

COUNTERACTIVE LOBBYING IN THE U.S. SUPREME COURT*

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ABSTRACT

Theories of counteractive lobbying assert that interest groups lobby for the purpose of neutralizing the advocacy efforts of their opponents. We examine the applicability of counteractive lobbying to explain interest group amicus curiae participation in the U.S. Supreme Court's decisions on the merits. Testing the counteractive lobbying hypotheses from 1953-2001, we provide strong support for the contention that interest groups engage in counteractive lobbying in the nation's highest court. Our findings indicate that, like the elected branches of government, the Supreme Court is properly viewed as a battleground for public policy in which organized interests clash in their attempts to etch their policy preferences into law.

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Writing in 1908, Arthur Bentley was among the first social scientists to recognize the significant roles organized interests play in American government. According to Bentley, to understand the political system, it is imperative to think in group terms. Any investigation into executive action, congressional legislation, or judicial decision making must be attentive to the roles of pressure groups, which utilize these venues in an attempt to etch their policy preferences into law (Bentley 1908). Although Bentley's seminal – and radical – contribution to the study of politics initially fell largely on deaf ears, the post-World War II era saw a rebirth of scholarship devoted to the scientific study of interest group activity in American government (e.g., Bauer, Pool, and Dexter 1963; Milbrath 1963; Schattschneider 1961; Truman 1951). We now know, for example, a great deal about the scope and bias of the pressure group system (e.g., Salisbury 1984; Schattschneider 1961; Scholzman 1984), how groups recruit and retain members (e.g., Olson 1965; Rothenberg 1988; Salisbury 1969), and the influence of pressure groups across the political system (e.g., Bauer, Pool, and Dexter 1963; McCubbins and Schwartz 1984; Vose 1959; Wright 2003). More recently, scholars have focused their attention to systematically investigating interest group lobbying decisions (e.g., Hansford 2004; Hojnacki and Kimball 1998; Holyoke 2003; Tauber 1998), frequently through the application of counteractive lobbying theory.

At its core, counteractive lobbying asserts that organizations will lobby for the purpose of negating the advocacy efforts of their opponents. Theories of counteractive lobbying, broadly defined, are ubiquitous in social science scholarship and have been utilized to explain interest group formation (e.g., Epstein 1985; Lowery et al. 2005; Truman 1951), why organizations lobby their legislative friends (Austen-Smith and Wright 1992, 1994, 1996; Baron 2006; Baumgartner and Leech 1996a, 1996b; Hojnacki and Kimball 1998; Sloof 1997), the decisions of organized interests to lobby federal bureaucracies (e.g., Ando 2001, 2003; McKay and Yackee 2007), groups' strategic choices to target particular venues (e.g., Gormley and Cymrot 2006; Holyoke 2003), and patterns of industry

campaign contributions (e.g., Hansen and Mitchell 2000; Leaver and Makris 2006; Mitchell, Hansen, and Jepsen 1997).¹ Our purpose here is to join this significant line of inquiry by exploring the applicability of counteractive lobbying to organizational amicus curiae² activity in the U.S. Supreme Court's decisions on the merits.

Investigating counteractive lobbying in the Supreme Court is noteworthy for a number of reasons. First, it is consistent with Bentley's (1908) affirmations regarding the import of viewing policy making institutions with a careful eye toward the role of interest groups.³ Scholars have long recognized the Supreme Court as a national policy maker (e.g., Dahl 1957) and extant research confirms the reality that the Supreme Court acts as a battleground for public policy in which organized interests marshal the language of the law in their pursuit of favorable outcomes (e.g., Tamanaha 2006). Indeed, it is well established that organized interests play an important role in

¹ In addition to these venue-specific analyses, a number of scholars have examined competitive lobbying as a more general phenomenon (e.g., Becker 1983; Browne 1990; Nownes 2000; Salisbury et al. 1987).

² Amicus curiae ("friend of the court") briefs are legal briefs filed by entities other than the direct parties to litigation (i.e., organized interests) that advocate for a particular disposition in the courts (e.g., Banner 2003; Krislov 1963). While amicus briefs can be filed at either the certiorari or merits stages, we focus our attention here on the latter since prior research reveals that there is little organizational participation and competition at the case selection stage (e.g., Caldeira and Wright 1988).

³ Following Schlozman and Tierney (1986: 11), we define interest groups as "the wide variety of organizations that seek joint ends through *political* action." Included in this definition are corporations, governments, public advocacy groups, public interest law firms, trade associations, and the like.

shaping the Court's agenda setting decisions (e.g., Caldeira and Wright 1988), the votes justices cast (e.g., Collins 2004, 2007; Kearney and Merrill 2000), and the content of the Court's opinions (e.g., Epstein and Kobyłka 1992; Samuels 2004). Given that groups play such a significant role in the Court, it is imperative that we address the motivations for organizational participation in the judiciary. Second, understanding the incentives for group activity in the Court is consequential in that it speaks to normative concerns about possible biases in the administration of justice. On the one hand, if there is little organizational competition in the judiciary, this suggests that judges hear from only one side of the debate. Provided that judges genuinely care about deciding cases consistent with the public interest, a lack of competition in the judiciary might induce judges to render decisions in a manner that follows from a biased, and sometimes erroneous, understanding of the public interest (Collins and Solowiej 2007). If, on the other hand, groups compete with one another for the purposes of counteracting the persuasion attempts of their opponents, this suggests that interest group participation can potentially improve the quality of judicial decision making by compelling judges to more seriously consider a broad range of perspectives on the public interest (e.g., Ginsburg 2001). In this sense, just as counteractive lobbying reduces a group's incentive to provide misleading information to legislators (Austen-Smith and Wright 1994), so too can group competition in the judiciary compel organizations to provide credible information to judges. Finally, this research is motivated by our desire to investigate the applicability of a general theory of organizational activity to venue overlooked by the counteractive lobbying literature. By examining counteractive lobbying in the Supreme Court, we hope to illustrate how theories developed with respect to a particular institution are translatable to other venues. This is a particularly compelling incentive given that social scientists have long been attentive to the desirability of developing generalizable theories that are applicable to numerous fields of inquiry.

We begin our analysis by discussing the application of counteractive lobbying to the Court, building on the seminal contribution made by Austen-Smith and Wright (1994). Recognizing that institutional differences exist with respect to organizational participation in the Court and Congress, we discuss the role of interest groups as *amici curiae*, paying careful attention to the context of group involvement in the Court. Next, we discuss our data and methodology, followed by an interpretation of our results. We close with a summary of our conclusions and provide a discussion of where future research in this area might head.

COUNTERACTIVE FRIENDS OF THE COURT

Counteractive lobbying occurs when groups lobby to neutralize their opponents' advocacy efforts. This phenomenon is evident even at the broadest level of the interest group system. Indeed, the notion that interests – whether active or latent – respond to the political activity of their opponents constitutes a key basis for Truman's (1951) disturbance theory for the formation of organized interests:

When a single association is formed, it serves to stabilize the relations among the participants in the institutionalized groups involved. At the same time, however, in the performance of its function it may cause disturbances in the equilibriums of other groups or accentuate cleavages among them. These are likely to evoke associations in turn to correct the secondary disturbances (1951: 59).

For example, many of the first American associations of employers, appearing in the late 1800s, were formed to minimize the perceived abuse of management by powerful labor unions. "From the standpoint of the most efficient organization of his business, the employer need[ed] to consider the employers' association as indispensable, either for dealing with or fighting the union" (Bonnett 1922: 17-18). Early conservative interest groups were reactionary in a similar manner, dedicated to specifically counteracting the causes and influence of progressive and suffragist associations (e.g., Epstein 1985: 24, 31).

In the late-1960s and early-1970s, a wave of conservative public interest law firms manifested themselves in clear response to the victories achieved by their liberal counterparts in the Supreme Court. Americans for Effective Law Enforcement (AELE) formed to counteract the success of liberal organizations, in particular the American Civil Liberties Union (ACLU). Witnessing the Court endorse the positions forwarded in the ACLU's amicus briefs in seminal criminal law cases such as *Mapp v. Ohio* (1961) and *Miranda v. Arizona* (1966), the AELE was organized to curtail the influence of its liberal adversaries by providing a voice to the law enforcement community in appellate courts (Epstein 1984: 89; Ivers and O'Connor 1987). Fred E. Inbau, the founder of AELE, articulated the groups' efforts to combat the ACLU concisely in noting that the organization's purpose was "not to put the ACLU out of business, (but) to make sure that the courts hear the law enforcement side of arguments" (quoted in Ivers and O'Connor 1987: 164). To do this, AELE specifically targets cases in which the ACLU and other liberal organizations support the criminal defendant (Epstein 1985: 94).

It is important to note that AELE is hardly the lone conservative force established to counterbalance liberal organizations' use of the courts. Indeed, after the explosion of liberal public interest groups in the 1960s and 1970s, this counteractive trend continued on a much larger scale in which a number of conservative public interest law firms were established, including the Pacific Legal Foundation in 1973 and Americans United for Life Legal Defense Fund in 1971. This was followed by an overall increase in conservative public interest groups in the 1980s (e.g., Berry 1997; Epstein 1984). These conservative organizations, many of which utilize the courts to achieve their goals, sprang up as a reaction to the threat they found inherent in the liberal organizations they perceived as wielding great influence in the American polity. Focusing on issues as diverse as the decline of family values, expanding rights of criminal defendants, and court-mandated access to

abortion, conservative organizations formed as part of a large-scale effort to counteract the influence of liberal organizations (Berry 1997).

Moving beyond explanations for interest group formation, Austen-Smith and Wright (1994, 1996; see also 1992) provided a seminal contribution to the study of counteractive lobbying by focusing on interest group participation in the Senate during the failed confirmation hearing of Robert Bork. In part, Austen-Smith and Wright's motivation for investigating counteractive lobbying was to determine why groups lobby legislators who are predisposed toward endorsing the groups' causes (1994: 25). These authors provided evidence that, when groups lobby their *ex ante* supporters, they do so in part to counteract the lobbying efforts of their opponents. In response to Austen-Smith and Wright's analysis of counteractive lobbying, Baumgartner and Leech (1996a, 1996b) presented a number of criticisms of Austen-Smith and Wright's application of counteractive lobbying, focused, among other things, on the myriad methods for group participation in the Senate and the sequence of group lobbying efforts. By removing counteractive lobbying from the congressional setting, and considering it instead in the Supreme Court, we are able to apply counteractive lobbying theory to an institution that strictly regulates the timing of interest group participation, tightly constrains the methods with which interest groups can interact with decision makers, and generally makes lobbying efforts transparent. Thus, by studying the general phenomena of counteractive lobbying in the Supreme Court, we bring new evidence to bear on the theory's applicability to organizational activity, while avoiding many of the errors Baumgartner and Leech (1996a, 1996b) contribute to Austen-Smith and Wright's analysis. To illustrate counteractive lobbying in the Supreme Court, we juxtapose interest group strategies in the judiciary with organizational activity in Congress.

In Congress, organizations have a multitude of decisions with regard to their lobbying efforts. While the initial decision involves the choice of whether to lobby, after this decision is made,

groups are then faced with a number of alternative strategies. Typically, groups will choose to engage in either direct or indirect lobbying, although many groups will employ both strategies. Groups opt to lobby indirectly to apply pressure to legislators via the grassroots lobbying of the groups' constituents (e.g., Kollman 1998). These strategies include using the media (e.g., holding press conferences, buying television or newspaper ads) and organizing their members to engage in, for example, letter writing campaigns or protests (Kollman 1998: 35; Schlozman and Tierney 1983). If groups choose to directly lobby Congress, they have a wide range of choices, ranging from contributing to electoral campaigns, testifying in front of committees, and contacting individual members of Congress to present them with relevant information and/or drafts of proposed legislation (e.g., Kollman 1998: 35; Schlozman and Tierney 1983).

The variety of tactics groups can employ in the judiciary is much more constrained. Most obviously, groups are forbidden from personally contacting the justices. Indeed, Thomas G. "Tommy the Cork" Corcoran's unsuccessful attempt to lobby Justice Black has become part of Supreme Court lore. When Corcoran entered Black's chambers to lobby the justice to grant a rehearing of *Utah Public Service Commission v. El Paso Natural Gas Co.* (1969), "Black was shocked. No one came to the Supreme Court to lobby, even to 'put in a good word' for a petitioner. The mere mention of a pending case at a cocktail party was forbidden" (Woodward and Armstrong 1979: 79-80). Similarly, when *New York Times* vice-president James "Scotty" Reston telephoned Chief Justice Burger in an attempt to discuss *New York Times v. United States* (1971), Burger quickly ended the conversation. Upon hearing of Reston's attempt to directly lobby Burger, Justice Harlan responded that "Reston was lucky not have been held in contempt" (Woodward and Armstrong 1979: 148). Thus, if groups want to lobby the Court, directly engaging the justices is out of the question. Instead, groups can only pursue one of three primary tactics: filing lawsuits, sponsoring cases that other bring into the courts, and filing amicus curiae briefs. Given the high costs associated with test cases and

case sponsorship, groups rely on these strategies far less frequently than the primary mechanism for lobbying the courts: the amicus curiae brief (e.g., Collins 2004, 2007; Kearney and Merrill 2000; Wasby 1995).⁴ Thus, when we discuss interest group lobbying in the Supreme Court, we are referring to organizations' attempts to persuade the justices to endorse policies favorable to their interests through the filing of amicus curiae briefs.⁵

It is well established that amicus curiae briefs are a staple of interest group activity in the Supreme Court (Banner 2003; Collins 2004, 2007; Kearney and Merrill 2000; Koshner 1998). In recent terms, more than 90% of cases disposed of on the merits in the Supreme Court were accompanied by amicus curiae briefs (e.g., Collins 2007). In part, this is a function of the Court's open door policy toward amicus briefs. Private amici, such as organized interests, must obtain the

⁴ Note that groups will occasionally orchestrate grassroots lobbying efforts targeted at the justices through mass-mailings of postcards or petitions (e.g., Harper and Etherington 1953). However, like attempting to directly contact a justice, these grassroots efforts are viewed as unethical and are ignored. For example, in response to such lobbying efforts in obscenity cases, Justice Black explained in *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General of Massachusetts* (1966) that "...we do not bow to them. I mention them only to emphasize [that their presence indicates] the lack of popular understanding of our constitutional system" (383 U.S. 413, at 428).

⁵ Due to the highly transparent procedures and limited methods for lobbying the Court, by focusing on this institution, we are able to partially overcome Baumgartner and Leech's (1996a) criticism that Austen-Smith and Wright (1994) failed to examine the wide array of tools at the disposal of interest groups in Congress, in that Austen-Smith and Wright focusing solely on direct contacts with the senator or the senator's staff (Austen-Smith and Wright 1994: 37).

permission of the parties to litigation to file amicus briefs, which is almost always granted.⁶ If one or both of the parties deny amici consent to file, the amici may then petition the Court for leave to file amicus briefs: these petitions are almost automatically granted, provided the briefs are filed in accordance with the Court's rules regarding the timing of the submission of amicus briefs (e.g., Bradley and Gardner 1985; O'Connor and Epstein 1983; Stern et al. 2002). Thus, procedurally speaking, there are effectively no barriers to interest group amicus participation in the Court. This state of affairs differs quite dramatically from Congress, where campaign donations and geographical ties to a legislator heavily govern access (e.g., Wright 2003). Moreover, interest group participation in the Supreme Court is distinct from Congress in that groups are unable to lobby particular justices. In this sense, while groups can choose to lobby any one of 535 legislators in Congress, groups cannot opt to lobby individual justices.⁷ Instead, by filing an amicus brief, a group lobbies the Court as a whole. Thus, groups do not have to evaluate whether a particular justice is a friend or enemy in making their lobbying decisions.

The Supreme Court's rules regarding the timing of amicus briefs also separate the Court from Congress and allow us to overcome Baumgartner and Leech's (1996a) criticism of Austen-Smith and Wright (1994) involving the timing of groups' lobbying decisions. That is, unlike Congress, in which groups may lobby anticipatorily, simultaneously, or responsively, the Court mandates a strict timeline for the filing of amicus briefs, structured by the litigant the amici support. For amici supporting the petitioner, Court rules require that the amicus briefs must be submitted

⁶ Note that entities of state governments and the federal government are not required to obtain permission from the parties to file amicus briefs.

⁷ Of course, this does not negate the possibility that groups might target particular justices in their amicus briefs (e.g., Kolbert 1989). Rather, the important point is that groups are unable to submit amicus briefs to particular justices, while withholding the briefs from other justices.

within 45 days of the date the cases was granted certiorari or probable jurisdiction was noted. Amici supporting the respondent then have 30 days from the date in which the petitioning party's briefs (and petitioner amicus briefs) have been submitted to file their briefs.⁸ The purpose of this rule is to give groups supporting the respondent (and the respondent party) ample time to review – and oppose – their adversaries' argumentation. Thus, lobbying in the Supreme Court is structured such that it allows us to investigate counteractive lobbying in a setting that not only takes into account the timing of groups' advocacy efforts, but also is organized in a manner that potentially promotes counteractive lobbying.

The Court's rules, allowing groups ample opportunity to lobby counteractively, are consistent with the fact that American law is based on the adversarial system (e.g., Kagan 2002). Under adversarialism, litigants and amici are required to act as their own advocates, presenting courts with information and evidence that promotes their particular policy preferences at the expense of their opponents. As such, the Supreme Court is a particularly appropriate venue to examine counteractive lobbying since it is organized around a system that values the airing of opposing positions as something beneficial for the creation of effective law. Concrete evidence of this fact is made apparent both by the rules regarding the timing of the submission of briefs and by the Court's rules directing amici to identify the party they supported in amicus briefs (Banner 2003:

⁸ These rules apply to the amicus briefs filed under the time frame under analysis here (1953-2001).

Recently, the Court amended Rule 37, requiring that amicus briefs filed after October 1, 2007 must be submitted within 7 days following the submission of the brief of the party the amici support. For example, under the previous version of the rules, amici supporting the petitioner had 45 days from the date in which the case was granted certiorari to submit the briefs. The amended rule grants amici supporting the petitioner 52 days to file their amicus briefs (provided the petitioning party files its brief at the 45 day deadline).

111). Indeed, the adversarial system is so engrained with respect to amicus practice that there was never a point in American law that amici acted solely as neutral advisors to the courts; instead, amicus briefs have always been exploited as an adversarial weapon (Banner 2003; Krislov 1963)

To sum, counteractive lobbying occurs when organized interests lobby to neutralize the advocacy efforts of their opponents. Interest groups are motivated to counteract the lobbying activity of their adversaries to maximize their opponents' influence over the fate of public policy. If political actors, such as judges, hear only from groups who represent one side of a given issue, this enhances the likelihood that those actors' decision making will be swayed toward the side of the debate that they are lobbied (e.g., Collins 2004, 2007; Kearney and Merrill 2000; Schattschneider 1960; Wright 2003). Recognizing this, opposing groups are invigorated to lobby the very actors who are lobbied by their opponents. This is done in an attempt to both negate their opponents' influence and to etch their own policy preferences into law. Groups recognize the reality that their influence on governmental policy relies heavily on competing truths – in that groups marshal facts and argumentation most favorable to their causes – and that, in practice, no single group or vision is capable of cornering the market on the truth (Berry 1997: 171; Tamanaha 2006). Since organizations comprehend that there are no objectively correct truths with respect to pressing debates involving public policy, they are motivated to respond to their opponents' lobbying efforts by following suit. Applying this theory to the Supreme Court, we expect that organized interests supporting the respondent party will file amicus briefs in response to the amicus activity of opponent organizations that support the petitioner. Thus:

Responsive Counteractive Lobbying Hypothesis: Organized interests supporting the respondent will respond to the number of amicus curiae briefs supporting the petitioning party. As the number of amicus briefs filed for the petitioner increases, so too will the number of amicus briefs filed for the respondent.

While most analyses of counteractive lobbying focus on the ability of groups to respond to their opponents' lobbying activity, the Court's rules afforded us the opportunity to evaluate the

extent to which groups engage in *anticipatory* counteractive lobbying (see also Hansen and Mitchell 2000; McKay and Yackee 2007; Mitchell, Hansen, and Jepsen 1997). Accordingly, we investigate whether the number of amicus briefs filed for the respondent influences the number of amicus briefs filed for the petitioning party. Since amicus briefs supporting the petitioner are filed prior to those briefs supporting the respondent, this offers us leverage over whether interest groups *anticipate* to the amicus activity of their opponents. That is, it allows us to examine counteractive lobbying in those circumstances under which groups are not yet aware that amicus briefs have been filed for the respondent.

Although groups who file briefs for the petitioning party are not privy to the briefs of the respondent amici, since they are not yet tendered to the Court, there is nonetheless reason to believe that petitioner amici are capable of anticipating their opponents' actions. Most obviously, groups can amass reasonable estimates of their opponents' participation through Supreme Court precedent. Since authoritative sources of Supreme Court opinions, such as *U.S. Reports*, catalog the positions and identity of amici, this provides a transparent and easily accessible record of allied and opponent amici who participated in previously decided cases. For example, Samuels (2004: 212) notes that the amici involved in abortion litigation were highly cognizant of both their allies and opponents and "participants in the abortion controversy were able to identify which amici might be most helpful or most damaging to their cause and they spent significant energies trying to either shore up or to undermine these briefs." Similarly, Kobylka (1987: 1076) reveals that the rise of feminist anti-pornography organizations and conservative decency groups motivated libertarian groups to step up their participation in obscenity litigation for the purposes of negating the claims of their adversaries; such counteractive lobbying can occur both in response to and in anticipation of an opponents' participation. In addition, amici are able to recognize the salience of a case to their own causes and to those of their adversaries. Indeed, even when an organization views a particular case as a less than

ideal vehicle for etching its policy preferences into law, that group still might file an amicus brief anticipating that its absence would go noticed by the justices, who might give more weight to the group's opponents who decide to file an amicus brief (e.g., McGuire 1993: 125; Wasby 1995: 226). In this sense, groups anticipate both their opponents' amicus activity and the justices' expectations of their own participation (Samuels 2004: 145). Lastly, Supreme Court rules, prohibiting the submission of reply briefs from amici, provide a substantial incentive for groups to engage in anticipatory counteractive lobbying. That is, because petitioner amici are not given the opportunity to respond to the arguments of their opponents, if they want to neutralize their opponents' advocacy efforts, they are forced to anticipate those arguments. One appellate practitioner corroborated this sentiment with no ambiguity in her discussion of efficacious amicus briefs by advising that, because the Court does not allow amici to file reply briefs, "It is therefore imperative that you anticipate your opposition's arguments in your brief and address them" (Arkin 2007: 44). Therefore:

Anticipatory Counteractive Lobbying Hypothesis: Organized interests supporting the petitioner will anticipate the number of amicus curiae briefs supporting the respondent party. As the number of amicus briefs filed for the respondent increases, so too will the number of amicus briefs filed for the petitioner.

DATA AND METHODOLOGY

To subject these counteractive lobbying hypotheses to empirical validation, we utilize the case as the unit of analysis.⁹ This allows us to investigate the extent to which: (1) respondent amici

⁹ We recognize that number of candidates can be utilized as the unit of analysis (e.g., Ando 2001, 2003; Austen-Smith and Wright 1996; Baumgartner and Leech 1996a; Gormley and Cymrot 2006; McKay and Yackee 2007; see also Hansford 2004; Martinek 2007: 813). Most obviously, we might employ the group-case dyad to investigate counteractive lobbying, by tying each interest group to each case decided by the Court. We rejected this approach for three reasons. First, this strategy is

react to the amicus activity of petitioner amici and, as a result, engage in responsive counteractive lobbying; and (2) petitioner amici anticipate the amicus activity of respondent amici by engaging in anticipatory counteractive lobbying. Since the Court's rules require that petitioner amicus briefs are filed prior to respondent amicus briefs, this provides an auspicious opportunity to evaluate counteractive lobbying in a setting that accounts for the timing of groups' lobbying efforts (Baumgartner and Leech 1996a). Rather than study a particular Supreme Court case, or a small subset of such cases, we provide a longitudinal analysis of group participation by analyzing all orally argued cases decided during the 1953-2001 terms, thus allowing us to avoid the more limited generalizability associated with case studies (Baumgartner and Leech 1996a: 531). The data on amicus activity come from Kearney and Merrill's (2000) amicus database for the 1953-1995 terms. Using the coding rules established by Kearney and Merrill (2000), we updated this database through the 2001 term. We then merged this dataset with Spaeth's (2003) database, allowing us to

limited in that there is a substantial amount of ambiguity as to the manner in which one appropriately identifies the universe of interest groups that might potentially participate as amicus curiae (Hansford 2004: 223). Second, using the group-case dyad is unsuitable because it assumes that every interest group is equally likely to file an amicus brief in every case. Finally, we forgo using this approach since it assumes that each group makes its decision to file an amicus brief independently of allied and opposing organizations (Austin-Smith and Wright 1996: 558). This ignores the fact that amicus activity might be orchestrated among a number of distinct organizations who work together in the pursuit of a common goal (e.g., Behuniak-Long 1991; Kolbert 1989; Moorman and Masteralexis 2001; Samuels 2004: 212; Wasby 1995: 234). Moreover, this approach is limited in that it assumes that groups file amicus briefs in response to a particular amicus on the other side of the controversy, rather than responding to the overall amount of amicus activity by opposition organizations.

incorporate information on the cases under analysis, which include all orally argued cases, identified using the case citation as the unit of analysis, decided during the 1953-2001 terms.¹⁰

Because we employ virtually identical model specifications to test the two counteractive lobbying hypotheses, we begin with a discussion of the model that evaluates responsive counteractive lobbying. In this model, our dependent variable is a count of the number of amicus briefs filed in support of the respondent (i.e., arguing for the affirmance of the lower court decision). Since our dependent variable is a count, and thus cannot take on negative values, ordinary least squares regression is inappropriate (e.g., Long and Freese 2006). Accordingly, we utilize a negative binomial regression model, which provides efficient and unbiased estimates that account for unobserved heterogeneity (dispersion) in the dependent variable.¹¹ To control for any possible

¹⁰ The data on amicus curiae briefs were collected on the basis of information obtained from the Reporter of Decisions as published in *U.S. Reports*. Because the Reporter only identifies the position advocated in an amicus brief if that position was distinguished in the conclusion section of the brief (Kearney and Merrill 2000), and because not all amicus briefs follow this convention, we were unable to identify the position advocated in 18% of amicus briefs and, as such, excluded these briefs. To ensure these excluded briefs would not bias the findings reported in this project, we analyzed a random sample of 256 amicus briefs coded as not having advocated for a particular disposition. Of those amicus briefs, 127 supported the petitioner (49.6%), 113 supported the respondent (44.1%), and 16 supported neither party (6.3%). T-tests, comparing these figures to the distribution of litigants supported in the universe of cases, failed to achieve statistical significance, indicating that the excluded amicus briefs are randomly dispersed in their support for petitioners and respondents (see also Collins 2004, 2007; Kearney and Merrill 2000).

¹¹ The negative binomial regression model (NBRM) differs from the most obvious alternative, the Poisson model, in that the NBRM does not assume that the variance is equal to the conditional

effects of model misspecification, we estimate the model using robust standard errors. Our key independent variable, *Petitioner Amicus Briefs*, is a count of the number of amicus briefs filed for the petitioner (i.e., arguing for a reversal of the lower court's decision). Consistent with the responsive counteractive lobbying hypothesis, we expect this variable will be positively signed, indicating that the number of respondent amicus briefs will increase as the number of amicus briefs filed for the petitioner increase.

While our central purpose is to evaluate the counteractive lobbying hypotheses, it is necessary to control for a variety of other factors that contribute more generally to amicus activity in the Supreme Court. We utilize five variables that capture factors related to the attractiveness of the case to organized interests. First, we control for the informational environment at the Court by including a *Solicitor General Invite* variable in the model, scored 1 if the Court invited the U.S. Solicitor General – the executive branch attorney who handles Supreme Court litigation – to file an amicus brief and 0 if the Court did not issue such an invitation.¹² When the Court invites the Solicitor

mean of the dependent variable. Instead, the NBRM includes a parameter estimate, α , that accounts for the unobserved heterogeneity among observations in the data. To test for the appropriateness of the NBRM vis-à-vis the Poisson model, we estimated a log-likelihood test for overdispersion in the data, which indicates that the NBRM is the more appropriate modeling strategy. When we use the Poisson model in place of the NBRM, we obtain substantively identical results.

¹² Invitations to the Solicitor General to file amicus briefs are almost exclusively made before the Court grants certiorari, thus preceding the ability of organizational amici to file amicus briefs for both the petitioner and respondent (e.g., Bailey and Maltzman 2005; Hansford 2004). In these invitations, the Court invites the Solicitor General to express the views of the United States, but does not specify whether the Solicitor General should support the petitioner, respondent, or neither

General to file an amicus brief, it sends an unambiguous signal that the Court is operating in an information poor environment (Hansford 2004: 221). As such, we expect interest groups will be attentive to this and, seeking to provide the justices with information regarding the correct application of the law in cases where the Court signals its desire for such input, will be increasingly likely to participate as amicus curiae. We expect this variable will be positively signed, indicating that the number of respondent amicus briefs will increase in cases in which the Court invited the Solicitor General to participate.

We also anticipate that a case's broad political salience will influence the number of amicus briefs filed for the respondent. In cases that have far-reaching policy importance, interest groups are increasingly likely to participate as amici in an attempt to etch their policy preferences into law. If successful, groups are enabled to claim credit for victories that have profound impacts on the American polity. To evaluate this consideration, we include a *Case Salience* variable in the model, scored 1 if the case appeared on the front page of the *New York Times* following the decision and 0 if it did not.¹³ We expect this variable will be positively signed.

We also believe that organized interests will be increasingly likely to participate as amici curiae in complex cases. In such cases, there is a substantial amount of uncertainty as to the correct application of the law as a result of numerous issues and legal provisions the justices must consider. As such, potential amici are likely to be attracted to these cases as the justices might find the party; that decision is left to the Solicitor General. We collected this data utilizing Lexis-Nexis, which contains the universe of invitations from the Court.

¹³ The data on this variable were collected by Epstein and Segal (2000) for the 1953-1995 terms and collected by the authors for the remaining terms. In the data under analysis, 20% of cases with amicus briefs were reported on the front page of the *Times*, compared to 9% of cases without amicus briefs.

information provided in the briefs particularly useful for creating efficacious law (e.g., Hansford 2004). We use two variables to capture a case's complexity. *Total Laws* reflects the number of legal provisions implicated by the case as identified in the Spaeth (2003) database. *Total Issues* is comprised of the number of issues raised in the case as identified in the Spaeth (2003) database. We expect these variables will be positively signed.

Following from the idea that interest groups are increasingly likely to participate as amici in cases that have broad societal importance, we hypothesize that the nature of the lawsuit will influence the number of respondent amicus briefs. When the Court is adjudicating a decision based on constitutional law, the Court's decision is final, save for a constitutional amendment overturning it. Conversely, when the Court is involved in statutory interpretation, its decision runs the risk of being overturned by Congress (e.g., Katzmann 1997; Segal 1997). Since statutory cases might face a congressional override, the Court's decisions in such cases are not necessarily final. Attentive to this, interest groups are less likely to file briefs in such cases, preferring to instead participate in cases that will have long lasting policy consequences (Hansford 2004). To examine this possibility, we include a *Statutory Case* variable in the model, scored 1 if the case involved statutory interpretation and 0 if the case involved a constitutional issue (Spaeth 2003). We expect this variable will be negatively signed.

We also believe interest groups will be particularly attracted to cases that involve the constitutionality of an act of Congress. In cases challenging congressional legislation, organized interests are likely to file amicus briefs to provide the justices with information regarding the implementation of the congressional law at issue as a result their monitoring activities (e.g., McCubbins and Schwartz 1984). Moreover, interest groups may be attracted to such cases since these cases are likely to implicate legislation interest groups shaped in Congress (e.g., Wright 2003). In this sense, groups might participate in the Court to protect gains they secured in Congress or, alternatively, to mount challenges against their opponents' congressional victories (Olson 1990). To

evaluate this possibility, we include a *Congressional Challenge* variable, scored 1 if the case implicates the constitutional or statutory interpretation of an act of Congress and 0 otherwise (Spaeth 2003). We expect this variable will be positively signed.¹⁴

Akin to the friendly lobbying that takes place in Congress (e.g., Bauer, Pool, and Dexter 1963; Hojnacki and Kimball 1998; Kollman 1997; Milbrath 1963), students of organizational activity in the judicial arena are attentive to the fact that interest groups might strategically file amicus briefs in cases they are predisposed towards winning (e.g., Collins 2004, 2007; Hansford 2004). In so doing, a group is able to illustrate to its members, patrons, and shareholders, not only that the organization is active on relevant policy matters, but is also achieving gains in the judiciary. In this sense, groups might be attracted to cases in which the Court is predisposed towards endorsing the groups' position(s) for the purposes of appearing efficacious. We include three variables in the model related to a case's perceived winnability to respondent amici. The first of these variables captures the ideological proximity between the Court and the respondent party. This variable is intended to account for the reality that the justices overwhelmingly render decisions that are consistent with their policy preferences (e.g., Segal and Spaeth 2002). To capture the ideological congruence between the respondent party and the Court, we utilize the Judicial Common Space scores, which provide ideal point estimates for the median member of the Court (Epstein et al. 2007), based on the Martin and Quinn (2002) scores. To derive our measure of *Court Ideological Congruence*, we adopt the method developed by Johnson, Wahlbeck, and Spriggs (2006). If the respondent party advocates a conservative outcome, this variable is the ideology score of the median justice multiplied by +1. If the respondent party advocates a liberal disposition, this variable is the

¹⁴ In the cases under analysis, 62% of challenges to congressional legislation involved constitutional interpretation, while the remaining 38% of decisions rested solely on statutory interpretation (Spaeth 2003).

median justice's ideal point multiplied by -1 . Since positive values on the Judicial Common Space are assigned to more conservative justices, higher values on this score reflect increased proximity to the median justice on the Supreme Court. If groups are increasingly likely to file amicus briefs when the Court is ideologically predisposed towards rendering a decision in their favor, we expect this variable will be positively signed, indicating that an increasing number of amicus briefs will be filed for the respondent when the Court is predisposed toward supporting that litigant's position.

In addition to the Court's ideology, the resources available to a litigant play an important role in shaping litigation success (e.g., Collins 2004, 2007; McGuire 1995). Such is the case because high resource litigants are better equipped than low resource parties to employ highly experienced advocates, perform extensive research, and develop reputations as credible information sources (Galanter 1974). To determine whether organized interests take advantage of the resources of the litigant they support, we include two variables in the model based on the following resource continuum: poor individuals = 1, minorities = 2, individuals = 3, unions/interest groups = 4, small businesses = 5, businesses = 6, corporations = 7, local governments = 8, state governments = 9, and the federal government = 10 (i.e., McGuire 1995; Collins 2004, 2007).¹⁵ *Petitioner Resources* represents the petitioner's resource score and *Respondent Resources* represents the respondent party's resource score. If groups file amicus briefs based on a case's winnability, we expect that the *Respondent Resources* variable will be positively signed, indicating that, when a respondent ranks high on the resource continuum, more amicus briefs will be filed supporting the respondent's position.

¹⁵ As an alternative to this resource continuum, we estimated models using a variety of other coding schemes, such as moving unions/interest groups up the resource scale, combining state and local governments into a single category, and grouping poor individuals, minorities, and individuals together. The results of those models remained consistent with the findings presented here.

Conversely, we expect that the *Petitioner Resources* variable will be negatively signed, indicating that fewer respondent briefs will be filed when the petitioner ranks high on the resource continuum.

The final variables in the model are intended to capture the fact that amicus briefs are more common in certain areas of the law and to account for the increase in amicus participation over time (e.g., Koshner 1998).¹⁶ To control for issue area effects, which capture the density of organizations within a policy area (e.g., Lowery and Gray 1995), we include four variables in the model, derived from the Spaeth (2003) database. *Civil Rights* is scored 1 if the case involves civil rights, due process, privacy, the First Amendment, and the rights of attorneys (which typically involve attorneys' free speech) and 0 otherwise. *Criminal Procedure* is scored 1 if the case involves the rights of the criminally accused and 0 otherwise. *Economics* is scored 1 if the case involves economic activity, federal taxation, or unions and 0 otherwise. *Federalism* is scored 1 if the case implicates federalism or interstate relations and 0 otherwise. Cases involving judicial power are the excluded category. To account for the increase in amicus participation over time, we include two variables in the model. *Time* is scored

¹⁶ We also ran a model that included variables capturing amici's ideological congruence with the median member of Congress and the President to evaluate whether amici are more likely to file amicus briefs when they are ideologically distant from the elected branches of government. We operationalized those variables akin to our *Court Ideological Congruence* variable discussed above by employing the Judicial Common Space scores for the median member of Congress and the President, respectively. Neither of those variables attained statistical significance and, as such, we exclude them from the results reported here.

such that 1953=1, 1954=2, etc. *Time Squared* is the square of the *Time* variable and is intended to model time as a quadratic function.¹⁷

To investigate whether organized interests anticipate the amicus activity of their opponents, we estimate a negative binomial regression model with the number of amicus briefs filed for the petitioner as the dependent variable. The key independent variable is the number of amicus briefs filed for the respondent (*Respondent Amicus Briefs*). To control for other factors related to the number of amicus briefs filed for the petitioner, we estimate the model with the same independent variables discussed above. Because the *Court Ideological Congruence* variable is scored to reflect the respondent's ideological proximity to the Court, we anticipate that this variable will be positively signed. We also expect that the variables capturing litigant resources will be signed in the reverse of our expectations with respect to Table 1 (the responsive counteractive lobbying model).

COUNTERACTIVE LOBBYING RESULTS

[Table 1 About Here]

Table 1 reports the results of the negative binomial regression model that predicts the number of amicus briefs filed for the respondent party. The key independent variable, *Petitioner Amicus Briefs*, serves to evaluate the extent to which respondent amici react to their opponents' amicus activity and thus engage in responsive counteractive lobbying. As this table makes clear, we find strong support for this counteractive lobbying hypothesis. In substantive terms, for every amicus brief filed in support of the petitioner party, the number of amicus briefs filed for the respondent increases by 17%. For example, if 12 briefs are filed by petitioner amici, we can expect to see the number of amicus briefs filed for the respondent increase by 205%. This provides

¹⁷ As an alternative to these variables, we also estimated the model including a dummy variable for each term in the data, save one, in addition using robust standard errors, clustered on term. The results of those alternative model specifications are consistent with the results reported here.

particularly compelling evidence that organized interests respond to the actions of their opponents and, seeking to counter their oppositions' influence on the Court, file their own amicus briefs. Since our results reveal that organizations file amicus briefs as a function of counteractive lobbying, this indicates that groups are able to alter the information environment in the Court by providing the justices with information regarding their own subjective interpretations as to the correct application of the law in a case, which run counter to those positions espoused by their opponents (e.g., Collins and Solowiej 2007). Potentially, this might improve the justices' ability to make efficacious law in that a group's ability to anticipate its opponents' participation provides a strong incentive for that group to provide the justices with credible information (e.g., Austin-Smith and Wright 1994). Indeed, Justice Ginsburg, who served as counsel for the liberal American Civil Liberties Union prior to her appointment to the bench, recognizes the benefits derived from organizational competitiveness in the judiciary in no uncertain terms in noting that:

Our system of justice works best when opposing positions are well represented and fully aired. I therefore greet the expansion of responsible public-interest lawyering on the "conservative" side as something good for the system, not a development to be deplored (2001: 8).

In addition to providing support for the responsive counteractive lobbying hypothesis, the model also reveals that factors related to the attractiveness of the case play an important role in predicting the number of amicus briefs filed for the respondent. First, it is clear that organized interests respond to the Court's signals that it is operating in an information poor environment, information obtained through the Court's invitations to the Solicitor General. When the Court invites the Solicitor General to file an amicus brief, the number of amicus briefs filed for the respondent party increase by 35%. Interest groups are also attracted to cases that have broad policy significance: compared to a relatively trivial dispute, in a salient case, the number of briefs filed for the respondent increases by 99%. This illuminates that organizations are attentive to a case's political

salience and make a concerted effort to influence the justices' decision making in these landmark cases. The number of legal provisions implicated in the case also motivates interest group participation. For each additional legal issue addressed by the Court, the number of amicus briefs filed for the respondent increases by 15%, corroborating our expectation that groups seek out complicated cases in which their expertise might be particularly valuable to the justices. However, we do not find a relationship between the number of issues implicated in the case and the number of briefs filed for the respondent. We do uncover some evidence that interest groups are more likely to participate in cases that involve constitutional, as opposed to statutory, interpretation (although $p = 0.11$). Compared to a statutory interpretation case, in a case involving the application of some aspect of the Constitution, there is a 6% increase in the number of amicus briefs filed for the respondent. Table 1 also indicates that organizations are particularly attracted to cases involving challenges to congressional legislation: we can expect an 11% increase in the number of amicus briefs supporting the respondent party in cases involving the adjudication of an act of Congress.¹⁸ This provides support for the idea that, since organizations play an important role in the legislative branch, they will often utilize the judicial branch in an attempt to defend their victories in Congress or to negate their opponents' victories in the legislative arena (e.g., Olson 1990).

¹⁸ It is important to note that this finding applies primarily to constitutional challenges to congressional legislation and exerts a lesser effect on statutory challenges. Such is the case because Table 1 reveals marginally statistically significant evidence that the number of amicus briefs filed for the respondent decreases in statutory, as compared to constitutional, cases. Since 38% of challenges to acts of Congress are statutory in their nature (Spaeth 2003), this variable must be interpreted with careful attention to the underlying reality that the Court hears both constitutional and statutory challenges to congressional legislation.

Our results with respect to factors related to the winnability of a case are particularly interesting. We fail to find evidence for our expectation that interest groups supporting the respondent will file an increasingly large number of amicus briefs before a Court that is ideologically predisposed toward endorsing the respondent's position. This suggests that groups lobby Courts that are both favorably disposed and unfavorably disposed towards supporting their positions (see also Collins 2004, 2007). In lobbying unfriendly Courts, it is clear that groups do so in part to counterbalance the lobbying efforts of their opponents. This is a significant finding in light of the voluminous amount of literature demonstrating that interest groups are more likely to lobby their friends, as opposed to their enemies, in Congress (e.g., Bauer, Pool, and Dexter 1963; Hojnacki and Kimball 1998; Kollman 1997; Milbrath 1963). This clearly indicates that theories of friendly lobbying, so ubiquitous in congressional scholarship, are likely inapplicable to the Supreme Court. In part, this is due to the number of access points available to interest groups in Congress vis-à-vis the Court. In the contemporary American system, organizations have 535 access points in the legislative area. Recognizing that geographical and monetary constraints influence the decision whom to lobby (e.g., Wright 2003), this reality still provides ample access points to target friendly legislators. Conversely, the increasingly long tenures of justices on the Supreme Court (e.g., Crowe and Karpowitz 2006), coupled with the difficulties associated with predicting vacancies on the bench, has resulted in a situation in which, if an organization wants to target a friendly Court, they might have to wait decades to do so. Indeed, the Court's stable nature, coupled with the common law tradition of *stare decisis*, contributes to the attractiveness of the Court as a venue for interest group lobbying, even for those groups who find the justices unfriendly to their causes. In this sense, even if an organization views the Court as a less than hospitable environment to exercise its influence, that group still might file an amicus brief on the off chance the justices will endorse its positions. As Wasby notes:

Judicial decisions, particularly Supreme Court rulings on constitutional matters, are difficult to dislodge. Thus a victory there is more permanent, decreasing uncertainty and stabilizing the environment, than one in Congress or in presidential administrations, which will be affected by election shifts (1995: 105).

The model fails to confirm our expectations with regard to the two other variables associated with the perceived winnability of a case (as such, we report two-tailed significance tests for these variables). First, the results indicate that amicus briefs filed for the respondent are not more prevalent when the respondent party ranks high on the resource continuum. In fact, we find just the opposite: for a one unit decrease in the respondent's position on the resource continuum, we can expect to see a 4% increase in the number of briefs filed for the respondent. For example, compared to the federal government, when a poor individual is the responding party, we can expect a 40% increase in the number of amicus briefs filed for the respondent. While inconsistent with the winnability argument, this finding can nonetheless be explained by organizations' willingness to file amicus briefs when they perceive that the respondent party might be incapable of marshalling the best arguments as a result of a lack of resources and/or expertise (e.g., Hansford 2004; Wasby 1995: 224). In other words, it appears that groups actively seek out those cases in which the justices might rely more on the persuasion forwarded in their amicus briefs due to an inability of the respondent party to convey relevant information. Second, divergent from our expectations, the results indicate that the number of amicus briefs supporting the respondent increase in tandem with the resources available to the petitioning party. This suggests that, rather than target cases based on their perceptions of a case's winnability, respondent amici are more likely to challenge high resource litigants, presumably in an attempt to negate the persuasion attempts forwarded by high status litigants, thus leveling the playing field (e.g., Songer, Kuersten, and Kaheny 2000). In substantive terms, for each one unit increase in the petitioning party's position on the resource continuum, we can expect to observe a 5% increase in the number of amicus briefs filed for the respondent.

The model also reveals that there exists significant differences in the number of amicus briefs filed for the respondent depending on the issue area implicated in the case. Compared to cases involving judicial power (the baseline category), we can expect to see 41% more amicus briefs filed for the respondent in federalism cases, 13% more in economics cases, 18% more in civil rights cases, and 44% fewer amicus briefs supporting the respondent in criminal disputes. We also find that the number of briefs filed for the respondent has increased over time, which is consistent with the rise in amicus participation since the 1950s (e.g., Collins 2007; Kearney and Merrill 2000; Koshner 1998).

[Table 2 About Here]

Table 2 reports the results of the negative binomial regression model that estimates the number of amicus briefs filed for the petitioning party, thus evaluating the validity of the anticipatory counteractive lobbying hypothesis. The results provide strong support for our contention that organized interests anticipate their oppositions' amicus activity by filing briefs supporting the petitioner. This indicates that, not only do groups respond to the participation of their opponents, but they also anticipate the briefs filed by their adversaries. In substantive terms, for each amicus brief filed for the respondent, the number of amicus briefs filed for the petitioner increases by 17%. For example, if 12 briefs are filed for the respondent, we can expect a 199% increase in the number of amicus briefs filed for the petitioner – an effect substantively identical to that of our responsive counteractive lobbying results. Thus, counteractive lobbying is applicable to organizational activity in the Supreme Court regardless of whether it is viewed as anticipatory or responsive, clearly supporting the contention that the Supreme Court operates as a policymaking institution in which organizations battle over the content of federal law (e.g., Tamanaha 2006).

The results of the other variables in Table 2 largely mimic those presented in Table 1, with one exception. That is, unlike respondent amici, the resources status of the opposing party does attenuate the number of amicus briefs filed for the petitioner. Table 2 indicates that the number of

amicus briefs filed for the petitioner decrease by 3% for each one unit increase in the respondent's position on the resource continuum. While statistically significant, the substantive effects of this variable are marginal, but nonetheless provide modest support that petitioner amici strategically target cases based on their perceptions of the case's winnability.

CONCLUSIONS

Our purpose in this paper was to evaluate the application of counteractive lobbying theory to explain organizational amicus curiae participation in the U.S. Supreme Court. We expected that, *ceteris paribus*, interest groups will respond to the lobbying efforts of their opponents and, seeking to counterbalance those efforts, will file amicus briefs providing the justices with their own perspectives as to the correct application of the law. The results of our 49-term analysis provide strong support for this contention, even after controlling for a host of other factors that contribute to organizational participation in the Supreme Court. In addition, we examined whether interest groups anticipate the amicus curiae activity of their opponents. Our results provide robust evidence that groups engage in this form of anticipatory counteractive lobbying. Taken as a whole, this research indicates that, like the elected branches of government, the judicial arena is appropriately viewed as a battleground for public policy in which organizations clash in an attempt to etch their policy preferences into law. This is consistent with Bentley's century-old perspective on American government:

There is no political process that is not a balancing of quantity against quantity. There is not a law that is passed that is not expression of force and force in tension. There is not a court decision or an executive act that is not the result of the same process (1908: 202).

In providing evidence for counteractive lobbying in the Supreme Court, this research corroborates the utility of applying generalizable theories of interest groups across a host of venues. Extant research on counteractive lobbying overwhelmingly focuses on explaining group participation in Congress (Austen-Smith and Wright 1992, 1994, 1996; Baron 2006; Baumgartner

and Leech 1996a, 1996b; Hojnacki and Kimball 1998; Sloof 1997). In investigating the application of this theory to explain group activity in the Supreme Court, we have provided an example of the theory's broad relevance. As such, we encourage other researchers to explore this theory in other political arenas. For example, one might investigate counteractive lobbying in the federal and state bureaucracies, lower federal and state courts, in addition examining whether this theory is capable of explaining patterns of political action committees' campaign contributions and interactions with White House liaisons. Future researchers might also examine counteractive lobbying in congressional agenda setting and during the Supreme Court's case selection process. Of course, it is important to note that one must pay close attention to the institutional features of interest group activity in each venue by accounting for the rules and norms regarding interest group participation in the venue under analysis.

It will also prove useful to examine how this type of interest group competition affects public policy outcomes and the decision making of political actors. Surely, not all bills, court cases, and bureaucratic rule making will necessarily involve counteractive lobbying. But, for those that do, this form of aggressive competition can potentially play a major role in the fate of public policy. Students of interest groups have long recognized that the number of allies and opponents of an organization can play a major role in the creation of public law (e.g., Bentley 1908; Schattschneider 1960; Truman 1951). By incorporating theories of counteractive lobbying into systematic research on the influence of interest groups, we are confident that much will be learned about the significant role organized interests play throughout the political system.

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Table 1. Negative Binomial Estimation of the Number of Amicus Curiae Briefs Filed for the Respondent in the U.S. Supreme Court, 1953-2001 Terms

Variable	Coefficient	Δ (%) ^a	Marginal Effect ^b
Responsive Counteractive Lobbying			
Petitioner Amicus Briefs [+]	.158 (.012)***	+17.1	+.101
Case Attractiveness			
Solicitor General Invite [+]	.301 (.108)***	+35.1	+.225
Case Salience [+]	.687 (.058)***	+98.8	+.632
Total Laws [+]	.143 (.053)***	+15.4	+.092
Total Issues [+]	.005 (.079)	n.s.	n.s.
Statutory Case [-]	-.063 (.052)	n.s.	n.s.
Congressional Challenge [+]	.103 (.060)**	+10.8	+.069
Winnability Factors			
Court Ideological Congruence [+]	-.008 (.183)	n.s.	n.s.
Petitioner Resources [-]	.049 (.009) [†]	+5.0	+.032
Respondent Resources [+]	-.045 (.010) [†]	-4.4	-.029
Issue Area Controls ^c			
Civil Rights	.164 (.070)***	+17.8	+.114
Criminal Procedure	-.576 (.079)***	-43.8	-.280
Economics	.121 (.074)*	+12.9	+.083
Federalism	.343 (.118)***	+40.9	+.262
Temporal Controls			
Time	.102 (.010)***	+10.8	+.066
Time Squared	-.0009 (.0002)***	-0.10	-.0006
Constant	-2.76 (.203)***		
α	.830 (.053)***		
Wald $\chi^2_{(df=17)}$	2,065.2***		
N	5,842		

Entries in parentheses are robust standard errors. The expected direction of the parameter estimates of the independent variables appear in brackets. * $p < .10$; ** $p < .05$; *** $p < .01$ (one-tailed tests); [†] $p < .01$ (two-tailed tests). n.s. = not significant.

^a Indicates percentage change in the number of amicus briefs filed for the respondent corresponding to a one-unit change in the independent variable

^b Indicates the marginal change in the expected count, holding all other variables at their mean or modal values.

^c Judicial power cases are the excluded category.

Table 2. Negative Binomial Estimation of the Number of Amicus Curiae Briefs Filed for the Petitioner in the U.S. Supreme Court, 1953-2001 Terms

Variable	Coefficient	Δ (%) ^a	Marginal Effect ^b
Anticipatory Counteractive Lobbying			
Respondent Amicus Briefs [+]	.153 (.009)***	+16.6	+.093
Case Attractiveness			
Solicitor General Invite [+]	.499 (.082)***	+64.7	+.392
Case Salience [+]	.593 (.054)***	+80.9	+.490
Total Laws [+]	.073 (.042)**	+7.6	+.044
Total Issues [+]	.091 (.087)	n.s.	n.s.
Statutory Case [-]	-.165 (.049)***	-15.2	-.092
Congressional Challenge [+]	.083 (.051)*	+8.7	+.053
Winnability Factors			
Court Ideological Congruence [-]	-.098 (.155)	n.s.	n.s.
Petitioner Resources [+]	-.055 (.008) [†]	-5.3	-.033
Respondent Resources [-]	-.028 (.008)***	-2.8	-.017
Issue Area Controls ^c			
Civil Rights	.257 (.074)***	+29.3	+.177
Criminal Procedure	-.281 (.080)***	-24.5	-.148
Economics	.305 (.076)***	+35.7	+.216
Federalism	.425 (.102)***	+52.9	+.321
Temporal Controls			
Time	.067 (.008)***	+6.9	+.041
Time Squared	-.0004 (.0001)***	-0.0	-.0002
Constant	-1.74 (.180)***		
α	.699 (.046)***		
Wald χ^2 (df = 17)	2,283.4***		
N	5,842		

Entries in parentheses are robust standard errors. The expected direction of the parameter estimates of the independent variables appear in brackets. * $p < .10$; ** $p < .05$; *** $p < .01$ (one-tailed tests); [†] $p < .01$ (two-tailed test). n.s. = not significant.

^a Indicates percentage change in the number of amicus briefs filed for the petitioner corresponding to a one-unit change in the independent variable

^b Indicates the marginal change in the expected count, holding all other variables at their mean or modal values.

^c Judicial power cases are the excluded category.