Strength in Numbers? Political Disadvantage and Coalition Formation in Public Law Cases

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ABSTRACT

Political Disadvantage has long been one of the traditional theoretical foundations for studying interest group success in public law cases. It proposes that interest groups use the courts more often to advance their agenda if they primarily represent certain underserved constituencies. These may include racial and religious minorities, women, the poor, and other similarly situated groups. The theory holds that because lobbying and campaign contributions are less effective for these constituencies, they tend to turn toward the courts, and in so doing, are better able to obtain their preferred policy outcomes.
It is therefore incumbent upon researchers to identify the probable mechanism for such success. In this paper I suggest one possibility: that if politically disadvantaged interest groups enjoy greater success in court, it is because of the coalitions they form which act as a signaling device to the justice system in their favor. I employ both qualitative and quantitative methods to explore this question, and conclude that coalitions indeed play a critical role.

Many of our most important landmark court decisions have resulted from interest group litigation, and sometimes resorting to the legal system is the only avenue of redress in the face of a recalcitrant legislature and a disinterested public. These "public interest lawsuits" rarely occur in a political vacuum. History shows that they are invariably part of a larger public and elite awareness campaign waged as much through personal relationships as through the media. Yet, the mechanisms of interest group activism in the courts receive relatively little attention from scholars. The theoretical foundations remain somewhat underdeveloped, though one, in particular, gained traction in the 1960s: the theory of political disadvantage, which stands for the proposition that interest groups use the courts more often to advance their agendas if they primarily represent certain constituencies. These normally include racial and religious minorities, women, the poor, and other similarly situated groups (Epstein 1993; Olson 1990). The theory holds that because lobbying and campaign contributions are less effective for these constituencies, they tend to turn toward the courts. This is because they see the courts as more receptive to furthering their policy objectives (Caldeira and Wright 1990; Galanter 1974). A more extreme version of this theory argues that the courts are the only forum where disadvantaged groups may achieve their goals, and that the courts exist primarily to "level the playing field" in relation to the political branches of government (Cortner 1968).

However, this political disadvantage is not necessarily limited to strategic decisions related to the form or forum of advocacy. The limitations that disadvantaged groups face may arise at any stage of the group's existence–from formation to resource gathering to the initial struggle to achieve that first policy success to finally gaining widespread recognition and "a seat at the table." A notable alternative to the "disadvantage-as-constituency" concept was argued by Galanter (1974), whose taxonomy of "one-shotters" and "repeat players" provided an interesting twist on the usual classification of litigants as either rights-conscious or gain-conscious (the former said to be more likely to favor public law litigation). Galanter defines an "advantaged" group as a repeat player with significant resources to play the long game and incrementally seek to change the legal rules of decision. This definition stands in contrast to the traditional political disadvantage perspective of "haves" as those parties opposed to distributive justice or rights-oriented change.

There are many paths on the road to recognition as a political force for advocacy, yet it remains the case that success often comes first through a landmark court case. The history of public interest law is strewn with the detritus of businesses and governments who were bested in court by "the little guy." But as romantic as Man Against Giant Corporation stories sometimes seem, it is rare that an individual goes it alone and ultimately prevails. Much more often, the winner is a group of "little guys," a citizens or community group formed around a common concern or a localized organization sponsored by a national network and able to tap into specialized legal expertise and media relations. For every Erin Brockovich or Robert Bilott, there are dozens of Parents Involved in Community Schools and Citizens Climate Lobbies, and it is the latter that are often able to attract the necessary attention to accomplish their goals. Coalition formation has been a major vehicle that has allowed small businesses, citizens groups, and "discrete and insular minorities" to have some hope of overcoming the presumption of validity that state laws and local ordinances have enjoyed in the courts (Ackerman 1984; Gilman 2004; Hessick 2009). In point of fact, Cortner

(1968) suggested the importance of coalitions in his seminal article on political disadvantage theory. It is, therefore, incumbent upon interest group scholars to study when and how groups go about the business of forming combinations, either for the purpose of litigating specific policy issues or to set up a united front to put pressure on lawmakers.

To demonstrate this phenomenon, I provide brief histories of two interest groups nationally recognized in their fields of endeavor that exhibit strikingly similar historical trajectories. The National Center for Law and Economic Justice (NCLEJ) was founded in 1965 to "advance the cause of economic justice for low-income families, individuals, and communities across the country."[1] Five years later, the Natural Resources Defense Council(NRDC) was founded with the stated mission to "safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends."[2]

The development of both groups is very well documented from both primary and secondary sources, and there is a wealth of information upon which to draw for our purposes here. Both groups emerged from movement-oriented teams of lawyers who desired to put their litigation skills to good use for the betterment of society and the improvement of public policy, without much consideration for their own personal remuneration. Even though they engage with different policy areas, and one represents "people" and the other "the environ- ment," their respective paths to policy success followed a similar track. Each began with the desire of a few individuals to create public awareness of a previously ignored or unpopular policy issue. In essence, each faced its own particular political disadvantage. Moreover, at key points in the development and expansion of the group's influence, coalition formation provided the necessary resources and momentum to move the group forward to greater heights.

Case Study: NCLEJ

The NCLEJ has been at the forefront of poverty law in the United States since the 1960s. What began as a small law office in New York City representing the poor in welfare rights cases soon expanded to a nationwide network of legal aid societies. At the same time, the group began to add other related policy areas to its portfolio, such as safe and fair housing, Medicaid and social security benefits, and the like. At its heart, the NCLEJ remained a public interest law firm, but the vicissitudes of time and political fortune required the staff to take a broader view of their organization's ability to influence welfare reform. The increase in political power that they sought was eventually achieved through combinations with other poverty-related interest groups, and by way of direct action to affect legislative outcomes.

Founding and purpose of the organization, initial court cases

The organization began operations in 1965 when Edward V. Sparer, a young New York lawyer, became interested in representing low-income and indigent clients. He founded the Center on Social Welfare Policy at Columbia University as one of the first "legal aid societies" and began to develop a network of community law offices that provided legal services to the poor. Inspired by the way in which groups such as the NAACP and ACLU had become successful in promoting civil rights through litigation, Sparer became convinced that high-profile "welfare rights" cases could change the legal landscape and give the poor a political and Constitutional voice (Diller and Davis 1995). In a very real sense, the organization originated from the ideas that underlie political disadvantage theory.

The initial goal of the Center's test case litigation was to secure a Constitutional "right to live." In other words, the organization had high hopes that the Supreme Court would recognize that the Constitution required the federal and state governments to ensure that all citizens had access to the essential necessities of life (Diller and Davis 1995). Such a ruling would have the effect of elevating the alleviation of poverty to the level of other positive rights, such as the right to vote. The Center's first major success of this nature was King v. Smith.[3]

The King case involved a challenge to Alabama's rules for the distribution of Aid to Families with Dependent Children. Under its "substitute father" provision, the state's regulations declared that single mothers who cohabitated with able-bodied men thereby forfeited their children's eligibility for benefits. The Court determined that the Alabama rule conflicted with federal regulations that defined who a father was and that the state's rule was, therefore, void. In deciding the case on federalism grounds, the Court did not reach the issue of equal protection under the 14th Amendment. Nevertheless, this was a victory for the Center and acted as the foundational case upon which it began to build its national policy efforts (Denvir 1976).[4]

Coalition building quickly emerged as the primary strategy during this early period. The Center partnered with the now-defunct National Welfare Rights Organization, a group whose members were primarily welfare recipients and their advocates. The NWRO was not a litigation outfit, however. Instead, it achieved its goals mainly through lobbying, fostering relationships with the executive branch, and protests and demonstrations. The Center's role was to act as the legal arm of the NWRO and it filed a number of lawsuits on behalf of the organization's members. The Center also joined the Organization of Legal

[1] https://nclej.org/our-mission-and-values; last accessed 7/27/2020.
[2] https://www.nrdc.org/about; last accessed 7/27/2020.
[3] 392 U.S. 309 (1968)
[4] https://nclej.org/history; last accessed 6/19/2021.

Services Back-Up Centers, an umbrella group comprised of legal aid and poverty lawyers that received federal funding for their operations.[5]

Recognition and National Advocacy

During the early 1970s, the Center continued its national welfare activism training efforts, including publishing a number of legal manuals. It also continued the test case strategy under new leadership after Sparer moved on to an academic career, collecting a number of favorable rulings related to Medicaid and food stamp benefits.[6] The nobility of the Center's cause was evident, but the movement was not without its detractors, particularly when it came to securing federal support. From its inception, the Center and its progeny had relied heavily upon funds made available through various Great Society and War on Poverty programs begun during the Johnson administration (Phinney 2017). President Nixon and Governor (later President) Ronald Reagan of California were two of the most vocal opponents of such funding and actively worked to reduce or eliminate it.

In the 1980s, the Center began to expand its advocacy and outreach operations beyond the traditional arenas of Congress and the courts. It published a number of books and other documents about welfare benefits and recipients in general, and began to engage in policy research on a national level. Many of their papers and studies were presented to the National Academy of Sciences, and they began to hold meetings and conferences with not only attorneys, but also recipient communities and other advocacy organizations. This shift reflected the emerging social movement "think tank" model where activism partnerships are formed between a wide array of different types of groups. Coalition-based successes in court also continued to occur; one of the most prominent was National Senior Citizens Law Center et al. v. Legal Services Corporation,[7] in which the plaintiffs were able to secure an injunction that prevented the LSC from greatly restricting the use of their federal funds for certain types of activities.

A broader focus and expanded influence

The precarious nature of funding for social welfare initiatives finally reached a tipping point in 1995 when, following the Republican revolution, Congress severely limited appropriations for the LSC and enacted new provisions of the law that prevented LSC-funded lawyers from acting as class action counsel in welfare benefits cases. Of course, this dealt a severe blow to the Center's operations. Their response to this development was to shift to exclusively private funding in 1995. In so doing, the Center was able to double its budget and expand many of its programs.[8]

The Center continued its mix of state and federal lobbying and litigation into the 21st Century, with major successes counted both in court and particularly with state and local governmental benefits agencies. In 2006, the organization changed its name to the National Center for Law and Economic Justice to reflect its continued evolution into new areas of law and activism. Today, the group is at the forefront of policy change in such diverse areas as disability law, immigration, and workers' rights, and it continues to support and partner with grassroots community organizations. The tale of the Center is one of increasing variety with regard to its approaches to activism, with coalition formation seen as a continuing necessity.

Case Study: NRDC

As with the NCLEJ, the NRDC first emerged as a public interest law firm with very few resources and limited staff but with a high concept. A small group of young attorneys, guided by a common goal of clean air and water, sought to use their legal training to forge new paths through the courts that they hoped would complement the work of the newly- formed federal Environmental Protection Agency. But, as is often the case, the political reality was more complicated than the vision. The story is one of ups and downs, of progress and setbacks, and what ultimately emerged turned out to be a larger and more comprehensive organization that only sometimes followed one single model of activism.

Origin of the organization and success in court

Like the NCLEJ, the NRDC began as a member of the nascent community of public interest law firms that were forming in the late 1960s. Founded by a group of like-minded lawyers with similar backgrounds and mentored by an established firm that performed pro bono work on pollution torts, the fledgling organization amounted to little more than a collection of individuals with an idea: that environmental litigation could drive policy change. The young staff felt that they could (also like the NCLEJ) emulate the success of civil rights groups and their use of the court system to further their agenda (Adams et al. 2010, 18). The impending enactment of legislation such as the National Environmental Policy Act and the Clean Air Act amendments of 1970 provided the means: citizen lawsuits.

[5] Interview with Henry Freedman, transcribed at the National Equal Justice Library, Georgetown Uni- versity, NEJL-009 (2013).
[6] See *USDA v. Moreno*, 413 U.S. 523 (1973) and *USDA v. Murry*, 413 U.S. 508 (1973).
[7] 7751 F.2d 1391 (D.C. Cir. 1985)
[8] Interview with Henry Freedman, transcribed at the National Equal Justice Library, Georgetown Uni- versity, NEJL-009 (2013).

These bills, and others that followed in the same vein, were some of the first that contained a method of enforcement known as the "private attorney general." That is, the law either explicitly or implicitly (as recognized by judicial ruling) authorized ordinary citizens, or groups of them, to sue to enforce provisions of an act against another private party or against the agency responsible for implementing it in the case of malfeasance (Timbers and Wirth 1984). Combined with direct judicial review of agency actions as provided by the federal Administrative Procedures Act,[9] public interest lawyers have increasingly been given access to an arsenal of powerful weapons to affect and shape policy to their preferred ends.

No sooner had they embarked upon their crusade against power companies, pollution, and toxic waste than the staff of the NRDC quickly realized one particular salient fact: litigation, especially of the environmental type, is expensive (Adams et al. 2010, 18). Cases in this arena often take years to resolve through trial and various appeals, and the opposing parties are generally unwilling to compromise or settle because of the nature of the case and the costs associated with an adverse outcome. Settlements of environmental cases, even if they allow the project to go forward, rarely result in decreased expenditures for the defendant. And, while a public entity might be able to absorb such a loss through increased taxation (or deficit spending where authorized), the long time horizon associated with energy-related public works or infrastructure projects means that any stoppage or delay could render construction or operation impractical. Therefore, it is often more beneficial and less expensive for environmental defendants to continue to fight in court to wrestle some advantage out of the eventual outcome, whatever that may ultimately be.

The focus on group resources thus entered the conversation early on at the NRDC. It became a central factor in formulating activism plans, and in terms of the decision-making process for litigation strategy, it became an essential consideration. A cadre of wealthy donors and growing membership (which provided both funding and visibility) led to the organization's first series of lawsuits related to the Clean Air Act, against the Tennessee Valley Authority (Adams et al. 2010, 47). The effort to force the TVA to clean up sulfur dioxide emissions from its power plants in the South had the dual effect of showcasing the power of private attorneys general and giving the relatively young Environmental Protection Agency some ammunition to bolster its separate enforcement actions.

Changing focus

While the decade of the 1970s produced numerous court victories for the NRDC, the staff realized that with the beginning of the Reagan administration, they would soon be entering a new era where lawsuits might not be the most effective tool to further their efforts. Until this point, the group had been operating alongside a (usually) friendly federal agency. The organization even characterized itself as a shadow EPA (Adams et al. 2010, 129), both assisting the agency when it had need and keeping it in line when enforcement seemed to lag. But, in the 1980s, all of that changed and the NRDC was forced to consider other alternatives. Landmark cases that could shape national environmental policy were becoming more difficult to find. It was this turn of events that began to shape the organization into a full-fledged interest group, with litigation as but one of many avenues of redress, along with lobbying and grassroots mobilization. The NRDC became a pioneer in negotiated rulemaking and as it began to lobby the executive branch and Congress, it often partnered with the very oil producers and energy companies that it fought as an adversary in court.[10] There also existed in the minds of the NRDC leadership a distinct sense that, to achieve their long-term goals, they needed to move beyond the public interest law firm model and begin to focus more on Congress itself. The effectiveness of bureaucratic lobbying had begun to wane, so they determined that the next best step was to descend upon the halls of the Capitol. The organization began a concerted effort to take its case for Congressional oversight directly to the committees responsible. At about the same time, financial resource problems led the NRDC to the realization that it could no longer act alone. Even though the group had occasionally operated through coalitions in the past (Adams et al. 2010, 135), the time had come to formalize such relationships to create a unified front in the fight for environmental justice before Congress. The result was the Group of Ten, a combination including the NRDC along with the Sierra Club, Wilderness Society, and the National Audubon Society among others. Coordination between these groups allowed them to share resources at at time when a number of them were in danger of failing financially because of protracted litigation against a recalcitrant federal government.

Recent scholarship suggests that interest groups, particularly those that are part of the environmental justice movement, tend to form coalitions that play to the strengths of and make up for the weaknesses of the other members. There is strong evidence that the division of labor and assignment of roles is important to the coalition dynamic, and the activities of the Group of Ten reflect this reasoning (Box-Steffensmeier et al. 2018). In the litigation context, this phenomenon may manifest itself in, for example, assigning one or more groups as primary parties of interest, where the remainder contribute to supporting roles such as amicus curiae. The Group of Ten has also historically engaged in this type of multi-party litigation (Whitford 2003).

[9] 5 U.S.C. § 551 et seq. (1946)

[10] This pattern of behavior comports with the theory of Phinney (2017).

Expansion of advocacy: the 1990s and beyond

The next major change in the operation of the NRDC came shortly after the Republican Revolution of 1994. The initial joy of the election of Bill Clinton and his staunch environmentalist vice president, Al Gore, quickly gave way to consternation as it became evident that there was little political will to carry through with the new administration's sustainability initiative. Environmental groups, in general, were concerned about the lack of concrete policy achievements as well as the ramifications of the so-called "Contract with America." The Republican majority led by House Speaker Newt Gingrich promised to roll back taxes and regulations across the board, and the EPA was one of its prime targets.[11]

The NRDC leadership soon realized that a united front was the only way forward. During the years leading up to the 1994 election, a significant amount of resource competition existed among individual environmental groups. A certain amount of poaching of donors and supporters was occurring between entities, both small and large, and even the loose voluntary coalitions that had formed were too disorganized to send strong enough messages to government officials (Adams et al. 2010, 208). The Group of Ten had grown to a membership of 27 disparate environmental advocacy organizations, had been renamed the Green Group, and its constituent entities were often at odds with one another. For its part, the NRDC understood the need for formalized coordination of the coalition's efforts. They opened a joint office in Washington and hired staff specifically to communicate with the Clinton administration with one voice. The NRDC thus followed a path very similar to the NCLEJ.

Discussion

The foregoing histories are instructive on a number of levels. Both groups began their work with a similar objective: using the courts as the primary vehicle for a societal movement. Both believed that the "civil rights model" could be adapted to other policy imperatives and that, in so doing, they could force governmental institutions to address their preferred issues while at the same time raising public consciousness. And, more importantly, both groups realized that funding would be a major point in their decision-making process, sometimes being the determining factor as to what could be done, and when. Of particular interest to the topic at hand, both groups also discovered early on that coalition building would hold the key to influential growth. In fact, the two groups forged a coalition together in 2013 to commence the case of Baez v. NYC Housing Authority. [12] This was a lawsuit brought under the Americans with Disabilities Act, to force the Authority to abate mold and other moisture problems in New York City's public housing projects. The partnership between the two groups, along with several others, was instrumental in achieving an initial victory as well as subsequent remedies that became necessary when the Authority reneged on its compliance with the court's orders. At every stage, the coalition appeared in the aggregate with a singular motivation to remind the court of the City's obligation to its more vulnerable residents.

These case studies are illustrative of the methods that many politically disadvantaged groups use to build political power. As noted, each experienced a similar path of activism. As they grew in influence, the two groups acted strategically in comparable ways. As it turns out, their choices were as much a result of the vicissitudes of limited financial and human resources, as they were of a lack of political power. It is abundantly clear that disadvantaged groups need coalitions, at least in the majority of cases. But are they always able to obtain them when desired? The answer to this question demands a focus on the available data that can be derived from court cases. The foregoing examples provide assistance in identifying and reinforcing the variables of interest needed for quantitative analysis. Having set the table, so to speak, we now proceed in that direction.

Explaining coalition formation in public litigation

Some scholars have found that judges may take into account the number of individuals or groups associated with one side or the other of a case. This is particularly true of plaintiffs, especially in product liability or environmental cases (Hassler and O'Connor 1986). Class actions are an extension of this concept. The old adage "where there's smoke, there's fire" is certainly true in personal injury litigation, and a plethora of plaintiffs is usually a signal to the court that it needs to look very closely at the details of the claims and defenses. Oneperson may file a frivolous case, but rarely will a group of individuals subject themselves to possible prosecution for perjury or abuse of process by filing baseless claims together.

Public law cases are no exception to this general rule, and courts researchers have in fact discovered particularized effects of this nature with regard to litigation coalitions in certain circumstances. For example, Goelzhauser and Vouvalis (2015) argue that large coalitions made up of diverse interests present a more credible front when they take similar positions before the court. If that is the case, then politically disadvantaged interest groups should desire to benefit from these arrangements as well. By theoretically possessing less litigation power, they would be in greater need of credibility. Indeed, history provides a number of famous or landmark examples where disadvantaged parties sought out larger, more diverse coalitions and were successful in doing so (see above and Cortner [1968]). When pooling resources through coalition formation, the main advantage to be gained is litigation strength. Litigation strength as wielded by the parties on either side of a public law case is a function of

[11] Bernard, M. and NRDC. 1995. Breach of faith: how the Contract's fine print undermines America's environmental success. NRDC published white paper.
[12] Class action settlement available at 13 Civ. 8916 (WHP) (S.D.N.Y.).

two main factors: first, the resources supplied either by one organization or a coalition; and second, the repeat-player status of one or more of the parties. For example, Collins (2004, 2007) studied the effects of amicus curiae briefs in the Supreme Court and discovered that not only do they provide information to the Court, but they also influence the Court's ideological decision-making. The effects tend to increase for either the appellant or respondent as the number of amicus briefs on that side increases. Stated differently, the larger the amicus coalition, the more litigation strength that side possesses.

With specific regard to the federal Courts of Appeals, Songer and Sheehan (1992) found a small but noticeable success advantage for "upperdogs" vs "underdogs," their terms for high and low-resource litigants respectively. A later study by Songer et al. (1999) confirmed that litigation resources (measured by party type) and repeat-player status were important predictors of successful outcomes. However, the authors' classification of parties to a case was limited to individuals, businesses, or government entities. They did not study interest groups as litigants, and in fact, their statistical analysis did not contain a category for them.

Two questions arise: Do these results translate to interest group litigation, particularly in the Courts of Appeals? If so, do groups with lower resources seek out coalitions to boost their litigation strength?

Hypotheses

It is possible for both the constituency type and resource level aspects of each group to affect the size of a coalition formed for the purposes of influencing the court. I therefore test two hypotheses here; the first is related to political disadvantage theory, and the second specifically addresses resource allocation. The availability and size of a coalition may or may not manifest before the initiation of a lawsuit. Below, I describe the variable specifications and expected outcomes for each hypothesis.

- H1: The size of a litigation coalition is larger for groups that represent disadvantaged constituencies than for those that do not.

This first hypothesis tests PDT as it relates to coalition size. According to the theory, groups that represent disadvantaged constituencies choose the courts as their preferred route of policy change because they obtain better outcomes and greater victories. If larger coalitions lead to greater litigation strength, then it stands to reason that disadvantaged groups should form larger coalitions more often, if only out of necessity. Likewise, disadvantaged groups should seek coalitions where possible in order to express to the court the breadth of the problem their lawsuit is designed to address. If coalition formation is based upon constituency, then the resulting litigation strength is either influential before the court or communicative to the court. Stated differently, it either impresses the court with the amount of public support for the coalition or with the salience of the coalition's case, or it provides information to the court regarding the effect of any ruling on the coalition's combined constituency.

If the indicator variable for constituency type shows a positive relationship, this result would support the hypothesis. On the other hand, if there is no significant difference between coalition size for disadvantaged and non-disadvantaged groups, then this hypothesis is not supported.

- H2: Litigation coalition size increases as litigation resources per coalition member decreases.

I anticipate an inverse relationship between coalition size and resource level. If the purpose of a coalition is to pool resources to gain litigation strength, then groups with lower levels of their own should desire to act in concert with larger combinations more often than more prominent organizations.

It should be noted that the two hypotheses are not mutually exclusive. Both hypotheses can be supported or confirmed. If (as is commonly assumed) disadvantaged groups generally have access to fewer resources, then we might observe significance in both indicator variables.

Data and methods

I use two primary data sources to test the above hypotheses. The first is the Court of Appeals database for the years 1997-2002, hosted at the University of South Carolina (and maintained by Susan Haire of the University of Georgia). The second is the dataset created by Schlozman et al. (2013). It contains data for approximately 40,000 interest groups with variables related to lobbying expenditures, hiring internal and external lobbyists, testimony before Congress, and other related items. To complete the dataset, I used Westlaw to search the records of the Court of Appeals cases to determine which interest groups acted as parties or amicus, whether the outcome was favorable to those groups, and the size of any coalitions. I then merged the two datasets to arrive at a composite that can be used for analysis. The total sample or N size is 323.

For all models, the unit of analysis is the "organization/case." Each observation in the final combined dataset represents a single interest group party to a single case. If the case involved a sponsored plaintiff, where the organization's primary role was legal counsel, the observation contains information on the organization(s) only. For cases with coalitions, there is one

observation for each party. In these instances, the case information is the same for each, but the interest group information is specific to that group. All of the independent and control variables in each of the models represent group characteristics and are not influenced in any way by the case parameters.

The dataset exhibits a type of long format panel structure in that it associates individual interest groups with cases by year. Because of the clustering of observations within cases, the case information is repeated a number of times whenever there is a coalition. Estimates of some basic models may therefore be biased and unreliable. To account for this possibility, I employ mixed effects models. The group-level variables of interest are treated as fixed effects, while the case-level effects are allowed to vary randomly. This type of multilevel approach both fits the data structure and minimizes error.

I made certain modifications to the combined dataset because of the types of variables used in the models. Specifically, I excluded certain classes of cases for which the underlying analysis might be less meaningful at best or, at worst, misleading. I removed all labor cases from the data because specific federal law often dictates the parties and timing of litigation in such matters, as well as the available remedies. Labor-management disputes generally must be decided first by an administrative or arbitration proceeding, and only then may the parties proceed to federal court. Unions themselves are of a different character than other kinds of organizational parties. They are at once both a trade association and a common interest group, and they are limited in their ability to litigate by several factors outside of their control. As a result, several confounding variables render labor cases ill-suited to the study I am engaged in. [13]

For similar reasons, I chose to leave out criminal cases. The parties to a criminal case are always the government (sometimes characterized as "the people") and an individual. When interest groups become involved in criminal proceedings, it is almost always as an amicus curiae. The group may provide counsel for one or more defendants and financial and political support, but they are prohibited from becoming a party in interest. For this reason, including criminal cases would create an unwanted disparity in the data, overbalancing it toward amicus participants and potentially affecting the results.

Conducting a statistical analysis using the Court of Appeals database entails a few considerations and caveats. Perhaps most importantly, the dataset itself does not contain every case filed in the intermediate federal courts during the stated time period. Nor does it even contain every published decision. The dataset includes a sample of the decisions by "circuit-year"; that is, the collectors of the data randomly selected 30 cases per year from each appellate circuit. Each year in the dataset thus contains 360 cases. Because of this sampling method, and because the number and type of cases heard each year varies by circuit, it is possible that the data may produce biased results if the individual cases are not weighted based upon the court from which they originated. This assumes that one desires a truly random sample.

However, this issue is of minimal relevance to the analysis contained herein. The nature and structure of the variables I use require the selection of a subset of cases from the larger dataset that meet certain criteria, namely, that an interest group must either be a party or amicus participant and that cases involving certain legal matters (for instance, criminal cases) are excluded. For this reason, I do not (and, in fact, cannot) use a random sample. The dataset used for analysis can best be described as a convenience sample where true randomization is neither necessary nor desirable. That said, I did not select the cases for inclusion based on any other set of criteria that might bias the results of this study. Every case in the Court of Appeals database from 1997-2002 that meets the variable requirements is included in the dataset for this project.

Some discussion of the time differences of the two datasets is appropriate here. The Schlozman-Verba-Brady set contains data from a number of single "snapshot" years: 1981, 1991, 2001, 2006, and 2011. I use the data for the year 2001 for two reasons. First, because it is contemporaneous with the Court of Appeals data. Second, because it contains the most complete information on group resources of any of the years included in the dataset. The Court of Appeals data cover a larger time frame than the S-V-B set. However, it is highly unlikely that any given interest group would so drastically change its advocacy strategy during a 5-year period that the reliability and validity of the data would be negatively affected. In fact, the difference in the Court of Appeals data is an advantage. Federal court cases regularly take a number of years to reach the appellate stage, therefore a single year "snapshot" would be very likely to leave out much of the ongoing litigation taking place during the relevant time period.

Table 1 shows the descriptive statistics for all variables. Where the coding rules reference the court opinion, the information was derived from Westlaw searches I conducted. I reviewed the published opinion for each case and coded each observation accordingly. Where the reference is to group-reported or publicly available information, I coded these based on internet searches and each group's official website, if they had one.

Dependent variable

The dependent variable for both hypotheses is coalition size, measured by the number of associated interest group parties aligned with one side of the litigation or with each side if there are interest groups on both sides of the case. Because this dependent variable represents a count, it is necessary to choose an appropriate generalized linear model that accounts for the

[13] This is, however, a good subject for a future project.

Table 1. Descriptive Statistics

Variable	Type	Mean	S.D.	Data Source
Coalition size	Count	5.71	5.96	Num. IG parties
Resources	Ordinal	1.10	1.07	Group reported
Scope	Ordinal	1.50	0.70	Group reported
Disadvantaged	Binary	0.30	0.46	Group reported
Amicus	Binary	0.68	0.47	Court opinion
Group type	Categorical	1.34	0.70	Public info

a - see text for measurement details

distribution. An initial statistical test indicated overdispersion, which means that a standard Poisson regression is inadvisable. Therefore, I instead employ a negative binomial model.[14]

The frequency distribution of the dependent variable is shown in Figure 1. The data represented in the graph are the combined organization/cases for the years 1997-2002.

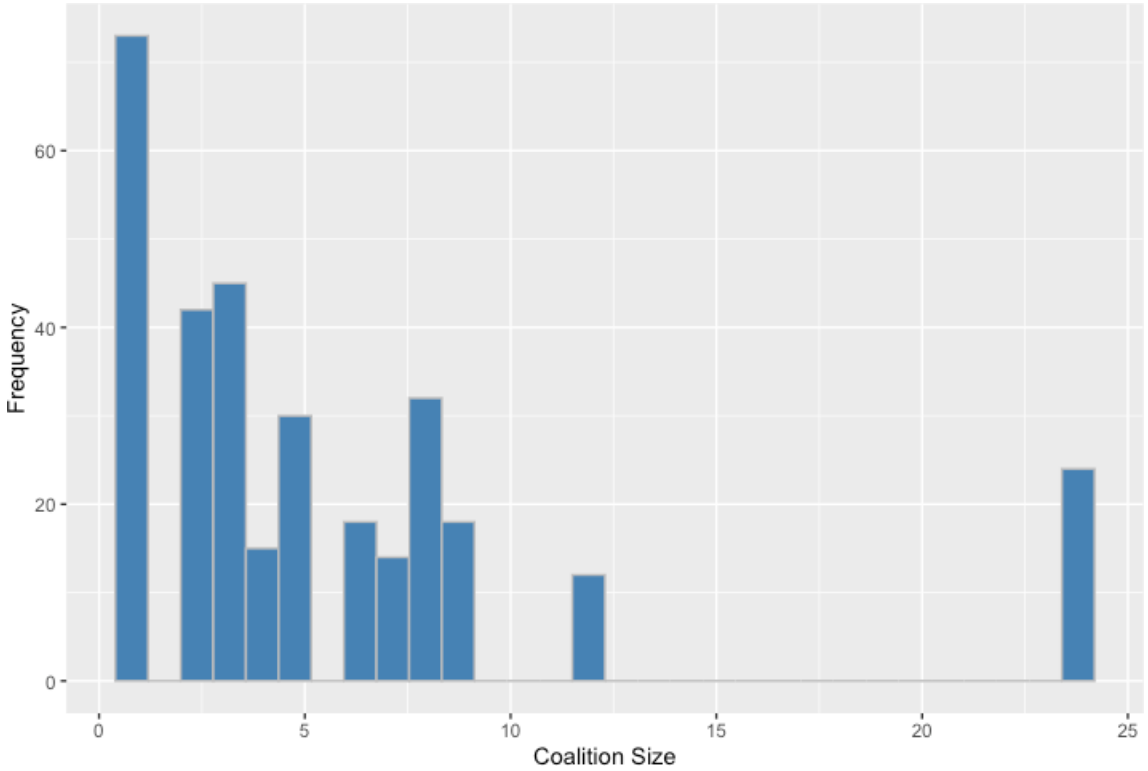

Figure 1: Distribution of dependent variable

Each case-level coalition is represented by each interest group that made up the coalition. Because each observation in the dataset represents an individual interest group within an individual case, unusually large coalitions may create artifacts in the graph, such as the single case with a 24-party coalition on the right-hand side. I performed influential data diagnostics to ensure that the model results were not biased and did not observe anything of concern.

Independent variables

The primary explanatory variable for H1 is disadvantaged constituency, which is a binary variable coded '1' if the interest group's membership or policy preferences are directed toward politically disadvantaged or historically marginalized persons, '0' otherwise. Disadvantaged is defined as any group that represents any of the following, based upon self-identification: the

[14]Even though it is impossible for coalition size to be zero, the standard negative binomial should be sufficient. While technically in this case it may be more appropriate to use the zero-truncated variety, because the mean of the count is not at or near 1, the two models should produce the same results.

poor or persons of low socioeconomic status; racial, ethnic, religious, or sexual minorities; the mentally or physically disabled; children; victims of violent crime; and currently or formerly incarcerated or institutionalized persons. If significant in a positive direction, this would indicate that disadvantaged groups tend to form larger litigation coalitions.

For H2, the main variable of interest is resources. This is an ordinal measure of the overall amount of money available to each group, as reflected by reported annual revenue. This information is derived from tax filings or IRS documentation for the most recent year available, which were retrieved through Pro Publica, Cause IQ, Guidestar, or Open990. Because not all interest groups file the same tax forms or report revenue in the same way, I chose to employ a relative as opposed to an absolute resource scale. The categories are coded by dollar amount as 0 = under $1 million or not available, 1 = 1 - 9.9 million, 2 = 10 **50 million, and 3 = over 50 million. These categories and cut points were chosen because they represented natural breaks in the data, where the cell counts for each category were reasonably close to each other.**

Control variables

I include three control variables related to the nature of each group. Group type is an unordered categorical indicator based upon the typology proffered by Salisbury (1984), who argued that "institutional" interest groups should be treated differently from those that relied on membership dues and the provision of benefits, and whose membership is open to the general public. Salisbury defined institutional groups as those whose membership is restricted in some way to a certain trade or profession (trade associations), or those that lack any club-style membership and operate only as charitable, political, or educational organizations. Public interest law firms would also fall into this latter category. I therefore coded each observation according to the type of group involved in the litigation, as follows:

- Common or traditional membership is open to the public (it can be geared toward a specific constituency), and membership includes more than simply donating and basic information; there must be some tangible benefit attached. Governance participation (voting rights, etc.) is counted as tangible benefits.
- Institutional but not a trade, professional, industry, or local government association, engages in policy activism as a charitable or educational organization, membership is not open to the public (i.e., membership must be vetted or is limited to "insiders", such as an "exclusive club"), or "membership" means regular donations only with no additional benefits; includes public interest law firms.
- Trade association; membership only open to businesses or to individuals in a certain profession, trade, or sector of the economy or local government (county, school board, etc.)

Scope is an ordinal measure of the breadth of the group's influence: local or unknown, state/regional, or national. These categories are based either on the geographic location of the organization's membership, or (for groups without a defined membership) the general extent of the organization's primary activism. To qualify as a national organization, a group must either have membership, chapters, or locations in multiple states across the country and must be involved in activism to change federal policy. A state or regional group confines itself to one or more connected states and does not generally engage in lobbying the national Congress. Local groups are those that exist in relation to a municipality or defined area within a state. A significant relationship for any of these categories would not necessarily constitute cause to discard one or more hypotheses. However, it may mean that other factors may need to be investigated to obtain a more complete picture.

Finally, amicus is a binary variable coded '1' if the interest group(s) involved in the case filed an amicus curiae brief, '0' if the group was a real party in interest. Because group decision-making and coalition dynamics may be (and usually are) markedly different when an organization is a party to the case as opposed to a friend of the court (Caldeira and Wright 1990), I considered subsetting out the amicus parties from the real parties in interest and treating the two subsets with separate models. As it turned out, doing so reduced some of the cell counts beyond acceptability limits, which might have impaired the reliability of the results. However, I analyzed the data both ways and the model results did not appreciably change between the two methods. I chose to retain the larger combined dataset and use the amicus binary variable to account for differences in group behavior.

Model Specification

The probability distribution for a negative binomial model can be expressed as:

$$p(Y = y_i|x_i) = \frac{\Gamma(\theta + y_i)r_i(1 - r_i)^{y_i}}{\Gamma(1 + y_i)\Gamma(\theta)} \tag{1}$$

where θ is the parameter to be estimated, and $r = \frac{\theta}{\theta+\lambda_i}$ is a measure of dispersion.

Using μ for the mean or expected value of Y, and λ as the log-linear mean, for H_1, I employ a mixed effects model of the form:

$$\lambda = \log(\mu) = \alpha_{j[i]} + \beta_1 \text{disad}_{ij} + X_{ij}B_2 + Z_{ij}B_3 + \beta_4 \text{amicus}_{ij} + \epsilon_i \tag{2}$$

The resulting model expresses the log mean of the dependent variable count as a function of the linear predictors. The within-case effects are fixed, and the case-level intercepts are allowed to vary randomly. The independent variable of interest is the disadvantaged constituency indicator. The coefficient β_1 reflects the change in the expected size of the coalition of which the observed interest group is a member if the observed interest group is disadvantaged. If it is not, i.e., where $x = 0$, then the β_1 term drops out, and only the controls are used. Each of the controls is included as well, with additional separate β parameters for each, and ϵ is a stochastic error term.

For H_2, the independent variable of interest is resources. In equation (3), for each resource category, the β_1 coefficient represents the change in the expected size of the coalition of which the observed interest group is a member. I chose "high" (or level 3) as the reference category for ease of interpretation. If the resources variable behaves as the hypothesis predicts, then for each successively lower category, the coefficient should exhibit a positive sign indicative of larger coalition size. In all of the above equations, the terms $X_{ij}B_2$ and $Z_{ij}B_3$ represent sets of binary variables, type and scope, respectively.

$$\lambda = \log(\mu) = \alpha_{j[i]} + \beta_1 \text{resources}_{ij} + X_{ij}B_2 + Z_{ij}B_3 + \beta_4 \text{amicus}_{ij} + \epsilon_i \tag{3}$$

Model results for both hypotheses are in Table 2. I would expect that the disadvantaged constituency variable would be significant with a positive sign, indicating that disadvantaged groups generally form larger coalitions to increase their litigation strength. However, not only does the outcome of the analysis not support H1, the variable of interest shows some unexpected behavior; that being, significance in the opposite direction. It therefore appears that the effect of disadvantaged constituency operates to reduce coalition size.

H2 is also unsupported by the results, though in this case the resources variable does not display any discernible effect. Additionally, none of the controls exhibit any significance, with the exception of the amicus binary. Models 2 and 3 are included as checks for robustness and to account for any collinearity between the predictors. The amicus binary exhibits a positive effect, indicating that coalition size is generally larger among amicus participants than real parties in interest.[15]

Figure 2 is a plot of the coefficients from models 1 and 2. The disadvantaged variable exhibits a definite negative effect, and amicus a positive. For both models the effects are almost identical. The resource measures and controls do not show any appreciable effects as their confidence intervals cross the zero line. Their inclusion did not change the results or the visible effects of the two significant variables.

[15] I also estimated Model 1 with an interaction between the disadvantage and resource variables, however it did not produce any significant results. It is not included here.

Table 2. Results of Mixed Effects Negative Binomial Regression

Dependent variable:	Coalition Size		
	(1)	(2)	(3)
Disadvantaged	−0.196**	−0.205**	
	(0.090)	(0.090)	
Very low resources	0.001	0.010	
	(0.098)	(0.098)	
Low resources	0.020	0.034	
	(0.092)	(0.092)	
Medium resources	0.069	0.092	
	(0.097)	(0.096)	
Common membership	0.117	0.118	0.114
	(0.103)	(0.101)	(0.103)
Trade association	0.003	0.004	0.047
	(0.073)	(0.072)	(0.070)
Regional scope	0.007	0.006	−0.014
	(0.098)	(0.095)	(0.098)
National scope	−0.068	−0.056	−0.079
	(0.096)	(0.090)	(0.096)
Amicus curiae	0.435***	0.436***	0.422***
	(0.114)	(0.113)	(0.114)
Observations	323	323	323
Log Likelihood	−667.260	−667.716	−669.610
Akaike Inf. Crit.	1,356.520	1,351.433	1,359.220
Bayesian Inf. Crit.	1,398.075	1,381.654	1,396.996
Num. groups: casino	98	98	98
Var: casenum (Intercept)	0.40	0.40	0.40
SD: casenum (Intercept)	0.63	0.63	0.63

Note: $^{*}p < 0.1$; $^{**}p < 0.05$; $^{***}p < 0.01$

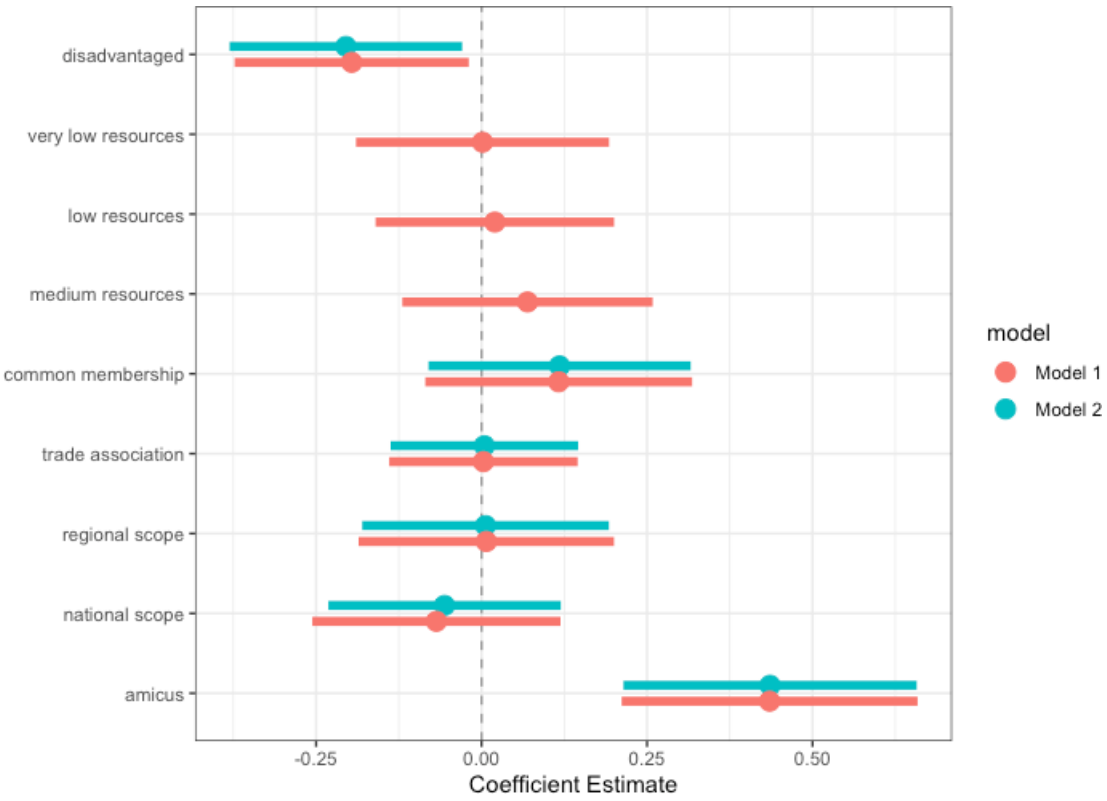

Figure 2: Coefficient plot

The effect of disadvantaged can be observed in Figure 3. There is a discernible reduction in the average coalition size associated with disadvantaged groups. Though the difference is small, this is still an unexpected finding.

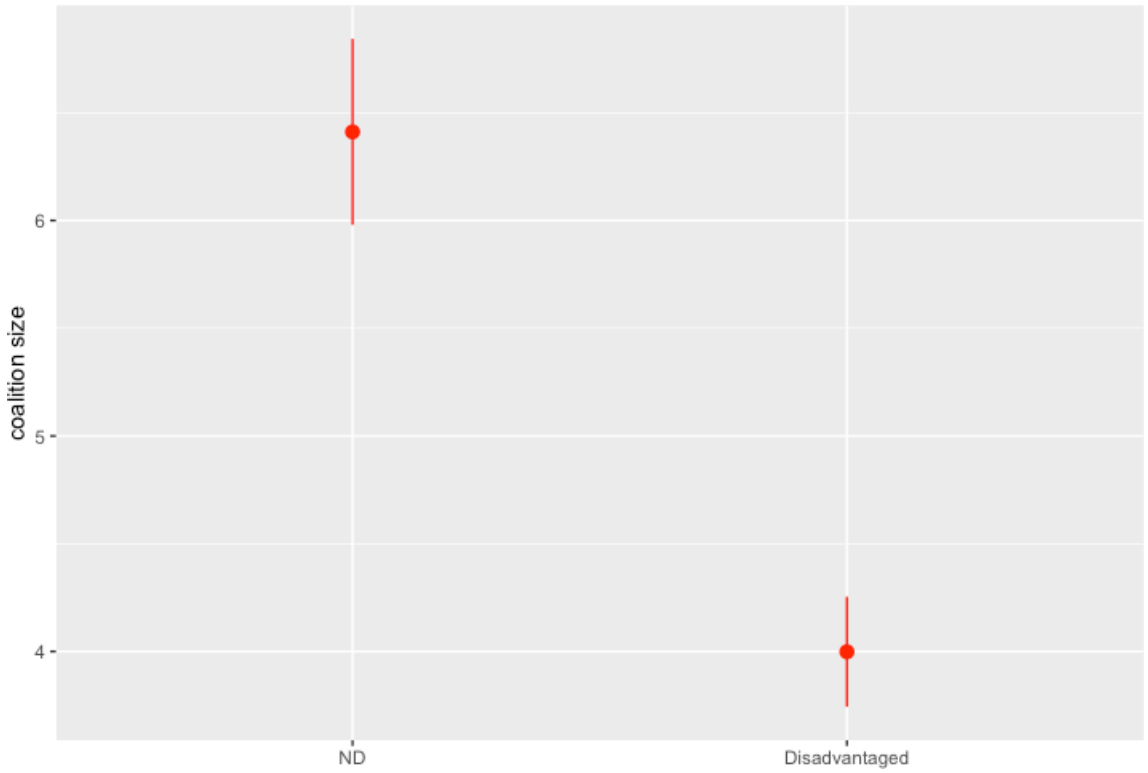

Figure 3: Mean predicted counts for constituency types

Conclusion

The most obviously striking outcome is that not only do politically *disadvantaged* groups not necessarily form or join larger coalitions, they seem to favor smaller ones. This is true even with the amicus control included, so we can draw the additional conclusion that the effect of political disadvantage is independent of party status. That said, amicus curiae participants seem to join larger coalitions in general, and this is not unexpected; in any given public law case, there are often more amicus participants than there are parties. In addition, as noted above, interest groups are known to form larger and more diverse amicus coalitions before the Supreme Court, in order to maximize their credibility and present a united front with regard to policy preferences (Box-Steffensmeier and Christenson 2014; Goelzhauser and Vouvalis 2015). It seems logical that this same behavior would be exhibited at the appellate court level.

Two possible explanations for the unusual results related to political disadvantage present themselves; one is a matter of practicality, the other of strategy. In the first instance, it may be that the same disadvantages that limit such groups' ability to lobby effectively also operate to reduce their chances of forming coalitions in the litigation context. Stated differently, it could be the case that resource or political power limitations, represented as lower litigation strength, may limit the ability of disadvantaged groups to command the attention of like minded organizations. Referring back to the case studies in the first part of this article, the trajectory of each group does indicate one or more early victories before serious coalition building took place. Perhaps disadvantaged groups need to "prove themselves" before larger- scale support becomes available.

The second potential explanation is that, for some reason, larger coalitions may be less desirable. There are a number of reasons why this might be the case. Coalitions require coordination, and it stands to reason that the larger the beast, the more effort it takes to control it. Smaller coalitions may be more nimble and able to respond and react more quickly and effectively to changes in the case or the political environment. Smaller coalitions may present less risk of conflict over strategic preferences or preferred results (as would be the case if some of the groups in the coalition wish to settle a case and others do not). Space is insufficient to completely list all of the possibilities here. It will suffice for now to conclude that more research is needed to address the implications of these findings.

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