

TENTH CIRCUIT DATABASE PROJECT: 2021–2022 YEARBOOK

ABSTRACT

This Note is the product of the Tenth Circuit Database Project, and it analyzes one year of Tenth Circuit data from April 2021 through March 2022. The Project uses two databases, including one that was specifically designed for *Denver Law Review* and the Tenth Circuit Database Project. The information is displayed using an unconventional approach. It is crafted as a yearbook that compares the Tenth Circuit to a high school. Although the presentation is playful, the Note is a nascent attempt at manipulating the data in a meaningful way. Ultimately, the Note finds several interesting trends in the data, including the possibility that the court is moving towards a liberal majority.

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INTRODUCTION

The Tenth Circuit Database Project is in its third year of data collection since its inception. *Harvard Law Review*’s SCOTUS Statistics inspired Professor Wyatt Sassman to initiate a similar statistical analytics project for the Tenth Circuit community.¹ Although Sassman initially viewed the project’s purpose as one based in legal realism—an empirical study of the difference between the law as written compared to the law in

1. Wyatt G. Sassman, *Introducing the Tenth Circuit Database Project*, 97 *DENV. L. REV.* 384, 387 (2020).

action—this year’s iteration focuses more closely on empirical data as a yearbook.²

Data collection and analysis originated in science as a tool of the scientific process.³ Scientists conducted tests, collected data, analyzed data looking for specific trends and probability, and used that data analysis to determine if their hypotheses were incorrect.⁴ In the modern era, data are used for many different purposes and in many industries. For example, businesses use data to look forward and predict future sales.⁵ Yet, some people are taking data analytics one step further than fulfilling Nostradamus’ dreams of seeing what is coming.⁶ Those people are using data analytics to influence the future.⁷ The way that data are interpreted and presented can change the impact that it has on the reader and predictably alter their future behaviors.⁸

But this year’s Tenth Circuit Database Project is analogizing the data presentation to a yearbook. Don’t yearbooks simply look at the past year and draw inferences about people? Arguably, yearbooks can influence people’s future behaviors. When one sees the yearbook’s superlatives, it can spur a desire to overcome particular stereotypes or to play into them further. With this project, the Tenth Circuit is being handed the opportunity to reflect on the data, the behavior it implies, and make decisions about how to continue forward in the future.⁹

I. SCOPE AND METHODOLOGY

Each year this project has encountered innovations in collecting data to create a greater tool for the legal community and a better understanding

2. *Id.* at 383–84.

3. See Valerie Miké, *Statistics: History, Interpretation, and Application*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/science/encyclopedias-almanacs-transcripts-and-maps/statistics-history-interpretation-and-application> (last visited Dec. 21, 2022).

4. See *id.* The best scientific tests are those that can falsify, or refute, a working hypothesis. See Mick Wilkinson, *Testing the Null Hypothesis: The Forgotten Legacy of Karl Popper?*, 31 J. SPORTS SCI. 919, 920 (2013). In other words, scientists want to disprove hypotheses, not prove them. *Id.* (noting that under falsification theory, “[i]f a prediction of a theory withstood falsification, it remained useful.”).

5. Holger Hürtgen, Frank Plaschke, Karolina Sauer-Sidor, & Nils Wittmann, *Predictive Sales Forecasting: Is Your Finance Function Up to Code?*, MCKINSLEY & CO. (Aug. 11, 2020), <https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/predictive-sales-forecasting-is-your-finance-function-up-to-code>.

6. See Paul Hünermund & Florent Buisson, *How to Understand and Influence Behavior Using Data Science*, CASUAL SCI. (Aug. 30, 2021), <https://www.causalscience.org/blog/how-to-understand-and-influence-behavior-using-data-science>; Tom Harris & Melanie Radzicki McManus, *How Nostradamus Works*, HOW STUFF WORKS (Nov. 12, 2021), <https://science.howstuffworks.com/science-vs-myth/extrasensory-perceptions/nostradamus.htm>.

7. See, e.g., Carole Cadwalladr, *The Cambridge Analytica Files: ‘I Made Steve Bannon’s Psychological Warfare Tool’: Meet the Data War Whistleblower*, GUARDIAN (Mar. 8, 2018), <https://www.theguardian.com/news/2018/mar/17/data-war-whistleblower-christopher-wylie-facebook-nix-bannon-trump>.

8. *See id.*

9. In no way is the Tenth Circuit Database Project claiming that it knows whether the Tenth Circuit will *actually* be influenced by this data, or in what ways it may be influenced. The Project is not attempting to move the court in any particular direction or towards any outcome.

of the Tenth Circuit landscape. This year, the Project implemented its own coding and computer data collection. With this relative modernization, the Project could analyze a larger set of data, which in turn allows for a more robust analysis.

In previous iterations of this project, law students were asked to code “by hand” each data point from the Tenth Circuit cases they examined. One or two students per year attempted to collect dozens of data points from manually skimming each case. The last two years, the students were unable to capture a full year’s worth of data, which limited the reliability of the conclusions they drew and the energy they had to invest in interesting analyses.

The data used in this year’s iteration of the project was collected in two different manners. First, a computer scientist coded a program to extract data from the PDFs of decisions released on the Tenth Circuit webpage within a specific date range.¹⁰ This data set is referred to as the DLR data set. The search used date parameters with a “file date” between April 1, 2021, through March 31, 2022. The program pulled all records that were responsive to the search terms, which amounted to 950 decisions.¹¹ To verify the reliability of the DLR set, the data was compared to the data on the Integrated Database (IDB) found on the Federal Judicial Center website.¹² In the IDB search, the same date parameters were used to produce as close of a data match as possible. However, the number of IDB Tenth Circuit cases within the same date range far outweighed the number of cases from the DLR set. The IDB search pulled 1,672 responses.¹³ The logical conclusion is that either the Tenth Circuit does not release all its decisions onto its website or that there are duplicate entries within the IDB data set. It is unclear at this time why the data set discrepancy exists, or which set is more accurate.

In addition to verification of the DLR data set, it was advantageous to use the IDB data set because it included unique information that the DLR set does not, such as the “nature of suit” and “publication status.”¹⁴ Likewise, the DLR set included data points that the IDB set did not, most notably the judges involved in each decision.¹⁵ Therefore, both sets were used to create a hardier set of data for the year in question. Where there

10. The Tenth Circuit allows the public to search and filter through its decision database for opinions issued after September 1, 2007. *See Search Decisions*, U.S. CT. APPEALS FOR THE TENTH CIR., <https://www.ca10.uscourts.gov/search-opinions> (last visited Dec. 21, 2022). The Tenth Circuit Database Project relied on this decision database for its results.

11. If one manually searches the Tenth Circuit decision database using the same date parameters, the search also yields 950 decisions. *See id.*

12. *Integrated Data Base Appeals Documentation FY 2008–Present*, FED. JUD. CTR., <https://www.fjc.gov/research/idb/interactive/21/IDB-appeals-since-2008> (last visited Dec. 21, 2022).

13. *See id.*

14. “Nature of Suit” refers to the issue presented in a civil suit. *See* FED. JUD. CTR., THE INTEGRATED DATABASE: A RESEARCH GUIDE 2, <https://www.fjc.gov/sites/default/files/IDB-Research-Guide.pdf> (last visited Dec. 21, 2022).

15. *See* Pelecanos, DLR Data Set, 10th Circuit 21–22 year (Oct. 2022) [hereinafter DLR Data Set 2021–22 Year] (on file with the author).

were data points that were unique to one set or another, the overall accuracy of the data could not be verified. Further, it appears that most of the decisions included in the DLR set are most similar to the data from the “merits” decisions and not the “procedural” decisions in the IDB set.

Lastly, the Tenth Circuit Database Project chose a date range with a decision file date between April 1, 2021, through March 31, 2022. The Project made this choice in keeping with the goal of previous years: an examination of one year of data. However, this project could easily expand to several years of data because the information is now gathered with a program and not by hand. Further, the Project focused on the specific data range to reduce the bias from any particular set of clerks. Although the most significant weight should be attributed to the judges that decide each case, the Project must attribute some minimal amount of influence over the outcomes of cases to the clerks because of their unique experiences and their particular subject knowledge.¹⁶ Federal circuit clerks most often begin a one-year term in or around August or September.¹⁷ By starting the year of data in April, it is most likely that two sets of clerks were included in the data set for each judge’s chambers, reducing the impact of any particular class of clerks on the data analysis.

II. LIMITATIONS

Although this method of data collection is an improvement from the previous year’s attempts, it is still flawed. The famous statistician George Box once said, “all models are wrong, [but] some are useful.”¹⁸ The Project may not have cleaned the data perfectly and most definitely recognizes that the data between the sets vary, yet, hopefully, the analysis can still be useful.¹⁹ When data varied too much between the sets to create a reliable analysis, the Project created no analysis with that data. In the future, these limitations can be curtailed with more advanced programming.

For example, when the computer scientist created the DLR set, the coding program confused the concurrences and dissents. The coding searched for the terms “concurrence,” “concurring,” “dissent,” and “dissenting,” which turned up cases that did not have concurrences and dissents. The data set was overinclusive because those terms appeared in citations or in the main text as a summary of another case or a suggestion for future cases. Therefore, a graph of the concurrences and dissents from

16. *Duties of Federal Law Clerks*, OSCAR, https://oscar.uscourts.gov/duties_of_federal_law_clerks (last visited Dec. 21, 2022).

17. *How and When Should I Apply for Clerkships?: Federal Courts*, CORNELL L. SCH., <https://community.lawschool.cornell.edu/careers/judicial-clerkships/clerkship-advice/how-and-when-should-i-apply-for-clerkships> (last visited Dec. 21, 2022) (“It is safe to say that most [federal] clerks begin work in August or September each year.”).

18. See, e.g., *All Models Are Wrong, Some Are Useful*, JAMES CLEAR, <https://jamesclear.com/all-models-are-wrong> (last visited Dec. 21, 2022).

19. Cleaning data encompasses the removal of errors, duplicates, and outliers, giving a data set necessary structure for analysis. See Will Hillier, *What Is Data Cleaning and Why Does It Matter?*, CAREER FOUNDRY: CF BLOG (Nov. 12, 2021), <https://careerfoundry.com/en/blog/data-analytics/what-is-data-cleaning>.

the DLR data set was discarded. Despite these limitations, the following results may be useful to the legal community, especially those involved in the Tenth Circuit.

III. RESULTS

A. Class of 2022 Superlatives

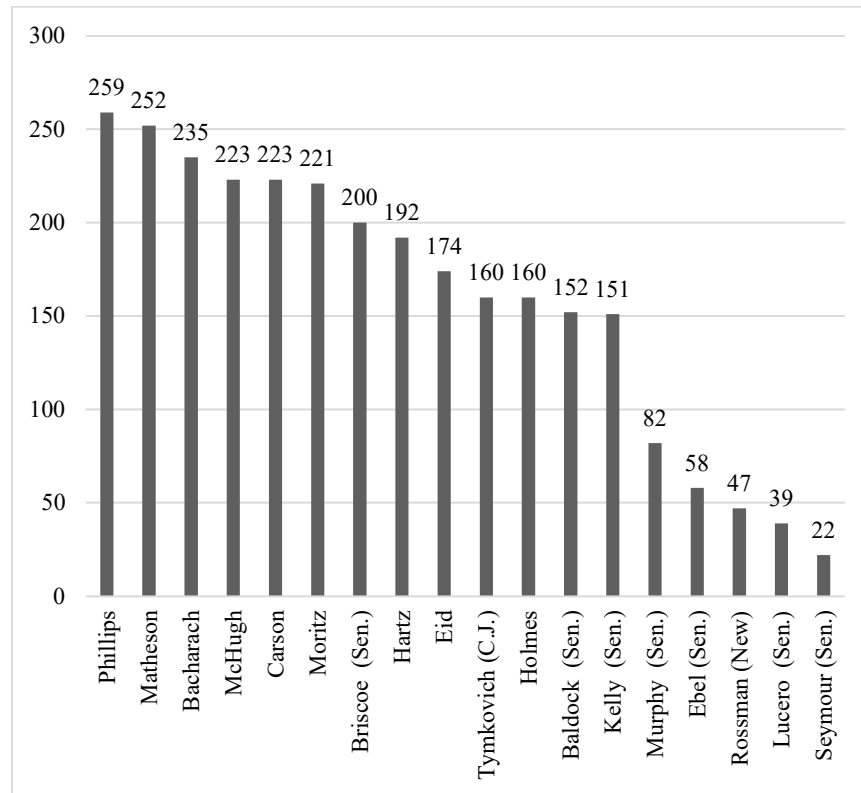


FIGURE 1. *Total Opinions Where Judge Was a Panel Member*

The majority of the decisions released each year are the result of a three-judge panel.²⁰ The Tenth Circuit only released one en banc decision during this time period, and nine judges participated.²¹ In the DLR data set, a case is coded to show which judges were a part of the panel but not specifically which one authored the decision. Therefore, the number corresponding to each judge is the number of decisions that the judge participated in over the year. This included decisions that the judge authored for the majority, decisions they agreed to but did not author, decisions where

20. *Appellate Courts and Cases—Journalist’s Guide*, U.S. CRTS., <https://www.uscourts.gov/statistics-reports/appellate-courts-and-cases-journalists-guide> (last visited Dec. 21, 2022).

21. Chief Judge Tymkovich and Judges Briscoe, Hartz, Holmes, Bacharach, Phillips, McHugh, Mortitz, and Eid. Pelecanos, DLR Data Set, Total Opinions (Oct. 2022) [hereinafter DLR Data Set Total Opinions] (on file with the author). More about this interesting en banc case later.

they wrote or agreed to a concurrence, and decisions where they wrote a dissent.²²

Judges Phillips and Matheson participated in panels that released the most decisions.²³ Judge Briscoe participated in the most panels to release decisions as a judge with senior status.²⁴ In contrast, then-Chief Judge Tymkovich came in near the bottom of participation on panels that released decisions by active judges.²⁵ This is likely a result of the administrative duties associated with his chief judge status. Judge Rossman participated in the lowest number of panels to release decisions during this year.²⁶ This is because she was new to the circuit.²⁷ Likely, Judge Rossman's involvement in resolved cases will look very different in the following year.

1. New Kid on the Court

The senate confirmed Judge Rossman on September 20, 2021.²⁸ The first decision that she authored came out on December 2, 2021.²⁹

2. Most Likely to Be on Your Panel

“I believe the most important attribute of a judge is a strong work ethic fueled by intellectual curiosity. I believe I possess this.”³⁰

—Judge Phillips

A judge's participation in panels that released decisions may not be directly correlated to productivity. In theory, it is possible that a judge with more seniority could author more opinions and participate in fewer panels overall.³¹ Because authoring decisions takes more time and effort than

22. A “majority opinion” needs more than half of the judges on a panel, thus in a three-panel decision, only one person can write a dissent. See *Opinion*, LEGAL INFORMATION INST., <https://www.law.cornell.edu/wex/opinion> (last visited Dec. 21, 2022).

23. See DLR Data Set Total Opinions, *supra* note 21.

24. *Id.*

25. *Id.*

26. *Id.*

27. See *infra* note 30.

28. Press Release, U.S. Ct. Appeals for 10th Cir., Honorable Veronica S. Rossman Joins the Tenth Circuit Court of Appeals (Sept. 30, 2021), <https://www.ca10.uscourts.gov/ce/news/honorable-veronica-s-rossman-joins-tenth-circuit-court-appeals>.

29. See DLR Data Set 2021–22 Year, *supra* note 15; *Benaissa v. Salina Regional Health Ctr.*, Nos. 20-3236 & 21-3015, 2021 U.S. App. 2021 WL 5710033, at *1 (10th Cir. Dec. 2, 2021).

30. SENATE JUDICIARY COMM., RESPONSE OF GREGORY ALAN PHILLIPS: NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT TO THE WRITTEN QUESTIONS OF SENATOR AMY KLOBUCHAR 2 (Mar. 19, 2013), <https://www.judiciary.senate.gov/imo/media/doc/031913QFRs-Phillips.pdf>.

31. The most senior judge on a panel will typically assign which judge will author the majority. The most senior judge is the one with the most active service years and not the most total number of years. The exception is a panel with the chief judge because he has the highest right to assign authorship. Much like the Supreme Court, assignments at the Tenth Circuit are also likely balanced more or less equally between potential authors. See Dr. Adam Feldman, *Supreme Court End of Term Cheat Sheet*, EMPIRICAL SCOTUS (June 20, 2022), <https://empiricalsctus.com/2022/06/20/end-of-term-cheat-sheet> (“A lesser known norm [at the U.S. Supreme Court] is that the justices typically write at least one majority opinion for each oral argument sitting [from] [October through April].”).

agreeing to someone else's writing, those chambers writing the most opinions would be the most productive. However, there is an overall balance structure in place that tends to erase large discrepancies of this kind. For this Tenth Circuit yearbook awards, Judge Phillips was the most likely to be on your panel and, in all likelihood, one of the most productive members of the court.³²

B. There Was So Much Homework!

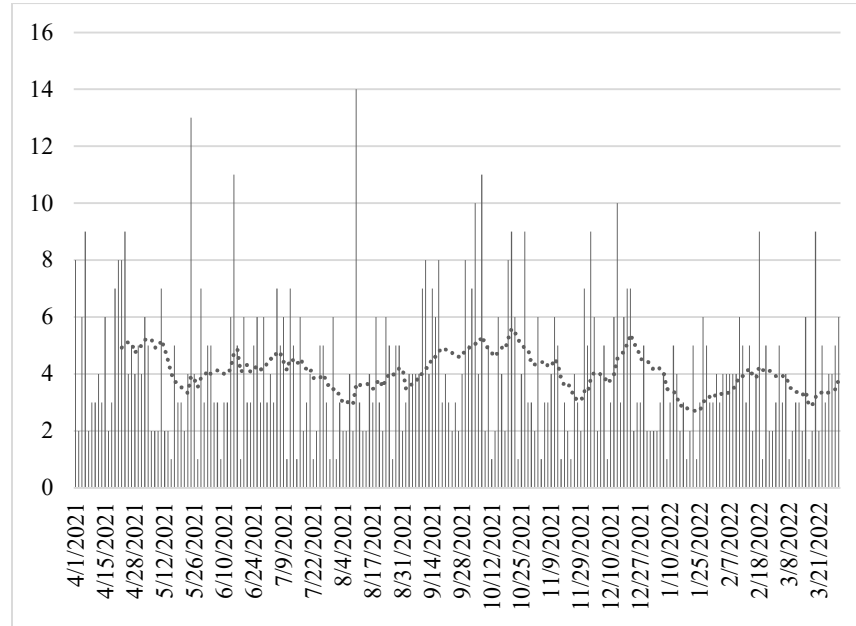


FIGURE 2. *Tenth Circuit Decisions Per Day with Moving Average Trendline*

Each year, the Tenth Circuit, along with other intermediate-level appellate courts, processes an extraordinary number of cases compared to the Supreme Court. Unlike the Supreme Court, circuit courts are required to review the cases that are presented on appeal; circuit courts do not get to pick and choose.³³ Of course, the circuit court has a process for “screening” the cases that need less attention.³⁴ Like the Supreme Court, the Tenth

32. See DLR Data Set Total Opinions, *supra* note 21.

33. See *Introduction to the Federal Court System*, U.S. DEP'T JUST., <https://www.justice.gov/usao/justice-101/federal-courts> (last visited Dec. 21, 2022). The losing party at the trial court level in the federal court system is generally entitled to appeal the decision to a federal court of appeals. See *About the U.S. Courts of Appeals*, U.S. CRTS., <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-courts-appeals> (last visited Dec. 21, 2022). The process of the federal circuit courts differs from that of the U.S. Supreme Court, which chooses the cases it hears primary through a process called a writ of certiorari. See *Appeals*, U.S. CRTS., <https://www.uscourts.gov/about-federal-courts/types-cases/appeals> (last visited Dec. 21, 2022).

34. Once the appellee/respondent brief is filed, the court “screens” the case to determine what level of attention the case needs. See OFFICE OF THE CLERK, U.S. CRT. OF APPEALS FOR THE TENTH CIR., PRACTITIONER'S GUIDE TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Circuit has seen a relative decrease in the number of cases it decides each year.³⁵ According to the IDB, the Tenth Circuit decided 1,672 cases this past year.³⁶ However, from April 2016 through March 2017, the Tenth Circuit wrote 2,296 decisions.³⁷ A possible explanation is an increase in litigation costs over the past six years.³⁸

Different chambers handle the drafting of decisions differently based on how involved a judge and their clerks are in the writing. Although the process of drafting an opinion may be second nature to those who have clerked in an appellate chamber, it is possible that there are readers who have not done so and would benefit from further explanation. If the case is set for oral argument, it follows a particular path. The judges on the panel will have their clerks write a bench memo so that the judge will have an opportunity to better understand the concepts under debate.³⁹ Then, oral arguments are heard.⁴⁰ Afterward, the judges have a conference, and the most senior judge, will assign the case to a particular chamber to write the majority opinion.⁴¹ Conference is a point when judges may choose to concur or dissent. The majority chamber writes a draft and sends it around to other panel members for feedback. At this point, a fresh possibility for a judge to concur or dissent arises.⁴² Once all the majority, concurring, and dissenting opinions are complete, the full circuit has an opportunity to read the draft.⁴³ Subsequently, the clerk's office finalizes the draft, date marks it, and puts it out on the website. Non-oral argument cases go through a similar process of drafting, sharing, and posting.⁴⁴ The clerks may support

51 (12th ed. 2022) [hereinafter TENTH CIR. PRACTITIONER'S GUIDE]. Based on my own experience as an intern at the Tenth Circuit, the staff attorney's office then prepares a screening memo with some basic advice and sends it to a judge's chamber. In chamber, the judge can decide to hold oral argument, work on the case with a member of the staff attorney's office, or keep the case in their chamber without oral argument. The cases that stay in chamber without oral argument are the least complex. Some cases can receive a relatively simple response from the court based on procedural issues. The most complex cases are assigned for oral argument. The Fifth Circuit observes a similar screening process. See CLERK'S OFFICE, U.S. CT. OF APPEALS FOR THE FIFTH CIR., PRACTITIONER'S GUIDE TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT 34 (2021), <http://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/documents/practitionersguide.pdf>.

35. See Federal Judicial Center, Integrated Database (IDB): Appeals Data from FY 2008 to Present (2022) [hereinafter IDB Data Set] (on file with author). This data set was extracted from the Federal Judicial Center's interactive IDB Appeals database. See *IDB Appeals 2008–Present*, FED. JUD. CTR., <https://www.fjc.gov/research/idb/interactive/21/IDB-appeals-since-2008> (last visited Dec. 21, 2022).

36. See IDB Data Set, *supra* note 35.

37. *Id.*

38. See LAW. FOR CIV. JUST., CIV. JUST. REFORM GRP., & U.S. CHAMBER INST. FOR LEGAL REFORM, LITIGATION COST SURVEY OF MAJOR COMPANIES 2–3, 8 fig.4 (2010), https://www.uscourts.gov/sites/default/files/litigation_cost_survey_of_major_companies_0.pdf.

39. See Stephen L. Wasby, *Clerking for an Appellate Judge: A Close Look*, 5 SETON HALL CIR. REV. 19, 55 (2008) (describing the process of bench memos).

40. *Id.* at 93.

41. See author's commentary *supra* note 30.

42. See TENTH CIR. PRACTITIONER'S GUIDE, *supra* note 34, at 59 (describing the process of deciding the appeal).

43. While information on the court's internal process is not readily available, this is a process I experienced firsthand during my internship at the Tenth Circuit. Additionally, most cases only have a majority opinion. It is rare for judges in the Tenth Circuit to concur or dissent.

44. See author's commentary *supra* note 43.

the judge at many different points in the process, particularly in the drafting and editing stages. However, the level of involvement is chamber specific.

Figure 2 represents the number of final judgments that came out each week over the course of a year from April to March.⁴⁵ In addition to the case totals, this graph depicts a trendline with a moving average every seven days.⁴⁶ Looking at this graph, periods of higher decision output are illustrated by vertical peaks. Over the past year, higher output periods were in late April, mid-September, early October, and late December.⁴⁷ In contrast, lower periods of output were in mid-May, end of July through the beginning of August, end of November, January, and mid-March.⁴⁸ Some of these peaks and valleys may be attributed to holidays, clerk onboarding, and arbitrary dates to complete backlogged work.

C. Democrats Win Tenth Circuit's Homecoming Game: Democrats Had the Bigger Team

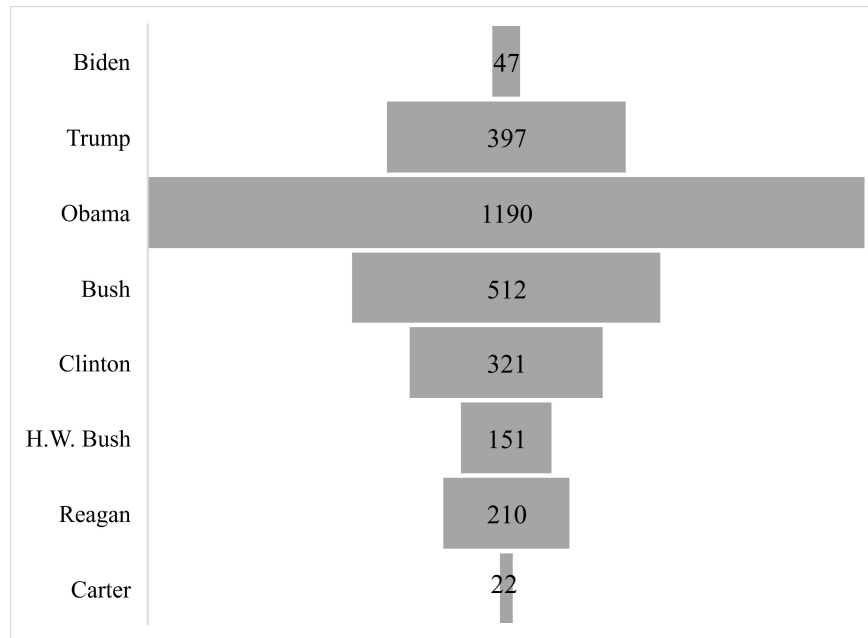


FIGURE 3A. *Cases Decided According to Appointing President*

45. *See supra* Figure 2.

46. *Id.*

47. *Id.*

48. *Id.*

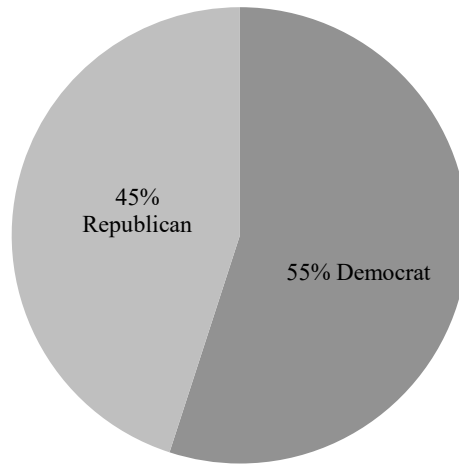


TABLE 3B. *Percent of Opinions by Appointing President Political Party*

Some argue that the appointing president of a judge has very little to do with the judge's judicial philosophy or the outcome of a case.⁴⁹ However, this project was born out of legal realism, and legal realism does not pretend that the law is neutral at its heart. It varies depending on who is applying the law. For those reasons, this project looks at the judges' appointing presidents.

Figure 3A shows the number of decisions released by each judge as categorized by the appointing president.⁵⁰ In the past, the Tenth Circuit has been considered a conservative court.⁵¹ However, during this study year, judges who were appointed by a Democratic president released a greater number of case decisions than the judges appointed by a Republican president.⁵² Because Judge Rossman's decision output will be higher over the subsequent year and any newly appointed judges over the next year will be appointed by a Democratic president, the percentage of decisions by Democratic appointed judges will likely increase. Furthermore, the more senior judges appointed by Presidents George H.W. Bush and Reagan will likely begin to contribute fewer case decisions and participate in fewer panels. As a nice balancing point to the rest of the court, a Republican

49. Ethan Yang, *Stop Bringing Politics into the Supreme Court*, AM. INST. FOR ECON. RSCH. (Oct. 19, 2020), <https://www.aier.org/article/stop-bringing-politics-into-the-supreme-court>.

50. See *supra* Figure 3.

51. See Umair Irfan, *A Conservative-Leaning Court Just Issued a Surprise Ruling on Climate Change and Coal Mining*, VOX (Sep 19, 2017, 3:10 PM), <https://www.vox.com/energy-and-environment/2017/9/19/16332952/court-ruling-coal-climate-change>. In fact, Neil Gorsuch, a Trump nominee, was plucked from this court. See *Current Members*, SUP. CT. U.S., <https://www.supremecourt.gov/about/biographies.aspx> (last visited Dec. 21, 2022).

52. See DLR Data Set Total Opinions, *supra* note 21.

president appointed the chief judge.⁵³ Even so, over the next several years, this court is likely to become more progressive in its overall ideology. Perhaps it is time to reconsider the potential of the Tenth Circuit moving forward.

D. Trips to the Principal's Appellate Office: One-Thirds for Fighting and Two-Thirds for Skipping Class

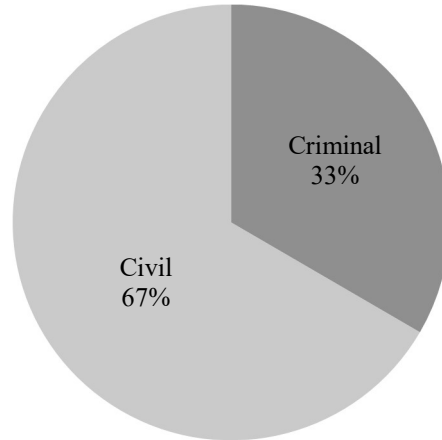


FIGURE 4. *Percentage of Cases Heard by Type*

Circuit court jurisdiction is most often based on a set geographic region that is not limited by a particular area of law.⁵⁴ However, the types of cases that arise in the Tenth Circuit and, for instance, the Second Circuit will naturally differ due to the differing population and physical characteristics of the two regions served by the circuits. For example, the types of civil cases may differ based on the industries within those circuits, environmental concerns that are location specific, the inclusion of Native American land within the circuit, and so on. The ratio of civil cases and criminal cases can also vary from circuit to circuit based on the unique factors present within the jurisdictions.

Although this year's analysis is rather superficial because it does not look at the particular types of civil and criminal cases brought in the Tenth Circuit, the Project can still glean the bigger picture presented by the ratio of civil to criminal cases. Figure 4 shows that out of the 950 cases that released decisions according to the DLR data set, about 324 of those cases

53. *Holmes, Jerome A.*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/holmes-jerome> (last visited Feb. 2, 2023).

54. The Federal Circuit is nationwide but covers specific types of law. *See Court Role and Structure*, U.S. CRTS., <https://www.uscourts.gov/about-federal-courts/court-role-and-structure> (last visited Dec. 21, 2022).

were criminal appeals.⁵⁵ The majority of decisions the Tenth Circuit reviewed were civil cases.⁵⁶

To further examine the criminal cases, the Project used the IDB data set which included information on pro se cases. Of the criminal cases, about ninety cases were pro se cases at the time the decision was released. Thirty of those decisions were on procedure⁵⁷ and sixty were on the merits.⁵⁸ Of the sixty pro se cases that were decided on the merits, thirty-seven affirmed the district court decision, and another fourteen were dismissed.⁵⁹ Likely, these pro se litigants would have benefited from representation. Only three pro se criminal appellants saw their cases reversed and only six saw their case remanded.⁶⁰ The court, whether consciously or not, has a hard time reading the briefs, understanding the claims, and deciding in favor of most criminal pro se litigants.

Another interesting subtype of criminal appellate cases are habeas corpus cases. A particularly interesting habeas corpus case that released a decision (unpublished) this year in the Tenth Circuit was *Lee v. Archuleta*⁶¹ out of the U.S. District Court for the District of Colorado.⁶² This case perfectly illustrates the broken nature of the habeas corpus doctrine and the struggle that federal appellate courts have with such cases.⁶³

As for the civil cases, the IDB data set shows that over 22% of the civil cases were civil rights cases.⁶⁴ Civil rights cases include voting, jobs, accommodations, welfare, and others. For a thought-provoking civil rights decision from this study year, look to *303 Creative LLC v. Elenis*,⁶⁵

55. See *supra* Figure 4.

56. Pelecanos, DLR Data Set, Civil v. Criminal (Oct 2022) (on file with author); IDB Data Set, *supra* note 35.

57. IDB Data Set, *supra* note 35.

58. *Id.*

59. *Id.*

60. *Id.*

61. 859 F. App'x 347 (10th Cir. 2021).

62. *Id.* at 347.

63. Lee is a Colorado state prisoner that was effectively sentenced to life without parole for non-homicidal crimes committed as a juvenile. Both the State and Lee agree that Lee's present sentence is unconstitutional, and Lee is entitled to a writ of habeas corpus. However, the Tenth Circuit was unable to deliver its four-page opinion for six years until Lee had exhausted all potential state remedies.

64. IDB Data Set, *supra* note 35.

65. Lorie Smith is a wedding website designer who brought free speech, free exercise, vagueness, and overbreadth challenges to the Colorado Anti-Discrimination Act. Smith intended to refuse her wedding website design services to same-sex couples, and she wished to publish a statement explaining her religious objections to same-sex marriage. The Tenth Circuit held that the Colorado Anti-Discrimination Act satisfied strict scrutiny, and permissibly compelled Smith to create wedding websites for same-sex couples. 6 F.4th 1160 (10th Cir. 2021). This case is significant because of its close resemblance to the recent *Masterpiece Cakeshop* case, a 2018 Supreme Court opinion based on a baker's claim that the Colorado Anti-Discrimination Act violated his First Amendment rights by compelling the baker to provide his creative services to same-sex couples. *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719 (2018).

also out of the District of Colorado.⁶⁶ This case was heard on appeal by the Supreme Court on December 5, 2022.⁶⁷

E. Which Teacher Is Sending the Most People to the Principal's Appellate Office?

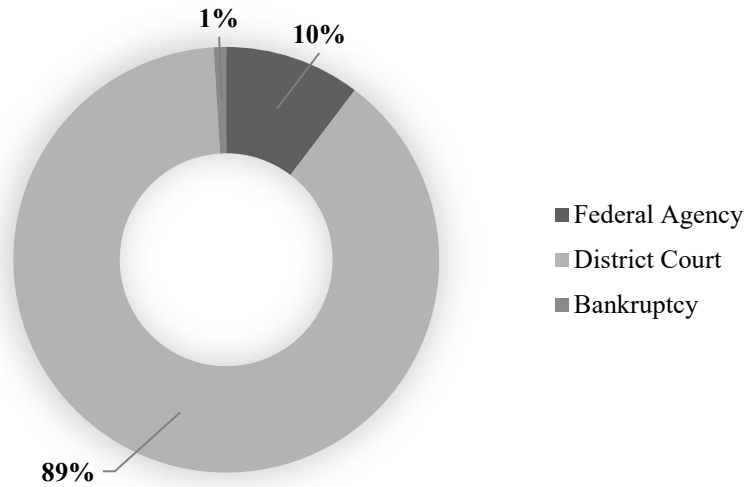


FIGURE 5A. *Percent of Cases by Origin*

66. *303 Creative*, 6 F.4th at 1170.

67. Mark Walsh, "Scenes with Santa" and Online-Dating Inquiries at the *303 Creative Argument*, SCOTUSBLOG (Dec. 5, 2022, 7:29 PM), <https://www.scotusblog.com/2022/12/scenes-with-santa-and-online-dating-inquiries-at-the-303-creative-argument/>. The Supreme Court granted the petition for certiorari on February 22, 2022. See *303 Creative LLC v. Elenis*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/303-creative-llc-v-elenis> (last visited Dec. 21, 2022).

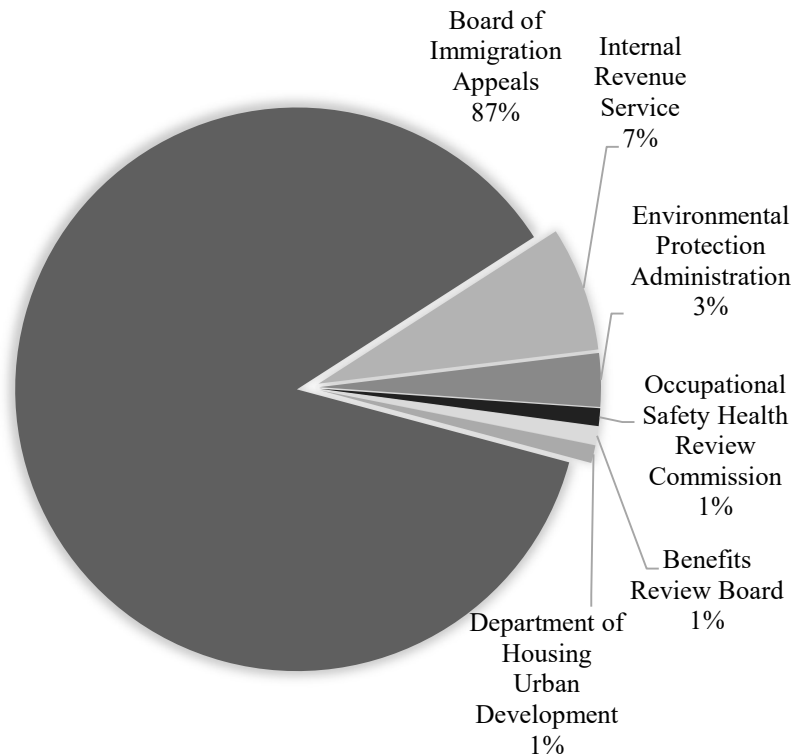


FIGURE 5B. *Breakdown of Federal Agency Origin Appeals*

Most appellate cases come directly from the district courts within their circuit jurisdiction.⁶⁸ Yet, there are some cases the court has jurisdiction over that are not from the district courts.⁶⁹ Figure 5A depicts the origins of cases more broadly and Figure 5B provides a more detailed graphic of the federal agency origins for cases that had appeals resolved in the Tenth Circuit during the year.⁷⁰

The vast majority of cases originate in the district courts of one of the six states in the Tenth Circuit.⁷¹ The district courts include the Districts of Colorado, Utah, Wyoming, New Mexico, Kansas, and the three district courts of Oklahoma.⁷² Less than 10% of cases that the Tenth Circuit decided this year came from federal agencies.⁷³ Of those federal agencies, most cases came from the Board of Immigration Appeals.⁷⁴ An even

68. See IDB Data Set, *supra* note 35; see also *Court Role and Structure*, *supra* note 54.

69. *General Information*, U.S. CRT. APPEALS FOR THE TENTH CIRCUIT, <https://www.ca10.uscourts.gov/clerk/general-information> (last visited Dec. 21, 2022); see also *Court Role and Structure*, *supra* note 54.

70. See *supra* Figure 5A and 5B.

71. See DLR Data Set 2021–22 Year, *supra* note 15.

72. *General Information*, *supra* note 69.

73. See *supra* Figure 5; see also Pelecanos, DLR Data Set, Federal Agencies (Oct. 2022); IDB Data Set, *supra* note 35.

74. See sources cited *supra* note 73.

smaller number of cases—between one and seven—came from the Internal Revenue Service, Environmental Protection Administration, Occupational Safety and Health Review Commission, the Department of Labor’s Benefits Review Board, and the Department of Housing and Urban Development.⁷⁵ A possible reason for this phenomenon is the rather lengthy, expensive, and convoluted intra-agency processes that litigants have to traverse before they can ever make it to the federal court system. Almost all federal agency appeals that reach the Tenth Circuit are affirmed,⁷⁶ likely due to agency deference. This leaves little reason for litigants aggrieved by a federal agency to appeal all the way to the circuit level.

F. College Acceptances: Which State Is Most Popular?

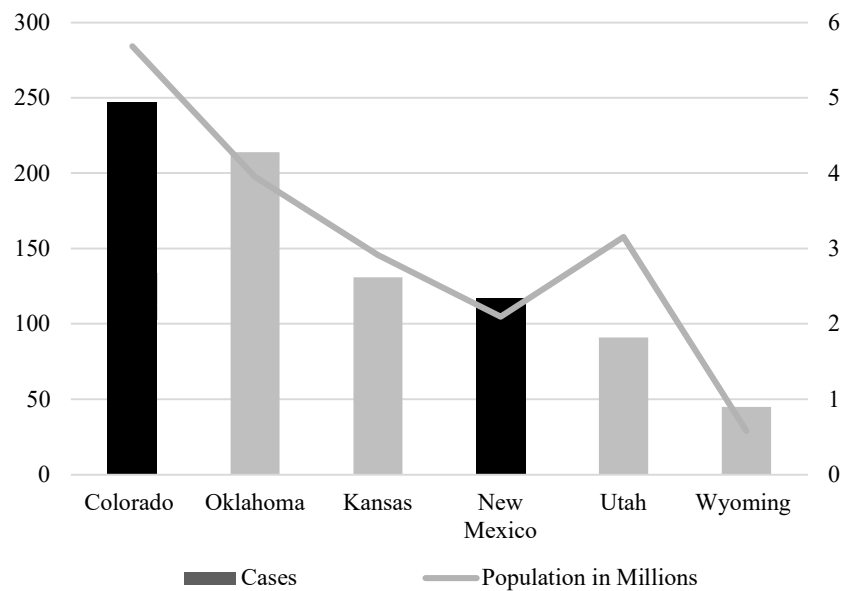


FIGURE 6. *Case Origins*

Six states encompass the territorial jurisdiction of the Tenth Circuit.⁷⁷ Figure 6 displays the state origins of the cases that received decisions this year.⁷⁸ The figure compares the number of cases to the population in those states and displays the states in black or gray depending on the overall political demographics of the state.⁷⁹ Oklahoma and, to a lesser degree, New Mexico and Wyoming are slightly overrepresented in the number of cases heard by the Tenth Circuit.⁸⁰ In contrast, Colorado and Utah are

75. *Id.*

76. See DLR Data Set 2021–22 Year, *supra* note 15; IDB Data Set, *supra* note 35.

77. See *General Information*, *supra* note 69.

78. See *supra* Figure 6. The state of origin was determined by the district court of origin.

79. The political makeup of the state for purposes of this Project relies on the data from the 2020 presidential election. Black correlates to the Democratic party and gray to the Republican party.

80. See *supra* Figure 6.

underrepresented in the number of cases decided by the Tenth Circuit. This Project encourages Coloradans and Utahns to appeal more suits in the name of fairness.

CONCLUSION

The 2021–2022 yearbook shows the year in review. The Tenth Circuit welcomed a new judge, worked hard to complete caseloads, turned into a more Democrat-appointed court, and looked at a variety of civil and criminal cases. The project encourages the local legal community to use the information contained in this Note in whatever way it is most useful.⁸¹ Who knows, maybe this data will even influence the future actions of judges or clerks. Be bold, Tenth Circuit.

*Pelecinos**

81. Please reach out to the author for data sets or details on specific calculations.

* Pelecinos is seeking their Juris Doctor with a certificate in constitutional rights and remedies at the University of Denver Sturm College of Law. They would like to thank the master legal analyst, Adam Feldman, for his guidance and resource support, and the *Denver Law Review* staff for their ability to mine precious metals from coarse rocks. Additionally, Pelecinos wishes to send a special thank you to the law clerks that they interned under at the Tenth Circuit. And lastly, Pelecinos acknowledges that none of this would have been possible without the unwavering support of their family.