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Exploring the Participation of Organized Interests in State Court Litigation

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For nearly five decades, scholars have explored interest group involvement in courts, with their insights providing substantive and, eventually, theoretical breakthroughs. While the early pluralists noted instances of groups litigation in both federal and state courts, virtually all modern-day scholars have focused their attention on federal arenas. This emphasis is hardly surprising: we do not know whether or not interest groups participate in state court litigation in numbers sufficient to warrant investigation. In an effort to fill this gap, I address two interrelated questions about litigation in state courts: has interest group use of state judicial systems increased over the past four decades and has the scope of litigation activity expanded to incorporate a wider range of interests? An examination of litigation activity in sixteen state supreme courts generally answers these questions affirmatively. It indicates a heightened presence of organized interests; it also shows that a wider range of groups now participate. Even so, growth occurred unevenly; some states evinced precisely the kind of patterns I anticipated, while others were far more erratic.

For nearly five decades, scholars have explored interest group involvement in courts, with their insights providing substantive and, eventually, theoretical breakthroughs (e.g., Barker 1967; Caldeira and Wright 1988; Lawrence 1990; Sorauf 1976; Vose 1959). While the early pluralists (e.g., Truman 1951; Vose 1959) noted instances of group litigation in both federal and state courts, virtually all modern-day scholars have focused their attention on activity in federal arenas. This emphasis is hardly surprising: the majority of studies on legal processes, broadly defined, also evince a bias towards federal judiciaries,

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with the U.S. Supreme Court of paramount interest.¹ What is more, the stress on federal courts may be justifiable: it is unclear if the examples invoked by Vose and the others were simply anomalies or representative of more general patterns. In other words, we do not know whether or not interest groups participate in state court litigation in numbers sufficient to warrant investigation.

In an effort to fill this rather large gap, I address two interrelated questions about litigation in state courts: has interest group use of state judicial systems increased over the past four decades, and has the scope of litigation activity expanded to incorporate a wider range of interests? The observations of legal specialists and interest group theorists lead me to posit affirmative answers to both questions. In the first section of the article, I summarize those observations and expectations; in the second and third parts, I develop and animate a research strategy for testing them against case data from sixteen representative state courts of last resort.

In the main, the findings confirm scholarly observations. The results indicate the growing presence of organized interests in state supreme courts; they also show that a wider range of groups now participate. Even so, growth occurred unevenly: some states evinced precisely the kind of patterns I anticipated, while others were far more erratic. The final section of the article discusses these findings and offers some suggestions for future research.

EXPECTATIONS ABOUT THE PARTICIPATION OF ORGANIZED INTERESTS IN STATE COURTS

This article seeks to address two questions centering on the growth and expansion of organized activity in state courts. Starting with the growth in participation, we have several reasons to suspect that interest group use of state judicial systems has increased over the past four decades. One is the heightened conservatism of the federal bench. Between 1968 and 1992, the United States elected only one Democratic president, Jimmy Carter. While President Carter had the opportunity to appoint 258 individuals to the lower federal courts, the federal district and appellate courts (not to mention the Supreme Court) are now more heavily loaded with Nixon, Reagan, and Bush appointees (Goldman 1993). Given that appointments by Republican presi-

¹ There have been some studies of *amicus curiae* in the states but they are dated (e.g., Glick 1971), overly legalistic (e.g., Angell 1967; Covey 1959; Northwestern 1960; Piper 1967; Wiggins 1976), or not particularly on point (e.g., Songer and Kuersten [1992] have written an intriguing paper exploring the *impact* of *amicus curiae* briefs in several state supreme courts). One exception is Kuersten and Songer's (1992) essay in which they report the preliminary results of research exploring various dimensions of *amicus* participation in three southern supreme courts.

dents (especially Reagan and Bush) have driven the federal bench further to the right (Alumbaugh and Rowland 1990), it is hardly surprising to hear interest groups, particularly those seeking to expand rights and liberties (e.g., the ACLU), talking of resort to the state courts.

A second reason is the growing importance of state courts as policymakers. Several factors account for this,² the most important of which is the emergence of “new judicial federalism,” or a “renewed willingness of state courts to rely on their own law, especially state constitutional law, in order to decide questions involving individual rights” (Abrahamson and Gutman 1987: 90). A voluminous literature now exists on new judicial federalism, but its origins lie with Burger Court decisions of the late 1970s, which were “directly and indirectly” responsible for it. The Court “*directly encouraged*” renewed use of state courts by “limiting access to federal forums. . . .” As Tarr and Porter (1982: 919) write, “[i]n a series of cases the Court revitalized the ‘equitable abstention’ doctrine as a barrier to removal from state to federal courts, discouraged federal injunctive relief against the enforcement of state law, instituted limits on federal *habeas corpus* relief, and imposed stricter limitations for raising claims in federal courts.” The Burger Court also “*indirectly encouraged* states to base their decisions on their own constitutions by conservative interpretation of the federal constitution.” By refusing to review decisions that were clearly based on independent state grounds (see Abrahamson and Gutman 1987), it indicated that “state courts can insulate more protective civil liberties rulings . . . by basing them on state constitutional guarantees” (Tarr and Porter 1982: 922). Accordingly, new judicial federalism presents another compelling reason for interest groups to consider state court litigation.³

² Another factor is that state supreme courts are now “the final decision makers on most issues of commercial, property, family, inheritance, tort and criminal law, as well as state constitutional issues and local governmental powers and procedural issues” (Meeker 1986). As Glick (1991: 87) points out, a “paltry two percent of state decisions ever get appealed to the U.S. Supreme Court.” Yet another reason is more structural in nature: through the creation of intermediate appellate courts, many states have provided increased opportunities for their highest courts to exercise policymaking functions. These courts act as “screening” devices, thereby giving those above them more discretion over their dockets. Presumably, courts in such states will spend less time and resources on “trivial” disputes and more on those with significant policy implications (Atkins and Glick 1976; Fino 1987).

³ One implication of this discussion is that state supreme courts are now more attractive forums for liberal interests, in particular. Yet, it is not clear that the U.S. Supreme Court overturns liberal state courts decisions more than conservative ones or that state supreme courts rely on state law to reach more liberal outcomes than are required by federal law. Compare, for example, Linde 1980 with Latzer 1991, 1991a and Spaeth 1985.

The observations of legal specialists, then, lead us to suspect that interest group use of state courts has increased over the past few decades. In particular, two recent institutional trends (the increasing Republican composition of the federal courts and the growing importance of state judiciaries) have, perhaps, triggered interests, especially those seeking expansions of rights and liberties, to relocate their policy conflicts into state courts. If that has occurred, we might also expect to answer affirmatively the second question posed by this study—has the scope of litigation activity expanded to incorporate a wider range of interests? As interests move into a new arena, they enlarge the scope of the conflict, bringing both like-minded groups and those in opposition into the fray (Schattschneider 1960). That is, when one kind of organizational interest decides to relocate the site of a policy conflict, we might expect to find others—both friends and enemies—following suit (see also Truman 1951, 1971). Accordingly, I anticipate two findings: first, organized activity in state judicial systems has increased over the past decade and second, the scope of that activity has expanded to incorporate a diverse range of interests.

A RESEARCH STRATEGY

Before explaining how I considered these propositions, some general observations about the research strategy are in order. The first concerns my choice of courts: I explore litigation in the same sixteen states selected by Kagan and his colleagues (e.g., 1977) for their seminal work on supreme courts: Alabama, California, Idaho, Illinois, Kansas, Maine, Michigan, Minnesota, Nevada, New Jersey, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and West Virginia. I chose these for the same reasons they offer⁴ and the additional one that I would benefit from the insights (and the data) generated by their research. Second, my study—like Kagan et al.' (1977)—limits itself to state courts of last resort. There is no theoretical reason to believe that the

⁴ Collecting data for all fifty states is an arduous and, perhaps, unnecessary task, as Kagan et al. (1977) and so many other scholars have demonstrated (e.g., Tarr and Porter 1988). That is because it is possible to draw a representative sample of state courts and reach generalizable conclusions based on that sample. In seeking to select a representative sample of the states, Kagan et al. (1977), for example, aggregated the forty-eight states (excluding Hawaii and Alaska) into five clusters (plain states, urban industrialized states, southern states, rocky mountain states and a “geographical mix of states that shared certain socioeconomic characteristics”). Those groupings were based on “population, industrialization, urbanization, per capita income,” racial composition, and legislative innovativeness (see Meeker 1986: 19–20). From the five clusters, they drew a random sample (weighted for the different sizes of the clusters) to arrive at the sixteen-state sample.

expectations would not apply to lower state courts, in much the same way some propositions developed around the U.S. Supreme Court also hold for lower federal courts (McIntosh and Parker 1986).⁵ For this research, though, it seems reasonable to start with the highest courts in each state. Finally, the study only considers organizational involvement as amici curiae. Although the friend-of-the-court brief is “just one of many tactics available to organized interest, participation as amicus has figured as an indicator of interest group activity in virtually every pertinent study” (Caldeira and Wright 1988: 11). A primary reason for this is that state (and regional) court reporters—like the *U.S. Reports*—generally do not note the group affiliation of attorneys for the parties to a given suit. In contrast, the reporters usually do identify the affiliation of amici curiae.

I gathered the data by which to consider my propositions in the following way. For each state included in my sample, I conducted this LEXIS search: AMICUS or AMICI and year = 1965 or 1970 or 1975 or 1980 or 1985 or 1990. For each case resulting in a full opinion and containing at least one friend-of-the-court brief,⁶ I recorded the number of briefs filed and the number of amici per brief.⁷ The number of cases containing one or more amicus curiae briefs, the number of briefs filed and the number of amici, thus, constitute various measures of the amount of participation occurring over time in a given state.⁸

Since I am also interested in determining whether a wider range of interests participate as amici curiae, I categorized each amicus into the two distinct

⁵ A LEXIS search revealed significant interest group activity in several lower courts, especially those in Michigan and Minnesota.

⁶ This search, of course, picked up orders, cities, and so forth. I counted only amicus curiae participation in full opinion cases. Full opinion cases were those that contained a signed opinion of the court.

⁷ Unlike the *U.S. Reports*, the state court reporters (or at least the ones picked up in the LEXIS search) do not generally use “et al.” to denote the presence of cosignatories. Counting the number of amici from the reports themselves, without having to go to the briefs, thus, was possible. There were, however, a half dozen or so exceptions—briefs listed as “et al.” In all but two, I was able to identify the cosigners from the courts’ opinions.

⁸ Owing to distinctions in the way states report amicus curiae participation, I encountered several obstacles. First, and most severe was that I could not record any information for California other than the number of briefs filed. The reporter system only identifies the names of the attorneys filing briefs; it does not identify the names of amici. It is even difficult to count the number of briefs filed in a given case. Second, for one year included in this study (1980), the reporting of amici in Minnesota changed. For that year, I was unable to code amici into substantive categorizations.

classification schemes illustrated in Table 1.⁹ The first is a relatively straightforward one, which ascertained the sorts of actors participating: government, group, unidentified participant,¹⁰ and corporation or business. The second identified the substantive issue interest of the participating amicus curiae.

Table 1

CLASSIFICATION SCHEMES FOR AMICI CURIAE

Actor Classification

CATEGORY	EXAMPLES
Business/Corporation	Avis Rent-a-Car, Prudential Insurance Company
Government	State of New Jersey, City of Newark
Group	New Jersey NAACP, New Jersey Bankers' Association
Unidentified	Any amici reported without affiliations

Interest Classification

CATEGORY	EXAMPLES
Business/Commercial	Avis Rent-a-Car, New Jersey Bankers' Association
Civil Rights/ Liberties/Legal Aid	New Jersey NAACP, ACLU of New Jersey, Newark Legal Services
Government	State of New Jersey, League of Municipalities
Health/Medical	New Jersey Hospital Association, American Medical Association
Labor	Communication Workers of America, AFL-CIO
Legal	New Jersey Association of Trial Lawyers, New Jersey Bar Association
Other	Co-Educated Eating Clubs
Public Affairs/ Good Government	New Jersey League of Women Voters, Citizens' League
Religious	Roman Catholic Diocese of New Jersey, American Jewish Committee
Women	NOW, Women's Legal Defense Fund

⁹ I selected these from among many alternatives. For example, I could have used an ideological or a pure pluralistic scheme. For present purposes, though, I thought it important to tap into the substance of the issues represented by participating interests. What is more, state court reporters generally do not indicate on what side the amicus filed. To gather such data, one must go directly to the briefs themselves, which are typically available only at the courts in which they were filed or from the participating attorneys.

¹⁰ I use the term unidentified participant, rather than individual, because in a few instances what seemed to be an individual amicus turned out to be a group. For most states, this was a rare occurrence. But it was the norm for California, which notes only the attorney filing the brief. In one case, for example, the reporter listed attorneys Paul Halvonik et al. as the amicus filer. The opinion identified "Halvonik et al." as the League of Women Voters and the Committee for Fair Elections.

As notes 8 and 10 indicate, this strategy is not without its share of technical or operational concerns. In general, though, the resulting data set provides a reasonably good representation of the depth and breadth of amicus curiae participation.

**THE PARTICIPATION OF ORGANIZED INTERESTS IN STATE COURTS:
HOW MUCH AND WHO?**

My primary tasks center on determining whether interest groups have significantly increased their participation in state court litigation and whether more (and different) types of interests are involved now than in the 1960s and 1970s. In some sense, these represent intra-court concerns. Hence, the most promising approach to addressing them is to look at patterns of participation and so forth on a court-by-court basis; and that is generally the way I chose to approach them. By the same token, I am interested in average patterns. Figure 1 and Table 2, accordingly, present three types of participation information across the sixteen states and for each (at five-year intervals between 1965 and 1990): the number of cases containing at least one amicus curiae, the number of briefs filed, and the number of amici curiae.

Figure 1, which depicts median participation rates across the sixteen states,¹¹ clearly suggests that amicus curiae participation is on the rise, especially since the mid-1980s.¹² The median number of cases containing at least one amicus curiae brief increases from a low of 3 in 1965 to a high of 18.5 in 1990. The number of briefs filed and the number of total amici evince similar upswings, with medians rising from 5 and 6 in 1965 to 28 and 34 in 1990.

These results make a good deal of sense in light of the onset of new judicial federalism (in the late 1970s) and of the Republicanization of the federal bench (in the 1980s). Indeed, if we simply divide the data into two equal periods—1975 and earlier and 1980 and thereafter—we see staggering increases in all three indicators of amicus curiae participation. Between 1965 and 1975, the mean of the number of cases containing at least one amicus curiae brief was 4.3; after 1980 that figure rose to 12.7. The data for the number of briefs and the number of amici, respectively, are 5.3 and 7.3 for the earlier period and 16.8 and 19.3 thereafter.¹³

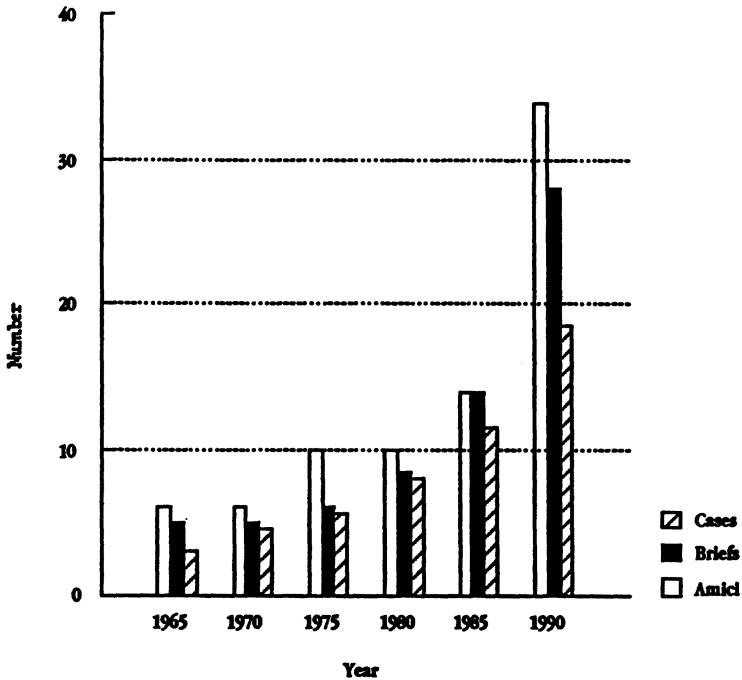
¹¹ I use medians here instead of means for a traditional reason (i.e., the presence of extreme values), a point to which I will return.

¹² An alternative interpretation is that more groups exist now than ever before; thus, the use of state courts has risen because the number of groups has increased. The data, however, fail to support such an interpretation: most participants were of an older vintage (e.g., the ACLU and its affiliates, the AFL-CIO, state bar associations, etc.).

¹³ I generated these numbers by taking the mean of the median figures displayed in Figure 1.

Figure 1

MEDIAN AMICUS CURIAE PARTICIPATION IN 16 STATE COURTS OF LAST RESORT, 1965-1990



Note: Amici indicate the median numbers of friends participating in cases in 15 states for years 1965-1975 and 1985-1990. Briefs indicate the median numbers of filed cases in 15 states for years 1965-1975 and 1985-1990. Cases indicate the median number of cases containing at least one amicus curiae brief in 16 states for all years represented. All data for amici and briefs exclude California; Minnesota is excluded for 1980.

Table 2 disaggregates the data to the individual state level. While we do see vast differences in participation figures—a point to which I will return—most states mirror the aggregated patterns evident in Figure 1. All courts of last resort received more amicus curiae briefs in 1990 than in 1965. In some instances, the increases are quite stark; the numbers of briefs filed and of friends participating in Illinois, for example, exhibit almost perfect monotonic growth. So too the ratios of briefs to cases to amici generally have increased. North Carolina is quite exemplary of this. In 1965 the average amicus curiae case contained one brief signed by one friend. In 1990, those figures increased to 2 briefs (per case), each signed by 1.5 amici. The raw totals of the number

of cases containing amicus curiae briefs (see Table 2) also attest to the growth of such participation: they increase more than threefold between 1965 and 1990.

Taken together, these general trends indicate that amicus curiae participation has increased. However, because the data presented in Figure 1 and Table 2 include all amici, they do not necessarily indicate that more organized interests are participating; they just suggest that state courts of last resort are receiving more amicus curiae briefs. To consider this, let us turn to figures 2 and 3, which present data on the kinds of amici participating in state court litigation. The bar graph (Figure 2) indicates the percent of total participants comprised by each actor (business, unidentified, group, and government); the pie graphs (Figure 3) divide amici into substantive categories for years 1965 and 1990. If my expectations are founded in fact, then we should see increases in both the percent held by groups (in the bar graphs) and in the slices of the pies (indicating participation by a wider range interests).

At first blush, Figure 2 seems to belie the expected pattern. In 1965, on average groups *qua* groups constituted about 55 percent of all amici, while governments and unidentified participants—about 22 percent each. In 1990, the percent composed by groups rose slightly to 68. So too in only a handful of states (e.g., Illinois and Minnesota) did interest group participation increase substantially over time. In short, group presence—as a percent of all participation—did not grow as fast as I anticipated. Still, the data do indicate at least two patterns consistent with my expectation: the decreasing presence of unidentified amici¹⁴ and the increasing participation of business interests. If we consider only governments and unidentified interests as non-interest group amici and groups and businesses as interest groups (as does much of the interest group literature), we do observe the predicted upswing: In 1965 interest groups constituted 55 percent of all amici; that figure jumped to about 77 percent in 1990.

Where we see more dramatic alterations are in the pie charts in Figure 3, which show the changing composition of interests represented by amici. In 1965, interests representing four substantive areas dominated: businesses, governments, religions, and civil liberties (see Table 1 for examples). By 1990, eight different kinds of organizations demanded some slice of the pie.¹⁵

¹⁴ Some of these unidentified amici are probably groups (this was certainly true for California, which is not represented in the figures); still, the balance are individuals.

¹⁵ To greater and lesser degrees the individual state courts reflect these overall patterns. In every state represented, a wider range of groups participated in 1990 than in 1965. Particularly interesting are Illinois, Kansas, Michigan, Minnesota, and New Jersey where, by 1990, virtually every group type is represented.

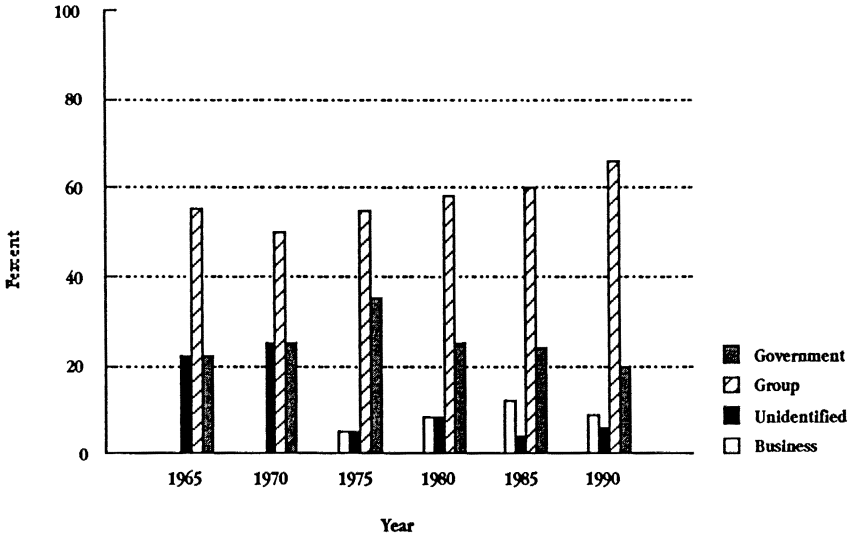
Table 2
AMICUS CURIAE PARTICIPATION IN 16 STATE COURTS OF LAST RESORT, 1965-1990

State	Year												Mean (Std. Deviation)								
	1965			1970			1975			1980						1985			1990		
	C	B	A	C	B	A	C	B	A	C	B	A	C	B	A	C	B	A	C	B	A
California	19		38				47		57			76			35			453 (19.7)			
New Jersey	10	12	20	15	17	21	12	40	75	16	20	20	22	38	40	74	89	33.5 (22.9)	33.5 (22.9)	44.2 (30.6)	44.2 (30.6)
Illinois	12	12	14	14	20	22	21	32	40	24	38	44	19	43	57	23	51	188 (4.9)	32.7 (14.6)	41.7 (21.8)	41.7 (21.8)
Michigan	12	16	16	4	4	6	17	35	61	9	15	18	37	82	100	24	54	17.2 (11.9)	34.3 (29.3)	45.3 (37.5)	45.3 (37.5)
Minnesota	7	15	20	15	24	27	21	30	31	17			14	20	20	22	42	16.0 (5.4)	21.8 (14.2)	23.7 (14.6)	23.7 (14.6)
Kansas	7	12	14	2	20	22	8	32	40	18	38	44	3	43	57	30	51	13.0 (10.0)	19.2 (15.4)	22.2 (15.9)	22.2 (15.9)
Alabama	3	3	3	5	5	6	11	27	28	8	8	8	11	14	14	22	31	10 (6.7)	14.7 (11.8)	15.8 (13.3)	15.8 (13.3)
Oregon	6	11	43	4	9	10	6	10	10	8	11	12	16	27	32	20	28	10.0 (6.5)	16.0 (8.9)	23.5 (14.6)	23.5 (14.6)
North Carolina	3	3	3	1	1	1	4	4	4	7	12	12	12	23	30	17	34	7.3 (6.1)	12.8 (13.2)	16.7 (19.5)	16.7 (19.5)
Idaho	2	6	6	8	12	12	2	2	2	3	4	4	9	11	13	5	7	4.8 (3.1)	7.0 (3.9)	7.3 (4.1)	7.3 (4.1)
West Virginia	3	5	6	1	1	1	2	3	28	6	7	11	5	5	5	10	13	4.5 (3.3)	5.7 (4.1)	10.7 (9.5)	10.7 (9.5)
Rhode Island	1	2	2	5	7	7	4	6	6	5	7	7	5	7	7	5	7	4.2 (1.6)	6 (2.0)	6.5 (2.6)	6.5 (2.6)

South Dakota	0	0	0	4	4	4	5	5	5	8	9	9	4	5	5	1	1	1	3.7 (2.9)	+0 (3.2)
Nevada	0	0	0	1	2	2	2	4	3	3	3	3	10	13	14	5	5	5	3.5 (3.6)	+7 (4.6)
Maine	1	1	1	5	5	5	1	1	1	1	1	1	3	9	11	9	14	21	3.3 (3.2)	5.2 (8.0)
Tennessee	0	0	0	0	0	0	3	3	3	1	1	1	5	7	7	3	3	3	2.0 (2.0)	2.3 (2.7)
Total (for C Only)	86		122		166		251		271		181.7									

Note: "C" indicates the number of cases containing a least amicus curiae brief; "B" indicates the number of amicus curiae briefs filed in cases; "A" indicates the number of amici participating in cases. Data on briefs and amici unavailable for California and Minnesota, 1980.

Figure 2
 MEAN PARTICIPATION OF AMICI CURIAE IN 15 STATE COURTS OF
 LAST RESORT BY ACTOR CATEGORIZATION, 1965-1990



Note: The data represent percents of yearly totals. California is excluded; Minnesota is excluded for 1980.

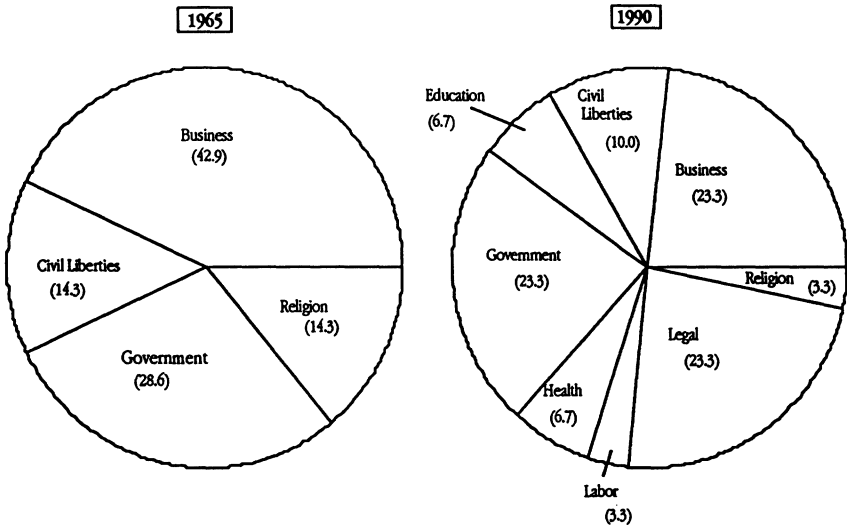
Government and business continue to participate but legal, health, and educational organizations are playing a greater role than ever before. We also see organizations representing lawyers (e.g., state bar associations) and other “legal” interests filing or co-signing briefs in increasing numbers. Tempering these results, though, is that two of the categories—women and public affairs—remain virtually unrepresented in state litigation. Given a spate of commentary (Kolbert 1989; Marcus 1989) emphasizing the need for women’s organizations to take particular causes into state courts (e.g., abortion) and their presence in U.S. Supreme Court litigation (George and Epstein 1991), we might expect to see them participating more as the decade wears on. But, for now, they remain a minimal presence in state courts.

What, then, can we conclude about amicus curiae participation within the states? On the one hand, the observations of legal specialists and interest group theorists prove useful for the study of organized use of state courts.

Theoretically, I anticipated that groups would be participating more now than ever before and that a wider range of interests would be involved. The data presented in the figures and tables seem to confirm those expectations. On the other hand, at least one unanticipated finding emerged: vast differences among the states, particularly in terms of the actual number of amicus curiae participations (see Table 2). Compare, for example, the data for Maine and

Figure 3

MEAN PARTICIPATION OF AMICI CURIAE IN 15 STATE COURTS OF LAST RESORT BY INTEREST CATEGORIZATIONS, 1965 AND 1990.



Note: Data represents percents of yearly mean totals (n=7 for 1965 and n=30 for 1990). Due to rounding percents may not total 100. Interest categorizations exclude unidentified amici. California is excluded.

Kansas. On some measures, both evince upward trends. But, at their heights in 1990, the number of amicus cases in Maine was only 9, while in Kansas it reached 30. More obviously, some states do not manifest the observed participation patterns displayed in Figure 1. Idaho, for instance, evinces rather erratic patterns, with the total number of amicus cases failing to reach 10 for any given year; Tennessee's numbers are consistently low over the 25-year period.

Differences among the states are even more vivid if we consider the proportion of full opinion cases containing at least one amicus curiae brief. Not surprisingly, as Table 3 indicates, quite a bit of variation exists; the 1990 proportions, for example, had a mean of .13, with a range of .54 and a stan-

dard deviation of .15.¹⁶ Thus, while amicus curiae participation—however measured—is on the rise, differences among the states are evident.

Table 3

PROPORTION OF FULL OPINION CASES WITH ONE OR MORE AMICUS CURIAE BRIEFS, 1965–1990

Year	Mean Proportion of full opinion cases with at least one amicus curiae brief	Range	Standard Deviation
1965	.03	.12	.03
1970	.05	.20	.06
1975	.05	.24	.06
1980	.08	.57	.14
1985	.11	.60	.16
1990	.13	.54	.15

Note: The proportion = $\frac{n \text{ of cases containing one or more amicus curiae brief}}{\text{total } n \text{ of cases decided with a signed opinion of the court}}$

Sources: Data for the denominator come from three sources: author correspondence with administrators of the various state courts, annual reports of the National Center for State Courts, and Kagan et al. 1977.

DISCUSSION

This article sought to address two questions: has interest group use of state judicial systems increased over the past four decades and has the scope of litigation activity expanded to incorporate a wider range of interests? Based on the observations of legal specialists and interest group theorists, I posited affirmative answers to both questions. The results obtained by studying litigation activity in sixteen state courts generally confirm these expectations. In the main, they indicate the growing presence of amici curiae in state supreme courts; they also show that a range of groups has increased their participation as friends of the court. It was true, though, that growth occurred unevenly: some states evinced precisely the kind of patterns I anticipated, while others were far more erratic.

¹⁶ Another way to consider the differences among the states is through a standardized measure of change in participation. Since a regression slope (indicative of the average change in Y associated with a one-unit change in X) neatly approximates such a measure, I obtained one for each state. I did so by regressing participation proportions (number of cases containing one or more amicus curiae brief/number of opinions), Y, on a counter (0 through 5, representing the 5-year intervals), X, for each state. The resulting 16 slopes ranged from .00 to .24, with a mean of .05 and a standard deviation of .06.

This noted, where might future research take us? First, and most obvious, is that we should seek to explain variation in this *amicus curiae* participation across the states. My theoretical discussion treated states as monolithic entities, as equally attractive arenas for amici to enter. Yet, as Table 2 clearly indicates, that was naïve. Apparently, interest groups do not find state courts in, say, South Dakota as attractive as those in New Jersey. The question, then, is what factors differentiate the South Dakotas from the New Jerseys? In seeking to address this question, scholars might find useful literature that considers the relative strength of pressure group systems within states (e.g., Morehouse 1981; Thomas and Hrebendar 1990, 1992). Second, the high level of case aggregation at which I worked may have masked important trends; indeed, scholars of the interest group process are paying increasing attention to “policy domains” (e.g., Heinz et al. 1993). Subsequent work, thus, might explore group participation in specific legal areas to uncover more fully the structure of group conflict and cooperation in the courts. Third, scholars should consider the arguments amici press on state courts. Is it the case that courts pay greater heed to liberal claims than to conservative ones? Addressing this and related questions could tell us a good deal about the direction of new judicial federalism. Finally, future research might apply some of the relatively well-entrenched propositions developed around group litigation in federal courts to that occurring in the states. Not only would such efforts provide insight into the world of group litigation. They also might give us a richer understanding of the American legal system.

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