Linguistics at the Supreme Court: Current Challenges and Potential Solutions

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Abstract. As the United States Supreme Court has become more textualist, it has become increasingly likely to rely on descriptive linguistic claims about mainstream American English in its interpretive decision-making processes. In this paper I discuss the role that linguists play at the Supreme Court through amicus briefing. I find that engagement with amicus briefs filed by linguists remains limited in most legal domains. I argue that limited understanding of linguistics, the nature of non-governmental amicus filings, and the division of factual and legal issues contribute to this lack of engagement. As a means of improving engagement with linguists in the legal profession, I propose that linguists should turn toward partnerships with the legal academy.

Keywords. linguistics; amicus brief; advocacy; interpretation; linguistics and law

Introduction. Textualism, an approach to the interpretation of the law that prioritizes textual sources over — or to the exclusion of — legislative history, policy considerations and other extratextual sources, has become the predominant interpretive approach of the justices of the United States Supreme Court (Eskridge et al. 2023). Although textualism has emerged as the Court's preeminent interpretive approach, legal scholars contend that it is far from a cohesive interpretive philosophy. As Eskridge et al. (2023) observe, the Supreme Court's textualist judges often disagree strongly with respect to how the law should be interpreted. Because of this, the authors have termed the current moment in Supreme Court's jurisprudence on statutory interpretation "textualism's defining moment." In this defining moment, Eskridge et al. argue, linguistics and linguists may have a role to play in the ongoing debate over the interpretation of the law (Eskridge et al. 2023). Building on this observation, I argue that the current moment is not simply a critical moment for textualism; it is also a defining moment for the relationship between linguistics and law.

Given the importance of language and text to the interpretation of the law, it is no surprise that scholars over time have viewed the relationship between law and linguistics as a natural one (Lawson 1995). As textualism has risen to prominence in the Supreme Court, so, too, has interest in linguistics as in the legal academy (*e.g.*, Solan (2020), Gries & Slocum 2017; Solan & Gales (2018)).[1] In spite of this, many linguists weighing in on interpretive legal issues have been met with hostility and apathy by some in the courtroom (*see, e.g.*, Ainsworth 2006; Lawson 1995; Poirer 1995).

In this article, I assess and discuss the status of advocacy done by linguists through amicus briefing at the Supreme Court of the United States (SCOTUS). I find that, although the textualist Court often engages in descriptive linguistic inquiry, SCOTUS' engagement with linguistics

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[1] Corpus linguistics has been a particular point of interest among those in the legal academy in the last decade, though there has been interest in other areas of linguistics as well, such as pragmatics (Solum 2025).

amicus briefing is limited in both scope and substance, with some notable exceptions. I identify three factors as underlying this lack of engagement, namely lack of understanding of the evidence and findings generated in the field of linguistics, general indifference to non-governmental amicus briefing, and the division of factual and legal issues in law. To assess linguistics amicus briefing, I constructed a database of amicus briefs filed with the Supreme Court involving linguists ("LingBriefs"). I then measured the influence of the briefing on SCOTUS opinions through citation rates. The LingBriefs database is now publicly available.[2] I propose a pedagogical solution to the challenges outlined in this article. As interest in the intersection of linguistics and law among legal scholars and practitioners continues to grow, linguists should go further than writing amicus briefs — in order to take full advantage of this defining moment, linguists should pursue law and linguistics as a legitimate research area in and of itself, building strong partnerships within the legal profession, educating the general public about linguistics, and striving to introduce linguistics to legal curricula.

I begin my analysis by presenting relevant background about textualist statutory interpretation and its relationship with linguists and linguistics. I then describe the design of LingBriefs and discuss the insights it provides with respect to the influence of linguistics amicus briefing on SCOTUS opinions. Finally, I identify three challenges linguists face as amici and propose that an intensified focus on the legal academy may ameliorate the current state of affairs.

1. Statutory interpretation, textualism, and law & linguistics. Before discussing the relationship between linguistics and statutory interpretation, it is first necessary to understand what the task of statutory interpretation is. Generally speaking, statutory interpretation is the process through which the general terms of a law are brought to bear on the specific facts of a case (Eskridge 2016). How, precisely, a judge goes about the process of statutory interpretation, however, varies by the judge's interpretive approach. Purposivists, for instance, believe that the purpose of the statute, as it may be discerned from a variety of sources, including text, precedent, and legislative history (*i.e.*, documentation of the legislature's deliberative process in the course of the developing a bill into a law), among other authorities (Eskridge et al. 2019). For textualists, however, the interpretive process is undergirded by the notion that the courts should act as faithful agents of Congress when interpreting a statute, and that the most democratic and reliable way to do so is to rely on the text of the statute (Coney Barrett 2010; Eskridge et al. 2019). Textualists on the current Supreme Court headed by Chief Justice John Roberts ("the Roberts Court") have been observed to believe that statutory text should be the primary authority in the interpretive process, with legislative history relegated to a confirmatory role (Brudney 2010; Eskridge et al. 2019). In recent decades, the textualist approach has grown to be the predominant one on Roberts Court (Waldon et al. 2025). This was not always the case, however. Textualism's rise to prominence is commonly associated with Antonin Scalia and his brand of the interpretive method.

1.1. ORDINARY MEANING & ANTONIN SCALIA. Antonin Scalia, confirmed as a member of the Supreme Court in 1986, is credited with the proliferation of New Textualism, the predecessor to the Roberts Court's current approach (Eskridge 2016). As an interpretive theory, New Textualism is characterized by two notions. First, that most interpretive debates can be resolved with a "plain meaning" analysis (Brudney 2010), and second, that the use of legislative history should be eschewed as unreliable and undemocratic (Eskridge et al. 2019). Scalia argued that legislative history is both unreliable and costly in terms of time and resources, while statutory

[2] The data may be viewed on Google Spreadsheets or on the LingBriefs website.

text supplies a simple and sound means to execute statutory provisions when their meaning is at issue (Scalia 1997). It was during the New Textualist era of the 1980s and 1990s that linguists began approaching the topic of language and law in greater numbers (Levi 1995).

1.2. LAW AND LINGUISTICS IN THE NEW TEXTUALIST ERA. Of particular significance to New Textualism was the notion that, in the absence of an indication that a term bears some specialized meaning, interpreters should construe statutory provisions in terms of their "ordinary meaning." Although disputed today (*e.g.*, *Bostock v. Clayton County*, 590 U.S. 644 (2020)), ordinary meaning may be generally understood as the meaning that a reasonable speaker of Mainstream American English at the time a piece of legislation is passed would infer from the text of a statute (Eskridge 2016). As the notion of ordinary meaning rose in prominence in statutory interpretation, it became clear that experts in the study of language would have a role to play in the interpretation of legal language. Thus, beginning mainly in the 1980s and 1990s, linguists joined other social scientists in this growing research area (Levi 1995). This nascent movement among linguists culminated in the formation of "Law and Linguistics Consortium" in the mid-1990s, as linguists and legal scholars collaborated in conferences, papers, and other projects. Of particular note was the essay "Plain Meaning and Hard Cases," a review of lawyer-linguist Lawrence Solan's book *The Language of Judges* and a piece that would come to influence several cases in the 1993-1994 Supreme Court term (Kaplan et al. 1995).

For all the successes of the law and linguistics movement of the 1980s and 1990s, however, the scholars were met with resistance among scholars and practitioners alike. Some questioned the authority of linguists to weigh in on questions related to ordinary meaning (Poirer 1995), while others remarked that the very nature of the legal system itself was an obstacle to collaboration between linguists and practitioners (Lawson 1995). Others still objected to the involvement of linguists because of a belief that linguists are not any better positioned to understand and interpret natural language than non-linguists are (Ainsworth 2006; Poirer 1995; Lawson 1995). By the turn of the century, the law and linguistics movement lost a great deal of its momentum. While linguistics remained relevant to the interpretation of the law, it would not return to the fore again until textualism emerged as the primary interpretive approach of the Roberts Court.

1.3. TEXTUALISM ON THE ROBERTS COURT. In the years following Antonin Scalia's death in 2016, the Roberts Court became both more conservative and more textualist, with the appointments of Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. As the Court has moved in the direction of textualism, even non-textualist justices have adopted some version of the majority's textualist reasoning (Eskridge et al. 2023). With the Supreme Court giving greater consideration to text and ordinary meaning than ever before, linguists have returned to the Supreme Court with a renewed vigor, filing amicus briefs and publishing papers applying theories and methods from linguistics to legal interpretation (*e.g.*, Waldon et al. 2025). Has this effort been successful? Analysis of linguistics amicus briefing at the Supreme Court in the Roberts era indicates that results have been mixed, with successes in some domains and shortcomings in others.

2. Linguistics Amicus Briefing at the Supreme Court. Amicus briefing is a form of filing in which a non-party in a case seeks to influence the decision of the court deciding the case. In order to understand the effectiveness of linguistics amicus briefing at the Supreme Court, I identified and collected SCOTUS amicus briefs involving at least one amicus identifying themselves as a linguist, either by training or profession. I then assessed the impact of the briefs

by tracking citations to linguistics amicus filings in judicial opinions. Using this measure, I find that SCOTUS' engagement with linguistics amicus briefing is limited in scope and in substance in most cases.

2.1. LINGBRIEFS: A DATABASE OF LINGUISTICS AMICUS BRIEFS. Amicus briefs involving linguists filed with SCOTUS were identified and collected from two different sources, Westlaw's U.S. Supreme Court Briefs, Petitions & Joint Appendices database and LexisNexis' Briefs, Pleadings and Motions collection. Although neither database offers a complete collection of Supreme Court briefing, the two sources together supply the most comprehensive coverage of amicus briefing at the Supreme Court available to researchers. Westlaw offers coverage of amicus briefing beginning in 1930 and LexisNexis' coverage of linguistics amicus briefing begins in January 1979. Linguistics amicus briefs were identified by searching the text and titles of briefs in each database with the following prompt: "linguist! AND amic!" This search yielded 1,058 results in Westlaw and 1,474 results in LexisNexis.[3] Results were then manually evaluated and identified as involving one or more linguists as amici. Briefs including at least one individual or organizational amicus identifying themselves as a linguist were included in the database. Thirty-three unique linguistics amicus briefs were identified with this method.

2.2. CITATION DATA INDICATES LIMITED ENGAGEMENT LINGUISTICS BRIEFING. After relevant amicus briefs were identified, the opinions in cases in which the briefs were filed were assessed for engagement with linguistics briefs. This was done by identifying citations to amicus briefs filed by linguists. It should be noted here that it is possible for a brief to impact a judicial opinion in a case even if the author does not cite it. Moreover, mere citation does not necessarily mean that a judge has adopted the argument presented in a brief. As the citations in the LingBrief database indicate, citations to amicus briefs are sometimes made for the purpose of stating a position with which an authoring judge disagrees (*e.g.*, Thomas, J., Dissenting in *Bondi v. Van Der Stok*, 145. S. Ct 857, 886). As Kearney & Merril (2000) observe, however, citation rates in judicial opinions are the only publicly available measure of amicus brief impact. Thus, citation rate should be understood as a conservative, yet reliable, measure of amicus brief influence.

Using citation rate as a measure of impact, I find that most linguistics amicus briefs go uncited in the Supreme Court Cases in which they are filed. Out of thirty-three linguistics amicus briefs, seven are cited at least once in any judicial opinion in the case in which they were filed.[4]

[3] Although Westlaw's coverage includes a greater time period, the LexisNexis database appears to include a greater number of duplicate filings. This may be the reason that the same search yielded a greater number of results on LexisNexis than Westlaw.

[4] The cited amicus briefs are as follows: Brief of Amici Curiae Professors of Law and Linguistics in Support of Neither Party in *Moore v. United States*, 602 U.S. 572 (2024); Brief for Professors of Linguistics and English Dennis E. Baron, Ph.D., Richard W. Bailey, Ph.D. and Jeffrey P. Kaplan, Ph.D. in Support of Petitioners in *District of Columbia v. Heller*, 554 U.S. 570 (2008); Brief of Amici Curiae American Society of Journalists and Authors, et al. in Support of Respondents in *Ashcroft v. American Civil Liberties Union*, 542 U.S. 570 (2008); Brief for Professors and Scholars of Linguistics and Law as Amici Curiae in Support of Petitioners in *Bondi v. VanDerStok*, 145 S. Ct. 857 (2025); Brief of Neal Goldfarb as Amicus Curiae in Support of Respondents and Brief for Corpus Linguistics Professors and Experts as Amici Curiae Supporting Respondents in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022); and Brief of Amici Curiae Professors Thomas R. Lee, Kevin Tobia, and Jesse Egbert in Support of Neither Party in *Pulsifer v. United States*, 601 U.S. 124 (2024).

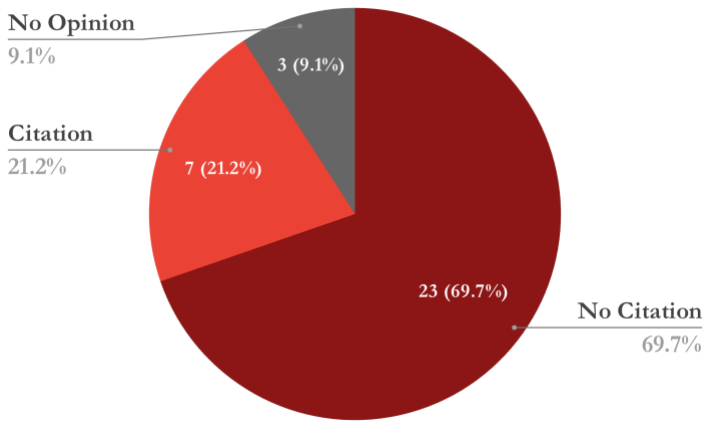

Figure 1. SCOTUS does not cite most linguistics amicus briefs

In addition, most citations to linguistics amicus briefs do not occur in majority opinions. In fact, dissenting opinions feature the greatest number of citations to amicus briefing filed by linguists. Of fourteen citations to seven amicus briefs, seven of those citations occur in dissenting opinions. Of the six citations to linguistics amicus briefs appearing in majority opinions, five occur within a single opinion authored by Antonin Scalia (*District of Columbia v. Heller*, 554 U.S. 570 (2008)). Moreover, as noted above, several of the citations to a linguistics amicus briefs are neutral or unfavorable. In some cases, justices appear to use citations of amicus briefs appear to have been made for the purpose of disagreeing with the amici.[5] The contents of each citation and commentary on individual cases is available in the LingBriefs database.

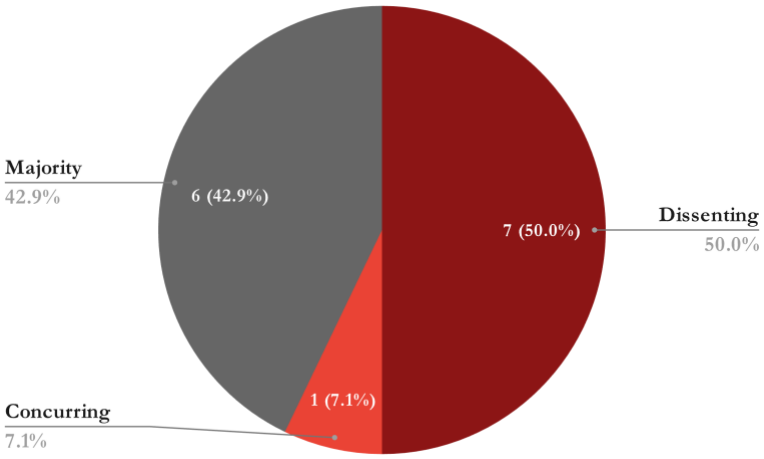

Figure 2. Most citations to linguistics amicus briefs occur in non-majority opinions

[5] For an example of this, see Alito, J., Dissenting in *Bostock v. Clayton County*, 590 U.S. 644 (2020). In this dissenting opinion, Alito cites eight amicus briefs. Four of those citations are included to state a position with which Alito disagrees, while the other four are used as support for Alito's argument. Alito did not cite either of the two linguistics briefs filed with the Court in this case.

Citation data also reveal that justices cite linguistics amicus briefs more often in particular substantive areas of the law. Eleven out of fourteen total identified citations occurred in firearm-related cases.[6]

3. Challenges for Linguists as Amici. I identify three factors as contributing to the limited engagement with linguistics amicus briefing.

3.1. LIMITED UNDERSTANDING OF LINGUISTICS.

A major challenge linguists face as legal advocates is hostility to linguists as experts on natural language and general anti-empiricism. Rooted in the belief that linguists possess no more knowledge of natural language than non-linguists, some legal practitioners have demonstrated a reluctance to acknowledge linguistics as an interpretive tool, much less to actually implement it into legal analysis (Ainsworth 2006; Lawson 1995). To the extent that this challenge is rooted in a lack of understanding about what linguistics can contribute to textual analysis, this problem calls for linguists to clearly communicate the specific contribution of their expertise and to delimit the limitations of linguistic analysis as a tool for legal interpretation. As Gries and Gales observe, misunderstanding of the goals and methods of linguistics underlies much of the criticism of linguistics in the legal domain (2024).

Beyond hostility to linguists as experts in natural language, a general disinterest in the contributions of amici may also be a contributing factor to the limited impact of linguistics amicus briefs in textualist Supreme Court decisions. Some scholars have gone as far as to claim that the Court may not actually read or seriously consider the amicus briefs filed in the cases it decides (Primus 2015). There may be a practical explanation for this. As amicus filings have dramatically increased in number in recent decades (Kearney & Merril 2000), substantive engagement with each brief may be impracticable for justices and their staff.

3.2. NON-GOVERNMENTAL AMICUS BRIEFS ARE CITED LESS.

In addition to the challenge of effective communication with non-linguists, it should be noted that amicus briefs filed by non-governmental parties are generally cited less often than governmental amicus filings (Franze & Anderson 2020). Indeed, in several cases in which linguistics amicus briefs were filed, the justices do not cite any amicus briefs at all. In fact, given that Franze and Anderson find that non-governmental amicus briefs are cited only 5-12% of the time per term (2020), the linguistics brief citation rate of 21.2% may be treated as an indicator of above average engagement with non-governmental amici.

3.3. THE DIVISION OF FACTUAL AND LEGAL ISSUES IN LAW.

Finally, the fact-law distinction in legal practice may be having an impact on the reception of linguistics amicus briefing, particularly that related to interpretive issues. As linguists know well, descriptive linguistic work is guided by empirical inquiry. Empirical matters are typically understood as issues of fact in legal practice, and are thus viewed as topics on which non-legal experts may properly weigh in. The interpretation of the law, however, is a legal issue. As a legal, rather than factual matter, the interpretation of the law is sometimes considered to be out of scope of linguists' the expertise, even as ordinary meaning doctrine places an empirical question at the center of the matter. This incongruity has led to a bizarre state of affairs, as practitioners are incentivized to the work of linguistics without linguists. As Gries and Gales astutely observe,

[6] These cases are *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Bondi v. VanDerStok*, 145 S. Ct. 857 (2025); *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

"[w]hile corpus *linguistics* is at the centerpoint of these debates, what is frequently absent are the corpus *linguists*" (2020: 3).

4. Three Potential Solutions. Given that the impact of linguistics amicus briefs filed with SCOTUS is limited, I argue that linguists should consider additional means of delivering linguistic information to courts. I propose three measures to advance this goal: research collaboration, scholarly communication, and pedagogy.

4.1. COLLABORATION AT THE LAW-LINGUISTICS INTERFACE. Linguists and legal practitioners interested in advancing linguistics as an interpretive tool must approach their goals with close and sustained collaborative relationships within the legal profession. The successes of the 1990s were not achieved by linguists acting on their own, but rather by linguists working in close collaboration with legal scholars and practitioners. Today, these relationships exist and have been highly generative as a result (*e.g.*, Eskridge et al. 2021; Solan & Gales 2018; Waldon et al. 2025), although they are relatively few in number.

There are two risks inherent in the paucity of joint law-linguistics groups of scholars pursuing law and linguistics work. First, they are constrained in the amount they can achieve. There is a great deal of research to be done at the law-linguistics interface. As things stand now, there are far fewer active researchers in this area than needed. The result of this is that existing law-linguistics collaboratives cannot keep pace with the rate at which relevant questions emerge, leaving legal interpreters to make their decisions without relevant background from linguistics. Second, the work of a small number of linguists may be taken to be representative of all of linguistics and thus obfuscate the diversity and breadth of the field. Linguistics is an extremely broad field (Charity Hudley et al. 2023). Without representation of as many areas as possible, the view of the field presented to legal scholars and practitioners will be incomplete. The only way to counter this challenge is to promote greater involvement on the part of linguists across the field in the process of interpretation.

Perhaps one of the most effective ways to bridge gaps between legal and linguistic researchers is to encourage students to pursue training in both fields. While relatively few in number, some academics, such as Lawrence Solan, Jeffrey Kaplan, Peter Tiersma, and Brian Slocum, hold both JDs and PhDs in linguistics.[7] These professors have been greatly influential in the effort to make linguistics a workable tool for legal interpretation. Moreover, as advanced degree holders in both law and linguistics, they have the ability to facilitate collaborative relationships between legal professionals and linguists. Individuals with this multidisciplinary training are particularly well-suited to participate in such partnerships.

4.2. SCHOLARLY COMMUNICATION. A major issue facing linguists seeking to weigh in on textualist debates is a lack of understandings of the key ideas behind linguistics. Indeed, in the legal domain and elsewhere, many non-linguists do not understand why and how the field is distinct from other fields dedicated to the study of language such as lexicography and literature. While some may feel inclined to express frustration with non-linguists, it is essential to recall that it is the responsibility of linguists to communicate pertinent information about the field to broader audiences when those audiences participate in a consequential social practice that is invalidated by the knowledge of linguists (Labov 1982: 172).

[7] This list is not exhaustive. Rather it is intended to highlight some scholars who have mobilized their joint law-linguistics expertise for the purpose of interpreting the law.

The key point that linguists should illustrate to non-linguists interested in using linguistic evidence in the process of legal interpretation is that the field presents a powerful means of better understanding *possible* interpretations of disputed terms. It must be made clear that linguistics is a descriptive field designed to describe language as it is used, not to prescribe meaning. Because of this, linguists may be likely to take a capacious view of disputed terms, highlighting how the term is used in different situations and by whom it is most often used. Thus, knowledge of linguistics tends toward building upon the knowledge possessed by non-linguists, not replacing it. As Vogel has aptly put it, "a difference between a semanticist and a lawyer is that the semanticist is not on retainer to find a desired interpretation, but to enumerate the possibilities" (2009: 25). Considering this point, linguists may adopt the role proposed by Lawrence Solan as "semantic tour guide[s]" rather than "arbiter[s] of meaning" (Solan 1999: 1184). Promoting understanding of this point may alleviate some of the hostility linguists face in the legal context.

4.3. PEDAGOGY. Finally, pedagogy is the third proposed solution to the challenges faced by linguists in the legal sphere. Where fundamentally changing the interpretive approach of the Supreme Court is a goal that is likely out of reach, introducing linguistics to legal curricula may have the effect of producing a generation of legal practitioners who are well-prepared to engage with linguistics. Indeed, incorporating linguistics into legal education may be the most potent solution, given the number of prospective legal professionals it would reach and the greater likelihood that the information will be internalized. Students, unlike judges and attorneys, are tasked primarily with learning the information presented to them. Thus, curricular changes incorporating linguistics may have the powerful effect of equipping future generations of legal professionals with a competency in linguistics, potentially leading to a shift with respect to how the language of law is discussed and understood.

5. Conclusion. The interface of law and linguistics is in an unusual and time-sensitive position. As the Supreme Court continues on its textualist trajectory, debates over natural language have become all the more important to legal decision making. In spite of this, linguists and linguistics have largely remained at the margins of such debates. While this finding is concerning, there is no reason for linguists to believe that the current state of affairs is one which must persist. By pursuing meaningful collaborations with legal scholars and practitioners, engaging in wide-reaching scholarly communication about the goals, methods, and contributions of the field, and taking steps to introduce linguistics into legal education, it may be possible to increase the impact of linguistics in the interpretation of the law.

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