

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

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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.

State 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 While these actors are less visible than Members of Congress, they play an extremely active role as policymakers in disguise. While most of their efforts consist of creating drastic changes to policy through litigation efforts, such as the overhaul of the tobacco and pharmaceuticals industries or changes in emissions policies (Nolette 2015), they also work to influence Supreme Court outcomes by lobbying the Court through *amicus curiae* briefs. While this second form of advocacy for policy change is not as high profile as some the litigation efforts, it is still an incredibly important endeavor due to the widespread implications of the Supreme Court’s decisions. One notable feature about SAG efforts is that they often work together by forming coalitions, often in a bipartisan manner. State attorneys general have been shown to be particularly effective lobbyists when they coordinate their efforts (Goelzhauser and Vouvalis 2015; Morris 1987; Nicholson-Crotty 2007). However, we still know little about what specific features of a coalition make the states so successful.

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 is related to an increase in the chances of success on the merits as *amicus curiae* filers, but that the ideological heterogeneity of the coalition is not. This finding is interesting in that it transcends our understanding of lobbying and representation as a simple

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

paradigm of liberal and conservative interests and suggests there is a more nuanced story at play.

The latter result is also 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. This paper serves to help shape how we think about effective lobbying efforts and suggests that lobbying coalitions, whether composed of SAGs or organized interests, might be particularly effective when they represent a more diverse set of preferences that encompass various cultural, social, and economic outlooks.

State Attorneys General and Policy Outcomes

State attorneys general are policymakers undercover. These unique actors serve as the chief legal officers of their states and actively work to change policy through the law. The SAGs have used litigation efforts to drastically overhaul policy affecting the tobacco industry, pharmaceutical industry, and the environment and climate change (Nolette 2015). However, active litigation is not the only means through which these actors work. Another way state attorneys general can influence policy outcomes is through the filing of amicus curiae briefs. These “friend-of-the-Court” briefs allow the SAGs to use legal and pragmatic arguments to advocate for a particular outcome in a case. It is a way for them to express their preferences to the nation’s highest Court, and as the chief legal officers of their states who are active in litigation efforts, their voice is a strong one. Over the past two decades, scholars have been increasingly interested in understanding the importance of these filings and what the Court

makes of them. Research has shown that states (through their attorneys general) 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 SAGs 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). While this work has advanced our understanding of state amicus curiae filings, we still know little about what makes for successful SAG amicus filings on the merits of a case and what, specifically, it is about coalition formation and multiple states advocating for certain outcomes that might make for more successful lobbying of the Supreme Court.

Sending a Signal: State Amicus Coalitions and Supreme Court Rulings

Amicus curiae briefs play an important role in the dissemination of information. Supreme Court justices have incomplete information (Epstein & Knight 1998, 1999; Hansford & Johnson 2014; Johnson, Wahlbeck & Spriggs 2006; Maltzman, Spriggs, and Wahlbeck 2000; Murphy 1964). They don’t always know the preferences of other actors, the wider implications of their rulings, or how their policies will play out. Amicus curiae briefs are important in that they can provide the justices with this information. While there is a broad debate on whether the amicus curiae briefs do (Collins 2007a; 2008a; 2008b; Ennis 1984; Hansford 2004; Kearney and Merrill

2000) or do not (Epstein, Segal and Johnson 1996; Songer and Sheehan 1993) influence outcomes, most scholars can agree that the submission of these briefs is a form of “informational lobbying” (qtd Hansford 2011 p. 751; Collins 2008b; Epstein and Knight 1999; Kearney and Merrill 2000; Spriggs and Wahlbeck 1997). The amicus filers submit these briefs with the belief they can influence outcomes, and the briefs serve as an important source of useful information that the Court might use to make informed decisions about the broader social implications (Barker 1967; Kearney and Merrill 2000) or importance of a case (Calderia and Wright 1988), even as it pertains to those who are not litigants in the case (Pacelle 1991). These briefs also serve to provide factual information (Ennis 1984) and information on the preferences of other actors (Epstein and Knight 1999).

One area in the study of amicus curiae filings that is of particular interest to scholars is that of coalition formation—that is, multiple entities coming together to advocate for a particular outcome. Coalitions are a way for interest groups to pool resources in order to effectively advocate for their policy preferences both in terms of amicus coalition formation (Box-Steffensmeier and Christenson 2015) and lobbying of Congress (Hula 1999). Research has demonstrated that better-connected interest groups who are frequent filers with the U.S. Supreme Court are able to influence outcomes in cases where the litigants have a similar number of amicus briefs supporting them (Box-Steffensmeier, Christenson, and Hitt 2013).

Scholars have also dedicated their attention to coalition formation among the state attorneys general in the form of multistate litigation as well as amicus curiae briefs and there are differences in these two forms. When it comes to joining multi-state lawsuits, research suggests state citizen ideology helps determine whether a SAG will join a lawsuit in consumer protection cases (Provost 2003, 2006), however, when it comes to the decision to join an amicus brief this connection is much less clear. Research has shown that in terms of joining amicus briefs in

criminal procedure cases SAGs are motivated by policy, elected SAGs join more often than appointed, and that SAGs are not motivated by state elite preferences (Provost 2011). Further, it has been demonstrated that in Fourth Amendment cases resources determine whether a SAG initiates or joins a brief, and that case facts can influence whether SAGs join a case but does not influence their decision to initiate an amicus brief (Gleason and Provost 2016).

It has also been shown that context matters to SAG coalition formation. Gleason (2018) has shown that in the 1980s and 1990s SAG coalitions formed due to budget constraints and a need to pool resources, while in the 2000s the SAGs coordinated their efforts more in terms of ideological similarity. Further, it has been shown that the 2000s brought an increase in the number of partisan amicus briefs submitted by state attorneys general (Nolette 2015). These findings are consistent with the creation of the Republican Attorneys General Association (RAGA) in 1999 and the Democratic Attorneys General Association (DAGA) in 2002 and show that SAG coalition formation changed over time. While such partisan behavior has increased over time and plays such an important role in understanding SAG coalition formation and motivation, it is worth noting that there are still many bipartisan efforts among SAGs (see Nolette 2014, 2015).

State coalitions are especially important as amicus filers because of the signals they can send the Court in their coordination efforts and because of their unique roles as chief legal officers and representatives of their state. As such, I first 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).

I next assume that States Attorneys General at least loosely represent the preferences of the citizens of their states—at least in the minds of the justices. 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).² This same author concludes that many SAGs are motivated by political ambitions (Solimine 2012), and as such, they must be mindful of public preferences. In addition, Paul Nolette provides a summary of the expectant roles SAGs are to play in stating, “For years AGs were understood to represent the interests of a single client: the state itself. Starting with initial empowerment of state litigators in the 1970s, however, federal institutions began encouraging AGs to understand themselves as representing not only the

² 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.

interests of their states but the people of the state as well” (Nolette 2015, pg. 38). While this latter example is related to litigation efforts, it is not unreasonable to assume that this extends to their role in amicus filings as well. While one might argue that, unlike litigation efforts, 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 local³ and national⁴ media outlets, and SAGs will even advertise their participation on their office website⁵ or in local news outlets.⁶ This is evidence that 1) SAG activity is noticeable to the public and 2) SAGs at times specifically highlight their amicus activity to show their state’s citizens that they are filing in cases of interest to them to advocate for desired outcomes. Additionally, one might make the argument that appointed SAGs are less likely to represent the preferences of their states’ citizens, since there is no electoral connection. However, it is worth noting that, with the exception of Tennessee, these SAGs are appointed by elected officials, most often the state’s governor.⁷ Finally, even if the public is not well attuned to amicus activity of SAGs, the theory holds as long as the Supreme Court justices view these briefs as being somewhat representative of state interests. Since SAGs are the primary actors that file briefs on behalf of the states, this is

³ 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/>>.

⁴ Birnbaum, Emily. 2018. “States ask Supreme Court to Limit LGBTQ Workplace Protections.” *The Hill*. (Accessed 28 December 2018) <<https://thehill.com/regulation/court-battles/403951-16-states-ask-supreme-court-to-legalize-discrimination-against-lgbtq>>.

⁵ 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>>.

⁶ 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>>.

⁷ In Maine the SAG is appointed by the state legislature, in Tennessee (s)he is appointed by the state Supreme Court, and in Alaska, Hawaii, Wyoming, New Jersey, and New Hampshire the SAG is appointed by the governor.

the information justices have available to determine citizen preferences.

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 SAG 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. Goelzhauser 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. Take, for example, *Elk Grove Unified School District v. Newdow* (2004) on whether reciting the Pledge of Allegiance in schools violated the Establishment Clause. In this particular case, the SAGs from all fifty states signed on to a brief in support of the petitioner. 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. This leads me to the following hypothesis:

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

States also send a signal of geographic diversity.⁸ Geographic (or regional) distinctions play a significant role in U.S. politics and have largely been shaped over the course of our nation's history. While each state has its own culture with different social and economic identities so too does each region within which the states reside. Political scientists have identified the importance of geography in political attitudes. Evidence has shown there are distinctive differences between red states and blue states and that this hasn't lessened over time (Abramowitz and Saunders 2008). These differences are not limited to the states themselves but in fact spread to greater geographic regions, such as the conservative South and the liberal New England and Pacific regions (Gelman 2009). In terms of political behavior, scholars have even identified differences in personality (Rentfrow 2010) and political views (Gelman 2009) across the states and have shown that individuals will consider partisanship when determining which state to migrate to (Tam Cho, Gimple, and Hui 2012). Similarly, it has been shown that

⁸ 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 fare 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).

individuals in different regions have different political preferences (Glaeser and Ward 2006). This is all to suggest that regional identities are important as they represent different cultures with strong social, political, and economic identities. These geographic distinctions do not go unnoticed by the Supreme Court. Rush (2014) claims, "... federalism and geography are inextricably intertwined" (p.122) and provides examples of Supreme Court justices identifying the importance of regional distinctions in their majority opinions, such as Justice Sandra Day O'Connor in *Grutter v. Bollinger* (2003) and Justice John Roberts in *Shelby County, Alabama v. Holder* (2013) (Rush 2014, pp. 121-122). Regional representation might send an even stronger signal to the justices than ideological heterogeneity as it provides a more complete picture of citizen preferences than the mere red state/blue state dichotomy and is easily received.

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. Take for example, *Gonzales v. Oregon* (2006) where the Court had to decide whether the U.S. Attorney General could regulate physician-assisted suicide through the Controlled Substances Act. The state of California initiated a brief joined by Mississippi, Missouri, and Montana on behalf of the state of Oregon claiming that the practice of medicine has been the responsibility of individual states. These four states represented four very different geographic regions, the Pacific (California in the West), the East South Central (Mississippi in the South), the West North Central (Missouri in the Midwest), and the Mountain region (Montana in the West). The Court ruled in favor of the state of Oregon. While there were obviously many other factors that drove Supreme Court decision making in this case, this very regionally diverse combination of states representing very different cultures with various social outlooks likely sent a strong signal to the Court. Imagine instead, if this brief were submitted on behalf of California, Washington, Hawaii, New York—the same number of states encompassing

only two geographic regions and a much narrower set of preferences. This signal would likely not have been as strong. Coalitions that encompass greater geographic diversity better reflect the interests of a much broader segment of the country by representing different cultural identities, ideologies, and social and economic outlooks.

The signal of regional representation sent by states is easily identifiable and can help the justices make inferences about other states in their geographic region in a straightforward manner. 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 due to similar cultural, social, and economic outlooks.

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

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 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.⁹

In order for these signals to be effective they must be “received” by the justices. The

⁹ 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.

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.

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) 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 eliminate these instances as these types of cases are fundamentally different and because the success of one coalition is directly related to the success

of the other.¹⁰ 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. 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 1,002 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 supported and “0” if it was not.¹¹

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).¹² In the subset of 1,002 coalitions, *Ideological Heterogeneity* ranges from .755

¹⁰ See Online Appendix E for more on competing coalitions and a separate look at this subset of the data.

¹¹ I do not assume the decision direction is the only area of interest to the SAGs, as they can be interested in the legal doctrine as well. However, the SAGs are advocating for a particular disposition, so this is the outcome of interest for this paper. Future work can examine text-based approaches to assess advocacy for specific legal doctrines.

¹² Goelzhauser and Vouvalis (2015) use the government ideology (NOMINATE) scores. I use the citizen ideology measures for states that elect their attorney general since I assume the attorney general also files in the interests of the state's citizens, and the NOMINATE score for

to 29.35. A visual representation can be found in Figure 1 below.

** INSERT FIGURE 1 HERE **

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.¹³ The four census regions include the West, Midwest, South, and Northeast.¹⁴ These are then broken down into regional divisions (used in this analysis). The Pacific and Mountain divisions reside in the West region, West North Central and East North Central reside in the Midwest Region, West South Central, East South Central, and South Atlantic reside in the region deemed the South, and the Middle Atlantic and New England divisions reside in the Northeast Region.¹⁵ To measure regional diversity, 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*. There are a total of 9 Census divisions. The mean number of divisions represented is 6.87 with a standard

states that do not elect their attorney general. As a robustness check I run the model using only the NOMINATE measures and the results remain consistent.

¹³ Census measures were used because such measures have been employed in previous work (Nolette 2015, pg. 25) and because states are not forced to limit their networking to geographic proximity, thanks in part to coordinating organizations such as NAAG. Further the Census divisions represent diverse geographical and cultural differences that cleanly and conveniently house the states which are the political units that represent them.

¹⁴ I use the four regions (West, Midwest, South, and Northeast) from the Census as a robustness check. These results can be found in Online Appendix B. I also replace Census Divisions with circuit court diversity and the results still hold as these two variables are highly correlated ($r = .94$). This is consistent with my results in that it might imply an added component of legal diversity, and the results of this analysis can be found in Online Appendix C. Regional representation is more theoretically appropriate for this paper as the states represent their state and its citizens and not the circuit within which they reside. This concept of circuit diversity should be explore in future work on the topic.

¹⁵ For more detailed information on how the U.S. Census Divisions were determined and evolved over time can be found on the U.S. Census website under “History: Regions and Divisions” located at https://www.census.gov/history/www/programs/geography/regions_and_divisions.html and a much more detailed breakdown can be found in Chapter 6 “Statistical Groupings of States and Counties” of the *Geographic Areas Reference Manual* of the U.S. Census located at <https://www.census.gov/geo/reference/garm.html>.

deviation of 2.34 and a median of 8. The ideological heterogeneity of the state coalition is not highly correlated with the regional diversity of the coalition ($r=.28$). A visual representation of the regional diversity in the data (using the 9 Census divisions) can be found in Figure 2 below.¹⁶

*** INSERT FIGURE 2 HERE ***

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, research demonstrates that more conservative Courts are more supportive of states' rights (Collins 2007a; Kearney and Sheehan 1992; Parker 2011; Waltenburg and Swinford 1999). 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 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

¹⁶ A visual representation of regional diversity using the four Census regions can be found in Online Appendix A.

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). I also include the *State Advocating Liberal Position* and the *Judicial Common Space Score of the Supreme Court Median* terms in the model. Next, I include fixed effects for the natural Court.¹⁷ 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 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). The state coalitions advocated on behalf of state litigants in 36.5% of the total number of

¹⁷ These are not reported in the tables for simplicity but are included in each analysis.

cases and advocated against state litigants in only 1.4% of cases.

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 2008b). Similar to Collins (2008b), this variable *Non-State Amicus Briefs* is the number of briefs against the state coalition subtracted from the number of briefs supporting the state coalition. Next, 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 control for state attorney general coordinating organizations in the model by including a variable *NAAG* which is an indicator variable for Supreme Court terms past 1982.

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).¹⁸ The issues included in the database are: Criminal Procedure, Civil Rights, First Amendment, Due Process, Privacy, Attorneys, Unions, Economic Activity, Judicial Power, Federalism, Interstate Relations, Federal Taxation, Miscellaneous, and Private Action. The issue area “Judicial Power” serves as the baseline. The states file most frequently in criminal procedure cases (24.7% of cases) followed by cases that involve Economic Activity (18%), Civil Rights (17.5%), Federalism (11.4%), and Judicial Power (10.3%). The median number of states in a coalition across all case types is 17 (mean = 18.6). The median number of states is slightly higher in cases involving criminal procedure (median = 21, mean = 21.7), and is lower in cases involving Civil Rights (median =

¹⁸ These are not included in the tables for simplicity, but when any of the issue areas are significant they are mentioned in the text.

12, mean = 15.22) and the First Amendment (median = 13, mean = 15). This finding that more states coordinate in criminal procedure cases is understandable given that attorneys general serve as the chief law enforcement officer in their states and are well suited to speak to these issues in this domain.

The median ideological heterogeneity across all cases is 15.2 with a mean of 14.8. The ideological heterogeneity of state coalitions remains fairly consistent across issue area. For example, Criminal Procedure cases (median =14.8, mean =14.4), Civil Rights cases (median = 15.1, mean = 14.5), and First Amendment cases (median = 14.5, mean = 14.3) are all very similar in ideological heterogeneity. Regional representation is fairly consistent across issue area as well. The median across all cases is 8 with an average of 6.9. Civil Rights cases (median = 7, mean = 6.3) and First Amendment cases (median = 7, mean = 6.3) are only slightly lower. Taken together, this might suggest that despite the different ideological orientations of the states, they are equally concerned with certain types of law and that these states' rights considerations might transcend ideology. Visualizations of variation in regional diversity, ideological heterogeneity, and the number of states in a coalition in each issue area can be found in Online Appendix A.

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. I use a logit model due to the dichotomous nature of the dependent variable.¹⁹ Table 1 below shows the results for SAG coalitions where at least two or

¹⁹ There were eight cases in which the U.S. Supreme Court database could not determine the ideological direction of the decision, and thus the interaction between the Supreme Court's Median Ideology and the State advocating for a liberal outcome could not be determined. In addition, there were four 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 987.

more states filed for the same outcome. The model includes fixed effects for issue area and natural Court. These are not reported in the table for simplicity.

*** 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. 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 is not statistically significant at conventional levels.²⁰ 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.

Regional diversity is positive and statistically significant, providing support for my hypothesis that an increase in regional representation might increase state success on the merits as amicus curiae. 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 is related to a substantial increase in the likelihood of the states experiencing "success" as amicus filers.²¹ 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. Seeking a diverse set of interests might be an effective lobbying strategy

²⁰ As a robustness check I ran the model using only Berry et. al.'s (2010) Government Ideology (NOMINATE) scores as opposed to the State Citizen Ideology scores for elected attorneys general. The results are consistent with the main model.

²¹ I also ran the model interacting Ideological Heterogeneity and Regional Diversity and used the testparm command in Stata to determine the significance of the interaction. There is no interactive effect here ($p = .12$).

that can extend to organized interests as well. This point is mentioned further in the discussion section.

*** FIGURE 3 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 is not statistically significant at conventional levels ($p = .093$, two-tailed). This suggests a more nuanced story is at play, and that there are more important features of coalition formation, like regional diversity, that can lead to more successful state advocacy.

The *Supreme Court Ideological Compatibility* measure is positive in direction but is not statistically significant at conventional levels.²² 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. *Non-State-Amicus Brief* is positive in direction but only borders on statistical significance at conventional levels ($p = .056$, two-tailed). If a state was a litigant in the case, either in support

²² I also ran the model using a direct interaction term between the *State Advocating and Liberal Position* and the *Judicial Common Space Score of the Court Median* (without reverse coding for direction) then used the `testparm` command in Stata to determine the significance of the interaction ($p = .06$).

of the states filing as amicus curiae or in opposition to them, there was no statistically significant impact on state amicus curiae success. The variable *NAAG*, accounting for coordinating organizations such as the National Association of Attorneys General, is positive in direction but is not statistically significant.²³

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 “Judicial Power” cases ($p = .012$, two-tailed). 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. The states are also less likely to win in Civil Rights cases ($p = .013$, two-tailed) and Economic activity cases ($p = .045$, two-tailed), relative to the baseline of “Judicial Power” cases.

Discussion and Directions for Future Work

This paper aimed to determine what features of SAG coalition formation make for more effective lobbying. I hypothesized that state coalitions, in other words states advocating for the same outcome, will be more successful when they are 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 is related to an increase in state success on the merits as amicus curiae, the ideological heterogeneity of the coalition is not.

²³ As identified in the theory section, one might be concerned with partisan coordinating efforts such as the Republican Attorneys General Association (RAGA) or the Democratic Attorneys General Association (DAGA) and the increase in partisan filings among SAGs over time. To account for this, a model in Online Appendix F includes fixed effects for each Supreme Court term. The results are substantively the same as the main model.

While this null finding about representing ideological heterogeneous preferences might seem surprising on its face, it appears to be consistent with previous work on how SAGs form coalitions. It has been shown that partisanship is not a significant predictor of a SAG's decision to participate in consumer protection litigation (Provost 2003, 2006) nor is it significant in determining a SAG's decision to initiate an amicus brief in search and seizure cases (Gleason and Provost 2016). Taken together these results suggest a level of ambiguity in terms of the role of ideology in SAG behavior. This might be a result of SAGs' unique role as both political and legal actors and perhaps suggests that they are not yet quite as polarized or overtly partisan as other strictly political actors, although evidence suggests this is changing over time (see Nolette 2014; Nolette and Provost 2018).

The findings in this paper provide a rich avenue for future research. As SAG coalitions become more partisan in nature what signal does this send to the Supreme Court? Will the states be less successful as they continue to engage in this behavior and lose some of their credibility with the Court? Or rather, does this increase in polarized behavior among SAGs reflect changes in more polarized citizen attitudes? As the SAGs polarize will they be less likely to coordinate their lobbying efforts in a bipartisan manner to advocate together for states' rights outcomes? Or is this form of advocacy constant given their unique position as legal actors? My paper revealed a limited number of cases where states form coalitions on each side of a case (i.e. one group of states advocating for affirmance and another advocating reversal). While the number of observations was quite small, preliminary evidence suggested regional representation did not matter in this context. It's possible that these types of cases are unique in that they are more political or partisan in nature and thus the Court relies more its own ideology in this context. These are important questions that can be answered in time as more data becomes available.

This paper also found that the regional representation encompassed by the state coalition might increase state success in lobbying attempts on the merits. This suggests that regional representation might tell a more complete picture of the diverse cultural, social, and economic complexities involved in each region of the United States—complexities that have been built into these regions throughout the nation’s history. Together with the null finding on ideological heterogeneity, this suggests the story of state representation is more nuanced than a simple conservative/liberal dichotomy implies. Different geographic regions have different identities and also a different set of needs. This is variation that traditional ideological markers may not capture well.

This finding also offers directions for future work. For example, what happens when another representative of the state, such as the governor, submits a brief, especially if it is advocating for the opposite side of the SAG filed brief? While governors are not the official representatives of a state, as per rule 37.4, they too might send a signal of state preferences to the Court. It is possible that in these rare situations of conflicting state preferences, the impact of regional diversity might be abated, similar to what was seen in the preliminary analysis on competing coalitions. Future work can also further address regional representation by looking into local governments and assessing whether representations of diversity in terms of urban and rural areas can send a strong signal to the Court about citizen preferences.

This paper does not come without its limitations. One notably missing component is the legal motivation behind SAG advocacy. SAGs are not merely interested in the disposition of a case and which party wins, they are often interested in legal doctrine. Advances in text analysis can help answer these questions by offering alternative dependent variables to explore. For example, plagiarism detection software and content analysis can be used to help determine whether the Supreme Court is more apt to adopt in its majority opinions the legal arguments

proposed by various SAG coalitions in amicus briefs. Similarly, this paper revealed that there is a strong correlation between regional diversity and judicial appellate circuit diversity. While this is consistent with the hypotheses in this paper in that circuit diversity might represent legal diversity, it is an important avenue to be explored in future work as it might help unravel the more distinctly legal goals of SAGs.

Finally, future work can also 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.

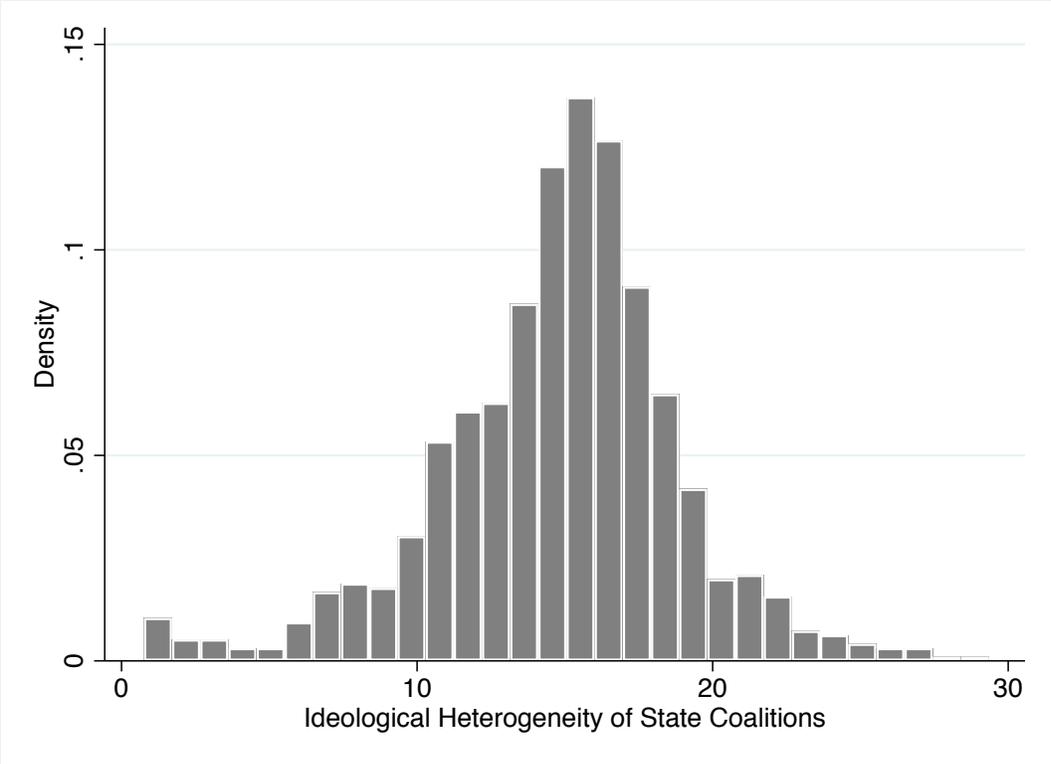


Figure 1: Ideological Heterogeneity of State Coalitions

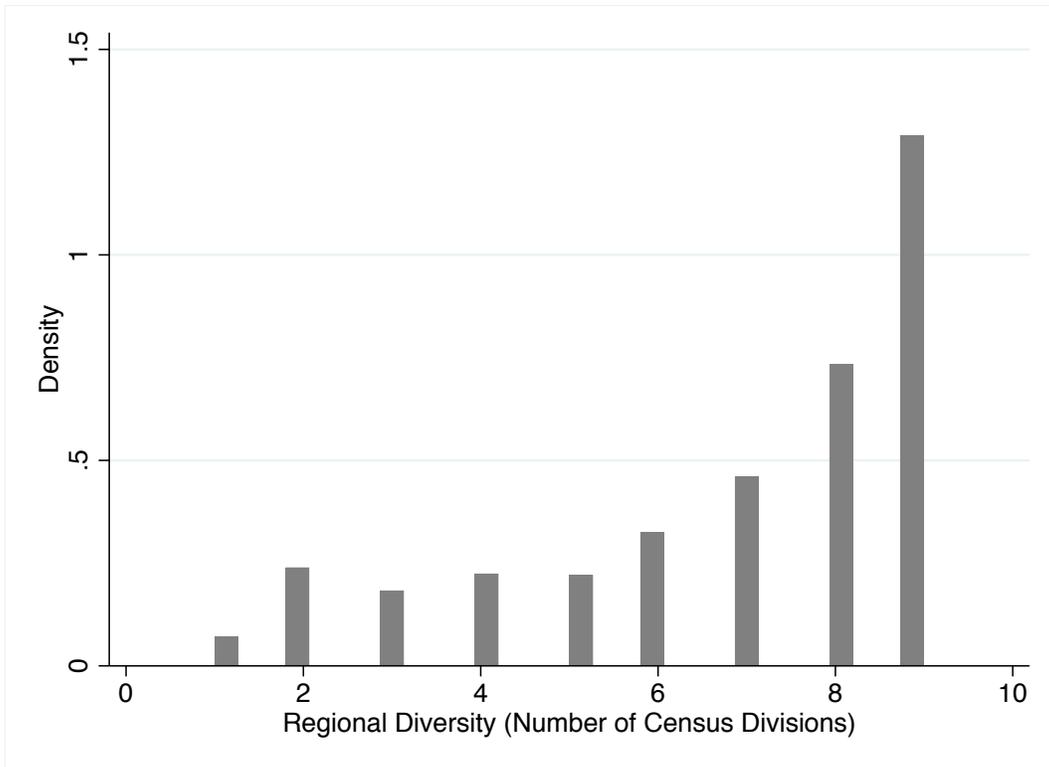


Figure 2: Regional Representation of State Coalitions (Census Divisions)

Table 1. State Amicus Curiae Success on the Merits
Independent Variable

Ideological Heterogeneity of the Coalition	-.023 (.019)
Regional Diversity	.130* (.057)
Number of States in Coalition	-.006 (.011)
State Advocating Liberal Position	.234 (.291)
Judicial Common Space of Median	-4.09 (1.82)
SC Ideological Compatibility	2.00 (1.11)
Non-State Amicus Briefs	.034 (.018)
USSG Support	.816*** (.181)
USSG Opposition	-.199 (.222)
NAAG	.713 (.502)
State Litigant Support	-.201 (.184)
State Litigant Opposition	-.132 (.626)
State Advocating Reversal	1.20*** (.151)
N	987
Log Likelihood	-579.6

Entries are logit estimates. * $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq .001$ (two-tailed). Includes fixed effects for issue area and natural Court.

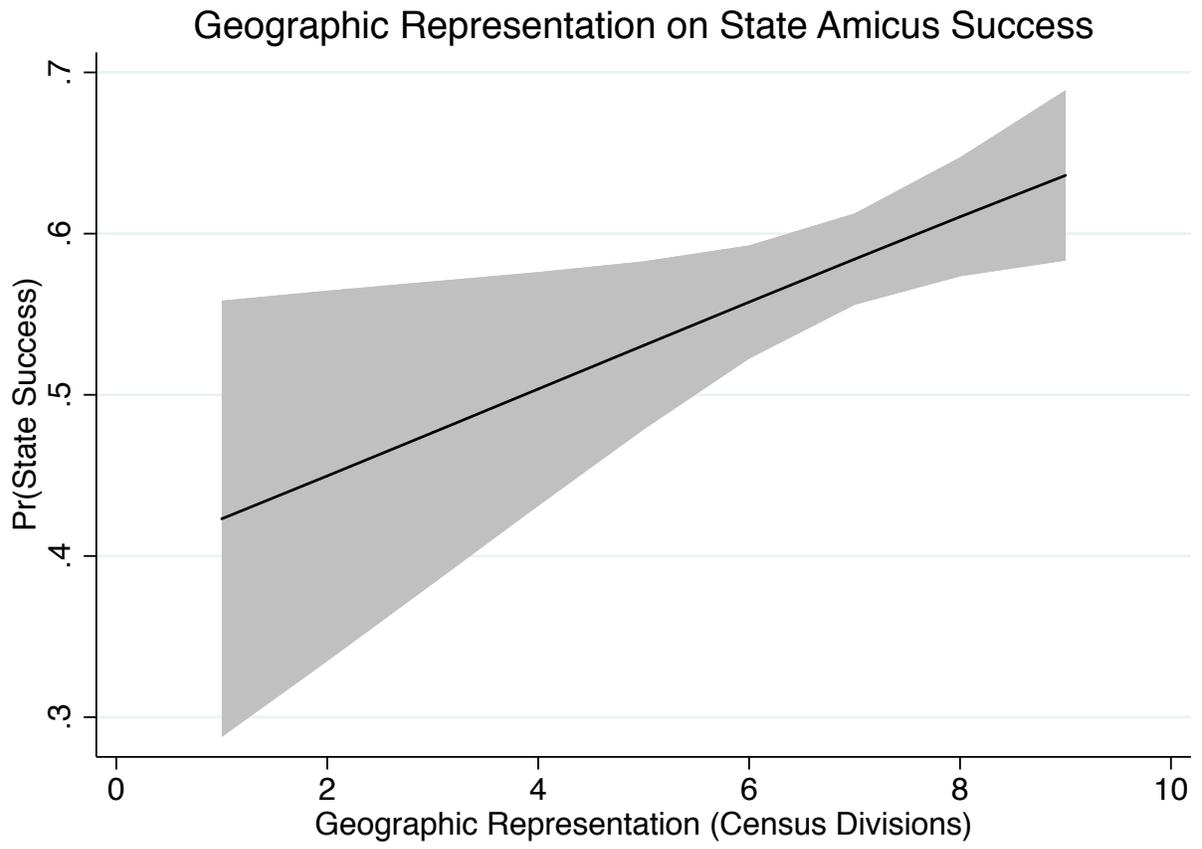


Figure 3: Geographic Representation on State Amicus Success

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

Online Appendix

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Online Appendix A: Descriptive Statistics Visualized

This section includes visual representations of some of the data. First there is a histogram of regional representation by U.S. Census regions, followed by box plots of the number of states in the coalition, ideological heterogeneity, and regional representation (Census divisions) by case issue area, and a boxplot of the number of states in a coalition over regional diversity.

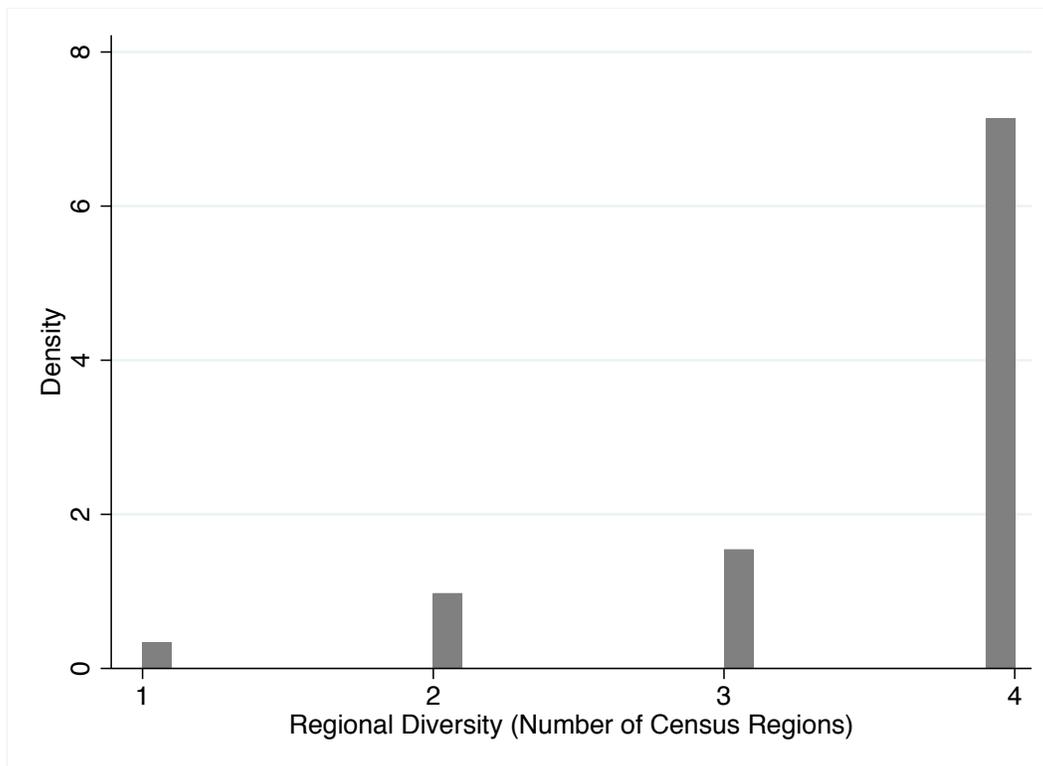


Figure 1A: Regional Representation of State Coalitions (Census Regions)

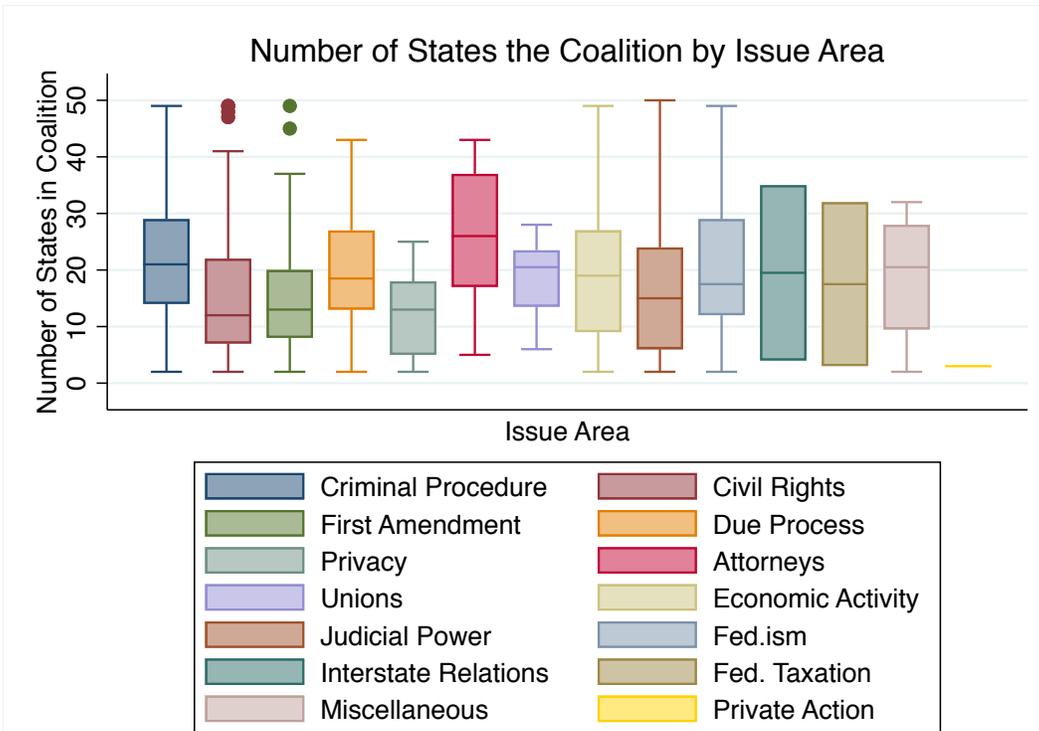


Figure 2A: Number of States in a Coalition by Issue Area

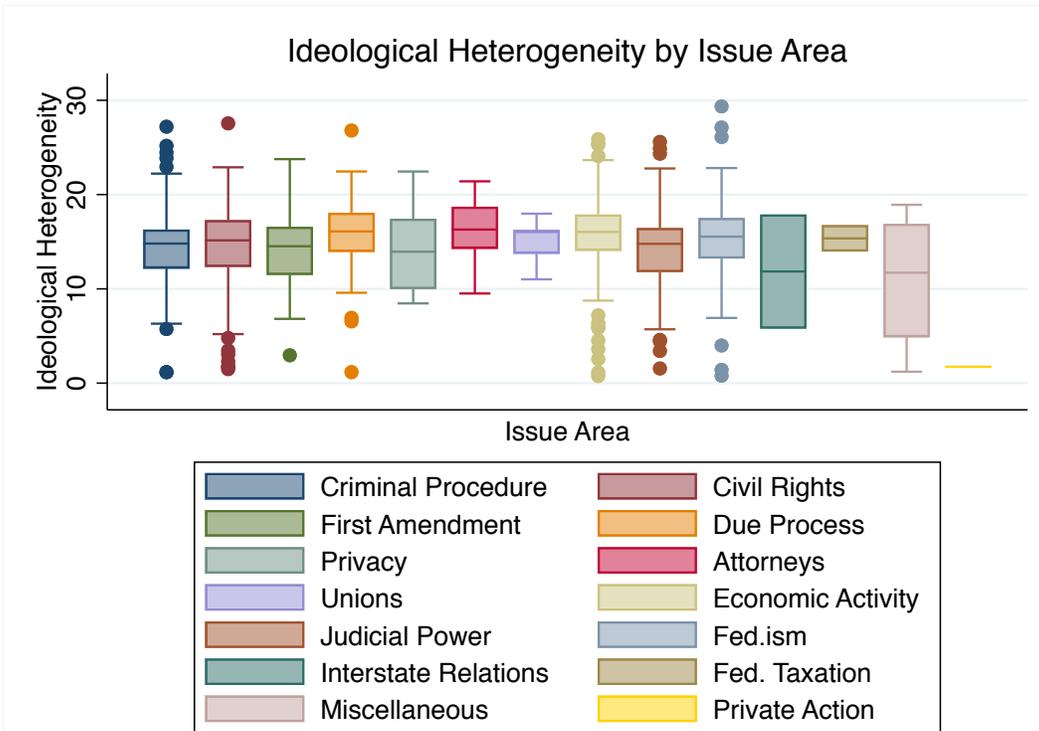


Figure 3A: Ideological Heterogeneity of a Coalition by Issue Area

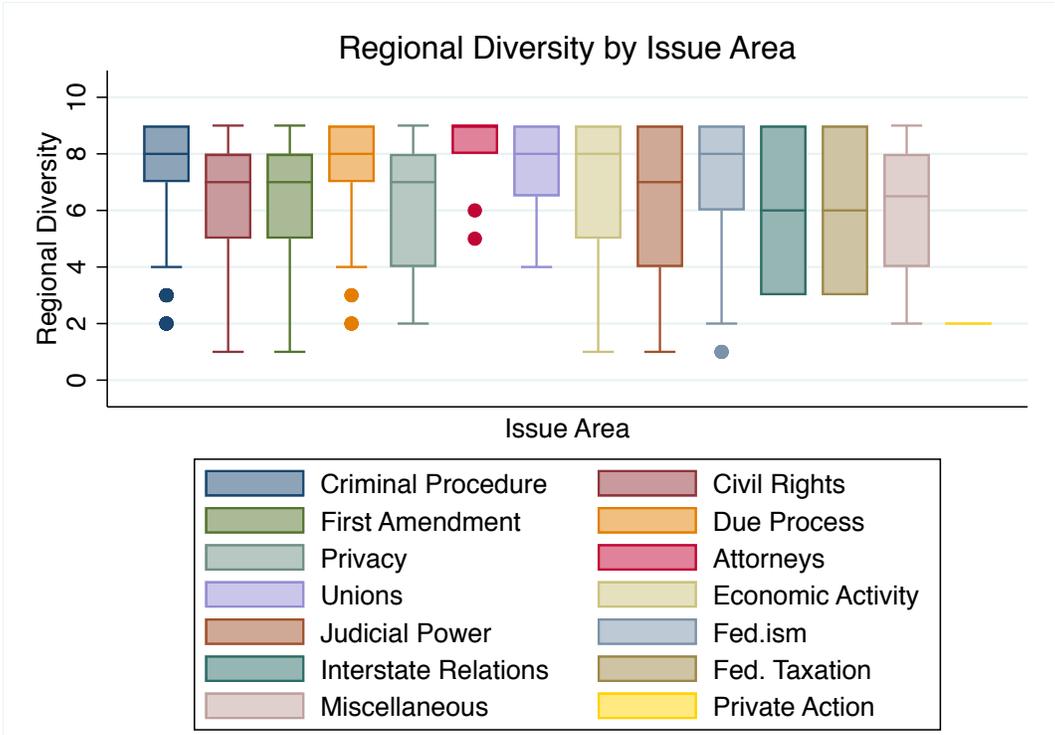


Figure 4A: Regional Diversity of a Coalition by Issue Area

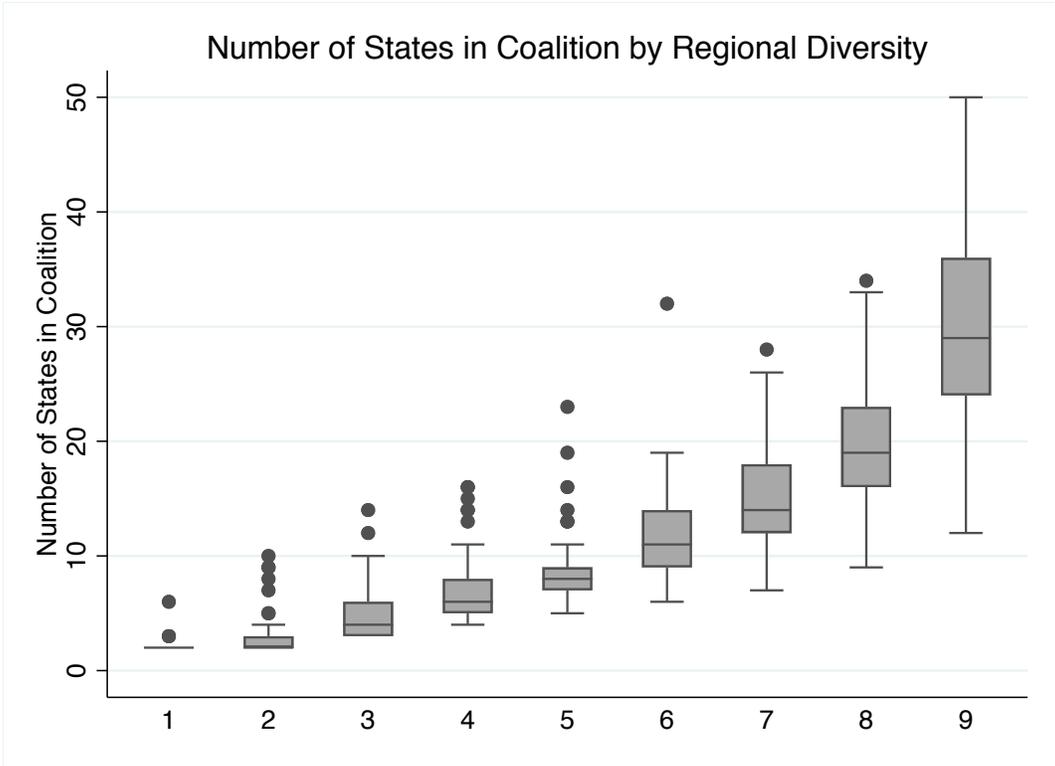


Figure 5A: Number of States in a Coalition by Regional Diversity

Online Appendix B: Regional Census Measure
Table 1A. State Amicus Curiae Success on the Merits
Independent Variable

Ideological Heterogeneity of the Coalition	-.027 (.020)
Regional Diversity (Census Regions)	.328** (.128)
Number of States in Coalition	.001 (.008)
State Advocating Liberal Position	.197 (.293)
Judicial Common Space of Median	-4.15* (1.82)
SC Ideological Compatibility	1.93 (1.11)
Non-State Amicus Briefs	.034 (.018)
USSG Support	.806*** (.181)
USSG Opposition	-.199 (.222)
NAAG	.697 (.503)
State Litigant Support	-.199 (.184)
State Litigant Opposition	-.130 (.625)
State Advocating Reversal	1.20*** (.151)
N	987
Log Likelihood	-578.9

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

Online Appendix C: Circuit Diversity
Table 2A. State Amicus Curiae Success on the Merits

Independent Variable	
Ideological Heterogeneity of the Coalition	-.023 (.019)
Circuit Diversity	1.38** (.539)
Number of States in Coalition	-.012 (.012)
State Advocating Liberal Position	.239 (.291)
Judicial Common Space of Median	-4.05* (1.82)
SC Ideological Compatibility	2.08 (1.11)
Non-State Amicus Briefs	.035* (.018)
USSG Support	.812*** (.181)
USSG Opposition	-.175 (.222)
NAAG	.689 (.502)
State Litigant Support	-.194 (.184)
State Litigant Opposition	-.149 (.627)
State Advocating Reversal	1.20*** (.151)
N	987
Log Likelihood	-578.9

Entries are logit estimates. * $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq .001$ (two-tailed).
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 for the three models that use different measures of diversity. Namely, this includes regional representation in terms of Census divisions (main model in the next), Census regions (online Appendix B), and circuit courts (Online Appendix C). The primary purpose was to compare the models using regional diversity (divisions) with that of circuit diversity, which are highly correlated ($r=.942$). As evidenced below the models perform very similarly.

Regional Diversity (Census Divisions): AIC = 1243.1, BIC = 1448.7, (N=987)

Regional Diversity (Census Regions): AIC = 1241.8, BIC = 1447.4, (N=987)

Circuit Court Diversity: AIC = 1241.8, BIC = 1447.4, (N=987)

Online Appendix E: Competing Coalitions

As mentioned in the paper, there were 58 cases (116 briefs) where state coalitions formed to advocate on opposite sides of the case. These cases were not included in the original analysis in the paper because they are fundamentally different than the cases where states advocate together and because the data is structurally different in that the success of one coalition is directly related to the success or failure of the other. To be more specific, the unit of analysis in this paper is the coalition and as such each coalition has its own row of data. However, for competing coalitions there are two rows of data for a particular case. It is impossible for both coalitions to win and thus the success of one coalition is contingent on the success of the other. As such, these cases cannot be analyzed with the main dataset.

Descriptively, the coalition with *less* regional representation (encompassing fewer Census divisions) won in 53.4% of the cases, the coalition with more regional representation (encompassing more Census divisions) won in 34.5% of cases, and in 12.1% of cases the coalitions contained the same number of states. In an attempt to formally test the hypotheses on this data, I ran a conditional logit model. However, because of the very limited number of observations, it was impossible to achieve convergence on the full model used in the body of the paper. As such, I had to severely limit the number of variables and controls included in the model. While this is not ideal, it is a mere attempt to get an idea of whether regional representation and ideological heterogeneity matter in this context. In the simplified model *Ideological Heterogeneity* was negative in direction and was not statistically significant, consistent with the findings of the paper. However, *Regional Diversity* was negative in direction and was statistically significant ($p = .013$, two-tailed). Taken with the descriptive results, this suggests that regional representation might not matter in the context of competing coalitions. This analysis is less than ideal and should be explored more thoroughly in future work.

Online Appendix E: Conditional Coalitions
Table 3A. State Amicus Curiae Success on the Merits
Independent Variable

Ideological Heterogeneity of the Coalition	-.082 (.054)
Regional Diversity	-.652* (.264)
Number of States in Coalition	.159 (.066)
Non-State Amicus Briefs	.022 (.027)
USSG Support	1.88* (.801)
State Litigant Support	-2.70** (1.02)
State Advocating Reversal	.469 (.367)
N	116
Log Likelihood	-25.2

Entries are conditional logit estimates.

* $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq .001$ (two-tailed).

Online Appendix F: Temporal Effects
Table 4A. State Amicus Curiae Success on the Merits
Independent Variable

Ideological Heterogeneity of the Coalition	-.038 (.021)
Regional Diversity	.120* (.059)
Number of States in Coalition	-.004 (.011)
State Advocating Liberal Position	.333 (.309)
Judicial Common Space of Median	-43.2 (1256.3)
Supreme Court Ideological Compatibility	2.09 (1.18)
Non-State Amicus Briefs	.034 (.019)
USSG Support	.795*** (.187)
USSG Opposition	-.295 (.235)
NAAG	3.90 (105.5)
State Litigant Support	-.195 (.194)
State Litigant Opposition	-.329 (.654)
State Advocating Reversal	1.29*** (.159)
N	984
Log Likelihood	-557.3

Entries are logit estimates. * $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq .001$ (two-tailed).
Includes fixed effects for issue area, natural Court, and term.

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