

Lobbying Justice(s)? Exploring the Nature of Amici Influence in State Supreme Court Decision Making

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Abstract

Most studies of amicus influence in both federal and state courts assume that the information provided in these briefs is the mechanism through which amici influence court outcomes. However, the question of how individual state supreme court judges respond to this third-party information and whether or not judicial responses are conditioned by differing methods of judicial retention is rarely theorized. Using social-psychological theories of confirmation bias and motivated reasoning, this article investigates how ideological predispositions and electoral institutions structure the responsiveness of state high-court judges to amicus brief information. Utilizing an original dataset of more than 14,000 votes of state high-court judges across three distinct areas of law, this article tests competing theories of amicus influence to determine how state high-court judges utilize amicus information to render judicial decisions. Results are generally supportive of the informational theory of amicus influence in complex areas of law. However, a conditioning relationship of retention method suggests that competitive elections may alter the mechanism of amicus brief influence such that judicial responsiveness to third-party briefs is more closely tied to the reelection and campaign fundraising considerations of individual judges in politically contentious areas of law.

Keywords

amicus curiae, state supreme court decision making, judicial elections, judicial politics, judicial selection, interest groups and elections, parties and interest groups

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Interest group involvement as *amicus curiae*, or “friend-of-the-court,” while an understudied area of interest group advocacy, continues to grow in both federal and state courts. Today, nearly every case heard by the U.S. Supreme Court is supported by organized interests filing *amicus curiae* (Collins 2008), and in state supreme courts, where these briefs were once an anomaly, amici are becoming a common part of appellate filings (Brace and Butler 2001; Epstein 1994). While a growing body of research suggests that organized interests may be successful in influencing state high-court outcomes (Songer and Kuersten 1995; Songer, Kuersten, and Kaheny 2000), the mechanism of *amicus* brief influence remains largely unexplored. The primary mechanism of amici influence in the courts is usually asserted or assumed to be the information and legal arguments contained in these third-party briefs (Collins 2004; 2007; Collins, Corley, and Hamner 2015; Collins and Martinek 2015; Kearney and Merrill 2000; Martinek 2006; Songer and Kuersten 1995; Songer, Kuersten, and Kaheny 2000; Songer and Sheehan 1993; Szmer and Ginn 2014). While this informational hypothesis of *amicus* brief influence is supported by research on the U.S. Supreme Court (Collins 2004; 2008; Collins, Corley, and Hamner 2015; Szmer and Ginn 2014), there is reason to believe that institutional variation across state high courts may fundamentally alter the mechanism of interest group influence when filing *amicus curiae* in state appellate courts. With the growing cost and contentiousness of judicial elections and the demands of campaigning for judicial office, judicial elections may create incentives for elected judges to pay greater deference to the policy wishes of interest groups filing *amicus curiae* as compared with their nonelected counterparts. This article tests whether institutional incentives created by differing methods of judicial retention used in the states alter the mechanism of *amicus* brief influence on the decision making of state high-court judges.

Using original data on nearly 15,000 individual judge votes spanning nearly 2,300 cases from all 50 states across three areas of law where interest groups regularly participate—products liability, environmental law, and free speech/expression—this article investigates how ideological predispositions and electoral institutions structure the responsiveness of state high-court judges to *amicus* brief information. Results strongly support an informational role of *amicus curiae* briefs in complex areas of law. However, in politically contested areas of law, a conditioning relationship of retention method emerges, suggesting that competitive elections alter the mechanism of *amicus* brief influence such that judicial responsiveness to amici is more closely tied to the reelection and campaign fundraising considerations of individual judges in competitively elected courts.

Lobbying State Supreme Court Judges

Interest groups seeking policy influence in the federal courts have few options other than the *amicus curiae* brief. However, when organized interests seek to influence case outcomes in state high courts, variations in institutional contexts afford groups multiple avenues through which to pursue policy goals. The principal method of interest group participation in state high courts is the filing of *amicus curiae* briefs (Epstein

and Knight 1999). Interest groups and citizens use these briefs to provide courts with policy specific information (Spriggs and Wahlbeck 1997), often including in them scientific and social scientific data and information about the potential consequences of judicial rulings (Rustad and Koenig 1993). As such, amicus briefs serve as a democratic mechanism through which groups and citizens can make policy concerns known to the courts without having to be a direct party to a case. Amicus curiae participation by interest groups in state high courts has increased over past decades (Brace and Butler 2001; Epstein 1994), and research suggests that amicus brief filings are able to influence state supreme court outcomes (Songer and Kuersten 1995; Songer, Kuersten, and Kaheny 2000)—all indications that organized interests perceive the amicus brief as a useful tool for lobbying state high courts. When groups file amicus curiae, they do so with the hope of directly influencing judicial decision making and ultimately the outcome of a specific case.

However, variation in judicial selection methods used across the states provides groups the opportunity to lobby judges more indirectly through strategies regularly employed by interest groups when lobbying in legislative arenas. With 38 states using some form of elections to choose judges, interest groups are able to seek favorable policy outcomes in these state courts by donating to judicial campaigns. Typically, when interest groups donate to elected officials, they do so with the promise of future policy payoffs. Empirical attempts to uncover whether campaign donations have direct effects on judicial decision making have encountered mixed results. Although some studies show a correlation between campaign contributors and favorable judicial votes (Cann 2007; McCall 2003; Shepherd 2009; 2013), other studies find no evidence of a causal relationship between donations and decisions (Cann 2002; Cann, Bonneau, and Boyea 2012; Williams and Ditslear 2007). In the context of the judicial elections, donations to judicial campaigns may not carry the same pay-to-play relationships often associated with campaign donations to other elected officials,¹ but the growing cost and rising level of interest group involvement in judicial races suggest that groups see judicial campaign contributions as viable lobbying strategies (Sample et al. 2010; Skaggs et al. 2011).

The use of popular elections as a means of judicial selection in the states gives yet a third lobbying option to groups seeking to influence elected judges on state high courts—the manipulation of court composition through the mounting of attack advertising campaigns. Interest groups with deep pockets can alter the ideological composition of state high courts by mounting protracted, oftentimes, multiyear campaigns to oust ideologically incongruent judges and replace them with ideological allies. The success of this strategy began in the late 1980s when pro-law-and-order groups ousted three justices on the California Supreme Court, including Chief Justice Rose Bird, for lenient voting records on death penalty decisions (Reidinger 1987). Soon thereafter, business interests and the medical industry led by Karl Rove adapted this strategy to the issue of tort liability and poured millions of dollars into reconstituting the Texas Supreme Court from one staffed entirely by Democratic judges to one staffed by Republican judges sympathetic to limits on tort liability. Similar strategies were applied to judicial elections in Alabama, Michigan, and Ohio

throughout the 1990s, increasing the cost of judicial campaigns and forcing judges to raise large amounts of outside money to obtain or retain a seat on the bench (Sample et al. 2010). Special interest contributions and campaign advertising were even attributed to the ousting of three Iowa state supreme court judges running in retention elections in 2010 after an unpopular court ruling that legalized same-sex marriage in the state (Skaggs et al. 2011).

Theory and Expectations

Amicus Influence and Information

Prior to serving as vehicles of interest group advocacy, *amicus curiae*, or “friend-of-the-court” briefs, originally served to provide neutral information to the court. However, within a common law system in which adversarial proceedings preclude the intervention of third parties, groups and individuals looking to give voice to unrepresented interests in the courts quickly transformed the role of *amicus curiae* from unbiased supporter to purposive advocate (Krislov 1963, 697). These third-party briefs are the primary avenue through which organized interests and individuals are able to provide courts with information about the broader impact of a decision (Spriggs and Wahlbeck 1997), offer alternative legal precedents and frameworks (Flango, Bross, and Corbally 2006), introduce scientific and social scientific data and research (Rustad and Koenig 1993), inform judges about the policy implications of their decisions (Comparato 2003), and make judges aware of the preference of other governmental actors involved in the policymaking process (Epstein and Knight 1999).

In short, *amicus* briefs allow organized interests to impart their policy expertise to the courts. They do this by providing context-specific information and policy arguments that go beyond a simple recitation of the legal arguments presented in the briefs of the direct parties. Indeed, empirical evidence from an examination of all *amicus* briefs filed in the 1992 term of the U.S. Supreme Court found that more than 65% of amici provided the Court with unique information not otherwise contained in litigant briefs (Spriggs and Wahlbeck 1997). Similarly, Collins (2008) found that more than 70% of *amicus* briefs filed in a subset of cases heard by the Court between 1946 and 2001 contained novel information not otherwise submitted to the Court in party briefs. In the most comprehensive look at the content of *amicus* briefs filed in the U.S. Supreme Court to date, Collins, Corley, and Hamner (2014) use plagiarism detection software to analyze the content of all litigant and *amicus* briefs submitted in every Supreme Court case decided with a majority opinion between 2002 and 2004. Findings indicate that *amicus* briefs rarely repeat the content found in litigant briefs, other *amicus* briefs, or lower-court decisions, doing so in a mere 1.5% to 2.6% of cases (Collins, Corely, and Hamner 2014). Similarly, in the only examination of amici content in state supreme courts, Comparato (2003) not only found that interest groups filing *amicus curiae* provided more information and legal arguments on average than litigant briefs, but also that this information often contained novel arguments related to the public-policy effects and the policy preferences of other political actors.²

If groups are effective in using amicus briefs as informational vehicles to provide courts with novel justifications for specific case outcomes, and if this information is successful in influencing state high-court decision making, then all judges should be equally responsive to the policy arguments of amici, and this responsiveness should increase with the amount of information submitted to the courts. Thus, if the information provided by third-party amici is influential, then its ability to influence judicial voting should be evident irrespective of a judge's ideological predispositions or the institutional context in which a judge operates.

Informational Impact Hypothesis: The greater the number of liberal (conservative) amicus briefs filed, the more likely a state high-court judge will be to cast a liberal (conservative) vote, *ceteris paribus*.

Judicial Attitudes, Motivated Reasoning, and Amicus Influence

Despite the expectations set forth in the *Informational Impact Hypothesis*, the hypothesis assumes amicus brief influence to be uniform across judges. However, previous research indicates that state high judges are influenced to a degree by their ideological preferences (Brace, Hall, and Langer 2001; Brace, Langer, and Hall 2000; Hall and Brace 1999; Hoekstra 2005; Langer 2002). In addition, because judges are at least partially motivated by policy preferences, there is reason to believe that the information contained in amicus briefs may not have a uniform impact on all state high-court judges. Established psychological theories of confirmation bias (Evans 1989; Kunda 1987; 1990; Nickerson 1998) and motivated reasoning (Fischle 2000; Gaines et al. 2007; Taber and Lodge 2006) suggest that individuals are biased processors of information who give greater weight and consideration to arguments that comport with their previously held beliefs. That is, given new information about one's prior beliefs and attitudes, individuals tend to overly accommodate information that is supportive of their prior preferences while being overly dismissive of information that runs counter to their preconceived beliefs (Lord, Ross, and Lepper 1979). Research also suggests that when confronted with counterattitudinal information, individuals with strong prior beliefs will become more confident and unwavering in their previously held beliefs, leading to a polarization effect (Lord, Ross, and Lepper 1979). Thus, state high-court judges may respond differently to amicus brief information depending on the ideological proclivities of the state high-court judge and the ideological argument presented by the amici. If judges are biasedly motivated informational processors, judges will assign greater value or weight to amicus information that supports their prior policy preferences and will become more resolute in their policy preferences when confronted with counterattitudinal information.

Motivated Reasoning Hypothesis: Liberal amicus briefs will induce conservative voting when considered by conservative judges. Conversely, conservative amicus briefs will induce liberal voting when encountered by liberal judges.

Therefore, for the *Informational Impact Hypothesis* to gain empirical support, all judges must be moving in the direction of the amicus brief, regardless of a judge's previously existing political predispositions. For the *Motivated Reasoning Hypothesis* to gain support, judges whose ideology is similar to the policy positions of amici must move in the direction of the brief while judges with ideologically incongruent political predispositions would polarize toward their preexisting beliefs and, thus, move away from the policy position advocated by amici. In this respect, the best place to look for evidence in support of these competing hypotheses is by examining how liberal and conservative judges behave in response to the briefs of ideologically incongruent amici.

The New Politics of Judicial Elections and Amicus Influence

The use of varying methods of judicial selection and retention across the states affords yet another possible relationship between amici and judicial voting. Judges in 38 states face popular elections, either competitive or retention elections, to secure and retain office. The fact that judicial elections force judges to engage in electoral politics is often charged with eroding judicial impartiality by opening judges up to possible quid pro quo relationships with the individuals and groups that donate to judicial campaigns (American Bar Association 2003; American Judicature Society 2012). Despite the mixed results of research addressing the direct effects of campaign donation on judicial voting (Cann 2002; 2007; Cann, Bonneau, and Boyea 2012; McCall 2003; Shepherd 2009; 2013), there is reason to suspect that the demands of campaigning for office may indirectly affect judicial decision making by incentivizing an increased responsiveness by elected judges to interest groups filing amicus curiae, especially if those amici are known to be regular donors to judicial campaigns.

Over the past two decades, contested judicial elections have become more competitive (Bonneau 2005; Kritzer 2011), more costly (Bonneau 2004; Sample et al. 2010), and more contested (Bonneau and Hall 2003; Hall 2015). This means that judges running for reelection must often raise greater levels of campaign funds while facing more qualified challengers in climates of greater electoral insecurity. To maintain seats on elected state high courts, judges must frequently raise large sums of money, coordinate statewide campaigns, and engage in campaign advertising to reach potential voters. In addition, a growing number of competitive state high-court races are now witnessing attack advertising sponsored by outside groups who hope to replace ideologically unfriendly judges with judges more ideologically aligned with the group goals (Hall 2015; Kritzer 2015). With many interest groups serving as both donors to judicial campaigns and sponsors of judicial advertising, there is reason to believe that elected judges may be more responsive to interest groups when they also file amicus curiae in cases before the court.

Specifically, state high-court judges who are accountable to the electorate and must mount campaigns to run for office are expected to be the most easily influenced by interest groups filing amicus curiae, regardless of ideological preference. Due to the expensive nature of today's competitive judicial elections and the large interest group presence in these campaigns, judicial responsiveness to amici is expected to be greater

for those judges who face competitive elections rather than uncontested retention elections (Sample et al. 2010). However, retention elected judges are expected to be more responsive to amicus information because of their electoral accountability as compared with reappointed judges, albeit less so than competitively elected judges.

New Politics of Judicial Elections Hypothesis: Judges retained by partisan or nonpartisan elections will be most likely to cast liberal (conservative) votes when liberal (conservative) amicus briefs are filed. Retention elected judges are more likely to cast liberal (conservative) votes when liberal (conservative) amicus briefs are filed as compared with reappointed judges, but not more so than partisan or nonpartisan elected judges.

In essence, the demand of campaign fundraising and the threats of attack advertising by outside groups that have become a fixture in today's judicial elections are expected to make judges more receptive to amicus brief information and ultimately more likely to issue a vote in the ideological direction advocated by the organized interests, regardless of a judge's ideological predisposition.

Data

To test the hypothesized relationships discussed above, I utilize an original dataset that includes the individual votes of more than 690 state high-court judges across the 50 states in cases decided with full, published opinions on matters of products liability, environmental law, and free speech and expression between 1995 and 2010. The combined datasets encompass nearly 15,000 judge votes from more than 2,300 cases. Each case was content analyzed to code for a variety of variables related to litigant information, lower-court dispositions, case outcomes, court compositions, judge votes, and amicus curiae participation.

The three areas of law were selected for two key reasons. First, each of these areas of law attracted relatively high proportions of amicus brief filings with good variation in the number of cases heard across state high courts. Previous analyses of amicus influence in state high courts have focused on only a select few states, which greatly limits the generalizability of the findings (Comparato 2003; Songer and Kuersten 1995; Songer, Kuersten, and Kaheny 2000). Selecting areas of law in which cases are routinely reaching state high courts allowed for the first comprehensive 50-state analysis of amicus influence on judicial decision making. Products liability, environmental, and free speech and expression law also brought a wide range of interest groups into the analysis. While each area of case law saw a variety of types of groups filing amicus curiae, certain types of groups had a propensity to file amicus curiae in specific areas of law. Amicus curiae filings in products liability law tend to be dominated by business and corporate interests arguing for limited tort liability with trial and tort lawyers' associations filing briefs in opposition. Environmental law cases tend to attract mainly environmental and citizen groups on the liberal side and business interests on the other. Free speech and expression cases mainly draw civil rights and civil liberties

groups filing for greater expansion and protection of first amendment rights opposite government interests in limiting these rights. This wide range of interest group involvement allows for the examination of whether or not amici influence is uniform across groups or if some groups in some areas of law are more influential.

Dependent Variable

To assess the various mechanisms of amicus brief influence, the dependent variable in this analysis is the ideological direction of a judicial vote. Thus, *Judge Vote* is measured as the ideological direction of a vote, coded as 1 for a liberal vote and 0 for a conservative vote. In matters of products liability, a liberal vote is one that favors the plaintiff, usually an individual, bringing suit against the manufacturers, distributors, suppliers, and retailers of consumer goods. In the context of environmental law cases, a liberal vote is one that favors the enforcement or extension of environmental protections over the interests of business, governments, or individuals. Votes in free speech and expression cases are coded as liberal when a judge's vote favors the protection or expansion of first amendment rights of individuals, groups, or businesses.

When the ideological direction of the legal issues in a case could not be clearly determined by reading the headnotes, case syllabi, or text of the court's decision, an outsider reader with legal training was consulted. When neither the researcher nor the legal consultant could determine the liberal or conservative coding of a given case and corresponding judge votes, the case was excluded from the analysis.³

Amicus Curiae Briefs

One of the primary independent variables of interest in this analysis is the measure of amicus curiae information. Because the impact of amicus information on judicial decision making is of primary concern, and past research shows that a large proportion of amicus briefs filed in state supreme courts offer unique information not found in litigant briefs (Comparato 2003), the number of liberal and conservative amici filed in each case is utilized as a proxy measure for the volume of amicus information presented to state high-court judges. The greater the number of amicus briefs filed in a given case, the more likely a judge is to encounter new legal arguments, novel legal frameworks from which to consider the case, and information regarding public-policy consequences not contained in litigant briefs. Thus, the variables *Liberal Amici* and *Conservative Amici* are included to measure the number of liberal and conservative amicus briefs filed respectively in each case and considered by each judge. If the *Informational Impact Hypothesis* is correct, we should see a positive and statistically significant effect of liberal amici on the likelihood of observing liberal votes across all high-court judges, regardless of the ideological predisposition method of retention. Similarly, the *Informational Impact Hypothesis* predicts a statistically significant negative relationship between conservative amicus briefs and liberal votes.

Judge Liberalism

To control for the influence of judge ideology on judicial voting, the Bonica and Woodruff (2015) common-space campaign finance ideology estimates for state high-court judges are included. Bonica and Woodruff use campaign finance data to derive scaled estimates of ideology for individual state high-court judges, allowing estimates to be generated for each judge based on their personal campaign finance data either as a candidate for public office, as a contributor, or as an appointee. For the state high-court judges included in this analysis, the variable *Judge Liberalism* ranges from -2.47 to 1.92 , with negative values representing conservative leaning judges and positive values representing liberal judges.⁴

To test if interest group influence as *amicus curiae* is conditioned by judge ideology, *Judge Liberalism* is interacted with *Liberal Amici* and *Conservative Amici*, respectively. The *Motivated Reasoning Hypothesis* expects state high-court judges to respond to amicus briefs making counterattitudinal arguments by polarizing toward their previously held policy positions. Therefore, if the *Motivated Reasoning Hypothesis* gains empirical support, liberal (conservative) judges will vote liberally (conservatively) in response to conservative (liberal) amicus briefs. If, however, the *Informational Impact Hypothesis* proves to be the mechanism of amicus influence on state high-court decision making, we should find both liberal and conservative judges responding similarly to amicus arguments.

Judicial Retention Systems

As the primary focus of the *New Politics of Judicial Elections Hypothesis* is whether the method of judicial retention changes the mechanism through which judges respond to amicus brief information, each judge vote is coded for the judicial selection method by which the corresponding state high-court judge is retained. Table 1 lists the systems of judicial retention used by each state to retain state supreme court judges during the years included in this analysis. An indicator variable is included for each of the three general methods of judicial retention used across the states—*Competitive Elections*, where judges face challengers in contested, and often costly, elections; *Retention Elections*, where judges face voters in an up-down vote to retain their seat; and *Reappointment*, where judges gain renewed terms of service by being reappointed by either the state's governor or legislature. Data on judicial retention systems come from the National Center for State Courts' website Judicial Selection in the States, which provides detailed information about the mechanisms through which states select and retain their judges and the historical evolution of these systems.⁵

To test if elected judges respond differently to amicus brief filings as compared with reappointed judges, indicator variables for judicial retention method are interacted with the measures of amicus participation. If judicial elections and the demands of campaigning for office incentivize judicial responsiveness to interest groups filing amicus curiae, then elected state high-court judges should be influenced to a greater degree by amicus briefs as compared with reappointed judges. The influence of third-party briefs

Table 1. Methods of Retention for State Courts of Last Resort 1995–2010.

Competitive elections		Retention elections		Reappointment	
Partisan	Nonpartisan	Merit retention		Gubernatorial	Legislative
AL	AR post-2001	AK	MO	CT	SC
AR pre-2001	GA	AZ	NE	DE	VT
LA	ID	CA	NM	HI ^a	VA
NC pre-2004	KY	CO	OK	MA	
TX	MI	FL	PA	ME	
WV	MN	IL	SD	NH	
	MS	IN	TN	NJ	
	MT	IA	UT	NY	
	NV	KS	WY	RI	
	NC post-2004	MD			
	ND				
	OH				
	OR				
	WA				
	WI				

a. HI uses a judicial selection commission to retain judges, but a majority of the nine members of the commission are appointed by the governor and state legislature.

should be observed in elected judges regardless of the ideological argument advanced by the amici or the ideological predisposition of the judge considering the case. Specifically, for the *New Politics of Judicial Elections Hypothesis* to find empirical support, liberal (conservative) amici should be positively (negatively) associated with liberal voting by elected state high-court judges, regardless of judge ideology. Due to the costly and contentious nature of today's competitive judicial elections, the conditioning effect of judicial elections on amicus brief influence is expected to be greatest on competitively elected state high-court judges as compared with reappointed judges, but also present, but to a lesser extent when retention elected judges are compared with their reappointed counterparts.

Controls

To control for the possibility that state ideology indirectly affects judicial decision making by producing judges with similar ideological proclivities to the states in which they reside, the Erikson, Wright, and McIver (2006) measure of state citizen ideology is included. This measure of state citizen ideology is derived from pooling CBS News/*New York Times* national polls from 1976 to 2003 and disaggregating to generate state-level estimates of citizen ideology, which range from -30.8 in Mississippi, the most conservative state, to 8 in the most liberal state of Vermont. State ideology is expected to be positively associated with liberal decision making by state high-court judges.

State ideology may also affect judicial decision making through the presence of judicial elections. Previous research shows that the electoral connection inextricably links elected judges to popular public opinion on issues of abortion, the death penalty, and criminal sentencing (Caldarone, Canes-Wrone, and Clark 2009; Canes-Wrone, Clark, and Kelly 2014; Gordon and Huber 2007; Huber and Gordon 2004). While none of the areas of law examined here is as prominent in the eyes of the public as the death penalty and abortion, there is still reason to believe that elected judges may be more attuned to the policy wishes of their electoral constituencies, than would judges selected through other mechanisms. To control for the possibility that elected judges may be more responsive to public sentiment, an interaction term of state ideology and method of judicial retention is included.

Several variables are included in the models to control for additional factors that may affect judicial decision making on state high courts. Previous research shows that state supreme courts affirm the rulings of lower courts more often than not (Benesh and Martinek 2002; Songer, Kuersten, and Kaheny 2000). The variable *Liberal Lower Court Direction* is included to control for the deference given to the lower court by most state high courts. *Liberal Lower Court Direction* is coded as 1 for a liberal lower-court ruling and 0 for a conservative one. The ideological direction of a lower-court ruling is expected to be positively related to the likelihood of liberal voting by state high-court judges. One additional variable included in the environmental law model is an indicator variable for whether the state or a state agency is a litigant in the dispute and advocating for a pro-environmental, liberal outcome. Because courts often give deference to state regulatory agencies, this indicator is included to control for any increased likelihood that a state high court will uphold state agency decisions.

Results

The datasets created and utilized in this analysis contain observations at the case level that are nested within judges, which are subsequently nested within states. As such, it is possible that any given vote of a state supreme court judge is correlated with that same judge's votes on other cases while also being correlated with the votes of other judges from the same state high court. Thus, a multilevel logit model with judge-specific and state-specific error terms was estimated for each of the three areas of case law. Table 2 shows the results of the random intercepts logit models with year fixed effects.

To ease interpretation of the logit coefficients, which are further complicated by the inclusion of two-way interactions, the average marginal effects of each variable are displayed in Table 3. These average marginal effects were estimated while fixing all other independent variables, including the constitutive terms of the two-way interactions, at their true values.⁶

To evaluate the efficacy of the *Informational Impact Hypothesis*, two different indicators are of interest. First, the interactive effects of the Liberal and Conservative Amici with Judge Liberalism reveal whether or not judges respond to amicus brief information. This interactive effect is important because the *Informational Impact*

Table 2. Multilevel Model Estimates—Amici, Judge Liberalism, and Judicial Retention.

	Products liability	Environmental law	Free speech and expression
	Coefficient (SE)	Coefficient (SE)	Coefficient (SE)
Liberal Amici	-0.132 (0.247)	0.063 (0.104)	0.468*** (0.109)
Conservative Amici	-0.171 (0.122)	-0.216** (0.080)	-0.391*** (0.115)
Competitive Elections	0.885 (0.633)	0.010 (0.606)	0.770 (0.454)
Retention Elections	0.585 (0.530)	0.076 (0.506)	0.376 (0.369)
Judge Liberalism	0.405*** (0.063)	0.167** (0.064)	0.160** (0.054)
Liberal Amici × Competitive Elections	0.643** (0.265)	-0.117 (0.120)	-0.210 (0.124)
Liberal Amici × Retention Elections	0.113 (0.261)	0.258 (0.141)	0.068 (0.124)
Conservative Amici × Competitive Elections	0.018 (0.132)	0.227* (0.106)	0.312* (0.150)
Conservative Amici × Retention Elections	0.037 (0.137)	0.140 (0.119)	0.009 (0.141)
Liberal Amici × Judge Liberalism	-0.041 (0.084)	-0.104 (0.055)	-0.117* (0.052)
Conservative Amici × Judge Liberalism	0.021 (0.048)	0.149** (0.058)	-0.050 (0.070)
Liberal Lower Ct. Decision	0.379*** (0.075)	0.597*** (0.078)	0.789*** (0.070)
State Ideology	-0.007 (0.032)	-0.011 (0.029)	-0.025 (0.023)
State Ideology × Competitive Elections	0.046 (0.043)	-0.004 (0.041)	0.052 (0.032)
State Ideology × Retention Elections	0.010 (0.041)	-0.002 (0.038)	0.060* (0.029)
State as Liberal Litigant	—	0.952*** (0.087)	—
Constant	-0.721** (0.288)	-0.468 (0.286)	-1.211*** (0.229)
N	4,188	3,868	5,120
χ^2	200.82	324.48	314.87
df	30	31	30

Note. The dependent variable is Pr(Liberal Vote = 1).

* $p < .05$. ** $p < .01$. *** $p < .001$.

Table 3. Marginal Effects of Amici on Pr(Liberal Vote).

	Products liability	Environmental law	Free speech
	Marginal effect	Marginal effect	Marginal effect
Liberal Amici	0.056*** (0.016)	0.014 (0.011)	0.078*** (0.009)
among 10th %ile liberal judges	0.063 (0.036)	0.065* (0.029)	0.118*** (0.023)
among 50th %ile liberal judges	0.060*** (0.017)	0.025 (0.013)	0.087*** (0.011)
among 90th %ile liberal judges	0.042 (0.031)	-0.014 (0.017)	0.048** (0.015)
among Competitively Elected judges	0.113*** (0.021)	-0.016 (0.014)	0.054*** (0.014)
among Retention Elected judges	-0.004 (0.021)	0.063*** (0.020)	0.101*** (0.012)
among Reappointed judges	-0.030 (0.056)	0.009 (0.022)	0.100*** (0.023)
Conservative Amici	-0.034*** (0.009)	-0.014 (0.010)	-0.052*** (0.012)
among 10th %ile liberal judges	-0.037 (0.021)	-0.086** (0.029)	-0.026 (0.030)
among 50th %ile liberal judges	-0.036*** (0.010)	-0.029** (0.012)	-0.047*** (0.013)
among 90th %ile liberal judges	-0.027 (0.018)	0.026 (0.018)	-0.069** (0.024)
among Competitively Elected judges	-0.034** (0.011)	0.009 (0.016)	-0.019 (0.022)
among Retention Elected judges	-0.032* (0.016)	-0.010 (0.019)	-0.076*** (0.016)
among Reappointed judges	-0.039 (0.028)	-0.041* (0.017)	-0.087*** (0.025)
Competitive Elections	0.080 (0.107)	0.017 (0.087)	0.024 (0.067)
Retention Elections	0.110 (0.108)	0.062 (0.078)	-0.067 (0.058)
Judge Liberalism	0.092*** (0.012)	0.038** (0.012)	0.021* (0.010)
Liberal Lower Court Decision	0.086*** (0.017)	0.128*** (0.016)	0.164*** (0.014)
State Ideology	0.005 (0.004)	-0.003 (0.004)	0.004 (0.003)
among Competitively Elected judges	0.009 (0.006)	-0.003 (0.006)	0.006 (0.005)
among Retention Elected judges	0.001 (0.006)	-0.003 (0.005)	0.007 (0.004)
among Reappointed judges	-0.002 (0.007)	-0.003 (0.006)	-0.005 (0.005)
State as Liberal Litigant	—	0.205*** (0.018)	—

* $p < .05$. ** $p < .01$. *** $p < .001$.

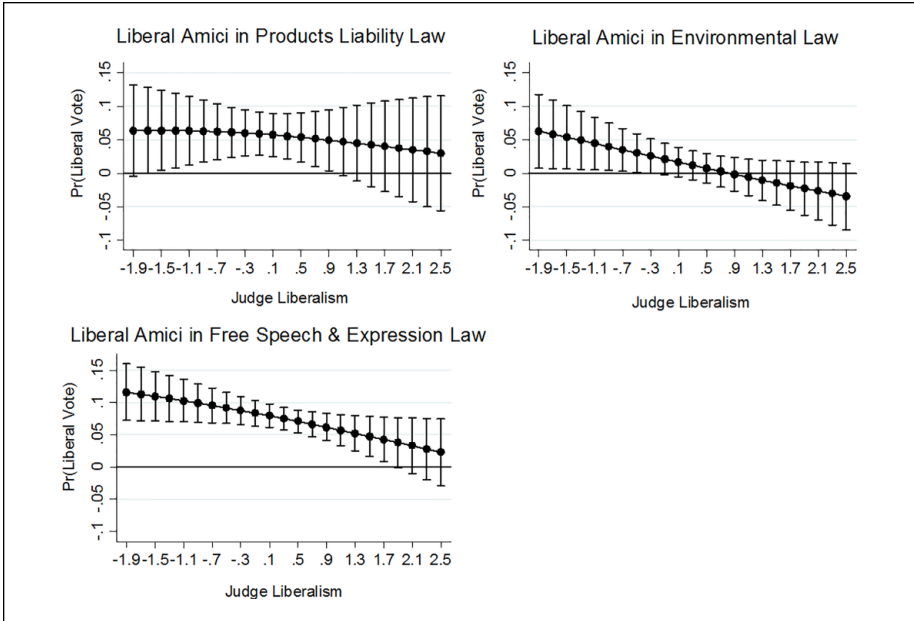


Figure 1. Liberal amici influence across judge ideology.

Hypothesis predicts that all judges will be more likely to vote in the direction of amicus brief filings, regardless of a judge’s previously held political predispositions. For these two-way interactions to produce results in support of an informational mechanism of amicus influence, liberal (conservative) briefs must be significantly associated with liberal (conservative) voting by all judges across the ideological spectrum. Figures 1 and 2 show the average marginal effects of liberal and conservative amici across the range of judge ideology in each of the three areas of law examined.

The second test of the *Informational Impact Hypothesis* stems from the two-way interactions of the amici variables with the indicator variables for judicial retention method. For the *Informational Impact Hypothesis* to be supported, amicus brief influence must be present not just across judge ideology but also across method of judicial retention. All judges must respond positively (negatively) to liberal (conservative) amicus brief arguments, regardless of their ideological predispositions or the institutional arrangement used to secure their seats on the bench. Figures 3 and 4 show the graphical representation of the average marginal effects of liberal and conservative amicus brief filings across methods of judicial retention.

Figures 1 and 2 reveal that liberal and conservative amicus briefs are not equally influential across all areas of law. Specifically, we see that the unilateral influence of amicus curiae briefs predicted by the *Informational Impact Hypothesis* is only supported by the results of the Free Speech and Expression Model. In the area of free speech and expression, state high-court judges, both liberal and conservative, are

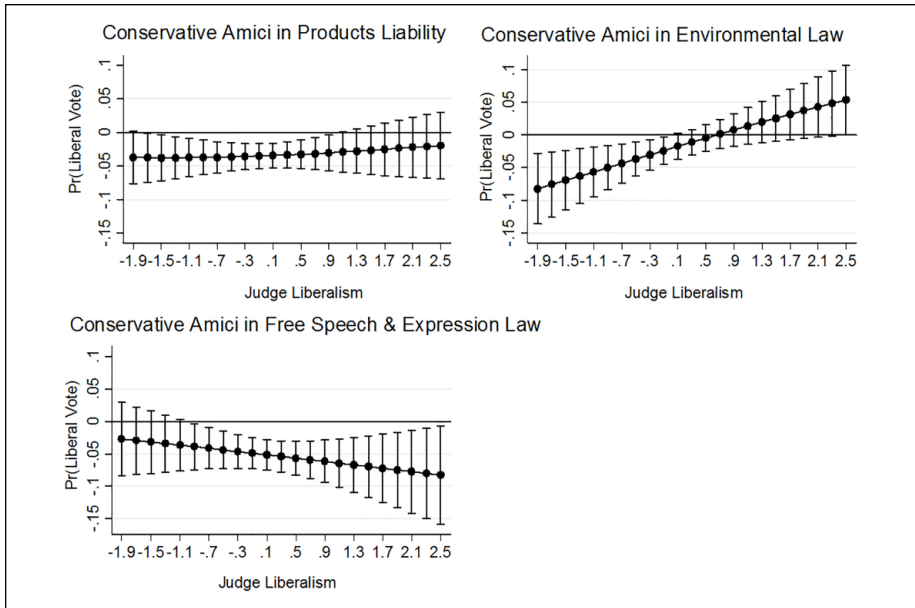


Figure 2. Conservative amici influence across judge ideology.

responding positively to third-party briefs advocating for a liberal outcome. The effects of liberal briefs are statistically significant across all judges, save the most liberal judges, with a liberalism score of 2.0 and higher. Across judges, the average marginal effect of a liberal amicus brief filed in a free speech and expression case ranged from 11.8% for the most conservative judges to 4.8% for the most liberal judges sitting on state high courts. Even more interesting is the finding that liberal amici exert the greatest influence on the decision making of the conservative judges as compared with the most liberal judges. Amicus curiae advocating for conservative outcomes saw a similar level of influence across judges in free speech and expression cases where most judges move in the conservative direction when conservative amicus briefs are present. Specifically, conservative amici appear to influence judge decision making in all judges with liberalism scores above -1.0 , which implies that conservative amici have a discernable effect on all but the most conservative judges.

The *Informational Impact Hypothesis* gains additional support in the area of free speech and expression law by examining the interactive effects of amici and retention system. Figure 3 shows that all judges respond positively to the filing of liberal amicus briefs, regardless of the manner in which judges are selected and retained. The average marginal effect of a liberal amicus brief on the likelihood of a liberal vote ranges between 10 percentage points in reappointed and retention elected judges and 5.4 points for competitively elected judges. Taken together, the results of the two-way interactions suggest that in certain types of cases such as free speech and expression, interest groups

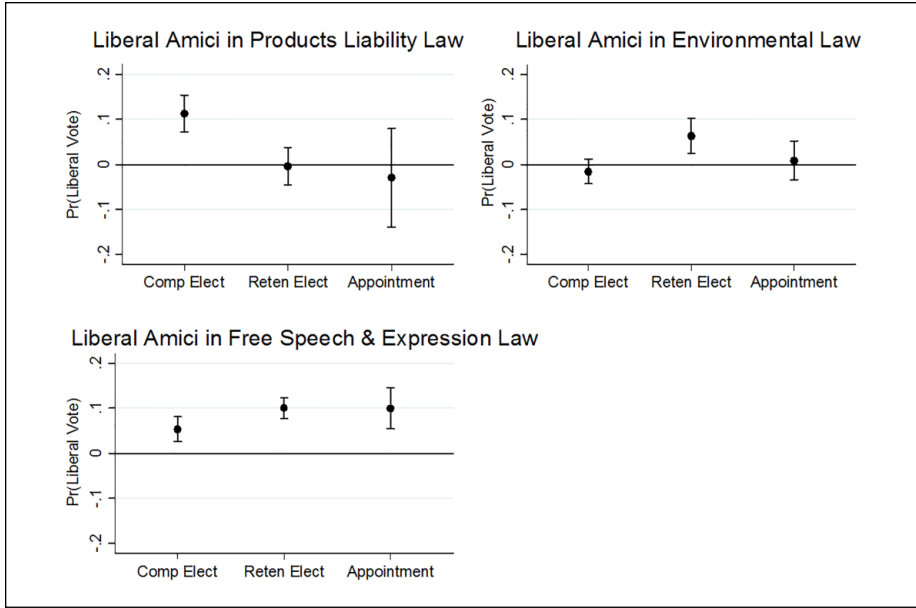


Figure 3. Liberal amici influence across retention methods.

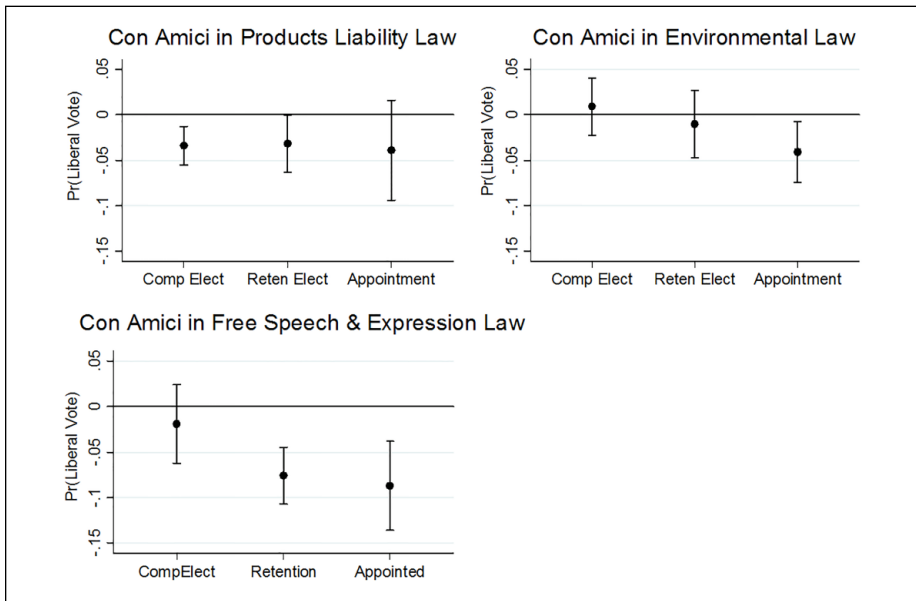


Figure 4. Conservative amici influence across retention methods.

filing amicus curiae are able to exert significant influence on the voting behavior of state high-court judges. Specifically, liberal amici are able to move all judges toward liberal decisions regardless of whether or not a judge is ideologically predisposed to rule in a liberal direction and regardless of the manner in which a judge is retained.

To find support for the *Motivated Reasoning Hypothesis*, we need to see judges polarizing toward their previously held ideological predispositions when confronted with ideologically incongruent amici. Simply stated, we should see liberal amicus briefs inducing conservative voting by conservative judges and conservative amicus briefs inducing liberal voting by liberal judges. An examination of Figure 2 shows little support for the *Motivated Reasoning Hypothesis*. Only the results from the two-way interaction of conservative amici and judge ideology in matters of environmental law show the expected voting behavior predicted under the *Motivated Reasoning Hypothesis*. Here, conservative judges are responding to pro-attitudinal amicus briefs by voting more conservatively while liberal judges appear to be polarizing toward their previously held liberal predispositions. However, because the voting behavior of the most liberal judges fails to meet conventional standards of statistical significance, we cannot definitively say that the results in environmental law cases are supportive of the *Motivated Reasoning Hypothesis*.

To assess the efficacy of the *New Politics of Judicial Elections Hypothesis*, we look to the results of the two-way interaction of amici and retention methods displayed in Figures 3 and 4. If the presence of judicial elections makes elected judges more responsive to the policy preferences of groups filing amicus curiae, then we should observe amicus brief influence only in elected judges. Specifically, because of the costly and contentious nature of competitive judicial elections, we expect this amicus brief influence to be greatest in competitively elected judges and less so in retention elected judges as compared with their reappointed counterparts. We find great empirical support for the *New Politics of Judicial Elections Hypothesis* in the area of products liability law. Here, each liberal amicus brief considered by a competitively elected judge increases the likelihood of a liberal vote by an average of 11.3 percentage points, holding all other factors, including ideology, at their true values. Thus, judges subject to competitive elections are 11.3% more likely to vote in a liberal direction when a liberal amicus brief is filed when compared with reappointed judges. In these same cases, conservative amicus briefs being considered by competitively elected judges are associated on average with a 3.4 point per brief increase in the likelihood of issuing a conservative vote. Thus, just as hypothesized by the *New Politics of Judicial Elections Hypothesis*, all competitively elected high-court judges, regardless of ideological predisposition, appear to be placing greater weight or value on the policy positions of groups filing amicus curiae in cases involving products liability.

The *New Politics of Judicial Elections Hypothesis* also anticipated retention elected judges to assign greater weight to amicus brief filings when compared with reappointed judges, but to a lesser extent than judges subject to competitive elections. Overall, results do not support this rank ordered response from retention elected judges as compared with competitively elected judges. In matters of products liability law,

retention elected judges did not respond significantly to the policy wishes of liberal amici, despite the significant response from competitively elected judges in these same cases. However, there is some evidence to suggest that retention elections can make judges responsive to amicus curiae filings. When conservative groups make their policy positions known to the court by filing amicus curiae in products liability cases, retention elected judges appear to be swayed to a similar degree as competitively elected judges, with average marginal effects of 3.2% and 3.4%, respectively. This evidence suggests that in some types of cases with certain types of groups filing amicus curiae, retention elected judges may be subject to the same institutional incentives as competitively elected judges.

Many of the control variables exhibited statistically significant relationships to the probability of liberal voting by state high-court judges. A liberal lower-court ruling was significantly and positively associated with liberal voting by judges across all three areas of law. In matters of products liability, a liberal lower-court ruling is associated with an 8.6 percentage point increase in the likelihood of a liberal vote, and this positive advantage increases to 12.8 and 16.4 percentage points, respectively, in cases of environmental law and free speech and expression. Similarly, the control for state high-court deference to state agency decisions in matters of environmental law was associated with a 20.5 percentage point increase in the likelihood of liberal voting, thus, confirming the expectation that state high-court judges defer to the judgments of the state in areas of law that are highly regulatory in nature.

One control variable that did not exhibit the expected relationship to state high-court judging was the interaction of state ideology and competitive elections. Despite the established empirical link between judicial elections and public opinion in the state high-court decision-making literature, competitively elected judges do not appear to be influenced by public opinion across any of the three areas of law examined here. This lack of electoral connection between public opinion and elected courts is most likely attributable to the low level of salience that the areas of law examined here carry with the mass public. An elected judge would have no institutional incentive to vote consistently with public opinion if the type of case being decided is of little importance to the voting public.

Discussion

The goal of this analysis was to investigate the mechanism of amicus curiae influence in state supreme court decision making to better understand the conditions under which state high-court judges are responsive to the policy positions of groups filing amicus curiae. The results presented here suggest that in complex areas of law such as free speech and expression, the information and policy positions advocated by amici are the source of interest group influence on state high-court decision making. When examining the influence of amicus briefs across judge ideology, evidence shows that organized interests are able to move all judges in the direction advocated by amicus curiae. In many instances, this amici influence is even able to sway judges to vote in counterattitudinal directions. However, in politically contentious areas of law such as

products liability, amicus brief influence appears more closely tied to the reelection and campaign fundraising considerations of competitively elected judges.

Despite the generalizability of these findings, it is important to interpret the results of each model with an eye to the specifics of each area of case law being examined. Each area of law involved a different set of organized interests and presented judges with different legal and policy questions, all of which likely had some bearing on the results. In matters of products liability, evidence suggests that liberal amicus briefs are influential, but only when considered by competitively elected judges, regardless of a judge's political predisposition. Why might this conditioning effect of competitive elections on amicus influence be found in products liability cases but not in the other areas of law examined? Products liability law is a politically loaded area of law where outside groups, predominantly business interests and trial lawyers' associations—two of the largest donors to judicial campaigns—have waged battles over tort reform for years. It is in this area of law that involves high-stakes political issues that we see the greatest support for the *New Politics of Judicial Elections Hypothesis*, suggesting that the demands of campaign fundraising make competitively elected judges more responsive to the policy wishes of certain groups filing amicus curiae, especially those known to be regular, large-scale donors to judicial campaigns. Thus, amicus brief influence appears to be more closely tied to the institutional incentives created by judicial elections than to the information or policy arguments contained in third-party briefs in politically contentious areas of law such as products liability.

Free speech and expression presents a more complex area of case law, where individual claims of First Amendment rights to free speech and expression must be weighed against the limitations allowed by law on individual and commercial speech both in public forums and in private associations to protect the public interest. It is in this complex area of case law that the *Informational Impact Hypothesis* gains the most empirical support. Amicus briefs, both those advocating for liberal and conservative outcomes, exert independent influence over the decision making of individual state high-court judges, suggesting that the information and legal arguments provided by these briefs are well received by all judges, regardless of ideology or method of retention. Indeed, amicus briefs filed in free speech cases are so influential that they exert significantly greater influence on the voting behavior of judges who are least ideologically inclined to vote in the direction advocated by amici.

Distinct from the other two areas of law examined, environmental law is highly regulatory in nature, and statutory construction greatly hinders judicial discretion. This may be the primary reason that we find very little evidence of amicus brief influence on judicial decisions in this area of law. It appears that state high-court decision making is highly constrained in this area where legal protections afforded to the environment are closely tied to the statutory construction set by state regulatory regimes. Perhaps it should not be surprising that the information and policy positions of outside interests filing amicus curiae have little ability to influence the votes of individual judges in this highly regulatory area of law.

Another issue worthy of discussion is the lack of evidence to support the *Motivated Reasoning Hypothesis*. Although there was some evidence to support polarizing

behavior by liberal judges in the face of conservative amicus briefs in environmental law cases, this evidence failed to reach conventional levels of statistical significance, and no such similar polarizing behavior was found in any of the other areas of law. These null results may be a direct result of the areas of law selected for analysis. While products liability, environmental law, and free speech/expression were selected to maximize the volume and variety of interest group participation as amicus curiae, none of these are areas of law in which we may expect judges to have particularly strong preexisting political predispositions. It is in highly salient areas of law where we might expect judges to possess deeply rooted political beliefs that may induce polarizing behavior in response to counterattitudinal information as predicted by the motivated reasoning literature. Perhaps future analysis of death penalty or abortion cases may provide a more optimal test of the *Motivated Reasoning Hypothesis*.

Another limitation of this study stems from the measure used to assess the informational mechanism of amicus brief influence. Measuring amicus brief information as the number of briefs filed in support of either a liberal or conservative case outcome is, at best, a proxy measure for the volume and nature of amicus brief information received by the judges considering a case. The use of this measure in no way captures the type of information provided by amici or the strength of legal arguments made in support of a group's preferred policy outcome. Ultimately, more extensive coding of the information and legal arguments included in each amicus brief is needed to determine if the information provided by amici is exerting independent influence on judicial decision making or if the observed influence is more specifically tied to the status or reputation of the groups filing these briefs. Such investigation is fertile ground for future research.

The results of this analysis are also suggestive of several strategies for interest groups seeking to influence state high-court decision making. First, when filing amicus curiae, groups focused solely on influencing case outcomes should focus their policy expertise in complex areas of case law. It is in more complex areas of case law such as free speech and expression that amicus briefs appear to play an informational role and influence state high-court decision making. Alternatively, when lobbying courts in politically charged areas of law, policy success may be greatest when concentrated interests lobby the courts both as amicus curiae and as campaign contributors. Indeed, the electoral connection created by contested elections appears to make judges more responsive to amicus briefs filed by the concentrated interests who regularly donate to judicial campaigns. The results also suggest a cautionary message for groups hoping to lobby state high courts in regulatory areas such as environmental law. Amicus briefs appear to exert little influence on judicial decision making in matters of environment law where judges are already highly constrained by statutory construction. Ultimately, the area of case law is important for understanding the context in which judges issue decisions and, thus, for understanding the determinants of judicial behavior. The area of case law being considered may itself structure the set of incentives available to judges by bringing different types of litigants to the table and different groups filing amicus curiae, in addition to the institutional incentives created by varying methods of judicial retention.

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Notes

1. Many states and state bar associations prohibit judicial candidates and judges from making campaign promises, taking policy positions on salient issues of public policy, and/or directly soliciting campaign donations from groups or individuals during the course of judicial campaigns. Interestingly, many state restrictions on judicial campaign speech are under fire from constitutional challenges since the U.S. Supreme Court's decision in *Republican Party of Minnesota v. White* 536 U.S. 765 (2002), which declared political statements by judicial candidates to be a protected form of speech under the First Amendment. In the most recent case, *Williams-Yulee v. The Florida Bar* 575 U.S. ____ (2015), the U.S. Supreme Court upheld a Florida Bar Association ban on direct solicitation of campaign funds by judicial candidates.
2. Comparato's (2003) study included an analysis of 994 amicus briefs submitted in 644 randomly selected cases decided with full opinions by the state high courts of Alabama, Colorado, Kansas, Michigan, New Jersey, South Carolina, and Wisconsin between 1986 and 1995.
3. The liberal and conservative coding of judicial outcomes was also subject to intercoder reliability checks. Using detailed coding instructions regarding the liberal/conservative nature of judicial decisions, a third-year law student coded a randomly selected 10% sample of cases from each of the three areas of law. Intercoder agreement rates were 94.4% in products liability law, 93.2% in environmental law, and 96.6% in free speech and expression law.
4. The Bonica and Woodruff (2015) common-space judge ideology scores use negative scores to represent liberal judges and positive scores for conservative. The scores are inverted in this study to make the relationship between liberal judges and liberal votes more intuitive.
5. See <http://www.judicialselection.us/> (accessed January 2016).
6. Results discussed here are robust to different model specifications, which are available from the author upon request.

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