

# Solicitor General's Effect on State Court's Deference to the Executive

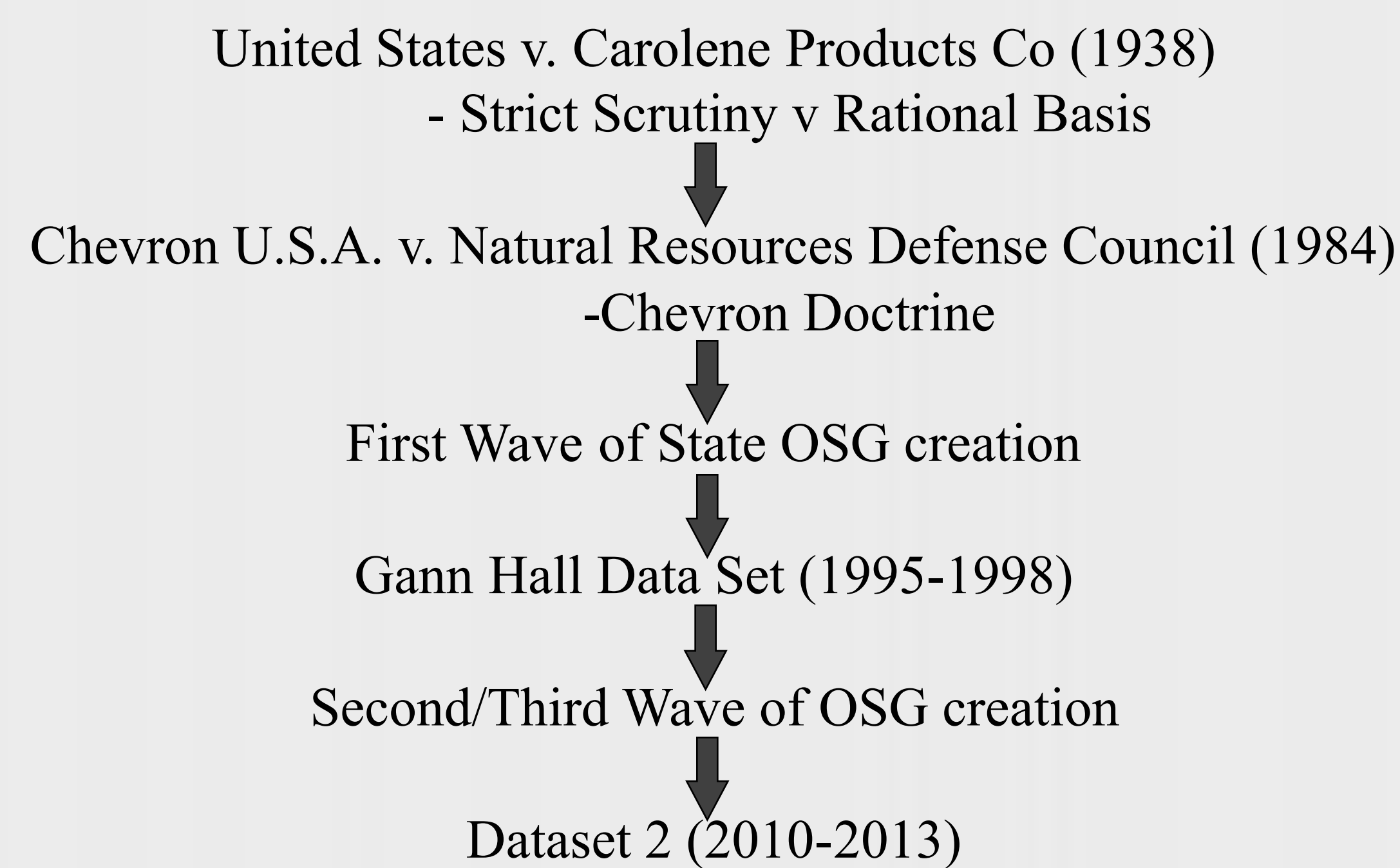
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## Question

Q: Does the creation of a State Solicitor General's Office increase the level of deference to the executive of that state's highest court

## Background

### Timeline



### Theories

**Signal Theory:** The Solicitor General increases judicial deference to the executive because they are a signal or direct representation of executive preference

**10<sup>th</sup> Justice Theory:** The Solicitor General increases judicial deference to the executive because of the unique relationship of trust and reliability they have with the judicial branch

## Main Hypothesis

States that created an OSG between the 1998 and 2013 will have the highest increase in judicial deference indicating that the creation of an OSG does influence the level of deference to the executive

## Methods

1. Measure how frequently a judge with the opposite ideological preference of the executive sides with the executive
  - Majority or concurrence when they win
  - Dissent when they lose
2. Find the mean level of deference with the court for both data sets
3. Compare the levels of deference between the two datasets for all three categories of states

## 1. OSG before 1995

State	Change (Pet)	Change (Def)
Arizona	-0.304	0.622
Colorado	0.355	0.631
Delaware	0.778	0.241
Missouri	0.187	0.233
Oregon	-0.332	0.262
South Carolina	0.054	0.429
Tennessee	0.388	-0.282
Utah	0.396	0.143
Vermont	0.432	0.464
Washington	0.275	0.298
Mean	0.223***	0.304***

## 2. OSG 1998-2013

State	Change (Pet)	Change (Def)
Alabama	-0.180	-0.036
Alaska	0.003	0.204
California	0.300	-0.293
Florida	0.348	0.503
Indiana	0.033	0.047
Nebraska	0.198	0.332
Nevada	-0.068	0.415
New Jersey	0.022	0.389
North Carolina	0.579	0.430
North Dakota	0.283	0.650
Oklahoma	-0.239	-0.233
Texas	0.211	0.066
Virginia	0.332	0.208
West Virginia	-0.324	0.406
Mean	0.107**	0.221***

## 3. OSG after 2013

State	Change (Pet)	Change (Def)
Idaho	0.254	0.462
Louisiana	0.136	0.227
New Mexico	0.243	0.142
Pennsylvania	0.479	0.006
Rhode Island	0.740	0.462
Wisconsin	-0.078	-0.032
Wyoming	0.255	-0.079
Mean	0.289***	0.169*

## Findings

- Overall, all states have experienced an increase in judicial deference to the executive branch regardless of OSG status
- Category 1 states have the highest change in deference at 30.4%
- Category 2 is the second highest at 22.1% increase

## Results

Main hypothesis is not completely accurate. The states that created an OSG in between the two datasets did have a higher increase in deference than those states without an OSG at all. This does indicate that the creation of an OSG likely helps increase judicial deference to the executive. However, those states with OSGs before 1995 had an even higher increase than the category 2 states.

Potential Explanation: The 10th Justice Theory is built upon the relational aspect between the SG and the court. Building trust and familiarity requires time and consistency. Perhaps there is a time delay in the effectiveness of the OSG to account for the relational aspects of the Deference Theories

## Secondary Hypotheses and Findings

Judges that span both datasets will have much lower deference than the overall court does

Category	# of Justices	Lower Def (Pet)	Lower Def (Def)
1	5	3	4
2	5	4	4
3	4	3	3

True. For a majority of judges (11/14) their own deference to the executive and SG was lower than that of their state court's overall

States will be less deferential if they appoint judges by Missouri Plan, Appointment, Non-Partisan Elections, then Partisan Elections

Non Partisan	Missouri	Appointment	Partisan
.351***	.240*	0.202	0.139

Not completely accurate. Non partisan elections actually have the highest level of deference, but the rest of the order was accurate. However, only two election methods have significant results.

## Conclusion

Overall, judicial deference to the executive branch is increasing and it is indicated in this study that the Solicitor General helps further exaggerate that trend. By comparing the level of deference state courts give their executive over two time periods, it can be seen that although not immediate, the SG does increase the level of deference. The judiciary holds the responsibility to check both the executive and legislative branches. The level of judicial deference to the executive branch can range from reasonable deference to agencies with expertise to neglectful allowance of the executive agenda. It is highly relevant to understand both the level and methods through which the judiciary defers to the executive. Without a proper understanding, there is no way to tell when the phenomena has crossed a line from reasonable to dangerous.

**Further Study:** It would be interesting to further investigate whether how accurate the time delay explanation is for the Solicitor General's effect on deference. Also, looking at what different types of cases (privacy, economic etc) may shed more light onto the extent and limitations of the SG's effectiveness. Party Identification and gender are also common variables in political science that may have compelling ramifications on these results.

\*\*\* significant at 0.001, \*\* significant at 0.01, \* significant at 0.05