REVIEW SECTION

Book Reviews

Friend of the Supreme Court: Interest Groups and Judicial Decision Making, by Paul M. Collins, Jr. New York: Oxford University Press, 2008. 234 pp.

reviewed by Kevin T. McGuire

I became convinced of the impact of amicus curiae briefs when the U.S. Supreme Court decided *Grutter v. Bollinger*, 539 U.S. 306 (2003), the challenge to the race-conscious admissions program at the University of Michigan's law school. To my surprise, the Court ruled that the program satisfied the stringent standards of strict scrutiny, holding not only that a diverse student body was a compelling state interest but also that using race as an admission criterion in seeking a critical mass of underrepresented minorities was the least restrictive means of doing so. Why, I wondered, would a largely conservative Court that had previously limited the state's use of race to remediating past discrimination make such liberal policy?

The answer, it seemed, was that various amici curiae convinced the otherwise skeptical justices that a racially diverse workforce was vital to major segments of American society. The majority placed particular reliance upon an amicus brief filed by former military leaders, who argued in support of such programs that the military "must train and educate a highly qualified, racially diverse officer corps in a racially diverse setting" (p. 331). The brief raised an issue that was perhaps not immediately obvious from the particulars of the case; if affirmative action were to fall, it might well undermine the capacity of the United States' armed forces. By underscoring the unanticipated consequences of limiting affirmative action, these amici almost certainly gave pause to members of Court—such as Justice O'Connor, the author of the *Grutter* opinion—who might otherwise have invalidated Michigan's program.

Paul Collins's splendid book *Friends of the Supreme Court* demonstrates that cases such as *Grutter* are hardly an exception. It presents a strong empirical case for the idea that amicus curiae briefs have a systematic effect on the justices' decision making. The theory that drives the analysis is simple: if amicus briefs provide the Supreme Court with information not contained within the parties' briefs, then they should increase the chances that otherwise ideologically oriented justices will see a case in a different light. The results should manifest themselves in both their votes and their opinions; amicus briefs should increase the variability of the justices' behavior, encouraging them to deviate from their preferences when casting votes on the merits and to write more concurring and dissenting opinions. In every context in which Collins conducts his analysis, he finds the justices responding to the presence—and in particular, the volume—of briefs amicus curiae.

The book begins with a useful history of the origins of the amicus brief and traces its transformation into a tool of advocacy by organized interests. It then offers a rich-

ly detailed portrait of the frequency of filings, categories of amici, and the types of arguments that they contain. Readers who are interested only in the impact of amicus briefs may be tempted to skim these early sections, but they contain a remarkable amount of detailed information that has previously gone uncollected.

Most of what is known about the demography of amici comes from the work of Gregory A. Caldeira and John R. Wright. Their work, which catalogues the identity of amici and the frequency with which they file, provides a rich portrait of the community of interests that lobby the justices as friends of the Court. For all its virtues, their work is cross-sectional in nature, revealing details of the field of filers at a given point in time. Building on their success, Collins expands upon their framework and presents longitudinal data on amici, tracking not only the increased frequency with which amicus briefs appear in the Court but also their relative importance across issue domains.

These data reveal that organized groups were especially interested in expressing their views in the federalism decisions of the Vinson and Warren Courts, while the Burger Court's business decisions were the most likely to attract amici curiae. More recent years, by contrast, show little variation; organized interests were present in nearly all of the cases on the Rehnquist Court's docket, regardless of issue domain. Although these amici vary a good deal in the policy areas that they target, they reveal surprisingly little variation in the positions that they take. Across a fifty-year time period, interest groups split nearly evenly between advocating liberal and conservative policy. Stated differently, despite the enormous swings over time in the policy preferences of the justices, in any given year, roughly half of the amicus briefs filed support the liberal side in the decisions on the merits; half support the conservative side.

In a close survey of a sample of briefs, Collins finds that they overwhelmingly contain information not contained in the briefs of the parties. What is more, much of that information involves citation to novel legal authorities. Despite frequently voiced concerns by the justices about the tendency for outside interests to pile on by filing what are essentially "me, too" briefs, Collins's data show a high degree of thoughtful innovation in the argumentation that they offer. This is an important finding, because it has implications for his explanatory models that follow.

Those models, which constitute the heart of the book, assess the impact of these amici. In chapter 4, he constructs a statistical model in which both the number of liberal amicus briefs filed in a case and the number of conservative briefs are used to predict the direction of the justices' votes, holding constant a number of rival explanations. As is often the case in the discussion of statistical interactions, Collins's discussion of the influence of amici for justices of different ideologies becomes somewhat belabored and confusing. He is much more successful, however, when he reverses the comparison and examines the impact of different levels of amicus participation for a prototypical conservative, moderate, and liberal justice. These estimated effects show very clearly that, while justices of different ideological stripes obviously begin from different starting points, they all respond to amici curiae in fairly uniform fashion. So, for

example, while liberal justices always vote more liberally than justices of more conservative orientation, all of the justices vote more liberally as the relative number of amicus briefs favors the liberal side of a case; no matter the justice, changes in the ideological weight of the briefs filed make that justice increasingly likely to see the case from that side's perspective and to vote accordingly.

In chapter 5, Collins turns his attention to the variability in the justices' voting. Using a fairly sophisticated empirical model, he asks, "Do amicus briefs make the justices' votes less predictable?" If amicus briefs can render a justice less likely to follow his or her ideological orientations, then increasing the number of amicus briefs should introduce greater variability in the direction of a justice's votes. The results make an exceedingly persuasive case that the justices are less prone to behave as one might predict, if one guessed based strictly on the basis of political preferences. With relatively few amici, the justices find it easier to follow their policy dispositions, but a larger number of amicus briefs introduce greater uncertainty as to the most sensible resolution of a case and, therefore, seem to give the justices considerable pause. As a result, the justices may not vote as dependably as they would in the absence of such competing voices.

Drawing from these results, Collins then posits that this variability should likewise be reflected in the opinion writing of the justices. Since amicus briefs increase the probability that a justice will view a case from a perspective different from the one framed by the litigants, support for those alternative views should be expressed in the opinions that they write or join. In the final empirical chapter, Collins highlights the linkage between amici curiae and dissensus on the Court by demonstrating that the fragmentation of opinions on the merits can be explained, at least in part, by briefs amicus curiae. His results show that concurring and dissenting opinions are tied directly to the arguments and ideas presented by outside interests. Seen in this way, the decline in consensus on the Court has not merely been the result of declining respect for a longstanding norm but likewise a consequence of a proliferation of information from an increasingly diverse set of competing stakeholders. The intuition is so appealing and the empirical test so obvious and straightforward that it is surprising that this connection has gone unexplored for so long.

Taken together, *Friends of the Court* provides overwhelming evidence that the justices respond in systematic ways to the participation of organized interests through amicus curiae briefs. Indeed, their lobbying of the Supreme Court by this method turns out to be far more consequential than previously believed.

Still, the precise mechanism by which amicus briefs affect the Court remains less clear. Collins casts his lot with "the indeterminacy of the law [that] provides judges with the opportunity to use the language of the law to achieve various ends" (p. 174). He may well be right, but the book does not provide direct empirical support to shore up that claim. It is not obvious that competing but plausible readings of the law are driving the results that he documents. Are amici successful because they make legal arguments that are objectively persuasive, or are they engaged in a kind of sophisticated heresthetic, maneuvering arguments along an ideological continuum to appeal to

the justices' policy preferences? *Friends of the Court* provides powerful evidence that amici are a leading force in the politics of the Court. Exactly how they exercise their influence is somewhat less certain. This is not so much a flaw of the book as it is a limitation of the evidence with which Collins is working.

Without question, this is one of the best books ever written on the role of organized interests in the U.S. Supreme Court. It is certainly the most comprehensive and compelling account of the impact of interest advocacy in the judiciary and will doubtless become the standard by which all subsequent scholarship will be measured. By marshalling an impressive array of data covering the entire length of the modern Court, Collins shows—in sophisticated yet accessible fashion—that interest groups underlie some of the most important facets of judicial policymaking. **jsj**

The Transformation of the Supreme Court of Canada: An Empirical Examination, by Donald R. Songer. Toronto: University of Toronto Press, 2008. 290 pp.

reviewed by Lori Hausegger

Donald Songer's *The Transformation of the Supreme Court of Canada* is a very detailed, data-rich volume offering interesting insight into the Supreme Court of Canada both before and after the passage of the Charter of Rights and Freedoms in 1982. Using the High Courts Judicial Database he created with Stacy Haynie, Reggie Sheehan, and Neal Tate, Songer undertakes empirical analyses of the Supreme Court's agenda, the litigants that appear before it, and the Court's decisions, providing the reader with dozens of tables and figures to peruse along the way. The book is thus aimed at filling in gaps in knowledge both about how the Court actually operates and about trends in its decision making. Songer suggests that four themes (which are discussed below) emerge from the study. However, the dominant theme is outlined in the book's title. Songer argues that the Supreme Court of Canada has been transformed as a result of the Charter of Rights and Freedoms, and he presents data throughout his book to illustrate this transformation.

Songer's goal is to provide the "most comprehensive empirical analysis to date of continuity and change on the Court," and he brings an impressive amount of data to the table to accomplish his goal (p. 6). Using such a large database to study the courts has not been the traditional approach in Canada. With some notable exceptions (for example, Peter McCormick's extensive body of work), Songer is probably correct in suggesting that much of the work on the Canadian Supreme Court over the past few decades has focused on doctrinal analysis or normative debates (see, for example, the extensive literature debating the proper role of the Court in the Charter era). While some of the younger Canadian judicial scholars are breaking away from these approaches, much of the more recent empirical work (such as Flemming, 2004; Ostberg and Wetstein, 2007) has been undertaken by American scholars. These studies—and Songer's—step back from the normative questions and, yet, provide compre-