Biggest Loser?
Obama's Administrative Agencies and the Supreme Court

Adam Rutkowski
University of Georgia

Allison Vick
University of Georgia

Martha Humphries Ginn
Augusta University

Lance Y. Hunter
Augusta University

On the surface, President Obama's administration has a victorious record at the Supreme Court, including successes in National Federation of Independent Businesses v. Sebelius (health care), Texas Department of Housing v. Inclusive Communities Project (racial housing discrimination), and Obergefell v. Hodges (same-sex marriage). However, when looking at cases in which a federal agency of the Obama administration is a party to a case, we find that the administration prevails in less than 50 percent of cases. When comparing the Obama administration to other recent presidential administrations, we find this falls short of their average success rates. We explore explanations for why the Obama administration might be less successful in the Supreme Court's rulings on federal agency administrative action by examining factors including deference under Chevron v. Natural Resources Defense Council, judicial ideology, and presidential popularity. We find that Obama's lower success rates are not attributable to citation of Chevron, ideology, or presidential popularity. Future research is needed to determine if ideology plays

a role with individual justices as well as to determine if the increasing reliance on executive orders led to greater judicial scrutiny for the Obama administration.

Historically, scholarship on agency success in the Supreme Court has consistently found that agencies are very successful litigants, with average success rates of at least 70 percent (Canon and Giles 1972; Crowley 1987; Handberg 1979; Pritchett 1948; Sheehan 1990, 1992; Tanenhaus 1960). Multiple factors are at play with these high levels of success, including the role of the Office of the Solicitor General in carefully selecting winnable cases, as well as the level of judicial deference built into the Administrative Procedure Act (APA). The substantial evidence test, along with the arbitrary and capricious test in the APA, assumes that the agency has expertise and makes rational and objective decisions unless proven otherwise (Horowitz 1994). This creates somewhat of a conundrum, because judicial review of agencies is designed to curb abuses of agency discretion, but the courts are expected to, and do, give the agencies great deference in this review. This deference would not be altogether problematic if it were applied across all agencies regardless of the agency's political orientation or the substantive policies made, but research suggests that is not the case. In fact, Canon and Giles (1972) found that the Supreme Court's willingness to defer to an agency was due to the justices' attitudes toward the policies made by the agency and not whether they followed proper procedures.

Our research builds on existing studies by asking if success varies across presidential administrations, with particular emphasis on the Obama administration. At the close of the US Supreme Court's 2014 term, the media and members of the public praised the Obama administration for its legal victories including the Affordable Care Act upheld, same-sex marriage legalized, and a tool to fight housing discrimination maintained. The media was full of praise for these victories; in fact, one source suggested the Obama administration won nearly all the politically significant cases at the Supreme Court at the end of the term (Hurley 2015). While other news outlets recognized that the Obama administration was not entirely successful, they praised the administration's ability to get their agenda through a conservatively stacked Supreme Court (Lemieux 2016). While the outcomes of these cases are significant and well publicized, it has been suggested that the Obama administration's agency success rate at the Supreme Court is actually relatively low. In fact, Obama's percentage of victory, when the United States or a federal agency is involved, is below 50 percent (Roeder 2015). So, despite the landmark cases that have been decided in favor of the Obama administration's agenda, the

administration did not fare well overall. Our goal is to first see how Obama's success (or lack thereof) compared to other recent presidents; then, if a significant difference is found, to investigate possible explanations for the disparity.

To do so, we will discuss several variables that have been used to explain success of a presidential administration's administrative agencies at the Supreme Court. These include deference to the agency under the precedent *Chevron U.S.A. Inc. v. Natural Resources Defense Council* (1984), the dominant ideology of the Court, the direction of the lower court, whether the United States is the petitioner, and presidential popularity.

Deference under *Chevron*

In exploring judicial review of contemporary administrative agency actions, it is vital to start out with a discussion of *Chevron*—the landmark case that changed the way administrative agency cases are decided. *Chevron U.S.A. Inc. v. Natural Resources Defense Council* (1984) changed the paradigm of administrative agency decisions by invoking democratic theory as its basis for requiring deference to executive (agency) interpretations of the law (Merrill 1992, 978). Acknowledging that many instances of statutory interpretation require an agency to resolve policy, and not legal, issues, and that agencies are given policy-making responsibilities by Congress, the Court established what has become known as the *Chevron* two-step test. According to *Chevron*, the courts must first decide if Congress has spoken clearly to the exact question at issue in the agency litigation, or if it was silent or ambiguous as to the issue. If the Court decides the former, it must give effect to the unambiguous intent of Congress. If the Court decides the latter, it should defer to the agency if its interpretation is reasonable and based on a permissible construction of the statute.

Chevron and its two-step test effectively modified the meaning of deference since courts were no longer merely required to give some credence to the agency's statutory interpretation. Rather, the decision required that if both conditions of the test were met, the Court was unable to substitute its own construction of the statute for that of the agency. In other words, the reviewing court had not only to consider the agency's interpretation, but to give controlling weight to the agency's construction, making it much more difficult to overturn an agency's decision (Starr 1986, 296). Legal scholars have argued that the doctrines that governed agency litigation prior to *Chevron* were schizophrenic (Seidenfeld 1994, 93). Prior to this landmark decision, federal courts took a case-by-case approach to agency litigation, which led to contradictory case law and inconsistent precedent (Callahan 1991, 1276). As a result, *Chevron*'s apparent partial departure from precedent has been regarded as an important innovation in administrative law because it created a procedural formula for courts to

follow (Merrill 1992, 976). Effectively *Chevron* moved deference from sliding scale phenomena to a switch that could either be turned on or off (Merrill 1992).

It is believed that the two-step test put forth by *Chevron* ultimately led to an increased level of deference to administrative agencies. The decision also gave rise to scholarship that argued for varying levels of strictness in the Court's interpretation. While some scholars assert *Chevron* receives a strict interpretation the majority of the time (Merrill 1992; Hennig 1999; Pierce 1988; 1995), others believe the precedent has been implemented in a flexible manner (Callahan 1991; Seidenfeld 1994; Sunstein 1990). Specifically, Pierce (1988) asserts that a strong reading of *Chevron* is the proper reading because agencies are the best-equipped institutions to resolve policy questions in the states that grant the agency its legal power. Agencies also deserve more deference than the federal courts because agencies are subject to the public (Pierce 1988).

Research on the *Chevron* decision has included a focus on the empirical question of whether the decision has actually altered deference. While *Chevron* has been regarded as directing courts to give greater deference to administrative agencies, Merrill (1992) argues that there is no discernible relationship between the application of the decision and greater deference to the agency's interpretations. In fact, he finds that cases applying the *Chevron* doctrine have produced fewer affirmations than those not applying the doctrine.

These ideas are substantiated by a study showing that of the 107 cases that were found to be *Chevron* applicable in the fifteen years following the ruling, only 64 (around 60 percent) cases were compliant (Hennig 1999). In 19 percent of the cases, the Court outright refused to apply the standard and instead imposed its own judgment as to the correct interpretation of the statute's language. This study found that close to 20 percent of the cases violate the *Chevron* rule. From this information, one might conclude that the Supreme Court only selectively complies with the *Chevron* test if it agrees with the agency's interpretation.

This less-than-perfect compliance rate is buttressed by the finding that there was a simple increase in deference to the agency by the justices (Richards, Smith, and Kritzer 2006). This fact stands in contrast to the commonly held belief at the time that the Supreme Court's deference to administrative agencies would increase dramatically. What, then, accounts for varying levels of deference?

Justice Ideology

The Administrative Procedure Act of 1946 (APA) decreed a significant role for the courts in federal administration. Congress passed the APA as a means to prevent the misuse and abuse of administrative authority, to implement procedural controls on administrative activities, and to compel agencies to provide information about their structures and operations. Judicial review of administrative agencies

stems largely from these policy preferences codified in the APA and recapitulated in amendments to the act like the Privacy and the Freedom of Information Acts. Deciding whether an agency has provided substantial evidence to support their ruling, or whether an agency has abused its discretion, is a highly subjective endeavor which may rely, unconsciously or not, on a judge's personal view of the subject matter (Rosenbloom & O'Leary 1997).

Earlier scholarship suggested ideology may play a part in judicial review of agencies depending on the substantive policy issue at hand in the case (Canon and Giles 1972). Crowley (1987) finds that the type of agency might play off of ideology to ultimately influence the outcome; for example, liberal justices are more likely to support social agencies, while conservative justices are more likely to support economic agencies. Tailoring this point more narrowly is the idea that the specific policy's position on the liberal-to-conservative spectrum affects the justices' votes; that is, liberal justices will support liberal policies and conservative justices will support conservative policies (Sheehan 1990, 1992).

Recent scholarship echoes the importance of ideology as a factor in rulings on administrative agency actions. It is vital to remember that judges are generally political creatures because of their appointment process and may vote in administrative cases along ideological lines (Caruson and Bitzer 2004). But perhaps judicial ideology is not the most important variable in administrative agency decisions. Deen, Ignagni, and Meernik (2005) find that while judicial ideology is important, partisan politics between the agency and the Court is even more suggestive. This is a key point to consider as Obama's administration leans liberally while the Court leans conservatively. The interplay between the Court and the agencies' ideologies is substantiated by the finding that justices' votes in administrative law cases are influenced by the ideology of the president under whom the administrative decisions were made (Smith 2007). However, Miller, Banks, and Curry (2008) found that a judge's subject matter expertise should also be considered in determining their likelihood to defer to the agency.

Attempts to understand judicial behavior in administrative agency litigation should also contemplate the extent to which justices might behave strategically. Schubert (1958), one of the first to apply game theory to judicial decision making, demonstrated that Supreme Court justices were strategic decision makers who wanted to maximize their influence on the Court. A strategic perspective suggests that judges are policy-oriented actors who attempt to advance their own policy preferences while simultaneously considering the preferences of other actors and anticipating the actions they take, realizing that all interactions are structured by institutions (Murphy 1964). Research on strategic behavior by Supreme Court justices includes strategic misrepresentation of preferences, persuasion, and bargaining (Baum 1997; Brenner 1982, 1989; Epstein and Knight 1998; Hammond, Bonneau, and Sheehan 2005; Maltzman

and Wahlbeck 1996; Wahlbeck, Spriggs and Maltzman 1998); strategic behavior occurring within the judicial hierarchy (McNollgast 1995; Songer, Segal, and Cameron 1994); as well as strategic behavior between the branches of government (Eskridge 1991; Gely and Spiller 1990; Segal 1997).

The strategic model assumes that judges act rationally to bring policy as close as possible to their own preferred outcome (McNollgast 1995, 1636). This model departs from the strictly attitudinal approach in alleging that judges may vote against their preferences in some instances to achieve more desirable results in the long run (Baum 1997). Therefore, a strategic model does not deny that attitudes play a significant role in decision making, but rather augments this assumption to include explanation for behavior that appears to be in direct contrast to a judge's sincere preferences. Therefore, if we find judicial ideology is not as significant in these cases, it may be due to strategic voting.

While the importance of judicial ideology, displayed either sincerely or through strategic behavior, cannot be disputed, factors such as precedent can limit their ideologically based decision-making (Segal and Cover 1989). As other variables are presented, we will explain how presidents have fared in the post-*Chevron* era. This will lead us to consider whether it is who the president is, and not just the ideology of said president, that matters.

Direction of the Lower Court

Related to the theory of judicial ideology influencing voting behavior in administrative agency cases is the idea that the directionality of the lower court decision might impact agency success. Specifically, if ideology matters, agencies should be successful when the policy direction of the agency's decision is congruent with the policy direction of the majority of the reviewing court. In fact, when controlling for the ideological direction of the agency's decision, researchers found directionality to have a significant influence on the level of deference granted (Crowley 1987; Sheehan 1990, 1992; Spaeth and Teger 1982). Further, Corley, Collins, and Calvin (2009) specifically identified factors of the lower court opinion that have the capability of influencing the actual content of a Supreme Court opinion. The authors found that the Supreme Court often uses the language and writing from a lower court that aligns with the ideology of the Court's majority decision. This displays a willingness of the Supreme Court to, at minimum, acknowledge lower Court decisions in their opinions.

US Petitioner Status

A less frequently discussed variable in administrative agency success at the Supreme Court is US petitioner status. Scholarship pertaining to this variable

often speaks in terms of the effect of the solicitor general, the United States' legal representative before the Supreme Court. Thus assumptions have to be made about how the prestige of US petitioner status stems from the Office of the Solicitor General (OSG) by likening the presence of the solicitor general to US petitioner status. Early research suggests that the solicitor general's influence is not significant (McGuire 1998). Supplanting this finding, later works find that the United States as the petitioner might matter if the solicitor general's ideology is proximate to the ideology of the justices (Bailey, Kamoie, and Maltzman 2004). This suggests the possibility that US petitioner status matters only if the position of the United States matches the ideology of the majority of the Court.

Petitioner Status of the United States is also found to be important because of the expertise of the solicitor general. Black and Owens (2012, 2013) find that the solicitor has a large influence on case outcomes because attorneys from the Solicitor General's Office have greater success than other attorneys. This can most likely be attributed to the Office's long-standing and established relationship with the Supreme Court. Another line of research within this variable is the idea of the United States as a repeat player. The United States is a repeat player as a petitioner and has some of the best lawyers with the most experience before the Court (Szmer, Songer, and Bowie 2016). Therefore, the United States is believed to have a huge advantage.

Presidential Popularity

In examining how successful post-*Chevron* presidents have been in administrative agency cases, we decided it was necessary to explore the role of a president's popularity in agency success. While several studies have found that presidential approval ratings can be translated into political capital to help influence congressional behavior (Brace and Hinkley 1992; Rivers and Rose 1985), research on presidential power over the Supreme Court has very few systematic empirical studies but relies on anecdotes or case studies. Ducat and Dudley (1989) have found that presidential prestige, measured by approval ratings, was a significant determinant of the presidential success at the district court level. At the Supreme Court level, Mishler and Sheehan (1993, 1996) found that the Court does act in a majoritarian manner by supporting popular presidents. One of the most comprehensive studies by Yates and Whitford (1998) looked at all presidential power cases from 1949 to 1993 to see if judges' votes were conditioned upon the presidents' approval rating. Operationalizing presidential approval as both an average and a trend in approval, Yates and Whitford (1998) find that increases in approval, measured either way, led to an increased likelihood that a justice would vote in favor of the president. Smith

(2007) examined the role of presidential and Supreme Court relations in influencing administrative cases and found that judicial administrative decision-making could be influenced by the ideological views of the president at the time the agency decision was made. This research encourages further evaluation of the influence of presidential popularity on specific decisions by the Supreme Court in agency cases.

Data and Methods

To explore whether the president influenced agency success in the Supreme Court, our primary data source is the Supreme Court Database (Spaeth et al. 2016). Since we are also interested in the role *Chevron* has in deference, we began our analysis in the 1985 term, which was over a full year after this landmark ruling. Within the database, we used the petitioner and defendant variable to identify the cases involving an administrative agency as a party. Including all cases from the 1985 term through the 2015 term, we identified a total of 394 cases that clearly involved at least one agency as a party. Our unit of analysis is the case itself and not the individual votes of the Justices.[1]

Since our primary research question is determining if the president influences agency success, our dependent variable in the study is *agency wins*. The *agency wins* variable is a dichotomous variable that captures whether the agency wins (1) or loses (0) a Supreme Court decision. To create this variable, we first looked at whether the agency was the petitioner or the respondent in the case and created a dummy variable identifying the cases where the agency was the petitioner. There is a winning party variable in the Supreme Court Database that identifies the cases where the petitioner won. We combined the information in these two variables to create the agency variable. Cases coded as the agency winning included those where the agency was the petitioner and the petitioner was the winning party, and cases where the agency was the respondent and the plaintiff lost.

---

[1] Our research question deals with levels of success for presidential administrations in administrative agency litigation and not the voting behavior of individual justices. We are focused on whether an agency won or lost so while the final vote count matters in determining the prevailing party, how each justice voted is not our primary concern. Further, the Spaeth Supreme Court database codes individual justices' votes on ideological lines rather than providing which party won or lost. In order to use justice vote as the unit of analysis, we would have to recode the justice votes in terms of votes for the winning and losing parties and were wary of the subjectivity that might be involved. While there are limitations in using the case as the unit of analysis, we thought it was worth it to stay true to the research question.

To explore our primary independent variable, we needed to create a variable identifying the president during the case. Since we wanted to gauge whether the cases championed by a given administration were more successful than those of other administrations, we had to account for some lag in the new administration taking charge of filings in the Supreme Court. Therefore, in election years, we coded the cases for that term to reflect the president in office prior to the election and did not attribute the cases to the new administration until the term beginning the following year. We then created five dichotomous presidential administration variables that indicate the administration in the term the case was decided. A value of (1) indicates the decision occurred during a given administration, and a value of (0) indicates the decision occurred during all other administrations. The administrations included are: *Reagan*, *HW Bush*, *Clinton*, *GW Bush*, and *Obama*. Remember that our time frame includes only the second Reagan administration because we included only cases in the term after *Chevron* was decided. We are interested in exploring whether there are systematic differences in our dependent variable, *agency wins*, and the different presidential administrations, with particular emphasis on the Obama administration.

Given that we are also interested in exploring whether the *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) decision led to greater deference to an agency, we needed to identify the cases where the majority opinion cited the case.[2] The *Chevron cited* case variable captures whether the majority opinion in each Supreme Court case cites the case. The variable is dichotomous, and (1) indicates the majority opinion cited the case and (0) indicates the majority opinion did not cite the case. We hypothesize that there will be a positive relationship between this variable and our dependent variable, *agency wins*.

We have also included several controls grounded in the existing literature on agency success in the Supreme Court. One of the most obvious controls in the judicial behavior literature is ideology of the justices. Since our unit of analysis is the case and not the justice, we could not use standard measures of individual justices' ideology like Segal and Cover (1989) scores or Martin and Quinn (2002) measures of judicial ideology. To capture ideology at the case level, we decided to focus on the author of the majority opinion, which is coded in the Spaeth database. From there, we identified the party appointing president of justice and compared it to the party of the president when the case was decided. We then created the *party congruence* control variable where cases were coded as one if the party of appointing president of the majority opinion

---

[2] To identify cases where the majority opinion cited *Chevron*, we took the case citation and viewed the entire case on the Supreme Court section of Justia.com. We then used ctrl-F to search *Chevron*.

writer and president in office during case are the same and zero otherwise. We expect to find a positive relationship between this congruence variable and our dependent variable, *agency wins*.

Another important control variable is the one identifying the agency as the petitioner. The *US petitioner* variable is coded one if the agency is petitioner and zero otherwise. We expect a positive relationship with this measure and our dependent variable for two reasons. First is the reality that the Supreme Court is more likely to reverse than affirm cases generally (Bernhardt 1948; Handberg and Hill 1980; Klein and Hume 2003; Scott 2006; Songer, Segal, and Cameron 1994; Wermiel 2008). Second, the Solicitor General's Office typically only appeals cases they think have a better chance of prevailing on the merits. Since the Supreme Court is well aware of the solicitor general's careful screening of cases to appeal, the Court often rules in favor of the "tenth justice" (Wohlfarth 2009).

Existing literature also suggest that the directionality of the lower court decision might influence the outcome of the case, again factoring in the Court's predilection to reverse. We create a variable, *lower court congruence*, that captures the congruence between the lower court decision direction and the appointing president of the majority opinion writer. If the agency is petitioner, we assume the agency wants the Court to reverse, so they would prefer that the lower court directionality to be the opposite of the majority opinion writer (in other words, if the directionality of the lower court decision is conservative, a majority opinion writer appointed by a Democratic would benefit the agency). Alternatively, if the agency is the respondent, they want the Court to affirm, so they would prefer that the lower court decision's directionality to coincide with the party of the appointing president of the majority opinion writer. The variable itself captures the instances when the congruence (or lack thereof) between the lower court's decision and majority opinion author's ideology benefit the agency, and those cases are coded as one and all other instances are coded as zero.

To measure whether the popularity of a president, both across and within administrations, influences agency success, we gathered each president's approval rating from Gallup in early October.[3] We used the approval rating from early October because it coincided with the start of the Supreme Court's term, and we held it as a constant across each individual term. While imperfect, we wanted to allow for temporal precedence in the measure and assumed that the justices would not be tracking the polls every morning before oral arguments. We anticipate a positive relationship between the *presidential popularity* variable

---

[3] Data on presidential popularity was retrieved from Gallup: http://www.gallup.com/poll/124922/presidential-job-approval-center.aspx.

and dependent variable. In other words, we expect the agency to be more likely to win when the president championing their case is popular.

Finally, we include two other potential independent variables that explore the basis of the decision provided by the Court. The *regulation* variable is coded as one if the decision was based on an administrative regulation. The *statutory* variable is coded as one if the decision was based on statutory construction. With both of these controls, we anticipate positive relationships with the variable and our *agency wins* variable because the Court typically defers to agencies in both types of cases.

We have cross-sectional time-series data with a dichotomous dependent variable. In order to assess the effect our primary variables of interest have on the likelihood an agency wins a Supreme Court decision, we used random effects logistic regressions with a lagged dependent variable to control for autocorrelation. In addition, we conducted Hausman tests to compare the results from random-effects and fixed-effects estimations in order to determine which approach is more appropriate given the distribution and nature of the data. We determined that the results in all estimations indicates that random-effects estimations are appropriate.

Findings

Before examining the results from our time-series logistic analyses, we first looked at the summary statistics for all our variables in Table 1 as well as the agency success rates across presidential administrations in Figure 1. The bars in Figure 1 reflect the percentage of cases where the agency is successful on the merits in each presidential administration. Interestingly, despite his success at high-profile cases, President Obama's overall success rate is dramatically lower than those of his predecessors. His agencies were successful in the Court only about 40 percent of the time. President Clinton was also less successful than other contemporary presidents but was still a full 20 percent more successful than Obama. Reagan's success rate here only includes the few years after the *Chevron* decision, and if you look at his entire presidency, his success rate is well over 70 percent. In our sample, President George H. W. Bush was the most successful before the Court, with a success rate of almost 76 percent. While George W. Bush's success rate is higher than the Democratic presidents immediately before and after his administration, it is still lower than the other Republican presidents examined here with a success rate of approximately 68 percent.

In Table 2, we look at each presidential administration separately in an effort to understand varying levels of success in the five administrations regarding the likelihood their administrative agencies prevail in Supreme Court decisions. As is displayed in Models 1, 3, and 4, the Reagan and Clinton administrations have

Table 1: Summary Statistics

	Observations	Frequency Distribution		Mean	Stand. Dev.	Min	Max
Reagan	394	0=290	1=104	.26	.44	0	1
HW Bush	394	0=320	1=74	.18	.39	0	1
Clinton	394	0=310	1=84	.21	.41	0	1
GW Bush	394	0=320	1=74	.18	.39	0	1
Obama	394	0=336	1=58	.14	.35	0	1
Chevron Cited	394	0=313	1=81	.20	.40	0	1
Presidential Popularity	394	—	—	54.33	12.94	25	87
Party Congruence	394	0=151	1=243	.61	.48	0	1
US Petitioner	394	0=163	1=261	.58	.49	0	1
Lower Court Congruence	394	0=186	1=208	.52	.49	0	1
Regulation	394	0=347	1=47	.11	.32	0	1
Statutory	394	0=138	1=256	.64	.47	0	1

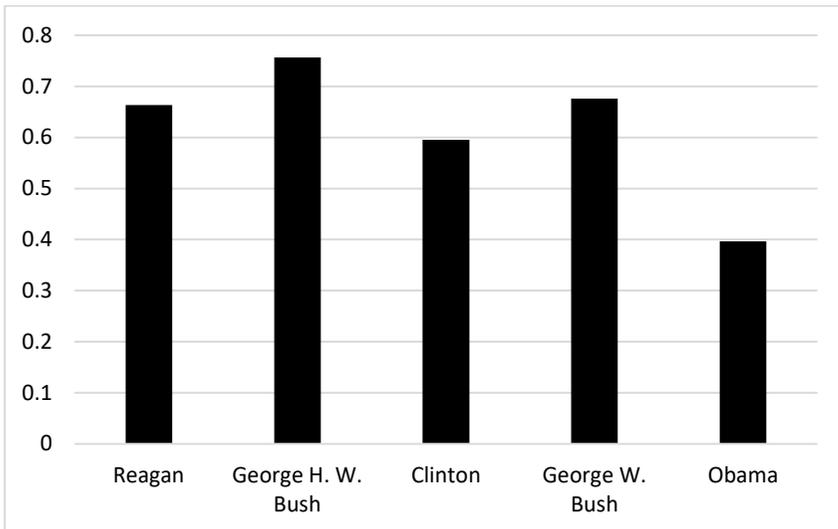**Figure 1: Agency Success by Presidential Administration**

Table 2: Agency Wins by Administration

Independent Variables	Model 1 (DV = Agency Wins)	Model 2 (DV = Agency Wins)	Model 3 (DV = Agency Wins)	Model 4 (DV = Agency Wins)	Model 5 (DV = Agency Wins)
Reagan	−.11 (.26)				
HW Bush		.68 (.30)**			
Clinton			−.10 (.28)		
GW Bush				.41 (.29)	
Obama					−.99 (.32)***
Chevron Cited	.30 (.28)	.33 (.28)	.32 (.28)	.32 (.28)	.38 (.29)
Party Congruence	.23 (.22)	.11 (.22)	.17 (.24)	.15 (.22)	.11 (.22)
Lower Court Congruence	.39 (.21)*	.37 (.21)*	.38 (.21)*	.40 (.21)*	.36 (.22)
US Petitioner	.64 (.22)***	.63 (.22)***	.62 (.22)***	.67 (.22)***	.59 (.22)***
Presidential Popularity	.02 (.00)**	.01 (.00)**	.02 (.00)**	.02 (.00)**	.01 (.00)
Regulation	−.02 (.40)	−.02 (.40)	.00 (.40)	−.04 (.40)	−.10 (.40)
Statutory	.00 (.26)	.00 (.26)	-.00 (.26)	−.01 (.26)	−.00 (.26)
Lagged Agency Wins	−.24 (.22)	−.30 (.23)	−.24 (.22)	−.25 (.22)	−.37 (.23)
N	393	393	393	393	393
Prob > chi2	.0076***	.0019***	.0077***	.0047***	.0004***
Wald X^2	22.43***	26.21***	22.39***	23.75***	30.30***

$*p < .10; **p < .05; ***p < .01$; standard errors in parentheses.

negative and insignificant relationships with the likelihood of Supreme Court success, while the GW Bush administration has a positive and insignificant

relationship. However, the two remaining administrations display significant relationships regarding the likelihood their agency will win a Supreme Court case.

In Model 2 in Table 2, we see that there is a positive and statistically significant relationship between the HW Bush administration and the likelihood of Supreme Court success at the .05 level. As we move from 0 (all other administrations) to 1 (HW Bush administration), the likelihood that an agency within the HW Bush administration will win a Supreme Court case increases by .68. This is a significant and noticeable increase. In contrast, in examining the results pertaining to the Obama administration in Model 5 in Table 2, we find that the likelihood an agency within the Obama administration will win a Supreme Court case decreases by .99 when moving from 0 (all other agencies) to 1 (the Obama administration), and the relationship is statistically significant at the .01 level. This indicates that agencies within the Obama administration have a significantly smaller likelihood of success regarding Supreme Court decisions compared with agencies in the four previous administrations.

In regard to the significance of the remaining variables in the models, we see that the majority opinion's citation of *Chevron* does not significantly relate to success in any of the administrations studied here. Looking back at Table 1, we can see that the citation of *Chevron* is rather infrequent. Only about 20 percent of the cases in our sample even cite the case, which could have contributed to the lack of significance. Interestingly, when we look at the frequency of citation of *Chevron* across the administrations, we find that the less successful presidents actually saw an increase in citations when compared to the more successful ones. Specifically, both Clinton and Obama had *Chevron* cited in about 25 percent of their cases, whereas Reagan had 15 percent, Bush I had 19 percent, and Bush II had 20 percent. However, the difference was not significant in chi-square analysis. In future research, we would like to explore these citations in greater depth to see if they were provided to bolster the ruling in the case or to distinguish it.

Additionally, we did not find a significant relationship between agency success, the variable measuring congruence between the majority opinion writer's ideology (as measured by appointing president), and the president during the litigation. This is surprising, but it may be a function of the rather basic way we were forced to measure this variable given that our unit of analysis was the case and not the individual justice's vote. If we were able to implement a more refined measure, we may have found a significant relationship. It is also possible that the justices are engaging in strategic behavior at times and not voting their sincere ideological preferences in each instance with long-term goals in mind. Further, the variable *lower court congruence* may be capturing some of the role of judicial ideology in this process. Remembering that this variable captures the congruence between the lower court decision direction and

the appointing president of the majority opinion writer, it is interesting to note that this variable has a positive and significant effect on the likelihood of an agency winning a Supreme Court decision in Models 1 through 4. In other words, under all presidents studied here except Obama, the congruence (or lack thereof) between the lower court's decision and majority opinion author's ideology impacted agency success. While we cannot make too much of the lack of significance in Model 5, it does at least suggest that the explanation that Obama was less successful due simply to the ideological makeup of the Court is not supported in our analysis.

Now we turn to our *US Petitioner* variable and find that it has a positive and statistically significant effect on the likelihood the agency wins across all models. Thus, if the agency is the petitioner in a Supreme Court case, there is a greater likelihood of the agency prevailing in Supreme Court decisions. It should be noted again that the Office of the Solicitor General winnows down all the possible appeals to the ones the government is most likely to win so its success is not necessarily indicative of bias in favor of the government, but rather the solicitor's role in agenda setting.

Before exploring presidential popularity, we want to point out that our two independent variables about the basis of the decision provided by the Court (*regulation* and *statutory*) were insignificant in all the models. While agencies do typically defer to agencies in both types of cases, this was not a factor in success in our models.

Finally, we look to see if the popularity of a president in each term impacts success. We hypothesized that the more popular a president was, the more likely they were to be successful. We find that is exactly the case in Models 1 through 4. Thus, for all presidents except Obama, *presidential popularity* has a positive and significant influence on the likelihood the agency wins. This finding indicates that as presidents have higher approval ratings, there is a greater likelihood their agencies will win Supreme Court decisions.

In interpreting the results from logistic regression, it is also important to examine the predictive margins as they pertain to the primary independent variables of interest. Table 3 reports the predictive margins for the effect each presidential administration variable has on the expected likelihood that an agency within that administration will win a Supreme Court decision. The predictive margins indicate the expected likelihood an agency within each administration wins a Supreme Court decision when all other control variables are held constant at their mean values. All predictive margins displayed in Table 3 and discussed below are statistically significant at the .01 level. In examining the predictive margins in Table 3, Model 6, we see that when the Reagan variable is at 1 (which indicates Supreme Court cases decided in the Reagan administration) there is a .60 expected likelihood an agency within the administration wins, and

Table 3: Predictive Wins—Agency Wins by Administration

Independent Variables = Presidential Administration/ Presidential Administration Comparison Group	Model 6 (DV = Agency Wins)	Model 7 (DV = Agency Wins)	Model 8 (DV = Agency Wins)	Model 9 (DV = Agency Wins)	Model 10 (DV = Agency Wins)
Reagan	.60 (.02)***				
Reagan Comparison Group	.63 (.04)***				
HW Bush		.74 (.05)***			
HW Bush Comparison Group		.60 (.02)***			
Clinton			.61 (.05)***		
Clinton Comparison Group			.63 (.02)***		
GW Bush				.69 (.05)***	
GW Bush Comparison Group				.61 (.02)***	
Obama					.43 (.06)***
Obama Comparison Group					.66 (.02)***
N	393	393	393	393	393

when the Reagan variable is set at 0 (all other administrations), there is a .63 expected likelihood of agency success.

However, the HW Bush and GW Bush administrations have a greater expected likelihood of agency success compared with the other three administrations. The expected likelihood of agency success within the HW Bush administration is .74, and all other administrations have a .60 expected likelihood of agency success. The GW Bush administration has a .69 likelihood of agency success, while the other administrations have a .61 expected

likelihood. In contrast, the Clinton and Obama administrations have a lower expected likelihood of agency success compared to other administrations. The Clinton administration has a .61 expected likelihood of agency success, and all other administrations have a .63 expected likelihood. Lastly, the Obama administration has a .43 expected likelihood of agency success, and all other administrations have a .66 likelihood. These predictive probabilities reinforce our general premise that Obama is less likely to be successful in the Supreme Court than all other presidents studied here.

Table 4 reports the predictive margins for the effect the 1984 *Chevron* case being cited in the majority opinion has on the expected likelihood of agency success across the five different presidential administrations from 1985 to 2015. All the predictive margins found in Table 4 and discussed below are statistically significant at the .01 level. The predictive margins indicate that in four out of the five models (Models 11, 12, 13, and 14 include the Reagan, Clinton, HW Bush, and GW Bush presidential administration variables in separate models), when the *Chevron* case is cited in the majority opinion, the agency in each administration has a .68 expected likelihood of winning a Supreme Court case. Additionally, in the same four models, the agency in each administration has a .61 expected likelihood of winning the Supreme Court case when the *Chevron* case is not cited. In Model 15 (the model that includes the Obama administration variable), we see that the expected likelihood of agency success is .69 when the *Chevron* case is cited and .61 when it is not cited. These results indicate that across the five different administrations, the expected likelihood that an agency will prevail in a Supreme Court case is at a minimum .07 percentage points higher (.08 percentage points higher when the Obama administration variable is included) when the *Chevron* case is cited in the majority opinion. Therefore, while the *Chevron* variable was not significant in our time series logistic regression models, citation of *Chevron* does modestly and significantly increase the expected probability of success for an agency in the Supreme Court across all presidential administrations.

Discussion

The primary aims of this project were first to explore whether the Obama administration was less successful in the Supreme Court in administrative agency litigation than the previous four administrations despite several historic and well-publicized victories in the Court. Second, we addressed why the Obama administration was the biggest loser in our sample. The obvious answer would be presumed to be ideological disparity between the president and the Court. However, we did not find any relationship between the judicial ideology of the majority opinion writer and agency success across all of the administrations studied here. Further, when we looked at the congruence between the opinion

Table 4: Predictive Margins:
Agency Wins when *Chevron* Case cited by SC Majority across Administrations

Independent Variables = *Chevron* Cited	Model 11 (DV = Agency Wins)	Model 12 (DV = Agency Wins)	Model 13 (DV = Agency Wins)	Model 14 (DV = Agency Wins)	Model 15 (DV = Agency Wins)
Chevron Cited by Majority/Reagan	.68 (.05)***				
Chevron Not Cited by Majority/Reagan	.61 (.02)***				
Chevron Cited by Majority/HW Bush		.68 (.05)***			
Chevron Not Cited by Majority/HW Bush		.61 (.02)***			
Chevron Cited by Majority/Clinton			.68 (.05)***		
Chevron Not Cited by Majority/Clinton			.61 (.02)***		
Chevron Cited by Majority/GW Bush				.68 (.05)***	
Chevron Not Cited by Majority/GW Bush				.61 (.02)***	
Chevron Cited by Majority/Obama					.69 (.05)***
Chevron Not Cited by Majority/Obama					.61 (.02)***
N	393	393	393	393	393

writer and the lower court decision, we found a significant relationship in all administrations except the Obama administration. It may be the Court was more concerned with procedure than policy with the Obama administration and that is why the ideological congruence with the lower court is not significant; but confirming that would require a more in-depth content analysis of the Court's decisions. Further, it may be that the role of ideology occurs at an individual justice level and not the majority opinion writer. Administrative agency cases can be quite technical, and certain justices have more expertise than others on various issues. Therefore, opinion assignment may be based on utility and not proximity to the preferred outcome. Finally, some justices may be voting strategically in these cases, and while it may appear that ideology did not matter, the justices were in fact voting more sophisticatedly to achieve long-term goals. Future research should explore individual voting behavior in these cases and see if ideology helps explain support for individual presidential administrations.

We were hopeful that adherence to the *Chevron* precedent might help explain agency success, but citation of it was not significantly related to agency success. We did find it interesting that the Court actually cited *Chevron* marginally more in Democratic administrations than Republican ones, although those administrations were less successful in the Court's ruling in administrative agency cases. We also found that citation of *Chevron* did increase the predictive probability of agency success significantly across all administrations and even to a very slightly greater degree under President Obama. However, it was not the landmark watershed decision dramatically mandating agency deference many speculated it would have been. It may have created a culture of deference even without citation potentially evidenced by President GHW Bush's having the highest level of agency success, with him winning in 76% of cases, but it was not sustained through the Clinton administration.

One thing that remained constant across all the administrations was the success an agency enjoyed when they were the petitioner. The Court was significantly more likely to rule in favor of the agency if they were the ones petitioning for review. While this finding may alarm some fearful of the expansion of the administrative state at the expense the public and their rights, agencies appeal only a fraction of the cases decided against them in the lower courts. Since there is a large pool of cases to appeal from, the federal government via the Office of the Solicitor General can be selective in choosing cases to appeal and thus increasing its chances of prevailing on the merits.

In addition to seeing if agency success was dependent on the presidential administration, we wanted to see if success by individual presidents varied depending on their popularity for any given term. We found this was the case for all presidents except Obama. Thus, for Reagan, GHW Bush, Clinton, and GW Bush, the more popular they were at the start of the term, the more likely

they were to be successful in the Supreme Court. However, this did not hold for President Obama. Therefore, we are not able to conclude that his popularity ratings (or lack thereof) explains his lack of success before the Supreme Court.

In general, we found that the conservatively leaning Court ruled more favorably toward agencies of conservative administrations instead of the agencies of liberal administrations. Given the time frame included here, this finding might be partially related to the resurgence of federalism in the Rehnquist era (Meddaugh 2015). Meddaugh (2015) compared conservative justices on the Burger and Rehnquist Courts and found that those on the Rehnquist Court were more supportive of states' rights policy. In our existing data, we cannot determine whether the apparent preference for conservative administrations was in actuality a resurgence of federalism, or whether it was the Court using the guise of federalism to strike down liberal policy (Colker and Brudney 2001; Cross 1999). Future research is needed to explore our findings in greater depth through content on these cases to see if there are states' rights issues involved and how the conservative justices voted on these issues.

Ultimately, the explanation for the differences across presidential administrations may lie in the much more complicated area of agency actions. It is probable that the lack of success by President Obama is due to the administration trying to accomplish more via executive orders or through the bureaucracy because the partisan deadlocked legislative branch was not enacting his policy preferences. Yates (1999) analyzed the specific reasons that would cause a president to pass an executive order compared to alternate methods and found that the lack of popularity for a president may significantly increase the number of executive orders issued. Rudalevige (2012) evaluated significant individual president's records in creating executive orders and found that Obama increased the percentage of executive orders passed. Further, the president may very well be utilizing his powers as executive in chief to accomplish his policy objectives through administrative rulemaking. When these orders or rules are challenged judicially, the courts may be striking down perceived overreach by the executive branch. Future research is needed to explore in greater depth the role of executive orders with particular attention on the content and context of these orders. If executive orders continue to proliferate, there is a significant separation of powers crisis looming.

This project has established that the Obama administration's administrative agencies are clearly not receiving the deference that agencies have historically received. We also learned that this discrepancy in success is not based on ideology or presidential popularity; therefore, it may be based more on the nature of the decisions agencies are now making and how they systematically differ from that of previous administrations. Exploring these differences is the

next step in our understanding why Obama appears to have been the biggest loser in the Supreme Court in administrative agencies cases in recent decades.

$$Q_{\mathcal{P}}$$

References

Bailey, Michael A., Brian Kamoie, and Forest Maltzman. 2004. "Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making." *American Journal of Political Science* 49(1): 72–85.

Baum, Lawrence. 1997. *The Puzzle of Judicial Behavior*. Ann Arbor: University of Michigan Press.

Bernhardt, Charlotte C. 1948. "Supreme Court Reversals on Constitutional Issues." *Cornell Law Review* 34(1): 55–70.

Black, Ryan C., and Ryan J. Owens. 2012. *The Solicitor General and the United States Supreme Court: Executive Influence and Judicial Decisions*. New York: Cambridge University Press.

———. 2013. "A Built-in Advantage: The Office of the Solicitor General and the U.S. Supreme Court." *Political Research Quarterly* 66(2): 455–66.

Brace, Paul, and Barbara Hinckley 1992. *Follow the Leader: Opinion Polls and the Modern Presidents*. New York: Basic Books.

Brenner, Saul. 1982. "Strategic Choice and Opinion Assignment on the U.S. Supreme Court: Reexamination." *Western Political Quarterly* 35: 204–11.

———. 1989. "Ideological Voting on the Vinson Court: A Comparison of Original and Final Votes on the Merits." *Polity* 22(1): 157–64.

Callahan, Maureen B. 1991. "Must Federal Courts Defer to Agency Interpretations of Statutes? New Doctrinal Basis for Chevron U.S.A. v. Natural Resources Defense Council." *Wisconsin Law Review* 6: 1275–99.

Canon, Bradley C., and Michael Giles. 1972. "Recurring Litigants: Federal Agencies before the Supreme Court." *Western Political Quarterly* 25: 183–91.

Caruson, Kiki, and J. Michael Bitzer. 2004. "At the Crossroads of Policymaking: Executive Politics, Administrative Action, and Judicial Deference by the DC Circuit Court of Appeals (1985–1996)." *Law and Policy* 26(3–4): 347–69.

Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. 1984. 467 U.S. 837.

Colker, Ruth, and Kevin Scott. 2002. "Dissing States? Invalidation of State Action during the Rehnquist Era." *Virginia Law Review* 88: 1301–86.

Corley, Pamela C., Paul M. Collins, and B. Calvin. 2009. "Lower Court Influence on US Supreme Court Opinion Content. *Journal of Politics* 73(1): 31–44.

Cross, Frank. 1999. "Realism about Federalism." *New York University Law Review* 74: 1304–35.

Crowley, Donald W. 1987. "Judicial Review of Administrative Agencies: Does the Type of Agency Matter?" *Western Political Quarterly* 31: 265–83.

Deen, Rebecca E., Joseph Ignagi, and James Meernik. 2005. "The Rehnquist Court and Support of Federal Agencies." *Judicature* 89(3): 154–60; 181.

Ducat, Craig R., and Robert L. Dudley. 1989. "Federal District Judges and Presidential Power during the Postwar Era." *Journal of Politics* 51(1): 98–118.

Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: CQ Press.

Eskridge, William M., Jr. 1991. "Overriding Supreme Court Statutory Interpretations Decisions." *Yale Law Journal* 101(2): 331–455.

Gely, Rafael, and Pablo T. Spiller. 1990. "A Rational Choice Theory of Supreme Court Statutory Decisions with Applications to the State Farm and Grove City Cases." *Journal of Law, Economics and Organization* 6(2): 263–300.

Hammond, Thomas H., Chris W. Bonneau, and Reginald S. Sheehan. 2005. *Strategic Behavior and Policy Choice on the US Supreme Court.* Redwood City, CA: Stanford University Press.

Handberg, Roger. 1979. "The Supreme Court and Administrative Agencies: 1965–1978." *Journal of Contemporary Law* 6: 161–76.

Handberg, Roger, and Harold F. Hill Jr. 1980. "Court Curbing, Court Reversals, and Judicial Review: The Supreme Court versus Congress." *Law and Society Review* 14(2): 309–22.

Hennig, Rob. 1999. "Do as I Say, Not as I Do: An Empirical Examination of the Supreme Court's Compliance with *Chevron*." Presented at the Annual Meeting of the American Political Science Association, Atlanta, Georgia.

Horowitz, Robert B. 1994. "Judicial Review of Regulatory Decisions: The Changing Criteria." *Political Science Quarterly* 109(1): 133–69.

Hurley, Lawrence. 2015. "In Supreme Court Term, Obama Wins Big and Loses Small." *Reuters*, June 3. http://www.reuters.com/article/us-usa-court-obama-idUSKCN0PD1FT20150703 (accessed March 2, 2017).

Klein, David E., and Robert J. Hume. 2003. "Fear of Reversal as an Explanation of Lower Court Compliance." *Law and Society Review* 37(3): 579–81.

Lemieux, Scott. 2016. "Why Did Obama Do So Well at the Supreme Court?" *New Republic*, July 7. https://newrepublic.com/article/134918/obama-well-supreme-court (accessed March 2, 2017).

Maltzman, Forrest, and Paul J. Wahlbeck. 1996. "Strategic Policy Considerations and Voting Fluidity on the Burger Court." *American Political Science Review* 90(3): 581–92.

Martin, Andrew D., and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999." *Political Analysis* 10: 134–53.

McGuire, Kevin T. 1998. "Explaining Executive Success in the U.S. Supreme Court." *Political Research Quarterly* 51(2): 505–26.

McNollgast (Matthew McCubbins, Roger Noll, and Barry Weingast). 1995. "Politics and the Courts: A Positive Theory of Judicial Doctrine and the Rule of Law." *Southern California Law Review* 68(6): 1631–83.

Meddaugh, Joshua R. 2015. "Where Have You Gone, Federalism, the States Turn Their Lonely Eyes to You: An Empirical Investigation into the Rehnquist Court's Federalism Decisions." *Questions in Politics* 3: 1–36.

Merrill, Thomas W. 1992. "Judicial Deference to Executive Precedent." *Yale Law Journal* 101(5): 969–1041.

Miller, Banks, and Brett Curry. 2008. "Experts Judging Experts: The Role of Expertise in Reviewing Agency Decision Making." *Law and Social Inquiry* 38(1): 55–71.

Mishler, William, and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87(1): 87–101.

———. 1996. "Public Opinions, the Attitudinal Model, and Supreme Court Decision Making: A Micro-Analytic Perspective." *Journal of Politics* 58(1): 169–200.

Murphy, Walter F. 1964. *Elements of Judicial Strategy*. Chicago: University of Chicago Press.

Pierce, Richard J., Jr. 1988. "Chevron and Its Aftermath: Judicial Review of Agency Interpretations of Statutory Provisions." *Vanderbilt Law Review* 41: 301–14.

———. 1995. "The Supreme Court's New Hypertextualism: An Invitation to Cacophony and Incoherence in the Administrative State." *Columbia Law Review* 95(4): 749–81.

Pritchett, Herman. 1948. *The Roosevelt Court: A Study in Judicial Politics and Values: 1937–1947*. New York: Macmillan.

Richards, Mark J., Joseph L. Smith, and Herbert M. Kritzer. 2006. "Does Chevron Matter?" *Law and Policy* 28(4): 444–69.

Rivers, Douglas, and Nancy Rose. 1985. "Passing the President's Program: Public Opinion and Presidential Influence in Congress." *American Journal of Political Science* 29(2): 183–96.

Roeder, Oliver. 2015. "Despite This Week's Victories, Obama Has Struggled at the Supreme Court." *FiveThirtyEight*, June 26. http://fivethirtyeight.com/datalab/despite-this-weeks-victories-obama-has-struggled-at-the-supreme-court/ (accessed October 23, 2016).

Rosenbloom, David H., and Rosemary O'Leary. 1997. *Public Administration and Law*. New York: Marcel Dekker.

Rudalevige, Andrew. 2012. "The Contemporary Presidency: Executive Orders and Presidential Unilateralism." *Presidential Studies Quarterly* 42(2): 138–60.

Schubert, Glendon. 1958. "The Study of Judicial Decision-Making as an Aspect of Political Behavior." *American Political Science Review* 52(4): 1007–25.

Scott, Kevin M. 2006. "Supreme Court Reversals of the Ninth Circuit." *Arizona Law Review* 48: 341–54.

Segal, Jeffrey A. 1997. "Separations of Powers Games in the Positive Theory of Congress and Courts." *American Political Science Review* 91(1): 28–44.

Segal, Jeffrey A., and Albert Cover. 1989. "Ideological Values and the Votes of Supreme Court Justices." *American Political Science Review* 83(June): 557–65.

Seidenfeld, Mark. 1994. "A Syncopated Chevron: Emphasizing Reasoned Decision-Making in Reviewing Agency Interpretations of Statutes." *Texas Law Review* 73(1): 83–138.

Sheehan, Reginald S. 1990. "Administrative Agencies and the Court: A Reexamination of the Impact of Agency Type on Decisional Outcomes." *Western Political Quarterly.* 43(4): 875–85.

———. 1992. "Federal Agencies and the Supreme Court: An Analysis of Litigation Outcomes, 1953–1988." *American Politics Quarterly* 20: 478–500.

Smith, Joseph L. 2007. "Presidents, Justices, and Deference to Administrative Agencies." *Journal of Law, Economics, and Organization* 23(2): 346–64.

Songer, Donald R., Jeffrey A. Segal, and Charles M. Cameron. 1994. "The Hierarchy of Justice: Testing a Principal-Agent Model of Supreme Court–Circuit Court Interactions." *American Journal of Political Science* 38(3): 673–96.

Spaeth, Harold J., Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh. 2016 Supreme Court Database, Version 2016 Release 01. http://Supremecourtdatabase.org.

Spaeth, Harold J., and Stuart Teger. 1982. "Activism and Restraint: A Cloak for the Justices' Policy Preferences," In *Supreme Court Activism and Restraint*,

edited by Stephen C. Halpern and Charles M. Lamb, 277–302. Lexington, MA: Lexington Books.

Starr, Kenneth W. 1986. "Judicial Review in the Post-Chevron Era." *Yale Journal of Regulation* 3: 283–312.

Sunstein, Cass. 1990. "Law and Administration after 'Chevron.'" *Columbia Law Review* 90(8): 2071–120.

Szmer, John, Donald R. Songer, and Jennifer Bowie. 2016. "Party Capability and the U.S. Courts of Appeals: Understanding Why the 'Haves' Win." *Journal of Law and Courts* 4(1): 65–102.

Tanenhaus, Joseph. 1960. "Supreme Court Attitudes toward Federal Administrative Agencies." *Journal of Politics* 22: 502–24.

Wahlbeck, Paul J., James F. Spriggs, and Forest Maltzman. 1998. "Marshalling the Court: Bargaining and Accommodation on the United States Supreme Court." *American Journal of Political Science* 42(1): 294–315.

Wermiel, Stephen J. 2008. "Supreme Court Reversals: Exploring the Seventh Circuit." *Southern Illinois Law Journal* 32: 641–57.

Wohlfarth, Patrick C. 2009. "The Tenth Justice? Consequences of Politicization in the Solicitor General's Office." *Journal of Politics* 71: 224–37.

Yates, Jeff. 1999. "Presidential Bureaucratic Power and Supreme Court Justice Voting." *Political Behavior* 21(4): 349–66.

Yates, Jeff, and Andrew Whitford. 1998. "Presidential Power and the United States Supreme Court." *Political Research Quarterly* 51(2): 539–50.