The Supreme Court, Ideology, and the Decision to Cite or Borrow from Amicus Curiae Briefs

Abstract

Scholars have sought to understand the dual characterization of Supreme Court justices as both legal and political actors. One way to further uncover this complexity is to assess how the justices engage with the interest groups that file amicus curiae or "friend-of-the-Court" briefs. Scholars have revealed that the justices often "borrow language" from these briefs in their opinions. However, much less often, they cite the amici. These two uses are distinct in that one is revealed to the reader while the other is not. So which interest groups do the justices decide to cite and which do they borrow language from? I find the justices borrow more language from ideologically similar interests, but that ideology plays a less central role in the decision to cite. Specifically, I find that the justices are less likely to cite briefs filed by ideologically overt interests, but this only extends to the most ideologically "extreme" groups. Further, the justices are not more likely to cite briefs filed by interests that are ideologically similar to their own preferences. These findings provide insight into how the justices balance policy and legitimacy goals.

Keywords: Supreme Court, ideology, amicus curiae, interest groups

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In *Grutter v. Bollinger* (2003) the Court determined that the use of race as a "plus" in law school admissions decisions did not violate the Equal Protection Clause of the Fourteenth Amendment, upholding this form of affirmative action in university admissions. Justice Sandra Day O'Connor authored the majority opinion and cited about eight different amicus curiae briefs 12 times. These references received attention in national newspapers such as the *Washington Post* and the *New York Times*.[1] Much less apparent, was the fact that 37 percent of the opinion was composed of the exact language from amicus curiae briefs filed in the case. These two types of uses of amicus curiae briefs are distinct in that one is revealed to the reader (citing) and the other is not (borrowing). This phenomenon brings to light an interesting puzzle—what types of interest groups are the justices citing and which are they borrowing language from and does this differ based on the type of use? More specifically, do the justices act more ideologically when amicus use is concealed (when borrowing language) and less ideologically when it is revealed (when citing)?

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[1] Greenhouse, Linda. 2003. "The Supreme Court: Affirmative Action; Justices Back Affirmative Action by 5 to 4, but Wider Vote Bans Racial Point System." *New York Times*. (Accessed online 24 March 2018). https://www.nytimes.com/2003/06/24/us/supreme-court-affirmative-action-justices-back-affirmative-action-5-4-but-wider.html

Bollinger, Lee C. 2003. "A Resounding Victory for Diversity on Campus." *The Washington Post*. (Accessed online 24 March 2018). https://www.washingtonpost.com/archive/opinions/2003/06/24/a-resounding-victory-for-diversity-on-campus/0ff03331-13c6-4906-97de-74a3dac29859/?utm_term=.14d23978d4bb

Over the past several decades, interest groups have worked to exert their influence over Supreme Court decisions, often by submitting amicus curiae briefs in an attempt to sway the justices' decision making, and scholars have debated how much attention the justices give to these briefs. One noticeable indication of amicus influence is the justices' tendency to cite these briefs in their majority opinions, and while this phenomenon is not common, citations in opinions of all varieties have been increasing over time (Franze & Reeves Anderson 2015, 2020; Kearney & Merrill 2000, 758; Owens and Epstein 2005). A less obvious but equally important (and more common) indicator is the use of amicus provided language in majority opinion content (Collins, Corley, & Hamner 2015). Here, the justices take the exact language from amicus briefs and incorporate it directly into their opinions. Analyzing these two types of use contributes to our understanding of the justices as both legal and political actors by revealing the contexts in which they do or do not behave ideologically. Further, it speaks to the literature on the usefulness of amicus curiae briefs and shows how politically motivated interest groups can help shape Supreme Court policy.

In this paper I assess whether the justices rely on different types of interests when they borrow language compared to when they formally cite. Doing so provides insight into how the justices weigh policy goals with concerns about legitimacy. I theorize that to the extent that legitimacy concerns matter to the justices, they should mostly manifest in the realm of citations, which is a visible action. Here, I expect the justices to be less likely to cite ideologically overt filers. However, if we assume policy goals override legitimacy concerns, we should see the justices citing ideologically congruent interests. This is similar to how the justices should act in the realm of borrowing language, a less visible action where legitimacy concerns are not likely to

manifest. Here, I hypothesize that the justices will borrow more language from ideologically similar interests.

I test the implications of this theory by analyzing over 1,900 amicus curiae briefs submitted in a subset of cases from the 1988 – 2008 terms. I am able to assess the role ideology plays in a justice's decision to cite or borrow language from amicus curiae briefs by using a novel dataset that provides ideal point estimates for 600 organized interests in the same policy space as the Supreme Court justices (Hansford, Depaoli, and Canelo w.p.).[2] Consistent with my theory, I find that the justices borrow more language from interest groups that are ideologically proximate to their own preferences, suggesting they act more ideologically when such use is unlikely to be noticed. This behavior is not replicated when it comes to citing the briefs as I find that the justices are not more likely to cite briefs filed by organized interests that are ideologically similar to their own preferences. This study also reveals that while the justices do not avoid citing briefs the more ideological the filing interest, they do avoid citing briefs filed by the most unapologetically ideological groups. Finally, I find that the justices interact with interest groups that file often differently in that they borrow more of their language but are less likely to cite them, suggesting that they find the information they provide useful, but perhaps see no utility in formally referencing them. These findings are interesting in that they allow us to understand how an institution whose legitimacy might rest on its perception as being apolitical engages with politically motivated interest groups and suggests that such interests might have the ability to help shape the content of the Court's policies.[3]

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[2] See https://amicispace.ucmerced.edu/

[3] Some have argued that the use of amicus briefs in majority opinions is a function of Supreme Court clerks. However, it can be argued that a justice would not claim authorship of an opinion

The Supreme Court's Use of Amicus Curiae Briefs

Scholars have worked to identify the actual level of influence organized interests have by analyzing the extent to which these interests do (Collins 2007; 2008a; 2008b; Ennis 1984; Hansford 2004; Kearney & Merrill 2000) or do not (Epstein, Segal, & Johnson 1996; Songer & Sheehan 1993) influence outcomes. Most of these studies focus on the decision direction in a particular case, assessing whether or not the justices voted in favor of the party the amici advocated for (Bailey, Kamoie, & Maltzman 2005; Kearney & Merrill 2000), or focusing on the ideological outcome of a case (Collins 2007; 2008), and/or the individual votes of the justices (Box-Steffensmeier, Christenson & Hitt 2013; Collins 2008). However, there has also been an emphasis on understanding how these interests can influence the content of the Supreme Court's majority opinions (Collins, Corley, & Hamner 2015; Epstein & Kobylka 1992; Spriggs & Wahlbeck 1997).

Citations to amicus briefs in Supreme Court opinions is one obvious indicator of the justices' use of these briefs, however, there has not been much scholarly work devoted to understanding this, outside of work that suggests these citations have increased over time (Franze & Reeves Anderson 2015, 2020; Kearney & Merrill 2000, 758; Owens and Epstein 2005) and work that reveals amicus briefs cited in the majority opinion do not enjoy greater success rates than those that remain uncited (Kearney and Merrill 2000). Understanding the impact these citations have on amicus curiae success and involvement with the Court is essential and generates a curiosity about which interests the justices choose to cite and why.

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he or she does not agree with. Further, Supreme Court clerks serve for very short periods of time relative to the justices' extensive tenure on the Court.

Another way organized interests can influence opinion content is through borrowed language, where the justices take the exact language from the amicus briefs and incorporate it directly into their opinions. Corley (2008) introduced the field to the use of plagiarism detection software to detect instances where the justices take the exact language from various sources of information. Collins, Corley, and Hamner (2015) used this method to assess the extent to which the justices borrow the exact language from amicus curiae briefs in their majority opinions. They find that the justices are more likely to incorporate amicus provided information that is of high quality, reiterates arguments from other sources, and is from credible interests such as elite amici (Collins, Corley, & Hamner 2015). This seminal work was essential to furthering our understanding of how organized interests can help shape the actual content of the Supreme Court's opinions. What we still know very little about are the ideological nature of the interest groups whose briefs the justices rely on and whether they rely on different types of interests based on whether they cite a brief (revealed use) or borrow language from one (a more concealed use).

Citing or Borrowing Language from Amicus Briefs Filed by Particular Interests

Distinguishing between these two types of amicus use provides a unique opportunity to understand the extent to which justices balance policy preferences and legitimacy concerns. In theorizing about this, it is important to understand the goals of the justices and the constraints that they face. First, Supreme Court justices have policy preferences and, as such, they seek to establish legal policy consistent with these preferences (Rohde & Spaeth 1976; Segal & Spaeth

1993, 2002)[4], an assumption that has been demonstrated empirically (Epstein & Knight 1998; Hansford & Spriggs 2006; Maltzman, Spriggs, & Wahlbeck 2000).

One constraint justices face is incomplete information in that they don't always know the preferences of other actors or the broader implications of their rulings (Epstein & Knight 1998, 1999; Hansford & Johnson 2014; Johnson, Wahlbeck & Spriggs 2006; Maltzman, Spriggs, & Wahlbeck 2000; Murphy 1964). This presents a challenge when producing effective majority opinions that garner compliance among external actors. For example, justices are unsure of how a ruling will be received by complying audiences and might have difficulty assessing the consequences or broader implications of a particular policy on those members of society impacted by the decision. In order to produce policy that is implemented as intended, the justices must overcome this challenge. Amicus curiae briefs help the justices achieve this goal, as these briefs can provide the justices with information (Epstein and Knight 1999; Hazelton and Spriggs 2019; Spriggs and Wahlbeck 1997) that can help them produce effective opinions.

A second consideration the justices must take into account pertains to legitimacy. As an institution that does not have the means or authority to implement its own decisions, the legitimacy of the Court's decisions should be of concern to the justices. Legitimacy theory asserts that the decisions of legitimate, respected institutions will be complied with even when they are unpopular because the institution is deemed to have the authority to make such

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[4] Policy preferences are not the only considerations that motivate the justices (Baum 1998; Epstein, Landes, & Posner 2013; Posner 2010). However, this is one of the main motivations that I will be focusing on in this project.

decisions.[5] The Court has no power over the "sword or the purse." In other words, while they are able to make decisions, they themselves cannot enforce them or force others to do so. As such, the justices should work to bolster the Court's institutional legitimacy and the legitimacy of its decisions. The justices can do so by sustaining their image as relatively unbiased, neutral actors whose purpose is to rely on the law to make decisions (Epstein & Knight 1998; Epstein, Landes, & Posner 2013; Posner 2010). This can be done by ensuring the public views the institution as void of partisanship (Hibbing & Theiss-Morse 1995) and guided by law (Baird 2001; Scheb & Lyons 2000), features that can also increase public acceptance of its rulings (Mondak 1990; 1992).

However, the extent to which the justices prioritize legitimacy has been debated. While some suggest the justices should or do work to maintain legitimacy to promote the efficacy of their decisions (Clark 2009; Hall 2014; Glennon and Strother 2019) others suggest that, in general, policy preferences override legitimacy concerns for the justices (Rohde and Spaeth 1976; Segal and Cover 1989; Segal and Spaeth 1993, 2002). Assessing the different types of amicus use in majority opinions can provide insight into the extent to which the justices are concerned with legitimacy. Majority opinions are essential for the justices to realize their goals as they use these opinions to align precedent with their preferences, articulate legal rules, and confer or maintain legitimacy.

In terms of amicus use, legitimacy concerns should only manifest in instances of *citations* to these briefs since this type of use is visible in the majority opinion and thus revealed

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[5] For more information on the different theories of legitimacy see Gibson (2007) and Gibson, Lodge, & Woodson (2014).

to the reader. If the justices care about the perception of the Court as a relatively neutral entity that is primarily guided by legal considerations and void of politics, they should be cautious about the types of interests whose briefs they cite. I assume that affiliating with certain political actors can be harmful to legitimacy, while associating with others can aid it. Citing interest groups in majority opinions might be viewed as signaling agreement with these actors. As such, citing ideologically extreme interests, an action that is visible to external audiences, might make the justices appear as biased, politically motivated actors whereas citing more neutral actors that are not as politically charged should not have this same effect. For example, one can imagine the implications a justice might face for citing a brief filed by Planned Parenthood (liberal) or Focus on the Family (conservative), with clear partisan and/or ideological agendas, relative to citing a brief filed by more moderate groups such as the American Hospital Association or the Health Insurance Association of America. As such, interests that are more centrist might enhance the Court's credibility and aid with maintaining their image as unbiased actors. Since these actors are not overtly ideological, they might help the Court legitimize its decisions, or at least not harm the perception of the justices as neutral decision-makers.[6] Thus, if legitimacy is of concern to the justices, I expect to find that:

H1: *The more ideologically overt an interest, the less likely the justices will be to cite their amicus curiae brief.*

However, if policy considerations override legitimacy concerns, then the justices shouldn't be

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[6] Prior work has established that the justices will cite extralegal sources such as the Federalist Papers (Corley, Howard, and Nixon 2005), rhetorical sources (Hume 2006), newspaper articles, magazines, and academic journals (Schauer and Wise 2000) in their majority opinions, especially when attempting to legitimize decisions (Corley, Howard, and Nixon 2005; Hume 2006).

worried about the types of interests they cite. In this scenario, they should not be averse to acting

ideologically by highlighting agreement with ideologically similar actors and thus I'd expect to

find that:

H2: *The more ideologically congruent an interest is to the opinion author, the more likely the justice will cite the brief.*

Unlike citations to interests which are highly visible in the Court's majority opinion,

borrowing language from an amicus brief is discreet in nature and is not readily apparent in the

majority opinion. Since this type of use is unlikely to be revealed, I argue that the justices will

borrow more language from ideologically congruent interests. In this scenario, legitimacy

concerns should be abated as external audiences will not notice this type of use and the justices

should thus have more leeway to rely on briefs filed by ideologically similar interests. As such, I

expect to find that:

H3: *The more ideologically congruent an interest is to the opinion author's preferences, the more language the justice will borrow from its amicus brief.*

Data and Methods

To test the citations hypotheses (H1-H2), I randomly selected over 300 cases across the

1988-2008 terms. The unit of analysis is the individual amicus brief of which there are

approximately 1,740 in the sample. Since I am interested in citations to interest groups I exclude

briefs filed by the United States Solicitor General, state and local governments, and individual

people. In this range of data there were only 46 citations to amicus briefs in the majority

opinions. To overcome this issue, I implement a research design proposed by King and Zeng

(2001), that recommends collecting an oversample of the rare events, in this situation, citations

to amicus briefs in majority opinions. To do so I intentionally selected cases where citations were

included in the majority opinion and included all amicus briefs filed in the case, whether there

was a citation to the brief or not. This produced 1,553 more briefs into the data, 181 of which

included citations. As I am selecting on the dependent variable, I use the "ReLogit: Rare Events

Logistic Regression" package in Stata as the "relogit" command produces estimates that are

corrected for the bias that occurs when events are rare or when the user collects an oversample of

rare-events data (Tomz, King, & Zeng 1999), as described above. This package was used to test

the citations hypotheses (H1-H2). The dependent variable *Cited* was coded "1" if a brief was

cited in the majority opinion and "0" otherwise.[7] The justices appear to be very selective when it

comes to citing amicus curiae briefs. Out of over 3,297 amicus briefs submitted by organized

interests in 523 cases, only 226 (7%) of them were mentioned in majority opinions in a positive

or neutral manner in just 156 different cases.[8] While the majority of citations were to briefs

advocating for the "winning" position, 35.7% of positive or neutral citations were to briefs filed

on the opposing side of the case. This compares to 80% of negative citations.[9]

Conceptually, my independent variables for the citation models attempt to measure the

credibility (or lack thereof) of particular interests that file amicus curiae briefs. To test whether

the justices are less likely to cite ideologically extreme actors (H1) I use a dataset that provides

ideal point estimates for 600 organized interests that have filed amicus curiae briefs with the

United States Supreme Court (Hansford, Depaoli, and Canelo w.p.).[10] I have ideological

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[7] This variable only includes citations that were considered positive or neutral in nature. See

Online Appendix Section A for more information on coding rules.

[8] A list that contains some of the interests whose briefs were cited can be found in Section B of

the Online Appendix.

[9] Negative citations were not used in the analyses.

[10] See https://amicispace.ucmerced.edu/

information for 1,935 out of the 3,297 amicus briefs filed by organized interests. This means in total, there are 137 cited briefs for which I have ideological data. These 1,935 briefs will be used to test my hypotheses. For briefs that had more than one co-signer with an ideal point estimate, I took the mean of those available. I create a variable called *Ideologically Overt* by taking the absolute value of the ideal point estimate. (This is the absolute value of the mean of available ideal points for briefs with multiple amici). Coding the variable as such makes it so that as the value increases, the more ideological the interest is, regardless of whether it is conservative or liberal. This variable allows me to assess whether the justices are less likely to cite ideologically overt actors.

My second independent variable measures *Ideological Congruence* between the organized interests on an amicus brief and the opinion author. To construct this variable, I use the absolute value of the majority opinion author's ideal point subtracted from the organized interests' ideal point multiplied by -1. With this coding I expect that as the ideological congruence between the filing interests and opinion author increases, the more likely the justice will be to cite said brief.

In testing the citations hypotheses, I control for a variety of important factors in an attempt to eliminate other causal pathways. First, I control for whether the United States Solicitor General (USSG) submitted an amicus brief in the case. Research demonstrates that the USSG is a very influential actor at the Supreme Court (Black & Owens 2012; 2013). While one might argue that the USSG is a credible actor that might help enhance the Court's legitimacy, I do not hypothesize about this relationship because I cannot causally determine whether the Court is citing the actor for her credibility or because of her access to high quality resources and information. Also, the relationship between the USSG and the Court is a unique one and is much

different than the relationship between interest groups and the Court, requiring additional theorizing that is beyond the purpose of this paper. Frequent filers of the Court might be deemed as credible by the Court, and as such I control for this factor. Further, previous work suggests some of these interests are held in high regard by the Court (Lynch 2004). To do so I used a dataset that included all amicus briefs filed from 1953-2008 and determined which interests filed most often. This includes those who were in the 99th percentile having filed 65 or more briefs during this period. The variable *Frequent Filer* is coded "1" if one of these organized interests was included on the brief and "0" otherwise. The exact list of interests included in this variable can be found in section B of the Online Appendix. I also include controls for the number of cosigners signed onto a brief (*Number of Amici*). It is possible that an extensive number of interests signed on to a brief can signal agreement amongst a variety of different actors which might signal credibility. I also control for the *Number of Amicus Briefs* filed in a case, as the justices might be less inclined to cite a particular brief when many briefs are filed in the case.

There are also a few case-level controls that are important to consider. I first control for case salience. The salience of a case might influence which interests file briefs and might also prompt the justices to be more cautious in their opinion writing. When controlling for this, it is important to avoid endogeneity and ensure the opinion issued in a case is not what is making it salient. It is also important to ensure the justices are aware of the case salience as they are writing the opinion. I therefore use Clark et. al.'s (2015) "early salience" measure that captures the salience of a case *before* the decision was announced in order to account for this. I also control for the number of words in the majority opinion (*Opinion Word Count*)[11], whether the Court is reversing the lower courts using measures from the Supreme Court Database (Spaeth et

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[11] This variable is scaled to be the actual opinion word count divided by 1,000.

al. 2016), and *Justice Ideology* using the ideal point estimates produced by (Hansford, Depaoli, and Canelo w.p.). These estimates are ideal because they are located in the same policy space as the interest groups.

Citations Results

Figure 1 takes a descriptive look at the ideology of the briefs that were filed in the dataset (solid line) relative to the ideology of the briefs that were cited (dashed line). As evident from the solid line in the figure, there is a wide range of ideological actors that file. The most liberal (-1.91) was a brief filed by 16 women's rights organizations with the American Association of University Women being the most liberal single entity (-2.50). The most conservative was a brief filed by the Knights of Columbus (1.18). While there are a range of actors that file, the justices seem to only cite interests whose ideal points are between -1 and 1. So, at least descriptively, the justices appear to somewhat limit which interests they cite in their opinions and avoid citing briefs filed by the most ideologically extreme groups. Next, I look at whether this is significant when modeled.

Figure 1: Ideology of Amici Whose Briefs Were Cited
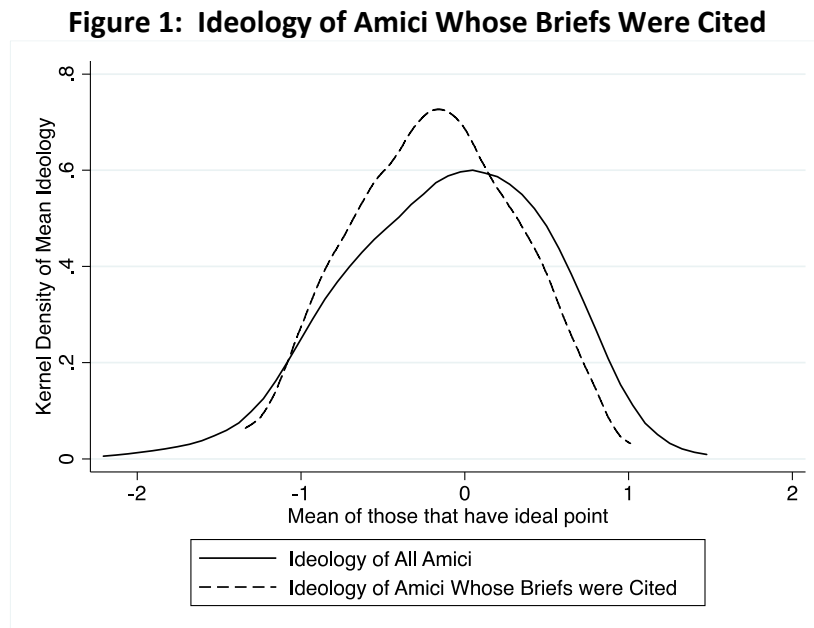
My first hypothesis suggested that the justices would be less likely to cite ideologically extreme interests. As we can see from Model 1 in Table 1, while the coefficient is in the correct direction, it is not statistically significant, suggesting that the justices do not actively refrain from citing ideologically overt interests. This was measured using the absolute value of the ideal point estimates as mentioned above. In Model 2 of Table 1 I address this hypothesis using a coarser measure. To do so, I look at whether the justices are avoiding citations to the most extreme interests. As such I create a variable *Ideological Brief* coded "1" if the brief was filed by the most liberal interests (where the mean ideology of filing interests on a brief is in the 25th percentile) or most conservative interests (when the mean ideology of filing interests on a brief is in the 75th percentile) and coded "0" otherwise. As evident in Model 2, the coefficient is negative and statistically significant, suggesting the justices avoid citing the most ideologically extreme interests, thus providing partial support for hypothesis 1. This would suggest that the legitimacy component theorized above plays at least some role in the decision to cite a brief. While the justices don't avoid ideological briefs altogether, they avoid citing those filed by the most ideologically extreme interests.

Next, I move on to assessing whether the justices are engaging in ideological behavior by evaluating hypothesis 2, that justices will be more likely to cite briefs filed by ideologically congruent interests. As evident in Model 3 in Table 1, the coefficient for *Ideological Congruence* is not statistically significant, suggesting the justices are not more likely to cite briefs filed by ideologically similar groups. As in testing my first hypothesis, I also tested this hypothesis using a coarser measure. That is, I assess whether the most liberal justices are citing briefs filed by the most liberal interests and whether the most conservative justices are more inclined to cite briefs filed by the most conservative groups. As such, I created a variable *Ideological Congruence*

(Coarse). To create this measure, I first assess the coarse ideology of the justices. I code this as "-1" (liberal) if a justice's ideal point was in the 25th percentile, "0" (moderate) if between the 25th and 75th percentiles, and "1" (conservative) if in the 75th percentile or higher. I repeat this process to code the ideology of the amici filers on each brief. Then I create the actual variable which is coded "1" if the opinion author is liberal and the filing interests on the brief are liberal or if the opinion author is conservative and the filers are conservative and "0" otherwise. As evident in Model 4, the coefficient is not statistically significant, suggesting more ideological justices are not citing briefs filed by more ideological interests. Taken together, these results demonstrate that the justices are not merely citing briefs filed by interests they agree with ideologically. This is especially interesting given the results above that demonstrate the justices do not avoid citing ideological briefs altogether.

Another interesting observation can be found in the control variables. Across all models, the justices are less likely to cite briefs filed by frequent filers.[12] This is interesting in that one might make the argument that these frequent filers have more of a reputation with the Court and that this credibility might make their briefs more likely to be cited. However, my findings show the opposite. Further, in one of the models the salience variable is negative and statistically

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[12] One might be concerned that frequent filers are more likely to be of the most ideologically extreme interests. I thus checked whether the dichotomous frequent filer variable is correlated with the dichotomous ideological brief variable and find that $r = .19$, suggesting this isn't a major concern. As a robustness check I also ran the models removing the frequent filer variable and the substantive results remained the same. These models can be found in Section C of the online appendix.

significant in a one tailed test (p = .04). This appears consistent with theories about legitimacy in that the justices are less likely to cite briefs filed by organized interests in salient cases, when the media and external audiences are more inclined to notice.

Table 1. Brief Cited in Majority Opinion

Independent Variable

	Model 1	Model 2	Model 3	Model 4
Ideologically Overt	-.249			
	(.358)			
Ideological Amicus Brief (Coarse)		-.455*		
		(.207)		
Ideological Congruence w/ OA			.167	
			(.244)	
Ideological Congruence (Coarse)				-.100
				(.297)
Frequent Filer	-.574*	-.517*	-.618**	-.615**
	(.238)	(.223)	(.220)	(.222)
United States Solicitor General Filed	.022	.037	.036	.010
	(.235)	(.234)	(.239)	(.237)
Number of Amici	.017*	.017*	.017*	.016*
	(.007)	(.008)	(.008)	(.007)
Number of Briefs	-.020	-.020	-.026†	-.020
	(.014)	(.014)	(.015)	(.014)
Opinion Word Count	.039	.039	.058*	.040
	(.028)	(.028)	(.027)	(.028)
Salience	-.174	-.130	-.223†	-.193
	(.138)	(.134)	(.131)	(.132)
Reversing Lower Court	-.332	-.340	-.413†	-.330
	(.221)	(.221)	(.227)	(.220)
Justice Ideology	-.977***	-.931**		-.990***
	(.297)	(.298)		(.303)
N	1,934	1,934	1,934	1,934

Entries are rare events logit estimates (using the relogit Rare Events Logistic Regression Package in Stata).
Standard errors clustered by case. * $p \leq .05$; ** $p \leq 0.01$; *** $p \leq 0.001$ (two-tailed test). † $p <= .10$ (two-tailed test).

Borrowed Language

Next, I move on to assess whether the justices borrow more language from ideologically congruent interests (H3). The data includes the briefs filed by organized interests in over 300 cases randomly selected across the 1988-2008 terms. The unit of analysis is the individual amicus brief. I created a dependent variable that is the percentage of the majority opinion derived from each individual amicus brief filed in that case. This was acquired using WCopyfind 4.1.5 (Bloomfield 2016) to compare the majority opinion to said briefs. I used the WCopyfind presets consistent with the existing literature. The shortest string of words was set to 6, the minimum percent of matching words to report was set to 80%, the maximum number of imperfections (non-matching words) was set to 2, and the program was set to ignore letter case, outer punctuation, numbers, and non-words (Black & Owens 2012; Corley 2008; Corley, Collins, & Calvin 2011; Collins, Corley, & Hamner 2014; Collins, Corley, & Hamner 2015). For these models I necessarily limit my analyses to only include the briefs for which I have ideological data (N = 1,041). The percentage of the majority opinion language borrowed from an individual brief ranges from 0 to 19 with a mean of 2.87 and a standard deviation of 3.18. The variable is entered as a proportion in the actual data and thus I employ a fractional logit model.

To test Hypothesis 3, that the justices will borrow more language from ideologically congruent interests I create an *Ideological Congruence* variable similar to the measure previously described for Model 3 above. First, I create a variable that is the *Ideological Congruence with the Opinion Author*. Next, since research suggests that the median of the majority coalition plays an important role in controlling opinion content (Carrubba et al. 2012), I create an *Ideological Congruence with the Median of the Majority Coalition* variable to account for the fact that the

opinion author must work to accommodate the preferences of the median of the majority coalition.

I control for the amount of overlap in language between the amicus brief and the litigant the interest was advocating for. In instances where the amicus brief did not express which party they were in support of I took the average overlap from the litigant briefs from each side. This variable, *Litigant Overlap*, is the percentage of the amicus brief derived from language in the respective litigant brief. I also control for the *Opinion Word Count* scaled as described above. Similar to the citations model, I control for whether the United States Solicitor General submitted a brief in the case, as this actor has been shown to be very influential (Black & Owens 2012; 2013). Similar to the previous models, I also control for whether an interest was a frequent filer, the number of amici on a brief, the number of briefs, and the early salience of a case (Clark et. al. 2015).

Borrowed Language Results

The results can be found in Table 2 below. Model 1 shows Ideological Congruence with the Opinion Author while Model 2 shows Ideological Congruence with the Median of the Majority Coalition. As can be seen in Table 2 Model 1, *Ideological Congruence with the Opinion Author* is positive and statistically significant, suggesting the justices borrow more language from ideologically similar actors, providing support for Hypothesis 3. Following Collins, Corley, and Hamner (2015) I calculated the percent change in the dependent variable given a one standard deviation increase in *Ideological Congruence* holding all other variables at their mean or modal values. This leads to an 8% increase in the amount of language borrowed (from a baseline prediction of .022 to .024). As shown in Table 2 Model 2, *Ideological Congruence with the Median of the Majority Coalition* is also positive and statistically

significant, providing additional support for H3. The percent change in the dependent variable given a one standard deviation increase in ideological congruence with the median of the majority coalition is 11% (from a baseline prediction of .022 to .025). In other words, Supreme Court justices borrow more language from interests that are ideologically similar to their own preferences. This finding is interesting and consistent with my theory in that the justices engage in ideological behavior when their actions are likely to go unnoticed.

Another interesting finding is that the case salience coefficient was negative but not statistically significant. In other words, the justices do not borrow less language from a brief when the case is salient—i.e. highly visible to external audiences. This is consistent with my theoretical argument that since borrowing language is discreet in nature, the justices do not need to hinder their use of it when writing their majority opinions since there are limited implications for legitimacy, unlike formally citing the source which is evident to the reader and likely to have implications for legitimacy. Recall that the role of case salience was mixed in the citations models. In citations model 3 this was statistically significant in a one-tailed test, though this did not hold for citations models 1, 2, and 4.

Both Models 1 and 2 in Table 2 reveal that the justices borrow more language from interests that are frequent filers. The percent change in the dependent variable when the brief is filed by a frequent filer is 21% in Model 1 (from a baseline prediction of .020 to .025) and 23% in Model 2 (from .020 to .025). This increase in the amount of language borrowed makes sense as the justices might be more inclined to rely on briefs filed by interests they are more familiar with. However, interestingly in the citations models the justices were less likely to formally cite these interests. This suggests that the justices are more inclined to rely on the information they supply but perhaps do not see any utility in formally citing them. Further, as the amount of

overlap between the amicus and its supported litigant briefs increases the justices borrow more

language from the amicus brief. This might serve as additional evidence that the justices rely

more on amicus briefs that repeat arguments made in the litigant briefs, which has been

demonstrated in the existing literature (Collins, Corley, and Hamner 2015; Hazelton, Hinkle, and

Spriggs 2019). I've also modeled this using a fractional logit that includes fixed effects for

justice and term and the substantive results remain the same. Results are located in section E of

the Online Appendix.

**Table 2. Percentage of Amicus Brief Borrowed in Majority Opinion**
Independent Variable

	Model 1	Model 2
Ideological Congruence w/ Opinion Author	.170* (.085)	
Ideological Congruence w/ Median of Majority		.232** (.091)
Frequent Filer	.196** (.067)	.208** (.067)
Litigant Overlap	.100*** (.008)	.099*** (.008)
Opinion Word Count	-.069*** (.022)	-.067** (.021)
United States Solicitor General Filed	.055 (.086)	.056 (.086)
Number of Amici	.006* (.003)	.006* (.003)
Number of Briefs	-.010 (.008)	-.011 (.008)
Salience	-.022 (.060)	-.014 (.060)
Reversing Lower Court	-.178* (.086)	-.172* (.086)

N	1,041	1,041
AIC	.216	.216
BIC	-7135	-7135

Entries are fractional logit estimates. * p ≤ .05; ** p ≤ 0.01; *** p ≤ 0.001 (two-tailed test). Standard errors clustered by case.

Figure 2 compares the ideology of the briefs in the dataset (solid line) relative to the ideology of the amici whose briefs were cited (dashed line). The dashed line depicts the ideological locations of only those briefs where the justices borrowed 5% or more of its language. As evident in the figure, the justices borrow language from a wide range of actors across the ideological spectrum. Recall Figure 1 showed that the justices cited amici whose ideal points were between -1 and 1. As Figure 2 demonstrates, the justices borrow language from amici whose ideal points are from nearly -1.8 or so to 1. This might suggest that the justices are borrowing more language from ideologically liberal interests. However, note that the solid black line suggests there are more liberal interests than conservative that filed amicus briefs.

Figure 2: Ideology of Amici Whose Briefs Were Borrowed From
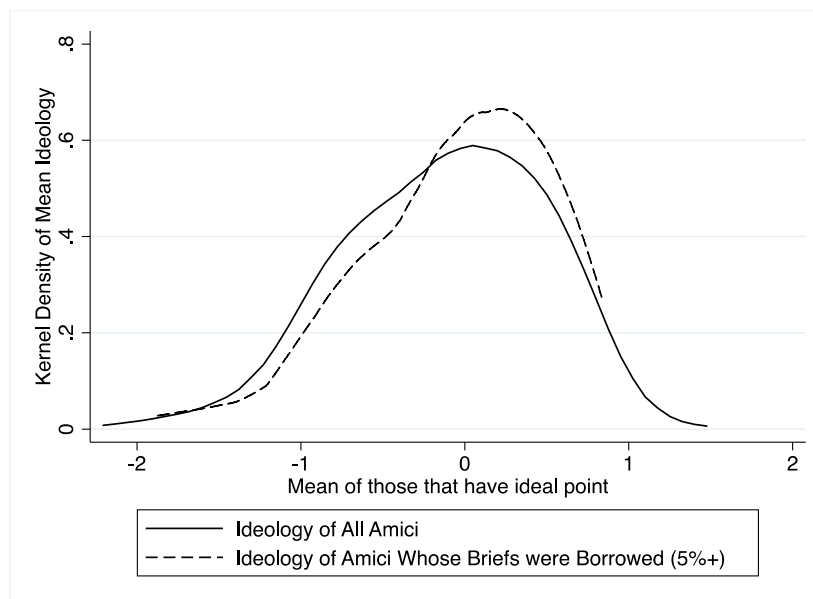
Discussion and Next Steps

This study revealed that the decision to cite briefs filed by organized interests is complex. The justices cite infrequently relative to borrowing language, they do not avoid citing ideological groups altogether, though they do avoid citing the most ideologically extreme groups, and they do not just cite groups that are ideologically similar to their own preferences. This provides some support for the notion that the justices are strategic actors when it comes to citing due to the legitimacy concerns that accompany citing organized interests. In terms of borrowed language, I find that justices borrow more language from briefs filed by interests that are ideologically congruent with their own preferences. This is consistent with my theory that suggests the justices will engage in more ideological behavior when their actions will go unnoticed by the public, in other words when legitimacy concerns are not present. Since borrowed language is discreet in nature and the reader will likely not realize it has occurred, the justices have more leeway in terms of the interests whose briefs they rely on. These findings provide insight into the extent to which the justices must balance their policy preferences with concerns over legitimacy. What is also interesting is that the justices borrow more language from interests that file amicus curiae briefs often, but they are less likely to formally cite their briefs. This suggests that the justices rely on the information provided by these high-profile filers, but they perhaps see no benefit to formally citing them.

I would like to add a few important caveats. First, the borrowed language results are likely to be under-inclusive in that they only capture instances of direct plagiarism as the software program only catches exact matches and does not capture paraphrasing or semantic similarities more generally. In the future, implementing programs that are more lenient than

WCopyfind and some level of content analysis might yield a more complete picture of exactly what type of information the justices borrow from amicus filers.

Second, the Supreme Court justices are selective with their citations to interest group filed amicus briefs, therefore, there is a smaller number of observations by nature making it difficult to make strong inferences about how the justices make use of citations. This project gained leverage on this phenomenon by analyzing over 1,900 briefs with ideological data. However, since citing is steadily increasing, future work might gain even more leverage on understanding the decision to cite amicus briefs by extending past the 2008 term.[13]

Scholars can next explore whether and how the justices are speaking to each other through the use of citations. For example, perhaps the opinion author cites interests that are ideologically proximate to the median of the majority coalition in order to appease justices that might be on the fence about a decision. Future work can also explore whether citations are more common in dissents, since they serve a different purpose than majority opinions, whether dissenting justices address citations that were included in the majority, and whether dissenting justices are more likely to cite ideologically similar actors. Finally, an important next step is to explore whether majority opinion authors negatively cite amicus briefs referenced in dissents.

The results of this paper highlight a few important real-world implications. First, it provides additional evidence that the justices are somewhat political actors that attempt to mask political behavior. This was evidenced by the finding that they borrow more language from ideologically congruent interests and avoided citations to briefs filed by the most ideologically extreme groups, but they were not more likely to cite briefs filed by ideologically similar groups.

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[13] I ended at the 2008 term because Clark et. al.'s (2015) measure of early salience ends in 2008.

Relatedly, this project provides further insight into how certain ideological interest groups can influence the content of Supreme Court opinions by helping shape the exact language used in the opinion. Since citations to amicus briefs are steadily on the rise, (Franze and Reeves Anderson 2015, 2020; Kearney and Merrill 2000; Owens and Epstein 2005), future work can assess public perceptions of this phenomenon. Specifically, what does the public think of Supreme Court justices relying on interest group provided information?

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The Supreme Court, Ideology, and the Decision to Cite or Borrow from Amicus Curiae Briefs

Online Appendix

A: Rules for Coding Citations and Information on Ideological Locations

Coding Citations:
This analysis only includes citations that were deemed to be positive or neutral in nature. This means that the Court mentioned the arguments put forth by the amici in a way that did not disparage them. Two additional methods of coding "Weak Negative" and "Negative" were gathered but were not used in this analysis. Citations were coded as "Negative" when the justices blatantly stated their disagreement with the amici, usually using strong language such as, "this argument is flawed", "we disagree" or "we cannot agree." Citations were coded "Weak negative" in instances where the Court mentioned the amici in a way that was neither in blatant disagreement nor neutral in nature. The vast majority of these were instances where the justices mentioned a point or legal question mentioned by the brief but stated they were not addressing that issue in this particular case.

Because the primary question of interest was which particular briefs/interests were cited in the opinion, general references to the amici (statements such as "respondent and her amici…") that did not include the name of the interest were not included.

B: List of Frequent Filers & Examples of Cited Amici
Frequent Filers
AARP
ALLIED EDUCATIONAL FOUNDATION
AMERICAN ASSOCIATION FOR JUSTICE
AMERICAN ASSOCIATION OF UNIVERSITY WOMEN
AMERICAN BAR ASSOCIATION
AMERICAN CIVIL LIBERTIES UNION
AFL-CIO
AMERICAN JEWISH COMMITTEE
AMERICAN JEWISH CONGRESS
AMERICANS FOR EFFECTIVE LAW ENFORCEMENT
ANTI-DEFAMATION LEAGUE
CENTER FOR CONSTITUTIONAL RIGHTS
CHAMBER OF COMMERCE OF THE U.S
COUNCIL OF STATE GOVERNMENTS
CRIMINAL JUSTICE LEGAL FOUNDATION
EQUAL EMPLOYMENT ADVISORY COUNCIL
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
EQUAL RIGHTS ADVOCATES
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.
INTERNATIONAL CITY-COUNTY MANAGEMENT ASSOCIATION
INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW
LEGAL MOMENTUM
LEGAL VOICE
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
NATIONAL ASSOCIATION OF COUNTIES
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
NATIONAL ASSOCIATION OF MANUFACTURERS
NATIONAL CONFERENCE OF STATE LEGISLATURES
NATIONAL COUNCIL OF JEWISH WOMEN
NATIONAL DISTRICT ATTORNEYS ASSOCIATION
NATIONAL EDUCATION ASSOCIATION
NATIONAL EMPLOYMENT LAWYERS ASSOCIATION
NATIONAL GOVERNORS' ASSOCIATION
NATIONAL LEAGUE OF CITIE
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION
NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES
NATIONAL SCHOOL BOARDS ASSOCIATION
NATIONAL WOMEN'S LAW CENTER
NEW YORK CIVIL LIBERTIES UNION
PACIFIC LEGAL FOUNDATION
PUBLIC CITIZEN

U.S. CONFERENCE OF MAYORS
UNION FOR REFORM JUDAISM
WASHINGTON LEGAL FOUNDATION
WOMEN'S LAW PROJECT

Examples of Interest Groups That Were Amici on Cited Briefs and Their Individual Ideal Points

ACLU OF TEXAS -0.471
ADVOCATES FOR CHILDREN OF NEW YORK
ALLIANCE FOR CHILDREN AND FAMILIES
ALLIANCE OF AMERICAN INSURERS 0.189
AMERICAN ACADEMY OF PEDIATRICS -0.633
AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW -0.505
AMERICAN ADVERTISING FEDERATION -0.049
AMERICAN ASSOCIATION FOR JUSTICE -0.383
AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES -0.755
AMERICAN BAR ASSOCIATION -0.399
AMERICAN BENEFITS COUNCIL 0.259
AMERICAN CENTER FOR LAW AND JUSTICE 0.521
AMERICAN CHEMISTRY COUNCIL 0.199
AMERICAN CIVIL LIBERTIES UNION -0.71
AMERICAN INSURANCE ASSOCIATION 0.213
AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION 0.062
AMERICAN MEDICAL ASSOCIATION -0.26
AMERICAN MEDICAL WOMEN'S ASSOCIATION -1.674
AMERICAN PSYCHIATRIC ASSOCIATION -0.475
AMERICAN PSYCHOLOGICAL ASSOCIATION -0.586
AMERICAN TRUCKING ASSOCIATIONS 0.185
AMERICAN UNITY LEGAL DEFENSE FUND
ASSOCIATION OF AMERICAN PUBLISHERS -0.176
ASSOCIATION OF GLOBAL AUTOMAKERS 0.312
ASSOCIATION OF NATIONAL ADVERTISERS -0.08
BLUE CROSS AND BLUE SHIELD ASSOCIATION 0.194
CALIFORNIA STATE ASSOCIATION OF COUNTIES 0.216
CAPITAL CITIES/ABC, INC. -0.051
CATO INSTITUTE 0.077
CENTER FOR BIOLOGICAL DIVERSITY
CENTER FOR THE COMMUNITY INTEREST 0.361
CHAMBER OF COMMERCE OF THE U.S. 0.381
CHEVRON CORP. 0.04
CONSERVATION LAW FOUNDATION
COUNCIL FOR ADVANCEMENT AND SUPPORT O...
CRIMINAL JUSTICE LEGAL FOUNDATION 0.598

DIRECT MARKETING ASSOCIATION -0.068
DRI -- THE VOICE OF THE DEFENSE BAR 0.34
EQUAL EMPLOYMENT ADVISORY COUNCIL 0.629
FAMILIES AGAINST MANDATORY MINIMUMS -0.426
FEDERAL DEPOSIT INSURANCE CORPORATION
FEDERAL PUBLIC AND COMMUNITY DEFENDER..
FEDERAL TRADE COMMISSION 0.048
FOUNDATION FOR ENVIRONMENTAL AND ECON...
GENERAL ELECTRIC COMPANY 0.171
GENERAL MOTORS CORP. -0.046
GEORGIA SCHOOL BOARDS ASSOCIATION
HEALTH INSURANCE ASSOCIATION OF AMERICA 0.195
HUMAN RIGHTS FIRST -0.573
HUMAN RIGHTS WATCH -0.554
ILLINOIS CHAPTER OF THE NATIONAL ASSO...
INDEPENDENT BANKERS ASSOCIATION OF AMERICA
INNOCENCE NETWORK -0.498
INSTITUTE FOR JUSTICE 0.072
INSTITUTE OF INTERNATIONAL BANKERS
INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL CITY-COUNTY MANAGEMENT ASSOCIATION 0.281
INTERNATIONAL COUNCIL OF SHOPPING CENTERS 0.279
INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION 0.269
INTERNATIONAL UNION OF POLICE ASSOCIA...
LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW -0.884
LEGAL MOMENTUM -1.525
LOUISIANA FOUNDATION AGAINST SEXUAL ASSAULT
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND -0.963
MID-AMERICA LEGAL FOUNDATION 0.222
MILITARY ORDER OF THE PURPLE HEART
MULTISTATE TAX COMMISSION 0.044
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. -0.762
NATIONAL ALLIANCE ON MENTAL ILLNESS -0.669
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS -0.539
NATIONAL ASSOCIATION OF FEDERAL DEFENDERS -0.435
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS -0.116
NATIONAL ASSOCIATION OF SOCIAL WORKERS -1.12
NATIONAL ASSOCIATION OF WOMEN LAWYERS -1.383
NATIONAL BLACK POLICE ASSOCIATION -0.768
NATIONAL CONGRESS OF AMERICAN INDIANS -0.284
NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS -0.064
NATIONAL GOVERNORS' ASSOCIATION 0.306
NATIONAL LEAGUE OF CITIES 0.269
NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPR... -0.397

NATIONAL SECURITY ARCHIVE
NATIONAL TREASURY EMPLOYEES UNION -0.318
NATIONAL WOMEN'S LAW CENTER -1.876
NEW ENGLAND LEGAL FOUNDATION 0.324
NEW MEXICO MEDICAL SOCIETY
NEW YORK CLEARING HOUSE ASSOCIATION -0.014
NEW YORK COUNCIL OF DEFENSE LAWYERS -0.118
PEOPLE FOR THE AMERICAN WAY -0.764
PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA 0.21
PRODUCT LIABILITY ADVISORY COUNCIL, INC. 0.241
PROJECT VOTE
REAL ESTATE ROUNDTABLE
REPUBLICAN NATIONAL COMMITTEE 0.284
SECURITIES AND EXCHANGE COMMISSION -0.083
SOUTH DAKOTA MUNICIPAL LEAGUE
TASH -0.306
TENNESSEE HEALTH CARE ASSOCIATION
THEATRE COMMUNICATIONS GROUP
THOMSON NEWSPAPER HOLDINGS, INC.
U.S. CONFERENCE OF MAYORS 0.248
UNITED MINE WORKERS OF AMERICA -0.305
VERIZON COMMUNICATIONS INC. -0.031
VOICES FOR ILLINOIS CHILDREN
WASHINGTON LEGAL FOUNDATION 0.428
WISCONSIN INNOCENCE PROJECT

C. Citations Models without the Frequent Filer Variable

Table OA1. Brief Cited in Majority Opinion

Independent Variable				
	Model 1	Model 2	Model 3	Model 4
Ideologically Overt	-.607†			
	(.343)			
Ideological Amicus Brief (Coarse)		-.585**		
		(.196)		
Ideological Congruence w/ OA			.326	
			(.237)	
Ideological Congruence (Coarse)				-.198
				(.282)
United States Solicitor General Filed	-.013	-.008	-.027	-.052
	(.231)	(.231)	(.234)	(.234)
Number of Amici	.018*	.017*	.018*	.016*
	(.007)	(.007)	(.008)	(.007)
Number of Briefs	-.016	-.015	-.020	-.014
	(.012)	(.012)	(.013)	(.012)
Opinion Word Count	.038	.038	.057*	.039
	(.028)	(.028)	(.026)	(.028)
Salience	-.155	-.125	-.226†	-.201
	(.136)	(.133)	(.131)	(.131)
Reversing Lower Court	-.342	-.349	-.417†	-.340
	(.220)	(.220)	(.225)	(.219)
Justice Ideology	-.973***	-.941***		-1.02***
	(.292)	(.294)		(.297)
N	1,934	1,934	1,934	1,934

Entries are rare events logit estimates (using the relogit Rare Events Logistic Regression Package in Stata).
Standard errors clustered by case. * $p \leq .05$; ** $p \leq 0.01$; *** $p \leq 0.001$ (two-tailed test). † $p <=.10$ (two-tailed test).

D. Citations Models with the Issue Area Controls
Table OA2. Brief Cited in Majority Opinion

Independent Variable	Model 1	Model 2	Model 3	Model 4
Ideologically Overt	-.558			
	(.349)			
Ideological Amicus Brief (Coarse)		-.574**		
		(.208)		
Ideological Congruence w/ OA			.124	
			(.257)	
Ideological Congruence (Coarse)				-.162
				(.292)
Frequent Filer	-.601*	-.585*	-.676**	-.682**
	(.246)	(.236)	(.233)	(.237)
United States Solicitor General Filed	.038	.035	.019	.020
	(.250)	(.250)	(.249)	(.251)
Number of Amici	.019*	.018*	.018*	.018*
	(.008)	(.007)	(.008)	(.008)
Number of Briefs	-.022†	-.021†	-.022†	-.022†
	(.013)	(.012)	(.013)	(.013)
Opinion Word Count	.041	.041	.041	.042
	(.028)	(.028)	(.028)	(.028)
Salience	-.168	-.137	-.203	-.203
	(.143)	(.140)	(.139)	(.140)
Reverse	-.257	-.262	-.255	-.257
	(.222)	(.222)	(.221)	(.221)
Justice Ideology	-.992***	-.952***	-.988***	-1.02***
	(.296)	(.297)	(.293)	(.299)
Civil Rights Case	.060	.111	.028	.031
	(.296)	(.300)	(.296)	(.291)
Economic Activity Case	-.290	-.292	-.216	-.205
	(.285)	(.290)	(.284)	(.286)
Federalism Case	-1.86**	-1.85**	-1.79**	-1.78**
	(.670)	(.672)	(.666)	(.664)
First Amendment Case	-.549	-.517	-.520	-.501
	(.441)	(.442)	(.448)	(.445)
Unions Case	-.395	-.353	-.348	-.348
	(1.05)	(1.04)	(1.05)	(1.05)
N	1,934	1,934	1,934	1,934

Entries are rare events logit estimates (using the relogit Rare Events Logistic Regression Package in Stata). Standard errors clustered by case. * p ≤ .05; ** p ≤ 0.01; *** p ≤ 0.001 (two-tailed test). † p <=.10 (two-tailed test).

E: Fractional Logit Models with Fixed Effects for Justice and Term

Table OA3. Percentage of Amicus Brief Borrowed in Majority Opinion

Independent Variable

	Model 1	Model 2
Ideological Congruence w/ Opinion Author	.231**	
	(.074)	
Ideological Congruence w/ Median of Majority		.257**
		(.086)
Frequent Filer	.198**	.205***
	(.063)	(.063)
Litigant Overlap	.102***	.101***
	(.009)	(.009)
Opinion Word Count	-.056**	-.056**
	(.020)	(.020)
United States Solicitor General Filed	.016	.014
	(.078)	(.078)
Number of Amici	.008**	.008**
	(.003)	(.003)
Number of Briefs	-.013	-.014
	(.008)	(.008)
Salience	-.040	-.034
	(.057)	(.057)
Reversing Lower Court	-.148	-.148
	(.084)	(.084)
Constant	-3.83***	-3.89***
	(.296)	(.289)
N	1,041	1,041
AIC	.280	.280
BIC	-6901	-6901

Entries are fractional logit estimates. * $p \le .05$; ** $p \le 0.01$; *** $p \le 0.001$ (two-tailed test). Includes fixed effects for justice and term, not reported for simplicity. Standard errors clustered by case. The coefficient for Justice Thomas bordered on statistical significance in Model 2 ($p<.10$). The 2008 term also bordered on statistical significance ($p<.10$) in both models.

F: Controlling for Issue Area in Borrowed Language Model

The table below includes the main model from Table 2 of the manuscript with controls for issue area (using the issueArea variable in the Supreme Court Database). These are not reported in the table for simplicity, but only Union and Federalism cases are statistically significant (p = .03 & .02, respectively).

Table OA4. Percentage of Amicus Brief Borrowed in Majority Opinion

Independent Variable	Model 1
Ideological Congruence w/ Opinion Author	.111
	(.081)
Frequent Filer	.228***
	(.067)
Litigant Overlap	.099***
	(.008)
Opinion Word Count	-.069***
	(.022)
United States Solicitor General Filed	.042
	(.086)
Number of Amici	.005
	(.003)
Number of Briefs	-.012
	(.009)
Salience	-.018
	(.060)
Reversing Lower Court	-.194*
	(.093)
Constant	-3.91***
	(.178)
N	1,041
AIC	.35
BIC	-7066

Entries are fractional logit estimates. * $p \leq .05$; ** $p \leq 0.01$; *** $p \leq 0.001$ (two-tailed test). Includes fixed effects for issue area, not reported for simplicity.

Note that in Table OA4 above, including fixed effects for every issue area produces a very conservative model and thus renders the coefficient for the main independent variable of interest (Ideological Congruence) insignificant. However, the coefficient is significant in a one-tailed test when controlling for Union and Federalism cases. This is consistent with the main findings in the manuscript. The results of this model are included in table OA4 below.

Table OA5. Percentage of Amicus Brief Borrowed in Majority Opinion

Independent Variable

	Model 1
Ideological Congruence w/ Opinion Author	.148*
	(.082)
Frequent Filer	.199**
	(.067)
Litigant Overlap	.099***
	(.008)
Opinion Word Count	-.073***
	(.022)
United States Solicitor General Filed	.035
	(.085)
Number of Amici	.005*
	(.003)
Number of Briefs	-.009
	(.008)
Salience	-.021
	(.059)
Reversing Lower Court	-.192*
	(.086)
Union Cases	.234
	(.147)
Federalism Cases	.273**
	(.118)
Constant	-3.73***
	(.191)
N	1,041
AIC	.220
BIC	-7122

Entries are fractional logit estimates. * $p \leq .05$; ** $p \leq 0.01$; *** $p \leq 0.001$ (one-tailed test).