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Abstract: Courts are often thought of as protectors of minority rights. What happens when the composition of courts changes such that politically disadvantaged groups expect a less favorable reception? This Element examines whether the increasing conservatism of the US Supreme Court during Donald Trump's presidency changed the behavior of litigants and amicus curiae. The authors test whether membership changes led to reduced filings by individuals and organizations representing marginalized groups and increased filings by businesses and conservative states and interest groups. The authors find substantial reductions in participation by the most politically disadvantaged and substantial increases in participation by the most conservative groups.

Keywords: Supreme Court, political representation, social construction, litigants, amicus curiae

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1 Introduction: Supreme Court Membership Change and Its Consequences

> To successfully wage such a campaign, you need three things: Money, legal personnel and a judiciary that's receptive to strategically selected and timed legal arguments.
>
> Damien M. Schiff, Attorney for the Pacific Legal Foundation[1]

In the 2023–2024 term, the US Supreme Court is hearing a variety of cases on salient issues, from gun rights to racial gerrymandering to the availability of the abortion pill mifepristone. However, one of the less publicly salient topics that is being watched closely by legal observers involves multiple cases that challenge a long-standing administrative law doctrine known as *Chevron*. This doctrine, which requires courts to defer to administrative agencies' interpretations of ambiguous statutory language, has long been a target of the conservative legal movement (Green, 2021). Advocates for overturning the *Chevron* doctrine believe that the timing is right to finally achieve that goal, and, as the quote above suggests, the timing is right because they believe the judiciary – specifically, the current members of the US Supreme Court – will be receptive to their arguments.

Administrative law is not the only issue area in which conservative advocates think the current Supreme Court will be receptive. Starting in the early 2010s, many states and localities enacted bans on conversion therapy, also known as "sexual orientation change efforts." This practice seeks to reverse same-sex attraction and non-biologically conforming gender identity through counseling, and is controversial because it has "been deemed harmful and ineffective to people" (Flores, Mallory, & Conron, 2020, p. 2). Over the years, the conservative legal advocacy organization, Liberty Counsel, has brought numerous lawsuits on behalf of licensed counselors who feel these bans violate their constitutional right to free expression. They have won some cases and lost others. Liberty Counsel attorney and chairman, Mathew Staver, told reporters:

> It's not a matter of if; it's just a matter of when the Supreme Court will take one of these cases and strike [conversion therapy bans] down nationally. I was hoping earlier that our defendants would ask the Supreme Court for

[1] Hiroko Tabuchi, *New York Times*, "A Potentially Huge Supreme Court Case Has a Hidden Conservative Backer." https://www.nytimes.com/2024/01/16/climate/koch-chevron-deference-supreme-court.html?searchResultPosition=7

> review. But they decided to end the case at the U.S. Court of Appeals. They were concerned if they took the case to the Supreme Court, they would lose.[2]

While earlier plaintiffs feared losing at the Supreme Court, a more recent plaintiff was not deterred. In May 2023, Brian Tingley, a licensed marriage and family therapist in Washington state represented by another conservative legal advocacy organization, the Alliance Defending Freedom, filed a petition for certiorari asking the Supreme Court to review a 9th Circuit decision upholding Washington's conversion therapy ban.[3] Seven amicus briefs by conservative advocacy organizations and one by eleven states with Republican attorneys general were filed, all urging the Court to take the case. Although the Court ultimately rejected the petition, three justices – Brett Kavanaugh, Clarence Thomas, and Samuel Alito – dissented from the denial of certiorari, and both Justices Thomas and Alito took the unusual step of writing opinions arguing that Court should have taken the case and suggesting that the 9th Circuit decision should be overruled.[4] Even though the conservative advocacy groups did not prevail this time, these dissents suggest that these groups were right to think their arguments could find a receptive audience among some of the Court's justices.

Other groups are shifting their advocacy away from the US Supreme Court, anticipating that it will be less receptive to their positions. For example, litigation has long been a primary strategy of abortion rights advocates, who have regularly challenged restrictive laws passed by state governments in the federal courts. Even before *Dobbs* v. *Jackson Women's Health Organization*[5] overturned *Roe* v. *Wade*'s recognition of a federal constitutional right to abortion access,[6] advocates were moving the fight to state courts (Kim et al., 2023). Rather than rely on a federal right to privacy, they argued that their state constitutions protected abortion access.[7] In the aftermath of *Dobbs*, abortion rights advocates have been working to shore up these state constitutional claims by bringing ballot initiatives like Proposal 3 in Michigan that enshrine the right

[2] See Michael A. Mora, Law.com, "Florida Judge Slashes 70% of Attorney Fees Requested by Evangelical Litigation Organization." https://www.law.com/dailybusinessreview/2024/01/19/florida-judge-slashes-70-of-attorney-fees-request-by-evangelical-litigation-organization/.

[3] Supreme Court docket number 22-942.

[4] See, https://www.supremecourt.gov/opinions/23pdf/22-942_kh6o.pdf.

[5] 142 S.Ct. 2228 (2022).

[6] 410 U.S. 113 (1973).

[7] See, e.g., *Hodes & Nauser* v. *Schmidt*, 440 P.3d 461, 502 (Kan. 2019), in which the Kansas Supreme Court held that the Kansas constitutional bill of rights guarantees the right to decide whether to continue a pregnancy.

to abortion care in state constitutions. As Michigan State Senator Mallory McMorrow remarked:

> I remember telling organizers that day that we're not powerless in Michigan. We have elections coming up; we would have Prop 3. We had the ability, unlike many other states, to do something about this. If the Supreme Court is going to say it's a state issue, let's make it our issue. And we did that.[8]

These examples suggest that there may have been changes in how litigants perceive the US Supreme Court's receptivity to their claims, and that those changes are shifting potential litigants' strategic calculations, and, by extension, their choices about whether to bring cases to the Court. Litigant strategy is changing for groups across the ideological spectrum and changing behavior in a variety of ways, with some groups bringing *more* cases to the Court anticipating a friendly reaction and some bringing *fewer* cases and shifting efforts elsewhere in anticipation of an unsympathetic audience at the Court. These changes happened during a time in which the make-up of the Supreme Court has shifted from a 5-4 conservative majority to a 6-3 conservative supermajority. Just how widespread are these changes? And what might they mean for who is represented – and thus, whose voices are heard – in this critical policymaking venue?

We examine how the changing composition of the US Supreme Court affects who participates in advocacy before it. Specifically, we focus on how the three Supreme Court justices nominated and confirmed during Donald Trump's presidency – Neil Gorsuch, confirmed on April 7, 2017; Brett Kavanaugh, confirmed on October 6, 2018; and Amy Coney Barrett, confirmed on October 26, 2020 – have changed the behavior of both litigants and amicus curiae participants at the Court. We argue that the growing conservatism of the Court radically reshaped the incentives of interested parties and, as a result, their participation in litigation activity. These changes in incentives have both normative and substantive importance. Normatively, if politically disadvantaged groups withdraw from or reduce advocacy before the Supreme Court, their voice in government is further marginalized. The most politically disadvantaged groups do not expect positive outcomes in the elected branches (Schneider & Ingram, 1997) and have traditionally turned to courts for relief (Cortner, 1968; Epp, 1998). If they come to believe the Supreme Court is hostile to their interests, they may choose to forgo advocacy before the courts,

[8] Anna Guftason, *Michigan Advance*, "'A beacon of hope': One year after *Dobbs*, advocates say Michigan leads on abortion rights." https://michiganadvance.com/2023/06/24/a-beacon-of-hope-one-year-after-dobbs-advocates-say-michigan-leads-on-abortion-rights/.

and, as a result, forgo opportunities for substantive policy change. Conversely, groups who expect a positive reception at the Court are likely to turn to it as a policymaking venue more often. Substantively, this shapes both the issues the Court takes up and the arguments it hears, both of which ultimately shape the law it creates.

This section describes the significant impact President Trump had on the federal courts generally, and the US Supreme Court in particular. It outlines what we know about how membership changes on the Supreme Court shape its docket and its decisions. It then explores what we know (and do not know) about how the Court's membership shapes the incentives and actions of litigants and amicus curiae. We lay out a theory of how we expect the increasing conservatism of the Supreme Court to affect these incentives and actions of legal groups in relation to the Court, and then describe the data we use to test those expectations. This section ends by providing a preview of the sections to come and our key findings. Our results suggest that the most disadvantaged groups are turning away from the Court, whereas favored groups are relying on the Court more for relief. These changes in participation rates will impact the kinds of cases the Court hears and its ultimate decisions – suggesting another way in which the divide between the "haves" and "have-nots" may be growing in America.

1.1 The Unusual Influence of Donald Trump on the Courts

> Over the next four years, America's President will choose hundreds of federal judges, and, in all likelihood, one, two, three, and even four Supreme Court justices. The outcome of these decisions will determine whether we hold fast to our nation's founding principles or whether they are lost forever.
>
> Donald Trump, September 9, 2020[9]

The presidency of Donald Trump will be remembered for many reasons, but perhaps its most enduring legacy will be its impact on the federal judiciary. Trump appointed more Supreme Court justices than any president since Ronald Reagan, and the most in a single term since Richard Nixon. His influence was not limited to the Supreme Court. In just four years, he appointed 27% of active district court judges, and 30% of active courts of appeals judges. His appointees are significantly more conservative and less diverse than those of both his Republican and Democratic predecessors.[10] They are also young – at

[9] See https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-judicial-appointments/.

[10] See: https://fivethirtyeight.com/features/trump-made-the-federal-courts-whiter-and-more-conseravative-and-that-will-be-tough-for-biden-to-reverse/.

47, the average age of Trump's nominees was lower than that of any president in at least a century.[11] Their youth ensures that many of them will serve for decades. These appointments have the potential to dramatically reshape the types of cases that come before the courts, the legal doctrine the courts create, and which litigants view the courts as a viable policymaking venue for many years to come.

Who holds both elected and appointed public office is consequential. Research on the composition of government shows that who is in office affects everything from citizens' trust in our institutions (see, e.g., Gay, 2002) to the issues that make it on to those institutions' agendas (see, e.g., Reingold, Haynie, & Widner, 2020) to the substantive policy decisions made by those institutions (see, e.g., Boyd, 2016). Less is known, however, about whether and how characteristics of those who hold office in a particular institution affect who participates in advocacy before that institution.

Representation and participation are particularly important with respect to the courts. While all branches of the US government are responsive to public pressures to some degree, officials in the legislative and executive branches are able to initiate policy activities based on their own interests, life experiences, or policy preferences (Burden, 2007). Federal courts, on the other hand, are limited by the "case or controversy" requirement of Article III of the Constitution. This requirement limits courts' decision-making authority to situations in which someone has suffered or will imminently suffer an injury or legal impairment, and courts can only weigh in once that party properly files before the correct court. This makes the judicial branch a reactionary institution, rather than a proactive one (see, e.g., Bandes, 1990). Because courts' policymaking opportunities are dependent on litigants to present issues for them to resolve, litigants play an essential role in agenda-setting for the judicial branch. However, this agenda-setting influence flows in both directions. Although courts can only take case litigants bring to them, judges can signal to potential litigants their interest in taking up a particular type of case (Baird, 2004). Further, the very presence on the bench of judges whose policy preferences are known or presumed can lead litigants to expect the Court to be a more or less receptive audience for their claims.[12]

[11] See: https://www.washingtonpost.com/outlook/2021/02/16/court-appointments-age-biden-trump-judges-age/.

[12] For example, we see this in repeated filings by conservative interests in the Amarillo Division of the Northern District of Texas, where the only judge is known to be extremely conservative. See, e.g., Alexandra Hutzler, *ABC News*, "Unprecedented Texas abortion pill ruling sparks debate about 'judge shopping,'" https://abcnews.go.com/Politics/unprecedented-texas-abortion-pill-ruling-sparks-debate-judge/story?id=98531203.

While a complete accounting of Trump's influence on the judiciary would consider judicial confirmations at all levels of the federal judicial hierarchy, we focus our attention here on Supreme Court confirmations during Trump's presidency. Supreme Court confirmations have become highly partisan, contentious affairs (Armaly & Lane, 2023; Cameron, Kastellec, & Park, 2013; Collins, Ringhand, & Boyd, 2023). They capture the attention of the public and the media. Moreover, particularly during the Trump presidency, controversial confirmations substantially eroded public support for the Court and the nominees specifically (Carrington & French, 2021; Rogowski & Stone, 2021). Because Supreme Court confirmations are salient political affairs that are well-covered by the media, interested parties in litigation are likely to pay attention to confirmations as signals of the Supreme Court's receptiveness to particular policy areas or legal strategies. The interaction of these strategies and the justices' preferences have significant implications for national policymaking.

1.2 Judicial Turnover, Case Selection, and Outcomes

Judicial turnover can be impactful at all levels of the federal judiciary, but it has the most significant effect at the Supreme Court. While lower courts have mandatory jurisdiction – meaning that they must respond to all properly filed cases – the US Supreme Court, for the most part,[13] chooses the cases it wishes to hear. The Court is very selective; each year it receives between 5,000 and 7,000 requests for review and grants only about 80 of these a full hearing (E. Lane & Black, 2017).[14] After reviewing petitions for certiorari, which are parties' official requests for the Court to hear a case, members of the Court meet and vote on whether to grant review. It takes four members of the Court to grant review.[15] As new justices come onto the Court, they inevitably affect this process. Justices vote independently, bringing their own preferences and beliefs about what cases are important, but they also vote strategically, considering how their colleagues might vote at the merits stage (Black & Owens, 2009; Perry, 1991). Thus, a new justice affects the Court's agenda both through their own votes and through their impact on the strategic calculus of other justices.

[13] Under 28 U.S.C. 1253, the Court is required to hear direct appeals from cases required by Congress to be heard by three-judge district court panels. This is most commonly cases involving legislative apportionment.

[14] See also, Supreme Court of the United States, "The Court at Work," https://www.supremecourt.gov/about/courtatwork.aspx. An additional 100 or so requests are disposed of summarily, without full hearing.

[15] United States Courts, Supreme Court Procedures, https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-1.

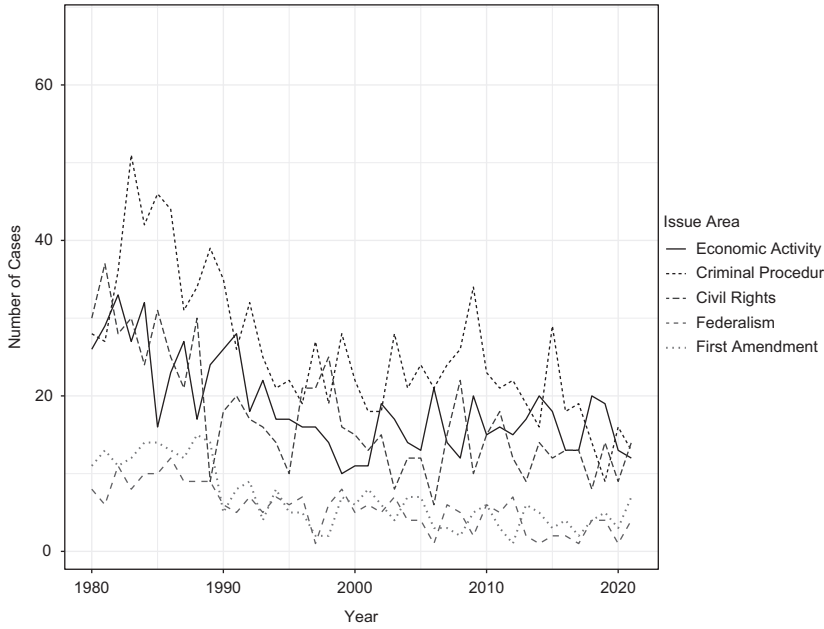

Figure 1 Issue area of SCOTUS cases granted cert over time, 1980 to 2021

Figure 1, which is drawn from the Supreme Court Database (Spaeth et al., 2021), shows the number of cases that the Supreme Court has reviewed in key issue areas over time. The most obvious trend is the general decline in the number of cases the Court has taken. In the 1980 term, the Supreme Court heard 150 cases, but starting in the mid-1980s, its caseload declined sharply. By 2000, the number of cases the Court took in a term had fallen to 86. Since then, the number has consistently been even lower, and has often been under 70 cases a term.[16] A closer look at the figure also reveals some interesting changes in the types of cases the Court takes. While all issue areas decline and all have occasional spikes over time, issue areas like criminal procedure and federalism show a steep and fairly consistent decline, whereas economic activity cases decline with other case types until the late 1990s and then rebound and level off at a higher proportion of the docket in the 2000s. The rebound happens right around the time that Chief Justice John Roberts – a justice who worked for Ronald Reagan and championed economic deregulation – took the bench. In the past decade, the number of economic activity cases per year has frequently surpassed the number of criminal procedure cases, the issue area that had traditionally dominated the Court's docket.

[16] Much of this decline can be attributed to the Supreme Court Case Selections Act of 1988 (E. Lane, 2022).

Table 1 Percent of cases at SCOTUS granted cert in each opinion year by issue area

Issue Area	2016	2017	2018	2019	2020	2021
Attorneys	0.00	1.50	1.50	1.30	0.00	0.00
Civil rights	21.60	12.30	16.40	18.40	17.30	18.40
Criminal procedure	23.50	21.50	16.40	18.40	15.40	19.70
Due process	5.90	6.20	3.00	2.60	5.80	2.60
Economic activity	19.60	20.00	23.90	28.90	15.40	17.10
Federal taxation	0.00	0.00	3.00	1.30	1.90	1.30
Federalism	3.90	1.50	4.50	5.30	3.80	2.60
First amendment	7.80	3.10	4.50	7.90	1.90	10.50
Interstate relations	0.00	1.50	0.00	0.00	0.00	0.00
Judicial power	15.70	23.10	16.40	6.60	15.40	3.90
Miscellaneous	2.00	0.00	3.00	2.60	3.80	0.00
Privacy	0.00	1.50	0.00	3.90	1.90	2.60
Private action	0.00	0.00	1.50	0.00	1.90	1.30
Unions	0.00	4.60	3.00	1.30	0.00	5.30

Table 1 focuses in on our period of study, 2016 to 2021, and displays the proportion of cases the Court decided each year that involved each of the fourteen specific issue areas in the Supreme Court Database (Spaeth et al., 2021). Some areas are more variable than others, but civil rights, criminal procedure, and economic activity predominate, with each making up the largest proportion of cases in at least one year. Judicial power is the only other issue area that constitutes the highest proportion in any given year (2017), but the number of cases in this area is much more variable.

New justices not only bring preferences over issues areas to the bench, they also bring preferences over the policy outcomes they would like to see in the cases they hear (Segal & Spaeth, 2002) and the legal reasoning that should be used (Liebell, 2023). Using coding from the Supreme Court Database, Figure 2 shows trends in the ideological direction of the Court's decisions over time in all cases (left panel) and only nonunanimous cases (right panel).[17] For most of the last four decades, the Court has made a greater proportion of conservative decisions (between approximately 50 and 60%, depending on the year) than liberal ones (between 40 and 50%). When the cases in which all members of the Court agreed are removed, we see that the rate of conservative decisions is

[17] See Figure A1 in the Appendix for this graph for the time period of our study only, 2016 to 2021.

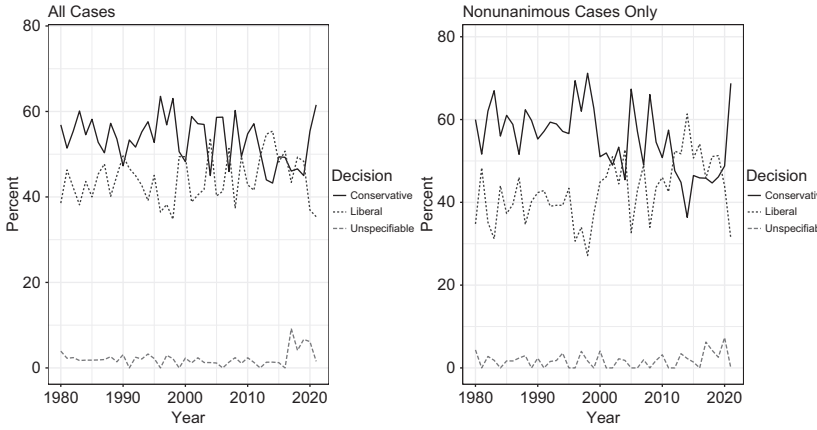

Figure 2 The ideological direction of SCOTUS cases over time, 1980 to 2021. Left panel reflects all cases and right panel reflects only the nonunanimous cases

generally higher, and has leaped to nearly 70% of nonunanimous cases since Trump's third appointee, Amy Coney Barrett, took the bench.

This is consistent with the make-up of the Court and other research that finds the Court is increasingly more conservative than the public (Jessee, Malhotra, & Sen, 2022). In every term since 1970, the Court has had at least five justices appointed by Republican presidents, and every chief justice during the same period has been appointed by a Republican. Given this consistent conservative majority, it is perhaps more surprising that there have been brief periods, most notably in the early 2010s, in which liberal decisions outpaced conservative ones.

However, looking at trends for all cases can be misleading. As noted earlier, the issues on the Court's docket vary from year to year. Even when cases are in the same issue area, some cases are closer calls than others, making year-to-year comparisons imprecise (Baum, 1988; Clark & Lauderdale, 2010). Experts suggest that reversals are more accurate reflections of the Court's ideology than affirmances because the Court most often grants review to reverse a lower court decision with which it disagrees. Affirmances, then, represent a miscalculation on behalf of the litigants, the justices, or both, about how the case aligns with the majority of justices' preferences (McGuire et al., 2009).

Figure 3 displays the percent of affirmances and reversals by ideological direction during the time period of our study, 2016 to 2021.[18] Interestingly, we

[18] Following McGuire et al., (2009) these are measured using the Supreme Court Database code for the Winning Party, with cases the petitioner won coded as reversals and cases the respondent won coded as affirmances.

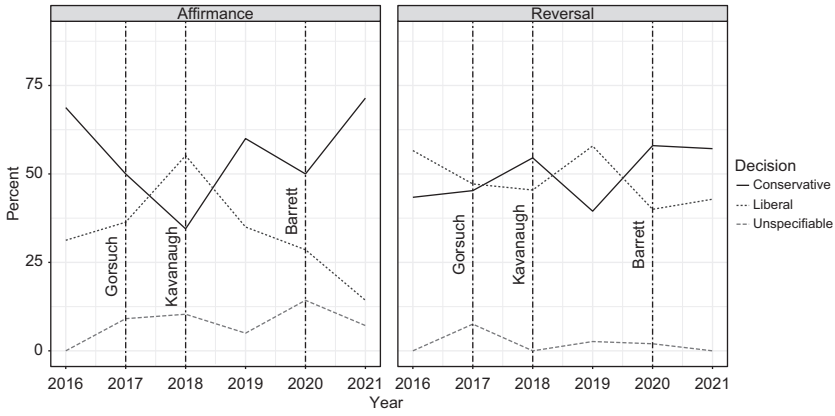

Figure 3 The ideological direction of SCOTUS cases over time, 2016 to 2021. This graph splits by case disposition, whether they are affirmances (left) or reversals (right). Cases with other dispositions were excluded

do not see the differences McGuire et al. (2009) documented between affirmances and reversals during this period. Instead, affirmances actually seem *more* conservative, particularly after Justice Kavanaugh's confirmation. This could indicate a change in the justices' behavior, in which they are granting more appeals of lower court decisions they want to affirm and make national precedents. It could also be a result of the way liberal and conservative decisions are coded in the Supreme Court Database, which regards decisions favoring plaintiffs alleging violations of their rights to free exercise of religion or free expression as liberal decisions. In prior periods, these claims often involved small, unpopular groups, but in the Court's recent decisions, they have tended to involve mainstream, conservative religious groups – for example, a Christian coach who prayed on a public school football field,[19] a Christian organization that wanted to fly their flag in front of Boston City Hall,[20] and parents who wanted the state to pay for tuition for their children to attend Christian religious schools.[21] These decisions – all of which were decided in the 2021–2022 term and resulted in Supreme Court victories for the religious plaintiffs – confound traditional definitions of liberal decisions by intermixing issues of free exercise, free expression, and the Establishment Clause and favoring majority rather than minority interests.[22]

[19] *Kennedy* v. *Bremerton School District*, 142 S.Ct. 2407 (2022).
[20] *Shurtleff* v. *City of Boston*, 142 S.Ct. 1583 (2022).
[21] *Carson* v. *Makin*, 142 S.Ct. 1987 (2022).
[22] See Figure A2 in the Appendix for the ideological direction of affirmances and reversals for the full period from 1980 to 2021. It suggests that the pattern found by McGuire et al. (2009) does not seem to hold from approximately 2010 on.

Whatever flaws may exist in our current measures of the ideology of Court decisions, it seems clear that the Court has become more conservative since Trump's second nominee, Kavanaugh, was confirmed. Equally significant, the way the Court explains its reasoning – which is important for how lower courts interpret the law moving forward – has shifted as well. The legal reasoning in recent cases like *New York State Rifle & Pistol Association, Inc.* v. *Bruen*,[23] *Kennedy* v. *Bremerton School District*,[24] and *Dobbs* v. *Jackson Women's Health Organization*[25] is a particular form of originalism that will shape decision-making throughout the federal judiciary for decades to come (Blocher & Willinger, 2023; Wilson & Hollis-Brusky, 2023; Ziegler, 2023).

Changes to the Supreme Court's issue agenda, reasoning, and decisions are substantively important consequences of changes in the Court's membership. They shape the rights and remedies available to all US residents in ways well illustrated by the cases just cited. Those cases limited states' ability to restrict gun ownership, approved sectarian prayer at a public school event, and overturned half a century of precedent protecting the right to abortion care. In addition to these serious implications, changes in the Court's membership may also shape the strategic incentives for litigants and amicus curiae to turn (or not to turn) to the Court for relief. This has important implications for representation in government and policymaking.

1.3 Representation and Participation at the Supreme Court

Policy entrepreneurs – those interested in changing the law in specific policy areas – watch the Court carefully and bring cases that will give the justices opportunities to make policy they favor (Baird, 2007). Skilled attorneys tailor their arguments to the current members of the Court (Drolc, Merrill, & Schoenherr, 2023; Wedeking, 2010) and coordinate amicus curiae who can bolster their arguments (Larsen & Devins, 2016). Interviews with attorneys who practice before the Supreme Court reinforce the view that litigants and their attorneys are strategic actors who think carefully about whether to bring a case to the Court or to get involved in an amicus brief (Hazelton & Hinkle, 2022).

This strategic calculus implies that there will be times when those with potential claims and policy goals choose to opt out of participation in Supreme Court litigation. This Element explores whether and how the membership of the Court impacts the decision to ask the Supreme Court to review a case or to provide it with an amicus brief. This is important to understand because those who

[23] 142 S.Ct. 2111 (2022).
[24] 142 S.Ct. 2407 (2022).
[25] 142 S.Ct. 2228 (2022).

choose *not* to submit petitions for certiorari or participate in amicus briefs are also shaping the Court's docket and opinions by their absence. The Court does not start from scratch in deciding what issues to review; it is dependent on litigants to bring it cases. Thus, the petitions and briefs the Court receives (and the absence of those it does not receive) shape the Court's docket as well as case outcomes and opinion language (Collins, Corley, & Hamner, 2015; Hazelton and Hinkle, 2022; Hazelton, Hinkle, & Spriggs, 2019).

Judicial advocacy is just one tool in the advocacy toolkit of those seeking to influence public policy (Grossmann, 2012; Walker, 1991). Under our constitutional system, the legislative branch plays the central role in policymaking, and most groups that are active in policy advocacy devote at least some of their efforts to legislative advocacy (Grossmann, 2012). Court advocacy, such as filing lawsuits or otherwise engaging in litigation, is generally the least frequent activity, in part because opportunities for participation are more structured and formal and require legal expertise (Nownes & Freeman, 1998; Schlozman & Tierney, 1986). It is also because the odds of making substantial policy change through the courts are low (Rosenberg, 2008). When parties win in the lower courts, their cases usually have limited policy effects. And because the Supreme Court takes so few cases – it grants review of approximately 1% of the cases it is asked to review each year (representing only 0.02% of the cases that are filed in the district courts annually) – the chances of any one case having national impact are very small. Individuals, as well as organized interests, need to be strategic in deciding whether to litigate because litigation is an expensive and time-consuming process, and even the most experienced attorneys can provide no guarantee of success (McCann, 2006). Moreover, financial costs are not all that are at stake when litigating. While a party who seeks legislation and fails usually just ends up with the status quo, a party who seeks policy change at the Supreme Court could end up with national precedent that goes against their interests. For example, the advocates who sought to have Mississippi's restrictive abortion law struck down ended up losing national constitutional protection for abortion rights in *Dobbs* v. *Jackson Women's Health Organization* (2022).

Groups develop their expectations about the Court's receptiveness to their claims in several ways. First, as noted above, Supreme Court confirmation hearings are highly salient, public affairs. In televised hearings, senators question the nominees about a wide range of topics, from their judicial philosophy to their views on particular issues (Collins, Ringhand, & Boyd, 2023). If the nominee has been a judge before, their prior decisions provide additional insights into their judicial philosophy and preferences (Hitt, 2013). While litigants themselves might not be familiar with these materials, their lawyers – if they are represented – have access to this information and likely use it to

shape their recommendations. Finally, the longer a justice sits on the bench, the more evident their preferences over issues and methods of interpretation become through their opinions and votes in cases. These sources of information provide litigants a foundation on which to base strategic decisions.

Litigants who receive these signals and do not expect to win may decide to avoid the financial and policy costs of filing for review in the first place. If an organized interest suspects that the courts will not be receptive to its position, it can shift its resources and effort to another policymaking venue, just as the abortion rights groups have done with their shift to a focus on state-level advocacy. Of course, the opposite is also true. Groups that see the courts leaning in their direction may also shift focus toward the courts. In sum, groups turn to the courts in a strategic manner that may shift as the composition of the courts' membership evolves.

We expect that the increasing conservatism of the Supreme Court that resulted from President Trump's appointments shifted the strategic incentives of different potential parties and amici to participate in Supreme Court litigation. We expect these effects to be cumulative, with the strongest shifts occurring after the more solidly conservative Brett Kavanaugh replaced frequent swing justice Anthony Kennedy, and then again after conservative Justice Amy Coney Barrett replaced the liberal icon, Ruth Bader Ginsberg, creating a 6-3 conservative supermajority on the Court. Drawing on decades of Supreme Court literature, we expect to see changes among three main types of groups: those who are politically disadvantaged, those who are well-resourced repeat players, and those who are pursuing ideological agendas. We expect some of these groups to decrease participation before the Court and others to increase participation, as explained below.

1.3.1 Politically Disadvantaged Groups

Political disadvantage theory suggests that groups who are disfavored in the political branches – whether because they lack traditional political power, like African Americans during the Civil Rights Era (Vose, 1959), or because they are unpopular, like business interests during the New Deal Era (Cortner, 1968) – are likely to turn to the courts for protection or recognition of their rights. The Supreme Court itself has long recognized its role in protecting the politically disadvantaged. For example, the famous footnote four in *United States* v. *Carolene Products Co.*[26] acknowledges that there may be a need for "more searching judicial inquiry" in cases where "prejudice against discrete

[26] 304 U.S. 144 (1938).

and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities." The tendency of disadvantaged groups to turn to the courts accelerated during the "rights revolution" of the 1960s and 1970s (Epp, 1998; Gunderson, 2022). It was reinforced by congressional statutes that explicitly authorized private lawsuits to enforce civil and statutory rights (Farhang, 2010).

The rights revolution suffered backlash, however, and conservatives mounted a concerted effort to fill the judiciary with judges who would be less receptive to private rights claims (Burbank & Farhang, 2017). This was accompanied by changes in procedural rules intended to limit access to the courts, such as the Antiterrorism and Effective Death Penalty Act of 1996 and the Prison Litigation Reform Act of 1996, which severely restricted litigation by incarcerated people (Burbank & Farhang, 2018; Gunderson, 2021; Staszak, 2014).

However, while much has been written about the political and judicial retrenchment that followed the rights revolution, we know relatively little about the effect of that retrenchment on the behavior of those who participate in litigation directly or as amicus curiae. As strategic actors, we might expect politically disadvantaged groups to shift their strategy away from the courts as the courts become less likely to return a favorable result. The combination of retrenchment and Trump's appointments would seem to create an unwelcoming environment for these groups. As each successive Trump appointee took their seat, the conservatism of the Supreme Court became more solidified. With the appointment of Justice Amy Coney Barrett in particular, the Court has attained a conservative supermajority that should lead litigants and amici to doubt the Court's receptiveness to politically disadvantaged groups' claims for the foreseeable future.[27] Further, some of the most politically disadvantaged groups started to see beneficial policy change coming from the elected branches during this period. For example, in 2018 Congress passed and President Trump signed bipartisan criminal justice reform, the First Step Act (P.L. 115-391). This suggests that disadvantaged groups might expect to receive a

[27] Decisions in the most recent terms of the Supreme Court suggest that such doubt would be justified. In the 2021 term alone, the Court declared that abortion is not a constitutionally protected right (*Dobbs* v. *Jackson Women's Health Organization*), undermined Native American sovereignty (*Oklahoma* v. *Castro-Huerta*), permitted Congress to deny residents of Puerto Rico benefits available to other citizens (*United States* v. *Vaello Madero*), and limited opportunities for non-citizens to seek judicial review of immigration decisions (*Patel* v. *Garland* and *Garland* v. *Aleman Gonzalez*).

more favorable reception in other venues and thus turn to the Court relatively less for policy victories.

1.3.2 Repeat Players

Some scholars have criticized political disadvantage theory, noting that the disadvantaged actors are not alone in turning to the courts (Olson, 1990). Galanter (1974) offered a competing theoretical perspective. He argued that the "haves" were more likely to benefit from litigation than the "have-nots" because they are repeat players in the court system and can appeal to shape the rules in their favor over the long term. They have to do this strategically, however, because as repeat players, they have more to lose if a court adopts a rule that works against their interests. As the term "haves" implies, repeat players tend to be relatively resource rich (Songer, Sheehan, & Haire, 1999). Thus, if they think a case could bring them favorable policy, they can hire the best lawyers and experts to pursue it. This leads them to win more over time. Empirical tests using Court of Appeals decisions have supported Galanter's intuition. Individual litigants, who are generally "one-shotters" – that is, they go to court only once – win the least on appeal, businesses win more often, and government, the ultimate repeat player, wins the most (Songer & Sheehan, 1992; Songer et al., 1999). At the Supreme Court level, repeat players are more likely to get their cases heard in the first place, in addition to being more likely to win once the Court considers the merits (Black & Boyd, 2012). However, in the Supreme Court, the ideology of the justices plays an important intervening role (Sheehan, Mishler, & Songer, 1992). Individual litigants fared far better under Chief Justice Earl Warren than they did under Warren Burger, and their likelihood of success declined even further under William Rehnquist, for example. The pattern for government was the reverse: the more conservative the Court, the more likely the government, particularly the federal government, was to win. The results for businesses were less consistent, but their success appeared to generally improve as the Court grew more conservative. In other words, the more conservative the Supreme Court, the more that expectations about the relative success of the haves over the have-nots seem to predict litigant outcomes.

These general patterns shape our expectations for individuals and businesses, but for government our expectations are more nuanced. Research on the Office of the Solicitor General (OSG) – the office that represents the US government in cases before the Supreme Court – suggests that the political preferences of the president who appointed the Solicitor General impact the Court's receptivity to its positions (Bailey, Kamoie, & Maltzman, 2005; Wohlfarth, 2009). For most of the time period of our study, the president was Donald Trump, so the

OSG would be perceived to be aligned with the Court. However, we might expect to see lower federal government participation at the beginning of our time period, because 2016 was the end of Barack Obama's presidency, and at the end, because the 2021 term is at the beginning of Joe Biden's presidency. Participation by other government actors, such as states, is also expected to be conditioned by partisanship.

1.3.3 Ideological Interest Groups

A November 2021 Quinnipiac poll found that 61% of Americans believe that the Supreme Court is "mainly motivated" by politics rather than the law.[28] Democrats were particularly likely to feel this way, with 67% expressing this view. Recent experimental work by Braman (2023) suggests that while Democrats have generally perceived that "people like [them]" have benefited a great deal from the Supreme Court over the long term, they feel less positive about the Supreme Court when asked about a more recent period when the Court has been more solidly conservative. In contrast, Republicans are more likely to see personal and societal benefits from the Supreme Court in the more recent period and looking forward to the future. Democrats were much more skeptical about future benefits from the Court, particularly in the short term. Those who identify strongly with a particular political party or ideology and see the composition of the Court changing may be expected to feel similarly. If they are conservative, their more optimistic expectations might make them more likely to see the Court as potentially receptive to their positions, and if they are liberal, the reverse may be true. This suggests that liberal litigants may see the Court as unreceptive to their interests, and may, as a result, forgo the cost of petitioning for certiorari. Conservative litigants, on the other hand, may be more likely to see benefit in seeking Supreme Court review.

1.3.4 Amicus Strategy

Although the theories and subsequent tests of them discussed here focused on litigant, rather than amicus curiae, behavior, there is reason to believe that the changing make-up of the Supreme Court might also influence amicus participation. If government actors win more under a more conservative Court, these actors may believe they have more influence as amici as well. Again, this may be particularly true for government actors who are ideologically aligned with the Court, such as Republican presidential administrations

[28] https://poll.qu.edu/poll-release?releaseid=3828.

and Republican-controlled state governments.[29] Businesses may also increase amicus participation in a more pro-business, conservative Court. Conversely, individuals who see the Court favoring better-resourced opponents may conclude that participating in an amicus brief may not make much difference.

With respect to ideology, formal theory suggests that groups that have the strongest bias toward a particular outcome will be most sensitive to contextual factors, like the ideological leanings of the justices (Bils, Rothenberg, & Smith, 2020). Empirical research shows that when a prominent liberal interest group supports a particular party with an amicus brief, all other things being equal, a conservative justice is more likely to support the opposing party (Box-Steffensmeier, Christenson, & Hitt, 2013). This suggests that participation by liberal groups may do more harm than good in some cases, and strategic groups are likely to be sensitive to this. Additionally, research shows that interest groups, at least those that rely on membership support, are more likely to file amicus briefs in cases they are more likely to win (Hansford, 2004a).

However, amicus curiae have to contend with other strategic considerations as well. Unlike litigants who can choose whether or not to seek Supreme Court review of a lower court decision, potential amicus filers are faced with a situation in which a petitioner has already made the decision to raise an issue to the Court's attention. There are two stages at which amicus briefs can be filed: the certiorari (cert) stage and the merits stage. If an amicus participant weighs in at the cert stage, it may increase the likelihood that the Court grants the petition, even if the brief argues against granting cert (Caldeira & Wright, 1988). Therefore, strategic behavior is particularly important at the cert stage.

However, once the Court has decided to hear the case, a decision not to file an amicus brief will not stop the Court from considering the issue. Interest groups are likely to engage with policymaking venues that are already considering their interests (Holyoke, Brown, & Henig, 2012). Once the Court has taken the case, groups may prefer to make the effort to influence the outcome rather than having the Court decide without their input, even if they anticipate that their brief will make little difference. Studies of the rise in participation of conservative interest organizations before the Court over time suggest that groups often engage in counteractive lobbying, seeking to negate or at least balance the influence of their ideological opponents (Hollis-Brusky, 2015; Southworth, 2019; Teles, 2012). Further, groups may feel they need to be seen "fighting the

[29] The federal government's participation as an amicus is not always voluntary. The Court may issue a "Call for the Views of the Solicitor General" (CVSG), which the OSG treats as an order to participate (Pacelle, 2003). However, the number of CVSGs has been relatively low and consistent over time (see Appendix Table C1 for the precise numbers in our time period), so we do not expect it to affect the overall patterns of participation.

good fight" to please members and donors, even if they do not expect to win (Hansford, 2004a), and may use amicus participation as an opportunity to credit claim for their efforts to their members and the public (Gunderson, Widner, & Macdonald, 2023). Thus, expectations about whether the Court will be receptive to an amicus curiae's position are likely to matter less at the merits stage than they do at the cert stage. This is particularly true for groups who do not expect a favorable reception at the Court. We should expect them to participate least at the cert stage.

1.3.5 Expectations

Integrating previous research with our own observations of litigant and amicus behavior leads us to the following testable expectations about how the confirmation of Trump's Supreme Court nominees affected litigant and amicus behavior. Remember that we expect the effects to be cumulative. Specifically, we expect the strongest effects to become evident after Trump's second justice, Brett Kavanaugh, replaced frequent swing justice Anthony Kennedy, and to further intensify after the confirmation of Amy Coney Barrett gave the Court a conservative supermajority. Our expectations are as follows:

H1: The most **politically disadvantaged groups** will become **less likely** to participate in Supreme Court **litigation and amicus briefs at the cert stage** after the addition of new Trump appointees to the bench.

H2: **Businesses, interest groups, and governments** will become **more likely** to participate in Supreme Court **litigation and amicus briefs at the cert and merits stages** after the addition of new Trump appointees to the bench. (Note, however, that the expectations for governments are conditional on ideology, as noted in H4.)

H3: **Individuals** will become **less likely** to participate in Supreme Court **litigation and amicus briefs at the cert stage** after the addition of new Trump appointees to the bench.

H4: **Conservative governments and interest groups** will become **more likely** to participate in Supreme Court **litigation and amicus briefs at the cert and merits stages** after the addition of new Trump appointees to the bench.

H5: **Liberal governments and interest groups** will become **less likely** to participate in Supreme Court **litigation and amicus briefs at the cert stage** after the addition of new Trump appointees to the bench.

1.4 Data and Measures

To test our expectations, we assembled two original datasets on participation in Supreme Court litigation. The first is a dataset of all petitions for certiorari on which the Supreme Court took some kind of action in its October 2016 through October 2021 terms.[30] We pulled the docket numbers, party names, and actions from the Supreme Court Journals, the official minutes of the Court.[31] The vast majority of the petitions for certiorari were denied. Approximately 1% were granted full hearing, and the remainder were granted and summarily decided. During our period of study, the Court denied between 4,722 and 6,157 petitions per year and granted full review to between 60 and 78 petitions per year.[32] The journals include the dates the Court took action rather than the dates the petitions for certiorari were filed, so we used Python to scrape the filing dates from the Supreme Court website.[33] The second dataset includes all parties and amicus brief signers on the 396 cases the Court gave full hearing during the 2016 through 2021 terms.[34] This data set was collected using SCOTUSblog's term archive, which provides information on all cases heard each term since 2007, with links to all case filings.[35]

We connect information on the parties and amicus participants with three temporal events: the confirmation of Neil Gorsuch on April 7, 2017, the confirmation of Brett Kavanaugh on October 6, 2018, and the confirmation of Amy Coney Barrett on October 26, 2020. We chose confirmation date and not nomination date because litigants and amici cannot be certain when or whether a nominee will be confirmed, and thus whether the nominee will be involved in deciding their cases, injecting uncertainty into their strategic calculus. Under Supreme Court Rule 13, litigants have only 90 days after a final decision by the lower court to petition for certiorari, so they cannot wait around to see how a nomination plays out before deciding.[36] Further, cases heard after nomination but before confirmation for both Justices Gorsuch and Kavanaugh were heard by a Court split evenly between liberal and conservative appointees. In our data,

[30] By law, Supreme Court terms begin on the first Monday of October and run into the following calendar year. 28 U.S.C. §2.

[31] The Journals are publicly available on the Court's website at https://www.supremecourt.gov/orders/journal.aspx.

[32] See Table 9 in Appendix A for details on grants, summary dispositions, and denials by term.

[33] Docket information is available at: https://www.supremecourt.gov/docket/docket.aspx?Search=&type=Docket.

[34] We exclude two cases from the analysis, under docket numbers 20A8 and 19A1016, because they are stay applications.

[35] https://www.scotusblog.com/case-files/terms/.

[36] Rules of the Supreme Court of the United States, www.supremecourt.gov/filingandrules/2023RulesoftheCourt.pdf.

74 cases were heard prior to any of the Trump justices' confirmations, 96 were heard between the confirmations of Gorsuch and Kavanaugh, 129 were heard after the confirmations of both Gorsuch and Kavanaugh but before Barrett's, and 97 were heard after all three were confirmed. We then compare filings in the four distinct time periods in our data: before any Trump appointees took the bench, after Gorsuch but before Kavanaugh and Barrett, after Kavanaugh's confirmation but before Barrett, and after all three.

Next, we categorize the parties and amici to test our hypotheses. Recall that Hypothesis 1 suggested that the most politically disadvantaged groups will become less likely to submit petitions for certiorari or amicus briefs as the Trump appointees join the bench. To operationalize political disadvantage, we consider both the social construction and the power of those involved. Social construction refers to whether a group is considered "good" or "deserving" of favorable policy outcomes (Schneider & Ingram, 1993). Power here refers to political power: the ability to make campaign contributions or vote in significant numbers, for example. A group can be seen as undeserving but still powerful, like big businesses, which are often perceived as greedy and exploitative, but play an important role in the national economy that may command policymakers' attention. They also have substantial resource advantages that can be used to meet their political goals. Conversely, groups can be seen as deserving but not powerful. For example, children are generally valued by society but lack the right to vote or the ability to make financial contributions, which reduces their influence with policymakers (Widner, 2020). Finally, some groups are both negatively constructed and not powerful. An example of this is people who are incarcerated. They are often viewed as wrong-doers who need to be punished, and many of them have lost the right to vote due to felony convictions. While both negative construction and low political power are disadvantages in the policymaking process (Schneider & Ingram, 1993), those who have both negative constructions and low power are the most politically disadvantaged.

To operationalize disadvantage, we use crowdsourced ratings of social construction and political power from Kreitzer and Smith (2018). Because the social construction of a group is inherently about public perception, crowdsourcing provides a powerful way to assess how different groups are viewed. Kreitzer and Smith (2018) asked respondents to separately rate a group's "deservingness" and their power. They found that some groups' construction varied greatly with the respondents' political affiliations, while other groups' constructions were more consistent. Though Kreitzer and Smith (2018) consider more than seventy distinct groups, here we focus on only the most disadvantaged as a conservative test of our expectations. We coded only groups

Table 2 Groups ranked lowest in policy deservingness and power in Kreitzer and Smith (2018)

Group	Negative Construction	Low Power	Both
Super PACs	X		
Big Banks and Corporations	X		
Congress	X		
Media	X		
Criminal Defendants/Prisoners	X	X	X
People on Public Assistance	X	X	X
People with Drug Addictions		X	
Undocumented Immigrants		X	
Children and Teens		X	
People with Disabilities		X	

who were at least one standard deviation below the mean rating in deservingness (we refer to this as negative construction), power, or both. Table 2 displays the groups that were coded in each category. Because Kreitzer and Smith (2018) did not include every possible litigant group in their data, this list is likely underinclusive of the most disadvantaged populations, but it provides a useful starting point for analysis.

We coded all petitioners and amicus filers with two dummy variables: (1) **Negative Construction**, which is coded as 1 if the group is listed in Table 2 as having negative construction (or low deservingness) and 0 otherwise, and (2) **Low Power** which is coded as 1 if they are listed as having low power and 0 otherwise. A petitioner or amicus filer did not need to be an individual member of a group to be coded as 1; interest groups that advocate for the interests of the group were coded as 1 as well. For example, public defenders' offices and associations of criminal defense lawyers generally file amicus briefs making arguments for the criminal defendant's side of a case, so they are coded as 1 for both negative construction and low power. Trade associations that represent big banks or big corporations are coded as negative construction but not low power. If an organization represents many groups, some of which have a negative construction or low power and some of which do not, they were coded as 0. For example, chambers of commerce, which represent both large corporations and small businesses, were not coded as having a negative construction. Similarly, the American Civil Liberties Union, which sometimes represents criminal defendants and undocumented immigrants but also represents many other groups, was coded as neither negative construction nor low power. Again,

this approach is likely under-inclusive, but it allows for a conservative test of our expectations. For businesses, we coded big banks and corporations and media as falling under negative construction. To operationalize this, we coded all financial services and media companies as negative construction. For other businesses, we only coded them as negative construction if they were on the *Fortune 1000* list during our period of study. All other businesses were coded as 0 on both negative construction and low power. This conservative coding was chosen to limit subjective judgments. We use our two dummy variables to classify the petitioners and amicus participants into four mutually exclusive categories: **negative construction only** (negative construction but not low power), **low power only** (low power but not negative construction), **negative construction and low power**, and **not disadvantaged** (neither negative construction nor low power).

For our repeat-player analysis, we follow scholars such as Songer and Sheehan (1992) and Hazelton and Hinkle (2022) and classify our petitioners and amicus filers into the following mutually exclusive categories: **business, government, individual, or interest group**. For governments, we also code whether they are federal, state, international, tribal, or local government actors. These distinctions are predictive of variation in case participation. Hazelton and Hinkle (2022), for example, find that in cases where the Court gave a full hearing over a thirty-year period, only 25% of individuals who filed a brief had done so previously, compared to 48% for businesses, 56% for federal government actors, and 72% of interest groups and subnational government filers. This coding also provides a proxy for resources for litigation (Songer et al., 1999). Businesses generally have resource advantages over individuals, while governments, particularly the federal government, tend to have the greatest resource advantages.

Finally, to test our ideological hypotheses, we code both state governments and interest groups into ideological categories. Specifically, we code state government actors[37] into three categories: blue, red, or purple, based on whether the state's attorney general and governor are both Democratic (**blue**), both Republican (**red**), or belong to different parties (**purple**). We chose to focus on attorneys general and governors for a few reasons. First, governors, as the head of their state, are considered to be chief legislators and party leaders, analogous to presidents and other chief executives with significant power (Kousser & Phillips, 2012). Second, because states' attorneys general are elected officials in most states and they represent their states in litigation, they are key players

[37] We include in this category actors like attorneys general, governors, or simply the "state of Arizona," but also state retirement boards and other state actors with political interests.

in litigation before the Court.[38] Governors are also often named in litigation as the executives of their states, so they also bear a closer relationship to the court process than does the state legislature or state supreme court, for example.

Similarly, we coded interest groups into three mutually exclusive categories: **liberal, conservative, and nonpartisan**. Liberal groups are those that explicitly mention a liberal or progressive agenda on their websites or other public materials[39] (e.g., Public Citizen or Texas Progressive Action Network), and conservative groups are those that mention conservative or family values (e.g., Washington Legal Foundation or Conservative Legal Defense and Education Fund). All those that did not expressly proclaim a liberal or conservative mission were labeled as nonpartisan. Groups labeled nonpartisan may pursue policy objectives more associated with one party or ideology – for example, reproductive rights or gun rights – but do not frame their missions in ideological terms. Most interest groups are not explicitly partisan: we identified only 170 liberal and 385 conservative organizations among the more than 6,000 interest groups in our data.

1.5 Looking Ahead

Up to this point, we have discussed the strategic incentives of litigants and amici together. However, the decision to file a petition for certiorari is not the same as the decision to participate in an amicus brief. The specific outcome of the case is usually more important to the parties, whereas amici are more often interested in the legal and policy aspects of a decision (Hazelton & Hinkle, 2022). Further, the costs of litigation fall more fully on the parties than on amici. Petitioners generally have to shoulder their own costs of litigation. In contrast, individuals and groups with shared interests typically co-sign amicus briefs, spreading out the work and the cost (Box-Steffensmeier, Christenson, & Hitt, 2013). Other differences between petitioners and amici necessitate different empirical approaches. For example, coding petitioners for certiorari into the categories described earlier is substantially more challenging than coding amicus participants. Petitioners are more numerous and are much more likely to be individuals. Those who sign amicus briefs are more likely to be repeat players and to be well known. For all these reasons we divide our analysis in the sections to come.

[38] In seven states, the attorneys general are not elected. In Alaska, Hawaii, New Hampshire, New Jersey, and Wyoming, attorneys general are appointed by the governor, in Tennessee the attorney general is appointed by the state supreme court, and in Maine the attorney general is appointed by the state legislature.

[39] We used Grossmann's coding of conservative and liberal groups for those interest groups included in both our data and his. For those remaining, we searched for each individual group online and read their website descriptions of their missions.

Section 2 takes a detailed look at the petitioners for certiorari. It discusses the techniques we employed to code them into our categories of interest, describes what we have learned about who filed petitions during the years of our study, and analyzes whether and how that has changed as Trump's appointees have been confirmed. We find support for our political disadvantage and ideological hypotheses, but less support for our repeat player hypotheses. Trends suggest that the most politically disadvantaged groups have been filing fewer and fewer petitions as each Trump justice joined the bench, while Republican-controlled states and explicitly conservative interest groups have been ramping up their efforts to bring cases to the Court. Most other categories of filers have remained fairly steady in their rates of filing or seen only modest increases or decreases.

Section 3 shines a similar light on amicus participants. It explains two different opportunities amici have to file briefs – the certiorari stage and the merits stage – and tests our hypotheses at each stage. Our most significant findings relate to our ideological expectations. Red states and explicitly conservative interest groups have dramatically increased their participation in amicus briefs at both stages as each Trump justice has been confirmed. We also find the resource typology for haves and have-nots and repeat players is in some ways a poor fit for studying amici. The individuals who participate in amicus briefs, at least in our period of study, are sophisticated political, legal, and academic elites, and the have-nots are most commonly represented by skilled advocacy organizations.

Finally, Section 4 reflects on the major findings of this study. It argues that who is on the Court influences political participation and representation in ways that are worthy of our attention. We also look ahead to the potential impact of President Joe Biden's nominations and those of administrations to come. Changes in the perceived and actual receptiveness of one of our three branches of government to different groups have implications for law, policy, and political inclusion. These conclusions also reach far beyond the courts, and we argue that the importance of court appointments should be made more visible to litigants, voters, and candidates for offices who can affect the process.

2 Changes in Petitioner Behavior

Direct participation in litigation can be costly. Thus, litigants need to be strategic with respect to whether they take cases to court at all and, if they lose, whether they appeal (Boyd, 2015; Cooter, Marks, & Mnookin, 1982; Priest & Klein, 1984). A 2013 survey of trial lawyers conducted by the National Center for State Courts found that the median cost of litigation ranged from

approximately $43,000 to $122,000, depending on the type of case.[40] Most of these costs are incurred at the trial court level. However, because Supreme Court review is so rare, these medians do not accurately capture the costs of appealing to the Supreme Court. While data on cost is not readily available, reporting by NPR's Marketplace from 2013 suggests that the legal fees just to prepare a petition for certiorari cost between $100,000 and $250,000.[41] If the Court takes the case, fees for preparing briefs and delivering arguments would cost at least another $250,000. Legal costs have also likely increased substantially in the past decade. LexisNexis's CounselLink found that fees for law firm partner services increased between 3.4% and 4.5% over each of the last three years.[42] If trends were similar for the preceding seven years, this means that the cost of taking a Supreme Court case through certiorari and argument is now at least half a million dollars, at least if a petitioner is using experienced counsel.

Spending more on experienced counsel matters. All else equal, parties with attorneys who have appeared more frequently before the Supreme Court craft more persuasive arguments (Hazelton & Hinkle, 2022) and are most likely to win their cases (McGuire, 1995). Further, petitioners with greater resources are more likely to succeed in persuading the Court to grant review in the first place. For example, while the overall grant rate for petitions for certiorari has hovered around 1% for decades, the grant rate for paid petitions – that is, those where the petitioner pays the Court's filing and document fees rather than requesting an in forma pauperis (IFP) fee waiver – is closer to 5%.[43]

IFP petitioners generally do not fare nearly as well. An exception to this was during Earl Warren's tenure as chief justice. Warren directed clerks to assist in making IFP petitioners' legal claims, and under his leadership, the Court granted as much as 5% of the IFP petitions it received (C. Lane, 2003). The most famous example of a case brought by an IFP petitioner the Court heard during the Warren era is that of Clarence Earl Gideon, whose case ensured the right to counsel for indigent criminal defendants in state courts (*Gideon* v. *Wainwright*). More commonly, however, IFP petitioners have a very low probability of getting taken up by the Court – often as low as 0.02% of IFP petitions are granted.

[40] Paula Hannaford-Agor, "Measuring the Cost of Civil Litigation: Findings from a Survey of Trial Lawyers," https://www.ncsc.org/__data/assets/pdf_file/0035/27989/measuring-cost-civil-litigation.pdf.

[41] Adrian Hill, "How Much Does a Big Supreme Court Case Like Gay Marriage Cost?" https://www.marketplace.org/2013/03/25/how-much-does-big-supreme-court-case-gay-marriage-cost/.

[42] LexisNexis, "Law Firm Partner Rates Spiked in 2022, New LexisNexis CounselLink Report Finds," www.lexisnexis.com/community/pressroom/b/news/posts/law-firm-partner-rates-spiked-in-2022-new-lexisnexis-counsellink-report-finds.

[43] See, e.g., Supreme Court Press, "Success Rate of a Petition for Writ of Certiorari to the Supreme Court," https://supremecourtpress.com/chance_of_success.html.

Table 3 displays the total number of petitions the Court acted on during the October 2016 to 2021 terms, as well as the numbers of those which were denied, summarily decided (without full hearing), and granted full review. The status column indicates whether the numbers refer to IFP or paid petitions. Grant rates were generally low in this period. Paid petitions were granted full hearings between 3.5% and 4.55% of the time, with the highest rate during the 2016 term. In contrast, only between 0.09% and 0.19% of IFP petitions were granted full review during this period, with the highest rate during the 2018 term.

Summary dispositions are technically also grants of certiorari. In these instances, the Court grants the petition and decides the outcome of the case at the same time, often by applying the holding from another case the Court has already decided. Combining grants and summary dispositions gives a fuller picture of the number of cases the court has decided. When summary dispositions are included, we see that between 5.31% and 7.08% of paid petitions and between 0.95% and 1.81% of IFP petitions were decided by the Court in the period of our study.

IFP petitioners have a lower rate of success in getting the Court to decide their cases, but they also have fewer resource costs in filing a petition for certiorari. They do not pay filing or copying fees, and most act pro se (representing themselves), so they do not have to worry about attorneys' fees. Further, a substantial proportion of IFP petitioners are incarcerated, and thus highly motivated to appeal even if the odds are low, because an overturned verdict is likely worth whatever it costs in time and effort. In some cases, their very lives may be at stake. On the other hand, repeat players like governments, businesses, and interest groups are likely to be more interested in policy outcomes. Although they may have the resources to appeal any case, they may want to wait for the right plaintiff, the right set of facts, the right justices, or all three. For these reasons, we expect that our hypotheses about who is most and least likely to file petitions for certiorari as Trump justices take the bench should apply most clearly to paid petitioners, who are most likely to be sensitive to both financial and policy costs. Before turning to testing these expectations, we describe the challenges in coding petitioner data and the methods we use to meet those challenges.

2.1 Coding Petitioner Types

The greatest challenge for coding the petitioners into the categories described in Section 1 is the sheer volume of them: over our time period, more than 33,000 petitions for certiorari were acted on by the Court, and almost 30,000 of the petitioners filed only one petition. To test our expectations, we needed to

Table 3 Number of cases summarily decided, granted with a full hearing, and denied cert at SCOTUS by IFP status, 2016 to 2021

Term	Status	Total	Summary Dispositions	Denied	Granted	Percent Granted Full Hearing	Percent Decided
2016	IFP	4,513	36	4,470	7	0.16	0.95
2017	IFP	4,239	63	4,170	6	0.14	1.63
2018	IFP	4,725	38	4,678	9	0.19	0.99
2019	IFP	3,968	68	3,896	4	0.10	1.81
2020	IFP	3,322	34	3,285	3	0.09	1.11
2021	IFP	3,220	43	3,174	3	0.09	1.43
2016	Paid	1,496	24	1,404	68	4.55	6.15
2017	Paid	1,677	27	1,588	62	3.70	5.31
2018	Paid	1,567	19	1,479	69	4.40	5.62
2019	Paid	1,456	30	1,370	56	3.85	5.91
2020	Paid	1,680	43	1,561	76	4.52	7.08
2021	Paid	1,658	52	1,548	58	3.50	6.63

code these petitioners into the political disadvantage, repeat player, and ideological frameworks described in Section 1. Fully hand-coding the sample was not realistic, so instead we used a combination of hand-coding, text analysis techniques, and probability matching. We first cleaned[44] the data for ease of matching, then assigned petitioners into our categories of interest using the following steps:

1. **Hand-Coded Amicus Curiae**. We began by hand-coding all the amicus participants in the dataset used for Section 3. This was the logical starting place because there are fewer unique individuals and organizations in that dataset, and more of them are easily recognizable. We then matched the amicus coding to the petitioner dataset, allowing us to code any individual, government, or organization that appears in both datasets.
   - *Example: 3M Company was in our amicus curiae dataset and is also a petitioner in a case denied cert. We coded 3M as a business and as 1 on negative construction and 0 on low power because they are in the Fortune 1000.*
2. **Hand-Coded Parties in Cases Granted Cert**. We also hand-coded the parties in every case in which the Supreme Court granted cert and in which argument was heard during the October 2016 to 2021 terms, and matched these to the petitioner dataset.
   - *Example: Bank of America is a party in a case granted cert and is also a petitioner in a case denied cert. We coded Bank of America as a business, and as 1 on negative construction and 0 on low power because they are a big bank and are in the Fortune 1000.*
3. **Hand-Coded Petitioners**. We then hand-coded over 6,000 randomly selected petitioners with the help of research assistants.[45]

[44] Specifically, we replaced the following strings: co. and b.v. with company, u.s.a with united states, s.a. with public limited company, l.p. with limited partnership, p.c. with professional corporation (to help with the dictionary process in Step 5 below). We then scrubbed the data of all punctuation for the matching steps listed.

[45] We performed an intercoder reliability check on 9% of the petitioners who were coded by multiple research assistants; 73% of these randomly selected checks were fully consistent with each other. Of the checks that did not match, the largest proportion were a result of differences in coding strategies. Initially, the research assistants relied entirely on the Supreme Court's website to access information about the petitions. However, the Supreme Court website does not include links to petitions for certiorari that were filed before the end of 2017. As a result, students coding early in the project left much of the information blank. Later students used Google searches and other research tools to find the petitions or the lower court decisions to code the petitioners, and found information that previous students had not. When we compare intercoder reliability on only the petitions that were fully available through the Supreme Court website, 85% of petitioners were coded identically. For a full discussion of intercoder reliability, see Section B1 of the Appendix.

- *Example: Aaron Brothers, as Independent Executor of the Estate of William Slade Sullivan, was hand-coded as an individual and as 0 on both negative construction and low power because he does not fit any of our disadvantage categories.*

4. **Respondent Dictionary**. The identity of the respondent can also provide information on the identity of the petitioner. We took the full case names of the remaining petitions and coded based on common phrases or words in the respondent names.[46]
   - If the respondent is a warden, jail, or correctional facility, the petitioner is a prisoner, and therefore coded as individual with negative social construction and low power.
   - *Example: Mickey Frank Pryor was labeled as a prisoner in our data as he was suing Lorie Davis, Director of the Texas Department of Criminal Justice Correctional Institutions Division. We code Pryor as an individual and as 1 on both negative construction and low power.*
5. **Petitioner Dictionary**. We then created a dictionary with nearly 200 terms to capture common phrases that would correspond to our categories in the petitioners' data and used these for additional coding.[47]
   - If the petitioner's name included the term 'sheriff' they would be coded as a government with neither low power and negative construction.
   - *Example: Gannett Co., Inc., is edited to be Gannett Company, Incorporated. Because the petitioner name includes both company and incorporated, it is identified as a business with 0 on low power.*
6. **IFP Coding.** The docket numbers for paid petitions and in forma pauperis (IFP) petitions are numbered in different sequences.[48] Any case in which the portion of the docket number after the hyphen is 5001 or higher (i.e., 16-5001), involves an IFP petitioner and was therefore coded as an individual.
   - *Example: Aaron Matthew Oleston filed under docket number 21-7442, so he was labeled as an individual.*
7. **Fuzzy Matching**. We used fuzzy matching for the remaining petitioners missing their repeat player categories, with a maximum Jaro-Winkler (JW) distance of 0.2.[49] We chose not to use fuzzy matching for negative construction and low power as these are much more context dependent, especially for individuals in our data.

[46] Appendix Section B2 includes the full respondent dictionaries.
[47] Appendix Section B3 includes the full petitioner dictionaries.
[48] See: National Archives Catalog, Appellate Jurisdiction Case Files, https://catalog.archives.gov/id/301668#.YYGlDB7naZs.link.
[49] There were initially about 500 observations that did not find a fuzzy match. We exported those observations, coded those manually, and added them to Step 3 above.

- We model this approach after Van der Loo (2014), which describes how to deploy approximate string matching in R. The JW distance "measures the number of matching characters between two strings that are not too many positions apart and adds a penalty for matching characters that are transposed" (p. 119). For our purposes, it is less important that these names match exactly, but instead that the method correctly identifies the petitioner *type*.
- *Example, Aaron Jensen was matched to Aaron J Webster with a JW distance of 0.16666667, so Jensen was labeled as an individual.* These names are not identical and the petitioners are not the same person, but JW distance does well on short strings like names, which is sufficient for our broad coding of repeat player types (Van der Loo, 2014). We also performed spot checks on the data to check the success of the fuzzy matches.
- This approach allows us to easily identify thousands of individuals in our data without hand-coding them. There are important tradeoffs in this decision, however. Hand-coding each observation would not be possible given the large quantity of observations: one alternative is that we could rely on a lower number of hand-coded observations. Or, we could employ the strategy we use here and use fuzzy matching with potential room for error, but be able to use the full dataset in our results (Kaufman & Klevs, 2022). Because we seek to describe the *overall* pattern of litigant participation, rather than just a subset, we use fuzzy matching, but acknowledge room for noise in this approach. We do also note, though, that we performed extensive spot checks in our iterative fuzzy matching process to ensure there are not obvious errors.

8. **Additional Hand-Coding.** At this point, all of our petitioners in the dataset had been coded into their repeat player types. We then hand-coded the political disadvantage variables (low power and negative construction) for all businesses, interest groups, and governments, which combined make up about 8% of all petitioners in our period of study. This also allowed us the opportunity to double check and correct any errors from the fuzzy matching.
    - *For example, In-N-Out Burger, Incorporated was labeled as a business using the dictionary approach in Step 5. We then hand-coded it as 0 on negative construction and low power, because while it is a business, it is not a "big business" under our definition (see Section 1).*

9. **Proportion Matching.** Individuals make up 92% of all petitioners. After all of the previous steps, about 55% of them were still not coded for our negative construction and low power variables. We used proportion matching to assign the remaining political disadvantage coding for those individuals. Specifically, we pulled an additional random sample of 500 of these individuals and hand-coded them for negative construction and low power. We then split the sample by IFP status, because IFP petitioners are far more likely to be politically disadvantaged. Per our random sample, IFP petitioners had an 80% chance of being low power and negative construction. Petitioners who were not IFP had a 28% chance of being low power and a 25% chance of being negative construction. We used these proportions to randomly assign coding on these two variables to the remaining individuals in our data based on IFP status.
    - This approach, while not perfect, allows us to see the full picture of participation by individuals in our data. One alternative to proportion matching is iterative hand-coding. Not only would this be prohibitively time-consuming, but also may be impossible. There may be zero records (legal or otherwise) of these individuals online to determine their identity, let alone their traits to determine negative construction and low power status. Therefore, while the proportion matching is not exact, we are reasonably confident that it mirrors the approximate proportions of individuals in our data by political disadvantage.
    - We checked for whether the distribution of these variables changes over our four discrete time periods in the Appendix; they do not. See Appendix Section B4 for these comparisons.

We use these codings for our petitioner analyses in this section. To verify our assumptions regarding the proportion matching, we conducted similar analyses using only samples from the hand-coded petitioners. These are presented in the Section B5 of the Appendix. The trends are substantially similar.

2.2 Analysis

To test the hypotheses described in Section 1, we use time trends to see whether and if the identities of petitioners for certiorari changed over time as Trump's appointees joined the Supreme Court. The analyses that follow use the number of filings by relevant group type by month to plot these trends.[50] While this

[50] We have also examined filings per week, which show the same trends but result in busier graphs.

relatively simple analysis does not allow us to claim that the changing make-up of the Supreme Court *caused* the trends we are seeing, it does provide evidence that the composition of the parties petitioning the Court for review has changed over time.

2.2.1 Trends for Politically Disadvantaged Petitioners

As we discussed in Section 1, courts have long been seen as the most receptive policymaking venue for politically disadvantaged groups (Cortner, 1968; Vose, 1959). However, we expect that the make-up of the courts generally and the Supreme Court more specifically may shift how receptive disadvantaged petitioners expect the Court to be to their interests. We expect that the most politically disadvantaged will become cumulatively less likely to seek Supreme Court review as each new Trump nominee takes the bench. We conceptualize the most politically disadvantaged groups as those that have both negative social construction and low power (Kreitzer & Smith, 2018; Schneider & Ingram, 1993).

Figure 4 shows the trends in numbers of petitions for certiorari filed per month over time for each of our four mutually exclusive groups: those with low power only, those with negative construction only, those with both negative construction and low power (the most disadvantaged), and those who are not disadvantaged under our conservative definition. Petitioners with only one form of disadvantage – either low power *or* negative construction – file at remarkably similar rates that stay relatively consistent over time. Petitioners that are not disadvantaged file at a higher rate with slightly more fluctuation. On the other hand, the difference between the most disadvantaged petitioners and the other categories is stark. While the number of petitions filed by most group types stays more or less flat, petitions from the most disadvantaged litigants decline dramatically. The drop begins before the end of 2018, drops most after Justice Kavanaugh's confirmation, and continues dropping after Barrett's appointment, before leveling off shortly thereafter.

One potentially confounding factor is that our period of study overlaps with the COVID-19 pandemic and associated national emergency. Courts and related institutions like jails and prisons faced challenges in safely conducting their work during this time (Dolovich, 2020). The Bureau of Justice Statistics found that the nation's prison population decreased by more than 16% in the first year of the pandemic. This, along with restrictive safety practices adopted in many jail and prisons during this period, may help account for the falling number of petitions by the most disadvantaged litigants, many

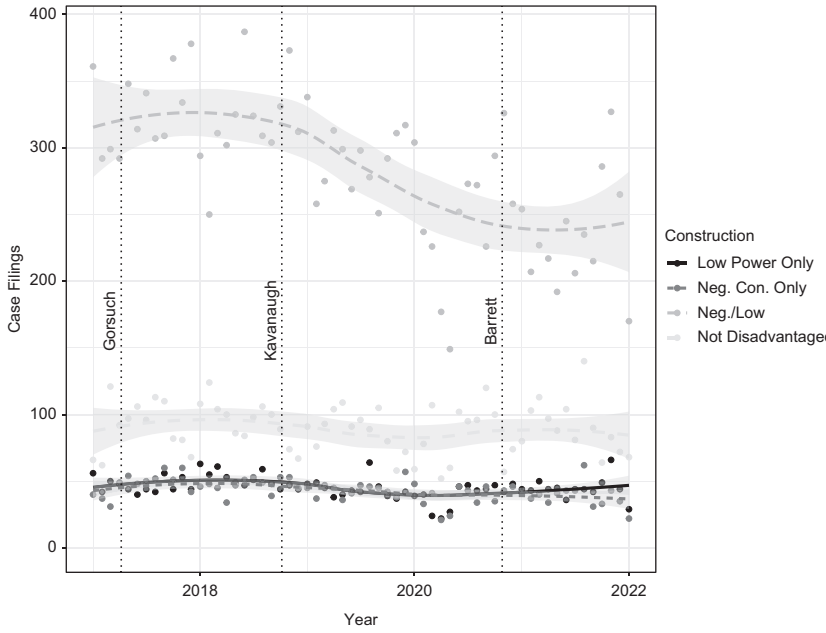

Figure 4 Monthly cert filings by political disadvantage pre- and post-candidate confirmation with a plotted loess line

of whom are criminal defendants and incarcerated people.[51] However, there is reason to believe that the trend in filings by the most disadvantaged petitioners was not predominantly driven by the pandemic. First, the decline in disadvantaged petitions begins during the 2018 term – more than a year before the pandemic. Second, petitions in other categories do not show any notable sustained decline around the time of the pandemic, suggesting that pandemic-related delays in lower court processing of cases were not driving changes in petitioner composition; otherwise, all categories of filers would be expected to have fallen.

While it is true that the number of individuals experiencing incarceration has declined over this period, that decrease is not enough to explain the sharp decline in petitions. According to data collected by the US Department of Justice, prison populations have declined approximately 14% over our period of study.[52] In contrast, the number of petitions for certiorari from the most

[51] E. Ann Carson, Melissa Nadel, and Gerald Gaes, Bureau of Justice Statistics, "Impact of COVID-19 on State and Federal Prisons, March 2020–February 2021," https://bjs.ojp.gov/library/publications/impact-covid-19-state-and-federal-prisons-march-2020-february-2021.

[52] E. Ann Carson, "Prisoners in 2021 – Statistical Tables," https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/p21st.pdf.

politically disadvantaged petitioners fell by over 30%. Although COVID and decarceration may have played some role, the overall trend is consistent with our first hypothesis.

2.2.2 Trends for Repeat Players

In Section 1, we explained that we expected an increasingly conservative Supreme Court to exacerbate the advantage of repeat players with greater resources. We expected these repeat players – specifically businesses, interest groups, and governments – to react strategically to changes in the Court's composition by increasing their advocacy before the Supreme Court. Conversely, we hypothesized that individuals would expect the Court to be less receptive as the Court grew more conservative and would become less likely to file. However, at the beginning of this section we also speculated that IFP petitioners – all of whom are individuals and who may be relying on the courts for literal life-and-death decisions – might be less likely to be affected by strategic incentives and less responsive to changes in the Court.

The trends in Figure 5 are inconsistent with our expectations. Filings by most group types stay relatively flat. Business filings decrease slightly, and IFP individuals decrease most dramatically. This is consistent with the political disadvantage analysis, but inconsistent with our hypothesis concerning behavior of repeat players.

While overall government filings look mostly flat in Figure 5, when we disaggregate by government type we see a more nuanced picture. As Figure 6 shows, filings by state governments were on the decline when Gorsuch was confirmed, but began to increase again after Kavanaugh's confirmation, then skyrocketed after Barrett's confirmation. By the end of 2021, they were nearly double what they were in 2016. Filings by the federal government increased after Kavanaugh's confirmation in a period during which both the Court and the administration were conservative, but then declined in 2021 as President Biden took office. This is consistent with our conditional expectations embodied in Hypotheses 2, 4, and 5. Filings by international, local, and tribal governments do not follow any clear pattern.

2.2.3 Trends by Ideology of Filers

Figure 7 shows that the increase in filings by state governments was not a uniform increase in participation by *all* state governments. Instead, the increase is driven by petitions for certiorari from red (Republican-controlled) states. As the Court has grown increasingly conservative, red states have filed more petitions for certiorari. Here, the biggest spikes come after Justice Barrett was

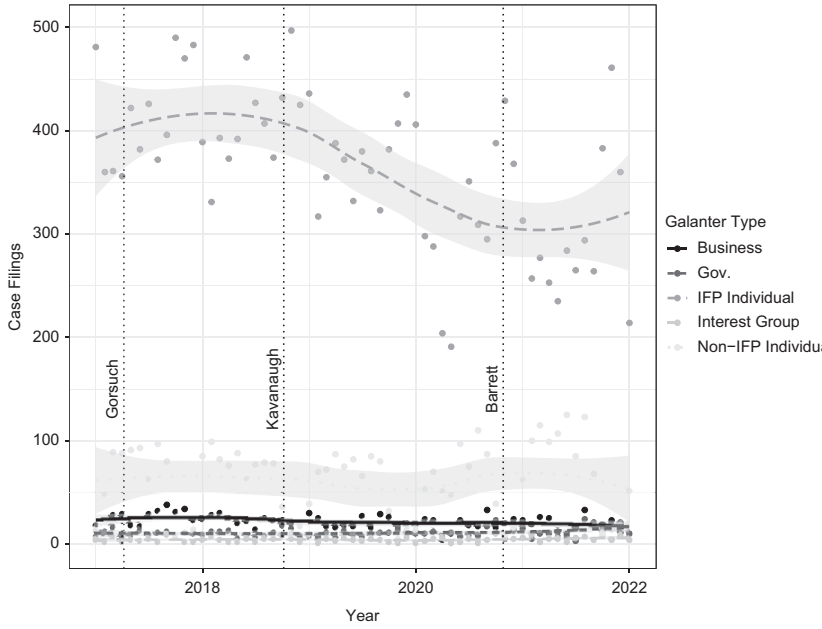

Figure 5 Monthly cert filings by repeat player filer type pre- and post-candidate confirmation with a plotted loess line

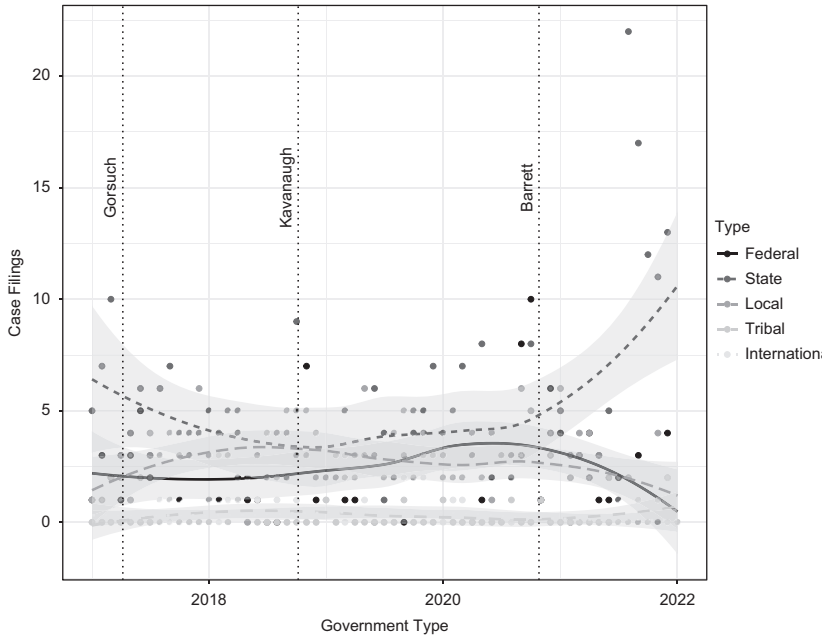

Figure 6 Monthly cert filings by government actors pre- and post-candidate confirmation with a plotted loess line

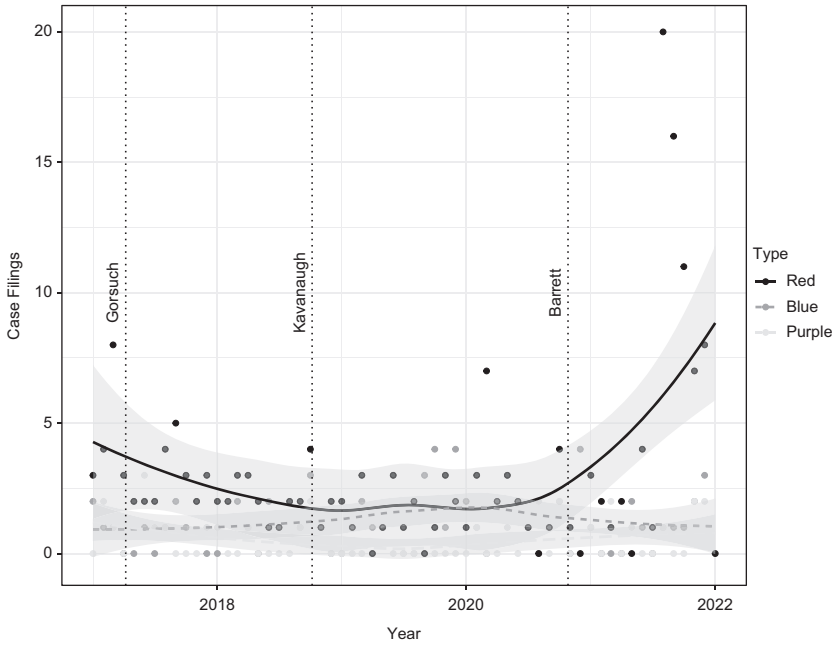

Figure 7 Monthly cert filings by state government actors pre- and post-candidate confirmation with a plotted loess line

confirmed, giving the Court a solid 6-3 conservative majority. This is consistent with Hypothesis 4. In contrast, purple (mixed control) states filed very few petitions at any point during this period. Blue (Democratic-controlled) state petitions are only slightly higher than those filed by purple states, though they show a brief bump in the first part of 2020. This does not support the decline predicted by Hypothesis 5, but it does offer more general support for our underlying theoretical expectation that liberal and conservative governments will respond differently to the Court's membership.

Red states are not the only conservative actors who increased their presence before the Court. Figure 8 shows that explicitly conservative interest groups have increased the number of petitions for certiorari they file with the Court since Trump's nominees were confirmed. At the beginning of our period of study, there are very few petitions from either explicitly conservative or explicitly liberal interest groups. Filings by conservative groups began to increase slightly before Justice Kavanaugh was confirmed, grew slightly until Justice Barrett was confirmed, and then increased again after her confirmation. This is consistent with Hypothesis 4 and our expectation that effects of the Court's membership changes will be cumulative. Nonpartisan interest groups still file more petitions overall and have increased their activity somewhat, but the gap

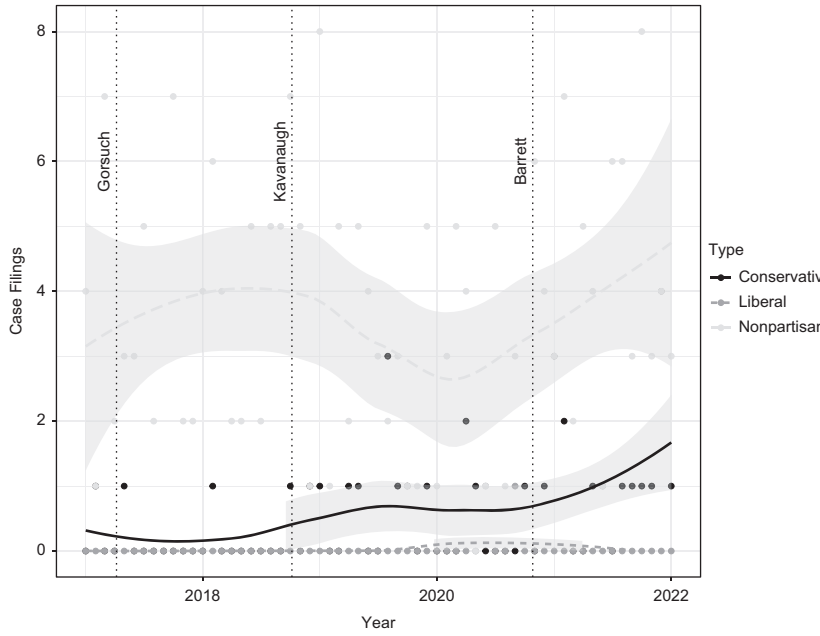

Figure 8 Cert filings by interest group type pre- and post-candidate confirmation with a plotted loess line

between nonpartisan and conservative interest groups is narrowing. We do not see a decrease in filings by expressly liberal interest groups in support of Hypothesis 5, but that may be because they were already essentially zero.

2.2.4 Summary and Conclusions

The patterns displayed in this section provide new insights into how the people and groups who petition the Supreme Court for certiorari are changing over time. While we cannot say with certainty that these changes have been caused by Trump's Supreme Court appointments, the findings are consistent with many of our expectations. In particular, we find that the most politically disadvantaged groups – many of whom are IFP petitioners – are filing fewer and fewer petitions, and that change is not fully attributable to the pandemic or decreases in the prison population. We also find that the most conservative states and interest groups have steadily increased the number of petitions for certiorari they are filing.

Some of our expectations are not supported, however. Most significantly, our expectations for increased participation by some repeat players are not supported. Businesses have actually decreased the number of petitions they file. While we cannot pinpoint the reason for this decrease, one potential explanation

is the friendliness of the Court, Democratic and Republican appointees alike, to business interests (Epstein, Landes, & Posner, 2017) – perhaps businesses do not necessarily feel the need to craft the law in their favor if they assume the decisions will be pro-business anyway. Participation by other repeat players, interest groups and governments, has stayed relatively level overall, but this is strongly conditioned by ideology, as we expected. Individuals who tend to be one-shotters and have fewer resources have reduced the number of petitions they are filing, consistent with expectations. This is not true for all individuals, however. Individuals with the resources to file paid petitions have remained relatively constant in their rates of filing, whereas IFP petitioners are the ones who have dropped off. This finding for individuals is more consistent with our political disadvantage hypothesis than our repeat player hypothesis.

These changes in who files petitions for certiorari before the Court have important implications for representation and outcomes. If IFP petitioners do not come to the Court, where can they go for recourse? If expressly conservative interest groups and states are filing more petitions, the Court has more opportunities to follow its preferences in a conservative direction. The cases it has decided in recent years suggest that it is eager to take those opportunities.

3 Changes in Amicus Behavior

In the previous section, we showed evidence that suggests litigants strategically changed their activity before the Court as more Trump appointees took the bench. This section considers another litigation participant, amicus curiae, and examines whether Trump's Supreme Court appointments have shifted the identity of the amicus curiae who are active before the Supreme Court. Changes in who files amicus briefs are important for two reasons. First, amicus briefs at the certiorari stage play an important role in agenda-setting on the Court. Petitions for certiorari are filed in thousands more cases each year than the Court could possibly hear, so the Court looks to cues like amicus briefs to identify the most important cases (Black & Boyd, 2013; Caldeira & Wright, 1988; Schoenherr & Black, 2019). Second, the arguments made in briefs shape the content of the Court's opinions. Supreme Court justices often cite amicus briefs and sometimes even lift language directly from the briefs into their opinions (Collins et al., 2015; Owens & Epstein, 2005; Spriggs & Wahlbeck, 1997). Amicus filers have incentives to craft legal arguments to influence the law in a beneficial direction; therefore, this lifting of language means these filers have a significant influence on the law. Who files amicus briefs shapes both the issues that make it onto the Supreme Court agenda and the substantive content of the law the Court makes.

Further, research suggests that the Supreme Court may use amicus participation as a rough proxy for public opinion. That is, the justices look to the coalitions of briefs on each side of a case for evidence of whose interests are affected by a case and the degree of policy coalescence on an issue (Hazelton & Hinkle, 2022). However, if the membership of the Court is shifting who participates in amicus briefs, the justices' perceptions of who is interested or how accepted a legal theory is may be skewed.

To examine amicus participation, we collected an original dataset of all those who submitted or signed on to an amicus curiae brief in a case decided by the Supreme Court during the October 2016 through the October 2021 terms. Our analyses suggest that while there has been a general increase in amicus participation over our period of study, growth has been most rapid among filers we expect to view a conservative Court as particularly receptive to their views. Moreover, growth has been much slower among the most politically disadvantaged groups, though this appears to be mostly a function of changes to the issues that are making it onto the Court's docket.

3.1 Amicus Participants and the Changing Make-up of the Court

Although change in the membership of the Court does not, by itself, have a significant effect on the number of amicus briefs filed, scholars suggest that ideological heterogeneity on the Court results in more briefs being filed because there is more uncertainty about the potential outcome (Salzman, Williams, & Calvin, 2011). Conversely, we might expect that the decreasing ideological heterogeneity on the Supreme Court with the arrival of the Trump appointees will depress amicus filings, at least by those who do not expect the Court to be receptive to their views. Further, groups' decisions to participate as amicus curiae are often spurred from the outside. Members of the Supreme Court bar frequently identify organizations that should be heard from and help to shape the messages amici present (Larsen & Devins, 2016). These lawyers are keenly attuned to who is on the Supreme Court and what arguments are most effective in reaching them. Therefore, they would likely want to shape the pool of potential amicus participants to maximize the likelihood of influence.

Amicus briefs are filed at two distinct stages of Supreme Court review. Because the Court has discretionary jurisdiction over almost all of its docket, litigants seeking Supreme Court review must first file a petition for certiorari, asking the Court to grant review of their case. Amicus briefs are often filed at this stage to encourage or discourage the Court from hearing the case at all. Evidence suggests that these briefs provide an important signal to the Court about the importance of a case. The more briefs filed in a case at the certiorari

stage – no matter whether those briefs are advocating grant or denial – the more likely the Court is to grant review (Caldeira & Wright, 1988; Schoenherr & Black, 2019), though the value of this signal may have decreased somewhat as amicus participation at the certiorari stage has become more common (Caldeira, Wright, & Zorn, 2012). Amicus briefs can also be filed after the Supreme Court has granted review, to aid it in its consideration of the merits of the case. In other words, briefs filed at the *certiorari stage* seek to influence the Court's agenda, while those filed at the *merits stage* seek to influence outcomes and policy. The decision to file an amicus brief is always strategic, though different factors may shape strategic decision-making at each stage. Specifically, groups that expect the Supreme Court to be sympathetic to their interests should be more active at the certiorari stage than groups that do not. Once the Court has already decided to hear a case, incentives shift for groups who do not expect a favorable reception. Even if they would not have wanted a case to be heard, groups may feel compelled to offer a brief at the merits stage in order to counteract arguments that harm their interests or to show their supporters that they are working to defend their policy preferences (Hansford, 2004b).

3.2 Data

To analyze shifts in amicus behavior resulting from Trump's nominees to the Supreme Court, we collected information on the 396 cases heard in the 2016 to 2021 terms[53] and gathered all the amicus signers on those cases – in total, over 53,000 signers on nearly 6,000 individual briefs (Gunderson, Widner, & Macdonald, 2023). Figure 9 displays the number of amicus briefs and amicus signers for cases heard between 2016 and 2021. This figure includes briefs at the certiorari stage (left panel) and merits stage (right panel). The average case had over 13 amicus briefs filed (with a median of 9), with over 130 organizations, individuals, or businesses signing on as amicus participants on average (with a median of 41). Some cases had no amicus briefs and some had more than 100. The maximum number of signers on one case was over 7,000. On average, from 2016 through 2021, there were approximately 1,000 amicus briefs filed in decided cases each year, with anywhere from 5,000 to 14,000 participants on those briefs. The number of briefs has trended up slightly over the time frame of our study – rising from an average of 12 briefs per case in 2016 to 15 briefs per case in 2021 – while the number of participants on those briefs has exploded.

Once we disaggregate this information by stage, however, it is clear that most amicus activity is occurring at the merits stage. Cert stage amicus participants

[53] We exclude two cases from our analysis, under docket numbers 20A8 and 19A1016 as they are stay applications.

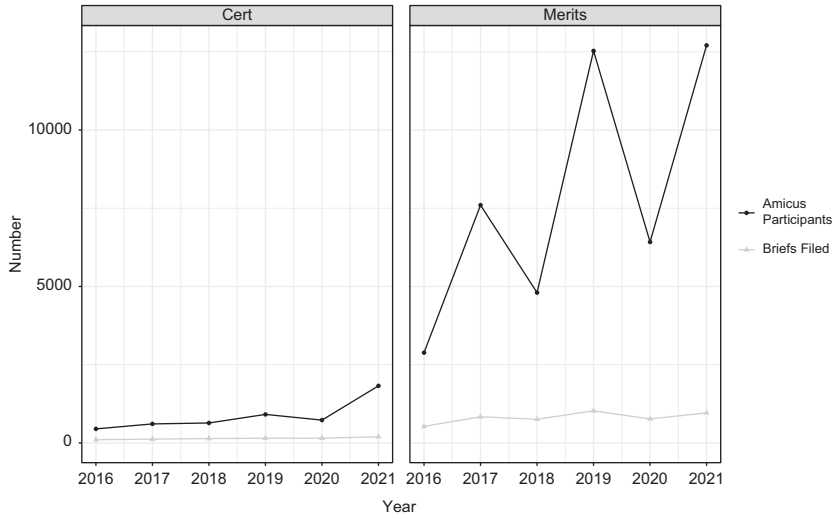

Figure 9 Amicus briefs and amicus participants over time at the cert stage (left panel) and merits stage (right panel), 2016 to 2021

annually typically number in the hundreds, but merits participants regularly exceed five thousand. Between 100 and 200 amicus briefs are filed at the cert stage per year, compared to nearly a thousand at the merits stage. Interestingly, Figure 9 also reflects fairly consistent growth in cert filings over time, but more variation in merits amicus participants per year.

We connected our dataset of amicus participation with the confirmation dates of Justices Gorsuch, Kavanaugh, and Barrett. Rather than pooling amicus briefs across both stages at which they could be filed – the cert or merits stages – we look at each stage separately because of the potential for different strategic incentives at each stage. We then hand-coded all of our political disadvantage, repeat player, and ideological variables for all amicus participants using the decision rules described in Section 1.[54]

Because our dataset consists of cases in which certiorari was granted, there may be concerns that analysis of amicus briefs at the certiorari stage for granted cases may not be representative of all amicus briefs filed at this stage. Gathering the level of information we did on all amicus briefs in cases where certiorari was denied was not feasible. Instead, to address potential concerns, we asked

[54] The analysis includes CVSG briefs, those briefs that are requested by the Court from the Solicitor General. Though these briefs do not constitute voluntary participation (Black & Owens, 2011; Johnson, 2003; Rogol & Montgomery, 2021), we nevertheless include them here as this participation is relatively constant over our time period. See Appendix Table A2 for the number of CVSG brief requests received by the OSG each year.

the research assistants who hand-coded petitioners for Section 2 to also collect information about whether the petitions they were investigating had amicus briefs filed supporting or opposing certiorari. They did this for 4,466 randomly sampled petitions for which certiorari was denied. Only 134 of these cases (0.03%) had any amicus briefs submitted. In contrast, 254 of the 396 cases (64%) in our dataset (all cases in which cert was granted) had briefs filed at the certiorari stage. This is consistent with previous studies finding that amicus briefs at the certiorari stage are highly correlated with grants of certiorari (Caldeira & Wright, 1988; Schoenherr & Black, 2019) and suggests that our dataset contains the majority of cert-stage amicus briefs filed. However, we wanted to be sure that there were not systematic differences in *who* was participating in amicus briefs at the cert stage in those cases that were granted and those that were not, so we gathered amicus data on the 134 cases with cert-stage briefs from the un-granted random sample for comparison. Generally, there are fewer briefs per case in the un-granted sample – the mean number of briefs for these 134 cases was just 2.4 briefs, and the median was 1. Generally the patterns with respect to who is participating on these briefs look similar to our analysis below, though the number of participants per case in those where cert was granted are generally higher.[55]

3.3 Analysis

Amicus briefs are crafted in response to cases already being considered by the court, either at the certiorari or merits stage. As a result, raw numbers of amicus briefs filed are not as useful as the raw numbers of petitions for certiorari used in Section 2. Instead, because the number of cases the Court agrees to hear varies from year to year, the most informative measure is the number of briefs filed per case. Standardizing by case allows us to make an apples-to-apples comparison across our different periods of interest. For this reason, the analyses that follow use the average number of amicus participants of each type per case in each period as the basis for comparison.

3.4 Political Disadvantage Analysis

As with petitioners, we expect that the most politically disadvantaged groups – those with negative social constructions and low power – will participate less in amicus filings as each Trump appointee is confirmed and the Court becomes more conservative, particularly at the certiorari stage when the Court has not yet

[55] There are a couple of exceptions that we will mention in conjunction with the relevant analyses below. The detailed comparisons between granted and un-granted cases are presented in Appendix Section C2.

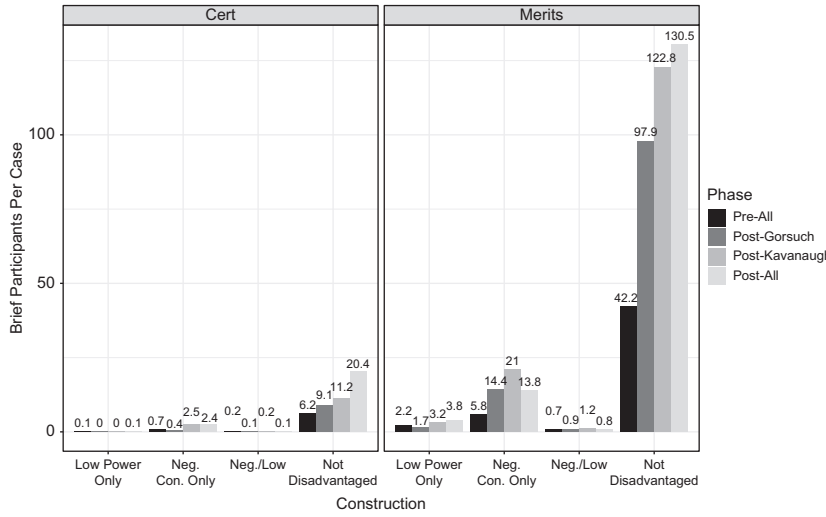

Figure 10 Filings by political disadvantage pre- and post-candidate confirmation, by stage

decided whether to take the case. Figure 10 displays the average participation by group type at both the certiorari and merits stages.

Amicus brief participation is much lower overall at the certiorari stage than at the merits stage, and patterns do appear to differ by group. Participation by groups with low power only is practically nonexistent at the cert stage. Groups who are both low power and negatively constructed start low and show a decline as Trump's nominees are confirmed, as Hypothesis 1 predicted.[56] Meanwhile, the not disadvantaged show a steady increase in amicus participation at this stage. Participation in amicus briefs at the merits stage follows a slightly different pattern. Like at the cert stage, the most advantaged groups increase participation in merits briefs with every Trump appointment. Groups with either negative construction or low power generally increase, but the pattern is not as steady – there are occasional dips at the merits stage. In contrast, the most disadvantaged groups follow a weak bell curve. They increase very slightly in merits participation after Justices Gorsuch and Kavanaugh's confirmations, then fall after Justice Barrett's confirmation. These patterns are mostly consistent with Hypothesis 1, and also support the intuition that there are slightly different strategic considerations at the merits stage.

[56] Those with low power and negative construction are the only one of these categories for whom the average number of amicus participants per case was higher in cases denied certiorari than in those in cases granted certiorari. However, the difference is very slight – 2.33 per case compared to 1.8 – and therefore unlikely to change the trends presented here.

Though Figure 10 demonstrates some differences between groups with different levels of political disadvantage, these differences may not be solely a result of amicus strategy. It is possible that the changing composition of the petitioners for certiorari described in Section 2 changed the opportunities for different types of groups to participate in amicus briefs at the cert stage. Similarly, it is possible that changes in the membership of the Court led to changes in the *types* of cases the Court accepted, which in turn presented fewer opportunities for disadvantaged groups to participate as amici. To test for this possibility, we estimate an ordinary least squares (OLS) regression that includes issue area fixed effects drawn from the Supreme Court database (Spaeth et al., 2022).[57] The dependent variables are the logged number of brief participants per case in each of the four categories described above. We regress the number of brief participants on a case on three dummy variables as specified in the previous sections: Post-Gorsuch, Post-Kavanaugh, and Post-All. The excluded category is cases in our time period before any Trump appointees to the Supreme Court were confirmed. The dataset we use is a case-stage analysis: that is, for each of the political disadvantage categories, we have two regressions: one for amicus participation at the cert stage (labeled as 'C' in the regression table) and one for the merits stage (labeled as 'M'). This allows us to assess differences in strategic incentives at each stage. Table 4 contains the results.[58]

Once the issue areas the petitioners are filing in or the Court is hearing are accounted for, support for Hypothesis 1 disappears. The decreases in participation by amici who have negative social constructions and low power at the cert stage that we observed in Figure 10 are not statistically significant. At the merits stage, this group actually shows an increase in amicus participation after Justice Kavanaugh's confirmation, though just in that period. Similarly, groups with low power but not negative construction increase amicus participation at the cert stage after Justice Barrett's confirmation and at the merits stage after Kavanaugh's. The increases in the number of amicus participants per case for those who are not disadvantaged under our coding scheme were dramatic in Figure 10, but appear to be entirely related to changes in the issues involved in the case. This group actually decreases participation at the cert stage after Barrett's confirmation, and no perceived increase at either stage turns out to be significant in the regression models. This analysis suggests that the differences we see between groups in Figure 10 may be driven more by the strategic decisions of petitioners and justices than by those of amici.

[57] See the Appendix Section C4 for the regression results without fixed effects.

[58] The fixed effects coefficients are omitted from the regression tables presented in this section for space and clarity. However, they are provided in Appendix Section C3.

Table 4 Amicus filers by political disadvantage and likelihood of filing an amicus brief at cert or merits stage

	Dependent variable:							
	Logged Number Brief Participants on a Case							
	Neg Con. Only (C)	Neg Con. Only (M)	Neg./Low (C)	Neg./Low (M)	Not Disad-vantaged (C)	Not Disad-vantaged (M)	Low Power Only (C)	Low Power Only (M)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Post-Gorsuch	−0.024	−0.107	−0.096	0.179	−0.024	0.042	0.018	0.153
	(0.031)	(0.137)	(0.107)	(0.214)	(0.042)	(0.087)	(0.216)	(0.262)
Post-Kavanaugh	−0.020	0.158	0.085	0.409**	−0.032	0.121	0.181	0.423*
	(0.030)	(0.129)	(0.101)	(0.203)	(0.040)	(0.083)	(0.205)	(0.248)
Post-All	0.013	0.082	−0.017	−0.042	−0.076*	−0.008	0.452**	0.310
	(0.032)	(0.140)	(0.109)	(0.220)	(0.044)	(0.090)	(0.222)	(0.269)
Observations	372	372	372	374	372	372	374	374
R^2	0.020	0.197	0.081	0.173	0.078	0.261	0.103	0.110
Adjusted R^2	−0.024	0.161	0.040	0.136	0.036	0.228	0.063	0.071

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$
Issue area fixed effects included.

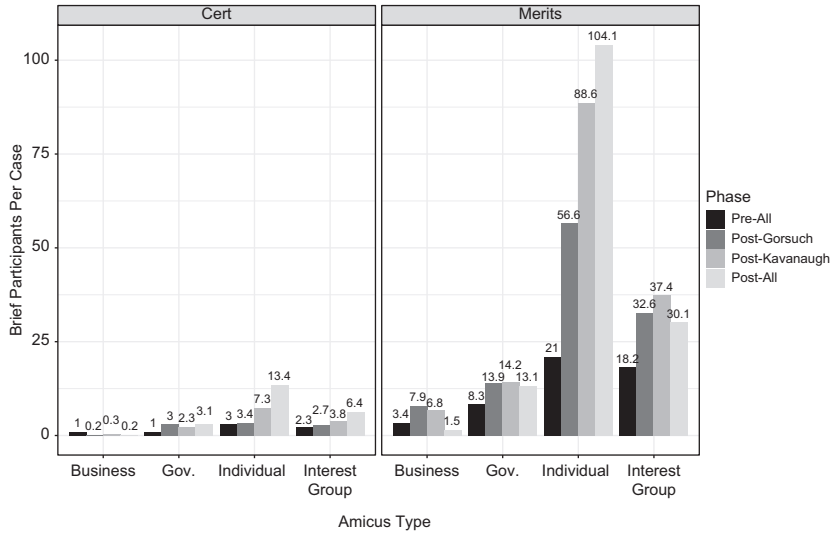

Figure 11 Filings by repeat player type pre- and post-candidate confirmation, by stage

3.5 Repeat Player Analysis

Hypothesis 2 predicted that repeat players in litigation – businesses, interest groups, and governments – would increase participation in amicus briefs at both the cert and merit stages as the Trump justices were confirmed. Hypothesis 3 predicted a decrease in individual participation at the cert stage. Figure 11 shows the changes over time for each of these groups by filing stage. At the cert stage, support for our expectations is mixed. Governments and interest groups do increase participation in amicus briefs as expected, though the increase for governments is not as steady. Contrary to expectations, businesses decrease participation in cert amicus briefs as the Court becomes more conservative and individuals actually increase participation. The increase in individual participation is dramatic; it more than quadruples from before any Trump justice is confirmed to after they are all confirmed. Note that this is one area where our comparison of the cases granted certiorari and those from our random sample of cases where cert was denied show differences. In the denied cases, the average number of business filers per case with amici was about a third higher than in the granted cases. The opposite is true for individuals – the average number of individual participants on a brief at the certiorari stage is three times larger in granted cases than in the denied cases we sampled. This suggests the findings for businesses and individuals may have been different if all amici at the cert stage were able to be included.

At the merits stage, all types increase participation in amicus briefs after Justice Gorsuch's confirmation, and most except businesses continued to increase after Justice Kavanaugh's, albeit more modestly. All types except individuals decreased amicus participation after Barrett's confirmation. This decrease was most dramatic for businesses. As we saw at the cert stage, individuals exhibit the greatest increase in amicus participation: their participation grows nearly fivefold from before all of Trump's appointment until after all three confirmations.

Are issue areas driving these unexpected results? As we did with the political disadvantage analysis, we estimate an OLS model regressing the number of brief participants per case on binary indicators for post-Gorsuch's confirmation, post-Kavanaugh, and post-all confirmations with issue area fixed effects, with separate models for the cert and merits stages. Table 5 shows the results. It suggests that the decline in participation by businesses at the cert stage is not being driven by the issue areas the Court is choosing to hear. Business participation decreases by large and significant levels after each Trump nominee is confirmed. This is counter to Hypothesis 2. Results for the other two repeat player categories, governments and interest groups, are more mixed. Consistent with Figure 11, government actors do increase their amicus participation at the cert stage, though only the increases after Justices Gorsuch and Barrett's confirmations are significant. The growth in interest group participation at the cert stage is only significant after Barrett's confirmation. Once issue area is controlled for, individuals do not appear to increase participation at the cert stage, but they also do not decrease, as predicted by Hypothesis 3.

At the merits stage, things look different. We do see a significant increase in business participation in amicus briefs, but only after Kavanaugh's confirmation. Government participation seems to increase, but is only significant after Barrett's confirmation. No increases in participation are evident for interest groups. Individuals, on the other hand, show significant increases after every Trump justice is confirmed.

3.5.1 Who Are These Individuals?

The dramatic growth in individual amicus filers seems inconsistent with the theory of repeat players. However, Galanter (1974) focused on individual litigants who may only go to court once in their lifetimes. This one-shotter experience may not apply to individuals who participate in amicus briefs. One-shotter litigants are forced to litigate by unhappy circumstances – for example, an accident, an arrest, or a divorce. These types of events are less likely to lead a person to file or join an amicus brief. So who are the individuals who participate as amicus curiae? We took a closer look to find out.

Table 5 Repeat player amicus filer types and likelihood of filing an amicus brief at cert or merits stage

	Dependent variable:							
	Logged Number Brief Participants on a Case							
	Business (C)	Business (M)	Gov. (C)	Gov. (M)	Individual (C)	Individual (M)	Interest Group (C)	Interest Group (M)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Post-Gorsuch	−0.229***	0.195	0.304**	0.349	−0.096	0.573*	0.002	−0.033
	(0.067)	(0.172)	(0.152)	(0.239)	(0.192)	(0.296)	(0.158)	(0.206)
Post-Kavanaugh	−0.191***	0.278*	0.216	0.369	0.120	0.959***	0.203	0.263
	(0.063)	(0.163)	(0.144)	(0.227)	(0.181)	(0.280)	(0.149)	(0.195)
Post-All	−0.169**	−0.016	0.347**	0.410*	0.195	0.670**	0.271*	0.048
	(0.068)	(0.177)	(0.156)	(0.246)	(0.197)	(0.304)	(0.162)	(0.211)
Observations	372	374	374	374	373	374	373	374
R^2	0.131	0.114	0.061	0.067	0.048	0.104	0.117	0.165
Adjusted R^2	0.092	0.074	0.018	0.025	0.005	0.064	0.078	0.127

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$
Issue area fixed effects included.

The individual amicus participants in our data differ from typical one-shotters in two main ways. First, many of them are repeat players in amicus briefs filed at the Supreme Court. In a sample of 5,000 individual amicus participants from 2020 and 2021, over a quarter (27%) had signed on to more than one amicus brief in just two terms. Second, amicus participants are disproportionately political, academic, or legal elites. The largest proportion (29%) of individual filers are professors or academic researchers. Interviews conducted by Hazelton and Hinkle (2022) suggest that the Court likes to hear from academic experts, and these experts are certainly answering the call. Law professors dominate this group, but professors from a wide range of disciplines – including computer science, medicine, anthropology, and philosophy – are represented in the sample. The individual who participated in the largest number of amicus briefs in the sample (24) is legal scholar and Dean of the University of California, Berkeley Law School, Erwin Chemerinsky. Elected officials make up the second largest group of individual amicus participants. Fourteen percent of the individual filers are members of Congress, with Senators Elizabeth Warren and Edward Markey participating in the most, at 20 briefs each over two years. State elected officials also participate at high levels; 9% of individual filers are officials elected at the state or local levels, with state legislators participating the most frequently. Attorneys who are not academics or elected officials are the next largest group of filers, making up about 7% of individual participants. Medical doctors and members of the clergy are also frequent participants.

Individual amicus participants who are not elites are often groups solicited by attorneys. One of the largest groups of individual amicus participants in our sample are women affected by abortion – either negatively or positively – who signed on to petitions that then became lists of signers of amicus briefs.[59] The three abortion-related cases heard during the two-year sample generated the lion's share of individual amicus participants. A stunning 13% of individual amicus signers did not give their full names, most frequently giving a first name and last initial as they signed on to one of these briefs. Other similar coordinated efforts occurred with small business owners in the same-sex discrimination case, *Masterpiece Cakeshop* v. *Colorado*, and with college athletes in *National Collegiate Athletic Association* v. *Alston*.

[59] See, e.g., Brief of Amici Curiae 375 Women Injured by Second and Third Trimester Late Term Abortions and Melinda Thybault, individually and acting on behalf of 336,214 Signers of the Moral Outcry Petition, www.supremecourt.gov/DocketPDF/19/19-1392/148153/20200720161116239_39927%20pdf%20Parker%20br.pdf.

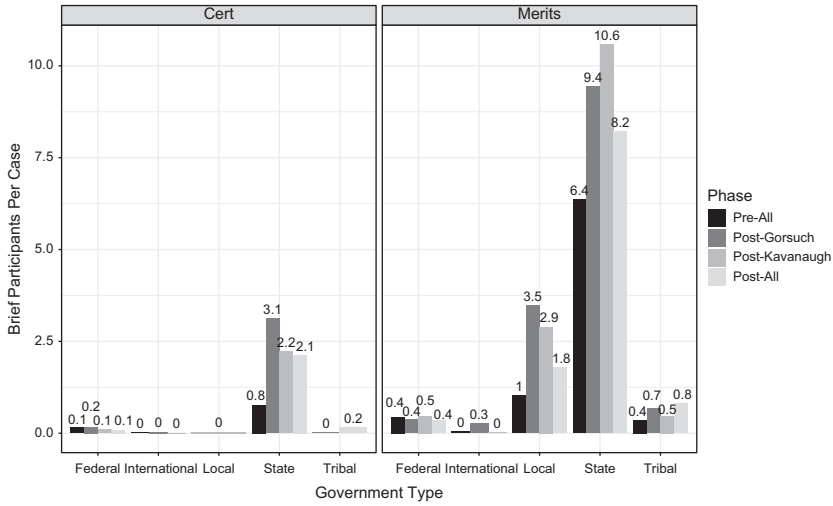

Figure 12 Filings by government actors pre- and post-candidate confirmation, by stage

3.5.2 Who Are the Government Filers?

To get a more nuanced look at government participation in amicus briefs, we subset the data to only *government actors*. Figure 12 shows the differences in *government type* pre- and post-Trump's appointees' confirmations in each stage for five types of government actors: federal, international, local, state, or tribal. International and local governments are largely absent at the cert stage, and tribal governments only became noticeably involved after Justice Barrett's confirmation. As with petitioners, the real growth in government participation in amicus briefs at the cert stage is coming from states. It spikes after Gorsuch's confirmation before leveling off at over twice its initial rate. At the merits stage, all types of government are more engaged, with state and local governments as the most active participants. Local and state governments more or less double their participation in briefs filed per case after Gorsuch's confirmation and beyond.

The federal government appears to have low but relatively steady participation at both the cert and merits stages, but this low level of participation is misleading for two reasons. First, there is only one federal government, and it is usually represented by the Office of the Solicitor General (OSG). Even though there are many federal government agencies, the OSG files amicus briefs only as the United States. Therefore, there is a ceiling for the number of amicus participants per case in the federal government category that is much lower than for other government types. Second, the federal government is much more often a

party to cases before the Court than other government types. During our period of study, the federal government is a party – either the petitioner or the respondent – in 139 out of the 396 cases the Court heard. Litigants do not act as both parties and amici in the same case. When considered in this context, the federal government's participation before the Court is remarkably high, consistent with its repeat player status. It participates as a party in 35% of the cases the Court hears and as an amicus in approximately 40% of the cases, meaning that it is involved in approximately 75% of the cases considered by the Supreme Court during our period of study.

Table 6 shows the OLS estimations of these relationships with issue area fixed effects. Consistent with Figure 12, at the certiorari stage, the only type of government that consistently shows significant growth is state governments, and their increase in participation is significant after each Trump justice's confirmation. Tribal governments' amicus filings after Barrett's confirmation are also significant. At the merits stage, the only statistically significant increases are for local governments after Barrett's confirmation, and states after Kavanaugh's. Thus, it appears that state government actors are the ones changing their behavior most in response to the Court's changing membership, but which states? We address that next as we test our ideological hypotheses.

3.6 Ideology Analysis

We subset the data even further to only *state government actors* to examine the partisanship of these state governments. Recall that we code state government actors into three categories: blue, red, or purple, based on whether the attorney general and governor are both Democratic (blue), both Republican (red), or belong to different parties (purple). Figure 13 shows the distribution of state government amicus participants across these categories in each period by stage.

At the cert stage, blue and purple states look quite similar. They participate at low rates before any Trump nominee is confirmed, then their participation spikes – by 300% and 400%, respectively – following Gorsuch's confirmation, perhaps reflecting a reaction to early policies of the Trump administration. Both drop off after Kavanaugh's confirmation, with blue states reverting to about where they started and purple states slightly higher. The pattern for red states at the certiorari stage shows a similarly dramatic jump after Gorsuch's appointment, but then stays at four times the initial level. Comparisons between cert stage petitions in denied and granted cases in Appendix Section C suggest that red states' increased amicus participation may actually be understated here. The average denied case had three more red state participants at the cert stage than

Table 6 Government amicus filers and likelihood of filing an amicus brief at cert or merits stage

	Dependent variable:									
	Logged Number Brief Participants on a Case									
	Federal (C)	Federal (M)	International (C)	International (M)	Local (C)	Local (M)	State (C)	State (M)	Tribal (C)	Tribal (M)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Post-Gorsuch	−0.002	−0.066	0.005	0.058*	0.001	0.164	0.302**	0.345	0.016	0.064
	(0.034)	(0.055)	(0.014)	(0.032)	(0.014)	(0.134)	(0.151)	(0.237)	(0.027)	(0.078)
Post-Kavanaugh	−0.037	0.017	−0.005	−0.008	0.021	0.164	0.255*	0.406*	−0.002	−0.002
	(0.032)	(0.052)	(0.013)	(0.031)	(0.014)	(0.127)	(0.143)	(0.225)	(0.026)	(0.074)
Post-All	−0.045	−0.032	−0.010	−0.014	0.010	0.244*	0.352**	0.401	0.059**	0.081
	(0.035)	(0.056)	(0.014)	(0.033)	(0.015)	(0.138)	(0.155)	(0.244)	(0.028)	(0.080)
Observations	372	373	372	373	372	372	374	374	372	372
R^2	0.169	0.084	0.017	0.051	0.049	0.089	0.053	0.073	0.052	0.067
Adjusted R^2	0.132	0.043	−0.027	0.008	0.007	0.048	0.010	0.031	0.010	0.025

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$
Issue area fixed effects included.

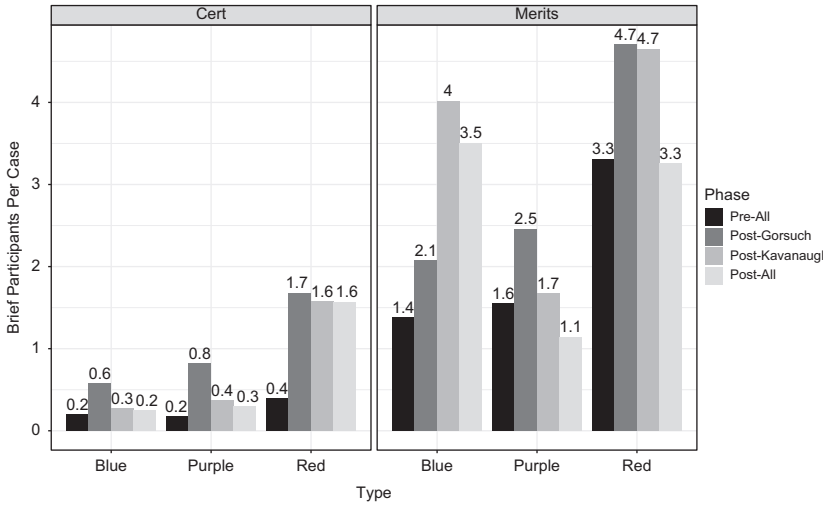

Figure 13 Filings by state government actors pre- and post-candidate confirmation, by stage

the average granted case. In contrast, blue states participated at a much lower rate in cases that were denied.

At the merits stage, the patterns are more complicated. Blue states increase their amicus participation significantly after the first two confirmations of Trump justices and drop slightly after Barrett's confirmation. The increase in blue state participation is the largest of all state types, more than doubling between the beginning and end of our period of study. Red states have a higher level of participation at the merits stage overall, but the growth in their participation is not proportionally as large, and it drops back to its initial level after Barrett's confirmation. The pattern for purple states at the merits stage looks similar to its pattern at the cert stage – a big spike in participation after the Gorsuch confirmation, and then a decline.

To understand whether and to what extent these patterns are suggestive of strategic behavior, we need to put them in context with the changing partisanship of the states themselves. At the beginning of our period of study (the pre-Gorsuch period), there were about twice as many red states in the country as either blue or purple states by our coding. In this period, amicus participation by states at both stages is therefore roughly proportional to the partisan makeup of the states. However, over time, several red and purple states flipped to blue, and comparatively few went the other way. By the end of our period of study, there were only 8% more red states than blue states. Yet in that same period of time, amicus briefs by red states at the certiorari stage quadrupled, while those from blue states spiked briefly after Gorsuch then returned to their

pre-Trump levels. This suggests that conservative states were more likely to perceive the Supreme Court as open to their interests, and sought to get those interests on the Court's agenda. In contrast, at the merits stage, we see blue states' participation growing more rapidly than red states. This may in part be a result of the growing number of blue states over time, or it may reflect a strategic effort to counteract the red states' influence.

Table 7 shows the regression results of the subset of state governments by partisanship with issue area fixed effects. Controlling for issue area, we see large and statistically significant increases in red state filings after every Trump justice confirmation at the cert stage and after Gorsuch and Kavanaugh's confirmations at the merits stage. Blue states show neither growth nor decline at the cert stage but show even greater growth than red states at the merits stage after the confirmations of both Kavanaugh and Barrett. Purple states show modest growth in participation at the cert and merits stages, but only after Gorsuch's confirmation.

3.6.1 Interest Group Ideology

Finally, we move from considering state partisanship to examination of our hypotheses regarding interest group ideology. We subset to only *interest groups* and code the approximately 6,000 groups into three mutually exclusive categories: liberal, conservative, or nonpartisan. Recall that liberal groups are those that explicitly mention a liberal or progressive agenda on their websites or other public material and conservative groups mention conservative or family values. All those not coded as explicitly conservative or liberal were labeled as nonpartisan. Most groups are not explicitly partisan.

Figure 14 shows the distribution of briefs filed per case by interest group ideology. Both conservative and nonpartisan interest groups increased their rate of amicus participation over our time frame at the cert stage, but there was especially great growth among conservative interest groups. We see very little cert stage participation in amicus briefs by explicitly conservative groups before Justice Gorsuch's confirmation. Their participation doubles after Gorsuch is confirmed, nearly doubles again after Kavanaugh's confirmation, and after Barrett's confirmation, they are participating at ten times their pre-Gorsuch levels. In contrast, there is no noticeable participation by liberal interest groups at all at the cert stage. Nonpartisan interest group participation grows steadily, but not exponentially like that of the conservative groups.

Explicitly liberal groups are more active at the merits stage, but are still overshadowed by their conservative counterparts. In the pre-Gorsuch period, participation by liberal and conservative groups is fairly similar – liberal groups

Table 7 State government actor amicus filers and likelihood of filing an amicus brief at cert or merits stage

	Dependent variable:					
	Logged Number Brief Participants on a Case					
	Blue (C) (1)	Blue (M) (2)	Purple (C) (3)	Purple (M) (4)	Red (C) (5)	Red (M) (6)
Post-Gorsuch	0.061	0.151	0.176**	0.219*	0.266**	0.360*
	(0.066)	(0.164)	(0.074)	(0.129)	(0.127)	(0.186)
Post-Kavanaugh	0.020	0.423***	0.106	0.127	0.256**	0.315*
	(0.062)	(0.155)	(0.071)	(0.122)	(0.120)	(0.176)
Post-All	−0.002	0.312*	0.088	−0.039	0.229*	0.026
	(0.067)	(0.169)	(0.077)	(0.132)	(0.130)	(0.191)
Observations	373	374	374	374	374	374
R^2	0.050	0.093	0.052	0.077	0.054	0.074
Adjusted R^2	0.008	0.052	0.010	0.035	0.012	0.033

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$
Issue area fixed effects included.

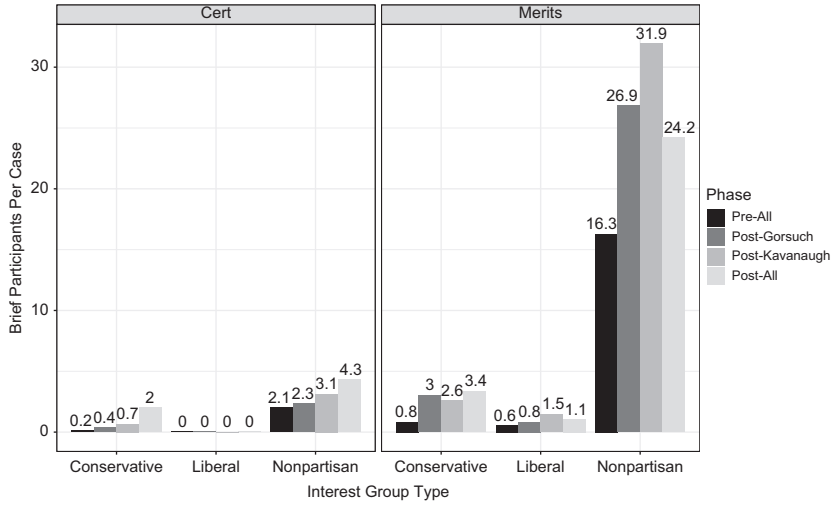

Figure 14 Filings by interest group type pre- and post-candidate confirmation, by stage

file an average of 0.6 briefs per case, and conservative groups file an average of 0.8. However, after Gorsuch's confirmation, conservative groups' participation more than triples, and after Barrett is confirmed, it is more than four times its pre-Gorsuch rate. Participation by liberal groups does show an increase, but it is not nearly as large or dramatic. The patterns for liberal groups are more similar to those for nonpartisan groups, which approximately double their participation then fall off somewhat after Barrett's confirmation.

Table 8 shows the regression results among interest group filers with issue area fixed effects. We see strong support for Hypothesis 4; conservative interest groups are increasing their amicus participation at both the cert and merits stages as each Trump nominee is confirmed, especially once Kavanaugh and Barrett reach the court. While we do not see direct support of Hypothesis 5 because liberal groups are not decreasing in their overall rate of amicus participation, their participation is decreasing as a proportion of all amicus filers over this period. Given that ideological representation was virtually balanced previously (Abi-Hassan et al., 2023), this rapid growth in participation by conservative groups is striking.

3.7 Summary and Conclusions

The number of amicus participants grew dramatically during our period of study, from about 3,000 participants in 2016 to over 14,000 in 2021, while the number of briefs grew slightly. Growth in amicus participation was not consistent across different types of groups, however. Our most notable finding is that,

Table 8 Interest group amicus filers and likelihood of filing an amicus brief at cert or merits stage

	Dependent variable:					
	Logged Number Brief Participants on a Case					
	Conservative (C) (1)	Conservative (M) (2)	Liberal (C) (3)	Liberal (M) (4)	Nonpartisan (C) (5)	Nonpartisan (M) (6)
Post-Gorsuch	0.052	0.288**	0.006	−0.016	−0.042	−0.048
	(0.084)	(0.129)	(0.019)	(0.097)	(0.147)	(0.199)
Post-Kavanaugh	0.162**	0.359***	−0.012	0.137	0.137	0.235
	(0.079)	(0.122)	(0.018)	(0.091)	(0.139)	(0.189)
Post-All	0.178**	0.269**	−0.002	0.111	0.214	−0.024
	(0.086)	(0.133)	(0.020)	(0.099)	(0.151)	(0.205)
Observations	373	374	372	373	373	374
R^2	0.133	0.230	0.042	0.177	0.105	0.156
Adjusted R^2	0.094	0.196	−0.001	0.140	0.065	0.118

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$
Issue area fixed effects included.

consistent with our expectations, amicus participation by conservative interest groups and red state governments increased dramatically. This suggests that those with explicitly conservative policy preferences expected to find a more receptive audience as the Court's conservative majority solidified with each Trump appointee's confirmation.

The results for participation by other groups are more nuanced. Our analysis of the most politically disadvantaged groups shows an apparent decrease in amicus participation, but when we control for issue area, this decrease is not significant. This suggests the decline in amicus participation by the most politically disadvantaged groups is being driven more by the types of cases petitioners are filing and the Court is granting rather than by the strategic decisions by these groups are making as amici. Repeat player theory proves to be a relatively poor fit for predicting amicus behavior. Perhaps this is because amicus participation is dominated by repeat players, and most individuals who participate in amicus briefs are policy-interested elites.

Our expectations regarding differing strategic incentives at the certiorari and merits stage are largely borne out. We see more and stronger evidence of strategic behavior at the certiorari stage. Notably, no group type that we examined exhibited a *decline* in amicus participation at the merits stage. However, participation by politically disadvantaged groups, liberal interest groups, and blue states grew less dramatically than participation by other groups. These differences matter. Justices are known to sometimes pull arguments and even direct quotes from amicus briefs. Conservative interest groups and states are rushing forward to provide arguments the Court can use and may not be effectively countered by more liberal or moderate perspectives.

4 Elections Have Consequences: Looking Beyond Trump's Justices

Shortly after his inauguration, President Barack Obama famously said, "elections have consequences." President Trump echoed this quote in defending the fast-tracking of Amy Coney Barrett's confirmation to the Supreme Court during the 2020 election season.[60] Scholars have long noted that appointments to the Supreme Court have consequences in terms of the cases the Court hears and the decisions it makes. In this Element, we have extended that scholarship to examine whether and how those consequences extend to who *participates* before the Court as litigants and amicus curiae. We argue that litigants' and amicus participants' strategic incentives to engage in cases before the Court

[60] www.bloomberg.com/news/videos/2020-09-30/we-won-the-election-elections-have-consequences-trump-video.

shift as the make-up of the Court changes. This has important implications for political representation and participation.

The relationship between the Court's membership, litigants, and amici is complex and reciprocal. Just as the justices' ideology, behavior, and decisions shape litigants' decisions about whether to seek Supreme Court review, the litigants' decisions about whether or not to seek review shape the cases available for the justices to decide and for amicus curiae to weigh in on. This in turn further shapes the output of the Court, which continues to shape litigant and amicus incentives. It is a self-reinforcing cycle that begins with appointment of Supreme Court justices and results in potential substantive changes to the law.

Who is on the Court matters for the types of groups who are heard. Following in the footsteps of other scholars who examine advantages and disadvantages before the Court specifically, and in policymaking more generally, we examined differences in participation by individual and group resources. Politically disadvantaged litigants have been filing fewer and fewer petitions for certiorari, while red states and conservative interest group litigants have been filing more. Red states and conservative interest groups have also dramatically increased their participation in amicus briefs at both the certiorari and merits stages of Supreme Court decision-making. This means that the 6-3 conservative majority on the Court is getting more and more opportunities to select cases that have been hand-picked by ideologically-aligned litigants and are being provided with more arguments in ideologically-aligned amicus briefs that provide legal bases with which the conservative majority can justify conservative decisions. This dynamic suggests we will continue to see more conservative decisions from the Court for the foreseeable future.

Recent decisions like *Dobbs* v. *Jackson Women's Health Organization*[61] and *New York State Rifle & Pistol Association, Inc.* v. *Bruen*[62] illustrate the dramatic impact that Trump's Supreme Court appointees are already having on the law. This impact could not happen without the strategic behavior of litigants who bring the cases and the amicus curiae who help shape the legal arguments. We emphasize not just that the appointees change the ideological composition of the Court, but also that those appointees alter incentives of political actors to get involved in litigation.

4.1 Beyond Trump's Justices

We have demonstrated not just that appointees matter, but that both the *individual* and *cumulative* effects of new justices are consequential for litigant and

[61] 142 S.Ct. 2228 (2022)
[62] 142 S.Ct. 2111 (2022)

amicus behavior. Cumulative effects raise the stakes for elections and subsequent judicial nominations. Although our analysis focuses on Supreme Court appointments by Donald Trump, it has broader significance. It demonstrates that any president who gets enough nominations can shift the Court and the opportunities for different types of litigants dramatically.

As of August 2022, President Joe Biden had appointed more federal judges than any president since John F. Kennedy over the same amount of time into an administration.[63] Biden's differences from his predecessors are not just notable in terms of the number of appointments. His appointees are also more diverse than those of any other president in history, in terms of race, sex, sexual orientation, background, and other metrics (Fredrickson & Neff, 2022). His Supreme Court pick, Ketanji Brown Jackson, is the first Black woman on the highest court, the third Black person, the sixth woman, and the first former public defender. This choice has significant implications not just for public perceptions of the Court, but also, as we have shown, for litigant and amicus strategy. Following our findings, it is possible that there will be additional changes in litigant and amicus behavior following Justice Jackson's confirmation. However, the overwhelming size and conservatism of the current majority make it unlikely that the appointment of an *individual* justice in the liberal minority coalition will shift things much. Instead, additional appointments will likely be necessary to reverse current trends given today's conservative supermajority.

The prospects for change look somewhat different when we consider the new, large slate of nominees and confirmations to the lower federal courts. We suspect shifts in strategic incentives similar to those we have documented at the Supreme Court level may be occurring as Biden's picks take the bench in the lower courts, particularly the US Courts of Appeals. This is an important avenue for future research. There are limits to how far lower court judges can stray from Supreme Court preferences in salient issue areas, but given the tiny proportion of cases the Supreme Court hears each year, there is at least some opportunity for lower courts to make room for different participants and their interests.

4.2 Future Directions

Another fruitful area for future research is further inquiry into the precise mechanisms that shape litigant and amicus incentives. The strength of our findings regarding the increased mobilization of conservative states and interest groups as litigants and amicus participants suggests that expectations regarding the

[63] See www.pewresearch.org/short-reads/2022/08/09/biden-has-appointed-more-federal-judges-than-any-president-since-jfk-at-this-point-in-his-tenure/.

justices' policy preferences are a primary motivator, but they are likely not the only influence. For example, it does not explain our peculiar findings regarding a decrease in petitions for certiorari and in amicus activity by businesses. Conservatives have traditionally been thought to favor pro-business policy, so why were businesses turning away from the Court during this period? Did businesses find these particular conservative justices unwelcoming to their interests? Did greater opportunities to influence policy in other branches of government develop and lead businesses to shift their energies and resources in those directions? Or did businesses simply assume that with a Court so closely aligned with their preferences and interest groups actively making their case, they did not have to invest time and money to get the outcomes they want?

Additionally, are there other characteristics beyond ideology that might also shape participation before the Court. For example, looking at Biden's appointees, could a judge's or justice's background, race, or age matter? Existing research shows that judges' individual characteristics may lead to differences in support for the courts (Achury et al., 2023; Badas & Stauffer, 2018; Krewson & Owens, 2021), but more work is needed on how these changes in public opinion translate into differences in litigant behavior. That is, if a potential litigant is supportive of a co-racial nominee (Kaslovsky, Rogowski, & Stone, 2021), for example, might that mean they then use that information to also decide whether to file a case, appeal it to the Supreme Court, or become involved in an amicus brief? Would a Black woman who sees Justice Jackson on the Supreme Court bench be more likely to move forward with a legal claim, all else equal? While we have shown differences in participatory behavior, future research ought to investigate the range of mechanisms or reasons litigants or amicus participants have for altering their behavior in the courts.

These precise mechanisms may also differ across levels of the federal hierarchy. While we focus on the Supreme Court in this Element for several reasons – data availability, the publicized nature of Supreme Court nominations, and the wide-ranging impact of Supreme Court decisions – district and circuit courts may also be avenues for changing litigant behavior. Namely, we would expect savvy litigants to take note of current preferences at their local and regional district and circuit courts in addition to the Supreme Court. Future work ought to explore these differences further to illuminate patterns in the oft-understudied lower courts (Boyd, 2016; Hübert & Copus, 2022; Martinek, Kemper, & Van Winkle, 2002; Massie, Hansford, & Songer, 2004).

We also invite consideration of a normative implication of this research. Ought we be concerned if, with each new justice confirmed to the court, we see significant differences in litigant and amicus behavior? Should there be

relatively equal levels of participation and perceived access to the courts over time? Is it problematic that one new justice (or, in our case, three new justices) can have such a significant influence on who comes to the court? Our research dovetails nicely with the growing literature on the politicization of confirmation hearings and judicial selection (Armaly & Lane, 2023; Badas, 2023; Collins et al., 2023; Rogowski & Stone, 2021) and encourages scholars not only to consider how these political battles influence public opinion of the courts, but also how they might affect representation and policy outcomes downstream from successful confirmations.

4.3 Final Thoughts

This project brings together several different strands of literature on law and courts and demonstrates how they can and should speak to one another. Early on, political disadvantage theory posited that the courts were a particularly fruitful policymaking venue for those lacking traditional political power (Cortner, 1968; Vose, 1959). Later studies suggested that businesses and governments may expect even greater benefits from litigation than disadvantaged groups (Galanter, 1974; Olson, 1990). All of these studies assume that litigants are behaving strategically, but seem to hold the Court constant. Existing explanations do not take seriously the make-up of *who* is on the Court and how that might shape strategic incentives. Yet, we know from studies of judicial decision-making that judges have their own policy priorities and strategic considerations (Epstein & Jacobi, 2010; Segal & Spaeth, 2002). If litigants are making strategic calculations, they should consider judicial preferences as part of that analysis. For example, when the Court exhibits pro-business policy bias (Whitehouse, 2015), it should make businesses more likely to view the Court as a good bet for policymaking, and should raise caution among advocates for regulation. Studies of amicus curiae behavior at the Supreme Court do a better job of considering the make-up of the Court (Bils et al., 2020; Hansford, 2004a), but these studies focus more on the influence of the amici on the Court rather than the influence of the Court's membership on amicus behavior (Collins, 2004; Mann & Fronk, 2021; McCammon et al., 2022; Songer & Sheehan, 1993). We bring these strands together by considering how both litigants and amicus participants respond to dramatic changes in the make-up of the Supreme Court.

Shifts in litigant behavior matter because they result in shifts in policy outputs. Courts have often played a minoritarian function, and reduction or withdrawal of cases involving the interests of disadvantaged groups can increase political inequality (Gibson & Nelson, 2021). Older studies have documented the link between litigant behavior and policy change with respect to

particular policy areas (see, e.g., Kobylka, 1987). More recent literature has done the same with amicus behavior (McCammon et al., 2022). Our work builds on these studies by taking a more comprehensive view, looking at both litigant and amicus curiae across all policy areas. We also contribute to the literature on group representation in the policymaking process more broadly. While most groups use a wide range of advocacy activities, litigation is one of the least frequently used tactics (Grossmann, 2012; Nownes & Freeman, 1998). Understanding how changes in the make-up of the Court affects access to this important policymaking venue advances our overall understanding of who gets what and when and how (Lasswell, 1958). The voices present at the Court can significantly shape policy outcomes and if certain voices are absent, that has important consequences for whether and to what degree policy is representative of the concerns and preferences of an increasingly diverse nation.

Appendix A

Appendix to Section 1

Table A1 describes the petitions for certiorari that were denied, summarily decided, and granted a full hearing in the October 2016 through October 2021 terms.

Figure A1 shows the ideological direction of all Supreme Court cases and nonunanimous Supreme Court cases during our period of study, using data from the Supreme Court Database (Spaeth et al., 2022).

Figure A2 shows the ideological direction Supreme Court affirmances and reversals from 1980 to 2021. It suggests the patterns identified by McGuire et al. (2009) have not persisted after 2010.

Table A1 Number of cases summarily decided, granted with a full hearing, and denied cert at SCOTUS, 2016 to 2021

Term	Total	Summary Dispositions	Denied	Granted	Percent Granted Full Hearing	Percent Decided
2016	6,010	60	5,875	75	1.25	2.25
2017	5,916	90	5,758	68	1.15	2.67
2018	6,292	57	6,157	78	1.24	2.15
2019	5,424	98	5,266	60	1.11	2.91
2020	5,004	77	4,848	79	1.58	3.12
2021	4,880	96	4,722	62	1.27	3.24

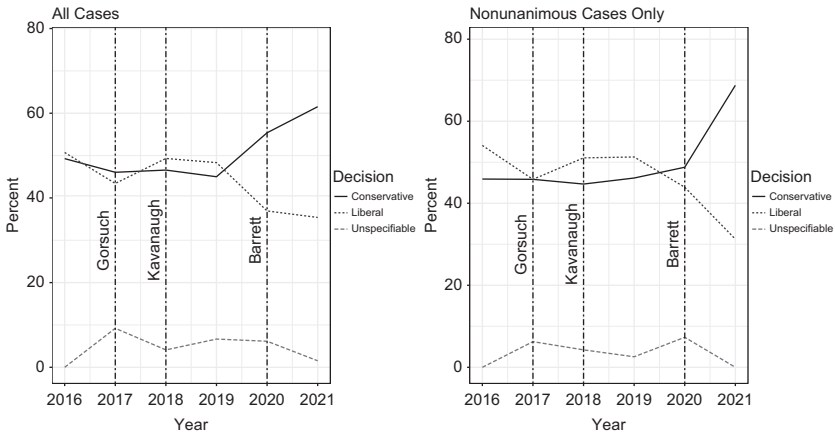

Figure A1 The direction of SCOTUS cases over time, 2016 to 2021

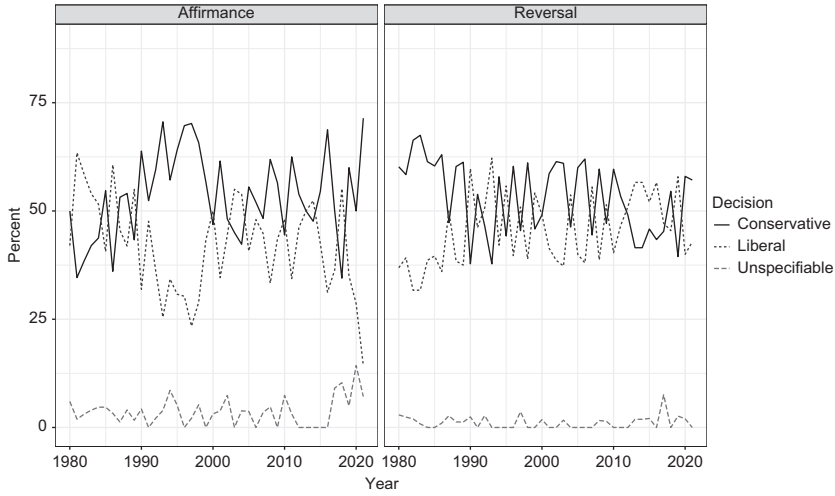

Figure A2 The ideological direction of SCOTUS cases over time, 1980 to 2021. This graph splits by case disposition, whether they are affirmances (left) or reversals (right). Cases with other dispositions were excluded

Appendix B

Appendix to Section 2

B1 Intercoder Reliability

Four undergraduate research assistants, Bob Medlin, Camdyn Kilzer, and Yaseen Sharara of the University of Tennessee and Connor Hamby of Cornell University, hand-coded random samples of petitioners for this project. This occurred in three stages. The first stage was before we had collected all of the petitioner names and docket numbers from the Supreme Court Journals. For this stage, samples were pulled from lists of docket numbers created sequentially. Supreme Court docket numbers begin with a two-digit stub representing the year the petition was filed, and then a hyphen, then a number that is between 1 and 9,999 that represents the specific case. Cases for which the number following the hyphen is above 5000 are IFP petitions. Thus 16-1 is the first paid petition docketed in 2016, and 16-5001 is the first IFP petition docketed in 2016. We created a set of numbers from 16-1 through 21-9999 and drew random samples from that list for the first stage. This included a large number of numbers that were not actual docket numbers because there were not as many paid petitions or IFP petitions each year as our range included.

Once we had gathered the actual docket numbers from the journals, the second stage began. In this stage, random samples were pulled from our petitioner dataset. While students coded, we also developed our petitioner and respondent dictionaries. Once these were refined, we entered a third stage, in which the random samples were pulled only from those petitions in our dataset which we had not yet coded in some other way. Thus, the least obvious petitions – most of which are petitions by individuals – are oversampled in the hand-coding.

Overall, the students completed coding assignments containing 5,078 unique docket numbers. Of these, 515 from the first stage were not actual docket entries or were writs of mandamus, which were excluded from our eventual study. This left 4,563 RA-coded petitions for certiorari. Of these, 409 (9%) were coded by two or more students to check for inter-coder reliability. Of these, two or more students coded one or more variables differently for 112 docket numbers. There was complete agreement on coding for 73% of the intercoder petitions.

A closer look at the codings that don't match reveals that the disagreement predominantly results from cases where one research assistant left fields blank and noted that there was not enough information to code, and the other research assistant found the information. This is because the Supreme Court did not start linking all petitions for certiorari on their website until the end of 2017. Thus, research assistants who only relied on the Supreme Court website were unable

to read the petitions for docket numbers beginning in 16- or 17-. Research assistants who got more creative, however, were able to find the information necessary to code the petitioners. All petitions in this category were double-checked by the authors for accuracy. Of the 200 petitions from 2018 to 2021 that were coded by two or more students there was complete agreement on 169 (85%).

B2 Respondent Dictionaries

The identity of the respondent can provide great insight into the identity of the petitioner. We used the following logic and dictionaries on the respondents to code petitioners:

- Someone suing a warden, jailer, or correctional facility is almost always a prisoner. A petitioner was coded as a prisoner, and therefore an **individual** with a **1 on negative construction** and **1 on low power**, if the respondent's name included any of the following terms: Corrections, Correctional, Warden, Jail, Prison, Parole, Penitentiary, Public Safety, or Sheriff.
- The government is always a party in criminal cases. Thus, when the respondent is the federal or state government, there is a chance the case is a criminal case. However, this is less predictable for paid petitions, which involve a wider variety of lawsuits against state governments, than it is for IFP petitioners. Additionally, there are other government agencies that are sometimes sued by IFP petitioners. We used iterative coding to eliminate these false matches. Thus, a petitioner was coded as a criminal defendant, and therefore an **individual** with a **1 on negative construction** and **1 on low power**, if they filed IFP, the respondent was the United States or an individual state, and the respondent name did **not** included any of the following terms: University, Health, Casualty, Children, Child, Bank, Game, School Board, Law Examiners, Judicial, Faulkner, Insurance, Bar, Finance, Transit, Transportation, General Assembly, Port Authority, Medical, Licensing, Vermillion, Medicine, Nursing, Tax, Revenue, Institute, Employment, Worsham, Company, Treasurer, Environmental, Retirement, Regents, Control, Human, Hospital, Character, Airlines, Labor, Family, Protective, Elections, Occupational, Corporation, State, Coastal, Homeland, Financial, Tours, Association, Utility, Education, Retention, Energy, Recreation, Power, Workforce, Work, Work- force, Conduct, Treasury, Inc, Inc., Company, Co, LLC, LLP, Agriculture, Forestry, Ltd., or Ltd.
- Immigration cases are filed against either the current Attorney General, or in a few cases, against immigration enforcement. In a check of cases filed against the Attorney General, almost all were immigration cases. Thus, a petitioner was coded as an undocumented immigrant, and therefore an

individual with a **1 on low power** and **0 on negative construction**, if the respondent included any of the following terms: Holder, Lynch, Sessions, Barr, Garland, or Immigration.

- People who sue the Veteran's Administration or VA hospitals are almost always veterans. Veterans are individuals with positive construction. While generally powerful as a group, many of the veterans in these lawsuits are disabled. A petitioner was coded as a veteran, and therefore and **individual** with a **0 on negative construction** if the respondent name included the word veteran or veterans. These were then hand-coded for disability status, with disabled veterans coded as **1 for low power**, and all others as **0 for low power.**

B3 Petitioner Dictionaries

We used the following words to assign our petitioners to a variety of categories. Note that these words are not mutually exclusive, so one petitioner could be assigned to multiple of these categories. If that is the case, we assigned the category that was assigned to the petitioner the most: for example, the Libertarian party of Erie County would match on two terms for interest groups and one for government, but we assign it (correctly) as an interest group given the higher number of terms assigned to that petitioner. We also hand-check any duplicates, hand-coding them if necessary.[1]

1. architects, christian school, diocese, farms, health care, healthcare, hospital, medical center, realty, underwriters: **business** with **0 on negative construction and low power**
2. banca, banco, bank, investment: **business** with **1 on negative construction and 0 on low power**
3. corp, dba, inc, llp, lp, pc, airways, communications, company, corporation, enterprises, gmbh, incorporated, insurance, l l c, limited, limited partnership, llc, ltd, ltm, machines, partners, petroleo, petroleum, pharma, plc, subsidiaries, systems, technologies: **business** with **0 on low power**
4. aktiengesellschaft, associates, breakfast, corizon, fund, group, holdings, law office, law offices, management: **business**
5. acting director, argentine republic, attorney general, board of, board of supervisors, cabinet for health and family services, circuit judge, city,

[1] For example, "brad martin individually and as an employee of the arizona department of public safety" initially through the dictionary was identified by the keywords as both an individual and government. We reviewed these individual discrepancies, assigned this petitioner correctly to the government category, and incorporated this hand-coded observation as described in Step 3 in Section 2.

city council, commissioner, correction, correctional, corrections, county, department of, district attorney, district court, fire district, government of, governor, honorable, house of delegates, housing authority, immigration and customs enforcement, jail, judicial circuit, judicial district, mayor, ministry of health, municipal court, nation of, official capacity, police officer, president of the united states, prison, regents, republic of, retirement system, school district, secretary of commerce, secretary of health and human services, secretary of homeland security, secretary of state, secretary of the interior, secretary of the treasury, senior official, sheriff, state auditor, state health officer, state legis, state police, state treasurer, superintendent, supreme court, territory of, the welsh, town, township, tribe, tribe of, under secretary, university of, village of, warden, water district: **government** with **0 on negative construction and low power**

6. house of representatives, senate: **government** with **1 on negative construction and 0 on low power**
7. cnp: **individual** with **0 on negative construction and low power**
8. a minor, an infant, as guardian, as next friend, by next friend, next friend of: **individual** with **0 on negative construction and 1 on low power**
9. congressman, congresswoman: **individual** with **1 on negative construction and 0 on low power**
10. liquidator: **individual** with **0 on low power**
11. aka: **individual** with **1 on low power**
12. administrator of the estate, as next of kin, as parents, as representative, beneficiary, by and through, conservator, deceased, estate of, estate representative, et vir, executor of, executrix of, family trust, individually, individuals, jane doe, john doe, legal representative, mother of, next of kin, on behalf of, parent of, personal representative, trustee of, tutrix, wrongful death beneficiary: **individual**
13. christ, church, guild, calvary, college, congregation, democratic party, fraternal order, libertarian party, museum, rabbinical, republican club, republican party, roman catholic, teamsters: *interest group* with **0 on negative construction and low power**
14. alliance, association, center for, citizens, coalition, commission, committee, organization, parents for, party of, people for, respect, union of: **interest group**

B4 Distribution of Low Power, Negative Construction Over Time

As described in Section 2, for the remaining individuals for whom we do not have enough information to code their negative construction or low power status, we assigned these values based on proportion matching. More specifically,

we randomly sampled 500 individuals and coded them into their negative construction and low power values, then split the sample by their IFP status. If the individual is filing IFP, there is a 80% chance they are both low power and negative construction. If an individual is not filing IFP, there is a 28% chance they are low power and 25% chance they have a negative construction. We used these proportions to randomly assign the remaining missing values to individuals based on their IFP status.

One question we considered was whether these probability patterns change over time. It would be problematic for our analysis of time trends in litigation activity if these patterns changed substantially over the four time periods in our analysis. We compared the breakdown of low power and negative construction by IFP status in our four periods in Figures B1 and B2.

Though there are some differences between periods, individuals who file IFP are anywhere from 77 to 84% likely to be assigned low power and 76 to 84% likely to be assigned negative construction. For individuals who do not file IFP, they are anywhere from 21 to 44% likely to be low power and 21 to 33% more likely to be negative construction. While the distribution is less clear for those filing paid petitions, they nevertheless comport with our broad patterns and suggest that though there might be some differences between stage and filing behavior, there are no statistically significant differences between periods.

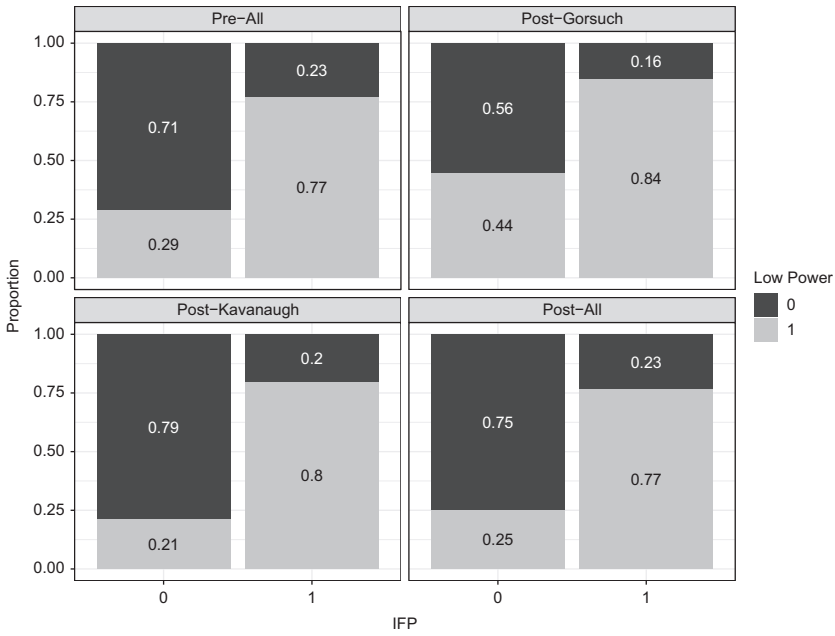

Figure B1 Distribution of low power by IFP status and phase

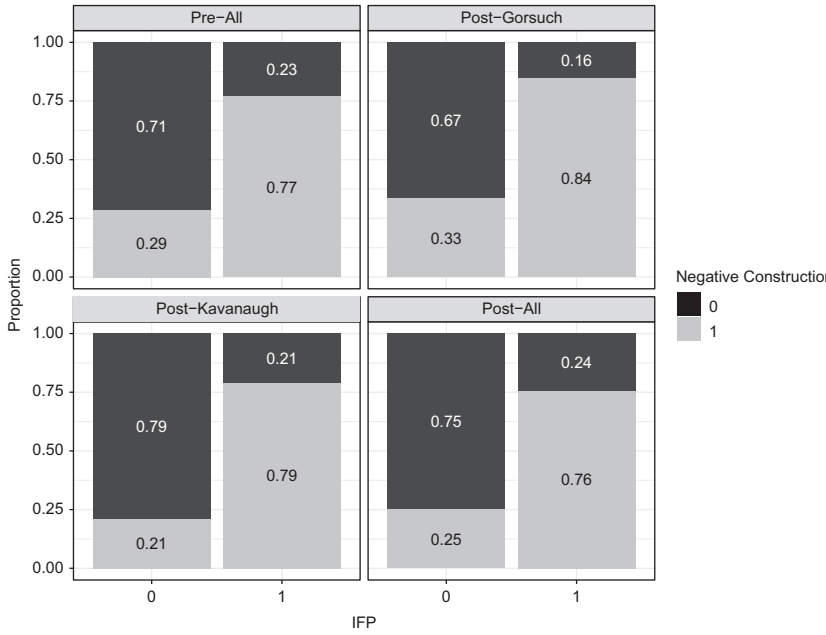

Figure B2 Distribution of negative construction by IFP status and phase

B5 Hand-Coded Individuals Only

As described in the previous section, our main analyses use our full dataset, with some individuals randomly assigned to low power or negative construction based on their IFP status. Though the distribution of these variables over time looked relatively consistent, here we rerun our comparisons for just those that we were able to hand-code into their political disadvantage categories. Figure B3 shows this graph; it is remarkably similar to the one presented in Section 2. This helps to assuage our concerns about the proportion matching we use in the main analysis.

B6 Separating Governors and Attorneys General

The main analyses group together state governments by ideology of their governors and attorneys general. However, it could be the case that the attorneys general, given their key role in the litigation process, are the political actors driving litigation. To check for this, we separate governors and attorneys general as filers in Figures B4 and B5. We find similar patterns of participation by either actor.

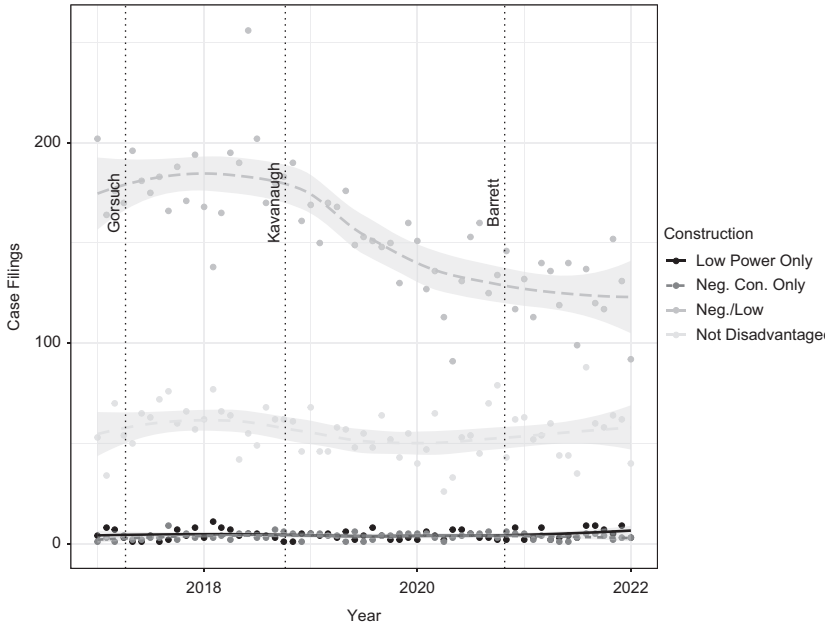

Figure B3 Cert filings by political disadvantage pre- and post-candidate confirmation, hand-coded observations only, with a plotted loess line

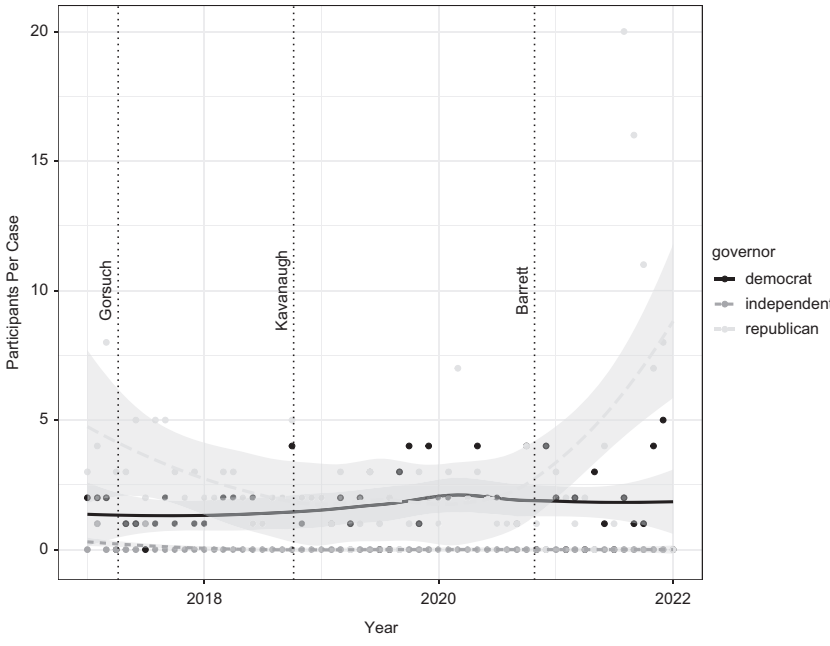

Figure B4 Monthly cert filings by governor party pre- and post-candidate confirmation with a plotted loess line

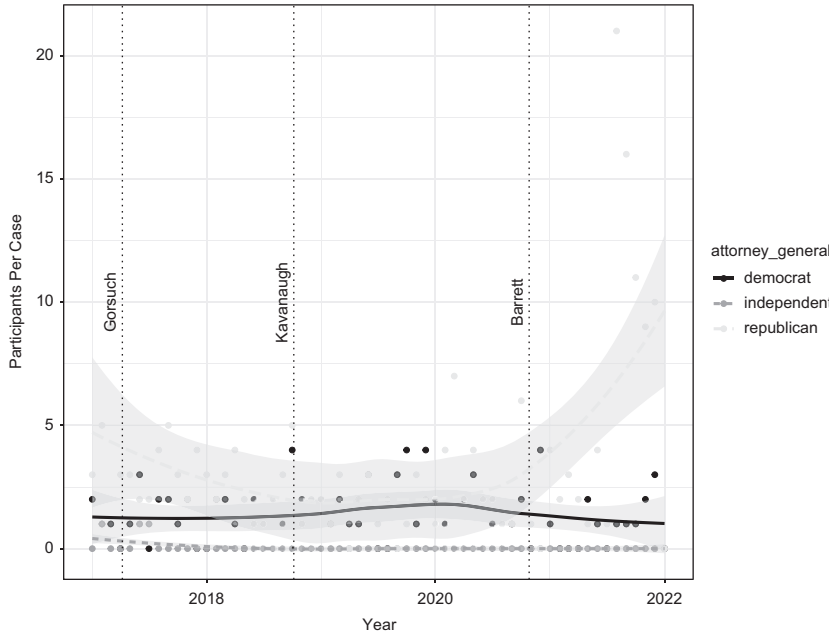

Figure B5 Monthly cert filings by attorney general party pre- and post-candidate confirmation with a plotted loess line

Appendix C

Appendix to Section 3

C1 Number of CVSG Briefs

In the amicus analysis, we include all listed amicus briefs, including those that are CVSG briefs (when the Court calls for the views of the Solicitor General). This participation is not voluntary, but we nevertheless include them in the main specifications we report here. This is primarily because the CVSG participation over time is very consistent. We collect information from the Office of the Solicitor General[1] to check this participation in our time period. Table C1 reports these numbers.

C2 Comparisons of Amici for Cases Granted and Denied Cert

Our analyses in Section 3 use amicus filers only on cases that are granted cert. However, it is possible that the filers on cases granted cert and those denied may be different. We investigated this possibility by asking the research assistants who hand-coded petitioners in Section 2 to also note whether those petitions had any amicus briefs filed. We compared the mean number of participants by relevant groups in amicus briefs filed in cases denied cert to the mean number of participants by groups in these briefs filed at the cert stage in cases granted cert. Figures C1, C2, C3, C4, and C5 show these comparisons. Note that these figures compare the average number of cert stage briefs per case that has briefs filed at that stage (dropping cases with no such briefs), for an apples-to-apples comparison.

Table C1 CVSG briefs at SCOTUS, 2016 to 2021

Term	Number CVSG Briefs
2016	10
2017	7
2018	8
2019	7
2020	7
2021	4

[1] See www.justice.gov/osg/supreme-court-briefs.

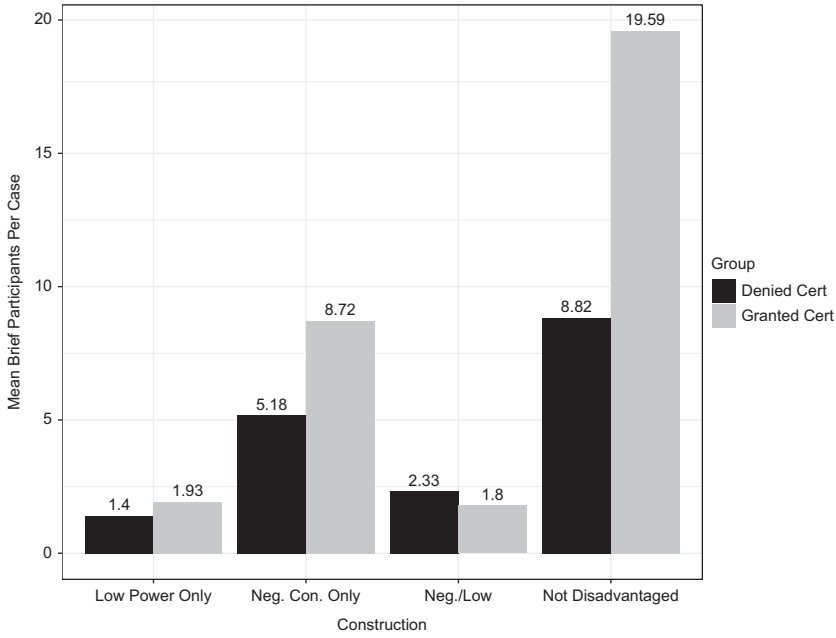

Figure C1 Comparing political disadvantage of amicus filers on cases granted or denied certiorari

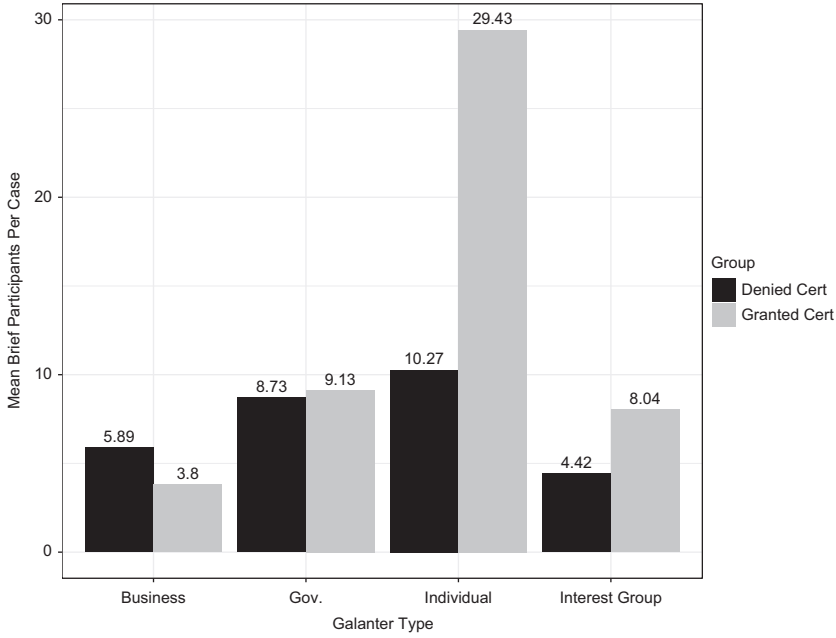

Figure C2 Comparing repeat player type of amicus filers on cases granted or denied certiorari

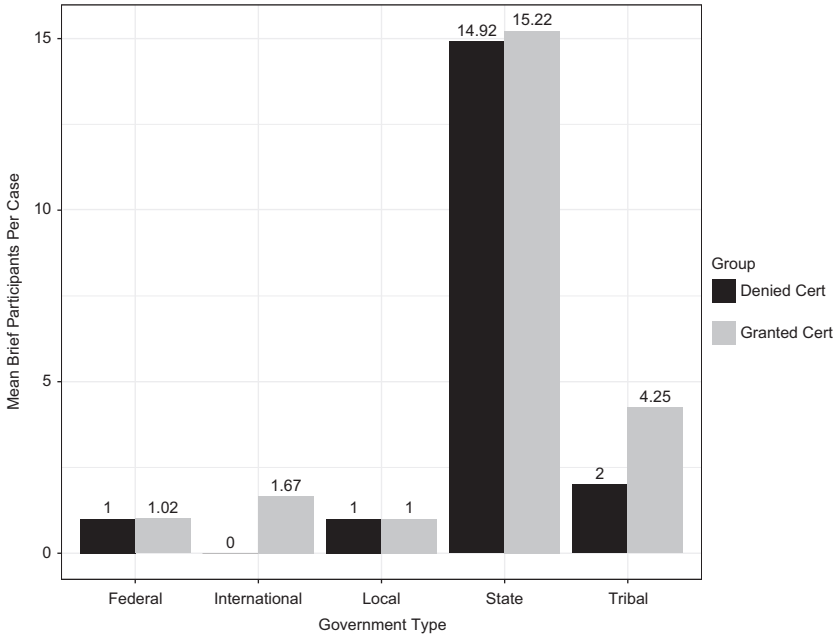

Figure C3 Comparing government type of amicus filers on cases granted or denied certiorari

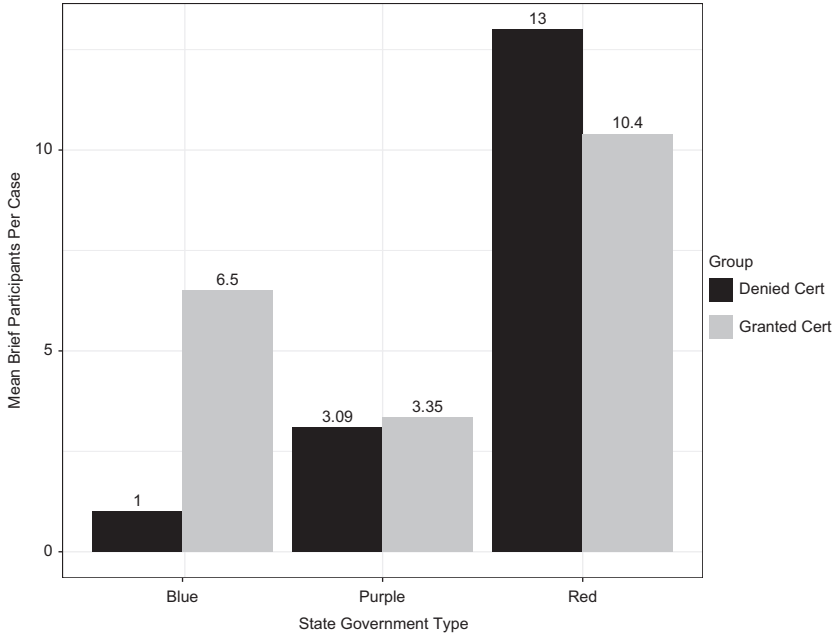

Figure C4 Comparing state government type of amicus filers on cases granted or denied certiorari

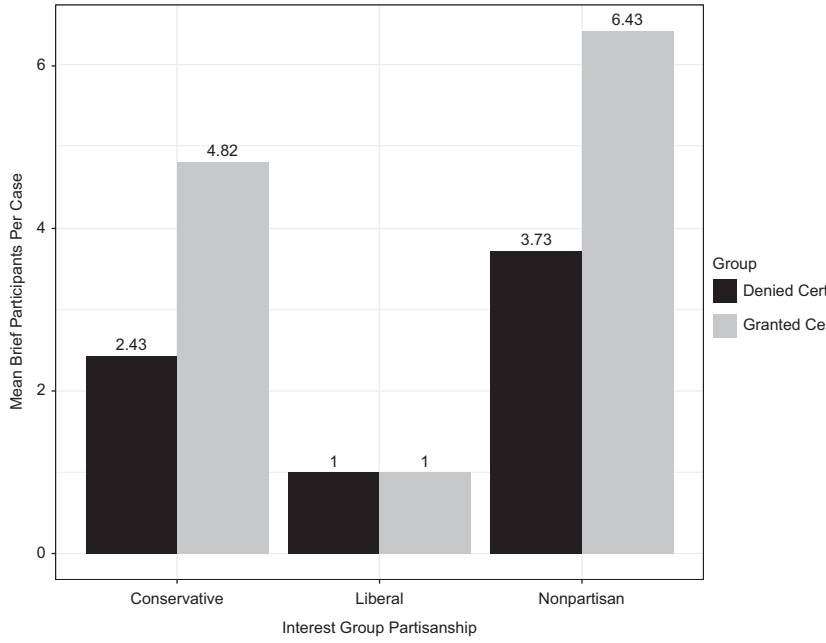

Figure C5 Comparing interest group type of amicus filers on cases granted or denied certiorari

C3 Fixed Effect Estimates

Here, we display the fixed effect coefficient estimates for the issue area fixed effects from each of the regressions in Section 3. These issue areas come from Spaeth et al. (2021) and are identified as below:

1. Criminal Procedure
2. Civil Rights
3. First Amendment
4. Due Process
5. Privacy
6. Attorneys
7. Unions
8. Economic Activity
9. Judicial Power
10. Federalism
11. Interstate Relations
12. Federal Taxation
13. Miscellaneous
14. Private Action

Table C2 Fixed effects results from Table 4

Fixed Effect Level	Column 1	Column 1 se	Column 2	Column 2 se	Column 3	Column 3 se	Column 4	Column 4 se	Column 5	Column 5 se	Column 6	Column 6 se	Column 7	Column 7 se	Column 8	Column 8 se
Attorneys	0.02	0.11	0.25	0.50	0.04	0.39	−0.26	0.78	0.39	0.15	0.70	0.32	−0.07	0.79	1.67	0.96
Civil Rights	0.07	0.02	1.18	0.10	0.12	0.08	0.80	0.16	0.13	0.03	0.41	0.07	0.69	0.16	3.38	0.20
Criminal Procedure	0.05	0.02	0.19	0.10	0.01	0.08	0.14	0.15	0.22	0.03	0.92	0.06	0.72	0.16	2.41	0.19
Due Process	0.05	0.05	0.45	0.22	0.20	0.17	0.60	0.34	0.16	0.07	0.51	0.14	1.59	0.34	2.68	0.41
Economic Activity	0.02	0.02	0.06	0.09	0.47	0.07	1.04	0.15	0.05	0.03	0.03	0.06	1.32	0.15	3.08	0.18
Federal Taxation	0.01	0.09	0.10	0.39	0.01	0.30	0.05	0.61	0.04	0.12	−0.06	0.25	1.04	0.61	1.66	0.74
Federalism	0.01	0.05	0.15	0.22	0.33	0.17	0.73	0.34	0.04	0.07	0.10	0.14	1.58	0.34	3.13	0.41
First Amendment	0.05	0.04	0.62	0.17	0.43	0.13	1.58	0.27	0.07	0.05	0.21	0.11	1.67	0.27	3.94	0.33
Interstate Relations	0.01	0.14	0.05	0.61	0.05	0.48	−0.09	0.96	0.01	0.19	−0.02	0.39	0.68	0.97	1.90	1.17
Judicial Power	0.04	0.03	0.38	0.12	0.38	0.10	1.21	0.19	0.05	0.04	0.21	0.08	1.29	0.19	3.08	0.23
Miscellaneous	0.02	0.08	0.07	0.35	0.11	0.28	1.39	0.51	0.02	0.11	0.22	0.23	0.76	0.52	3.78	0.63
Privacy	0.11	0.07	0.65	0.33	0.37	0.26	3.33	0.51	0.04	0.10	0.34	0.21	2.32	0.52	4.60	0.63
Private Action	−0.00	0.11	−0.02	0.50	0.04	0.39	0.43	0.78	0.06	0.15	0.22	0.32	1.79	0.79	1.93	0.96
Unions	0.01	0.06	0.22	0.27	0.29	0.21	1.37	0.43	0.04	0.08	0.32	0.17	1.60	0.43	3.62	0.52

Table C3 Fixed effects results from Table 5

Fixed Effect Level	Column 1	Column 1 se	Column 2	Column 2 se	Column 3	Column 3 se	Column 4	Column 4 se	Column 5	Column 5 se	Column 6	Column 6 se	Column 7	Column 7 se	Column 8	Column 8 se
Attorneys	0.22	0.24	0.14	0.63	−0.27	0.56	0.59	0.88	0.02	0.70	−0.47	1.08	0.30	0.58	1.76	0.75
Civil Rights	0.15	0.05	0.44	0.13	0.22	0.12	1.44	0.18	0.40	0.15	1.93	0.23	0.37	0.12	2.79	0.16
Criminal Procedure	0.16	0.05	0.02	0.12	0.07	0.11	1.08	0.17	0.26	0.14	1.32	0.21	0.40	0.11	1.77	0.15
Due Process	0.22	0.11	0.31	0.27	0.20	0.24	1.29	0.38	0.60	0.31	1.42	0.47	1.21	0.26	2.35	0.33
Economic Activity	0.51	0.05	0.90	0.12	0.23	0.11	1.06	0.17	0.67	0.13	1.65	0.21	0.72	0.11	2.24	0.14
Federal Taxation	0.20	0.19	0.09	0.49	−0.28	0.43	−0.23	0.68	0.17	0.54	0.04	0.84	1.04	0.45	1.75	0.58
Federalism	0.29	0.11	0.49	0.27	0.90	0.24	1.90	0.38	0.77	0.30	1.56	0.47	0.71	0.25	2.34	0.33
First Amendment	0.38	0.08	0.82	0.22	0.50	0.19	2.05	0.30	0.70	0.24	2.14	0.38	1.31	0.20	3.56	0.26
Interstate Relations	0.11	0.30	0.25	0.77	0.54	0.68	1.35	1.07	0.05	0.86	0.61	1.33	−0.00	0.71	0.36	0.92
Judicial Power	0.25	0.06	0.61	0.15	0.42	0.14	1.39	0.21	0.53	0.17	1.88	0.26	0.73	0.14	2.35	0.18
Miscellaneous	0.29	0.17	1.01	0.41	0.16	0.36	1.09	0.57	0.39	0.46	2.78	0.71	0.52	0.38	2.62	0.49
Privacy	0.29	0.16	1.45	0.41	0.58	0.36	1.44	0.57	1.32	0.46	3.74	0.71	1.73	0.38	3.91	0.49
Private Action	0.19	0.24	0.18	0.63	−0.33	0.56	−0.16	0.88	1.68	0.70	1.06	1.08	0.59	0.58	1.69	0.75
Unions	0.18	0.13	0.85	0.34	0.27	0.31	1.70	0.48	0.61	0.38	2.45	0.59	1.26	0.32	2.91	0.41

Table C4 Fixed effects results from Table 6

Fixed Effect Level	Column 1	Column 1 se	Column 2	Column 2 se	Column 3	Column 3 se	Column 4	Column 4 se	Column 5	Column 5 se	Column 6	Column 6 se	Column 7	Column 7 se	Column 8	Column 8 se	Column 9	Column 9 se	Column 10	Column 10 se
Attorneys	0.01	0.12	0.03	0.20	−0.00	0.05	−0.04	0.12	−0.01	0.04	−0.16	0.48	−0.30	0.54	0.57	0.87	−0.01	0.09	−0.05	0.27
Civil Rights	0.09	0.03	0.26	0.04	0.00	0.01	0.00	0.02	0.00	0.01	0.39	0.10	0.11	0.11	0.97	0.18	0.06	0.02	0.31	0.06
Criminal Procedure	0.03	0.02	0.19	0.04	0.01	0.01	0.01	0.02	−0.01	0.01	−0.06	0.10	−0.01	0.11	0.93	0.17	−0.02	0.02	−0.01	0.05
Due Process	0.06	0.05	0.37	0.09	0.00	0.02	0.08	0.05	−0.01	0.02	0.07	0.21	0.16	0.23	1.18	0.37	−0.01	0.04	−0.03	0.12
Economic Activity	0.21	0.02	0.42	0.04	0.03	0.01	0.01	0.02	−0.00	0.01	−0.05	0.09	0.04	0.10	0.73	0.16	−0.01	0.02	−0.01	0.05
Federal Taxation	0.02	0.10	0.16	0.15	0.00	0.04	−0.02	0.09	−0.01	0.03	−0.17	0.37	−0.28	0.42	−0.35	0.67	−0.02	0.07	−0.04	0.21
Federalism	0.42	0.05	0.45	0.09	0.00	0.02	−0.01	0.05	−0.01	0.02	0.28	0.21	0.48	0.23	1.46	0.37	−0.01	0.04	−0.03	0.12
First Amendment	0.06	0.04	0.38	0.07	0.00	0.02	0.00	0.04	0.05	0.01	0.08	0.17	0.35	0.19	1.83	0.30	−0.02	0.03	0.03	0.09
Interstate Relations	0.00	0.15	0.37	0.24	−0.00	0.06	−0.03	0.14	−0.00	0.05	0.26	0.59	−0.16	0.66	−0.18	1.06	−0.01	0.11	−0.03	0.33
Judicial Power	0.09	0.03	0.31	0.05	0.00	0.01	0.10	0.03	−0.01	0.01	0.52	0.12	0.35	0.13	0.86	0.21	−0.01	0.02	0.05	0.07
Miscellaneous	0.02	0.09	0.20	0.13	0.00	0.04	−0.02	0.08	−0.01	0.03	−0.14	0.34	0.13	0.35	0.96	0.57	−0.00	0.06	−0.02	0.19
Privacy	0.03	0.08	0.31	0.13	0.00	0.03	0.00	0.08	−0.01	0.03	0.57	0.32	0.58	0.35	1.28	0.57	−0.01	0.06	−0.02	0.18
Private Action	0.03	0.12	0.29	0.20	0.00	0.05	−0.01	0.12	0.00	0.04	−0.18	0.48	−0.27	0.54	−0.25	0.87	−0.03	0.09	−0.06	0.27
Unions	0.02	0.07	0.25	0.11	0.00	0.03	−0.02	0.06	−0.00	0.02	0.26	0.26	0.31	0.29	1.70	0.47	−0.03	0.05	−0.05	0.15

Table C5 Fixed effects results from Table 7

Fixed Effect Level	Column 1	Column 1 se	Column 2	Column 2 se	Column 3	Column 3 se	Column 4	Column 4 se	Column 5	Column 5 se	Column 6	Column 6 se
Attorneys	−0.05	0.24	−0.01	0.60	−0.15	0.27	−0.19	0.47	−0.26	0.46	0.58	0.68
Civil Rights	0.01	0.05	0.44	0.13	0.03	0.06	0.57	0.10	0.08	0.10	0.65	0.14
Criminal Procedure	0.02	0.05	0.25	0.12	−0.02	0.05	0.45	0.09	−0.00	0.09	0.75	0.13
Due Process	0.12	0.10	0.73	0.26	0.11	0.12	0.71	0.20	0.12	0.20	0.71	0.29
Economic Activity	0.09	0.05	0.39	0.11	0.05	0.05	0.41	0.09	−0.00	0.09	0.48	0.13
Federal Taxation	−0.03	0.19	−0.29	0.47	−0.13	0.21	−0.13	0.36	−0.25	0.36	−0.28	0.53
Federalism	0.41	0.10	0.67	0.26	0.27	0.12	0.81	0.20	0.32	0.20	1.12	0.29
First Amendment	0.03	0.08	0.91	0.21	0.18	0.09	1.00	0.16	0.33	0.16	1.44	0.24
Interstate Relations	−0.03	0.29	−0.08	0.74	−0.09	0.33	−0.11	0.58	−0.13	0.57	−0.18	0.83
Judicial Power	0.14	0.06	0.42	0.15	0.19	0.07	0.46	0.11	0.24	0.11	0.61	0.16
Miscellaneous	−0.03	0.17	0.25	0.39	0.05	0.18	0.38	0.31	0.12	0.30	0.82	0.45
Privacy	0.14	0.16	0.85	0.39	0.24	0.18	0.84	0.31	0.53	0.30	1.04	0.45
Private Action	−0.02	0.24	−0.26	0.60	−0.12	0.27	−0.05	0.47	−0.24	0.46	−0.14	0.68
Unions	−0.03	0.13	1.41	0.33	0.13	0.15	1.00	0.26	0.30	0.25	0.47	0.37

Table C6 Fixed effects results from Table 8

Fixed Effect Level	Column 1	Column 1 se	Column 2	Column 2 se	Column 3	Column 3 se	Column 4	Column 4 se	Column 5	Column 5 se	Column 6	Column 6 se
Attorneys	−0.09	0.31	−0.31	0.47	0.00	0.07	−0.03	0.35	0.35	0.54	1.78	0.73
Civil Rights	0.00	0.06	0.28	0.10	0.01	0.01	0.56	0.07	0.36	0.11	2.68	0.15
Criminal Procedure	−0.02	0.06	0.20	0.09	0.06	0.01	0.14	0.07	0.40	0.11	1.71	0.14
Due Process	0.30	0.14	0.68	0.20	0.09	0.03	0.13	0.16	1.05	0.24	2.27	0.32
Economic Activity	0.03	0.06	0.13	0.09	0.01	0.01	0.11	0.07	0.74	0.10	2.19	0.14
Federal Taxation	0.10	0.24	−0.04	0.37	0.00	0.05	−0.07	0.27	1.05	0.42	1.76	0.57
Federalism	0.05	0.13	0.21	0.20	0.05	0.03	0.23	0.15	0.65	0.23	2.26	0.32
First Amendment	0.61	0.11	1.55	0.16	0.00	0.02	0.64	0.12	1.16	0.19	3.38	0.25
Interstate Relations	−0.03	0.38	−0.14	0.58	−0.00	0.09	0.01	0.43	0.02	0.66	0.37	0.89
Judicial Power	0.17	0.07	0.43	0.11	0.02	0.02	0.49	0.09	0.65	0.13	2.28	0.18
Miscellaneous	0.19	0.20	1.37	0.31	0.01	0.05	0.42	0.23	0.44	0.35	2.15	0.48
Privacy	0.63	0.20	1.48	0.31	0.01	0.05	1.43	0.23	1.61	0.35	3.80	0.48
Private Action	0.10	0.31	−0.28	0.47	−0.00	0.07	−0.07	0.35	0.56	0.54	1.68	0.73
Unions	0.45	0.17	0.55	0.26	−0.00	0.04	0.64	0.19	1.11	0.29	2.83	0.40

C4 Results with No Fixed Effects

Table C7 Amicus filers by political disadvantage and likelihood of filing an amicus brief at cert or merits stage, no fixed effects

	Dependent variable:							
	Logged Number Brief Participants on a Case							
	Neg Con. Only (C) (1)	Neg Con. Only (M) (2)	Neg./ Low (C) (3)	Neg./ Low (M) (4)	Not Disadvantaged (C) (5)	Not Disadvantaged (M) (6)	Low Power Only (C) (7)	Low Power Only (M) (8)
Post-Gorsuch	−0.021	−0.141	−0.105	0.182	−0.028	0.026	0.048	0.138
	(0.030)	(0.146)	(0.105)	(0.222)	(0.041)	(0.096)	(0.217)	(0.274)
Post-Kavanaugh	−0.021	0.113	0.117	0.437**	−0.045	0.046	0.206	0.313
	(0.028)	(0.137)	(0.099)	(0.210)	(0.039)	(0.091)	(0.204)	(0.259)
Post-All	0.006	0.055	−0.028	−0.074	−0.078*	−0.024	0.486**	0.158
	(0.030)	(0.145)	(0.105)	(0.222)	(0.041)	(0.096)	(0.217)	(0.274)
Constant	0.043*	0.428***	0.250***	0.824***	0.109***	0.382***	1.103***	3.025***
	(0.022)	(0.109)	(0.079)	(0.167)	(0.031)	(0.072)	(0.163)	(0.207)
Observations	396	396	396	398	396	396	398	398
R^2	0.004	0.011	0.016	0.021	0.010	0.002	0.017	0.004
Adjusted R^2	−0.003	0.003	0.008	0.013	0.002	−0.006	0.009	−0.004

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$

Table C8 Galanter amicus filers and likelihood of filing an amicus brief at cert or merits stage, no fixed effects

	Dependent variable:							
	Logged Number Brief Participants on a Case							
	Business (C) (1)	Business (M) (2)	Gov. (C) (3)	Gov. (M) (4)	Individual (C) (5)	Individual (M) (6)	Interest Group (C) (7)	Interest Group (M) (8)
Post-Gorsuch	−0.229***	0.239	0.304**	0.303	−0.057	0.537*	0.032	−0.049
	(0.068)	(0.174)	(0.149)	(0.237)	(0.187)	(0.298)	(0.162)	(0.223)
Post-Kavanaugh	−0.141**	0.301*	0.192	0.244	0.148	0.868***	0.226	0.194
	(0.064)	(0.164)	(0.141)	(0.224)	(0.176)	(0.282)	(0.153)	(0.210)
Post-All	−0.177***	−0.030	0.310**	0.299	0.204	0.502*	0.321**	−0.017
	(0.068)	(0.174)	(0.149)	(0.237)	(0.187)	(0.298)	(0.162)	(0.223)
Constant	0.272***	0.506***	0.268**	1.316***	0.491***	1.703***	0.656***	2.351***
	(0.051)	(0.131)	(0.112)	(0.179)	(0.141)	(0.225)	(0.122)	(0.168)
Observations	396	398	398	398	397	398	397	398
R^2	0.030	0.017	0.014	0.005	0.007	0.024	0.015	0.005
Adjusted R^2	0.023	0.009	0.006	−0.002	−0.0001	0.016	0.007	−0.002

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$

Table C9 Government amicus filers and likelihood of filing an amicus brief at cert or merits stage, no fixed effects

	Dependent variable:									
	Logged Number Brief Participants on a Case									
	Federal (C)	Federal (M)	International (C)	International (M)	Local (C)	Local (M)	State (C)	State (M)	Tribal (C)	Tribal (M)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Post-Gorsuch	0.012	−0.061	0.005	0.048	−0.000	0.191	0.309**	0.317	0.014	0.067
	(0.036)	(0.054)	(0.013)	(0.030)	(0.011)	(0.133)	(0.143)	(0.233)	(0.023)	(0.073)
Post-Kavanaugh	−0.028	0.006	−0.004	−0.017	0.021**	0.128	0.242*	0.332	0.000	−0.006
	(0.034)	(0.051)	(0.012)	(0.029)	(0.010)	(0.126)	(0.135)	(0.220)	(0.022)	(0.069)
Post-All	−0.039	−0.066	−0.009	−0.028	−0.000	0.110	0.226	0.189	0.035	0.031
	(0.036)	(0.054)	(0.013)	(0.030)	(0.011)	(0.133)	(0.143)	(0.233)	(0.023)	(0.073)
Constant	0.103***	0.309***	0.009	0.028	0.000	0.172*	0.145	0.972***	0.000	0.062
	(0.027)	(0.041)	(0.010)	(0.023)	(0.008)	(0.100)	(0.108)	(0.175)	(0.017)	(0.055)
Observations	396	397	396	397	396	396	398	398	396	396
R^2	0.008	0.010	0.004	0.022	0.021	0.005	0.013	0.007	0.009	0.004
Adjusted R^2	0.0003	0.002	−0.004	0.014	0.014	−0.002	0.005	−0.001	0.002	−0.004

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$

Table C10 State government actor amicus filers and likelihood of filing an amicus brief at cert or merits stage, no fixed effects

	Dependent variable:					
	Logged Number Brief Participants on a Case					
	Blue (C) (1)	Blue (M) (2)	Purple (C) (3)	Purple (M) (4)	Red (C) (5)	Red (M) (6)
Post-Gorsuch	0.078	0.129	0.178**	0.191	0.259**	0.313*
	(0.065)	(0.162)	(0.073)	(0.127)	(0.124)	(0.183)
Post-Kavanaugh	0.020	0.370**	0.096	0.087	0.238**	0.268
	(0.061)	(0.153)	(0.069)	(0.120)	(0.117)	(0.172)
Post-All	−0.018	0.278*	0.071	−0.031	0.226*	0.036
	(0.065)	(0.162)	(0.073)	(0.127)	(0.124)	(0.183)
Constant	0.071	0.447***	0.076	0.530***	0.103	0.687***
	(0.049)	(0.122)	(0.055)	(0.095)	(0.093)	(0.138)
Observations	397	398	398	398	398	398
R^2	0.007	0.017	0.015	0.011	0.014	0.013
Adjusted R^2	−0.0004	0.010	0.008	0.003	0.006	0.005

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$

Table C11 Interest group amicus filers and likelihood of filing an amicus brief at cert or merits stage, no fixed effects

	Dependent variable:					
	Logged Number Brief Participants on a Case					
	Conservative (C) (1)	Conservative (M) (2)	Liberal (C) (3)	Liberal (M) (4)	Nonpartisan (C) (5)	Nonpartisan (M) (6)
Post-Gorsuch	0.035	0.199	0.001	−0.049	−0.029	−0.096
	(0.084)	(0.138)	(0.018)	(0.100)	(0.147)	(0.215)
Post-Kavanaugh	0.156**	0.346***	−0.017	0.133	0.138	0.166
	(0.079)	(0.130)	(0.017)	(0.094)	(0.138)	(0.203)
Post-All	0.164*	0.213	−0.007	0.077	0.195	−0.137
	(0.083)	(0.138)	(0.018)	(0.099)	(0.146)	(0.215)
Constant	0.105*	0.383***	0.028**	0.322***	0.616***	2.269***
	(0.063)	(0.104)	(0.014)	(0.075)	(0.110)	(0.162)
Observations	397	398	396	397	397	398
R^2	0.017	0.018	0.004	0.013	0.009	0.008
Adjusted R^2	0.009	0.010	−0.003	0.005	0.002	0.001

Note: *$p < 0.1$; **$p < 0.05$; ***$p < 0.01$

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