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In the Crosshairs: Second Amendment Lawyers and Cases in State and Federal Appellate Courts

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ABSTRACT

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Judicial behavior, the types of activities and behaviors judges become involved with in their capacity on the bench, has a profound and lasting impact on the types of decisions rendered by judges across all courts that comprise the American judiciary (Baum 2000; Baum 2006; Maveety 2002). There is a growing realization that judicial behavior encompasses more than just the making of good laws and public policy decisions (Baum, 2000; Baum 2006; Hammond, Bonneau, & Sheehan 2005; Comparato 2003). For example, Songer & Haire (1992) explore integrated approaches to the study of judicial voting through obscenity cases in the U.S. Courts of Appeals. Creating an integrated multivariate model that combines five approaches to judicial voting, the authors find that this new model correctly predicts about 80% of the judges' votes on obscenity cases with an error reduction rate of almost 46%. My dissertation focuses on the judicial behavior of state Supreme Court and U.S. Courts of Appeals judges through the lens of Second Amendment claims and issues, a polarizing American political issue over the last fifty years.

Through a descriptive and logistic regression analysis of the extent of 488 Second Amendment court rulings made in state courts of last resort and U.S. Courts of Appeals rendered between 1960 and 2009, I theorize that state Supreme Court selection methods, the presences of a state intermediate appellate courts, U.S. Courts of Appeals majority presidential party nomination panel, along with state and federal appellate circuit political ideology, urban/rural dynamics, gun ownership percentage, and homicide rates will have an impact on the outcome of Second Amendment decisions at these various judicial levels. For instance, an elected state Supreme Court system is more likely to produce a gun rights ruling, while an appellate panel with a majority of judges appointed by Democratic Presidents would be more likely to produce a gun control ruling. The results indicate state and appellate circuit political ideology (conservative→liberal spectrum) and gun ownership percentages affect the outcome of Second Amendment decisions in state Supreme Courts and the U.S. Courts of Appeals, while homicide rates affect these decisions in state courts of last resort. As such, a conservative political ideology and high gun ownership percentage in a state or appellate circuit means that it is more likely for their judges to produce a gun rights ruling, while a liberal political ideology and low gun ownership percentage means that the state or appellate circuit is more likely to produce a gun control ruling. One chapter explores these dynamics at the state Supreme Court level, while a second chapter does the same in the U.S. Courts of Appeals.

A third substantive dissertation chapter considers the impact of legal participation, litigation strategies, venue-shopping, along with interest group coordination, networking, and organization, in planned telephone interviews with pro-gun and gun control Second Amendment interest group lawyers who have litigated cases in these two levels of the state and federal judiciary between 1960 and 2009. In this chapter, it is theorized that there will be clear differences between gun rights and gun control interest groups, and heavily funded and lesser funded interest groups, with regard to the five major interview issues listed above. Twenty-one interviews with interest group lawyers will be conducted between 24 August and 15 October 2010.

To My Wife, Maggie

“What greater thing is there for two human souls than to feel that they are joined together

to strengthen each other in all labor,

to minister to each other in all sorrow,

to share with each other in all gladness,

to be one with each other in the silent unspoken memories?”

-George Eliot

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CHAPTER ONE

CURRENT SECOND AMENDMENT LITERATURE AND INTRODUCTION TO THE RESEARCH SETTING

> The right of bearing arms for a lawful purpose is not a right granted by the Constitution; neither is it in any manner dependent upon that instrument for its existence.
>
> --Chief Justice Morrison Waite, *United States v. Cruikshank*, 1876[1]

> I agree with the Court that the Second Amendment is fully applicable to the States. I do so because the right to keep and bear arms is guaranteed by the Fourteenth Amendment as a privilege of American citizenship.
>
> -- Justice Samuel Alito, *McDonald v. City of Chicago*, 2010[2]

During the last forty years, the Second Amendment to the United States Constitution has become a focal point of political attention within the executive, legislative, and judicial branches of local, state, and federal governments across the country. In fact, political attention that focused on the Second Amendment was amplified after the 2010 United States state and federal midterm elections as proponents of gun rights made dramatic electoral gains. For instance, Kansas voters approved an amendment to the state constitution that affirmed the right of state residents to own firearms. The Kansas "Right to Bear Arms" Amendment passed on 2 November 2010 with the staggering support of 89 percent of the electorate.[3] A similar result occurred in the neighboring state of Oklahoma, as U.S. Representative Mary Fallin (R-OK) easily won election to the Governor's office. Fallin's twenty-point victory (60 percent to 40 percent) over the sitting Lieutenant Governor, Jari Askins (D-OK), ensured that the Oklahoma

legislature's bipartisan open carry of firearms bill would not be vetoed again in 2011, as it was under current Governor Brad Henry (D-OK) in early 2010.[4]

Focusing on the outcome of federal legislative midterm races, pro-gun candidates won seven seats in the U.S. Senate, including seats in Arkansas, Indiana, Ohio, North Dakota, Pennsylvania, West Virginia, and Wisconsin. U.S. Senate Majority Leader Harry Reid's re-election in Nevada assured gun advocates that pro-gun legislation is more likely to make it to the floor of the Senate then would have been the case under under the number two (Richard Durbin, IL) or three (Charles Schumer, NY) ranking Democrats in the Senate leadership. According to David Kopel's voting math, based on campaign statements or policy positions of candidates, the Republican election wave that hit the U.S. House of Representatives saw an increase of almost nineteen pro-gun votes. Congressional candidates endorsed by the National Rifle Association's Victory Fund won 85 percent of their House races and 76 percent of their senatorial races.[5]

If the 2010 elections brought significant legislative gains for gun rights advocates, one institutional bastion that remains up for grabs is the American judiciary. This dissertation focuses on how the state and federal courts have dealt with the Second Amendment and associated issues. It addresses the questions: What factors explain Second Amendment interest group cause lawyering and the inclusion of Second Amendment issues on the agenda (docket) of courts, and, second, what political factors effect judges when making Second Amendment rulings in state supreme courts and the U.S. Courts of Appeals?

To address the first question, Chapter Two considers the impact of legal participation, litigation strategies, venue-shopping, interest group coordination, networking, and organization in telephone interviews with gun rights and gun control Second Amendment lawyers who litigated cases in these two levels of the state and federal judiciary between 1960 and 2009. In

this chapter, it is hypothesized that there is a clear difference between gun rights and gun control interest groups, heavily funded and lesser funded interest groups, and local, state, and national interest groups with regard to legal participation, litigation strategies, venue-shopping, interest group coordination, networking, and organization.

To address the second question, two chapters of this dissertation is focused on the judicial behavior of state supreme court and the U.S. Courts of Appeals judges regarding Second Amendment cases. Judicial behavior, the types of activities and behavior appellate judges exhibit on the bench, has a profound and lasting impact on the types of decisions rendered by judges across all courts that comprise the American judiciary.[6] There is a growing realization that judicial behavior encompasses more than just the making of good laws and public policy decisions.[7] Donald Songer and Susan Haire explored integrated approaches to the study of judicial voting through obscenity cases in the U.S. Courts of Appeals. Creating an integrated multivariate model that combined five approaches to judicial voting, the authors found that this new model correctly predicted about 80 percent of the judges' votes on obscenity cases with an error reduction rate of almost 46 percent.[8] Two chapters of this dissertation focuses on the behavior of state supreme court and U.S. Courts of Appeals judges through the lens of Second Amendment claims and issues, a polarizing American political issue over the last fifty years.

Through a descriptive analysis of 488 Second Amendment court rulings made in state supreme courts and U.S. Courts of Appeals between 1960 and 2009, I theorize that state supreme court selection methods, political party identification of state supreme court judges, the presence of a state intermediate appellate court, U.S. Courts of Appeals majority presidential party nomination panel, along with state and federal appellate circuit political ideology, population density, gun ownership percentage, and homicide rates will have an impact on the outcome of

Second Amendment decisions in these two judicial forums. For instance, an elected state court of last resort system is more likely to produce a gun rights ruling, while an appellate panel with a majority of judges appointed by Democratic Presidents would be more likely to produce a gun control ruling. The following sections set the political context for judicial decision-making regarding the Second Amendment and reviews important Second Amendment works and provide an introduction to the research setting for my dissertation.

Constitutional Underpinnings

Until the middle of the twentieth century, the Second Amendment to the United States Constitution was a little-visited and often dormant area of the Bill of Rights. In fact, the annual commentary regarding the Constitution published by the Library of Congress in 1973 included less than a page and half of annotations regarding the Second Amendment, while other clauses, such as the Free Exercise Clause and the Freedom of Speech Clause, included citations of ten pages or more.[9] According to the longtime Cato Institute staffer, Brian Doherty, before the 2008 United States Supreme Court case, *Heller v. District of Columbia,* in which an ideologically divided Court overturned the District of Columbia's gun ban and forbade future gun bans on federally governed areas,[10] there had only been five other significant Second Amendment cases heard by the U.S. Supreme Court.[11]

Of the five important Supreme Court Second Amendment cases listed by Doherty, three played a significant role in state law. After a white militia attacked Republican freedmen gathered at the Grant Parish Courthouse in Louisiana to protect it from a local Democratic takeover during Reconstruction, in *United States v. Cruikshank*, the Supreme Court ruled that the Second Amendment had "no other effect than to restrict the powers of the national government".[12] In *Presser v. Illinois*, the Supreme Court held that the Second Amendment

limited only the power of the U.S. Congress and the federal government to control firearms, and did not apply to the states.[13] In *Miller v. Texas*, the Supreme Court ruled that the Second Amendment did not apply to state laws, such as the one in Texas that Franklin Miller had violated when he was convicted and sentenced to be executed for shooting a police officer to death with an unlicensed handgun.[14]

While the *Cruikshank*, *Presser*, and *Miller* decisions played a much larger role in state law and government, another Supreme Court decision was the first to strike at the heart of the Second Amendment within the sphere of the federal governmental power. In the wake of the Saint Valentine's Day Massacre, in *United States v. Miller*, the Supreme Court upheld the constitutionality of the National Firearms Act against a challenge Jack Miller and Frank Layton. Miller and Layton argued that the law allowed the men to keep and use a sawed-off shotgun. The U.S. Supreme Court disagreed.[15] The National Firearms Act of 1934 required certain types of firearms, including automatic rifles, sawed-off shot guns, and semi-automatic firearms, to be registered and taxes paid to the federal government every time the firearm was sold. The *Miller* decision has become a flashpoint in the ongoing debate over the Second Amendment in America, as gun control advocates and state and federal judges have pointed to this decision for over six decades when rejecting legal challenges to new federal firearms regulations. Curiously, gun rights advocates claim the *Miller* decision as a victory because interpretations of that ruling state that ownership of weapons for the preservation of a militia in the present day is exclusively protected by the Constitution.[16]

Doherty's fifth important Second Amendment Supreme Court decision struck at the heart of both state and federal law. Building upon *Heller*, gun rights interests brought a similar case before the Supreme Court that was a clear challenge to a local gun ban in Chicago, Illinois. In

McDonald v. City of Chicago (2010), an ideologically divided Supreme Court ruled that the right to "keep and bear arms," outlined in the Second Amendment, was incorporated into the Due Process Clause of the Fourteenth Amendment, and thus, applied to all states.[17] David Kopel explored the holdings of twenty-nine other Second Amendment cases handled by the Supreme Court. None of the twenty-nine other cases have become as legally important as the six cases presented previously.[18] Along with incorporation of the Second Amendment in state law, the *McDonald* decision cleared up much of the uncertainty left after *Heller* regarding the application of federal laws to states. Landmark cases, such as *Heller* and *McDonald*, illustrate the importance of the policy and the ideological polarization of the Second Amendment issue in the courts and in American society today.

The deep sectional, cultural, and ideological divide in American life that has been evident within the Second Amendment debate has often times become expressed in legal terms and within the judicial arena. The mere existence of the Second Amendment debates exemplifies the importance of the constitutive function of legality in American life. The legality perspective has reduced and framed a cultural conflict into easily recognizable rights, constitutional power terminology, and a manageable and orderly bipolar debate that is often capable of expression in ideological or partisan terms. Nowhere has this debate manifested itself more than inside the walls of state and federal courtrooms across the United States.

Regarding this legality perspective, in *United States v. Tot* (1942), the Third Circuit Court of Appeals affirmed a lower court ruling that convicted Frank Tot of receiving firearms transported via interstate commerce after he was convicted of a violent crime.[19] *Tot* was decided in accordance with the *Miller* decision because the appellate panel reasoned that the Second Amendment was not adopted with individual rights in mind; however, the panel's interpretation

in the case changed *Miller* in that the case results were solely based on a flawed analysis of common law and colonial history.[20] The *Miller* legal perspective—which holds that the Second Amendment does not encompass an individual right to keep and bear arms—was also adopted in several other Supreme Court and lower federal court decisions. Since the *Miller* decision, lower federal appellate courts have interpreted the substance of the ruling differently.

For instance, in *Cases v. United States* (1942)[21], the First Circuit Court of Appeals created much confusion in the lower federal courts over the substance of *Miller*. By challenging the logic of *Miller*, the *Cases* panel concluded that any person making a Second Amendment claim is required to have the maintenance and preservation of a militia as their main concern. As such, the *Cases* decision forbade the federal government from prohibiting the possession and usage of firearms if the prohibition related to the maintenance of a militia.[22] The same legal test was forwarded by the Eighth Circuit Court of Appeals in *United States v. Hale*.[23]

After the *Cases* and *Tot* decisions of the 1940s, there was little Second Amendment litigation until the late 1960s and 1970s, when individuals began to challenge the gun control legislation passed by Congress in the 1960s. In one of these cases, *United States v. Warin* (1976), the Sixth Circuit concluded, without any historical references and in accordance with *Miller*, that the Second Amendment does not guarantee an individual right.[24] In the case, Francis Warin was convicted of possessing an unlicensed machine gun in 1970, and he argued that his ownership of the weapon was legal and in accordance with his official membership in an Ohio militia. While the *Warin* decision seemed to have satisfied the tests established in *Cases* and *Hale*, the appellate panel that heard the case disagreed and upheld the initial state court conviction. Again, like *Cases* and *Tot*, *Warin* changed the implication and interpretation of *Miller* in the sense that individuals could no longer possess firearms even in connection with the

maintenance of a militia.[25] Again, these various legal perspectives regarding *Miller* have since been overturned by the *Heller* and *McDonald* majority, which asserted gun ownership as an individual right.

In *Adams v. Williams* (1972), Justice Douglas argued that *Miller* did not prohibit the enactment of vigorous gun control laws on the state level.[26] In *Cody v. United States* (1972), the U.S. Supreme Court ruled, in accordance with *Miller*, that the Second Amendment guarantees no right to keep and bear arms that does not have a relationship with the preservation of a militia.[27] Similar findings were rendered in *United States v. Three Winchester 30-30 Caliber Lever Action Carbines*[28], *United States v. Johnson*[29], *Lewis v. United States*.[30]

Cases decided over the last fifteen years have also exemplified the same perspective that appeared in earlier rulings. For instance, in the United States Court of Appeals for the Fifth Circuit case, *United States v. Emerson* (2001),[31] the Fifth Circuit rejected the common legal perspective that the Second Amendment protected the interest of states in order to maintain their own militias and changed the paradigm of Second Amendment rights to include individual ownership of firearms.[32] Interestingly, only one year later, in *Silveira v. Lockyer* (2002), the Ninth Circuit disagreed with the *Emerson* ruling and found that private individuals do not possess the personal right to own and operate firearms.[33]

Seven years after the *Silveira* ruling, the same Ninth Circuit overturned the *Silveira* ruling in *Nordyke v. King* (2009).[34] In *Nordyke*, the Ninth Circuit affirmed and expanded the Supreme Court's *Heller* decision by clearly stating that the right to keep and bear arms was an individual right and should be incorporated against all states. Subsequently, the Ninth Circuit set the decision aside and ordered an en banc rehearing of the *Nordyke* decision. In the en banc review

of *Nordyke v. King* (2009),[35] the Ninth Circuit ruled that the original decision should not be cited as precedent and that the review should be delayed until the Supreme Court ruled in *McDonald.*

The legal perspective has reduced and framed cultural conflicts in more gun policy areas than just simple ownership. For instance, since the early 1980s, localities around the nation have attempted to ban the possession of personal firearms inside city limits in order to decrease violence and crime, even if an individual was a member of a local militia. In *Quilici v. Village of Morton Grove* (1982), the Seventh Circuit ruled in favor of the Illinois town of Morton Grove, which, in 1981, became the first modern American town to prohibit the possession of firearms inside city limits. The Court ruled that the local gun ban was valid under state and federal constitutions.[36] Two years later, the same Morton Grove firearms ban was legally challenged once again. In this case, *Kalodimos v. Village of Morton Grove* (1984), the Illinois State Supreme Court agreed with *Quicili* that the town ordinance did not violate state or federal constitutional provisions.[37]

Similar legal findings to *Quicili* and *Kalodimos* were made in two other state supreme court cases. In *Arnold v. City of Cleveland* (1993), the Ohio Supreme Court ruled that an ordinance banning the possession and sale of assault weapons inside the city limits of Cleveland was constitutional.[38] In *Robertson v. City and County of Denver* (1994), the Colorado Supreme Court ruled that an ordinance that banned the manufacture, sale, or possession of semi-automatic or automatic assault weapons within the limits of the City and County of Denver was constitutional.[39] Eventually, the findings of the *Quicili*, *Kalodimos*, *Robertson,* and *Arnold* decisions were overturned after the landmark *Heller* decision. State and federal Second Amendment cases, like the ones discussed above, have framed a cultural conflict in easily recognizable terms.

The Problem of "Original Meaning"

Along with important U.S. Supreme Court cases, it is also important to explore the original intent of the Founding Fathers when they framed the Constitution in 1787, and the conceptions of the Second Amendment in today's American society. Possibly no other amendment in the Constitution has created more interpretive disputes than the Second Amendment.[40] Historical analysis of the right to bear arms has created two competing interpretations.[41] The first interpretation guarantees a personal and individual right to bear arms, while the second version applies only to the right in association with militias.[42] The scope of the Second Amendment has not traditionally been considered pressing because the approach of the courts has largely been focused on *United States v. Miller*, which reads that the Second Amendment only ensures that formal and organized state militias may remain armed.[43]

From a constitutional development perspective, the eminent American historian Gordon S. Wood has eloquently written about the evolution of the sectional, cultural, and ideological divide in American life since the establishment of the nation. Since the establishment of colonial America, the North and South regions of the country evolved differently and have been divided based upon geography, culture, and politics. In one work, Wood illustrated how the American colonies emerged from a monarchical system, created a republic, and eventually evolved into a democratic society. Wood's focus was on representation, beginning with the colonial assemblies, arguing that the American colonies had a legacy of representative institutions, which helped in forming the necessary consensus in order to achieve the ultimate goal of independence.[44] Along with the American political system, Wood delved into issues related to the same cultural and political divide in that different cultures and ideologies were predominate early on throughout the country. Exemplified in conventions of the people in the states held to

ratify both the Declaration of Independence and the Constitution, the fear of governmental corruption by some citizens forced households to take up arms in order to ensure some level of security and autonomy from the state.[45]

Wood examined how the American cultural and political divide was also defined through ratification of the Bill of Rights. As James Madison proposed the Bill of Rights, ideological conflict between pro-government Federalists and states rightist Anti-Federalists, dating from the 1787 Philadelphia Convention, threatened the overall ratification of the new Constitution. The Bill of Rights was adopted in response to the Constitution's influential opponents, including prominent Founding Fathers, who argued that the Constitution should not be ratified because it failed to protect the basic principles of human liberty.[46]

The Bill of Rights was influenced by George Mason's 1776 Virginia Declaration of Rights and other English lists of rights. Like Anti-Federalist leader Patrick Henry, Mason was a leader of those who pressed for the addition of explicit States rights and individual rights to the Constitution as a balance to the increased federal powers, and did not sign the document in part because it lacked such a statement. Mason's efforts eventually succeeded in convincing the Federalists to add the first ten amendments, including the Second Amendment, of the Constitution. Plainly, the addition and ratification of Bill of Rights was an attempt to soothe dissent against increased national power by leaders of more conservative, states' rights-oriented southern states.[47]

Linking Founders Views to Firearms Policy History

Prior to the ratification of the Bill of Rights, an American "gun culture" was created in the years before the American Revolution. In fact, the American Revolution was triggered by a gun confiscation mission ordered by the British General Thomas Gage, which led to fighting at

Lexington and Concord, Massachusetts.[48] However, many scholars have rightly questioned the actual original intent of the Second Amendment.[49] Does the Second Amendment grant individual citizens the right to keep and bear arms or does it only allow states to possess the right to have a militia for the protection of its residents?[50]

According to Randy Barnett of the Georgetown University School of Law, before discerning the original intent of a constitutional statute, scholars should ask themselves why it is important to consult the intentions of the Framers. Consequently, there are two reasons to examine the original intent of the Framers. The first reason is a view that the Framers are wardens who issued specific commands to those leaders who were to come after them, and the meaning of the commands depends upon the Framers intentions. The second reason is a view of the Framers as designers of the lawmaking machine. To the extent that the Framers were designers, this view notes that scholars should consult them when it is important to know how the lawmaking process should work. If scholars would focus on these two principles, they would be much more likely to hone in on the original intent of the Framers. For instance, the original intent of the right to keep and bear arms is clearly linked to the maintenance of state militias.[51]

However, simply looking at the original intent of the words located on the pages of the Constitution is not enough because what is in the document and the personal feelings of the Founders sometimes differ significantly. The stance of several of the American Founding Fathers seem to be split on issues related to personal gun ownership and the Second Amendment.[52] For instance, prominent Virginians George Mason, Richard Henry Lee, and George Washington presented unequivocal support for the personal right to bear arms after American independence. During Virginia's convention to ratify the Constitution in 1788, Bill of Rights author George Mason said, "I ask, Sir, what is the militia? It is the whole people. To

disarm the people is the best and most effectual way to enslave them."[53] Although supporters of the personal right to possess firearm were greater in number, alleged opponents of the Second Amendment also were very important in the founding of the United States. Both Samuel Adams and Alexander Hamilton offered only tepid acceptance of the Second Amendment as it was originally written.[54]

According to the Second Amendment, the exact meaning of the rights reserved by the statement is questionable. If the preamble included in the amendment did not exist, then the amendment would reserve a personal right to keep and bear arms to all American; however, the preamble is present and can create problems regarding the meaning of the amendment. While some scholars have interpreted the meaning of the Second Amendment to restrict the keeping and bearing of arms to members of the militia, others have forwarded a theory of a collective right for all Americans to bear arms.[55]

It is clear, according to the constitutional scholar Leonard W. Levy, that "if all it (the Second Amendment) meant was the right to be a soldier or serve in the military, whether in the militia or the army, it would hardly be a cherished right and would never have reached constitutional status in the Bill of Rights."[56] Nonetheless, the right to keep and bear arms is not unlimited. Public regulations and laws passed over the last fifty years on both the state and federal governmental levels specify the kinds of firearms that are lawful and the conditions through which weapons can be used and kept; however, no regulation may subvert that right to legally possess personal firearms itself.[57]

According to political scientist Robert Spitzer, "the right to bear arms is prefaced by the necessity for the government to maintain a militia in order to ensure security for the nation".[58] It is important to note, as former Chief Justice Warren Burger argued, the word "because" should

be read as the opening line of the amendment. As such, the amendment should be read as "[because] a well-regulated militia [is] necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed".[59] The intent of the Founding Fathers was that the keeping and bearing of arms should stem from a necessity for a government to keep, organize, and regulate a militia.[60]

The phrasing of to "bear arms" is connected throughout history to the possession of firearms and weapons for usage in a military capacity.[61] For instance, in *Aymette v. State*, the Tennessee State Supreme Court ruled that the right to bear arms had a military sense and no other.[62] Also in *Hill v. Georgia*, the Georgia State Supreme Court held that the right to bear arms is guaranteed for members of the local and state militia only.[63] This traditional military conception of bearing arms is much different than the current notion of the Second Amendment to mean personal possession of firearms for hunting activities or for the protection of ones person, family, or property.[64] Second Amendment matters now encompass issues relating to hunting activities, personal and familial protection, concealed weapons, gun permits, semi-automatic and automatic weapons, gun bans, along with many others.

Contemporary Legal Constructions of the Second Amendment

According to the historian Garry Wills, the fearful atmosphere of the Cold War and the first cadre of Second Amendment scholars joined together to create a new paradigm through which stakeholders in the gun rights/control debate have viewed and argued the ramifications of Second Amendment political decisions.[65] President Dwight D. Eisenhower stoked the flames of the Cold War and gun ownership at the very end of his term in office.[66] On 17 January 1961, Eisenhower delivered his famed farewell address in which he warned Americans of the creation of a "military-industrial complex," a process in which private companies gained increasing levels

of influence within the United States Department of Defense and federal government in general. Although an increase in defense spending became an important earmark in the national budget and provided an important boost to the nation's flagging economy after war, the military build-up also generated great political debate.[67]

Eisenhower's Cold War rhetoric correctly predicted a seemingly endless conflict against the aggressive communist enemies.[68] Communism, a socio-political movement that developed in the Soviet Union and other satellite nations, attempts to establish a classless and stateless society that is organized upon collective property ownership.[69] The basic tenets of communism directly conflict with the fundamental doctrine of freedom, life, liberty, and property important to American life. Although the Cold War and the military-industrial complex did not provide arms to average American citizens, it did create a sense of suspicion among the populace that was firmly rooted in reality. During the Cold War, Soviet communism, when judged versus liberal democracy, was evil, even if people did not know the full scope of the devastation of humane values, slave labor, and deliberate famine.[70] The suspicion of attacks by enemies of the United States, when coupled with increases in urban gun violence increased personal gun ownership in America.[71]

The anxious call during the mid-twentieth century for the need for private gun ownership stemmed from (or produced) three significant American political assassinations and the fearful atmosphere promulgated by the Cold War era of the 1950s and 1960s,[72] while members of academia became prominent in the Second Amendment debate between the 1960s and the 1980s because of their association with gun control interests.[73] The assassinations of President John F. Kennedy in 1963, presidential candidate and U.S. Senator Robert F. Kennedy (D-NY) in 1968, and civil rights leader Martin Luther King, Jr., in 1968, were each carried out with mail-order,

military surplus firearms obtained from different foreign and domestic firearms industry catalogues. With three low-pressure clutches of firearm triggers, the contemporary gun rights-gun control debate in American culture and politics had begun.[74]

In addition to the three important political assassinations, a horrific shooting brought the debate over gun rights-gun control to a fever pitch. On 1 August 1966, Charles Whitman, a mentally-disturbed student at the University of Texas at Austin and former Marine, climbed to the twenty-ninth floor observation deck of the school's administrative building and shot forty-eight people with numerous rifles, killing sixteen individuals. Whitman's victims included people inside the building and on the campus green below. Directly before the shooting rampage, Whitman murdered his wife and mother in their homes. Nearly two hours after shooting began, Austin Police finally reached Whitman on the observation deck. After a short gun fight, Whitman was killed. As a result of the Whitman shooting rampage, President Lyndon Johnson called for stricter gun control policies.[75]

More than two decades after Eisenhower's farewell address another American President and his wife stoked the underlying flames relating to firearms through their war on drugs. In early 1982, First Lady Nancy Reagan began pushing a "Just Say No" to drugs awareness agenda, which aimed to discourage the usage of recreational drugs among America's children and teenagers.[76] As the First Lady said, "If you can save just one child, it's worth it…".[77] During the course of her five year awareness campaign, the First Lady traveled to sixty-five drug and violence plagued cities in thirty-three states.[78] While the First Lady made public appearances on behalf of her agenda, the President busied himself by helping to enact significant policies responding to the perceived increased usage of drugs in America.[79]

By 1986, Reagan signed a massive drug enforcement bill that funded the war on drugs and required mandatory minimum sentences for all drug offenses.[80] While some critics lauded this effort as a good first step, others heavily criticized the bill for helping to promote significant racial disparities in American prisons and doing nothing to reduce the availability of drugs on the streets.[81] Reagan also created the Office of National Drug Control Policy (ONDCP) through the Anti-Drug Act of 1988. The goal of the new office was to provide a central coordination point within the federal government for drug-related legislative, security, diplomatic, research, and health policy. Headed by a director known as the "Drug Czar," the office attained cabinet-level status in 1993 under President Clinton, but has since been demoted within the Executive Office of the President.[82] Even though firearms played a central, active role in the associated violence of the drug trade, the various anti-drug enactments of the 1980s failed to address any firearm-related reforms.[83]

Along with these important political assassinations, the Cold War, and the war on drugs, three different pieces of federal legislation stoked the flames of the debate over the Second Amendment. The Firearm Owners' Protection Act (FOPA) of 1986, passed against the protests of many gun control advocates and interest groups, was crafted in order to restrain many of the most rigorous provisions outlined in the federal Gun Control Act of 1968. FOPA allowed licensed firearms dealers to distribute and sell firearms away from their business location, limited on-site dealer inspections performed by the federal Bureau of Alcohol, Tobacco, and Firearms, prohibited the creation of a national gun registry, and allowed interstate ammunition sales.[84]

A second piece of federal legislation, the Brady Handgun Violence Prevention Act, was a reaction to both FOPA and the attempted assassination of President Ronald Reagan and the shooting of White House Press Secretary James Brady by John Hinckley, Jr. in 1981. The Brady

Bill, as it was commonly known, required all individuals wishing to purchase a firearm from a licensed gun dealer to go through a government background check before the sale was completed.[85] The Brady Bill prohibited certain individuals, such as people who were under indictment, ex-convicts, fugitives from justice, the mentally disabled, illegal aliens, or former members of the Armed Forces discharged dishonorably, from shipping, transporting, buying, or owning any firearm.[86] Concealed weapons laws are often associated with the Brady Bill; however, most concealed weapons laws were passed through other statutes, and have created significant debate within academic circles.[87]

In the weeks following President Bill Clinton's signing ceremony for the Brady Bill, the NRA immediately brought suit in ten states that asked the federal courts to declare the Brady Bill unconstitutional. This litigation effort culminated in the Supreme Court case, *Printz v. United States*. In *Printz*, the Supreme Court held that a provision of the Brady Bill, that compelled state and local law enforcement officials to perform mandated background checks for a limited period of time, were unconstitutional violations of the Tenth Amendment to the Constitution. However, the most important Brady provisions were upheld and the effect of this decision was negligible, as the vast majority state and local law enforcement officials continued to do the mandated background checks.[88]

A third federal law, the Violent Crime Control and Law Enforcement Act of 1994, was passed by a Democratically-controlled Congress and signed into law by President Bill Clinton in the wake of numerous gang-related killings, school shootings, and public mass killings with assault weapons in the 1980s and 1990s. The piece of legislation banned the sale, ownership, and usage of nineteen named guns and 200 other guns that fell under definitions included in the assault weapons ban. According to the Act, selected pistols, rifles, and shotguns were not

appropriate for usage by non-military personnel. After the law was enacted, both foreign and domestic firearms manufacturers were able to skirt the periphery of the provision by making minor alterations to their firearms that allowed for the guns to be sold to the public. A decade after the passage of the assault weapons ban, a Republican-controlled Congress and President George W. Bush allowed the law to sunset without reauthorization.[89]

Three events that occurred both during and after the life of the assault weapons ban focused attention on firearms, violence, and the failure of gun control laws in the United States. In a chilling account of the 1998 Columbine High School shooting, author Dave Cullen reported that shooters Eric Harris and Dylan Klebold bypassed the assault weapons ban and other gun laws by having adult friends Robyn Anderson, Phil Duran, and Mark Manes procure their assault weapons from the Tanner Gun Show in Denver, Colorado, in December 1998.[90] This so-called "gun show loophole" utilized by the friends of the Columbine killers allows private sellers and individuals who were not engaged in business to sell guns at gun shows without conducting background checks.[91]

Following the terrible attack at the high school, the only people ever charged with a crime for the massacre were Duran and Manes for providing the weapons to the underage shooters, while a parent of one of the victims of the tragedy, Tom Mauser, became a gun control advocate for SAFE (Sane Alternatives to the Firearms Epidemic) Colorado. Mauser helped to legally close the gun show loophole in Colorado. Mauser's gun control success was limited to his home state, as the U.S. Congress failed to pass any significant legislation in response to the Columbine attacks.[92]

Similar to the Columbine High School attacks, the "Beltway Sniper Attacks" occurred in Maryland and Virginia a few years later and transpired by circumventing existing gun control

laws. The spree killings, carried out by the former Army marksman John Allen Muhammad and his protégé, Lee Boyd Malvo, were perpetrated with a stolen Bushmaster XM-15 semi-automatic .223 caliber rifle equipped with a holographic sight for ranges of between 50 and over 100 yards. The Bushmaster rifle used by Muhammad and Malvo was an assault weapon that had been slightly altered by a foreign firearms distributor in order to conform to the principles outlined in the assault weapons ban; however, the weapon was still considered a semi-automatic assault rifle.[93] After ten shootings in three weeks in the Washington, D.C. Metro area, the spree killings have become the perfect example of what can take place through the evasion of gun control laws.[94]

Following the expiration of the assault weapons ban in 2004, individuals who could complete the mandated background checks were then able to again purchase assault weapons. This is what occurred leading up to the April 2007 Virginia Tech massacre. Seung-Hui Cho, a U.S. permanent resident, South Korean national, and Virginia Tech undergraduate student, killed thirty-two people and wounded many more in an attack in two buildings on the Blacksburg, Virginia, campus. The mentally-ill Cho purchased his selected assault weapons over the internet from a federally-licensed firearms dealer based in Wisconsin, and then completed the required background check at a pawnshop in the Blacksburg area. The background check for the guns was approved because his juvenile mental health records had been sealed after his eighteenth birthday. The Virginia Tech shooting brought strong calls for gun legislation that would align mental health officials with those conducting background checks in order to protect the public.[95]

Four years later, no substantial state or federal laws have been passed in the wake of the massacre. The various pieces of gun control legislation that have passed are not working and efforts following tragedies to pass important gun laws have failed, as well. Even when political

leaders become aware of ineffective gun laws, these leaders have shown a consistent unwillingness to amend them. Although many of these presidential pronouncements, congressional statutes, and actions of madmen provide stark examples of the deep sectional, cultural, and ideological divide in American life, they have also created a sense of need for greater gun control legislation and increased interest in the Second Amendment.

Roots of the Political and Cultural Debate over the Second Amendment

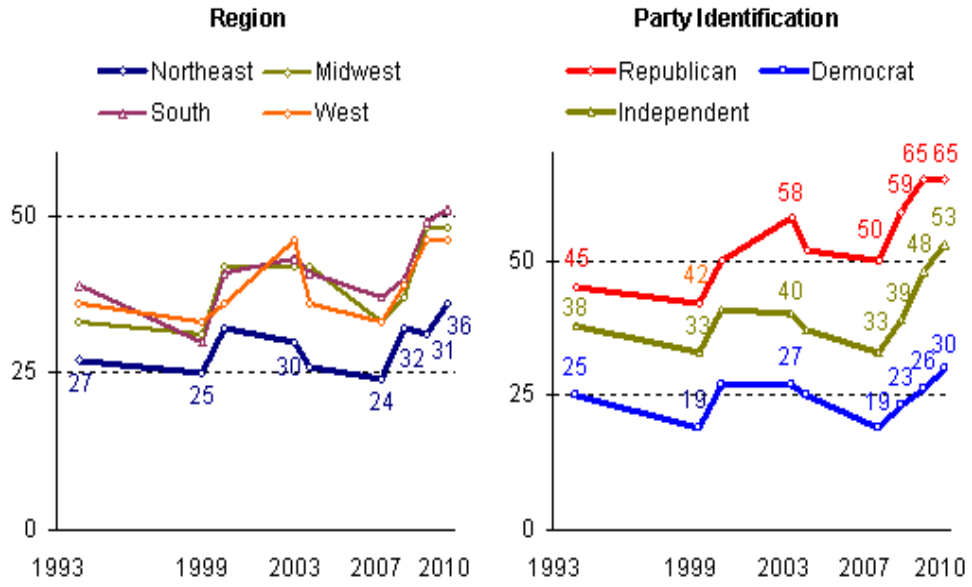
These historical, legal, and political debates over Second Amendment rights reflect a deep cultural and ideological divide in American life. For instance, states that possess higher percentages of gun ownership are also some of the most conservative ideologically, while states that have the lowest percentages of gun ownership are some of the most liberal ideologically. Culturally, southern and western states have higher percentages of gun ownership and are more conservative than their liberal counterparts in the northeast and the Midwest. This cultural and ideological divide shows that residents of Southern and Western states possess a perspective that is enamored with individualism and is almost suspicious in its fear of external manipulation and control of its interests by the state or federal government. The same ideological divide has created a contrary perspective in the Northeastern and Midwestern states that assumes the need for civic control of license, greed, and disorderly interests to ensure a civil society through control over the sale, ownership, and usage of firearms.

Three recent studies published by the non-partisan Pew Research Center for the People and the Press illustrate the same deep cultural and ideological divide. A 2010 Pew Research Study on gun ownership and gun control reported that public support for governmental control over gun ownership is at a twenty-year low, while polling trends support the notion that the protection of gun rights has increased in support in every region of the country over the last five

years. However, not every region is created equal when it comes to percentage of support for gun rights. The Midwestern and Southern regions have overall support for gun rights, while Eastern and Western states possess a majority of citizens that continue to support gun control policies. Political conservatives and self-described Republicans support gun rights twice as much as political liberals and self-described Democrats.[96]

Another Pew Research Study from 2005 reports that gun ownership is much more prevalent among Republicans and groups associated with the party than among Democrats or those associated with the political left. Polling data shows that a solid majority of self-described political conservatives report that they own guns and keep them in their homes. Gun ownership among conservatives rested at 59 percent, while gun ownership among liberals was polled at 23 percent.[97] Table One (taken from a third Pew Research Study) provides a visual representation of the deep sectional, cultural, and ideological divide in American life that is clearly reflected in Second Amendment policy and public debate.[98]

Table One: Long-Term Trends Regarding Support for Gun Rights



Source: Pew Research Center for the People & Press. (2010). Public Divided Over State, Local Laws Banning Handguns; Since 2008, Increased Support for Gun Rights. Retrieved 14 August 2010 from http://people-press.org/report/599/handguns.

A Gallup polling trend analysis of stricter gun control laws conducted both before and after the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, shows some fluctuation in public opinion. Table Two, below, shows that levels of support for less strict gun laws two years before the bombing at only seven percent. Two years later, and right after the bombing, the same poll was conducted and found that the support for less strict gun laws had almost doubled, while those respondents wanting stricter gun laws decreased by more than five percent.[99]

Table Two: Stricter Gun Laws—Gallup Trend

Date	**More Strict Gun Laws**	**Less Strict Gun Laws**	**Kept as are Now**	**No Opinion**
1995 April 23-23	62 percent	12 percent	24 percent	2 percent
1993	67	7	25	1
1991	68	5	25	2
1990	78	2	17	3

Source: Gallup Organization. (1995). Gallup Polling Trend (May 1995). In Bijlefeld, M., ed. *The Gun Control Debate; A Documentary History*. Westport, CT: Greenwood Press, p. 104-105.

Because so few important constitutional questions regarding the Second Amendment were broached within the three branches of government prior to the current era, there was little scholarly interest in studying the Amendment.[100] However, a number of events sparked a marked increase in interest in the Second Amendment as an assurance of a right to bear arms for individuals and militias and beyond over the last fifty years. Even before this peaked interest, the National Rifle Association (NRA) campaigned on the premise that the amendment applied to private ownership of guns for all Americans. Originally developed in conjunction with the

National Guard and devoted to military marksmanship, the NRA subsequently condemned the work of the National Guard as not doing the work of a real militia.[101]

The Second Amendment and Interest Groups

Typically confusion over the meaning of the Second Amendment, and an important factor in the formulation of the current notion of the Second Amendment, stems from the politically motivated reading of only a selected portion of its text.[102] The Executive Director of the National Rifle Association (NRA), and a gun rights lobbyist Wayne LaPierre has either written or ghost-written numerous works in which he has only cited in error the second part of the Amendment. In one instance, LaPierre, argued that interests outside the United States have attempted to have the right to bear arms taken out of the Bill of Rights,[103] while LaPierre provided his understanding of the Second Amendment since ratification of the Bill of Rights in another work.[104] LaPierre and other authors have increasingly focused solely on the second part of the Amendment, in which the right of the people to keep and bear arms shall not be taken away, while not acknowledging the first part of the Amendment, where it clearly mentions the importance of militias to the statute.[105]

A cursory view of the NRA's website, the preeminent American gun rights group, reveals no mention of the need for a well-regulated militia. Instead, the NRA focuses its unwavering attention on the need for firearms programs that foster safe and responsible gun ownership and usage.[106] It is clear that the process that crafted the Bill of Rights, and thus the Second Amendment, included numerous individuals and was established through a number of compromises essential to produce a document that was acceptable to a majority of the states in convention and was able to win the support of a majority of members of Congress. Through these compromises within the legislative process, the conceptions of the language within the

Second Amendment have changed and are exposed to significant debate and misunderstanding.[107]

Although Spitzer and other scholars have focused on the rights and liberties associated with the Second Amendment, other authors have attempted to examine the public policy consequences of the debate over the Second Amendment. Legal scholar Mark V. Tushnet argues that in order to fully understand the debate over gun rights and gun control it is important to consider and examine public policy, as well as the law.[108] From Tushnet's analysis, it is clear that gun-related policies that survive political processes will do little to reduce violence and will be more likely to side with the arguments of gun rights groups, such as the NRA. The argument that making it harder to buy guns at stores or gun shows will decrease gun ownership and violence is just not true. When advocates of gun control win political or legal battles, typically they find it difficult to enact or sustain strong gun-control policies because a culture war over American civil liberties occurs. Opponents of the passage of the Brady Bill helped to mobilize support for the Republican takeover of the U.S. Congress in the 1994 midterm elections.[109]

Comparatively, other authors have focused on policies that center upon the ownership of firearms in relation to the Second Amendment. For instance, Dennis Henigan, Vice President of the Brady Center to Prevent Gun Violence, was the first author to link the increased gun ownership in America with the slogans of the gun lobby. For more than forty years, the gun lobby has had remarkable success in blocking the passage of gun control legislation.[110] Harcourt also considers firearms ownership, and the associated violence, from the perspectives of youth. Through structured interviews with youths detained in correctional facilities, the author finds that public policy and the law do not focus on the two issues that could help high risk youth, recidivism and gun ownership.[111]

According to Philip Cook and Jens Ludwig, the ever increasing percentage of gun ownerships in the United States has, in turned, swelled the number of individuals injured or killed by firearms.[112] John Lott, Jr. examined Second Amendment gun ownership policy from the viewpoint of whether or not owning a gun saves or costs lives. Tracking gun ownership and crime rate data for all U.S. counties between 1977 and 1994, John Lott, Jr. found that gun ownership has grown across all demographic groups, while national crime rates have been falling at the same time as gun ownership has been growing. States that have experienced the greatest reductions in crime rates also possess policies that have allowed for the fastest growing percentage of gun ownership.[113]

Alternately, Philip Ludwig and Jens Cook consider the policies related to the Second Amendment from a protective policy perspective. In an offering published by the non-partisan Brookings Institute, the authors compare the United States with other developed nations, as the U.S. is clearly unique in that it has high rates of both gun ownership and homicides. Although widespread gun ownership does not have an automatic increasing effect on the overall crime rate, gun use does make violence related to criminal activity more lethal, more prevalent, and has a unique capacity to terrorize the public. Gun crime accounts for most of the costs of violent crime in the United States, which is more than $100 billion per year.[114]

While authors, such as Lott, Ludwig, and Cook, have focused their scholarly attention on support for a particular public policy position, others have explored Second Amendment policies associated with the various aspects of gun ownership. For instance, in a new work, Robert Spitzer observes that in the United States someone is murdered every twenty-one minutes by firearms. According to the author, if gun policies were narrowly tailored to prevent guns from falling to the hands of those who would do harm then fewer people would killed by firearms.[115]

Instead of focusing directly on gun ownership, Colin Loftin, Milton Heumann, and David McDowall explored alternatives to gun control legislation. The main alternative to passage of legislation that focuses explicitly on gun control is mandatory sentence laws. Mandatory sentence laws would allow legislators to punish individuals who commit gun crimes without supporting legislation that infringes upon the right to bear arms.[116]

Lott and John Whitley explored gun ownership through the lens of safe-storage laws. While many safe storage advocates voice the opinion that these types of laws save lives, the authors of this work provide a strong rebuke to that notion.[117] Thomas Marvell examined the numerous 1994 federal and state laws that piggybacked the Brady Handgun Violence Prevention Act and banned the possession of handguns by individuals under the age of eighteen years old. Estimating the laws' impacts on various crime measures, such as juvenile gun homicide rates and suicide rates, the author finds that even with many different crime measures and regression specifications, there is little to no evidence that suggests that the new gun laws had the intended effect of reducing gun violence and homicides prior to the application of the sunset provisions of the federal and state laws.[118]

Conversely, Glenn Pierce and William Bowers explore the groundbreaking 1981 Massachusetts-based Bartley-Fox Gun Act, which made the illegal carrying of any firearm within the state borders punishable with a mandatory one-year prison sentence. Using FBI crime data inside interrupted time series analysis, the authors found that the law substantially reduced the amount of gun assaults; however, the law seemed to have increased the number of non-gun related armed assaults. The authors also found that this law produced a reduction in gun robberies, while it also increased the amount of non-gun related armed robberies. Many of the

non-gun related armed assaults and armed robberies were carried out with other weapons, such as knives and other sharp objects.[119]

Interest groups have also helped to shape the litigation over the Second Amendment. In particular, interest groups have attempted to shape litigation in a number of different ways. Lee Epstein and Joseph Kobylka argued that abortion and death penalty-related interest groups helped dramatically shape the debate over their respective issues. Focusing on amicus curiae briefs, the authors found that interest groups affected abrupt legal change be offering numerous briefs that had a direct impact on the rulings made justices of the U.S. Supreme Court.[120]

Second Amendment interest groups have also played important roles in changing the legal perspectives of firearms law. Brian Doherty's gun rights account of the behind-scenes action before and during the consideration of the *Heller* decision provides significant background for understanding the thinking of Supreme Court justices on critical constitutional and policy issues. Accordingly, Doherty provides extensive background about the maneuvering that allowed Associate Justice Antonin Scalia to deliver the majority opinion in *Heller*. There seems to be a consensus among scholars that the four other justices in the majority forced Scalia to blunt the original language of the proposed decision or there was the potential for a defection, which would have been lethal to the outcome of the 5-4 decision. Scalia's original view on the case was that an individual right to own and possess firearms could be clearly established by the legal application of historical interpretation, grammar, and common sense.[121]

Doherty provides other compelling stories about the plaintiffs' fight for the right to protect themselves and their families from violent, crime-ridden neighborhoods, the activist lawyers who worked exhaustively to affirm that right, and the forces that fought to stop the case from being heard, including city officials and the NRA. For instance, Dick Heller, the eventual

plaintiff in the *Heller* case, was an avid firearms collector, weapons expert, and a licensed special police officer for the District of Columbia, who had to carry a gun in the federal office buildings in which he worked; however, he was unable to have one in his possession at home. Living in a high-crime area of southeastern D.C., Heller had seen the area transform from a family-friendly environment to a rampant drug haven. Heller was the natural choice in the case once the Cato Institute had completed its vetting process to determine the best possible plaintiff.[122]

Although Doherty, Levy, and Mellor provide impenitent support for gun rights, others have published work about the horrors of gun violence in the streets of the United States. For instance, in a fascinating personal account of horrors of gun violence in the streets of America, Geoffrey Canada notes that firearms are the reason why inner cities in New York, Los Angeles, Chicago, and beyond are so violent. Essentially, the explosion of killings across the inner city is based upon decades of ignoring issues associated with guns, the failure to reign in the power of gangs, and collapse of support for increased sentencing on gun crimes.[123] Alexander DeConde outlined many of the events that lead up to the passage of the Brady Bill and continued efforts in the U.S. Congress and state legislatures to pass increased gun control legislation. For instance, in late 1999, a masked gunman short and killed three people in an Anaheim Medical Center. Three days later, investigators found that the total amount of money spent on treating gunshot victims was a sum equal to the spending on guns. Once the California Assembly came back into session, they debated and ultimately rejected proposals to make gun crimes punishable by tougher sentences.[124]

As the illustrated in this section, debate over the right to own firearms has affected American presidential policy, congressional public policy, and the judicial opinions, along with culture, cultural conflict, ideology, and academic interest. From each of these different

perspectives, the deep sectional, cultural, and ideological divide in American life apparent within the debate over the Second Amendment is easily discernable. The same firearms debate has often times been expressed in legal terms and also exemplifies the importance of the constitutive function of legality in American life. Nowhere has this debate and legality perspective manifested itself more than inside the walls of state and federal courtrooms across the United States. This dissertation focuses on the Second Amendment debate inside the state and federal judiciary across the country. The following section provides an introduction to the research setting for the dissertation.

Introduction to the Research Setting

Every day federal, state, and local judges across the United States render decisions on issues ranging from mundane municipal parking violations to the polarizing political issue of the constitutionality of unlimited political campaign expenditures made by large private corporations. These decisions, especially those regarding polarizing political issues, are crafted and affected by a number of internal and external forces, including the judge's personal interests, his/her colleagues on the bench, the professional and personal circles the judges interact with outside the walls of their chambers or courtrooms, the presidential nominations that allowed the judges to achieve their professional standing, and the political and ideological forces that the judges must obey in order to maintain their professional standing, among many others.

These internal and external factors affect judicial rulings, American public policy outcomes, and even the way the public goes about their lives on a daily basis. Although relevant in so many ways, judicial behavior and the forces that affect that behavior have failed to determine differences in behavior between the many institutions of the state and federal judiciary. Second, scholarship has failed to provide a descriptive analysis of the extent of

judicial rulings at the various levels of the judiciary. Third, the literature has not explained the judicial outcomes of polarizing public policies, such as the Second Amendment. Fourth, scholars have been unable to explain the behavior of the lawyers who litigate these important cases. This dissertation attempts to do all four of these tasks. The following paragraphs explain the research setting, objective, theory, and design of each chapter included in this dissertation.

The second chapter will consider Second Amendment interest groups, cause lawyers, and strategic litigation through the lens of legal participation in firearms-related cases, the litigation strategies of Second Amendment interest groups and lawyers, the avenues through which Second Amendment interests and lawyers shop for court venues, the coordination and networking efforts of these related groups, and the interest group and legal team organization. This chapter utilizes telephone interviews with both gun rights and gun control Second Amendment cause lawyers and group leaders litigating state and federal firearms cases for reputable firearms interest groups.

The list of potential candidates for the leader and lawyer interviews was culled from data collected regarding state supreme court and federal courts of appeal cases in which a legal party either made a Second Amendment claim or cases where the central issue involved in the case centered upon Second Amendment issues that were litigated between 1 January 1960 and 31 December 2009. In this chapter, I theorize that there will be clear differences between gun rights and gun control interest groups, between heavily funded and lesser funded interest groups, and between local, state, and national Second Amendment interest groups, with regard to legal participation, litigation strategies, venue-shopping, coordination, networking, and organization. Sixteen interviews with both interest group leaders and lawyers were conducted between 24

August and 15 October 2010. The literature review, research design, results of these interviews, discussion, and conclusions are presented in chapter two.

The third chapter of the dissertation considers the extent of state supreme court decisions in which a legal party either made a Second Amendment claim or cases where the central issue involved in the case centered upon Second Amendment issues that were litigated between 1 January 1960 and 31 December 2009 through usage of logistic regression analysis. Case-level data was collected from the legal search engine within the LexisNexis Academic database. Search terms for data collection included the following phrases: Second Amendment, concealed weapons, concealed weapons permits, automatic weapons, semi-automatic weapons, gun violence, gun show loophole, background checks, right to bear arms, sawed-off shot gun, assault weapon, convicts and firearms, and gun bans. After data collection, a total of 269 cases fit these selected criteria.

The dependent variable was the actual gun control or gun rights rulings, while the independent variables included state supreme court judge selection method, the presence of a state intermediate appellate court, state political ideology scores, state population density, state gun ownership percentage, and state homicide rate. Logistic regression commands for the variables mentioned above were used within Stata, the statistical analysis program. In this chapter, I theorize that elected state supreme court judicial selection methods, the presence of a state intermediate appellate court, a conservative state political ideology, low state population density, high gun ownership percentages, and low homicide rates increase the probability of a Second Amendment decision that will favor gun rights, while non-elected state supreme court judicial selection methods, the absences of a state intermediate appellate court, a liberal state political ideology, high state population density, low gun ownership percentages, and high

homicide rates increase the probability of a Second Amendment decision that will favor gun control. The literature review, research design, results of this statistical analysis, discussion, and conclusions are presented in chapter three.

The fourth chapter of the dissertation considers federal appellate decisions in which a legal party either made a Second Amendment claim or cases where the central issue involved centered upon Second Amendment issues that were litigated between 1 January 1960 and 31 December 2009 through usage of logistic regression analysis. As with the previous chapter, case-level data was collected from the legal search engine within the LexisNexis Academic database. Search terms for data collection included the following phrases: Second Amendment, concealed weapons, concealed weapons permits, automatic weapons, semi-automatic weapons, gun violence, gun show loophole, background checks, right to bear arms, sawed-off shot gun, assault weapon, convicts and firearms, and gun bans. After data collection, a total of 219 cases fit these selected criteria.

The dependent variable was the gun control or gun rights rulings, while the main independent variable was the majority appellate panel presidential nomination, which means that if a panel had two Democratic-appointed judges and one Republican-appointed judge then that case was coded as a Democratic appellate panel decision. Additional independent variables include appellate panel political ideology, population density, gun ownership percentage, and homicide rate. Logistic regression commands for the variables mentioned above were used within Stata, the statistical analysis program.

In this chapter, it is theorized that circuit courts that have panel decisions with a Republican majority, a conservative political ideology, low population density, high gun ownership percentages, and low homicide rates increase the probability of a Second Amendment

decision will favor gun rights, while circuit courts that have panel decisions with a Democratic majority, a liberal political ideology, high population density, low gun ownership percentages, and high homicide rates increase the probability of a Second Amendment decision that will favor gun control. The literature review, research design, results of this statistical analysis, discussion, and conclusions are presented in chapter four. The fifth chapter of the dissertation presents a summary of the findings in my dissertation, the research implications, and conclusions.

Endnotes

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[26]*Adams v. Williams*, 407 U.S. 143 (1972).

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CHAPTER TWO

SECOND AMENDMENT CAUSE LAWYERS

> As long as there are guns, the individual that wants a gun to commit a crime is going to have one and is going to get it.
>
> --President Ronald Reagan, 1984

> If I could have banned them all—"Mr. and Mrs. America turn in your guns"—I would have!
>
> --U.S. Senator Diane Feinstein (D-CA), 1995

Emboldened by the 2008 U.S. Supreme Court ruling, *District of Columbia v. Heller*, which affirmed an individual Second Amendment right to own and operate firearms inside a federal district and found several portions of the D.C. Firearms Control Regulation Act of 1975 unconstitutional, the Second Amendment Foundation filed another suit in federal court. Known as *McDonald v. Chicago*, the Second Amendment Foundation suit challenged a controversial municipal handgun ban within the City of Chicago, IL.[1] In preparation for the *McDonald* case, the Second Amendment Foundation obtained the legal services of Alan Gura of the law firm of Gura & Possessky, P.L.L.C. A rising star within the civil rights legal arena, Gura had also successfully represented Dick Heller in *D.C. v. Heller*.[2]

Leading up the U.S. Supreme Court decision, Gura handled the *McDonald* case in the circuit court, wrote the pleadings, devised hundreds of legal arguments, developed a litigation strategy, and filed the petition for certiorari before the U.S. Supreme Court.[3] Working with the Second Amendment Foundation, the Illinois State Rifle Association, and Chicago attorney

David Sigale on the case, Gura's arguments explicitly challenged only parts of the Chicago firearms ban. In particular, Gura confronted the Chicago prohibition on handgun registration, the requirement that guns be registered prior to their acquisition by Chicago residents, the mandate that guns be re-registered annually, and the permanent inability to register a firearm that had its registration lapse.[4]

In *McDonald v. Chicago,* Gura's knowledge of the case subject matter and the conservative bent of the U.S. Supreme Court paid off. Justice Samuel Alito, writing for the majority, sided with Gura and the Second Amendment Foundation, concluding "that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*."[5] Not only did the Supreme Court agree with Gura regarding the unconstitutionality of the Chicago handguns ban, but the majority ruling incorporated, or applied the Second Amendment to state law. With the skilled assistance of the Second Amendment Foundation in *McDonald* and the National Rifle Association in *Heller*, Alan Gura has become one of the preeminent gun rights and libertarian-affiliated lawyers in the United States. The work of local, state, and federal gun rights and gun control cause lawyers, such as Gura, is the focus of this study.

This study concentrates on state and federal Second Amendment cause lawyers through the lens of legal participation in firearms-related cases, the litigation strategies of Second Amendment interests and lawyers, how Second Amendment cause lawyers shop for court venues, the coordination and networking efforts of related interests, and legal team organization. This study utilizes telephone interviews with gun rights and gun control Second Amendment cause lawyers litigating state and federal firearms cases. This study theorizes that there will be distinct differences between gun rights and gun control cause lawyers, between

heavily funded and lesser funded interest groups, and between local, state, and national Second Amendment cause lawyers, with regard to legal participation, litigation strategies, venue-shopping, coordination, networking, and organization. The following section reviews important literature regarding cause lawyering.

Styles of American Cause Lawyering

The average American private practice lawyer is often seen as a "hired gun." These individuals are thought to possess shifting values based on the cases they are preparing for and arguing in a legal setting. However, some practicing attorneys do enjoy an established set of values that transfer into their working legal relationships. These attorneys, known as cause lawyers, are committed legal professionals who pledge their time and legal skills in an attempt to further the establishment of a better society. Essentially cause lawyers, motivated by their own personal beliefs, attempt to elevate the legal profession beyond a simple tool through which lawyers peddle their services for a fee without regard for the potential ends a case might create. By attempting to connect personal morals with the legal profession, cause lawyers attempt to improve humanity by challenging what they perceive to be wrong with society.[6]

Individual Client Lawyering

Four styles of cause lawyering have been proposed in order to better understand their efforts. The first style of lawyering is known as individual client lawyering. The foundation of the legal profession is the fundamental responsibility of an attorney to focus on the legal needs of their clients. The simple goal of this form of cause lawyering is to provide clients access to legal services who might not have representation otherwise. Most of the time, these clients simply cannot afford legal representation because of their financial situation, and thus have little to no access to the American justice system.[7]

Individual client lawyers have been a mainstay within several different societal litigation movement efforts over the last fifty years. For instance, Susan Olson found that the litigation strategy surrounding the individual client lawyers that served the disabled have been more decentralized at the state and local levels and featured greater client participation than was apparent in the 1950s and 1960s.[8] Neal Milner found that the lawyers who worked on the legal protection of mentally disabled clients coped with what Stuart Schiengold labeled a "myth of rights," which referred to having faith in the protective and transformational character of legal rights. However, lawyers of the mentally disabled have also established a liberation ideology that accepted Schiengold's "politics of rights," which refers to rights as an instrument or resource that can alter one's life and the behavior of others.[9] According to Robert Mnookin and Robert Burt, children dealing with foster care, pregnancy, abortion, school discipline problems, the welfare system, and mental retardation have seen mixed rates of success when their cases were brought before the state and federal judiciary. Essentially, success came down to resources. Individual client lawyers that had resources were more successful.[10]

Individual cause lawyers also played important roles in the anti-poverty movement. According to Joel Handler, Ellen Hollingsworth, and Howard Erlanger, anti-poverty lawyers piggybacked on top of President Lyndon Johnson's Great Society anti-poverty initiatives. By litigating cases at the same time as many of the Great Society programs, anti-poverty lawyers were much more successful.[11] Beth Harris argued that lawyers played a secondary role in the anti-poverty movement by providing the resources and strategies for litigation, and lobbying elected officials on behalf of clients and regarding poverty issues.[12] Providing a different perspective about cause lawyers fighting for the rights of the poor and disadvantaged, John

Kilwein argued that, contrary to the findings of other scholars, individual client lawyers in Pittsburgh, Pennsylvania did play an integral role in the lives of the needy. Specifically, Kilwein argued that poverty lawyers tailored different litigation strategies to the types of issues faced by clients and groups.[13]

Cause lawyers have also been productive in fighting for the rights of workers, the condemned, the convicted, and animals. Michael McCann powerfully illustrated that even when lawyers were unsuccessful in wage discrimination and pay equity battles on behalf of female workers, the battles helped to raise public consciousness about the rampant gender-based discrimination in the workplace.[14] In a different work, Austin Sarat considered the impact of lawyers on the rights of condemned individuals. Arguing that capital punishment lawyers created a political claim of "democratic optimism," Sarat disagreed with the notion that the death penalty was rooted in reality, but founded on ignorance and misunderstanding, of which individual lawyers attempted to expose.[15]

Alternately, Susan Sturm explored the legacy and future of litigation surrounding corrections and convicted individuals. Sturm investigated four main assumptions: that corrections litigation has contributed to a greater understanding of institutions; leadership and staff have contributed to American bureaucracy, and is associated with institutional order through the help of lawyers. Sturm created these assumptions through careful review of important corrections cases from the 1970s and 1980s.[16] In a final piece, Helena Silverstein examined the animal rights movement from the perspective of litigation practices. The most important aspect of the work focused on the way litigation and associated strategies influenced the activities and opportunities of the movement for success. She concluded that greater

societal reform regarding the rights of animals has been established through the work of individual animal rights lawyers.[17]

Impact Cause Lawyering

The second style of lawyering is known as impact cause lawyering. This style of lawyering is often punctuated by the litigation of class action lawsuits or deliberately chosen cases. In particular, impact cause lawyers have sought to solve unjust conditions within society through their litigation efforts. In many of these rulings, a favorable decision will solve current societal problems, as well as future collective problems. According to John Kilwein, effective impact litigation efforts should bring legal change to some practice, institution, or group of individuals who have been negatively affected by certain elements of society.[18]

The effects of impact cause lawyering have long been seen within the African-American Civil Rights Movement. In fact, some of the first impact cause lawyers served groups affiliated with the civil rights movement. In particular, scholars have focused on the attempts by the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund during the 1940s and 1950s to overturn institutional segregation in public education across the country. Richard Kluger outlined how cause lawyers, such as the future U.S. Supreme Court Justice Thurgood Marshall, helped the NAACP Legal Defense Fund litigate a number of educational segregation cases culminating in the *Brown v. Board of Education* (1954) decision that prohibited racial segregation in educational facilities. Calling the *Brown* decision one of the five most important U.S. Supreme Court rulings of all time, Kluger established the fact that Thurgood Marshall became the principal hero of the fight for civil rights for all people. Instead of directly confronting the *Plessy v. Ferguson* (1896)

decision that upheld the constitutionality of racial segregation, Marshall decided that smaller court victories within the sphere of the "separate but equal" legal edict would be a better tactic. This litigation strategy created by Marshall resulted in a string of smaller victories that eventually encouraged the NAACP legal team to challenge *Plessy* head on and succeed.[19]

Mark Tushnet emphasized the internal workings of the NAACP's Legal Defense Fund's organization and their cause lawyers. Tushnet's basic argument suggested that the dedication, along with the significant political connections and legal skills of the NAACP legal team and other staff members of the Legal Defense Fund, were responsible for the ultimate success of this important interest group litigation effort. Individuals including Walter White, Charles Hamilton Houston, and Thurgood Marshall, possessed the ability and perseverance to topple one of the foremost social and institutional arrangements in America, educational segregation.[20]

Jack Greenberg provided additional insight into the inner workings of the NAACP Legal Defense Fund, as the author worked as Marshall's legal assistant and eventually led the fund after Marshall's departure. While the author focused on the abilities of the lawyers he worked with, Greenberg also made sure to note that organizational conflict did undermine the group on several occasions when case representation and support were hotly debated. However, Greenberg argued that these instances of conflict only brought their colleagues closer together to fight against institutional segregation.[21]

Like Greenberg, Michael Meltsner was a cause lawyer from inside the NAACP Legal Defense fund as an assistant under Thurgood Marshall and Jack Greenberg. During his time with the Legal Defense Fund, Meltsner witnessed and participated in important litigation supporting the African-American Civil Rights movement across the United States, and the

South, in particular. While Meltsner participated in the potent efforts associated with the *Brown* litigation, Meltsner also took part in other cases that tugged at his soul. In particular, these litigation efforts surrounded cases, such as *Griffin v. County School Board of Prince Edward County* (1964) and *Swann v. Charlotte-Mecklenburg Board of Education* (1971), which attempted to dismantle the re-segregation efforts across the country in the years following the first *Brown* decision.[22]

Stephen Wasby explored the litigation strategies of the American Civil Rights Movement between the late 1960s and the 1980s. Wasby argued that earlier litigation strategy studies overemphasized the planned nature of the NAACP's and other strategic litigation campaigns, and presented a different picture of what occurred during their litigation efforts. The picture of the NAACP civil rights litigation strategy created by Wasby focused attention on the problems faced by the lawyers litigating cases and noted how numerous aspects of the strategy were not planned, simple, or linear, in nature, as other scholars have argued.[23] In a final piece, David Kairys became one of the preeminent civil rights cause lawyers living in the North between 1960 and 1970. Kairys' work focused on several successful race discrimination cases from Philadelphia he brought against the Federal Bureau of Investigation (FBI), and positively impacted the lives of local African-Americans.[24]

Impact cause lawyering has also been a part of the American Women's Rights Movement. In particular, the lawyers of the movement focused on lobbying efforts at the executive and congressional levels for measures that helped gain more rights for women. For instance, the Equal Employment Opportunity Act of 1972 was a successful federal attempt to outlaw racial and gender discrimination by employers and unions.[25] In another effort, Title IX was passed, after intense congressional and executive lobbying efforts by lawyers, to end

gender-based discrimination in education.[26] The culmination and, ultimately, the failure of the Women's Rights Movement resulted in congressional passage of the Equal Rights Amendment (ERA), an amendment that would have added gender-based discrimination protection to the U.S. Constitution. However, the ERA failed to gain ratification by the states before the deadline passed.[27] However, Alice Echols argues that, even though lawyers lobbied Congress on behalf of the equal employment act and the ERA, cause lawyers played secondary roles in the movement. Lawyers who supported women's rights joined local feminist organizations represented women in legal cases that challenged the status quo.[28]

Impact cause lawyers have also been successful within welfare reform litigation efforts. Martha Davis argued that cause lawyers played a significant role in the welfare rights movement. In the movement, lawyers developed and implemented an ambitious litigation strategy that fought for and won a "right to live" that required the federal government to guarantee a minimum standard of living for all individuals.[29] Barbara Sard made the case that the state and federal courts, and in turn lawyers, played an important role in welfare reform. By helping to establish a minimum wage, welfare rights lawyers were integral to the success of this movement.[30]

Mobilization Cause Lawyering

The third style of lawyering is known as mobilization cause lawyering. Mobilization lawyers attempt to give their clients a greater understanding of their class and group. Attorneys attempt to communicate with their client that they are part of a historically oppressed group within society. In order to achieve both of these goals, lawyers must create a new dialogue with clients and establish a better understanding of what the legal profession can achieve. Along with performing their normal legal functions for clients, mobilization lawyers

engage clients in dialogue to create a state of collective affirmation. Mobilization lawyers develop discussions between a number of clients in order for them to be made aware that they are part of a larger group of individuals who suffer comparable difficulties in society. Essentially, mobilization cause lawyers create dialogue between social group clients and the community that aides the growth of group mobilization.[31]

One social group that has been able to establish a greater understanding of themselves through litigation was the gay, lesbian, and transgender movement. According to Patricia Cain, cause lawyers played a prominent role in the lesbian, gay, bisexual, and transgender movement. These cause lawyers often successfully took on state sodomy laws, which were one of the chief ways states targeted homosexual lifestyles and defined them as being deviant. For instance, Abby Rubenfeld, legal director of Lambda Legal, a civil rights organization focusing on homosexual communities, said that "sodomy laws are the bedrock of legal discrimination against gay men and lesbians".[32]

Patricia Cain explored the role of lawyers inside the gay and lesbian civil rights movement in a separate volume. In particular, Cain provided a detailed examination of the legal strategies used by gay rights cause lawyers in court. The litigation strategy employed by many gay rights cause lawyers tried to emulate the success of the African-American Civil Rights Movement by focusing on smaller local and state cases and achieving victories in these cases. Unfortunately, the rate of success of gay rights cause lawyers was much less than that of the NAACP because of the social stigma of the gay community. Cain argued that through many of these early litigation efforts the lawyers helped to mobilize the gay community in to being a cohesive unit when in court.[33]

Client Voice Lawyering

The fourth style of lawyering is known as client voice lawyering. According to John Kilwein, client voice lawyering involves more than a simple translation of a client's story into a legal case. Client voice lawyering involves clients gaining the ability to express their own personal story outside the scope of a courtroom. Client voice lawyering scholars have argued that this style retains some usefulness, but the lawyering process could be improved if the voice of the clients could be heard. This dialogue between clients, lawyers, and the public allows clients to learn about themselves and their social group, about the litigation process, and about mobilizing activities.[34]

Scholarship regarding cause lawyering styles, civil rights, and social movement litigation practices raises the question. How have cause lawyers dealt with issues related to civil liberties? These four lawyering styles help us to explain how lawyers have helped civil rights groups and other movement, but little work has been produced regarding civil liberties cause lawyering. In particular, one of the most polarizing political issues in America today are those often associated with firearms. Not only have firearms issues been legislated in Congress, but firearms policies have also been handed down from the White House. Most importantly, Second Amendment issues have been brought to court by cause lawyers following different styles of lawyering with varying levels of success.

Why explore litigation to address issues related to firearms? Often times American social and political movements, such as the African-American civil rights or the gun rights movement, begin with noble expressions of outrage and employ what Stuart Scheingold labeled a "myth of rights," which refers to having faith in the transformational character of legal rights, and the "politics of rights," which refers to rights as an instrument or resource that

can alter one's life and the behavior of others. In particular, Schiengold argued that the enduring faith most Americans place in constitutional government is the foundational point for making sense of the contours of the American political community. Thus, Scheingold argued that American law is a principal and responsive element of American national identity and American politics itself.[35]

Scheingold argued that the symbolic life of law surfaces as a "myth of rights." Scheingold's "myth of rights" refers to the common assumption that litigation can evoke a declaration of rights from courts, that it can be used to assure the realization of these rights, and that realization is equivalent to meaningful legal, political, and social change. In this way, the myth of rights expressed a faith in the promises of constitutional government. Arguing that most Americans are responsive to the law, Scheingold thus suggested that the "myth of rights" augments American life in distinctive and creative ways.[36]

Scheingold argued that the "myth of rights" facilitates a "politics of rights" in three important ways. First, a claim of rights may activate political consciousness, and a belief in rights can help groups visualize and focus grievances and perceptions of unfairness that might otherwise remain unclear. Second, a claim of rights could be useful for political organizations that would like to increase their publicity. Third and finally, the cumulative impact of consciousness and simplicity can encourage a realignment of resources and values at the public policy level.[37] This study explores Scheingold's "politics of rights" through the participatory practices, litigation strategies, venue-shopping, coordination/networking, and organization of local, state, and national gun rights and gun control cause lawyers.

Design of the Research

This study examines the participation, litigation strategies, venue-shopping, coordination and networking, and organization of local, state, and national Second Amendment cause lawyers. These five main issue areas strike at the heart of cause lawyering and policy litigation. The five main issues became the focal point of the questions asked during interviews with Second Amendment gun control and gun rights cause lawyers in this study. The following few sections outline these five important interview areas, along with providing a rationale for the creation of hypotheses and specific questions to be used in interviews with Second Amendment cause lawyers.

Interest Group Case Participation

Interest group participation in the policy process and in case litigation in the courts has long been a part of the strategy employed by interests that want to get ahead on certain policy goals. For instance, Paul Collins and Lisa Solowiej analyzed pluralistic, competitive, and conflictual interest group amicus curiae participation is in the U.S. Supreme Court. They found that the federal appellate courts were open to an array of interests and that particular types of groups did not dominate amicus activity. Nonetheless, when interests engaged in this express form of participation, they played a clear role in shaping the flow of information.[38] Karen O'Connor and Lee Epstein updated a previous interest group amici participation study and found that amicus briefs are filed in more than half of all non-commercial cases, and in two-thirds of the cases when criminal cases are excluded. The authors also concluded that even from their brief analysis, amicus curiae participation by interests has become the norm for legal participation by groups.[39]

Interest group participation in case litigation can take many forms. Susan Olson argued that the use of case litigation is more generally a function of an interest group's political and legal resources and participation. Thus, patterns of interest-group litigation might parallel patterns of group participation in other arenas. A survey of interest-group litigation in private civil cases in the Minnesota federal district courts found that cases involving regulatory policy attracted the highest frequency of group participation efforts, but a greater number of cases involving redistributive policy attracted more group activity overall. District court litigation also included more citizen groups relative to occupational groups than a survey of interest groups at the national level found.[40]

Richard Kluger argued the strategic participation of the NAACP Legal Defense Fund in certain litigation efforts was paramount in their success. Instead of confronting the *Plessy v. Ferguson* (1896) head on, Marshall and the NAACP Legal Defense Fund decided that smaller court victories within the sphere of the "separate but equal" legal statute would be a more successful tactic. This litigation strategy created by Marshall resulted in a number of smaller victories that eventually encouraged the NAACP legal team to challenge *Plessy* head on and succeed. The strategic participation in local and state cases allowed the NAACP to ultimately succeed in their efforts to achieve equality.[41]

Kristin Goss argued that the National Rifle Association (NRA), the preeminent American Second Amendment interest group, has engaged in both preemptive and reactive legal action on behalf of gun rights clients. The NRA employed preemptive legal action against the Chicago, IL, suburb of Morton Grove when it decided, by action of the town council, to ban the ownership and possession of firearms inside the municipal limits of the town. The NRA engaged in reactive legal action most of the time. In particular, the NRA flexed its legal muscle when the

group successfully sued Handgun Control, Inc. over postal discounts the group enjoyed in the early 1980s, and when the NRA unsuccessfully sued the Washington, D.C., city council over a local gun ownership and possession ban.[42]

Osha Davidson argued that while the NRA focused their attention on litigating certain cases and issues, the majority of their participation rested in lobbying the U.S. Congress. For instance, when the NRA was attempting to have the 1986 Gun Control Act repealed, the NRA concentrated on lobbying members of Congress rather than bringing lawsuits.[43] Scott Melzer argued that the NRA was an active participant in policy litigation from the 1980s to the present. In particular, Melzer argued that once foreign and domestic gun manufacturers started to produce guns that bypassed certain provisions of the Brady Bill, the NRA began an assault on the statute, as well as the manufacturers. In the end, the effort amounted to little as the NRA failed to have the bill ruled unconstitutional in the courts.[44]

I suggest a similar dynamic is at work regarding interest group participation in the courts, as there is a potential dichotomy between gun rights and gun control interests and their use of the judiciary. I hypothesize that there will be clear differences between gun rights and gun control interest groups, between heavily funded and lesser funded Second Amendment interest groups, and between local, state, and national Second Amendment interest groups with regard to way the interest groups decide to participate in cases. This work and hypotheses propelled me to pose questions on the topic of legal participation during telephone interviews with Second Amendment interest group cause lawyers. Interview questions for case participation focused attention on participation in Second Amendment case litigation, how cases get to certain interest groups, how and why interest groups decide to become involved with cases, and the factors that determine interest group participation in certain cases.

Interest Group Litigation Strategies

The litigation strategies used by various legal teams in the African-American civil rights movement, lesbian and gay civil rights movement, and other ideologically-based movements have been a central issue of study within the literature of interest group and judicial-based literature. Stephen Wasby suggested that the common picture surrounding civil rights interest group litigation was one of success with ease after a planned and crafted litigation campaign was inaccurate. Instead, Wasby argued that the majority of civil rights litigation that occurred after the *Brown* decision should be characterized as unplanned litigation activities that occurred throughout the "humps and bumps" of the civil rights movement.[45] Mark Tushnet's classic study of the civil rights movement provided a history of this strategic litigation campaign in the years before the *Brown* decision. Tushnet elucidated the NAACP's litigation strategy during this period as one that focused on cases that the lawyers thought that they could win, along with great success and relative ease after a planned and carefully crafted litigation campaign both before and after the *Brown* decision.[46]

Since the mid-1970s, litigation within the civil rights arena was most notably carried out by Morris Dees and Joseph Levin of the Southern Poverty Law Center (SPLC) through lawsuits against racist organizations and by taking on controversial discrimination cases. In particular, Dees became the primary creator of an advanced discrimination litigation strategy. Using civil lawsuits to gain court judgments for monetary damages against discriminatory organizations for illegal practices, Dees then used the court system to gain access to organizational assets, such as money or property, to have the judgment paid out. SCLC lawyers used this innovative litigation strategy to hold the Ku Klux Klan (KKK) responsible for the acts of its followers. By the early 1980s, Dees and the SPLC successfully sued the

KKK for the family of Michael McDonald, the black victim of a lynching in rural Alabama carried out by KKK members. In the judgment, the McDonald family was awarded seven million dollars.[47] Eventually, the United Klans of America were forced into bankruptcy because of the judgment, and it caused their national headquarters to be sold in order to fulfill the judgment.[48]

Patricia Cain explored the role of lawyers and their strategies inside the gay and lesbian civil rights movement. For instance, lesbian and gay civil rights attorneys have relied on similar legal arguments and strategies that were developed by earlier civil rights lawyers fighting for racial and gender equality. These lesbian and gay civil rights lawyers challenged discrimination against homosexuals through use of planned and carefully crafted litigation campaigns that focused on constitutional equal protection theories that were rooted in the Fourteenth Amendment.[49] Much like Cain, Rebecca Salokar provided an in depth examination of the litigation strategy utilized by the gay and lesbian civil rights movement. Calling the litigation strategy used by the gay rights movement "systematic" in nature, Salokar noted that the litigation strategy was not national in scope; however, it was focused on cases that the various litigators could win in friendly judicial arenas.[50]

In one of the first articles focusing on conservative cause lawyers, Karen O'Connor and Lee Epstein argued that, in fact, conservative interest groups do use the courts to litigate in a strategic fashion. In particular, O'Connor and Epstein found that the strategic litigation employed by conservative groups mostly consisted of the use of amicus curiae briefs since the 1970s.[51] In a later work, Lee Epstein compared three types of conservative interest groups, including economic, social, and public interest groups, to determine how each conducts litigation

activities. In her comparison, Epstein found that conservative social and public interest groups were more likely to utilize amicus curiae briefs than economic interest groups.[52]

Steven Teles explored the nature of The Federalist Society, a preeminent American legal reform organization for conservatives and libertarians. Teles argued that the rapid growth of The Federalist Society forced the organization to adopt unorthodox legal strategies to advance their conservative agenda. Instead of working for direct legal change through the court system, members of The Federalist Society choose to act as an intellectual organization focused on networking between entrepreneurs who would bring legal action in the courts.[53] Kim Scheppele and Jack Walker developed a model of interest group litigation that included organizational resources, conflict structure, sensitivity and structure of the political issue, strategies that gain influence, and universe of the political issue. The authors discussed the two main litigation strategies utilized by interest groups: lawsuits and amicus curiae brief filings.[54]

Lee Epstein and Joseph Kobylka also established the fact that the success and failure of litigation strategies by interest groups, and litigators in general, can greatly affect how those interests move forward inside and outside the courtroom. As the authors noted, litigation strategies and tactics evolve over time, not just within the litigation of a case, but with a series of cases over time that might be litigated by a diverse set of individuals and groups.[55]

Literature, such as the work reviewed above, drives this study to question whether gun rights and gun control interest groups utilize different strategies during litigation. This study hypothesizes that there will be distinct differences between gun rights and gun control interest groups, between heavily funded and lesser funded Second Amendment interest groups, and between local, state, and national Second Amendment interest groups with regard to the strategies used during litigation. This work and hypotheses propelled me to ask certain

questions on these topics during telephone interviews with Second Amendment interest group cause lawyers. Interview questions for litigation strategies placed on emphasis the types of litigation strategies used by Second Amendment interest groups, the productivity of litigation strategies, and the level of influence opposing counsel has on litigation strategies.

Interest Group Judicial Venue-Shopping

The issue of venue-shopping in the policy process and in other political spectrums is a relatively modern topic that has ramifications on both the success and failure of interest groups regarding the policy issues that they support. Douglas Besharov examined the idea of forum shopping with regard to tort reform. Focusing on individuals injured abroad, returned home, and resorted to the American court system for remedy, Besharov found that these individuals shopped between forums because of antiquated jurisdictional rules.[56]

The Harvard Law Review defined forum shopping as "a litigant's attempt to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict".[57] The American legal system has tended to treat forum shopping as unethical or inefficient. Often times, interest groups that shop for forums are accused of abusing the adversary system and squandering precious judicial resources. However, this law review note from Harvard University argued that these traditional notions about forum shopping might be incorrect as the process is much more complex than these characterizations suggest.[58]

Andreas Lowenfeld explored the idea of forum shopping in concert with international litigation, arguing that less than two decades ago forum shopping in international litigation efforts was a little used tactic. By the 1990s, forum shopping in litigation regarding international issues had become a fine art. While forum shopping used to be a dirty tactic, it

has become a litigation method used in almost 70 percent of international cases.[59] Paul Rubin, Christopher Curran, and John Curran examined how litigants in rent discrimination cases shopped between different judicial venues. In particular, the authors argued that litigation forum shopping, as opposed to lobbying a legislature, was a better method of helping individuals injured during rent discrimination cases. Shopping between judicial venues helped rent litigators find forums where their cases would be heard by a preferential court.[60]

In a litigation-based venue-shopping effort, Andrew Bell argued that the rules by which a judicial venue is selected and settled upon for the resolution of any given transnational dispute have created a complex body of laws of great commercial significance. Venue-shopping allows for both plaintiffs and defendants to try to win their case in a selected forum. Accordingly, Bell examined the fascinating competition to win the battle for venues in transnational litigation, finding that venue-shopping within the judiciary and for interests is a vital pre-trial process.[61]

Thomas Holyoke argued that most research on the lobbying strategies of organized interests is venue specific. Yet organized interests frequently lobby in many different kinds of institutional venues, including the judiciary, often on a single issue, such as the Second Amendment. In testing a model regarding venue decision-making, Holyoke found significant variation in the levels of lobbying performed by different organizations on issues in different legal venues, while expectations of opposition from other interests are a significant factor in the decision to lobby or take a case to a particular venue.[62]

Marc Busch examined the alternative dispute resolution legal process used in the World Trade Organization (WTO) for preferential trade agreements between foreign nations, a process that allowed for a rise in forum shopping because the WTO allows complaints to be

filed with local, regional, or multilateral legal venues. Busch found that countries engaged in these legal complaints discriminated along overlapping international membership lines.[63]

The scholarship regarding venue-shopping in general, and judicial venue-shopping specifically, concentrated attention on the notion that interest groups do shop between judicial venues when engaging in litigation. Consistent with the literature, this study hypothesizes that there will be distinct differences between gun rights and gun control interest groups, between heavily funded and lesser funded Second Amendment interest groups, and between local, state, and national Second Amendment interest groups with regard to judicial venue-shopping. Interview questions for interest group venue-shopping focused on whether or not certain interest groups shop for venues, if certain levels of the judiciary are favored, and whether or not litigation strategy changes based on the venue selected for litigation.

Interest Group Coordination and Networking

Interest group coordination and networking is a part of the strategy employed by interest groups in pursuit of policy goals. An example of interest group coordination and networking on behalf of litigation efforts comes from the gay and lesbian civil rights movement. According to Patricia Cain, the gay and lesbian legal community developed solid communication networking systems to keep each lawyer and interested group apprised of important developments in cases involving lesbian or gay rights around the country and in developed democracies across the world. This legal communication network that was developed after the Stonewall riots helped to create a legal services program for the homosexual community named Lambda. The Lambda network helped to create a gay and lesbian legal strategy that was regional in scope because of the great geographical disparity in the rights given to gays and lesbians between states.[64]

Interest group coordination and networking has also been important within the conservative legal movement. Focusing on the Pacific Legal Foundation, the preeminent conservative/libertarian public interest legal group in the United States, Oliver Houck provided the background for the creation and early work of the legal group. In particular, Houck argued that the Pacific Legal Foundation was integral in the creation of a much larger network of connected conservative interest groups with their eye on the state and federal court system as a means to forward a right-leaning agenda.[65]

Ann Southworth argued that conservative interest groups and lawyers coordinated with other interest groups and lawyers, business leaders, clergy, and other conservative activists in support of conservative political issues, such as opposition to new regulatory policy, abortion regulations, separation of church and state boundaries, liberalized criminal laws, pro-busing laws, and opposition to the Equal Rights Amendment. This coordinated network of conservative interest groups and lawyers gained critical support and resources for their legal efforts from foundations, such as the Heritage Foundation, the Cato Institute, and the Federalist Society, committed to supporting these causes and from an emerging policy research network capable of translating conservative and libertarian ideas into legislative and litigation campaigns.[66]

John Heinz, Anthony Paik, and Ann Southworth found that conservative interest groups used extensive interest group networks to gain legal success. In particular, conservative interest groups, including those from diverse areas of religious conservatives, libertarians, nationalists, and business interests, to litigate cases in state and federal courtrooms.[67] In a later work focusing on the networks and organizations of conservative cause lawyers, Anthony Paik, Ann Southworth, and John Heinz argued that right-leaning and

libertarian interest group cause lawyers organize with interests that they agree with politically. The network of relationships established between lawyers and interest groups has helped to establish and maintain local, state, and national conservative coalitions between groups.[68]

David King and Jack Walker argued that interest groups have attempted to carve out their own policy niche through decentralized coordination with other interest groups. According to a survey completed by the authors, nearly 90 percent of interest groups claimed to coordinate all of their organized activities with other interests. This high level of organization was fostered by the extent to which existing groups have joined together to help pay the initial expenses of newly formed organizations. Coordination and communication between and among groups were also enhanced to the extent that staffers move between groups, as about three-quarters of groups employ permanent staff members who also held staff positions in other groups.[69]

Ken Kollman explored when and why interest group leaders in Washington sought to mobilize the public in order to influence policy decisions in Congress. Of particular importance to this study was Kollman's assertion that there is a distinct relationship between interest group lobbyists and legislators on policy issues on which they agree. Coordination on policy goals between interest groups and politicians extended into the judiciary, as well.[70]

This body of literature has focused attention on the potential for coordination and networking between different types of interest groups to occur in a dissimilar fashion. This study hypothesizes that there will be distinct differences between gun rights and gun control interest groups, between heavily funded and lesser funded Second Amendment interest groups, and between local, state, and national Second Amendment interest groups with regard to coordination and networking. Interview questions regarding this issue emphasized interest

group coordination and networking in the legal spectrum, coordination in general, coordination between both state and national organizations, along with interest group networking interdependencies and its effect on interest group litigation.

Interest Group Legal Team Organization

The organization of legal teams of local, state, and national interests has been a defining variable in the success of interest groups in the attainment of their public policy goals since interest group litigation started. An example of the importance of interest group legal team organization comes from litigation efforts on behalf of the underprivileged. Robert Moonkin and Robert Burt explored five case studies involving the underprivileged and the role and effectiveness of test case litigation brought by public-interest attorneys and resultant judicial policymaking in promoting the welfare and rights of children. In each instance, the organization of the litigation team for each interest group was crucial in the success or failure of each case study and interest group. Interest groups that had access to significant resources were much more successful that than those that did not have the same access.[71]

In a seminal work on interest groups in American politics, E.E. Schattschneider argued that the scope of political conflict is an aspect of the scale of political organization and the extent of political competition. Of particular importance are pressure groups. Pressure groups are small-scale organizations while political parties are large-scale organizations. Hence, the outcome of the political process depends on the scale on which it is played. Since pressure groups are not universal, when conflicts are played out in narrow scope, most of the people are not represented. Business-related groups dominate the pressure system, leading to an upper-class bias. This bias was strengthened by the tendency for participation in voluntary organizations to be related to upper social and economic status. Thus, heavily-moneyed

interest groups have dominated the policy process.[72] Agreeing with Schattschneider, Kevin Leyden examined the types of organized interests that get included in the policy-making process. The analysis demonstrates that if a group expected to testify on specific policy issues, it must have had a substantial degree of organizational resources.[73]

Monetary resources and staff-based work has also dominated the cause lawyering organizational literature. Lynn Jones argued that one of the most important parts of a legal organization is its monetary resources. Unfortunately, lawyers within many social movements have often been thought to have a negative impact on these movements for several reasons. First, litigation is costly because of the time, energy, and money needed for it to be completed. Second, spending monetary resources on litigation is inefficient because institutional issues hinder the ability of the courts to promote reform. Third, the tendency of lawyers to prevent alternative social movement strategies exhausts resources.[74]

Lynn Jones contended that cause lawyers bring several things to social movements. Most importantly, cause lawyers provide a certain set of resources to social movements. These resources include legal skills, prestige within the legal arena, organizational leadership, and monetary resources.[75] This issue of monetary resources has also illustrated the differences between the funding levels of organizations. Sandra Levitsky found that legal advocacy organizations within the gay community in Chicago, IL, had both the monetary resources and drive to dominate the gay movement because of their significant size, sophistication, and visibility within the media. Smaller grassroots gay organizations simply did not have the same legal access as larger legal advocacy groups. In fact, these smaller groups had less money and human resources to make the same difference as larger groups.[76]

Tim Howard examined how a small group of Florida cause lawyers brought down the big tobacco companies during the controversial Florida tobacco liability litigation efforts between 1993 and 1997. Prior to this significant victory, big tobacco was thought to be unbeatable. However, the author and five legal associates started with only a small organization, and eventually helped craft Florida's Medicaid Third Party Liability Law, which created the foundation for the largest settlement in a civil case in U.S. history. During the height of the litigation process, Howard and his law growing law firm amassed representation of more than 10,000 clients who sued large tobacco companies over the four year litigation period.[77]

The important issue of organizational staffing has often been broached in the literature. Stephen Meili found that lawyers on staff in Argentine public interest groups were scarce. In fact, fewer than twenty full-time cause lawyers worked for interest groups in the entire country.[78] Susan Coutin argued that the legal staff of immigration interests played an important role in the daily operation of CARECEN and El Rescate, two Central American immigration interest groups, provided potential clients with initial legal consultations, gave legal advice, provided legal brief services, and collected information that helped to decide if the group would represent the client in legal proceedings.[79]

Lucie White argued that FIDA-Ghana (Federacion Internacional de Abogadas), the first free legal aide services program in Ghana exclusively for women and children who otherwise could not afford it, created a nationwide network of legal services offices. These offices were staffed by full-time lawyers, and provided direct legal assistance in civil cases.[80] Kevin den Dulk examined the culture of cause lawyers within the evangelical movement, arguing that conservative and evangelical organizations took major steps forward in the 1990s

by increasing the number of staff members and sponsoring major high profile cases, such as Paula Jones' civil lawsuit against Bill Clinton. Without the unwavering support of skilled staff members evangelical groups would have been unable to support the cases they sponsored.[81]

This work regarding interest group cause lawyering organization suggests that the organizational structure of an interest group's legal team is a crucial variable to the success or failure of litigation efforts. This study hypothesizes that there will be distinct differences between gun rights and gun control interest groups, between heavily funded and lesser funded Second Amendment interest groups, and between local, state, and national Second Amendment interest groups with regard to organizational structure. Interview questions regarding this issue centered upon interest group organization in the legal spectrum, organization of interest group legal teams, levels of organization, the types of people employed by interest group legal teams, the types of organizational strategies utilized by interest groups, and the sources of funding for interest group legal teams.

Methodology and Data Collection Format of the Study

Telephone interviews were used to collect empirical data regarding Second Amendment interest group cause lawyer participation, litigation strategies, venue-shopping, coordination/networking, and organization. According to Ronald Czaja and Johnny Blair, telephone interviews typically have low administrative costs, provide for a short period of study, and a wide geographic distribution for sampling. Like administrative issues, questionnaire concerns vary significantly in telephone interviews. Based on the type of questions asked, a telephone interviewer can use a lengthy survey instrument, employ questions of increasing complexity, and control the order of questions asked. Scholars that use telephone interviews are

able to use open-ended questions and personal records. On a personal level, telephone interviews provide for a good rapport between interviewer and respondent, allow sensitive topics to be broached, and allow non-threatening questions to be considered. Overall, telephone interviews provide researchers with a high-quality empirical research method that has few administrative, survey, and data quality issues.[82]

The data collection format for this study regarding the factors that help explain Second Amendment interest group cause lawyers to participation in litigation, the strategies used in litigation efforts, court venue-shopping, coordination and networking between interest groups, and legal team organization utilized telephone interviews for the issues discussed in the preceding pages. The list of potential candidates for the cause lawyer interviews was culled from data collected regarding state supreme court and U.S. Courts of Appeals cases in which a legal party either made a Second Amendment claim or cases where the central issue involved in the case focused on Second Amendment issues. All interviews were conducted with lawyers who litigated a firearms-related case for a Second Amendment interest group between 1 January 1960 and 31 December 2009 in these two levels of the judiciary. Because of the date limitations represented in this study, no interview respondent litigated a case in the sample prior to 1980.

Twenty-one total Second Amendment cause lawyers were interviewed. Eleven gun rights and ten gun control Second Amendment cause lawyers were included in the interview pool. Eighteen interview participants were taken from the cases in the samples used in Chapter Three and Four. Three other interviews were completed as part of a snowball sample of potential cause lawyer names who were given to me during the first eighteen interviews. All twenty-one interviews were conducted between 24 August and 19 November 2010. While the telephone interviews were not timed, the average interview lasted forty-four minutes with the

shortest lasting eight minutes and the longest lasting sixty-two minutes. Interview recordings totaled fifteen hours and forty minutes.

Dates and times were scheduled at least one week before the interview occurred and were completed between 10AM and 4PM on the dates specified with the respondents. With the approval of the respondents, interviews were recorded using a small recording device. Four of the twenty-one interview respondents asked that their names and interest groups not be used in this study. As such, I have decided to simply number the respondents in interview date order and refer to each simply as "Respondent Six" or "Respondent Fourteen" in the text of this study. Without this pledge of anonymity, these respondents were reluctant to give any relevant information during interviews.

Questionnaire design was completed, in conjunction with members of my dissertation committee, based on Second Amendment interest group participation in litigation, litigation strategies, judicial venue-shopping, coordination and networking between interest groups, and organization. The questionnaire used in the interview included only relevant questions regarding these five topics. The questionnaire employed both open-ended and closed-ended questions that allowed interview respondents to provide the interviewer with accurate and insightful responses. To fully engage the interview respondent, few notes were taken during the interview process. After completion of all the interviews, between 17 December and 23 December 2010, the interview recordings were reviewed and coded based on the responses given by the respondents in order to create a complete picture of the data collected. The interviews conducted for this study fully conformed to the guidelines for research performed on individuals prescribed by the West Virginia University Office of Research and Economic Development.

Second Amendment Interest Group Cause Lawyering: Results and Analysis

Although the previous sections have described important literature, theories, and methods that characterize interest group participation, litigation strategies, venue-shopping, coordination/networking, and organization as critical components of the operations of Second Amendment interest groups and their litigation efforts, a direct connection between the suggested issues and Second Amendment interest group cause lawyers also needs to be established.

Table One illustrates the relevant demographic background of the interview respondents, as they relate to this study.

Table One: Relevant Demographics of Gun Control Interest Group Cause Lawyers

	National Interest Group	**State Interest Group**	**Local Interest Group**
Total Gun Control Lawyers	5	3	2
Interview Respondents	4, 12, 13, 19, 20	8, 9, 17	7, 15
Funding Level	High	Moderate	Low

Table Two illustrates the relevant demographic background of the interview respondents, as they relate to this study.

Table Two: Relevant Demographics of Gun Rights Interest Group Cause Lawyers

	National Interest Group	**State Interest Group**	**Local Interest Group**
Total Gun Rights Lawyers	6	3	2
Interview Respondents	2, 3, 10, 11, 14, 18	5, 6, 21	1, 16
Funding Level	High	Moderate	Low

Taken as a whole, the interview sample provides an interesting view of the litigation efforts of Second Amendment interest groups across the country. Eleven interviews were

conducted with interest group cause lawyers that possess a national scope, while six were completed with state-level interest group cause lawyers and four with local-level interest group cause lawyers. In total, eleven cause lawyers representing gun rights interest groups were interviewed, while ten gun control cause lawyers were interviewed.

Six different national-level interest groups (three gun rights interest groups; three gun control interest groups) were represented in the respondent pool, while five state-level interest groups and four local-level interest groups were also represented in the pool of interview participants. In total, fifteen different gun rights and gun control interest groups (seven gun rights interest groups; eight gun control interest groups) were represented in the respondent pool. Funding levels were taken from figures available on the websites of the represented interest groups. The demographics outlined in Table One show that the interview respondent pool is representative of the interest groups and lawyers that currently practice law in favor of gun rights or gun control.

Cause Lawyer Philosophy

From a philosophical standpoint, the twenty-one gun rights and gun control interest group cause lawyers interviewed for this study largely agreed with the philosophy espoused by interest group they worked for. In fact, the seventeen interest group cause lawyers representing state and national Second Amendment interest groups reported that they always supported their interest group from a philosophical position. Comparatively, the three of the four local interest group cause lawyers represented in this study reported that they did not always support the philosophy advocated by their interest group. These two lawyers, one national gun control cause lawyer and one local gun rights cause lawyer, vividly illustrated the differences, or lack thereof, in their philosophical point-of-view:

> I almost always support the policies important to my superiors. I am fully invested in our agenda, and have a special interest in working cases that…that forward this plan. (Respondent Thirteen)

> If my group advocates for a particular philosophy that I cannot support, I would go into the (group) director's office and tell him about it. In no way, am I going to neglect my personal values and goals to promote an agenda that I don't think works or isn't correct. (Respondent One)

The three local interest group cause lawyers (one gun rights; two gun control), who reported that their support for the philosophy of their interest group wanes at times, made it clear that only certain issues affect their levels of support. For instance, even though the local gun rights cause lawyer supports Second Amendment rights, he also supports legislation that would strengthen the background check process, so that individuals with mental illnesses have no chance to obtain a firearm. His support for increased background check laws stem from an incident where a family member was harmed by an unregistered firearm brandished by an unstable individual. The issues that affect support of the local gun control interest group cause lawyers differed. For instance, these two lawyers explained the reasons and issues that affect their wavering philosophical support:

> Sometimes, I think, that the powers that be (in the interest group) aren't worried about expanding gun registration laws. I really wish that they would. It pains me everyday to flip on CNN only to see lunatics shooting up schools. (Respondent Seven)

> I think that the gun control movement as a whole, needs to focus on increasing awareness towards lackadaisical gun control laws…My guys need to be tougher on these laws. (Respondent Seventeen)

Though philosophical issues are important issues covered in the interviews, the focus of the interviews was Second Amendment interest group participation, litigation strategies, venue-shopping, coordination/networking, and organization. The following pages outline the interview responses in these areas.

Interest Group Participation

For this study, interest group participation interview questions attempted to determine how Second Amendment cases get to interest groups for litigation purposes, how interest groups decide to participate in litigation, and why interest groups decide to participate in certain cases and not in others. Table Two outlines important responses regarding how cases get to an interest group for litigation purposes.

Table Three: How Cases Get to Second Amendment Interest Group Cause Lawyers

Respondent(s)	**Cases Referred from Local Chapters**	**Central Team Searches for Cases**	**Intervene on Appeal**
1, 6, 7, 9, 15, 16, 17, 21			
2, 3, 10, 11, 12, 14, 19, 20	X	X	X
4, 13		X	X
5			X
8	X		
18	X		X

Source: Interview Respondents One through Twenty-One[83].
Note: n=21 interviews;
Note 1: Respondents 4, 12, 13, 19, 20 national level gun control interests, respondents 8, 9, 17 state level gun control interests, and respondents 7, 15 local level gun control interests; Respondents 2, 3, 10, 11, 14, 18 national level gun rights interests, respondents 5, 6, 21 state level gun rights interests, and respondents 1, 16 local level gun rights interests.
Note 2: National interests have high funding levels, while state interests have moderate funding levels and local interests have low funding levels.

According to Table Three, the most significant dividing line between the participatory litigation efforts of Second Amendment interest groups was money. Consequently, Second Amendment interest groups that possessed a national scope, and significantly more monetary resources than their state and local counterparts, controlled more avenues that allowed groups to participate in gun-related litigation. For instance, nine of the eleven national-level cause lawyers interviewed reported that they had cases referred from locally affiliated organizations. Similar ratios are representative of the responses regarding central team searches for Second Amendment

cases and the ability or willingness to intervene in cases on appeal. There were few differences between the participation efforts of gun rights and gun control cause lawyers and interest groups. According to two interview respondents, the reasons for these participatory efforts differ:

> Sometimes, we have one person looking for cases, other times we have bunches of people trying to find cases that fit our model and the issues we support. Regardless of our sources, we are always looking. (Respondent Thirteen)

> Our local guys know what they are doing. In fact, I've practiced law with a few of them. We trust a lot of their judgments regarding cases. They know what we want and, most of the time, they won't waste our time with trivial (cases). (Respondent Three)

Responses from the interviewed state and local cause lawyers regarding participation efforts differed wildly. Taken as a whole, none of the three potential responses regarding participation received an affirmative reply from the four local lawyers. State level cause lawyers reported similar findings. Because of lesser funding and different organizational formats, state cause lawyers had fewer avenues where cases could get to them. Given this, cases are still litigated by local and state interest groups; however, cases get to these groups through a number of back-channels, including the offering of informal legal advice and the acceptance of a case on a pro bono basis. Accordingly, several local and state interview respondents outlined the reasons they used the specific avenues for participation outlined in Table Three:

> We have a couple of local groups…they work hard. They aren't paid. They give us some (cases) every once and awhile. In fact, I think, we've been able to change the result of couple they have given us. (Respondent Eight)

> Unfortunately, we only can do what we can do. Realistically, we can offer help during the appeals process if we think we can be of service. Otherwise, its tough for us. (Respondent Five)

This study also posed questions to interview respondents regarding the process through which interest group legal teams decide to litigate cases. Larger, national and state interests have continually followed potential cases that warrant consideration for litigation. Because of this,

interest groups must decide which cases to take and which cases to decline. In doing so, interview accounts reported that there was a clear distinction between levels of interest groups. In particular, large state and national Second Amendment interest groups decide to take more cases because they have the resources available to litigate them. Winning was the most important component of deciding to participate in Second Amendment cases. Nine of the eleven national interest group respondents reported that the potential of winning a case was most important factors in deciding to participate in litigation.

For smaller, state and local interest groups, the decision to participate in cases was much more complex. For instance, not only did smaller interests have to consider the monetary aspect of participation, but they also had to consider the potential outcomes after litigation. As a small, local Second Amendment gun control cause lawyer reported:

> It's hard for us. We don't have the resources of the Brady group or the NRA. If we get involved, we have to consider tangible outcomes…after litigation. You know…potential television coverage of a case or membership drives afterwards would benefit. I worry about the solvency of our group all the time. (Respondent Fifteen)

According to this local gun control lawyer, the decision to participate in litigation could potentially come down to the financial solvency of the group. In the end, the group would be better off if they were able to capitalize on the news of their litigation. Essentially, if the group was unable to guarantee news coverage or increased giving, then the likelihood of participation in a case would be small.

Interview respondents were also questioned about the most important factors in deciding to participate in cases. Responses regarding participatory factors created the first clear distinction between gun rights and gun control interest groups. Of the eleven gun rights cause lawyers interviewed, ten responded that along with winning cases, the most important factor that

determines their participation in Second Amendment cases is ensuring constitutional standards are followed. In fact, one national-level gun rights lawyer was adamant:

> It's really about the legitimacy of the law. It's clearly laid out in the Constitution that we have "the right to bear arms"…In my opinion, any violation of that is unfair. (Respondent Eighteen)

The words of this national gun rights lawyer strike at the heart of majority of his brethren. It is evident that most gun rights lawyers focus on the constitutional perspective when determining participation in cases.

From a comparative perspective, gun control lawyers responded with a mix of responses regarding the most important factor determining participation in cases. Five of the ten gun control lawyers responded that changing a unjust law was the most important factor regarding participation, other responses included making legal and constitutional history and the potential for winning the case. Most gun control lawyers worried about the potential for increased crime with regard to more guns on the streets. In particular, one national gun control lawyer invoked the *Heller* decision to make his point clearer:

> I am of the opinion that a place like D.C. needs the laws that were in place prior to *Heller*. More guns on the streets mean more violence. It doesn't seem fair to force citizens to live in what could amount to a war zone in several years. (Respondent Four)

The differing views regarding the most important factors that determine participation couldn't be more striking. Gun rights lawyers consider participation from the much larger perspective of constitutional standards, while gun control lawyers mostly focus on individual laws and cases.

Because of these results, two of the three hypotheses associated with Second Amendment interest group cause lawyer legal participation are accepted. Specifically, data shows that there are distinct differences between heavily funded and lesser funded Second Amendment interest groups with regard to legal participation. The study found that there were distinct differences

between local, state, and national Second Amendment interest groups with regard to legal participation. Based upon the data collected, the legal participation hypothesis regarding differences between gun rights and gun control interest groups with regard to legal participation could not be accepted. Thus, the null hypothesis could not be rejected. The next issue area covered in interviews for this study was litigation strategy.

Interest Group Litigation Strategies

For this study, Second Amendment interest group litigation strategy questions sought to discover what litigation strategies are most productive for gun rights and gun control interest groups, what litigation strategies are least productive for gun rights and gun control interest groups, if litigation strategies change over time, and what level of influence different factors have over litigation strategies and tactics. Table Four outlines the different litigation strategies used by Second Amendment interest groups and their cause lawyers.

Table Four: Litigation Strategies Used by Second Amendment Interest Group Cause Lawyers

Respondents(s)	Amicus Curiae	Test Cases	Financial Support	Other
7, 9				
2, 3, 4, 10, 11, 13, 14, 18, 19, 20	X	X	X	
1, 6, 15				X
8, 16, 17	X			
5		X		
12	X	X		
21		X		X

Source: Interview Respondents One through Twenty-One[84].
Note: n=21 interviews.
Note 1: Respondents 4, 12, 13, 19, 20 national level gun control interests, respondents 8, 9, 17 state level gun control interests, and respondents 7, 15 local level gun control interests; Respondents 2, 3, 10, 11, 14, 18 national level gun rights interests, respondents 5, 6, 21 state level gun rights interests, and respondents 1, 16 local level gun rights interests.
Note 2: National interests have high funding levels, while state interests have moderate funding levels and local interests have low funding levels.

In focusing on the litigation strategies of Second Amendment interest groups, it is important to note that major differences between local, state, and national level interest groups. Interview responses indicate distinct differences between the litigation strategies of local, state, and national level interest groups. In particular, local and state interests focused on litigation strategies that were most economically feasible. For instance, one state level gun control lawyer reported:

> We tend to focus on legal briefs...Why? Well, they are relatively cheap, easy to produce, and have little standard format. My lawyer could produce a brief in an afternoon if the need arose. We just don't have substantial resources. (Respondent Seventeen)

According to the responses to litigation strategy questions listed in Table Four, the most popular strategy was the filing of non-binding amicus curiae, or "friend of the court" briefs, which provide judges with information to help decide cases. In fact, 67 percent of interview respondents referred to amicus curiae briefs as primary litigation strategies. A comparable percentage of 62 percent of interview respondents reported the usage of test case litigation strategies as challenges to established state and local gun rights and gun control laws, while 48 percent of respondents reported that their interest group provided financial support to various Second Amendment litigants. Four of the twenty-one interview respondents reported the usage of other litigation strategies as part of their Second Amendment efforts. In particular, the other strategies used by these cause lawyers focus upon the lack of resources available to interest groups in question:

> I don't know if you would call it a (litigation) strategy or not, but most of the time we try to match lawyers up with cases…if you know what I mean. Some lawyers are more likely to take cases on a pro bono basis if they agree with our groups standing on the matter. (Respondent One)

Focusing on the litigation strategies of the national Second Amendment interests included in the study, ten of the eleven national level cause lawyers reported that their interest group legal team used all three of the main litigation strategies mentioned previously. The main reason for the usage of all three strategies was financial resources. The national level interest groups have more financial resources. In turn, these interests put much more money back into their litigation efforts. For instance, two national level Second Amendment interest group cause lawyers, one gun rights lawyer and one gun control lawyer, provided similar answers regarding the importance of finances in litigation strategies:

> We have used all three strategies you mentioned. We believe that we owe it to the millions of members we serve to look into all potential litigation strategies to fight harmful laws across the country. We have few limits when it comes to spending. (Respondent Eleven)

> Because of the generous support of our donors, we are able to use multiple approaches to gain traction in the courts. Briefs, financial support, and case testing in different jurisdictions are the main strategies we utilize. (Respondent Thirteen)

In regard to litigation strategies, major differences exist between local, state, and national Second Amendment interest groups. The main focus of the usage of differing litigation strategies was made apparent through numerous interview responses about the lack of financial resources at local and state interest group levels. National level Second Amendment interest group cause lawyers made it clear that because of their higher levels of financial resources they are able to use different litigation strategies and to litigate more Second Amendment cases. Differing litigation strategies between gun rights and gun control interest groups were not apparent.

It is also important to consider the different types of factors that influence litigation strategies. Table Five outlines the different influences regarding litigation strategies reported by Second Amendment interest group cause lawyers.

Table Five: Influences on the Litigation Strategy of Second Amendment Interest Group Cause Lawyers

Respondent(s)	Opposing Counsel	Judicial Attitudes	Existing Law	Legis./Exec. Policy	Legal Expert/Soc./ Sci. Evidence
1, 7, 15, 16					
2, 3, 10, 11, 14, 18	X	X	X	X	
4, 8, 9, 12, 13, 17				X	X
5, 6	X		X	X	
19	X			X	
20	X	X		X	X
21	X		X		

Source: Interview Respondents One through Twenty-One[85].
Note: n=21 interviews.
Note 1: Respondents 4, 12, 13, 19, 20 national level gun control interests, respondents 8, 9, 17 state level gun control interests, and respondents 7, 15 local level gun control interests; Respondents 2, 3, 10, 11, 14, 18 national level gun rights interests, respondents 5, 6, 21 state level gun rights interests, and respondents 1, 16 local level gun rights interests.
Note 2: National interests have high funding levels, while state interests have moderate funding levels and local interests have low funding levels.

In focusing on the influences on litigation strategies of Second Amendment interest groups, it is important to note major differences exist between gun rights and gun control interest group cause lawyers. Gun rights lawyers reported that they were much more likely to be influenced by the existing local, state, or federal law governing the case. In fact, nine of twenty-one interview respondents reported being influenced by existing law when deciding on Second Amendment litigation strategies. All eight of these respondents represented gun rights interest groups, while no gun control cause lawyers were a part of the group influenced by existing law.

In comparison, a similar data point was established with regard to the influence that legal experts, social science evidence, and hard science evidence has upon the litigation strategies of Second Amendment interest group cause lawyers. Specifically, interview responses from gun control lawyers representing interest groups of all scopes reported that they were much more

likely to be influenced by legal experts, social evidence, and hard science evidence when deciding how to litigate Second Amendment cases. In fact, eight of the twenty-one interview respondents reported being influenced by legal, social, and hard science evidence when deciding litigation strategies. All eight of these respondents represented gun control interest groups, while no gun rights cause lawyers were a part of this group influenced by legal, social, and hard science evidence. Regarding each of these findings, one gun rights and one gun control cause lawyer provided particularly colorful responses regarding both influential perspectives:

> We don't follow that fluff (social science evidence) stuff. We follow the law. What is on the books is what we are fighting for or against. Just because a Ph.D. tells me something about guns doesn't mean it has much value in the real world. (Respondent Two)

> Above all it is important for us to follow the published research about the importance of gun control. Even though judges might not work with these studies, it is important for us that our legal points are backed up by evidence. (Respondent Twelve)

Focusing on the particular interview responses regarding influences on litigation strategy, the data shows that influences were split relatively evenly between the five influential options outlined in the survey questionnaire. For instance, 62 percent (thirteen of twenty-one) of interview survey respondents reported that legislative and executive politics and policies influenced their decision regarding litigation strategy regarding Second Amendment cases. 48 percent (ten of twenty-one) of the cause lawyers surveyed reported that the opposing counsel and changing judicial attitudes influenced decisions about strategy for litigation. From a comparative perspective, the two cause lawyer litigation influences that had the lowest level of affirmative response were existing laws (43 percent; nine of twenty-one) and legal experts, social evidence, and hard science evidence (38 percent; eight of twenty-one). These results show that political

influences, the opposing counsel, and the judge sitting for a case were the most important factors when Second Amendment cause lawyers decided what strategies would be used during litigation.

Analysis of the data collected regarding Second Amendment cause lawyering litigation strategies during interviews found acceptance for all three research hypotheses associated with this section. More specifically, distinct differences were found between the litigation strategies of gun rights and gun control interest groups, between heavily funded and lesser funded Second Amendment interest groups, and differences between local, state, and national Second Amendment interest groups. All three of these hypotheses are accepted and the associated null hypotheses are rejected. The third issue area covered in interviews for this study was judicial venue-shopping.

Interest Group Judicial Venue-Shopping

For this study, Second Amendment interest group judicial venue-shopping questions attempted to discover the level of Second Amendment interest groups venue-shopping during the litigation process and whether or not litigation strategy changes depending upon the venue selected for litigation. Table Six outlines the different aspects of venue-shopping regarding Second Amendment interest groups and their cause lawyers.

Table Six: The Judicial Venue-Shopping of Second Amendment Interest Group Cause Lawyers

Respondent(s)	Shop for Venues	Favored Judicial Level	Shop Between Urban/Rural	Venue Shop in Diversity Cases	Venue-Shopping Important Lit. Process
1, 5, 7, 8, 9, 15, 16, 17	No	--	--	--	--
2, 3, 10, 14, 18	Yes	Federal	Rural	Yes	Yes
12, 13, 20	Yes	Federal	Urban	Yes	Yes
4, 19	Yes	State	Urban	Yes	Yes
6, 21	Yes	State	Rural	No	No
11	Yes	State	Rural	Yes	Yes

Source: Interview Respondents One through Twenty-One[86].
Note: n=21 interviews.
Note 1: Respondents 4, 12, 13, 19, 20 national level gun control interests, respondents 8, 9, 17 state level gun control interests, and respondents 7, 15 local level gun control interests; Respondents 2, 3, 10, 11, 14, 18 national level gun rights interests, respondents 5, 6, 21 state level gun rights interests, and respondents 1, 16 local level gun rights interests.
Note 2: National interests have high funding levels, while state interests have moderate funding levels and local interests have low funding levels.

Do Second Amendment interest groups shop for judicial venues? The answer is both yes and no. Thirteen of twenty-one interview respondents reported that their interest groups legal team does shop for venues. However, simply looking at that percentage can be misleading. All four (0 percent) of the local level Second Amendment cause lawyers reported that their low levels of funding prevented any level of shopping for a judicial venue, while two (33 percent) of the six state level Second Amendment cause lawyers reported that they did shop for a judicial venue. All eleven (100 percent) of the national level Second Amendment interest group cause lawyers shop for judicial venues.

It is also important to determine which levels of the judiciary and what types of judicial districts are favored. Of the thirteen cause lawyers who reported that they do shop for judicial venues, five responded that they favored the state courts system, while eight responded that they

favored the federal court system. Second Amendment interest group cause lawyers favored state court systems when venue-shopping was fairly evenly distributed between gun rights (three respondents) and gun control (two respondents) interest groups. Lawyers that favored the national courts system as five of the eight respondents represented gun rights organizations, while the balance (three respondents) represented gun control groups.

In regard to the types of judicial venues favored by respondents, cause lawyers interviewed created a clear delineation between gun rights and gun control lawyers. Gun rights lawyers favored rural jurisdictions, while gun control lawyers preferred urban jurisdictions. With these legal perspectives in mind, one gun rights and one gun control cause lawyer explained the reasons behind their preferences:

> Because of the prevalence of gun owners in rural areas, we certainly prefer rural jurisdictions. Guns are much more a part of the culture in these areas and make it more likely that the outcome will favor us. (Respondent Three)

> I like the stricter gun laws that mostly come in urban areas. We are more likely to succeed with cases in these types of situations rather than in rural (locations). (Respondent Nineteen)

Coupled with judicial venue-shopping, favorite judicial levels, and types of venues are whether or not an interest group legal team shops for venues in diversity cases and the importance of venue-shopping in the litigation process. Ten of the thirteen cause lawyers who did venue-shop did so diversity cases, as well. The diversity cases litigated by the cause lawyers centered upon gun-related corporations. For instance, one national level gun rights cause lawyer reported that by moving a Second Amendment diversity case from one jurisdiction to another helped their litigation efforts in a major way because the litigant gun manufacturer had a large assembly operation in the jurisdiction the case was moved to and still had plenty of goodwill in the judicial district.

Ten of the thirteen Second Amendment interest group cause lawyers in the interview pool reported that shopping for venues was an important part of their litigation process. For a number of reasons, national and state level Second Amendment interest groups reported that venue-shopping was or was not an important part of the their litigation process. In particular, one national gun control lawyer supported the notion that venue-shopping was important to litigation, while one national level gun rights lawyer noted that his group disagreed:

> For us, a court hearing a case can be the factor between winning and losing. We want to win every case we take on, so picking the right court is probably the most important factor of the litigation process for us.
> (Respondent Nineteen)

> Like I said, we do consult different judicial venues, but we don't focus on it when we are litigating a case. I am more worried about the law, the opposition, resources, the client, potential witnesses…the nuts and bolts of a trial. Court selection is important, but I don't lose sleep over it.
> (Respondent Eighteen)

Results of the data collected that focused on Second Amendment interest group cause lawyering judicial venue-shopping led to the acceptance of all three research hypotheses associated with this section. Specifically, clear differences were established between the ways gun rights and gun control interest groups, between heavily funded and lesser funded Second Amendment interest groups, and differences between local, state, and national Second Amendment interest groups shopped between judicial venues. All three of these hypotheses are accepted and the associated null hypotheses are rejected. The next issue area covered in interviews for this study was Second Amendment interest group coordination and networking.

Interest Group Coordination and Networking

For this study, Second Amendment interest group coordination and networking questions ought to discover the levels at which Second Amendment interest group cause lawyers

coordinate with other interest groups, determine the organizational levels of the surveyed Second Amendment interest group cause lawyers, and networking efforts between similar state and national organizations. Table Seven reports the different aspects of coordination between local, state, and national Second Amendment interest groups and their cause lawyers.

Table Seven: Coordination between Second Amendment Interest Groups and Legal Teams

Respondent(s)	Have Coordinated	Levels of Groups	Types of Groups	Level of Coordination
7, 8, 15, 16, 21	No	--	--	--
3, 18	Yes	State/National	Gun Rights	High
5, 14	Yes	State/National	Gun Rights	Moderate
12, 19	Yes	State/National	Gun Control	High
1	Yes	State	Gun Rights	Low
2	Yes	National	Conservative/Gun Rights	High
4	Yes	National	Progressive/Gun Control	High
6	Yes	Local/National	Gun Rights	Low
9	Yes	Local	Liberal/Gun Control	Low
10	Yes	State	Conservative/Gun Rights	Moderate
11	Yes	National	Gun Rights	High
13	Yes	National	Gun Control	High
17	Yes	Local/National	Gun Control	Moderate
20	Yes	State	Gun Control	High

Source: Interview Respondents One through Twenty-One[87].
Note: n=21 interviews.
Note 1: Respondents 4, 12, 13, 19, 20 national level gun control interests, respondents 8, 9, 17 state level gun control interests, and respondents 7, 15 local level gun control interests; Respondents 2, 3, 10, 11, 14, 18 national level gun rights interests, respondents 5, 6, 21 state level gun rights interests, and respondents 1, 16 local level gun rights interests.
Note 2: National interests have high funding levels, while state interests have moderate funding levels and local interests have low funding levels.

Table Seven outlines the basics of legal coordination between Second Amendment interest groups. In particular, a large majority of interest group cause lawyers surveyed (76.2

percent) reported that they had, in fact, coordinated with other interest groups at some level. Results show that the types of groups with which a particular interest group coordinates depends upon the level of the interest group in question. Local level interest groups are more likely to coordinate with state interest groups because of the lack of other local groups in a given geographical area. Similarly, state level interest groups are more likely to coordinate with other state or national interest groups for litigation purposes, while national level interests are more likely to coordinate with other state and national level organizations

There are significant differences between gun rights and gun control interest groups when it comes to the levels of coordination. Gun rights interest groups coordinated with other gun rights groups, while gun control interest groups coordinated with other gun control interest groups. Both gun rights and gun control groups reported coordination efforts with other politically-oriented groups:

> I have worked with other gun rights groups, along with (conservative) groups… We do this because they want the same things that we do. All in all, they believe in the "right to bear arms" just as much as we do. (Respondent Two)

> I started off working with progressive organizations back in the 1980s, so for me, it was second nature to work with the people I have known for more than twenty years. Not only do I know those guys, but I know that they are fighting hard. (Respondent Four)

Five respondents reported that they had coordinated, in some ways, with conservative, liberal, or progressive interest groups in order to move a particular agenda forward. This finding is particularly striking because it shows just how intertwined gun interest groups are inside the American political system. Questions were also posed to interview respondents regarding the level of coordination that existed between organizations. Not surprisingly, all eleven national level interest group cause lawyers reported that a moderate to high level of organization existed, while local and state level respondents reported moderate to low levels with interest groups.

Table Eight outlines the different aspects of interest group networking between local, state, and national Second Amendment groups and their cause lawyers.

Table Eight: Networking between Second Amendment Interest Groups and Legal Teams

Respondent(s)	Have Networked	Types of Interdependencies	Help Litigation Efforts?	Affect Patterns of Litigation?
1, 7, 15, 16, 21	No	--	--	--
2, 4, 13	Yes	Common Interest	Sometimes	Yes
10, 12, 19	Yes	Common Interest	Yes	Yes
3	Yes	Similar Beliefs	Yes	Not Sure
5	Yes	Similar Beliefs	Yes	No
6	Yes	Common Interest	Yes	No
8	Yes	Friendship	Sometimes	No
9	Yes	Financial Exchange	Yes	Yes
11	Yes	Similar Beliefs	Sometimes	No
14	Yes	Similar Beliefs	Yes	No Response
17	Yes	Financial Exchange	No	No
18	Yes	Similar Beliefs	No	No
20	Yes	Friendship/Interest	Yes	Yes

Source: Interview Respondents One through Twenty-One[88].
Note: n=21 interviews.
Note 1: Respondents 4, 12, 13, 19, 20 national level gun control interests, respondents 8, 9, 17 state level gun control interests, and respondents 7, 15 local level gun control interests; Respondents 2, 3, 10, 11, 14, 18 national level gun rights interests, respondents 5, 6, 21 state level gun rights interests, and respondents 1, 16 local level gun rights interests.
Note 2: National interests have high funding levels, while state interests have moderate funding levels and local interests have low funding levels.

Interview responses regarding Second Amendment interest group networking provided similar results as those given regarding coordination. A significant majority of interest group cause lawyers surveyed (76.2 percent) reported that they networked with other interest groups. When asked what types of interdependences propel interest groups towards forming networks of cooperation and understanding, 44 percent of respondents (seven of sixteen) reported that

common interests inspired networking, 31 percent of respondents mentioned similar beliefs, and 13 percent of respondents reported that friendship or financial exchange spurred networking to occur:

> We do not have the money that other groups have, so we reached out to a group from a neighboring state for help. They came through big time. Their (financial) support allowed us to change things (legally) throughout Colorado. (Respondent Nine)

> While our opponents were out raising money, we doubled-down and formed relationships with other groups that helped us litigate cases that we truly felt needed to be argued. I guess you would call that "common interest." (Respondent Six)

When asked whether or not networks helped litigation strategies or affected patterns of litigation, nine (56.25 percent) of the sixteen respondents suggested they did. Five (31.25 percent) of the respondents reported that their networking efforts sometimes helped their litigation efforts, but only two (12.5 percent) reported that networking did not aide their litigation efforts:

> Like I said before, our networking efforts through several financial dealings most definitely helped our litigation efforts. Not only were we able to litigate cases we wouldn't have been able to otherwise, but I honestly feel we made a difference in the lives of those who would have been harmed with more guns on the streets. (Respondent Nine)

My results presented a muddled picture of whether or not networking efforts affected patterns of Second Amendment litigation. Seven (43.75 percent) of the sixteen respondents reported networking with other interest groups also reported that their networking efforts did affect patterns of gun-related litigation. The same result, seven (43.75 percent) of the sixteen Second Amendment interest group cause lawyers, reported that their networking efforts did not affect patterns of litigation, while one interview respondent provided no response and one was not completely sure. This result shows a mixed view on the importance of networking with other

groups. For several respondents, networking directly affected litigation, while others possessed the view that there was no affect.

Results from the interviews illustrate the fact that two of the three hypotheses associated with Second Amendment interest group cause lawyer coordination and networking are accepted. More specifically, data showed that there were distinct differences between heavily funded and lesser funded Second Amendment interest groups with regard to legal coordination and networking. The study found that there were distinct differences between local, state, and national Second Amendment interest groups with regard to legal participation. Based upon the data collected, the legal coordination and networking hypothesis regarding differences between gun rights and gun control interest groups with regard to legal participation could not be accepted. Thus, the null hypothesis could not be rejected. The next issue area covered in interviews for this study was litigation strategy. The fifth issue area covered in interviews for this study was interest group organization.

Legal Team Organization

For this study, Second Amendment interest group organization questions attempted to examine the importance of organization in the Second Amendment interest group, the organization of the interest group legal team, the level of organization of the interest group legal team, the types of organizational strategies employed by the interest group and its legal team, and how the legal team is funded. Table Nine reports the different aspects of organization inside local, state, and national Second Amendment interest groups and their legal teams.

Table Nine: Second Amendment Interest Group Legal Team Organization

Respondents(s)	Internal Legal Counsel	Adjunct Legal Organization	Group Devoted to Legal Change	Pro Bono Legal Counsel	Outside Legal Counsel
1, 5, 7, 8, 15, 16, 21				X	X
2, 4, 10, 14, 20	X		X		
3, 11, 12, 13, 19	X	X	X		
6, 9	X		X		X
17					X
18	X	X			X

Source: Interview Respondents One through Twenty-One[89].
Note: n=21 interviews.
Note 1: Respondents 4, 12, 13, 19, 20 national level gun control interests, respondents 8, 9, 17 state level gun control interests, and respondents 7, 15 local level gun control interests; Respondents 2, 3, 10, 11, 14, 18 national level gun rights interests, respondents 5, 6, 21 state level gun rights interests, and respondents 1, 16 local level gun rights interests.
Note 2: National interests have high funding levels, while state interests have moderate funding levels and local interests have low funding levels.

Table Nine demonstrates that finances are important to the organization of Second Amendment interest groups. National level interest groups are more likely to possess internal legal counsel, possess an adjunct legal organization, or lean on a group devoted to legal change as their litigation team, while local and state level interest groups are more likely to rely on pro bono or outside legal counsel as the organization of their legal team. Obviously, this speaks directly to the funding levels of Second Amendment interest groups. Second Amendment interests that work on the national level have the funding available to keep internal legal counsel, have an adjunct legal organization, or a group devoted to legal change, all of which require significant monetary resources. State level Second Amendment interests typically focus on obtaining pro bono or outside legal counsel, which can typically be had for free or at a significant discount. One national level gun rights lawyer and one local level gun control lawyer reported:

> Essentially, we have the first three (organizational structures) you mentioned. I see our connected legal organization as one that fights for legal change, so in my

> mind we have all three. For a long time, it has been no secret that that we have the money, so we use it. Our organization is second to none. (Respondent Eleven)
>
> Our organization is quite small. In fact, you could say we don't have one, other than me. I am the director and head legal counsel…A number of times I have used pro bono representation…or I have received a discounted rate from an outside lawyer who believed in what we were doing. This is really how we get by. (Respondent Fifteen)

Thirteen (61.9 percent) of the twenty-one respondents reported that their interest group employs an internal legal counsel. Twelve (92.3 percent) of the thirteen respondents also represented national level interest groups. Similar findings were apparent with regard to adjunct legal organizations and groups devoted to legal change. Six (28.6 percent) of the twenty-one interview respondents reported that their interest group has used adjunct legal organizations as their legal team, while ten (47.6 percent) of the respondents reported that they have employed the usage of groups devoted to legal change. In both respects, each (100 percent) of the affirmative interview respondents on these two organizational characteristics represented national level Second Amendment interest groups.

Two other legal organization arrangements, pro bono legal counsel and outside legal counsel, are most often used by local and state Second Amendment interest groups. In particular, nine (42.9 percent) of the twenty-one survey respondents reported they had utilized pro bono legal counsel as their legal organization in Second Amendment litigation. All nine (100 percent) of these respondents represented local or state level interest groups. Eleven (52.4 percent) of the survey respondents reported they use outside legal counsel as their legal organization, ten (91.9 percent) of which represent local or state level interest groups.

One local level gun rights lawyer provided some interesting insight into this phenomenon:

> Over the course of the last twenty-three years, we have received both pro bono and outside legal counsel. Our perspective is…'Why pay for something we can have for free?' In any form, counsel isn't cheap and we don't have the money to have additional counsel on staff, other than myself. (Respondent Sixteen)

Twenty (95.2 percent) of the twenty-one respondents reported that they used more than one of the five organizational features mentioned above, while eight (38.1 percent) of the respondents reported that they three of the five organizational structures mentioned above.

Table Ten provides responses regarding the different ways in which Second Amendment interest groups and their legal teams are funded publicly and privately.

Table Ten: Second Amendment Interest Group Legal Team Organizational Funding

Respondent(s)	**Mass Membership Drives**	**Few Donor Contributions**	**Corporate Funding**
7, 15			
1, 5, 8, 9, 16, 17, 21		X	
2, 3, 10, 14, 18	X	X	X
4, 12, 13, 19	X		
11, 20	X	X	
6		X	X

Source: Interview Respondents One through Twenty-One[90].
Note: n=21 interviews.
Note 1: Respondents 4, 12, 13, 19, 20 national level gun control interests, respondents 8, 9, 17 state level gun control interests, and respondents 7, 15 local level gun control interests; Respondents 2, 3, 10, 11, 14, 18 national level gun rights interests, respondents 5, 6, 21 state level gun rights interests, and respondents 1, 16 local level gun rights interests.
Note 2: National interests have high funding levels, while state interests have moderate funding levels and local interests have low funding levels.

Table Ten illustrates clear differences between the funding of local, state, and national level interest groups, and between gun rights and gun control interest groups. In particular, national level interest groups are much more likely to be funded through mass membership drives or through corporate donors, while local and state Second Amendment interests are more likely to be funded through the contributions of a few donors. Gun rights groups are much more

likely to be funded by corporate contributions then their gun control counterparts. One national level gun rights lawyer and one state level gun control lawyer reported:

> We definitely get contributions from the gun industry. Because we do this, it is probably not surprising that we support gun rights. Even though they have a financial stake in the game, they are supporters of our (movement) and maintain monetary support of our team. (Respondent Ten)

> There are definitely strong distinctions between gun groups. One of the biggest is how we are funded. Obviously, we don't have connections to corporations and have few people willing to contribute money from out of state. Our lone source of funding is a small, committed group of donors who believe in our (gun control) agenda. (Respondent Seventeen)

Twelve (57.1 percent) of the twenty-one interview respondents reported that their interest group and legal team were funded, in part, through the efforts of small donation mass membership drives. Not surprisingly, the only interest groups with the organizational capacity to complete mass membership drives were national level Second Amendment groups. No local or state interest group reported the usage of mass membership drives as being a significant part of their organizational funding efforts.

The most popular form of organizational funding, beyond mass membership drives, according to interview respondents was few donor contributions. Fifteen (71.4 percent) of the twenty-one interview respondents reported that a small group of donors provided their interest group and legal team with important financial resources. Of the fifteen affirmative respondents, eleven represented gun rights groups and four represented gun control organizations. This result shows that gun rights organizations are almost three more likely than gun control organizations to use small group donor contributions to fun their organization.

The final organizational structure that was considered in the Second Amendment interest group cause lawyer study was the importance of corporate funds to the financial support of gun-related organizations. In particular, six (28.6 percent) of the twenty-one interview respondents

reported that their interest group receives the monetary support of corporate groups and industry. All six affirmative respondents represented gun rights organizations. This finding is not particularly striking considering the fact that the gun industry has a financial stake in continuing to support gun rights legislation and litigation, and gun control does not have an industry that explicitly supports their agenda. Eight (38.1 percent) of the twenty-one interview respondents utilized at least two of these organizational funding mechanisms, while five (23.8 percent) respondents reported that their interest group used all three instruments.

Analysis of the data collected regarding Second Amendment interest group cause lawyering legal team organization led to the acceptance of all three research hypotheses associated with this section. Specifically, distinct differences were found between the legal organization of gun rights and gun control interest groups, between heavily funded and lesser funded Second Amendment interest groups, and differences between local, state, and national Second Amendment interest groups. All three of these hypotheses are accepted and the associated null hypotheses are rejected.

Conclusions

This study posed the research question, how have Second Amendment interest group cause lawyers dealt with case participation, litigation strategies, judicial venue-shopping, coordination and networking between interest groups, and legal team organization, 1960-2009? This study theorized that there will be distinct differences between gun rights and gun control interest groups, between heavily funded and lesser funded interest groups, and between local, state, and national Second Amendment interest groups, with regard to legal participation, litigation strategies, venue-shopping, coordination, networking, and organization. This theory was operationalized into five distinct interview independent variable areas, including legal

participation, litigation strategies, venue-shopping, coordination, networking, and organization, with the actual Second Amendment interest group cause lawyer being the dependent variable.

Using telephone interviews, this study found that there were clear differences between local, state, and national Second Amendment interest groups with regard to legal participation, litigation strategies, judicial venue-shopping, coordination and networking, and organization. More specifically, local, state, and national Second Amendment interest groups deal with all five of the interview areas differently. As such, the five research hypotheses associated with these variable relationships are accepted and the null hypotheses are rejected. This study found that there were distinct differences between heavily funded and lesser funded interest groups with regard to legal participation, litigation strategies, judicial venue-shopping, coordination and networking, and organization. In particular, heavily funded and lesser funded Second Amendment interest groups deal with all five of the interview areas differently. Because of this, the five research hypotheses associated with these variable relationships are accepted and the null hypotheses are rejected.

Along with the first sets of theories, this study found that there were distinct differences between gun rights and gun control interest groups with regard to litigation strategies, judicial venue-shopping, and organization. More specifically, gun rights and gun control interest groups deal with these three interview areas significantly different ways. As such, the three research hypotheses associated with the variable relationships are accepted and the null hypotheses are rejected. Interview responses regarding legal participation and coordination/networking showed that gun rights and gun control lawyers actually participate and coordinate in similar manners, and thus, the two research hypotheses associated with these two variable relationships cannot be accepted and the null hypotheses cannot be rejected.

The most important find of this study is not that there were differences between local, state, and national Second Amendment interest groups or that there were differences between heavily funded and lesser interest groups, but that there were not differences between gun rights and gun control interest groups with regard to legal participation and coordination/networking. In focusing on what we know about interest groups, this finding shows that in some ways interest groups do not act in the ways we often expect them to. For instance, because gun rights and gun control lawyers both participate in the legal arena for vastly different reasons, we should expect them to participate in different ways as well. However, complied results of the interviews for this study show that gun rights and gun control, in fact, act very similarly when deciding whether or not to participate in Second Amendment cases.

This study found that gun rights and gun control lawyers coordinate network with other interest groups in similar ways and for similar reasons. While both sets of lawyers strive to win in the courtroom, they are attempting to attain totally different legal goals. One set of lawyers want fewer gun laws, while the other wants more, and to find that they actually coordinate and network in similar fashions is very interesting. One would think that coordination and networking techniques between the two different types of lawyers would be completely different because of their competing legal efforts. The best answer that this study can give as to why they have similar process with regard to legal participation and coordination/networking is that they are both working the legal system. Each lawyer knows what they have to do get ahead, and regardless of what they are fighting for, they have to follow the legal system that has been laid out for so many years.

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CHAPTER THREE

SECOND AMENDMENT DECISIONS IN STATE SUPREME COURTS

> (President Clinton) boasts about 186,000 people denied firearms under the Brady Law rules. The Brady Law has been in force for three years. In that time, they have prosecuted seven people and put three of them in prison. You know, the President has entertained more felons than that at fundraising coffees in the White House, for Pete's sake.
>
> --Charlton Heston, former actor and N.R.A. President, 1997

> This (the attempted assassination of U.S. Rep. Gabrielle Giffords) is clearly an illustration of why we must all work together to fight gun violence in America and keep dangerous weapons out of the hands of the wrong people…I will immediately be offering legislation further limiting gun possession laws.
>
> --U.S. Representative Carolyn McCarthy (D-NY), 2011

In the fall of 1967, Arthur Burton, Louis Benton, Edmond Shuler, Al Toth, Herman Treptow, and George Schlelke brought litigation that challenged the constitutionality of the New Jersey Gun Control law passed earlier in the year. This coalition of sportsman club members and gun dealers felt that the new restrictive law infringed upon the rights of individuals to own and operate legal firearms. The New Jersey Gun Control law provided new guidelines for the ownership and operation of firearms, forced firearms sellers to comply with new standards and qualifications for licenses to sell firearms, and gave the New Jersey Superintendent of Police broad powers to ensure the safety, health, and welfare of the public from the misuse of firearms. The litigants formally asked the New Jersey Supreme Court to declare the new gun law unconstitutional and forbid its enforcement.[1]

Following a hearing before the New Jersey Supreme Court, the Court upheld the constitutionality of the newly-passed gun control law. The written opinion, by a Democratic-majority, was quite striking as the majority felt that without legal protections, including gun law in question, could create scenarios through which political assassinations, the killing of law enforcement officers, and increased sniper attacks would occur with a higher frequency. With this opinion, membership in New Jersey gun clubs declined and many gun dealers found other ways to pedal their firearms. *Burton v. Sills* (1968) has become known as one of the first legal opinions to be held as evidence in support of the American gun control movement, as well as one of the most overt legal attempts to take the gun ownership rights away from American by the gun rights movement in America.[2]

This study focuses on the decision-making and judicial behavior of judges of state supreme courts through the lens of Second Amendment claims and issues, such as those outlined in the introductory example that focused on the *Burton v. Sills* case. This study attempts to do two different things. First, I will provide readers with a descriptive study of state Second Amendment decisions between 1960 and 2009. Second, I present readers with an explanatory analysis that estimates whether electoral accountability, party affiliation of the court, institutional factors, public opinion, and specific exogenous factors affect the way judges who sit on state supreme courts rule on polarizing political issues, such as the Second Amendment between 1960 and 2009.

Potential Influences on State Supreme Court Judicial Behavior and Decision-Making

In this study, I am interested in the political aspects that affect Second Amendment decisions in state supreme courts from 1960 to 2009. This study theorizes that electoral accountability, party affiliation of the court, institutional factors, public opinion, and specific

exogenous factors affect the way state supreme courts judges rule on cases that encompass the polarizing political issue of Second Amendment rights. Rejecting the legal model of decision-making and building upon recent studies of state supreme courts produced by Melinda Gann Hall, Paul Brace, Chris Bonneau, and others, this study attempts to uncover specific institutional and state-level political aspects that make it more or less likely for a state supreme court judge to rule in favor of gun rights or gun control.

State supreme courts are an important part of this study because of their position as an integral part of the public policy-making process. The Second Amendment policy area gives this study particularly good mileage towards understanding state supreme courts because the right to bear arms is integral within the Bill of Rights, and consequently also is a civil liberty that the federal government should be unable to take away from American citizens. Since the 1970s, scholarship regarding state supreme courts has focused on judicial decision-making on particular cases, the composition of specific state courts, and policy-making.

One of the barriers to the study of decision-making in state supreme courts has been the differing ideological composition of membership on state supreme courts. According to Donald Songer and Susan Tabrizi, the connection between political ideology, religiosity, and judicial decision-making has always been difficult to measure empirically. In an attempt to create a new model for the study of state supreme courts decision-making, Songer and Tabrizi found that practicing Christian Evangelicals judges were significantly more conservative than regular Protestant, Catholic, and Jewish justices regarding death penalty, gender discrimination, and obscenity cases.[3]

In one of the first attempts to empirically measure the decision-making of state supreme courts judges, Stuart Nagel explored the connection between state supreme court judges and

political party affiliation regarding decision-making. Nagel found that Democratic state supreme court judges were much more likely to support the liberal argument in a case than their Republican counterparts. Democratic judges were more likely than Republican judges to support the defense in criminal cases, the administrative agency in business regulation cases, and broadening position in free speech cases.[4]

John Patterson and Gregory Rathjen explored the social, political, and legal backgrounds of state supreme courts judges and how they affected the judicial decision-making processes when the judges rendered decisions. Patterson and Rathjen found that partisanship, tenure on a court, religion, and career patterns were each significant factors that helped determine how state supreme court judges decided cases. In particular, partisanship and religion were the two most important variables that helped to determine how state supreme court judges decided cases.[5]

Through analysis of the demographic background of state supreme court judges, Robert Kagan, Bobby Infelise, and Robert Detlefsen produced a model that outlined the distinctive patterns of the decision-making of judges. The study found that the judges who served on state supreme courts between 1900 and 1970 were relatively diverse, drawn from a variety of legal and political backgrounds with significant or no experience, and attended an assortment of elite and non-elite law schools. Unfortunately, the model used by the authors found no connections between selected judge background characteristics and judicial trends in judicial decision-making.[6]

Gerard Gryski and Eleanor Main measured the importance of social demographic backgrounds on the judicial decision-making of state supreme court judges in sexual discrimination cases. The authors found that state supreme court judges who decided in favor of a sexual discrimination claim were most likely a Democrat who studied law at an out of state or

public law school.[7] Craig Emmert used a wide-ranging set of three thousand state supreme court decisions to create an integrated model of judicial decision-making. Statistical analysis revealed that the case issue raised, the identity of a challenging party, types of constitutional arguments advanced, centrality of legal challenge, and the lower court ruling all impact the decision-making process used by state supreme court judges.[8]

Melinda Gann Hall and Paul Brace explored the political nature of the burden of death penalty cases in state supreme courts within the context of judicial decision-making. The model of decision-making created by Hall and Brace found that age and partisanship significantly affected how judges ruled on death penalty cases. In particular, Republican-affiliated judges were more likely to approve a death sentence than Democratic judges, while the same phenomenon was apparent with older judges. Older state supreme court judges were much more likely than younger judges to support the death penalty.[9]

Paul Brace, Laura Langer, and Melinda Gann Hall created a better measure of party affiliation to examine the judicial decision-making of state supreme court judges. The new measure, party-adjusted surrogate judge ideology measure (PAJID), was exposed to a number of analyses, and was found to be a valid, stable measure of the preferences of state supreme court judges that is much better than party affiliation. Not only did the new PAJID measure improve explanations of judicial decision-making across areas of law, but also across 52 different state supreme courts.[10]

Donald Songer and Kelley Crews-Meyer examined the effects of a judge's gender on decision-making in state supreme courts across the United States. This decision-making effort found that regardless of political ideology, female judges on state supreme courts collectively supported greater rights when a case regarding women's issues was decided. The study found

that there was no connection between gender and judicial decision-making in criminal rights and economic liberty cases.[11] Sara Benesh and Wendy Martinek found that the decision-making of state supreme court judges is influenced by the U.S. Supreme Court and state-level political elites.[12]

David Caplan provided some analysis regarding the decision-making of the Indiana and Oregon state supreme courts as they decided several important Second Amendment decisions. In *Oregon v. Kessler* (1980), the Oregon Supreme Court handed down a unanimous decision in which struck down a state statute banning the private possession of weapons. A month after the *Kessler* decision, in *Schubert v. DeBard* (1981), the Indiana Supreme Court declined to review a lower state court ruling that the Indiana State Superintendent of Police may provide gun licenses to individuals with a reason for carrying a weapon after they passed a background check. These early decisions show how state supreme court decision-making regarding the Second Amendment have changed to include the potential for greater gun ownership.[13]

David Hardy addressed state supreme court decision-making as it relates to the Second Amendment. In the work, Hardy found that many of the early state supreme court Second Amendment cases (1820-1940) were decided in accordance with the prevailing cultural conception of the Second Amendment as allowing firearms to owned and operated only in circumstances in which a state or local militia was the central focus.[14] Michael Quinlan explored numerous early state supreme court Second Amendment cases and how judges came to a decision. Through analysis of early state supreme court Second Amendment decisions, the author found that the cases surveyed show that almost all early state supreme court judges who decided a case regarding the Second Amendment favored the right to bear arms in conjunction with a militia.[15]

David Kopel, Clayton Cramer, and Scott Hattrup systematically outlined the Second Amendment judicial decision-making process in the Ohio, Oregon, and Colorado supreme courts. First, Oregon's original intent test states that all Second Amendment cases brought before the court must be closely associated to firearms usage by militias to be satisfied when judges are deciding a firearms-related case. Second, Colorado's fundamental right to bear arms test states that firearms cases must be connected with individual ownership in order to be satisfied when judges are deciding a Second Amendment case. Third, the new "reasonableness" standard of review created by the Ohio Supreme Court states that a Second Amendment claim must be deemed reasonable by the Court before an affirmative ruling can be rendered. According to the authors, each of these standards help to explain how state supreme court judges decide Second Amendment cases in Oregon, Colorado, and Ohio.[16] Using this work as a starting point, this study suggests that electoral accountability, party affiliation of the court, institutional factors, public opinion, and specific exogenous factors affect the way state supreme court judges decide polarizing political issues, including the Second Amendment.

From this scholarship, it is obvious that there is expansive work regarding the many issues that encompass the study of decision-making and judicial behavior in state supreme courts, and state appellate decision-making regarding Second Amendment cases. However, research for this study suggests that no literature has focused on a statistical analysis of the political aspects of Second Amendment decisions in state supreme courts. This study attempts to fill this void in the literature regarding analysis of the political characteristics of state supreme court firearms-related decision. Since this topic has never been the focus of scholarship, it is my hope that this chapter will, in its own small way, be successful in encouraging discussion of and

improve descriptions of the explanations of the issues that affect decision-making regarding Second Amendment decisions in state supreme courts.

Design of the Research

In this study, I am interested in the political aspects that explain the judicial decision-making and behavior of judges on Second Amendment cases in state supreme courts. Specifically, this study elaborates on the theory that political context and the political values of judges, including electoral accountability, party affiliation of the court, institutional factors, public opinion, and specific exogenous factors, affect decision-making on Second Amendment decisions. The dependent variable for the study is the Second Amendment case decision, whether a state supreme court ruled in favor of gun control or gun rights. Although scholars have not created a dependent variable in this manner before, there is precedent for the usage of case outcomes as the central focus of judicial scholarship.

John Kilwein and Richard Brisbin examined a sample of more than 1,000 state supreme court decisions that focused on intensified scrutiny doctrine.[17] In second work, Sidney Ulmer created a methodical approach to the study of judicial behavior of U.S. Supreme Court justices that focused racial discrimination case outcomes during the Civil Rights Movement.[18] In third work, Nancy Scherer and Banks Miller created a logistic regression model to determine if membership in the Federalist Society affected the political ideology and decision-making of U.S. Courts of Appeals judges through usage of the Harold Spaeth database on U.S. Supreme Court decisions. After surveying case law, the authors argued that federal appellate judges who were members of the Federalist Society were significantly more conservative than non-members.[19]

A model, similar to that of the Schrer and Miller study, was created for this chapter. This new model estimates the effects of electoral accountability, party affiliation of the court,

institutional factors, public opinion, and specific exogenous factors on state supreme court Second Amendment decisions. Second Amendment case decisions were gathered from the LexisNexis Academic Legal search engine, between 1 January 1960 and 31 December 2009, for a total of 269 cases from all state supreme courts. Search terms for data collection in LexisNexis included the following phrases: Second Amendment, concealed weapons, concealed weapons permits, automatic weapons, semi-automatic weapons, gun violence, gun show loophole, background checks, right to bear arms, sawed-off shot gun, assault weapon, convicts and firearms, and gun bans. The dependent variable was created so that if a case ruled in favor of gun control, then the case was labeled "0." If a case favored gun rights, then the case was labeled "1." The mid-range theory of this study was disaggregated into seven independent variables, each including specific hypotheses, to estimate their effect on the dependent Second Amendment decision variable.

Electoral Accountability

Electoral accountability provides reasoning for the way state politicians vote and act, and state supreme court judges are similar. Each of the judges sitting on the fifty state supreme courts across the United States were either elected or appointed. Recent scholarship has suggested that the judicial decision-making of state supreme court judges is partly influenced by the type of judicial selection method that propelled them into office. According to Melinda Gann Hall, the low rate of dissenting opinions authored by state supreme court judges can be accounted for because some judges are forced to face reelection, and constituent values suppress the expression of dissent on important policy issues for certain judges. Hall argued that instead of voting in agreement with their personal policy preferences, state supreme court judges want to retain their positions do not offer dissenting opinions in order to avoid being singled out in an

election.[20] Gregory Huber and Sanford Gordon found that judges who stand for election become more punitive in sentencing as re-election approaches.[21]

Melinda Gann Hall and Paul Brace argued that the method of judicial selection in a state affected how state supreme court judge's decided cases. In particular, Hall and Brace argued that state supreme courts with appointive selection methods promoted consensus decision-making, while elective methods promoted disagreement. The authors found that in states with appointive judicial selection methods had 7.5 percent lower dissenting opinion rates than state with elective judicial selection.[22] Paul Brace and Melinda Gann Hall argued that non-elected or appointed judicial selection methods encouraged decision-making by state supreme court judges in a consensual fashion, while elected judicial selection methods did not. In the article, the authors found appointive judicial selection methods were associated with fewer dissenting opinions regarding important state courts of appeals policy decisions.[23]

Melinda Gann Hall argued that state supreme court judges act in a strategic fashion when deciding cases in order to minimize opposition when they face an election. Focusing on death penalty decisions between 1983 and 1988 in four southern state supreme courts, Hall found that the influence of voters on state supreme court judges was enhanced when an environment of competitive elections were present.[24] Daniel Pinello came to a similar conclusion when exploring business law policy decisions made in state supreme courts. The author found that popularly elected judicial selection methods led to cost-stabilizing business decisions, while appointed judicial selection methods led to cost-increasing business decisions.[25]

Paul Brace and Melinda Gann Hall explored the connection between institutional rules and structures, including state judicial selection method, and judicial behavior and decision-making. After estimating several models of judicial voting on the death penalty cases in state

supreme courts, Brace and Hall found that state judicial selection method did impact how judges voted on death penalty cases. In particular, the authors found that state supreme courts with an elected selection method were more likely to support the death penalty than judges selected through appointments or commissions.[26]

Paul Brace and Melinda Gann Hall examined the linkage between electoral politics and judicial decision-making in state supreme courts. Using probit estimations of death penalty decisions in eight state supreme courts between 1983 and 1988, Brace and Hall found that state supreme court judges do have predispositions that are consistent with a state's electoral and ideological situation. In particular, the authors found that a judge's support for the death penalty in a decision was directly linked to more competitive judicial election situations.[27] Elisha Savchak and A.J. Barghothi tested the effects of merit plan judicial selection on judicial decision-making. Using a larger sample than previous studies, Savchak and Barghothi found that judges facing retention elections act in a similar manner to those who face partisan or non-partisan elections. In fact, the authors concluded that judicial decisions were influenced more by the public voting in retention elections than the commission who original appointed the judge.[28]

Roughly half of all state supreme court judges across the country face either partisan or non-partisan elections in order to retain their seats on the bench. According to Adam Long, over the past twenty years judicial elections have been transformed into races that are indistinguishable from other political campaigns. Fueled by contributions from industry, corporations, companies, businesses, the legal bar, and doctors, candidates running for seats on state supreme courts have become pawns in the political game to become the best judge money can buy.[29]

Because of these contributions, justices elected, in part, with the money given to their campaigns from these interests are seen as being beholden to their contributors when deciding tough cases they are litigating or cases that involve policy aspects of their interests. For instance, during the 2000 Ohio Supreme Court race, a pro-business organization accused incumbent Justice Alice Robie Resnick "of having an anti-business bias, encouraged by the donations of trial lawyers…"[30] In West Virginia, incumbent supreme court Justice Warren McGraw (D) lost his 2004 re-election race to Charleston private practice lawyer Brent Benjamin, in what the Washington Post called "a rancorous contest…one of the nastiest (races) in the nation…"[31]

Special interest groups spent more than $3.5 million on the 2004 West Virginia Supreme Court of Appeals race, while the candidates raised a total of $2.8 million. In 2004, the two major party candidates for state supreme court in Illinois raised more than $8.9 million in campaign contributions, which was the most money ever contributed for a state judicial election, and it was not even statewide race, as supreme court justices are elected from districts across the state. The winner, lawyer Lloyd Karmeier (R), raised nearly $4.6 million, while the loser, Gordon Maag (D), brought in $4.4 million.[32]

Other state supreme court judges who do not face election are either selected through a commission process, which is often similar to the Missouri Plan, or through lifetime appointments.[33] In stark contrast to hyper-political state supreme court elections, judges sitting on the bench through Missouri Plan processes or gubernatorial lifetime appointments are supposed to be independent of political interests with regard to potential case outcomes.[34] Elected state supreme court judges possess the added weight of being supported by political interests through elections, while selected judges are independent of the political fray.[35] Connecting this work together, it should be noted that the method through which state supreme

court judges are selected can have a direct impact on how they decide important cases. As such, this study hypothesizes that elected state supreme courts increase the probability of a Second Amendment decision that will favor gun rights, while selected or appointed state supreme courts increase the probability of a Second Amendment decision that will favor gun control.

The electoral accountability variable, judicial selection method, estimated the effect of judicial selection methods on state supreme court Second Amendment decisions. This dichotomous variable was labeled "0" in cases where a state supreme court judicial selection method was elected on a partisan or non-partisan basis, the variable was labeled "1" in cases where the state supreme court judicial selection method was not elected. Data regarding state supreme court selection method was collected from the American Judicature society, and accounted for changes in state judicial selection methods between 1960 and 2009.

Political Party Affiliation of the Court

The political party affiliation of the judges who hear a case might affect the way a state supreme court decides Second Amendment cases. This hypothesis suggests that a judge's political party affiliation can affect how judges' rule on important cases in state supreme courts. In particular, several studies have advanced the argument that party affiliation affects judicial decision-making. In one of the first works that linked judicial party affiliation to the decision-making of judges, Sidney Ulmer found that U.S. Presidents were interested in appointing U.S. Supreme Court justices that possessed a background in public office. Ulmer found that all of President Dwight Eisenhower's appointees had previous public experience on either the state or federal judiciary or as the attorney general of a state. The author argued, with the exception of Earl Warren, that justices with previous experience in an elected office typically mirrored the opinion of the president who nominated them when deciding a case.[36]

In an attempt to explore the judicial role of state supreme court judges, John Wold found that the political ideology, social background, and political party associations helped to model personal and professional views of the judicial role of state supreme court judges.[37] Philip Dubois found that the political party affiliation of state supreme court judges was at the center of judicial decision-making. Dubois found that one of the key factors that helped to explain how state supreme court judges behaved was the political party that they had often been associated with.[38]

Melinda Gann Hall and Paul Brace surveyed death penalty cases from 1980 to 1988 in four states to determine factors that helped explain judicial decision-making in state supreme courts. Specifically, Hall and Brace found that the individual preferences regarding death penalty cases mirrored the perceived party affiliation of state supreme court judges in the four state sample.[39] Paul Brace and Melinda Gann Hall explored the connection between electoral politics and judicial decision-making in state supreme courts. Using statistical analysis of capital punishment decisions in eight state supreme courts between 1983 and 1988, Brace and Hall found that state supreme court judges did have political predispositions that were consistent with association with a political party.[40]

Using a meta-analysis of numerous judicial politics studies, Daniel Pinello found that political party affiliation of state supreme court judges was a dependable measure of ideology and judicial decision-making. In the study, Pinello found that state supreme court judges who were affiliated in some way with the Democratic Party were much more liberal when dispensing justice than their Republican Party affiliated counterparts, who were far more conservative in their rulings.[41]

Because this literature argues that party affiliation affects judicial decision-making in general, and state supreme court judicial decision-making in particular, this study contends that party affiliation will affect how state supreme court judges rule on Second Amendment decisions. Consistent with commonly held conceptions about the policy preferences of the two parties, this study hypothesizes that the number of state supreme court judges affiliated with the Democratic Party increase the probability of a Second Amendment decision that will favor gun control, while state supreme court associated with the Republican Party increase the probability of a Second Amendment decision that will favor gun rights.

The party affiliation of the court variable estimated the effect of a state supreme court's majority political party affiliation on Second Amendment decisions. This dichotomous variable was labeled "0" in decisions where the ruling majority of a state supreme court was affiliated with the Democratic Party. The variable was labeled "1" in decisions where the ruling the majority of a state supreme court was affiliated with the Republican Party. Variable data regarding state supreme court political party affiliation was collected from the Richard Brisbin and John Kilwein state supreme court judicial biography dataset created in the early 1990s, updated to 2006, and spanning the years 1970 to 2006. Data for Second Amendment cases used in this study decided before 1970 or after 2006 was taken from the on-line judicial database, Judgepedia.

Institutional Factors

Specific institutional factors might also affect the way a state supreme court decides Second Amendment cases. In state supreme courts, literature has addressed the importance of institutional arrangements and their effect on the decision-making of judges. Robert Sickels argued that the high level of judicial consensus in the decisions of the Maryland Court of

Appeals was a product of the institutional process that rotated case assignments randomly between the sitting judges of the court. According to Sickels, this arrangement was reinforced by the judicial compliance of the opinions of others.[42] Edward Beiser found a similar result within the Rhode Island Supreme Court. Because of a high degree of integration, the judges of the court rarely disagreed with one another because of the institutional process of randomly assigned case assignments.[43]

Bradley Canon and Dean Jaros, like Sickels and Bieser, examined the importance of several institutional factors on the rate of dissent in state supreme courts. Institutional factors used in the study included: the method of state judicial selection, the method of office retention, length of tenure in office, and presence or absence of an intermediate appellate court. Canon and Jaros found that institutional factors, in the form of the presence of absence of intermediate appellate courts, did create conditions for an increase in the behavior of dissenting behavior of state supreme court judges.[44]

Elliot Slotnick found that, according to the personal and professional perceptions of a number of state supreme court chief justices, a randomly-selected system of opinion assignments maintained social and political cohesion of a state supreme court. Slotnick also argued that methods of discretionary case assignments promoted social and political conflict within a state supreme court.[45] Roger Handberg argued that there was a direct connection between institutional factors and the writing of dissenting opinions in state supreme court decisions. In particular, Handberg found that states with an intermediate appellate court just below the state supreme court had significantly higher levels of dissent.[46] Henry Glick and George Pruet found a similar result. Glick and Pruet found that the presence of a state intermediate appellate court significantly increased the potential for dissenting opinions in state supreme court decisions.[47]

Later work also focused on the institutional arrangement of the presence of state intermediate appellate courts, coupled with other institutional factors. Melinda Gann Hall and Paul Brace argued that in addition to state intermediate appellate courts, the method of judicial selection in a state affected how state supreme court judge's decided cases. In particular, Hall and Brace argued that state supreme courts with appointive selection methods promoted consensus decision-making, while elective methods encouraged disagreement. The authors found that in states with appointive judicial selection methods had 7.5 percent lower dissenting opinion rates than state with elective judicial selection. Results of the study found that the use of random opinion assignments and the presence of a state intermediate appellate court were associated with higher levels of dissenting opinions in state supreme courts.[48]

Paul Brace and Melinda Gann Hall argued that judicial selection methods influenced the judicial decision-making of state supreme court judges. In particular, Brace and Hall found that appointive judicial selection methods and voting rules were associated with fewer dissenting opinions and behavior. In fact, in states with an appointed the governor or the legislature, the number of cases that possessed dissenting opinions dropped by 4 percent. The authors found that the presence of an intermediate appellate court produced significant dissent in state supreme courts. In states with intermediate appellate courts, dissenting opinions were expected in 8.5 percent more cases each year than in states without this institutional arrangement.[49]

Much of this scholarship suggests that institutional factors in general, and the presence or absence of state intermediate appellate courts in particular, affect state supreme court judicial decision-making. This study contends that the presence or absence of state intermediate appellate courts will affect how state supreme courts judges decide Second Amendment decisions. Specifically, this study hypothesizes that the presence of a state intermediate appellate

court increase the probability that state supreme courts will rule in favor of gun control in Second Amendment decisions, while states without an intermediate appellate court increase the probability that state supreme courts will rule in favor of gun rights in Second Amendment decisions.

The state intermediate appellate court variable estimated the effect of the presence or absence of state intermediate appellate courts on Second Amendment decisions. This dichotomous variable was labeled "0" in decisions that had an operative state intermediate appellate court at the time of the ruling. The variable was labeled "1" in decisions that did not have an active state intermediate appellate court at the time of the ruling. Variable data regarding state intermediate appellate courts was collected from the American Judicature Society, and accounted for changes in the presence or absence of state intermediate appellate courts between 1960 and 2009.

Public Opinion

Public opinion might also affect the way judges who sit on state supreme courts rule on polarizing political issues. Because a significant amount of state supreme court judges across the country are elected on a partisan and non-partisan basis, they act in a manner similar to regular politicians. As these judicial campaigns are bankrolled by wealthy political interests, there is evidence to suggest that the judges have become beholden to these interests.[50] Similarly, much like politicians who routinely face election and re-election, there is scholarship that proposes that one of the main concerns of these judges is to be re-elected like their legislative counterparts.[51] For instance, the intake of campaign contributions into elections for state supreme court has drastically increased over the last fifteen years. Judges who are up for re-election and actively seek campaign contributions illustrate their desire to win re-election.[52]

One of the key aspects of winning re-election for any politician, as outlined by David Mayhew, is to take credit for particular policies and to take positions on issues.[53] For state supreme court judges who face elections, this desire is no different. Even though state supreme court judges are politicians, they are governed by very different ethical rules and professional norms. The West Virginia State Code of Judicial Conduct states that candidates for State Supreme Court should refrain from making policy statements regarding issues that the court might hear and should abstain from endorsing or opposing candidates for other offices. During his 2004 re-election campaign, former West Virginia Supreme Court Justice Warren McGraw violated both statutes of the code. At a time when West Virginia was dealing with numerous changes to its criminal law statutes, Justice McGraw made it clear, during a campaign speech in Kermit, WV, that he was at least partly responsible for many of the tougher criminal laws coming on to the books. At another campaign speech in Williamson, WV, Justice McGraw noted that, "If I were going to do so, I'd be endorsing Joe Manchin for Governor of West Virginia."[54] This example shows that not only did McGraw violate the judicial code of conduct he was supposed to uphold, but he also took credit for the new, tougher criminal laws created in West Virginia directly before his re-election effort.

This idea of state judicial credit claiming has extended to other states. Incumbent Wisconsin State Supreme Court justice David Prosser (R) was running for re-election against challenger JoAnne Kloppenberg (I), a prosecutor in the Wisconsin Department of Justice, during the spring 2011 race. During a campaign forum at the Marquette University Law School between the candidates, Prosser made a number of statements where he seemingly claimed credit for the outcomes of cases he presided over. Prosser said:

> In 12 years, I participated in more than 900 published decisions. I have written 132 majority opinions, plus many concurrences and dissents. I have written decisions on

> virtually every area of Wisconsin law from anti-trust to zoning, including constitutional, contempt, criminal, environmental, family, insurance, labor, and tort law. Many of my opinions have significantly influenced Wisconsin law.[55]

While state supreme court judges have started to make statements regarding policies, it wasn't until 2002 that it was protected speech under the First Amendment. In *Republican Party of Minnesota v. White*, an ideologically divided U.S. Supreme Court ruled that Minnesota's requirement that judges not discuss political issues was unconstitutional. The case successfully challenged the Minnesota Code of Judicial Ethics that constrained candidates seeking election as a judge from discussing issues that could come before them if elected.[56]

Taking credit for rendered decisions speaks specifically to the point that judges, while they are typically seen as being insulated from the pressures of the public, are affected by what the public thinks because of their interest in being re-elected. Research has shown that politicians and elected judges in particular, must focus on changes in public opinion over time. In particular, variation and stability patterns in political ideology and public policy change in states as national ideological trends manifest themselves in states.[57] The system of judicial selection at the state supreme court level has created elections that are virtually the same as executive and legislative contests where money and public opinion affects the policy positions taken by candidates because each are interested in getting re-elected.

Like Mayhew outlines for members of Congress, elected state supreme court judges are able to point to specific decisions in regard to policy decisions and issue positions in their re-election fights in order to show attentiveness to public opinion and political ideology. This literature shows that public opinion can affect how cases are ruled upon in state supreme courts because of changing opinions of the electorate and because of institutional arrangements that force judges to stand for election. In particular, state supreme court judges might be inclined to

rule in favor of gun rights or gun control on Second Amendment cases given the timeline and their re-election interests. Depending upon the state, the closer to an election a case is determined might mean a gun rights ruling if a state favors firearms rights or a gun control ruling if a state does not.

The public opinion variables estimated the effect of state political ideology and population density on Second Amendment state supreme court decisions. This study hypothesizes that state supreme court Second Amendment decisions will be significantly affected by state political ideology and population density. In particular, states with a liberal political ideology increase the probability that their state supreme court will rule in favor of gun control in Second Amendment decisions, while states with a conservative political ideology increase the probability that their state supreme court will rule in favor of gun rights in Second Amendment decisions. States with high population density increase the probability that their state supreme court will rule in favor of gun control in Second Amendment decisions, while states with low population density increase the probability that their state supreme court will rule in favor of gun rights in Second Amendment decisions.

Accordingly, the state political ideology measure was taken from the Berry, et. al. citizen political ideology dataset. The variable was continuously measured between 1 and 100 with lower numbers representing conservative political ideologies and higher numbers representing liberal political ideologies. The appellate circuit population density measure was taken from the U.S. Census Bureau dataset. This continuously measured variable represents the number of people per square mile in each state. Lightly populated states have lower population densities, while densely populated states have higher population densities.

Specific Exogenous Factors

Specific exogenous factors might affect the way state supreme court judges decide Second Amendment cases. This hypothesis suggests that factors from outside the judicial system affect state appellate firearms cases. In particular, several studies have advanced the argument that specific exogenous factors have influenced judicial decision-making. One of the first studies that considered this external argument was produced by James Gibson. In the study, the author found that particular exogenous factors did affect the way judges decided cases. According to Gibson, the exogenous factors that had an effect were contact with constituents and the potential for electoral defeat. Focusing on the circuit system used in the Iowa trial courts, Gibson found that this involvement from outside factors was essential when judges ruled offered important decisions.[58]

Philip Fetzer argued that extralegal factors helped to explain complex American Indian legal decisions rendered in tribal jurisdictions. Through analysis of case law, Fetzer found that that the extralegal factor of tribal sovereignty had a particular impact on these Indian legal decisions. Previously, scholars had questioned much of the confusing legal reasoning that was established in prior tribal decisions. According to Fetzer, tribal sovereignty was the outside factor that helped explain why judges ruled the way that did in several of these unusual decisions.[59] James Gibson argued that one of the biggest failings of early judicial behavior literature was that few considered multiple exogenous concepts. In several of these studies, the authors employed exogenous measures that considered the personal lives of judges. Gibson argued that personal factors were exogenous in nature.[60]

John Ferejohn and Barry Weingast created a spatial model that connected personal and professional judicial goals with distinct judicial behavioral and decision-making outcomes.

According to the Ferejohn and Weingast model, external factors included those outside the scope of a judge's career.[61] Pragati Patrick and Thomas Bak found that a federal law involving increased sentences for individuals who were arrested for violent firearms-related drug crimes affected the amount of firearms cases decided by the federal court system. For Patrick and Bak, this finding was of specific interest because judges in the sample appeared hesitant to get involved with cases that concerned these new sentences.[62]

Gretchen Helmke and Mitchell Sanders argued that external factors helped to shape the behavior of judges on the Argentine Supreme Court. The exogenous factors that shaped the behavior of Argentine judges included loyalty to the national government and specific policy interests. The model created by Helmke and Sanders linked specific exogenous factors to the behaviors of judges in their role on the Argentine Supreme Court.[63] In a final work, Matthew Henry and John Turner created a patent litigation case dataset from the Federal Circuit Court of Appeals from the last fifty years. In the study, the authors found that exogenous factors have affected these decisions. Decisions made by other judicial levels were the outside factor that had a particular impact on patent decisions.[64] This literature shows that specific exogenous factors have affected judicial rulings made at various levels of the state and federal judiciary.

Specific exogenous factor variables estimated their effect on state supreme court Second Amendment decisions. Two firearms-related external factor variables, state gun ownership percentage and homicide rate, were created. State gun ownership percentage was continuously measured from each state based on the findings from Washington Post gun ownership surveys completed in 1970, 1980, 1990, and 2000. Lower gun ownership rates meant that fewer state residents own firearms, while higher gun ownership reflected elevated rates of gun ownership. State homicide rate was a continuous measure of the total number of homicides committed per

100,000 people in a state population per year. Variable data regarding state homicide rate was collected from the U.S. Bureau of Justice Statistics. Lower homicide rates meant that the state had fewer murders, while more murders reflected elevated rates of homicides in an appellate circuit.

This study hypothesized that states with high gun ownership percentages increase the probability that their state courts of appeals will rule in favor of gun rights in Second Amendment decisions, while states with low gun ownership percentages increase the probability that their state supreme court will rule in favor of gun control in Second Amendment decisions. This study hypothesized that states with low homicide rates increase the probability that their state supreme court will rule in favor of gun rights in Second Amendment decisions, while states with high homicide rates increase the probability that their supreme court will rule in favor of gun control in Second Amendment decisions.

Study Methodology and Data Collection Format

Logistic regression analysis was the method used for the analysis of the political aspects of Second Amendment court rulings made in state supreme courts. The dependent variable for this study was the state-level Second Amendment case, where cases that favor gun control will be labeled zero and cases that favor gun rights will be labeled one, so it was important to use logistic regression because this variable was dichotomous.[65] Logistic regression allows researchers to predict outcomes from a set of variables that may be continuous, discrete, dichotomous, or a mix of the three types. In particular, the dependent variable was dichotomous, such as presence/absence or success/failure.[66] Logistic regression analysis is designed to analyze the relationship between independent variable data and a dichotomous dependent variable. A

dichotomous variable can assume only two values and are just like the indicator dummy variables used throughout the political science literature.[67]

Second Amendment case data used for this study spanned the last fifty years, between 1 January 1960 and 31 December 2009. The starting point of this study was significant because it started several years before Second Amendment issues burst onto the American political landscape. Case coding was noted after reading the case twice to determine if the respective state supreme court ruled in favor of gun rights or in favor of gun control cases. Only cases in which a Second Amendment claim was forwarded or where an important Second Amendment issue was broached were used in this study.

Predicted probability estimates were tabulated for average and interesting observations within the data in order to interpret the affect of the independent variables on the dependent variable and create observations that varied values and showed which variables were significant. Inter-coder reliability for this study was established. Fifty cases of the 269 full case sample were randomly selected and coded by another reader. A Cronbach's α statistic was tabulated based on the random sample case codes and the reader's code in order to establish a measure of internal consistency and reliability between the two codes. The following section provides the results and analysis of this study.

Political Aspects of Judicial Behavior and Second Amendment Cases: Results and Analysis

The previous sections have described important literature, theories, and methods that link electoral accountability, institutional factors, public opinion, and specific policy interests to the types of Second Amendment decisions rendered by state supreme court judges; however, a direct connection between the independent variables and Second Amendment state supreme court decisions needs to be established.

Table One reports the estimated logistic regression coefficients of the state supreme court Second Amendment case model that was clustered for states, along with several logistic regression model performance measures presented at the bottom of the table, 1960-2009.

Table One: Logistic Regression Analysis of State Supreme Court Second Amendment Decisions, 1960-2009

State Supreme Court Independent Variables	**Estimated Coefficients**
Judicial Selection Method	0.173 (0.396)
Party Affiliation of the Court	0.017 (0.013)***
Presence of Intermediate Appellate Court	-0.251 (0.477)
Political Ideology	-0.071 (0.014)***
Population Density	0.153 (0.289)
Gun Ownership Percentage	0.101 (0.021)***
Homicide Rate	0.093 (0.059)
Log-Likelihood Statistic	-127.664
Chi-Squared Statistic	0.021
% Correctly Predicted	0.887
Proportional Reduction of Error	0.313
R^2_P	0.917
PCP	0.906
AIC	212.6614
BIC	244.6645

***p<0.05
Sources: LexisNexis Legal Database, the American Judicature Society, Brisbin & Kilwein dataset; Judgepedia; the Federal Judicial Center, Berry, et. al., four Washington Post gun ownership surveys, the U.S. Census Bureau, and the U.S. Bureau of Justice Statistics[68].
Note: n=269 cases.

The first variable, judicial selection method (X_1), had an estimated coefficient of 0.173. The estimated coefficient of judicial selection method was not statistically significant because zero was included in the 95 percent confidence interval. Because this variable was not

statistically significant, the null hypotheses associated with this variable cannot be rejected. The two specific directional hypotheses, elected state courts of last resort increase the probability of a Second Amendment decision that will favor gun rights and selected or appointed state courts of last resort increase the probability of a Second Amendment decision that will favor gun control, cannot be accepted.

Second, the state supreme court party affiliation variable (X_2) had an estimated coefficient of 0.017. The estimated coefficient of the party affiliation variable was statistically significant because zero was not included in the 95 percent confidence interval. Because this variable was significant, the null hypotheses associated with this variable can be rejected. The two specific directional hypotheses, state supreme court judges affiliated with the Democratic Party increase the probability of a Second Amendment decision that will favor gun control and state judges affiliated with the Republican Party increase the probability of a Second Amendment decision that will favor gun rights, are accepted. Anticipated relationships between judicial political party affiliation and state supreme court Second Amendment decisions are consistent with my hypotheses.

Third, the presence of a state intermediate appellate court variable (X_3) had an estimated coefficient of -0.251. The estimated coefficient of the intermediate appellate court variable was not statistically significant because zero was included in the 95 percent confidence interval. Since the appellate court variable was not statistically significant, the null hypotheses related to this variable cannot be rejected. The two specific directional hypotheses, the presence/absence of a state intermediate appellate court increase the probability that state supreme courts will rule in favor of gun control/rights in Second Amendment decisions, cannot be accepted.

Fourth, the state political ideology variable (X_4) had an estimated coefficient of -0.071. The estimated coefficient of the state political ideology variable was statistically significant because zero was not included in the 95 percent confidence interval. Because this variable was significant, the null hypotheses associated with this variable are rejected. The two specific directional hypotheses, states with a liberal/conservative political ideology increase the probability that their state supreme court will rule in favor of gun control/gun rights in Second Amendment decisions, are accepted. Anticipated relationships between state political ideology and state supreme court Second Amendment decisions are consistent with my hypotheses.

Fifth, the state population density variable (X_5) had an estimated coefficient of 0.153. The estimated coefficient of the variable was not statistically significant because zero was included in the 95 percent confidence interval. Since the homicide rate variable was not statistically significant, the null hypotheses related to this variable cannot be rejected. The two specific directional hypotheses, states with high/low population density increase the probability that their state supreme court will rule in favor of gun control/gun rights in Second Amendment decisions, cannot be accepted.

Sixth, the state gun ownership percentage variable (X_6) had an estimated coefficient of 0.101. The estimated coefficient of the variable was statistically significant because zero was not included in the 95 percent confidence interval. Because this variable was significant, the null hypotheses associated with this variable are rejected. The two specific directional hypotheses, states with high/low gun ownership percentages increase the probability that their state supreme court will rule in favor of gun rights/gun control in Second Amendment decisions, are accepted. Anticipated relationships between state gun ownership percentages and state supreme court Second Amendment decisions are consistent with my hypotheses.

Seventh, the state homicide rate variable (X_7) had an estimated coefficient of 0.093. The estimated coefficient of the variable was not statistically significant because zero was included in the 95 percent confidence interval. Since the homicide rate variable was not statistically significant, the null hypotheses related to this variable cannot be rejected. The two specific directional hypotheses, states with high/low homicide rates increase the probability that their state supreme court will rule in favor of gun control/gun rights in Second Amendment decisions, cannot be accepted.

The chi-squared statistic, 0.021, allows this study to reject the null hypothesis that all variables in the model jointly equal zero. This also refers to the finding that the null hypothesis of the model does not improve upon simply picking the model outcome. The percent correctly predicted statistic for this study is 0.887, which means that the model predicts 88.7% of all cases in the model. This high statistical value refers to the fraction of cases where the actual outcome corresponds to the predictions described in the model. The third and final statistic that needs to be addressed is the proportional reduction of error statistic, which is 0.313. This statistic refers to the percentage of errors that occur from just picking the modal outcome. The reduction of error is the percentage of these errors that your model eliminates. Because of this statistic, the model presented in this study reduced chance error by 31.3%

Regarding the performance by the logistic regression model, the R^2_P value for the linear probability model was .901. This value reflects that the logistic model makes correct predictions 90 percent of the time, which is forty percent better than pure chance. The PCP value for the logistic regression model was .897. This value reflects that the logistic regression model makes correct predictions about 90 percent of the time, which means that the model predicts potential outcomes much better than chance. The AIC and BIC values for the logit probability model are

low. This means that the logistic regression model has a good fit. The logistic regression model was shown to predict outside the bounds of zero and one because the minimum and maximum summation values for the predicted value of dependent variable of the model were -1.271 for the minimum value and 1.683 for the maximum value. These model performance values were estimated following the initial execution of the model.

In order to measure the inter-coder reliability and to measure the soundness of the coding schema for this study, fifty cases of the full 269 case sample were randomly selected and coded by another reader. A Cronbach's α statistic was tabulated based on the random sample case codes and the reader's code in order to establish a measure of internal consistency and reliability between the two codes. The Cronbach's α statistic for this study was 0.918, which suggests that the two case codes have a high level of internal consistency. Typically, a reliability coefficient of 0.70 or higher for two codes is considered to be highly acceptable and possess excellent agreement.

Table Two outlines the predicted probability estimation (PPE) of important data observations within the full sample of Second Amendment state supreme court cases. PPE estimates interpret the affect of significant independent variables on the dependent variable. Coupled with several averaged PPE observations, Table Two presents sixteen PPE observations from eight states that changed the most over the study period, 1960-2009. For instance, a state that changed considerably from conservative to liberal regarding political ideology was measured in the year the state was most conservative and the year the state was most liberal in order to illustrate the full affect of significant independent variable on the dependent variable.

Table Two: Predicted Probability Estimation (PPE) of State Supreme Court Second Amendment Decisions, 1960-2009

Type of Estimation	Variable	Var. Score; Year	State	Gun Control Ruling PPE	Gun Rights Ruling PPE
Average Sample Observation	--	--	--	55.3 percent	44.7 percent
Average State w/ GOP Majority Court	Party Aff.	--	--	21.5	78.5
Average State w/ DEM Majority Court	Party Aff.	--	--	76.3	23.7
Average Conservative Ideology State	Pol. Ideo.	--	--	29.7	70.3
Average Liberal Ideology State	Pol. Ideo.	--	--	78.4	21.6
Average Low Gun Ownership % State	Gun Own.	--	--	81.4	18.6
Average High Gun Ownership % State	Gun Own.	--	--	25.9	74.1
Conservative to Liberal Political Ideology	Pol. Ideo	2.27; 1965	NC	6.2	93.8
Conservative to Liberal Political Ideology	Pol. Ideo	53.86; 2006	NC	67.2	32.8
Conservative to Liberal Political Ideology	Pol. Ideo	1.26; 1965	SC	5.8	94.2
Conservative to Liberal Political Ideology	Pol. Ideo	53.50; 1999	SC	66.6	33.4
Liberal to Conservative Political Ideology	Pol. Ideo	73.83; 1972	AK	88.9	11.1
Liberal to Conservative Political Ideology	Pol. Ideo	16.66; 2000	AK	13.9	86.1
Liberal to Conservative Political Ideology	Pol. Ideo	63.11; 1964	KY	79.5	20.5
Liberal to Conservative Political Ideology	Pol. Ideo	8.45; 2002	KY	8.7	91.3
More Gun Ownership to Less	Gun Own.	23.4; 1970	NY	80.1	19.9
More Gun Ownership to Less	Gun Own.	18.0; 2000	NY	87.0	13.0
More Gun Ownership to Less	Gun Own.	15.9; 1970	MA	89.0	11.0
More Gun Ownership to Less	Gun Own.	12.6; 2000	MA	91.7	8.3
Less Gun Ownership to More	Gun Own.	32.4; 1970	LA	62.2	37.8
Less Gun Ownership to More	Gun Own.	44.1; 2000	LA	34.4	65.6
Less Gun Ownership to More	Gun Own.	15.2; 1970	NV	89.7	10.3
Less Gun Ownership to More	Gun Own.	33.8; 2000	NV	59.2	40.8

Sources: LexisNexis Legal Database, the American Judicature Society, the Federal Judicial Center, Berry, et. al., four Washington Post gun ownership surveys, the U.S. Census Bureau, and the U.S. Bureau of Justice Statistics[69].
Note: n=269 cases.

Table Two illustrates averaged and state-level data regarding the predicted probability estimates of the two significant variables from the study. The first estimation in the table provides an

average sample observation in which 55.3 percent of the time a gun control ruling is expected, while 44.7 percent of the time a gun rights ruling was expected.

By setting data values of the variables through usage of the standard deviation scores, I can create average PPE values for significant state-level variable data. In an average state that had a state supreme court majority of Republican-affiliated judges, 78.5 percent of the time a gun rights ruling was expected 78.5 percent of the time, while a gun control ruling was expected only 21.5 percent of the time. In an average state that had a state supreme court majority of Democratic-affiliated judges, 76.3 percent of the time a gun control ruling was expected, while only 23.7 percent of the time a gun rights ruling was expected.

Since the Berry, et. al., state political ideology and state gun ownership percentage values were continuous, the data set allows for easy analysis by means of PPE. By setting the state political ideology value one standard deviation both above (liberal) and below (conservative) the mean, I can create an average liberal and conservative state Second Amendment PPE. In an average liberal state, a gun control ruling is predicted 78.4 percent of the time, while a gun rights ruling is predicted only 21.6 percent of the time. Comparatively, in an average conservative state, a gun rights ruling is predicted 70.3 percent of the time, while 29.7 percent of the time a gun control decision is predicted. By setting the state gun ownership percentage value one standard deviation both above (more gun ownership) and below (less gun ownership) the mean, I can create an average low and high gun ownership percentage state Second Amendment PPE. In an average high gun ownership state, a gun control ruling is predicted 25.9 percent of the time, while a gun rights ruling is predicted 74.1 percent of the time. Conversely, in an average low gun ownership state, a gun rights ruling is predicted only 18.6 percent of the time, while 81.4 percent of the time a gun control decision is predicted.

Predicted probability estimates can also be used to track changes to the probabilities of Second Amendment case rulings for state-level variable data that changed the most during the fifty year study period by setting the variable values at the opposing scores. For instance, North Carolina and South Carolina state political ideology scores moved from very conservative (2.27; 1.26 respectively) in 1965 to moderate (53.86; 53.50 respectively) in the 1990s and 2000s. In these states, the PPE of a gun rights ruling in both states was very high (93.8 percent; 94.2 percent respectively) when the state political ideology values were at their most conservative. After the state political ideologies moderated the two state in the 1990s and 2000s (53.86; 53.50 respectively), the PPE of a gun rights ruling decreased by more than 60 percent. In fact, by the 1990s and 2000s, the PPE of a gun control ruling was 67.2 percent in North Carolina and 66.6 percent in South Carolina that the state supreme court would rule in favor of gun control after political ideologies changed from conservative to moderate. As state political ideologies move from conservative to liberal, the probability of a state supreme court gun control ruling increases.

Comparatively, Alaska and Kentucky state political ideology scores moved from liberal (73.83; 63.11 respectively) in the 1960s and 1970s to very conservative (16.66; 8.45 respectively) in the 2000s. In these states, the PPE of a Second Amendment gun control ruling in both states was high (88.9 percent; 79.5 percent respectively) when the state political ideology values were at their most liberal. After the state political ideologies became very conservative in the two state in the 2000s (16.66; 8.45 respectively), the PPE of a gun rights ruling increased by more than 70 percent. In fact, by the 2000s, the PPE of a gun rights ruling was 86.1 percent in Alaska and 91.3 percent in Kentucky that the state supreme court would rule in favor of gun rights after political ideologies changed from liberal to conservative. As state political ideologies

moved from liberal to conservative, the probability of a state supreme court gun rights ruling increased.

Predicted probability estimates can also be used to track changes to the probabilities of Second Amendment case rulings for state gun ownership percentage variable data that changed the most during the fifty year study period by setting the variable values at the opposing scores. For instance, New York and Massachusetts state gun ownership percentage values were the only two states that decreased (New York from 23.4 percent in 1970 to 18 percent in 2000; Massachusetts from 15.9 percent in 1970 to 12.6 percent in 2000) during the fifty year study period. For these two states, the affect of decreasing state gun ownership percentage is not as great because the earlier values were already very low, as compared to other states. After the state gun ownership percentage decreased, the PPE of a gun control ruling increased by 7 percent in New York (80.1 percent in 1970 to 87 percent to 2000), while the PPE of a gun control ruling increased by only 3 percent in Massachusetts (89.0 percent in 1970 to 91.7 percent in 2000). As state gun ownership percentages move lower, the probability of a state supreme court gun control ruling increases.

Comparatively, Louisiana and Nevada state gun ownership percentage values increased the most (Louisiana from 32.4 percent in 1970 to 44.1 percent in 2000; Nevada from 15.2 percent in 1970 to 33.8 percent in 2000) during the fifty year study period. For these two states, the affect of increasing state gun ownership percentage is quite significant. After the state gun ownership percentage increased in these two states, the PPE of a gun rights ruling increased by nearly 30 percent in Louisiana (37.8 percent in 1970 to 65.6 percent to 2000), while the PPE of a gun rights ruling increased by more than 30 percent in Nevada (10.3 percent in 1970 to 40.8 percent in 2000). As state gun ownership percentages move higher, the probability of a state

supreme court gun rights ruling increases. The following section provides the conclusions of this chapter.

Conclusions

This study posed the research question, what is the extent and determinants of Second Amendment rulings in state supreme courts, 1960-2009? This study theorized that electoral accountability, institutional factors, public opinion, and specific policy interests affect the way judges that sit on state supreme courts rule on polarizing political issues, such as the Second Amendment. This theory was then operationalized into six independent variables, with the actual Second Amendment case ruling being the dependent variable. The operationalizations of the study included electoral accountability. This variable was developed into a dichotomous variable, state judicial selection method, which measured whether a state used elections or another means of selecting judges to state supreme courts. Second, institutional factors were operationalized into a dichotomous variable, the presence of state intermediate appellate courts, which measures whether or not a state had an intermediate appellate court when a Second Amendment ruling was handed down. Third, public opinion aspect of the study was operationalized to continuously measure state political ideology and population density. Forth, specific policy interests were operationalized to continuously measure state gun ownership percentage and homicide rate.

Using logistic regression analysis, this study found that the extent and determinants of Second Amendment rulings in state supreme courts, 1960-2009, were limited to select public opinion and specific policy interests. More specifically, state political ideology and state gun ownership percentage variables had a direct impact on the outcomes of Second Amendment state supreme court rulings during the fifty year study period. As such, the four hypotheses associated

with these two independent variables are accepted and the null hypotheses are rejected. State judicial selection method, the presence of a state intermediate appellate court, state population density, and state homicide rate did not have a statistically significant relationship with the dependent variable, and thus the eight hypotheses associated with these independent variables cannot be accepted and the null hypotheses cannot be rejected. The logistic regression model performance measures illustrated the fact that the model made predictions correctly more than 90 percent of the time and had a good fit, while the coding schema employed in the study was shown to provide high consistency between coders because of the Cronbach's α statistic.

The effect of state political ideology on Second Amendment state supreme court rulings is no surprise. Political institutions and state judicial systems are populated by political appointees or judges who have won elective office. Political actors, even ones who are supposed to have some level of political independence, possess a personal political ideology. This set of personal ideas, goals, expectations, and actions, affects the actions of most political actors when they carry out their political role, and state supreme court judges are no different.

Corresponding directly to traditional notions about political ideology and support for or opposition to gun rights, this study shows that state supreme court judges in states with conservative political ideologies are much more likely to rule in favor of gun rights than gun control. Comparatively, this study also shows that state supreme court judges in states with liberal political ideologies are much more likely to rule in favor of gun control than gun rights. Traditionally, people with conservative political ideologies support greater gun rights, while individuals with liberal political ideologies support greater gun control measures. The findings in this study affirm traditional political ideology considerations, especially regarding the Second Amendment at the state supreme court level.

Like the state political ideology variable, the affect of state gun ownership percentage on Second Amendment state supreme court decisions is not a surprising revelation. State gun culture across the country varies widely. States with higher gun ownership rates have traditionally been associated with rural and conservative areas, while states with lesser gun ownership rates have traditionally been associated with urban and liberal areas. Since judges are political actors and possess an individual political ideology, the connection should be made between ideology and specific policy interests. While judges are not often directly lobbied regarding these cases, the make-up of a personal political ideology includes goals and actions.

These goals and actions frequently include specific policy interests, such as gun ownership and the Second Amendment. Related directly to the creation of individual political ideologies and the support for specific policy interests, this study shows that state supreme court judges in states with higher gun ownership percentages are more likely to rule in favor of gun rights than gun control. Comparatively, this study also shows that state supreme court judges in states with lower gun ownership percentages are much more likely to rule in favor of gun control than gun rights. Traditionally, support for gun rights breeds an atmosphere that respects gun ownership, while laws that curtail the ownership or possession of firearms creates a scenario through which gun ownership is frowned upon. The findings in this study affirm traditional specific policy interest considerations, especially regarding the Second Amendment.

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CHAPTER FOUR

SECOND AMENDMENT DECISIONS IN THE U.S. COURTS OF APPEALS

> For target shooting, that's okay. Get a license and go to the range. For defense of the home, that's why we have police departments.
>
> --James Brady, former White House Press Secretary and Gun Control Advocate, 1988

> Just as the First and Fourth Amendment secure individual rights of free speech and security respectively, the Second Amendment protects an individual right to keep and bear arms. This view of the text comports with the all but unanimous understanding of the Founding Fathers.
>
> --John Ashcroft, former U.S. Attorney General and U.S. Senator (R-MO), 2002

By the fall of 2005, Alan Klebig had gained the reputation around his neighborhood as being a bit of a pack rat. The yard and fence in front of his Watertown, Wisconsin, home was adorned with dozens of squirrel tails from hunting trips, along with shiny compact disc cases collected from the town dump. Containers filled with acidic chemicals and other substances littered the backyard area, while various odds-and-ends were strewn across the garage and kitchen. An extensive assortment of other items were scattered across his bedrooms, while his living room was in complete disarray.[1]

On 18 October 2005, the Watertown Police Department executed a search warrant on Klebig's home. Officers on the scene found two unregistered firearms around the house. One of the firearms was a .22-caliber rifle with a sawed-off barrel, a missing stock, and two ammunition magazines taped together. An illegal silencer was found inside the bedroom

closet. Both the .22 caliber rifle and silencer were seized during the search, and Klebig was charged under Sections §5861(d) and §5871 of the *United States Code* "with knowingly possessing a firearm and silencer which were not registered to him in the National Firearms Registration and Transfer Record."[2]

In the U.S. District Court for the Eastern District of Wisconsin, Klebig was convicted of possessing an unregistered rifle and illegal silencer. Subsequently, Klebig appealed to the U.S. Court of Appeals for the Seventh Circuit. The appeal challenged the district court's decision to admit firearms-related evidence and to permit the completion of gun demonstrations during closing arguments. The appellate decision was authored by Judge Ilana Rovner, a George H.W. Bush appointee. Other case panelists included Judge Richard Cudahy, a Jimmy Carter appointee, and Judge Richard Posner, a Ronald Reagan appointee.[3]

Judge Rovner's Republican-majority panel ruled that the government should not have allowed firearms articles to be placed into evidence and should not have allowed gun demonstrations to occur during closing arguments. Rovner wrote in the decision that "without the improperly admitted evidence (and gun demonstrations), the prosecution's case here would have been considerably weaker."[4] Because of these findings, Rovner's decision reversed Klebig's firearms convictions and remanded the case for a new trial consistent with the decision.[5]

Using the firearms issues related to the Klebig case as a starting point, this study focuses on the decision-making and judicial behavior of U.S. Courts of Appeals judges regarding Second Amendment decisions. This study attempts to do two different things. First, I provide readers with a descriptive study of U.S. Courts of Appeals Second Amendment decisions between 1960 and 2009. Second, I present an explanatory analysis that estimates

whether partisan accountability, public opinion, and specific exogenous factors affect the way U.S. Courts of Appeals judges rule on polarizing political issues, such as the Second Amendment between 1960 and 2009.

Potential Influences on U.S. Courts of Appeals Judicial Behavior and Decision-Making

In this study, I am interested in the political aspects that affect Second Amendment rulings in the U.S. Courts of Appeals. This study theorizes that partisan accountability, public opinion, and specific exogenous factors affect the way judges who sit on the U.S. Courts of Appeals rule on the polarizing political issue of Second Amendment rights. Rejecting the legal model of decision-making and building upon recent U.S. Courts of Appeals work produced by Donald Songer, Susan Haire, and others, this study attempts to uncover specific institutional and appellate circuit-level political aspects that effect U.S. Courts of Appeals gun rulings.

Focusing on the judicial behavior of U.S. Courts of Appeals judges, Frank Cross explored the nature of federal appellate court decision-making over the last twenty years by focusing on political ideology, the law, judicial background, political institutions, litigants, panel effects, procedural thresholds, and legal precedent. Cross argued that a judge's judicial and personal life, personal experience, and background affect how they rule on important cases. In particular, Cross found that judges of the U.S. Courts of Appeals are influenced in their decision-making processes by political ideology and by the appointing president.[6]

The U.S. Courts of Appeals are the concern of this study because of their position as an integral part of the federal public policy-making process. In fact, Frank Cross argued that the U.S. Courts of Appeal have a profound impact on the law because judges issue many more decisions in more areas of law than the U.S. Supreme Court.[7] The Second Amendment policy area also gives particularly good mileage towards understanding the U.S. Courts of Appeals

because the right to bear arms is a part of the Bill of Rights in the U.S. Constitution, and therefore also is a civil liberty that the federal government should be unable to take away from American citizens. Work regarding the U.S. Courts of Appeals has been concerned with judicial decision-making on cases, partisanship, and policy-making. One of the barriers to the study of decision-making in the U.S. Courts of Appeals was the three-judge panel decision structure. According to John McIver, panel decisions on issues from the U.S. Courts of Appeals provided information only a subset of the judges of the court on any case, regardless of issue. In an attempt to create a new model for the study of U.S. Courts of Appeals decision-making, McIver created a general decentralized model that scaled case issues and decisions including unanimous and non-unanimous decisions.[8]

In one of the first attempts to empirically measure the decision-making of the U.S. Courts of Appeals judges, Sheldon Goldman created a model of decision-making for all U.S. Courts of Appeals decisions rendered between 1961 and 1964. Most important for this study, Goldman included in his model a measure of case issue and of voting position, and found that criminal cases, including several Second Amendment cases, were not evenly distributed across the U.S. Courts of Appeals circuits. Some appellate circuits, such as the Fifth Circuit, dispose of a disproportionate number of criminal cases than other appellate circuits.[9] Sheldon Goldman updated his earlier work to extend to decisions rendered during the late 1960s and early 1970s, finding that patterns of judicial decision-making regarding specific case issues, such as criminal cases, were effected by interrelated political attitudes and values held by the judges who rendered a decision.[10]

Later scholarship started to focus specifically on case issues and decision-making outcomes in the U.S. Courts of Appeals. John Gruhl found that libel cases decided before the

U.S. Courts of Appeals were not always consistent with decisions rendered by the U.S. Supreme Court. Even though 88 percent of U.S. Courts of Appeals decisions were consistent, Gruhl argued that certain political aspects accounted for this inconsistency between the decision-making of the U.S. Courts of Appeals and the U.S. Supreme Court regarding libel cases.[11] In a similar study, Steve Koh found that the decision-making processes of the eleven U.S. Courts of Appeals circuits vary widely regarding immigration cases. Some circuits have different standards of review than others. The Ninth Circuit Court of Appeals, a sprawling appellate circuit covering much of the western U.S. has long had to deal with immigration cases because of its proximity to foreign countries, possessed different standards of review of than other circuits.[12]

Donald R. Songer, alone and with others, has published extensively regarding issues relating to the U.S. Courts of Appeals. Judicial decision-making has been the central focus of some of his work. For instance, Donald Songer and Susan Haire explored integrated approaches to the study of judicial decision-making regarding obscenity cases within the halls of the U.S. Courts of Appeals. Creating an integrated multivariate model that combined five approaches to judicial voting, the authors found that their new model correctly predicted about 80 percent of the judges' votes on obscenity cases with an error reduction of almost 46 percent.[13] Susan Haire, Stefanie Lindquist, and Roger Hartley considered judicial decision-making through the lens of litigant success, finding that U.S. Courts of Appeals judges were less likely to support the position of plaintiffs when represented by an attorney appearing for the first time before the appellate circuit.[14]

Brandon Denning provided case analysis of several important U.S. Courts of Appeals cases the focused on the Second Amendment, including *Cases v. United States* (1942), *United*

States v. Tot (1942), and *United States v. Warin* (1976). Denning argued that the decisions made by federal appellate judges in these cases created an exceedingly irregular view of the Second Amendment. In fact, Denning argued that two cases, *Cases* and *Warin*, presenting the virtually the same facts, but came to two completely different decisions.[15] Not only has the Second Amendment been politically polarizing in nature, but the U.S. Courts of Appeals have offered vastly different decisions based on similar case facts.

Donald Kilmer and Gary Harding surveyed the Second Amendment case of *Nordyke v. King* (2004). In the decision, as of the start of 2010, Ninth Circuit Court of Appeals decided to offer no formal decision in the important case because the panel judges decided to wait until the *Parker* and *Heller* cases were decided by the U.S. Supreme Court. According to Kilmer and Harding, *Nordyke* was important regarding federal appellate decision-making because the plaintiffs, local gun show promoters, challenged an Alameda County, California, ordinance that made the possession of firearms on county property illegal.[16]

Christopher Keleher examined *Parker v. District of Columbia* (2006) and how it related to the decisions of other federal appellate decisions. The *Parker* case was the first time a federal appellate court found a law unconstitutional on Second Amendment grounds. Keleher concluded that the decision did not forbid all state and local firearms regulations; however, the banning of firearms would be outside their range of legality.[17] Amanda Dupree examined *Parker v. District of Columbia* (2007), a U.S. Court of Appeals for the District of Columbia Circuit case, which was the precursor to the U.S. Supreme Court case, *District of Columbia v. Heller* (2008). *Parker*, then subsequently *Heller*, held that the District of Columbia's ban on handguns violated the Second Amendment and was unconstitutional. Through examination of Second Amendment judicial decision-making analysis, Dupree

argued that *Parker* firmly ushered in an era government sponsorship of an individual right theory of the right to keep and bear arms.[18]

David Kopel surveyed thirty years (1977-2007) of decisions related to the Second Amendment rendered by the plains and Rocky Mountains-based Tenth U.S. Circuit Court of Appeals (CO, KS, NM, OK, UT, WY). The author's argument, established through intense analysis of numerous Second Amendment cases, is that in light of U.S. Supreme Court's *District of Columbia v. Heller* decision, the case law of the Second Amendment in the Tenth Circuit Court of Appeals have largely been wrongly decided. According to Kopel, the case law has been incorrect because the vast majority of cases were decided in opposition to Second Amendment precedents established in *Heller*. For instance, *Bastible v. Weyerhaeuser Co.* (1985) and *U.S. v. Great Guns, Inc.* (2001) were two cases in which Tenth Circuit Second Amendment decisions were wiped out by *Heller.*[19] Using these analyses as a central motivation point, this study suggests that partisan accountability, public opinion, and specific exogenous factors affect the way judges that sit on federal appellate courts rule on polarizing political issues, including the Second Amendment.

From this literature, it is apparent that there is wide-ranging literature regarding the numerous issues that make-up the study of the decision-making and judicial behavior of U.S. Courts of Appeals judges, and federal appellate decision-making regarding Second Amendment cases; however, lengthy research suggests that no literature has focused on a statistical analysis of the political aspects of Second Amendment case holdings in U.S. Courts of Appeals. This study attempts to fill this void in the literature regarding analysis of the political characteristics of U.S. Courts of Appeals Second Amendment decisions. Since this topic has never served as the focus of scholarship, it is my hope that this study will stimulate discussion of and improve

explanations of the issues that affect decision-making regarding Second Amendment decisions in the U.S. Courts of Appeals.

Design of the Research

In this study, I am interested in the political factors that help to explain the judicial behavior and decision-making processes of judges on issue-based cases in the U.S. Courts of Appeals. Specifically, this study elaborates on the theory that political context and the political values of judges, including judicial partisan accountability, public opinion, and specific exogenous factors, affect Second Amendment decisions. Because of this theory, the dependent variable for the study is the Second Amendment case decision whether a U.S. Courts of Appeals three-judge panel ruled in favor of gun control or gun rights. Although scholars have not created a dependent variable in this way before, there is precedent for the usage of case outcomes as the central focus of scholarly commentary.

John Kilwein and Richard Brisbin studied a sample of 1,040 state supreme court decisions regarding intensified scrutiny doctrine.[20] In different work, Sidney Ulmer provided a systematic overview of the behavior of U.S. Supreme Court justices with regard to race-based case outcomes during the Civil Rights Movement.[21] Using the Harold Spaeth database on U.S. Supreme Court decisions, Nancy Scherer and Banks Miller created a logistic regression model to determine if membership in the Federalist Society affected the political ideology and decision-making of U.S. Courts of Appeals judges. Through consideration of case law, the authors found that federal appellate judges who held membership in the Federalist Society were significantly more conservative than non-members.[22]

A new logistic regression model was created for this chapter. This new model estimates the effect of partisan accountability, public opinion, and specific exogenous factors regarding

U.S. Courts of Appeals Second Amendment decisions. The dependent variable for this new logistic regression model were the Second Amendment case decisions, in which a U.S. Courts of Appeals panel either ruled in favor of gun control or gun rights. Dependent variable data was taken from the LexisNexis Academic Legal search engine. Second Amendment case data used for this study spanned the last fifty years, between 1 January 1960 and 31 December 2009. A total of 219 cases from all state supreme courts were included in the data. The dependent variable was created so that if a case ruled in favor of gun control, then the case was labeled "0." If a case favored gun rights, then the case was labeled "1." The mid-range theory of this study was disaggregated into five independent variables, each including specific hypotheses, to estimate their effect on the dependent Second Amendment decision variable.

Partisan Accountability

Partisan accountability provides reasoning for the way politicians vote and act, and judges sitting on the U.S. Courts of Appeals are no different. Each of the 156 U.S. Courts of Appeals individual judges that sit on the bench of one of the eleven appellate circuits across the United States were appointed by a U.S. President. According to Jeff Gill and Richard Waterman, presidential appointments to the federal courts system and the cabinet have symbolized the greatest basis of executive influence over both the bureaucracy and the federal judiciary.[23]

According to Sheldon Goldman federal appellate appointments are dramatically important. This lack of attention can be attributed to the fact that the lower federal judiciary is organized on a region and local basis. Often made behind closed doors, nominations to the U.S. Courts of Appeals are often coupled with intense drama and significant public policy

decisions. The decisions of U.S. Courts of Appeals judges in the 1960s and 1970s regarding civil liberties and civil rights led the courts to become a political issue in elections.[24]

Following Ronald Reagan's victory in 1980, his administration thought that the U.S. Courts of Appeals had become too activist in nature, and thus had established an imbalance of power between the federal and state systems that threatened the rights of the states. Because of this perception, the Reagan administration saw judicial appointments to be an important link to the potential success of the President's domestic agenda. This sharp political turn to the right sought to change direction of government through very partisan means. In fact, Reagan trumped the traditional senatorial prerogative to help name judges to the federal bench, by instead asking Republican Senators to submit three to five names for a federal judgeship. After submission of names, the Reagan Administration would then study the potential nominees and select the individual who would most likely favor Reagan's agenda. For one of the first recorded times, partisanship and ideology had changed the way U.S. Courts of Appeals judges were selected.[25]

According to Sheldon Goldman and Elliot Slotnick, this overt partisanship that took hold during the Reagan Administration regarding appointments to the U.S. Courts of Appeals continued into the 1990s. President Clinton, facing a hostile political environment, was forced into moderation, compromise, and accommodation when he made appointments to the U.S. Courts of Appeals. Because the U.S. Senate and U.S. House Judiciary Committee was chaired by Orrin Hatch (R-UT) and Henry Hyde (R-IL) respectively, the Clinton Administration was forced to contend with both during the nomination and confirmation process of judges to the U.S. Courts of Appeals. The success of his efforts in getting many Democratic, left-leaning

judges nominated, and ultimately confirmed, depended on funneling judicial nominations at the right times.[26]

Sheldon Goldman, Elliot Slotnick, Gerard Gryski, Gary Zuk, and Sara Schiavoni argued that while George W. Bush's judicial appointees were made through coordinated effort and expended significant resources to place judges who shared the President's judicial philosophy on the U.S. Courts of Appeals. In fact, a Bush aide was quoted as saying "(Bush) is very interested in this (judicial selection) and thinks it is one of his most important responsibilities on the domestic side".[27] The authors argued that Bush's nomination process for the U.S. Courts of Appeals became so politically motivated that the administration deviated from the normal nomination process by not allowing the American Bar Association to rate potential candidates before a nomination was made official. Because the U.S. Senate had a poor record of confirming Bush judicial nominees, the administration attempted to regulate the time parameters of the nomination process. This effort was ultimately unsuccessful, but Bush's partisan legacy of the U.S. Courts of Appeals nominees remains.[28]

Sheldon Goldman, Elliot Slotnick, Gerard Gryski, Gary Zuk, and Sara Schiavoni found that the key to understanding the rancorous nature of the judicial nomination process under George W. Bush was his want to continue to nominate politically partisan judges even though his political capital was small after two type presidential elections. Even though the President confronted a nasty environment within the advice and consent process, the Bush Administration placed many highly qualified, ethnically diverse individuals on the U.S. Courts of Appeals. Most importantly, the judges of the federal appellate circuits confirmed during Bush's first term shared the President's judicial philosophy and many shared his partisan nature.[29]

Sheldon Goldman, Elliot Slotnick, Gerard Gryski, and Sara Schiavoni explored the process through which the George W. Bush Administration picked U.S. Courts of Appeals judges between 2005 and 2007, a time of widespread turmoil within his second term in office. The authors found that despite the swirling negative atmosphere around Bush's foreign policy goals, the administration was still exceedingly successful in getting their nominees to the U.S. Courts of Appeals passed through the U.S. Senate. During each of his two presidential campaigns, Bush made it clear that he was going to nominate judges who agreed with him from a policy/partisan standpoint, and this effort continued to be effective during the most trying time of his presidency. [30] In a final work regarding Bush judicial appointments, Sheldon Goldman, Sara Schiavoni, and Elliot Slotnick surveyed the judicial nomination record of the George W. Bush Administration. In the article, the authors found, through numerous interviews with individuals involved the process, that the Bush Administration legacy appointments to the U.S. Courts of Appeals was one that included almost complete success in selecting judges who espoused the similar political and partisan views.[31]

Scholars have also focused on the role of interest groups in the nomination process to the U.S. Courts of Appeals. Nancy Scherer, Brandon Bartels, and Amy Steigerwald argued that nominations to the U.S. Courts of Appeals have become lengthy, partisan proceedings not because of an intense political environment or ideological extremism of nominees, but because of increasing opposition to judicial nominees from concerned interest groups. In instances when interests opposed U.S. Courts of Appeals nominees, the groups sounded a "fire alarm" regarding the professional record of a nominee, which forced U.S. Senators politically-aligned with the interest group to desert the traditional senatorial position of quickly confirming judicial nominees.[32] Through considerable analysis of the U.S. Courts of Appeals, Frank

Cross found that judges of the U.S. Courts of Appeals are influenced in their decision-making processes by political ideology and by the appointing president.[33]

According to scholarship, presidential appointments to the federal bench have become exceedingly political in nature. Scholars have also shown that judicial appointees by Democratic and Republican Presidents traditionally espouse the liberal and conservative values often associated with the political parties of President who nominated the judge. Presidential staffs assure policy agreement between the President and judicial nominees through considerable assessment of candidates. Moreover, the Republican Party was often associated with clear support for Second Amendment rights.[34] To compare, the Democratic Party was frequently connected with gun control efforts.[35]

Connecting this work together, it can be noted that the federal judicial appointment process has become politicized as the executive branch of government has scrambled to make appointments to the federal judiciary who are consistent with presidential ideological and partisan boundaries.[36] As such, this study hypothesizes that U.S. Courts of Appeals Second Amendment decisions will be significantly affected by the partisan presidential nomination make-up of appellate circuit panels because federal appellate judges often mirror the policy preferences of the executives who they were nominated by because of an intense vetting process. In particular, U.S. Courts of Appeals panels that have a majority of judges appointed by Democratic presidents increase the probability that the panel will rule in favor of gun control in Second Amendment decisions, while federal appellate circuit panels that have a majority of judges appointed by Republican presidents increase the probability that the panel will rule in favor of gun rights in Second Amendment decisions.

The partisan accountability aspect of the theory was created to estimate the effect of presidential party nomination majority appellate panels on Second Amendment U.S. Courts of Appeals decisions. This variable indicates that if a Second Amendment federal appellate panel had two Clinton appointments and one Reagan appointment, then the case variable would labeled as a majority Democratic panel. This dichotomous variable was labeled "0" for panels with a majority of judges appointed by Democratic Presidents, or labeled "1" for panels with a majority of judges appointed by Republican Presidents. Variable data regarding U.S. Courts of Appeals panel partisanship was collected from the judge biography section of the Federal Judicial Center website.

Public Opinion

Even though the judges of the federal judiciary possess lifetime appointments, the varying opinions of members of professional circles and the public affect the way that U.S. Courts of Appeals judges rule on issues like the Second Amendment. This notion is backed-up by a law review work that preceded a foundational effort by Frank Cross. In the piece, Cross found that legal and political factors were statistically significant with regard to what issues determined the way federal appellate judges decide cases. One of the political factors measured in the article was an affirmance rate of lower court rulings by the U.S. Courts of Appeals. The affirmance ruling rate was virtually the same regardless of the partisan make-up on the appellate panel. Statistical analysis showed that political ideology was a significant factor of judicial decision-making.[37] Lawrence Baum argued that judicial colleagues, the public, the executive and legislative branches of government, social and professional groups, interested policy groups, and the media are all groups which judges are conscious of and seek consent from when they are making decisions.[38]

Not only does political ideology and public opinion affect judicial decision-making, but evidence also suggests that there is a geographical factor involved when it comes to issues that affect decisions. Steve Koh found that immigration decisions in the U.S. Courts of Appeals differ significantly among the eleven federal appellate circuits. The Ninth Appellate Circuit Court of Appeals, an appellate circuit that has long grappled with issues relating to immigration because of its proximity to both the Mexican and Canadian borders, possess different standards regarding review of immigration cases than the Eleventh Circuit, created in 1981, covering states along the Gulf of Mexico.[39] In another important work, John Gruhl found a similar result regarding the difference in adherence to U.S. Supreme Court libel cases between the different circuits of the U.S. Courts of Appeals.[40] This geographical factor is important because it shows that different circuits and geographic regions affect how federal appellate judges decide cases. This finding shows that the judiciary is aware of and seeks out judicial positions that the general public agrees with.

Coupled together for this study, political ideology and geographical factors establish an estimation of public opinion. J. Woodford Howard, Jr.'s analysis of his work on the role perceptions and behavior of judges in two U.S. Courts of Appeals circuits suggests that there is a common link. While many of the federal appellate judges saw their role and behavior on the bench in a similar light, it was clear that judges coming from different political and demographic background across the two appellate circuits acted differently regarding the law then other judges. Based upon his experience as an elected local and state judge, a southern newcomer to the U.S. Courts of Appeals argued that federal judges should merely interpret the law, while a new northern judge felt that his job included more than simple legal interpretation.[41] Why did the two U.S. Courts of Appeals judges make these arguments? The

first judge clearly understood that a judicial policy overreach was never seen as a positive by the public, while the second judge believed that exact opposite. Even though U.S. Courts of Appeals judges possess lifetime appointments, they still show attentiveness to public opinion and political ideology.

The way U.S. Courts of Appeals judges decide cases has become an important issue within this theory and the literature. The study of judicial behavior has focused on the types of issues that affect the decisions rendered by judges. According to this assertion, judicial behavior refers the types of activities and behaviors judges become involved with in their capacity on the bench, and has an intense and enduring impact on the types of decisions rendered by judges across all courts that comprise the American judiciary.[42] There is also a growing consciousness by scholars that judicial behavior includes more than just ruling on the constitutionality of laws and public policy decisions.[43]

Lee Epstein and Jack Knight argued that the achievement of personal and professional goals, calculated behaviors, and communication between justices effect the behavior of judges. First, an essential assumption of strategic judicial behavior is that justices make decisions on cases that are consistent with their personal goals and interests. Second, because judges want to make the most of their goals and interests, they have to make decisions in a calculated fashion that encompasses the opinions of others. Third, a complete account of strategic judicial behavior is difficult to establish without an understanding of the institutions in which judges work.[44]

Lawrence Baum added to the study of judicial behavior in two recent works. In the earlier effort, Baum addressed the sometimes perplexing issue of judicial behavior.[45] Baum analyzed the significance of striking a balance between a judge's personal interests in a decision and other professional goals, including personal, professional, and judicial popularity, in addition

to the size of the docket. Baum also considered the extent to which judges think, act, and decide cases in a strategic fashion. Strategic judicial behavior refers to the notion that judges develop and select their own judicial policy positions following early assessments of the position of colleagues and other decision-makers might assume.[46]

Building on his earlier scholarship, Lawrence Baum developed his investigation of judicial behavior further by examining judges' work and the environments in which it takes place. Baum argued that judges are aware of, and look for, support from the people that occupy their social and professional environment. Judicial colleagues, the public, other branches of government, social and professional groups, policy groups, and the news media are all entities judges are aware of, and seek approval from, as they do their job. Judges and their audiences, people whose esteem they regard as important, provide a key viewpoint regarding overall judicial behavior.[47] Baum argued "that a judge's motivation to win the approval of their audiences can explain a good deal about their choices as decision-makers…"[48] Epstein, Knight, and Baum agree that judges care about the opinions of others when they decide particular cases. This literature shows that public opinion and public political ideology affects how cases are ruled upon in the U.S. Courts of Appeals.

The public opinion variables estimated the effect of appellate circuit political ideology and population density on Second Amendment U.S. Courts of Appeals cases. This study hypothesizes that U.S. Courts of Appeals Second Amendment decisions will be significantly affected by appellate circuit political ideology and population density. In particular, U.S. Courts of Appeals circuits with a liberal political ideology increase the probability that their appellate panels will rule in favor of gun control in Second Amendment decisions, while federal appellate circuits with a conservative political ideology increase the probability that their appellate panels

will rule in favor of gun rights in Second Amendment decisions. U.S. Courts of Appeals circuits with high population density increase the probability that their appellate panels will rule in favor of gun control in Second Amendment decisions, while federal appellate circuits with low population density increase the probability that their appellate panels will rule in favor of gun rights in Second Amendment decisions.

The appellate circuit political ideology measure was taken from the Berry, et. al. citizen political ideology dataset. The variable was continuously measured between 1 and 100 with lower numbers representing conservative political ideologies and higher numbers representing liberal political ideologies. The appellate circuit population density measure was taken from the U.S. Census Bureau dataset. This continuously measured variable represents the number of people per square mile in each appellate circuit. Lightly populated appellate circuits have lower population densities, while densely populated appellate circuits have higher population densities. The data collected for both of these variables was aggregated from state-level data to account for the eleven circuits that comprise the U.S. Courts of Appeals.

Specific Exogenous Factors

Specific exogenous factors might affect the way U.S. Courts of Appeals judges decide Second Amendment cases. A variety of studies suggest that factors outside the judicial system affect federal appellate cases. James Gibson found that specific external factors, including contact with constituents and electoral defeat, affected the way judges made important decisions. Through data analysis of a quasi-experimental design focusing on the circuit system used by the Iowa trial courts, the author argued that this outside involvement was integral when judges made case decisions.[49]

Philip Fetzer argued that extralegal factors, such as tribal sovereignty, helped to explain multifaceted American Indian legal rulings made in tribal courts. In several previous tribal decisions, scholars questioned the confusing legal reasoning brought up in particular cases. Exogenous factors, such as the way tribes ruled themselves, helped to explain why judges ruled the way that did in several of these rulings inconsistent with other legal reasoning.[50] James Gibson argued that early studies of judicial behavior and decision-making rarely considered multiple exogenous concepts, and that this was a failing in the literature. Gibson argued that far too many studies that have included exogenous measures were created by considering the personal life of judges, which Gibson believed were not exogenous in nature.[51]

John Ferejohn and Barry Weingast used a model of spatial theory to connect judicial goals with distinct judicial behavioral and decision-making outcomes. According to the Ferejohn and Weingast model, exogenous factors included those outside the scope of a judge's career.[52] Pragati Patrick and Thomas Bak found that a powerful federal law that involved increased penalties for individuals who were arrested for violent firearms-related drug crimes affected the amount of firearms cases decided by the federal court system. This finding was particularly interesting because judges seemed hesitant to become involved with these types of cases.[53]

Gretchen Helmke and Mitchell Sanders argued that external factors, such as loyalty to a national government and specific policy interests, helped to shape the behavior of judges on the Argentine Supreme Court. The dominant framework created by the authors linked specific external factors to the types of ideal-type behaviors carried out by judges in their national level judicial careers, including: loyalists, policy seekers, institutionalists, and careerists.[54] Matthew Henry and John Turner analyzed a dataset of patent litigation case decisions from the Court of

Appeals for the Federal Circuit occurring over the last fifty years. Henry and Turner found that outside factors, including decisions made by other judicial levels, have dramatically affected patent decisions made by judges of the Court of Appeals for the Federal Circuit.[55] This literature shows that specific exogenous factors have affected judicial rulings made at various levels of the state and federal judiciary.

Specific exogenous factor variables estimated their effect on U.S. Courts of Appeals Second Amendment decisions. Two firearms-related external factor variables, appellate circuit gun ownership percentage and homicide rate, might be expected to influence case decisions. U.S. Courts of Appeals gun ownership percentage was continuously measured from each appellate circuit based on the findings from Washington Post gun ownership surveys completed in 1970, 1980, 1990, and 2000. Lower gun ownership rates meant that fewer appellate circuit residents own firearms, while higher gun ownership reflected elevated rates of gun ownership.

Appellate circuit homicide rate was a continuous measure of the total number of homicides committed per 100,000 people in an appellate circuit population. Variable data regarding appellate circuit homicide rate was collected from the U.S. Bureau of Justice Statistics. Lower homicide rates meant that the appellate circuit has fewer murders, while more murders reflected elevated rates of homicides in an appellate circuit. All appellate circuit-level data used for this study was aggregated from state-level measures. The data collected for both of these variables was aggregated from state-level data to account for the eleven circuits that comprise the U.S. Courts of Appeals.

This study hypothesized that U.S. Courts of Appeals circuits with high gun ownership percentages increase the probability that their appellate panels will rule in favor of gun rights in Second Amendment decisions, while federal appellate circuits with low gun ownership

percentages increase the probability that their appellate panels will rule in favor of gun control in Second Amendment decisions. This study hypothesized that U.S. Courts of Appeals circuits with low homicide rates increase the probability that their appellate panels will rule in favor of gun rights in Second Amendment decisions, while federal appellate circuits with high homicide rates increase the probability that their appellate panels will rule in favor of gun control in Second Amendment decisions.

Study Methodology and Data Collection Format

Since my dependent variable is dichotomous I use logistic regression analysis.[56] Logistic regression allows researchers to predict a discrete outcome a set of variables that may be continuous, discrete, dichotomous, or a mix of the three types.[57] Logistic regression analysis was designed to analyze the relationship between independent variable data and a dichotomous dependent variable. A dichotomous variable can assume only two values and are just like the indicator dummy variables used throughout the political science literature.[58]

U.S. Courts of Appeals Second Amendment case data was collected separately from the legal search engine within the LexisNexis Academic database. Search terms for data collection in LexisNexis included the following phrases: Second Amendment, concealed weapons, concealed weapons permits, automatic weapons, semi-automatic weapons, gun violence, gun show loophole, background checks, right to bear arms, sawed-off shot gun, assault weapon, convicts and firearms, and gun bans.

Second Amendment case data used for this study spanned the last fifty years, between 1 January 1960 and 31 December 2009. The starting point of this study was important because it encompassed several years before firearms-related issues became important in the American political lexicon, along with the inclusion of the era of peaked interest in gun ownership, gun

control, important political assassinations, and Second Amendment issues that occurred between 1963 and 2009. Case coding was noted after reading the case twice to determine if the respective U.S. Court of Appeals ruled in favor of gun rights or in favor of gun control cases. Only cases in which a Second Amendment claim was forwarded or where an important Second Amendment issue was broached were used in this study. In total, 219 cases from the U.S. Courts of Appeals were found to be appropriate for coding in this project.

Predicted probability estimates were tabulated for average and interesting observations within the data in order to interpret the affect of the independent variables on the dependent variable and create observations that varied values and showed which variables were significant. Inter-coder reliability for this study was established. Fifty-one cases of the 219 full case sample were randomly selected and coded by another reader. A Cronbach's α statistic was tabulated based on the random sample case codes and the reader's code in order to establish a estimate of internal consistency and reliability between the two codes. The following section provides the results and analysis of this study.

Political Aspects of Judicial Behavior and Second Amendment Cases: Results and Analysis

While the previous sections of this study has outlined important scholarly works, theories, and methods that link partisan accountability, public opinion, and specific exogenous factors to the types of Second Amendment decisions rendered by U.S. Courts of Appeals judges, a direct connection between the suggested independent variables and Second Amendment U.S. Courts of Appeals decisions also needs to be established.

Table One reports the estimated logistic regression coefficients of the U.S. Courts of Appeals Second Amendment case model that was clustered for appellate circuits, along with

several logistic regression model performance estimates presented at the bottom of the table, 1960-2009.

Table One: Logistic Regression Analysis of the U.S. Courts of Appeals Second Amendment Decisions, 1960-2009

U.S. Courts of Appeals Independent Variables	**Estimated Coefficients**
Panel Partisanship	0.203 (0.317)
Political Ideology	-0.033 (0.016)***
Population Density	-0.003 (0.002)
Gun Ownership Percentage	-0.025 (0.036)
Homicide Rate	0.044 (0.034)
Log-Likelihood Statistic	-122.578
Chi-Squared Statistic	0.083
% Correctly Predicted	0.867
Proportional Reduction of Error	0.039
R2P	0.864
PCP	0.823
AIC	303.8711
BIC	346.2649

***p<0.05
Sources: LexisNexis Legal Database, the American Judicature Society, the Federal Judicial Center, Berry, et. al., four Washington Post gun ownership surveys, the U.S. Census Bureau, and the U.S. Bureau of Justice Statistics[59].
Note: n=219 cases.

The first variable, panel partisanship (X_1), had an estimated coefficient of 0.203. The estimated coefficient of panel partisanship was not statistically significant because zero was included in the 95 percent confidence interval. Since this variable was not statistically significant, the null hypotheses related to this variable cannot be rejected. The two specific directional hypotheses, appellate circuits with a Republican majority panel increase the

probability of a gun rights rulings and appellate circuits with a Democratic majority panel increase the probability of a gun control ruling, are rejected.

Second, the federal appellate circuit political ideology variable (X_2) had an estimated coefficient of -0.033. The estimated coefficient of the political ideology variable was statistically significant because zero was not included in the 95 percent confidence interval. Because this variable was statistically significant, the null hypotheses associated with this variable can be rejected. The two specific directional hypotheses, appellate circuits with a liberal political ideology increase the probability of a gun control ruling and appellate circuits with a conservative political ideology increase the probability of a gun rights ruling, are accepted. Anticipated relationships between political ideology and U.S. Courts of Appeals Second Amendment decisions are consistent with my hypotheses.

Third, the federal appellate population density variable (X_3) had an estimated coefficient of -0.003. The estimated coefficient of the population density variable was not statistically significant because zero was included in the 95 percent confidence interval. Since the population density variable was not statistically significant, the null hypotheses related to this variable cannot be rejected. The two specific directional hypotheses, U.S. Courts of Appeals circuits with a high population density increase the probability of a gun control ruling and federal appellate circuits with a low population density increase the probability of a gun rights ruling, cannot be accepted.

Fourth, the federal appellate gun ownership percentage variable (X_4) had an estimated coefficient of -0.025. The estimated coefficient of the gun ownership percentage variable was not statistically significant because zero was included in the 95 percent confidence interval. Since the gun ownership percentage variable was not statistically significant, the null hypotheses

related to this variable cannot be rejected. The two specific directional hypotheses, U.S. Courts of Appeals circuits with a high gun ownership percentage increase the probability of a gun rights ruling and federal appellate circuits with a low gun ownership percentage increase the probability of a gun rights ruling, cannot be accepted.

Fifth, the federal appellate homicide rate variable (X_5) had an estimated coefficient of -0.044. The estimated coefficient of the homicide rate variable was not statistically significant because zero was included in the 95 percent confidence interval. Since the homicide rate variable was not statistically significant, the null hypotheses related to this variable cannot be rejected. The two specific directional hypotheses, U.S. Courts of Appeals circuits with a low homicide rate increase the probability of a gun rights ruling and federal appellate circuits with a high homicide rate increase the probability of a gun control ruling, cannot be accepted.

The chi-squared statistic, 0.083, allows this study to reject the null hypothesis that all variables in the model jointly equal zero. This also refers to the finding that the null hypothesis of the model does not improve upon simply picking the model outcome. The percent correctly predicted statistic for this study is 0.867, which means that the model predicts 86.7% of all cases in the model. This high statistical value refers to the fraction of cases where the actual outcome corresponds to the predictions described in the model. The third and final statistic that needs to be addressed is the proportional reduction of error statistic, which is 0.289. This statistic refers to the percentage of errors that occur from just picking the modal outcome. The reduction of error is the percentage of these errors that your model eliminates. Because of this statistic, the model presented in this study reduced chance error by 28.9%

Regarding the performance by the logistic regression model, the R^2_P value for the linear probability model was 0.864. This value reflects that the logistic model makes correct

predictions 86.4 percent of the time, which is almost forty percent better than pure chance. The PCP value for the logistic regression model was 0.823. This value reflects that the logistic regression model makes correct predictions 82.3 percent of the time, which means that the model predicts potential outcomes much better than chance. The AIC and BIC values for the logistic probability model are relatively low. This means that the logistic regression model has a good fit. The logistic regression model was shown to predict outside the bounds of zero and one because the minimum and maximum summation values for the predicted value of the dependent variable of the model were -1.189 for the minimum value and 1.789 for the maximum value. These model performance values were estimated following the initial execution of the model.

In order to estimate the inter-coder reliability and to measure the soundness of the coding schema for this study, fifty-one cases of the full 219 case sample were randomly selected and coded by another reader. A Cronbach's α statistic was tabulated based on the random sample case codes and the reader's code in order to establish an estimate of internal consistency and reliability between the two codes. The Cronbach's α statistic for this study was 0.907, which suggests that the two case codes have a high level of internal consistency. Typically, a reliability coefficient of 0.70 or higher for two codes is considered to be highly acceptable and possess excellent agreement.

Table Two outlines the predicted probability estimation (PPE) of important data observations within the full sample of Second Amendment U.S. Courts of Appeals cases. PPE estimates interpret the effect of significant or interesting independent variables on the dependent variable. Coupled with several averaged PPE estimates, Table Two presents sixteen PPE observations from eight appellate circuits changed the most over the study period, 1960-2009. An appellate circuit that changed considerably from conservative to liberal regarding political

ideology was measured in the year the circuit was most conservative and the year the circuit was most liberal in order to illustrate the full affect of significant independent variable on the dependent variable.

Table Nine: Predicted Probability Estimation (PPE) of the U.S. Courts of Appeals Second Amendment Decisions, 1960-2009

Type of Estimation	Variable	Var. Score; Year	App. Circ.	Gun Control Ruling PPE	Gun Rights Ruling PPE
Average Sample Observation	--	--	--	76.2 percent	23.8 percent
Average Conservative Appellate Circuit	Pol. Ideo.	--	--	69.2	30.8
Average Liberal Appellate Circuit	Pol. Ideo.	--	--	82.5	17.5
Average Low Pop. Den. App. Circuit	Pop. Den.	--	--	67.4	32.6
Average High Pop. Den. App. Circuit	Pop. Den.	--	--	83.6	16.4
Conservative to Liberal Political Ideology	Pol. Ideo.	33.55; 1966	4	66.8	33.2
Conservative to Liberal Political Ideology	Pol. Ideo.	55.99; 1999	4	80.8	19.2
Conservative to Liberal Political Ideology	Pol. Ideo.	15.42; 1971	5	52.7	47.3
Conservative to Liberal Political Ideology	Pol. Ideo.	43.21; 1994	5	73.5	26.5
Liberal to Conservative Political Ideology	Pol. Ideo.	53.92; 1960	6	79.7	20.3
Liberal to Conservative Political Ideology	Pol. Ideo.	36.53; 2000	6	68.9	31.1
Liberal to Conservative Political Ideology	Pol. Ideo.	58.99; 1960	9	82.2	17.8
Liberal to Conservative Political Ideology	Pol. Ideo.	41.46; 2000	9	72.3	27.7
Least Population Growth	Pop. Den.	32.37; 1960	8	67.1	32.9
Least Population Growth	Pop. Den.	43.06; 2007	8	67.9	32.1
Least Population Growth	Pop. Den.	16.57; 1960	10	65.9	34.1
Least Population Growth	Pop. Den.	31.22; 2007	10	67.0	33.0
Most Population Growth	Pop. Den.	394.6; 1960	1	86.9	13.1
Most Population Growth	Pop. Den.	506.1; 2007	1	89.9	10.1
Most Population Growth	Pop. Den.	432.9; 1960	3	88.1	11.9
Most Population Growth	Pop. Den.	630.4; 2007	3	92.3	7.7

Sources: LexisNexis Legal Database, the American Judicature Society, the Federal Judicial Center, Berry, et. al., four Washington Post gun ownership surveys, the U.S. Census Bureau, and the U.S. Bureau of Justice Statistics[60].
Note: n=219 cases.

Table Two illustrates averaged and appellate circuit-level data regarding the predicted probability estimates of the significant variable from the study. The first estimation in the table provides an average sample observation in which 76.2 percent of the time a gun control ruling is expected, while 23.8 percent of the time a gun rights ruling was expected.

By setting data values of the variables through usage of the standard deviation scores, I can create average PPE values for significant appellate circuit-level variable data. Since the Berry, et. al., state political ideology and state gun ownership percentage values are continuous, and I combined state-level data to establish appellate circuit level measures, the data set created for this study allows for easy analysis by means of PPE. By setting the appellate circuit political ideology value one standard deviation both above (liberal) and below (conservative) the mean, I can create an average liberal and conservative appellate circuit Second Amendment PPE. In an average liberal appellate circuit, a gun control ruling is predicted 82.5 percent of the time, while a gun rights ruling is predicted only 17.5 percent of the time. Comparatively, in an average conservative appellate circuit, a gun rights ruling is predicted 30.8 percent of the time, while 39.2 percent of the time a gun control decision is predicted.

By setting the appellate circuit population density values one standard deviation both above (high population density) and below (low population density) the mean, I can create an average high and low population density for appellate circuit Second Amendment PPE. In an average high population density appellate circuit, a gun control ruling is predicted 83.6 percent of the time, while a gun rights ruling is predicted 16.4 percent of the time. Conversely, in an average low population density appellate circuit, a gun control ruling is predicted 67.4 percent of the time, while 32.6 percent of the time a gun rights decision is predicted.

Predicted probability estimates can also be used to track changes to the probabilities of Second Amendment case rulings for appellate circuit-level variable data that changed the most during the fifty year study period by setting the variable values at the opposing scores. For instance, the Fourth and Fifth Circuit Courts of Appeals appellate circuit political ideology moved from conservative to (33.55; 15.42 respectively) in 1960s and early 1970s to moderate (55.99; 43.21 respectively) in the 1990s. In these appellate circuits, the PPE of gun rights rulings were at their highest point (33.2 percent; 47.3 percent respectively) when the appellate circuit political ideology values were at their most conservative. After the appellate circuit political ideologies moderated in the 1990s (55.99; 43.21 respectively), the PPE of a gun rights ruling decreased by about 15 percent. In fact, by the 1990s, the PPE of a gun control ruling was 80.8 percent in the Fourth Circuit Court of Appeals and 73.5 percent in the Fifth Circuit Court of Appeals that the federal appellate court would rule in favor of gun control after political ideologies moved from conservative to moderate. As the political ideology of an appellate circuit moves from conservative to liberal, the probability of a gun control ruling increases.

In comparison, the Sixth and Ninth Circuit Courts of Appeals appellate circuit political ideology scores moved the most from liberal (53.92; 58.99 respectively) in 1960 to conservative (36.53; 41.46 respectively) in 2000. In these appellate circuits, the PPE of a Second Amendment gun control in both appellate circuits was high (79.7 percent; 82.2 percent respectively) when the appellate circuit political ideology values were at their most liberal in 1960. After the appellate circuit political ideologies became more moderate/conservative in the two circuits in 2000 (36.53; 41.46 respectively), the PPE of a gun rights ruling increased by more than 10 percent. In fact, by 2000, the PPE of a gun rights ruling was 31.1 percent in the Sixth Circuit Court of Appeals and 27.7 percent in the Ninth Circuit Court of Appeals that the federal appellate court

would rule in favor of gun rights after political ideologies moved from moderate/liberal moderate/conservative. As the political ideology of an appellate circuit moved from liberal to conservative, the probability of a gun rights ruling increased.

Predicted probability estimates can also be used to track changes to the probabilities of Second Amendment case rulings for appellate circuit population density variable data that changed the most during the fifty year study period by setting the variable values at the opposing scores. For instance, the Eighth and Tenth Circuit Courts of Appeals appellate circuit population density measures grew the least (Eighth from 32.37 in 1960 to 43.06 in 2007; Tenth from 16.57 in 1960 to 31.22 in 2007) during the fifty year study period. For these two appellate circuits, the affect of low population growth had little impact on the PPE of gun control and gun rights rulings because of the already significant gun control ruling skew in the full sample. In fact, the PPE changed by only 0.8 percent (67.1 percent in 1960 to 67.9 percent in 2007) in the Eighth Circuit Courts of Appeals from 1960 to 2007, while the PPE changed by only 1.1 percent (65.9 percent in 1960 to 67.0 percent in 2007) in the Tenth Circuit Court of Appeals during the same period. As population growth increases, the probability of a federal appellate circuit ruling in favor of gun control increases.

In comparison, the First and Third Circuit Courts of Appeals appellate circuit population density values grew the most (First from 394.6 in 1960 to 506.1 in 2007; Third from 432.9 in 1960 to 630.4 in 2007) during the fifty year study period. For these appellate circuits, the affect of significant population growth had little impact on the PPE of gun control and gun rights rulings because of the already significant gun control ruling skew in the full sample. The PPE changed by only 3.0 percent (86.9 percent in 1960 to 89.9 percent in 2007) in the First Circuit Court of Appeals from 1960 to 2007, while the PPE changed by 4.2 percent (88.1 percent in

1960 to 92.3 percent in 2007) in the Third Circuit Court of Appeals during the same period. Again, as population grows the probability of a federal appellate circuit ruling in favor of gun control increases; however, the affect is not significant.

Conclusions

This study posed the research question, what is the extent and determinants of Second Amendment rulings in the U.S. Courts of Appeals, 1960-2009? This study theorized that partisan accountability, public opinion, and specific policy interests affect the way judges that sit on the circuits of the U.S. Courts of Appeals rule on polarizing political issues, such as the Second Amendment. This theory was then operationalized into five independent variables and hypotheses, with the actual Second Amendment case ruling being the dependent variable. The operationalizations of the study included partisan accountability. This variable was developed into a dichotomous variable, panel partisanship, which measured the partisan make-up of federal appellate panels. Second, the public opinion aspect of the study was operationalized to continuously measure appellate circuit political ideology and population density. Third, specific policy interests were operationalized to continuously measure appellate circuit gun ownership percentage and homicide rate.

Using logistic regression analysis, this study found that the extent and determinants of Second Amendment rulings in the U.S. Courts of Appeals between 1960 and 2009 were limited to a single public opinion variable. More specifically, appellate circuit political ideology had a direct impact on the outcomes of Second Amendment U.S. Courts of Appeals rulings during the fifty year study period. As such, the two hypotheses associated with these two independent variables are accepted and the null hypotheses are rejected. In particular, this study can conclude that U.S. Courts of Appeals circuits with a liberal political ideology increase the probability that

their appellate panels will rule in favor of gun control in Second Amendment decisions. U.S. Courts of Appeals circuits with a conservative political ideology increase the probability that their appellate panels will rule in favor of gun rights in Second Amendment decisions.

The four other variables in the study, panel partisanship, appellate circuit gun ownership, and appellate circuit homicide rate did not have a statistically significant relationship with the dependent variable, and thus the eight hypotheses associated with these independent variables cannot be accepted and the null hypotheses cannot be rejected. The logistic regression model performance measures illustrated the fact that the model made predictions correctly almost 90.7 percent of the time and had a good fit, while the coding schema employed in the study was shown to provide high consistency between coders because of the Cronbach's α statistic.

The affect of appellate circuit political ideology on Second Amendment U.S. Courts of Appeals decisions provides no significant shock. Political institutions and federal judicial circuits are filled with political appointees who have been given their position because of their own personal political feelings or have feelings that closely mirror those of the individual doing the appointing. Judicial actors, even ones that are supposed to possess political independence, do have their own personal political ideology. This set of personal ideas, goals, expectations, and actions, affects the actions of judicial actors when they carry out their role on the bench.

Corresponding directly to traditional notions about political ideology and support for or opposition to gun rights, this study shows that U.S. Courts of Appeals judges with conservative political ideologies are more likely to rule in favor of gun rights than gun control. This study also shows that federal appellate judges with liberal political ideologies are more likely to rule in favor of gun control than gun rights. Historical trends have shown that individuals with conservative political ideologies support greater gun rights, while individuals with liberal

political ideologies support greater gun control measures. The findings in this study affirm traditional political ideology considerations, especially regarding the Second Amendment at the federal appellate level.

Like the appellate circuit political ideology variable, the affect of appellate circuit of other study variables on Second Amendment U.S. Courts of Appeals rulings provides an interesting look into the uncertain nature of urban politics. Urban areas have traditionally been much more likely to curtail the usage and possession of firearms in order to maintain stability and decrease violence in cities that have seen their fair share of it in the past. Appellate circuits, such as the Third Circuit Court of Appeals, and the states associated with the circuit (Delaware, New Jersey, and Pennsylvania) often choose to deter gun violence through ownership because of the density of their population.

For instance, New Jersey is the most densely populated state with 1171.1 people per square mile (2007), while the state also has one the lowest gun ownership percentages in the entire country with only 12.3 percent (2000) of people owning firearms. In comparison, Alaska only has 1.2 people per square mile (2007) with 57.8 percent gun ownership (2000). Some states and appellate circuits, especially those with densely populated areas, are more likely to restrict gun ownership. Gun culture across the country varies widely. States and appellate circuits with higher gun ownership rates have traditionally been associated with rural and conservative areas, while states and appellate circuits with lesser gun ownership rates have traditionally been associated with urban and liberal areas. The findings in this study affirm traditional population density considerations, especially regarding the Second Amendment at the federal appellate level.

CODA

State Supreme Court and U.S. Courts of Appeals Second Amendment Data Comparison

Because of the similar design of the studies completed in Chapter Three and Chapter Four, the important findings in each study are easily comparable. For instance, Second Amendment rulings by decade, gun rights/gun control ruling types, gun-related issues, tracking Second Amendment cases, Second Amendment estimated logistic regression coefficients, and Second Amendment predicted probability estimates (PPE) in state supreme courts and the U.S. Courts of Appeals can be comparable in table format.

Table One outlines comparable Second Amendment ruling decade data, 1960-2009, for state and federal appellate court

Table One: State and Federal Appellate Second Amendment Rulings by Decade, 1960-2009

Decade	State Supreme Courts	U.S. Courts of Appeals	All-Decade Totals
1960s	29 (10.8 percent)	4 (1.8 percent)	**33 (6.8 percent)**
1970s	89 (33.1)	31 (14.2)	**120 (24.6)**
1980s	59 (21.9)	24 (10.9)	**83 (17.0)**
1990s	57 (21.2)	88 (40.2)	**145 (29.7)**
2000s	35 (13.0)	72 (32.9)	**107 (21.9)**
Judicial Level Totals	**269 (100 percent)**	**219 (100 percent)**	**488 (100 percent)**

Source: LexisNexis Academic Legal Database[61].
Note: n=488 cases.

Comparing state and federal appellate rulings by decade, the most active decade for Second Amendment cases in state supreme courts was the 1970s (33.1 percent; 89 cases), while the most active decade for similar cases in the U.S. Courts of Appeals was the 1990s (40.2 percent; 88 cases). A majority of Second Amendment state supreme court cases were decided in the 1970s and 1980s (55 percent; 148 cases), while a super majority of similar cases in the U.S. Courts of Appeals were decided in the 1990s and 2000s (73.1 percent; 160 cases). All-decade

Second Amendment case totals (both state supreme courts and U.S. Courts of Appeals) found that the 1970s (24.6 percent; 120 cases) and 1990s (29.7 percent; 145 cases) were the two most active decades in terms of total decisions rendered at both levels of the state and federal judiciary.

Table One illustrates the rising importance of the Second Amendment in the American political system. In both the state supreme courts and the U.S. Courts of Appeals, the 1960s (6.8 percent; 33 cases) were the least active in terms of Second Amendment decisions. All other decade totals from both judicial levels reported Second Amendment decision totals of more than 14 percent, except for the 1980s in the U.S. Courts of Appeals. The all-decade case total percentages at both studied levels of the judiciary were fairly evenly distributed between decades. Other than the 1960s (6.8 percent), all-decade decision percentages were not lower than 17 percent in the 1980s and not higher than 29.7 percent in the 1990s.

Table Two illustrates comparable Second Amendment ruling type data, 1960-2009, from the state supreme courts and the U.S. Courts of Appeals.

Table Two: State and Federal Appellate Second Amendment Cases by Ruling Type, 1960-2009

Type of Ruling	**State Supreme Courts**	**U.S. Courts of Appeals**	**Number of Cases**
Gun Control Rulings	143 (53.2 percent)	160 (73.1 percent)	**303 (62.1 percent)**
Gun Rights Rulings	126 (46.8)	59 (26.9)	**185 (37.9)**
Total Rulings	**269 (100 percent)**	**219 (100 percent)**	**488 (100 percent)**

Source: LexisNexis Academic Legal Database[62].
Note: n=488 cases.

Second Amendment case ruling types at both the state supreme courts and the U.S. Courts of Appeals provided interesting comparable data. The spread between state supreme courts and U.S. Courts of Appeals Second Amendment decisions that favored gun control and rights was significant. According to the data, a Second Amendment case was 19.9 percent more likely to

favor gun rights in state supreme courts than in the U.S. Courts of Appeals, while the same spread favored gun control in the U.S. Courts of Appeals over state supreme courts.

In state supreme courts, Second Amendment cases were 6.4 percent more likely to be decided in favor of gun control then gun rights. In the U.S. Courts of Appeals, Second Amendment cases were 46.2 percent more likely to be decided in favor of gun control. This finding represents a 39.8 percent difference between the likelihood of a particular ruling in the two levels of the state and federal judiciary. Regarding the full state and federal appellate Second Amendment case sample, 303 (62.1 percent) of the 488 cases were decided in favor of gun control. The balance of the case sample, 185 (37.9 percent), were decided in favor of gun rights. This represents a 24.2 percent spread between the likelihood of a gun control ruling (62.1 percent) and a gun rights ruling (37.9 percent) in the full state and federal case sample.

Table Three illustrates comparable Second Amendment case issue data, 1960-2009, from the state supreme courts and the U.S. Courts of Appeals.

Table Three: State and Federal Appellate Second Amendment Cases by Issue, 1960-2009

Litigated Second Amendment Issues	**State Supreme Courts**	**U.S. Courts of Appeals**	**Number of Cases**
Felon in Possession of a Firearm	51 (19.0 percent)	38 (17.4 percent)	**89 (18.2 percent)**
Concealed Weapons Violation	31 (11.5)	17 (7.8)	**48 (9.8)**
Denial of Personal Firearms License	24 (8.9)	28 (12.8)	**52 (10.7)**
Possession of Automatic/Assault Weapon	23 (8.5)	24 (11.0)	**47 (9.6)**
Unregistered Firearms Violation	20 (7.4)	16 (7.3)	**36 (7.4)**
Local Ban on Gun Show Sales/Exhibition	9 (3.3)	14 (6.4)	**23 (4.7)**
Gun Club Related Issues	8 (3.0)	13 (5.9)	**21 (4.3)**
Total Cases	**269 (100 percent)**	**219 (100 percent)**	**488 (100 percent)**

Source: LexisNexis Academic Legal Database[63].
Note: n=488 cases in the full sample.

The types of Second Amendment issues decided in both state supreme courts and U.S. Courts of Appeals can be compared much like the chronological and rulings data. Table Three outlines the Second Amendment case issue data, 1960-2009, from both levels of the judiciary in the study. In particular, the Second Amendment that was litigated the most during the fifty year study period in the state and federal appellate levels was possession of a firearm by a convicted felon. In fact, almost 20 percent (89 cases; 18.2 percent) of the full 488 case sample dealt with the felon possession issues. Given the numerous issues associated with the Second Amendment, it is a significant to show that one particular issue, such as felony possession, made up nearly one-fifth of the full case issue sample.

Three other issues made up more than 30 percent of the full case issue sample. Denial of personal firearms license, concealed weapons violations, and possession of automatic/assault weapon accounted for 30.1 percent of the issues decided in the 488 full state and federal Second Amendment case sample. In particular, all three firearms-related issue-based case types accounted for about 10 percent of the full case sample. The final issues listed in the table, unregistered firearms violations, local ban on gun show sales/exhibitions, and gun club-related issues accounted for 16.4 percent of the full case sample, or about 5.4 percent each. The balance of the Second Amendment case issues decided in state supreme courts and the U.S. Courts of Appeals, 35.3 percent of all cases, varied between the levels of the judiciary and between different types of issues consistent with state and federal systems.

Table Four illustrates comparable Second Amendment case tracking data, 1960-2009, from the state supreme courts and the U.S. Courts of Appeals.

Table Four: Tracking State and Federal Appellate Second Amendment Cases, 1960-2009

Type of Action	**State Courts of Last Resort**	**U.S. Courts of Appeals**	**Number of Cases**
None	219 (81.4 percent)	183 (83.6 percent)	**402 (82.4 percent)**
Case Reheard (State)/Reviewed En Banc (Fed.)	5 (1.9)	3 (1.4)	**8 (1.6)**
Original Ruling Overturned (Same Level)	2 (0.7)	1 (0.4)	**3 (0.06)**
Case Appealed	45 (16.7)	33 (15.1)	**78 (16.0)**
Case in which Certiorari was Denied	40 (14.9)	24 (11.0)	**64 (13.1)**
Case Reviewed	5 (1.9)	9 (4.1)	**14 (2.9)**
Case Overturned	3 (1.1)	5 (2.3)	**8 (1.6)**
Total Cases	**269 (100 percent)**	**219 (100 percent)**	**488 (100 percent)**

Source: LexisNexis Academic Legal Database[64].
Note: n=488 cases.

Table Four shows that 402 (82.4 percent) Second Amendment cases ended with a decision rendered in the state supreme courts of the U.S. Courts of Appeals. In all 402 of these cases, no further action by either side was formally attempted. Several litigants in the sample looked into possibly appealing their decision to the U.S. Supreme Court; however, ultimately there was no appeal made. Only 8 cases of the full case sample were either re-heard (5; state supreme courts) or reviewed en banc (3; U.S. Courts of Appeals). Of these 8 cases, 3 of the original rulings were overturned at the same of the judiciary.

78 total Second Amendment cases in the full sample (16.0 percent) were appealed to the U.S. Supreme Court. In 64 of these cases (13.1 percent), certiorari, an official writ for review by a judicial body, was denied by the U.S. Supreme Court. This finding means that 14 cases (2.9 percent; 5 from state supreme courts; 9 from the U.S. Courts of Appeals) were accepted for review by the U.S. Supreme Court. After review, 8 original Second Amendment case outcomes (1.6 percent; 3 from state supreme courts; 5 from U.S. Courts of Appeals) were overturned by the U.S. Supreme Court. Taken as a whole, only 11 original Second Amendment case decisions

(3 decisions overturned at original judicial level; 8 decisions overturned on appeal in the U.S. Supreme Court) were eventually overturned through re-hearings or on appeal. This rate of success was only 2.3 percent.

Table Five illustrates comparable estimated logistic regression coefficients for Second Amendment case data, 1960-2009, from the state supreme courts and the U.S. Courts of Appeals.

Table Five: Comparable Estimated Logistic Regression Coefficients of State and Federal Appellate Second Amendment Decisions, 1960-2009

Independent Variables	**State Supreme Courts**	**U.S. Courts of Appeals**
Political Ideology	0.000 (0.014)***	0.036 (0.015)***
Population Density	0.345 (0.211)	0.039 (0.001)
Gun Ownership Percentage	0.000 (0.020)***	0.487 (0.395)
Homicide Rate	0.117 (0.059)	0.192 (0.033)
R^2_P	0.901	0.864
PCP	0.897	0.823
AIC	235.2367	303.8711
BIC	265.5498	346.2649
Cronbach's α Statistic	0.918	0.907

***p<0.05
Sources: LexisNexis Legal Database, the American Judicature Society, the Federal Judicial Center, Brisbin & Kilwein, Judgepedia, Berry, et al., four Washington Post gun ownership surveys, the U.S. Census Bureau, and the U.S. Bureau of Justice Statistics[65].
Note: n=269 cases in the state supreme courts; n=219 in the U.S. Courts of Appeals; 488 total cases.

Considering the logistic regression coefficients for similar measurable variables at both the state and federal appellate levels, Table Five illustrates the differences between continuously measured variables in the full Second Amendment case sample. In particular, two variables in the state supreme courts and one in the U.S. Courts of Appeals proved to be significant. In the state supreme courts, state political ideology and gun ownership percentage were significant. In the U.S. Courts of Appeals, appellate circuit political ideology was significant.

In terms of the two statistical models, the state supreme court regression model makes correct predictions regarding Second Amendment decisions better based upon the R^2_P values. However, according the outlined PCP values, the U.S. Courts of Appeals regression model makes correct predictions better than the state supreme court model. The AIC and BIC values were all low and have a good fit for each model. Finally, the Cronbach's α statistic for intercoder reliability for both models was high and acceptable. In particular, the state supreme court statistic had a slightly higher rate of internal consistency than the U.S. Courts of Appeals model.

Table Six illustrates comparable predicted probability estimates (PPE) for Second Amendment case data, 1960-2009, from the state supreme courts and the U.S. Courts of Appeals.

Table Six: Comparable Predicted Probably Estimates (PPE) of State and Federal Appellate Second Amendment Decisions, 1960-2009

Type of Estimation	Variable	State Supreme Courts Gun Control Ruling PPE	State Supreme Courts Gun Rights Ruling PPE	U.S. Courts of Appeals Gun Control Ruling PPE	U.S. Courts of Appeals Gun Rights Ruling PPE
Average Sample Observation	--	55.3 percent	44.7 percent	76.2 percent	23.8 percent
Average State Conservative Ideology	Pol. Ideo.	29.7	70.3	--	--
Average State Liberal Ideology	Pol. Ideo.	78.4	21.6	--	--
Average Conservative App. Circuit	Pol. Ideo.	--	--	69.2	30.8
Average Liberal App. Circuit	Pol. Ideo.	--	--	82.5	17.5

Sources: LexisNexis Legal Database, the American Judicature Society, the Federal Judicial Center, Brisbin & Kilwein, Judgepedia, Berry, et al., four Washington Post gun ownership surveys, the U.S. Census Bureau, and the U.S. Bureau of Justice Statistics[66].
Note: n=269 cases in the state supreme courts; n=219 in the U.S. Courts of Appeals; 488 total cases.

The predicted probability estimates (PPE) outlined above show the differences in the predicted outcomes of Second Amendment case outcomes in the state supreme courts and the U.S. Courts of Appeals. The most striking difference between the two judicial levels was the

average sample observation. In the U.S. Courts of Appeals sample a gun control ruling was expected 21.9 percent more than in the state supreme courts sample. These estimates show a much greater percentage of gun control rulings were decided in the U.S. Courts of Appeals level than in state supreme courts.

Comparable PPE estimates were tabulated for political ideology, which was the lone variable significant in both the state supreme courts and the U.S. Courts of Appeals Second Amendment case samples. PPE estimates show how much of an affect the independent variable has on dependent variable. In this scenario, even though political ideology was shown to be significant in both state supreme courts and U.S. Courts of Appeals regarding Second Amendment decisions, the effect of this significant variable was greater in the state supreme courts. The likelihood of a gun control decision in the state court of last resort in a conservative was 29.7 percent, while the likelihood of a gun control ruling in the state court of last resort in a liberal state was 78.4 percent. This statistic represents a difference of 48.7 percent between the likelihood of a gun control decision in two different states from a political ideology perspective. In comparison, the same statistic tabulated in for conservative and liberal appellate circuits shows a difference of only 13.3 percent between the likelihood of a gun control decision. This represents a difference of 35.4 percent between the state supreme courts and the U.S. Courts of Appeals with regard to political ideology.

Endnotes

[1]*United States v. Klebig,* 600 F.3d 700 (7th Cir. 2009).

[2]Ibid.

[3]Ibid.

[4]Ibid.

[5]Ibid.

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[25]Ibid.

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CHAPTER FIVE

SUMMARY OF FINDINGS AND RESEARCH IMPLICATIONS

> The ruling class doesn't care about public safety. Having made it very difficult for states and localities to police themselves, having left ordinary citizens with no choice but to protect themselves as best they can, they now try to take our guns away. In fact they blame us and our guns for crime. This is so wrong that it cannot be an honest mistake.
>
> --Malcolm Wallop, former U.S. Senator (R-WY), 1992

> I think there should be a law—and I know this is extreme—that no one can have a gun in the United States. If you have a gun, you go to jail. Only the police should have guns.
>
> --Rosie O'Donnell, American Television Personality, 1999

This study surveyed important literature regarding the Second Amendment, provided interview analysis about the operations of Second Amendment legal operations and cause lawyers, and outlined the nature of Second Amendment litigation and judicial decision-making in state supreme courts and the U.S. Courts of Appeals between 1960 and 2009. This chapter will provide some analysis about potential implications of the research provided in the preceding pages and chapters. Finally, this final chapter will outline the most important concluding thoughts complied as the various studies were completed. The next section provides a summary of the findings of this dissertation.

Summary of Findings

Three separate studies were completed in the course of this dissertation. By using data collected from telephone interviews with twenty-one Second Amendment gun rights and gun control cause lawyers, Chapter Two found that there were distinct differences between local, state, and national Second Amendment interest groups with regard to legal participation, litigation strategies, judicial venue-shopping, coordination and networking, and organization. More specifically, local, state, and national Second Amendment interest groups deal with all five of the interview issues differently. Because of this finding, the five research hypotheses associated with these variable relationships were accepted and the null hypotheses were rejected. This study found that there were distinct differences between heavily funded and lesser funded interest groups with regard to legal participation, litigation strategies, judicial venue-shopping, coordination and networking, and organization. Heavily funded and lesser funded Second Amendment interest groups deal with the five interview areas very differently. Because of this finding, the five research hypotheses associated with these variable relationships were accepted and the null hypotheses were rejected.

Along with the first two sets of theories, this study found that there were clear differences between gun rights and gun control interest groups with regard to litigation strategies, judicial venue-shopping, and organization. More specifically, gun rights and gun control interest groups deal with these three interview areas in significantly different ways. As such, the three research hypotheses associated with the variable relationships are accepted and the null hypotheses are rejected. Interview responses from the cause lawyers regarding legal participation and coordination/networking showed that gun rights and gun control lawyers actually participate and coordinate in Second Amendment cases in similar manners, and thus, the two research

hypotheses associated with these two variable relationships cannot be accepted and the null hypotheses cannot be rejected.

Using logistic regression analysis, Chapter Three found that the nature and determinants of Second Amendment rulings in state supreme courts, 1960-2009, were limited to select public opinion and specific policy interests. More specifically, state political ideology and state gun ownership percentage variables had a direct impact on the outcomes of Second Amendment state supreme courts rulings during the fifty year study period. As such, the four hypotheses associated with these two independent variables were accepted and the null hypotheses were rejected.

State judicial selection method, the presence of a state intermediate appellate court, state population density, and state homicide rate variables did not have a statistically significant relationship with the dependent variable, and thus the eight hypotheses associated with these independent variables cannot be accepted and the null hypotheses cannot be rejected. Furthermore, the logistic regression model performance measures illustrated the fact that the model made predictions correctly more than 90 percent of the time and had a good fit, while the coding schema employed in the study was shown to provide high consistency between coders because of the kappa statistic.

Similar to the study completed in Chapter Three, Chapter Four found that the effect of political aspects on Second Amendment rulings in the U.S. Courts of Appeals, 1960-2009, were limited to public opinion variables. More specifically, appellate circuit political ideology and population density variables had a direct impact on the outcomes of Second Amendment U.S. Courts of Appeals rulings during the fifty year study period. Because of these relationships, the

four hypotheses associated with these two independent variables are accepted and the null hypotheses are rejected.

Panel partisanship, appellate circuit gun ownership, and appellate circuit homicide rate did not have a statistically significant relationship with the dependent variable, and thus, the six hypotheses associated with these independent variables cannot be accepted and the null hypotheses cannot be rejected. The logistic regression model performance measures illustrated the fact that the model made predictions correctly more than 83 percent of the time and had a good fit, while the coding schema employed in the study was shown to provide high consistency between coders because of the tabulated kappa statistic.

Research Implications

This work has outlined a number of findings regarding Second Amendment cause lawyering and cases in state supreme courts and the U.S. Courts of Appeals. Given the findings previously outlined, several important research implications become apparent. First, it is important to discuss the "so what" question regarding power and empowerment in American politics. In the data collected, cause lawyers who represented national level interest groups wielded significant monetary power to participate in more Second Amendment cases, utilize more litigation strategies, shop between potential judicial venues, coordinate and network with other interest groups, and possess a larger legal team and organization for litigation purposes. The local, state, and federal court system empowers local cause lawyers to bring Second Amendment litigation as an outlaw to obtain a remedy from an unjust law. Although many local gun rights and gun control lawyers do not possess the same resources as their national level colleagues, the court system in itself sanctions litigation for laws thought to be unfair.

In state supreme court and the U.S. Courts of Appeals Second Amendment rulings, the issues of power and empowerment were fairly divided. Because state supreme court judges were much more likely to rule in favor of gun rights, and thus more gun rights, than their federal appellate court colleagues, the public were empowered with more rights in these states. Once state residents attained greater rights in these Second Amendment cases, they were empowered through the authority of the state. In this respect, state supreme court judges possessed significant power to determine what rights should be given to the public and the rights that should not be given. The wielding of power in the federal court was much different. In the U.S. Courts of Appeals, almost three-quarters of the time a gun control ruling was expected. In significantly more rulings, federal appellate judges ruled in favor of gun control, and thus did not allow citizens to gain more rights and liberties associated with firearms. In this respect, U.S. Courts of Appeals judges and the federal government retained significant power concerning firearms and federal law.

Second, the three studies that comprise my dissertation establish a clear argument with regard to the American federal system because of distinct and lasting differences between the ways Second Amendment cases are decided in both state supreme courts and the U.S. Courts of Appeals. It was clear from the data that state supreme courts judges were much more likely to rule in favor of gun rights than their federal appellate counterparts.

There were distinct differences in the political aspects that affected the ways Second Amendment cases were decided. In reading and taking notes on the cases in the full sample, state supreme courts judges often focused on the civil liberties aspect of the Second Amendment, even if they ultimately choose to rule in favor of gun control. In comparison, in only 16 cases did U.S. Courts of Appeals three-judge panels even mention the importance of

the Second Amendment in the same analysis as civil liberties. This analysis was included in more than 50 decisions from the state supreme courts and shows the differences regarding how both sets of judges saw Second Amendment cases. State supreme courts judges often saw Second Amendment cases through the lens of the Bill of Rights and civil liberties, while U.S. Courts of Appeals judges focused on firearms cases through the applicability of the federal statute being questioned in a particular case.

Even though the logistic regression model showed that the electoral component of judicial selection did not have an effect on state supreme court Second Amendment decision-making, it seems to me that the closeness engendered by their position on the supreme court of a state, rather than on the federal appellate bench was important regarding this federalism argument. Because federal appellate court judges possess lifetime appointments and rarely have to comply with the feelings of the public they serve, U.S. Courts of Appeals judges were able to simply interpret federal law without having to discuss rights and liberties issues. Because federal appellate courts only have appellate jurisdiction they only review decisions from lower trial courts for errors of law. The U.S. Courts of Appeals only considers the record from the trial court, and the legal arguments of the parties involved. Different from federal appellate judges, state supreme court judges are often forced to comply with public pressure. In this way, state supreme court judges discussed these rights and liberties issues in decisions frequently neglected by federal appellate judges because of this intimacy with the public.

A surrogate measure of political party identification was used in each decision-making study. For the state supreme court chapter, party affiliation of the court was used, while partisan panel appointment was used for the U.S. Courts of Appeals study. Estimation of both models revealed that only the party identification from the state supreme court chapter was

significant. This estimation reports that political party affiliation is still an important part of the daily activities of state supreme court judges when they render decisions. However, party identification did not affect judicial decision-making in the federal appellate circuit decisions. This provides us with a key difference between the two judicial levels. Why does party affiliation matter at the state level, but not the federal appellate level? First, state supreme court judges are more intimate with their constituents and show some level of connection to a political party, while federal judges want to be seen as being above the political fray. Second, federal appellate judges have lifetime appointments and are not beholden to electorate for their position, while a large amount of state supreme court judges are elected on a partisan level, non-partisan level, or face retention elections, and must comply with public sentiments in order to remain in office.

A third research implication is the notion that this type of logistic regression model could potentially be used to predict case outcomes and outline judicial decision-making regarding previously decided and future Second Amendment cases in state supreme courts and the U.S. Courts of Appeals, along with other important political issues when litigated in judicial levels below the U.S. Supreme Court. Although this is not a new idea, a new model, such as the two used in this dissertation, could be updated to account for the political aspects that affect many issues. In this scenario, variables, such as state/appellate circuit political ideology, population density, gun ownership percentage, homicide rate, and judicial-level specific measures could be estimated to determine a possible case outcome before a decision is rendered. This model could then be revised to utilize only the significant variables to determine the type of decision that is expected.

Similar predictive models could be created to consider the judicial decision-making impact of state supreme courts and U.S. Courts of Appeals judges regarding Second Amendment, other Bill of Rights issues, and other important political issues. Immigration reforms issues, including deportation and differences between state and federal immigration law, could be used to determine potential political aspects that determine case outcomes regarding this issue. Using estimated models such as this, would give judicial scholars a better understanding of the types of political aspects and variables that affect the outcome of important political or Bill of Rights related cases decided by state supreme courts and U.S. Courts of Appeals judges. Moreover, mainstream judicial politics studies, such as the three completed in this work and proposed in the previous paragraphs, would certainly be a positive addition to the literature regarding the two judicial levels and literature focusing on judicial decision-making.

A fourth research implication is that the findings in Chapter Two affirmed what E.E. Schattschneider argued more than fifty years ago. According to Schattschneider, the American democratic system was comprised of many competing interest groups, and that the pressure system where these interest groups compete was biased toward the wealthiest groups. The range of the pressure group system was amazingly narrow, and the system spoke with an "upper-class bias."[1] In Chapter Two, Second Amendment cause lawyers and interest groups that had more resources were able to employ more people to search of cases, utilize more litigation strategies, have larger legal teams, and possess more avenues for organizational funding. According to those respondents who did not have significant resources, often times they were forced to complete many of these litigation tasks by themselves or with only limited help. This is at least some clear proof of Marc Galanter's the "haves come out ahead" thesis.

In the piece, Galanter argued that “repeat players”, known as the “haves”, anticipate having repeated litigation, and thus have more resources than the “one shotter”, known as the “have-nots”.[2]

Second Amendment cause lawyers who worked as gun rights and gun control lawyers were found that they actual participate and coordinate/networking in similar manners. This finding was particularly interesting in that both groups are fighting for very different issues, yet they decide to take cases, coordinate with other groups, and network with other groups in a comparable fashion. In particular, several gun rights lawyers and gun control lawyers reported that they had local chapter case referrals, had central search team referrals, and intervened on appeal. Both gun rights and gun control lawyers reported that they coordinated with both state and national groups.

The issue of litigation success was a bit different. From the study, cause lawyers affiliated with national level interest groups obviously had more success than local or state interests simply because of the level of resources they had at their disposal. However, local and state groups still were able to prevail under several circumstances. For instance, local gun control interests in the state of Colorado were very successful in getting the state gun-show loophole overturned because of the public will following the Columbine High School shootings of the late 1990s. SAFE Colorado had limited funds, yet they were able to sufficiently buoy public support in favor of their litigation. In other instances, local cause lawyers were able to help individuals who were less fortunate beat firearms related charges. In several of cases, the local group had more resources than groups from other states. The cause lawyers who brought and argued these cases seemed to be meticulous in preparation, paid close attention to detail, and possessed impressive persuasive skills.

Another implication would be that the findings in Chapter Two could potentially be used to explain the behavior of interest group cause lawyers working on behalf of other politically-important issues being litigated in judicial levels below the U.S. Supreme Court. A large amount of research has been focused on the cause lawyering of the African-American civil rights movement, the gay rights movement, and other disparate groups. However, little work has been published regarding civil liberties related groups, such as those associated with the Second Amendment. Not only does the study completed in Chapter Two outline the legal participation, litigation strategies, court venue-shopping, coordination/networking, and organizational structure of gun rights and gun control Second Amendment interest groups, but also at local, state, and national levels.

Although much work has been published regarding civil rights related organization, less has been completed civil liberties groups, such as Second Amendment groups, freedom of speech groups, and other liberties groups. Given the structure of the study completed in Chapter Two, other civil liberties related groups could be interviewed for a similar study. An adaptation of the questionnaire would be easy to complete and applicable to similar interest group cause lawyering literature. Groups supporting free speech have been active litigants in the courts regarding First Amendment issues. The study framework established in Chapter Two would be easily manipulated so as to consider the structure, performance, and output of other civil liberties related interest groups.

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[2]Galanter, M. (1974). Why the "Haves" Come Out Ahead; Speculations on the Limits of Legal Change. *Law & Society Review* 9, 1: p. 95-160.

APPENDICES

Appendix A

Interview Participants and Relevant Demographic Information from Chapter Two

Respondent	Cause Lawyer Type	Funding Level	Interest Group Scope
One	Gun Rights	Low	Local
Two	Gun Rights	High	National
Three	Gun Rights	High	National
Four	Gun Control	High	National
Five	Gun Rights	Moderate	State
Six	Gun Rights	Moderate	State
Seven	Gun Control	Low	Local
Eight	Gun Control	Moderate	State
Nine	Gun Control	Moderate	State
Ten	Gun Rights	High	National
Eleven	Gun Rights	High	National
Twelve	Gun Control	High	National
Thirteen	Gun Control	High	National
Fourteen	Gun Rights	High	National
Fifteen	Gun Control	Low	Local
Sixteen	Gun Rights	Low	Local
Seventeen	Gun Control	Moderate	State
Eighteen	Gun Rights	High	National
Nineteen	Gun Control	High	National
Twenty	Gun Control	High	National
Twenty-One	Gun Rights	Moderate	State

Appendix B

Interest Group Cause Lawyer Interview Questions Used in Chapter Two

A. Introduction

a. Do you mind if I use your name in my report?
b. Do you mind if I tape this telephone interview?
c. Do you agree with what the interest group you work for/worked for stands for from a philosophical standpoint?
    i. If so, have you always supported the interest group philosophically?
    ii. Does your level of support for your interest group change based on positions that they take on certain issues?
    iii. If so, what types of issues make you re-think your levels of support?

B. Participation

a. How do Second Amendment cases get to you and your legal team?
    i. Are cases referred to you from local interest group chapters, as the NAACP does?
    ii. Does your legal team employ a central team that searches for cases to be litigated?
    iii. Does your litigation team intervene in cases on appeal?
        1. If so, how do trial court actions affect the appeal?
        2. How are further legal actions pursued?
        3. What is the trigger for legal intervention?
b. How does your legal team decide to participate/litigate in certain Second Amendment cases?
c. Are there any Second Amendment issue-based cases that you would refuse to participate in?
    i. If so, what types of issue-based cases would you always refuse to participate in?
    ii. Are there specific issue-based cases that you would always accept participation in, if asked?
d. What is the single most important factor, such as changing an unjust law, making legal and constitutional history, taking a legal stand, ensuring constitutional standards, or others, that determines your participation in certain cases?
    i. What others factors are foremost in your mind when deciding to participate in certain cases?
    ii. Do you and your legal team have full say over the types of cases that you participate in?
    iii. If not, then who else has a say in the types of cases that you participate in?

C. Litigation Strategies

a. What litigation strategies, such as amicus curiae, test cases, financial support of litigants, and other strategies, have you found to be most productive during litigation of Second Amendment cases?
    i. How important are amicus curiae briefs for your legal team's litigation strategy?
    ii. How important is the litigation of test cases for your legal team's litigation strategy?
    iii. How important is the financial support of litigants for your legal team's litigation strategy?
b. What litigation strategies have you found to be least productive during litigation of Second Amendment cases?
    i. Have these unproductive litigation strategies forced you change the way you were going to litigate before, during, or after a Second Amendment case?
    ii. Why do you think this litigation strategy that was least productive for your interest group was unsuccessful?
c. Has your legal team's litigation strategy changed over time?
    i. What types of legal situations have caused your legal team to change litigation strategies?
    ii. Please explain how your legal team's litigation strategy choice has evolved in your time working for your interest group.
d. What level of influence does the opposing legal counsel have over your legal team's choice of litigation strategies and tactics?
    i. What level of influence do judicial attitudes have over your legal team's choice of litigation strategies and tactics?
    ii. How has the text of existing law shaped your choice of litigation strategy and tactics?
    iii. Have aspects of legislative or executive politics and policy preferences influenced your choice of litigation strategy and tactics?
    iv. Have legal experts or any form of social or scientific evidence affected your choice of litigation strategy or tactics?

D. Venue-Shopping

a. When litigating Second Amendment cases, does your legal team shop for court venues?
    i. If so, does your legal team you favor a certain level of the state or federal judiciary?
        1. In the state court system, does your legal team shop for venues between urban or rural jurisdictions?
        2. In the federal court system, does your legal team shop for court venues between urban or rural jurisdictions?
        3. In diversity cases, does your legal team decide to favor a certain party's state court or federal district?

a. If so, how/why?
b. If not, why?

ii. How much of a factor is venue choice when deciding where to bring Second Amendment litigation?
iii. What are the chief reasons behind shopping for a potential court venue?

b. Does your litigation strategy change depending on the venue selected in which your litigation is brought?
i. If so, how?
ii. If not, why?

E. Coordination/Networking

a. In your capacity as an interest group lawyer, did you coordinate with other interest groups when trying a case?
i. If so, what types of groups?
ii. If so, what groups did you coordinate with?
iii. If so, what level of coordination existed between interest groups, group legal counsels, or legal teams?

b. Does your interest group have both state and national organizations?
i. If so, what level of coordination existed between the levels of your organization?
ii. Who normally takes the lead when your interest group is trying a case in state courts?
iii. Who normally takes the lead when your interest group is trying a case in federal courts?

c. Does your organization network with similar state and national organizations?
i. What types of interdependencies (friendship, kinship, common interest, financial exchange, dislike, or relationships of beliefs, knowledge or prestige) connects your interest group to other similar interest groups?
ii. To what degree does interest group networking help to litigate cases?
iii. Does networking effect the patterns of litigation that can be seen in Second Amendment cases (i.e.: topical cases, such as federal or state gun bans)?

F. Organization

a. Is organization an important part of your day-to-day activities?
i. How integral is your legal team to the day-to-day activities of the interest group?
ii. Is litigation a focal point of your interest groups mission?

b. How is your legal team organized?
i. Does your interest group employ its own internal legal counsel (unions do this)?
ii. Does your interest group have an adjunct legal organization, such as NAACP Legal Defense Fund and other models?

iii. Does your interest group rely on a group devoted to legal change for its counsel, such as the Pacific Legal Defense Fund's support of pro-business causes and pursuing anti-affirmative action policies?
iv. Does your interest group ever use pro bono legal counsel?
v. Does your interest group ever hire outside legal counsel?
vi. Is there any other information that your would like to share with me regarding the organization of your interest group's legal team?

c. How organized is your interest group's legal team?
    i. What types of people make up your legal team?
    ii. What types of personal and professional backgrounds does your legal team possess?
    iii. How many Second Amendment cases has your legal team litigated together?
    iv. How many Second Amendment cases has your legal team litigated all together?
    v. What types of topical cases has your legal team litigated?
d. What types of organizational strategies does your legal team employ?
    i. Does your legal team have a vision for litigation on future cases and issues?
    ii. If so, what types of issues would you be most likely to focus on?
e. How is your interest group's legal team funded?
    i. Does your legal team receive funding from mass membership drives?
    ii. Does your legal team receive funding from a few contributors?
    iii. Does your legal team receive funding from corporations?
f. Why do you think gun groups are more likely to use the court system rather than to seek legislation that advances their policy aims?

Appendix C

Second Amendment State Supreme Court Cases Surveyed for Chapter Three

Case Name	Year	State
Anderson v. Maryland	1992	Maryland
A.P.E. v. Colorado	2001	Colorado
Arizona v. Belcher	1975	Arizona
Arizona v. Doyle, Jr.	1977	Arizona
Arizona v. Rascon	1974	Arizona
Arnold v. City of Cleveland	1993	Ohio
Artis v. Virginia	1972	Virginia
Bailleaux v. Gladden	1962	Oregon
Balentine v. Arkansas	1976	Arkansas
Baron v. New Jersey	1971	New Jersey
Bearden v. City of Boulder	1973	Nevada
Beason v. Kentucky	1977	Kentucky
Benjamin v. Bailey	1995	Connecticut
Bergeson v. Georgia	2000	Georgia
Bernstein v. New Jersey	1971	New Jersey
Bilinski v. Delaware	1990	Delaware
Blore v. Mossey	1976	Minnesota
Blumenauer v. Keisling	1992	Oregon
Blumenfeld v. Codd	1977	New York
Boston Housing Authority v. Guirola	1991	Massachusetts
Brewer v. Georgia	2006	Georgia
Bristow v. Alabama	1982	Alabama
Brown v. Wyoming	1979	Wyoming
Burton v. Sills	1968	New Jersey
Busch v. Maryland	1981	Maryland
CA Rifle and Pistol Association, Inc. v. City of West Hollywood	1998	California
California v. Bland	1995	California
California v. King	1978	California
Carfield v. Wyoming	1982	Wyoming
Carson v. Georgia	1978	Georgia
Castillo v. Texas	1967	Texas
CBS, Inc. v. Block	1986	California
Chenault v. Georgia	1975	Georgia
Chimel v. California	1969	California
City of Chicago v. Beretta U.S.A. Corporation	2002	Illinois
City of Chicago v. Taylor	2002	Illinois

City of Junction City v. Lee	1975	Kansas
City of Lakewood v. Pillow	1972	Colorado
City of Las Vegas v. Moberg	1971	New Mexico
City of Portland v. Lodi	1989	Oregon
City of Princeton v. Buckner	1988	West Virginia
City of St. Paul v. Azzone	1970	Minnesota
Coalition of New Jersey Sportsmen, Inc. v. Whitman	1999	New Jersey
Cobb v. Georgia	2008	Georgia
Colorado v. Blue	1975	Colorado
Colorado v. Brown	1975	Colorado
Colorado v. Ford	1977	Colorado
Colorado v. Garcia	1979	Colorado
Colorado v. Taylor	1975	Colorado
Colorado v. Ulibarri	1975	Colorado
Davis v. Florida	1962	Florida
Des Moines Register & Tribune Co. v. Hildreth	1970	Iowa
Disciplinary Counsel v. LoDico	2008	Ohio
Doe v. Portland Housing Authority	1995	Maine
Dolph v. Oklahoma	1974	Oklahoma
Douglass v. Kelton	1980	Colorado
Eary v. Kentucky	1983	Kentucky
Estate of Heck v. Stoffer	2003	Indiana
Ex parte Lancaster	1973	Texas
Ex parte Portis	1982	Alabama
Farrakhan v. Virginia	2007	Virginia
Foote v. Mississippi State Bar Association	1987	Mississippi
Ford v. Texas	1993	Texas
Fryar v. Oklahoma County	1969	Oklahoma
Fuller v. Wyoming	1977	Wyoming
Gaber v. Florida	1996	Florida
Gabrielle v. Alaska	2007	Alaska
Galvan v. Superior Court of San Francisco	1969	California
Garcia v. Indiana	1973	Indiana
Gardner v. Jenkins	1988	Pennsylvania
Gilio v. Oklahoma	2001	Oklahoma
Gooden v. Board of Appeals of the WV Dept. of Public Safety	1977	West Virginia
Green v. Green	1997	Delaware
Grimm v. New York City	1968	New York
Hampton v. Thurmand	1981	Missouri
Hand v. Nevada	1991	Nevada
Harris v. Nevada	1967	Nevada

Harris v. Virginia	2001	Virginia
Hasan v. Virginia	2008	Virginia
Hawaii v. Goudy	1971	Hawaii
Hawaii v. Mendoza	1996	Hawaii
Hawaii v. Ogata & Sullivan	1977	Hawaii
Hawaii v. Onishi	1972	Hawaii
Hazel v. Texas	1976	Texas
Hilly v. City of Portland	1990	Maine
Hollander v. Warden Nevada State Prison	1970	Nevada
Hunt v. Daley	1997	Illinois
Hyde v. City of Birmingham	1980	Alabama
Idaho v. McNary	1979	Idaho
Iley v. Harris	1977	Florida
In Interest of J.V.R. (J.V.R. v. Wisconsin)	1985	Wisconsin
In re 1969 Plymouth Roadrunner, etc.	1970	Missouri
In re Atkinson	1980	Minnesota
In re Brickley	1982	Idaho
In re Cueto	1990	West Virginia
In re DuBois	1968	Nevada
In re Goots	1990	West Virginia
In re Metheny	1990	West Virginia
In re Ramadass	1971	Pennsylvania
In re Rinker	1990	West Virginia
In re Robb	1998	Mississippi
In re Standard Jury Instructions in Criminal Cases--No. 2005-1	2007	Florida
In re Thomas	1981	Maine
In re Ware	1984	Delaware
Iowa v. Rupp	1979	Iowa
Iowa v. Werner	1970	Iowa
J.L. v. Florida	1998	Florida
James v. Mississippi	1999	Mississippi
Johnson v. Arkansas	1998	Arkansas
Jones v. Arkansas	1993	Arkansas
K.W. v. Florida	1996	Florida
Kalodimos v. Village of Morton Grove	1984	Illinois
Kansas v. Davis	1985	Kansas
Kansas v. Porter, Green, and Smith	1980	Kansas
Kasler v. Lockyer	2000	California
Kellogg v. City of Gary	1990	Indiana
King v. Wyoming Division of Criminal Investigation	2004	Wyoming
Klein v. Leis	2003	Ohio

Knowles v. Langlois	1960	Rhode Island
Kolokouris v. Georgia	1999	Georgia
LaBate v. New Jersey	1971	New Jersey
Landers v. Georgia	1983	Georgia
Lansdown v. Virginia	1983	Virginia
Lehman v. Pennsylvania State Police	2003	Pennsylvania
Lightfoot v. Maryland	1976	Maryland
Louisiana v. Amos	1977	Louisiana
Louisiana v. Blanchard	2001	Louisiana
Louisiana v. Hamlin	1986	Louisiana
Louisiana v. Landry	1977	Louisiana
Louisiana v. Reddix	1986	Louisiana
Louisiana v. Robinson	1977	Louisiana
Louisiana v. Sanders	1978	Louisiana
Louisiana v. Sandifer	1996	Louisiana
Louisiana v. Wiggins	1983	Louisiana
Louisiana v. Williams	1999	Louisiana
M.P. v. Florida	1996	Florida
Mackall v. Maryland	1978	Maryland
Maine v. Brown	1990	Maine
Maine v. Friel	1986	Maine
Maine v. Goodno	1986	Maine
Maryland v. Crawford	1987	Maryland
Massachusetts v. Alvarado	1996	Massachusetts
Massachusetts v. Davis	1976	Massachusetts
Massachusetts v. Johnson	1992	Massachusetts
Massachusetts v. Wilson	2004	Massachusetts
Masters v. Texas	1985	Texas
Matthews v. Indiana	1960	Indiana
McGuire v. Texas	1976	Texas
McKenna v. Nevada	1982	Nevada
Mecikalski v. Office of the Attorney General	2000	Wyoming
Metzger v. Metzger	1987	Pennsylvania
Michigan United Conservation Clubs v. Lansing	1985	Michigan
Michigan v. Alexander	1979	Michigan
Michigan v. Beauregard	1970	Michigan
Michigan v. Brintley	1979	Michigan
Michigan v. Henderson	1974	Michigan
Michigan v. Johnson	1981	Michigan
Michigan v. McDonald	1968	Michigan
Michigan v. McFadden	1971	Michigan

Michigan v. Nix	1987	Michigan
Michigan v. Panknin	1966	Michigan
Michigan v. Robinson	1978	Michigan
Michigan v. Smelter	1989	Michigan
Michigan v. Tavolacci	1981	Michigan
Milligan v. Texas	1977	Texas
Minnesota v. Paige	1977	Minnesota
Missouri v. Booker	1982	Missouri
Missouri v. Bordeaux	1960	Missouri
Missouri v. Whitworth	1986	Missouri
Mohammad v. Kentucky	2006	Kentucky
Montana v. Bar-Jonah	2004	Montana
Montana v. Broken Rope	1996	Montana
Montana v. Guillaume	1999	Montana
Montana v. Krantz	1990	Montana
Montana v. Smith	2000	Montana
Moosani v. Texas	1995	Texas
Morgan v. Town of Heidelberg	1963	Mississippi
Mosely v. Kentucky	1964	Kentucky
Mosher v. City of Dayton	1976	Ohio
Nebraska v. Comeau	1989	Nebraska
Nebraska v. LaChapelle	1990	Nebraska
Nebraska v. Rush	1989	Nebraska
New Hampshire v. Beckert	1999	New Hampshire
New Hampshire v. Fox	2004	New Hampshire
New Hampshire v. Sanne	1976	New Hampshire
New Hampshire v. Smith	1990	New Hampshire
New Hampshire v. Taylor	1976	New Hampshire
New Jersey v. Nelson	1998	New Jersey
New Mexico v. Dees	1983	New Mexico
New York v. King	1985	New York
New York v. Moore	1973	New York
New York v. Pugach	1964	New York
Nicholas v. Wisconsin	1971	Wisconsin
Nichols v. Keisling	1992	Oregon
North Carolina v. Dawson	1968	North Carolina
North Carolina v. Fennell	1989	North Carolina
North Dakota v. Chaussee	1965	North Dakota
North Dakota v. Ricehill	1987	North Dakota
O'Brien v. Keegan	1996	New York
O'Connor v. Scarpino	1994	New York

Office Disciplinary Counsel v. Cushion	2001	Ohio
Ohio v. Waldbillig	1964	Ohio
Oklahoma v. Warren	1998	Oklahoma
Oregon v. Blocker	1981	Oregon
Oregon v. Cartwright	1966	Oregon
Oregon v. Delgado	1984	Oregon
Oregon v. Hash	1978	Oregon
Oregon v. Kessler	1980	Oregon
Oregon v. Krogness	1963	Oregon
Oregon v. Smoot	1989	Oregon
Ozenna v. Alaska	1980	Alaska
Pagel v. Franscell	2002	Wyoming
Pennsylvania v. Cartagena	1978	Pennsylvania
Pennsylvania v. Hawkins	1997	Pennsylvania
Pennsylvania v. Ray	1970	Pennsylvania
Perez v. Virginia	2007	Virginia
Posey v. Kentucky	2006	Kentucky
Pruitt v. Virginia	2007	Virginia
Rainey & Harton v. Hartness	1999	Arkansas
Reilly v. New Jersey	1971	New Jersey
Rhode Island v. Storms	1973	Rhode Island
Rinzler v. Carson	1972	Florida
Robertson v. City & County of Denver	1994	Colorado
Robinson v. Howard Bros. of Jackson, Inc.	1979	Mississippi
Runo v. Texas	1977	Texas
Sardis v. Second Judicial District Court	1969	Nevada
Savior v. Georgia	2008	Georgia
Schaaf v. Virginia	1979	Virginia
Sheppard v. Texas	1979	Texas
Short v. Delaware	1991	Delaware
Siccardi v. New Jersey	1971	New Jersey
Simmons v. Virginia	1977	Virginia
Simonton v. Huiskamp	1964	Iowa
Smith v. County of Missoula	1999	Montana
Smith v. Delaware	2005	Delaware
South Carolina v. Mitchum	1972	South Carolina
South Carolina v. Muller	1984	South Carolina
South Carolina v. Spinks	1973	South Carolina
South Dakota v. Coe	1979	South Dakota
Spurrier v. Maryland	1962	Maryland
St. John v. Tennessee	1972	Tennessee

Superintendent of Police v. Freedom of Information Comm.	1992	Connecticut
Suter v. City of LaFayette	1997	California
Tennessee v. McDowell	1978	Tennessee
Texas v. Trujillo	1972	Texas
US v. Brooks	1995	Montana
Utah v. Beorchia	1974	Utah
Utah v. Garfield	1976	Utah
Utah v. Hansen	1968	Utah
Van Der Hule v. Mukasey	2009	Montana
Vermont v. Duranleau	1969	Vermont
Washington v. Eker	1985	Washington
Washington v. Mak	1986	Washington
Washington v. Sabala	1986	Washington
Washington v. Schelin	2002	Washington
Washington v. Tongate	1980	Washington
Wayne County Prosecutor v. Recorder's Court Judge	1979	Michigan
Webb v. Texas	1969	Texas
Williams v. Oklahoma	1977	Oklahoma
Wilson v. Cook County	2009	Illinois
Wisconsin v. Chambers	1972	Wisconsin
Wisconsin v. Fry	1986	Wisconsin
Wisconsin v. Kerr	1994	Wisconsin
Wisconsin v. Medrano	1978	Wisconsin
Wisconsin v. Williamson	1983	Wisconsin
Wisconsin v. Wisumierski	1982	Wisconsin
Wright v. City of Anchorage	1979	Alaska
Wyoming v. McAdams	1986	Wyoming
Zanders v. Anderson	1996	Ohio

Appendix D

Second Amendment United States Court of Appeals Cases Surveyed for Chapter Four

Case Name	Year	Appellate Circuit
Akins v. US	2009	11th
American Arms International v. Herbert	2009	4th
Article II Gun Shop, Inc. v. Gonzales	2006	7th
Bach v. Pataki	2005	2nd
Baranski v. Fifteen Unknown Agents of the Federal Bureau of A.T.F.	2006	6th
Bastible v. Weyerhaeuser Co.	2006	10th
Blaustein & Reich, Inc. v. Buckles	2004	4th
Camden County Bd. Of Chosen Freeholders v. Beretta	2001	3rd
Casanova Guns, Inc. v. Connally	1972	7th
City of Chicago v. United States Dept. of Treasury	2005	7th
City of New York v. Beretta U.S.A. Corp.	2008	2nd
Cody v. US	1972	8th
CT Coastal Fishermen's Assoc. v. Remington Arms Co., Inc.	1993	2nd
Dick's Sporting Center, Inc. v. Alexander	2007	6th
Eckert v. City of Philadelphia, PA	1973	3rd
Edwards v. City of Goldsboro, NC	1999	4th
Egan v. City of Aurora, IL	1960	7th
Farmer v. Higgins	1990	11th
Forrest v. Florida Department of Corrections	2009	11th
Fresno Rifle and Pistol Club v. Van De Kamp	1992	9th
Gardner v. Vespia	2001	1st
Georgiacarry.org, Inc. v. City of Atlanta, GA	2009	11th
Gillespie v. City of Indianapolis	1999	7th
Gun Owners' Action League v. Swift	2002	1st
Gun South, Inc. v. Brady	1989	11th
Hamblen v. US	2009	6th
Haymond v. Hall	2009	11th
HC Gun & Knife Shows, Inc. v. City of Houston	2000	5th
Hickman v. Block	1996	9th
Hinkle v. City of Clarksburg, WV	1996	4th
Hunter v. US	1996	9th
Ileto v. Glock, Inc.	2009	9th
In re Shaffaat	1998	4th
In re Weitzman	1970	8th

Jackson v. County of Marlboro Board Of Commissioners	1997	4th
Jennings v. Mukasey	2007	9th
Johnson v. Acevedo	2009	7th
Justice v. Elrod	1987	7th
Justice v. Town of Cicero, IL	2009	7th
Kwan v. Federal Bureau of A.T.F.	2007	9th
Love v. Pepersack	1995	4th
Maloney v. Cuomo	2009	2nd
McCoy v. Newsome	1992	11th
McGrath v. US	1995	2nd
Michigan United Conservation Clubs v. Lujan	1991	6th
Milwaukee Gun Club v. Schulz	1992	7th
Morgan v. Federal Bureau of Alcohol, Tobacco, & Firearms	2007	6th
National Rifle Association of America v. Brady	1990	4th
National Rifle Association of America v. Magaw	1997	6th
New Banner Institute, Inc. v. Dickerson	1980	4th
Nordyke v. King	2009	9th
Northern Indiana Gun & Outdoor Shows v. City of South Bend, IN	1998	7th
NRA of America v. City of Chicago and Village of Oak Park, IL	2009	7th
NRA of America v. Handgun Control Federation of OH	1994	6th
Ohntrup v. Firearms Center, Inc.	1985	3rd
Olympic Arms v. Buckles	2002	6th
On Target Sporting Goods, Inc. v. Attorney General of the US	2007	8th
People's Rights Organization, Inc. v. City of Columbus, OH	1998	6th
Perkins v. F.I.E. Corporation	1984	5th
Plona v. UPS, Inc.	2009	6th
Presley v. US	1988	8th
Procaccio v. Lambert	2007	6th
Quilici v. Village of Morton Grove	1982	7th
Rafferty v. US	1973	5th
Ramsey Winch, Inc. v. Henry	2009	2nd
Richmond Boro Gun Club, Inc. v. City of New York	1996	2nd
Rowlands v. Pointe Mouille Shooting Club	1999	6th
RSM, Inc. v. Buckles	2001	4th
San Diego County Gun Rights Committee v. Reno	1996	9th
Silveira v. Lockyear	2002	9th
Sipes v. US	1963	8th
Sklar v. Byrne	1984	7th
Springfield Armory, Inc. v. City of Columbus	1994	6th
Stevens v. US	1971	6th

The General Store, Inc. v. Van Loan	2009	9th
Thomas v. City Council of Portland, ME	1984	1st
Thomas v. New England Firearms Co.	1994	10th
Thompson v. Immigration & Naturalization Service	1964	7th
Tomas v. Holder	2009	7th
US v. 16,179 Molso Italian .22 Caliber Winlee Derringer Convertible Starter Guns	1971	2nd
US v. Ardoin	1994	5th
US v. Arrington	1980	5th
US v. Barry	1996	8th
US v. Bass	1970	2nd
US v. Battle	2009	11th
US v. Beavers	2000	6th
US v. Bergeman	1979	9th
US v. Berry	1992	5th
US v. Beuckelaere	1996	6th
US v. Billue	1993	11th
US v. Bostic	1998	4th
US v. Bournes	2003	6th
US v. Cabbler	1970	4th
US v. Cardoza	1997	1st
US v. Cassidy	1990	6th
US v. Chesney	1996	6th
US v. Clarke	2000	7th
US v. Coleman	1983	9th
US v. Cooper	2009	4th
US v. Corliss	1960	2nd
US v. Currier	1980	1st
US v. Dahms	1991	9th
US v. Dalton	1992	10th
US v. Daniels	1970	9th
US v. DeBerry	1996	7th
US v. Driscoll	1992	6th
US v. Elliott	1997	8th
US v. Emerson	2001	5th
US v. Engesser	1986	9th
US v. Essick	1991	4th
US v. Evans	1991	9th
US v. Farmer	1993	4th
US v. Farrell	1995	8th
US v. Frechette	2006	1st

US v. Friel	1993	1st
US v. Fryer	1976	6th
US v. Glover	2005	11th
US v. Gomez	1990	9th
US v. Gooden	2009	7th
US v. Gravenmeir	1997	9th
US v. Graves	1977	3rd
US v. Gray	1982	5th
US v. Great Guns, Inc.	2001	9th
US v. Griley	1987	4th
US v. Grinkiewicz	1989	11th
US v. Hager	2001	4th
US v. Hale	1992	8th
US v. Hale	1992	8th
US v. Hall	1996	11th
US v. Hamm	2005	11th
US v. Haney	2001	10th
US v. Hanna	1995	9th
US v. Harkrider	1996	5th
US v. Hemmings	2001	7th
US v. Herrell	1978	9th
US v. Hinostroza	2002	9th
US v. Jackson	2007	11th
US v. Jackubowski	2003	7th
US v. Johnson	1974	4th
US v. Johnson	1971	5th
US v. Jones	1992	4th
US v. Kafka	2000	9th
US v. Kenney	1996	7th
US v. Kirk	1995	5th
US v. Klebig	2009	7th
US v. Knutson	1997	5th
US v. Kolter	1988	11th
US v. Lawton	2004	7th
US v. Luna	1999	5th
US v. Mack	1999	9th
US v. Mastrangelo	1984	11th
US v. Matassini	1978	5th
US v. McLean	1990	4th
US v. Meade	1999	1st
US v. Meza-Corrales	1999	9th

US v. Michael R.	1996	9th
US v. Minnick	1991	1st
US v. Miscellaneous Firearms, Explosives, Destructive Devices, & Ammunition	2009	7th
US v. Mitchell	2000	4th
US v. Napier	2000	6th
US v. Nelson	1983	9th
US v. Nelson	1993	8th
US v. Ninety-Three Firearms & Assorted Firearm Parts and Ammunition	2003	6th
US v. Nix	2006	11th
US v. Oakes	1977	10th
US v. Oliver	1994	11th
US v. Paz	1991	4th
US v. Pearson	1993	8th
US v. Pelusio	1983	2nd
US v. Peters	2005	11th
US v. Potts	1975	9th
US v. Price	2003	7th
US v. Purgason	1977	4th
US v. Rambo	1996	9th
US v. Ramos	1992	1st
US v. Reavis	1995	4th
US v. Reddick	2000	10th
US v. Rene E.	2009	1st
US v. Rivera	1995	11th
US v. Rose	1982	10th
US v. Ross	1993	7th
US v. Rybar	1996	3rd
US v. Salamone	1986	3rd
US v. Scanio	1998	2nd
US v. Seven Firearms and Ammunition	2004	8th
US v. Seventeen Firearms and 3,005 Rounds of Ammunition	2006	6th
US v. Skoien	2009	7th
US v. Smith	1991	1st
US v. Smith	1999	8th
US v. Sorrentino	1995	2nd
US v. Sweeting	1991	11th
US v. Synnes	1971	8th
US v. Taylor	1971	8th
US v. Thirty-Five Firearms	2005	6th

US v. Thomas	1993	5th
US v. Thomas	1978	5th
US v. Three Winchester 30-30 Caliber Lever Action Carbines	1974	7th
US v. Throneburg	1990	6th
US v. Tinker	1992	6th
US v. Tous	1972	9th
US v. Turner	1996	6th
US v. Waller	2000	8th
US v. Warin	1976	6th
US v. Wesela	2000	7th
US v. Whitfield	1990	8th
US v. Whitman	1996	1st
US v. Wihbey	1996	1st
US v. Wiley	1971	8th
US v. Wilks	1995	10th
US v. Williams	1971	5th
US v. Wilson	1971	6th
US v. Wilson	1998	7th
US v. Winchester	1990	11th
US v. Wright	1997	11th
US v. Wright	1981	8th
US v. Ziskowski	1972	3rd
Williams v. Beemiller, Inc.	2008	2nd
Wyoming ex. Rel. Crank v. US	2008	10th
York v. Secretary of the Treasury	1985	10th

Appendix E

Randomly Selected Second Amendment State Supreme Court Cases;

Used to Establish Inter-coder Reliability for Chapter Three

Case Title	Year	State
Anderson v. Maryland	1992	Maryland
Arizona v. Rascon	1974	Arizona
Bilinski v. Delaware	1990	Delaware
Burton v. Sills	1968	New Jersey
Busch v. Maryland	1981	Maryland
City of Chicago v. Beretta U.S.A. Corporation	2002	Illinois
City of St. Paul v. Azzone	1970	Minnesota
Colorado v. Blue	1975	Colorado
Colorado v. Brown	1975	Colorado
Colorado v. Ford	1977	Colorado
Colorado v. Garcia	1979	Colorado
Colorado v. Taylor	1975	Colorado
Colorado v. Ulibarri	1975	Colorado
Davis v. Florida	1962	Florida
Douglass v. Kelton	1980	Colorado
Foote v. Mississippi State Bar Association	1987	Mississippi
Green v. Green	1997	Delaware
Grimm v. New York City	1968	New York
Hawaii v. Mendoza	1996	Hawaii
Hunt v. Daley	1997	Illinois
Iley v. Harris	1977	Florida
In re Robb	1998	Mississippi
In re Thomas	1981	Maine
Jones v. Arkansas	1993	Arkansas
Knowles v. Langlois	1960	Rhode Island
Landers v. Georgia	1983	Georgia
Lehman v. Pennsylvania State Police	2003	Pennsylvania
Lightfoot v. Maryland	1976	Maryland
Louisiana v. Amos	1977	Louisiana
Louisiana v. Blanchard	2001	Louisiana
Louisiana v. Hamlin	1986	Louisiana
Louisiana v. Reddix	1986	Louisiana
Mackall v. Maryland	1978	Maryland
Maryland v. Crawford	1987	Maryland
Massachusetts v. Alvarado	1996	Massachusetts

Massachusetts v. Johnson	1992	Massachusetts
Massachusetts v. Wilson	2004	Massachusetts
Masters v. Texas	1985	Texas
Missouri v. Whitworth	1986	Missouri
Morgan v. Town of Heidelberg	1963	Mississippi
Mosher v. City of Dayton	1976	Ohio
Pennsylvania v. Cartagena	1978	Pennsylvania
Posey v. Kentucky	2006	Kentucky
Rainey & Harton v. Hartness	1999	Arkansas
Rinzler v. Carson	1972	Florida
Robertson v. City & County of Denver	1994	Colorado
Short v. Delaware	1991	Delaware
Smith v. Delaware	2005	Delaware
Spurrier v. Maryland	1962	Maryland
Superintendent of Police v. Freedom of Information Comm.	1992	Connecticut

Appendix F

Randomly Selected Second Amendment United States Courts of Appeals Cases;

Used to Establish Inter-coder Reliability for Chapter Four

Case Title	Year	Appellate Circuit
American Arms International v. Herbert	2009	4th
Article II Gun Shop, Inc. v. Gonzales	2006	7th
Baranski v. Fifteen Unknown Agents of the Federal Bureau of Alcohol, Tobacco, & Firearms	2006	6th
Blaustein & Reich, Inc. v. Buckles	2004	4th
Camden County Bd. Of Chosen Freeholders v. Beretta	2001	3rd
Casanova Guns, Inc. v. Connally	1972	7th
City of Chicago v. United States Dept. of Treasury	2005	7th
CT Coastal Fishermen's Assoc. v. Remington Arms Co., Inc.	1993	2nd
Dick's Sporting Center, Inc. v. Alexander	2007	6th
Edwards v. City of Goldsboro, NC	1999	4th
Egan v. City of Aurora, IL	1960	7th
Fresno Rifle and Pistol Club v. Van De Kamp	1992	9th
Georgiacarry.org, Inc. v. City of Atlanta, GA	2009	11th
Gillespie v. City of Indianapolis	1999	7th
Gun Owners' Action League v. Swift	2002	1st
HC Gun & Knife Shows, Inc. v. City of Houston	2000	5th
Hinkle v. City of Clarksburg, WV	1996	4th
In re Shaffaat	1998	4th
Jackson v. County of Marlboro Board Of Commissioners	1997	4th
Jennings v. Mukasey	2007	9th
Justice v. Town of Cicero, IL	2009	7th
Kwan v. Federal Bureau of Alcohol, Tobacco, & Firearms	2007	9th
Maloney v. Cuomo	2009	2nd
Michigan United Conservation Clubs v. Lujan	1991	6th
Milwaukee Gun Club v. Schulz	1992	7th
Morgan v. Federal Bureau of Alcohol, Tobacco, & Firearms	2007	6th
National Rifle Association of America v. Brady	1990	4th
New Banner Institute, Inc. v. Dickerson	1980	4th
Nordyke v. King	2009	9th
Northern Indiana Gun & Outdoor Shows v. City of South Bend, IN	1998	7th
NRA of America v. City of Chicago and Village of Oak Park, IL	2009	7th

NRA of America v. Handgun Control Federation of OH	1994	6th
Ohntrup v. Firearms Center, Inc.	1985	3rd
Olympic Arms v. Buckles	2002	6th
On Target Sporting Goods, Inc. v. Attorney General of the US	2007	8th
Perkins v. F.I.E. Corporation	1984	5th
Procaccio v. Lambert	2007	6th
Ramsey Winch, Inc. v. Henry	2009	2nd
Rowlands v. Pointe Mouille Shooting Club	1999	6th
RSM, Inc. v. Buckles	2001	4th
The General Store, Inc. v. Van Loan	2009	9th
Thomas v. New England Firearms Co.	1994	10th
Thompson v. Immigration & Naturalization Service	1964	7th
Tomas v. Holder	2009	7th
US v. 16,179 Molso Italian .22 Caliber Winlee Derringer Convertible Starter Guns	1971	2nd
US v. Great Guns, Inc.	2001	9th
US v. Miscellaneous Firearms, Explosives, Destructive Devices, & Ammunition	2009	7th
US v. Ninety-Three Firearms & Assorted Firearm Parts and Ammunition	2003	6th
US v. Seven Firearms and Ammunition	2004	8th
US v. Seventeen Firearms and 3,005 Rounds of Ammunition	2006	6th
US v. Thirty-Five Firearms	2005	6th

Appendix G

Research Hypotheses

Chapter Two; Second Amendment Interest Group Leaders and Lawyers

H_1: There will be clear differences between gun rights and gun control interest groups with regard to legal participation.

H_2: There will be clear differences between gun rights and gun control interest groups with regard to litigation strategies.

H_3: There will be clear differences between gun rights and gun control interest groups with regard to judicial venue-shopping.

H_4: There will be clear differences between gun rights and gun control interest groups with regard to legal coordination and networking.

H_5: There will be clear differences between gun rights and gun control interest groups with regard to interest group organization.

H_6: There will be clear differences between heavily funded and lesser funded Second Amendment interest groups with regard to legal participation.

H_7: There will be clear differences between heavily funded and lesser funded Second Amendment interest groups with regard to litigation strategies.

H_8: There will be clear differences between heavily funded and lesser funded Second Amendment interest groups with regard to judicial venue-shopping.

H_9: There will be clear differences between heavily funded and lesser funded Second Amendment interest groups with regard to legal coordination and networking.

H_{10}: There will be clear differences between heavily funded and lesser funded Second Amendment interest groups with regard to interest group organization.

H_{11}: There will be clear differences between local, state, and national Second Amendment interest groups with regard to legal participation.

H_{12}: There will be clear differences between local, state, and national Second Amendment interest groups with regard to litigation strategies.

H_{13}: There will be clear differences between local, state, and national Second Amendment interest groups with regard to judicial venue-shopping.

H_{14}: There will be clear differences between local, state, and national Second Amendment interest groups with regard to interest group coordination and networking.

H_{15}: There will be clear differences between local, state, and national Second Amendment interest groups with regard to interest group organization.

Chapter Three; Second Amendment Cases in State Courts of Last Resort

H_1: Elected state courts of last resort increase the probability of a Second Amendment decision that will favor gun rights.

H_2: Selected or appointed state courts of last resort increase the probability of a Second Amendment decision that will favor gun control.

H_3: State courts of last resort judges affiliated with the Democratic Party increase the probability of a Second Amendment decision that will favor gun control.

H_4: State courts of last resort judges affiliated with the Republican Party increase the probability of a Second Amendment decision that will favor gun rights.

H_5: The presence of a state intermediate appellate court increase the probability that state courts of last resort will rule in favor of gun control in Second Amendment decisions.

H_6: States without an intermediate appellate court increase the probability that state courts of last resort will rule in favor of gun rights in Second Amendment decisions.

H_7: States with a liberal political ideology increase the probability that their state courts of last resort will rule in favor of gun control in Second Amendment decisions.

H_8: States with a conservative political ideology increase the probability that their state courts of last resort will rule in favor of gun rights in Second Amendment decisions.

H_9: States with high population density increase the probability that their state courts of last resort will rule in favor of gun control in Second Amendment decisions.

H_{10}: States with low population density increase the probability that their state courts of last resort will rule in favor of gun rights in Second Amendment decisions.

H_{11}: States with high gun ownership percentages increase the probability that their state courts of last resort will rule in favor of gun rights in Second Amendment decisions.

H_{12}: States with low gun ownership percentages increase the probability that their state courts of last resort will rule in favor of gun control in Second Amendment decisions.

H_{13}: States with high homicide rates increase the probability that their state courts of last resort will rule in favor of gun rights in Second Amendment decisions.

H_{14}: States with low homicide increase the probability that their state courts of last resort will rule in favor of gun control in Second Amendment decisions.

Chapter Four; Second Amendment Cases in U.S. Courts of Appeals

H_1: U.S. Courts of Appeals panels that have a majority of judges appointed by Democratic presidents increase the probability that the panel will rule in favor of gun control in Second Amendment decisions.

H_2: U.S. Courts of Appeals panels that have a majority of judges appointed by Republican presidents increase the probability that the panel will rule in favor of gun rights in Second Amendment decisions.

H_3: Appellate circuits with a liberal political ideology increase the probability that their appellate panels will rule in favor of gun control in Second Amendment decisions.

H_4: Appellate circuits with a conservative political ideology increase the probability that their appellate panels will rule in favor of gun rights in Second Amendment decisions.

H_5: Appellate circuits with high population density increase the probability that their appellate panels will rule in favor of gun control in Second Amendment decisions.

H_6: Appellate circuits with low population density increase the probability that their appellate panels will rule in favor of gun rights in Second Amendment decisions.

H_7: Appellate circuits with high gun ownership percentages increase the probability that their appellate panels will rule in favor of gun rights in Second Amendment decisions.

H_8: Appellate circuits with low gun ownership percentages increase the probability that their appellate panels will rule in favor of gun control in Second Amendment decisions.

H_9: Appellate circuits with low homicide rates increase the probability that their appellate panels will rule in favor of gun rights in Second Amendment decisions.

H_{10}: Appellate circuits with high homicide rates increase the probability that their appellate panels will rule in favor of gun control in Second Amendment decisions.

APPENDIX H

Relevant State-Level Data Set Tables

State Courts of Last Resort Judicial Selection Method Changes, 1960-2009

State	Old Selection Method	New Selection Method	Year
Arkansas	Partisan Elections	Non-Partisan Elections	2000
Arizona	Partisan Elections	Merit Plan Selection	1974
California	Non-Partisan Elections	Merit Plan Selection	1979
Colorado	Partisan Elections	Merit Plan Selection	1966
Florida	Partisan Elections	Non-Partisan Elections	1971
Florida	Non-Partisan Elections	Merit Plan Selection	1976
Georgia	Partisan Elections	Non-Partisan Elections	1983
Iowa	Partisan Elections	Merit Plan Selection	1962
Indiana	Partisan Elections	Merit Plan Selection	1970
Kentucky	Partisan Elections	Non-Partisan Elections	1975
Maryland	Partisan Elections	Merit Plan Selection	1970
Mississippi	Partisan Elections	Non-Partisan Elections	1994
Nebraska	Partisan Elections	Merit Plan Selection	1962
New Mexico	Partisan Elections	Merit Plan Selection	1988
Oklahoma	Partisan Elections	Merit Plan Selection	1967
South Dakota	Non-Partisan Elections	Merit Plan Selection	1980
Tennessee	Partisan Elections	Merit Plan Selection	1971
Tennessee	Merit Plan Selection	Partisan Elections	1974
Tennessee	Partisan Elections	Merit Plan Selection	1994
Utah	Non-Partisan Elections	Merit Plan Selection	1967

Source: the American Judicature Society.
Note: n=21 total changes.

State Courts of Last Resort Cases by Review/Ruling Type, 1960-2009

Type of Review/Ruling	# of Cases
En Banc Review	20
Per Curiam Ruling	24

Source: LexisNexis Academic Legal Database.

State Courts of Last Resort Judges by Majority Rulings Authored, 1960-2009

Judge Name	State	Opinions Authored	Office Tenure	Position
Walter F. Marcus, Jr.	LA	7	1973-2000	Associate Justice
William T. Brotherton, Jr.	WV	4	1984-1995	Associate/Chief Justice
Robert B. Lee	CO	4	1969-1983	Associate Justice
Donald W. Lemons	VA	3	2000-Present	Associate Justice
Thomas G. Kavanagh	MI	3	1969-1984	Associate Justice
William E. Hunt, Sr.	MT	2	1985-2000	Associate Justice
William G. Callow	WI	2	1977-1992	Associate Justice
Lawrence L. Koontz, Jr.	VA	2	1995-Present	Associate Justice
Jean A. Turnage	MT	2	1985-2000	Associate/Chief Justice
David Zenoff	NV	2	1966-1976	Associate Justice
Nathan L. Jacobs	NJ	2	1952-1975	Associate Justice
John C. Mowbray	NV	2	1967-1992	Associate Justice
Masaji Marumoto	HI	2	1959-1995	Associate Justice
Berkeley B. Lent	OR	2	1977-1988	Associate/Chief Justice
Vincent L. McKusick	ME	2	1977-1992	Associate/Chief Justice
William A. Grimes	NH	2	1966-1981	Associate/Chief Justice
Leslie Boslaugh	NE	2	1961-1994	Associate Justice
Andrew D. Christie	DE	2	1983-1992	Associate/Chief Justice
John R. Dethmers	MI	2	1946-1970	Associate/Chief Justice

Source: LexisNexis Academic Legal Database and state judicial websites of the state in the table.

State Supreme Court Second Amendment Rulings by Year, 1960-2009

Year	Number of Rulings	Year	Number of Rulings
1960	3	1986	10
1961	0	1987	5
1962	3	1988	2
1963	2	1989	6
1964	4	**1980s Total**	59 (21.9 percent)
1965	1	1990	11
1966	2	1991	3
1967	2	1992	5
1968	6	1993	3
1969	6	1994	3
1960s Total	29 (10.8 percent)	1995	5
1970	7	1996	9
1971	10	1997	4
1972	8	1998	6
1973	6	1999	8
1974	4	**1990s Total**	57 (21.2 percent)
1975	7	2000	4
1976	10	2001	5
1977	16	2002	4
1978	9	2003	3
1979	12	2004	4
1970s Total	89 (33.1 percent)	2005	1
1980	7	2006	3
1981	6	2007	5
1982	7	2008	4
1983	6	2009	2
1984	4	**2000s Total**	35 (13.0 percent)
1985	6	**Total Cases**	269 (100 percent)

Source: LexisNexis Academic Legal Database.

This table demonstrates that more than thirty percent (33.1 percent) of all cases in the full sample of cases were decided during the 1970s, while less than eleven percent (10.8 percent) of the full case sample were decided during the 1960s. This finding shows that the three political assassinations and other causation from the 1960s did bring the Second Amendment to the forefront of American political thought as people fought for their perceived to right to bear arms in a society that continued to see the Second Amendment as a collective, instead of an individual right.

State Supreme Court 2nd Amendment Rulings by State, 1960-2009

State	Gun Rights Rulings	Gun Control Rulings	Total Rulings	State	Gun Rights Rulings	Gun Control Rulings	Total Rulings
Alabama	3	0	3	Montana	5	3	8
Alaska	3	0	3	Nebraska	3	0	3
Arizona	0	3	3	Nevada	3	4	7
Arkansas	3	1	4	New Hampshire	2	3	5
California	1	7	8	New Jersey	0	8	8
Colorado	3	7	10	New Mexico	1	1	2
Connecticut	0	2	2	New York	1	6	7
Delaware	0	5	5	North Carolina	2	0	2
Florida	4	4	8	North Dakota	2	0	2
Georgia	5	3	8	Ohio	4	3	7
Hawaii	0	4	4	Oklahoma	5	0	5
Idaho	2	0	2	Oregon	3	7	10
Illinois	0	5	5	Pennsylvania	2	5	7
Indiana	3	1	4	Rhode Island	0	2	2
Iowa	0	3	3	South Carolina	3	0	3
Kansas	3	0	3	South Dakota	1	0	1
Kentucky	2	3	5	Tennessee	2	0	2
Louisiana	10	0	10	Texas	9	3	12
Maine	1	5	6	Utah	2	1	3
Maryland	0	6	6	Vermont	0	2	2
Massachusetts	0	5	5	Virginia	5	4	9
Michigan	4	10	14	Washington	0	5	5
Minnesota	1	3	4	West Virginia	6	0	6
Mississippi	5	0	5	Wisconsin	1	8	9
Missouri	4	1	5	Wyoming	7	0	7

Source: LexisNexis Academic Legal Database.

This table shows that the five states with the most total Second Amendment rulings were divided between gun rights and gun control in nature. Texas and Louisiana had the most gun rights rulings, with nine and ten respectively, and two of the highest amounts of total full sample rulings. Michigan, Colorado, and Oregon had three of the highest numbers of gun control rulings and three of the highest amounts of total full sample rulings. This table also illustrates the differences between states when it comes to Second Amendment court rulings. Few of the state supreme courts split rulings between gun rights and gun control. In fact, only Florida, Kentucky, Nevada, New Hampshire, New Mexico, Ohio, Utah, and Virginia, had at least one of

each type of gun ruling and the amounts of each type of gun ruling were within one of the other ruling. For instance, Virginia has five gun rights rulings and four gun control rulings.

State Supreme Court Second Amendment Cases by Ruling Types, 1960-2009

Majority Ruling Type	**Number of Rulings**
Gun Control	143 (53.2 percent)
Gun Rights	126 (46.8)
TOTAL	**269 (100 percent)**

Source: LexisNexis Academic Legal Database.

State Supreme Court Second Amendment Rulings by Selection Method, 1960-2009

State Supreme Court Selection Method	**Number of Rulings**
Life-Time Appointments	57 (21.2 percent)
Merit Plan Selection	66 (24.5)
Non-Partisan Elections	84 (31.2)
Partisan Elections	62 (23.0)
TOTAL	**269 (100 percent)**

Source: LexisNexis Academic Legal Database and the American Judicature Society.

This table demonstrates that a plurality of all cases in the sample were litigated in state supreme courts where the judges were elected on a non-partisan basis, while more than fifty percent of all cases in the sample (54.3 percent) were litigated in state supreme courts where judges were either elected on a partisan or a non-partisan basis. The balance of cases in the sample (45.7 percent) was heard in state supreme courts where judges are appointed for lifetime or selected through a commission.

State Supreme Court Second Amendment Rulings by Judicial Selection Method, 1960-2009

Judicial Selection Method	**Number of Rulings**
Gun Rights Rulings by Selection Method	---
Lifetime Appointments	13 (4.8 percent)
Merit Plan Selection	36 (13.4)
Non-Partisan Elections	36 (13.4)
Partisan Elections	41 (15.2)
Total Gun Rights	**126 (46.8 percent)**
Gun Control Rulings by Selection Method	---
Lifetime Appointments	44 (16.4 percent)
Merit Plan Selection	30 (11.2)
Non-Partisan Elections	48 (17.8)
Partisan Elections	21 (7.8)
Total Gun Control	**143 (53.2 percent)**
TOTAL	**269 (100 percent)**

Source: LexisNexis Academic Legal Database and the American Judicature Society.

This table provides some interesting data regarding Second Amendment case rulings over the last fifty years. Partisan elections and merit plan selection judicial selection methods each had a majority of cases in which the state supreme court ruled in favor of gun rights, while lifetime appointments and non-partisan election judicial selection methods had a majority of cases that ruled in favor of gun control. However, only in life-time appointments and partisan elections the percentage of gun rulings types were heavily weighted in one way or the other. States that use partisan elections to select their state supreme court judges had only 33.9 percent of cases rule in favor of gun control, while 66.1 percent of cases ruled in favor of gun rights. Lifetime appointment judicial selection method states had only 22.8 percent of Second Amendment cases rule in favor of gun rights, while 77.2 percent of lifetime appointment states ruled in favor of gun control. Nine of the eleven states that had life-appointments processes for state supreme court judges during the sample period were located in the northeast United States.

State Supreme Court Second Amendment Rulings by Intermediate Appellate Court, 1960-2009

Intermediate Appellate Court at Time of Ruling?	Number of Rulings
Yes	186 (69.1 percent)
No	83 (30.9)
TOTAL	**269 (100 percent)**

Source: LexisNexis Academic Legal Database and the American Judicature Society.

According to this table, almost seventy percent (69.1 percent) of all supreme court sample cases were litigated in a situation where an intermediate appellate court was present at the time when a decision was handed down. 30.9 percent of cases in the sample did not have a state intermediate appellate court during litigation and final ruling. During the fifty year period of the study, thirteen states added intermediate appellate courts, and this is reflected in the data sample findings. For instance, Arkansas added an intermediate appellate court in 1978. Cases prior to 1978 were coded as not having an intermediate appellate court, while cases after 1978 were coded as having an intermediate appellate court. According to the American Judicature Society, ten states (DE, ME, MT, NV, NH, RI, SD, VT, WV, WY) continue to have state judicial systems that do not include intermediate appellate courts.

State Supreme Court Second Amendment Cases by Issue, 1960-2009

Ten Most Litigated Second Amendment Case Issues	# of Cases
Felon in Possession of a Firearm	51 (19.0 percent)
Concealed Weapons Violation	31 (11.5)
Denial of Personal Firearms License	24 (8.9)
Possession of Semi-Automatic/Automatic/Assault Weapon	23 (8.5)
Unregistered Firearms Violation	20 (7.4)
Required Background Check Information Violation	13 (4.8)
Local/State Gun Registration Violation	12 (4.5)
Local Firearms Ban	11 (4.1)
Local Ban on Gun Show Sales/Exhibition	9 (3.3)
Gun Club Related Issues	8 (3.0)
Various Other Issues	67 (24.9)
TOTAL	**269 (100 percent)**

Source: LexisNexis Academic Legal Database.

This table presents some interesting findings regarding the issues associated with Second Amendment state supreme court cases. This study originally supposed that the sample would be smaller than the final number of 269 cases. Finding that fifty-one cases in which a felon arrested for possession of a firearm increased the number of sample cases significantly. In each of these felony firearms possession cases, the felon that was arrested made the claim that state laws banning the possession of firearms by formerly incarcerated individuals violated their right to bear arms under the Second Amendment. Only two of the fifty-one cases regarding felons in possession of a firearm were successful in regaining the right to bear arms for the defendant. An issue area where Second Amendment defendants were exceedingly successful was in local gun registration violation cases. In these cases, state supreme courts uniformly allowed defendants to correct their gun registration information, and then re-register their firearms on the local/state level.

Tracking Second Amendment Cases in State Supreme Courts, 1960-2009

Type of Judicial Action	**Judicial Level**	**Number of Rulings**
None	---	219 (81.4 percent)
Case Reheard	State Supreme Court	5 (1.9)
Original Ruling Overturned	State Supreme Court	2 (0.7)
Case Appealed	U.S. Supreme Court	45 (16.7)
Case in which Certiorari was Denied	U.S. Supreme Court	40 (14.9)
Case Reviewed	U.S. Supreme Court	5 (1.9)
Case Overturned	U.S. Supreme Court	3 (1.1)
TOTAL	---	269 (100 percent)

Source: LexisNexis Academic Legal Database.

The vast majority (81.4 percent) of all sample Second Amendment cases ended when the respective state supreme court handed down a ruling, while five (1.9 percent) of the 269 cases were reheard in the same state court of resort. Of the five cases reheard in state supreme courts, only two (0.7 percent) of the original case rulings were eventually overturned. In both of these

cases, the original state supreme court ruling was overturned several years later with different judges rehearing the case.

All cases appealed beyond the state supreme courts went directly to the U.S. Supreme Court. Forty-five (16.7 percent) total sample cases were appealed directly to the U.S. Supreme Court. On Second Amendment cases, the U.S. Supreme Court's rate of review was 11.1 percent on appealed cases, while the rate of successfully getting the original ruling overturned was 6.7 percent. Certiorari was denied in the U.S. Supreme Court 88.9 percent of the time. Both the rate of review and overturn rate on Second Amendment cases coming from state supreme courts were higher than the traditional rates often cited by scholars.

APPENDIX I

Relevant Appellate Circuit-Level Data Set Tables

U.S. Courts of Appeals by Sample Three-Judge Panel Appearance, 1960-2009

Name	Circuit	Panel Appearances	Tenure	Appointing President	Party
William J. Bauer	7	10	1974-Present	Gerald Ford	R
James Wilkinson, III	4	9	1984-Present	Ronald Reagan	R
Ilana K.D. Rovner	7	9	1992-Present	George H.W. Bush	R
Richard A. Posner	7	8	1981-Present	Ronald Reagan	R
Richard F. Suhrheinrich	6	7	1990-Present	George H.W. Bush	R
Diane P. Wood	7	6	1995-Present	Bill Clinton	D
Juan R. Torruella	1	6	1984-Present	Ronald Reagan	R
Stephan R. Reinhardt	9	6	1980-Present	Jimmy Carter	D
Phyllis A. Kravitch	5, 11	6	1979-Present	Jimmy Carter	D
Gerald W. Heaney	8	6	1966-2006	Lyndon Johnson	D
Peter T. Fay	5, 11	6	1976-Present	Gerald Ford	R
Arthur L. Alarcon	9	5	1979-Present	Jimmy Carter	D
Edward E. Carnes	11	5	1992-Present	George H.W. Bush	R
Frank H. Easterbrook	7	5	1985-Present	Ronald Reagan	R
Michael S. Kanne	7	5	1987-Present	Ronald Reagan	R
Gilbert S. Merritt, Jr.	6	5	1977-Present	Jimmy Carter	D
Kenneth F. Ripple	7	5	1985-Present	Ronald Reagan	R
Norman H. Stahl	1	5	1992-Present	George H.W. Bush	R
William W. Wilkins	4	5	1986-2008	Ronald Reagan	R

Source: LexisNexis Academic Legal Database and the Federal Judicial Center.

U.S. Courts of Appeals by Sample Majority Rulings Authored, 1960-2009

Name	Circuit	Opinions Authored	Tenure	Appointing President	Party
Bobby R. Baldock	10	3	1985-Present	Ronald Reagan	R
William J. Bauer	7	3	1974-Present	Gerald Ford	R
Theodore McMillian	8	3	1978-2006	Jimmy Carter	D
Ilana K.D. Rovner	7	3	1992-Present	George H.W. Bush	R
James Wilkinson, III	4	3	1984-Present	Ronald Reagan	R

Source: LexisNexis Academic Legal Database and the Federal Judicial Center.

U.S. Courts of Appeals by Review/Ruling Type, 1960-2009

Type of Review/Ruling	# of Cases
En Banc Review	3
Per Curiam Ruling	43

Source: LexisNexis Academic Legal Database.

U.S. Courts of Appeals Second Amendment Rulings by Year, 1960-2009

Year	Number of Rulings	Year	Number of Rulings
1960	2	1986	2
1961	0	1987	2
1962	0	1988	2
1963	1	1989	2
1964	1	**1980s Total**	24 (10.9 percent)
1965	0	1990	8
1966	0	1991	8
1967	0	1992	11
1968	0	1993	8
1969	0	1994	5
1960s Total	4 (1.8 percent)	1995	9
1970	4	1996	18
1971	8	1997	7
1972	4	1998	6
1973	2	1999	8
1974	2	**1990s Total**	88 (40.2 percent)
1975	1	2000	9
1976	2	2001	7
1977	3	2002	4
1978	3	2003	4
1979	2	2004	3
1970s Total	31 (14.2 percent)	2005	6
1980	3	2006	6
1981	1	2007	7
1982	3	2008	3
1983	3	2009	23
1984	4	**2000s Total**	72 (32.9 percent)
1985	2	**Total Cases**	219 (100 percent)

Source: LexisNexis Academic Legal Database.
Note: n=219 cases.

This table shows that the last two decades, 1990-2009, provided the vast majority of Second Amendment activity in the U.S. Courts of Appeals. In fact, 73.1 percent (160) of cases in the entire fifty year sample were decided between 1990 and 2009. The most active year for Second Amendment decisions was 2009, as 10.5 percent (or 23 cases) of all cases in the sample were decided in the calendar year. The least active decade for Second Amendment decisions were the 1960s. Only four sample cases (1.8 percent) were decided during the entire ten year period (1960-1969), while seven years during the period didn't even have one Second Amendment case decided during the year.

The findings from this table suggest that litigants on both side of the Second Amendment gun debate only started to chiefly use the federal court system to litigate gun issues until the last twenty years. Seeing the success of gun rights litigants in cases, such as *Heller,* others have attempted to bring selected Second Amendment cases and issues before the federal courts to a larger degree in recent years. Unlike the state supreme courts, when 33.1 percent of all cases in the full sample of cases were decided during the 1970s, the federal appellate courts reaction to the three political assassinations and other causation from the 1960s happened two decades later when American conceptions of the Second Amendment where changing.

U.S. Courts of Appeals Second Amendment Cases by Ruling Types, 1960-2009

Majority Ruling Type	**Number of Cases**
Gun Control	160 (73.1 percent)
Gun Rights	59 (26.9)
TOTAL	219 (100 percent)

Source: LexisNexis Academic Legal Database.
Note: n=219 cases.

This table illustrates the extent of U.S. Courts of Appeals Second Amendment majority ruling types. 73.4 percent of all federal appellate Second Amendment cases were decided in favor of gun control, while only 26.6 percent of all cases in the full sample supported gun rights. When compared with the same findings in the state supreme courts (53.1 percent of cases supported gun control), this finding suggests that when federal appellate judges are forced to decide matters regarding the gun statutes they are much more likely to ere on the side of gun control than their state court of last resort colleagues.

U.S. Courts of Appeals Second Amendment Rulings by Appellate Circuit, 1960-2009

Appellate Circuit	Gun Rights Rulings	Gun Control Rulings	Total Rulings
First	1	13	14
Second	2	12	14
Third	4	3	7
Fourth	4	20	24
Fifth	5	12	17
Sixth	6	24	30
Seventh	9	21	30
Eighth	2	18	20
Ninth	10	20	30
Tenth	4	6	10
Eleventh	12	11	23
TOTAL	**59 (29.6 percent)**	**160 (73.1 percent)**	**219 (100 percent)**

Source: LexisNexis Academic Legal Database.
Note: n=219 cases.

This table demonstrates how both types of Second Amendment Second Amendment ruling were divided among the eleven appellate circuits. Only two appellate circuits out of the eleven had a majority of Second Amendment gun rights rulings. In fact, seven of the eleven appellate circuits had majority Second Amendment gun control ruling totals which surpassed gun rights rulings by more than ten rulings. Only the Third, Fifth, Tenth, and Eleventh Circuit Courts of Appeals had gun control ruling totals that were within ten rulings of the total gun rights rulings. Only the Third (Delaware, New Jersey, and Pennsylvania) and the Eleventh (Alabama, Florida, and Georgia) Circuit Courts of Appeals had total rulings that favored gun rights. In both instances, the majority gun rights rulings total only surpassed gun control rulings by a single decision. This table also shows that the total amount of gun control rulings far exceeded the amount of total gun rights rulings in the full sample.

U.S. Courts of Appeals Second Amendment Majority Partisan Appointment Panels, 1960-2009

	Gun Control Rulings	Gun Rights Rulings	Total Majority Panels
Majority DEM Panels	59 (26.9 percent)	21 (9.6 percent)	80 (36.5 percent)
Majority GOP Panels	101 (46.1)	38 (17.4)	139 (63.5)
Total Majority Panels	160 (73.0 percent)	59 (27.0 percent)	219 (100 percent)

Source: LexisNexis Academic Legal Database and the Federal Judicial Center.
Note: n=219 cases.

During the fifty year study period, Republican President's controlled the White House for twenty-nine of the fifty years. This table illustrates this fact. Because Republican's held the executive branch for eight more years than Democrat's, they held the power of judicial appointments for a longer time. In fact, Republican-appointed federal appellate judges held the majority on the three-judge U.S. Courts of Appeals Second Amendment panels in 63.5 percent of all cases during the study period. However, traditional conceptions about the policy preferences of the two political parties did not hold with regard to Second Amendment cases.

Traditionally, the Republican Party has supported gun rights, while the Democratic Party has not. In spite of this, the two political parties had a very similar rate of support for gun rights when each held the majority on the three-judge federal appellate panels. Only 27.3 percent of the Republican-appointed majority U.S. Courts of Appeals panels supported gun rights, while 26.3 percent of the Democratic-appointed majority panels supported gun control. These findings support and back-up the statistics found regarding support for gun rights in the full sample and outlined in other tables.

U.S. Presidential Appellate Nominations and Sample Appellate Panel Judges, 1960-2009

U.S. President	**Political Party**	**# of Judges Nominated**
Herbert Hoover	Republican	1 (0.3 percent)
Franklin Roosevelt	Democrat	4 (1.1)
Harry Truman	Democrat	8 (2.2)
Dwight Eisenhower	Republican	13 (3.5)
John Kennedy	Democrat	24 (6.5)
Lyndon Johnson	Democrat	31 (8.4)
Richard Nixon	Republican	24 (6.5)
Gerald Ford	Republican	27 (7.3)
Jimmy Carter	Democrat	28 (7.5)
Ronald Reagan	Republican	61 (16.4)
George H.W. Bush	Republican	45 (12.2)
Bill Clinton	Democrat	52 (14.0)
George W. Bush	Republican	51 (13.7)
Barack Obama	Democrat	2 (0.5)
Total Democrat	**Democrat**	**149 (40.2 percent)**
Total Republican	**Republican**	**222 (59.8 percent)**
TOTAL	**7 DEM // 7 GOP**	**371 (100 percent)**

Source: LexisNexis Academic Legal Database and the Federal Judicial Center.
Note: 371 total federal appellate judges served on Second Amendment case panels, 1960-2009.

This table demonstrates the figures of partisan presidential appointments to the U.S. Courts of Appeals as they appeared in the full case sample. Because the full sample had 219 cases, a total of 657 judges could have been a part of these Second Amendment three-judge panels. However, only a total of 371 judges took part. This is because multiple federal appellate judges were randomly assigned numerous sample panels. As for presidential nominations, it is no surprise that Republican President's federal appellate appointments vastly outnumbered those of Democratic President's.

Of the 371 federal appellate judges to sit on a Second Amendment panels in the sample, 59.8 percent were appointed by Republican presidents. In fact, the last three Republican President's, serving during the heart of the study period, Reagan, Bush (41), and Bush (43), accounted for the nominations of 42.3 percent of the federal appellate judges in the full sample. President's who served for two full terms during the study period also appointed

more judges then their counterparts to the U.S. Courts of Appeals. Another interesting aspect of the sample of judges that heard Second Amendment cases are the judges that were appointed by President Franklin Roosevelt and President Herbert Hoover each of whom served in the first part of the 1900s. These judges heard Second Amendment cases during the 1960s and had served twenty to thirty years on the U.S. Courts of Appeals before their appearances in the full case sample.

U.S. Courts of Appeals Second Amendment Cases by Issue, 1960-2009

Ten Most Litigated Second Amendment Issues	**# of Cases**
Felon in Possession of a Firearm	38 (17.4 percent)
Denial of Personal Firearms License	28 (12.8)
Denial of Federal Firearms Marketing/Sale License	25 (11.4)
Possession of Semi-Automatic/Automatic/Assault Weapon	24 (11.0)
Concealed Weapons Violation	17 (7.8)
Unregistered Firearms Violation	16 (7.3)
Local Ban on Gun Show Sales/Exhibitions	14 (6.4)
Gun Club Related Issues	13 (5.9)
Local Firearms Ban	11 (5.0)
Local Gun Registration Issues	9 (4.1)
Various Other Issues	24 (11.0)
TOTAL	**219 (100** percent**)**

Source: LexisNexis Academic Legal Database.
Note: n=219 cases in the full sample.

This table presents finding regarding the issues associated with Second Amendment U.S. Courts of Appeals cases in the full sample. Much like the Third Chapter, the most prevalent issue associated with the Second Amendment cases in the U.S. Courts of Appeals was felons arrested for possessions of firearms. In these felony firearms possession cases, the felon that was arrested claimed that state or federal laws banning the possession of firearms by formerly incarcerated individuals violated their constitutional right to bear arms that is protected under the Second Amendment. The stringent nature of federal gun laws forbade future legal purchase, possession, and usage of firearms for all defendants in these cases.

An issue area where Second Amendment defendants were exceedingly successful was in denial of federal firearms marketing/sale license cases. In these sample cases, U.S. Courts of Appeals defendants had a 76 percent (19 of 25 cases) rate of success in getting the federal courts to over turn U.S. Bureau of Alcohol, Tobacco, and Firearms (A.T.F.) directives that forbade companies from purchasing federal firearms licenses that allow the marketing and selling of registered firearms to qualified individuals based on mandated background checks. In several case instances, the U.S. Courts of Appeals that made a ruling regarding A.T.F. firearms marketing permits called the denial of these permits arbitrary or completely based off personal discretion.

Tracking Second Amendment Cases in the U.S. Courts of Appeals, 1960-2009

Type of Action	**Judicial Level**	**# of Cases**
None	---	183 (83.6 percent)
Case Reviewed En Banc	U.S. Courts of Appeals	3 (1.4)
Original Ruling Overturned	U.S. Courts of Appeals	1 (0.4)
Case Appealed	U.S. Supreme Court	33 (15.1)
Case in which Certiorari was Denied	U.S. Supreme Court	24 (11.0)
Case Reviewed	U.S. Supreme Court	9 (4.1)
Case Overturned	U.S. Supreme Court	5 (2.3)
TOTAL	**---**	**219 (100 percent)**

Source: LexisNexis Academic Legal Database.
Note: n=219 cases.

This table shows how cases in the full sample were dispensed with in the U.S. Courts of Appeals and beyond. The vast majority (83.6 percent) of all sample Second Amendment cases ended when the respective U.S. Courts of Appeals panel handed down a ruling, while three of the 219 cases we re-tried en banc in the same federal appellate circuit with 33 percent (1 of the 3 cases) rate of overturning the original decision during review. Because the U.S. Courts of Appeals are the federal appellate circuit directly below the U.S. Supreme Court in terms of hierarchy, most of the cases that were appealed (91.7 percent) went to the U.S. Supreme Court. The rate of review of Second Amendment U.S. Courts of Appeals cases in the U.S. Supreme

Court was high at 27.3 percent. Of the nine Second Amendment cases which were granted certiorari was granted, five (55.6 percent) of those cases were successful in getting the original U.S. Courts of Appeals decision overturned. Certiorari was denied by the U.S. Supreme Court 72.7 percent of the time.

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