



# **JUDICIAL DECISION-MAKING IN INMATE LITIGATION: INFLUENCE AND EFFECTIVENESS OF INTEREST GROUPS AS AMICI CURIAE**

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## **Abstract**

It is commonly suggested that amicus curiae briefs (ACBs) are useful to influence judicial decisions. Interest groups often use ACBs to participate in litigation. Unfortunately, most assessments of judicial decision-making fail to review the latent content of ACBs. This is problematic because there is no way to be certain that interest groups truly influence case outcomes. Furthermore, it is possible that the type of litigation affects judicial outcomes as well. The current analysis employs a mixed methods approach to assess judicial decision-making. The current study is unique as it is perhaps the first to measure both influence and effectiveness separately in a qualitative manner. In doing so, the study makes comparisons between the latent content of judicial opinions and ACBs. The results support prior research findings regarding the influential nature of ACBs towards judicial decisions. Despite evidence of influence, interest groups' advocacy only results in favorable case outcomes in a minority of cases. Suggestions for future research are also provided.

## **Keywords**

Judicial Decision-Making, Interest Groups, Inmate Litigation, Prisoners' Rights, Amicus Curiae Briefs

In recent decades, interest groups (IGs) have exhibited a heightened degree of participation in litigation. By using amicus curiae briefs (ACBs), IGs can expand their advocacy by presenting their perspective on various matters adjudicated by the judiciary. In doing so, IGs can participate in matters of judicial decision-making without being a party to the case. Over time, perhaps due to technological advancements, the volume of ACBs submitted for cases has increased substantially. Nowadays, ACBs are a frequent method of judicial participation especially in United States Supreme Court litigation (Box-Steffensmeier et al., 2013; Kearney & Merrill, 2000).

ACBs are an opportunity for neutral parties (not a party to the litigation) to offer insight or expertise regarding subject matter that may be of interest to the case. Viewed in this regard, it is possible that various IGs may indirectly influence case outcomes using ACBs. Typically, IGs submit ACBs both in favor and in opposition to a particular outcome. Stated differently, there are numerous viewpoints submitted using ACBs from a vast range of amici curiae attempting to sway the Court's opinion in either direction. Despite the broad range of topics and participants, less is known about the extent to which ACBs truly affect justices' decision-making.

The problem is that few studies examine the content of ACBs to measure IGs' effect on judicial decision-making. Thus, little is known about the arguments contained in ACBs to more accurately conclude that ACBs are a persuasive element involved in a case. Some studies highlight the importance of how the number of ACBs filed per case can affect judicial outcomes. Yet, quantitative analyses alone are insufficient to explain why such arguments contained in ACBs are influential. Though it is possible that ACBs introduce new information that can help judges make decisions, it also possible that judges make decisions based on personal sentiments exclusive to the arguments presented in these briefs.

Further, little is known about the extent which ACBs are influential involving convicts as adversaries of the justice system. Prior studies of judicial decision-making often review a vast array of case types and are rarely specific to cases involving convicted criminals. Whereas other case types may reveal support for the influential nature of IGs' advocacy, prisoners may be less likely to prevail in court since judges often defer to criminal justice officials. This idea is important because if IGs are less effective in certain case types, this point may suggest that extra-legal factors are able to limit or counteract the effect of ACBs. As such, an analysis of prisoners' rights cases is useful as it can add meaningful insights to our understanding of how well IGs are able to influence judicial

decisions using ACBs.

Decision-making might be summarized by the following two approaches: inductive or deductive. Between the two approaches, inductive reasoning is typically suggested in the literature on judicial decision-making. An inductive process occurs when judges begin by analyzing a set of ideas or observations then use such evidence or information to guide subsequent decisions regarding the case. An inductive approach is a more objective approach to judicial decision-making. On the contrary, judges could also employ a deductive approach. From this standpoint, a judge first decides to rule either in favor or opposition to a specific litigant perhaps based on personal sentiments or other preconceived beliefs then uses information contained in ACBs to further justify their decision. The latter view suggests that ACBs have no influence on the decision-making process for judges. Regardless of which process is used, scant attention has been dedicated to finding qualitative evidence of ACBs' ability to influence judicial decisions. Prior research is often limited to quantitative studies of ACBs (Buckler, 2014; Collins Jr. 2004; Kuersten & Jagemann, 2000; Smith & Pollack, 2000; Songer & Sheehan, 1993). These studies tend to highlight judicial outcomes and how they correlate with the number of ACBs filed or the status and prestige of specific amici curiae. Because there are so few qualitative studies available, the current analysis seeks to clarify these problems by analyzing the latent content of ACBs and judicial opinions.

### **Prisons and Inmates' Rights**

Prison administrators exercise near limitless authority over their captives. In fact, inmates are often referred to as "slaves of the state" that possess few rights. Of those remaining rights that convicts retain, substantial restrictions are placed on inmates which are typically justified by the need for safety and security within correctional facilities. As a result of such restrictions, whether administrative or legislative, inmates have limited access to courts and thus attenuated opportunities for redress of grievances apart from administrative remedies provided by prison staff. Because of this, the actions of IGs and the effectiveness of ACBs are particularly important for inmates. ACBs have the potential to either aid or dissuade judges concerning the merits of a case in a manner that might be either adverse or beneficial to inmates' well-being while incarcerated. Because researchers have paid scant attention to the quality of ACBs submitted to the courts, several questions arise. To what extent are ACBs consistent with the decisions rendered by judges? Is there any information contained in judicial opinions that indicates whether a brief(s) may have influenced judges' decisions? Finally, to what extent do ACBs result in favorable case outcomes for IGs?

Cases involving inmates constitute a unique unit of analysis for several reasons. The literature on judicial decision-making instead typically focuses on case types involving populations that are less often marginalized. Some rights held by inmates are lost or restricted due to conviction. It is possible that courts will prioritize the goals of the penal system above the rights of inmates. One might argue that there is rarely a level "playing field" between civilians and criminal justice practitioners. Thus, inmates and the IGs advocating on their behalf may be less likely to receive favorable case outcomes because of negative stereotypes associated with criminals. Further, inmates tend to have less support both publicly and politically. As such, judges may be less inclined to decide cases in a manner that is favorable toward inmates.

### **Deference by Courts**

It is not uncommon for the judiciary (most notably the U.S. Supreme Court) to defer to agents of the justice system. In doing so, while treatment of inmates may seem somewhat unfair or perhaps appears to violate constitutional rights, Supreme Court justices are sometimes partial to corrections as an institution. This point is evidenced in numerous majority opinions by United States Supreme Court (USSC) justices. For instance, in the case of *Vitek v. Jones* (1980), the justices note the importance of avoiding "unnecessary intrusion into... correctional judgments" (p. 496). Similarly, in the case of *Foucha v. LA* (1992), the majority opinion states that "courts should pay particular deference to reasonable legislative judgments" (pp. 110-11). As these examples indicate, courts may be less inclined to rule in favor of inmates despite the merits of the case. To be fair, this form of judicial restraint may be necessary to uphold the separation of powers principle by avoiding unnecessary interference with the authority granted by the constitution to other branches of government. On the other hand, such restraint may result in a higher threshold for inmates trying to obtain redress through the judiciary.

Another example of deference toward the justice system involves legislative efforts like the Prison Litigation Reform Act (PLRA). This statute problematizes the process of judicial review for inmates in various ways. PLRA mandates that inmates exhaust all administrative remedies available within a correctional facility prior to petitioning courts for redress of grievances. Thus, an inmate must first utilize all available channels to resolve a grievance using disciplinary review boards and similar administrative bodies within a prison. Such decisions at the institutional level, if unfavorable, must be appealed throughout the institutional hierarchy to the highest authority (presumably the warden) prior to any filing in a court of law. While this arrangement may indeed reduce the number of frivolous lawsuits filed in courts (as is the stated purpose of PLRA), it can also affect the duration that inmates are subjected to potential violations of their constitutional rights. Such violations become particularly more serious when they involve deficiencies in the basic needs of prisoners like food quality,

unsanitary living conditions, or inadequate medical attention to name a few.

### Interest Groups

The efforts of IGs have been quite prevalent historically (Walker, 1999; Zackin, 2008). To this end, IGs have been characterized in several ways to include social/political pressure groups and advocacy groups (Griffin et al., 2016; Smith & Pollack, 2000; Yancey, 2014). Fairchild (1981) describes IGs as “organizations...dedicated to influencing the formulation and execution of public policy” (p. 183). Although IGs have been prominent politically, their influence has been discussed less frequently in criminal justice literature. On the contrary, notable examples do exist such as Stolz’s (2005;2002) assessments of IGs impact on criminal legislation and policy. Similarly, Walker’s (1999) thorough analysis of the American Civil Liberties Union (ACLU) details the historical impact of the organization’s advocacy. Nonetheless, such accounts of IGs are scarcely available from a criminological standpoint. While other examples are available from criminal justice scholars (Garland, 2011; Griffin et al., 2015) the common narrative persists as criminologists have been less outspoken regarding factors that influence judicial decision-making.

### Literature Review

In general, the literature concerning IGs’ ability to affect policy-making is voluminous. Prior research indicates that IGs influence policy choices through various means. These efforts primarily include litigation to uphold civil rights and disseminating of information to educate others regarding various injustices (Collins, Jr. & Solowiej, 2007; Garland & Simi, 2011; Smith & Pollack, 2000; Zackin, 2008). In doing so, policymakers receive valuable information about the benefits and consequences of various choices. On the other hand, IGs’ advocacy helps policymakers gauge the level of public sentiment and interest regarding a topic. Viewed in this manner, the number of IGs that participate in litigation as amici curiae may be indicative of the the impact of certain judicial decisions.

IGs distinctly influence policymaking in the following two ways: legislative advocacy and participation in litigation. Legislatively, prior research has often focused on Congressional decision-making. For instance, Caldiera and Wright’s (1998) analysis of Senate confirmation processes for United States Supreme Court justices reveals that IGs introduce valuable information to Congressmembers for consideration. Similarly, Scherer and colleagues’ (2008) assessment of judicial confirmations reveal that IGs’ oppositional advocacy can negatively impact the confirmation process by prolonging the time needed to confirm judicial nominees. At the state level, Roby’s (1969) study of proposed legislation prohibiting prostitution highlights the way in which IGs’ not only differ regarding levels of influence, but also the way each IG’s influence can vary over time. Stolz (2002) emphasizes further support for this “time dimension” with a focus on specific decision points during the process of ratifying proposed criminal justice legislation. These points suggest that the impact of IGs’ advocacy is not always as straightforward as it may seem.

Despite the prevalence of research focused on Congressional decision-making, the literature regarding judicial decision-making is perhaps more extensive. Hansford’s (2004) analysis of venue selection reveals that IGs are intentional about which courts are targeted based on justices’ receptiveness to specific issues. Findings reveal that justices are more receptive to IGs that have been past participants before the court (either as litigants or amici curiae). McAtee and McGuire’s (2007) analysis of “issue salience” finds similar support for the idea of judicial receptivity. The authors note that judges are more likely to respond to ACBs when the issues before them are salient among the public.

Other studies have more broadly focused on the use of ACBs as a strategy for advocacy. Much like congressional advocacy, ACBs are a useful means of providing valuable contextual information to judges thus informing them on various public interests (Collins, Jr., 2004; McAtee & McGuire, 2007; Spriggs & Wahlbeck, 1997; Stolz, 2005). Prior research finds substantial support for the “information hypothesis” and the utility of ACBs to influence judicial decision-making (Caldiera & Wright, 2000; Collins, Jr., 2004; Kearney & Merrill, 2000). Interestingly, Spriggs and Wahlbeck (1997) is one of few studies that conducts a latent content analysis of ACBs as evidence of support for the information hypothesis. Findings reveal that ACBs contributed new information in more than two-thirds of the cases analyzed (n=110). Collins, Jr. (2004) tests the “affected groups hypothesis” to determine whether coalitions of participating IGs affect judicial outcomes. While findings do not support the notion that cosigning IGs (or coalitions) influence judicial outcomes significantly, the results do show that the quantity (sum total) of participating IGs positively affects judicial outcomes.

While participation frequency is important to consider, so too the is the notoriety of amici curiae. Prior research reveals that certain groups like the ACLU often have greater success with regards to judicial outcomes. Buckler (2014) finds support for the “status differential hypothesis” noting that the prestige of amici curiae can positively affect case outcomes. It is possible that there is a reciprocal relationship between participation frequency and status differential which heightens the likelihood of favorable case outcomes for amici curiae. Collins and Soloweig (2007) assess participation frequency with a focus on IGs’ stance and whether ACBs reveal conflict with

opposing IGs. Findings indicate that direct conflict between competing IGs is very rare and occurs in less than 15% of cases. In terms of status differential, Box-Steffensmeier and colleagues (2013) find that the power of IGs (or ability to influence case outcomes) varies considerably. The study examines cases for a period of over 50 years (1946 – 2001) and identifies the five most powerful IGs by decade. Interestingly, the authors note that power is most important in cases involving roughly the same number of participating amici curiae (Box-Steffensmeier et al., 2013). Conversely, Songer & Sheehan (1993) found no support for the idea of status differential. Methodologically, the study is unique as the sample is limited to cases with no opposing amici curiae during a twenty-year period. Contrary to prior research (Hansford, 2004), findings show a slight disadvantage for amici curiae in cases with no opposing ACB submissions.

Although studies of lower court decisions are less common, they do exist. Collins, Jr. and Martinek's (2010) analysis indicates that ACBs filed in appeals courts are more advantageous for appellants than appellees. As such, status differential among IGs is perhaps one of numerous factors that potentially affect judicial outcomes. Simard (2008) examines both USSC and lower court cases using self-report surveys to question judges. Despite low response rates, findings show that ACBs are not given equal consideration as many are not even read by judges. Martinek (2006) notes that IGs' participation in lower court decisions is strategically based on whether such cases are deemed useful to advance policy reform. Viewed in this regard, while IGs' participation may be less prevalent outside the USSC, their participation is still likely to be influential.

Finally, several case studies have been conducted of prominent IGs with a focus on litigation strategies. Zackin's (2008) historical analysis examines the ACLU's shift from an educational and/or informative approach to a litigation-based strategy. Similarly, Walker's (1990) historical analysis assesses bureaucratic conflict among administrators regarding choices in litigation and advocacy efforts. Garland and Simi (2011) observe the effects of litigation by the Southern Poverty Law Center (SPLC). Findings reveal that monetary damages awarded through successful litigation have been useful to effectively bankrupt hate groups. Tauber's (1999) longitudinal analysis of race discrimination cases involving the National Association for the Advancement of Colored People (NAACP) is less supportive of IGs' ability to influence case outcomes. Findings show that the NAACP's participation in race discrimination had relatively no impact on judicial outcomes. Although Tauber (1999) casts doubt on the influential nature of IGs' advocacy, it is worth noting that the case type (race discrimination) may have contributed to results that are less consistent with prior research. Because the sampling frame examines a period in which views of racism were less often regarded as abnormal, it is possible that favorable decisions challenging race discrimination are less likely. Here again, this point highlights the possibility that other factors like case type and venue selection contribute to judicial decision-making.

### Methodology

The current analysis examines IGs' impact on litigation. The unit of analysis is cases argued at the USSC. The latent content of these cases is analyzed to address several dimensions of judicial decision-making. These dimensions include frequency, stance on issues, influence, scope, and effectiveness. The following research questions are used to guide the current analysis:

1. Which IGs participate most frequently in USSC litigation?
2. Among participating IGs, what is their stance on issues relative to inmates' rights?
3. To what extent does the latent content of cases reveal evidence of IGs' advocacy?
4. Regarding case types, what is the scope of IGs' participation in USSC litigation involving inmates' rights?
5. To what extent does IGs' advocacy result in favorable outcomes?

The current analysis is unique in that it measures influence in a manner that is distinct from effectiveness. Prior research (Buckler, 2014; McAtee & McGuire, 2007) has conceptualized favorable case outcomes as a measure of justices' agreement with arguments proffered in ACBs. The current analysis employs a similar approach to examine the effectiveness of IGs' advocacy.

### Sampling

The analysis utilizes a purposive sampling procedure to select USSC cases that address prisoners' rights. In doing so, the sample is limited to cases in which IGs participate either as amicus curiae or as parties (counsel for litigants) to a case. A search is conducted through the Westlaw database using several keyword combinations relative to the 8<sup>th</sup> Amendment and prisoners' rights. This process results in 209 non-identical cases. Next, the initial list of cases is summarily reviewed to ensure that each case involves issues that are specific to prisoners' rights or prison reforms. Because of the way in which judicial opinions sometimes cite prior case law (precedents), the keyword search may erroneously select some cases that are not relative to prisoners' rights. In the instances in which the case did not involve prisoners' rights, such cases are unfit for sampling.

Several cases are excluded from the current analysis. These cases involve appeals of convictions, automatic appeals of capital punishment, cases in which no ACB is filed, and cases in which no majority opinion is rendered by the Court. These adjustments result in a sample of 90 USSC cases. The number of ACBs filed per case range from as few as one to as many as 22 ACBs. A total of 90 cases are sampled resulting in 124 ACBs analyzed using latent content analysis. Among those ACBs, 50% (62) are submitted by individual IGs, while the other half are submitted by multiple amici curiae collaboratively (including at least one IG).

Past research has often focused on the most frequent amici curiae as participants in litigation. The current study seeks to add to the literature by examining a more comprehensive list of IGs participating as amici curiae. In this way, the study examines the efforts of lesser known IGs and whether they exhibit a similar degree of influence upon case outcomes.

### Data analysis

Each case is analyzed using directed content analysis to assess the way that information contained in ACBs might affect or contribute to positive case outcomes. According to Hsieh and Shannon (2005), directed content analysis is a deductive approach that relies on “existing theory or prior research... [for] identifying key concepts or variables as initial coding categories” (p. 1281). These concepts are then operationalized to guide data analysis. The current analysis utilizes a paragraph matching technique to identify similarities between ACBs and judicial opinions. In other words, every paragraph contained in the documents is thematically coded regarding the subjective interpretation of the arguments proffered and then matched to similar content found in ACBs and judicial opinions. Next, the degree of similarity between each set of matching paragraphs is quantified in terms of the total number of matching paragraphs. This cumbersome process also facilitates comparisons that highlight the scope of litigation involving prisoners’ rights, the extent to which prison reforms have been successful longitudinally, the case types to which the USSC has been most receptive, and whether the rights of prisoners are being expanded or constricted.

The current analysis is unique since it is perhaps the first study to go beyond majority opinions to include concurring and dissenting opinions in the study. It is possible that ACBs may be both ineffective to obtain favorable case outcomes but influential by contributing to dissenting opinions. Because hardly any analyses of judicial decision-making involve an actual review of ACBs’ latent content, such criteria may prove useful to advancing a more in-depth understanding of the impact of ACBs.

### Concepts

Interest Groups (IGs) are defined as “organizations that are entirely or partially dedicated to influencing the formulation and execution of public policy” (Fairchild, 1981, p. 183). For purposes of the current analysis, IGs are limited to membership-based organizations and do not include official state and federal agencies. IGs’ advocacy often encompasses many things including writing letters to politicians, information campaigns, as well as ACBs (Griffin et al., 2016; Roby, 1969; Walker, 1999). In this regard, *participation* by IGs in litigation is defined as follows: either (1) indirectly by filing an ACB, or (2) directly by being retained as legal counsel for litigants. It should be noted that ACBs are sometimes filed neutrally and may not necessarily favor a particular case outcome.

### Variables

*Influence* denotes the extent to which there is consistency between ACBs and judicial opinions on a given case. Higher levels of similarity between the two documents suggests that IGs are better able to influence judicial decisions. It is possible that this measure will be useful to predict favorable case outcomes. Influence scores measure the degree of similarity by quantifying the number of matching paragraphs resident between each document type. Influence factors are used to assess the cumulative effect of all IGs’ advocacy whether favorable or opposed to prisoners’ rights. Sum totals of influence scores for IGs opposing prisoners’ rights are assigned negative integers while IGs favoring prisoners’ rights are denoted positive integers. The cumulative results for all influence scores yield positive or negative integers called influence factors which are used to assess influence among IGs collectively per case. Ideally, influence factors will predict case outcomes assuming that IGs’ influence is substantial.

*Effectiveness* is conceptualized as the extent to which IGs’ participation results in favorable case outcomes. It is possible that IGs display influence and may even receive notable mention by justices. However, such efforts may be unconvincing and thus do not result in a favorable decision. Thus, it is necessary to measure effectiveness separately from influence to better understand the utility of ACBs. Effectiveness is determined by how well influence factors predict case outcomes.

*Identity* refers to the specific name or title used to identify each IG. For purposes of the current analysis, smaller subsidiary entities are counted as part of the larger group. This practice prevents double counting of IGs. For instance, although there may be numerous chapter organizations that comprise an IG (e.g., ACLU or NAACP)

in each state, these smaller subsidiaries are counted as part of the larger national organization.

*Frequency* refers to the number of cases in which a specific IG participates. Here again, the issue of subsidiary organizations is relevant. While multiple chapters of an IG might submit separate ACBs for a specific case, for purposes of the current analysis, frequency counts are tallied as one national entity participating in the case. It should also be noted that this problem occurred infrequently.

*Scope* refers to the full range of case types litigated by IGs included in the sample. Reforms are defined as case types that have received a favorable disposition. In theory, an historical timeline of reforms makes it possible to better understand the utility of ACBs over time.

## Findings

Initially, 263 amici curiae were identified and further examined to ensure that each one is a membership-based, non-government agency. Based on these conceptual parameters, the sample of participating amici curiae is further reduced to 102 membership-based IGs.

A host of different types of IGs participated as amici curiae. These groups include private law firms, legal services agencies (both state and federally funded), faith-based groups like churches, traditional non-profit organizations, and law clinics from various law schools.

It should be noted that amici curiae often submit a single ACB on behalf of multiple amici curiae (collaboration). Perhaps the best way to explain this practice is that one ACB is submitted with numerous amici curiae as signees denoting agreement with the manuscript. In some ways, this practice is reminiscent of justices concurring with majority opinions. The current analysis includes a total of 81 ACBs. Among them, 34 ACBs are collaborative manuscripts (representing a plurality IGs) while 47 ACBs constitute individual submissions by one specific IG. This sort of collaborative teamwork is also visible in other ways. Findings reveal that the same cohorts of IGs often participate in the same cases or case types. For example, the list of faith-based IGs participating in both *Holt v. Hobbs* (2015) and *Sossamon v. Texas* (2011) is virtually identical. This finding highlights the possibility that IGs are aware of other IGs' advocacy and suggests a teamwork-oriented approach to influence judicial decision-making. Further, IGs sometimes utilize both a team-oriented approach and an individualized approach within the same case. The National Alliance on Mental Illness participates in the case of *Panetti v. Quaterman* (2007) using an individually-authored submission and as well concurs on a collaborative ACB submission with other IGs. It should be noted that this practice of "multiple submissions" in the same case occurs infrequently in the current study.

### IGs as Counsel

A total of 16 IGs are retained as legal counsel in the current analysis. In ten cases, IGs are retained as counsel exclusively and file no ACBs. This point is important as these ten cases are later excluded from the qualitative assessment since there are no ACBs to analyze.

Among amici curiae, six of them display a history of "dual participation" that involves advocacy as both an amicus curiae and as legal counsel on behalf of specific litigants. Of those six amici curiae, only one of them fit the description of IGs as conceptualized in the current analysis. Unsurprising, the American Civil Liberties Union (ACLU) is most frequently involved in dual participation with 22 cases as amicus curiae and 11 exclusive cases as legal counsel. Prior research notes the extensive participation of the ACLU in both roles as counsel and as amicus curiae (Smith & Pollack, 2000; Tauber, 1999).

### Participation Frequency

The overwhelming majority (72.55%) of IGs are "one shot" participants having only submitted an ACB in one case throughout the sample. While the ACLU is generally the most frequent participant, other IGs are identified as amici curiae in multiple cases. These groups include the American Bar Association (7 cases), the American Psychiatric Association (6 cases), and the American Psychological Association (5 cases). The stance of each group is favorable toward prisoners' rights. On the contrary, among IGs opposing prisoners' rights, the Criminal Justice Legal Foundation is the most frequent participant in the sample (7 cases). Interestingly, despite the CJLF's prominence opposing prisoners' rights, the group does not rely on a team-oriented approach. All ACBs by the CJLF are individually-authored submissions with no collaboration from other IGs. It is possible that groups opposing prisoners' rights less often ally with amici curiae that are IGs instead opting to collaborate with government entities like the Solicitor General, individual practitioners like judges or professors, or even states' attorneys general. Future research might be useful to clarify this possibility.

### IGs' Stance

The overwhelming majority of cases reveal IGs with favorable stances on prisoners' rights. A total of

75 IGs (73.53%; n=102) advocated in favor of inmates. The remaining 27 IGs (26.47%) hold stances opposing inmates' rights. However, this point should be received with caution since federal and state agencies are most often the amici curiae opposing inmate litigation. It should be noted that the sample is limited to membership-based IGs which excludes most state and federal agencies by default. This fact may explain the skew towards IGs that favor prisoners' rights.

### **IGs' Scope**

Numerous unanticipated challenges arise when categorizing the scope of each case into a meaningful typology. The question involves determining the best method for such categories. These difficulties highlight the subjective nature of collapsing various case elements into one distinct category. Several categories might be considered including meritorious claims, type of relief sought, procedural dynamics, jurisdiction, among other things. For instance, despite strong merits for filing a case, it might be dismissed or remanded due to violations of procedural due process. Despite these difficulties, the current analysis examines the merits of each case to organize them into categories thematically. Among the sample of 42 cases, post-conviction relief is most common (8 cases). Similarly, cases involving conditions of confinement (6 cases) and inadequate medical attention (5 cases) follow in terms of most prevalent.

### **ACBs' Influence**

The qualitative component involves a comparative analysis between the latent content of ACBs and judicial opinions submitted per case. Documents are thoroughly read and coded thematically in terms of the subjective interpretation of the data. The codes are then reconciled to assess any similarities which may be resident among each document type. In rare cases, justices submit opinions which in part both concur with and dissent from the majority opinion. Most often, this sort of "split decision" occurs when judges concur with the final decision by the court yet disagree with the Court's reasoning to arrive at the conclusion.

A few points of clarity are essential to explain findings among documents. In most instances judicial opinions provide a summary of case facts prior to any merit-based or procedural discussion. To the extent that both judicial opinions and ACBs summarize case facts, these points are not used to determine similarity among documents or to suggest influence by IGs. Similarly, case precedents that merely list a history of cases which might be used to inform judicial decisions are commonplace among the data. However, such precedents are largely excluded from the analysis when there is no argument presented relative to the merits of those cases. These exclusions are intended to reduce the number of "false positives" in matching similar latent content among documents by focusing solely on merit-based arguments presented in ACBs and subsequent judicial opinions.

Findings reveal matching concepts in 26 ACBs across 22 cases. The number of matching paragraphs range from 0 to 7 throughout the sample. Nine cases display only one matching paragraph between each document type. The highest number of matching paragraphs (7) is only identified in two cases. Additionally, the ACLU, the American Psychiatric Association, and the American Psychological Association each submitted ACBs with multiple matching paragraphs. This finding is noteworthy because each of these IGs constitute the three most frequent participants in the sample. This point supports the notion that frequent participants as amici curiae tend to have greater influence in judicial decision-making. It should be noted that a key factor that affects the number of matching paragraphs is the length of each document type. For instance, shorter judicial opinions do not provide much content for assessing similarities. As such, shorter ACBs and/or opinions reduce the likelihood of finding similarities among latent content.

Summated influence factors ranged from -3 to 4 indicating that the cumulative effect of advocacy is more often in favor of prisoners' rights. Only three cases (7.14%) reveal negative influence factors whereas 18 cases (42.86%) show positive influence factors. This skew may result from a higher saturation of IGs favoring prisoners' rights rather than a greater likelihood of convincing arguments by IGs favorable to prisoners' rights. Half of all cases (21) display neutral influence factors (0) suggesting that in many instances, the effects of ACBs may either cancel out or fail to have any influence on the case.

### **Effectiveness**

Effectiveness is the final component of the analysis to determine whether any influence resulting from IGs' participation contributes to favorable case outcomes. Influence factors accurately predict the judicial decisions in 18 cases (42.86%). Stated differently, in 18 cases, justices' decisions are consistent with the collective advocacy of IGs. This finding supports the notion that ACBs can be somewhat influential when assessing the cumulative effect of participation per case. On the contrary, most cases (57.14%) are not predicted by influence factors thus suggesting that IGs' advocacy is often ineffective. Additionally, this finding highlights the possibility that other factors (i.e. deductive reasoning or preconceptions about justice, politics or partisanship, judicial restraint, etc.) may also be responsible for much of the variance that is not accounted for by influence factors. A notable example of this occurs in the case of *Youngberg v. Romeo* (1982) in which the majority opinion seemingly sides with both parties. The opinion states that citizens retain certain liberty interests in cases of civil commitment as if to

recognize and possibly agree with merit-based claims presented by one of the litigants. On the contrary, the Court also notes that it is necessary to defer to treatment decisions made by qualified professionals to avoid constant litigation in the future. This example illustrates that IGs may present influential viewpoints that are ineffective in the end since other spurious factors like the impact of a judicial ruling may be prioritized in the case.

### Conclusion

The current analysis reveals 102 membership-based IGs participating USSC litigation among 42 cases focused on prisoners' rights. Consistent with previous studies (Box-Steffensmeier et al., 2013; Buckler, 2014), the ACLU is unsurprisingly the most frequent participant identified in the sample as both legal counsel and as *amicus curiae*. On the contrary, the overwhelming majority of IGs in the sample are characterized as "one-time participants" in USSC litigation. The stance of IGs' advocacy (either favoring or opposing prisoners' rights) remained constant throughout subsequent litigation. Stated differently, IGs do not seem to change stances based on extra-legal factors or other case-related specifics.

References to *amici curiae* reveal that justices are receptive to arguments found in ACBs and that justices do indeed read many of the briefs submitted. However, there is no way to be certain that all ACBs are read or regarded with the same level of importance. Most references by justices are relative to litigants' briefs rather than ACBs submitted by IGs. Nonetheless, there is further proof of the influential nature of IGs evidenced by similarities among court documents. Frequent participants do seem to enjoy more sway with the Court indicating that participation frequency and the prestige of IGs are key factors that affect judicial decisions. Although it is beyond the scope of this study, the current analysis finds support for both the repeat players hypothesis and the information hypothesis.

Qualitatively, judicial opinions regarding prisoners' rights rarely echo the arguments put forth in ACBs. However, in those rare instances where similarities are found, ACBs do seem to be influential especially when submitted by IGs that are frequent participants before the Court. Further, such efforts have proven to be effective as evidenced by subsequent favorable case outcomes. On the contrary, such effectiveness occurs in a minority of cases in the sample.

### Shortcomings

It should be noted that various prominent *amici curiae* are excluded from the current analysis since they do not adhere to the conceptualized definition of IGs used in this study. It is possible that the decision to focus solely on IGs excludes notable instances in which ACBs are able to influence judicial opinions. Many *amici curiae*, such as the Solicitor General of the United States various States' Attorneys General, are highly regarded among Supreme Court justices and may have considerable sway with the Court. In fact, the Solicitor General is perhaps the most frequent participant to litigation using ACBs. Thus, while the sample does not indicate a substantial degree of influence by certain IGs, these results should be received with caution. Stated differently, it is possible the "non-IGs" like the Solicitor General or other States' Attorneys General are more successful using ACBs than IGs. If so, assessments of effectiveness are likely affected by limiting the analysis to ACBs submitted by IGs. Future research should expand the list of *amici curiae* beyond IGs to determine whether this narrow focus limits variation among available observations. Perhaps a better approach to assess differences among IGs specifically is to limit the sample to cases in which IGs are the only participants to ensure more accurate results per case regarding effectiveness.

A second limitation of the current study is that the sample is skewed regarding IGs' stance on prisoners' rights. Potentially, this skew can limit our ability to adequately measure the effectiveness of ACBs with regards to judicial decision-making. Yancey (2014) warns of this sort of unwarranted "effect bias" resulting from negative scrutiny towards conservative IGs accorded by too many liberal researchers. Future research should aim for a more balance sample in terms of IGs' stance whether favoring or opposing prisoners' rights. Here again, this problem might be mitigated by using a sampling frame that is not exclusive to IGs and more broadly incorporates *amici curiae* as both groups and individual actors.

### Additional Research

Future research should examine whether teamwork by IGs occurs intentionally or coincidentally. It is possible that collaborative efforts towards advocacy result from IGs' similar stance on specific issues rather than a concerted effort to work together. On the other hand, it might be useful to understand the process of collaboration in terms of co-authoring ACBs. It is possible that some IGs routinely partner with and target specific groups for collaboration.

Lastly future research should explore IGs' effectiveness in other areas of the criminal justice system like policing. Police officers are more likely garner public support than inmates. This difference may also contribute to variance in case outcomes to suggest whether certain categories of litigation have an effect on judicial decision-



making. In other words, expanding our research to different case types may reveal additional factors beyond prestige and/or participation frequency that affect judicial decision-making.

### Works Citation

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