

Federal Preferences and State Government Influence in the U.S. Supreme Court[†]

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1 Introduction

An important tension – arguably the key tension – within any federal system is that which exists between the reach of national authority and the sovereignty of subnational bodies. And perhaps nowhere is that tension more strongly felt than in the judiciary, for two reasons. First, in many if not most instances it is the judicial branch which is called upon to adjudicate disputes arising out of that tension. Second, and more important, judicial decisions are often at the mercy of other institutions, both national and subnational, to ensure their implementation. These two facts suggest that courts within a federal system with their pronouncements ought carefully to consider the preferences of national and subnational actors should they wish to ensure compliance with their pronouncements.

One area of particularly vigorous debate in this vein has been the effectiveness of transnational judicial institutions, particularly the European Court of Justice (ECJ). In recent years, some have argued that the ECJ, through declarations of legal doctrine, has not only “constitutionalized” the treaty bases of the European Union (EU), but actually institutionalized its ability independently to enforce EU laws over governments (e.g. Burley and Mattli 1993; Stone–Sweet and Brunell 1998). Countering this line of argument, scholars rooted in a neorealist perspective see governments in an international setting as relatively unconstrained actors, free to abide by or ignore international court rulings at their whim. These scholars have therefore argued that the ECJ must fundamentally worry about government compliance with its decisions; as a result, while the ECJ may help enforce of EU law to some degree, its ability to do so is constrained by a government’s willingness to abide by that ruling (cf. Taylor 1983; Garrett 1992; Moravcsik 1993).

More recently, concerns over the ability of courts to enforce a political system’s laws have been extended to national settings. In the U.S. context, Carrubba and Rogers (2003) argue that the U.S. Supreme Court of the 1800s was an institutionally weak actor. While

it nominally had the right to enforce the federal laws of the land, it could not easily enforce those laws over independent-minded States. Similarly, Vanberg (2001) argues that domestic courts are not necessarily as capable of enforcing compliance with the laws of the land as is commonly believed. He provides strong evidence in support of this argument by examining judicial decision-making of the German Constitutional Court. Perhaps more importantly, Vanberg demonstrates that this problem exists not just in the “easiest case” of international institutions, nor the next easiest case of a young, weak federal system, but rather a “hardest case” of a fully institutionalized court.

This work suggests a number of important questions for scholars of the U.S. Supreme Court. If the Supreme Court historically has had to worry about compliance with its decisions, and if the German Constitutional Court has to worry about compliance with its decisions even today, then might the modern Supreme Court not have similar concerns? That is, is the ability of the U.S. Supreme Court to enforce the laws of the land dependent upon its ability to elicit compliance with its decisions?

In fact, there is good reason to suspect that this might be the case. Beginning with James Madison, students of American politics have long recognized that the Supreme Court controls “neither the purse nor the sword.” Thus, compliance with the Court’s rulings must either be voluntary, or rely upon some exogenous enforcement mechanism. This mechanism may take any number of forms, ranging from martial enforcement to public opinion. However, whatever the form, someone or something independent of the Court must make noncompliance costly.

If correct, this observation implies an important conditionality on the ability of the Supreme Court to enforce the law. Only when the Court knows that a sufficient enforcement mechanism exists can it reasonably expect compliance with a costly ruling. To examine empirically this expectation, we develop a simple theory and test of the conditions under which the Supreme Court will be influenced in its decisions by state-level factors related

to compliance. In a nutshell, we argue that the Supreme Court should be less responsive to state-level signals about compliance when it expects the federal government to enforce compliance and/or sanction noncompliance, and more responsive to those concerns when the federal government expresses ambivalence or hostility towards the Court's decision.

The rest of the paper proceeds as follows. Section two outlines a simple rational choice theory of judicial decision-making in a federal system, with particular attention to the issue of national- and subnational-level compliance. Section three discusses the applicability of the model to U.S. Supreme Court cases involving the fifty states, describing the two central means – litigation and the filing of amicus curiae briefs – by which the states may endeavor to influence the Court and outlining a series of empirical expectations. Section four outlines our data, and section five analyzes a few of the model's implications through a model of Supreme Court decision making during the Warren and Burger Courts. Section six concludes.

2 A Theory of Judicial Decision Making in a Federal System

Suppose there exists a court and two levels of government, which we term the “federal” government and a group of “state” governments. The court is considering how to rule in some case, and each actor has their own preferred outcome. For the court this preference can arise from either ideologically or legally based motivations; for the federal and State governments, this preference can arise either because they are a party to the case, or simply because they care indirectly about the outcome. Cases arise through an appeals process; upon a case's arrival in the court, the states and federal governments, if they are not already parties to the case, can file briefs in favor of affirmance or reversal. Once all briefs are filed, the court makes its ruling.

Importantly, the game does not stop there, because enforcement and compliance are assumed to be the prerogative of the governments. If a state government loses the case,

compliance is a choice. Complying with the decision ends the game; however, noncompliance leaves the federal government with a final choice over whether to enforce the court's decision in the absence of state compliance. How costly it is for the federal government to enforce the decision depends partly upon how other states will react to the federal government's actions. *Ceteris paribus*, the more and more negatively states will react to such an exercise of federal power, the more costly the federal government will find the action, and the less likely it will be to step in and enforce the court's ruling. Additionally, if the federal government does not enforce the court's ruling, this imposes a cost on the court in the form of an undermining of its legitimacy. Thus, unlike typical separation of powers games, compliance with court decisions *can* be enforced, but that does not mean that they *will* be enforced.

Behavior in this simple, informal model is intuitive. The court wants to rule "sincerely," i.e., according to its own policy preferences. However, the court also does not want to lose legitimacy by having its rulings violated. Thus, at the margin, the court's ruling will depend upon how the federal government and states feel about the alternative outcomes. The position of the federal government is the one most important to the court. At the most basic level, a clear signal from the federal government that it favors a particular ruling obviates, to a great extent, concerns about implementation of that decision (and thus about the possibility of a loss of legitimacy); all else equal, such a statement should therefore have a positive impact on the probability that the court rules in the direction the federal government wishes. Moreover, under such circumstances the court should be more willing to vote against a state litigant, even if it is clear that the state in question disagrees with the case outcome. That is to say, with the federal government involved, the court may largely ignore the preferences of the state in question. The only mitigating factor is the potential for other states to weigh in against the federal government's (and, by implication, the court's) preferred outcome. Then the federal government might shy away from enforcing the court's will, and the court may not rule sincerely.

Conversely, not having the federal government on its side – either because the federal government has indicated that it is opposed to the ruling the court wants to make, or because the federal government has not made its position on the question known – leaves a sincere ruling by the court vulnerable to an act of noncompliance. Under these circumstances the court should tend to rule consistently with a government’s position (be it the federal government or a state), whenever a government expresses a preference in a case.¹ On the other hand, if the federal government supports the court’s preferred ruling, the court can reasonably anticipate that the federal government will help enforce its ruling if necessary. Taken together, these patterns of behavior imply the following testable expectations:

Expectation 1: If the federal government expresses no preference over the outcome in a case, the court should tend to rule in favor of state interests.

Expectation 2: If the federal government express a preference over a case’s outcome, the court’s ruling should tend to be biased in favor of positions supported by larger numbers of states.

3 States and State Influence in the U.S. Supreme Court

Consider the model discussed above in the context of the U.S. Supreme Court. A central tenet of the influential, inelegantly named “strategic approach” to Supreme Court decision making is that justices are constrained in their ability to follow their own preferences by those of other actors. Chief among these actors are those entrusted with implementation and enforcement of the Court’s decisions: the Congress, the executive branch, and the states and localities charged with seeing that the Court’s rulings are carried out. Of these, the states present a particularly interesting dilemma with regard to enforcement: while the Court trivially can rely upon the police and threats of incarceration to ensure compliance with rulings against private actors, the same cannot be said with regard to states. For

¹If two governments are involved, the court should just make a sincere ruling, since noncompliance could be an issue however it rules.

example, if the Court declares that some state action is a violation of (say) the Interstate Commerce Clause, it is highly unlikely that the Court police would be sent to arrest that state's legislature for failing to reverse or amend that action. Thus, the Court might be forced to turn to others when ruling against a recalcitrant state.

One potentially strong source of support in such situations could be the federal government. Simply put, if a state threatens noncompliance with a Court ruling, the federal government in turn could threaten to sanction the state. The form of this sanctioning could vary, from threatening to withhold federal funds to sending in the National Guard. Whatever the case, as long as the threat is credible, and the sanction sufficiently severe, the Court could then anticipate state-level compliance (be it voluntary or enforced) irrespective of the states' indications to the contrary. Conversely, in those circumstances in which it cannot rely on the national government to back up its decisions, a Court concerned about compliance must weigh carefully the likely response of the states to any decision it makes.² Here we consider two means by which states might signal their intentions regarding compliance, and thereby influence the Court's decisions: bringing litigation, and filing briefs *amicus curiae*.

3.1 States as Litigants

Perhaps the clearest signal the Court can receive from a state regarding its policy preferences occurs when the state itself goes to Court. States appeared as litigants in more than a quarter (27 percent) of all cases before the Court between 1953 and 2001. Moreover, during that time the evolution of the Burger Court brought on significant changes in the fortunes of states in the U.S. Supreme Court. Doctrinally, the 1970's saw the beginning of a shift towards

²Some preliminary evidence in support of this argument is provided by examining the development of the Supreme Court's Commerce Clause doctrine. Carrubba and Rogers (2003) demonstrate that the Court seems to have adopted a doctrine it did not sincerely desire, but was rather tailored to avoid situations in which States would choose not to comply with adverse rulings specifically because of an inability to enforce its rulings over the States. Their historical analysis suggests that the Court, rather than run the risk of reducing its institutional legitimacy through widespread defiance of its decisions, chose instead to moderate its doctrine vis-a-vis the dormant Commerce Clause.

a renewed constitutional muscularity of states as actors on the American political scene. Banks (2003, 447), for example, notes that “(B)eginning in the Burger Court ... the Court thus more actively sought to constrain congressional discretion by reasserting, and sometimes resurrecting, the concept of state sovereignty in federalism cases...” including such cases as *National League of Cities v. Usery* (426 U.S. 833 (1976)).³

Not surprisingly, this favorable jurisprudential turn was accompanied by a corresponding improvement in the fate of states as litigants before the Court. Figure 1 plots cases in which states won as litigants before the Court, as a percentage of all appearances, for the 1953 to 2001 terms; from this figure, two facts are readily apparent. First, there was a substantial upturn in the fortunes of states around the transition from the Warren to the Burger Court, a change that has persisted to the present day. Prior to the 1969 term, states won an average of 34.9 percent of all cases in which they appeared as litigants; from the 1969 term forward, that number rose to 60.4 percent ($t = 7.88, p < 0.001$). Second, the increase in state litigant success was accompanied by an increase in the number of cases involving states; prior to 1969, that number averaged 35 per term, but rose to nearly 63 per term during the Burger and Rehnquist eras ($t = 3.40, p < 0.001$), doing so despite the decreasing number of cases decided by the Court since the 1970’s.

Conceptually, state sponsorship of or involvement in litigation presents the most direct opportunity for a state to inform the Court of, among other things, its likely response should the Court rule against it. Johnson (2001), for example, demonstrates that the Court utilizes the information it receives in oral arguments in its decisions. At the same time, the presence of a state litigant by itself is of somewhat limited potential influence on the Court. A lone

³More recent decisions by the Rehnquist Court have continued this development, along with a corresponding curtailing of Congressional power vis-a-vis the states, most notably in *New York v. United States* (505 U.S. 144 (1992)), *United States v. Lopez* (514 U.S. 549 (1995)), *Seminole Tribe v. Florida* (517 U.S. 44 (1996)) and *Printz v. United States* (521 U.S. 898 (1997)).

state is unlikely to be able successfully to thwart implementation of the Court’s ruling, especially if that ruling has the support of the federal government.

3.2 States as Amici Curiae

In cases in which states are not litigants, as well as in many where they are, states also make their preferences known to the Court as amici curiae.⁴ States regularly file such briefs, nearly always for the purpose of making known the state’s preferred outcome in the case, and to bring attention to policy matters which the justices might not otherwise consider. As a factual matter, there is much about the Supreme Court’s procedures for filing amicus briefs that suggests the importance of their informational content vis-a-vis policy implementation (O’Connor and Epstein 1983). Rule 37.1 states flatly that “(A)n amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored.” In addition, other aspects of the Court’s rules suggest its preference for briefs from those political actors most relevant to a decision’s implementation. Epstein and Knight (1999) for example, note that governments – federal, state, and local – have always been exempt from the requirement that potential amicus filers receive the permission of the litigants to do so; this suggests that the Court tends to favor briefs outlining the likely policy impacts of a decision. Similarly, the Court regularly invites the United States solicitor general to file a brief in cases in which the U.S. is not a party, but where some substantial federal interest may be at stake; between 1953 and 1986, the Court did so in an average of two cases per year.

⁴Existing work on amicus participation includes numerous case studies of both specific interest groups (e.g. Tauber 1998) and specific issue areas (e.g. Barker 1967; Samuels 1995). Other work has focused on the impact of amicus briefs on judicial decision making, both in the U.S. Supreme Court (e.g. Collins 2004; Deen et. al. 2003; Kearney and Merrill 2000; Songer and Sheehan 1993) and elsewhere (e.g. McIntosh 1984; McIntosh and Parker 1986; Songer and Kuersten 1995). In addition, Shelton (1994) provides a review of amicus participation by nongovernmental organizations in the International Court of Justice, the European Court of Justice, the European Court of Human Rights, and the Inter-American Court of Human Rights.

Empirically, there is evidence to believe that amicus curiae briefs provide the Court with information about matters specifically relating to implementation and compliance. Caldeira et. al. (1999) note the strong impact of the presence of amicus briefs on the justices’ votes on certiorari. More directly, Epstein and Knight (1999) discuss the informational role of amici curiae, arguing (and providing some preliminary evidence) that amicus briefs serve to inform the Court about the “strategic terrain” – specifically, the preferences of the actors who may play key roles in post–decision implementation, and/or who may seek to overturn the Court’s decision via legislation or constitutional amendment. They go on to note that the justices often (and increasingly) cite amicus briefs in their opinions, suggesting that the Court’s members pay at least some attention to briefs’ contents. Similarly, Spriggs and Wahlbeck (1997) analysis of the content of amicus briefs notes that such briefs often contain information not present in the briefs and arguments of the litigants, including information on the potential policy ramifications of a potential decision.

Because of the information regarding implementation and compliance which state amicus briefs bring to the Court, it would be surprising if state–filed amicus briefs did not have some influence on the Court’s decisions. At the same time, we argue that those briefs greatest influence will occur in cases in which the U.S. has taken a position in the case as well. This is because, under those circumstances, amicus briefs by states serve to inform both the Court and the U.S. about the potential costliness of federal enforcement of the Court’s ruling.

4 Data and Operationalization

To examine empirically the expectations discussed above we consider data on the Warren and Burger courts, OT1953–1985 ($N = 7161$), as compiled in Phase II of the Supreme Court Judicial Database (Gibson 1997). To assess the viability of the model outlined in Section 2, we require four things. First, we need an indicator of the Court’s decisions; here we adopt a

variable for *Reversal*, coded zero if the Supreme Court affirmed the lower court decision and one if it reversed.⁵

Second, we require measures of both the level and the direction of state-level involvement in the cases which comprise the Court's docket. Following our discussion above, two sets of indicators are included to test for state influence over the Court's decisions. The first two measures capture state litigation activity, indicating whether (= 1) or not (= 0) a state was the *Petitioner* or the *Respondent* in each case. Additionally, to address circumstances in which states appear as litigants on both sides of a case, we include the interaction of these two terms. In our data, 11.9 percent of all cases had states as petitioners, while 25.5 percent had states as respondents.

The second two measures capture the extent and direction of state amicus activity in each case. For each case in the data, we recorded the number of states appearing as amicus curiae, either as the first-named filer or as a co-signatory; we created separate variables for the number of *State Amici for Reversal* and for the count of *State Amici for Affirmance*.⁶ The former range in number from zero to 32, the latter from zero to 34. As with states as litigants, we consider the possibility that the marginal impact of state briefs supporting reversal (affirmance) may be moderated by the presence of counterposing briefs favoring affirmance (reversal); we therefore include an interaction of these two variables in our model as well.

Third, we need a measure of the likely federal response to the Court's ruling – in particular, whether the U.S. favors the affirmance or reversal of the lower court decision. We operationalize two such measures. The first, *U.S. Favors Reversal*, is coded one if either the U.S. is the petitioner in the case or if it files an amicus curiae brief arguing for reversal,

⁵Because they comport with the logic discussed above, as well as for simplicity, we treat “in parts” and other mixed rulings as reversals throughout our analyses.

⁶We consider as state amicus briefs only those in which the state appeared as such; we therefore exclude briefs filed by state agencies (e.g., the Wisconsin Department of Health and Family Services) as well as briefs filed or co-signed by individual state legislators or other state officials.

and zero otherwise. We similarly code a second variable for *U.S. Favors Affirmance* when the federal government is either the respondent or files a brief supporting affirmance.⁷ Previous research (e.g. Johnson 2003) supports the idea that the Court extracts substantial information about the federal government’s position from such activity.

Finally, it is crucial that our model account for other influences on judicial decision making. In particular, we must control for ideological influences on the Court’s decision making (Segal and Spaeth 2002); failure to do so raises the possibility of serious specification bias. Estimating the influence of the Court’s ideology on the probability of reversal requires that we consider both the Court’s liberalism or conservatism as well as the ideological outcome of the decision under consideration. We measure the Court’s aggregate liberalism as the mean Segal–Cover score (Segal and Cover 1989) for the Court in that term, which ranges from -0.22 (during the 1967 and 1968 terms) to 0.66 (during OT1985); higher scores denote greater aggregate liberalism on the Court. We also include a variable indicating whether the lower court’s decision was liberal (= 1) or conservative (= 0), as well as the interaction of these two variables. Consistent with previous work on the effect of ideology on the Court’s decision making, we expect that both direct effects will be positive while the interaction term will be negative. That is, greater ideological liberalism should be associated with an increased propensity to reverse conservative lower court decisions, but a decreased probability of reversal in liberally-decided cases.

⁷In 34 cases in our data – less than 0.5 percent – we record the federal government as taking positions on both sides of the case. While a few of these cases are quite unusual (e.g. *United States v. Nixon*, 418 U.S. 683 (1974)), others are more routine – for example, cases in which the Department of Justice litigates against an independent agency (e.g. *Udall v. FPC*, 387 U.S. 428 (1967)). In all our analyses, we omit these 34 cases from the models.

To summarize, our empirical model is:

$$\begin{aligned}
Pr(\text{Reversal}_i) = & f[\beta_0 + \beta_1(\text{Supreme Court Liberalism}_i) + \beta_2(\text{Liberal Lower Court Decision}_i) \\
& + \beta_3(\text{Supreme Court Liberalism}_i \times \text{Liberal Lower Court Decision}_i) \\
& + \beta_4(\text{State Petitioner}_i) + \beta_5(\text{State Respondent}_i) + \beta_6(\text{State Petitioner}_i \times \\
& \text{State Respondent}_i) + \beta_7(\text{State Amici for Reversal}_i) + \beta_8(\text{State} \\
& \text{Amici For Affirmance}_i) + \beta_9(\text{State Amici for Reversal}_i \times \text{State} \\
& \text{Amici for Affirmance}_i) + u_i] \tag{1}
\end{aligned}$$

In light of our earlier discussion, we can derive a series of expectations for the influence of these factors on the Court’s decision making. Based on our earlier model of judicial decision making in a federal system, consider two potential sets of circumstances. In the first, the federal government has made its position clear in the case; as a result, the Court understands that the U.S. favors a particular outcome. Should the Court choose to rule consistently with the U.S. government’s position, the Court knows that the federal government would aid in enforcing that outcome. However, the Court also knows that the federal government may well be concerned with how states will react. The more states that oppose the federal government’s position, the more likely the federal government will be to back down. Accordingly, this set of factors imply two expectations. First, if the U.S. government takes a position on a case, the presence of a state as a litigant in the case should have no influence on the Court’s decision. The Court can rely upon the federal government to enforce its will on the State, and thus need not rely upon the state to enforce the decision voluntarily. Second, even in the presence of a federal government statement on the case, the more states that file briefs on behalf of a particular outcome, the more likely the Court will rule in favor of that outcome. This is because the Court knows that a significant number of states on one side of an issue will be difficult for the federal government to ignore. Formally:⁸

$$E(\hat{\beta}_4, \hat{\beta}_5, \hat{\beta}_6 | \text{U.S. Takes a Position}) = 0 \tag{2}$$

⁸Note that we have no firm expectations for the second interaction term in Equation (1); its direction will depend on the marginal value of the tradeoff between affirm- and reverse-minded states, a question for which the model offers no guidance.

$$E(\hat{\beta}_7|\text{U.S. Takes a Position}) > 0 \tag{3}$$

$$E(\hat{\beta}_8|\text{U.S. Takes a Position}) < 0 \tag{4}$$

In the second set of circumstances, the position favored by the U.S. is unknown. While the Court may have some expectation about the level of enthusiasm with which the U.S. will implement its decision, the government’s position is nonetheless less clear than in the previous two instances. Moreover, the fact that the U.S. chooses not to weigh in on the case may well suggest to the justices that it is not particularly interested or involved in the issue at hand. As a result, the Court can reasonably expect to have to rely upon the states for enforcement. Thus, the Court should tend to rule in favor of the position adopted by the state, when one of the litigants is a state. Additionally, state amici should matter to the degree that States might sanction each other for noncompliance.⁹ Thus, the formal expectations are as follows:¹⁰

$$E(\hat{\beta}_4, \hat{\beta}_7|\text{U.S. Takes No Position}) > 0 \tag{5}$$

$$E(\hat{\beta}_5, \hat{\beta}_8|\text{U.S. Takes No Position}) < 0 \tag{6}$$

5 Analysis and Results

An initial series of bivariate analysis lend support to the expectations outlined above. We begin with an analysis of the impact of states as litigants by considering the relationship between reversal and the presence of a state as a petitioner or respondent. Our expectation is that state petitioner status will be positively related to the incidence of reversals, while state respondents will have a negative association. Additionally, however, our theory suggests that only when the position of the U.S. is unknown will the expected relationships hold; and, in fact, this is precisely the case. We find no significant relationship between state petitioners

⁹See Carrubba and Rogers 2003 for the micro-foundations of this argument.

¹⁰Again, we have no expectations over the signs of the interaction terms.

and the Court’s decisions when the U.S. participates in the case, and the relationship between reversal and state respondents is actually in the opposite of the hypothesized direction. Conversely, we uncover strong relationships in the expected directions in cases where the U.S. does not participate in the case.

We uncover similar, albeit slightly weaker, findings for states participating as amicus curiae. A series of t -tests for the difference in the mean number of state amicus briefs filed in favor of reversal or affirmance, stratified by the position of the federal government, are also generally supportive of our expectations (see Table 2). Here, the t -test indicates the significance of the difference in the mean number of amicus briefs filed in cases in which the Court reversed or affirmed the lower court decision (that is, the significance of the difference $(\overline{\text{Amici}}|\text{Reversal}) - (\overline{\text{Amici}}|\text{Affirmance})$). If the Court is influenced by briefs submitted by the states, we would expect that these differences will be negative for briefs favoring reversal, and positive for briefs favoring affirmance. Moreover, as outlined in Equations (2)–(6), we expect these relationships to hold irrespective of whether or not the U.S. takes a position in the case. As is clear in Table 2, over the period of study this is generally the case. Only in the case of state amici favoring affirmance in cases where the U.S. did not participate did the differences fail to attain statistical significance.

Taken together, tables 1 and 2 provide relatively clear support for the model outlined above. A better test, however, lies in a multivariate analysis which can simultaneously consider these factors as well as control for other influences (such as ideology) on the Court’s decision making. Table 3 presents the estimates of a logit model of Supreme Court reversals during the Warren and Burger Courts, of the form outlined in Equation (1). To evaluate the expectations outlined above, we divide the data into cases where the federal government participated in the case and those where it did not.¹¹

¹¹Note that, as a rudimentary means of controlling for case-specific factors, we reestimated both models in Table 3 by treating cases in each of Spaeth’s 260 *Issue* areas as a unit and estimating random effects by issue. Those estimates were substantively identical to the results in Table 3.

Turning first to the ideological variables, we find that in both models all coefficient estimates are in the expected direction (that is, positive signs for the direct effects and negative for the interaction term) and all are relatively precisely estimated. Ideology matters: taking for example the results in column two of Table 3, an increase in Court liberalism of 0.88 (the maximum range of the data for this period) increases the log-odds of the Court reversing a conservative lower court decision by more than 550 percent. Conversely, the same change in ideology, in the presence of a liberal lower court decision, decreases its odds of reversal by 55 percent.

Note as well that, among cases in which the U.S. participated the direction of that participation played a substantial role in influencing the Court’s decision. In such cases, the log-odds of a reversal were 415 percent greater if the U.S. supported reversal than if it supported affirmance; at mean levels of the independent variables, this translates to an increase in the predicted probability of reversal of 0.36. In this respect, in addition to supporting the expectations of our model, our findings confirm those of earlier work which demonstrated the substantial influence of U.S. involvement on the Court’s decisions (e.g. McGuire 1998).

Turning finally to our findings regarding state-level influences on the Court, we find support for nearly all of our expectations. A Wald test of the joint expectations set forth in Equation (2) yields $\chi_3^2 = 2.82$ ($p = 0.42$) for cases in which the U.S. participated; the corresponding values for cases in which the U.S. took no part is 25.14 ($p < 0.001$). Similarly, testing the joint null hypothesis $\hat{\beta}_7 = \hat{\beta}_8 = 0$ yields a χ_2^2 statistic of 8.91 ($p = 0.01$) and 4.21 ($p = 0.12$) for the “participation” and “no participation” models, respectively.

Examining the individual coefficients, we note that the influence of states as litigants is confined to cases in which the U.S. takes no position in the case. In such cases, the likelihood of reversal increases when one or more states is the petitioner and decreases in the presence of a state respondent. At mean levels of the other covariates, each additional state

amicus favoring reversal increases the probability of the Court doing so by 0.02, while each state amicus for affirmance decreases that probability by 0.01. The latter decrease, however, disappears in instances where both parties are states; in fact, cases with two state litigants on opposing sides yield the highest probabilities of reversal.

Our findings with respect to the effects of state-sponsored amicus curiae briefs are also of some note. As we note, those effects are strongest in cases where the U.S. is involved in the case; in addition, all of the effects are in the predicted directions, with briefs favoring reversal tending to influence reversals and vice-versa. We also uncover an interesting dynamic between state briefs for and against reversal, one which is illustrated in Figure 2: at least in the case of decisions in which the U.S. takes part, the influence of state amici favoring affirmance increases with the number of state amici supporting reversal. While the highest probabilities of reversals occur when large numbers of states support reversal without opposition, the reverse is not true; instead, the impact of state amici arguing affirmance is maximized when there are also large numbers of states favoring reversal. Put differently, rather than “cancelling each other out,” state amicus filers arguing for affirmance are actually advantaged by the presence of state briefs in opposition. At the same time, note that we find no such effect – and much less substantial influences in general – in those cases in which the U.S. does not participate.

Perhaps most impressive is the fact that our findings with respect to the state variables hold even after controlling for the ideological composition of the Court, the presence of federal involvement in the case, and the direction of that involvement. That is, our results broadly support the proposition that, *at the margin*, information about states’ willingness to implement the Court’s decisions affects those decisions, and does so in ways consistent with our stylized account in Section 2.

6 Conclusion

We have sketched and discussed a model of judicial decision making in a federal system. While our model is in many respects a general one, its motivation lies primarily in studies of the U.S. Supreme Court, and to a lesser extent in transnational judicial bodies such as the ECJ. The empirical implications of our model for the Court's decision making are clear: the Court need only consider subnational actors' preferences in circumstances where the national government is unlikely to act as an adequate means of enforcing the Court's rulings. The key point, therefore, is that the position of the national government in the case stands as a key intervening factor in the relationship between states' positions in the case and the Court's decision, and is thus a critical element in the institutional context in which Court decisions are made.

This observation has important implications for the Court's ability to enforce national laws. Scholars have established a substantial body of literature demonstrating how Supreme Court rulings are influenced by its ideological beliefs. While we find evidence consistent with these expectations, we also find evidence suggesting that the Court's ability to indulge its own ideological beliefs is constrained by concerns over compliance. Thus, this evidence suggests that the Court may well be strategic, taking into account both federal and state government preferences, and not wholly unconstrained as some have claimed.

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Table 1: $\hat{\gamma}$ Statistics for Reversal, by Petitioner and U.S. Participation

Variable	State Petitioner	State Respondent	Valid N
U.S. Participates	0.08 (0.07)	0.19 (0.07)	3127
U.S. Does Not Participate	0.17* (0.04)	-0.22* (0.03)	4030

Note: Cell entries are $\hat{\gamma}$ statistics for the association between *Reversal* and the *State Petitioner* or *State Respondent* variables; asymptotic standard error estimates are in parentheses. Asterisks indicate $p < 0.05$ (one-tailed); entries in bold are consistent with expectations. See text for details.

Table 2: t -tests for the Difference in the Mean Number of State Amicus Briefs

Variable	State Amici for Reversal	State Amici for Affirmance	Valid N
U.S. Participates	-1.78 ($p = 0.04$)	2.16 ($p = 0.02$)	3127
U.S. Does Not Participate	-2.98 ($p < 0.01$)	-0.99 ($p = 0.84$)	4030

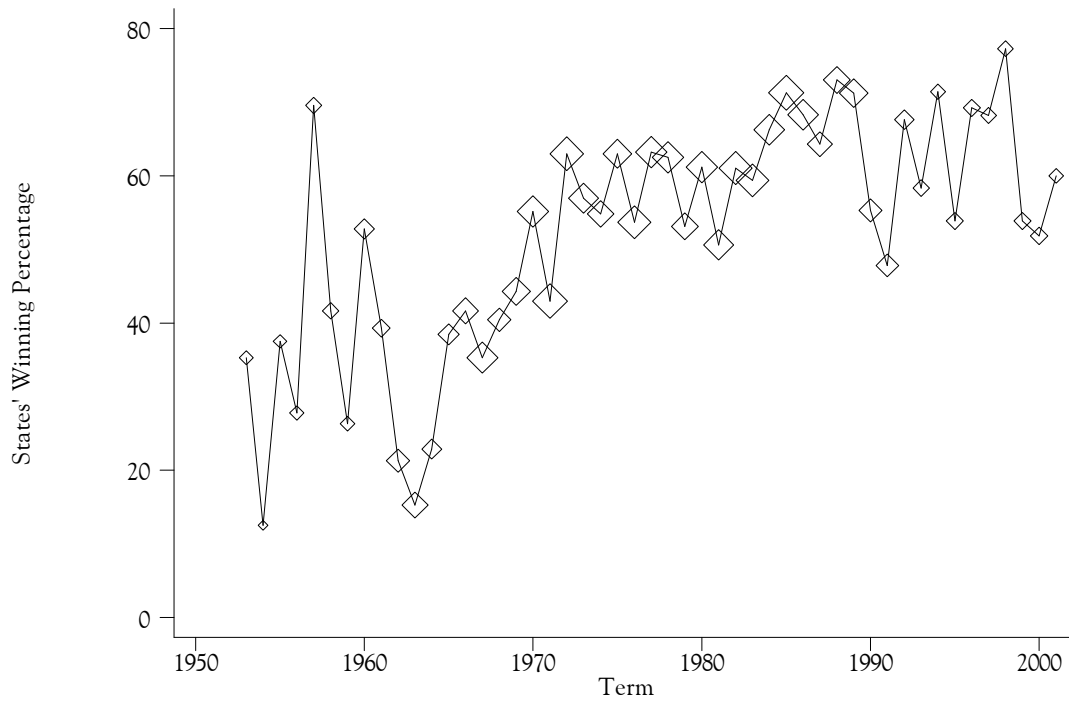
Note: Cell entries are t -scores for the difference between the mean number of briefs filed in cases in which the Court affirmed the lower court decision and the mean number of such briefs in cases in which the Court reversed; negative numbers indicate greater numbers of briefs filed in cases in which the Court reversed the lower court decision. p -values are one-tailed; entries in bold are consistent with expectations. See text for details.

Table 3: Logit Estimates of Supreme Court Reversals, 1953–1985 Terms

Variable	U.S. Participation	No U.S. Participation
Constant	-0.58* (0.07)	-0.21* (0.06)
<i>Ideological Variables</i>		
Supreme Court Liberalism	1.86* (0.18)	2.13* (0.13)
Liberal Lower Court Decision	0.16* (0.09)	0.54* (0.08)
Supreme Court Liberalism × Liberal Lower Court Decision	-2.77* (0.27)	-2.09* (0.25)
U.S. Favors Reversal	1.64* (0.09)	—
<i>States as Litigants</i>		
State Petitioner	0.19 (0.18)	0.17* (0.11)
State Respondent	0.09 (0.18)	-0.31* (0.07)
State Petitioner × State Respondent	0.46 (0.38)	0.53* (0.32)
<i>States as Amici</i>		
State Amici for Reversal	0.070* (0.036)	0.062* (0.034)
State Amici for Affirmance	-0.058* (0.026)	0.040 (0.041)
State Amici for Reversal × State Amici for Affirmance	-0.020* (0.011)	-0.007 (0.010)
<i>lnL</i>	-1791.9	-2556.3
Valid <i>N</i>	3093	3948

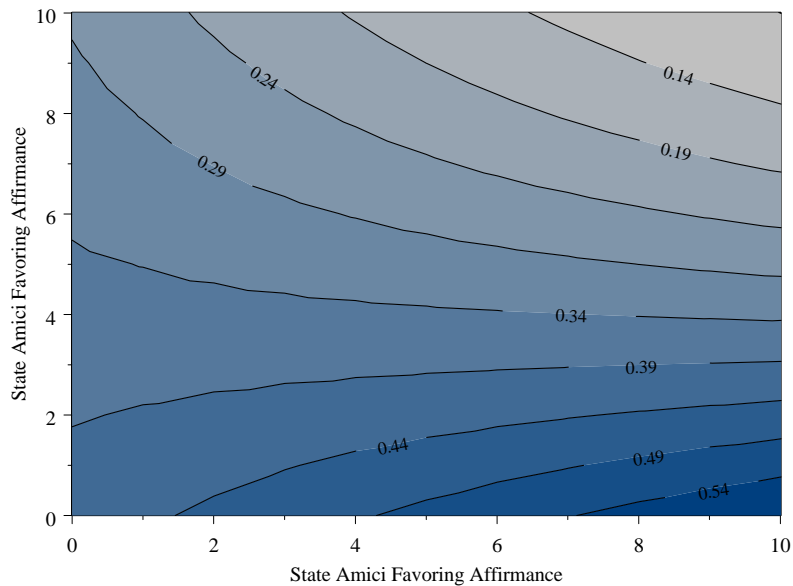
Note: Cell entries are coefficient estimates; numbers in parentheses are robust (White 1980) standard errors. Asterisks indicate $p < 0.05$ (one-tailed).

Figure 1: States' Winning Percentages as Supreme Court Litigants, OT1953–2001

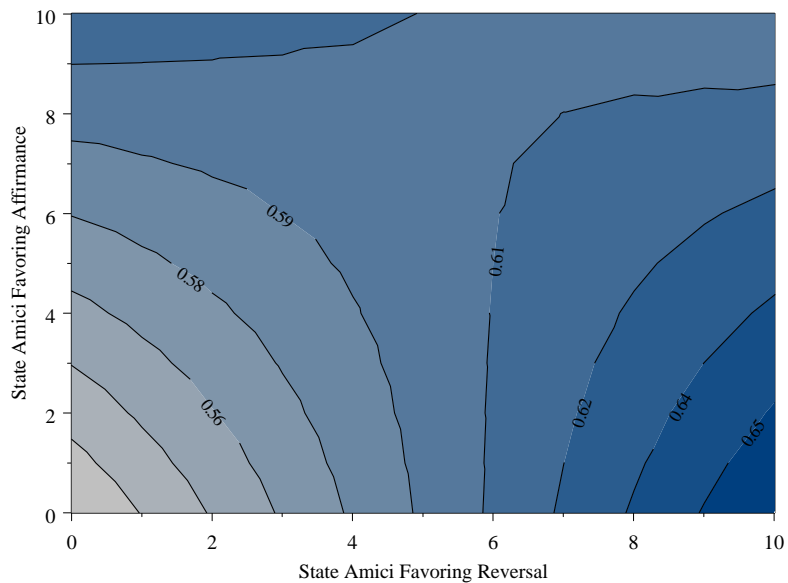


Note: Graph plots the percentage of cases in which states won as litigants in the U.S. Supreme Court. Symbol sizes reflect the total number of cases in which states were litigants decided in that year. See text for details.

Figure 2: Contour Plots of Predicted Probabilities of Reversal for Modal Cases, by State Amicus Activity and U.S. Participation



U.S. Participation



No U.S. Participation