The Determinants of the Number of Amicus Briefs Filed Before the U.S. Supreme Court, 1953-2001*

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Amicus curiae activity represents the primary form of democratic input into the federal judiciary. We add to the scholarly understanding of this most important means of interest-group activity by examining the factors that influence the number of amicus curiae briefs filed in a case before the U.S. Supreme Court. We employ a theoretical framework that 1) focuses on the desire of groups to achieve long-lasting policy goals, 2) addresses the low-information environment at the Court, and 3) recognizes the role of uncertainty in influencing group behavior. Using data from 1953 to 2001, we examine how these case- and Court-specific factors lead to a change in the number of amicus briefs filed in the Supreme Court. We find varying degrees of support for each of the three frameworks, thereby providing insight into why certain cases attract more interest-group amicus activity than others.

Why do certain cases before the U.S. Supreme Court capture the attention of interest groups while others pass almost unnoticed? As an enduring part of our governing system, interest groups use several avenues to affect public policy and advance their goals.[1] For many groups, this includes participating in the judicial system. That groups participate through litigation is not surprising, but the increase in organizational activity in the courts calls into question how interest groups choose which cases to spend resources on and which cases to ignore. Just as interest groups act strategically in lobbying legislators (Hojnacki and Kimball, 1999), participating in the bureaucratic rulemaking process (Golden, 1998), and donating to campaigns (Wright, 1989), they also act strategically in their efforts to influence the judiciary (Caldeira and Wright, 1990; Caldeira, Hojnacki, and Wright, 2000; Collins, 2008). As

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[1] We define interest groups as "the wide variety of organizations that seek joint ends through political action" (Schlozman and Tierney, 1986:11). Included in this definition of interest groups are corporations, institutions, unions, citizen or public-advocacy groups, pubic-interest law firms, governments, professional associations, charitable organizations, and ad hoc associations of individuals (Caldeira and Wright, 1990). We use the terms *interest groups* and *organized interests* interchangeably.

more organized interests find their way to the Supreme Court, their attempts to lobby for influence take place primarily in the form of amicus curiae briefs.[2]

There has been a considerable rise in the percentage of cases before the Court that draw amicus curiae participation (e.g., Collins, 2004; O'Connor and Epstein, 1983). For example, Collins (2008) notes that over 90 percent of cases in the Supreme Court now have at least one amicus curiae brief filed, compared to only about 35 percent during the Warren Court era (1953-68). In fact, in recent terms, for the Supreme Court to hear a case that has not garnered interest-group attention is a rarity. What we do not know, however, is why some cases invoke greater interest-group attention than others. Our purpose in this article is to investigate the determinants of the number of amicus curiae briefs filed at the merits stage in a case before the U.S. Supreme Court.

We attempt to answer this question by examining both Court- and case-specific variables to discern the factors that contribute to the number of amicus briefs filed in a case. While the field of political science has accumulated evidence as to why interest groups file amicus curiae briefs (see Hansford, 2004a, b; Koshner, 1998), our research diverges in its focus upon the Court and specific cases, rather than on interest groups. We examine factors intrinsic to the Supreme Court and individual cases generating amicus interest. Simply put, previous literature has focused almost exclusively on the attributes of interest groups leading to amici filing, whereas this research moves beyond explanations for amici filing based entirely upon interest-group attributes. We develop case-specific hypotheses that emphasize the role and importance of information to the Supreme Court. Under this perspective, amici are influential information providers to members of the Court. As such, they will take advantage of cues concerning the need for information to determine the conditions that are most beneficial to pursue their goals. Second, we examine variables relating to the Supreme Court as an institution, as part of a larger judicial network, and as a policymaking government entity. We hypothesize that changes in Court personnel and the nature of the case will affect the number of amicus briefs filed.

Examining the levels of interest-group amicus curiae participation in the Supreme Court is important for a number of reasons. First, the filing of amicus briefs is the clearest form of democratic participation by outside actors in the Supreme Court. As Garcia (2008) posits, amicus briefs are an expressive democratic function, protected by the Petition Clause of the First Amendment. Amicus briefs allow the Court to hear the concerns of all types of public and private actors, including those outside the government. Any individual or organization can file an amicus brief, provided the Court's rules for participation are followed. In amicus briefs, individuals and groups are able to express their viewpoints as they relate to the case at hand. That free

[2] Amicus curiae is Latin for "friend of the court." Amicus curiae briefs are submitted by third parties to provide the Supreme Court with relevant legal, political, or social information. An overwhelming majority of briefs are not neutral to the case, but in fact are attempts to persuade the Court to endorse policies favorable to group interests (e.g., Collins, 2008).

expression of ideas to the justices captures the democratic potential present in the institution of the Supreme Court. Examining the number of filings emphasizes this democratic capacity as it sheds light on the degree of participation by outside actors.

Second, studying the filing of amicus curiae briefs allows us to understand some catalysts for interest-group action. With interest groups constituting a core part of the American governmental system, it is important to understand what motivates interest groups to participate in the Court. We choose to focus upon amicus curiae brief filing by interest groups because it is the prominent avenue for interest-group participation in the courts.

Finally, scholars have demonstrated that interest-group activity through amici participation shapes the justices' decision making (e.g., Collins, 2004, 2007, 2008; Kearney and Merrill, 2000). We know that the number of amicus briefs filed affects the petitioner's probability of winning, the votes justices cast, and a justice's decision to write or join a separate opinion (Collins 2004, 2008:109). Since greater brief filing affects judicial behavior, it is important to understand what factors prompt participation.

This article proceeds as follows. First, we discuss the rules pertaining to the filing of amicus curiae briefs in the Supreme Court. Next, we present our theoretical framework and the corresponding case-related and Court-specific hypotheses. We then test our hypotheses using data on amicus curiae briefs during the 1953-2001 terms and discuss our results. We close with a brief conclusion and suggest directions for future research.

A BRIEF OVERVIEW OF AMICUS CURIAE BRIEFS IN THE UNITED STATES SUPREME COURT

The Supreme Court's policy toward amicus briefs is supportive of the participation of organized interests, and few procedural barriers exist to prevent filings (e.g., Collins, 2008; Kearney and Merrill, 2000). Interested individuals or organizations who wish to file an amicus curiae brief must receive written consent by all parties involved with the case, or if consent is withheld, file a motion for leave to file with the Court. The United States Solicitor General, government agencies, and local or state governments do not have to seek permission to file. Groups must follow specific guidelines and adhere to deadlines established by the Rules of the Supreme Court of the United States. Amicus briefs filed in support of the petitioner or respondent must be filed within the time allowed for the petitioner or respondent's brief, respectively. Amicus briefs that support neither party must be filed within the same time allotment given to the petitioner.[3] Amicus briefs are limited to thirty pages at the merits stage, although amici may file appendices to their briefs (Collins, 2008:45). Amicus briefs provide the Court with a

[3] In 2007 the Court altered the Rules of the Supreme Court of the United States. The new rules require amicus briefs to be filed within seven days of the party they are supporting. Amicus briefs filed in support of neither party must be filed within seven days of the petitioner's filings. We emphasize the older rules, because our data ends before the adoption of the new rules.

variety of information. Spriggs and Wahlbeck (1997) note that, while the information provided by interest groups often reinforces the arguments made by the litigants, amici also provide unique legal analyses. Moreover, interest groups sometimes present non-legal information unique to their constituencies, such as social-scientific argumentation.

INTREST GROUP AMICUS CURIAE STRATEGIES IN THE SUPREME COURT

Interest groups that participate in politics desire to achieve long-lasting, far-reaching policy regardless of the venue in which a group is acting (Bentley, 1908; Gerber, 1999; Walker, 1991).[4] Besides the pursuit of policy, interest groups are attuned to the environment of the Supreme Court. Although justices have vast legal knowledge, their level of expertise pertaining to all issues addressed in specific cases is relatively low compared to the specialized knowledge that interest groups possess (e.g., Breyer, 1998; Hansford, 2004a; Spriggs and Wahlbeck, 1997). The abundance and diversity of cases brought before the Court makes it difficult for the justices to become policy experts. Interest groups may perceive the Court as information deficient and will subsequently file amicus briefs to address the justices' lack of knowledge of specific issues. Further, interest groups are aware of variable levels of uncertainty related to the decisions of the justices. While the Court delivers a single decision in a case, the decision-making process is that of nine individual members. Interest groups will respond accordingly to the varied composition of the Supreme Court. We therefore expect that more amicus curiae briefs will be filed in cases where: 1) the policy stakes are high; 2) the information available to the Supreme Court justices is low; and 3) interest groups face increased uncertainty about the preferences and anticipated actions of the Court. This general framework leads us to formulate nine hypotheses we expect to influence the number of amicus briefs filed.

Policy Goals. We postulate that interest groups have policy concerns and use political means to achieve these goals (Schlozman and Tierney, 1986; Hansford, 2004a, b). Further, groups want their policy wins to be long-lasting and far-reaching (Hansford, 2004a). Groups seek to influence the Court's decisions to set precedent. That precedent would affect future decisions for different litigants in all courts. Absent being a party in the case, amicus curiae briefs represent the primary avenue for interest groups to shape precedent. Thus, we expect certain policy-related case characteristics to attract a greater number of amicus curiae brief filings.

Case Salience. We propose that certain cases will attract a greater number of amicus curiae brief filings because they will have a broad economic, legal, and political impact. Case salience signals to groups that the policy implications of a particular case

[4] It must be noted that although long-lasting and far-reaching policy is not the sole goal of interest groups, it is, nonetheless, a significant goal of all politically focused interest groups.

will be far-reaching (Solowiej and Collins, 2009). That is to say, a particular case affects many people throughout the nation. Salience denotes that a case (or issue) matters for many people. Since interest groups wish to have the most far-reaching policy impact possible, we expect a greater number of amicus curiae briefs will be filed in litigation that is salient.[5]

Challenges to Acts of Congress. We expect that when a case involves a challenge to a federal statute enacted by Congress, more amicus briefs will be filed for the purpose of affecting policy. Interest groups have a particular attraction to cases that challenge a federal statute because they were very likely involved in lobbying for or against that particular act while it was being decided upon by Congress (Olson, 1990; Solowiej and Collins, 2009). Groups, therefore, seek to protect their policy achievement or undermine a policy that they do not agree with through the courts. To protect their policy achievements in Congress, some groups may file amicus briefs when challenges to federal statutes are raised. This can also work when a law that an interest group worked against is challenged in the Court. A group may become interested to try to have that law overturned. The simple logic is that since interest groups expend their time and effort lobbying in Congress, they will then expend some level of effort to protect their victory or continue to fight a particular piece of legislation. Of course, groups that did not lobby in Congress also have an incentive to file an amicus curiae brief. If a group does not agree with a statute that Congress passed and it is subsequently challenged in front of the Court, the group may take the opportunity to attempt to have the law overturned. Likewise, groups that did not participate in Congress but desire that the legislation be upheld may also lobby the Court. Therefore, we expect that more amicus briefs will be filed in cases in which a challenge to a statutory act of Congress is being decided.

Constitutional Challenge. A dispute involving a constitutional challenge implicates a decision regarding the Constitution, rather than statutory law. When a case involves a challenge to the Constitution, we expect a greater number of amicus briefs will be filed. The Supreme Court is the final say in constitutional matters, barring a constitutional amendment. Therefore, since groups seek the longest-lasting policy impact they can achieve, they will be more likely to seek to influence the Court's decision in constitutional matters. Groups hoping to have a long-lasting policy impact seek to lobby the Court on constitutional matters because these policies are more likely to survive for a long period of time. This is the case because decisions concerning the U.S. Constitution are for all intents and purposes unchangeable. It is possible that an amendment to the Constitution may be passed, ostensibly overruling the Court, or it

[5] An accompanying argument related to case salience involves the desire of groups to maintain their organization. Besides achieving policy goals, it is recognized that groups have "structural needs" that must be attended to (Solberg and Waltenburg, 2006). Pursuing salient cases could presumably ameliorate concerns related to the structural needs of groups.

is possible that the Supreme Court hears a similar case in the future and reverses its own decision, but these two instances are very rare. Therefore, we expect cases involving a constitutional challenge will prompt a greater number of amicus filings.

Incomplete Information. We also theorize that the Court works with some level of incomplete information (Collins, 2007; Epstein and Knight, 1998; 1999; Maltzman, Spriggs, and Wahlbeck, 2000). Supreme Court justices are not experts in all areas of economic, legal, and social policy. They are legal and policy generalists, who have a vast and thorough understanding of the legal profession, but often lack knowledge pertaining to specific issue areas (Collins, 2007). Technical details of many issues are confounding, which can make decision making on the part of justices difficult. Justice Breyer (1998:26) stated that "[amicus] briefs play an important role in educating the judges on potentially relevant technical matters, helping make us not experts, but moderately educated lay persons, and that education helps to improve the quality of our decisions." Further, we assert that interest groups *recognize* that justices work with incomplete information. Interest groups will then seek to supply the justices with information in hopes of persuading the justices' decision making.

Case Complexity. When a case is complex, interest groups may perceive that Supreme Court justices lack information. Complex cases are disputes that are more likely to create uncertainty among the justices of the Supreme Court (Hansford, 2004). Justices will not necessarily have a firm grasp of all aspects of all issues contained within a case because they are not experts in all matters that come before them. Furthermore, even when the complex issues of a case are basic legal principles, justices may not have a completely certain understanding concerning which legal principle trumps another. That is, justices may be ambivalent concerning which legal principle is the correct one to apply in a case containing multiple legal issues. Interest groups will, therefore, seek to provide information to the justices in complex cases with the desire of affecting a justice's decision and, in turn, affecting policy. Thus, case complexity prompts more amicus briefs filed because the justices are seen as needing greater information to come to a coherent decision. We expect a greater number of amicus curiae briefs will be filed in litigation that is complex.

Lower-Court Conflict and Lower-Court Dissent. Lower-court conflict, understood as differing decisions concerning similar cases from two or more lower courts, is expected to affect amicus brief filings because it is a cue to interest groups that their amicus briefs may be better received than in cases where there is agreement between courts. Intercircuit conflict, as lower-court conflict is often known, has been shown to increase the likelihood of the Court placing a case on their agenda (Caldeira and Wright 1988; Ulmer, 1983, 1984). This signals that the Supreme Court seeks to remedy disagreement between the lower levels of the judiciary. Lower-court conflict communicates to groups that there is legal disagreement concerning a particular case and

the arguments they present in amicus briefs may be better able to persuade the justices (see Ulmer, 1984). When there are disagreements between two or more lower courts, there will be greater ambiguity concerning the correct application of the law (Ulmer, 1984). Because there are multiple, conflicting findings by lower courts, the justices are unable to rely upon consistent lower-court decisions on which to base their rulings (Ulmer, 1984). Therefore, they will be assumed to desire more information. Lower-court conflict, thus, creates a situation in which interest groups receive a cue concerning the information level of Supreme Court justices. Knowing that the justices have ambiguous information might motivate groups to provide information in the hope of having an effect upon their decision. That information is provided in amicus briefs. Therefore, we expect a greater number of amicus curiae briefs will be filed in litigation where lower-court conflict is present.

At both the state and federal levels, cases before appellate courts are heard by a panel of judges. If the panel is not unanimous in its decision, a dissent is present (Brace and Hall, 1990; Hettinger, Lindquist, and Martinek, 2006). Like cases where there is conflict between the lower courts, cases that are heard by the Supreme Court in which a dissent is filed by a lower-court judge may signal to interest groups that the justices have ambiguous or conflicting information. The presence of that cue is expected to encourage information provision by interest groups through the filing of amicus briefs. Therefore, we expect a greater number of amicus curiae briefs will be filed in cases where there is a dissent filed in the lower court's decision.

Solicitor General Invite. We posit above that interest groups help resolve information problems in the Supreme Court. An invitation to the solicitor general to file an amicus curiae brief may be viewed as a signal that the justices are operating in an information-poor environment and, thus, their amicus briefs may have a larger impact upon that particular case than on other cases without a similar cue. By inviting an amicus brief from the solicitor general, the Supreme Court is signaling that they need more information (Hansford, 2004a; Solowiej and Collins, 2009). When a Court signals that it is lacking in information, groups may view it as more subject to persuasion. Thus, by filing an amicus brief that supplies information, the group may have a better chance of affecting a decision and, thus, having a policy impact. Therefore, we expect a greater number of amicus briefs will be filed in litigation in which the Court invites an amicus brief from the solicitor general.

Interest-Group Uncertainty. We also propose that interest groups will target the Supreme Court when they are less certain about how each justice will vote in a case. Although organizations that watch the Court carefully can get a sense of the justices' preferences, they cannot be absolutely sure that the details of a case will not sway the justices' decisions. Potentially exacerbating this uncertainty are changes to the Court's membership, as well as variation in the ideological distribution of the Court. Although there are instances where presumed outcome certainty may prompt interest groups to

file amicus curiae briefs (to appear effective for reasons of group maintenance), more often we expect increased uncertainty to promote greater brief filing. In general, amicus curiae briefs may be seen as instruments of persuasion that are more effective in more uncertain Court environments.

Ideological Heterogeneity. Ideological heterogeneity on the Court is expected to positively affect the number of amicus curiae briefs filed relative to a more ideologically homogeneous Court. Recent research has shown that ideological homogeneity in the majority coalition leads to more consequential decisions (Staudt et al., 2008). We theorized that in an ideologically diverse Court, the case outcome is less certain to interest groups. The more ideologically heterogeneous the Supreme Court is, the more conflicting policy preferences it has (Segal and Spaeth, 2002:89-91). Diversity in policy preferences signals to interest groups that the Court may be more open to multiple views on any given issue. Ideological heterogeneity may encourage the participation of interest groups who ordinarily would not participate as amicus curiae because they will believe themselves to have a greater chance of victory due to the perceived cue they received concerning openness to multiple opinions. A Court with a high level of diversity in policy preferences offers more targets for amicus briefs filers (Hansford and Johnson, 2008). Thus, an ideologically heterogeneous Court is a cue to the interest groups that their amicus briefs will not be wasted, and that there is a greater probability of affecting the outcome of the decision and achieving their policy goals. Therefore, we expect that a greater number of amicus curiae briefs will be filed in cases pending before a Court that is ideologically heterogeneous.

Court Membership Change. The Supreme Court, although possessing a certain amount of stability, is nonetheless subject to periodic changes in its makeup. We argue that there are two reasons why Court membership change may affect the number of amicus briefs filed. First, these changes in Court membership create a shift in Court ideology (Hansford and Johnson, 2008). Although it is obvious when a shift occurs, the direction and the magnitude of the ideological shift is often unknown. This shift causes uncertainty on the part of interest groups concerning how justices will decide cases before the Supreme Court. We expect that groups will test the waters of the new Court by increasing their amicus curiae filings. Groups try to discern whether the new members of the Court are receptive to amicus brief lobbying. That is, groups do not know if the new members on the Court will place much credence in the information provided in their amicus briefs. Groups will, therefore, file amicus briefs in the hope of discovering a new justice's receptivity to amicus briefs and, in particular, receptivity to their own organization. Second, beyond the ideological shift, freshman-justice uncertainty might attract the attention of organized interests. New justices are more likely than senior justices to hold moderate policy preferences (Brenner, 1983). During their first few terms, new justices undergo an acclimation period in which their policy preferences become better developed. As such, interest groups might posit that

new justices will seek information and be more susceptible to persuasion by information provided by amici. Interest groups take Court membership change as a reason to test the waters and as a cue that their amicus briefs might have a greater chance of effectiveness. Therefore, we expect more amicus briefs will be filed in cases in which there has recently been membership change on the Court.

DATA AND METHODS

To test our hypotheses, we employ the dependent variable *Amicus Curiae Briefs*. This is a count variable representing the number of amicus curiae briefs filed in each case at the merits stage. The unit of analysis is the case.[6] The data include cases heard in the Supreme Court from 1953 to 2001, as reported in the Spaeth (2003) database. The number of amicus filings was extracted from the Kearney and Merrill (2000) database, which Collins (2008) merged with the Spaeth (2003) data and updated through the 2001 term.[7]

The inability of a count variable to take on negative values suggests that OLS regression is inappropriate. Moreover, constraints placed on the conditional mean as it relates to the conditional variance exclude the Poisson regression model (PRM) given the makeup of our dependent variable because overdispersion of the variance can lead to a violation of the efficiency requirement of the PRM (Long, 1997). As such, we use the negative binomial regression model (NBRM), which relaxes the assumption that the conditional variance and the conditional mean are equivalent by including a parameter estimate that allows the variance of the observations to remain independent of the means and, thus, vary without violating any statistical assumptions.[8]

Each of the independent variables was created to test the hypotheses that appear in the theoretical section above. To determine whether interest groups are particularly attracted to salient cases, we include a *Case Salience* variable. This information was compiled by identifying if the case was mentioned on the front page of the *New York Times* on the day after the decision. Cases mentioned were given a score of 1, and cases not mentioned were scored 0 (Epstein and Segal, 2000). We expect this variable will be positively signed. It is understood that this measure is not ideal; however, in a lengthy consideration and defense of the *New York Times* salience measure, Epstein and Segal (2000) demonstrate the superiority of the measure relative to other existing

[6] Cases were extracted from the Spaeth (2003) data set using the orally argued case citations as the unit of analysis, inclusive of decrees, cases decided by equally decided votes, per curiam cases, and judgments of the Court.

[7] The data on amicus curiae participation are publicly available at the following Web site: http://www.psci.unt.edu/~pmcollins/data.htm (last accessed June 7, 2010).

[8] When running the NBRM, an alpha value is given that signals if, in fact, the NBRM is the appropriate model relative to the PRM. The significance of the alpha in our model indicates that the proper model has been selected for use.

measures. While concerns about the time ordering of the variable are valid, the authors do a good job of testing the measure and demonstrating its usefulness and reliability for measuring salience.[9]

To test for group participation given a challenge to a federal statute passed by Congress, or a challenge involving the Constitution, we utilize two challenge variables. If a case challenges congressional legislation that has been implemented as a legal statute it is scored 1. If no *Congressional Challenge* is present in a case it is scored 0. Likewise, cases involving a *Constitutional Challenge* are scored 1, with cases not demonstrating a challenge to the Constitution scored 0, that is, those cases involving statutory interpretation, the Court's original or diversity jurisdiction, or disputes involving judge-made law (Spaeth, 2003). We anticipate positively signed coefficients for both of these variables.

Since interest groups might perceive that the justices will benefit from additional information in complicated cases, we include measures for case complexity, taken from the Spaeth (2003) database. Employing two measures is appropriate to avoid misspecification.[10] *Total Laws* pertains specifically to the number of legal provisions implicated by each case. *Total Issues* moves beyond the strict number of legal provisions to measure the number of issues raised in each case.[11] We expect these variables will be positively signed.

To determine whether more amicus briefs are filed when there is lower-court conflict, we include a *Lower-Court Conflict* variable that is also found in the Spaeth (2003) data set.[12] If the Supreme Court identified lower-court conflict as a reason for granting the writ of certiorari, the case is scored 1. If no mention of lower-court conflict was found the case was scored 0. We expect this variable will be positively signed.

To determine whether more amicus briefs are filed in cases where there is a dissent filed in the lower-court decision, we include a *Lower-Court Dissent* variable that is found in the Spaeth (2003) data set. If the Supreme Court identified that there was

[9] Because Epstein and Segal (2000) report that this measure has a slight tendency to "over count" civil-rights-and-liberties cases, we include a series of dummy variables in the model to control for issue-area effects. In the data under analysis, 78.4 percent of cases appearing on the front page of the *New York Times* on the day after the decision had at least one amicus brief, while 59.6 percent of cases not appearing on the front page of the *New York Times* had at least one amicus brief. Given this, salient cases are not entirely dominated by disputes with amicus participation.

[10] This method has been used in earlier research (Hansford, 2004; Solowiej and Collins, 2009). Distinct findings per variable in past research have led us to include both measures in this research.

[11] For example, *Lyng v. International Unions* (1988) is identified as addressing one law and three issues. The law addressed is the Omnibus Budget Reconciliation Act of 1981. The issues are the right to free association contained in the First Amendment, the freedom of expression outlined in the First Amendment, and the Due Process Clause of the Fifth Amendment.

[12] This variable is included with a note of caution. In granting certiorari, the Court does not always provide a reason. Therefore, it is likely that this variable underreports the actual number of cases granted certiorari due to lower-court conflict (Spaeth, 2003). In just under 41 percent of cases granted certiorari, no reason was given. Also note that the data under analysis include cases that reached the Court both "on appeal" and through the more common certiorari process. When we exclude cases arriving at the court "on appeal," we obtain substantively similar results.

a dissent in the lower-court decision they reviewed, the case is scored 1. If no mention of a dissent was found, the case was scored 0. We expect this variable will be positively signed.

To test whether an invitation to the solicitor general to submit an amicus brief encourages more amicus filing in the Court, we include a *Solicitor General Invite* variable. The data on the Court's invitations to the solicitor general to file an amicus brief were obtained from LexisNexis. This variable was scored 1 if the solicitor general was invited to file an amicus brief and 0 if no invitation was given. We expect this variable will be positively signed.[13]

To evaluate whether interest groups are more likely to file amicus curiae briefs when the Court is ideologically heterogeneous, we use Clark's (2009) measure of *Ideological Heterogeneity*, based on the Segal and Cover (1989) ideology scores for the justices. This variable is based on three attributes of ideological polarization: homogeneity within a group on the Court, heterogeneity among groups, and the number of groups on the Court. This variable ranges from 0.239 to 0.607, with higher scores indicating more ideologically heterogeneous Courts. We expect this variable will be positively signed.

To determine whether interest groups are especially attracted to cases where a new member is present in the Court, we include a *Membership Change* variable. This variable is a count variable where full Supreme Court terms in which a new member was present were given a score that corresponded to the number of new justices present in the Court.[14] Each term was scored 0, 1, or 2 depending on the magnitude of the change in membership with no term integrating more than two new justices. We expect this variable will be positively signed.

The final variables in the model are intended to control for issue-specific effects that might influence the number of amicus briefs filed in a case. Following Solowiej and Collins (2009), we expect that different issue areas will attract varying numbers of amicus briefs since interest-group density per issue can vary substantially (Lowery and Gray, 1995). For this reason we account for the issue of the case by using data from the Spaeth (2003) data set. *Civil Rights Case* is scored 1 if the case involves civil rights, due process, the First Amendment, privacy, and the rights of attorneys and is scored 0 if none of those issues are present. *Criminal Case* is scored 1 if the case involves the rights of the criminally accused and 0 otherwise. A case involving economic activities, federal taxation, or unions is considered an *Economic Case* and is scored 1. If it does not involve economic issues then it is scored 0. A *Federalism Case* is scored 1 if it

[13] To account for potential bias in the model related to the number of amicus filings in cases with a solicitor general invitation, we respecified the model by removing amicus briefs filed by the solicitor general in response to an invitation from the Court from the dependent variable. To be clear, not all invites were met with briefs. The results of this alternative model specification reveal no substantive changes from the model reported herein.

[14] In some Supreme Court terms, justices were appointed to serve after the term had begun. On these occasions a score of 1 was given to the full term that followed the term in which the justices took their seats on the Court. This was done because it is difficult to identify when amicus briefs were filed relative to when the new justice was seated on the Court and began participating in case outcomes.

Table 1
Summary Statistics

Variable	Mean	Standard Deviation	Minimum	Maximum	Expected Direction
Amicus Curiae Briefs	2.485	4.049	0	78	n.a.
Case Salience	0.152	0.359	0	1	+
Congressional Challenge	0.193	0.395	0	1	+
Constitutional Challenge	0.330	0.470	0	1	+
Total Laws	1.250	0.552	1	6	+
Total Issues	1.081	0.295	1	5	+
Lower-Court Conflict	0.204	0.403	0	1	+
Lower-Court Dissent	0.215	0.411	0	1	+
Solicitor General Invite	0.043	0.204	0	1	+
Ideological Heterogeneity	0.430	0.148	0.239	0.607	+
Membership Change	0.436	0.584	0	2	+
Civil-Rights Case	0.309	0.462	0	1	n.a.
Economic Case	0.284	0.451	0	1	n.a.
Federalism Case	0.061	0.239	0	1	n.a.
Criminal Case	0.213	0.409	0	1	n.a.
Time	24.387	12.999	1	49	+
Time Squared	763.713	655.443	1	2401	-

Note: n.a. denotes "not applicable."

involves federalism or interstate relations and 0 otherwise. The excluded category to which these issue areas are compared is judicial power cases.

A *Time* variable is also included to account for the increase in the number of amicus briefs over time (e.g., Collins, 2008). This variable is a simple counter variable[15] where each term is scored such that 1953=1, 1954=2, etc. A *Time Squared* variable was created by squaring the *Time* variable. This is intended to account for a potential quadratic relationship between time and the number of amicus curiae briefs filed per case (Hansford, 2004a). The potential for a nonlinear relationship rests on the presumption that amicus curiae filings may decline in their rate of increase because a consistent rate is difficult to maintain indefinitely. We expect this variable will be negative in its direction. Table 1 reports information pertaining to the mean, standard deviation, and minimum and maximum values of the dependent variable and those of the independent variables.[16]

[15] As an alternative, we included a dummy variable for each term, save one. The results of that model specification remain consonant with the findings reported here.

[16] We recognize that groups who file amicus briefs at the certiorari stage may be likely to follow up on those briefs at the merits stage. However, because information on amicus briefs at the agenda-setting stage is not available in *U.S. Reports*, Westlaw, or LexisNexis for the time frame under analysis, we are unable to control for this possibility.

RESULTS

Table 2 reports the results of the negative binomial regression model that predicts the number of amicus curiae briefs filed per case.[17] The alpha estimate is statistically significant, indicating that the negative binomial regression model provides a good fit for the data (Long, 1997:233). Since the parameter estimates of the NBRM cannot be interpreted directly, Table 2 also includes a measure for the percent change in the number of amicus curiae briefs filed given a one-unit change for each independent variable with a dichotomous or count structure in the model that achieves statistical significance at $p < .05$ for a one-tailed test (Long and Freese, 2006:94). For *Ideological Heterogeneity,* the percent change reflects varying the value of the variable from the mean to one standard deviation above the mean.

The results of the analysis indicate that more amicus briefs are filed in salient cases, as compared to relatively routine disputes. This confirms our expectation that increased salience implies greater potential for the establishment of far-reaching policy gains. Given that the measure for case salience is dichotomous, the percent change reported in Table 2 allows us to interpret the relative influence of a salient case compared to a nonsalient case. We estimate that there is a 156 percent increase in the number of briefs filed in salient cases as compared to nonsalient cases. The magnitude of the result reflects the value of public attention given to cases for interest groups participating as amici curiae.

Cases with a challenge to congressional legislation are expected to attract greater attention by groups due to a desire to protect or negate existing policy. We find statistical support for our assertion, though the magnitude of this influence is substantively moderate. In our model, cases involving a challenge to an act of Congress experience a 12 percent increase in briefs filed relative to cases without a congressional challenge. Practically speaking, a case without a congressional challenge with ten briefs filed could expect to see an increase of about one brief filed if there is a congressional challenge present. So, while a challenge to an act of Congress may draw greater amicus curiae filings, the impact should be considered minimal.

Unlike the motivation to protect or negate policy that prompts interest-group action in cases involving a statutory challenge, challenges to the Constitution are expected to prompt increased filing because the policy achievements that come from those cases will be the longest lasting of all policy. It is this desire for long-lasting policy that drives the statistically significant result demonstrating an increase in the number of amicus briefs filed for cases with a constitutional challenge. The magnitude of

[17] We also conducted an analysis considering if there were *any* amicus curiae briefs present in a case as opposed to changes in the quantity of the number of briefs filed (results not shown). To do that we employ a dichotomous variable that is coded 1 if there were one or more briefs filed and 0 if no briefs were filed. The results of the logit model reveal findings that are similar to those in Table 2. The variable *Total Laws* is positive and significant in affecting the number of briefs filed but demonstrates no significance in the retest with the dichotomous dependent variable. The same is true for both *Lower Court Dissent* and *Ideological Heterogeneity*. The variable *Federalism* also loses significance in the retest, indicating that it is indiscernible from the excluded category of *Judicial Power Cases*. We gather that these variables seem to influence the number of amicus briefs filed but fail to be related to whether the threshold of 0 to 1 amicus briefs filed is crossed.

Table 2
Negative Binomial Regression Model Predicting the Number of Amicus Curaie Briefs Filed per Case, 1953-2001 Terms

Independent Variable	Parameter Estimate	% Change
Case Salience	0.943**	+156.8
	(0.044)	
Congressional Challenge	0.113**	+12.0
	(0.044)	
Constitutional Challenge	0.186**	+20.5
	(0.044)	
Total Laws	0.092**	+9.8
	(0.037)	
Total Issues	0.055	n.s.
	(0.060)	
Lower-Court Conflict	-0.144**	-13.4
	(0.040)	
Lower-Court Dissent	0.066*	+6.9
	(0.038)	
Solicitor General Invite	0.561**	+75.2
	(0.076)	
Ideological Heterogeneity	0.481**	+7.3
	(0.201)	
Membership Change	0.049	n.s.
	(0.032)	
Civil-Rights Case	0.170**	+18.5
	(0.061)	
Economic Case	0.192**	+21.2
	(0.061)	
Federalism Case	0.190*	+21.0
	(0.089)	
Criminal Case	-0.638**	-47.2
	(0.067)	
Time	0.086**	+9.0
	(0.010)	
Time Squared	-0.000**	-0.0
	(0.000)	
Constant	-1.882**	_
	(0.123)	
Wald Chi^2	2,864.06**	
Alpha	0.778**	
	(0.031)	
N	5,965	

Notes: Numbers in parentheses indicate robust standard errors of the parameter estimates.

*$p < 0.05$; **$p < 0.01$ (one-tailed tests).

n.s. denotes not significant where % change fails to achieve statistical significance at $p < 0.05$ using a one-tailed test. % Change is computed as the expected percentage change in the number of amicus curiae briefs filed per case given a one-unit increase in the independent variable for dichotomous and count variables. For Ideological Heterogeneity, the percent change represents varying the value of the variable from the mean to one standard deviation above the mean.

The baseline category for the issue area control variables is judicial powers cases.

the change is nearly double that of cases with a congressional challenge, with cases involving a constitutional challenge having 20 percent more amicus briefs filed than cases lacking a constitutional challenge. It appears that cases with constitutional challenges will have the longest lasting policy effects and, thus, draw greater numbers of amicus curiae briefs.

Depending on how case complexity is conceptualized dictates the impact of that complexity for prompting increased filing. Our *Total Laws* variable is positive and significant as we expected, whereas the *Total Issues* variable fails to achieve statistical significance at conventional levels. Each additional law that is present per case results in a 10 percent increase in the number of amicus briefs filed per case. Therefore, we can expect the complexity of the case to matter only as it pertains to the number of laws addressed in the case. Regardless, it remains apparent that increased complexity of a case will signal to potential amicus curiae filers that increased information is needed. Recognizing that filing amicus briefs is the best way to provide information, more groups apparently feel an urge to file.

Contradicting our expectations of a positive relationship between cases where lower-court conflict is present and the number of briefs filed per case, the test of the *Lower-Court Conflict* variable uncovers a significant negative relationship. With a 13 percent decrease in filings where lower-court conflict is present, this finding is significant primarily for the negative direction of the relationship. Some research has found that the legal ambiguity caused by lower-court conflict causes an increase in the filing of amicus curiae briefs by the solicitor general (Nicholson and Collins, 2008). Our findings demonstrate that the effect of lower-court conflict on amicus filing is variable dependent on the type of interest that is filing. While the solicitor general is attracted to cases with lower-court conflict, it appears that interest groups more generally are not.

Unlike the results of the *Lower-Court Conflict* variable, *Lower-Court Dissent* is positively related to the number of amicus briefs filed per case. Because cases in which there is a dissent filed in the lower court signal that the information coming to the justices is potentially ambiguous, more amicus briefs are filed by interest groups. We observe an increase in amicus briefs filed of almost 7 percent when a dissent is present. While the results of *Lower-Court Conflict* and *Lower-Court Dissent* are in the opposite directions, we feel certain that this is not unreasonable as each variable captures a different nuance of incomplete information.

Like our expectations for complex cases, cases in which a solicitor general invitation is issued are perceived to be cases in which the justices lack information. This lack of information is expected to encourage amicus curiae brief filing to supplement the justices with information. Our findings confirm our hypothesis. In fact, cases with an invitation to the solicitor general have 75 percent more briefs filed than cases where an invitation is absent. The lack of ambiguity implicit in the cue given through a solicitor general invitation appears to prompt an equally unambiguous response of substantially increased amicus filings.

Greater ideological dissimilarity between the justices is expected to cause greater uncertainty related to the case's outcome. Our model exhibits strong, positive results for *Ideological Heterogeneity* affecting the number of amicus briefs filed. In fact, varying the value of the measure from the mean to one standard deviation above the mean results in an increase of 7 percent in the number of amicus briefs filed. Thus, we can expect the degree of ideological heterogeneity on the Court to positively affect the number of briefs filed in a case.

Uncertainty is also present when a new justice is added to the bench. Like the ideological makeup of the Court, we anticipate that this uncertainty will encourage increased amicus filings. While this variable fails to achieve statistical significance at the conventional $p<.05$ level, it is significant at $p=.063$. This suggests there may be some role of membership change at influencing amicus activity. However, the results of our test leave us less than certain that this is the case.

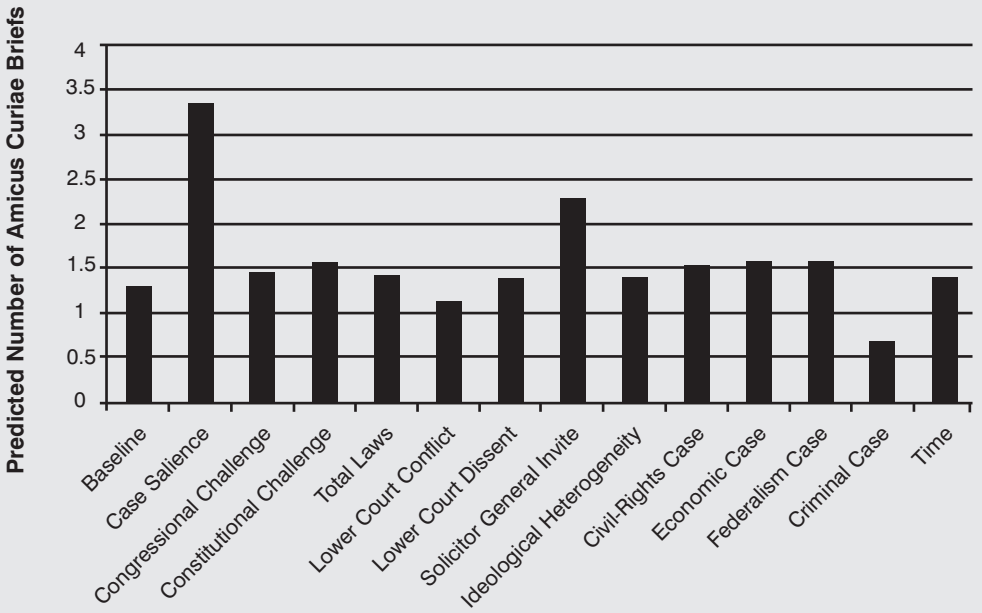
The performance of our issue control variables demonstrates the variation per issue that was believed to exist given the nature of each case type, as well as the varying quantity of interest groups operating within particular issue areas. Holding judicial power cases as our reference group, we found positive significant parameter estimates for the variables *Civil-Rights Case, Economic Case,* and *Federalism Case*. Compared to judicial power cases, we observe about a 20 percent increase in briefs filed per case for civil-rights, economic, and federalism cases. Criminal cases correspond with a decrease of 47 percent in briefs filed per case compared to judicial power cases. Thus, the type of case being decided by the Court prompts strong variation in the number of amicus curiae briefs filed per case.

Finally, we included two variables controlling for time, *Time* and *Time* Squared, in our statistical model. The *Time* variable performs as expected with a positive significant parameter estimate. The magnitude of the impact recorded in Table 2 shows that each year finds a 10 percent increase in filings per case relative to the prior year. The substantively marginal magnitude of the *Time Squared* variable demonstrates that the relationship between time and the number of amicus briefs filed per case is slightly quadratic.

Figure 1 further represents the results discussed above by illustrating the change in the number of amicus briefs filed relative to the baseline number of briefs filed per case when each variable is held at its mean or mode. Just as the variables *Case Salience* and *Solicitor General Invite* were responsible for the largest percent change in amicus brief filing, so too do these variables demonstrate the largest increase in the number of briefs filed. Where the baseline number of briefs filed is short of 1.5, cases that are salient have just under 3.5 briefs filed. Cases where the Court invites the solicitor general to file a brief see an increase of a full brief relative to the baseline. The other variables see more moderate changes but they are visually distinct nonetheless.

It is important to recognize that a variety of factors influence the number of amicus briefs filed in a case. As such, the additive effect of the variables under analysis is particularly insightful. For example, a salient, constitutional civil-rights case with a

Figure 1
The Predicted Number of Amicus Curiae Briefs Filed in a U.S. Supreme Court Case, 1953-2001



solicitor general invitation and lower-court conflict during the 2000 term can be expected to have approximately twenty-six amicus briefs filed. By comparison, in 1975, a judicial powers case that is not salient, has no solicitor general invitation, is not a constitutional challenge, and has no lower-court conflict should have about one brief filed. Here we can see that the variables under analysis influence the number of briefs filed in an additive fashion, the effect of which can be quite large.

CONCLUSION

The purpose of this research was to determine what influences the number of amicus curiae briefs filed in a case before the U.S. Supreme Court. This line of research is important to understand the democratic functioning of the Supreme Court as an institution and the causes of interest-group action. While previous research has attempted to identify why interest groups file amicus curiae briefs (e.g., Hansford, 2004), we feel that further elaboration is useful as the quantity of briefs filed can be an insightful representation of interest-group attention. To do this, we developed nine hypotheses concerning case-related and Court-specific factors that were argued to influence the number of amicus curiae briefs filed per case in the Supreme Court. These nine hypotheses were derived from a three-point theoretical framework and subjected to empirical testing using a negative binomial regression model.

We first argued that interest groups seek to achieve policy goals that are long-lasting and far-reaching. Second, we theorized that the Court works in an environment of incomplete information. Finally, we contended that there are Court-specific factors that dictate the level of certainty among interest groups related to judicial preferences and potential policy implications.

Under this logic, we expected cases that are salient, as well as those that challenge congressional legislation or the Constitution, to positively affect the number of briefs filed. All three case conditions performed as expected with case salience influencing the number of briefs filed more than any other single factor.

Further we expected that, in their desire to achieve policy goals, interest groups recognize the low-information environment and seek to supply the Court with information. The complexity of the case (understood as the number of laws addressed in the case being heard), the presence of a dissent in the lower court, and whether or not the solicitor general was invited to file a brief affect the number of briefs filed. In fact, the solicitor general invitation produced the second-strongest results relative to all other factors. However, the findings of the lower-court conflict variable somewhat undermine the role of incomplete information as that factor appears to induce fewer amicus curiae filings.

Related to the Court-specific factors, a more ideologically heterogeneous Court, as well as a Court with new members, was expected to promote uncertainty about the decisions that would be rendered and, therefore, prompt greater filing because of the perception that policy goals will be achieved. Our results reveal that ideological heterogeneity can have a strong effect, but change in the membership of the Court has a weak statistical influence. Although the Court-specific factors had some impact, they were among the most modest parts of the puzzle determining the number of briefs filed per case.

According to our results, it appears that interest groups do seek policy ends of which certain case-specific factors are indicative. This is most clearly demonstrated by the marked difference in filing rates between salient and nonsalient cases. In addition, interest groups desire to supplement information to justices when the information environment is particularly poor. An invitation to the solicitor general by the Court is the clearest signal to all potential filers that the Court desires more information. The change in the rate of filing dependent on a solicitor general invitation is substantively significant, demonstrating that interest groups understand the cue and act to provide information.

Decision uncertainty may prompt increased filing by interest groups in the U.S. Supreme Court. However, the evidence in our research suggests that it has a mixed effect on the number of briefs filed. Ultimately, the realization of policy goals through the pursuit of salient cases and the desire to present information to a Court in need of information appear to be the best indicators of the quantity of interest-group amicus curiae brief filing in the Supreme Court.

Theoretically speaking, future research will benefit from integrating group-specific factors that might influence amicus curiae brief filing into a general model of filing determinants. An example of one such factor is the role of resources. Monetary and human capital varies per group. Studying that variation may offer insight into interest-group behavior beyond case- and Court-specific factors. Further, creating a more nuanced measure of interest-group density (currently accounted for by the issue control variables) may encourage clearer insight into how groups operate given differences in the competitive context in which they exist. This would be akin to counteractive lobbying in the context of the Court (e.g., Solowiej and Collins, 2009). By including interest-group factors, the picture of what influences the number of amicus briefs filed will become more complete.

We have uncovered systematic reasons why certain cases experience a higher rate of amicus curiae filings by interest groups than others. This research allows us to better understand the catalysts for interest-group participation. As interest groups are important actors in American democracy, understanding the actions of those groups better informs our knowledge of citizen participation. **jsj**

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