The Influence of Animal Advocacy Groups in State Courts of Last Resort

Steven Tauber
University of South Florida
stauber@cas.usf.edu

Abstract
Since the 1970s, animal advocacy groups have attempted to improve the treatment of non-human animals by influencing public opinion and lobbying for legislation that protects animals. Empirical assessments of these efforts have reported mixed results. Animal advocacy groups also use litigation as a means of improving the treatment of nonhuman animals, but there has been limited empirical testing of the effectiveness of animal advocacy litigation. To fill this gap in the literature, this study examines the 188 animal law cases decided in state supreme courts from 1973 through 2005. It looks specifically at whether the participation of an animal advocacy organization increases the chance of a favorable decision, while controlling for legal and political influences on case outcomes. Logistic regression reveals that the presence of animal advocacy groups does not exert a statistically significant impact on case outcomes. Further analysis demonstrates, however, that animal advocacy groups are significantly more likely than nongroup litigators to pursue cases that are difficult to win.

Keywords
animal advocacy organizations, animal law, interest group litigation, and judicial politics

Animal Advocacy Groups and the Courts
Although animal advocacy groups have been politically active for well over a century, the number of organizations and advocates has expanded immensely since the 1970s. Many of these contemporary groups adopted more radical positions and became more vocal in their opposition to animal exploitation. Scholars have researched various strategies that different groups have employed, such as protesting, mobilizing at the grassroots level, lobbying government officials, sponsoring state initiatives, influencing public opinion, and even incapacitating industries and scientific establishments that harm animals. This literature reports that these tactics have yielded mixed results (Allen, 2005; Finsen & Finsen, 1994; Garner, 1993; Jasper & Nelkin, 1992; Sperling, 1988). Although these studies are comprehensive, they devote minimal attention to
animal advocacy groups’ use of litigation to improve the plight of nonhuman animals (Finsen & Finsen, 1994, pp. 90-92; Garner, 1993, pp. 188-190; Jasper & Nelkin, 1992, pp. 35-37, 82-83), with Garner (1993, p. 188) concluding that “courts are used most often to prosecute cruelty to animal cases.” Despite this lack of scholarly attention, the courts are a significant arena not only for prosecuting cruelty but also for enhancing legal protections granted to nonhuman animals and expanding the ability of humans to advocate on their behalf (Silverstein, 1996).

In fact, both group- and nongroup-sponsored litigation designed to improve the treatment of nonhuman animals has become so prevalent that legal scholars have recognized the subfield of “animal law.” Waisman, Frasch, and Wagman (2006, p. xxvii) define animal law as “statutory and decisional law in which the nature—legal, social, or biological—of nonhuman animals is an important factor.” Some animal law research examines specific doctrinal issues (discussed in more detail below) that affect the well-being of nonhuman animals (e.g., Waisman, et al., 2006; Moore, 2005; Byszewski, 2003; Root, 2002; Tresl, 2002; Hannah, 2001; Smith, 1999; Silverstein, 1996; Squires-Lee, 1995; Ugalde, 1991; Moretti, 1984).

Much of the animal law scholarship focuses on the debate between the welfarists and the rightists. Largely inspired by the utilitarian animal liberation philosophy of Singer (2002), the welfarists argue that litigation should focus primarily on reducing animal suffering wherever possible, even if the litigation does not fully stop humans from exploiting nonhuman animals. Conversely, the rightist view stems from the philosophy that animals have intrinsic rights (Regan, 2001, 1983); therefore, it contends, litigation should concentrate on eliminating the property status of nonhuman animals in order to end the exploitation of animals used for food, clothing, entertainment, and research.

At the extreme end of the animal rightist spectrum is Francione (2000, 1996, 1995), who argues that animal law should only seek to gain legal rights for animals. Francione claims that the welfarist approach is “counterproductive on both theoretical and practical levels” (1996, p. 5). Wise (2000) is less extreme than Francione, but he still contends that higher-functioning animals, particularly chimpanzees and bonobos, deserve legal rights.1 Welfarists counter that the activists’ goals are unrealistic, and that, as a practical matter, animal advocates should focus on ending tangible suffering, regardless of the property status of nonhuman animals (Lovvorn, 2006; Garner, 2002). Using legal history as a guide, Tannenbaum (1995) maintains that animals will always be treated as property and that the best way to improve the treatment of animals is therefore through the property framework. Favre (2005, 2000) strikes a middle ground by advocating for animal interests instead of animal
rights. Specifically, he argues that existing property law concepts of equity and title (Favre, 2000) and torts (Favre, 2005) can be used to protect essential interests of animals such as freedom from pain and suffering, access to social contact with species members, and the ability to exist in an environmental setting approximating natural living conditions.

Undoubtedly, the animal advocacy organization literature and animal law literature are both vibrant and have contributed to the study of the relationship between humans and nonhuman animals. The extant animal advocacy organization literature has not sufficiently addressed the use of litigation as a strategy, however, and the extant animal law literature lacks an empirical analysis of whether animal advocacy organizations significantly influence animal law case outcomes. Therefore, a systematic, quantitative examination of the effectiveness of animal advocacy organizations will fill those gaps in the literature.

Animal Advocacy Group Litigation and the Interest Group Litigation Context

The use of litigation as a political strategy is not unique to animal advocacy groups. Groups seeking progressive political change, such as racial and ethnic minorities, women, adherents of unpopular religions, and opponents of capital punishment, have used the courts to achieve their policy goals because success depends not upon political strength, which those groups normally lack, but instead upon the skills, talent, experience, and dedication of legal counsel (Greenberg, 1994; Epstein & Kobylka, 1992; O’Connor & Epstein, 1984; O’Connor, 1980; Sorauf, 1976; Kluger, 1975; Meltsner, 1973; Cortner, 1968; Manwaring, 1962; Vose, 1959). Scholars disagree, however, on the effectiveness of litigation as a strategy for advancing a group’s policy goals. Systematic research on interest group litigation has uncovered evidence that interest groups can favorably impact the outcome of cases (Songer, Kuersten, & Kaheny, 2000; Farole, 1999; George & Epstein, 1992), but there is also evidence showing that interest groups do not influence judicial decisions (Tauber, 1999; Tauber, 1998; Songer & Sheehan, 1993; Epstein & Rowland, 1991; Kobylka, 1987).

Despite this long line of scholarship on interest groups seeking progressive social change through the courts, Silverstein (1996) has conducted the only extensive empirical study of animal advocacy group litigation. Silverstein demonstrates that animal advocacy group litigation has enjoyed mixed success in terms of case outcomes but that it has exerted an impact beyond the courts, most notably by mobilizing public support and expanding concepts of rights.
Silverstein's findings offer important insights into animal advocacy group litigation, but the methodology employed does not provide for a comprehensive, systematic analysis of group effectiveness. First, it examines a nonrandom sample of the leading animal law cases and does not test systematically, or with rigorous quantitative methods, whether animal advocacy groups have significantly influenced judicial policy-making over the totality of animal law cases. Moreover, Silverstein does not systematically control for the impact that political forces have on the outcome of cases. Political scientists studying interest group litigation have found that political forces (e.g., the ideology of the judges deciding cases, the actions of other branches of government, the political environment, and public opinion) determine case outcomes as much, if not more, than groups’ litigation efforts (Brace & Hall, 2001; Tauber, 1999; Tauber, 1998; Ivers, 1995; Wasby, 1995; Sheehan, 1992; Sheehan, Mishler, & Songer, 1992; Olson, 1990).

The research cited above demonstrates the importance of placing interest group litigation within the larger political and ideological context surrounding the judiciary. Some of those studies focus on interest groups in general (Brace & Hall, 2001; Sheehan, 1992; Sheehan, et al., 1992; Olson, 1990), whereas other studies focus on specific issue areas, such as the rights of religious minorities (Ivers, 1995), capital punishment (Tauber, 1998), and racial discrimination (Tauber, 1999; Wasby, 1995). Silverstein (1996), however, does not place animal advocacy group litigation in the larger political and ideological context. It is possible that animal advocacy litigation is distinct from those other issue areas, and the political and ideological context of the judiciary does not impact animal advocacy litigation. Nevertheless, given the demonstrated influence of politics and ideology on other forms of interest group litigation, it is certainly worth testing systematically the extent (if any) to which these factors shape the effect of animal advocacy litigation.

The political and ideological context, furthermore, can differ between federal and state courts. State courts reflect greater variation in political environments, compared with the federal courts. Once confirmed, federal judges serve as long as they want to unless they are impeached, whereas most state judges face the voters. Consequently, systematic studies of interest group influence in the judiciary should distinguish between state and federal courts, but Silverstein does not separate litigation filed in state court from litigation filed in federal court.

Furthermore, the animal advocacy group and animal law literatures have not sufficiently addressed the extent to which animal advocacy group participation in animal law cases is planned or unplanned, which is a key question in the study of interest group litigation (Tauber, 1998; Wasby, 1995; Greenberg,
1994; Lawrence, 1990; Kluger, 1975; Melstner, 1973; Cortner, 1968; Vose, 1959). The traditional perspective (Greenberg, 1994; Kluger, 1975; Melstner, 1973; Cortner, 1968; Vose, 1959) contends that organizations carefully and strategically plan the cases they seek to argue, whereas more recent studies provide evidence that group-sponsored litigation is random and unplanned (Tauber, 1998; Wasby, 1995; Lawrence, 1990). Silverstein (1996, pp. 123-159) categorizes the different types of cases that animal advocacy organizations have litigated but does not systematically test for specific patterns explaining animal advocacy group participation. A systematic analysis that explains the presence of animal advocacy groups in court will enhance our understanding of animal advocacy politics.

Methodology

As has previous research testing the effectiveness of interest group litigation (Songer et al., 2000; Tauber, 1999; Tauber, 1998; Emmert, 1992; George & Epstein, 1992), this study specifies a multivariate model explaining the outcome of the 188 animal law cases decided in state courts of last resort from 1973 to 2005. This model tests primarily whether the participation of an animal advocacy organization exerts a significant impact on the outcome of those cases, while controlling for political and legal explanations. I located cases with a keyword search in LEXIS and used those opinions to glean relevant information. Because unpublished opinions are important in judicial policy making (Ringquist & Emmert, 1999), this dataset includes both published and unpublished decisions. State high courts are optimal for studying judicial politics because they are the final arbiter of state legal issues, and they interpret how federal law applies within their respective state jurisdictions. As the federal judiciary has devolved power back to the states since the 1980s, state courts of last resort have increasingly had more impact over policy making (Fino, 1987) and are thus worthy of study. Moreover, there are significant variations across states’ political and legal cultures (Hall & Brace, 1992), and interest groups do participate in state courts of last resort (Farole, 1998; Epstein, 1994); therefore, using state supreme courts generates a viable dataset to test the efficacy of animal advocacy group litigation.

It bears mentioning that the focus of this research on state courts of last resort excludes other crucial animal law venues. For example, trial court verdicts are important for the development of animal law, especially concerning cruelty prosecutions and trials of animal advocates. In fact, as I discuss in more detail in the conclusion, animal advocates may be more concerned about the
publicity a trial generates than the actual outcome. Furthermore, by using courts of last resort, this dataset cannot capture cases that are not appealed or cases that are settled out of court. Moreover, the federal courts are a more common venue than state courts for animal advocacy litigation (Waisman et al., 2006, p. 183), and this study does exclude federal courts. Nevertheless, state courts of last resort are important enough to be examined in isolation. They are significant policy makers in general, and for animal law in particular, and variations among states allow for a thorough analysis of the political and ideological influences on animal law case outcomes. Because each venue should be studied in isolation, future research should study animal advocacy group activity in trial courts and the federal judiciary.

Defining animal law is essential to designing research explaining animal law outcomes. Drawing on legal scholarship, this study identifies the following types of cases as animal law: (a) those that challenge government policies, expenditures, and administrative decisions that directly harm animals or weaken animal protections (Waisman et al., 2006, pp. 183-271; Wise, 2000; Silverstein, 1996, pp. 132-147); (b) those that challenge private entities’ use of nonhuman animals (Waisman et al., 2006, pp. 307-402); (c) those valuing pets as companions and more than their replacement value in wrongful death or injury suits (Waisman, et al., 2006, pp. 70-160; Byszewski, 2003; Root, 2002; Hannah, 2001; Squires-Lee, 1995); (d) those defending the free expression of individuals and groups who advocate on behalf of animals (Waisman et al., 2006, pp. 284-296, 309-346, 433-445); Tresl, 2002; Silverstein, 1996, pp. 147-151; Ugalde, 1991); (e) those upholding cruelty laws and appeals from cruelty convictions (Waisman, et al., 2006, pp. 474-540; Lubinski, 2003, pp. 1141-1142; Silverstein, 1996, pp. 141-144; Moretti, 1984, pp. 1-62); and (f) those involving appeals from bans or restrictions on “dangerous” dogs (Waisman et al., 2006, pp. 296-306). Although seemingly disparate, these issues adhere around a common core—judicial outcomes that significantly prevent pain and suffering in nonhuman animals (including painless death) or allow human activists to advocate on behalf of nonhuman animals.

Variables

Case Outcome. The dependent variable measures the outcome of the case, and it is dichotomous. One outcome is pro-animal, meaning that the ruling resulted in reducing nonhuman animal suffering or favored the position of an advocate (either an individual or a group). The other possible outcome is anti-animal, meaning that the ruling did not result in reducing nonhuman animal
suffering and went against the position of an advocate (either an individual or a group). Pro-animal cases are coded with a 1, and anti-animal outcomes are coded with a 0. The LEXIS opinions report each case outcome.

Animal Advocacy Group Participation. The primary independent variable measures whether an animal advocacy group litigated the case. Some animal advocacy groups participate directly as plaintiffs in animal law cases, whereas other animal advocacy groups provide the legal expertise and financial support for litigation on behalf of different plaintiffs. Either way, the animal advocacy group sought to pursue litigation in a state court of last resort as a strategy to improve the plight of nonhuman animals or the ability of humans to advocate on their behalf. To construct this variable, I initially determined whether an interest group was named in the judicial opinion as the pro-animal party, pro-animal counsel, or pro-animal counsel’s firm. I verified organizations’ status by examining their Web sites or cross-referencing with one of the comprehensive sources on animal advocacy (Waisman et al., 2006; Francione, 2000; Wise, 2000; Francione, 1996; Silverstein, 1996; Francione, 1995; Finsen & Finsen, 1994; Sherry, 1994, pp. 82-109; Garner, 1993; Jasper & Nelkin, 1992; Sperling, 1988). Cases in which an animal advocacy group participated as lead attorney, amicus curiae, or plaintiff are coded with a 1, while all other cases are coded with a 0. Because of the mixed evidence on the effectiveness of interest group litigation in general and because this model controls for political and legal factors, I hypothesize that, despite the dedication and skill of the groups and attorneys, animal advocacy organization participation will not significantly increase the likelihood of a pro-animal result.

Aggressive Case. This control variable is primarily legal in nature, and it is adopted from Cortner (1968, p. 288), who describes the aggressive case as one in which a disadvantaged litigator “finds the prevailing constitutional policy unfavorable, and therefore is forced into pursuing an aggressive strategy by seeking innovative interpretations of the Constitution from the courts in order to succeed.” The aggressive case variable used here encompasses a broader definition that includes any case in which the pro-animal side seeks to overturn a statute, policy, precedent, or official governmental action that harms animals directly or hinders advocacy on their behalf. The case opinions provide the relevant information to determine whether the case meets the above definition, and if the opinion lacks sufficient information, then I used LEXIS to access the relevant lower court opinions. Cases deemed to be aggressive are coded with a 1, and other cases are coded with a 0. To reach a pro-animal result in aggressive cases, state supreme courts would be required to interfere with another branch of government or its own established precedents, which present difficult, albeit not impossible, legal obstacles for the pro-animal side.
Therefore, if a case involves an “aggressive” legal argument, then the odds of a pro-animal result should decrease.

**Government Involvement.** Previous research demonstrates that state and local governments possess considerable resources and extensive litigation experience; therefore, state and local government litigants are more likely than other types of litigants to be successful in state court (Farole, 1999; Wheeler, Cartwright, Kagan, & Friedman, 1987; Galanter, 1974). Because state and local governments participate in animal law cases, this research must account for that influence by including two dummy variables. One variable accounts for a state or local government’s pro-animal participation, and it is coded with a 1 if the judicial opinion indicates that a state or local government participated in a pro-animal direction and a 0 if not. A second dummy variable accounts for a state or local government’s anti-animal participation, and it is coded with a 1 if a state or local government participated in an anti-animal direction and a 0 if not. The reference group is when there is no government participation at all. I expect that pro-animal government participation will increase the odds of a pro-animal decision, and anti-animal government participation will decrease the odds of a pro-animal outcome.

**Urbanicity.** Another political variable captures the degree of urbanization in the state where the case is decided. There is evidence that a state’s urbanization can influence the outcome of judicial decisions (Lundberg, 2000), and urbanization should especially influence the outcome of animal law cases. Empirical evidence reveals a relationship between urbanicity and support for animal protection on the individual level (Sperling, 1988, p. 117) and the aggregate level (Allen, 2005). The U.S. Census provides data on the percentage of people in each state living in an urban area for each of the four decades used in this study. Therefore, this variable is measured as the percentage of the population in the state where the case is decided that lives in an urban area during the decade in which the case is decided. I hypothesize that the more urban the state in which the litigation takes place, the greater the likelihood of a pro-animal decision.

**Judicial Ideology.** Research demonstrates that the ideology of state high court justices impacts the character of decisions, with liberal judges more likely than conservative judges to reach liberal decisions, and vice versa (Bensh & Martineck, 2002; Langer, 2002; Brace, Langer, & Hall, 2000; Songer & Tabrizi, 1999; Traut & Emmert, 1998; Brace & Hall, 1997; Emmert & Traut, 1994). There is strong evidence of a relationship between liberal ideological views and support for animal advocacy issues (Allen, 2007; Allen, 2003; Peek, Bell, & Dunham, 1996; Silverstein, 1996, pp. 36-37; Jamison & Lunch, 1992); consequently, state supreme courts with more liberal justices should be
more likely than courts with conservative justices to rule in a pro-animal direction. With a dataset that spans over 35 years and covers 48 states, it is difficult to develop a comprehensive measure of judicial ideology that accounts for each participating justice’s ideology. Consequently, the ideology variable used in this model is based on Brace et al.’s (2000) PAJID score, which measures judicial ideology by factoring each justice’s party affiliation with elite and citizen ideology at the time of appointment (weighted by selection system). Brace et al. (2000) compute an average of the composite PAJID score for each state for the period between 1970 and 1993. Although the scope of this study extends to the year 2005, this use of the PAJID score is still the most thorough composite measure of a state supreme court’s ideology.

Table 1 reports each variable, its measurement, its hypothesized impact, and its mean value.\(^\text{10}\)

<table>
<thead>
<tr>
<th>Variables</th>
<th>Measurement</th>
<th>Hypothesized Impact</th>
<th>Mean Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>DEPENDENT</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Case Outcome</td>
<td>0 = “anti-animal”</td>
<td>N/A</td>
<td>0.612</td>
</tr>
<tr>
<td></td>
<td>1 = “pro-animal”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>INDEPENDENT</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Animal Group</td>
<td>0 = no participation</td>
<td>Pro-animal</td>
<td>0.372</td>
</tr>
<tr>
<td></td>
<td>1 = group participation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aggressive Case</td>
<td>0 = no</td>
<td>Anti-animal</td>
<td>0.287</td>
</tr>
<tr>
<td></td>
<td>1 = yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Govt. Pro-Animal</td>
<td>0 = no</td>
<td>Pro-animal</td>
<td>0.545</td>
</tr>
<tr>
<td></td>
<td>1 = yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Govt. Anti-Animal</td>
<td>0 = no</td>
<td>Anti-animal</td>
<td>0.266</td>
</tr>
<tr>
<td></td>
<td>1 = yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Urbanicity</td>
<td>% of population living in urban area</td>
<td>Pro-animal</td>
<td>69.38%</td>
</tr>
<tr>
<td>Judicial Ideology</td>
<td>Composite PAJID score for the state</td>
<td>Pro-animal</td>
<td>49.56</td>
</tr>
</tbody>
</table>

Results

Because the dependent variable is dichotomous, I analyzed the model with binary logistic regression, instead of ordinary least squares regression (Menard,
Table 2 reports the results of the logistic regression for the model explaining the outcome of the cases.\textsuperscript{11} The model as a whole adequately explains the outcome of animal law cases. The Model Chi-Square of 25.838 is significant (p < 0.001). Furthermore, the reduction of error\textsuperscript{12} of 14.9 percent and the Nagelkerke R-Square (Nagelkerke, 1991) of 0.174 suggest that the model’s explanatory power is adequate. As expected, urbanicity influences the outcome of animal law cases. A 1 percent increase in urbanicity increases the chance of a pro-animal ruling by a factor of 1.022 (or 2.2 percent).\textsuperscript{13} Likewise, aggressive cases are 0.315 times as likely as nonaggressive cases to result in a pro-animal decision. In other words, if the pro-animal side seeks to overturn established precedent or state policy, then the chance of a pro-animal decision decreases by 68.5 percent. The presence of the animal advocacy group variable is not significant at the p < 0.05 level, which confirms the hypothesis that when placed in the political and ideological context of judicial decision-making, animal advocacy groups are not more likely than nongroup litigators to win animal law cases. None of the other independent variables (government pro-animal participation, government anti-animal participation, and judicial ideology) are significant at the p < 0.05 level.

### Table 2: Logistic Regression Model of Animal Law Case Outcomes Decided in State Courts of Last Resort, 1970-2005; N=176

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Log-Odds</th>
<th>Odds-Ratio</th>
<th>log-odds/std error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>-1.132</td>
<td>0.332</td>
<td>1.33ns</td>
</tr>
<tr>
<td>Animal Group</td>
<td>-0.373</td>
<td>0.688</td>
<td>0.84ns</td>
</tr>
<tr>
<td>Aggressive Case</td>
<td>-1.157</td>
<td>0.315</td>
<td>-2.47*</td>
</tr>
<tr>
<td>Govt. Pro-Animal</td>
<td>0.570</td>
<td>1.768</td>
<td>1.18ns</td>
</tr>
<tr>
<td>Govt. Anti-Animal</td>
<td>0.169</td>
<td>1.184</td>
<td>0.37ns</td>
</tr>
<tr>
<td>Urbanicity</td>
<td>0.022</td>
<td>1.022</td>
<td>2.00*</td>
</tr>
<tr>
<td>Judicial Ideology</td>
<td>0.005</td>
<td>1.005</td>
<td>0.50ns</td>
</tr>
</tbody>
</table>

**MODEL STATISTICS**

- Model Chi-Square = 25838***
- Reduction in Error = 14.9%
- Nagelkerke R-Square = 0.174

*\( p < 0.05 \); **\( p < 0.01 \); ***\( p < 0.001 \); ns = not significant
This research also tests whether legal and political factors influence the decision of animal advocacy groups to litigate. Therefore, I created another model with the presence of an animal advocacy group as the dependent variable and the other independent variables from the first model as the independent variables. Table 3 reports the results of this logistic regression. The model as a whole robustly explains the presence of animal advocacy groups. The Model Chi-Square of 97.799 is significant (p < 0.001), the reduction of error is 45.7, and the Nagelkerke R-Square is 0.553. These results suggest strongly that there is a pattern to animal advocacy groups’ decisions to litigate. Specifically, a state or local government’s pro-animal participation decreases the chance of animal advocacy group participation by a factor of 0.067 or 93.3 percent. This evidence suggests that, although state and local governments often appear in state high courts on behalf of animals, they are not likely to litigate alongside animal advocacy groups. Moreover, a 1 percent increase in urbanicity increases the chance of animal advocacy group participation by a factor of 1.030 (or 3.0 percent), which shows that animal advocacy groups tend to litigate in the more urbanized states. Furthermore, an increase of one on the PAJID score increases the chance of animal advocacy group participation by a factor of 1.024 (or 2.4 percent); consequently, animal advocacy groups are more likely to litigate in states with more liberal justices. Most important, aggressive cases are 3.023 times (or 202.3 percent) more likely than nonaggressive cases

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Log-Odds</th>
<th>Odds-Ratio</th>
<th>log-odds/ std error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>-2.921</td>
<td>0.054</td>
<td>-2.76**</td>
</tr>
<tr>
<td>Aggressive Case</td>
<td>1.106</td>
<td>3.023</td>
<td>2.24*</td>
</tr>
<tr>
<td>Govt. Pro-Animal</td>
<td>-2.699</td>
<td>0.067</td>
<td>4.93***</td>
</tr>
<tr>
<td>Govt. Anti-Animal</td>
<td>-0.050</td>
<td>0.951</td>
<td>0.10ns</td>
</tr>
<tr>
<td>Urbanicity</td>
<td>0.029</td>
<td>1.030</td>
<td>2.07*</td>
</tr>
<tr>
<td>Judicial Ideology</td>
<td>0.024</td>
<td>1.024</td>
<td>2.00ns</td>
</tr>
</tbody>
</table>

MODEL STATISTICS
Model Chi-Square = 97.799***
Reduction in Error = 45.7%
Nagelkerke R-Square = 0.553

*p < 0.05; **p < 0.01; ***p < 0.001; ns = not significant
to be litigated by an animal advocacy group. Animal advocacy groups are considerably more likely than nongroup litigators to seek to overturn a statute, policy, precedent, or official governmental action. The finding that animal advocacy groups are more likely than nongroup litigators to take the more difficult cases could explain the earlier finding that the participation of animal advocacy organizations does not statistically influence the outcome of cases. Simply put, in state courts of last resort, animal advocacy groups tend to litigate the cases that are difficult to win. The government anti-animal participation variable is not significant at the p < 0.05 level.

Discussion

This article quantitatively tested whether animal advocacy group litigation had a significant effect on the outcome of the 188 animal law cases decided in state courts of last resort from 1973 through 2005, while systematically controlling for other possible influences. The purpose of this study is to fill gaps in both the animal advocacy organization literature and the animal law literature. Until now, the animal advocacy group literature has not systematically examined the effectiveness of litigation as a technique for influencing policy in favor of nonhuman animals and their advocates.

This research uncovered that when controlling for political and legal influences on case outcomes animal advocacy group participation in a case does not statistically impact the chance of a pro-animal decision. This result is tempered, however, with the additional finding that animal advocacy groups are more likely than individual litigators to take the more difficult “aggressive” cases. This study also contributes to the field of animal law by offering a quantitative analysis of the outcome of animal law cases. The fact that multivariate models significantly explain the variance in animal-law case outcomes and the participation of animal advocacy groups supports the notion that animal law is a distinctive, coherent, and explainable branch of law. This research specifically introduces the animal law field to the significance of political factors, such as urbanicity and judicial ideology. Future analyses of animal law, even qualitative and normative studies, should incorporate the impact of these political factors. Furthermore, this study should interest political scientists because it provides evidence for the growing skepticism over the efficacy of litigation as a method for groups to bring about progressive social change (Tauber, 1999; Tauber, 1998; Songer & Sheehan, 1993; Epstein & Rowland, 1991; Kobylka, 1987), especially when controlling for the political environment (Brace & Hall, 2001; Tauber, 1999; Tauber, 1998; Ivers, 1995; Wasby, 1995; Sheehan, 1992; Olson, 1990).
These findings are certainly important enough to warrant continued empirical research on animal advocacy group litigation. Future research should examine other judicial venues (e.g., trial courts and federal courts) and explore whether animal advocacy group litigation has an impact beyond the outcome of the cases. Scholars have shown that judicial victories do not necessarily bring about desired social changes unless the litigation influences other branches of government and public opinion to support the groups’ policy goals. Therefore, in order to have full impact, interest group litigation should increase public awareness of the issue, enhance organizations’ ability to mobilize members, and even win converts (e.g., Silverstein, 1996; McCann, 1994; Stewart & Sheffield, 1987; Scheingold, 1974). Rosenberg (1991) demonstrates that landmark Supreme Court cases not only failed to improve the plight of racial minorities, women, and the environment; they also failed to increase public attention to those issues. Focusing specifically on animal advocacy groups, Lovvorn (2006) and Payne (2002, pp. 630-631) propose, and Silverstein (1996) shows anecdotally, that animal advocacy organizations can use litigation to generate support for their cause and mobilize members; yet there has been no rigorous quantitative test of this proposition.

Notes

1. Wise (2000) focuses mainly on chimpanzees and bonobos, which are closely related to humans, but he makes it clear that his views are not limited to those two species.
2. Because some states do not refer to their courts of last resort as the “supreme court,” the term “supreme court” is technically not accurate. Nevertheless, in order to vary usage I will use interchangeably the terms “state supreme court,” “state high court,” and “state court of last resort.”
3. I initially searched for cases between 1970 and 2005, but there were no cases decided prior to 1973.
4. The Michigan Supreme Court did not decide any animal law cases between 1970 and 2005.
5. I used “animal” to locate potential animal law cases and narrowed the list by reading the opinion summary and, if necessary, the full text of the opinion. Data available from author upon request.
6. These free expression cases include challenges to statutes that prevent animal advocates from confronting hunters, appeals from libel convictions against animal advocates who highlight a company or facility’s abuse of animals, and animal advocates seeking access to information on the condition of research animals. Although these issues generally center on the First Amendment to the United States Constitution (or corresponding protections in state constitutions) and not on animal protection per se, these cases still expand the ability of animal advocates to protest and lobby against the misuse of animals for scientific research, entertainment, clothing, and food. This research therefore considers these free expression cases to be part of animal law, as do comprehensive sources on animal law (e.g., Waisman et al., 2006).
7. Lawsuits against enforcers of animal cruelty laws are also included in this legal issue because the prospect of paying monetary damages to targets of animal cruelty investigations can have a chilling effect on people’s willingness to enforce animal cruelty laws.

8. I discarded hunting out of season and night-hunting cases because those regulations are designed to ensure a sufficient supply of game animals, make hunting more “sporting,” and protect humans from mishaps. They are not concerned with animal suffering. Furthermore, although animal law overlaps with environmental law, there are important distinctions to be made between them. This project includes only those environmental cases that entail specific harm (i.e., death, pain, humiliation, and acute emotional distress) to specific animals. For this reason, I discarded endangered species cases in which the direct suffering of an animal was not at stake. For example, cases involving migration, albeit significant to the survival of a species, do not immediately bear upon the pain or suffering that an animal experiences.


10. It bears emphasizing that the legal doctrine of standing presents an obstacle to animal advocacy group litigation. Because animal activists bring cases on behalf of animals, standing doctrine limits their ability to use litigation as a means of alleviating animal suffering (Waisman et al., 2006, pp. 183-271; Smith, 1999; Silverstein, 1996, pp. 133-141). Standing cases do not feature prominently enough in this dataset, however, to include standing as a separate variable.

11. Because the SPSS Logistic Regression function does not compute tolerances, I tested for multicollinearity by running an OLS Regression with the same dependent and independent variables used in the logistic regression (Menard, 1995, p. 66). All the tolerance figures were well above 0.2, which is a conservative threshold for evidence of multicollinearity. Therefore, there is no evidence of multicollinearity in this model.

12. Since SPSS does not report ROE, I calculated it by hand with the following formula: 100 * (% classified correctly-% in modal category) / (100%-% in modal category).

13. The formula for figuring the percentage interpretation is 100 * (odds-ratio – 1) (DeMaris, 1992, p. 46).

References


