The Chamber of Commerce’s influence on the Supreme Court

Literature review

March 14, 2022

David Franklin, *What Kind of Business-Friendly Court-Explaining the Chamber of Commerce's Success at the Roberts Court*, 49 Santa Clara L. Rev*.* 1019 (2009). [[link](https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1071&context=lawreview)]

Franklin argues that the Chamber’s success at a case’s merits stage reflects the Roberts Court’s “skepticism about litigation as a vehicle of regulation”. While the article notes that the Court grants certiorari at an exceptionally high rate in cases with a Chamber amicus brief, it focuses on the Court’s opinions to assess its relationship with the Chamber and regulation more broadly. The article supports this argument by qualitatively examining Roberts Court decisions with their corresponding Chamber of Commerce amicus briefs. Franklin identifies that the Chamber has been successful in cases categorized by preemption, putative damages, arbitration, and pleading standards while having a lackluster success in employment discrimination cases. Meanwhile, Franklin notes, the Chamber tends to avoid business-on-business disputes, thus removing a substantial portion of the antitrust litigation from the Chamber’s influence.

R. Betsy Emmert, *The Corporate Clique in the Courtroom: a Jurisprudential Study of the Success and Influence of Amicus Curiae Briefs Filed by the US Chamber of Commerce During the 2014-2017 Terms of the US Supreme Court*, 87 U. Cin. L. Rev. 227 (2018). [[link](https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1259&context=uclr)]

The article establishes the Chamber is increasingly successful in the Supreme Court: winning 43% of cases they filed an amicus brief for during the Burger Court, 56% during the Rehnquist Court, and 70% in the Roberts Court. More generally, she finds that over the 2014 to 2016 terms, the Supreme Court hears more cases at the merits stage that the Chamber files an amicus brief for which involve administrative law as well as benefits and compensation, while hearing the fewest healthcare-related disputes.

The article argues however, that successful amicus briefs can be a noisy indicator because they are often overlooked by clerks and do not meaningfully affect the results.[[1]](#footnote-1) For a more reliable indicator, the article suggests using direct citations to amicus briefs as a marker of influence. The author, then, claims direct citations to Chamber amicus briefs are rare, noting that over the 2014 through 2016 terms one opinion (out of 53 cases with a Chamber brief) cited a Chamber brief, but does not provide much evidence outside of that time period. While she also briefly mentions two other opinions that cite the Chamber outside the time period of study, it is unclear whether this is representative of a greater trend.

Joshua B. Fischman, *Do the justices vote like policy makers? Evidence from scaling the Supreme Court with interest groups*, 44 J. of Legal Studies S269-S293 (2015). [[link](https://www.journals.uchicago.edu/doi/full/10.1086/682694#_i13)]

Like Emmert, Fischman finds the Roberts Court voted in favor of the Chamber’s litigant in 70% of the cases that reached the merits stage. The percent of cases in favor of business increased also increased over the Roberts Court; during the 2005-8 terms 66% of cases (38% unanimously) were decided in favor of the Chamber’s litigant, while from 2010-12 the average was 75% (46% unanimously).[[2]](#footnote-2) In the 2005-8 terms, 67% disagreement on Chamber of Commerce cases can be attributed to the justices’ disagreement with the Chamber and 68% in the 2010-12 terms. The model’s second axis’s lack of strong analytical presence indicates that the space is defined by justices voting for the Chamber’s interests due to positive associations rather than voting against the Chamber’s interests due to negative associations.

The author uses metric multi-dimensional scaling method which generates a map where the spatial differences estimate their disagreement rates.

Richard Lazarus, *Advocacy matters before and within the Supreme Court: transforming the court by transforming the bar*, 96 Geo. LJ 1487 (2007). [[link](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1022629)]

The Supreme Court Bar (and Chamber’s increasing involvement) helped get Chamber-priority cases in front of the court.

Lee Epstein, *Interest Group Litigation During the Rehnquist Court Era*, 9 J.L. & Pol 639 (1992). [[link](https://static1.squarespace.com/static/60188505fb790b33c3d33a61/t/6050de80c886fd052d94df6d/1615912584471/igWHRct.pdf)]

In a study of the Rehnquist Court (until 1990), Epstein finds that during this era interest groups are submitting more amicus briefs than before, but they are competing for attention with other briefs. The author does not discuss the Chamber’s success in specifics but Table 10 notes that the Chamber from 1920-81 submitted 11 successful briefs (out of 26; 42%), while 1986-90 they submitted 14 successful briefs (out of 30; 47%).

1. Kelly J. Lynch, *Best Friends?: Supreme Court Law Clerks on Effective Amicus Curiae Briefs*, 20 Journal of Law & Politics 33 (2004). [↑](#footnote-ref-1)
2. The author excludes 2009 because it wasn’t a “natural court”, i.e. there was personnel turnover. [↑](#footnote-ref-2)