THE ARIZONA EMPLOYMENT PROTECTION ACT: ANOTHER "WRONGFUL DISCHARGE STATUTE" THAT BENEFITS EMPLOYERS?

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I. INTRODUCTION

In 1996, the state of Arizona passed a law known as the Employment Protection Act (EPA or the Act).[1] The EPA can be termed a wrongful discharge statute because it allows employees to recover for wrongful termination or discharge under certain circumstances. Initially, one might expect that such a law would be detrimental to employers because in the absence of such a law, they have the freedom to discharge employees at will, with minor exceptions. On the other hand, there are reasons to believe that the

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1. 1996 Ariz. Sess. Laws ch. 140 § 3 (codified at ARIZ. REV. STAT. ANN. § 23-1501 (2007)).

EPA actually benefited employers. Even though the EPA places limits on employers' freedom to discharge employees, the Act is actually less favorable to employees than the common law in Arizona at the time it was passed. This article will investigate whether the EPA benefited employers by using event study methodology, a technique that looks at the impact of events on firms by looking at how firm stock prices responded to that event. A finding that stock prices rose in response to the passage of the EPA (the event) will indicate that the Act benefited employers in Arizona.

Prior to enactment of the EPA in Arizona, the State of Montana passed a wrongful discharge statute known as the Wrongful Discharge from Employment Act (WDFEA) in 1987.[2] In a prior study, I used the same methodology to show that the WDFEA benefited employers in Montana.[3] There are reasons to expect that the EPA would have been more beneficial for employers in Arizona than the WDFEA was for employers in Montana, but there are other reasons to expect the opposite result. Therefore, another objective of this article will be to compare the effects of the EPA with the effects of the WDFEA with event study methodology in an attempt to assess which law was more beneficial for employers.

The issue being investigated in this article is interesting for several reasons. First, the results will help address the claim by Alan Kruger that unjust dismissal legislation is likely to be enacted in states where such legislation will benefit employers.[4] In addition, the issue is interesting because, as will be discussed in more detail below, there are credible arguments why the EPA would have been more beneficial for employers than the WDFEA but there are equally compelling arguments for the opposite result. Briefly, the provisions of the EPA appear to be better for employers than the provisions of the WDFEA but the WDFEA did more to change the common law then did the EPA. Therefore, these results will help us assess whether the specific provisions of the statute are more important than the way they changed the common law at the time or vice versa.

The rest of this article proceeds as follows: a brief description of the employment-at-will doctrine is given, followed by a discussion of employment at will in Arizona at the time the EPA was passed. The

2. 1987 Mont. Laws ch. 641 §1 (codified at MONT. CODE ANN. § 39-2-901 (2007)).

3. Steven E. Abraham, *Can a Wrongful Discharge Statute Really Benefit Employers?*, 37 INDUS. REL. 499 (1998).

4. Alan B. Krueger, *The Evolution of Unjust-Dismissal Legislation in the United States*, 44 INDUS. & LAB. REL. REV. 644 (1991).

next section discusses the EPA and the ensuing section discusses which of the two laws (the EPA or the WDFEA) was likely to have benefited employers more. Following these descriptive sections, the empirical methodology for testing the effects of the EPA and for comparing the two laws is explained. The final section discusses the results and concludes.

II. THE EMPLOYMENT-AT-WILL DOCTRINE

The majority of employment relationships in the United States are governed by the employment-at-will doctrine. According to this doctrine, an employer is free to discharge an employee "for good cause or for no cause, or even for bad cause without thereby being guilty of an unlawful act per se."[5] In other words, the employment-at-will doctrine gives employers the right to discharge an employee for almost any reason, as long as that discharge does not violate a specific statute, a personal contract, or a collective bargaining agreement.[6]

Over the years, the courts in a number of states have created three branches of common law inroads on the employment-at-will doctrine:

(1) The wrongful discharge for violation of public policy theory holds that, if an employee's discharge compromised a public policy that the state wishes to uphold, the discharge was wrongful and the employee is entitled to recover damages.[7] Examples of a public policy that may trigger wrongful discharge liability in these states include the discharge of an employee for refusing to violate the law,[8] for

5. Payne v. W. & Atl. R.R.. Co., 81 Tenn. 507, 518-19 (1884).

6. The review of employment-at-will presented here is cursory; it is assumed that the reader is familiar with the doctrine and its exceptions. Many works that treat employment at will in great depth have been written, and those wishing a more detailed treatment of the doctrine are encouraged to consult one of those works. *See, e.g.*, Michael A. DiSabatino, Annotation, *Modern Status of Rule that Employer May Discharge At-Will Employee for any Reason*, 12 A.L.R. 4th 544 (1982); Theodore J. St. Antoine, *A Seed Germinates: Unjust Discharge Reform Heads Toward Full Flower*, 67 NEB. L. REV. 56 (1988); Clyde W. Summers, *Individual Protection Against Unjust Dismissal: Time for a Statute*, 62 VA. L. REV. 481 (1976)).

7. *See, e.g.*, Ray v. Nampa Sch. Dist. No. 131, 814 P.2d 17, 20 (Idaho 1991) (an at-will employee "may be terminated at any time for any or no reason which does not violate public policy"); Murphy v. City of Topeka, 630 P.2d 186, 192 (Kan. App. 1981) ("[t]o allow an employer to coerce employees in the free exercise of their rights [under Workers Compensation Act] would substantially subvert the purpose of the act."): Suchodolski v. Mich. Consol. Gas Co., 316 N.W.2d 710, 711 (Mich. 1982) (even in an at-will employment relationship, "some grounds for discharging an employee are so contrary to public policy as to be actionable").

8. *See, e.g.*, Peterman v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers, 344 P.2d 25, 27-28 (Cal. App. 1959) (employer wrongfully discharged employee because employee refused to commit perjury); Russ v. Pension Consultants, Co., 538 N.E.2d 693, 697 (Ill. App. 1st Dist. 1989) (employer wrongfully discharged employee because employee refused

exercising a legal right,[9] for satisfying a legal obligation,[10] or for taking other actions that are deemed to be in the public interest (e.g., warning the public about safety hazards).[11] Not all states have adopted this exception and those that have differ on the definition of public policy; in more restrictive states, public policy can be found only in the state constitution and state statutes while in more permissive states, the sources of public policy are broader.[12]

(2) The implied contract theory holds that written or oral statements by an employer can create an implied contract limiting the

to falsify federal tax records); Trombetta v. Detroit, Toledo & Ironton R. Co., 265 N.W.2d 385, 388 (Mich. App. 1978) (if employer discharged employee because employee refused to alter the results of a pollution control test that state law required) employer would be liable for wrongful discharge in violation of public policy); Coman v. Thomas Mfg. Co., 381 S.E.2d 445, 448 (N.C. 1989) (employer wrongfully discharged employee in violation of public policy because employee refused to falsify logs that federal regulations required long-distance driver to maintain).

9. *See, e.g.*, Perks v. Firestone Tire & Rubber Co., 611 F.2d 1363, 1366 (3d Cir. 1979) (public policy is violated when an employer terminates an employee for refusing to take a statutorily prohibited polygraph test); Fulford, v. Burndy Corp., 623 F. Supp. 78, 80-81 (D.N.H. 1985) (public policy is violated when an employee is fired for hiring an attorney to pursue a claim against his employer); Frampton v. Cent. Ind. Gas Co., 297 N.E.2d 425, 428 (Ind. 1973) (employer wrongfully terminated employee because employee filed a claim under Indiana's Workmen's Compensation Act).

10. *See, e.g.*, Wiskotoni v. Mich. Nat'l Bank-West, 716 F.2d 378, 382-84 (6th Cir. 1983) (public policy is violated if an employer discharges an employee because the employee has been summoned to appear and testify before a grand jury); Norfolk S. Ry. Co. v. Johnson, 740 So.2d 392, 396 (Ala. 1999) (public policy is violated if an employer terminates an employee solely because he serves on a jury); Parnar v. Americana Hotels, Inc., 652 P.2d 625, 631 (Haw. 1982) (public policy is violated if an employer induces an employee to leave the jurisdiction and prevents her testimony before a grand jury).

11. *See, e.g.*, Woodson v. AMF Leisureland Centers, Inc., 842 F.2d 699, 703-04 (3d Cir. 1988) (employer wrongfully terminated waitress for refusing to serve a visibly intoxicated person); Green v. Ralee Eng'g Co., 960 P.2d 1046, 1050 (Cal. 1998) (employer wrongfully discharged aircraft parts inspector for objecting to shipping defective airplane parts to airplane manufacturers); Boyle v. Vista Eyewear, Inc., 700 S.W.2d 859, 878 (Mo. App. W.D. 1985) (employer wrongfully terminated employee when she refused to obey her employer's orders to manufacture eyeglasses that did not meet specifications issued by the FDA).

12. Some courts have declined to recognize the public policy exception to the employment-at-will doctrine. *See, e.g.*, Hinrichs v. Tranquilaire Hosp. 352 So.2d 1130, 1132 (Ala. 1977) (strict adherence to the employment at will doctrine in accordance with precedent and the rule of stare decisis); Murphy v. Am. Home Prods. Corp., 448 N.E.2d 86 (N.Y. 1983) (legislature is the appropriate institution to alter the employment at will doctrine). Other courts have accepted a narrow public policy exception to the employment at will doctrine. *See, e.g.*, Sequoia Ins. Co. v. Super. Ct., 16 Cal. Rptr. 2d 888, 893 (App. 1993) (public policy must be based on policies delineated by a statutory or constitutional provision and must be described in detail to allow the employer to know the fundamental public policies expressed in that law); Brockmeyer v. Dun & Bradstreet, 335 N.W.2d 834, 89 (Wis. 1983) (while recognizing a public policy exception to the employment at-will doctrine, plaintiff is limited to contract damages and must confine such claims to statutory or constitutional violations). Still other courts have accepted a broader public policy exception to the employment-at-will doctrine. *See, e.g,*, Pierce v. Ortho Pharm. Corp., 417 A.2d 505, 512 (N.J. 1980) ("[t]he sources of public policy [which may limit the employer's right of discharge] include legislation; administrative rules, regulation, or decision; and judicial decisions. . . [and] a professional code of ethics.).

employer's right to discharge employees.[13] For example, if a company personnel manual states that employees will not be discharged without good cause or grants employees the right to challenge their discharges in some way, those promises inure to the employees' benefit and an employee can challenge a discharge in violation of those promises.[14] In other cases, oral promises (e.g., a promise not to fire an employee without good cause) are enforceable under this exception.[15] As with the wrongful discharge exception, not all states have adopted this exception, and those that have differ on the extent to which oral promises or promises contained in personnel manuals will be enforced.[16]

(3) An implied covenant of good faith and fair dealing exists in employment relationships, and this covenant is violated if an employee can establish that his or her discharge was in bad faith (e.g., an employer firing an employee for refusing to go on a date or employer firing an employee to avoid having to pay a large commission that would become due on a certain date).[17] Of the three

13. *See, e.g.*, Huey v. Honeywell, Inc., 82 F.3d 327, 331 (9th Cir. 1996) (an exception to the employment at will doctrine based on contract law allows an at-will employee to recover for wrongful discharge upon proof of an implied-in-fact promise of employment for a specific duration); Scott v. Pac. Gas & Elec. Co., 904 P.2d 834, 838-39 (Cal. 1995) (an implied-in-fact contract term not to terminate an employee without good cause, based on the employer's course of conduct and oral representations, overcomes the statutory presumption that employment for an indefinite period is terminable at will).

14. *See, e.g.*, Jones v. Lake Park Care Ctr., Inc., 569 N.W.2d 369, 376. (Iowa 1997) (employer breached employment contract created by employee handbook when the employer summarily discharged employee rather than providing written warning as provided in the handbook); Woolley v. Hoffmann-LaRoche, Inc., 491 A.2d 1257, 1258 (N.J. 1985), *modified*, 499 A.2d 515 (N.J. 1985) (absent a clear and prominent disclaimer, an implied promise contained in an employment manual that an employee will be fired only for cause was enforceable against employer even when employment was for an indefinite term and would otherwise be terminable at will).

15. *See, e.g.*, Pugh v. See's Candies, Inc., 171 Cal. Rptr. 917, 927 (App. 1981) (holding that the employer created a contract by telling employee "[i]f you are loyal to See's and do a good job, your future is secure," and thus could not terminate employee at will); Rooney v. Tyson, 697 N.E.2d 571, 572 (N.Y. 1998) (holding that the legal guardian of a minor boxer created an employment contract by telling plaintiff that he was to be the boxer's trainer "for as long as [he] fights professional" and would be paid ten percent of boxer's earnings).

16. *See, e.g.*, Ball v. Ark. Dept. of Cmty. Punishment, 10 S.W.3d 873, 877 (Ark. 2000) (implied provision against the employer's right to terminate is not enough to create a contract of employment); Miller v. Pepsi-Cola Bottling Co., 259 Cal. Rptr. 56, 59 (App. 1989) (summary judgment for employer was granted where the only evidence of an implied contract was the employee's longevity of service, regular salary increases, and promotions); Calleon v. Miyagi, 876 P.2d 1278, 1284 (Haw. 1994) (expressing doubt about "subjecting" each discharge to judicial incursions into the amorphous concept of bad faith); Taliento v. Portland W. Neighborhood Planning Council, 705 A.2d 696, 699 (Me. 1997) (only exception to employer's common law right to discharge employee at will is a contract that expressly restricts such right and clearly limits employer to enumerated method of terminating employment).

17. *See, e.g.*, Prout v. Sears, Roebuck & Co., 772 P.2d 288, 291 (Mont. 1989) (under

exceptions, the implied covenant exception has been adopted by the smallest number of states.

Commencing with Lawrence Blades,[18] many have called for the employment-at-will doctrine to be abrogated and for employees to be protected from arbitrary discharges. Some have urged the courts to continue to create judicial inroads on the employment-at-will doctrine while others have advocated state legislators to enact wrongful discharge legislation that would protect employees from the effects of employment at will.[19] A number of different statutory protection schemes have been advanced, but what virtually all of these schemes have in common is that they would protect employees from employers' virtually unfettered right to discharge employees at will. In fact, the "Model Employment Termination Act" approved by the National Conference of Commissioners on Uniform State Laws in 1991 requires good cause for any employee to be discharged; however, no state has adopted the Model Act.[20]

The states were not quick to respond to calls for wrongful discharge legislation to be enacted. While a number of states passed whistleblower legislation that protects employees who report certain illegal acts to appropriate authorities,[21] it was not until 1987 that Montana became the first state to pass a wrongful discharge law known as the WDFEA.[22] Several papers have examined the impact of the WDFEA since its introduction, and all of these papers show that

Montana law, an employer wrongfully discharges an employee if the discharge is in violation of the implied covenant of good faith and fair dealing); Lopez v. Bulova Watch Co., Inc., 582 F. Supp. 755, 767-68 (D.R.I. 1984) (under Rhode Island law, an employee may state a claim for breach of implied covenant of good faith and fair dealing); *compare* Dykes v. DePuy, Inc., 140 F.3d 31, 40 (1st Cir. 1998) (under Indiana law, there is no general implied duty of good faith and fair dealing in at-will employment contracts); McCormick v. Sears, Roebuck & Co., 712 F. Supp. 1284, 1289 (W.D. Mich. 1989) (under Michigan law, no implied covenant of good faith and fair dealing exists in the employment arena); Jeffers v. Bishop Clarkson Mem. Hosp., 387 N.W.2d 692, 695 (Neb. 1986) (under Nebraska law, there is no implied covenant of good faith or fair dealing in employment termination, except in cases where employee is deprived of constitutional or statutory rights or where contractual agreements guarantee employees many not be fired without just cause).

18. Lawrence E. Blades, *Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power*, 67 COLUM. L. REV. 1404, 1413-15 (1967).

19. *See, e.g.*, Michael Jordan, *Employment-at-Will in Kentucky: "There Ought to be a Law"*, 20 N. KY. L. REV. 785 (1993); Gary Minda & Katie R. Rabb, *Time for a Unjust Dismissal Statute in New York*, 54 BROOK. L. REV. 1137, 1188-1209 (1989); Clyde W. Summers, *Individual Protection Against Unjust Dismissal: Time for a Statute*, 62 VA. L. REV. 481, 519-31 (1976).

20. MODEL EMPLOYMENT TERMINATION ACT (1991), *reprinted in* 7A U.L.A. 307.

21. *See, e.g.*, ALA. CODE § 36-25-24 (2007) (public employees only); MINN. STAT. § 181.932 (2006); N.Y. LABOR LAW § 740 (McKinney 2006); W.VA. CODE § 6C-1-3 (2007); 740 ILL. COMP. STAT. 174/1-40 (2007).

22. 1987 Mont. Laws ch. 641 §1 (codified at MONT. CODE ANN. § 39-2-901 (2007)).

the WDFEA wound up benefiting employers rather than employees. My prior study showed that shareholder returns to Montana firms rose 8.1 percent in response to the passage of that law.[23] In other words, the expected future profitability of publicly-traded firms in Montana rose in response to the law's passage. Marc Jarsulic, for example, showed that, compared to the common law in Montana from 1983-1987, the WDFEA reduced the costs of wrongful discharge lawsuits for employers.[24] Finally, Bradley Ewing, Charles North, and Beck Taylor showed that, while one of the most pro-employee employment law cases prior to the WDFEA reduced annual employment growth in Montana by 0.46 percentage points, the WDFEA restored the original growth rate.[25]

These results for the WDFEA were not surprising, given the history of the common law in Montana and given the legislative history of the Act itself. In fact, the finding that the WDFEA benefited employers in Montana is consistent with the argument advanced by Alan Krueger that unjust dismissal legislation is most likely to be introduced in states where the courts have departed furthest from the employment-at-will doctrine and offered the greatest protection to employees.[26] The next section will discuss the common law in Arizona that led to the passage of the EPA in 1996.

III. EMPLOYMENT-AT-WILL IN ARIZONA

The Arizona Courts followed the employment-at-will doctrine and allowed employers to discharge employees at their discretion until 1984. Then, in *Leikvold v. Valley Community Hospital*[27] the Arizona Supreme Court adopted the implied contract exception to the employment-at-will doctrine and ruled that, in appropriate cases, a company's personnel manual may become a part of an employee's employment contract with the employer, even if the parties did not have a specific written or oral contract between them. Then, perhaps the most significant legal development in Arizona occurred in 1985, in *Wagenseller v. Scottsdale Memorial Hospital.*[28] In *Wagenseller*, the

23. Abraham, *supra* note 3, at 512.

24. Marc Jarsulsic, *Protecting Workers from Wrongful Discharge: Montana's Experience with Tort and Statutory Regimes*, 3 EMP. RTS. & EMP. POL'Y J. 105, 119-21 (1999).

25. Bradley T. Ewing et al., *The Employment Effects of a "Good Cause" Discharge Standard in Montana*, 59 INDUS. & LAB. REL. REV. 17, 22-32 (2005).

26. Krueger, *supra* note 4, at 653-59.

27. 688 P.2d 170, 172 (Ariz. 1984).

28. 710 P.2d 1025, 1033 (Ariz. 1985).

Arizona Supreme Court adopted the wrongful discharge exception to the employment-at-will doctrine, holding that employers may not discharge employees for reasons that violate public policy.[29] What was especially significant about *Wagenseller* was that the definition of public policy adopted by the court was quite broad, meaning that there would be a variety of restrictions on employers' right to discharge employees. In an oft-quoted passage from *Wagenseller*, the court stated: "in the absence of contractual provision . . . an employee may be fired for good cause or for no cause, but not for 'bad' cause."[30] What concerned employers were that they had no way to predict how the courts would define "bad cause."

Another significant Arizona case was *Broomfield v. Lundell*,[31] in which an Arizona court of appeals held that an employee could maintain a common law wrongful discharge lawsuit under the *Wagenseller* reasoning even though the public policy allegedly violated by her discharge was sex discrimination, and sex discrimination was also covered by the Arizona Civil Rights Act.[32] In other words, even though the employee had a statutory remedy to contest her discharge under the Arizona Civil Rights Act, the court allowed her to pursue a common law remedy under the *Wagenseller* rationale. This entitled her to many procedural and monetary advantages and presented even greater risks for employers. Throughout the rest of the 1980s and early 1990s, the Arizona courts recognized common law exceptions to the employment-at-will doctrine and Arizona became an extremely "pro-employee" state in this legal area.[33]

In response, the Arizona Chamber of Commerce spearheaded a drive to restore employment-at-will in Arizona throughout the early 1990s.[34] The Chamber's efforts actually began in 1992 with the

29. *Id.* at 1033-35.

30. *Id.* at 1033.

31. 767 P.2d 697 (Ariz. App. 1989).

32. *Id.* at 703.

33. *See* Jenny Clevenger, Note, *Arizona's Employment Protection Act: Drawing a Line in the Sand between the Court and the Legislature*, 29 ARIZ. ST. L.J.605 (1997); Marzetta Jones, Note, *The 1996 Arizona Employment Protection Act: A Return to the Employment-at-Will Doctrine*, 39 ARIZ. L. REV. 1139 (1997); David F. Gomez, *The 1996 Employment Protection Act and the Abolition of Common Law Wrongful Termination in Arizona*, ARIZ. ATT'Y, Sept. 1996, at 36, 39.

34. Much of the information for this section of the paper comes from an interview with David Selden, an Arizona attorney who was very involved with the legislative efforts to pass the EPA. Notes of the interview with Mr. Selden are on file with the author. *See also* Clevenger, *supra* note 33, at 608-09; Jones, *supra* note 33, at 1149 (citing ARIZ. CHAMBER OF COMMERCE, GUIDE TO ARIZ. & FED. EMP. LAW I-2 (Sept. 1996)).

preparation of a bill that would be introduced in the Arizona Senate on February 5, 1993 as SB 1315. That bill had many of the same provisions as the EPA and even though it passed the Senate on March 11, 1993 and was transferred to the House, it died in committee. On January 31, 1995, another bill similar to the EPA – SB 1326 – was introduced in the Arizona Senate. Even though SB 1326 passed the Senate and went to the House, the Chamber of Commerce felt that it was one vote short of the votes needed to pass the house and pulled the bill.

This led to the introduction of SB 1386 in the Arizona Senate on January 30, 1996. Perhaps the clearest indication of the intent of SB 1386 is the preamble, which states:

> The Arizona supreme court in the case of *Wagenseller v. Scottsdale Memorial Hospital*, 147 Ariz. 370, 710 P.2d 1025 (1985) (en banc), held that an employer may be held liable for civil damages if such employer discharges from employment an employee for a reason that is against the public policy of this state. The court also held that it had the independent authority to determine what actions of the employer violated the public policy of this state. The legislature affirms that an employer may be held liable for civil damages in the event it discharges from employment an employee for a reason that is against the public policy of this state. However, public policy is expressly determined by the legislature in the form of statutory provisions. While courts interpret the common law in accordance with Arizona Revised Statutes section 1-201, they are not authorized to establish a cause of action in connection with specific acts or omissions that constitute a violation of the public policy of this state.[35]

Jenny Clevenger and David Gomez give further evidence of how the Act was introduced and passed for the benefit of employers.[36] The next section discusses the EPA, with specific reference to how it benefited employers in Arizona.

IV. THE EPA

The EPA does much to restore the employment-at-will doctrine in Arizona. In fact, the title of Marzetta Jones' note in the Arizona Law Review is "The 1996 Arizona Employment Protection Act: A Return to the Employment-at-Will Doctrine."[37] Others have

35. 1996 Ariz. Sess. Laws ch. 140 § 1 ¶ E (codified at ARIZ. REV. STAT. ANN. § 23-1501 (2007)).

36. Gomez, *supra* note 33, at 36-37; Clevenger, *supra* note 33, at 614-15.

37. Jones, *supra* note 33, at 1139.

discussed the EPA in depth and readers wishing an in-depth discussion of the Act are encouraged to consult those works.[38] Its features will be summarized here. First, the Act specifically states that employment in Arizona is at will, unless the parties have reached a *specific, written agreement* to the contrary.[39] This negates employees' ability to utilize the implied contract theory adopted by the court in *Leikvold*. In addition, the public policy theory discussed above is also greatly restricted. The Act specifically lists sources of public policy and only allows public policy claims based on the Arizona Constitution or Arizona statutes.[40] In other words, wrongful discharge claims may not be based on federal or local law or generalized pronouncements by the courts. This restricts the broad definition of public policy announced by the *Wagenseller* court. It also negates employees' ability to claim successfully that they were discharged in bad faith in violation of an implied covenant of good faith and fair dealing.[41] In addition, the Act overturned the *Broomfield* case discussed above by stating that, when a statute provides employees with remedies for its violation, employees are limited to those remedies; they may not bring a common law wrongful discharge lawsuit based on the public policy contained in the statute.[42] Finally, the Act reduces the amount of time an employee has to bring a claim for breach of an employment contract or wrongful termination to one year.[43] Prior to the Act, an employee had two years to bring a wrongful termination claim and either three or six years to bring a breach of contract claim, depending on whether the contract was oral or written.[44]

Nevertheless, the Act did contain some benefits for employees, as compared to employment at will. First, while the definition of public policy was greatly restricted from the common law, the Act did retain employees' right to maintain a wrongful discharge lawsuit. In other words, the Act did place some limits on employers' ability to discharge employees at will. In addition, the Act also amended the Arizona Civil Rights Act to cover sexual harassment claims of employees working at small businesses. Prior to the Act, only

38. *See* Clevenger, *supra* note 33; Jones, *supra* note 33; Gomez, *supra* note 33.
39. ARIZ. REV. STAT. ANN. § 23-1501(2) (2007) (emphasis added).
40. *Id.* § 23-1501(3)(b).
41. *Id.*
42. *Id.*
43. ARIZ. REV. STAT. ANN. § 12-541 (2007).
44. Gomez, *supra* note 33, at 39.

employers with fifteen or more employees were subject to the Arizona Civil Rights Act.[45] Now, with regard to sexual harassment claims, "employer" means "a person who has one or more employees in the current or preceding calendar year."[46] Finally, the Act protects private employees who engage in "whistleblowing" activities. For the first time, the Arizona Legislature provided protection to whistleblowers who disclose, in a reasonable manner, an employer's violation of the Arizona Constitution or an Arizona statute.[47] Although courts had recognized a common law right of private employees to be free from retaliation for disclosing illegal activity, private employees were not protected under a state statute. Thus, while most of the provisions of the EPA were beneficial for employers, there were some provisions that benefited employees.

In sum, the EPA greatly reduced Arizona employees' protection from common law exceptions to the employment-at-will doctrine. While the Act did not return the law back to employment-at-will in total, the law greatly reduced the inroads on that doctrine that had been fashioned by the Arizona courts. Therefore, it is expected that the law benefited employers. Further, as discussed earlier, my prior study found that another wrongful discharge statute, the Montana WDFEA, also benefited employers. The next section will discuss which of the two laws likely would have been more beneficial for employers.

V. WHICH LAW WOULD HAVE BENEFITED EMPLOYERS MORE?

There are persuasive reasons to argue that the EPA would have benefited employers in Arizona even more than the WDFEA benefited employers in Montana, but there are other reasons to argue the opposite. Looking first at the text of the acts themselves, the provisions of the EPA appear to be more beneficial for employers than the provisions of the WDFEA. As stated elsewhere, the WDFEA was intended to be a compromise between employers' interests and employees' interests,[48] while the EPA was intended to be more of a return to the employment-at-will doctrine.[49]

45. Jones, *supra* note 33, at 1148 (citing L.A. Mitchell, *Ease of Firing to be Offset by Sex-Harassment Risks*, ARIZ. BUS. GAZETTE, June 20, 1996, at 3).

46. ARIZ. REV. STAT. ANN. § 41-1461(2) (2007).

47. *Id.* § 23-1501(3)(c)(ii).

48. Daniel J. Libenson, *Leasing Human Capital: Toward a New Foundation for Employment Termination Law*, 27 BERKLEY J. EMP. & LAB. L. 111, 130-31 (2006).

49. Jones, *supra* note 33, at 1149.

For example, under the WDFEA, employees can prevail in a wrongful discharge lawsuit by showing any of three things: that the discharge is contrary to public policy, that the discharge violated the express terms of the employer's written personnel manual or that the employee had completed the employer's probationary period and the discharge was without cause.[50] Under the EPA, only the first of those three options is available.[51] Furthermore, the definition of public policy under the WDFEA is much broader than under the EPA.[52] Therefore, employees in Montana have many more avenues to challenge their discharges than do employees in Arizona, and employers in Arizona have much more freedom to discharge employees than employers in Montana have. In addition, it is much more difficult to prevail on a constructive discharge claim under the EPA than under the WDFEA.[53]

Finally, Section 1 of the EPA details the intent of the law. That language makes it clear that the intent of the EPA is, for the most part, to restore the employment-at-will doctrine in Arizona.[54] This language clearly would have sent to investors a signal that the tide of employment law in Arizona had been shifted to the employer. No similar language appears in the WDFEA. This might have been significant to investors. It is difficult to find any provisions of the WDFEA that benefited employers more than the EPA. Therefore, based on the respective language of the statutes alone, one would expect the EPA to be more beneficial for employers than the WDFEA.

The reason the WDFEA might have benefited employers in Montana more than the EPA benefited employers in Arizona stems not from the statutes themselves, but from how they changed the law in their respective states. While it is clear that both Arizona and Montana were very pro-employee in the common law of the employment-at-will doctrine and wrongful discharge, it can be argued persuasively that the Montana courts were even more pro-employee then were the Arizona courts. While no systematic comparison of the common law in the two states has been done, an examination of the cases from the two states reveals several significant points.

50. MONT. CODE ANN. § 39-2-904 (2007).
51. ARIZ. REV. STAT. ANN. § 23-1501 (2007).
52. *Compare* MONT. CODE ANN. § 39-2-903(7) *with* ARIZ. REV. STAT. ANN. § 23-1501.
53. *Compare* MONT. CODE ANN. § 39-2-903(1) *with* ARIZ. REV. STAT. ANN. § 23-1502.
54. 1996 Ariz. Sess. Laws ch. 140 § 1.

Specifically, one clear way in which the Montana courts were more pro-employee than the Arizona courts is their respective treatments of the implied covenant of good faith theory. The Montana courts treated the implied covenant as a tort, and employees recovering under this theory were often awarded tort damages (e.g., emotional distress) and punitive damages.[55] In Arizona, the implied covenant was treated as a cause of action based on contract, meaning that employees could recover much less. As stated by Marzetta Jones, "[t]herefore, the [implied covenant] exception is recognized in Arizona, but only under limited circumstances. The exception has had little application in subsequent Arizona employment cases."[56]

More generally, it was recognized that Montana was one of the most – if not the most – pro-employee states. As stated by LeRoy Schramm: "Montana was in the forefront" of the trend towards "rejecting the previously dominant presumption of at-will employment."[57] Shelley Hopkins and Donald Robinson noted: "it appears that the ability of a discharged employee to contest his discharge judicially creates, as a practical matter, an exception that has swallowed the [at-will] rule."[58] Aaron Andreason and Jack Morton stated:

> Montana's Supreme Court began to weaken the state's at-will employment doctrines in the mid 1970s. It developed a novel legal remedy known as the tort of bad faith for wrongful discharge. Briefly, the court's actions opened the door for emotional distress claims and punitive damages in employee dismissals. In early 1982 the court held, without dissenting opinion, that Montana employers could be sued for wrongful discharge based on the nebulous concept of bad faith and be held liable for compensatory damages, punitive damages, and emotional distress. Employee termination issues suddenly ranked among the most hazardous problems facing Montana employers. Although the court couldn't repeal the state's at-will statute, it did routinely either ignore that statute or simply create exceptions it deemed in the public interest.[59]

While Arizona was clearly recognized as being pro-employee, which is why the EPA was enacted in the first place, it was not

55. LeRoy H. Schramm, *Montana Employment Law and the 1987 Wrongful Discharge from Employment Act: A New Order Begins*, 51 MONT. L. REV. 94, 96-106 (1990).

56. Jones, *supra* note 33, at 1148.

57. Schramm, *supra* note 55, at 96.

58. Shelley A. Hopkins & Donald C. Robinson, *Employment at-Will, Wrongful Discharge, and the Covenant of Good Faith and Fair Dealing in Montana, Past, Present, and Future*, 46 MONT. L. REV. 1, 23 (1985).

59. Aaron W. Andreason & Jack K. Morton, *Avoiding Wrongful Discharge Law Suits in Montana*, MONT. BUS. Q., Summer 1993, at 22, 23.

thought to be nearly as pro-employee as Montana. Therefore, since the common law in Montana was so much more detrimental for employers than was the common law in Arizona, the passage of a statute limiting the courts' discretion in the area of the employment-at-will doctrine would have done more to benefit employers in Montana.

In sum, it can be argued that both the EPA and the WDFEA were better for employers in their respective states. While the text and specific provisions of the EPA were more pro-employer then were the text and provisions of the WDFEA, the common law of wrongful discharge in Montana had been more pro-employee than the common law in Arizona prior to the passage of the respective statutes, meaning that employers in Montana would have benefited more than would employers in Arizona from a statute that nullified the common law. The next section will discuss how event study methodology will be used to assess the extent to which the Act benefited employers according to shareholders of publicly traded firms.

VI. ASSESSING THE EFFECTS OF THE EPA

To investigate whether the EPA benefited employers in Arizona, I use event study methodology, a technique that estimates the effect of an event on firm stock prices to determine the effect of that on those firms. More precisely, event studies examine the change in shareholder returns – the change in stock prices from one period to the next plus dividends during that period – rather than the change in stock prices. In non-technical terms, event studies examine how firm shareholder returns move in response to an "event," in this case, the event being the passage of the EPA. Shareholder returns are a measure of firms' financial worth. Therefore, if the shareholder returns of firms likely to have been affected by the EPA rose in response to the passage of the law, the researcher can conclude that the law benefited those firms, at least financially. In fact, event study methodology has been used successfully to assess the effects of legislation in many prior studies and researchers have concluded repeatedly that firms have benefited from or suffered from legislation.[60]

60. *See, e.g.*, P.R. Chandy et al., *The Shareholder Wealth Effects of the Pennsylvania Fourth Generation Anti-Takeover Law*, 32 AM. BUS. L. J. 399 (1995); Jo Watson Hackl & Rosa Ann Testani, *Second Generation Takeover Statutes and Shareholder Wealth: An Empirical Study*, 97

Event studies rest on the efficient-market hypothesis, which states that any event that affects the future profitability of a firm is immediately impounded into the firm's shareholder returns. Although there are critics of event studies and the efficient market hypothesis on which it is premised,[61] most scholars who have investigated the subject of market efficiency in detail provide evidence in support of the concept,[62] and event study methodology has been used successfully to assess the effects of legislation in many prior studies.[63]

More technically, in event studies, the actual returns to a firm given an event are compared to a prediction of what those returns would have been absent the event, and any difference is attributed to the event being investigated. In this case, the passage of the EPA is the event. Shareholder returns are examined on each date associated with the passage of the EPA and any difference between actual and predicted shareholder returns on those dates is referred to as an abnormal return (AR). The sum of the ARs over all of the event dates is referred to as the cumulative abnormal return (CAR). Thus, if the CAR given the event is positive and statistically significant (i.e., greater than predicted to have been absent the event), the event study allows the researcher to conclude that the event benefited the shareholders of the firms affected by the event. Since event study methodology was used in my prior study to assess the effects of the WDFEA,[64] the model used here will replicated as much as possible, to enable the effects of the two laws to be compared.

YALE L. J. 1193 (1988); Roberta Romano, *The Political Economy of Takeover Statutes*, 73 VA. L. REV. 111 (1987); W. Thomas Conner, Note, *Sword or Shield: The Impact of Third-Generation State Takeover Statutes on Shareholder Wealth*, 57 GEO. WASH. L. REV. 958 (1989).

61. *See, e.g.*, Abhijit V. Banerjee, *A Simple Model of Herd Behavior*, 107 Q. J. ECON. 797 (1992); Sushil Bikchandani et al., *A Theory of Fads, Fashion, Custom, and Cultural Change as Informational Cascades*, 100 J. POL. ECON. 992 (1992).

62. Ronald J. Gilson & Reinier Kraakman, *The Mechanisms of Market Efficiency Twenty Years Later: The Hindsight Bias*, 28 J. CORP. L 715 (2002); Burton G. Malkiel, *The Efficient Market Hypothesis and Its Critics*, J. ECON. PERSP., Winter 2003, at 59.

63. *See, e.g.,* Abraham, *supra* note 3; Craig A. Olson & Brian E. Becker, *The Effects of the NLRA on Stockholder Wealth in the 1930s*, 44 INDUS. & LAB. REL. REV. 116 (1991); G. William Schwert, *Using Financial Data to Measure Effects of Regulation*, 24 J. L. & ECON. 121 (1981).

64. Abraham, *supra* note 3, at 507-17.

A. The Formal Model

The effect of the EPA on security returns on any particular day is estimated by examining the equation:

$$AR_{id} = R_{id} \quad E(R_{id}|\text{No EPA Information}) \qquad (1)$$

where AR_{id} is the abnormal return to firm i on day d due to information about the law and the probability of its passage. R_{id} is the actual return to firm i on day d and $E(R_{id}|\text{No EPA Information})$ is the expected return to firm i on day d absent any information about the law. R_{id} is readily available.[65] $E(R_{id}|\text{No EPA information})$ must be predicted by the researcher. That return is predicted by the market model, which posits that the return to any security on day d is a function of the market as a whole and the risk of investing in that security relative to the risk of investing in the market as a whole. The ex ante return to security i in any time period t equals:

$$R_{it} = \alpha_i + \beta_i(R_{mt}) + \epsilon_{it} \qquad (2)$$

where R_{it} is the return to security i in time t, R_{mt} is the Center for Research on Security Prices (CRSP) value-weighted index of all securities in time t and α_i and β_i are parameters.[66]

The parameters in equation (2) for each firm were estimated using data from a period beginning 150 days before the first event date through the day 51 days before the first event (Thus, the model has 100 observations and 98 degrees of freedom.) Data from days well outside the event period were used so as to minimize the possibility of the firms' parameters having been affected by the event in question, and one hundred day model estimation periods from day -150

65. Equity returns are used to estimate the effect of an event on firms. R_{it}, the return to any security in time t is equal to its price change in that period plus any dividend disbursements:

$$R_{it} = \frac{Price_{it} - Priced_{t-1} + Dividends_t}{Price_{t-1}}$$

To estimate the return for any day d, the "t" in the equations above become "d." Data on firm returns are maintained by the Center for Research on Security Prices (CRSP) connected with the University of Chicago School of Business. The value-weighted index was used in this study. Both firm and market returns were transformed by a natural logarithm, Ln(1 + returns) before estimation.

66. If the time period involved is one day, the "t" subscripts are replaced with "d" subscripts and equation (2) becomes $R_{id} = \alpha_i + \beta_i(R_{md}) + \epsilon_{id}$.

through -51 are commonly used in event study research.[67]

According to the market model, ϵ_{it} is a fair game variable with mean = 0 and variance (δ^2). Therefore, equation (1) (the abnormal return to firm *i* on event day *d* due to the decision) is tested by examining:

$$AR_{id} = R_{id} - (\hat{\alpha}_i + \hat{\beta}_i(R_{md})) \quad (3)$$

Thus, the abnormal return (*AR*), or measure of the impact of the event, is simply the actual return given the event minus the expected return had the event not occurred. To determine the average effect of the event on day *d* for the sample of the firms, the researcher merely averages the *ARs* over all the firms in the sample.

$$AR_d = 1/n \sum_{i=1}^{n} AR_{id} \quad (4)$$

In this case, there is more than one event date. Hence, the average *AR*s computed for each day must be summed over all of the event days to estimate the average *total* effect of the event under investigation. This total effect is known as the *CAR*:

$$CAR = \sum_{d=1}^{t} AR_d \quad (5)$$

where 1 and *t* are the beginning and ending days of the event period under investigation.

Whether or not the event being investigated affected shareholder wealth in the sample of firms is determined by testing whether the *CAR* computed in equation (5) is statistically different from zero. In computing the standard error of the *CAR*, an adjustment is made to account for the fact that all firms in the sample share the same event days, which makes it possible that something other than the pending enactment of legislation caused the firms' actual returns to be different from those predicted by the market model on these particular days.[68] Several procedures for dealing with this problem have been employed, each of which uses the variance-covariance

67. Pamela P. Peterson, *Event Studies: A Review of Issues and Methodology*, Q. J. BUS. & ECON., Summer 1989, at 36, 37-38.

68. John J. Binder, *Measuring the Effects of Regulation with Stock Price Data*, 16 J. ECON. 167, 167-68 (1985).

matrix of the residuals from the model estimation periods to correct the standard errors for the correlation in the abnormal returns across firms in the sample on any given day. In this paper, the Burgstahler and Noreen "H-statistic" is used to assess statistical significance – a method specifically designed to correct for situations in which there is correlation of abnormal returns among the firms.[69]

B. Event Dates

To select the event days relevant to the EPA, I examined the Bill Tracking Sheet for SB 1386 (available from Lexis-Nexis). The Bill Tracking Sheet lists each date on which there was some activity related to the law. There were nine event dates related to the EPA and these dates are listed on Table 1. Then, since one of objectives of this paper is to compare the effects of the EPA with the effects of the WDFEA the same tests that were used in the prior study,[70] were used herein. Test I examined shareholder returns on each of the nine event dates of the Act. Test II examined shareholder returns over a three-day window surrounding each event date.[71] A three-day window allows for two possibilities. If information about an event was leaked to the investing public before the actual event date, that information might have been impounded into the market before the actual event date; if the event took place late in the day, its effect might not have been impounded into the market until the next day. This latter possibility is especially important in this case, since Arizona is located on the west coast, meaning that the markets might have closed by the time the event occurred. Looking at shareholder returns one day before and one day after each event date accounts for both possibilities. Test III examined shareholder returns over the -5 to +1 period surrounding each event date.[72] Expanding the window in Test II to five days before the actual event date is especially important when dealing with legislation, where the possibility of leakage is especially great. Finally, Test IV examined shareholder returns over the entire period from the introduction of the SB 1386 until the bill

69. David Burgstahler & Eric W. Noreen, *Detecting Contemporaneous Security Market Reactions to Sequence of Related Events*, 24 J. ACCT. RES. 170, 171-86 (1986).

70. Abraham, *supra* note 3, at 510-11.

71. There are twenty-five event dates rather that twenty-seven because several dates were close together, meaning that day +1 for one event date was the same as day -1 for the next event date.

72. Again, because several of the event dates are close together, shareholder returns were examined over fifty-three days in this test.

was signed by governor Fife Symington on April 11, 1996. This test ensures that effects of the event that occurred in between two specific event dates are captured by the methodology.

Table 1
Event Days Of The EPA

Date	Reason
January 30	SB 1386 Introduced
February 12	Senate Committee on Professions and Employment passes SB 1386
February 15	Senate Committee on Rules passes SB 1386
February 21	Senate Passes SB 1386
March 12	House Committee on Commerce fails to pass SB 1386
March 19	House Committee on Commerce passes SB 1386
April 2	House passes SB 1386 – to Senate for concurrence
April 4	Senate concurs in House amendments
April 11	EPA signed by Governor

C. The Samples of Firms

A study of the EPA, like any event study, relies on an accurate definition of which publicly traded firms would have been affected by the law more than the average publicly traded firm. Since the EPA is an Arizona law, I examined its effect on all publicly traded firms in Arizona. Standard & Poor's "Compustat" database was used to identify firms whose primary location was Arizona during 1996 (There were 101 firms with data on the necessary dates). Firms whose primary location is not Arizona but who have operations in the state also may have been affected by the Act, since its provisions would

apply to any employees employed in Arizona. In other words, the results will be biased towards zero. Nevertheless, the sample used here will give an indication of the effects of the Act. In addition, my prior study assessed the effects of the WDFEA on a sample of firms whose primary location was Montana, according to Compustat.[73]

Finally, to compare the effects of the EPA with the effects of the WDFEA, a zero-investment difference portfolio was created, consisting of a long position in the set of firms that formed the sample in this paper and an equally-valued short position in the set of firms that were used in the prior study.[74] Each firm was weighted so that the firms affected by the EPA and the firms affected by the WDFEA carried equal weight in the combined portfolio. Essentially, this investment portfolio involves buying shares of the Arizona firms and simultaneously selling shares of the Montana firms in a manner that equally weights each group by the value of their shares. If the EPA was more beneficial for employers than the WDFEA, the return on the zero-investment difference portfolio should be positive and significant, and if the WDFEA was more beneficial, the return on that portfolio should be negative and significant. Tests for significance in the returns of the zero-investment difference portfolios are performed using a weighted standardized residual technique which is a variant of the test statistic described by James Patell.[75]

VII. RESULTS AND DISCUSSION

Table 2 presents the results for the four tests. According to Test I (the event dates of the law itself), shareholder returns rose 5.8 percent in response to the EPA; according to Test II (the nine days plus and minus one day), returns rose 13.96 percent; according to Test III (from five days before each event date until one day after), returns rose 10.7 percent; and, according to Test IV (all days from the introduction of SB 1386 to the passage of the Act), returns rose 11.35 percent. Further, the AR was positive and significant on nine of the twenty-five days examined in Test II and on none of the days was the AR negative and significant (detailed results are available from the author). In fact, the point estimate was positive on twenty-two of the twenty-five days tested in Test II. Finally, shareholder returns rose

73. Abraham, *supra* note 3, at 509-10.

74. *Id.*

75. James M. Patell, *Corporate Forecasts of Earnings per Share and Stock Price Behavior: Empirical Tests*, 14 J. ACCT. RES. 246, 246-59 (1976).

2.03 percent (p-value <.001) on January 30 (the day SB 1386 was introduced) and 1.01 percent (p-value <.01) on April 11 (the date the bill was signed into law), two of the most important dates in the process. All of these results show that shareholder returns of Arizona firms rose on the dates corresponding to the passage of the EPA. According to the premises of the event study, this increase would have been caused by investors' unbiased expectation that the EPA would increase the future profitability of firms that would now be governed by the law. This increase in profitability would have been due to the fact that the Act was beneficial to firms in Arizona.

Table 2

Cumulative Abnormal Return (CAR)

Test	**Interval**	CAR
Test I	Event days only	5.81% (3.141)***
Test II	Event days, minus 1 to plus 1	13.96% (4.672)***
Test III	Event days, minus 5 to plus 1	10.70% (3.611)**
Test IV	All days from introduction to passage)	11.35% (2.974)**

t-statistic, 98 degrees of freedom
** p-value <.01; *** p-value <.001

Before discussing these results, the possibility must be acknowledged that unanticipated events other than the passage of the EPA were responsible for the rise in shareholder returns that occurred here. Two safeguards were employed to minimize this possibility. First, the same methodology was applied to a sample of firms from Florida on the event dates of the EPA. I chose Florida based on the suggestions of three separate colleagues, all of whom independently suggested Florida as a state similar to Arizona on many dimensions. The citizens of the two states share similar demographic characteristics. For example, the average age in both states is above the average age of citizens in the US as a whole. In

addition, employees in the two states are employed in similar occupational categories and the industrial distributions of the employees were similar.[76] Therefore, since the states are similar in many respects, if firms primarily located in Florida did not experience the same increase in shareholder returns that Arizona firms experienced on the dates associated with the EPA, it would increase the likelihood that the EPA, rather than some other events occurring on those dates, was responsible for the results displayed on Table 2. The results for the Florida firms are presented on Table 3, which displays the results for the EPA and the control sample of Florida firms. As shown on Table 3, shareholder returns to firms in Florida did not experience an increase in profitability similar to firms located primarily in Arizona on the event dates of the EPA. Thus, it is likely that something that affected firms in Arizona accounted for the increase in profitability of Arizona firms on those dates.

Table 3

Comparison of Arizona and Florida Firms on the Dates of the EPA

Test	**Interval**	EPA (n=101)	Florida (n=392)
Test I	Event days only	5.81% (3.141)***	.254 (.75)
Test II	Event days, minus 1 to plus 1	13.96% (4.672)***	1.12 (1.12)
Test III	Event days, minus 5 to plus 1	10.70% (3.611)**	.654 (.87)
Test IV	All days from introduction to passage)	11.35% (2.974)**	.0153 (.145)

t-statistic, 98 degrees of freedom
** p-value <.01; *** p-value <.001

76. *Compare* U.S. Census Bureau, Arizona Population and Housing Narrative Profile: 2006, *at* <http://factfinder.census.gov/servlet/NPTable?_bm=y&-geo_id=04000US04&-qr_name=ACS_2006_EST_G00_NP01&-ds_name=&-redoLog=false> (last viewed Apr. 27, 2008) *with* U.S. Census Bureau, Florida Population and Housing Narrative Profile: 2006, *at* <http://factfinder.census.gov/servlet/NPTable?_bm=y&-geo_id=04000US12&-qr_name=ACS_2006_EST_G00_NP01&-ds_name=&-redoLog=false> (last viewed Apr. 27, 2008).

To investigate the possibility that something specific to Arizona other than the EPA was responsible for these results, I examined newspapers and magazines from Arizona, for the period from January 15 through April 30, 1996 (the time when the EPA was passed). According to the newspapers and magazines from these dates, however, there seems to be nothing specific on the relevant dates that might have been responsible for firms in Arizona having abnormally high shareholder returns.

In sum, as discussed previously, the results from all four tests show that shareholder returns of firms in Arizona rose significantly in response to the passage of the EPA. According to the premises of event study methodology, this increase would have been caused by investors' unbiased expectation that the EPA would increase the future profitability of firms that would now be governed by the Act. This increase in profitability would have been due to the fact that the Act was beneficial to firms in Arizona. Therefore, the question presented in the title of this article should be answered in the affirmative: Another wrongful discharge statute benefits employers; the EPA was a benefit for employers in Arizona as compared to the common law that existed at the time the Act was passed.

Finally, another important objective of this paper is to compare the results from the EPA with the results from the WDFEA. Table 4 displays the results over the four tests from each state and the results from the zero investment difference portfolio comparison described earlier. Unfortunately, however, the empirical results are mixed, making it impossible to draw a definitive conclusion over which law benefited employers more. The return on the zero investment difference portfolio was insignificant over two of the tests (Test I and Test III). Over Test II, the return on that portfolio was positive and significant, which seems to show that the EPA was more beneficial for employers than the WDFEA. Test IV, however, leads to the opposite conclusion. The return on the portfolio over Test IV was negative and significant, indicating that the WDFEA was more beneficial for employers. Nevertheless, while the results are not unanimous, most people would conclude that the results support the finding that the EPA was more beneficial for employers in Arizona than was the WDFEA for employers in Montana. Test II, which showed that the EPA was more beneficial, examined shareholder returns over the specific event days of each law plus one day surrounding each event day. Test IV examine shareholder returns over the entire period from the introduction until the signing of the

law. Test II, therefore, is a much more precise test, focusing on fewer days. Because Test II is more precise, it is more plausible to believe the results from that test, showing that the EPA benefited employers in Arizona more than the WDFEA benefited employers in Montana. While the opposite conclusion cannot be ruled out entirely, it is less credible. These results indicate that the specific provisions of the law do matter. As discussed above the provisions of the EPA appear to be more beneficial for employers in Arizona than the provisions of the WDFEA were for employers in Montana. Shareholders seem to have recognized this difference, as reflected in the shareholder returns to the firms in each state

Table 4

Comparison of the EPA and WDFEA

Test	Interval	EPA (n=101)	WDFEA (n=8)	Difference
Test I	Event days only	5.81% (3.141)***	6.55% (3.201)***	-.0084 (-.71)
Test II	Event days, minus 1 to plus 1	13.96% (4.672)***	8.12% (2.769)**	.0585 (3.47)***
Test III	Event days, minus 5 to plus 1	10.70% (3.611)**	11.23 (2.872)**	-.0052 (-.49)
Test IV	All days from introduction to passage)	11.35% (2.974)**	23.07 (4.1168)***	-.1172 (-3.18)***

t-statistic, 98 degrees of freedom
** p-value <.01; *** p-value <.001

VIII. CONCLUSION

Based on the material presented in the beginning of this paper, the results just given are not surprising. The common law of employment in Arizona had become fairly pro-employee, given the *Leikvold*, *Wagenseller* and *Broomfield* decisions. Employers in Arizona were especially concerned with the unpredictable nature of how the Arizona courts would treat the employment-at-will doctrine

in Arizona; in fact, it was the Arizona Chamber of Commerce who introduced wrongful discharge legislation into the Arizona senate in 1993, 1995 and 1996. As stated above, this supports Alan Kreuger's argument that unjust dismissal legislation is likely to be introduced to benefit employers, not employees.[77]

It should be noted, however, that the results reported show that the EPA benefited firms in Arizona on one dimension; specifically, the Act increased the expected future profitability of firms that would be governed by the law. They tell us nothing about the Act's effects in other areas. Similar to the WDFEA, it would be interesting to look at the Act's effects on other measures (e.g., the number of cases filed, the percentage of cases won by employers and employees, etc.).

Further, while we can say with confidence that the EPA benefited employers in Arizona, we cannot draw conclusions on the Act's effects on employees; the fact that employers gained does not mean that employees lost. As stated often, one of the main reasons employers sought to have the EPA enacted was the unpredictable nature of employment law in Arizona. The predictability restored by the Act might well have benefited employees as well as employers; both parties now had a clear definition of what would and would not allow the courts to depart from the employment-at-will doctrine.

Finally, the findings reported here are merely statistical results regarding the effects of the one wrongful discharge law – the EPA – in one state – Arizona. They are not doctrinal in any sense. In no way should they be read as support for the employment-at-will doctrine or the view that the courts should not continue to create exceptions to that doctrine. They merely show that the EPA in Arizona benefited employers, as did the WDFEA in Montana.

77. Krueger, *supra* note 4.