Journal of Law and Courts (20xx), **xx**, 1–7

CAMBRIDGE
UNIVERSITY PRESS

ONLINE APPENDIX

The Downstream Effects of Certiorari: Agenda-setting, Amicus Briefs, & Opinion Writing on the U.S. Supreme Court†

Sahar Abi-Hassan,*‡ Janet M. Box-Steffensmeier,¶ and Dino P. Christenson§

‡Assistant Professor, Lokey School of Business and Social Science, Northeastern University, Oakland, 94613, California, United States
¶Distinguished University Professor and Vernal Riffe Professor of Political Science & Sociology (Courtesy), Department of Political Science, The Ohio State University, Columbus, 43210, Ohio, United States
§Professor, Department of Political Science, Washington University-St. Louis, St. Louis, 63130, Missouri, United States
*Corresponding author. Email: s.abi-hassan@northeastern.edu

Appendix 1. Strategic or Sincere Voting on Granting Cert and on the Merits Disposition

We know that the justices maintain great latitude when voting to grant review (Ulmer 1972). Previous research has found that depending on the circumstances of the case the justices may act strategically to maximize their preferred outcome on the merit (e.g. Caldeira, Wright, and Zorn 1999), unless they find themselves in a position where their understanding of proper judicial behavior prevents them from making a sophisticated policy decision (e.g. Provine 1980). In Table 1, we provide a cross-tabulation of each justice's vote on cert and on the merits for all the cases in our data.

The proportions in Table 1 demonstrate that justices are more likely to cast a vote on cert that is consistent with their preferences on the merit — 59% of the votes are sincere following the pattern of Deny–Affirm or Grant–Reverse. However, in the remaining 41% of the votes, justices voted on cert strategically. This is consistent with the findings of previous studies (e.g Perry 1994), where there are a number of instances where justices vote to grant cert when they intend to affirm the lower court decision and vice versa.

Table 1. Cross-tabulation of Cert Vote and on the Merits Disposition

	Disposition on the Merit		
Cert Vote	Affirm	Reverse	**Totals**
Deny	1,128 (15%)	939 (13%)	2,067 (28%)
Grant	2,215 (30%)	3,158 (42%)	5,373 (72%)
Totals	3,343 (45%)	4,097 (55%)	7,440 (100%)

Appendix 2. Reasons for Granting Certiorari: Conflict/Confusion or Important Questions

The dominant standard for granting certiorari is conflict or confusion among lower courts. In these cases, the Court serves an indispensable role in maintaining uniformity in federal law. However, according to several accounts of the Court's role from scholars and the justices themselves, this story is incomplete (e.g. Narechania 2022; Perry 1994). In addition to conflict, a significant number of cases are granted review based on what the Court considers to be an important question. This

†The authors' names are listed alphabetically. The replication materials are available at the Journal's Dataverse archive.

includes overturning precedent, addressing new circumstances, and correcting errors (Narechania 2022, 926).

Table 2. Crosstabulation of Cert Vote and Reason for Cert

	Reason for Granting Cert			
Cert Vote	Other	Conflict/Confusion	Important	**Totals**
Deny	1,197 (17.6%)	679 (10%)	183 (2.7%)	2,059 (30.3%)
Grant	2,344 (34.4%)	2,084 (30.6%)	317 (4.7%)	4,745 (69.7%)
Totals	3,541 (52%)	2,763 (40.6%)	500 (7.4%)	6,742 (100%)

This distinction in the reasoning for granting cert has the potential to shed further light on the extent to which justices are bound by legal principles and when they are freed to act strategically. In Table 2, we provide the proportion of cases based on the justice's vote, and the reason the Court gave for granting cert. While a significant number of case are granted review to resolve conflict among lower courts (40%), the majority of the cases granted review are divided between the important questions, and other categories. This leaves a sizable number of cases without a clear identification by the Court as to why they merit review by the highest court of the land.

Appendix 3. Strategic or Sincere Voting on Granting Cert and Opinion Writing

The results in Tables 3 & 4 are consistent with the results in Table 2 of the manuscript. On average, justices who vote to grant cert tend to also join the majority opinion, with a few notable exceptions. For instance, Justice Brennan voted to grant cert in 275 cases, and was equally likely to join the majority and write/join a separate opinion with his opinion writing split 50/50, respectively. A similar trend is observed for Justices Marshall and Stevens. A similar pattern is observed for Justices Blackmun, Marshall, Ginsburg, and Thomas.

While these descriptive results are consistent with our main hypotheses, when it comes to cert denials, the patterns are less predictable that when justices vote to grant cert. This points to the need for further research on the considerations of the justices when they vote to deny a case the opportunity to be heard by the Supreme Court.

Table 3. Cross-tabulation of Cert Vote and Opinion by Justice

Cert Vote	Majority Opinion	Separate Opinion	Total
	Justice Blackmun		
Deny	106	109	215
Grant	355	267	622
Total	461	376	837
	Justice Brennan		
Deny	74	80	154
Grant	137	138	275
Total	211	218	429
	Justice Breyer		
Deny	0	0	0
Grant	10	0	10
Total	10	0	10
	Justice Ginsburg		
Deny	11	10	21
Grant	50	22	72
Total	61	32	93
	Justice Kennedy		
Deny	156	54	210
Grant	395	108	503
Total	551	162	713
	Justice Marshall		
Deny	106	108	214
Grant	174	161	335
Total	280	269	549
	Justice O'Connor		
Deny	106	68	174
Grant	457	209	666
Total	563	277	840

Appendix 4. Voting with the Majority

On the merits decision-making consists of two steps, first a justice decides whether they will join the dispositional majority, and then they determine whether to join the majority opinion, write or join a separate opinion, or do both in part. In Table 5 we present the effects of a justice's vote on cert on the likelihood that they will join the dispositional majority. Similar to the models in the manuscript, we build the final model stepwise. Model C1 contains the terms testing the direct effect of a justice's cert vote and the reasons for cert on the likelihood of being the majority. Models 2 to 4 bring in each one of the amicus curiae measures separately. Model 5 includes all the aforementioned variables together.

Although the outcome variables are substantively and empirically different—opinion writing dissensus vs voting with the majority—they both capture behavioral dissensus. As such, many of the results in Table 5 resemble those in the manuscript. All Models C1-C5 show a consistently positive relationship between granting cert during and the likelihood of joining the majority. This is

Table 4. Cross-tabulation of Cert Vote and Opinion by Justice, Continued

Cert Vote	Majority Opinion	Separate Opinion	Total
	Justice Powell		
Deny	12	0	12
Grant	24	3	27
Total	36	3	39
	Justice Rehnquist		
Deny	166	58	224
Grant	507	130	637
Total	673	188	861
	Justice Scalia		
Deny	188	106	294
Grant	358	221	579
Total	546	327	873
	Justice Souter		
Deny	66	24	90
Grant	195	70	265
Total	261	94	355
	Justice Stevens		
Deny	162	166	328
Grant	299	229	528
Total	461	395	856
	Justice Thomas		
Deny	38	25	63
Grant	129	70	199
Total	167	95	262
	Justice White		
Deny	47	21	68
Grant	511	144	655
Total	558	165	723

interpreted as a decrease in the likelihood of nonconsensual behavior in line with H1. In addition, the cert reasoning coefficient is positive for both Conflict/Confusion and Important Question, although not statistically significant. This is partially also consistent with H2, where we interpret the reason of conflict/confusion to impose jurisprudential constraints on the justices, decreasing the likelihood of nonconsensual behavior. All three amici variables are negative, although only Amici Power and Amici Heterogeneity are statistically significant. The number of briefs is less influential on this outcome, while powerful groups are more so. This is interpreted as justice being more likely to engage in consensual behavior in the presence of external cues, consistent with H3 and H5.

Table 5. Models for Justice's Vote on the Merits, 1986-1994 Terms

	Model A1	Model A2	Model A3	Model A4	Model A5
Justice's Vote on Cert	0.257***	0.260*	0.261***	0.257***	0.259***
	(.092)	(.092)	(.091)	(.091)	(.091)
Ideological Distance	–0.102	–0.102	–0.103	–0.104	–0.104
	(.123)	(.123)	(.123)	(.123)	(.122)
Legal Complexity	–0.217***	–0.212***	–0.210***	–0.210***	–0.208***
	(.072)	(.071)	(.071)	(.071)	(.070)
Legal Salience	–0.145	–0.161	–0.156	–0.163	–0.166
	(.360)	(.365)	(.361)	(.359)	(.363)
Salience to the Public	–0.268***	–0.220***	–0.241***	–0.211***	–0.204***
	(.047)	(.049)	(.046)	(.052)	(.051)
Cooperation	0.187**	0.198**	0.193**	0.201**	0.203**
	(.082)	(.081)	(.081)	(.082)	(.081)
Freshman	0.666***	0.671***	0.667***	0.669***	0.669***
	(.217)	(.215)	(.216)	(.216)	(.214)
Chief Justice	0.446***	0.447***	0.446***	0.447***	0.447***
	(.154)	(.154)	(.154)	(.155)	(.154)
Reason for Cert					
Conflict/Confusion	0.058	0.049	0.0425	0.060	0.052
	(.098)	(0.101)	(.100)	(.099)	(.103)
Important Question	0.169	0.179	0.182	0.183	0.187
	(.200)	(0.198)	(.201)	(.202)	(.200)
Number of Amicus Briefs		–0.024			–0.004
		(.010)			(.014)
Amici Power			–0.222***		–0.099**
			(.052)		(.060)
Amici Heterogeneity				–0.321***	–0.250**
				(.069)	(.103)
AIC	6,401	6,395	6,392	6,385	6,383
Log Likelihood	–3,188	–3,184	–3,183	–3,180	–3,179
Observations			6,205		

Clustered standard errors by justice in parentheses
* p<0.1; ** p<0.05; *** p<0.01

Appendix 5. Interactive Models

To test the conditioning effects of external actors given how the justices voted on cert, we interact each one of the amicus measures with the cert vote separately in Models D1, D2, and D3 in Table 6. Each model includes the full set of aforementioned controls for potential confounders. It estimates effects of the number of amicus briefs, the presence of powerful amici in a coalition, and coalition diversity, interacted with a justice's cert vote, respectively, on the decision of a justice to write/join a separate opinion on the merit.

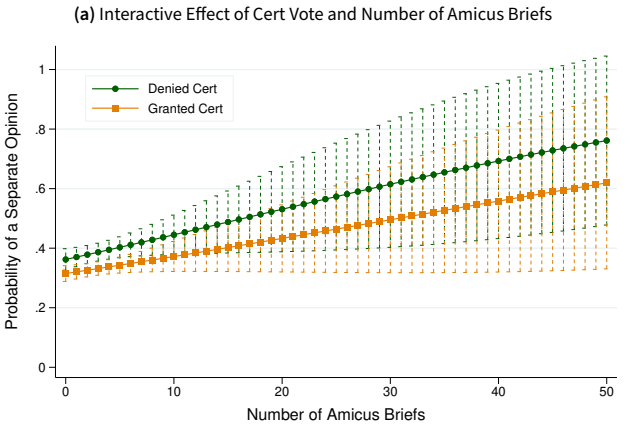
None of the interactive effects rise to statistical significance in the table. However, across the full values of the amicus measures plotted in Figure 1, we find some conditioning of the effect of cert on opinion writing. In all three cases, as amicus presence grows—i.e., larger number of briefs (Figure 1a), the presence of a powerful group (Figure 1b), the presence of a heterogeneous group

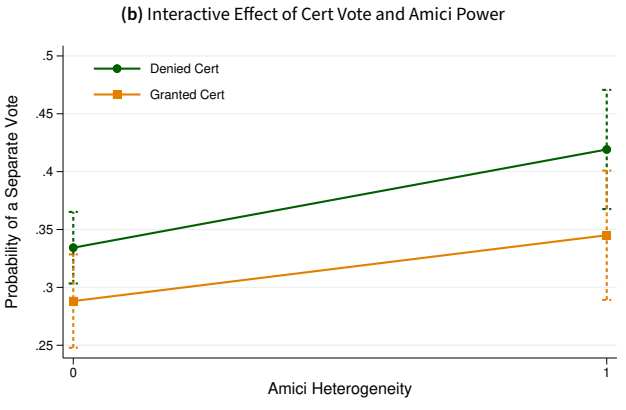
Table 6. Interactive Models for Decision to Write/Join a Separate Opinion, 1986-1994 Terms

	Model B1	Model B2	Model B3
Justice's Vote on Cert	–0.226**	–0.272**	0.223**
Ideological Distance	0.067	0.066	0.068
Legal Complexity	0.221***	0.223***	0.218***
Legal Salience	0.277	0.258	0.272
Salience to the Public	0.252***	0.298***	0.257***
Cooperation	–0.133	–0.122	–0.133
Freshman	–0.513***	–0.508***	–0.510***
Chief Justice	–0.843***	–0.841***	–0.842***
Reason for Cert			
Conflict/Confusion	–0.167	–0.173	–0.180*
Important Question	–0.105	–0.096	–0.107
Number of Amicus Briefs	0.037**		
Amici Power		0.063	
Amici Heterogeneity			0.376**
Number of Amicus Briefs x **Vote on Cert**	–0.009		
Amici Power x **Vote on Cert**		0.046	
Amici Heterogeneity x **Vote on Cert**			–0.103
AIC	7,557	7,568	7,551
Log Likelihood	–3,765	–3,771	–3,763
Observations		6,205	

Clustered standard errors by justice in parentheses
*p<0.1; **p<0.05; ***p<0.01

(Figure 1c) — the effect of cert vote has a greater effect on writing a separate opinion. The effects are in the same direction but substantively quite small for each of the amicus measures.





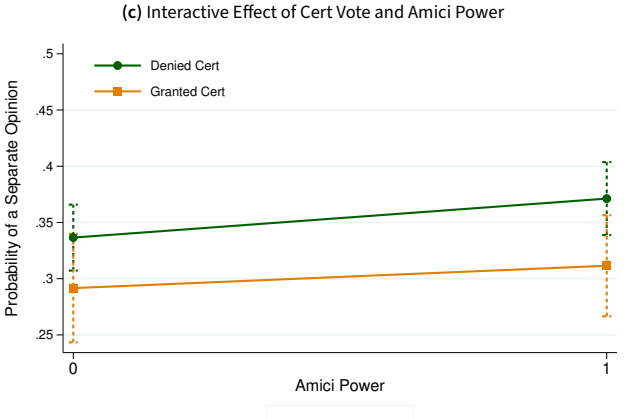


Figure 1. Interactive Effect of Amici and Cert Vote on Nonconsensual Behavior, 1946–2019