

**State Coalitions, Informational Signals, and Success as Amicus Curiae at the
United States Supreme Court**

Kayla S. Canelo
Ph.D. Candidate of Political Science
School of Social Sciences, Humanities, and Arts
5200 North Lake Rd.
University of California, Merced
Merced, CA 94343
kcanelo2@ucmerced.edu

An earlier version of this paper was presented at the 2017 Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 6-9. For valuable comments I'd like to thank Thomas Hansford and Greg Goelzhauser. Any and all errors are my responsibility.

State Coalitions, Informational Signals, and Success as Amicus Curiae at the United States Supreme Court

States are uniquely situated as both individual governments in the federal system and entities that represent the interests of their citizens. So, what makes groups of states successful when they lobby the Supreme Court as amicus curiae filers? I argue that it is not just the number of states included in a coalition that matters, but rather *which* states are included. In this paper I offer a theory that implies certain types of coalitions will be more influential than others, as these coalitions can vary in how representative they are of public preferences. I use a dataset on state amicus curiae filings from 1960 to 2013 to test the implications of my theory. I find that the regional diversity of coalitions increases the odds of state amicus curiae filers obtaining their preferred outcome, but the ideological heterogeneity of the group of states does not. This latter result is interesting given that it is contrary to the theoretical expectations of the existing scholarship on state amicus filings.

States attorneys general (SAG), as actors tasked with serving as the primary legal officer of their state and representing the interests of its citizens, are said to “occupy the intersection of law and public policy.”¹ These actors play an important role at the United States Supreme Court both in terms of litigating on behalf of their state as well as filing amicus curiae or “friend-of-the-Court” briefs that represent state interests through legal argumentation. Effectively, these briefs serve as a means of lobbying the Supreme Court. Often times SAGs will coordinate their efforts when filing such briefs, and research suggests they are more successful when doing so (Morris 1987), as this can signal that many citizens support the outcome advocated (Nicholson-Crotty 2007). Much of this scholarship looks at the number of states that sign onto a single brief or the number of separate briefs the states file on a particular side of a case. While it is logical that numerous states advocating the same outcome can signal the wider implications of a case, it does not consider variation in which states are included in the coalition and whether certain coalitions might be more effective than others. We know states are active as filers (Clayton and McGuire 2001; Solimine 2012) and that they are fairly successful (Lynch 2004; Harper 2014), but it is not yet clear *why* their briefs are effective.

Goelzhauser and Vouvalis (2015) further our understanding of what makes state lobbying coalitions successful and argue that preference heterogeneity among the members of a coalition sends a credible signal to its intended audience – the justices. The authors assess this claim at the agenda setting stage by analyzing state amicus curiae filings on cert and find that greater preference heterogeneity among filing states increases the likelihood that the High Court will grant review (Goelzhauser and Vouvalis 2015). I extend this work by applying a similar

¹ National Association of Attorneys General. “About NAAG” (Accessed 14 June 2018) <http://www.naag.org/naag/about_naag.php>

theoretical logic to assess what features of a state amicus curiae coalition makes for more effective lobbying on the merits of a case. I argue that state amicus curiae coalitions send important signals to the Court about their representativeness (i.e. the diversity of the preferences they encompass) that can impact Supreme Court outcomes.

In the pages that follow, I offer a theory of state amicus curiae influence on Supreme Court outcomes that points to certain features of a coalition that can increase the likelihood of success on the merits. Specifically, I theorize that the ideological heterogeneity and the regional diversity of the coalition send important signals to the Supreme Court justices about how representative these states are of public interests. I find that the regional (geographic) diversity represented by the coalition increases the chances of success on the merits as amicus curiae filers, but that the ideological heterogeneity of the coalition does not.

This latter result is intriguing as it goes against the theoretical expectations in the existing literature. While the ideological heterogeneity of a coalition of states might signal the policy and legal importance of a case and increase the likelihood that the Court will grant review (Goelzhauser & Vouvalis 2015), this “success” of getting their desired outcome does not extend to the merits stage. Further, previous work has implied that the number of states in a coalition can signal that “a large number of citizens support the outcome produced under state authority” (Nicholson-Crotty 2007, p. 601). However, I find that the mere number of states in a coalition does not increase the chances of amicus success on the merits, but that regional diversity, perhaps a more representative measure of diverse preferences, does.

Sending a Signal: State Amicus Coalitions and Supreme Court Rulings

States are said to experience “above-average success” when they file amicus curiae briefs (Kearney and Merrill 2000, 829). They have been filing more often over time (Clayton and

McGuire 2001; Solimine 2012), and the justices have been increasingly citing and borrowing language from these briefs in their opinions (Harper 2014). Scholars have been especially interested in coalition formation—instances where the attorneys general from multiple states cosign onto a single brief. Coordinated efforts among state filers have been increasingly common (Clayton and McGuire 2001) and have been shown to increase success both on the merits (Morris 1987; Nicholson-Crotty 2007) and during the certiorari stage, or in other words, to encourage the High Court to hear particular cases (Goelzhauser and Vouvalis 2015). In this latter paper, the authors find that the ideological heterogeneity of coalitions signals the importance of a case and can increase the likelihood that the Court will grant review (Goelzhauser and Vouvalis 2015).

The Supreme Court Case *Pacific Bell (d/b/a AT&T California) v. linkLine Communications* (2009) provides an example of coalition formation. In this case linkLine claimed Pacific Bell was selling some of its internet products at “wholesale” prices and that this was equivalent to “price squeezing.” The Ninth Circuit agreed, claiming even partially regulated industries were subject to antitrust laws, creating conflict in the lower courts. The attorneys general from nine states encompassing six geographic divisions cowrote an amicus brief in support of the petitioner.² The attorneys general wanted this case resolved as the existing Ninth Circuit ruling made it difficult for them to enforce antitrust laws. Their second primary concern expressed in this brief was that ruling for the respondent might lead to unnecessary litigation that would burden the courts and claimed the high legal fees acquired by businesses would ultimately lead to higher prices for consumers.³ The Supreme Court ruled in favor of Pacific Bell (the

² The ideological heterogeneity of this coalition was 12.7, near the average of 13.7.

³ “Brief of the Commonwealth of Virginia and Eight other States as Amicus Curiae in Support of the Petitioner.” 555 U.S. 438.

litigant the state coalition was supporting), claiming “price squeezing” claims cannot be made under Section 2 of the Sherman Act.

The brief detailed above provides just one example of the states’ widespread involvement as amicus curiae at the United States Supreme Court. States filed in approximately 21% of all cases from the 1960 through 2013 terms. In 2013, the last term in my data, states filed amicus curiae briefs in 29 of the 75 (39%) cases. While the states are heavily involved as amicus filers, the coalitions that form vary widely in terms of how diverse they are—namely in terms of their ideological outlooks (i.e. ideologically similar or dissimilar states filing together), the number of geographic regions they represent (the average is 6.68 on a scale of 1 to 9), and the mere number of states that the coalition encompasses (anywhere from two to all fifty). While in some cases states with ideologically similar preferences file briefs, in others states with very different ideological outlooks will cosign on to briefs together or advocate for the same outcome. Further, some coalitions are formed with many states from the same geographic region of the U.S., while others include only a few states from all over the country.

States attorneys general (SAG) are uniquely situated in relation to the Court due to their role as both the primary legal officers for state agencies and legislatures and as representatives of their state’s interests. SAGs are thus tasked with handling their state’s litigation and filing amicus curiae briefs to represent their state’s interests. In order to better understand their relationship with the Supreme Court it is necessary to explore what motivates them to get involved as litigants and amicus curiae filers. Research suggests SAGs are motivated by policy preferences (Provost 2011) and political ambitions (Solomine 2012). Research demonstrates that the party of the state attorney general and whether a SAG is elected or appointed drive the decision to initiate and join amicus briefs (Provost 2011). Since most of these actors are

motivated by political ambitions and reelection, they must be mindful of public preferences,⁴ and Provost's work has shown that state citizen ideology motivates SAGs to participate in multistate litigation (Provost 2003, 2006). As such, I assume that States Attorneys General at least loosely represent the preferences of the citizens of their states. In fact, Solimine claims one reason to consider state-filed amicus briefs is because they are "superior barometers of state opinion and state interests" (Solimine 2012, 378).⁵ While one might argue amicus participation goes unnoticed by the public and thus should have little to no consequences for SAGs, it is worth noting that their participation as amici does, at times, appear in local⁶ and national⁷ media outlets, and SAGs will even advertise their participation on their office website⁸ or in local news outlets.⁹

⁴ It is not unreasonable to assume that the non-elected SAGs are mindful of public preferences as well. In five of the seven states where SAGS are not elected they are appointed by the governor. Governors, as elected officials, should be interested in appointing actors that share similar ideologies and preferences, and these should, to some extent, reflect the preference of said state's citizens.

⁵ This is not to say SAGs are not motivated to initiate or join amicus briefs by other factors such as case facts (Gleason and Provost 2016) or a "duty to defend" the law (Devins and Prakash 2015), however, evidence suggests representing public interests should be a primary concern for most SAGs.

⁶ Aguilar, Julián. 2018. "AG Paxton says he will consider suing to end DACA if court case drags on." *The Texas Tribune*. (Accessed 6 June 2018) <<https://www.texastribune.org/2018/01/25/ag-paxton-says-he-will-consider-suing-end-daca-if-court-case-drags/>>.

⁷ O'Brien, John. 2018. "States Against Climate Change Lawsuits Ask for Dismissal of NYC's." *Forbes*. (Accessed 6 June 2018) <<https://www.forbes.com/sites/legalnewsline/2018/06/04/states-against-climate-change-lawsuits-ask-for-dismissal-of-nycs/#2ca77be97b82>>.

⁸ Office of the Attorney General of California. 2012. "Attorney General Kamala D. Harris Files Amicus Brief in Supreme Court against Arizona Immigration Law." (Accessed 6 June 2018) <<https://www.oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-files-amicus-brief-supreme-court-against>>.

⁹ Office of New Mexico Attorney General. 2018. "Brief to Protect New Mexico Women's Access to Reproductive Health and Family Planning." *New Mexico State KRWG TV/FM NRP*. Accessed (6 June 2018) <<http://krwg.org/post/brief-protect-new-mexico-women-s-access-reproductive-health-family-planning>>.

Next, I assume that the Court values the views of the state governments, as evidenced by rule 37.4 that allows the federal, state, and local governments, via the appropriate actors, to file amicus curiae briefs without receiving consent from the parties, which is required of other interests. The states are allowed to submit briefs under this rule so long as the State Attorney General files them, which is almost always the case. Existing research validates this assumption by highlighting the importance of state filed briefs. Interviews with former Supreme Court clerks revealed that amicus briefs submitted by states were given close attention and were next in importance to amicus briefs submitted by the United States Solicitor General (Lynch 2004). The clerks also stated that the briefs were not especially known for their quality, but rather were considered more prominently because of their position in the government (Lynch 2004, 9). Kearney and Merrill (2000) claim that the state filed briefs appear to receive more attention relative to other amici (p. 830) and theorize that this might be due to their role in the implementation of some of the Court's decisions (p. 782). While the Court may value the opinion of the states due to their role in the federalist system of government, it is not a stretch to assume that the justices care about the preferences of states as indicators of citizen preferences as well, as several studies have shown that the Supreme Court is sensitive to public opinion in various contexts (Casillas, Enns, and Wohlfarth 2010; Clark 2009; Epstein and Martin 2010; Hall 2014; McGuire and Stimson 2004).

Multiple state filers advocating for the same outcome can send important signals to the Court, particularly in terms of representing a diversity of interests. As previously iterated, the ideological heterogeneity of a coalition of state amici is particularly intriguing. While the theoretical motivations behind why these coalitions influence success on the merits is a bit more complex than those in the cert stage, the logic is similar. Goetzhauser and Vouvalis (2015)

theorize that ideologically heterogeneous coalitions (i.e., coalitions including both liberal and conservative states) signal the importance of a case from both a policy and legal standpoint. The authors state that heterogeneous coalition activity can “inspire confidence in the petitioner’s claim that some legal defect in the lower court’s judgement warrants consideration” (Goelzhauser and Vouvalis 2015, p. 102). In other words, if ideologically dissimilar states are drawing attention to a case, it is likely because the lower court’s argument is flawed and requires further evaluation.

A similar logic can extend to the merits stage. The attitudinal model implies that a legal argument can be made on either side of a case. The premise is that legal actors have ideological preferences first, then find legal arguments to support them (Segal & Spaeth 1993, 2002). Ideologically divergent interests advocating for the same outcome can signal that the position advocated is the “correct” legal ruling. In terms of cut-points in the ideological space, it could be that the legal ruling from the lower court might be so extreme on either side of the ideological spectrum that neither liberal nor conservative states can justify supporting it. Alternatively, ideologically heterogeneous coalitions might signal broad support from the public. If SAGs represent the interests of their state’s citizens and both liberal and conservative states are advocating for the same outcome, it can signal popular support for a ruling. Whether ideologically heterogeneous coalitions signal support for a “correct” legal argument or wider policy support among the public, we should expect to find that this type of amicus activity increases state success on the merits as amicus filers. In other words, we should expect to see the Court more likely to rule in favor of a litigant supported by a coalition of states spanning the ideological spectrum.

States can send also send a signal of geographic diversity.¹⁰ Geographic (or regional) representation can be important for several reasons. First, different regions of the United States express different policy preferences, ideological outlooks, and have different geographic, environmental, and economic needs. Regional diversity in a state coalition can signal the representativeness of a diverse citizenry. Geographic representation, in some ways, is a better indicator of diversity than the number of states in a coalition. For example, a brief filed by California, Oregon, and Washington likely represents a narrower set of interests than a brief filed by California, Nebraska, and Virginia. This second scenario encompassing greater geographic diversity, better reflects the interests of a much broader segment of the country.

This signal is likely to be more easily received by the justices compared to more complex signals like the specific ideological preferences of each state. For example, the Court might assume that Southern states are conservative, while Western states are more liberal. The Court might then easily infer that if one state in the region prefers a particular outcome, similarly situated states in the rest of that region share these preferences as well. For example, if Alabama (a conservative state) expresses a particular preference, the justices might assume that other conservative Southern states in the region share these preferences. Inferring the preferences of broader regions is easier than inferring the preferences of each individual state.

In this study, state coalitions include all states filing briefs on a particular side of a case. This does not mean the states need to file together on the same brief, just that they are proposing the same outcome for the case. My theory suggests that the coalitions themselves send an

¹⁰ Previous work that assesses the role of states as litigants in the Supreme Court finds that there are regional differences that influence outcomes. Particularly, it has been found that southern states fair poorly on the merits compared to other regions such as the northeast (Horn 1962; Ulmer 1986). Epstein and O'Connor even claim that, "any systematic investigation of state success must consider region as a primary determinant" (Epstein and O'Connor 1988, 663).

important message about representation of diverse public interests. The justices can “receive” this message by looking at the states that file in the same direction. There is no theoretical reason to expect that the message of representation will be received differently if the states actually cosign on the same brief as opposed to filing separately.¹¹

In order for these signals to be effective they must be “received” by the justices. The justices do not need to know the exact ideal point estimate of each state, they just need to have a general idea of ideological outlooks. For example, they would need to recognize that California is liberal and Texas is conservative. Finally, for regional diversity, the justices would just need to know where the state lies geographically (the Pacific, New England, etc.) and if the states are mostly from the same region or from multiple regions. This theory leads me to the following hypotheses:

Hypothesis 1: *The greater the ideological heterogeneity of the filing states, the more likely they will be successful on the merits.*

Hypothesis 2: *The greater the regional diversity represented by the filing states, the more likely they will be successful on the merits.*

Data and Measures

The data necessary to test these hypotheses come from a variety of sources. The first dataset contains information on every organized interest that has filed an amicus curiae brief at the U.S. Supreme Court from the 1953 through 2013 terms (Hansford, Depaoli, and Canelo n.d.). I am interested here in the briefs filed by states, but this dataset also contains important information to be used as controls. For data on state ideology, I use the Berry et al. (1998)

¹¹ Note that 78% of the cases in my sample include instances where multiple states filed onto a single brief rather than instances where states filed multiple briefs to advocate for a particular position.

revised citizen ideology scores that span from 1960-2013. I obtain data from the United States Census Bureau to construct my independent variable pertaining to geographic representation by using the nine divisions created by the Bureau, and I control for Supreme Court ideology by creating measures constructed from the Judicial Common Space Scores (Epstein et al 2007). Finally, I map all of the data onto the U.S. Supreme Court case-centered database (Spaeth et al 2016). This includes all information on the cases such as litigants, winning party, and issue area that help create my independent and dependent variables as well as important controls.

Collectively I am able to analyze all cases where one or more states filed an amicus curiae brief from the 1960 - 2013 terms. This includes a total of 1,421 unique cases. Because separate coalitions sometimes form to advocate for each side of a case (i.e. one side forms to advocate a reversal of the lower court ruling and another forms to affirm) the total number of coalitions in the dataset is 1,539. I include one model with and one without these opposing coalitions.¹² Finally, in the main analysis I use only “true” coalitions. In other words, I eliminate instances where only a single state advocated for a particular side of a case. These cases are eliminated because they do not provide any variation in ideological heterogeneity or regional diversity. Eliminating cases on these factors leaves 961 observations, and the states were successful as filers in 58% of these cases.

My dependent variable measures state success as amicus curiae on the merits. Using the U.S. Supreme Court database, I use the *Party Winning* variable to determine whether the petitioner or respondent won the case. Then, I matched this with the state coalition's position and coded the variable *State Success* “1” if the winning party was the party the coalition

¹² Occasionally states will file a brief to inform the justices of certain considerations or broader implications of a ruling without advocating for a particular disposition. I exclude these cases, as I am interested in understanding what influences success when the states are actually advocating.

supported and “0” if it was not.

To construct my first independent variable, I use the revised citizen ideology measures from Berry et. al. (1998). To calculate heterogeneity, I took the standard deviation of the ideology scores for all states advocating for the same position; therefore, the higher the standard deviation the more ideological heterogeneity in the coalition. This approach of using the standard deviation to measure heterogeneity is consistent with previous research (Goelzhauser and Vouvalis 2015).¹³ In the subset of 960 coalitions, *Ideological Heterogeneity* ranges from .755 to 29.35. Finally, to construct my last independent variable of regional diversity I use the United States Census Bureau's categorization of the nine divisions of the United States.¹⁴ I first determine which states are in each division and then generate a count of the number of unique divisions represented. This variable is called *Regional Diversity*.¹⁵

Next, I construct the relevant control variables. First I control for the *Number of States in the Coalition*. Previous work suggests that the larger the number of states in the coalition, the more likely they will be successful on the merits (Morris 1987; Nicholson-Crotty 2007). I also control for the Supreme Court's ideology. There are several meaningful ways in which ideology or ideological heterogeneity can influence coalition formation and Supreme Court outcomes. First, is that it is plausible that more conservative Courts are more supportive of states' rights. In these instances, the states might be more inclined to file under conservative Courts and conservative Courts might be more likely to vote in favor of the states. The second is that the

¹³ Goelzhauser and Vouvalis (2015) use the government ideology (NOMINATE) scores. I use the citizen ideology measures since I assume the attorney general also files in the interests of the state's citizens. As a robustness check I include the model with the NOMINATE measures in Online Appendix C.

¹⁴ I use the four regions from the Census as a robustness check. These results can be found in Online Appendix B.

¹⁵ Visual representations of each independent variable can be found in Online Appendix A.

states advocate for liberal or conservative policy outcomes. In this instance states advocating liberal (conservative) outcomes might be more inclined to file under liberal (conservative) Courts.

I thus account for ideological considerations in two ways. First, I create an ideological compatibility measure that compares the Court median's position to the state coalition's preferred position. Using the "Decision Direction" variable in the U.S. Supreme Court Database (Spaeth et. al. 2016), I determine whether the state coalition is advocating for the liberal or conservative position. I then use the Judicial Common Space Score (Epstein et al. 2007) measure of the Court median to create a measure that compares the Court median's ideology with the state coalition's position. The Judicial Common Space Scores are created so that larger values indicate the median is more conservative. If the states advocated for a conservative position, I kept the JCS Score as is. If the states advocated for a liberal position, I multiplied the score by -1. This ensures that the higher the number of the *Supreme Court's Ideological Compatibility Score* the closer the Court median's position is to the state coalition's preferred outcome. Similar methods have been used in previous work (Johnson, Spriggs and Wahlbeck 2007). Next, I include fixed effects for the natural Court.¹⁶ This allows me to ensure there are no systematic, time variant changes influencing my results, and that particular natural courts aren't influencing coalition dynamics and merits outcomes. This includes the aforementioned scenario where conservative Courts might be friendlier to states rights and thus more sympathetic to their position.

Next I control for the support or opposition of the United States Solicitor General. Briefs filed by the federal government might be more inclined to address federalism cases and thus

¹⁶ These are not reported in the tables for simplicity, but are included in each analysis.

encourage states to form coalitions in response, and the USSG is known to influence outcomes (Black and Owens 2012). To account for this I create a variable *USSG Support* coded “1” if the USSG was proposing the same outcome as the state coalition and “0” otherwise. I then coded a second variable called *USSG Opposition* coded “1” if the USSG was filing in the direction opposite the states and “0” otherwise. I construct similar variables *State Litigant Support* and *State Litigant Opposition* to capture whether a state(s) was a party in the case and whether the coalition was advocating for or against said state(s). This is crafted using the “petitioner” and “respondent” variables using the “State” coding in the Supreme Court Database (Spaeth et al 2016).

I also control for the number of non-state filed amicus curiae briefs filed on each side of a case. This is important to control for as the number of briefs filed might both correlate with coalition formation and the outcome of the case, as the number of briefs on a particular side of a case has been shown to influence outcomes (Collins 2008). My control consists of two variables, one that is a count of the number of briefs supporting a reversal, and another is a count of the briefs urging the Court to affirm the lower court's decision. This is then put into terms of state preferences so the end variables include a count of the number of briefs that share the preferences of the state (*Number of Briefs in Support*) and another variable that is the number of briefs that do not agree with the states (*Number of Briefs in Opposition*).

I control for whether or not the state coalition is advocating a reversal (*State Advocating Reversal*), since the Court is more inclined to reverse lower court decisions. I also control for the *Issue Area* as certain issues like federalism might prompt coalition formation and also influence the outcome of a case. This is done using indicators of the issue area variable in the Supreme

Court Database (Spaeth et al 2016).¹⁷ The issue area “Criminal Procedure” serves as the baseline. For the actual analysis, I use a logit model due to the dichotomous nature of the dependent variable.

Results

My dependent variable measures whether or not the Court's ruling (disposition) was the same position the state amicus curiae advocated for. In other words, it measures whether the states received their desired outcome. Model 1 in Table 1 below shows the results for “true coalitions” where at least two or more states filed for the same outcome and excludes cases with competing coalitions (instances where states filed on both sides of a case).¹⁸ Model 2 below shows the results for “true coalitions” while including the cases where there were opposing coalitions. In this model I included an indicator variable for these instances called “Opposing Coalitions” in case there are any systematic differences in these cases.¹⁹

*** TABLE 1 HERE ***

As evidenced in Table 1, the ideological heterogeneity of the coalition is negative in direction but is not statistically significant, and thus does not appear to influence state success on the merits at conventional levels. Thus, there is no support for Hypothesis 1. In fact, the models suggest ideological heterogeneity moves in the opposite direction of my expectations. In other words, ideological heterogeneity decreases the odds of state success on the merits, but again, this

¹⁷ These are not included in the tables for simplicity, but when any of the issue areas are significant they are mentioned in the text.

¹⁸ There were six cases in which the U.S. Supreme Court database could not determine the ideological direction of the decision, and thus the SC Ideological Compatibility Measure could not be determined. In addition, there were five cases that were omitted because of collinearity in the Natural Court fixed effects, and three from the Issue Area controls. This brought the final number of observations to 947.

¹⁹ Goodness of fit measures for each of these models can be found in Online Appendix D.

is not statistically significant at conventional levels. This is interesting because one would expect ideologically diverse coalitions to signal widespread support for a particular position. However, I find these signals do not increase the likelihood of a decision that favors the states' preferences. I speculate that it is likely more difficult for actors with diverse ideological preferences to write coherent, persuasive briefs compared to actors with shared preferences, suggesting brief quality could be an important factor in state success.

Regional diversity is positive and statistically significant, providing support for my hypothesis that an increase in regional representation can increase state success on the merits as *amicus curiae*. This result holds in both Model 1 without opposing coalitions and Model 2 with opposing coalitions. Figure 1 below shows the average marginal effects of regional representation on the probability of the Court ruling in the direction advocated by the states. As evidenced in this figure, an increase in the number of geographic regions encompassed in the coalition leads to a substantial increase in the likelihood of the states experiencing "success" as *amicus* filers. Together, these findings suggest that seeking regional representation might be a more effective lobbying strategy than trying to maximize ideological heterogeneity or simply large numbers of cosigners. A similar logic can extend to *amicus* filings submitted by organized interests.

*** FIGURE 1 HERE ***

In examining the control variables, the *Number of States in the Coalition* is negative and is not statistically significant in either model, contrary to previous findings. Prior work has shown that the number of states in a coalition can lead to Supreme Court outcomes that favor state power in federalism cases (Nicholson-Crotty 2007). However, the number of states advocating for a particular outcome does not appear to lead to rulings favoring state preferences

in the broader set of cases that include state amicus filings. In fact, this finding partially stands even when removing ideological heterogeneity and regional representation from the model. In doing so, the number of states advocating for a particular outcome remains insignificant in Model 1, though is statistically significant in a one-tailed test in Model 2.

In Models 1 and 2, the *Supreme Court Ideological Compatibility* measure is positive and statistically significant at conventional levels. In other words, the more compatible the Court median's ideology is with the states' preferred outcome, the more likely the states will be successful. The support of or opposition from the United States Solicitor General acts in the way we would anticipate, although only support from the USSG is statistically significant in both models. This makes sense theoretically since the federal government taking a position that is in support of state power might send a strong signal to the Court. The number of non-state-filed amicus briefs in support of or in opposition to the state coalition works in the expected direction as well, though only state support is significant in both models. If a state was a litigant in the case, either in support of the states filing as amicus curiae or in opposition to them, there was no statistically significant impact on state amicus curiae success in either model.

As expected, when a state is advocating for a reversal there is a statistically significant increase in the odds that the state will realize its preferred outcome. *Issue Area* appears to matter as well. Specifically, in Federalism cases states are statistically less likely to “win” on the merits, relative to the baseline of “Criminal Procedure” cases. This is interesting because states are presumably concerned with federalism cases as they often pertain to the allocation of power between the states and the federal government. This is an issue area where the states want to be particularly effective lobbyists, but don't actually experience much success. States were less likely to win on the merits in civil rights cases in both models, although this was not statistically

significant at conventional levels in a two-tailed test ($p = .08$ and $p = .11$ in Models 1 and 2, respectively). Finally, in Model 2 an indicator variable was used to identify cases where states filed on both sides (i.e. cases with opposing coalitions). This variable was positive but was not statistically significant, indicating there were no systematic differences between cases with opposing coalitions and those without.

Conclusion

In conclusion, my theory implies that states as *amicus curiae* might be particularly influential on Supreme Court decision making as they can potentially represent a wide swath of public preferences. I hypothesize that state coalitions, in other words states advocating for the same outcome, will be more successful when they were more ideologically diverse and when they represent a greater number of geographic regions, as these two features should send a clearer signal about state and public preferences. While regional (geographic) representation increases state success on the merits as *amicus curiae*, the ideological heterogeneity of the coalition does not. This finding is intriguing in that previous work has found that the ideological heterogeneity of state preferences leads to an increased likelihood of the Court granting review (Goelzhauser and Vouvalis 2015). While the theoretical motivations are similar at the merits stage, the results do not extend in this context. Further, existing research has shown that the mere number of states in a coalition can increase the likelihood that the Court will issue a ruling that favors the states' preferences in federalism cases (Nicholson-Crotty 2007). These results do not extend to the wider set of cases where states file an *amicus* brief. Instead, it is the geographic diversity of the states in the coalition that matters.

Why is regional representation an effective signal while ideological heterogeneity is not? It is possible that regional representation is a more straightforward, easily observed, and

processed heuristic for the justices. Regional diversity may be easier to glean from the list of states signing a brief than ideological diversity. It is also possible that ideologically diverse coalitions struggle to write strong briefs, which might explain why I did not find the expected effect for the ideological heterogeneity of the coalition. When writing a brief that must accommodate actors of very different ideological positions the arguments or language used may be weaker and not as cohesive as it would be if actors of a similar ideology were filing the brief. While ideological heterogeneity can help states in the agenda setting stage since it signals the importance of a case, as previous research has found (Goelzhauser and Vouvalis 2015), it might not be a useful strategy for writing effective briefs on the merits. It might be that brief quality matters more than existing theories have emphasized. Future work can assess whether more cohesive actors write more effective briefs than ideologically diverse interests.

Together, these findings suggest that ensuring regional representation can be a very cost-effective lobbying strategy for states for a variety of reasons. There is likely less bargaining and accommodating when focusing on geographical representation with fewer states as opposed to garnering support from as many cosigning states as possible. For example, if a coalition were to form with a single state from each division (nine states in total), it might be more efficient and likely less time consuming than coordinating with a coalition of 20-30 states. Again, this is post hoc speculation, but a strategy that should be further explored nonetheless.

Finally, future work should assess whether this strategy of representing diverse preferences extends to other forms of lobbying with various interest groups. For example, if a set of groups such as the National Organization of Women (NOW), the National Association for the Advancement of Colored People (NAACP), and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) all of whom are ideologically liberal, but represent the

interests of women, minorities, and the working class file a brief, it might be a stronger signal than a brief filed by three groups that only represent the interests of a single subset of the population. Similarly, if the American Petroleum Institute, the American Farm Bureau Federation, and the National Association of Manufacturers, all of whom are ideologically conservative and represent the needs of various subsets of businesses file a brief, it might send a stronger signal than three groups representing the needs of only those in the fossil fuel industry. Extending this theory to other organized interests and contexts outside of the states can contribute to the literature on what makes for effective lobbying and can shed light on the role of public preferences in Supreme Court decision making.

Table 1. State Amicus Curiae Success on the Merits

Independent Variable	Model 1	Model 2
Ideological Heterogeneity of the Coalition	-.033 (.024)	-.033 (.021)
Regional Diversity	.161** (.058)	.096* (.053)
Number of States in Coalition	-.012 (.011)	-.002 (.011)
Supreme Court Ideological Compatibility	1.23* (.740)	1.61** (.666)
USSG Opposition	-.255 (.236)	-.355* (.211)
USSG Support	.795*** (.184)	.884*** (.173)
Number of Briefs in Opposition	-.017 (.027)	-.040* (.019)
Number of Briefs in Support	.051* (.025)	.052** (.017)
State Litigant Support	-.178 (.186)	-.284 (.172)
State Litigant Opposition	-.508 (.689)	.646 (.474)
State Advocating Reversal	1.22*** (.154)	1.10*** (.140)
Opposing Coalitions		.110 (.224)
N	947	1,101
Log Likelihood	-557	-651

Entries are logit estimates. * $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq .001$ (one-tailed test). Includes fixed effects for the Natural Court and Issue Area.

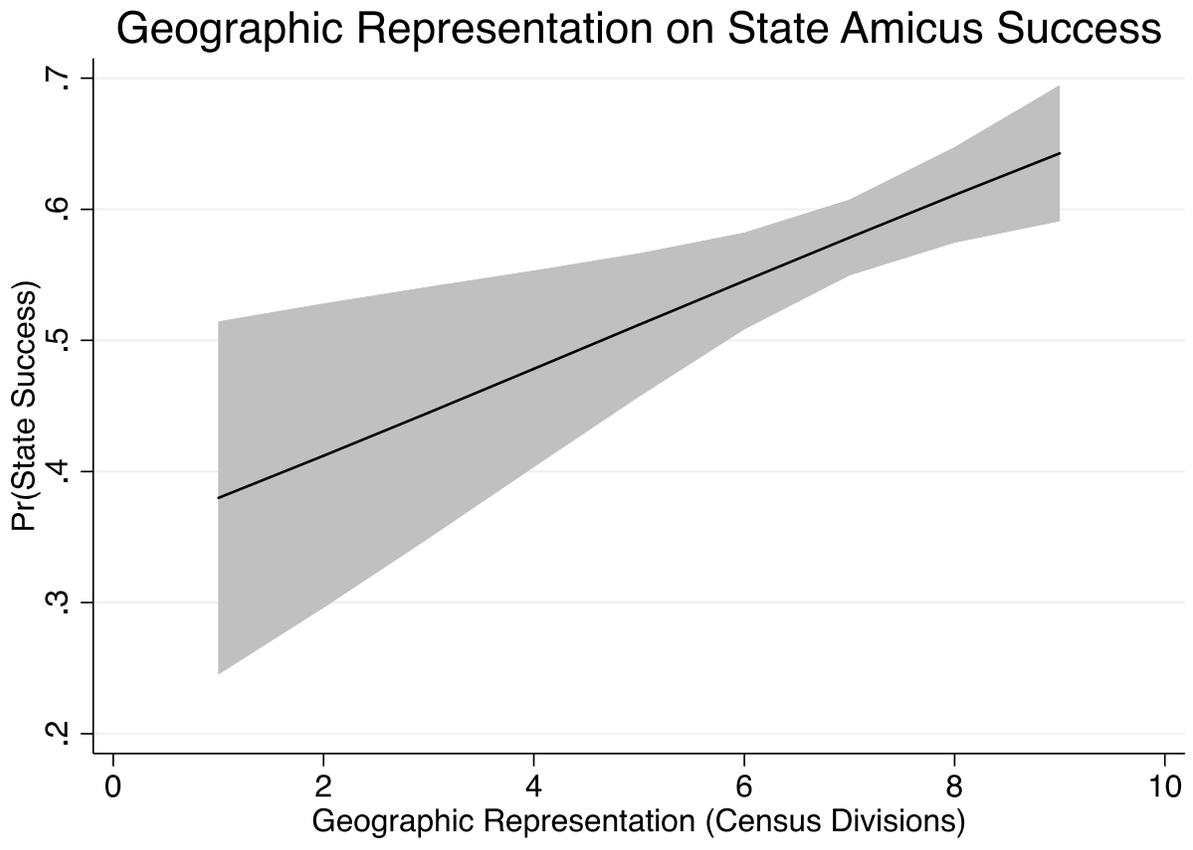


Figure 1: Geographic Representation on State Amicus Success

**State Coalitions, Informational Signals, and Success as Amicus Curiae at the United States
Supreme Court**

Online Appendix

Online Appendix A: Independent Variables Visualized	pp. 24-26
Online Appendix B: Regional Census Measure	p. 27
Online Appendix C: NOMINATE Measures	pp. 28-29
Online Appendix D: Model Fit Estimates	p. 30

Online Appendix A: Independent Variables Visualized

Below are histograms of the independent variables. “True Coalitions” include instances where two or more states filed.

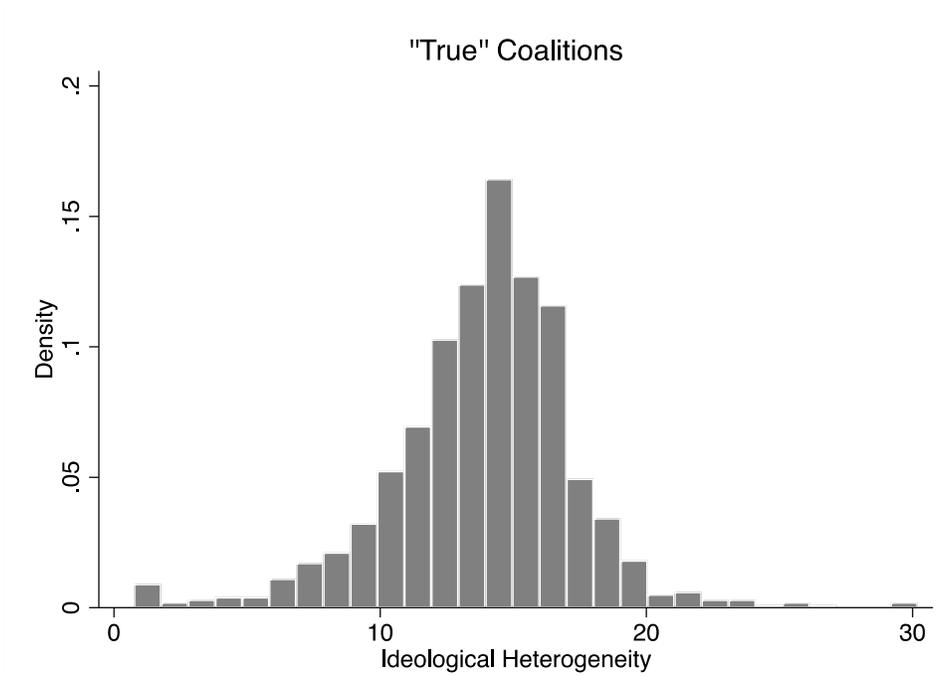


Figure 1: Ideological Heterogeneity in “True” Coalitions

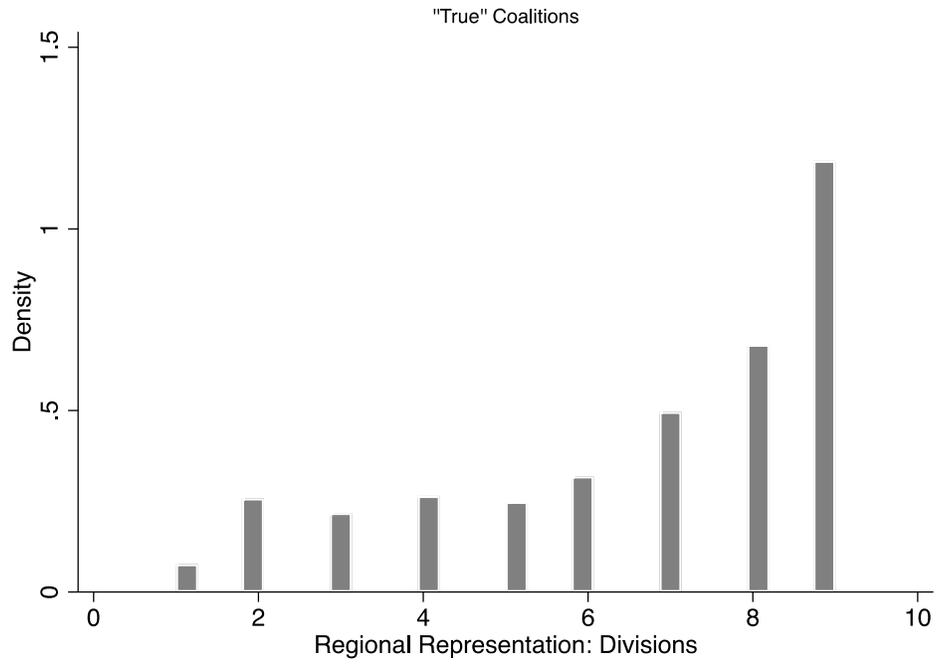


Figure 2: Regional Representation in "True" Coalitions- Census Divisions

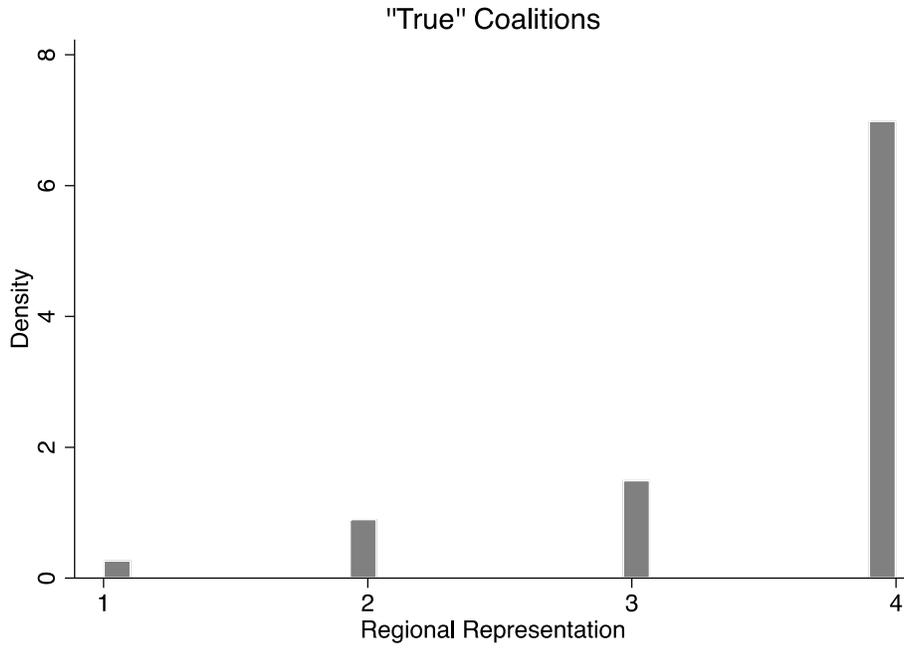


Figure 3: Regional Representation in "True" Coalitions- Census Regions

Online Appendix B: Regional Census Measures

Table 1A. State Amicus Curiae Success on the Merits

Independent Variable	Model 1	Model 2
Ideological Heterogeneity of the Coalition	-.036 (.025)	-.038 (.021)
Regional Diversity (Census Regions)	.379** (.131)	.290** (.114)
Number of States in Coalition	-.002 (.009)	.001 (.008)
Supreme Court Ideological Compatibility	1.24* (.740)	1.64** (.668)
USSG Opposition	-.257 (.236)	-.358* (.211)
USSG Support	.781*** (.184)	.876*** (.174)
Number of Briefs in Opposition	-.016 (.027)	-.041** (.019)
Number of Briefs in Support	.049* (.025)	.052** (.017)
State Litigant Support	-.173 (.187)	-.280 (.172)
State Litigant Opposition	-.534 (.688)	.605 (.473)
State Advocating Reversal	1.22*** (.154)	1.11*** (.141)
Opposing Coalitions		.111 (.224)
N	947	1,101
Log Likelihood	-556	-649

Entries are logit estimates. * $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq .001$ (one-tailed test). Includes fixed effects for the Natural Court and Issue Area.

Online Appendix C: NOMINATE Measures

Below is the model (without opposing coalitions) using Berry et. al.'s (2010) Government Ideology (NOMINATE) scores as opposed to the State Citizen Ideology scores. While the direction of the sign changes from negative in the citizen ideology measures to positive in the NOMINATE measures, the variable is not statistically significant at conventional levels in either model. In Model 2, that includes opposing coalitions, regional diversity (Census Divisions) loses statistical significance at conventional levels ($p=.06$ in a one-tailed test). There are no other substantive differences between the two models.

Table 2A. State Amicus Curiae Success on the Merits

Independent Variable	Model 1	Model 2
Ideological Heterogeneity of the Coalition (NOMINATE)	.004 (.018)	.001 (.015)
Regional Diversity (Census Divisions)	.143** (.057)	.078 (.052)
Number of States in Coalition	-.011 (.011)	-.002 (.011)
Supreme Court Ideological Compatibility	1.27* (.739)	1.66** (.665)
USSG Opposition	-.261 (.236)	-.362* (.211)
USSG Support	.784*** (.184)	.873*** (.173)
Number of Briefs in Opposition	-.018 (.027)	-.040* (.019)
Number of Briefs in Support	.054* (.025)	.053** (.018)
State Litigant Support	-.173 (.186)	-.274 (.172)
State Litigant Opposition	-.530 (.694)	.630 (.474)
State Advocating Reversal	1.21*** (.154)	1.10*** (.140)
Opposing Coalitions		.125 (.224)
N	947	1,101
Log Likelihood	-557	-652

Entries are logit estimates. * $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq .001$ (one-tailed test). Includes fixed effects for the Natural Court and Issue Area.

Online Appendix D: Model Fit Estimates

In this section I add goodness of fit tests comparing the models analyzed in the main text and appendix. As evidenced below, the models excluding opposing coalitions appear to be better fits.

For Main Analysis in Body of Paper. Corresponds to Table 1:

Model 1: (Excludes Opposing Coalitions) AIC = 1191, BIC = 1380 (N=947)

Model 2: (Including Opposing Coalitions) AIC = 1383, BIC = 1588 (N=1,101)

For Analysis in Appendix B (Regions), Corresponds to Table 1A:

Model 1: (Excludes Opposing Coalitions) AIC = 1190, BIC = 1379 (N=947)

Model 2: (Including Opposing Coalitions) AIC = 1380, BIC = 1585 (N=1,101)

For Analysis in Appendix C (NOMINATE), Corresponds to Table 2A:

Model 1: (Excludes Opposing Coalitions) AIC = 1193, BIC = 1382 (N=947)

Model 2: (Including Opposing Coalitions) AIC = 1386, BIC = 1591 (N=1,101)

References

- Berry, William D., Evan J. Ringquist, Richard C. Fording and Russell L. Hanson. 1998. "Measuring Citizen and Government Ideology in the American States, 1960-93." *American Journal of Political Science* 42:327-48. Revised 1960-2013 Citizen Ideology Series.
- Berry, William D., Richard C. Fording, Evan J. Ringquist, Russell L. Hanson and Carl Klarner. 2010. "Measuring Citizen and Government Ideology in the American States: A Re-appraisal." *State Politics and Policy Quarterly* 10: 117-35.
- Black, Ryan C., and Ryan J. Owens. 2012. *The Solicitor General and the United States Supreme Court: Executive Branch Influence and Judicial Decisions*. New York: Cambridge University Press.
- Casillas, Christopher J. Peter K. Enns, and Patrick C. Wohlfarth. 2010. "How Public Opinion Constrains the U.S. Supreme Court." *American Journal of Political Science* 55(1): 74-88.
- Clark, Tom. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy." *American Journal of Political Science* 53(4): 971-989.
- Clayton, Cornell W., and Jack McGuire. 2001. "State Litigation Strategies and Policymaking in the U.S. Supreme Court." *Kansas Journal of Law & Public Policy* 11(1): 17-34.
- Collins Jr., Paul M. 2008. *Friends of the Supreme Court: Interest Groups and Judicial Decision Making*. New York: Oxford University Press.
- Devins, Neal and Saikrishna Bangalore Prakash. 2015. "Fifty States, Fifty Attorneys General, and Fifty Approaches to the Duty to Defend." *The Yale Law Journal* 124(6): 2100-2187.
- Epstein, Lee & Andrew D. Martin. 2010. "Does Public Opinion Influence the Supreme Court? Possibly Yes (But We're Not Sure Why)." *University of Pennsylvania Journal of Constitutional Law* 13: 263-281.
- Epstein, Lee, Andrew D. Martin, Jeffrey A. Segal, and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics & Organization* 23:303-325.
- Epstein, Lee, and Karen O'Connor. 1988. "States and the U.S. Supreme Court: An Examination of Litigation Outcomes." *Social Science Quarterly* 69(3): 660-674.
- Gleason, Shane A. and Colin Provost. 2016. "Representing the States Before the U.S. Supreme Court: State Amicus Brief Participation, the Policy-making Environment, and the Fourth Amendment." *Publius: The Journal of Federalism* 46(2): 248-273.

- Goelzhauser, Greg and Nicole Vouvalis. 2015. "Amicus Coalition Heterogeneity and Signaling Credibility in Supreme Court Agenda Setting." *Publius: The Journal of Federalism* 45(1): 99-116.
- Hall, Matthew E.K. 2014. "The Semi-Constrained Court: Public Opinion, the Separation of Powers, and the U.S. Supreme Court's Fear of Nonimplementation." *American Journal of Political Science* 58(2): 352-366.
- Hansford, Thomas G., Sarah Depaoli, and Kayla S. Canelo. n.d. "Estimating the Ideal Points of Organized Interests in Legal Policy Space" Working Paper.
- Harper, Brandon D. 2014. "The Effectiveness of State-Filed Amicus Briefs at the United States Supreme Court." *Journal of Constitutional Law* 16(5): 1503-1529.
- Horn, Robert. 1962. "The Sectional Impact of Judicial Review." Paper presented at the annual meeting of the American Political Science Association.
- Johnson, Timothy R., James F. Spriggs II, and Paul J. Wahlbeck. 2007. "Oral Advocacy Before the United States Supreme Court: Does It Affect the Justices' Decisions?" *Washington University Law Review* 85(3): 457-527.
- Kearney, Joseph D., and Thomas W. Merrill. 2000. "The Influence of Amicus Curiae Briefs on the Supreme Court." *University of Pennsylvania Law Review* 148(3):743-855.
- Lynch, Kelly J. 2004. "Best Friends?: Supreme Court Law Clerks on Effective Amicus Curiae Briefs." *Journal of Law and Politics* 20(1): 33-75.
- McGuire, Kevin T., and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Preferences." *The Journal of Politics* 66(4): 1018-1035.
- Morris, Thomas R. 1987. "States before the U.S. Supreme Court: State Attorneys General as Amicus Curiae." *Judicature* 70:298306.
- Nicholson-Crotty, Sean. 2007. "State Merit Amicus Participation and Federalism Outcomes in the U.S. Supreme Court." *Publius: The Journal of Federalism*. 37(4): 599-612.
- Provost, Colin. 2006. "The Politics of Consumer Protection: Explaining State Attorney General Participation in Multi-State Lawsuits." *Political Research Quarterly* 59(4): 608-618.
- Provost, Colin. 2003. "State Attorneys General, Entrepreneurship, and Consumer Protection In the New Federalism." *Publius: The Journal of Federalism*. 33(2): 37-53.

- Provost, Colin. 2011. "When to Befriend the Court? Examining State Amici Curiae Participation Before the United States Supreme Court." *State Politics and Policy Quarterly* 11(1): 4-27.
- Segal, Jeffrey A., and Harold J. Spaeth. 1993. *The Supreme Court and the Attitudinal Model*. Cambridge University Press.
- Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press.
- Solimine, Michael E. 2012. "State Amici, Collective Action, and the Development of Federalism Doctrine." *Georgia Law Review* 46: 355-406.
- Spaeth, Harold J., Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh. 2016 Supreme Court Database, Version 2015 Release 03. URL: <<http://Supremecourtdatabase.org>>
- Ulmer, S. Sidney. 1978. "Selecting Cases for Supreme Court Review: An Underdog Model." *American Political Science Review* 72:902-10.
- United States Census Bureau 2010 Census Data. "Resident Population Data: Population Density." Accessed 2 April 2015. <<http://www.census.gov/2010census/data/>>