

*Texas vs. the Federal Government:  
An Examination of the Influence of Political Ideologies on State-  
Filed Lawsuits*



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## Introduction

The purpose of this study is to discover how ideology affects the preponderance of lawsuits filed by the state of Texas against the federal government, that is, against any federal agency or individual acting in a federal role. The research conducted to complete this report is a broad indicator at best of the role that politics plays in the federal system of government in the United States of America. The members of the research team are: Becky Calahan, Danielle Drastata, Ann Marie Garcia, Matthew Gaskin, Jesus Perales, Patrick Philpot, and Theo Plowman. This research was conducted to fulfill, in part, the requirements of PSAA 675-650 and 676-650, the Texas Legislative Capstone.

To conduct this research, we identified four important policy areas of interest to members of our research team. The policy areas included are: criminal justice, environmental protection, immigration, and social issues. We also determined a time frame during which the cases need to have been filed. This time frame encompasses an ideological spectrum in Texas government, as well as among the American presidents who held office simultaneously with the Texas governors we analyze. The report starts analyzing lawsuits with the beginning of Governor Ann Richards' term in office as Governor of Texas (1991-1995) and spans to the current administration, with Greg Abbott as Governor of Texas. Further, comparisons of lawsuits filed by both the states of California and Florida against the federal government are made within this same time frame. Making such comparisons allows us to present a broad picture of how ideology may affect the majority of lawsuits filed by a state against the federal government.

The organization of this report is meant to guide readers through our research. To begin, we provide a description of federalism and its context in the United States of America. Next, we explain our research framework. Specifically, we provide detailed explanations of why we chose to compare lawsuits filed by Texas to lawsuits filed by California and Florida as well. Then, we delve into the details of the lawsuits each of these three states has filed against the federal government. For each of the four subject areas we researched, we analyzed the background of the cases, who participated in the lawsuit, the political climate at the time the lawsuit was filed, as well as the outcomes. Following the overview of the lawsuits filed by each state, we summarize our findings. Finally, we discuss limitations faced in conducting this research, as well as offer final conclusions and recommendations for further research.

## Background

Federalism is a system of government that balances multiple hierarchies of authority. It is defined as:

“...a system of government in which the same territory is controlled by two levels of government. Generally, an overarching national government governs issues that affect the entire country, and smaller subdivisions govern issues of local concern. Both the national government and the smaller political subdivisions have the power to make laws and both have a certain level of autonomy from each other,” (Cornell University Law School, 2017).

In the United States, federalism is a balance of power and responsibilities between the national government and state governments, while municipal and county governments are legally creatures of their state governments. Both the federal and state levels of government have the authority to create laws; local governments have the powers that their states give them. For the purposes of this report, our focus on federalism is between the national government and the government of the state of Texas.

### *History of American Federalism*

The federal system began with the creation of the U.S. Constitution in 1787; it established a system of government which empowered the people but distributed power between member states and institutions (Campbell, 1992). Citizens have political obligations to, or have their rights secured by, two authorities: federal authority and state authority. This relationship however is not static throughout history; there have been shifts in how power has been brokered (Campbell, 1992). Up until the latter part of the 20th century, the Supreme Court generally supported the assigning of more influence to Congress at the cost of state authority; predictably the states would often grapple for power. However, changes in the Court’s composition led to a shift in the 1990’s and onwards in which the Supreme Court began to favor states’ rights (Lépine, 2012). To understand just how pronounced this swing has been, it is important to examine several Supreme Court cases within historical context.

### *Why sue the federal government?*

Understanding that federalism is a balance of diverging power, with some authority held by the federal government and some authority held by the states, one might ask why a state government with powers would choose to sue the federal government. This is an underlying question addressed in this report. The primary variable we attempt to address is politics, specifically by researching the number of lawsuits Texas filed against a federal agency or actor during four separate administrations. The four administrations examined represent Democrat and Republican ideologies, therefore allowing tentative conclusions to be drawn about how politics may play a role in lawsuits filed by a state government against the federal government.

However, it is also important to note that there could be other reasons a state would choose to file a lawsuit against the federal government. Money is a potential reason: to ensure the state receives federal funds it may have received in the past or that it feels it deserves. Likewise, power may also be an underlying cause for a state's choice to sue the federal government. In this instance, leaders of states may feel their authority is being usurped by the federal government through mandates handed down from the U.S. Congress to the states. Federalism scholar Jenna Bednar (2009) argues that states will resist the efforts of the federal government to encroach on state authority.

In this report one potential reason for a state to sue the federal government is explored. The goal is to determine whether ideology plays a role in the decision by the state of Texas to sue the federal government.

## Framework for Comparison

To complete this research, we compare our findings for the state of Texas to our findings for two other states, California and Florida. These comparisons are made in an attempt to generalize our findings, rather than draw conclusions based solely on one state's propensity to file lawsuits against the federal government. The two states used for comparison are California and Florida, chosen based on the following criteria: population size, geographic location, ideology, and legislative structure.

### *Population size*

As shown in Table 1, the population of each of these three states is roughly comparable. They are the three most populous states in the United States, with New York not far off in fourth place (United States Census Bureau 2017). Population size was the first criterion used to decide which states to include in this research.

**Table 1. State Population**

State	Population
California	39,250,017
Florida	20,612,439
Texas	27,862,596

(Source: United States Census Bureau 2017).

### *Geographic location*

The three states used in this research are each located in a different geographic location in the United States. California is situated on the western coast of the United States, Florida lies on the eastern coast, and Texas sits centrally between both California and Florida.

While geographic location is not necessarily an indicator of likelihood for a state to sue the federal government, it is a distinction that differentiates these three states. Though the states may be of comparable population size, they may each represent any potential regional tendencies that states have to sue the federal government.

### *Ideology*

In choosing the states for comparison with Texas when looking at lawsuits against the federal government, the ideology of the states is an important consideration. To make general assumptions about the role of ideology and its effect on a state's propensity to file lawsuits against the federal government, it is important to compare states that are not ideologically similar. If all the states we studied were traditionally of the same majority ideology, the findings of our research would not be easily generalizable. According to two national surveys, one by Pew and the other by Gallup, the citizens of the three states being compared differ in ideological majority.

As shown in Table 2, in 2014, the California citizenry was reportedly 31 percent conservative, 34 percent moderate, 29 percent liberal, and six percent identifying as unknown (Pew Research Center 2014). Florida was 37 percent conservative, 31 percent moderate, 24 percent liberal, with eight percent unknown. Texas was the most conservative and least liberal of the three states with 39 percent of those surveyed being conservative, 32 percent moderate, 21 percent liberal, and seven percent identifying as unknown (Pew Research Center 2014). Table 2 displays the ideological distribution in these states in 2014.

**Table 2. Political Ideology by State, 2014**

State	Conservative	Moderate	Liberal	Unknown
California	31%	34%	29%	6%
Florida	37%	31%	24%	8%
Texas	39%	32%	21%	7%

Similarly, in 2016, the citizenry of the three states was surveyed by Gallup. The results were similar for ideological tendencies, as shown in Table 3. With the nation at 36 percent conservative as a whole, California was 30 percent, Florida 36 percent, and Texas 40 percent (Gallup 2016). As a nation, Americans were 36 percent moderate, while California, Florida, and Texas were each at 35 percent moderate (Gallup 2016). Lastly, the national average for identifying as liberal was 24 percent, while California was 29 percent, Florida 23 percent, and Texas 20 percent liberal (Gallup 2016).

Further, this particular Pew report, as shown in Table 3, also identifies those surveyed as Republican leaning and Democratic leaning. With the nation at 40 percent Republican, California was 32 percent, Florida 41 percent, and Texas 43 percent (Gallup 2016). For Democratic leaning, the nation was at 44 percent, with California at 50 percent, Florida 43 percent, and Texas 39 percent (Gallup 2016).

**Table 3. Political Ideology by Nation and State, 2016**

State	Conservative	Moderate	Liberal	Republican	Democrat
Nation	36%	36%	24%	40%	44%
California	30%	35%	29%	32%	50%
Florida	36%	35%	23%	41%	43%
Texas	40%	35%	20%	43%	39%



## Legislative structure

Within the federal system, each state legislature operates uniquely to meet the needs of the state. Scholars have attempted to classify the differences in legislative organizations and functions to make assertions about effectiveness. Based on prior research on the topic of full-time and part-time legislatures, we have chosen three states that operate differently from one another. Therefore, we are attempting to compare findings about states' propensities to sue the federal government across a variety of legislative systems.

**Figure 1. Professionalism of Legislatures**

The National Conference of State Legislatures (NCSL) has classified state legislatures as full-time and part-time based on three indicators. The three indicators used are: time on the job (including time in session, constituent service, interim committee work, and election campaigns), compensation, and staff size (National Conference of State Legislatures 2014). In the NCSL analysis, California is classified as green, which signifies a full-time, well paid legislature with a large staff. Florida is classified as light green: full-time, without the same well paid and large staff indicators like California. (See Figure 1.) Texas is classified as a hybrid of the full-time, well paid, large staff green category and the part-time, low pay, small staff (color-coded as yellow). The explanation given for a hybrid category is that the legislators work about two-thirds of the amount of a full-time job, while receiving a compensation that is not equivalent to a full-time job and having mid-size staff.



The details of time on the job and pay for legislators in California, Florida, and Texas help clarify their differences. California legislators meet in regular session on the first Tuesday in December of even numbered years, and the regular session ends on November 30th of the following even-numbered year (Constitution of the State of California). California legislators are compensated

\$97,197 per year and a \$176 per day per diem while in session (National Conference of State Legislatures 2016). Florida meets in regular legislative session annually for 60 days (Constitution of the State of Florida). Florida legislators are compensated \$29,697 per year and a \$152 per day per diem while in session (National Conference of State Legislatures 2016). Texas meets in regular legislative session every other year for 140 days, a biennial model (Constitution of the State of Texas). Lone Star state legislators are compensated \$7,200 per year with a \$190 per day per diem while in session (Texas Ethics Commission).

Clearly each of these three states has a unique system in which their legislative body operates. There is a wide range of time spent in session and in the level of legislative compensation. We have attempted to ensure that we are not comparing like states for the purposes of this research topic. However, the population size of these states is comparable, in that they are the three most populous states in the United States. These are important states that often serve as models for other states. They wield influence in the federal system and when they sue the federal government, policymakers take notice.

Overall, these three states were specifically chosen to be compared for our research. The reasons for choosing these states, as explained above, allow us to shed light on a little known but significant subject: state lawsuits against the federal government, and notably, the role that ideology may play in the filing of these legal challenges.

## Topics of Lawsuits

The purpose of presenting varying lawsuits filed against the federal government by Texas, Florida, and California is to ascertain whether a distinguishable trend or pattern can be found with regard to ideology when states make the decision to sue the federal government. The topics introduced in this section consist of the following: criminal justice, environmental protection, immigration, and social issues. These topics were chosen based on the importance of the policy area, the relevant interests of the seven team members, and were also guided by a Texas Tribune article titled “Texas vs. the Feds — A Look at the Lawsuits” (Satija et al. 2017). As such, this section will explore the aforementioned topics, and will specifically evaluate lawsuits filed under each topic by Texas, Florida, and California (either jointly or not) while also considering ideologies of the Governor Richards/President George H.W. Bush era; the Governor Bush/President Clinton era; the Governor Perry/President George W. Bush era; and the Governor Abbott/President Obama era, as applicable. Each lawsuit topic will present the lawsuit(s) to be discussed, the grounds for filing that lawsuit, the political framing at the time of filing, and the outcome of the lawsuit.

**Table 4. Gubernatorial and Presidential Partisanship, 1991-2017**

	1991	1995	1999	2003	2007	2011	2015	2017
<b>Texas</b>	D	R	R	R	R	R	R	R
<b>California</b>	R	R	D	R	R	D	D	D
<b>Florida</b>	D	D	R	R	R	R	R	R
<b>Presidential Partisanship</b>	R	D	D	R	R	D	D	R

## *1. Criminal Justice*

Criminal justice is an area where traditionally states have had considerable leeway for determining sentencing, laws and exemptions. The original intent was for the federal government to be a limited government in this arena, with the bulk of regulatory authority residing in the states. Generally, federal felonious laws aim to penalize conduct that occurs on federal possessions or behavior involving federal personnel, currency, national security and rights secured by the Constitution.

State laws are designed to regulate in two capacities. Firstly, state laws control issues of a local character or concern. A state may regulate, for instance, its laws over texting and driving. Second, state laws regulate issues or items that remain within a state's border. A good example of this is Colorado's legalization of the possession and sale of marijuana. Federal laws are uniform across all states, but state laws obviously differ from state to state. This inconsistency makes the American system of federalism complicated for lawmakers.

### *The Death Penalty*

Capital punishment or the death penalty is a legal process whereby a person is put to death by the state as a punishment for a crime. This judicial decree varies from state to state with 19 states theoretically without such a penalty in their judicial arsenal. The three states examined, however, all maintain their ability to sentence the convicted to death. The legal process in all three states is mired in difficulty with strong federal involvement in both the appeals process and the execution method itself. The U.S. Supreme Court's pledge to federalism is nowhere more robust than in the jurisprudence of capital punishment. The key to determining a death sentence is asserting a crime or crimes that warrant such extreme action. This determination is actioned on a state by state basis. For example, in Florida it is an aggravating factor if the murder is "committed in a cold, calculated, and premeditated manner without any pretense or moral or legal justification" (FCRC 2017). In this area it could be expected that there would be considerable challenges to an area where there is federal involvement. However, the lawsuits discovered in research focused predominantly on the appeals process and thus was often a plaintiff against the state rather than a federal state adjudication. One key case was found in Texas in which The Texas Department of Criminal Justice (TDCJ) is suing the Federal government over an impounded shipment of drugs to be used for lethal injections (Satija 2017).

### *Grounds for Filing*

The Texas Department of Criminal Justice sued the U.S. Food and Drug Administration for what it says is an “unreasonable delay” in deciding whether to allow the delivery of execution drugs from India. In 2015 the FDA seized 1,000 vials of sodium thiopental at a Houston airport (Stapleton and McLaughlin 2017). The FDA asserted the drugs appeared mislabeled and unapproved, effectively barring TDCJ from importing the drug, but no final decision has been made. However, lawyers for the TDCJ have argued that the state qualifies for a special law enforcement exemption to the FDA labeling requirements. Texas Attorney General Ken Paxton filed suit in Galveston, imploring the federal court for the southern district of Texas to force the agency to make a final decision. Texas claims the import is legal mainly since the drugs are being used exclusively for “law enforcement” purposes, in this case executions (Star 2017). Attorney General Ken Paxton’s statement that the FDA is “impair[ing] Texas’ responsibility to carry out its law enforcement duties” (Stapleton and C. McLaughlin 2017) suggests an adversarial position against the federal government.

### *Outcome*

The lawsuit is currently pending in the Galveston-based U.S. District Court for the Southern District of Texas.

## *2. Environmental Protection*

Federal environmental policy intends to preserve natural resources by harmonizing environmental protection with fiscal growth, property rights, public health, and energy production. This is done predominantly through legislation and regulation passed at all governmental levels and influenced by many stakeholders with different agendas. The primary stakeholders who influence the decisions are strongly tied to industry and governmental environmental agencies, both are adversarial with both jostling over a fine line between economic development and environmental protection.

Texas state government specifically has had a tumultuous relationship with the U.S. Environmental Protection Agency (EPA). For example, Texas legislators and business owners have refused EPA monitoring of greenhouse gas emissions and air permit requirements in the state. Motives for these as explored in this section vary and include claims of states' rights and rejection of EPA rulings on the dangers of greenhouse gases.

### *Climate Change and Increased Friction*

The increasing reality of the impacts of global climate change are likely to have sparked increased debate in the state of Texas, with growing pressure on government to act against emitting actors. Striking the fine balance between the vitality of a fossil fuel based economy, specifically the oil industry, and the needs of the natural world is a challenging task.

The current scientific community overwhelmingly points to anthropogenic actions as the cause of global warming; consuming fossil fuels and emitting greenhouse gases are major factors that Texas is most certainly culpable of. Some impacts of climate change may be the flooding of low lying areas such as Galveston and increased extreme weather events similar to Hurricane Andrew.

Many political actors do not share the same views on the dangers of climate change. Former Texas Governor Rick Perry for example whom many of the following lawsuits are filed under was quoted as saying, "Climate change [is] all one contrived phony mess that is falling apart under its own weight (Johnson 2014)." There are strong groups within Texan politics who either outright deny climate change or belie its impacts.

### *Grounds for Filing*

Texas, California, and Florida all have diverse reasons for filing lawsuits against environmental measures. California has taken some proactive stances on lawsuits as well as some defensive actions to protect industry. For decades, California has been a pioneer in the United States on air pollution and climate change, adopting ever-higher criteria for controlling auto emissions and, more recently, greenhouse gases.

In climate politics, Texas essentially aims to be the anti-California. Determined challenges are coming directly from the Texas state government and leading Texas politicians, rebelling against federal regulation, especially on the environment. The primary basis of Texan arguments is a pushback against government overreach and the potential harm that new regulations could have on flagship industries.

### *Political Framing for the Lawsuit*

Greg Abbott assumed the office of Attorney General of the State of Texas in January 2002 during the presidency of George W. Bush. The State of Texas filed no lawsuits against any federal entity regarding environmental regulation during President Bush's administration. President Barack Obama took office in January 2009, and as his policy initiatives began to shape American regulation, Texas began to use litigation as recourse to federal policy directives. As Attorney General (AG), Greg Abbott filed 18 individual suits for redress or halt of federal action and regulation.

### *Texas*

Texas has been at the forefront of energy production, and by necessity, energy policy for the United States for decades. Uniquely, policy initiatives which encumber production or slow growth in the sector are of particular concern to Texas political figures and their constituents, and litigation may be seen as the most expedient and feasible means of redress. Lawsuits, however, serve the purpose only for the administration seen as hostile to the sector. It is worth noting that Texans have had a disproportionate presence in the federal executive branch in recent history, thereby either preempting the need for litigation due to favorable policy, or simply by addressing concerns in other avenues. There are several reasons Texas has found itself at the forefront of lawsuits against the federal government, but the notable increase

during the Obama administration possibly signals either policy viewed as hostile within the state, or politically favorable to the electorate.

*Lawsuits Filed under Governor Rick Perry (R) by Attorney General Greg Abbott (R)*

Under Republican Governor Rick Perry, Republican Attorney General Greg Abbott would use the power of litigation to address concerns facing the energy sector, but also to grow his political notoriety both locally and nationally. Beginning in February 2010, Texas filed 16 individual lawsuits under the administration seeking redress from policy issues ranging from wildlife protections to greenhouse gas emissions. The validity of these can largely be viewed as wanting. Eleven of the cases were either dismissed or ruled in the EPA's favor, while only four can be seen to have resulted in substantive policy changes in the state's favor (Owen 2013).

Examining proportionate key rulings for and against Attorney General Abbott can be helpful to reveal the policy issues causing friction between the state and federal capitols, but can also demonstrate the political realities within the State.

In arguably the most landmark and current politically pertinent rulings, Texas challenged policy initiatives which recognized both that man-made greenhouse gas emissions cause and contribute to global warming and that the federal government has the right to regulate such emissions. In February 2010, attorney general Abbott brought suit over the Endangerment Findings--an EPA report stating that greenhouse gases "threaten the public health and welfare" of citizens and were in need of regulation. The D.C. Circuit Court of Appeals upheld the EPA findings, and the Supreme Court declined to hear any appeal. The same year, Abbot once again brought suit against the EPA claiming its regulation of greenhouse gases at industrial facilities was an illegal overreach under the Clean Air Act and that the agency did not have the authority to regulate such industry. Though the Supreme Court found that the EPA had in fact overreached the authority granted to it by the Clean Air Act, it did find that the EPA had the authority to regulate emissions at such industrial facilities. Two more times in 2010 Texas would challenge the EPA's right to oversee and regulate greenhouse emissions, and two more times courts would either find in the favor of the EPA, or the effects of their ruling would have no substantial change to policy directives (Satija et al. 2017).

Texas' only win of 2010 against the EPA came in a suit filed in December of that year. "Texas' pollution control permitting program let industrial facilities bypass some burdensome



regulations if they reduce their air emissions. After waiting for the EPA to weigh in on the program for years, Texas got a rejection in the fall of 2010, and promptly sued that December alongside one of the state's biggest power companies, Luminant. In March 2012, the U.S. 5th Circuit Court of Appeals in New Orleans ruled in favor of Texas and said the EPA "...had illegally disapproved of the permitting program," (Satija et al. 2017).

In the following years, Abbott continued to challenge EPA rulings and regulations with similar success. With little exception, the suits filed resulted in either administrative changes within the agency with little substantive result, or flat rejection of the AG's argument. What victories did come for the state can largely be seen to have resulted from improper implementation of an existing rule or improper evaluation of a permit or plan submitted by the state or industry within the state. In his last challenge of 2010, Abbott challenged and gained redress of a rule restricting certain particulate pollution which may lodge in the lungs of humans. The EPA agreed to reevaluate its implementation and the case was left pending by Abbott. Additionally, Abbott's challenge of the EPA rejection of the state's air pollution plan was found by the 5th Circuit Court of Appeals to be valid due to the previous illegal rejection of Texas' pollution control permitting program by the EPA (Satija et al. 2017).

It is worth noting that while effective defeats of policy reversals were frequent, Abbott did claim his victories. In rulings in 2011 and 2012, Abbott was able to gain legal redress and policy change in regulations controlling pollution drifting to other states, as well as forcing a rewrite of agency policy concerning the regulation of mercury emissions from power plants. While both cases had shared benefits for both state and environmental advocates, the practical effect was one of the state being able to continue to operate at status quo (Satija et al. 2017).

Many of the challenges filed by Abbott over the next years can be viewed as either indecisive or still contested due largely to the local effect and focus, or their non-environmental implications. Three times Abbott would challenge the EPA regulation and directive over smog and air quality plans in individual localities, losing one and the other two having little practical effect or still being contested. The D.C. Circuit Court of Appeals rejected Abbott's 2012 claim that Wise County, TX could not be added to a list of North Texas Counties violating federal smog regulation, while not specifically ruling against the grounds on which Abbott filed his challenge of the regional haze rule the same year. In 2013, Texas, along with ten other states, challenged an EPA denial of FOIA relating to discussions with NGO environmental group, but the case was dismissed (Satija et al. 2017).

*Lawsuits Filed under Greg Abbott (R) by Attorney General Ken Paxton (R) (Satija et al. 2017)*

Ken Paxton assumed the office of Attorney General in January 2015 following the election of former Attorney General Greg Abbott to the office of Governor. With two years remaining in the tenure of President Obama, Ken Paxton continued to enter the court for redress against federal environmental regulation. Five times over a two-year period Attorney General Paxton attempted to halt Obama administration directives.

Ken Paxton would continue to challenge the Obama administration in a similar method, with similar results, as Abbott. Climate change and greenhouse emissions continued to be a much contested issue, along with additional issues related to industry within the state, but a tone of federal overreach began to be the central issue of the suits. Most notably, in 2015 Paxton challenged the EPA over their attempt to clarify which waters were under federal jurisdiction. In an unrelated ruling, the U.S. 5th Circuit issued a stay on the rule, effectively resulting in a de facto victory for Paxton.

Using legal recourse as the method to combat climate change, legislation continued to evolve as precedent was established. While the continuously litigated Clean Air program of the Abbott era was still an issue for the newly sworn in Paxton, the direct opposition to pollution regulation as a method to halt climate change continued to develop. In 2015, AG Paxton filed two lawsuits to halt Obama administration directives relating to climate change, one of which, seeking to drastically cut carbon emissions allowable from power plants was blocked by the Supreme Court in an unrelated decision, and the other, tightened standards on ground-level ozone pollution, continues to be contested. In perhaps the most direct and transparent defense of Texas industry under the Obama administration, Paxton filed suit against EPA regulations seeking to severely limit methane emissions from oil and gas producers. In what he called, “a gross demonstration of federal overreach,” Paxton specifically noted the exorbitant costs this would have for the Texas economy and the real effect on working Texans (Satija et al. 2017). This case is pending as of this writing.

Though Paxton has continued to file suit against federal directives in the environmental arena despite the shift in national political power with the inauguration of President Trump, it is apparent that these suits continue to be used as a tool to slow or prevent the implementation of Obama era directives. Beginning with the methane emissions suit, Paxton has sought to use the court to address lingering Obama policies dealing with coal mining near waterways, and regulation dealing with hazy conditions in national parks and wilderness areas, both of which

are currently pending as of this writing (Satija et al 2017 ). While these suits continued to be filed and litigated for myriad reasons, it would be incorrect to attribute them to a state administration politically aligned with the federal administration.

### California

California's lawsuits against the federal government regarding environmental concerns are both fewer and of a different tone. It is possible that California has had other methods of redress and has not felt the need to seek recourse in the courts, or simply that California has not found itself at odds with the regulations coming from the EPA. Conflicting industry cannot be viewed to be as prevalent as it is in Texas, but similarities are present between the two states. Examining a specific suit in this case can adequately represent these differences in both need and philosophy.

#### *Lawsuits Filed under Governor Arnold Schwarzenegger (R) by Attorney General Jerry Brown (D)*

California, joined by 15 other states led by New York, sued the Environmental Protection Agency over its refusal to allow the state to set its own, tougher vehicle-emissions standards to control greenhouse gases and combat global warming.

In a 5-4 decision issued on April 2, 2007, the Supreme Court held that the EPA acted arbitrarily and capriciously in denying a rulemaking petition under which several organizations had asked the agency to regulate greenhouse gas ("GHG") emissions from new motor vehicles under Section 202 of the Clean Air Act (Richburg 2008).

While California did, in this case, feel the need to petition the courts for redress of an issue, the filed suit dealt with their inability to exceed federal standards.

### Florida

#### *Lawsuits Filed under Governor Rick Scott (R) by Attorney General Pam Bondi (R)*

Florida sued to block a U.S. Environmental Protection Agency rule that would require 35 states to take additional steps to cut carbon emissions from power plants. The lawsuit, which was filed in a federal appeals court in Washington and joined by 16 other states, set in motion another state battle against the Obama administration over its clean power initiative (Harris 2015).

### *3. Immigration*

Immigration has been an increasingly polarizing issue at both the federal and state levels of government. The increased number of undocumented immigrants has forced states to take legal action against the federal government, primarily over the lack of federal immigration enforcement. The starting point for an increased conflict between states and the federal government can be traced back to the Immigration Reform and Control Act of 1986. Although the correlation between the passage of the 1986 immigration reform legislation and an increase in the number of undocumented immigrants has yet to be substantiated, elected officials and opponents of immigration reform have not hesitated to cite the legislation for an increase in undocumented immigrants. The purported increase in undocumented individuals has also led elected officials to blame undocumented immigrants for placing a drain on state resources such as public education and law enforcement. This section analyzes federal lawsuits filed by the state of Texas that concern immigration policy. Primarily the analysis will focus on the lawsuits filed in the mid 1990's claiming the federal government should be held responsible for the incurred cost of undocumented immigrants as well as recent lawsuits filed in reaction to federal changes to immigration policy.

#### *Lack of Immigration Enforcement*

The passage of the Immigration Reform and Control Act of 1986 led to a rise of anti-immigrant sentiment from both the public and elected officials. Unsurprisingly elected officials seized on their constituents' apprehension and blamed the passage of the Immigration Reform and Control Act for the increase in illegal immigration. In an effort to demonstrate resistance to the federal government's response or lack thereof towards immigration enforcement, states began to sue the federal government for not enforcing federal immigration laws and for costing the state government millions of dollars through state provided services for undocumented immigrants. The following three federal lawsuits in states with a sizeable immigrant population all address this concern with the federal government: *Gov. Chiles (FL) v. United States*, *State of Texas v. U.S.*, *State of CA v. U. S.*

At the time of the filing Florida and Texas were led by Democratic leadership while California was under Republican control. Despite the political differences among the elected officials in each state all three of the states sued the federal government under similar pretext.

### *Grounds for Filing*

Texas, California, and Florida argued that the federal government was costing the states millions of dollars by not adequately enforcing immigration laws. The lack of enforcement forced the states to use their own resources to provide public services such as education, medical care, and law enforcement for illegal immigrants. Texas, California, and Florida filed suit against the federal government claiming they deserve reimbursement for incurred cost. The states pointed to three main clauses as the basis of their lawsuits. The states argued using the Naturalization Clause:

“...insofar as the rule of naturalization is to be ‘uniform,’ the effects of immigration upon the states must also be uniform and, if they are not, the federal government has an affirmative duty to compensate those states that can be seen as disproportionately affected by immigration” (Manuel 2016, 3).

Furthermore, under the Guarantee Clause, the states argued that the:

“United States is required to guarantee to every State in this Union a Republican Form of Government, and that the federal government deprived them of a republican form of government by ‘forcing’ them to spend money on unauthorized aliens that they would not have had to spend if these aliens had been excluded or removed from the United States” (Manuel 2016).

Finally, the states used the Invasion Clause to further bolster their claims. Under the Invasion Clause the federal government is required to protect the states against invasion (Manuel 2016). The states claimed that the federal government’s lack of immigration enforcement has led to an invasion by undocumented immigrants.

### *Political Framing of the Lawsuit*

Despite similar lawsuits, the participating states have taken a different tone when addressing the need for the lawsuits. Texas officials framed the issue as a lack of federal responsibility as opposed to a burden from undocumented immigrants. Elected officials stated that the lawsuit was a “means to correct a glaring budget imbalance under which many illegal immigrants paid taxes that were collected by the Federal Government while the state and local governments were left with the financial obligation for providing services” (Verhovek 1994). The Attorney

General of Texas, Dan Morales, further stated, "While undocumented immigrants make contributions to the Texas economy, they also contribute substantially to the Federal coffers in the form of income taxes and Social Security payments, which are matched by businesses," yet on the other hand, "the costs of delivering services to the immigrants is imposed upon the state and its communities" (Verhovek 1994). The tone used in other states was much different.

In California, Governor Pete Wilson used the announcement of the state's lawsuits against the federal government to also present a proposal for cutting the undocumented immigrants' eligibility for some services, as well as amending the Federal Constitution so that their United States-born children would no longer qualify for American citizenship (Verhovek 1994). Similarly, in Florida illegal immigration was framed as "an ongoing immigration emergency that endangers the lives, property, safety and economic welfare of the residents of the state" (Los Angeles Times 1994).

### *Outcome*

Despite the states' usage of various existing clauses to support their argument, the lawsuits filed by each state were thrown out either due to a lack of standing in the case or due to the lack of merit of the argument. The states' claims unsurprisingly involved matters related to agency discretion and therefore were not reviewable by the courts. Furthermore, the courts rejected the notion that the federal government had an obligation to reimburse various states for cost incurred by the presence of undocumented immigrants.

### *Refugee Resettlement*

A *Houston Chronicle* article dated December 2, 2015, outlines the story of a Syrian family flying to Texas to seek refuge from conflicts in their home country (Rosenthal 2015). This story is provided as background on a lawsuit, *Texas Health and Human Services Commission v. USA US Department of State, John Kerry et al.*, that the state of Texas filed against the federal government.

The state Health and Human Services Commission (HHSC) filed the lawsuit in 2016 (United States District Court, N.D. Texas, Dallas Division 2016). The lawsuit cited the risk of "irreparable injury" as the reason to file the lawsuit (Rosenthal 2015). This lawsuit was the first in the country against the federal government to block Syrian refugees (Rosenthal 2015). Originally, the lawsuit was going to be filed against the International Rescue Committee, the nonprofit

organization coordinating the arrival of the family, to demand that the family and/or the organization provide information about background checks conducted on the family (Rosenthal 2015).

In fiscal year 2015, 190 Syrian refugees and 23 Syrian asylum-seekers had resettled in Texas (Tilove 2015). The article alludes to comments made by the Texas governor, Governor Greg Abbott, a Republican, and his efforts to block all Syrian refugees from entering Texas due to security concerns (Rosenthal 2015). These comments were made after terrorist attacks in Paris, France on November 3, 2015 (Rosenthal 2015). One strategy, which later was carried out in the above-mentioned lawsuit, was to direct the Texas Health and Human Services Commission not to participate in the resettlement of any Syrian refugees in the state in the future (Tilove 2015).

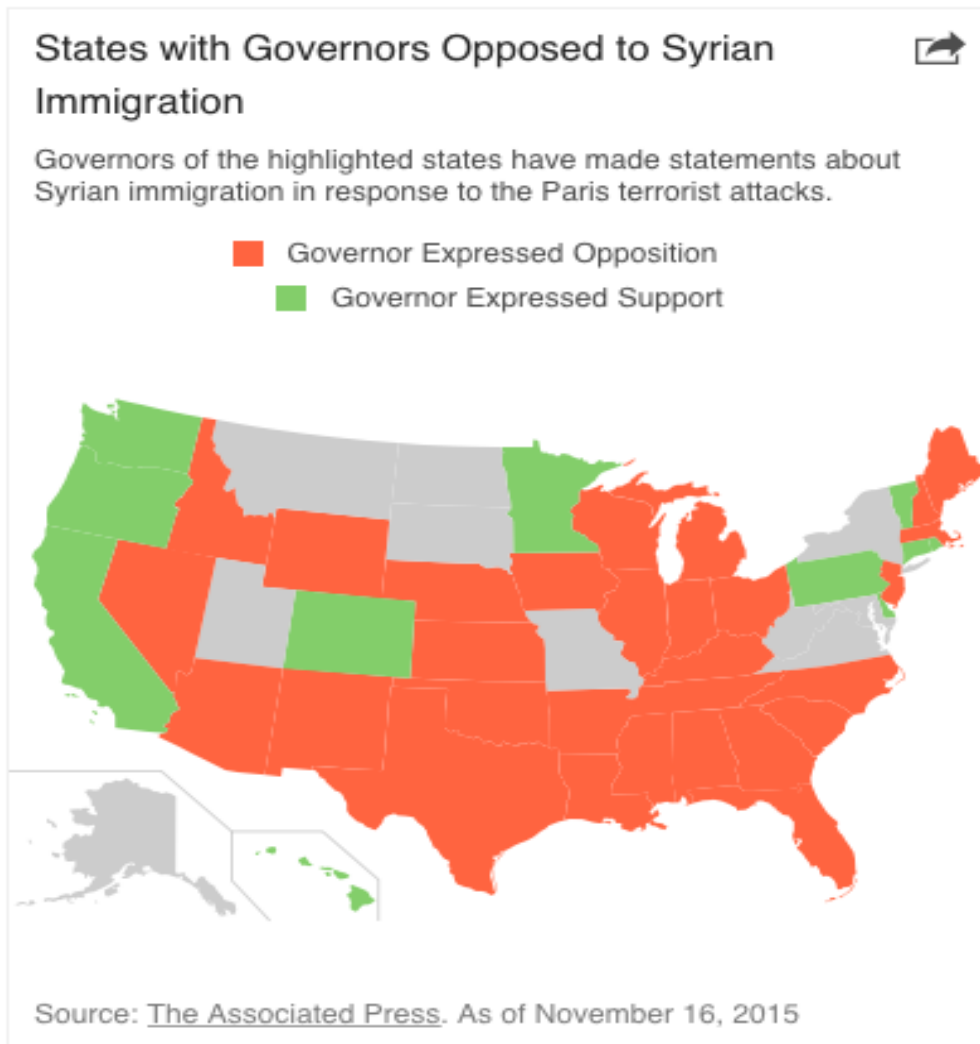
### *Grounds for Filing*

The Texas Health and Human Services Commission filed for preliminary injunction against the International Rescue Committee and the federal government, namely: the United States of America, the United States Department of State, John Kerry in his official capacity as Secretary of State, the United States Department of Health & Human Services, Sylvia Burwell in her official capacity as Secretary of Health & Human Services, Office of Refugee Resettlement, and Robert Carey in his official capacity as Director of the Office of Refugee Resettlement (United States District Court, N.D. Texas, Dallas Division 2016). The lawsuit cited the risk of "irreparable injury" as the reason to file the lawsuit (Rosenthal 2015).

### *Political Framing of the Lawsuit*

The president at the time of this lawsuit was Barack Obama, a Democrat from Illinois. Governor Abbott, as noted above, a Republican, qualified his statements regarding his efforts to block the Syrian refugees from settling in Texas by expressing safety concerns for Texans (Tilove 2015). Abbott, along with several other governors, expressed opposition to President Obama's commitment to resettle 10,000 refugees in the United States (Caldwell 2015). Three Republican governors who expressed opposition to admitting refugees were also candidates for the Republican nomination for president in 2016: Governor Bobby Jindal of Louisiana, Governor John Kasich of Ohio, and Governor Chris Christie of New Jersey (Caldwell 2015). Figure 2 shows the states in which governors expressed support for or opposition to Syrian refugee resettlement.

Figure 2. States with Gubernatorial Support or Opposition to Syrian Immigration



(Caldwell 2015)

Further, within the case documents, there is direct reference to political questions that arise from the Texas HHSC filing for a preliminary injunction. In fact, four questions are presented within the case:

1. The legislative branch's commitment to the executive of determining the number of refugees to admit in any given year;
2. The executive branch's administration of foreign policy in determining, in



- conjunction with the international community, our country's share of shouldering the burden of refugees;
3. The executive branch's exercise of its national security duties in determining which refugees to admit; and
  4. The federalism and separation of powers issues inherent in the federal legislative instruction to the federal executive to consult with the states on refugee resettlement.

The Court decided to “leave resolution of these difficult issues to the political process” (United States District Court, N.D. Texas, Dallas Division 2016).

### *Outcome*

The outcome of this case was a loss for the Texas Health and Human Services Commission. The decision of the Court states, “The Commission, again, has failed to carry its burden,” (United States District Court, N.D. Texas, Dallas Division 2016). The decision was primarily made on the basis that the plaintiff must prove that harm is substantial and not merely speculative (United States District Court, N.D. Texas, Dallas Division 2016).

The decision concluded in stating, “The Court, however, cannot interfere with the executive's discharge of its foreign affairs and national security duties based on a possibility of harm, but only on a proper showing of substantial threat of irreparable injury and a legal right to relief,” (United States District Court, N.D. Texas, Dallas Division 2016).

### *President Obama's Executive Action on Immigration*

During his 2012 reelection campaign, President Obama was the target of numerous protests and sit-ins by immigrant rights activists. The activists demanded a stop to his record number of deportations and insisted that the president use executive action to grant temporary legal status to millions of undocumented immigrants. Despite the pressure from immigrant rights activists, President Obama remained adamant that he did not have the legal authority to make significant changes to immigration policy, stating, “I am president, I am not king. I can't do these things just by myself. We have a system of government that requires the Congress to work with the Executive Branch to make it happen. I'm committed to making it happen, but I've got to have some partners to do it. ... The main thing we have to do to stop deportations is to

change the laws. ... But there's a limit to the discretion that I can show because I am obliged to execute the law. That's what the Executive Branch means. I can't just make the laws up by myself. So the most important thing that we can do is focus on changing the underlying laws” (Transcript of President Barack 2010.) On June 15, 2012, backtracking on previous statements, President Obama introduced Deferred Action for Childhood Arrivals (DACA). The new policy covered an estimated 936,000 immigrants at the time of the announcement of the program. (Singer and Svajlenka 2013.) In 2014, DACA was expanded; this expansion changed the required entry date to January 1, 2010 and did not take into consideration the age of the applicant at time of entrance (United States Citizenship and Immigration Services 2015.)

In addition to the expansion of DACA, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) was also announced. In order to be eligible, undocumented immigrants would have had to be present in the United States at the time of announcement and continuously since January 1, 2010. In addition, they must be the parent of a U.S. citizen or lawful permanent resident (USCIS 2015.) The new executive action has a much broader effect, as an estimated 4 million undocumented immigrants would qualify for the policy. Following the announcement of the executive action by President Obama, legal objections were raised by conservative elected officials and organizations. The State of Texas, joined by 26 other states, filed a joint lawsuit: *United States v. Texas*, 579 U.S. (2016).

### *Grounds for Filing*

The state of Texas and 26 other states argued that the President was overstepping his legal authority and implementing an executive amnesty. The states emphasized that the president did not have the legal authority to grant quasi-legal status to millions of undocumented immigrants. The case presented by the State of Texas focused on two arguments, “(1) failure to follow notice and comment rulemaking procedures they allege were required by the Administrative Procedure Act in promulgating DAPA, and (2) violation of the Constitution’s Take Care Clause. In their complaint, the states claimed that the executive action threatens “the rule of law, presidential power, and the structural limits of the U.S. Constitution.” The states added that “the unilateral suspension of the Nation’s immigration laws is unlawful” and demanded the court’s “immediate intervention” (Schulberg 2015.) The Obama administration countered the argument by insisting that the prosecutorial discretion is not subject to APA procedures and discretion on immigration enforcement is clearly established as a power of the executive.

### *Political Framing of the Lawsuit*

Immigrant rights advocates and legal scholars interpreted the lawsuit as unnecessary and solely based on political differences. Opponents of the lawsuit claimed that the state of Texas strategically chose the court to file suit in, claiming that the presiding judge was well known for his anti-immigrant rhetoric. In a December 2013, ruling Judge Hanen accused federal officials of being complicit in human trafficking amid a surge of illegal immigrant children crossing the border because the children were later delivered to their parents in the U.S. “Instead of arresting (the child's mother) for instigating the conspiracy to violate our border security laws, the (Homeland Security Department) delivered the child to her -- thus successfully completing the mission of the criminal conspiracy, Hanen wrote at the time,” (International Business Times, 2015.) Additionally, elected officials such as U.S. Sen. John Cornyn framed the lawsuit as a stance against executive overreach, “By going around Congress to grant legal status to millions of people here illegally, the president abused the power of his office and ignored the will of the American people. The president can’t circumvent the legislative process simply because he doesn’t get what he wants” (Texas Tribune 2016).

### *Outcome*

Despite previous precedent by numerous presidential executive actions, the federal district court concluded that, “...as a general matter of statutory interpretation, if Congress had intended to empower the DHS to defer deportation of up to five million undocumented immigrants through such statutes, it would have done so more explicitly. The court found that DAPA surpasses mere inadequate enforcement and amounts to “an announced program of non-enforcement of the law that contradicts Congress’ statutory goals”—in short, a “complete abdication,” (Schluberg 2015). The court wrote that an agency “cannot enact a program whereby it not only ignores the dictates of Congress, but actively acts to thwart them,” (Schluberg 2015). The court ruling was in sharp contrast to the opinion of legal scholars, including one hundred legal scholars who penned an open letter to President Obama advising on the legal grounds of executive actions. Wadhia (2014) states, “Some have suggested that the size of the group who may ‘benefit’ from an act of prosecutorial discretion is relevant to its legality. We are unaware of any legal authority for such an assumption. The administration could conceivably decide to cap the number of people who can receive prosecutorial discretion or make the conditions restrictive enough to keep the numbers small, but this would be a policy choice, not a legal question. A serious legal question would arise if the administration were to

halt all immigration enforcement, because in such a case the justification of resource limitations would not apply. But the Obama administration to date appears to have enforced the immigration law significantly through apprehensions, investigations, detentions and over two million removals.” After an unfavorable ruling, the Obama Administration appealed the decision to the Fifth Circuit Court of Appeals which was also known to be dominated by conservative judges. The Fifth Circuit Court ruled in favor of the State of Texas.

#### *A Case for Reducing Expenditures*

In several court cases filed by each state being analyzed, money is the factor that caused states to join, in some capacity, in a coalition against the federal government. In the early 1990s, states were faced with budget shortfalls due to the global recession. States began to look for ways to reduce a number of expenditures, and one area that was shared by the three states was that of immigration. These states were running large expenditures by providing housing, education, hospitalization, and jailing of illegal immigrants. The amounts of money that each state was suing the federal government for was as follows: California \$337 million, Texas \$500 million, and Florida \$1.5 billion (Tessier 1995).

#### *Political Framing for the Lawsuit*

While lawsuits were never jointly filed, each of the states had similar grievances and filed around the same time. Texas, under the governorship of Governor Ann Richards and other Texas lawmakers, was hesitant about taking such a bold action as it appears they felt it was an assault on the large immigrant community. However, in the end, budget concerns outweighed the desire not to upset or slight a minority population. This was further stated by then serving Attorney General, Dan Morales: “While undocumented immigrants make contributions to the Texas economy, they also contribute substantially to the Federal coffers in the form of income taxes and Social Security payments, which are matched by businesses” (Verhovek 1994). In the end, Florida, California, Texas, and Arizona were the only states that filed seeking compensation for providing public services for illegal immigrants. New York was considering filing but the process never completed.

## *Outcome*

Regarding the final disposition of the California suit, a judge dismissed the case agreeing with the U.S. attorney general's office that there is no legal precedent for a state suing the federal government for failing to fully enforce immigration laws (Perry 1995). This would, however, lead to a very controversial decision taken by the voting populace. Unable to recoup public service fees associated with supporting illegal immigrants, an “anti-immigrant” movement began to grow within the state and, as a result, a voter initiative placed on the 1994 election ballot was approved by voters. California’s Proposition 187 denied public education, public services, and emergency healthcare to illegal immigrants (Tessier 1995). Additionally, public officials would be required to report anyone applying for state benefits that the official “determines or reasonably suspects” is an illegal immigrant” (Tessier 1995). In sum, all of the different provisions contained in Proposition 187 were intended “to stem the flow of illegal aliens into California, encourage the state's roughly 1.4 million illegal residents to go home, and expel the rest” (Tessier 1995). Proposition 187 was declared unconstitutional by a federal district court judge in 1999 and the state did not pursue an appeal.

The suits in Texas and Florida suffered similar fates. While neither state successfully passed a voter initiative quite like that of proposition 187, the effects of the suit were felt further down the road. The failure to recoup illegal immigration funds in Texas might have played a role in the ultimate electoral defeat of Governor Richards. Her successor, George W. Bush, ran a campaign with the message revolving around Richards “soft” stance on crime (Hart 2004). This ran counterintuitive to the fact that Texas would eventually be awarded funds by the federal government to combat this issue.

Even though the suit involving the states failed regarding their original intentions, the federal government took notice and action regarding appropriations. Congress allocated over \$350 million dollars the following year under the Crime Bill as a means of providing some means of compensation to the States (Tessier 1995). This program was called the State Crime Alien Assistance program, and Texas was among the first states to receive nearly \$43 million dollars in federal funds (Tessier 1995).

This lawsuit can serve as a tipping point in terms of an ideological shift on California and Texas. At this time, California was considered a “conservative” state in terms of its position on illegal immigration. The failed suit against the government was felt so strongly by its political leaders

and citizenry that it resulted in the approval of a controversial voter initiative which aimed to deny illegal immigrants essential public services and essentially attempted to remove them from the state. Texas, on the other hand, took what can be described as a more “liberal” approach regarding immigration in this case. Governor Richards appears to have been reluctant to file a suit to recoup funds, citing the importance to the Texas economy.

#### *4. Social Issues*

This section will discuss the lawsuits filed by states against the federal government concerning social issues. As previously mentioned, the social-political climates in California, Florida, and Texas are very different, in addition to being located in different geographic areas. Regarding California and Texas, their social-political climates could be compared to that of oil and water, while Florida falls into the middle leaning ground towards the conservative spectrum. Nevertheless, the following discussion highlights a few examples in all, or at least two, of the states that have filed jointly to sue the federal government in over social issue policy disagreements. In addition, at the conclusion of this section, there will be a discussion about future and potential legal litigation involving the state of Texas and the federal government.

##### *Medicaid Expansion*

Medicaid is a giant cost to any state. Texas faces the problem of finding the funds in its state budget, as do other states. The population in need of Medicaid services has grown substantially. At the federal level there is a large push to continue providing services, which is important, but it continues to pose a cost and other unintended consequences to the states. We see a push back on this in the states of Florida and California regarding “Obamacare” requirements and changes to Medicaid expansion. Governor Rick Scott of Florida sued the federal government for what he considered a coercion of Medicaid expansion. The state of California also pursued action against the federal government related to the healthcare overhaul.

##### *Grounds for Filing*

In 2015, Florida Governor Rick Scott “filed a lawsuit against President Obama's federal healthcare agency for ending the Low Income Pool (LIP) healthcare program in an attempt to coerce the state to expand Medicaid under Obamacare” (Harrington, 2015). Governor Scott claimed that the sudden end to LIP healthcare program was illegal due to its intention to influence the state into Obamacare. This was seen as executive overstep and an abuse of power. Lastly he stated, “His [Obama’s] administration is effectively attempting to coerce Florida into Obamacare by ending an existing federal healthcare program and telling us to expand Medicaid instead. This sort of coercion tactic has already been called illegal by the US Supreme Court” (Harrington 2015).

Similar to Florida, in 2010, California legislators called on the state's attorney general to file suit against the federal government, determined that the federal government was overreaching into the lives of citizens and state laws. "The legislators said Congress cannot force people to buy health insurance or any other products" (Bussewitz 2010). Republican members of the California Legislature called the act of requiring citizens to purchase health insurance a violation of the commerce clause and remind the legislature that the government is limited in what it is allowed to implement (Bussewitz 2010).

Both of these states saw the Obamacare implementation as an action considered too broad and beyond the scope of what the executive branch should be able to implement. They contended that citizens' rights were being violated, and determined as states that the expansion of Medicaid was an illegal action.

#### *Outcome*

The Florida lawsuit was eventually sent to the United States Supreme Court, and did not conclude in the state's favor. The Supreme Court determined that Congress had the power to enact most provisions within the Affordable Care Act (ACA). This was upheld 5 to 4.

There is no indication that the attorney general of California filed a lawsuit against the federal government, although legislators had urged such an action (Bussewitz 2010).

#### *Flawed or Inaccurate Processes*

The two cases described in this section are not as closely correlated as the previous two were. However, they have a slight connection in regards to how a program is flawed in operation or inaccurate when providing specific information. The idea of transparency and consistency is important to the public and the two cases below are brought forth because they address those main principles.

#### *Grounds for Filing*

In California, Attorney General Jerry Brown sued the federal government, in 2010, with the hopes of stopping mortgage buyers, such as Fannie Mae and Freddie Mac, from preventing



homeowners from using property taxes to pay for home improvements (Thompson 2010). Jerry Brown sued "... asking a judge to stop government-sponsored mortgage buyers from blocking a program that lets homeowners pay for energy-efficient improvement through increased property taxes," (Thompson 2010). For the past decade homeowners in California have been able to make improvements through the use of property tax assessments. The new attempt to prohibit this is what sparked the filing of this lawsuit.

In 2012, Florida also filed a suit against the federal government under the premise that they were implementing unfair practices. They "filed a suit against the U.S. Department of Homeland Security, claiming the federal agency restricted access to information on people who might not be eligible to vote," (Blaine, 2012). The state claimed that the federal government had not been providing adequate or appropriate information that would allow them to remove ineligible voters from the voter rolls.

### *Outcome*

In the end, the lawsuit in California failed (Lacey 2014). As for the Florida case, the information provided determines that the ruling was not in their favor. Though unable to completely determine the final ruling for the case, the decisions made regarding the case affected Florida greatly. In the end, the Justice Department found Florida to be in violation of the 1995 Voting Rights Act and the 1993 Voter Registration Act.

### *Women's Health*

Another social issue that is usually at the forefront of contention within the battle of federalism and states right is that of women's health issues. In the following example, the Obama mandate required employers to provide birth control coverage for employees of religious-affiliated hospitals, schools, and other miscellaneous outreach programs (Aaronson 2012). This particular lawsuit was filed with Texas and Florida as well as five other states during the Abbott and Obama Administrations. The named defendant in the lawsuit was The US Department of Health and Human Services. This mandate was a result of the passage of the Affordable Care Act and received increased criticism from religious organizations that had objections about the requirements of having to provide coverage for contraceptives, sterilization, as well as abortion-inducing drugs (Aaronson 2012).

### *Political Framing of the Lawsuit*

From the viewpoint of the states that sued the federal government, mandating religious employers to provide these contraceptive options would be a clear violation of their religious liberties as “Obamacare’s latest mandate tramples the First Amendment’s Freedom of Religion and compels people of faith to act contrary to their convictions,” said former Attorney General Greg Abbott in a statement referencing the state’s reasoning for filing the lawsuit (Denniston 2013). From the federal government’s perspective then US Attorney General Eric Holder stated, “covering contraception is cost-neutral since it saves money by keeping women healthy and preventing spending on other health services” (Denniston 2013).

### *Outcome*

This lawsuit proved to be a mixed win for the state of Texas. The Supreme Court ruling was split decision. The court stated that in the case of large for-profit organizations they cannot make the argument that providing means for employees to obtain contraception options would be a violation of their religious freedoms (Denniston 2013). However, the court did rule that if a small number of people ran the organization, then that organization could use the religious argument as a means of not being compliant with the mandate (Denniston 2013). While the rulings can be considered mixed, Republican lawmakers in Texas, saw this as a clear victory.

Looking ahead towards the future it should be expected that states will bring up litigation with the federal government and agencies. With President Trump already threatening to repeal some of the socially progressive work done during the Obama administration, many socially liberal states, such as California, have begun gathering information for future litigation. As of May 18, 2017, California, along with 14 other states, has taken legal action “to try to preserve Affordable Care Act funds that insurance companies receive to lower insurance costs for some Americans” after the Trump Administration became defendants in a case to repeal Obamacare (Karlama 2017). The outcome of this is yet to be determined, however, one can note how the states involved in the lawsuit tend to be more progressive, liberal states against the conservative Trump Administration. Therefore, returning to the main question motivating this study of whether ideology affects decisions by the state of Texas to sue the United States, it can be concluded that ideology does have an effect on whether a lawsuit on women’s health is filed. When the ideology in Texas and the United States administration are similar, so to speak, there appears to be less motivation and fewer instances of the filing of suits. On the other

hand, when the ideologies are in opposition of one another, there is certainly an increased likelihood of Texas filing a lawsuit.

### *Same-Sex Couple Benefits*

Topics concerning same-sex couples repeatedly raise contention across the nation. From hate crimes committed against same-sex couples to employer discrimination to marriage rights, many cases have been filed to improve laws protecting same-sex rights. Texas has been an advocate in protecting the institution of marriage as that between a man and a woman. California, on the other hand, is much more liberal when it comes to the topic and began allowing same-sex marriage as early as 2008 (FindLaw 2017). There was a setback in 2008 after voters passed Proposition 8, which banned same-sex marriage, but was later overruled in 2010 when “Judge Vaughn Walker ruled that Proposition 8 was unconstitutional because it violated federal due process and equal protection clauses” (FindLaw 2017). This ruling was later upheld in 2013. Florida’s history with same-sex benefits is more relatable to that of Texas than California. As such, when the Obama Administration took over and began to work to expand equal rights and opportunities to the LGBTQ community, states that did not share the same ideology began to fire back against the Administration. One instance of a lawsuit filed against same-sex couple rights occurred in Texas.

### *Grounds for Filing*

The Texas lawsuit came about after a rule change made by the Obama administration to include same-sex couples under the definition of spouse. Republican Attorney General, Ken Paxton, sued the U.S. Labor Department for allowing medical leave benefits to same-sex couples (Satija 2017).

### *Political Framing of the Lawsuit*

In 2015, Paxton filed suit against the Obama Administration in a case concerning benefits of medical leave for same-sex couples (Walters 2015). The lawsuit was in response to President Obama’s rule change to the Family and Medical Leave Act (FMLA), which granted paid time-off to same-sex couples who were legally married, even in states that did not recognize same-sex marriage, such as Texas. The change redefined what qualified as a “spouse,” which Paxton claimed was in “direct violation of state and federal laws” as well as “the U.S. Constitution”

(Walters 2015).

### *Outcome*

The lawsuit ended up being withdrawn by Paxton in July of 2015, roughly a month after the U.S. Supreme Court ruled same-sex marriage bans unconstitutional. Overall, the case ended up costing the state roughly \$28,242 (Satija 2017).

## Summary of Findings

In Table 4 below, the number of lawsuits analyzed in this research is tallied by issue area and time period as represented by the Governor of Texas and the President of the United States at the time of filing. The first column of this table shows that under the governorship of Governor Ann Richards of Texas and President George H.W. Bush, one immigration related lawsuit was filed by each of the states in our analysis against the federal government. That is a total of one lawsuit filed in each of these three states.

Next, under the governorship of Governor George W. Bush of Texas and President Bill Clinton, no lawsuits were filed by any of the states in our research against the federal government.

Then, under the governorship of Governor Rick Perry of Texas and President George W. Bush, 17 environment related cases were filed by the state of Texas against the federal government. No lawsuits in other issue areas examined were filed by the state of Texas against the federal government. One lawsuit was filed by the state of California against the federal government in the criminal justice issue area and another regarding the environment, for a total of two lawsuits filed by the state of California against the federal government. No lawsuit was filed in this time period by the state of Florida against the federal government.

Lastly, under the governorship of Governor Greg Abbott of Texas and President Barack Obama, the state of Texas filed several (11 total) lawsuits against the federal government. Of these filed lawsuits, one was related to immigration, two were related to social issues, and eight were related to the environment. The state of California filed three lawsuits against the federal government, all three relating to criminal justice. The state of Florida filed five lawsuits against the federal government. Of these filed lawsuits, two were related to criminal justice, one related to immigration, one related to social issues, and one related to environment.

**Table 5. State Lawsuits Filed Against the Federal Government**

	<b>Gov. Richards/Pres. George H.W. Bush</b>	<b>Gov. Bush/Pres. Clinton</b>	<b>Gov. Perry/Pres. George W. Bush</b>	<b>Gov. Abbott/Pres. Obama.</b>	<b>Total Lawsuits Filed by the State</b>
<b>Texas</b>	Crim. Justice - 0 Immigration - 1 Social Issues - 0 Environment - 0  <b>Total - 1</b>	Crim. Justice - 0 Immigration - 0 Social Issues - 0 Environment - 0  <b>Total - 0</b>	Crim. Justice - 0 Immigration - 0 Social Issues - 0 Environment - 17  <b>Total - 17</b>	Crim. Justice - 0 Immigration - 1 Social Issues - 2 Environment - 8  <b>Total - 11</b>	<b>Total - 29</b>
<b>California</b>	Crim. Justice - 0 Immigration - 1 Social Issues - 0 Environment - 0  <b>Total - 1</b>	Crim. Justice - 0 Immigration - 0 Social Issues - 0 Environment - 0  <b>Total - 0</b>	Crim. Justice - 1 Immigration - 0 Social Issues - 0 Environment - 1  <b>Total - 2</b>	Crim. Justice - 3 Immigration - 0 Social Issues - 0 Environment - 0  <b>Total - 3</b>	<b>Total - 6</b>
<b>Florida</b>	Crim. Justice - 0 Immigration - 1 Social Issues - 0 Environment - 0  <b>Total - 1</b>	Crim. Justice - 0 Immigration - 0 Social Issues - 0 Environment - 0  <b>Total - 0</b>	Crim. Justice - 0 Immigration - 0 Social Issues - 0 Environment - 0  <b>Total - 0</b>	Crim. Justice - 2 Immigration - 1 Social Issues - 1 Environment - 1  <b>Total - 5</b>	<b>Total - 6</b>

The summation of each lawsuit by state and under time periods as defined by Texas governors and their corresponding American president visually displays the volume at which states filed lawsuits against the federal government. The state of Texas has filed more lawsuits against the federal government than California and Florida, both respective and combined totals. A substantial increase in volume of state lawsuits filed against the federal government began to occur under the time period of Governor Rick Perry and President George W. Bush, both members of the Republican party.

Since Governor Perry and President Bush are both Republicans, these findings do not explicitly affirm that ideology plays a role in the decision of a state to file a lawsuit against the federal government. Likewise, there was not a high volume of lawsuits filed by the state of Texas against the federal government under a period in which a Democratic governor, Governor Ann Richards, served at the same time as a Republican president, President George H.W. Bush.

However, comparing the total number of lawsuits filed by the states of Texas, California, and Florida there does seem to be a wide disparity in volume. Particularly, Texas - the most conservative of the three states as exhibited in Tables 2 and 3 - filed more lawsuits than both California and Florida combined (29 and a combined 12) during the time periods analyzed.

To conclude, there are no clear findings in this research to confirm that ideology plays a role in how many lawsuits are filed by the states of Texas, California, and Florida against the federal government. This research is a first step towards further answering the question of the role of ideology in the filing of lawsuits by states against the federal government. An important next step in this research would be to include lawsuits filed by the states of Texas, California, and Florida against the federal government under the governorship of Governor Greg Abbott and President Donald Trump, both Republicans.

## Limitations of the Study

It is important to note the methodological limitations present in conducting this study. As mentioned earlier in our report, the purpose is to discover if ideology affects most of the lawsuits by the state of Texas against the federal government. In order to do so, we looked at four different time frames in three states in order to encompass an ideological spectrum in that specific state's government when assessing lawsuits filed against the federal government.

One initial limitation the team came across when conducting research is that acquiring cases under each of the chosen lawsuit topics proved difficult, as it was not possible to gain access to all lawsuits from each state during each governorship/presidency. As such, the team worked to find as many relatable cases with particular saliency within the state. These cases tend to be more widely known, or published, about; therefore, making them easier to locate and describe. Along with cases being difficult to access, particularly for California and Florida, there is also the instance of cases that are still pending. Due to these circumstances, the team is not able to determine the complete impact of the case when analyzing the importance of ideology when assessing the preponderance of lawsuits the state has filed against the federal government. The cases left pending also make it difficult to discern the fiscal implications of these cases. Further, some cases did not mention the costs of the lawsuit. As such, the team was not able to fully analyze the fiscal impact of each case under each governorship/presidency.

Finally, attorney generals and governors of a state are occasionally of different parties, which complicates the analysis of the impact of ideology on a state's decision to file a lawsuit.



## Conclusion and Considerations for Future Research

The federal system is one defined by an imprecise relationship between state and national actors, and shifting roles in the political shaping of the nation. This flexibility is considered one of the advantages of American federalism: relationships can evolve as circumstances dictate. Throughout American history, both state and federal powers have asserted their influence at the expense of the other.

States attempting to resist top down policy directives have had to develop their own framework to assert politics that may be locally supported but nationally minimized. Suits filed by, or on behalf of, state officials against the federal government continue to be an evolving way to address the national concerns of state leaders. State litigation has, and continues to serve, many aims such as: politicians looking to gain national notoriety<sup>1</sup>, slow national legislative directives, or simply to address legitimate concerns and constitutional questions.

An examination of the issues in Texas and two other large states, California and Florida, with differing ideologies reveals both a shifting political landscape and a preference for recourse by the state against the federal government. As depicted in Table 5, all of the states analyzed in this research have filed lawsuits against the federal government in more recent times, when Governor Perry and President George W. Bush held their respective offices. It is worth noting that while this analysis can be viewed as incomplete due to the limitations of the study mentioned previously, a clear association is beginning to reveal itself between the role of the state and the role of the federal executive branch.

Though it remains unclear whether political ideology of the individual officeholder plays a prominent role in filing a lawsuit, it appears that the general ideology of a state does have some influence on the likelihood of a state to file a lawsuit. The marked rise in the volume of lawsuits coming out of Texas under Governor Perry's terms in office does not lend to the assumption that the ideology of state leaders is the reason for states to file lawsuits against the federal government. However, this peak in volume does indicate an increase in the likelihood of

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<sup>1</sup> Note that several former Texas governors became national figures, such as former Texas governor-turned-president, President George W. Bush, as well as Governor Rick Perry, who is the United States Secretary of Energy in the Trump Administration.

conservative states to file lawsuits against the federal government. Texas is unique in that the issue areas in which suits are filed continue to play out nationally. An energy producing border state with high immigration may simply just have more to lose if its interests are not being adequately represented.

Further study and data analysis is required to reveal trends that may point the way between political reality and political expediency. The recent election of President Trump will likely result in more enriching data to further a similar study and produce more finite results. Continued study into the subject, outcome, and effects of state versus federal lawsuits is needed to better understand this continued shift towards legal recourse in response to federal or executive action.

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