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Interest Groups and the Judiciary

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Abstract and Keywords

Interest groups play an important role in the legal system, participating in a wide array of cases as litigants, sponsors, amici curiae, and intervenors. This chapter provides a critical analysis of academic scholarship on interest group litigation, devoting particular attention to establishing the limitations of the current state of knowledge and providing suggestions for future research. This chapter demonstrates that, while there has been a great deal of research on some facets of social movement litigation, such as amicus curiae participation in the U.S. Supreme Court, others have been relatively unexplored, including investigations of coalition formation, venue selection, and extrajudicial lobbying. Thus, there are ample opportunities for future scholars to contribute to our understanding of planned litigation by organized interests.

Keywords: organized interests, amicus curiae, sponsorship, intervention, social movement litigation, planned litigation, venue selection, coalitions

SCHOLARSHIP on the role of interest groups in American politics tends to focus most heavily on the legislative, executive, and electoral arenas. For example, research investigates the ability of groups to shape legislative outcomes, regulatory policy, and political campaigns (for a review, see Baumgartner and Leech 1998; Hojnacki et al. 2012). Though it may not be as visible as these other outlets, interest groups have long participated in the judiciary, particularly at the U.S. Supreme Court. In doing so, groups recognize that, like the legislative and executive branches, the courts are policy-making institutions. Accordingly, their decisions are capable of affecting a wide range of behavior, including how police officers question suspects, the rights of same-sex couples to marry, the constitutionality of affirmative action and health care programs, and the ability of governments to confiscate private property.

The purpose of this chapter is to address the state of academic scholarship on interest group litigation in the American judiciary. We begin by exploring the three primary means by which organizations engage the courts: case sponsorship, amicus curiae participation, and intervention. Next, we discuss topics relevant to each of these methods of litigation by considering venue selection and coalition activity, followed by a treatment of extrajudicial lobbying. In addition to reviewing scholarship in each area, we also provide a critical analysis of existing research for the purpose of establishing the limitations of our current knowledge of interest group litigation. Our hope is that, by shining light on theoretical and empirical weaknesses of existing research, as well as overlooked avenues of study, we will identify opportunities for future scholars to advance our understanding of organizational litigation.

(p. 362) Case Sponsorship

The earliest academic work on interest group litigation focused on how, and to what effect, organizations brought cases into the courts for the purpose of challenging various policies (e.g., Cortner 1964, 1968; Vose 1955, 1959). Interest groups do this in two ways. First, if the group can obtain standing to sue, the group will generally bring a lawsuit as a party to the litigation. In order to obtain standing, the organization must demonstrate that an actual controversy exists that will impair its interests (Orren 1976; Scheppele and Walker 1991). Alternatively, if the group cannot obtain standing, it can file a lawsuit on behalf of an individual (or group of individuals) who has standing to sue. In this capacity, the group directs the litigation on behalf of the individual (at both the trial and appellate levels), including providing attorneys, research and clerical personnel, and other resources. In exchange, the organization uses the case to further its goals. Case sponsorship is an extremely resource intensive form of litigation as it takes years to litigate cases into the appellate stages, potentially costing hundreds of thousands to millions of dollars (e.g., O'Connor 1980; Wasby 1995). It is for this reason that some groups wait until cases have reached the appellate stages to sponsor litigation, working with, or taking the case over from, the attorneys who litigated it at the trial court.

There are several notable examples of interest groups successfully employing case sponsorship in the pursuit of their goals. For example, the NAACP and the NAACP Legal Defense Fund (LDF) used planned litigation to effectively challenge school segregation, restricted covenants, and other race-based statutes (Vose 1955, 1959; Wasby 1984, 1985, 1995). Similarly, women's rights organizations, such as the National Organization for Women and the American Civil Liberties Union Women's Rights Project, successfully fought an array of gender discrimination policies in the courts (Cowan 1976; O'Connor 1980). More recently, a variety of organizations representing the interests of lesbian, gay, bisexual, and transgender Americans have utilized case sponsorship to litigate issues

including adoption, marriage, and hospital visitation (e.g., Pinello 2003; Rubenstein 1999).

Despite these prominent illustrations of group success, it is not clear whether case sponsorship is an effective litigation strategy. Most of the evidence we have on the topic is from case studies that may have been chosen precisely because they demonstrate the triumphs of interest groups. As Segal and Spaeth (1993: 241) note, “Few people want to spend a year or two studying losing litigators.” Related, our understanding of this strategy is circumscribed by the fact that most studies focus on a single case or issue area, which may not be generalizable to other areas of litigation. Third, it is not entirely evident why we should expect groups to be especially effective litigators. Presumably, organizations will be successful because they carefully select cases and bring a great deal of expertise and resources to the table, making them repeat players (e.g., Epstein and Rowland 1991; Galanter 1974). Yet, this expectation remains largely untested and is confounded by the fact that groups frequently challenge the policies of governments, who also have ample expertise and resources (Sheehan, Mishler, and Songer 1992). Finally, (p. 363) our knowledge is limited because studies very rarely compare the success of litigants sponsored by organized interests to those without such support. Of those that have, the results have been mixed. For example, Epstein and Rowland (1991) demonstrate that interest groups are no more likely to win federal district court cases than other types of litigants, and Tauber (1998) shows that sponsorship by the NAACP LDF does not influence the outcome of capital punishment cases in the U.S. courts of appeals. Conversely, George and Epstein (1992) provide evidence that U.S. Supreme Court death row appeals sponsored by interest groups are more likely to be decided in favor of the inmate.

Though case sponsorship is typically associated with organized interest groups, there has been a recent trend of individuals supplanting the role of groups in some situations and sponsoring cases themselves. For example, in *District of Columbia v. Heller* (2010), the Supreme Court determined that the Second Amendment established an individual right to keep and bear arms. This case was sponsored not by a pro-Second Amendment group, but by Robert Levy, a lawyer and senior fellow at the Cato Institute. Levy organized and personally financed the case owing to his academic interest in constitutional issues, rather than because of a particular devotion to gun rights (Liptak 2007). Another interesting phenomenon involves a small group of Washington lawyers arguing an increasingly large number of cases before the Supreme Court (Biskupic, Roberts, and Shiffman 2014; Lazarus 2008; McGuire 1993). In so doing, these elite attorneys—who often represent business interests—sometimes perform a role similar to interest groups by taking cases over from other attorneys once they reach the Supreme Court. Further investigation into these relatively recent developments is certainly warranted.

It is also interesting to note that, compared to the study of amicus curiae briefs, there is a dearth of recent scholarship on case sponsorship, despite the fact that this strategy has become more common over time (Epstein 1993). In part, we suspect this is due to the fact that it is more difficult to collect data on case sponsorship than amicus curiae briefs.

Such is the case because one cannot necessarily read a judicial opinion and determine that a case was sponsored by an interest group. Further, the rigorous analysis of case sponsorship often entails studying litigation at multiple levels of the judicial system, and sometimes in both state and federal courts. In addition to being a time-consuming endeavor, this requires an understanding of multiple layers of the legal system that many scholars lack.

Despite this, it is clear that case sponsorship is a powerful tool at the disposal of interest groups and we hope to see a resurgence of scholarship devoted to this most significant topic. In addition to addressing some of the limitations of existing research discussed above, we also encourage researchers to include a broader set of organizations in their studies. In particular, we think it will be useful to focus attention, not just on civil rights and liberties organizations, but also on groups whose goals implicate other issue areas, such as economic policies (e.g., Franklin 2009). Further, there has been little scholarly attention focused on class action lawsuits organized by interests groups (e.g., Scheppele and Walker 1991). Through these lawsuits, organizations consolidate the claims of dozens (or even thousands) of individuals into a single lawsuit. The expectation is that, by combining claims, the class action may result in higher damage awards (p. 364) than would be expected from a single lawsuit (e.g., Coffee 1995). Lastly, we believe that large-scale investigations into how groups select cases for sponsorship are warranted (e.g., Scheppele and Walker 1991). Though we have a fairly good knowledge of how particular organizations choose cases for planned litigation, it is not clear how generalizable these studies are to the broader interest group population. To be sure, we recognize that such studies are very time-consuming and resource-intensive to conduct. However, they have the potential to shed a great deal of light on how and why interest groups use the court system in the pursuit of their goals.

Amicus Curiae Briefs

Research on interest group amicus curiae activity is by far the most well-developed literature on organizational litigation. Through this technique, organizations submit legal briefs to courts providing judges with information regarding the application of legal standards, the interpretation of precedent, the perspectives of other actors in the American political system, as well as their views of the broader economic, legal, and policy implications of a decision (Collins 2008a). Amicus curiae translates literally to "friend of the court" in Latin, suggesting that the briefs provide neutral information that helps educate judges. However, they are, in fact, adversarial weapons, urging courts to decide in favor of one litigant or the other (Banner 2003; Krislov 1963).

Research on amicus participation takes a variety of forms. Numerous studies provide information on the overall amount of amicus activity in various courts, and address the identity of the organizations that file amicus briefs. These studies reveal that the number of amicus briefs filed has increased steadily over time (e.g., Collins 2008a; Corbally, Bross, and Flango 2004; Epstein 1994; Kearney and Merrill 2000; Laroche 2009; Martinek 2006; O'Connor and Epstein 1982). Today, it is the rare case that does not have amicus briefs in the U.S. Supreme Court. Other studies address the types of organizations that participate as amici. Generally speaking, a diverse assortment of groups file amicus briefs, and the amicus environment in the courts is quite pluralistic when compared to organizational participation in the executive and legislative branches (Caldeira and Wright 1990; Collins and Solowiej 2007; Collins 2008a; Collins and Martinek 2010a; Epstein 1994).

While the literatures on these topics are fairly saturated, they overwhelmingly focus on federal appellate courts, especially the U.S. Supreme Court. Given this, it would be useful to devote more research to understanding the volume of amicus activity and the types of organizations that file amicus briefs in state courts and the federal district courts. The question of who files amicus briefs is particularly important because most theories of amicus influence posit that judges are provided with a diverse assortment of information (Collins 2008a; Hansford 2004; Kearney and Merrill 2000; Spriggs and Wahlbeck 1997). Presumably they would not be privy to such varied information if the amicus environment was homogenous, or had an elitist bent.

(p. 365) Another body of research addresses why interest groups participate as amicus curiae. These studies reveal that groups file amicus briefs in an attempt to further their policy goals, and that membership groups are also attentive to organizational maintenance concerns (Hansford 2004a, 2004b; Martinek 2006; Solberg and Waltenburg 2006; Scheppele and Walker 1991; Solowiej and Collins 2009). As it relates to the pursuit of policy goals, organizations are attracted to cases that have far-reaching policy implications, such as those involving important constitutional questions, the exercise of judicial review, and civil rights and liberties policies (Martinek 2006; Provost 2011; Salzman, Williams, and Calvin 2011; Solowiej and Collins 2009). In addition, groups are

more likely to file amicus briefs when the information environment at the court is relatively poor, as in cases featuring complex legal questions or inexperienced counsel (Hansford 2004a; Martinek 2006; Solowiej and Collins 2009). Further, groups participate as amici in an effort to counteract the lobbying efforts of their opponents (Epstein 1985; Hansford 2011; Solowiej and Collins 2009; Teles 2008). In terms of maintaining the organization, membership groups are especially interested in cases that allow them to increase publicity for their causes, particularly those generating media attention that touch on the concerns of the their members (Hansford 2004a, 2004b; Koshner 1998; Solberg and Waltenburg 2006).

Though this is an important and growing corpus of research, it is almost entirely concentrated on federal appellate courts, particularly the U.S. Supreme Court. It is clear that, in order to understand group motivations for filing amicus briefs, we must move beyond the almost myopic focus on the Supreme Court. In addition, it would be useful to have more information on why groups file amicus briefs at particular stages of litigation. This will shed light on, for example, whether interest groups enter litigation at the intermediate appellate level and then continue to file amicus briefs at the court-of-last-resort level. On the one hand, this seems to be a useful strategy since groups can easily revise their amicus briefs for submission to a different court and because amicus participation in an intermediate appellate court can increases the chances that a higher court will review the case (Hagle and Spaeth 2009). On the other hand, groups filing amicus briefs at the intermediate court of appeals level run the risk that a higher court will not accept the case for review and there is an increased financial burden in participating in multiple judicial venues. Finally, we encourage scholars to devote more attention to ascertaining the weight that membership groups place on pursuing their policy goals relative to attending to organizational maintenance issues. For example, some argue that maintaining the group represents a goal (Koshner 1998; Solberg and Waltenburg 2006), while others view it as a constraint that only membership-based groups face (Collins 2008a; Hansford 2004a, 2004b). Far from being mere semantics, this distinction can make a real difference in terms of how we approach the study of amicus curiae participation.

A voluminous amount of scholarship has been devoted to ascertaining the influence of amicus briefs. Groups can file amicus briefs at two stages of decision-making. At the agenda-setting stage (when judges determine which cases will receive their full attention), groups urge courts to grant or deny a petition for review. At the merits stage (when (p. 366) judges decide the outcome of cases), organizations advocate for courts to rule in favor of a particular litigant. Beginning with the agenda-setting stage, research by Caldeira and Wright (1988) shows that the number of amicus briefs filed with a certiorari petition is a significant determinant in the U.S. Supreme Court’s decision to review a case (see also McGuire and Caldeira 1993). In addition, Black and Boyd (2013) provide evidence that Supreme Court justices are more likely to add cases accompanied by amicus briefs to their discuss list (the group of cases the justices discuss amongst

themselves prior to voting to grant or deny certiorari). Amicus briefs are argued to influence judges' selection of cases because they provide reliable signals regarding the broader economic, legal, and social impact of a decision, thus making review more likely.

Although it is has become the conventional wisdom that amicus briefs filed at the certiorari stage in the Supreme Court enhance the likelihood that a case will be accepted for review, most of the studies on which this wisdom is based focus on a single term or a single issue area. Accordingly, it would be useful to provide more longitudinal examinations into this relationship. Because the number of amicus briefs filed with the Court has increased over time, it is plausible that the effect of these briefs on certiorari decisions has lessened in more recent years. In addition, research on amicus influence on agenda-setting focuses entirely on the U.S. Supreme Court. Since many state courts of last resort enjoy discretionary jurisdiction, it will prove useful to apply the insights garnered from this literature to state high courts. Finally, because studies that examine why groups file amicus briefs overwhelmingly focus on the merits stage, it will be beneficial to investigate the decisions of groups to participate at the agenda-setting stage.

There is a vast literature on amicus influence on judicial decision-making at the merits stage. One line of research attempts to determine whether amicus briefs influence the likelihood of litigation success, i.e., whether a particular party wins or loses (Collins 2004; Collins and Martinek 2010b; Comparato 2003; Kearney and Merrill 2000; Laroche 2009; McGuire 1990, 1995; Songer and Kuersten 1995; Songer and Sheehan 1993). Based on the idea that amicus briefs provide judges with persuasive information that helps buttress the arguments of the litigants they support, several of these studies show that amicus support increases litigation success. That is, as the number of amicus briefs supporting a litigant increase, so too does the chances of that litigant winning the lawsuit (e.g., Collins 2004; Collins and Martinek 2010b; Songer and Kuersten 1995).

Others approach the question of amicus influence by exploring the ability of amicus briefs to influence the ideological direction of case outcomes and judicial votes (Box-Steffensmeier, Christenson, and Hitt 2013; Collins 2007, 2008a; Collins and Martinek 2015). These studies are premised on the idea that, because interest groups are most concerned with the broader policy outcomes of a decision, we are best served by studying the ideological direction of those decisions, instead of whether a particular litigant won or lost the case. Collins (2008a) finds that amicus briefs influence the ideological direction of the justices' votes, with conservative briefs shaping the voting behavior of liberal justices and vice-versa. This finding demonstrates that amicus briefs can influence judges across ideological lines (see also Box-Steffensmeier, Christenson, and Hitt 2013).

(p. 367) A third means to study amicus influence at the merits stage involves analyzing how amici contribute to judicial opinions. This is an especially important avenue of study since opinions provide the rational for judges' decisions, establishing rules and tests that provide guidelines for the behavior of judges, elected officials, and the American public. Several studies demonstrate that judges cite amicus briefs in their opinions and adopt the

arguments of amici (Alger and Krislov 2004; Chauncey 2004; Collins, Corley, and Hamner 2015; Day 2001; Kearney and Merrill 2000; Kolbert 1989; Manz 2002; Samuels 1995; Spriggs and Wahlbeck 1997; Wofford 2015). For example, Behuniak-Long (1991) found that amicus briefs filed in *Webster v. Reproductive Health Services* (1989) shaped the content of the majority opinion, as well as that of the concurring and dissenting opinions. Similarly, Epstein and Kobylka (1992) provide compelling evidence that amicus briefs were influential in shaping the Supreme Court's death penalty and abortion litigation, and Samuels (2004) provides similar evidence with respect to the Court's privacy decisions. Moreover, studies show that amicus briefs increase the chances that judges will write concurring and dissenting opinions (Collins 2008b; Rebe 2013). Such is the case because amicus briefs provide numerous alternative perspectives on the outcomes of cases, creating ambiguity in judges' already uncertain decision-making, while providing them with substantial foundations for concurring and dissenting opinions.

Scholarship on amicus influence on judicial decision-making on the merits has provided a variety of insights into how friends of the court shape judicial behavior. Yet, some areas are less well developed than others. First, as with interest group litigation research in general, it focuses overwhelmingly on the U.S. Supreme Court. Though such studies have shed tremendous light on our understanding of amici, we need to look to other venues to test the generalizability of theories developed in the Supreme Court. This is especially true for research that explores the influence of amicus briefs on the ideological direction of votes and decisions, as well as that investigating amicus influence on opinion content, which focuses almost entirely on the Supreme Court.

Second, the theoretical motivation for these studies is not as well developed as it could be. While there is agreement that amicus briefs are influential because they provide judges with information, little attention has been paid to determining whether particular types of information are more useful than others. This is a particularly important point since amicus briefs supply judges with a wide variety of information and there is good reason to believe that some types of information are more useful than others (e.g., Collins, Corley, and Hamner 2014; Spriggs and Wahlbeck 1997). For example, a survey of Supreme Court law clerks shows that they pay particular attention to amicus briefs providing social scientific data and that amicus briefs are most beneficial in highly technical cases (Lynch 2004; see also Flango, Bross, and Corbally 2006).

Third, our collective understanding of amicus influence would benefit from a consideration of particular aspects of amicus briefs, including their quality and the identity of the amici (e.g., Box-Steffensmeier, Christenson, and Hitt 2013). Similar to interest group scholarship more broadly, research on amicus briefs tends to operationalize amicus influence using the presence or amount of amicus activity, heeding little attention to the quality of the argumentation in the amicus brief or the identity of the amici.[1] Because (p. 368) not all amicus briefs are created equal, future scholars would be well advised to heed greater attention to capturing these attributes.

Fourth, a greater consideration of how the influence of amicus briefs might be enhanced or attenuated would be useful. With a few exceptions (e.g., Collins 2008a; Box-Steffensmeier, Christenson, and Hitt 2013; Collins and Martinek 2015), most studies of amicus influence fail to consider how judges of various ideological stripes might differently respond to amicus briefs. Because there is substantial evidence that receivers are active participants in persuasion (e.g., Crano and Prislin 2006), there is good reason to believe that judges might have varied reactions to amicus briefs. Similarly, interviews with clerks and judges reveal that they believe that amicus briefs are especially useful in particular types of cases, such as complex and technical disputes (Flango, Bross, and Corbally 2006; Lynch 2004; Simard 2008). Conversely, because judges rely more on their attitudes in especially salient cases (Collins 2008c), the influence of amicus briefs might be lessened in such high-profile controversies. A careful consideration of how such factors might mediate the effect of amicus briefs will surely enhance our understanding of friends of the court.

Lastly, there are two types of amicus participation that have gone largely overlooked by scholars. Although rare, from time to time judges invite interest groups to participate as amici curiae. Such invitations might be issued when a litigant refuses to defend a law or an unfavorable lower court decision, or when the court believes that the amicus can provide especially valuable information (e.g., Black and Owens 2012; Goldman 2011). Given that these amicus briefs are filed at the invitation of the court, it seems that judges would be particularly receptive to the information supplied in them. Second, some amicus "briefs" are not briefs at all, but are instead letters or written comments that are submitted to judges. These tend to be much shorter than traditional amicus briefs, usually constituting only a few pages. As far as we can tell, these are most commonly submitted at the trial court level and it is at the discretion of the judge as to whether they become a formal part of the case record. Although uncommon, these forms of amicus participation offer additional opportunities for interest group involvement in the courts. Accordingly, we believe that they deserve some scholarly attention.

Intervention

Without a doubt, the most underdeveloped literature on interest group litigation involves intervention. As intervenors, organizations can enter into a lawsuit that has already commenced at either the trial or appellate levels. Although they are not technically parties to the litigation, intervenors are authorized to make motions, introduce new legal arguments, and present evidence and witnesses at trials (Hall 2012; White 2002). While this is seemingly an attractive strategy for organizations (mimicking in many ways case sponsorship), the requirements for obtaining intervener status are rather amorphous and do not seem to be applied consistently. For example, despite the fact that the Federal Rules of (p. 369) Civil Procedure detail the conditions under which organizations might

obtain intervenor status as a matter of right (in addition to providing guidelines for discretionary intervention), judges treat such requests for intervention as if they are discretionary (Hilliker 1981; Tobias 1991).

The small body of research devoted to intervention focuses primarily on the requirements for intervention, and how these rules are applied (Appel 2000; Hall 2012; Hilliker 1981; Tobias 1991). Much of this scholarship is prescriptive, suggesting best practices to clarify the confusing nature of the requirements for obtaining intervenor status (e.g., Gardner 2002; Vreeland 1990; White 2002). Thus, there is a plethora of opportunities to expand on our understanding of interest group intervention. For example, we know little about how successful organizations are at obtaining intervenor status and what happens when intervenor status is denied. It seems that groups would turn to the amicus brief (Hilliker 1981), but there is little empirical evidence on this point. Moreover, there is scant research on the frequency of intervention, the categories of organizations that successfully become intervenors, or the types of information these groups provide courts. Further, evidence with respect to the influence of intervenors on judicial decisions and opinions is sorely lacking. Thus, we believe that increased attention to the study of interest group intervention will benefit our collective knowledge of group litigation.

Venue Selection

How interest groups choose judicial venues to participate in is a topic relevant to the study of all forms of organizational litigation. Though there is a relatively large literature on why litigants bring cases into the legal system (e.g., Cooter and Rubinfeld 1989; Priest and Klein 1984), there is not nearly as much research on how interest groups select venues for litigation, whether through sponsorship, amicus participation, or intervention. Much of this scholarship focuses on why organizations choose to pursue their goals in the legal system, as opposed to other venues, such as the legislative and executive branches (Engel 2007; Hansford 2004b; Holyoke 2003; Rubin, Curran, and Curran 2001; Scheppele and Walker 1991). However, a few studies explore why groups opt to litigate at different levels of the legal system, including choosing between federal and state courts (Rubenstein 1999; see also Howard 2007).

The question of why groups select certain venues for litigation is a significant one, speaking directly to concerns about interest group influence on the judiciary. For example, if organizations “cherry pick” venues for participation in which judges are likely to rule in their favor—regardless of their participation—this indicates that the groups were not likely influential, despite the appearance of their “success.” Thus, it would be useful to approach the study of group influence as a two-stage selection model. For example, the first stage might capture venue selection, with the second stage examining whether the organization was successful in that venue (e.g., Nicholson and Collins 2008). Moreover, (p. 370) venue selection decisions tell us a great deal about how organizations approach the legal system. For example, though it is believed that groups prefer to litigate in venues with the potential for the broadest policy impact (Wasby 1995), such a strategy is accompanied by risks. In particular, while a victory in a venue with nationwide jurisdiction is a huge achievement, a loss can be devastating to the organization, setting it back years in the pursuit of its policy goals. Finally, studies of venue selection across institutions enhance our understanding of how groups view litigation relative to other strategies, such as lobbying legislators or bureaucrats. Insofar as it is important to more closely connect the study of interest group litigation to the scholarship on interest groups more generally (Collins 2008a), venue selection studies can play a key role in this.

Coalition Formation

Similar to venue selection, research on why interest groups work alone or together is relevant to the study of all forms of litigation, although amicus coalitions have garnered the most scholarly attention. Regarding alliance formation, we have a basic understanding of the types of amici that work together (Caldeira and Wright 1990; Collins and Solowiej 2007; see also Box-Steffensmeier and Christenson 2014). For example, these studies show that groups of the same organizational type are inclined to work together in coalitions (e.g., corporations form alliances with other corporations). Yet, because these studies address coalitional activity as only a small part of the more general analysis of amicus activity, they do not speak to the frequency with which different group types work together and what coalitional amicus activity looks like as a whole.

Another line of research explores why groups opt to join coalitions or work alone (e.g., Box-Steffensmeier and Christenson 2014; Whitford 2003). These studies reveal that organizations tend to join coalitions because it allows them to pool their resources while influencing public policy. In other words, it is a low-cost means to lobby the courts. However, the research on litigation coalitions is far less developed than studies of coalition formation in other venues, particularly in legislative settings (e.g., Hojnacki 1997, 1998; Hula 1999). Among other topics, we have only a limited of knowledge of how coalitions form, why organizations opt to join specific coalitions, the means by which work and resources are allocated in coalitions, and how groups claim credit for coalitional victories. We suspect that the use of interviews and surveys will be particularly useful tools for addressing such questions.

Moreover, we have only scratched the surface in our understanding of how turf wars develop between possible coalition partners. As noted above, *District of Columbia v. Heller* was financed by Robert Levy. As part of the litigation strategy, Levy fought the National Rifle Association's (NRA) direct involvement in the case, stating that he did not want the case "to be identified with the usual gun lobby groups" (Teichner 2008). In addition to refusing requests from NRA lawyers to not file the lawsuit in the first place, Levy challenged the organization's attempt to consolidate *Heller* with a similar case filed (p. 371) by the NRA (Gibeaut 2007). Though Wasby (1995) sheds a great deal of insight into the inter-organizational dynamics at play in race relations litigation from the late 1960s to the 1980s, there has been scant attention devoted to this important line of inquiry beyond this.

Finally, there is a very small body of research that investigates the effect of coalitional amicus activity. Collins (2004) evaluated whether the number of interest groups cosigning amicus briefs influence Supreme Court decision-making. Though he provided evidence that the justices responded to the number of briefs filed in a case, he found no support that the size of group coalitions affected litigant success. This suggests that amicus briefs

are influential, not because they signal broad support for a cause, but instead because of their legal and policy arguments. In addition, Spriggs and Wahlbeck (1997) found that no relationship exists between the size of amicus coalitions and the adoption of arguments from amicus briefs into Supreme Court majority opinions.

Nonetheless, it would be useful to expand on such studies before shutting the door on the idea that coalition size might matter. For example, Box-Steffensmeier, Christenson, and Hitt (2013) provide evidence that amici who are central actors in coalitions are especially influential in certain circumstances. Though this does not speak to coalition size, it does suggest that judges might pay attention to the identity of coalition members (see also Simard 2008). In addition to these studies that focus on judicial decision-making, Lynch (2004) interviewed Supreme Court law clerks, who overwhelmingly indicated that they would prefer to see more collaboration among amici. This was especially true if this resulted in fewer overall briefs, with those submitted being of higher quality. Further, a very large majority of clerks indicated that they would give special attention to amicus briefs filed by ideologically diverse coalitions. We are certain that applying these insights to the study of the influence of coalitional amicus briefs will prove highly useful.

Extrajudicial Lobbying

Thus far, we have focused on the various methods that are available to organizations to participate directly in the American legal system. Though these are the primary tools at the disposal of groups, it is important to note that there are methods that groups can employ outside of the legal arena in an attempt to influence judicial decisions. Chief among these is making campaign donations to candidates for state judicial offices. Because most state judges are elected in some way, organizations regularly contribute to their political campaigns in hopes of influencing who sits on the state bench and the decisions those judges render.

Though this is a common strategy for groups, there is relatively little research on this topic. We have some knowledge of the types of groups that give to political campaigns and the influence of money on campaigns themselves (Bonneau and Hall 2009; Champagne 2001; Streb 2007), but our understanding of whether campaign donations influence litigation outcomes is more circumscribed. Presumably, groups donate to (p. 372) judicial campaigns with the expectation that a quid pro quo relationship will exist. That is, a group provides campaign funding and, in return, expects some level of favorable treatment from the judge whose campaign the organization funded. Indeed, there is some evidence in support of this relationship (Cann 2007; Cann, Bonneau, and Boyea 2012; Kang and Shepherd 2011; McCall 2008; McCall and McCall 2006; Waltenburg and Lopeman 2000; Ware 1999).

As a growing body of research, this literature is still developing into its own. Because the question of whether campaign contributions influence judicial decision-making speaks to the very impartiality of the American legal system, this is clearly an area worthy of investigation. As it continues to grow, we encourage researchers to focus their studies beyond the analysis of a single state. Because this topic touches on such a sensitive area (the impartiality of judges), it is important that we make our studies as generalizable as possible. Moreover, employing data from multiple states will allow researchers to investigate whether institutional variation among states conditions the effect of money on judicial decisions (Cann, Bonneau, and Boyea 2012; Kang and Shepherd 2011).

In addition, we advocate for the adoption of techniques such as those used by Cann (2007) to address questions of causality. Consider, for example, two states of the world. In the first, groups donate money in an effort to receive favorable rulings. In the second, groups donate money to reward judges who are ideologically supportive of the groups' preferred policies. A correlation between donations and the outcomes of judicial decisions supports both narratives, but does not indicate that the donations *caused* the judge to behave in a particular manner. Due to this, it is important that researchers are attentive to causality concerns that can be addressed through techniques such as the use of selection and instrumental variable models.

Another strategy available to groups involves participating in the selection of federal judges. Because federal judges are appointed by the president and confirmed by the Senate, there are numerous access points available to groups. For example, some groups lobby executive and legislative branch officials who are active in the selection of federal judges. Others testify before the Senate Judiciary Committee and take public positions on behalf of, or in opposition to, a nominee (e.g., Bell 2002; Caldeira and Wright 1998; Scherer 2005; Scherer, Bartels, and Steigerwalt 2008; Segal, Cameron, and Cover 1992; Steigerwalt 2010; Vining 2011). This is a relatively well-established body of research that has reached consensus on a good number of points. For example, it is clear that groups are very active in federal judicial selection and also that group lobbying and testimony can influence the fate of a nominee in the Senate. Yet, our knowledge of other issues is not quite as clear, such as the diversity of the organizations that participate, whether some strategies are more useful than others (e.g., lobbying individual senators versus testifying before the Judiciary Committee), and how groups select which nominees they will support or oppose. In addition, we know very little about how interest groups form coalitions for the purpose of influencing federal judicial selection.

The final extrajudicial strategy we wish to discuss involves interacting with judges outside of the confines of their selection or litigation. This typically involves groups inviting judges to often lavish resorts to give speeches or teach courses and substantially (p. 373) remunerating them for their time (*The New York Times* 2006; *The Washington Post* 2011; see also Black, Owens, and Armaly 2016).[2] Although attending such junkets do not appear to violate any federal laws, it certainly gives rise to numerous ethnical concerns. Equally importantly, this type of extrajudicial activity provides a host of avenues for future research. Among other questions, investigating the types of

organizations and judges that participate in these junkets is important, as is unearthing how much judges are remunerated for their attendance. Moreover, the question of what groups expect from these events is significant. For example, do groups invite judges in hopes they will receive favorable outcomes in future cases, do they invite them to reward like-minded jurists, or are their other reasons motivating this choice? As with campaign contributions, this is an extremely important area of investigation as it gets at the heart of questions about judicial impartiality.

Conclusions

Although scholars and the public tend to give short shrift to how interest groups use the courts in pursuit of their goals, it is clear that litigation is a powerful tool at the disposal of interest groups. Indeed, many of the U.S. Supreme Court's most significant decisions in the past century featured substantial involvement by interest groups, including *Brown v. Board of Education* (1954), *Mapp v. Ohio* (1961), and *Grutter v. Bollinger* (2003). In this chapter, we have reviewed academic research on interest group litigation for the purpose of highlighting the current state of our knowledge and suggesting directions for future research. As we have argued, there are only a small number of areas in which continued labors are unlikely to bear additional fruits. Chief among these is the literature that examines the volume of amicus activity at the U.S. Supreme Court, and the types of organizations that file amicus briefs in that institution. In addition, we have a solid understanding of the litigation activities of particular organizations, such as the NAACP LDF.

As it relates to suggestions for future scholarship, we have identified numerous opportunities for advancement, a few of which bear emphasizing. First, due to the almost myopic focus on the U.S. Supreme Court, much of what we know about interest group litigation comes from studies of that venue. Accordingly, we encourage scholars to look beyond the Supreme Court and center their studies on other federal and state judiciaries (as well on foreign judicial bodies). Second, there has been little systematic attention as to why organizations choose venues for litigation, or why they opt to pursue particular litigation strategies (e.g., O'Connor 1980; Scheppele and Walker 1991). Moreover, it is not evident whether certain litigation methods are more effective than others. Third, because scholars have focused on how groups pursue their goals in the legal system, they have given little attention to the effects of extrajudicial lobbying methods, such as inviting judges on lucrative junkets. Finally, the vast majority of research on the influence of interest groups considers how judges respond to group litigation. This ignores the fact that judges' law clerks are often the first, and sometimes the only, eyes on legal **(p. 374)** documents, such as amicus briefs, as well as the important roles these clerks play in drafting judicial opinions (Lynch 2004; Ward and Weiden 2006). We are confident that our understanding of interest group litigation will be greatly enhanced by developing and

testing theoretical expectations for how relatively green law clerks respond to interest group litigation.

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Notes:

(1.) A clear exception to this is the voluminous literature on the US Solicitor General (e.g., Bailey, Kamoie, and Maltzman 2005; Black and Owens 2012; Deen, Ignagni, and Meernik 2003; Nicholson and Collins 2008; O'Connor 1983; Pacelle 2003).

(2.) In addition, groups sometimes organize mass mailings or petition drives in an attempt to influence judicial decisions, and hold vigils outside of courts (Vose 1958). Because there is little reason to believe that such techniques have the potential to be influential, we mention them only in passing.

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