

The Tenth Justice? Consequences of Politicization in the Solicitor General's Office

Patrick C. Wohlfarth University of North Carolina at Chapel Hill

Previous scholarly accounts of the solicitor general's (S.G.) influence on the U.S. Supreme Court emphasize either the office's role as an ideological advocate for the executive branch or its reputation as a resource for credible legal information. Yet existing empirical analyses do not fully examine the potential that political advocacy of executive policy might undermine the S.G.'s influence. I propose a theory investigating the degree to which perceptual political bias jeopardizes the solicitor general's credibility as a trustworthy informational source. I argue that the Court should discount the S.G.'s arguments when the office exhibits excessive politicization. I test my assertion using individual-level data spanning the 1961–2003 Court terms. The data reveal that excessive politicization jeopardizes success on the merits, thereby demonstrating a systematic, negative impact on the office's legal influence.

The solicitor general (S.G.), as the executive branch's chief lawyer on the U.S. Supreme Court, represents perhaps the most important influence on the Court's decisions beyond the justices themselves. While officially a presidential appointee and member of the Justice Department, scholars widely regard the S.G. as the independent bridge connecting the executive branch to the Court. As a result, Court observers view the S.G. as an informational tool the justices utilize throughout the decision-making process. Perry (1991) claims that the solicitor general, on many cases at the agenda-setting stage, functions as a "surrogate of the Court" in signaling the merit for granting *certiorari*. This unique status affords the S.G. unmatched success when seeking the Court's support for legal positions (Caldeira and Wright 1988; Caplan 1987; McGuire 1998; O'Connor 1983; Salokar 1992; Scigliano 1971; Segal 1988). In fact, the S.G.'s success on the merits as a litigant and *amicus curiae*, and the deference commonly received from the Court, is so well established that scholars often refer to the solicitor general as the "Tenth Justice" (Caplan 1987).

Judicial scholars offer several explanations for the Court's disproportionate attention to the office's arguments and commonly view the S.G. as a representative of both executive and judicial interests.

Historically, solicitors general have acknowledged and respected the office's reputation for legal integrity and relative independence from partisan inclinations. Yet by many accounts, recent solicitors general have increasingly politicized the office by frequently behaving as a direct advocate of the executive's often narrow legal philosophy (Caplan 1987; Ubertaccio 2005). Solicitors general commonly enter the office with a reservoir of decision-making capital. The office's esteemed reputation affords the S.G. a degree of freedom to act as the president's political advocate. The heightened sense of political behavior within the contemporary office suggests that solicitors general are indeed willing to utilize this discretion and expend such resources. However, the S.G. who exhausts that capital and excessively politicizes the office might jeopardize both the president's immediate ability to advance the administration's policy agenda through the Court as well as the long-term integrity of the S.G.'s office as an institution.

The recent controversy surrounding the firing of several U.S. attorneys and Attorney General Alberto Gonzales' eventual resignation further illustrates the consequences that may arise when perceptions of excessive political bias pervade the Justice Department. The S.G., even more so than the attorney general, stands at the intersection of

law and politics. This unique position carries an expectation that its office holders will maintain an independent balance. Existing empirical accounts of the S.G.'s behavior have not fully explored the degree to which the Court's perceptions of political bias may jeopardize the office's reputation as an unbiased informational cue. In this article, I examine the extent to which the S.G.'s politicization adversely affects the office's credibility. If the Court perceives that solicitors general repeatedly abuse their discretion by acting as the president's political advocate, then it should not trust the information provided and, thus, discount the office's arguments. I employ an individual-level analysis of all solicitor general *amici* between 1961 and 2003. The results reveal that increased politicization diminishes the likelihood that the Court will support the S.G.'s positions on the merits. In addition, I demonstrate that politicization's negative impact yields a spillover effect by endangering the success of the United States as a litigant beginning with Reagan's solicitors general.

Solicitor General Success and the "Repeat Player"

Judicial scholars have established the solicitor general as the most influential actor external to the Court and demonstrated that the justices overwhelmingly support the S.G.'s legal positions on the merits compared to all other participants (Caplan 1987; McGuire 1998; Perry 1991; Puro 1981; Salokar 1992; Segal 1988; Segal and Reedy 1988). In addition, Court opinions disproportionately implement the legal justifications supplied by S.G. *amici* compared to all other briefs (Spriggs and Wahlbeck 1997). Legal expertise and recurrent opportunities to appear before the Court, or the notion of the S.G. as the quintessential "repeat player," represents one primary explanation for the office's distinguished success (Caldeira and Wright 1988; Galanter 1974; McGuire 1998; Perry 1991; Segal 1988; Spriggs and Wahlbeck 1997). The S.G. as a "repeat player" utilizes a lofty reputation as an elite lawyer and a familiarity in delivering arguments before the Court to maintain such a unique status. McGuire concludes that the S.G.'s single advantage over every other external actor is "command of litigation expertise" (1998, 522). Likewise, the presence of more experienced lawyers substantially improves a litigant's expected outcome on the merits (McGuire 1995). As a result, Court

observers often argue that the S.G.'s relative legal skills provide the necessary tools to maintain such extensive influence.

The Solicitor General as an Independent Agent and Political Actor

Many scholars argue that the S.G. considers the Court's legal interests and acts as an agent of those on the bench (Caldeira and Wright 1988; Caplan 1987; Pacelle 2003; Puro 1981; Salokar 1992; Scigliano 1971; Segal 1988). Under this view, the Court affords the S.G. a unique status because the office customarily respects jurisprudence and assists in establishing doctrinal stability, above solely advocating the executive branch's narrow partisan interests. In essence, the justices expect the S.G. to remain unbiased by arguing within a legal framework (Pacelle 2002) and filing *amici* only in cases of great legal merit (Puro 1981). Former Solicitor General Drew Days claims that the S.G.'s duty before the Court is to "... insist that justice be done even where the immediate interests of the federal government may not appear to benefit" (1994, 488). Caplan provides an effective illustration of the respect that the S.G. pays to the Court, claiming that the office must "look beyond the government's narrow interests... and pay close attention to [a] case's impact on the law" (1987, 4).

Unlike the purely legal orientation of the S.G. as an agent of the Court, other scholars view the office's success as a function of ideological orientation. A political perspective of Supreme Court policy output naturally proceeds from the attitudinal model (Segal and Spaeth 2002). Therefore, explaining S.G. influence using this line of reasoning emphasizes the ideological proximity between the S.G. and the justices. Segal argues that the justices must "condition their support for the solicitor general on the ideological direction of the brief" (1988, 142). Bailey, Kamoie, and Maltzman (2005) provide empirical evidence supporting a political theory of S.G. success and contend that the office's *amici* send ideological, informational signals that influence decision making in civil liberties cases.

Increasing involvement in the office's actions and judicial activism within the executive branch reinforce the importance of the S.G.'s political responsibilities. According to former S.G. Days (1994), presidents have occasionally given "explicit instructions" to solicitors general regarding what arguments

to bring before the Court in select cases.¹ Ronald Reagan and George H.W. Bush frequently utilized the S.G.'s office as a political advocate in attempts to overturn *Roe v. Wade* (1973) and promote a broader social agenda (Caplan 1987; Pacelle 2003; Salokar 1992). Salokar notes that the Reagan administration "coined a new term in the language of the solicitor general's office, 'agenda cases'" (1992, 76). Furthermore, some observers also claim that the S.G. now increasingly files briefs involving a weak legal or governmental interest (Cooper 1990) and that *amici* often respond to the president's ideological preferences (Meinhold and Shull 1998). Succinctly stated, some scholars attribute the S.G.'s success to political orientation, and believe that "the 'Tenth Justice' is no less political than the other nine" (Bailey, Kamoie, and Maltzman 2005, 83). Although judicial scholars commonly view the S.G. as a representative of both executive and judicial interests, existing empirical analyses do not examine the degree to which presidential influence and the S.G.'s outright political advocacy might harm the office's perceived neutrality. The question remains how politicization might undermine the S.G.'s reputation and the office's special position among those on the bench.

Perceptual Bias and Solicitor General Success

Acting as the federal government's gatekeeper to the Supreme Court, the solicitor general's office resides at the intersection of law and politics. On one hand, the S.G. maintains the responsibility to represent the

views of the executive branch. Presidents and federal agencies often attempt to utilize the Court to advance their political goals. As a result, decisions regarding which cases and arguments to advance hold clear policy implications. Yet an extensive norm for respecting legal precedent and fostering doctrinal stability persists within the office. Among many office holders, the respect for the Court transcends any single administration's interests. Therefore, the central dilemma involves balancing the executive branch's immediate interests against the long-term protection of the S.G.'s office as an institution (Pacelle 2003). The S.G., within this context, must regularly make decisions along this continuum, and balance duties as an executive advocate against its reputation for independence as the Court's preeminent lawyer.

Despite the conventional expectation that the S.G. must cater to the competing constraints placed on the office, individual solicitors general have exhibited varying degrees of independence. Generally speaking, a solicitor general who politicizes the office acts as a forceful advocate for executive policy at the expense of assisting the Court. Although agency lawyers and attorneys general often possess a more politically driven outlook on Supreme Court litigation, the S.G. must temper executive branch opinions in accordance with precedent and doctrinal development. Each S.G. maintains a responsibility to preserve the office's reputation for political moderation and respect for the Court. The justices should perceive political bias when the S.G.'s office fails to strike the appropriate balance and consistently promotes ideologically slanted arguments.

From a legal perspective, the S.G. serves as an informational resource for the Court to utilize at various stages in the judicial process. The Court relies on the S.G.'s legal expertise to assist with controlling its docket and properly framing opinions. Essentially, the solicitor general filters complex litigation and provides cues to the Court regarding the relative importance of various legal issues. Judicial scholars have previously demonstrated the S.G.'s function as a valuable informational resource, both in assessing the merit of *certiorari* petitions (Perry 1991) and when acting as an advocate of executive policy (Bailey, Kamoie, and Maltzman 2005). The justices traditionally pay special attention to the S.G.'s arguments, in part, because the office maintains legal integrity despite executive influence. Although, historically, solicitors general have acted as partisan advocates to varying degrees, observers claim that excessive politicization has permeated the contemporary office.

¹President Eisenhower's involvement in *Brown v. Board of Education* (1954) and Reagan in *Bob Jones University v. United States* (1983) provide two noteworthy examples of direct presidential influence. Eisenhower personally wrote several sentences of the S.G.'s *amicus* brief in the *Brown* case (Days 1994). In the *Bob Jones* case, Bob Jones University challenged a lower court ruling upholding the IRS' decision to revoke the institution's tax-exempt status (based on the charge that the university's admission policy discriminated on the basis of race). Acting Solicitor General Lawrence Wallace (since Rex Lee recused himself) initially "acquiesced" by supporting the *certiorari* petition but not reversal on the merits (Caplan 1987). Justice Department lawyers, with President Reagan's support, switched the administration's position on the merits on the brief's primary issue. Wallace signed the brief but included a footnote declaring that he was only subscribing to the administration's position on the second substantive question (Caplan 1987).

I argue that this excessive partisan advocacy has manifested itself in two primary ways. First, recent presidents have increasingly viewed the S.G. as a resource to influence judicial policy. The politicization of the S.G.'s office becomes more apparent as presidents and attorneys general assume a more active role in the solicitor general's business and Supreme Court litigation. Recent presidents, most notably beginning with the Reagan administration, have demonstrated a greater desire to utilize the Court as a vehicle to pursue their policy agendas. The Reagan administration's creation of the political deputy, an appointee originally designed to supervise civil rights litigation, represents one such example of this heightened presidential involvement (Pacelle 2003). The political deputy is second-in-command of the S.G.'s office but not subject to Senate confirmation. This arguably provides the president with more direct influence on the office's day-to-day operations. Second, the ideological inclinations of individual solicitors general also lead to greater politicization. Presidents have increasingly appointed partisan solicitors general who reflect their ideal preferences and have less external stature compared to previous office holders, such as Thurgood Marshall, Archibald Cox, and Erwin Griswold (Pacelle 2003). Solicitors general now appear less willing to moderate their ideological positions in the interest of maintaining the office's traditional independence (Pacelle 2003). In general, many contemporary solicitors general have increasingly abused their discretion and opened the gates to the Court at the expense of providing unbiased assistance to the justices.

Historical accounts of the S.G.'s office repeatedly point to the stigma associated with Reagan's second S.G., Charles Fried, as evidence of the Court's expectations that the office maintain its legal veracity. Caplan (1987, 209) details the adversarial relationship and general decline in the trust of the office under Fried's supervision, noting that the S.G. had fallen to "... the level of an ideological interest group, a salesman for a partisan line just like the ACLU." Essentially, a solicitor general who persistently promotes ideologically slanted information loses credibility and will undermine the Court's trust. Such biased behavior counteracts the Court's need to impose doctrinal stability. As Pacelle notes, the S.G. must "provide the justices with accurate and balanced information and assure that the briefs maintain a high level of professionalism" (2003, 45). The justices seek information from many sources to aid their decision making, and the office's esteemed reputation makes the S.G. the predominant resource.

However, the Court will treat a solicitor general who narrowly attends to the executive branch's ideological agenda much more like the average litigant.

Although political bias will jeopardize the office's credibility and corresponding legal influence, the Court recognizes the S.G.'s responsibility as a representative of the president. This is not to say that the S.G. is free to completely ignore the Court's legal interests without consequence, but rather the solicitor general may selectively advocate the executive's partisan interests. This is especially true in the case of voluntary *amici curiae*. Pacelle (2006) argues that the S.G. functions more as an agent of the president when participating in voluntary *amicus* cases. But, perceptions of the S.G.'s political bias will endanger the office's credibility when surpassing a particular threshold. Former Solicitor General Rex Lee echoes this argument:

It is part of the duty of the S.G. to file *amici* in the so-called agenda cases and in those cases, the Court does give the S.G. a little more leeway. There is a realization by the justices that the S.G. does carry some of the Administration's positions to the Court. But all solicitors general feel it would be a mistake to file in too many. (Lee 1986)

I contend that perceptions of excessive political bias, especially within the contemporary office, will jeopardize the S.G.'s credibility. The Court should discount the S.G.'s arguments when the office facilitates the president's agenda beyond a threshold that the justices deem acceptable. Essentially, a failure to effectively balance law and politics will violate this threshold. This will occur when a solicitor general repeatedly chooses not to moderate policy positions to the extent that the justices come to expect a narrow, biased view of the law. A solicitor general who increasingly acts like an ordinary, single-minded interest before the Court will undermine the office's value as a legal assistant or "Tenth Justice." Once the S.G. surpasses such a threshold, the Court should increasingly ignore the office's arguments. Therefore, the probability of the Court supporting the S.G.'s position on the merits should decrease as the office becomes more politicized.

Data and Methodology

In order to test for the effects of politicization on the probability that the Court will adopt the S.G.'s position on the merits, I utilize all voluntary *amici curiae* filed by the solicitor general's office during

Supreme Court terms 1961–2003.² I use *amici* rather than cases where the U.S. government was a litigant because they offer the best lens from which to view the S.G.’s discretionary behavior, thus enabling a more accurate analysis of the office’s influence.³ The potential for politicization is most pronounced in *amicus* cases because the S.G. retains nearly complete discretion over the government’s participation. The S.G. does not maintain exclusive control over the decision to appeal all lower court decisions. For example, strategic concerns may influence the S.G.’s decision making, such as a desire to avoid affirming an unfavorable disposition. Additionally, the S.G. crafts *amici* with different temperaments, in that some represent narrow agenda cases while others reflect law enforcement issues. The latter serve the broader interests of the Justice Department while the former offer the best opportunity to endorse the president’s agenda (Pacelle 2003). However, I include all voluntary *amici* because they reflect discretionary decisions to provide assistance to the Court and are therefore important in measuring how far each S.G. deviates from the norm of impartiality. A partisan-minded S.G. will likely utilize even “law enforcement types of cases as vehicles to push the administration’s policy designs” (Pacelle 2003, 26).⁴

The unit of analysis is the individual case in which the Supreme Court granted *certiorari*.⁵ In order to create the measures described below, I identify when the S.G. filed an *amicus* brief and whether it

²I use data on S.G. *amicus* briefs from 1961 to 1993 that were made available by Rich Pacelle and Jeffrey Segal. S.G. briefs from 1994 to 2003 were coded by the author. I obtained all non-S.G. briefs from 1961 to 1985 using the Phase II database (Gibson 1997). The remaining non-S.G. *amici* data (1985–2003) were coded by the author. I obtained all other case data needed in the paper from the Spaeth “AllCourt” database (2006).

³I drop invited *amici* because they do not reflect discretionary decision making, and are therefore problematic when measuring the extent of the S.G.’s politicization.

⁴It is possible that the S.G. might strategically adhere to legal concerns in many criminal cases and other decisions that the office makes (e.g., *certiorari* petitions) as a means to maximize the Court’s tolerance to political behavior in the agenda cases. Since I am unable to determine if such strategic behavior occurs, I must assume that all voluntary *amici* contribute to the Court’s perceptions of political bias.

⁵I drop all cases where the Court’s judgment or the S.G.’s position was not clearly distinguishable in the *U.S. Reports*. I drop case outcomes with split decisions due to the inability to definitively determine whether the Court’s judgment supports the S.G.’s position. Likewise, the S.G. occasionally files *amici* without directly supporting either the petitioner or respondent. Of all voluntary *amici* filed between 1961 and 2003, only 5% do not directly support a litigant.

advocated a liberal or a conservative position, based on the ideological direction of the lower court’s disposition and the litigant supported in the brief.⁶ The dependent variable is the binary outcome of whether the Court’s decision on the merits supported the position advocated by the S.G. I code a “1” if the Court supported the S.G.’s position and “0” if not. Due to the binary dependent variable, I implement a logit regression of all voluntary *amici* submitted in civil rights and liberties cases from 1961 to 2003.⁷ In each model, I utilize a robust variance estimator, clustered on each individual S.G., in order to account for correlated errors between solicitors general.

The main predictor, *S.G. politicization*, measures the percentage of all S.G. *amici*, submitted prior to the decision date of a given case, advocating the appointing president’s ideological predisposition.⁸ I construct the measure to incorporate all *amici* filed by an individual S.G. in order to assess the general representation of the office’s political bias.⁹ For example, *S.G. politicization* during each term of Charles Fried’s tenure in the Reagan administration comprises the percentage of all voluntary *amici* submitted to the Court advocating a conservative policy position. I then cumulate the measure from the beginning of a single S.G.’s tenure up to the decision

⁶I use Spaeth’s (2006) definition of liberal versus conservative for a given case outcome.

⁷I follow the lead of Bailey, Kamoie, and Maltzman (2005) in examining only civil rights and liberties cases (Spaeth database, variable “VALUE” < 6). Essentially, the nature of the Court’s agenda changes over time and therefore may become problematic when making comparisons.

⁸I assume that the ideological preferences of each S.G. are most closely connected to the appointing president. Erwin Griswold, appointed by Lyndon Johnson prior to the 1967 term, remained in office until Richard Nixon replaced him with Robert Bork in June 1973. Also, Wade McCree, a Carter appointee, served for the duration of the 1980 term until Reagan replaced him with Rex Lee prior to the 1981 term. The substantive results of the analysis do not change if you drop the terms associated with the Johnson and Carter holdovers ($p < .05$, one-tailed tests). The results are available upon request. Additionally, when a new S.G. enters the office in the middle of the term following a change in administration (e.g., 1988), I measure the S.G.’s politicization corresponding to the previous president. I make this assumption because newly appointed solicitors general repeatedly do not take office until late in the term (e.g., 1976, 1988, 1992, and 2000), and I am often unable to definitively determine when a new S.G., after representing a change in party, might make the significant move to change the office’s position in a case inherited from a previous administration.

⁹Since I group all data by the Court term, observations where a new S.G. entered the office and the appointing president’s party changed before the conclusion of the term are potentially problematic for measuring politicization. I therefore drop these terms from the analysis, but the substantive results do not change if you include these terms ($p < .05$, one-tailed tests).

date of each case.¹⁰ In other words, the S.G.'s level of *politicization* corresponding to a single observation in the analysis includes every *amicus* brief with an oral argument date occurring before the Court issued a decision. The measure continues to cumulate for each individual S.G. until a new person enters the office. I argue that this produces a general picture of politicization, reflecting the cumulative exposure of each S.G.'s behavior and allowing each office holder to form an individual record.¹¹ The measure reveals a continuously updated, summary evaluation of each S.G., and accounts for the institutional memory of those on the bench.¹² Therefore, a higher value of *S.G. politicization* signifies more political bias and should decrease the probability of the Court adopting the S.G.'s position on the merits.

Aside from *S.G. politicization*, the extent to which the S.G.'s political behavior differs from the general ideological favor of all other *amicus* filers may

¹⁰I make the assumption that Republican presidents hold a conservative predisposition while Democratic presidents generally support liberal policy. Additionally, some scholars argue that the nature of the S.G.'s *amicus* participation in some issue areas, such as criminal cases, does not significantly differ across administrations (see Pacelle 2006). I argue that the Court should discount the S.G.'s information as it repeatedly conveys the same ideological message. The ACLU, for example, frequently provides information to the Court using *amicus* briefs. This information can be useful to the Court, but is assuredly less valuable because the ACLU rarely strays from its liberal agenda. As a result, consistently and voluntarily providing ideologically slanted information on behalf of the president should make the office more like the average filer.

¹¹Data on the S.G.'s *amicus* participation are available starting in 1953. However, President Eisenhower's solicitors general often filed very few voluntary *amici* each term. I therefore begin the analysis in 1961 with Kennedy's S.G., Archibald Cox. Including *amici* from 1953 to 1960 does not change the results ($p < .01$, one-tailed tests). Additionally, measuring *politicization* as a percentage of *amicus* filed is potentially less precise during the earlier years in the analysis and in the first year of each S.G.'s tenure because of the relative levels of *amicus* participation. The results do not differ substantively when excluding Archibald Cox from the analysis ($p < .001$, one-tailed tests). Including a dummy variable controlling for the first year of each S.G.'s tenure and interacting it with *S.G. Politicization*, yields no statistically significant effect. Lastly, dropping all cases decided during the first half of each S.G.'s first term (before April) does not change the results ($p < .01$, one-tailed tests).

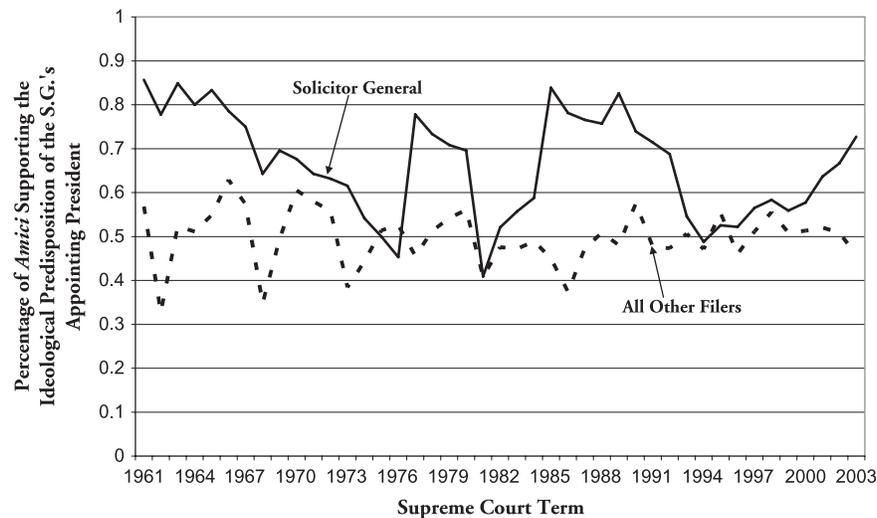
¹²Other scholars present evidence for similar theories in terms of candidate evaluation and the "online" model of psychological processing (Lodge, Steenbergen, and Brau 1995). Although the ideal measure of politicization would distinguish between varying degrees of political advocacy by each individual brief, no objectively agreed upon standards exist to construct such information. Judicial scholars have established that the mere presence of *amici* is an important factor in the Court's decision making (Hausegger and Baum 1999). I argue that a measure of ideological quantity and concentration has numerous virtues, including face validity and easy replication.

condition the Court's evaluations of the office's bias. The Court, for example, may perceive less bias on the part of a liberal-minded solicitor general who represents a Democratic president if the information received from other *amici* is also predominantly liberal. In other words, the S.G.'s political bias may appear more extreme as it increasingly deviates from the general ideological tenor of *amicus* information reaching the justices' chambers. The Court might associate added bias with a solicitor general who is not only ideologically narrow-minded but also significantly diverges from the prevailing orientation of *amicus* contributors. Thus, I utilize the ideological balance of all external *amici curiae* as a baseline comparison against *S.G. politicization*.

Some scholars demonstrate the potential for differential effects of raw and relative measures of *amicus* participation as control variables (Hausegger and Baum 1999). I therefore construct two measures—*external politicization* and *contextual deviation*—to account for external *amicus* behavior. *External politicization* measures the percentage of all *amici* in each term, not filed by the solicitor general, supporting the same ideological direction as the S.G.'s appointing president. Higher values of *external politicization* may attenuate the justices' perceptions of political bias while lower values might intensify the impact. I utilize this measure as a raw control variable in model 2.¹³ *Contextual deviation* explicitly measures the extent to which the S.G.'s *amicus* behavior differs from that of all other filers, and I compute it as the simple difference between *S.G. politicization* and *external politicization*. I implement this variable as the main substantive predictor, measuring the relative impact of *politicization*, in model 3. Greater values of *contextual deviation* signify a solicitor general that the Court should increasingly perceive as politically biased. Figure 1 presents the longitudinal representation of *external politicization* and *S.G. politicization* measured at the end of each Court term.

I include several control variables in all models to account for additional potential influences on S.G. success. As the primary ideological control, I introduce an interaction term consisting of the ideological rating of the median justice and the appointing

¹³Using external *amici* as a baseline comparison against the level of *S.G. politicization* is surely an imperfect measure. For example, special interests might organize equally on both sides of an issue or the mere presence of the S.G. may also have an impact on decisions to file briefs. However, I argue that external *amici* offer a useful approximation of the general balance of information that knowingly reaches the justices' chambers, and I employ them merely to test the robustness of the results.

FIGURE 1 Ideological Advocacy as *Amicus Curiae*, 1961–2003

president's party. The Court should be more receptive to the S.G.'s *amicus* arguments when the ideological position of the median justice converges to the appointing president's predisposition. Based on the notion of the justices as political actors, a Democrat-appointed S.G. should win more often as the Court median becomes more liberal. Likewise, a conservative Court will more likely support solicitors general appointed by Republican presidents. I include a dummy variable indicating the party of the president who appointed the S.G. I assign a "1" to Democratic presidents and a "0" for Republicans. I also include the ideological rating of the median justice during each term and add a multiplicative term capturing the degree to which the president's party moderates the impact of the median justice.¹⁴ Higher values for the median justice when the S.G. represents Republicans should generate greater success. Alternatively, the effect during Democratic control should exhibit a negative relationship and should be significantly different from success among Republican presidents.

I also include several case-specific control variables in the analysis. Since I argue that excessive politicization leads the Court to discount the S.G.'s arguments, briefs filed contrary to the appointing president's predisposition should reinforce the office's credibility. I include a dummy variable, *contradiction*, indicating an *amicus* brief that advocates the opposing ideological direction. Here, I code a "1" for

those briefs signifying an ideological contradiction and "0" if not. The probability that the Court will support the S.G.'s position should increase in these cases, thus reflecting an overall positive relationship. In addition to the *contradiction* predictor, I implement two controls measuring case salience, both from a legal and political perspective. I replicate the measures used by Bailey, Kamoie, and Maltzman (2005) in accounting for the degree to which the Court's need for information affects S.G. success. Maltzman and his colleagues (2000) argue that the justices possess more distinguished preferences on cases of great legal or political importance. As a result, the S.G.'s position should prevail less often in legally and politically salient cases. *Legal salience* is a dummy variable identifying cases where the Court declared a law unconstitutional or one that officially altered precedent (Bailey, Kamoie, and Maltzman 2005). *Political salience* is a dummy of cases that appeared on the front page of the *New York Times* (Epstein and Segal 2000) or in *Congressional Quarterly's Guide to the U.S. Supreme Court* (Savage 2004).¹⁵ I assign a "1" to a salient case, and therefore each predictor should be negatively related to S.G. success. I add two final case-specific dummy variables, one accounting for the litigant that the S.G. supported and the other for cases primarily involving constitutional issues. I code a "1" for cases where the office supported the petitioner and for constitutional cases.

¹⁴I use the Martin-Quinn scores (2002) for the median ideological ratings of the Supreme Court. Higher values signify a more conservative Court while lower values indicate more liberalism.

¹⁵I use data from Epstein and Segal (2000) to identify cases through the 1995 Court term. For the 1996–2003 terms, I replicate the measure using their coding criteria in a *Lexis-Nexis* news search.

Aside from ideological and case-specific controls, I implement two S.G.-specific predictors accounting for the length of each S.G.'s tenure in the office and Solicitor General Fried's term. The Court's familiarity with each S.G. may influence evaluations of the office's *amici* positions. In other words, the Court may not judge the S.G. in the same manner during the first year compared to later years of the office holder's tenure. Likewise, the S.G.'s expertise and success may increase as the office holder becomes more familiar with the Court members. I therefore include a predictor in all model specifications specifying the year of an individual S.G.'s tenure.¹⁶ The variable *S.G. tenure* assigns values corresponding to the number of years each S.G. has held the office and thus should increase the Court's acceptance of the office's arguments.¹⁷ Lastly, observers widely regard Charles Fried as the preeminent example of a partisan-minded S.G. (Caplan 1987). Therefore, I include a dummy variable specifying the four terms he held the office—1985–88. I assign a “1” for all observations during these four Supreme Court terms to ensure that the effect of *S.G. politicization* is not confined to Fried's tenure in the office.

Results

Table 1 presents the logit regression results for each of the three model specifications. Additionally, I compute predicted probabilities since the coefficients are not directly interpretable, based on the logit model's assumption of nonlinearity. Figure 2 presents the simulated effects of *S.G. politicization* for the second model.¹⁸ As evident in Table 1, *S.G. politicization* yields a significant, negative effect on the

probability that the Court adopts the S.G.'s position in all models. As the S.G. exhibits a greater degree of politicization, the office experiences less success on the merits. At the minimum level of *S.G. politicization* (0.33), the Court will likely support the S.G. 87% of the time. Alternatively, when the S.G. exhibits the highest degree of *politicization* during the observed time period (1.0), the Court adopts the office's position only 60% of the time. The S.G. is nearly 8% less likely to win on the merits when exhibiting a level of *politicization* just one standard deviation above the mean.

Historical accounts of executive influence over federal litigation in the S.G.'s office often contrast the two solicitors general who served in the Reagan administration—Rex Lee and Charles Fried. Some observers believe that Reagan replaced Lee with Fried following the 1984 term for a failure to effectively represent Reagan's partisan view of the law (Caplan 1987; Ubertaccio 2005). Lee's average level of *politicization* (0.53) corresponds to a simulated 82 percent success rate. This degree of *politicization* starkly contrasts that of Fried, whose mean behavior (0.80) leads to a 70% chance of success on the merits. These results support the theory that the Court's perceptions of the S.G.'s political bias exert a systematic, negative impact on the office's credibility.

Measuring the explicit deviation of the S.G.'s ideological behavior from that of all other filers yields the same conclusion. Model 3 demonstrates a statistically significant, negative relationship between *contextual deviation* and the probability of the Court supporting the S.G.'s *amici* positions. More specifically, when viewing the relationship at the minimum level of *contextual deviation* (−.11), the S.G. prevails 86% of the time. However, the S.G. triumphs in a mere 61% of cases associated with the maximum level of *contextual deviation* (0.48). Lee's tenure as the S.G. exhibits a mean level of *contextual deviation* (0.06) leading to an 81% predicted probability of success. This contrasts Fried's average degree of *contextual deviation* (0.36) and a simulated 67% success rate. Thus, the data suggest that the Court will more likely ignore the arguments of a highly partisan S.G., which sharply contrasts the office's well-established record for influence.

Even though I am primarily interested in the effect of *S.G. politicization*, the ideological control exhibits a statistically significant effect in the expected direction among both Democratic and Republican presidents. The effect of the median justice is negatively related to the probability of adopting the office's position among Democrat-appointed solicitors

¹⁶The growing complexity of legal issues over time might have some impact on the S.G. Some scholars have examined policy change in civil liberties cases (e.g., Baum 1988). Controlling for the term in which a decision occurred as well as any potential differences between the Warren, Burger, and Rehnquist Courts does not substantively alter the results ($p < .05$, one-tailed tests).

¹⁷It is possible that as the president makes more appointments to the Court, the justices could naturally favor the S.G.'s positions despite any politicization. Adding a predictor accounting for the number of sitting justices appointed by the president does not substantively change the results ($p < .05$, one-tailed tests).

¹⁸I calculate predicted probabilities for each 5% increment in the value of *S.G. politicization*. I hold all remaining variables at their mean values in order to simulate the general effect of *politicization*. I limit my discussion of predicted probabilities to models 2 and 3, but model 1 yields virtually identical results. I compute all predicted probabilities using the “SPOST” program in Stata (Long and Freese 2005).

TABLE 1 The Effect of S.G. Politicization on Success on the Merits as *Amicus Curiae*, 1961–2003

	1	2	3
Predictor			
S.G. Politicization	−1.93* (.78)	−2.27* (.86)	—
External Politicization	—	2.06 (2.98)	—
Contextual Deviation	—	—	−2.24* (1.03)
Ideological Controls			
Democratic President	.48 (.30)	.40 (.25)	.38 (.38)
Median Justice Ideology	1.36* (.35)	1.28* (.32)	1.26* (.35)
Median Justice Ideology X Democratic President	−2.67* (.48)	−2.67* (.51)	−2.65* (.71)
Case-Specific Controls			
Contradiction	−.03 (.19)	−.03 (.19)	−.02 (.19)
Legal Salience	−.53 (.43)	−.54 (.44)	−.54 (.44)
Political Salience	−.58* (.35)	−.60* (.35)	−.60* (.35)
Petitioner	1.35* (.21)	1.36* (.21)	1.36* (.21)
Constitutional Case	.78* (.17)	.78* (.17)	.78* (.17)
S.G. Controls			
S.G. Tenure	.03 (.09)	−.001 (.10)	−.003 (.08)
Solicitor General Fried	−.67* (.26)	−.50 (.32)	−.49* (.28)
Constant	2.18* (.57)	1.52 (1.01)	1.43* (.39)
Log-Likelihood	−209.83	−209.55	−209.55
Pseudo-R ²	.14	.14	.14
Number of Cases	411	411	411

Note: Table entries are MLE logit coefficients with robust standard errors, clustered on each S.G., in parentheses. *p < .05 (one-tailed). I restrict the dependent variable to whether the Court supported the S.G.'s position on the merits only in civil rights and liberties cases.

general and yields a positive relationship in the Republican category.¹⁹ The median justice's effect on S.G. success during Republican control is also significantly different from Democratic administrations. As the Court median becomes more liberal, a Democrat-appointed S.G. will prevail more often on the merits. Conversely, a solicitor general representing a Republican president experiences diminished success in the presence of a liberal Court but wins more frequently when confronted by a conservative bench. The results demonstrate the expected effect of the Court's ideological predisposition as an influence on its decision making. In addition to the ideological control, predictors for political salience, the litigant supported by the S.G., and constitutional cases are all in the expected direction and statistically significant. Solicitors general experience less success on the merits in politically salient cases. Cases involving constitutional issues and when the S.G. supports the petitioner increase the probability of success. Additionally, Charles Fried's tenure in the office yields a negative

effect in models 1 and 3. The remaining control variables—S.G. tenure, contradiction, and legal salience—each exhibit effects that are not statistically significant in all models.²⁰

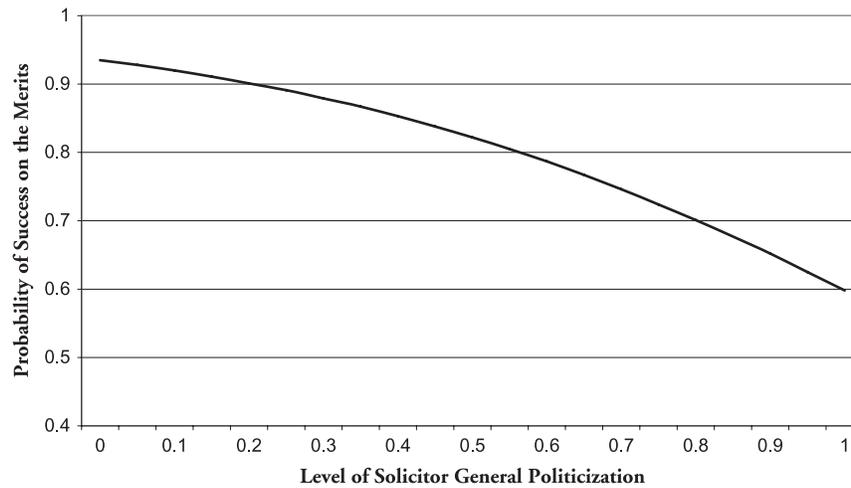
The Spillover Effect of Solicitor General Politicization

The politicization of the solicitor general's office clearly hinders the probability of the Court adopting the office's *amicus* positions on the merits. Yet, participation as *amicus curiae* represents only one facet of the S.G.'s interaction with the Court. If excessive politicization truly jeopardizes the office's reputation, then that negative effect should extend beyond *amicus* participation. Furthermore, former Solicitor General Lee, as noted earlier, has suggested the Court expects that the office will act more as a presidential advocate in the *amicus* cases (Lee 1986). If the Court

¹⁹For model 2 in Table 1, the coefficient for the median justice's effect among Democratic presidents is −1.39 with a standard error of 0.537 and a t-statistic of −2.59. The slopes for models 1 and 3 are available upon request.

²⁰A potential reason that *legal salience* does not exert a statistically significant effect is that the analysis only investigates civil rights and liberties cases. Arguably, the justices need less information in these cases. Therefore, this variable likely possesses less explanatory leverage in this sample compared to the universe of cases.

FIGURE 2 The Effect of Solicitor General Politicization on Success on the Merits as *Amicus Curiae*, 1961–2003



Note: Figure 2 displays the predicted probabilities associated with the effect of S.G. politicization on S.G. success, 1961–2003. The predicted probabilities were computed using regression results from model 2 displayed in Table 1, and calculated using the “SPOST” program in Stata (Long and Freese 2005).

compartmentalizes the S.G.’s *amici*, then perhaps excessive politicization does not lead to dire consequences. Therefore, I assess the extent to which politicization generates a spillover effect by undermining success on the merits as a direct litigant.

Table 2 models the impact of S.G. politicization on the probability that the Court’s disposition supports the S.G. when representing the federal government as a respondent, 1961–2003. I exclude cases with the U.S. government as the petitioner because the S.G. determines which cases to challenge, thereby enabling the office to strategically select winnable cases. Various scholars characterize the S.G. as a strategic actor, and one that makes review decisions, in part, based on a case’s expected outcome (Pacelle 2003; Salokar 1992). Therefore, I argue that respondent cases offer the most robust test of politicization’s spillover effect.²¹ The dependent variable indicates when the petitioner failed to receive a favorable disposition from the Court. I code a “1” if the Court’s

disposition did not favor the petitioner, “0” otherwise.²² I repeat the three general model specifications used to estimate the *amicus* outcomes in Table 1 and include the two main substantive variables measuring the extent of the S.G.’s political bias, S.G. politicization and contextual deviation. I construct these predictors in the same manner as the *amicus* models, utilizing the voluntary *amici* to measure the extent of the S.G.’s political bias. I also include many of the same control variables from Table 1, including external politicization, the ideological interaction term between the president’s party and median justice, S.G. tenure, and the dummy variables for constitutional cases and former Solicitor General Fried’s tenure.

Lastly, I examine the extent to which the S.G.’s office following the 1980 term moderates the impact of S.G. politicization and contextual deviation. Caplan (1987) suggests that actions during the Reagan administration engendered a disdain from those on the bench that might pose a cumulative effect on subsequent solicitors general and the office’s legal culture more generally. I include a dummy variable accounting for the post-1980 Supreme Court terms and interact it with S.G. politicization and contextual deviation, respectively. For the post-1980

²¹A selection effect likely exists when the S.G. is the petitioner representing the government. An unobserved variable reflecting the extent to which individual solicitors general, to varying degrees among different office holders, strategically challenge some lower court losses and not others (based on perceptions of prevailing on the merits) should influence the dependent variable. However, the substantive results of the analysis do not differ if you include the petitioner cases ($p < .05$, one-tailed tests).

²²I use Spaeth’s (2006) definition of whether the petitioner received a favorable outcome on the merits. I drop the few case outcomes with decision dates occurring before the oral argument date of a newly appointed S.G.’s first *amicus* brief.

TABLE 2 The Spillover Effect of S.G. Politicization During the Post-1980 Supreme Court Terms

	1	2	3
Predictor			
S.G. Politicization	.05 (1.00)	.19 (.92)	—
External Politicization	—	-.44 (1.13)	—
Contextual Deviation	—	—	.35 (.78)
Post-1980 Terms	3.13* (1.20)	3.17* (1.20)	.19 (.26)
S.G. Politicization X Post-1980 Terms	-5.77* (2.01)	-5.84* (1.99)	—
Contextual Deviation X Post-1980 Terms	—	—	-5.73* (1.77)
Ideological Controls			
Democratic President	-.56* (.26)	-.55* (.26)	-1.03* (.37)
Median Justice Ideology	1.44* (.44)	1.47* (.44)	.77 (.58)
Median Justice Ideology X Democratic President	-.49 (.48)	-.48 (.46)	.21 (.61)
Case-Specific Control			
Constitutional Case	.02 (.37)	.02 (.37)	.02 (.37)
S.G. Controls			
S.G. Tenure	.16* (.10)	.17 (.11)	.17* (.10)
Solicitor General Fried	1.15* (.19)	1.11* (.20)	1.57* (.27)
Constant	.01 (.56)	.11 (.61)	.43 (.43)
Log-Likelihood	-339.32	-339.28	-339.64
Pseudo-R ²	.12	.12	.12
Number of Cases	561	561	561

Note: Table entries are MLE logit coefficients with robust standard errors, clustered on each S.G., in parentheses. *p < .05 (one-tailed). I restrict the dependent variable to whether the Court supported the S.G.'s position on the merits as a respondent only in civil rights and liberties cases. Due to the potential for strategic S.G. behavior in selecting winnable cases, I only include cases where the U.S. government was a respondent because they offer the most robust test of S.G. *politicization* and its spillover effect.

dummy, I code a "1" for the 1981–2003 terms signifying the arrival of Reagan's first solicitor, Rex Lee. The multiplicative term captures the differences in any spillover effect once Reagan assumed office.²³

The results demonstrate that the S.G.'s political bias exerts a spillover effect following the beginning of Rex Lee's tenure. *S.G. politicization* and *contextual deviation* do not display noticeable effects on outcomes prior to the Reagan administration. However, the two predictors demonstrate sharp, negative impacts on the S.G.'s success rate as a respondent following the 1980 term.²⁴ Figure 3 presents the simulated effects of *S.G. politicization* for model 2

in Table 2.²⁵ Specifically, the S.G. prevails 50% of the time at the mean level (0.63) of *S.G. politicization* following the 1980 Court term. However, the solicitor general triumphs in a mere 32% of cases when increasing the level of *S.G. politicization* by just one standard deviation (0.76). The data suggest that excessive politicization may jeopardize not only *amicus* influence, but also the government's success as a party.

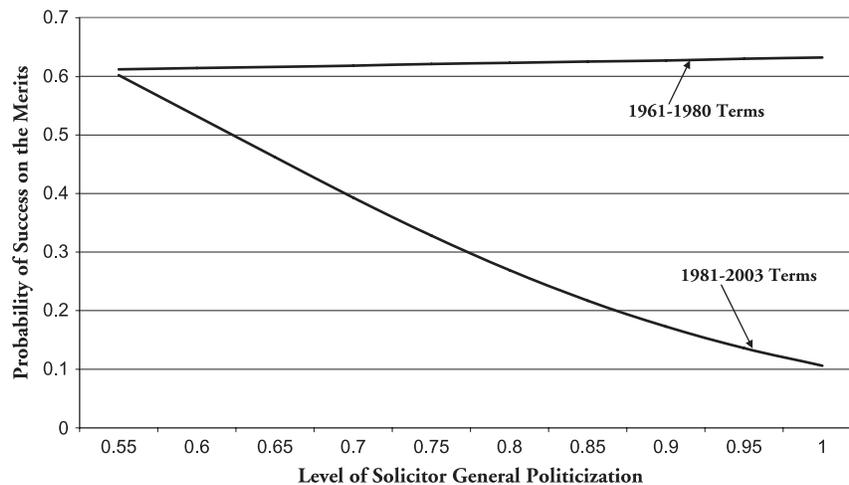
Among the various control predictors in the model, the ideological interaction term, *S.G. tenure*, and the dummy for Solicitor General Fried's tenure exhibit statistically significant effects. In models 1 and 2, a more conservative median justice among Republican presidents leads to increased success. A more conservative Court also produces more support for Democrat-appointed solicitors general. This counter-intuitive result is due to the fact that the U.S. government defended conservative policy positions

²³Including an identical interaction term in the *amicus* models from Table 1 yields no significant effect. The impact of politicization on *amicus* success prior to the Reagan administration is not significantly different from the post-1980 terms.

²⁴For model 2 in Table 2, the coefficient for the effect of *S.G. politicization* following the 1980 term is -5.65 with a standard error of 1.56. The t-statistic of -3.62 displays a significant, negative effect (p < .001, one-tailed test). The slopes and standard errors for the post-1980 term category in models 1 and 3 are available upon request.

²⁵I calculate predicted probabilities in five percent increments for the value of *S.G. politicization* starting at 0.55. I estimate the effect of *S.G. politicization* in each separate time period while holding all other variables at their mean values. I limit my discussion of predicted probabilities to model 2 in Table 2. The other two models yield similar results.

FIGURE 3 The Spillover Effect of Solicitor General Politicization During the Post-1980 Supreme Court Terms



Note: Figure 3 displays the predicted probabilities associated with the effect of S.G. Politicization on success as a respondent, 1961–2003. Due to the potential for strategic S.G. behavior in selecting winnable cases, I only include cases where the U.S. government was a respondent because they offer the most robust test of S.G. politicization and its spillover effect. All simulated probabilities were computed using regression results from model 2 displayed in Table 2, and calculated using the “SPOST” program in Stata (Long and Freese 2005).

in 93% of the sample cases, regardless of the administration.²⁶ In addition, solicitors general with longer tenures experience greater success on the merits in models 1 and 3. Lastly, the dummy variable for Solicitor General Fried is positively related to S.G. success in all models. The unexpected result for the Fried dummy most likely represents an artifact of the data, as the former S.G. won all civil rights and liberties cases in the sample during his first term in office.

Conclusions

I set out to determine if claims of increased partisanship and political advocacy in the contemporary solicitor general's office bear any consequence for the esteemed actor's legal influence and credibility. I propose a theory of S.G. influence contending that the office's politicization directly affects its unique status among the justices. The results suggest that despite increasingly partisan outlooks on the S.G.'s role in American politics, the justices have not altered their expectations that the office should maintain its legal integrity. Furthermore, the increasingly partisan

culture that arguably began with the Reagan administration has seemingly altered the conventional S.G.-Court relationship. Not only are the justices more apt to ignore *amicus* arguments when faced with a politicized S.G., but now a solicitor general perceived as politically biased also stands to jeopardize success when defending positions with a direct governmental interest at stake. The net effect is a degree of cumulative damage to the office's reputation, in that the Court has seemingly altered the way it regards solicitors general appearing as partisan advocates. Overall, this study leads to a more refined explanation of the multifaceted influences on the S.G.'s activity before the Court.

The solicitor general's office traditionally holds considerable discretion to supervise federal government litigation before the Supreme Court. The S.G. has developed a reputation for objectivity and independence over time that enables the office to freely exercise such decision-making capital. Indeed, the varying degrees of politicization among individual solicitors general suggest that many office holders willingly utilize that discretion to serve political ends. However, the results imply that exhausting this capital poses significant consequences for the S.G., the executive, and the office as an institution. Excessive politicization endangers both the immediate success of the president's agenda before the Court and the

²⁶The results do not change after adding a multiplicative term that accounts for whether the ideological direction of the S.G.'s position in each case moderates the impact of the median justice.

S.G.'s legal influence among the justices. More importantly, the negative impact of politicization may jeopardize the office's long-standing institutional credibility. A short-sighted solicitor general may act as a presidential advocate, but potentially at the expense of the office's revered reputation. Therefore, the effects of politicization suggest that solicitors general might concern themselves with the extensive effect of their political behavior and how they bestow the office to their successors.

Due to the consequences of excessive politicization, the S.G. must proceed cautiously when appearing as an ideological advocate before the Court. The S.G., as the federal government's effective gatekeeper, must act strategically in balancing legal and political responsibilities. Solicitors general who consistently supply information that appears partial to a particular ideological agenda may find that those on the bench treat the office much more like the average participant. The increasingly political climate surrounding the contemporary Justice Department exacerbates the potential consequences of this politicization. In general, the S.G. is the most important link between the executive and judicial branches. Establishing a greater understanding of the esteemed lawyer's behavior contributes to a broader knowledge of interinstitutional relationships in the American political system.

Acknowledgments

I am grateful to Tom Carsey, Peter Enns, Kevin McGuire, Rich Pacelle, Jim Stimson, Terry Sullivan, Georg Vanberg, the editor of the *Journal of Politics*, and three anonymous reviewers for their insightful comments and criticisms. I would also like to thank Larry Baum, Rich Pacelle, and Jeff Segal for making data available. I appreciate the support from the UNC-Duke American Politics Research Group. An earlier version of this paper was presented at the 2006 annual meeting of the Midwest Political Science Association.

Manuscript submitted 19 June 2007

Manuscript accepted for publication 1 March 2008

References

- Bailey, Michael, Brian Kamoie, and Forrest Maltzman. 2005. "Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making." *American Journal of Political Science* 49 (1): 72–85.
- Baum, Lawrence. 1988. "Measuring Policy Change in the U.S. Supreme Court." *American Political Science Review* 82 (3): 905–11.
- Bob Jones University v. United States. 1983. 461 U.S. 574.
- Brown v. Board of Education. 1954. 347 U.S. 483.
- Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82 (4): 1109–27.
- Caplan, Lincoln. 1987. *The Tenth Justice: The Solicitor General and the Rule of Law*. New York: Vintage Books.
- Cooper, James. 1990. "The Solicitor General and the Evolution of Activism." *Indiana Law Journal* 65 (3): 675–96.
- Days III, Drew. 1994. "In Search of the Solicitor General's Clients: A Drama with Many Characters." *Kentucky Law Journal* 83 (2): 485–507.
- Epstein, Lee, and Jeffrey A. Segal. 2000. "Measuring Issue Salience." *American Journal of Political Science* 44 (1): 66–83.
- Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculation on the Limits of Legal Change." *Law and Society Review* 9 (1): 95–160.
- Gibson, James. 1997. "United States Supreme Court Judicial Database, Phase II 1953–1993." First ICPSR version. ICPSR Number 6987.
- Hausegger, Lori, and Lawrence Baum. 1999. "Inviting Congressional Action: A Study of Supreme Court Motivations in Statutory Interpretation." *American Journal of Political Science* 43 (1): 162–85.
- Lee, Rex. 1986. "Lawyer for the Government: Politics, Polemics & Principle." *Ohio State Law Journal* 47 (3): 595–601.
- Lodge, Milton, Marco R. Steenbergen, and Shawn Brau. 1995. "The Responsive Voter: Campaign Information and the Dynamics of Candidate Evaluation." *American Political Science Review* 89 (2): 309–26.
- Long, J. Scott, and Jeremy Freese. 2005. *Regression Models for Categorical Outcomes Using Stata*. 2nd ed. College Station, TX: Stata Press.
- Maltzman, Forrest, James F. Spriggs II, and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge University Press.
- Martin, Andrew D., and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999." *Political Analysis* 10 (2): 134–53.
- McGuire, Kevin T. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *The Journal of Politics* 57 (1): 187–96.
- McGuire, Kevin T. 1998. "Explaining Executive Success in the U.S. Supreme Court." *Political Research Quarterly* 51 (2): 505–26.
- Meinhold, Stephen S., and Steven A. Shull. 1998. "Policy Congruence between the President and the Solicitor General." *Political Research Quarterly* 51 (2): 527–37.
- O'Connor, Karen. 1983. "The Amicus Curiae Role of the U.S. Solicitor General in Supreme Court Litigation." *Judicature* 66 (5): 256–64.
- Pacelle, Richard L. Jr. 2002. *The Role of the Supreme Court in American Politics: The Least Dangerous Branch?* Boulder, CO: Westview Press.
- Pacelle, Richard L. Jr. 2003. *Between Law and Politics: The Solicitor General and the Structuring of Race, Gender, and Reproductive Rights Litigation*. College Station: Texas A&M University Press.
- Pacelle, Richard L. Jr. 2006. "Amicus Curiae or Amicus Praesidentis? Reexamining the Role of the Solicitor General in Filing Amici." *Judicature* 89 (6): 317–25.

- Perry, H. W. Jr. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge, MA: Harvard University Press.
- Puro, Steven. 1981. "The United States as Amicus Curiae." In *Courts, Law and Judicial Processes*, ed. S. Sidney Ulmer. New York: The Free Press, 220–29.
- Roe v. Wade*. 1973. 410 U.S. 113.
- Salokar, Rebecca M. 1992. *The Solicitor General: The Politics of Law*. Philadelphia: Temple University.
- Savage, David G. 2004. *Guide to the U.S. Supreme Court*. 4th ed. Washington, DC: Congressional Quarterly.
- Scigliano, Robert. 1971. *The Supreme Court and the Presidency*. New York: Free Press.
- Segal, Jeffrey A. 1988. "Amicus Curiae Briefs by the Solicitor General during the Warren and Burger Courts: A Research Note." *Western Political Quarterly* 41 (1): 135–44.
- Segal, Jeffrey A., and Cheryl D. Reedy. 1988. "The Supreme Court and Sex Discrimination: The Role of the Solicitor General." *Western Political Quarterly* 41 (3): 553–68.
- Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.
- Spaeth, Harold. 2006. "United States Supreme Court Judicial Database, 1953–2004 Terms." <http://www.as.uky.edu/polisci/ulmerproject/sctdata.htm> (April 6, 2006).
- Spriggs, James F., and Paul J. Wahlbeck. 1997. "Amicus Curiae and the Role of Information at the Supreme Court." *Political Research Quarterly* 50 (2): 365–86.
- Ubertaccio III, Peter N. 2005. *Learned in the Law and Politics: The Office of the Solicitor General*. New York: LFB Scholarly Publishing.

Patrick C. Wohlfarth is a Ph.D. candidate in political science, University of North Carolina at Chapel Hill, Chapel Hill, NC 27599–3265.