

**Amicus Contributions and Appellant Success
in State Supreme Courts**

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Abstract

Although there are several studies on campaign contributions, there is very little research on contributions from interest groups participating as amicus curiae. As the costs of judicial campaigns continue to rise in some states, and interest groups seek to exert more influence over elected judges, it is important to understand how these changes impact judicial decisions. In order to address this question, I constructed an original dataset of amicus briefs and campaign contributions from interest groups participating as amicus curiae at the state supreme court level. The results provide evidence that amicus support and campaign contributions significantly increase an appellant's probability of success.

In English common law, the *amicus curiae* (“friend of the court”) originated as a servant of the court (Kaye 1989). Its role was to prevent the court from making any legal or factual errors (Simpson and Vasaly 2004). However, in the United States, it has “become a means of advocacy for interest groups, private individuals, and business concerns that are nothing more than extensions of the parties; they are friends of the litigants rather than of the courts” (Simpson and Vasaly 2004, 3). The first amicus brief in the United States was submitted by Henry Clay in the case of *Green v. Biddle*, which involved a land dispute between the states of Virginia and Kentucky. The Supreme Court ruled against Kentucky, and Clay filed an amicus brief advocating for a rehearing of the case (Heidler and Heidler 2010). This was the first in a long tradition of amicus filings by groups seeking to influence the courts (Heidler and Heidler 2010). Eventually, the courts would be inundated with amicus briefs on any case of political importance (Simpson and Vasaly 2004).

Since the common law tradition of limiting the case to the parties to the dispute excludes non-parties from directly participating in the case, the amicus brief has become the vehicle for addressing the broader interests to a dispute (Krislov 1963). Consequently, *amicus curiae* today play a role in the judiciary similar to the role lobbyists play in the legislature. They provide judges with information about the broader policy implications of a case and how other actors will be affected by the court’s decision (Caldeira and Wright 1988; Collins 2004; Munford 1999). As interest groups have become more involved in the judiciary these lobbying efforts have increased substantially in recent decades (Kearney and Merrill 2000). Since the 1970s, amicus briefs have been filed with increasing frequency at both the state and federal levels due to an increase in

the number of advocacy groups, and the growing recognition by these groups that judicial decisions have implications that extend beyond the particular parties to the case (Wohl 1996).

Furthermore, the scope of litigation activity at the state level has expanded to incorporate a wider range of interests (Epstein 1994). Decisions during the Burger Court years are directly responsible for encouraging an increase in the amount of litigation at the state level, especially in the area of civil liberties (Tarr and Porter 1982). “In 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 standing limitations for raising claims in federal courts” (Tarr and Porter 1982, 923). This trend resulted in state courts hearing more cases involving individual rights and relying on interpretations of their own state’s laws (Epstein 1994).

These lobbying efforts raise obvious concerns about the impartiality of elected judges who rely on support from interest groups to win reelection. This support may come in the form of an endorsement or campaign contributions and expenditures. This is why money has become the most controversial aspect of judicial elections (Bonneau 2012). Reformers contend that contributions from special interests may pose a threat to the public’s faith in fair and impartial courts (Skaggs et al. 2011), and there is evidence that these concerns are not without merit. The findings from this study suggest that elected judges are influenced by amicus participants, especially when the amicus has contributed money to the judge in the previous election.

Amicus Curiae and Strategic Decision Making

As amicus participation has increased in recent decades, so has interest in studying the effects on decision making (Epstein 1993; Epstein and Knight 1999; Kearney and Merrill 2000). Studies at the U.S. Supreme Court level suggest that amicus participation does not have an effect on success (Songer and Sheehan 1993; Epstein and Rowland 1991). The argument is that the increase in the volume of amicus briefs to the U.S. Supreme Court may have actually decreased their effectiveness (Colker and Scott 2002). That is, amicus briefs have become so commonplace they are basically meaningless (Colker and Scott 2002).

On the other hand, amicus briefs may be more influential than previously realized (Ennis 1984). Recent research finds that amicus briefs are successful when they impart valuable new information (Comparato 2003; Kearney and Merrill 2000). According to Spriggs and Wahlbeck (1997), more than 65 percent of the amicus briefs filed in the U.S. Supreme Court during their 1992 term contained information not found in the briefs of either party.

Flango, Bross, and Corbally (2006) believe amicus play a similar role in state courts, although there is wide variation between states. In their surveys of state appellate judges, they find that amicus briefs play a strong role in state appellate courts by reducing the amount of research judges have to do, providing information the parties may not have discussed, and by presenting the broader implications of the case to groups not party to the suit. Thus, amicus briefs are important sources of information for judges about the broader policy implications of their decisions. Songer and Kuersten's (1995) study of the success of amicus participants in three southern state supreme courts (Georgia, South

Carolina, and North Carolina) reaches a similar conclusion. They look at simple won/loss ratios, their success in “matched pairs,” and the relationship between amici support and the success of litigants in state courts. They find that amicus participation is significantly related to the likelihood of success of the supported litigants, regardless of whether the amicus supports the appellant or the respondent.

Comparato’s (2003) study of the effects of amicus briefs on the decisions from seven state courts sheds light on how interest group activity can alter the strategic behavior of state judges depending on the institutional context. He contends that judges are more likely to rely on public policy related arguments in states where they face reelection, while issues concerning the preferences of governors and legislators are more important in appointment states.

As these examples demonstrate, most of the studies on this topic have been conducted at the U.S. Supreme Court level, or on a small number of states. I seek to extend the study of amicus curiae participation to a wider and more diverse set of states, and to include an analysis comparing the success of amici in states with partisan and nonpartisan ballots. I also want to examine the effects that campaign contributions from amicus participants have on judicial decisions. While contributions from attorneys have been studied extensively, there is very little research on the effects of contributions from the amicus participants in a case.

Amicus Support in an Electoral Context

The institutional context in which judges operate is central to the account of judicial decisions. Federal judges with life tenure will seek to maximize policy preferences, whereas, judges running for office will seek to maximize their chances for

reelection (Epstein and Knight 1998). This point relates back to the role that interest groups play in shaping judicial outcomes. Interest groups may exert external pressures on state judges to a degree not apparent at the federal level (Hall and Brace 1999; Songer and Kuersten 1995). Elected judges avoid antagonizing interest groups by not making decisions which conflict with their preferences. This is what makes amici valuable allies for appellants seeking to overturn a lower court's ruling. Based on this argument, I seek to test the following hypotheses:

H₁: *Amicus support increases the probability of a vote for the appellant.*

Judges often vote strategically to minimize electoral opposition (Hall and Brace 1999), and they need support from interest groups to win reelection. Since judges are motivated by self interest, they may act contrary to their own preferences when faced with the possibility of sanctions from the electorate (Hall 1992). Therefore, I expect the likelihood of a vote for the appellant to increase significantly when the appellant receives amicus support. Amicus briefs signal to the judges the importance of the case to outside interests (Collins 2004). They also contain information not found in the briefs of the litigants directly involved in the case (Flango, Bross, and Corbally 2006), and are useful for informing judges on complex legal, technical, or historical issues (Collins 2004).

H₂: *As the campaign contribution differential between the amici supporting the appellant and the amici supporting the respondent increases, the probability of a vote for the appellant increases.*

Campaign spending in state supreme court elections has increased steadily since 1990 in real dollars (Bonneau 2007). But, there is still some debate about whether campaign contributors receive favorable treatment from judges (Bonneau 2012). While

this issue has been studied from the standpoint of attorney contributors, there is very little research on contributions from amicus curiae. Based on prior research showing that judges adjust their rulings to attract votes and campaign money from interest groups (Shepherd 2009), I expect campaign contributions from amici supporting the appellant to increase the likelihood of a vote for the appellant.

H₃: *Amicus Support is more likely to affect votes in partisan states than in nonpartisan states.*

Partisan ballots make judges more susceptible to political pressure from campaign contributors. Judicial contests in partisan states are not necessarily more expensive or contentious than nonpartisan races (Arbour and McKenzie 2011), but candidates in partisan states are more dependent on party supporters for campaign funds. In nonpartisan states, candidates spend more from their own coffers in order to get information to voters (Bonneau and Hall 2009; Rock and Baum 2010). This gives judicial candidates in nonpartisan states more independence from contributors. Consequently, amicus support should have a greater impact in partisan states.

Research Design

In order to obtain a representative sample of recent cases from a diverse set of states, I collected data on the twenty-five most recent opinions from sixteen state supreme courts from January to July 2012. The sample includes every partisan state except Texas which has two supreme courts. I also coded cases from the most populated nonpartisan states for purposes of comparison.¹ Out of a total sample of 400 cases I identified 88 with at least one amicus brief filed. The statistical analysis in this article focuses on those 88 cases. Only published written opinions are included in the sample.²

The campaign contributions data were obtained from the National Institute on Money in State Politics. The Institute receives its data from the state disclosure agencies with which candidates file their campaign finance reports. They collect the data for all state-level candidates in primary and general elections and put it into a dataset. The data are then organized by state and election year. Table 5.1 describes the states and the number of observations from each state.

Table 5.1 Descriptive Statistics for Amicus Contributions Data

<i>State</i>	<i># of Obs.</i>	<i>Region</i>	<i>Term(yrs.)</i>	<i>Selection Method</i>	<i># of Judges</i>
West Virginia	5	Southeast	12	Partisan	5
Montana	7	Northwest	8	Nonpartisan	7
Georgia	7	Southeast	6	Nonpartisan	7
Alabama	9	Southeast	6	Partisan	9
Kentucky	14	Southeast	8	Nonpartisan	7
New Mexico	20	Southwest	8	Partisan/Retention	5
Louisiana	21	Southeast	10	Partisan	7
North Carolina	56	Southeast	8	Nonpartisan	7
Illinois	75	Midwest	10	Partisan/Retention	7
Oregon	77	Northwest	6	Nonpartisan	7
Pennsylvania	84	Northeast	10	Partisan/Retention	7
Minnesota	96	Midwest	6	Nonpartisan	7
Wisconsin	113	Midwest	10	Nonpartisan	7
Washington	166	Northwest	6	Nonpartisan	9
Ohio	196	Midwest	6	Semi-partisan	7
Michigan	222	Midwest	8	Semi-partisan	7

Variables

The dependent variable is coded “1” if the judge voted with the appellant and “0” if the judge voted with the respondent. The first independent variable, labeled *Amicus Support*, is coded “1” if the amicus participant supported the appellant and “0” if the amicus supported the respondent. The second independent variable, labeled *Amicus Contributions*, represents the campaign contribution differential between the amici

supporting the appellant and the amici supporting the respondent. This variable is based on the total contributions from amicus curiae to each judge in their previous election.

In order to account for other factors which explain votes for the appellant, I included eight control variables. The first control variable, labeled *Case Salience*, measures the total number of amicus participants in each case. Since amicus curiae are more likely to file briefs in support of the appellant, I expect cases with more amicus participants to increase the probability of a vote for the appellant.³ The second control variable is coded “1” if the appellant was represented by a law firm and “0” otherwise. Representation by a law firm is likely to improve an appellant’s chances of winning since law firms have more resources at their disposal than other lawyers. Furthermore, law firms are probably more selective in the types of clients they represent. The next two control variables account for case types. I added controls for criminal and property cases because they are the two case types in my sample with the largest percentage of votes for the appellant. The final four control variables account for cases involving the state or business litigants. The state usually has a higher success rate on appeal than other litigants, and pro-business judges may be biased towards business interests. Table 5.2 presents the summary statistics for each of the variables in the model.

Table 5.2 Summary Statistics for Amicus Contributions Data

<i>Independent Variables</i>	<i>Min</i>	<i>Max</i>	<i>Mean</i>	<i>Median</i>	<i>Mode</i>	<i>S.D.</i>
Amicus Support	0	1	.65	1	1	.48
Amicus Contributions	-30,375	3,500	-105.33	0	0	1287.02
Case Salience	1	12	3.38	3	1	2.84
Law Firm	0	1	.55	1	1	.50
Criminal Cases	0	1	.26	0	1	.44
Property Cases	0	1	.14	0	0	.34
Respondent-State	0	1	.18	0	0	.38
Respondent-Business	0	1	.19	0	0	.40
Appellant-State	0	1	.37	0	0	.48
Appellant-Business	0	1	.21	0	0	.41

Estimation Method

The data are pooled cross-sectional times series. Since the dependent variable is dichotomous, I utilize logit regression with mixed effects. This is an approach that uses a combination of fixed and random effects. It calculates fixed effects coefficients while allowing the intercepts to vary by state. Since logit coefficients are difficult to interpret, I calculate the marginal effects. The marginal effects are the partial difference in the probability of y given a one unit change in x.

Results

There is a wide disparity in the amount of amicus activity between states in this sample. The number of observations range from 5 in West Virginia to 222 in Michigan. This is evidence that interest group involvement in the judiciary is not uniform throughout the country. As Figure 5.1 indicates, there is a noticeable regional pattern to these results. Six out of the eight states with the lowest number of observations are in the Southeast. There is also slightly more amicus activity in the partisan sample than the nonpartisan sample.⁴

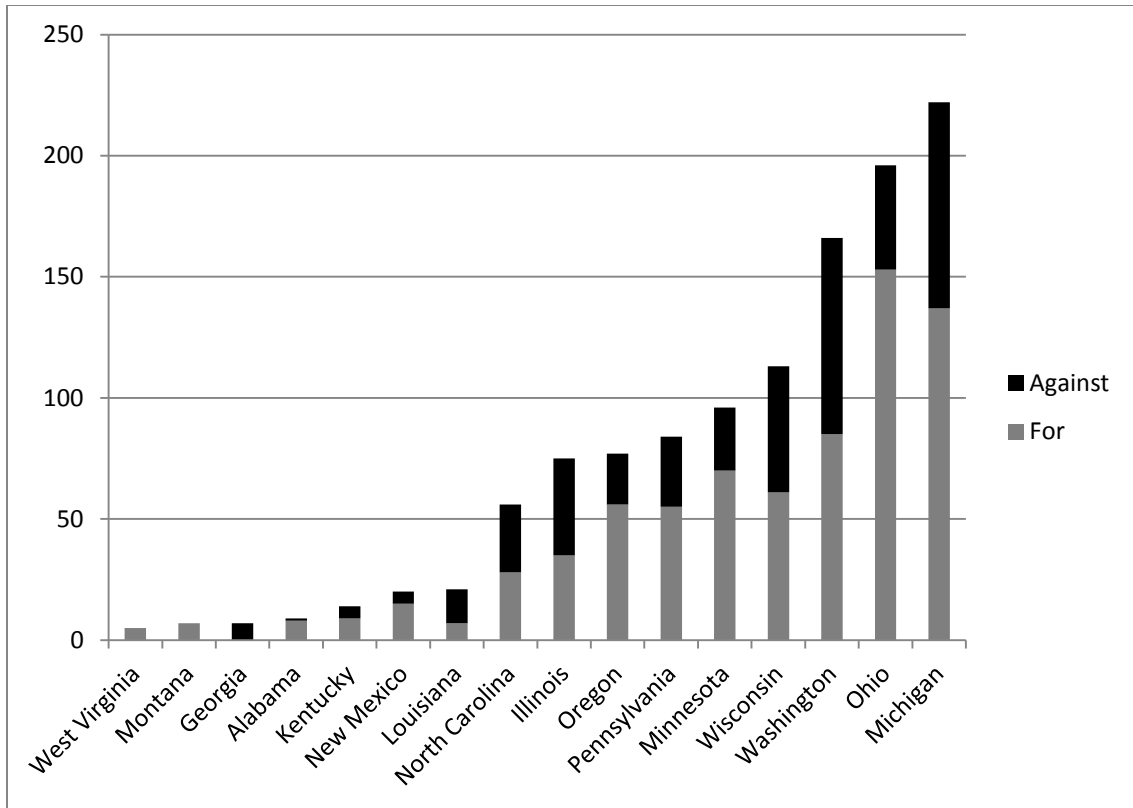


Figure 5.1 Number of Votes For or Against an Amicus Participant by State

Overall, the statistical analysis provides support for all three hypotheses. The first hypothesis predicts that amicus support increases the probability of a vote for the appellant. To test this proposition, I calculated several statistics. First, I calculated the percentage of votes for appellants with amicus support, and compared it to the percentage without amicus support. As the crosstabs analysis in Figure 5.2 shows, votes for the appellant increased from 44 percent to 66 percent when the appellant received amicus support.

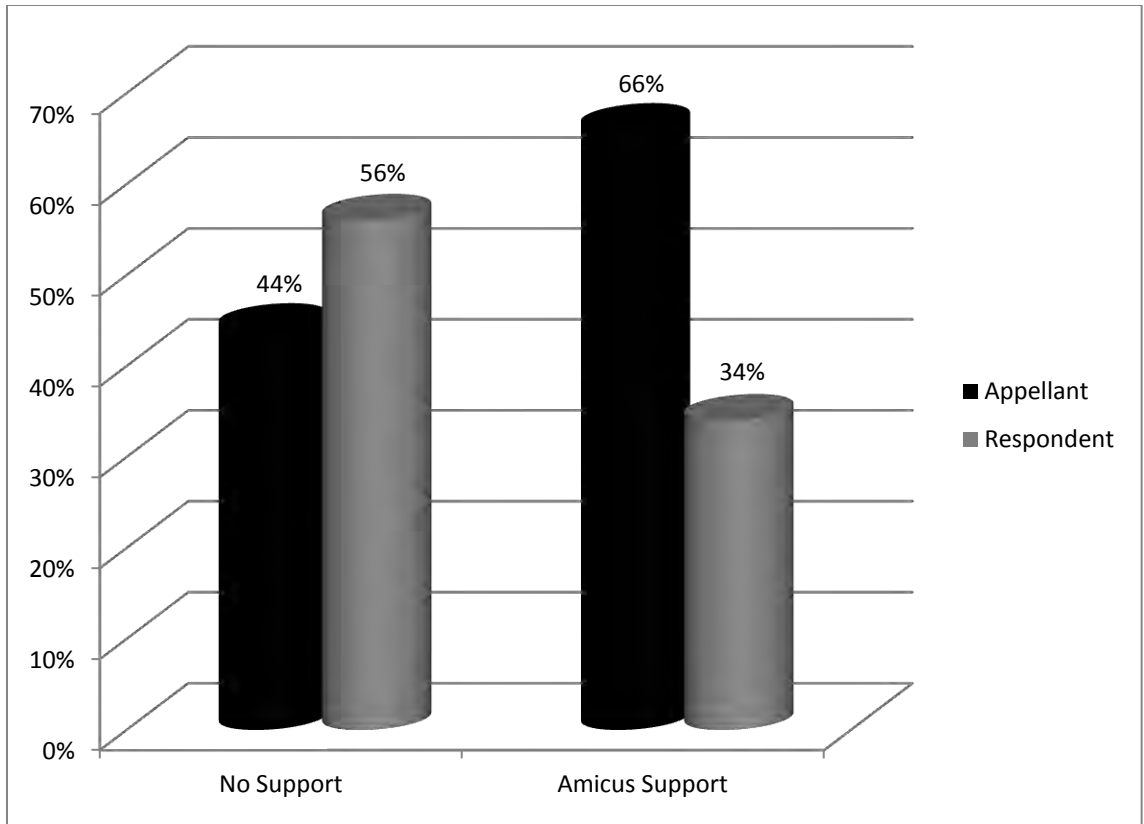


Figure 5.2 The Effect of Amicus Support on the Percentage of Votes for Appellant

Second, I ran a logit regression with mixed effects. This model calculates fixed effects coefficients while allowing the intercepts to vary by state. The results in Table 5.3 show a positive and significant relationship ($p < .001$) between amicus support and appellant success. This result is significant despite controlling for other explanatory factors, which indicates that amicus support has an independent effect on votes for the appellant.

Table 5.3 Amicus Support and Appellant Votes in State Supreme Courts, 2011-2012
(Mixed-Effects Logit Model with Random Intercepts for each State)

Independent Variables	Coefficient	SE	P-value
Amicus Support	.750***	.162	.000
Amicus Contributions	.0004*	.0002	.020
Case Salience	.194***	.039	.000
Law Firm	1.151***	.200	.000
Criminal Cases	2.501***	.275	.000
Property Cases	.789**	.255	.002
Respondent-State	-2.826***	.372	.000
Respondent-Business	.688**	.234	.003
Appellant-State	-.675**	.219	.002
Appellant-Business	.500*	.245	.041
Intercept	-1.384***	.347	.000
Observations	1168		
Percent Correctly Predicted	75.00%		
Percent Reduction in Error	40.29%		
Wald χ^2	171.83***		

***p < .001, **p < .01, *p < .05 (two tailed)

After running the regression, I calculated the marginal effects. As Table 5.4 reports, the marginal effect is also positive and significant ($p < .001$). It shows a .17 increase in the probability of a vote for the appellant given a change in amicus support for the entire sample.

Table 5.4 Marginal Effects for Amicus Contributions Data (*fixed portion only*)

Independent Variables	dy/dx
Amicus Support	.169***
Amicus Contributions	.00009*
Case Saliency	.044***
Law Firm	.259***
Criminal Cases	.562***
Property Cases	.177**
Respondent-State	-.635***
Respondent-Business	.155**
Appellant-State	-.152**
Appellant-Business	.112*

***p < .001, **p < .01, *p < .05 (two tailed)

In order to show the change in probabilities as the number of amicus supporters increases, I plotted the predictive margins with confidence intervals in Figure 5.3. This graph provides a good illustration of the impact that amicus support can have on an appellant's probability of success. As indicated, the probabilities of a vote for appellant increase steadily from .52 to .88 as the number of amicus supporters increases.

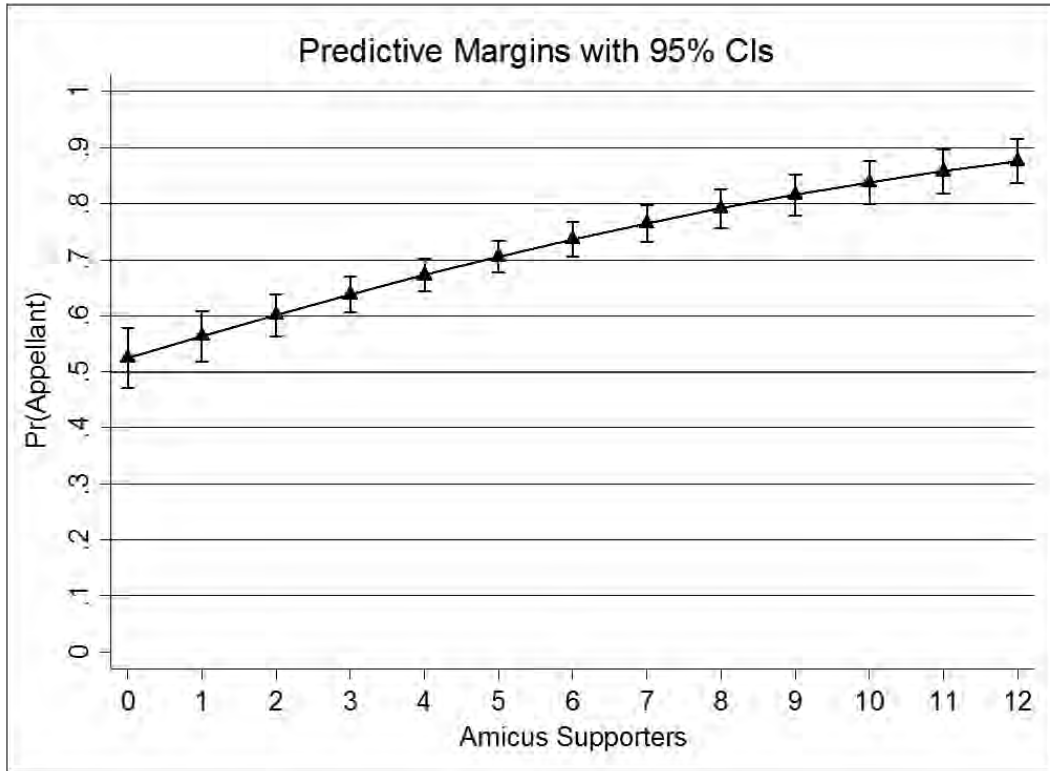


Figure 5.3 Probability of a Vote for Appellant as Amicus Support Increases

The second hypothesis predicts that campaign contributions from the amicus supporting the appellant to judges in the previous election increase the probability of a vote for the appellant. There is statistical support for this hypothesis, as well. I identified 32 cases in which an amicus participant contributed to a judge in the previous election. Out of these 32 cases, the judge voted with the amicus 29 times (91%). The regression coefficient for *Amicus Contributions* in Table 5.3 and its marginal effect in Table 5.4 are both positive and significant ($p < .05$), providing support for this proposition. It is important to note that the coefficient for *Amicus Contributions* represents a \$1 change in contributions, which is why it is so small.

As further evidence to support the second hypothesis, Figure 5.4 plots the predictive margins as the amicus contribution differential increases. As the graph shows,

the probability of a vote for the appellant increases steadily as the contribution differential increases. When there is a zero contribution differential, the marginal effect is .59. However, an increase of just \$3,000 increases the marginal effect to .79.

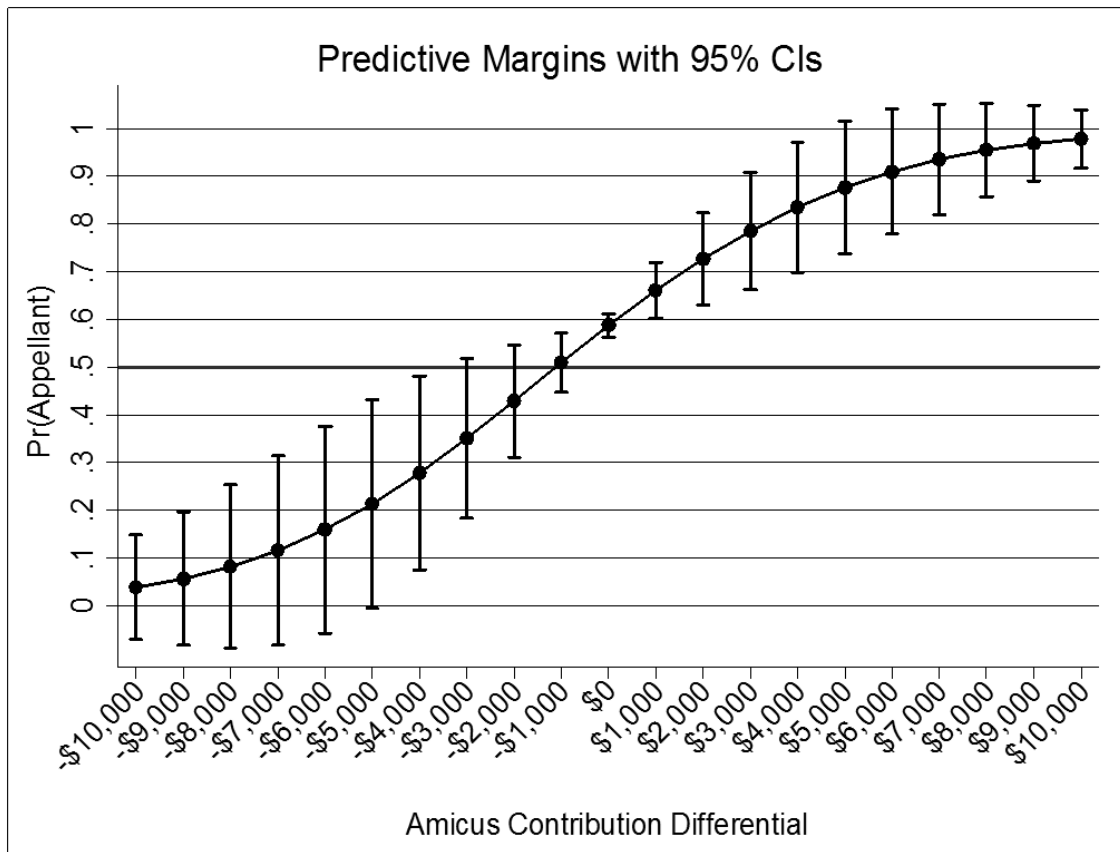


Figure 5.4 Probability of an Appellant Vote as the Amicus Contribution Differential Increases

While the predictions in the first two hypotheses are aimed at testing the effects of amicus support and contributions in all the states pooled together, the third hypothesis separates partisan and nonpartisan states in order to make comparisons by selection method. Based on the crosstabs analysis in Table 5.5, amicus support appears to have a slightly greater impact in the partisan sample. There is a 26 percent increase in the votes

for appellants with amicus support in partisan states compared to 21 percent in nonpartisan states.

Table 5.5 Crosstabs for Appellant Votes by Selection Method and Amicus Support

	No Support	Amicus Support
Nonpartisan	35.37% (58)	56.45% (210)
Partisan	49.17% (118)	74.74% (293)

Number of observations in parentheses

However, it is hard to distinguish between the two samples when graphing the predicted probabilities. As Figure 5.5 shows, amicus support has a positive effect on the probability of a vote for the appellant in both the partisan and nonpartisan samples, and the slopes appear to be similar. The predicted probability of a vote for the appellant increases from 49 percent to 74 percent when the appellant is supported by an amicus in partisan states—an increase of 25 percent. The probability increases from 33 percent to 56 percent in nonpartisan states—an increase of 23 percent. Thus, while the probabilities are higher in partisan states (indicating that appellants fare better overall in partisan states), the effect of amicus support appears to be similar in both selection systems.

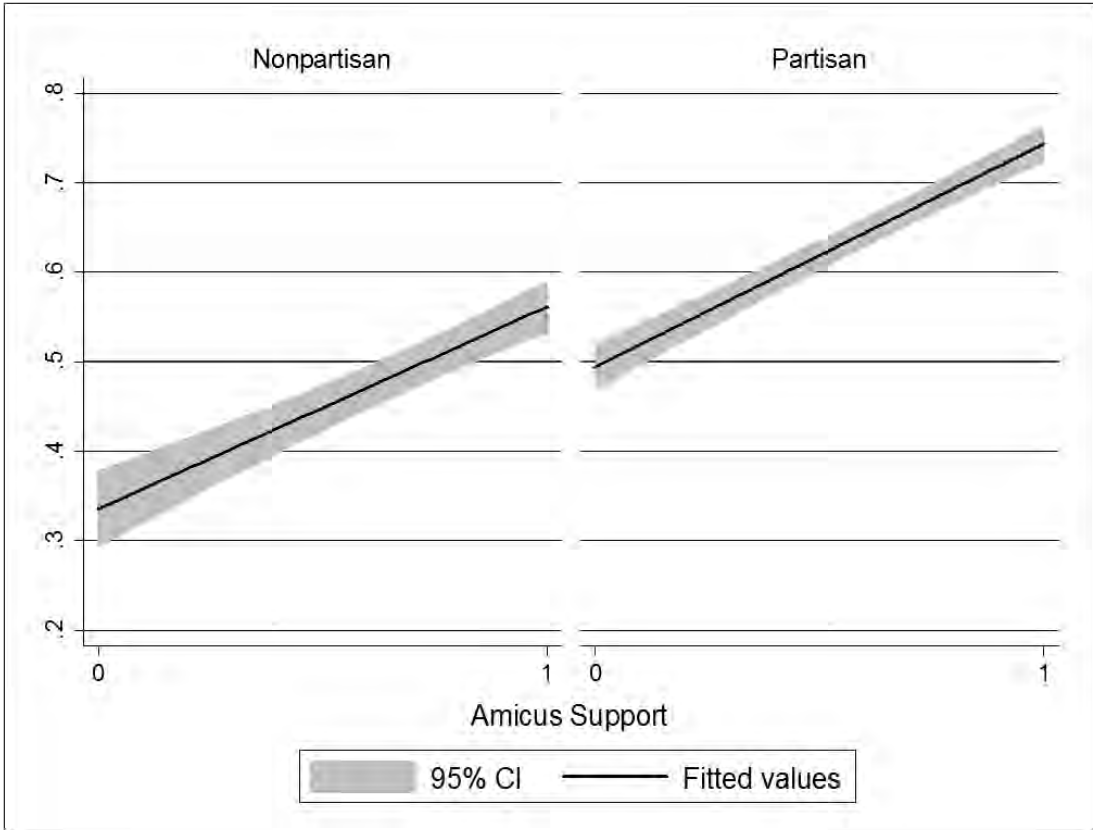


Figure 5.5 Predicted Probabilities of a Vote for Appellant by Selection Method

However, the contrast between partisan and nonpartisan states is substantial when comparing the amount of campaign contributions from amicus supporters, as illustrated by Figure 5.6. While contributions from amicus curiae are almost nonexistent in the nonpartisan sample, there is a large amount of contributions in the partisan sample. The total amount of contributions from amicus supporting the appellant in nonpartisan states is \$5,250, compared to \$147,295 in partisan states.

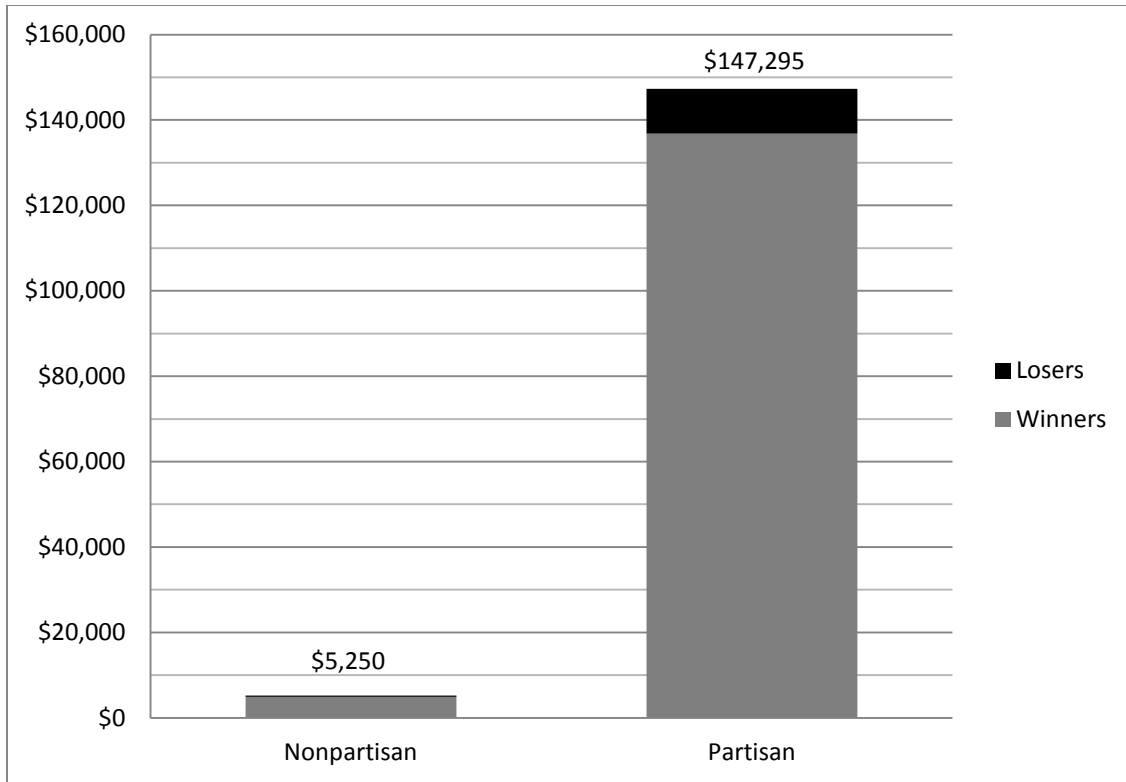


Figure 5.6 Total Amicus Campaign Contributions by Selection Method

In both samples, campaign contributions led to positive outcomes for the amicus curiae in almost every case. Overall, the “winners” contributed a total of \$141,745, compared to \$10,800 from the “losers,” which shows a clear link between amicus contributions and voting in this sample of cases.

Discussion

There are several important findings from this study. First, in this sample of cases from sixteen state supreme courts, there is evidence of a connection between amicus support and appellant success. The probability of success for the appellant increases significantly as the amount of amicus support increases. This result is consistent with previous research on amicus support and appellant success. Second, there is evidence of a relationship between amicus contributions and votes. In almost every case, judges

voted with their amicus contributors. This is the most significant finding from this research, and the one that adds to the existing literature. There have been studies on contributions from businesses, interest groups, and attorneys, but there is a lack of research directly connecting contributions from amicus curiae and case outcomes. Furthermore, comparing the effects of amicus contributions in partisan and nonpartisan states is also a unique contribution. The results show a wide disparity in the amount of amicus contributions in partisan and nonpartisan states—97% of the contributions occurred in partisan states. While the effect of amicus support is similar in both samples, amicus contributions appear to play a much larger role in the partisan sample.

These findings are an important contribution to the study of amicus participation in state supreme courts, but they do not settle the question of causality between amicus support and votes. The question remains whether judges vote consistently with amicus curiae because of pressure from outside interests, or whether the relationship is due to a close alignment between the ideological preferences of the judges and the amicus participants. It could also be the case that amicus are more likely to throw their support behind an appellant who has a strong case. The costs associated with amicus filings may preclude interest groups from expending time and money on cases they see as a losing cause. This could account for the high success rate for amicus curiae in this sample.

It is also important to note that these results do not include campaign expenditures, which have reached record levels in some states. In light of the U.S. Supreme Court's decisions in *Citizens United v. FEC* and subsequently *American Tradition Partnership v. Bullock*, it is going to be difficult for states to limit the amount that outside interests spend in judicial campaigns. Now that *Citizens United* is applicable

to state and local elections, we are likely to see even higher levels of campaign spending in future elections. Thus, there needs to be further research focusing specifically on the effects of campaign expenditures in judicial elections.

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