

LOOKING TO PEERS: TRANSJUDICIAL CITATIONS BEHAVIOR AMONG STATE SUPREME COURTS

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ABSTRACT

Other states . . . have held that a possessory interest in the items seized is sufficient to establish standing For example, in *State v. Alston*, the defendants were passengers in a vehicle from which weapons were seized during a search of the vehicle . . . **We agree with the reasoning in *Alston*.**¹

State courts of last resort are embedded in lateral legal communities. Although similarly situated, state courts develop their own peer networks, favoring the decisions of particular courts over others when deciding their case law. Using an original dataset of all interstate citations by U.S. state supreme courts in 1995 and 2010, this paper models the factors that influence state court citation decisions. Results suggest that a state supreme court is more likely to cite courts that are regionally and ideologically proximate to itself. Citations are the realization of shared values—cultural, ideological, and structural. Using a multiyear approach provides a new theoretical lens for understanding judicial decision-making at the state level.

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1. *State v. Bullock*, 901 P.2d 61, 68 (Mont. 1995) (emphasis added).

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I. INTRODUCTION

When writing for the majority of the Montana Supreme Court, Judge Trieweiler chose to cite the New Jersey Supreme Court—from among others—for support adjudicating Montana’s search and seizure law. Frequently, and with little fanfare, state courts engage in patterns of cross-court citation. They turn to their fellow state high courts looking for insights and justification when deciding their own cases. What explains Judge Trieweiler’s decision to cite the New Jersey Supreme Court? More broadly, what factors influence the likelihood that a state high court will engage in cross-court citation patterns?

The decision in *State v. Bullock*² indicates that state high courts view themselves as part of a network of peers, relying on each other’s jurisprudence as guidance when establishing their own precedents.³ State courts not only engage in what others have termed “horizontal federalism,” which is the practice of using the precedent of peer courts when adjudicating their own state laws, but actively support litigants bringing this information to the court’s attention. Drawing upon previous work analyzing citation patterns among state courts of last resort,⁴ This article shows that state supreme courts recognize that they are part of a lateral legal community. Using an original dataset of all positive lateral citations among state high courts in 1995 and 2010, this article builds upon the notion of a lateral legal community showing how in some instances these practices have changed and in others they have remained the same.

Horizontal federalism provides important insight into citations patterns among state supreme courts. By using a multiyear approach, this research shows that state supreme courts engage more with the decisions of peer courts that are ideologically and regionally proximate. Interestingly, this has changed over time with the prevalence of online legal research tools lessens the importance of regionalism. Ultimately, these findings suggest that citation patterns are largely determined by perceived communal forces that interact in meaningful ways.

2. 901 P.2d 61 (Mont. 1995).

3. See generally *State v. Bullock*, 901 P.2d 61 (Mont. 1995).

4. See generally Gregory A. Caldeira, *On the Reputation of State Supreme Courts*, 5 POL. BEHAV. 83 (1983) [hereinafter Caldeira, *State Supreme Courts*]; Gregory A. Caldeira, *The Transmission of Legal Precedent: A Study of State Supreme Courts*, 79 THE AM. POL. SCI. REV. 178 (1985) [hereinafter Caldeira, *Transmission*]; Lawrence M. Friedman et al., *State Supreme Courts: A Century of Style and Citation*, 33 STAN. L. REV. 773 (1981); Rachael K. Hinkle & Michael J. Nelson, *The Transmission of Legal Precedent Among State Supreme Courts in the Twenty-First Century*, 16 ST. POL. & POL’Y Q. 391 (2016).

II. THE UNIQUE POSITION OF STATE COURTS

Debates persist surrounding the role precedent and citations play in judicial decision-making. Scholars have developed theories accounting for the utility and constraining capacity of citations to precedent. For example, work focusing on the U.S. Supreme Court has shown that a justice's selection of precedent is primarily motivated by their personal ideology.⁵ Responding to this, others have found that judicial adherence to precedent, that is, privileging the doctrine of stare decisis, can temper personal policy preferences, suggesting that citation patterns constrain judges' behavior.⁶

Although helpful for theorizing about the factors that motivate citations, these theories cannot fully account for state supreme courts' unique position in the American legal system. At any given moment state supreme courts are courts of last resort with a robust peer network, or intermediate appellate courts subject to review by the U.S. Supreme Court. Much like the U.S. Supreme Court is the final arbiter of federal law, state supreme courts are the final arbiters of their respective state laws. However, unlike the U.S. Supreme Court, which sits peerless atop the judicial hierarchy, certain cases from state supreme courts are subject to appellate review by the U.S. Supreme Court.

Given that state supreme courts are primarily adjudicating state laws, it would seem logical to view state courts as singularly dependent on internal state political pressures, but decades of research have shown this is not the case. Since trailblazing research by scholars such as Caldeira,⁷ and more recently Hinkle and Nelson,⁸ it has been clear that state supreme courts act within a complex system of interactions that extend beyond internal state politics. State courts use the decisions of peer courts in setting new precedent. Therefore, understanding what motivates citations between state courts is essential for uncovering the mechanisms underlying legal policy transmission between states.

5. Lawrence Baum, *What Judges Want: Judges' Goals and Judicial Behavior*, 47 POL. RES. Q. 749, 752 (1994); JEFFREY A. SEGAL & HAROLD J. SPAETH, *THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED* 25 (2002); Donald R. Songer & Stefanie A. Lindquist, *Not the Whole Story: The Impact of Justices' Values on Supreme Court Decision Making*, 40 AM. J. OF POL. SCI. 1049, 1055 (1996).

6. Michael A. Bailey & Forrest Maltzman, *Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court*, 102 AM. POL. SCI. REV. 369, 373 (2008); Brandon L. Bartels, *The Constraining Capacity of Legal Doctrine on the U.S. Supreme Court*, 103 AM. POL. SCI. REV. 474, 474 (2009); LEE EPSTEIN & JACK KNIGHT, *THE CHOICES JUSTICES MAKE* 126 (1998); Mark S. Hurwitz, *Institutional Arrangements and the Dynamics of Agenda Formation in the US Supreme Court and Courts of Appeals*, 28 L. & POL'Y 321, 331 (2006); Jack Knight & Lee Epstein, *The Norm of Stare Decisis*, 40 AM. J. OF POL. SCI. 1018, 1019 (1996).

7. Caldeira *Transmission*, *supra* note 4, at 184.

8. Hinkle & Nelson, *supra* note 4, at 395.

Credited to Porter and Tarr,⁹ horizontal federalism is best defined as “federalism in which states look to each other for guidance.”¹⁰ Nowhere is this more readily apparent than lateral citation practices among state high courts. Looking to explain this behavior, the authors of *State Supreme Courts: A Century of Style and Citation* assert that out-of-state citations should only be present when in-state case law is ambiguous or non-existent.¹¹ This suggests that state courts will look to peer institutions when answering a difficult or novel legal issue for which little “in-house” precedent exists. Canon and Baum,¹² looked at tort reform among state court systems, finding few systematic patterns of diffusion. Caldeira,¹³ however, suggests that these citations are best viewed as a measure of communication between states on policy. Citations among state courts are in some ways a dialogue about public policy and legal development.

Since the decision of one state supreme court is in no way binding on another state supreme court, the decision to cite laterally suggests that state supreme courts recognize the relevance and persuasive nature of each other’s jurisprudence. By exploring horizontal citation patterns in state supreme courts at different points in time, these results suggest that the decision to cite a peer is motivated by different measures of community—physical, ideological, and professional.

III. UNDERSTANDING LATERAL CITATIONS AND HORIZONTAL FEDERALISM

Whether interpreting statutory or constitutional law, judges may rely on different legal sources either as exegetical aides or as means of jurisprudential justification. For students, as well as casual observers of the U.S. Supreme Court, the most well-known of these tools is the doctrine of stare decisis. Regardless of motivation, the justices root their decisions in the logic of the past, in continuing a chain of legal tradition.¹⁴ Although on the U.S.

9. MARY CORNELIA PORTER & G. ALAN TARR, *STATE SUPREME COURTS IN STATE AND NATION* xxi-xxii (1988).

10. Stewart G. Pollock, *Adequate and Independent State Grounds as a Means of Balancing the Relationship Between State and Federal Courts*, 63 TEX. L. REV. 977, 992 (1984).

11. Friedman et al., *supra* note 4, at 734.

12. Bradley C. Canon & Lawrence Baum, *Patterns of Adoption of Tort Law Innovations: An Application of Diffusion Theory to Judicial Doctrines*, 75 AM. POL. SCI. REV. 975, 983 (1981).

13. Caldeira, *Transmission*, *supra* note 4, at 190.

14. Whether one is an adherent of the attitudinal model, strategic decision-making models, or the legal constraint model, all can agree that the justices use precedent as justification for their decisions. *See generally* SEGAL & SPAETH, *supra* note 5. *See also* FORREST MALTZMAN, JAMES F. SPRIGGS & PAUL J. WAHLBECK, *CRAFTING LAW ON THE SUPREME COURT: THE COLLEGIAL GAME* 4 (2000); WALTER F. MURPHY, *ELEMENTS OF JUDICIAL STRATEGY* 23 (1964); Bailey & Maltzmann, *supra* note 6, at 10; EPSTEIN & KNIGHT, *supra* note 6, at 1019.

Supreme Court citation to its own precedent is assuredly the single most important legitimating source, when superimposing a similar analysis at the state-level it quickly becomes apparent that another interpretive tool emerges: the practice of horizontal federalism.

The willingness of state high courts to cite each other is a routine practice in American jurisprudence. In fact, supreme courts often encouraged litigants and state bar associations to survey the decisions of other states. In *State v. Wheaton*,¹⁵ Judge Bistline, in his concurrence, offers guidance to litigants on how best to argue that a constitutional issue rests on adequate and independent state ground.¹⁶ In doing so he highlights the actions of other state supreme courts (WA, IL, MA, AK, NY, NJ), suggesting that future litigants might find it prudent to rely on the actions taken by these and other courts.¹⁷ In *State v. Jewett*,¹⁸ the Vermont Supreme Court explicitly directs litigants to use the decisions of other state courts when arguing a case; “the advocate may also use a sibling state approach in state constitutional arguments.”¹⁹

A clear pattern emerges from these two examples: horizontal federalism is more than simply a reciprocal citation process; state high courts actively engage with and rely on peer courts’ precedent when making decisions. Yet, what then motivates and explains a court’s decision to cite a fellow state high court? Put somewhat differently, since the decisions of peer courts are not binding on each other, how do courts choose whom to cite? What explains the frequency (or infrequency) of citations between state supreme courts? Unlike vertical citations, lateral citations are best understood as a realization of shared region, culture, and ideology. Ultimately, when reaching beyond their own jurisprudence, courts will cite those most similar to themselves when justifying legal decisions.

A. STATE PROXIMITY

Sociological, psychological, and other social science research has established that repeated interactions among individuals often result in more closely interwoven groups or clusters.²⁰ Citations between state supreme courts are similar in this respect. Neighboring states are likely to share a common culture, which arguably generates greater incentives and opportunities

15. 825 P.2d 501 (Id. 1992).

16. *Wheaton*, 825 P.2d at 504-07.

17. *Id.*

18. 500 A.2d 233 (Vt. 1985).

19. *Jewett*, 500 A.2d at 237.

20. Sanjeev Goyal & Fernando Vega-Redondo, *Network Formation and Social Coordination*, 50 GAMES AND ECON. BEHAV. 178, 181 (2005); Miller McPherson, Lynn Smith-Lovin & James M. Cook, *Birds of a Feather: Homophily in Social Networks*, 27 ANN. REV. OF SOC. 415, 417 (2001); HENRI TAJFEL, *SOCIAL IDENTITY AND INTERGROUP RELATIONS* 7 (2010).

for communication. For example, the Alabama Supreme Court may sooner look to Mississippi than to Massachusetts to see if and how that state has dealt with a specific issue. Thus, “it follows that the unique character of one state is more likely to be shared by neighboring states and less likely to be shared by more distant states.”²¹ Proximate states tend to exhibit similar societal norms and values, which arguably motivate political actors to rely on the decisions of their neighbors. If states are to engage in horizontal federalism then it makes sense that they will first look to their neighbors for guidance.²²

In this vein, Caldeira found that geography can affect the likelihood of interstate citations.²³ By focusing on physical distance between state capitols he concludes that, “[r]emoteness decreases communication until a threshold is reached and then exercises less and less effect, but before that threshold is reached, each thousand miles of territory between a pair of courts depresses the proportion of precedents invoked by about 0.33%.”²⁴ Geography may still matter for influencing lateral citation patterns, however, in more recent years, with the interconnectedness provided by World Wide Web, physical distance between state capitols becomes a less compelling explanation. Caldeira’s work focused on citation patterns in 1975 and much has changed in terms of mobility and access to information.²⁵ Yet, regional bar associations still exist and frequently host conferences, thus increasing the likelihood that judges in a specific region are aware of each other’s actions either through direct interactions or local news. I therefore expect:

Hypothesis 1: Sharing a border will increase the likelihood of citations between state supreme courts.

Hypothesis 2: Physical distance between state capitols will have a muted influence on lateral citations as time goes on.

21. David Blumberg, *High Court Study: Influence of the Massachusetts Supreme Judicial Court on State High Court Decisionmaking 1982-1997: A Study in Horizontal Federalism*, 61 ALBANY L. REV. 1583, 1592 (1998).

22. Patrick Baude, *Interstate Dialogue in State Constitutional Law*, 28 RUTGERS L.J. 835, 840 (1996); Fabrizio Gilardi, *Who Learns from What in Policy Diffusion Processes?*, 54 AM. J. OF POL. SCI. 650, 650 (2010); Andrew Karch, *Emerging Issues and Future Directions in State Policy Diffusion Research*, 7 ST. POL. & POL’Y Q. 54, 61 (2007); Covadonga Meseguer, *Policy Learning, Policy Diffusion, and the Making of a New Order*, 598 THE ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 67, 68 (2005); Charles R. Shipan & Craig Volden, *The Mechanisms of Policy Diffusion*, 52 AM. J. OF POL. SCI. 840, 845 (2008); Craig Volden, Michael M. Ting & Daniel P. Carpenter, *A Formal Model of Learning and Policy Diffusion*, 102 AM. POL. SCI. REV. 319, 329 (2008).

23. Caldeira *Transmission*, *supra* note 4, at 189.

24. *Id.* at 188.

25. *Id.* at 190-91.

B. LEGAL REGIONALISM

Looking at cases from 1870 to 1970, Harris found that the number of cross-court citations increased over time and these citations were highly correlated with region.²⁶ Regional proximity meant easier access to legal material, as he noted; “state high courts tended to cite the decision of courts whose rulings were contained in the same West regional reporter as its own decisions.”²⁷

There are reasons to suspect that these findings are time bound and that due to increased access to online legal databases, the cost of research has decreased. As Hinkle and Nelson point out, “addition[ally], the advent of online legal research has dramatically increased the ability of state court judges to locate relevant opinions from other state supreme courts while lessening their need to rely on the printed reporters that Caldeira’s (1988) study found were a key determinant of transjudicial communication.”²⁸ Unfortunately, previous studies are limited in their capacity to uncover over time variation since they examine one year.²⁹ By focusing on two years 1995 and 2010, this analysis is better able to investigate not only if regionalism matters in the age of the Internet, but how its influence has changed. If factors beyond geography shape citations choices, we should see a decline in the influence of reporting regions as a predictor of incoming citation. Still, despite strong theoretical arguments suggesting that technological improvements should lessen the cost associated with finding cases outside of these reporting regions, I expect shared legal culture and psychological attachment to persist, therefore suggesting:

Hypothesis 3: State supreme courts in the same legal region will be more likely to cite each other; and

Hypothesis 4: As online research tools become more prevalent, over time legal regionalism will have a muted influence on citation patterns.

26. Peter Harris, *Structural Change in the Communication of Precedent Among State Supreme Courts*, 4 SOC. NETWORKS 201, 210 (1982).

27. *Id.* at 32; Caldeira, *Transmission*, *supra* note 4, at 189 (finding that being in the same regional reporter increases the likelihood of legal transmission).

28. Hinkle & Nelson, *supra* note 4, at 395.

29. Caldeira, *Transmission*, *supra* note 4, at 180; Hinkle & Nelson, *supra* note 4, at 398.

C. JUDICIAL PROFESSIONALISM AND RESPECT

In a hierarchical judiciary where higher-level appellate courts can overturn lower court decisions, strategic citation is both rational and easily explainable.³⁰ As noted by Caminker, judges avoid reversal because they:

- (1) fear that their professional audience, including colleagues, practitioners, and scholars, will disrespect their legal judgments or abilities; and
- (2) fear that a high reversal rate might reduce opportunities for professional recognition and advancement (including promotion to a higher court or appointment to judicial or other commissions); and
- (3) the perception that reversal undercuts their de facto judicial power both in a tangible and intangible sense.³¹

In the realm of horizontal federalism, where one state supreme court has no power to dictate the actions of another state high court, what motivates cross-court citations?

Irrespective of a threat of reversal, judges in a horizontal federal system care about personal standing and their capacity to influence political outcomes. Studies focusing on state court professionalization have shown that levels of institutional professionalization are often associated with increased judicial capabilities and higher quality opinions.³² This suggests that professionalization plays a central role in defining a court's prestige, relative to its peers.

Moreover, courts that have higher levels of professionalization are likely to have similarly professionalized legislatures. Given previous work showing that highly professionalized legislatures have increased lawmaking capacities leading to more detailed policy initiatives,³³ courts in these states are

30. See e.g., Matthew E. K. Hall, *The Semiconstrained Court: Public Opinion, the Separation of Powers, and the US Supreme Court's Fear of Nonimplementation*, 58 AM. J. OF POL. SCI. 352, 352 (2014) (arguing that Supreme Court justices have more power in vertical cases, since lower courts will implement their decisions); Thomas G. Hansford, James F. Spriggs & Anthony A. Stenger, *The Information Dynamics of Vertical Stare Decisis*, 75 THE J. OF POL. 894, 894 (2013) (showing that lower court implementation of Supreme Court decisions provides the justices with information that helps them adjust precedent to reflect preferred policy outcomes); Joseph L. Smith, *Law, Fact, and the Threat of Reversal From Above*, 42 AM. POL. RES. 226, 226 (2014) (The claim here is that the threat of review and reversal by the Supreme Court affects circuit court judges differently in disputes focusing on law compared to disputes focusing on facts.) This threat, coupled with the case-dynamics can influence the choice of citations. Kirk A. Randazzo, *Strategic Anticipation and the Hierarchy of Justice in U.S. District Courts*, 36 AM. POL. RES. 669, 671-72 (2008).

31. Evan H. Caminker, *Precedent and Prediction: The Forward-Looking Aspects of Inferior Court Decisionmaking*, 73 TEX. L. REV. 1, 77-78 (1994).

32. Peverill Squire, *Measuring the Professionalization of US State Courts of Last Resort*, 8 ST. POL. & POL'Y Q. 223, 225-26 (2008); Damon Cann, *Beyond Accountability and Independence: Judicial Selection and State Court Performance*, 90 JUDICATURE 226, 232-33 (2006).

33. See e.g., Daniel C. Bowen & Zachary Greene, *Should We Measure Professionalism with an Index? A Note on Theory and Practice in State Legislative Professionalism Research*, 14 ST.

expected to address difficult legal questions sooner than other courts (if at all), thereby generating precedents before other options are available to cite. Ultimately, professionalism lends credibility. If judges believe that their ability to influence outcomes depends on the willingness of others to listen, then legal capital, or judicial influence should matter to them. As put by Merryman, “presumably a citation means something to the person citing, and presumably he anticipates that it will have some meaning to the reader.”³⁴ Citation to other state high courts acts as a signal that the citing court’s decision is shared by others, rooted in some precedent, and not arbitrary.³⁵ Moreover, in some cases citing another court may carry more weight than self-citation (or citations to the federal system) since it indicates more consensus driven decision-making. A citing court might therefore prefer rulings from more professionalized courts in hopes that such sources will lend greater credibility and justification for the decision. This then suggests:

Hypothesis 5: Highly professionalized courts are more likely to have their caselaw cited by others.

D. JUDICIAL IDEOLOGY

Ideology is a key factor in structuring political behavior. It is not just an indicator of political beliefs, but it very often has the capacity to shape patterns of personal interactions.³⁶ Prior work on courts and policy diffusion has shown that states are likely to adopt policies when they are ideologically similar.³⁷ Thus, ideological congruence shapes patterns of horizontal federalism. Ideology acts as a shortcut for trust. A state court is more likely to trust the decisions of an ideologically proximate court and rely more heavily on its jurisprudence.³⁸ This would seem to suggest that horizontal federalism is not just about turning to one’s geographic neighbor when deciding cases. Instead, the practice of looking to peers for guidance is rational: a high court will

POL. & POL’Y Q. 277, 280 (2014); Gary F. Moncrief, *Dimensions of the Concept of Professionalism in State Legislatures: A Research Note*, 20 ST. & LOC. GOV’T REV. 128, 135 (1988); Christopher Z. Mooney, *Measuring US State Legislative Professionalism: An Evaluation of Five Indices*, 26 ST. & LOC. GOV’T REV. 70, 77 (1994); Peverill Squire, *Measuring State Legislative Professionalism: The Squire Index Revisited*, 7 ST. POL. & POL’Y Q. 211, 212 (2007).

34. John Henry Merryman, *The Authority of Authority: What the California Supreme Court Cited in 1950*, 6 STANFORD L. REV. 613, 613 (1954).

35. Erik Voeten, *Borrowing and Nonborrowing Among International Courts*, 39 THE J. OF LEGAL STUD. 547, 553 (2010).

36. See generally Shanto Iyengar, Gaurav Sood & Yphtach Lelkes, *Affect, not Ideology: A Social Identity Perspective on Polarization*, 76 PUB. OPINION Q. 405 (2012).

37. Caldeira, *Transmission*, *supra* note 4, at 187-88; Shipan & Volden, *supra* note 22, at 25; Russell Smyth & Vinod Mishra, *The Transmission of Legal Precedent Across the Australian State Supreme Courts over the Twentieth Century*, 45 LAW & SOCIETY REVIEW 139, 145 (2011).

38. Caldeira, *Transmission*, *supra* note 4, at 186.

place greater trust and stock in the decisions of another ideologically similar court.

That said, studies of political behavior and socialization in America have frequently recognized the reciprocal effects of region and ideology on each other.³⁹ Similarly, it is likely that citation patterns will be substantively affected by interactions between region and ideology. Regionalism may allow for more personal and frequent interactions, which helps judges develop opinions about neighboring peer courts. For example, both the Kentucky and Tennessee Supreme Courts are likely to have more intimate knowledge of each other's cultures and practices than they are of the Supreme Courts of Oregon and Minnesota. As ideological distance increases regional connections will moderate citation behavior. These dynamics suggests two additional hypotheses:

Hypothesis 6: The closer two state supreme courts are ideologically, the more often they will cite each other; and

Hypothesis 7: State supreme courts are more likely to cite courts that are ideologically distant in their own region than ideologically distant courts in another region.

E. JUDICIAL SELECTION

Lateral citations among state high courts are motivated by different measures of community—physical, ideological, and professional. Judges will look to, and take guidance from, peers who are similarly situated.⁴⁰ Another way in which judges assess “likeness” or “similar-ness” is judicial retention mechanisms.⁴¹ State judges perceive differences in behavior to exist across selection and retention mechanisms, and this may, knowingly or not, color how they think about other courts. This is best expressed by former Chief Judge of the New York Court of Appeals Jonathan Lippman, who, when asked if he thinks selection mechanisms influence decision-making, said:

Yeah, I think it can. I think it shouldn't, but it can. I think people who run for election and have to submit themselves to the public - I think just like trial judges who do that - are maybe a little bit more

39. See generally Paul R. Brace, *Mapping Economic Development Policy Change in the American States*, 19 REV. OF POL'Y RES. 161 (2002); Nicholas A. Valentino & David O. Sears, *Old Times There are Not Forgotten: Race and Partisan Realignment in the Contemporary South*, 49 AM. J. OF POL. SCI. 672 (2005).

40. Hinkle & Nelson, *supra* note 4, at 403.

41. *Id.*

conscious of the fact, of what the political winds of the day are and recognize that they are under great scrutiny.⁴²

Given that state court judges believe differences exist in decision-making across selection and retention mechanisms, judges on appointed benches may view the decisions of judges on elected benches less favorably, which can influence citation patterns. In other words, if judges view the decisions of peer courts differently, given judicial selection and retention mechanisms, this in turn will affect whether a fellow court's decisions are viewed as credible or worth citing. Additionally, research has found that appointed judges tend to produce higher quality opinions that more closely mimic those produced by the U.S. Supreme Court.⁴³ This raises two final expectations:

Hypothesis 8: Courts that share selection mechanisms are more likely to cite each other; and

Hypothesis 9: Appointed courts are more likely to be cited by their peers, relative to other selection systems.

Overall, these hypotheses suggest that citations between state supreme courts are anything but arbitrary. They instead are calculated and purposive decisions on the part of the author, selecting similarly situated courts hoping to provide maximum credence and justification for their decisions.

IV. DATASET CONSTRUCTION

To explain cross-state citation patterns, I assembled a new dataset with all lateral citations made by state high courts in the United States in 1995 and 2010. Using the Hall and Windett State Supreme Court Database,⁴⁴ I compiled a list of all published cases in both years.⁴⁵ I then scripted an algorithm that automatically searched an online database using each case citation. Using the Table of Authorities associated with each case, I extracted and generated a list containing only citations to another state high court.

42. Telephone Interview with Jonathan Lippman, Former Chief Justice of the New York Court of Appeal (Nov. 7, 2017) (consent received for recording, attribution, and reproduction).

43. Stephen J. Choi, Mitu Gulati & Eric A. Posner, *Judicial Evaluations and Information Forcing: Ranking State High Courts and Their Judges*, 58 DUKE L.J. 1313, 1321 (2008).

44. See generally Matthew E. K. Hall & Jason H. Windett, *New Data on State Supreme Court Cases*, 13 ST. POL. & POL'Y Q. 427 (2013).

45. This analysis excludes the District of Columbia. Although Caldeira treats the D.C. Court of Appeals as a state high court, this makes little sense. The D.C. Court of Appeals is part of the federal judiciary and its peer network is the other 12 U.S. Circuit Courts of Appeals. John G. Roberts, Jr., *What Makes the D.C. Circuit Different?: A Historical View*, 92 VA. L. REV. 375, 375-77 (2006). Moreover, as a federal court, its jurisdiction and caseload are different from those of state high courts.

A. DEPENDENT VARIABLE

Using information extracted from each case's Table of Authorities, I construct the dependent variable, which is a count of the number of times a state supreme court favorably cites a unique decision of another state supreme court.⁴⁶ For example, if Montana cited a case from Illinois once, this is considered a single citation. If Montana cited multiple cases from Illinois those are coded as unique citations. However, if Montana cited the same Illinois decision multiple times, this was considered one citation. More formally, I create state_i-state_j dyads, where the dependent variable is the number of unique cases from state_j that were cited in 1994 or 2010 by state_i. Following previous work,⁴⁷ both the Oklahoma and Texas Criminal Court of Appeals are treated as separate state high courts, resulting in a total of fifty-two state high courts.

B. INDEPENDENT VARIABLES

Two variables are constructed to control for regional proximity. The first, *physical distance*, is the number of miles between two state capitols. Second, *shared border* is a binary variable that equals 1 if the state pair share a border, 0 otherwise. The next two explanatory variables explore how legal proximity influences citation patterns, and whether this effect changes over time. The analysis controls for whether the citing and cited state supreme courts are in the same reporting region. This variable—*regional reporter*—is binary, with 1 indicating same regions and 0 otherwise. Next, *regional reporter* is interacted with year to see how regional factors have influenced lateral citations, over time.

Above, it is argued that court professionalism should influence the number of incoming citations. To control for this, Squire's index measuring the professionalization of state high courts is used.⁴⁸ Larger values indicate more professionalized courts. The underlying assumption (taken from Squire) is that increased professionalism—measured as judicial salaries, a court's level of control over its docket, and the number of law clerks employed by the justice—allows a court to engage with complex legal issues and craft better

46. The online legal database provides a "treatment" indicator, suggesting whether a citation is treated positively, neutrally, or negatively. WESTLAW, <https://www.westlaw.com> (last visited Feb. 15, 2020); Hall & Windett, *supra* note 44, at 441.

47. Hinkle & Nelson, *supra* note 4, at 402.

48. See generally Squire, *supra* note 33. Previous studies have attempted to generate measure of court prestige by factoring in the count of how many tens of thousands of published opinions a state high court has issued from its inception until the date of study. Hinkle & Nelson, *supra* note 4, at 397-402. Although, impressive, this is susceptible to endogeneity problems: the number of published opinions may be a derivative of prestige rather than a product thereof. To avoid this, the analysis relies on professionalism, as measured by things other than caseload.

opinions. As Caldeira notes, “for the most part, more professionalized judiciaries can claim greater prestige than less professionalized state supreme courts.”⁴⁹

To assess the influence of judicial ideology on citation patterns, two variables are generated, one capturing the ideological makeup of the cited court and the other measuring the ideological distance between courts.⁵⁰ First, the median judge for each high court in 1995 and 2010 is found – this creates a measure of both citing and cited court ideology.⁵¹ Using the cited court median, the model investigates whether a court’s ideology influences the number of incoming citations. Next, the absolute distance between these two as a measure of ideological distance is taken. For ease of interpretation distance is rescaled to range from 0 to 1, with higher values indicating greater ideological distance between a court-dyad. Finally, ideological distance is interacted with the two measures of regionalism (*shared border* and *regional reporter*) to assess whether regional proximity conditions—or moderates—the influence of ideological distance.

Judicial retention is controlled for by using a categorical variable measuring retention mechanisms: appointment, nonpartisan elections, partisan elections, reappointments, and retention elections. From this a variable controlling for whether the citing and cited court share a retention mechanism is generated. This new variable equals 1 when retention is shared, 0 otherwise. In what follows, models exploring what motivates and explains lateral citations between state high courts are presented.

V. ANALYSIS

In 1995 state high courts issued a total of 11,073 published opinions, whereas in 2010 a total of 8,765 published opinions were issued. Combined across both years, state high courts issued a total of 19,838 published opinions. Courts vary in terms of the number of opinions. For example, in 1995, the Minnesota Supreme Court published 767 opinions compared to the Oklahoma Court of Criminal Appeals, which issued seventy-seven published opinions. Similar results are seen in 2010, with Georgia publishing 903 opinions and, again the Oklahoma Court of Criminal Appeals publishing thirty-

49. Caldeira, *Transmission*, *supra* note 4, at 99.

50. See generally Jason H. Windett, Jeffrey J. Harden & Matthew E. K. Hall, *Estimating Dynamic Ideal Points for State Supreme Courts*, 23 POLITICAL ANALYSIS 461 (2015).

51. I use the median justice rather than the mean of the overall court, since this is a better measure of central tendency and is less susceptible to influence by outliers.

three cases.⁵² The number of published opinions by state court for each year under analysis can be found in the appendix.

My unit of analysis is the number of incoming citations between court-dyad pairs. Each state high court is paired with each other state high court resulting in 5,304 dyads (2,652 in 1995 and 2,652 in 2010) among fifty-two state supreme courts. To explore differences in “citing” and “being cited” directed dyads are used, producing two observations for each pair of states. In other words, one dyadic observation would be Alaska citing Alabama and another observation would be Alabama citing Alaska. This is done for all state high courts. Table 1 presents summary statistics for the entire dataset, by year.

Table 1. Summary Statistics for Court Caseloads and Citations

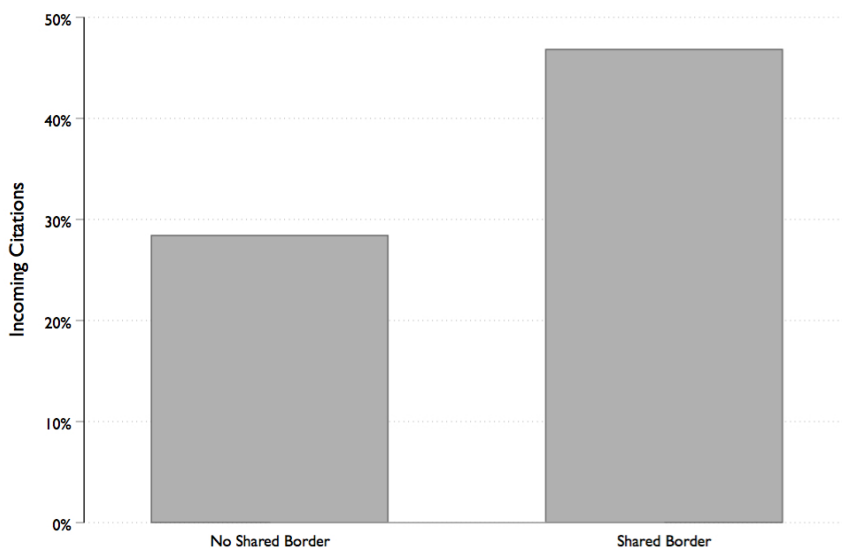
	1995	2010	Total
Published Cases	11,073	8,765	19,838
Minimum Caseload	77	33	33
Maximum Caseload	767	903	903
Dyads	2,652	2,652	5,304
Minimum Incoming Citations	0	0	0
Maximum Incoming Citations	30	39	39
Mean Incoming Citations	3.5	2.5	3.2

As noted above, the dependent variable is the number of times a state supreme court favorably cites a unique decision of another state supreme court. For both years combined, this ranges from 0 to thirty-nine incoming citations, with the average dyad having approximately three citations. In general, most states see no, or very few, incoming citations.⁵³

52. It should be noted that these only reflect the number of published opinions as contained in the Hall and Windett State Supreme Court Database, not the total docket of each court. Hall & Windett, *supra* note 44, at 55. In other words, it may be that the OK Court of Criminal Appeals saw only thirty-three petitions in 2010, or there could have been additional cases heard by this court, but not recorded in the Hall and Windett database. These numbers do not tell us anything about overall caseload or docket clearance rates.

53. See *infra* Figures 1, 4, 7, 8, and 9 (showing the distribution of incoming citations by year, as well as by the overall distribution of incoming citations in the dataset).

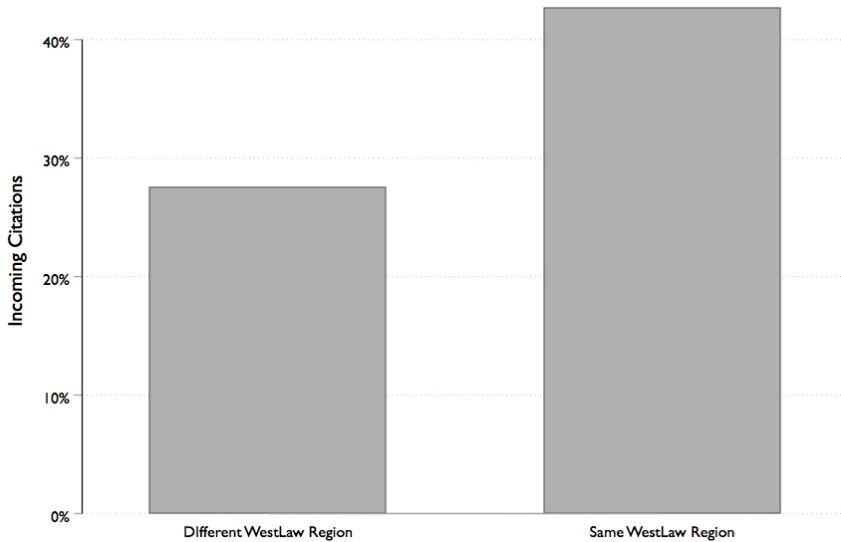
Figure 1. Percent of Incoming Citations when Sharing and not Sharing a Border



Focusing on the variables capturing regionalism, initial summary statistics find that, a larger percentage of lateral citations occur between states that share a physical border. This difference is best seen in Figure 1, which shows the percentage of incoming citations when states share, and do not share, a border. Turing next to the variables capturing legal regionalism, these data lend support to my hypothesis that sharing a reporting region increases cross-court citations. Figure 2 shows that sharing a reporting region results in a higher percentage of citations between states, than when not sharing a reporting region. A difference of means tests uncovers a statistically significant difference ($p < 0.05$).⁵⁴

54. When sub-setting these data by year, the percent of cross-court citations in the same reporting region is lower in 2010 than 1995. A statistically significant difference ($p < 0.05$) is found between the means for sharing a reporting region in 1995 and 2005. In the appendix, this difference is visually depicted.

Figure 2. Percent of Incoming Citations when Sharing and not Sharing a Reporting Region



Given these exploratory statistics showing the distribution of observations across variables of interest and the proportion of incoming citation by different categories, next the hypotheses are empirically tested and examined explaining how these factors influence lateral citations patterns among state high courts. To do this, the dyadic relationships between state courts is modeled using random effects negative binomial regression. First, since the dependent variable is a count of the positive citations from one state supreme court to another, negative binomial regression is best suited for count modeling.⁵⁵ Second, random effects modeling is used to account for the clustered nature of these dyads: citations are conceptualized as nested within state-court dyads. Moreover, given that this analysis explores citation patterns over a two-year period, a random effects model is well suited to explore time-series cross-sectional data.⁵⁶

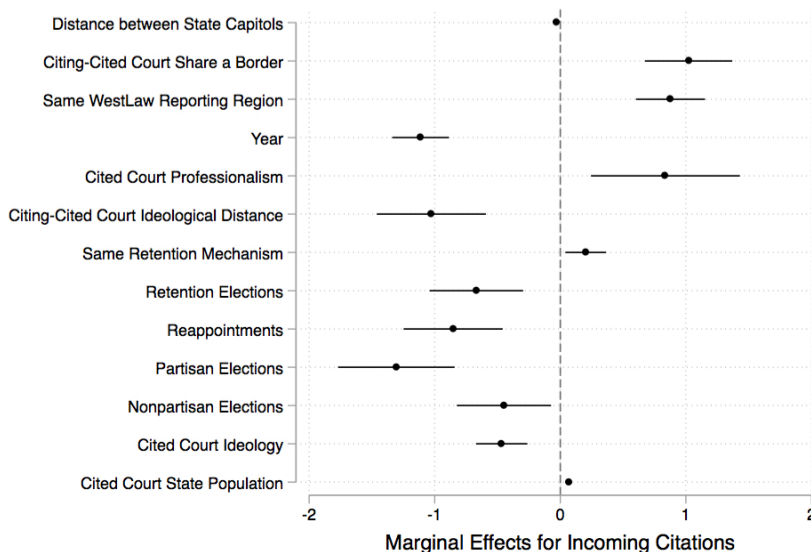
55. See generally JOSEPH M. HILBE, *NEGATIVE BINOMIAL REGRESSION* (2011); J. SCOTT LONG, *REGRESSION MODELS FOR CATEGORICAL AND LIMITED DEPENDENT VARIABLES* (1997); J. SCOTT LONG & JEREMY FREESE, *REGRESSION MODELS FOR CATEGORICAL DEPENDENT VARIABLES USING STATA* (3rd edition 2014).

56. See generally ANDREW GELMAN & JENNIFER HILL, *DATA ANALYSIS USING REGRESSION AND MULTILEVEL HIERARCHICAL MODELS* (2007). See also BRANDON L. BARTELS, *BEYOND 'FIXED VERSUS RANDOM EFFECTS': A FRAMEWORK FOR IMPROVING SUBSTANTIVE AND STATISTICAL ANALYSIS OF PANEL, TSCS, AND MULTILEVEL DATA.*, *QUANTITATIVE RES. IN POL. SCI.* 1 (Robert J. Franzese ed., 2015). The appendix provides goodness-of-fit diagnostic tests

A. RESULTS

The negative binomial coefficients from Models 1 and 2, testing the factors expected to influence cross-court citation patterns are presented in the appendix. Model 1 presents the unconditional effects explaining what motivates lateral citations between state high courts, whereas Model 2 controls for the interactive effects. Since negative binomial coefficients cannot be directly interpreted, Figure 3 plots the average marginal effects for Model 1.⁵⁷ Marginal effects are particularly useful because they can be interpreted much like OLS coefficients. That is, a one-unit change in the independent variable, yields a marginal effects change in the dependent variable, holding all else constant.

Figure 3. Average Marginal Effects for Model 1 - Unconditional Effects on Incoming Citations



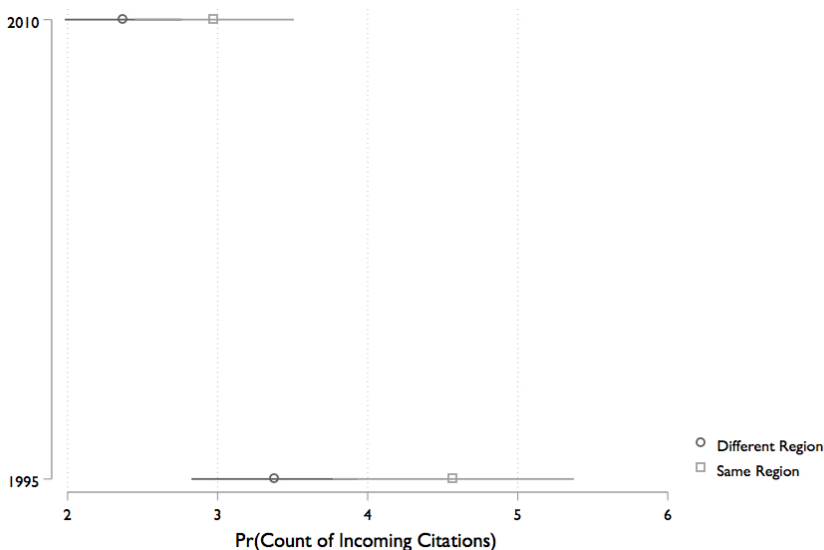
comparing various modeling approaches. Additionally, the use of random effects is preferable to fixed effects when using negative binomial regression with time-series cross-sectional data. See generally, e.g., Paul D. Allison & Richard P. Waterman, *Fixed-Effects Negative Binomial Regression Models*, 32 SOC. METHODOLOGY 247 (2002); William Greene, *Functional Forms for the Negative Binomial Model for Count Data*, 99 ECON. LETTERS 585 (2008).

57. I calculate the average marginal effects (AMEs) following the work of Gary King, Michael Tomz, and Jason Wittenberg. Gary King, Michael Tomz, & Jason Wittenberg, *Making the Most of Statistical Analyses: Improving Interpretation and Presentation*, 44 AM. J. OF POL. SCI. 347, 351 (2000); LONG & FREESE, *supra* note 55, at 144; Hanmer & Kalkan, *Behind the Curve: Clarifying the Best Approach to Calculating Predicted Probabilities and Marginal Effects from Limited Dependent Variable Models*, 57 AM. J. OF POL. SCI. 263, 269 (2013).

Focusing on Model 1—the unconditional effects on the likelihood of cross-court citations—I find support for my first two hypotheses. As expected, when the physical distance between two state capitols increases, the number of citations decrease, holding all else constant. This corroborates what was found over thirty-five years ago.⁵⁸ Sharing a border increases transjudicial citations. Sharing a border with the citing state increases the predicated citation count by 1.02, holding all other variables fixed. Together, these findings lend support to my expectation that geographic proximity plays an important role in structuring cross-court citation patterns.

Although technological advances have made access to information easier, cheaper, and more widely available, reporting regions still play a central role in understanding lateral citations between state high courts. Model 1 finds that a state is more likely to be cited if it is in the same reporting region as the citing state. In other words, a cited state in the same reporting region as the citing state is predicted to have a citation count of 3.75 compared to a predicted count of 2.87 if the states are in different regions. This finding is statistically significant with a p-value near zero.

Figure 4. Interaction Effects between Year and Reporting Region



The results from Model 2, where year is interacted with reporting region, corroborate my expectation that as time goes on reporting regions will have a muted influence on cross-court citations patterns. Figure 4 shows that, in

58. See Caldeira, *Transmission*, *supra* note 4, at 182-83.

1995, sharing a reporting region with a citing court yields a predicted count of 4.6 incoming citations. In 2010, the predicted count drop to approximately 3 incoming citations. A pairwise comparison uncovers a statistical difference between these predicted counts ($p < 0$).⁵⁹ This finding supports the notion that as online databases become cheaper to access and more prevalent in legal research, reporting regions will have less of an influence on cross-court citation patterns.⁶⁰

Across both models there is support for the professionalism hypothesis. Courts with higher levels of professionalism are cited more frequently by their peers. The marginal effects show that increasing court professionalism by one-unit, increases a court's predicted cite count by 0.84, *ceteris paribus*. This reaches statistical significance with a p-value of 0.05 or stricter. Courts with low levels of professionalism have a predicted cite count of 2.74, whereas courts that are highly professionalized have a predicted cite count of 3.42. A pairwise comparison of endpoints uncovers a statistically significant difference between the predicted cite count for courts with high levels and low levels of professionalism ($p < 0.05$).⁶¹

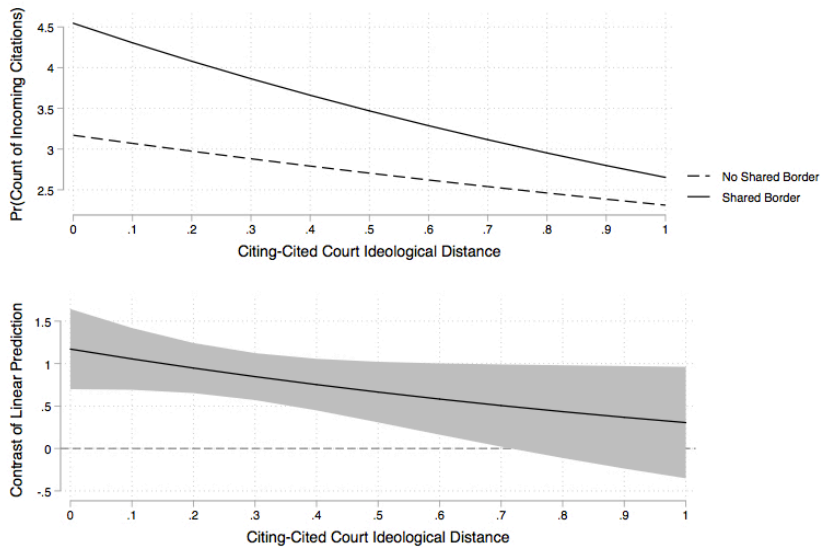
Next, these results bolster my expectation that ideology drives the decision to positively cite another court. Increasing ideological distance between courts decreases the likelihood of cross-court citations by 1.03-points, all else held constant. When the citing and cited courts are ideologically proximate, the cited court is expected to see a predicted count of 3.31 incoming citations. When courts in a citation dyad are at ideological extremes, the cited court is expected to see a predicted count of 2.36 incoming citations. This difference proves to be statistically significant with a p-value near zero.

59. Although the graph appears to have overlapping confidence intervals, a pairwise comparison reveals that all comparisons are statistically distinct from each other at a p-value of 0.05 or stricter. All linear pairwise combinations are shown in the appendix.

60. It once was that access to the entire database was quite expensive and law firms would buy subscriptions based on reporting regions. Larger corporate firms and law schools generally bought subscriptions to access the full database, but smaller firms would subscribe to their own region and sometimes a second region. With the pricing such that it is affordable to subscribe to the whole database, regional reporters are becoming less relevant when conducting legal research.

61. A plot showing the linear prediction of incoming citations across judicial professionalism can be found in the appendix to the article. app. fig. 7.

Figure 5. Interaction between Ideological Distance and Sharing a Border



To explore if and how regionalism might temper the effects of ideology, in Model 2 ideological distance is interacted with whether the citing and cited courts share a border. Further, the model controls for the interactions between ideological distance and whether the citing-cited courts are in the same reporting region. Figure 5 plots the interaction effects for sharing a border and ideological distance. This allows me to assess whether sharing a border moderates the effects of ideological distance on cross-court citation patterns. The top panel shows that sharing a border moderates the influence of ideology. In other words, a court would rather cite an ideologically distant court with which it shares a border than an ideologically distant court with which it does not share a border.⁶² This difference is statistically distinct until an ideological distance value of 0.7, at which point there is no difference in the predicted count of incoming citations when states share a border and when they do not. This is visually depicted in the bottom panel, showing where the confidence interval crosses the dashed zero line.

62. A comparison of endpoints shows a statistical difference for each line.

Figure 7. Interaction between Ideological Distance and Reporting Region

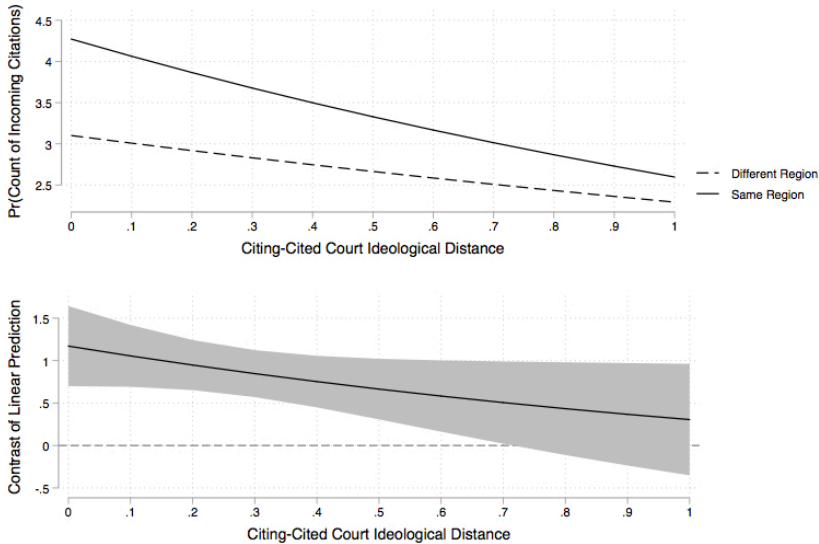


Figure 6 shows the interaction between ideological distance and reporting region. Focusing on the top panel, which shows the predicted counts, the results find that being in the same region moderates the influence of ideological distance. A court is more inclined to cite an ideologically distant court in the same reporting region than an ideologically distant court in a different region.⁶³ Again, looking at the bottom panel, this difference is statistically distinct until an ideological distance value of just over 0.7.

Assessing my two remaining hypotheses, Model 1 indicates that retention mechanisms play a central role in explaining lateral citations between state high courts. First, these findings show that sharing a retention mechanism increases the likelihood of cross-court citations. Specifically, when a citing-cited court pair are retained in a similar manner, the cited court is expected to see a 0.20-point increases in the number of incoming citations, compared to court dyads that do not share a mode of retention ($p < 0.05$). Focusing on how mode of retention influences incoming citations, as expected, reveals that courts with life or near-life tenure will see more incoming

63. A comparison of endpoints shows a statistical difference for each line. However, there is no statistical difference in the predicted number of incoming citations between courts at extreme ideological distances in the same reporting region and ideologically similar courts in different regions.

citations relative to courts retained through other mechanisms. Appointed courts have a predicted incoming citation count of 3.7.⁶⁴

Above, this article argued that transjudicial citations among state high courts are motivated by different measures of community—physical, ideological, and professional. Judges will look to, and take guidance from, peers who are similarly situated as themselves. The findings in Models 1 and 2 offer substantive support for my argument and expectations. Ultimately, state high court judges turn to and rely on fellow state supreme court precedent when they occupy similar spheres—whether they be geographical, ideological, or otherwise.

VI. DISCUSSION

The development of law and legal doctrine in the U.S. is frequently studied in a “top-down” fashion. Scholars are predominately interested in explaining how U.S. Supreme Court justices as well as how lower court judges treat and examine precedent.⁶⁵ Often excluded from this literature is the power state courts have in shaping legal doctrine and procedure. However, this research illustrates that state high courts are not isolated entities singularly explicating their state laws and constitutions. Instead, just as Caldeira found decades ago,⁶⁶ state high courts exist in a complex network of peers and look to their fellow state supreme court judges for insights into and justification for similar legal questions. Moreover, these findings suggest that state high courts—either consciously or not—have developed preferred legal communities; that is, when engaging in horizontal federalism, state courts of last resort are more likely to rely on their regional and ideological peers.

This analysis makes significant contributions to our understanding of lateral citation practices among state high courts. First, unlike previous studies, this study explored citation patterns in two years. This not only brings more data allowing for robust generalization but enables a fine-grained understanding of how these patterns have (or have not) changed, over time. Importantly, this research has affirmed that access to online information and

64. A pairwise comparison shows retention mechanisms are statistically distinct, except retention elections vs reappointments. These fail to prove to be statistically distinct with a p-value of 0.07. The appendix presents the pairwise comparisons, as well as the predicted counts for sharing and not sharing a retention mechanism.

65. Bartels, *supra* note 6, at 476; Sara C. Benesh & Malia Reddick, *Overruled: An Event History Analysis of Lower Court Reaction to Supreme Court Alteration of Precedent*, 64 J. OF POL. 534, 541 (2002); James H. Fowler & Sangick Jeon, *The Authority of Supreme Court Precedent*, 30 SOC. NETWORKS 16, 22 (2008); James F. Spriggs & Thomas G. Hansford, *Explaining the Overruling of US Supreme Court Precedent*, 63 THE J. OF POL. 1091, 1093 (2001). *See generally* THOMAS G. HANSFORD & JAMES F. SPRIGGS, *THE POLITICS OF PRECEDENT ON THE U.S. SUPREME COURT* (2006).

66. Caldeira, *Transmission*, *supra* note 4, at 190-92.

expansive legal research databases has muted the influence of legal reporting regions on citation practices.

Second, this research corroborates that ideology is an important predictor of judicial behavior. State high courts are more inclined to cite from peer courts that are ideologically similar. This has important implications for explaining why these patterns exist. The literature on policy development is frequently interested in teasing out whether the act of looking to peers is motivated by a true desire to learn or instead a justification for actions. Although it could be argued that looking to peer courts is at its essence a type of learning, these results suggest that judges look to peers as a means of justifying their decisions. The preference to cite ideologically distant courts in the same reporting region suggests that judges look to their ideological allies primarily for jurisprudential justification.

Lastly, these results find that judicial retention mechanisms have important effects on the willingness to cite laterally. Judges prefer to cite from fellow judges who share a similar mode of retention. Additionally, courts where judges are appointed and serve for life (or near-life) tenures have a higher incoming citation count than courts retained through other mechanisms. This suggests that judges on these benches produce persuasive and authoritative decisions.⁶⁷ Finding that retention mechanisms influence transjudicial citation patterns offers further evidence that rules surrounding a judge's continuance on the bench structures judicial behavior.

Ultimately, this research reinforces that citation patterns are best understood as reflections of robust legal communities among state high courts. Combining two years of data provide a useful dataset for future exploration of judicial decision making in state courts of last resort. Exploring citation behavior in more recent years uncovers how technological changes and cultural ties play important roles in decisions to cite laterally. These are more than communications between state supreme courts; they are the realization of shared values—cultural, ideological, and structural.

67. Choi, Gulati, & Posner, *supra* note 43, at 1322.

VII. APPENDIX

Table 1. Total Number of Published Opinions by State High Courts

State Court	Published Opinions 1995	Published Opinions 2010	Total Published Opinions
AK	148	134	282
AL	473	228	701
AR	392	273	665
AZ	95	46	141
CA	109	110	219
CO	390	146	536
CT	168	140	308
DE	418	123	541
FL	568	163	731
GA	623	903	1526
HI	85	58	143
IA	262	120	382
ID	139	135	274
IL	129	85	214
IN	152	160	312
KS	148	120	268
KY	134	234	368
LA	123	76	199
MA	213	161	374
MD	147	151	298
ME	285	141	426
MI	81	187	268
MN	767	780	1547
MO	98	79	177
MS	288	194	482
MT	282	376	658
NC	147	63	210
ND	209	252	461
NE	239	149	388

NH	193	213	406
NJ	114	95	209
NM	83	50	133
NV	185	274	459
NY	275	175	450
OH	416	332	748
OK CA	77	33	110
OK SC	149	178	327
OR	94	77	171
PA	312	107	419
RI	191	97	288
SC	207	206	413
SD	139	105	244
TN	92	70	162
TX CA	113	87	200
TX SC	78	64	142
UT	80	64	144
VA	140	110	250
VT	140	118	258
WA	119	135	254
WI	94	74	168
WV	257	150	407
WY	213	164	377
Total	11,073	8,765	19,838

Figure 1. Histogram Showing the Distribution of Incoming Citations

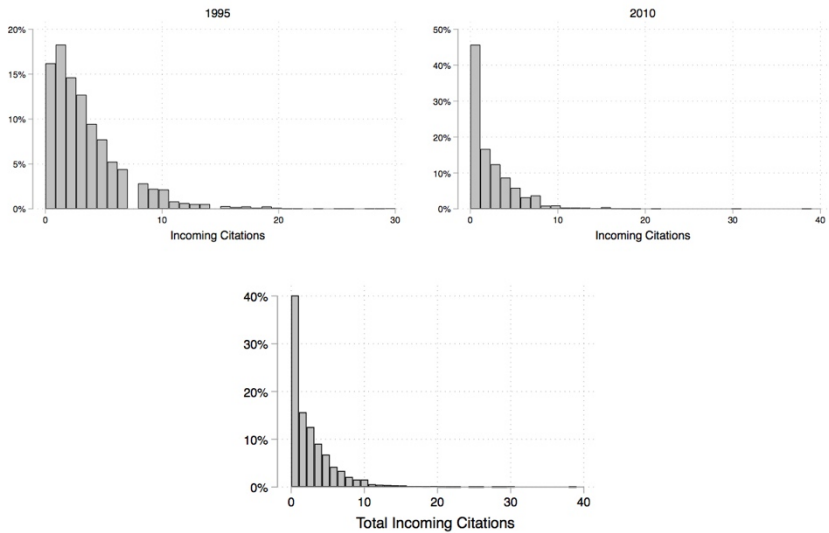
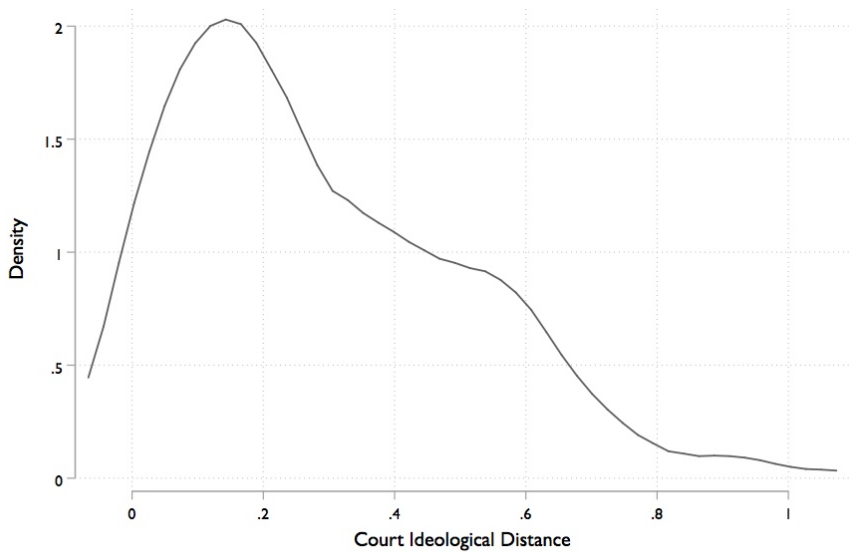
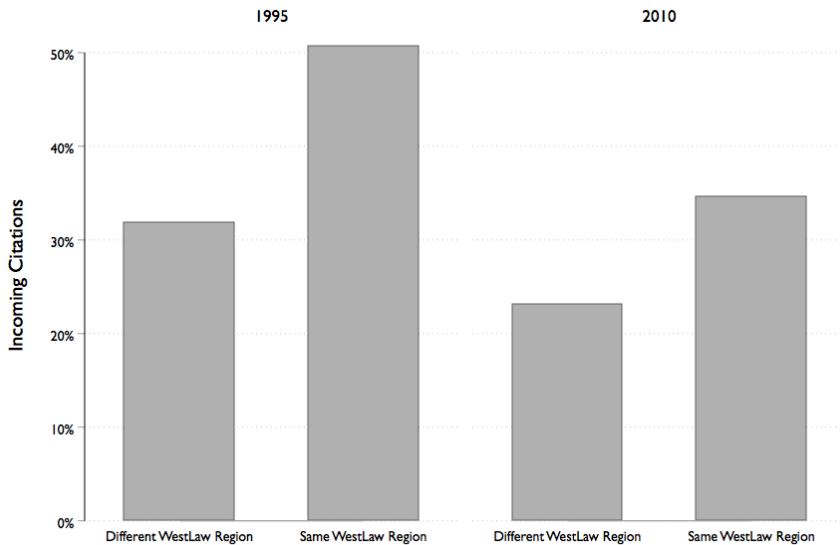


Figure 2. Distribution of Observations over Court Ideological Distance



Focusing on ideological distance between state high courts, figure 3 shows that cited court dyads tend to align ideologically with most observations clustering around low levels of ideological difference.

Figure 3. Percent of incoming citations by Year over Reporting Region



This figure compares the percent of incoming citations when state dyads occupy and do not occupy a Reporting Region. This is further subset by year to show the changes in patterns from 1995 to 2010. A difference of means test comparing incoming citations for sharing a Region in 1995 and 2010 uncovers a statistically significant difference ($p < 0$).

Figure 4. Incoming Citations over Judicial Retention Mechanisms

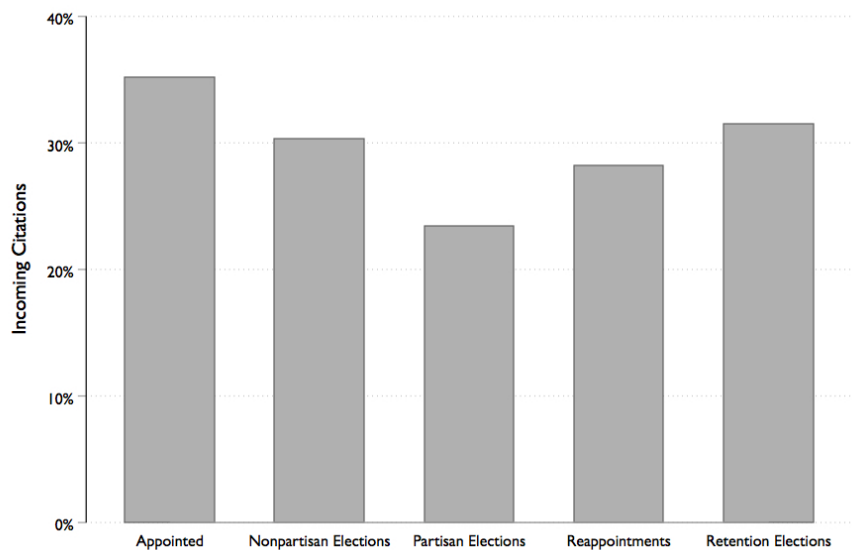
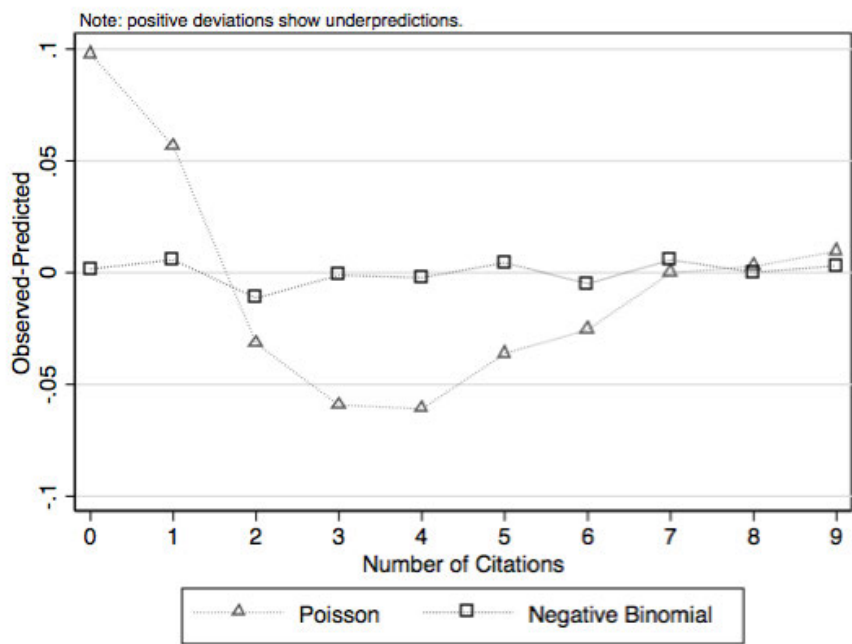


Figure 5. Diagnostic Test: Using Negative Binomial Regression over Poisson Modeling



Statistical comparison between the Poisson and Negative Binomial models for count data. As can be seen from the graphic, the negative binomial has greater predictive power compared to the Poisson, given the structure of these data.

Table 2. Testing the Conditional and Unconditional Effects on Cross-Court Citations

	Model 1 Unconditional Ef- fects	Model 2 Conditional Effects
Distance between State Capitols	-0.01* (0.00)	-0.01* (0.00)
Citing-Cited Court Share a Border	0.30* (0.04)	0.36* (0.07)
Same WestLaw Report- ing Region	0.27* (0.03)	0.35* (0.06)
Year	-0.37* (0.02)	-0.35* (0.03)
Court Professionalism	0.28* (0.10)	0.28* (0.10)
Citing-Cited Court Ide- ological Distance	-0.34* (0.07)	-0.28* (0.07)
Same Retention Mech- anism	0.07* (0.03)	0.07* (0.03)
Nonpartisan Elections	-0.13* (0.05)	-0.12* (0.05)
Partisan elections	-0.44* (0.07)	-0.43* (0.07)
Reappointments	-0.26* (0.05)	-0.26* (0.05)
Retention Election	-0.20* (0.05)	-0.20* (0.05)
Cited Court Ideology	-0.15* (0.03)	-0.16* (0.03)
Cited State Population	0.02* (0.00)	0.02* (0.00)
Same WestLaw Report- ing Region \times Year	-	-0.07 (0.06)

Same WestLaw Report- ing Region \times Citing- Cited Court Ideological Distance	-	-0.20 (0.17)
Citing-Cited Court Share a Border \times Cit- ing-Cited Court Ideo- logical Distance		-0.22 (0.20)
Intercept	1.08 (0.11)	1.05 (0.11)
Inalpha	-1.23* (0.05)	-1.23* (0.05)
Variance Constant (Citing State)	0.30* (0.06)	0.30* (0.06)
Observations	5304	5304

Note: Random effects negative binomial coefficients * $p < 0.05$, or stricter.
Baseline retention mechanism is Appointed Judiciaries.

**Table 3. Pairwise Comparison of interaction effects for
Year and Reporting Region**

Comparison	Contrast
1995 at Same vs 1995 at Different	1.20* (0.21)
2010 at Different vs 1995 at Different	-1.01* (0.11)
2010 at Same vs 1995 at Different	-0.40* (0.14)

2010 at Different vs 1995 at Same	-2.20* (0.25)
2010 at Same vs 1995 at Same	-1.59* (0.24)
2010 at Same vs 2010 at Different	0.61* (0.14)

Pairwise comparisons of predictive margins. *p < 0.05

Figure 6. Distribution of Cited Courts over Court Professionalism

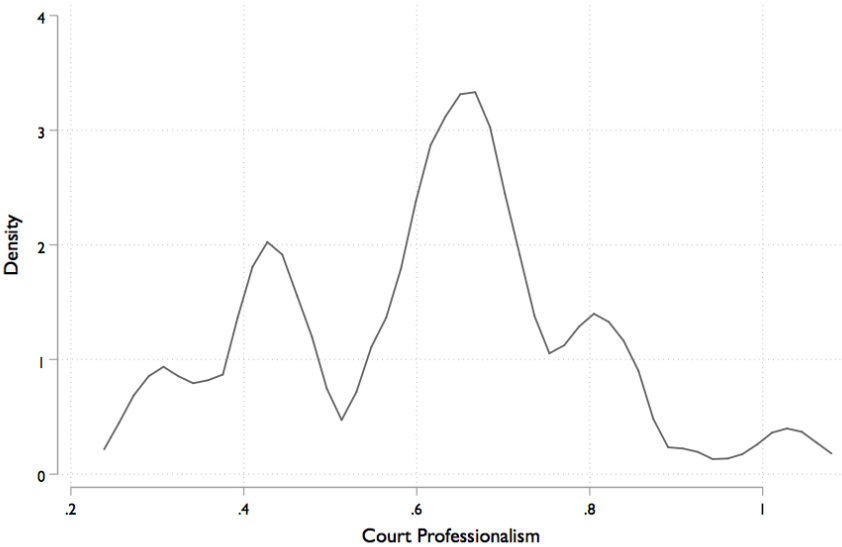


Figure 7. Predicted Incoming Citations over Levels of Court Professionalism



Table 3. Distribution of Courts by Judicial Retention Mechanism

Mode of Retention	Number of Courts	Percentage
Appointment	3	5.77
Nonpartisan Elections	15	28.85
Partisan Elections	5	9.62
Reappointment	9	17.31
Retention Elections	20	38.46
Total	52	100

Figure 8. Predicted Count of Incoming Citations for Judicial Retention Mechanisms

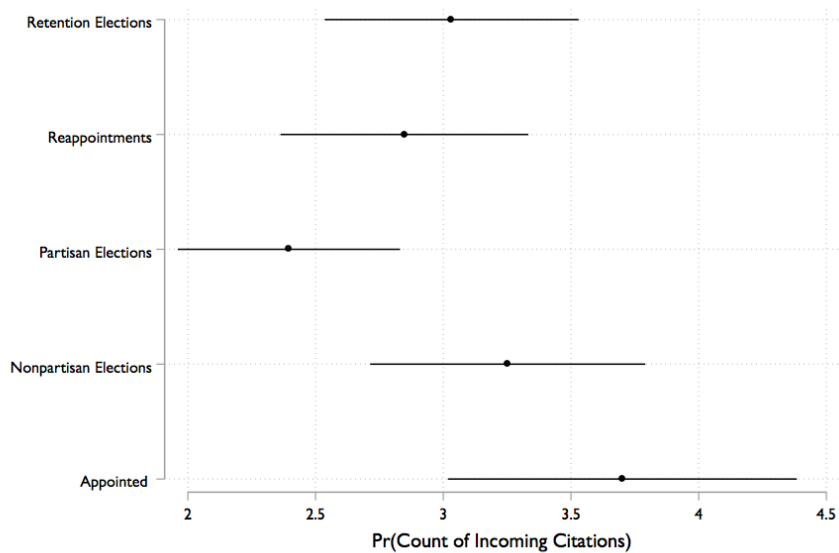
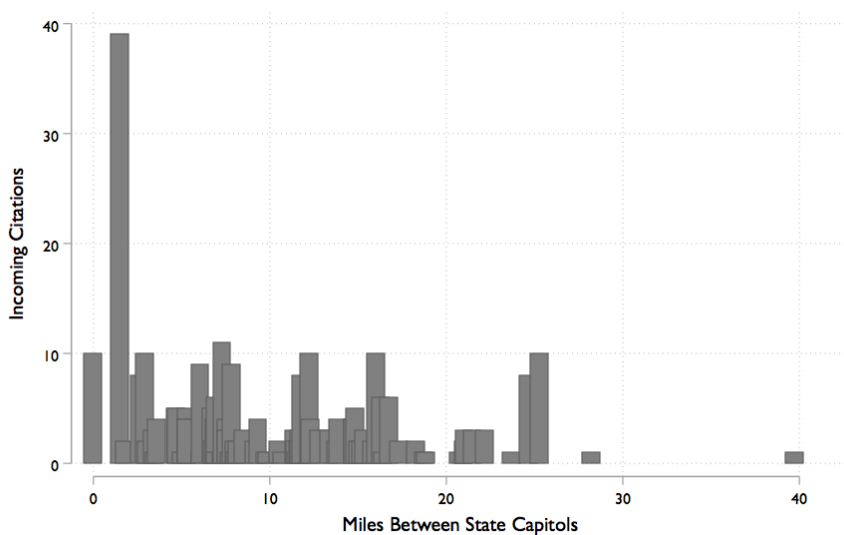


Table 5. Pairwise Comparison among Retention Mechanisms

Comparison	Contrast
Nonpartisan Elections vs Appointed	-0.45* (0.19)
Partisan Elections vs Appointed	-1.31* (0.24)
Reappointments vs Appointed	-0.85* (0.20)
Retention Elections vs Appointed	-0.67* (0.19)
Partisan Elections vs Nonpartisan Elections	-0.86* (0.14)
Reappointments vs Nonpartisan Elections	-0.40* (0.12)
Retention Elections vs Nonpartisan Elections	-0.22* (0.09)
Reappointments vs Partisan Elections	0.45* (0.15)
Retention elections vs Partisan Elections	0.64* (0.13)
Retention Elections vs Reappointments	0.19* (0.10)
Pairwise comparisons of predictive margins. *p < 0.05	

Figure 9. Number of Incoming Citations Relative to Miles between State Capitols



Miles = $x/100$