

LOBBYING THE COURTS

INTRODUCTION

Lobbying, defined as the transfer of information from interest groups to policymakers, is a key corporate political activity that firms use to advocate for regulatory policies aligned with their competitive advantage (de Figueiredo & Richter, 2014; Dorobantu, Kaul, & Zelner, 2017; Hillman & Hitt, 1999). While lobbying targeting the legislative and executive branches of government has attracted significant attention from strategy scholars (de Figueiredo & Silverman, 2006; Jia, Markus, & Werner, 2023; Kim, 2019; Park, 2023), “courts have not traditionally been thought of as a policy-making branch of government,” resulting in limited recognition of their policymaking role and a corresponding lack of research on lobbying directed at courts (de Figueiredo, 2009, p. 3). More than 15 years after de Figueiredo’s observation, strategy research has yet to explore—or even recognize—lobbying the courts as a form of corporate political activity.

This paucity of research is puzzling, given that courts are influential policymakers whose rulings shape firms’ competitive environments, influence their market and non-market strategies, and impact performance outcomes (Balasubramanian, Sivadasan, & Xu, 2024; Contigiani, 2023; Luchs, Geylani, Durkes, & Srinivasan, 2010; Mezzanotti, 2021; Ozden & Khashabi, 2023; Sundaram & Inkpen, 2004; Werner, 2012, 2017; also see *Chevron v. Natural Resources*, 1984; *Citizens United v. FEC*, 2010; *eBay v. MercExchange*, 2006). Recognizing this, firms lobby courts through amicus curiae briefs (henceforth, amicus briefs).¹ The term *amicus curiae* refers to an actor that, though not a direct party in a case, provides the court with information relevant to the case by submitting amicus briefs. While the primary purpose of amicus briefs is to assist the court in decision making, these briefs also serve as a medium through which interest groups lobby the courts by strategically presenting information aligned with their policy interests, with several studies in law and political science documenting their influence on court decisions and, by

¹ In addition to lobbying through amicus briefs, influence on court decisions occurs through strikes and demonstrations (Iaryczower, Spiller, & Tommasi, 2006), public opinion (Casillas, Enns, & Wohlfarth, 2011), and campaign contributions aimed at shaping judicial appointments (Cameron & Kastellec, 2023; Cann, 2002).

extension, on the policy outcomes embedded in these decisions (Caldeira & Wright, 1988; Collins, 2018; Kearney & Merrill, 1999).

Beyond its intrinsic phenomenological importance as a corporate political activity, exploring lobbying directed at courts holds promise for advancing strategy research in at least four ways. First, theories of integrated market and non-market strategy posit that policymaking involves sequential and interdependent interactions among the three branches of government (legislative, executive, and judicial), with each branch differing in its probability, cost, scope, and durability of policy enactment. These differences shape firms' non-market strategies, such as deciding which policymaker to target and when and how to do so, as well as their market strategies, such as determining investment horizons based on policy durability. Naturally, empirical analyses of these theories remain incomplete without accounting for lobbying directed at courts (Baron, 1999; Bonardi, Hillman, & Keim, 2005; de Figueiredo, 2009; de Figueiredo & de Figueiredo Jr., 2002).

Second, information is central to lobbying theories, yet these theories remain largely untested due to the opacity of information exchanges in legislative and executive lobbying (de Figueiredo & Richter, 2014; Bombardini & Trebbi, 2020). Legislative lobbying occurs behind closed doors, and executive lobbying, despite being documented to some extent through public commentaries, remains largely opaque (Bertrand, Bombardini, Fisman, Hackinen, & Trebbi, 2021). By contrast, court lobbying occurs in a more transparent informational environment, where the content of information exchanges is observable. This setting therefore provides a unique opportunity to empirically examine information-based lobbying theories. Third, this transparency also holds promise for corporate political responsibility research, which seeks to understand whether the regulatory policies firms lobby for are consistent with their social and environmental claims and practices (He, Henisz, Josefy, and Werner, 2024; Lyon, 2023; Lyon et al., 2018). Unlike legislative or executive lobbying, court-directed lobbying allows researchers to capture firms' policy positions on social and environmental issues, which are increasingly addressed in courts due to heightened polarization, legislative gridlock, and the demise of the Chevron doctrine (Hasen, 2019; Zimmer, 2024). Finally, studying court lobbying can inform research that treats court decisions as policy

shocks. Understanding who lobbies and for what can help researchers improve their research designs and refine the scope of their empirical claims.

As such, there appears to be a powerful theoretical and empirical imperative for strategy research to investigate lobbying directed at courts. To facilitate research in this area, we present a novel dataset and context documenting lobbying that is directed at the U.S. Supreme Court and aims to influence patent policy. While court decisions carry significant policy implications for firms across various domains, they are particularly critical in patent law, where the Supreme Court has served as the *principal policymaker* over the past two decades (Chien, 2011; Lemley, 2016), with several studies showing that the Supreme Court's decisions have wide-ranging implications for firms' innovation activities and outcomes (Contigiani, 2023; Mezzanotti, 2021; Ozden & Khashabi, 2023).

Our dataset covers the 31 patent-related U.S. Supreme Court cases heard between 2000 and 2015. For each case, it documents the patent policy question at issue, the relevant patent dimension (e.g., patentability, scope, and exclusion), the individuals and organizations lobbying through amicus briefs, their policy positions, and the characteristics of the justices and attorneys involved. Lobbying success for each amicus brief is measured by whether the court ruled in favor of the litigant backed by the lobbying entity. We also include a more nuanced measure of lobbying success, capturing the information provided in the amicus brief to the court and the extent to which it was incorporated into the court's decision. Specifically, we use legal precedent citations in the amicus briefs as a proxy for the information shared with the court, and we capture lobbying success based on the overlap between citations in the amicus briefs and the court's judgments (Fleming & Sorenson, 2004; Yackee & Yackee, 2012, 2016). Finally, we merge this dataset with the DISCERN database to present stylized facts comparing court lobbying with legislative lobbying on patent policy (Arora, Belenzon, & Sheer, 2021).

Our findings show that between 2000 and 2015, 152 firms lobbied on patent policy, with 141 lobbying the Supreme Court. Although this represents a small fraction of the 2,803 public firms with innovative activities (Arora et al., 2021), these 141 firms collectively own about 60% of all U.S. patents held by public firms, indicating that major innovators view the court as a key venue for influencing patent

policy (see Figure 1). Notably, 17 firms lobby both Congress and the court, 124 lobby only the court, and just 11 lobby only Congress. This suggests that a substantial share of patent-related lobbying occurs in the Supreme Court and that overlooking court lobbying may obscure a major channel through which firms influence patent policy.

Insert Figure 1 about here

Our core contribution is to shift attention to the importance of court lobbying for strategy research and to increase access to relevant data. In addition to making our dataset publicly available, we provide a primer on constructing datasets for court lobbying to enable researchers to efficiently develop similar datasets for other policy domains beyond patent law. Scholars often cite the expanded availability of data as a key factor driving the increase in high-quality research on firms' lobbying activities directed at the legislative and executive branches (e.g., de Figueiredo & Richter, 2014; Katic & Hillman, 2023). Similarly, we aim for our paper to stimulate future research on firms' lobbying directed at the judicial branch (Ethiraj et al., 2019).

The article proceeds as follows. We first discuss the role of courts as critical policymakers and outline how lobbying occurs within the judicial system. We then introduce our dataset and present stylized facts on patent policy lobbying directed at the U.S. Supreme Court versus Congress. Next, we provide a primer on constructing similar datasets for other policy domains. Finally, we conclude by highlighting key questions on court lobbying important to strategy research and discuss how our dataset serves as a foundation for addressing these questions.

BACKGROUND: COURTS, POLICY, AND LOBBYING

Strategy scholars have paid limited attention to how firms seek to influence courts, and the limited work that does exist has focused almost exclusively on how the attributes and strategies of primary litigants—plaintiffs and defendants— influence court rulings (e.g., Ang & Jia, 2014; McDonnell & King, 2018; Somaya, 2003; Sutch & Kim, 2021). However, court decisions affect not only litigants but can also influence other firms within the industry or organizational field, as they can function as regulatory policy decisions that shape competitive landscapes. Consequently, non-litigant firms with a stake in a decision's

policy implications may lobby the court for a ruling that aligns with their interests. Given that the policymaking role of courts and the phenomenon of lobbying them may not be immediately apparent, a brief clarification of their pertinence is warranted.

The courts' policymaking function is grounded in their authority to review and potentially invalidate existing policies, such as presidential executive orders and congressional statutes. Although invalidating policies is a powerful tool, courts may refrain from using it to avoid perceptions of judicial overreach. However, courts serve as policymakers in another crucial way: the inherent incompleteness and ambiguity of legal statutes make them subject to interpretation. When private parties bring legal disputes before a court, the judges' interpretation of statutes not only determines the case's outcome but also establishes legal precedents, shaping future applications of the law. Unless legislators revise statutes to address gaps or ambiguities, the judiciary's interpretation becomes *de facto* policy. Lawmakers, constrained by limited time and expertise, often struggle to keep statutes current. Consequently, statutes may become outdated due to new developments (e.g., intellectual property rights for novel inventions). In addition, statutes are often politically contested (e.g., civil rights or environmental regulations). When such issues arise, bipartisan consensus can be challenging, and even agreed-upon revisions face legislative delays. Consequently, it has long been established that court decisions can function as *de facto* policy for extended periods (Caldeira, 1986; Cameron & McCarty, 2004; Dahl, 1957).

Because court decisions can serve as *de facto* policy, they often attract the attention of third parties that have vested interests in the decisions' policy implications. While third parties can influence courts in several different ways, such as strikes and demonstrations (Iaryczower et al., 2006) and public opinion (Casillas et al., 2011), we focus specifically on how third parties directly lobby the courts through provision of information.

Prior research indicates that information functions as the primary currency of influence within judicial contexts (Collins, 2004, 2018). Courts derive their legitimacy from the perception of impartiality, which is reinforced when their decisions rest on well-reasoned legal foundations. But many legal issues are highly complex, requiring judges to synthesize multiple laws, regulations, and precedents. This

imposes a significant cognitive burden on judges, who are often limited by time, expertise, and resources. As a result, they welcome information from third parties that clarifies the legal landscape and helps them to develop a robust legal foundation for their decisions. Additionally, judges may have their own policy preferences (Bonica & Woodruff, 2015), and these have the potential to introduce biases into their legal reasoning. Even when predisposed toward a particular interpretation, judges must reconcile their decisions with established legal precedents. Information from third parties can either support their preferred outcomes or prompt them to reconsider their biases. Consequently, lobbying the judiciary through information provision is the central mechanism through which third parties seek to influence judicial decisions (Caldeira & Wright, 1988; Collins, 2008, 2018).

Across the world, courts receive input from third parties through amicus briefs—legal documents filed by non-litigant individuals or organizations to inform the court in a specific case. Each brief outlines the submitting entity’s interest, presents its arguments, and provides legal precedents in support. Amicus briefs can support the plaintiff’s or the defendant’s position or take a neutral stance. Regardless of whether the plaintiff or the defendant wins the case, the key aim of an entity that files an amicus brief is to guide the court toward a final judgment that aligns with its own policy preferences. As such, amicus briefs often provide insights beyond those of the litigants. For instance, Collins (2008) found that over 70% of amicus briefs submitted between 1946 and 2001 included content not covered by the litigants’ briefs.

Both court rules and prior research indicate that amicus briefs can significantly impact judicial rulings. For instance, Rule 37 of the U.S. Supreme Court states that an amicus brief presenting relevant matters “not already brought to [the court’s] attention by the parties may be of considerable help.” Toobin (2008) has extensively documented how judges and their clerks frequently rely on amicus briefs when drafting opinions. Consistent with this, Hazelton and colleagues (2019) find that information stated in both amicus and party briefs often appeared in Supreme Court majority opinions issued between 1988 and 2005. Similarly, Collins, Corley, and Hamner (2015) show that up to a third of the language in judicial opinions can be traced to amicus briefs, indicating their substantial role in shaping court decisions. In

essence, lobbying through amicus briefs can influence judicial outcomes and, by extension, the policies embedded in these decisions.

To help in paving the way for research on court lobbying as a form of corporate political activity that firms use to shape their competitive landscapes (Baron, 1999; Bonardi et al., 2005; de Figueiredo, 2009; de Figueiredo & de Figueiredo Jr., 2002), we present a dataset documenting lobbying efforts that are directed at the U.S. Supreme Court and aim to influence patent policy.

DATASET: LOBBYING THE SUPREME COURT ON PATENT POLICY

Our dataset captures patent-related lobbying directed at the U.S. Supreme Court from 2000 through 2015. Although the U.S. Constitution grants Congress the authority to legislate on patents, it has rarely exercised this power. Between 2000 and 2015, Congress enacted only one major patent-related law, the *America Invents Act* of 2011. In contrast, the Supreme Court issued 31 rulings that significantly reshaped patent law and had far-reaching consequences for the generation, development, or use of innovation.

The rulings applied to the 3.5 million patents awarded by the U.S. Patent and Trademark Office (USPTO) between 2000 and 2015, with the decisions also affecting retroactively unexpired patents granted before this period. The rulings' impact becomes clear just by considering three cases—*Alice Corp. v. CLS Bank* (2014), *Mayo Collaborative Services v. Prometheus Laboratories* (2012), and *Association for Molecular Pathology v. Myriad Genetics* (2013)—that redefined the standard for patentability. The USPTO tracks patent application rejections in which examiners cited these rulings as grounds for rejection, totaling 133,145 for *Alice*, 21,764 for *Mayo*, and 8,311 for *Myriad*. High as these numbers are, they likely underestimate the rulings' full effect: many inventors, anticipating rejections based on these rulings, may have forgone—and may still be forgoing—applying altogether. Likewise, scholars have documented sizable implications of patent-related Supreme Court rulings on firms' innovation activities and outcomes, including R&D expenditures, venture capital investments, and productivity, as well as smaller firms' ability to innovate and license their inventions (Contigiani, 2023; Mezzanotti, 2021; Ozden & Khashabi, 2023).

Simply put, since the turn of the century, the Supreme Court has emerged as the primary policymaker in the U.S. patent system (Chien, 2011; Holbrook, 2007; Lemley, 2016).² Thus, to understand lobbying dynamics in patent policy, it is imperative to focus on patent-related Supreme Court cases and the lobbying activities directed at the court in these cases.

Supreme Court Patent Cases: Sample and Key Case Characteristics

We identified patent-related Supreme Court cases using the Westlaw database. Our initial search for Supreme Court decisions referencing patent law produced 65 cases decided between 2000 and 2015. We reviewed each case, and in doing so we excluded those in which the Supreme Court had denied certiorari or where patent issues were only tangentially relevant, such as cases primarily concerning copyright, trademark, or physical property law (e.g., *Eldred v. Ashcroft* [2003] and *Horne v. Department of Agriculture* [2015]). This refinement process resulted in a final sample of 31 patent-related cases.

Policy Questions, Supreme Court Decisions, and Patent Categories

The first component of our dataset constitutes key case characteristics, which we captured using two sources: the Supreme Court's decision documents obtained from the Westlaw database, which provide detailed descriptions of the issues at stake, and the Oyez Project, which offers helpful case summaries.

Table 1 presents the key case characteristics.

Insert Table 1 about here

Table 1 describes patent policy question embedded in each case and the Supreme Court's rulings. For example, in *Alice Corp. v. CLS Bank* (2014) (case number 13-298), the Supreme Court considered whether computer-implemented inventions are eligible for patents. It ruled that they are not if they merely apply an abstract idea using a generic computer, as this does not constitute a sufficient technological innovation to warrant patent protection. As is self-evident, the implications of this decision extend far beyond the litigants, significantly impacting the software industry as a whole. Other cases similarly

² Even before the 2000s, patent policy was shaped more by the Court of Appeals for the Federal Circuit (CAFC) than by Congress. Observers attribute the Supreme Court's emergence as the primary policymaker on patent-related issues to its growing concerns that the CAFC had overextended patent protections by disproportionately favoring patent holders (e.g., Seidenberg, 2008).

address broad policy questions, with court rulings' impact extending beyond the immediate parties.

Indeed, this is a defining feature of Supreme Court cases, as the court prioritizes cases that present "an important question" (The Supreme Court of the United States, 2017, Rule 10), meaning most cases inherently involve one or more policy considerations (Kastellec & Lax, 2008).

To capture greater nuance in Supreme Court rulings, Table 1 also indicates whether each decision was unanimous—reflecting full agreement among the justices—or split, involving at least one dissenting opinion. Although both types of rulings are legally binding, unanimous decisions are generally regarded as stronger precedents (Fallon, 2005). This distinction makes split decisions particularly relevant to interest groups whose policy objectives may be threatened by the ruling, as these groups may focus their lobbying on justices likely to dissent, providing legal arguments to bolster the dissenting opinion. While dissenting opinions lack legal authority, research suggests they can lay the groundwork for potential future reversals, influence lower court rulings, and shape congressional action (Banks, 1999).

Table 1 also indicates the specific area of patent policy impacted by the Supreme Court decision. To compile this information, we manually coded each case by drawing on previous research that distinguishes between four key areas: patentability, scope, exclusion, and other. *Patentability* defines the criteria an invention must meet to qualify for a patent, such as novelty and non-obviousness, thereby determining which types of inventions are eligible for protection (Contigiani, 2023). *Scope* pertains to the breadth and duration of the rights granted, affecting how broadly a patent claim can cover similar inventions and the level of control the patent holder has over related innovations (Marco, Sarnoff, & Charles, 2019). *Exclusion* involves the patent holder's rights to prevent others from using, making, or selling the invention (Ziedonis, 2004). Finally, the *other* category includes issues that fall outside the first three areas but are still pertinent to patent law, such as jurisdictional and administrative matters.

As Table 1 shows, eight cases in our sample addressed patentability, four addressed scope, sixteen focused on exclusion, and six dealt with other issues. While most cases concentrate on a single dimension of patent policy, three address both exclusion and scope, and one involves both exclusion and patentability. Categorizing cases by policy dimension enables analysis of how interest groups position

themselves on different aspects of patent policy, revealing, for example, which groups consistently advocate for broader patents and which oppose them.

Amicus Briefs and Amici Curiae

The second component of our dataset constitutes data about the amicus briefs (lobbying documents) and amici curiae (lobbying entities) involved in these patent cases. We obtained these data from amicus briefs submitted in each case in our sample. Table 2 shows the total number of amici curiae and briefs, revealing significant variation across cases. This variation may serve as a proxy for each case's perceived importance: high-profile cases such as *Alice*, *Mayo*, and *Myriad* predictably attracted briefs and amici in greater numbers. Across our 31 cases, 1,952 amici curiae submitted 654 briefs, with multiple amici often collaborating on a single brief. When briefs are jointly submitted, justices may assign greater weight to the content, as collective endorsement can signal added significance or credibility (Collins, 2004).

Insert Table 2 about here

Given the wide variety of individuals and organizations whose interests are at stake in each case, we classified amici curiae into distinct interest groups using a two-step process. First, we reviewed the “Interests of the Amici” section in each amicus brief, where amici typically provide characterizations of themselves. For example, in *KSR v. Teleflex* (2007), PhRMA described itself as “a voluntary, nonprofit association representing the nation’s leading research-based pharmaceutical and biotechnology companies,” indicating that it is a trade association for the pharma and biotech industries. Second, we verified each amicus’s self-characterization by consulting the individual’s or organization’s website and other publicly available resources. Table 2 identifies the number of different interest group types for each case. In the interest of parsimony, we merged the initially identified ten amici categories into three: business interests (firms, trade associations, professional associations); non-business organizations (non-profits, universities, and government organizations), and individuals (professors, inventors, lawyers). As the table shows, all three types of interest groups lobby in all cases. However, business interests are more numerous in almost all cases, though in some instances, non-business interests and individuals are also present in significant numbers—a variation that is in need of empirical and theoretical explanation.

We also reviewed the amicus briefs to identify whether the amici curiae supported the petitioner, supported the respondent, or remained neutral. Table 2 shows the percentage distribution of amici in each category for each case. On average across all cases, amici curiae support was nearly balanced, with approximately 46% backing petitioners and 41% supporting respondents. Additionally, 13% of amici took no explicit side, reinforcing the idea that amici's primary interest lies in shaping the decision's content rather than its outcome for litigants.

Additional Case-Level Variables

In addition to the case-level information reported in Table 1 and Table 2, our dataset includes details about the judges involved in each case. Prior research indicates that the composition of the bench—the set of judges hearing a case—can significantly influence case outcomes: judges' ideological leanings, clerkship experience, and other biases shape these arguments alongside the case facts (Bonica & Sen, 2017). Our dataset includes judges' names obtained from the Cornell Legal Information Institute. Judges' ideology is captured by using the nominating president's political party. In terms of educational background, we recorded each judge's undergraduate and J.D. institutions, manually sourcing this information from their résumés. The attorneys' backgrounds are similarly pertinent, because shared educational or professional experiences with the justices may impact case dynamics (Sytch & Kim, 2021). Consulting personal websites and résumés, we manually collected data on the legal counsel listed on amicus briefs, including undergraduate and J.D. institutions and clerkship experience. We created variables indicating common educational background if a lawyer and a judge attended the same institution, and common professional background if the lawyer previously clerked at the Supreme Court for a judge on the bench.

Together, these variables capture each case's key characteristics and form the core components of our dataset. Depending on the researcher's desired focus, they can serve as control variables or be used to explore mediating and moderating mechanisms. Having outlined the cases in our sample and their main attributes, we now turn to our measure of lobbying success.

Measuring Lobbying Success

A straightforward way to assess the success of lobbying efforts is to examine whether amici supported the litigant on the winning or losing side of a case. This measure is intuitive and easy to implement, offering a useful starting point for evaluating whether amici curiae secured Supreme Court rulings aligned with their policy interests. However, it has significant limitations.

First, Supreme Court decisions do not always produce clear winners and losers. In *Association for Molecular Pathology v. Myriad Genetics* (2013), for example, the court ruled that naturally occurring human genes could not be patented, siding with the Association for Molecular Pathology. At the same time, the court upheld the patentability of synthetically altered genes, benefiting Myriad Genetics and other firms in the industry, including amici such as Genentech and Roche. This case illustrates how a binary measure of success fails to capture the reality that amici curiae may achieve partial victories (losses) even when the litigant they supported loses (wins).

Second, as noted above, about 13% of the amicus briefs are filed without supporting a specific litigant. These amici nevertheless have economic stakes and policy preferences that are impacted by the court decisions, which a binary measure would fail to capture.

Third, even when amici take a side, their ultimate goal is more nuanced than securing a legal victory for the litigant they support. Consider *eBay v. MercExchange* (2006), which addressed whether patent holders should automatically obtain permanent injunctions against infringers. Both Research in Motion (RIM) and the Electronic Frontier Foundation (EFF) filed amicus briefs opposing automatic injunctions, yet their arguments differ. RIM emphasized that automatic injunctions could unjustly benefit holders of low-quality patents and stifle innovation, particularly when wielded by patent assertion companies (also referred to as patent trolls). EFF, by contrast, argued that automatic injunctions posed a direct threat to free speech, as patented digital technologies were becoming central to online expression and electronic communications. The Supreme Court's final opinion aligned with RIM's position on the need for an adequate remedy to infringements that aligns with the patent system's goal of promoting innovation, but it omitted any discussion of EFF's free speech argument. Thus, although RIM and EFF supported the same litigant, their lobbying efforts pursued distinct policy objectives, and only RIM's

objective was reflected in the ruling. As a result, RIM secured a precedent it could invoke to support its stance on injunctions in economic exchanges and legal disputes, whereas EFF, as a nonprofit advocating for digital free expression, derived little comparable advantage.

An Information-Based Measure of Lobbying Success

Given these limitations, we propose an alternative measure of lobbying success: the extent to which policymakers (in our case, the Supreme Court) incorporate information from lobbying entities (in our case, amici curiae) in their policy decisions (in our case, the court rulings). To this end, we consider the legal precedent citations in amicus briefs as a proxy for information provided by the amici curiae and develop a measure of lobbying success based on the overlap between the citations in amicus briefs and court's ruling. We focus on citations because they are a widely recognized metric of information flow (Griliches, 1990; Sorenson & Fleming, 2004; Yackee, & Yackee, 2012, 2016), and hold particular significance in the judicial context (Branting et al., 2020; Tippet et al., 2021), which we elaborate on below.

The primary goal of amici curiae is to have their preferred policy position reflected in the court's decision (Collins, 2008; Kearney & Merrill, 1999). While court decisions are not bound by formal rules, certain guiding principles shape judicial decision-making. For instance, Rule 10 of the Supreme Court emphasizes that a central aim of court decisions is to uphold a coherent body of law (Supreme Court of the United States, 2017). Courts also seek to adhere to the principle of *stare decisis*, or 'let the decision stand', meaning that current rulings are typically influenced by established legal precedents. Likewise, judges rely on legal precedents to justify their rulings, ensuring their legitimacy and minimizing the risk of override or non-enforcement by other branches of government (Epstein and Knight, 1998; Fallon, 2005). By training and professional experience, judges are therefore conditioned to place precedents at the heart of their reasoning and decision-making (Tippet et al., 2021).

For example, in *Association for Molecular Pathology v. Myriad Genetics* (2013), the court cited the past ruling *Mayo Collaborative Services v. Prometheus* (2012) to invoke the principle that products of nature should not be patentable. However, by also citing *Diamond v. Chakrabarty* (1980), the court distinguished between naturally occurring substances and those modified by human ingenuity, arguing that

patents can be granted when human intervention has significantly altered the substance. The court also cited *Funk Brothers v. Kalo Inoculant* (1948), a case in which the court ruled that a mere combination of naturally occurring elements does not qualify for patent protection. Drawing on these legal precedents, the court delivered a ruling asserting that products of nature are not patentable, but they can become so if substantially modified by human intervention.

Furthermore, amicus briefs mirror this citation practice. Lawyers drafting amicus briefs are trained to construct arguments by invoking legal precedents, just as Supreme Court justices are. This shared epistemic framework suggests that when the court's final opinion includes legal precedents also cited by an amicus brief, this citation overlap indicates that the opinion reflects the amici's preferred legal reasoning. Because this measure of lobbying success, to the best of our knowledge, has not been previously employed in lobbying research (for a comparable approach, see Yackee, & Yackee, 2012, 2016), we consulted several legal and lobbying experts, who affirmed the importance of legal precedent citations in this context and supported our use of this measure as a proxy for lobbying success. In addition to being scalable, this measure is more nuanced than simply evaluating who won or lost.

We began our work on this aspect of our dataset by extracting all legal precedent citations included in each amicus brief in our sample. We then reviewed the Supreme Court's final decisions to identify whether any of the precedents cited in the briefs were referenced in the court's opinions, and we used citation overlap between amicus briefs and the court's opinions as a proxy for lobbying success.

Since the focal firm's amicus brief is only one of many informational sources available to the court, it is important to account for other materials justices may consult in the case. Our interviews with experts as well as previous research indicate that Supreme Court justices, as generalists rather than patent experts, rely heavily on both party briefs (i.e., those submitted by petitioners and respondents) and amicus briefs to inform their decisions (Toobin, 2008; Larsen, 2014). To account for this, we reviewed party briefs in each focal case to determine whether they cited the same legal precedents as the focal amicus brief. Additionally, we examined all other amicus briefs in the case to document the extent to which amici

supporting various positions cited the same legal precedents. Specifically, we recorded the prevalence of each citation across amicus briefs favoring plaintiffs, favoring respondents, and taking neutral stances.

As an illustrative example, Table 3 presents data from the aforementioned RIM amicus brief in *eBay v. MercExchange* (2006) (Mezzanotti, 2021; Ozden & Khashabi, 2023). This case addressed whether courts should automatically issue a permanent injunction for patent infringement. While the case was being heard, RIM was also involved in litigation with NTP, a patent assertion company seeking an injunction against RIM's use of its patents in BlackBerry's messaging system. In its amicus brief, RIM supported the plaintiff (eBay), arguing that automatic injunctions, especially for non-practicing patent holders, could unfairly burden companies relying on patented technology for innovation. RIM advocated for a discretionary approach based on equitable considerations, warning that strict enforcement could stifle technological progress and disproportionately benefit entities that contribute little to innovation.³

To support its stance, RIM's amicus brief cited 17 legal precedents, four of which were also cited in the court's opinion. Table 3 displays these citations and shows whether each precedent appeared in the plaintiff's or the respondent's briefs. Two citations overlapped with both parties' briefs, eight were unique to either the plaintiff's or respondent's brief, and seven were exclusive to RIM's brief. These seven citations reveal how amici curiae introduce additional legal arguments beyond those presented by the parties (Collins, 2008). Additionally, the table shows the overlap between RIM's citations and those in the other amicus briefs filed during this case. Table 3's tracing of appearances of citations from RIM's amicus brief in other documents from *eBay v. MercExchange* exemplifies the approach we took in constructing our dataset, and we systematically applied this approach to all 6,421 legal precedents cited across cases in our sample, thus creating a map of citation networks that can help trace the policy positions and lobbying strategies of firms and other interest groups (Branting et al., 2020)

³ Notably, RIM paid a \$600 million settlement to NTP just three months before the Supreme Court's ruling in *eBay v. MercExchange* (2006), which ultimately supported RIM's position. Although RIM could not directly benefit from the ruling due to the prior settlement, it is possible the outcome might have reduced the settlement amount had the court ruled earlier. Alternatively, RIM's close monitoring of the case and involvement through amicus briefs suggest it anticipated a reduction in NTP's leverage based on the threat of a permanent injunction. Overall, the case illustrates the importance of policy shifts like this one and why firms like RIM lobby to influence outcomes that affect their interests in patent-related issues.

Insert Table 3 about here

Our dataset includes information not only at the citation level but also at the amicus brief level.

Table 4 illustrates this aspect of our dataset, showing data on the 32 amicus briefs submitted by 146 amici curiae in the course of *eBay v. MercExchange* (2006). The table lists each brief's amici, number of participants, and position vis-à-vis the litigants (supporting the petitioner, supporting the respondent, or neutrality). For each brief, we recorded the number of legal precedents cited and the extent of overlap with the court's final ruling. The data reveal notable variation in the number of amici per brief, their positions, and overlap of their citations with those of the ruling. For example, a group of 52 professors (Pamela Samuelson et al.) submitted a brief supporting the plaintiffs; in this they cited 14 legal precedents, seven of which appeared in the final opinion, indicating substantial overlap. By contrast, the Pharmaceutical Research and Manufacturers of America (PhRMA), a trade association supporting the respondent, cited 20 precedents, none of which was included in the opinion. While citation-level data track specific legal arguments, brief-level data capture each amicus brief's effectiveness in lobbying the court. In this case, the overlap rate for Samuelson et al.'s citations suggests successful lobbying, whereas PhRMA's lack of overlap indicates relatively limited influence.

Insert Table 4 about here

Although Table 4 provides a simple measure of lobbying success by counting overlaps between amicus brief citations and the court's opinion, the citation-level data in our dataset allows for more nuanced analysis. For instance, depending on the research question and the specific policy area under consideration, certain citations may be of greater importance than others. Additionally, for studies focused on networks of interest groups and citation patterns, our dataset allows for more sophisticated analyses, such as assigning greater weight to specific citations or less weight to frequently cited precedents. In short, citation-level data gives researchers the flexibility to construct tailored measures that capture different dimensions of court lobbying.

Additional Measures of Lobbying Success

A key limitation of our citation overlap measure of lobbying success is that the same citation might have different rhetorical implications. For instance, even if a court decision includes the same citation as an amicus brief, the court may reference the citation to indicate disagreement with the focal legal precedent, whereas the amicus brief may cite it to bolster its argument. Thus, the presence of the same citation in both the amicus brief and the court’s decision does not necessarily indicate that the court aligns with the position of the amicus curiae.

To address this concern, we used natural language processing (NLP) methods to assess the sentiment of sentences containing the citations (Bertrand et al., 2021; Catalini, Lacetera, & Oettl, 2015). Our manual verification revealed that while the magnitude of the sentiment score does not reliably distinguish “more positive” from “more negative” sentences, the score’s sign (positive or negative) is a reliable indicator for capturing potential disagreement when there is citation overlap. Based on this finding, we created a binary variable: 1 for positive or neutral sentiment and 0 for negative sentiment. Using these sentiment classifications, we constructed a measure of lobbying success based on the number of legal citations shared between amicus briefs and court opinions, including only those citations that reflect the same sentiment. However, we note a limitation: in some cases, sentences may carry a negative tone without being negative about the citation itself. Despite this limitation, our manual verification suggests that this variable offers a more nuanced measure of lobbying outcomes.

In addition, an amicus’s citation being referenced on the “winning side” of a Supreme Court ruling (majority or concurring opinion) may have a different impact than it being referenced on the “losing side” (dissenting opinion). To account for this, we reviewed court rulings and categorized their sections as majority, concurring, or dissenting. Majority opinions reflect the reasoning and decision agreed upon by the majority, concurring opinions are authored by justices who agree with the outcome but offer alternative reasoning, and dissenting opinions are written by justices who disagree with the majority. Using this classification, we created an alternative measure of lobbying success that counts precedent citations shared between amicus briefs and the majority and concurring opinions. Additionally, we developed a more restrictive variable that includes only citations in the majority opinion.

We also developed an alternative measure that does not rely on citations. Using natural language processing, we computed text similarity scores for all amicus brief–opinion dyads in our sample, which can serve as a measure of lobbying success in courts (Bertrand et al., 2021; Espinosa, 2021). While this text similarity measure may seem appealing for assessing lobbying success, our manual inspection reveals a key limitation: it can produce false negatives by overlooking instances where the court adopts legal arguments that are similar in phrasing to an amicus brief but differ in substance.

Descriptive Statistics

Table 5 presents descriptive statistics at three levels: case, amicus brief, and precedent citation. Panel A, reporting case-level data, shows that each case averages 23.2 amicus briefs and 66.5 amici curiae, demonstrating the scale of amici engagement. On average, 261.8 unique legal citations appear across all amicus briefs per case, but only 19.19 of these are included in the court’s final opinion, highlighting the selective nature of the court’s citation process. Panel B, reporting amicus brief-level data, shows that each amicus brief cites an average of 21.39 legal precedents, with only about 4.48 of these appearing in the court’s decision. Panel C, reporting citation-level data, indicates that individual legal precedents are cited in 0.23 litigant party briefs and in approximately 1.89 other amicus briefs for the focal case. Out of all the legal precedents cited in specific cases, only 5.8% appear in the court’s ruling. Together, these descriptive statistics reveal that while amici cite many legal precedents to support their positions, the court includes only a selective subset, indicating the intense competition among amici to influence the patent policy embedded in the court’s decisions.

Insert Table 5 about here

Table 6 (omitted from the paper due to page limits) presents descriptive statistics on the types of firms that were more successful in their lobbying efforts. Specifically, we examine whether a given precedent citation appears in the court’s ruling based on the citing firms’ sales, assets, return on assets, patent stock, and social status. Data on firms’ assets and sales come from Compustat, those on patent stock come from DISCERN (Arora et al., 2021), and those on social status come from Fortune’s Most Admired Companies list (McDonnell and King, 2018). As expected in view of the role economic and symbolic

power play in lobbying success, the precedent citations advanced by firms with greater assets, sales, patent stock, and higher social status are more likely to appear in court rulings compared to those from firms with fewer assets, lower sales, smaller patent stock, and lower social status.

Next, we present descriptive statistics on the characteristics of firms that lobby on patent issues versus those that do not. Among lobbying firms, we distinguish between those that lobby only in courts, only in Congress, or in both venues. To identify a relevant set of firms that could have plausibly engaged in lobbying on patent-related issues, we used the firms in the DISCERN database, which includes all U.S. firms with at least one patent and one year of positive R&D expenditure between 1982 and 2015. Our final sample comprises 2,955 firms that plausibly fit the profile of those with potential incentives to lobby on patent policy between 2000 and 2015. For these firms, we collected data on congressional lobbying from the Senate Office of Public Records (SOPR), identifying all lobbying expenditures linked to issues containing the keyword *patent*.

Insert Table 7 about here

Table 7 presents the summary statistics. Panel A compares non-lobbying firms with lobbying firms. Of the 2,955 firms at risk of lobbying on patent-related issues, 2,803 firms did not lobby, while 152 firms lobbied either Congress or the court. This amounts to approximately 5.2% of firms with at least some innovative activity, a figure comparable to other settings and policy domains (e.g., Dutt, Sung, Li, & Rath, 2024; Kerr, Lincoln, & Mishra, 2014). As expected, compared to non-lobbying firms, lobbying firms have, on average, 15 times more assets, 10 times more sales, 18 times more patents, and seven times higher social status.

A further distinction emerges when comparing lobbying firms based on their choice of venue. Panel B shows that 28 lobbied Congress, while 141 lobbied the Supreme Court. There are notable differences in the characteristics of firms that lobby the court compared to those that lobby Congress. Firms that lobby the court are more numerous but tend to have substantially fewer assets, lower sales, smaller patent stocks, and lower social status than those that lobby Congress.

Panel C presents more detail on firms that lobby for patent policy, comparing those lobbying the court *only* (124 firms) with those lobbying the Congress *only* (11 firms). Firms that lobby Congress only tend to be smaller in terms of sales, assets, and patent stock, suggesting that the differences observed in Panel B are driven by firms lobbying in both venues. Indeed, Panel D clearly indicates that firms that lobby in both venues (17 firms) are significantly larger in terms of assets, sales, patent stock, and social status than those which lobby only the Court or only Congress.

Overall, the descriptive statistics suggest that firms lobbying the court have greater economic and social power than those that do not lobby at all but less than those that lobby both political venues. This pattern is relevant to questions raised by theories of integrated political strategy, such as why firms choose to lobby in a given venue but not others (de Figueiredo, 2009). While this paper does not seek to extend or test these theories, the accessibility of court lobbying to firms with lower economic and social power suggests meaningful variation across venues in terms of openness to influence from different types of interests. Indeed, filing an amicus brief requires fewer resources than congressional lobbying, with costs ranging from \$10,000 to \$20,000 (Chien, 2011). This difference implies that court-level policymaking may accommodate a broader range of lobbying interests than congressional lobbying, whose higher barriers to entry may restrict participation in policymaking. Relatedly, it is instructive that nearly three times as many firms lobby the court as do Congress alone, reinforcing the core argument of this paper: neglecting court lobbying in empirical research risks overlooking an important dimension of corporate influence on regulatory policy. In the case of patent policy, in particular, the data indicate that a substantial share of lobbying activity occurs in courts, suggesting that analyses focused solely on congressional lobbying risk providing an incomplete or misleading account of firms' influence on patent policy.

A PRIMER ON COMPILING A DATASET ON LOBBYING THE COURTS

Providing a clear guide for constructing similar datasets is just as important as making our dataset available for future research (Ethiraj et al., 2019). Although there is intermittent legal research on U.S. Supreme Court amicus briefs (Chien, 2011; Collins et al., 2015), no publicly available dataset or guide currently exists to facilitate understanding of this context. When we began this project, our first step was

an in-depth qualitative content analysis of the briefs filed in *eBay v. MercExchange*. We manually coded open-ended categories based on the arguments presented, their meanings, and emerging themes, applying these categories to all briefs (Crotty, 2003). We complemented our qualitative analyses by interviewing legal experts and extensively consulting legal and political science literatures. This approach allowed us to gain insights into the nuances of court lobbying, including patterns such as amici's frequent reliance on precedent citations to support their arguments. Drawing on several years of efforts to understand the institutional context of court lobbying and the data needed to capture it, we are now positioned to provide a primer on systematically collecting data on court lobbying. Our guide aims to assist researchers in building datasets that go beyond our timeframe within the area of patent policy, focus on other policy areas, or examine courts other than the U.S. Supreme Court.

Policy Domain and Relevant Court

Researchers constructing a court lobbying dataset should begin by selecting a specific policy area. Once identified, the next step is to determine which courts are most relevant to that policy domain. This step is crucial, as different policy areas may fall under the jurisdiction of various courts, including federal and state courts or transnational courts such as the Court of Justice of the European Union. Determining which specific court(s) to examine requires familiarity with the institutional context of the chosen policy area. Consulting law and political science literature can provide valuable insights, as these sources often analyze where impactful policy decisions are made and why they occur there. Additionally, interviews with experts can clarify legal dynamics, as the locus of policymaking can shift over time across industries and jurisdictions. For instance, through literature and expert insights, we found that before 2000, the Supreme Court rarely heard patent cases, with most patent policy developments handled by the Court of Appeals for the Federal Circuit (CAFC). This shift in the Supreme Court's involvement after 2000 informed our dataset's starting point; a pre-2000 dataset would instead focus on the CAFC.

Sample Construction

Once the policy area and relevant courts are identified, the next step is to construct a sample of cases within that policy area. For U.S. and European contexts, we recommend using databases such as Westlaw or LexisNexis that are widely used by legal scholars, political scientists, and practitioners. To compile our dataset, we used Westlaw; since navigating Westlaw is complex, we provide a guide in the Online Appendix A. Regardless of the specific database used, this step should yield three types of document for each case in the focal policy area: the court opinion, litigant party briefs, and amicus briefs.

The next step is to carefully review the court opinion documents to ensure that each case genuinely pertains to the policy area of interest. This step is essential because Westlaw's and LexisNexis's policy area keyword filters can be broad, resulting in some irrelevant cases in the search results. For example, our initial search for patent cases yielded 65 results, but only 31 were truly focused on patent policy; the others merely mentioned patents incidentally. We recommend that researchers review the case opinion documents themselves, as examining them not only confirms relevance but also deepens understanding of the policy area and potentially foregrounds conceptual development, empirical design, and qualitative evidence gathering. In our project, for example, this careful review revealed insights into specific policy questions, judicial perspectives, and the factors prioritized by the courts, which informed our variable selection and enriched our understanding of the judiciary's policymaking role.

Case-Level Information

Once the final sample of cases has been selected, the next step is to use the opinion documents to create variables that capture case-level information. In terms of baseline variables, we recommend extracting data on the petitioner, the defendant, the case outcome, and whether the decision was unanimous or split. To automate the extraction of this information from court opinion documents, we have written a code and will make it publicly available.

However, identifying the specific policy issue in each case requires manual review. While the initial manual inspection confirms that each case is relevant to the researcher's policy area, this additional step documents the specific policy question under review by the court. The court's opinion document is typically the primary source for identifying the policy issue, as it often states the question explicitly. The

Oyez Project also provides helpful summaries of policy questions, case facts, and context. After identifying these for each case, it can be useful to categorize policy questions into distinct categories, for example, we categorized patent cases into four main areas, following classifications in prior research.

In addition, extracting information about judges and attorneys is worthwhile, because their characteristics can significantly impact case outcomes and should be included as control variables (Sytch & Kim, 2021). We manually extracted the names of the justices, attorneys representing petitioners and respondents, and legal counsel for amici from the court documents. Once these names are collected, researchers can use resources such as the Cornell Legal Information Institute to gather background details on judges and attorneys, including professional and educational histories. Additionally, data on judges' ideological leanings can be obtained by identifying the political party of the appointing authority. Together, this set of case-level variables forms the foundational elements of any dataset on court lobbying.

Amicus Brief-Level Information

The next step in constructing the dataset is to compile information from each amicus brief, which in the case of U.S. Supreme Court amicus briefs generally follows a standardized structure. Each brief begins with a header that identifies the case, the parties, and the brief's position (see Online Appendix B1, Panel A). The next page includes a table of contents and a table of authorities listing all cited legal precedents (see Online Appendix B1, Panel B). The next section explains the amici's interest in the case, helping judges understand what is at stake (see Online Appendix B2). In patent cases, for example, amici often emphasize the number of patents they hold or detail their R&D activities. Then, the main section presents the amici's arguments (see Online Appendix B3).

We developed an R script to automatically extract key information from amicus brief PDFs, including case number; brief identifier; the name of the litigant; the names of amici; and whether the brief supports the respondent, supports the petitioner, or remains neutral. The script also captures text from each brief's Interest of Amici section, allowing researchers to identify how the interest group characterizes itself (e.g., firm, trade association, professor). For accuracy, we recommend verifying this self-reported information using the amicus's website or other public sources. Although amicus briefs generally follow a

standardized format, some variations in formatting occur. Our code accommodates common differences, but unique deviations may require manual adjustments to ensure dataset accuracy.

To extract precedent citations, which serve as proxies for arguments, we used regular expression functions to identify federal case citations. We developed an R script to scrape these citations from PDFs of briefs and opinions. Although this process is largely automated through our code, two common issues require attention. First, U.S. Supreme Court precedents can be cited in two different formats. For example, *Alice Corp. v. CLS Bank International* (2014) may appear as “573 U.S. 208” (from *United States Reports*, the official publication) or “134 S.Ct. 2347” (from the *Supreme Court Reporter*, an unofficial reporter published by West Publishing). Within the U.S. legal system, cases heard in the lower courts are not affected by this formatting issue. For the Supreme Court citations in our sample, we manually collected the two versions from the publications. Although this step is time-intensive, it prevents missed connections between identical cases referenced under different formats. Second, within a brief, a legal precedent is often cited with the full reference initially (e.g., “573 U.S. 208”) and then abbreviated (e.g., “573 U.S.”) in subsequent mentions. Although the abbreviated citation is clear within a single document, it can cause confusion when analyzing a larger dataset with multiple briefs, as cases with similar abbreviations may refer to different precedents. We recommend replacing subsequent shortened citations with the full reference or dropping them altogether to avoid ambiguities. For instance, replacing “573 U.S.” with “573 U.S. 208” ensures no confusion with “573 U.S. 682,” a citation for *Burwell v. Hobby Lobby Stores* (2014), a completely different case.

Once case-level and brief-level variables have been captured, the final step in building the dataset is merging the collected data with data from other databases that provide relevant information on the amici curiae. For our focus on court lobbying pertaining to patent policy, we linked our dataset with DISCERN, a widely used database in innovation research that offers information on firms’ patents and scientific publications, and with Compustat to obtain firm characteristics. Researchers focusing on other policy areas can perform similar merges with relevant databases; for instance, those studying environmental policy may consider ESG datasets such as Refinitiv’s ASSET4.

DISCUSSION AND FUTURE RESEARCH

Similar to how research on lobbying the legislative and executive branches has expanded with greater data access (e.g., de Figueiredo & Richter, 2014; Katic & Hillman, 2023), we seek to advance the study of court lobbying by providing our dataset, along with a primer and our codes that will enable researchers to efficiently construct similar datasets. As we noted in the introduction, these data can facilitate the examination of largely untested theories on integrated market and non-market strategy (Baron, 1999; Bonardi et al., 2005; de Figueiredo, 2009), informational models of lobbying (de Figueiredo & Richter, 2014; Bombardini & Trebbi, 2020), and corporate political responsibility research (He et al., 2024; Lyon, 2023; Lyon et al., 2018). Beyond the value of integrating court lobbying into existing research, shifts in the political and legal landscape highlight the need to theorize and empirically investigate the dynamics of court lobbying in its own right.

Over the past two decades, rising political polarization has deepened divisions among legislators, reducing their willingness to compromise and leading to persistent legislative gridlock (Iyengar, Lelkes, Levendusky, Malhotra, & Westwood, 2019). As a result, courts have assumed a greater policymaking role: they are increasingly called upon to fill the policymaking void left by a paralyzed political process in the other branches of government (Hasen, 2019; Levinson & Pildes, 2006). More recently, the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* (2024) overturned the longstanding Chevron doctrine, which had required courts to defer to regulatory agencies' reasonable interpretations of ambiguous laws (Merrill, 2022). This shift transfers interpretive authority from regulatory agencies to the judiciary, expanding judicial influence over regulatory policy. The change is likely to be particularly consequential in areas such as climate change, consumer protection, and labor rights, where firms now have greater opportunities to challenge agency regulations in courts (Zimmer, 2014). Although the judiciary has always played a role in policymaking, political polarization and the demise of the Chevron doctrine have elevated its influence over regulatory policy, underscoring the need for scholarly attention to the dynamics of court lobbying.

As strategy scholars turn their attention to court lobbying, our dataset, or datasets constructed using our approach, can help address two critical questions. First, do firms' lobbying efforts successfully influence policymaking, and what factors determine lobbying success (de Figueiredo & Silverman, 2006)? To facilitate research on the effectiveness of lobbying directed at courts, our dataset presents a measure of lobbying success. Using legal precedent citations in amicus briefs as a proxy for the information firms provide to courts, our measure captures effectiveness by examining whether firms' citations overlap with those in judicial rulings. By enabling systematic tracking of the information firms provide and whether courts incorporate these inputs into their decisions (Yackee & Yackee, 2012, 2016), this approach offers greater granularity and complements the common reliance on indirect proxies, such as lobbying expenditures to infer lobbying intent or financial performance to assess lobbying effectiveness. Because legal precedents serve as the fundamental currency in judicial settings, this measure applies across industries, policy arenas, and time periods, allowing for tests of the generalizability of lobbying effectiveness theories and contributing to a cumulative and replicable body of knowledge on court lobbying (Bettis, Ethiraj, Gambardella, Helfat, & Mitchell, 2016).

Second, a key theoretical and practical question is why so few firms engage in court lobbying—only 141 out of 2,803 patent-holding firms in our sample. This mirrors Ansolabehere, de Figueiredo, and Snyder's (2003) question of why so little money flows into politics despite high potential returns. Explanations for this include the fact that many firms lack the financial resources to cover the fixed costs of establishing a Congressional lobbying operation and that most firms have insufficient political power and access to influence policy, creating high barriers to entry into lobbying (Bertrand, Bombardini, & Trebbi, 2014; Bombardini & Trebbi, 2012, 2020; de Figueiredo & Richter, 2014). However, these constraints are less relevant in court lobbying, where financial and political resources are not prerequisites for influence. Filing an amicus brief costs as little as \$10,000 to \$20,000—an amount within reach for most firms—and courts, in principle, decide cases based on legal arguments rather than the political clout of the lobbying entity. If the barriers that constrain congressional lobbying do not explain firms'

reluctance to lobby the courts, a puzzle of both theoretical and practical significance remains: Why don't more firms lobby the courts?

One potential explanation is organizational inertia: firms that abstain from congressional lobbying due to high fixed costs may extend this inaction to judicial settings despite the lower barriers. Firms may simply be unaware of court lobbying as a viable non-market strategy, leading them to underutilize this accessible, cost-effective channel, even though it does not depend on political or financial power. Another possibility is that court lobbying offers lower expected returns due to the limited durability of policy outcomes (de Figueiredo, 2009), though in areas such as patent policy, durability can be substantial.

Yet another potential explanation is that unlike lobbying the legislative or executive branches, where much of the process occurs behind closed doors, court lobbying is inherently public: information on who is lobbying and for what policy is visible. This transparency might explain why relatively few firms lobby courts. Public visibility likely shapes firms' strategic calculus regarding when and how to lobby, as disclosure of their lobbying activities can carry competitive and reputational consequences. For instance, if a firm lobbies on an issue tied to its competitive advantage in innovation or trade secrets, publicly disclosing its position could enable rivals to infer its strategic direction or upcoming innovations (de Figueiredo & Kim, 2004; de Figueiredo & Tiller, 2001; Park, 2023). Similarly, firms lobbying for policies that are potentially perceived as socially harmful—such as those opposed by environmental groups or labor advocates—risk inflicting reputational damage on themselves (Jia et al., 2023, Lyon et al., 2018). That said, remaining passive can also be costly if adverse policies threaten a firm's competitive standing.

How do firms navigate this dilemma? Do they rely on proxies, such as trade associations, to lobby on their behalf in courts (Bombardini & Trebbi, 2012)? Our data show that a significant number of trade associations lobby on patent policy. If trade associations' policy objectives do not fully align with firm-specific interests, do firms turn to alternative intermediaries, such as non-profits to which they donate (Bertrand et al., 2021)? Or to circumvent the dilemma, do firms go even further and seek to shape the broader policymaking environment? Rather than lobbying courts directly, for example, firms may attempt to influence the composition of the judiciary by lobbying the legislative and executive branch for

favorable judicial appointments (Caldeira & Wright, 1998). These considerations highlight a fertile area for research: Do firms abstain from court lobbying due to its inherent transparency, and how do they develop strategies to mitigate the risks associated with this transparency? Understanding these dynamics can provide new insights into the interaction between corporate political strategy, institutional transparency, and regulatory outcomes (de Figueiredo, 2009; Jia et al., 2023). Our data, or data constructed using our approach, offer a foundation for exploring these questions.

CONCLUSION

While the roles of the legislature and executive as policymakers are well established, and lobbying directed at these branches has been extensively studied in strategic management research, scholars have largely overlooked the role of courts as policymakers and lobbying the courts as a corporate political activity. We seek to advance research in this unexplored yet theoretically and practically important domain, along with a primer and tools for researchers to efficiently construct datasets on court lobbying. These data can facilitate the testing and extension of existing theories of integrated political strategy, lobbying, and corporate political responsibility. Additionally, they can serve as a foundation for developing a research agenda around the antecedents, processes, and consequences of court lobbying. Just as the increasing availability of data has stimulated research in other areas of corporate political activity, we hope our work will encourage further inquiry into corporate political activity directed at courts.

REFERENCES OMITTED DUE TO SPACE CONSTRAINTS, AVAILABLE UPON REQUEST

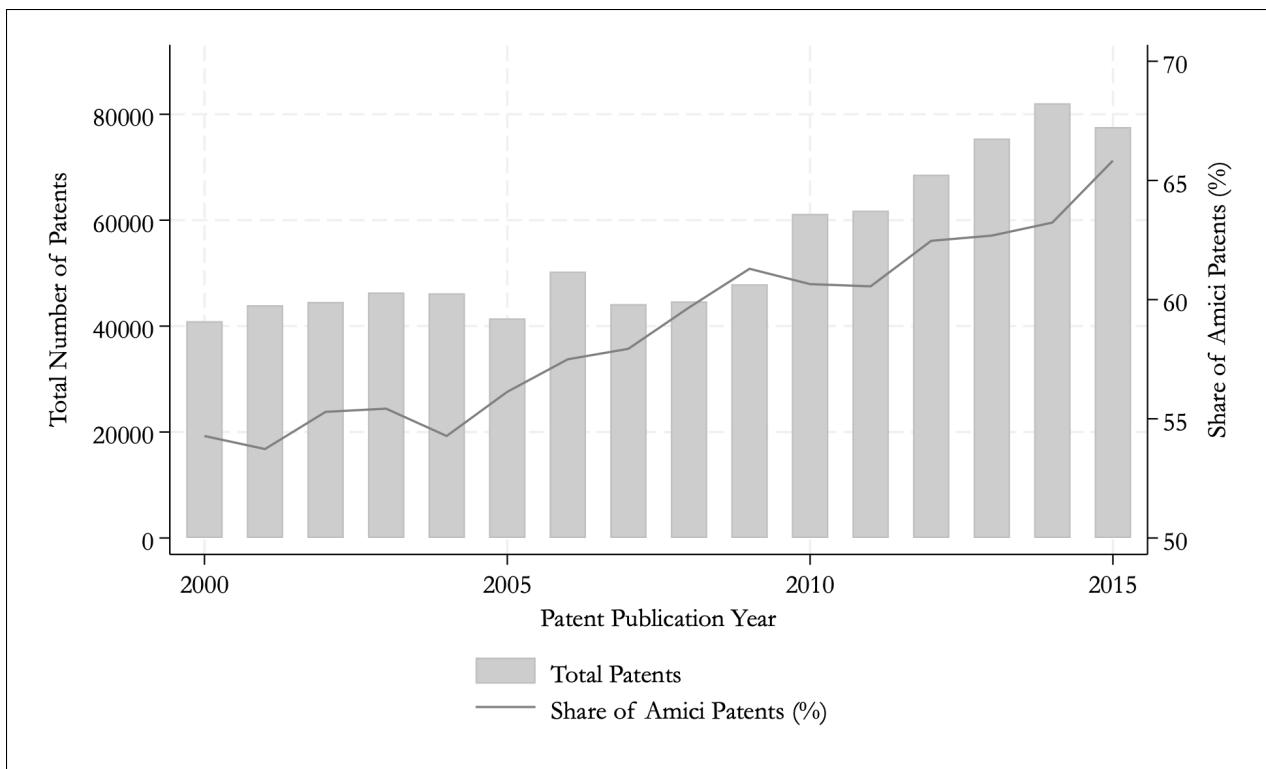


Figure 1: Share of Patents by U.S. Publicly Traded Firms filed by Amici

This histogram depicts the number of patents owned by U.S. publicly traded firms with innovative activities by year of patent publication (DISCERN data sample). The share of amici patent represents the same of those patents owned by firms that file an amicus brief at least once over the period 2000-2015

Table 1: Patent Policy at the Supreme Court, 2000-2015

Case	Policy Question	Decision	Unanimous	Policy Category
99-1996	Can patents be granted for plants?	Yes	No	Patentability
00-1543	By narrowing a claim, does a patentee surrender all equivalents to the amended claim?	No	Yes	Scope, Exc.
01-408	Does the Federal Circuit have jurisdiction over cases with patent counterclaims?	No	Yes	Other
03-1237	Is preclinical use of patented inventions, excluded from FDA submissions, allowed?	Yes	Yes	Exclusion
04-1329	Does tying a patent license to a non-patented product enable pricing power?	No	Yes	Exclusion
04-1350	Does the non-obviousness criterion involve showing "teaching, suggestion, or motivation"?	No	Yes	Patentability
05-1056	Can software code be a component of a patented invention?*	No	No	Patent., Exc.
05-130	Should a permanent injunction always be issued when a patent has been infringed?	No	Yes	Exclusion
05-608	Are licensees required to stop paying royalties before suing?	No	No	Exclusion
06-937	Can a patent holder claim royalties from firms beyond its direct purchaser?	No	Yes	Scope, Exc.
07-1437	Is a federal district court's decision to remand a case to state court after declining supplemental jurisdiction over federal claims subject to appellate review?	No	Other	
08-964	Should the machine-or-transformation test be applied and does it improperly exclude patents for business methods?	No & No	Yes	Patentability
09-1159	Do patients from federally-funded research belong to the inventor's university?	No	No	Other
10-1150	Can certain diagnostic medical tests be patented?	No	Yes	Patentability
10-1219	Can a plaintiff present new evidence not shown to the Patent Office?*	Yes	Yes	Other
10-290	Must patent validity challenges be proven with clear and convincing evidence?	Yes	Yes	Exclusion
10-6	Does induced infringement require knowing the induced acts are patent infringement?	Yes	No	Exclusion
10-844	Does the Hatch-Waxman counterclaim apply only if a patent lacks an approved use?	Yes	Yes	Exclusion
11-1118	Do federal courts have exclusive jurisdiction over cases involving patent issues?	No	Yes	Other
11-796	Does a patent on self-replicating technology expire after an authorized sale?	No	Yes	Scope

Continued on next page

Table 2: Amici Participation in Supreme Court Patent Cases, 2000-2015

Case	Case Winner	Case Winner is the Patent Holder	Amicus Briefs	Amici Curiae	Business Interests		Non-business Interests		Interest Groups		Side taken by Amici Curiae		
					Individuals	Petitioner	Individuals	Petitioner	Respondent	Neither			
99-1996	Respondent	1	13	15	12	2	1	20%	80%	0%	0%		
00-1543	Petitioner	1	28	68	48	17	3	69%	25%	6%	6%		
01-408	Petitioner	0	1	1	1	0	0	0%	100%	0%	0%		
03-1237	Petitioner	0	19	42	29	9	4	33%	48%	19%	19%		
04-1329	Petitioner	1	17	52	29	19	4	33%	65%	2%	2%		
04-1350	Petitioner	0	37	108	58	11	39	36%	60%	4%	4%		
05-1056	Petitioner	0	19	23	17	4	2	65%	17%	17%	17%		
05-130	Petitioner	0	32	146	56	13	77	60%	37%	3%	3%		
05-608	Petitioner	0	17	41	16	8	17	17%	80%	2%	2%		
06-937	Petitioner	0	29	45	32	4	9	40%	51%	9%	9%		
07-1437	Petitioner	0	0	0	0	0	0	0%	0%	0%	0%		
08-964	Respondent	0	68	143	80	15	48	18%	43%	39%	39%		
09-1159	Respondent	1	12	26	19	5	2	50%	46%	4%	4%		
10-1150	Petitioner	0	27	61	39	12	10	49%	36%	15%	15%		
10-1219	Respondent	1	5	11	11	0	0	36%	0%	64%	0%		
10-290	Respondent	1	51	184	109	18	57	54%	43%	3%	3%		
10-6	Respondent	1	12	68	26	1	41	93%	1%	6%	6%		
10-844	Petitioner	0	9	13	8	4	1	54%	46%	0%	0%		
11-1118	Petitioner	0	6	23	6	5	12	57%	43%	0%	0%		
11-796	Respondent	1	23	78	46	26	5	16%	84%	0%	0%		
12-1128	Petitioner	0	5	16	3	1	12	81%	13%	6%	6%		
12-1163	Petitioner	0	9	22	21	1	0	9%	14%	77%	77%		
12-1184	Petitioner	0	12	57	23	34	0	95%	0%	5%	5%		
12-398	Respondent	1	51	113	48	26	39	55%	36%	9%	9%		
12-416	Petitioner	0	27	215	30	45	140	81%	19%	0%	0%		
12-786	Petitioner	0	23	59	38	3	18	78%	15%	7%	7%		
13-298	Respondent	0	43	172	121	8	43	42%	45%	13%	13%		
13-369	Petitioner	0	16	36	31	4	1	72%	14%	14%	14%		
13-720	Respondent	0	16	26	11	13	2	54%	19%	27%	27%		
13-854	Petitioner	1	10	29	25	1	3	0%	66%	34%	34%		
13-896	Petitioner	1	17	60	37	6	17	12%	87%	2%	2%		

Table 3: Legal Precedent Citations in Research In Motion's Amicus Brief for Ebay v. MercExchange (2006)

Legal Precedent Citation	Citation in Opinion	Citation in party briefs		Citation in amicus briefs favoring		
		Petitioner	Respondent	Petitioner	Respondent	Neither
105 U.S. 189	0	0	1	1	3	1
18 U.S. 405	0	0	0	1	0	0
321 U.S. 321	0	1	0	6	3	3
383 U.S. 1	0	0	0	5	2	0
389 F.3d 1219	0	0	0	1	0	0
401 F.3d 1323	1	0	0	8	3	3
456 U.S. 305	1	1	1	10	4	3
480 U.S. 7	0	0	0	1	0	0
492 F.2d 1317	0	1	0	9	6	3
533 U.S. 483	1	1	0	4	0	0
56 F.3d 1538	0	0	1	5	6	3
716 F.2d 1550	0	0	1	2	0	0
733 F.2d 858	1	1	0	5	2	2
7 U.S. 334	0	0	0	1	0	0
83 F.2d 409	0	1	1	4	0	0
868 F.2d 1226	0	0	1	6	2	0
947 F.2d 506	0	0	0	1	0	0

Notes: We consider citations of federal court rulings and appellate court decisions, which are important legal precedents binding and serve as guiding decisions for future cases in lower courts. We exclude district court rulings that are binding within their own jurisdiction.

Table 4: Lobbying the Supreme Court in eBay v. MercExchange (2006)

Amicus brief submitted by:	No. of Amici Curiae	Side Taken	Citations in Amicus Brief	Citations Shared with Opinion	Percent Citations with Opinion
Federal Circuit Bar Association et al.	2	Neither	38	5	13.2%
Teva Pharmaceuticals	1	Neither	17	2	11.8%
Bar Association of the District of Columbia et al.	1	Neither	8	3	37.5%
Intl Business Machines Corp.	1	Neither	40	2	5.0%
Infineon Technologies AG et al.	10	Petitioner	23	3	13.0%
Computer & Communications Industry Association	1	Petitioner	19	2	10.5%
Information Technology Industry Council et al.	4	Petitioner	28	3	10.7%
Software & Information Industry Association et al.	4	Petitioner	23	5	21.7%
Yahoo! Inc.	1	Petitioner	19	1	5.3%
Nokia	1	Petitioner	16	2	12.5%
Association of the Bar of the City of New York	1	Petitioner	44	6	13.6%
Pamela Samuelson et al.	52	Petitioner	14	7	50.0%
American Association of Law Libraries et al.	5	Petitioner	29	5	17.2%
Malla Pollack et al.	1*	Petitioner	15	1	6.7%
Research in Motion Ltd.	1	Petitioner	17	4	23.5%
American Innovators' Alliance	1	Petitioner	17	4	23.5%
Bond Market Association et al.	4	Petitioner	17	4	23.5%
Biotechnology Industry Organization	1	Respondent	15	1	6.7%
Association of American Universities et al.	2	Respondent	10	2	20.0%
Technology Patents & Licensing Inc et al.	3	Respondent	0	0	
Pharmaceutical Research and Manufacturers of Amer.	1	Respondent	20	0	0.0%
Johnson & Johnson et al.	5	Respondent	33	5	15.2%
the United States	1	Respondent	59	3	5.1%
Rembrandt IP Management LLC	1	Respondent	22	0	0.0%
Thomas G. Field Jr. et al.	4	Respondent	25	1	4.0%
Steven M. Hoffberg	1	Respondent	28	3	10.7%
Wisconsin Alumni Research Foundation et al.	11	Respondent	4	1	25.0%
R. Polk Wagner et al.	9	Respondent	14	3	21.4%
Technology Licensing Corp et al.	2	Respondent	16	1	6.3%
American Bar Association	1	Respondent	10	2	20.0%
Intellectual Ventures Management Co et al.	10	Respondent	29	3	10.3%
Tessera et al.	2	Respondent	7	1	14.3%

Notes: We consider amicus briefs and party briefs only in the merits phase. *Malla Pollack files "with other scholars" but those scholars are not named so we did not create an entry for them in the data set.

Table 5: Descriptive statistics

Variable	Panel A: Case level information (N = 31)			
	Mean	S.D.	Min	Max
Unanimous decision (0/1)	0.710	0.461	0	1
No. legal cites in case opinion	19.193	10.815	4	47
No. amicus briefs	23.226	15.806	2	70
No. amici curiae	66.516	57.175	3	219
No. unique legal cites from briefs	261.81	132.218	90	685

	Panel B: Brief level information (N = 720)			
	Mean	S.D.	Min	Max
No. amici curiae	97.151	60.217	3	219
No. legal cites per brief	21.386	16.919	0	133
No. legal cites shared with the opinion	4.480	3.343	0	21
No. legal cites shared with the op. with the same sentiment	4.430	3.365	0	21
No. legal cites shared with the op. excluding dissenting op.	0.296	0.624	0	5

	Panel C: Citation-by-case level information (N = 6,421)			
	Mean	S.D.	Min	Max
In opinion (0/1)	0.058	0.234	0	1
In opinion with same sentiment (0/1)	0.055	0.229	0	1
In opinion excluding dissenting opinion (0/1)	0.007	0.085	0	1
No. of amicus briefs citing the legal precedent	1.892	3.060	1	62
No. of party briefs citing the legal precedent	0.229	0.567	0	4

Notes: We consider amicus briefs and party briefs only in the merits phase

Table 7: Summary statistics: characteristics of firms lobbying the Court, Congress, and non-lobbying firms on patent policy

Panel A: Lobbying firms vs. Non-lobbying firms				
	Court and/or Congress (152 firms)		Neither (2,803 firms)	
<i>Variable</i>	Mean	S.D.	Mean	S.D.
Sales	16,747.36	33,899.92	1,664.90	10,863.43
Total assets	27,892.94	74,904.22	1,825.56	10,773.39
Return on assets	0.72	0.42	0.91	2.01
Patent stock	1,395.47	2,923.05	76.98	288.07
Status	2.52	3.23	0.35	1.44
Obs.	1,936		24,291*	

Panel B: Firms lobbying each political venue				
	Firms lobbying the Court (including those lobbying both) (141 firms)		Firms lobbying Congress (including those lobbying both) (28 firms)	
<i>Variable</i>	Mean	S.D.	Mean	S.D.
Sales	17,626.21	35,103.85	25,639.18	34,669.58
Total assets	29,165.69	77,745.96	37,499.75	48,236.54
Return on assets	0.74	0.42	0.67	0.42
Patent stock	1,443.99	3,005.93	2,906.25	5,425.95
Status	2.51	3.24	3.70	3.35
Obs.	1,786		359	

Panel C: Firms lobbying only one of the political venues				
	Firms lobbying the Court only (excluding those lobbying both) (124 firms)		Firms lobbying Congress only (excluding those lobbying both) (11 firms)	
<i>Variable</i>	Mean	S.D.	Mean	S.D.
Sales	14,723.16	33,404.12	6,283.095	6,495.242
Total assets	25,705.97	79,588.63	12,738.77	14,174.25
Return on assets	0.73	0.42	0.49	0.28
Patent stock	1,051.55	1,778.90	817.76	1,533.08
Status	2.25	3.15	2.65	3.16
Obs.	1,577		150	

Panel D: Multi-venue Lobbying Firms				
	Firms lobbying both the Court and Congress (17 firms)			
<i>Variable</i>	Mean	S.D.		
Sales	39,531.10	39,679.61		
Total assets	55,270.80	55,689.55		
Return on assets	0.79	0.46		
Patent stock	4,405.16	6,601.94		
Status	4.45	3.28		
Obs.	209			

Notes: *24,282 observations for ROA due to missing values