

Amicus Coalition Heterogeneity and Signaling Credibility in Supreme Court Agenda Setting

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What makes lobbying coalitions successful? We contend that greater preference heterogeneity among members of a lobbying coalition enhances the credibility of its signals to a target audience. To test this theory, we analyze the relationship between the preference heterogeneity of state amicus coalitions at the agenda setting stage and the probability of the U.S. Supreme Court granting review in state-filed cases. The results suggest that petitions are more likely to be granted as the preference heterogeneity among members of amicus coalitions increases. Our theoretical and empirical approaches are easily adapted to the study of lobbying influence in other institutional contexts.

What makes lobbying coalitions successful? This question is central to the study of interest group influence across a variety of institutional contexts. In the courts, for example, organized interests attempt to influence agenda setting decisions and the development of law by participating in cases as amicus curiae (Collins 2008). Participation by organized interests at the agenda setting stage signals valuable information to the courts about case importance (Caldeira and Wright 1988). Although organized interests regularly join coalitions to influence judicial decision making, little is known about how coalition structure affects signal credibility. Building on signaling models from the study of legislative politics (Gilligan and Krehbiel 1989; Kessler and Krehbiel 1996), we contend that ideologically heterogeneous lobbying coalitions convey more credible signals. The key insight from these models is that signals from heterogeneous coalitions decrease uncertainty in the information environment among members of the target audience. As applied to the courts, this suggests that signals from organized interests about case importance at the agenda setting stage should be viewed as more credible when delivered by ideologically heterogeneous coalitions.

We approach our theoretical perspective through the lens of states lobbying the U.S. Supreme Court for access to its agenda. States are regularly involved with

Supreme Court litigation, and the results have important consequences for federalism (e.g., Waltenburg and Swinford 1999; Joondeph 2011; Shortell 2012; Lindquist and Corley 2013; Nolette 2014). The Supreme Court is often the last recourse for states when lower federal courts or state courts invalidate their policies under federal law. Although states enjoy a remarkably high rate of success on the merits (Epstein and O'Connor 1988), they must first secure access to the Court's agenda. Given the Court's small, shrinking, and almost entirely discretionary docket (Owens and Simon 2012), securing access is a difficult and unlikely task. States have long organized to jointly lobby the Court by cosigning amicus curiae briefs (e.g., Provost 2011). Our theoretical perspective suggests that these state efforts will be more successful when there is greater preference heterogeneity among members of the lobbying coalition.

Using a sample of state-filed certiorari petitions from the Supreme Court's 2001–2010 Terms, we find that petitions accompanied by a state-filed amicus brief are more likely to be granted as the preference heterogeneity of the state lobbying coalition increases. This result contributes to a growing literature exploring the formation and influence of lobbying coalitions in the courts (Whitford 2003; Solberg and Waltenburg 2006; Box-Steffensmeier, Christenson, and Hitt 2013; Box-Steffensmeier and Christenson 2014; Hansford n.d). By illustrating an important mechanism through which states can influence decision making at the federal level, this project also has important implications for federalism. Moreover, our theoretical and empirical approaches can easily be extended to examine the influence of lobbying coalitions in other institutional contexts.

Coalition Heterogeneity and Lobbying Success

Supreme Court justices pursue policy and legal goals when making decisions about how to allocate their scarce agenda space (Perry 1991; Black and Owens 2009). Organized interests regularly file amicus curiae briefs to signal case importance. As Caldeira and Wright (1988, 1112) explain, “amicus curiae participation [at the agenda setting stage] reflects the demand for adjudication [and] provides information, or signals—otherwise largely unavailable—about the political, social, and economic significance of cases.” Amicus curiae briefs at the agenda setting stage can also signal legal importance (McGuire 1994). Amici, for example, can help explain why a particular case is a good vehicle for answering the legal question at issue, highlight conflict in the lower courts, or present new legal arguments. The consistent empirical finding that organized interests are successful at securing review demonstrates the influence of amici at the agenda setting stage (e.g., Caldeira and Wright 1988; Perry 1991; McGuire and Caldeira 1993; Caldeira, Wright, and Zorn 1999; Black and Owens 2009; Owens 2010).

The influence of signals about case importance at the agenda setting stage is tied to their credibility (Cameron, Segal, and Songer 2000). Given that credible signals are costly to send, it is important to understand what makes an amicus brief, or any other signal at the agenda setting stage, a credible indicator of policy or legal importance. The first generation of research concerning the influence of amici on agenda setting suggested that the time and cost associated with their filing attested to their credibility (Caldeira and Wright 1988). As amicus brief filings at the agenda setting stage become more prevalent, however, their influence may be declining (see Caldeira, Wright, and Zorn 2012). Although the mere presence of amici at the agenda setting stage may not be as strong an indicator of case importance as it once was, other features of these briefs may influence their perceived credibility.

One possibility is that amicus briefs with more cosigners may be perceived to be more credible. Cosigning amicus briefs is an important way for organized interests to build coalitions to lobby the Supreme Court (Box-Steffensmeier and Christenson 2014). Pooling expertise and resources is an important benefit to organizing lobbying efforts (Hojnacki 1998). Moreover, broad endorsement enhances the prospect of obtaining support from policymakers (Berry 1989). Anecdotal evidence suggests that Supreme Court justices pay attention to the number of amicus cosigners (Collins 2004; Solimine 2012). Furthermore, the number of cosigners on state amicus briefs is associated with a higher likelihood of review at the agenda setting stage (Goelzhauser and Vouvalis 2013) and pro-state outcomes at the merits stage (Nicholson-Crotty 2007). Conversely, cosigning briefs might be viewed as a relatively costless activity compared to filing a separate brief (Caldeira and Wright 1990; Hansford 2011). And there is evidence that the number of merit stage amicus cosigners is not associated with merit outcomes generally (Collins 2004) or merit outcomes in cases involving states (Clayton and McGuire 2001).

Conflicting empirical evidence regarding the influence of cosigners may be due to differences in coalition structure. A homogenous coalition, for example, may be less effective at transmitting a credible signal about case importance. In general, like-minded groups tend to comprise lobbying coalitions (Hula 1999). For example, the probability of bill sponsorship in the Senate increases as ideological preferences converge with those of the bill's sponsor (Howard and Moffett 2010). Although the fact that like-minded groups are more likely to join coalitions is not surprising from a lobbying perspective, it creates difficulties from a signaling perspective. If a lobbying target observes a coalition with many members, but understands that members have homogenous preferences, any signaling benefit derived from the presence of multiple members may be diminished.

Heterogeneous coalitions may be better able to convey credible signals. This insight has received some attention in the legislative politics literature. Gilligan and Krehbiel (1989), for example, demonstrate that committees composed of

policymakers with heterogeneous preferences are better able to transmit credible signals about the value of policy proposals to moderate lawmakers. Building on this model, Kessler and Krehbiel (1996) show that bill cosponsorship by heterogeneous lawmakers serves as a credible intra-legislative branch signal of bill quality. Observing support among lawmakers with heterogeneous preferences leads moderates to update their beliefs about the merits of a proposed policy, thereby facilitating the consolidation of broad coalitions. Both of these legislative signaling models emphasize the importance of heterogeneous coalitions for decreasing uncertainty among members of a target audience.

Theories of heterogeneous coalitions and signaling credibility have a straightforward application to lobbying: the more heterogeneous a lobbying coalition, the less uncertainty among members of the target audience about the implications of siding with the coalition. With respect to Supreme Court agenda setting, ideologically heterogeneous amicus coalitions may be perceived to send more credible signals about case importance—particularly the legal dimension. Although a policy-motivated justice might prefer homogenous signals to avoid ambiguity about policy impact, Black and Owens (2009, 1070) demonstrate that “policy gives way” to legal considerations at the agenda setting stage when the two conflict. In turn, signals about the law are likely to be perceived as more credible when coming from ideologically heterogeneous lobbying coalitions. One former Supreme Court clerk noted, for example, that amicus briefs filed by ideologically diverse interests may “convince you that they have a good legal argument” (Lynch 2004, 61). As Provine (1980, 29) explains, “the apparent rightness of the petitioner’s claim” is paramount among the Court’s considerations when deciding whether to grant review. A heterogeneous coalition lobbying the Supreme Court for review is more likely to inspire confidence in the petitioner’s claim that some legal defect in the lower court’s judgment warrants reconsideration.

State Amicus Coalitions and Agenda Setting

We test our theory of coalition heterogeneity and lobbying success by examining the influence of state amicus briefs on Supreme Court agenda setting decisions. States regularly lobby the Supreme Court at the agenda setting stage (Caldeira and Wright 1990; Perry 1991; Waltenburg and Swinford 1999). Aided by coordination efforts from the National Association of Attorneys General’s (NAAG) Supreme Court Project (Clayton 1994; Clayton and McGuire 2001; Chen 2003), states typically sign a single amicus brief in their effort to signal case importance and secure Supreme Court review.¹ For example, a brief signed by twenty-eight states in *Wilkins v. Cuno* (2005) requested review of a lower court decision they said “undermine[d] every State’s ability to encourage investment in depressed areas, and to compete with other States and with foreign nations for economic investment.”²

According to a survey of former Supreme Court clerks conducted by Lynch (2004), state amicus filings are second only to those from the U.S. Solicitor General in terms of generating interest among the justices.³

Our argument suggests that heterogeneous state amicus coalitions are more likely to be successful at convincing the Supreme Court to grant review. Two state-filed amicus briefs in First Amendment cases illustrate differences in coalition heterogeneity. In *O'Bannon v. Indiana Civil Liberties Union* (2001) [cert denied], the lobbying coalition consisted of nine relatively conservative states: Alabama, Mississippi, Nebraska, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Virginia. In contrast, the lobbying coalition in *Virginia v. Black* (2002) [cert granted] also consisted of nine states, but these states had comparatively heterogeneous preferences: they included the relatively conservative states of Arizona, Georgia, Kansas, Missouri, Oklahoma, and Utah, along with the relatively liberal states of California, Massachusetts, and Washington.

Two assumptions underlie the application of our theoretical account to state amicus briefs and agenda setting decisions. First, signal heterogeneity must be observed. Former Supreme Court clerks have suggested that state-filed amicus briefs, and filings by “groups of states” in particular, are afforded special weight by the Court (Lynch 2004, 47). Moreover, clerks overwhelmingly suggest that briefs cosigned by interests with divergent ideological preferences are given special consideration (Lynch 2004, 61–62). The justices’ primary source of information about a petition is the pool memo, and clerks regularly list the coalition of states participating as amicus in state-filed cases.⁴ In *Murray v. Giarratano* (88-411), for example, the pool memo writer noted that “[t]he states of Georgia, Mississippi, North Carolina, Missouri, South Dakota, Wyoming, Delaware, California, Pennsylvania, New Mexico, Indiana, Kentucky, New Hampshire, Nevada, Utah, South Carolina, Oregon, Maryland, and Idaho filed an amicus brief in support of petitioners.”⁵ Even when the justices do not observe the members of a state amicus coalition in the pool memo, however, it is possible that this information influences the clerk’s recommendation and framing of the relevant legal issues (e.g., whether a mistake was made in the lower court) given the survey evidence from clerks on the importance of state-filed briefs and the enhanced credibility of coalitions with divergent preferences.

Our second assumption is that preference heterogeneity can be reasonably estimated by clerks or justices. We certainly do not suggest that clerks or justices can (or attempt to) precisely estimate the variance in preferences among members of a coalition. However, states are repeat players before the Court and it is reasonable to expect that clerks and justices develop an understanding of state preferences and ideological orientations just as they do with other interest groups (see Box-Steffensmeier, Christenson, and Hitt 2013) and lower court judges (see Black and Owens 2012b). Moreover, clerks and justices are well-educated members

of a prominent political institution, and as a result are likely to be broadly familiar with electoral politics and state ideological orientations.⁶

Data and Measurement

We examine the influence of coalition heterogeneity on lobbying success with data on state amicus filings accompanying state-filed petitions during the Supreme Court's 2001–2010 terms.⁷ The dependent variable is an indicator scored one if the Supreme Court granted a petition and zero otherwise. Although there were more than five hundred state petitions for review filed during the sample period, we are interested in petitions accompanied by a state-filed amicus brief with at least two cosigners in order to capture coalition heterogeneity empirically.⁸ There are eighty-one observations meeting this criterion in the sample: forty-five (55.6 percent) of which were denied and thirty-six (44.4 percent) granted.⁹ This extraordinary grant rate is not surprising in light of the existing literature on state success at the agenda setting stage.

Capturing the concept of preference heterogeneity empirically requires a measure of government ideology that places states in the same ideological space. We employ Berry et al.'s (2010) measure of state government ideology based on NOMINATE scores.¹⁰ For each state-filed amicus brief with more than one cosigner, we calculated the standard deviation of the joining states' government ideology scores. Larger standard deviations indicate greater dispersion around the mean and thus greater preference heterogeneity among coalition members.¹¹ The mean of the coalition heterogeneity variable is 22.6, with a standard deviation of 3.2 and a range of 11.6–29.9.

Several control variables are included to account for alternative explanations of the Supreme Court's decision to grant review. First, we include a variable scoring the number of cosigning states. As discussed previously, the number of cosigners may itself signal something about case importance. Moreover, an increase in the number of cosigning states may be associated with increased heterogeneity.¹² To account for the success that petitioning states enjoy when they have their own solicitors general (Goelzhauser and Vouvalis 2013), we include an indicator variable scored one if the petitioning state has a solicitor general and zero otherwise.¹³ The Court may also be more likely to grant petitions as the distance between the mean ideology of the coalition and petitioner increases. As a result, we include a measure scoring the absolute value of the difference between the coalition's mean ideology score and the petitioner's ideology score.¹⁴ To account for the influence of amicus participation more generally (e.g., Caldeira and Wright 1988), we include an indicator variable scored one if an interest group filed a brief supporting or opposing review and zero otherwise.¹⁵ Given the U.S. Solicitor General's influence on agenda setting decisions (e.g., Black and Owens 2012a), we include an indicator

scored one if the United States opposes review and zero otherwise; there were no instances of the United States supporting review in this sample.

We also include controls for several case-level legal factors.¹⁶ The most important influence on the Court's agenda setting decisions is whether there is conflict in the lower courts (e.g., Perry 1991). Thus, we include an indicator variable scored one if conflict is alleged and zero otherwise. The Court is also more likely to grant review when a lower court invalidates a statute (e.g., Epstein, Martin, and Segal 2012). As a result, we include an indicator variable scored one if the lower court opinion declared a state law or policy unconstitutional and zero otherwise. Additional signals of legal importance include a dissent in the lower court (e.g., Tanenhaus et al. 1963) and the lower court reversing a previous court's judgment (e.g., Black and Owens 2009). We capture dissent with an indicator scored one if there was a dissent in the lower court and zero otherwise. We capture reversal with an indicator scored one if the lower court reversed a previous court's judgment and zero otherwise. To account for the political dynamics of agenda setting (see e.g., Black and Owens 2012b), we interact an indicator scored one if the lower court was liberal and zero otherwise with a measure of Court conservatism based on the median justice's ideal point.¹⁷ Given that the Supreme Court was somewhat conservative during the sample period, it may be more likely to audit liberal lower court judgments. The interaction term accounts for the expectation that this effect should be exacerbated (attenuated) by conservative (liberal) shifts in Supreme Court ideology.¹⁸ Finally, we include issue area fixed effects to account for the influence of issue area on agenda setting decisions (see e.g., Morris 1987; Pacelle 1991; Yates, Whitford, and Gillespie 2005).¹⁹

Analysis and Results

Table 1 presents results from a probit model explaining the Supreme Court's decision to grant review in a sample of state-filed petitions from OT 2001 through OT 2010. The model includes issue area fixed effects and standard errors are clustered by term. Overall, the model fit is good. The area under the ROC curve is 0.80. Moreover, the model predicts 71.6 percent of the Court's decisions correctly for a 36.1 percent reduction in error over prediction based on simply guessing the modal outcome (deny) for each petition.

The model offers strong support for the coalition heterogeneity hypothesis. As an initial matter, the estimated coefficient for the coalition heterogeneity variable is positive and statistically significant, indicating that increased coalition heterogeneity is associated with an increase in the probability of the Supreme Court granting review. Substantively, setting binary variables at their modes and continuous variables at their means, an increase in coalition heterogeneity from one standard deviation below the mean to one standard deviation above the mean is associated

Table 1 Supreme Court agenda setting decisions in state-filed cases

	Est.	S.E.
Coalition heterogeneity	0.15*	0.05
Signing states	0.03*	0.01
State solicitor general	1.23*	0.27
Coalition-petitioner distance	0.01	0.02
Interest group brief	0.87*	0.52
U.S. opposition	-0.04	0.60
Conflict	0.96*	0.34
Unconstitutional	0.17	1.01
Dissent	1.02*	0.43
Reversal	-0.17	0.25
Liberal decision	-1.68	4.21
Court conservatism	4.04	60.98
Liberal \times conservatism	-3.64	61.71
Intercept	-3.65	4.23
Issue effects	Yes	
Observations	81	
Area under ROC	0.80	
Percent correctly predicted	71.6	
Percent reduction in error	36.1	

* $p < 0.05$ (one-tailed). Standard errors clustered by term.

with an increase in the probability of the Court granting review from 0.14 [-0.01, 0.29] to 0.46 [0.15, 0.78], a change of 0.32 [0.10, 0.54].²⁰

State coordination impacts the likelihood of securing review in other ways as well. First, the number of states cosigning an amicus curiae brief urging review is positively associated with the probability of the Court granting review.²¹ Substantively, moving from one standard deviation below the mean number of signing states to one standard deviation above is associated with an increase in the probability of the Court granting review from 0.20 [0.02, 0.37] to 0.38 [0.08, 0.67], a change of 0.18 [0.01, 0.35]. Second, petitions filed by states that centralize their federal litigation efforts through solicitors general offices are more likely to be granted. Substantively, the probability of review increases from 0.03 [-0.05, 0.11] without a solicitor general to 0.27 [0.05, 0.51] with a solicitor general, a change of 0.24 [0.09, 0.40].

Turning to the other control variables, and consistent with previous research, the presence of nonstate amici at the agenda setting stage is associated with an increase in the probability of review. Substantively, the presence of nonstate amici

is associated with an increase in the probability of review from 0.28 [0.05, 0.51] to 0.61 [0.19, 1.03], a change of 0.33 [<0.01 , 0.66]. Two case-level legal variables are associated with increases in the probability of review as expected. First, alleged conflict in the courts below is associated with an increase in the probability of the Supreme Court granting review from 0.28 [0.05, 0.51] to 0.65 [0.37, 0.92], a change of 0.37 [0.16, 0.57]. Second, a dissent in the lower court is associated with an increase in the probability of the Court granting review from 0.28 [0.05, 0.51] to 0.69 [0.36, 0.98], a change of 0.39 [0.14, 0.64]. The remaining control variables are not associated with changes in the probability of review.

To summarize the results, there is a strong relationship between the level of preference heterogeneity among lobbying states at the agenda setting stage and the probability of the Supreme Court granting review. This suggests that heterogeneous lobbying coalitions are better able to convey credible signals about case importance. In this sample, a change from one standard deviation below the mean level of coalition heterogeneity to one standard deviation above increases the predicted probability of review more than two-fold. This is nearly the same change in the probability of review generated by the presence of alleged conflict—long considered the most important determinant of the Court granting review. In addition to offering support for the coalition heterogeneity hypothesis, this result speaks to the broader relationship between amicus filings and Supreme Court decision making. One concern with studies of amicus briefs and judicial decision making is that the number of amicus filings may be endogenous to decision making if organized interests are more likely to file when they expect to win (see e.g., Collins 2004; Hansford 2004b; Collins 2007b). The preference heterogeneity of coalition members is plausibly exogenous to agenda setting decisions, however, lending additional confidence to the view that amici are influential in securing agenda access.

It is worth noting some limitations inherent in our empirical test. First, the number of decisions subject to possible influence by coalitions is not particularly large. Although our data include Supreme Court agenda setting decisions across ten terms, there are less than 100 chances to observe the relationship between coalition heterogeneity and lobbying success in the sample. Given existing data limitations, however, this is a necessary trade-off to ensure that we observe lobbying success and failure along with being able to measure preference heterogeneity among coalition members. Second, our data are limited to state-filed briefs in state-filed cases. States enjoy a litigant status second only to the federal government (Black and Boyd 2012), which raises questions about whether coalition heterogeneity would matter among less successful organized interests or in a broader category of cases. While recognizing this limitation, as we discuss further below our theoretical approach can easily be extended to test the relationship between coalition heterogeneity and lobbying success in other institutional contexts. Moreover, the initial test of the theory provided here has consequential federalism implications in

its own right due to the importance of understanding when states are successful at securing access to the Supreme Court's agenda.

The generalizability of these results even to state cases in other eras is another potential concern. The Supreme Court is thought to have been positively oriented toward states dating back to Chief Justice Burger's tenure. Although this positive orientation may result in a higher expected probability of review in state-filed cases, or devoting more attention to state-filed briefs, it seems less likely to change how coalition heterogeneity impacts the perception of signal credibility with respect to case importance. It is reasonable to expect that the structure of the lobbying coalition among states mattered more (because organization was less common) or less (because state performance was poorer) before the period of institutionalization that states embarked on with increased investment in state attorneys general offices and federal litigation expertise several decades ago. Moving forward, however, it is reasonable to expect that the structure of amicus coalitions will continue to influence judicial decision making due in part to the increase in filings.

Conclusion

Lobbying plays a central role in politics. Consequently, it is important to understand the determinants of lobbying success. Building on signaling theories from the study of legislative politics, we contend that ideologically heterogeneous lobbying coalitions convey more credible signals. We apply this theory to state efforts to lobby the Supreme Court for agenda access, and find that ideologically heterogeneous state coalitions are more successful at helping state petitions secure review. This result has important federalism implications. After decades of poor performance in the federal judicial arena, states have invested resources in their attorneys general offices and improved coordination efforts. Although much of the research on states and the Supreme Court understandably focuses on merits success (e.g., Epstein and O'Connor 1988; Kearney and Sheehan 1992; Solberg and Ray 2005; Collins 2007a), it is also important to understand how these institutionalization and coordination efforts influence agenda setting decisions. Our results suggest that ideologically heterogeneous state lobbying coalitions are more likely to be perceived as credible sources of information about case importance by the Supreme Court at the agenda setting stage.

This project contributes to the literature on amicus briefs in several ways. First, scholars are increasingly attentive to the importance of amicus brief structure as an influence on judicial decision making (Whitford 2003; Box-Steffensmeier, Christenson, and Hitt 2013; Box-Steffensmeier and Christenson 2014; Hansford n.d.). The results presented here suggest that coalition structure may have an important impact on amici success. Relatedly, the results offer an important caveat to the view that cosigning briefs is "cheap talk" (Hansford 2011, 753). Although

the number of cosigners alone might not be particularly informative, ideologically heterogeneous cosigners may be perceived to be particularly credible. This project also speaks to the debate over the extent to which amicus briefs are valuable as a result of their information content (see e.g., Spriggs and Wahlbeck 1997; Hansford 2004a, 2004b; Collins 2008). Collins (2004), for example, demonstrates that amici success at the merits stage is better explained by information provision than the number of affected groups while recognizing that the two theoretical perspectives are not necessarily contradictory. Our results suggest that these perspectives may indeed be complementary at the agenda setting stage. Finally, our findings offer important practical guidance to lobbyists interested in securing access to the Court's agenda insofar as they suggest that there may be a substantial payoff to building ideologically diverse coalitions.

Our theoretical and empirical approaches can be extended in several ways. As an initial matter, scholars can adopt our approach to examine the relationship between preference heterogeneity among members of other lobbying coalitions and judicial decision making. For example, scholars have been interested in questions concerning the filing of amicus briefs by members of Congress (e.g., Solberg and Heberlig 2004). Our theory suggests that heterogeneous coalitions of congresspersons (which scholars can capture using Common Space scores) may be more successful at the agenda setting and merits stages. But our theoretical approach is not limited to the study of judicial politics. Scholars interested in lobbying more generally can take advantage of innovative measures locating interest groups (McKay 2008) and political action committees (Bonica 2013) into common ideological spaces to examine whether coalition heterogeneity influences lobbying success in the legislative, executive, and judicial branches. Moreover, the concept of coalition heterogeneity can be expanded to include factors other than ideological diversity. Geographical and resource diversity are examples of factors that create coalition heterogeneity and may therefore influence lobbying success. We encourage scholars to continue to explore how coalition heterogeneity impacts decision making across institutional contexts.

Notes

Thanks to Ryan Black, Adam Chamberlain, Peter Yacobucci, the editor, and the anonymous reviewers for helpful comments. Thanks to Judge Scott Makar for helpful discussions about state solicitors general and appellate litigation. Thanks to Dan Schweitzer for providing data and helpful discussions about state litigation before the Supreme Court. Previous versions of this paper were presented at the 2013 meeting of the Western Political Science Association and 2014 meeting of the Southern Political Science Association, and we thank participants at those meetings for helpful feedback.

- 1 Although it is more common to see multiple state-filed amicus briefs at the merits stage, states tend to join one brief rather than file separately at this stage as well (Clayton and McGuire 2001; Collins and Solowiej 2007).
- 2 Brief for the States of South Dakota et al. as Amici Curiae in Support of Petitioner. No. 04-1724 (2005, 2).
- 3 State attorneys general also organize to file or join multistate lawsuits to enforce various regulations (e.g., Provost 2010).
- 4 To determine whether clerks list cosigning states, we examined cert pool memos from the Blackmun Archive (Epstein, Segal, and Spaeth 2007) for every case with a state petitioner (as determined using the Supreme Court Database). Of the fifteen cases that had amicus briefs filed by a coalition of states, six (40 percent) cert pool memos listed cosigning states separately. If state amicus briefs are considered more credible in state-filed cases, it is possible that listing state cosigners is more common for cases with a state petitioner. This possibility should be considered before generalizing our assumption to state-filed amicus briefs in other contexts.
- 5 The pool memo is available as part of the Blackmun Archive (Epstein, Segal, and Spaeth 2007).
- 6 Justices participating in a betting pool on state outcomes in the 1992 presidential election combined for 261 accurate predictions out of 306 (85 percent) votes (Maltzman, Sigelman, and Wahlbeck 2004).
- 7 Data on state-filed petitions and amicus briefs from 2001 to 2010 were provided by the National Association of Attorneys General's Supreme Court Project. Although we were not able to obtain comprehensive information on cases with a state respondent, the NAAG suggests that it is rare for states to file an amicus brief opposing review. As a check, we reviewed cert pool memo from the Blackmun Archive (Epstein, Segal, and Spaeth 2007) from cases identified through the Supreme Court Database with a state respondent (excluding original jurisdiction cases). There were no instances of state coalitions filing amicus briefs urging the Court to deny review in this sample. State coalitions sometimes file amicus briefs urging review in order to side with a state respondent (i.e., urging the Court to grant and affirm). Although these briefs are similar to the ones in our sample in that they urge the Court to grant and side with the state party on the merits, we cannot rule out that they have a differential impact on the cert decision given that they go against the state party's preference with respect to whether to grant cert. We emphasize, however, that state amicus briefs urging the Court to grant and affirm are rare occurrences, appearing in about 2% of the cases we reviewed.
- 8 Using the entire sample of state-filed petitions during the sample period provided by the NAAG, we also fit a probit model with sample selection to account for the possibility that analyzing only petitions that were accompanied by a state-filed amicus brief introduces selection bias. The selection equation modeled the probability of observing a state-filed amicus brief supporting review, and the outcome equation modeled the probability of the Supreme Court granting review. The results were statistically and substantively similar. Moreover, the equations were not correlated.
- 9 This sample does not include petitions that were granted, vacated, and remanded (GVR). Although GVRs are a type of grant, and are certainly more favorable to petitioners than

- cert denials, they are not final dispositions. In most instances, GVRs are issued when the Court believes that a recent opinion would have informed the lower court's judgment had it been available.
- 10 Berry et al. (2010) argue that these scores are preferable to their original scores (Berry et al. 1998) based on unadjusted interest group ratings, but the results presented here are consistent with either measure. Shor and McCarty (2011) also propose state government ideology scores that map onto a common ideological dimension, but these data are not available over the sample period for each state due to the sporadic availability of roll call votes used to calculate the scores. Although Berry et al. (2013) recommend using Shor and McCarty's scores when those scores are available across the sample period of interest, that is not the case here. In any event, Berry et al. (2013) find a high level of correlation across measures; they also find that prior studies published using their scores are almost uniformly robust to using Shor and McCarty's measure instead.
 - 11 This approach to modeling preference heterogeneity is similar to measures of opinion coalition (Staudt, Friedman, and Epstein 2007) and Court-level (Goelzhauser 2011) heterogeneity on the Supreme Court.
 - 12 The signing states and coalition heterogeneity variables are correlated at 0.01.
 - 13 Data on whether a state has a solicitor general come from Miller (2010).
 - 14 As with the measure of coalition heterogeneity, this score was calculated using Berry et al.'s (2010) measure of state government ideology.
 - 15 Caldeira and Wright (1988) find that the probability of the Court granting review increases with amicus participation at the agenda setting stage regardless of whether the brief is filed in favor of or opposition to review.
 - 16 Unless otherwise noted, case-level variables were coded by reading the opinions below. Following Supreme Court Rule 10, we score alleged conflict when an opinion below notes conflict between circuits, between a circuit and the Supreme Court, or between a state court of last resort and a circuit on a question of federal law. Although lower court judges often acknowledge conflict in their opinions, it is possible that they may attempt to embellish or suppress conflict to strengthen their opinions or impact the likelihood of review. Nonetheless, this approach is necessitated by data availability.
 - 17 Ideal point data come from Martin and Quinn (2002).
 - 18 Of course, only four votes are required to grant cert so the median justice's ideal point is a proxy; it is a reasonable (and often used) proxy, however, considering existing evidence for the use of aggressive grants and defensive denials.
 - 19 The NAAG provided us with a short issue area description for each petition from U.S. Law Week. Using those descriptions, we created issue categories using the Supreme Court Database's coding of issue areas as a guide. The following issue areas are included in the models we estimate here: Criminal Procedure (e.g., habeas, prison litigation); Federalism (e.g., Tenth Amendment, dormant commerce clause, preemption); Civil Rights and Liberties (e.g., First Amendment); Regulation and Economic Activity (e.g., taxation, bankruptcy); Procedure (e.g., personal jurisdiction, sovereign immunity); and a Miscellaneous category (e.g., attorneys fees, American Indian law).
 - 20 Brackets contain 90 percent confidence intervals.

21 To examine whether the relationship between coalition heterogeneity and the probability of review is conditioned by the number of signing states, we fit a model interacting the coalition heterogeneity and signing states variables. The results suggest that the relationship between coalition heterogeneity and the probability of review is not conditioned by the number of signing states. However, this null finding may be due to imprecise estimates resulting from the relatively small number of observations and little variation in the dependent variable across different combinations of values on the coalition heterogeneity and signing states variables. As a result, the interactive relationship between lobbying coalition size and heterogeneity is worth exploring in future research.

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