A Proposal for Research

Winners and Losers: An Examination of Factors Affecting the Success and Failure of Interest Group Litigators*

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Since publication of Clement E. Vose's *Caucasian's Only* in 1959, many analysts, lawyers, and journalists have been fascinated by interest group litigators-- organizations that use the courts to achieve policy ends. Vose's painstaking study of the NAACP's successful quest to end racially-based housing discrimination not only stirred our imaginations, but also set the tone for later analyses. Though the scope of their inquiries has broadened considerably, most scholars working in this field begin and end with Vose's basic proposition that group-sponsored litigation is more successful than non-group litigation. That we continue to confirm this basic conclusion is hardly surprising: since so many of us look only at winning campaigns, we are perpetuating a self-fulfilling prophecy. Used in this way, the basic methodology of Vose virtually ensures the inevitability of finding that groups are more or less infallible litigants.

The fundamental flaw of this approach would be less problematic if we did not base so much of our knowledge about group litigation around it. Since we begin with the proposition that groups win, we expend a great deal of energy explaining why they do. And, indeed, we have developed a laundry list of reasons: expert counsel, ample financial resources, support from other organizations, and so forth.

It is nevertheless less true that numerous examples of group losses exist. Consider *Bowen v. Kendrick* (1988), in which the ACLU mounted an unsuccessful First Amendment challenge to the Adolescent Family Life Act. Why did the ACLU lose this case? Because they lacked expert counsel? Because they failed to garner support from other organizations? Or, did other factors, such as the composition of the Court, come into play? We simply do not know because we have yet to explore this side, the darker side, of group litigation.

The purpose of this paper is to articulate a research program that would help us to address such questions and provide us with a richer understanding of the phenomenon of group litigation. In general, it views litigation losses, not merely as the flipside of litigation successes, but as events just as worthy of systematic study. In this sense, we ask not only the question of "why do groups win?," but also "why do groups lose?"

To address these questions, we have selected four pairs of cases for in-depth investigation. Each pair contains cases presenting similar legal stimuli to the Court. They differ only to the extent

that organized interests won one and lost the other. For each pair, we seek to isolate factors contributing to the win and to the loss. Doing so, we hope, will enable us to develop a more complete understanding of the dynamics of group presence in the legal system.

Conventional Wisdom about Interest Group Litigators

Conventional wisdom about interest group litigation suggests that organized pressures are "winners," unusually successful participants in the judicial game. The roots of this wisdom lie in a number of sources, but foremost are the case studies. Vose's exploration of the restrictive covenant suits was only the first in a long series of treatments of successful litigation campaigns waged by interest groups. His analysis was soon followed by those of Cortner (1964, 1968, 1970a, 1970b, 1975, 1980, 1988), Manwaring (1962), and Kluger (1976), Cowan (1976), to name just a few.

The list is long and the analytical commonalities are evident. First, the *modus operandi* always is the same. Analysts choose a particular Supreme Court case for investigation, inevitably a suit that resulted in an organizational "win." Then, in the style of Vose, they explicate factors affecting the Court's ultimate ruling: the contextual ones of group decision-making processes and dynamics, the legal ones of precedent and doctrine, and the environmental ones of public opinion and political climate. This is usually followed by some assessment of what went right for the organizational litigant.

Cortner's (1988) recent work, *A Mob Intent on Violence,* is highly illustrative of this approach. Using Vose's treatise as a template, he seeks to explain the NAACP's victory in the landmark case of *Moore v. Dempsey* (1923). The book itself is just as thought provoking as Vose's *Caucasians Only*; indeed, we learn a great deal about the NAACP during its early years and how the organization evolved into a premiere litigating group. Moreover, like most studies of its genre, the story is told in painstaking detail, supported by meticulous documentation of theretofore unmined sources.

In short, this study-- and the many others of its type-- have added a great deal to our knowledge about group litigation. But, to some extent, they have distorted it as well. By focusing exclusively on successful campaigns, we see only the joys of victory, never the agonies of defeat.

In this vein, we have little sense of the factors affecting group losses and how groups respond to those defeats because implicit in the literature is the conclusion that group input prompts legal victory.

Case studies are not the only source of conventional wisdom concerning group success. More broad-based treatments of group involvement in a range of legal areas also have played a role. In general, these studies select a particular area of the law for investigation (*e.g.*, race discrimination, free speech) or a specific organization (*e.g.*, ACLU, LDF) for in-depth analysis. Using "success scores," the ratios of group wins to participations, they seek to reach conclusions about the efficacy of organizational litigation. Inevitably, such studies find that groups have higher success scores than non-groups.

Most exemplary of this approach is Lawrence's (1989) study of the Legal Services Program (LSP). She examined the relative success of LSP attorneys in Supreme Court litigation involving the gamut of poverty law issues. Based on the finding that LSP attorneys won 62 percent of their cases, she concluded that: "The LSP's appellate advocacy...gave the poor a voice in the Supreme Court's policymaking and doctrinal development" (p.270). Consider also O'Connor and Epstein's (1983) analysis of group involvement in gender-based discrimination cases. After reporting that the Women's Rights Project of the ACLU won 66 percent of its cases, they too concluded that: "while women's rights groups' efforts often have been frustrated in legislative forums, the Supreme Court has served as a source of expanded rights. Women's rights groups have used this forum effectively..." (p.143).

Such conclusions are not necessarily misplaced: success scores do tell something about an organization's ability to win cases over the long haul. What these and so many other authors miss, of course, is the fact that groups do not win all of their cases. In Lawrence's study LSP attorneys lost nearly 40 percent; in O'Connor and Epstein's-- almost a third. Yet, because they won more than other counsel or more than the average in that particular legal area, scholars conclude they are successful. They, then, seek to explain that success. But, again, we ask: what about the failures, group losses? How can we explain those? Little, if any, attention is ever given to them.[1]

Despite these problems scholars have deduced from these works specific sets of factors that seem to explain group success. Combining those enumerated by Vose, Cortner, and others, this list

emerges.

Longevity: continued and repeated use of the judicial process to achieve policy ends (see Vose, 1972; O'Connor, 1980; Kluger, 1976; Galanter, 1974; Yale Law Journal, 1949; Greenberg, 1977).

Expert Staff Attorneys: attorneys committed to organizational goals and who are well-versed in areas of interest to the group (see Sorauf, 1976; Meltsner, 1973; Manwaring, 1962; Greenberg,1974; Epstein, 1985).

Sharp Issue Focus: legal concentration in but a handful of issues (see O'Connor, 1980; Cowan, 1976; Wasby, 1983).

Financial Resources: funds necessary to carry out litigation strategy (see Belton, 1976; Sorauf, 1976; Gelb and Palley, 1982).

Technical Data: social scientific evidence presenting proofs of legal arguments (Vose, 1957,1972; O'Connor, 1980; O'Connor and Epstein, 1982).

Legal Publicity: usually in the form of law review articles (see Vose, 1959; Greenberg, 1977; Newland, 1959).

Coordination with Other Organizations: assistance with legal strategy, supplemental funds, the filing of supporting *amicus curiae* briefs (see Sorauf, 1976; Baker and Stewart, 1982; O'Connor and Epstein, 1983; Kluger, 1976; Handler, 1978; Kobylka, 1987).

Support from the Solicitor General: assistance in the form of supporting *amicus curiae* briefs (see Krislov, 1963; Vose, 1972; Scigliano, 1971, Puro, 1971).

Others, in turn, have used these factors (and other views of the Supreme Court's role in American society) to develop more broad-based inferences about groups and courts. Galanter's (1974) repeat player-one shotter view and Ulmer's (1978) upperdog-underdog distinction both attempt to put group victories into some larger perspective (see Caldeira and Wright, 1989). Indeed, taken together, they provide a compelling explanation as to why groups win in judicial arenas: organizations are repeat players who also can take advantage of their underdog status to prey upon the judiciary's institutionalized inclination to protect minority interests. In short, the ACLU, NAACP, and the like are simultaneously viewed as repeat players and underdogs.

Challenges to the Conventional Wisdom

Though the conventional wisdom about group activity in Court is well-entrenched and, to some extent, well-justified, three challenges emerge. The first was a quantitative investigation designed to test the assumptions explained above. This study used a precision matching approach, that is, it paired cases presenting the same legal stimuli to the same judge during the same year; the only difference between the two was that one was sponsored by an organization, the other brought by private counsel. The authors found no significant differences between the group-sponsored

suits and those brought by non-group attorneys (Epstein and Rowland, 1986,1989).

Flowing from this research are two other challenges, both centering on the idea that what we think we know and what we observe fail to converge. For one thing, we think we know that groups are winners, but we also know that this is not always so. Again consider the ACLU's challenge to the Adolescent Family Life Act. In this instance we observed a known repeat player, an organization with great expertise in religious establishment clause litigation (see Sorauf, 1976; Morgan, 1968), with substantial resources, lose a case of some significance to it. The same year also witnessed the NAACP LDF go down in defeat in *City of St. Louis v. Praprotnik* (1988), involving a constitutional challenge to the city's lay-off plan. Are these isolated instances? Maybe. But, even if they are, we cannot *know* this without systematic investigation of these occasionally occurring phenomena.

For another, as we know, *most* groups regularly resorting to litigation characterize themselves as liberal (see O'Connor and Epstein, 1989). Yet, as we also recognize, the Burger and now Rehnquist Courts at minimum sought to contain the expansion of rights and liberties (see Blasi, 1983; Schwartz, 1987). If those Courts were capping rights, as many suggest they were and are, how can groups, such as the ACLU and LDF, contemporaneously be achieving their objectives?

In short, we maintain that the conventional wisdom about group litigation provides, at best, an incomplete view of the dynamics of group litigation. The rather rosy picture painted by the literature has emerged largely because of a bias most researchers have toward its study. It is far more interesting, for most of us, to study campaigns resulting in successes, rather than losses. But, as new challenges arise to the conventional wisdom, we need to contemplate ways by which to capture the reality of group participation in the judiciary, not merely the "sexier"--group win--side of it.

Conceptualizing Group Successes and Failures: A Research Strategy

How can we develop a fuller understanding of group "wins" and "losses" as part and parcel of group litigation? Though several strategies may be viable we suggest a return to the basic

approach of Vose and Cortner-- the case study. Though this design has its inherent flaws, it allows for in-depth analysis of the sorts of contextual, legal, and environmental factors contributing to case outcomes. That kind of analysis allows for the creation of testable hypotheses, which in turn facilitate the development of richer theories to explain judicial resolution of group-backed litigation.

The sort of case study we propose, however, fundamentally differs from those undertaken in the past. Rather than focus exclusively on successful campaigns, we have selected three dyads and one triad of cases for comparative analysis.[2]

1. ***Furman v. Georgia*** (1972)
   Gregg v. Georgia (1976)
   McCleskey v. Kemp (1987)

2. ***National League of Cities v. Usery*** (1976)
   Garcia v. San Antonio Metro Transit Authority (1985)

3. ***Lynch v. Donnelly*** (1984)
   Wallace v. Jaffree (1985)

4. ***Fullilove v. Klutznick*** (1980)
   City of Richmond v. J.A. Croson Co. (1989)

The cases contained in each grouping are remarkably similar on several dimensions. First, as we note in Appendix A, they presented very similar stimuli to the Court. *Furman, Gregg, and McCleskey* all raised questions about Georgia's procedures for implementing the death penalty; *National League of Cities* and *Garcia* asked the Court to construe Congress' power over state and local governments under the commerce clause; *Lynch* and *Wallace* raised questions about the wall of separation between church and state; and, *Fullilove* and *Richmond* treated the constitutionality of minority set-aside programs. Second, as we also detail in Appendix A, each case was supported by significant numbers of organized interests, participating as *amici curiae* and as sponsors. Indeed, the only outward difference between the cases was the Court's disposition of them. Despite the fact that they presented similar legal issues to the Court within a relatively constrained time frame, they were decided quite differently (see Appendix A).

Our research task is to determine those factors conditioning the win-lose or lose-win resolution of these case sequences. Based on previous studies of group litigation (*e.g.*, Vose, 1972) and of Supreme Court decision making (*e.g.*, Rohde and Spaeth, 1976), we hypothesize

that three sets of factors had some role in the ultimate success/failure of the groups.

Changes in the Groups

In conducting case studies of organizations and/or their involvement in specific legal areas, scholars have recognized that groups do, on occasion, lose cases; some analysts have even sought to explain those defeats, generally doing so in the context of intra-group decision-making processes and dynamics. From those studies we can infer a number of group-based explanations for the ultimate success/failure of their litigation campaigns.

The first is that the organization underwent some major internal alteration, which hampered/enhanced their litigation efforts. Vose's (1972) analysis of the National Consumers' League's (NCL) quest to obtain judicial validation of progressive legislation provides a prime example of the significance of such changes. After winning *Muller v. Oregon* (1908), in which the Court upheld maximum hour work laws, the NCL sought to secure minimum wage legislation. Indeed, *Muller* was such an astounding victory that the organization felt confident about its ability to reach this further objective. But such was not to be-- in *Adkins v. Children's Hospital* (1923) it failed to convince the Court of the constitutionality of such laws.

Vose's analysis of the NCL's loss in *Adkins* considers a number of explanations for its defeat. Among the most important was the group's change in legal counsel. Louis Brandeis had conducted the litigation campaign leading to *Muller*. After he became a Supreme Court Justice, Felix Frankfurter replaced him as NCL counsel. Though Frankfurter was a more-than-competent attorney, he was preoccupied with his professorial responsibilities at Harvard and, thus, a less-than-committed NCL lawyer.

Neier's (1979) examination of the ACLU's involvement in *Skokie v. National Socialist Party* provides another example of how internal alterations can affect litigation. In this instance, the ACLU actually won the litigation battle-- the Court ruled that Skokie's attempts to bar the Nazi's from marching violated the Constitution-- but it was scarred from the war. From the time the group agreed to represent the Nazis in 1977 through the Court's decision, it lost over 60,000 members, breaking a well-established trend of organizational growth.[3] The resulting loss of

membership dues caused the Union to restrict its activities, reevaluate priorities, and so forth.

From these and other studies of internal, organizational dynamics, we can conclude that those factors that enhance prospects for group success in litigation (see p.6) can also work to inhibit it. Thus, in examining why groups ultimately win/lose the cases contained in our pairs, we will focus quite heavily on the groups themselves.

A second group-based factor emerges from Kobylka's (1987) work on obscenity litigation. Here, he attempts to explain how a fundamental change in the law (in this instance the Court's ruling in *Miller v. California*, 1973) affected the behavior of organizational litigants (libertarian groups). What he found was that different kinds of groups (see Salisbury, 1969; Olson, 1965; Clark and Wilson, 1961; Wilson, 1973) reacted in varying ways to the policy shift: in general, political/purposive organizations-- the ACLU, in particular-- opted out of the area of obscenity; conversely, material organizations-- both professional and commercial-- "mobilized to become the preeminent litigators, filling the void" left by political groups. In the final analysis, this was an important shift in group representation of the libertarian position because material groups framed their arguments quite differently than did political ones.

Kobylka's work, too, generates a number of propositions about the ability of groups to succeed in Court. For one thing, it suggests a consideration of the types of groups involved in litigation. As we can see in Appendix A, the groups that participated in the cases we have selected for analysis represent a broad range of organizational types. We know, though, that those possessing political interests are likely to present very different sorts of legal stimuli to the Court than those with material concerns, even though they may be litigating precisely the same legal issue. This may, in turn, affect the Court's response. So too we will need to explore the organizations' reaction to the first case in the context of how it dealt with the second. As Kobylka's work demonstrated, it is altogether possible that the resolution of Case 1, whether a success or failure, affected group litigation strategy for Case 2. To develop a fuller picture of group litigation, then, we must consider these as important explanations.

Measuring group-based changes and gathering the data to assess them are challenging, though not impossible, tasks. Vose and Kobylka both used a mixed-research strategy and a multi-source data collection approach, relying on court and group records and archival data. Kobylka

also interviewed leading participants to garner a sense of the kinds of internal changes that might have occurred. These sorts of data provide the insight into group decision making necessary to evaluate explanations of organizational dynamics as determinants of judicial outcomes.

Changes in the Court

Although cases contained in our pairs were decided in relative proximity to each other (no more than 15 years apart), we cannot ignore behavioral, or as Vose (1981) would write, "internal" explanations for case outcomes. Two seem possible. The first, of course, is that a membership change occurred on the Court, which created alteration in policy. As Baum (1985) notes, "Membership change is probably the primary source of policy change on the Court..." (p.142). In some instances, that change need only involve the replacement of one Justice as was the case when Tom Clark replaced Frank Murphy or when Arthur Goldberg filled the vacancy left by Felix Frankfurter. Even when replacers are of similar ilk as their replacees, shifts in the Court can occur. For instance, after O'Connor joined the Court, "Blackmun's movement away from Burger accelerated" (Wasby, 1988, p.251).

At first blush, such changes might have affected the disposition of several of our cases. Compare, for example, Court composition at the time *Fullilove* was decided with that of *Richmond* (see Appendix A); between the two, the Court that had experienced a turnover in one-third of its membership.

Another possibility is a major behavioral or attitudinal change of one or more existing members of the Court-- a change that affected our pairs and all other like cases. Scholars (see Kobylka, 1985-86), contemplating the radical policy shift occurring in *Garcia*, for example, point to Blackmun's change of heart. He concurred with the five-person majority in *National League*, but wrote for the majority in *Garcia,* which overruled *National League*. Blackmun is not the only Justice to evince major shifts in behavior; as Ulmer found (1979), both Black and Douglas altered their views over the course of their careers.

Such shifts are rather difficult to measure systematically. The methodology of behavioralism would suggest the use of cumulative scales and continuums to assess both sets of changes. These are useful tools to the extent that they convey information about actual voting

patterns and alterations in votes. Given our concern with explaining, and not just predicting, decisions, we also will need to look more closely at doctrine generated in each particular area of the law from the time the Court decided the first case through the second. Doing so will provide a more complete picture as to why the alteration occurred, and not merely at "how" it did.

Changes in the External Environment under which the Court and Groups Operate

Over the past decades, scholars have virtually shattered the myth that the Court is an apolitical body composed of neutral, non-partisan decision makers. This, in turn, has led analysts to explore a range of environmental factors that may affect Court resolutions. Two emerge as particularly significant. The first is public opinion: Does the Court consider the views of the public as legitimate bases for decision making? Does it take them into account? Recent research by Marshall (1989) suggests that it does. He finds that "Most modern Court decisions reflect public opinion. When a clear cut poll majority or plurality exists, over three-fifths of the Court's decisions reflect the polls. By all arguable evidence the modern Supreme Court appears to reflect public opinion as accurately as other policy makers" (p.97). This finding confirms work by many others including Barnum (1985) and Casper (1972).

Given the legal issues raised by our cases-- some highly salient to the public-- we must consider public opinion as a potentially significant factor in the Court's decision-making process. Consider just one-- the death penalty. Not only does the Court view public opinion as a relevant factor in deciding these cases, but, according to research by Weissberg (1976), its opinions in this area closely track the public's views.

The second factor is a change in the political environment of other institutions. Using an aggregated model of decision making in the area of criminal law, scholars concluded that the Court was sensitive to changes in the party of the President, in particular. Overall they found the Court to take a pro-defendant rights posture more often during Democratic regimes, a finding that held up even after they introduced controls for other variables (Epstein, Walker, and Dixon, 1989).

Again, this and other changes in the political environment may have been highly relevant considerations in the resolution of our cases and, certainly ones ripe for analysis. For example, the

Fullilove-Richmond pair will enable us to examine the effect of a regime change on Court decisions.

It also is true that groups are sensitive and responsive to changes in the political environment. Literature on organizational use of the legal system (see Cortner, 1968; Kobylka, 1987,1989) suggests that groups contemplate their objectives vis-a-vis the existing social and political contexts, contexts defined by governmental institutions (especially the federal judiciary), organizations with related interests, and public opinion.

Their perceptions of these external contexts can affect group behavior in a number of ways. Consider, first, the posture of governmental institutions, and of the U.S. Supreme Court, in particular. As the Bork confirmation proceedings clearly demonstrate, groups are certainly cognizant of the fact that changes in personnel affect their ability to succeed. A Court composed largely of Nixon-Reagan appointees, while exceedingly attractive for conservative interests like the Pacific and Washington Legal Foundations, is a less-than-appealing forum for the ACLU, LDF, and so forth. Such perceptions will not only affect the way they frame their legal arguments, but may lead them to avoid the Supreme Court altogether and confine their activities to other courts. Indeed, under such circumstances, if they do end up in the Supreme Court, it may be because they are forced to defend lower court victories, rather than to etch policy into law. And, as Cortner (1968) argues, a world of difference exists between taking offensive versus defensive postures in Court: groups have far more difficulty defending, rather than challenging, lower court rulings. Moreover, since the Supreme Court generally takes cases to reverse (see Wasby, 1988), their probability of success is even further minimized.

Again, this might provide, in some measure, a reasonable explanation for the disparities between cases within our pairs. Consider *National League* and *Garcia:* In the first, groups arguing for the state's position were on the defense; in *Garcia* they were on the offense.

By the same token, groups also will be affected by other pressures populating the specific legal area. In today's legal system, groups have become all too aware of the fact that their arguments will be countered by groups with opposing interests. Such was not the case when the ACLU, LDF, and others first began resorting to the judiciary. This rise of ideological warfare has, in turn, affected group behavior in a number of ways. For one, groups know that they will face

skilled opponents, opponents who have just as much expertise in particular legal areas as do they. Second, and relatedly, they will have to develop arguments to counter their organized opposition, and not just to push their causes.

The increasingly pluralistic environment under which the Court operates is certainly evident within our pairs (see Appendix A). In *Furman,* for example, the ratio of *amicus curiae* briefs opposing and supporting Georgia's position was 4:1; fifteen years later, in *McCleskey,* it was 2:1. The affirmative action cases present an even more attenuated example of just how much pressure the Justices currently face and how opposing interests must compete to see their views etched into law.

All in all, then, it is clear that groups are just as influenced by the political environment, if not more so, than the Court. They have been forced to adapt their behavior to those changes, adaptations that may have ultimately affected their efficacy, one way or the other, in the judicial arena.

Measuring changes in public opinion and the political environment is a deceivingly simple task. On one hand, given the relative recency of our cases, we can easily obtain public opinion data and other measures of the political environment. On the other hand, it is virtually impossible to detect whether direct connections exist between those data and Court decision making (Marshall, 1989). Further, it is also difficult to discern if and how groups react to changes in the environment. This task, though, is made somewhat less onerous since many group representatives are more than willing to be interviewed. Nevertheless, we believe that use of all existing sources, rather than reliance on any one in particular, will allow us to gauge with some precision the effect of environmental changes on group activity, and ultimately, on judicial resolution of their litigation.

Summary

This paper outlines a research strategy by which to begin an exploration into judicial resolution of group-backed litigation. We argue that such a research program is necessary in light of new challenges to the conventional wisdom about group success in the judicial arena.

In general, our research will address two related questions: why do groups win and why do they lose? We suggest that three sets of factors provide the answers to those questions: changes

in the groups, changes in the Court, and changes in the political environment under which the Court and groups operate. We propose to explore the applicability of those factors to judicial resolution of four "pairs" of cases. This approach, we hope, will enable us to develop a richer understanding of the dynamics of group presence and efficacy in the legal system.

Notes

[1]Two other studies of interest group litigation success recently have been conducted. To assess the influence *amicus curiae* briefs may have on the Court's decision to grant certiorari, Caldeira and Wright (1988) developed a model designed to control for the decisional propensities of the Justices. Stewart and Sheffield (1987) explored the impact of litigation sponsored by civil rights groups on the political activities of blacks in Mississippi. Both studies found that groups "do matter;" yet, neither explored their effect on decisions on the merits.

[2]Depending upon the outcome of the Court's latest foray into abortion, another natural pairing would be *Roe v. Wade* (1973) with this case, *Webster v. Reproductive Health Services*.

[3]With but two exceptions, the ACLU's membership had increased every year between 1920 and 1977.

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Appendix A
Profiles of Case Pairs

1. ***Furman v. Georgia,*** 408 U.S. 238 (1972)
   Gregg v. Georgia, 428 U.S. 153 (1976)
   McCleskey v. Kemp, 107 S.Ct. 1756 (1987)

2. ***National League of Cities v. Usery,*** 426 U.S. 833 (1976)
   Garcia v. San Antonio Metro Transit Authority, 469 U.S. 528 (1985)

3. ***Lynch v. Donnelly,*** 465 U.S. 668 (1984)
   Wallace v. Jaffree, 472 U.S. 38 (1985)

4. ***Fullilove v. Klutznick,*** 448 U.S. 448 (1980)
   City of Richmond v. Croson Co., 109 S.Ct. 706 (1989)

Furman v. Georgia[a]
(408 U.S. 238, 1972)

Legal Question: Do Georgia's procedures for implementing the death penalty violate Constitutional guarantees?

Court's Response: Yes
Majority: Douglas, Brennan Stewart, White, Marshall

Dissent: Burger, Blackmun, Powell, Rehnquist

Attorney for Appellant:
Jack Greenberg (LDF)

Attorney for Appellee:
Dorothy Beasley
(Assistant Attorney General)

***Amicus Curiae* to Reverse:**
1. ACLU
2. NAACP, National Urban League, Southern Christian Leadership Conference, Mexican American LDF, National Council of Negro Women
3. Committee of Psychiatrists for Evaluation of the Death Penalty
4. National Council of Churches of Christ of the U.S.A, American Friends Service Committee, Board of the Ministry of Lutheran Church of America, Church of Brethren General Board, Council for Christian Social Action of the United Church of Christ, Department of Church in Society of the Christian Church, The Presiding Bishop of the Episcopal Church in the U.S., General Board of Christian Social Concerns of the United Methodist Church, Greek Orthodox Archdiocese of North and South America, United Presbyterian Church in the U.S.A., National Catholic Conference for Interracial Justice, National Coalition of American Nuns
5. Synagogue Council (for its 6 constituent members), the American Jewish Congress
6. 4 Individuals
7. Alaska
8. West Virginia Council of Churches, Christian Church in West Virginia, United Methodist Church (W.Va.)

Gregg v. Georgia[b]
(428 U.S. 153, 1976)

Legal Question: Do Georgia's procedures for implementing the death penalty violate Constitutional guarantees?

Court's Response: No
Majority: Powell, Stewart, White, Burger, Rehnquist
Dissent: Brennan, Marshall

Attorney for Appellant:
G. Harrison (court-appointed)

Attorney for Appellee:
G. Thomas Davis
(Assistant Attorney General)

***Amicus Curiae* to Reverse:**[d]
1. NAACP LDF
2. Amnesty International

McCleskey v. Kemp[c]
(107 S.Ct. 1756, 1987)

Legal Question: Do Georgia's procedures for implementing the death penalty violate Constitutional guarantees?

Court's Response: No
Majority: Powell, Rehnquist, O'Connor, White Scalia
Dissent: Brennan, Marshall Stevens, Blackmun

Attorney for Appellant:
Julius Chambers (LDF)

Attorney for Appellee:
Mary Beth Westminster
(Assistant Attorney General)

***Amicus Curiae* to Reverse:**
1. International Human Rights Law Group
2. Congressional Black Caucus
3. 2 Professors
4. Congressional Black Caucus, NAACP, Lawyers' Committee for Civil Rights Under Law

***Amicus Curiae* to Affirm**	***Amicus Curiae* to Affirm**	***Amicus Curiae* to Affirm**
1. Indiana	1. United States	1.Washington Legal Foundation, Allied Educational Foundation
	2. California	2. California, Los Angeles

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[a]Data obtained from Kurland and Casper (1975)

[b]Data obtained from Kurland and Casper (1975)

[c]Data obtained from BNA microfiche briefs, Docket No. 84-681

[d]Some of these briefs were filed jointly in *Gregg* and the four other capital punishment cases of 1976: *Jurek v. Texas, Woodson v. North Carolina, Profitt v. Florida, and Roberts v. Louisiana.* Those filed in one of these, but not in *Gregg*, are not listed.

National League of Cities v. Usery[a]

(426 U.S. 833, 1976)

Legal Question: Does the Commerce Clause empower Congress to enforce minimum wage and other provisions of the FLSA against the states?

Court's Response: No
Majority: Rehnquist, Burger, Stewart, Blackmun, Powell
Dissent: Brennan, White Marshall, Stevens

Attorneys for Appellant:
Charles S. Rhyne
J. Keith Dysart (Council of State Governments)
Attorneys from:
National League of Cities, National Governors Council, 4 cities, 20 states

Attorney for Appellee:
Robert Bork (Solicitor General)

***Amicus Curiae* to Reverse**
1. Virginia, NY, Virginia Municipal League, Virginia Association of Counties
2. Public Service Research Council

***Amicus Curiae* to Affirm**
1. International Conference of Police Associations
2. Florida Police Benevolent Association
3. Alabama, Colorado, Michigan
4. Coalition of American Public Employees (includes 5 unions/associations)
5. Two Senators

Garcia v. San Antonio Metro Transit Authority, et al.[b]
(469 U.S. 528, 1985)

Legal Question: Does the Commerce Clause empower Congress to enforce minimum wage and other provisions of the FLSA against the states?

Court's Response: Yes
Majority: Blackmun, Brennan, White, Marshall, Stevens
Dissent: Powell, Burger, Rehnquist, O'Connor

Attorneys for Appellants:
Lawrence Gold (AFL-CIO)
Rex E. Lee (Solicitor General)

Attorney for Appellee:
William T. Coleman
Robert Batchelder (American Public Transit Association)

***Amicus Curiae* to Reverse**
(none)

***Amicus Curiae* to Affirm**
1. National Institute of Municipal Law Officers
2. Legal Foundation of America
3. California, Connecticut, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, Pennsylvania, South Carolina, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming
4. Colorado Public Employees Retirement Association
5. National Public Employer Labor Relations, 12 of its state affiliates, Eugene, Oregon

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[a]Data obtained from the BNA microfiche briefs, Docket No. 74-878.

[b]Data obtained from the BNA microfiche briefs, Docket No, 82-1913

Lynch v. Donnelly[a]
(465 U.S. 668, 1984)

Legal Question: Does the Religious Establishment Clause prohibit the erection of a state-supported creche?

Court's Response: No
Majority: Rehnquist, Burger, O'Connor, White, Powell
Dissent: Brennan, Blackmun, Marshall, Stevens

Attorneys for Appellant:
William F. McMahon
Spencer W. Vines (City Solicitor)

Attorney for Appellee:
Amato A. DeLuca
Burt Neuborne (ACLU Foundation)

***Amicus Curiae* to Reverse**
1. Coalition for Religious Liberty and the Freedom Council (written by the Rutherford Institute)
2. Legal Foundation of America
3. Washington Legal Foundation
4. United States

***Amicus Curiae* to Affirm**
1. American Jewish Committee and National Council of Churches of Christ
2. Anti-Defamation League of B'nai B'rith and American Jewish Congress

Wallace v. Jaffree[b]
(472 U.S. 38, 1985)

Legal Question: Does the Religious Establishment Clause prohibit a minute of silence in public schools?

Court's Response: Yes
Majority: Blackmun, Brennan, Powell, Marshall, Stevens, O'Connor
Dissent: White, Burger, Rehnquist

Attorneys for Appellants:
John S. Baker, Jr. (Legal Advisor-Governor)

Attorney for Appellee:
Ronald Williams (formerly of Alabama Legal Services)

***Amicus Curiae* to Reverse**
1. Connecticut
2. Christian Legal Society and National Association of Evangelical
3. Legal Foundation of America
4. Center for Judaic Studies at Notre Dame
5. Moral Majority
6. Delaware, Arizona, Indiana, Louisiana, Oklahoma, Virginia
7. Freedom Council (written by Rutherford)
8. United States

***Amicus Curiae* to Affirm**
1. ACLU, Alabama CLU, National Coalition for for Public Education and Religious Liberty (represents 32 organizations)
2. American Jewish Congress and National Jewish Community Relations Advisory Council (represents 12 national organizations and 111 community agencies)
3. Lowell Weicker

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[a]Data obtained from BNA microfiche briefs, Docket No. 82-1256.

[b]Data obtained from BNA microfiche briefs, Docket No. 83-812

Fullilove v. Klutznick[a]
(448 U.S. 448, 1980)

Legal Question: Does a 10 percent federally-enacted set-aside program violate constitutional guarantees?

Court's Response: No
Majority: Marshall, Burger, Brennan, White Powell, Blackmun
Dissent: Stewart, Rehnquist, Stevens

Attorneys for Appellant:
Robert G. Benisch, et al.
General Building Contractors of New York
New York State Building Chapter of Associated General Contractor

Attorney for Appellee:
United States
Robert Abrams (New York Attorney General)
Allen G. Schwartz (New York City Corporate Counsel)

***Amicus Curiae* to Reverse**
1. Equal Employment Advisory Council
2. Anti-Defamation League of B'nai B'rith
3. Pacific Legal Foundation

(*Amicus* to Affirm- see next page)

City of Richmond v. Croson Co.[b]
(109 S.Ct. 706, 1989)

Legal Question: Does a 30 percent city-enacted set-aside program violate constitutional guarantees?

Court's Response: Yes
Majority: Rehnquist, White, Kennedy, Scalia, Stevens, O'Connor
Dissent: Marshall, Brennan, Blackmun

Attorneys for Appellants:
John Payton of Wilmer, Cutler & Pickering
Drew St. James Carneal (City Attorney)

Attorney for Appellee:
Walter H. Ryland

***Amicus Curiae* to Reverse**
1. State and Local Legal Center for: National National League of Cities, U.S. Conference of Mayors, National Association of Counties International City Management Association
2. Michigan
3. San Francisco
4. Maryland Legislature Black Caucus
5. Lawyers Committee for Civil Rights Under Law, Mexican American Legal Defense Fund NAACP, Women's Legal Defense Fund
6. Minority Business Enterprise LDEF, Louisiana Association of Minority and Women Owned Business
7. Maryland
8. NAACP LDF
9. ACLU, VA CLU, CLU of Northern California
10. Alpha Kappa Alpha Sorority, Coalition for Civil Rights, Coalition for Economic Equity Council of Asian-American Business, Golden Gate Section of the Society for Women Engineers, Hispanic Chamber of Commerce, 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, Inter State Parking Company, Jean Pierre and Co., Jefferson and Associates, Naomi

Gray Associated, Gasus Engineering, Selwyn Whitehead Enterprises

***Amicus Curiae* to Affirm**

1. Native American Rights Fund for Minority Contractors Association
2. ACLU, Society of American Law Teachers
3. Asian American LDF
4. Lawyers' Committee for Civil Rights Under Law
5. AKA Sorority
6. Affirmative Action Coordinating Center (A project of National Conference of Black Lawyers, National Lawyers Guild, and Center for Constitutional Rights), Center for Urban Law, and a member of Congress
7. American Savings and Loan, National Association of Black Manufacturers
8. LDF, National Urban League, National Bar Association
9. NAACP, United Auto Workers
10. Mexican American LDF for: Mexican American/ Hispanic Contractors and Trucking Association, LULAC, American GI Forum, Mexican American Government Employees

***Amicus Curiae* to Affirm**

1. United States
2. Pacific Legal Foundation
3. Equal Employment Advisory Council
4. Washington Legal Foundation and Lincoln Institute for Research and Education
5. Mountain States Legal Foundation
6. Southeastern Legal Foundation
7. Anti-Defamation League of B'nai B'rith
8. Associated Specialty Contractors

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[a]Data obtained from BNA microfiche briefs, Docket No. 78-1007.

[b]Data obtained from BNA microfiche briefs, Docket No. 87-998.