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SCOTUS on Cert: a Look at the Blackmun Papers

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ABSTRACT
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Many studies aim to capture the influence of the Supreme Court over political actors who provide information to the justices. However, it seems reasonable to suggest that the reciprocal effect might also occur. Certain groups and individuals, hence political actors, might influence the Court through information mechanisms. With increasing requests for certiorari and thousands of cases being petitioned to the Court, the justices are faced with the daunting task of trying to decide which cases merit review. Reviewing 80-100 cases a year, the justices must rely upon political actors to help ease their burden of decision making. Employing the Blackmun Papers, this paper seeks to analyze whether the recommendation made by the justices' law clerks in the pool memoranda influence the Court's decision to grant certiorari. Finding clerk recommendation influences decision making, I further analyze whether the content of the memos—what the law clerks write in them—significantly influences the justices' decision to grant cert. The results indicate that certain groups and individuals (i.e., lower court judges, attorneys, and the parties of a case), who provide information in the pool memoranda, significantly increase the likelihood a case will be granted certiorari, suggesting the justices consider information provisions of political actors when making decisions on cert.

-To my wife, twins, parents, and family, for without them I would not be where I am today.

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CHAPTER 1: Introduction

Ways in which decision making by the Supreme Court influences various political actors, including lower court judges, the political branches of government, and street-level bureaucrats, has prompted considerable attention from scholars (Rosenberg 2008; Hall 2013; Borochoff 2013). However, it seems reasonable to suggest that the Court might need guidance and be influenced by other actors as well, especially when setting its agenda. After all, the Supreme Court receives thousands of petitions each year, and yet only reviews a fraction of these cases (approximately 1% according to Segal, Spaeth, and Benesh 2005). Many petitions are frivolous and/or meritless and are, hence, undeserving of review by the Court. But, faced with increasing requests for cert – more than 7,000 last term (United States Courts 2014) – the justices of the Supreme Court must rely on some information shortcuts to help them gauge which cases are cert-worthy.[1] The essential question becomes, *what* information, provided by *which* groups and individuals influence the justices?

The justices are in an odd informational environment – they both *need* and also *have* vast amounts of information when analyzing a case. Having a plethora of information is beneficial, especially when plenty of information is needed, but separating the useful information from the information that is unneeded is difficult, making their decision making process complex. All of this may lead to seeking out *additional* information, edited by trusted advisors.

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[1] The Supreme Court, during this analysis (1986-1993), received increasing requests for cert each year. However, today, the request for cert among paid petitions is starting to decline, but only among the paid petitions (Stras 2007; Lazarus 2008).

Part of the information overload faced by the justices is endemic to judging, given the judicial process of discovery. Since vast amounts of information can emerge, judges oftentimes act as generalists (Rosenberg 2008) required to know something about, and be able to deal with information on nearly, every legal topic. But the justices do not possess the time to read and analyze every petition that arrives at their desk. And they do not work alone. In this dissertation, I supplement previous scholarship which suggests the justices are forward looking strategic actors and use cues in decision making, and propose, in addition to strategy and signals, that the justices seek out necessary information provided by groups and individual political actors.

Research has attempted to identify various influences on judicial decision making, but we have only a modest understanding of the types of short cuts the justices use in their agenda-setting decisions. Scholars suggest that the justices' law clerks help them make decisions (Rehnquist 1957; Woodward and Armstrong 1979; Lazarus 1999; Ditslear and Baum 2001; Wahlbeck, Spriggs and Sigelman 2002), and we know that justices obtain information from the lower court decision (Perry 1991; Cameron, Segal, and Songer 2000; Hall 2009), amicus briefs filed either for or against cert (Krislov 1963; O'Connor and Epstein 1981-1982; Caldeira and Wright 1988; McGuire and Caldeira 1993; Caldeira, Wright, and Zorn 1999; Collins 2004, 2007, 2008a, 2008b), attorneys, especially experienced ones like those who work in the Office of the Solicitor General (Tanenhaus et al. 1963; Ulmer, Hintze, and Kirklosky 1972; Provine 1980; McGuire 1993, 1998; Lazarus 2008; Black and Owens 2012b)) and the litigants themselves (Galanter 1974; Caldeira and Wright 1990; Songer, Sheehan, and Haire 1999; Collins 2008b; Corley 2008; Black and Boyd 2012b). All of these actors bring some information

to the justices about the advisability of granting cert to a given case and the clerks give the justices this information in the "cert pool memos" they write.

Chapter Layout

Chapter 2 lays out a theoretical framework for the possibility of information influences on the Court from groups and individuals. I provide a theory of decision making on cert, which relies on notions of source effects and advisors, and I explain how the theory is likely to work in practice. I focus especially on the extent to which law clerks influence the justices' cert decisions both via their explicit recommendations on cert, and through their attention to other groups and individuals in the body of the cert pool memos. Scholars have not typically considered the use of the justices' primary source of information, the cert pool memos, which are written synopses of a case by a law clerk, to examine the influence of law clerks on the justices' decision, mostly because they have only just become available to scholars. I argue that law clerks influence the justices' decision making on cert both through the recommendations they give on whether to grant or deny cert and through the information they provide to the Court about the actions and preferences of other actors. Although scholars have before examined clerk influence at the Supreme Court, much of that work lacks empirical rigor and hence cannot directly test the influence of clerks as advisors for the Court (see, e.g. Lazarus 1999). Here, I examine that advice as well as the influence of the actual information in the memo on decision making. For example, clerks often discuss the lower court's decision in the cert pool memo, sometimes mentioning judges by name or quoting their opinions directly. Perhaps these notations suggest to the justices that a case has adequately percolated through the lower courts and, hence, is a good vehicle for the Court

in its decision making (Perry 1991). Or, that a given lower court decision, written by a very well-known and reputable judge, is reasoned very well, making the justices' job in deciding the case an easier one.

Chapter 3 reviews the scholarly research on the determinants of judicial decision making on cert. Previous scholars suggest that the justices either rely on cues in cert decisions, act strategically at cert to better pursue their policy preferences on the merits, or make cert decisions purely on the basis of jurisprudential concerns. My dissertation offers a new theory that might be used to understand the success of some of the cue theory and the strategic analyses, that clerks, judges, attorneys, and litigants convey essential information to the Court, beyond a simple cue, that can help the justices choose the cases in which they are most interested without the burden of considering every piece of information before the Court.

In addition, given my novel data source and my ability to come closer to a "true" measure of conflict, I present a more complete model of Supreme Court agenda setting. Replicating a model of cert constructed by Caldeira, Wright and Zorn (1999), I demonstrate that my data, collected from the Blackmun Papers archives, resembles that of the most exhaustive model of cert to date. Not only does my data replicate Caldeira, Wright, and Zorn's (1999) model of cert, but the updated model adds new measures that withstand the rigor of an already complete model. Controlling for conflict, both alleged and actual, I can ascertain whether a real conflict exists from the clerk's discussion of the case in the pool memo. This discussion of conflict by the clerk presents the most realistic measure of conflict to date. Clerks frequently address whether conflict exists because parties often alleged conflict knowing that conflict is a primary reason for a grant of cert

by the Court. In fact, Rule 10, in the Supreme Court handbook, states the Court is more likely to grant review when conflict exists among the lower courts (Provine 1980; Supreme Court 2011). Thus, information clerks provide in the pool memos might provide a direct window to the Supreme Court's decision making on cert.

Chapter 4 provides empirical evidence to support the theory offered, demonstrating that law clerk cert recommendations exert an independent effect on the cert decision of the justices even after controlling for other, known determinants of cert. Given their status, (i.e., just out of law school, young, inexperienced, etc.), many have argued that any law clerk influence on the justices is inappropriate. However, the justices have designed a process to limit their workload – the cert pool – and institutions have impacts (Perry 1991; Ward and Weiden 2006). We might expect, then, that the justices that choose to participate actually use the information created by the pool. Hence, we expect, due to time constraints and the complexity of decision making, that the law clerk's recommendation to grant or deny cert will influence judicial decision making, especially when the justice has reason to trust the clerk making the recommendation. Importantly, given the likely coincidence of influences on the justices' cert decisions and the clerks' recommendation, I show that a non-pool justice (in this time frame, Justice Stevens) is not so influenced.

In Chapter 5, I turn to the substantive information in the pool memos to ascertain whether what the clerks write (even beyond their recommendation) also influences the justices' decision making. I begin my analysis with the potential influence of lower court judges on the cert decision. By examining "mentions" by the names of lower court judges in the cert pool memo, I argue that this chapter could be seen as empirically

testing Perry's (1991) percolation theory. A case has percolated when it has been reviewed in multiple courts by various judges who have provided their legal interpretation of the issue. Perry suggested the justices make decisions for jurisprudential reasons, hence the justice will examine whether or not the case is considered a "good vehicle" (1991, 279). I model whether the unique number of lower court judges mentioned in a pool memo increases the likelihood the justices vote to grant cert on the theory that the Court wants cases that have percolated through the court system. Multiple mentions of discussions about lower court judges' opinions might mean that the case has adequately percolated. One might expect, for example, that as the number of judges mentioned in the pool memos increases, the extent to which the case has "percolated" across many lower courts is higher and, therefore, that the justices will be more likely to vote to grant cert. The results bear out that expectation.

Taking the judge mention analysis one step further, I test whether the discussion of *prestigious* lower court judges further increases the likelihood of cert, based on the idea that justices prefer to take cases that are not only well-percolated but also well-reasoned in the lower court (Perry 1991). And all lower court judges are not equally likely to produce high-quality opinions; prestigious judges, on average, ought to do a better job. Most of the literature examining the effects of prestige among judges analyzes the influence of lower federal court judges on one another (i.e., they cite more prestigious judges more often. See Klein and Morrisroe 1999). I assert that the prestige of the lower court judge authoring the opinion might also influence the decision making of a Supreme Court justice. Of course, one might also expect that not all prestigious judges are categorized as such due to their positive qualities. Indeed, there are likely also

"notorious" judges who may, by their presence in the lower court, induce a different reaction from the justices. The analysis suggests that clerks' mention of a prestigious judge does not influence the likelihood of cert but that discussion of opinions on the actual number of prestigious judges influences judicial decision making. I explore why.

Finally, I consider whether mentioning a judge by name has a reputational impact. My argument is that, sometimes, justices actually know and have experience with lower court judges, and their personal relationship may influence how the justices treat their opinions. I consider, therefore, a judge's ability to promote clerks to the Supreme Court. The more "success" a judge has in placing clerks with a justice, the more likely the justices will come to know that judge and trust him or her. I find that clerk mentions, by name, of particularly successful lower court judges (sometimes called "feeder judges," Ward and Weiden 2006, 82) increase the likelihood of cert. This suggests an influence beyond mere percolation of multiple treatments by multiple judges. Instead, the justices consider the qualities of the judge being mentioned in a more specific way, granting cert to cases considered by judges with whom they have more familiarity.

In Chapter 6, I turn my attention to another substantive focus of the cert pool memos: amici, attorneys, and litigants. Much of the literature suggests the presence of these groups and individuals increases the likelihood of cert. Amicus briefs, whether in favor or in opposition to cert, indicate to the Court, that some group, other than the parties bringing the case, will be affected by the Court's decision. Therefore, scholars have found that the higher the number of briefs on cert, the more likely the Court is to grant the petition (Caldeira, Wright, and Zorn 1999; Lazarus 2008). However, I examine the amicus briefs clerks choose to include in the memo and how the clerks' discussion of

these briefs, whether the amici requests the Court grant or deny cert, influences the decision making of the justices. Certain litigants and attorneys, especially those considered specialists (i.e., those in the office of the Solicitor General), also have advantages, perhaps due to their status ("haves") or, their repeated interaction with the justices. When parties with greater resources petition the Court, they are more likely win review (Galanter 1974). When certain attorneys argue that the Court grant cert, for example, the Court is more likely to hear the case (McGuire 1993). And, when the Solicitor General asks that Court to hear a case, its success rate is unmatched (Black and Owens 2012b).

The question remains, though, how these influences operate at the Court, and I argue that they operate through the clerks' cert pool memos. When the clerks discuss amicus briefs or attorney arguments, they provide additional, useful, edited information to the justices about the importance of the case. For instance, clerks do not always include an analysis of every amicus brief filed with a petition. Clerks frequently choose which amici to include in the pool memo thus, directing the attention of the justices to information provided by a particular group or multiple interests. For example, multiple amicus briefs were filed in the case of *Citicorp Industrial Credit, Inc. v. Secretary of Labor*, 483 U.S. 27 (1987), however the memo clerk discussed one amicus which supported the petitioner (Epstein, Segal, and Spaeth 2007, see Docket Number 86-88). The Court granted cert, hence, the clerk likely used the argument provided by this brief to support his/her position requesting the Court take the case. Hence, these discussions, of amici, the SG, and the parties, may enhance the likelihood of a cert grant. Indeed, I find

there to be an influence, again, above and beyond the usual determinants of cert, of clerk discussion of litigants, attorneys, and interest groups.

Chapter 7 concludes the dissertation, considering what we have learned, what we have yet to learn, and what limitations the current research experiences. My work provides a theory of decision making that considers the influence of groups and individuals on the Supreme Court's decision making and tests this theory using the Blackmun Papers. My findings suggest that law clerks influence the justices through the recommendations they give on cert. Along with clerk recommendations, the substantive material in the pool memos matters too. Information conveyed by the clerks about other groups and individuals influences the justices. The clerks write about lower court judges, citing legal reasoning and opinions, perhaps to indicate a case has percolated through the courts. Clerks also choose arguments presented by amici filed before the Court, when the Solicitor General presents an argument, and what litigants are before the Court. These groups and individuals convey information to the justices, who, in turn, use this information in their decision making. Obtaining this information is important because cases the Court chooses to hear can ultimately impact those in the court room, outside interests, formulation of policy, the American citizen, etc. Thus, information the justices are provided with, and who is providing the Court with this information, will influence various aspects of society. It is through these pool memos law clerks provide specific advice to the justices through their recommendations to grant or deny cert, but also edited information in their discussion of groups and individuals, providing useful material to ease the burden on the Court in identifying cases that are worth their time and attention.

CHAPTER 2: Theoretical Framework

Creation of Law Clerks and the Cert Pool

Law clerks, considered "personal assistants to the justices," are critical to the vitality and function of the Court (Ward and Weiden 2006, 21). Law clerks provide information about the cert worthiness (or non-cert worthiness) of a case, help the justices draft opinions, research questions of law, and play a crucial role on the decision to grant cert. However, the role of law clerks has not gone unchanged. In fact, scholars suggest that the institution of law clerks has evolved since its inception in 1882, such that "Today's clerks bear little resemblance to the early clerks, who began their service over a century ago" (Ward and Weiden 2006, 22).

Ward and Weiden have categorized clerks into regimes based on recurrent structures and emergent structures (2006). Recurrent structures are those duties performed by clerks on a routine basis that are considered most important. These include tasks such assisting the justices with research and drafting opinions. These recurrent structures, however, can become more or less important by the introduction of emergent structures which cause a regime change. Specifically, the introduction of law clerks and as "the number of clerks allotted to each justice increased, the institution of the law clerk was transformed…creating different time periods or 'regimes'" (Ward and Weiden 2006, 22). Thus, each time Congress delegated the justices with additional law clerks do we see a regime change and transformation of the law clerk.

Early in the Court's history, some justices requested that Congress hire clerks to work for the Court to assist the justices with clerical duties. This request was ignored by Congress, initially, and so many of the justices turned to current employees already

working at the Supreme Court to assist with extra duties. However, in 1882, Justice Horace Gray hired the first law clerk of the Supreme Court to assist him with his work. This clerk was paid by the justice with no financial compensation from Congress. The success of the law clerk, however, prompted Congress to hire and pay law clerks to work for the justices. Their role was to merely assist the justices and nothing more. With the law clerk firmly established by 1888, their responsibility was primarily secretarial. Clerks were involved in assisting their justice by investigating case law (Witt 1990), but their role was largely to learn the law and type exactly what they were told (Ward and Weiden 2006).

The law clerk's secretarial role was short lived, however, because by 1919 the clerk moved from a secretarial role to that of a research assistant. Clerks were no longer solely investigating case law and copying opinions for their justice, rather clerks took on an editing role in which they would proofread the work of their justice. Under this regime, the justice's opinion writing process operated under a retention method. This meant the justices wrote initial drafts of opinions and law clerks provided an editing role by adding appropriate citations and relevant footnotes. Because of their editing role, clerks became more involved in researching the justices' written work. When the justice needed additional information, clerks would often research and find the information for their justice. However, by 1942 the role of clerks shifted to that of a junior justice. The number of clerks doubled with each justice now employing two law clerks instead of one. As a junior justice, clerks were active decision makers because they were expected to review a large number of cert petitions and draft opinions for their justice. Clerks began to analyze cases and make recommendations on whether their justice should grant cert or

not. Clerks were also actively involved in drafting opinions of their respective justice with the justice largely editing the clerk's draft. By 1970, each justice was allotted a third and fourth clerk. Part of this change is attributed to the workload required of the justices. The justices, now, began to author approximately equal numbers of opinions and methodical justices could not keep up with their more swift colleagues. This equalization of opinion assignment paved the way for delegation: clerks wrote first drafts of opinions with revisions made by the justice (Ward and Weiden 2006). In this way, justices could keep up with their increasing workload and not fall behind.

While some may be uncomfortable positing this sort of influence of a (lowly) law clerk on a (mighty) justice (Liptak 2008), the institution of law clerks was designed to reduce the workload burdening the justices. Some of the justices even pooled their clerks to save on time.[2] The mechanics of the cert pool process are as follows: cases come to the chief justice's chamber and are equally distributed to other participating justices involved in the cert pool process by the chief justice's assistant(s); cases are then divided up by each justice's own law clerks who write the memos; and the completed memos are reviewed by the chief justice's administrative assistant(s) and redistributed back to the justices involved in the cert pool process (USLegal 2011). The purpose of the pool was to combine efforts toward improving decision making by providing edited, reliable information about the cases requesting Supreme Court review.

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[2] All of the justices, except for Justice Stevens, participated in the pool memorandum process over the time frame of this study (Epstein, Segal, and Spaeth 2007). Of course, we also know that Justice Alito recently opted out of the cert pool process (Liptak 2008), and that Justices Brennan and Marshall also stayed out after the pool's creation.

This is the primary reason Justice Lewis F. Powell, Jr. established the cert pool in 1972. He suggested the justices' pool clerks together in order to reduce the duplication of petitions in each chamber. In effect, this was to reduce the workload of the Court due to the increasing number of petitions being filed. In other words, "Rather than have nine clerk-written memos on each case, the pool of clerks would divide up all the petitions and produce only one memo on each case for all the justices who chose to participate" (Ward and Weiden 2006, 45). Under this process, clerks could spend more time focusing on fewer petitions, and yet, provide relevant information not only for their own justice, but all justices participating in the pool.

Not all justices participate in the cert pool. Some justices have expressed concerned about the potential influence by a law clerk. This may be the reason Justice Alito opted out of the cert pool process, although his reason remains at bay (Liptak 2008), as did Justice Stevens (Epstein, Segal, and Spaeth 2007). One reason, offered by Justice Stevens, to remain outside the cert pool was his belief that the composition of pool memos "ceded too much authority to a single clerk" (Ward and Weiden 2006, 45). This was a "dangerous practice" (Ward and Weiden 2006, 45) because most memos read by justices involved in the cert pool would be written by another justice's law clerk. Justice Ginsburg, however, remains in the pool because the role of clerks at the cert stage is carefully monitored. When information provided by a clerk raises doubt, the justices take a closer look at the petition. However, the benefit of law clerks and the cert pool far outweigh the costs as they save the justices "hours upon hours of labor" in the decision making process (Liptak 2008).

The Influence of Law Clerks

Scholars have been interested in whether law clerks, who work for the justices, influence the Court's decision making (Rehnquist 1957; Woodward and Armstrong 1979; Lazarus 1999; Ditslear and Baum 2001; Wahlbeck, Spriggs, and Sigelman 2002). The image of clerks being able to influence the outcome of a justice's decision and, ultimately, the outcome of a case is seen by some as inappropriate and unwarranted. One scholar, and former law clerk, Edward Lazarus (1999), suggests that law clerks have both the ability to influence their respective justice and shape the written opinions of the justices. Lazarus (1999) also suggests the justices are willing to give up their power to a law clerk with potentially ideological motives. Of course, these suggestions come from a former clerk with exaggerated notions of his own influence, and he does not provide empirical evidence to demonstrate his claims. We do know, however, that clerks play a major role in opinion writing.

Scholars have shown that law clerks can influence the way their justice writes his/her opinions (Wahlbeck, Spriggs, Sigelman 2002), while others suggest the increased polarization of the Court is directly related to hiring law clerks who have ideological leanings (Ditslear and Baum 2001). The justices of the Court, according to these scholars, are indirectly influenced by law clerks. If law clerks can influence the opinions and ideological nature of votes on the merits, it seems plausible to suggest clerks might also have an effect on the Court's cert decision via their advice, especially given their extensive role in the cert decision and the major need for assistance the justices have at that stage of the decision making process.

Clerks on Cert

The primary source of information used by the justices to make cert decisions, and the customary way law clerks communicate advice and information to the justices, are the cert pool memorandums. Pool memos, all of which end with an explicit recommendation, should, therefore, carry a significant amount of influence. In fact, clerks suggest that the decision to grant or deny cert is where law clerks have the most influence on judicial decision making (Ward and Weiden 2006). And, the clerks' general humility in terms of their influence on the justices leads Ward and Weiden to trust their contention. For example, in their mail survey and personal interviews, Ward and Weiden say that clerks evaluate "their own research and persuasiveness…of little value to their justices when compared to other decision-making factors" (2006, 195).[3] This implies that clerks are not likely to overestimate their influence.

Clerks, nonetheless, took on an increasingly crucial role in the case selection process. Given other changes meant to save precious time (i.e., the deadlist), it is reasonable to expect that the creation of the cert pool was also designed as a time saver, as the justices rely ever more heavily on the clerk to highlight those cases most worthy of their attention. In fact, drafting pool memos at the cert stage means law clerks are "the initial gatekeepers and primary decision makers in the agenda-setting process" (Ward and Weiden 2006, 238). The creation of the dead list under Chief Justice Hughes signaled

[3] Other factors clerks perceive to influence their own justice's decision making on cases, aside from their own persuasiveness, include the justice's jurisprudential philosophy, specific facts about a case, precedent set in previous cases, what the justice views as proper policy, the briefs written by the parties, the opinion of the lower court, views of the other justices, research conducted by the law clerk, negotiation between justices, and the oral arguments presented by attorneys (Ward and Weiden 2006).

that not all cases were worthy of discussion and so only those cases deemed important were even considered by the justices. Because the dead list was created to save time, the justices placed greater emphasis on clerk written pool memos to provide them with information about a particular case because not all cases were being discussed by the justices.

The creation of the clerk pool and greater reliance on pool memos had a dramatic effect on how the Court functioned. One case was no longer considered by multiple clerks, thus reducing duplicate synopses of a case. Because a case was being briefed by one clerk in the cert pool, this meant clerks would have more time to devote to each cert memo. A more thorough and in-depth analysis of the case would provide for greater interpretation of the law or issue at stake. Although the creation of the cert pool diluted individual clerk influence by giving each clerk fewer cases with which to impose influence, the influence of clerks as a whole expanded as the total number of clerks in the cert pool increased giving greater responsibility to a larger number of clerks at the agenda-setting stage (Ward and Weiden 2006).

Lazarus (1999) posits that the way in which law clerks frame pool memos ultimately affects the decision making of the justices or the way the case is viewed. Justice Rehnquist argued similarly in the U.S. News and World Report (1957). He, speaking as a former law clerk, suggested that law clerks have influence, regardless of whether people want to believe it or not. The "unconscious slanting of material by clerks" inserts itself anytime the clerks, acting as subordinates, brief the justices because clerks are likely "to have or acquire ideas…regarding the matters briefed" (Rehnquist

1957). Thus, there is the possibility "that unconscious bias" can creep into a clerk's work (Rehnquist 1957).

Other justices believe the pool memos are ideologically slanted and therefore have their own clerks reread the memos to make sure the argument and reasoning are not biased and that the assessment of the case is fair (Peppers 2006; Ward and Weiden 2006; Liptak 2008). The mark-up of the pool memo by a justice's own clerk is considered "the most important formal check…to guard against outside influence" (Ward and Weiden 2006, 136). Although clerks mark-up the pool memos, "[t]hey cannot control their justice" and rarely does a clerk influence a justice in such a way that alters his/her mind (Perry 1991, 70). If influence is seen "as the ability to change a justice's mind, or…undermine him," according to Perry's interviews with clerks and justices, "that rarely happens" (1991, 70). However, clerks are influential at the cert stage because of their delegated task in writing these memos. The justices utilize these memos at the cert stage to obtain a detailed analysis of a case. Thus, we should likely expect that a clerk's recommendation to grant or deny cert along with the content provided in the pool memo (including its discussion of other groups or individuals (e.g., lower court judges, amicus curiae briefs, attorneys participating in the case, the litigants to a case)) will influence the justices' perception of a particular case, and, perhaps, their vote to grant or deny cert.

A Theory of Advice

I propose that the justices seek out advice and obtain this information in pool memos written by law clerks to assist them in their decision making on cert. The justices both *have,* and *need* an abundance of information to guide their decision making on agenda setting. Therefore, decision makers, especially in complex situations where they

lack resources or have an overabundance of information, seek out the advice of others (Birnbaum and Stegner 1979; Chaiken 1980; Mondak 1993; Huckfeldt 2001; Yaniv 2004a; 2004b). Yaniv (2004b) suggests that people want to improve their decision making and to do so will seek the opinion of another person. Seeking out opinions of others ultimately helps to improve decision making (Yaniv 2004a). There only needs to be a few opinions for the advice to be beneficial, however opinions are less useful if the decision maker has excessive bias or is distant on some ideological or policy space with the advisor (Yaniv 2004a; Yaniv 2004b; Birnbaum and Stegner 1979; Huckfeldt 2001).

Scholars have found that how people evaluate the source, from which the advice was given, matters (Chaiken 1980), and that the credibility of the source can matter, especially when the source is utilized as a heuristic (Mondak 1993). If a source is held in higher regard, people are more likely to accept that advice and thus efficiency is enhanced because people are more certain of the source's credibility. People considered experts are more likely to be utilized as a source of information especially if the expert is neutral with his/her advice (Birnbaum and Stegner 1979; Huckfedlt 2001). But, especially for intelligent decision makers, individuals are more likely to assume their own advice is better, and thus discredit the opinions of other sources (Yaniv 2004a). Individuals who are considered intelligent and knowledgeable also seek advice in decision making, but do so with caution by determining the expertise of the individual giving the advice (Chaiken 1980).

It seems plausible to suggest that the Court's decision making might be influenced by the recommendations given by law clerks because they act as trusted, ideologically friendly advisors. The law clerks who come to work for the justices are the best of the

best, nearly always coming with impressive pedigrees and experience on law reviews as well as experience clerking with a lower court judge (many of whom feed their clerks up to specific Supreme Court justices) (Ward and Weiden 2006). Thus, it would not be unreasonable to suggest the justices deem law clerks to be expert advisors – both for their advice and credibility as a like-minded source of information.

Information and Advice in the Cert Pool Memos

Scholars have directed their attention to cues (Tanenhaus et al. 1963; Ulmer, Hintze, and Kirklosky 1972; Songer 1979; Teger and Kosinski 1980) influencing the Court's decision on cert. Investigating whether the information provided by lower court judges, amicus briefs, and the petitioning parties influence judicial decision making, through the lens of a law clerk's explanation, is profitable because the justices need information to consequently make a decision on cert. Some petitions are more likely to be granted cert because one or more of these informational sources are present in the pool memo. The identity, and presence, of these informational sources matter. The justices search for informational sources they have come to learn over time provide information that is both relevant and necessary in the agenda setting process.

Information effects, as I posit here, can be distinguished from cue theory in that the justices want clerks to provide information that will help them decide whether a case should be granted cert. Instead of merely stating the name of the interest group, the lower court judge, or the parties petitioning before the Court, the justices expect clerks provide a detailed summary of the argument presented by the source. The justices, then, direct their attention to the identity of the source making the argument and utilize this information to help them decide whether a case is worthy of cert or not. These groups

provide information by signaling to the clerks/justices (Cameron, Segal, and Songer 2000; Black and Owens 2012a) information they want the Court to read. Although these groups do not necessarily control the actual information a clerk will include in the memo, per se, clerks are directed by their own justice to discuss information about certain groups and individuals if present in a case. It is the job of the clerk, then, to distinguish information that is relevant, from that which is not so as to provide the justices with information from these groups and individuals the justices generally trust.

In short, the justices have neither the time nor the resources necessary to thoroughly examine every case. If the justices, alone, devoted all their time reviewing only cert petitions, they would have "about twelve minutes" for each petition (Lazarus 2008, 1523). This does not include reviewing other necessary sources of information such as the amicus briefs, the opinion of the lower court(s), or the opposition brief (Lazarus 2008). Much crucial, and necessary, information relevant in the decision making process could be, under such a system, disregarded. The justices need some guidance because they are humans who do not make decisions in a vacuum or have perfect information and infinite wisdom. The cert pool memos, which are written by the justices' law clerks, become an initial step in the course of decision making. Acting as advisors, the clerks write these memos, give cert recommendations, and provide relevant information to the justices. Indeed, pieces of information clerks write in the pool memos—discussion of opinions by lower court judges, summaries of amicus briefs, names of arguing attorneys, and the litigants to a case—are useful information for the justices given the complexity of case selection. I argue that the justices utilize the recommendation from the cert pool clerk, their own clerk's markup of the cert pool

memo, and the actual information provided by groups and individuals in their briefs, along with their own intuition and attitudes, to reach a decision. Thus, the clerks aid the justices in their decision making by providing advice and relevant case information to ease the burden on the Court.

Data from the Blackmun Papers

Despite extensive research on the influence of political actors, one primary source of information relied upon by the justices—the cert pool memos—have been, as of yet, understudied. The cert pool memos are important because they are written synopses of a case provided by law clerks, which help reduce the burden of decision making for the Court. Clerks include relevant information to the justices' cert decision, including notes on amici, the lower court's treatment of the case, and the parties to the case, ending with a recommendation. Utilizing the cert pool memos, we might better identify the factors driving cert decisions. What clerks choose to include could be a direct window into what drives decision making on the Supreme Court.

I begin with the assumption that the justices of the Supreme Court seek out sources of information to help them decide which cases are cert-worthy as expeditiously as possible, as detailed above. Past research has identified "cues," such as whether a question of civil liberties is at issue, whether the government is party to the suit, or whether a dissent was filed in the lower court, that influence cert decisions (Tanenhaus et al. 1963). However, because of limited access and availability, scholars have not yet considered the *actual primary source* utilized by the justices—the cert pool memos—to examine the factors that drive cert (but see Black and Boyd 2012a, 2012b). These pool memos may carry great weight and impact judicial decisions (Lazarus 1999), and,

according to interview evidence, the justices, at times, "rely pretty heavily on the memo," especially as the term progresses (Perry 1991, 60). Most often, the justices read only "the memo and the markup" written by the law clerks and nothing more unless a case is particularly difficult (Perry 1991, 42). Because the justices do not routinely seek out other sources of information unless necessary, this suggests material provided in pool memos are integral to understanding decision making on cert.

Fortunately for researchers, Justice Blackmun's released papers include copies of nearly all of the cert pool memos circulated on cases granted and denied cert. I use these memos to ascertain what types of information the clerk-advisors are offering to the justices, in order to ascertain whether that information matters to certiorari decision making. It is useful to start with an in-depth discussion of this data source.

The cert pool memoranda (the justices' primary source of information), are typed assessments, by law clerks, of a petition for cert that are circulated to all justices in the cert pool.[4] (Recall that the cert pool itself is an institution designed to decrease the

[4] There is some dispute over whether or not non-cert pool chambers also receive the cert pool memo. Justice Stevens expressed his reasoning to remain out of the cert pool "to provide a check against what he saw as a dangerous practice that ceded too much authority to a single clerk" (Ward and Weiden 2006, 45). In Justice Stevens' memoir, *Five Chiefs: A Supreme Court Memoir*, he speaks of his decision not to join in the then, newly created cert pool. However, he says Justice Powell shared the memos with him that first term and that, while he found them to be useful and thorough, "…based on my earlier experience as a law clerk, I was convinced that in most cases I could make an accurate judgment about whether to grant or deny the petition more easily by glancing at the original papers than by reading an unnecessarily detailed description of the arguments favoring and opposing review" (Stevens 2011, 139). However, Epstein, Martin, and Segal (2012) suggest that Stevens' did receive pool memos because of the Court's practice circulating material to all chambers (Sara Benesh personal correspondence with Lee Epstein, 10/24/13). I also asked Justice Stevens directly, writing a letter to him with

workload of any given chambers. Clerks from all chambers who are members of the cert pool distribute the cert petitions and summarize them in the pool memo, which also ends with the pool clerk's recommendation. It appears to be the case that most chambers "marked up" the cert pool memo. This is discussed in detail below.) The first page of every memorandum names the parties, the lower court that made the most recent decision on the case, and a categorization of the case as Federal/Civil, State/Civil, Federal/Criminal, State/Criminal, Federal/Habeas, State/Habeas, or Military/Criminal. The memoranda are systematic, employing the following sections regardless of author: 1) a summary of the case; 2) the facts and proceedings below; 3) the contentions made by the petitioner and the respondent; 4) the clerk's evaluation of the case; and 5) the recommendation by the clerk of what action should be taken (usually deny, grant, or Call for Record (CFR) with a possibility to grant). Blackmun's clerks then read each cert pool

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the following question: "Were the cert pool memos, in your time on the Court, circulated to your chambers as well as to the chambers of all of the other justices whether in the cert pool or not, or did you not receive copies of those memos? If you did receive copies of them, did you or your clerks read them?" Justice Stevens replied, "In response to the question in your recent letter, cert pool memos were just circulated to members of the pool. Of course, from time to time, on interesting or difficult cases, the pool memo writer would discuss a case with clerks in other chambers, including mine, and I'm sure my clerks did the same. I'm sure I looked at some pool memos during my years at the Court, but they played no role in either me or my clerk's normal work." An anonymous former clerk said that he "never saw a cert pool memo in the two years I clerked for Justice Stevens" (Sara Benesh personal correspondence, 10/25/13). Justice Stevens' account as a non-pool justice alludes to the fact that he did, indeed, read through pool memos during the cert pool's first year, however, he opted out after he believed his own assessment was superior to that of a law clerk.

memo and "marked them up."[5] The information they wrote is perhaps revealing of what Blackmun deemed to be important. Blackmun's clerks provided the memo author's first name (last name is already typed on the memo), the justice for whom s/he clerks, the lower court judge for whom s/he clerked, and the law school s/he attended, as well as Blackmun's clerk's own recommendation on cert (Grant, Deny (X), Call for Record (CFR), Call for the Views of the Solicitor General (CVSG), Join 3 (J3), etc.), his or her own initials, and a reason for any disagreement with the pool clerk's recommendation written in paragraph form.[6]

For the purposes of this study, I took a sample of cases granted and denied cert for each term for a total of 666 cases granted and 666 cases denied. Paid and unpaid cases were included.[7] The sample of granted cases was drawn from the Spaeth database

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[5] Justice Blackmun's chamber also marked up memos drafted by his own clerks, with the markup routinely conducted by the memo author.

[6] A copy of the cert pool memos can be found in the Appendix.

[7] I include unpaid petitions, also known as in forma pauperis (IFP), in the sample, because during the era of the Blackmun Papers (1986-1993), IFP cases are reviewed by the Court using the same process as paid petitions. An IFP case is an unpaid petition, meaning it was from a litigant that lacked appropriate funds and had filing fees waived. Early in the Court's history, IFP and meritless cases were "briefly screened" in the Chief Justice's chambers and given minimal attention (Ward and Weiden 2006, 38). Chief Justice Hughes created a procedure in which IFP cases and cases deemed unworthy of cert were put on a special list called the deadlist. The Chief Justice would bring deadlisted cases to the conference and only discuss IFP and certworthy cases he considered important. If another justice wanted to review a case on the deadlist, s/he would request a review of the case in conference and the case would be discussed and voted on. Cases that remained on the deadlist "were neither discussed nor voted on, and were therefore automatically denied" (Ward and Weiden 2006, 113). Some justices became concerned with the Court's limited treatment of IFP and "unimportant" cases, therefore the Court decided, during the 1970s, that "all cases" be placed "on a single

(Spaeth 2009). The sample of cases denied cert was drawn from the digital archive of the Blackmun Papers (Epstein, Segal, and Spaeth 2007).[8] Each docket (1986-1993) was systematically sampled separately. The total number of cases petitioned to the Supreme Court was calculated for each of the eight terms. The total number of cases petitioned in each term was divided to create a *k*th unit number in which every *k*th case was selected to be in the sample. If the *k*th number landed on a case that was granted cert, the next case that was denied cert was chosen.[9]

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docket for review by every justice" (Ward and Weiden 2006, 39), meaning a deadlist was not longer utilized, per se. Rather, all cases were considered and prepped by a memo writer for justices in the cert pool, and cases meriting examination by a justice were placed on the discuss list and reviewed in conference (Kurland and Hutchinson 1983; Caldeira and Wright 1990). Although IFP cases are considered along with paid petitions, both paid and unpaid petitions may lack success at the cert stage because the petition fails to meet the proper requirements of a certworthy case (i.e., squarely presented issue and question, not factbound, meet all justiciability requirements, etc.). As I detail in the following chapters, I test whether information in the pool memos influences the individual votes of the justices and the Court's vote on cert. I omit deadlisted cases when testing the justices' individual votes because no vote was recorded on the docket sheet. (Docket sheets were provided in the Blackmun Papers archive which included the votes of the justices on cert). Therefore, I was not able to ascertain whether a particular justice voted to grant or deny cert in that case. However, I include deadlisted cases when testing the Court's vote because if no justice places a petition on the discuss list, the Court, as a whole, has decided to deny the petition without actually reviewing the case or casting a vote on cert.

[8] The Spaeth database (Spaeth 2009) only includes cases granted cert, along with a handful of cases in which a justice, or multiple justices, dissent from a denial of certiorari, by the Supreme Court; therefore a random sample of denied cases was selected from the Blackmun archives.

[9] This sample of cases will be utilized for each subsequent model tested unless otherwise specified.

Utilizing the Blackmun Papers, I can model the influence of information discussed by the clerks on the justices' (and the Court's) cert decision. Law clerks are well-educated individuals who provide a discussion about the arguments of certain groups and individuals, such as lower court judges, amici, and party litigants, and also provide a recommendation on cert. Reading through these pool memos, I extracted the clerks' discussion of the arguments provided by these actors. Most frequently, lower court judges are referenced in the pool memorandum when the lower court's decision is discussed. If a judge wrote a dissenting or concurring opinion in the court below, they are often referenced as well. Other judges are mentioned for making decisions in similar cases in other lower courts. As we can see in Table 1, judges are frequently mentioned in pool memos. In fact, 61.45 percent of pool memos contain a reference to a lower court judge's opinion. Amicus briefs are often included in the contentions section, as additional arguments either in favor of or in opposition to cert (Tables 2 and 3). (Most amici are filed in favor of granting cert, siding with the petitioner.) The memo writer often mentions the name of the party filing the brief and then provides a summary of the interest group's argument about why the Court should or should not hear the case. Sometimes Blackmun's clerk would mark, on the first page of the memo, that an amicus brief had been filed in that particular case. This could serve as an additional indication of the importance of amicus briefs, especially from certain groups.[10] While the clerks do

[10] Amicus briefs were not always mentioned on the first page of the pool memo by Justice Blackmun's clerks. However, if the clerk discussed information provided by the amicus brief on the first page of the pool memo, I consider this information relevant to the justices' decision on cert.

not mention the arguing attorneys by name,[11] the Solicitor General's position, when s/he takes one, is usually noted. Litigants, labeled petitioner or respondent, are always referenced on the first page of the pool memo, along with the name of the group or individual that brought the case (Ward and Weiden 2006).[12]

Conclusion

The justices receive thousands of petitions each term and must winnow these requests to an appropriate number of cases to be heard. This winnowing process is difficult and so to help alleviate the problem, an institution has evolved: the law clerk. Clerks provide the justices with vast amounts of edited information necessary for decision making via "cert pool memos." The clerks, then, have the opportunity to act as advisors to the justices and the advice they provide – the carefully, edited case information in the cert pool memos – can guide judicial decision making.

I view law clerks, therefore, as essential advisors to the justices and expect that law clerks are aware of the importance of the information they provide to the justices. Just as the president relies on information from his cabinet members, and members of Congress obtain information from lobbyists (Austen-Smith and Wright 1994), so too do justices of the Supreme Court require information. That the justices seek advice, therefore, is not at all unusual (Rehnquist 1957; Woodward and Armstrong 1979; Lazarus

[11] At least they do not do so during this time frame. One might expect, given the emergence of a "Supreme Court bar" (Lazarus 2008) and the justices' occasional mention of the Washington DC attorneys by first name during oral argument (McGuire 1993), that this will likely change.

[12] Clerks were apparently urged by the justices to label party litigants in order to ease the justices' ability to identify the petitioner and respondent in the case (Ward and Weiden 2006).

1999; Ditslear and Baum 2001; Wahlbeck, Spriggs and Sigelman 2002). Understanding their influence, though, is important.

CHAPTER 3: Literature Review

Cue Theory on Decision Making

Early studies on the Supreme Court's case selection took the view that the justices relied on certain cues to make decisions easier. Cue theory, as explained by Tanenhaus et al. (1963, 121), implied that "the justices of the Supreme Court employ cues as a means of separating those petitions worthy of scrutiny from those that may be discarded without further study." Cues such as "support by the federal government, dissension among judges or lower courts, and the presence of a civil liberty question" were supposed to flag cert-worthy cases, easing the decision making of the justices (Ulmer, Hintze, Kirklosky 1972, 638). Cases that presented no cue were easily denied. Using a different data set, Ulmer, Hintze, and Kirklosky (1972) reevaluated the Tanenhaus et al. (1963) study, finding that the federal government as a petitioning party was a statistically significant cue while the presence of a civil liberty question or lower court dissension was not (Ulmer, Hintze, Kirklosky 1972). Songer doubted cue theory, suggesting that, beyond those cues defined, the justices also take into account "the policy consequences of their actions" when deciding to grant cert (1979, 1187). Teger and Kosinski (1980), in an examination of all cases granted review, supported Songer's (1979) contention that cues are only as effective as the issues the justices currently consider salient. They suggest that the theory's practicality is highly questionable (Teger and Kosinski 1980).

Strategy in Agenda Setting

Other research has considered strategy in case selection, suggesting that the justices do not merely vote their sincere preferences when making decisions about case selection, but rather consider the potential actions of their colleagues as well. Baum

(1989) suggested that strategies were important to the justices even after analyzing other variables. Brenner and Krol (1989; Krol and Brenner 1990) tested the three certiorari strategies suggested by Baum (1989). These include the error correcting strategy which "assumes a direct, positive relationship between voting to grant certiorari and voting to reverse at the final vote on the merits," the outcome prediction strategy which "assumes a direct positive relationship between voting to grant certiorari and being a member of the winning coalition at the final vote on the merits," and the majority strategy which "assumes that liberal courts are likely to render liberal decisions and conservative courts likely to hand down conservative decisions" (Brenner and Krol 1989, 828-830). They found evidence to suggest that all three strategies were operative. Boucher and Segal (1995) tested strategic behavior by testing whether the justices consider the likelihood of winning on the merits when they decided to grant or deny review to a case. Finding that justices who wish to affirm a case carefully consider the outcomes whereas those wanting to reverse do not, this study helped reaffirm Perry's (1991) suggestion that justices engage in aggressive grants (granting a petition from a favorable lower court to achieve affirmance by the Court) but not defensive denials (denying a petition from an unfavorable lower court to prevent an affirmance by the Court) (Boucher and Segal 1995). More recently, Caldeira, Wright, and Zorn (1999) and Benesh, Brenner, and Spaeth (2002) have found that sophisticated (strategic) voting is prevalent among the justices. The justices are more inclined to grant cert if they anticipate "big wins" at the outcome or if they are frequently "in the majority" (Benesh, Brenner, and Spaeth 2002, 227), but also when the Court, as a whole, is likely to favor "their preferred outcome on the merits" (Caldeira, Wright, and Zorn 1999, 564).

Jurisprudential Reasoning in Case Selection

Perry's (1991) analysis of the Court's case selection process, however, suggested that the Court's decision making was maybe not as strategic as we think. He argues that the justices may not have enough time to maneuver strategically, nor are they particularly interactive. They are "nine small, independent law firms" (Powell 1976; Segal, Spaeth, and Benesh 2005, 358). While Perry (1991) does suggest that, at times, the justices ask themselves if they will win on the merits and base their decision as to cert on this initial question, they also make these decisions for jurisprudential reasons, wherein the justice examines whether or not the case is a "good vehicle" (Perry 1991, 279). It seems to be the justices determine a case to be a "good vehicle" when it has a clearly presented argument, has no justiciability issues, has clear and apparent facts, and the question presented is clear (Perry 1991, 279). Perry suggests that the Supreme Court seeks out "good" and "well-percolated" cases so as to have a more informed starting point (1991, 230-231). As one law clerk noted, the justices want to choose a case that has been reviewed by several other courts because they want to "review how other courts have looked into this issue" (Perry 1991, 231).

Decision Making Through the Use of Clerks, Groups, and Individuals

Previous literature analyzing the Court's decision making suggests the justices do not act alone when deciding whether to grant cert to a case and that the justices want cases that present cues, because without a clear signal indicating whether a case should be heard, the justices will assume the case is a clear denial. When presented with a case, the justices often assume a "presumption against a grant" (Perry 1991, 218). Thus, cues serve as a tool to ease the justices' decision making about those cases that are an easy

grant or clear denial. Other literature has found that the Court will act strategically, by evaluating whether they will get their preferred outcome in the end. It is likely the justices need some source of information to give them this prospective outlook. The justices need more than simple cues to flag a case as cert-worthy. For example, just because dissent exists in the lower court does not mean a petition is worthy of review (Ulmer, Hintze, and Kirklosky 1972; but see Tanenhaus et al. 1963). The justices need information or some discussion about what dissensus exists and why the issue should be resolved by the Court. Similarly, the justices cannot always act strategically because of time constraints (Perry 1991). Receiving thousands of petitions each term, the justices must utilize edited information to assist their decision making for requests on cert. The justices are human beings, and as such are still constrained by their own cognition and need sources of information to ease the burden of their decision making.

Use of Clerks

Researchers have examined the influence certain groups and individuals have on the Supreme Court's evaluation of a given cert petition, beginning with clerks (Rehnquist 1957; Woodward and Armstrong 1979; Lazarus 1999; Ditslear and Baum 2001; Wahlbeck, Spriggs, and Sigelman 2002). Clerks have direct and daily contact with the justices. Among other duties, clerks advise the justices in cert pool memos. The advice clerks provide to the justices is, perhaps, the most important function of a law clerk (Black and Boyd 2012a). Former law clerk, Edward Lazarus, suggests law clerks have the ability to influence their respective judge and shape the written opinions of cases (1999). Clerks can influence the way a justice writes his/her opinions (Wahlbeck, Spriggs, Sigelman 2002) while the increased polarization of the Supreme Court is often

attributed to the hiring of ideological law clerks (Ditslear and Baum 2001). Because the justices tend to hire law clerks with similar ideological tendencies, the clerks' analogous preferences to their justice indirectly influence opinion writing. However, information the clerks choose to provide, in pool memos, is guided by their like-minded justice. Thus, any discrepancy between what clerks think they should be writing in the pool memos and what the justices' want written in the pool memos should be minimal.

The use of clerks at the agenda setting stage is important not only because clerks can potentially influence their own justice, but also other justices involved in the cert pool. That clerks have the ability to influence not only their own justice, but other justices of the Court is not surprising as many of the justices involved in the cert pool process (i.e., Justices Blackmun, Scalia, O'Connor, Rehnquist, etc.) read the information provided by law clerks (i.e., summary of the case facts, arguments of the parties, any amicus curiae, and the clerk's recommendation to grant or deny petition). Law clerks are to write pool memos that are systematic and with "a provision of objectivity" (Ward and Weiden 2006, 118). As such, the clerks provide information the justices want, including information about the behavior of other groups and individuals.

Lower Court Judges and the Supreme Court

Previous literature has examined the ability of lower court judges to influence the Supreme Court's decision making (Perry 1991; Caldeira, Wright, and Zorn 1999; Cameron, Segal, and Songer 2000; Hall 2009). Examining the relationship between the ideological composition of the Supreme Court and the direction of the lower court decision, scholars find a conservative Court is more likely to grant cert when the decision of the lower court is liberal (Caldeira, Wright, and Zorn 1999). Thus, a negative

relationship exists between the ideological direction of the lower court decision and the vote to hear a case. This implies that a conservative Court is less likely to hear a case involving conservative outcomes in the lower court and that the ideological composition of the Court matters for decision making. Examining signals and indices the Supreme Court receives from the lower court, Cameron, Segal, and Songer (2000) find the Court examines a host of variables, including facts readily available to the public, the tendencies of the lower court, and how the lower court ruled in the case. However, conservative higher courts decline to hear cases involving conservative lower court decisions regardless of the facts or ideology of the judges while liberal lower court decisions are subject to such scrutiny. Similarly, Hall (2009) finds that liberal appeals courts are more likely to have their case heard and overturned by a conservative Supreme Court, suggesting the justices consider policy in its cert decisions.

In his extensive interview projects, Perry's interviewees suggest that the justices examine who the lower court judges are, indicating the justices do, in fact, consider lower court judges when reviewing cases and that respect for the judges likely varies (1991). Some judges are considered more credible sources of information because of their reputation and thus, provide the justices with necessary information at the cert stage. Less reputable judges are more likely to have their case denied by the Court (Perry 1991). Thus, the justices want cases that have percolated through the lower courts before multiple judges who, in turn, have reasoned with the facts and produced logical arguments for the Court to interpret. Perry alludes to the notion that lower court judges can, indeed, prime decision making but he offers no systematic explanation (1991).

Amicus Briefs on the Supreme Court

Considerable research has been conducted on the influence of amici on judicial decision making (Krislov 1963; O'Connor and Epstein 1981-1982; Caldeira and Wright 1988; McGuire and Caldeira 1993; Caldeira, Wright, and Zorn 1999; Collins 2004, 2007, 2008a, 2008b). Amicus briefs indicate that some group or special interest outside the case has a stake in the Court's ruling, thus indicating the importance of the issue before the Court (Collins 2004). Amici may serve several functions from acting as a litigant in a future case that might come before the Court, siding with a particular party to a case, or acting on behalf of a group that might not otherwise be able to represent itself (Krislov 1963). In this way, amicus briefs act as a source of influence. Because various groups and individuals can file an amicus brief before the Court and, yet, provide relevant information, the discussion of amicus briefs might be one of the best measures for why the Court takes a case (O'Connor and Epstein 1981-1982).

Amicus briefs are commonly used by interest groups wanting to support or oppose a Court grant of cert. Amici are not only more likely to influence the Court's agenda, but they also have the ability to influence the justices' final decision as well (Collins 2007). These briefs serve as an indicator that if the Supreme Court agrees to hear the case, the outcome of the case will likely affect more than the parties involved and that many individuals have a vested interest. Because of the importance often equated with amici, interest groups and litigants often utilize amicus briefs as a resource to gain leverage. These groups gain leverage by providing information to the justices about the issue and whether or not a case is worthy of the Court's attention (Collins 2004; Lazarus 2008). In fact, Collins finds amici can provide additional information that is

otherwise unknown to the justices, beyond the salience of a case (2008a). And scholars have found that amicus briefs influence the Supreme Court's decision to grant cert, whether in favor (McGuire and Caldeira 1993) or against (Caldeira and Wright 1988; Caldeira, Wright, and Zorn 1999).

Attorneys in the Office of the SG

Experienced attorneys, in particular attorneys from the Office of the Solicitor General, influence the Supreme Court's decision making (Lazarus 2008; Black and Owens 2012b). Members of the Solicitor General's office are considered specialists before the Supreme Court (McGuire 1993) and scholars have found that merely having the support of the federal government deems a case cert-worthy (Tanenhaus et al. 1963; Ulmer, Hintze, and Kirklosky 1972). The Solicitor General interacts with the justices routinely and because of this, members of the SG's office argue multiple cases before the Court. Repeated interactions with the Court increase the visibility of the SG's attorneys and, in turn, the justices know who these members are and the types of arguments they present, while members of the SG's office anticipate the types of cases the justices deem cert-worthy and present credible arguments (McGuire 1998). Thus, the success of the Solicitor General can be attributed to the fact that these members are repeat players (Provine 1980).

Another reason the Court favors the Office of the Solicitor General is because the SG does not file every case that can be petitioned to the Court. Only relevant cases are petitioned because the SG does not want to adversely affect their relationship with the justices of the Court. Because of this knowledge, the SG develops a level of expertise and anticipates issues which builds credibility with the justices (Provine 1980) and

provides the SG with increased access to the Court (Lazarus 2008). Although the SG has experience arguing before the Court and s/he understands the individual predilections of each justice, the SG's recommendation is constrained by the law. As Black and Owens argue in their most recent work, "we believe that OSG [Office of the Solicitor General] success likely stems from the office's longstanding relationship with the Court and with the professionalism its attorneys display" (2013, 462). Because attorneys of the SG's Office carry a level of professionalism and repeatedly interact with the justices, information the Office provides is considered most credible by the Court.

Litigants before the Court

Acting as parties before the Supreme Court, certain litigants are known to influence the decision making of the Court (Collins 2008b; Corley 2008; Black and Boyd 2012b). Not all litigants have equal access to the Court. Some litigants are consistently denied cert while some are considered to have better "luck" in having their case heard by the Court. This is why some groups turn to the Court, because either they cannot solve their grievance in a different institutional venue, or having their issue resolved before the Court secures a long-term victory (Collins 2008b). Thus, some groups are more likely to come before the Court because they are better situated with proper resources to achieve a successful outcome.

Examining litigants before the Supreme Court, Galanter (1974) categorizes litigants as one-shotters or repeat players. One-shotters tend to be litigants who do not appear in court(s) frequently and are less likely to be successful before the Court. Repeat players, however, tend to litigate frequently in court(s) and consist of corporations, governments, and businesses and command much greater success at the Supreme Court.

Categorizing litigants into one of these groups is a useful way to examine litigants and the distinct advantages and disadvantages that exist. Repeat players are more likely to know the rules of the game, have funds to hire superior legal counsel, prolong the judicial process thus costing more money and resources, enjoy relationships with judges that allow for rapport to develop, be more strategic, etc. Because repeat players are rich in resources, they possess a clear advantage over litigants considered one-shotters before the Court, thus providing potentially superior arguments.

In a reexamination of Galanter's (1974) work on repeat players and one-shotters, Songer, Sheehan, and Haire (1999) examine the success of individuals, businesses, state and local governments, and the US. Government as a party in the U.S. appellate courts and find that repeat players, also known as "haves," (e.g. the U.S. government and state or local governments) tend to win more. Repeat players are generally rich in resources and tend to have more money to afford superior legal counsel and carry through with a long litigation process, and because of this they tend to win more. The special relationship "haves" share with judges, such as repeated interactions and understanding how to write case briefs, allows for rapport to develop with judges and puts one-shotters at a distinct disadvantage (Galanter 1974).

However, an exception to Galanter's (1974) litigant success was found by Sheehan et al. (1992) in an examination of the Supreme Court. They find the U.S. government was more successful than individuals, however the authors did not find any consistent pattern between repeat players and one-shotters at the U.S. Supreme Court, putting Galanter's (1974) finding into question. Creating a petitioner advantage index, Black and Boyd (2012b) find advantaged groups petitioning before the Court are more

likely to reap success at the cert stage, however this success can be mitigated by the justices' ideology and whether an amicus brief was filed. Nevertheless, scholars generally agree that certain litigants are more likely to influence the justices, and the presence, or absence, of information provided by these different groups and individuals can influence the legitimacy of a petition. Hence, when clerks draw the justices' attention to such things, it has the potential to influence the Court's vote on cert.

A Base Model of Cert

We might use previous literature analyzing the Supreme Court's agenda setting process to establish a baseline model for cert. To date, Caldeira, Wright, and Zorn (1999) presumably demonstrate one of the most thorough models for cert, which includes many variables prior research suggests influences the Court's cert decision. Scholars routinely include variables measuring dissensus in the lower courts, cases involving civil liberties, or federal government support because these cues serve as indicators about the cert-worthiness of a case (Tanenhaus et al. 1963). Cues are used as a signal to simplify decision making, and cases lacking such cues are easily denied by the Court. Strategy has also been proffered as a reason why the justices make decisions on cert (Baum 1989; Brenner and Krol 1989; Krol and Brenner 1990; Caldeira, Wright and Zorn 1999; Benesh, Brenner, and Spaeth 2002). The justices do not always vote their sincere preference, nor would it always be wise to do so, but rather they consider the potential actions of the other justices. Therefore, scholars include a distance measure between the ideologies of the justices to test whether the justices consider the preferences of their brethren.

Constitutional claims made by the parties increase the likelihood of cert, while disagreements in the lower courts often enhance the prospects for cert, therefore, reversals often account as a reason why the Court grants cert. The Supreme Court also frequently decides cases in which a subset of the justices wants to reverse on the merits because of an unfavorable lower court decision. Therefore, the justices are more likely to grant cert when a petition involves an unfavorable ruling in the lower court. The presence of amicus briefs also increases the likelihood of cert along with conflict, both alleged and actual. Amici indicate a case has importance beyond the parties presenting arguments and that some party outside the case will be affected by the Court's decision. Conflict is often one reason the Supreme Court provides for granting cert. Conflict is so influential, in fact, that a rule exists (e.g. Rule 10) stating the Court will be more likely to review a case when there are conflicts in the lower court (Provine 1980; Supreme Court 2011). Because of this, parties oftentimes "allege" conflict even if no "actual" conflict exists.

Caldeira, Wright, and Zorn (1999) provide the ideal model of cert containing each of the above influences. In Table 4, I present their model. Ten of these variables known to influence the Court's decision on cert are statistically significant and in the expected direction. The presence of cues, such as the U.S. as a petitioner and dissent in the lower court increase the likelihood of cert. The justices also employ strategy and sophistication in their voting because when the Court becomes more conservative and a justice is liberal, the likelihood of cert decreases, however, when the Court becomes more liberal along with a justice, the prospects of cert increase. The same can be said for the direction of lower court decisions, which suggests a conservative Supreme Court is less likely to

hear a case from a lower court that was decided conservatively.[13] When a lower court has been reversed, the justices are more likely to put these cases on their agenda. The presence of amici, whether in favor or against cert, increase the likelihood a petition will be heard by the Court (Caldeira and Wright 1988; McGuire and Caldeira 1993).[14] Finally, conflict, alleged and actual, influences the Court's decision to grant cert.

Caldeira, Wright, and Zorn's (1999) rigorous and theoretical model includes variables prior research has found to be a staple of the Court's decision making on cert. However, as exhaustive and complete their model is, my research addresses and improves upon their work in novel ways. Utilizing the *New York University Supreme Court Project* (1984a) and reading through Summaries of Cases Granted Certiorari During the 1982 Term (New York University Supreme Court Project 1984b), Caldeira, Wright, and Zorn (1999) determined whether the petitioner alleged conflict between lower courts and/or the Supreme Court and whether an actual, or square, conflict existed. A square conflict existed if two or more courts reached different outcomes on similar cases. Meaning, different conclusions were reached by some number of courts on a similar

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[13] In 1982, under Chief Justice Rehnquist, the Supreme Court was primarily conservative. Examining, Martin-Quinn scores, I ascertain that a majority of the justices MQ scores were in a conservative direction (positive numbers indicate conservative decision making and negative numbers vice versa) (Martin and Quinn 2002). Thus, I expect a conservative Court to be more likely to hear cases in which the most recent lower court decision was liberal.

[14] In an updated manuscript, Caldeira, Wright, and Zorn find that briefs in opposition might not increase the likelihood of cert (2012). The authors find during OT 2007, the grant rate for opposition briefs actually decreased (Caldeira, Wright, and Zorn 2012). However, my study examines the 1986-1993 Terms, outside this finding by the authors, and I expect amici to increase the likelihood of cert whether in favor or against (an exception to this expectation is provided in Chapter 6).

issue. Although actual conflict can be measured as disagreement among lower courts, this does not give us a realistic idea of whether the justices consider this to be a square conflict.

I create a measure of conflict that is more realistic. Using the Blackmun Papers, I can ascertain whether the justices' most trusted advisors, law clerks, provide an argument about the existence of a real conflict. The systematic nature of the pool memos invariably allows for the clerks to discuss the nature of a conflict (as discussed earlier in Chapter 2). Most often, clerks would discuss whether they thought the case presented a real conflict or not in the discussion section, frequently referring to the conflict as a split in the circuit (see Appendix). If the clerk thought a real conflict existed, s/he discussed the split; however, if no conflict existed and the petitioner alleged conflict, the clerk would discredit the split and provide reasoning. The parties often alleged conflict, 57 percent of the time to be exact (Table 5), such that clerks frequently discussed whether the alleged conflict was real or not. Because clerks assess the authenticity of the conflict, and their written summaries are overseen by the justices, information they provide about conflict in the pool memos is the most precise measure of actual conflict we have to date.

Conflict is essential in determining whether the Supreme Court will grant cert or not. In Table 6, we see that almost 98 percent of cases are granted cert by the Court when clerks report an actual conflict. Compare that to only 68 percent of cases in which an alleged conflict is made (Table 7). It comes as no surprise that parties allege conflict because if there is any indication that conflict exists, and the clerk recognizes this, a litigant will almost invariably have their case heard by the Supreme Court.

However, as persuasive actual conflict is at placing a case on the Court's agenda, most of these petitions are not landmark cases. In fact, in most instances, petitions granted cert by the Court involving actual conflict are likely not "important" cases at all (Epstein, Landes, and Posner 2013). According to Epstein, Landes, and Posner, the "Court feels some obligation to resolve such conflicts even if they don't present challenging issues" (2013, 130). Even though conflict is often attributed as a primary reason the Supreme Court takes a case in the first place, accepting to hear a case because a square conflict exists does not mean the case is important. Rather, the Court feels a duty to resolving cases in which conflict exists, particularly in the circuit courts of appeals (Tables 8-10).

Utilizing the Blackmun Papers, I replicate Caldeira, Wright, and Zorn's (1999) model of cert. My dependent variable is the justices' vote on cert during the 1986-1993 Terms, coded "1" if the justice favors cert and "0" otherwise.[15] I include the same variables used by Caldeira, Wright, and Zorn (1999) measuring cert determinants along with ideological variables to control for strategy on the Court. [16] In Table 11, I present a

[15] I exclude deadlisted cases from the justices' individual votes on cert (noted in Chapter 2) because docket sheets for deadlisted cases in the Blackmun Papers archive did not record the justices' votes on cert. Therefore, I could not ascertain how a justice voted on cert because no judge requested the case be discussed and voted on in conference. Some votes are also missing because a docket sheet was not provided,or the justice did not occupy the Court for a specified term (1986-1993).

[16] Because an equal number of granted and denied cases were coded, the data is weighted to account for the small percentage of cases granted review by the Court. Rare events logistic regression is utilized because of its ability to correct for the biased number of petitions granted and denied cert (King, Tomz, and Wittenberg 2000; King and Zeng 2001, 2002). I extract and code variables from the pool memos and include the variables used by Caldeira, Wright, and Zorn (1999). The U.S. as the petitioner is coded "1" when

model of cert replicating that of Caldeira, Wright, and Zorn (1999) and find similar results that include more reliable measures of conflict.[17] Not only does my "base" model

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the federal government petitions a case and "0" otherwise. Reversal in the lower court is coded "1" when the lower court decision is reversed, "0" otherwise. If a judge in the lower court issues a dissent on the case, I code the dissent "1" and "0" otherwise. Conflict is distinguished whether it was alleged by the petitioner or respondent or if the clerk deemed the conflict as real. Alleged conflict is coded "1" if a litigant alleges the lower courts are in disagreement while actual conflict is coded "1" if the clerk deems the conflict as being real and "0" otherwise. I include whether one amicus brief, two or three amicus briefs, and four or more amicus briefs for certiorari, along with amicus briefs against cert, influence the justices' decision making. Each category of amicus briefs are dummied such that "1" equals the presence of the number of briefs, "0" otherwise. Caldeira, Wright, and Zorn's (1999) amici measure is twofold. First, it measures whether the number of briefs increases or decreases cert. More amici that request the Court grant cert should increase the likelihood of cert and vice versa. Second, the authors account for information provided in the briefs, such that a brief requesting cert should increase the likelihood of cert and a brief requesting a denial of cert should decrease the likelihood of cert. The authors are able to test the influence of all amici filed in a case because of their data collection. However, in my data collection, since clerks choose to include certain briefs in the pool memos, I can only test the influence of amici the clerks discuss. Therefore, my measure of the number of amicus briefs, in favor or against cert, does not accurately represent all amici filed. A case involving a constitutional claim is coded "1" and "0" otherwise. The direction of the lower court decision measures the ideology of the decision made by the most recent lower court. A liberal lower court decision is coded "1" while a conservative decision is coded "0." I use Martin-Quinn scores to measure the judge's ideology, the ideological leaning of the Court, and the interaction between a justice and the Court's ideology (Martin and Quinn 2002) such that positive numbers are conservative and negative numbers are liberal. Finally, a measurement for civil liberties is omitted from the model because data measuring this variable was not collected. However, Caldeira, Wright, and Zorn (1999) did not find civil liberties to be a significant predictor on the justices' decision making on cert (see Table 4).

[17] Some discrepancy exists between the two models. I find that two or three amici favoring cert increase the likelihood the justices' will grant cert, however, Caldeira, Wright, and Zorn (1999) find all measures of amici influence cert. Since I rely on pool memos and clerks choose whether to include and discuss the arguments provided by amici, I am not able to accurately test the influence of all amici filed. Therefore, if two or three amicus briefs were discussed by the clerk, it is possible that several more amici

include variables identified by previous scholars known to influence the Court's decision making on cert, and a more stringent measure of conflict, but in the subsequent chapters I build from the base model. These updated models will include unique measures of clerk recommendation and lower court judge influence, along with edited information provided by amicus briefs, attorneys, and litigants.

Although previous scholarship has investigated several of these measures, the novelty of my dissertation lies in my data source: the Blackmun Paper's cert pool memos. The cert pool memos are important because they are written synopses of a case provided by law clerks, which help reduce the burden of decision making for the Court. Clerks include relevant information to the justices' cert decision, including notes on amici, the lower court's treatment of the case, and the parties to the case, ending with a recommendation. Utilizing the cert pool memos, we might better identify the factors driving cert decisions. What clerks choose to include could be a direct window into what drives decision making on the Supreme Court.

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were filed in the case but not discussed by the clerk in the pool memo. Second, I find no strategy effects being employed by the justices, contrary to Caldeira, Wright, and Zorn's (1999) model.

Chapter 4: The Influence of Law Clerks

Armed with a solid understanding of the determinants of cert on which to base the extension proposed here, I turn to the question of interest to the dissertation: do clerks, acting as advisors, influence the justices' decisions on cert? My theory posits that the clerks matter to cert decisions both via the content of the cert pool memos, and also via their bottom line recommendation on cert. In this chapter, I focus on the simpler question of whether or not the bottom line recommendation – to either grant or deny cert – influences the justices' votes on cert even after controlling for the cert determinants I detailed in the last chapter. In the following chapters, I consider other forms of information provided by the clerks in the memos, including names of lower court judges, amici, parties, and attorneys, to ascertain whether the arguments provided by these groups and individuals as additional information also affects the justices' views of the cert-worthiness of the case.

Utilizing the Blackmun Papers, then, I can directly model the influence of law clerk advice, ascertaining whether the recommendation as to cert given by a law clerk influences Justice Blackmun's, other members of the cert pool (Justices Rehnquist, O'Connor, and Scalia), and a non-pool justice's (Justice Stevens) vote on cert. In addition, using the markup made by Blackmun's clerks (Justice Blackmun required his law clerks to note a clerk's justice, law school, and lower court clerkship, as detailed in Chapter 2), I am able to measure whether the degree of influence is dependent upon Blackmun's perception of the source of the advice. Law clerks are well-educated individuals coming from highly renowned law schools, and, thus, the interaction they have with their own justices, and other justices of the Court, should likely build rapport.

We might expect Blackmun to be more influenced by his own clerks than clerks of other justices, since he knows and trusts them more. He chose them after all, and they likely share his ideology and are committed to his service. Law clerks, who worked for different lower court judges and clerk for one of the other eight justices on the Supreme Court, may be treated differently depending on Blackmun's agreement with, and perception of, those judges and justices. The ideological distance between Justice Blackmun and another member justice of the Supreme Court could, for example, influence the extent to which Blackmun relies upon the advice of a clerk not his own.

Data and Method

The dependent variable, *Blackmun's Vote*, is a dichotomous variable coded "1" if Justice Blackmun votes to grant cert to a case and "0" otherwise.[18] The variables of theoretical interest, which consider the clerks' recommendations on cert, include the *Memo Writer's Recommendation to Grant* (1=grant, 0=deny) and *Blackmun's Clerk's Recommendation to Grant* (1=grant, 0=deny), the interaction of these two variables with the ranking of the law school the clerk attended (*Memo Writer's Recommendation to*

[18] Because of the Court's practice using the deadlist, or discuss list (noted above in Chapter 2), some docket sheets did not provide a tally indicating how each justice voted on cert. Therefore, deadlisted cases, and even some paid petitions, are excluded from models testing the influence of cert votes by individual justices such as Blackmun (and also for my examination of pool justices (Rehnquist, O'Connor, and Scalia) and Justice Stevens (a non-pool justice)). I test whether Blackmun's votes are missing at random or if some systematic reasoning follows why he did not record his votes for certain types of cases. I find Blackmun's missing votes are random and not specific to any case type (i.e., true conflict, conflict alleged by one of the parties, etc.). I follow a long line of previous scholars who test the influence of judicial decision making by the justices, examining only paid petitions (Caldeira, Wright, and Zorn 1999; Caldeira, Wright, and Zorn 2012) or cases that make the discuss list (Black and Boyd 2012b; Black and Owens 2012a).

*Grant*Law School Rank*; *Blackmun's Clerk's Recommendation to Grant*Law School Rank*), the memo author's recommendation interacted with the ideological disagreement of his/her justice and Justice Blackmun (*Memo Writer's Recommendation*Ideological Disagreement*), and the direct effect of each.

I coded the following types of advice as advice toward granting cert because each choice was frequently recommended by the clerk in granted cases: grant, J3 (Join Three), CFR (Call For Record) w/possibility to grant, CVSG (Call for Views of Solicitor General) w/a view to grant, CVSG w/eye toward noting probable jurisdiction, summarily reverse, GVR (Grant, Vacate, Remand), grant and consolidate, tentative grant, grant or CVSG, summarily reverse or grant, hold or grant, grant or J3, grant and deny, J3 and deny, grant and summarily reverse, hold and grant, relist and grant and consolidate, tentative grant or summarily reverse, grant, deny and CFR w/possibility to grant, and grant and CFR w/possibility to grant. The following recommendations were determined to be more slanted toward a denial: X (Deny), CFR w/a possibility to deny, CVSG w/a view to deny, X?, DWJ (Dismiss for Want of Jurisdiction), deny or dismiss for want of jurisdiction, CVSG or deny, DWSFQ (Dismiss for Want of a Sufficient Federal Question), deny or hold, D and D, deny and summarily reverse, CFR or deny, hold and deny, DWPPFQ, and DNPPFQ.

I expect Justice Blackmun to be more likely to grant cert when his own clerk recommends that he do so since he is likely to understand why his clerk has given the advice and he trusts that advice, and because he has a better understanding of his own clerk's knowledge and ideological tendencies (Yaniv 2004b). That the justices, in particular Justice Blackmun, seek the advice of law clerks is not unusual. Justice

Blackmun is in an odd informational environment because a lot of information is available and, yet, he needs to sort information that is useful from that which is irrelevant to help him make a decision. Therefore, in this complex situation where an overabundance of information exists, he seeks the advice of clerks, especially his own clerks, to provide a recommendation on cert (Birnbaum and Stegner 1979; Chaiken 1980; Mondak 1993; Huckfeldt 2001; Yaniv 2004a; 2004b).

Second, even though we would expect Blackmun to be more likely to heed advice from his own clerk over other justices' clerks, we would expect that the closer, ideologically, a clerk's justice is to Blackmun, the more likely Blackmun will agree with this clerk's advice, knowing the advice is likely to be ideologically closer and, hence, more credible (Calvert 1985). *Ideological Disagreement* is measured using Martin-Quinn scores, calculating the absolute difference Blackmun had in the term previous with the memo clerk's justice, such that higher numbers indicate greater disagreement (Martin and Quinn 2002). The closer a justice for whom the clerk works is to Blackmun, the more likely Blackmun is to deem the advice as credible and hence, heed it. I expect this variable to be negatively related to Blackmun's vote in combination with the recommendation. (In other words, I posit an interaction between ideological interagreement and a recommendation to grant; as the absolute difference increases, recommendations to grant will have a lesser influence on Justice Blackmun's likelihood to vote to grant.)

Third, I include a measure of clerk pedigree, expecting that clerks who attended law schools with higher rankings will be more likely to influence judicial votes, as they are seen as more credible sources (Birnbaum and Stegner 1979; Chaiken 1980; Mondak

1993; Huckfeldt 2001). Justice Blackmun should rely more heavily on the advice of a clerk who is shown to have expertise as defined by the law school s/he attended. I use the *U.S. News and World Report* ranking of law schools to operationalize pedigree (Prelaw Handbook 2010).[19] Historically, university rankings were used only by academics and administrators. Not until the media conducted their own evaluations of universities did this information become intended for the general population. In 1987, the *U.S. News and World Report* conducted their first law school ranking of the top 20 law schools in the United States, employing an opinion survey polling law school deans.[20] Law schools were then ranked on the basis of the frequency which a school appeared on a dean's top 10 list (Sauder and Espeland 2007). Ranking law schools was not conducted again until 1990 (annually thereafter), and the method for ranking law schools changed after 1987.[21] Obviously, there is little variance in this measure as most

[19] The top 20 law schools for each year in the sample include: 1987 – Yale (1), Harvard (1), Michigan (3), Columbia (4), Stanford (4), Chicago (6), Berkley (7), Virginia (8), NYU (9), Penn (10), Texas (11), Georgetown (13), and UCLA (14); 1990 – Yale (1), Chicago (2), Stanford (3), Columbia (4), Harvard (5), Michigan (7), Virginia (10), Berkeley (Boalt) (13), UCLA (18), Boston College (20); 1991 – Yale (1), Harvard (2), Chicago (3), Stanford (4), Columbia (5), Michigan (6), NYU (7), Virginia (8), Pennsylvania (10), Georgetown (11), Berkeley (Boalt) (12), Texas (15); 1992 – Yale (1), Harvard (2), Stanford (3), Chicago (4), Columbia (5), Michigan (6), NYU (7), Virginia (8), Duke (9), Penn (10), Georgetown (11), UCLA (17); 1993 – Yale (1), Harvard (2), Stanford (3), Chicago (4), Virginia (8), Duke (9), Georgetown (10), Penn (11), Berkeley (12), UCLA (17).

[20] Of the 183 law school deans that were contacted, 96 responded to the survey (Sauder and Espeland 2007).

[21] Law school rankings are now evaluated and weighted on four general categories: reputation, selectivity, placement success, and faculty resources (Sauder and Espeland 2007). Some scholars argue that ranking law schools is flawed and that a new point

law clerks hail from Harvard (authored 18 percent of pool memos) or Yale (authored 21 percent of pool memos). Therefore, I dummy both *Harvard* (1=Harvard, 0=Other) and *Yale* (1=Yale, 0=Other) placing all of the other schools in the "other" category. If this theory about advice holds, Justice Blackmun should rely more heavily on the advice of a clerk who attended a higher ranking law school because of the expertise presumably gained in doing so.

Control variables are also included because of their significance in previous studies on case selection. First, I control for the ideological direction of the lower court decision. Caldeira, Wright, and Zorn (1999) have found that when the Supreme Court is ideologically conservative, the justices will be less likely to grant cert to a conservative lower court decision and more likely to grant cert to a case with a liberal outcome. Since this study is analyzing Justice Blackmun's vote on cert, and he became more liberal over his tenure on the Court, it is expected that Blackmun will be more likely to vote to grant cert to cases in which the lower court decision is conservative.[22] The ideological

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measurement system is needed (Prelaw Handbook 2010) and that every law school is influenced by a ranking system, especially those working in "the dean's office, admissions, and career services" (Sauder and Espeland 2007, 2). The American Bar Association (ABA) does not recognize nor does the organization advocate the use of law school rankings (ABA 2012).

[22] Martin-Quinn scores measure the judicial preferences of the justices on a common ideological continuum. Negative scores indicate a justice is liberal while conservative justices reflect positive scores. Since Justice Blackmun's Martin-Quinn score is liberal (negative) during the span of the Blackmun Papers (-0.957 beginning in 1986 and -1.855 in 1993) and he becomes more liberal in each consecutive term (one exception being the 1988 Term in which his liberalness decreased slightly), we can safely categorize Justice Blackmun as a liberal leaning justice who will be more likely to grant cert when the decision below is conservative.

direction of a *Lower Court Decision* is coded "1" if the lower court made a decision that is liberal and "0" if the lower court decision is conservative. A decision is considered liberal if the outcome is pro-civil liberties, pro-child, pro-affirmative action, pro-competition, anti-business, pro-consumer, etc., as coded in the Spaeth database (Spaeth 2009).

Second, I control for conflict, both alleged and actual. *Alleged Conflict* is coded "1" if the petitioner or the respondent alleged a conflict among lower courts as reported in the memo and "0" if no conflict is alleged. *Actual Conflict* is coded "1" if the clerk deemed the conflict to be real and "0" if the clerk thought the conflict was not real or was not clear. I expect the presence of a conflict to increase the likelihood that Blackmun will vote to grant cert because conflict typically suggests that an issue needs to be resolved. Indeed, it is the one reason the Supreme Court typically provides for granting cert. Rule 10 of the Supreme Court's rules states that the Court will review cases in which there are conflicts among lower courts (Provine 1980; Supreme Court 2011). Many studies have found conflict to increase the chances of plenary review (Ulmer 1983; Provine 1980; Caldeira, Wright, and Zorn 1999). The Court is particularly interested in taking cases over which the lower courts have disagreed.

I also control for discussion of the Solicitor General. If the *Solicitor General* is mentioned in the memo and the Office provides an argument, I code this "1" if the SG argues in favor of cert, "-1" when the SG provides a reason the Court should not take the case, and "0" when the SG was not mentioned in the pool memo or when a clerk's assessment to a reply memo was not provided after the clerk requested the views of the

Solicitor General.[23] Usually referenced in the pool memoranda when the United States is the responding party, but also discussed as amicus, the participation of the Solicitor General indicates importance. Since the Solicitor General is a repeat player, the Solicitor General should increase the likelihood of a case being granted cert. When the Solicitor General has given information about a case, the clerks will oftentimes reference the Solicitor General by his title or as the "SG" and write down what was said by him. Provine (1980) has found that the success of the Solicitor General is due to the fact that s/he is a repeat player and that the Solicitor General's expertise and anticipation of issues that will be salient to the Court provide him/her with enhanced credibility. Indeed, Black and Owens (2013) suggest the Office's professional and abiding relationship with the justices increases the SG's access to the Court's docket.

Research has also shown that disagreements among the lower courts increases the probability of a case being granted certiorari (Tanenhaus et al. 1963; Caldiera, Wright, and Zorn 1999). If the intermediate appellate court (or state supreme court) reverses the court below it, or if there is dissensus among the judges of the lower courts (e.g., a dissenting vote/opinion in the court below), I expect certiorari prospects to be enhanced. *Lower Court Reversal* is coded "1" if the memo indicates that the appellate court reversed the trial court. *Lower Court Dissent* is coded "1" when the memo mentions a dissenting opinion below.

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[23] Clerks would request the Court call for the views of the Solicitor General (CVSG) to clarify a particular issue or question of law. When the SG responded, clerks would write, or type, a reply memo detailing the SG's argument. Since each of the justices in the pool obtain a record of the SG's reply, I code this information provided outside the actual pool memo as relevant information provided by the SG. If the SG recommends the Court grant cert, I code this as such and vice versa.

Previous research assessing the presence of amicus briefs at the cert stage has found such briefs to increase the likelihood that a case will be reviewed. Amicus briefs serve as an indication that some person, group of people, or interest group has a personal stake in the case and that the outcome or decision of the case could affect more than just the litigants. And, they provide information the Court might not receive otherwise (Collins 2008a). *Amicus Briefs* is coded "1" if there is an amicus brief filed and "0" otherwise.[24] Hence, I expect the presence of an amicus brief to positively increase the likelihood of a case being granted certiorari.

Scholars suggest a constitutional claim increases the likelihood of cert, and previous research by Caldeira, Wright, and Zorn (1999) has found that when the U.S. is a petitioner in a case, the likelihood that the Supreme Court will grant certiorari to a case increases. A *Constitutional Claim* is coded "1" if a constitutional claim is raised while

[24] There is some discussion about whether amici in favor or against cert equally influence the likelihood the Court will grant cert. Scholars have found that amicus briefs, whether in favor or against cert, increase the likelihood a case will be reviewed (Caldeira and Wright 1988; Caldeira, Wright, and Zorn 1999). Caldeira, Wright, and Zorn (1999) used amici as a cue and tested whether the number of amici influence the justices' cert decision. In my replication of their study in Chapter 3, I used amici in a similar manner. However, in this chapter and the chapters that follow, I suggest amicus briefs provide information to the justices to assist them in their decision making on cert. In an unpublished study, Caldeira, Wright, and Zorn suggest that amicus briefs against cert might actually influence the Court to not hear a case (2012). This might suggest that information provided by amici requesting the Court deny cert has its intended effects: when the amicus argument requests a denial of cert the justices are likely to use and heed this information. However, the authors' finding occurs only in the 2007 term. My study examines the 1986-1993 terms, therefore using amici as a control variable and following the work of previous literature, I expect amicus brief arguments favoring or denying cert to increase the likelihood of cert. (In Chapter 6, however, I examine whether the arguments by amici requesting a grant or denial of cert compel the Court to be more or less likely to grant cert, respectively.)

the *U.S. as a Petitioner* variable is coded "1" if the United States is explicitly mentioned as a petitioner in the case on the first page of the pool memo and "0" otherwise.[25]

Finally, a dummy variable is included for *Death Penalty* cases (1=death penalty, 0=otherwise) and *Abortion Cases* (1=abortion, 0=otherwise), as well as an *Ideological Distance* measure between Martin-Quinn ideological scores for the median justice on the Court and Justice Blackmun (Martin and Quinn 2002). Blackmun became increasingly concerned with the Court's treatment of death penalty and abortion cases; therefore, he should be more likely to grant cert when presented with a case addressing the issue of terminating a pregnancy or that which involves an individual on death row (Lazarus 1999, Greenhouse 2005). Ideology scores are included to control for the fact that justices can act strategically and sometimes look ahead to the vote on the merits (Brenner and Krol 1989; Caldeira, Wright, and Zorn 1999; Benesh, Brenner, and Spaeth 2002) and that as the absolute difference between Blackmun's ideology and the Court's median ideology

[25] Correlation between the Solicitor General and the U.S. as a petitioner is low (0.2142) while collinearity between the two variables does not present a problem in the model. Because the U.S. petitioned a case before the Supreme Court does not mean the clerk directly alludes to the Solicitor General providing information. Only when the Solicitor General is mentioned in the pool memo and the clerk directs attention to information provided by the Solicitor General in the pool memo, do I code the mention of the Solicitor General. I also code the U.S. petitioner variable in a similar way. Only when the clerk explicitly writes the United States is petitioning a case before the Court on the first page of the pool memo do I code this variable as such. Previous scholars have found that the presence of the United States cues the justices to the importance of a case (Tanenhaus et al. 1963; Ulmer, Hintze, and Kirklosky 1972). Thus, I expect when clerks direct the justices' attention to the United States petitioning a case, and include information provided by the government via their editing role, the Court will be more likely to grant cert.

score increases, he will be less likely to grant cert out of fear of losing. This means he will be less open to the Court hearing cases.

Overall, I expect the advice given by clerks on whether to grant or deny cert to be influential to the decision making by the justices[26] (specifically, to Justice Blackmun, but later, I extend the analysis to other justices, both in and outside the certiorari pool). To test that expectation, I estimate a binomial rare events logistic regression (King, Tomz, and Wittenberg 2000; King and Zeng 2001, 2002) of Justice Blackmun's vote on cert on variables measuring advice, Justice Blackmun's own considerations, and other known determinants of cert. A binomial rare events logistic regression will be used for each of the following subsequent models unless otherwise specified. Rare events logit is utilized because of its ability to correct for the biased number of petitions granted and denied cert in the entire population. The author has sampled an equal number of cases granted and

[26] Black and Boyd investigate a similar question and find clerks have the ability to influence judicial decision making (2012a). The authors create a quality petition variable estimating whether a petition has low, medium, or high certworthiness and find that "the direction of the clerk's recommendation [grant or deny]…interacts with the quality of the petition and the comparative ideology of the voting justice," and so the clerk's ability to influence judicial decision making is conditional on these factors (Black and Boyd 2012a, 18). Taking the perspective of principal-agent theory, Black and Boyd suggest that the justices, acting as the principal, designate decision making functions to the clerks who, acting as agents, provide information requested by the justices (2012a). Sometimes, according to Black and Boyd, a justice will switch positions based on a clerk recommendation (2012a). I contend, however, that clerks take on a much greater advisory role. Much research, usually in psychology, suggests that reliance on advice and evaluation of the source of advice influence greatly both the decisions people make and their quality (see, e.g., Chaiken 1980; Yaniv 2004a). I apply psychological research regarding expert advice and source credibility to judicial decision making, attempting to ascertain the degree to which Justice Blackmun was influenced in his decision making by the advice available to him (from the Court's law clerk) and his evaluation of this advice.

denied cert in the models. Since the Court receives thousands of petitions and around 1% of these will actually be granted cert, using rare events logistic regression to account for the bias of cases granted and denied cert will allow for more reliable estimates of the coefficients.[27]

Results

As we can see in Table 12, the advice given by Justice Blackmun's own clerk (Model 2) and the memo clerk (Model 1) have a significant impact ($p<.05$) on whether he will vote to grant cert or not. This suggests that clerks have a significant influence on the decision making of the justices, particularly Justice Blackmun.[28] Blackmun is 3 percent

[27] However, in the Blackmun Archive during the 1986-1993 Terms, three percent of the petitions were granted cert by the Court. Therefore, the regression is weighted as such.

[28] Computing a model of cert that includes congruence suggests that Justice Blackmun's own clerk's advice, however, is conditioned by the congruence that exists between his clerk and the memo author's recommendation. Meaning, Justice Blackmun is more likely to heed the advice of his clerk's recommendation when his clerk and the memo clerk agree on the recommendation. In fact, Justice Blackmun is 2.62 times more likely to vote with his own clerk's recommendation when congruence exists, however, he is only 1.29 times as likely to vote with his clerk when the memo author and his clerk disagree. These numbers are obtained by calculating and interpreting the interaction term (Blackmun's Clerk's Recommendation X Clerk Congruence) and the direct effect of each (Blackmun's Clerk's Recommendation and Clerk Congruence). With this interaction term, we can test to see if the slope between Blackmun's vote and his clerk's recommendation are different with and without congruence between his clerk and the memo clerk's recommendation. When congruence is equal to one, the equation simplifies to:

Blackmun's Vote = (-3.72-0.85)+(1.29+1.33)Blackmun's Clerk's Recommendation

Blackmun's Vote = -4.57+2.62(Blackmun's Clerk's Recommendation)

However, when congruence is equal to zero, the equation looks like this:

Blackmun's Vote = -3.72+1.29(Blackmun's Clerk's Recommendation)

more likely to heed the memo clerk's advice and 5 percent more likely to grant cert when his clerk suggests he do so (Table 13) (also see Figures 1 and 2). Although not large, the advice of both the memo clerks and Blackmun's own clerks significantly influence his decision making on cert. Thus, clerks give advice, via the pool memoranda, and Justice Blackmun heeds these recommendations to help him make decisions on whether or not to grant cert. However, in Model 3 (Table 12), when I include the memo clerk's recommendation along with Blackmun's clerk's recommendation on cert, the memo clerk's recommendation becomes insignificant. This is not surprising, as we would expect Justice Blackmun to heed the advice of his own clerk over the memo clerk.[29] He did, in fact, choose his clerks after all. Thus, the advice from his own clerk should carry greater weight than advice from a pool memo clerk who works for another justice.

Here we can see that when congruence exists between Blackmun's clerk and the memo clerk's recommendation, he is more likely to heed his clerk's advice than when congruence is absent. Clearly, congruence has a significant impact on the influence of Blackmun's own clerk's recommendation, over twice as much, conditioning the influence of his own clerk's recommendation. However, to maintain consistency with subsequent models in this chapter (i.e., Pool Justices and Non-Pool Justices alike), I omit congruence from the original model measuring Blackmun's vote on cert and rerun this additional model as a robustness check. Interestingly, including a congruence measure conditions his clerk's recommendation on cert and drops the significance of the memo clerk's recommendation. This is not entirely surprising as we would expect Justice Blackmun to be influenced by the advice of his own clerks more than clerks from other chambers. By including a measure of congruence, we are tapping into Blackmun's own clerk's recommendation. This suggests that Blackmun's own clerk's recommendation and the congruence between the memo clerk and his clerk are influential factors in his decision making.

[29] I also test the influence of the memo clerk's recommendation on Blackmun's cert vote without his clerk as the pool memo author and find the influence of the memo writer becomes insignificant. This further validates the theory of advice, wherein a trusted, close advisor would be preferred more by his own clerk than clerks of his brethren.

Control variables such as liberal decision rendered by the lower court decreases the likelihood Blackmun votes to grant cert. Since Justice Blackmun is considered a liberal leaning justice and maintained a liberal stance during his tenure on the Court, I expect that he would be less likely to grant cert when the lower court decision was liberal for fear of reversal on the merits. Other variables such actual conflict deemed real by the memo clerk, information provided by the SG arguing in favor of cert, and dissensus in the lower court increase Blackmun's vote on cert ($p<.05$).

This analysis suggests clerks' recommendations matter in the certiorari process, and that this recommendation is real, even when controlling for variables known to influence cert. The direct recommendation made by law clerks influences judicial decision making, in particular for Justice Blackmun. Does the recommendation to grant or deny cert, given by law clerks, also influence other justices of the Court in the cert pool process? I turn to this question next.

Clerk Influence on Pool Justices

Although the results in Table 12 suggest Blackmun is influenced by the recommendations of both the memo clerk and his own law clerks, these results do not indicate whether other members of the Court are similarly influenced. I expect that these results are not only applicable to Justice Blackmun, and so I also test a model of cert decisions by the other pool justices in my sample. Indeed, were this not the case, my results would be lacking in generalizability. Clerks are directed to write pool memos that are "bland" and "straightforward" since these memos are being written for multiple justices (Perry 1991, 59) and while this does not imply pool memos are entirely impartial, nor that justices do not have preferences toward certain cases, the memo is a "first

review" providing the assigned clerk's assessment of the case and all of the pool justices are expected to use the clerk's recommendation as a "baseline opinion" (Perry 1991, 59) Testing the influence of the memo clerk's recommendation on justices in the cert pool, other than Justice Blackmun, will serve as a robustness check that the influence of recommendations made by clerks matters. Hence, I test the same model tested in Table 12 for each of the other members of the cert pool (Justices Rehnquist, O'Connor and Scalia).[30] Results are listed in Table 14.

Results

The results in Table 14 suggest the memo writer's recommendation significantly impacts judicial decision making on cert, with some caveats. Two pool justices, Justice Rehnquist and Scalia, are positively influenced by the memo author's recommendation ($p<.05$). This finding suggests that recommendations made by clerks are not arbitrary nor do they only affect Justice Blackmun. Rather, the effect of the recommendation is real and has implications for how judicial decision making is conducted on the Court.

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[30] I examine whether the memo clerk's recommendation influences Justices Rehnquist, O'Connor, and Scalia because all three justices were involved in the cert pool during the span of the Blackmun Papers (1986-1993), thus sufficient data exists for each justice's vote on cert. (I exclude deadlisted cases for reasons noted in my discussion on Justice Blackmun's cert vote.) However, some cert votes are missing for each of the three pool justices because some docket sheets did not provide a tally on how the individual justice voted or the case was deadlisted and no justice voted on it. Justice Blackmun's docket sheets would sometimes mark a vote for specific justices and not others, for reasons that are not exactly clear. However, I test whether the missing votes of Rehnquist, O'Connor, and Scalia, that were not deadlisted cases (cases in which no votes were recorded for any of the justices on the docket sheet), are missing at random or if the missing votes for these pool justices are systematic. Justice O'Connor and Scalia's votes are missing at random however I find that Justice Rehnquist's missing cert votes are systematically related to actual conflict cases but no other case types.

Although small, Justices Rehnquist and Scalia are three percent and one percent more likely to grant cert to a case when the memo clerk advises to do so, respectively (Table 15; see Figures 3 and 4). Justice O'Connor, however, is not significantly influenced by the pool memo clerk's recommendation on cert ($p<.136$).[31] O'Connor is one percent more likely to grant cert when the memo clerk recommends the petition be granted (Table 15; see Figure 5). However, the insignificance of the memo clerk's recommendation on Justice O'Connor's cert vote to grant is calculated using a two-tailed test, $p<.05$.[32] Using a one-tailed test, expecting the memo clerk's grant recommendation to influence Justice O'Connor's cert vote, the memo clerk's recommendation almost reaches conventional levels ($p<.05$) while being statistically significant with a $z = 1.49$, $p<.1$. Though it does not reach the conventional threshold of 95 percent, this still suggests that the memo clerk's recommendation can, and does, influence Justice O'Connor's vote to grant cert.[33]

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[31] I test whether the influence of the memo clerk's recommendation is significant for Justice O'Connor when conflict variables are removed from the model. I find that, when conflict is removed from the model, the memo clerk's recommendation is significant and positively influences Justice O'Connor's vote to grant cert. Indeed, the memo clerk's recommendation and actual conflict strongly correlate (0.5909) while a moderate correlation exists with alleged conflict (0.3671). It might be that conflict is reducing the effect of the memo clerk's recommendation even though conflict is not significant.

[32] The p-value obtained using a two-tailed analysis for Justice O'Connor is $p = 0.136$. To get a p-value for a one-tailed test, I divide $p = 0.136$ in half, which calculates to $p = 0.68$ for a one-tailed test. This p-value misses being significant at conventional levels ($p<.05$) but is significant at $p<.1$.

[33] As a robustness check, I test whether each of the three pool justices (Rehnquist, Scalia, and O'Connor) are influenced by the memo clerk's recommendation when each justice's own clerk is omitted. I find the influence of the pool clerk's recommendation becomes insignificant, again, suggesting that justices (at least these three pool justices) rely much more heavily on the advice of their own clerks than law clerks from other chambers.

Controls, such as the direction of the lower court decision, suggests that when a liberal decision is made by a lower court, Justices Rehnquist, O'Connor, and Scalia are more likely to grant cert. Conservative justices are more likely to take a case when the previous decision is liberal (Caldeira, Wright, and Zorn 1999), oftentimes with the intent of reversing the decision. Since these three justices can safely be assumed conservative, this finding is theoretically sound. Other controls such as the Solicitor General, reversal in the lower court, and dissents made by lower court judges increase cert while cases involving capital punishment, a Harvard law clerk (negatively influences Justice Scalia's vote on cert), and the memo clerk's recommendation interacted with ideological disagreement (Justices O'Connor is less likely to vote a grant of cert) decrease the likelihood of cert.

This analysis is not the only important robustness check, however. It may still be believed that the cert pool memo author is merely parroting all of the determinants of cert to the justices and hence, that their only influence is in the repetition of the things the justices would rely upon in the first instance. In order to buttress the claim that these recommendations are an additional and independent influence on the justices, I consider the cert decision making of Justice Stevens, who was not a cert pool member. If it is, in fact, the case that the cert pool memo and its recommendation exert a separate influence on the cert pool justices' decisions (as indicated above for Justices Blackmun, Rehnquist, Scalia and O'Connor), then that additional influence ought NOT be present when modeling the decision making of a non-pool justice. Only Justice Stevens participated frequently enough over our time span and was not a member of the cert pool, and so we model his decision making on cert. Note that the extent to which this is an actual

robustness check depends on Justice Stevens NOT having access to cert pool memos, and this question is a matter of some debate.

In his memoir, *Five Chiefs: A Supreme Court Memoir*, Justice Stevens speaks of his decision to join in the then, newly created cert pool (he credits Justice Powell with its creation, before he, Stevens, joined the Court) (2011). He says Justice Powell shared the memos with him that first term and that, while he found them to be useful and thorough, "..based on my earlier experience as a law clerk, I was convinced that in most cases I could make an accurate judgment about whether to grant or deny the petition more easily by glancing at the original papers than by reading an unnecessarily detailed description of the arguments favoring and opposing review. I therefore declined the chief's invitation to join the pool" (Stevens 2011, 139). It appears, according to Justice Stevens' narrative, that during his first term on the Court he perused pool memos but found them to be unhelpful in deciding whether cases should be granted or denied cert.

There is some dispute, however, over whether or not non-cert pool chambers also receive the cert pool memo. Justice Stevens expressed his reasoning to remain out of the cert pool "to provide a check against what he saw as a dangerous practice that ceded too much authority to a single clerk" (Ward and Weiden 2006, 45). However, Epstein, Martin, and Segal (2012) suggest that Stevens' did receive pool memos because of the Court's practice circulating material to all chambers (Sara Benesh personal correspondence with Lee Epstein, 10/24/13). In a letter to the retired Supreme Court justice, I asked him the following question: "Were the cert pool memos, in your time on the Court, circulated to your chambers as well as to the chambers of all of the other justices whether in the cert pool or not, or did you not receive copies of those memos? If

you did receive copies of them, did you or your clerks read them?" Justice Stevens replied, "In response to the question in your recent letter, cert pool memos were just circulated to members of the pool. Of course, from time to time, on interesting or difficult cases, the pool memo writer would discuss a case with clerks in other chambers, including mine, and I'm sure my clerks did the same. I'm sure I looked at some pool memos during my years at the Court, but they played no role in either me or my clerk's normal work." An anonymous former clerk said that he "never saw a cert pool memo in the two years I clerked for Justice Stevens" (Sara Benesh personal correspondence, 10/25/13). Justice Stevens' account as a non-pool justice alludes to the fact that he did, indeed, read through pool memos during the cert pool's first year, however, he opted out after he believed his own assessment was superior to that of a law clerk.

The cert pool process is much more formalized than the process used in non-pool chambers. In non-pool chambers, "there is no formalized sharing of information between chambers" and the information written is generally "shorter and much less formal" (Perry 1991, 42-43). As Perry (1991) notes, from his interviews with clerks and justices of the Court, Justice Stevens' approach to the cert process was much different even from other justices not participating in the cert pool, in that he utilized his clerks much more frequently throughout the process of cert. Justice Stevens did not go through every cert petition himself nor did he, or his clerks, write memos for every petition that reached the Court's docket. Rather, Justice Stevens "had his clerks write memos only on those cases that the clerks thought should be granted or discussed" (Perry 1991, 64). Stevens' reason behind this method was to save time. Since the Court receives thousands of petitions, many of them denials, he felt no need to waste unnecessary time on a petition that was a

clear denial of cert. However, Stevens' clerks would still write memos on cases they expected would be denied, but the review of such cases were rather hasty. Oftentimes, these cases were given cursory review because clerks would predict that other justices would include them on the discuss list. This was to "protect" the clerk while making sure Stevens was given a brief understanding of the case (Perry 1991, 66).

Justice Steven's reason for choosing this method for the cert process is not well known. However, being a critic of the Court's disproportionate acceptance of cases, Perry suggests it might have been his "strong belief the Court takes far too many cases for review" (1991, 66). It might also have been the fact that Stevens believes clerks should be doing other tasks that are more beneficial than devoting time to a cert process that could only increase the likelihood of the Court hearing a case. Whatever his reason, Stevens' approach to reviewing cases undoubtedly directs his clerks to write full memos only on cases deemed cert-worthy, leaving others that, while unimportant, may still reach the discuss list, for cursory review.

Clerk Influence on a Non-Pool Justice

Assuming, then, that Justice Stevens did not receive copies of the cert pool memos, the recommendations contained therein, to the extent they exert an independent effect on the justices' vote on cert, should not matter to him in his decision making. Although this examination does not directly test the influence of Justice Stevens' own clerk's recommendations, it is still relevant to test the effect of the pool memo clerk's recommendation on a non-pool justice to test the strength of the findings from the previous analyses in which the clerk's recommendation mattered to justices in the cert pool, making certain the finding is meaningful and robust. The expectation is that non-

pool justices will not be influenced by the memo author's recommendation. If this finding holds true, it would suggest the memo clerk's recommendation carries special weight and that clerk influence on the pool justices' decisions is "real." This would lend credence to the notion that cert pool memos authored by the clerks are appropriate sources that convey necessary information.

Again, data is from the Blackmun Papers (86-93 terms). Justice Stevens' vote on cert is my dependent variable (1=grant) and my main independent variable of interest is the cert pool memo recommendation.[34] I basically replicate the models tested in Tables 12 and 14, on the cert pool justices with just a few changes. First, Blackmun's clerk's recommendations resulting from their mark-up of the memos after it is written by the pool writer will not be included because that information is exclusively provided to Justice Blackmun. Second, Stevens' absolute distance will account for whether he acts strategically and is less likely to vote to grant cert as he finds himself distanced from the Court's median. Finally, the ideological agreement Stevens had with the memo clerk's justice in the term previous is included as a control for ideological similarity. Eleven control variables previously used will also be included (death penalty, abortion, lower court dissent, lower court direction of decision, alleged and actual conflict, a

[34] Votes for Justice Stevens are missing because some docket sheets did not provide a tally for how a justice voted on every case. Some cases are deadlisted, (which I exclude for Justice Stevens' vote) and therefore no votes were recorded for any of the individual justices as the Court automatically denies these cases. Other cases, however, the docket sheet would only provide votes for some of the justices and not others. I examine why votes are missing for Justice Stevens when the case was not deadlisted and find his missing votes are not systematic, meaning his missing votes are not related to specific case types.

constitutional claim, reversal in the lower court, the U.S. as the petitioner, amicus brief(s), and the Solicitor General). Using a rare events logistic regression as discussed above (King, Tomz, and Wittenberg 2000; King and Zeng 2001, 2002), I expect Justice Stevens, a non-pool justice, to *not* be influenced by the recommendation of the pool writer, though he'll most certainly also obtain information on the other cert determinants discussed in the memo, given that his clerks will look over the petitions. Indeed, Perry notes that memos written by clerks of non-pool justices "contain much of the same information that is in the pool memo" (Perry 1991, 43). Although variation will exist in formality and length, information contained within the memos remains similar (Perry 1991). If Justice Stevens is not influenced by the pool clerk's recommendation, it will provide further evidence that the clerk recommendation has an independent effect on the justices who receive them.

Results

The results in Table 16 suggest that the pool memo writer's recommendation to grant or deny cert does not influence Stevens' vote on cert[35] (also see Table 17 and Figure 6). This suggests the memo writer's recommendation does not influence a non-

[35] Other variables also influencing Justice Stevens' vote on cert include the direction of the lower court decision (a lower court decision made in a liberal direction is less likely to be granted by Stevens) and his distance from the pool memo writer's justice. Both findings match with my expectations as I would expect Justice Stevens, a liberal leaning justice, to be less likely to grant cert when the decision of the lower court is liberal for fear of reversal on the merits and that he be less likely to accept a case with the memo writer's justice who is distant from him ideologically when the memo writer recommends deny.

pool justice,[36] implying the influence a memo writer has on a justice in the cert pool is real. The findings from Table 12 and Table 14 demonstrate that pool memo clerks' recommendations have a significant influence on justices in the pool (Justice Blackmun, Justice Rehnquist, Justice Scalia (all three at $p<.05$), and Justice O'Connor (at $p<.1$)). Oftentimes petitioned cases come before the Court as being a clear grant or denial of cert. Granted cases have often evolved through the court system being heard by multiple lower court judges and courts, while denied cases often present fact bound issues without any legitimate reason to grant cert (Perry 1991). Because of this, the justices tend to have an understanding of whether a case is likely to be certworthy. Even if the justices know a case is likely to be granted or denied by the Court, or there is useful information being provided by multiple groups and individuals known to influence judicial decision making on cert, the recommendation by the memo clerk still acts as a crucial piece of information utilized by the justices in the pool. And since the findings suggest the recommendation made by a pool memo clerk only influences justices in the cert pool, one can safely assume this recommendation is not arbitrary, but real.

Conclusion

Now that we know that recommendations matter, even after controlling for a host of other determinants of cert and ideological congruence, for Justice Blackmun and the other cert pool justices (Rehnquist, O'Connor, Scalia) and NOT for Justice Stevens, the

[36] The influence of the memo writer's recommendation on Justice Stevens' cert vote ($p<0.378$) does not reach statistical significance using a one-tailed test. However, testing the memo clerk's recommendation on Stevens' vote with only cert variables and no conflict variables in the model reveals a statistically significant influence of the memo clerk's recommendation on his vote.

only non-pool justice we are able to consider, we might naturally wonder whether other aspects of these memos matter as well. This brings us to ask the question: if the recommendation made by law clerks influences judicial decision making, does the actual language of the memo, the information provided by the clerks to the justices (about other actors and groups) additionally influence the justices' decision whether to grant cert or not? I turn to this question next, examining lower court judges first.

CHAPTER 5: Lower Court Judge Influence

A growing class of literature has focused on the ability of lower court judges to influence the Supreme Court, especially its plenary docket (Perry 1991; Caldeira, Wright, and Zorn 1999; Cameron, Segal, and Songer 2000; Hall 2009). In his extensive interview project, Perry suggests that the justices do consider the identity of the lower court judges they are reviewing, and that respect for these judges varies (1991). His interviewees suggested that granting certiorari to a case that was decided by a "well-respected judge" gave the justices a "more informed point" from which to base their decision and opinion (Perry 1991, 125). Knowing the "character of the judges" from the lower court was important because a case coming from a "court that is less respected" in the eyes of the justices will likely be denied (Perry 1991, 233). The justices also seek cases that have percolated through several lower courts, allowing them to "review how other courts have looked at this issue" (Perry 1991, 231). According to Perry (1991, 231), the phrase "other courts" actually refers to the lower court judges. A well-percolated case is both objective and includes a multitude of decisions made by numerous lower court judges. Making numerous references to the names of lower court judges and the discussion of their opinions by clerks may act as an indicator to the Court that a case has been well reviewed, producing many different opinions.

As noted earlier, Perry (1991) alluded to this notion that lower court judges help "prime" decision making, but he offers no systematic explanation as to how or why. Examining a conservative Court, Caldeira, Wright, and Zorn (1999) find a statistically significant and negative relationship between the ideological direction of the lower court decision and the vote to hear the case, which demonstrates that a conservative Court is

less likely to hear cases involving conservative outcomes. This implies that both agenda setting and decision making will be influenced by the "dominant ideological coalition" of the Court (Caldeira, Wright, and Zorn 1999, 571). Cameron, Segal and Songer (2000) discern certain signals and indices the Supreme Court receives from lower courts that affect its decision on cert. They suggest the Supreme Court looks to "publicly observable case facts, the known preferences of a lower court, and its decision" (Cameron, Segal, and Songer 2000, 101) to help its own decision making. Using a formal model, they find a conservative higher court will decline to hear conservative decisions from a lower court regardless of the facts or ideology of the judges while liberal lower court decisions are subject to scrutiny depending on case facts and ideology (Cameron, Segal, and Songer 2000). Similarly, Hall (2009) analyzed the partisanship of U.S. Courts of Appeals judges, from 1995-2004, finding that a liberal appeals court was more likely to have its case heard and overturned by the Supreme Court than a conservative appeals court. Given that the Supreme Court was conservative during this time, this demonstrates a desire by the justices to consider policy in its cert decisions.

Law clerks may cite lower court judges in the pool memoranda without the intention of pronouncing the judge's ideology, but instead to direct the justice's attention to the presence of and reasoning by the lower court judge. Although previous literature suggests lower court ideology influences the Court's judicial decision making, the discussion of lower court judges may extend beyond the ideology of the lower court.

The justices may even look at *who the lower court judges are* when making decisions on cert. Justice Blackmun became "concerned about…the absence of the names of the judges participating in the case" and requested that names of lower court

judges be included in the memos because he wanted "to know who the judges below were" (Ward and Weiden 2006, 133). When lower court judges are cited in the pool memos, the justices might be looking at more than just the partisanship or ideology of the lower court judge. The judge being mentioned, and the discussion of this judge's opinion, might serve as an indicator to the justice of the quality of the lower court decision, and therefore might induce a vote to grant certiorari. Percolating cases are deemed as "good vehicles" that have been well-reasoned by several lower court judges. A case that has several authored opinions allows the clerks to cite different lines of reasoning by lower court judges. When multiple lower court judges have written concurrences, dissents, or majority opinions for a case, the case has received considerable attention from lower court judges and the clerk will, in discussing the arguments in a case, have more lower court judge's names to mention. Multiple citations of lower court judges may be indicative of a case that has filtered through the lower courts and has a good legal foundation, thus warranting cert. This is precisely what Justice Ginsburg has suggested: the Supreme Court "benefits from reading opinions from lower courts" because it permits "a range of views" before the Court which allows the justices to "make a better informed decision" about the case (Wall Street Journal 2011).

Some might argue just the opposite: a case that has filtered through the lower courts, and has many authored opinions by multiple lower court judges, should be denied review. A case that has withstood the rigor and scrutiny of a lower court should, again, as some might argue, cause the Court to reject the case. However, previous scholarship suggests the justices want to know who the lower court judges are that recently heard the case (Perry 1991; Ward and Weiden 2006) to help the justices "learn" about judges in the

lower courts. Wanting to know who these lower court judges may be due to the fact the justices want to defer to a case that is well-reasoned in the lower court with opinions by really good judges. This suggests at least some of the justices wanted to know who these lower court judges were beyond the ideological direction of the lower court's treatment of the case.

If referencing judges' names and their reasoning in pool memoranda persuade the Court that cert is warranted, then direct quotation of language from a specific lower court judge in a specific case may further increase the likelihood of selection. To quote a lower court judge in a pool memorandum shows that the clerk thinks it matters what was said and that s/he wants to alert the justices to it. Examining whether a general court, such as the courts of appeals, or a specialized Court of Customs and Patent Appeals (CCPA) is more or less likely to cite the Supreme Court justices, Baum (1994) found general courts more likely cite justice' opinions. More importantly, he found a significant difference between the mere citation of a justice and a direct quotation of a justice, while positive and negative citations made no significant difference (Baum 1994). According to Baum, the quotation of a justice goes "beyond routine acknowledgements of decisions" and that a "quotation generally indicates a stronger reliance on the cited court" (1994, 697-698). If quotations by clerks bring more attention to the lower court opinions or to specific judges, one might expect the justices use quotations as an indication that the opinion by this lower court judge is well-reasoned and reliable. Therefore, it should influence the judicial decision making of the justices and increase the likelihood of a case being granted certiorari.

To test this theory of lower court influence, and to determine if information written by the clerks in the pool memoranda, which specify the presence of lower court judges and their arguments, influences the decision on cert, I will use the Blackmun Papers and rare events logistic regression. This will test both the indirect influence of what law clerks write and whether the discussion and/or quotation of lower court judges influences the justices. (Later in the chapter, I will test whether the discussion of prestigious lower court judges and judges that successfully place clerks on the Supreme Court differentially influence the justices' decision making on cert.) Since law clerks decide whether to mention the names of lower court judges in the pool memos, and discuss argument of those judges, any significant finding should indicate whether the justices care about what is written in the memos. This will ascertain whether the mention and discussion of lower court judges' opinions serves as a source of information to the justices as to the quality of the case/reasoning/outcome thus, influencing their decision making.

The dependent variable, *Case Cert*, is a dichotomous variable coded "1" if the Court grants cert to a case and "0" otherwise.[37] The three independent variables of

[37] Previous studies analyzing the influence of lower courts on judicial decision making by the justices have utilized both the justices' vote on certiorari (Caldeira, Wright, and Zorn 1999; Black and Boyd 2012b) and a Court approach (Cameron, Segal, and Songer 2000; Hall 2009; Black and Boyd 2012b). Basically, scholars examine either individual cert decisions by the justices or the decision making of the Court as a whole. During this time period (1986-1993 Terms), a majority of justices were involved in the cert pool, with only three justices remaining outside the pool (Justices Stevens, Brennan, and Marshall). Of these three non-pool justices, only one served on the Court from 1986-1993 (Justice Stevens). Since I test the influence of information provided in the pool memos, I can assume that analyzing the Court's decision to grant cert on information contained in the cert pool memos, rather than separating the votes of pool and non-pool justices, is

theoretical interest include whether or not a judge is mentioned, the actual number of lower court judges mentioned in the cert pool memo, and whether or not a lower court judge is quoted in the memorandum.[38] Eleven control variables will also be included because of their relative significance in previous studies on case selection along with a measure of lower court judge ideology.[39]

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acceptable because the Court vote includes a majority of justices in the pool. I also use deadlisted cases when using the Court's vote on cert (see discussion of the deadlist in Chapter 2). In earlier models testing the influence of the individual justices' votes (i.e., Justices Blackmun, Rehnquist, O'Connor, Scalia, and Stevens), I omit deadlisted cases because the docket sheet did not record how these individual justices voted on cert. If a petition did not reach the Court's discuss list, the case was not reviewed in conference and the justices did not cast a vote. However, I include deadlisted cases when examining the Court's vote on cert because the Court, as a whole, denied cert to the case by not reviewing or voting on the case in conference. This Court vote measure will be used in subsequent models, unless otherwise noted.

[38] The first variable, *Judge Mention*, is coded "1" if a lower court judge is mentioned in the memo and "0" if not. The second variable, *Actual Number of Judges Mentioned*, is the total number of unique lower court judges mentioned in a pool memorandum. The third variable, *Judge Quote*, is coded "1" if at least one judge is quoted and "0" otherwise.

[39] Control variables include alleged conflict, true conflict, constitutional claim, lower court reversal, the U.S. as a petitioner, lower court direction of decision – the dependent variable is measuring the Rehnquist Court's vote on cert, which can safely be considered conservative, it is expected that the Court will be more likely to grant cert to cases in which the lower court decision is liberal – amicus brief(s) filed, dissent in the lower court, the Solicitor General, capital punishment cases, and lower court judge ideology of the judges mentioned in the pool memos. A correlation between the U.S. as the petitioner and the Solicitor General is moderately weak (0.3204) suggesting these two variables do not strongly correlate with each other. Lower court judge ideology is an ordinal measure with positive numbers indicating more mentions of conservative judges and negative numbers indicating liberal judges were mentioned in the memo. Zero indicates no judges were mentioned or an equal number of conservative and liberal judges were mentioned by clerks. Correlation and reliability tests were conducted on the lower court direction of decision and lower court judge ideology. The correlation between the lower court's

Results

Contrary to findings suggested by Baum (1994), a judge quote in the pool memos does not significantly influence the Court's decision making on cert (Table 18). Indeed, quotes are not often used in the pool memos. In this sample less than 9% of cases, or 115 pool memos, included direct quotes (Table 19).[40] Judges are quoted most often when they author a dissent or concurring opinion. When clerks do quote lower court judges, these judges are overwhelmingly viewed in a neutral manner. The clerks almost never reference quoted lower court judges positively or negatively, but rather cite only what the judge wrote.[41]

Table 18 shows the mention of a judge and the actual number of lower court judges named in the pool memos is positive and statistically significant. The results indicate that the presence and discussion of lower court judges' opinions and the unique mention of multiple lower court judges in the pool memos increase the likelihood of

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decision and ideology of judges mentioned in the pool memos is weak (0.0874) suggesting these variables are not related. Reliability among the two variables has an (alpha) $\alpha = 0.1018$, which is considered weak and suggests these variables measure different concepts.

[40] The relationship between a judge quote and the Supreme Court granting cert is negative (Figure 7). This is surprising as previous literature suggests we should expect the opposite: referencing judge quotes should place greater reliance on the argument madet (Baum 1994).

[41] When collecting data on lower court judge quotations in the pool memos, I coded whether the clerk discussed the quote positively, negatively, or in a neutral manner. I found that clerks routinely quoted lower court judges without providing positive or negative treatment to the argument.

cert.[42] This lends credence to the informational mechanisms first suggested by Perry (1991). The justices want a case that has percolated through multiple lower courts so they can analyze how other courts have examined the issue. A case is well-percolated when multiple judges have written reasoned decisions, thus allowing the Court to examine how other judges viewed the case. Figures 8 and 9 demonstrate the predicted probability of the Court granting cert to a case when a lower court judge is mentioned and as the unique number of lower court judges mentioned in the memo increases, respectively (also see Tables 20 and 21). As the number of actual lower court judges mentioned in the pool memo increases, so does the probability of the Court granting cert. Table 22 further illustrates the influence of the actual number of lower court judges mentioned demonstrating that not one case sampled in this survey, having over six lower court judges' opinions discussed by the clerk in the memo, was denied cert by the Court. When numerous lower court judges author decisions on a case, clerks will cite these judges in the pool memos and the Court will use these arguments, and the presence of lower court judges in the memos, to help gauge the cert-worthiness of a case.

[42] A correlation test was computed between true conflict and judge mentions. Conflict is one reason the Court offers for granting cert, specifically when a conflict is deemed real. One might argue that actual conflict and mentioning judges in the pool memos are highly correlated because as more judges are referenced in the memo, the existence of conflict between multiple courts increases. Although positively correlated, a correlation test reveals a low to weakly moderate relationship between true conflict and a judge mention (0.2181), total judges mentioned (0.2821), and the actual number of judges mentioned (0.2617).

Prestigious Lower Court Judges as a Source of Influence

Literature studying lower court judges has also examined the influence of judge prestige on decision making. Having judicial colleagues as a personal audience, judges "assess each other's work" by the respect they have for their colleagues (Baum 2006, 54; Wald 1984). Judges are inclined to cite other judges with whom they agree or for whom they have respect; thus reputable judges are potentially able to influence the decision making of other judges (Landes, Lessig, and Solimine 1998; Klein and Morrisroe 1999). In order to sustain judicial influence, lower court judges want to maintain prestige and approval from their colleagues as respected professionals who can adhere to the norms of their work and perform their jobs well (Baum 2006; Klein and Morrisroe 1999).

Klein and Morrisroe (1999) have proposed that certain lower court judges have prestige and influence over their peers and that citations to these opinions are not attributable wholly to precedent.[43] Using the total number of cases in which a judge was cited, Klein and Morrisroe found that "legal rules are more likely to be adopted by other circuits" when "highly esteemed judges" write them (1999, 371). These are judges who

[43] The authors suggest that publishing by circuit court judges attracts the attention of other circuit judges, and therefore judges who frequently publish opinions will be more prestigious and author more opinions. To calculate this, Klein and Morrisroe (1999) devise a mathematical scheme to measure prestige. After a decision was handed down, the authors determined how often judges from other circuits mentioned the name of the opinion author, along with concurrences and dissents (five years after the case was decided). Judges cited multiple times for a majority opinion in a case were limited to one count per case, while concurrences and dissents were weighted .27 times a majority opinion. Thus, prestige is a measure of references to a judge's majority opinions and concurrences and dissents. (For a complete description of the authors' measure of prestige, see Klein and Morrisroe's 1999 article "The Prestige and Influence of Individual Judges on the U.S. Courts of Appeals" in The Journal of Legal Studies.)

are cited more often.[44] The authors argue that such "prestige can translate into influence"[45] (Klein and Morrisroe 1999, 371).

However, most scholarship examining judicial influence has focused exclusively on high courts in other countries (Bhattacharya and Smyth 2001; Smyth and Bhattacharya 2003) or how lower federal court judges (Landes, Lessig, and Solimine 1998; Klein and Morrisroe 1999) influence each other. Very little literature, if any, has focused on whether prestigious lower court judges influence the Supreme Court's decision on cert. The Blackmun Papers include the 1986-1993 terms, and these are similar to the years of the study (1989-1991) conducted by Klein and Morrisroe, in which they looked at the prestige of lower court judges and how this prestige translates into influence (1999). Hence, I can use their prestige scores of lower court judges to determine whether prestigious judges are mentioned by clerks in the pool memos and influence the Court's decision making on cert. I expect that when a clerk discusses the argument of a lower court judge with prestige in the pool memo, this will lend legitimacy to a petition for cert. The justices should be more inclined to trust the legal reasoning of that prestigious lower court judge, and thus, the Court will expect the case to be well-reasoned with an

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[44] Landes, Lessig, and Solimine also suggest "the number of citations" in "published opinions" acts as a "measure of influence" and "that the more citations a judge receives, the greater his influence" (1998, 271).

[45] Baum is skeptical of the relationship between citations and influence but believes that judges want to be viewed positively and that they will adhere to other judges' opinions and the "development of law because that is a norm of judging" (2006, 109). Choi and Gulati also suggest that citations in published opinions lead to biased behavior by judges in three ways: 1) judges will cite their colleagues from the opposite party less; 2) judges are more likely to engage in authoring citations when the issue is salient; and 3) judges are more likely to cite those judges who cite them in published opinions (2008).

established base giving the justices a more informed starting point from which to decide the case.

Using data from the Blackmun Papers and rare events logistic regression, these models test whether the Supreme Court is likely to grant cert to a case when there is/are opinions of prestigious lower court judge(s) mentioned.[46] The three variables of theoretical interest include a *Prestigious Judge Mention* coded "1" if a prestigious judge is mentioned in the memo and "0" otherwise; the *Actual Number of Prestigious Judges Mentioned* calculated as the unique number of prestigious judge's names in a pool memorandum; and *Prestigious Judge Quotes* coded "1" if at least one prestigious judge is quoted and "0" otherwise. Control variables used in previous models will be included because of their influence on case selection.[47]

[46] This analysis will test the influence of prestigious lower court circuit judges from the 89-91 dockets because Klein and Morrisroe (1999) only code prestigious judges during 1989-1991. The 1989 term sampled 165 cases (81 grants, 84 denials), while 168 cases were sampled from both the 1990 (85 grants, 83 denials) and 1991 (84 grants, 84 denials) terms. Thus, 501 cases will be examined (the 250 grants and 251 denials). The total number of grants and denials are not equal because some terms did not include an adequate number of granted cases to match denials.

[47] The ten control variables used include alleged conflict, true conflict, a constitutional claim, lower court reversal, lower court direction of decision – the dependent variable is measuring the Rehnquist Court's vote on cert, which can safely be considered conservative, therefore I expect the Court to grant cert when the decision of a lower court is liberal – amicus brief(s) filed, dissent in the lower court, the Solicitor General, capital punishment cases, and lower court judge ideology of mentioned prestigious judges. For this subset of cases, the U.S. as a petitioner will not be used because the variable does not vary because the Court always grants cert when the federal government petitions a case.

Results

The actual number of prestigious lower court judge mentions on the Supreme Court's decision making is significant. As shown in Table 23, merely referencing or quoting prestigious lower court judges has no statistical impact on judicial decision making. The Court is six percent more likely to grant cert as the actual number of prestigious judges providing discussion in the memo increases from 0 to 3 (Table 24, also see Figure 10). However, controls such as actual conflict, a liberal lower court ruling, a reversal or dissent in the lower court, and the filing of amici positively influence the Court's decision making. Corley, Collins, and Calvin find the Supreme Court is more likely to incorporate the language of lower court judges into their own opinions when the authoring judge is prestigious (2011).[48] The actual number of prestigious judges mentioned in pool memos might be meaningful because it might suggest something about how the justices view lower court judges. If prestige influences whether the justices trust the opinions of a lower court judge, so much that the justices utilize the language in their own opinions, one might expect that multiple mentions of lower court judges considered prestigious will impact whether a case is cert worthy or not. Prestigious judges might be considered trustworthy by the Court, thus giving the justices a better perspective on the case. Indeed, a pool memo containing more than one mention of a prestigious judge was only denied cert once by the Court (Table 25). Maybe opinions authored by prestigious

[48] Corley et al. calculates judicial prestige according to the rating a judge received from the American Bar Association (ABA) and coded the authoring judge on a scale from not qualified (1) to well qualified or exceptionally qualified (3).

lower court judges are viewed as better reasoned and suggest a case is a good vehicle for the Court's agenda.

However, questions loom about the appropriateness of this prestige measure (Baum 2006; Choi and Gulati 2008; Landes, Lessig, and Solimine 1998; Corely et al. 2011). As noted, Klein and Morrisroe (1999) measured judicial prestige by the number of times a judge was cited for their opinion by his/her colleagues. The authors find, from this calculation, "that prestige can translate into influence" (Klein and Morrisroe 1999, 371). However, this calculation was intended as a measure of prestige among judges within the federal circuit courts. One plausible critique is that this measure of prestige might be an intra-court measure. It focuses on judges at one level of the federal judiciary, the appellate courts, and how these judges cite each other's work. Circuit court judges must hear all federal cases appealed within their jurisdiction meeting appropriate justiciability requirements; therefore I might expect these judges to be citing each other's work frequently – some judges more than others. It could be that circuit court judges considered prestigious among judges of the appellate system are not the same judges the Court considers reputable.

Successful Lower Court Judges as a Source of Influence

Influence by lower court judges might be a product of the quality of clerks these judges place before the Court. To be considered for a clerkship at the Supreme Court, potential clerks must clerk for a lower court judge. In fact, "securing a clerkship on the courts of appeals with one of the top 'feeder' judges has become a virtual requirement" for any candidate to clerk at the Supreme Court (Ward and Weiden 2006, 107). Lower court judges who consistently place clerks on the Court build a relationship with the

justices, and therefore, build a level of trust and confidence with a justice. Building rapport with a justice of the Court not only augments a judge's reputation, but constructs an image of a judge who is "well respected in their profession[s]" (Ward and Weiden 2006, 83).

Lower court judges can secure a positive reputation and relationship with the justices by providing quality clerks for the Court. Providing reputable clerks could be a factor distinguishing successful lower court judges from those that are not. Clerks are such "an integral part of the function of the Supreme Court…that even the justices admit that the institution could not operate without them" (Ward and Weiden 2006, 5). Therefore the justices use informal guidelines and unwritten rules to determine clerk capability. Several factors play a role in becoming a clerk for the Supreme Court, such as clerking for a lower court judge and attending law school. Although there are no guidelines on which court(s) an individual must clerk for, clerks generally come from circuit courts, in particular the D.C. circuit (Ward and Weiden 2006). Clerking experience matters but coming from a prestigious law school, or "the right law school, usually Harvard or Yale" increases one's likelihood of clerking at the Court and is often considered "the first hurdle" (Ward and Weiden 2006, 55). Thus, lower court judges who can routinely attract quality clerks to work in their chambers and channel the clerk to the Supreme Court will command a certain degree of influence. This influence is ultimately measured by the number of clerks a lower court judge contributes to the Court. The more success a lower court judge has securing his/her own clerks with clerkships on the Supreme Court, the more likely this judge will be seen as reputable by the Court. Not only will this judge have established a personal relationship with one or more of the

justices by providing quality clerks, but this judge will build a reputation for consistently producing "top-notch clerks" (Ward and Weiden 2006, 83). Because the Court looks much more favorably on these lower court judges, these judges should influence the Court's decision making because of the information they provide.

I test whether the Supreme Court is more likely to grant cert to a case when a successful lower court judge, defined by a judge's ability to promote clerks to the Court, thus, establishing a relationship with members of the Court, is referenced and provides an argument in the pool memo.[49] Ward and Weiden calculate the success of lower court judges by the average number of law clerks a judge places on the Supreme Court per term (2006).[50] Therefore, I include a *Successful Judge Mention* variable coded "1" if a judge, successful at placing clerks on the Court, is mentioned in the memo and "0" otherwise. I

[49] The influence of lower court judges successful at placing clerks on the Court will be tested from the Blackmun Archives 86-93 docket (1332 cases – 666 denials, 666 grants). Ward and Weiden (2006) have calculated the success of judges placing clerks on the Court from 1962-2002, which appropriately covers the compilation of the Blackmun Papers (1986-1993). Therefore, when clerks choose to cite successful judges in the memos, I can ascertain whether the reference to successful judges has a significant influence on the Court's judicial decision making on cert.

[50] The authors calculate the placement success rate of law clerks by lower court judges as the number of clerks a judge has placed on the Court divided by a judge's years of service. Only the 26 most successful lower court judges (two district court judges and 24 judges from the federal circuit court from 1962-2002) placing clerks on the Supreme Court were calculated and included. The average number of clerks placed on the Court by all 26 lower federal court judges is 1.19 clerks per term and this ranges from a maximum of 2.73 clerks per term (J. Michael Luttig, 4th Circuit) to a minimum 0.52 clerks per term (Ralph K. Winter, 2nd Circuit). For more information regarding the placement success rate of law clerks by lower court judges, see Ward and Weiden's book, *Sorcerer's Apprentices: 100 Years of Law Clerks at the United States Supreme Court* (2006), pages 76-85.

also include a variable measuring the *Actual Number of Successful Judges Mentioned* in the pool memo which calculates the unique number of mentions a clerk references the name of successful judges in a pool memo. Finally, a *Successful Judge Quote* variable is coded "1" if the clerk included the quotation of a judge who successfully placed clerks on the Court and "0" otherwise. Control variables used in previous models on judicial decision making are also included because of their relevance in previous studies on case selection.[51]

Results

Both the mention and discussion of the opinion by a successful lower court judge and the actual number of successful lower court judges referenced in a pool memo increase the likelihood the Supreme Court will vote to grant cert (Table 26).[52] In fact, the Court is one percent more likely to grant cert when a successful judge is mentioned and even more likely to accept a case when the actual number of successful judges providing

[51] Eleven control variables used in previous studies on case selection include alleged conflict, true conflict, constitutional claim, lower court reversal, the U.S. as a petitioner, lower court direction of decision – the dependent variable is measuring the Rehnquist Court's vote on cert, which can safely be considered conservative, therefore I expect the Court to grant cert when the decision of a lower court is liberal – amicus brief(s) filed, dissent in the lower court, the Solicitor General, capital punishment case, and lower court judge ideology of successful judges mentioned in the pool memo.

[52] Quoting a lower court judge that has success placing clerks on the Court does not influence the justices' vote on cert, meaning that when clerks reference the actual words of a successful judge, the Court is not persuaded to grant or deny a case. In fact, the clerks rarely quote successful judges. Only 22 times (1.65%), of the 1,332 cases sampled, did a clerk quote a successful judge (Table 27). Thus, referencing the actual language established by successful judges is quite uncommon. However, controls such as conflict, both alleged and true, along with a reversal or dissent in the lower court, and the U.S. as a petitioner, the lower court decision being made in a liberal direction, the SG, and the filing of amici all increase the likelihood of cert (Table 26).

information via the law clerks editing role increases from zero to 5 (71 percent) (Tables 28 and 29, respectively). Figures 11 and 12 depict the predicted probability of the Court's vote on cert when clerks cite successful judges in the pool memos. Judges who are successful placing clerks on the Court wield a certain level of respect on cert. Table 30 shows that when more than one successful lower court judge is mentioned, no case failed to be granted cert by the Court.

Conclusion

I find the Supreme Court analyzes judges who are successful at placing quality clerks before them differently than all other lower court judges. As noted earlier, the calculation for prestigious lower court judges might be considered inadequate. Examining the influence of all lower court judges on the Supreme Court's cert decision is positive and significant, however it takes many more lower court judges to achieve this influence. Judges considered prestigious within the federal appellate courts might not be judges the justices consider most reputable. The most reputable judges might be those whom the justices have contact with and build personal relationships through clerks. Thus, opinions authored by successful lower court judges might be viewed as better reasoned and suggest a case is a good vehicle for the Court's agenda. If the justices want cases that are good vehicles, meaning the case has been well-reasoned and viewed by multiple lower court judges (Perry 1991) thus giving them a more informed starting point from which to decide the case, greater trust and reliance might be placed on information given by successful lower court judges.

CHAPTER 6: Amicus Briefs, Case Attorneys, and Litigants as a Source of Information

Amici as a Source of Information

Considerable research has been conducted on the influence of amicus briefs on judicial decision making (Krislov 1963; O'Connor and Epstein 1981-1982; Caldeira and Wright 1988; McGuire and Caldeira 1993; Caldeira, Wright, and Zorn 1999; Collins 2004, 2007, 2008a, 2008b). Early literature examining the influence of amici suggests the Court will utilize amicus briefs "as a potential litigant in future cases, as an ally of one of the parties, or as the representative of an interest not otherwise represented" (Krislov 1963, 704), which implies the Court uses amicus briefs as a source of information. Because amici provide information, both to the Court and about those they represent, amicus briefs might be considered the "best quantitative indicator available" for why the Court grants cert (O'Connor and Epstein 1981-1982, 314). Scholars, then, can adequately measure both the influence of special interests on the Court's decision making via the information they provide in amicus briefs.

Briefs are frequently used by interests groups who want to support or oppose the decision to grant cert. Briefs are also filed on the merits as interested parties attempt to influence policy (Collins 2007). Arguments presented by amici might also indicate that a case, if heard by the Supreme Court, has the potential to affect more than just those present in the court room (Collins 2004). When many groups participate, many individuals are likely to have a vested interest in Supreme Court outcomes. Hence, amicus briefs become a significant resource for interest groups, litigants (Collins 2004; Lazarus 2008) and the Court in providing information about whether or not a case is worthy of the Court's attention. The most significant finding by scholars is that, whether

an amicus brief is filed in favor of cert (McGuire and Caldeira 1993) or against, their mere presence increases the likelihood of certiorari (Caldeira and Wright 1988; Caldeira, Wright, and Zorn 1999; Black and Owens 2009; Black and Boyd 2012b)).[53]

The use of amici has increased tremendously due to its seeming ability to influence Supreme Court decision making (but see Caldeira, Wright, and Zorn 2012). An amicus brief filed in favor of cert "is often essential to establishing a persuasive case" before the Court (Lazarus 2008, 1513). Although amici are not necessary for a petition to warrant review by the Court, the content provided in the brief potentially serves as an invaluable source of information about the cert-worthiness of a case. Attorneys filing a petition before the Court understand the importance of amici. Amicus briefs suggest that the question(s) and issue(s) presented are not only about "self-interested" parties but that the issue is more generally important (Lazarus 2008, 1513) and warrants a thorough review. Table 31 shows that the number of amici filed, from this sample of the Blackmun Papers covering the 1986 through 1993 terms, has remained relatively stable with only a modest increase over time.[54] More importantly, Table 32 shows that a

[53] In a more recent and unpublished study, however, Caldeira, Wright, and Zorn suggest that briefs in opposition may no longer increase the likelihood of cert (2012). The authors find that during OT 2007 the grant rate for opposition briefs actually decreased (Caldeira, Wright, and Zorn 2012). This finding might be attributed to the fact that the number of amici filed has increased in recent decades and, hence, the overall influence of briefs has weakened. Nonetheless, the authors' finding compels scholars to consider the potential influence of briefs, whether in opposition or favor of cert. I expect amicus briefs requesting cert to increase the likelihood of cert, while briefs arguing against cert should provide information to the justices for why the Court should deny cert.

[54] Although data in this table does not represent every petition before the Court, it likely approximates the population given that it is a random sample of grants and denials.

petition with an amicus brief filed is much more likely to be granted cert by the Court than one unaccompanied by a petition. In fact, over 97 percent of the sampled petitions with an amicus brief were granted cert suggesting amici support is crucial, if not necessary for gaining the Court's attention (Lazarus 2008). Indeed, of the 126 petitions in my sample with at least one brief filed in favor or against cert, only three petitions were deemed unworthy of the Court's attention.

In two of the three petitions denied cert by the Court, even though they had amicus participation, one brief was filed in favor of certiorari. The other petition had one brief filed in favor and one filed against cert (Tables 33 and 34). Rule 37 of the Supreme Court Rules creates guidelines about who can file amici and the appropriate procedures, and so not any interested party can file (Supreme Court 2011). In addition, the act of filing an amicus brief is not costless. Amici addressing several issues or requiring a significant amount of research will generally incur greater costs. However, many groups will pool together and submit a single brief to alleviate expenses. When submitting a brief to the Court, generally groups submit information about the case that is not already known to the Court (Ebner 2013). Therefore, amicus briefs serve as supplemental sources of information for the justices.

Amici can provide additional information that is otherwise unknown to the justices, beyond the salience of a case (Collins 2008a). In fact, this is a primary reason amici are utilized: to provide information to the justices that would otherwise be unknown. Examining amicus briefs from orally argued cases during the Supreme Court's 1992 term (using LexisNexis), Spriggs and Wahlbeck find that amici add additional information, not found in party briefs, approximately 64 and 70 percent of the time when

favoring the petitioner and respondent, respectively (1997, 372). According to the authors, this suggests "that amici often present arguments not contained in party briefs" (Spriggs and Wahlbeck 1997, 373). Collins, in his examination of the role amicus briefs contribute to a justice issuing a separate opinion, finds briefs provides a "myriad of information…with novel argumentation that might otherwise be unavailable to them" (2008a, 166-167). Corroborating this previous work, scholars also suggest amici provide the justices with additional information by "alerting the justices to alternative legal issues" (Corley et al. 2010, 10) in plurality decisions, or hard cases, that might otherwise be overlooked by the Court.

Law clerks choose which amicus briefs to mention in the pool memos, most often in the contentions section where the clerk presents each party's argument. The memo writers give the amicus brief a subheading within the contentions section (stating, both, that it was a filed "amicus brief" and the name(s) of the interest group(s) filing) and a summary paragraph of the interest group's views of the issue. The argument of the interest group is written after the argument presented by the petitioner or the respondent, depending on whether the brief was filed in favor or against cert. Most amici were filed in favor of granting cert (Table 35), thus siding with the petitioner and presenting additional reasons why the Court should hear the case.

Indeed, clerks often chose which amici to mention in the memo, thus directing the attention of the justices to information provided by a particular group or multiple interests. For example, in the case *Citicorp Industrial Credit, Inc. v. Secretary of Labor*, 483 U.S. 27 (1987), two amici had been filed but the memo clerk only included the argument provided by the brief in support of the petitioner, in which case the Court

ultimately granted cert (Epstein, Segal, and Spaeth 2007, see Docket Number 86-88). In this case, the clerk chose to include additional information (the amicus brief) that opposed the argument by a federal government agency. It might be the case this amicus was chosen because the memo clerk favored granting cert and wanted to provide additional, and necessary, information to request the justices grant cert. Another example, where the memo clerk chose to include a select number of amici in the memo, was the case of *Hustler Magazine, Inc. and Larry Flynt v. Jerry Falwell*, 485 U.S. 46 (1988). In the case, Jerry Falwell sued Larry Flynt of Hustler Magazine for libel (written words) damages because the magazine included an advertisement of a parody about an incestuous relationship Falwell had with his mother regarding his "first time." Falwell claimed the parody of the advertisement published in Huster Magazine defamed him personally and he sought monetary compensation for the libelous act. In this case, nine amicus briefs were filed favoring the petitioner, Hustler Magazine. In the pool memo, however, the memo clerk only mentioned two of these amicus briefs and their arguments why the petition should be granted cert. The two amici argued, according to the clerk's interpretation, that the lower court's decision was "inconsistent with this Court's First Amendment jurisprudence and poses a substantial threat to the country's tradition of political and social satire" (Epstein, Segal, and Spaeth 2007, see Docket Number 86-1278, page 11 of the pool memo). This selection of amicus briefs by the clerks might suggest some sort of filtering of information.[55] Indeed, I expect that amici discussed by

[55] The author will examine whether the filtering of amicus briefs in pool memos influences judicial decision making on the Court in a subsequent project because it appears clerks choose which amicus briefs to include in the pool memo. Not only does this suggest that clerks choose to sort through information and filter what the justices

the clerk favoring cert will increase the likelihood the Court grants cert, as shown by the examples above. However, when amici argue against cert, and the clerk chooses to discuss these arguments in the pool memo, I expect the justices to consider this information and be more likely to deny the petition. This might be indicative of the importance of amicus briefs in general, and the importance of filings in that case specifically.

Case Attorneys as a Source of Information

Experienced attorneys before the Court might also influence the justices' decision making (Lazarus 2008). Some attorneys are considered specialists before the Supreme Court, such as "former law clerks…the Solicitor General's office, and the lawyers of the leading law firms in Washington" (McGuire 1993, 365). The Solicitor General is an especially effective litigator. Both Tanenhaus et al. (1963) and Ulmer, Hintze, and Kirklosky (1972) found that merely having the support of the federal government suggested a case as cert-worthy, thus easing the decision making by the Court. As an attorney for the United States government, the Solicitor General brings multiple cases before the Court, and as such s/he will understand the justices more fully as well as anticipate the types of cases the justices will deem significant, presenting arguments the justices hold in high regard (McGuire 1998).

Although the names of the arguing attorneys are never mentioned in the pool memos, Lazarus suggests that "the clerks pay special attention to the petitions filed by

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read, but rather clerks may invoke a significant amount of influence via their editing role of information provided by actors. Therefore, I will test whether clerks are more likely to include information from certain groups and individuals and in what types of cases this inclusion (or omission) of information occurs.

prominent Supreme Court Advocates" such as the Solicitor General (2008, 1526),[56] and, nearly every time, mention the Solicitor General when s/he presented an argument (either as a party or as amicus). That clerks explicitly mention the Solicitor General in the pool memos, followed by the SG's argument, suggests that information the SG's Office provides for the Court matters, and the SG wins frequently (Table 36).

Overall, the clerks, in the pool memos, mentioned the SG when the U.S. was a petitioner (Table 37), respondent (Table 38), or amicus on the case (Table 39), but most often when the U.S. was the responding party. The SG tends to get its way at the Supreme Court, with some exceptions. As shown in Table 40, when the SG is the respondent, the Court grants cert 59 percent of the time. However, we should expect when the SG is the respondent in a case, the Office received a favorable lower court ruling and does not want the Court to hear the case for fear of reversal. However, there are instances where the SG recommends the case is cert-worthy even when the U.S. government is the respondent. An example of one argument presented by the SG's attorneys requested the Court take the case because "There is a circuit split…" and "The issue involved here is one of substantial administrative importance; more than twenty cases presenting the issue are pending in the lower courts" (Epstein, Segal, and Spaeth 2007, Docket 89-530). This might be an explanation for why the Court grants cert even when the SG is the respondent to the case. Not surprising, when the SG petitions before

[56] This is interesting, given the recent attention to a "Supreme Court Bar" and the assumption that the participation of these "expert" Supreme Court litigators matters (Lazarus 2008). Lawyers from the Washington D.C. area are often considered experts who command a level of success before the Court. It may very well be, today, the justices request clerks mention lawyers of the Supreme Court Bar, beyond the Solicitor General, and their arguments.

the Court, and is explicitly mentioned in the pool memo by the clerk with the Office's corresponding argument, the SG always gets its way (Table 41). In every instance, where the U.S. government petitioned to the Court and the clerk provided the SG's argument in the memo, the Supreme Court granted cert.

When the SG submits a brief on amicus, the Office is doing so voluntarily, and Black and Owens have found the Court is likely to agree with the SG when the Office submits a voluntary amicus (2013b). In the pool memos, SG amici were often discussed within the contentions section, where the arguments of both parties were presented, just like other briefs amicus curiae. Indeed, when the SG files an amicus brief (in this sample, all amici filed by the SG suggested the Court grant cert), the Court grants cert one hundred percent of the time (Table 42). Mentioning the SG acts as an indication to the justices that this is a worthy case, given that there is credible information being presented by their favorite source (the SG). As one law clerk noted, members of the SG's office understand certain "catchwords" when providing information, but more importantly, the Solicitor General's office knows "how to write them in a brief" (Perry 1991, 132).

The Solicitor General also provides its "views" of a case upon request by the justices on a "call for the views of the Solicitor General" (CVSG) at the cert stage. The justices will call for the views of the SG, basically forcing the Office to file an involuntary brief (Black and Owens 2012b), seeking more information about some issue or question in a case because the justices know, and have come to learn over time, that the Court can trust the SG as a legitimate source of information. In this sample, the clerks suggested that the Court CVSG approximately three percent of the time (Table 43).

When the clerk requests the Solicitor General's views on a case, it was most often when a case presented conflict, both alleged (Table 44) and actual (Table 45), and if the direction of the lower court decision was liberal (Table 46). When the Court did, indeed, call for the Solicitor General's view on a case, the SG usually suggested that the Court grant cert (see Tables 47 and 48). The Court, when it engages in this process, is explicitly seeking information from the Solicitor General. As we can see in Table 49, the Court ends up granting cert approximately 98 percent of the time when it calls for the views of the Solicitor General. However, 80 percent of the time, the Court disagrees with the SG's recommendation not to grant cert after requesting the Office's views (Table 50), while agreeing 100 percent of the time when the SG recommend the justices take the case (Table 51).[57]

Scholars have offered a variety of reasons why the Solicitor General fares so well before the Court. One theory is that the Solicitor General's vetting of which cases to bring, and issues on which to weigh in, means it only files cases worthy of the Court's attention, ever mindful of its relationship with the Court (Lazarus 2008). Thus, the Solicitor General develops a level of expertise, born of repeated interactions with the Court, and a level of credibility, providing him/her with increased access (Provine 1980; Lazarus 2008). [58]

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[57] Not all requests for the views of the Solicitor General included a recorded response from the SG because in some pool memos in which the clerks recommend the Court call for the views of the Solicitor General, a reply brief would not be attached. Therefore, I am not able to code the SG as providing a reply, even though a reply was requested and the pool memo indicates that the SG provided a reply brief.

[58] Corley (2008) has found, using plagiarism software, that party briefs are utilized by the justices in writing their opinions, implying the justices do take into account arguments

Another argument posits that the SG's ongoing representation of the United States government allows the Office to craft superior litigation before the Court (Days 1994). Since the Solicitor General's Office enjoys a continuous relationship with the federal government, "and not just a particular client in a particular case" (Lazarus 2008, 1495), the attorney (SG) has a vested interest in her client (the United States) beyond the current case. Whether the SG is successful or not petitioning before the Supreme Court (the SG frequently commands success before the Court, however, this success is not absolute – see Table 36), the Office must maintain a relationship with the U.S. government and its agencies. Therefore, lawyers of the SG's Office commit all their energy and focus toward representing the United States on a continuous basis, and because of this ongoing relationship, the Office knows how to present arguments that favor the United States government because of past successes and failures.

Scholars also postulate, and I maintain, the SG commands success because of experience (McGuire 1998). Because lawyers from the Office of the Solicitor General frequently argue before the Court, more than any other litigant, they understand the predispositions of each individual justice (Pacelle 2003). Black and Owens (2011) propose the SG's ability to influence the justices' vote on agenda setting is conditioned on policy and legal factors. Although the SG has experience arguing before the Court and s/he understands the individual predilections of each justice, the SG's recommendation is constrained by the law. As Black and Owens argue in their most

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presented before the Court. She argues that, when certain attorneys, whom the justices know are more likely to present clear arguments and relevant case facts (the Solicitor General, for example), the justices will rely more heavily on their briefs given that they expect them to be reliable and well-reasoned.

recent work, "we believe that OSG [Office of the Solicitor General] success likely stems from the office's longstanding relationship with the Court and with the professionalism its attorneys display" (2013, 462). The poise of SG attorneys often carries a level of expertise and respect. Being an expert who understands the predilections of the justices creates a level of trust the justices have come to learn over time. These experts, such as attorneys from the Office of the SG, and "their professional goals will be more in line with the Court's institutional focus than the goals of private attorneys who more closely follow the directions of their principals" (Black and Owens 2013, 463). Thus, mentioning the SG explicitly in the pool memo and directing the justices' attention to the argument of the SG's attorneys flags a credible source of information on the case with whom the justices have repeated interaction and experience with.

Litigants as a Source of Information

Certain litigants, acting as parties before the Supreme Court, are known to influence the Court's decision making on the merits because these groups are likely to command superior legal counsel and resources, and may even directly influence the opinion content of the justices (Galanter 1974; McGuire 1995; Collins 2004, 2007, 2008b; Corley 2008; but see Smyth 2000). Some scholars have found litigant status influences the Court's agenda setting as well, however status can be diminished (Black and Boyd 2012b). Indeed, Black and Boyd (2012b) find advantaged groups petitioning before the Court are more likely to reap success at the cert stage, though this success can be mitigated by the justices' ideology and whether an amicus brief was filed. A petitioner who is weaker than the respondent is significantly more likely to have her case granted by a liberal justice than a conservative leaning justice. Not surprising either,

liberal justices are more likely to support disadvantaged litigants than their conservative colleagues. This effect is also conditioned by the presence of an amicus brief submitted by a special interest, wherein liberal justices exhibit slightly lower support for a weak petitioner but provide significantly more support for the petitioning litigant than the Court's median or right wing justices (Black and Boyd 2012b).

Some litigants make it less likely that the Court will hear a case. The Court terms a handful of such litigants "frequent filers," and cases petitioned by this group are clear denials. Frequent filers are litigants who petition the Court repeatedly, typically filing a case the justices have no interest in taking (Schlanger 2003). For example, frequent filers might be individuals or groups who litigate before the Court and lack justiciability. These litigants might petition a case that is not ripe for review or is already moot, involves a political question, does not present an actual case or controversy, or the litigant might lack standing. These litigants petition the Court, frequently, hoping the Court will grant cert and rule favorably toward them. The justices recognize such groups and individuals and deny cert altogether. Oftentimes, frequent filers are purposely noted on the first page of the memo by the clerk to inform the justices a frequent filer has petitioned to the Court. For example, after the petitioning litigant is categorized by its formal name, the clerk might write "here we go again" to provide information about the petitioner to the justices before they read the memo.[59] In this example, the clerk is

[59] I do not, however, account for the influence of these phrases directly on the Court's decision making. These phrases are important, nonetheless, because all justices in the pool would see it. This information provided by the clerk provides additional information about the various litigants to the justices via the cert pool memos to assist the justices' decision making on cert.

providing information to the justices that this litigant has petitioned yet another case to the Court.

The Court also receives a majority of petitions from litigants who have never before petitioned to the Court, and these are also largely deemed as meritless, frivolous, and thus not cert-worthy. Unpaid petitions, otherwise known as in forma pauperis (IFP) petitions, also come before the Court but are mostly filed by criminals and prisoners alleging civil rights violations as last-ditch efforts to get out of jail, and so these cases are less likely to be cert-worthy; they are clear denials (Epstein, Martin, and Segal 2012).

Just as some litigants face an uphill battle in gaining the Court's attention, others have better "luck" in having their case heard before the Court. These include the U.S. government and state and local governments. Governments, in general, are considered to be the most successful litigants before the Court (Wheeler et al. 1987; Sheehan et al. 1992; Songer and Sheehan 1992; Songer et al. 1999; Collins 2004, 2007) because of "their nearly limitless pool of resources and frequency with which they litigate" (Black and Boyd 2012b, 293). The ability of businesses to litigate successfully before the Court lags behind federal, state, and local governments because businesses generally have better access to resources and counsel, however, not nearly the access governments enjoy. Of course, businesses are better suited than individuals who are limited in resources and the least powerful of all litigants (Black and Boyd 2012b).

In a reexamination of Galanter's (1974) study on whether certain groups are privileged, Songer, Sheehan, and Haire (1999) examine the success of individuals, businesses, state or local governments, and the U.S. government as appellant litigants in the U.S. courts of appeals and find that the "haves" (both the U.S. government and state

or local governments[60]) tend to win more frequently. An exception to litigant success was found, however, by Sheehan et al. (1992) in an examination of the U.S. Supreme Court. While finding the U.S. government was more successful than individuals, the authors did not find any consistent pattern matching Galanter's (1974) findings about repeat players and one-shotters at the level of the U.S. Supreme Court. Nonetheless, these litigants are considered repeat players, who are rich in resources, and because of this, are known as the "haves," who usually have their case granted cert (Black and Boyd 2012b) (and, later, win on the merits (Galanter 1974; McGuire 1995; Collins 2004, 2007, 2008b)). The "haves," or repeat players, tend to have more money to afford superior legal counsel and carry through with a long litigation process. Because of their experience and resources, repeat players are more likely to provide the "right" information to the justices and do so more frequently than one-shotters (Galanter 1974).

Certain groups will turn to litigation before the Supreme Court because "they do not find outlets in other institutional arenas" or "they perceive the possibility of obtaining unique and long-lasting benefits" (Collins 2008b, 22). Engaging with the Court allows these groups to secure advantages and policies obtained in other venues. Some groups are more likely to come before the Court because it is a "distinctive characteristic(s)" of that group (Collins 2008b, 23), meaning the group is better situated and has the proper

[60] Several states experience success before the Supreme Court because of the arguing attorneys acting on the state's behalf. In order to command success at the Supreme Court, some states have found it necessary to recruit individuals who possess the required expertise before the justices: law clerks. Many former laws clerks come from offices to work for the states as "highly credentialed attorneys" who "possess expertise in advocacy before the U.S. Supreme Court" (Lazarus 2008, 1501), and thus, successfully litigate on the state's behalf.

resources to appear, and be successful, before the Court. Thus certain groups, who are actual parties to a case, are likely to gain the Court's attention and provide information that helps the Court rule favorably to them.

These advantaged groups also share a special relationship with the justices (i.e., repeated interactions, understanding of the formal rules of filing and how to write briefs, etc.), which allows for rapport to develop and thus creates a distinct advantage the "have nots," or one-shot players such as individuals, do not enjoy (Galanter 1974). Thus we would expect the "haves," or repeat players, to command greater success at the cert stage. In fact, Table 52 shows the advantage the U.S. government and state and local governments ("haves") command at the cert stage. When petitioning to the Court, state and local governments and the U.S. government reap success over 81 and 97 percent of the time, respectively (but also see Table 53 depicting respondent litigants).

Litigants are mentioned on the first page of the pool memos, labeled as the petitioner versus respondent (see Appendix). A phrase was sometimes included after the petitioner or respondent's party name (although petitioners were much more likely to include a slogan since they were, in fact, requesting the Court grant cert). These phrases were used to uniquely identify the party that filed (or responded) and to direct the attention of the justice to the litigant. Presumably, this was to assist the justices when identifying who the petitioner and respondent were in the case (Ward and Weiden 2006). However, it seems reasonable to suggest that including a "catchy" phrase or unique identifier for litigants provides relevant information to the justices. From the example used earlier to describe frequent filers, if the clerk directs the justices' attention to a litigant that frequently files unnecessary and non cert-worthy petitions, this provides the

justice with information about the petitioner immediately. Having this information tells the justice something about the case before s/he ever reads the memo: This petition will likely be denied cert because the litigant, most likely, will not provide a quality arguement. Therefore, knowing who the parties are in a case (which is included on the first page of every memo), and having clerks frequently classify the litigants with unique slogans provides information to the justices, thus assisting in their decision making.[61]

The discussion of these groups and individuals by the law clerks, then, has the ability to convey information to the justices that they use in their decision making. It may well be that the preferences of the justices, alone, do not fully account for their decision making, but rather that the decision to grant cert can be influenced by the presence and information provided by these actors. The arguments of amicus briefs in favor or against cert are likely to influence the Court's judicial decision making, providing information to the Court that the outcome of the decision of the case could affect more than just the litigants. Attorneys who have repeated interactions with the Court, including, most notably, the SG, are also more likely to be successful on cert. The arguments of certain litigants—namely, repeat players or "haves"—might serve as yet another indicator that the case being brought before the Court will be well-argued and have significance. I test whether amicus briefs (both in favor and against cert), arguments presented by the SG's office, and the information provided by certain categories of litigants influence decision making on cert. The law clerk, in each of these

[61] As noted earlier, I do not directly test the influence of these slogans provided by the clerks, however, phrases were often attached to certain litigants providing the justices with information about who the litigants were in the petition.

cases, draws the attention of the justices to these considerations; perhaps they do so because they know such information will influence the votes of the justices.

Operationalization

I categorize amicus briefs separately, coding *Amicus Briefs in Favor of Cert* "1" if an amicus brief is included in the pool memo and favors cert, and I code *Amicus Briefs Against Cert* "1" if the clerk discusses amici requesting the Court deny cert, and "0" otherwise. My measure of amici is different here, than in previous chapters (see Chapters 3, 4, and 5), because I am interested in whether the arguments provided in the brief and discussed by the clerk in the pool memo differentially influences the Court's vote on cert. In the previous chapters, I measured the influence of amici according to previous research such that amici, whether in favor or against cert, increase the likelihood of cert (McGuire and Caldeira 1993; Caldeira and Wright 1988; Caldeira, Wright, and Zorn 1999; Black and Owens 2009; Black and Boyd 2012b). Because amici are "friends of the Court" who provide supplemental material, the information provided in briefs requesting cert and denying cert should increase or decrease the likelihood of cert, respectively. In an unpublished study by Caldeira, Wright, and Zorn (2012), the authors find that during OT 2007 briefs in opposition actually lower the likelihood the Supreme Court grants cert (presumably in line with the motivation of those filing in opposition). However, the authors did not find a relationship between briefs in opposition and a reduction in grant rates during other terms, and confirmed their earlier findings for the 1968, 1982, and 1990 terms. However, I posit that information provided by amici requesting the Court grant or deny cert will differentially influence the Court's vote on cert. Indeed, amicus briefs clerks choose to include and discuss in the pool memos should influence the

Court's decision on cert because the brief is providing additional information to assist the justices in their decision making. Therefore, briefs requesting or denying cert should influence the Court's vote as such.

I code for the participation of the SG via an index coded "-2" if the SG was a respondent in the case arguing against cert, "-1" when the Court CVSGed and the SG's reply memo was against cert,[62] "0" when the SG was not mentioned or a reply memo was received by the SG but not attached to the pool memo,[63] "1" if the SG was the respondent but favored cert,[64] "2" when the SG was an involuntary participant arguing in favor of cert and supplied a reply memo after the clerk requested the Court seek the views of the SG, "3" if the SG favored cert in a voluntary brief filed as amicus, and "4" when the SG petitioned the Court requesting cert. I code the mention of the SG when the Office is explicitly mentioned in the pool memo and presents its argument to the Court. The SG is

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[62] In this sample, there were no instances where the SG filed an amicus brief against cert. We might expect the SG file an amicus brief in opposition to cert, but since this study takes a sample, and does not include all petitions before the Court, it is likely this sample is small enough never to have encountered one (n=1332).

[63] In this sample, there were 16 instances where a clerk suggested that the Court call for the Solicitor General's views on a case and a reply memo was noted as having been received from the SG, but it was not attached to the pool memo (Table 54). In those cases, I was not able to ascertain the preferences of the SG as to cert and so I coded these requests as "0" in the SG index.

[64] As noted earlier, in this sample of cases, the Solicitor General as the respondent to a petition for cert agreed with the request and argued in favor of a cert grant six times (Table 55). In most cases, the SG requested the Court grant cert to clear up confusion in the lower courts or resolve existing conflict. Even though the SG "got its way" in the lower court, the SG made it clear that the ruling made would not be the last time this particular issue would come up and oftentimes, would argue its desire for the Court to resolve the issue using the current case.

not automatically coded as being present in the pool memo if the U.S. was a party to the case, filed an amicus, or was summoned for a supplemental brief (CVSG). I code the SG variable as such because I posit that the justices seek information from actors, such as the SG's Office. Therefore, visually seeing the clerks explicitly write the SG in the memo, and provide the Office's argument to the Court, is the most appropriate way to tease out the influence of information. Coding the SG on a scale is appropriate because it adequately captures the extent to which we might consider the SG to be providing the most useful information. When the SG seeks cert as the petitioner, the Office should be most influential. In fact, in this sample, the Court ALWAYS grants cert when the SG petitions the Court and requests the justices do so (Table 56). Also, as respondent, the SG more often than not requests the Court deny the petition and the justices heed the Office's advice approximately 44 percent of the time (Table 56). Black and Owens found that when the SG acts as a voluntary participant (supplies an amicus brief in favor or against cert), the justices are more likely to follow the advice of the Solicitor General's office (2013b). Less influential is when the SG's office provides an involuntary brief (reply memo from a CVSG request). The difference in probability in their study, however, is marginal, and so they conclude "that invited cases are just as important as noninvited cases (Black and Owens 2012b, 59).

Litigants are coded and categorized separately as a series of dummy variables indicating the presence in the case of an *Individual*, a *Business*, a *State or Local Government*, or the *U.S. Government* as either petitioner or respondent with "1" indicating the presence of the group as a party before the Supreme Court and "0"

otherwise (Songer, Sheehan, and Haire 1999).[65] Litigants are labeled, characterized, and broadly classified into groups provided in the Songer database (Songer 2008) and narrowed by Songer, Sheehan, and Haire's (1999) classification of parties.[66] Employing Songer, Sheehan, and Haire's (1999) categorization, I examine four groups of litigants: two "haves" (U.S. government and state or local government) and two "have nots," (individuals and businesses), who brought cases before the Supreme Court, to determine

[65] Individual litigants will be omitted from two separate models and used as the base category (as the petitioner and as the respondent). Omitting the dummied individual litigant variable allows the comparison of each litigant variable in the model to the omitted variable. Examining the matchups among each litigant group reveals at least one case in which each litigant pair is opposed (Table 57). As we can see in Table 57, the percentage of cases involving two states or the federal government as both the petitioner and respondent is low (under 1 percent). The U.S. is both petitioner and respondent in cases where one agency sues another. For example, the Department of Treasury might petition a case against the Federal Labor Relations Board; this would be classified as two U.S. government litigant groups squaring off in Court (for this example, see Docket 88-2123 from Epstein, Segal and Spaeth's (2007) Harry A. Blackmun archive; Songer, Sheehan, and Haire 1999).

[66] I code litigants according to the category groupings in the Songer database (2008). These groups include private businesses, private organization or association, the federal government, a substate government, a state government, government, natural persons, miscellaneous, and not ascertained (Songer 2008). Next I grouped Songer's (2008) nine categories of litigants into one of five categories used by Songer, Sheehan, and Haire (1999). Private businesses and private organizations or associations were grouped together as "Businesses," the federal government was categorized as the "U.S. Government," a substate government, state government, and government were categorized as "State or Local Governments," natural persons grouped as "Individuals," and the miscellaneous group of litigants was classified as "Others." I have omitted "others" from the models because Songer, Sheehan, and Haire suggest this group of litigants "could not be categorized in terms of litigation resources" (817, 1999), thus I cannot safely hypothesize the ability of these other litigants to influence the Court. Also, if a litigant could not be ascertained because a pool memo was missing or sufficient information did not exist to classify the litigant, the party was omitted.

if these groups are differentially successful on cert, expecting haves command greater success.[67] The U.S. government and state and local governments are successful petitioning before the Court. In fact, when a state or local government petitions against a resource disadvantaged group, the state or local government gets its way over 80 percent of the time (Table 58). The same holds true for the U.S. government who "gets its way" all the time when petitioning against a business and approximately 98 percent of the time

[67] In a similar study, Black and Boyd (2012b) investigate whether "haves" come out ahead of "have nots" by creating a petitioner advantage index that categorizes litigants on a nine point scale and calculates the status differential between the petitioner and respondent. The larger the distance between the petitioner and the respondent, the greater inequality exists between the litigants thus, favoring one party over another. Finding a positive and significant relationship, Black and Boyd (2012b) suggest advantaged litigants petitioning to the Court are more successful at the cert stage. Though meaningful, the index can only tell us whether advantaged litigants are more or less likely to have their case heard by the Supreme Court. It cannot tell us, specifically, which groups of litigants are more likely to reap success at the cert stage. Black and Boyd (2012b) address this concern in their paper suggesting they would need more data to appropriately test dummy variables against an omitted baseline litigant variable. However, the authors suggest, and justifiably so, this method would be unsuitable to measure their theory: the conditional effects of amici and ideology on the status of litigant's success at the cert stage. I, however, am interested in the absolute advantage one litigant has over another. Since my sample of cases covers each term in the Blackmun archive (1986-1993) yielding 1,332 cases, and I employ Songer, Sheehan, and Haire's (1999) five category litigant status ranking (instead of Collins' (2004; 2007) nine category litigant status ranking), I can adequately test the direct advantage (or disadvantage) of each litigant petitioning or responding before the Court. Also, as a robustness check, I will run two additional models examining litigant advantage. The first will consider a party litigant index variable (similar to Black and Boyd's litigant index), with higher numbers indicating an advantaged litigant is petitioning against a disadvantaged respondent and vice versa for lower numbers. Second, I will dummy and analyze each litigant matchup in a model by itself to test whether the Court is more or less likely to hear a case when certain litigants petition against respondents.

when the respondent is an individual. The success of "haves" versus "have nots" is substantial.

Each of these variables measures beyond the effect of cues, and I differentiate these variables from previous theories examining cue effects (Tanenhaus et al. 1963; Ulmer, Hintze, and Kirklosky 1972; Teger and Kosinski 1980) in that I measure whether these groups provide information beyond their mere presence in the pool memo. Merely citing that an amicus had been filed in the pool memo is not how I measure information. Clerks must provide information, via the argument provided by the amicus brief, explicitly in the pool memo. This is similar for the SG and party litigants. If the SG is mentioned in the pool memo, the clerk must discuss arguments provided by the SG's Office. Clerks must also discuss the information party litigants present to the Court. This information, beyond the simple recognition of cuing the justices to the presence of the amicus brief, SG, or party litigant, should influence the justices' decision on cert.

Finally, seven of the control variables used in the previous models will be included because of their relative significance in previous studies on case selection. These include alleged conflict, true conflict, a constitutional claim, lower court dissent, the lower court direction of the decision, lower court reversal, and a death penalty case, all measured as before.[68]

Results

Amici requesting the Court grant cert and the Solicitor General index are statistically significant and positive ($p<.05$). This suggests that information provided by

[68] I omit the U.S. as the petitioner because I include a U.S. government variable measuring whether the federal government petitions a case before the Supreme Court.

briefs requesting cert, filed by parties not directly involved in the case, and the U.S. government's attorney's position (favoring cert) increase the likelihood of cert (Tables 59 and 60). These results support my theory that groups and individuals provide necessary information to the justices, shaping their decision making on cert. Indeed, when additional information is provided about a case that the justices deem not only as relevant, but valuable, the Court will use this information in decision making. Figures 13 and 14 show that amicus briefs in favor of cert increase the likelihood of cert, suggesting the Court uses information contained in the briefs that might not be readily apparent to the justices or provided by the parties (also see Tables 61 and 62). Indeed, Table 33 shows the Court grants cert approximately 98 percent of the time when the clerk discusses the argument provided by an amici requesting the Court grant cert. As "friends of the Court," amicus briefs provide information for the justices that reiterate existing party arguments, or the brief might add a new perspective (Spriggs and Wahlbeck 1997; Corley et al. 2010). Beyond cues, clerks discuss amicus briefs requesting cert which provide additional information to the justices, who use this information in their cert decisions.

The Solicitor General is also useful to the Court acting as a trusted source of information. The justices, as we know, *have* a lot of information and *need* a lot of information in decision making. With so much information to decipher, it becomes necessary for the Court to seek out trusted sources like the Solicitor General. Figures 15 and 16 depict the informative role of the SG before the Court (also see Tables 63 and 64). As a petitioner requesting the Court grant cert, the Solicitor General has the highest success of having its case heard. The Court is also more likely to grant cert when the SG

requests the Court do so as a respondent. Occasionally the SG will suggest the Court grant cert even when the Office received a favorable ruling in the lower court to help resolve existing conflict in the lower courts or to clarify an issue the SG believes will present itself in future cases. Following work set out in previous literature, the SG's Office commands greater success on cert as amici than when the Court calls for the Solicitor General's views (Black and Owens 2012b). When the SG's Office provides noninvited, voluntary information (amicus briefs), the Office is providing information it presumably wants the Court to know about and, most likely, a case the SG determines will be favorable to the United States.

Other results suggest state and local governments and the U.S. government are more likely to have their cases heard acting as the petitioner, as compared with an individual litigant (Table 59).[69] When the United States brings a case before the Supreme Court because of an unfavorable ruling below, the Court is likely to grant cert. Interestingly, however, when the U.S. is hauled into Court, the Supreme Court is not significantly more likely to reject the case against it as compared to an individual (Table 60).[70] Again, as the respondent, the U.S. government does not always advocate that the

[69] Control variables such as conflict alleged by the parties, a true conflict presented by the clerk in the pool memo, a reversal or dissent in the lower court, and a liberal decision handed down by a lower court all increase the likelihood that the Supreme Court will grant cert to a case.

[70] Rice finds the federal government is more successful requesting a denial of cert as the respondent than petitioning the Court and requesting the Court grant cert (2008). One explanation for this discrepancy from my finding might be Johnson's use of the Expanded Burger Court Judicial Database (Spaeth 2007), whereas I focus exclusively on information about the Rehnquist Court obtained from the Harry A. Blackmun Papers

Court deny cert (Table 56). Although not frequent, when lawyers of the SG's Office respond to a case and request the Court grant cert, the justices adhere to the Office's request.

State and local governments, considered "haves" because of ample resources at their disposal, are also more likely to be successful petitioning the Court, as compared to individual litigants (Table 59). Again, however, as the respondent, state and local governments are not significantly less likely to have their case heard by the Court (Table 60). This is surprising, as was the case with the U.S. government before, because I expect litigants considered "haves" to not only command success convincing the Court cert is warranted, but also being able to convince the Court a case should be disregarded. The success of "haves" over "have nots" can be seen in Table 58. (Notice the high percentage of grants when "haves" petition against "have nots.") However, the overwhelming percentage of success by state and local governments and the U.S. government decrease when they are hauled into court by a litigant with less than adequate resources. Information provided by these resource-rich litigants allows them to petition successfully before the Court, however, their influence as a respondent is limited. Nonetheless, as Black and Boyd point out, and from what we have seen here regarding litigant status, "individuals are the least powerful and have the smallest number of resources" while governments, such as state and local and the federal government, have a "nearly limitless pool of resources" and "are thought to be the most powerful litigants" (2012b, 293).

(Epstein, Segal and Spaeth 2007). The fluctuation and dynamic composition of each Court will likely influence the decision making of the justices.

Again, the dominance of the U.S. government before the Supreme Court is paramount. Essentially, the U.S. government tends to get its way. When the government petitions to the Court, due to unfavorable rulings below, the justices will likely take the case. This is consistent with findings by Sheehan et al. (1992). The success of the federal government also surpasses businesses petitioning the Court. This is not particularly surprising as businesses are generally classified as "have nots." Thus, we would expect the U.S. government ("have") to command greater success (Black and Boyd 2012b). The same holds true for state and local governments. Although considered a "have," state and local governments are not successful to the same extent as the federal government. The federal government trumps the success of other litigants, thus these findings further suggest the U.S. government is a dominant player in successful litigation before the Court compared to other groups of litigants because the government provides valuable information and is abundant in resources. Therefore, the federal government knows what information the justices are seeking to assist them with their decision making on cert.

Reevaluation Using the Litigant Index

Although informative, these results can only tell us the benefit a litigant has over another petitioner or respondent. This analysis cannot tell us the advantage a resourced litigant has over a disadvantaged respondent in a head-to-head competition, and vice versa. As I have shown, and other scholars have found, the U.S. government is extraordinarily successful when petitioning the Court, especially as compared to individuals (Galanter 1974; Sheehan et al. 1992). However, it is necessary to understand not only the advantage litigants have over each other comparing their status as petitioners

and respondents, but to examine the matchups between litigant pairings and whether information provided by advantaged litigants differentially influences the Court. Following an approach similar to Black and Boyd (2012b) and creating a litigant index variable, I assign the pairing of each litigant matchup to one of thirteen values. Scaling a variable that indexes litigant matchups has been utilized by a long line of scholars (Songer and Sheehan 1992; McCormick 1993; McGuire 1995, 1998; Collins 2004; Black and Boyd 2012b). Employing litigant groups categorized as individuals, businesses, state and local government, and the U.S. government, I operationalize a litigant index ranging from -6 to 6. A value of -6 pairs the weakest party as petitioner – an individual – with the strongest party as respondent – the U.S. government. Conversely, a value of 6 means the U.S. government is petitioning against an individual respondent. Higher numbers indicate the petitioner has greater resources at its disposal than the respondent, thus we would expect the Court to be more likely to grant cert because of the petitioner's ability to present valuable information and carry through with a long litigation process. Lower numbers suggest the petitioner is disadvantaged compared to the respondent, and I expect the respondent to be successful in convincing the Court cert is not warranted.[71] I employ

[71] Ranging from -6 to 6, matchups between litigants can fall into one of thirteen values (Table 65). Six places the U.S. government petitioning against a responding individual. Five pits the U.S. government against a business, and four matches the federal government against a state or local government. A value of three pairs a petitioning state or local government against an individual with a value of two pairing state and local government against a business. A one is when a business petitions against an individual. A value of zero matches similar litigants against one another: U.S. government versus U.S. government, state and local government against state and local government, business versus business, and an individual against an individual. Negative one places an individual petitioning against a business. A value of negative two is when a business petitions against a state or local government. Negative three pits a petitioning individual

the same variables used in the previous analyses to model the Supreme Court's vote on cert,[72] inserting the litigant scale as a measure of party capability. Since higher values place advantaged petitioners over less-advantaged respondents, I expect a positive relationship between the index and the Supreme Court's vote on cert.

Results

As expected, Table 66 shows a positive and statistically significant party litigant index variable ($p<.05$).[73] Petitioners considered advantaged over respondents are more likely to reap success at cert. When resource advantaged litigants, such as the United States government and other state and local governments, petition the Court, the justices are more likely to grant cert in these cases, especially when the responding litigant is an

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against a state or local government. Negative four is when a state or local government is a challenging the U.S. government, while negative five places a petitioning business against the federal government, and negative six when an individual brings a case against the U.S. government.

[72] Previous variables used in the earlier-reported models in this chapter include conflict alleged by the parties, whether a real conflict is specified by the memo clerk, a constitutional claim, the SG index variable, dissent or reversal in the lower court, whether an amicus brief in favor or against cert was filed, if the case involves capital punishment, and the direction of the lower court decision (coded "1" if liberal).

[73] Other statistically significant variables include the Solicitor General index, suggesting that when the SG's office is mentioned in the pool memo and provides argument that favors cert, the Court is likely to heed the SG's advice. Amicus briefs requesting the Court grant cert also increase the likelihood of cert. Amici can provide information to the justices that might otherwise be unknown or not considered. Finally, controls such as alleged and actual conflict, dissent and reversal in the lower court, and a liberal lower court decision increase the likelihood of cert (the Court at this time consisted of a conservative majority coalition, thus I expect a conservative Court to scrutinize liberal lower court decisions more carefully).

individual (see Tables 67-70).[74] Holding all other variables at their mean value, Figure 17 shows the predicted probability of the Supreme Court granting cert when certain litigant matchups are present (also see Table 71). The Court is 19 percent more likely to grant cert when an individual petitions against the U.S. government, however, the Court is 30 percent more likely to grant cert when the U.S. government brings a case against an individual. Clearly, we see advantaged litigants who are rich in resources command a certain level of success before the Court. Since advantaged litigants have the ability to hire quality attorneys and carry through with a long litigation process, they present arguments the Court deems most relevant and credible. This finding corroborates Black and Boyd's petitioner advantage index, where they find the Court is least likely to grant cert when the petitioner is weakest (individual) and most likely when the petitioner is the strongest (U.S. government) (2012b).

[74] I examine other matchups between litigants before the Court to determine which pairings significantly influence the Court's cert decision. Because I find the litigant index variable statistically significant, it is likely that each pairing valued negative six through six is not statistically significant, but rather some values have greater influence. I find just that. When the U.S. government and a state or local government petition against an individual, the Court is significantly more likely to grant cert. The same is true when the federal government petitions against a state or local government. When the U.S. is against a business, the federal government wins every time. However, no statistically significant relationship exists between a state or local government petitioning against a business or when a business is up against an individual. Even more interesting is when the petitioner is disadvantaged, compared to the respondent. A business petitioning against a state or local government and a state or local government petitioning against the U.S. significantly increases the likelihood the Court grants cert. Not surprising, however, is success of the government when an individual hauls the U.S. into Court. The justices, in this instance, are significantly less likely to grant cert.

Conclusion

These findings support the success of advantaged litigants before the Supreme Court. Litigants who are rich in resources, with virtually unlimited amounts of resources at their disposal, tend to be more successful than litigants who are at a disadvantage. The Solicitor General, providing quality arguments and its informational role before the Court, provide the justices with information about the cert-worthiness of a case. Amici, prepared by outside interests present the Court with additional information about a case, whether this information merely adds to what the justices already know or provides a different view about the case. Previous scholarship supports these findings, however, I add to existing research demonstrating that information contained within the pool memos can influence the decision making of the justices. I am interested in the information these groups provide to the justices via law clerks' assessment in pool memos. I examine whether these actors, parties filing amici, the Solicitor General's Office, and party litigants, are not only mentioned in the pool memos, but also provide information via the clerks editing role. Only when the clerks mention these groups and provide discussion of their arguments in the pool memos for the Court's consideration, do I code these actors as providing information in the pool memo. Thus, I find the law clerks' decisions to include summaries of the arguments made by these actors, litigants, and amici matter to the Court's decision making on cert.

CHAPTER 7: Concluding Remarks

My research attempts to discern how sources of information, provided via edited information in pool memos by law clerks, influence the Supreme Court's decision making on cert. Since the justices are faced with the onerous task of deciding cert, they need to utilize information from actors involved in the case, and also those outside the case who provide supplemental or complementary material, to help them determine which petitions are cert-worthy. This is precisely the question I ask: *what* information, provided by *which* groups and individuals, guides the justices to decide which cases are worthy of review for cert? This is not a simple question to answer, but many scholars have alluded to it. The justices cannot act alone. They need to utilize information, other than their own attitudes, to make decisions. Reading through thousands of petitions trying to determine which cases are cert-worthy based on personal preferences is not efficient, or effective. That is why the justices employ law clerks, who can help ease this burden by including edited information, provided by groups and individuals, in pool memos and give recommendations on the decision over cert.

These recommendations, on whether to grant or deny cert, can be used by the justices in their own decision making. Indeed, I find just that: the recommendation to grant cert by the memo clerk influences justices involved in the cert pool but is absent for a justice outside the cert pool. That clerks can influence judicial decision making of the justices is not unwarranted, however. Clerks are hand-picked by the justices, thus one would expect these clerks to be the best of the best. Generally, clerks hail from prestigious law schools with impressive pedigrees. The clerks, then, are trusted advisors

who give a recommendation on cert along with edited information provided by other actors.

If the justices employ the recommendations made by clerks for their own decisions on cert, one could expect that what the clerks write in the memos will also influence the justices' decision making. After all, the clerks write about other influential sources and convey this edited information to the justices. First, the clerks write about lower court judges who develop the legal reasoning in cases. When more opinions of lower court judges are cited, and further information is provided about the treatment of a case, it may indicate that a case has percolated and has been well-reasoned. This is precisely what the justices are looking for: cases that have been examined by many lower courts, and thus many lower court judges. The opinions of lower court judges, provided via the law clerks' discussion in the memo, is a key ingredient for judicial decision making. The justices might also be influenced by a particular lower court judge, specifically prestigious lower court judges or judges successful at placing clerks on the Court. Since judges are constantly evaluating each other's work, there is a need to be well-respected. A judge that consistently places reliable clerks on the Supreme Court develops rapport with the justices and thus, credibility. Information produced by a judge that is well-respected by the justices of the Court should be more likely to have his/her case heard, regardless of the number of other lower court judges cited, because the justices trust the reasoning made by that lower court judge and will assume the case has an informed base from which to hear the petition.

Finally, amicus briefs, attorneys, and litigants can influence the Court's decision making. The discussion of amici arguments indicate the involvement of more than just

the party litigants, but rather some external third party group(s) will be affected by a decision made by the Court. These outside actors, such as amici, supply information to the Court providing the justices with either a new perspective on the case or reiterating an argument provided by the petitioner or respondent. Attorneys, especially the Solicitor General, acting both as a specialist and repeat player, have more interactions with the Court and thus, have greater access and understand better the types of cases the justices want to hear and how cases should be presented. The Solicitor General will present only those cases the Office determines are essential and appropriate for the Court to resolve, therefore building a reputation the justices have come to recognize and trust. Certain litigants are also more likely to have repeated interaction with the Court, leading to an increased presence and success on cert. The justices understand and remember which litigants are more likely to present reliable arguments that can be used in their written opinions. Again, when the justices read the clerks' discussion of the arguments provided by an interest group requesting cert, that an attorney specialist such as the SG is providing arguments requesting the Court grant or deny cert, or that an advantaged litigant who the Court has repeated interaction with is bringing a petition, the justices are favorably predisposed to hearing the case.

This research does not come without limitations. It might very well be the case the justices obtain information outside the pool memos that I cannot measure. Indeed, it would be unreasonable to think the pool memos are the justices' only source of information when making a decision on cert. Although the justices may rely heavily on the memos at times, the justices obtain information from other venues. Lawyers and amici provide argument briefs supporting whether a case should be granted or denied

cert. However, much of this information can be found in pool memos written by law clerks via their editing role. Some might argue, then, that the use of the Blackmun Papers limits the generalizability of the findings. Not only are these data limited to several justices and eight terms, they are also derived from papers written by law clerks. The clerks write the memo, and they decide whether or not to include the edited information provided by these different groups and individuals. But, the justices read the memos and direct their content. Hence, while some clerk bias may be introduced, the clerks are so justice-directed that any bias is unlikely to be substantial. Clerks are required to type the memos in a certain format and such a design guides clerks to write the memo with "a provision of objectivity" (Ward and Weiden 2006, 118). It does not make sense for clerks to include information provided by these groups and individuals if they are irrelevant to the Court's certiorari process. Indeed, the creation and existence of the cert pool was not only "to reduce the duplication of effort by the clerks" and "produce only one memo on each case" (Ward and Weiden 2006, 45), but more importantly, the pool memo has "basic requirements" of information that must be included otherwise "something would have been done" (Perry 1991, 59). That the edited information clerks write about matter and influence the justices' decisions on cert support these claims.

The justices of the Supreme Court cannot make decisions alone, nor would it be wise for them to do so. As justices of the highest court in the land, their decisions to grant cert are limited by time constraints. Thus, they need information from other actors to help them decide which cases are cert-worthy. Law clerks do this directly by giving recommendations. Through these pool memos, the clerks can write about other actors the justices deem as important to the certiorari process. By including references to these

different groups and individuals, the clerks convey information provided by these actors to the justices that can guide them in their decision making. The edited information provided by law clerks about these groups and individuals may lend credence to a petition for cert. These pool memos not only provide key sources of information, but they are the key piece of information through which groups and individuals transmit their influence. Future researchers would do well to examine how actors involved in the cert process influence a superior court such as the Supreme Court. This is important, and this research has demonstrated that the justices utilize edited information written by trusted law clerks to assist their decision making on cert.

Table 1 – Judge Mention in Pool Memos (1=Mention; 0=No Mention)[75]

Judge Mention	
0	512 (38.55)
1	816 (61.45)
Total	1328
Frequency (Row Percentage)	

[75] Cases are missing because a docket sheet was absent, the memo was unreadable, or variables could not be ascertained from the pool memo. Any figure, table, or graph subsequently following Table 1 which depicts missing data is for the reasons specified above, unless otherwise noted by the author.

Table 2 – Amicus Brief Filed in Favor of Cert (1=Brief Filed; 0=Brief Not Filed)

Amicus Brief in Favor of Cert	
0	1196 (90.54)
1	125 (9.46)
Total	1321

Frequency
(Row Percentage)

Table 3 – Amicus Brief Filed Against Cert (1=Brief Filed; 0=Brief Not Filed)

Amicus Brief Against Cert	
0	1312 (99.24)
1	10 (0.76)
Total	1322

Frequency
(Row Percentage)

Table 4 – Justice Vote on Cert (1 = Grant, 0 = Deny)†

	Coef.	Std. Err.
U.S. as a Petitioner	1.082*	(0.121)
Lower Court Reversal	0.338*	(0.074)
Alleged Conflict	0.375*	(0.096)
Actual Conflict	1.221*	(0.095)
Civil Liberties Issue	-0.071	(0.089)
One Amicus Brief for Certiorari	0.506*	(0.120)
Two or Three Amicus Briefs for Certiorari	0.901*	(0.173)
Four or More Amicus Briefs for Certiorari	1.466*	(0.196)
One or More Amicus Briefs Against Certiorari	0.656*	(0.149)
Constitutional Claim	0.020	(0.082)
Dissent in Lower Court	0.152*	(0.091)
Conservative Lower Court Decision	-0.468*	(0.077)
Justice's Ideology (*J*)	-0.863*	(0.406)
Ideological Leaning of the Court (*p*)	-1.776*	(0.492)
Justice's Ideology x Ideological Leaning of the Court	3.124*	(0.803)
Constant	-1.690*	(0.238)
N	9231	

* $p<.05$

†Table is from Caldeira, Wright, and Zorn (1999, 563) measuring certiorari voting estimates during the Supreme Court's 1982 October term.

Table 5 - Conflict Alleged by Parties

Conflict Alleged	Frequency	Percentage
0 - NO	568	43.00
1 - YES	753	57.00
Total	1321	100.00

Table 6 - Actual Conflict and Cert Decision by the Supreme Court

	Case Cert		
Actual Conflict	0	1	Total
0	653 (67.88)	309 (32.12)	962
1	8 (2.22)	352 (97.78)	360
Total	661	661	1322

Frequency
(Row Percentage)

Pearson Chi-Square = 451.72 Pr = 0.001

Table 7 - Alleged Conflict and Cert Decision by the Supreme Court

	Case Cert		
Alleged Conflict	0	1	Total
0	420 (73.94)	148 (26.06)	568
1	241 (32.01)	512 (67.99)	753
Total	661	660	1321

Frequency
(Row Percentage)

Perason Chi-Square = 227.78 Pr = 0.001

Table 8 - Conflict in Circuit Courts and Cert Decision by the Supreme Court

	Case Cert		
Circuit Court Split	0	1	Total
0	659 (64.17)	368 (35.83)	1027
1	7 (2.30)	298 (97.70)	305
Total	666	666	1332

Frequency
(Row Percentage)

Pearson Chi-Square = 360.10 Pr = 0.001

Table 9 - Conflict Between State Courts and Cert Decision by the Supreme Court

State Court Conflict	Case Cert 0	1	Total
0	666 (50.80)	645 (49.20)	1311
1	0 (0.00)	21 (100.00)	21
Total	666	666	1332

Frequency
(Row Percentage)

Pearson Chi-Square = 21.34 Pr = 0.001

Table 10 - Conflict Between State and Federal Courts and Cert Decisions by the Supreme Court

State/Federal Court Conflict	Case Cert 0	1	Total
0	665 (51.43)	628 (48.57)	1293
1	1 (2.56)	38 (97.44)	39
Total	666	666	1332

Frequency (Row Percentage)

Pearson Chi-Square = 36.16 Pr = 0.001

Table 11 – Justices' Vote on Cert, 1986 -1993 Terms (1 = Grant, 0 = Deny)†

	Coef.	Std. Err.
U.S. as a Petitioner	0.5040*	(0.1363)
Lower Court Reversal	0.3005*	(0.0661)
Alleged Conflict	0.3427*	(0.0695)
Actual Conflict	0.8277*	(0.0610)
One Amicus Brief for Certiorari	0.1809	(0.1212)
Two or Three Amicus Briefs for Certiorari	0.4259*	(0.1503)
Four or More Amicus Briefs for Certiorari	-0.2258	(0.1730)
One or More Amicus Briefs Against Certiorari	-0.0542	(0.2788)
Constitutional Claim	-0.1637*	(0.0746)
Dissent in Lower Court	0.2489*	(0.0654)
Liberal Lower Court Decision	0.3720*	(0.0614)
Justice's Ideology (*J*)	0.0485	(0.1070)
Ideological Leaning of the Court (*p*)	-0.1841	(0.2740)
Justice's Ideology x Ideological Leaning of the Court	0.1432	(0.1309)
Constant	-4.2853*	(0.2205)
N	6325	

* $p<.05$ McFadden R^2 (0.0565) ePRE (0.0180)

†Civil liberties is omitted from the model because the author did not collect data on whether the case involved a civil liberties issue.

Table 12 – Justice Blackmun's Vote on Cert, 1986-1993 Terms (1 = Grant, 0 = Deny)

	(1)		(2)		(3)	
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Memo Clerk's Recommendation	1.2484*	(0.4825)	---------	---------	-0.2914	(0.3002)
Memo Rec*Ideological Disagreement	-0.1998	(0.1686)	---------	---------	---------	---------
Memo Rec*Memo Clerk Harvard	-0.1586	(0.5307)	---------	---------	---------	---------
Memo Rec*Memo Clerk Yale	0.4280	(0.5424)	---------	---------	---------	---------
Harvard Law School – Memo Clerk	-0.1456	(0.4235)	---------	---------	---------	---------
Yale Law School - Memo Clerk	-0.1481	(0.4279)	---------	---------	---------	---------
Ideological Disagreement	-0.0666	(0.1194)	---------	---------	---------	---------
Blackmun's Clerk's Recommendation	---------	---------	1.9014*	(0.3039)	2.1677*	(0.2709)
Blckmn Clerk Rec*Blckmn Clrk Harv.	---------	---------	1.0456	(0.5827)	---------	---------
Blckmn Clerk Rec*Blckmn Clerk Yale	---------	---------	0.2064	(0.4957)	---------	---------
Harvard Law School - Blackmun Clerk	---------	---------	-0.2037	(0.3940)	---------	---------
Yale Law School - Blackmun Clerk	---------	---------	-0.3281	(0.3615)	---------	---------
Ideological Distance from SC Median	-0.0113	(0.3852)	0.0691	(0.4549)	0.0804	(0.4447)
Alleged Conflict	-0.0320	(0.2587)	-0.3254	(0.3098)	-0.2723	(0.3100)
Actual Conflict	0.6173*	(0.2222)	0.7139*	(0.2581)	0.7537*	(0.2721)
Constitutional Claim	-0.0114	(0.2571)	-0.1007	(0.3144)	0.0525	(0.2984)
U.S. as the Petitioner	0.4501	(0.6101)	0.3979	(0.6575)	0.9796	(0.5706)
Solicitor General	0.9361*	(0.3058)	0.8253*	(0.2966)	0.7742*	(0.2963)
Lower Court Dissent	0.2869	(0.2377)	0.6826*	(0.2636)	0.5559*	(0.2692)
Lower Court Direction of Decision	-0.5737*	(0.2234)	-0.0140	(0.2667)	-0.1286	(0.2602)
Lower Court Reversal	-0.2966	(0.2344)	-0.3389	(0.2648)	-0.2642	(0.2573)
Amicus Brief(s) Filed	0.2211	(0.2698)	0.3344	(0.3120)	0.3334	(0.3001)
Death Penalty Case	0.5429	(0.3687)	0.5972	(0.5002)	0.1331	(0.4654)
Abortion Case	1.4623	(1.1059)	1.7770	(1.0519)	1.7063	(1.0115)
Constant	-3.8420*	(0.8602)	-4.9261*	(0.9994)	-4.9270*	(0.9994)
N[76]	638		629		642	

* $p<.05$ Model 1 - McFadden R^2 (0.0700) ePRE (0.0287)
Model 2 - McFadden R^2 (0.1489) ePRE (0.0669)
Model 3 – McFadden R^2 (0.1354) ePRE (0.0578)

[76] Justice Blackmun did not always provide a vote for himself on the docket sheet because sometimes a case was deadlisted, meaning no justice wanted to discuss the case in conference. If a case was not discussed in conference, Justice Blackmun did not record a vote for the justices. Therefore, data are missing for Blackmun because his vote on cert could not be recorded.

Table 13 - Predicted Probability of Blackmun's Vote on Cert
(as memo clerk and Blackmun's clerk's recommendation changes from
0 (=deny) to 1 (=grant))[77]

Memo Clerk's Recommendation = 0.0286	95% Confidence Interval = 0.0062 to 0.0528
Blackmun's Clerk's Recommendation = 0.0479	95% Confidence Interval = 0.0281 to 0.0779

[77] All other variables held at their mean value.

Figure 1 - Blackmun's Vote on Cert (Memo Clerk's Recommendation)

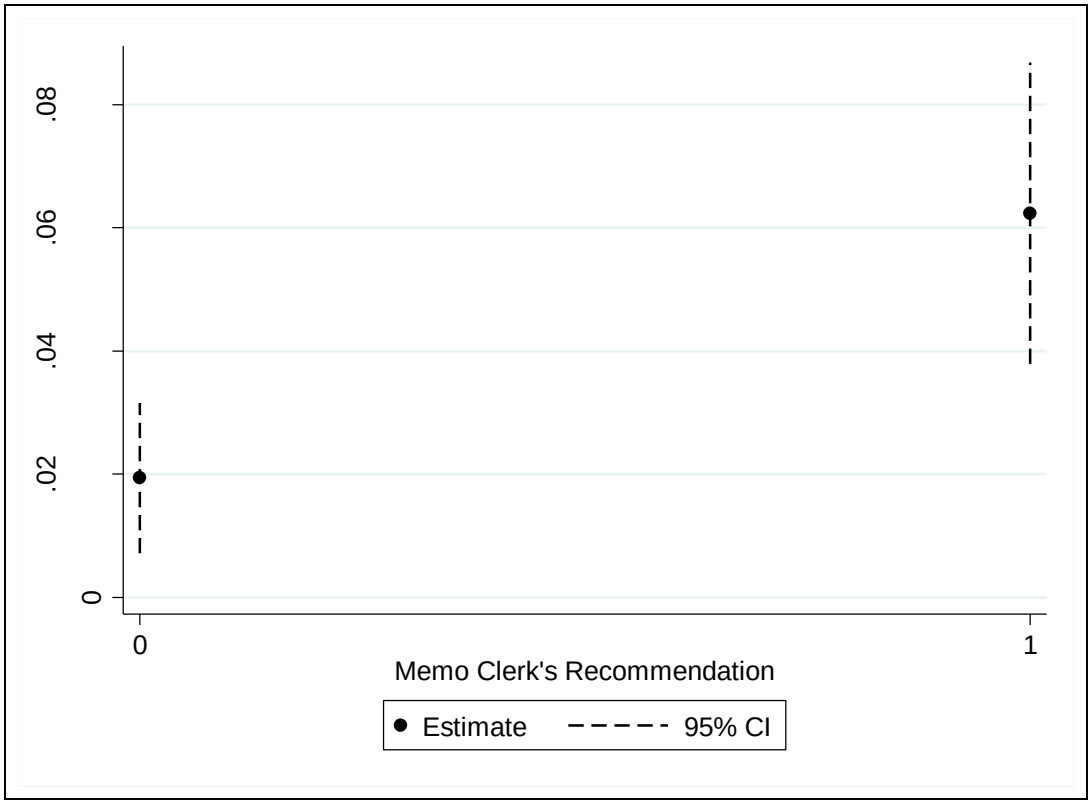

Figure 2 - Blackmun's Vote on Cert (Blackmun's Clerk's Recommendation)

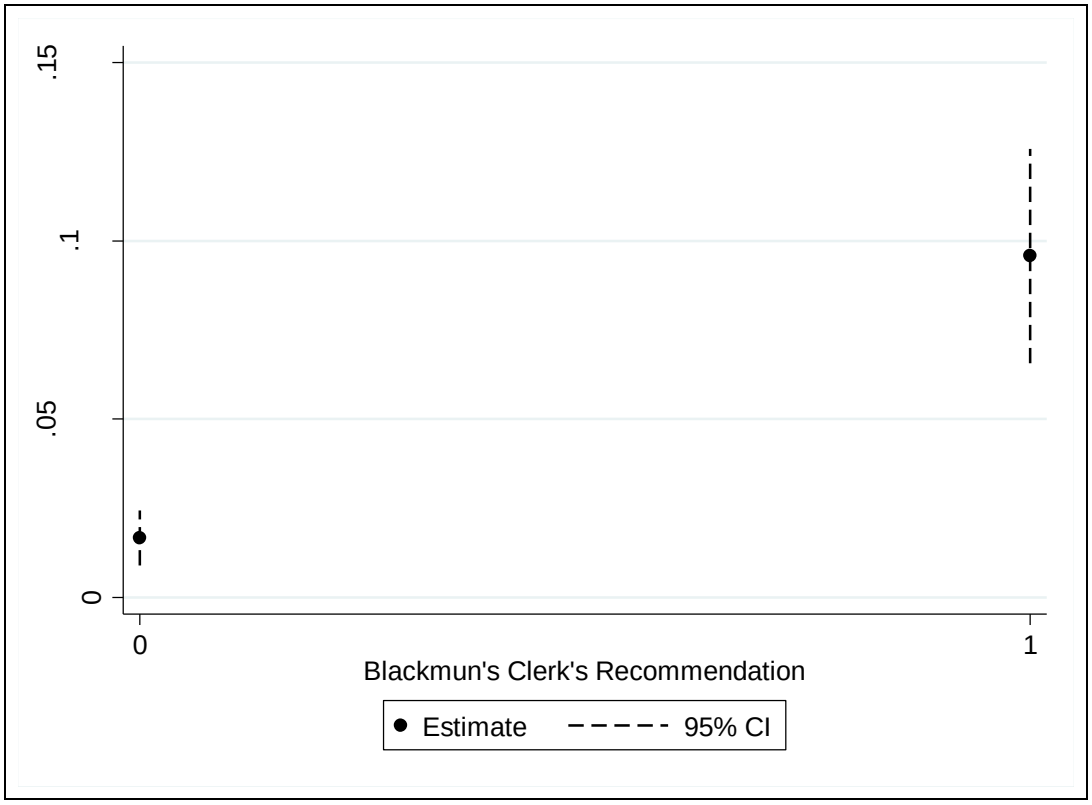

Table 14 – Pool Justices' Vote on Cert, 1986-1993 Terms (1 = Grant, 0 = Deny)

	(4) Rehnquist Vote on Cert		(5) O'Connor Vote on Cert		(6) Scalia Vote on Cert	
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Memo Clerk's Recommendation	1.5093*	(0.4011)	0.5267	(0.3537)	0.7606*	(0.3288)
Memo Rec*Ideological Disagreement	-0.2086	(0.2096)	0.5807*	(0.2531)	-0.2243	(0.2093)
Memo Rec*Memo Clerk Harvard	0.3356	(0.5979)	-0.4175	(0.5553)	1.0149	(0.5429)
Memo Rec*Memo Clerk Yale	-0.5670	(0.6742)	-0.5447	(0.5524)	1.0458	(0.5706)
Harvard Law - Memo Clerk	-0.0419	(0.4524)	0.1651	(0.4286)	-0.8953*	(0.4461)
Yale Law School - Memo Clerk	0.2251	(0.5519)	0.1292	(0.4447)	-0.2946	(0.4677)
Ideological Disagreement - Rehnquist	0.0010	(0.1616)	---	---	---	---
Rehnquist Distance from SC Median	0.4268	(0.2837)	---	---	---	---
Ideological Disagreement - O'Connor	---	---	-0.1030	(0.1845)	---	---
O'Connor Distance from SC Median	---	---	-0.6007	(0.4216)	---	---
Ideological Disagreement - Scalia	---	---	---	---	0.0723	(0.1680)
Scalia Distance from SC Median	---	---	---	---	0.2291	(0.2470)
Alleged Conflict	0.2564	(0.2633)	0.1265	(0.2578)	0.4018	(0.2436)
Actual Conflict	0.3671	(0.2383)	0.4697	(0.2664)	0.3754	(0.2138)
Constitutional Claim	-0.1259	(0.2906)	-0.0036	(0.2535)	-0.1256	(0.2480)
U.S. as the Petitioner	0.6536	(0.5778)	0.7113	(0.7489)	0.2011	(0.4541)
Solicitor General	0.2514	(0.2757)	0.6402*	(0.3081)	0.2406	(0.2243)
Lower Court Dissent	0.8614*	(0.2574)	0.1049	(0.2210)	0.1750	(0.2135)
Lower Court Direction of Decision	1.2405*	(0.2451)	0.6834*	(0.2396)	0.6587*	(0.2037)
Lower Court Reversal	0.6904*	(0.2481)	0.0682	(0.2511)	0.5809*	(0.2055)
Amicus Brief(s) Filed	0.4343	(0.3583)	0.2671	(0.3328)	-0.0927	(0.2647)
Death Penalty Case	-1.1479*	(0.4072)	-0.8397*	(0.3531)	-1.1102*	(0.3993)
Abortion Case	1.6188	(1.1162)	0.5520	(1.1392)	1.4125	(1.1416)
Constant	-6.3595*	(0.5956)	-4.4613*	(0.3708)	-5.1955*	(0.4286)
N[78]	652		640		656	

* $p<.05$ Model 4 - McFadden R^2 (0.1438) ePRE (0.0616)
Model 5 - McFadden R^2 (0.0910) ePRE (0.0347)
Model 6 - McFadden R^2 (0.0810) ePRE (0.0279)

[78] Deadlisted cases are excluded and some docket sheets did not provide a tally indicating whether a justice voted in favor or against granting cert, thus, data on these pool justices will be limited because a vote on cert was not always recorded.

Table 15 - Predicted Probability of Pool Justices' Vote on Cert
(as memo clerk's recommendation changes from 0 (=deny) to 1 (=grant))[79]

Rehnquist Vote on Cert = 0.0263	95% Confidence Interval = 0.0112 to 0.0427
O'Connor Vote on Cert = 0.0111	95% Confidence Interval = -0.0036 to 0.0262
Scalia Vote on Cert = 0.0149	95% Confidence Interval = 0.0020 to 0.0275

[79] All other variables held at their mean value.

Figure 3 -Rehnquist's Vote on Cert (Memo Clerk's Recommendation)

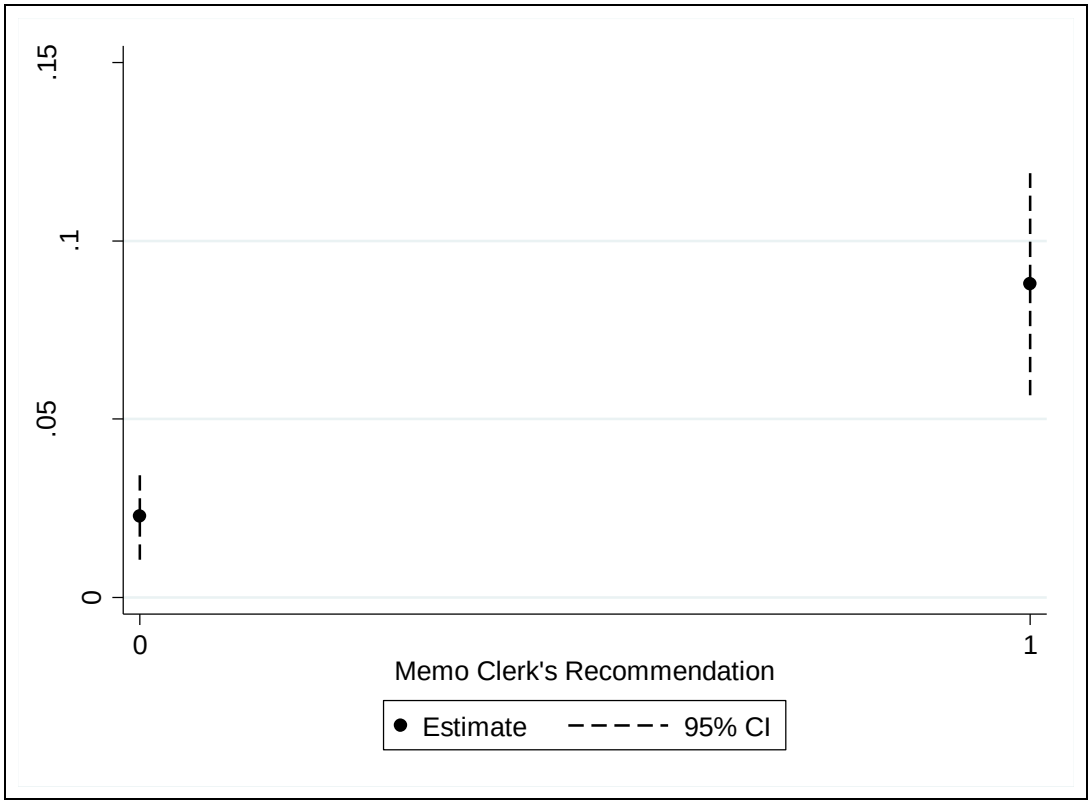

Figure 4 - Scalia's Vote on Cert (Memo Clerk's Recommendation)

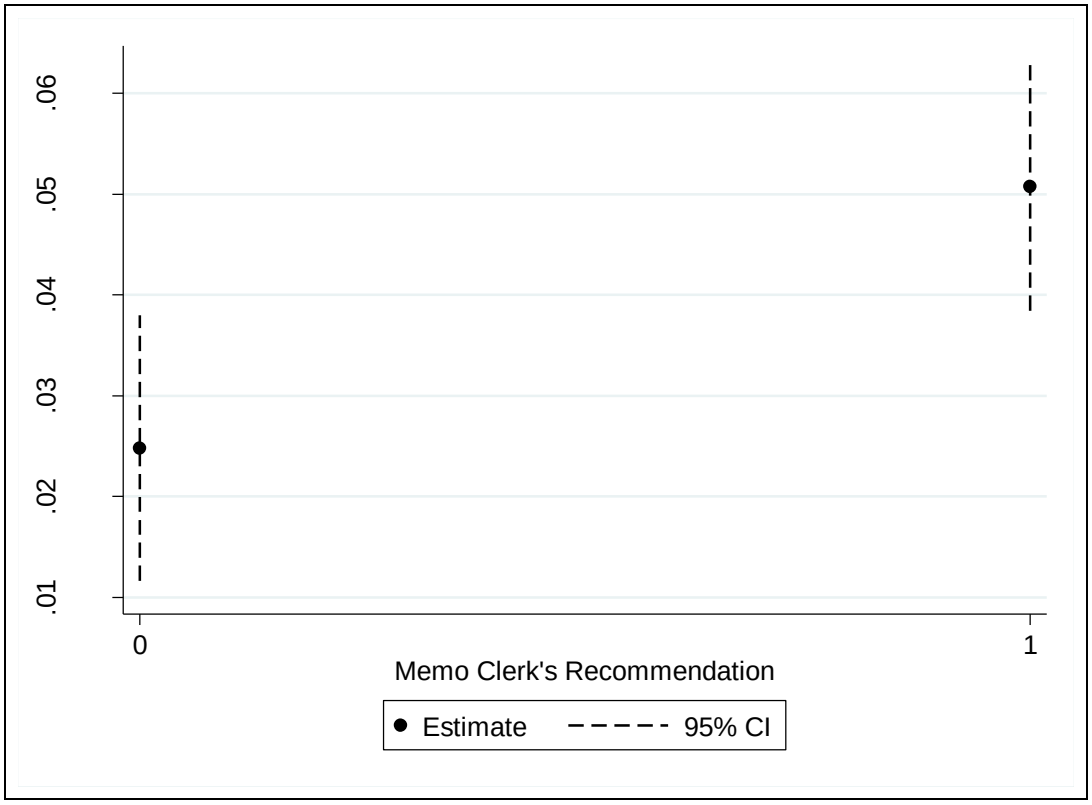

Figure 5 –O'Connor's Vote on Cert (Memo Clerk's Recommendation)

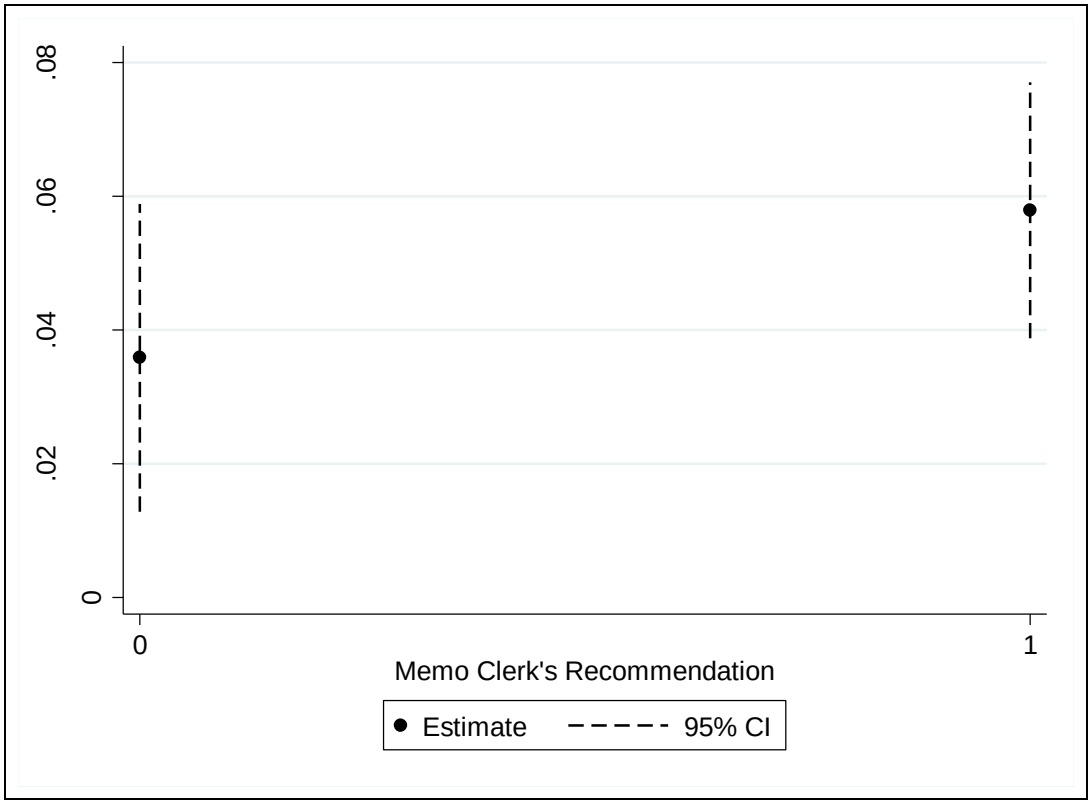

Table 16 – Justice Stevens' Vote on Cert – Non-Pool Justice, 1986-1993 Terms
(1 = Grant, 0 = Deny)

	(7) Stevens Vote on Cert Coef.	Std. Err.
Memo Clerk's Recommendation	-0.3278	(0.3544)
Memo Rec*Ideological Disagreement	-0.3953	(0.2482)
Memo Rec*Memo Clerk Harvard	0.0291	(0.4778)
Memo Rec*Memo Clerk Yale	0.4823	(0.4998)
Harvard Law School - Memo Clerk	-0.1787	(0.3776)
Yale Law School - Memo Clerk	-0.5147	(0.4109)
Ideological Disagreement - Stevens	-0.1728*	(0.0860)
Stevens' Distance from SC Median	0.2313	(0.2026)
Alleged Conflict	0.3420	(0.2238)
Actual Conflict	0.1821	(0.1988)
Constitutional Claim	0.0364	(0.2147)
U.S. as the Petitioner	-0.0551	(0.3973)
Solicitor General	0.3785	(0.2210)
Lower Court Dissent	0.3358	(0.1866)
Lower Court Direction of Decision	-0.6633*	(0.1785)
Lower Court Reversal	-0.0061	(0.1854)
Amicus Brief(s) Filed	-0.0104	(0.2342)
Death Penalty Case	0.3494	(0.3583)
Abortion Case	1.4258	(1.1106)
Constant	-3.7520*	(0.4994)
N[80]	643	

* $p<.05$ Model 7 – McFadden R^2 (0.0368) ePRE (0.0121)

[80] Data is limited because Justice Stevens' vote for or against cert was not recorded on every docket sheet.

Table 17 - Predicted Probability of Justice Stevens' (a Non-Pool Justice) Vote on Cert (as memo clerk's recommendation changes from 0 (=deny) to 1 (=grant))[81]

Stevens Vote on Cert = -0.0086	95% Confidence Interval = -0.0310 to 0.0084

[81] All other variables held at their mean value.

Figure 6 - Steven's Vote on Cert (Memo Clerk's Recommendation)

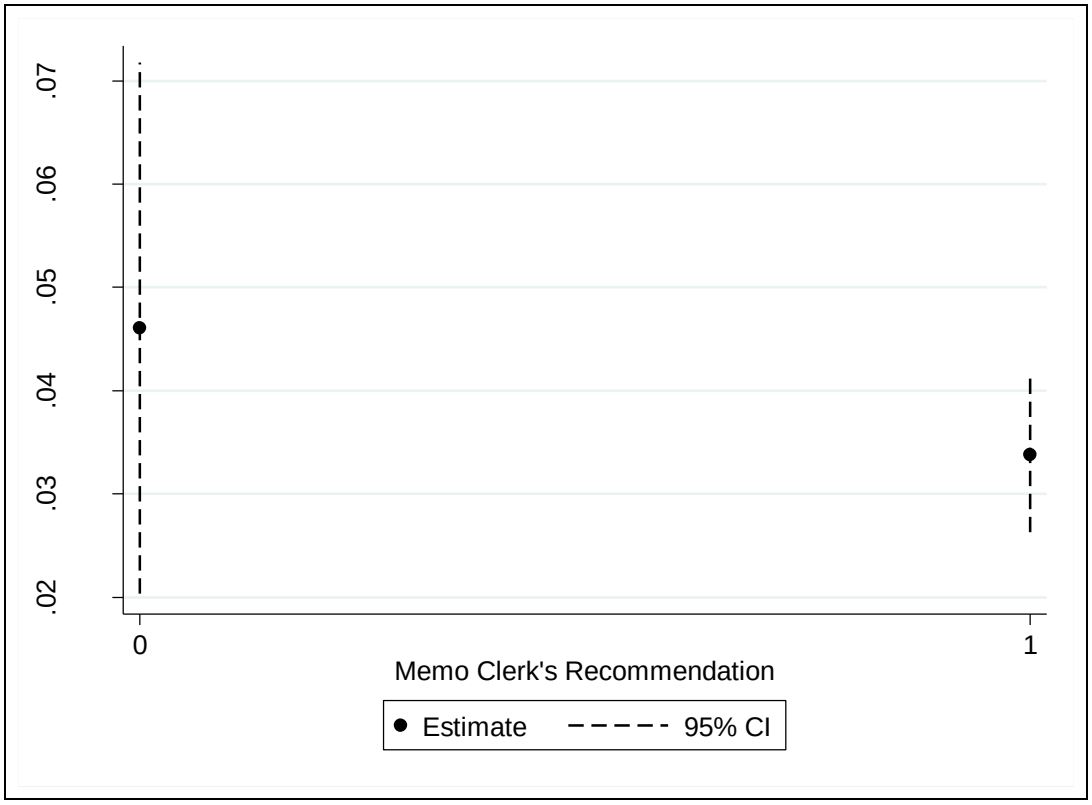

Table 18 – Supreme Court Decision to Grant Cert – Lower Court Judges, 1986-1993 Terms (1=Grant, 0=Deny)

	(8)		(9)		(10)	
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Judge Mention	0.5454*	(0.2560)	----------	----------	----------	----------
Actual Judges Mentioned	----------	----------	0.2320*	(0.0907)	----------	----------
Judge Quote	----------	----------	----------	----------	-0.4061	(0.6871)
Alleged Conflict	0.7427*	(0.2404)	0.6453*	(0.2330)	0.7872*	(0.2864)
Actual Conflict	4.3332*	(0.4047)	4.3170*	(0.3764)	4.3357*	(0.3344)
Constitutional Claim	0.2498	(0.2931)	0.1738	(0.2998)	0.0758	(0.2489)
U.S. as the Petitioner	3.2530*	(0.5007)	3.0759*	(0.7994)	2.9514*	(0.3078)
Solicitor General	1.7753*	(0.4229)	1.8814*	(0.4501)	1.7871*	(0.7589)
Lower Court Dissent	1.0438*	(0.3918)	0.9262*	(0.4073)	1.2636*	(0.3149)
Lower Court Direction	1.5163*	(0.2236)	1.4762*	(0.2207)	1.4537*	(0.6674)
Lower Court Reversal	0.8256*	(0.2930)	0.7846*	(0.2922)	0.9078*	(0.2540)
Amicus Brief(s) Filed	3.2415*	(0.8201)	3.2809*	(0.7958)	3.3109*	(0.4120)
Lower Ct. Judge Ideology	-0.0308	(0.0796)	-0.0493	(0.0761)	-0.0180	(0.0749)
Death Penalty Case	0.2084	(0.5518)	0.0874	(0.5396)	0.1055	(0.4727)
Constant	-6.0142*	(0.2319)	-5.7580*	(0.1869)	-5.6790*	(0.1829)
N	1297		1297		1293	

* $p<.05$ Model 8 – McFadden R^2 (0.5061) ePRE (0.4525)
Model 9 – McFadden R^2 (0.5085) ePRE (0.4568)
Model 10 – McFadden R^2 (0.5046) ePRE (0.4479)

Table 19 -Total Number of Judge Quotes

Judge Quote	Frequency	Percent (%)
0	1213	91.34
1	115	8.66
Total	1328	100.00

Figure 7 - Supreme Court's Vote on Cert (Judge Quote)

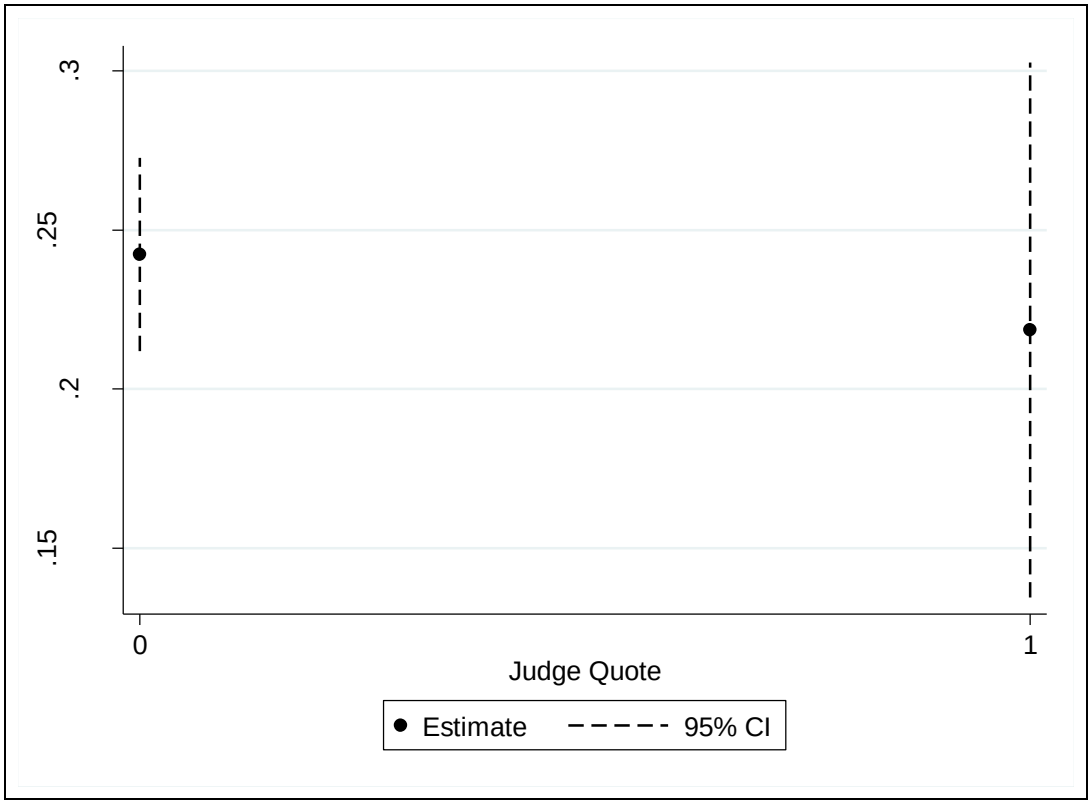

Figure 8 - Supreme Court's Vote on Cert (Judge Mention)

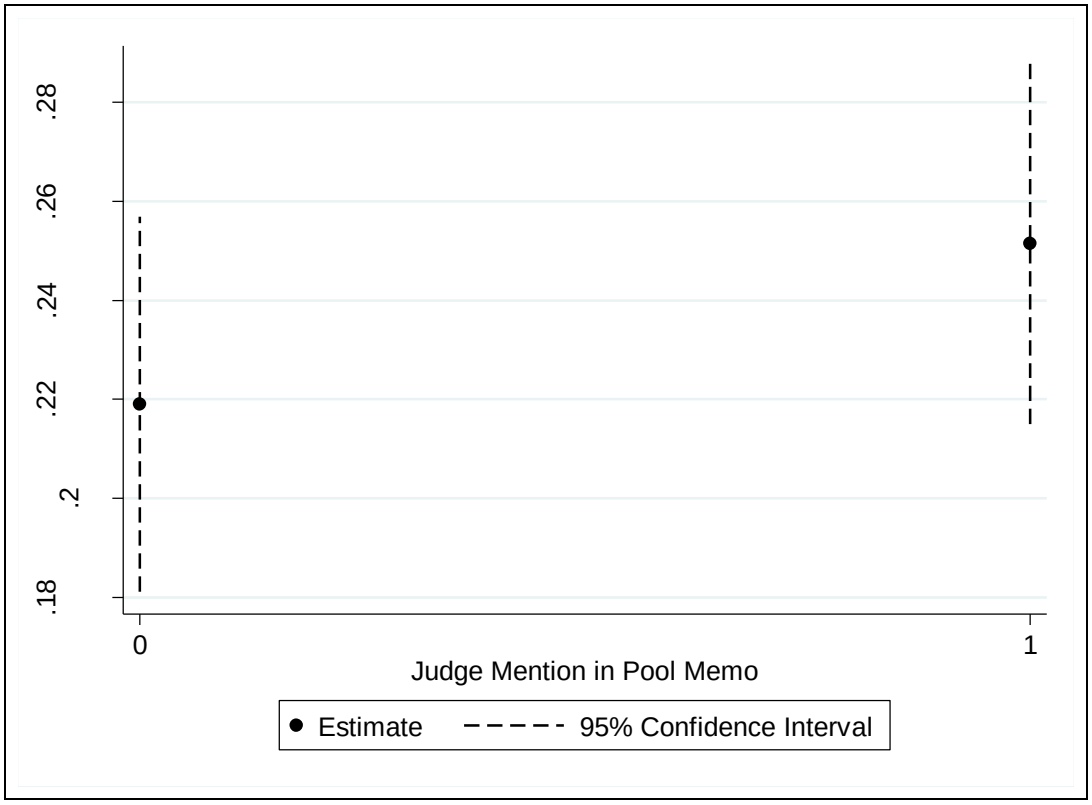

Figure 9 - Supreme Court's Vote on Cert (Actual Number of Judges Mentioned)

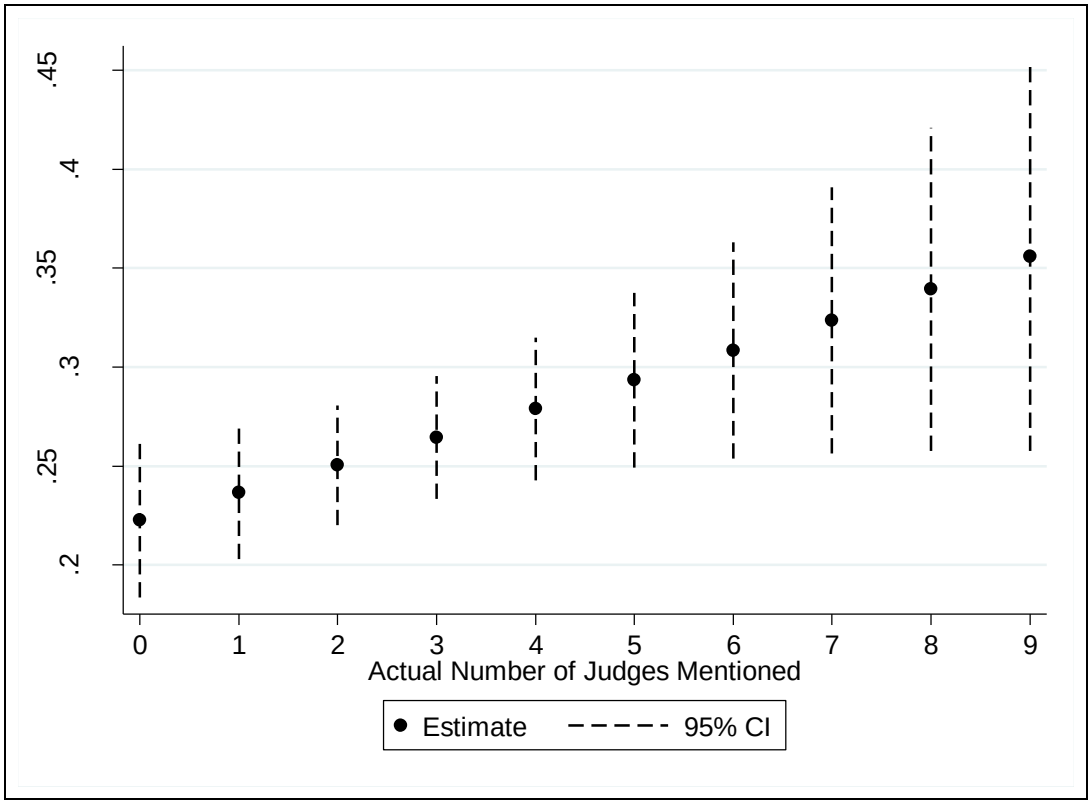

Table 20 - Predicted Probability of Supreme Court Vote on Cert
(as judge mention changes from 0 (=No Judge) to 1 (=Judge Mention))[82]

USSC Vote on Cert = 0.0038	95% Confidence Interval = 0.0002 to 0.0076

[82] All other variables held at their mean value.

Table 21 - Predicted Probability of Supreme Court Vote on Cert
(as actual judges changes from 0 (=No Judge) to 9 (=Judges Mentioned))[83]

USSC Vote on Cert = 0.0434	95% Confidence Interval = 0.0040 to 0.1690

[83] All other variables held at their mean value.

Table 22 – Actual Number of Judges Mentioned in Cases Granted and Denied Cert
1986-1993 Terms

Actual Number Of Judges Mentioned	Case Cert Deny	Grant	Total
0	319	194	513
1	281	230	511
2	34	119	153
3	16	53	69
4	11	29	40
5	4	23	27
6	1	7	8
7	0	2	2
8	0	6	6
9	0	3	3
Total	666	666	1,332

Pearson Chi-Square = 139.58 Pr = 0.001

Table 23 – USSC Decision to Grant Cert – Prestigious Lower Court Judges, 1989-1991 Terms
(Grant=1, Deny=0)

	(11)		(12)		(13)	
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Prestigious Judge Mention	0.8713	(0.5420)	----------	----------	----------	----------
Actual Number of Prestigious Judges	----------	----------	0.5667*	(0.3094)	----------	----------
Prestigious Judge Quote	----------	----------	----------	----------	-0.2848	(0.8395)
Alleged Conflict	0.5104	(0.3900)	0.4731	(0.3944)	0.5363	(0.3833)
Actual Conflict	4.7547*	(0.6701)	4.8395*	(0.6688)	4.7846*	(0.6824)
Constitutional Claim	0.5428	(0.3941)	0.5784	(0.3862)	0.5908	(0.3863)
Solicitor General	1.4349	(0.8250)	1.4816	(0.8508)	1.6442	(0.8763)
Lower Court Dissent	1.6671*	(0.4402)	1.7461*	(0.4266)	1.8229*	(0.4590)
Lower Court Direction	0.6812	(0.4167)	0.7005	(0.4159)	0.8419*	(0.4212)
Lower Court Reversal	1.7006*	(0.4162)	1.6968*	(0.4258)	1.6455*	(0.4292)
Amicus Brief(s) Filed	3.7802*	(0.7982)	3.7789*	(0.7960)	3.7460*	(0.7847)
Lower Court Judge Ideology	0.1307	(0.1037)	0.1477	(0.0970)	0.1703	(0.1062)
Death Penalty Case	-0.0599	(0.6257)	0.0264	(0.6001)	0.1864	(0.5756)
Constant	-5.5842*	(0.2963)	-5.5951*	(0.2977)	-5.5879*	(0.3004)
N	483		483		480	

* $p<.05$ Model 11 – McFadden R^2 (0.5501) ePRE (0.4831)
Model 12 – McFadden R^2 (0.5500) ePRE (0.4865)
Model 13 – McFadden R^2 (0.5468) ePRE (0.4824)

Table 24 - Predicted Probability of Supreme Court Vote on Cert
(as actual number of prestigious judges changes from 0 (=No Judge) to 3 (=Judges Mentioned))[84]

USSC Vote on Cert = 0.0618	95% Confidence Interval = -0.0014 to 0.4147

[84] All other variables held at their mean value.

Figure 10 – Actual Number of Prestigious Judges Mentioned, 1989-1991 Terms

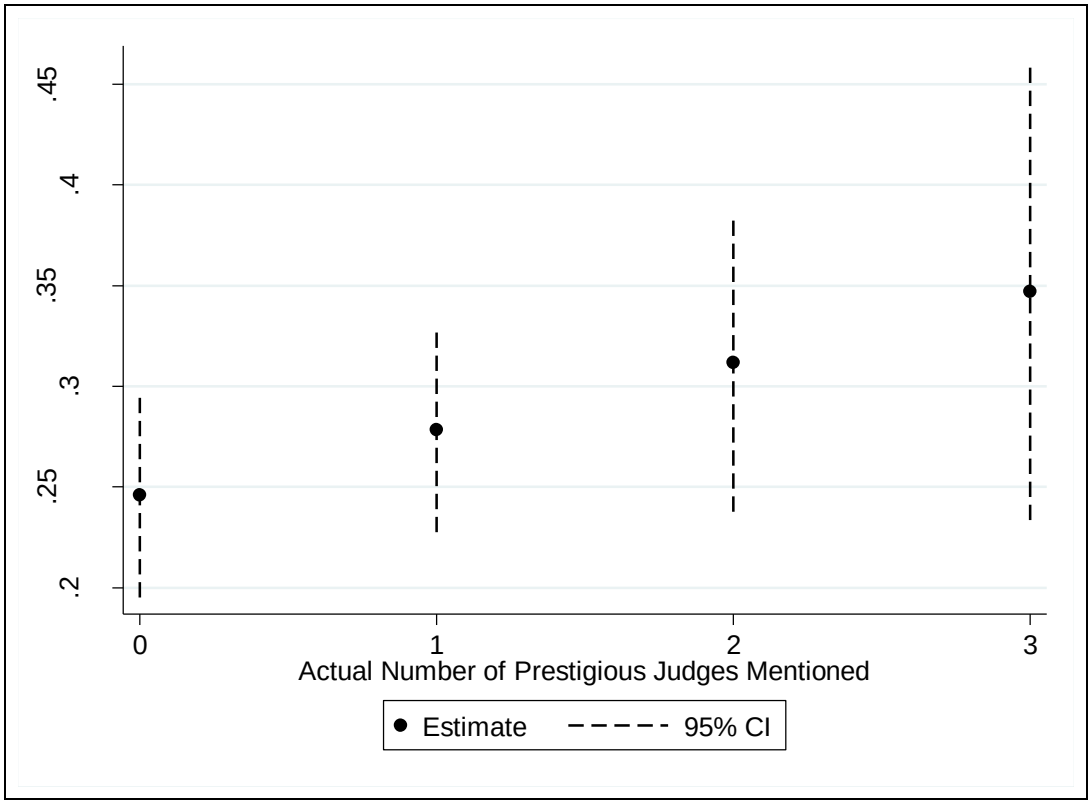

Table 25 -Actual Number of Prestigious Judge Mentions in Cases Granted and Denied Cert
1989-1991 Terms

Actual Number of Prestigious Judges Mentioned	Case Cert Deny	Grant	Total
0	242	210	452
1	8	33	41
2	0	5	5
3	1	2	3
Total	251	250	501

Pearson Chi-Square = 22.18 Pr = 0.001

Table 26 – USSC Decision to Grant Cert – Successful Lower Court Judges, 1986-1993 Terms
(Grant=1, Deny =0)

	(14)		(15)		(16)	
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Successful Judge Mention	1.1277*	(0.3768)	----------	----------	----------	----------
Actual Successful Judges Mentioned	----------	----------	1.1828*	(0.3733)	----------	----------
Successful Judge Quote	----------	----------	----------	----------	-0.2876	(0.9848)
Alleged Conflict	0.7116*	(0.2307)	0.6612*	(0.2311)	0.7694*	(0.2217)
Actual Conflict	4.3706*	(0.3912)	4.3605*	(0.3948)	4.3091*	(0.3945)
Constitutional Claim	0.1501	(0.3237)	0.1306	(0.3210)	0.1141	(0.3217)
U.S. as the Petitioner	2.9993*	(0.4816)	3.0336*	(0.8016)	2.9470*	(0.4785)
Solicitor General	1.8683*	(0.4311)	1.8252*	(0.4587)	1.7627*	(0.4343)
Lower Court Dissent	1.0966*	(0.3845)	1.0830*	(0.3849)	1.1916*	(0.3883)
Lower Court Direction	1.4612*	(0.2242)	1.4215*	(0.2225)	1.4424*	(0.2280)
Lower Court Reversal	1.0175*	(0.2855)	1.0318*	(0.2862)	0.9155*	(0.2845)
Amicus Brief(s) Filed	3.1404*	(0.7177)	3.0863*	(0.7199)	3.2948*	(0.7763)
Lower Court Judge Ideology	0.0017	(0.0774)	0.0013	(0.0779)	-0.0303	(0.0805)
Death Penalty Case	0.1974	(0.6045)	0.1911	(0.5974)	0.1104	(0.5875)
Constant	-5.7324*	(0.1879)	-5.6610*	(0.1830)	-5.6768*	(0.1810)
N	1297		1297		1297	

* $p<.05$ Model 14 – McFadden R^2 (0.5075) ePRE (0.4521)
Model 15 – McFadden R^2 (0.5086) ePRE (0.4530)
Model 16 – McFadden R^2 (0.5028) ePRE (0.4466)

Table 27 – Judge Quotes by Successful Lower Court Judges

Quote by a Successful Lower Court Judge	Freq.	Percent
No Quote	1310	98.35
Quote	22	1.65
Total	1332	100.00

Table 28 - Predicted Probability of Supreme Court Vote on Cert
(as successful judges changes from 0 (=No Judge) to 1 (=Judges Mentioned))[85]

USSC Vote on Cert = 0.0059	95% Confidence Interval = -0.0001 to 0.0128

[85] All other variables held at their mean value.

Table 29 - Predicted Probability of Supreme Court Vote on Cert
(as actual number of successful judges changes from 0 (=No Judge) to 5 (=Judges Mentioned))[86]

USSC Vote on Cert = 0.7147	95% Confidence Interval = 0.0689 to 0.9835

[86] All other variables held at their mean value.

Figure 11 – Predicted Probability of USSC Vote on Cert – Successful Judge Mention

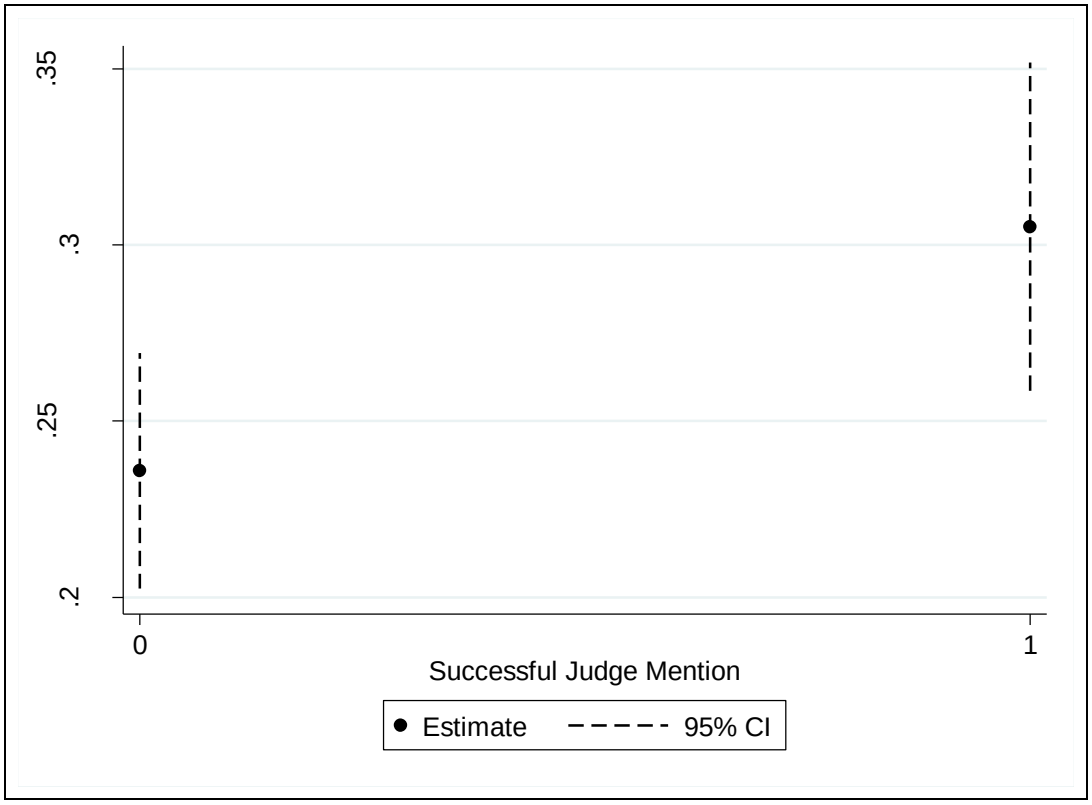

Figure 12 – Predicted Probability of USSC Vote on Cert – Actual Successful Judges Mentioned

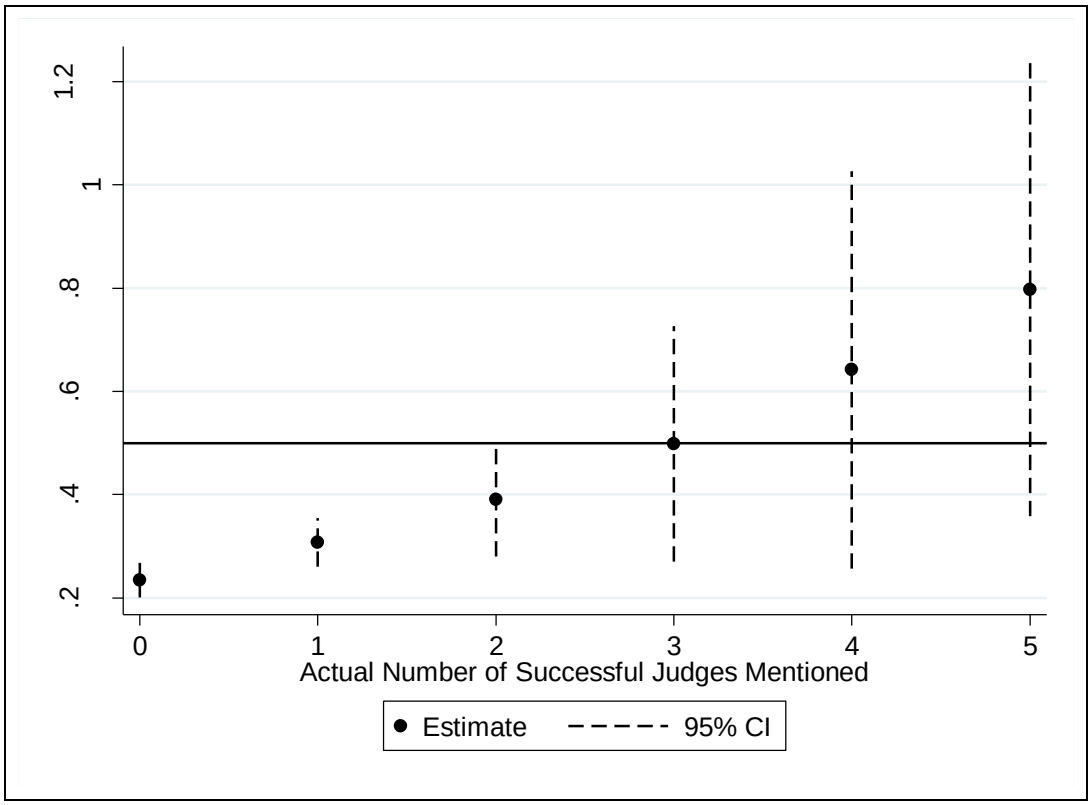

Table 30 –Actual Number of Successful Judge Mentions in Cases Granted and Denied Cert
1986-1993 Terms

Actual Number Of Successful Judges Mentioned	Case Cert Deny	Grant	Total
0	651	595	1246
1	15	55	70
2	0	12	12
3	0	2	2
4	0	1	1
5	0	1	1
Total	666	666	1332

Pearson Chi-Square = 41.37 Pr = 0.001

Table 31 – Total Number of Amici Filed by Term

	Amicus Brief Filed		
Term	0	1	Total
1986	153	13	166
1987	152	15	167
1988	147	13	160
1989	150	13	163
1990	153	15	168
1991	147	18	165
1992	147	20	167
1993	146	19	165
Total	1195	126	1321

Frequency

Table 32 – Total Number of Petitions with/out Amici Filed by Cases Granted and Denied Cert

Amicus Brief Filed	Case Cert 0	1	Total
0	656	539	1195
	(54.90)	(45.10)	(100.00)
1	3	123	126
	(2.38)	(97.62)	(100.00)
Total	659	662	1321

Frequency
(Row Percentage)

Pearson Chi-Square = 125.73 Pr = 0.001

Table 33 – Amicus Brief in Favor of Cert by Cases Granted and Denied Cert

	Case Cert		
Amicus Brief in Favor of Cert	0	1	Total
0	656	540	1196
	(54.85)	(45.15)	(100.00)
1	3	122	125
	(2.40)	(97.60)	(100.00)
Total	659	662	1321

Frequency
(Row Percentage)

Pearson Chi-Square = 124.53 Pr = 0.001

Table 34 – Amicus Briefs Against Cert by Cases Granted and Denied Cert

Amicus Brief Against Cert	Case Cert 0	1	Total
0	659	653	1312
	(50.23)	(49.77)	(100.00)
1	1	9	10
	(10.00)	(90.00)	(100.00)
Total	660	662	1322

Frequency
(Row Percentage)

Pearson Chi-Square = 6.42 Pr = 0.010

Table 35 – Amicus Brief Present in Pool Memo by Cases Granted and Denied Cert

	Case Cert		
Amicus Brief	0	1	Total
Favor Cert	3	122	125
	(2.40)	(97.60)	(100.00)
Against Cert	1	9	10
	(10.00)	(90.00)	(100.00)
Total	4	131	135

Frequency
(Row Percentage)

Table 36 – Solicitor General in Favor or Against Cert by the USSC Decision to Grant Cert (1=Grant, 0=Deny)

	Cert Vote		
Solicitor General	0	1	Total
-1 (Against Cert)	49 (43.36)	64 (56.64)	113 (100.00)
0 (No Mention/Argument Attached)	617 (55.64)	492 (44.36)	1109 (100.00)
1 (Favor Cert)	0 (0.00)	110 (100.00)	110 (100.00)
Total	666	666	1332

Frequency
(Row Percentage)

Pearson Chi-Square = 126.08 Pr = 0.001

Table 37 – Solicitor General as Petitioner in Pool Memo

Solicitor General	Frequency	Percent
Other	1262	94.74
SG Petitioner	70	5.26
Total	1332	100.00

Table 38 – Solicitor General as Respondent in Pool Memo

Solicitor General	Frequency	Percent
Other	1218	91.44
SG Respondent	114	8.56
Total	1332	100.00

Table 39 – Solicitor General as Amicus Brief in Pool Memo

Solicitor General	Frequency	Percent
Other	1327	99.62
SG Amici	5	0.38
Total	1332	100.00

Table 40 –Solicitor General as Respondent in Pool Memo by Cases Granted and Denied Cert

	Case Cert		
SG as Respondent	0	1	Total
0	619	599	1218
	(50.82)	(49.18)	(100.00)
1	47	67	114
	(41.23)	(58.77)	(100.00)
Total	666	666	1332

Frequency
(Row Percentage)

Pearson Chi-Square = 4.57 Pr = 0.030

Table 41 –Solicitor General as Petitioner in Pool Memo by Cases Granted and Denied Cert

	Case Cert		
SG as Petitioner	0	1	Total
0	666	596	1262
	(52.77)	(47.23)	(100.00)
1	0	70	70
	(0.00)	(100.00)	(100.00)
Total	666	666	1332
Frequency (Row Percentage)			

Pearson Chi-Square = 73.88 Pr = 0.001

Table 42 –Solicitor General as Amici in Pool Memo by Cases Granted and Denied Cert

	Case Cert		
SG as Amici	0	1	Total
0	666	661	1327
	(50.19)	(49.81)	(100.00)
1	0	5	5
	(0.00)	(100.00)	(100.00)
Total	666	666	1332
Frequency (Row Percentage)			

Pearson Chi-Square = 5.02 Pr = 0.030

Table 43 – Call for the Views of Solicitor General (CVSG) in Pool Memo

Call for Views of SG	Frequency	Percent
No CVSG	1290	96.85
CVSG	42	3.15
Total	1332	100.00

Table 44 – Call for Views of Solicitor General by Petitions with Alleged Conflict

	Alleged Conflict		
Call for Views of SG	0	1	Total
0	561	719	1280
	(43.83)	(56.17)	(100.00)
1	7	34	41
	(17.07)	(82.93)	(100.00)
Total	568	753	1321
Frequency (Row Percentage)			

Pearson Chi-Square = 11.60 Pr = 0.001

Table 45 – Call for Views of Solicitor General by Petitions with Actual Conflict

	Actual Conflict		
Call for Views of SG	0	1	Total
0	665	625	1290
	(51.55)	(48.45)	(100.00)
1	1	41	42
	(2.38)	(97.62)	(100.00)
Total	666	666	1332
Frequency (Row Percentage)			

Pearson Chi-Square = 39.34 Pr = 0.001

Table 46 – Call for Views of Solicitor General by a Liberal Decision in the Lower Court

	Liberal Decision in the Lower Court		
Call for Views of SG	0	1	Total
0	862	421	1283
	(67.19)	(32.81)	(100.00)
1	20	22	42
	(47.62)	(52.38)	(100.00)
Total	882	443	1325
Frequency (Row Percentage)			

Pearson Chi-Square = 7.00 Pr = 0.010

Table 47 – Call for Views of Solicitor General by the SG Requesting Cert

	SG Favors Cert		
Call for Views of SG	0	1	Total
0	1201	89	1290
	(93.10)	(6.90)	(100.00)
1	21	21	42
	(50.00)	(50.00)	(100.00)
Total	1224	108	1332
Frequency (Row Percentage)			

Pearson Chi-Square = 102.15 Pr = 0.001

Table 48 – Call for Views of Solicitor General by the SG Against Cert

	SG Against Cert		
Call for Views of SG	0	1	Total
0	1182	108	1290
	(91.63)	(8.37)	(100.00)
1	37	5	42
	(88.10)	(11.90)	(100.00)
Total	1217	115	1332
Frequency (Row Percentage)			

Pearson Chi-Square = 0.59 Pr = 0.440

Table 49 – Call for Views of Solicitor General by Cases Granted and Denied Cert

	Case Cert		
Call for Views of SG	0	1	Total
0	665	625	1290
	(51.55)	(48.45)	(100.00)
1	1	41	42
	(2.38)	(97.62)	(100.00)
Total	666	666	1332

Frequency
(Row Percentage)

Pearson Chi-Square = 39.34 Pr = 0.001

Table 50 – Call for Views of the Solicitor General Recommending the Court Deny Cert by Cases Granted and Denied Cert

	Case Cert		
CVSG – SG Against Cert	0	1	Total
0	665	662	1290
	(50.11)	(49.89)	(100.00)
1	1	4	5
	(20.00)	(80.00)	(100.00)
Total	666	666	1332
Frequency (Row Percentage)			

Pearson Chi-Square = 1.81 Pr = 0.180

Table 51 – Call for Views of the Solicitor General Recommending the Court Grant Cert by Cases Granted and Denied Cert

	Case Cert		
CVSG – SG Favors Cert	0	1	Total
0	666	645	1311
	(50.80)	(49.20)	(100.00)
1	0	21	21
	(0.00)	(100.00)	(100.00)
Total	666	666	1332
Frequency (Row Percentage)			

Pearson Chi-Square = 21.34 Pr = 0.001

Table 52 – Petitioner Type by Cases Granted and Denied Cert

	Case Cert		
Petitioner Type	0	1	Total
Individual	573 (67.49)	276 (32.51)	849 (100.00)
Business	61 (30.81)	137 (69.19)	198 (100.00)
State/Local Govt.	30 (18.29)	134 (81.71)	164 (100.00)
U.S. Government	2 (2.08)	94 (97.92)	96 (100.00)
Other	0 (0.00)	19 (100.00)	19 (100.00)
Total	666	660	1326

Frequency
(Row Percentage)

Pearson Chi-Square = 312.19 Pr = 0.001

Table 53 – Respondent Type by Cases Granted and Denied Cert

	Case Cert		
Respondent Type	0	1	Total
Individual	134	227	361
	(37.12)	(62.88)	(100.00)
Business	81	152	233
	(34.76)	(65.24)	(100.00)
State/Local Govt.	175	145	320
	(54.69)	(45.31)	(100.00)
U.S. Government	274	106	380
	(72.11)	(27.89)	(100.00)
Other	1	24	25
	(4.00)	(96.00)	(100.00)
Total	665	654	1319
Frequency (Row Percentage)			

Pearson Chi-Square = 156.84 Pr = 0.001

Table 54 – Argument of the Solicitor General in Pool Memo when Clerk CVSG

	Clerk CVSG		
Solicitor General	0	1	Total
-1 (Against Cert)	108 (95.58)	5 (4.42)	113 (100.00)
0 (No Mention/Argument Attached)	1093 (98.56)	16 (1.44)	1109 (100.00)
1 (Favor Cert)	89 (80.91)	21 (19.09)	110 (100.00)
Total	1290 (96.58)	42 (3.15)	1332 (100.00)

Frequency
(Row Percentage)

Pearson Chi-Square = 102.72 Pr = 0.001

Table 55 - Solicitor General as Respondent in Favor of Cert by U.S. Government as Respondent

SG as Respondent Favoring Cert	U.S. Government as Respondent 0	1	Total
0	939	375	1314
	(71.46)	(28.54)	(100.00)
1	0	6	6
	(0.00)	(100.00)	(100.00)
Total	939	381	1320

Frequency
(Row Percentage)

Pearson Chi-Square = 14.85 Pr = 0.001

Table 56 – Solicitor General Index by Cases Granted and Denied Cert

	Case Cert		
SG Index	0	1	Total
-2 SG Resp. Against	47 (43.93)	60 (56.07)	107 (100.00)
-1 SG CVSG Against	1 (20.00)	4 (80.00)	5 (100.00)
0 No SG/Reply Not Attached	618 (55.28)	500 (44.72)	1118 (100.00)
1 SG Resp. Favor	0 (0.00)	6 (100.00)	6 (100.00)
2 SG CVSG Favor	0 (0.00)	21 (100.00)	21 (100.00)
3 SG Amicus Favor	0 (0.00)	5 (100.00)	5 (100.00)
4 SG Pet. Favor	0 (0.00)	70 (100.00)	70 (100.00)
Total	666	666	1332

Frequency
(Row Percentage)

Pearson Chi-Square = 117.73 Pr = 0.001

Table 57 – Litigant Matchups

Petitioner vs. Respondent	Frequency	Percent	Cumulative
Individual vs. Individual	124	9.73	9.73
Individual vs. Business	105	8.24	17.97
Individual vs. State/Local Govt.	279	21.90	39.87
Individual vs. U.S. Government	324	25.43	65.31
Business vs. Individual	64	5.02	70.33
Business vs. Business	59	4.63	74.96
Business vs. State/Local Govt.	29	2.28	77.24
Business vs. U.S. Government	35	2.75	79.98
State/Local Govt. vs. Individual	113	8.87	88.85
State/Local Govt. vs. Business	32	2.51	91.37
State/Local Govt v. State/Local Govt	3	0.24	91.60
State/Local Govt. vs. U.S. Govt.	13	1.02	92.62
U.S. Govt. vs.	55	4.32	96.94

Individual			
U.S. Govt. vs. Business	29	2.28	99.22
U.S. Govt. vs. State/Local Govt.	8	0.63	99.84
U.S. Govt. vs. U.S. Govt.	2	0.16	100.00
Total	1274	100.00	100.00

-Data are missing because some litigant groups are categorized "other" (i.e., foreign nations, private club/facility, private education institutions, etc.) or not ascertained and were omitted from the model because they could not be classified based on their resource advantage (Songer, Sheehan, and Haire 1999).

Table 58 – Litigant Matchups by Cases Granted (=1) and Denied (=0) Cert

Petitioner vs. Respondent	Case Cert 0	1	Total
Individual vs. Individual	94 (75.81)	30 (24.19)	124
Individual vs. Business	55 (52.38)	50 (47.62	105
Individual vs. State/Local Govt.	164 (58.78)	115 41.22)	279
Individual vs. U.S. Government	258 (79.63)	66 20.37)	324
Business vs. Individual	17 (26.56)	47 (73.44)	64
Business vs. Business	21 (35.59)	38 (64.41)	59
Business vs. State/Local Govt.	10 (34.48)	19 (65.52)	29
Business vs. U.S. Government	13 (37.14)	22 (62.86)	35
State/Local Govt. vs. Individual	22 (19.47)	91 (**80.53**)	113

State/Local Govt. vs. Business	5 (16.63)	27 (**84.38**)	32
State/Local Govt v. State/Local Govt	0 (0.00)	3 (100.00)	3
State/Local Govt. vs. U.S. Govt.	3 23.08	10 76.92	13
U.S. Govt. vs. Individual	1 (1.82)	54 (**98.18**)	55
U.S. Govt. vs. Business	0 (0.00)	29 (**100.00**)	29
U.S. Govt. vs. State/Local Govt.	1 (12.50)	7 (87.50)	8
U.S. Govt. vs. U.S. Govt.	0 (0.00)	2 (100.00)	2
Total	664	610	1274

Pearson Chi-Square = 295.02 Pr = 0.001

-Data are missing because some litigant groups are categorized "other" (i.e., foreign nations, private club/facility, private education institutions, etc.) or not ascertained and were omitted from the model because they could not be classified based on their resource advantage (Songer, Sheehan, and Haire 1999).
-Petitioning "haves" against a responding "have not" and their percentage of success on cert in bold.

Table 59 – Supreme Court Decision to Grant Cert - Amicus Briefs, Solicitor General, and Petitioning Litigants (Individual Litigants the Omitted Category), 1986-1993 Terms (1=Grant, 0=Deny)

	(17) Case cert Coef.	Std. Err.
Business Petitioner	0.1083	(0.5365)
State/Local Petitioner	0.9940*	(0.3850)
U.S. Government Petitioner	3.1448*	(0.7287)
Alleged Conflict	0.6950*	(0.2350)
Actual Conflict	4.3411*	(0.3787)
Constitutional Claim	0.1333	(0.3131)
Solicitor General Index	0.7040*	(0.1973)
Lower Court Dissent	1.0788*	(0.3532)
Lower Court Direction	1.0256*	(0.3403)
Lower Court Reversal	0.9504*	(0.2857)
Amicus Brief in Favor of Cert	3.0586*	(0.7453)
Amicus Brief Against Cert	-0.5635	(1.0920)
Death Penalty Case	0.1704	(0.6009)
Constant	-5.7025*	(0.1918)
N	1294	

* $p<.05$ Model 17 – McFadden R^2 (0.5228) ePRE (0.4654)

Table 60 – Supreme Court Decision to Grant Cert - Amicus Briefs, Solicitor General, and Responding Litigants (Individual Litigants the Omitted Category), 1986-1993 Terms (1=Grant, 0=Deny)

	(18) Case cert Coef.	Std. Err.
Business Respondent	-0.1183	(0.3585)
State/Local Respondent	0.3712	(0.2750)
U.S. Government Respondent	-0.4175	(0.3438)
Alleged Conflict	0.8121*	(0.2404)
Actual Conflict	4.4376*	(0.3895)
Constitutional Claim	0.0036	(0.2980)
SG Index	0.8037*	(0.1438)
Lower Court Dissent	1.1224*	(0.3750)
Lower Court Direction	1.4437*	(0.2547)
Lower Court Reversal	0.8791*	(0.2760)
Amicus Brief in Favor of Cert	3.2467*	(0.9081)
Amicus Brief Against Cert	-1.0035	(1.2177)
Death Penalty	-0.1780	(0.6196)
Constant	-5.6363*	(0.2715)
N	1285	

* $p<.05$ Model 18 – McFadden R^2 (0.5212) ePRE (0.4625)

Figure 13 - Amicus Brief in Favor of Cert (Individual Petitioner the Omitted Litigant Category)

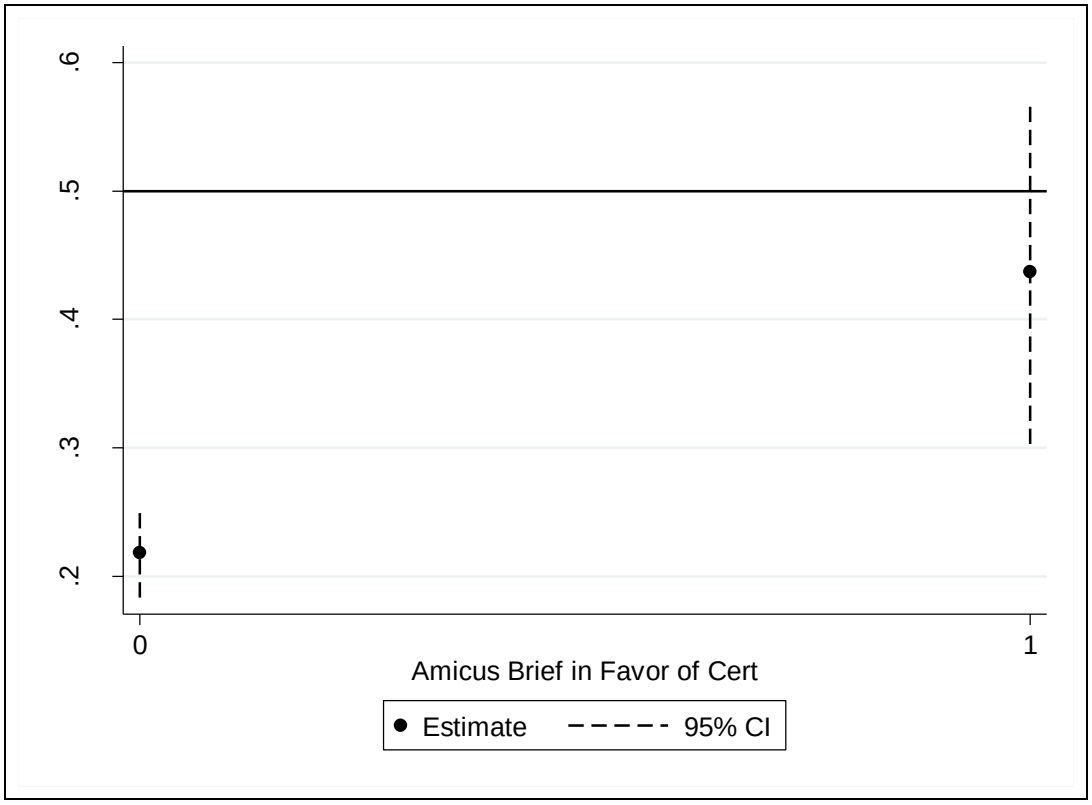

Figure 14 - Amicus Brief in Favor of Cert (Individual Respondent the Omitted Category)

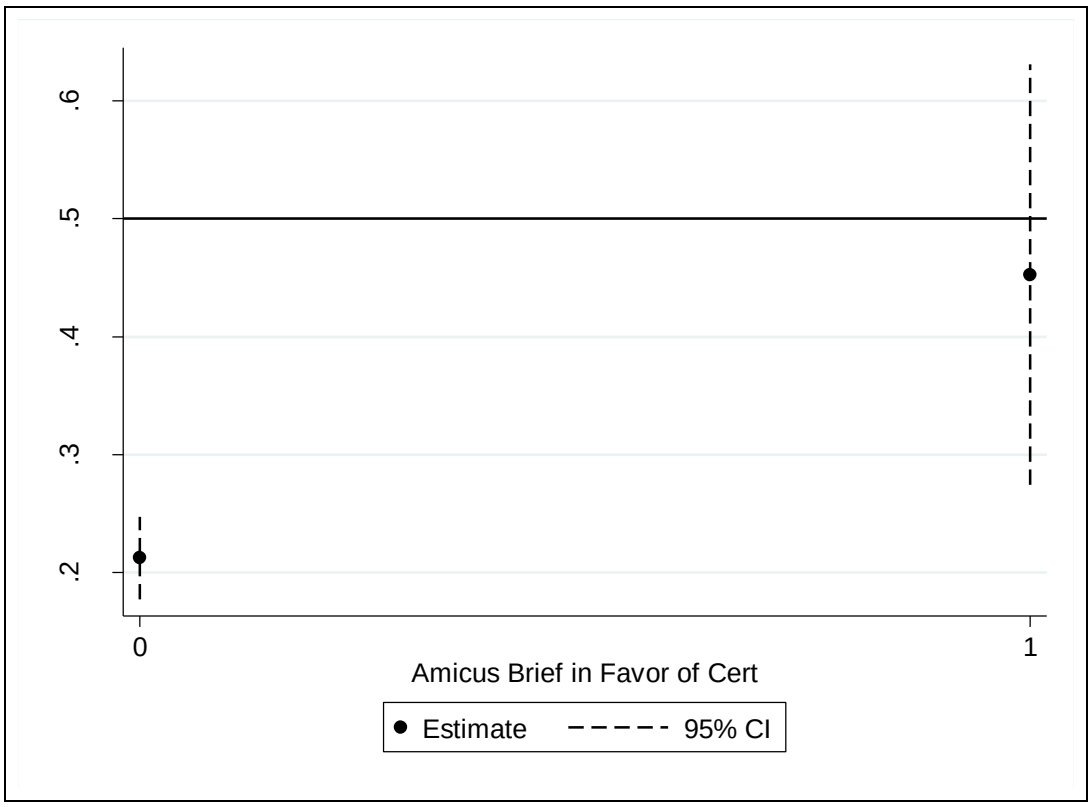

Table 61 - Predicted Probability of Supreme Court Vote on Cert
(Individual Petitioner the Omitted Litigant Category)
(as amicus brief favoring cert changes from 0 (=No Brief) to 1 (=Amicus Brief Filed))[87]

USSC Vote on Cert = 0.1212 95% Confidence Interval = 0.0297 to 0.3707

[87] All other variables held at their mean value.

Table 62 - Predicted Probability of Supreme Court Vote on Cert
(Responding Individual as the Omitted Litigant Category)
(as amicus brief favoring cert changes from 0 (=No Amicus Brief) to 1 (=Amicus Brief Filed)[88]

USSC Vote on Cert = 0.1345	95% Confidence Interval = 0.0221 to 0.5332

[88] All other variables held at their mean value.

Figure 15 - Solicitor General (Individual Petitioner the Omitted Litigant Category)

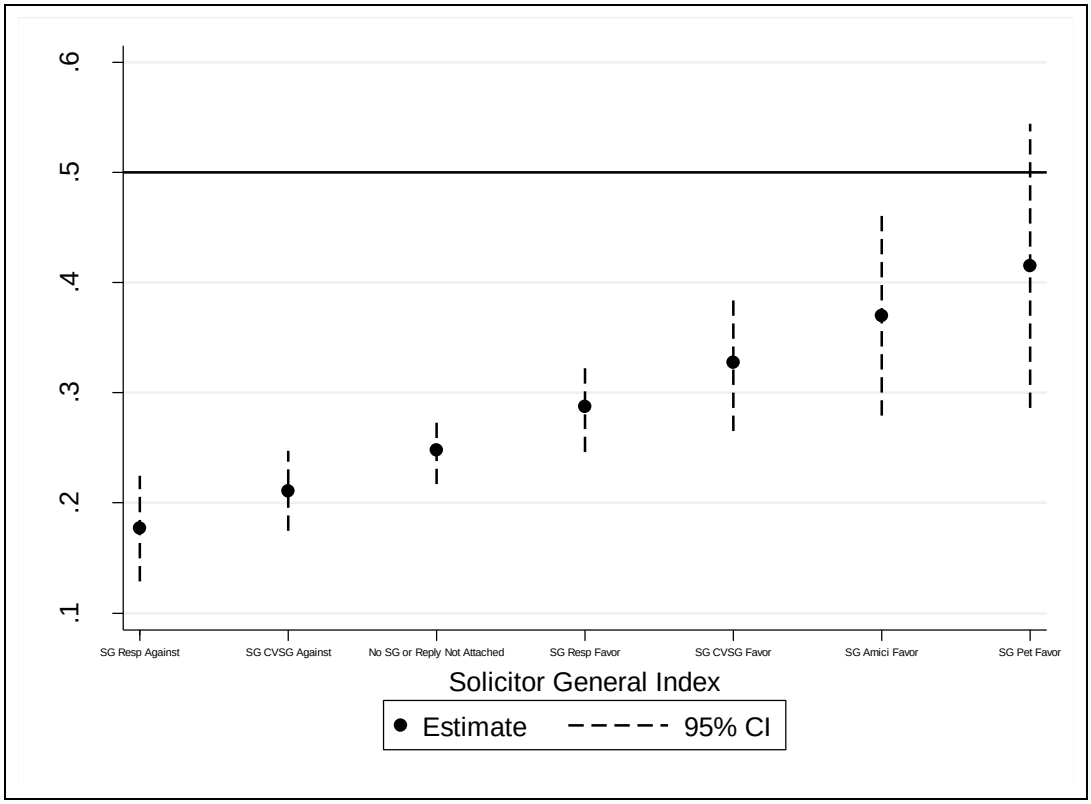

Figure 16 - Solicitor General (Individual Respondent as the Omitted Category)

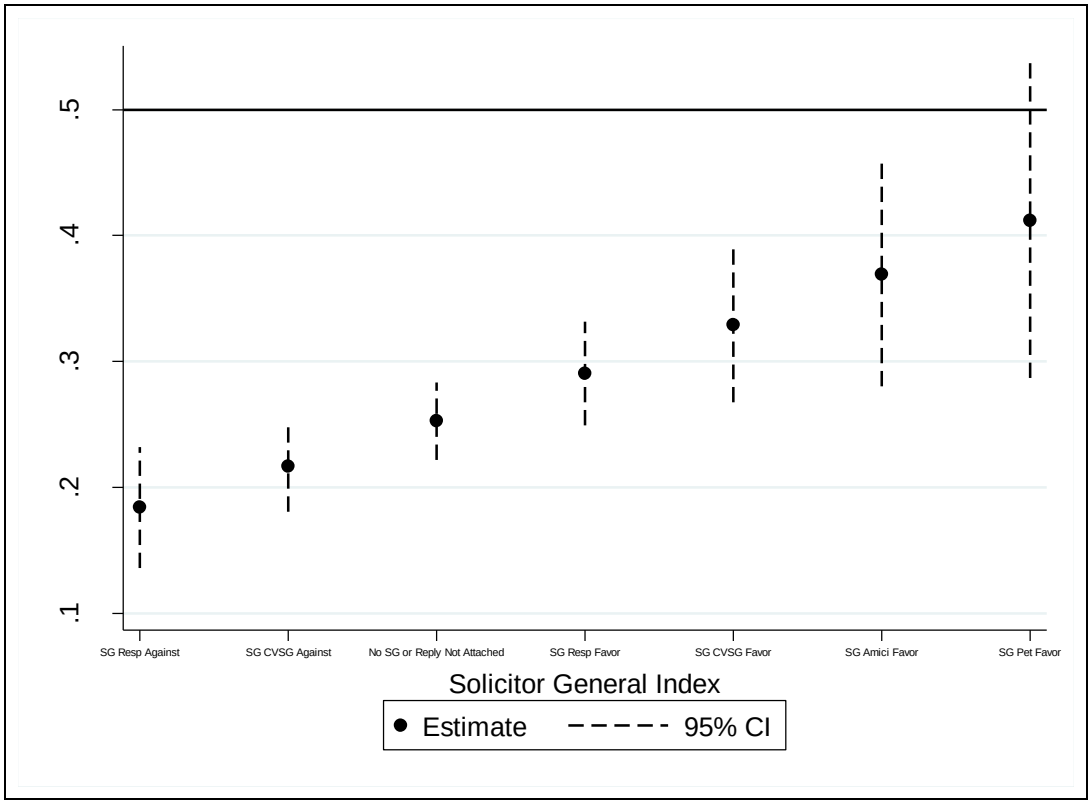

Table 63 - Predicted Probability of Supreme Court Vote on Cert
(Individual Petitioner the Omitted Litigant Category)
(as Solicitor General index changes from
-2 (=SG Respondent Against Cert) to 4 (=SG Petitioner in Favor of Cert)[89]

USSC Vote on Cert = 0.1161 95% Confidence Interval = 0.0239 to 0.3685

[89] All other variables held at their mean value.

Table 64 - Predicted Probability of Supreme Court Vote on Cert
(Responding Individual as the Omitted Litigant Category)
(as Solicitor General index changes from
-2 (=SG Respondent Against Cert) to 4 (=SG Petitioner in Favor of Cert)[90]

USSC Vote on Cert = 0.1555 95% Confidence Interval = 0.0512 to 0.3732

[90] All other variables held at their mean value.

Table 65 – Litigant Pairings

Petitioner vs. Respondent	Value
U.S. Government vs. Individual	6
U.S. Government vs. Business	5
U.S. Govt. vs. State/Local Govt.	4
State/Local Govt. vs. Individual	3
State/Local Govt. vs. Business	2
Business vs. Individual	1
U.S. Government vs. U.S. Government	0
State/Local Govt. vs. State/Local Govt.	0
Business vs. Business	0
Individual vs. Individual	0
Individual vs. Business	-1
Business vs. State/Local Govt.	-2
Individual vs. State/Local Govt.	-3
State/Local Govt. vs. U.S. Government	-4
Business vs. U.S. Government	-5
Individual vs. U.S. Government	-6

Table 66 – Supreme Court Decision to Grant Cert - Amicus Briefs, Solicitor General, and Party Litigants (Litigant Index) (1=Grant, 0=Deny)

	(19) Case cert Coef.	Std. Err.
Party Litigant Index	0.1465*	(0.0545)
Alleged Conflict	0.8249*	(0.2526)
Actual Conflict	4.3887*	(0.4489)
Constitutional Claim	0.1858	(0.3030)
SG Index	0.6883*	(0.1534)
Lower Court Dissent	0.9854*	(0.4050)
Lower Court Direction	1.0518*	(0.3143)
Lower Court Reversal	0.8348*	(0.2882)
Amicus Brief in Favor of Cert	3.0969*	(0.8475)
Amicus Brief Against Cert	-0.4228	(1.1827)
Death Penalty	0.2517	(0.6643)
Constant	-5.3086*	(0.2358)
N	1240	

* $p<.05$ Model 19 – McFadden R^2 (0.5250) ePRE (0.4631)

Table 67 – Supreme Court Decision to Grant Cert – U.S. Government, 1986-1993 Terms
(1=Grant, 0=Deny)†

	(20) Case cert Coef.	Std. Err.	(21) Case Cert Coef.	Std. Err.
U.S. Govt. vs. Individual	2.0074*	(0.8622)	---------	---------
U.S. Govt. vs. State/Local Govt.	---------	---------	2.9514*	(1.2042)
Alleged Conflict	0.8118*	(0.2509)	0.8164*	(0.2506)
Actual Conflict	4.3260*	(0.4099)	4.3863*	(0.4116)
Constitutional Claim	0.1896	(0.3249)	0.1355	(0.3283)
SG Index	0.7545*	(0.1801)	0.8879*	(0.1575)
Lower Court Dissent	1.1983*	(0.3953)	1.1744*	(0.3979)
Lower Court Direction	1.4245*	(0.2344)	1.4807*	(0.2296)
Lower Court Reversal	0.8834*	(0.2924)	0.8949*	(0.2882)
Amicus Brief in Favor of Cert	3.3459*	(0.8553)	3.3069*	(0.9033)
Amicus Brief Against Cert	-0.7653	(1.1814)	-0.7688	(1.2197)
Death Penalty	0.1974	(0.6013)	0.1822	(0.6051)
Constant	-5.7646*	(0.1939)	-5.7521*	(0.1902)
N	1240		1240	

* $p<.05$ Model 20 – McFadden R^2 (0.522) ePRE (0.4618)
Model 21 – McFadden R^2 (0.5199) ePRE (0.4611)
†The U.S. government versus a business and the U.S. government petitioning against another federal agency are omitted because the Court grants cert every time the U.S. petitions against a business or another agency of the federal government.

Table 68 – Supreme Court Decision to Grant Cert – State/Local Government, 1986-1993 Terms (1=Grant, 0=Deny)†

	(22) Coef.	Std. Err.	(23) Coef.	Std. Err.	(24) Coef.	Std. Err.
State/Local Govt. vs. Individual	0.6705*	(0.3334)	---------	---------	---------	---------
State/Local Govt. vs. Business	---------	---------	0.4899	(0.6542)	---------	---------
State/Local Govt. vs. U.S. Govt.	---------	---------	---------	---------	3.0069*	(0.6906)
Alleged Conflict	0.8000*	(0.2458)	0.7802*	(0.2484)	0.7799*	(0.2463)
Actual Conflict	4.4047*	(0.4114)	4.3858*	(0.4086)	4.4250*	(0.4135)
Constitutional Claim	0.1364	(0.3285)	0.1347	(0.3244)	0.1514	(0.3334)
SG Index	0.8927*	(0.1530)	0.9015*	(0.1578)	0.9391*	(0.1559)
Lower Court Dissent	1.1357*	(0.3913)	1.1520*	(0.3982)	1.1846*	(0.3978)
Lower Court Direction	1.2671*	(0.2618)	1.4567*	(0.2298)	1.4776*	(0.2253)
Lower Court Reversal	0.8911*	(0.2797)	0.9013*	(0.2832)	0.9062*	(0.2848)
Amicus Brief in Favor of Cert	3.4337*	(0.8691)	3.2577*	(0.8991)	3.2383*	(0.8832)
Amicus Brief Against Cert	-0.8387	(1.2001)	-0.8706	(1.1905)	-0.7076	(1.2062)
Death Penalty	0.1205	(0.6124)	0.1903	(0.6093)	0.1810	(0.6130)
Constant	-5.7227*	(0.1870)	-5.7155*	(0.1876)	-5.7522*	(0.1925)
N	1240		1240		1240	

* $p<.05$ Model 22 – McFadden R^2 (0.5202) ePRE (0.4618)
Model 23 – McFadden R^2 (0.5183) ePRE (0.4598)
Model 24 – McFadden R^2 (0.5234) ePRE (0.4660)
†State and local government versus state and local government was omitted because the Supreme Court granted cert every time a local or state government petitioned against another local or state government.

Table 69 – Supreme Court Decision to Grant Cert – Business, 1986-1993 Terms (1=Grant, 0=Deny)

	(25)		(26)		(27)		(28)	
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Business vs. Individual	-0.9369	(0.5141)	---------	---------	---------	---------	---------	---------
Business vs. Business	---------	---------	-0.9325	(0.9513)	---------	---------	---------	---------
Business vs. S/L Govt.	---------	---------	---------	---------	1.5041*	(0.4656)	---------	---------
Business vs. U.S. Govt.	---------	---------	---------	---------	---------	---------	0.4628	(0.5036)
Alleged Conflict	0.7508*	(0.2238)	0.7955*	(0.2496)	0.7704*	(0.2476)	0.7657*	(0.2454)
Actual Conflict	4.4208*	(0.4196)	4.4586*	(0.3570)	4.4244*	(0.4129)	4.3965*	(0.4169)
Constitutional Claim	0.1091	(0.3280)	0.0940	(0.3253)	0.1416	(0.3237)	0.1554	(0.3289)
SG Index	0.9196*	(0.1662)	0.9044*	(0.1557)	0.8870*	(0.1577)	0.8973*	(0.1559)
Lower Court Dissent	1.1839*	(0.4017)	1.2749*	(0.2877)	1.1955*	(0.4006)	1.2058*	(0.4038)
Lower Court Direction	1.5803*	(0.2248)	1.4731*	(0.2314)	1.5020*	(0.2324)	1.4476*	(0.2298)
Lower Court Reversal	0.9946*	(0.2682)	0.8286*	(0.2895)	0.8806*	(0.2878)	0.8536*	(0.2947)
Amici Favor Cert	3.6326*	(0.6750)	3.3383*	(0.8979)	3.3195*	(0.9092)	3.3582*	(0.8955)
Amici Against Cert	-1.1778	(1.0194)	-0.8415	(1.2172)	-0.7752	(1.2215)	-0.8552	(1.2148)
Death Penalty	0.1250	(0.6001)	0.0963	(0.5924)	0.1951	(0.6091)	0.1705	(0.6076)
Constant	-5.7085*	(0.1827)	-5.6939*	(0.1899)	-5.7635*	(0.1896)	-5.7176*	(0.1834)
N	1240		1240		1240		1240	

* $p<.05$ Model 25 – McFadden R^2 (0.5208) ePRE (0.4640)
Model 26 – McFadden R^2 (0.5197) ePRE (0.4772)
Model 27 – McFadden R^2 (0.5206) ePRE (0.4625)
Model 28 – McFadden R^2 (0.5184) ePRE (0.4607)

Table 70 – Supreme Court Decision to Grant Cert – Individual, 1986-1993 Terms (1=Grant, 0=Deny)

	(29)		(30)		(31)		(32)	
	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.	Coef.	Std. Err.
Individual vs. Individual	-0.6402	(0.3280)	---------	---------	---------	---------	---------	---------
Individual vs. Business	---------	---------	-0.1479	(0.5043)	---------	---------	---------	---------
Individual vs. S/L Govt.	---------	---------	---------	---------	0.3894	(0.2533)	---------	---------
Individual vs. U.S. Govt	---------	---------	---------	---------	---------	---------	-0.9384*	(0.4421)
Alleged Conflict	0.7725*	(0.2534)	0.7900*	(0.2485)	0.8064*	(0.2485)	0.8113*	(0.2494)
Actual Conflict	4.3282*	(0.4110)	4.3694*	(0.4197)	4.4104*	(0.4015)	4.4576*	(0.4740)
Constitutional Claim	0.1798	(0.3325)	0.1368	(0.3286)	0.0676	(0.3240)	0.1217	(0.3046)
SG Index	0.8856*	(0.1584)	0.8879*	(0.1588)	0.8848*	(0.1572)	0.7670*	(0.1348)
Lower Court Dissent	1.1597*	(0.3928)	1.1818*	(0.4013)	1.1701*	(0.3949)	1.0445*	(0.4118)
Lower Court Direction	1.4846*	(0.2331)	1.4494*	(0.2392)	1.5290*	(0.2418)	1.3011*	(0.2453)
Lower Court Reversal	0.9034*	(0.2904)	0.8851*	(0.2905)	0.8954*	(0.2906)	0.8197*	(0.2885)
Amici Favor Cert	3.2911*	(0.9293)	3.3370*	(0.9098)	3.3641*	(0.9068)	3.1965*	(0.8543)
Amici Against Cert	-0.8594	(1.2459)	-0.8267	(1.2248)	-1.0331	(1.2251)	-0.8116	(1.1737)
Death Penalty	0.1250	(0.6042)	0.1575	(0.6107)	-0.0101	(0.5918)	0.0245	(0.6863)
Constant	-5.6477*	(0.1934)	-5.6963*	(0.1912)	-5.8163*	(0.2092)	-5.4235*	(0.2176)
N	1240		1240		1240		1240	

* $p<.05$ Model 29 – McFadden R^2 (0.5194) ePRE (0.4591)
Model 30 – McFadden R^2 (0.5179) ePRE (0.4592)
Model 31 – McFadden R^2 (0.5190) ePRE (0.4612)
Model 32 – McFadden R^2 (0.5234) ePRE (0.4639)

Figure 17 - Party Litigant Index on the Supreme Court's Vote on Cert

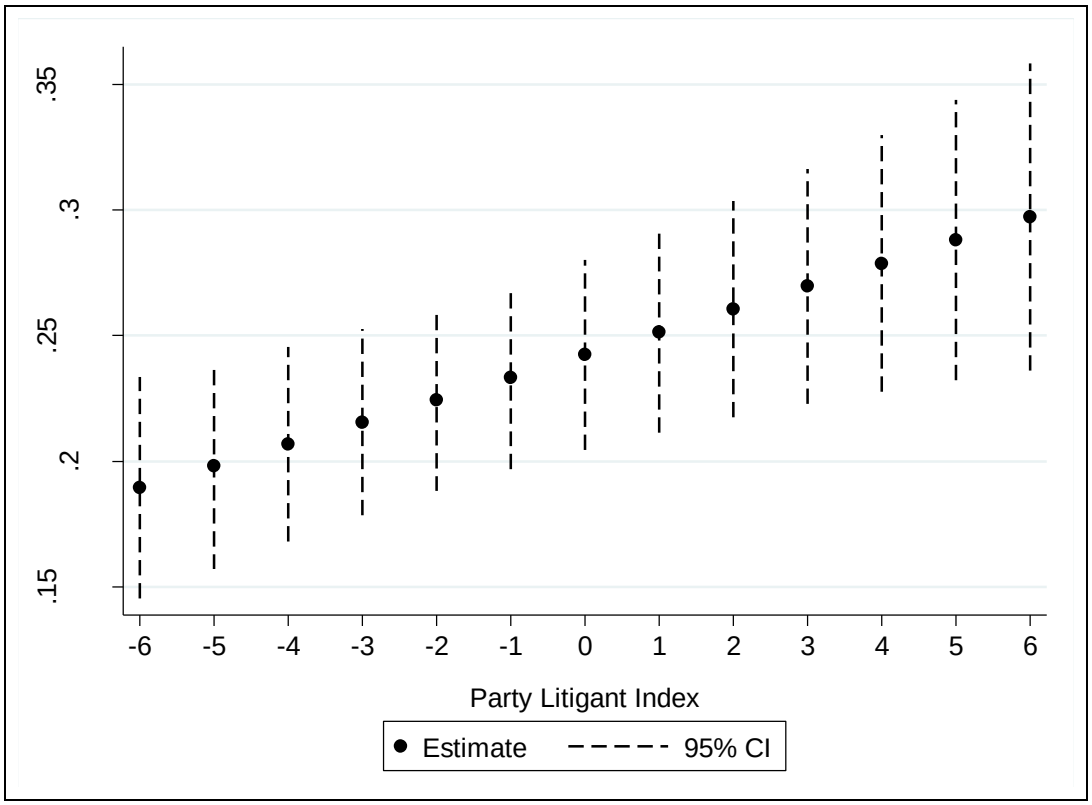

Table 71 - Predicted Probability of Supreme Court Vote on Cert
(as Party Litigant index changes from -6 (=Individual vs. U.S. Government)
to 6 (=U.S. Government vs. Individual)[91]

USSC Vote on Cert = 0.0193	95% Confidence Interval = 0.0034 to 0.0517

[91] All other variables held at their mean value.

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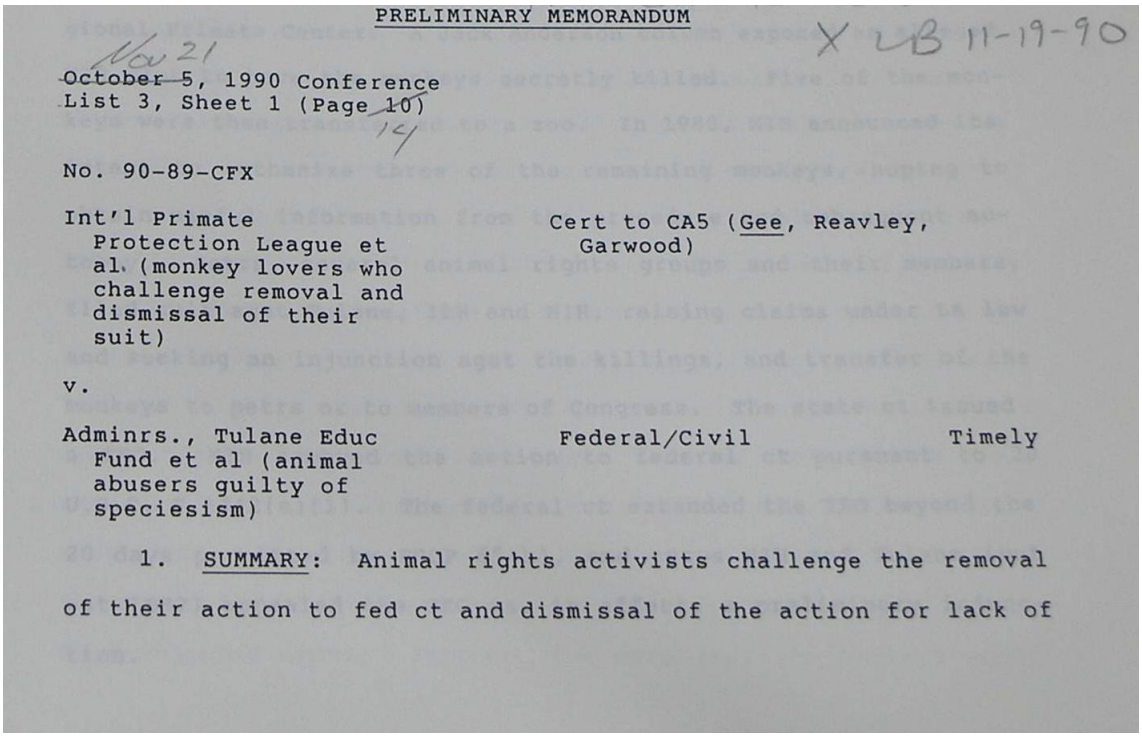
Appendix

Visual Description of the Cert Pool Memos

First Page of the Memo



PRELIMINARY MEMORANDUM

X LB 11-19-90

Nov 21

October 5, 1990 Conference
List 3, Sheet 1 (Page 10)

14

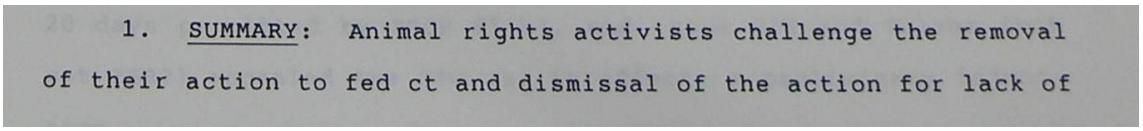
No. 90-89-CFX

Int'l Primate Protection League et al. (monkey lovers who challenge removal and dismissal of their suit)	Cert to CA5 (Gee, Reavley, Garwood)	
v.		
Adminrs., Tulane Educ Fund et al (animal abusers guilty of speciesism)	Federal/Civil	Timely

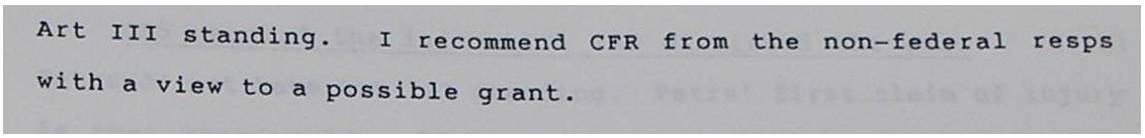
1. SUMMARY: Animal rights activists challenge the removal of their action to fed ct and dismissal of the action for lack of

Sections of the Memo

Section One – Detailed Summary of the Case



1. SUMMARY: Animal rights activists challenge the removal of their action to fed ct and dismissal of the action for lack of



Art III standing. I recommend CFR from the non-federal resps with a view to a possible grant.

Section Two – Facts and Proceedings Below

2. FACTS AND PROCEEDINGS BELOW: Dr. Edward Taub of the Inst for Behav Res (IBR) was convicted in Md of cruelty to 17 macaque monkeys being used in experiments in which nerves to the monkeys' limbs were severed. A state ct order awarded custody of the monkeys to the National Institutes of Health (NIH) until 1983. The disposition of the monkeys apparently became a cause celebre, and over 300 members of Congress asked (and NIH agreed?) that they be turned over to an animal sanctuary. Nevertheless, NIH has continued to keep the monkeys since expiration of the state ct custody order, transferring them to Tulane's Delta Regional Primate Center. A Jack Anderson column exposed an alleged NIH plot to have the monkeys secretly killed. Five of the monkeys were then transferred to a zoo. In 1988, NIH announced its intent to euthanize three of the remaining monkeys, hoping to obtain useful information from the procedure and subsequent autopsy. Petrs, several animal rights groups and their members, filed suit agst Tulane, IBR and NIH, raising claims under La law and seeking an injunction agst the killings, and transfer of the monkeys to petrs or to members of Congress. The state ct issued a TRO. NIH removed the action to federal ct pursuant to 28 U.S.C. § 1442(a)(1). The federal ct extended the TRO beyond the 20 days permitted by FRCP 65(b), and resps NIH and Tulane (but not IBR?) appealed the TRO as, in effect, a preliminary injunction.

Section Three – Contentions Made by the Petitioner and the Respondent

3. CONTENTIONS: Petrs: (1) Section 1442(a)(1) clearly permits removal only by federal officers, not by federal agencies. CA5's position is supported by only a few cts.[1] CA5's decision directly conflicts with Lovell Mfg. v. Export-Import Bank, 843 F.2d 725 (CA3 1988), and with the vast majority of dcts.[2] It is not surprising that the majority rule is found primarily in dct cases, since remand orders are generally unappealable. Thermtron Prods., Inc. v. Hermansdorfer, 423 U.S. 336, 352-53 (1976). When petrs sued resps in Md, the case was removed on the basis of federal question jurisdiction. IPPL v. IBR, supra. CA4 found petrs had no standing to raise the federal question they presented, and remanded the case to state ct. CA4

[illegible] their interest in the monkeys.

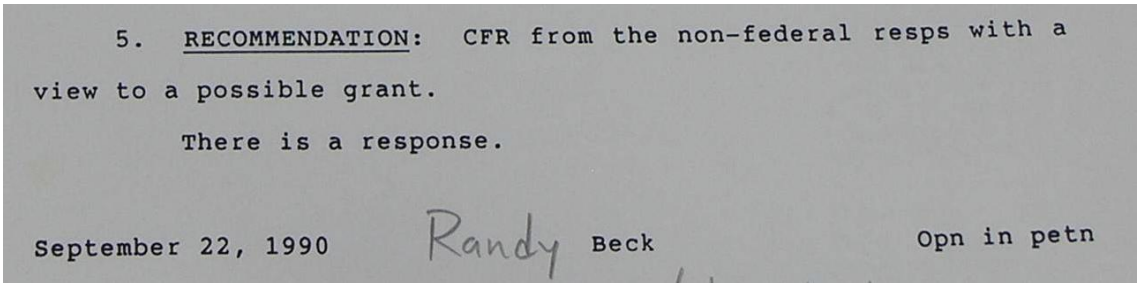
Resp (SG): (1) CA5 correctly determined that petrs lack Art III standing. Petrs claim that they sought broader relief than in the CA4 case is not only factually incorrect, but also fails to establish standing. Petrs' alleged injury (lack of a future relationship w/ monkeys) is not "fairly traceable" to the assertedly illegal conduct, but rather is attributable to the fact that the monkeys are privately owned. See Allen v. Wright, 468 U.S. 737, 753 & n.19 (1984). Petrs' alleged injury is also not "redressable" by any relief to which they might be entitled under state law. None of their state law causes of action entitled them to continue their relationships with the monkeys or to be granted custody. Further, even if Art III standing had been found, CA5 would have had to dismiss the case (even agst the private resps) on Supremacy Clause grounds, because petrs cannot

Section Four – Memo Clerk's Evaluation of the Case

4. DISCUSSION: Petrs' first issue -- whether a federal agency may remove an action under § 1442(a)(1) -- is potentially certworthy. That statute permits removal by various "persons" including "[a]ny officer of the United States or any agency thereof, or person acting under him..." (emphasis added). The issue is whether an "agency [of the United States]" is a "person" entitled to remove, or whether only an "officer of ... [an] agency" may do so. The latter is a more natural reading of the statutory language, but the former may be more consistent with the statute's purpose to protect the exercise of federal authority from state ct interference. As demonstrated by petrs, there is a longstanding split of authority on this question. See 14A Wright, Miller & Cooper, Federal Practice and Procedure § 3727 (2d ed. 1985). While apparently only two CAs have addressed the issue, they reached opposite conclusions. Most of the relevant cases were decided by dcts, probably, as petrs suggest, because dct remand orders are generally unreviewable. 28 U.S.C. § 1447(d).

The SG's argument that the issue would benefit from further study in the lower cts is strained, given that a split of authority has existed for over 20 years. While only two CAs have ruled on the issue (CA5 in three cases), there are at least 15 dct opinions. The existence of nearly 20 published opinions also

Section Five – Recommendation by the Memo Clerk

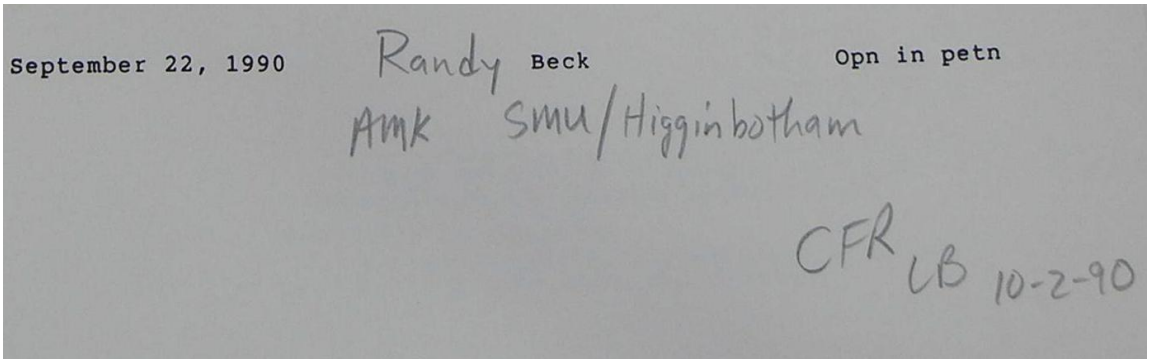


5. RECOMMENDATION: CFR from the non-federal resps with a view to a possible grant.

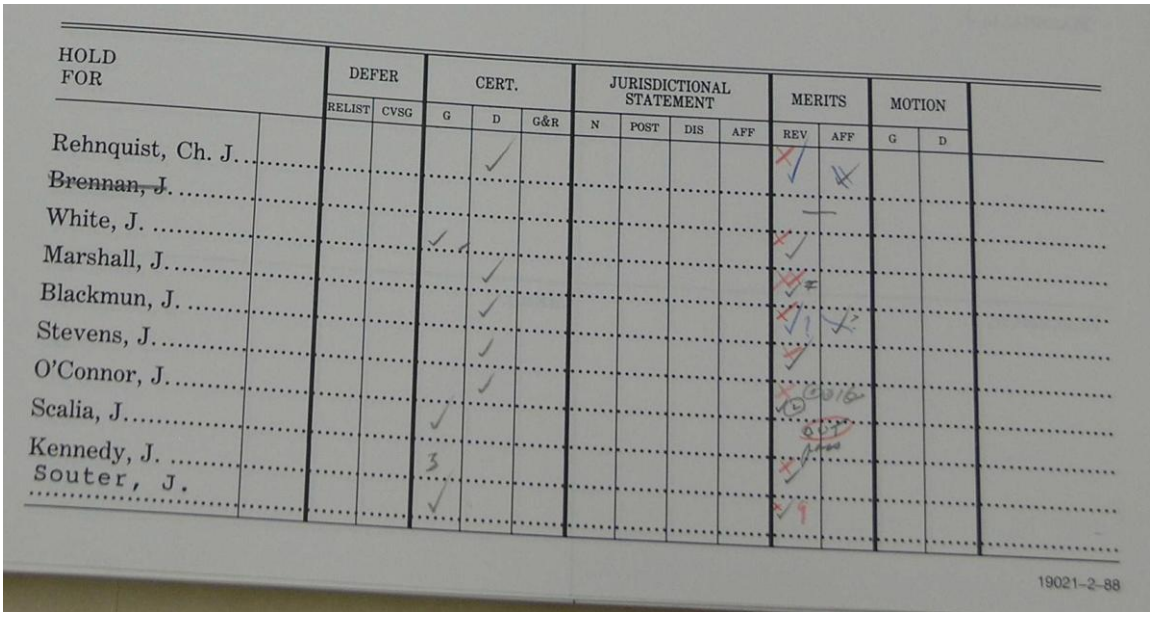
There is a response.

September 22, 1990 Randy Beck Opn in petn

Blackmun's Clerk's Markup of the Memo



Docket Sheets



HOLD FOR	DEFER		CERT.			JURISDICTIONAL STATEMENT				MERITS		MOTION	
	RELIST	CVSG	G	D	G&R	N	POST	DIS	AFF	REV	AFF	G	D
Rehnquist, Ch. J.				✓						✓	✓		
~~Brennan, J.~~													
White, J.			✓							✓	—		
Marshall, J.				✓						✓			
Blackmun, J.				✓						✓			
Stevens, J.				✓						✓	✓		
O'Connor, J.				✓						✓			
Scalia, J.			✓							✓			
Kennedy, J.			3							✓			
Souter, J.			✓							✓			

19021–2–88

Zachary Wallander

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Exam Fields: American Politics and Public Administration & Public Policy

Dissertation: SCTOUS on Cert: A Look at the Blackmun Papers

Ways in which decision making by the Supreme Court influences political actors has prompted considerable attention from scholars. It seems reasonable, however, to suggest that guidance might come from those whom the Court influences. Analyzing pool memos from the Blackmun Papers, I extract information provided by law clerks, lower court judges, amici, attorneys, and litigants to determine if these groups and individuals provide the information justices need when making decisions on cert and setting the Court's agenda. Dissecting relevant information from that which is irrelevant makes decision making a complex process that often involves the justices seeking out information and advice given by other actors.

Committee: Sara Benesh (chair), Erin Kaheny, David A. Armstrong, Kathleen Dolan, and Artemus Ward (Northern Illinois University)

M.A., Political Science, University of Wisconsin-Milwaukee, May 2010
Thesis: Judicial Decision Making and the Supreme Court: The "Judge Mention" Effect
Committee: Sara Benesh (chair), Erin Kaheny, David A. Armstrong

B.A., Political Science – Law Studies, University of Wisconsin-Milwaukee, May 2008
Minor: History and Psychology
Magna Cum Laude (with honors in the major), Dean's List
Capstone Paper: Gender and Sex Discrimination

Teaching Experience

Instructor, University of Wisconsin-Milwaukee

Law and Society, Fall 2013, Spring 2014: Full course responsibility, including choice of text, syllabus preparation, course requirements, lecture and grading.

Teaching Assistant, University of Wisconsin-Milwaukee

Introduction to American Government and Politics (for Kathleen Dolan), Fall 2011, 2012, Spring 2013 (*including discussion sections)*; (for David Helpap) Spring 2012

(*including discussion sections)*; (for Sara Benesh), Spring 2010: Lead weekly discussion sections, held one-on-one office meetings with students outside class, and graded weekly discussion papers.

The Supreme Court (for Sara Benesh), Fall 2010: Generated mock Supreme Court cases, aided students in writing mock petitions to the Supreme court, graded papers and student exams.

The Presidency (for Lara Wessel), Spring 2011 (online): Graded papers and student responses to weekly online questions.

Women and Politics (for Kathleen Dolan), Fall 2009 (online): Engaged in discussion with student's online posts to weekly questions and graded student papers and exams.

Constitutional Law – Civil Rights and Liberties (for Sara Benesh), Spring 2009: Corrected student case briefs and exams.

Constitutional Law – Government Powers and Federalism (for Erin Kaheny), Fall 2008 (online); Fall 2009; Spring 2010 (online): Graded online posts, exams, and weekly written case briefs.

Women and the Law (for Erin Kaheny), Fall 2010 (online): Initiated academic debate with students in weekly online posts and graded papers.

Law and Society (for Erin Kaheny), Fall 2008 (online); Spring 2011 (face-to-face): Responded to student's online posts, graded legal research papers, debate papers, exams, and met individual students for academic guidance.

Guest Lecturer, University of Wisconsin-Milwaukee

"Law Clerks on Cert." Spring 2014. For undergraduate Trial Courts in the Judicial Process class. University of Wisconsin-Milwaukee.

"Political Parties." Spring 2013. For undergraduate Introduction to American Government and Politics class. University of Wisconsin-Milwaukee.

"The Judiciary – The Federal Courts." Fall 2011, 2012. Spring 2010, 2012, 2013. For undergraduate Introduction to American Government and Politics class. University of Wisconsin-Milwaukee.

"The Bill of Rights and Civil Liberties." Spring 2012. For undergraduate Introduction to American Government and Politics class. University of Wisconsin-Milwaukee.

"Search and Seizure." Fall 2011. For undergraduate Constitutional Law – Civil Rights and Liberties class. University of Wisconsin-Milwaukee.

"The Bureaucracy." Spring 2010. For undergraduate Introduction to American Government and Politics class. University of Wisconsin-Milwaukee.

Research Experience

Research Assistant, University of Wisconsin-Milwaukee, Summer 2013

"Courting Diversity" (for Erin B. Kaheny, John Szmer, and Rob Christensen)

Work Under Review

Wallander, Zachary and Timothy Lynch. "Judicial Campaign Funds and the Legitimacy of State Courts. Under review at *State and Local Government Review.*

Working Papers

"The Influence of Law Clerks: Evidence from the Blackmun Papers," with Sara C. Benesh and David A. Armstrong.

"Decision Making and the Supreme Court: The 'Judge Mention' Effect"

"The Blackmun Papers: Understanding Decision Making through the Eyes of Justice Blackmun"

"Career Effects on Review and Reversal: A Longitudinal Analysis of Circuit Court Judicial Behavior," with Sara C. Benesh.

Conference Presentations

"Law Clerks as Advisors: A Look at the Blackmun Papers" (with Sara Benesh). Presented at the Marquette Law Clerk Symposium, April 11-12, 2014.

"The Influence of Amici, Attorneys, and Litigant Expertise: A Look at the Blackmun Papers." Presented at the 2014 meeting of the Southern Political Science Association.

"Decision Making and the Supreme Court: The "Judge Mention" Effect." Presented at the 2013 meeting of the Midwest Political Science Association.

"Judicial Campaign Funds and the Legitimacy of State Courts" (with Timothy R. Lynch). Presented at the 2012 meeting of the Midwest Political Science Association.

"The Influence of Law Clerks: Evidence from the Blackmun Papers" (with Sara Benesh). Presented at the 2010 meeting of the Midwest Political Science Association.

Professional Memberships

American Political Science Association
Midwest Political Science Association
Southern Political Science Association
Political Science Graduate Student Association, University of Wisconsin-Milwaukee

Computing Skills

Stata, SPSS, R

Professional References

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