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ABSTRACT. This article explores intergovernmental relations, discretionary authority and the effect of state political ideology on the nature of civil legal representation in the United States. I examine support for legal services from 1996 to 1999 using data gathered by the federal Legal Services Corporation (LSC). A Heckman (1976) selection model is employed to test several hypotheses regarding states' decisions to supplement the federal funding for legal services. I find that state citizen political ideology, economic capacity of the state, and institutional design shape the decision-making environment for civil legal services. In addition, I find evidence that suggests that states are sensitive to shifts in intergovernmental relations in the area of legal services.

KEYWORDS. Poverty law, legal services, state funding, Legal Services Corporation, federalism

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INTRODUCTION

In 1919, Reginald Heber Smith argued that legal representation for the poor was a fundamental issue for the American legal system. Equal justice for all, irrespective of means, he noted, was the "cornerstone of American democracy" (Johnson, 2000, p. 84). However, since the 1980s, federal support for civil legal assistance for the poor has been cut by a third while statutory limits have been placed on the types of cases and clients that federally funded poverty lawyers can accept (Rhode, 2004, p. 3). In addition, a number of studies of the legal needs of low-income Americans since the mid-1990s have found that almost three-quarters of that population did not have the advantage of legal counsel when faced with a serious legal issue where counsel might have made a difference in the outcome of the legal dispute (Legal Services Corporation, 2000, p. 12). If a goal of the American legal system is "equal justice for all," then this large proportion of poor people without adequate legal representation does not bode well for the attainment of that goal. It seems to suggest that justice, or access to representation in legal proceedings, is a commodity too expensive for a significant number of citizens.

The federally funded Legal Services Corporation (LSC) was founded in the 1970s to provide one avenue for access to the legal system for low income Americans. Recipients of LSC funds also receive contributions from states. However, states vary in terms of their levels of support for legal services. In assessing that variation, I find that political context matters, particularly the state's prevailing citizen ideology. Institutions also matter. The rules and procedures adopted by the federal government shape the decisions of state officials and, by extension, the nature of legal services within the state. However, those rules and procedures adopted by the federal government are interpreted by state officials through the lens of state political ideology and fiscal capacity. The result is an interesting dynamic in intergovernmental relations, at least in the context of civil legal services for the poor.

In addition to intergovernmental relations, this examination of state funding for civil legal representation for the poor provides an opportunity for the consideration of other important areas of scholarly inquiry. By focusing on states' funding for legal services, I am also able to explore the effects of delegated discretionary authority and comparative state social welfare spending in the context of divergent state political ideologies. The following review of literature and the development of the hypotheses derived from theories explored in that literature must then reflect the blending of these multiple approaches.

EMPHASES OF THE LITERATURE

Legal Representation and Its Effects

The empirical literature dealing with civil legal representation supports the view that inadequate or unequal resources in legal proceedings affect the success of participants. That is, even when low-income litigants do have access to an attorney, the resources available to that attorney matter. This is important in the sense that if states differ in terms of their financial support for poverty lawyers, which they do, then the legal outcomes for the poor will vary across states as well. The effect is a patchwork of legal successes and legal failures, predictably disadvantageous to those low-income Americans living in the more penurious states. Moreover, the "patchwork effect," along with state and national funding and policy restrictions, may effectively limit legal reform efforts that poverty lawyers may attempt.

Scholars have long noted that the legal resources a claimant can bring to a legal dispute can affect the outcome of cases in many ways (e.g., Galanter, 1974; Wertheimer, 1988). At trial, legal resources matter for the persuasiveness of argumentation, the legal claims made (and not made), and the framing of the issues. Resources may matter in these areas due to insufficient support for investigating legal claims, a lack of specialization on the part of counsel, inadequate law libraries, or less time to prepare a case, among other things (Wertheimer, 1988). Outside of court, inadequate legal resources (or even absence of legal counsel) affect the resolution of disputes. A *pro se* litigant, or a litigant with limited resources for adequate counsel, may be more likely to accept an unattractive settlement in a case for which he or she has a valid legal claim for fear of being outspent or exhausted by opposing counsel (Wertheimer, 1988). In addition, Wertheimer argues, "the *prospect* of unequal legal resources may affect the resolution (or nonresolution) of controversies where litigation is never brought because one of the parties cannot afford the sort of legal assistance that holds any promise of success" (p. 304).

The scholarly literature in the area of legal representation for the poor has generally focused on the barriers facing litigants in *pro bono* representation (Rhode, 2004); the limits of *pro se* litigants (Smith, 1999); the relative advantages of the "haves" over the "have-nots," "repeat players" and "one-shotters" or the "upperdogs" versus the "underdogs" in litigation (Galanter, 1974; Lawrence, 1990; Ulmer, 1978); the role of counsel in those cases that did not go to court (Kritzer, 1998); and the practice contexts for poverty lawyers (Kessler, 1987; Scheingold & Sarat, 2004).

In addition, the scholarly literature has explored the theoretical questions regarding access to civil justice for the poor (Fishkin, 1983; Wertheimer, 1988) and documented the history of the federal government's involvement in the provision of legal services (Johnson, 1999; Vivero, 2002), while some states have also provided interesting assessments of their own histories (Schroeter, 1999).

In different contexts and with different methods, much of the literature points to the importance of litigant resources within the adversarial legal system. Even when low-income Americans have access to legal representation, the resources the litigants can muster to articulate their claims affect the outcome of the legal dispute. The effect that party asymmetry in litigation has on judicial outcomes is an important element of poverty law to consider. Studies have also shown that institutional factors, judicial ideology, local political culture, and case type matter as well (Kessler, 1987, 1990). While Kessler (1987) was able to provide a thorough series of case studies of local political culture and its effect on legal services providers, the present study is based upon aggregated measures of the political context (as expressed in prevailing ideological orientation) at the state level. This analysis extends the Kessler case studies in important ways by considering aggregated measures that permit an examination of change over time within states and shifts in intergovernmental relations—both elements that were beyond the scope of the Kessler studies.

Federal Context for the Funding of Legal Services

In 1965, as part of President Johnson's "War on Poverty," the federal government established the first national legal services program. It was developed to provide financial support to existing providers of civil legal services and to encourage the development of similar programs in areas where no poverty law activity was occurring, particularly in the Southern states. In 1974, the federal Legal Services Program moved out of the Office of Economic Opportunity, became an independent agency and was renamed the Legal Services Corporation (LSC). By moving the responsibility for legal services away from the executive branch, Congress was able to grant the corporation some autonomy in budget requests and grant-making policies and procedures. That relative autonomy was short-lived. Beginning with the Reagan administration, and culminating with the 1994 Republican takeover in the House, the LSC has faced dramatic reductions in its annual budgets as well as important restrictions on LSC

grantees.[1] Taken together, the decreasing federal funds for legal services and the congressionally imposed restrictions on the use of those funds have had important consequences for the provision of legal services across the country.

The LSC is not the sole source of funds for legal services providers. The LSC is, however, the single largest source. After the LSC, the largest funder of legal services is state government.[2] States vary, however, in their willingness to supplement the federal and private funding for legal services (see Tables 1–2).

I argue that variation in state contributions to legal services is important to consider because funding for legal services is a reflection of states' views of their obligations to ensure access to the legal system. If barriers to access are insurmountable in one state, yet access is readily provided in another, that variation has important consequences for the debate regarding civil legal representation in the federal context.

The shift from executive dominance to a more politically independent position in the federal government has not freed the LSC from the political influence of its principals in Congress and the executive branch. Though it is an independent agency and has budgetary pass-through authority, the LSC is subject to presidential appointment of its directors, congressional oversight, and reliance upon congressional appropriations. The Legal Services Corporation is therefore sensitive to changes in the political environment. The Republican gains in the 1994 midterm elections signaled a dramatic change in the funding, programmatic emphases, and structure of legal services for the poor.

This fundamental change, in which the Republican Party took control of the House for the first time in several decades, had an immediate effect on federal funding for legal services for the poor. The changes at the federal level were first felt in the legal services arena during the 1996 fiscal year. The changes that were enacted by the new Republican majority were a function of at least three interrelated elements. First, the nature of congressional delegatory activity under newly divided government shaped the political context for the LSC and, by extension, the provision of legal services across the nation. Second, the devolutionary predisposition of the new congressional majority, as expressed in the "Contract with America," presaged a shift in the locus of responsibility for legal services funding away from the federal government. Third, the new majority's ideological opposition to the perceived "social reformist" strain of legal services provided a foundation for regulatory and statutory changes in LSC programming.

TABLE 1. 1985–1999 Average funding per poor person by state

State	Total Funding*	LSC Funding	State Funding	% State
Alabama	$11.01	$9.17	$0.00	.03
Alaska	56.77	19.66	15.88	27.30
Arizona	20.84	9.71	.49	2.81
Arkansas	11.74	8.94	.05	.35
California	15.88	8.11	.28	2.12
Colorado	18.38	9.73	.57	3.01
Connecticut	18.42	8.09	1.35	4.77
Delaware	16.89	7.71	.59	2.33
Florida	15.72	7.93	1.30	7.73
Georgia	14.04	8.38	.84	4.79
Hawaii	29.13	7.94	14.01	47.54
Idaho	13.75	8.28	.04	.36
Illinois	14.44	8.49	1.17	7.61
Indiana	13.59	9.26	.90	5.67
Iowa	16.26	9.69	1.83	9.30
Kansas	21.82	8.68	7.98	28.33
Kentucky	15.38	9.49	1.78	8.64
Louisiana	11.50	9.40	.17	1.33
Maine	16.27	8.34	2.00	11.20
Maryland	23.75	8.18	8.80	37.24
Massachusetts	22.70	8.54	4.98	20.33
Michigan	16.25	9.04	2.02	10.03
Minnesota	24.85	8.87	6.70	24.65
Mississippi	12.31	10.33	.02	.16
Missouri	15.53	9.26	1.48	8.62
Montana	13.65	8.54	.62	4.33
Nebraska	15.99	8.84	2.76	15.91
Nevada	15.95	8.67	2.31	12.38
New Hampshire	14.93	7.67	.00	.00
New Jersey	27.54	7.66	8.40	28.62
New Mexico	15.02	9.80	.18	1.16
New York	16.31	7.54	4.48	26.81
N. Carolina	15.18	8.47	1.36	8.14
North Dakota	18.59	9.96	1.34	7.16
Ohio	19.54	8.36	1.11	5.86
Oklahoma	14.18	9.20	1.02	6.55
Oregon	19.87	8.34	4.02	20.42
Pennsylvania	18.72	8.36	1.16	6.14
Rhode Island	16.32	7.64	1.11	7.00
S. Carolina	12.77	9.03	.63	3.66
South Dakota	23.58	14.32	.67	1.95
Tennessee	14.08	8.80	1.11	6.17
Texas	11.57	8.68	.30	2.58

(*Continued*)

TABLE 1. (*Continued*)

State	Total Funding*	LSC Funding	State Funding	% State
Utah	15.07	10.00	.87	6.40
Vermont	22.39	8.76	7.14	20.95
Virginia	18.05	8.43	4.18	21.76
Washington	15.69	7.88	.57	4.10
West Virginia	13.12	9.35	.90	6.02
Wisconsin	14.94	9.13	.32	1.98
Wyoming	17.05	10.40	.18	.90

Source: Legal Services Corporation Factbook (1986–2000) 1987 Excluded.
*Total funding includes all funds—LSC funding as well as non-LSC funding.
Poverty population based on 1980, 1990 U.S. Census data.

Each of these elements reflecting changes in LSC policy and funding affected the context for states and localities struggling to meet the civil legal needs of their low-income citizens. From 1996 to 1999, states adapted differently to the new legal services environment. This analysis explores the context of civil legal representation immediately following the dramatic shift in LSC funding and policy. The mediating factors of states' responses to the changes at the federal level follow strikingly similar patterns to those of the pre-1996 era.[3] That is, state ideology, economic capacity, and institutional choice are key explanatory factors for states' responses to dramatic changes in federal policy and funding.

Divided Government and LSC Policy

In recent years, much of the literature on congressional-executive relations has explored the role of congressional delegations of authority to executive branch agencies (see, for example, Epstein & O'Halloran, 1996, 1997). One of the central questions of this research is the extent to which divided (or unified) government makes a difference in the congressional decision to delegate discretionary authority to the executive branch. According to Epstein and O'Halloran (1997), when Congress chooses to delegate policy-making responsibility to executive-level agencies, it does so as a result of a political transaction cost analysis. As bureaucrats' preferences diverge from those of legislators, however, Epstein and O'Halloran (1996) find that "Congress will rationally place tighter constraints on the use of delegated authority through restrictive administrative procedures." Consequently, "divided government is associated with bureaucrats having

TABLE 2. 1996–1999 Average funding per poor person by state

State	Total Funding*	LSC Funding	State Funding	% State
Alabama	$12.25	$9.58	$.01	.07
Alaska	53.32	20.79	10.17	18.98
Arizona	16.76	11.11	.78	5.01
Arkansas	13.01	8.62	.10	.77
California	11.24	6.36	.43	3.76
Colorado	19.58	10.15	.68	3.36
Connecticut	6.77	5.93	.00	.00
Delaware	7.75	6.83	.00	.00
Florida	17.91	7.31	2.10	11.63
Georgia	16.91	8.13	1.67	8.90
Hawaii	34.21	7.35	17.43	51.21
Idaho	13.98	8.12	.09	.80
Illinois	15.81	8.57	1.47	9.43
Indiana	16.47	10.32	1.80	10.82
Iowa	20.71	9.93	3.59	17.13
Kansas	31.49	8.30	15.86	49.64
Kentucky	20.29	10.23	4.01	19.39
Louisiana	12.90	9.73	.39	2.95
Maine	18.25	8.25	3.16	16.32
Maryland	27.78	7.89	10.75	40.20
Massachusetts	13.61	6.51	2.66	18.31
Michigan	21.59	9.78	3.91	17.36
Minnesota	30.91	9.22	11.18	36.40
Mississippi	13.82	11.20	.04	.27
Missouri	19.70	9.69	2.53	12.89
Montana	12.61	8.49	.21	1.69
Nebraska	18.05	8.14	4.54	24.73
Nevada	12.23	8.70	.73	5.86
N. Hampshire	6.59	6.14	.00	.00
New Jersey	38.63	6.76	13.28	33.80
New Mexico	15.61	10.49	.31	2.05
New York	17.46	6.31	6.05	35.06
N. Carolina	17.01	7.94	1.99	11.65
North Dakota	19.04	10.31	2.58	13.84
Ohio	23.85	8.26	1.02	4.28
Oklahoma	16.04	9.76	1.83	11.20
Oregon	19.90	8.03	4.76	24.41
Pennsylvania	18.64	7.96	1.66	8.88
Rhode Island	16.95	6.54	2.20	14.15
S. Carolina	14.78	9.18	1.34	7.65
South Dakota	29.99	21.22	1.46	4.07
Tennessee	17.91	8.84	2.48	13.72
Texas	12.40	8.93	.37	2.91

(*Continued*)

TABLE 2. (*Continued*)

State	Total Funding*	LSC Funding	State Funding	% State
Utah	19.71	12.03	.90	5.05
Vermont	7.85	7.36	.03	.39
Virginia	22.12	7.87	6.13	27.26
Washington	11.26	6.91	.93	7.00
West Virginia	15.27	8.97	1.94	12.78
Wisconsin	17.73	9.85	.47	2.64
Wyoming	13.52	10.37	.00	.00

Source: Legal Services Corporation Factbook (1997–2000).
*Total funding includes all funds—LSC funding as well as non-LSC funding.

less discretionary authority" (p. 374), a finding consistent with the political environment and delegation decisions of the 104th Congress.

The appropriations bill for the LSC for the 1996 fiscal year introduced not only dramatic cutbacks in the amount of funds for legal services providers (from $400 million in 1995 to $278 million in 1996, a reduction of over 30%) but also new limits on the corporation's discretionary authority. The discretionary language of the appropriations legislation for 1996 was later made slightly more restrictive in the 1997 bill and again in the 1998 appropriation. Among other restrictions, LSC recipients may not engage in advocacy before legislative bodies, or in administrative rulemaking procedures; they may not participate in class action lawsuits; they may not receive attorney's fees; they may not represent clients in redistricting cases or abortion cases; nor may they represent incarcerated persons; nor may recipients appeal a decision by the LSC to deny them funding (Houseman, 1999, pp. 11–13). In addition, subsequent LSC appropriations have remained well below the pre-1996 levels. As a result of the decreased federal funding for legal services, approximately 13% of legal services providers were shut down in 1996 (LSC Factbook, 1996–2004).

The 1996 and subsequent restrictions on the LSC effectively limited their discretionary authority, pulling the corporation closer to the new majority's preferred policy position during a time of divided government. One of the major consequences of the restrictions in LSC discretionary authority, coupled with decreasing appropriations, has been a shift away from reliance upon the LSC as the primary locus of funding for legal services for the poor. The interesting result may be that some states may seek opportunities to eschew federal funding and the attendant restrictions. It is unlikely, however, that the poorer states would be able to turn down

federal support, given the paucity of local and state financial assistance. Consequently, congressional efforts to curtail legal services providers' discretion may have the effect of exacerbating an already uneven landscape of access to civil legal assistance.

The limitations that Congress placed on the LSC's discretionary authority and, by extension, their funded providers have dramatically affected the decision making of state and local legal services communities. If legal services providers accept funding from the LSC, which is still the single largest granting agency for legal assistance, then they must also accept a set of obligations and restrictions that may be inconsistent with their perceptions of adequate legal representation for the poor. If they opt out of LSC money, then they must turn to alternative sources of income, which may be quite difficult to attract depending on the local political climate. The post-1996 reduction in federal funding, linked with a dramatic shift in discretionary authority, has fundamentally altered the political and economic context for civil legal assistance for the poor in the United States. While divided government may be part of the explanation for the reduction in discretionary authority for the LSC, there are other important explanations to consider.

Decentralization and the New Republican Majority in Congress

The Republican revolution, led by Speaker of the House Newt Gingrich, was marked by a set of ideals expressed in the "Contract with America." Among the provisions included in the Contract were several aimed at limiting federal authority and restoring state powers. The emphases of the new majority were consistent with (but not dependent upon) President Clinton's interest in devolving power to states, following a long line of presidential attempts to limit federal involvement in welfare and poverty measures, at least since Nixon. However, as Kincaid (1998) notes, "it is the Congress more often than the White House that alters the balance of power in the federal system" (p. 17).

Decentralization was not the initial goal of the new majority, however. In 1995, the desire to limit federal power, coupled with the deep-rooted suspicion of legal services programs within the Republican Party, led to a significant effort to de-fund legal services. That year, the House leadership sought to end legal services within two years by refusing to reauthorize the LSC. The proposed House appropriation for FY1996 effectively put federal legal services funding on a "glide path to elimination" (Houseman, 1999, p. 10).

Opposition to Legal Services

In the 1960s, the Office of Economic Opportunity's (OEO) Legal Services Program employed a test-case litigation strategy to eliminate poverty. According to Handler (1978), "[t]est case litigation and other forms of advocacy . . . aim at a balance in the flow of information so that *agencies exercising discretionary power will modify their views of the public interest* in the directions of the definitions that the lawyers advocate" (p. 3). The early successes of the OEO's Legal Services Program drew criticism from the Nixon administration. In addition, many state governors vetoed legal services funding for their states, reflecting this concern over the ability of legal services attorneys to challenge state and local laws and regulations.

There were two dramatically different understandings of the purpose behind legal services for the poor, even within the federal Legal Services Program. One view understood legal services to be a mechanism for social reform and the ultimate elimination of poverty. The other view reflected a client service perspective. While not completely incompatible, the divergent perspectives marked much of the Legal Services Program and its successor, the LSC, for many years.

Not surprisingly, the law reform perspective generated the most criticism, typically from conservatives who viewed the actions of legal services attorneys as "social engineering" outside of the democratic process. The critics' arguments were multilayered. Some saw government-funded legal assistance as unjustifiable, preferring a more limited role for government, including a system of legal services vouchers (Rowley, 1992). Others rejected the entire law reformist enterprise, arguing that poverty is a consequence of individual action or inaction, talent, mettle, and so forth and not a responsibility of the legal apparatus to ameliorate (Johnson, 1999). At the center of the arguments was a concern about "social reformist" lawyers overturning the duly enacted legislation of democratic majorities.

The new Republican majority in 1994 emboldened the opponents of the LSC within Congress. Similarly, lobbyists representing businesses affected by LSC activities found a receptive audience on Capitol Hill. In response to these pressures, the House attempted to eliminate the LSC and all federal funding for legal services in the 1996 appropriations bill. It was only through an intensive lobbying campaign coordinated by the American Bar Association (ABA) and others that prevented the elimination of the federal program. By saving the federal funding for legal services,

however, the LSC was forced to accept the substantial reforms and dramatic reductions in funding discussed earlier.

In sum, the changes brought about by the Republican gains in the midterm elections of 1994 reshaped the legal services landscape. Restrictions on social reform efforts were enacted, funding was reduced, and a large number of providers were shut down. This fundamental shift in 1996 marked the beginning of a new era for legal services in the United States, one that placed a great deal of responsibility for the funding of legal services on states. After 1996, the decisions by states regarding legal assistance matters even more than it did just a year earlier. The political environment changed; the relationship between the legal services providers and the LSC changed; and states now faced important decisions regarding their view of their obligation to provide legal services for their poor.

HYPOTHESES

Given the striking change in legal services policy and funding after the 1996 appropriation, it is necessary to consider the effect of that policy punctuation on state funding for legal services. After the 1996 changes, 26 states opted to provide direct, yearly appropriations for legal services. The competitive granting procedure adopted by the LSC, along with the elimination of the right of grantees to appeal the rejection of their grant proposals, introduced even more uncertainty into federal funding for legal services. What had previously been an expected federal allocation had, by 1996, become a zero-sum competition. One provider's successful grant application limited another's opportunity for similar success. States' decisions to deal with this uncertain federal funding environment varied.

Prior to the 1996 changes, which introduced a competitive bidding system for LSC grants, legal services providers received annual appropriations from the LSC by a formula based on poverty population in the most recent census. Under the old procedure states had to determine whether that LSC contribution was sufficient to meet the state's view of its obligation to ensure representation for the poor in civil legal matters. Some states augmented substantially that rather uniform federal distribution; other states did not. State political ideology and fiscal capacity shaped that decision by state officials (Harward, 2007). After 1996, state officials were faced with a very different decision-making environment with regard to legal services for the poor.

The decision to appropriate or not appropriate is worth considering, as after 1996 approximately half of the states opted to not make that budgetary commitment to legal services, relying instead on alternative sources of funding for civil legal assistance. I argue that the decision is shaped by state political ideology, economic capacity, and reliance upon federal grants for legal services for the poor. That is, the choice to secure annual appropriations for legal services or to rely upon private or other federal funds is a function of the state's political and economic environment.

It is important to note that data are available only from those legal services providers receiving LSC grants. Providers not receiving LSC funds are not required to report their sources of funding. No state completely divested itself of LSC funding. Many states, however, may have limited the number of providers receiving the federal funding. In fact, that has been a stated goal of the LSC. The reason that the number of grantees in a state receiving LSC funds may be limited has to do with the 1996 restrictions that affect all funds, not just the LSC funds that a provider receives. That is, if a local provider is a LSC recipient, that provider is required to abide by all applicable restrictions, irrespective of whether the money used for certain activities is federal or private. One strategy that the states have adopted to deal with this restriction is to establish completely separate entities for the prohibited activities. Thus, the actual number of legal services providers may in fact increase but not be reported in the LSC data, which are used in this analysis.[4]

State Ideology

The dominant ideology of a state, and its ideological center, shapes the policy outcomes of states (Kingdon, 1999). Two elements comprise my operationalization of a state's dominant ideology. First, a state's ideology is inclusive of the ideological leanings of a state's citizens. Second, it incorporates a state's governmental ideology (a measure of the ideology of elected state officials, weighted for the officials' ability to shape policy) drawn from Berry, Ringquist, Fording, & Hanson (1998). The empirical analysis examines the influence of ideology on states' funding for legal services. By examining state ideology from these two distinct perspectives (citizen ideology and government ideology), the effects of both elements of the ideological context of a state can be assessed in relation to one another.

Institutional Design

The premise that variation among states is the result of institutional design assumes the linkage of policy outcomes and particular institutions

that structure the decision-making environment. Institutions matter; political outcomes are not separable from the rules and procedures that give shape to the political decision-making environment. In the context of the legal representation of the poor, the way states organize the provision of legal assistance will dramatically affect the resource allocation strategies of state officials.

There are two ways for a state to organize the legal services apparatus within its jurisdiction. One arrangement is for states to retain allocative authority in the area of legal services funding. The alternative is for states to devolve that authority to cities or counties, or leave the providers reliant upon alternative (nonstate) sources of funding. I argue that the design of a state's allocative strategy for legal assistance resources is shaped by the political context of the state and has a discernible effect on the amount of funding available for legal services.

Following the passage of the 1996 appropriations bill, states saw a reduction in the amount of funds available for legal services, a competitive granting process initiated, and a system of discretionary restrictions in place that may have been inconsistent with the "prevailing ideological center" of that state. My first hypothesis suggests that liberal states would be more likely than more conservative states to begin to limit their reliance on the LSC funding. One of the main ways a state could afford to do forego LSC money and still support legal services would be to adopt a line in the budget for legal services. Clearly, a state appropriation is not the only mechanism available to states. Many states had adopted alternative approaches during the LSC cutbacks of the Reagan era, including the imposition of court fines and fees, filing surcharges and the like. Most providers have attempted to broaden their base of funding sources for legal services; one of the strategies has been to have a line in the state budget. Those states where that strategy has been successful, I argue, are those states where a more liberal political ideology prevails, *ceteris paribus.*

Thus, two hypotheses are proposed that address the effect of both the dominant political ideology of state government and the dominant political ideology of citizens within a state:

H_1: *States with a dominant liberal (left-leaning) governmental political ideology will limit the uncertainty in funding for legal services and choose to make direct appropriations for the civil representation for the poor.*

H_2: *As the "prevailing political ideology" of the public helps to shape state policy, it is hypothesized that public opinion on matters related to the representation of the poor in civil cases*

will affect state funding allocations for representation of the poor. Specifically, the more ideologically left the public, the more likely that state will be to appropriate.

Two related hypotheses consider the amount of states' appropriations. Once a state has decided to appropriate funds for legal services, how much does that state appropriate? Again, I argue that such decisions are a function of state political ideology, economic capacity, and reliance upon other sources of governmental funding.

H_3: *States that have chosen to make direct appropriations for the civil representation for the poor, and have a dominant liberal (left-leaning) governmental political culture will appropriate more than those with less liberal political cultures.*

H_4: *As the "prevailing political ideology" of the public helps to shape state policy, public opinion on matters related to the representation of the poor in civil cases will affect state funding allocations for representation of the poor. Specifically, in states that have opted to appropriate, the more ideologically left the public, the more that state will appropriate.*

To test these hypotheses, I use the state government ideology measures designed by Berry et al. (1998) with updates through 1999. These measures reflect the ideological orientation of state elected officials and weight those orientations by the relative influence that those officials have on a state's public policies. These measures are appropriate in that they incorporate "realistic assumptions about the relationship between party control and political power in state policy-making institutions" for all states and all years from 1960 forward (Berry et al., 1998, p. 343). The authors use the known ideology scores of members of Congress to impute ideology scores for state legislators. These scores are not solely based upon legislators' views of funding for the poor; rather they incorporate interest group assessments of the particular representative's vote in congruence with the interest group's preferred position in a wide range of policies. Their assumption is that "the average ideological position of a party in a state's legislature is the same as the average position of that party's members of the state's congressional delegation" (Berry et al., 1998, p. 332). In terms of a state's governor, his or her ideology is constructed by the same logic;

it is estimated to be roughly equal to the average ideology scores of state legislators from the governor's party (Berry et al., 1998, p. 332). These scores are then combined and weighted according to the proportion of seats in the lower and upper chambers controlled by each party, thus allowing for a measure of relative influence over policy. The measure that results is reflective of the ideological center of a state's government for each year and has potential values ranging from 0 to 100.

To test the hypotheses related to citizen ideology, the key independent variable for the examination of this hypothesis is also a measure developed by Berry et al. (1998). The citizen ideology measure correlates quite well with the Erikson, Wright, and McIver (1993) measure of political liberalism (Berry et al., 1998, p. 343). To measure citizen ideology, the authors identify the ideology of each member of Congress from each state for each year using interest group ratings. Then, citizen ideology is discerned using the ideology of the incumbent representative, the estimated ideology score of the challenger, and election results that are presumed to reflect ideological divisions in the district's electorate. Each candidate's share of support in the congressional district is then weighted to reflect the ideological center of that district. These scores are then averaged across the state for each year, with possible values of 0 to 100 (Berry et al., 1998, pp. 330–31).

RESEARCH METHODS

The model used to test the hypotheses must account for both the decision to appropriate as well as the amount of the appropriation for those states that do appropriate. This introduces the problem of selection bias, however. To account for this I employ a Heckman (1976) selection model, which allows for a simultaneous estimation of two models, involving a sample selection based upon a particular criterion. In this case the criterion for censoring the observations is whether or not the state makes an appropriation for legal services for the poor. The dichotomous dependent variable for the estimation is whether a state appropriates funds for civil legal representation (1 if yes, 0 if no). The key independent variables are *Government Ideology*, *Citizen Ideology*, and *Gross State Product* (GSP). The relevant control variables are *LSC Funding*, *Federal/Non-LSC Funding*, *Private Funding*, *Caseload*, and dummy variables for the years 1997, 1998, and 1999.[5]

RESULTS

The results of the logistic regression estimation, shown in Table 3, do not lend much support to the first hypothesis regarding states' decisions to appropriate. In addition, the Wald test is significant at .001. This result confirms that the Heckman (1976) selection model is indeed needed to estimate the independent equations.

As for the variables of interest, the measure of elected officials' ideological leanings (*Government Ideology*) approaches statistical significance at .10 and in the positive direction, as expected. This grants modest support to the conclusion that as a state's governmental officials score higher (more liberal) on the ideology measure, then their likelihood of appropriating is increased. The results of the *Citizen Ideology* variable suggest that the null for the second hypothesis cannot be rejected. The coefficient for *Citizen Ideology* is in the expected positive direction but does not reach statistical significance. The economic capacity of a state does seem to affect its decision to appropriate, as revealed by the results for *Gross State Product*. *Caseload* does not achieve statistical significance, indicating demand for legal services may not drive the decision of whether or not to appropriate. *Per capita GSP* does seem to affect the decision of whether or not to appropriate. As expected, those states with higher GSP per capita are more likely to appropriate for civil legal services. *Legal Services Corporation Funding* is statistically significant and in the anticipated negative direction, indicating that the more money a state's providers receive from the LSC, the less likely that state is to appropriate. Interestingly, the more support from private sources the state receives, the more likely it is to appropriate. (*Private Funding* approaches significance at .10). This seems consistent with the expectations that providers seek out a broad base of funding to buttress the allocations from the state, in the context of diminishing funding from the LSC.

The second substantive equation, estimating the amount of a state's appropriation once the decision to appropriate has been made, reveals some rather counterintuitive results. The second equation incorporates only the appropriating states. It explores the amount of those appropriations in the context of key explanatory variables such as political ideology and economic capacity and the control variables from the earlier analyses. I hypothesize that those states that make the institutional choice of appropriating will appropriate at levels that are shaped by the state political culture, economic capacity, and reliance upon other federal support for legal services. The most prominent finding of this model is the negative coefficient

TABLE 3. Heckman selection equations estimating state legal services funding

Variable	B	(se)b
Heckman Selection Equation 1 Modeling States' Decision to Appropriate StateMoney for Legal Services 1996–1999		
Government	.002	.002
Citizen Ideology	.002	.003
Caseload	–.000	.000
Gross State Product	.000	.000***
LSC Grants	–.000	.000**
Other Federal Funding	.000	.000
Private Funding	.000	.000
1997	–.009	.094
1998	–.012	.095
1999	.093	.097
Intercept	.014	.237
(*N* = 200)		
Heckman Selection Equation 2 Modeling the Amount of State Appropriations Per Poor Person (in 1999 dollars)		
Government	–.014	.009
Citizen Ideology	.051	.018***
Caseload	.006	.004*
Gross State Product	.000	.000
LSC Grants	–.000	.000
Other Federal	.000	.000
Private Funding	.000	.000***
1997	.881	.489*
1998	.152	.466
1999	–.123	.485
Intercept	–3.68	1.44**
(*N* = 175)		

N = 175; Censored Observations = 25.
Rho: –.794.
Test of Ind. Equations: chi2(1) = 8.54.
Prob > chi2 = .004.
*p < .10; **p < .05; ***p < .01.

for *Government Ideology*. The coefficient approaches significance at .10. I had hypothesized a positive coefficient, expecting that more liberal appropriating states would also appropriate more than less liberal states. The above results, however, suggest just the opposite: the more liberal the state's governmental ideology score, the less the appropriation. However, the citizen

ideology coefficient is strongly significant and in the positive direction. Why these two variables point in opposite directions is an interesting issue.

There may be a very plausible explanation for this result. It may be that the restrictions and reductions in funding introduced by the Republicans in the mid-1990s were interpreted as an opportunity for states to assert more control over the provision of legal assistance within their borders. As the LSC "marginalized itself" after the 1996 appropriations bill, wealthy, liberal states may have taken the opportunity to wean themselves of LSC funds and restrictions in favor of a diversity of funding sources within the state (McBurney, 2003; Houseman, 1999, p. 14). Therefore, states like Vermont may have opted to not receive LSC funds in favor of funding alternatives. If states move away from the LSC funding, one would have no way to observe increases in alternative sources, as the available data are self-reported data from LSC grantees only. One would have to be able to "step outside" of the LSC data to observe a concomitant increase in outside funding as providers opt out of LSC funding. There is no comprehensive data set available to assess that increase. I suspect that a state like Vermont has established a wide array of alternatives to LSC funding; so much so that the LSC plays a relatively minor role in the funding of legal service programs in the state. The problem, however, is that Vermont may be the observational equivalent of Alabama in terms of reported funding, per the LSC's requirements. It would be reasonable to suspect that Alabama has not established a network of local support for legal services that a state like Vermont may have. Nonetheless, the nature of the reporting requirements for LSC providers (and the absence of reporting requirements for non-LSC providers) reveals relatively little difference in state support for legal services in two dramatically different political climates. Thus, I suspect that wealthy, liberal states like Vermont can afford, and have the political support, to move away from LSC funding in favor of nonrestricted funds from other sources. A brief analysis of the cases of Vermont and Alabama bears this out.

In anticipation of the new federal regulations the largest LSC recipient in the state of Vermont opted to cut its financial ties with the LSC in order to pursue alternative sources of funding that did not carry with them the federal regulatory restrictions (Committee on Equal Access to Legal Services, 2001, p. 2). The new LSC funding guidelines stipulated that no recipient of federal funding could engage in the restricted activities, even if they did not use the federal funding for the activities. Therefore, if Vermont Legal Aid wanted to be free to represent certain clients or engage in certain forms of litigation, they had no choice but to opt out of the federal program.

However, the state still needed the federal funding to meet all the legal needs of its low-income citizens. In 1996, Vermont established the Legal Services Law Line of Vermont, which then became the sole recipient of LSC funding in the state. Once Vermont Legal Aid, Inc. opted out of the LSC funds, leaving only the Law Line as the sole recipient, the LSC-reported data could only capture the state contribution to the Law Line and not Vermont Legal Aid. Therefore, what at first glance seemed to be Vermont's unwillingness to support legal services is in fact indicative of a strategic decision to avoid the uncertainty of the competitive granting procedure and the restrictions imposed by the 104th Congress.

As a separate entity, Vermont Legal Aid, Inc. could continue to pursue cases outside of the federally mandated restrictions. In effect, Vermont has been able to support, through alternate means, Vermont Legal Aid, Inc. without the contribution from the federal government. The primary contribution comes from a line in the state budget of approximately $658,000 per year for civil legal services since 1996, roughly 70% of Vermont Legal Aid's total operating budget. The American Bar Association's Project to Expand Resources for Legal Services (PERLS) reports that Vermont's state contribution is complemented by a number of other public funding sources, including fee for service projects, solicitation of attorneys, an annual foundation giving campaign, and the state mandatory IOLTA program (PERLS, 2004). These alternative funding sources contributed to a 2003 funding level for legal services (including LSC funding to the Law Line) of $45.38 per poor person in the state of Vermont, compared to Alabama's $10.25 per poor person (Houseman, 2003, p. 4).

Unlike Vermont, Alabama had three independent, regional legal services providers by the time the new LSC funding guidelines were implemented in 1996. The state of Alabama made no direct contribution to the funding of civil legal services within the state. Thus, when the 1996 regulatory restrictions and funding cuts were enacted, there was no financial support apparatus in place at the state level to allow the three providers to choose to reject the conditions of LSC support. Even after 1996, there is no general revenue allocation made by the state to support civil legal services in Alabama. As a result, the service providers within the state remain largely dependent upon the federal contribution from the LSC and are thereby limited in the nature of the representation they can offer to prospective clients. Since 1996, the average LSC basic field funding for Alabama is $6,062,619, or $8.68 per poor person (LSC Factbook, 1996–2004). Overall funding for civil legal services in the state is $10.25 per poor person, indicating some contributions from sources outside the LSC.

From 1996 to 1999 Alabama legal services providers received 92% of their funding from the LSC. Alabama is not alone in this respect; the LSC continues to be the largest source of funds for most states in the South and Rocky Mountain regions. The Northeast, Mid-Atlantic, Midwest and West regions, however, are able to find alternative sources to supplement the federal contribution, or opt out of the federal contribution by establishing independent legal services entities to continue federally proscribed activities.

This alternative funding interpretation of the *Government Ideology* variable seems to be consistent with the results for the *LSC Funding* variable. In the first equation, *LSC Funding* is significant and has a negative sign on the coefficient. In the second equation, it loses significance but maintains a negative coefficient. This suggests that the more funding an appropriating state receives from the LSC, the less likely that state is to appropriate to their providers. It is unclear, however, whether those states that do appropriate, appropriate less money per poor person. Again, this result is understood in the context of the universe of LSC fundees, not all providers. The economic capacity of a state seems to matter only in the context of the decision of whether or not to appropriate and seems to have no bearing on the amount of the appropriation.

The fourth hypothesis is supported by the data, as noted earlier. The coefficient is in the anticipated positive direction, and it does reach statistical significance at .01. The null hypothesis that citizen ideological liberalism does not affect the level of a state's appropriation can be rejected. However, considered in the context of the direction of the coefficient for *Governmental Ideology*, the counterintuitive result should be explored in further work.

CONCLUSION

While state political ideology, economic capacity, and institutional design do affect states' allocative decisions regarding legal services, they do so in unanticipated ways. The interesting results of the second independent equation suggest that the alternative hypothesis put forth by Houseman (1999) and McBurney (2003) may be correct: the more liberal a state's governmental officials, the less that state appropriates to recipients of LSC funding. The assumption is that after the 1996 restrictions were adopted, the LSC in effect "marginalized itself," allowing states to pass on the LSC funds in favor of alternative sources of income. That decision

by legal services providers within a state then freed those providers from the multiple restrictions that came with the federal dollars. Since these data include only LSC recipients, it is likely that after 1996, the most liberal states looked elsewhere for funding in response to the dramatic shift in LSC policy. Future work that links the ABA's PERLS data with that of the LSC data would shed some light on that dynamic.

This alternative hypothesis is consistent with the work on executive-legislative interaction at the federal level. The 1994 Republican gains initiated a time of divided government, during which the new majority in the House sought to rein in the discretionary authority of the LSC. As this alternative explanation suggests, the interesting consequence of the reduction in discretion may in fact have had the unintended outcome of more, not less, social reform activity on the part of poverty lawyers. The presumption is that a restriction in discretion carries with it a policy outcome that is more consistent with the preferences of the congressional majority (or, the enacting coalition within Congress). The results of the analysis seem to suggest that the effect of decentralization, competitive granting processes, and statutory restrictions may have moved the policy outcome in some states further away from congressional preferences rather than closer. If this hypothesis is correct, this finding is important to consider in the context of the intergovernmental relations literature, studies of executive-legislative interaction, and public policy analysis.

NOTES

1. From 1975 to 1981 LSC appropriations grew from $90 million to $300 million in 1980 to $321 million in 1981 (LSC Fact Book 1987). The political environment was marked by relatively little opposition to LSC programs, due in large part to both the political insularity of the organization as well as the restrictions placed on its law reform activities. All of that changed with the election of Ronald Reagan in 1980. Though a powerful coalition of supporters were able to protect the LSC from abolition, the Reagan administration sought to limit the activities (and funding) of the LSC by distributing the responsibility for legal aid to the private sector—to private attorneys, through an emphasis on *pro bono* representation. Consistent with this approach, the LSC appropriation for fiscal year 1983 was $241 million (LSC Fact Book, 1984).

2. Other important sources of funds include contributions connected to the Violence Against Women Act, the Older Americans Act, Title XX (social services block grants), revenue sharing, and community development block grants. Also, providers may receive financial support generated from Interest on Lawyers

Trust Accounts (IOLTA), *cy pres* awards, state bar association contributions, the United Way, and foundation grants for example.

3. Drawn from an analysis of state funding for legal services from 1985–1990 (Harward, 2007).

4. No data other than LSC data are available prior to 1996. Since 1996 the American Bar Association has maintained a tracking system for funding for state legal services providers (the Project to Expand Resources for Legal Services, or PERLS network). I have opted to use the LSC data for the 1996–1999 years in part because the effect of the changes in rules is only felt by LSC recipients. Future research on funding strategies of states may do well to begin to bridge the two sets of data to provide a comprehensive account of funding for legal services in each state after 1996.

5. The Alaska outlier has been excluded from the independent equation estimating the likelihood of a state choosing to appropriate. There is no good theoretical reason why Alaska's high transportation costs, remoteness, and so forth should affect the state's decision to appropriate or not appropriate. Morever, its inclusion in the second independent equation, reflecting the amount of a state's appropriation, contributes very little to the analysis. Its effect is marginal, adding very little to the model, and has therefore been excluded from the reported results in the second equation. Excluding all AK observations from the estimation had little effect on the model coefficients and overall results.

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