



US Centre Summer Research Grant

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Project Title (preliminary): The Role of Amicus Curiae Briefs in Fossil Fuel Litigation

Summary of project:

A fundamental query in judicial scholarship concerns how judges make decisions. Tangled within this debate is the study of how interest groups shape judicial reasoning through the submission of amicus curiae ("friend of the court") briefs. A multitude of research has found that amicus briefs shape judicial behavior, even demonstrating that this influence may be more often through extralegal advocacy— including political signaling— rather than any novel legal arguments the briefs may contain. However, the influence of amicus briefs— and the underlying mechanisms thereof— remain debated.

The role of amicus briefs in politically charged litigation is critically understudied, yet it has drawn particularly strong attention, opening discussions about transparency, undue influence, and fairness in the courts. My dissertation addresses this gap, exploring the role of amici in one especially contentious area of litigation: lawsuits seeking to hold the fossil fuel industry accountable for deception. This litigation has sparked debates that call into question the perception of the judicial branch as apolitical. How have amicus briefs— which occupy a significant presence in such cases— contributed to these debates?

The core assertion underlying amicus brief theory is that amicus briefs are useful for courts because they provide novel information, supplementing party briefs. However, a host of studies have provided evidence that challenges this notion. This dissertation tests this theory, evaluating the usefulness and impact of amicus briefs on the courts in the context of climate litigation.

Introduction

This dissertation is the first known research to evaluate the role of amicus curiae briefs filed in U.S. lawsuits brought by local and state governments against the fossil fuel industry for deceptive practices. The analysis includes all amicus briefs that have been filed in any court (state or federal) in this line of litigation. The essential query that guides this research is: *More than 250 amicus briefs have been filed thus far in this line of litigation; are they having any impact on the courts? If so, what kind of impact?*

This research contains empirical and qualitative components. The empirical research includes (1) a content analysis of the 250+ briefs that have been submitted thus far in this line of litigation, as well as (2) an evaluation of whether (and if so, how) these amicus briefs have impacted court opinions and oral arguments. The qualitative component entails interviews with those who have signed onto amicus briefs in this line of litigation, as well as with attorneys, judges, and clerks. The purpose of the interviews is to elucidate central points of contention regarding participants' perspectives on the role and utility of amicus briefs. Patterns found also inform the empirical analysis and discussion.

Crucially, this dual approach (quantitative + qualitative) sets up a comparison of what people *think* is effective legal practice versus what actually works. Conventional wisdom clashes with empirical findings in fascinating ways, as described below. The results of this research will prove useful for those who file amicus briefs, the courts, and judicial scholars. Ultimately, this research is significant because it provides needed insight into a regularly employed legal strategy, contributes to theories of judicial behavior, and adds to our understanding of whether and how external actors shape legal outcomes.

Preliminary Results

The Phelan grant was used to conduct in-person interviews. I have conducted more than 50 interviews with professors, scientists, Attorneys General, attorneys, and judges. The interviews have elucidated several interesting patterns as well as deepened some existing tensions within judicial scholarship. Transcript analysis is still underway, but below are some preliminary findings of note:

- (1) Repetition paradox: Conventional wisdom (i.e., advice from practitioners and officers of the court) dictates that amicus briefs should not be repetitive of other sources that judges use (i.e., lower court opinions, party briefs, other amicus briefs). Instead, amici are most (potentially) useful when providing novel information that the judges have not fully considered yet. Indeed, the central assumption underlying amicus brief scholarship is that amicus briefs are influential because they offer judges novel information. The Supreme Court's rules also admonish repetitive briefs. Yet, a multitude of empirical research has found that courts are *more* receptive to amicus briefs when they are repetitive of other sources. These findings challenge the underlying theory of this entire body of scholarship and requires further exploration. As expected, my interviews corroborate the conventional wisdom. The empirical findings, which have not been completed yet, will either question or further reinforce the divide between practitioners' understanding of amicus brief utility and their practical effect.
- (2) The role of climate science: One key question in this area of litigation concerns how essential background information (i.e., climate science) is to judges' understanding of the law. Many amicus briefs have been submitted that contain only scientific information about climate change- either in support of the scientific consensus or challenging it. These submissions suggest that these amici believe that judges need this background information. The interviews indeed corroborate this notion. This finding naturally leads to the question of whether the judges find this information helpful, which the empirical analysis will explore.
- (3) A variety of perspectives on the utility of amicus briefs: Views differ regarding the perceived usefulness of amicus briefs for the courts. Largely, participants seem apathetic towards amicus practice. The majority expressed at least some doubt as to their utility. Several participants even regard amicus briefs as "vanity projects," with courts dismissing them as mere political signals. Most interviewees did not track the potential outcome of their amicus brief (e.g., whether it was mentioned in oral argument or in the court opinion) or the outcome of the case it was filed in. Yet these briefs are regularly filed. Why? The interviews have provided some clarity: several attorneys emphasized that the filing of amicus briefs was necessary to "keep up with the opponent," while also believing these briefs would be dismissed by judges as mere political signals. Are these briefs truly

necessary to play ball? These questions speak to a larger debate regarding the contemporary infiltration of politics into the judiciary.

- (4) Content vs Identity: A key debate concerns how much weight officers of the court lend to the identity of amici. Several interviewees stressed that name recognition is more important than content. There is some empirical evidence supporting this notion, but the topic requires more research.
- (5) Amicus briefs as political signals: An abundance of literature, as well as interviews with judges, support the notion that amicus briefs filed by the United States Solicitor General yield the most influence on the courts, compared to other amici. The Supreme Court also regularly invites the United States to participate as an amicus, as has happened several times in this line of litigation. However, interviewees have emphasized that the courts may be less perceptive to U.S. briefs given the (now twice) flip in stances between the Trump and Biden administrations. Contributing to this notion is the observation that large groups of "blue" and "red" states are filing amicus briefs, respectively – do they cancel out? Are the judges receptive to such political hand-raising? Or, if the court cannot view the federal and state governments as credible sources of information, are there any amici that receive such recognition?

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