A Superficial Friendship with the High Court:
The Relevance of Amicus Curiae Information in Supreme Court Deliberations

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Dedication

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Finally, I'd like to dedicate this paper to the elusive figures of Spriggs and Wahlbeck. I've repeated their names so much these last few months. My only hope is that someday I'll run into them downtown and we could all discuss the influence of amicus curiae over a cup of Starbucks coffee.

Abstract

Amicus curiae, or friend of the court briefs, provide one of the only ways for individuals and interest groups to affect the judicial process without being privy to the case. Conventional wisdom holds that these organizations add substantial policy information to help the justices

better understand the social context of the case. In this paper I questioned conventional wisdom by considering the use of amici information within all opinions written by members of the Court, an approach never taken before by past scholarship. I performed the study by examining the arguments in 353 amicus briefs presented in the 1999 term. Particularly in constitutional cases, I found justices rarely using the novel information introduced by amici. Groups looking to use an amicus brief to lobby the Court see their interests overlooked by the nine justices. Overall, this study provided an important and noteworthy glimpse at the fundamental nature of judicial behavior, illustrating a Court unreceptive to outside concerns.

With lifetime appointments to the nation's highest court, Supreme Court justices lack the accountability that directs the behavior of elected officials within the other two branches of the federal government. The justices do not need to represent a constituency like members of

Congress or campaign on their most recent accomplishments like the President. Nonetheless, the Court has the ultimate decision on issues that affect Americans everyday; these nine justices control the extent to which every woman has control over her pregnancy and how easy it should be to buy an automatic weapon in stores across the country. They decide when a state can seize a family's home and under what circumstances the government can put a person to death. Despite the importance of these issues, most Americans have little chance of affecting the deliberations of the nine justices (Slotnick and Segal 1998).

Although the justices lack much of the accountability found within the other two branches of government, the Court cannot stray too far from the prevailing thought of the time or risk losing its relevance. "Unlike Congress, with the power of the purse, and the president, with the power of the sword," the Court cannot force society to follow its ruling in a case (Slotnick and Segal 1998: 5). Ultimately, the Court's ability to affect change depends primarily on its perceived legitimacy in society and its responsiveness to the public. Judicial scholars point to the justices' acceptance of amicus curiae, or friend of the court briefs, as one demonstration of the Court's receptiveness to the demands of the public. These briefs allow interest groups to describe their perspective to the justices in a written brief without being privy to the case. An organization or group of individuals can submit an amicus brief when it adds substantial information to the Court's deliberations (Rule 37.1).

Conventional wisdom holds that interest groups submitting amicus curiae routinely add supplemental policy information. Justices can take cues from these briefs to help them better understand the societal factors involved in each case (Caldeira and Wright 1988). Thus, amicus briefs not only add to the Court's legitimacy by allowing the justices to be receptive to the public, but they also provide the justices with information that they may find valuable to hear.

More recent scholarship has rejected this theory, showing that while the Court allows amici to be submitted at an increasingly high rate, the supplemental information they provide have very little impact on the decisions of the justices (Spriggs and Wahlbeck 1997; Epstein, Segal and Johnson 1996). Like all past research on amicus briefs, this study focused solely on the content of majority opinions, with little regard to non-majority opinions.

Little attention is paid to concurrences and dissents in the scholarship on amici participation. The research that does address separate opinions suggests that the justices are more likely to use unique amici information when authoring these opinions (Maltzman, Spriggs and Wahlbeck 2000; Caldeira and Zorn 1998). Dissenting and concurring justices may feel less constrained in the source of information they use than those in the majority. In this paper I will ask to what extent do concurrences and dissents rely on the new information presented in an amicus brief that is different than the arguments in the party briefs? Are these opinions more likely than the majority opinion to use amici as a source of additional information?

A look at concurrences and dissents becomes important as scholarship has increasingly less regard for the importance of amicus curiae participation by interest groups. Current research has turned away from conventional wisdom holding that amici add substantial policy information to the process and focused on the minimal impact advocacy groups have on the actual decisions handed down by the Court. Amici participation is one of the few, and the most inexpensive, methods of affecting the judicial process (Baum 2001). If the Court is not using the information presented in amici, it casts doubt on the openness of the Court overall. Many scholars now end their studies with the question of why interest groups would want to use their limited resources to lobby the judicial system in this ineffective manner (Epstein 2004; Kearney and Merrill 1999; Epstein, Segal and Johnson 1996; Spriggs and Wahlbeck 1997). My study will examine this

question by looking at the content of non-majority opinions in an effort to more fully understand the influence of amicus briefs on the Court.

This study asks whether concurrences and dissents employ new arguments made in amicus curiae before the Court. To this end, I replicate the Spriggs and Wahlbeck (1997) study, but I analyze all opinions rather than only majority opinions as they do. Using opinions and amicus briefs from the 1999 term, I will compare the use of supplemental amici information within the majority opinion versus the use of this information within dissenting and concurring opinions. In the following section I will discuss the previous literature on the role of amicus briefs. This will highlight the changes in scholarly attitudes across time; along with the way my study fits into the established scholarship. I then describe the methods that I used to conduct my research, in which I discuss the Spriggs and Wahlbeck (1997) study. Next, I describe the preliminary results of my study, followed by a discussion of how these findings illuminate the overall picture of amicus curiae influence on the Court.

Background on Amicus Curiae

Amicus curiae provide interest groups with a limited way to involve themselves in important issues before the Supreme Court. Termed a 'friend of the court' brief, this form of group participation gives outside interests access to the nine justices that they would otherwise not have. Traditionally, amici seek to influence the outcome of the case by "offering arguments on one side or for a position that neither side takes" (Baum 2001: 264). Amici do not need to address the legal issues that the litigation is based on. An organization can present a range of information relating to the case at issue, including anything from policy considerations to the historical context of the case. The briefs provide groups with a wide forum to discuss the case without directly sponsoring the litigation.

The use of amicus curiae is the most common strategy employed by advocacy groups because it is the least expensive method available within the judicial arena (Baum 2001). Although amicus briefs allow a much less involved strategy than sponsoring litigation, they do require a significant amount of time and resources for any interest group. The amount of resources available to any group must factor into its considerations to enter the arena or stay largely on the sidelines. The filing of a brief costs anywhere from $10,000 to $15,000 for an organization (Caldeira and Wright 1990). Furthermore, with the exception of large groups like the American Civil Liberties Union (ACLU) and National Association for the Advancement of Colored People (NAACP), many advocacy organizations have a small legal team on staff. Issue organizations have a limited amount of resources and will allocate funds when they think it will be most effective to their cause (Caldeira and Wright 1990).

The Court has adopted a liberalized policy toward amici participation in recent years. The formal rules of the Court explicitly allow for the submission of amicus if that "brief brings to the attention of the Court relevant matter not already brought to its attention by the parties that may be of considerable help to the Court" (Rule 37.1). Additionally, an interest group must obtain consent of all parties before the submission of their arguments. If they fail to obtain consent, the organization can file a motion with the Court and the justices will decide if permission may be granted (Rule 37.4). Rarely do experienced litigators not give consent, recognizing the Court's open door policy; they realize blocking approval would be a waste of time and resources. The open door policy toward third-party briefs gives groups greater incentive to submit a brief because there is a good chance the Court will accept it. There is little risk that an organization will allocate the resources for a brief to see it denied recognition by the Court (Kearny and Merrill 1999).

Interest groups still face some restrictions when seeking access to the Court through amicus curiae. The Court mandates an organization state their proposed relevance to the issue at hand. Lawyers must put this section in the first few pages of each brief filed before the Court. Here, the organization must lay out its relation to the parties and why the case is significant to their independent mission (Rule 37.4). In 1997, the Court chose to enact a new regulation on amicus brief filings. Organizations must identify every person who made a monetary contribution to the development and execution of the amicus brief. This possibly highlights a growing concern among the justices regarding the impact of interest groups that are funded by people privy to the case (Kearny and Merrill 1999).

Once the Court accepts an amicus brief, justices can utilize the information in a number of ways. Scholars have identified three theoretical representative models of judicial decision-making, each with a different interpretation of the purpose of amicus curiae for the justices. The most traditional ideal, the conventional legal model, regards judges as "seeking to resolve cases in accordance with the requirements of law, as understood by professional actors in the legal community" (Kearny and Merrill 1999: 748). Proponents of this model see justices as open to the information presented in amici because of their relevant content. A justice will then incorporate the points into their opinion when they feel an amicus point affected their view of the case.

A second theory, the attitudinal model, has gained prominence within judicial research circles, as it explains the justices as people appointed to their position because of their fixed ideology. Justices will decide cases on the basis of these principles, and merely use the rules of law to confirm their judgment. Here, amici play no role because the justices have already decided their opinion. Amicus curiae only act as a way for the justices to validate their preferences after the fact (Kearney and Merrill 1999).

A third model, the interest group model, stands as an alternative approach to these two divergent theories. It assumes no strong ideologies within justices; rather, proponents of the theory assert that justices will decide cases to placate the interests of the most influential members of society. Amicus briefs then act as a prime indication of where these powerful interests lay (Kearney and Merrill 1999). This theory strongly implies the importance of amicus curiae in the decision-making process of the Supreme Court.

Superficial Effects of Amici

Many researchers first viewed the volume of amici as an indication of their effect on the judicial process (O'Connor and Epstein 1981). A focus on only noncommercial cases, which had dramatically increased after World War II, illuminated the growing number of amicus briefs submitted. Previously, the Court had decided mainly cases of economic and business interests, which did not have as much amici participation. Beginning with the Warren Court, the justices granted cert to numerous noncommercial cases, including those about issues of prisoner rights, free speech, and religious tolerance. Coupled with the increase in interest group activity, this qualitative change in cases acted as an incentive to organizations to expand their lobbying efforts into the judicial sphere. Between 1970 and 1980, over half of the cases had at least one amicus brief filed. By further separating out the criminal cases, this rate rises to 63.8 percent of cases with amici activity. From this sheer volume of briefs flooding the Court, researchers hypothesized that there must be a positive effect to their presence before the Court (O'Connor and Epstein 1981).

Use of amicus curiae has now become the norm among legal coalitions seeking access to the Court (O'Connor and Epstein 1981). At the beginning of the 20th Century, groups submitted third-party briefs in only 10% of cases before the Court. This number has exponentially grown,

as 85% of recent cases have had one or more amicus briefs filed on behalf of one or both of the parties (Kearney 1999). An interest group is most likely to submit an amicus brief in a case concerning a constitutional challenge (Hansford 2004). Additionally, the Court commonly finds multiple submissions of amicus curiae for constitutional cases. For example, in *Grutter v. Bollinger* (2003) the Court received 107 amici submissions (Coyle 2008). Although collaboration between groups could save each organization time and resources, many groups find it beneficial to file independent briefs (Caldeira and Wright 1990).

Amici participation varies according to the type of organization filing a brief (Caldeira and Wright 1990; O'Connor and Epstein 1983). Interest groups vary according to their membership (public interest law, trade associations, citizen-based groups, etc.) or by issue orientation (civil rights, women's issues, evangelical promotion, etc.), both of which affect the circumstances under which an organization decides to enter the judicial arena (Caldeira and Wright 1990). Furthermore, the involvement of issue-oriented groups encompasses an array of political interests from across the spectrum. The Court is accessible to a vast array of interests, across a broad range of social and economic issues. Large institutions do not dominate activity, showing the openness of the Court to a diverse body of actors (Caldeira and Wright 1990). The latter half of the 20th Century saw involvement from a number of new groups who had previously not been involved in the judicial process (Epstein 1994).

Additionally, the fact that interest groups enjoy increasingly unfettered access to the Court through amicus curiae suggests the Court finds the information useful in its deliberations. Scholars hypothesize that the justices place value on these documents or they would not allow their widespread use. Caldeira and Wright (1990) argue that the fact that "the Court seldom limits amicus participation, despite its extremely heavy workload, suggests the positive value of

amicus briefs to the justices" (786). The reduced caseload by the Supreme Court in recent years, coupled with the increasing acceptance of amicus briefs by the Court, adds further weight to this hypothesis.

Scholars have found that the frequency of citing a friend of the court brief has increased over time. In the last 15 years, amici have been cited in over 15% of all cases before the Supreme Court (Kearney and Merrill 1999). For example, in the case of *Webster v. Reproductive Health Services* (1989), the justices cited 29 separate amicus briefs, from both sides of the case (O'Brien 2003). This high use of amici information can imply that interest groups played a large role in affecting the Court's decision. On the other hand, under the attitudinal model of decision-making, many see the justices using amici information to give legitimacy to their previously held viewpoints.

Scholarship further separates amici participation into the agenda and merit stages. Research on the agenda-setting stage finds that the number of amici filed increases the likelihood of review by the Court. The intensity of activity indicates to the justices the array of social factors involved in the issue at hand (Caldeira and Wright 1988). Experienced litigators are likely to seek out help from advocacy organizations when they feel broad interests are at stake, in hopes of "amplifying their claims" (McGuire 1994: 835). The presence of amici on the plenary agenda helps indicate the importance of the issue for the justices (McGuire and Caldeira 1993). Organized interests recognize this role and will submit amici if they want the Court to take up the issue. Groups will stay silent, during the certiorari stage, if they agree with the lower court's decision (Caldeira and Wright 1990).

The Court appears to find third-party briefs as a useful informational tool on both the agenda and merits stage of the process. As the case moves from one stage to the next, the justices

will take into account a smaller amount of indicators but still rely on the presence of amicus curiae (Caldeira and Wright 1990). On the merit stage, "amici curiae provide the justices with information, or signals, otherwise not readily available, about the legal, social, political and economic ramifications of cases on the Court's docket" (Caldeira and Wright 1988: 816). Third-party briefs help to present outside authorities that have not been considered in the merit briefs. They can serve as valuable background information for the justices, as the Court does not have the resources or time to investigate these issues themselves. Thus, amici act as a supplemental means of receiving policy information (Kearney and Merrill 1999). The inclusion of Rule 37.1, that all amicus briefs must add new information, reinforces this notion of amici adding to the deliberative process. "An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored" (Rule 37.1). The Court's rules add credence to the belief that amici must contribute additional arguments that the Court finds beneficial to hear.

The early research presented thus far on amicus curiae considered both the increasing use of briefs and the Court's liberal policy toward these briefs as a reflection on how influential this form of group strategy was (Caldeira and Wright 1988). While the preliminary studies helped add to the limited knowledge on amici involvement, only more complex studies could explain the actual effect amicus briefs have on the judicial process. Ultimately, a more sophisticated analysis of how the Court uses amicus briefs was needed for more advanced understanding of the influence of amici information.

Substantive Effects of Amici Arguments on Majority Opinions

Once a case is argued before the Court, the justices are constrained by a number of environmental factors and institutional norms (Gibson 1983). Unlike decision-making on the agenda-setting stage, the merits stage exposes the preferences and votes of each individual

justice to the public. The legal rules of the Court constrain the author of the majority opinion. Justices must act strategically to further their own policy goals within institutional and environmental constraints (Epstein and Knight 1998). The writer must take the demands of others in the majority coalition into consideration when writing the opinion; limiting what information he or she chooses to incorporate into the decision (Maltzman, Spriggs, and Wahlbeck 2000). Amici must provide information primarily about the consequences and possible alternatives to be relevant at this stage (Caldeira and Wright 1990).

Conventional wisdom, holding that the number of briefs indicates the importance of a case, does not hold weight at the plenary stage. The addition of amicus briefs does not add to the relative success of a party to the case (Hansford 2004). Additionally, research has found that organizations chose to file separate briefs, not due to their belief that individual briefs further their cause, but instead because of internalized concerns. Competition is routinely found between membership organizations (Caldeira and Wright 1990). Increased activity by other interest groups has created an 'arms race phenomenon' that organizations feel they must follow. To placate membership and keep their watchdog role intact, groups feel increasing pressure to submit an individual brief for each relevant case (Kearney and Merrill 1999). This research suggests that the high level of amici participation is more a function of interest group behavior rather than the perceived legal effects of amici use.

A recent study points to the type of litigant being supported as an indication of the chances of victory more than the presence of amici in a case. While group support may help disadvantaged litigators, the addition of amici to the side of repeat players before the Court does little to add to the success of their case. Groups may be aware of this fact, showing the success of amicus as merely good case selection by organized interests (Songer, Kuersten, and Kaheny

2000). Advocacy groups choose to participate in litigation when the Court is operating in a poor information context. The addition of amicus briefs is likely to only benefit the justices when they choose to pursue policy goals (Hansford 2004). If third-party groups are only selecting cases in which success if guaranteed, this would question the importance of amicus briefs overall.

A comparison of similar cases with and without group support questions the conventional wisdom on amici. A 1991 study found that interest group litigation had no real effect on the outcome of the case in U.S. District Courts (Epstein and Rowland 1991). The differences in success between similar pairs of cases, one being group sponsored and one without group involvement, was negligible. Here, researchers concluded that their study supported the attitudinal model of decision-making because judges sided the same way in similar cases. Very little emphasis should be on the characteristics of counsel; rather it should be on the ideological predilection of the judges (Epstein and Rowland 1991: 213).

Songer and Sheehan (1993) took this study and applied it to the use of amicus curiae by interest groups. They applied the same type of systematic pairing of like cases before the same set of judges, but instead used amici participation as the variable. While some specific cases showed amici as exceedingly important, no overall trend was discovered through this study. Again, the various attitudes and values of the justices seemed to play the most vital role on the decision-making process (Songer and Sheehan 1993: 346).

Some scholars challenge the notion of amicus curiae as an informational tool on the merits level by looking at the content of these briefs. A limited 1996 study provided evidence refuting the notion that amici add outside information to the deliberations on the Court. Although amici may raise unique arguments, more often they present arguments already raised by the litigant briefs (Epstein, Segal, and Johnson 1996: 345). Many legal figures agree with this

scholarly assessment of amicus curiae. Chief Justice of the Seventh Circuit Richard Posner said that amici are of little assistance to him because they mainly duplicate the information already presented in the party briefs (Kearney and Merrill 1999).

Spriggs and Wahlbeck (1997) further expanded upon this theory concerning the insignificance of the arguments raised by amicus briefs. These researchers tested conventional wisdom regarding the supplemental nature to amicus briefs by examining the type of information presented in a brief. They found that when third-party briefs do present new ideas, they are largely ignored by the majority opinion in each case. Spriggs and Wahlbeck (1997) argue that the best possible tactic for groups may be to simply reiterate their party's arguments as a way of reinforcing their own interests. The replication of the petitioner or respondent briefs may help to positively influence the outcome of the case (382).

If amicus curiae do not affect the outcome of a case, it then begs the question of why groups are willing to spend their time and resources on participating in the process. No specific research exists in this area, although many scholars speculate that an amicus brief helps to generate publicity for the cause. Organized interests commonly seek out cases that are likely to get media coverage (Hansford 2004). This would suggest that issue coalitions take publicity into account when making the decision to submit third-party briefs. Kearney looks to the effect of third-party briefs on public consciousness as a sign that an amicus brief serves to enhance the public discussion of an issue. Many analysts have associated the abundance of third-party briefs in abortion cases with the dominance of public protests and letter writing campaigns to the Court. These public actions show that citizens recognize the policy issues presented by the interest groups and are willing to respond by joining the cause (Kearney and Merrill 1999).

Additional rationales exist for submitting an amicus brief, even if it does not have the desired effect of changing the law. The increasingly small number of cases taken by the Court has created a limited atmosphere from which interest groups can affect change. It is possible that advocacy organizations feel pressured to submit amici in the few matters the Court will decide on in a term (Kearney and Merrill 1999). Furthermore, many groups look to influencing long-term policy preferences of the justices, even if not changing their minds in the current case (Songer and Sheehan 1993). All of the research presented thus far focuses on the impact of amicus briefs on majority opinions, largely because these opinions reflect the final decision of the Court. Still, separate opinions are not without their significance and the information used in these opinions has not been studied.

Possible Effect of Amici Arguments on Separate Opinions

Many of the institutional constraints on the majority authors are absent for authors choosing to write a dissent or concurrence. Research on the federal circuit of appeals suggests that dissenting opinions may not adhere as much to strategic considerations as in majority opinions (Hettinger, Lindquist, and Martinek 2004). Additionally, dissenting justices do not adhere to precedent as much as when writing for the majority. Justices who have disagreed with the precedent in past cases while they were on the Court are free to dissent in subsequent cases. In this respect, when a justice decides to dissent in a ruling, he or she does not systematically adhere to the judicial concept of *stare decisis* (Segal and Spaeth 1996). This investigation furthers the hypothesis that dissenting behavior may lack the constraints normally associated with majority opinions. While justices may feel constrained by the convention of *stare decisis* as an institutional constraint on the majority, those that had disagreed with the holding when first handed down do not comply with this legal norm in their future dissents.

Justices take a different approach to crafting their separate opinions than they would when writing a majority opinion (Scalia 1994). Many justices use their dissenting opinion as a forum for discussion and deliberation (Scalia 1994). This alternative outlet allows members of the Supreme Court to counter the arguments of those in the majority. Additionally, concurrences are used for a number of purposes, generally clarifying or adding to the majority opinion (Caldeira and Zorn 1998). Justice Scalia sees this deliberative element to the process as adding to the legitimacy of the Court as a whole. He finds that "the Court itself is not just the central organ of legal judgment; it is center stage for significant legal debate" (Scalia 1994: 39). These viewpoints suggest that dissents and concurrences may be an open forum of discussion, possibly for the policy information involved in amici as well.

Members of the Supreme Court also have more discretion in the language chosen to articulate their dissenting or concurring views. Individual opinions do not generally receive publicity because they do not represent the holding of the Court for future cases. To counteract this lack of publicity, many justices use combative language to better call attention to their argument. Justice Scalia, known for his scathing critiques of the majority through dissenting opinions, acknowledges the lack of constraints on rhetoric in non-majority opinions. He holds that "dissents can have a character and flair ordinarily denied to majority opinions" (Scalia 1994: 43). Scalia's characterization of the language used in dissenting opinions suggests that individual authors may have more latitude in constructing their arguments.

A study by Caldeira and Zorn (1998), however, suggests otherwise. These researchers analyzed changes in consensual norms over time and found that non-majority opinions still adhered to judicial behavioral patterns (1998: 399). This finding focused on the number of dissents and concurrences, not the content of such opinions. While the norms may serve as a

constraint on the decision to concur or dissent, little research highlights the constraints on the substance of the non-majority opinion. An analysis of the content of dissents and concurrences adds depth to this area of limited scholarship.

Justices decide to write a dissenting or concurring opinion for different reasons, many of which do not involve affecting the present case. This implies that justices consider a number of outside issues, beyond the usual constraints on the majority opinion, when forming their dissent. In a 2007 speech, Justice Ginsburg articulated the uses of many dissenting opinions in the history of the Court. Justices sometimes use dissents to argue "to the intelligence of the future day" when their reasoning may eventually be incorporated into a majority opinion (Ginsburg 2007). Here, justices act while considering the implication of the law on society's future. Some noteworthy dissents in the history of the United States are now viewed as visionaries of their time. Justice Harlan's dissent in *Plessy v. Ferguson* (1896) is one classic example of a dissent not given much consideration during its onset in the record. By the 1950's it had become an echoing voice in the Court's *Brown v. Board of Education* (1954) ruling. "When history demonstrates that one of the Court's decisions has been a truly horrendous mistake, it is often comforting – and conducive of respect for the Court – to look back and realize that at least some of the justices saw the danger clearly and gave voice, often eloquent voice, to their concern" (Scalia 1994: 36).

Dissents also aim to attract attention and persuade legislatures to enact change. In the case of *Ledbetter v. Goodyear* (2007), Ginsburg (2007) explicitly called for the country's policymakers to take note of the Court's erroneous decision. This becomes important in the current study as the content of the dissent may incorporate policy positions of various interest groups. These dissenters are, then, not acting within the usual constrictions of the Court and instead using their opinion as a forum to reach outside actors. It is possible that a dissenting

justice would find the use of policy information, found within an amicus brief, as necessary to persuade lawmakers to take up an issue.

Not only does Ginsburg's speech (2007) highlight the freedom in separate opinions but it also serves as a model of the importance of non-majority opinions. If amici information is incorporated into the dissenting opinion, this opinion has importance and can eventually affect legal change. Dissents and concurrences are "long-term, long-memory processes" that the Court may adopt in the future (Caldeira and Zorn 1998: 900). If amici information does influence the opinions of dissents and concurrences, the incorporation of these opinions into the future holdings of the Court would also encompass the interests of advocacy groups. The research presented here fits well with the approach interest groups take when lobbying the Court. Songer and Sheehan discussed the long-term effects on the Court as one component of the motivation to submit amici (1993). If dissents do incorporate the novel arguments presented in third-party briefs, then advocacy groups can see their long-term interests fulfilled through the use of amicus curiae. The research gap between amici information and non-majority opinions is an important area could rectify the unresolved attitudes held toward strategic use of amicus curiae.

Methods

This research examines the influence of amicus briefs submitted in the 1999 term on the Supreme Court. For a number of reasons, this term provided a good case study from which generalizations about other terms can be made. First, the 1999 term represents the larger trend of a diminishing caseload on the Court and does not showcase a radical departure from the immediately preceding years. The remaining time left in the Court's term influences one's decision to write a separate concurrence or dissent. An unusually small caseload allows justices to write these opinions that they would not normally have time to do in other terms (Wahlbeck,

Spriggs and Maltzman 1999). This would skew the data and not provide a representative sample for analysis. This number fits well with the average caseload in the years surrounding the term (Epstein, Segal, Spaeth and Walker 2003).[1]

Additionally, the composition of the Court in 1999 was the same as it was for many years before and after (1994-2001). Particularly, the Chief Justice remained unchanged for this time period. Most of the content studies concerning amicus curiae looked at the Rehnquist Court, which saw no change in composition from the period of 1994 through 2005. Scholarship shows consensual norms on the Court to vary considerably under the leadership of different chief justices (Caldeira and Zorn 1998). Insofar as norms about separate opinions over time vary, this was not a variable for the 11 years surrounding the 1999 term.

Thirdly, the number of non-unanimous cases within the 1999 term offered a typical sample to perform an investigation of the effects of amicus briefs on different types of opinions. The Court handed down dissents and concurrences in 60 percent of its cases in the 1999 term, matching the rate of divisibility within the surrounding years. For example, in the two years immediately preceding and following 1999, the percentage of cases with separate opinions ranged from 49 percent to 63 percent. Further separating the terms by the number of dissents and concurrences, the 1999 term provided a stable representation of the Court's use of both types of separate opinions (Epstein, Segal, Spaeth and Walker 2003).[2]

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[1] While this study only chose to look at one term, it closely mirrors the sample size used by Wahlbeck and Spriggs (1997) in their content analysis. These researchers only used the 1994 term to examine the use of amicus information.

[2] While examining the most recent term was tempting, the 2006 term was not representative in important ways. Most importantly, it had only 18 unanimous opinions, out of a total of 72 decisions handed down, the smallest amount in over a dozen years. One can hypothesize that these dissents and concurrences would likely show a lack of adherence to the norms of opinion writing due to the term's highly uncharacteristic amount of divisibility. Instead, the year of 1999 provided a more stable account of non-majority opinions. Although this year did not have the unusually high number of dissents as marked by the previous term, it did provide an ample

I used *Lexis Nexis* to search for all the opinions by docket number. From these opinions, I excluded cases with both unanimous holdings and no separate opinions. The absence of division among the justices made them less relevant to the purpose of my study. There were three unanimous cases when a justice chose to write separately to underscore the argument presented in the majority opinion. Because the opportunity existed for the justice to utilize amici information in the separate opinion, I included these cases. Once the relevant cases were identified, the document numbers were used to search for the amicus briefs presented in each case.[3] From this search, two more cases were excluded since no amici were submitted for these cases. The dataset then included 48 cases, with 385 amicus briefs submitted. Within that group, organizations wrote 353 amici in support of either the petitioner or respondent. The briefs remaining did not support either party and were not used within this study.[4]

The study used each amicus brief as the unit of analysis for coding, with the purpose of determining the extent to which unique information is presented in each amicus brief. Using the model of prior studies (Spriggs and Wahlbeck 1997), I coded the principal arguments of each amicus brief by using the heading in its 'Argument' section, a required feature for submission to

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number of non-majority opinions to examine (Epstein, Segal, Spaeth, and Walker 2003).

[3] According to Spriggs and Wahlbeck (1997), Lexis is a reliable source for all Supreme Court briefs. They did a random case study and found that the database had a 99.2 percent accuracy rate for briefs involved in a case. One would expect this to hold in the current situation. *Findlaw*, a free online research tool, provided downloadable copies of most amici and petitioner briefs. Due to their convenience and clear format, the briefs available through *Findlaw* were used to supplement those found in *Lexis Nexis.*

[4] This research focused on analyzing the overlap between amici briefs and the merits briefs they are submitted in support of. Because of this, a neutral brief could not fit within the confines of the study. Although it should be noted that they may have a significance that would be worth consideration in future studies. For example, in the case of *Dickerson v. United States (2000),* interest groups filed 23 briefs, 16 of which supported neither party. This use of amicus curiae could illuminate unknown reasons for submitting friend of the court briefs, beyond supporting one side of the case.

the Supreme Court. Because both types of briefs are structured similarly, I also coded the arguments presented in the merit briefs by using their summary of arguments sections. A comparison of the summary of arguments presented helped control for past research flaws. This allows for an assessment of equal categories, unlike the McGuire and Palmer study (1995) that compared the content of syllabi with the questions presented in the case.

I compared each amicus brief and its corresponding merit brief, and then recorded the number of amicus arguments also found in the party brief. I then calculated the overlap as a proportion out of the total number of amicus arguments as my independent variable. This allowed for a more detailed measure of how much information within the amicus was unique and how much reiterated the merit brief. For example, in the case of *Hill v. Colorado* (2000), the American Civil Liberties Union (ACLU) presented three separate arguments in the 'Argument' section. When compared with the petitioner's brief the amicus supported, two of the three arguments presented by the ACLU replicated those already existing in the merit brief. The brief was then given a independent value of 2/3, indicating the percentage the amicus restated the merits brief. The independent variable could range anywhere from zero to one, with this amicus brief falling between the two extremes.[5]

Once I calculated my independent variable by measuring the repetitiveness of the amicus brief, I turned to determine the extent to which the case's opinions used the amicus brief

[5] Spriggs and Wahlbeck (1997) used a categorization system that grouped briefs as exclusively add, exclusively reiterate, or both reiterate and add. Respectively, they defined these categories as "(1) brief only presents arguments not located in the litigant's brief, (2) presents no new arguments and exclusively reiterates arguments made by party in dispute, and (3) brief both adds information not in a party brief and reiterates litigant arguments" (1997: 370). After initially coding a number of briefs according to this method, I found their categorization too easily overlooks differences among amicus use. For example, in the Spriggs and Wahlbeck study, a brief presenting five arguments, four of which reiterated the merit brief, would be classified as 'both reiterating and adding information.' Under my categories, this brief would initially be recorded as 4/5. By using the Spriggs and Wahlbeck system, the distinctions between all statistics higher than zero but less than one would be lost.

arguments as my dependent variable. For each majority opinion, I compared the 'Argument' section of the amicus brief to the syllabus of the case. Again, the overlap was recorded as a proportion. In these instances, this dependent variable represents the percentage of all amicus arguments that the author used within that opinion. Similarly, the dependant variables for dissenting and concurring opinions were coded for their use of amicus briefs; however in the absence of a syllabus, the opinions were read in their entirety to determine the use of amicus arguments. In a case like *Hill v. Colorado* (2000), three justices decided to write separate opinions in addition to the majority opinion. I performed a separate comparison of arguments between the amicus and each of the four opinions in a case.

Spriggs and Wahlbeck (1997) controlled for a number of factors in their integrated model that I took into consideration as well. The first control variable was the organization or group of individuals presenting an amicus brief. I coded for which organization presented the amicus by grouping the organizations according to their membership. This took into account the presence of the Solicitor General, who research has shown to have a successful history as amici before the Court (Caldeira and Wright 1990). I separated the amici into seven groups – Solicitor General, state and local government, academics, public interest groups, business associations, individuals, and miscellaneous.

Secondly, I coded the party supported by the brief as a control variable, as past research shows that petitioners have a higher likelihood of winning their case (Caldeira and Wright 1988). The study tracked the side supported, for both the amicus brief and each opinion. Additionally, I collected data on the type of issue before the Court in each case. Past scholarship suggests justices have more latitude in their opinions when faced with a constitutional question, rather than one of statutory construction so my study controlled for this factor (Easterbrook, 1984).

Each case was coded as a Bill of Rights, statutory construction, or Federalism/Separation of Powers issue. The last control variable I tracked was the author of each case. This allowed me to consider if a certain justice tended to utilize amici arguments more than another.

Results

During the 1999 term, the Court published separate opinions in 50 cases, 48 of which had amici involvment.[6] Out of the 353 amici submitted, 195 briefs (55.2 percent) supported the petitioner and 158 briefs (44.7 percent) supported the respondent. The number of briefs submitted for each case ranged from 1 to 32 briefs, with an average of 7.4 briefs being submitted per case. The case with the greatest number of amici was in the *Boy Scouts of America et al. v. Dale* (2000); concerning a challenge to a New Jersey law banning discrimination on the basis of sexual orientation in public accommodations. Diverse organizations submitted supplemental briefs on behalf of both sides in this case, ranging from Gays and Lesbians for Individual Liberties to Becket Fund for Religious Liberty. Overall, organizations participated as amici disproportionately in cases concerning civil rights and liberties issues. Although only 52.1 percent of the cases analyzed in this study involved questions pertaining to the Bill of Rights, over 60 percent of the amicus briefs were presented in these cases.

Public interest groups sponsored the majority of amici before the Court in its 1999 term. Interest groups wrote 221 briefs in support of either side, making up 62.6 percent of the total amici in the 1999 term. The Solicitor General presented the government's position in 13 cases.[7]

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[6] One would expect to find a lower rate of amici participation in a study of all opinions in a term, including unanimous decisions. As past research indicates, interest groups are more likely to submit friend of the court briefs in more highly contentious cases (Songer, Kuersten, and Kaheny 2000). The high rate of amici involvement in cases with separate opinions reflects this interest group trend.

[7] The Solicitor General submitted an additional amicus brief in the case of *Natsios v. National Foreign Trade Council (2000)* but that brief did not support either side of the case and was not included in the data set.

Additionally, state and local governments weighed in on a number of cases, asserting their views in 49 briefs during the term. Many of these third-party briefs argued in favor of maintaining states' authority in cases concerning federalism challenges. States with varying political leanings routinely sign onto the same brief, as shown in *Vermont Agency of Natural Resources v. US* (2000). In that case, forty-two states, from Alabama to California, urged the Court to find that the 11th Amendment bars a federal court from considering a private liability suit against a State under the False Claims Act.

While states regularly collaborated on friend of the court briefs, results show a general tendency of groups to present individual briefs, rather than co-signed amici. The Court received briefs signed by a single organization in 194 instances (55.00 percent). The number of cosigners was fairly low, with more than three-quarters (79.6 percent) having five or less groups signed on. In the remainder of briefs, groups collaborated with a varying number of organizations. In a rare amicus brief authored by counsel at the Harvard Immigration and Refugee Clinic, 106 human rights organizations and academics signed onto the document. The 'Statement of Amici Curiae' emphasized the broad nature to the coalition, and the extreme impact the case could have on the array of parties involved.

As senior members of the Court, Justice Rehnquist and Justice Stevens authored the most opinions during the term. Their use of information presented in friend of the court briefs differed greatly. Table 1 presents the frequency of Justice Rehnquist and Justice Stevens' utilization of amicus briefs within their opinions.[8] Out of the 123 briefs submitted for cases he authored an

[8] The fractions within Table 1 represent the proportion of amici arguments that were used in the merit brief. Following data collection, the statistics representing overlap between the amici arguments were collapsed together into five categories. Because each friend of the court brief can present a distinct number of arguments, the data had to be grouped together into categories that could better highlight trends in amici usage. These categories – 0, 1/3, 1/2, 2/3, and 1 – helped to present clearer data while still preserving the subtle distinctions that previous studies may have overlooked.

opinion in, Stevens used at least one argument found in each of 113 amici briefs, or 91.9 percent of the time. Justice Rehnquist did not incorporate amici information at such a high rate. Instead, he used information from 72.1 percent of the briefs presented to him. Also, Justice Stevens demonstrated a higher propensity than Justice Rehnquist to use amici in their entirety by using all of the arguments presented in 56 briefs (45.5 percent). In comparison, Justice Rehnquist used all arguments from only 21 percent of the briefs presented to him. From this table, it appears that Justice Stevens is more willing to use the information presented in amicus curiae, and that he does so at a comparably high rate. Yet, the picture is more complex than this data set suggests.

An amicus brief can offer unique arguments or present points reiterating those already raised in the merit brief. As shown in Table 2, Justice Stevens' large use of amici information can be better understood by first considering how much the amici overlapped with the merit briefs. Although Stevens demonstrated a tendency to incorporate amici arguments, he was frequently presented with amici repeating the points argued by the party to the case. Sixty-three briefs, out of the 123 submitted in the cases, offered no new arguments and solely reiterated the arguments raised in the merit brief. The large number of repetitive briefs is even more significant considering only six briefs presenting completely new information were accessible to Stevens in the cases.

Justice Stevens tended to only use amici in their entirety when they completely overlapped with the merit brief. Stevens completely incorporated the points raised in 65 percent of the briefs solely reiterating information already presented in the party brief. In the few cases of amici providing unique arguments, 83.3 percent of these briefs had points that were not mentioned in Stevens' opinions at all. A number of amici contained both unique and repetitive points, with Justice Stevens showing a tendency to use some of these arguments within his

opinions. Additionally, when splitting the data further by opinion type, the same trends in Table 2 were again detected. Justice Stevens only utilized the repetitive briefs, no matter which opinion type he wrote. No difference could be observed in Stevens' behavior when writing a separate opinion versus authoring the holding of the Court.[9]

Overall, the results in Table 2 demonstrate the flaws in relying on Justice Stevens' use of amici information as indication of the impact amici have on the Court and him specifically. While Stevens showed a tendency to incorporate into his opinions the arguments put forth in friend of the court briefs, the parties to the case had already raised most of these points. Like the Spriggs and Wahlbeck (1997) study, this example underscores the significance of controlling for the amount of merit overlap when analyzing an individual justice's use of third-party briefs.

When Do Amicus Briefs Provide New Information?

Briefs contributed a range of information to the justices' deliberations on the Court. While some organizations choose to only reinforce the points made by the petitioner or respondent they supported, others offered a unique set of arguments completely unrelated to those in the merit briefs. The majority of briefs lay somewhere in between these two extremes.

Amici frequently provide information independent from the points raised by the litigants in a case. As Table 3 illustrates, nearly a quarter (21.2 percent) of briefs filed in 1999 added all unique arguments to their side of the case. Many of these briefs came from single-issue organizations looking to use amicus curiae as a way to advocate for their narrow interests. The briefs generally provide policy information and statistics on the impact the case's outcome would have on the real-life parties the organization concerned itself with most. Many of these points

[9] The other eight justices were presented with a more balanced mixture of briefs when authoring their opinions. Justice Stevens provided an extreme example of a justice with access to mainly repetitive amicus briefs.

focused on background information that related directly to the narrow institutional goals of that organization.

For example, US Term Limits Inc. is a group solely concerned with creating term limits for elected officials across all levels of government. As amici in the campaign finance case of *Nixon v. Shrink Missouri Government PAC* (2000), the group devoted its entire brief to discussing how regulating campaign contributions would not level the playing field in elections. By presenting a range of statistics and examples, the organization offered term limits as an effective and more feasible alternative to campaign finance reform. The corresponding brief for the respondent did not address any of the policy implications of campaign finance, instead resting its argument on First Amendment grounds. Like single-issue organizations, academic groups routinely raised points outside of the scope of the case at hand. A number of political scientists collaborated on a brief submitted on behalf of the petitioner in the *Nixon* case, using the brief to introduce "certain practical considerations that support the Missouri statewide limit." These academics raised three arguments based on real-life concerns, all of which were not mentioned in the petitioner brief.

Slightly more briefs offered completely repetitive arguments (31.2 percent), as shown in Table 3. A range of organizations sponsored these amici, anywhere from established groups like the American Bar Association to less well-known and more narrowly focused groups such as the Student Press Law Center. Many of these amici reinforced their party's brief, not only by reiterating the merit arguments, but by using identical language in doing so. The National Governors' Association exemplified this trend in the case of *Vermont Agency of Natural Resources v. US* (2000). Here, the amicus brief was virtually indistinguishable from Vermont's

brief, with each point in its summary of arguments directly corresponding to the next issue raised by the merit brief.

Most amici could be found somewhere in between these two extremes. Nearly half (47.6 percent) of the friend of the court briefs submitted employed a mix of unique and repetitive points. Briefs of this nature generally provided unique points by giving policy or historical context to the case at hand. Their additional points usually reinforced the legal arguments set forth in the merit briefs. Out of the 168 briefs in this mixed category, 74 amici (21.0 percent) devoted half of the brief to introducing new information.

Many of these briefs differed subtly from the merits brief by their attention to the legal standard promoted in the case. Interest groups tended to argue in favor of a standard more favorable to their extreme position. Additionally, in case their viewpoint did not prevail, groups would also reinforce the standard set forth in the merits brief. The Court received a number of briefs demonstrating this trend in the free speech case of the *City of Erie v. Pap's A.M.* (2000). This case involved a challenge to Erie's prohibition on public nudity by a local strip club. Here, family-oriented organizations argued two points; (1) nude dancing did not constitute speech and, thus, should not be considered under the First Amendment and (2) if nude dancing fell under the Free Speech Clause, Erie's ordinance was still written narrow enough to be deemed constitutional. The City of Erie did not claim the former point and so these briefs fell into the category of both unique and repetitive points.

The similarities between the arguments raised in a third-party brief and a merit brief are not the only comparison worth noting. For example, some interest groups used their amicus briefs as a way of refuting the unique points raised by an interest group on the opposing side. *United States v. Morrison* (2000) highlighted the noteworthiness of this type of discussion. The

question at issue was whether Congress had authority under the Commerce Clause to enact the Violence Against Women Act, which created a private right of action for victims of gender related crimes. While most amici hinged on domestic violence statistics and federalism arguments, an organization called International Law Scholars submitted an amicus brief based solely on the international treaty power of the United States to redress gender related violence. The organization presented a 30-page amicus brief to argue that Congress retains authority in this matter because of international obligations stemming from the International Covenant on Civil and Political Rights.

This argument stayed wholly out of the discussion within the merit briefs on both sides. Instead, it was another amicus brief, in support of the respondent, who wrote primarily to counteract the argument concerning international treaty power. Both the Eagle Forum Education & Legal Defense Fund and the National Association of Criminal Defense Lawyers tried to neutralize the treaty obligation claim raised by the International Law Scholars in their brief by urging the Court not to allow a vague concept of international law to supersede the Constitution. This occurrence suggests that those authoring briefs take into consideration the points raised by other friend of the court briefs, implying an interactive nature to the way amici are written. Furthermore, the example shows that unique amici arguments may sometimes be raised solely to counteract the claims of the opposing side.

The degree of unique information presented in a brief was not related to the subject matter of the case at hand. While groups tended to submit amici at a higher rate in cases centered on civil rights and liberties violations, these briefs did not demonstrate any more uniqueness in their arguments than the briefs presented in other cases. Amici reinforced the merit briefs at almost identical rates, no matter what kind of question was presented in the case.

When Does the Court Use Unique Arguments Presented in Amicus Briefs?

Prior to Epstein, Johnson, and Segal (1996), judicial research generally analyzed the impact of amicus curiae in terms of the Court's use of amici information. This method consistently showed Justices referring to friend of the court briefs, implying the value of amicus curiae to the justices' decision-making process. The analysis of Justice Stevens' opinions in Table 2 illustrates this to be a premature conclusion. Because a brief may simply be reiterating the points already raised by the party brief, research must control for this variable.

Table 4 presents data for the use of unique and repetitive briefs by all justices, within all the opinions written.[10] The relationship between uniqueness and use in opinions is clear: when amicus briefs present completely unique arguments, the majority of these briefs (58.7 percent) do not get used. Briefs from academics and single-issue organizations, such as U.S. Term Limits, Inc., routinely fell into this category. Alternatively, when amicus briefs present wholly repetitive arguments, the majority of these briefs (55.1 percent) are used by the justices.

The relationship is supported by the frequency of use in the middle category. Where amicus briefs presented a mix of unique and repetitive points, justices adopted some of these arguments 63 percent of the time. A closer look at this behavior reveals that often it was the repeated arguments that justices adopted. For example, in the *Erie* case concerning erotic dance clubs, the American Association for Nude Dancing submitted a brief offering unique and repetitive points. Their unique argument, based on the invasion of privacy that the Erie ordinance created for social nudists, did not become incorporated into the Court's opinions. On the other

[10] Categories were furthered collapsed to present a clearer understanding of the relationship between the dependent and independent variables. The categories of 1/3, 1/2, and 2/3 were grouped into one category that represented briefs presenting a mixture of unique and repetitive points. A more sophisticated breakdown of the data only furthers the relationship shown in Table 4. While this breakdown would be helpful to explain the Court's treatment of amici information, it became too complex to present in the results section.

hand, the Association offered an over breadth argument mimicking that of the merit brief, and the justices frequently mentioned the point in their opinions.

The amicus filed by the Washington Legal Foundation in the case of *Friends of the Earth, Inc. v. Laidlaw Environmental Service* (2000) provides an interesting example of a unique point of a mixed brief actually being used by the Court. The brief offered three arguments in support of the respondent, one of which argued that the public interest was not served by allowing civil lawsuits on behalf of the Clean Water Act. The Washington Legal Foundation employed this as a novel point, using it to counteract the public interest claims of both the environmentalist organizations acting as amici and the petitioner's brief on the opposing side. The authors of the majority and concurrence directly referred to this novel argument in their opinions. Both authors wrote in favor of the petitioner, first citing the point and then flatly denying its validity. The Court likely used Washington Legal Foundation's unique argument because they found it easily refutable by using the information described in briefs supporting their opinion.

While the justices tended to rely on the repetitive arguments, a small percentage of briefs presenting novel arguments were used within the opinions of the Court. Over 41 percent of the fully unique briefs were used in opinions at least in part; including the 13.1 percent of the time that these novel briefs were completely used by the Court. While justices occasionally demonstrated a willingness to use novel amici arguments, cases like *Friends of the Earth* did not constitute the norm on the Court. Generally, it is the repetition that attracts the attention of the justices. The involvement by the American Association of Nude Dancing exemplifies the Court's tendency to use only repetitive arguments supplied by a brief. This generalization of amici usage greatly diminishes the importance that amici play on the Court. Similar to past content

examinations, the findings presented here suggest that litigants' arguments are the primary focus of the justices when writing their opinions.

Yet, Table 4 aggregates for all opinions, and it is possible that justices may use information differently in separate opinions. As previously discussed, concurrences and dissents may use amicus briefs differently because the purpose of their opinions are not the same as the majority author's. Table 5 highlights the extreme significance of distinguishing among opinions by illustrating how different concurrences are from other opinions. The 'All Briefs' column shows concurrences being twice as likely as a majority or dissenting opinion to not use any amici information, regardless of the novelty of the arguments presented. Justices writing a concurrence used at least some amici information approximately 60 percent of the time, while authors of a majority or dissent demonstrated almost identical rates at 80 percent. Furthermore concurrences rarely used an amicus in its entirety, at a minor rate of 18.9 percent, compared to the majority and dissents reaching 33.4 and 34.3 percent, respectively.

A further breakdown by merit overlap only enhances the differences among opinion types. Although dissenting and majority authors used amici information at almost identical rates, the type of information they utilized, repetitive or unique, varied by opinion type. Among briefs offering unique arguments, dissents used them more fully (16.0 percent) than the majority opinions (12.0 percent). The dissenters in the highly contentious *Stenberg v. Carhart* (2000) demonstrated this higher use of amici information. A number of pro-life organizations submitted novel amici, arguing this type of late-term abortion amounted to infant homicide. Once decided, seven justices wrote separately to discuss the legality of the Nebraska's partial-birth abortion ban. While the majority did not address this point in their opinion overturning Nebraska's law, Justice Scalia used his dissent to describe partial-birth abortion as "the method of killing a

human child." He employed the same unique position that many pro-life organizations discussed in their amicus briefs.

While dissenters utilized supplemental information in amicus briefs at a slightly higher rate than the other opinions, these dissenting justices showed less regard for repetitive briefs. A dissent was more than twice as likely as a majority opinion to not use any points in a completely repetitive brief, and less likely (59.7 percent) to fully use completely repetitive briefs than the majority opinion (69.1 percent). Although dissenters did utilize amici information slightly differently than majority authors, they did not demonstrate a high use of unique arguments as the literature on separate opinions previously suggested. Any variation between these two opinions paled in comparison to the way concurrences treated all amici information.

Authors of a concurrence showed little regard for amici arguments even when they repeated the claims of the parties to the case. When presented with an amicus exclusively reinforcing the merit brief, a justice did not use any of the amici arguments over 32 percent of the time. There are different types of concurrences, each type with a different purpose that may help to explain the use of amicus briefs among each opinion. Many justices used concurrences to discuss an issue peripheral to the case at hand, one not raised in the briefs. Because this study compared only the main arguments presented in amici, these short concurrences would often neglect to mention the broader topics tracked in each amicus brief. For instance, in the case of *Jones v. United States* (2000), Justice Thomas' 40-word concurrence described his unwillingness to apply the statute in question to commercial activities. This minor issue, that compelled Justice Thomas to write separately, was not mentioned in any of the four amici, or in either of the merit briefs.

Concurrences can also be classified as those seeking to reinforce the main topic the majority opinion focused on. These cases fall into what past research has labeled a 'regular concurrence,' one that a justice uses to elaborate or clarify the majority's rationale (Caldeira and Zorn 1998; Kirman 1995). Generally, these separate opinions would use stronger language to underscore the holding already reached by the Court. Justice Stevens employed this type of concurrence in the *Jones* case, saying he wrote to reinforce the fact that the Court was narrowly interpreting federal criminal laws that overlap with state authority. Almost all amici present in the case discussed this broad point, but because Stevens' only touched on one argument, many of their other points were overlooked.

Thirdly, justices used concurrences as a way to articulate their differences with their brethren. These concurrences tended to be longer and more detailed in their reasoning, occasionally utilizing amici arguments to highlight distinctions among opinions. For example, in *Carhart*, Justice Stevens used his concurrence to dispute the points made by the dissenters in the case. He articulated his disdain for Justice Scalia's and many pro-life amicus briefs' characterization of partial-birth abortion as homicide. Members of the Court used concurrences of this type as a forum of discussion and debate, similar to the way dissenting opinions are commonly used. Additionally, many concurrences within this third category showed the largest departure from the arguments of the majority opinions. A justice often chooses to concur in judgment with a case, using their opinion to express a divergent rationale to reach the same outcome as the majority. Researchers often refer to this type of opinion as a 'special concurrence,' (Caldeira and Zorn 1998).

Overall, concurrences demonstrated a much lower use of amici arguments, unique or repetitive, than majority and dissenting opinions. Among briefs offering unique arguments,

dissents used them more fully than any other opinion type. While the type of opinion explains some use of amici information, subject matter is an additional factor that must be considered when studying judicial decisions. The results show a strong correlation between the substance of the case and the use of amici arguments in judicial opinion writing. Table 6 highlights these trends by breaking the cases down by subject matter.

As previously noted, the Court received the majority of friend of the court briefs in support of litigants in civil rights and liberties cases. Because of this, the results in Table 6 for Bill of Rights cases greatly mirror the data discussed in Table 4. Authors of these opinions showed the greatest reluctance to use the unique arguments presented in amici briefs. When presented with a brief arguing all novel points, the justices did not incorporate any of the brief's points at a rate of 61.6 percent. Additionally, these cases demonstrated a large use of repetitive points. The justices fully incorporated 62.3 percent of the briefs that exclusively reinforced the merit arguments. Justices addressing legal questions of separation of powers and federalism disputes exhibit the same tendencies as in Bill of Rights cases, but to a lesser extreme.

Statutory construction cases did not exemplify the extreme trends shown in cases concerning civil rights and liberties violations. In these cases, justices demonstrated little tendency to use repetitive rather than unique amici arguments. When encountering a third-party brief concerning the interpretation of a statute, justices incorporated all the arguments of an exclusively unique brief at approximately the same rate as a completely repetitive brief. Furthermore, opinions in statutory cases did not use any arguments in an amicus for 33.4 percent of completely novel briefs and for 26.4 percent of completely repetitive briefs. Generally, within statutory cases, justices treated an amicus raising unique arguments similar to an amicus completely reinforcing the merit points.

The largest distinction between subject matters can be observed by comparing Bill of Rights and statutory construction cases. Authors writing in civil rights and liberties cases incorporated unique amici arguments at a much lower rate than when a statute was in question. When presented with a completely novel brief, these authors only used the unique arguments at a rate of 38.4 percent, as compared to 66.6 percent within cases concerning statutory construction. With subject matter and opinion type shown to be important factors, the results were broken down further by incorporating both factors into a multivariable model. Again, concurrences showed little use of any type of amici information, even in cases of statutory construction.

The subject matter of a case provides valuable clues to how the Court will treat information provided by amicus curiae. While interest groups participate the most in Bill of Rights cases, justices are the least receptive to the novel arguments presented in these types of issues. Rather, the Court chooses to focus on the arguments presented in the merit briefs for cases of this type. Organizations wishing to present new information would find the Court more receptive to their interests in cases of statutory interpretation.

Discussion

The Supreme Court's formal rules governing amicus curiae state that an amicus must add substantial information to their deliberations (Rule 37.1). When coupled with the rise in amici participation in prior decades, researchers have concluded that amici must impact the decision-making process or the Court would not allow them to be submitted (Caldeira and Wright 1988). An analysis of the use of friend of the court briefs for cases in the 1999 term demonstrate that this conclusion is too simple and does not account for the greater complexity of amicus brief influence on the Court.

The data presented here shows that interest groups use amicus briefs to present a range of novel and repetitive information. The majority of friend of the court briefs put forth a mixture of arguments, preventing them from easily fitting within the understanding of conventional wisdom that argues amici provide unique information that the justices find useful in their deliberations (See Spriggs and Wahlbeck 1997). Moreover, a significant number of interest groups use their resources to produce an amicus brief identical in substance and language to the merit brief.

While the current study supports the findings of Spriggs and Wahlbeck (1997), it takes the additional step of distinguishing between the specific number of arguments overlapping with the merit briefs. Similarly, these researchers found briefs exclusively adding information rarely incorporated, while briefs exclusively reiterating information routinely were reflected within the majority opinion. By instead tracking the number of arguments within amicus briefs, the current study demonstrates patterns within briefs that both add and repeat information. Often the number of repetitive points within these amicus briefs corresponded directly to the number of arguments an opinion would utilize. This observation implies that the Court only focuses on the arguments in the litigant briefs, while the amici points merely reinforce what the members of the Court already decided upon.

The opinions of the Court rarely reflect the points of unique briefs, with single-issue organizations often drafting these arguments. The amici regularly present the real-world ramifications of the case on different communities in the United States. While the data shows some justices using unique amici arguments, the points raised by these groups rarely fall into this category. This directly contradicts the established theory that amici provide valuable policy information for members of the Court (Kearney and Merrill 1999). Additionally, it suggests that amici may not affect the judicial process as often or in the way they are intended. Many of the

supplemental policy discussions within an amicus brief directly relate to the goals of the submitting organization. Amici of this type cannot feel their interests adequately addressed when their unique points are rarely reflected within the Court's opinions.

An examination of concurring and dissenting opinions did not clarify any of the ambiguity surrounding the effects of amicus briefs. Literature on separate opinions suggests that dissenters do not face the same environmental and institutional constraints that make it difficult for majority authors to discuss outside information. The results provide ample evidence to the contrary. Although dissenting opinions do utilize unique information more than majority opinions, they did not demonstrate a high use of the new information presented in an amicus brief. One explanation may be demonstrated in the Erie case where a number of amicus briefs presented a different legal standard than the merits briefs argued in favor of. None of the justices used this new standard, with many authors writing separately to underscore their hesitation to adopt the extremist position taken by the amici. This occurrence may suggest that justices feel compelled to adopt a moderate position in the hopes of increasing the number of cosigners to their opinion, as often majority authors feel inclined to do (Maltzman, Spriggs and Wahlbeck 2000).

Concurring justices exhibited unusual behavior in their use of amici information when compared with the behavior of other authors. These justices barely touch on the repetitive points in an amicus brief, and rarely, if ever, feel inclined to incorporate information not included in the party litigation. Concurrences tend to be short, single issue driven opinions that either reinforce the position of the majority or introduce issues secondary to the case. Often, these secondary concerns involve the holding of the case, within the context of future decisions.

Concurrences of this type overlook most points in an amicus brief because they only set out to discuss one issue. This maybe less a function of the information presented in amicus curiae, and more a reflection of the nature of concurrences themselves. Most justices writing a concurrence rely on the majority opinion to articulate the broader issues surrounding the case. Instead, a concurrence allows members of the Court to discuss one issue that may or may not relate to an amicus argument. Kirman's study suggests that 'regular concurrences' are the only concurrences that should be given precedential weight by lower courts (1995). By accepting this argument, there is little hope that an amicus brief will be incorporated into a concurring opinion that could have an effect on subsequent law.

Justices also use concurrences to articulate their differences with the majority opinion. These differences range in size and importance, with justices extremely opposed to the majority rationale who file a concurring opinion in the judgment. Justices who write a 'special concurrence' act as dissenters by using their separate opinion as a way to counteract the points of other authors, yet they ultimately agree with the outcome of the case so they vote with the majority (Caldeira and Zorn 1998). Kirman (1995) argues that lower courts should not consider concurrences in judgment to have any precedential value. The type of concurrence more likely to use unique amici arguments is the type that is least likely to have a long-term impact on the Court.

Although rare, when opinions do incorporate unique amici points, can reoccurring patterns be identified? If so, interest groups could focus their attention and resources on parallel cases, improving their case selection, and ultimately furthering the organization's influence on the Court. This study provided a glimpse into three reoccurring patterns on the Court. First off, when a unique point in an amicus brief does find a receptive audience, it is likely a dissenting

justice and not a majority author. The obstacle for any interest group may be to simply get the attention of just one of nine individuals on the Court. Often, a justice's clerks separate out amicus briefs that they do not find relevant before a justice has the opportunity to review the document (O'Brien 2003). Organizations may see their interests best served by tailoring their amici to target the preferences of one receptive chamber, even if that may be a likely dissenter in the case. The discussion of an organization's unique arguments by one dissenter may be helpful to that group's long-term interests, as these opinions have future effects on the Court (Caldeira and Zorn 1998).

Secondly, a justice's treatment of amici information, once incorporated into an opinion, may shed significant light on the question of when unique arguments were used by the Court. In their 1997 study, Spriggs and Wahlbeck broke up the use of amici information into categories of having been accepted or rejected. While this study utilized the same method, once collected, the data became too complex for the purpose here. The case study on Washington Legal Foundation's use of novel amici points, and the Court's ultimate rejection of them, provides some insight. As an example of the justices' use of a strawman argument to strengthen their opinions, this case signals the significance of understanding acceptance or rejection as a dependent variable. Unique arguments may provide opposing justices with an easy target to attack. Justices may mention the unique arguments presented in amici simply with the intention of refuting them.

While these situations do not imply the influence of amicus curiae on the Court, organizations could still find the reference to their supplemental arguments useful in other ways. Scholars theorize that interest groups use amici to gain publicity for their organization's main issues (Hansford 2004; Kearney and Merrill 1999). Without reaching the merits of this argument,

it is a plausible that an interest group could benefit from a Court refuting an argument unique to their organization. This is not to imply that organizations wish to see their points refuted, which is not a goal of any rational actor; rather, when this does occur, amici may still further some institutional objective. Interest groups may use the judicial system as a way of addressing the needs of their membership, rather than focusing on the Court's conclusions. By considering the acceptance or rejection of an argument, a future study could provide a better insight into the behavior of both interest groups and members of the Court.

Thirdly, the subject matter of a case greatly affects how the justices will treat amicus curiae. Past research shows that interest groups tend to submit amici in the most highly contentious cases before the Court (Songer, Kuersten, and Kaheny 2000). Justices exhibit the most disagreement when addressing constitutional questions, helping to explain the disproportionate number of amici filed in constitutional cases. Prevailing wisdom says that a constitutional case provides a justice with more discretion in his or her opinion because of the "age and vagueness of the text" (Easterbrook 1984: 389). Additionally, advocacy groups participate in cases when the Court is operating in a poor information context by offering supplemental information (Hansford 2004). This observation on group behavior, coupled with prevailing wisdom on constitutional cases, creates the expectation that amici will have the greatest influence in constitutional cases.

This study seems to contradict that expectation by showing authors, in Bill of Rights' cases, utilizing novel arguments at a much lower rate than while writing in statutory cases. Justices show little regard for the repetitive nature of an amici argument when faced with questions of statutory interpretation. It is possible that justices writing for such highly publicized cases may fear that divergence from the merit points could harm their image or the Court's

legitimacy. Easterbrook's research (1984) testing conventional wisdom adds weight to this theory. Here, he undermined the significance of the disagreements justices demonstrate in constitutional cases. From data showing a number of lopsided votes in these supposedly 'contentious cases,' Easterbrook concluded, "the justices either agree on many fundamental premises or are constrained by doctrine, political forces, public opinion, and scholarly criticism to behave as they do" (397; 1984). Additionally, justices may hold the strongest beliefs in constitutional cases, which would diminish the influence of new information on their deliberations.

This discussion accounts for the low usage of novel amici arguments within constitutional opinions, but does nothing to explain the high levels shown in statutory cases. Justices may see the mundane aspects of legal construction as a relief from the pressures of public scrutiny facing them in constitutional cases, allowing them to incorporate unique points at a higher rate. Alternatively, interest groups may use less policy information in cases of this nature, and focus more on a legal rationale. A study concentrating on the type of argument presented – policy, historical perspective, legal, etc. – would likely give credence to this theory. A third explanation exists to why justices use the unique arguments of amicus briefs when presented with a statutory case. Amicus curiae has the most impact when justices are acting in a poor context environment (Hansford 2004). A justice may have less expertise on mundane statutory questions and seek out amici to better understand the issue at hand.

Although amici in statutory construction cases benefit from this high use of unique points, many interest groups focus solely on constitutional law. If an advocacy organization wants to maximize its influence on the Court, it should submit amici in cases of statutory interpretation. If an advocacy organization wishes to maximize its influence on issues it cares

about most, it should submit amici in constitutional cases. Advocacy groups, acting as amici, may find other sectors of government, outside of the judicial arena, more receptive to their key interests.

What continues to make an organization submit amicus curiae, case after case, in spite of growing evidence on its ineffectiveness? Much scholarship suggests other reasons why interest groups decide to submit amici briefs, outside of their legal impact. Interest groups providing amici in the 1999 term submitted an individual brief most of the time. The 'arms race phenomenon,' the tendency to use an amicus brief to compete with other organizations, settles well with this data and provides a plausible alternative on the influence of amici (Kearney and Merrill 1999). The significant number of briefs supporting neither party suggests that organizations consider the case within a broader context. Judicial advocates may not seek a certain legal outcome; rather, the articulation of a rationale more conducive to their institutional goals.

Furthermore, the interactive nature to briefs in the *US v. Morrison* example suggests a new motivation to group participation. Like opinion writing, there may be an interactive nature to amici brief writing, causing groups to submit arguments solely to refute amici on the opposing side. According to Dennis J. Hutchinson of the University of Chicago Law School, interest groups develop an amicus brief because they realize they "can't let the other side go unanswered," (Barnes 2008). Similar to the 'arms race phenomenon,' opposing interest groups may view amici as their only way to neutralize the arguments of rival organizations (Kearney and Merrill 1999). A last explanation may be that organizations are not aware of or do not trust the scholarship on amicus curiae. Instead, submitting amicus curiae has become a behavioral norm that interest groups blindly choose to follow.

Conclusion

Justices rarely utilize arguments not already presented by litigating counsel, even when authoring an opinion separate from the Court's holding. The findings suggest the points discussed in the merit briefs are what justices find most valuable. Justices rarely acknowledge the argument of an amicus brief that is closest to that advocacy group's mission, especially in cases of constitutional law. The findings further dim the already bleak perspective scholars hold on the influence of amicus curiae. In the face of this mounting research, interest groups continue to swarm the Court's chambers with a number of amici for each case. While this fact could show an irrational quality to interest group behavior, it most likely demonstrates the flaws in the way scholars define what constitutes success for an organization. These advocacy groups may use amici for purposes other than what conventional wisdom deems appropriate.

With that said, all hope is not lost for an organization wishing to provide the justices with supplemental information. While this study hints at potential patterns, future scholarship may further identify the types of amici arguments the Court finds most persuasive. Additionally, interest groups may gain success by strategically targeting a specific justice and tailoring their unique arguments to his or her policy concerns or ideological positions. Lastly, advocacy groups would benefit from altering their approach to case selection in light of the findings on subject matter. Although interest groups are most attracted to contentious cases concerning civil rights and liberties' violations, statutory construction cases provide these actors with the greatest opportunity to exert influence. A group should consider funneling their resources toward cases that concern both statutory questions and societal issues closely related to their mission.

While an examination of concurrences and dissents did not reveal any substantial use of amici arguments, the study offers a rare and noteworthy glimpse at the broader scope of judicial

behavior on the Supreme Court. Scholarship suggests that when a justice feels compelled to discuss a legal argument, other authors will follow suit, due to the collective nature to decision writing on the Court. According to Stack, "it urges a Justice, whether writing her own opinion or writing the opinion of the Court, to acknowledge and address the arguments presented by her peers" (1995: 2259). The findings showed the justices deviating from this behavior slightly. Dissenters tend to utilize slightly different amici information than majority authors, with the information occasionally ignored by the opposing justices. The Court's opinions may not demonstrate as vigorous of a debate between the justices as past literature would imply.

Within the context of amici information, the study exposed the fundamental nature of opinion writing by the justices. Members of the Court are rational actors that make systematic judgments about what arguments will benefit their position most (Spriggs, Maltzman and Wahlbeck 1999). They must consider the preferences and votes of their colleagues when drafting their own opinions (Epstein and Knight 1998). The Court's use of amici information provides a rich example of this strategic behavior within the attitudinal model. Justices weigh the costs and benefits of using novel arguments to enhance their position, understanding that their use may diminish others' support for their drafts. The results show that the justices frequently perceive these costs to outweigh the advantages.

The Supreme Court remains the most isolated and closed off branch of the federal government. With only a couple dozen cases being argued each year, few litigators have the opportunity to bring their cases before the justices. Amicus curiae seems to provide one of the only open avenues for interest groups looking to affect social change. Instead, an amicus brief may serve as an empty measure, rarely affecting the justices' deliberations. While the justices allow outside actors to feel a part of the judicial process through the submission of a brief, their

actual relationship with the justices is superficial at best. The justices on the Court decide the cases based on the arguments put forth by the litigating parties. For those advocacy groups lacking the funding and resources to take a case on directly, their novel arguments go unnoticed in the judicial process. The Court's receptiveness to the influx of friend of the court briefs may only be a symbolic gesture taken by a body largely concerned with maintaining its public legitimacy, and ultimately its power.

Appendix

TABLE 1:
Frequency of Justice Stevens and Justice Rehnquist's Use of Amicus Briefs When Authoring an Opinion During the 1999 Term

Use of Amicus Brief Within Authored Opinion	Justices' Opinions	
	Rehnquist	Stevens
No Arguments	61 (27.9%)	10 (8.1%)
1/3 of Amicus Arguments	30 (13.7%)	10 (8.1%)
1/2 of Amicus Arguments	43 (19.6%)	20 (16.3%)
2/3 of Amicus Arguments	39 (17.8%)	27 (22.0%)
All Arguments	46 (21.0%)	56 (45.5%)
Total	*219 (100%)*	*123 (100%)*

Note: The total for each justice does not reflect the total number of opinions written during

the 1999 term. Instead, this number represents the number of amicus briefs that were presented to the Court when that justice authored an opinion in the corresponding case.

TABLE 2:
The Frequency of Justice Stevens' Use of Amicus Briefs that Present Unique and Repetitive Arguments in All Opinions During the 1999 Term

Use of Amicus Brief Within Each Opinion	Amount of Amicus Brief Overlap with the Corresponding Merit Brief					
	All Unique	Mixture of Both			All Repetitive	
	0	1/3	1/2	2/3	1	*All Briefs*
No Arguments	5 (83.3%)	0 (0%)	2 (7.4%)	0 (0%)	3 (4.8%)	*10 (8.1%)*
1/3 of Arguments	0 (0%)	1 (10.0%)	1 (3.7%)	5 (29.4%)	3 (4.8%)	*10 (8.1%)*
1/2 of Arguments	0 (0%)	3 (30.0%)	9 (33.3%)	3 (17.6%)	5 (7.9%)	*20 (16.3%)*
2/3 of Arguments	0 (0%)	5 (50.0%)	3 (11.1%)	8 (47.1%)	11 (17.5%)	*27 (22.0%)*
All Arguments	1 (16.7%)	1 (10.0%)	12 (44.4%)	1 (5.9%)	41 (65.0%)	*56 (45.5%)*
Total	*6 (100%)*	*10 (100%)*	*27(100%)*	*17 (100%)*	*63 (100%)*	*123 (100%)*

TABLE 3:
Amicus Brief Overlap with the Corresponding Merit Brief During the 1999 Term

Amicus Brief Overlap with the Corresponding Merit Brief	Number of Amicus Briefs
0 – All Unique	75 (21.2%)
1/3 of Amicus Arguments	47 (13.3%)
1/2 of Amicus Arguments	74 (21.0%)
2/3 of Amicus Arguments	47 (13.3%)
1 – All Repetitive	110 (31.2%)
Total	*353 (100%)*

TABLE 4:
The Frequency of the Court's Use of Amicus Briefs that Offer Unique and Repetitive Arguments

	Amici Argument Overlap with Merit Brief			
All Opinions' Use of Amicus Brief	All Unique	Mixture of Both	All Repetitive	*All Briefs*
Did NOT Use Any Amici Arguments	143 (58.3%)	96 (17.3%)	64 (17.7%)	*303 (26.1%)*
Used SOME Amici Arguments	70 (28.6%)	349 (63.0%)	98 (27.2%)	*517 (44.6%)*
Used ALL Amici Arguments	32 (13.1%)	109 (19.7%)	199 (55.1%)	*340 (29.3%)*
Total	*245 (100%)*	*554 (100%)*	*361 (100%)*	*1160 (100%)*

Note: Amicus briefs had to be counted for each opinion written because each author could utilize amici information in a different way. Thus, the total number of amicus briefs is higher than the actual number of briefs present in the sample size. The total, 1160 briefs, represents the sum of all briefs that each opinion had available to use.

TABLE 5:
The Frequency of the Court's Use of Amicus Briefs that Offer Unique and Repetitive Arguments, by the Type of Opinion

	Amicus Brief Overlap with the Corresponding Merit Brief			
Majority Opinions' Use of Amicus Briefs	All Unique	Mixture of Both	All Repetitive	*All Briefs*
None	49 (65.3%)	14 (8.3%)	7 (6.4%)	*70 (19.8%)*
Some	17 (22.7%)	121 (72.0%)	27 (24.5%)	*165 (46.7%)*
All	9 (12.0%)	33 (19.6%)	76 (69.1%)	*118 (33.4%)*
Subtotal	*75 (100%)*	*168 (100%)*	*110 (100%)*	*353 (100%)*
Dissenting Opinions' Use of Amicus Briefs				
None	48 (48.0%)	22 (10.3%)	21 (15.1%)	*91 (20.1%)*
Some	36 (36.0%)	135 (63.4%)	35 (25.2%)	*206 (45.6%)*
All	16 (16.0%)	56 (26.3%)	83 (59.7%)	*155 (34.3%)*
Subtotal	*100 (100%)*	*213 (100%)*	*139 (100%)*	*452 (100%)*
Concurring Opinions' Use				

of Amicus Briefs				
None	46 (65.7%)	60 (34.7%)	36 (32.1%)	*142 (40.0 %)*
Some	17 (24.3%)	93 (53.8%)	36 (32.1%)	*146 (41.1%)*
All	7 (11.7%)	20 (11.6%)	40 (35.7%)	*67 (18.9 %)*
Subtotal	*70 (100%)*	*173 (100%)*	*112 (100%)*	*355 (100%)*
Total	*245 (100%)*	*554 (100%)*	*361 (100%)*	*1160 (100%)*

Note: Again, the total, 1160 briefs, represents the sum of all briefs that each opinion had available to use. For the majority opinions, this number equals the sample size, 353, because there was only one majority opinion written in the case each amicus brief was submitted in.

TABLE 6:
The Frequency of the Court's Use of Amicus Briefs that Offer Unique and Repetitive Arguments, by Subject of the Case

	Amicus Brief Overlap with the Corresponding Merit Brief			
Court's Use of Amicus Briefs In Bill of Rights Cases	All Unique	Mixture of Both	All Repetitive	*All Briefs*
None	106 (61.6%)	52 (13.8%)	41 (16.9%)	*199 (25.1%)*
Some	52 (30.2%)	241 (63.9%)	50 (20.8%)	*343 (43.4%)*
All	14 (8.2%)	84 (22.3%)	151 (62.3%)	*249 (31.5%)*
Subtotal	*172 (100%)*	*377 (100%)*	*242 (100%)*	*791 (100%)*
Court's Use of Amicus Briefs In Statutory Cases				
None	7 (33.4%)	24 (29.6%)	14 (26.4%)	*45 (29.0%)*
Some	4 (19.0%)	46 (56.8%)	16 (30.2%)	*66 (42.6%)*
All	10 (47.6%)	11 (13.6%)	23 (43.4%)	*44 (28.4%)*
Subtotal	*21 (100%)*	*81 (100%)*	*53 (100%)*	*155 (100%)*
Court's Use of Amicus Briefs In Separation of Powers & Federalism Cases				

None	30 (62.5%)	20 (20.4%)	9 (5.0%)	*57 (26.6%)*
Some	12 (25.0%)	62 (65.3%)	32 (53.3%)	*110 (51.4%)*
All	10 (20.8%)	14 (14.3%)	25 (41.7%)	*47 (22.0%)*
Subtotal	*52 (100%)*	*96 (100%)*	*66 (100%)*	*214 (100%)*
Total	*245 (100%)*	*554 (100%)*	*361 (100%)*	*1160 (100%)*

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