

# The Effect of Ideological Divergence on Executive-Judicial Interactions

## Government Agencies and the Courts of Appeals

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# Research Question

What impacts the decision of government agencies to file amicus briefs in the federal appellate courts?

# Motivation

- ▶ Gap in the literature
- ▶ Judiciary and bureaucracy are closest to the public, but neither are electorally accountable.

# The Solicitor General and Supreme Court

- ▶ Relationship between the bureaucracy and lower federal courts is similar to Solicitor General and Supreme Court
- ▶ Differences in policy preferences and agency mission
- ▶ Implicit support of the President and executive branch
- ▶ Credibility as an informational source

## Underlying Assumptions

- ▶ Agencies have policy preferences
- ▶ Amicus briefs are aimed at persuading judge to decide in line with agency preferences.
- ▶ Amicus briefs provide new information, which is the persuasion mechanism for judges.

## Underlying Assumptions, Continued

- ▶ Agencies are aware of circuit ideology and factor that in when deciding the file briefs.
  - ▶ As agencies gain experience, it becomes easier to determine judicial ideology.
- ▶ Amicus briefs are costly to file.

# Hypothesis 1

Hypothesis 1: As agency age increases in tandem with judicial workload, the likelihood of an agency to file a brief increases.

- ▶ The experience gained by an agency allows for an increase agency information advantage, while increased caseload decreases the court's information.

## Hypothesis 2

Hypothesis 2, Part 1: When the ideological distance between an agency and circuit is extremely high or low, an agency will be less likely to file an amicus brief in that circuit.

Hypothesis 2, Part 2: When ideological distance between an agency and circuit is moderate, the agency will be more likely to file amicus briefs in the circuit.



## Hypothesis 3

Hypothesis 3: As an agency increases in age, so too increases the probability of filing amicus briefs in circuits that are at a moderate ideological difference. The probability an agency files in an extremely divergent or congruent circuit, however, should decrease.

# The Basics

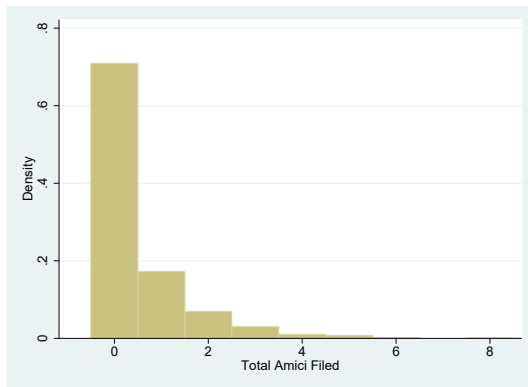
- ▶ Scope: 2000-2012
- ▶ Nested data: agency nested within circuits within years
- ▶  $N=1,272$
- ▶ 3 regulatory agencies, 2 departments broken into seven agencies

## Dependent Variable

- ▶ Total number of amicus briefs filed by in a circuit
- ▶ Count variable
- ▶ Collected by case-level from agency websites and aggregated.

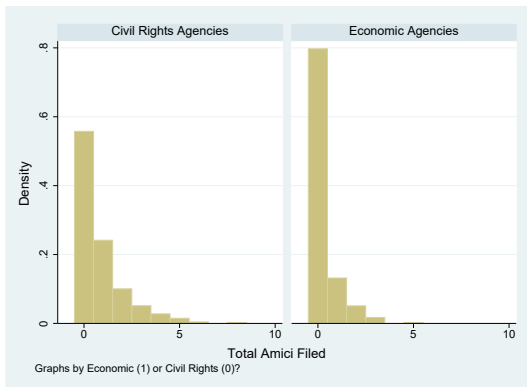
## Dependent Variable Distribution

Figure: Histogram of Total Amicus Brief Filings

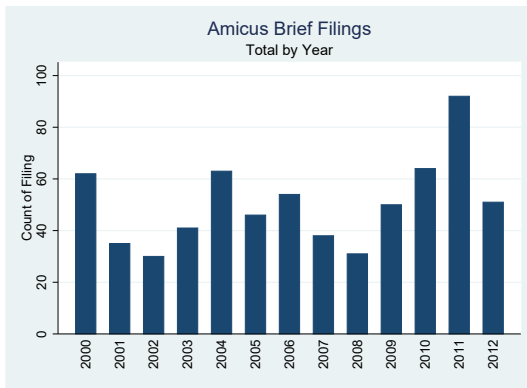


## Dependent Variable Distribution

Figure: Histogram of Total Amicus Brief Filings by Type of Agency



## Amicus Filings by Year



# Ideology

- ▶ DW NOMINATE Scale, -1 (liberal) to 1 (conservative)
- ▶ Circuit ideology measured as the median circuit judge ideology
- ▶ Existing ideology scores from Chen and Johnson (2014) for agencies and Epstein et al. (2007) for circuits.

Variable	Mean	Std. Dev.	Min	Max	Median
Court/Agency Distance	.318	.201	.001	.834	.313

## Agency Age

- ▶ Measured as the difference between agency creation year and the observation year.
- ▶ Older agencies are more experienced and likely to better gauge circuit ideological. Additionally, implicit informational advantage.

Variable	Mean	Std. Dev.	Min	Max	Median
Agency Age	52.189	23.277	2	98	45

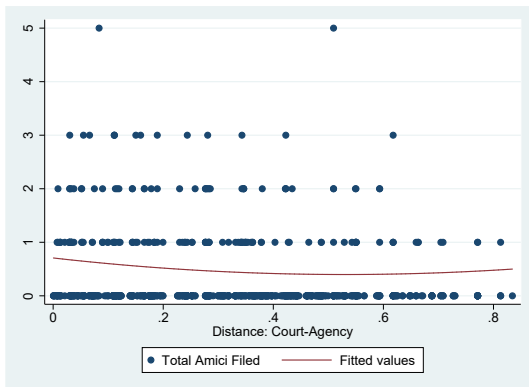


## Circuit Caseload

- ▶ Measures for terminated, pending, and filed cases
- ▶ Logged due to skew
- ▶ Collected from Judicial Management Statistics
- ▶ Importance: The larger the caseload, the steeper the information disadvantage.

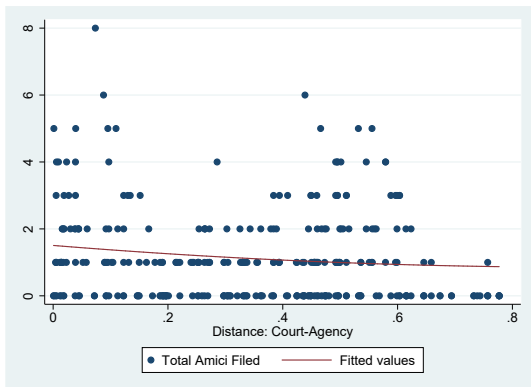
## Ideology and Filings: Civil Rights Agencies

Figure: Ideological Distance and Filings, All Agency Types



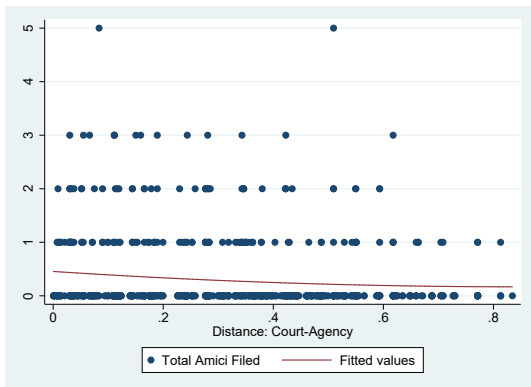
## Ideology and Filings: Civil Rights Agencies

Figure: Ideological Distance and Filings, Civil Rights Agencies



# Ideology and Filings: Economic Agencies

Figure: Ideological Distance and Filings, Civil Rights Agencies



# Future Research

- ▶ Case-by-case unit of analysis
  - ▶ Inter-executive branch relationship
  - ▶ Effect of agency amicus briefs
  - ▶ Salience and evolution of cases
- ▶ Larger sample of agencies
- ▶ Alternative sources of amici data

# Limitations

- ▶ Data
- ▶ Self-selection
- ▶ Outlier agencies
- ▶ Case facts, salience, overlap
- ▶ Age as a proxy for experience

## Questions?

# Appendix



## Regulatory Agencies

- ▶ EEOC
  - ▶ Age: 36-48
  - ▶ Ideological Range:  $-.2909$  to  $-.2467$
  - ▶ Total Filings: 223
- ▶ FTC
  - ▶ Age: 86-98
  - ▶ Ideological Range:  $-.3269$  to  $-.1772$
  - ▶ Total Filings: 24
- ▶ SEC
  - ▶ Age: 67-79
  - ▶ Ideological Range:  $-.3423$  to  $-.1017$
  - ▶ Total Filings: 34

## Department of Labor

- ▶ Department of Labor
  - ▶ Age:
  - ▶ Ideological Range:  $-.2851$  to  $.0889$
  - ▶ Total Filings: 182
- ▶ Employee Benefits Security Admin.
  - ▶ Age: 26-38
  - ▶ Ideological Range:  $-.2851$  to  $.0889$
  - ▶ Total Filings: 114
- ▶ Occupational Health and Safety
  - ▶ Age: 29-41
  - ▶ Ideological Range:  $-.2851$  to  $.0889$
  - ▶ Total Filings: 2

## Department of Labor, Continued

- ▶ Workers' Compensation
  - ▶ Age: 2-3
  - ▶ Ideological Range:  $-.2851$  to  $-.2851$
  - ▶ Total Filings: 1
- ▶ Wage and Hours
  - ▶ Age: 2-3
  - ▶ Ideological Range:  $-.2851$  to  $-.2851$
  - ▶ Total Filings: 23
- ▶ Employee Standards Admin.
  - ▶ Age: 29-39
  - ▶ Ideological Range:  $-.2851$  to  $.0889$
  - ▶ Total Filings: 42

## Department of Justice

- ▶ Department of Justice:
  - ▶ Age: 43-55
  - ▶ Ideological Range:  $-.1597$  to  $.0354$
  - ▶ Total Filings: 163
- ▶ Anitrust Division:
  - ▶ Age: 67-79
  - ▶ Ideological Range:  $-.1597$  to  $.0354$
  - ▶ Total Filings: 27
- ▶ Civil Rights Division:
  - ▶ Age: 43-55
  - ▶ Ideological Range:  $-.1597$  to  $.0354$
  - ▶ Total Filings: 136