

The Solicitor General, Signals, and Supreme Court Oral Arguments ¹

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Abstract

When the United States makes its view known to the Supreme Court as *amicus curiae* the side that garners the Solicitor General's support is more likely to win. Existing studies, however, virtually ignore cases where the Solicitor General personally appears at oral arguments. We rectify this limitation by testing whether the government is more successful when the Solicitor General appears at oral arguments as *amicus curiae* than if an assistant appears or if the government only submits a brief. We find the government has a high probability of success when the Solicitor General personally argues but less so when only submitting a brief or when an assistant appears. Additionally, we find the Solicitor General can virtually guarantee success by combining strategic appearances with ideological signals. We discuss the implications this has for outside interests and the role of the Court's place in our system of shared powers.

It is accepted among judicial scholars that the Solicitor General is one of the most successful *amici curiae* to appear before the Supreme Court (see e.g., Puro 1981; O'Connor 1983; Caplan 1987; Segal 1988, 1991; Salokar 1992; Bailey et al. 2005). While the government only participates as *amicus* in about eight percent of all cases it wins almost 76 percent of the time when it appears in this capacity. However, scholars continue to disagree about exactly why the government wins so often when the Solicitor General intervenes as a friend of the Court. We argue that when the executive branch sends a signal that the outcome of a case is salient for the president the justices are likely to support the government's position, even if they are ideologically opposed to the president's policy preferences (see Epstein and Knight 1998a; Epstein and Walker 1998).¹

The federal government certainly indicates that a case is important to it by submitting *amicus* briefs to the Court (Spriggs and Wahlbeck 1997), or by sending ideological signals (Bailey et al. 2005) to the justices, but the Solicitor General may sometimes believe a stronger signal is needed to accomplish this goal. We argue there are times when the Solicitor General may want to face the justices in person to explain the government's position. Sending such a signal indicates that the outcome of a case is of utmost importance to the president. Thus, we test the hypothesis that when the Solicitor General appears at oral arguments as *amicus curiae* the party it supports is significantly more likely to win than if the government only submits a brief on that party's behalf. To do so, we compare the government's success when

¹Scholars agree that the Solicitor General represents the views of the president and current administration. For instance, Meinhold and Shull (1998) demonstrate that the Solicitor General is responsive to the ideological preferences of the presidents who appoint them and Deen et al. (1998, 4) argue that the Solicitor General "is viewed as responsible for advancing the president's agenda in the legal system." Pacelle (1999, 2) agrees with this assessment, and suggests that even though Solicitors General are independent, "Most believe it is proper to use the office to contribute to the president's broader agenda..." Empirically, Epstein and Walker (1998, 43) point out that president Clinton's Solicitor General (Drew Days III) rewrote at least four briefs that had already been filed by president Bush's Solicitor General so as to reflect the preferences of the new administration.

the Solicitor General appears before the Court as *amicus* in various capacities.

The Solicitor General and the Court

A myriad of explanations have been offered for why the federal government enjoys great success before the Supreme Court (see e.g., Puro 1981; O'Connor 1983; Caplan 1987; Segal 1988, 1991; Salokar 1992; Bailey et al. 2005). Some scholars argue that the Solicitor General wins so often because of his special relationship with the justices. In essence, he is viewed as the “Tenth Justice” (Salokar 1992; Caplan 1987; Scigliano 1971).² Others posit that the government is highly successful because it is the quintessential repeat player (Segal 1988; Galanter 1974). Additionally, there is evidence the Solicitor General wins because the office has a high degree of credibility with the Court (Salokar 1992), because it provides the best legal arguments (Segal 1988), and because its attorneys have the most experience (McGuire 1998). The two most recent analyses of this topic diverge in their conclusions. Bailey et al. (2005) suggest the Solicitor General’s success is strongly related to the current administration’s ideological relationship, and more importantly to its ideological compatibility, with the Court. Alternatively, Nicholson and Collins (2008) argue that the office’s success is related to its legal, political, and administrative functions.³

Interestingly, none of the above analyses consider instances where the Solicitor General, or an assistant Solicitor General, participates at the oral arguments as *amicus curiae* (but see Segal 1988).⁴ We seek to rectify this oversight by going beyond the existing literature

²We use the male pronoun “he” throughout because of the time period of our study.

³Nicholson and Collins analyze the Solicitor General’s participation as a two stage process. They demonstrate that the decision to file an *amicus* brief affects the success the government has before the Court. We view this two stage process differently, and we will have more to say on this point below (see the appendix).

⁴Given that research shows oral argument affects the Court’s decisions (e.g., Johnson 2004; Johnson, Spriggs, and Wahlbeck 2006), a logical extension of these findings would be the Solicitor General’s participation in these proceedings might also be important for how a case is decided.

and modeling how different forms of participation as *amicus* affect the government's success before the Court. The next section offers the theoretical argument on which we base our model.

The Solicitor General and Oral Arguments

We posit that the president can procure favorable decisions by signaling that the outcome of a case is salient for the administration. Previous research suggests that justices listen to, and often rule in favor, of the U.S. government because the executive branch can levy sanctions against the Court or refuse to enforce the Court's decisions.⁵ Sanctions can take many forms including the refusal to enforce decisions (Epstein and Walker 1998; Wasby 1993), taking anti-Court action in Congress (Baum 1995), or publicly criticizing the justices for making particular decisions (Baum 1995). Examples of such tactics abound in our nation's history. For instance, in response to *Cherokee Nation v. Georgia* (1831) President Jackson said, "John Marshall has made his decision, now let him enforce it" (Ducat 1996, 110). Another example stems from the Bush Administration's reaction to the Court's decision in *Hamdan v. Rumsfeld* (2006). The administration preferred not to abide by the Court's decision, spurred the passage of new legislation after the decision, and publicly criticized the majority for the decision. As Vice President Cheney argued, "I happen to disagree with the Supreme Court. I think the Thomas, Scalia, Alito minority views were the correct ones. The fact of the matter is the Court said for example the Geneva Convention applies to terrorists, that Common Article 3 applies to an international conflict. We've never before believed it did" (2006).

⁵As Epstein and Knight argue, "To create efficacious law—that is, policy that the other branches will respect and with which they will comply—justices must take into account the preferences and expected actions of these government actors" (1998a, 138).

Certainly the Constitution and our system of separated powers provide for the various institutions to levy sanctions against one another, but do possible presidential sanctions affect the Court? For us, the answer is clear. First, the president can and does levy sanctions against the other branches of the federal government, and even the threat of sanctions can be effective. Indeed, research on the interaction between the president and Congress shows that the mere threat of sanction—a veto—can change congressional decisions (see e.g., Cameron 2000). Second, there is evidence Supreme Court justices are concerned enough about the preferences of the president, members of Congress, and other institutions to suggest they take potential sanctions seriously. The Court also acts to ensure possible threats do not come to fruition. For instance, analysts (Woodward and Armstrong 1979) argue the Warren Court remained unanimous on its school integration cases to ensure the justices put up as strong an argument as possible so the decisions would be effectively enforced by the executive. Similarly, the Court unanimously ruled against the president in *U.S. v. Nixon* in an effort to guarantee President Nixon would comply with its decision (see e.g., Epstein and Walker 1992).

More specifically, real or threatened presidential sanctions can and do have bite, and the justices clearly think about the president's preferred policies as they make decisions (Johnson 2003; 2004). As to the former point, Eskridge's (1991) work delineates what happens if the Court strays too far from the president or Congress in its civil rights cases. For the latter, Johnson (2004) finds that 34 percent of all questions the justices pose to counsel during oral arguments focus on the preferences of external actors. And, while not all of these are focused on the president, the evidence is suggestive. The justices' actions during conference discussions make this point as well. In his sample of 75 cases, Johnson (2004) finds the

justices raised 102 issues about external actors. The bottom line is that, at the very least, justices consider that sanctions may be levied against them by the executive, and they try to elicit information that will help them make decisions that do not stray too far, too often, from the president's preferred outcome.

Signaling and Oral Arguments

Signals (or tacit cues) can be used by political actors to assess the credibility of information transmitted to them from others (Crawford and Sobel 1982). These signals are informative and aid coordination between the actors, because sending them is costly (Banks and Sobel 1987; Crawford and Sobel 1982). More specifically, signals can be informative if two conditions are met (Bailey et al. 2005). First, if an information asymmetry exists among actors and a “sender” transmits a message. Second, the receiver of information knows that the signal sender may offer incomplete or inaccurate information (Bailey et al. 2005). Receivers therefore take into account the credibility of the signal they receive as they determine their best course of action. For our purposes, we are interested in the credibility of signals sent to a receiver.

In our question of interest, the Solicitor General can present the president's views as *amicus curiae*, which, we argue, is an effective means for the president to signal the Court that the outcome of a case is salient for him (see e.g., Epstein and Knight 1998a). Taking such action involves two key decisions—whether to do so and, if so, in what capacity to appear as *amicus curiae*. The first decision forces the Solicitor General to determine when it is appropriate to send a signal. The answer is obvious to at least one former Solicitor General—not often. Indeed, Rex Lee argues that, “it is a mistake to file in too many [cases], because in so doing the ability of the Solicitor General to serve any of the president's objectives would

suffer” (Lee 1986, 599-600). The reason for this is intuitive; if the government files *amicus* briefs in every case then the justices have no means to determine which cases are important to the president. As Salokar notes, “Lee’s concern as Solicitor General was that he not become involved in so many cases that the Court should begin to expect the government’s views, and as a result, give them less weight” (Salokar 1992, 141). This position is bolstered by Paul Clement who, while not speaking directly about participation as *amicus curiae* but on decisions to file appeals, indicated that “he routinely declines requests in order to bring only the most meritorious claims and to preserve the integrity and reputation of his office as a valued assistant to the Court in screening cases” (Harvard Law School 2007). The point is that signals cannot be meaningful if they all send the same message, and the justices therefore cannot use them to determine which cases are truly salient for the president.

Additionally, the Solicitor General must ensure that the administration does not appear overly political when it decides to appear as *amicus curiae*. As one former assistant Solicitor General argued, “The question is whether you lose some of that credibility by filing briefs in cases where it is clear to everybody, including the Court, that the only interest is political, political in the sense that this is this administration’s philosophy” (Salokar, 1992, 14). While a plethora of cases exist in which the administration wants its views known to the justices, the Solicitor General knows he cannot express these views in every case—especially in those where he has a vested political interest (Johnson 2003). Stated another way, the decision to participate as *amicus curiae* is essentially a bidding game for the Solicitor General, whereby the government has to calculate when it should place a bid and when it should stay out of the game. As former Solicitor General Lee put it, “It is almost as though we had a certain number of chips that we could play. Where was the best place to play them?”

More generally, the question of when to participate as *amicus* involves the president's credibility in the eyes of the justices. This credibility is grounded in the norm that the justices will account for the fact that the outcome of a case is salient for the president while the Solicitor General will use the special status the Court accords his office with caution. Ultimately, Solicitors General do not participate often as *amicus*, but when someone from the office does so the Court heeds the signal when possible (see e.g., Salokar 1992).⁶

Solicitors General tacitly agree not to appear too often or to appear too political because, “a wholesale departure from the role whose performance has led to the special status that the Solicitor General enjoys would unduly impair that status itself” (Lee 1986, 599-600). The point is that they see participation as a scarce resource that must be used sparingly, and the result is clear; if the Solicitor General appears too often he may lose credibility with the Court. As Lee concludes, “There’s an inverse relationship between the effectiveness of that kind of advocacy [arguing for the president’s policy positions] and the frequency with which you use it” (cited in Salokar 1992, 141). Ultimately, participation by the Solicitor General is costly and can therefore only be done when the government seeks to send a strong signal about the salience of a case for the president.

After deciding when to participate, the Solicitor General must then decide in what capacity to appear based on how strong a signal the government would like to send. There are three choices. First, the Solicitor General can choose to submit an *amicus* brief to the Court. This is the easiest method of participation because, unlike other potential *amici*, the federal government need not ask the litigants or the Court for permission to do so. Indeed, Supreme Court Rule 37.4 states that “No motion for leave to file an *amicus curiae* brief is necessary

⁶Credibility also includes a sender’s ability to sanction the receiver if a signal is not heeded. In the relationship between the president and the Court these sanctions exist, as we note above.

if the brief is presented on behalf of the United States by the Solicitor General.” Certainly the signal sent in these instances suggests that the case is salient for the president. It is also easily discernible and credible because it is sent in only about ten percent of all cases that receive a full hearing before the Court (Gibson 1997). However, only submitting a brief is the least costly and easiest way to participate in a case. Moreover, simply filing a brief rather than appearing at oral argument also contributes to the quality of signal being sent. For example, if there are two sets of voluntary amicus briefs, one reflecting the president’s view and the other that involve other federal authority that do not reflect the president’s views, then only filing a brief sends the signal that the case is relatively less important to the president compared to those cases where the SG appears at oral argument.

Second, the Solicitor General can submit a brief and an assistant from the office can orally argue on behalf of one of the parties. This signal is stronger, easier for the justices to understand, and therefore more credible because the Solicitor General’s office submits a brief and an assistant appears at oral arguments in approximately 4.3 percent of all cases (Gibson 1997).⁷ Thus, when the government participates in this capacity the justices may discern that the case is even more salient for the president, as it is unusual for an *amicus* to orally argue before the Court.

Finally, in cases of the highest priority for the president (what Lee calls “agenda cases” [Salokar 1992]), the Solicitor General can submit a brief and personally present oral arguments on behalf of a litigant. This is the rarest signal the government can send (it is used

⁷The Court frowns on more than one advocate presenting oral arguments per side. Thus, it is not common for *amici* to participate in these proceedings. As Stern et al. note, “An *amicus* other than the Solicitor General is seldom permitted to participate in oral argument, and then only by special leave of the Court and usually after obtaining the consent of the party supported by the *amicus* to share some of that party’s time” (1993, 566). Although the Court is more willing to allow the Solicitor General to participate in this manner, it is still a rare occasion when permission is granted. See footnote 9 below for a discussion of rare events.

in about one percent of all cases [Gibson 1997]). It is therefore the strongest, clearest, and most credible way for the president to indicate the importance of the case outcome for him because it comes from the government's top, and most respected, advocate.

Hypotheses

Because signaling theory suggests that different forms of participation in a case (only submit brief, assistant SG appears at oral argument, SG personally appears) will send different signals, we do not expect the Solicitor General's success to be the same when it participates in different capacities. Rather, its success should increase as its signals to the justices about the importance of a case become stronger. These hypotheses focus on the credibility aspect of signaling theory. That is, stronger yet rarer signals should be seen as more credible and should therefore be more successful. Consistent with this argument, as well as with signaling theory, we offer three specific hypotheses: 1) When the government submits an *amicus* brief, the side it supports should win a majority of the time; 2) When an assistant Solicitor General argues, the government should win more often than when the office only submits an *amicus* brief; and 3) When the Solicitor General personally appears at oral arguments, the side it supports should win almost every case in which it participates.

Data and Methods

To test our hypotheses we utilize Gibson's *United States Supreme Court Database, Phase II: 1953-1985* (1997) for data from 1953-1985, and combine it with data we collected to fill in the 1986-1995 terms, as well as data on *amicus* participation collected by Hansford (2004). Together, these data include all cases when the Solicitor General (or any *amicus*) files a

brief and participates at oral arguments.⁸ Thus, our data provide a unique opportunity to determine whether the Solicitor General gains an advantage by choosing how to participate as an *amicus curiae*.⁹

The dependent variable is whether the party the Solicitor General supported wins, and is coded 1 when the supported party wins and 0 when that side loses. Given that the dependent variable is binary, we use probit to estimate our multivariate model because it is more appropriate than Ordinary Least Squares regression (Aldrich and Nelson 1984). Additionally, because the government argues multiple cases per term we control for possible error correlation within each Solicitor General’s tenure by employing robust standard errors clustered on the term in which a case was decided.

Independent Variables

The probit model includes several independent measures to test our signaling hypothesis as well as to test competing explanations for the Solicitor General’s success.¹⁰ First, we

⁸We only include orally argued cases decided by the Court. The docket number is the unit of analysis because attorneys can argue in different cases even if they are consolidated. With this unit of analysis, the total number of cases in the sample is 5348. However, we are only interested in those cases where the Solicitor General participates as an *amicus* before the Court. While the Solicitor General is involved in 717 cases as *amicus* over this time frame the model only has an N of 677. This is due to 37 cases where the government did not take a position in the case. As such, we were not able to code whether or not the government’s position prevailed or whether *amici* argued against the government’s position, as this does happen from time to time. For instance, in *Rhodes v. Chapman* (1981) the Solicitor General’s brief argued: “While the United States takes no position in the case before the Court, we believe it will be useful to the Court to have some indication of current federal policy in this area and of the practices at the Bureau of Prisons, which administers the 43 federal institutions comprising one of the largest correctional systems in the country.” Three additional cases were excluded because one or more of the explanatory variables was missing and not recoverable. Of the remaining 677 cases, the Solicitor General’s office participated in the oral arguments as *amicus* 407 times. Note that, unlike Bailey et al. (2005) we analyze all cases instead of only civil liberties cases. As such, our findings are generalizable across issues and across time.

⁹One should not take the small number of cases in which the government participates as evidence that this phenomenon is not important. Indeed, as King and Zeng (2001, 693) note, “Many of the most significant events in international relations—wars, coups, revolutions, massive economic depressions, economic shocks—are rare events. They occur infrequently but are considered of great importance.” We believe that the phenomena we analyze, while rare, is also important. Like vetoes or veto threats, appearances by the U.S. government at oral arguments are rarely used but, as the evidence shows, are quite effective as a strategy for telling the Court that the president really cares about a case.

¹⁰The Appendix provides summary statistics for the dependent and independent variables.

determined whether the United States appeared in a case as *amicus curiae* and then whether the Solicitor General presented an *amicus* brief or appeared at the oral arguments *without an invitation from the Court*.¹¹ From these data we created three dichotomous variables to capture if and how the Solicitor General appeared before the Court.¹²

To test the most recent competing explanation for the Solicitor General’s success—that the president’s ideological signals sent to the Court affect its success (Bailey et al. 2005)—we included two control variables. First, we calculated the absolute value of the ideological distance between the president and the Court median using Epstein et al.’s (n.d.) Judicial Common Space Scores. This variable captures whether the Court is more willing to support the Solicitor General’s position when the president is ideologically closer to the median justice. Second, we test Bailey et al.’s (2005) argument that the Court may be more willing to support outlier arguments made by the Solicitor General.¹³ To do so, we use the Judicial Common Space scores to determine whether the current president is more liberal or more conservative than the current Court median. We then determine whether the Solicitor General advocates a liberal or conservative position in each case.¹⁴ If either of these variables

¹¹Johnson (2003) argues that the Solicitor General may have a different effect on case outcomes if the office is invited by the Court to argue as *amicus* (also see Stern et al. 1993). Thus, we exclude them from the analysis here. Note, however, that when they are included in the model the substantive results do not change. We keep them out to ensure that the effect we find is exogenous of the Court’s action.

¹²The first is coded 1 if the Solicitor General appears at oral arguments on behalf of the United States and 0 if he does not appear in this capacity (N=65 in the final model). The second variable equals 1 if an assistant Solicitor General appears at oral arguments and 0 if such an appearance does not occur (N=342 in the final model). The final variable is coded 1 if the Solicitor General’s office only files an *amicus* brief and 0 otherwise (N=310). We exclude this variable from the model as the baseline for the administration’s participation. Note that these categories add to 717, but due to missing values on other parts of the data the total appearances for the government in our model is 677.

¹³Note that the main analysis presented by Bailey et al. (2005) is based on how individual justices react to signals sent from the Solicitor General. Because we are concerned with case outcomes (how often the government wins), our focus is on how signals sent by the Solicitor General affect the Court’s final decisions rather than individual votes. Bailey et al. (2005) conduct a similar analysis in the final section of their paper, and find that ideological signals affect the justices’ decisions in civil liberties cases. The primary difference speaks to the ultimate goal of the Solicitor General, while affecting individual votes is always beneficial, it is different from affecting case outcomes whereas affecting votes does not necessarily lead to changed outcomes.

¹⁴If the Solicitor General is more liberal (conservative) than the Court median and advocates a conservative (liberal) position this variable is coded as the distance between the president and the median justice.

has an impact on the government’s propensity to win then there is support for the theory of ideological signaling.¹⁵

We also control for whether the relationship between the Court and the president holds when accounting for signals from other external actors. To do so we first include a variable that is coded 1 if any other *amici* participate in the oral arguments on the side against the government.¹⁶ We also include the sum of all the *amicus* briefs submitted that take the opposite position of the Solicitor General’s. This variable measures overall opposition to the government’s position, even when *amici* do not appear before the justices. To account for the non-linear effect that we expect this variable to have on case outcomes, we take the log of this variable.

Beyond our variables of interest, we include several controls to account for alternative explanations for the Solicitor General’s success. First, given the assumption that there must be an asymmetry of information for signals to be meaningful, we control for whether the Court is more likely to adhere to the Solicitor General’s signal in complicated cases. Complex cases are measured with the “mlaw” variable in Spaeth (2004) that counts the number of legal provisions in a case. Second, based on McGuire’s (1998) argument that experience of the attorney who argues before the Court is the main predictor of success we include a variable to account for the Solicitor General’s experience.¹⁷ Third, given existing research

When the Solicitor General is more liberal (conservative) than the Court median and advocates a liberal (conservative) position it is coded 0 (this follows Bailey et al.’s coding scheme).

¹⁵As a robustness check, we substituted Bailey’s (2001) scores for the ideology of the median and the president, the results do not change. Thus, we are confident that the findings are robust to different measurement strategies.

¹⁶While the Solicitor General has great influence on the Court, extant literature also suggests that *amici* generally can affect the justices’ decisions (Caldeira and Wright 1988; Spriggs and Wahlbeck 1997; Epstein and Knight 1998b). Thus, for a fully specified model we include this variable. Note that we intended for this variable to be the sum of all *amici* participating at oral arguments who took a position opposite of the Solicitor General’s. However, because the sample only includes one case where more than one took part in these proceedings, we chose to code this as a dichotomous variable equaling 1 if any participation is found and 0 otherwise.

¹⁷We sum the number of cases in which the Solicitor General participated as *amicus* prior to the current

that the Court is predisposed to reverse lower court decisions (Provine 1980; Palmer 1983), we include a dummy variable that equals 1 when the Solicitor General supports the petitioner and 0 otherwise.

We also control for whether the Solicitor General won more in cases on the president's domestic political agenda. This provides a more stringent test for our signaling argument because including the executive branch's policy preferences may discount any benefit the executive branch gains by the SG personally appearing at oral argument. To measure the president's agenda we matched agenda items from each president (Light 1999, 70) included in the sample with the main issue of each case in the sample.¹⁸ Additionally, we account for the legal salience of the case by assessing whether the Court issued a declaration of unconstitutionality.¹⁹ Finally, we include two control variables to determine whether Solicitors General won more frequently under the Warren Court, the Burger Court, or the Rehnquist Court. Using the Rehnquist Court as a baseline, we include dummy variables for the Warren and Burger Courts.

Results

The results of the probit estimation appear in Table 1. Examining the top two variables offers evidence supporting the conclusion that how the government chooses to participate

case and then take the log of that number. We only model the experience of the Solicitor General given that *amici* other than the Solicitor General almost never appear at these proceedings. Thus, the Solicitor General will almost always have more experience than any other *amici* who may appear.

¹⁸Light's list includes the most important domestic agenda issues for each president (Eisenhower through Clinton) as identified by White House staffers (1999, 70). We then took each item and matched them to the issue category of the case as delineated by Gibson. Presidents Clinton and G.H.W. Bush were not included on this list. However, Light provides their major policy agenda items in the last chapter of the book. Although the coding of these last two presidents was more subjective, we followed the table on page 70 as closely as possible. Cases that match items on a president's agenda are coded 1 while all other cases are coded 0. The major issues in 161 of the cases (out of 677 total) are part of the current administration's agenda.

¹⁹We also included measures of political salience, measured by the number of *amicus* briefs filed, and issue area, but neither was significant and did not change the results of the other variables.

affects the likelihood of success. The model suggests that the Solicitor General's personal participation at oral arguments has a larger effect on securing a favorable decision for the government than does simply filing a brief ($p = .016$). On the other hand, contrary to the hypothesis, assistant Solicitors General do not fair as well when they orally argue as *amicus curiae*. This too is an important finding as it indicates the government may want to be even pickier about the cases in which the Solicitor General's office participates. In fact, it suggests that the office should simply file a brief in most cases and reserve its appearances at oral arguments for the Solicitor General himself. This would make the oral argument signal even stronger for the justices.

[Table 1 about here]

To provide a more intuitive understanding of the results, predicted probabilities of the government's success with respect to how the government participated are illustrated in Figure 1.²⁰ Substantively, if the federal government files an *amicus* brief in a case but the Solicitor General or an assistant does not personally appear at oral arguments, the likelihood that the government will win a favorable ruling is 76.9 percent. Moreover, if an assistant appears, then the probability the government's side will win a favorable ruling is .751. However, if the Solicitor General personally appears at oral arguments the probability of winning increases to over 90 percent, which means the government is close to guaranteeing a victory with this strategy. This finding provides support for Segal's (1988) analysis of government success before the Court. It also confirms our theoretical account that the Solicitor General's participation at oral arguments signals the federal government is serious about winning the case. The implication is that the justices listen to this signal and act

²⁰We derive all predicted probabilities using Long and Freese's (2006) SPOST commands.

accordingly, which ultimately means the president has an influence on the outcomes of cases he deems the most salient.

[Figure 1 about here]

The model also demonstrates that, even when the government sends the strongest signal possible about the president’s preferences it can be muted by arguments submitted by other *amici*, but only if those *amici* take the added step of appearing at oral arguments (a strong signal according to our theory). If *amici* appear against the government at oral arguments the Solicitor General is less likely to win a favorable outcome from the Court ($p = .028$). Substantively, the government’s success drops to .46 (with a .13 to .79 confidence interval) when the Solicitor General does not personally argue a case and *amici* appear to argue against the government’s position. If the Solicitor General personally appears in the oral arguments, and *amici* appear against him, his probability of victory is .68, which is a much smaller probability than when he appears without opposition from other outside groups. Note, however, that this finding has a large 95 percent confidence interval (from .35 to .99). These findings are interesting and important as they somewhat suggest that the supremacy of the federal government is not always guaranteed—even when its top lawyer appears at oral arguments before the Court.

We find little support for the other control variables. Only when the government supports the petitioner (asks for reversal) it is much more likely to win. This is consistent with earlier work (e.g., Segal 1988; Provine 1980) that suggests the petitioner wins more often when it supports reversal.²¹

²¹In alternative analyses, we estimated a selection model that accounts for the possibility the Solicitor General “cherry picks” cases that are easier to win, but we found no relationship between the selection of which cases to participate in and the likelihood of winning in those cases. This model is displayed in the appendix.

The other important findings in Table 1 are the insignificant coefficients on the two ideological signaling variables. Neither the ideological distance between the president and the Court median, nor the fact that the Solicitor General sends an outlier signal that is opposite of what the justices would expect from the president's preferences, affects whether the government wins its case. Even when we remove the oral argument variables from the model, neither of these ideological variables helps explain the government's success. Indeed, when we rerun the model without our key independent variables, the only variable that affects the government's success is if another outside *amicus* appears at argument or whether the Solicitor General argues for reversal.

The implication of these findings is important for understanding the relationship between the president and the Court. Indeed, while it is clear that signals are being sent between the president and justices, these signals seem to have less to do with the ideological relationship between the president and the justices than they have to do with the salience of a case for the president. In other words, as signaling theory suggests, the Solicitor General rarely participates, but when he appears at oral arguments his presence sends a signal that this is a case about which the president cares a great deal. The justices, in turn, act accordingly by almost always ruling in favor of the government's position. On the other hand, the ideological signals that Bailey et al. find simply do not play much role once the model accounts for the oral argument signal. However, it is possible that there is an interaction effect at work here.

To test for the possibility of an interactive effect, we estimate the original model from Table 1 and add all four possible interaction terms. The results are shown on the right side of Table 1. Because interaction coefficients are not intuitive and it can be misleading to interpret the significance of interaction effects simply by looking at the p-values (see

Brambor, Clark, and Golder 2006), we graph the marginal effects of the ideological signaling variables in Figures 2a and 2b, and the marginal effect of the Solicitor General personally appearing at oral argument in Figures 3a and 3b to determine whether the SG's appearance signal gains any added benefit or suffers any if there is a large ideological divide between the Court and the president.²²

Figure 2a shows the marginal effect of the ideological distance between the Court median and the president on the likelihood of the Solicitor General winning. The results from the interaction analysis are informative and display a nuanced relationship between the president and the Court. The personal appearance of the Solicitor General moderates the relationship between the ideological signal and the Solicitor General's likelihood of winning. Substantively, when the Solicitor General does not appear at oral argument the ideological signal the SG sends through a filing of a brief or having an assistant appear have no effect on winning. However, when the SG does appear at oral argument, an increase in the ideological distance between the president and the Court median leads to a decrease in the likelihood of winning.

[Figures 2a and 2b about here]

Figure 2b shows the marginal effect of the Solicitor General making an outlier argument, and it is shown to have no effect on winning, regardless of whether the Solicitor General personally appears at oral argument. This suggests that Bailey et al (2005) captured only part of the signaling story. With a more nuanced focus on how the Solicitor General sends a signal we are able to discern when ideological signals will have an effect on case outcomes. Our results are not mutually exclusive, as Bailey et al (2005) examine the effect on individual

²²The graphs of marginal effects were generated using Boehmke's (2006) *grinter* data utility for STATA.

justice's votes, while we examine the effect on case outcomes. If the Solicitor General sends an ideological signal like Bailey et al (2005) suggest, our results do not preclude the possibility that it is possible to sway one or two justices, but that may not change the outcome of a case if it was not in doubt. In other words ideological signals, by themselves, build larger coalitions but rarely change minimum winning coalitions.

Conversely, we also graph the interactions and switch the order to assess the possibility that the ideological signals theorized by Bailey et al (2005) moderated the relationship between the Solicitor General's signal of personally appearing and the Solicitor General's side winning. Figure 3a shows the graph of the marginal effect if the Solicitor General personally appears. From the figure we can see that when the distance between the Court median and the president is small, then the interactive effect has a positive effect that is statistically distinguishable from zero. Indeed, the interactive effect is much stronger than the constitutive effect of only the Solicitor General appearing. The predicted probability of the Solicitor General's side winning the case if he appears at oral argument *and* if the ideological distance between the Court and the president is very small is .997, with a 95 percent confidence interval of .986 and 1 (the ideological distance is .05 common space units, the minimal value in the dataset). This exceeds the estimate for winning shown in Figure 1. However, when the ideological gap between the Court median and the president increases, the importance of the interactive effect begins to decline until the confidence intervals eventually cross zero, indicating that its effect is no longer statistically distinguishable from the constitutive effect (the predicted probability for the mean distance between the Court and the president is .954, with .894 and 1 as lower and upper bounds, respectively).

[Figures 3a and 3b about here]

A similar story emerges from Figure 3b, where the appearance of the Solicitor General exerts a positive effect when he makes relatively “safe” outlier arguments. The predicted probabilities for this scenario are, again, highly in favor of the Solicitor General’s side. The likelihood of winning is .995, with .98 and 1 as the confidence interval. But when the outlier arguments become more “risky” (eg. a very liberal Solicitor General takes a very conservative position) then the interactive effect diminishes as well (the probability drops to .917 with .857 and .977 as the bounds).²³

In sum, the results from Figures 3a and 3b suggest that the Solicitor General gains an added benefit when he uses a combination of multiple signals, but the incorrect combination will produce no added benefit. Thus, in order to maximize the effect of its signals to the Supreme Court, it appears that the Solicitor General must be conscious of the conditions and pay attention to the totality of their potential effect. Our results suggest that the Solicitor General can almost guarantee victory for a given side by personally appearing at oral argument in a case where the Court median is in relatively close spatial proximity. Conversely, it would be costly for the Solicitor General, in terms of resources and spent political capital, to appear personally in front of the Court and have the full potential of its signals not realized. This is possible if the Solicitor General appears and makes an argument that is simply too far afield from the Court median.

Conclusion and Implications

This paper began with the assumption that the federal government can signal the importance of a case to Supreme Court by participating as *amicus curiae*. Although the government is

²³We also graphed out the effects of the Assistant Solicitor General appearing and none of the marginal effects were significantly different from zero.

not always successful before the Supreme Court when it participates in this capacity, we find that when it sends the strongest signal that the outcome of a case is important (when the Solicitor General appears personally at oral arguments), the justices are almost guaranteed to oblige. Beyond this important general finding, we offer insight into the Court's decision making process, as well as how the separation of powers and external actors more generally affect the justices' choices.

First, this paper provides an explanation for the conventional wisdom that the Solicitor General has a substantial effect on decisions made by the Court. Indeed, until now scholars have not come up with a generally accepted explanation for the government's "special status" before the Court. Theoretically, we provide such an explanation based on signaling theory and on the strategies employed by the office of the Solicitor General. As such, this paper makes a significant contribution to the vast literature that seeks to explain the government's success in the U.S. Supreme Court. Specifically, it suggests that models seeking to explain this phenomenon must control for participation by the Solicitor General at oral arguments. Further, it suggests that models must also simultaneously account for the interaction with the ideological signal the Solicitor General is sending and the strength of that signal. If the Solicitor General sends two signals, one by personally appearing before the Court and the other signal that suggests a great deal of ideological distance lies between the Court median and the president, then this may reduce the likelihood of winning (the maximum distance between the Court median and the president dropped the probability of winning to .695, but with a large confidence interval of .310 and 1). This carries important implications for the system of checks and balances and for the separation of powers. In terms of existing literature (see e.g., Eskridge 1991), it suggests that such signals should be accounted for in

both our statistical and formal analyses of these processes.

Second, the findings here provide additional evidence that oral arguments have a clear effect on the Court's decisions, at least in this special case. While we do not demonstrate how Solicitors General substantively convince the Court to rule on specific legal arguments (this is part of ongoing research), we are able to demonstrate that oral arguments play a key role in how the justices make decisions. Indeed, without the oral arguments the federal government would lose a key signaling mechanism for the government to indicate how the president would like the justices to rule. And, although the government is still highly successful when it only submits an *amicus* brief, this success decreases markedly if the Solicitor General cannot personally argue before the Court. This comports with the findings of previous studies concerning the efficacy of oral arguments (see e.g., Johnson, 2004; Wasby et al. 1976).

We conclude with the most general implication of our work: namely that forces external to the Court can and do affect decisions justices make. Scholars who study the role of *amici* beyond the federal government reach conclusions similar to the ones we present here. For instance, Cortner (1975) shows that the Court relied heavily on the brief submitted by the American Civil Liberties Union in the landmark privacy case *Mapp v. Ohio* (1961). In this case the parties focused on the obscenity issue, while the ACLU brief argued that Mapp was an exclusionary rule case. In the end, the Court made a decision based on the exclusionary argument forwarded by the *amicus curiae* ACLU.

More systematic analyses support Cortner's anecdotal account (see e.g., Caldeira and Wright 1988; Epstein and Kobylka 1992; Songer and Sheehan 1993; Epstein 1993; Spriggs and Wahlbeck 1997; Epstein and Knight 1998b). In particular, two works are instructive. Epstein and Knight (1999) stress that, as strategic actors, justices use *amicus curiae* briefs

to obtain information about the preferences of actors beyond the Court. This information acts as a signal about policy the justices can set in light of the preferences of the president, for example. Additionally, Spriggs and Wahlbeck (1997) analyze the conditions under which the Court is likely to adopt positions forwarded in *amicus* briefs. They demonstrate that the justices are less likely to adopt positions from *amicus* briefs that exclusively add new arguments to the policy space. The implication, for them, is that *amici* do influence the Court's decisions, but they do so mainly when they reinforce the issues presented by the parties (1997, 382). In other words, by reiterating arguments found in the litigants' briefs *amici* signal that a particular argument is important for the justices to decide. In general, the works cited here demonstrate that *amicus* briefs provide vital information that helps Supreme Court justices make decisions.

In the end, this paper offers an explicit theory about the interaction between the executive and the judiciary. It suggests that, while the federal government is certainly the most successful *amicus curiae* to appear before the Court, it can take additional measures to enhance, and sometimes virtually guarantee, its success. The next step is to more explicitly analyze the tactics Solicitors General use at oral arguments to convince the justices to make a particular decision.

Figure 1: Government Success as Amicus Curiae

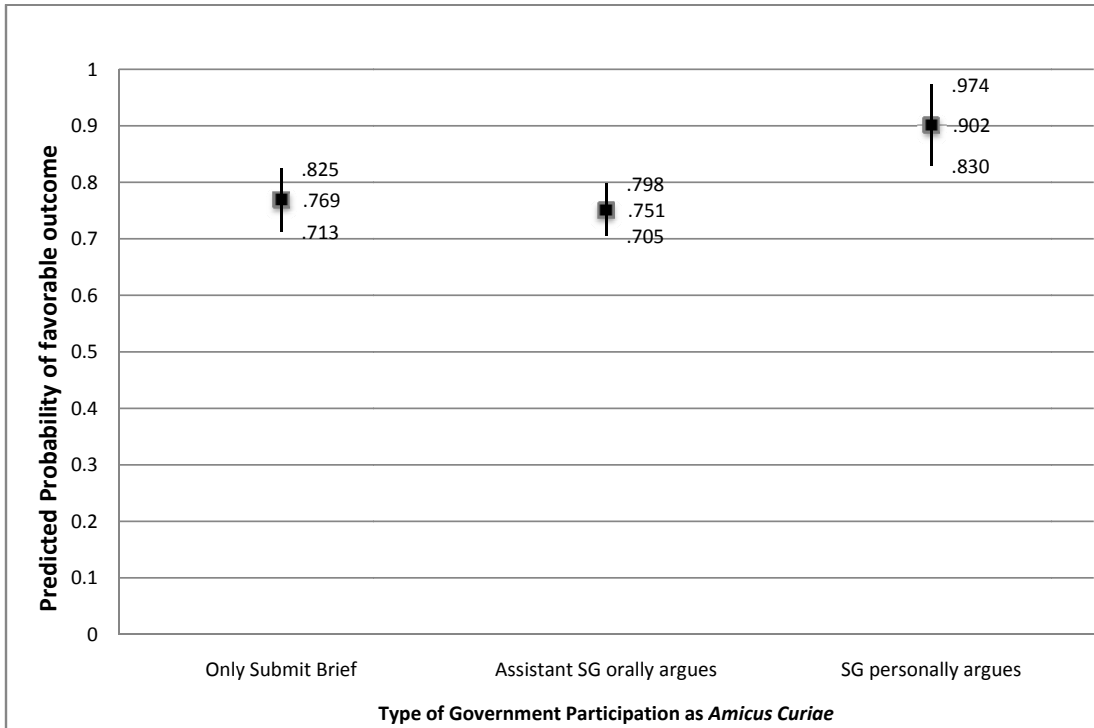


Figure 2: Marginal Effects of Ideological Distance Signals and Outlier Signals

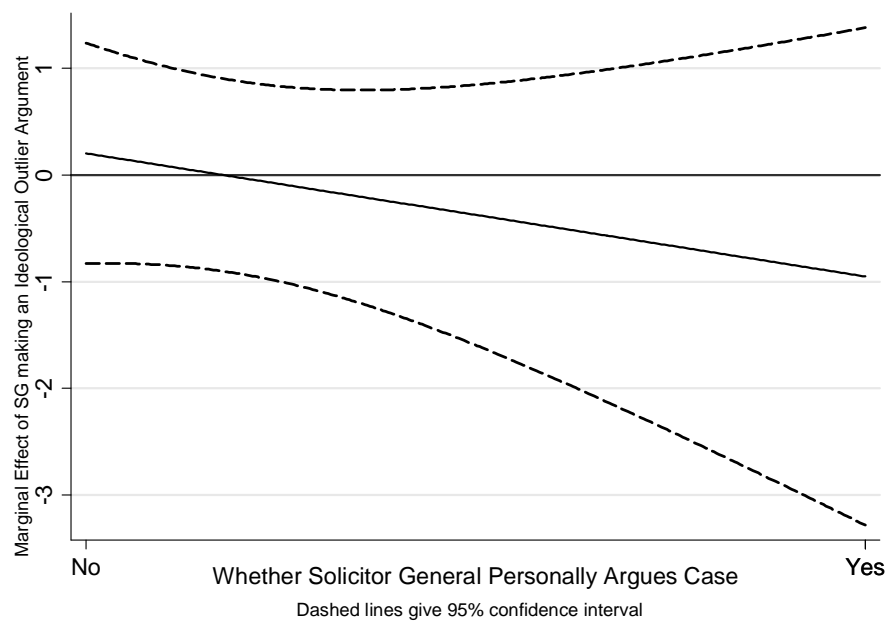
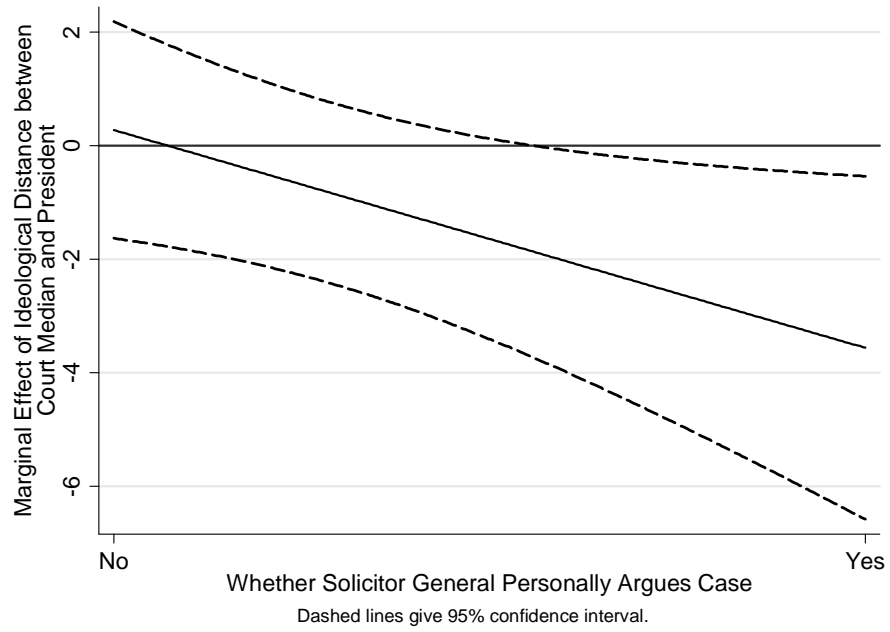
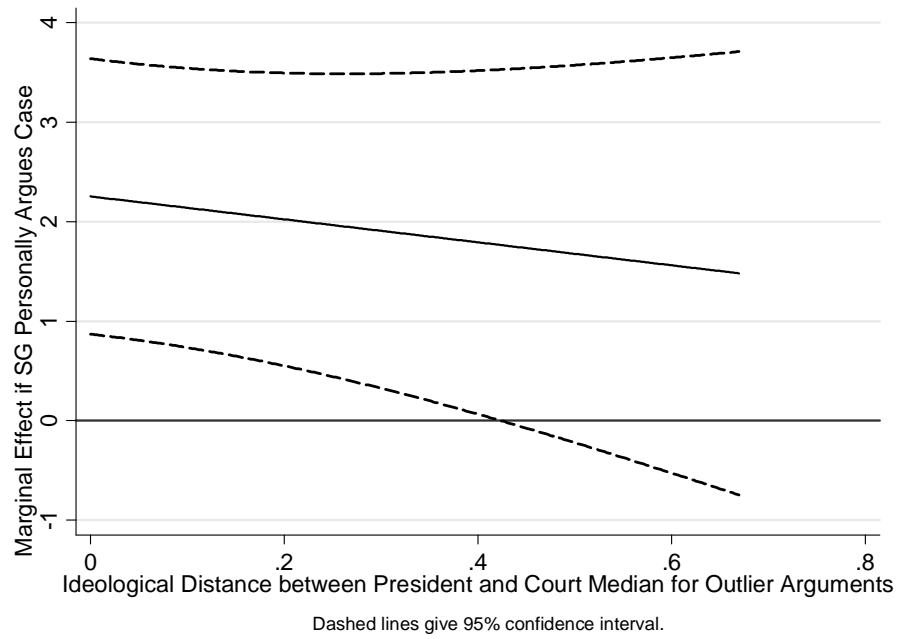
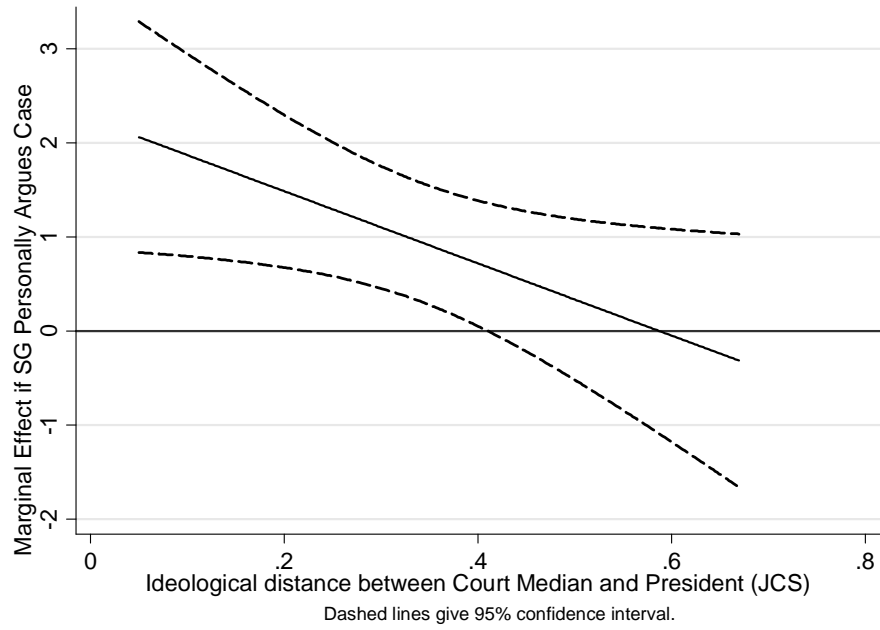


Figure 3: Marginal Effects if Solicitor General Personally Argues Case



	Coeff.	S.E.	Coeff.	S.E.
SG personally gives oral argument	0.555*	0.232	2.255*	0.672
Assistant SG orally argues	-0.058	0.118	0.266	0.527
Distance between Ct. median and pres.	-0.167	0.619	0.279	0.926
SG sends outlier signal	0.070	0.237	0.203	0.501
Amici argue against SG at o.a.	-0.853*	0.388	-0.930*	0.403
Log num. of amici briefs against SG	-0.040	0.055	-0.026	0.053
Case has multiple legal provisions	-0.112	0.128	-0.118	0.127
SG experience (logged)	0.079	0.058	0.082	0.058
SG's position	0.416*	0.137	0.411*	0.141
Legal salience	-0.217	0.209	-0.272	0.226
Case on president's agenda	-0.078	0.140	-0.094	0.137
Case from Warren court	0.446	0.326	0.435	0.336
Case from Burger court	0.043	0.120	0.033	0.122
SG Gives OA * Distance between Ct.-pres.			-3.835*	1.755
SG Gives OA * SG sends outlier signal			-1.154	1.288
Asst. gives OA * SG sends outlier signal			-0.127	0.625
Asst. gives OA * Distance between Ct.-pres.			-0.770	1.201
Constant	0.273	0.429	0.084	0.504
Observations	677		677	
Pseudo R-Squared	.0560		.0628	
Log pseudolikelihood	-350.571		-348.061	
Proportion in modal category	76.2		76.2	
Proportion Correctly Predicted	76.5		76.2	

Table 1: Probit estimates of Government's Success as *Amicus Curiae*, with robust standard errors clustered on the term in parentheses. Cases where the Solicitor General was invited are excluded from the analyses. * denotes $p < 0.05$ (two-tailed test).

Appendix

Summary Statistics

Variable	Mean	Min	Max	Standard Deviation
Does the SG's Side Win?	.762	0	1	.426
SG personally gives oral argument	.090	0	1	.287
Assistant SG orally argues	.494	0	1	.500
Distance between Ct. median and Pres.	.403	.05	.67	.139
SG Sends an Ideological Outlier Signal	.176	0	.67	.221
Amici Argue Against SG at Oral Argument	.022	0	1	.147
Amici Filing Briefs against SG (logged)	.831	0	5.63	.917
Case has Multiple Legal Provisions	.202	0	1	.402
SG's Experience (logged)	3.420	0	4.78	1.04
SG's Position	.653	0	1	.476
Legal Salience	.083	0	1	.276
Case on president's Agenda	.238	0	1	.426
Case occurred during Warren court	.151	0	1	.358
Case occurred during Burger Court	.479	0	1	.500
SG Gives OA X Distance between Ct.-pres.	.030	0	.67	.106
SG Gives OA X SG Gives Outlier Signal	.010	0	.48	.061
Asst. Gives OA X SG Gives Outlier Signal	.102	0	.67	.195
Asst. Gives OA X Distance between Ct.-pres.	.215	0	.67	.230

Tests For Endogeneity

Our inferences are subject to criticisms based upon earlier research that argues the Solicitor General knows when the probability of winning is low, or which cases are the “easy ones” and, therefore, will “cherry pick” easy cases in order to obtain an exceptionally high winning percentage. In essence, the “cherry picking” argument asserts that our findings are subject to problems of endogeneity because our results may be more indicative of the SG searching for a particularly easy or “slamdunk” case rather than the SG being a more persuasive advocate than his assistants because of his power to send a signal to the justices.

In this supplementary material, we present evidence from two different approaches that dispels the endogeneity critique. Both approaches support the argument that the SG does not “cherry pick” easy cases. In fact, our results, if anything weakly support the opposite

conclusion. Namely, we find the SG is more likely to appear himself in cases that have a lower likelihood of success, such as: in legally salient cases, whenever a large number of amicus briefs are filed against the SG's position, and when a case matches the president's agenda. Those are three conditions that would not make a case an easy "slamdunk." Further, the SG is not less likely to appear himself whenever (1) another amicus appears at oral argument; (2) in cases with multiple legal provisions; and (3) when the SG is inexperienced. Those are conditions when we expect the SG not to appear because those conditions make predicting a likely outcome more difficult, which hurts the SG's ability to win via "cherry picking."

The two approaches are as follows. First, we use a modeling approach similar to Collins (2008, 64-5, Table 2) to account for a potential endogeneity explanation. The second approach uses a Heckman Probit sample selection model that estimates two models, whether the SG decides to participate in the case at all, and second, to see how the mode of participation affects the likelihood of winning, which is the same dependent variable in our main analyses. The selection model provides us with an estimate of the relationship between the SG's decision to participate in a case and the SG's success when the office does participate. In other words, we can test empirically whether the final outcome is simply a function of the SG's office decision to participate.

Examining Factors that Affect How the SG participates

In this approach, adopted from Collins (2008), we examine which factors from our earlier model affect how the SG participates. Here, the dependent variable contains three, non-ordered outcomes: "0" for only submitting brief; "1" if an assistant advocates at oral argument; and "2" if the SG himself appears at oral argument. We estimate a multinomial logit with six independent variables from our main model, but we exclude the variables that are related to the SG's participation (similar to Collins 2008). If the SG chooses to appear at oral argument only in cases that he is likely to win (i.e., "cherry picks"), then we expect:

- (1) the SG not to appear when another amicus appears at oral argument that opposes the SG's position. We presume that whenever other outside parties appear at oral argument, this reduces the likelihood of knowing the probable outcome. Thus, if the SG "cherry picks" cases, the SG should be more likely to only file a brief or send an assistant to oral argument rather than appear himself;
- (2) the SG not to appear if there are a large number of amicus briefs opposing his position. We presume that a large number of outside parties filing briefs against the position of the SG, while adding more information, also adds to the uncertainty surrounding the outcome. Thus, if the SG "cherry picks" cases, the SG should be more likely to only submit a brief or send an assistant to appear rather than appear himself;
- (3) the SG not to appear when there are multiple legal provisions involved. Having more than one legal provisions would add complexity to the case and

add uncertainty about the likely outcome or decision of the Court because the Court has multiple venues on which to base a merits decision. Thus, if the SG “cherry picks” cases, the SG would be more likely to only submit a brief or send an assistant rather than appear himself in cases with more than one legal provision;

(4) the SG to appear more often when he is more experienced; a lesser experienced SG would, on average, be less certain about likely outcomes and would want to avoid the possibility of embarrassing himself or the office by losing due to his inexperience. Thus, if the SG “cherry picks” cases, the SG’s appearances should be positively correlated with the SG’s experience;

(5) the SG not to appear when legal salience is low. If a highly legal salient case indicates the Court declares a law unconstitutional, then we presume if the SG wants to “cherry pick” easy cases, then it would not be an “easy” case to win if the SG had to ask the Court to rule a law unconstitutional, something the Court does not do frequently or lightly.

(6) the SG not to appear on cases that match the president’s agenda. We presume that if the SG wants to “cherry pick” easy cases, then it would not be an easy case to win if the SG had to persuade the Court to rule in favor of the president’s agenda. This variable also tests a notion of the “politicization” of the SG’s office. Where, if the SG does not do the president’s bidding, then we expect that the SG wants to avoid making appearances on behalf of the president and having the office look overtly partisan. But if the SG is more likely to appear in person rather than only submitting a brief or having an assistant appear when a case is on the president’s agenda, then this would support the idea that the SG’s office does contain an element of partisanship.

The results from the endogeneity analysis are shown in Table 3 below and do not support the argument that the SG searches for “easy” victories or “slamdunk” cases. Rather, the results suggest that the SG appears more under conditions that decrease the likelihood of a certain victory. Because the coefficients are from a multinomial logit, where the dependent variable has three categories, they must be interpreted relative to the baseline category that is omitted. Because we are mainly interested in personal appearances by the SG, the easiest way to interpret the coefficients is to have SG personal appearances excluded as the baseline. To interpret the coefficients, a statistically significant and positively signed coefficient indicates that the displayed category of the dependent variable “gains” at the expense of the baseline category. A statistically significant and negatively signed coefficient indicates that the displayed category of the dependent variable “loses” at the expense of the baseline category.

First, examining the coefficient for whether an amici argues against the SG at oral argument, we see that the two coefficients are not significant. What this means is that there is no relationship between other amici appearing at oral argument and how the SG chooses to participate. This does not support the “cherry picking” hypothesis. If the SG

searched for easy cases, we would expect those coefficients to be significant and signed in a positive direction, which would indicate that the the SG is both more likely to submit a brief or have an assistant appear rather than appear himself when other amici argue at oral argument.

Second, examining the coefficient for the logged number of amici briefs against the SG, we see that the coefficient under the “only submitting a brief” column is statistically significant and negatively signed. This indicates that as more opposing amici briefs are filed in the case, the SG is *more* likely to appear himself rather than only submitting a brief. The coefficient in the “assistant appears” column is not significant. In short, these results contradict the “cherry picking” hypothesis, which predicts that the SG would appear less when facing a larger opposition.

Next, the coefficients for “multiple legal provisions” and “SG experience” are not significant. These results are also not supportive of the “cherry picking” hypothesis. In addition, both coefficients for “legal salience” are statistically significant and negatively signed, indicating that in highly salient legal cases the SG is more likely to appear in person rather than only submitting a brief or having an assistant appear. Thus, when the legal stakes are higher and more uncertain, the SG is more likely to appear, not less likely.

The final coefficients are for whether “the case is on the president’s agenda” and is significant for “only submitting a brief” but in the opposite direction from what the “cherry picking” hypothesis suggests. In sum, with this endogeneity analysis we find no support for the argument that the SG personally appears in cases that are easy to win.

Testing for Selection Effects

In this section we treat the SG’s decision to participate as the first step in a two step process, where the second step examines the effect of how the SG participated on the likelihood of winning. In this section, we estimate a Heckman Probit selection model, which provides an alternative strategy to assessing the endogeneity argument and it estimates two separate models and assesses whether the two processes are related. The first of the two models is the selection model, where the dependent variable is whether the SG’s office participates in the case as *amicus curiae* or not. As predictors of SG participation, we included several of the traditional variables known to correlate with the SG’s participation. The second model is the outcome equation, where the dependent variable is whether the side the SG supports won. The specification of outcome model is the same as our main model in the paper above. the equation also estimates a rho coefficient with a standard error that tells us whether the error terms of the two equations are related. If the rho coefficient is statistically significant, then that supports the “cherry picking” hypothesis, that there is a connection between which cases the SG’s office participates in and which ones the SG’s office wins.

The results are shown in Table 4 below, the outcome model on top and the selection model on the bottom. The results do not support the “cherry picking” argument. Namely, the

rho coefficient is not statistically significant. This indicates that there is no relationship between which cases the SG's office participates in and which cases the SG's office wins. Also of importance, the coefficients in the outcome model are similar to those reported earlier in our main model. In sum, with this selection model analysis, we do not find support for the SG's office picking easy cases to win.

	Only Submit Brief	Assistant Appears
	Coeff. (S.E.)	Coeff. (S.E.)
Amici argue against SG at o.a.	-.123 (1.14)	.162 (.637)
Log num. of amici briefs against SG	-.558* (.183)	-.146 (.157)
Case has multiple legal provisions	-.094 (.352)	-.288 (.325)
SG experience (logged)	-.108 (.165)	.185 (.196)
Legal salience	-1.22* (.424)	-2.33* (.504)
Case on president's agenda	-.853* (.403)	-.506 (.449)
Constant	2.82* (.631)	1.696* (.799)
Observations	677	
Pseudo R-Squared	.0636	
Log pseudolikelihood	-589.531	

Table 3: Multinomial Logit estimates of Solicitor General's mode of participation as *Amicus Curiae*, with robust standard errors clustered on the term in parentheses. The baseline (omitted) category is the SG appears himself at oral argument. Thus, all coefficients must be interpreted relevant to the baseline category. A Small-Hsiao test for IIA accepted the null hypothesis that the assumption of independence of irrelevant alternatives was met. A multinomial probit reveals almost identical results. Cases where the Solicitor General was invited are excluded from the analyses. * denotes $p < 0.05$ (two-tailed test).

Heckman Probit Selection		
	Coefficient	(Standard Error)
Outcome Equation (Did SG win?)		
SG personally gives oral argument	.555*	.236
Assistant SG orally argues	-.058	.119
Distance between Court median and president	-.177	.701
SG sends outlier signal	.070	.237
Amici argue against SG at oa	-.852*	.384
Log num. of amici briefs against SG	-.041	.065
Case has multiple legal provisions	-.112	.129
SG experience (logged)	.079	.058
SG's position	.415*	.153
Legal Salience	-.218	.208
Case on the president's agenda	-.080	.143
Case from Warren court	.451	.386
Case from Burger Court	.045	.158
Constant	.299	.994
Uncensored Observations	677	
Selection Equation (Did SG's office participate?)		
SG's past participation in term (zscore)	-.044	.032
Case on the president's agenda	.232*	.090
president agrees direction of lower court decision	-.067	.044
Distance between Court median and president	.867*	.361
Issue area (civil liberties case)	.008	.052
Legal Salience	.014	.111
Logged difference of amici support (pet-resp)	.846*	.180
Case from Warren court	-.373*	.139
Case from Burger Court	-.103	.068
Constant	-4.443*	.675
rho	-.014	.477
Constant	-0.014	0.477
Observations	5249	
Log pseudolikelihood	-2254.295	

Table 4: Heckman Probit estimates of Government's Success as *Amicus Curiae* while accounting for whether the Government participates at all, with robust standard errors clustered on the term in parentheses. Cases where the Solicitor General was invited are excluded from the analyses. * denotes $p < 0.05$ (two-tailed test).

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