An Integrated Model of State Attorney General Behavior in Multi-State Litigation

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Abstract: Multi-state lawsuits, filed by state attorneys general, have become the primary method by which state consumer protection laws are enforced. Patterns of participation in these lawsuits vary tremendously across the states, yet little is known about the factors driving this variation. I argue that state AGs are primary concerned with achieving electoral and policy making goals. Consequently, I expect AGs to be responsive to consumer interests when they are strong and to participate in cases when the infraction is severe. Additionally, whether it is for public interest or electoral goals, AGs should be attracted to cases that promise bigger settlements. My analysis of each state's decision to join each of 172 multi-state lawsuits filed and settled between 1989 and 2002 provides support for each of these hypotheses.

The dynamics of consumer protection regulation have changed considerably in the past thirty years. While the Federal Trade Commission was once the primary enforcer of deceptive advertising laws and, to a lesser extent, antitrust laws, the states have assumed the mantle of responsibility for ensuring fair competition and truthful advertising in the marketplace. Specifically, state attorneys general (AGs) bring joint lawsuits against companies that violate state laws, thereby regulating at the national level. These multi-state lawsuits were first employed in the mid-1980s, but since then, they have grown in use to include not only advertising cases, but cases involving price-fixing, mergers, product safety and privacy issues. Despite their prevalence, however, relatively little is known about the patterns of participation in these lawsuits.

As elected politicians in the majority of the states, state AGs are driven by the desire to make good policy, but also by political ambition. Thus, in states where consumer concerns are strong, we ought to see greater AG responsiveness in the form of greater participation in multi-state lawsuits. However, the desire to make good, sensible policy on the part of the AG should dictate that if the severity of the infraction is high and extensive damage to consumers can be proven, then a larger proportion of states will be likely to join the suit. Additionally, if the target of a particular lawsuit is a large company with abundant financial resources, AGs may perceive the case as highly salient and thus be more responsive to voters. On the other hand, they may view such a potential settlement with a wealthy company as a chance to distribute pork to voters or the state coffers, in which case, we would expect greater participation overall. To test these hypotheses, I examine the states' decisions to join each of 172 multi-state lawsuits filed between 1989 and 2002.

Multi-State Litigation

Multi-state litigation employed by state AGs is now the primary method by which states deal with deceptive advertising, antitrust violations, and consumer fraud. The power to investigate has a tremendous impact on the decision to follow a case to the end, as most AGs have the authority to issue civil investigative demands (CIDs) "to obtain both documentary and testamentary evidence from anyone who may have information relevant to the investigation" (Ross 1990: 208). CIDs essentially amount to subpoenas and they allow AGs to gather all the information they need before deciding whether a lawsuit should be filed or not. In most multi-state cases, one state or a small group of states does much of the early investigative work and then once a lawsuit is filed, other states will file lawsuits in their own states[1], help with the remainder of the work to be done and share the settlement money (Lynch 2001; Tierney 2002). Rather than spend a protracted length of time in court, most defendants choose to settle cases quickly. In fact, it is not uncommon for some businesses to ask that all or most states be included in the settlement to avoid the specter of future litigation from other states (Greenblatt 2003: 56). Final settlements usually include a cash settlement for the states or for state consumers, along with mandates that the defendant(s) will not repeat the forbidden activity, yet they rarely include an admission of guilt on the part of the defendant(s).

The use of multi-state lawsuits gradually evolved as a response to a perceived weakening of federal regulatory enforcement (Clayton 1994; Lynch 2001; Ross 1990; Zimmerman 1998) and by the late 1980s, state AGs were filing them with greater and greater frequency. During the 1990s, multi-state lawsuits became institutionalized as a tool for enforcing consumer protection regulations at the national level.[2] While the

overall number of lawsuits as well as the number of states participating has increased over time, there is still considerable variation in the participation rates of each state. This is an important fact, as it indicates that, for some AGs, consumer protection ranks as a much higher priority than for others.

The Motivations of State AGs

Understanding why consumer protection is more important to some state AGs than others requires an understanding of AG motivations. AGs represent the governor, legislators and other members of state government as their clients, but they are also charged with representing the public interest (Davids 2005; Ross 1990). As such, they are granted a significant level of discretion to use the tools of their office to pursue policies that they believe will benefit the state. In all 50 states, AGs have either common law or *parens patriae* authority to enforce the law in the public interest.[3] Given these powers, state AGs have strong motivations to formulate and implement legal policy as they see fit.

However, the state AG is also elected in 43 states[4] which means that state AGs must face reelection. Additionally, the office has a reputation for being a springboard into higher office positions, such as governor and senator (Clayton 1994; Mahtesian 1996; Provost 2003). Consequently, when pursuing their policy initiatives, AGs must consider also how they will garner sufficient public support to achieve their electoral goals. Thus, state AGs are driven by normative concerns of what policies are best for the state, but also by pragmatic concerns of how to get reelected and for the more ambitious, how to reach higher offices, such as governor.

Previous research on state AGs supports the idea that they have the twin goals of shaping policy and accomplishing career/electoral objectives. In their study of the state tobacco litigation, Spill et al find that AGs filed early if their state had a high level of Medicaid expenditures due to smoking-related disease, a finding that reveals a concern for how smoking was affecting state health care programs (2001). On the other hand, the authors' discovery that as tobacco farming becomes a larger part of a state's economy, states were more likely to file late or not at all, indicates a responsiveness to important constituents within states. Thus, the authors find evidence that state AGs are responsive to their constituents, but that they also make policy according to their perception of what is in the public's best interest.

Research has also shown that other public prosecutors are strongly motivated by the public interest and by career/electoral goals. For example, Sanford and Huber find that voters will reelect local prosecutors for obtaining convictions at trial (2002), thus giving prosecutors the incentive to maximize their conviction rate. Even for appointed prosecutors, these motives appear to be paramount. Whitford finds that U.S. attorneys will pursue more regulation cases in liberal districts, thus showing responsiveness to their local constituents (2002). Moreover, in what might be seen as pursuing the public interest in order to advance one's career, Boylan finds that U.S. attorneys who secure longer sentences for guilty defendants are more likely to become federal judges (2005), an occupation to which many U.S. attorneys aspire (Eisenstein 1978).

Employing this previous research as a guide, I argue similarly that in multi-state litigation, the decisions of state AGs are driven by the desires to get reelected, to reach higher office and to shape policy in their vision of the public interest. Because strong

regulation of business through litigation is more likely to be championed by liberals than conservatives, I expect more liberal states and states with strong consumer interests to look more favorably upon multi-state litigation. Consequently, I expect AGs in these states to be more active in multi-state litigation. However, AGs will also be driven by their perceptions of the public interest and their desire to shape policy. In this case, this will be borne out by the seriousness of the crime.[5] The more overall damage done by a business to consumers or to the economy in a particular case, the more likely it is that AGs will overcome their partisan differences and rally together to prosecute collectively the business in question.

The Importance of Studying Multi-State Litigation

The exploration of AG decision making in multi-state litigation is important for several reasons. First, because multi-state lawsuits involve multiple states, each one potentially represents regulatory enforcement at the national level, as opposed to just the state level. Given the large scope of these lawsuits, their study is essential if we are to further our understanding of regulation. However, previous studies of consumer protection regulation at the state level have focused mostly on the legislative side of the regulation (Bernacchi 1976; Ford 1976; Meier 1987; Sigelman and Smith 1980). This study examines the implementation of such regulation. More recently, some scholars have attempted to understand the inter-state differences in multi-state litigation systematically (Bowman 2004; Provost 2006), yet neither of these studies had much to say regarding the motivations of AGs or the case-level factors that affect participation

rates. In this analysis, I introduce these other factors and attempt to construct a more complete theory of AG participation in multi-state litigation.

Second, the importance of multi-state lawsuits has also been illustrated recently by the negative reactions of conservative policy makers and commentators. In 1999, several Republican AGs created the Republican Attorneys General Association (RAGA) as a balance to what they perceived as the excessive regulatory meddling of Democratic AGs. Additionally, in 2002, the U.S. Chamber of Commerce finally started to pay attention to AG elections as they ran television commercials against "aggressive Democratic candidates for attorney general" (Greenblatt 2003: 54). It can be debated whether the commercials actually had an effect, but regardless, Republicans won 10 of the 15 open seats for AG. These reactions indicate that multi-state lawsuits are having a significant impact on the business community and they represent important policy initiatives.

Third, research on policy making by state AGs is important because of their increasingly visible and powerful role in state, national and, in some cases, even international, policy making. This rise to prominence has been well documented in anecdotal stories in the media on AGs as a group, but also on particular, entrepreneurial AGs (e.g. Greenblatt 2002, 2003). In scholarly research, much early work focused on the increasing levels of state success before the Supreme Court, as both direct party (Epstein and O'Connor 1988; Kearney and Sheehan 1992; Waltenburg and Swinford 1999) and as *amici curiae* (Clayton 1994; Morris 1987). However, more recent work has begun to document the importance of AGs in other legal venues as well, documenting their crucial roles in prosecuting tobacco companies (Spill, Licari and Ray 2001), in combating global

warming (Rabe 2006) and in upholding consumer protection statutes (Bowman 2004; O'Brien 2005**;** Provost 2003, 2006). Given the rising salience of these actors in the American policy making arena, we should strive to understand the factors that shape their decision making.

Finally, multi-state litigation is an ideal method of studying the collective policy making of state AGs because it provides a policy making measure that is comparable across all the states. This is the case for three major reasons. First, as already indicated, every state gives its AG primary responsibility for enforcing consumer protection and antitrust laws and SAGs have authority to enforce such laws as they see fit. This means that in no state does another agency have gate-keeping power over the decision to join an MSCP lawsuit. Second, and related to the first point, every state gives its AG the power to issue CIDs to investigate potential wrongdoing, with the exception of Connecticut, Nevada and Utah (Ross 1990). However, these states can still join lawsuits that have already been initiated, as well as help states that are initiating investigations. Third and finally, multi-state lawsuits deal with businesses that operate throughout the nation and thus, every state has the same potential incentive to join a lawsuit, once one has been initiated. Even if a company's wrongdoing does not affect citizens from every state, an AG may join a suit to prevent that business from committing future infractions in his/her state. Additionally, Bowman has found evidence that multi-state lawsuits do not appear to follow any sort of regional pattern (2004). Taken together, these factors reveal that a state AG's decision to initiate or join a lawsuit depends primarily on the AGs own motivations and political considerations.

AG Motives and Participation in Multi-State Litigation

I have argued that state AGs are motivated by the twin electoral goals of reelection and the pursuit of higher office, but that they are also driven by a desire to shape policy as they see fit. How then do these goals determine which states will participate and how frequently they will participate? In accordance with achieving their electoral goals, we should expect that AGs will participate in multi-state lawsuits more frequently when they expect their constituents to reward them for such participation. In accordance with achieving their policy making goals, we should expect that as the severity of the infraction increases, more AGs will see fit to punish the business in question and join the lawsuit.

Electoral/Career Goals

In order to fulfill their electoral goals, AGs must decide to whom in the state polity they will be most responsive in their policy making. In this section, I evaluate the possibilities of AGs being responsive to interest groups, specifically consumer and business groups, voters at large and actors in state government. Responsiveness will be determined to a large extent by the salience and complexity of the issue (Gerber and Teske 2000; Gormley 1986; Ringquist, Worsham and Eisner 2003). Gormley states that, "salience and complexity shape the contours of regulatory politics. They affect incentives to participate, the choice of tactics, the selection of a forum, and the kinds of criteria that are invoked." (1986: 603). Consumer protection can be considered a salient issue because virtually everybody in society is a consumer and can therefore potentially fall victim to market failures such as poor information (deceptive advertising), market

power (product-tying or price fixing), or fraud (phony telemarketers or pyramid schemes). Moreover, consumer protection has been classified as a salient issue in previous studies (Gerber and Teske 2000; Gormley 1986; Ringquist, Worsham and Eisner 2003).

When an issue is salient, but also low in technical complexity, it is easier for regular voters to understand what is at stake and, as a result, "regulators and business groups cannot hide behind a cloak of technical expertise" (Gormley 1986: 608). Because the cost of acquiring information is low, collective action problems are fewer and consumer groups can more easily form. Research has shown that citizen groups do exert more influence over utility issues when they are not complex (Berry 1984; Gormley 1983). Moreover, Provost finds that AG participation in multi-state litigation is higher in states with a larger consumer group presence (2006), and I expect to find the same result in this analysis.

Hypothesis 1: The more consumer groups there are in a state's organized interest group community, the more that state's AG will participate in multi-state litigation.

State AGs should also be responsive to the electorate in general when enforcing consumer protection regulations. Much research at the American state level has found that policy makers are responsive to the wishes of the electorate (Brace, Sims-Butler, Arceneaux and Johnson 2002; Erikson, Wright and McIver 1993; Gray, Lowery, McAtee and Fellowes 2004; Jacoby and Schneider 2001). Moreover, and more specifically, there is evidence that politicians are responsive to the electorate in the area of consumer protection. For example, in liberal states, state legislatures are more likely to pass consumer protection statutes and to spend money on consumer protection programs (Bernacchi 1976; Ford 1976; Sigelman and Smith 1980). Thus, we should expect that in

states where voters favor strong regulation of business, participation in multi-state lawsuits will be high and in states where voters favor a more laissez-faire attitude towards business, AGs will participate in multi-state lawsuits less frequently.

However, not all multi-state lawsuits are equally salient. Some lawsuits target relatively small companies while others focus on Fortune 500 companies, such as Reebok or Walgreens, and are thus more likely to garner media attention. The question then becomes, how does case salience affect the behavior of SAGs in multi-state litigation? Here, I define a multi-state lawsuit as salient when the defendant is a Fortune 500 company because such companies are economically large, more likely to appear in the media and, when they are the subject of lawsuits, they are more likely to capture the attention of voters.[6] In addition to the wealth of evidence showing government policy responsiveness to the electorate, many scholars have also found that representation is often stronger when the policy issues in question are salient to voters (Burstein 2003; Gormley 1986; Jones 1994; Wlezien 2004). The implication is that when voters pay closer attention to the issues, politicians work harder to make sure that policies match the preferences of voters. Using this research as a guide, I expect state AGs to be more responsive to their electorates when the case is salient, as measured by whether or not the company is in the Fortune 500.

Hypothesis 2: When a defendant is a Fortune 500 company, state AGs will be more likely to participate in multi-state litigation, the more liberal the state's electorate.

If the expectation is that consumer interests will influence the level of multi-state litigation, we might suspect that business interests will have a role in deterring multi-state lawsuit participation in conservative states. The ability of business interests to influence regulators when the issue is complex or when the benefits of regulation are narrowly

concentrated upon particular industries has been well documented (Gormley 1986; Meier 1987; Peltman 1976; Posner 1975; Stigler 1971; Wilson 1980). However, in consumer protection regulation, makers of all types of products are potentially affected, so companies from multiple industries have potential collective action problems in organizing against strong regulation. Recent findings are mixed on the power of big business to influence policy making in a broad fashion. Some authors have found a modest impact of business lobbying in the states on overall policy liberalism (Gray, Lowery, Fellowes and McAtee 2004), but others have found that business lobbyists affect neither the state's policy liberalism nor the business policy climate (Witko and Newmark 2005). Additionally, and as suggested by the 2002 election evidence previously presented, business groups may target AG elections more so than actual AG activities. Thus, when taken as a whole, the evidence does not suggest that AGs will be that responsive to business groups when deciding whether or not to participate in multi-state litigation.

Finally, will state AGs be responsive to other actors in state government, such as the governor or state legislature? The constitutional and statutory authority of state AGs to pursue policy initiatives in the public interest ensures that they can act as independent state executives, whether the governor or state legislators agree with AG policy making or not. State legislatures do have the power to reduce AG budgets as well as the statutory or constitutional power of the AG, but "legislatures typically have not changed the common law authority of State Attorneys General" (Ross 1990: 35). Moreover, Spill et al found no gubernatorial influence over the timing of state lawsuits in the tobacco litigation (2001) and when Mississippi Governor Kirk Fordice sued his AG, Mike Moore,

in 1994 to prevent Moore from suing the tobacco companies, the Mississippi Supreme Court ruled in favor of Moore (Zimmerman 1998). Finally, Provost finds virtually no state government influence on AG multi-state litigation decisions (2003, 2006) while Bowman finds only modest government influence (2004).

Taken all together, the expectation here is that the nature of consumer protection as an issue will cause state AGs to look to consumer groups and to voters, rather than to business groups and state government, if they wish to fulfill electoral goals by pursuing consumer protection initiatives.

Policy Making Goals

While state AGs will participate in multi-state lawsuits partly to fulfill electoral goals, they will also participate when they believe that is in the public's interest. I expect this hypothesis to be borne out by the data in two ways. First, because some regulatory violations do more tangible monetary damage to consumers than others, we can expect particularly severe cases to generate more consensus among the AGs, thus attracting more participants. For example, cases involving abuse of market power, particularly price-fixing cases, are likely to damage consumers' pocketbooks considerably. On the other hand, in deceptive advertising cases, it may be more difficult to convince conservative AGs that serious wrongdoing has occurred. They may believe that consumers must bear some of the burden of acquiring product information and are thus reluctant to prosecute all advertising cases. Many conservative academics have documented their belief that while vigorous antitrust enforcement may be necessary to keep markets competitive, deceptive advertising can often be corrected through private

means or simply, greater levels of industry-wide advertising (e.g. Beales and Muris 1993; Posner 1969). Consequently, I believe that in severe cases, such as antitrust cases, political differences should diminish and there should be greater participation overall.

Hypothesis 3: As the severity of the infraction in question increases, more states are likely to join the lawsuit.

Second, a frequent criticism leveled at state AGs in their use of multi-state litigation is that they are primarily interested in prosecuting big companies, in order to extract large settlements, which are then delivered to either state consumers or to state government budgets (see e.g. Debow 2002; Pryor 1997). If such a claim were true, it may be because AGs believe that larger companies are more deserving of larger punishments or that AGs can enhance political career prospects through a new method of pork-barreling. Evidence of such behavior is not in abundance, yet in their study of the tobacco litigation, Spill et al do find that Republican AGs were more likely to file suit once the Liggett Company had settled, a move that demonstrated vulnerability and division on the part of the tobacco companies (2001). This indicates that although Republicans did file later overall, perhaps on ideological grounds, they were still willing to file when it was clear that the probability of victory and, larger cash settlements, had increased. Employing this finding, I hypothesize that AGs will be more likely to participate in multi-state cases in which the defendant is a Fortune 500 company.

Hypothesis 4: When the defendant in a lawsuit is a Fortune 500 company, more states will participate in the lawsuit.

Data and Measures

Multi-State Lawsuits

The data on multi-state lawsuits used for this study come from four monthly publications released by the National Association of Attorneys General (NAAG): *Consumer Protection Report, Antitrust Report, Attorney General Bulletin* and *Telemarketing Fraud Bulletin*. With these publications, I was able to collect information on all multi-state lawsuits settled between 1989 and 2002. Information includes who the defendant was, the alleged infraction, the terms of the settlement and which states participated. As the NAAG publications do not distinguish between who initiated and who joined each lawsuit, the dependent variable merely indicates whether a state joined each of the 172 lawsuits.[7] The likelihood of joining a lawsuit depends on a variety of state and case factors, all of which are explained in detail in this section. Descriptions of all the variables are to be found in Appendix A.

AG Electoral Goal Factors

Issues that are high in salience and low in complexity encourage the participation of citizens groups which, in this case, are consumer groups. Thus, I account for state-level presence of consumer groups by including the number of groups affiliated with the Consumer Federation of America (CFA) from each state. Additionally, I expect business interests to have, at most, a modestly negative impact on multi-state activity. To test this, I include each state's proportion of for-profit lobby registrants.[8]

As previously hypothesized, AG participation in multi-state lawsuits should be responsive to both consumer groups and to the electorate as a whole, but multi-state lawsuits should also vary in salience as some lawsuit defendants are large companies, with name recognition and financial resources. In order to evaluate the potential salience

of each case or lawsuit, I examined the financial status of the defendant(s) in each case. If the company was a Fortune 500 company in the year prior to the lawsuit, then I coded the case as being salient, whereas if the company was not a member of the Fortune 500, it was not considered salient.

As previously stated, as cases become salient, we should expect state AGs to be more responsive to ideology of the electorate. In order to examine citizen ideology, it is necessary to have a measure that captures inter-year variation and that captures differences within parties across states. The citizen ideology measure developed by Berry, Fording, Rinquist and Hanson (1998) accomplish these two goals.[9] Because AGs are more likely to be responsive to their electorates when cases are salient, I expect this measure to have a significant effect when the defendant company is a Fortune 500 company. An interaction term is created to capture this conditional effect of citizen ideology. Additionally, although I do not expect a significant effect, it is important to test for the potential effect that other actors in state government may have on state AG behavior. Thus, I also include Berry et al's measure for state government ideology which carries the same advantages as the state citizen ideology measure (1998).[10]

Finally, it is also logical to expect elected AGs to have more ambitious electoral goals than appointed AGs. While appointed politicians typically have less ambition and therefore fewer incentives to get deeply involved in policy making, elected officials must make more of an impression on voters if they are to be reelected or elected to higher office. For example, Swinerton shows that state executives with progressive ambition (those that want to reach higher office) get their hands dirty in party politics and partisan issues (1968). Moreover, Gormley states that, "citizen participation in states with elected

public utility commissioners is clearly less, apparently because citizens' groups assume that elected commissioners will be more responsive to their interests (than appointed officials)" (1983: 93). Finally, Besley and Coate show that, by making regulatory issues salient for voters, American states with elected regulators are more pro-consumer than are states with appointed regulators (2000).

AG Policy Making Factors

This set of predictors largely addresses the differences in case characteristics and how these differences drive multi-state lawsuit participation. Each of the 172 lawsuits are placed into eight categories in order to classify the type of infraction. The first and probably most distinct category is that of antitrust cases. This category is unique because antitrust cases routinely attract a far larger number of states than any other category. This is because consumers pay significantly higher prices when illegal market power is utilized to fix prices, tie products together or restrict supply in other ways. Because the damage done to consumers in these cases is extensive, political differences are less likely to deter the states from rallying around such lawsuits. Participation in salient antitrust cases should be higher than in non-salient antitrust cases, but because participation ought to be high to begin with, this difference may be small. To test this hypothesis, I evaluate the effect of antitrust cases and include an interaction term to evaluate the impact of antitrust cases when the firm is in the Fortune 500.

A second category of cases is included for mergers, another type of antitrust case. Mergers are kept separate from other antitrust cases because unlike in the first category, no wrongdoing has necessarily taken place. Mergers are often viewed with suspicion

because they may give rise to price-fixing or supply restrictions, but the mere act of a merger itself does not necessarily hurt consumers. As a result, I expect that merger cases are likely to attract fewer states than would antitrust cases.

Third, I create a category for any case dealing with banking, finance or people's personal or financial information. These infractions have a separate category because, while they may not be worse than any other type of infraction, voters may have symbolic beliefs that cases involving people's financial information or assets are highly sensitive and are therefore more serious in nature. AGs may recognize this and participate in such cases more often, as a result. The cases here involve mortgage overcharging, credit reporting, private financial information, debt collection, and deceptive lending practices. Additionally, the difference in participation for salient and non-salient cases should be considerable. Large and resourceful financial institutions are capable of violating regulations on a much wider scale and are therefore likely to be the subject of more salient cases. As with antitrust cases, I include a dummy variable for banking/finance cases by themselves, but also an interaction term to evaluate the effect of banking/finance cases when the defendant is a Fortune 500 company.

There are two categories dealing with deceptive advertising, a broad one that encompasses phony advertising committed by all sorts of businesses, and a second much more narrow category, involving only deceptive ads related to claims made about the nutrition or environmental benefits of particular products. Lawsuits for deceptive advertising broadly defined, as in the first category, are likely to magnify the differences between liberals and conservatives the most as they fiercely debate the true level of harm inflicted upon consumers by false advertising. However, deceptive advertising on a

larger scale, as in the case of a Fortune 500 company, should increase participation significantly. Thus, as with antitrust and banking/finance cases, I include a dummy variable for deceptive ad cases, but also an interaction term for deceptive ad cases when the defendant is a Fortune 500 company. In nutritional and environmental labeling cases, participation should be low in both salient and non-salient cases. These cases were pursued by a small group of states in the early 1990s, but they gradually died out as a majority of states did not appear to consider such cases worth pursuing. Despite this expectation, I still test for differences in participation according to case salience by creating an interaction variable for nutritional and environmental labeling cases.

The sixth category contains cases dealing with outright fraud. The line between deceptive advertising and fraud is not always clear, but the typical targets of these cases are phony business seminars, pyramid schemes, companies that sell used parts as new parts, and companies that overcharge for products. This category also contains product safety cases, such as the case against Bridgestone/Firestone for manufacturing tires that blew out too easily. In these cases, the wrongdoing on the part of business is transparently evident, but the large majority of fraud cases involves small businesses and may thus fail to attract many states.

Finally, AG party is perhaps the most easily accessible indicator of an AG's policy making philosophy. As Democrats are traditionally more in favor of regulating markets, we should expect to see more participation from Democratic AGs.

Control Variables

Research has also demonstrated that particular socioeconomic variables reveal the importance placed upon consumer protection as an issue across the states. Sigelman and Smith state that, "to the extent that educational and income characteristics of a state's population are indicative of the presence of middle-class values, we would expect these characteristics to be related to the adoption of consumer-oriented legislation…" (1980: 61). Additionally, Ford (1976) and Bernacchi (1976) both find that states with high income levels are more likely to adopt consumer protection laws. I include each state's median four-person family income for every year in the study to represent each state's collective taste for strong consumer protection enforcement. I also expect that a state's level of urbanism or urban population should relate to the propensity of each state to enforce consumer protection laws vigorously. Urbanism in states tends to be correlated with affluence and it is an important reason why states adopt consumer protection laws (Meier 1987). Annual population density figures were generated by dividing each state's population by the 1990 land area census estimates.

Finally, in order to control for the resources of each AG office, I include a measure of state government capability (Bowman and Kearney 1988). It would be ideal to use budget or staff indicators to represent resources, but such data are not available for all states, nor do they cover all years, even for those states where data are available. Given the level of guesswork and imputation it would require to fill in missing observations, I opt instead for the more general measure of state government capability, which should serve as a good proxy for AG resources.[11] It should be noted that, because states share the workload on multi-state lawsuits, it is not clear how important each state's resources will actually be. Additionally, in previous research, neither AG staff or

budget levels were found to be significant in predicting success before federal appellate courts (Solberg and Ray 2005). Regardless, I include state government capability with the expectation that it may have a modest effect on an AG's decision to participate.

TABLE 1 HERE

For initial evidence that these state-level factors are important, I examine each state's participation rate among the 172 cases in Table 1. Among the most active states, many are states with liberal electorates, such as California, New York, Wisconsin and Massachusetts. Those states that are not as liberal, such as Texas, Florida and Missouri have many consumer groups, high median income, large urban populations or a combination of these factors. The data also appear to suggest that resources may matter, as states with big economies tend to participate more. Among the least actively participating states, there is a clear pattern of electoral ideology as Montana, Wyoming, South Carolina, Georgia, Mississippi and Nebraska, among others, all have conservative electorates. Additionally, many of these states have smaller economies and more rural populations. Finally, five of the seven states with appointed AGs (Wyoming, Alaska, New Hampshire, Maine and Hawaii) appear on this list of less active states as well.

TABLE 2 HERE

Table 2 provides initial support for some of the hypotheses presented thus far with respect to types of cases. In the first two columns, overall mean and median participation

rates across all states are presented for each of the six categories of cases. As expected, the severe nature of antitrust violations attracts more states than any other category. Banking and finance cases also attract a fairly large number of states on average, but not nearly as many as in antitrust cases. Also as expected, nutritional and environmental labeling cases as well as merger cases attract very few states as it is more difficult to determine whether consumers have truly been harmed. Moreover, when we observe the differences between Fortune 500 and non-Fortune 500 cases, we see that overall, states tend to join Fortune 500 cases more frequently than non-Fortune 500 cases. This provides initial support for the notion that AGs may be attracted by potentially larger settlements.

Research Design and Results

I analyze each state AGs decision to join each of 172 MSCP lawsuits that were settled between 1989 and 2002. Thus, each state appears in the dataset 172 times, resulting in 8600 observations. A logit model is the appropriate choice, given the dichotomous dependent variable, yet the pooling of lawsuits and states must also be considered. Because the decisions of states to join given lawsuits may not be independent of one another, I estimate a pooled, population-averaged model with robust standard errors. The population-averaged model employs random effects rather than fixed effects.

Results

Table 3 shows that many of the hypotheses are borne out by the results. Among the factors that drive AG electoral goals, states are significantly more likely to join any lawsuit when there are a large number of consumer groups in the state. On the other hand, business group density has no significant impact, indicating that AGs are far more responsive to consumer groups than to business groups. Citizen ideology has no effect in non-salient cases, but when cases are salient, AGs are more likely to join lawsuits, the more liberal the state. We see this by adding together the citizen ideology constitutive term and the interaction term and calculation of the standard error reveals that the variable is in fact significant. These findings provide support for the hypotheses that AGs pursue electoral goals by showing responsiveness to consumer group and voters when they are likely to be rewarded for it. Moreover, there is no significant effect for state government ideology, indicating that state AGs act as independent policy makers in state government and that, in consumer protection, they take their cues from consumer groups and voters, rather than the governor or legislators. Lastly among the AG electoral goal variables, there is surprisingly no support for the notion that elected AGs are more likely to join lawsuits than appointed AGs.

TABLE 3 HERE

Among the factors driving AG policy making goals, we first observe that AG party is not significant. This indicates that ideological concerns about what is best for the public interest are potentially manifested in other variables, such as the types of cases brought. Among the case category variables, I have chosen nutritional and environmental

labeling cases as the baseline category of cases and they are therefore, excluded from the model. Thus, the likelihood of joining a particular category of cases is evaluated against the probability of joining a nutritional labeling case. Each case category variable by itself represents a non-Fortune 500 case while the interaction terms represent that type of case in a Fortune 500 case. First, I will discuss the results for case category variables in non-Fortune 500 cases.

As hypothesized, states are much more likely to join antitrust cases than nutritional labeling cases, most likely because they do significant monetary damage to consumers and there is less ideological disagreement among AGs on this issue. Merger cases are significant and positive, but there is reason to treat this finding with caution, as there are only two non-salient merger cases. Among banking and finance cases, states are no more likely to join these cases than they are to join nutritional labeling cases. This runs somewhat counter to expectations, as I hypothesized that infractions in financial cases may be perceived as more severe, since they involve people's money and sensitive information. Similarly, the coefficients for fraud and deceptive advertising cases are also insignificant, but as already stated, these coefficients are for non-Fortune 500 companies, compared against the baseline of non-Fortune 500 nutritional labeling cases. To evaluate the contextual variable of salience, I now turn to the coefficients for Fortune 500 cases.

When cases involve Fortune 500 companies, we see a different picture. The baseline is now Fortune 500 nutritional and environmental labeling cases. First, antitrust cases are significant here as well, indicating that the nature of these cases brings states together regardless of the company's financial status. However, unlike the case of non-Fortune 500 cases, banking and finance cases are significantly more likely to bring states

together when the company is a Fortune 500 company. As a matter of fact, states are also more likely to join deceptive advertising and fraud cases when the defendant is a Fortune 500 company. These findings are very interesting as they indicate that case salience enhances the attractiveness of cases for all states, either because of increased attention or the chances of a larger monetary settlement. Either way, it does indicate that AGs are strategic and are more likely to participate when they see electoral or policy returns on their investment. However, the fact that state AGs are responsive to citizen ideology in salient cases also indicates that while overall participation is likely to increase when the case becomes salient, AGs from liberal states are still likely to participate more often than AGs from conservative states.

Finally, among the control variables, we see not surprisingly that AGs are more likely to participate in multi-state lawsuits in states with high median incomes. This is consistent with findings in previous research which suggests that consumer protection becomes more important as states grow wealthier. What is more difficult to explain, however, is that AGs are significantly less likely to participate in multi-state lawsuits, the more densely populated their states. This contradicts previous research on consumer protection demographics and is a bit difficult to explain. Lastly, capability of state government as a measure of AG resources is not significant, indicating that the work-sharing aspect of multi-state litigation appears to nullify any advantage of resources.

Discussion

This analysis demonstrates that state AGs pursue both electoral and policy making goals when they participate in multi-state lawsuits. First, evidence of electoral

ambitions is borne out in two important ways. The more consumer groups there are in a state, the more likely it is that an AG will participate in a given lawsuit. While the specific mechanisms in the AG-consumer group relationship are not specified here, the results do show responsiveness on the part of AGs to consumer interests. Moreover, while AG participation in non-salient lawsuits does not appear to follow any particular ideological pattern among the voters, AGs from liberal states are likely to participate more often than AGs from conservative states in salient lawsuits. Thus, while multi-state litigation may not always be the stuff of headlines, it is more likely to be so when the company involved is well-known and well-resourced. In such instances, AGs may believe that voters are paying closer attention and, consequently, they will participate in multi-state litigation where the electoral rewards are the highest-in liberal states. The last point to note about political responsiveness is that do not appear to take ideological cues from other actors in state government. This confirms that state AGs act as independent policy makers who, as powerful and elected state officials, do not necessarily need to cultivate support among other state politicians.

Second, AGs pursue policy goals, and possibly electoral ambition goals as well, through their selection of cases. AGs act in the public interest by joining more cases with severe infractions, such as antitrust cases. This is primarily seen with antitrust cases, as, contrary to expectations, states were no more likely to join banking and finance cases than they were to join nutritional labeling cases. Similarly, when cases were not salient, states were no more likely to join deceptive advertising or fraud cases either. However, when cases were salient, participation was significantly higher than nutritional labeling cases in antitrust, banking and finance, fraud and deceptive advertising cases. This

indicates that participation is higher overall for salient cases. As already stated, nutritional labeling cases started out with a small group of states, then gradually died out, indicating they have a low overall level of participation among the states. Patterns stand out more in Fortune 500 cases, as states are significantly more likely to join every other type of case, with the exception of merger cases.

Additionally, the fact that AGs join several types of cases more often when they are salient raises the question of what is the precise motivation. Do they believe that a larger punishment is warranted because a larger company is bound to affect a larger number of customers? On are they simply taking advantage of an opportunity to bring in more money for the states? There is no sure way to discover the truthful answer, but the results here appear to mirror findings from previous research. Spill et al find that Republicans were more willing to file lawsuits against tobacco companies only after some tobacco companies were willing to settle (2001). This suggests that sticking by free-market principles and avoiding litigation works up until the point where an AG may incur a political cost by not pursuing fairly easy money. Similarly here, we see higher rates of participation overall in salient cases, but we also know that AGs are responsive to citizen ideology in salient cases. Thus, we can infer from this that AGs from conservative states will stick by free-market principles, but if the target becomes too tempting, they will rush in to claim their share of the reward as well.

If we are to believe this last interpretation, the evidence indicates that political or career factors may matter more than factors related to sensible policy making. Given that state AGs are partisan state executive who are elected in 43 states, this perhaps is not

surprising. Rather it should firmly dispel any notion that law enforcement is a neutral policy pursuit.

Notes

1. Cases dealing with violations of state consumer protection laws are filed in each state's court system, even though the overall case is a joint effort across states. The process is similar with antitrust cases, except that the states file their lawsuits together in federal court.

2. For a more detailed history of multi-state litigation, see Provost (2006).

3. In *State of Florida ex rel. Shevin vs. Exxon Corp* (1976), the Fifth Circuit affirmed SAG common law authority to act in the public interest. Also, the U.S. Supreme Court maintains that states may invoke *parens patriae* authority to act on behalf of the state when "a state has a quasi-sovereign interest in the health and well-being-both physical and economic-of its residents in general" (*Alfred L. Snapp & Son, Inc. vs. Puerto Rico* 1982).

4. State AGs are appointed in the other seven states: Alaska, Hawaii, Maine, New Hampshire, New Jersey, Tennessee and Wyoming. In Maine, the AG is selected by the state legislature and in Tennessee, by the state supreme court. In the other five states, the AG is appointed by the governor.

5. While I use the terms crime, infraction and violation interchangeably throughout the paper, it should be remembered that the settlements in question are the result of civil lawsuits, not criminal cases.

6. For the rest of the paper, I refer to salient lawsuits, lawsuits involving Fortune 500 companies and Fortune 500 cases interchangeably.

7. These data contain one other notable shortcoming: information on when each state joined each lawsuit is not available, thus it is not possible to model factors that influence the timing of each state's joining decisions, a model that has been developed for analysis of the tobacco litigation (Spill, Licari and Ray 2001).

8. Some industries are virtually never targeted by MSCP lawsuits and thus are not included in this measure: agriculture, construction, law, sports or utilities industries. Thus, what is measured is the proportion of lobbyists in banking, business services, communications, health care, hotels and restaurants, insurance, manufacturing, small business and transportation. Because these data are only available from 1990, 1997 and 1998, 1990 data are used for 1989-1995, 1997 data are used for 1995-1998 and 1998 data are used for 1998.

9. This measure contains annual interest groups ratings of ideology for each state's congressional delegation which are then weighted to reflect the electoral support each member receives. To account for the ideology of citizens voting for losing candidates, the authors also estimate ideology scores for the challengers the incumbents face in their elections and weight these by electoral support, as well. Finally, the measure is conveniently scaled between 0 and 100, with 100 representing the most liberal scores.

10. This measure is composed of ideology estimates of the governor and each party in each chamber of the legislature. Legislative ideology is estimated using the state's congressional delegation, while the governor's estimated ideology is equal to the average ideology score of the state's legislators from the same party.

11. One drawback to this measure is that the data come from the 1980s and they do not vary over time in this study. Regardless, to the extent that we should expect resources to matter, this variable should be able to explain cross-sectional variation, if not temporal variation.

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Table 1: States with the Highest and Lowest Participation Rates, 1989-2002

Most Active States	Participation Rate	Least Active States	Participation Rate
Texas	72%	Montana	15%
California	71%	Wyoming	15%
New York	69%	South Carolina	19%
Wisconsin	69%	South Dakota	19%
Florida	68%	Alaska	20%
Illinois	67%	New Hampshire	20%
Missouri	65%	Colorado	21%
Massachusetts	65%	Georgia	22%
Pennsylvania	59%	Mississippi	22%
Minnesota	58%	Maine	23%
Arizona	56%	Nebraska	23%
Washington	54%	North Dakota	23%
Connecticut	52%	Hawaii	24%
North Carolina	49%	Louisiana	24%
New Mexico	48%	Utah	24%

Table 2: Mean and Median Participation Rates by Case Type

Case Type	Mean	Median	Fortune 500 Mean	Fortune 500 Median	Non-Fortune 500 Mean	Non-Fortune 500 Median
Antitrust (16)	37.5	37.5	40.1	42	34.4	33.5
Banking and Finance (25)	22	19	29.4	27	15	12
Deceptive Advertising (61)	20.1	16	24.7	23.5	16.2	12
Fraud (38)	17.9	13	23.1	21	16.3	13
Nutrition and Environmental Labeling (26)	10.8	10	10.5	9.5	11.4	10
Merger (6)	14.5	12.5	12.5	12.5	18.5	18.5

Table 3: Population-Averaged, Pooled Logit Estimates of States' Propensity to Join MSCP Lawsuits

	Coefficient	Robust Standard Error
Constant	-3.924***	.876
State Consumer Groups	.205***	.047
State Business Group Density	2.064	1.586
State Citizen Ideology	.004	.006
State Government Ideology	-.003	.003
Method of Selection	-.319	.224
Party of Attorney General	.070	.114
State Median 4-Person Family Income (10000s of dollars)	.239**	.072
State Population Density	-.001**	.000
State Government Capability	.130	.100
Fortune 500 Case	-.330	.199
Citizen Ideology*Fortune 500	.006*	.003
Antitrust Case	1.999***	.217
Merger Case	-.697**	.222
Banking/Finance Case	.084	.201
Deceptive Advertising Case	.182	.182
Fraud Case	.232	.206
Antitrust*Fortune 500	.584**	.195
Merger*Fortune 500	-1.005***	.259
Banking/Finance*Fortune 500	1.369***	.167
Deceptive Advertising*Fortune 500	.924***	.139
Fraud*Fortune 500	.719***	.158
N	8600	
Number of States	50	
Number of Lawsuits	172	

*** p<.001, ** p<.01, * p<.05

Appendix A: Variable Descriptions, Excluding Interaction Terms

Variable	Range
Multi-State Lawsuit Participation	1=AG Joined Lawsuit 0=AG Did Not Join Lawsuit
State and Local CFA Groups (Consumer Groups)	0-9
Proportion of For-Profit Lobby Registrants	0-1
State Citizen Ideology	0-100, Conservative to Liberal
State Government Ideology	0-100, Conservative to Liberal
AG Method of Selection	1=AG is Appointed 0=AG is Elected
AG Party	1=AG is Democrat 0=AG is Republican
State Median 4-Person Family Income	30,242-82,879
State Population Density (Population in Millions Divided by Land Area)	.959-1158.15
State Government Capability Index	0-5.044
Fortune 500 Case	1=Defendant is Fortune 500 Company 0=Defendant is not Fortune 500 Company
Antitrust Case	1=Case is Antitrust Case 0=Case is Not Antitrust Case
Merger Case	1=Case is Merger Case 0=Case is Not Merger Case
Banking/Finance Case	1=Case is Banking/Finance Case 0=Case is not Banking/Finance Case
Deceptive Advertising Case	1=Case is Deceptive Ad Case 0=Case is Not Deceptive Ad Case
Fraud Case	1=Case is Fraud Case 0=Case is Not Fraud Case
Nutrition/Environmental Labeling Case	1=Case is Labeling Case 0=Case is Not Labeling Case