Mitigating the Defects of Pluralism: Interest Group Coalitions Before the Supreme Court

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Western Michigan University

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MITIGATING THE DEFECTS OF PLURALISM: INTEREST GROUP COALITIONS BEFORE THE SUPREME COURT

by

Jason Frederick Jagemann

A Dissertation
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
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Department of Political Science

Western Michigan University
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MITIGATING THE DEFECTS OF PLURALISM: INTEREST GROUP COALITIONS BEFORE THE SUPREME COURT

Jason Frederick Jagemann, Ph.D.
Western Michigan University, 2000

This project examines interest group coalitional activity before the Supreme Court in affirmative action cases between 1971 and 1995. First, I address the characteristics and dynamics of amicus participants over time. Second, I examine the extent to which organizations with a smaller base of resources, in terms of staff and the number of years that organizations have been on the scene, engage in coalitional activity. I find that organizations with smaller staffs are more likely to participate in coalitions, and, contrary to my expectations, organizations that have been on the scene longer are more likely to engage in coalitional activity. Third, I examine how successful group participation via amicus curiae is in all affirmative action cases. I found that at the macro level, the proportion of briefs filed on the side of the “pro” affirmative action litigant significantly affects the probability that the Court will vote in favor of affirmative action, controlling for the Court’s ideology and solicitor general participation. I also found, however, that the proportion of coalitions lobbying “pro” affirmative action has a statistically negative effect on the outcome of the Court’s votes. At the micro level, I found that the proportion of briefs filed in favor of affirmative action had a positive effect on the probability of the justice’s voting in favor of the “pro” affirmative action litigant. The proportion of coalitions
favoring the "pro" affirmative action litigant had a statistically negative effect on the probability of the justices' votes. While the ideology of the individual justices was found to be a strong predictor of their votes in these cases, I found that "pro" affirmative action participation by the solicitor general had a statistically negative effect on the justices' votes.

My findings suggest that while coalitions may help to mitigate the defects of pluralism insofar as scholars have suggested that access to the Court is concerned, I do not find strong evidence that the utility of these efforts in coalitions have a positive effect on the outcome of the Court's affirmative action decisions.
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Jason Frederick Jagemann
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CHAPTER I
INTRODUCTION

As the power of the federal government has broadened in scope and as it has become more functionally specialized, the interest group community has changed. Coalitional activity among groups is now more likely since groups must compete to place their agenda on the already crowded table and since no one group dominates the interest group community (Salisbury 1992). Further, as the power of the federal government has broadened, interest groups have realigned the utility of their efforts before the judiciary (Caldeira and Wright 1988). This project examines interest group coalitional activity before the Supreme Court in affirmative action cases between 1971-1995. I address the characteristics and dynamics of amicus participants over time in a single policy area: affirmative action. Second, I examine the success of group participation via amicus curiae in these cases argued before the Court. Although my analysis is confined to one policy arena, I believe the results will help scholars understand the dynamics of coalitional activity in the context of the courts and perhaps more systematically understand the characteristics of groups participating as amici over time.
Interest Groups and the Pluralist Enterprise

Since Madison's justification for the extended republic in *Federalist #10*, interest groups have been viewed as a cornerstone of American democracy. Scholars and theorists alike have painted interest groups as essential to the maintenance of the democratic process. In *Democracy in America*, Tocqueville articulated this theme that associations are essential to freedom due to the secondary effects participating in an association has in nurturing the democratic practice. In modern times, Dahl suggests that interest groups play an important function in large-scale democracies by maintaining "mutual control" over the democratic process in large-scale polyarchies. Also, interest groups are necessary to challenge democratic elitism (Dahl 1956, 1961, 1982; Dahl and Lindblom 1953). That is to say, organized participation outside of state institutions serve as a counter-weight to the power actors in those institutions that command a fountion of resources. Moreover, interest groups play a pivotal role in mediating not only the power of the state, but also serving as a countervailing force against the power of elites that command the helm of the state's resources. More recently, Putnam (1993) argues that the norms and networks of civic engagement and associational life foster economic and institutional development.

The role of interest groups has been a paramount concern to students of politics since the turn of the century. The first students of interest groups understood the processes of government as the culmination of groups pressuring the state. For Bentley (1908), interest groups acquired the social resources they needed from the institutions of the state but the state was of little significance in and of itself, as it
simply processed the demands of groups in society. He argued that interest groups employ a variety of strategies to influence the state. They attempt to gain direct and indirect access to the three branches of government (Berry 1989), they also lobby to shape public opinion (Key 1961) and to influence or prevent particular policy changes. More recent students of interest groups have turned their attention to understanding the explosion of interest groups since the 1960s, and the resultant increase in the strength of the state.

Pluralist theorists such as Bentley, Truman, and the earlier works of Dahl understood the political process and policy outcomes as a function of the interaction between competing groups. In *The Process of Government* (1908, 308), Bentley argued that “all phenomena of government are phenomena of groups pressing one another, forging one another, and pushing out new groups and group representatives (the organs or agencies of government) to mediate the adjustments.” Robert A. Dahl (1967, 34) encapsulated the basic tenets of pluralist theory...

Because one center of power is set against another, power itself will be tamed, civilized, controlled, and limited to decent human purposes, while coercion, the most evil form of power, will be reduced to a minimum...and because even minorities are provided with opportunities to veto solutions they strongly object to, the consent of all will be won in the long run...because constant negotiations among different centers of power are necessary in order to make decisions, citizens and leaders will perfect the precious art of dealing peacefully with their conflicts, and not merely to the benefit of one partisan but to the mutual benefit of all the parties to a conflict.

This classic and benign formulation of pluralism culminated in Dahl’s empirical study of pluralism at work (Dahl 1961). In keeping with the classic formulation of the
The interplay between divergent groups competing on the political stage, Dahl saw countervailing forces checking the power of each group.

The Defects of Pluralism

Other scholars reacted against this benign view of pluralism. Schattschneider (1960) and Connolly (1960) articulated the inherent biases of pluralism and pluralist theory. These scholars criticized pluralist theory because it was too uncritical of the inequalities among groups in resources and access. Far from being an accessible stage, competition is aided and abetted by financial resources of the groups. Conflict is not simply self-regulated by countervailing forces; instead “the flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent” (Schattschneider 1960, 34-35) and the pressure group system is skewed in favor of a small minority. Among other critiques, Connolly (1960) argues that pluralism inhibits certain segments of society from participating on an equal footing with more advantaged groups. Connolly argues that the political bargaining table ignores important interests because “persistent, active, and legitimate ‘groups’ fail to define these concerns as high priority interests” (Connolly 1960, 18). Additionally, “latent concerns” (Bachrach and Baratz 1962) are marginalized and not placed on the political agenda, as status quo biases discourage shifting the terms of the debate. Bachrach and Baratz (1962, 7) argue that power holders “limit the scope of the political process to public consideration of only those issues which are comparatively innocuous...to them.”
Another branch of scholars points out the potential defects of an interest group society. These scholars mount a serious challenge to the notion that groups have equal access to the political system, as well as the degree to which the interest group society stultifies governmental effectiveness and responsiveness. Mancur Olson (1965, 1982) argues that high levels of associationism is an obstacle in the way of efficient and sound governance. Lowi (1969) articulates a similar theme in the context of the public policy arena and argues that the crowded and dominant interest group universe clouds the democratic process, as the state panders to the strength of organized interests.

Robert A. Dahl (1982) most notably articulates the dilemmas of an asymmetric balance of power between the state and interest groups. As Dahl suggests, the underlying dilemma of pluralist democracies revolves around the degree to which organizations have independence and autonomy vis-a-vis the state. For Dahl, complete autonomy may render democratic ideals untenable. Dahl grants considerable primacy to the existence of independent associations as a concomitant of large-scale democracies in modern times, which he labels "polyarchies." "To achieve various rights...citizens also have a right to form relatively independent associations or organizations, including independent political parties and interest groups" (Dahl 1982, 11). However, an asymmetry in the interplay between the control of the state and the autonomy of organized interests will threaten the stability of polyarchies. Most notably, Dahl argues that without some degree of control, interest group pluralism may stabilize existing political inequalities. That is, political inequality is a
likely consequence of the organizational advantages of some groups over others.

"...Other things being equal, the organized are more influential than an equivalent number of unorganized citizens" (Dahl 1982, 40). Further, for Dahl resources are an integral part of the success or failure of groups and the extent to which the agenda is distorted. "The unequal resources that allow organizations to stabilize injustice also enable them to exercise unequal influence in determining what alternatives are seriously considered" (Dahl 1982, 47).

Other students of American politics have observed the asymmetric balance of power in the interest group community. Schattschneider's (1960) observation that the "...heavenly interest group chorus sings with an upper class accent" struck a blow to the benign view of pluralism articulated by scholars such Bentley (1908) and Truman (1951). Indeed, groups with meager resources have difficulty gaining access to a political system that has developed a "mobilization of bias" (Schattschneider 1960). If new and financially disadvantaged groups gain access to the political system, it is likely that elites can coopt them and diffuse the intensity of their challenges, as elites offer these groups symbolic concessions (Piven and Cloward 1977).

In the face of an unequal political playing field, disadvantaged groups (especially in terms of budget and organizational vitality) are marginalized from participating as equals in the political system. What are the consequences of Dahl's defects of pluralism for interest group activity? Taking into consideration the relative growth in the power of the state, as well as the proliferation of countless groups pressuring the state, the rise of coalitional activity (especially for groups who do not
have a large resource base) may address some of the defects of pluralism Dahl has identified. That is, coalition building may be a way for groups to counter-balance the organizational weakness of disadvantaged groups. Coalitions may have access where individual groups would otherwise have not because the solitary groups were going it alone. Moreover, in the face of these changes in the political system, one relatively new strategy of groups has been to form coalitions to influence the increasingly powerful state. In their now classic study of interest group activity, Schlozman and Tierney (1986) note that interest groups engage in coalitional activity about 90 percent of the time. Although the literature on interest groups has addressed coalitional activity, scholars have not attempted to empirically investigate over time why some organizations believe it is advantageous to join alliances to advance their interests or whether they agree to work alone.

Scholars, like Salisbury (1992), suggest that the context within which groups participate has changed. If this change has, indeed, occurred, then we should see the level of group coalitional activity increase over time as a result. There is also a paucity of literature addressing the types of groups participating in coalitions over time. I attempt to supplement this relative vacuum in the literature by examining interest group alliances in affirmative action cases argued before the Supreme Court from 1971 to 1995.

In the broadest sense, this project takes Dahl’s theoretical framework concerning the defects of pluralism as a stepping stone to examine whether or not coalitional activity before the Supreme Court helps to offset the asymmetric balance
of power between interest groups. To this end I examine the composition of coalitions accessing the Court and also assess the extent to which interest groups are successful in affirmative action cases argued before the Supreme Court.

The second chapter outlines the relevant literature regarding coalitional activity in the policy process, as well as a discussion about the role of interest groups in the context of the courts. There I pay particular attention to the development of pluralism and the rise of what Epstein (1993) calls the “new judicial pluralism.” Here we will find that the federal judiciary, and especially the Supreme Court, has been viewed as the most egalitarian institution in the political system. However, as students of the courts suggest, whereas the courts were viewed as the institution most favorable to disadvantaged interests, the contemporary judicial forum has seen a mobilization of advantaged interests leveling, and subsequently tilting, the playing field in their favor. For disadvantaged interests, then, coalitions may be a means of counter-balancing this bias.

In Chapter III I document the dynamics of group participation in the Court over time. To this end I examine the composition of those organized groups lobbying the Court across all affirmative action cases. I also look at the content of the affirmative action cases over time, and this, I believe, will aid in the task of understanding what kinds of groups we would expect to press their positions on the Court. Also, looking at groups over time will help to make generalizations about the behavior of group participation over time. Painting a picture of the affirmative action cases and interest group participants in these cases over time will help to provide
some context for the subsequent models to be tested and reported on in the fourth and fifth chapters. In Chapter IV I examine whether organizational resources such as staff size and organizational vitality affect the probability of organizations participating before the Court as solo-filers or co-filers in a coalition. In Chapter V I assess the utility of organized efforts to influence the Court across all affirmative action cases, while controlling for relevant variables. The findings from these models will enhance our knowledge of not only who participates in coalitions over time, but will also determine how successful coalitions and groups are before the Court in affirmative action cases. I conclude this study with a summary of the major findings of this research, as well as some suggestions for future research.
CHAPTER II

LITERATURE REVIEW

Coalitional Activity and Alliance Building in the Policy Process

This study examines coalitional activity in the context of the Supreme Court. But before we explore group and coalitional participation in the Court, we need to understand why coalitional activity is more pronounced in today's political environment, as well as why groups may find it more advantageous to coalesce. In the face of an atomistic and fragmented interest group environment, scholars have noted the tendency for groups to rely on coalition building as a tool for lobbying in various policy arenas. Some scholars suggest that the rise in coalition formation among groups is a necessary by-product of changes in the political system, while others argue that in the face of the dynamic policy environment, groups join coalitions in order to achieve a variety of policy and organizational goals for their groups' members.

The work of Robert Salisbury (1992) has improved our understanding of the rise in coalition formation among groups in the policy process. He argues that although there has been a sizable expansion in the interest group universe since the 1960s, interest groups have less clout than they enjoyed in the past. The cause of this change in interest group power is related, he argues, to institutional changes in the
political system. In Congress, the breakdown of the seniority system, as well as the proliferation of subcommittees as the workhorses of Congress and incumbency advantages, give an advantage to legislators. Salisbury's description of the fragmentation and dilution of interest groups paints a different picture of the interest group society than the dominant view espoused by Lowi (1969) in the End of Liberalism and others who articulated the "iron triangle" model of interest group involvement in the policy process\(^1\) (see Griffith 1939). However, Salisbury notes that changes in the political system yield a fragmented interest group universe, where no one group dominates an issue or policy arena. Articulating this theme, Salisbury notes that it is difficult even for political elites to identify which interest groups consistently press their claims on the political system. Salisbury notes that "in a destabilized world of fragmented interests and multidimensional challenges from externality groups it becomes impossible for policy makers to identify which interests, if any, they can succumb to without grave political risk" (1992, 347). Interest groups adapt to this changing environment through the use of coalitional activity; that is, they "build bridges in a Balkanized state" (Loomis 1986, quoted in Salisbury 1992, 353).

Moreover, in a crowded interest group universe, coalitions help to maximize the amount of resources available to groups' collective interests. Coalitions also enhance the credibility of the groups involved and help to solidify the legitimacy of the claims being pressed (Evans 1991, 262).

\(^1\) Lowi observes that major policy changes reflect the demands of particular interests and the strength of particular interests is inimical to the production of coherent public
Other scholars, such as Hula (1995), suggest that political scientists have put forth little effort to understand why interest groups forge coalitions and instead, in an Olson-like fashion, focus exclusively on why individuals do or do not join groups. Hula examines interest group coalitions in the education and transportation policy domains and argues that coalition membership and structure is a reflection of the goals of the groups. For example, groups may seek to shape policy outcomes, obtain selective benefits they would not otherwise have had (i.e., information, intelligence of policy matters), or as a symbolic gesture to their constituents or to another organization, as it may help to foster solidarity. The founders and brokers of coalitions form what Hula calls the "coalition core." Interest groups in this category focus on broad–based policy outcomes and invest the most resources into coalitional activity. "Players," on the other hand, are concerned with particular policy outcomes and are the specialists of the coalition. Core members and players both expend considerable resources for the coalition effort. "Peripheral" or "tag–along" groups do not commit a large amount of resources to the coalition and often join a coalition as an end in itself. These groups have non-policy goals and instead seek information and group maintenance benefits.

Hula's analysis lays a foundation for understanding the various roles groups play in a coalition. However, Hula only examines transportation and education groups and does not address the dynamics of "core members," "players," and "peripheral policy."
groups" over time. Also, Hula's analysis is confined to coalitional activity in Congress.

Although these scholars have enhanced our knowledge of how changes in the political system facilitate coalitional activity, the aforementioned analyses are a product of research centered in congressional institutions. But research in this field must also investigate coalition formation in the context of the federal judiciary. Looking at the dynamics of coalitional activity in the courts will shed some light on the nature of coalitional activity, as more empirical examination is necessary to understand coalition formation over time.

The Utility of Coalitional Activity

What is the utility of organized groups acting in concert with one another?

Schlozman and Tierney (1986, 279) argue that...

coalitions among private organizations seem to be not simply an important, but an increasingly important, component of Washington politics. Sixty-seven percent of our respondents indicated that their organizations had increased their commitment to coalitional activity over the past decade. In terms of increasing use by Washington organizations, entering into coalitions ranks second on the list of 27 techniques of influence.

Cultivating allies in the policy process is an instrumental way of pressing policy claims and some recent research has begun to explore the utility of coalitional formation between interest groups. This theme of a rise of coalitional activity among organized interests challenges the view of policy lobbying as a product of
impermeable iron triangles. But scholars such as Heclo (1978) and Gais, Peterson, and Walker (1991) found that the particular policy arenas were more permeable and that the actors participating in policy arenas were more numerous and transient. A number of studies have shed some light on the scope of interest group coalitions. These scholars argue that groups do join coalitions, and do so to reduce their resource expenditures or obtain selective benefits (Hula 1995). Hojnacki (1997) found a greater likelihood for groups to form coalitions when organizations perceived as "pivotal" to success are members of an alliance. Coalitions of organized interests "...exist when several diverse groups or institutions informally agree to work together on a specific public policy problem" (Browne 1990, 480). But Browne notes that coalitional activity is not necessarily a new phenomenon. Hojnacki (1998, 441) defines coalitions as...

...cooperative ventures that are forged between groups to take action on a set of policy issues. When groups act in coalition, they provide public goods (or 'bads') that are enjoyed by coalition members and non-members alike; groups enjoy any policy benefits (or costs) that result from an alliance's efforts regardless of whether they are members of that alliance.

Two general perspectives in the literature have addressed the context of the political system within which interest groups make decisions about alliance opportunities. The traditional view of coalitional activity among organized interest groups assumes that groups forgo alliances in order to preserve their autonomy. That

---

2 The iron triangles included a peak interest group, a congressional committee, and an executive branch agency charged with overseeing and implementing the particular policy area (see McCool 1995 for a good survey of this literature).
is, as Berry (1977) suggests, groups, in order to survive, will devote their resources to efforts that enhance their own reputations rather than invest those resources in coalitional activity that may diminish the group's distinctiveness. Further, Browne (1990) suggests that organizations seek to create "issue niches" in order to establish expertise and remain credible in the eyes of decision makers. This view assumes that the cost of losing a group's autonomy outweighs the likelihood of success when engaging in coalitional activity.

Another view of coalitional activity suggests that changes in the political system have made it advantageous for groups to form coalitions. As the power of the federal government has broadened in scope and as it has become more functionally specialized, the number of interest groups has increased (Berry 1989; Heclo 1978; Loomis 1986; Salisbury 1992; Walker 1983). The crowded interest group community lends itself to the interdependency of interest groups. In a sense, these alliances enable groups to enhance the prospects for success in an increasingly complex political environment. Alliance relationships are also affected by the range and type of information organizations have about their allies, the scope of their interests, and the character of their organizations. Loomis (1986) and Schlozman and Tierney (1986) also show that the nature of the issue of interest to alliance members will affect coalition formation. Hall (1969) suggests that groups' desires to magnify the power of their interests also provide incentives for allied advocacy.

One reason they may coalesce is to pool resources. Hula (1995) shows that some groups join coalitions to reduce their resource expenditures, while others join to
obtain selective benefits. More recently, Hojnacki (1997) argues that the probability of coalition formation is more likely to arise when organizations perceived as "pivotal" to success are members of an alliance, and when groups represent expressive interests or perceive a strong opposition. Additionally, some studies suggest that groups are likely to engage in coalitions due to the potential political capital the coalition can use as a bargaining chip in negotiations with politicians. Blocs of groups acting in concert pose a formidable and unavoidable coalition of potentially mobilized blocs of voters, and as Costain (1992) shows, political leaders pay considerable attention to the demands of a potentially mobilized bloc of voters. Moreover, disadvantaged interests may have the most to gain from joining an alliance. That is, groups with limited resources and political clout have a greater need to advertise their interest's claim (Browne 1992; Kuersten and Jagemann 2000).

Other scholars have instead examined coalitional activity in terms of the interest group environment. In general, all coalitions are characterized by organized actors acting in concert to pursue policy goals. But coalitions are organized differently; they can be formal, long-term alliances that are to some degree indistinguishable from an interest group that has organizational membership (Hula 1999), while others can be short term and less formal enterprises. As Berry (1989) and Schlozman and Tierney (1986) suggest, coalitions tend to be “marriages of convenience,” sometimes lacking any organizational structure and staff committed to the alliance effort.
Hojnacki's (1997) model of interest group coalitional activity is one of first attempts to empirically capture what factors groups take into consideration before joining an alliance. She places considerable importance on issue-context in order to determine the likelihood of groups coalescing. According to Hojnacki, if there is congressional opposition for a particular policy or cause, the probability of joining a coalition decreases as groups may find it futile to expend resources that will fall on deaf ears. Under these circumstances, groups may be more inclined to work alone. But this may not signal an end to the possibility of coalition building. That is, groups may seek alternative strategies and seek to access other points of the federal system.

Presumably the Supreme Court would be one of these points of access, though Hojnacki does not examine this possibility. Hojnacki suggests that the probability of coalitional activity decreases as a function of the narrowness of the issue in question. That is, if organized interests seek distinct, group-specific benefits, the costs of joining a coalition are greater than if the interests seek broader interests to the benefit of more groups. As her analysis suggests, the forces that affect this estimate derive from the context of the policy issue in question, the group's knowledge of their potential allies, and the group's concern for maintaining a distinct identity in the interest group community.

Interest Groups and the Courts

Scholarly literature attempting to understand coalitions in the context of the federal judiciary remains in a nascent stage. To a large extent, this is because scholars
at first largely ignored the potential effects of organized interests on the courts generally. Historically, scholars and citizens alike associated interest groups enmeshed in the political fray of the legislative and executive branches exclusively. Indeed, the notion of interest group lobbying conjures up a pejorative overtone of specialized interests seeking to influence the legislative process at the expense of the public good. But this is no longer the case. Judicial scholars and analysts since the late 1940's struck a blow to the myth of the federal judiciary as a seemingly objective institution insulated from the pressures of outside influence (see Pritchett 1948; Rhode and Spaeth 1976; Schubert 1965; Segal and Spaeth 1993). Scholars have made considerable gains showing how the environment within which the courts operate, not unlike their counterpart institutions in the legislative and executive branches of government, is influenced by outside pressures like public opinion (Caldeira 1991; Marshall 1989) and the interest group community (Caldeira and Wright 1988; Vose 1959). In their survey of the interest group environment, Schlozman and Tierney (1986, 150) find that 72 percent of the groups surveyed relied on filing lawsuits or engaging in litigation. They also find that more groups are using coalitions as a technique for influencing policy outcomes (68 percent).

Bentley (1908, 393) was one of the first students of politics to recognize the extent to which groups influence litigation before the Supreme Court. Bentley declared that

so far from being a sort of legal machine, courts are a functioning part of this government, responsive to the group pressures within it, representative of all sorts of pressures, and using their representative
judgment to bring those pressures to balance, not indeed in just the same way, but on just the same basis that any other agency does.

The mobilization and counter-mobilization of organized interests is seen at various stages in the judicial process, from the nomination stage of judges to the federal bench to organized efforts to support parties to a suit before the Court. Groups can employ a variety of strategies to try to shape the outcome of judicial decision-making. Other forms of organized participation include groups providing legal representation to parties in the suit (sponsorship), as when the National Association for the Advancement of Colored People-Legal Defense Fund (NAACP-LDF) provided legal representation and paid the costs associated with the litigation in Brown v. Board of Education of Topeka (1954)3 (for other examples and case studies see Greenberg 1977; O’Connor 1980; Vose 1959). Groups also organize to lobby for and against nominations to the federal bench (Caldeira and Wright 1988) in order to shape senators’ decisions. But perhaps the most common way for interest groups to influence the court system is through amicus curiae briefs. Amicus curiae or friend of the court participation is a legally sanctioned part of our judicial system in which an interested party, with permission from the court, may file a brief in support of either party to a case. For organizations without considerable financing, submitting these briefs, which are usually no longer than 25 pages, may be their only feasible avenue to gain access to the judicial process.

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Group participation as amici has been a standard litigation tactic that groups and interested parties have employed in the twentieth century. Amicus curiae has a long pedigree in legal history, extending from Anglo-American common law practices and as far back as the fourteenth century and Roman law (Lowman 1992). Historically, the amicus curiae was not a party to the litigation but instead served as an impartial interlocutor in the judicial process, both providing assistance to judges and correcting legal errors in the adjudication process. Over time, the role of amicus has evolved concomitantly with the evolution of the federal judiciary in the U.S. Whereas the amicus historically participated in the judicial forum as a participant who aided the shortcomings of the adversarial process, the amicus has now evolved into a participant who represents the interests of a third party (Lowman 1992). Moreover, the amicus, loosely translated as “friend of the court,” has become an active lobbyist “be-friending one of the parties of the litigation” (Lowman 1992).

Scholars have examined the effect of interest group participation at both the jurisdictional and merit stages of the courts. In general, scholars agree that groups influence the Court’s behavior. The success of the NAACP-LDF in *Brown* (1954) suggests that some groups can influence the Court (Vose 1955). Scholars have also examined the extent of interest group influence in certain policy domains. Epstein and Kobylka (1992) find that group arguments in abortion and capital punishment cases helped to frame the issues for the justices. Sorauf’s (1976) study of church-state litigation highlights the demands and pressures that groups placed on the Court and that ultimately led it to change its doctrinal position. Sorauf contends that the Court
cannot ignore these demands because they will run the risk of alienating the activist segment of the public and thus place its legitimacy in jeopardy.

Perhaps the most accessible way to determine the potential influence of groups on the Court's behavior is to examine the amicus briefs filed by interest groups. Caldeira and Wright (1988, 1990) and McGuire and Caldeira (1993) assess group influence at the jurisdictional stage and conclude that briefs filed during this stage give important cues to justices about which cases deserve plenary review. These studies show that amicus support for the petitioner increase the likelihood of the Court granting certiorari. Amicus briefs also provide policy cues for justices at the merits stage, as they provide information about which cases will help to advance the justices' ideological dispositions about the content of legal policy (Caldeira and Wright 1988; Spriggs and Wahlbeck 1997).

In sum, despite the expectations of the Federalist, specifically Alexander Hamilton's classic discussion of the role to be played by the federal judiciary in Federalist #78, where the Supreme Court should declare the sense of law through "that inflexible and uniform adherence to the rights of the Constitution and... [individuals]..." (Publius, 470-471) the Court has become more political over time. Interest groups have become an integral component of the judicial process and these groups have tapped into almost all aspects of the Court's work and processes, from the Senate confirmation hearings (Segal 1987), to the influence of interest groups on whether to grant a case plenary review (Caldeira and Wright 1990), to shaping the Court's legal justification for the outcome of the case (Spriggs and Wahlbeck 1997).
Although the architects of pluralist theory (Bentley 1908; Truman 1951) noted the propensity of organized interests to exert the same pressure on the federal judiciary as they did in the elected branches of government, scholars, until recently, have largely ignored the extent of organized interest group participation at the level of the Supreme Court. One reason for this lack of inquiry may be that scholars followed the tradition legal model (Kort 1957), where legal precedent and the facts of the case were the driving forces influencing the Court’s decision-making. This focus on case law and the facts of the case leaves little room for interest groups to play a role in the process. Also, the early behavioral approach to judicial outcomes, where the decision-making processes of justices are driven by their own personal policy predilections, also leaves little room for groups to have an impact on the Court’s decision-making processes. The incorporation of the “pluralist paradigm” most notably articulated by Bentley and Truman opened a window of opportunity for scholars to examine the role organized interests play in the judicial arena. Bentley (1908, 338) saw “…numerous instances of the same group pressures which operate through executives and legislatures, operating through supreme courts.” Truman (1951, 479) made the following observation about the role of organized interests in the federal judiciary.

Relations between interest groups and judges are not identical with those between groups and legislators or executive officials, but the difference is rather one of degree than of kind. For various reasons organized groups are not so continuously concerned with courts and court decisions as they are with the functions of the other branches of government, but the impact of diverse interests upon judicial behavior is no less marked.
Hakman (1966) examined the extent of organized interest group participation in the Supreme Court between 1928 and 1966 and concluded that the interest group presence in the Court was almost non-existent. Of the approximately 1,200 “non-commercial” cases explored by Hakman, interest groups filed amicus curiae briefs only 18.8 percent of the time. Hakman went so far as to call scholarly work examining the role of organized participation in the Court “scholarly folklore.” Since Hakman, however, scholars began to unearth and substantiate the theoretical framework of pluralism working in the federal judiciary. Scholars challenged Hakman’s claims about the impotency and lack of participation of organized interests in the judiciary. Between 1953 and 1990, there has been a substantial increase in the number of interest groups filing amicus curiae briefs to the Supreme Court. O’Connor and Epstein (1981-1982, 317) reappraised Hakman’s thesis and found that groups are filing amicus briefs in more than half of all non-commercial cases receiving plenary review by the Court. For example, between 1928 and 1966 the percentage of race-discrimination cases accompanied by amicus briefs was 26.8 percent whereas between 1970 and 1980, 62.9 percent of race discrimination cases were accompanied by at least one amicus brief (O’Connor and Epstein 1981, 317). Between 1986 and 1992 all race discrimination cases were accompanied by amicus briefs (Epstein 1993). Others, using case study methods, showed high levels of involvement of organized interests in religious establishment cases (Sorauf 1976) and sex

4 O’Connor and Epstein (1981-1982), find an error in Hakman’s table, correcting the percentage from 18.6 to 18.8 percent.
discrimination cases (O'Connor 1980). Analyses of these commentators documented the rise of pluralism in the federal judiciary and began to debunk the myth of the Court as an institution insulated from outside pressures. Clearly, Hakman's conclusions are outmoded, as the extent of amicus participation over time has steadily increased. Table 1 displays the frequency of amicus participation between 1950 and 1995, broken down by substantive issue and constitutional areas the Court has been asked to judge.

The Surge of Interest Group Activity in the Courts

The Rehnquist Court, on average, sees about 84.4 percent of all plenary cases accompanied by at least one amicus curiae brief, compared with only 28.6 percent during the Warren Court era. Also, during the 1990 term more than 4.5 interest groups cosigned the average amicus brief. A few cases during the Rehnquist Court standout as exemplifying strong interest group participation. In *Webster v. Reproductive Health Services* (1989)\(^5\), 78 amicus briefs were filed where 420 organizations participated, as well as thousands of individuals. Other notable cases include *Regents of University of California v. Bakke* (1978), where 58 briefs were filed and *Cruzan v. Director, Missouri Department of Health* (1990)\(^6\), where the justices received almost 60 briefs by 80 groups or corporations. In the latter case, over 50 percent of the amici were organized interest groups.

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### Table 1

Frequency of Amicus Participation, 1950-1995

<table>
<thead>
<tr>
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<td></td>
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<td>%</td>
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<td>%</td>
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<td></td>
<td>Church-state</td>
<td>14.3</td>
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<td>6</td>
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<td></td>
<td>Obscenity</td>
<td>NC</td>
<td>NC</td>
<td>NC</td>
<td>NC</td>
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<tr>
<td></td>
<td>Due process</td>
<td>1.7</td>
<td>59</td>
<td>19.8</td>
<td>116</td>
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<tr>
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<td>Race discrim.</td>
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<td>15</td>
<td>46.7</td>
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<td></td>
<td>Sex discrim.</td>
<td>NC</td>
<td>NC</td>
<td>NC</td>
<td>NC</td>
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<tr>
<td></td>
<td>Criminal</td>
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<td>NC</td>
<td>NC</td>
<td>55.0</td>
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<td></td>
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<td>NC</td>
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<td></td>
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<td>NC</td>
<td>NC</td>
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<td></td>
<td>Total %</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>With Amici</td>
<td>1.7</td>
<td>18.2</td>
<td>23.8</td>
<td>53.4</td>
</tr>
</tbody>
</table>

**Note:** % indicates the percentage of cases accompanied by amicus briefs; N indicates the total number of cases in each category; NC indicates that the author did not code cases in that issue area. Source: Epstein, Lee. 1993. "Interest Group Litigation During the Rehnquist Court Era." *The Journal of Law and Politics* 9:651. (permission to reproduce table was granted by the author).

Epstein (1993) describes some of the reasons that may account for this surge of organized interest group participation before the Supreme Court. Epstein reports that some groups formed for the purpose of using litigation. Schlozman and Tierney...
(1986, 388) note that the increase in organized group participation increased not simply because “...there are more organizations on the scene, but [because] these organizations are active as well.” Epstein also notes that groups view litigation as a fruitful political strategy. In their survey of interest groups, Schlozman and Tierney (1986, 431) find that between 55 and 75 percent of groups use the courts to achieve their policy goals. Epstein also notes that the Court has invited and even encouraged groups to use the judicial forum to achieve policy-oriented goals. In *NAACP v. Button* (1963)\(^7\), the Court wrote that “groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts...” The Court goes on to say that “under the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances” (371 U.S. 415, 429-30).\(^8\) O'Connor and Epstein (1983) found that between 1969 and 1981, only 11 percent of the 832 motions for leave to file as amicus curiae were denied. More recently, Epstein (1993) reported that the Rehnquist Court in 1990 only denied one of the 115 motions. The extent of organized group participation in the Court can also be found in the efficacy of such efforts. O'Connor and Epstein (1983) found that justices frequently cite the briefs filed by amici in their opinions. Epstein (1993) reports that the percentage of briefs cited by justices has increased considerably over time, with the Warren Court citing amici approximately 42 percent of the time, 66 percent for

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8 The Rules of the Court facilitate interest groups to actively use the courts. Rule 37 invites groups to present information that has not already brought to the attention of the Court by the parties to the suit.
the Burger Court, and 68 percent for the Rehnquist Court. The percentage of decisions where the modern Supreme Court justices mentioned amicus briefs are presented below in Table 2.

Hakman’s view that cases involve “immediate disputes between private adversaries” (1960, 245) is an outdated thesis. In sum, groups are instrumental players in the judicial process and cases are stages on which groups try to play out their broader policy views.

Why Groups Mobilize the Courts

Epstein (1993) argues that the contemporary environment within which the Court operates demonstrates pluralism at work and students of politics who study the federal judiciary demonstrate the rise of pluralism in the courts. Some scholars, including Richard Cortner, discussed the types of participants engaged in lobbying the court. Cortner concludes that certain types of groups lobbied the judiciary more than others. Cortner (1968, 287) held that marginalized groups could take refuge in the courts. These groups…

are highly dependent upon the judicial process as a means of pursuing their policy interests usually because they are temporarily, or, even permanently, disadvantaged in terms of their ability to attain successfully their goals in the electoral process, within the elected institutions of government or in the bureaucracy. If they are to succeed at all in the pursuit of their goals they are almost compelled to resort to litigation.
Table 2
Justices' Citations of Amicus Briefs

<table>
<thead>
<tr>
<th>Justice</th>
<th>Number of Citations to Amicus Briefs</th>
<th>Number of Citations Divided by Total Opinions Written</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>297</td>
<td>.53</td>
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<tr>
<td>Blackmun</td>
<td>531</td>
<td>.69</td>
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<td>Brennan</td>
<td>755</td>
<td>.65</td>
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<tr>
<td>Burger</td>
<td>337</td>
<td>.68</td>
</tr>
<tr>
<td>Burton</td>
<td>17</td>
<td>.21</td>
</tr>
<tr>
<td>Clark</td>
<td>109</td>
<td>.36</td>
</tr>
<tr>
<td>Douglas</td>
<td>416</td>
<td>.45</td>
</tr>
<tr>
<td>Fortas</td>
<td>43</td>
<td>.44</td>
</tr>
<tr>
<td>Frankfurter</td>
<td>74</td>
<td>.29</td>
</tr>
<tr>
<td>Goldberg</td>
<td>87</td>
<td>.39</td>
</tr>
<tr>
<td>Harlan</td>
<td>252</td>
<td>.37</td>
</tr>
<tr>
<td>Jackson</td>
<td>10</td>
<td>.63</td>
</tr>
<tr>
<td>Kennedy</td>
<td>82</td>
<td>.65</td>
</tr>
<tr>
<td>Marshall</td>
<td>505</td>
<td>.71</td>
</tr>
<tr>
<td>Minton</td>
<td>8</td>
<td>.20</td>
</tr>
<tr>
<td>O'Connor</td>
<td>292</td>
<td>.77</td>
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<tr>
<td>Powell</td>
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<tr>
<td>Reed</td>
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<td>Rehnquist</td>
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<td>Scalia</td>
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<tr>
<td>Whittaker</td>
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</table>

Caldeira and Wright (1990), however, point out that myriad groups ranging from charitable organizations to corporations now regularly lobby the courts. That conservative groups and corporations lobby the court regularly suggests that there is a degree of balancing in the interest group universe in the context of the courts. Not surprisingly, the adversarial nature of the court system lends itself to a pluralist-balancing act. Epstein (1993) shows that the gap in participation between “upperdogs” (advantaged interests) and “underdogs” (disadvantaged interests) closed by the late 1970s. Moreover, Cortner’s notion, or the disadvantaged thesis, needs to be reexamined in the face of this more contemporary pluralist balancing act between advantaged and disadvantaged organized interests (Kuersten and Jagemann 2000; Songer and Kuersten 1996). Epstein (1993, 657) calls this contemporary balancing act the “new” pluralism and suggests that there exists a degree of parity in the rates of participation between advantaged and more disadvantaged interests. However, the notion of “disadvantaged” needs to be further explored. That is to say, some organizations that represent “disadvantaged” interests such as the NAACP are clearly successful participants in the political system (Vose 1957). I examine disadvantaged groups not so much in terms of their being marginalized from the political system, but, instead, in terms of organizational resources.

Schattschneider’s observation that groups representing advantaged interests were more influential in the policy making process have been echoed by Schlozman and Tierney (1986). They claim that “it is clear that Schattschneider’s observations...about the shape of the Washington pressure group community are apt
today. Taken as a whole, the pressure group community is heavily weighted in favor of business organizations” (1986, 68). Epstein (1991) notes that this bias is also seen in the participation of groups in the Supreme Court. The pluralist balancing act, at least as the literature has spelled it out, has tilted from the disadvantaged having the upper hand in the 1960s-1970s, then advantaged and disadvantaged groups having near parity in their rates of participation during the late 1970s into the 1980s, and today being tilted toward advantaged interests, particularly businesses and corporations.

Scholars point out that cases have a better chance of receiving full treatment by the Court when accompanied by interest group support. In their discussion of the Court’s “discuss list,” Caldeira and Wright (1988) find that when a petition for certiorari is accompanied by one or more amicus briefs, the chances of the case making the “discuss list” increase. Moreover, organized group participation plays a pivotal role in the justices’ decision to grant a case plenary review. Also, a host of scholars point out that amicus briefs convey important information to the Court (Behuniak-Long 1991; Caldeira and Wright 1988; Epstein 1993; Ivers and O’Connor 1987; Spriggs and Wahlbeck 1997). One scholar even went so far as to say that “Courts often rely on the factual information, cases or analytical approaches provided only by an amicus” (Ennis 1984, 603). Indeed, the rules governing amicus participation in the Supreme Court admonishes amici to present unique information to the Court. Rule 37.1 of the Court stipulates that “an amicus brief which brings relevant matter to the attention of the Court that has not already been brought to its
attention by the parties is of considerable help to the Court. An amicus brief which does not serve this purpose simply burdens the staff and facilities of the Court and its filing is not favored.”

The Disadvantaged Litigant in Court

While money and other political resources are required to lobby Congress, these are scarce commodities for groups with limited budgets and staffs that seek to gain access to the greater policy process. In response, some scholars suggest that these disadvantaged groups turn to the court system to achieve their policy goals because the judiciary is the one governmental forum in which political resources are not as necessary as are legal resources (e.g., legal expertise and accessibility to the law, etc.). Legal resources are more easily obtainable than political resources; if a disadvantaged group can form a coalition with an interest group who regularly appears before the court (and would therefore presumably have more legal expertise than a disadvantaged group), that disadvantaged group could offset their legal resource deficit with the resources of the more advantaged group.\(^9\) Moreover, the court system becomes the most efficient venue for disadvantaged groups to access the governmental policy making process. It is in the other branches of government that

\(^9\) On the whole, groups may find it easier to participate in the courts versus congressional institutions. Presumably, groups will find it easier to file a brief versus expending financial resources to lobby legislators. Although filing briefs can be expensive and serve as a deterrent to group participation in this way (see Behuniak-Long 1991), other groups may help to offset these costs by volunteering their services.
resources like political capital are needed; filing an amicus brief takes legal resources that are more attainable than political capital. The costs for groups filing may decrease more when these groups form coalitions and file briefs with other like-minded groups (Epstein 1985).

Further, these groups that file amicus briefs have the most to gain from coalitional activity. While the judicial system helps to equalize the playing field, giving groups with the least amount of political capital greater access in court than in other branches, various studies have suggested that repeat players are often the most successful in court (Galanter 1974; McGuire 1993). The reason repeat players are so successful is that they have several advantages including legal expertise, knowledge of the system and superior legal counsel. If coalitional behavior occurs in the courtroom, then it would make sense that those groups who are the most disadvantaged have the greatest incentives to pool their resources with repeat players and sign onto amicus briefs as co-sponsors.

Scholars have identified "disadvantaged groups" who turn to the courts as the most effective venue for getting their voices heard. In his case study of apportionment cases, Richard C. Cortner (1968, 1970) outlines a typology of litigants engaged in the apportionment cases. Cortner finds two types of litigants engaged in apportionment cases and labels them as either "defensive" or "aggressive." Defensive litigants seek to preserve the status-quo, as they seek to uphold the prevailing constitutional doctrine already favorable to the participants. Aggressive litigants seek to convince

and thereby reducing the costs for any particular group in the coalition (Songer and
the court to change current doctrine by way of encouraging innovative interpretation of the Constitution from the courts. Cortner argues that litigants in the apportionment cases showcase creative elements in constitutional development, where temporary alliances coordinate their resources to change the status quo. Groups who are marginalized from the electoral process because “they cannot attain their goals…within the elected political institutions, or in the bureaucracy…” are compelled to turn to the courts (Cortner 1968, 287). According to Cortner, disadvantaged groups are those groups that if they are to succeed at all in the pursuit of their goals they are almost compelled to resort to litigation.

Some scholars suggest that the structures and processes of the court system may provide a more level playing field for interest groups, particularly groups that do not have a large capital base, to press their claims on the state (rules of evidence, low-cost of filing fees, etc). The more level playing field of the court system would attract groups with meager resources simply because it may be their only option. The relatively low cost of filing briefs before the courts enables groups to coalesce, rather than relying on political capital (i.e., lobbying Congress), which is a more costly activity.

Coalitional Activity of Groups in the Courts

Probably the most dramatic reason for these groups to coalesce their agendas centers on the political capital both groups could potentially press on politicians.

Kuersten 1995).
Groups are potential mobilized voters, and if these groups mobilize themselves as a powerful voting bloc then political leaders would find it advantageous to pay attention to their demands (Costain 1992). Various scholars have demonstrated that groups succeed in magnifying the power of their own group when they coalesce (Hall 1969) and that magnifying their power helps get the immediate attention of political leaders.

Costain (1992) demonstrates the success of women's groups using this approach. In what she calls the "political process model," successful groups are those that provide information and ideas to political leaders on highly conflictual and partisan issues. Legislators will always have an incentive to pay attention to potentially mobilized voters on conflictual issues. What the group needs is the cognitive liberation that they can affect change. It is only the organizational structure, Costain explains, that will cause the greatest barriers to group success. Yet if groups do not possess a significant resource base, they are forced to pool their meager resources with other groups in order to share the financial or legal burden of the fight. Then they magnify their power and political leaders should be more likely to hear their voice.

Therefore, the least advantaged groups in society will have the most incentive to coalesce with like-minded groups who have more resources. In the judicial forum this is even more the case since groups with the highest levels of resources are consistently the most successful in the judicial forum (Epstein and Rowland 1991; Galanter 1974). However, it is not just financial advantage that makes these groups
more successful. Several authors attribute the success to the advantages enjoyed by litigants in a "repeat player" status. With greater litigious experience, these participants develop optimal litigation strategies that enable them to know where to cut costs and how to utilize expensive but superior legal firms. Their knowledge of specific cases, as well their in-depth understanding of the judicial process itself, allows them to select cases and tactics that have the best prospects for success.

Disadvantaged groups have an enormous incentive, then, to coalesce their activities with groups that already have the advantages of greater organizational skills and superior legal counsel through optimal litigious experience. In fact, coalitions between disadvantaged groups and repeat players may serve to improve the balance of resources within the court system (Kuersten and Jagemann 2000). Repeat player status does not assure groups of judicial success against less advantaged groups when those less advantaged litigants can supplement their own meager resources with the resources and expertise of repeat player amici. In other words, underdogs supported by repeat player amici can probably neutralize the normal advantage of the upperdogs.

Given the asymmetric balance of power between more advantaged interest group participants and their more disadvantaged counterparts, coalitional activity between them may not only be more likely, but it is also preferable in equalizing the judicial playing field. This would ensure that the court system is the most egalitarian branch of government, and most open to various interests.
Forming coalitions would be financially wise for groups with a limited resource base in terms of budget and staff as well. The enormous expense involved in filing amicus briefs before the Supreme Court presents quite a problem for disadvantaged groups with little money. Using the courts is costly in terms of both time and resources. Filing amicus curiae briefs, however, is much cheaper in terms of organization resources relative to litigation in a suit. Although filing a brief is much less expensive, the average cost of filing a brief is about $8,000, with costs ranging from $500 to $50,000 per brief (Caldeira and Wright 1990). Coalition building would allow groups to defray the costs of filing, presumably with like-minded groups that would share their ideological predispositions.

Disadvantaged groups presumably seek to broaden their access to the political system at the lowest possible cost and scholars argue that coalitions are the most realistic way to do this (Costain 1981). By using the capabilities and resources of each group within the coalition cooperatively, groups with meager resources can achieve access to the political system. This is especially true if disadvantaged groups can cooperatively pool their resources with those of more advantaged groups. In that way, a disadvantaged group could equalize their weaknesses (e.g., money, limited staff) by coalescing with a group that has more assets, and the advantaged group gains the image of a large potentially mobilized voting bloc to give their position more punch to the political elites. This research argues that coalitional activity may be a litigation strategy used not only to express a certain policy position but may also be a means to balance the judicial playing field.
Before I examine when interest groups join coalitions and whether groups’ involvement and coalition activity make any difference in terms of the Court’s decision making, I provide an overview of the affirmative action landscape and the manner in which organized interest groups fit into it.
CHAPTER III
ORGANIZED PARTICIPATION IN AFFIRMATIVE ACTION CASES
ARGUED BEFORE THE SUPREME COURT

This chapter surveys the landscape of affirmative action as a constitutional policy arena in order to understand the context within which we would expect certain types of groups to participate before the Supreme Court. I spell out a classification scheme for capturing the different types of organizations. Also, I lay out expectations about which groups lobby the courts and explore the extent of participation both across and within all affirmative action cases. Finally, I identify the general trends of organized participation over time.

Data and Methods

The data used in the analysis include all affirmative action cases granted plenary review before the Supreme Court from 1971 (Griggs v. Duke Power Company) to 1995 (Adarand Constructors v. Pena).\(^\text{10}\) I chose affirmative action as a policy arena because the substantive content of this arena focuses on access of traditionally marginalized and disadvantaged groups. This issue area should provide

\(^{10}\) I do, however, include one case that was decided by the Court per curium: Defunis v. Odegaard (1974). I include this case in the analysis due to the fact that a flurry of organizations participated in this case as amici. Although the Court rendered this case moot, I treat Defunis as a con affirmative action decision throughout the analysis.
fruitful data on coalitional behavior of disadvantaged interests. Also, as a policy issue, affirmative action is a highly polarizing issue (Edsall and Edsall 1991) within which I expect to find a flurry of organizations participating. Further, affirmative action cases before the Court span a time frame long enough to confidently assess the dynamics of group participation. I exclude per curium opinions because not all amici participating are documented in the U.S. Reports. The U.S. Supreme Court Judicial Database (1995) was consulted in order to identify all affirmative action cases given plenary review by the Court. The Records and Briefs of the U.S. Supreme Court (herein referred to as Records and Briefs) were used to identify all amicus participants for each case. The analysis excludes individuals participating as both filers and co-filers. The cases used in the following analyses are listed below in Table 3.

Generalizing about the extent of organized participation before the Supreme Court is confounded by the methodology employed by various scholars assessing organized participation. Epstein (1993) discusses the variety of methodological tactics scholars use to study interest groups and the Court. Epstein points out four distinct approaches: the case study method, success ratings, control designs, and contextual designs. Most of the major studies cited in the literature (for example see Vose 1957) use the “case study method” to unearth the efficacy and impact of organized group participation in the context of the federal judiciary. Yet, case studies of particular court cases or particular groups do not allow us to reach generalizations. In an effort to assess the efficacy of group participation, scholars employing “success ratings” use
success scores to determine the extent of group success in terms of wins. Yet these studies generally fail to control for important and recognized factors that shape case

Table 3
Affirmative Action Cases Argued Before the Supreme Court, 1971-1995

<table>
<thead>
<tr>
<th>Case</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albemarle Paper Company v. Moody</td>
<td>422 U.S. 405 (1975)</td>
</tr>
<tr>
<td>United Steel Workers of America v. Weber</td>
<td>443 U.S. 193 (1979)</td>
</tr>
<tr>
<td>Local 28, Sheet Metal Workers' v. EEOC et al.</td>
<td>478 U.S. 421 (1986)</td>
</tr>
<tr>
<td>Local 93, International Association of Firefighters</td>
<td>478 U.S. 501 (1986)</td>
</tr>
</tbody>
</table>

N=22, The affirmative action cases were selected from the U.S. Supreme Court Judicial Database, Phase 1 (1995).
outcomes (Epstein 1993). The assumption in this method is that only group participation affects the outcomes of cases, neglecting factors such as precedent, the facts of the case, and the justices' ideological dispositions. "Control designs" attempt to "assess the effect of interest groups only if we control for other factors that may be influencing the judicial decision, such as partisanship, legal facts, and ideology" (Epstein 1993, 693). Epstein suggests that control designs show a marginal impact of groups on case outcomes. "Contextual approaches" attempt to assess the extent to which justices incorporate the content of amicus briefs into their legal reasoning. We already know that justices frequently cite amicus briefs in their opinions, but it is more difficult to assess the extent to which these briefs impact the justices. Scholars have found that amici add new insights into the cases at hand, and justices often adopt the language and legal reasoning of amici, as opposed to the framework set-out by the briefs filed by the parties to the suit. I now move to a discussion of affirmative action as a policy arena and from there I present findings about organized group participation in these cases.

Affirmative Action as a Policy Arena

Affirmative action refers to government policies that seek to directly or indirectly award social goods such as jobs, academic positions, and resources, to individuals on the basis of their membership in a designated protected group in order to compensate for past discrimination. These programs have largely been viewed in terms of addressing issues of social justice. Government services and income
supplements distributed to individuals and groups seemingly provide a means through
which disadvantaged groups can be better equipped to enjoy a more level playing
field in sectors of economic and social life. Affirmative action policies establish a
pattern of rewards and benefits to minorities and women in order to increase their
representation in various public and private sectors. Such rewards and benefits seek to
rectify past discrimination against minorities and women. Michel Rosenfeld (1991,
47) provides a more explicit working definition of affirmative action. He writes that
affirmative action refers to the

...preferential hiring, promotion, and laying off of minorities or
women, to the preferential admission of minorities and women to
universities, or to the preferential selection of businesses owned by
minorities or women to perform government public contracting work
for purposes of remedying a wrong act or of increasing the proportion
of minorities and women in the relevant labor force, entrepreneurial
class, or university student population.

Debate centering on affirmative action is usually coined in terms of social
justice. That is, proponents of such programs argue that enacting affirmative action
provides “equality of opportunity.” Although affirmative action policies seem to be
antithetical to the principle of equal protection of the laws (the basis of equal
opportunity), these rewards and benefits are designed to assist people who have been
marginalized from the political, economic, and social arenas. To a considerable
degree, these programs focus on the equality of result rather than equality of
opportunity.

Affirmative action reflects the disparate impact theory of discrimination. This
theory holds that there is a statistical racial and gender disparity resulting from
employment practices and forms of discrimination in the workplace. In other words, this theory of discrimination says that discrimination is based not so much on prejudice than it is based on the disproportionate representation of ethnic and racial minorities in social and economic sectors.

Affirmative action was first defined in an executive order issued by President Lyndon Johnson in 1965. It required employers to recruit minority candidates to be considered equally with other applicants in the hiring pool.\(^\text{11}\) This Executive Order banned discrimination of minorities by the federal government and its contractors. A later order in 1965 prohibited discrimination by the government and its contractors, and required that affirmative action be taken “to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.”\(^\text{12}\) While the first order was primarily aimed at blacks, the latter expanded the focus of affirmative action to include Hispanics, Native Americans, and other minorities. And although originally couched in terms of employment policy, affirmative action programs have grown to include any policy that grants preferences based on membership in a specific group (Eastland 1992). Today, affirmative action programs target not only racial and ethnic-minority groups but women as well. Through the years, affirmative action programs have varied

\(^{11}\) As Vice-President to John F. Kennedy, Johnson first attempted to achieve equal opportunity for African Americans in 1961 by playing a major role in enacting Executive Order 10,925, which is commonly referred to as the “Affirmative Action Order.”

\(^{12}\) Executive Order No. 11,246, 3 C.F.R 339 (1964-1965).
extensively, from “soft” forms that include having business establishments recruit minorities, to “hard” forms that involve reserving a specific quantity of openings for designated minority groups.

The varieties of affirmative action programs have been challenged in the courts on a number of fronts. On its face, affirmative action programs contradict the notion of a “color-blind” Constitution.\(^\text{13}\) Affirmative action polices invite debate about the legal norms articulated in \textit{Brown} (1954) to the extent that supporters of affirmative action programs believe that the “color blind” constitutional doctrine is not sufficient to remedy the pervasive impact of disparate treatment. As Blackmun asserted in his dissent in \textit{Bakke} (1978), “in order to get beyond racism we must first take account of race.” Moreover, part of the debate over affirmative action includes the extent to which race is to be taken into account when enacting economic and social policies to remedy past discrimination. More specifically, in dealing with affirmative action cases, the Court has treated the issue on the basis of competing standards of scrutiny. On the whole, the Court has employed three levels of review to scrutinize legislation. These standards of review the Court has utilized for equal protection challenges have changed over the years. The first level is the “rational relationship test,” which is met when the classification is “rationally related to a legitimate legislative end.” Under this standard of review the government need only

\[^{13}\text{As Justice Harlan spelled out his dissent in} \textit{Plessy v. Ferguson}, 163 U.S. 537 (1896), “our constitution is color blind.” Later in \textit{Brown} (1954), the Court declared the “separate but equal” doctrine unconstitutional and blessed the notion of a “color blind” constitution.\]
establish that there is a rational relationship between the governmental objective and the legislation in question. Classifications involving gender have been held to the more rigorous "intermediate level" of scrutiny, which requires that the classification serve an "important governmental objective" and that the classification be "substantially related" to the governmental policy. "Strict scrutiny" is the most difficult standard and is used when classifications are said to alter a fundamental right or when they are based on racial and/or ethnic classifications. Under this type of scrutiny the challenged classification must be "necessary" to achieve a "compelling" governmental objective. This doctrinal dictate was spelled out by the Court in Wygant (1986). Legislation will be deemed unconstitutional unless "the means chosen to accomplish the State's asserted purpose [is] specifically and narrowly framed to accomplish that purpose" (Wygant v. Jackson Bd. of Education (1986)). In race-based affirmative action cases over time, the Court has imposed stricter standards of review to all levels of government.

Attempts to remedy past discrimination in the form of affirmative action policies raise important constitutional questions. Since classifications based on race must be examined under the lens of "strict scrutiny," should the same standard of review be required of affirmative action policies based on gender? A difficulty arises because the beneficiaries of such polices include both women and racial/ethnic

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14 Of the 22 cases examined in this study, 20 cases involved race-based affirmative action policies and two cases (Wygant (1986) and Johnson (1987)) dealt with affirmative action policies based along the lines of gender.
minorities. That is, sexual classifications that disadvantage women are held to "intermediate-level" scrutiny, whereas classifications based on race are to meet the standards of strict scrutiny. The legal history of affirmative action cases reveals disagreement between the justices concerning the proper way to evaluate these policies; over the past 20 years or so, the Court has been unclear on what standards should be used. Indeed, the Court has been sharply divided in its decisions and has produced a variety of conflicting opinions. This discord between members of the Court may lend itself to high levels of interest group and intergovernmental participation. Table 4 presents some of the legal and doctrinal highlights of affirmative action cases in order to showcase the dynamics of the Court's interpretation of legal precedent.

The selection of affirmative action cases to be used in this project comes from Supreme Court cases granted plenary review and coded as "affirmative action" cases in the U.S. Supreme Court Judicial Database, 1953-1993 Terms (Sixth ICPSR Version, February 1995). Since the publication of this edition of the database, the Court granted plenary review to Adarand (1995). This case is included in the analysis.

Table 5 lists all affirmative action cases granted plenary review by the Supreme Court from 1971 (Griggs) to 1995 (Adarand). The table highlights the legal combatants before the Court in each case. Also listed in this table is the vote in the case, the outcome, whether the Court decided in favor of affirmative action policies and procedures, as well as the law being addressed by the Court.
Table 4
Treatment of Precedent and Level of Scrutiny Applied for the Major Affirmative Action Cases of the Rehnquist Court, 1986-1995

<table>
<thead>
<tr>
<th>Case</th>
<th>Outcome/Interpretation</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>U.S. v. Paradise</em> (1987)</td>
<td>Liberal Interpretation of Precedent (intermediate level scrutiny)</td>
</tr>
<tr>
<td><em>Metro Broadcasting v. FCC</em> (1990)</td>
<td>Liberal Interpretation of Precedent (intermediate level scrutiny)</td>
</tr>
</tbody>
</table>

Note: All cases listed above are race-based affirmative action cases.

The data on the outcome of the cases and the law in question come from the coding of all decisions, as well as validation from the codes for each case from the *U.S. Supreme Court Judicial Database, Phase I* (1995). The cases can be segregated into categories based on the interests represented by the petitioner and respondent. Some cases deal with school admissions procedures (*Defunis* and *Bakke*), employee and employer relationship with regard to hiring and promotion in the private sector.
<table>
<thead>
<tr>
<th>Case</th>
<th>Petitioner</th>
<th>Respondent</th>
<th>Vote</th>
<th>Outcome</th>
<th>Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Griggs (1971)</td>
<td>Racial/Ethnic Employee</td>
<td>Employer</td>
<td>8-0</td>
<td>pro</td>
<td>Title VII</td>
</tr>
<tr>
<td>Defunis (1974)</td>
<td>Student</td>
<td>University</td>
<td>5-4</td>
<td>moot</td>
<td>Standing</td>
</tr>
<tr>
<td>Morton (1974)</td>
<td>DOI</td>
<td>Government Employee</td>
<td>9-0</td>
<td>pro</td>
<td>5A=P</td>
</tr>
<tr>
<td>Albemarle (1975)</td>
<td>Employer</td>
<td>Racial/Ethnic Applicant</td>
<td>7-1</td>
<td>pro</td>
<td>Title VII</td>
</tr>
<tr>
<td>Franks (1976)</td>
<td>Racial/Ethnic Applicant</td>
<td>Employer</td>
<td>5-3</td>
<td>pro</td>
<td>Title VII</td>
</tr>
<tr>
<td>Bakke (1978)</td>
<td>University</td>
<td>Student</td>
<td>5-4</td>
<td>pro</td>
<td>14A=</td>
</tr>
<tr>
<td>Furnco (1978)</td>
<td>Employer</td>
<td>Racial/Ethnic Applicant</td>
<td>9-0</td>
<td>con</td>
<td>Title VII</td>
</tr>
<tr>
<td>Weber (1979)</td>
<td>Union</td>
<td>Employee</td>
<td>5-2</td>
<td>pro</td>
<td>Title VI</td>
</tr>
<tr>
<td>Fullilove (1980)</td>
<td>Government Contractor</td>
<td>COMM</td>
<td>6-3</td>
<td>pro</td>
<td>Title VI</td>
</tr>
<tr>
<td>Mayor (1984)</td>
<td>Union</td>
<td>NJ City</td>
<td>8-1</td>
<td>pro</td>
<td>PRIV/ IMM</td>
</tr>
<tr>
<td>Stotts (1984)</td>
<td>Union</td>
<td>TN Minority</td>
<td>6-3</td>
<td>con</td>
<td>Title VII</td>
</tr>
<tr>
<td>Wygant (1986)</td>
<td>MI Govt. Employee</td>
<td>MI School District</td>
<td>5-4</td>
<td>con</td>
<td>14A=</td>
</tr>
</tbody>
</table>
Table 5—Continued

<table>
<thead>
<tr>
<th>Case</th>
<th>Petitioner</th>
<th>Respondent</th>
<th>Vote</th>
<th>Outcome</th>
<th>Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local 28 (1986)</td>
<td>Union</td>
<td>EEOC</td>
<td>5-4</td>
<td>pro</td>
<td>Title VII</td>
</tr>
<tr>
<td>Local 93 (1986)</td>
<td>Union</td>
<td>OH City</td>
<td>6-3</td>
<td>pro</td>
<td>Title VII</td>
</tr>
<tr>
<td>Paradise (1987)</td>
<td>U.S.</td>
<td>AL Minority Government Employee</td>
<td>5-4</td>
<td>pro</td>
<td>14A=</td>
</tr>
<tr>
<td>Johnson (1987)</td>
<td>CA Govt. Employee</td>
<td>CA County</td>
<td>6-3</td>
<td>pro</td>
<td>Title VII</td>
</tr>
<tr>
<td>Richmond (1989)</td>
<td>VA City</td>
<td>Government</td>
<td>6-3</td>
<td>con</td>
<td>14A=</td>
</tr>
<tr>
<td>Wards Cove (1989)</td>
<td>Employer</td>
<td>Racial Job Applicant</td>
<td>5-4</td>
<td>con</td>
<td>Title VII</td>
</tr>
<tr>
<td>Martin (1989)</td>
<td>AL Minority Employee</td>
<td>AL Govt. Employee</td>
<td>5-4</td>
<td>con</td>
<td>CIVP</td>
</tr>
<tr>
<td>Metro (1990)</td>
<td>Business (TV) FCC</td>
<td>5-4</td>
<td>pro</td>
<td>5A=P</td>
<td></td>
</tr>
<tr>
<td>Adarand (1995)</td>
<td>Government Contractor</td>
<td>DOT</td>
<td>5-4</td>
<td>con</td>
<td>5A=P</td>
</tr>
</tbody>
</table>

Note: Pro: pro-affirmative action decision; Con: opposite; moot: case or controversy (no decision on the merits). Title VII: Civil Rights Act of 1964, Title VII; Title VI: Civil Rights Act of 1964, Title VI; CRA 1981: Civil Rights Act of 1981; Standing: case or controversy requirements; 5A=P: equal protection; 14A=: equal protection; CIVP: federal rules of civil procedure; PRIV/IMM: privileges and immunities clause. (Codes come from U.S. Supreme Court Judicial Database, 1995).
(Griggs, Albemarle, Furnco, and Wards Cove), employee and employer relationship with regard to government departments and the like (Morton, Wygant, Paradise, and Martin), relationships between unions and union members (Weber, Mayor, Stotts, Local 28, and Local 93), and relationships between government contractors and contractees (Fullilove, General Building, Richmond, Metro Broadcasting, and Adarand). Among all of the affirmative action cases granted plenary review, the Court rendered 13 decisions broadly interpreted as being in favor of affirmative action policies and procedures and nine against. However, if the substantive conclusions the Court has made about affirmative action over time are examined, we find that the Court has applied stricter standards of review for all governmental levels (federal, state, local), as well as private attempts to either remedy past discrimination or promote diversity with the procedures and practices of affirmative action.

It is difficult to assess the extent to which the Court has ruled decidedly either in favor or against affirmative action. Each case presents a unique set of facts that the Court had to consider. However, despite the uniqueness of the plight of the parties to the suits at hand, the implications of these decisions of the Court on these cases extend far beyond the immediate outcome for the litigants. Moreover, because some of the cases deal with affirmative action policies and procedures regarding unions, school admissions, or awarding public contracts, all issues that illicit public controversy, I expect that the broad-based implications of these decisions would invite myriad groups to participate as amici, while at the same time attracting organizational types that reflect the interests of the parties to the suit.
Classification of Organizations

In order to capture the diversity of groups who filed briefs, I classify all amici according to their bases of membership. I include 13 out of the 14 categories used by Caldeira and Wright (1990). I exclude “individuals” as a category, while at the same time, I add educational organizations and institutions given the participants that we expect to see lobbying in affirmative action litigation. Scholars since Truman (1951) have used classification schemes to describe and analyze interest group activity. Because the number of amicus participants is overwhelming and encompasses a host of types of organizations, a classification scheme is needed that captures the diversity of organizations. I use the phrase “organized interests” rather broadly and understand them as a “variety of organizations that seek joint ends through political action” (Schlozman and Tierney 1986, 11). By classifying amici according to the bases of their membership characteristics we can identify the myriad groups participating at this stage in the judicial process. The organizational classification of amici is a slightly modified version of the type offered by Caldeira and Wright (1990). Table 6 displays the classification scheme used in the analysis.

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15 The organizations that Caldeira and Wright (1990) included in their classification scheme were as follows: Individuals, Corporations, U.S. Government, States, Counties, Municipalities, Other Government Groups, Charitable/Community, Public Interest Law Firms, Citizen/Public Interest/Advocacy, Business/Trade/Professional Associations, Unions, Peak Associations, and Other Groups.

Table 6
Organizational Classification of Groups

<table>
<thead>
<tr>
<th>Type of Organization</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Corporation</td>
<td>Mobile Oil</td>
</tr>
<tr>
<td>2. United States</td>
<td>U.S. Solicitor General</td>
</tr>
<tr>
<td>3. State</td>
<td>State of Alaska</td>
</tr>
<tr>
<td>4. County</td>
<td>Kalamazoo County, MI</td>
</tr>
<tr>
<td>5. Municipality</td>
<td>City of Azusa, California</td>
</tr>
<tr>
<td>6. Other</td>
<td>Congress. Black Caucus</td>
</tr>
<tr>
<td>7. Charitable or community organization</td>
<td>March of Dimes, Girl Scouts of America</td>
</tr>
<tr>
<td>8. Public interest law firm or policy/research group</td>
<td>Pension Rights Center, Pacific Legal Foundation</td>
</tr>
<tr>
<td>9. Citizen/public interest/advocacy group</td>
<td>Americans for Democratic Action, Advocates, NAACP</td>
</tr>
<tr>
<td>10. Business, trade, or professional organization</td>
<td>Americans Bankers Association, Associated General Contractors, American Federation of Teachers, United Mine Workers, AFL-CIO, Chamber of Commerce</td>
</tr>
<tr>
<td>11. Union</td>
<td>Hills College, UCLA</td>
</tr>
<tr>
<td>12. Peak Association</td>
<td>Baptist Church, Ute Indian Tribe</td>
</tr>
</tbody>
</table>

Note: Table as presented by Caldeira and Wright (1990, 791). My classification scheme, however, is modified as follows: I excluded individuals from the analysis and added a category for educational groups and institutions given the nature of the affirmative action policy domain.
A variety of typologies could have been used. Some of the typological schemes in the literature would either not provide a refined enough basis to capture the diversity of interests, or they would oversimplify what seems to be diverse interests lobbying the court. For example, I could have classified groups according to types of benefits they provide to members. Organizing groups in this way would cloud the analysis, as groups provide a mix of incentives for their members (Moe 1980). Classifying groups according to the types of policies they pursue or their ideological orientation would be difficult as well because such a scheme may be too sensitive to particular years and particular courts (Caldeira and Wright 1990). Also, if we wish to make any generalizations about the behavior of organized participation before the Court, we want to construct a classification scheme as broadly as possible. Dividing groups according to their purpose (e.g., religious, educational, etc.) may not be refined enough to capture the diversity of organized participants. And dividing groups according to their issue-niches does not provide mutually exclusive categories. Further, dividing groups into liberal and conservative camps would split generally into amici supporting the respondent versus the petitioner (see O'Connor and Epstein 1983).

Caldeira and Wright hypothesized that institutional groups (i.e., corporations and public interest law firms) are more likely to be active during the merit stage than "position-taking" citizen/advocacy groups because the latter is more concerned with organizational membership than the former types of groups. Since institutional groups do not have to satisfy the diverse membership of their organizations, they also have
greater flexibility in choosing coalitional partners. However, they do not take into account the organizational characteristics (such as staff size and organizational vitality, measured in years active) that may lend themselves to engaging in coalitional activity. This will be explored more systematically in subsequent chapters. However, I will briefly summarize the frequency rates of participation as either solo filers or in coalitions below. Since cases are more visible when the Court decides to grant plenary review and since groups have more time to prepare briefs once cases are on the Court’s docket, not to mention that the stakes are much higher, I expect a diverse lot of organizations to participate as amici.

The analysis of amicus participation is based on data collected on all affirmative action cases granted plenary review between 1971 and 1995. The data come from the Records and Briefs on microfiche (Griggs to Weber) and housed on the Lexis-Nexis website17 (from Fullilove to Adarand). The sample consists of 22 cases and 884 amicus filers representing groups of all organizational stripes.18 For all cases I coded whether the amicus participants filed solo briefs or participated in a coalition. Also, I coded all amicus participants according to their base of membership. The groups are divided into the number of distinct organizations participating as amici, as well as the total number of amici across all cases.19 Table 7 displays the

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17 <http://www.lexis-nexis.com/universe>
18 A host of groups filed amicus briefs in more than one case. Later in this chapter I will address these “repeat players.”
19 Of course, that the total number of amici within an organizational category will be greater than the total number of distinct organizations because numerous groups participated in multiple cases.
### Table 7

Frequency of Types of Groups Participating in All Affirmative Action Cases*

<table>
<thead>
<tr>
<th>Type</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Corporation</strong></td>
<td>9</td>
<td>1.1</td>
</tr>
<tr>
<td><strong>Government</strong></td>
<td>(170)</td>
<td>(21.2)</td>
</tr>
<tr>
<td>U.S.</td>
<td>12</td>
<td>1.5</td>
</tr>
<tr>
<td>State</td>
<td>118</td>
<td>14.7</td>
</tr>
<tr>
<td>County</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Municipality</td>
<td>21</td>
<td>3.0</td>
</tr>
<tr>
<td>Other Govt. Group</td>
<td>17</td>
<td>2.0</td>
</tr>
<tr>
<td><strong>Charitable</strong></td>
<td>37</td>
<td>5.0</td>
</tr>
<tr>
<td><strong>Public Law</strong></td>
<td>119</td>
<td>14.8</td>
</tr>
<tr>
<td><strong>Citizen</strong></td>
<td>249</td>
<td>31.0</td>
</tr>
<tr>
<td><strong>Business, Professional</strong></td>
<td>81</td>
<td>10.1</td>
</tr>
<tr>
<td><strong>Union</strong></td>
<td>39</td>
<td>4.9</td>
</tr>
<tr>
<td><strong>Peak Association</strong></td>
<td>10</td>
<td>1.2</td>
</tr>
<tr>
<td><strong>Educational</strong></td>
<td>57</td>
<td>7.1</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>31</td>
<td>3.9</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>802</td>
<td>100.5</td>
</tr>
</tbody>
</table>

Note: *82 individuals filed amicus briefs either as solo filers or in coalitions with other groups. Individuals participating as amici are excluded from the subsequent analyses. ** The category "Government" is an aggregation of all national, state, local, and other types of governmental groups. Total percentage is not equal to 100 due to rounding.
frequencies of participation for all amici across the 14 categories of participants. In an examination of the distributions for total amici and distinct organizations across all of the 14 categories, as expected, groups of all stripes participated as amici throughout all the cases. Citizen and public interest groups participated more frequently than any other organizational type. Nearly a third (31 percent) of all distinct participants in the affirmative action cases come from citizen and public interest organizations. Public interest law firms are the second highest group of participants (nearly 15 percent).

Aggregating all government level organizations, we find that about 21 percent of the participants represented various governmental interests. Standing alone, however, state governments participated in greater numbers (14.7 percent) than their counterparts in the federal government (1.5 percent), and other local and county governments. Business, trade, and professional organizations accounted for 10.1 percent of all amicus participants. Corporations (1.1 percent), unions (4.9 percent), and peak associations (1.2 percent) had surprisingly low levels of amicus participation vis-à-vis citizen and public interest law firms.

General Overview of Group Participation

At this point I turn my attention to an examination of the frequency of groups participating and the number of briefs filed in each case, as well as frequency of coalitional activity. Table 8 showcases this sketch of the groups participating as amici in affirmative action cases. The table includes the number of amicus curiae briefs filed within each case, as well as the number of amicus filers and coalitions.
Table 8

Frequencies of Organizational Participation for All Affirmative Action Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Outcome</th>
<th>Briefs</th>
<th>Groups</th>
<th>Coalitions</th>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Griggs (1971)</td>
<td>pro</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>.00</td>
</tr>
<tr>
<td>Defunis (1974)</td>
<td>moot</td>
<td>24</td>
<td>60</td>
<td>7</td>
<td>.88</td>
</tr>
<tr>
<td>Morton (1974)</td>
<td>pro</td>
<td>2</td>
<td>4</td>
<td>1</td>
<td>.50</td>
</tr>
<tr>
<td>Albermarle (1975)</td>
<td>pro</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>.00</td>
</tr>
<tr>
<td>Franks (1976)</td>
<td>pro</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>.00</td>
</tr>
<tr>
<td>Bakke (1978)</td>
<td>pro</td>
<td>44</td>
<td>117</td>
<td>19</td>
<td>.84</td>
</tr>
<tr>
<td>Furnco (1978)</td>
<td>con</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>.67</td>
</tr>
<tr>
<td>Weber (1978)</td>
<td>pro</td>
<td>29</td>
<td>97</td>
<td>12</td>
<td>.88</td>
</tr>
<tr>
<td>Fullilove (1980)</td>
<td>pro</td>
<td>16</td>
<td>29</td>
<td>7</td>
<td>.76</td>
</tr>
<tr>
<td>Gen. Building (1982)</td>
<td>con</td>
<td>5</td>
<td>5</td>
<td>0</td>
<td>.00</td>
</tr>
<tr>
<td>Mayor (1984)</td>
<td>pro</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>.00</td>
</tr>
<tr>
<td>Stotts (1984)</td>
<td>con</td>
<td>15</td>
<td>65</td>
<td>5</td>
<td>.92</td>
</tr>
<tr>
<td>Wygant (1986)</td>
<td>con</td>
<td>23</td>
<td>71</td>
<td>7</td>
<td>.90</td>
</tr>
<tr>
<td>Local 28 (1986)</td>
<td>pro</td>
<td>12</td>
<td>45</td>
<td>6</td>
<td>.87</td>
</tr>
<tr>
<td>Local 93 (1986)</td>
<td>pro</td>
<td>16</td>
<td>57</td>
<td>7</td>
<td>.90</td>
</tr>
<tr>
<td>Paradise (1987)</td>
<td>pro</td>
<td>6</td>
<td>23</td>
<td>3</td>
<td>.87</td>
</tr>
<tr>
<td>Johnson (1987)</td>
<td>pro</td>
<td>11</td>
<td>43</td>
<td>6</td>
<td>.86</td>
</tr>
<tr>
<td>Richmond (1989)</td>
<td>con</td>
<td>19</td>
<td>65</td>
<td>8</td>
<td>.88</td>
</tr>
<tr>
<td>Wards Cove (1989)</td>
<td>con</td>
<td>9</td>
<td>14</td>
<td>2</td>
<td>.86</td>
</tr>
<tr>
<td>Martin (1989)</td>
<td>con</td>
<td>7</td>
<td>52</td>
<td>4</td>
<td>.92</td>
</tr>
<tr>
<td>Metro (1990)</td>
<td>pro</td>
<td>20</td>
<td>34</td>
<td>4</td>
<td>.88</td>
</tr>
<tr>
<td>Adarand (1995)</td>
<td>con</td>
<td>20</td>
<td>58</td>
<td>9</td>
<td>.84</td>
</tr>
</tbody>
</table>

Totals (13 pro; 8 con; 1 moot) 294 802 108 .87

does the picture of coalitional activity among organizations look like over time? The last column reports a coalition index, which is an index based on the number of briefs and groups participating in each case. This index is calculated by dividing the number

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of coalitions for each case by the number of organizations participating. From there I subtracted this number from one. This index helps to showcase the over time trends of the proportion of groups that engage in coalitional activity.

In some cases (Griggs, Albemarle, General Building, and Mayor) all of the amicus participants were solo filers, with no groups participating in a coalition. Other cases enlisted a considerable number of coalitions relevant to the number of groups and briefs filed. Stotts (.92), Wygant (.90), and Martin (.92) had the highest proportion of coalitional activity. The coalition index tells us that in affirmative action cases where more than five amici participated, amici are more likely to engage in coalitional activity. That is, in 15 out of 22 cases where more than five filers participated as amicus curiae, the coalition index ranged from .76 to .92. Also, since the Stotts case of 1984, there seems to be a general trend of both high and consistent levels of coalitional participation among organized interests. Moreover, when organized groups get involved in affirmative action cases, they more likely to join coalitions. The cases that have the highest level of coalitional participation come from the “major” and more high profile affirmative action cases, which form the corpus of constitutional doctrine regarding affirmative action. The general trend of group activity suggests that they are participating in coalitions with more consistency and frequency over time. A total of 294 amicus briefs were filed across all affirmative action cases and there were a total of 802 amicus filers, excluding individuals.

Table 9 displays the frequency of amicus participation by organization type and displays the percentage of participation (in parentheses) as both solo filer and as
Table 9
Frequency of Amicus Participation by Organization Type

<table>
<thead>
<tr>
<th>Type</th>
<th>Solo Filer</th>
<th>Coalition</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation</td>
<td>4 (44.4)</td>
<td>5 (55.6)</td>
<td>9</td>
</tr>
<tr>
<td>Government</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>U.S.</td>
<td>9 (75.0)</td>
<td>3 (25.0)</td>
<td>12</td>
</tr>
<tr>
<td>State</td>
<td>6 (5.1)</td>
<td>112 (94.9)</td>
<td>118</td>
</tr>
<tr>
<td>County</td>
<td>0 (0.0)</td>
<td>2 (100.0)</td>
<td>2</td>
</tr>
<tr>
<td>Municipality</td>
<td>7 (33.3)</td>
<td>14 (66.7)</td>
<td>21</td>
</tr>
<tr>
<td>Other Govt. Group</td>
<td>6 (35.3)</td>
<td>11 (64.7)</td>
<td>17</td>
</tr>
<tr>
<td>Charitable</td>
<td>2 (5.4)</td>
<td>35 (94.6)</td>
<td>37</td>
</tr>
<tr>
<td>Public Law</td>
<td>28 (23.5)</td>
<td>91 (76.5)</td>
<td>119</td>
</tr>
<tr>
<td>Citizen</td>
<td>44 (17.7)</td>
<td>205 (82.3)</td>
<td>249</td>
</tr>
<tr>
<td>Business, Professional</td>
<td>25 (30.9)</td>
<td>56 (69.1)</td>
<td>81</td>
</tr>
<tr>
<td>Union</td>
<td>11 (28.2)</td>
<td>28 (71.8)</td>
<td>39</td>
</tr>
<tr>
<td>Peak Association</td>
<td>7 (70.0)</td>
<td>3 (30.0)</td>
<td>10</td>
</tr>
<tr>
<td>Educational</td>
<td>17 (29.8)</td>
<td>40 (70.2)</td>
<td>57</td>
</tr>
<tr>
<td>Other</td>
<td>3 (9.7)</td>
<td>28 (90.3)</td>
<td>31</td>
</tr>
<tr>
<td>Totals</td>
<td>169 (21.0)</td>
<td>633 (79.0)</td>
<td>802</td>
</tr>
</tbody>
</table>

Note: *Chi-square* (13 d.f.) = 75.845; prob. = .000 (2-tailed); Solo Filers = 169 (21 percent); Filers Participating in Coalitions = 633 (79 percent).
part of a coalition. Out of the 802 amicus filers participating across all affirmative action cases, 169 (21 percent) participated as solo filers, while 633 (79 percent) participated in concert with other groups in the form of a coalition. The first column, labeled “solo filer,” presents the frequency of group participation acting alone, while the second column showcases the number of times these groups participated as amici in a coalition with other groups. Of the most active participants before the Court on affirmative action cases, citizen groups participated in coalitions approximately 82 percent of the time, while public law groups and business and professional groups participated in coalitions approximately 77 percent and 69 percent of the time, respectively. Corporations (56 percent) and peak associations (30 percent) participated in coalitions with less frequency than all organizational types, excluding some government groups. Among governmental groups, states almost uniformly participated in coalitional efforts (approximately 95 percent of the time). Some of the high percentages of either solo filer participation or coalitional activity (county governments, U.S. government, and peak associations) may be artifacts of the lower frequency of participation across all cases. Is organizational type significantly related to coalitional behavior? The large chi-square statistic indicates that there is a significant difference in the kind of participation (either as a solo filer or in a coalition) between the organizational types. The very low probability indicates that it is quite unlikely that the kind of participation before the Court and organizational type are independent in the population.
Table 10 lists the frequency of support for the petitioners and respondents by organizational type. To simplify this scheme, I coded whether groups supported affirmative action or whether they filed briefs in opposition to affirmative action. On the whole, 81.3 percent (631 groups) supported the affirmative action policies being addressed by the Court, while 18.7 percent (145 groups) participated in filing briefs against affirmative action. Aggregating all of the governmental groups together, we find that about 89 percent of the participation on behalf of national, state, and local governments were in support of affirmative action. Most of the participation by government groups was on behalf of state governments in support of affirmative action policies brought before the Court. Interestingly enough, participation by the national government fell on the side of opposition to affirmative action policies and practices argued before the Court. To a considerable extent this reflects the position articulated by the respective presidential administration's solicitor general, who not only submitted briefs to the Court but who also participated in oral arguments before the Court in some cases. Upon a closer inspection of participation mounted by presidential administrations over time, through the mouthpiece of the solicitor general, we find that all Democratic administrations lobbied pro affirmative action (Carter and Clinton) while all Republican administrations participated in opposition
Table 10

Frequency of Support for Affirmative Action by Organizational Type

<table>
<thead>
<tr>
<th>Type</th>
<th>Pro AA</th>
<th>Con AA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation</td>
<td>6 (75.0)</td>
<td>2 (25.0)</td>
<td>8</td>
</tr>
<tr>
<td>Government</td>
<td>148 (89.2)</td>
<td>18 (11.8)</td>
<td>166</td>
</tr>
<tr>
<td>U.S.</td>
<td>2 (16.7)</td>
<td>10 (83.3)</td>
<td>12</td>
</tr>
<tr>
<td>State</td>
<td>111 (94.1)</td>
<td>7 (5.9)</td>
<td>118</td>
</tr>
<tr>
<td>County</td>
<td>2 (100.0)</td>
<td>0 (0.0)</td>
<td>2</td>
</tr>
<tr>
<td>Municipal</td>
<td>20 (100.0)</td>
<td>0 (0.0)</td>
<td>20</td>
</tr>
<tr>
<td>Other Govt.</td>
<td>13 (92.9)</td>
<td>1 (7.1)</td>
<td>14</td>
</tr>
<tr>
<td>Charitable</td>
<td>25 (67.6)</td>
<td>12 (32.4)</td>
<td>37</td>
</tr>
<tr>
<td>Public Law</td>
<td>87 (75.0)</td>
<td>29 (25.0)</td>
<td>116</td>
</tr>
<tr>
<td>Citizen</td>
<td>210 (86.1)</td>
<td>34 (13.9)</td>
<td>244</td>
</tr>
<tr>
<td>Business, Professional</td>
<td>57 (80.3)</td>
<td>14 (19.7)</td>
<td>71</td>
</tr>
<tr>
<td>Union</td>
<td>24 (63.2)</td>
<td>14 (36.8)</td>
<td>38</td>
</tr>
<tr>
<td>Peak Association</td>
<td>3 (30.0)</td>
<td>7 (70.0)</td>
<td>10</td>
</tr>
<tr>
<td>Educational</td>
<td>55 (96.5)</td>
<td>2 (3.5)</td>
<td>57</td>
</tr>
<tr>
<td>Other</td>
<td>16 (55.2)</td>
<td>13 (44.8)</td>
<td>29</td>
</tr>
<tr>
<td>Totals</td>
<td>631 (81.3)</td>
<td>145 (18.7)</td>
<td>776</td>
</tr>
</tbody>
</table>

Chi-square (13 d.f.) = 108.860; prob. = .000 (2-tailed).

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to affirmative action (Nixon, Ford, Reagan, and Bush). Of the non-governmental groups, educational and citizen-based groups participated with the most frequency in support of affirmative action programs being challenged in the Court. Aside from the category of “Other” groups in the classification scheme, which is a hodge-podge of groups representing churches and fraternal organizations, peak associations and unions garnered the most in terms of opposition to affirmative action policies being argued before the Court. Peak associations opposed affirmative action 70 percent of the time, while unions were virtually identical to charitable organizations in their opposition to affirmative action.

Although there seems to be an overwhelming difference in the aggregate for groups supporting and opposing affirmative action programs, it is important to examine the extent of group participation within each case argued before the Court. Is organizational type significantly related to supporting affirmative action policies being argued before the Court? The large chi-square statistic listed in the table indicates that there is a significant difference in the aggregate for organizations supporting affirmative action (labeled “Pro AA”).

Moreover, the aggregate summary of support for affirmative action policies argued before the Court is lopsided in favor of affirmative action policies (81.3

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20 In Chapter V I will more thoroughly explore solicitor general participation before the Court across all affirmative action cases.
percent to 18.7 percent), indicating that organizational groups are more likely to support affirmative action in the cases presented before the Court.21

Summary of Affirmative Action Law in Selected Cases

We now turn to a brief description of some of the major affirmative action cases, the legal questions the Court has been asked to address, as well as a summary of group participation within these cases. I elect to discuss these particular cases due to the fact that within these cases we find the most active participation mounted by organized groups. What does affirmative action law look like? What types of groups participate in these cases? Since the outcomes of Supreme Court cases have implications beyond the petitioners and the respondents, we should expect to see diverse participation as measured by the organization classification outlined earlier. Below I briefly describe some of the major affirmative action cases. The following cases form the corpus of affirmative action case law. After the description is spelled out, I summarize the extent of group participation within each of the cases where there was a noticeable concentration of participation on the part of organized groups.

21 Although the chi-square statistic is significant we must remember that larger sample sizes tend to conflate the differences between categories, even when those differences appear to be small. Moreover, small differences between the groups can be statistically significant.
The first major affirmative action case to reach the Court was *Defunis*. Despite having received higher test scores than some of the minority admittees at the University of Washington Law School, Defunis was denied admission to the law school. Upon challenging the university’s admission policy, Defunis asked a trial court to require the school to admit him. On appeal, the Washington Supreme Court reversed the trial court’s decision and upheld the university’s decision to deny Defunis admission. The U.S. Supreme Court considered the case as Defunis was entering his final year of school. In a 5-4 per curiam opinion, the Court held that the case in question was moot because the University of Washington Law School had agreed to allow Defunis to enroll and to earn a diploma. Although the Court did not spell out the jurisprudential contours of affirmative action in this case, the deeply divided Court (5-4) in *Defunis* later set the stage and opened the floodgates for subsequent affirmative action cases.

Perhaps the most well known affirmative action case is *Bakke* (1978). The *Bakke* case presented to the Court the question of whether or not the University of California violated the Fourteenth Amendment’s equal protection clause and the Civil Rights Act of 1964, by practicing an affirmative action policy that resulted in the rejection of Bakke’s application for admission to its medical school. Bakke, a white medical school applicant, sued the University of California Davis Medical School,
even though his GPA, MCAT scores and benchmark scores were significantly higher than the minority and non-minority admittees. He filed a request for an injunction, claiming he was denied admission on the basis of race, which was in violation of the equal protection clause. The Court ruled that the University had the burden of proof, and thus failing, ordered Bakke’s admission to the program.

The decision was divisive and while there was no single majority opinion for the Court, four of the justices (Burger, Rehnquist, Stewart, and Stevens) argued that any racial quota system supported by the government violated the Civil Rights Act of 1964, and four justices (White, Blackmun, Marshall, and Brennan) held that the use of race as a criterion in admissions decisions was constitutionally permissible. In the final analysis, Powell cast the deciding vote and joined Burger, Rehnquist, Stewart, and Stevens. The Court ruled that since there was no previous racial discrimination by the University, the University’s special admissions program violated the equal protection clause of the Fourteenth Amendment, as well as the Civil Rights Act of 1964. The Court also held that it is constitutionally permissible for universities to consider race in their admissions policies in order to promote diversity, so long as individual rights are protected. Powell cautioned, however, that promoting diversity through affirmative action is a double-edged sword. That is, it may further remedial purposes but it may also fuel racial hostility by promoting improper racial stereotypes.
United Steel Workers of America v. Weber (1979)

The United Steelworkers of America and the Kaiser Aluminum and Chemical Corporation implemented an affirmative action-based training program in an effort to increase the number of the company’s black skilled craft workers. Through this program, half of the eligible positions were reserved for blacks. Weber, a white employee, was passed over for the program and claimed that he was a victim of reverse discrimination. In Weber the Court addressed whether the United and Kaiser Aluminum’s training schedule violated Title VII. The Court held that the training scheme was legitimate because the 1964 Act “did not intend to prohibit the private sector from taking effective steps” in order to implement its goals. The Court reasoned the training program was consistent with the intent of the act since the intention of the affirmative action-based training program was to eliminate old patterns of racial segregation in the hierarchy of the company’s positions, while at the same time not prohibiting white employees from advancing in the company.


The facts of the case in Fullilove centered around a statute Congress enacted in 1977 requiring that at least ten percent of federal funds granted for public works projects be used to obtain services or supplies from minority owned businesses. Fullilove and other contractors filed suit, claiming that they had been economically harmed by the enforcement of the statute. The Court examined whether the provision of the statute for minority business enterprises violated the Equal Protection Clause.
The Court held that the minority set-aside was a legitimate exercise of congressional power and that Congress could pursue the objectives of the minority business enterprise program under the Spending Power. In the remedial context, the Court argued that Congress did not have to act "in a wholly 'color-blind' fashion."

**Firefighters v. Stotts (1984)**

In *Stotts*, the Court addressed an employment conflict between the Memphis City affirmative action policy and its seniority system. African American firefighters filed a class-action suit claiming discrimination on the part of the city of Memphis in its hiring and promotion practices and the city subsequently signed a consent decree in an effort to increase the proportion of African Americans in the city's firefighters department. However, in the face of a fiscal crisis, the city needed to lay off workers and based its decision on who to lay off on its seniority system (the so-called "first hired, first fired principle"). This practice would have a negative effect on the newly hired African American firefighters. A federal district court modified the city's seniority system in an effort to preserve the affirmative action program. However, the Supreme Court, by a 6-3 vote, held that the federal district court judge exceeded his powers under Title VII. Justice White said that seniority systems are valid even if they go against the grain of affirmative action policies.
In 1986 the Court heard arguments in three affirmative action cases. *Wygant* involved a collective-bargaining provision for race-based layoffs. Under the collective-bargaining agreement between the Board of Education and a teacher’s union, teachers with the most seniority would not be laid off. The agreement also stipulated that it would not lay-off a percentage of minority personnel that exceeded the percentage of minority personnel employed at the time of a layoff. When the school laid off some nonminority teachers, while keeping other minority teachers with less seniority, Wendy Wygant, a laid off nonminority teacher, challenged the layoff. In a 5-4 decision, the Court argued that Wygant’s layoff stemmed from her race and therefore violated the Equal Protection Clause. The Court argued that when the government embarked on affirmative action it had to justify racial classification with a compelling state interest and to demonstrate that its chosen means were tailored narrowly to its purpose. The Court also rejected the school’s layoff preferences; the school incorrectly addressed injurious prior discriminatory hiring practices since “denial of a future employment opportunity [was] not as intrusive as loss of an existing job.”

In *Local 28 v. EEOC* the Court held that Title VII did not prohibit courts from ordering affirmative action race-conscious relief as a remedy for past discrimination. Where employers or unions engaged in “persistent or egregious discrimination, or where necessary to dissipate the lingering effects of pervasive discrimination,” the
Court noted that such relief was appropriate. The Court also entertained another case involving a hiring and promotion scheme of a union. In *Local 93*, the Court held that a federal court could enforce a voluntary agreement to give minorities preferences in hiring and promotion. The Court argued that under Title VII, a voluntary public sector affirmative action plan is valid when it was issued by a consent decree from a lower federal court. The same set of state governments filed an amicus brief in a coalition in both cases. The general trend of organizational participation by public interest law, citizen, and business and professional groups is evident in these cases. Citizen groups participated with the most frequency (40 percent in *Local 28* and 36.8 percent in *Local 93*).

**United States v. Paradise (1987)**

In *U.S. v. Paradise*, the Court dealt with the issue of whether an Alabama Department of Public Safety “one-black-for-one-white” promotion scheme violated the Equal Protection Clause. In light of a series of NAACP-initiated lawsuits in the 1970s, the Alabama Department of Public Safety was ordered to implement a promotion scheme in which half of the department’s promotions would go to qualified black officers. The Court upheld the promotion plan because it was narrowly tailored promotion policy and did not bar whites from advancing to higher positions within the department. Looking at the department’s record of complying with past judicial decisions, the Court noted that this promotion policy was required “in light of the Department’s long and shameful record of delay and resistance.”
Johnson v. Transportation Agency (1987)

In Johnson the Court examined a case based on gender. Two candidates were qualified and the Agency hired the woman. Was the Agency impermissibly taking account of gender of the applicants? In a 6-3 decision, the Court affirmed the promotion plan arguing that it was not unreasonable to consider gender as one factor among many in making promotion decisions, and that the promotion scheme did not erect an absolute barrier to the promotion of men.

City of Richmond v. J.A. Croson Company (1989)

Striking a blow to affirmative action procedures in the arena of awarding contracts to minority business enterprises, the Court in Richmond argued that generalizations of past racial discrimination could not justify "rigid" racial quotas for awarding public contracts. In her opinion for the Court, O'Connor argued that the 30 percent quota adopted by the City Council of Richmond, Virginia could not be tied to "any injury suffered by anyone" and was an impermissible employment of a suspect classification. O'Connor also reasoned that allowing claims of past discrimination to serve as a basis for racial quotas would subvert constitutional values. "The dream of a Nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs."
Martin v. Wilks (1989)

*Martin v. Wilks* examined whether employees could challenge consent decrees regarding affirmative action by a federal district court. The ruling made it easier for employees to challenge the constitutional basis of affirmative action promotion schemes instituted by employers. As a result of a lawsuit in 1974, the Jefferson County Personnel Board of Birmingham, Alabama entered into consent decrees that included hiring and promoting blacks as firefighters. A white firefighter, Robert K. Wilks, challenged the decrees and claimed that whites were being denied promotions in favor of less qualified blacks. Wilks argued that these practices violated Title VII. The Board argued that although it was making race-conscious decisions it was acting on the basis of the court ordered decrees. The Court sided with Wilks and held that he had a right to challenge the previously established decrees. Because "a person cannot be deprived of his legal rights in a proceeding to which he is not a party," the white firefighters were not prevented from challenging employment decisions instituted on the basis of consent decrees. Further, the Court reasoned that no one "can seriously contend that an employer might successfully defend against a Title VII claim by one group of employees on the ground that its actions were required by an earlier decree entered in a suit brought against it by another, if the later group did not have adequate notice or knowledge of the earlier suit."
Metro Broadcasting, Inc. v. FCC et al. (1990)

The case of *Metro* (decided concurrently with *Astroline Communications Co. v. Shurberg Broadcasting*)\(^{22}\) challenged the constitutionality of two minority preference policies of the Federal Communications Commission (FCC). The first policy centered on preferences given to minority applicants for broadcast licenses, all other things being equal. Shurberg Broadcasting of Hartford Incorporated challenged the second policy, referred to as the “distress sale.” This policy allowed broadcasters in danger of losing their licenses to sell their stations to minority buyers before the FCC formally ruled on the violation of the troubled stations. The Faith Center Inc. made a “distress sale” of its television license to a minority owned company owned by Astroline. Shurberg, a non-minority applicant for a similar license, challenged the FCC’s approval of Faith Center’s sale to Astroline. The Court examined the FCC’s minority preference policies. In a 5-4 decision, they said that the FCC’s minority preference policies were constitutional because they provided appropriate remedies for discrimination victims and were aimed at the advancement of legitimate congressional efforts to promote diversity in the broadcasting industry. More specifically, the Court reasoned that the FCC’s polices were narrowly tailored to meet the legitimate congressional demands of fostering diversity in this industry. Also, the availability of program diversity sales served the interests not only of minorities, who

have historically been victims of discrimination in this industry, but also of the viewing and listening public. Finally, the Court argued that the minority-based preference policies did not unduly burden non-minority broadcast businesses. Undeniably the facts of this case would seem to elicit participation on the part of corporate interests.

**Adarand Constructors v. Pena (1995)**

The last case in the analysis is *Adarand* (1995). In a deeply divided decision, the Court in *Adarand* overruled its decision in *Metro*. In this case Adarand, a contractor specializing in highway guardrail work, submitted the lowest bid as a subcontractor for part of a project funded by the U.S. Department of Transportation. Under the federal contract, the primary contractor would receive additional compensation if it hired small businesses controlled by “socially and economically disadvantaged individuals.” The clause stipulated that “the contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic American, Native Americans, Asian Pacific Americans, and other minorities…” However, another subcontractor, Gonzales Construction Company, was awarded the work because it was certified as a minority business while Adarand was not. The Court was asked to consider whether the presumption of disadvantage based on race alone and subsequent allocation of favored treatment on that basis was a discriminatory practice violating the Fifth Amendment’s Equal Protection Clause. In its response the Court ruled that this presumption did violate the Equal Protection...
Clause of the Fifth Amendment. The Court held that all racial classifications, whether imposed by federal, state, or local authorities, must pass “strict scrutiny review.” That is, they “must serve a compelling government interest, and must be narrowly tailored to further that interest.” The Court reasoned that race is not a sufficient condition for a presumption of disadvantage and the award of favored treatment, all race-based classifications must be judged under the strict scrutiny standard. Even more strictly, the Court announced that proof of past injury does not in and of itself establish the suffering of present or future injury.

Summary of Group Participation in Selected Affirmative Action Cases

In this section I summarize group participation within the major affirmative action cases. Table 11 displays the frequency of amicus participation by type of organization within each case.

Organized Participation in Defunis et al. v. Odegaard et al. (1974)

Although the Defunis case was rendered moot, it received considerable attention in both support and opposition to affirmative action by a host of organized interests. A total of 60 amici participated in this case and 24 amicus briefs were filed. In this case we see a diversity of interests participating in filing amicus briefs. State, charitable, public law, citizen, business and professional, unions, peak associations, educational, and “other” groups all filed briefs. Citizen and educational groups led the way in participation, constituting just over half of the participants by organizational
Table 11

Frequency of Amicus Participation by Type of Organization in Selected Cases

<table>
<thead>
<tr>
<th>Type</th>
<th>Defunis</th>
<th>Bakke</th>
<th>Weber</th>
<th>Fullilove</th>
<th>Stotts</th>
<th>Wygant</th>
<th>Local 28</th>
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<td>22.2 (10)</td>
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<td>1.5 (1)</td>
<td>1.4 (1)</td>
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<td>2.8 (2)</td>
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<td></td>
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<tr>
<td>Other</td>
<td>3.1 (3)</td>
<td>3.4 (1)</td>
<td>1.5 (1)</td>
<td>2.8 (2)</td>
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<tr>
<td>Charity</td>
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<td>8.5 (10)</td>
<td>5.2 (5)</td>
<td>4.6 (3)</td>
<td>4.2 (3)</td>
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<tr>
<td>Pub.Law</td>
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<td>12.0 (14)</td>
<td>16.5 (16)</td>
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<td>21.5 (14)</td>
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<td>40.0 (26)</td>
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<td>40.0 (18)</td>
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<td>10.3 (10)</td>
<td>20.7 (6)</td>
<td>15.4 (10)</td>
<td>4.2 (3)</td>
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<td>12.4 (12)</td>
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<tr>
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<td>3.1 (3)</td>
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<td>7.7 (5)</td>
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<table>
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<tr>
<th>Type</th>
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<th>Paradise</th>
<th>Johnson</th>
<th>Richmond</th>
<th>Martin</th>
<th>Metro</th>
<th>Adarand</th>
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<td>4.6 (3)</td>
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<td>63.5 (33)</td>
<td>27.6 (16)</td>
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<td>County</td>
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<td>7.0 (3)</td>
<td>3.1 (2)</td>
<td>1.9 (1)</td>
<td>1.7 (1)</td>
<td></td>
</tr>
<tr>
<td>Other</td>
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<td>5.9 (2)</td>
<td>3.4 (2)</td>
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<tr>
<td>Charity</td>
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<tr>
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<td>18.6 (8)</td>
<td>15.4 (11)</td>
<td>19.2 (10)</td>
<td>29.4 (10)</td>
<td>10.3 (6)</td>
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<tr>
<td>Citizen</td>
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<td>30.4 (7)</td>
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<td>17.2 (10)</td>
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<tr>
<td>Business</td>
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<td>7.7 (5)</td>
<td>8.8 (3)</td>
<td>34.5 (20)</td>
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<td></td>
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</tr>
<tr>
<td>Union</td>
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<tr>
<td>Peak</td>
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<td>3.1 (2)</td>
<td></td>
<td></td>
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<td></td>
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</tbody>
</table>

Note: County includes county and municipal governments. The category “Other” is excluded from this table due to the small number of these organizations participating across the cases.
type. Here we start to see the diversity thesis come into play. That is, we find participation before the Court on the part of groups not necessarily associated with the groups that the parties to the suit represent.

Organized Participation in University of California Regents v. Bakke (1978)

In Bakke we see a flood of groups attempting to influence the Court. Of all the affirmative action cases surveyed in this analysis, Bakke saw the highest frequency of participation in all the measures of group activity outlined earlier. The number of briefs filed (44), as well as the number of groups participating (117) and coalitions (19), is the highest number across all cases. Approximately 25 percent of all amici in this case came from citizen and public interest groups, most of which lobbied the Court in favor of affirmative action. Business, trade, and professional groups made up 13.7 percent, and public interest law firms constituted 12 percent of all amici. Governmental participation rates were rather low in this case compared to other similar cases. Noticeably absent from the list of all organization types are corporations. Undoubtedly, we would expect to see participation mounted on the part of educational groups, and the data bear this out (22.2 percent of the amicus participants was on the part of groups representing the educational community). However, we also see participation on the part of state governments (3.4 percent), county and municipal governments (0.9 percent), charitable groups (8.5 percent), public law groups (12 percent), citizen groups (24.8 percent), business and
professional groups (13.7 percent), unions and peak associations (7.7 percent), and "other" miscellaneous groups (6.8 percent).

Organized Participation in United Steel Workers of America v. Weber (1979)

Not unlike Bakke, in terms of the extent of group participation, we see a concerted effort on the part of groups of all organizational stripes to attempt to influence the outcome of the decision. A total of 29 briefs were filed in this case and upward of about 100 groups participated in the form of amici. In Weber, 47.4 percent of all amici come from citizen and public interest organizations. Public interest law firms accounted for nearly 17 percent of all participating amici. In line with the expectation that the organizational nature of the parties to the suit will structure the types of groups pressing their claims on the Court as amici, we find that in Weber there is a higher rate of participation by unions (12.4 percent) when compared to the aggregate participation by unions across all cases (4.5 percent).

Interestingly, we see very little participation on the part of governmental groups. In subsequent cases, however, we will find a growing trend of governmental groups at all levels to be a staple of participants in affirmative action cases. Among non-governmental types of organizations, all types participated in this case with the exception of peak associations.

In Fullilove, we find that 29 amicus filers participated and 16 briefs were filed. Citizen/public interest groups and public interest law firms account for approximately 55 percent of all amicus participants. Business and professional groups also figured prominently in their rate of participation among all organized groups, making up about 19 percent of all amicus filers.


In Stotts amici participated from 111 out of the 14 categories. In this case there were 65 filers and 15 briefs. Citizen based organizations netted the most participation in this case (40 percent) and public interest law firms made up almost 22 percent of all amici in this case. Ten business and professional filers participated in this case making up about 15 percent of all amici filed and educational groups made up almost 8 percent of all amici. Although we would expect a higher frequency of union participation in this case, only two union amici participated in this case along with only one filer representing a peak association.

Organized Participation in Wygant v. Jackson Board of Education (1986); Local 28, Sheet Metal Workers’ v. EEOC et al. (1986) and Local 93, International Association of Firefighters, AFL-CIO v. City of Cleveland et al. (1986)

In Wygant we find that 71 filers lobbied the Court as amicus curiae and a total of 71 briefs were filed. Participation in Wygant was widespread among the different organizational types. Among non-governmental groups, all but peak associations
participated as amici, with citizen groups mounting the most frequent rate of participation (35.2 percent). Not surprisingly, given the nature of the dispute before the Court, educational groups participated with the second most frequency among non-governmental types of groups (approximately 13 percent). Seven state attorney generals participated in this case as a coalition.

In the three cases of 1986 we start to see a trend in the consistency of participation among state and municipal governments. Public law and citizen groups continue to be a staple of the groups participating in affirmative action cases. Citizen groups constituted approximately 35 percent of the organizational participants in Wygant, 40 percent in Local 28, and approximately 37 percent in Local 93. Of all non-governmental groups, all organizational types, with the exception of peak associations, participated in these three cases.


In Paradise, six amicus briefs were filed and 23 amicus filers participated. Paradise did not elicit the diversity of participation on the part of different organizational types. However, state participation garnered the bulk of participation at about 38 percent, with citizen groups (approximately 39 percent) and county and municipalities (about 17 percent) rounding out the second and third most active types of organizations.
Organized Participation in Johnson v. Transportation Agency (1987)

A total of 43 amicus filers participated in Johnson and 11 amicus briefs were filed. A flurry of organizations participated in this case. Once again, citizen groups accounted for the highest rate of participation among all groups at approximately 35 percent. Public law groups netted the second highest rate of participation among non-governmental groups (approximately 19 percent). Business and professional groups did not file any briefs in this case, which seems to be the exception to the general trend of consistent participation before the Court in affirmative action cases. Among governmental groups, a total of ten states participated in this case as a coalition.


Upwards of 65 amicus filers participated in this case, which contributed to a total of 19 amicus curiae briefs. Groups of all organizational stripes, with the exception of unions and peak associations, participated in this case in some capacity. State governments accounted for the highest rate of participation among all organized groups (26.2 percent) with 15 states filing as one coalition, along with the Corporation Counsel of the District of Columbia, and both Michigan and Maryland Attorney Generals filing individual briefs on the same side as the larger coalition of states. Among non-governmental groups citizen groups (23.1 percent) and public law groups (15.4 percent) were the most frequent participants filing briefs. Also in this case we see that a few corporations filed briefs and all of them filed on the pro affirmative action side. However, after having surveyed the landscape of participation
across all affirmative action cases, corporate interests hardly mounted any concerted participation insofar as filing amicus briefs. Not since 1975, in the *Albemarle* case, did we see even a hint of participation on the part of any corporations. However, participation by corporations in this case amounted to only three briefs for a total of only 4.6 percent of amicus participation.

**Organized Participation in Martin v. Wilks (1989)**

In this case, only seven briefs were filed but over 52 amicus filers participated in four coalitions. In *Martin* we do not see the diversity of participation that we see in most of the affirmative action cases since *Stotts*. Thirty-three state governments, which constitute over 60 percent of the participation in this case, participated as amici, all of whom participated in a coalition in support of the affirmative action policy being challenged before the Court. Among non-governmental groups, public law groups participated with the most frequency (19.2 percent), while citizen groups constituted 11.5 percent of the total amicus participation. Interestingly, given the facts of the case, we do not see any concerted efforts on the part of unions or peak associations to shape the constitutional landscape on this case.

**Organized Participation in Metro Broadcasting, Inc. v. FCC et al. (1990)**

In this case a total of 34 amicus filers participated and 20 briefs were filed. As the data show, corporate interests play a larger role in this case than the previous
cases. Corporations amounted to almost 15 percent of the amicus participants.

Again we see the prominence of participation on the part of public law groups (29.4 percent) and citizen groups (26.5 percent). The diversity of participation in this case was relatively slim, with no participation on the part of states, counties, and municipalities, for governmental organizations, and no participation from unions, peak associations, and educational groups.


Participation in this case reflects the general trend of both diverse and concentrated participation among most of the organizations. A total of 58 filers participated as amici in this case and 20 amicus briefs were filed. Business and professional groups scored the highest rate of participation among all groups (34.5 percent), while among governmental groups, states accounted for the highest percentage of participation (almost 30 percent).

23 Although in Albemarle (1975) 25 percent of the amicus participants represented corporate interests, only 1 group participated and seems to conflate the concentration of group participation based on a small number of filers (a total of only four participants).

24 The following is a brief breakdown of participation in other affirmative action cases. In contrast to the cases summarized previously, other cases did not elicit diverse and concentrated participation of organizational groups. In Griggs (1971), Morton (1974), Albemarle (1975), Franks (1976), Furnco (1978), General Building Contractors (1982), and Mayor (1984), only a total of 22 briefs combined were filed. In these cases we see few groups participating and the number of groups and concentration of coalitional activity (measured by the coalition index discussed earlier) is quite low. The relative scarcity of groups participating as amici in these cases, as well as the lack of diversity in participation across the board relative to the other cases, goes against the grain of the trend toward concentrated and diverse participation.
Table 12 provides an example of the organizations participating in *Adarand*. In this particular case, those groups supporting the petitioner are against the affirmative action policy the Court is being asked to address, while those supporting the respondent are in favor of the policy. The last group of organizations participating in this case filed an amicus brief but did not indicate a particular preference for the outcome of the case. In fact, this pro affirmative action coalition of women’s business organizations filed for leave to participate in oral argument as amicus curiae. The Court denied their petition. In the opinion of the Court, these groups are simply listed as having filed amicus briefs.25

The participation mounted by organizations in *Adarand* (1995) is a good example of the trends in the types of groups participating as well as the extent of participation in general and coalitional activity in particular. For one, 15 states along with the Acting Corporation Counsel for the District of Columbia filed together in a coalition. This coalitional activity reflects the general trend of states acting in concert. Also, we see a diverse lot of organizations participating in this case and a high proportion of filers participating together through coalitions.

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25 I have included an appendix that displays a breakdown of all organizational participants within each affirmative action case.
Table 12


<table>
<thead>
<tr>
<th>Briefs in Support of Petitioner</th>
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<tbody>
<tr>
<td>Solo Filer Associated General Contractors of America, Inc.</td>
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</tr>
<tr>
<td>Solo Filer Atlantic Legal Foundation</td>
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<td>Solo Filer Federalist Society, Ohio State University College of Law Chapter</td>
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</tr>
<tr>
<td>Solo Filer Pacific Legal Foundation</td>
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<tr>
<td>Coalition Washington Legal Foundation</td>
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<tr>
<td>Coalition Equality in Enterprise Opportunities Association, Inc.</td>
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<table>
<thead>
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<tr>
<td>Solo Filer Latin American Management Association</td>
<td></td>
</tr>
<tr>
<td>Coalition Lawyers' Committee for Civil Rights Under Law</td>
<td></td>
</tr>
<tr>
<td>Coalition American Civil Liberties Union</td>
<td></td>
</tr>
<tr>
<td>Coalition Women's Legal Defense Fund</td>
<td></td>
</tr>
<tr>
<td>Coalition National Women's Law Center</td>
<td></td>
</tr>
<tr>
<td>Coalition National Council of La Raza</td>
<td></td>
</tr>
</tbody>
</table>

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Table 12—Continued

<table>
<thead>
<tr>
<th>Briefs in Support of Respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coalition</strong></td>
</tr>
<tr>
<td>Minority Business Enterprise Legal Defense and Education Fund, Inc.</td>
</tr>
<tr>
<td>National Minority Supplier Development Council, Inc.</td>
</tr>
<tr>
<td>National Black Chamber of Commerce, Inc.</td>
</tr>
<tr>
<td>National Association of Minority Contractors</td>
</tr>
<tr>
<td><strong>Coalition</strong></td>
</tr>
<tr>
<td>Minority Media and Telecommunications Council</td>
</tr>
<tr>
<td>League of United Latin American Citizens</td>
</tr>
<tr>
<td>Office of Communication of the United Church of Christ</td>
</tr>
<tr>
<td>National Hispanic Media Coalition</td>
</tr>
<tr>
<td>Communications Task Force</td>
</tr>
<tr>
<td>National Association of Black Owned Broadcasters</td>
</tr>
<tr>
<td>American Hispanic Owned Radio Association</td>
</tr>
<tr>
<td>Emerging Telecommunications Entrepreneurs Association</td>
</tr>
<tr>
<td><strong>Solo Filer</strong></td>
</tr>
<tr>
<td>National Association for the Advancement of Colored People</td>
</tr>
<tr>
<td><strong>Solo Filer</strong></td>
</tr>
<tr>
<td>National Coalition of Minority Businesses</td>
</tr>
<tr>
<td><strong>Solo Filer</strong></td>
</tr>
<tr>
<td>NAACP Legal Defense and Educational Fund, Inc.</td>
</tr>
<tr>
<td><strong>Solo Filer</strong></td>
</tr>
<tr>
<td>National Association of Minority Businesses</td>
</tr>
<tr>
<td><strong>Coalition</strong></td>
</tr>
<tr>
<td>National Bar Association et al.</td>
</tr>
<tr>
<td>Council of 100-An Organization of Black Republicans, Inc.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Briefs of Amici Curiae Taking No Position for the Petitioner or Respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coalition</strong></td>
</tr>
<tr>
<td>Maryland Women Business Entrepreneurs Association</td>
</tr>
<tr>
<td>National Association of Women Business Owners</td>
</tr>
<tr>
<td>Illinois Association of Women Contractors and Entrepreneurs</td>
</tr>
<tr>
<td>WBE Line, Inc.</td>
</tr>
<tr>
<td>Federation of Women Contractors &amp; Women's Business Development Center</td>
</tr>
</tbody>
</table>

Repeat Player Status of Amici

Do certain types of organizations participate more frequently in affirmative action cases than others? Is there any pattern to organizational participation over time? A variety of scholars have examined “repeat players” before the Court.
These studies typically explore the success of repeat players in litigation. Repeat players enjoy such a high rate of success vis-à-vis individuals or groups who are represented by private attorneys due to the fact that they have more experience and expertise than private attorneys (O'Connor 1980; Vose 1959). Although it is beyond the scope of this project to more formally examine the efficacy of the efforts of repeat players on the Court's decisions, it is important to note whether certain types of organizations continue to participate in the affirmative action policy arena or whether their participation is short-lived. Examining this will shed some light on the general debate in the interest group literature about whether certain groups dominate certain policy arenas, that is, they focus on an "issue niche" (Browne 1990), or whether the proliferation of a host of groups playing on the political field dissolves the potential influence of any particular group (Salisbury 1992).

Table 13 displays the frequency of cases within which non-governmental organizations filed at least two solo amicus curiae briefs. Of the 169 solo amicus briefs filed by organizations, 66.3 percent (112 out of 169) were filed by repeat players. Among the 141 non-government organizations, 15 percent were repeat players (21 out of 141), having filed solo briefs in at least two cases. Also, only 9.2 percent of the non-governmental solo filers were repeat players at least three times. Public interest law firms and business and trade organizations have the most frequent repeat players across all organizational categories.
Table 13

Repeat Player Status: Frequency of Non-governmental Organizational Participation as Solo Filers

<table>
<thead>
<tr>
<th>Organization by Type</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Charitable or Community Organization</strong></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>--</td>
</tr>
<tr>
<td><strong>Public Interest Law Firm or Policy/Research Group</strong></td>
<td></td>
</tr>
<tr>
<td>Equal Employment Advisory Council</td>
<td>13</td>
</tr>
<tr>
<td>Pacific Legal Foundation</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer's Committee for Civil Rights Under Law</td>
<td>8</td>
</tr>
<tr>
<td>NAACP Legal Defense &amp; Educational Fund</td>
<td>7</td>
</tr>
<tr>
<td>Washington Legal Foundation</td>
<td>5</td>
</tr>
<tr>
<td>Mexican American Legal Defense and Educational Fund</td>
<td>3</td>
</tr>
<tr>
<td>Southeastern Legal Foundation, Inc.</td>
<td>3</td>
</tr>
<tr>
<td>Council on Legal Education Opportunity</td>
<td>2</td>
</tr>
<tr>
<td><strong>Citizen/Public Interest/Advocacy Group</strong></td>
<td></td>
</tr>
<tr>
<td>NAACP</td>
<td>6</td>
</tr>
<tr>
<td>Anti-Defamation League of B'nai B'rith</td>
<td>5</td>
</tr>
<tr>
<td>American Jewish Congress</td>
<td>2</td>
</tr>
<tr>
<td><strong>Business, Trade, or Professional</strong></td>
<td></td>
</tr>
<tr>
<td>Chamber of Commerce of the U.S.</td>
<td>6</td>
</tr>
<tr>
<td>American Society for Personnel Administration</td>
<td>3</td>
</tr>
<tr>
<td>Associated General Contractors of America, Inc.</td>
<td>2</td>
</tr>
<tr>
<td>Association of American Law Schools</td>
<td>2</td>
</tr>
<tr>
<td>Association of American Medical Colleges</td>
<td>2</td>
</tr>
<tr>
<td>National Conference of Black Lawyers</td>
<td>2</td>
</tr>
<tr>
<td>North Carolina Association of Black Lawyers</td>
<td>2</td>
</tr>
<tr>
<td><strong>Union</strong></td>
<td></td>
</tr>
<tr>
<td>International Association of Fire Fighters, AFL-CIO</td>
<td>3</td>
</tr>
<tr>
<td>American Federation of Teachers, AFL-CIO</td>
<td>2</td>
</tr>
<tr>
<td><strong>Peak Association</strong></td>
<td></td>
</tr>
<tr>
<td>AFL-CIO</td>
<td>2</td>
</tr>
<tr>
<td><strong>Educational Groups, Institutions</strong></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>--</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>--</td>
</tr>
</tbody>
</table>

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Table 14 lists the frequencies of non-government repeat players that co-filed amicus briefs in coalitions. Among the 491 non-government organizations, approximately 64

### Table 14

Repeat Player Status: Frequency of Participation as Co-filers

<table>
<thead>
<tr>
<th>Organization by Type</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Charitable or Community Organization</strong></td>
<td></td>
</tr>
<tr>
<td>Office of Communication of the United Church of Christ</td>
<td>2</td>
</tr>
<tr>
<td><strong>Public Interest Law Firm or Policy/Research Group</strong></td>
<td></td>
</tr>
<tr>
<td>Women's Legal Defense Fund</td>
<td>10</td>
</tr>
<tr>
<td>NOW Legal Defense and Education Fund</td>
<td>8</td>
</tr>
<tr>
<td>National Women's Law Center</td>
<td>8</td>
</tr>
<tr>
<td>Lawyers' Committee for Civil Rights Under Law</td>
<td>7</td>
</tr>
<tr>
<td>NAACP Legal Defense and Educational Fund</td>
<td>7</td>
</tr>
<tr>
<td>Mexican American Legal Defense and Educational Fund</td>
<td>6</td>
</tr>
<tr>
<td>Puerto Rican Legal Defense and Education Fund</td>
<td>6</td>
</tr>
<tr>
<td>Center for Constitutional Rights</td>
<td>4</td>
</tr>
<tr>
<td>Employment Law Center</td>
<td>4</td>
</tr>
<tr>
<td>Northwest Women's Law Center</td>
<td>4</td>
</tr>
<tr>
<td>Women's Law Project</td>
<td>4</td>
</tr>
<tr>
<td>Women's Law Fund</td>
<td>3</td>
</tr>
<tr>
<td>Minority Business Enterprise Legal Defense and Education Fund,</td>
<td></td>
</tr>
<tr>
<td>Inc.</td>
<td>3</td>
</tr>
<tr>
<td>Asian American Legal Defense and Education Fund</td>
<td>3</td>
</tr>
<tr>
<td>American Indian Law Students Association</td>
<td>2</td>
</tr>
<tr>
<td>La Raza National Lawyers Association</td>
<td>2</td>
</tr>
<tr>
<td>Washington Legal Foundation</td>
<td>2</td>
</tr>
<tr>
<td><strong>Citizen/Public Interest/Advocacy Group</strong></td>
<td></td>
</tr>
<tr>
<td>American Civil Liberties Union</td>
<td>14</td>
</tr>
<tr>
<td>NAACP</td>
<td>9</td>
</tr>
<tr>
<td>National Urban League</td>
<td>7</td>
</tr>
<tr>
<td>Women Employed</td>
<td>7</td>
</tr>
<tr>
<td>League of Women Voters of the United States</td>
<td>6</td>
</tr>
<tr>
<td>Affirmative Action Coordinating Center</td>
<td>5</td>
</tr>
<tr>
<td>American G. I. Forum</td>
<td>5</td>
</tr>
<tr>
<td>Equal Rights Advocates</td>
<td>5</td>
</tr>
<tr>
<td>Organization by Type</td>
<td>Number of Cases</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>League of United Latin American Citizens</td>
<td>5</td>
</tr>
<tr>
<td>National Organization for Women</td>
<td>5</td>
</tr>
<tr>
<td>Anti-Defamation League of B'nai B'rith</td>
<td>4</td>
</tr>
<tr>
<td>IMAGE</td>
<td>4</td>
</tr>
<tr>
<td>Wider Opportunities for Women</td>
<td>4</td>
</tr>
<tr>
<td>Women's Equity Action League</td>
<td>4</td>
</tr>
<tr>
<td>American Jewish Committee</td>
<td>3</td>
</tr>
<tr>
<td>National Jewish Commission on Law and Public Affairs</td>
<td>3</td>
</tr>
<tr>
<td>Unico National</td>
<td>3</td>
</tr>
<tr>
<td>American Jewish Congress</td>
<td>2</td>
</tr>
<tr>
<td>Americans for Democratic Action</td>
<td>2</td>
</tr>
<tr>
<td>Asian Law Caucus</td>
<td>2</td>
</tr>
<tr>
<td>Aspira of America</td>
<td>2</td>
</tr>
<tr>
<td>Coalition for Economic Equity</td>
<td>2</td>
</tr>
<tr>
<td>Japanese American Citizens League</td>
<td>2</td>
</tr>
<tr>
<td>League of Martin</td>
<td>2</td>
</tr>
<tr>
<td>National Council of La Raza</td>
<td>2</td>
</tr>
<tr>
<td>New Jewish Agenda</td>
<td>2</td>
</tr>
<tr>
<td>Polish American Congress</td>
<td>2</td>
</tr>
<tr>
<td>Ukrainian Congress Committee of America (Chicago Division)</td>
<td>2</td>
</tr>
<tr>
<td>Women's Coalition, Inc.</td>
<td>2</td>
</tr>
</tbody>
</table>

**Business, Trade, or Professional**

<table>
<thead>
<tr>
<th>Organization by Type</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Bar Association</td>
<td>7</td>
</tr>
<tr>
<td>National Conference of Black Lawyers</td>
<td>6</td>
</tr>
<tr>
<td>National Lawyers Guild</td>
<td>6</td>
</tr>
<tr>
<td>International City Management Association</td>
<td>5</td>
</tr>
<tr>
<td>California Women Lawyers</td>
<td>4</td>
</tr>
<tr>
<td>National Bar Association, Women Lawyer's Division</td>
<td>3</td>
</tr>
<tr>
<td>National Black Police Association</td>
<td>3</td>
</tr>
<tr>
<td>American Association of University Women</td>
<td>2</td>
</tr>
<tr>
<td>Federally Employed Women Legal and Education Fund</td>
<td>2</td>
</tr>
<tr>
<td>Hellenic Bar Association of Illinois</td>
<td>2</td>
</tr>
<tr>
<td>Society of American Law Teachers Board of Governors</td>
<td>2</td>
</tr>
</tbody>
</table>

**Union**

<table>
<thead>
<tr>
<th>Organization by Type</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Union, United Automobile, Aerospace and</td>
<td>4</td>
</tr>
<tr>
<td>United Farm Workers of America</td>
<td>3</td>
</tr>
<tr>
<td>United Mine Workers of America</td>
<td>3</td>
</tr>
</tbody>
</table>
percent were repeat players (312 out of 491). Thirty-six percent of all organizations that joined coalitions participated only once. Forty-seven percent of non-government organizations were repeat players at least three times. The most frequent participants across all affirmative action cases were the ACLU (14 times), Women’s Legal Defense Fund (ten times), NAACP (nine times), NOW-LDF and National Women’s Law Center (eight times). With the exception of peak associations, all non-governmental types of organizations had repeat player groups acting in concert with other groups. Citizen-based groups netted the most repeat players. The table also shows that both public interest law firms and business and professional organizations were active repeat players across all affirmative action
cases. Moreover, although a majority of groups that participated in coalitions were repeat players, a considerable number of organizations that filed amicus briefs forged “temporary” coalitions and seemingly disappeared from the scene.

Since the 1960s, scholars have noted the proliferation of interest groups accessing the political process (Berry 1989; Schlozman and Tierney 1986). Scholars have interpreted the consequences of this “explosion” of organized participation in different ways. Some have suggested that one result of this proliferation is that no single group wields any stronghold on the policy process (Salisbury 1992). That is, the proliferation of groups increases the competitive spirit of pluralism (Baumgartner and Leech 1998). Others, on the other hand, have argued that despite the explosion of organized participation in the Washington community, some groups concentrate their lobbying efforts on a particular issue or find an “issue niche” (Browne 1990). Browne suggested that since groups understand that their impact on policy is negligible in the face of increased competition, groups focus on a particular piece of the policy puzzle where they have a better chance of influencing the policy process. As Baumgartner and Leech (1998, 2000) argue scholars do not have a comprehensive picture of what the interest group universe looks like. And although some scholars have surveyed interest groups for this purpose (Schlozman and Tierney 1986), Baumgartner and Leech argue that scholars do not have an idea of whether issue domains are characterized by competitiveness (a la Salisbury 1992) or whether groups find issue niches (a la Browne 1990) in order to have a better chance at influencing the policy process. My findings indicate that while there is a considerable degree of competition,
indicated by the diversity of participation across all affirmative action cases argued before the Court, a majority of the organized efforts of groups is temporary in nature. My findings of the repeat player status of both solo filers and co-filers also support the notion that the policy process is characterized by "issue networks" (Heclo 1978) rather than the domination of a particular set of actors or groups.

Conclusions

This chapter has surveyed the landscape of organized group participation before the Court in all affirmative action cases from 1971 to 1995. Spelling out the facts of the cases, as well as the constitutional questions argued before the Court, help us to understand the context within which a variety of organizational groups engage the Court through amicus participation. The facts of the case notwithstanding, we expect that since the outcome of cases granted plenary review by the Court will have consequences beyond the immediate scope of the petitioners and respondents that a diversity of interests will press the Court for a favorable outcome. The data on group participation over time suggests that groups of all organizational stripes have been lobbying the Court in the form of coalitions. The data displayed in Table 8 suggests that there has been an almost steady and concerted effort on the part of groups to form coalitions when lobbying the Court. Since Stotts (1984), participation before the Supreme Court on affirmative action cases has been almost overwhelmingly in the form of coalitions.
Another significant observation is that participation has become more diverse over time, especially since Stotts. While no single case netted participation among all of the organization types, there has been a concerted effort on the part of both governmental and non-governmental groups to shape the boundaries of these important constitutional questions and affirmative action policies presented to the Court. Among non-governmental groups, citizen, public interest law, and business and professional groups are the most frequent participants before the Court in these cases. Among governmental groups, states are clearly the most active participants and most state participation is in the form of coalitional activity (94.9 percent). State attorneys general since Wygant have participated with the most frequency and most consistency among all of the governmental types of organizations. This trend within this one policy-arena reflects the general trend for states to mount their efforts in the face of substantial federal questions that will shape the landscape of policies within state governments. It reflects the more general rise of the “inter-governmental lobby” in the broader political arena (Berry 1977, 1989). Corporations, which undoubtedly have a stake in the outcome of how affirmative action hiring and promotion schemes are judged, constituted only a fraction of the overall participation (1.1 percent). I also found that a majority of organizations are repeat players that continue to file both solo briefs, as well as co-filing briefs in concert with other groups over time. However, only a small proportion of organized participants filed more than three briefs across the 22 cases examined in this study.
Now that we have visited in a summary fashion an overview of organized participation in affirmative action cases, I turn my attention to examining coalitional activity of these groups. Do certain organizational factors shape the probability of groups filing together in a coalition? In the next chapter, I look more closely at the organizational characteristics of non-governmental organization and present a model that assesses the probability that groups will act in concert with one another, insofar as they file amicus briefs, based on these organizational characteristics.
CHAPTER IV

ASSESSING THE FILER STATUS OF AMICI BEFORE THE SUPREME COURT IN AFFIRMATIVE ACTION CASES

The previous chapter described the participation of organized interests before the Supreme Court in affirmative action cases. In this chapter I turn my attention to a more sophisticated model, which assesses the characteristics of groups participating as amici in all affirmative action cases argued before the Court. I assess the probability of groups filing solo briefs versus filing briefs in coalitions as a function of organizational characteristics such as staff size and organizational vitality. In what follows I provide some background on the data and the dependent and independent variables used in the following analyses. Later, I test hypotheses about the nature of coalition formation or filer status and the potential influence of organized participation on the outcome of the Court's decisions on affirmative action cases.

Model 1: Assessing the Relationship Between Organizational Characteristics and Filer Status

What do we know about coalitional activity in the political process generally? Scholars have only recently examined the nature of coalitions in the context of accessing the political environment. This is due, in part, to the fact that scholars focus on the macro view of the interest community at large. A number of scholars,
however, have looked at coalitions as an important institutional link between interest groups.

Schlozman and Tierney (1986) documented the rise of coalitional activity as a lobbying technique among organized interests. From their list of 27 lobbying techniques, the strategy of engaging in coalitions ranked second, as they found that 90 percent of the organizations in their sample used coalition-building as a lobbying tool. Also, they found that 65 percent of the surveyed organized groups reported that they would seek to cooperate with allies in other organizations when planning strategies for influencing policy (1986, 278-279). According to Schlozman and Tierney (1986) and Salisbury, Heinz, Laumann, and Nelson (1987), groups are more likely to coalesce with other groups within a particular issue area or economic sector and these studies document the stability of coalitions with a given policy arena.

Others have attempted to examine the nature of coalition formation in the face of Olson’s (1965) “free-rider problem.” Does the free-rider problem also plague coalitions? Hula (1999) downplays the free-rider problem for the formation of political coalitions. He argues that while political entrepreneurs must offer selective benefits to potential group members, coalition brokers operate in a different context. Hula (1999, 38) states that...

the task for the coalition broker is not to provide incentives for people to get involved on an issue, but rather to convince these already active Washington representatives that they could be more effective at what they are doing by pursuing their goals in cooperation with other Washington representatives.
Groups join coalitions not only to receive selective benefits such as information but also to receive symbolic benefits, which aid in the task of maintaining group membership. Hula suggests that brokers of coalitions play a dominant role in organizing the coalition's effort and maintaining relative control on the flow of political information. For coalitions, potential free-riders are asked to participate as peripheral groups that do not have to supply material resources. Moreover, while the contributions of groups to an alliance effort may not be equitable, the "logic" of coalitions suggests that groups can bring different resources to the alliance table. The results of Hula's recent survey of Washington lobbyists in the transportation, education, and civil rights policy domains show that lobbyists overwhelmingly agree that coalitions are the way to be effective in politics.

What do we know about organized participation and access to the judicial playing field? Scholars have spelled out a variety of reasons why groups consider filing amicus briefs or using other litigation strategies. As the number of players on the field has increased considerably, so, too, have the motivations for participating in the Courts. Caldeira and Wright (1988) showcased this point and showed that groups organize in order to satisfy the economic, political, and social goals of the group and utilize the courts to this end. Also, groups access the Court for organizational maintenance. Also, we know that a number of amici are repeat players (Galanter 1974) that appear regularly before the Court. Caldeira and Wright (1989, 15) suggest that...

...a group's legal credibility and reputation depend considerably on the kinds of cases in which it chooses to participate. Once an organization
establishes a reputation for participating in cases of good legal quality, its presence as an amicus may receive greater attention from the clerks and Justices.

Scholars have also examined why some groups participate in litigation while others do not. Bruer (1987) attempted to understand why groups chose to litigate or not. He found that budget and organizational vitality do not successfully predict the probability that groups will engage the judicial process using various litigation strategies. Scheppele and Walker (1991) also attempted to explain differences among the groups they surveyed as to why they participated in various forms of litigation. They found, contra Bruer’s conclusions, that organizational factors such as staff size and age of the group, as well as support from patron groups, are significant determinants of whether groups utilized litigation strategies.

Caldeira and Wright (1988) show that filing amicus briefs are rather expensive costs for an organization to bear, with some groups shelling out as much as $60,000. Further, being able to access the Court through amicus participation would run a group about $128,000 a year, an amount that exceeded the budgetary foundation of more than half of all organized that they surveyed. They concluded, moreover, that groups can only afford to participate in important cases. But coalitions may serve as an important avenue through which groups can share the costs of filing a brief. Although this study does not document which groups contributed to the cost of filing an amicus brief, I hypothesize that groups with a smaller base of organizational resources can gain easier access to the judicial stage in the form of amici in coalitions.
Do organizational characteristics influence the probability that groups act alone or act in concert with one another? In what follows I describe the data used in the analysis, as well as the dependent and independent variables to be utilized in the logistic regression model.

The Data

The unit of analysis is the filer status of all amici (excluding individuals) participating across all affirmative action cases. These data come from the U.S. Reports and the Records and Briefs of the United States Supreme Court, which are housed both on the Lexis-Nexis website (from 1980-current) and on microfiche. I include only those briefs listed in the U.S. Reports and the Records and Briefs, excluding individual interests but including briefs filed by the U.S. Solicitor General.

The dependent variable is a dichotomous variable delineating whether the amicus participant is a solo-filer or a co-filer of the amicus curiae brief. Solo-filers are those groups that individually filed an amicus brief on behalf of their organization and co-filers are those groups listed as “et al” in the U.S. Reports and subsequently

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26 <http://www.lexis-nexis.com/universe>
27 Although I collected data on government groups and reported on their frequency of participation in affirmative action cases earlier, my primary focus for the rest of the dissertation centers on non-governmental organized groups. Although governmental groups are undoubtedly important forces to deal with on the judicial playing field, my analysis in this and subsequent chapters focuses on the sea of interest groups outside of the governmental apparatus. I do, however, use the participation of the U.S. Solicitor General as a control variable in the next chapter.
detailed in the amicus brief presented by the co-filers. These data are detailed in *The Records and Briefs of the United States Supreme Court*. This variable is a dichotomous variable where solo filers are coded as zero and groups filing together in a coalition as co-filers are coded as one. Out of the 300 amicus filers used in the analysis, a total of 28 percent were solo filers and 72 percent filed as part of a coalition.

The independent variables used in the analysis capture the organizational resources of the amicus filers. *The Encyclopedia of Associations* (Gale Research Group 1970-1995, volumes 4 through 27) is used to code the organizational characteristics of the amicus participants such as staff size, type of group, and years active in order to assess how these organizational characteristics influence the probability of an amicus participant being a solo-filer or a co-filer. The data come from *The Encyclopedia of Associations (EOA)* for the respective year each group filed their amicus briefs. Although the *EOA* generously lists a host of groups covering a wide spectrum of organizational types, it does not contain detailed organizational information on all groups. Out of the 645 non-governmental filers to be used in the subsequent analysis, organizational information was found for only about 300 groups.28 In particular, I code each group for the following:

---

28 Since the *Encyclopedia of Associations* does not generously list detailed organization information on all groups participating in affirmative action cases over time, my sample size has decreased somewhat. The lower number of cases to be used in the model does not significantly differ from the data presented in the last chapter: 22.2 percent v. 27.7 filing solo briefs and 77.8 percent versus 72.2 filing in coalitions. Also, information on the ten corporations was also difficult to obtain. Nonetheless, it
Organizational Staff Size

Organizational staff size is used to measure the organizational resources of each organization. Originally, data on the budget and staff were coded from the *EOA*. Consistent with the findings of Scheppele and Walker (1991), many groups do not report their budgets. Nonetheless, Scheppele and Walker report a correlation of .9 between budget and staff size in their survey of interest groups. Including budget and staff size in the model may conflate two problems. First, we may lose a good portion of the sample size for those groups that do not provide budgetary information. Second, there may be high multicollinearity between budget and staff size, thus biasing the parameter estimation.29 Instead of losing sample size, on account of the scarcity of organizations' budgetary data, I use staff size as a proxy for organization resources. Scheppele and Walker also report that the impact of each additional staff member is likely to decrease as the total staff size increases, so they use the log of staff size as a measure of organizational resources. Consistent with their methodology, which was also employed by Gais and Walker (1991) and King and Walker (1991), I also use the log of staff size as the final measure of organizational resources and incorporate this measure into the model. The data on filer status and staff size confirm my expectations that groups participating in coalitions, on the

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29 Consistent with Scheppele and Walker (1991), I found a high correlation between organizational budget and staff size (r=. 85).
average, have smaller staff sizes. The raw average staff size for solo filers is 164.25 and the raw average for groups participating in coalitions is 157.40. In the aggregate, these differences are statistically significant.\textsuperscript{30} Moreover, I expect that groups with larger staffs will be more likely to participate as solo-filers and less likely to be co-filers.

\textbf{Organizational Vitality Measured in Years}

I also include a variable that captures the degree of organizational vitality, which is measured by the number of years each group participating as amici has been active. The data on the year that each group was founded was easy to find in \textit{The Encyclopedia of Associations}. Careful attention had to be paid to the year that each group filed an amicus brief, as not all groups filed briefs in the same year as the others. My expectation is that groups that are newer on the scene will seek to unify their efforts in concert with other groups. Upon inspecting the descriptive data on the number of years the organizations have been active vis-à-vis their filer status, we find a slight difference in the mean years of solo filers versus co-filers (solo filers = 40.58 versus co-filers = 39.87). Across all affirmative action cases we find filers participating that range from one year to 135 years on the scene. On a purely descriptive level, this finding confirms my expectation about the relationship between filer status and organizational vitality. However, these differences are not statistically

\textsuperscript{30} T-test statistic = -5.37; p = .000 (2-tailed test).
significant. I hypothesize that groups that have been organized longer are more likely to participate as solo-filers and less likely to be co-filers.

The model proposed below attempts to explain whether interest group characteristics such as staff size and organizational vitality increase the probability of whether groups participate as solo-filers or co-filers. The statistical model is conceptualized as follows:

\[ Y_i = \beta_0 + \beta_1 x_1 + \beta_2 x_2 + e_i, \]

where:

- \( Y_i \) = probability of group participating as a solo-filer (coded as one) or co-filer (coded as zero);
- \( \beta_0 \) = intercept term;
- Group Characteristics:
  - \( x_1 \) = staff size (log of staff in numbers)
  - \( x_2 \) = number of years group has been active (in years)

**Model With Dummy Variables for Type of Organization**

I also include in the model dummy variables for the types of organizations participating as amici in order to tease out the statistically significant differences between different types of organizations and their proclivity to participate as solo filers or in the form of coalitions. I exclude governmental organizations from the model and focus exclusively on participation on the part of non-governmental

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31 T-test statistic = .191; p = .85 (2-tailed test).
groups. Governmental organizations are excluded due to the fountain of resources they command. Is there a statistically significant relationship between filer status and organizational type on the aggregate? In the bivariate case, I find that there is a statistically significant difference between filer status and organizational type among non-governmental organizations. Citizen groups serve as the reference category in the model. Dummy variables are included for public law, business and professional, peak associations, and other groups. Not unlike the results from the descriptive statistics listed in the last chapter, I expect to find significant difference in the filer status of citizen groups vis-à-vis business and professional and peak associations but not between citizen-based groups and public law organizations.

Model 2 is conceptualized as follows:

\[ Y_i = \beta_0 + \beta_1 x_{i1} + \beta_2 x_{i2} + \beta_3 x_{i3} + \beta_4 x_{i4} + \beta_5 x_{i5} + \beta_6 x_{i6} + \epsilon_i, \]

where:

- \( Y_i \) = probability of organization participating as a solo-filer (coded as one) or co-filer (coded as zero);
- \( \beta_0 \) = intercept term (citizen-based organizations as the reference group)

---

32 The following is a breakdown of the groups to be included in the analysis: Charitable groups (14); Public Law (74); Citizen (155); Business (35); Peak Associations (10); Educational (1) and Other (10). The percentage of participation by each type of group here does not stray too far from the percentages discussed in the last chapter. The following compares the percentages of each type of group: Charitable (4.7 v. 5 percent); Public Law (24.8 v. 20 percent); Citizen (51.8 v. 40 percent); Business and Professional (11.7 v. 13 percent); Peak Associations (3.3 v. 1 percent); Educational (8 percent v. .33 percent); Other (3.3 v. 6 percent).

33 Chi-square statistic = 35.10 (6 d.f); p = .000 (2-tailed test)

34 Not all types of organizations are included in the analysis as dummy variables due to the fact that there was not enough sufficient data on them.
X1 = staff size (log of staff in numbers)
X2 = number of years group has been active (in years)
X3 = dummy variable for public law organizations
X4 = dummy variable for business and professional organizations
X5 = dummy variable for peak associations
X6 = dummy variable for other groups

Findings

Table 15 displays the logistic regression results of model 1. Although my expectations about the significance of staff size and years active are confirmed by the results of the model, the direction of the coefficient for years active goes against the grain of my expectations. That is, I expected that organizations will be more likely to participate as solo filers the more years they have been on the scene. The results from the analysis, however, do not confirm my expectations about the effect that organizational vitality has on the filer status of amici. As the data from the table show, every additional year a group has been active, the predicted probability of a group filing in a coalition increases by .01 when staff size is controlled. An alternative explanation may be that organizations that have been on the scene longer understand the virtue and utility of coalescing with other groups. This may reflect the more general trend that groups are increasingly more likely to engage in coalitional behavior, as proposed by Schlozman and Tierney (1986). Also, groups that have been organized longer on the scene may be viewed by other groups as valuable coalition
Table 15

Logistic Regression Coefficients for the Probability of Organizational Characteristics Influencing Filer Status

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff</td>
<td>-0.90*</td>
</tr>
<tr>
<td></td>
<td>(.26)</td>
</tr>
<tr>
<td>Years Active</td>
<td>0.01*</td>
</tr>
<tr>
<td></td>
<td>(.01)</td>
</tr>
<tr>
<td>Constant</td>
<td>1.93*</td>
</tr>
<tr>
<td></td>
<td>(.36)</td>
</tr>
<tr>
<td>Number of cases</td>
<td>299</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-169.95</td>
</tr>
<tr>
<td>Log Likelihood Ratio</td>
<td>13.31*</td>
</tr>
<tr>
<td>Percent Correctly Predicted</td>
<td>70.23</td>
</tr>
<tr>
<td>Pseudo R-square</td>
<td>.04</td>
</tr>
</tbody>
</table>

Note: Results obtained using Intercooled Stata v. 6.0; * indicates significance at the p <.05 level (two-tailed); Standard errors are in parentheses below each coefficient.

partners. The significance and the directionality of the coefficient for staff goes hand in hand with my expectation that organizations that have large staffs increase the probability that they will participate as solo filers. As the table shows, for a unit increase change in the log of staff size, the predicted probability of a group filing in a coalition decreases by .90, holding all other variables constant.35 Both staff and years

35 The values for log of staff size ranges from .00 for 1 staff member to 3.85 for 7000 staff members.
active are statistically significant at $p < .05$. The model test statistic (likelihood ratio of 13.31) displayed in the notes of the table is significant at $p < .05$ and this model correctly predicts the filer status of organized groups at a rate of 70.23 percent. The data in this table demonstrate that organizational characteristics, measured in staff size and years active, significantly affect the filer status of organizational interests.

Table 16 displays the results of model 2, which attempts to capture the differences in filer status for the different types of organizations filing amicus briefs. Although the magnitude of staff size and years active changes only slightly, the directionality and significance of these variables remain consistent with the results

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36 Here, I break down more thoroughly the number of cases that were positively and negatively classified.

<table>
<thead>
<tr>
<th>Classified</th>
<th>True</th>
<th>Co-filer</th>
<th>Solo-filer</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-filer</td>
<td></td>
<td>208</td>
<td>81</td>
<td>289</td>
</tr>
<tr>
<td>Solo-filer</td>
<td></td>
<td>8</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>216</td>
<td>83</td>
<td>299</td>
</tr>
</tbody>
</table>

Classified + is predicted $\Pr(\text{Co-filer}) > .5$
True $D$ defined as coalition $\sim= 0$. Reduction in Error = -7.23 percent

The reduction of error statistic indicates the proportion of correct guesses beyond the number that would be correctly guessed by choosing the largest marginal. We can interpret the reduction in error statistic as our knowledge of the independent variables compared to basing our prediction only on the marginal distributions. The formula for calculating this statistic is:

Percentage reduction of error = $100 \times \left( \frac{\% \text{ correctly classified} - \% \text{ in modal category}}{100\% - \% \text{ in modal category}} \right)$ (Hagle and Mitchell 1992).
Table 16
Logistic Regression Coefficients for the Probability of Organizational Characteristics Influencing Filer Status (With Dummy Variables for Organizational Type)

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Staff</td>
<td>-1.14* (.31)</td>
</tr>
<tr>
<td>Years Active</td>
<td>0.02* (.01)</td>
</tr>
<tr>
<td>Public Law</td>
<td>-0.60 (.33)</td>
</tr>
<tr>
<td>Business/Professional</td>
<td>-2.35* (.46)</td>
</tr>
<tr>
<td>Peak Associations</td>
<td>-1.66* (.79)</td>
</tr>
<tr>
<td>Other Organizations</td>
<td>0.14 (0.87)</td>
</tr>
<tr>
<td>Constant (Citizen Organizations)</td>
<td>2.48* (.46)</td>
</tr>
<tr>
<td>Number of Cases</td>
<td>283</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-150.79</td>
</tr>
<tr>
<td>Likelihood Ratio</td>
<td>40.88*</td>
</tr>
<tr>
<td>Percent Correctly Predicted</td>
<td>74.91</td>
</tr>
<tr>
<td>Pseudo R-squared</td>
<td>.12</td>
</tr>
</tbody>
</table>

Note: Results obtained using Intercooled Stata v. 6.0; * indicates significance at the p < .05 level (two-tailed); Standard errors are in parentheses below each coefficient.

For a discussion of this and other goodness of fit measures for logit and probit see Hagle and Mitchell (1992).
reported in the table listed above. The reference category (included in the constant in the table) in this model is citizen-based organizations. Consistent with the findings reported in chapter three, the data demonstrate that there is a statistically significant difference in the filer status of citizen-based organizations and business/professional organizations and peak associations. The negative direction of the coefficient for business/professional organizations and peak associations confirms the expectation that these groups are more likely to engage in solo-filer activity than citizen-based organizations that have a proclivity to participate in coalitions. This model predicts a slightly higher percentage of filer status at a rate of 74.91 percent\textsuperscript{37} and the likelihood ratio test statistic (40.88) for this model is significant at $p < .05$.

Discussion

What do the characteristics of coalition members tell us about group access to the Court within the pluralist system? As I pointed out earlier, literature regarding

\begin{table}
\begin{center}
\begin{tabular}{lrrr}
\hline
Classified & True & & \\
& Co-filer & Solo-filer & Total \\
\hline
Co-filer & 204 & 57 & 261 \\
Solo-filer & 11 & 26 & 37 \\
Total & 215 & 83 & 299 \\
\hline
\end{tabular}
\end{center}
\end{table}

\textsuperscript{37} Here, I break down more thoroughly the number of cases that were positively and negatively classified.

\begin{itemize}
\item Classified + is predicted $Pr(\text{Co-filer}) > .5$
\item True D defined as coalition $\sim=0$. 
\item Reduction in error = 17.9 percent
\end{itemize}
pluralism in the Courts is in a nascent stage. Some scholars (see Caldeira and Wright 1990 and Epstein 1993) have found that a wide range of groups and organizations regularly use litigation strategies to lobby the Court. Epstein (1993) has likened the contemporary judicial playing field to a balancing act. That is, whereas the “underdogs” or “disadvantaged” interests flooded the courts during the 1950s and 1960s, the flurry of organized participation by business and corporate interests (the so-called “upperdogs”) mounted since the 1970s provided a counter-weight to the imbalance on the judicial playing field. Also, these analyses examine whether there is a balance in terms of the percentage of amicus cases with participation on both sides. This type of analysis is undoubtedly important in order to gauge the extent of organizational involvement in the courts.

My analysis of all affirmative action cases over time adds an important piece of the puzzle to this new judicial pluralist outlook. The pluralist outlook regarding the courts should also examine the extent to which groups without a large fountain of resources from which to draw can access the courts. My results show that organizations that are not heavily endowed with resources can access the Court through acting in concert with other organizations. Organizations that have a larger base of resources are better equipped to go it alone and file solo briefs. Moreover, coalitions seem to be an important conduit through which “disadvantaged” organizations (at least in terms of organizational characteristics) can access the judicial arena. The findings presented above are commensurate with the literature presented by Hojnacki (1998) and Scheppele and Walker on the organizational

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incentives groups find necessary to participate in the political system. Schepele and Walker (1991) reported that staff size is significantly related to the importance of litigation efforts on the part of organized interests. Hojnacki (1998) found that resource availability significantly affects the incentives that organizations have to contribute to an advocacy alliance effort. Generally speaking, my findings fit into the literature regarding the utility of coalitions due to the ability of groups to pool their resources (Berry 1977, 1989; Hula 1995, 1999; Schlozman and Tierney 1986). My findings add an important dimension to this discussion. That is, organizational resources may not only help to determine whether groups will participate but, more importantly, the manner of participation as either a solo filer or as a co-filer in a coalition with other organizations.

In the next chapter I test hypotheses about the nature of coalition formation or filer status and the potential influence of organized participation on the outcome of the Court’s decisions on affirmative action cases. The model in the next chapter will control for relevant variables that could influence the Court’s decisions such as the ideological disposition of the justices, as well as the role of the U.S. Solicitor General’s participation.
CHAPTER V

ASSESSING THE EFFECTIVENESS OF COALITIONAL EFFORTS

Does participation mounted by organizations influence the decisions of the Supreme Court in the aggregate and the individual justices on affirmative action cases? In what follows, I present two models that assess the influence of organized participation on the outcome of the Court's decisions in affirmative action cases.

The information detailed in chapter three regarding the frequency of participation and the types of groups participating tells us a considerable amount of information about organized participation in affirmative action cases. However, the picture seems to be somewhat incomplete. That is, we need to assess the extent to which amici have an effect on judicial decision making. Does group participation make any difference in the outcome of the Court's decisions in affirmative action cases?

What do we know about the success of litigation efforts mounted by organized groups? The literature addressing the efficacy of group participation on the outcome of the Court's decisions is mixed. Caldeira and Wright (1988) examined the effect of group participation at the jurisdictional stage and found that indeed litigants have a better chance of having the case heard on the merits when they are backed or sponsored by interest groups. More specifically, they found that if groups back a litigant at the jurisdictional stage it increased the probability of the Court granting
review in the face of conflict in lower court rulings from .39 to .74. They concluded that “[t]he U.S. Supreme Court...is quite responsive to the demands and preferences of organized interests when choosing its plenary docket” (1988, 1122).

At the merits stage, scholars have employed a variety of analyses to test the efficacy of group participation. Vose’s (1959) classic study showed the influence of the NAACP on the outcome of restrictive covenant cases. Others have followed Vose’s lead and found that group-backed litigants tend to be victorious (Cortner 1988). Others have used success ratings or scores that target specific groups (such as the ACLU or the NAACP-LDF) and assess the success of these groups. For example, Lawrence (1989) examined the Legal Services Program (LSP) and found that their attorneys won 62 percent of the cases. She concludes that the LSP’s advocacy “…gave the poor a voice in the Supreme Court’s policy-making and doctrinal development” (1989, 270).

Still others have tried to determine the actual effect that amicus briefs have on the legal doctrine that the Court announces in its decisions. Justices regularly cite amicus briefs in their opinions (see Table 2 in Chapter II). Ivers and O’Connor (1987) examined criminal law and procedure cases in the Burger Court and found that the Court adopted some of the language of the main groups that backed the litigants in the case (the ACLU and the American for Effective Law Enforcement (AELE)). They found that the Court adopted only 29 percent of the ACLU’s arguments and over 60 percent of the arguments of the AELE. However, this study did not compare the briefs filed on behalf of the litigants with the flurry of amicus briefs filed by other
interested parties. Regarding the influence of amici, Ivers and O'Connor (1987, 172) stated that the "extent [amicus] briefs influenced the opinions we compared to the briefs of other litigants is a question that must be left for later research."

Perhaps a more effective approach to assessing the impact of organized participation before the Court attempts to assess the outcome of cases in light of controlling for relevant factors that may influence judicial decision making such as ideology and partisanship. Songer and Sheehan (1990) examined the impact of amicus briefs filed on all written Court decisions from 1967 through 1987 controlling for the Court's ideology. They found that

briefs filed by state and local governments appear to have little effect on the outcome of cases heard by the Court. Briefs filed by other amicus parties have the potential for a moderate impact on the chances for litigant success as long as they are not opposed by the United States as either a direct party or as amicus curiae. In contrast briefs filed for the United States by the solicitor general were shown to have a major impact on Court decisions even after the effects of [other variables] were taken into account (Songer and Sheehan 1990, 12, quoted in Epstein 1993, 693).

Also, Segal and Reedy (1988) found that the solicitor general had a significant impact on the outcome of sex discrimination cases. Moreover, these studies have had mixed results regarding the effect of organized participation on the Court's decisions at the merits stage. I seek to add to this literature by gauging organized participation, while controlling for relevant variables. Incorporating variables that tap into the composition of organized participation (in the form of groups, briefs, and coalitions) will help to clarify the effect of group participation in the Court. I believe that the issue of organized participation and efficacy has not been adequately addressed at the
plenary stage in the decision-making process and I seek to supplement this literature through modeling the outcome of the Court's decision in affirmative action cases.

Model 3: Assessing the Success of Coalitional Efforts

The Data

The data used in the following analyses come from a careful coding of the 22 affirmative action cases decided by the Supreme Court from 1969 to 1995. I verified my coding of these cases against the codes made available by the U.S. Supreme Court Judicial Database (Spaeth 1995) from Griggs (1971) to Adarand (1995). In what follows I provide a more detailed sketch of the variables used in the analyses, as well as the statistical methodology employed.

Outcome of the Decision

I measure the outcome of the Court's decision in two ways. The first measure of the dependent variable reflects the outcome of the each decision handed-down by the Supreme Court in the aggregate. There are 22 cases and, along the lines of this dependent variable, 22 outcomes. The outcomes of the cases are coded as zero for a "con" affirmative action decision and one for a "pro" affirmative action decision. I also recode the dependent variable along the lines of the proportion of pro affirmative action votes in each case and I used ordinary least squares regression in order to estimate the results. The second dependent variable disaggregates the decision of the Court in each case in order to capture the individual justice's vote in each case. This
variable is coded as zero for a justice that voted “con” affirmative action and coded as one if the justice cast a “pro” affirmative action vote.

There are some methodological issues I had to sort through upon coming to the conclusion that I should test the effects of organized participation on the Court on the aggregate level and on the micro level of each justice’s vote. The first issue I was confronted with was the small number of cases (n=22) I had to work with. Using logistic regression with a small number of cases tends to produce inaccurate results, especially with regard to the standard errors of the coefficients. However, advances in computing power, as well as new methodological approaches, have allowed social scientists to confidently estimate parameters in the face of a small sample size. Later, I will spell out in more detail some of the statistical techniques utilized for estimating my models (e.g., the use of a specialized program called LogXact and a statistical technique called “bootstrapping”). Examining the impact of organized participation on the level of the individual justice has its practical merits. That is, disaggregating the Court’s votes boosts the sample size from 22 to 157 and lends itself to more accurate parameters. Disaggregating the Court’s votes also has the merit of adding important information about the outcomes of the cases given some of the deeply divided decisions by the Court on these cases.38

38 For a more detailed portrait of the outcomes of all affirmative action cases, refer to Table 6 in Chapter III.
Group, Brief, and Coalition Indices

In order to assess the effect of organized participation as amici on the aggregate level of the Court and on the micro-level of the individual justices, I devised three indices of organized participation. I include all non-government amicus briefs with the exception of amicus participation on the part of the solicitor general. These indices measure the proportion of groups, briefs, and coalitions in support of affirmative action. Construction of these variables was a rather simple task, which involved dividing the number of pro affirmative action groups, briefs, and coalitions by the total number of groups, briefs, and coalitions for each respective case. These indices can be read as continuous variables, ranging from zero (participation overwhelmingly against affirmative action) to one (participation overwhelmingly in support of affirmative action). Upon running diagnostics on these variables, I found no multicollinearity between them and I am confident that these measures can accurately estimate the effects of the different measures of organized participation on the Court’s decisions. Some driving questions that justify the use of these variables center around whether or not the Court or individual justices may be influenced by the organized efforts before them in the form of either groups, briefs, or coalitions.

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39 In Chapter III I used a different coalition index, which measured the proportion of groups respective to the number of coalitions in each case.
40 The correlation coefficients between these indices are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Group Index</th>
<th>Coalition Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coalition Index</td>
<td>.70</td>
<td></td>
</tr>
<tr>
<td>Brief Index</td>
<td>.72</td>
<td>.49</td>
</tr>
</tbody>
</table>
This theme of understanding group participation before the Court has a long and distinguished pedigree among scholars (for example see Behuniak-Long 1991; Caldeira 1991; Caldeira and Wright 1988, 1990; Hakman 1966; McGuire 1994; Vose 1955, 1957, 1958, 1959). I expect that a concerted effort on the part of groups overwhelming in support of a specific outcome in a case will shape the decisions of both the Court as a whole and the individual justices. Moreover, I expect that the proportion of briefs, groups, and coalitions supporting affirmative action will increase the probability of a successful outcome for the pro-affirmative action litigant.

Ideology

I include measures of ideology for both the Court as a whole and for the individual justices participating in the affirmative cases. The justification for including ideology as a control variable stems from the fountain of research indicating that the driving force behind the justice’s decisions is their policy predilections. Scholars who articulated this thesis can be traced to Pritchett (1948) who can be considered a progenitor to what is commonly referred to as the “attitudinal model.” The attitudinal model stems from two bodies of research conducted since the late 1940s. The classic studies employed by Pritchett (1948) used dimensional analysis of votes, as he tried to determine interaction agreement and patterns of voting behavior through block analysis and Gutmann scaling techniques. In *The Roosevelt Court* (1948), Pritchett set the foundation of behaviorism to public law. He found ideological patterns within the Court and challenged the myth that
judges were only the mouthpieces of law and exercised judgment and not will. Rhode and Spaeth (1976) and Segal and Spaeth (1993) presented a more mature and comprehensive attitudinal model. They argue that Supreme Court justices are situated in an institutional context that allows them to be guided by their policy predilections. That is, justices lack electoral accountability and ambition for higher office. These conditions free justices to focus on the content of legal policy.

I use the ideological scores compiled by Segal and Cover (1989) and updated by Segal, Epstein, Cameron, and Spaeth (1995) to control for the effect of the individual justice’s ideology. Segal and Cover devised a measure of the justices’ ideological positions from sources independent of their votes. I use Segal and Cover’s composite index of the Court’s ideology for the respective years within which the 22 affirmative action cases were decided. This index serves as an acceptable independent measure of the justice’s ideological dispositions. Segal and Cover (1989) analyzed the relationship between justices’ policy preferences and their voting behavior between 1953 and 1988. They construct an independent measure of ideology (thus avoiding the circularity problem of using the justices’ votes to predict votes, which plagued previous research) employing content analysis of newspaper editorials about the justices after a justice was nominated to the bench by the president. A subsequent analysis by Segal, Epstein, Cameron, and Spaeth (1995) extended Segal and Cover’s analysis to cover earlier and later appointees. Both studies find a strong, significant statistical relationship between the justice’s ideology and their voting behavior. The measure ranges from negative one (unanimously conservative) to zero (moderate) to
positive one (unanimously liberal). The correlations between the outcome of cases and the justices' ideological positions in civil liberties cases ranged from $r=0.47$ for civil liberties cases during the Roosevelt-Truman administrations to $r=0.80$ for the Eisenhower-Reagan appointees (Segal and Cover 1989). In order to capture the ideological tenor of the Court as a whole, I aggregated the individual justice's scores and divided them by the total number of justices participating in each case. The continuum of ideology for each justice and for the Court as a whole range from $-1$ (most conservative) to 1 (most liberal). Commensurate with the literature on the influence of ideology on the outcome of the Court's decisions, I expect to find significant relationship between ideology and the outcome of affirmative action cases. More specifically, I expect that the probability of the Court deciding in favor of the pro-affirmative action litigant is positively related to ideology. Table 17 presents the ideology scores for each justice as well as for the Court as a whole in each affirmative action case.

Looking at the ideology scores for the Court for all the affirmative action cases we should notice the relative lack of variation in scores, especially if we look at the scores from Franks (1976) to Fullilove (1980) and from General Building (1982) to Local 93 (1986). However, if we read down the column we find that the Court has become more conservative as a whole from 1971 to 1995. This may undoubtedly account for the Court's stricter standard of scrutiny for affirmative action policies at all levels of government. Nonetheless, we find considerably more variation if we look
Table 17

Ideology Scores for Individual Justices Participating in Affirmative Action Cases and for the Court as a Whole in Each Case

<table>
<thead>
<tr>
<th>Justice</th>
<th>Score</th>
<th>Case</th>
<th>Court Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black</td>
<td>.75</td>
<td>Griggs</td>
<td>0.07</td>
</tr>
<tr>
<td>Douglas</td>
<td>.46</td>
<td>Defunis</td>
<td>-0.02</td>
</tr>
<tr>
<td>Warren</td>
<td>.50</td>
<td>Morton</td>
<td>-0.02</td>
</tr>
<tr>
<td>Harlan</td>
<td>.75</td>
<td>Albemarle</td>
<td>0.06</td>
</tr>
<tr>
<td>Brennan</td>
<td>1.00</td>
<td>Franks</td>
<td>-0.12</td>
</tr>
<tr>
<td>Stewart</td>
<td>.50</td>
<td>Bakke</td>
<td>-0.12</td>
</tr>
<tr>
<td>White</td>
<td>.00</td>
<td>Furnco</td>
<td>-0.12</td>
</tr>
<tr>
<td>Marshall</td>
<td>1.00</td>
<td>Weber</td>
<td>-0.12</td>
</tr>
<tr>
<td>Burger</td>
<td>-.77</td>
<td>Fullilove</td>
<td>-0.12</td>
</tr>
<tr>
<td>Blackmun</td>
<td>-.77</td>
<td>General Build.</td>
<td>-0.20</td>
</tr>
<tr>
<td>Powell</td>
<td>-.67</td>
<td>Mayor</td>
<td>-0.20</td>
</tr>
<tr>
<td>Rehnquist1</td>
<td>-.91</td>
<td>Stotts</td>
<td>-0.20</td>
</tr>
<tr>
<td>O’Connor</td>
<td>-.17</td>
<td>Wygant</td>
<td>-0.20</td>
</tr>
<tr>
<td>Rehnquist2</td>
<td>-.91</td>
<td>Local 28</td>
<td>-0.20</td>
</tr>
<tr>
<td>Scalia</td>
<td>-1.00</td>
<td>Local 93</td>
<td>-0.20</td>
</tr>
<tr>
<td>Kennedy</td>
<td>-.27</td>
<td>Paradise</td>
<td>-0.22</td>
</tr>
<tr>
<td>Souter</td>
<td>-.34</td>
<td>Johnson</td>
<td>-0.22</td>
</tr>
<tr>
<td>Thomas</td>
<td>-.68</td>
<td>Richmond</td>
<td>-0.18</td>
</tr>
<tr>
<td>Ginsburg</td>
<td>.36</td>
<td>Wards Cove</td>
<td>-0.18</td>
</tr>
<tr>
<td>Breyer</td>
<td>-.05</td>
<td>Martin</td>
<td>-0.18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Metro</td>
<td>-0.18</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Adarand</td>
<td>-0.40</td>
</tr>
</tbody>
</table>

Note: The data listed in the first column come from Segal and Cover (1989) and Segal, Epstein, Cameron, and Spaeth (1995). The data listed in the second column is an aggregation of the justices’ ideology scores in each case.

at the individual justices’ scores. These two measures of ideology should serve as legitimate indicators to be factored into the models detailed below.
Solicitor General Participation

Another control variable introduced into each model is the role of the U.S. Solicitor General in the affirmative action cases. There is empirical and theoretical justification for adding the role of the solicitor general as a control variable. As a representative of the executive branch, the solicitor general is rather successful in getting cases heard before the Supreme Court (Segal and Spaeth 1993), especially when the case is decided on the merits. Tanenhaus et al (1963) found that the Court granted certiorari in 47 percent of the cases where the U.S. favored review versus 5.8 percent when it did not. As a voice of the administration's position on various issues, the solicitor general plays a pivotal role in shaping judicial policy-making (see O'Connor 1983; Puro 1981; Segal and Reedy 1988), as the solicitor general has used its authority to voice the administration's position in important cases such as Brown (1954) and Bakke (1978). A host of other scholars have documented the success of the U.S. Solicitor General (Caldeira and Wright 1988; Caplan 1987; Epstein 1993; O'Connor 1983; Scigliano 1971; Segal 1984, 1986, 1988, 1990, 1991; Segal and Reedy 1988; Puro 1981). On the whole, there is a wealth of empirical evidence that parties supported by the solicitor general are more successful than those parties that are not backed by the solicitor general.

Why does the solicitor general enjoy so much success before the Court as amicus? Some scholars argue that the government is successful in the Court because, acting through the solicitor general as its liaison, it is a repeat player (Galanter 1974). Others argue that the government is successful because of its high degree of
credibility (Salokar 1992) and because the solicitor general usually makes the best arguments (Segal 1988) based to a large extent on the experience of those working in the solicitor general’s office (McGuire 1998). Still, other scholars suggest that because the executive branch has powerful checks on the Court, such as choosing not to enforce the Court’s decisions, the justices are more likely to support the position of the administration (Epstein and Knight 1998). The empirical evidence seems to bear this theoretical justification out. When the executive branch signals the Court to adopt its position, the justices usually do so. The literature on the impact of the solicitor general poses a challenge to those who articulate the attitudinal approach. That is, if the solicitor general enjoys considerable success before the Court does that not suggest that the Court is influenced by exogenous forces? In other words, justices may not be simply guided by their own policy preferences but instead they pay attention to the preferences of outside forces. Justices may do this, according to Epstein and Knight (1998, 138), because in order to “…create efficacious law – that is, policy that the other branches will respect and with which they will comply – justices must take into account the preferences and expected action of these government actors.” If the Court does not comply with the wishes of the presidential administration, the Court’s legitimacy may be called into question as the final arbiter of the law. Baum (1995, 43) suggests that the president can throw his weight behind “anti-Court action in Congress,” as well as to publicly lambaste the Court if he disagrees with its decision. Moreover, the Court does not simply operate in the kind of contextual vacuum depicted by attitudinal theorists but instead acts strategically.
As Epstein and Knight (1998, 43) note, members of the Court "act strategically, anticipating the wishes of the executive branch, and responding accordingly to avoid a confrontation that could threaten its legitimacy."

I devised a measure of solicitor general participation according to whether the solicitor general participated in support or in opposition to the affirmative action policy being argued before the Court and whether the solicitor general participated as either an amicus curiae participant or before the Court in oral arguments. The indicator ranges from negative one (argued against affirmative action in the form of amicus or oral argument), to zero (no participation in the case), to one (argued for affirmative action on behalf of the respective presidential administration in the form of amicus or in the form of oral argument). From 1971 to 1995 the solicitor general participated in 15 out of the 22 cases argued before the Court. The solicitor general participated in six cases supporting affirmative action and in nine cases against affirmative action. I use solicitor general participation in the model in two ways. First, I include the solicitor general index as a semi-continuous variable to assess the potential influence his participation has on the outcome of the Court and on the

41 Out of the 14 cases where the solicitor general participated, he both filed an amicus brief and participated in oral arguments in six cases (Albemarle, Bakke, Stotts, Local 93, Paradise, and Adarand). In Griggs, Franks, Furnco, Wygant, Johnson, Richmond, and Metro, the solicitor general participated through only filing and amicus brief. In Weber the solicitor general participated only in oral arguments.
42 This measure is somewhat similar to Johnson's (1999) measure of solicitor general participation, where he measures whether the solicitor general participated on behalf of the respondent or the petitioner or whether the solicitor general did not participate in the case.
individual justices. Second, I create a pair of dummy variables, with no solicitor general participation as the reference category in order to assess any significant differences between participation mounted by the Solicitor General on behalf of the respective presidential administration and no participation whatsoever on his part. I include the dummy variable in the analysis this way because it is important to assess the discrete outcomes of solicitor general participation given the manner in which the variable was coded. I hypothesize that solicitor general participation as an amicus and/or as a participant in oral argument will increase the probability of a successful outcome in his favor.

Expression of the Models

In order to generate logit estimates for the first model, which assesses the influence of the aforementioned variables on the probability of the outcome of the Court's decisions, I utilize two statistical techniques to correct for the small sample size of only 22 cases. The base model is conceptualized as follows:

\[ Y_i = \beta_0 + \beta_1 x_1 + \beta_2 x_2 + \beta_3 x_3 + \beta_4 x_4 + \beta_5 x_5 + e_i, \]

where:

- \( Y_i \) = outcome of the Court's decision on each affirmative action case (against affirmative action coded 0 and pro affirmative action coded 1)
- \( \beta_0 \) = intercept term

Coalition/Group Characteristics

\( X_1 = \) coalition index = percentage of coalitions in support of pro-affirmative action petitioner

\( X_2 = \) group index =
percentage of groups in support of pro-affirmative action petitioner

\[ X_3 = \frac{\text{percentage of briefs in support of pro-affirmative action petitioner}}{} \]

Control Variables

\[ X_4 = \text{ideological tenor of the Court (composite index of respective Court, } \% \text{ liberal)} \]

\[ X_5 = \text{Solicitor General (SG) participation (coded } 1 \text{ if SG participated in oral argument or filed a brief in favor of the pro-affirmative action petitioner, } 0 \text{ if no SG participation, and } -1 \text{ if SG participated in oral argument or filed a brief in favor of the anti-affirmative action petitioner)} \]

In what follows, I briefly spell out the expression of the model and describe the two statistical modeling approaches.

**LogXact Parameter Estimation for a Small Sample Size**

In order to attempt to estimate the parameters for the variables with a small sample size of 22, I use a statistical package called *LogXact*. This program is relatively new and most published studies using this program come from the medical community and biostatisticians trying to assess the influence of medications and the like with a small sample size of patients. This program boasts the estimation of exact parameters when working with small sample sizes. Whereas the usual method of estimating logistic regression parameters is maximum likelihood, this method is often inaccurate or unable to produce estimates at all in the face of a small sample


44 For an excellent and rich description of the exact conditional inference method, see Metha and Patel (1995).
size of about fifty or less. Cox (1970) was one of the first to propose an alternative method based on exact permutation distributions (Metha and Patel 1993, 4). *LogXact* yields exact p-values and confidence intervals regardless of the sample size. The program utilizes sophisticated algorithms made possible by the exponentially increasing computational power of computers.

Using this program, the conditional test statistic has a degenerate probability distribution; that is, it has only a single value with a probability of one. Despite the program’s strength, in such situations no conditional maximum likelihood estimation and other exact estimates are possible. Although the program could not produce exact p-values for my dataset, I attempted to compensate for this failure to estimate by regrouping and recoding each of the covariates in the model. Table 18 shows the distributions for the covariates used in the model. I regrouped each of the variables, with the exception of solicitor general participation, by quartiles.

The results of the model are listed below in Table 19. The table lists the odds ratios and the exact p-values for the independent variables. As the data show, the odds of impacting the outcome of the case in favor of affirmative action decrease by a factor of .10 when coalitions file an amicus brief supporting the pro-affirmative

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45 I was unable to produce estimates for this model using SPSS version 7.5.
46 Email correspondence with Kannappan from the Technical Support Group Department of Cytel Software <kannappan@cytel.com> (January 20, 2000).
47 The technical staff at Cytel Software Corporation informed me that in this case I should recode the covariates and re-run the analysis.
action litigant. In other words, coalitional activity has a negative effect when other variables are controlled. For the strength of group participation in favor of affirmative

Table 18

Distributions of Covariates

<table>
<thead>
<tr>
<th>NG</th>
<th>Group</th>
<th>NB</th>
<th>Brief</th>
<th>NC</th>
<th>Coalition</th>
<th>NI</th>
<th>Ideology</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>.40</td>
<td>1</td>
<td>.40</td>
<td>1</td>
<td>.00 (4)</td>
<td>1</td>
<td>-0.40</td>
</tr>
<tr>
<td></td>
<td>.50</td>
<td></td>
<td>.44</td>
<td></td>
<td>.69</td>
<td></td>
<td>-0.22 (2)</td>
</tr>
<tr>
<td></td>
<td>.57</td>
<td></td>
<td>.50</td>
<td></td>
<td>.71</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>.64</td>
<td></td>
<td>.53</td>
<td></td>
<td>.75</td>
<td>2</td>
<td>-0.20 (6)</td>
</tr>
<tr>
<td></td>
<td>.67</td>
<td>2</td>
<td></td>
<td></td>
<td>.78</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>.70</td>
<td></td>
<td>.65 (2)</td>
<td>2</td>
<td>.80</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>.76</td>
<td></td>
<td>.67 (2)</td>
<td></td>
<td>.83 (2)</td>
<td>4</td>
<td>-0.12 (6)</td>
</tr>
<tr>
<td></td>
<td>.80</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>-0.02 (2)</td>
</tr>
<tr>
<td></td>
<td>.85</td>
<td>3</td>
<td>.68</td>
<td>3</td>
<td>.86 (2)</td>
<td></td>
<td>0.07</td>
</tr>
<tr>
<td></td>
<td>.86</td>
<td></td>
<td>.71</td>
<td></td>
<td>.88 (2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>.72</td>
<td></td>
<td></td>
<td></td>
<td>.90</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>.87</td>
<td></td>
<td>.73</td>
<td>4</td>
<td>1.0 (6)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>.88</td>
<td></td>
<td>.74</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>.89</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>.91</td>
<td></td>
<td>.80</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>.93</td>
<td></td>
<td>.83</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>.94</td>
<td></td>
<td>.88</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>.96 (2)</td>
<td></td>
<td></td>
<td></td>
<td>1.0 (2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1.0 (2)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: All frequencies are equal to 1 unless otherwise noted in parentheses. N for each variable is 22. NG = recoded group index; NB = recoded brief index; NC = recoded coalition index; NI = recoded ideology index.
action, the odds increase by a factor of 6.63. This finding indicates that the Court is more likely to favor the pro affirmative action litigant when more groups file amicus briefs in favor of affirmative action relative to the number of groups that file against the pro affirmative action litigant. The data show that the brief index has a negligible effect on the outcome of affirmative action cases, as well as the control variables used in the model. That is, ideology and solicitor general participation are not significant covariates in this model. At the aggregate level of the Court’s affirmative action

Table 19

Exact P-values Using Condition Maximum Likelihood Estimation With LogXact

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Odds Ratio</th>
<th>Exact P-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brief Index</td>
<td>1.67</td>
<td>0.44</td>
</tr>
<tr>
<td>Group Index</td>
<td>6.63*</td>
<td>0.03</td>
</tr>
<tr>
<td>Coalition Index</td>
<td>0.10*</td>
<td>0.01</td>
</tr>
<tr>
<td>Ideology</td>
<td>1.53</td>
<td>0.25</td>
</tr>
<tr>
<td>Solicitor General Participation</td>
<td>1.22</td>
<td>0.57</td>
</tr>
<tr>
<td>Number of cases</td>
<td>22</td>
<td></td>
</tr>
<tr>
<td>Likelihood Ratio Statistic (6 d.f.)</td>
<td>12.36*</td>
<td></td>
</tr>
</tbody>
</table>

Note: * indicates significance at the p < .05 level (one-tailed test). Results obtained with LogXact version 4, Cytel Software Corporation, Cambridge, MA.
decisions, one of the group indices statistically increases the odds that the Court will vote pro affirmative action (Group Index), while another group index (Coalition Index) decreases the odds that the Court will side in favor of the pro affirmative action litigant. Why is there a discrepancy between the direction of the change in odds between these two indices? The findings presented here suggest that the success of coalitional efforts is negligible before the Court across all affirmative action cases. While coalitions are useful devices for accessing the Court for groups with a smaller base of organizational resources, the utility of these efforts may be confounded by the fact that coalescing may dilute the influence of the effort.

**Bootstrap Estimates**

Since I could not get exact estimates before collapsing the continuous measures of the group indices and ideology, I utilize the bootstrap technique in order to more confidently estimate the standard errors. Bootstrapping is a method of estimating the standard error of a statistic using repeated samples from the original data set. This is done by sampling (with replacement) to get many samples of the same size as the original data set. The standard error of each parameter estimate is then calculated as the standard deviation of the bootstrapped estimates. Bootstrap methodology is used here to obtain confidence regions in circumstances where consistent normal theory confidence bounds are unreliable, as well as difficult to obtain. Parameter values from the original data are used as starting values for each
bootstrap sample. Using this method I draw 1100 samples of the 22 cases in order to estimate the confidence intervals.

Table 20 lists the standard errors and point estimates falling within the 95% confidence intervals, as well as the significance of the variables used in this model. As the data in table 20 show, all of the organizational participation indices are significant at the p < .05 level. Also, all three coefficients are pointed in the expected direction. Ideology and Solicitor General participation are not statistically significant predictors of the Court's vote on affirmative action cases.

On the aggregate level of the Court's affirmative action decisions, these two models (the results are displayed in Tables 19 and 20) show that the group and coalition indices are statistically significant predictors of the Court's decisions in affirmative action cases. Ideology and solicitor general participation, however, are not significant in either model. However, across these two models there exist discrepancies in the impact of coalitions on the outcome of the Court's affirmative action decisions. Why is this the case? One reason to account for this difference could be an artifact of the bootstrap procedure which boosts the number of permutations to get the estimates from 22 (using the LogXact program), to 1100 (drawing 1100 samples of the 22 cases). The bootstrap method, while a useful and appropriate methodological tool given my small sample size of 22 cases, may not produce reliable estimates in the face of the small sample size of only 22 cases (Mooney 1996).

48 For more on the bootstrapping technique, see Chernick (1999) and Mooney and Duval (1993).
Table 20

Standard Errors and Confidence Intervals for Logistic Regression
Using the Bootstrap Procedure

<table>
<thead>
<tr>
<th>Variable</th>
<th>Estimate</th>
<th>95% Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brief Index</td>
<td>0.75*</td>
<td>0.49 1.00</td>
</tr>
<tr>
<td></td>
<td>(.13)</td>
<td></td>
</tr>
<tr>
<td>Group Index</td>
<td>0.85*</td>
<td>0.56 1.14</td>
</tr>
<tr>
<td></td>
<td>(.15)</td>
<td></td>
</tr>
<tr>
<td>Coalition Index</td>
<td>0.86*</td>
<td>0.19 1.53</td>
</tr>
<tr>
<td></td>
<td>(.34)</td>
<td></td>
</tr>
<tr>
<td>Ideology</td>
<td>-0.02</td>
<td>-0.18 .14</td>
</tr>
<tr>
<td></td>
<td>(.08)</td>
<td></td>
</tr>
<tr>
<td>Solicitor General Participation</td>
<td>0.00</td>
<td>-1.67 1.67</td>
</tr>
<tr>
<td></td>
<td>(.84)</td>
<td></td>
</tr>
</tbody>
</table>

Note: The coefficients listed in the first column are the observed estimates with bootstrapped standard errors in parentheses. The entries under the confidence interval column show the bounds where the point estimate falls 95% of the time. * Indicates statistical significance at the \( p < .05 \) level.

**OLS Regression**

Since the outcomes of the affirmative action cases decided by the Court have been rather close,\(^{49}\) the dependent variable must be recoded to capture the outcome of the Court's decisions with more precision. To this end I devise a measure that

\(^{49}\) Sixteen of the 22 cases have been decided by a margin of 6-3, 5-4, or 5-3.
captures the percentage of the Court's vote in each case as pro-affirmative action. To devise this variable I divide the number of justices voting pro-affirmative action by the total number of votes in each case. I use ordinary least squares regression (OLS) utilizing the same model specifications used above. Table 21 displays the results of the model using this technique.

As the data show, the brief and coalition indices have a statistically significant effect on the Court's decision measured in this manner. As the percentage of liberal briefs filed increases, the percentage of the Court's decisions being pro affirmative action increases by 1.24 units, holding all other variables constant. However, while the direction of the coefficient for the brief index confirms my expectations, the direction of the coalition index does not. As the percentage of coalitions that file pro affirmative action briefs increases, the percentage of the justices siding in favor of the affirmative action litigant decreases by -0.64 units, holding all other variables constant. The model is statistically significant at the accepted level of p <.05. At the aggregate level of the Court's decisions on all affirmative action cases, ideology and solicitor general participation do not have a statically significant effect.

Taking a step back from the results of all three models, which assess the outcome of the Court's affirmative action decisions on the aggregate level, we can see some trends. In all three models, the group and coalition indices are statistically significant predictors of the outcome of affirmative action cases. However, there is a discrepancy in the direction of the coefficients for the coalition index. This discrepancy may be an artifact of the different methods employed in order to estimate
Table 21

Assessing Organizational Participation, Ideology, and Solicitor General Participation on the Outcome of the Court’s Affirmative Action Cases Using OLS Regression

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brief Index</td>
<td>1.24*</td>
</tr>
<tr>
<td></td>
<td>(.51)</td>
</tr>
<tr>
<td>Group Index</td>
<td>-3.60*</td>
</tr>
<tr>
<td></td>
<td>(.51)</td>
</tr>
<tr>
<td>Coalition Index</td>
<td>-0.64*</td>
</tr>
<tr>
<td></td>
<td>(.16)</td>
</tr>
<tr>
<td>Ideology</td>
<td>0.00</td>
</tr>
<tr>
<td></td>
<td>(.45)</td>
</tr>
<tr>
<td>Solicitor General Participation</td>
<td>-0.13</td>
</tr>
<tr>
<td></td>
<td>(.06)</td>
</tr>
<tr>
<td>Constant</td>
<td>0.22</td>
</tr>
<tr>
<td></td>
<td>(.23)</td>
</tr>
</tbody>
</table>

Number of cases 22
R-square .65
Adjusted R-square .54
F-Statistic 5.85

Note: Values are unstandardized coefficients. The standard errors are listed in parentheses. * Indicates statistical significance at the p < .05 level.

the coefficients. Also, ideology and solicitor general participation, on the aggregate level, did not have a statistically significant effect on the Court’s vote.
The Efficacy of Organized Participation at the Micro-Level of the Individual Justice

At this point, I turn to modeling the individual justice's votes on all affirmative action cases as a function of the same independent variables used in the model presented earlier.

Model 4 focuses on the outcome of the affirmative action cases using the individual justice's votes as the dependent variable (n = 157). The logistic regression model is expressed as follows:

\[ Y_i = \beta_0 + \beta_1 x_{i1} + \beta_2 x_{i2} + \beta_3 x_{i3} + \beta_4 x_{i4} + \beta_5 x_{i5} + \beta_6 x_{i6} + e_i \]

where:

- \( Y_i \) = outcome of each justice's decision on each affirmative action case (Against affirmative action coded 0 and pro affirmative action coded 1)
- \( \beta_0 \) = intercept term (no S.G. participation as the reference group)
- \( X_1 \) = group index
- \( X_2 \) = brief index
- \( X_3 \) = coalition index
- \( X_4 \) = ideology score for each justice
- \( X_5 \) = dummy variable for S.G. participation pro affirmative action
- \( X_6 \) = dummy variable for S.G. participation against affirmative action

Findings

The logit coefficients for the base model, with solicitor general participation as a continuous variable, are displayed in the left-hand column of Table 22. Of the three organizational indices, only the brief index is significant at a level of \( p < .05 \).
Table 22


<table>
<thead>
<tr>
<th>Variable</th>
<th>Estimates</th>
<th>Estimates (with Dummy Variables)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brief Index</td>
<td>4.96*</td>
<td>5.17*</td>
</tr>
<tr>
<td></td>
<td>(2.23)</td>
<td>(2.29)</td>
</tr>
<tr>
<td>Group Index</td>
<td>-2.42</td>
<td>-3.31</td>
</tr>
<tr>
<td></td>
<td>(2.77)</td>
<td>(2.86)</td>
</tr>
<tr>
<td>Coalition Index</td>
<td>-1.97</td>
<td>-2.64</td>
</tr>
<tr>
<td></td>
<td>(2.10)</td>
<td>(2.15)</td>
</tr>
<tr>
<td>Ideology</td>
<td>1.62*</td>
<td>1.62*</td>
</tr>
<tr>
<td></td>
<td>(0.31)</td>
<td>(0.32)</td>
</tr>
<tr>
<td>Solicitor General</td>
<td>-0.55</td>
<td>----</td>
</tr>
<tr>
<td></td>
<td>(0.31)</td>
<td></td>
</tr>
<tr>
<td>S.G. Pro Affirmative Action</td>
<td></td>
<td>-1.59*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.62)</td>
</tr>
<tr>
<td>S.G. Con Affirmative Action</td>
<td></td>
<td>-0.20</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(0.49)</td>
</tr>
<tr>
<td>Constant</td>
<td>0.65</td>
<td>2.42</td>
</tr>
<tr>
<td></td>
<td>(1.60)</td>
<td>(1.87)</td>
</tr>
<tr>
<td>Number of cases</td>
<td>157</td>
<td>157</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-86.47</td>
<td>-84.46</td>
</tr>
<tr>
<td>Likelihood Ratio</td>
<td>43.27*</td>
<td>47.29*</td>
</tr>
<tr>
<td>Percent Correctly Predicted</td>
<td>70.06</td>
<td>68.15</td>
</tr>
<tr>
<td>Pseudo R-square</td>
<td>.20</td>
<td>.22</td>
</tr>
</tbody>
</table>

Note: Values are unstandardized coefficients. The standard errors are listed in parentheses. * Indicates statistical significance at the p < .05 level.
Also, the direction of the coefficient for this variable is in the expected direction. Ideology is statistically significant at \( p < .05 \) and the coefficient of this variable goes in the expected direction. The continuous measure of the participation on the part of the Solicitor General is not statistically significant, nor does the direction of the variable go in the expected direction.

These findings tell us that on the micro-level, the percentage of briefs filed in support of affirmative action policies being argued before the Court has a statistically significant affect on the probability of the individual justice’s vote on the case. However, not all of the measures of organized participation before the Court, measured in terms of the coalition and group indices, significantly influence the individual justice’s votes in these cases. Although it is troubling that the directionality of the coefficients for these two variables goes against the grain of my expectations about their direction, these variables are not statistically significant.

As the notes at the bottom of the table indicate, the model has a statistically significant log-likelihood ratio at \( p < .001 \). This model properly categorizes about 70 percent of the justices’ votes on affirmative action. The model’s chi-squared test reaches a level of statistical significance at the level of \( p < .05 \). We can reject the null hypothesis that the variables included in the model do not serve as robust predictive

The next model includes dummy variables for solicitor general participation, with no solicitor general participation as the reference category. I run this model with dummy variables for solicitor general participation in order to test whether there is a significant difference in the type of participation mounted in each case. The results of
the logit estimation procedure are listed in right-hand column of Table 22. As the data
reveal, the model has a statistically significant log-likelihood ratio (p < .001). This
model properly categorizes about 68 percent of the Court’s votes. Not unlike the base
model, the score for the brief index is statistically significant at the p < .05 level and
the other two organizational indices are not statistically significant. Ideology also
maintains its significance in this model at the p < .05 level. Looking at the dummy
variables for solicitor general participation, the data show that there is a statistically
significant difference in the influence on the individual justice’s vote when the
solicitor general participates as pro-affirmative action vis-à-vis no participation
whatsoever. However, the negative direction of the coefficient goes against the grain
of my expectation that individual justices would side with the position of the solicitor
general. In fact, this finding suggests that participation in support of affirmative
action on the part of the solicitor general has the reverse effect. Also, I find that there
is no significant difference between con affirmative action participation and no
participation mounted by the solicitor general. These findings are surprising given the
wealth of empirical data that find such high success rates for the solicitor general.

In the face of the wealth of empirical validation of the success rates of
solicitor general participation, I find that there is no significant difference between no
solicitor general participation and solicitor general participation against affirmative
action in the form of amicus curiae or in the form of participation in oral arguments.
Further, I find that pro affirmative action solicitor general participation has a negative
and significant impact on the individual justices’ opinions.
Do we find any commonalities between the aggregate and the individual-level models? Across the aggregate and the individual-level models, the most noteworthy finding is the statistical significance of the percentage of briefs filed in the direction of favoring affirmative action policies argued before the Court. While the percentage of groups participating before the Court pro affirmative action was statistically significant using the bootstrap method for the aggregate model, it did not stand up to statistical significance for any other model. On the aggregate level of the Court's decisions, the impact of coalitional activity was significant and negative for two of the three models. At the micro-level of the individual justices' decisions, coalitional activity had a statistically significant negative effect on the probability of the justices voting pro affirmative action. Another important finding is the strength of ideology at the individual level. At the micro-level, ideology is the strongest predictor of the outcome of the justices' votes.

This finding is commensurate with the fountain of research supporting the attitudinal model, which purports that individual justices are driven by their policy predilections when making decisions. However, the impact of ideology for the Court as a whole did not significantly predict the outcome of the Court's affirmative action decisions.

One of the most surprising findings of the models was the statistically negative effect that pro affirmative action solicitor general participation had on the outcome of the individual justices' votes. Also, I found no significant difference between no solicitor general participation and when the solicitor general participates
against affirmative action. These findings go against the grain of the literature on the high success rates of the solicitor general participating before the Court. On the aggregate level, however, there is no indication that solicitor general participation has an effect on the outcome of the Court’s affirmative action decisions.

In general, the findings tell us about the importance of briefs in general and the utility of coalitions in particular. Whereas the findings presented in chapter four showcased the importance of organizational resources and its relationship to the filer status of organized groups, the finding presented here suggest that the utility of coalitions has a negligible effect on the outcome of the Court’s decision on affirmative action cases.

Two of the major findings from these models need further explanation. Does there exist a theoretical explanation in the literature as to why the higher proportion of coalitional activity have a negative impact on the individual justices’ votes? Also, why is the participation mounted by the solicitor general unsuccessful across all affirmative action cases?

In *A Theory of Political Coalitions*, William Riker (1962) attempted to construct a theory of coalitions based on the assumptions of the rational-choice model (e.g., participants have perfect information). Riker devised a set of propositions from his game-theoretical model of coalitions and argued that with complete and perfect information, coalitions that tend to win are of a relatively small size. Riker argued that larger coalitions are of little value to the extent that there is a diminishing return for the effectiveness of a coalition as the size of the coalition increases. For Riker, the
size of the coalition is important for purposes of effectiveness and utility. Riker proposed that “in social situations similar to n-person, zero-sum games with side-payments, participants create coalitions just as large as they believe will ensure winning and no larger (1962, 32-33). That is to say, Riker argued that the number of participants in coalitions is conditioned by their subjective perception of how many participants they need to win. After that, participants in coalitions seek to minimize the number of participants entering into the coalition in order to maintain this winning size. My results about the negative effect of coalitions on the outcome of the individual justices’ votes support Riker’s theoretical considerations. That is, as the proportion of coalitions in favor of affirmative action increase, it has a negative effect on the outcome of the justices’ decisions.

Perhaps if we look more closely at the context of solicitor general participation across all affirmative action cases, paying particular attention to the position of the respective presidential administrations, it may lend clues to this unique and interesting finding.

Looking across all of the presidential administrations from Nixon to Clinton, each administration lobbied the Court consistently either pro affirmative action or against affirmative action.\textsuperscript{50} Out of the 22 cases spanning these administrations,\textsuperscript{50} The following is a breakdown of the respective presidential administration’s participation across all affirmative action cases.

<table>
<thead>
<tr>
<th></th>
<th>Pro</th>
<th>None</th>
<th>Con</th>
<th>Total</th>
<th>Success Rate (excluding no participation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nixon</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>0%</td>
</tr>
</tbody>
</table>

\textsuperscript{50} The following is a breakdown of the respective presidential administration’s participation across all affirmative action cases.
solicitor generals for these administrations articulated positions 14 times, leaving eight cases where there was no participation on the part of the solicitor general for the respective presidential administrations.

Although the Nixon and Ford administrations only participated in two affirmative action cases (Griggs and Albemarle respectively), both lobbied against affirmative action. In both cases the Court decided against the wishes of their administrations. Out of the five affirmative action cases argued during the window of the Carter administration, the Carter administration’s solicitor general participated in three cases. The success rate for the Carter administration in these three cases was 66 percent. Eight affirmative action cases were brought before the Court during the Reagan administration. The solicitor general participated in five out of eight of these cases and in all five, the solicitor general participated against affirmative action. On the whole, the Court upheld the Reagan administration’s affirmative action position in 40 percent of the cases where the solicitor general took a position. Moreover, despite the concerted effort on the part of the Reagan administration lobbying the Court against affirmative action, the Court sided with the Reagan administration’s position only 40 percent of the time (two out of five cases). The Bush administration

<table>
<thead>
<tr>
<th></th>
<th>0</th>
<th>0</th>
<th>1</th>
<th>1</th>
<th>0%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ford</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carter</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>5</td>
<td>66%</td>
</tr>
<tr>
<td>Reagan</td>
<td>0</td>
<td>3</td>
<td>5</td>
<td>8</td>
<td>40%</td>
</tr>
<tr>
<td>Bush</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>66%</td>
</tr>
<tr>
<td>Clinton</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0%</td>
</tr>
</tbody>
</table>
participated in three out of the four affirmative action cases during his tenure and was successful 66 percent of the time (two out of three). Finally, the solicitor general acting as a voice for the Clinton administration only participated in one case: Adarand. Here the solicitor general argued pro affirmative action and the Court decided against the grain of the Clinton administration’s position.

Although the extant literature suggests that the solicitor general enjoys a high success rate in the Courts, these findings could be the product of the particular policy arena at hand. That is, affirmative action is a divisive policy arena and perhaps participation on the part of the respective administration’s is viewed by the Court as more symbolic than substantive. Scholars have documented the extent to which racially-based issues, such as affirmative action, are polarizing (Carmines and Stimson 1989; Edsall and Edsall 1991). In Chain Reaction, Edsall and Edsall (1991) documented the extent to which affirmative action as a policy arena serves as a symbolic and polarizing issue among presidential administrations. According to Edsall and Edsall, of all the civil rights issues that have surfaced in the last few decades, none is more polarizing and symbolic than affirmative action, especially with regards to race-based affirmative action. Presidential administration may very well capitalize on issues such as affirmative action to connote symbolic overtones on these policies through their participation in the Court.

Also, one of the reasons that the solicitor general enjoys such a high success rate is due to the fact that he relays important information to the Court about the administration’s position (Johnson 1999; McGuire 1998; Spriggs and Wahlbeck
1997). However, the Court must also entertain important jurisprudential arguments in order to make constitutional sense out of issues. Since all of these administrations mounted consistent and one-sided participation either for or against affirmative action, perhaps the Court did not see this participation as adding anything to the constitutional puzzles with which it confronted. And since the Court has been viewed as a set of strategic actors that takes cues from organized participants (Epstein and Knight 1998), the symbolic participation on the part of the respective administration’s may not aid in reducing the costs of sorting through the landscape of constitutional issues.

In the next chapter, I summarize the findings of my research and revisit the theme articulated at the beginning of the dissertation. That is, I assess the extent to which the dynamics of organized participation before the Supreme Court fit into the larger and picture of pluralist theory. Finally, I lay out some paths for future research to be explored.
CHAPTER VI

CONCLUSIONS

In an effort to understand the participation of organized interests in the context of the Court, this dissertation research provides some empirical evidence that coalitions are useful vehicles for groups to access the judicial playing field that do not command, on average, a large base of resources. However, I also find that there is not strong evidence to suggest that these efforts in coalitions have a positive effect on the outcome of the Court's affirmative action decisions.

In this final chapter, I summarize the major findings of the research. Also, I spell out some caveats given the findings of this research. Also, I map out plans for future research.

Summary of Findings

First I examined the extent of organized participation across all affirmative action cases argued before the Supreme Court. I surveyed the landscape of organized participation before the Court from 1971 (Griggs) to 1995 (Adarand). I found that groups of all organizational stripes have been lobbying the Court in the form of coalitions. I constructed a coalition index (dividing the total number of amicus filers by the total number of coalitions for each case), that indicated that the proportion of organized groups relative to the number of coalitions that filed amicus briefs in each
case. I found that there has been an almost steady and concerted effort on the part of
groups to form coalitions when lobbying the Court. Since Stotts (1984), participation
before the Supreme Court on affirmative action cases has been overwhelmingly in the
form of coalitions. Based on the classification scheme used to code the different types
of organizations lobbying the Court, I found that since Stotts (1984) participation has
become more diverse over time. That is to say, I found that almost all organization
types participated across all affirmative action cases since Stotts (1984).

And while I found that no single case netted participation among all of the
organization types, there has been a concerted effort on the part of both governmental
and non-governmental organizations to shape the outcomes of affirmative action
cases through amicus participation. Among non-governmental groups, citizen, public
interest law, and business and professional groups were the most frequent participants
before the Court in these cases. Among governmental groups, I found that states were
the most active participants and most state participation was in the form of coalitions
(94.9 percent of the time). Since the Wygant case, state attorneys general participated
with the most frequency and most consistency among all of the governmental types of
organizations. I also found that a majority of organizations were repeat players that
filed both solo briefs, as well as co-filing briefs in coalitions with other groups.

Next, I turned my attention to examining the coalitional activity of these
groups. The driving research question addressed in chapter four was whether
organizational factors shaped the probability of groups filing together in a coalition.
Using logistic regression, I assessed the extent to which organizational characteristics
such as staff size, as a proxy for organizational resources, as well as organizational
vitality (measured in years), affected the probability that organizations would
participate as either solo-filers or as co-filers in coalitions. I also examined whether
there were any significant differences between different organizational types of
groups and their propensity to participate as filers or co-filers.

The results confirmed my expectations about the significance of staff size.
That is, larger staff sizes of organizations affected the probability that organizations
filed solo briefs. Although the number of years a group has been active significantly
predicted the filer status of organized participation before the Court, I found that the
direction of the coefficient went against the grain of my expectations. The results
indicated that groups that have been on the scene longer are more likely to engage in
coalitions than to file solo briefs.

As an alternative explanation, I posited that organizations that have been
around for longer periods of time could understand the virtue and utility of coalescing
with other groups. This may reflect the more general trend that groups are
increasingly likely to engage in coalitional behavior, as proposed by Schlozman and
Salisbury 1992). The results of my model also demonstrated that there was a
statistically significant difference in the filer status of citizen-based organizations and
business/professional organizations and peak associations. The directionality of the
coefficient for citizen-based organizations suggested that these groups were more
likely to engage in coalitional activity than business/professional organizations, and peak associations.

In Chapter V I tested whether organized participation had an effect on the outcome of the Court’s affirmative action decisions. I assessed the efficacy of group participation at both the macro-level of the Court’s decisions, as well as the micro-level of the individual justices.

One of the most significant findings of these models was the statistical significance of the percentage of briefs filed in the direction of favoring affirmative action policies argued before the Court at the micro level of the individual justices’ votes. Another significant finding was the strength of the justice’s ideology at the micro level. Perhaps the most interesting finding from this research is the statistically significant and negative impact that coalitions have on the outcome of the justices’ votes in affirmative action cases. This finding is consistent with Riker’s (1962) theoretical formulation regarding minimum winning coalitions. That is, as the size of coalitions increase, the success rate become more negligible.

I also found that pro affirmative action participation mounted by the solicitor general had a statistically negative effect on the probability of the individual justices voting in favor of affirmative action. I proposed that affirmative action is a deeply partisan and symbolic issue and that the Court may not be as receptive to presidential administrations’ positions in this highly polarizing and symbolic issue area. In sum, the findings tell us about the importance of briefs in general and the utility of coalitions in particular. Whereas the findings presented in Chapter IV showcased the
importance of organizational resources and its relationship to the filer status of organized groups, the finding presented here suggest that the utility of coalitions has a negligible effect on the outcome of the Court’s decision on affirmative action cases.

At this juncture, I revisit some of the major themes articulated earlier. What do my findings tell us about the disadvantaged litigant in Court? What are the consequences of these findings for the broader picture of pluralism?

The Disadvantaged Litigant Revisited

Political disadvantage theory holds that the courts are the most accessible forum for groups that are politically and financially disadvantaged. Cortner (1968) argued that disadvantaged groups turn to the courts because while other institutional access points in the political system are difficult to access, the courts are guided by the principle of the rule of law and impartiality. That is to say, Cortner argued that the rules of the game governing access to other governmental institutions is structured for groups with a larger base of political and financial capital compared to the judiciary where access is governed by the rule of law. Further, the Court itself, in *NAACP v. Button* (1963), has acknowledged that it was a haven for marginalized groups in terms of political and financial muscle. Other studies have built upon the framework set up by Cortner and have argued that organizations that are politically and financially disadvantaged turn to the courts (Greenberg 1974; Sorauf 1976; Wenner 1984). Others have found that amicus curiae participation is a relatively less costly way for
groups to participate, compared to direct sponsorship of cases (Caldeira and Wright 1988; O’Connor 1980).

Recently, however, scholars have challenged and criticized this theory. For example, Olson (1990) argued that a host of groups use litigation tactics that are advantaged in terms of resources and political muscle. This finding was documented earlier by Epstein (1985) who showed that conservative and corporate interests have concentrated their efforts on the courts. Still, others criticize this theory due to the fact that advantaged interests (in terms of political and financial resources) utilize the courts just as extensively as disadvantaged interests (Bradley and Gardner 1985; Dolbeare 1978; Epstein 1985; Olson 1990).

Although Cortner and others who examine participation under the rubric of disadvantage theory focus on access to the Courts, the findings regarding the success rates and effectiveness of disadvantaged groups are not as positive. That is, studies show that groups with a larger base of resources are more successful in the courts. As Galanter (1974) notes, the “haves” usually come out ahead of the “have-nots.” Other scholars have confirmed Galanter’s findings at different levels of the judiciary. Wheeler, Cartwright, Kagan, and Friedman (1987) found that the more financially well-off groups enjoy higher success rates at the level of state supreme courts and Songer and Sheehan (1992) found higher rates of success for the “haves” at the level of the U.S. Court of Appeals. Also, Caldeira and Wright (1988) presented evidence that business and professional organizations, that command a wealth of resources compared to other organizational types, significantly shape what cases are placed on
the Court’s docket. In sum, these studies suggest that the “haves” do indeed come out ahead for the same reason that these groups enjoy success in other institutional forums such as the legislative and executive branches.

The research presented here adds to this corpus of literature on disadvantage theory by showing that coalitions are another vehicle through which groups with limited resources can access the Court. Undoubtedly though, some disadvantaged groups as identified by Cortner (1968) and others command a large base of organizational resources and to that extent they are not necessarily disadvantaged. However, a flurry of organized interests participating as amici do not enjoy such a wealth of resources and the data show that they are more likely to engage in coalitional activity.

Moreover, participating in coalitions as co-filers seems to be a way that groups can off-set the relatively high cost of accessing the Court through filing amicus curiae briefs. The findings presented here confirm some of the scholarship on disadvantage theory cited earlier in so far as access is concerned. That is, groups that are not as organizationally well off in terms of resources tend to access the Court through co-filer participation as amici.

However, the effectiveness of these efforts does not bode well for coalitional activity. Whereas participation as amici in coalitions may off-set the costs of filing an amicus brief alone and enable groups to participate, these efforts have a negative impact on the outcome of the Court’s affirmative action cases.
Mitigating the Defects of Pluralism?

What do the characteristics of coalition members tell us about group access to the Court within the pluralist system? At the outset of this project I laid out a theoretical framework of pluralism in general and the "new judicial pluralism" in particular. The pluralist enterprise attempted to demonstrate how the democratic process worked in the face of the inattentiveness of citizens in the electoral process. Truman (1951), building on the foundations set down by Bentley (1908), argued that groups operated at a political equilibrium. That is, when their interests were "disturbed," groups would control and neutralize their surroundings. Dahl (1967) articulated some of these themes regarding pluralism and he suggested that no one group would dominate the political process because of the competitiveness that a free society engenders. Kelso (1978) calls this "laissez-faire pluralism." Under the rubric of this type of pluralism, Kelso argues that the political system is responsive to a host of groups accessing the policy stage where politics is characterized by openness.

Others, however, have argued that the picture painted by pluralist theorists is inaccurate. Recalling Schattschneider's (1960) observation that the pluralist heaven sings with an "upper class accent," advantaged groups (read: business and corporate interests) command a larger resource base and, consequently, were more influential in the government process. Dahl (1982, 40) suggested that the organizational advantages of some groups over others leads to political inequality. Dahl argued that "...other things being equal, the organized are more influential than an equivalent number of unorganized citizens. Further, for Dahl (1982, 47) resources are an integral part of the
success or failure of groups and the extent to which the agenda is distorted. "The unequal resources that allow organizations to stabilize injustice also enable them to exercise unequal influence in determining what alternatives are seriously considered."

A more contemporary account of pluralism, echoed by Schlozman and Tierney (1986), suggested that Schattschneider’s observations are fitting today. Taken as a whole, according to Schlozman and Tierney (1986), the interest group community is heavily weighted in favor of business organizations.

In light of the aforementioned criticisms of the asymmetric balance of power in the interest group community, this study documented that business and professional groups accounted for only about 10 percent of the participation of all organized interested across all affirmative action cases. Citizen groups, on the other hand, were the most active participants. But the overall findings across all affirmative action cases are commensurate with Caldeira and Wright’s (1990) observations insofar as we see a diverse lot of organized groups actively engaging the Court.

This finding is not too surprising, given that the general trend in amicus curiae participation is extensive in civil rights cases (recall the findings presented in Table 1) where briefs were filed in all race and gender-based civil rights cases during the Rehnquist Court era. With regards to affirmative action cases, coalitions have become a staple of the lobbying process in the Supreme Court and coalitions serve as an effective means for organized groups to access the judicial playing field. Since groups with a smaller organizational resource base engage in coalitional activity moreso than those with a large base of organizational resources, coalitions serve to mitigate the
potential defects of pluralism insofar as access is concerned. However, accessing the judicial playing field is only part of the picture. As far as success is concerned, I found that coalitions have a negative impact on the outcome of the Court’s affirmative action cases.

This finding regarding the interaction between groups filing amicus briefs together in coalitions has significant implications for pluralism. Riker’s (1962) assessment of minimum winning coalitions set down an important foundation for understanding the behavior of organized interests. Although it was beyond the scope of this project to assess what constitutes a minimum winning coalition according to Riker’s formulation, it is in order to at least speculate what effects this has on the broader scope of interest groups and pluralism.

At the core of Riker’s theory of coalitions, winning is everything. According to Riker, rational actors in groups attempt not simply to access institutions but to succeed in shaping policy. And while the findings presented above show that coalitional activity has a negative impact on the outcome of the individual justices’ decisions, there may be other incentives for groups to join coalitions beyond success in the outcome of the case. Riker’s assumptions fit into the corpus of literature that suggests that groups act in concert for the strategic reason of shaping policy outcomes. For example Loomis (1986) and Salisbury (1992) suggest that coalitions are more effective vehicles for shaping policy in the face of a fragmented political and interest group environment.
There are, however, other incentives that groups have to join coalitions beyond achieving specific policy goals. Another reason groups may unify and coordinate their efforts may have to do with the benefit of sharing information. Laumann and Knoke (1987) and Heinz, Laumann, Salisbury, and Nelson (1990) show that information sharing is a valued benefit among Washington lobbyists, as these lobbyists often seek out allies in their effort to share information. Especially for groups that have a small budget and staff, coalitions may be important avenues through which groups can keep up with the complexity and deluge of information on a policy arena.

Another incentive that groups have to coalesce beyond successful outcomes is group maintenance. While success in a policy arena is undoubtedly important, some groups may join in a coalition for the symbolic benefits that engaging in a coalition offers. That is, participation in a coalition may be a way for groups to show their members that they are engaging in important activity, even, in this case, if their participation only amounts to signing onto an amicus brief. Moreover, participation may be important for groups to satisfy their membership base. Hula (1999) suggests that groups may sign onto a project without even knowing the substantive content of the issue at hand. Hula (1999, 37) argues that some groups sign onto a project in a coalition “...for the sake of an audience—so they could tell their members that they had worked on the project and could show the relevant committee staff that they were active in the policy arena.”
Although it was beyond the scope of this project to assess the motivation behind why groups filed amicus briefs together in coalitions, we can see that groups join coalitions for different reasons. Perhaps the strategic incentive of shaping the policy outcome of the affirmative action cases was not the only reason why these groups participated in coalitions. More research needs to be done in order to assess these incentives and why groups participated in coalitions as amici. A path for future research could use Hula's typology (1995, 1999) of coalitional players (e.g., core members, players, and tag-along groups) in order to meter out the manner of participation in coalitions. That is, do some groups simply “tag-along” to a coalition in order to satisfy their membership vane? Which groups in these affirmative action coalitions brokered the coalition? Which groups provided the policy and legal knowledge, as well as the financial resources, to mount participation as amici? Survey research can aid in the task of getting a more refined picture of the motivations behind why groups act together in coalitions.

In the following sections, I spell-out some caveats about the findings of the research presented earlier, as well as some paths for future research.

Some Caveats About Generalizability

Browne (1988) notes some methodological problems associated with interest group research. Broad theoretical treatments, which attempt to understand interest group behavior in the larger political environment, rely mostly on anecdotal evidence. Case studies of individual groups or organizations provide rich detail but leave the
reader to wonder whether the findings at the micro-level are more the exception than the rule. Macro-level analysis of groups may lend itself to making generalizations but, according to Browne (1988, 1-3), may miss the mark on the context within which behavior and proclivities of groups take place. Pratt (1976) argues that a sounder methodological approach is to combine the elements of the approaches listed earlier.

Moreover, studying a single policy domain over time, such as affirmative action, may lend sounder insight into the behavior of groups. Some have incorporated the policy-domain focus beyond a single domain. Hula (1999) argues that scholars should adopt a multi-domain approach. Hula’s work documents coalitional activity among organized interest groups within three policy domains: transportation, education, and civil rights. Although the results of this research cannot necessarily be generalized for all issue domains, the methodological design presented above can serve as a springboard for future research.

Pathways for Future Research

Survey Research

Recently, some scholars have tried to capture the nuances of organized participation and, more specifically, coalitional activity, through administering survey instruments to a variety of organized interest groups (Hojnacki 1997, 1998; Hula 1995, 1999). These studies have reinvigorated scholarship concerning coalitional behavior.
Another source of data for understanding the nuances of group participation before the Court comes from a recently issued U.S. Supreme Court rule. The Court issued a new rule that requires amicus participants to disclose whether the counsel for a party authors a brief "in whole or in part." This rule was effective on May 1, 1997. Before this rule was issued, it was difficult to ascertain which groups provided the legal resources for writing the brief. Moreover, the list of groups participating as amici on a brief are listed alphabetically and scholars have pointed out that researchers should not impute any significance to which group was listed first on the brief (Spaeth 1995). This new rule issued by the Court requires the identification of "every person or entity, other than the amicus curiae, its members, or its counsel, who made a monetary contribution to the preparation or submission of the brief."

However, this disclosure rule does not apply to amicus briefs submitted on the part of federal, state, and local governments. With this rule in effect, scholars may have more data at their disposal in order to investigate the extent of organized participation for both solo filers as well as co-filers participating in coalitions.

**Political Entrepreneurs and Coalition Brokers**

Scholars also need to assess the role of political entrepreneurs in the context of coalition formation. In "An Exchange Theory of Interest Groups," Salisbury (1969) argues that interest group origins, as well as the growth, death, and success of organizations, may be better explained if we look at them as "exchange relationships" between entrepreneurs or key organizers and their members, who invest capital in a
set of benefits which they offer to their prospective members at a price (membership). Whereas scholars such as Truman (1951) and Bentley (1908) argued that the proliferation of groups was due to some disequilibrium in the sea of potential interests groups, Salisbury argues that we must understand the role of interest groups in light of organizers who invest capital to create a system of benefits which they offer to a market of potential customers at a price. If enough customers (read potential members) buy (read join) to make a viable organization, the group will be in business. If, on the other hand, the benefits fail, or the costs exceed the benefits, the group will fail and collapse. The entrepreneur in this case is the initiator of the enterprise and bears the brunt of costs to organize the group for collective action. Salisbury builds on Clark and Wilson’s (1961) typology of benefits and argues that political entrepreneurs must maintain a satisfactory flow of exchange of benefits to keep the group alive. Also, Moe (1980) argues that entrepreneurs play a managerial role. That is, they offer both economic and noneconomic benefits to members and persuade members that their individual contributions are indispensable to secure the collective good.

Political entrepreneurs in both the eyes of Salisbury and Moe must create a surplus of benefits to sustain the group’s cohesion and success. Scholars should extend this theoretical formulation regarding the role of the political entrepreneur to coalitional behavior among organized interests.
Organized Participation at the Jurisdictional Versus Plenary Stage of the Supreme Court

Do groups mount the same efforts lobbying the Court in the jurisdictional stage (deciding whether or not to grant certiorari) than during the plenary stage of full-blown oral arguments and opinion writing? Research in this area suggests that among non-government groups, groups with larger resource bases, namely corporate interests and governmental interests, have more of an impact on setting the Court's agenda (Caldeira and Wright 1990). Caldeira and Wright also find that among governmental groups, state governments file more amicus briefs at the jurisdictional stage than any other type.

There are significant implications to these findings in light of the findings presented here. Earlier I suggested that coalitional activity is an effective avenue through which groups with a smaller base of organizational resources can access the Courts. The substantive conclusion of this finding is that coalitions serve as a participatory device to mitigate the defects of pluralism. However, since Caldeira and Wright show that the participation of states, as well as business and corporate interests have a significant effect on whether the Court grants a case plenary review, then there seems to be an imbalance in the types of participation among groups at different stages of judicial decision making. Moreover, a path for future research should more thoroughly assess the types of organizations participating at the jurisdictional and plenary stage and examine more thoroughly the effect that coalitions have on accessing the Court at each stage in the process.
Institutional Context and Choice

Do the rules of the game governing access to institutions such as the Court and Congress affect alliance strategies? How do institutional arrangements affect the strategies groups employ to influence the political process, with particular attention paid to coalition-building and alliance formation as a means to that end? Both Hojnacki (1997, 1998) and Hula’s (1995, 1999) analyses have reinvigorated interest group scholars to assess interest group coalitional formation and behavior. However, these studies examine interest group coalitional activity in the institutional context of Congress. A path for future research would be to attempt to understand the changing shape in the context of different institutional settings where the rules of the game governing access to the process is different. The following is a set of interesting questions that would be fruitful to understand the strategies groups employed to participate in different institutional contexts: Do we expect to find increased coalitional activity in the context of one institutional setting versus another, or are pressure mounted equally on both sides? Have certain institutional changes in the Court/Congress facilitated increased coalitional activity?

Additionally, how can we empirically recognize coalitional activity in a consistent and comprehensive manner for both institutional access points? How do institutional factors affect coalitional activities? Do alliances persist across different access points in the political system or do specific institutional rules of the game facilitate the probability of coalitional activity where institutional barriers do not encumber access? Studies that examine increasing interest group involvement need...
not only explain the rise of interest group participation but more importantly need to understand the changing shape of these patterns. Also, one must understand the changing shape in the context of different institutional settings where the rules of the game governing access to the process is different.

Congressional hearings provide a consistent and comprehensive account of the interaction between legislators and interest group participants (Hansen 1991). The testimony of interest groups before committees and subcommittees provides a detailed record of which interest groups participated and more importantly for purposes of analysis on behalf of whom the respective groups are speaking. Not unlike the amicus briefs presented by interested parties before the Court, the written testimony of interest group participants lays-out a detailed picture of the coalitions involved and their stated interests. From these detailed records I may be able to gauge coalitional behavior before congressional hearings.

Hearings are a stage show, and lawmakers are keenly aware of their role as actors. They curry the favor of those who are important to them; they feign interest in the testimony of those who can be ignored; and they pummel those they are expected to pummel (Hansen 1991, 23).

The most visible means of influencing legislation is through participation in congressional hearings. Here, groups establish themselves as players. The legislative process is legitimized by virtue of a variety of groups participating in this process. Although scholars agree that group testimony does not necessarily persuade committee members of the group’s positions (Evans 1991, 264), it is the most visible forum through which we can assess the extent of coalitional activity.
One way to tease-out which groups not only participate in the affirmative action policy arena but engage in coalitional behavior is to examine those groups who participated together during congressional hearings. Here, we can gauge over time, not unlike the Courts, which groups participated together, which groups acted in concert with one another, which groups are repeat players, and whether organizational resources affect coalitional activity in each institutional venue. Moreover, the incentives to form a coalition may be a product of institutionally-situated circumstances.

These paths for future research projects will lead scholars in the direction of understanding the nuances of coalitional activity in a variety of ways. Scholars should examine not only the incentives that groups have to join coalitions but also how different institutional contexts shape organized participation in coalitions.

This dissertation explored the extent of organized participation before the Supreme Court in all affirmative action cases from 1971 to 1995. I surveyed the landscape of organized participation across all affirmative action cases argued before the Court and found that a flurry of different types of organizations mounted participation in the form of amici. One research question I asked was whether coalitions enable organizations with a smaller base of resources to access the judicial playing field through amicus curiae participation. I found that organizations with smaller staffs are more likely to participate in coalitions, and, contrary to my expectation, organizations that have been on the scene longer are more likely to engage in coalitional activity. Another question addressed in the dissertation was
whether participation mounted by organizations influenced the decisions of the Court at both the macro (the Court as a whole) and micro levels (individual justices). I found that at the macro level, the proportion of briefs filed on the side of the “pro” affirmative action litigant significantly affects the probability that the Court will vote in favor of affirmative action, controlling for the Court’s ideology and solicitor general participation. I also found, however, that the proportion of coalitions lobbying “pro” affirmative action has a statistically negative affect on the outcome of the Court’s votes. At the micro level, I found that the proportion of briefs filed in favor of affirmative action had a positive effect on the probability of the justice’s voting in favor of the “pro” affirmative action litigant. The proportion of coalitions favoring the “pro” affirmative action litigant had a statistically negative effect on the probability of the justices’ votes. While the ideology of the individual justices was found to be a strong predictor of their votes in these cases, I found that “pro” affirmative action participation by the solicitor general had a statistically negative effect on the justices’ votes. My findings suggest that while coalitions may help to mitigate the defects of pluralism insofar as scholars have suggested that access to the political process is encumbered by a mobilization of bias, I do not find strong evidence that the utility of these efforts in coalitions have a positive effect on the outcome of the Court’s affirmative action decisions. Scholars should continue to investigate organized group participation in coalitions not only across different policy domains but also across different institutional contexts.
Appendix A

Appendix of Cases and Amicus Participation in Support of Petitioners and Respondents
Appendix of Cases and Amicus Participation in Support of Petitioners and Respondents


Briefs in Support of Petitioner

Solo Filer: Chamber of Commerce of the United States (argued case as amicus curiae)

Briefs in Support of Respondent

Solo Filer: Solicitor General for the United States
Solo Filer: Louis J. Lefkowitz, Attorney General for the United States
Solo Filer: Attorney General of the State of New York
Solo Filer: United Steelworkers of America, AFL-CIO

Defunis et al. v. Odegard et al., 416 U.S. 312 (1974)

Briefs in Support of Petitioner

Solo Filer: Chamber of Commerce of the United States
Solo Filer: American Federation of Labor and Congress of Industrial Organizations
Solo Filer: American Jewish Congress
Solo Filer: Jewish Rights Council
Coalition: Advocate Society
American Jewish Committee
Joint Civic Committee of Italian-Americans
Unico National
Solo Filer: Anti-Defamation League of B'nai B'rith

Briefs in Support of Respondent

Solo Filer: Assistant Attorneys General, for the State of Ohio
Solo Filer: American Bar Association
Solo Filer: President and Fellows of Harvard College
Solo Filer: Center for Law and Education, Harvard University
Coalition: Board of Governors of Rutgers, the State University of New Jersey
Student Bar Association of Rutgers School of Law
Solo Filer: Deans of the Antioch School of Law
Solo Filer: Association of American Law Schools
Solo Filer: Association of American Medical Colleges
Solo Filer: Group of Law School Deans

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Coalition
Mexican American Legal Defense and Educational Fund
Puerto Rican Legal Defense and Education Fund
American Civil Liberties Union
American G.I. Forum
Aspira of America, Inc.
IMAGE
League of United Latin American Citizens
Puerto Rican Bar Association, Inc.
Puerto Rican Law Students Association, Inc.
La Raza Association of Spanish-Surnamed Americans
La Raza National Lawyers' Association
La Raza National Law Students Association

Solo Filer
Council on Legal Education Opportunity

Solo Filer
Lawyers' Committee for Civil Rights Under Law

Solo Filer
NAACP Legal Defense and Educational Fund, Inc.

Solo Filer
National Conference of Black Lawyers

Coalition
American Indian Law Students Association, Inc.
American Indian Lawyers Association, Inc.

Coalition
Legal Aid Society of Alameda County
NAACP

Coalition
National Organization for Women Legal Defense and Education Fund, Inc.
National Education Association

Coalition
National Council of Jewish Women
Union of American Hebrew Congregations
Commission on Social Action
International Union, United Automobile, Aerospace, Agricultural Implement Workers of America (UAW)
United Mine Workers of America (UMWA)
International Union, American Federation of State, County and Municipal Employees, AFL-CIO
United Farm Workers of America
Massachusetts Institute of Technology
Robert C. Wood, President, University of Massachusetts
United Negro College Fund, Inc.
Americans for Democratic Action
Center for Community Change
Center for National Policy Review
Japanese Americans Citizens League
National Urban Coalition
National Urban League
Southern Christian Leadership Conference
University of Notre Dame Center for Civil Rights
Children's Defense Fund of the Washington Research Project, Inc.

Briefs in Support of Petitioner

Coalition  Montana Inter-Tribal Policy Board
          National Congress of American Indians
          National Tribal Chairmen's Association
Solo Filer  Mexican American Legal Defense and Educational Fund

Briefs in Support of Respondent

(none)

Albemarle Paper Company v. Moody, 422 U.S. 405 (1975)

Solo Filer  Chamber of Commerce of the United States
Solo Filer  Lawyer's Committee for Civil Rights Under Law
Solo Filer  American Society for Personnel Administration
Solo Filer  Scott Paper Company


Briefs in Support of Petitioner

Solo Filer  Solicitor General for the United States
Solo Filer  Local 862, United Automobile Workers

Briefs in Support of Respondent

Solo Filer  Chamber of Commerce of the United States


Briefs in Support of Petitioner

Coalition  Attorney General of Washington
          University of Washington
Coalition  American Civil Liberties Union
          ACLU of Northern California
          ACLU of Southern California
Solo Filer  Antioch School of Law
Solo Filer  Asian American Bar Association of the Greater Bay Area
Solo Filer  Association of American Law Schools
Solo Filer  Association of American Medical Colleges
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United States National Student Association
Young Woman's Christian Association
Solo Filer National Employment Law Project, Inc
Coalition National Medical Association Inc.
The National Bar Association, Inc.
The National Association for Equal Opportunity in Higher Education
Coalition Puerto Rican Legal Defense and Education Fund
Aspira of America
Solo Filer Society of American Law Teachers
Solo Filer American Medical Student Association
Solo Filer Council on Legal Education Opportunity
Coalition Native American Law Students of the University of California, Davis
The Native American Student Union of the University of California at Davis
American Indian Bar Association
American Indian Law Students Association
American Indian Law Center
Coalition UCLA Black Law Students Association
UCLA Black Law Alumni Association
The Union Women's Alliance to Gain Equality
Coalition Mexican American Legal Defense and Educational Fund
La Raza National Lawyers Association
County of Santa Clara, California
League of United Latin American Citizens
American G.I. Forum
National Council of La Raza
Los Angeles Mecha Central
IMAGE
National Association for Equal Educational Opportunity
John Vasconcellos
Unitas

**Brief in Support of Respondent**

Solo Filer American Federation of Teachers
Coalition American Jewish Committee
American Jewish Congress
Hellenic Bar Association of Illinois
Italian-American Foundation
Polish American Affairs Council
Polish American Educators Association
Ukrainian Congress Committee of America (Chicago Division)
Unico National

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Coalition Anti-Defamation League of B'nai B'rith
Council of Supervisors and Administrators of the City of New York,
   Local 1, AFSA, AFL-CIO
Jewish Labor Committee
National Jewish Commission on Law and Public Affairs (COLPA)
Unico National
Solo Filer Chamber of Commerce of the United States
Coalition Fraternal Order of Police
   The Conference of Pennsylvania State Police Lodges of the Fraternal
   Order of Police
The International Conference of Police Associations
   International Association of Chiefs of Police
Solo Filer Order Sons of Italy in America
Solo Filer Pacific Legal Foundation
Coalition Queens Jewish Community Council
   Jewish Rights Council
Solo Filer Young Americans for Freedom

Briefs of amici curiae were filed by

Solo Filer American Association of University Professors
Coalition Committee on Academic Nondiscrimination and Integrity
   Mid-America Legal Foundation
Solo Filer Equal Employment Advisory Council;
Solo Filer Fair Employment Practice Commission of California
Coalition Director of the Department of Health of California
   Director of the Department of Benefit Payments of the State of
   California
Solo Filer National Association of Affirmative Action Officers
Solo Filer National Conference of Black Lawyers
Solo Filer National Fund for Minority Engineering Students
Solo Filer North Carolina Association of Black Lawyers
Coalition Polish American Congress
   The National Advocates Society
   The National Medical and Dental Association
Coalition Price M. Cobbs, M.D
   (including 21 other M.D.s)
Solo Filer Ralph J. Galliano
Solo Filer Timothy J. Hoy

Briefs in Support of Petitioner

Coalition
Solicitor General for the United States
Equal Employment Opportunity Commission

Solo Filer
Equal Employment Advisory Council

Briefs in Support of Respondent

(none)


Briefs in Support of Petitioner

Coalition
Affirmative Action Coordinating Center
The National Conference of Black Lawyers
The National Lawyers Guild
The Center for Constitutional Rights
The Center for Urban Law
The Asian American Legal Defense and Education Fund
The Asian Law Caucus
The Black American Law Students Association, Inc.
The Indian Law Resource Center
The La Raza Legal Alliance
The Law Students Civil Rights Research Council
The Mexican American Legal Defense and Educational Fund
The National Emergency Civil Liberties Committee
The National Puerto Rican Law Students Association
The National Council of Churches of Christ

Coalition
American Civil Liberties Union
Society of American Law Teachers Board of Governors

Coalition
American Federation of State, Country and Municipal Employees,
AFL-CIO
International Union of Electrical, Radio and Machine Workers, AFL
CIO, CLC
International Union of Oil, Chemical and Atomic Workers, AFL-CIO
International Union, United Automobile, Aerospace and Agricultural
Implement Workers (UAW)
International Woodworkers of America, AFL-CIO, CLC
National Education Association
United Farm Workers of America, AFL-CIO
United Mine Workers of America

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Coalition of Labor Union Women

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Asian American Legal Defense and Education Fund
The Asian Law Caucus, Inc.
Asian Americans for Equality

Coalition
California Fair Employment Practice Commission
California Division of Fair Employment Practices

Solo Filer
Lawyers' Committee for Civil Rights Under Law

Solo Filer
NAACP

Coalition
NAACP Legal Defense and Educational Fund, Inc.
National Urban League
Howard University

Coalition
National Medical Association, Inc.
The National Bar Association, Inc.
The National Association for Equal Opportunity in Higher Education

Coalition
National Puerto Rican Coalition
The Puerto Rican Forum

Solo Filer
National Union of Hospital and Health Care Employees, RWDSU,
AFL-CIO

Coalition
Patricia Schroeder
ACLU Women's Rights Project
Chicana Service Action Center
Creative Employment Project
Equal Rights Advocates, Inc.
Federally Employed Women
Federally Employed Women's Legal and Education Fund
League of Women Voters of the United States
National Association of Black Women Attorneys, Inc.
National Conference of Puerto Rican Women, Inc.
National Federation of Business and Professional Women's Clubs, Inc.
National Women's Employment Project
National Women's Political Caucus
National Organization for Women
NOW Legal Defense and Education Fund
Organization of Chinese American Women

60 Words Per Minute
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Wider Opportunities for Women, Inc.
Women Employed
Women in Apprenticeship Program, Inc.
Women in Construction Project
Women Working in Construction
Women's Division of R.T.P., Inc.
Women's Equity Action League
Women's Equity Action League Educational and Legal Defense Fund
Women's International League for Peace and Freedom
YWCA Women's Trade Center

Solo Filer: Women's Caucus, District 31 of the United Steelworkers of America

Coalition: American G. I. Forum
Incorporated Mexican American Government Employees
League of United Latin American Citizens
S.E.R. - Jobs for Progress, Inc.

Solo Filer: Women's Equal Rights Legal Defense and Education Fund

Briefs in Support of Respondent

Solo Filer: California Correctional Officers Association
Solo Filer: Government Contract Employers Association
Solo Filer: Pacific Legal Foundation
Coalition: Polish American Congress
Coalition: National Advocates Society
Solo Filer: Southeastern Legal Foundation, Inc.
Solo Filer: United States Justice Foundation
Coalition: Anti-Defamation League of B'nai B'rith
Coalition: Hellenic Bar Association of Illinois
Coalition: Institute for Liberty and Justice-Order or Sons of Italy in America, Inc.
Coalition: National Jewish Commission on Law and Public Affairs (COLPA)
Coalition: Ukrainian Congress Committee of America (Chicago Division)
Coalition: Unico National

Briefs of amici curiae in all cases were filed by

Solo Filer: Committee on Academic Nondiscrimination and Integrity
Solo Filer: Equal Employment Advisory Council
Solo Filer: National Coordinating Committee for Trade Union Action and Democracy
Solo Filer: Pacific Civil Liberties League
Solo Filer: United Electrical, Radio and Machine Workers of America
Solo Filer: Washington Legal Foundation
Solo Filer: City of Los Angeles

Briefs in Support of Petitioner

Solo Filer  Equal Employment Advisory Council  
Solo Filer  Pacific Legal Foundation

Briefs in Support of Respondent

Solo Filer  Alpha Kappa Alpha Sorority, Inc.  
Coalition  American Civil Liberties Union  
Coalition  Society of American Law teachers Board of Governors  
Coalition  American Savings & Loan League, Inc.  
Coalition  National Association of Black Manufacturers, Inc.  
Solo Filer  Asian American Legal Defense and Education Fund, Inc.  
Solo Filer  Lawyers' Committee for Civil Rights Under Law  
Coalition  Mexican American/Hispanic Contractors and Truckers Association, Inc.  
Coalition  League of United Latin American Citizens  
Coalition  Incorporated Mexican American Government Employees (Image)  
Coalition  American G.I. Forum  
Solo Filer  Minority Contractors Assistance Project, Inc.  
Coalition  NAACP  
Coalition  International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)  
Coalition  NAACP Legal Defense and Educational Fund, Inc.  
Coalition  National Urban League, Inc.  
Coalition  National Bankers Association, Inc.  
Coalition  National Bar Association, Inc.  
Coalition  National Bar Association, Inc.  
Coalition  American Business Council, Inc.  
Coalition  Affirmative Action Coordinating Center  
Coalition  National Conference of Black Lawyers  
Coalition  National Lawyers Guild  
Coalition  Center for Constitutional Rights  
Coalition  Center for Urban Law  
Coalition  Hon. Parren J. Mitchell, Member of Congress  
Solo Filer  Anti-Defamation League of B'nai B'rith  
Solo Filer  Minority Contractors Association, Inc.  
Solo Filer  National Conference of Black Mayors, Inc.

Briefs in Support of Petitioner

Solo Filer  Equal Employment Advisory Council
Solo Filer  National Constructors Association
Solo Filer  Washington Legal Foundation

Briefs in Support of Respondent

Solo Filer  Black Economic Survival
Solo Filer  NAACP


Briefs in Support of Petitioner

Solo Filer  New England Legal Foundation

Briefs in Support of Respondent

Solo Filer  New Jersey Department of the Public Advocate


Briefs in Support of Petitioner

Coalition  American Federation of Labor and Congress of Industrial Organizations
          Public Employee Department, AFL-CIO
Solo Filer  Anti-Defamation League of B'nai B'rith
Solo Filer  Detroit Police Officers Association
Solo Filer  Equal Employment Advisory Council
Solo Filer  United States Solicitor General
Solo Filer  International Association of Fire Fighters, AFL-CIO
Solo Filer  Washington Legal Foundation

Briefs in Support of Respondent

Solo Filer  City of Detroit
Coalition  Affirmative Action Coordinating Center
          National Conference of Black Lawyers
          National Lawyers Guild
          Center for Constitutional Rights
All Peoples Congress
Asian Law Caucus, Inc.
Association of Oregon Black Lawyers
Black Educators' Alliance of Massachusetts
Black Women for Policy Action
Boston Mobilization for Survival
Chinese-American Citizens Alliance
Council of Minority Educators in Massachusetts Public Colleges and Universities
Educators United
Esperanza Unida
Gray Panthers
La Alianza Legal De Oregon
La Casa Legal
La Raza Central Legal
League of Martin
Massachusetts Citizens Against the Death Penalty
Massachusetts State Division
American Association of University Women
Minority Law Students Association
National Anti Racist Organizing Committee
New England Minority Women in Business
Parish Council of Holy Angels Catholic Church
Vulcan Pioneers of Newark, N.J.
Willamette Valley Immigration Project
Women's Bar Association of Massachusetts
Women's Coalition, Inc.
Women for Economic Justice
Women's Job Counseling Center

Solo Filer
American Jewish Congress
Lawyers' Committee for Civil Rights Under Law
Mexican American Legal Defense and Educational Fund
National Black Police Association
American Civil Liberties Union
National Organization for Women
American Association of University Women
Equal Rights Advocates, Inc.
League of Women Voters of the United States
National Conference of Black Lawyers
National Women's Law Center
Women Employed
Women's Legal Defense Fund

Coalition
International Association of Black Firefighters—San Francisco Chapter
The Black Agenda Council
Association of Northern California Black Women Lawyers
William Hastie Lawyers Association
Charles Houston Bar Association
Kappa Alpha PSI Fraternity
Black Women Organized for Political Action
Wiley Manuel Law Foundation
National Bar Association
California Association of Black Lawyers


**Briefs in Support of Petitioner**

Solo Filer United States by Acting Solicitor General Fried
Solo Filer American Federation of Teachers, AFL-CIO
Solo Filer Anti-Defamation League of B'nai B'rith
Solo Filer Pacific Legal Foundation
Solo Filer Equal Employment Advisory Council
Coalition Local 36, International Association of Firefighters, AFL-CIO
   Kevin Michael Byrne
   Curtis J. Callaway
   Ronald J. Danner
   James A. Funk
   Thomas I. Herlihy
   Joseph Worth Lane, Jr.
   Stuart J. Winokur
   John E. Yocum
   David F. Zollars
Solo Filer Michigan State Police Troopers Association, Inc.
Solo Filer Mid-America Legal Foundation

**Briefs in Support of Respondent**

Coalition Attorney General of Minnesota
   Attorney General of California
   Attorney General of Louisiana
   Attorney General of Nebraska
   Attorney General of New Mexico
   Attorney General of Wisconsin
Coalition Affirmative Action Coordinating Center
   National Conference of Black Lawyers
   The National Lawyers Guild
   Center for Constitutional Rights

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American Association for Affirmative Action
League of Martin
Sisters of Saint Dominic
Women's Coalition, Inc.
Women's Division, General Board of Global Ministries, United Methodist Church

Solo Filer Coalition
Solo Filer Greater Boston Civil Rights
Solo Filer Jackson Education Association
Coalition Lawyers' Committee for Civil Rights Under Law
American Civil Liberties Union

Solo Filer Coalition
Solo Filer Michigan Civil Rights Commission
Solo Filer Michigan Department of Civil Rights

Solo Filer Attorney General of Michigan
Solo Filer NAACP
Solo Filer NAACP Legal Defense and Educational Fund, Inc.
Coalition National Education Association
California Teachers Association
Florida Teaching Professional-Nation Education Association
Georgia Education Association
Massachusetts Teachers Association
Michigan Education Association
Washington Education Association
Wisconsin Education Association Council

Solo Filer National School Boards Association
Coalition National Board, YMCA of the USA
National Conference of Black Lawyers,
Section on the Rights of Women Equal Rights Advocates
National Organization for Women
NOW Legal Defense and Education Fund
California Women Lawyers Association
League of Women Voters of the United States
League of Women Voters of Michigan
Women's Law Fund, Inc.
Northwest Women's Law Center
Women's Law Project
Women Employed
Women's Equity Action League
National Bar Association, Women Lawyer's Division,
Greater Washington Area Chapter
Women's Legal Defense Fund
Wider Opportunities for Women
Employment Law Center
Solo Filer  City of Detroit

*Local 28, Sheet Metal Workers' International Association et al. v. EEOC et al., 478 U.S. 421 (1986)*

**Briefs in Support of Petitioner**

Coalition  Local 542, International Union of Operating Engineers  
Local 36, International Association of Firefighters, AFL-CIO

Solo Filer  Pacific Legal Foundation

Solo Filer  Equal Employment Advisory Council

Solo Filer  National Association of Manufacturers

**Briefs in Support of Respondents**

Coalition  Attorney General of California  
Attorney General of Louisiana  
Attorney General of Michigan  
Attorney General of Minnesota  
Attorney General of Nebraska  
Attorney General of New Jersey  
Attorney General of New Mexico  
Attorney General of Oregon  
Attorney General of West Virginia  
Attorney General of Wisconsin

Solo Filer  City of Birmingham, Alabama

Coalition  City of Detroit  
District of Columbia  
City of Los Angeles

Coalition  Lawyers' Committee for Civil Rights Under Law  
NAACP  
American Civil Liberties Union  
National Black Police Association

Coalition  NAACP Legal Defense and Educational Fund, Inc.  
NAACP  
Mexican Americana Legal Defense and Educational Fund, Inc.  
National Urban League, Inc.  
Puerto Rican Legal Defense and Educational Fund, Inc.  
Asian American Legal Defense and Education Fund, Inc.  
New Jewish Agenda

Solo Filer  National Conference of Black Mayors, Inc.

Coalition  NOW Legal Defense and Education Fund  
California Women Lawyers  
Employment Law Center
Equal Rights Advocates
League of Women Voters of the United States
National Women's Law Center
Northwest Women's Law Center
Wider Opportunities for Women
Women Employed
Women's Law Fund
Women's Law Project
National Bar Association, Women Lawyer's Division, Greater
Washington Area Chapter
Women's Legal Defense Fund

Solo Filer North Carolina Association of Black Lawyers


Briefs in Support of Petitioner

Coalition Anti-Defamation League of B'nai B'rith
National Jewish Commission on Law and Public Affairs
Solo Filer International Association of Fire Fighters, AFL-CIO, CLC
Coalition Local 542, International Union of Operating Engineers
Local 36, International Association of Firefighters, AFL-CIO
Solo Filer Pacific Legal Foundation
Solo Filer Washington Legal Foundation
Solo Filer Equal Employment Advisory Council

Briefs in Support of Respondent

Coalition Attorney General of California
Attorney General of Louisiana
Attorney General of Michigan
Attorney General of Minnesota
Attorney General of Nebraska
Attorney General of New Jersey
Attorney General of New Mexico
Attorney General of Oregon
Attorney General of West Virginia
Attorney General of Wisconsin
Coalition City of Atlanta
Minority Business Enterprise Legal Defense and Education Fund, Inc.
Solo Filer City of Birmingham, Alabama
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National Conference of Black Lawyers
National Lawyers Guild
Center for Constitutional Rights

Solo Filer
International Association of Black Professional Fire Fighters

Coalition
Lawyers' Committee for Civil Rights Under Law
NAACP
American Civil Liberties Union
National Black Police Association

Coalition
NAACP Legal Defense and Educational Fund, Inc.
NAACP
Mexican Americana Legal Defense and Educational Fund, Inc.
National Urban League, Inc.
Puerto Rican Legal Defense and Educational Fund, Inc.
Asian American Legal Defense and Education Fund, Inc.
New Jewish Agenda

Solo Filer
National Conference of Black Mayors, Inc.

Solo Filer
National Institute of Municipal Law Officers

Coalition
National League of Cities
International City Management Association
U.S. Conference of Mayors
National Association of Counties

Coalition
NOW Legal Defense and Education Fund
California Women Lawyers
Employment Law Center
Equal Rights Advocates
League of Women Voters of the United States
National Women's Law Center
Northwest Women's Law Center
Wider Opportunities for Women
Women Employed
Women's Law Fund
Women's Law Project
National Bar Association, Women Lawyer's Division,
Greater Washington Area Chapter
Women's Legal Defense Fund


**Briefs in Support of Petitioner**

Solo Filer
Pacific Legal Foundation

**Briefs in Support of Respondent**
Coalition Attorney General of New York
Attorney General of California
Attorney General of Illinois
Attorney General of Louisiana
Attorney General of Maryland
Attorney General of Michigan
Attorney General of Minnesota
Attorney General of West Virginia
Attorney General of Wisconsin

Solo Filer City of Birmingham, Alabama
Solo Filer NAACP Legal Defense and Educational Fund
Coalition Lawyers' Committee for Civil Rights Under Law
American Civil Liberties Union
American Jewish Congress
Mexican American Legal Defense and Educational Fund
NAACP
National Women's Law Center
Puerto Rican Legal Defense and Education Fund
Women Employed
Women's Legal Defense Fund

Coalition City of Detroit
The District of Columbia
The City of Los Angeles


**Briefs in Support of Petitioner**

Solo Filer United States by Solicitor General
Solo Filer Mid-Atlantic Legal Foundation
Coalition Pacific Legal Foundation
William Kidd
Edward Swiden

**Briefs in Support of Respondent**

Coalition Attorney General of California
Attorney General of Idaho
Attorney General of Louisiana
Attorney General of Maryland
Attorney General of Michigan
Attorney General of Minnesota
Attorney General of Nebraska

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Attorney General of New York
Attorney General of Oregon
Attorney General of Wisconsin
Pennsylvania Human Relations Commission

Solo Filer
American Federation of Labor and Congress of Industrial Organizations

Solo Filer
American Society for Personnel Administration
Cities

Coalition
National League of Cities
National Association of Counties
U.S. Conference of Mayors
International City Management Association

Coalition
NOW Legal Defense and Education Fund
National Organization for Women
American Civil Liberties Union
California Women Lawyers
Employment Law Center
Equal Rights Advocates
Federally Employed Women Legal and Education Fund
League of Women Voters of the United States
NAACP Legal Defense and Educational Fund
National Women's Law Center
Northwest Women's Law Center
Women Employed
Women's Equity Action League
Women's Law Project
Women's Legal Defense Fund

Coalition
City of Detroit
District of Columbia
City of Los Angeles

Coalition
Lawyers' Committee for Civil Rights Under Law
Mexican American Legal Defense and Educational Fund, Inc.
NAACP
Puerto Rican Legal Defense and Education Fund, Inc.

Solo Filer
Equal Employment Advisory Council


Briefs in Support of Petitioner

Solo Filer
Attorney General of Maryland
Solo Filer
Attorney General of Michigan
Coalition
Attorney General of New York
Attorney General of California
Attorney General of Connecticut
Corporation Counsel of the District of Columbia
Attorney General of Illinois
Attorney General of Massachusetts
Attorney General of Minnesota
Attorney General of New Jersey
Attorney General of Ohio
Attorney General of Oregon
Attorney General of Rhode Island
Attorney General of South Carolina
Attorney General of Washington
Attorney General of West Virginia
Attorney General of Wisconsin
Attorney General of Wyoming

Coalition
Alpha Kappa Alpha Sorority
Coalition for Civil Rights
Coalition for Economic Equity
Council of Asian-American Business Association
Golden Gate Section of the Society of Women Engineers
Hispanic Chamber of Commerce, San Francisco
Kappa Alpha PSI Fraternity
National Bar Association
San Francisco Black Chamber of Commerce
Western Region-NAACP
Aileen Hernandez Associates
American Property Exchange
Casa Sanchez, Cory Gin, Associates
Interstate Parking Company, Inc.
Jean Pierre and Company
Jefferson and Associates
McClain and Woo
Naomi Gray Associates, Inc.
Pegasus Engineering, Inc.
Selwen Whitehead Enterprises

Coalition
American Civil Liberties Union
The ACLU of Virginia
The ACLU of Northern California

Coalition
City of San Francisco, California
County of San Francisco

Coalition
Lawyer's Committee for Civil Rights under Law
Mexican-American Legal Defense and Educational Fund
NOW Legal Defense and Education Fund
NAACP
Women's Legal Defense Fund
Solo Filer Maryland Legislative Black Caucus
Coalition Minority Business Enterprise Legal Defense and Education Fund, Inc.
The Louisiana Association of Minority and Women Owned Businesses, Inc.
Solo Filer NAACP Legal Defense and Educational Fund, Inc.
Coalition National League of Cities
U.S. Conference of Mayors
National Association of Counties
International City Management Association

Briefs in Support of Respondent

Solo Filer United States by Solicitor General
Solo Filer Anti-Defamation League of B'nai
Solo Filer Associated Specialty Contractors, Inc.
Solo Filer Equal Employment Advisory
Solo Filer Mountain States Legal Foundation
Solo Filer Pacific Legal Foundation
Solo Filer Southeastern Legal Foundation, Inc.
Coalition Washington Legal Foundation
Lincoln Institute for Research and Education


Briefs in Support of Petitioner

Solo Filer United States by Solicitor General
Solo Filer American Society for Personnel Administration
Solo Filer Chamber of Commerce of the United
Solo Filer Equal Employment Advisory Council
Solo Filer Center for Civil Rights

Briefs in Support of Respondent

Coalition American Civil Liberties Union
National Women's Law Center
NOW Legal Defense and Education Fund
Women's Legal Defense Fund
Solo Filer Lawyers' Committee for Civil Rights Under Law
Solo Filer NAACP
Coalition NAACP Legal Defense and Educational Fund, Inc.
The Mexican American Legal Defense and Education Fund
The Puerto Rican Legal Defense and Education Fund

Briefs in Support of Petitioner

Coalition

Attorney General of Alabama
Attorney General of Massachusetts
Attorney General of Alabama
Attorney General of Arkansas
Attorney General of California
Attorney General of Connecticut
Corporation Counsel of the District of Columbia
Attorney General of Florida
Attorney General of Georgia
Attorney General of Idaho
Attorney General of Indiana
Attorney General of Iowa
Attorney General of Kansas
Attorney General of Kentucky
Attorney General of Louisiana
Attorney General of Maryland
Attorney General of Minnesota
Attorney General of Missouri
Attorney General of Montana
Attorney General of Nebraska
Attorney General of Nevada
Attorney General of New Hampshire
Attorney General of New Jersey
Attorney General of New York
Attorney General of Ohio
Attorney General of Oklahoma
Attorney General of Rhode Island
Attorney General of South Carolina
Attorney General of Texas
Attorney General of Vermont
Attorney General of Virginia
Attorney General of Virgin Islands
Attorney General of West Virginia
Attorney General of Wisconsin
Attorney General of Wyoming

Coalition

American Civil Liberties Union
Alabama Civil Liberties Union
Women's Equity Action League

Solo Filer

Equal Employment Advisory Council
Coalition
National League of Cities
National Governor's Association
U.S. Conference of Mayors
Council of State Governments
International City Management Association
National Conference of State Legislatures
National Association of Counties

Coalition
NAACP Legal Defense and Educational Fund, Inc.
Women's Legal Defense Fund
National Women's Law Center
International Association of Black Professional Firefighters

Briefs in Support of Respondent
Solo Filer International Association of Fire Fighters, AFL-CIO
Solo Filer Pacific Legal Foundation


Briefs in Support of Petitioner
Solo Filer United States by Acting Solicitor General
Solo Filer Associated General Contractors of America, Inc.
Solo Filer Galaxy Communications, Inc.
Coalition Mountain States Legal Foundation
Anti-Defamation League of B'nai B'rith
Solo Filer Pacific Legal Foundation
Solo Filer Washington Legal Foundation
Solo Filer Committee to Promote Diversity
Solo Filer Jerome Thomas Lamprecht

Briefs in Support of Respondent
Solo Filer American Civil Liberties Union
Solo Filer Congressional Black Caucus
Solo Filer National Association of Black Owned Broadcasters, Inc.
Solo Filer National Bar Association
Solo Filer United States Senate
Coalition American Jewish Committee
Black Citizens for a Fair Media
Communications Committee of the Connecticut Conference of the United Church of Christ

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Department of Communications of the Capitol Region Conference of Churches
Office of Communication of the United Church of Christ
People for the American Way
Reverend Alexis Sidorak
Steven Sidorak
Sherman G. Tarr
Telecommunications Research and Action Center
Reverend Mark Welch

Solo Filer Capital Cities/ABC, Inc.
Coalition Cook Inlet Region, Inc.
Solo Filer Granite Broadcasting Corporation
Solo Filer Giles Television, Inc.
Solo Filer Lawyers' Committee for Civil Rights Under Law
Solo Filer NAACP Legal Defense & Educational Fund, Inc.
Coalition National League of Cities
National Conference of State Legislatures
National Association of Counties
Council of State Governments
U.S. Conference of Mayors
International City Management Association
Solo Filer American Women in Radio and Television, Inc.


Briefs in Support of Petitioner

Solo Filer Associated General Contractors of America, Inc.
Solo Filer Atlantic Legal Foundation
Solo Filer Federalist Society, Ohio State University College of Law Chapter
Solo Filer Pacific Legal Foundation
Coalition Washington Legal Foundation
Equality in Enterprise Opportunities Association, Inc.

Briefs in Support of Respondent

Coalition Attorney General of Maryland
Attorney General of Maryland
Attorney General of Arizona
Attorney General of Connecticut
Attorney General of Hawaii
Attorney General of Illinois
Attorney General of Indiana
Attorney General of Massachusetts
Attorney General of Minnesota
Attorney General of New Mexico
Attorney General of New York
Attorney General of North Carolina
Attorney General of Ohio
Attorney General of Oregon
Attorney General of Washington
Attorney General of Wisconsin
Acting Corporation Counsel for the District of Columbia

Coalition
Coalition for Economic Equity
Mid-Peninsula Minority Contractors Association

Coalition
Congressional Asian Pacific American Caucus
National Urban League

Solo Filer
Congressional Black Caucus

Solo Filer
Equality in Enterprise Opportunities Association, Inc.

Solo Filer
Latin American Management Association

Coalition
Lawyers' Committee for Civil Rights Under Law
American Civil Liberties Union
Women's Legal Defense Fund
National Women's Law Center
National Council of La Raza

Coalition
Minority Business Enterprise Legal Defense and Education Fund, Inc.
National Minority Supplier Development Council, Inc.
National Black Chamber of Commerce, Inc.
National Association of Minority Contractors

Coalition
Minority Media and Telecommunications Council
League of United Latin American Citizens
Office of Communication of the United Church of Christ
National Hispanic Media Coalition
Communications Task Force
National Association of Black Owned Broadcasters
American Hispanic Owned Radio Association
Emerging Telecommunications Entrepreneurs Association

Solo Filer
NAACP

Solo Filer
National Coalition of Minority Businesses

Solo Filer
NAACP Legal Defense and Educational Fund, Inc.

Solo Filer
National Association of Minority Businesses

Coalition
National Bar Association
Council of 100-An Organization of Black Republicans, Inc.
Briefs of amici curiae were filed for the Coalition

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>Maryland Women Business Entrepreneurs Association</td>
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<td>National Association of Women Business Owners</td>
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<td>Illinois Association of Women Contractors and Entrepreneurs</td>
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<td>WBE Line, Inc.</td>
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<tr>
<td>Federation of Women Contractors &amp; Women's Business Development Center</td>
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</tbody>
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Appendix B

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May 24, 2000

To Whom it May Concern:


I understand that Bell & Howell may supply copies of the dissertation on demand.

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[Signature]

Washington University
Department of Political Science
Campus Box 1063
One Brookings Drive
St. Louis, Missouri 63130-4899
Phone: 314 935 8580
Fax: 314 935 5856
Email: EPISTEIN@ARTSCI.WUSTL.EDU
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