

AMICUS PARTICIPATION IN THE U.S. COURTS OF APPEALS*

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ABSTRACT:

Though we know a great deal about amici curiae in the U.S. Supreme Court – who participates, why they participate, the nature of their arguments, and if their participation matters for case outcomes – we know very little about amici curiae in the U.S. courts of appeals. In this paper, we investigate the nature of group participation in court of appeals cases using data from the *Update to the U.S. Courts of Appeals Database (1997-2002)*, supplemented with extensive original data collection. We pay particular attention to the types of groups that participate, allowing us to shed new light on the plural versus elite nature of interest group participation in these courts. Our results indicate that a diverse assortment of interest groups utilize the amicus curiae brief in pursuit of their legal and political goals in the courts of appeals, indicating that organizational participation in these significant policymaking venues is most consistent with pluralist perspectives on organizational activity.

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In the past two decades, scholars have made remarkable inroads in our understanding of the U.S. courts of appeals. We now have a better understanding of the political nature of their staffing (e.g., Hartley and Holmes 1997; Binder and Maltzman 2002) and the historical transformation that the selection process underwent (e.g., Goldman 1997; Bell 2002; Scherer 2005). We also have a better grasp on the consequences of the organizational design of these courts (e.g., Cohen 2002; Kaheny, Haire, and Benesh 2008) and their position in the federal judicial hierarchy (e.g., Songer, Segal, and Cameron 1994; Benesh 2002). Further, we have a deeper appreciation for the ways in which judges on these courts make law (e.g., Klein 2002; Hume 2009a) and how they influence the behavior of other actors (e.g. Lindquist, Haire, and Songer 2007; Hume 2009b). Of course, all of the contemporary research devoted to the U.S. courts of appeals builds on earlier seminal work (e.g., Goldman 1966, 1975; Howard 1981; Songer 1982). But, at present, the characterization of the courts of appeals as “among the least comprehended of major federal institutions” (1981: xvii), is much less apt a description of the state of knowledge regarding these courts than it was when Howard penned those words almost thirty years ago.

This is certainly a welcome development given the opportunity the courts of appeals offer for advancing theory beyond what we know based on the exclusive focus on the singular court that is the U.S. Supreme Court. Further, it is a long overdue development in light of the importance of the courts of appeals as legal institutions in their own right. As Klein (2002) demonstrates, these courts make law in meaningful ways, particularly when the Supreme Court has not yet spoken. Moreover, for all practical purposes, the courts of appeals are the court of last resort given how few cases are disposed of by the Supreme Court and how many cases are disposed of by the courts of appeals (Martinek 2008). The state of knowledge regarding the courts of appeals has grown impressively but not uniformly: “there continue to be important areas about which we remain stubbornly and conspicuously uninformed” (Martinek 2006: 804). Though we know a great deal

about amici curiae in the Supreme Court – including the types of groups that file amicus briefs, why they participate, the nature of their arguments, and if amicus participation matters for case outcomes (e.g., Caldeira and Wright 1988, 1990; Collins and Solowiej 2007; Collins 2008) – what we know regarding amici curiae in the courts of appeals is more limited.

This is unfortunate for two reasons. First, though in percentage terms more amicus participation occurs in the Supreme Court, in terms of raw numbers more amicus participation occurs in the courts of appeals (McIntosh and Parker 1986; Martinek 2006; Collins and Martinek 2010). Accordingly, our understanding of amici curiae is extremely constrained if it is limited to what we know based on analyses of amici in the Supreme Court. Second, case history (which includes amicus participation in earlier stages) matters for understanding what transpires at the Supreme Court level (Hagle and Spaeth 2009). In other words, understanding amicus activity at the courts of appeals level is a prerequisite for understanding amicus activity at the Supreme Court level.

Moreover, analyzing organizational participation in the courts of appeals is important as it sheds light on the perennial debate regarding the pluralist or elitist nature of interest group activity in American politics. To the pluralists, a diverse assortment of interest groups participates in the political system, with no one group type (e.g., business interests) dominating the interest group choir (e.g., Truman 1951; Dahl 1961). Conversely, elitist views of interest group representation assert that institutional and corporate interests superabound, and further suggest that political institutions can be captured by powerful interests (e.g., Schattschneider 1960; Salisbury 1984; Schlozman 1984). The empirical evidence on point in the context of the courts is primarily focused on plural versus elite influences on the decision making of the Supreme Court (e.g., Kuersten and Jagemann 2001; Collins and Solowiej 2007). By examining amicus participation in the courts of appeals, we bring fresh evidence to bear that is capable of addressing whether interest group participation in the American courts is more consistent with a pluralist or elitist view of representation.

AMICUS CURIAE ACTIVITY IN THE COURTS OF APPEALS

Amicus curiae participation in the federal courts of appeals is governed by the Federal Rules of Appellate Procedure (FRAP). The requirements are much the same as those for participation as amici curiae in the Supreme Court. Permission from both of the direct parties to a suit is a prerequisite for filing an amicus brief, unless the potential amicus is the United States, a state, a territory, or the District of Columbia. As is the case in the Supreme Court, if one or the other or both of the direct parties to a case declines to grant permission, a potential amicus may seek the permission of the court. FRAP 29(b) states that the “motion must be accompanied by the proposed brief” In other words, the would-be amicus filer must prepare and submit the brief before permission to file the brief has been granted.

The courts have generally been quite profligate in granting permission to those seeking to file amicus curiae briefs (Tigar and Tigar 1999).¹ Some legal scholars argue in favor of a much more restrictive approach to granting permission to file amici curiae briefs because of their potential to overburden already overworked court of appeals judges or the threat they may pose to perceptions of fairness in the adversarial process (Harrington 2005). Some court of appeals judges, too, have taken a dim view of this practice. The sentiment expressed by Judge Richard Posner in *Voices for Choices v. Illinois Bell Telephone Company* (7th Cir. 2003) is an excellent example of judicial disapproval:

¹ There are, of course, exceptions to the usual generosity of the courts of appeals in granting permission. For example, the U.S. Court of Appeals for the Second Circuit has implemented the following rule: “The court will deny leave to file brief for an amicus curiae where, by reason of a relationship between a judge who would hear the proceeding and the amicus or counsel for the amicus, the filing of the brief would cause the recusal of the judge” (Interim Local Rule 29 of the Federal Rules of Appellate Practice, 2nd Cir.). The Ninth Circuit follows a similar practice with regard to the recusal of a member of an en banc court (see Circuit Advisory Committee Note to Rule 29-2).

The fact that powerful public officials or business or labor organizations support or oppose an appeal is a datum that is irrelevant to judicial decision making, except in a few cases, of which this is not one, in which the position of a nonparty has legal significance. And even in those cases the position can usually be conveyed by a letter or affidavit more concisely and authoritatively than by a brief (339 F.3d 542, at 545).²

With some minor variations, formal requirements with regard to the timing, format, and content of amicus briefs are generally consistent both across the circuits and in comparison to the Supreme Court. For example, each amicus curiae brief in a case is limited to no more than half the maximum length of the briefs for the direct parties to a case by FRAP 29(d). But the number of such briefs is limited only by the ability of amici to meet the procedural requirements for filing amicus briefs discussed above. In terms of their content, FRAP Rule 29(c) specifies that “the cover [of an amicus brief] must identify the party or parties supported and indicate whether the brief supports affirmance or reversal.” Notwithstanding this rule, in some cases amici file briefs that do not explicitly support either litigant. As is clear, none of these requirements are exorbitantly burdensome in and of themselves but securing the assistance of skilled legal talent to produce the kind of argumentation likely to be persuasive can be quite expensive. However, the available evidence suggests that filing an amicus brief is a much less expensive proposition than sponsoring a test case or filing suit as a direct party (see, e.g., Caldeira and Wright 1988; Smith and Terrell 1995; Wasby 1995; Moorman and Masteralexis 2001; Collins 2008).

Though the rules and norms governing amicus curiae activity in the courts of appeals largely mimic those in the Supreme Court, amicus briefs are filed far less frequently in the courts of appeals. For example, from 1990-1996, amicus briefs were filed in about 8% of court of appeals cases, compared to approximately 85% of cases in the Supreme Court (Martinek 2006). However, because

² See, also, *National Organization of Women v. Scheidler* (7th Cir. 2000) and *Ryan v. CFTC* (7th Cir. 1997).

the courts of appeals dispose of the vast majority of appellate cases in the United States (some 30,000 per year in recent years), in terms of the raw number of amicus briefs filed, the majority of amicus activity occurs in the circuit courts (Collins and Martinek 2010). Thus, it is clear that interest groups view the courts of appeals as significant policymaking venues and, as such, they target these venues in an attempt to have their preferred policy preferences engraved into law (Martinek 2006). And, indeed, recent research indicates that amici curiae are capable of shaping decision making in the courts of appeals (Collins and Martinek 2010). Despite the recent increase in attention devoted to understanding friends of the circuit courts,³ we do not yet have a firm grasp on the types of organizations that participate as amici curiae in the courts of appeals. Below, we hope to ameliorate this lacuna by exploring interest group participation in the major federal intermediate appellate courts.

THE DIVERSITY OF AMICI CURIAE IN THE U.S. COURTS OF APPEALS

To examine the participation of amici curiae in the courts of appeals, we begin with data extracted from the Kuersten and Haire (2007) database.⁴ This database contains a random sample of 30 courts of appeals cases from each circuit, with the exception of the Federal Circuit, from 1997 to 2002. It also contains a variable indicating whether any amicus briefs were filed in each case. Based on this information, we collected original data on how many amicus briefs were filed in each case

³ Though there is a plethora of studies that “control for” amicus participation (e.g., as an indicator of case salience), there is only limited scholarship that directly addresses interest groups in the context of the courts of appeals. Exceptions include the study by McIntosh and Parker (1986) that compares group participation in the courts of appeals and the Supreme Court and an unpublished paper evaluating interest group success in the circuits.

⁴ Formally, this database is an extension of the United States Courts of Appeals Data Base originally created by Donald R. Songer.

and the names of the entities that participated as amici curiae. We obtained information on the number of amicus briefs filed in each case from Westlaw, an on-line legal database, and PACER, the Public Access to Court Electronic Records dataset maintained by the Administrative Office of the United States Courts. Our final dataset contains 2,160 cases in which 305 amicus briefs were filed by 730 amici in 175 of these cases (8.1%).

We compiled information regarding the types of amici that participate in the courts of appeals from the websites of the organizations who filed the amicus briefs, supplemented by information contained in the amicus briefs themselves.⁵ We employ two classification schemes to obtain leverage over the diversity of amici in the courts of appeals. First, following the primary method employed in extant research (e.g., Caldeira and Wright 1990; Collins and Solowiej 2007; Collins 2008), we categorized amici based on their basic unit of membership. For example, we distinguish amicus briefs filed by individuals from those filed by institutional interests, such as corporations and governments. We also separate membership associations, which are comprised of individuals (e.g., public advocacy organizations), from peak associations, whose membership is made up of institutions.

There are eleven categories of amici based on this group typology. Individuals who are not connected to a particular organization are classified simply as *Individuals*, such as academics, adoptive

⁵ Note that we give no special attention to the amici listed first on an amicus brief since coalitional amici may list each amicus alphabetically or randomly on the briefs. In other words, all amici, whether they are listed first or last on the brief, are treated equally in our analyses. We relied on the organizations' websites in those instances in which we were unable to extract sufficient information regarding the identity of the amici from the amicus briefs themselves. Because PACER only contains the identity of each amicus, and because Westlaw does not contain all of the amicus briefs filed in the courts of appeals, the bulk of our data were obtained from websites.

parents, and lawyers. *Corporations* are amici identified by their corporate monikers, such as America Online, Pfizer, and United Parcel Service. Federal commissions, agencies, and the like are classified as the *United States*, such as the Equal Employment Opportunity Commission, the Securities and Exchange Commission, and the U.S. Department of Justice. *State Governments* is comprised of amicus briefs filed by state governments, including Alabama, Maine, and New York. Cities, counties, and other municipal governments are categorized as *Local Governments*, including Bakersfield, California, the Metropolitan Denver Water Authority, and Pierce County, Washington. *Public Advocacy Organizations* are those groups whose membership is comprised of individuals, regardless of their occupational status, and who seek primarily political benefits for their members. Public advocacy groups include the American Civil Liberties Union, the Citizens Committee for the Right to Keep and Bear Arms, and the Feminist Majority Foundation. Groups are classified as *Public Interest Law Firms* if they are non-profit legal organizations that provide attorneys to represent individuals in a manner consistent with the group's jurisprudential goals or file lawsuits themselves on behalf of their members. Public interest law firms include the American Civil Liberties Union Foundation, the Pacific Legal Foundation, and the Student Press Law Center.

Amici are considered *Trade Associations* if their membership is made up of individuals who share a common occupation, such as the American Bankers Association, the National Abortion Federation, and the Society of Professional Journalists. Groups are classified as *Unions* if they identify themselves as labor organizations representing individuals employed in a particular occupation, such as the Brotherhood of Maintenance of Way Employees, the International Brotherhood of Electrical Workers Local Number 969, and the United Mine Workers of America. Amici are classified as *Peak Associations* if their basic unit of membership is the organization. That is, peak associations do not have members in the ordinary sense, but rather are organizations whose members are other organizations and institutions. Peak associations include the American

Federation of Labor-Congress of Industrial Organizations, the Chamber of Commerce of the United States, and the New York State School Boards Association. Finally, organizations that do not fit into the categories described above are classified as *Other Organizations*, such as the Democratic National Committee, the Rosebud Sioux Tribe, and the University of Virginia Appellate Litigation Clinic.

Our second classification of amici focuses on the issue area in which each amicus is primarily involved in lobbying. Here, we are concerned not with each amicus's basic unit of membership, but rather with the content of the policies to which each amicus devotes its attention. We base our interest area typology coding on a modification of the Baumgartner and Jones (2009) policy agendas project. Those authors created a codebook that allows for the temporal comparison of issues at the forefront of American politics. We have adapted that coding to shed light on the policies with which each amicus is primarily concerned, such as whether the amicus focuses its energies on civil rights and liberties issues as opposed to, for example, banking and commerce.

There are ten categories of amici based on our interest area typology. *Banking, Commerce, and Macroeconomics* includes those amici who involve themselves primarily in economic matters, such as the American Iron and Steel Institute, the Center for the Moral Defense of Capitalism, and the National Association of Independent Insurers, as well as corporations who did not fit into one of the other categories described below (e.g., Bruce W. Eberle and Associates, C.E. Thurston and Sons, and Dow Jones and Company). *Civil Rights, Law, Crime, and Family* is composed of amici who focus primarily on issues of legal policy, including the rights of the disadvantaged in society, such as the American Civil Rights Union, the NOW Legal Defense and Education Fund, and the Wyoming Coalition Against Domestic Violence and Sexual Assault. *Education* includes amici whose primary issue focuses involves educational issues, such as the Council for Christian Colleges and Universities, the Council for Higher Education Accreditation, and the Massachusetts Association of School Superintendents.

Energy and Environment includes amici who are involved in energy, the environment, public lands, and water management, such as the American Petroleum Institute, the Corporate Environmental Enforcement Council, and the National Trust for Historic Preservation in the United States. *Health* is composed of amici who are primarily involved in medical and public health issues, such as the American Foundation for Aids Research, the Catholic Health Association of the United States, and Teva Pharmaceuticals.

Labor and Employment is made up of amici who are involved in labor and employment issues, such as the Council on Labor Law Equality, the National Federation of Federal Employees, and the Society for Human Resource Management. *Space, Science, and Technology* is comprised of amici who are involved in these technological fields, including the Association for Competitive Technology, the Chemical Manufacturers Association, and Union Carbide. *Transportation* includes those amici who are involved in transportation services, such as the Association of American Railroads, the American Automobile Manufacturers Association, and the Dana Corporation. *Governmental Entities* is composed of governmental units, such as the Hawaii Office of Consumer Protection, the City of Houston, and the United States of America. Finally, amici that do not fit into any of the categories described above are categorized as involving *Other Issue Areas*, such as Joint Sports Claimants, the United States Golf Association, and other miscellaneous amici.

***** Tables 1 and 2 About Here *****

The categorization of amici according to their group type classification appears in Table 1, while Table 2 presents an overview of amicus participation using the interest area typology. The first column in these tables (number of cases) indicates the number of cases in which each category of amici appeared on at least one amicus brief, for those cases with amicus participation. The second column (number of briefs) provides information relating the number of amicus briefs on which each category of amicus was present. The third column (number of amici) presents the number of amici

constituted by each category of amicus. The entries in these tables are the number of cases, briefs, and amici, respectively, while the entries in parentheses indicate within column percentages.

Beginning with Table 1, it is evident that a wide array of interest groups files amicus briefs in the courts of appeals. The most frequent amicus participants in term of the number of cases in which at least one amicus brief was filed are peak associations, trade associations, public advocacy organizations, the federal government, and public interest law firms. Each of these categories of amici participated in 20-30% of amicus cases (in which at least one amicus brief was filed). The least frequent amici in terms of the number of cases were unions, local governments, and other organizations. The second column reports the number of briefs on which at least one of the categories amicus appeared. Of the 305 amicus briefs filed, at least one public advocacy organization appeared on 23% of the briefs, at least one peak or trade association appeared on 21% of the briefs, and at least one public interest law firm was present on 16% of the briefs. Again, the least frequent participants were unions, local governments, and other organizations. Column three reveals how often each amicus type is represented, compared to all other categories of amici. Peak associations comprised 17% of all amici, followed by public advocacy organizations (16%), individuals (14%), trade associations (13%), and public interest law firms (10%). These figures suggest that these amicus types are especially likely to engage in coalitional activity by joining each other's amicus briefs.

Table 2 presents information relating to the interest area typology, thus providing evidence as to the policy areas represented by the amici. Regardless of whether one examines the number of cases in which each category of amici appears, the number of briefs, or the number of amici, a clear picture emerges. That is, bar none, the most frequent amici in the courts of appeals are concerned with civil rights, law, crime, and family. Indeed, these groups appeared in 43% of cases and on 41% of briefs, making up 44% of all amici. These groups are followed by governmental entities, which

make up 19% of all amici, and banking, commerce, and macroeconomic organizations, which represent 11% of all amici. Following these three group types, the other organizational issue areas are represented in more or less equal terms, with each category of amicus constituting less than 10% of the overall amici. That civil rights, law, crime, and family organizations are well represented does not come as surprise in light of Collins and Martinek's (2010) finding that most amicus briefs are filed in civil rights and liberties cases. Moreover, the fact that banking, commerce, and macroeconomics groups are frequent amici is consistent with those authors' evidence that economic activity and regulation cases involve the second highest percentage of amicus participation.

In large part, our motivation for the current project was to determine whether interest group participation in the courts of appeals is more consistent with a pluralist or elitist view of organizational activity. Of course, such a determination is hampered by the fact that there is no single point of reference available to gauge whether interest group participation is best described as pluralist or elitist (Baumgartner and Leech 1998: 117; Collins and Solowiej 2007: 967). Nonetheless, to obtain purchase over such a classification, we can turn to previous studies on amicus participation. In particular, Collins and Solowiej (2007) employed the same classification scheme utilized in Table 1 (see also Caldeira and Wright 1990) to classify interest group amicus participation in the 1995 Supreme Court term. They used these findings to reach the pluralist conclusion that "the Supreme Court is not wholly dominated by institutions or business interests, but instead is open to a broad array of pressure groups" (Collins and Solowiej 2007: 968). Comparing our findings to those authors' evidence, a similar picture emerges in the courts of appeals. That is, Table 1 reveals that business interests (i.e., corporations and trade associations) make up 20% of all amici, while public interest groups (i.e., public advocacy organizations and public interest law firms) comprise 26% of amici. Moreover, it is clear that an assortment of other interest group use the courts of appeals to pursue their policy goals, including governments, peak associations, and ad hoc associations of

individuals. Thus, our evidence indicates that, like the Supreme Court, organizational activity in the courts of appeals is best viewed through a pluralist lens. This stands in stark contrast to Washington lobbying more generally. For example, Schlozman (1984) examined organizational representation in the nation's capital, evincing that 70% of organizations were tied to business interests. She used this figure to conclude that "the pressure system is heavily weighted in favor of business organizations" (1984: 1011). As the above results make clear, this type of elitism is a far cry from the diversity of organizational activity in the courts of appeals.

Although we are the first to employ the particular interest group issue area classification scheme used in Table 2 to the study of interest groups in the federal courts, Epstein (1994) used a similar categorization of amici in her study of organizational activity in sixteen state courts of last resort. She found that, in 1990, business interests constituted 23% of amici, while civil rights, law, crime, and family organizations⁶ comprised 37% of amici. Using these figures, Epstein (1994) concluded that a wide range of organizations plays a role in state supreme court jurisprudence. Comparing those findings with ours, it is clear that an even more pluralist picture emerges in the courts of appeals. That is, business interests (i.e., banking, commerce, and macroeconomics) make up 11% of all amici in the courts of appeals, while civil rights, law, crime, and family organizations represent 44% of all amici. Government interests participate in roughly the same numbers in the courts of appeals (19%) and state courts of last resort (23%), as do education, health, and labor organizations. Thus, regardless of whether we rely on a group-type classification or an issue-based

⁶ Epstein (1994) did not use the exact same coding scheme applied here. To allow a comparison to our civil rights, law, crime, and family category, we combine Epstein's classification of civil liberties, legal, and religion as these interest categories fall within our civil rights, law, crime, and family typology.

categorization, it is clear that a diverse assortment of interests use the amicus curiae brief in the courts of appeals in pursuit of their legal and policy goals.

CONCLUSION

The motivation for this paper is a simple one: we wanted to know who participates as amici curiae in the U.S. courts of appeals. Though interest groups have more tools at their disposal than the amicus curiae brief, it is a particularly important tool – arguably the most important tool – when groups choose to participate in the judicial arena. These briefs influence success in the courts of appeals (Collins and Martinek 2010) and contribute meaningfully to the Supreme Court’s certiorari decisions (Hagle and Spaeth 2009). Given the consequential nature of amicus curiae briefs in the courts of appeals, it behooves us to have an understanding of who is choosing to participate using this vehicle in this venue. Knowing whether court of appeals amici are of a particular kind (e.g., businesses, individuals) or have particular substantive interests (e.g., civil rights, economic regulation) provides valuable information as to the plural versus elite nature of interest group participation in these courts. Certainly, disproportionate influence on policy outcomes does not require active participation by the select few (Winters and Page 2009). But, lobbying in the form of filing of amicus curiae briefs in the courts is one very potent mechanism used to pursue influence on policy.⁷ The findings we report here indicate that, whether amici are categorized on the basis of their

⁷ As Winters and Page (2009) observe in their discussion of oligarchic influence in American politics, electoral activities (e.g., campaign contributions), opinion shaping, and constitutional rules are also significant means for oligarchic interests to exert (disproportionate) influence on political outcomes. The case of constitutional rules is especially interesting vis-à-vis the competition among interests that plays out in the judiciary considering the role of the federal judiciary (including the courts of appeals) in interpreting and enforcing constitutional law. That process of interpretation inevitably

membership or on the basis of their substantive area of interest, the constellation of amici participating in the courts of appeals is marked by diversity and competition. That is, the “interest group chorus” in the circuits is better characterized as a cacophony of voices rather than as an ensemble dominated by the arias of a few soloists.

produces winners and losers not only in the short-term in the instant case but also in the long-term in the legal rules embedded in court rulings.

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Table 1. Amicus Curiae Participation in the U.S. Courts of Appeals by Group Type, 1997-2002

Amicus Type	Number of Cases	Number of Briefs	Number of Amici
Individuals	21 (12.0%)	24 (7.9%)	105 (14.4%)
Corporations	17 (9.7%)	18 (5.9%)	53 (7.3%)
United States	39 (22.3%)	41 (13.4%)	41 (5.6%)
State Governments	16 (9.1%)	18 (5.9%)	57 (7.8%)
Local Governments	6 (3.4%)	7 (2.3%)	42 (5.8%)
Public Advocacy Organizations	45 (25.7%)	71 (23.3%)	115 (15.8%)
Public Interest Law Firms	38 (21.7%)	48 (15.7%)	72 (9.9%)
Trade Associations	46 (26.3%)	63 (20.7%)	95 (13.0%)
Unions	8 (4.6%)	8 (2.6%)	18 (2.5%)
Peak Associations	52 (29.7%)	64 (21.0%)	126 (17.3%)
Other Organizations	5 (2.9%)	5 (1.6%)	6 (0.8%)
Totals	175	305	730

These data represent amicus curiae participation in a random sample of 2,160 U.S. Courts of Appeals cases from 1997-2002. 305 amicus curiae briefs were filed by 730 amici in 175 of these cases (8.1%). Numbers in parentheses indicate within column percentages. These percentages were calculated by dividing the total number of times each type of amicus appeared on a brief by the total number of cases with amicus participation (column one), the total number of amicus briefs filed (column two), or the total number of amici participating (column three).

Table 2. Amicus Curiae Participation in the U.S. Courts of Appeals by Interest Area, 1997-2002

Amicus Type	Number of Cases	Number of Briefs	Number of Amici
Banking, Commerce, and Macroeconomics	32 (18.3%)	41 (13.4%)	81 (11.1%)
Civil Rights, Law, Crime, and Family	76 (43.4%)	125 (41.0%)	323 (44.3%)
Education	11 (6.3%)	16 (5.2%)	21 (2.9%)
Energy and Environment	15 (8.6%)	20 (6.6%)	38 (5.2%)
Health	17 (9.7%)	20 (6.6%)	30 (4.1%)
Labor and Employment	12 (6.9%)	12 (3.9%)	18 (2.5%)
Space, Science, and Technology	14 (8.0%)	17 (5.6%)	30 (4.1%)
Transportation	9 (5.1%)	10 (3.3%)	18 (2.5%)
Governmental Entities	59 (33.7%)	66 (21.6%)	141 (19.3%)
Other Issue Areas	14 (8.0%)	14 (4.6%)	30 (4.1%)
Totals	175	305	730

These data represent amicus curiae participation in a random sample of 2,160 U.S. Courts of Appeals cases from 1997-2002. 305 amicus curiae briefs were filed by 730 amici in 175 of these cases (8.1%). Numbers in parentheses indicate within column percentages. These percentages were calculated by dividing the total number of times each type of amicus appeared on a brief by the total number of cases with amicus participation (column one), the total number of briefs filed (column two), or the total number of amici participating (column three).