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# Elections Matter: the Politics of Prosecuting Deceptive Advertising in Wisconsin

Courtney Vander Veen Mich  
*University of Wisconsin-Milwaukee*

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ELECTIONS MATTER: THE POLITICS OF PROSECUTING DECEPTIVE  
ADVERTISING IN WISCONSIN

by

Courtney Vander Veen Mich

A Thesis Submitted in

Partial Fulfillment of the

Requirements for the Degree of

Master of Arts

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December 2016

ABSTRACT  
ELECTIONS MATTER: THE POLITICS OF PROSECUTING DECEPTIVE  
ADVERTISING IN WISCONSIN

by

Courtney Vander Veen Mich

The University of Wisconsin-Milwaukee, 2016  
Under the Supervision of Professor David Pritchard

This study examines the causal relationship between ideology and regulation. Specifically, this study looks at the relationship between Wisconsin elected officials and their political party in relation to the level of enforcement of the Wisconsin deceptive advertising statute. The study analyzed 79 Wisconsin cases prosecuted for deceptive advertising from 2003 through 2014. The 79 cases occurred over the span of three different governor and attorney general four-year periods. These cases were analyzed for outcomes and the number of cases prosecuted during each of the three four-year periods present in Wisconsin. Fifty-six of the 79 cases were analyzed further for the number of defendants, type of defendants, amount of forfeitures ordered by the court during each four-year period. The study found that the part of the governor and attorney general correlated with the number of deceptive advertising cases prosecuted and the amount of forfeiture ordered in a four-year period.

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## CHAPTER 1: INTRODUCTION

Advertisers and lawmakers have long been concerned with the potential of deceiving people about products and services through advertising. Laws against deceptive advertising have been in place at the state level for over 100 years.<sup>1</sup> Wisconsin was one of the first American states to enact legislation against deceptive advertising.<sup>2</sup> By the end of the twentieth century, all 50 states had enacted legislation against deceptive advertising, similar to the Federal Trade Commission Act.<sup>3</sup> Commercial speech can be regulated at the state level, and is in the state of Wisconsin. However, the Federal Trade Commission (FTC), is the primary regulatory body of commercial speech.<sup>4</sup>

Over the past century, Wisconsin's law regarding deceptive advertising hasn't changed much, save expanding the law to cover radio and television.<sup>5</sup> Regulation of deceptive advertising is a form of consumer protection, which is presumably important to a market economy.

Wisconsin has departments devoted to consumer protection issues in the Department of Agriculture, Trade and the Consumer Protection and in the Wisconsin Department of Justice.

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<sup>1</sup> DANIEL POPE, *THE MAKING OF MODERN ADVERTISING* 206 (1983).

<sup>2</sup> Laws of Wisconsin Chapter 510, (1913), 576–77 (1913); POPE, *supra* note 1 at 206. Ohio was the first U.S. state to enact a deceptive advertising law on February 26, 1913. Wisconsin's law took effect on June 21, 1913.

<sup>3</sup> 15 U.S.C. §§41-58; KENNETH PLEVAN & MIRIAM SIROKEY, *ADVERTISING COMPLIANCE HANDBOOK* 289 (2nd ed. 1988); *COMMUNICATION AND THE LAW: 2014 EDITION*, 168 (W. Wat Hopkins ed., 2014). The Federal Trade Commission oversees national advertising campaigns for deceptive, fraudulent, or misleading advertising claims. Unlike many state deceptive advertising laws, federal law does not allow for private lawsuits. Federal and state laws regulate commercial speech, but federal law always supersedes state law in the event of conflict between the two.

<sup>4</sup> *COMMUNICATION AND THE LAW: 2014 EDITION*, *supra* note 3 at 164.

<sup>5</sup> Kathleen Kepner, *State Regulation of Advertising*, in *THE WISCONSIN BLUE BOOK* 183, 186 (1956); WIS. STAT. TIT. 100, 100.18 (2014). The original language of 1913 statute covered only public statements or announcements in print form. Eventually the language of the statute was changed to include advertisements over “any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public.” The law has yet to be updated to include explicit language covering cable and internet.

Political party lines have the potential to affect the enforcement of the law. How the law is applied determines the level of protection for the people and businesses of Wisconsin. In Wisconsin, the attorney general's office prosecutes individuals or business responsible for deceptive advertising under the Wisconsin Fraudulent Representations law.<sup>6</sup> The party of the elected governor and attorney general, Democratic or Republican, may determine the level of government regulation of the economy, where term is defined as the combination of governor and attorney general. This study hypothesizes a relationship between political party and application of Wisconsin's Fraudulent Representations law.

My theory is that ideology is related to regulation. Ideology is a system of shared beliefs and ideas that influences and forms political power structures.<sup>7</sup> Regulation is defined as state made laws or tools that are used to standardize conduct and to manage social, economic, and ecological risks.<sup>8</sup> In this study, ideology is operationalized and measured by the political party of the elected officials. Regulation is operationalized and measured by the level of enforcement of Wisconsin Statute 100.18. My general hypothesis is that the political party of the elected official(s) has an impact on the level of regulation of deceptive advertising with stricter regulation during a Democratic term than during a non-Democratic term.

In theory, consumer protection laws protect people against abusive business practices. These laws are in place at federal and state level, holding sellers of goods and services accountable for any deceptive information disseminated to the public. In Wisconsin, the Department of

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<sup>6</sup> WIS. STAT. TIT. 100, *supra* note 5.

<sup>7</sup> TERRY EAGLETON, LITERARY THEORY 13 (2nd ed. 1996). My definition was derived from Eagleton's definition of ideology.

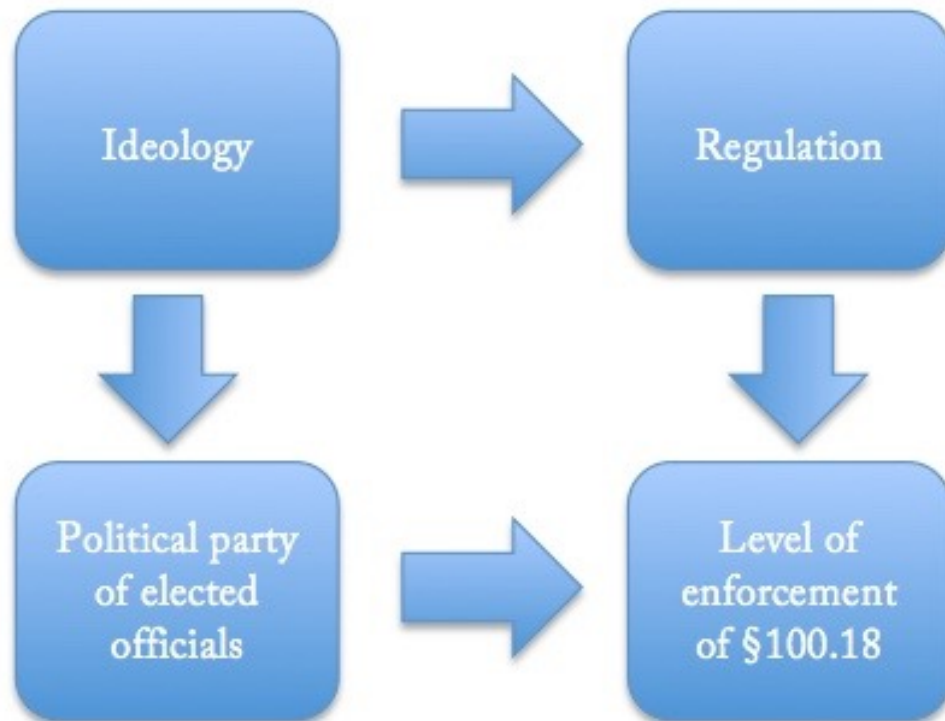
<sup>8</sup> David Levi-Faur, *Regulation & Regulatory Governance*, Working Paper No. 1 JERUS. PAP. REGUL. GOV. 1-47, 4 (2010).

Agriculture, Trade and Consumer Protection and the attorney general's office enforce consumer protection laws, including laws against deceptive advertising. Voters believe consumer protection to be an important issue.<sup>9</sup> Given that the attorney general is elected and that the secretary of the Department of Agriculture, Trade and Consumer Protection is appointed by the governor, it stands to reason that political ideology could have some influence over the application of consumer protection laws, specifically deceptive advertising. Figures 1 and 2 illustrate the conceptual framework of my hypotheses.

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<sup>9</sup> Colin Provost, *The Politics of Consumer Protection: Explaining State Attorney General Participation in Multi-State Lawsuits*, 59 *POLIT. RES. Q.* 609–18, 612 (2006).

**Figure 1**  
*Conceptual framework*

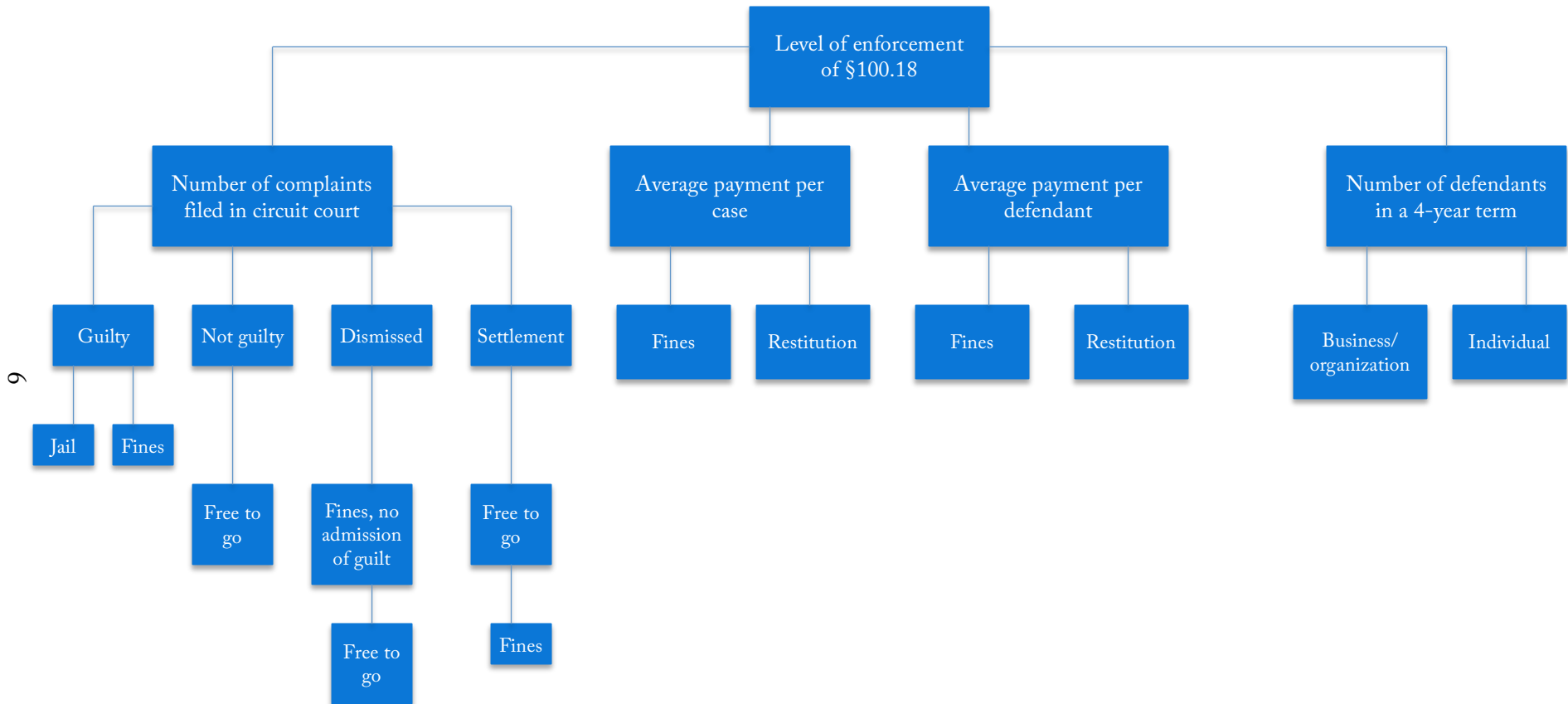


In the following pages of this study, I will attempt to explore the inner workings of Wisconsin’s consumer protection process and the roles elected officials play in this process. Chapter 2 explores political ideology, the history of Wisconsin’s fraudulent representations law underpinning the importance of this study to government workers and citizens alike, and identifies the specific hypotheses. In Chapter 3 I outline the methodology used in this study, how I tracked down, acquired and analyzed the data. In Chapter 4 I discuss in detail the study’s

findings in relation to my specific hypotheses as well as address other interesting results found in the data. Chapter 5 discusses what the findings mean and the importance of them. Chapter 6 restates the key findings of this study, acknowledges the limitations of this study and points to future research opportunities.



**Figure 2**  
*Conceptual breakdown*



## CHAPTER 2: BACKGROUND

### I. Political Theory

Generally when Americans speak about American politics, two political parties are recognized, Republicans and Democrats. Republican Party and Democratic Party are essentially the brand names for the groups of individuals and their ideals, and unlike special interest groups, political parties “do not have ‘natural’ issues positions.”<sup>10</sup> The Republican and Democratic parties are not the only political parties in America, but due to the financial backing of these two parties via large corporations and wealthy individuals, the majority of political power lies with these two parties. At the most basic level, the Republican Party claims to favor state rights and smaller federal government, while the Democrats often support expanding social welfare programs and policies.<sup>11</sup> Each political party holds a “set of interrelated attitudes that fit together into [a] coherent and consistent view of or orientation towards the political world,” otherwise known as political ideology.<sup>12</sup> In American politics, liberalism and conservatism are the most recognized political ideologies.<sup>13</sup> Because of the ideological differences between the two parties, each party believes economic and consumer issues should be handled differently. Both Republicans and Democrats have distinct sets of ideas that shape how the party and its elected officials shape their economic policies.

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<sup>10</sup> James M. Snyder, Jr. & Michael M. Ting, *An Informational Rationale for Political Parties*, 46 AM. J. POLIT. SCI. 90–110, 90–91 (2002).

<sup>11</sup> TIMOTHY O. LENZ & MIRYA HOLMAN, AMERICAN GOVERNMENT 187 (2013); Republican National Committee, GOP REPUBLICAN PLATFORM 2016, <https://www.gop.com/the-2016-republican-party-platform/>; Democrats, THE 2016 DEMOCRATIC PLATFORM DEMOCRATS, <https://www.democrats.org/party-platform>.

<sup>12</sup> WILLIAM H. FLANIGAN ET AL., POLITICAL BEHAVIOR OF THE AMERICAN ELECTORATE 179 (13 ed. 2015).

<sup>13</sup> *Id.* at 146.

Both the Republican and Democratic parties project clear political ideologies, and while American voters hold “opinions on a wide range of issues” these opinions are labeled either liberal leaning or conservative leaning by political commentators and analysts.<sup>14</sup> In modern day American politics, the Democratic Party typically represents liberal leaning political ideologies. On the other hand, the Republican Party represents the more conservative leaning political ideologies.<sup>15</sup> Most Americans are able to articulate their political ideological leanings in terms of liberal and conservative, but the Democratic and Republican parties do not always fully represent liberal and conservative leanings.<sup>16</sup>

More Americans indicate that they believe themselves to have more “middle-of-the-road” ideologies or “haven’t thought about it” in comparison to liberal or conservative ideological identification.<sup>17</sup> Business autonomy tends to be an issue that many Americans have opinions on, as do the Democratic and Republican parties. Because the country has supported a two party system for over 150 years, many voters are able to identify as Republican or Democratic and many elected officials adhere to either the Republican or Democratic party values.<sup>18</sup> Identifying with a political party tends to hinge on social issues as well as feeling a sense of “closeness to the social groups affiliated with the parties.”<sup>19</sup> And though voters can identify with one party or the other on a sliding scale, the following assessments of the two major American political parties are

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<sup>14</sup> *Id.* at 179–180.

<sup>15</sup> *Id.* at 180–182.

<sup>16</sup> *Id.* at 179.

<sup>17</sup> *Id.* at 181.

<sup>18</sup> *Id.* at 99.

<sup>19</sup> Paul Goren, *Party Identification and Core Political Values*, 49 AM. J. POLIT. SCI. 881–896, 881 (2005).

a general outline of party beliefs, common practices, and visions of citizenship and independent citizen actions.<sup>20</sup>

### *A. Republicans*

In general, citizens who feel close to social groups typically affiliated with the Republican Party, such as business people, white evangelical Protestants, white men with some college or less, and culturally conservative individuals identify themselves as part of the Republican Party.<sup>21</sup> Republicans tend to believe that the government's role is to uphold U.S. citizens' ability to secure the freedoms of a democratic society for themselves; individuals are responsible for their own "autonomy or rights."<sup>22</sup> The Republican Party's core beliefs stress the importance of the individual and thus decreasing state involvement in the economy, increasing individual liberties, and restricting the power of unions.<sup>23</sup>

The economic theory that the Republicans claim to favor is a *laissez-faire* or free market theory in terms of business autonomy.<sup>24</sup> This theory proposes that businesses should face little regulation from the government, consumers and competing business should take on the role of regulating unfair business practices. Another key objective of the Republican Party is a minimal state.<sup>25</sup> The free market theory suggests that sellers of superior products will regulate the market by informing consumers of the inferior products and false claims of the inferior products through

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<sup>20</sup> FLANIGAN ET AL., *supra* note 12 at 101–102.

<sup>21</sup> Goren, *supra* note 19 at 882; RUSSELL J. DALTON, *CITIZEN POLITICS: PUBLIC OPINION AND POLITICAL PARTIES IN ADVANCED INDUSTRIAL DEMOCRACIES* 145 (6th ed. 2014); Strong Groups for the Democratic and Republican Parties, PEW RESEARCH CENTER (2015), [http://www.people-press.org/2015/04/07/a-deep-dive-into-party-affiliation/4-6-2015\\_lede/](http://www.people-press.org/2015/04/07/a-deep-dive-into-party-affiliation/4-6-2015_lede/).

<sup>22</sup> DAVID HELD, *MODELS OF DEMOCRACY* 202 (3rd ed. 2006).

<sup>23</sup> *Id.* at 201.

<sup>24</sup> Robert Pitofsky, *Beyond Nader: Consumer Protection and the Regulation of Advertising*, 90 HARV. LAW REV. 661–701, 663 (1977); HELD, *supra* note 22 at 201.

<sup>25</sup> HELD, *supra* note 22 at 201.

advertising.<sup>26</sup> Consumers are expected to protect their own consumer interest by initiating consumer suits against deceptive advertisers.<sup>27</sup> Placing consumer protection on consumers and or “sellers with superior products” remedies the need for government intervention.<sup>28</sup> The free market theory upholds the idea that the market will regulate itself, thus leaving the regulation of the market to businesses rather than government. Republicans tend to lend a higher amount of business autonomy than does the Democratic Party, thus trusting the economy to right itself with little to no government involvement.

A Gallup poll surveying politically motivated U.S. citizens illustrates partisan trust in the U.S. government and U.S. businesses to solve economic problems. The poll shows that 64 percent of Republicans trust businesses to solve economic problems compared to 29 percent of Republicans trusting the U.S. government to solve the U.S.’s economic problems.<sup>29</sup> In contrast, 72 percent of Democrats trust the U.S. government to solve the U.S.’s economic problems compared to 24 percent of Democrats trusting U.S. business (See Table 1).<sup>30</sup>

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<sup>26</sup> Pitofsky, *supra* note 24 at 663.

<sup>27</sup> *Id.* at 667.

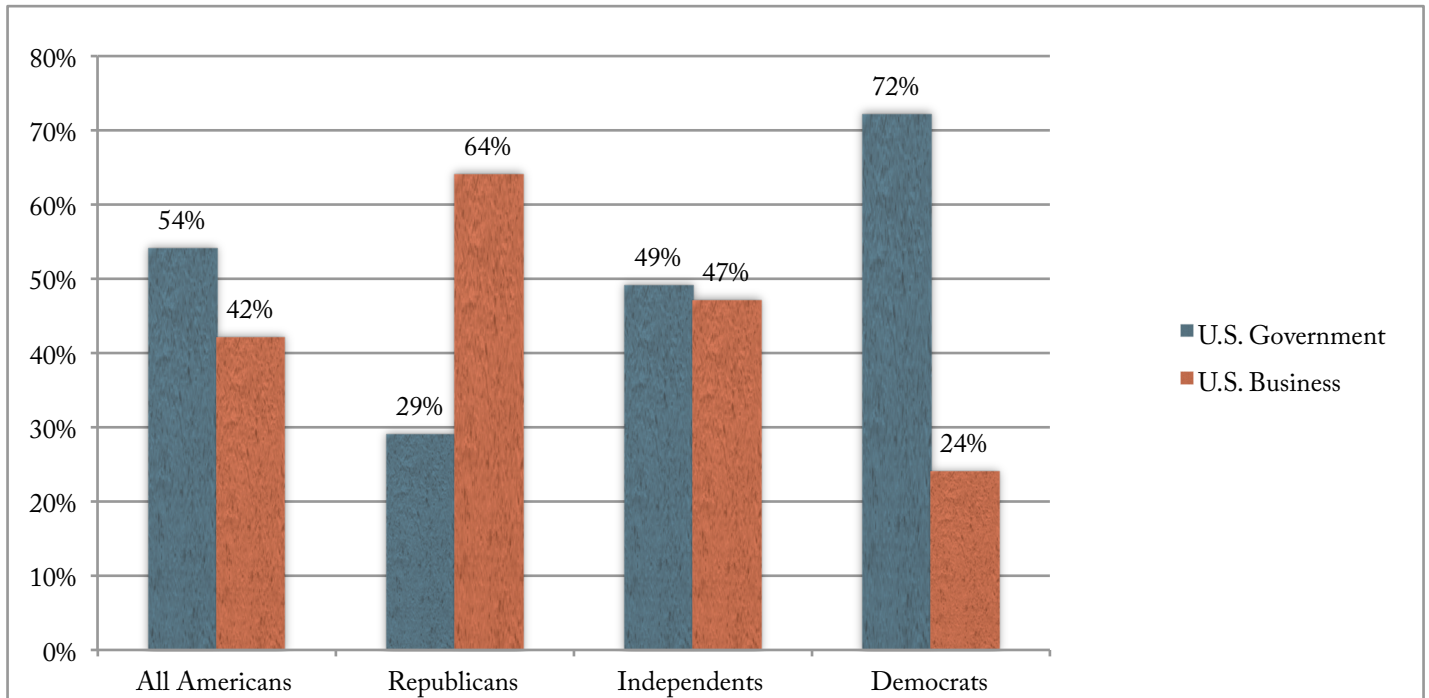
<sup>28</sup> *Id.* at 667.

<sup>29</sup> Frank Newport, ON ECONOMY, REPUBLICANS TRUST BUSINESS; DEMS TRUST GOV’T GALLUP (2009), <http://www.gallup.com/poll/116599/Economy-Republicans-Trust-Business-Dems-Trust-Gov.aspx>; MARK D. BREWER & JEFFREY M. STONECASH, POLARIZATION OF THE POLITICS OF PERSONAL RESPONSIBILITY 95 (2015).

<sup>30</sup> Newport, *supra* note 29.

**Table 1**

*Who do you trust more to solve the United States' economic problems—the U.S. government or U.S. businesses?*



*Gallup Poll, March 5-8, 2009*

*Based on 500 national adults in survey form B<sup>31</sup>*

Due to the party's belief that the government is doing too much to regulate the nation's economy, GOP politicians would be less likely to intervene with deceptive advertising and rather let the market or competitors correct the deceptive messages.<sup>32</sup> Republican elected politicians are less likely to regulate business because their ideological beliefs lean towards letting the market

<sup>31</sup> *Id.* "Results are based on telephone interviews with 1,012 national adults, aged 18 and older, conducted March 5-8, 2009. For results based on the total sample of national adults, one can say with 95% confidence that the maximum margin of sampling error is  $\pm 3$  percentage points. For results based on the 500 national adults in the Form B half-sample, the maximum margins of sampling error are  $\pm 5$  percentage points. For results based on the 512 national adults in the Form A half-sample and 500 national adults in the Form B half-sample, the maximum margins of sampling error are  $\pm 5$  percentage points."

This is the most current Gallup Poll available concerning America's trust and economic problem solving.

<sup>32</sup> *Id.*

handle itself.<sup>33</sup> I am not implying that Republicans avoid regulation entirely but rather place a greater importance on the responsibility of individuals and marketplace competitors to solve marketplace problems.<sup>34</sup>

### *B. Democrats*

The social groups that tend to feel closer the Democratic Party are non-white Americans, Millennials, Jews, post-graduate women, and the religiously unaffiliated.<sup>35</sup> The Democratic Party believes the government's role in society is to intervene and regulate the economy when in the public's interest, but to refrain from intervening in the private affairs of individuals.<sup>36</sup> Those who subscribe to a more liberal political ideology aim to foster a "relationship between state, civil society and subject populations."<sup>37</sup> Instead of fostering a society where individuals are responsible for advocating for their own "autonomy or rights," Democrats believe the government should further a society that actively supports groups of people.<sup>38</sup> The poor, the elderly, the unemployed are among the groups of people the Democratic Party believes are not always able to fully obtain the benefits of a democratic society and thus should be helped by their government.<sup>39</sup>

The Democratic Party puts a higher value on society as a whole, sometimes at the cost of individual freedoms, and aims to balance majority and minority needs. Rather than a free market economy, Democrats favor a fair market economy, on the theory that capitalism works best when

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<sup>33</sup> Colin Provost, *State Attorneys General, Entrepreneurship, and Consumer Protection in the New Federalism*, 33 PUBLIUS 37–53, 46 (2003).

<sup>34</sup> *Id.* at 46.; Pitofsky, *supra* note 24 at 663.

<sup>35</sup> Strong Groups for the Democratic and Republican Parties, *supra* note 21.

<sup>36</sup> Democratic Party, ENCYCLOPEDIA BRITANNICA.COM (2016), <https://www.britannica.com/topic/Democratic-Party>.

<sup>37</sup> HELD, *supra* note 22 at 209.

<sup>38</sup> Democratic Party, *supra* note 36.

<sup>39</sup> *Id.*

the government has a role in regulating the economy.<sup>40</sup> Democrats believe that the government has an important role in regulating the nation's economy. As previously stated, the majority of Democrats polled trust the government to solve economic problems over business.<sup>41</sup> Democrats tend to believe that the free market theory approach to the economy is inadequate and that the approaches of letting the market take care of inferior products and false claims will not result in accurate information for consumers.<sup>42</sup> Democrats argue, "there are too many sellers" selling "too many products" and the features of these products able to change frequently over time making it hard for competitors to be able to expose false claims.<sup>43</sup> Democrats tend to favor consumer protection programs as an alternative to putting the onus on consumers because consumer suits are infrequent and usually have a minimum jurisdictional amount.<sup>44</sup> Ultimately, no matter the level of government involvement in regulating the economy, consumers should inform themselves on products and business practices.<sup>45</sup>

Democrats not only say that they trust the government more than businesses to solve economic problems, they are also more likely to say that government should do more to regulate the nation's economy.<sup>46</sup> Thus, Democrats may be likely to pursue more consumer complaints regarding fraud or deception in attempts to ensure a fair marketplace.<sup>47</sup>

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<sup>40</sup> BARBARA A. BARDES, MACK C. SHELLY & STEFFEN W. SCHMIDT, *AMERICAN GOVERNMENT AND POLITICS TODAY: THE ESSENTIALS* 21 (17 ed. 2013).

<sup>41</sup> Newport, *supra* note 29.

<sup>42</sup> Pitofsky, *supra* note 24 at 663.

<sup>43</sup> *Id.* at 633.

<sup>44</sup> *Id.* at 667–668.

<sup>45</sup> *Id.* at 663.

<sup>46</sup> Newport, *supra* note 29. See Table 1.

<sup>47</sup> Provost, *supra* note 33 at 46.



### *C. Regulation of Wisconsin Economy in Action*

In March of 2015, environmentalists criticized Republican Governor Scott Walker for decreased enforcement of environmental regulations by the state Department of Natural Resources (DNR).<sup>48</sup> Under the Walker administration, fewer notices of environmental violations were issued; the DNR referred fewer cases for prosecution and overall the department took on fewer cases.<sup>49</sup> The DNR under Walker's first administration, 2011-2014, pursued nearly 47 percent fewer cases than under Democrat Jim Doyle's second term (2007-2010).<sup>50</sup> The number of violations issued dropped 42 percent since Doyle's final term to Walker's first term. Finally, during Walker's first term the DNR referred an average of 32 cases annually to the Department of Justice compared to an average of 68 cases referred annually under Doyle's final term.<sup>51</sup>

The seemingly lax enforcement of environmental regulations by a Republican governor illustrates the GOP ideology of less interference in the economy. Less responsibility is put on the government and more responsibility is put on the business sector. In theory, this same approach would be used by a Republican administration in regard to regulation of deceptive advertising.

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<sup>48</sup> Lee Bergquist, *DNR enforcement actions down under Scott Walker*, JOURNAL SENTINEL, March 27, 2015, <http://www.jsonline.com/news/statepolitics/dnr-enforcement-actions-down-under-scott-walker-dnr-enforcement-actions-down-under-scott-walker-b994-297806681.html>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

## II. *History of Wisconsin law*

Despite being a multi-billion dollar industry, advertisers have long struggled to legitimize their professional status and be seen as an ethical industry.<sup>52</sup> The lack of respect towards the industry can be traced back to patent medicine advertising. Patent medicine creators spent large amounts of money to sell “cure all” tonics and concoctions that often failed to deliver the results their advertisements claimed users would experience.<sup>53</sup> These advertisements were criticized for including unverified testimonials and many of these tonics proved to be harmful to users.<sup>54</sup> The deceptive nature of some of these early patent medicines led to nearly an industry wide embargo on such advertisements.<sup>55</sup>

The need for a law addressing deceptive and fraudulent advertising messages stemmed from the advertising industry’s desire to legitimate the profession and mitigate government regulation through self-regulation.<sup>56</sup> Around 1900, newspapers and magazines began to review advertisements in response to complaints about deceptive advertisements.<sup>57</sup> Publishers were believed to have an important role in the advertising industry.<sup>58</sup> Magazine publisher Cyrus H.K. Curtis published what is believed to be the first self-regulation advertising code, “Curtis

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<sup>52</sup> Daniel Pope, “MAKING SENSE OF ADVERTISEMENTS,” HISTORY MATTERS: THE U.S. SURVEY COURSE ON THE WEB (2003), <http://historymatters.gmu.edu/mse/Ads/>, PAMELA WALKER LAIRD, *ADVERTISING PROGRESS: AMERICAN BUSINESS AND THE RISE OF CONSUMER MARKETING* (1998); Quentin J. Schultze, *Professionalism in Advertising: The Origin of Ethical Codes*, 31 J. COMMUN. 64 (1981).

<sup>53</sup> LAIRD, *supra* note 52 at 50.

<sup>54</sup> LAIRD, *supra* note 52.

<sup>55</sup> Jeffery S. Edelstein, *Self-Regulation of Advertising: An Alternative to Litigation and Government Action*, 43 JL TECH 509, 515 (2003); LAIRD, *supra* note 52 at 222–223.

<sup>56</sup> Edelstein, *supra* note 55 at 515; COMMUNICATION AND THE LAW: 2014 EDITION, *supra* note 3 at 168.

<sup>57</sup> Edelstein, *supra* note 55 at 515.

<sup>58</sup> LAIRD, *supra* note 52 at 52.

Advertising Code,” in 1910.<sup>59</sup> The code was created to protect Curtis’s magazine advertisers and readers “from all copy that is fraudulent or deceptive.”<sup>60</sup> Curtis believed in truth in advertising.<sup>61</sup> Truthful advertising bolsters consumer confidence in the claims advertised; in turn advertisers benefit.<sup>62</sup>

In 1911, George P. Rowell, founder of the first national trade magazine for the advertising industry, *Printers’ Ink*, published a model statute dubbed “The Printers’ Ink Statute.”<sup>63</sup> *Printers’ Ink* hired lawyer Harry D. Nims to write the statute that proposed to make the dissemination of deceptive or fraudulent advertising a misdemeanor.<sup>64</sup> Through the *Printers’ Ink* periodical, editor John Romer encouraged Associated Advertising Clubs of America members to push the enactment of “The Printers’ Ink Statute” in all states.<sup>65</sup> Associated Advertising Clubs were ardently supportive of the model statute because it established the industry’s notion of “ethicality as an economic resource.”<sup>66</sup> Enactment came first with Ohio on February 26, 1913.<sup>67</sup> Fourteen other states would introduce a version of “The Printers’ Ink Statute” in 1913, including Wisconsin.<sup>68</sup>

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<sup>59</sup> Edelstein, *supra* note 55 at 515; LAIRD, *supra* note 52 at 222–223; Cyrus H.K. Curtis, ADVERTISING HALL OF FAME, [http://advertisinghall.org/members/member\\_bio.php?memid=594](http://advertisinghall.org/members/member_bio.php?memid=594). Curtis is the founder of the modern magazine and made noted contributions to the advertising profession. Curtis published the *Ladies’ Home Journal* and the *Saturday Evening Post*.

<sup>60</sup> Edelstein, *supra* note 55 at 515.

<sup>61</sup> Cyrus H.K. Curtis, *supra* note 59.

<sup>62</sup> Edelstein, *supra* note 55 at 509–510.

<sup>63</sup> *Id.* at 515.; GEORGE P. ROWELL, FORTY YEARS AN ADVERTISING AGENT 355–356 (2nd ed. 1926).

<sup>64</sup> CHRIS HOOFNAGLE, FEDERAL TRADE COMMISSION PRIVACY LAW AND POLICY 122–123 (2015); HARRY D. NIMS, NIMS ON UNFAIR COMPETITION AND TRADE MARKS 634 (2 ed. 1917).

<sup>65</sup> Schultze, *supra* note 52 at 65.

<sup>66</sup> *Id.* at 66.

<sup>67</sup> POPE, *supra* note 1 at 206.

<sup>68</sup> *Id.* at 206.

The Wisconsin Legislature enacted its law prohibiting deceptive advertising in 1913.<sup>69</sup> This multi-sectioned statute titled “Fraudulent representations” aimed to protect Wisconsin consumers from untrue, deceptive or misleading representations made to sell a product or service. Before the enactment of Wisconsin’s Deceptive Trade Practices Act, in 1913, to determine liability against the defendant, the prosecution had to prove the defendant intended to deceive the public.<sup>70</sup> Since 1962, statements can be found in violation of the statute even if they are literally true but leave a misleading impression.<sup>71</sup>

The original language of the law read that no entity with the intent to sell may make or place before the public in a newspaper, magazine, or other publication an advertisement, statement, representation that is untrue, deceptive or misleading.<sup>72</sup> The original language limited the law to printed advertisements. Eventually, the law was expanded to include oral, written and broadcast claims.<sup>73</sup>

The Wisconsin Legislature has modified the law over the years. In 1927, subsection (2) was added. Subsection (2) relates to buying and selling of products or services by private parties.<sup>74</sup> This subsection explicitly directs the seller or purchaser to indicate that the transaction is a

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<sup>69</sup> Laws of Wisconsin Chapter 510, (1913), *supra* note 2 at 576–77.

<sup>70</sup> Cullen Goretzke, *The Resurgence of Caveat Emptor: Puffery Undermines the Pro-Consumer Trend in Wisconsin’s Misrepresentation Doctrine*, 2003 WIS REV 171, 222 (2003); Mark R. Hinkston, *Protecting Consumers in the Modern Age: Wisconsin’s Deceptive Trade Practices Act*, 81 WIS. LAWYER (2008), <http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=81&Issue=10&ArticleID=1596>. Wisconsin statute 100.18 is often referred to as the Deceptive Trade Practices Act.

<sup>71</sup> Wis. Dep’t of Agric., Trade and Consumer Prot., FRAUDULENT REPRESENTATIONS, ADVERTISING AND SALES CLAIMS; *CF. MURRAY SPACE SHOE CORP. v. FTC*, 304 F. 2D 270 (2D CIR. 1962).

<sup>72</sup> Kepner, *supra* note 5 at 186.

<sup>73</sup> Hinkston, *supra* note 70.; *Automatic Merch. of Am. Inc.*, 437 64 Wis.2d 659 at 663. The statute has yet to be updated to include internet claims exclusively. Internet can be included in multiple advertising mediums and or if a transaction takes place.

<sup>74</sup> Kepner, *supra* note 5 at 186.

“business concern and not a private party”.<sup>75</sup> Subsection (3) regulated charity solicitations, requiring that any advertisement for charitable donations must disclose the amount of funds going directly to the charitable organization. Subsection (3) was added in 1941.<sup>76</sup> In 1945, the language of the law was expanded to cover “any advertisement, announcement, statement or representation.”<sup>77</sup> This amendment expanded the application of the statute to cover television and radio.<sup>78</sup> In 1951, the Wisconsin Retail Gas Association requested legislation regulating standards for displaying gasoline prices. Thus subsection (5) was enacted and, as a result, some of the regulations overseen by the Department of Motor Vehicles were transferred to the Fraudulent Representations section.<sup>79</sup> In 1955, another subsection was added to the Act, and many of the subsections were renumbered.<sup>80</sup> In 1974, the Wisconsin Supreme Court ruled ‘the public’ does not mandate statements need to be made to a large audience, but that one person constitutes as ‘the public’.<sup>81</sup>

Representations are not limited to media advertisements, but oral and written statements or contracts are also included.<sup>82</sup> The Deceptive Trade Practices Act was enacted to fill the legal holes that existed in common law protection for the state’s citizens.<sup>83</sup> The 2014-15 language of the statute generally reads: no entity intending to sell any product or service or enter into a contract, relating to any product or service may make any untrue, deceptive or misleading

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<sup>75</sup> *Id.* at 186.

<sup>76</sup> *Id.* at 186. Today subsection (3) is an expanded version of the 1927 subsection (2).

<sup>77</sup> Wis. Dep’t of Agric., Trade and Consumer Prot., *supra* note 71.; Cf. Murrery Space Shoe Corp. V. FTC, 304 F. 2d 270 (2<sup>nd</sup> Cir. 1962).

<sup>78</sup> WISCONSIN, WISCONSIN SESSION LAWS 1945 Chapter 399, 652 (1945).

<sup>79</sup> Kepner, *supra* note 5 at 187.

<sup>80</sup> Kepner, *supra* note 5. (Today subsection (6) deals with gas price displays.)

<sup>81</sup> State v. Automatic Merchandisers of America, Inc., 64 Wis. 2d 659, 663, 221 N.W. 2d 683, 686, (1974).

<sup>82</sup> *Id.* 437 64 Wis. 2d 659 662, 663 (1974).

<sup>83</sup> Hinkston, *supra* note 70 at 81.

representation in combination with such dealings.<sup>84</sup> Thus, under the law, theoretically, the state could prosecute an individual even if intent to deceive wasn't present and not harm was done.

The following standards must be met for the Department of Agriculture, Trade and Consumer Protection and or the Department of Justice to take action against an entity accused of distributing a fraudulent representation:

1. The defendant has intentionally made a public depiction (advertisement, statement or other representation).
2. The depiction is presented as factual but is, in fact, false, deceptive or misleading.
3. The plaintiff or the public (if the plaintiff is the State on behalf of the public) has suffered monetary loss as a result of the deceptive depiction.<sup>85</sup>

Individuals found in violation of the law face penalties including fines and official sanctions and the possibility of imprisonment.<sup>86</sup> Intent to deceive does not need to be proved by

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<sup>84</sup> Department of Agriculture, Trade and Consumer Protection, ADVERTISING AND SALES CLAIMS: FRAUDULENT REPRESENTATIONS, <http://datcp.wi.gov/uploads/Consumer/pdf/FraudulentRepresentationsDetails.pdf>. Wisconsin statute 100.18 (1) reads in its entirety "No person, firm, corporation or association, or agent or employe [sic] thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employe [sic] thereof, directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, merchandise, securities, service or employment or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading."

<sup>85</sup> *Tietsworth*, 2004 WI 32, ¶ 39, 270 Wis. 2d. 146. *See also* Wis. JI-Civil 2418.

<sup>86</sup> WIS. STAT. TIT. 100, *supra* note 5. Only the violation of §100.18 (9) and §100.182 carry the possibility of imprisonment.

the plaintiff for a seller to be found guilty under the statute.<sup>87</sup> Sellers can be found guilty of deceptive advertising under the law even without proof of anyone being deceived.<sup>88</sup>

Once a complaint of deceptive advertising is made to the Department of Agriculture, Trade and Consumer Protection there are many possible ways in which that complaint can be resolved. Complaints are handled by the Consumer Protection Bureau Organization, which operates within the Department of Agriculture, Trade and Consumer Protection. The Bureau is located in Madison and is structured into several units.<sup>89</sup> As of 2015, the work units consist of 33 employees in the following departments: administration and outreach, consumer information hotline, compliant administration, investigation, and privacy protection.<sup>90</sup>

According to the Department of Agriculture, Trade and Consumer Protection, the Consumer Protection Bureau receives on average of 12,000 to 15,000 consumer complaints annually.<sup>91</sup> The Department of Agriculture, Trade and Consumer Protection estimates that upwards of two thirds of these initial complaints are resolved during initial communication simply by informing these individuals of their “legal rights and options for further actions.”<sup>92</sup> The nearly one third of the complaints that aren’t resolved during initial contact are resolved primarily within the Department of Agriculture, Trade and Consumer Protection (see Figure 3).

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<sup>87</sup> Department of Agriculture, Trade and Consumer Protection, *supra* note 84.

<sup>88</sup> *Id.*

<sup>89</sup> Paul Ferguson & Michael Steinschneider, CONSUMER PROTECTION PROGRAMS INFORMATIONAL PAPER 85, 2015 7–8 (2015).

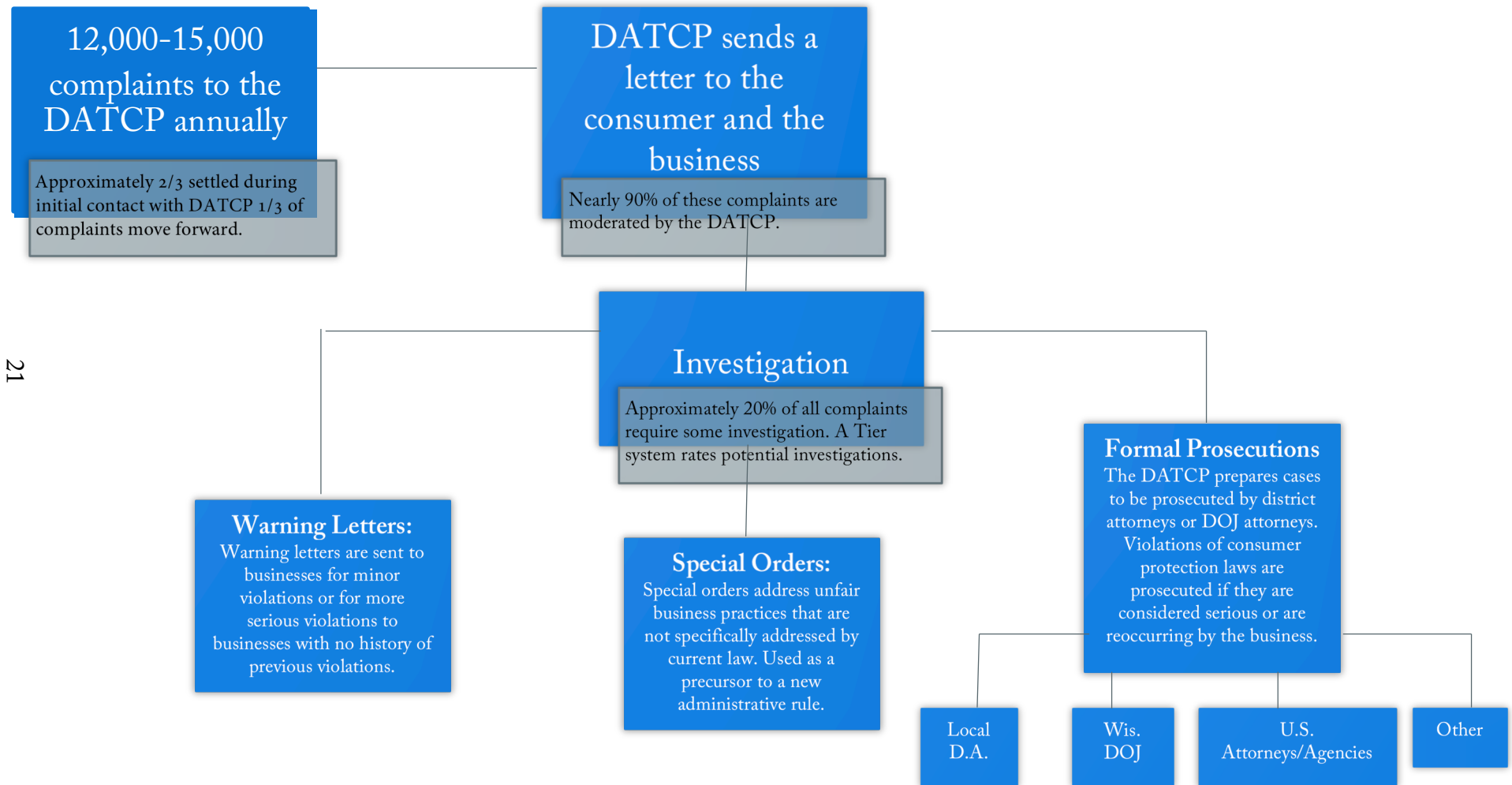
<sup>90</sup> *Id.* at 8.

<sup>91</sup> Christopher Pollek, CONSUMER PROTECTION PROGRAMS INFORMATIONAL PAPER 75, 2003 8 (2003); Christopher Pollek & Paul Onsager, CONSUMER PROTECTION PROGRAMS INFORMATIONAL PAPER 79 8 (2005), [http://legis.wisconsin.gov/lfb/publications/Informational-Papers/Pages/Info\\_2005.aspx](http://legis.wisconsin.gov/lfb/publications/Informational-Papers/Pages/Info_2005.aspx); Christopher Pollek & Paul Onsager, INFORMATIONAL PAPER 84 CONSUMER PROTECTION PROGRAMS 9 (2007); Paul Ferguson & Paul Onsager, CONSUMER PROTECTION PROGRAMS INFORMATIONAL PAPER 86 11 (2013); Ferguson and Steinschneider, *supra* note 89 at 15.

<sup>92</sup> Ferguson and Steinschneider, *supra* note 89 at 14.

**Figure 3<sup>93</sup>**

*Process by which a consumer complaint gets resolved*



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<sup>93</sup> *Id.* at 14-17. Other refers to other jurisdictions or DATCP for further DATCP action.



### *A. History of Regulatory Responsibility*

The Department of the Treasury Agent was specifically created for the regulation of “peddlers,” “transient merchants,” “showmen” and closeout sales in 1872.<sup>94</sup> Thus, in 1913, it probably seemed like a good department to oversee deceptive advertising.<sup>95</sup> During this time, the Office of Dairy and Food Commissioner regulated food, drink, and drugs.<sup>96</sup> In 1929, regulation of deceptive advertising fell to the Department of Agriculture when the Department of Agriculture absorbed the Office of Dairy and Food Commissioner.<sup>97</sup>

The 1960s brought about a national “consumerism” trend in the United States. Wisconsin was not immune to this trend. The Department of Agriculture’s consumer protection enforcement role came under attack because of the consumerism trend.<sup>98</sup> The attack was twofold. First came the push to change the name of the Department of Agriculture to encompass better its role in trade regulations and consumer protection matters.<sup>99</sup> Secondly, efforts by Wisconsin legislature were being made to transfer the enforcement of consumer protection matters to the Department of Justice.<sup>100</sup> Proponents of the transfer of duties believed that a “statewide law

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<sup>94</sup> General Laws Passed by the Legislature of Wisconsin, (1872), <http://docs.legis.wisconsin.gov/1872/related/acts/177.pdf>; Kepner, *supra* note 5 at 185.

<sup>95</sup> General Laws Passed by the Legislature of Wisconsin, *supra* note 94. In 1872, chapter 117, section 1 authorized the governor to appoint a “suitable person” to act as “treasury agent,” the duty of the treasury agent was to “overs and enforce if necessary under the provisions thereof, the collection of fees dues for license fixed by chapter 72 the general laws of 1870, relating to ‘hawkers and peddlers,’ and also to enforce the collection of fees required to be paid into the state treasury for any license to transact business under the provisions of any other existing law of state.”

<sup>96</sup> A history of consumer protection in Wisconsin, THE JOURNAL TIMES (1998), [http://journaltimes.com/news/history-of-consumer-protection-in-wisconsin/article\\_3932d947-af4f-598c-b195-098603d435db.html](http://journaltimes.com/news/history-of-consumer-protection-in-wisconsin/article_3932d947-af4f-598c-b195-098603d435db.html).

<sup>97</sup> Kepner, *supra* note 5 at 185; A history of consumer protection in Wisconsin, *supra* note 96.

<sup>98</sup> James D. Jeffries, *Protection for Consumers Against Unfair and Deceptive Business Practices in Wisconsin*, 57 MAR REV 559, 562 (1974).

<sup>99</sup> *Id.* at 562.

<sup>100</sup> *Id.* at 562–63.

enforcement agency” with more legal expertise was needed to reduce consumer fraud.<sup>101</sup> The Department of Agriculture and Wisconsin businesses opposed the transfer of consumer protection matters to the attorney general’s office, claiming that an elected official should not handle consumer protection matters.<sup>102</sup>

However, at the time, the only states that did not place the responsibility of enforcement of deceptive trade practices with the attorney general’s office were Wisconsin, Virginia and Florida.<sup>103</sup> Wisconsin businesses opposed transferring consumer protection matters to the Department of Justice because they were acting in their own interest. The typical state department of agriculture functions not as a regulatory agency, but more as a protector of the interests of producers, such as “farmers, farm co-ops, and food processors,” rather than protecting the interests of consumers.<sup>104</sup> In contrast to the typical state department of agriculture, the attorneys in the attorney general’s office are legal experts, and would be more likely to vigorously proceed with prosecution under state legislation, acting on the consumer’s behalf.<sup>105</sup>

In 1961, two Democratic sponsored bills proposed to transfer the Department of Agriculture’s consumer protection authority to the attorney general’s office.<sup>106</sup> These bills as well as two like bills introduced in 1963, failed.<sup>107</sup> The 1963 bills failed even with bipartisan

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<sup>101</sup> *Id.* at 563. In 1951, the Wisconsin legislature did give the attorney general the ability to file complaints but the Department of Agriculture still held the majority of enforcement responsibility. While the attorney general was authorized to file complaints, the Department of Agriculture still had the authority to hear and throw out complaints filed.

<sup>102</sup> *Id.* at 563.

<sup>103</sup> William A. Lovett, *State Deceptive Trade Practice Legislation*, TULANE LAW REV. 724–757, 734 (1972).

<sup>104</sup> *Id.* at 735.

<sup>105</sup> *Id.* at 735.

<sup>106</sup> Jeffries, *supra* note 98 at 563. Governor Gaylord Nelson (D) Attorney General John Reynolds (D) were supportive of these two bills.

<sup>107</sup> *Id.* at 563–64.

support.<sup>108</sup> Again, from 1965 to 1968, Attorney General Bronson LaFollette (D) supported a bill based on the Illinois Consumer Fraud Act.<sup>109</sup> The bill would have granted the attorney general's office investigative and injunctive authority as well as have created a comprehensive consumer fraud law in Wisconsin.<sup>110</sup> Although the LaFollette supported bill ultimately failed, it fared far better than its predecessors, passing unanimously in the State Assembly, but failing in the State Senate by a narrow vote.<sup>111</sup> The continued attempt to strip the Department of Agriculture of its consumer protection authority and transfer that authority to the Attorney General's Office undoubtedly created a hostile and feuding atmosphere between the two state agencies.<sup>112</sup>

In 1969, the Republican governor and Republican attorney general sought to end the ongoing feud between the Department of Agriculture and the Department of Justice over consumer protection issues.<sup>113</sup> Negotiations between the two agencies resulted in an interagency relationship through a memorandum of understanding.<sup>114</sup> Both agencies agreed to coordinate investigation and enforcement procedures in matters of consumer protection and trade practices.<sup>115</sup> The coordination between the two agencies resulted in an "integrated complaint processing system," in which the Department of Agriculture would investigate complaints to

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<sup>108</sup> *Id.* at 564. The 1963 bills had the bipartisan support of Democratic Governor Gaylord Nelson and Republican Attorney General George Thompson.

<sup>109</sup> *Id.* at 564.; ILL. STAT. ANN. CH. 121 1/2 (SMITH-HURD SUPP.1972).

<sup>110</sup> Jeffries, *supra* note 98 at 564.

<sup>111</sup> *Id.* at footnote 564.

<sup>112</sup> *Id.* at 564.

<sup>113</sup> *Id.* at 564. Warren Knowles was the governor and Robert Warren was the attorney general in 1963.

<sup>114</sup> *Id.* at 564.; WISCONSIN LEGISLATIVE REFERENCE BUREAU, STATE OF WISCONSIN BLUE BOOK 448 (1970),

[https://books.google.com/books?id=\\_ccqAAAAMAAJ&pg=PA448&clpg=PA448&dq=Cooperative+consumer+protection+agreement+between+the+Wisconsin+Department+of+Justice+and+the+Wisconsin+Department+of+agriculture+1969&source=bl&cots=0q-2EvWQuE&sig=FoAETsJ3luIVXL9BQuWs6QrB6ps&hl=en&sa=X&ved=0ahUKEwiL7dfjyvJAhXLOz4KHZgVB-0Q6AEIKjAC#v=onepage&q=consumer%20protection&f=false](https://books.google.com/books?id=_ccqAAAAMAAJ&pg=PA448&clpg=PA448&dq=Cooperative+consumer+protection+agreement+between+the+Wisconsin+Department+of+Justice+and+the+Wisconsin+Department+of+agriculture+1969&source=bl&cots=0q-2EvWQuE&sig=FoAETsJ3luIVXL9BQuWs6QrB6ps&hl=en&sa=X&ved=0ahUKEwiL7dfjyvJAhXLOz4KHZgVB-0Q6AEIKjAC#v=onepage&q=consumer%20protection&f=false)

<sup>115</sup> WISCONSIN LEGISLATIVE REFERENCE BUREAU, *supra* note 114 at 448. The cooperation agreement was reached in June of 1969.

determine the merit of the complaint and refer law violations the Department of Justice for prosecution.<sup>116</sup> Before the year was out it became clear that cooperative agreement between the two agencies wasn't working. The Department of Justice's authority over civil prosecutions was believed to be "makeshift and inadequate."<sup>117</sup> The attorney general launched an in-depth investigation of the "...resources, programs and statutes in the consumer fraud field."<sup>118</sup> The investigation resulted in a 240-page report that made several legislative recommendations, including modifying the Department of Agriculture's consumer protection role to regulatory rather than enforcement.<sup>119</sup>

As a result of this investigation, a bill was submitted to the Wisconsin Legislature for consideration on October 10, 1969.<sup>120</sup> This bill proposed giving the Department of Justice and local district attorneys more authority in the enforcement of fraudulent representations and unfair trade practices.<sup>121</sup> The bill also sought to grant investigative powers of consumer protection issues to the DOJ while removing the Department of Agriculture's authority over the statute.<sup>122</sup> Ultimately the bill did not pass, but a compromise bill was signed into law on February 1970.<sup>123</sup> This new legislation did not result in a substantial change in the statutes, though it did strengthen civil enforcement for violation of trade practice and consumer protection laws.<sup>124</sup> It

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<sup>116</sup> Jeffries, *supra* note 98 at 564.

<sup>117</sup> *Id.* at 565.

<sup>118</sup> *Id.* at 565.

<sup>119</sup> *Id.* at 565.

<sup>120</sup> WIS. S.B. 701, (1969); Jeffries, *supra* note 98 at 566.

<sup>121</sup> WIS. S.B. 701, *supra* note 120; Jeffries, *supra* note 98 at 566. (Sections 100.18 and 100.20).

<sup>122</sup> WIS. S.B. 701, *supra* note 120; Jeffries, *supra* note 98 at 566.

<sup>123</sup> WISCONSIN SESSION LAWS 1389 (1969).

<sup>124</sup> Jeffries, *supra* note 98 at 567.

was also through this compromise bill that the Office of Consumer Protection within the Justice Department was created.<sup>125</sup>

In 1991, Republican Governor Tommy Thompson vetoed the Democratic-controlled Legislature's request to transfer some of the Department of Agriculture's consumer protection duties to the Department of Justice.<sup>126</sup> This same year Democrat James Doyle was sworn in as the attorney general. Again in 1992, the Democratic-controlled Legislature sought to transfer some consumer protection duties to the Department of Justice and once again, Thompson vetoed the proposal.<sup>127</sup> Thompson vetoed the proposed transfer of selected consumer trade and trade regulation programs to the Department of Justice partially because he claimed it would "abolish positions" and that there was a lack of "policy, programmatic or administrative justification for the transfer."<sup>128</sup> Furthermore, Thompson said that the transfer would not yield any "administrative efficiencies or material cost savings."<sup>129</sup> Thompson stated that it was "imperative that the consumer protection responsibilities remain at an agency governed by a citizen board."<sup>130</sup>

The 1994 election brought about a Republican-controlled legislature.<sup>131</sup> Doyle was still the state's attorney general. In efforts to minimize Doyle's power over consumer protection issues as attorney general, Governor Thompson urge the Legislature to shift the consumer protection

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<sup>125</sup> A history of consumer protection in Wisconsin, *supra* note 96.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> State of Wisconsin Senate Journal Ninetieth Regular Session, 907 (1992), <https://docs.legis.wisconsin.gov/1991/related/journals/senate/19920505.pdf>.

<sup>129</sup> *Id.* at 907.

<sup>130</sup> State of Wisconsin Senate Journal Ninetieth Regular Session, *supra* note 125 at 907.

<sup>131</sup> A history of consumer protection in Wisconsin, *supra* note 96.

matters from the Department of Justice to the Department of Agriculture, Trade and Consumer Protection as part of the 1995-97 state budget.<sup>132</sup>

On July 1, 1996, the Department of Justice was stripped of most of its authority under the Fraudulent Representations Statute to regulate and prosecute “untrue, deceptive or misleading” representations under 1995 Wisconsin Act 27.<sup>133</sup> Positions at the Department of Justice were either removed or transferred to the Department of Agriculture, Trade and Consumer Protection.<sup>134</sup> The majority of the state’s authority was transferred to the Department of Agriculture, Trade and Consumer Protection.<sup>135</sup> Before the transfer of authority to the Department of Agriculture, Trade and Consumer Protection, either or both of the departments had the authority to “enforce violations of consumer protection laws.”<sup>136</sup> Under Act 27, the following responsibilities were transferred from the Department of Justice to the Department of Agriculture, Trade and Consumer Protection:<sup>137</sup>

- Fraudulent representations;
- Fraudulent drug advertising;
- Penalties for violations of DATCP rules relating to methods of competition and trade practices;
- Motor vehicle rust proofing warranties;
- Substantiation of energy savings and safety claims;
- Penalties: marketing and trade practices;
- Sale of cleaning agents and water conditioners containing phosphorus;
- Products containing or made with ozone-depleting substances;
- Ticket refunds;
- Cable television subscriber rights;
- Dating service contracts;

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<sup>132</sup> *Id.*

<sup>133</sup> Legislative Fiscal Bureau, JOINT COMMITTEE ON FINANCE TRANSFER CONSUMER PROTECTION FUNCTIONS (AGRICULTURE, TRADE AND CONSUMER PROTECTION) 5-6 (2005).

<sup>134</sup> *Id.* at 6.

<sup>135</sup> Pollek, *supra* note 91.

<sup>136</sup> *Id.*

<sup>137</sup> Legislative Fiscal Bureau, *supra* note 133 at 6.

- Fitness center and weight reduction contracts;
- Pawnbrokers and secondhand article and jewelry dealers;
- Prize notices;
- Mail-order sales regulated;
- Motor fuel dealerships;
- Future service plans;
- Vehicles-financial responsibility: damage waivers and penalties;
- Self-service storage facilities;
- Time share ownership deposits, escrow requirements remedies and penalties;  
and
- Prepaid maintenance liens.

Since 1996, the Department of Agriculture, Trade and Consumer Protection has had the authority to make rules and enforce consumer protection laws.<sup>138</sup> The Department of Justice has the authority to determine violations of consumer protection laws, as well as initiate prosecution for violations.<sup>139</sup> However, the Department of Justice can proceed with the prosecution of deceptive, fraudulent or misleading representations only after checking with the Department of Agriculture, Trade and Consumer Protection first.<sup>140</sup> The Department of Agriculture, Trade and Consumer Protection has the authority to bring about court action against alleged violators of the fraudulent representations law. However, the Department of Agriculture, Trade and Consumer Protection requests that the DOJ represent the state in court in deceptive representation cases.<sup>141</sup>

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<sup>138</sup> Ferguson and Steinschneider, *supra* note 89 at 1.

<sup>139</sup> *Id.* at 2.

<sup>140</sup> *Id.* at 2.

<sup>141</sup> *Id.* at 3.

## B. Governmental Enforcement of the Law

Wisconsin consumer protection laws are intended to protect consumers from illegal business practices including fraud, deceptive advertising and pressure sales methods. The Department of Agriculture, Trade and Consumer Protection enforces consumer protection laws.

The Bureau of Consumer Protection along with two other bureaus in the Division of Trade and Consumer Protection oversees the programs related to consumer protection issues.<sup>142</sup> The 2014-2015 budget, under Governor Scott Walker, allows the Bureau 33 positions, nearly a 48 percent decrease in the number of positions from the 63 positions in 2012-2013 and the elimination of the regulation and safety section unit.<sup>143</sup> Additionally, before December of 2009 the Bureau had a central office in Madison and regional offices in Madison, Wauwatosa, Eau Claire and Green Bay.<sup>144</sup> The regional offices have since been cut and the only Bureau of Consumer Protection office is located in Madison. The cut is likely due to the approximately 2.7 million dollar budget cut to the Consumer Protection Program's budget.<sup>145</sup> As well as further implementation of the fewer consumer protection and government regulations, and letting the free market control the quality and messaging of goods through product competition.<sup>146</sup> The 2014-2015 Department of Agriculture, Trade and Consumer Protection consumer protection

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<sup>142</sup> *Id.* at 7.

<sup>143</sup> Ferguson and Onsager, *supra* note 91 at 5; Ferguson and Steinschneider, *supra* note 89 at 7.

<sup>144</sup> Ferguson and Onsager, *supra* note 91 at 6.

<sup>145</sup> *Id.* at 6; Ferguson and Steinschneider, *supra* note 89 at 6.

<sup>146</sup> Pitofsky, *supra* note 24 at 664.



staff consists of administration, consumer information/education, complaint administration, investigation, and privacy protection.<sup>147</sup>

Other consumer protection resources are available through other state agencies. The Department of Justice maintains consumer protection resources for Wisconsin consumers via its website and Consumer Protection and Antitrust Unit.<sup>148</sup> The Department of Justice's Consumer Protection and Antitrust Unit is responsible for the enforcement of "laws that protect consumers and businesses, including laws that prohibit deception, fraud, misrepresentation, or concealment of facts in the sale or advertisement of goods and services."<sup>149</sup> Through the website consumers can file a complaint as well as gain access to consumer resources, including how to file a complaint.<sup>150</sup> In reality, the Department of Justice does not field complaints but redirects a consumer to the Department of Agriculture, Trade and Consumer Protection's website.<sup>151</sup> The primary duty of the Department of Justice's Consumer Protection and Antitrust Unit is to litigate cases referred by other state agencies such as the Department of Agriculture, Trade and Consumer Protection and the Department of Financial Institutions.<sup>152</sup> The Department of Justice's consumer protection staff also works with other states in multi-state litigation as well as the Federal Trade Commission in national consumer protection matters.<sup>153</sup> The unit seeks to

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<sup>147</sup> Ferguson and Steinschneider, *supra* note 89 at 8.

<sup>148</sup> Wisconsin Department of Justice, CONSUMER PROTECTION HOME WISCONSIN DEPARTMENT OF JUSTICE, <https://www.doj.state.wi.us/dls/consumer-protection/consumer> (last visited Apr 9, 2015).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Wisconsin Department of Justice, HOW TO FILE A CONSUMER COMPLAINT WISCONSIN DEPARTMENT OF JUSTICE, <https://www.doj.wisconsin.gov/dls/consumer-protection/how-file-consumer-complaint> (last visited Apr 6, 2015).

<sup>152</sup> Wisconsin Department of Justice, CONSUMER PROTECTION AND ANTITRUST UNIT WISCONSIN DEPARTMENT OF JUSTICE, <https://www.doj.wisconsin.gov/dls/consumer-protection-and-antitrust-unit> (last visited Apr 6, 2015).

<sup>153</sup> *Id.*

stop deceptive and fraudulent practices through various enforcement actions, including filing lawsuits, injunctions, an imposition of fines, and restitution.<sup>154</sup>

The Department of Agriculture, Trade and Consumer Protection aims to settle cases of alleged fraudulent advertising reported to its Consumer Protection Bureau within the Department.<sup>155</sup> If the Consumer Protection Bureau is not able to resolve the case, it is referred to the Department of Justice.<sup>156</sup> If the case is referred to the Department of Justice, it is not uncommon for the issue to be settled without going to court. Cases referred to the DOJ for prosecution are tried in the county Circuit Court from which the complaint originated. The vast majority of complaints that go to court are tried and settled in the Dane County Circuit Court.<sup>157</sup>

Wisconsin's history shows a long contention between Democratic and Republican politicians regarding consumer protection and where the authority to act in the interests of consumers ought to be. The many attempts by Wisconsin Democrats to move consumer protection issues to the Department of Justice, and the refusal of Wisconsin Republicans to let that happen suggests a causal relationship between the political party of elected officials has an impact on the level of regulation of deceptive advertising. More specifically, I hypothesize the following:

### **Hypotheses:**

**H1.** When the governor is a Democrat and the attorney general is a Democrat the attorney general's office will prosecute more deceptive advertising cases and more individual defendants

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<sup>154</sup> *Id.*

<sup>155</sup> Ferguson and Steinschneider, *supra* note 89 at 17.

<sup>156</sup> *Id.* at 2.

<sup>157</sup> This information is based on the data collected from case filings from 2003 through 2014.

than when the governor and the attorney general are Republicans. Tables 3 through 6 will show results related to this hypothesis.

**H2.** In cases that have fines; fines will be larger under an all-Democrat term. Tables 7 through 12 will show results related to this hypothesis.

**H3.** When there is an all-Democratic term the percentage of guilty outcomes of cases and individual defendants will be higher than the percentage of guilty outcomes in cases that spill into the mixed term or all-Republican term. Tables 13.1 through 16.2 will show results related to this hypothesis.

## CHAPTER 3: METHODOLOGY

### I. Analysis of Wisconsin Deceptive Advertising Cases

My hypothesis suggests that there is a causal relationship between the political party of elected officials and the level of government regulation of the economy. The primary method for studying causal relationships is experiments.<sup>158</sup> To identify a causal relationship occurring naturally in society I have to look at past governmental interactions with the regulation of deceptive advertising in Wisconsin. Politicians often make decisions that can be observed and analyzed, creating a natural social science experiment.<sup>159</sup> Natural experiments are empirical studies in which variables and control conditions are determined by nature or factors outside of the researcher's control.

Using a natural experiment, I analyzed the patterns of prosecutions of deceptive advertising by the attorney general's office from 2003 through 2014.<sup>160</sup> The subjects of this experiment are already in pre-determined groups and have not been randomly assigned. The conditions of this experiment are beyond my control. Therefore, there is no control group. This experiment, conducted in a real-life environment is more likely to reflect natural occurrences because of its setting outside of a laboratory.<sup>161</sup> The independent variable, political party affiliation, has not been manipulated. This experiment studies past events and it is expected that behaviors exhibited by the governmental departments are natural.<sup>162</sup> While this natural design

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<sup>158</sup> EARL BABBIE, *THE PRACTICE OF SOCIAL RESEARCH* 249 (12 ed. 2010).

<sup>159</sup> *Id.* at 248.

<sup>160</sup> *Id.* at 248.

<sup>161</sup> Saul McLeod, *EXPERIMENTAL METHOD SIMPLY PSYCHOLOGY.ORG*, <http://www.simplypsychology.org/experimental-method.html>.

<sup>162</sup> *Id.*

occurred in Wisconsin, a replication of this study could be replicated at a different point in Wisconsin's history or in other states.

Ideally, I would have liked to study the prosecution patterns of the fraudulent representations statute under in a term of a Republican governor and a Democratic attorney general. But the opportunity hasn't presented itself within the last 12 years. Other limitations of this study are the lack of randomization and control conditions.<sup>163</sup> Additionally, while I believe the list of cases obtained during this study is comprehensive, there is a possibility not all cases charged with the violation of the Fraudulent Representations Statute are accounted for from 2003 through 2014. A large number of cases were obtained from Court Data Technologies in Madison, Wisconsin. Court Data Technologies is an independent consulting firm that specializes in searching data that is publicly available through Wisconsin Circuit Court Access (WCCA), also known as the Consolidated Courts Automations Programs (CCAP). While there is a wealth of information to be had via the CCAP website, the search options are limited. Court Data Technologies was able to provide me with a detailed spreadsheet containing state prosecutions of alleged violations of the deceptive advertising statute. Additionally, at the request of my advisor, Professor David Pritchard, the attorney general's office emailed a list of cases and investigations pursued by the Department of Justice.<sup>164</sup>

The experiment deals with prosecutions in Wisconsin and 12 counties. Wisconsin cases were chosen because of my physical presence in the state and because Wisconsin, along with the

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<sup>163</sup> Thad Dunning, *Improving Causal Inference: Strengths and Limitations of Natural Experiments*, 61 *POLIT. RES. Q.* 282, 290 (2008).

<sup>164</sup> In February of 2015, my advisor, Professor David Pritchard, contacted Assistant Attorney General Lara Sutherlin, via email, asking for a list of state prosecutions for alleged violations of §100.18. a list of prosecutions and investigations pursued by the DOJ was emailed to Professor Pritchard in March of 2015. See Appendix A and B for a list of all state litigated deceptive advertising cases.

Midwest has often been hailed the most representative region in the United States.<sup>165</sup> Of Wisconsin's 72 counties, only 23 have filed a deceptive advertising case from 2003 through 2014.<sup>166</sup> The 12 counties included in this study were chosen for various reasons. Dane County was chosen out of necessity. Twenty-nine of the 79 cases were filed in Dane County. Milwaukee County had the second highest number of cases filed. The remaining counties were chosen because they fit one of the following criteria: proximity to Milwaukee, or all relevant information was available on CCAP and or in papers published by the state of Wisconsin.<sup>167</sup>

In 2002, Wisconsin voters elected Democrats, Governor Jim Doyle and Attorney General Peg Lautenschlager. In 2006, Republican J.B. Van Hollen replaced Attorney General Lautenschlager, and then 2010 Republican Scott Walker was elected governor. Table 2 illustrates the break down of elected officials.

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<sup>165</sup> Mark Preston, THE MOST "REPRESENTATIVE" STATE: WISCONSIN CNN (2006), <http://www.cnn.com/2006/POLITICS/07/27/mg.thu/>; Andy Kiersz, REVEALED: THE AL STATES IN AMERICA BUSINESS INSIDER (2014), <http://www.businessinsider.com/the-most-average-states-in-america-2014-4?op=1>.

<sup>166</sup> See Table 20 and Appendix A for a list of all counties and cases filed from 2003-2014.

<sup>167</sup> The 12 counties included in this study are: Brown, Crawford, Dane, Kenosha, Marinette, Milwaukee, Outagamie, Racine, Vilas, Waukesha, Winnebago, and Wood. Not all counties surrounding Milwaukee are represented in this study because either a lack of filings in those counties, or in the case of Ozaukee County, only one of the three case files could be located at the time I called.

**Table 2**

*Elected officials breakdown*

Years in office	Governor and attorney general
2003-2007	Democratic officials: Doyle/Lautenschlager
2007-2011	Democratic/Republican officials: Doyle/Van Hollen
2011-2015	Republican officials: Walker/Van Hollen

*\*Note:* Elections are held in even years opposite of the presidential election. The governor takes office the first Monday in January of the following year. This table reflects the governor and attorney general terms, not when they were elected.

I analyzed cases filed in circuit court from January 2003 through December 2014. I coded 56 cases filed in twelve counties.<sup>168</sup> Counties were selected by the number of cases filed in the county, the county's proximity to Milwaukee, and or the availability of case details on Wisconsin Circuit Court Access, also known as CCAP or other government documents.<sup>169</sup> Multistate and federal litigations were not included in this study. Cases are defined in terms of the alleged violation(s) of the statute against a business or individual(s) and not defined in terms of the

<sup>168</sup> Counties included in the study are: Brown, Crawford, Dane, Kenosha, Marinette, Milwaukee, Outagamie, Racine, Vilas, Waukesha, Winnebago, and Wood. Visits to over 20 counties in which deceptive advertising cases were filed was not feasible.

<sup>169</sup> Government documents containing pertinent details on selected deceptive advertising cases were found in governmental informational papers published biannually by the Wisconsin Legislative Fiscal Bureau.

number of individuals charged with the violation(s).<sup>170</sup> In some cases there are multiple defendants. Each defendant is able to have a separate attorney. For this study, cases will not be defined by the number of individuals charged for alleged violations, but rather the violation(s) filed simultaneously against an entity. I also analyzed expanded cases. Expanded cases are defined as the individuals charged with violating the statute in conjunction with business or nonprofit company.

Each case is given a unique number by the county prosecuting the case. Cases with multiple defendants are distinguished by adding a letter at the end of the unique code. The cases involved in this study are public record. Case files are available at county court houses for the public to look through. I coded variables I coded each case for are as follows:<sup>171</sup>

- Administration: the type of elected officials in place at the time of the case's filing was coded to determine the number of cases prosecuted during specific time period.
- Outcome: each case's outcome was coded in accordance to the administration at the time of filing and at the time of conclusion of the case. Outcomes were coded for individual defendants as well.
- Penalties: the median penalties ordered by the court for each case was coded for.
- Restitution: the median amount of restitution ordered by the court for each case was coded.
- Total forfeitures: the median total forfeiture ordered by the court for each case was coded.
- Number of defendants: the number of individual defendants for each case was coded.
- Advertising medium: the type of advertising medium allegedly in violation was coded.

An analysis of state prosecutions of the statute from January 2003 through December 2014 will provide empirical evidence to test my hypotheses.

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<sup>170</sup> In some cases there are multiple alleged violations of §100.18. Each count of alleged violation of §100.18 does not equal a case, but rather the collection of alleged violations filed simultaneously.

<sup>171</sup> See Appendix C for the coding sheet used for this study.



The information needed to code these cases was obtained from multiple sources. Wisconsin Court Systems Circuit Court Access (CCAP) was used to gather basic information, such as the dates cases were filed and closed, outcome of the case and any other cross-referenced cases. Information was also gathered from government documents such as Department of Justice press releases and informational papers. Finally, the bulk of the information used to code these cases came from manually pulling the case files in courthouses throughout Wisconsin.




## CHAPTER 4: FINDINGS

At the most basic level, my research aimed to identify a connection between political party of the governor and the attorney general and the level of enforcement of regulation over deceptive advertising. My hypotheses predict that (1) more deceptive advertising cases will be prosecuted by Democrats than by Republicans; (2) the median fine will be larger when the governor and attorney general are both Democrats; and (3) a Democratic governor and Democratic attorney general in office will result in a higher percentage of guilty outcomes.

This chapter has tables that represent findings for deceptive advertising cases identified in all Wisconsin counties from 2003 through 2014 as well as findings for the deceptive advertising cases coded entirely for select Wisconsin counties. Findings for individual defendants in a case are also represented in the following tables. The tables are color coded for ease of reading see the key below.

**Figure 4:**

*Table Color Coding Key for Tables 3–27:*

	Refers to cases in all Wisconsin counties
	Refers to the 56 cases identified in selected Wisconsin counties
	Refers to the 97 individual defendants identified in the 56 selected cases

## I. Hypotheses Findings

### *A. Hypothesis 1 Findings*

Based on the information I received from Court Data Technologies and the Attorney General's office I was able to identify 79 different complaints or individual cases filed in Wisconsin Circuit Courts (see Table 3). The breakdown of the cases identified from 2003 through 2014 is as follows: 42 cases filed during the first term (Democratic governor and attorney general), 23 cases filed during the second term (Democratic governor and Republican attorney general) and 14 cases filed during the third term (Republican governor and attorney general). On average, the all-Democratic term filed 10.5 allegedly deceptive advertising cases in Wisconsin Circuit Courts annually. The mixed term, on average, filed 5.75 cases annually, and the all-Republican term filed an average of 3.5 cases annually. During the Doyle/Van Hollen term, roughly half as many deceptive advertising cases were filed compared to during the Doyle/Lautenschlager term and during the Walker/Van Hollen term, only a third of the number of cases as the all-Democrat term were filed.

**Table 3***Complaints filed in circuit court per term in all Wisconsin counties*

Governor/attorney general	Number of complaints yearly	Complaints per term	Percentage of complaints per term included
Doyle (D) / Lautenschlager (D)	2003-16	42	27 (64.3%)
	2004-9		
	2005-8		
	2006-9		
Doyle (D) / Van Hollen (R)	2007-7	23	17 (73.9%)
	2008-2		
	2009-7		
	2010-7		
Walker (R) / Van Hollen (R)	2011-2	14	12 (85.7%)
	2012-4		
	2013-3		
	2014-5		
<b>Total Complaints</b>	<b>79</b>	<b>79</b>	<b>56 (70.9%)</b>
<i>*Note: These cases do not represent multi-state litigation or federal litigation.</i>			

From the 79 total cases identified, I was able to code for 56 (70.9%) unique cases in select counties. Of the 56 cases included in this study, 27 were filed in the first four-year term, 17 were filed in the second four-year term, and 12 were filed in the third four-year term (see Table 4). I was able to code 70.88% of the cases identified. For each four-year term, I was able to code over 50% of the cases filed in the four-year span. Tables 3 and 4 demonstrate a clear decline in the number of complaints filed per four-year term. While the decline does not appear as drastic in

Table 4, it should be noted that only 64% of the cases identified in the all-Democratic term were coded for. I was able to code for 73.9% of the mixed term cases and 85.7% of the all-Republican term cases.

**Table 4**

*Complaints filed in circuit court per term in select Wisconsin counties*

Governor/attorney general	Number of complaints yearly	Complaints per term
Doyle (D) / Lautenschlager (D)	2003-6	27
	2004-5	
	2005-7	
	2006-9	
Doyle (D) / Van Hollen (R)	2007-5	17
	2008-2	
	2009-3	
	2010-7	
Walker (R) / Van Hollen (R)	2011-1	12
	2012-4	
	2013-2	
	2014-5	
<b>Total</b>	<b>56</b>	<b>56</b>

*\*Note:* Counties included in this study include: Brown, Crawford, Dane, Kenosha, Marinette, Milwaukee, Outagamie, Racine, Vilas, Waukesha, Winnebago, and Wood.

The picture isn't as clear regarding defendants. Before 2005, all alleged deceptive advertising violations were filed as civil cases, and multiple defendants were included under the

same case number. Sometime in 2005, alleged deceptive advertising violations began to be filed as complex forfeiture cases. By 2007, all of the cases I looked at were coded as complex forfeiture cases. Assistant Attorney General Lara Sutherlin revealed that the change in the labeling of the cases was court mandated when I interviewed her in December of 2015. Additionally, with the case designation of complex forfeiture, each individual defendant or individual business/nonprofit is separated off by a letter designation, indicating that there are multiple defendants in the case and each defendant has the opportunity to have their own lawyer.<sup>172</sup> Under a complex forfeiture case, while the alleged violation is considered a single case by the Department of Justice, any other individual or business can be named individually and has the opportunity to have separate legal representation.<sup>173</sup> Ultimately, multiple individuals and organizations can be charged for the same violation.

Table 5 shows the number and type of defendants charged with violating the deceptive advertising statute during each four-year term for all 79 cases identified in this study. The total number of complaints or cases filed in the circuit court was 79 from 2003 through 2014 with 125 individual defendants. The number of defendants prosecuted in a four-year period in all Wisconsin counties by four-year term was: All-Democratic term, 42; Democratic and Republican term, 57, and All-Republican term 26. The numbers imply that during the Doyle (D)/Van Hollen (R) term, more individuals were prosecuted for deceptive advertising than during any other four-year term. However, because of the change in case designation from a civil case to a complex forfeiture case, the numbers do not give a clear picture.

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<sup>172</sup> Telephone Interview with Lara Sutherlin, Wisconsin Assistant Attorney General, Department of Justice, (Dec. 4, 2015).

<sup>173</sup> *Id.*

**Table 5***Number of defendants in a four-year period in all Wisconsin counties*

Governor/attorney general	Business/organization defendants	Individual defendants	Total
Doyle (D) / Lautenschlager (D)	35	7	42
Doyle (D) / Van Hollen (R)	33	24	57
Walker (R) / Van Hollen (R)	12 <sup>174</sup>	14 <sup>175</sup>	26 <sup>176</sup>
<b>Total</b>	<b>80</b>	<b>45</b>	<b>125</b>

*\*Note:* These cases do not represent any multi-state litigation or federal litigation.

During the Doyle (D)/Lautenschlager (D) term, 35 different organizations were prosecuted, and seven separate individuals were prosecuted for a total of 42 cases and separate alleged violations of the statute. The defendants during the Doyle (D)/Van Hollen (R) and Walker (R)/Van Hollen (R) term do not represent individual cases, but rather cases with multiple defendants. Many of the individuals named in cases during the second and third terms studied are the proprietor(s) of the organizations responsible for disseminating allegedly

<sup>174</sup> Dane County case, 2014CX53 was amended on October 16, 2015. Four business were added to the DOJ's complaint, 2014CXF-I. Because these were filed after December 2014, they are not included in this study.

<sup>175</sup> Dane County Case, 2014CX53 was amended on October 16, 2015. Three individuals were added to the DOJ's complaint, 2014CXC-E. Because these individuals were filed after December 2014, they are not included in this study.

<sup>176</sup> Dane County Case, 2014CX53 was amended on October 16, 2015. The amended complaint added 2014CX53C-I, bringing total number of defendants to 30. The additions of these seven defendants were filed after December 2014, and are not included in this study.

deceptive advertising. It appears that the second part of H1 is supported based on Table 5.

However, without knowing how many individuals or subsidiarity organizations were a part of the 2003 through 2006 cases, the second part of H1 cannot be fully supported.

This study looked at 56 deceptive advertising cases in depth. Of those 56 cases, 97 individual defendants were named. The breakdown of these defendants is shown in Table 6.

**Table 6**  
*Number of defendants in a four-year period in select Wisconsin counties*

Governor/attorney general	Business/organization defendants	Individual defendants	Total
Doyle (D) / Lautenschlager (D)	22	5	27
Doyle (D) / Van Hollen (R)	28	19	47
Walker (R) / Van Hollen (R)	10 <sup>177</sup>	13 <sup>178</sup>	23 <sup>179</sup>
<b>Total</b>	<b>60</b>	<b>37</b>	<b>97</b>

*\*Note:* Counties included in this study include: Brown, Crawford, Dane, Kenosha, Marinette, Milwaukee, Outagamie, Racine, Vilas, Waukesha, Winnebago, and Wood.

<sup>177</sup> Dane County case 2014CX53 was amended on October 16, 2015. Four business were added to the DOJ's complaint, 2014CXF-I. Because these were filed after December 2014, they are not included in this study.

<sup>178</sup> Dane County Case 2014CX53 was amended on October 16, 2015. Three individuals were added to the DOJ's complaint, 2014CXC-E. Because these individuals were filed after December 2014, they are not included in this study.

<sup>179</sup> Dane County Case 2014CX53 was amended on October 16, 2015. The amended complaint added 2014CX53C-I, bringing total number of defendants to 30. The additions of these seven defendants were filed after December 2014, and are not included in this study.



During the first term, Doyle (D)/Lautenschlager (D), there were 27 defendants identified. Forty-seven defendants were identified in the second term, Doyle (D)/Van Hollen (R). Twenty-three defendants were identified in the third term, Walker (R)/Van Hollen (R). I was able to code for 64% of the defendants identified during the all-Democratic term, 82% of the defendants from the mixed term and 88% of the defendants from the all-Republican term. I was able to code for a higher percentage of defendants during the mixed and all-Republican terms because there were fewer cases files to code for during those terms. Additionally, over the years cases filed become concentrated to Dane and Milwaukee counties because the majority of the cases filed in the second two terms studied were located in an included county.

In regard to H1, the data only supports the first half of H1. There is a clear decline of cases filed as elected officials shift from all-Democratic to all-Republican. But the number of defendants doesn't show the same decline. There is, however, a significant reduction in defendants from the all-Democratic and mixed four-year terms to the all-Republican term. There were 42 total defendants during the Doyle/Lautenschlager term and 57 defendants during the Doyle/Van Hollen term to 26 defendants during the Walker/Van Hollen term (see Table 5). The data suggest that when there is a Democratic governor and attorney general in office, more instances of deceptive advertising will be prosecuted than when Republican governor and attorney general are in office.

It is interesting to note that during Governor Doyle's terms the number of business defendants didn't change much despite the change in party affiliation of the attorney general (see Table 5). The number of business defendants during Walker's first term was nearly three times

smaller than the number of business defendants during Doyle's terms. This finding again suggests that Republicans may be more business friendly than Democrats.

While the number of business defendants decreases under a Republican governor, the number of individual defendants prosecuted over the three terms is less clear. During the Doyle/Lautenschlager term, seven individual defendants were prosecuted for deceptive advertising. During the mixed term of Doyle/Van Hollen the number of individual defendants rose from seven to 24. During the all-Republican term of Walker/Van Hollen the number of individual defendants fell from 24 to 14, still higher than Doyle/Lautenschlager. In reality, the change from civil cases to complex forfeiture cases can account for some of the inconsistencies in the numbers for both business and individual defendants.

While there are more individual defendants named and prosecuted in the mixed four-year term than in the all-Democratic term, it should again be noted that before 2007, the Department of Justice did not separate out and formally prosecute individuals in deceptive advertising cases. Thus, it is not out of the realm of possibility that had the Department of Justice named all individuals in a case, that there would be more individuals prosecuted in the all-Democratic term than in a mixed or all-Republican term. Overall, the data supports the first part of H1; more instances of deceptive advertising are prosecuted when there is an all-Democratic term in place compared to a mixed term or an all-Republican term. The second half of H1 is inconclusive. It appears that more individuals were prosecuted for deceptive advertising in the mixed Doyle (D)/Van Hollen (R) term. But because of the change in Department of Justice administrative processes, I cannot say without reasonable doubt that had the 42 complaints filed and prosecuted from 2003 through December 2006, been coded for all

individuals that there wouldn't be more individuals prosecuted in the all-Democratic four-year term than in the mixed four-year term.

### *B. Hypothesis 2 Findings*

My second hypothesis proposed that fines would be larger under an all-Democratic term. I coded each case for fines, restitution and total forfeiture per case and individual defendant. The first four-year term analyzed, Democrats Doyle/Lautenschlager, came in with a median fine per case of \$6,175 (see Table 7). This figure is significantly lower than the mixed four-year term of Doyle/Van Hollen and the all-Republican four-year term of Walker/Van Hollen, of \$50,000 for both the mixed and the all-Republican terms.

**Table 7**  
*Median fines per case*

Elected officials	Number of cases fined	Median fine
Doyle (D) / Lautenschlager (D)	26	\$6,175
Doyle (D) / Van Hollen (R)	15	\$50,000
Walker (R) / Van Hollen (R)	9	\$50,000 <sup>180</sup>
<b>Total</b>	<b>50</b>	<b>\$106,175</b>
<p><i>*Note:</i> The penalties were calculated according to the elected officials in office at the file date of the case, the conclusion.</p> <p><i>**Note:</i> The numbers in this table are based off the 56 cases coded for.</p>		

The median fines per individual charged in a deceptive advertising case. Regarding fines per individual, the all-Democratic term, Doyle/Lautenschlager, and the mixed term, Doyle/Van Hollen, came in significantly lower than the all-Republican term, Walker /Van Hollen. The defendants issued with a fine during the Doyle/Lautenschlager term had a median fine of \$6,175 per individual charged in the case. Admittedly, this figure may be high per individual because not all individuals in a case were named before 2007. Individual defendants issued with fines under the Doyle/ Van Hollen term were issued with a median fine of \$4,762. During the Walker /Van

<sup>180</sup> Waukesha County cases 2012CX01, 2012CX01A, 2012CX01B, and 2012CX01C each have \$150,948.71 attached to them as part of a settlement with the 2010 Outagamie Going Places Travel Corp. case.

Hollen term, individual defendants charged with violating the deceptive advertising statute had a median fine of \$40,000 (see Table 8).

**Table 8**

*Median fines per individual charged in a case*

Governor/attorney general	Number of individuals charged with fines	Median fine
Doyle (D) / Lautenschlager (D)	26	\$6,175
Doyle (D) / Van Hollen (R)	39	\$4,762
Walker (R) / Van Hollen (R)	13	\$34,638 <sup>181</sup>
<b>Total</b>	<b>78</b>	<b>\$45,575</b>

*\*Note:* The penalties were calculated according to the governor and attorney general in office at the filing date of the cases, not the conclusion of the case. There were 26 individuals charged with fines in term 1.

*\*\*Note:* The numbers in this table are based off the 56 cases coded for.

Restitution orders under the all-Democrat four-year term were also significantly lower than the other two terms. The Doyle/Lautenschlager term had a median restitution order of \$1,768. The Doyle/Van Hollen term increased the median restitution order to \$71,800. Finally, the Walker/Van Hollen term drastically increased the median restitution order to \$228,800 (see Table 9). The Department of Justice cannot always determine the full amount of restitution

<sup>181</sup> Waukesha County case 2012CX01 has \$603,794.84 attached to it as part of a settlement with the 2010 Outagamie Going Places Travel Corp. case.

received by Wisconsin consumers because some settlement recoveries are distributed by third parties.<sup>182</sup>

**Table 9**  
*Median restitution per case*

Governor/attorney general	Number of cases ordered restitution	Median restitution
Doyle (D) / Lautenschlager (D)	7	\$1,768
Doyle (D) / Van Hollen (R)	11	\$71,800
Walker (R) / Van Hollen (R)	7	\$228,800 <sup>183</sup>
<b>Total</b>	<b>25</b>	<b>\$302,368</b>

Table 10 demonstrates the median restitution ordered per individual prosecuted in a deceptive advertising case. Again, the amount of restitution ordered per individual defendant is significantly higher under the mixed four-year term of Doyle/Van Hollen and under the all-Republican four-year term of Walker/Van Hollen than during the all-Democratic four-year term. The median amount of restitution ordered per individual charged during the Doyle/Van Hollen term is over ten times the amount of restitution ordered under the Doyle/ Lautenschlager term. The all-Republican term ordered a median restitution over 150 times the restitution of the all-Democratic term. The all-Democratic four-year term had a median of \$1,768 in restitution

<sup>182</sup> Pollek, *supra* note 91.

<sup>183</sup> Waukesha County cases 2012CX01, 2012CX01A, 2012CX01B, and 2012CX01C each have \$542,857.14 attached to them as part of a settlement with the 2010 Outagamie Going Places Travel Corp. case.

ordered per individual defendant. The median restitution ordered per individual defendant during the mixed four-year term was \$23,933. The all-Republican term had the highest median restitution ordered per individual defendant at \$287,289. These figures, however, are not entirely accurate due to the use of third parties used to distribute some of the forfeiture recoveries. Additionally, many times a lump sum forfeiture is ordered by the court and documented as penalties, fees and restitution without identifying how much of the total forfeiture is restitution.<sup>184</sup>

**Table 10**

*Median restitution per individual charged in a case*

Governor/attorney general	Number of individuals charged with restitution	Median restitution charged per individual
Doyle (D) / Lautenschlager (D)	7	\$1,768
Doyle (D) / Van Hollen (R)	28	\$23,933
Walker (R) / Van Hollen (R)	10	\$287,289 <sup>185</sup>
<b>Total</b>	<b>45</b>	<b>\$312,988</b>

Finally, I coded for total amount of forfeitures. The total amount of forfeitures is perhaps the best measure of financial penalties because it includes fines, fees and restitution. Often,

<sup>184</sup> Pollek, *supra* note 91.

<sup>185</sup> Waukesha County case 2012CX01 has \$2,171,428.56 attached to it as part of a settlement with the 2010 Outagamie Going Places Travel Corp. case.

restitution is included in the lump sum of forfeitures indicated in court documents without specifying exactly how much the restitution would be. The Doyle/Lautenschlager term had median total forfeitures of \$7,031. Again, the all-Democratic term issued fewer fines, fees and restitution than the other two four-year terms. The Doyle/Van Hollen term had median total forfeitures of \$105,745. The all-Republican term of Walker/Van Hollen had the largest median total forfeitures of \$316,900. Table 11 shows the total amount of forfeitures per case under each of the four-year terms.

**Table 11**

*Total median forfeitures per case*

Governor/attorney general	Number of cases ordered forfeitures	Total median forfeiture
Doyle (D) / Lautenschlager (D)	26	\$7,031
Doyle (D) / Van Hollen (R)	15	\$105,745
Walker (R) / Van Hollen (R)	10	\$316,900 <sup>186</sup>
<b>Total</b>	<b>51</b>	<b>\$429,676</b>

The total median forfeiture per individual charged in a case was coded for as well (see Table 12). Again, because during the Doyle/Lautenschlager four-year term, individual defendants

<sup>186</sup> Waukesha County cases 2012CX01, 2012CX01A, 2012CX01B, and 2012CX01C each have \$542,857.14 attached to them as part of a settlement with the 2010 Outagamie Going Places Travel Corp. case.



were not indicated the median total forfeiture per individual charged in a case remains the same as the total medial forfeiture per case, \$7,031. Under the Doyle/Van Hollen four-year term the median total forfeiture per individual charged in a case increase over two times the amount of the previous term to \$14,536. Finally, a very significant hike in the total median forfeiture per individual charged in a case was seen under the Walker/Van Hollen four-year term of \$293,800.

**Table 12**  
*Total median forfeitures per individual charged in a case*

Governor/attorney general	Number of individuals charged with a forfeiture	Total median forfeiture
Doyle (D) / Lautenschlager (D)	26	\$7,031
Doyle (D) / Van Hollen (R)	40	\$14,536
Walker (R) / Van Hollen (R)	13	\$293,800 <sup>187</sup>
<b>Total</b>	<b>79</b>	<b>\$315,367</b>

H2 is unsupported by the data. As the number of cases and individual defendants goes down in the consecutive four-year terms, the amount of total forfeitures, fines and restitution goes up significantly.

<sup>187</sup> Waukesha County case 2012CX01 has \$2,171,428.56 attached to it as part of a settlement with the 2010 Outagamie Going Places Travel Corp. case.

### *C. Hypothesis 3 Findings*

H3 states that an all-Democratic term will have a higher percentage of guilty outcomes of cases and individuals in comparison to a mixed term or the all-Republican term. Cases were coded for the outcomes of cases and individuals according to the governor and attorney general in office at the start of the trial and according to the outcomes of cases and individuals according to the governor and attorney general in office at the close of the case. Some, but not all cases conclude after a change in governor and attorney general. Cases and individuals were coded for settlements before and after court proceedings, dismissal of a case and or individual(s), guilty plea entered, went to trial and found guilty, and went to trial and found innocent.

The mixed term, Doyle/Van Hollen, had the highest percentage of guilty outcomes with 52.9% of all cases pleading guilty and 17.6% of all cases being found guilty at trial (see Table 13.1). The total guilty outcome for cases filed in 2007-2010 during the mixed term is 70.5%.

**Table 13.1***Outcome of all 79 cases, governor and AG in office at filing of case and percentage of guilty outcomes*

Governor/attorney general	Settlement	Case dismissed	Guilty plea	Trial found guilty	Total guilty outcomes
Doyle/Lautenschlager	25 (59.5%)	1 (2.3%)	13 (31%)	3 (7.1%)	16 (38%)
Doyle/Van Hollen	6 (26%)	3 (13%)	10 (43.5%)	4 (17.4%)	14 (60.9%)
Walker/ Van Hollen	11 (78.5%)	0 (0%)	1 (7%)	1 (7%)	2 (14.3%)
<b>Total</b>	<b>42 (53%)</b>	<b>4 (5%)</b>	<b>24 (30%)</b>	<b>8 (10%)</b>	<b>32 (40.5%)</b>
*Note: One case is missing from the Walker/Van Hollen term because it is still open					
**Note: Settlement refers both to cases settled before or after a trial started.					

The all-Democratic term had the second highest guilty outcomes. Of the cases filed in the all-Democratic term, 37% of all cases plead guilty, and 11.1% of the cases were found guilty at trial. The total guilty outcome for the all-Democratic term was 48.1%.

The all-Republican term had the fewest number of cases ending in a guilty verdict. Not a single case was entered in as a guilty plea, and only one case or 11.1% of all cases filed in 2011-2014 were found guilty at trial.

Settlements were reached at a higher rate for the all-Republican term. The Walker and Van Hollen term had the highest settlement rate, 88.9% of all cases filed in 2011-2014 ended in a settlement. Settlements could have occurred before trial proceedings or after a trial began. The

all-Democratic term, Doyle/Lautenschlager had the second highest settlement rate of 48.1%.

The mixed term, Doyle/Van Hollen had the lowest

Settlements and pleading guilty outcomes both stay out of a court room and have forfeitures ordered by the court. Additionally, while agreeing to a settlement that results in a monetary forfeiture isn't an admission of guilt, it does suggest that the defendant isn't sure that court proceedings would result in a not guilty verdict. For these reasons, I opted to combine cases that ended in a settlement with cases that plead guilty. Even when combining the cases that ended in a settlement with cases that plead guilty, the all-Republican term has the highest settlement rate at 88.9%. The all-Democratic term has a much higher settlement rate of 85.2% when combined with guilty pleas. Finally, the mixed term soars to a 70.6% settlement rate when settlements are combined with guilty pleas (see Table 13.2).

**Table 13.2***Outcome of all 79 cases, Gov. and AG in office at filing of case & total percent charged with forfeitures*

Governor/attorney general	Settlement/Guilty plea	Case dismissed	Trial found guilty	Total cases charged with a forfeiture
Doyle/Lautenschlager	38 (80%)	1 (2.3%)	3 (7.1%)	41 (97.6%)
Doyle/Van Hollen	16 (69.5%)	3 (13%)	4 (17.4%)	20 (87%)
Walker/ Van Hollen	12 (85.7%)	0 (0%)	1 (7%)	13 (92.8%)
<b>Total</b>	<b>66 (83.5%)</b>	<b>4 (5%)</b>	<b>8 (10%)</b>	<b>74 (93.6%)</b>

*\*Note:* One case is missing from the Walker/Van Hollen term because the case is still open.  
*\*\*Settlement* refers to both cases settled before or after a trial has started and is combined with guilty pleas.

Having a case dismissed once charges had been filed was unlikely no matter which political party was in charge. The all-Democratic term dismissed one or 3.7% of all cases filed during the 2003-2006 term. The mixed term dismissed two or 11.8% of all cases filed in 2007-2010. The all-Republican term did not dismiss any cases filed in 2011-2014.

The picture isn't much different for the all-Democratic four-year term and the mixed term concerning outcomes of a case when the cases are coded for by the elected officials in office at the close of the case (see Table 14.1). Coding the cases for outcomes by according to the elected officials in office at the close of the case boosts the guilty rate for the all-Republican four-year term significantly. During the Walker/Van Hollen four-year term guilty rate increases to

40% when cases filed during the mixed four-year term but were concluded in the all-Republican term are included in the guilty count. The total guilty verdict for the all-Republican four-year term is 50%.

**Table 14.1**

*Outcome of the 56 cases, governor and AG in office at close of case and percentage guilty*

Governor/attorney general	Settlement	Case dismissed	Guilty Plea	Trial found guilty	Total guilty outcomes
Doyle/Lautenschlager	11 (50%)	1 (4.5%)	9 (41%)	1 (4.5%)	10 (45.5%)
Doyle/Van Hollen	4 (23.5%)	2 (11.8%)	9 (52.9%)	2 (11.8%)	11 (64.7%)
Walker /Van Hollen	5 (50%)	0 (0%)	1 (10%)	4 (40%)	5 (50%)
<b>Total</b>	<b>20 (35.7%)</b>	<b>3 (5.4%)</b>	<b>19 (34%)</b>	<b>7 (12.5%)</b>	<b>26 (46.4%)</b>

*\*Note:* Seven cases are not included in this table because their outcome came after December 31, 2014.

The mixed four-year term still has the highest guilty outcome with 52.9% of cases ending in a guilty plea and 11.8% of cases found guilty at trial. Of all the cases concluded during the mixed term, 64.7% ended in a guilty plea or guilty verdict at trial.

Guilty pleas during the all-Democratic four-year term increased to 41% when the cases were coded for outcomes according to the elected officials in office at the close of the case. But the guilty at trial verdict fell to 4.5% during the all-Democratic four-year term. The all-

Democratic four-year term had a 45.5% guilty rate total when cases were filed and closed during the Doyle/Lautenschlager four-year term (see Table 14.1).

The settlement rate for both the four-year all-Democratic term and the all-Republican term when coded for outcomes based on the governor and attorney general in office at the close of the case is 50%. The mixed four-year term, Doyle/Van Hollen had a 23.5% settlement rate. When combining settlements with guilty pleas for cases coded by outcome and the governor and attorney general in office at the end of the case, the all-Democratic term has the highest settlement rate at 91% (see Table 14.2).

**Table 14.2**

*Outcome of 56 cases, governor and AG in office at close of case and percentage charged with forfeiture*

Governor/attorney general	Settlement/Guilty plea	Case dismissed	Trial found guilty	Cases charged with a forfeiture
Doyle/Lautenschlager	20 (91%)	1 (4.5%)	1 (4.5%)	21 (95.5%)
Doyle/Van Hollen	13 (76.5%)	2 (11.8%)	2 (11.8%)	15 (83.3%)
Walker /Van Hollen	6 (60%)	0 (0%)	4 (40%)	10 (100%)
<b>Total</b>	<b>39 (69.6%)</b>	<b>3 (5.3%)</b>	<b>7 (12.5%)</b>	<b>46 (82%)</b>

*\*Note:* Seven cases are not included in this table because their outcome came after December 31, 2014.

*\*\*Note:* Settlement in this table refers to both settlements reached before and after a trial started is combined with guilty pleas entered.

The mixed four-year term, Doyle/Van Hollen, had a settlement rate of 76.5% and the all-Republican four-year term had 60% of cases end in a settlement or guilty plea.

Tables 15.1-16.2 show the outcomes for individuals charged in deceptive advertising cases. Table 15.1 shows the outcomes of defendants coded by the governor and attorney general in office at the time the case was filed. The mixed term had the highest guilty findings, 19.1% of individuals charged during the Doyle/Van Hollen four-year term were found guilty at trial, and 42.6% of individuals plead guilty, in total, 61.7% of individuals charged with deceptive advertising from 2007-2010 were guilty.

**Table 15.1**  
*Outcome of defendants, governor and AG at filing of case, and percentage guilty*

Governor/attorney general	Settlement	Defendant dismissed	Guilty Plea	Trial found guilty	Total guilty outcomes
Doyle/Lautenschlager	13 (48.1%)	1 (3.7%)	10 (37%)	3 (11.1%)	13 (48%)
Doyle/Van Hollen	11 (23.4%)	7 (14.9%)	20 (42.6%)	9 (19.1%)	29 (61.7%)
Walker /Van Hollen	16 (69.6%)	5 (21.7%)	0 (0%)	1 (4.3%)	1 (4.3%)
<b>Total</b>	<b>40 (41.2%)</b>	<b>13 (13.4%)</b>	<b>30 (31%)</b>	<b>13 (13.4%)</b>	<b>43 (44.3%)</b>

\*Note: Settlement refers to cases settled both before and after a trial has started.

\*Note: One defendant is missing from the Walker/Van Hollen term because the case is still open.

The all-Democratic term had the second highest guilty findings, with 11.1% of individuals found guilty at trial and 37% plead guilty. Nearly half of individuals charged with



deceptive advertising in the all-Democratic term were found guilty. The all-Republican term had one individual found guilty at trial, making the guilty rate for the Walker/Van Hollen term 6.7%. The all-Republican term did not have any individuals plead guilty. The mixed four-year term also had the highest rate of individuals dismissed from a case at 14.9%. The all-Republican term dismissed 21.7% of individuals charged with deceptive advertising and the all-Democratic four-year term dismissed just one, or 3.7% of individuals. The all-Republican four-year term had the highest settlement rate for individuals, at 69.6%. The all-Democratic four-year term had a settlement rate of 48.1%, and the mixed term had a settlement rate of 23.4% for individuals. When guilty pleas are combined with settlements, the all-Democratic term has the highest settlement rate at 85.2%, and the mixed term's settlement rate goes up to 65.9%. The all-Republican term's settlement rate stayed the same when combining the guilty pleas with the settlements rates of individuals (see Table 15.2).

In terms of wins for the state, the all-Democratic term has the highest winning rate at 96.3% of individuals charged with deceptive advertising being charged with a monetary forfeiture. Roughly 85% of individuals charged with deceptive advertising during the mixed term ended up being charged with a monetary forfeiture. Finally, 74% of individuals charged with deceptive advertising during the all-Republican term were charged with a monetary forfeiture.

**Table 15.2***Outcome of defendants, governor and AG at filing of case, and percentage charged with forfeiture*

Governor/attorney general	Settlement/guilty plea	Defendant dismissed	Trial found guilty	Individuals charged with forfeiture
Doyle/Lautenschlager	23 (85.2%)	1 (3.7%)	3 (11.1%)	26 (96.3%)
Doyle/Van Hollen	31 (65.9%)	7 (14.9%)	9 (19.1%)	40 (85.1%)
Walker /Van Hollen	16 (69.6%)	5 (21.7%)	1 (6.7%)	17 (74%)
<b>Total</b>	<b>70 (72.1%)</b>	<b>13 (13.4%)</b>	<b>13 (13.4%)</b>	<b>83 (85.6%)</b>

*\*Note:* Settlement refers to cases settled both before and after a trial has started and defendants that plead guilty.

*\*\*Note:* One defendant is missing from the Walker/Van Hollen term because the case is still open.

Table 16.1 shows the outcomes for individuals based on the governor and attorney general in office at the conclusion of the case. When looking at the data this way, the mixed four-year term still has the highest total guilty rate of individuals, guilty pleas (57%) and guilty at trial (5.7%) combined for 62.7%. The all-Republican had the second highest totally guilty rate at 47.8% but had the highest guilty at trial rate of 43.5%, and 4.3% of individuals plead guilty. The all-Democratic four-year term had a total guilty rate of 45.5%, 41% of individuals plead guilty and 4.5% were found guilty at trial.

**Table 16.1***Outcomes of defendants, governor and AG in office at the close of the case, and percentage guilty*

Governor/attorney general	Settlement	Defendant dismissed	Guilty Plea	Trial found guilty	Total guilty outcomes
Doyle/Lautenschlager	11 (50%)	1 (4.5%)	9 (41%)	1 (4.5%)	10 (45.5%)
Doyle/Van Hollen	8 (22.9%)	5 (14.3%)	20 (57%)	2 (5.7%)	22 (62.9%)
Walker /Van Hollen	10 (43.5%)	2 (8.7%)	1 (4.3%)	10 (43.5%)	11 (48%)
<b>Total</b>	<b>29 (30%)</b>	<b>8 (8.2%)</b>	<b>30 (31%)</b>	<b>13 (13.4%)</b>	<b>43 (44.3%)</b>

*\*Note:* Seventeen defendants are not included in this table because their outcome came after December 31, 2014.  
*\*\*Note:* Settlement refers to cases settled both before and after a trial has started.

The all-Democratic four-year term, Doyle/Lautneschlater, had the highest settlement rate for individuals at 50%. The all-Republican four-year term, Walker/Van Hollen, had the second highest settlement rate of 43.5% for individuals, and the mixed four-year term and an individual settlement rate of 22.9%. The mixed term had the highest percentage of individuals dismissed from a case, 14.3%. The all-Republican term dismissed 8.7% of individuals from cases, and the all-Democratic term dismissed 4.5% of individuals from cases. Table 16.2 combines individuals who plead guilty with individuals who took settlements. The all-Democratic term had 91% of individuals take a settlement or plead guilty. The mixed term had 80% of individuals plead guilty or take a settlement and the all-Republican term had 47.8% of individuals take a settlement or plead guilty.

**Table 16.2***Outcomes of defendants, Gov. & AG in office at the close of case, & percentage charged with forfeiture*

Governor/attorney general	Settlement	Defendant dismissed	Trial found guilty	Individuals charged with forfeiture
<b>Doyle/Lautenschlager</b>	20 (91%)	1 (4.5%)	1 (4.5%)	<b>21 (95.5%)</b>
<b>Doyle/Van Hollen</b>	28 (80%)	5 (14.3%)	2 (5.7%)	<b>30 (86%)</b>
<b>Walker /Van Hollen</b>	11 (47.8%)	2 (8.7%)	10 (43.5%)	<b>21 (91.3%)</b>
<b>Total</b>	<b>59 (61%)</b>	<b>8 (8.2%)</b>	<b>13 (13.4%)</b>	<b>72 (74.2%)</b>

*\*Note:* Seventeen defendants are not included in this table because their outcome came after December 31, 2014.

*\*\*Note:* Settlement in this table refers to both settlements reached before a trial started as well as settlements reached during a trial.

These findings are based on the 56 cases I was able to code for out of the 79 cases I identified. I coded 64.3% of the cases identified as filed in the all-Democratic term of Doyle/Lautenschlager. For the Dolye /Van Hollen mixed term, I was able to code for 74% of the cases identified as filed during their term. Finally, I was able to code for 86% of the cases identified as filed in the all-Republican term of Walker/Van Hollen.

## II. Other Coding Results

I was able to code for 56 cases with 97 individual defendants. Much of what I coded was done for the purpose of testing my hypotheses. However, I was able to code additional variables somewhat unrelated to my hypotheses. This section deals with those notable findings.

### *A. Outcome of Case and Prosecuting Assistant Attorney General*

Table 17 shows the outcomes of cases based on who the prosecuting assistant attorney general (AAG) was. Of the 56 cases coded, only 7 (13%) went to trial.<sup>188</sup> One hundred percent of the coded cases that went to trial resulted in a guilty verdict; AAG John Green is most likely to take a case to trial. Assistant attorneys general Nelle Rohlich and Lara Sutherlin prosecuted the most cases coded, 26.7% and 21.4% respectively. Sutherlin is more likely to reach a settlement than Rohlich, but Rohlich is more likely to dismiss a case entirely or reach a guilty plea. Table 18 shows the outcomes of individuals based on who the prosecuting AAG was.

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<sup>188</sup> There is a possibility that 8 of the 56 cases coded for will go to trial, as one of Sutherlin's case is still open .

**Table 17***Outcome of case and prosecuting assistant attorney general*

AAG	Settlement	Case dismissed	Guilty plea	Trial found guilty
Beilin, Lewis W.	1 (100%)	0	0	0
Earley, Meredith M.	1 (25%)	0	2 (50%)	1 (25%)
Ferris, Philip D.	2 (100%)	0	0	0
Gilles, David J.	2 (66.7%)	0	0	1 (33.3%)
Green, John S.	3 (50%)	0	1 (16.7%)	2 (33.3%)
Hancock, Jerry L.	1 (100%)	0	0	0
Hirsch, Cynthia Rae	0	1 (33.3%)	2 (66.7%)	0
Jefferies, James D.	4 (66.7%)	0	2 (33.3%)	0
Milligan, Diane L.	1(100%)	0	0	0
Rohlich, Nelle	3 (20%)	2 (13.3%)	9 (60%)	1 (6.7%)
Sutherlin, Lara*	7 (63.6%)	0	3 (27.3%)	1 (9.1%)
Joint	1 (50%)	0	0	1 (50%)
Totals**	26 (47.3%)	3 (5.5%)	19 (34.5%)	7 (12.7%)
*Note: One of Sutherlin's cases is still open.				
**Note: Totals do not include the open case.				

**Table 18***Outcome of defendants and prosecuting assistant attorney general*

AAG	Settlement	Defendant dismissed	Guilty plea	Trial found guilty
Beilin, Lewis W.	2 (100%)	0	0	0
Earley, Meredith M.	1 (25%)	0	2 (50%)	1 (25%)
Ferris, Philip D.	4 (100%)	0	0	0
Gilles, David J.	2 (66.7%)	0	0	1 (33.3%)
Green, John S.	5 (62.5%)	0	1 (12.5%)	2 (25%)
Hancock, Jerry L.	1 (100%)	0	0	0
Hirsch, Cynthia Rae	0	1 (16.7%)	5 (83.3%)	0
Jefferies, James D.	4 (66.7%)	0	2 (33.3%)	0
Milligan, Diane L.	1(100%)	0	0	0
Rohlich, Nelle	3 (18.8%)	2 (12.5%)	10 (62.5%)	1 (6.2%)
Sutherlin, Lara*	13 (40.6%)	8 (25%)	10 (31.3%)	1 (3.1%)
Joint	4 (30.8%)	2 (15.4%)	0	7 (53.8%)
Totals**	40 (41%)	13 (14%)	30 (31%)	13 (14%)
*Note: One Sutherlin defendant is still in pre-trial negotiations.				
**Note: Totals do not include the open trials.				

Individuals prosecuted for deceptive advertising are more likely to have their case end in a settlement (41%). Only 14% of all defendants were dismissed of charges, however, 3 defendants were dismissed with prejudice.<sup>189</sup> Forty-five percent of all individual defendants entered in a guilty plea.

<sup>189</sup> Three of Sutherlin's defendants were dismissed with prejudice in association with the settled Dane County case 2013CX11, Legal Helpers Debt Resolution LLC.

*B. Type of Defendant*

Table 19 is a breakdown of the types of defendants prosecuted for deceptive advertising. Businesses were the most prevalent type of defendant identified in the 56 coded cases, which is unsurprising. What is somewhat curious is that in terms of gender, men were named as individual defendants nearly four times as often as women. Nonprofits were coded for, but it should be noted that the two nonprofits prosecuted for deceptive advertising, were found not to be legitimate nonprofit organizations.<sup>190</sup>

**Table 19**  
*Type of defendant*

Type of defendant	Frequency	Percent
Male	31	32%
Female	8	8.2%
Business	56	57.7%
Nonprofit	2	2.1%
Total	97	100%

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<sup>190</sup> The “so-called nonprofits” were from the Dane County case, 2007CX21; defendants F & G, The Journal of American Medicine and Health Care and American Medical Enterprise Association.



### *C. County of Circuit Court Filings*

Of the 72 Wisconsin counties, only 23 have filed deceptive advertising cases from 2003 through 2014. Table 20, shows the frequency of filings of alleged deceptive advertising cases for all 79 cases. For all of the 79 cases identified, Dane County had the most filings (29) 36.7% of all cases identified in this study. Milwaukee County had the second most filings of all counties with 13 filings or 16.4% of all cases identified in this study. Kenosha and Waukesha counties each filed 5% of all the cases identified in this study.

**Table 20***County complaint/case filed in for all counties*

County	Frequency	Percent
Brown	1	1.3%
Columbia	1	1.3%
Crawford	1	1.3%
Dane	28	35.4%
Eau Claire	1	1.3%
Fond du Lac	1	1.3%
Kenosha	4	5%
Marathon	1	1.3%
Marinette	2	2.5%
Milwaukee	13	16.4%
Oneida	1	1.3%
Outagamie	2	2.5%
Ozaukee	4	5%
Portage	3	3.8%
Racine	3	3.8%
Rock	1	1.3%
Sheboygan	1	1.3%
St. Croix	1	1.3%
Vilas	1	1.3%
Walworth	1	1.3%
Waukesha	4	5%
Winnebago	2	2.5%
Wood	2	2.5%
Total	79	

Table 21 shows the frequency and percentage of cases filed in the selected Wisconsin counties for this study. Dane and Milwaukee counties were included in this study because over 50% of the cases identified were filed in those two counties (see Table 20).

Of the 56 cases coded for this study, 28 or 50% of the cases were filed in Dane County.<sup>191</sup> Twelve of the 56 cases or 21.4% were filed in Milwaukee County (see Table 21). The other 10 counties were chosen for this study because of their location to Milwaukee County and or because the information needed for coding was available online or in other government documents. In total, I was able to code 70.8% of all the cases identified from 2003-2014.

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<sup>191</sup> Dane, Milwaukee, Outagamie, and Wood Counties are missing a case(s) in the final analysis because the case files were unavailable during my visits to the court houses or the information was not recoded entirely in the Consumer Protection Programs Informational Papers.

**Table 21***County complaint/case filed in select counties*

County	Frequency	Percent
Brown	1	1.8%
Crawford	1	1.8%
Dane	28	50%
Kenosha	1	1.8%
Marinette	1	1.8%
Milwaukee	12	21.4%
Outagamie	1	1.8%
Racine	3	5.4%
Vilas	1	1.3%
Waukesha	4	7.1%
Winnebago	2	3.6%
Wood	1	1.8%
<b>Total</b>	<b>56</b>	

*\*Note:* Some counties are missing cases because I was unable to get access to all case files.

*D. Outcomes Coded by Defense Attorney Request to Withdraw*

Tables 22.1-23.2 show the outcomes of cases and defendants based on whether or not an attorney requested to be withdrawn from the case. Of the 56 cases coded for, 42.9% of the cases did not have legal representation. Cases that were not represented by an attorney were much more likely to reach a settlement rather than go to trial. When settlements and guilty pleas are coded for separately, 54.2% of unrepresented cases ended in a settlement and 37.5% of these cases entered a guilty plea (see Table 22.1).

**Table 22.1***Outcomes of cases and defense attorney request to withdraw*

Defense attorney request to withdraw from case	Settlement	Case dismissed	Guilty plea	Trial found guilty
<b>No request to withdraw</b>	7 (35%)	1 (5%)	8 (40%)	4 (20%)
<b>Request to withdraw</b>	5 (50%)	0 (0%)	2 (20%)	3 (30%)
<b>No attorney</b>	13 (54.2%)	2 (8.3%)	9 (37.5%)	0 (0%)

*\*Note:* One case is still open and the attorney has not requested to withdraw.

When settlement and guilty pleas are combined, 91.7% of cases without legal representation ended in a settlement (see Table 22.2). Not a single case without legal representation went to trial. Once the Wisconsin Department of Justice has filed a case is unlikely that the case will be dismissed. Two (8.3%) of the three of the 56 cases coded were dismissed and lacked legal representation. Five percent of the cases dismissed had legal representation that did not seek to withdraw from the case.

**Table 22.2***Outcomes of cases and defense attorney requests to withdraw combining settlements and guilty pleas*

Defense attorney request to withdraw from case	Settlement/guilty plea	Case dismissed	Trial found guilty
<b>No request to withdraw</b>	15 (75%)	1 (5%)	4 (20%)
<b>Request to withdraw</b>	7 (70%)	0 (0%)	3 (30%)
<b>No attorney</b>	22 (91.7%)	2 (8.3%)	0 (0%)

*\*Note:* Three cases are still open and have not had an attorney request to withdraw from the case.

*\*\*Note:* Settlement includes guilty pleas.

Of the 56 cases coded for, 10 or 17.9% of the cases had an attorney request to be withdrawn from the case. Not a single case that had an attorney request to withdraw ended in the case being dismissed. Settlements were most common for cases that had an attorney request to be withdrawn at 70%. Cases whose attorney requested to withdraw from the case and went to trial ended in a guilty verdict at a rate of 30%. Only 20% of cases whose attorney request to withdraw ended with a guilty plea (see Table 22.1). When settlements and guilty pleas are combined, 70% of cases whose attorney requested to withdraw ended in a settlement (see Table 22.2). Settlements and guilty pleas are a win for the state, defendants are charged with forfeitures and the state doesn't have to spend time in litigation.

For the 20 or 35.7% of cases that did not have an attorney request to withdraw from the case, settlement was the most common outcome (see Table 22.1). The settlement rate for these cases was 35%. Only 5% of cases whose legal representation did not request to be removed from the case ended in the case's dismissal. Forty percent of cases whose attorney did not request to withdraw ended in a guilty plea and 20% of these cases went to trial and were found guilty. When settlement and guilty plea are combined, 75% of cases whose attorney did not request to withdraw from the case ended in a settlement (see Table 22.2).

Around 2007, not only were all alleged violations of deceptive advertising being filed as complex forfeiture cases, but all entities (multiple individuals and or multiple organizations) being charged in a case were specifically called out and given a "related" case number. For example, if a Dane County case had multiple defendants the case would be given a number-2007 (the year) CX (complex forfeiture) 9 (the ninth complex forfeiture case filed in 2007 in Dane County) 2007-CX-9. Any additional individual or organization accused of being part of the

alleged deceptive advertising violation would have the same case number, 2007-CX-9 but a letter would be attached to the “9”, 2007-CX-9A and so on for as many entities that allegedly were party to the deceptive advertising violation. The complex filing of these cases and individuals makes it possible to dismiss an individual or organization but not the case. Additionally, it allows individuals the opportunity to have their own legal counsel if they so choose.<sup>192</sup> Tables 23.1-23.2 look at the outcomes of individuals and whether or not their legal counsel requested to withdraw from the case or not.

At the individual level, 29 or 29.9% (a total of 97 defendants coded for) had their attorney request to be withdrawn from their case. Individual defendants whose attorney request to withdraw were more likely to see their case end in a settlement (see Table 23.1). Fifteen (51.7%) of individuals, whose attorney withdrew, saw their case end in a settlement. Two of these individuals (6.9%) were successfully dismissed from the case. Three individuals whose attorney requested to be withdrawn entered a guilty plea, and 9 (31%) of these individuals went to trial and were found guilty. When settlements and guilty pleas were combined, 57.7% of individuals whose attorney requested to withdraw saw their case end in a settlement (see Table 23.2).

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<sup>192</sup> Telephone Interview with Lara Sutherlin, Wisconsin Assistant Attorney General, Department of Justice, *supra* note 172.

**Table 23.1***Outcomes of defendants and defense attorney request to withdraw*

Defense attorney request to withdraw from case	Settlement	Defendant dismissed	Guilty plea	Trial found guilty
<b>No request to withdraw</b>	10 (24.3%)	9 (22%)	18 (44%)	4 (9.7%)
<b>Attorney withdrew</b>	15 (51.7%)	2 (6.9%)	3 (10.3%)	9 (31%)
<b>No attorney</b>	15 (57.7%)	2 (7.7%)	9 (34.6%)	0 (0%)

*\*Note:* One defendant is still on trial and the attorney has not requested to withdraw from the case.

*\*\*Note:* Settlement includes guilty pleas.

Thirty-seven of the 97 total defendants did not have an attorney request to withdraw from their case. Of the individuals whose attorney did not request to withdraw from the case, 24.3% ended their case in a settlement (see Table 23.1). Six of these individuals (16.2%) were dismissed from the case. Most individuals whose attorney did not request to withdraw from their case entered a guilty plea, at 44%. Finally, four or 9.7% of individuals who maintained the same legal counsel for the duration of the case went to trial and were found guilty. When guilty plea and settlement were coded together, 73% of individual's cases ended in a settlement (see Table 23.2).

**Table 23.2***Outcomes of defendants and defense attorney request to withdraw combining settlement and guilty plea*

Defense attorney request to withdraw from case	Settlement	Defendant dismissed	Trial found guilty
<b>No request to withdraw</b>	28 (73%)	9 (16.2%)	4 (10.8%)
<b>Attorney withdrew</b>	18 (57.7%)	2 (7.7%)	9 (34.6%)
<b>No attorney</b>	24 (92.3%)	2 (7.7%)	0 (0%)

*\*Note:* Seven defendants are still on trial and have not had an attorney request to withdraw from the case.

*\*\*Note:* One defendant is still on trial and the attorney withdrew from the case.



Twenty-six or 26.8% of individual defendants did not seek legal counsel. Of those defendants that did not obtain legal counsel, 57.7% of them reached a settlement with the Wisconsin Department of Justice (see Table 23.1). Nearly 8% of unrepresented defendants were dismissed from the case, and 34.6% of unrepresented defendants entered a guilty plea. Not a single unrepresented defendant took their case to trial. When settlements and guilty pleas are combined, 92.3% of unrepresented defendants ended their case with a settlement or guilty plea (see Table 23.2).

#### *E. Advertising Mediums Allegedly in Violation*

All 56 cases were also coded for the advertising medium(s) allegedly in violation of Wisconsin's deceptive advertising law. Tables 24-26 show the trends of which media was used to allegedly transmit deceptive advertising messages during each of the three four-year terms examined in this study.

During the all-Democratic four-year term, more cases of deceptive advertising were prosecuted than in the mixed four-year term or during the all-Republican four-year term. Of the 27 alleged deceptive advertising violations during the Doyle/Lautenschlager term, 10 of those alleged violations were phone calls to consumers (see Table 24).

**Table 24***Advertising medium allegedly in violation during the all-Democratic four-year term*

Advertising medium	Frequency	Percent
Print	0	0%
Oral	0	0%
Envelope	1	3.7%
Letter	1	3.7%
Service/contract agreement	1	3.7%
Outdoor	7	25.9%
Telephone	10	37%
Radio	0	0%
Website	0	0%
Multiple mediums	7	25.9%
Multiple mediums including internet	0	0%
<b>Total</b>	<b>27</b>	<b>100%</b>

Seven of the alleged violations during this time were identified as outdoor advertisements, and seven of the alleged violations were identified as multiple medium advertising campaigns not including the internet. The remaining alleged violations were in the forms of letters, envelopes, and service or contract agreements. During the Doyle/Lautenschlager term, not a single alleged violation was identified in the form of internet advertising.

Table 25 shows the advertising mediums of the alleged deceptive advertising violations for the mixed, Doyle/Van Hollen term. Of the 17 alleged violations identified during this four-year term, 29% were considered multiple medium advertising campaigns without an internet component.

**Table 25***Advertising medium allegedly in violation during the mixed four-year term*

Advertising medium	Frequency	Percent
Print	1	6%
Oral	0	0%
Envelope	2	12%
Letter	0	0%
Service/contract agreement	0	0%
Outdoor	0	0%
Telephone	3	17%
Radio	0	0%
Website	2	12%
Multiple mediums	5	29%
Multiple mediums including internet	4	24%
<b>Total</b>	<b>17</b>	<b>100%</b>

During the Doyle/Van Hollen term, was the first time advertisements over the internet were identified as allegedly deceptive, 24% (4) of the cases during this term were coded as multiple medium advertising campaigns that included an internet component and two of these cases were coded as websites allegedly in violation of Wisconsin’s deceptive advertising law. A total of 36% of the cases coded for had an internet component during the Doyle/Van Hollen term. Alleged telephone violations fell during this time period to three. The remaining alleged violations were in the form of print and envelope.

During the all-Republican, Walker/Van Hollen term there were 12 cases of alleged deceptive advertising cases. During this term, 33% (4) of the cases were coded as multiple

medium advertising campaigns without an internet component, and two were coded as multiple medium advertising campaigns with an internet component (see Table 26). During this term cases with an internet component dropped to 17%. Additionally, two cases were coded as envelopes in alleged violation of the law. The remaining cases were coded as oral, letter and service or contract agreements in alleged violation of the law.

**Table 26**

*Advertising medium allegedly in violation during the all-Republican four-year term*

Advertising medium	Frequency	Percent
Print	0	0%
Oral	1	8%
Envelope	2	17%
Letter	1	8%
Service/contract agreement	1	8%
Outdoor	0	0%
Telephone	0	0%
Radio	1	8%
Website	0	0%
Multiple mediums	4	33%
Multiple mediums including internet	2	17%
<b>Total</b>	<b>12</b>	<b>100%</b>

Table 27 looks at all 56 cases and the frequency of mediums of all alleged deceptive advertising violations. Of all 56 cases, multiple medium advertising campaigns without the

internet were the most common advertising medium allegedly in violation of Wisconsin's deceptive advertising law at 28.5%.

**Table 27**

*Advertising medium allegedly in violation*

Advertising medium	Frequency	Percent
Print	1	1.8%
Oral	1	1.8%
Envelope	5	8.9%
Letter	2	3.6%
Service/contract agreement	2	3.6%
Outdoor	7	12.5%
Telephone	13	23.2%
Radio	1	1.8%
Website	2	3.6%
Multiple mediums	16	28.5%
Multiple mediums including the internet	6	10.7%
<b>Total</b>	<b>56</b>	<b>100%</b>

The second most common advertising medium allegedly in violation was telephone calls at 23.2%. Forms of outdoor advertising accounted for 12.5% of the cases. Forms of alleged deceptive advertising via the internet got a late start. Deceptive internet advertising was unheard of in Wisconsin before 2007, but multiple medium advertising campaigns with an internet component accounted for 10.7% of all cases and when websites are added various forms of internet advertising account for 14.3% of all the cases allegedly in violation of Wisconsin's deceptive advertising law.

## CHAPTER 5: DISCUSSION

Chapter 4 laid out the findings of this study based on the methodology outlined in Chapter 3. Given the high number of consumer complaints the Department of Agriculture, Trade and Consumer Protection receives annually, I was surprised that only 79 cases of deceptive advertising were filed from 2003 through 2014, I had anticipated the number of deceptive advertising cases filed to be larger. The vast majority of consumer complaints are settled during by simply informing the consumer of their legal rights under the law. Another large chunk of the complaints are settled by simply sending a warning letter to the accused business.<sup>193</sup> For this study, 56 (70.9%) deceptive advertising cases out of the 79 cases identified were analyzed and coded to identify characteristics of the cases as well as prosecutorial trends. This chapter aims to expand on those findings and what they mean.

### I. Discussion of Hypotheses

#### *A. Discussion of Hypothesis 1*

This study suggests that when the governor and attorney general are both Democrats, alleged instances of deceptive advertising are more likely to be escalated to state prosecutions than under a mixed or all-Republican term. As described in Chapter 2, consumer complaints of deceptive advertising go through the Department of Agriculture, Trade and Consumer Protection and are investigated, then referred to the Department of Justice if prosecution is deemed necessary by the Department of Agriculture, Trade and Consumer Protection. The

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<sup>193</sup> Ferguson and Onsager, *supra* note 91 at 13; Ferguson and Steinschneider, *supra* note 89 at 17. In 2010, a warning letter resolved 1,012 complaints. In 2011, a warning letter resolved 1,288 consumer complaints. In 2012, a warning letter resolved 1,511 complaints. In 2013, a warning letter resolved 1,216 consumer complaints.

Department of Agriculture, Trade and Consumer Protection also has the power to settle with organizations thought to be violating the deceptive advertising law instead of formally prosecuting. The Department of Agriculture, Trade and Consumer Protection can order restitution to deceived consumers and issue civil forfeitures to cover fees and investigation costs.<sup>194</sup> Settlements that are reached through either government agency do not imply that the alleged offending party is admitting that any Wisconsin laws or regulations were violated. Instances of deceptive advertising are not actively monitored by the government, but rather rely on consumers to file a complaint.<sup>195</sup> With this procedure in place for handling deceptive advertising claims, the findings suggest that several things may have been happening from 2007 through 2014.

One might speculate that the nearly 50% (42 cases filed from 2003 through 2006 in all Wisconsin counties to 23 cases filed from 2007 through 2010) decrease in deceptive advertising cases prosecuted by the Department of Justice means that there were fewer consumer complaints made from 2007 through 2010. But The Department of Agriculture, Trade and Consumer Protection, receives on average “15,000 complaints every year about possible wrongdoing, fraud, defective products and other deceptive business practices.”<sup>196</sup> So if approximately the same number of complaints are coming in, presumably the average number of cases going to prosecution should remain relatively the same. Another speculation one might make considering

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<sup>194</sup> Rick Barrett, *Wyndham Vacation Ownership agrees to \$665,000 settlement with consumers*, JOURNAL SENTINEL, May 28, 2015, <http://archive.jsonline.com/business/wyndham29-b99508960z1-305330681.html>. The Wyndham settlement was done through the Department of Agriculture, Trade and Consumer Protection. There is no record of any prosecutorial proceedings for Wyndham in CCAP.

<sup>195</sup> Telephone Interview with Lara Sutherlin, Wisconsin Assistant Attorney General, Department of Justice, *supra* note 172.

<sup>196</sup> Dan Cassuto, INVESTIGATION: STATE IGNORES SOME CONSUMER COMPLAINTS WKOW.COM (2010), <http://www.wkow.com/story/11965435/investigation-state-ignores-some-consumer-complaints> (last visited Sep 27, 2016).

the average number of complaints didn't decline is that the Department of Agriculture, Trade and Consumer Protection referred cases to the Department of Justice but the Attorney General declined to prosecute all the referrals. Finally, it is possible that while the average number of consumer complaints remained the same but the Department of Agriculture, Trade and Consumer Protection simply referred fewer cases to the Department of Justice for prosecution.

From 2011 through 2014, the Department of Justice prosecuted 14 deceptive advertising cases, far fewer cases than during the previous two four-year terms. But the number of consumer complaints was not decreasing. In fact, in 2014, the Department of Agriculture, Trade and Consumer Protection saw an increase in consumer complaints.<sup>197</sup> The continued decrease in deceptive advertising cases prosecuted by the state of Wisconsin as more Republicans entered into office reinforces the notion that Republican politicians are more hands off regarding business autonomy and advertising regulation.

In 2009, the Department of Agriculture, Trade and Consumer Protection was accused of outright ignoring consumer complaints by the WKOW news outlet.<sup>198</sup> The governor at the time was Jim Doyle and J.B. Van Hollen (R) was the attorney general. WKOW investigative reporter Dan Cassuto alleged that the Department of Agriculture, Trade and Consumer Protection either “ignores, hands off or rushes to close complaints about serious consumer fraud, scams and wrongdoing.”<sup>199</sup> Cassuto’s investigation found that complaints were often closed by “sending a form letter to the suspect” with little to no investigation taking place.<sup>200</sup> Additionally, many

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<sup>197</sup> Department of Agriculture, Trade and Consumer Protection, WI DATCP NEWS: CONSUMER COMPLAINTS ON THE RISE IN 2014 (2015), [www.datcp.wi.gov/news/?Id=1231](http://www.datcp.wi.gov/news/?Id=1231) (last visited Mar 15, 2015).

<sup>198</sup> Cassuto, *supra* note 196.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*



victims were notified of their complaint cases being closed months and sometimes years after the case was closed.<sup>201</sup> I also came across another instance of allegedly deceptive advertising from 2015 (out of the scope of this study), that was settled by the Department of Agriculture, Trade and Consumer Protection for over half a million dollars in restitution, fines, fees and assessments.<sup>202</sup> Allegedly, the settlement was filed in Sauk County Court, but there is no court record of this alleged violation in CCAP.<sup>203</sup> The WKOW investigative series by Cassuto, who accused the Department of Agriculture, Trade and Consumer Protection of failing to protect Wisconsin consumers, paired with the findings of this study suggests that failure to enforce state regulations is a continuing trend.

Despite the continued declining prosecution of deceptive advertising cases, the findings suggest that cases that are prosecuted by the Department of Justice are likely to reach an outcome in the State's favor. The Democratic governor and attorney general are far more likely to prosecute alleged deceptive advertising violations, but both parties are careful to prosecute cases that will end in the prosecution's favor. Of the 56 cases coded for only 5% of the cases ended in the defendant's favor, these cases were dismissed. Of the 56 cases coded for, not a single case that went to trial ended in a not guilty verdict.

The substantial drop in the number of cases from the all-Democratic four-year term (42 total, 27 included in the study) to the mixed four-year term (23 total, 17 included in the study) raises questions. Jim Doyle (D) was the governor during the first and second four-year terms.

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<sup>201</sup> *Id.*

<sup>202</sup> Barrett, *supra* note 194.

<sup>203</sup> George Hesselberg, *Wyndham timeshare outfit settles state consumer complaints for \$665,000*, WISCONSIN STATE JOURNAL, May 29, 2015, [http://host.madison.com/wsj/news/local/wyndham-timeshare-outfit-settles-state-consumer-complaints-for/article\\_98521dde-43a4-5b8d-bf62-73dd6935f839.html](http://host.madison.com/wsj/news/local/wyndham-timeshare-outfit-settles-state-consumer-complaints-for/article_98521dde-43a4-5b8d-bf62-73dd6935f839.html) (last visited Sep 27, 2014) There are two cases filed in Sauk county with Wyndham named as a garnishee, not as a defendant.

The change in party in 2007 was the attorney general; Republican J.B. Van Hollen replaced Peggy Lautenschlager (D). Because Doyle was governor for both term and the change in party affiliation was at the attorney general level, could suggest that Wisconsin's Attorney General has more power over the prosecutions of allegedly deceptive advertising than the governor.

That shifts the focus back to the Department of Agriculture, Trade and Consumer Protection and its secretary, appointed by the governor. From 2003-July of 2010, the Department of Agriculture, Trade and Consumer Protection had the same secretary, Rod Nilsestuen, who had been appointed by Doyle. Nilsestuen was replaced with Randy Romanski in 2010, because of Nilsestuen's death in July of 2010.<sup>204</sup> Romanski was also an appointee of Doyle. It isn't unreasonable to believe that the Department of Agriculture, Trade and Consumer Protection continued to send cases to be reviewed and prosecuted by the Department of Justice while Doyle and his appointed secretary were still in office, but that the Republican headed Department of Justice declined to prosecute. However, Cassuto contends that the Consumer Protection Bureau has priorities and focuses nearly exclusively on "Do Not Call list violations, landlord/tenant disputes and telecommunication problems."<sup>205</sup> If the consumer complaint doesn't fit into one of these categories, "Consumer Protection says you can either sue on your own or hope that Attorney General Van Hollen takes the case."<sup>206</sup> In a 2010 interview with WKOW, Van Hollen stated that the Department of Justice's "hands are somewhat tied by what Consumer Protection does," but admitted that more cases could be investigated and prosecuted if the

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<sup>204</sup> Devin Rose, *Romanski is appointed to replace Nilsestuen as state DATCP secretary*, WISCONSIN STATE JOURNAL, August 30, 2010, [http://host.madison.com/wsj/news/local/govt-and-politics/romanski-is-appointed-to-replace-nilsestuen-as-state-datcp-secretary/article\\_00b73a26-b49d-11df-8548-001cc4c03286.html](http://host.madison.com/wsj/news/local/govt-and-politics/romanski-is-appointed-to-replace-nilsestuen-as-state-datcp-secretary/article_00b73a26-b49d-11df-8548-001cc4c03286.html) (last visited Jun 26, 2010).

<sup>205</sup> Cassuto, *supra* note 196.

<sup>206</sup> *Id.*

Department of Agriculture, Trade and Consumer Protection had more legislative funding and a larger staff.<sup>207</sup> So are these two agencies and their consumer protection units really working together on behalf of Wisconsin consumers?

The findings in this study suggest that Cassuto's investigation had no effect on the regulatory departments and that the routine dismissal of consumer complaints continued. Cassuto's investigation turned up over 40 complaints about A Great American Balloon Company for failing to give balloon rides to Wisconsin consumers who purchased tickets.<sup>208</sup> The Department of Agriculture, Trade and Consumer Protection never investigated these consumer complaints. And when the Democratic governor changed from Doyle to the Republican governor, Scott Walker, and Republican attorney general, J.B. Van Hollen remained in office, the number of allegedly deceptive advertising cases took another plunge. The mixed term prosecuted 23 deceptive advertising cases in total, and the all-Republican term prosecuted 14 allegedly deceptive advertising cases. Also, with the election of Walker, came the appointment to the secretary of the Department of Agriculture, Trade and Consumer Protection, Ben Brancel. Brancel had held the position previously under Republican Governor Tommy Thompson.<sup>209</sup> Again, it is unknown how many alleged cases of deceptive advertising violations Brancel referred to Van Hollen's office. But given the declining trends in the years previously, it would stand to reason that fewer instances of deceptive advertising violations were referred to

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<sup>207</sup> *Id.*

<sup>208</sup> *Id.*; Bill Lueders, WKOW HIDES EXPOSE ON A GREAT AMERICAN BALLOON COMPANY ISTHMUS (2009), <http://isthmus.com/news/news/wkow-hides-expose-on-a-great-american-balloon-company/>.

<sup>209</sup> Lyn Jerde, *Endeavor beef farmer Ben Brancel gets top state agriculture post*, DAILY REGISTER, December 30, 2010, [http://www.wiscnews.com/portagedailyregister/news/article\\_74fcd5a4-149b-11e0-887e-001cc4c002e0.html](http://www.wiscnews.com/portagedailyregister/news/article_74fcd5a4-149b-11e0-887e-001cc4c002e0.html) (last visited Jun 26, 2016).

Van Hollen's office from 2011 through 2014 because the governor, attorney general and Department of Agriculture, Trade and Consumer Protection secretary were Republican.

*B. Discussion of Hypothesis 2*

The findings of this study suggest that while Democrats are likely to prosecute more violations of Wisconsin's deceptive advertising statute than Republicans, the fines associated with a deceptive advertising violation under a Democratic governor and attorney general are likely to be less than fines under a Republican governor and attorney general. This study looked at the median forfeitures issued per case rather than the average because each case was assigned an individual forfeiture rather than a standard issue forfeiture. Despite this, there is a rather sizeable increase of the total median forfeiture per case when Van Hollen was elected as attorney general alongside Doyle as governor. During the all-Democratic term, the total median forfeiture was just over \$7,000. The total median forfeiture increased nearly 15 times the median total forfeiture from the all-Democratic term to the mixed term. The all-Republican term's median total forfeiture was nearly three times the median forfeiture of the mixed term. A Republican governor and attorney general are likely to go after fewer deceptive advertising violations, but hand out much heftier forfeitures.

Perhaps the heftier forfeitures stem from the larger acts of deception taking place during the Walker/Van Hollen term. Or, perhaps the heftier forfeitures are used to cover up the fact that fewer cases are going to prosecution but still maintain an image of consumer protection effectiveness. In 2010, the Department of Agriculture, Trade and Consumer Protection's Consumer Protection Bureau claimed that it had recovered \$4.5million in 2009 for consumers

and the state's general fund.<sup>210</sup> At this time, the Bureau also claimed that it was referring more cases for prosecution than it had in the past.<sup>211</sup> If this statement by the Consumer Protection Bureau, under the direction of Democratic appointee Randy Romanski is true, it further supports the theory that the Attorney General's office was declining to pursue prosecution on a great number of alleged deceptive business practices. Thus, rendering a need for higher forfeitures ordered by the Attorney General's office as the number of deceptive advertising cases prosecuted goes down to maintain the appearance that the state is tough on deception and Wisconsin consumers are being protected.

Of the 12 coded complaints filed during the Walker/Van Hollen four-year term (2011 through 2014) half the cases had a total forfeiture loss of over a quarter million dollars. The Waukesha County Grand Vacations Club Inc. case, 2012CX01<sup>212</sup> also cross-referenced with the 2010 Outagamie County Going Places Travel Corp. 2010CX01<sup>213</sup> concluded during the Walker and Van Hollen four-year term of nearly 4 million dollars. Both Country Grand Vacations Club Inc. and Going Places Travel Corp. were operated by William Baily and Christy Spensberger but in different locations and under different company names. Baily and Spensberger swindled many Wisconsin residents out of thousands of dollars in their vacation time-share con.<sup>214</sup>

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<sup>210</sup> Cassuto, *supra* note 196.

<sup>211</sup> *Id.*

<sup>212</sup> Waukesha County cases 20102CX01A-2012CX01C are cross-referenced with the Grand Vacations Club Inc. case.

<sup>213</sup> Outagamie County cases 2010CX01B-2010CX01I are cross-referenced with the Going Places Travel Corp. case.

<sup>214</sup> Wisconsin Department of Justice, ATTORNEY GENERAL J.B. VAN HOLLEN ANNOUNCES JUDGMENT AGAINST TRAVEL SERVICES, INC., WILLIAM BAILEY, CHRISTY SPENSBERGER AND OTHERS FOR THEIR DECEPTIVE MARKETING OF TRAVEL CLUB MEMBERSHIPS WISCONSIN DEPARTMENT OF JUSTICE (2014), <https://www.doj.state.wi.us/news-releases/attorney-general-jb-van-hollen-announces-judgment-against-travel-services-inc-william> (last visited May 4, 2016).

Also during the Walker/Van Hollen term, the state began prosecuting Corinthian Colleges, a for-profit institution, for deceptive advertising practices. Though this case was concluded after December 31, 2014, the governor and attorney general are Republicans, Governor Scott Walker and Attorney General Brad Schimel. Corinthian Colleges was fined nearly \$9.5 million for its deception of thousands of students who didn't receive the education they thought they were paying for. Both the Baily and Spensberger case and the Corinthian Colleges cases got a fair amount of media coverage and help legitimize the consumer protection divisions in both the Department of Agriculture, Trade and Consumer Protection as well as Department of Justice.

Ultimately, H2 was a logical assentation especially given that H1 is supported, but H2 is not supported by the data. There are many possibilities as to why the prosecution of more cases of deceptive advertising doesn't result in higher fines, but the data collected in this study isn't sufficient enough to explain why as the number of cases prosecuted goes down, the amount of fines issued goes up.

### *C. Discussion of Hypotheses 3*

In terms of the outcome of the case, the findings suggest that no matter the party affiliation of the governor and attorney general the outcome of the case is likely to be in some form of settlement. Settlements do not have a guilty verdict or plea attached to them. But settlements come with a monetary forfeiture, which is a win for the state. Not applying a guilty label to settlements can also be viewed as a pro-business move so much so, it seems somewhat surprising that the all-Republican term didn't have a higher likelihood of closing a case via

settlement. But a settlement can be less time consuming and a cheaper alternative to trial proceedings.<sup>215</sup> Furthermore, even if a monetary judgment is ordered doesn't mean that the funds will be collected.<sup>216</sup>

Going to trial has a 100% guilty verdict outcome for all three terms, but according to Table 13.1, going to trial is more likely when there is a Democratic governor and a Republican attorney general.<sup>217</sup> This conclusion is representative of the outcomes of cases based on the elected officials in office at the filing of the case. However, trial doesn't appear to be a popular course of action during any of the four-year terms. Of the 52 cases coded for, only seven went to trial and were concluded by December 31, 2014. Additionally, dismissal of a case is extremely rare. Of the 56 cases coded for only three cases were dismissed entirely. Of the cases coded for, only 46% of the cases that went to prosecution ended in a guilty verdict or a win for the state and Wisconsin consumers. The high number of settlements for all three terms paired with the low number of cases dismissed and cases going to trial further suggests that both consumer protection departments are aiming to please Wisconsin consumers with restitution and monetary fines to organizations allegedly in violation of the law. This trend also suggests a tendency of both agencies to foster a business-friendly economy by not attaching criminal charges by going to trial or settling with a guilty plea.

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<sup>215</sup> Cassuto, *supra* note 191. Additionally, many of the case files I looked at still had outstanding fines.

<sup>216</sup> *Id.*

<sup>217</sup> This figure speaks only of the 52 cases analyzed for this study. Of those cases, all that proceeded to trial were found guilty of deceptive advertising under §100.18.

## II. Discussion of Other Findings

### *A. Outcomes and the Prosecuting Assistant Attorney General*

There seems to be little correlation between the outcome of a case and the prosecuting assistant attorney general. The majority of the AAGs close cases in a settlement. Though, of the eleven AAG's included in this study, four (36%) do not have any guilty verdicts recorded. Additionally, only two AAG's have a guilty verdict rate over 50% and neither of those attorneys works for the Department of Justice any longer. Both assistant attorney generals, John S. Green and Lara Sutherlin close approximately half of their cases with a guilty verdict.<sup>218</sup>

### *B. Counties of Circuit Court Filings*

Of the 79 deceptive advertising cases identified, over half of the cases were filed in either Dane County or Milwaukee County. Initially, this seems foreseeable; these two counties are heavily populated, and both the Department of Agriculture, Trade and Consumer Protection and the Department of Justice are located in Dane County. But the location of the Department of Justice shouldn't have any correlation with the counties in which deceptive advertising cases are filed because the same AAG's prosecuting cases in all counties. In fact, the last time a deceptive advertising case was filed in a county with less than 100,000 total population was 2011.<sup>219</sup> The consolidation of cases filed in Dane and Milwaukee counties is more representative

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<sup>218</sup> It is worth noting Lara Sutherlin has a cases still open and it appears to being heading to trial.

<sup>219</sup> United States Census Bureau, WISCONSIN-2010 CENSUS RESULTS TOTAL POPULATION BY COUNTY CENSUS.GOV, [http://www.census.gov/2010census/news/img/cb11cn80\\_wi\\_totalpop\\_2010map.jpg](http://www.census.gov/2010census/news/img/cb11cn80_wi_totalpop_2010map.jpg). The Countryside Meats case in Portage County, 2011CX01.



of the fact that consumer protection continues to be underfunded and consumer protection divisions in the Department of Agriculture, Trade and Consumer Protection and the Department of Justice continue to shrink.<sup>220</sup>

From 2003 to 2013, the Department of Agriculture, Trade and Consumer's consumer protection division employed on average 66 individuals responsible for dealing consumer complaints and investigations among other things. Before December 2009, there were four regional consumer protection offices located in Eau Claire, Green Bay, Madison, and Wauwatosa.<sup>221</sup> The consolidation of the consumer protection offices to Madison didn't eliminate jobs. But, it could be argued that the consolidation of consumer protection offices to Madison decreased investigations in less populated counties across the state and therefore had a part in the significant decrease in the number of deceptive advertising cases prosecuted. In 2014, when the consumer protection staff was slashed in half, the only deceptive advertising cases filed were in Dane, Milwaukee, and Waukesha counties, the three largest counties in Wisconsin.<sup>222</sup>

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<sup>220</sup> Telephone Interview with Lara Sutherlin, Wisconsin Assistant Attorney General, Department of Justice, *supra* note 168; Ferguson and Steinschneider, *supra* note 135 at 8; Ferguson and Onsager, *supra* note 140 at 6. Sutherlin stated that the "DOJ used to have consumer protection offices all over the state" but the unit has "dwindled to the smallest unit in the DOJ." The number of DATCP consumer protection staff decreased from 63 staff members from 2012-13 to 33 staff members in 2014-2015.

<sup>221</sup> Pollek, *supra* note 91 at 5-7; Pollek and Onsager, *supra* note 91 at 5; Ferguson and Steinschneider, *supra* note 89 at 8; Ferguson and Onsager, *supra* note 91 at 6; Christopher Pollek & Paul Onsager, CONSUMER PROTECTION PROGRAMS INFORMATIONAL PAPER 84 5 (2007); Paul Ferguson & Paul Onsager, CONSUMER PROTECTION PROGRAMS INFORMATIONAL PAPER 87 7 (2011).

<sup>222</sup> United States Census Bureau, *supra* note 214. According to the 2010 U.S. Census, Milwaukee County has a population of 947,735; Dane and Waukesha counties each have a population of 300,000 to 500,000.

*C. Advertising Mediums Allegedly in Violation of Wisconsin Law*

When discussing deceptive advertising, the medium in which the deceptive or fraudulent message is distributed should be examined. Thirty-nine percent of the cases that were coded for advertising mediums were coded as multiple mediums (with and without the internet). Pushing a message through various channels is typical of an advertising campaign. But, many of the cases coded were not reminiscent of a traditional advertising campaign. In fact, not a single case was linked to an advertising agency.

Another high-ranking medium overall was telephone. This finding is interesting because it legitimizes Cassuto's 2010 claim that the Department of Agriculture, Trade and Consumer Protection has priorities, and one priority being telephone violations. It seems that not all forms of deception are considered equal to the Department of Agriculture, Trade and Consumer Protection.

## CHAPTER 6: CONCLUSION

### I. Overview of Study

This study only looks at the prosecutorial pattern of one Midwest state, Wisconsin. However, the findings do have implications for other U.S. states as well. Wisconsin and the Midwest are known as part of the most representative region in the United States.<sup>223</sup> While this study is far from complete, it does offer a useful prosecutorial pattern of political parties to legislatures and voters alike. Both Republicans and Democrats appear to be tough on deceptive advertising, but each in different and not consistent ways.

This study suggests that Democrats tend to execute the law in a more evenhanded manner. If the law is broken prosecution will take place but the forfeitures are not as financially devastating. However, it seems that Republicans may only be prosecuting cases that egregiously violate the law and slap multimillion-dollar forfeitures on the violators.<sup>224</sup> Some may applaud the Republican governor and attorney general for dealing hefty financial blows to these predatory advertising practices. But in reality, it seems that the Republicans are picking and choosing only to prosecute the worst offenders while other offenders are getting off with just a slap on the wrist without Circuit Court filings and a public record documenting their misdeeds. These findings suggest that elected Republicans in Wisconsin do not enforce regulatory laws equally,

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<sup>223</sup> Kiersz, *supra* note 165.

<sup>224</sup> Cases that ended in a over a million dollar forfeitures under the Republican term include the 2010 Outagamie travel vacation case 2010CX01, 2010CX01A-F combined with the 2012 Waukesha case 2012CX01, 2012CX01A-C both involving William Baily and Christy Spensberger, the forfeiture for these cases was approximately 4 million dollars. The 2012 Milwaukee case, Vivant 2012CX07 had a forfeiture of over 1.8 million dollars and the 2014 Milwaukee case, Corinthian Colleges, Inc., 2014CX06 had a forfeiture of over 9.4 million dollars.

but will let violations pass un-prosecuted as long as they are smaller infractions and not larger violation capable of bringing the state a substantial monetary gain in forfeitures.

Uneven application of the law on deceptive advertising by different political parties can have major implications for Wisconsin consumers. Active enforcement of the law can lead to fewer instances law violations. While only a fraction of consumer complaints result in a formal prosecution by the state, the fact that the law was enforced to its fullest extent is significant for those who received closure to their complaints. Additionally, the formal prosecution of deceptive advertising cases can act as a deterrent for other businesses within Wisconsin. Other businesses tend to fall in line simply to avoid the risk of getting caught if laws are vigilantly enforced. “Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment.”<sup>225</sup>

Far more troubling than the apparent failure to enforce state regulations in an even handed manner is the apparent dismissal of consumer complaints. I am not convinced that Wisconsin consumer complaints are being diligently investigated across the state. A company charging \$200 for services that were never rendered to numerous consumers and refusal to reimburse those consumers is a clear violation of the law.<sup>226</sup> How many more complaints have gone uninvestigated? The sole purpose of the Consumer Protection Bureau is to field consumer complaints, investigate those complaints and move forward with prosecution when the law has been violated. The department is not being asked to monitor the economy or intervene when it

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<sup>225</sup> U.S. Department of Justice, FIVE THINGS ABOUT DETERRENCE NATIONAL INSTITUTE OF JUSTICE, <http://nij.gov/five-things/pages/deterrence.aspx>.

<sup>226</sup> Lueders, *supra* note 203. The hot air balloon company charged \$200 dollars a ticket and failed to ever honor those tickets. At least 40 Wisconsin consumers complained to the Department of Agriculture, Trade and Consumer Protection. It can be assumed that many of those individuals purchased more than one ticket. The claims were never investigated and the company is now out of business.

notices deception or fraud.<sup>227</sup> Rather, the department is reactive and should react to consumer complaints. Wisconsin citizens are asking a tax dollar funded regulatory agency to step in and regulate specific instances of fraud or deception. Unfortunately, it seems that if caught, the majority of offenders will “have a slap on the wrist,” and certainly not face any criminal charges.<sup>228</sup>

#### *A. Limitations and Opportunities for Future Research*

Further research needs to be completed to fully understand the trend in the decline of deceptive advertising prosecution and a drastic increase in civil forfeitures. This study is limited because not all 79 cases were coded. Additionally, the research design of this study cannot answer every question about the process by which a consumer complaint is resolved. There are far too many moving parts. Further research should include another term including a Republican governor and a Democratic attorney general would be ideal, but is currently out of the realm of possibility. Additionally, I would have liked to not have any cases still open during this study to shape a clearer picture. Other limitations of this study are the lack of knowledge of the final restitution outcome. Because the total amount of restitution wasn't always clear from the court documents, how much consumers got is relatively unknown. Also, more interviews with additional assistant attorneys general as well as past attorneys general would help to understand the political nature of the department and the standard for beginning prosecution.

Future research of the Department of Agriculture, Trade and Consumer Protection would likely complement this study. Interviews with investigators within the Department of

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<sup>227</sup> Telephone Interview with Lara Sutherland, Wisconsin Assistant Attorney General, Department of Justice, *supra* note 172.

<sup>228</sup> Cassuto, *supra* note 196.

Agriculture, Trade and Consumer Protection’s consumer protection office should be included in future research. Additionally, a public records request for complaints and investigations made by the Consumer Protection Bureau is necessary. Comparing the prosecutorial patterns of Wisconsin and Minnesota would also help shape the scope of this study further and hold a stronger message on a larger scale.

### *B. Recommendations*

The Department of Agriculture, Trade and Consumer Protection and the Department of Justice each have their own consumer protection departments. These departments are state funded and expected to work together in the best interest of the citizens of Wisconsin. From my vantage point, it doesn’t appear that this goal is being reached. Historically, the Wisconsin State Legislature has struggled with the amount of power it believes each agency should have concerning consumer protection matters.<sup>229</sup> The desire to have enforcement authority split between two agencies is political in nature and does not truly protect the consumer or honor the legislation. While cooperation between the two agencies can be “reasonably effective,” Wisconsin should transfer full investigative and enforcement authority with the attorney general’s office.<sup>230</sup>

Not only is the attorney general’s office more likely to enforce the statute and proceed with prosecution, placing consumer protection interests over business interests, responsibility to

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<sup>229</sup> Jeffries, *supra* note 98 at 563.

<sup>230</sup> Lovett, *supra* note 103 at 735.

the consumers would be consolidated.<sup>231</sup> There would be no question as to who dropped the ball on investigating consumer complaints and proceeding with charges. Currently, Wisconsin tax dollars are funding two separate consumer protection units, but the promotions of consumer protection interests do not appear to be a priority. Continuing to place consumer protection with an agency that is also concerned with business interests appears to be a conflict of interests. Why have a consumer protection office in the Department of Agriculture, Trade and Consumer Protection if the prosecution of violations is going to be transferred to another agency entirely?

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<sup>231</sup> *Id.* at 735.

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## Appendix A.

Table of all Wisconsin cases and defendants prosecuted under §100.18 from 2003-2014 sorted by county then case number.

**Table 28**

*Table of all Wisconsin cases and defendants prosecuted under §100.18 from 2003-2014*

County	Case number	Defendant name
Brown	2003CV0241	Midwest Readers Service, Inc.
Columbia	2009CX02	Morey, Joseph A.
Crawford	2006CX01	Murphey Oil Corporation et al
Dane	2003CV0274	LCR Telecommunications, LLC
Dane	2003CV0275	Best Web USA, Inc.
Dane	2003CV2662	Platinum Marketing Group, Inc. d/b/a The Awards Center and Mirror Lake Resort
Dane	2003CV3203	Kuhn & Associates, Inc., d/b/a Madison Kirby Co.
Dane	2004CV0639	Vacation Showroom, Inc.
Dane	2005CX01	Coons, Michael L.
Dane	2005CX06	Radical Persson Inc. et al
Dane	2005CX07	Best Buy Company Inc.
Dane	2005CX08	Danecki, Richard L.
Dane	2006CV1334	Yellow Pages, Inc.
Dane	2006CX22	Marathon Petroleum Co LLC et al
Dane	2006CX23	Bulk Petroleum Corp et al
Dane	2007CX21	Medlife Plus Inc.
Dane	2007CX21A	Kraft, Mike G.
Dane	2007CX21B	Manning, Thomas M.
Dane	2007CX21C	Katosic, George
Dane	2007CX21D	Full Access Medical LLC
Dane	2007CX21E	Kinsey, Karen D.
Dane	2007CX21F	The Journal of American Medicine & Health Care, Inc.
Dane	2007CX21G	American Medical Enterprise Association, Inc.
Dane	2007CX43	Kool View Co Inc. et al
Dane	2007CX65	Asphalt Specialists LLC
Dane	2007CX65A	McDonald, Jace
Dane	2007CX68	Bluehippo Funding LLC et al
Dane	2007CX68A	Bluehippo Capital, LLC
Dane	2007CX68B	Rensin, Joseph
Dane	2008CX14	Bonnell, Peter J.
Dane	2008CX14A	Schurr, Linda
Dane	2008CX14B	Investors Union LLC
Dane	2008CX14C	Annuity Service Center
Dane	2008CX02	Preferred Readers Service Inc.
Dane	2009CX23	Southeastern Family Publishers Inc.
Dane	2009CX23A	Hedberg, Valerie H.
Dane	2009CX23B	McGrath, Edward J.

Dane	2009CX24	Federal Loan Modification Law Center LLP
Dane	2010CX31	Relief Law Center
Dane	2010CX33	Relief Law Center Inc.
Dane	2010CX36	Federal Loan Modification Law Center LLP
Dane	2010CX40	Burlin, Joshua
Dane	2010CX40A	Elharar, Shachar
Dane	2010CX40B	Madison Locksmith LLC
Dane	2013CX11	Legal Helpers Debt Resolution LLC
Dane	2013CX11A	Hyslip, Jeffrey S.
Dane	2013CX11B	Searns, Jason
Dane	2013CX11C	Aleman, Jeffrey
Dane	2013CX11D	Macey, Thomas G.
Dane	2013CX2	Mandatory Poster Agency Inc. et al
Dane	2013CX2A	Fata, Steven J.
Dane	2014CX53	Lovrien, Laura
Dane	2014CX53A	Liberty Publishers Services Inc.
Dane	2014CX53B	Orbital Publishing Group Inc.
Dane	2014CX55	T-Mobile USA Inc.
Eau Claire	2005CX01	Omni Plus Marketing Service Inc.
Fond du Lac	2013CX02A	Stitt, Mark F.
Fond du Lac	2013CX02B	ES Technology LLC
Kenosha	2003CV0671	Liberty Online Services, Inc., and National Online Services, Inc.
Kenosha	2003CV1413	Soho Marketing LLC d/b/a The Award Center, Debt Services International and Direct Reservations Center
Kenosha	2003CV1414	Next Level Marketing, Inc., d/b/a UCC Total Home Gurnee
Kenosha	2011CX01	Zapencki, Edward M.
Marathon	2004CV0379	Panas, Richard James and Leisure International, Inc.
Marinette	2006CX02	Krist Oil Co.
Marinette	2009CX04	Krist Oil Co.
Milwaukee	2004CV0957	Z-Tel Communications, Inc.
Milwaukee	2004CV4283	Sherard, Will J. d/b/a W. J. Sherard Realty Company
Milwaukee	2004CV4678	Strategic Marketing Innovations and Solutions, Inc.
Milwaukee	2005CX03	M.A.R. & Associates, Inc.
Milwaukee	2005CX05	Dawson, J. Dale & Gudrun Dawson
Milwaukee	2006CX08	Ebert, Timothy Michael et al
Milwaukee	2009CX02	GE Milwaukee LLC et al
Milwaukee	2010CX07	Credenciales USA LLC, Hugo I. Loyo
Milwaukee	2012CX06	Pinnacle Security LLC
Milwaukee	2012CX07	Vivint Inc.
Milwaukee	2012CX09	Wallace, Nicholas S.
Milwaukee	2014CX06	Corinthian Colleges, Inc.
Milwaukee	2014CX07	Paulos, Kaleb
Oneida	2003CV0273	Environmental Safety International, Inc., d/b/a Environmental Products, Inc.



Outagamie	2003CV1005	P & M Consulting, Inc. and Market II, Inc. d/b/a Bluegreen Vacations and Christmas Mountain Village
Outagamie	2010CX01	Going Places Travel Corporation
Outagamie	2010CX01B	Ruiz, Perry T.
Outagamie	2010CX01C	Ruiz, Lisa Ann
Outagamie	2010CX01D	Castaways Vacations Inc.
Outagamie	2010CX01E	Phoenix Vacations, Inc.
Outagamie	2010CX01F	Miller, Adrian D.
Outagamie	2010CX01G	Bailey, William
Outagamie	2010CX01H	Spensberger, Christy
Outagamie	2010CX01I	Travel Services Inc.
Ozaukee	2004CV0287	WebXites, L.P.
Ozaukee	2003CV0275	Shock Electronics and Brian Fontaine
Ozaukee	2005CX02	Wholesale Connection Company (WCC)
Ozaukee	2009CX03	Munteoreanu, Gabriel et al
Portage	2003CV0157	U.S. Connect, LLC
Portage	2003CV0366	Talk Too Me, LLC d/b/a 00 Operator Services and d/b/a American Directory Services
Portage	2011CX01	Countryside Meats
Racine	2004CV0775	Drucilla Anna Jones
Racine	2005CX04	First American Funding Co. (FAFC)
Racine	2010CX01	Prestige Business Solutions, Inc.
Rock	2004CV0432	American Travel and Management, LLC. Kevin B. Raines, Francine Bauer
St. Croix	2009CX03	Rassbach, John P.
Sheboygan	2007CX02	Sunshine Travel Escapes Inc. et al
Sheboygan	2007CX02A	Maher, Joseph P.
Sheboygan	2007CX02B	Gettys, Joseph
Sheboygan	2007CX02C	Go Broadcasting et al
Sheboygan	2007CX02D	Funtime Getaway Inc.
Vilas	2006CX01	Holiday Stationstores, Inc.
Walworth	2007CX02	A Lighter Than Air Affair et al
Waukesha	2004CV1241	Trugreen Limited Partnership, d/b/a Truegreen Chemlawn
Waukesha	2007CX04	TV Marketplace LLC
Waukesha	2007CX04A	TV Product LLC
Waukesha	2007CX04B	TV Market LLC
Waukesha	2007CX04C	Your Store Online LLC
Waukesha	2007CX04D	Reoch, Chris
Waukesha	2007CX04E	Reoch, Paul
Waukesha	2012CX01	Grand Vacation Club Inc.
Waukesha	2012CX01A	Bailey, William
Waukesha	2012CX01B	Spensberger, Christy
Waukesha	2012CX01C	Travel Services Inc.
Waukesha	2014CX04	Michaud, Brian
Waukesha	2014CX04A	Michaud, Andrea
Winnebago	2003CV1200	VoiceNet, Inc.

Winnebago	2006CX02	Lang Oil Inc.
Wood	2006CX01	J D S Systems, Inc. d/b/a/ et al
Wood	2006CX01	Schierl, Inc.

## Appendix B.

Table of cases coded from select Wisconsin counties from 2003-2014. Cases are sorted by county and then by case number.

**Table 29**

*All cases and defendants coded from select Wisconsin counties used in this study*

County	Case number	Defendant name
Brown	2003CV0241	Midwest Readers Service, Inc.
Crawford	2006CX01	Murphey Oil Corp.
Dane	2003CV2662	Platinum Marketing Group Inc.
Dane	2003CV274	LCR Telecommunications, LLC
Dane	2003CV275	Best Web USA, Inc.
Dane	2003CV3203	Kuhn and Association Inc. d/b/a Madison Kirby Co.
Dane	2004CV0639	Vacation Showroom, Inc.
Dane	2005CX01	Coons, Michael L.
Dane	2005CX06	Radical Persson Inc. et al
Dane	2005CX07	Best Buy Company Inc.
Dane	2005CX08	Danecki, Richard L.
Dane	2006CV1334	Yellow Pages Inc. et al
Dane	2006CX22	Marathon Petroleum
Dane	2006CX23	Bulk Petroleum
Dane	2007CX21	Medlife Plus Inc.
Dane	2007CX21A	Kraft, Mike G.
Dane	2007CX21B	Manning, Thomas M.
Dane	2007CX21C	Katosic, George
Dane	2007CX21D	Full Access Medical LLC.
Dane	2007CX21E	Kinsey, Karen D.
Dane	2007CX21F	The Journal of American Medicine & Health Care, Inc.
Dane	2007CX21G	American Medical Enterprise Association, Inc.
Dane	2007CX43	Kool View Co Inc. et al
Dane	2007CX65	Asphalt Specialists LLC
Dane	2007CX65A	McDonald, Jace
Dane	2007CX68	Bluehippo Funding LLC et al
Dane	2007CX68A	Bluehippo Capital, LLC
Dane	2007CX68B	Rensin, Joseph
Dane	2008CX02	Preferred Readers Service Inc.
Dane	2008CX14	Bonnell, Peter J.
Dane	2008CX14A	Schurr, Linda
Dane	2008CX14B	Investors Union LLC
Dane	2008CX14C	Annuity Service Center

Dane	2009CX23	Southeastern Family Publishers Inc.
Dane	2009CX23A	Hedberg, Valerie H.
Dane	2009CX23B	McGrath, Edward J.
Dane	2009CX24	Federal Loan Modification Law Center LLP
Dane	2010CX31	Relief Law Center
Dane	2010CX33	Relief Law Center Inc.
Dane	2010CX36	Federal Loan Modification Law Center LLP
Dane	2010CX40	Burlin, Joshua
Dane	2010CX40A	Elharar, Shachar
Dane	2010CX40B	Madison Locksmith LLC
Dane	2013CX02	Mandatory Poster Agency
Dane	2013CX02A	Fata, Steven J.
Dane	2013CX11	Legal Helpers Debt Resolution LLC.
Dane	2013CX11A	Hyslip, Jeffrey S.
Dane	2013CX11B	Searns, Jason
Dane	2013CX11C	Aleman, Jeffrey
Dane	2013CX11D	Macey, Thomas G.
Dane	2014CX53	Lovrien, Laura
Dane	2014CX53A	Liberty Publishers Services Inc.
Dane	2014CX53B	Orbital Publishing Group Inc.
Dane	2014CX55	T-Mobile USA Inc.
Kenosha	2011CX01	Zapencki, Edward M.
Marinette	2006CX02	Krist Oil Co.
Milwaukee	2004CV0957	Z Tell Communications
Milwaukee	2004CV4678	Strategic Marketing Innovations & Solutions, Inc.
Milwaukee	2005CX03	MAR & Associates Inc.
Milwaukee	2005CX05	Dawson, J. Dale et al.
Milwaukee	2006CX08	Ebert, Timothy Michael et al
Milwaukee	2009CX02	GE Milwaukee LLC et al
Milwaukee	2010CX07	Credenciales USA LLC et al
Milwaukee	2012CX06	Pinnacle Security LLC
Milwaukee	2012CX07	Vivint Inc.
Milwaukee	2012CX09	Wallace, Nicholas S.
Milwaukee	2014CX06	Corinthian Colleges, Inc.
Milwaukee	2014CX07	Paulos, Kaleb
Outagamie	2010CX01	Going Places Travel Corp
Outagamie	2010CX01B	Ruiz, Perry T.
Outagamie	2010CX01C	Ruiz, Lisa Ann
Outagamie	2010CX01D	Castaway Vacation Inc.
Outagamie	2010CX01E	Phoenix Vacations Inc.
Outagamie	2010CX01F	Miller, Adrian D.

Outagamie	2010CX01G	Bailey, William
Outagamie	2010CX01H	Spensberger, Christy
Outagamie	2010CX01I	Travel Services Inc.
Racine	2004CV0775	Jones, Drusilla A.
Racine	2005CX04	First American Funding Co. LLC.
Racine	2010CX01	Prestige Business Solutions, Inc.
Vilas	2006CX01	Holiday Stationstores Inc.
Waukesha	2004CV1241	Truegreen Limited Partnership
Waukesha	2007CX04	TV Marketplace LLC
Waukesha	2007CX04A	TV Product LLC.
Waukesha	2007CX04B	TV Market LLC.
Waukesha	2007CX04C	Your Store Online LLC.
Waukesha	2007CX04D	Reoch, Chris
Waukesha	2007CX04E	Reoch, Paul
Waukesha	2012CX01	Grand Vacation Club Inc.
Waukesha	2012CX01A	Bailey, William
Waukesha	2012CX01B	Spensberger, Christy
Waukesha	2012CX01C	Travel Services Inc.
Waukesha	2014CX04	Michaud, Brian
Waukesha	2014CX04A	Michaud, Andrea
Winnebago	2003CV1200	VoiceNet, Inc.
Winnebago	2006CX02	Lang Oil, Inc.
Wood	2006CX01	Schierl, Inc.

## Appendix C:

Coding Sheet used for this study:

COUNTY                    5=Brown, 12=Crawford, 13=Dane,  
30=Kenosha, 38=Marinette, 40=Milwaukee, 44=Outagamie,  
51=Racine, 63=Vilas, 67=Waukesha, 70=Winnebago,  
71=Wood,.....

CASENUMB                    \_\_\_\_\_

D-NAME                    \_\_\_\_\_

STATCITE                    Statute allegedly in violation: 0=Not filed 1=100.18(1), 2=100.18(8),  
3=100.18(9) 4=100.18(10)(b), 5=100.18 (11)(d),  
6=100.182(2), 7=100.20(6) 8=  
.....

NUMBER                    Number of charges against the defendant(s): \_\_\_\_\_

DEF-INFO                    1=male, 2=female, 3=business, 4=nonprofit  
.....

ADMIN                    1=Democratic Gov. & Democratic AG, 2=Democratic Gov. & Rep. AG,  
3=Republican Gov. & Republican AG  
.....

AAG                    1=Lara Sutherlin, 2=Phillip D. Ferris, 3=John S. Green,  
5=Nelle Rohlich, 6=Meredith M. Earley, 7=Joint, 8=James D. Jefferies,  
9=Cynthia Rae Hirsch, 10=Diane L. Milligan, 12=Jerry L. Hancock,  
13=Brenda Yaskal,14=Lewis W. Beilin, 15= David J. Gilles  
.....

DEFATTY                    \_\_\_\_\_

WITHDRAW                    0=Attorney was not withdrawn 1=Attorney withdrew 99= No attorney

DATE-FIL                    \_\_\_\_\_

DATE-CL                    \_\_\_\_\_

ADMIN-CL            1=Democratic Gov. & Democratic AG, 2=Democratic Gov. & Rep. AG,  
3=Republican Gov. & Republican AG, 4=Republican administration  
outside of the study  
.....\_\_\_\_\_

PATH                Original pathway of the complaint: 1=DATCP, 2=DFI, 3=DOJ,  
4=BBB, 5=multiple pathways, 6=Unknown  
.....\_\_\_\_\_

MED                Advertising medium: 1=print, 2=oral, 3=envelope, 4=letter,  
5=service/contract agreement, 6=outdoor, 7=phone, 8=radio, 9=television,  
10=email, 11=website 12=social media, 13=multiple mediums,  
14=other.....\_\_\_\_\_

CASETYPE            1=civil, 2=complex forfeiture,  
.....\_\_\_\_\_

OUTCOME            1=settlement prior to trial, 2=settlement during trial,  
8=case dismissed, 4=trial guilty, 11=Case still open 12=no trial  
guilty.....\_\_\_\_\_

FINES                Amount of fines.....\_\_\_\_\_

REST                Amount of restitution recovered \_\_\_\_\_

**Notes:**

DATCP= Department of Agriculture, Trade and Consumer Protection  
DFI= Department of Financial Institutions  
DOJ= Department of Justice  
BBB= Better Business Bureau

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## Appendix A.

Table of all Wisconsin cases and defendants prosecuted under §100.18 from 2003-2014 sorted by county then case number.

**Table 28**

*Table of all Wisconsin cases and defendants prosecuted under §100.18 from 2003-2014*

County	Case number	Defendant name
Brown	2003CV0241	Midwest Readers Service, Inc.
Columbia	2009CX02	Morey, Joseph A.
Crawford	2006CX01	Murphey Oil Corporation et al
Dane	2003CV0274	LCR Telecommunications, LLC
Dane	2003CV0275	Best Web USA, Inc.
Dane	2003CV2662	Platinum Marketing Group, Inc. d/b/a The Awards Center and Mirror Lake Resort
Dane	2003CV3203	Kuhn & Associates, Inc., d/b/a Madison Kirby Co.
Dane	2004CV0639	Vacation Showroom, Inc.
Dane	2005CX01	Coons, Michael L.
Dane	2005CX06	Radical Persson Inc. et al
Dane	2005CX07	Best Buy Company Inc.
Dane	2005CX08	Danecki, Richard L.
Dane	2006CV1334	Yellow Pages, Inc.
Dane	2006CX22	Marathon Petroleum Co LLC et al
Dane	2006CX23	Bulk Petroleum Corp et al
Dane	2007CX21	Medlife Plus Inc.
Dane	2007CX21A	Kraft, Mike G.
Dane	2007CX21B	Manning, Thomas M.
Dane	2007CX21C	Katosic, George
Dane	2007CX21D	Full Access Medical LLC
Dane	2007CX21E	Kinsey, Karen D.
Dane	2007CX21F	The Journal of American Medicine & Health Care, Inc.
Dane	2007CX21G	American Medical Enterprise Association, Inc.
Dane	2007CX43	Kool View Co Inc. et al
Dane	2007CX65	Asphalt Specialists LLC
Dane	2007CX65A	McDonald, Jace
Dane	2007CX68	Bluehippo Funding LLC et al
Dane	2007CX68A	Bluehippo Capital, LLC
Dane	2007CX68B	Rensin, Joseph
Dane	2008CX14	Bonnell, Peter J.
Dane	2008CX14A	Schurr, Linda
Dane	2008CX14B	Investors Union LLC
Dane	2008CX14C	Annuity Service Center
Dane	2008CX02	Preferred Readers Service Inc.
Dane	2009CX23	Southeastern Family Publishers Inc.
Dane	2009CX23A	Hedberg, Valerie H.
Dane	2009CX23B	McGrath, Edward J.

Dane	2009CX24	Federal Loan Modification Law Center LLP
Dane	2010CX31	Relief Law Center
Dane	2010CX33	Relief Law Center Inc.
Dane	2010CX36	Federal Loan Modification Law Center LLP
Dane	2010CX40	Burlin, Joshua
Dane	2010CX40A	Elharar, Shachar
Dane	2010CX40B	Madison Locksmith LLC
Dane	2013CX11	Legal Helpers Debt Resolution LLC
Dane	2013CX11A	Hyslip, Jeffrey S.
Dane	2013CX11B	Searns, Jason
Dane	2013CX11C	Aleman, Jeffrey
Dane	2013CX11D	Macey, Thomas G.
Dane	2013CX2	Mandatory Poster Agency Inc. et al
Dane	2013CX2A	Fata, Steven J.
Dane	2014CX53	Lovrien, Laura
Dane	2014CX53A	Liberty Publishers Services Inc.
Dane	2014CX53B	Orbital Publishing Group Inc.
Dane	2014CX55	T-Mobile USA Inc.
Eau Claire	2005CX01	Omni Plus Marketing Service Inc.
Fond du Lac	2013CX02A	Stitt, Mark F.
Fond du Lac	2013CX02B	ES Technology LLC
Kenosha	2003CV0671	Liberty Online Services, Inc., and National Online Services, Inc.
Kenosha	2003CV1413	Soho Marketing LLC d/b/a The Award Center, Debt Services International and Direct Reservations Center
Kenosha	2003CV1414	Next Level Marketing, Inc., d/b/a UCC Total Home Gurnee
Kenosha	2011CX01	Zapencki, Edward M.
Marathon	2004CV0379	Panas, Richard James and Leisure International, Inc.
Marinette	2006CX02	Krist Oil Co.
Marinette	2009CX04	Krist Oil Co.
Milwaukee	2004CV0957	Z-Tel Communications, Inc.
Milwaukee	2004CV4283	Sherard, Will J. d/b/a W. J. Sherard Realty Company
Milwaukee	2004CV4678	Strategic Marketing Innovations and Solutions, Inc.
Milwaukee	2005CX03	M.A.R. & Associates, Inc.
Milwaukee	2005CX05	Dawson, J. Dale & Gudrun Dawson
Milwaukee	2006CX08	Ebert, Timothy Michael et al
Milwaukee	2009CX02	GE Milwaukee LLC et al
Milwaukee	2010CX07	Credenciales USA LLC, Hugo I. Loyo
Milwaukee	2012CX06	Pinnacle Security LLC
Milwaukee	2012CX07	Vivint Inc.
Milwaukee	2012CX09	Wallace, Nicholas S.
Milwaukee	2014CX06	Corinthian Colleges, Inc.
Milwaukee	2014CX07	Paulos, Kaleb
Oneida	2003CV0273	Environmental Safety International, Inc., d/b/a Environmental Products, Inc.



Outagamie	2003CV1005	P & M Consulting, Inc. and Market II, Inc. d/b/a Bluegreen Vacations and Christmas Mountain Village
Outagamie	2010CX01	Going Places Travel Corporation
Outagamie	2010CX01B	Ruiz, Perry T.
Outagamie	2010CX01C	Ruiz, Lisa Ann
Outagamie	2010CX01D	Castaways Vacations Inc.
Outagamie	2010CX01E	Phoenix Vacations, Inc.
Outagamie	2010CX01F	Miller, Adrian D.
Outagamie	2010CX01G	Bailey, William
Outagamie	2010CX01H	Spensberger, Christy
Outagamie	2010CX01I	Travel Services Inc.
Ozaukee	2004CV0287	WebXites, L.P.
Ozaukee	2003CV0275	Shock Electronics and Brian Fontaine
Ozaukee	2005CX02	Wholesale Connection Company (WCC)
Ozaukee	2009CX03	Munteoreanu, Gabriel et al
Portage	2003CV0157	U.S. Connect, LLC
Portage	2003CV0366	Talk Too Me, LLC d/b/a 00 Operator Services and d/b/a American Directory Services
Portage	2011CX01	Countryside Meats
Racine	2004CV0775	Drucilla Anna Jones
Racine	2005CX04	First American Funding Co. (FAFC)
Racine	2010CX01	Prestige Business Solutions, Inc.
Rock	2004CV0432	American Travel and Management, LLC. Kevin B. Raines, Francine Bauer
St. Croix	2009CX03	Rassbach, John P.
Sheboygan	2007CX02	Sunshine Travel Escapes Inc. et al
Sheboygan	2007CX02A	Maher, Joseph P.
Sheboygan	2007CX02B	Gettys, Joseph
Sheboygan	2007CX02C	Go Broadcasting et al
Sheboygan	2007CX02D	Funtime Getaway Inc.
Vilas	2006CX01	Holiday Stationstores, Inc.
Walworth	2007CX02	A Lighter Than Air Affair et al
Waukesha	2004CV1241	Trugreen Limited Partnership, d/b/a Truegreen Chemlawn
Waukesha	2007CX04	TV Marketplace LLC
Waukesha	2007CX04A	TV Product LLC
Waukesha	2007CX04B	TV Market LLC
Waukesha	2007CX04C	Your Store Online LLC
Waukesha	2007CX04D	Reoch, Chris
Waukesha	2007CX04E	Reoch, Paul
Waukesha	2012CX01	Grand Vacation Club Inc.
Waukesha	2012CX01A	Bailey, William
Waukesha	2012CX01B	Spensberger, Christy
Waukesha	2012CX01C	Travel Services Inc.
Waukesha	2014CX04	Michaud, Brian
Waukesha	2014CX04A	Michaud, Andrea
Winnebago	2003CV1200	VoiceNet, Inc.

Winnebago	2006CX02	Lang Oil Inc.
Wood	2006CX01	J D S Systems, Inc. d/b/a/ et al
Wood	2006CX01	Schierl, Inc.

## Appendix B.

Table of cases coded from select Wisconsin counties from 2003-2014. Cases are sorted by county and then by case number.

**Table 29**

*All cases and defendants coded from select Wisconsin counties used in this study*

County	Case number	Defendant name
Brown	2003CV0241	Midwest Readers Service, Inc.
Crawford	2006CX01	Murphey Oil Corp.
Dane	2003CV2662	Platinum Marketing Group Inc.
Dane	2003CV274	LCR Telecommunications, LLC
Dane	2003CV275	Best Web USA, Inc.
Dane	2003CV3203	Kuhn and Association Inc. d/b/a Madison Kirby Co.
Dane	2004CV0639	Vacation Showroom, Inc.
Dane	2005CX01	Coons, Michael L.
Dane	2005CX06	Radical Persson Inc. et al
Dane	2005CX07	Best Buy Company Inc.
Dane	2005CX08	Danecki, Richard L.
Dane	2006CV1334	Yellow Pages Inc. et al
Dane	2006CX22	Marathon Petroleum
Dane	2006CX23	Bulk Petroleum
Dane	2007CX21	Medlife Plus Inc.
Dane	2007CX21A	Kraft, Mike G.
Dane	2007CX21B	Manning, Thomas M.
Dane	2007CX21C	Katosic, George
Dane	2007CX21D	Full Access Medical LLC.
Dane	2007CX21E	Kinsey, Karen D.
Dane	2007CX21F	The Journal of American Medicine & Health Care, Inc.
Dane	2007CX21G	American Medical Enterprise Association, Inc.
Dane	2007CX43	Kool View Co Inc. et al
Dane	2007CX65	Asphalt Specialists LLC
Dane	2007CX65A	McDonald, Jace
Dane	2007CX68	Bluehippo Funding LLC et al
Dane	2007CX68A	Bluehippo Capital, LLC
Dane	2007CX68B	Rensin, Joseph
Dane	2008CX02	Preferred Readers Service Inc.
Dane	2008CX14	Bonnell, Peter J.
Dane	2008CX14A	Schurr, Linda
Dane	2008CX14B	Investors Union LLC
Dane	2008CX14C	Annuity Service Center

Dane	2009CX23	Southeastern Family Publishers Inc.
Dane	2009CX23A	Hedberg, Valerie H.
Dane	2009CX23B	McGrath, Edward J.
Dane	2009CX24	Federal Loan Modification Law Center LLP
Dane	2010CX31	Relief Law Center
Dane	2010CX33	Relief Law Center Inc.
Dane	2010CX36	Federal Loan Modification Law Center LLP
Dane	2010CX40	Burlin, Joshua
Dane	2010CX40A	Elharar, Shachar
Dane	2010CX40B	Madison Locksmith LLC
Dane	2013CX02	Mandatory Poster Agency
Dane	2013CX02A	Fata, Steven J.
Dane	2013CX11	Legal Helpers Debt Resolution LLC.
Dane	2013CX11A	Hyslip, Jeffrey S.
Dane	2013CX11B	Searns, Jason
Dane	2013CX11C	Aleman, Jeffrey
Dane	2013CX11D	Macey, Thomas G.
Dane	2014CX53	Lovrien, Laura
Dane	2014CX53A	Liberty Publishers Services Inc.
Dane	2014CX53B	Orbital Publishing Group Inc.
Dane	2014CX55	T-Mobile USA Inc.
Kenosha	2011CX01	Zapencki, Edward M.
Marinette	2006CX02	Krist Oil Co.
Milwaukee	2004CV0957	Z Tell Communications
Milwaukee	2004CV4678	Strategic Marketing Innovations & Solutions, Inc.
Milwaukee	2005CX03	MAR & Associates Inc.
Milwaukee	2005CX05	Dawson, J. Dale et al.
Milwaukee	2006CX08	Ebert, Timothy Michael et al
Milwaukee	2009CX02	GE Milwaukee LLC et al
Milwaukee	2010CX07	Credenciales USA LLC et al
Milwaukee	2012CX06	Pinnacle Security LLC
Milwaukee	2012CX07	Vivint Inc.
Milwaukee	2012CX09	Wallace, Nicholas S.
Milwaukee	2014CX06	Corinthian Colleges, Inc.
Milwaukee	2014CX07	Paulos, Kaleb
Outagamie	2010CX01	Going Places Travel Corp
Outagamie	2010CX01B	Ruiz, Perry T.
Outagamie	2010CX01C	Ruiz, Lisa Ann
Outagamie	2010CX01D	Castaway Vacation Inc.
Outagamie	2010CX01E	Phoenix Vacations Inc.
Outagamie	2010CX01F	Miller, Adrian D.

Outagamie	2010CX01G	Bailey, William
Outagamie	2010CX01H	Spensberger, Christy
Outagamie	2010CX01I	Travel Services Inc.
Racine	2004CV0775	Jones, Drusilla A.
Racine	2005CX04	First American Funding Co. LLC.
Racine	2010CX01	Prestige Business Solutions, Inc.
Vilas	2006CX01	Holiday Stationstores Inc.
Waukesha	2004CV1241	Truegreen Limited Partnership
Waukesha	2007CX04	TV Marketplace LLC
Waukesha	2007CX04A	TV Product LLC.
Waukesha	2007CX04B	TV Market LLC.
Waukesha	2007CX04C	Your Store Online LLC.
Waukesha	2007CX04D	Reoch, Chris
Waukesha	2007CX04E	Reoch, Paul
Waukesha	2012CX01	Grand Vacation Club Inc.
Waukesha	2012CX01A	Bailey, William
Waukesha	2012CX01B	Spensberger, Christy
Waukesha	2012CX01C	Travel Services Inc.
Waukesha	2014CX04	Michaud, Brian
Waukesha	2014CX04A	Michaud, Andrea
Winnebago	2003CV1200	VoiceNet, Inc.
Winnebago	2006CX02	Lang Oil, Inc.
Wood	2006CX01	Schierl, Inc.

## Appendix C:

Coding Sheet used for this study:

COUNTY                    5=Brown, 12=Crawford, 13=Dane,  
30=Kenosha, 38=Marinette, 40=Milwaukee, 44=Outagamie,  
51=Racine, 63=Vilas, 67=Waukesha, 70=Winnebago,  
71=Wood,.....\_\_\_\_\_

CASENUMB                \_\_\_\_\_

D-NAME                    \_\_\_\_\_

STATCITE                Statute allegedly in violation: 0=Not filed 1=100.18(1), 2=100.18(8),  
3=100.18(9) 4=100.18(10)(b), 5=100.18 (11)(d),  
6=100.182(2), 7=100.20(6) 8=  
.....\_\_\_\_\_

NUMBER                 Number of charges against the defendant(s):\_\_\_\_\_

DEF-INFO                1=male, 2=female, 3=business, 4=nonprofit  
.....\_\_\_\_\_

ADMIN                    1=Democratic Gov. & Democratic AG, 2=Democratic Gov. & Rep. AG,  
3=Republican Gov. & Republican AG  
.....\_\_\_\_\_

AAG                        1=Lara Sutherlin, 2=Phillip D. Ferris, 3=John S. Green,  
5=Nelle Rohlich, 6=Meredith M. Earley, 7=Joint, 8=James D. Jefferies,  
9=Cynthia Rae Hirsch, 10=Diane L. Milligan, 12=Jerry L. Hancock,  
13=Brenda Yaskal,14=Lewis W. Beilin, 15= David J. Gilles  
.....\_\_\_\_\_

DEFATTY                 \_\_\_\_\_

WITHDRAW                0=Attorney was not withdrawn 1=Attorney withdrew 99= No attorney

DATE-FIL                \_\_\_\_\_

DATE-CL                 \_\_\_\_\_

\_\_\_\_\_

ADMIN-CL            1=Democratic Gov. & Democratic AG, 2=Democratic Gov. & Rep. AG,  
3=Republican Gov. & Republican AG, 4=Republican administration  
outside of the study  
.....\_\_\_\_\_

PATH                Original pathway of the complaint: 1=DATCP, 2=DFI, 3=DOJ,  
4=BBB, 5=multiple pathways, 6=Unknown  
.....\_\_\_\_\_

MED                Advertising medium: 1=print, 2=oral, 3=envelope, 4=letter,  
5=service/contract agreement, 6=outdoor, 7=phone, 8=radio, 9=television,  
10=email, 11=website 12=social media, 13=multiple mediums,  
14=other.....\_\_\_\_\_

CASETYPE            1=civil, 2=complex forfeiture,  
.....\_\_\_\_\_

OUTCOME            1=settlement prior to trial, 2=settlement during trial,  
8=case dismissed, 4=trial guilty, 11=Case still open 12=no trial  
guilty.....\_\_\_\_\_

FINES                Amount of fines.....\_\_\_\_\_

REST                Amount of restitution recovered \_\_\_\_\_

**Notes:**

DATCP= Department of Agriculture, Trade and Consumer Protection  
DFI= Department of Financial Institutions  
DOJ= Department of Justice  
BBB= Better Business Bureau