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THE EFFECT OF AMICUS CURIAE BRIEFS ON THE UNITED STATES SUPREME
COURT

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ABSTRACT

Over the course of the twentieth century, there has been a substantial increase in the number of amicus curiae briefs filed in the Supreme Court. These briefs provide the justices with important information from third parties regarding a case. Oftentimes, amicus briefs work to persuade the justices to decide a case in a certain manner. The government, interest groups, private citizens, and foreign entities all file these briefs. Through filing these briefs, they seek to promote their interests and viewpoints to the Court. As amicus brief participation has increased, the Court has been able to hear the opinions of individuals and entities it otherwise would not have been privy to. The United States Supreme Court is also the most insulated branch of government from public opinion, due to in part by the life-time tenures of the justices on the Court. This allows the members of the Court to make rulings without regard for public backlash or fear of being removed from the bench. These factors have led to research into what instances is the Court more or less likely to listen to the opinions of the amicus brief filers. Variables coded include the amount of language that the Court includes in its majority opinions from the filed amicus curiae briefs, whether the Court cites amicus briefs in the footnotes of its majority opinion, whether the brief filer is a public or private entity, the decision of the lower court, and the ideological direction of the Supreme Court's decision in order to develop a better understanding of how influential these brief filers actually are to the Court.

The results of this study indicate that there is a statistically significant relationship between the partisanship of the amicus brief filer and the majority decision of the Court. The decision of the lower court also had a statistically significant and negative relationship with the majority opinion of the Court, which demonstrates that there is a greater likelihood that the

justices will overturn the decision of the lower court and produce an ideologically opposite majority opinion. The United States Solicitor General also had a high amicus brief success rate. Of the fifteen cases in which the Solicitor General filed an amicus brief, ten of the majority opinions of the Court reflected the same ideology set forth by the Solicitor General's amicus brief.

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INTRODUCTION

Above the main entrance of the Supreme Court are the words “Equal Justice Under Law” (“The Court and Constitutional Interpretation”). This message enforces the Supreme Court’s promise to the American people to be fair and equal in its administration of justice at the highest level of American jurisprudence. According to Article III of the United States Constitution, the Supreme Court is designed to be an insulated branch of government. The framers of the Constitution did not want the Court to be influenced by the popular views or trends of public opinion. They designed the Court so that the justices would not be punished for ruling in a manner that opposed the views of Congress or the President. Supreme Court justices are given the ability to serve for life and not have their salaries regularly adjusted by Congress. Even with these protections and precautions, however, outside influences have been able to permeate the judicial system through the direct lobbying of interest groups that file *amicus curiae* briefs (Collins 2008).

The Legal Information Institute at Cornell Law School defines an *amicus curiae* brief as, “a person or group who is not a party to an action, but has a strong interest in the matter, will petition the court for permission to submit a brief in the action with the intent of influencing the court’s decision” (“*Amicus Curiae*”). *Amicus curiae* briefs are submitted to the Court with the purpose of influencing the majority opinion of the Supreme Court. As interest groups have increased the number of briefs that they submit to the Court for each case, they have developed their own reputations with the Court as being reliable or trustworthy sources of information that could influence the views of the justices.

This paper will look at the effect that amicus curiae briefs have on the opinion of the Supreme Court. Specifically, it will look at how the justices have responded to amicus curiae briefs filed for criminal procedure cases during the first three years of the Roberts Court. This research will help to provide clarity as to how interest groups have played a greater role in the decision-making of the Court. Additionally, answers to this question will also illuminate any evidence as to whether this influence occurs across the topic of criminal procedure cases. The Roberts Court will be especially important to examine because the first three years of the Court had a conservative majority, which provides a baseline expectation that conservative interest groups will have a greater impact on creating ideologically conservative decisions.

THE ROLE OF AMICUS CURIAE BRIEFS IN SUPREME COURT DECISION MAKING

Amicus curiae briefs have developed an increasingly impactful role on the decision making process of the United States Supreme Court. The number of amicus curiae briefs that are submitted each term to the Court has increased dramatically. Between the 1946 and 1995 terms, the number of amicus briefs filed increased by 800 percent (Kearney and Merrill 2000, 749). There are a wide array of public and private sector entities that submit these briefs, including the United States Solicitor General, individual states, state attorney generals, interest groups, and private citizens. Experienced litigants and filers of briefs to the Supreme Court oftentimes are found to be more successful in having an impact on the decision-making process than irregular and inexperienced filers. Examples of experienced brief filers include the American Civil Liberties Union, the American Federation of Labor-Congress of Industrial Organizations, individual states, and the United States Solicitor General (Kearney and Merrill 2000).

Amicus curiae briefs have a demonstrated effect on the ideological direction of Supreme Court decisions. In 2006, Collins studied Court terms between 1946 and 1995 to compare the filed amicus briefs and the partisan decisions of the Supreme Court. He found that when liberal amicus briefs were submitted at least three times, the Court was five percent more likely to make a liberal majority decision. When conservative amicus briefs were submitted at least three times, the Court was three percent more likely to make a conservative majority decision. When ten briefs were filed supporting a liberal decision and no briefs were filed supporting a conservative decision, the Court was twenty-five percent more likely to make a liberal decision (Collins

2006). These findings underscore the importance of brief ideology on the decision-making process of the Supreme Court.

Supreme Court scholars also point to the importance of amicus briefs in the decision-making process because of the information that they include on topics and the circumstances of the case itself. Collins called this the information hypothesis, which argues that amicus briefs become more effective when they provide the Court with more information on complex topics (Collins 2004). Justices may seek out information about cases from scholarly sources, as well as from information housed in the amicus brief itself. In 1997, Spriggs and Wahlbeck found that 65 percent of the filed amicus briefs for the 1992 term included information that was not originally included in the briefs of the two parties for the cases. When state chief justices and appellate court clerks were asked about the role that amicus curiae briefs have with their courts, most responded by expressing that the information presented in the brief is helpful to the judges in the decision making process. By in large, the respondents viewed supplementary legal, economic, and scientific information pertaining to the details of the case as helpful (Flango, Bross, and Corbally 2006). Because of the informational role that amicus curiae briefs can have with the Court, there may be instances in which the justices are more likely to reference or utilize these sources of information when making their decisions.

Political ideology also has a perceived effect on the decisions of the Court. Karen Swenson (2016) hypothesizes that when interest groups from both the conservative and liberal sides of the political spectrum favor the same side of a case, the justices are more likely to rule in favor of that particular side. She controlled for the side that the U.S. Solicitor General supported, the number of amici filed, and the ideological decision of the appellate court. Swenson coded for interest group ideology with clearly categorized liberal or conservative labels. When classifying

interest groups as conservative, Swenson used *Policy Experts: The Insider Guide to Public Policy Experts and Organizations* by the Heritage Foundation, a conservative think tank. If the Heritage Foundation recommends a group as a public policy expert, Swenson believes that it is safe to assume that the group has a conservative ideology. When classifying interest groups as liberal, Swenson examines the professed ideological stance from material on the interest group's website. First, Swenson found that the U.S. Solicitor General filing a brief for a case has a statistically significant effect on the outcome of the case. She found that the more weighted the support is behind a specific side and ideology, the more likely the Justices are to rule in their favor. When a side was supported by both liberal and conservative groups, they were more likely to win the case.

There is some scholarly evidence that highlights the importance of the language used in amicus briefs and its impact on swaying the opinion of the Court. In 2015, Paul Collins, Pamela Corley, and Jesse Hamner studied how interest groups use language to influence the Court. In order to track the language that the Justices used in their opinions, the authors collected the majority opinions of all cases between the 2002 and 2004 Supreme Court terms. Majority opinions without amicus curiae briefs were excluded from their research. Plagiarism software was used in order to determine the amount of language that was lifted from the brief and incorporated into the majority opinion. Their dependent variable was the amount of language used from the amicus brief and incorporated into the majority opinion. A score was created to measure the congruence between the ideologies reflected in the brief and the majority opinion. If the ideologies are the same, then it is assigned a positive score. If the amicus brief and majority opinion have different ideologies, then it has a negative score. The key explanatory variables are cognitive clarity, plain language, and ideological congruence. These variables help to determine

amicus brief quality and the ideological congruence between the outcome of the Court and the filed amicus brief. The research finds that the justices were more likely to use language from higher quality briefs.

The United States Solicitor General has a great deal of influence on the United States Supreme Court. The Solicitor General is appointed by the President of the United States, and therefore reflects the ideology of the sitting President. They submit briefs to the Court when the United States is a party in a case, or when the issue of the case is within the interests of the Solicitor General. They have more frequent interaction with the Court, which has allowed for a trusting relationship to develop between the two entities.

In a 2006 study by Collins, he examined the Supreme Court terms between 1946 and 1995 to compare the filed amicus briefs and the partisan decisions of the Supreme Court. He found that when the Solicitor General argues for a Liberal majority opinion, the Court is 18 percent more likely to create a liberal decision. When the Solicitor General argued in favor of a Conservative majority opinion, the Court was 17 percent more likely to rule in a conservative manner (Collins 2006). This special relationship between the Court and Solicitor General can also be observed through the opinions of the Supreme Court law clerks. The clerks read the filed amicus briefs and help to construct their Justice's opinion. In response to a survey sent by Kelly Lynch in 2004, the clerks consistently maintained that the Solicitor General submits high quality briefs, which helps to give the Solicitor General their special status (Lynch 2004).

Christopher Smith, Madhavi McCall, and Michael McCall examined the conservative and liberal voting patterns of the Roberts Court through 2014. They studied the frequency of the number of justices who voted in favor of a certain political ideology in order to find patterns in decision-making. They defined swing votes for the Roberts Court as being "votes from a

member of the conservative wing that help produce a five-member liberal majority, and those from a member of the liberal wing that help produce a five-member conservative majority” (Smith, McCall, and McCall 2014, 419). The liberal and conservative wings of the Court were mainly consistent in their decision-making. Justices Ginsburg, Kagan, and Sotomayor voted together 88.3 percent of the time. Justices Roberts, Alito, Thomas, and Scalia voted together 83.4 percent of the time. The Roberts Court produced conservative opinions in 56 percent of all cases (Smith, McCall, and McCall 2014, 422).

There were substantial changes in criminal procedure case law during the first five years of the Roberts Court. This includes, “lessening the protection of the right to counsel under the Sixth Amendment; cutting back on the privilege against self-incrimination under the Fifth Amendment; and attacking the exclusionary rule under the Fourth Amendment” (Chemerinsky 2010, 15). It will be interesting to see if this pattern has continued or if *amicus curiae* briefs have had a hand in shaping this change by the Court.

THEORY

Amicus curiae briefs are submitted by interest groups and are written with the express purpose of persuading the Supreme Court justices to rule in favor of a certain party. Actors, such as the United States Solicitor General and state attorney generals, also submit amicus curiae briefs to the Court. Different states will oftentimes sign the same amicus brief in an effort to widen their fight and increase their influence on the Court. There was a major increase in the number of times amicus briefs were submitted by organizations throughout the twentieth and twenty-first centuries. Between 1946 and 1955, 23.45 percent of all Supreme Court cases had amicus briefs that were filed by various organized interest groups. In 1986, 85.1 percent of all cases had at least one amicus brief filed (Kearney 2000, 753). By 2015, 98 percent of all Supreme Court cases had amicus curiae briefs filed (Franze 2015). This change exhibits a significant increase in not only the total number of briefs filed, but it also demonstrates an increase in the amount of judicial lobbying by interest groups.

This paper will examine the effectiveness of submitted amicus curiae briefs by partisan interest groups for criminal procedure cases during the first three years of the Roberts Court. Because of the significant increase in filed amicus briefs at the outset of the Rehnquist Court, it would be beneficial to see if the justices have responded differently to organized groups over the course of the Roberts Court. Established and consistent parties, such as state attorney generals, may have a more significant impact on the outcome of a case than a partisan, unreliable source. The United States Solicitor General could also have a significant impact on the opinion of the Court. This individual is typically well respected by the Court because they are viewed as a

reliable source of information and frequently submit briefs on a wide array of cases. It will be important to note if the justices rule in favor of a certain party, cite certain arguments made in filed amicus curiae briefs, or if they cite the amicus brief in their opinion. This research will examine criminal procedure cases because this is an area of the law that sees highly contested issues that are constantly evolving. These cases are important to analyze today because of the development of new law enforcement technology and the growing number of conflicts that individuals have with local law enforcement officials.

The Roberts Court has historically had a strong conservative voting block. The central hypothesis is that there will be a positive relationship between conservative parties filing amicus curiae briefs and successfully swaying the conservative block of the Supreme Court to rule in a conservative manner. Evidence of this influence can be found in the opinion of the Court and whether these conservative arguments are cited in the footnotes, summarized, directly included, or not included in the majority opinions of the justices. The second hypothesis is that the justices will use more language and will reflect the wishes of the United States Solicitor in the majority opinions of the Court. This pattern will be present in the research because the ideology of the Solicitor General matches the overarching conservative ideology of the Roberts Court. The Solicitor General also has a reputation of being a trustworthy source to the Court. Nexis Uni will be used to access the universe of criminal procedure cases and their filed amicus curiae briefs for the first three years of the Roberts Court.

HYPOTHESES

The following hypotheses address the relationship between each of the coded variables and the ideological outcome of the Supreme Court. The six hypotheses address the types of amicus curiae brief filers, such as their political ideology, whether the filer is the United States Solicitor General, or a public or private individual or institution. The hypotheses also address how amicus briefs are utilized by the justices in the majority opinions of the Court. These hypotheses seek to describe the effect of amicus curiae briefs on the outcome of Supreme Court cases across different variables.

Hypothesis I: There will be a positive relationship between conservative parties filing amicus curiae briefs and successfully swaying the Supreme Court to rule in a conservative manner.

In her 2016 article, Karen Swenson found that when amicus briefs more heavily supported a specific party or ideology, the justices would be more likely to rule in that party and ideology's favor. One would expect to see that ideologically conservative amicus briefs filed to the Court will be more likely to lead to conservative majority decisions. The Roberts Court has been shown to be conservative in nature by Supreme Court scholars, oftentimes pointing to the replacement of Justice O'Connor with Justice Alito as reasoning as to why the Court became more ideologically conservative (Liptak 2012). Through 2014, Justices Ginsburg, Kagan, and Sotomayor voted together 88.3 percent of the time. Justices Roberts, Alito, Thomas, and Scalia voted together 83.4 percent of the time. The Roberts Court produced conservative opinions in 56 percent of all cases (Smith, McCall, and McCall 2014). Because of the conservative leaning of

the Court, the justices, mainly through the conservative bloc, will be more likely to incorporate the wishes of conservative amicus brief filers in to their decision making process.

Hypothesis II: The justices will be more likely to reflect the wishes of the United States Solicitor General in the majority opinions of the Court.

The United States Solicitor General has been shown to have a very influential affect on the Supreme Court (Collins 2006). This individual is appointed by the President and regularly submits high quality briefs to the Court. Because the Solicitor General is an appointed position, the Court could view the opinions of this individual as reflecting the wishes of the executive branch. There could be an inherent desire on the part of the justices to uphold these views. In 2006, Paul Collins found that the Solicitor General had a notable impact on swaying the ideological direction of the Court. He found that when the Solicitor General argues for a liberal majority opinion, the Court is 18 percent more likely to make a liberal decision. When the Solicitor General argued in favor of a conservative interpretation, the Court was 17 percent more likely to rule in a conservative manner (Collins 2006, 20). These findings underscore the impact of the opinion of the Solicitor General on the actions of the Court.

Hypothesis III: The Supreme Court will be more likely to listen to the wishes of a public sector amicus brief filer than a private sector amicus brief filer.

The Supreme Court will be more partial to the wishes of public sector amicus brief filers because of the credibility and reputation they have with the Court. Within the scope of public sector filers includes the United States Solicitor General and state amicus brief filers to the Court. The Solicitor General is known to submit high quality briefs to the Court, which allows

their briefs to be taken with heavier consideration by the Court (Lynch 2004). States also regularly file amicus briefs to the Court, which helps to boost their collective reliability and influence on the Court. Some private interest groups are partisan and unreliable filers of amicus briefs. They do not have the same developed reputation that some of the public filers have.

Hypothesis IV: The Supreme Court will be more likely to include language from amicus briefs in the majority opinion when the Court makes a liberal decision, instead of a conservative decision.

The Roberts Court began in 2005 and has become substantially more conservative during its first five years. During the first year of the Court, the justices ruled conservatively 58 percent of the time. After the fifth year of the Court, this rate rose to 65 percent, the highest it had been since 1953 (Liptak 2012). Because of the conservative nature of the Court, the justices may be more likely to include language from liberal amicus briefs when writing an ideologically liberal majority opinion. Because there is an expectation that the Court will rule conservatively, based on the makeup and previous decisions of the Roberts Court, the justices may feel a greater need to fully explain why they made a liberal decision and may feel a greater need to use the reasoning presented in liberal amicus briefs to explain and justify their decision.

Hypothesis V: The Supreme Court will be more likely to cite an amicus brief in the footnotes of the majority opinion when the Court makes a liberal decision, instead of a conservative decision.

As shown by Liptak, the Roberts Court ruled conservatively in 65 percent of cases by 2010 (Liptak 2012). As a result of this percentage, the Roberts Court has a conservative

reputation in the minds of scholars and the public. Because of this conservative reputation, people may expect a conservative majority decision. Because of this expectation, the justices may feel a greater responsibility to directly show how they came to their decision. By citing the amicus briefs that they used in the footnotes of the majority opinion, the justices are able to further justify and signal how exactly they came to their decision. This process makes following the reasoning behind the decision clearer to understand.

Hypothesis VI: The Supreme Court will be more likely to reverse the decision of the lower court in its majority opinion for a case.

The Supreme Court oftentimes chooses to hear appellate court cases that it believes address an important Constitutional question that may not already be answered by the Court. In other instances, the Court may decide to hear a case whose decision it hopes to reverse. The justices may disagree with the decision or justification of the lower court, and include the case on the Supreme Court's docket to reverse the precedent set by the lower court. Because of the selective nature of adding cases to the Court's docket, the Supreme Court will be more likely to reverse the decision of the lower court instead of reaffirming it.

RESEARCH DESIGN

For the research design, the universe of criminal procedure cases during the first three years of the Roberts Court (2005, 2006, and 2007) is used. There were 65 criminal procedure cases with amicus curiae briefs. The unit of analysis is each Supreme Court criminal procedure case during these three years. Cases without filed amicus briefs were not included in the dataset because they do not exhibit a relationship between amicus briefs and the majority opinion of the Court.

The independent variables are the types of amicus curiae briefs filed for the universe of criminal procedure cases during the Roberts Court from 2005 to 2007. The variable, Partisanship, was coded based on the political leanings of the filers of the amicus briefs to the Court. In congruence with Karen Swenson's 2016 study, there are no datasets that are available to the public that code interest groups and individuals based on their political ideology. The variable interest group partisanship was coded based on material from the interest group's website. Information on the website of the interest group that is traditionally liberal or conservative made it possible to determine the ideology of the group. If the group represents a certain profession, such as the American Bar Association, or seems to have no opinion on partisan topics, then the group was coded as neutral. For example, the Criminal Justice Legal Foundation was a filer for multiple cases. On their website, a press release is posted with the title, "Supreme Court Vacates Ruling Blocking Travel Ban" (Rushford 2017). In the press release, the author praised the use of President Donald Trump's use of presidential authority in

creating the travel ban. Because of the group's support of this conservative issue, they were coded as conservative.

The United States Solicitor General was coded with the same ideology of the sitting President, because this is an appointed position by the President of the United States. State filers were coded based on the ideology of the governors and state attorney generals. If there was a split between the party affiliation of the governor and state attorney general, the variable was coded for the party of the state attorney general. An example of this is Pennsylvania, whose state attorney general in 2005 was a Republican and governor was a Democrat. Therefore, Pennsylvania was coded as ideologically conservative. Partisanship was coded as an ordinal variable, with 0 meaning that the group is conservative, 1 meaning that the group is neutral, and 2 meaning that the group is liberal. Filers of amicus briefs were also coded based on whether they are public or private entities. This was coded as an ordinal variable, with 0 meaning that the filer is from the public sector, and 1 meaning that the filer is from the private sector.

The amount of language incorporated in the majority decision that was lifted from the amicus curiae briefs filed for each criminal procedure case was coded. This helps to determine to what extent the Court is swayed by the opinion expressed by the filed amicus curiae briefs. This variable, Langcite, is measured on a 0-2 scale. 0 means that none of the language from the brief is included in the majority opinion, 1 means that summary language or short quotations are used from the brief in the opinion, and 2 means that direct or multiple quotations from the brief are included in the opinion itself. The variable Footcite was coded for whether the majority opinion cites an amicus brief in its footnotes, which can also indicate that the justices were swayed by the brief's argument. Footcite is an ordinal variable, with 0 meaning that there is no citation of the brief in the footnotes of the majority opinion, and 1 meaning that there is a citation of the brief in

the footnotes of the majority opinion. These variables are separate because they represent different types of cited brief influence on the majority opinion of the Court. Language is oftentimes more extensive in explaining arguments, while footnote citations are often used as a means of supporting an argument based on existing brief information. The variable LowerDecision was created, which is an ordinal variable measured on a 0-1 scale that measures the ideological direction of the lower court's decision before the case came to the Supreme Court. 0 means that there was a conservative decision and 1 means that there was a liberal decision.

The dependent variable is the political leaning of the majority opinion of the Supreme Court in criminal procedure cases from 2005-2007. The dependent variable, Decision, was coded as an ordinal variable on a 0-1 scale. 0 means that the Supreme Court wrote a conservative majority opinion for the case, and 1 means that the Court wrote a liberal majority opinion for the case. The ideological direction of the outcome of a case is determined by the partisan outcome assigned to each case by Inside Gov.

In order to measure the amount of language that is used in the majority opinion of the Court that is from the amicus curiae briefs, a program called Copyscape was used. This is a website that is able to detect similar language that is used in two different texts. The software was run to detect the amount of similar language that was used in amicus briefs and incorporated into the majority opinion by the justices. It is important to read the sentences that surround any language that is summarized or directly used in the opinion in order to ensure that detected language used in both the amicus brief and majority opinion is simply not transition or introductory phrases. Typically, in order to qualify as either summary or exact language, there must be more than eight percent of similar language, which was the average threshold for

ensuring similar unique language in both the amicus brief and majority opinion. Inside Gov was used to collect the universe of criminal procedure cases from the Roberts Court from 2005-2007. Nexis Uni was used to obtain the filed amicus curiae briefs for each criminal procedure case from the Roberts Court from 2005-2007.

R Studio was used to run a logistic regression to determine if there are any statistically significant relationships between the independent and dependent variables. R Studio was also used to create cross tabulations that examine the percent frequency relationships between liberal or conservative decisions and the amount of language cited and whether there was a footnote citation.

DATA ANALYSIS

The following summary statistics and data analyses seek to highlight the effect that amicus curiae briefs have on the ideological outcome of criminal procedure cases of the Roberts Court from 2005-2007. Table 1 is a descriptive table that provides summary statistics on the number of criminal procedure cases and their filed amicus curiae briefs from 2005-2007. It also includes the frequency of conservative and liberal case rulings for each year. Table 2 is a descriptive table that includes the total number of amicus briefs for criminal procedure cases from 2005-2007 and the frequency of conservative, liberal, and neutral amicus brief filers for each year. Tables 3 and 4 are cross tabulations that compare the amount of language used in the majority opinion from filed amicus briefs and whether an amicus brief was cited in the footnotes of a majority opinion with the ideological leaning of the Supreme Court's majority decision. Table 5 shows the results of a logistic regression that demonstrates the probability that an amicus brief has an influence on the majority opinion of the Supreme Court. Tables 6 and 7 are descriptive tables that reflect the frequency count and percentage of topics that individual states and the United States Solicitor General addressed in their filed amicus curiae briefs across criminal procedure topics from 2005-2007.

Table 1: Descriptive table of the number of cases, number of amicus curiae briefs, and percentage of partisan majority opinions from 2005-2007 of the Roberts Courts in criminal procedure cases.

	2005	2006	2007
Number of cases	24	21	20
Number of amicus briefs filed	113	99	137
% Partisan Case Rulings	Liberal: 9/24 37.5% Cons.: 15/24 62.5%	Liberal: 8/21 38.1% Cons.: 13/21 61.9%	Liberal: 8/20 40% Cons.: 12/20 60%

Key: frequency column percentage

Table 1 is a descriptive table for the universe of criminal procedure cases between 2005 and 2007. It reflects that a similar number of liberal and conservative decisions were made in each year. In 2005 there were 9 (37.5%) liberal cases and 15 (62.5%) conservative cases. In 2006, 8 (38.1%) of the cases were liberal and 13 (61.9%) were conservative. In 2007, 8 (40%) of the cases were liberal and 12 (60%) were conservative. This reflects a consistent means of decision making across the three years by the justices of the Supreme Court.

Table 2: A descriptive table of the total number of amicus curiae briefs and the frequencies of partisan filers of amicus briefs for criminal procedure cases during 2005-2007 of the Roberts Court.

Year	Total number of briefs	Number of conservative filers	Number of liberal filers	Number of neutral filers
2005	113	24 21.24%	10 8.85%	79 69.91%
2006	99	30 30.30%	9 9.09%	60 60.61%
2007	137	53 38.69%	10 7.30%	74 54.01%

Key: frequency column percentage

Table 2 reflects the percentage of partisan filers of amicus briefs during each of the three years of the Roberts Court. In 2005, 21.24% of amicus brief filers were conservative, 8.85% were liberal, and 69.91% were neutral. In 2006, 30.30% of brief filers were conservative, 9.09% of filers were liberal, and 60.61% were neutral. In 2007, 38.69% of amicus brief filers were conservative, 7.30% were liberal, and 54.01% were neutral brief filers.

Table 3: Cross tabulation table comparing the frequency percentages of conservative and liberal majority opinions of cases and the amount of the language used from amicus briefs in the opinions of the Roberts Court for criminal procedure cases from 2005-2007.

Langcite	Conservative decision (0)	Liberal decision (1)	Total
No language (0)	65 30.95%	43 31.39%	108 31.21%
Summary language (1)	77 36.66%	39 28.47%	116 33.43%
Exact language (2)	68 32.38%	55 40.15%	123 35.55%
Total	210 100%	137 100%	347 100%

Cross tabulation key: frequency column percentage

Table 4: Cross tabulation table comparing the frequency percentages of conservative and liberal majority opinions of cases and whether the opinion cited an amicus brief in its footnotes from criminal procedure cases under the Roberts Court from 2005-2007.

Footcite	Conservative decision (0)	Liberal decision (1)	Total
No footnote citation (0)	193 91.90%	131 95.62%	324 93.37%
Footnote citation (1)	17 8.10%	6 4.38%	23 6.63%
Total	210 100%	137 100%	347 100%

Cross tabulation key: frequency column percentage

A cross tabulation was used to compare whether the majority opinion of the Supreme Court includes more language from amicus curiae briefs when they rule in either a conservative or liberal manner. This is reflected in Table 3. Of the conservative rulings, 30.95% of the opinions did not contain any language from the amicus briefs, 36.66% included summary language, and 32.38% included exact language in the majority opinion. Of the liberal rulings, 31.39% of the opinions did not include any language, 28.47% included summary language, and

40.15% included exact language from the amicus brief in the majority opinion of the Court. Conservative Supreme Court decisions are more likely to include summary language from amicus briefs than exact language or no language. For example, *Moises Sanchez-Llamas v. Oregon* received a conservative decision from the Court. The Criminal Justice Legal Foundation, a conservative brief filer, submitted an amicus brief that contains summary language that was incorporated into the majority opinion of the Court from the brief itself. Liberal Supreme Court decisions are more likely to include exact language from amicus briefs than summary language or no language.

Another cross tabulation was used to compare whether the majority opinion of the Supreme Court includes footnote citations from amicus curiae briefs in its majority opinions. This is reflected in Table 4. In conservative rulings, 8.10% of the majority opinions did include a cited brief in the footnotes, and 91.90% of the opinions did not include a cited amicus brief in the footnotes of the majority opinion. For liberal decisions, 4.38% of majority opinions did include a cited amicus brief in its footnotes, and 95.62% of majority opinions did not include a cited amicus brief in its footnotes.

Conservative majority opinions are more likely than liberal majority opinions to include an amicus brief citation in the footnotes of the opinion. The increase in the percentage of times that the Supreme Court cites briefs in conservative decisions can be explained by the actions of the U.S. Solicitor General, who is a conservative filer from 2005-2007. In the total number of amicus curiae briefs that the U.S. Solicitor General submitted to the Court, the justices cited their brief 50% of the time. This further demonstrates the important role and strong reputation that the Solicitor General has with the Court.

Table 5: Logit Regression of the probability that an amicus brief has an influence on the majority opinion of the Supreme Court between 2005 and 2007 in criminal procedure cases.

Variable	Coefficients	Standard Error
Partisanship	0.689***	0.212
PublicPrivate	-0.093	0.219
Langcite	0.252*	0.145
Footcite	-0.756	0.527
Lower Decision	-1.945****	0.427
N=65 cases		
*p<0.1 **p<.05 ***p<.01 ****p<.001		

R Studio was used to run a logistic regression to determine whether filer partisanship (conservative, neutral, or liberal), the type of filer (public or private), the amount of language cited in the brief (none, summary, or exact), whether the brief is cited in the footnotes, and the decision of the lower court (conservative or liberal) has a statistically significant effect on the ideological ruling of the Court. The control variables are PublicPrivate and Lower Decision. Partisanship of the brief filer is included in the model because this variable could help explain how the Court is influenced by the political ideologies of brief filers. The type of filer (public or private) is included to see if the Court is more or less likely to listen to government related or private entities in its decision-making process. Langcite is included in the model in order to examine whether the amount of language included in the majority opinion from the brief has a significant effect on the overall outcome of the case. The variable Footcite helps to demonstrate whether briefs cited in the opinion have a significant impact on the decision of the case. The lower court decision is the final variable and is included because it could provide insight into

whether the Court is more likely to maintain or reverse the lower court's ruling in its decision, which could be a driving force in the Court's decision making process. The partisanship of the decision of the lower court has a negative and statistically significant effect on the majority opinion of the Supreme Court. Partisanship also has a statistically significant effect on the majority opinion of the Court. The variable that measures the amount of language used in the majority opinion of the Court from the amicus briefs, Langcite, is statistically significant to the 0.1 level of confidence. The variables PublicPrivate and Footcite do not have statistically significant effects on the majority decision of the Supreme Court.

From 2005-2007, the United States Solicitor General filed fifteen amicus curiae briefs in 65 criminal procedure cases included in the dataset. The Solicitor General filed in 4.3 percent of the criminal procedure cases included in the study. Below, Table 7 reflects the frequency of topics for which the Solicitor General filed amicus briefs. Based on Table 6, Habeas Corpus cases and search and seizure cases both had the highest frequency of amicus briefs filed by the U.S. Solicitor General. Table 8 reflects the frequency of topics addressed by both the United States Solicitor General and individual states. Among these topics, habeas corpus cases were addressed the most, and search and seizure and right to counsel cases both had the second highest frequency of briefs by both the U.S. Solicitor General and individual states.

Table 6: Descriptive table of the frequency count and percentage that the U.S. Solicitor General files amicus briefs across topics from 2005-2007.

U.S. Solicitor General as Filer by topic	(Frequency of topic)/(Total case type frequency 2005-2007)
Search and Seizure	3/7
Search and Seizure, vehicles	1/2
Right to Counsel	2/3
Confrontation	1/2
Habeas Corpus	4/15
Extra-legal jury influencer: jurors and death penalty	1/1
Retroactivity	1/2
Cruel and unusual punishment, death penalty	2/10
Total Topics=8	

Table 7: Descriptive table of the frequency count that the U.S. Solicitor General and individual states file amicus curiae briefs across topics from 2005-2007.

Case Topic	U.S. Solicitor General Briefs	State Briefs	Total Briefs per topic
Search and Seizure	3	3	6
Search and Seizure, vehicles	1	1	2
Right to Counsel	4	2	6
Confrontation	1	1	2
Habeas Corpus	4	8	12
Extra-legal jury influencer: jurors and death penalty	1	1	2
Retroactivity	1	2	3
Cruel and unusual punishment, death penalty	2	6	8
Sentencing Guidelines	0	1	1
Subconstitutional fair procedure: presentation, admissibility, or sufficiency of evidence	0	1	1
Subconstitutional fair procedure: exhaustion of remedies	0	1	1
Extra-legal jury influences: miscellaneous	1	1	2
Miscellaneous criminal procedure (Guns)	0	2	2
Total Topics=13	18 S.G. Briefs	30 State Briefs	48 Total Briefs

DISCUSSION

The results of this study indicate that there is a significant relationship between the partisanship of the amicus brief filer and the majority decision of the Court, highlighting the importance of the partisanship of the amicus brief filer and being able to successfully influence the majority opinion of the justices. This conclusion has been supported by Collins' 2006 conference paper, in which he found that when liberal briefs were submitted to the Court at least three times, the likelihood that the Court made a liberal decision increased by five percent, while when a conservative brief was submitted up to three times, the likelihood of success rose to three percent. Swanson further supports this conclusion through her finding that when there is more weighted support behind a specific side and ideology, the justices are more likely to rule in favor of that particular ideology (Swenson 2016). The logistic regression, as reflected in Table 5, highlights this relationship with a statistically significant p-value of less than .01. This logistic regression shows that as the partisanship of the amicus filer becomes more liberal, the odds of producing a liberal majority decision by the Court increases. This is important because it shows that partisan interest groups and filers can have their intended impact on the Court. The amount of language cited in the majority opinion from the filed amicus briefs was statistically significant to a 0.1 level, which shows that it is not a highly contributing factor to the outcome of the case.

The decision of the lower court also had a statistically significant and negative relationship with the majority opinion of the Court. The variable, LowerDecision, has a p-value of less than .001. This demonstrates that there is a greater likelihood that the justices will overturn the decision of the lower court and produce an ideologically opposite majority opinion.

This is also interesting because it shows a different insight into the actions of the Court. The justices could have added cases to their docket with the intention of changing a lower court decision, thus making amicus curiae briefs less relevant to the justices from the outset of the case. This finding lends itself to an insight into the relationship between lower court decisions and the decisions of the Supreme Court that suggests that cases could be added to the term docket with the prior intent by the justices of reversing the lower court's decision. This could imply that the justices have prior intent when hearing cases, thus diminishing the role of amicus brief arguments.

The cross tabulation in Table 3 demonstrates the relationship between liberal and conservative majority opinions and the amount of language cited by the Court. In conservative cases, the Court was more likely to use summary language than exact language from the amicus briefs in their majority opinions. In liberal cases, the court was more likely to use exact language than summary language from the amicus briefs in their majority opinions. This could be explained through the notion that because the Court was historically conservative from 2005-2007, the public may have had a greater expectation of the Court making a conservative decision for a case. The conservative justices of the Court may have felt a greater need to cite specific reasoning when adopting the language and viewpoint of liberal amicus brief filers as more specific justification of their opinion to the public.

The cross tabulation in Table 4 demonstrates the relationship between liberal and conservative cases and whether the justices cited filed amicus briefs in the footnotes of the majority opinions. Conservative decisions had a higher percentage frequency than liberal decisions of citing amicus curiae briefs in the footnotes section of its majority opinions. This could be explained through the actions of the U.S. Solicitor General. The Solicitor General from

2005-2007 was a reliable, conservative entity to the Court. Of the ten cases in which the U.S. Solicitor General was the sole filer of an amicus brief, the Court made a conservative majority decision in six of those cases. In nine of those cases, the justices incorporated exact language from the briefs of the Solicitor General into the majority opinions. In five of those cases, the justices cited the brief of the Solicitor General in the footnotes of their majority opinions. This shows that the United States Solicitor General has a very impactful role with the Court.

The United States Solicitor General submitted fifteen amicus curiae briefs to the court for the 65 criminal procedure cases from 2005-2007. Within those cases, eleven of the fifteen briefs submitted to the Court supported the United States, state, or state-employed worker in the case. This demonstrates a commitment on behalf of the U.S. Solicitor General to protecting the interest of the country and individual states, as well as public sector workers. When the United States Solicitor General was the sole filer of amicus curiae briefs to the Supreme Court, the topic with the highest percentage of briefs were habeas corpus cases, with 26.67 percent of amicus briefs. This remained true when state filers were incorporated with the solicitor general's filings, with habeas corpus cases receiving 26.09 percent of the filed amicus briefs. In both of these cases, the second highest topic frequency was search and seizure. This could signal similar concerns for both federal and state level public entities.

These results support *Hypothesis I and Hypothesis II*. *Hypothesis I* stated that one expected to see a positive relationship between conservative entities filing amicus curiae briefs and successfully swaying the Supreme Court to rule in a conservative manner. The logistic regression supports this hypothesis with a statistically significant relationship between the partisanship of the brief filer and the outcome of the Court. As briefs became liberal, they were more likely to create liberal decisions. Conservative amicus briefs tended to lead to conservative

majority opinions by the Court. *Hypothesis II* states that the justices will be more likely to reflect the wishes of the United States Solicitor in the majority opinions of the Court. Of the fifteen cases in which the Solicitor General filed an amicus brief, ten of the majority opinions of the Court reflected the same ideology set forth by the Solicitor General's amicus brief. In seven of the fifteen cases in which the U.S. Solicitor General filed an amicus brief, the majority opinion of the Court reversed the decision of the lower court. This could demonstrate that the Solicitor General tends to file amicus briefs for cases that they hope to change the lower court's ruling. Based on the logistic regression, the amicus brief filer being a public or private entity did not have a statistically significant impact on the outcome of the Court. *Hypothesis III* cannot be shown to have a bearing on the outcome of a case.

Hypothesis IV states that the Supreme Court will be more likely to include language from amicus briefs when making an ideologically liberal majority decision. In the logistic regression, the variable *Langcite* is statistically significant to the 0.1 level of confidence, indicating that it has a lower level of statistical significance. Table 3 demonstrated that of the conservative rulings, 32.38% of the majority opinions included exact language from amicus briefs, while 40.15% of liberal rulings included exact language from the briefs. These percent frequencies indicate that the Court may be more likely to include exact language from amicus briefs when making liberal decisions.

Hypothesis V, which states that the Court is more likely to cite amicus briefs in the footnotes of a majority decision when making an ideologically liberal decision, is shown to have no statistical significance in the logistic regression. Table 4 shows that 8.10% of the conservative opinions included a footnote, while 4.38% of the liberal decisions included a footnote. These factors could provide evidence that *Hypothesis V* cannot be shown to be true. *Hypothesis VI*

states that the Supreme Court is more likely to reverse the decision of the lower court that ruled on the case. This hypothesis was confirmed after running the logistic regression, which found this phenomenon to be statistically significant to the .001 level of confidence.

CONCLUSION

In conclusion, an important outcome of this research is the impact that the partisanship of the amicus brief filer has on the outcome of the Court. Conservative and liberal filers were the most successful at swaying the Court to write decisions that reflected their own ideologies. Next, the role of the United States Solicitor General is very influential on the decision-making process of the Supreme Court. The Solicitor General's briefs had a high success rate with the Court and are reportedly more closely examined by Supreme Court law clerks. Liberal majority opinions by the Court were more likely to have exact language incorporated from their filed amicus briefs than conservative decisions. This could be explained through the partisan makeup of the Court. In some liberal majority opinions, such as *Roper v. Weaver*, the ideologically liberal justices of the Court would be joined by a conservative leaning justice in order to form a majority. In this case, because the liberal justices were able to form a majority, they would be more likely to use liberal amicus briefs to support their ideology. In other instances, such as in *Samson v. California*, the conservative justices would be joined by a liberal justice in order to form a majority. This could lead to an incorporation of liberal amicus briefs to demonstrate how a liberal ideology could lead to their opinion.

Limitations to the analysis were that there were not any accessible data sets that coded for the ideology of interest groups, which made the process more complex than expected. Another limitation is that it was sometimes difficult to discern summary language from exact language in cases where the same terminology or transition words or phrases were used in both the majority

opinion and the amicus curiae brief. This led to a greater effort to determine the importance and level of the language used.

There are many opportunities for research that could come from these findings. One could take a closer look into the amicus briefs that the U.S. Solicitor General filed to the Court over a longer period of time and across varying topics to further investigate their special relationship with the Supreme Court. Future research could also examine changes in how interest group and U.S. Solicitor General participation with the Court increased throughout the twentieth century.

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EXPERIENCE

**Office of United States Senator Robert P. Casey Jr., Internship
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Wrote briefing memos for staff, wrote constituent letters, attended committee hearings and briefings, and logged constituent voicemails

**Corporation for National and Community Service, Internship
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Wrote memos and briefing materials regarding Congressional legislation and hearings

**Legal Aid of Southeastern Pennsylvania, Volunteer
2012, 2013, 2015**

Pottstown, Pennsylvania

Aided staff attorneys and clients, completed research assignments

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Planned activities for campers between the ages of 5-15

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Completed research using RStudio and Stata, Data Analysis and Statistical Software