

FRIENDS OF THE CIRCUITS: INTEREST GROUP INFLUENCE ON THE U.S. COURTS OF APPEALS*

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ABSTRACT

Though there is an extensive literature focused on the participation and efficacy of amici curiae in the U.S. Supreme Court, there is exceedingly little rigorous analysis of amici curiae in the U.S. Courts of Appeals. This deficit is troubling in several regards, including the fact that much more amicus activity occurs in the latter than in the former. In this paper, we contribute to the amelioration of this deficiency by systematically analyzing the influence of amicus curiae briefs on U.S. Court of Appeals decision making using Kuersten and Haire's (2007) *Update to the Appeals Court Data Base (1997-2002)* in conjunction with data gathered from Westlaw and PACER. Our empirical analysis reveals that amicus briefs filed in support of the appellant enhance the likelihood of that litigant's probability of success but that amicus briefs filed in support of the appellee have no effect on litigation outcomes. We conclude that amici can help level the playing field between appellants and appellees by serving to counter the propensity to affirm in the U.S. Courts of Appeals.

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Interest groups are everywhere in American politics (Bentley 1908) and they are armed with a superfluidity of tools for the pursuit of their goals in a plethora of venues.¹ They are, to borrow from Schattschneider (1960), ready, willing, and able to redefine the scope of the conflict as necessary in furtherance of their objectives.² Notwithstanding the image and the myth of the judiciary as above the common political fray, interest groups are no strangers to the courts (Kearney and Merrill 2000). In the judicial arena, groups seek to create conditions conducive to the achievement of their goals by influencing the selection of judges (Bell 2009), and further attempt to secure favorable outcomes through planned litigation³ (Wasby 1995) and the submission of amicus curiae briefs arguing for particular outcomes and legal rules (Collins 2008a). Though each of these mechanisms of participation in the courts has its appeal, amicus curiae briefs are arguably the most commonly used interest group tool in the judicial setting.⁴

As scholars have documented, amicus curiae participation in the U.S. Supreme Court is omnipresent, with almost every case in recent terms guaranteed to have at least one amicus brief (Collins 2008a: 47). And, as scholars have also demonstrated, amicus curiae briefs are not merely vehicles for the communication of neutral information to the courts by third parties but instead are put to work for the purposes of advocacy and persuasion (e.g., Collins 2008a; Kearney and Merrill

¹ There are, of course, some trade offs for groups choosing between and among tools and between and among venues for the deployment of those tools. It would be inaccurate, however, to see interest group choices in this regard as a Scylla-and-Charybdis situation. Rather, groups most often use more than one tool and operate in more than one venue in a complementary fashion (e.g., Holyoke 2003).

² Interest groups no doubt have both policy goals and organizational maintenance objectives. That is, they wish to achieve particular policy outcomes as well as retain old members and attract new members. Arguably, however, organizational maintenance represents a constraint on organized interests, rather than a goal. In other words, organizational maintenance is a proximate but not an ultimate goal (Collins 2008a: 28).

³ In particular, groups may choose to sponsor test cases by providing assistance to litigants or file suit as litigants themselves. Alternatively, they may seek intervenor status in particular cases. Though rarely granted, intervenor status places groups in an intermediate position; not quite direct litigants but not quite third parties either.

⁴ Interest groups are not the only actors to file amicus curiae briefs but they constitute the vast majority of amicus filers.

2000; Krislov 1963; Spriggs and Wahlbeck 1997).⁵ Unfortunately, however, what we currently know about amici curiae is almost entirely limited to the context of the U.S. Supreme Court. In this paper, we set ourselves to the task of contributing to the remediation of this regrettable state of affairs by examining the efficacy of amicus curiae activity in the U.S. Courts of Appeals. To do so, we use data extracted from Kuersten and Haire's (2007) *Update to the Appeals Court Data Base (1997-2002)*, supplemented with original data collected from Westlaw and PACER specifically for the task at hand. We are motivated to do so for three reasons.

First, the almost exclusive focus on amici curiae in the U.S. Supreme Court limits the generalizability of our currently understanding of interest group litigation strategies.⁶ To be sure, the U.S. Supreme Court is an enormously important court for a variety of reasons, not the least of which is the fact that it sits at the zenith of the American judicial system. But the uniqueness of the nation's highest court is a non-trivial and stubborn threat to the external validity of studies based solely on it. Second, while it is true that, in percentage terms, there is more amicus curiae participation in the U.S. Supreme Court than in the U.S. Courts of Appeals, in raw numbers the majority of amicus curiae participation occurs in the latter rather than the former. In fact, in recent years, the number of circuit court cases with amicus activity has exceeded the total number of cases (with or without amicus activity) heard by the Supreme Court! Hence, we cannot claim to understand amicus curiae activity without understanding amicus curiae activity in the U.S. Courts of Appeals. And, third, while the scholarship devoted to unraveling and understanding what were previously "among the least comprehended of major federal institutions" (Howard 1981: xvii) has

⁵ For interesting historical perspectives on the origination and operation of amicus curiae briefs, see Covey (1959), Harper and Etherington (1953), and Krislov (1963).

⁶ Recent notable exceptions to this myopic focus on the Supreme Court are Comparato (2003) and Songer, Kuersten, and Kaheny (2000), both of which analyze amici in state courts of last resort.

flourished in recent years,⁷ there are lingering aspects of decision making in the U.S. Courts of Appeals “about which we remain stubbornly and conspicuously uninformed” (Martinek 2006: 804). Amici curiae in the courts of appeals constitute one such deficiency.⁸ Accordingly, filling at least some of the gaps in our knowledge with regard to amici will simultaneously contribute to extending our understanding of these most important of American appellate courts.

This paper proceeds as follows: First, we provide some requisite background about amicus curiae participation in the U.S. Courts of Appeals and develop a theory of amicus influence on litigation success in these courts. Drawing on the relevant extant literature, we then develop a model with which to evaluate the ability of amici to influence case outcomes. Next, we subject our model to empirical verification and, finally, offer some thoughts about what our empirical results suggest about the efficacy of interest groups in the U.S. Courts of Appeals.

AMICI CURIAE IN THE U.S. COURTS OF APPEALS

The Federal Rules of Appellate Procedure govern the participation of amici curiae in the U.S. Courts of Appeals. The requirements are much the same as those for participation as amici curiae in the U.S. Supreme Court. Permission from 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 declines to grant permission, a potential amicus may seek the permission of the court.

⁷ For example, Benesh (2002) makes clear the consequences of the intermediate position in the judicial hierarchy occupied by the courts of appeals for understanding the choices made in those courts, while Cohen (2002) illuminates the consequences of their organizational structure. Meanwhile, Cross (2007) demonstrates the importance of the law for judicial decision making in these courts, while Hettinger, Lindquist, and Martinek (2006) show the powerful effect of ideology on judicial choice in the context of circuit decision making.

⁸ At worst, amici in the courts of appeals are ignored altogether. At best, amici are “controlled for” in empirical analyses of decision making. The exceptions include a study by McIntosh and Parker (1986) comparing group participation in the U.S. Supreme Court with that in the U.S. Courts of Appeals, an analysis by Martinek (2006) investigating the dynamics underlying the pattern of amicus participation in those courts, and a recent unpublished paper evaluating interest group success in the circuit courts (Sarver n.d.).

Notwithstanding the dim view taken by some court of appeals judges (and legal scholars), the courts have generally been quite profligate in granting permission (Harrington 2005; Tigar and Tigar 1999).⁹ 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 U.S. Supreme Court. None of these requirements are exorbitantly burdensome in and of themselves¹⁰ but securing the assistance of skilled legal talent to produce the kind of legal argumentation likely to be persuasive is unquestionably quite expensive.

Historically, the rate of participation by amici in the U.S. Courts of Appeals has grown from under 2% in the 1920s to over 6% in the 1990s (Martinek 2006: 807). This rate of participation positively pales in comparison to the rate of such participation in the Supreme Court (Collins 2008a: 47). As noted earlier, on average, almost every case heard by the nation's highest court is accompanied by a minimum of one amicus curiae brief. But, also as noted earlier, in terms of raw numbers there is more amicus activity in the circuit courts than in the Supreme Court. Regardless, since the costs of filing an amicus brief are generally comparable regardless of venue (i.e., Supreme Court or courts of appeals), it may be that the lower rate of participation in the circuit courts reflects the desire of interest groups to husband their resources for participation in the court with the final say. If so, this might redound to the detriment of interest groups who are financially capable of participation as amici in the circuit courts but decline to do so since there is evidence to suggest that amicus activity at the court of appeals level is associated with an enhanced likelihood of Supreme

⁹ The sentiment expressed by Judge Richard Posner in *Voices for Choices v. Illinois Bell Telephone Company* (2003) is an example: "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).

¹⁰ This is not to say they are cost-free, of course. But, 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; Moorman and Masteralexis 2001; Smith and Terrell 1995; Wasby 1995).

Court review (Johnson 2008). Hence, a group wishing to get a case heard by the nation’s high court would do well to participate (if possible) before the case ever lands in the pool of certiorari petitions.

Some empirical investigations of the choices circuit court judges make and the outcomes of court of appeals cases consider the presence of amici as a control variable. For example, in an analysis of lower court reversal on the part of the U.S. Courts of Appeals, Hettinger, Lindquist, and Martinek (2006: ch. 5) include the presence of amici as a control for case salience. Similarly, they incorporate an amicus variable in an analysis of the likelihood of separate opinions in the courts of appeals (Hettinger, Lindquist, and Martinek 2006: ch. 3).¹¹ Examples of studies centered specifically on amicus curiae activity in the U.S. Courts of Appeals are much more difficult to come by. In fact, the only recent systematic study of amicus curiae activity in the U.S. Courts of Appeals is the analysis by Martinek (2006).¹²

In that study, Martinek develops a model of amicus curiae participation in the courts of appeals derived from a consideration of the goals of potential amici. In particular, since potential amici should be interested in securing favorable policies as articulated in court opinions, they should be attracted to cases that afford the best opportunity for the creation of policy. And, the empirical evidence she brings to bear does suggest just that. Cases that are better policy-making vehicles (e.g., *en banc* cases; cases involving judicial review; cases in which the litigants are represented by counsel rather than *pro se*) are more likely to garner amicus participation. “The question remains, however,

¹¹ In the case of lower court reversal, Hettinger and her colleagues find that the presence of amici enhances the likelihood of lower court reversal. They suggest this empirical finding is due to the fact that court of appeals judges are likely to be more attentive—and hence more likely to discern reversible error—in salient cases. In the case of separate opinion writing, they find that amicus participation is associated with greater probabilities of observing both concurring and dissenting opinions. They attribute this finding to the following: “judges will be more likely to divert their scarce time and energy to producing separate opinions when a case is a salient one” (Hettinger, Lindquist, and Martinek 2006: 58). The particular inferences drawn in each case depend on the validity of amicus participation as a measure of salience, a premise with which some have taken vigorous issue (Collins 2008b).

¹² See footnote 8.

to as to their success in that regard,” that is, in securing favorable outcomes (Martinek 2006: 818). Here, we address that question and assess the efficacy of interest groups in influencing outcomes in the U.S. Courts of Appeals. Since, with rare exceptions, amici specify the litigant (appellant or appellee) for whom they are filing in support, we analyze the factors that structure the likelihood of the appellant (versus the appellee) winning.

We argue that amicus briefs supporting a litigant will increase that litigant’s probability of success because the amici provide the court of appeals panel with persuasive argumentation advocating for that litigant’s position (e.g., Collins 2008a). Because parties are constrained by page limitations in terms of the number of arguments they are able to advance, the addition of outside support—in the form of amicus curiae briefs—provides the decision making panel with supplemental argumentation supporting a particular outcome in the case (Tigar and Tigar 1999). Insofar as the persuasion forwarded by amici typically presents the panel with novel perspectives on the social and legal implications of the case (e.g., Collins 2008a: 63-71), we expect that court of appeals judges, in their capacities as both legal and political actors, will be especially receptive to the information presented by the amici.¹³

In the courts of appeals, amici present judges with a wide array of information, ranging from alternative interpretations of statutes or precedent to background information to the potential effects of the decision for individuals who are not parties to the case (e.g., Harrington 2005: 674). Far from neutral third parties, amici act as adversarial weapons (e.g., Krislov 1963), urging the courts to rule in favor of one party over another. This role of amici in persuading judges to rule in favor of a particular litigant is consistent with comments made by Third Circuit Court of Appeals Judge

¹³ For example, in their discussion of amicus briefs, Stern, Gressman, Shapiro, and Geller (2002: 659–660) highlight that “an association of psychologists might be better able to marshal facts pertaining to the general effects of severe criminal sentences or mandatory notice to the parents of a child attempting to obtain an abortion” than the nonspecialists that typically appear as litigants in legal controversies.

Samuel Alito in *Neonatology Associates v. Commissioner of Internal Revenue* (2002) regarding the value of amicus briefs:

[T]he fundamental assumption of our adversary system [is] that strong (but fair) advocacy on behalf of opposing views promotes sound decision making. Thus, an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court's friend (293 F.3d 128, at 131).

Because a large number of amicus briefs advocating for a particular litigant increases the amount of advocacy on behalf of that litigant, thus potentially persuading court of appeals judges to rule in favor of that litigant, we expect that the number of amicus briefs supporting a litigant will enhance that litigant's chances of obtaining a favorable outcome. Accordingly, we hypothesize that, as the number of amicus briefs filed for a litigant increases, so too will that litigant's probability of success.

DATA AND METHODOLOGY

To empirically test whether amicus curiae briefs shape decision making on the U.S. Courts of Appeals, we utilize data from 1997-2002, extracted from Kuersten and Haire's (2007) *Update to the Appeals Court Data Base (1997-2002)*. Like the original Songer (2007) database, this dataset contains a random sample of 30 cases per year from each of the courts of appeals, excluding the Federal Circuit. Because amicus briefs are filed in cases heard by both three-judge panels and *en banc* panels, we include both types of panels in our data.¹⁴ Our dependent variable measures the appellant party's success, scored 1 if the court of appeals panel ruled in favor of the appellant and 0 if the panel ruled in favor of the appellee.¹⁵ Given the dichotomous nature of the dependent variable, we estimate the

¹⁴ To be sure, *en banc* panels are unique (George 1999). However, since they have previously been demonstrated to be attractive policy-making mechanisms for potential amici, we opted to include them in the analysis. Further, we obtain substantively identical results when we exclude *en banc* panels.

¹⁵ More specifically, the dependent variable is scored 1 if the *Treatment* variable in Kuersten and Haire (2007) is equal to 0, 2, 3, 4, or 7 (that is, if the stay, petition, or motion was granted; if the lower court decision was modified and remanded; remanded; reversed; reversed and remanded; reversed and vacated; set aside and remanded; vacated; or vacated and remanded). The dependent variable is scored 0 if the *Treatment* variable is equal to 1, 8, or 11 (that is, if the petition was denied; the appeal was dismissed; if the lower court decision

model of appellant success using probit (Long 1997). To control for circuit-level and temporal effects, we employ robust standard errors, clustered on circuit-year (e.g., Hettinger, Lindquist, and Martinek 2006: 109).

To obtain data on the positions taken in court of appeals amicus briefs, we examined all cases in which Kuersten and Haire (2007) indicated an amicus brief was filed. We then used Westlaw, an on-line legal research source, and PACER, the Administrative Office of the U.S. Courts' Public Access to Court Electronic Records database, to identify whether each amicus brief supported the appellant, the appellee, neither party, or took a position that was indeterminable. Of the 228 amicus briefs in our dataset, we were able to identify the position taken in 88.1% of them. We excluded the 11.9% of amicus briefs in which the amici did not support either the appellant or the appellee and those briefs in which we were unable to identify the position taken by the amici.¹⁶ This percentage of excluded amicus briefs compares quite favorably to the 18% of excluded amicus briefs (i.e., those briefs in which the position was unable to be determined) common to studies that examine the influence of amici curiae on the U.S. Supreme Court (e.g., Collins 2008a; Gibson 1997; Kearney and Merrill 2000).

was affirmed; or affirmed, vacated [with no mention of reversal], and remanded). Because mixed outcomes result in a partial victory for both the appellant and the appellee (e.g., Lindquist, Martinek, and Hettinger 2007), we exclude cases in which the *Treatment* variable is equal to 5 or 6 (that is, those cases in which the lower court decision was affirmed in part and reversed in part; affirmed in part, reversed in part, and remanded; or affirmed in part, vacated in part, and remanded). Appendix Table 1 reports the results of alternative model specifications that treat mixed outcomes as appellant and appellee wins. We also exclude those instances in which the case was certified to another court and those in which the outcome was not ascertained, as neither of these outcomes is indicative of appellant or appellee success. Finally, we exclude cases in which the ideological direction of the decision (i.e., conservative or liberal) was indeterminable as this variable is utilized to measure the appellant's ideological congruence with the court of appeals panel (as discussed below).

¹⁶ For examples of amicus curiae briefs that support neither party, see the amicus brief of the Public Employment Relations Commission in *Kelly v. Borough of Sayreville* (1997) and the amicus brief of the Recording Industry Association of America and the National Music Publishers' Association in *Perfect 10 v. Amazon.com* (2007).

To investigate whether amicus briefs influence the likelihood of appellant success in the courts of appeals, we created two variables. *Appellant Amicus Briefs* is composed of the number of amicus briefs filed supporting the appellant. Similarly, *Appellee Amicus Briefs* constitutes the number of amicus briefs filed supporting the appellee. We expect the former variable will be positively signed, indicating that the appellant's likelihood of success increases when that litigant is supported by an increasing number of amicus curiae briefs. Conversely, we expect the latter variable will be negatively signed, indicating a decreased probability of appellant success when the appellee is supported by a relatively large number of amicus briefs.

While our primary purpose is to examine the influence of amicus curiae briefs on decision making in the courts of appeals, it is necessary to control for a variety of other factors that influence appellant success. Past research has established that the resources available to a litigant can play a major role in litigation success since high resource parties are privy to vast litigation resources, allowing them access to the best attorneys and the ability to perform extensive legal research (e.g., Galanter 1974; Songer, Sheehan, and Haire 1999). Following generally from Songer, Sheehan, and Haire (1999: 824), we control for each litigant's resources by adopting the following resource continuum: individuals = 1, businesses = 2, local governments=3, state governments = 4, and the federal government = 5.¹⁷ We expect that *Appellant Resources*, which represents the appellant's resource score, will be positively signed and *Appellee Resources*, which indicates the appellee's resource score, will be negatively signed.

We are also cognizant of the fact that the appellant's ideological compatibility with the court of appeals panel can potentially influence that panel's decision making. That is, all else equal, we expect that panel decision making will be heavily influenced by the ideological proclivities of the

¹⁷ Appellants and appellees not fitting into these categories were assigned the mean resource score for the appellant and appellee, respectively. As a check of the robustness of our results, we also estimated a model that combined local and state governments in the same category, the results of which are consistent with those reported here.

judges serving on the panel (e.g., Giles, Hettinger, and Peppers 2001; Hettinger, Lindquist, and Martinek 2006; Songer, Sheehan, and Haire 1999). To measure the ideology of each judge on the decision making panel, we use the Giles, Hettinger, and Peppers (2001) scores, which allow us to capture the dynamics of the federal judicial selection process. In the absence of senatorial courtesy (that is, when the home state senators do not share the president's party affiliation), each judge is assigned the president's Common Space score (Poole 1998). If one senator from the judge's home state delegation is a member of the president's political party, that judge takes on that senator's ideal point score. If both of the home state senators share the party affiliation of the president, that judge takes on the mean value of the two senators' Common Space scores. Because senatorial courtesy also plays a role in the selection process of district court judges, the ideologies of designated district court judges serving from district courts in the United States are calculated using this same method. Judges serving on the District of Columbia Circuit are given the ideal point score of the President who appointed them, as are designated judges serving on court of appeals panels from the Federal Circuit, International Court of Trade, and federal district courts located in U.S. territories and possessions.

To capture the appellant's ideological compatibility with the court of appeals panel, we adopted the method developed by Johnson, Wahlbeck, and Spriggs (2006). If the appellant advocates for a conservative outcome, this variable is the ideology score of the median panel judge multiplied by +1. If the appellant advocates for a liberal disposition, this variable is the median panel judge's ideal point multiplied by -1. Since positive ideal point scores are assigned to more conservative judges, higher values reflect increased proximity to the median judge on the court of appeals panel. Accordingly, we expect the *Appellant Ideological Congruence* variable will be positively signed.

Our final control variable accounts for the fact that court of appeals panels overwhelmingly affirm criminal cases and thus rule in favor the appellee (e.g., Guthrie and George 2005; Howard 1981; Songer, Sheehan, and Haire 1999).¹⁸ While criminal cases are of the utmost importance to the individual appellant, such cases generally raise legally inconsequential issues, but nonetheless must be heard as a function of the courts of appeals' mandatory dockets. To capture the courts of appeals' propensity to affirm criminal appeals, we include a *Criminal Appellant* variable in the model, scored 1 if the case was a criminal appeal filed by an individual appellant and 0 otherwise. We expect this variable will be negatively signed.

EMPIRICAL RESULTS

[Table 1 About Here]

Table 1 reports the results of the probit model that predicts appellant success in the courts of appeals. The model performs quite well, correctly predicting 73% of case outcomes, for a percent reduction in error of 8%. Because the parameter estimates associated with the probit model cannot be interpreted directly in terms of their substantive magnitude, Table 1 reports the marginal effects for each variable in the model. The marginal effects were calculated altering the variables of interest from 0 to 1 for dichotomous variables and from the mean to one standard deviation above the mean for continuous and count variables, while holding all other variables at their mean or modal values, as appropriate.

The central variables of interest measure the number of amicus curiae briefs filed for the appellant and the appellee. As Table 1 indicates, we find strong evidence that the number of amicus briefs supporting the appellant increases that litigant's probability of success. However, the number of amicus curiae briefs supporting the appellee does not play a statistically significant role in shaping

¹⁸ More generally, there is an affirmance effect at work in the U.S. Courts of Appeals that Guthrie and George (2005) tentatively suggest may be a function of a deference norm on the part of the courts of appeals and the tendency for experts to demonstrate high levels of inter-expert agreement.

litigation outcomes in the courts of appeals. In substantive terms, a one-standard-deviation increase in the number of amicus briefs filed for the appellant (zero to one) increases the likelihood of appellant success by 9%. The minimum to maximum change in this variable (zero to seven) improves the chances of observing the court of appeals panel reverse the lower court decision—ruling in favor of the appellant—by 57%, a rather strong effect. While we expected to find that amicus briefs supporting the appellee would increase the probability of appellee success, the null finding with respect to the *Appellee Amicus Briefs* variable is not altogether surprising. That is, because the courts of appeals overwhelmingly affirm lower court rulings (70% of the cases in the data correspond to affirmances), this finding suggests that an appellee’s probability of success is so high to begin with that the addition of outside persuasion in the form of amicus curiae briefs does not increase the appellee’s likelihood of victory. In this sense, the results indicating that only amicus briefs supporting the appellant play a statistically significant role in litigation success are particularly interesting as they suggest that amici supporting the appellant have the ability to level the playing field between the appellant and the appellee. That is, because the vast majority of courts of appeals’ decisions result in the affirmance of lower court decisions, it appears that appellant amicus briefs are capable of reducing the courts of appeals’ prodigious tendency to rule in favor of the appellee. Insofar as litigants might evaluate their probability of victory before appealing their cases (e.g., Clermont and Eisenberg 2001; Rathjen 1978; Songer, Cameron, and Segal 1995), it is apparent that the ability to procure the outside assistance of friends of courts (e.g., Ennis 1985: 604) can potentially play a major role in persuading a court of appeals panel that the lower court judge erred in his or her application of the law.

Turning now to the control variables, our results indicate that the resource status of the parties is important for understanding litigation success. For example, compared to a business, when a state government is the appellant, the probability of appellant success increases by 15%. Similarly,

as compared to a business, when the appellee is a state government, the appellee's chances of victory increase by 6%. Galanter (1974) would certainly not be surprised by these findings. We also find that the appellant's ideological proximity to the court of appeals panel influences litigation outcomes. A one-standard-deviation increase in the appellant's ideological proximity to the median judge on the panel, bringing the appellant closer to the median judge's ideology, enhances the appellant's likelihood of success by 7%. Given the extensive evidence regarding the influence of judicial ideology in the choice judges—including those on the courts of appeals—make (e.g., Hettinger, Lindquist, and Martinek 2006; Songer, Sheehan, and Haire 2000), this is hardly surprising. Finally, and also not surprising, our results indicate that court of appeals panels are 5% less likely to rule in favor of a criminal appellant, as compared to other types of petitioning litigants. Guilty or innocent, criminal appellants generally have very little to lose in appealing and potentially quite a bit to lose in not appealing. Regardless of the magnitude of their potential personal loss, however, criminal appellants are unlikely to bring much to the table when it comes to weighty legal issues, making their appeals the epitome of up-hill (perhaps unwinnable) battles.

CONCLUSIONS

Interest groups actively seek to etch their economic, legal, and political preferences into law through the filing of amicus curiae briefs. Extant research into the effectiveness of this strategy overwhelmingly focuses on the U.S. Supreme Court, ignoring the fact that organized interests more frequently file amicus briefs in the U.S. Courts of Appeals. This research investigated the influence of interest groups amicus curiae briefs on decision making in the courts of appeals from 1997-2002. Our empirical results indicate that amicus curiae briefs supporting the appellant enhance that litigant's likelihood of success. However, amicus briefs advocating for the appellee do not shape litigation outcomes in the courts of appeals. This suggests that, due to the courts of appeals' overwhelming tendency to affirm lower court decisions—thus ruling in favor of the appellee—

amicus briefs supporting the appellant are capable of leveling the playing field between appellants and appellees.

While this research represents one of the first attempts to empirically analyze the influence of amicus curiae briefs in the courts of appeals, it is important to recognize that we have examined only one form of amicus influence: litigation success. As interest groups have multiple goals in filing amicus curiae briefs (e.g., Collins 2008a: 28-35), future research might look to other avenues of influence. For example, one could examine the ability of interest groups to shape doctrinal and policy change in the courts of appeals. In addition, future research might examine how interest groups signal the policy importance of a case in their attempts to secure review by the U.S. Supreme Court (Hagle and Spaeth 2006). Given that the courts of appeals have become the *de facto* courts of last resort in the federal judicial system (Martinek 2009), the importance of understanding how interest groups shape these courts' decisions cannot be overstated. Accordingly, additional scholarship will surely contribute to our understanding of how organized interests utilize the judicial arena in their efforts to create legal, social, and economic change.

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Table 1. Probit Model of Appellant Success in the U.S. Courts of Appeals, 1997-2002

Predictor	Parameter Estimate	Marginal Effect
Appellant Amicus Briefs	.243 (.106)**	+9.2**
Appellee Amicus Briefs	-.037 (.084)	-1.3
Appellant Resources	.193 (.039)***	+7.2***
Appellee Resources	-.061 (.029)**	-4.2**
Appellant Ideological Congruence	.573 (.108)***	+7.2***
Criminal Appellant	-.135 (.105)*	-4.7*
Constant	-.645 (.135)***	
N	1,748	
Wald χ^2	134.4***	
Percent Correctly Predicted	73.1	
Percent Reduction in Error	8.2	

Dependent variable indicates appellant success (1 = appellant win, 0 = appellee win). Numbers in parentheses report robust standard errors, clustered on circuit-year. Marginal effects were calculated altering the variables of interest from 0 to 1 for dichotomous variables and from the mean to one standard deviation above the mean for continuous and count variables, holding all other variables constant at their mean or modal values, as appropriate. * $p < .10$, ** $p < .05$, *** $p < .01$ (all tests one-tailed).

Appendix Table 1. Alternative Probit Models of Appellant Success in the U.S. Courts of Appeals, 1997-2002

Predictor	Model I: Mixed Outcomes = Appellant Win	Model II: Mixed Outcomes = Appellee Win
Appellant Amicus Briefs	.246 (.096)***	.128 (.113)
Appellee Amicus Briefs	-.046 (.081)	.002 (.085)
Appellant Resources	.187 (.036)***	.168 (.040)***
Appellee Resources	-.051 (.029)**	-.061 (.026)**
Appellant Ideological Congruence	.518 (.102)***	.519 (.104)***
Criminal Appellant	-.131 (.089)*	-.127 (.109)
Constant	-.504 (.129)***	-.677 (.128)***
N	1,894	1,894
Wald χ^2	133.6***	132.1***
Percent Correctly Predicted	68.0	74.2
Percent Reduction in Error	7.9	4.7

Dependent variable indicates appellant success (1 = appellant win, 0 = appellee win). Numbers in parentheses report robust standard errors, clustered on circuit-year. In Model I, mixed outcomes (those cases affirmed in part and reversed in part; modified or affirmed and modified; affirmed in part, reversed in part, and remanded; and affirmed in part, vacated in part, and remanded) are treated as appellant victories. In Model II, mixed outcomes are treated as appellee victories. * p < .10, ** p < .05, *** p < .01 (all tests one-tailed).