

LINGUISTICS AT THE SUPREME COURT: CURRENT CHALLENGES AND POTENTIAL SOLUTIONS

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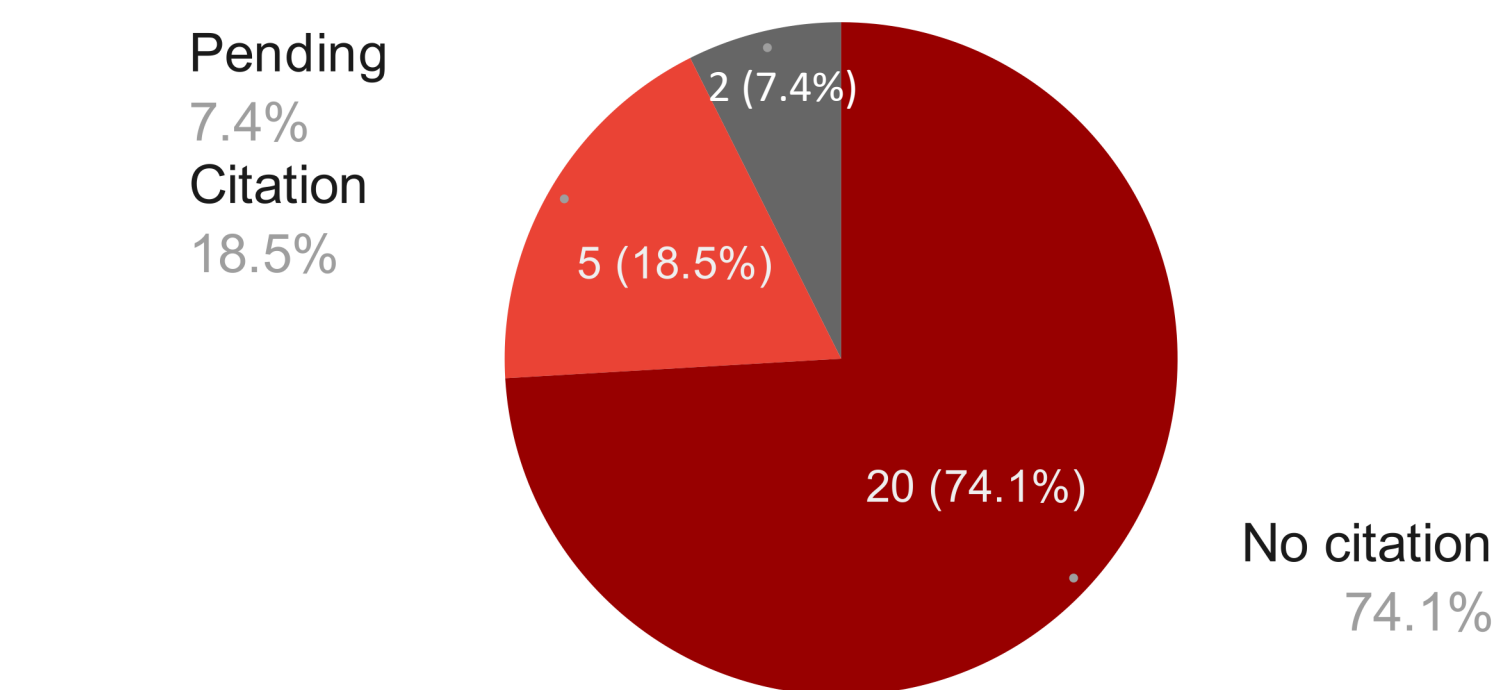
LINGUISTICS WITHOUT LINGUISTS

The Supreme Court (SCOTUS) often interprets the law according to its “ordinary meaning.”

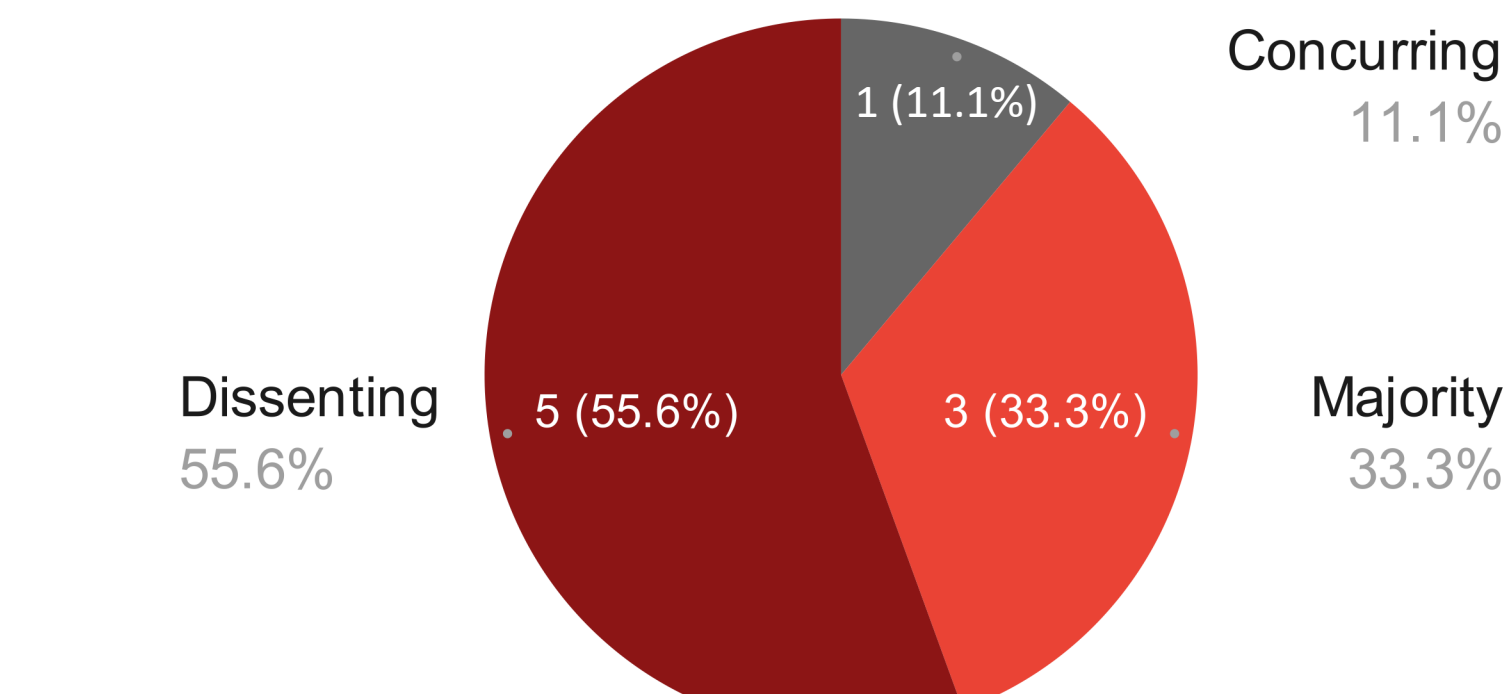
- In its search for ordinary meaning, SCOTUS is increasingly engaged in descriptive linguistic analysis.

SCOTUS’ engagement with linguistics amicus briefing has been limited in scope and in substance.

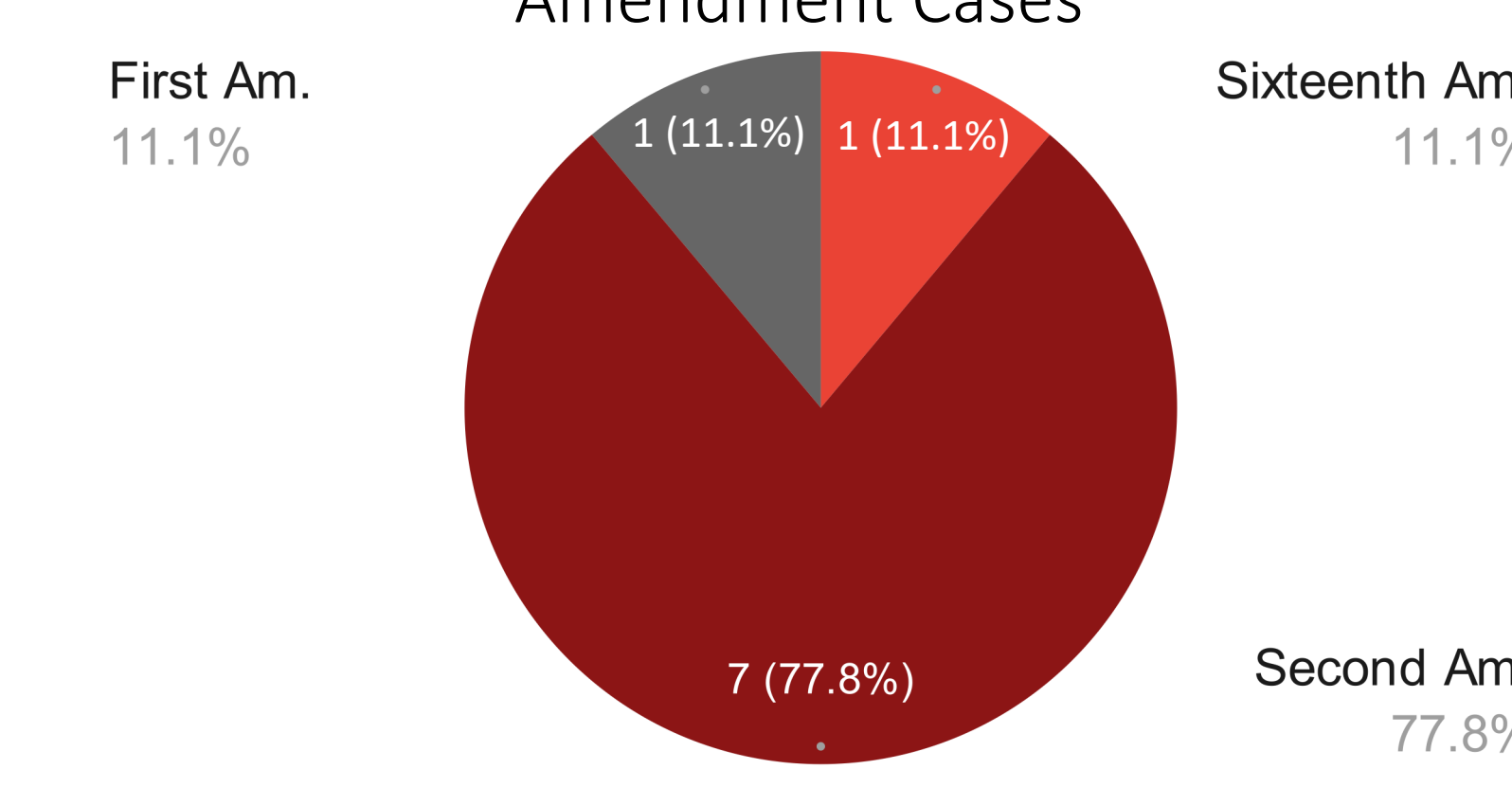
SCOTUS does not cite most linguistics briefs



Linguistics briefs are mostly cited in non-majority opinions



Linguistics briefs are mostly cited in Second Amendment Cases



KEY POINTS

- SCOTUS does not cite most linguistics amicus briefs.
- Most citations are not in majority opinions.
- Citation does not indicate agreement with brief contents.
- Most citations are in Second Amendment cases.

CURRENT CHALLENGES

1. Limited understanding and positive reception of linguistics.
2. Non-governmental amicus briefs receive little attention.
3. The division of factual and legal issues in law.
 - The interpretation of the law is always a legal issue, even when it hinges on non-legal analysis.

THE DATA

All amicus briefs filed by individuals or organizations identifying themselves as linguists were compiled into a dataset for this project (scan QR code below to view data).

- 27 linguistics amicus briefs.
- 20 linguistics amicus briefs about interpretation.

Opinion contents and citations in cases in which linguists filed amicus briefs were analyzed.

- 5 linguistics briefs cited.
- 9 total citations to linguistics briefs.

SUMMARY

With the rise of textualism, the Supreme Court is increasingly reliant on empirical linguistic analysis.

Linguists filing amicus briefs face several challenges:

1. Misunderstanding and skepticism of linguistics.
2. Lack of regard for non-governmental amicus briefs.
3. The division of legal and factual issues is sometimes understood to preclude linguists’ contributions on interpretation.

Linguists should deepen their engagement with the legal academy.

CASE STUDY: BOSTOCK V. CLAYTON COUNTY

Is discrimination because of sexual orientation and gender identity unlawful sex discrimination within the meaning of Title VII? **Yes.**

Linguistics Brief 1:

- Corpus linguistics is superior to other methods for ordinary meaning analysis (*i.e.*, judicial intuition, dictionaries).
- The ordinary meaning of sex is not limited to a male/female binary.

Linguistics Brief 2:

- Sex is binary and Title VII does not reach gender identity.

Gorsuch’s majority opinion relies on intuition, dictionaries, and case law; no citation of any amicus briefs.

- It is impossible to engage in sexual orientation or gender identity discrimination without considering sex.

Alito’s dissenting opinion relies on intuition, historical evidence, dictionaries, and case law; no citation to linguistics amicus briefs.

- The ordinary meaning of sex does not extend beyond a male/female binary, citing dictionaries and historical evidence.

Kavanaugh’s dissenting opinion argues that the ordinary meaning of Title VII is distinct from the literal meaning the majority relies upon; no citation to linguistics briefs.

BOSTOCK IN THE LEGAL ACADEMY

Bostock reveals that **the legal academy is often more willing to engage with linguists than the Supreme Court.**

- Discussion of linguistics and citations to the work of linguists in have been incorporated into widely used casebooks.
- Legal educators have begun incorporating linguistics into their curricula related to the interpretation of the law.
- Collaborative work between linguists and legal scholars about this case has been published in major legal venues.
 - Law-linguistics academic partnerships have impacted Supreme Court cases in the past (Cunningham et al. 1994).

POTENTIAL SOLUTIONS

Linguistic advocacy before the Supreme Court and elsewhere can benefit from deepened connections with the legal academy.

- Introducing linguistics into legal education prepares future practitioners to engage with linguistics.

SCOTUS often relies on evidence from secondary sources published in legal venues.

Collaborations between legal scholars and researchers in fields has often led to the development of influential interfacial subfields (*e.g.*, law and history, law and economics, law and sociology)

SELECTED REFERENCES

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DATA AND FULL
REFERENCE LIST:



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