SELECTING INFLUENCE? THE SOLICITOR GENERAL AND THE SUPREME COURT

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ABSTRACT

Scholars have devoted a great deal of research to investigating the role and influence of the U.S. Solicitor General (SG) as amicus curiae in the Supreme Court. Yet, we know little about the SG's decision to file an amicus brief and how this relates to the SG's success on the merits. We fill this void by examining legal, political, and administrative factors that affect the SG's decision to participate as amicus curiae. We subject our hypotheses to empirical testing utilizing data on the 1953-1999 Supreme Court terms by linking the SG's decision to file an amicus brief to the SG's ultimate success on the merits, employing a Heckman-style selection model. We find that the SG's decision to file an amicus brief, and the SG's success on the merits, is influenced by legal, political, and administrative considerations, suggesting that the SG is best viewed through the incorporation of a variety of theoretical perspectives.

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Although the government of the United States is based on a separation of powers system, in which power is divided among the three branches of government, this does not denote that the branches operate in isolation from one another. Rather, it has long been recognized that a host of opportunities exist for inter-branch interactions. For example, scholars have investigated congressional control of the bureaucracy (e.g., Balla and Wright 2001), presidential influence on congressional agendas and legislation (e.g., Copeland 1983; Edwards and Wood 1999), the effectiveness of Presidents in appointing like-minded judges to the federal bench (e.g., Segal, Timpone, and Howard 2000), and the ability of Congress to constrain Supreme Court decision making (e.g., Epstein and Knight 1998). In addition to these avenues, students of judicial politics have focused a substantial amount of attention to examining the influence of the executive branch on the Supreme Court, which offers another rich opportunity to analyze inter-branch interactions. Indeed, it is well established that the Solicitor General (SG) – the primary litigator for the executive branch in the Supreme Court – is one of the most frequent and successful litigants and amicus curiae[1] participants in the nation's highest judicial arena (e.g., Bailey, Kamoie, and Maltzman 2005; Caldeira and Wright 1988; Caplan 1987; Deen, Ignagni, and Meernik 2001, 2003; Johnson 2003; Lindquist and Klein 2003; McGuire 1998; O'Connor 1983; Puro 1981; Salokar 1992; Scigliano 1971; Segal 1988). While scholars have reached a general consensus on this point, there has been virtually no attention devoted to the Solicitor General's decision to participate as a litigant or an amicus in the first place. Indeed, with the exception of treatments of the executive branch's decisions to appeal cases to the Supreme Court by Horowitz (1977), Yates (2002), and Zorn (2002), we have accumulated little systematic knowledge concerning why the SG decides to litigate in the Court (Deen, Ignagni, and Meernik 2003: 71). To remedy this state of affairs, we investigate the SG's

[1] Amicus curiae is Latin for "friend of the Court." Despite its literal translation suggesting neutrality, the term refers to entities that are not parties to a case, but believe that the case's disposition will affect them and, as such, advocate for a particular outcome in the Court.

decisions to participate as amicus curiae in the Supreme Court and subject our theoretical expectations to empirical scrutiny during the 1953-1999 terms of the Court.

Investigating the Solicitor General's amicus curiae strategies is significant for a number of reasons. First, political scientists have long recognized the importance of actor's agenda setting decisions. For example, we know a great deal about the Supreme Court's certiorari decisions (e.g., Caldeira and Wright 1988; Perry 1991) and why members of Congress (e.g., McLauchlan 2005; Solberg and Heberlig 2004) and organized interests (e.g., Hansford 2004) opt to file amicus curiae briefs. Given this, it is surprising that there has been little accumulated knowledge regarding the SG's decision to participate as amicus (cf. Meinhold and Shull 1998; Puro 1971; Salokar 1992). Moreover, of the research that does exist, none have attempted to link the SG's decision to file an amicus briefs to the SG's subsequent success on the merits. This is troubling because, if the SG selects cases based in part on his[2] estimate of whether the Court will endorse his position, this suggests that scholars have likely overstated the influence of the SG on the Court. Simply put, absent an understanding of the SG's decision to file an amicus brief in the first place, we cannot fully comprehend the SG's influence in the Court. Second, understanding the SG's motivations for filing amicus briefs is important precisely because of the extraordinarily high levels of success he enjoys in the Court. For example, Deen, Ignagni, and Meernik (2003) report success rates as amicus ranging from 66% (Carter) to 88% (Johnson). Since the Court overwhelmingly endorses the positions advocated by the SG, this indicates that, through filing an amicus brief, the SG alters the litigation environment at the Court, tipping the scales of justice toward the litigant he supports. Thus, it is important to understand the SG's amicus strategies in order to more fully recognize the complex nature of litigation in the Court. Third, it is imperative to comprehend the SG's decisions to participate as amicus since this litigation strategy affords Presidents the opportunity to further the

[2] "His" is used because Presidents have yet to appoint a female Solicitor General.

administration's agenda outside of the elected branches of government. This is particularly significant because, if the SG is successful as an amicus, this provides Presidents the ability to influence public policy long after they leave the White House given that Supreme Court precedents are difficult to dislodge (Wasby 1995: 105). Finally, by investigating the SG's amicus strategies, a more complete picture of executive branch litigation is revealed. Prior research on the SG focuses on two roles: the SG as an agent of the Court and as an agent of the President. We introduce a third perspective on the SG by illustrating how bureaucratic considerations, in addition to legal and political factors, shape the decision to file an amicus brief.

We begin with a discussion of the options presented to the SG once the Court has agreed to hear a case. Next, we present our theory of the factors that contribute to the SG's decision to file an amicus brief. By integrating legal, political, and administrative considerations, we illustrate that a host of elements contribute to the SG's amicus strategies in the Court. We then operationalize the variables derived from our hypotheses and subject them to empirical testing by employing a Heckman-style selection model that links the SG's decision to participate as amicus to his subsequent success in the Court. We conclude with a brief discussion of the implications of our findings, as well as suggestions for further research.

THE SOLICITOR GENERAL BEFORE THE SUPREME COURT

The Solicitor General can participate before the Supreme Court in one of two primary ways: as a litigant or an amicus curiae.[3] During the 1953-1999 terms, the SG participated as a litigant in almost 40% of the Court's cases, while the SG filed an amicus brief, either by invitation of the Court or on his own accord, in almost 20% of cases.[4] An amicus brief filed by the SG concerning the Court's decisions on the merits arrives at the Court in one of two ways. First, like other entities with

[3] In addition to these principal mechanisms for participation, the SG can participate in the Court as an intervenor under 28 U.S.C. §2403(a) and does so on rare occasions (Stern et al. 2002: 388).
[4] The data from which we derive these percentages are discussed in the Data and Methodology section.

an interest in the Court's jurisprudence, the SG may file an amicus brief at his own discretion. However, unlike private amici, the SG is not required to obtain permission from the parties to litigation to file an amicus brief. As such, procedurally speaking, the SG faces no barriers to filing an amicus brief. Through these discretionary amicus filings, the SG performs a dual role. First, as an agent of the bench, the SG provides the justices with information regarding the correct application of the law in a case (e.g., Caplan 1987; Scigliano 1971). Second, as an agent of the President, the SG advances the policy goals of the President he represents through the positions he advocates before the Court (e.g., Bailey, Kamoie, and Maltzman 2005; Deen, Ignagni, and Meernik 2003). During the 1953-1999 terms, the SG filed amicus briefs at his own discretion in 24.1% of the Court's cases in which he did not represent the federal government as a direct party to litigation, comprising almost 15% of the Court's docket. These discretionary amicus filings constitute a major means of participation for the SG in the Court, second only to directly representing the executive branch as a party to litigation.

Alternatively, the SG may participate as amicus curiae by invitation from the Court. Such invitations are very much unique to the SG as they are rarely bestowed upon other amici. As a former staff member in the SG's Office noted, such a request "is not an invitation. It's an invitation from the king. You don't turn it down" (Salokar 1992: 143). Given this, when the SG participates as amicus at the request of the Court it is not truly by his own discretion. Instead such invitations might best be viewed as mandatory amicus filings. During the 1953-1999 terms, the SG participated as amicus by invitation of the Court in 6.4% of the Court's cases where he did not represent the federal government as a direct party to litigation, comprising almost 4% of the Court's docket.

THE SOLICITOR GENERAL'S DECISIONS TO FILE AMICUS CURIAE BRIEFS

Provided that the Court did not invite the SG to file an amicus brief, the SG has considerable discretion with regard to the cases he briefs as amicus curiae (O'Connor 1983). Below,

we present our theoretical expectations for why the SG will choose to file an amicus curiae brief. Consistent with recent research (e.g., Bailey, Kamoie, and Maltzman 2005; Deen, Ignagni, and Meernik 2003; Zorn 2002), we do not believe that the SG's decisions are solely motivated by *either* legal or political factors. Instead, it is our perspective that *both* legal and political factors shape the SG's decision making. In addition, we also posit that administrative factors will influence the SG's decision to file an amicus brief. A discussion of the legal, political, and administrative determinants we hypothesize will influence the SG's amicus strategies in the Court follows.

LEGAL FACTORS

The traditional view of the Solicitor General in the Supreme Court can be generally construed of as legalistic in nature, viewing the SG as an agent of the bench (e.g., Caplan 1987; Scigliano 1971). In this mode, rather than merely representing the President, the SG provides the justices with unbiased information that enables the Court to render legally sound decisions (Salokar 1992: 22). Statements made by a former SG to Puro (1971: 130) corroborate this perspective:

> We have a role in the administration of justice. However, we are not judges; we are interested in the sound development of law and not just winning a case. The Solicitor General must be fair, broad-minded and not just out to win cases. …It is our responsibility to say that even the best arguments would be no good. The Supreme Court respects our role and it is a mutual activity.

This outlook corresponds to the unique facets of the SG's Office: he is the only federal official required to be "learned in the law" and is one of only two federal officials (the other being the Vice President), who maintain formal offices in two branches of government (Waxman 1998).

From this point of view, the SG is assumed to have genuine concerns about providing the justices with information concerning the Court's best interests, particularly in relation to the development of legal doctrine (e.g., Kearney and Merrill 2000). As such, it is expected that the SG will seek out cases with a careful eye toward resolving confusion as a result of his dedication to the advancement of law (Salokar 1992: 22). Following from this, we expect the SG to participate in cases

in which the disposition of a case in the lower court(s) is ambiguous. For example, when inter-circuit conflict exists or a lower court decision was accompanied by dissenting opinions, this increases the uncertainty surrounding the correct application of the law for the justices, thus suggesting that the case is legally ambiguous. If the SG is concerned with the Court's development of legal doctrine in such cases, he will likely view these stimuli as a signal that his expertise will be useful to the justices.

H1: The Solicitor General is more likely to file an amicus curiae brief in a legally ambiguous case.

In addition, we hypothesize that the SG will pay particular attention to where the lower court decision originated. Under the view of the SG as an agent of the bench, we propose that the SG will be especially attracted to cases appealed from federal courts or administrative agencies of the federal government, as opposed to state courts of last resort. In his capacity as the "Tenth Justice" (Caplan 1987), the SG is expected to promote the coherency of the law by targeting cases with wide ranging implications. Since cases appealed from state courts of last resort are only binding on the state jurisdictions from which they emanate, this creates an incentive for the SG to participate in cases with greater breadth in terms of the constituencies they impact. Indeed, Puro (1971:138) identifies these cases as particularly worthy of the SG's attention since they more closely parallel the public interest as compared to cases appealed from state courts. An assistant to the SG confirms this expectation:

> The cases in which the government had a direct interest usually concern the administration of federal acts, e.g., National Labor Relations Act. There are many cases like that. In cases concerning a federal statute administered by an agency or the Department of Justice it is important for the United States to present to the Supreme Court what the act meant or means (quoted in Puro 1971: 140).

Moreover, the SG does not necessarily have to make such decisions in a vacuum. This is the case because administrative agencies will often communicate to the SG the desirability of expressing the government's viewpoint as a means to ensure that the agency's views are considered by the justices

(Salokar 1992: 138). We believe that the SG will be attentive to this consideration and, seeking to reduce legal ambiguity in cases that have far-reaching impact, will participate more often in cases stemming from the federal courts or bureaucracies than state courts.

H2: The Solicitor General is more likely to file an amicus curiae brief in a case appealed from a federal court.

H3: The Solicitor General is more likely to file an amicus curiae brief in a case involving the actions of a federal administrative agency.

Consistent with the view of the SG as an agent of the Court, we hypothesize that the SG will respond to signals from the justices that the Court is interested in the SG's participation in order to assist the justices in developing legal policy. While the Court has no formal mechanism to solicit certain types of cases, recent work by Baird (2004) illustrates that the justices can, nonetheless, indicate to the legal community a desire for litigation that assists in the growth of law within particular issue areas. Since the justices operate in an environment of incomplete information (Epstein and Knight 1998; Murphy 1964), they are often reliant on outside information transmitted through amicus briefs to assist in reaching decisions that create efficacious law and/or maximize the application of their policy preferences (Collins 2007). While the Court can virtually "compel" the SG's participation through invitations to file amicus briefs, the SG can also play an active role in providing the Court with desired information by responding to the Court's indirect signals that it is interested in the further advancement of a particular area of law. Since the SG participates as either an amicus or litigant in almost 60% of the Court's cases, we believe the SG is uniquely situated to respond to the justices' signals by filing amicus briefs in issue areas that the justices indicate they are especially interested in developing.

H4: The Solicitor General is more likely to file an amicus curiae brief in a case if the Supreme Court signals its interest in the development of the issue area implicated in the case.

POLITICAL FACTORS

Unlike the legal perspective of the SG, the political view posits the SG as an agent of the President seeking to influence the Court to adopt policies favorable to his administration's interests; that is, policies that maximize the President's political goals (e.g., Bailey, Kamoie, and Maltzman 2005; Meinhold and Shull 1998; Norman-Major 1994; Salokar 1992; Zorn 2002). The reality that the SG is very much an agent of the President is perhaps most evident in the SG's selection process. As Salokar (1992: 3) notes, "the selection process is designed to ensure that the solicitor general will share the basic political values of the administration. 'The Candidate for the Office must be in basic accord with the philosophical tenets of the President and Attorney General.'" Thus, although the SG may enjoy some independence from the President in terms of his day-to-day decision making, the selection process ensures that the SG will not stray too far from the ideological bent of the administration.[5] Should this occur, there are well documented incidences of the President reigning in the SG (e.g., Caplan 1987; Days 2001; Salokar 1992). For example, in *Regents of the University of California v. Bakke* (1978), the SG prepared an amicus brief in favor of Bakke, arguing that California's affirmative action program was unconstitutional. When the brief was sent to the White House for consideration, President Carter's administration, having announced its support earlier that year for affirmative action programs, signaled their unhappiness with the brief. After a series of highly contentious meetings between the administration and the SG, the Solicitor backed down, arguing instead that race should be taken into account to remedy the effects of prior discrimination (Days 2001: 510-511). Thus, the political perspective on the SG posits that the SG is an ideological advocate for the President's policies in the Court.

[5] Not surprisingly, the justices are well aware of the fact that the SG serves at the pleasure of the President. As Justice Sutherland noted in *Humphrey's Executor v. United States* (1934), "…it is quite evident that one who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will" (295 U.S. 602, at 629).

Following from the viewpoint of the SG as an agent of the President, we expect the SG will be particularly attracted to cases that enable him to further the President's policy agenda. While the SG might theoretically participate as amicus in every case before the Court – with the exception of those cases where the SG represents the federal government as a litigant – the SG has an incentive to limit his participation to those cases that have considerable policy implications for the President's administration. This is the situation because, should the SG opt to file an amicus brief in all cases before the Court, "the Court [would] begin to expect the government's views, and as a result, give them less weight" (Salokar 1992: 141). Accordingly, the SG must carefully consider the attributes of each case prior to filing an amicus brief. Clearly, not all cases heard by the Court are of equal import to the President. However, when such a case arises, the SG has a substantial incentive to attempt to shape the justices' decisions in order to maximize the President's policy preferences (Bailey, Kamoie, and Maltzman 2005). Indeed, SGs themselves corroborate the importance of filing amicus briefs in so-called "agenda cases" – those cases that are salient for promoting the President's policy priorities. For example, in interviews with Salokar (1992: 139-142), former SGs spoke to the importance of these agenda cases: for Rex Lee, SG under Reagan, these cases involved obscenity, religion, and abortion; for Archibald Cox, SG under Kennedy, agenda cases included issues dealing with civil rights and reapportionment; for SGs Stanley Reed and Robert Jackson, who served under Roosevelt, these cases covered litigation related to the New Deal. By filing amicus briefs in these agenda cases, SGs can promote the President's agenda, and, should their positions prevail on the merits, this enables Presidents to influence public policy long after they leave the White House by creating favorable precedents (Meinhold and Shull 1998; Wasby 1995). Former Solicitor General Rex Lee unequivocally denotes the attractiveness of cases that are congruent with the President's political agenda in observing that "One of the purposes of the solicitor general is to represent his client, the president of the United States. One of the ways to implement the President's policies is through

positions taken in court. When I have that opportunity, I'm going to take it" (quoted in Salokar 1992: 139).

H5: The Solicitor General is more likely to file an amicus curiae brief in a case that is important to the President's policy agenda.

The SG is well known for his considerable success in the Supreme Court. However, the SG's apparent success before the Court does not necessarily imply that he influences the Court. This is particularly true in those cases he chooses to brief as amicus curiae because the Court is predisposed toward accepting his position (e.g., Zeppos 1998; Zorn 2002). There are three reasons why the SG might file amicus briefs before a Court that is inclined to accept his arguments. First, because the SG is the focus of considerable scholarly and media attention, much of it related to his phenomenal success before the Court, this creates a stimulus for the SG to appear successful in the eyes of history. As the focus of books (e.g., Caplan 1987; Salokar 1992), law review issues (e.g., Issue 3, *The Journal of Appellate Practice and Process*, 2001), conferences (e.g., the Rex E. Lee Conference on the Office of Solicitor General held at Brigham Young University in 2002), and numerous scholarly articles, the attention accorded to the SG, relative to other members of the Supreme Court bar, is very much unique. Further, SGs are aware of this differential attention, as evidenced by the lengthy list of books and articles regarding the Office published on the SG's website.[6] Given the likelihood that SGs genuinely care about their performance in the eyes of history, and given that SGs are able to select cases to participate in as amicus curiae, one method for the SG to increase his standing in the public record is to appear successful before the Court. Second, since the SG serves at the pleasure of the President, he has a further incentive to appear successful in order to maintain his position within the Department of Justice. If the SG appears ineffective before the Court, the President then has reasons to consider his dismissal. To be sure, maintaining one's position in the

[6] See http://www.usdoj.gov/jmd/ls/sgbib2004.htm (last accessed March 7, 2007).

administration is a powerful incentive to appear efficacious before the Court. Finally, SGs might be motivated to file amicus briefs in cases that they are predisposed to win in order to further their own careers after leaving office. Indeed, numerous SGs have become Supreme Court justices, including Stanley Reed, Robert Jackson, and Thurgood Marshall.[7] In determining whether to appoint a former SG to a position on the high Court, the President might be motivated by that SG's ability to etch the President's policy preferences in the law as an advocate in the SG's Office. For example, during the confirmation hearings of Chief Justice John Roberts, several journalists spoke to Roberts' extraordinary success as a Deputy Solicitor General as evidence of his credentials (e.g., Holland 2005; Mauro 2005a). Moreover, even if a position on the Supreme Court is not a motivating force, the promise of a high paying job in private practice might provide the incentive to appear efficacious. For example, Horowitz (1977: 27) notes that many government attorneys utilize their public sector employment as a stepping-stone to lucrative private practice positions. In point of fact, two former SGs, Seth Waxman and Erwin Griswold, parlayed their governmental service into profitable positions in two of the nation's top Supreme Court practices, which actively sought out the former SGs to serve in the vanguard of their appellate litigation teams (Mauro 2005b). Given these stimuli, by filing amicus briefs before a Court that is predisposed toward accepting his position, the SG is able to maintain his appearance of substantial success.

The central means by which the SG can manipulate his appearance of success before the Court is by filing amicus briefs in cases where the SG and the Court are ideologically aligned. Decades of research on Supreme Court decision making reveals the paramount importance of the justices' ideological preferences in shaping their decisions (e.g., Pritchett 1948; Schubert 1965; Segal and Spaeth 2002) and we have little doubt that this concept is not lost on Solicitors General. By filing an amicus brief in a case in which the Court is predisposed to accept the SG's arguments due

[7] Corroborating this point, former SG Charles Fried (1991) begins his account of his term as SG by asking what the Solicitor General does and responds that he prepares to take his place on the high Court.

to ideological proximity, the SG is offered a powerful method to appear successful before the justices without actually influencing their decision making.

H6: As the ideological proximity between the Solicitor General and the Supreme Court increases, so too will the likelihood that the Solicitor General will file an amicus curiae brief.

ADMINISTRATIVE FACTORS

Thus far, we have focused on the two primary perspectives on the SG in the literature, viewing the SG as an agent of both the Court and the President. However, it is important to note that neither of these perspectives offers a complete understanding of the SG's amicus strategies. This is the case because, like other bureaucracies, the Office of the Solicitor General faces administrative constraints that can potentially shape the decision to participate as amicus curiae (e.g., Horowitz 1977; Zeppos 1998). Extant scholarly analyses of the SG generally focus on his participation and success before the Court (e.g., Bailey, Kamoie, and Maltzman 2005; Caldeira and Wright 1988; Deen, Ignagni, and Meernik 2001, 2003; Johnson 2003; Lindquist and Klein 2003; McGuire 1998; O'Connor 1983; Segal 1988), while ignoring the myriad responsibilities of the Office. But, it is important to note that, in addition to deciding which cases to appeal to the Court, and those in which to file amicus briefs, the SG has numerous administrative functions. These include working with bureaucratic agencies to determine litigation strategies, managing the Office staff, determining the allocation of oral arguments among the Deputy and Assistant SGs, and interacting with the media, all while ensuring a congenial relationship with the White House and Attorney General (McGinnis 1992; Salokar 1992). We theorize that two factors related to the SG's role as a bureaucrat will influence the decision to file an amicus brief.

First, we hypothesize that SGs will experience acclimation effects that limit their amicus activity during their first year in office. In their freshman term, SGs are thrown in to steer what is, in effect, a small law firm. Among other things, a new SG must manage the current workload of the

SG's Office, which typically involves becoming familiar with pending litigation brought by previous SGs. Moreover, turnover in the SG's Office is not uncommon as one administration departs the White House (McGinnis 1992: 812); it is the SG's duty to fill these positions with qualified Assistant and Deputy Solicitors General (Salokar 1992: 56). In addition, like other chief bureaucrats, the SG is charged with familiarizing himself with the bureaucratic subculture within the Office (e.g., Wilson 1989), including the SG's somewhat unique standard operating procedure of filing briefs with exhaustive citations to Supreme Court precedent (Fried 1991: 66). Once more, as the leader of a bureaucracy, the SG is required to ensure the smooth functioning of the Office by imparting faith in his abilities among the other attorneys and Office staff (Wilson 1989). Importantly, all of this occurs before the new SG even begins one of his central tasks: to further the President's policy agenda.[8] Thus, it should not be surprising that former SG Charles Fried (1991: 24) reports that, upon entering the SG's Office, he was somewhat unprepared for the demands of his new position. As a result, he experienced a period of initial disorientation until he became more fully acclimated to the rigors of serving as an SG. Since newly appointed SGs must dedicate a substantial amount of time to dealing with these administrative considerations, we expect that this will limit the number of amicus briefs they file.

H7: The Solicitor General is less likely to file an amicus curiae brief during his first year in office.

In addition to acclimation effects, we also expect that the level of resources available to the SG will influence his ability to file amicus briefs. Like other executive branch agencies, the Office of the Solicitor General is dependent upon budget appropriations made by Congress to operate and carry out its duties.[9] Following Ippolito (2003), we view the SG's budgets as both a resource and a

[8] We recognize, of course, that the SG is able to further the President's political agenda by hiring Assistant and Deputy SGs who share the administration's jurisprudential philosophies and will act in good faith to promote those perspectives before the Court. However, this occurs primarily prior to actually participating in Supreme Court litigation (McGinnis 1992: 812).

[9] Although part of the Department of Justice, the Office of the Solicitor General has a separate and distinct budget.

constraint that can potentially shape the decision to file an amicus brief. On the one hand, budgets provide the necessary funds to hire staff, purchase equipment, and operate the agency. In this sense, as the budget grows, so too does the capacity of the SG to devote resources to hiring Assistant and Deputy SGs and staff that can promote the legal and political goals of the SG through the filing of amicus briefs. Moreover, as Parkinson (1957) notes, there is a clear relationship between the supply and demand aspects of budgetary resources as they relate to administrative action: the greater the agency's budget, the greater the agency's output. On the other hand, the finite funds available can constrain agency heads and impact their decision making processes as they relate to the most effective methods to expend these resources. For the SG, the level of available resources can constrain the decision to file amicus briefs since these are, after all, discretionary decisions. In this sense, when facing resource constraints, the SG might choose to deploy the Office's limited resources by focusing on litigation in which the government is a party, rather than by promoting legal and policy goals through facultative amicus participation. Accordingly, we expect that the SG's decision to file an amicus brief will be influenced by the size of the Office's budget.

H8: As the size of the Office of the Solicitor General's budget increases, so too will the likelihood that the Solicitor General will file an amicus curiae brief.

DATA AND METHODOLOGY

To determine whether our hypotheses comport with reality, we examine data on the Solicitor General's amicus participation during the 1953-1999 Supreme Court terms. These data were drawn primarily from Kearney and Merrill's (2000) amicus curiae database, which includes information on the SG's participation as both amicus and as the attorney for the federal government when it appears as a direct litigant for the 1953-1995 terms.[10] We updated this information with data on the

[10] To determine the validity of Kearney and Merrill's database, we performed a reliability analysis on that data by extracting a random sample of 155 (approximately 2.5%) cases from the whole dataset. We uncovered no errors with respect to any of the variables utilized in this study (see also Collins 2007).

SG's participation in the 1996-1999 terms using the coding rules established by Kearney and Merrill. Because the Court's rules prohibit the SG from filing amicus briefs in cases in which he represents the U.S. as a direct litigant, such cases were excluded from consideration. In addition, we excluded those cases where the SG participated as amicus curiae by invitation from the Court since such invitations are most appropriately viewed as mandatory filings and therefore not subject to the discretion of the SG.[11] In order to obtain information regarding the justices and cases, we merged the Kearney and Merrill database with Spaeth's (2003) judicial database. The final dataset contains information on every orally argued case in which it was at discretion of the SG whether to file an amicus brief. The unit of analysis is the case citation.

Our central interest is determining the factors that motivate the SG to file an amicus brief and whether these considerations influence the success of the SG as amicus on the merits. Statistically, this can be accomplished by employing a Heckman-style selection model (Heckman 1979). This model is most appropriate because the opportunity for the Court to rule in favor of the SG as amicus is contingent upon the SG's decision to file an amicus brief in the first place. As such, observations of the SG's success as amicus in the Court are not necessarily drawn from a random distribution if – as is argued here – the variables that shape the SG's decision to file an amicus brief are related to his subsequent success on the merits. The Heckman-style model provides a test for whether the factors that contribute to the SG's decision to participate as amicus are related to his ultimate success before the Court. The exact selection model employed here involves probit procedures for both stages since each of the outcome variables are dichotomous.[12] The first stage of the model predicts whether the SG filed an amicus brief in the 3,242 cases in which he did not represent the federal government as a direct litigant or was invited by the Court to participate as

[11] We utilized Lexis-Nexis to identify invitations from the Court to the SG to file an amicus brief. For a comprehensive treatment of these invitations see Bailey and Maltzman (2005).
[12] For a recent political science application of this model see Solowiej and Brunell (2003).

amicus. This variable is scored 1 if the SG filed an amicus brief and 0 otherwise. The second stage of the model predicts whether the Court ruled in favor of the SG's position in the 743 instances where he participated as amicus. This variable is scored 1 if the Court ruled in favor of the litigant supported by the SG's amicus brief and 0 otherwise.[13] We use robust standard errors to account for the possible effects of model misspecification (King 1998: 34).

Four variables related to the view of the SG as an agent of the Court are utilized in the first stage of the equation to predict whether the SG will file an amicus curiae brief. The first three of these variables were derived from the Spaeth (2003) database. To measure a case's *Legal Ambiguity* (H1), we develop a variable that accounts for dissensus both within and among lower courts. This variable is scored 0 if the Supreme Court did not identify lower court conflict as the reason for granting certiorari and there were no dissenting opinions in the lower court's disposition of a case; 1 for cases with either of these qualities; and 2 for cases with both lower court conflict and dissenting opinions.[14] To determine whether the SG is more likely to file an amicus brief in a case that is appealed from a federal court (H2), we employ a *Federal Appeal* variable. This is scored 1 if the case was appealed from a federal court and 0 otherwise. To investigate whether the SG is more likely to file an amicus brief in a case that implicates the actions of a federal administrative agency (H3), we utilize an *Administrative Action* variable scored 1 if federal administrative action preceded the litigation and 0 otherwise. To evaluate whether the SG responds to signals from the Court (H4), we adopt the technique developed by Baird (2004). That is, we operationalize a *Supreme Court Signal* variable indicating the number of cases that were accompanied by front page stories in the *New York Times*

[13] Approximately 10% of the SG's amicus participation is excluded from consideration in the statistical models as the ideological position advocated by the SG was indeterminable.

[14] We also factor analyzed these variables (inter-court conflict and dissenting opinion in the lower court) as an alternative method to create this variable. That variable is correlated with the one used here at 0.99 and substituting it does not change the results.

during the previous term that fall within the thirteen issue areas in the Spaeth (2003) database.[15] We believe that this variable provides a sensible proxy for the Court's interest in hearing cases by providing a contemporaneous measure of an issue area's broad political salience, which is likely to garner the SG's attention.

We use two variables to capture political influences on the SG's decision to participate as amicus curiae. To determine whether the SG is more likely to file an amicus brief in a case that is important to the President's agenda (H5), we adapt the method developed by Heck and Shull (1982) and Meinhold and Shull (1998) by content analyzing presidential inaugural and State of the Union addresses. More specifically, we examined these addresses to determine the number of sentences in which Presidents made an explicit policy statement involving seven issue areas: Civil Rights, Crime, Economic Activity, Federalism, First Amendment, Judicial Power, and Privacy.[16] Following Heck and Shull (1982: 329), we defined policy statements as those sentences in which the President expresses a clear philosophy, attitude, or opinion about one of these issues, often involving encouraging, proposing, supporting, or opposing specific actions. For example, we include the sentence from Eisenhower's 1964 State of the Union address announcing the creation of the Department of Education, but exclude the sentence from Clinton's 1997 State of the Union address where he references a visit to northern Illinois with his Secretary of Education since the latter involves no explicit statement of public policy. We then matched these statements to the issue areas

[15] The data indicating whether a case was covered on the front page of the *Times* were collected by Epstein and Segal (2000) for the 1953-1995 terms and collected by the authors for the remaining terms. Note that we experimented with alternative time lags, ranging from one to five terms. The results indicate that the one-year lag offers the most explanatory power.

[16] We located the presidential speeches at the University of California Santa Barbara's *The American Presidency Project* (www.presidency.ucsb.edu; last accessed March 7, 2007). The exact search terms are available in Appendix Table 1. Note that our analysis differs slightly from that of Meinhold and Shull (1998) in that we focus only on inaugural and State of the Union addresses, while Meinhold and Shull examined all presidential addresses. We opted to limit our search to these statements since Presidents vary widely in the overall number of speeches they give. For example, *The American Presidency Project* reports that Eisenhower made 2,746 speeches, as compared to Clinton's 12,336 addresses. Since all of the Presidents under analysis gave inaugural addresses and fulfilled their constitutional duty with respect to their State of the Union addresses, this puts the Presidents on a near-equal footing with respect to their overall amount of communication with the public.

identified in the Spaeth (2003) database.[17] To control for the fact that the Presidents under analysis did not serve the same number of years in office, and therefore gave varying numbers of State of the Union and inaugural addresses, we divided our salience measure by the number of State of the Union and inaugural addresses given by each President, resulting in our measure of *Presidential Salience.*[18]

To examine whether the SG participates as amicus curiae with increased frequency when ideologically aligned with the Court (H6), we employ a variable that captures the ideological distance between the President who appointed the SG and the ideology of the median justice on the Supreme Court. Since this requires ideal point estimates that put Presidents and justices on the same metric, we utilize the scores developed by Epstein, Martin, Segal, and Westerland (n.d.). For Presidents, these scores are Poole's (1998) first dimension Common Space scores. For the Court, these scores are a tangent-based transformation of Martin and Quinn's (2002) ideal point estimates which put the justices' scores on the same ideological space as the President's Common Space scores. From these scores we derived an *Ideological Distance* variable that is the absolute value of the President's ideology score subtracted from the ideology score of the median justice on the Court. Thus, higher values on this variable reflect increased ideological distance between the President and the Court.[19]

Two variables are employed to capture administrative factors that might contribute to the SG's decision to file an amicus brief. First, to determine whether SGs experience acclimation effects

[17] To accomplish this, we collapsed cases involving economic activity, federal taxation, and unions into a single Economic Activity category; we recoded cases involving the First Amendment and attorneys, which typically involve attorneys' commercial speech, into a First Amendment category; we reclassified cases involving civil rights and due process into a single Civil Rights category; and we recoded cases involving federalism and interstate relations into a single Federalism category.

[18] In addition, we utilized three alternative measures of salience. First, we employed the log of the variable discussed above. Second, we applied the salience variable corresponding to Segal, Timpone, and Howard's (2000) survey of American presidency scholars, available at www.sunysb.edu/polsci/jsegal/data/pressc_main.htm (last accessed March 7, 2007). Third, we used a variable that captured the number of cases in which the SG appeared as a petitioner falling within the thirteen issue areas in the Spaeth (2003) database. Substituting our variable for any of these alternative measures does not alter the substance of the results.

[19] As an alternative to this variable, we utilized the ideology scores developed by Bailey and Maltzman (2005). These scores are based on bridged observations across institutions, but are only available for civil rights and liberties cases. When we substitute these measures of ideology for the proxies utilized here, we find substantively similar results.

(H7), we include a *Freshman* variable in the model, scored 1 during the Supreme Court term corresponding to the SG's first year in office and 0 otherwise. Second, to evaluate whether the SG's budget influences the decision to file an amicus brief (H8), we utilize a *Budget* variable that is a simple calculation of the Office of the Solicitor General's budget for each fiscal year. To facilitate interpretation, we have multiplied this variable by 10,000.[20]

Several variables are included in the second stage of the model that predicts the SG's success as amicus curiae. To control for the SG's ideological compatibility with the Court, we use a measure of *Ideological Congruence* adopted from Bailey and Maltzman (2005). When the SG argues a conservative position, this variable is the ideology score of the Court's median justice multiplied by +1; when the SG argues a liberal position, this variable is the median justice's ideology score multiplied by −1. Because conservative justices have positive ideology scores, and liberal justices have negative scores, higher values on this variable indicate an increased ideological congruence with the median justice on the Court. It is expected that the sign of this variable will be positive, indicating that, when the SG argues a position congruent with the ideology of the Court, his likelihood of success will increase. In addition to arguing a position that is ideological congruent with the Court, we expect the SG will be more likely to prevail if he represents an administration that is ideologically proximate to the Court (Bailey and Maltzman 2005). To test this possibility, we include the *Ideological Distance* variable discussed above in the second stage of the equation. We expect this variable will be negatively signed, indicating that the SG is more likely to prevail if he represents an administration that is ideologically proximate to the median justice on the Court.

Past research indicates that the justices rely more on their policy preferences in salient cases, as compared to relatively trivial disputes (Bailey and Maltzman 2005; Spaeth and Segal 1999: 309-311; Unah and Hancock 2006). As such, in salient cases, we expect that the influence of the SG will

[20] We also ran the model including a measure of case complexity in the selection equation, operationalized from Bailey and Maltzman (2005). That variable failed to achieve statistical significance.

be diminished. To control for this possibility, we include a *Political Salience* variable in the model, scored 1 if the case appeared on the front page of the *New York Times* on the day after the decision and 0 otherwise (Epstein and Segal 2000). We expect this variable will be negatively signed, indicating that the SG's probability of success will decrease in salient cases.[21] In addition, we include our measure of *Presidential Salience* in the outcome stage of the equation. This offers us leverage over whether SGs are particularly successful at etching the President's policy preferences into law in cases important to the President's political agenda. If SGs are especially influential in these agenda cases, we expect this variable will be positively signed.

Several studies indicate that Presidents can use approval as a source of political capital to promote their interests in Congress and the courts (e.g., Ducat and Dudley 1989; Yates 2002). As it relates to the Court, this line of research argues that the justices should be increasingly deferential to the interests of Presidents who enjoy high approval ratings. To control for this possibility, we include a variable labeled *Presidential Approval*. This variable is simply the percentage of the public who responded that they "approve of the way President [name] is handling his job as President" and is derived from Gallup polls. We use a mean quarterly measure of presidential approval and peg it to each Supreme Court case using the date of oral argument. The expected direction of this variable is positive, indicating that the SG's success as amicus will increase along with presidential approval.

To account for the influence of interest group amicus curiae participation in the Court (e.g., Collins 2007; Kearney and Merrill 2000), we use two variables, *Supporting Amicus Briefs* and *Opposing Amicus Briefs*. These variables represent the number of amicus briefs filed by entities other than the SG supporting and opposing the SG's position, respectively, and were derived from the Kearney

[21] We also considered including this variable in the selection equation. However, we found that the editors of the *New York Times* tended to over-report front page stories involving cases in which the SG filed an amicus brief ($\chi^2 = 29.5$, sig. $< .001$). As such, we opted to exclude it since it is endogenous with the dependent variable in the selection equation. We ran the same test to determine if the editors of the *Times* over-reported cases in which the SG prevailed as amicus, finding no evidence to support this ($\chi^2 = 1.1$, sig. = 0.3).

and Merrill (2000) database. The expected sign of the *Supporting* variable is positive in direction, indicating that the SG's success will increase when he is supported by an increasing number of amicus briefs. Conversely, the expected sign of the *Opposing* variable is negative, indicating that the SG's success is attenuated by an increasing amount of opposing amicus participation. Finally, we include the *Legal Ambiguity* variable in the second stage of the equation to determine whether the SG is particularly successful in cases involving lower court conflict or dissent. We expect that, in such cases, the information transmitted by the SG will be especially useful for the justices since these cases are accompanied by a substantial amount of uncertainty as to the correct application of the law. As such, we expect this variable will be positively signed, indicating that the Court is more likely to rule in favor of the SG's position when the case involves ambiguity, both within and between lower courts.[22]

RESULTS

***** TABLE 1 ABOUT HERE *****

Table 1 reports the results of the Heckman-style selection model. The significant and positive estimate of Rho signifies that the two equations in the model are correlated with one another. This indicates that the factors influencing the SG's decisions to file an amicus brief in the first place are positively associated with his ultimate success as amicus, thus supporting the overall line of argumentation presented above. For purposes of comparison, Table 1 also reports the results from the two probit models corresponding to each equation, which we will discuss shortly.

Turning first to the variables that represent the role of the SG as an agent of the bench, we find strong support for all four hypotheses. First, Table 1 indicates that the SG is more likely to file an amicus brief in a legally ambiguous case. This suggests that the SG is particularly attentive to his

[22] In addition to the variables reported in Table 1, we also included proxies for the SG's outlier status and a case's legal salience and complexity, operationalized from Bailey and Maltzman (2005). We further included the *Administrative Action*, *Federal Appeal,* and *Freshman* variables in the outcome equation. None of those variables achieved statistical significance.

role as agent of the Court and selects cases to brief as amicus curiae with a careful eye toward resolving confusion both within and between lower courts. Second, the SG is more likely to file amicus briefs in cases appealed from federal courts. This corroborates our argument that the SG selects cases that have wide ranging legal implications for large segments of American society. That is, rather than focusing attention on cases appealed from state courts, which are only binding on the state population from which they originate, the SG seeks to develop the coherency of law for those cases that impact larger, circuit wide populations. Third, our results illustrate that the SG directs a significant amount of amicus participation to cases involving federal administrative action. In this role, the SG clarifies the meaning of federal administrative rules for the justices for the purposes of promoting the transparency of bureaucratic regulations. Finally, the results show that the SG responds to signals sent by the Court showing its interest in developing legal policy within a particular issue area. As such, it is clear that the SG's decision making, from the standpoint of the SG as an agent of the bench, is driven both by the SG's own determinations as to which cases are appropriate to brief, as well as his responsiveness to signals sent by the Supreme Court.

With regard to political factors, the data fail to support either of our hypotheses. We do not find that the SG is more likely to file an amicus brief in cases that are important to the President's policy agenda. As mentioned above (footnote 18), we utilized alternative proxies for a case's salience to the President's policy agenda, none of which achieved statistical significance. As such, although we do not doubt that the SG acts as an agent of the President, it appears that the salience of an issue to the President does not drive the SG's decision to file an amicus brief. Moreover, contrary to our expectations, the SG is not more likely to file amicus briefs when he is ideologically aligned with the Court. In fact, the results indicate just the opposite: the more ideologically distant the SG is from the median member of the Court, the more likely he is to file an amicus brief. As such, we can reject the hypothesis that the SG selects cases based on their perceived winnability. Of course, it is important

to note that the SG has no control over the ideological preferences of the median member of the Court. In this sense, the SG can only exploit ideological proximity, he cannot directly affect it. But, the results here suggest that SGs do not take advantage of their proximity to the median justice in deciding to file amicus briefs.

Both of our hypotheses related to administrative considerations find support in Table 1. First, the results indicate that SGs file fewer amicus briefs during their freshman year in office. This illustrates that, like other actors in the judicial community (e.g., Hettinger, Lindquist, and Martinek 2006), SGs experience acclimation effects related to time management. In this case, acclimation effects decrease the amount of amicus briefs SGs file during their first year in office. In addition, we find strong support for the role of the Office's budget in shaping the decision to file an amicus brief: as the budget increases, so too does the likelihood that the SG will participate as amicus. Given this, coupled with the fact that the SG's budget has grown in recent years (after controlling for inflation), this makes it probable that we may see an increase in the number of amicus briefs filed by the SG in the future.

Turning now to the second stage of the equation, several variables are of interest. First, the results indicate that the SG is particularly successful when arguing a position ideologically congruent with the median justice on the Court. For example, compared to a case in which the SG argues a liberal position before a Court whose median member is conservative with an ideology score of 0.307, when the SG advances the conservative position before the same court, his likelihood of success increases by almost 5%.[23] This corroborates the reality that the SG's success as amicus is not entirely due to the special status he enjoys. Instead, like other litigants, the SG is more successful when the Court is predisposed toward endorsing the position he advocates. However, we do not

[23] Marginal effects for the outcome equation are calculated altering the variables of interest, while holding all other variables at their mean or modal values, given that the SG filed an amicus brief. Since only cases in which the SG filed an amicus brief fall into the outcome equation (i.e., the uncensored observations), we are unable to interpret the variables in the selection equation through the use of marginal effects.

find that the SG is more likely to prevail when he is ideologically aligned with the median justice on the Court. Thus, it appears that the SG's success is related, not to how ideologically proximate the SG is the Court, but instead to the position the SG advocates before the Court.

At this point, it is appropriate to address the primary difference between the two probit models and the Heckman-style selection model. That is, while two variables fall slightly out of statistical significance in the probit model of the selection equation,[24] the primary difference between the alternative model specifications is the strong significance of the *Ideological Distance* variable in the probit model that predicts the SG's success as amicus and its lack of significance in the Heckman model. This suggests that, absent a consideration of the factors that shape the SG's decision to file an amicus brief in the first place, the estimates associated with factors influencing the SG's success as amicus are biased, particularly with regard to the impact of ideological proximity. For example, the probit model indicates that a one standard deviation change in this variable, moving the SG closer to the median justice on the Court, results in a 10% increase in the SG's likelihood of victory. However, with the Heckman model, this effect dissipates. As such, researchers should be particularly attentive to how factors that contribute to the SG's decision to file an amicus briefs attenuate the influence of variables on the SG's success on the merits. Failure to do so can lead to biased estimates that do not take full advantage of available information (i.e., inefficiency).

The results also provide support for the impact of organized interests in the Court: as the number of amicus curiae briefs supporting the SG increases, so too does his likelihood of success. Conversely, as the number of amicus briefs opposing the SG increases, his chances of success decline. For both of these variables, a change from two to five amicus briefs increases (or decreases) the SG's probably of prevailing by 2%. Moreover, the SG's probability of success is enhanced in legally ambiguous cases. For example, compared to a case with no dissensus within or between

[24] That is, the *Ideological Distance* proxy falls out of significance at $p = 0.12$ in the probit equation from $p = 0.07$ in the Heckman model; and the *Freshman* variable falls out of significance at $p = 0.14$ from $p = 0.08$ in the Heckman model.

lower courts, for a case with both forms of dissensus, the SG's likelihood of emerging victorious increases by almost 8%. This suggests that, by providing the justices with information regarding the correct application of the law in uncertain cases, the SG performs a role as agent of the bench that is noted by the Court, which proves especially deferential to the SG in these legally unclear disputes.

Finally, there are several null findings in the second stage of the equation. Contrary to our expectation, the results indicate that the SG's success in the Court is not influenced by the salience of the case, whether we consider salience as relating to the broader public (*Political Salience*) or to the President's policy agenda (*Presidential Salience*). As such, it appears that the SG is not particularly effective at etching the President's agenda into the law in salient cases, as compared to cases that are less salient to the President. The results also illustrate that presidential approval does not increase the SG's likelihood of success before the Court, suggesting that the justices are relatively immune to political pressures transmitted via presidential public approval polls.

CONCLUSIONS

Students of politics have long been attentive to the opportunities for inter-branch relations within the separation of powers system that defines American politics. We contribute to this literature by examining the role and success of the Solicitor General in the Supreme Court. Our analysis differs from previous research in three ways. First, we develop and test theoretical expectations regarding why the SG chooses to file amicus briefs in the Court. Second, we depart from previous analyses that focus only on the legal and political roles of the SG by introducing the concept of the SG as a bureaucrat facing administrative constraints similar to other chiefs of the federal bureaucracy. Third, we explicitly link the SG's initial decision to participate as amicus curiae to his eventual success on the merits. Our results indicate that the SG's decision to participate as amicus curiae, and his subsequent success on the merits, is driven by legal, political, and administrative considerations. As such, extant perspectives that view the SG as either an agent of the

President or an agent of the bench offer only an incomplete picture of the SG's role in American politics. It is only through the incorporation of the SG's role as a legal, political, and administrative actor that we are afforded a more inclusive understanding of the Solicitor General. Moreover, our analysis indicates that, by failing to integrate factors that influence the SG's decision to file an amicus brief, previous studies have likely reported biased estimates with regard to the SG's influence on the Court. Of course, this is not to say that the SG lacks influence. Rather, it is to illuminate the importance of considering factors related to how the SG sets his amicus agenda and their relationship to the SG's success in the Court.

While we focus only on the SG's amicus strategies in the Supreme Court in this analysis, we believe that many of our core ideas are translatable to other actors and venues. For example, one might apply our hypotheses to an investigation of Department of Justice strategies in the federal Courts of Appeals. Similarly, our theories can be adapted to offer leverage over interest group decisions to file amicus briefs in federal and state appellate courts. Moreover, we wish to note the importance of considering selection factors to better understand a host of legal and political phenomena, including the motivations for filing lawsuits, introducing legislation, running for office, and enacting executive orders. If factors that influence the decision to engage in these activities are related to their effectiveness, this suggests that failure to consider the selection stage offers only an incomplete comprehension of the actions taken by legal and political actors.

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TABLE 1. THE SOLICITOR GENERAL'S AMICUS CURIAE STRATEGIES AND SUCCESS IN THE SUPREME COURT, 1953-1999 TERMS

PREDICTOR	HECKMAN MODEL	PROBIT MODELS
SELECTION EQUATION: WILL THE SOLICITOR GENERAL FILE AN AMICUS CURIAE BRIEF?		
Legal Ambiguity	.065 (.038)**	.065 (.046)*
Federal Appeal	.146 (.047)***	.130 (.055)***
Administrative Action	.380 (.082)***	.359 (.104)***
Supreme Court Signal	.044 (.009)***	.041 (.010)***
Presidential Salience	−.030 (.027)	−.025 (.030)
Ideological Distance	.287 (.192)*	.255 (.212)
Freshman	−.075 (.054)*	−.069 (.063)
Budget	.002 (.0001)***	.002 (.0002)***
Constant	−1.58 (.084)***	−1.57 (.093)***
OUTCOME EQUATION: DID THE COURT RULE IN FAVOR OF THE SOLICITOR GENERAL AS AMICUS?		
Ideological Congruence	.633 (.365)**	.835 (.419)**
Ideological Distance	−.316 (.491)	−1.21 (.445)***
Political Salience	−.119 (.110)	−.148 (.129)
Presidential Approval	.004 (.004)	.003 (.005)
Supporting Amicus Briefs	.055 (.020)***	.054 (.022)***
Opposing Amicus Briefs	−.075 (.023)***	−.089 (.025)***
Legal Ambiguity	.219 (.075)***	.158 (.084)**
Presidential Salience	−.051 (.059)	−.050 (.067)
Constant	−.289 (.464)	.988 (.343)***
MODEL DIAGNOSTICS		
Rho	.589 (.138)***	–
Wald χ^2 (Heckman)	23.9***	–
Wald χ^2 (Selection Equation)	–	255.9***
Wald χ^2 (Outcome Equation)	–	30.1***
N (Selection Equation)	3,242	3,242
N (Outcome Equation)	743	743

Entries in parentheses are robust standard errors.
* p < .10; ** p <. 05; *** p< .01 (one-tailed tests).

APPENDIX TABLE 1. SEARCH TERMS FOR PRESIDENTIAL SPEECHES

Civil Rights
Affirmative Action
Civil Rights
Civil Rights Act
Civil Rights Bill
Desegregation
Discrimination
Equal Employment Opportunity
Integration
Nondiscrimination
Public Accommodations
Schools
Segregation
Voting Rights
White House Conference of Civil Rights

Crime
Crime Law Enforcement
Habeas Corpus
Law and Order
Law Enforcement
Search and Seizure

Economic Activity
Antitrust Laws
Clayton Act
Fair Labor Standards Act
Federal Trade Commission
Labor Unions
Liability
Monopolies
Occupational Safety and Health Act
Sherman Act
Government

Federalism
Central Government
Decentralization
Federalism
Federalist
Governmental Relations
Preemption
Sovereignty
States' Rights
Strong Federal

First Amendment
Assembly
Education
Establishment of Religion
Obscenity
Petition
Pornography
Press
Private and Parochial Schools
Religion
Religious Freedom
Sedition
Speech

Judicial Power
Certiorari
Comity
Judicial Activism
Judicial Restraint
Judicial Review
Jurisdiction

Privacy
Abortion
Freedom of Information Act
Physician Assisted Suicide
Privacy
Reproductive Rights
Right to Die

Note: the search terms in italics were adopted from Meinhold and Shull (1998), while the non-italicized entries were selected by the authors.