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DEBUNKING THE MYTH OF INTEREST GROUP INVINCIBILITY IN THE COURTS

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Research on interest group litigation has provoked a reevaluation of the conventional wisdom about the study of pressure group activity and judicial politics. Nevertheless, the notion that interest groups are intrepid litigators that rarely lose to nongroup adversaries persists unchallenged and unscathed. We seek to determine if groups are, in fact, as invincible as the literature suggests. Several findings emerge that may undermine conventional wisdom about the relative efficacy of group-sponsored litigation. Most important is that groups are no more likely than nongroups to win, at least in U.S. District Courts. Based on this and other results, we draw a number of conclusions about interest group litigation and the direction into which future study might head.

The 1980s witnessed a marked rejuvenation in the study of interest group politics (e.g., Berry 1989; Cigler and Loomis 1986; Salisbury, Heinz, Lauman, and Nelson 1987; Scholzman and Tierney 1986). This new wave of research enriched our understanding of many facets of organizational activity and, concomitantly, of the governmental process. Surely, though, among its most important contributions was expanding the scope of the field to include group involvement in the judiciary. Indeed, the study of interest group litigation has become a fixture on the scholarly agendas of those working in the subfields of pressure group activity and judicial politics.

Some of the more influential work has caused us to reevaluate conventional wisdom in light of fundamental changes in the relationship between legal and democratic subcultures. In the past we were informed that groups rarely, if ever, used the judiciary to achieve their policy objectives (Hakman 1969); we now know that the majority of Supreme Court cases attract the attention of a multitude of pressure groups. Likewise, we have learned that the model of interest group litigation conventionally associated with liberal causes (see Vose 1959), has been adopted and refined by contemporary conservative groups (Epstein 1985). So too, we once thought interest groups participated only in cases decided on the merits; but it is true that they also act as agenda setters, filing *amicus curiae* briefs on *certiorari* (Caldeira and Wright 1988).

This systematic contravention of conventional wisdom is, however, marked by a notable exception. The notion that interest groups are intrepid litigators that rarely lose to nongroup adversaries persists unchallenged and unscathed.[1] That such is the case is hardly surprising: in general those studying group litigation have had difficulty developing viable analytic schema capable of separating the

influence of groups from all other known determinants of judicial decisions. As a result, the assumption that groups are invincible players has become an axiomatic component of our understanding of the litigation game.

Given growing interest in group use of the courts to achieve policy goals (for a recent review, see Caldeira and Wright 1988) and a large body of existing, albeit impressionistic, literature suggesting that groups are highly successful players in the litigation game, this void looms large. It is, thus, our purpose to reexamine conventional wisdom about group influence on decisions of the judiciary, specifically on those of U.S. District Courts.

The Literature on the Success of Group Litigators

Conceptualizing and Measuring Success

Any contemplation of the success of litigants in court, from both conceptual and operational standpoints, is bound to be complex. This is true for a number of reasons, the most important of which is that the society of interest group litigators has changed markedly over the past several decades. In the days when Vose (1959) published *Caucasians Only*, many pluralists conceptualized and measured "success" as did he: the ability of groups to see their policy goals etched into law. This was, undoubtedly, adequate and accurate: the few groups that litigated prior to the 1960s generally went to court to win (see Vose 1972). However, as the environment surrounding the federal judiciary has changed, with increasing numbers of groups entering the fray, the motivations for litigation have broadened. Most groups ultimately are concerned with *winning* their cases; yet, they also use the judiciary to achieve other, perhaps subtler, ends, such as gaining publicity for their causes and maintaining their memberships (see Gates and McIntosh 1989).

This alteration has important implications for those studying the success of interest group litigators. Indeed, scholars are now recognizing that the increasing diversity among group goals requires greater sensitivity in their analyses; in particular, that any examination of the "success" of groups in legal forums must carefully articulate the relationship between the research question asked and the underlying measures used to address it. By way of illustration, consider Caldeira and Wright's (1988) research in which they sought to elucidate the role of interest groups in the Supreme Court's agenda-setting process. Because of their particular focus, they contemplated "success" as the ability of interest groups to influence the Court's formulation of its plenary docket through the filing of amicus curiae briefs. In other words, their research focus dictated their measure. To have used another focus, say the effect of groups on case outcomes, would have been to beg the question.

Other examples of the relationship between our research foci and our measures of success abound. For those interested in issues involving the use of courts by politically disadvantaged groups (e.g., Cortner 1968), success might be best conceptualized as the ability of such to gain access to judicial forums (Orren 1976). For Epstein (1985), who studied groups that marched into legal arenas because they viewed them as hostile to their interests, success became a question of whether they provided a counterbalance to competing claims, whether they could "cut their losses." Still others, focusing on how groups use litigation to garner publicity for their causes (O'Connor 1980) or for maintenance (Kobylka 1987), might define success as their ability to foist issues on to the national agenda, to maintain or attract members. By the same token, many scholars (e.g., Vose 1959)

have asked whether groups can and do achieve their policy objectives in court. In explicating their responses, these analysts are usually more attuned to court outcomes over the long haul, than in the amount of publicity, and so forth, that groups generate along the way. Finally, for Scheingold (1974) and others who have explored whether legal "wins" necessarily translate into policy victories, those factors explaining litigation outcomes are far less relevant than are issues of compliance and implementation.

This intimate relationship—between the different research questions we ask and the underlying measures we use to answer them—speaks to two interrelated dimensions of our work on interest groups. For one, that we have such an array of options available to us reveals a great deal about the complexity of pluralism in today's legal environment. Groups resort to litigation with myriad objectives in mind: for some, the simple act of gaining publicity for a cause might be sufficient; for others, nothing short of seeing their objectives translated into legal doctrine will suffice. Second, and relatedly, as group use of the courts becomes increasingly complex, we need to be more pointedly conscious of and sensitive to the relationship between the conceptualizations and measures of success we use and the sorts of issues over which we are puzzling.

Our Research Focus: The Invincibility of Interest Group Litigators

It is with this in mind that we take particular care to explicate our research focus and concomitant measure of success. As our introduction reveals, we are interested in a facet, albeit an important one, of the conventional wisdom about interest groups: that they are intrepid litigators that are more successful in achieving their legal goals than their nongroup adversaries.

Our interest in this particular dimension of success emanates from a rather simple concern: this piece of conventional wisdom is among the most deeply entrenched in the literature. Perusal of mainstay works in this area (e.g., Cortner 1968; Greenberg 1977; Vose 1959) easily leads to the conclusion that groups are, virtually, invincible. Later, we shall review some of the justifications for this "wisdom," as well as some of its potential flaws. Suffice it for now, this proposition has yet to be systematically assessed, but has emerged from rich and thick description of specific cases (e.g., Kluger 1976; Manwaring 1962), series of cases (e.g., Sorauf 1976), or types of groups (e.g., O'Connor 1980; Lawrence 1990).

Because our objective is to closely examine the assumption that groups are invincible players in the litigation game, how can we best measure the concept of legal success? In our opinion, a satisfactory approach is to explore actual case outcomes in federal district courts, asking who won and who lost the legal dispute. We recognize that both dimensions of this measure may be troubling. Winning a case may be tangential (perhaps even irrelevant) to the objectives of some groups. Further, the conventional wisdom concentrates on the long-term success of groups in convincing the Supreme Court to adopt certain doctrinal innovations, rather than on their ability to influence lower courts to rule in favor of the specific litigants they are representing.[2] If this is so, the implication of the literature—that groups are unusually successful litigants—may not aptly describe their ability to prevail in one dispute in a federal district court.

Yet, we are convinced that our measure is best suited to address the question we ask. The research forming the assumption of invincibility may be based on things other than federal district court outcomes; yet, *it monotonically informs most of our knowledge about group success before the*

courts. As a result, actual case outcomes provide an appropriate vehicle by which to examine its virtually unqualified assessment of interest group success in legal forums. At a minimum, testing the literature against lower court outcomes will tell us something about the breadth of group effectiveness in the federal judiciary. It also may suggest that this received wisdom needs to be tempered in light of the legal reality it purports to describe.

Why are Groups Better?: A Look at the Conventional Wisdom

Though the literature on group success in court is rather stark in its conclusion that groups outperform their nonorganized counterparts, it does provide us with some reasonable justifications for that view. Most of these explanations, though, revolve around two premises: groups and private litigants have different objectives and follow different tactics in pursuit of them (see, generally, Casper 1972).

That private counsel and groups possess varying goal structures is undoubtedly true. Simply, private counsel are client oriented; their goal is an immediate court victory. Group attorneys, by contrast, are policy oriented, aiming to create national legal precedent consistent with their objectives. Such motivation often leads groups to prioritize requests for legal assistance—to select for litigation those that maximize their probability of victory. It is only logical to assume, then, that groups will be more successful; after all, as Kobylka (1987) observed, attorneys looking for winners are bound to find them.

The advantages inherent in the unique goal structures of groups are even more attenuated by the tactics they use to achieve them, tactics that may be unfeasible for, or even irrelevant to, the efforts of private counsel. For example, groups appear to be much more attuned to the importance of coalition building than are most private counsel. They often request like-minded interests and/or the U.S. Solicitor General's office to file reinforcing amicus curiae briefs. The former may help the Court to see the greater policy implications of a case (see Barker 1967); the latter is the quintessential "repeat player," the most successful litigator in the federal system (see Krislov 1963; Puro 1971; Segal 1984). Moreover, conventional wisdom suggests that interest groups attempt to sustain their use of the courts over as long a period as possible (O'Connor 1980). This persistence, which makes groups "repeat players," is said to give them significant advantages over private litigants, many of whom are "one shotters" (Galanter 1974). Finally, organizations seem more sensitive than private litigants to the importance of priming the Court even before they enter its corridors: they often inundate law reviews with articles "presenting constitutional justification for their cause," which they later cite in legal briefs (Newland 1959); and they make use of social scientific evidence (see Vose 1958; Lempert and Sanders 1986).

The avalanche of success stories and the strategic advantages thought to account for these successes combine to reinforce notions of group invincibility. Yet, a closer examination of this evidence raises some serious concerns about its validity, concerns that others have raised and with which we share. Most important is that assumptions about interest group success seem to run counter to the conclusions from other studies of judicial behavior. Particularly disconcerting is substantial evidence that the values and attitudes of trial and appellate judges help shape their judicial judgments (Carp and Rowland 1983; Spaeth 1979). If we assume these factors explain court behavior, then to what extent can the presence or absence of groups further influence outcomes?

Second, we have developed our assumptions about group success from case

studies of highly visible litigators (i.e., national organizations) involved in important (i.e., constitutional) legal (i.e., Supreme Court) battles. Indeed, organizations possessing substantial resources and commitment to shaping public policy through constitutional adjudication (e.g., ACLU, NAACP LDF) are interesting to scholars precisely because of their highly visible, highly successful attempts to shape policy. But, do studies of NAACP LDF-type groups allow us to generalize about the success of those lesser-known, or those litigating nonconstitutional issues in other judicial arenas?[3]

Finally, with few exceptions (see Olson 1984), the conventional wisdom has been developed around one side of the litigation equation—the group—without considering the adversaries of their legal efforts. An implicit assumption exists within the literature that groups will outmaneuver their opponents. But, as we know, interest groups sometimes find themselves in adversarial relationships with other litigants who have long-term policy goals, substantial resources, and so forth (e.g., Rubin 1987). When interest groups face these participants in court, their advantages at any level of the judiciary may be vitiated. Or, at the very least, it would be almost nonsensical to claim that the status accrued to interest groups would be any greater than that of others, especially the federal government, which possesses significant resources, expertise, and credibility. If organized interests oppose (or are opposed by) the U.S. government, can we really believe that it is the group that will have the legal advantage?

Thus we are left with serious questions about an important piece of conventional wisdom. Are interest group litigators more successful than others? Are they as invincible as some of the literature would lead us to believe?

In the research reported below, we address these questions by comparing the success of group and nongroup litigants in the arenas where most federal disputes are ultimately resolved, the U.S. District Courts. In attempting to do so, we are, of course, cognizant of those risks to which we alluded earlier. And, our discussion of the literature certainly raises another: that the conventional wisdom may rest, at least from a conceptual standpoint, on a rather shaky foundation. Still, we enter our research endeavor with the expectation that groups will be more victorious than other litigants. The balance of the literature, though perhaps overemphasized and even caricatured, suggests that we should not anticipate otherwise.

Analyzing Group Influence on Judicial Decisions: A Research Strategy

Answering the questions we pose requires us to develop a research strategy by which to compare the relative success of groups and nongroups. Yet, exploring the relationship between pressure group politics and ultimate policy outcomes in any political forum is a difficult and complex task. We must consider that all politicos—be they judges, members of Congress, or bureaucrats—have unique cognitive systems that influence the way they frame and evaluate disputes. In short, to accurately assess the impact groups may have on decision making, we must control for the schematic predilections of individual judges. Yet, we cannot sacrifice external validity by subjecting surrogate judges to manipulated stimuli in a laboratory setting. Nor is it reasonable to compare the responses of multiple judges to the same case stimuli in a natural trial setting.

To minimize these inherent problems, we borrow an approach used by psychologists wrestling with the perennial nature–nurture debate. What they did was to invoke a design called "precision matching" (see Babbie 1986; Yinger, et al.

1977) through which they compared the behavior of identical twins separated at birth. Although this level of precision reduced the subject pool, the matching of genetically identical subjects enabled them to attribute behavioral differences to "nurture," not "nature," in a way that would be impossible through more conventional, randomized designs.

Adapting their usage to our inquiry, we can "pair" or "match" cases presenting analogous facts and law to the same judge during the same year. Indeed, the pairs could be comparable in all but one respect: one would be sponsored by an interest group; the other, brought by private counsel. Such a strategy would allow us to control for relevant differences among cases and judges (i.e., stimuli and responses) and thus, we could focus specifically on the potential effect of groups.

To implement this plan, we followed a multistaged data collection strategy. First, we selected several areas of the law on which to focus: employment discrimination, the environment, religion, and the death penalty. These represent issues identified by researchers as containing participation by a range of litigants: private counsel, governments, and interest groups. We then identified all published cases (involving those issues) decided by federal district court judges between 1968 and 1980.[4] Next, we sorted cases of the same general legal area (e.g., religion) by particular issue (e.g., establishment, free exercise), by year, and then by judge. This procedure resulted in an initial list of "pairs"—cases of analogous stimuli—decided by the same judge, the same year.

Then, to determine whether each of our pairs actually contained one group case and one nongroup case, we wrote to all participating attorneys—a necessary step since the *Federal Supplement* rarely lists the affiliation of participating attorneys.[5] In the end we were left with 40 acceptable cases (20 pairs), distributed across four case categories and equally divided between group and nongroup litigants.

To measure the dependent variable, *success,* we determined from the published opinion whether the group or the private counsel prevailed. We then compared the ultimate resolution of group and nongroup cases.

The Appendix details this information for the 40 cases. Before turning to our results, though, we should address an obvious concern about our data: the small number of cases.[6] In doing so, we must be mindful of two considerations. The first is that we began with the universe of published district court cases decided between 1968 and 1980, involving one of the four specified issue areas. This initial pool consisted of thousands of cases from which we selected those meeting a highly specified set of criteria. Only through such an approach could we keep the design pure, free from undue influences. Second, the sort of experimental design we are generally adopting, "precision matching,"[7] is an approach frequently used in other social sciences where analysts are more tolerant of small *ns*. It is nevertheless true that this design results in a more-than-typical reduction in cases (see Nachmias and Nachmias 1987). This deficit, though, has not discouraged its usage; other researchers believe, as we do, that the benefits of the approach (i.e., an increase in comparability) more than compensates for the reduction in cases.

Results

Table 1 explores the conventional wisdom that groups, generally speaking, should prevail in court. As we can see, however, that view remains unsupported by our pairs. Looking first at the aggregated success scores we see that of the 40 cases (20 pairs) groups and nongroups succeed at virtually equal rates. A sign test confirms this observation in a more precise way. This procedure considers

Table 1. The Success of Group and Nongroup Litigants in U.S. District Courts

Litigant	Case Outcome			
	Percent Won	Number of Cases	Percent Lost	Number of Cases
All Groups	40	8	60	12
Nongroups	45	9	55	11

each pair in turn to determine whether significant differences exist on a pair-by-pair basis. Within our dataset, nongroups "beat" groups in 5 of the pairs; groups prevailed in 4; and, they tied (either both winning or losing) in the remaining 11.

Before we dismiss the view of groups as invincible litigators, we should consider another possibility: that the group and nongroup plaintiffs had some effect on each other's ability to win. It could be, for example, that the nongroup dispute may have had a negative impact on the group case with which it was paired. That is, for those pairs containing cases lost by both types of plaintiffs, did the judge decide the nongroup's first? If so, then the group may have been disadvantaged by the precedent set in the nongroup case. The data, though, fail to bear this out: of those seven pairs (in which groups and nongroups lost), the court decided three group cases before the nongroup's and four nongroup's before the group's (see Appendix).[8]

Since the data do not support the conventional wisdom about organizational use of the courts (i.e., the expected advantages of groups *qua* groups, at least in U.S. District Courts, failed to materialize), let us consider a number of factors that might be masking a presumed group effect. It may be true, for example, that "group" is not a monolithic concept, that the interest group litigation model applies only to certain kinds of litigators. This is a reasonable assumption since the literature's portrayal of organizations as dominant players is based primarily, though not fully, on the successful litigation activities of NAACP LDF-type groups.

As displayed in Table 2, we explored this proposition by trichotomizing our litigants into these categories: "national" (e.g., NAACP LDF, ACLU), "local, ad hoc" (self-described community groups generally created for the purpose of bringing one particular suit), and nongroups. At an aggregated level, it again appears that our results controvert conventional wisdom: national litigators do not have a significantly higher success rate than nongroups. They won about 50% of their 17 cases; private litigants also had a success rate of 50%. A pair-by-pair analysis confirms this: national groups and private litigants prevailed over each other in about four cases and tied in the remaining ten.[9]

It also might be that national organiza-

Table 2. A Comparison of Litigants' Success in U.S. District Courts

Litigant	Case Outcome			
	Percent Won	Number of Cases	Percent Lost	Number of Cases
National Group	47	8	53	9
Local/Ad Hoc Group	0	0	100	3
Nongroup	45	9	55	11

Table 3. A Comparison of Litigants' Success in U.S. District Courts by Case Type

	Case Type			
	Nonconstitutional		Constitutional	
Litigant	Percent Success	Number of Cases	Percent Success	Number of Cases
National Group	36	11	67	6
Local/Ad Hoc	0	3	—	—
Nongroup	50	14	33	6

tions would perform better in cases involving constitutional issues as opposed to those of statutory and administrative law. This possibility is buttressed by the fact that most studies on which we base our knowledge of group litigation tend to focus on the success of groups litigating constitutional cases, using such as their primary, albeit not only, vehicle for social change.

The data displayed in Table 3, in which we divided the cases into constitutional and nonconstitutional suits, provide some support for this. On the whole national groups won two-thirds of their constitutional cases; nongroups won only one-third. In head-to-head competition, groups beat nongroups twice, never losing to them. Conversely, in nonconstitutional litigation, private counsel triumphed over groups three times.

In short, of the five total cases in which groups lost to nongroups (see Table 1), three involved national groups litigating nonconstitutional issues and two were losses yielded by local groups. In other words, national organizations involved in constitutional cases explain more than one-half of all group victories over nongroups.

Finally, let us consider the courtroom opponents of the group and nongroup litigants. As we previously mentioned, it may be reasonable to suspect that suits in which organizations face the federal government, in particular, bring down their overall success rate. The data depicted in Table 4 provide some support for this expectation. As we can see, all organizations—local and national—perform poorly when pitted against the federal government. They won only one (14%) of the seven suits in which the federal government opposed their efforts. Conversely, private litigants won three of their six cases (50%).

Again, though, if we return to a matching approach, a slightly different picture emerges. In head-to-head competition, organizations and nongroup litigants fared about the same. Of those pairs in which national and nongroups both faced

Table 4. Success of Litigants by Opposition in U.S. District Courts

	Adversary					
	U.S. Government		State/Local		All Others	
Litigant	Percent Success	Number of Cases	Percent Success	Number of Cases	Percent Success	Number of Cases
National Group	20	5	80	5	43	7
Local/Ad Hoc	0	2	0	1	—	—
Nongroup	50	6	20	5	55	9

the federal government, private litigants beat their organized counterparts in one case and tied three times. Despite appearances, then, nongroups fared no better against the federal government than did groups.

As we can also observe, however, this does not necessarily mean that groups performed better against all other parties. In fact, if we exclude state/local governments from the data (see Table 4), national organizations were no more successful against other litigants than they were against the United States; it was simply their suits against state/local governments that raised their overall score. That is, they won four of the five cases in which they opposed subnational governments compared with but one in five against the federal government and three of seven against other litigants. The matching approach confirms this finding: national groups outperformed nongroups when they faced subnational opponents, winning three, losing none, and tying once.

What, then, can we conclude about the relationship between litigants and their adversaries? Overall, both litigant categories—groups and nongroups—perform about the same against the federal government. Seen in this light, federal opposition gives neither a distinct advantage nor disadvantage over the other. When it comes to subnational opponents, however, national groups do seem to have an edge: both the aggregate scores and the pairing approach indicate that they overmatched such opponents.[10]

Discussion

We systematically explored conventional wisdom concerning the efficacy of groups in court. Using an experimental design in which we paired cases sponsored by groups with those brought by other litigants, we attempted to assess the literature's portrayal of groups as premiere players in the legal game.

Several findings emerge, most of which challenge conventional wisdom about the relative efficacy of group-sponsored litigation. First, differences in success between and among our pairs are negligible: groups are no more likely than nongroups to win in U.S. District Courts. To that extent, the literature's monolithic characterization of groups as "winners" is inaccurate. And, though some distinctions do emerge when we begin to control for the other factors of group type, issue, and opposition, they are less than compelling.

Perhaps the most significant finding of this research was that so many of our pairs resulted in ties. Indeed, but for constitutional cases, more of our matches produced the same outcomes (either both won or lost) than a clear win for any litigant category. In our view, the sheer number of tied outcomes reinforces conventional wisdom about the nature of individual judicial decision making. Faced with similar case stimuli during the same year, district court judges are most likely to rule in the same direction. Given previous studies (e.g., Carp and Rowland 1983), indicating the importance of values and attitudes in shaping judicial outcomes, this is hardly a surprising finding, but it does call into question the ability of groups to affect legal outcomes. In all probability, judges simply will follow their predilection, ideological or otherwise, and place little emphasis on the characteristics of counsel bringing suit.

Naturally, our study has limitations; in particular, because we focused exclusively on U.S. trial courts, we cannot generalize about group efficacy in other judicial arenas.[11] Nor can we specify precisely the causes and correlates of group-nongroup success or the lack thereof.

We can, however, reach some tentative conclusions about the overall study of litigation and the direction into which further research might move. Most impor-

tant is this: for years, analysts have focused exclusively on successful litigation campaigns, a focus that is rather troublesome because it inevitably leads to the conclusion that groups are, in fact, successful. That this research found otherwise confirms flaws inherent in that approach, and thus leads us to suggest that we must begin to explore litigation losses. Doing so, at all levels of the judiciary, will not only help us disentangle the effects of litigants from all others, it also will inevitably provide us with a richer understanding of the dynamics of judicial decision making.

Appendix: Profiles of Paired Cases

Citation	Issue	Plaintiff	Defendant	District Ct. Outcome
413 F.Supp. 142	Nonconstitutional	National Group	Nongovernmental	Lost
407 F.Supp. 745	Nonconstitutional	Nongroup	Nongovernmental	Lost
441 F.Supp. 881	Nonconstitutional	National Group	Nongovernmental	Lost
436 F.Supp. 1273	Nonconstitutional	Nongroup	State/Local	Lost
441 F.Supp. 846	Nonconstitutional	National Group	Nongovernmental	Won
435 F.Supp. 310	Nonconstitutional	Nongroup	Nongovernmental	Won
430 F.Supp. 227	Nonconstitutional	National Group	Nongovernmental	Lost
428 F.Supp. 156	Nonconstitutional	Nongroup	Nongovernmental	Won
80 F.R.D. 109	Nonconstitutional	National Group	Nongovernmental	Lost
464 F.Supp. 1005	Nonconstitutional	Nongroup	Nongovernmental	Lost
468 F.Supp. 1302	Nonconstitutional	National Group	Federal	Lost
476 F.Supp. 1048	Nonconstitutional	Nongroup	Nongovernmental	Lost
407 F.Supp. 218	Nonconstitutional	National Group	Nongovernmental	Won
421 F.Supp. 519	Nonconstitutional	Nongroup	Nongovernmental	Won
421 F.Supp. 594	Nonconstitutional	National Group	State/Local	Won
422 F.Supp. 61	Nonconstitutional	Nongroup	State/Local	Lost
293 F.Supp. 587	Nonconstitutional	National Group	Nongovernmental	Won
293 F.Supp. 574	Nonconstitutional	Nongroup	Nongovernmental	Lost
509 F.Supp. 1216	Nonconstitutional	National Group	State/Local	Lost
526 F.Supp. 272	Nonconstitutional	Nongroup	Nongovernmental	Won
479 F.Supp. 815	Nonconstitutional	Local Group	Federal	Lost
473 F.Supp. 310	Nonconstitutional	Nongroup	Federal	Won
497 F.Supp. 504	Nonconstitutional	Local Group	Federal	Lost
497 F.Supp. 1377	Nonconstitutional	Nongroup	Federal	Lost
433 F.Supp. 906	Nonconstitutional	Local Group	State/Local	Lost
471 F.Supp. 488	Nonconstitutional	Nongroup	Nongovernmental	Won
481 F.Supp. 397	Nonconstitutional	National Group	Federal	Lost
481 F.Supp. 195	Nonconstitutional	Nongroup	Federal	Won
525 F.Supp. 1150	Constitutional	National Group	State/Local	Won
525 F.Supp. 1045	Constitutional	Nongroup	State/Local	Won
425 F.Supp. 176	Constitutional	National Group	State/Local	Won
441 F.Supp. 312	Constitutional	Nongroup	State/Local	Lost
526 F.Supp. 1271	Constitutional	National Group	Federal	Lost
511 F.Supp. 166	Constitutional	Nongroup	Federal	Lost

APPENDIX (continued)

Citation	Issue	Plaintiff	Defendant	District Ct. Outcome
317 F.Supp. 863	Constitutional	National Group	Federal	Won
318 F.Supp. 1401	Constitutional	Nongroup	Federal	Won
302 F.Supp. 1296	Constitutional	Federal	National Group	Lost
302 F.Supp. 584	Constitutional	Federal	Nongroup	Lost
506 F.Supp. 274	Constitutional	National Group	State/Local	Won
487 F.Supp. 554	Constitutional	Nongroup	State/Local	Lost

Notes

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1. There have been virtually no attempts to systematically assess the proposition that groups are better players in the litigation game, that is, that they win at greater rates than their nonorganized counterparts. Two excellent studies, however, have examined the efficacy of organizations at other stages in the judicial process. To explore the influence amicus curiae briefs might have on the Court's decision to grant certiorari, Caldeira and Wright (1988) developed a model designed to control for Justices' decisional propensities. Stewart and Sheffield (1987, 780) considered assumptions of group litigation "by examining the impact of litigation by civil rights groups and other concurrent civil rights activity upon the political mobilization of black citizens of Mississippi. . . ." Although both studies find that groups "do matter," neither explored their effect on decisions on the merits.

2. In fact, it may be that groups fully expect to lose in lower courts; and, they enter litigation anticipating they will appeal lower court losses up through the federal ladder.

3. We should also note that recent research has elucidated deficits in the litigation of those "visible" litigators on which much of the conventional wisdom rests. Both Tushnet's (1987) and Wasby's (1984) examinations of the NAACP and NAACP LDF speak to the problematic nature of group litigation. In doing so, they call into question, among other things, conventional conceptualizations of group strategies and success in judicial arenas. For an interesting review of this sort of work, see Wasby, 1988, 155–56.

4. We obtained these cases through *WESTLAW*, a legal information retrieval system containing all opinions published in the *Federal Supplement*.

5. Since we knew we would be dealing, in the end, with a limited number of pairs, we "forced" the response rate to 100%. We did so by sending two more letters to those who initially did not respond, followed by phone calls.

6. We emphasize this point because such designs are quite rare in political science (see Walker and Barrow 1985), and, as a result, the small number of cases might trouble some readers. Beyond what we have already emphasized, it is interesting to note, parenthetically, that this technique has been adopted by Bill James (1987) to estimate the success of major league baseball players. After a player's rookie season, James matches the player's statistics with those of a veteran whose first-year statistics most closely resemble those of the rookie. He then projects for the rookie a career similar to that of the veteran.

7. "Precision matching" is a term used by other social scientists to generally describe the sort of research scheme we are invoking. In the remainder of this note, however, we will refer to it as a "matching" approach, in recognition of the fact that the word "precision" implies something more than what we did. That is, even two cases heard by the same judge, the same year, can vary *significantly* in case stimuli, even if the subject matter is matched more finely.

In a somewhat different but related vein, we acknowledge that our scheme does not explicitly control for an important construct within the literature: that groups look for and attempt to select "winning" cases. Yet, by pairing cases as closely as we could, our approach assumes that interest groups selected the case more apt to evoke a favorable decision. This should bias our results in favor of the group plaintiffs, but in a manner suggested by previous research.

8. Another possibility is that the group dispute may have had a positive impact on the nongroup

case with which it was paired. It could be that the group "primed" the court, flooding it with legal arguments and so forth, that affected the judge's decision in both its case and the nongroup's. Thus, for those pairs in which the judge decided the group case first (and favorably) the nongroup may have benefited from the precedent. If this holds, then we should find that the group case preceded the nongroup one for those pairings won by both types of litigants. This situation (groups and nongroups both winning) arose only four times; but, even so, it was not borne out for two of the four pairs (see Appendix).

9. Another interesting finding depicted in Table 2 is the lack of success of local groups: they failed to win any cases included in our dataset. Yet, for these groups the aggregated data do mask the fact that their nongroup counterparts hardly fared better. Private litigants beat local groups in two cases; both lost the remaining one.

10. This finding corresponds to studies on the Supreme Court (e.g., Epstein and O'Connor 1988) indicating that state governments do not perform as well as their federal counterpart. In recognition of this perceived problem, "lawyers for state and local governments [established] a State and Local Legal Center to assist" attorneys representing subnational governments with their litigation (Wasby 1988, 148). For more on this Center, see Baker and Asperger 1982.

11. Along these same lines, we did not examine the fate of the cases on appeal. To do so would have risked losing the overall design of our research, which hinges on the matching of disputes decided by the same judge, the same year. That is, to retain the integrity of the approach for appellate court litigation, the identical panel would have had to decide both cases contained in the pairs.

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