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Measuring Party Polarization in Congress: Lessons from Congressional Participation in Amicus Curiae

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MEASURING PARTY POLARIZATION IN CONGRESS: LESSONS FROM CONGRESSIONAL PARTICIPATION AS AMICUS CURIAE

Neal Devins[†]

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INTRODUCTION

This Article will assess patterns in congressional amicus filings over the past forty years and, in so doing, call attention to how judicial filings by Congress are an excellent measure of party polarization. My findings are hardly surprising. By looking at briefs filed both by individual members of Congress and institutional counsel for the House and Senate, I document how today’s lawmakers are less likely to file

† Goodrich Professor of Law and Professor of Government, College of William and Mary. Thanks to Jonathan Entin, Kirk Shaw, and the Case Western Reserve Law Review for inviting me to participate in the Executive Discretion and the Administrative State Symposium. Thanks to my research assistants Brian Gividen, Brian Kelley, and especially Phil Giammona. Thanks finally to Tara Grove for collaborating with me on a joint paper on Congress’s power to represent itself in court. Some of the research and a fair bit of the thinking for this Article is drawn from research undertaken for (but not published in) that joint paper.

bipartisan briefs than earlier less polarized Congresses. Correspondingly, Democrats and Republicans are more likely to line up on the opposite side of the same case. For example, litigation over the Affordable Care Act, the Defense of Marriage Act, campaign finance, and abortion have divided Democrats and Republicans in Congress.¹ Finally, the House is far more likely than the Senate to participate as an institutional litigant, for the majority party controls House participation and participation of the Senate Legal Counsel requires bipartisan support.²

Each of these findings is to be expected, and much of this Article highlights how congressional amicus filings are a reliable measure of party polarization. Beyond these findings, this study examines why today's polarized Congress is less prone to defend its institutional prerogatives than earlier less polarized Congresses. In particular, lawmakers are less apt to work together to defend congressional power. There are comparatively fewer filings in separation of powers cases, and there is often a partisan divide on cases that implicate the scope of congressional power—whether it be the Senate's power to confirm or congressional authority under the commerce clause.³ For these reasons, a study of congressional amicus filings (although principally about Congress and the courts) offers important insights into the balance of power between Congress and the Executive and, for that reason, is an appropriate subject to explore in this symposium on executive power.

This paper will be organized as follows: First, I will detail the prevalence of party polarization and how party polarization has limited congressional interest in its institutional prerogatives vis-à-vis the executive. Second, I will discuss my research findings governing congressional amicus briefs. I will consider patterns in bipartisan filings over time (comparing the less polarized 1974–1985 Supreme Court terms with the more polarized 2002–2013 terms). I will also consider the types of issues lawmakers and their institutional counsel have pursued in their filings. This investigation will reveal a decline in briefs in institutional cases and an upswing in briefs on politically salient issues that divide the parties (abortion, same-sex marriage, campaign finance,

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1. My research findings are principally drawn through an analysis of congressional amicus filings before the Supreme Court. In particular, my research assistants and I prepared an inventory of all cases involving congressional amicus filings from 1974 to 1985 and 2003 to 2014. See Appendix A. My rationale for comparing these two periods is discussed *infra* Part II.B.
 2. For additional discussion, see *infra* Part II.E. For a discussion of how the House and Senate counsel participate in litigation, see Tara Leigh Grove & Neal Devins, *Congress's (Limited) Power to Represent Itself in Court*, 99 CORNELL L. REV. 571 (2014).
 3. I refer here to the *Noel Canning* recess appointment case and litigation regarding the Affordable Care Act. These cases are discussed *infra* notes 6 and 13.

etc.). Third, I will draw some conclusions from this study and also draw some contrasts between filings by individual members of Congress and filings by the institutional counsels for the House and Senate.

Before starting my analysis of party polarization and its impact on congressional amicus filings, two observations about what this Article does and does not accomplish: First, in studying changing patterns in congressional amicus filings, I am not contending that these briefs are highly influential and that these changes are likely to spill over to Supreme Court decision-making. I suspect that these briefs are sometimes helpful to the Court, but often they are not influential at all. My interest is measuring party polarization and its manifestations. These briefs, as noted above, are a revealing measure of congressional interest in defending institutional prerogatives and, in so doing, checking the executive branch. Second, for reasons I have detailed elsewhere and will again discuss in this Article, party polarization simultaneously deflates lawmaker interest in asserting their institutional prerogatives and increases the likelihood that members of the party not in the White House will—when in power—aggressively use congressional oversight to embarrass the President.⁴ For this reason, today’s House Republicans are aggressively using oversight and related litigation to question the lawfulness of various actions of the Obama administration.

I. PARTY POLARIZATION AND THE BALANCE OF POWERS

Congress is poorly positioned to assert its institutional prerogatives against the President. Where the President has incentive to expand power, lawmakers have incentive to trade off institutional prerogatives in order to secure personal advantage.⁵ Party polarization generally exacerbates lawmakers’ tendencies to discount institutional prerogatives. Most notably, lawmakers are unlikely to come together in a bipartisan way to check the President. On the other hand, when the

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4. See *infra* Part I; see also Grove & Devins, *supra* note 2, at 593–97 (noting that Congress’s unwillingness to defend federal statutes may be substantially influenced by partisan concerns rather than institutional ones); Neal Devins, *Presidential Unilateralism and Political Polarization: Why Today’s Congress Lacks the Will and the Way to Stop Presidential Initiatives*, 45 WILLAMETTE L. REV. 395 (2009) (analyzing the effect of party polarization on congressional oversight); Ilya Somin & Neal Devins, *Can We Make the Constitution More Democratic?*, 55 DRAKE L. REV. 971, 986–87 (2007) (noting that each party’s stance on congressional oversight changes depending on which party sits in the White House).
 5. I have written about this before, and portions of this section draw from that research. In particular, see Neal Devins, *Party Polarization and Congressional Committee Consideration of Constitutional Questions*, 105 NW. U. L. REV. 737, 773–74 (2011). For an outstanding discussion of the competing incentives of Congress and the President, see Terry M. Moe & William G. Howell, *The Presidential Power of Unilateral Action*, 15 J. L. ECON. & ORG. 132 (1998).

party in opposition to the President is in control of the House or Senate, efforts to embarrass the executive might tick up, and, with it, there might be increasing congressional oversight of the executive. For reasons I will explain at the end of this section, the increasing tendency of lawmakers to put party ahead of institution is likely to spill over to the types of briefs that are filed by lawmakers and their institutional counsel—matters that will be explored in greater detail in Part II.

Unlike Congress, Presidents inevitably expand the scope of presidential power by pursuing the policy initiatives they support. While lawmakers fight over the scope of congressional power (embracing it when it supports their policy goals and opposing it when it does not),⁶ the unitary President is not at war with himself—the President claims the authority to act and leaves it to Congress to check him. Political scientists Terry Moe and William Howell put it this way: “[W]hen presidents feel it is in their political interests, they can put whatever decisions they like to strategic use, both in gaining policy advantage and in pushing out the boundaries of their power.”⁷ In sharp contrast, members of Congress often sacrifice institutional interests in favor of individual interests (reelection and advancing their and their constituents’ policy goals). Lawmakers, in other words, are “trapped in a prisoners’ [sic] dilemma: all might benefit if they could cooperate in defending or advancing Congress’s power, but each has a strong incentive to free ride in favor of the local constituency.”⁸

In today’s polarized Congress, lawmakers are especially apt to discount institutional prerogatives. Aside from their natural disinclination to prioritize institutional objectives that might vary from their personal objectives, today’s lawmakers increasingly identify with party-defined messages and seek to gain power by advancing within their respective party.⁹ In so doing, Republican and Democratic lawmakers are increasingly distant from each other and increasingly unlikely to seek common ground in order to advance congressional prerogatives.

The rise in party-line voting exemplifies this phenomenon. Two noteworthy examples: (1) the enactment and proposed repeal of the

6. Consider, for example, divisions between Democrats and Republicans over two recent exercises of Congress’s Commerce Clause authority—the Affordable Care Act (where Republicans opposed and Democrats supported congressional power) and the Federal Partial Birth Abortion Act (where the roles were reversed). See Appendix A.

7. Moe & Howell, *supra* note 5, at 138.

8. *Id.* at 144.

9. For a discussion of how each party adheres to a message that distances it from the other party, see C. Lawrence Evans, *Committees, Leaders, and Message Politics*, in CONGRESS RECONSIDERED 217, 217 (Lawrence C. Dodd & Bruce I. Oppenheimer eds., 7th ed. 2011). For a discussion of how power has centralized in party leaders, see Devins, *supra* note 5, at 756–59 (collecting sources that discuss the rise of centralized party leadership).

Affordable Care Act (ACA) almost perfectly divided Republicans and Democrats in Congress (no Republican voted for the initial enactment in 2010, and no Democrat backed the 2015 repeal)¹⁰; (2) the then-Democratic Senate's November 2013 repeal of the filibuster in order to push through Obama nominees whom had been blocked by Senate Republicans (a measure supported by all but three Democrats and no Republicans).¹¹ The ACA and filibuster, while striking, are hardly anomalies: House Republicans now vote along party lines around 92 percent of the time, and Senate Democrats vote with their party around 94 percent of the time.¹²

Beyond party-line voting, there are essentially no instances of Democrats and Republicans coming together to stand up to the President and defend congressional prerogatives.¹³ Unlike the less partisan Congresses of the 1970s, there is no prospect that Republicans and Democrats in today's Congress would come together to enact the War Powers Resolution, the Impoundment Control Act, the Ethics in Government Act, or vote articles of impeachment against the President.¹⁴ Moreover, the only circumstances where one or the other party seems willing to assert Congress's institutional prerogatives are instances where the party in opposition to the President controls one

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10. On the enactment, see *Health Care Overhaul Makes History for Obama, Democratic Congress*, 2010 CQ ALMANAC at 9-3-9-5 (Jan Austin ed., 66th ed. 2011), available at <http://library.cqpress.com/cqalmanac/document.php?id=cqal10-1278-70363-2371661>. On the 2015 repeal vote, see Erin Mershon, *3 Republicans Say No as House Again Votes Obamacare Repeal*, POLITICO, (Feb. 3, 2015, 8:09 PM), <http://www.politico.com/story/2015/02/3/republicans-say-no-as-house-again-votes-obamacare-repeal-114882.html>.
 11. Jeremy W. Peters, *In Landmark Vote, Senate Limits Use of the Filibuster*, N.Y. TIMES (Nov. 21, 2013), <http://www.nytimes.com/2013/11/22/us/politics/reid-sets-in-motion-steps-to-limit-use-of-filibuster.html?pagewanted=all>.
 12. Elahe Izadi, *Congress Sets Record for Voting Along Party Lines*, NAT'L J. (Feb. 3, 2014), <http://www.nationaljournal.com/congress/congress-sets-record-for-voting-along-party-lines-20140203>.
 13. For example, the Senate Legal Counsel did not participate in the *Noel Canning* recess appointment case because Democratic and Republican lawmakers could not come together to file an institutional brief on this issue. See Neal Devins, *Counsel Rests*, SLATE (Jan. 13, 2014), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/01/the_senate_s_lawyer_doesn_t_participate_in_important_litigation_against.html. For additional discussion of this issue in the context of congressional amicus filings, see *infra* note 22.
 14. See generally Devins, *supra* note 5 (discussing increased congressional polarization).

or the other chamber and uses its investigative powers to hold oversight hearings and otherwise find ways to embarrass the President.¹⁵

Against this backdrop, it is to be expected that the amicus filings of lawmakers and institutional filings of the House and Senate would reflect party polarization in Congress. In Section II, I will detail changes between 1974–1985 and 2002–2013 practices. At this point, let me spin out some of the ways that polarization might impact legislative filings before the Supreme Court—hypotheses that will be evaluated in Part II. There are three¹⁶: One, amicus filings have become more partisan over time; that is, there are more filings where all (or next to all) signatories are from one or the other party, and there are very few bipartisan filings. Correspondingly, there would be next to no bipartisan filings in the salient cases that divide the parties (abortion, health care, gay rights, etc.). Two, today’s amicus filings center less on separation of powers cases, where lawmakers would defend Congress’s institutional prerogatives. Instead, lawmaker briefs would increasingly focus on salient cases that divide the parties. Three, the Senate Legal Counsel will have participated more regularly in the 1974–1985 period as compared with the 2002–2013 period. In particular, since the Senate Counsel cannot participate without bipartisan support, there are fewer opportunities in today’s polarized Congress to elicit bipartisan support. In contrast, the House Counsel would remain an active participant in litigation, especially on issues that divide the parties. Since the House Counsel largely works at the behest of the majority party, the House Counsel is not limited by bipartisanship requirements. Relatedly, on salient issues that divide the party, the House minority may well file an amicus brief taking issue with the claims of the House Counsel.¹⁷

15. See Somin & Devins, *supra* note 4, at 986–87 (discussing oversight hearings); Grove & Devins, *supra* note 2, at 575–83 (discussing litigation associated with congressional enforcement of subpoenas).

16. Of course, I know that each of these claims will be validated in the next section. At the same time, these are the obvious common-sense claims about the ways in which party polarization would impact congressional filings in court. The fact that party polarization’s impacts turn out to be predictable does not negate the value of seeing how it is that party polarization has transformed congressional filings, especially amicus briefs, before the Supreme Court.

17. Another hypothesis (which will be mentioned but not studied in Part II) is that the House counsel is more likely than the Senate counsel to file suit in order to preserve congressional prerogatives vis-à-vis the executive. In particular, when the President’s party is not in control of the House, the House Counsel might well litigate disputes with the President over the scope of congressional power. In the Senate, however, it is less likely to get bipartisanship agreement that such litigation should be pursued. See *infra* Part II.E.

II. CONGRESSIONAL AMICUS FILINGS:
COMPARING THE LESS POLARIZED 1974–1985 TERMS
WITH THE HIGHLY POLARIZED 2002–2013 TERMS

In this Part, I will detail changing practices in lawmaker and institutional amicus filings before the Supreme Court. I will also elaborate upon my findings by referencing some amicus filings before lower courts as well as filings in which the House was a party to the litigation (the Defense of Marriage Act, for example, where the House participated as a party to the litigation but Democratic lawmakers filed amicus briefs opposing the formal House position both before the federal courts of appeal and the Supreme Court).¹⁸ Before turning to my findings, I think it useful to detail my reasons for studying congressional amicus filings and the methodology of my study.

A. *Why Study Congressional Amicus Filings?*

Congressional amicus filings are not an obvious measure of Congress as an institution. Unlike more traditional measures of congressional activity (floor votes, committee hearings), amicus filings are not formally tied to Congress's legislative powers.¹⁹ Nevertheless, amicus filings are a reasonably good measure both of how lawmakers interface with each other and of the types of issues that matter to lawmakers.

To start, today's Congress is an active participant in Supreme Court litigation. Unlike pre-1969 lawmakers (who rarely filed amicus briefs), today's lawmakers increasingly see amicus briefs as a mechanism to communicate their legal policy preferences. For example, throughout the Warren Court and before 1970, only one member of Congress filed an amicus brief (Senator William Fulbright in 1958).²⁰ Starting in 1974, lawmakers began to file amicus briefs on a "regular" basis, and 796 different senators and representatives filed briefs from

18. *See infra* Part II.C.

19. I refer here to amicus filings, not judicial filings when the House or Senate (as part of their Article One investigatory powers) seek judicial enforcement of subpoenas. *See* Grove and Devins, *supra* note 2, at 595–96 (explaining that Congress uses amicus filings to score political points rather than defend laws the DOJ fails to defend).

20. JUDITHANNE SCOURFIELD MCLAUCHLAN, CONGRESSIONAL PARTICIPATION AS *AMICUS CURIAE* BEFORE THE U.S. SUPREME COURT 26–27 (2005).

1977 to 1997.²¹ Since 1997, lawmaker amicus brief filing increased, as revealed in my study of 2002–2013 amicus filings.²²

The dramatic rise in lawmaker participation in amicus briefs is driven principally by two phenomena. First, the filing of amicus briefs became commonplace. Before 1949 amicus briefs were filed in only 1.6 percent of Supreme Court cases; by 1969, amicus briefs were filed in around 39 percent of all cases.²³ By this time, the amicus “[was] no longer a neutral, amorphous embodiment of justice, but an active participant in the interest group struggle.”²⁴ Indeed, from 1950 to 1994, there was a steady increase in amicus filings—so that today amicus briefs are filed in nearly every case.²⁵ Second, amicus filings are an easy, low-cost mechanism for lawmakers to stake out policy positions. In particular, rather than see amicus briefs as a mechanism to secure desired policy outcomes, amicus curiae participation “generally is a measure of the intensity of members’ preferences on issues because politicians must feel sufficiently strongly to act in a public manner to communicate their preferences to others.”²⁶ Correspondingly, the principal audience of lawmaker amicus briefs are “select constituents[,

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21. *Id.* at 37. Correspondingly, the number of amicus briefs almost doubled from 1979–1985 (4 per term) to 1991–1997 (7.5 per term). Rorie L. Spill Solberg & Eric S. Heberlig, *Communicating to the Courts and Beyond: Why Members of Congress Participate as Amici Curiae*, 29 LEGIS. STUD. Q. 591, 591 (2004).
 22. As Appendix A reveals, there are noticeably more congressional filings in the 2002–2013 terms as compared with 1974–1985. For example, all Republican senators signed on to a single amicus brief in the *Noel Canning* recess appointment case, most Republican members signed onto briefs opposing the Affordable Care Act, and nearly all House Democrats signed onto a brief opposing the Defense of Marriage Act. See *infra* Appendix A. In highlighting the increasing willingness of lawmakers to file briefs, I am not suggesting that Congress is more institutionally engaged in litigation—defending its turf against potential executive encroachment. As noted earlier, one of the hypotheses that I will test in this section is Congress’s declining interest in its institutional prerogatives. This question is one that Amanda Frost has usefully considered in her 2012 article on the need for Congress to assert its institutional voice on statutory interpretation and other questions of federal law—where the executive would interpose its view of congressional intent, and Congress would often sit silent. Amanda Frost, *Congress in Court*, 59 UCLA L. REV. 914 (2012).
 23. McLAUHLAN, *supra* note 20, at 28.
 24. Samuel Krislov, *The Amicus Curiae Brief: From Friendship to Advocacy*, 72 YALE L.J. 694, 703 (1963).
 25. See Joseph D. Kearney & Thomas W. Merrill, *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 U. PA. L. REV. 743, 751–53 (2000) (summarizing studies of amicus filings).
 26. Solberg & Heberlig, *supra* note 21, at 594 (citations omitted).

interest groups,] and campaign contributors” particularly interested in the issue.²⁷

The fact that lawmakers frequently use amicus filings as a way to register ideological preferences suggests that a study of changing congressional practices in this area is a window into the role of ideology in Congress. Correspondingly, since congressional amici are often coalitional rather than individual,²⁸ a study of changes in the character of multimember congressional filings is a useful way of measuring party polarization in Congress. For these reasons, whatever its limitations, a study of congressional amicus filings seems a plausible way to track polarization in Congress.

B. Methodology

In assessing changing patterns in congressional amicus filings, my research assistants and I looked at all Supreme Court amicus briefs filed in the 1974–1985 and 2002–2013 terms. We selected the 1974–1985 terms as representative of fairly low polarization for two reasons. First, the rise of congressional amicus briefs began in the 1970s, and I wanted to pick a representative low-polarization period in which there were a substantial number of amicus filings.²⁹ Second, as compared with any other period I might have chosen, party polarization was comparatively low in this period. Watergate-era reforms were largely bipartisan, and measures of party polarization rank this period as less polarized than others I might have studied (in which there were substantial congressional filings).³⁰ In comparing this eleven-year period (eleven years was somewhat random but long enough to track patterns) with another eleven-year period, we selected the 2002–2013 terms for the obvious reasons that it is the most recent period, and it is also the period in which the ideological distance between the parties has been greater than ever before.³¹

In each time period, we identified cases in which briefs were filed; the number of briefs; the number of briefs filed by representatives, senators, or both; the number of signatories on each brief; and the party affiliations of signatories. We also measured for issue salience (using the standard political science measure of whether the case was featured on the front page of *The New York Times*). Finally, we categorized the

27. *Id.* (citations omitted).

28. See Gregory A. Caldeira & John R. Wright, *Amici Curiae Before the Supreme Court: Who Participates, When, and How Much?*, 52 J. POL. 782, 798 (1990) (explaining the increase in coalitional activity).

29. See McLAUCHLAN, *supra* note 20, at 27–28 (noting rise of amicus filings in the 1970s).

30. See Nolan McCarty et al., *Party Polarization: 1879–2010*, POLARIZED AMERICA, <http://polarizedamerica.com> (last visited Apr. 13, 2015) (depicting low party polarization in the 1970s).

31. See *id.* (depicting high polarization during the 2002–2013 time period).

cases around three general issue types—social issues, institutional issues, or federalism. Social issues reference issues like race, abortion, and gay rights; institutional issues involve separation of powers issues and issues of congressional power outside federalism; federalism often combines both social issues and institutional issues (voting rights, disability rights, violence against women, family medical leave, etc.). Appendix A summarizes our raw data.

In addition to this search, my student assistants did separate searches of all Supreme Court amicus filings between 1973 and 2014 on abortion and separation of powers. Recognizing that the case distribution between the two studied periods do not operate as perfect pairs (where the portfolio of cases in one period is a perfect match for the portfolio in another period), I thought it would be useful to take an in-depth look on two issues where there were numerous cases throughout the 1973–2014 period—one obviously about social issues and the other about institutional issues. Needless to say, my efforts at making the two periods comparable were rough guesses. At the same time, I think my approach to the question is a reasonable way to get a general understanding regarding changing congressional practices between periods of relatively low and extremely high polarization.

C. *The Findings*³²

As an initial matter, congressional participation in amicus briefs has increased dramatically between the 1974–1985 and 2002–2013 terms.³³ The number of cases in which members filed amicus briefs

32. Unless otherwise noted, the raw data for all claims about congressional filings in this subsection are drawn from Appendix A.

33. In reporting my findings, I do not break down differences between House and Senate filings. Some briefs are House or Senate only and some briefs include members of both chambers. In this footnote, I will summarize ways in which House and Senate participation differed. The most notable finding is that House members filed many more briefs than Senate members but that Senate members increasingly make use of briefs to register their legal policy preferences. From 1974 to 1985, there were 26 House-only briefs and 6 Senate-only briefs (so 4.3 House briefs were filed for each Senate brief). During this period, House members accounted for 85 percent of all brief signatories (794 as compared with 136). From 2002 to 2013, there were 70 House-only briefs and 34 Senate-only briefs (a little more than a 2:1 ratio). During this period, House members accounted for 82 percent of signatories (3,112 as compared with 695). Considering that there are more than four times as many members of the House than Senate, it appears that the Senate is as active as the House in filing briefs. See *infra* Appendix A. This conclusion is consistent with recent academic studies demonstrating that the Senate has become as polarized as the House and that historic House-Senate differences have given way to an era where both chambers are equally partisan. See Grove & Devins, *supra* note 2, at 605–07 (noting historic House-Senate differences); SEAN M. THERIAULT, *THE GINGRICH SENATORS: THE ROOTS OF PARTISAN WARFARE IN CONGRESS* 48–50 (2013) (tracing roots of partisanship in

increased from 45 to 86, a stunning increase considering the fact that the Court heard substantially more cases in the earlier period.³⁴ The number of total briefs increased from 52 in the earlier period to 150 in the later period. Correspondingly, briefs with five or more signatories increased from 27 to 84.³⁵ Finally, the number of members who signed onto a brief increased from 930 to 3,807.

Between the two periods, there was a sharp decline in bipartisan briefs³⁶—so much so that changing patterns in amicus filings can only be seen as a byproduct of the growing polarization between the parties. Despite the fact that the number of briefs with five or more signatories increased from 27 to 84, the number of bipartisan briefs with five or more signatories stayed at 7 for both periods. In other words, 26 percent of filings were bipartisan in the earlier period as compared with 8 percent in the later period. Likewise, when calculating all briefs (including those with four or fewer signatories), the number of cases with bipartisan briefs declined from 31 percent (14 briefs in 45 cases) to 19 percent (16 briefs in 86 cases).

This decline in bipartisan briefs, not surprisingly, tracks an even larger increase in the number of partisan briefs, especially single party briefs.³⁷ During the earlier period, there were 16 briefs (all with five or more signatories) that leaned to one or the other party; that is, they were principally from one party but had at least one signatory from each party. These briefs accounted for 31 percent of all briefs (16 out of 52 briefs) and 59 percent of briefs with five or more signatories (16 out of 27 briefs). During the 2002–2013 terms, lean partisan briefs declined in number—replaced by purely partisan briefs. There were just 22 lean partisan briefs, 20 with five or more signatories. Thus, lean

today's Senate); Steven S. Smith, *The Senate Syndrome*, 35 ISSUES GOVERNANCE STUD. 1, 5 (2010) (same).

34. The search was performed by inputting the term ranges on The Supreme Court Database, www.supremecourtdatabase.gov.
35. The percentage of briefs filed by five or more decreased slightly; 60 percent of briefs filed in the earlier period had five or more signatories; 56 percent of briefs filed in the later period had five or more signatories. *See infra* Appendix A.
36. For my purposes, “bipartisan” means each party has at least one-third of all brief signatories.
37. I draw a distinction between purely partisan briefs (no signatories from one party) to briefs that lean partisan (where at least one but fewer than one-third of signatories are from one party). For example, a nine-member brief with three or more members from each party is bipartisan for my purposes (at least one-third from each party). A nine-member brief with one or two members from one party would be a “leans partisan” brief (more than one but fewer than one-third from one party). *See infra* Appendix A.

partisan briefs accounted for 15 percent of all briefs (22 out of 150) and 21 percent of briefs with five or more members (18 out of 84).

The number of single-party briefs saw a dramatic increase between the two periods. During the 1974–1985 period, there were 22 briefs that were all Republican (6) or all Democrat (16). Four of these briefs (all Democrat) had five or more signatories. Thus, completely partisan briefs accounted for 42 percent of all briefs and 15 percent of briefs with five or more signatories. During the 2002–2013 terms, there were 112 single-party briefs, 62 Republican and 50 Democrats. Twenty-four Republican briefs and 33 Democratic briefs had five or more signatories. This means that single-party briefs now account for 75 percent of all briefs and 68 percent of briefs with five or more signatories (a stunning increase of 450 percent from the earlier period when such briefs accounted for 15 percent of member filings).

Another important difference between the two periods is the increasing focus of lawmakers on politically salient issues, measured by the appearance of at least one standalone article on the front page of *The New York Times*.³⁸ This difference is revealed by comparing the number of briefs filed in salient cases with the number of signatories on briefs in these cases.³⁹ During the earlier period, there were an equal number of briefs filed in salient and nonsalient cases (26 briefs each). During the 2002–2013 period, 69 percent (103 briefs) were filed in salient cases and 31 percent (47 briefs) were filed in nonsalient cases. More significantly, the number of member signatories in salient cases jumped dramatically between the two periods. In the 1974–1985 period, 65 percent of member signatories were in salient cases (610 out of 930). In the later period, 88 percent of member signatories were in salient cases (3,369 out of 3,807).

Given the increasing focus on salient issue and the rise of single-party briefs, there has also been a dramatic increase in single-party briefs with forty or more signatories on politically salient issues that divide the parties.⁴⁰ During the 1974–1985 period, there were 6 briefs

38. See *supra* Part II.B. (noting that this measure is commonplace among political scientists studying the Court).

39. There is no difference between the periods with respect to the percentage of salient versus nonsalient cases that members participated in. In both periods, there was a near-perfect 50 percent split between cases that were salient and cases that were nonsalient. In the earlier period, briefs were filed in 45 cases—22 salient and 23 nonsalient. In the later period, briefs were filed in 86 cases—43 salient and 43 nonsalient. *Infra* Appendix A.

40. Forty is a somewhat arbitrary number. It was selected because some Senate briefs attract (nearly) all members from one party, and I wanted to note those briefs as well as single-party House briefs that attract a much larger number of signatories. For an example of a relevant Senate filing, see Brief of Senate Republican Leader Mitch McConnell and 44 Other Members of the United States Senate as Amici Curiae in Support of Certiorari, *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014) (No. 12-1281).

with forty or more signatories (around 12 percent of all filings during this period). One of those briefs was bipartisan, none were single party, and 5 leaned Democrat or Republican (but each of these 5 had at least 14 percent signatories of the other party). During the 2002–2013 terms, there were 33 briefs with forty or more signatories (around 22 percent of all filings). None were bipartisan, 22 were single party, and 11 leaned toward one party (and 6 of those 11 had fewer than 5 percent representation from the other party). The 28 briefs that were single party or virtually single party, not surprisingly, included filings on the Affordable Care Act, the Defense of Marriage Act, immigration, voting rights, abortion, affirmative action, campaign finance, legislative prayer, the pledge of allegiance, recess appointments, and state immunity under the Eleventh Amendment.⁴¹

The final measure I used to track changes between the two periods concerned the types of issues addressed by member briefs. I considered cases involving social issues, cases involving institutional powers, and cases involving federalism (many of which implicated both congressional power and social issues).⁴² My concern here is seeing whether lawmakers shifted their focus toward the social issues that divide the two parties and away from institutional cases that might have united the parties (as these cases frequently deal with Congress's efforts to protect its institutional prerogatives). Here, the results also point to a substantial increase in member interest in social issue cases as compared with institutional issue cases. During the 1974–1985

41. This explosion of multimember single-party briefs on issues that divide the parties now extends to congressional filings before lower federal courts. Republican lawmakers, for example, filed briefs on recess appointments, immigration, and tax subsidies for federal exchanges. *See* Brief for Amici Curiae Senate Republican Leader Mitch McConnell and 41 Other Members of the United States Senate in Support of Petitioner/Cross-Respondent Noel Canning, *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013) (Nos. 12-1115, 12-1153); Michael D. Shear & Julia Preston, *Dealt Setback, Obama Puts Off Immigrant Plan*, N.Y. TIMES, Feb. 18, 2015, at A1 (noting that sixty-eight Republican lawmakers filed an amicus brief arguing that President Obama was without legal authority to pursue his immigration initiative); Todd Ruger, *Lawmakers Take Sides in Health Care Case in D.C. Circuit*, CONSTITUTIONAL ACCOUNTABILITY CENTER (Feb. 19, 2014), <http://theconstitution.org/news/lawmakers-take-sides-health-care-case-dc-circuit>. For their part, Democrats also filed a brief on the federal exchange issue and argued that the Defense of Marriage Act was unconstitutional and that the House's institutional counsel spoke the voice of majority Republicans and not the full House. *See id.* Brief of 172 Members of the U.S. House of Representatives and 40 U.S. Senators as *Amici Curiae* in Support of Respondent Edith Schlain Windsor, *Urging Affirmance on the Merits, United States v. Windsor*, 133 S. Ct. 2675 (2013) (No. 12-307).

42. For example, federalism cases implicating Congress's Section 5 enforcement powers have touched on age discrimination, religious liberty, disability rights, voting rights, gender, and family.

period, 15 out of 52 briefs (29 percent) were filed on social issues, and 20 briefs (38 percent) were filed on institutional issues. During the 2002–2013 period, 52 out of 150 briefs (35 percent) were filed on social issues, and 43 (29 percent) were filed on institutional issues. Total member participation also showed an increase of interest in social as compared with institutional issues. In the earlier period, 42 percent of members (388 out of 930 signatories) participated in social issue cases, and 40 percent (372 signatories) participated in institutional cases.⁴³ For the 2002–2013 period, 48 percent of members participated in cases implicating social issues (1,822 of 3,807), and 24 percent (926 signatories) participated in institutional cases.

D. A Closer Look at Abortion and Separation of Powers Cases

The above measures strongly support claims made earlier in this Article about the ways party polarization is likely to impact on congressional amicus filings. Today's briefs are more partisan and increasingly focus on the politically salient issues that divide the parties. Correspondingly, lawmakers are less engaged in institutional questions that might bring the parties together in an effort to defend congressional powers and prerogatives. At the same time, it is hard to draw definitive conclusions from the evidence reported thus far—because there might be substantial variations in the docket between the two time periods. For that reason, I will comment specifically about two issue areas over the past forty years—one concerning social issues and the other institutional issues. Specifically, this subpart will track congressional filings in abortion cases (starting with *Roe v. Wade* in 1973) and separation of powers cases (starting with *United States v. Nixon* in 1974). While my focus remains amicus filings by individual members of Congress, I will also take note of briefs filed by counsel for the House and Senate—a topic I will consider in greater detail in the next subpart.

In an effort to make abortion and separation of powers cases comparable, I chose roughly the same number of cases for each group (18 abortion cases and 19 separation of powers cases) over the 1973–2014 time period—selecting cases throughout the time period so that neither grouping was skewed toward the years where Congress was

43. This calculation treats the Court's 1980 abortion funding decision, *Harris v. McRae*, 448 U.S. 297 (1980), as raising institutional and not social issues. This conclusion is based on the fact that the 239-member bipartisan coalition that supported Congress's control over its appropriations process included pro-choice as well as pro-life lawmakers. See Brief of Rep. Jim Wright et al. as Amici Curiae, *Harris v. McRae*, 448 U.S. 297 (1980) (No. 79-1268).

more bipartisan or more polarized.⁴⁴ This is not to say that the comparison is perfect; at the same time, shifting patterns in congressional filings are sufficiently stark and sufficiently consistent with earlier claims in the Article that I think the comparison sound and useful.

For abortion, ten cases were examined raising state regulatory authority, and eight cases were examined involving federal statutes or federal administrative initiatives. Of the cases involving state regulatory authority, no amicus brief was filed in the five examined cases between 1973 and 1983; the first amicus brief was filed in 1986, and amicus briefs were filed in four of the five subsequent cases involving state regulatory authority. In other words, it appears that lawmakers initially drew a line separating state regulatory issues from questions involving congressional authority and the interpretation of federal statutes. Starting in 1986, however, amicus filings tracked the growing ideological divide between the parties—a divide fueled by Reagan administration efforts to draw distinctions between Democrats and Republicans on socially divisive wedge issues, especially abortion.⁴⁵ In four state regulatory cases from 1986 to 2000, competing briefs were filed by coalitions dominated (around 90 percent) by Republicans or Democrats.

Congressional filings in abortion cases implicating federal law buttress this conclusion. A bipartisan brief was filed in the 1980 abortion funding case—as that case implicated Congress’s power of the purse—and 239 lawmakers came together to defend institutional turf on that question. Aside from that filing, lawmakers participated in three of the other seven cases involving federal law. As a group, these cases were less salient as four involved efforts to either seek money judgments against abortion protesters or impose other restrictions on them.⁴⁶ In contrast, lawmakers participated in a 1991 case involving federal restrictions on abortion counseling and a 2007 case concerning federal partial birth abortion legislation. These lawmakers’ briefs were

44. See Appendices B and C for a listing of abortion and separation of powers cases that I sampled, including information on congressional amicus filings in those cases. I did not include cases argued in the 2014 term and decided in 2015; one of those cases, *Zivotofsky v. Kerry*, is discussed in Part III.

45. On Ronald Reagan’s campaign against abortion, see NEAL DEVINS, *SHAPING CONSTITUTIONAL VALUES: ELECTED GOVERNMENT, THE SUPREME COURT, AND THE ABORTION DEBATE* (1996). On how today’s polarization between Democrats and Republicans is partially attributable to Reagan administration efforts to reach out to Southern Democrats at the expense of left-leaning Northern Republicans, see Neal Devins, *The Academic Expert Before Congress: Observations and Lessons from Bill Van Alstyne’s Testimony*, 54 *DUKE L.J.* 1525, 1535 (2005).

46. Lawmakers participated in just one of these cases, a 2006 case involving the applicability of civil RICO sanctions to abortion protesters who engage in noneconomic violence. For more information regarding *Scheidler v. National Organization for Women*, 547 U.S. 9 (2006), see Appendix B.

overwhelmingly Democratic or Republican. Correspondingly, although not directly involving abortion, Democrats and Republicans stood on opposing sides of the Supreme Court's 2014 decision in *Burwell v. Hobby Lobby Stores*,⁴⁷ a case involving the Affordable Care Act's contraception mandate. Of the five lawmaker amicus briefs filed in this case, none was bipartisan and four were signed by only one party.⁴⁸

Lawmaker filings in abortion cases back up the central claims of Part II.C. Lawmakers were comparatively more interested in questions on institutional power and less interested in social issues when Congress was less polarized. The fact that the only brief filed before 1986 was a bipartisan filing implicating Congress's appropriations power supports this conclusion. More than that, the fact that lawmakers filed partisan briefs, principally on state law issues, after 1986 also supports claims made about the impact of party polarization on amicus filings—namely, that lawmakers focus their energies on wedge issues that divide the parties.

Abortion filings are telling for another reason, especially as compared with separation of powers filings. In many of these cases, hundreds of lawmakers signed onto briefs that increasingly pitted Democrat and Republican lawmakers. In the eight cases for which lawmakers filed briefs, 1,369 signed onto briefs. In *Hobby Lobby*, a total of 217 lawmakers signed onto the various lawmaker briefs.⁴⁹ In sharp contrast, there were far fewer signatories in separation of powers cases. Even though lawmakers filed amicus briefs in ten of the nineteen cases studies (and counsel for the House and Senate filed briefs in two other cases), there were only 186 brief signers—so an average of 19 as compared with 171 in the eight abortion cases where briefs were filed.

47. 134 S. Ct. 2751 (2014).

48. See Brief of Amici Curiae Members of Congress in Support of Respondents, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); Brief of 91 Members of the United States House of Representatives as Amici Curiae in Support of the Government, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); Brief for United States Senators Murray, Baucus, Boxer, Brown, Cantwell, Cardin, Durbin, Feinstein, Harkin, Johnson, Leahy, Levin, Markey, Menendez, Mikulski, Reid, Sanders, Schumer, and Wyden as Amici Curiae in Support of Hobby Lobby Petitioners and Conestoga Respondents, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); Brief of U.S. Senators Ted Cruz, John Cornyn, Mike Lee, and David Vitter as Amici Curiae Supporting Respondents in Case No. 13-354 and Petitioners in Case No. 13-356, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014); Brief of Amici Curiae Senators Orrin G. Hatch, Daniel R. Coats, Thad Cochran, Mike Crapo, Charles Grassley, James M. Inhofe, John McCain, Mitch McConnell, Rob Portman, Pat Roberts, & Richard Shelby, and Representatives Bob Goodlatte, Chris Smith, Lamar Smith, & Frank Wolf in Support of Hobby Lobby and Conestoga Wood, et al., *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

49. See Appendix B.

And while House and Senate counsel participation may deflate the number of signatories,⁵⁰ it is quite clear that there is less interest in staking out a position in separation of powers cases as compared with abortion cases.⁵¹ For example, throughout the enemy combatant dispute, a total of sixteen lawmakers signed amicus briefs, and no amicus briefs were filed by the House or Senate counsel.

Amicus filings in separation of powers cases also point to the growing partisan divide between Democrats and Republicans. First, there is a growing trend toward partisan filings (particularly during George W. Bush-era litigation over enemy combatants⁵² and during the fight over Obama recess appointments⁵³). Second, although some bipartisan briefs were filed, lawmakers were not motivated by a desire to preserve or expand congressional power in these cases. In 1990s litigation over item veto legislation, lawmakers were seeking to advance their reputations as deficit hawks—defending their delegation of authority to the President because Congress could not be trusted to

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50. In *Raines v. Byrd*, 521 U.S. 811 (1997) (item veto) and *Morrison v. Olson*, 487 U.S. 654 (1988) (independent counsel), House and Senate counsel participated and no individual amicus briefs were filed. See Appendix C. In *INS v. Chadha*, 462 U.S. 919 (1983) (legislative veto), *Bowsher v. Synar*, 478 U.S. 714 (1986) (deficit control legislation), *Burke v. Barnes*, 479 U.S. 361 (1987) (pocket veto), and *Clinton v. City of New York* (item veto), House and/or Senate counsel participated and individual amicus briefs were also filed. See Appendix C.
51. At the same time, there were no filings in three of the first four cases examined (from 1974 to 1982). Also, recent briefs in the recess appointments case and a case involving a Congress–State Department conflict over Israel have attracted more signatures than earlier briefs. For reasons I will detail *infra*, I think these recent filings are consistent with claims in this paper about the impact of partisanship on amicus filings. See *infra* Part II.E (discussing recess appointment and Congress–State Department dispute).
52. Five all-Republican or all-Democrat briefs were filed in the four cases I looked at. And while only sixteen lawmakers signed on to these briefs, these cases nonetheless highlight the partisan divide between Democrats and Republicans on this issue. See Appendix C.
53. All Senate Republicans argued that the President had exceeded his constitutional authority, joining together in filing briefs before the D.C. Circuit and U.S. Supreme Court. For their part, Democrats claimed that the President was backed into a corner and, ultimately, changed the Senate’s filibuster rules to facilitate the confirmation of presidential appointees. See Paul Kane, *Reid, Democrats Trigger “Nuclear” Option; Eliminate Most Filibusters on Nominees*, WASH. POST (Nov. 21, 2013), http://www.washingtonpost.com/politics/senate-poised-to-limit-filibusters-in-party-line-vote-that-would-alter-centuries-of-precedent/2013/11/21/d065cfe8-52b6-11e3-9fe0-fd2ca728e67c_story.html. At the same time, Democrats did not participate in litigation challenging the President’s recess appointments. See *infra* Part II.E.

manage the federal deficit.⁵⁴ In 2012, litigation over the authority of Congress to allow individuals born in Jerusalem to list Israel as their place of birth, brief signers were interested in reaffirming their support for Israel.⁵⁵ Third, for reasons I will now detail in Part II.E, profound changes in the role of institutional counsel in Congress also demonstrate growing partisanship and polarization in separation of powers disputes.

*E. The Changing Role of Institutional Counsel*⁵⁶

From 1978 (when the Office of Senate Legal Counsel was created) through 1995, institutional counsel for the House and Senate regularly participated in Supreme Court litigation involving separation of powers matters. Up until 1986, moreover, these lawsuits pitted Congress against the executive.⁵⁷ In these disputes, party identity did not matter. The House defended institutional prerogatives when the President was of the same party as the House majority (most notably in *INS v. Chadha*, a dispute involving the constitutionality of the legislative veto that involved the Democratic House against the Carter and then Reagan administrations). The Senate too defended congressional prerogatives in cases where the President and Senate majority were of the same party (including the willingness of the Republican Senate majority to stand up to the Reagan administration and join forces with Democrats in defending deficit control legislation in *Bowsher v. Synar*). Amicus briefs filed in these and other cases during this period were often bipartisan, and, correspondingly, lawmakers of the President's party sometimes lined up in opposition to the President.⁵⁸

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54. Item veto legislation, while bipartisan, was tied to the Republican takeover of Congress and related claims that Congress was irresponsible and that power should devolve from it—principally to the states. See Jerry Gray, *Debt and Line-Item Veto Bills Approved*, N.Y. TIMES, Mar. 29, 1996, at B11; see also Appendix C (noting bipartisan filings in item veto litigation).
55. Part III of this Article discusses this 2012 dispute and a follow-up 2014 Supreme Court case.
56. This subsection draws from my coauthored article on Congress's authority to litigate and a *Slate* column on the Senate Counsel's failure to appear in the recess appointments case. See Grove & Devins, *supra* note 2; Devins, *supra* note 13.
57. In the 1990s, Congress and the executive both backed Congress's delegation of budgetary authority to the President in two Supreme Court cases involving constitutional challenges to the Item Veto Act. Cf. Grove & Devins, *supra* note 2, at 614 n.277 (discussing the relative rarity of joint House and Senate amicus filings).
58. See Appendix C; see also Grove & Devins, *supra* note 2, at 617 (discussing bipartisan filings in these disputes).

Starting in 1995, the trend of growing polarization (which started during the Reagan administration) exploded.⁵⁹ With the Republican takeover of Congress, lawmakers who had previously divided on social issues refused to cooperate on institutional questions too. Most notably, the Senate Legal Counsel did not defend congressional prerogatives before the Supreme Court in any separation of powers dispute from 1995 until 2014 (where the Senate Counsel has filed a brief in *Zivotofsky v. Kerry*, a follow-up to a 2012 Supreme Court case concerning Congress's power to allow American citizens born in Jerusalem to declare Israel as their place of birth when obtaining a passport). In Part III, I will return to *Zivotofsky* and explain how bipartisanship about Israel is not at odds with claims made in this subsection. For the balance of this subsection, I will call attention to how the institutional counsel for the House and Senate reflect growing partisanship and polarization in Congress.

As noted, the principal manifestation of party polarization in the Senate was the failure of the Senate counsel to participate in litigation, especially litigation pitting the Congress against the executive. This failure was a byproduct of the statutory requirement that the Senate Legal Counsel can only participate in litigation with broad bipartisan support. Specifically, counsel representation of the Senate requires two-thirds support of a leadership group comprising four members of the majority party and three members of the minority party.⁶⁰ And while this requirement made perfect sense when the office was created (as a bipartisan effort to defend Senate institutional prerogatives in the wake of Watergate), it has largely resulted in the muting of the Senate Counsel. For example, in the *Canning* recess appointment case, the Senate counsel stood on the sidelines when counsel for Senate Republicans filed amicus briefs and made oral arguments before both the D.C. Circuit and Supreme Court.⁶¹

When it comes to the House, the majority party controls House litigation. Although the so-called Bipartisan Legal Advisory Group (BLAG) is composed of three majority and two minority party members, a simple majority can direct House counsel participation in litigation. In recent years, the BLAG turned its attention to the social issues that divide the parties, dividing itself along party lines when defending (in 2000) a federal statute overturning *Miranda v. Arizona*

59. See, e.g., Devins, *supra* note 5, at 753–59 (discussing increasing polarization in the context of constitutional hearings).

60. 2 U.S.C. § 288a(b) (2012) (leadership group membership); 2 U.S.C. § 288(a) (two-thirds support requirement for participation).

61. For their part, Democrats too were mute—unwilling to formally back the President's position on recess appointments and unwilling to join forces with Republicans in their bitter battle with Democrats over Obama administration efforts to fill judicial and administrative vacancies.

and (in 2012) the Defense of Marriage Act (DOMA). In both cases, the Democratic minority filed amicus briefs backing Clinton and Obama Department of Justice claims that these statutes were unconstitutional. In the DOMA case, for example, 132 House Democrats filed a July 2012 amicus brief arguing both that the DOMA is unconstitutional and that “the Bipartisan Legal Advisory Group . . . does not speak for a unanimous House on this issue.”⁶²

On issues involving congressional prerogatives to investigate the executive, partisanship also rules the day. The House is willing to assert its institutional prerogatives when the House majority and President are of different parties; otherwise, the House will not use litigation to defend its subpoena and investigatory powers. House Democrats went into court to challenge the Bush White House’s handling of a scandal involving the firing of U.S. Attorneys for partisan reasons⁶³; House Republicans likewise went into court to assert their prerogatives against Obama Attorney General Eric Holder’s handling of the Fast and Furious gun-running operation.⁶⁴

House and Senate participation (or lack of participation) in litigation buttresses the central claims of this paper. The House and Senate operated more as bipartisan institutions interested in preserving congressional power vis-à-vis the executive when Congress was less polarized; during the past twenty years, however, the participation of institutional counsel has become highly polarized. This polarization, moreover, spilled over to the amicus filings of individual members of the House and Senate.⁶⁵ In the *Canning* recess appointment case, the Senate’s counsel said nothing while Senate Republicans filed an amicus brief that sought to score political points against the Obama administration. In the DOMA case, House Democrats filed an amicus brief decrying the House counsel’s defense of the statute and, in so doing, called attention to how social issues often dominate political battles between the parties.

III. SOME CONCLUDING OBSERVATIONS WITH SPECIFIC REFERENCE TO *ZIVOTOFSKY V. KERRY*

Amicus filings by members of Congress as well as institutional filings by the House and Senate legal counsel are testament to

62. Brief of Members of the U.S. House of Representatives—Including Objecting Members of the Bipartisan Legal Advisory Group, Representatives Nancy Pelosi and Steny H. Hoyer—As *Amici Curiae* in Support of Plaintiffs-Appellees and Urging Affirmance at 1, *Massachusetts v. U.S. Dept. of Health and Human Services*, 682 F.3d 1 (No. 10-2204).

63. Grove & Devins, *supra* note 2, at 602–03.

64. *Id.*

65. For this reason, institutional counsel participation cannot neatly be separated from the participation of individual members.

increasing polarization in Congress. Unlike earlier lawmakers (who rarely filed single-party briefs and sometimes filed bipartisan briefs), today's lawmakers almost never file bipartisan briefs and typically file single-party briefs. Today's lawmakers, moreover, are particularly interested in staking out positions on socially divisive issues that separate Democrats from Republicans. For example, pre-1986 lawmakers saw state regulation of abortion as a state issue and did not file amicus briefs; since 1986, however, lawmakers frequently sign on to Democratic or Republican briefs in state abortion cases.

For reasons noted in Section I, lawmakers typically trade off institutional interest to pursue personal interests. The dramatic rise in lawmaker briefs on social issues and the increasingly partisan nature of those filings highlight how today's lawmakers speak to their increasingly partisan base by staking out positions on the social issues that matter to their base.

On separation of powers cases, however, lawmakers throughout the study have been less interested in staking out personal positions on cases implicating congressional power. Institutional questions rarely engage the base, and it is hardly surprising to see very few signatories on separation of powers cases and other cases that implicate congressional powers. Indeed, the very offices created to defend congressional interests in separation of powers disputes (the House and Senate counsel) are often absent from separation of powers disputes (the Senate counsel) or are increasingly engaged in social issues that divide the parties (the House counsel).

One recent exception to this practice actually highlights how separation of powers disputes matter only to lawmakers if there is an underlying policy issue that allows members to curry favor with their base. The issue in the case: the constitutionality of a statutory provision overriding State Department policy to disallow individuals born in Jerusalem to claim on their passports that they were born in Israel (so that the passport would designate the birthplace as Jerusalem, not Israel). That case, *Zivotofsky v. Clinton* (and now Kerry), has brought together an unusual bipartisan coalition of lawmakers who are strong proponents of Israel. In 2012 (when the dispute centered on the suitability of the case for judicial resolution), thirty-nine lawmakers from the House and Senate submitted a joint brief backing Congress's authority (twenty-three Democrats, fifteen Republicans, one Independent).⁶⁶ In 2014, after the Supreme Court ruled the case justiciable and granted certiorari to resolve the dispute, the Office of Senate Legal Counsel submitted a brief defending congressional prerogatives (marking the first time in twenty years that Democrats and Republicans were able

66. See Brief for Members of the United States Senate and the United States House of Representatives as *Amici Curiae* in Support of Petitioner at app. 1-5, *Zivotofsky v. Clinton*, 132 S. Ct. 1421 (No. 10-699) (listing House and Senate participants); see also Appendix C.

to come together to defend the constitutionality of legislation in a separation of powers dispute).⁶⁷ For its part, a bipartisan coalition of forty-two House members filed a brief supporting congressional prerogatives (twenty-four Republicans, eighteen Democrats).⁶⁸

The ability of Democrats and Republicans to come together in *Zivotofsky* is testament to Congress's bipartisan support of Israel, not lawmaker interest in the institutional questions that underlie the *Zivotofsky* dispute. As noted, the 2014 recess appointment case involved critical Senate prerogatives but nonetheless was pursued in purely partisan terms. Likewise, lawmakers who signed briefs in *Zivotofsky* regularly sign on to single-party briefs in the issues that divide the parties—as the *Zivotofsky* coalition is made up of some of the most liberal Democrats and most conservative Republicans.⁶⁹ *Zivotofsky* signatories also are some of the most pro-Israel members of Congress. Twelve of the forty-two 2014 House brief signers cosponsored a resolution expressing “solidarity with Israel as it takes necessary steps to provide security to its people by dismantling the terrorist infrastructure in the Palestinian areas”⁷⁰; twenty-two of the forty-two signed a letter to President Obama affirming the “commitment to the unbreakable bond that exists between our country and the state of Israel.”⁷¹ By way of contrast, no member of the *Zivotofsky* coalition spoke about the case's separation of powers implications on the House or Senate floor.

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67. See Brief for Members of the United States House of Representatives as *Amici Curiae* in Support of Petitioner at 1–5, *Zivotofsky v. Kerry* (No. 13-628) (decision not yet published); see also Devins, *supra* note 5, at 768 (noting failure of Senate counsel to defend acts of Congress and linking that failure to party polarization).
68. See Brief for Members of the United States House of Representatives as *Amici Curiae* in Support of Petitioner, *supra* note 67, at App. 1–3.
69. *Zivotofsky* signatories included the majority and ranking minority members of the House Committee on Foreign Affairs (Ed Royce and Eliot Engel); they also included liberal and conservative icons, including Democrats Harry Waxman and Jerold Nadler, Republicans Michele Bachmann and Steve Chabot. *Id.*
70. See H.R. Res. 392, 107th Cong. (2002) (enacted). The twelve cosponsoring members were Eliot Engel, Josephy Crowley, Gene Green, Steve Israel, Carolyn Maloney, Jerrold Nadler, Bill Pascrell, Ilena Ros-Lehmitnen, Adam Schiff, Brad Sherman, Pat Tiberi, and Henry Waxman. *Id.*
71. Letter by Representatives Steny Hoyer and Eric Cantor to Secretary of State Hillary Clinton Re-Affirming the U.S.-Israel Alliance (Mar. 26, 2010), available at [http://www.aipac.org/~media/Publications/Policy%20and%20Politics/Source%20Materials/Congressional%20Action/2010/3_26_10_Letter_to_Secretary_of_State_re_US_commitment_to_Israeli_Security_and_Middle_East_peace\(1\).pdf](http://www.aipac.org/~media/Publications/Policy%20and%20Politics/Source%20Materials/Congressional%20Action/2010/3_26_10_Letter_to_Secretary_of_State_re_US_commitment_to_Israeli_Security_and_Middle_East_peace(1).pdf) (last visited Mar. 30, 2015) (signed by 333 House members).

Zivotofsky, therefore, is the exception that proves the rule. A bipartisan coalition of lawmakers has cast aside other differences, standing together for Congress's institutional power while also advancing their personal agenda. Cases like *Zivotofsky* are extremely rare, and there is no other recent case that has brought together Democrats and Republicans to stand together against perceived executive encroachments into Congress's institutional power.⁷² Instead, it is far more likely to see Republicans but not Democrats defend Congress's appointments powers against the Obama administration. Correspondingly, when Democrats but not Republicans defended the Affordable Care Act, lawmakers were less interested in defending the scope of congressional power and more interested in advancing positions that resonate with their party and their base.

And so it goes. None of the above is especially surprising, and my study of congressional amicus participation before the Supreme Court has largely corroborated several common-sense propositions about the ways increasingly partisan lawmakers register their legal policy preferences. Sadly, my assessment also suggests that the Supreme Court should treat lawmaker briefs with skepticism. They are largely partisan statements intended to win favor with constituents. Rather than reflecting the institutional beliefs of Congress, they reflect the partisanship that often cripples Congress.

72. In contrast, during the Watergate era, members of Congress could seek personal gain by standing up for Congress's institutional prerogatives in disputes with the Nixon White House over war powers and the impoundment of appropriations. See Devins, *supra* note 5, at 773.

APPENDIX A: CONGRESSIONAL AMICUS FILINGS, 1974–85 & 2002–13

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYT/FP)	Social/Institutional/Federalism (S/I/F)
Brief for United States Senator Lee Metcalf	Buckley v. Valeo, 424 U.S. 1 (1976)	1974–1985	0	1	1D, 0R	All D	N	F
Brief of Senators Hugh Scott and Edward M. Kennedy, Amici Curiae	Buckley v. Valeo, 424 U.S. 1 (1976)	1974–1985	0	2	1D,1R	Bipartisan	"	"
Brief for Senators Harrison A. Williams, Jr. and Jacob K. Javits as Amici Curiae	National League of Cities v. Usery, 426 U.S. 833 (1976)	1974–1985	0	2	1D, 1R	Bipartisan	N	I
Brief Amicus Curiae of John D. Dingell (U.S. Rep., 16th Dist. Michigan)	Kleppe v. Sierra Club, 427 U.S. 390 (1976)	1974–1985	1	0	1D, 0R	All D	N	F
Brief for Amicus Curiae Henry A. Waxman in Support of Respondent	Regents of the University of Calif. v. Bakke, 438 U.S. 265 (1978)	1974–1985	1	0	1D, 0R	All D	Y	S
Brief for Hon. Patricia Schroeder, Hon. Yvonne Brathwaite Burke, Hon. John L. Burton, Hon. Cardiss Collins, Hon. Dante B. Fascell, Hon. Millicent Fenwick, Hon. Donald M. Fraser, Hon. Jim Leach, Hon. William Lehman, Hon. Helen S. Meyner, Hon. Barbara A. Mikulski, Hon. George Miller, Hon. Gladys Spellman Members of Congress as Amici Curiae	Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979)	1974–1985	13	0	11D, 2R	Lean D	N	I

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for Hon. Claude Pepper, Hon. Edward R. Roybal, Hon. Fred B. Rooney, Hon. Mario Biaggi, Hon. John L. Burton, Hon. John Paul Hammerschmidt, Hon. Charles E. Grassley, Hon. Matthew J. Rinaldo	Vance v. Bradley, 440 U.S. 93 (1979)	1974-1985	8	0	5D, 3R	Bipartisan	N	F
Brief Amici Curiae of the Honorable Thomas P. O'Neill, Jr., Speaker; The Honorable Frank Thompson, Jr., Chairman and Honorable William L. Dickinson, Committee on House Administration, of the United States House of Representatives	United States v. Helstoski, 442 U.S. 477 (1979)	1974-1985	3	0	2D, 1R	Bipartisan	Y	I
Brief Amici Curiae of the Honorable Warren G. Magnuson, President Pro Tempore; the Honorable Robert C. Byrd, Majority Leader; the Honorable Howard H. Baker, Jr., Minority Leader; the Honorable Claiborne Pell, Chairman; and the Honorable Mark O. Hatfield, Ranking Minority Member, Committee on Rules and Administration, of the United States Senate on Behalf of the United States Senate	Hutchinson v. Proxmire, 443 U.S. 111 (1979)	1974-1985	0	5	3D, 2R	Bipartisan	Y	I
Brief of the Honorable Thomas P. O'Neill, Jr., Speaker; the Honorable Jim Wright, Majority Leader and the Honorable John J. Rhodes, Minority Leader, of the United States House of Representatives, as Amici Curiae	Hutchinson v. Proxmire, 443 U.S. 111 (1979)	1974-1985	3	0	2D, 1R	Bipartisan	"	"

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
<p>Brief Amici Curiae of the Hon. Patricia Schroeder, Member of Congress, and The ACLU Women's Rights Project, Chicana Service Action Center, Creative Employment Project, Equal Rights Advocates, Inc., Federally Employed Women, Federally Employed Women's Legal and Education Fund, League of Women Voters of the United States, National Association of Black Women Attorneys, Inc., National Conference of Puerto Rican Women, Inc., National Federation of Business and Professional Women's Clubs, Inc., National Women's Employment Project, National Women's Political Caucus, National Organization for Women, NOW Legal Defense and Education Fund, Organization of Chinese American Women, 60 Words Per Minute, Skilled Jobs for Women, Inc., Wider Opportunities for Women, Inc., Women Employed, Women in Apprenticeship Program, Inc., Women in Construction Project, Women Working in Construction, Women's Division of R.T.P., Inc., Women's Equity Action League, Women's Equity Action League Educational and Legal Defense Fund, Women's International League for Peace and Freedom, and YWCA Women's Trade Center</p>	<p>United Steelworkers of America, AFL-CIO-CLC v. Weber et al., 443 U.S. 193 (1979)</p>	<p>1974-1985</p>	<p>1</p>	<p>0</p>	<p>1D, 0R</p>	<p>All D</p>	<p>Y</p>	<p>S</p>

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Rep. Jim Wright, Rep. John J. Rhodes, Rep. Robert H. Michel, Rep. Lindy Boggs, Rep. Mary Rose Oakar, Senator William Proxmire, Senator Thomas F. Eagleton, Senator Edward Zorinsky, and Certain Other Members of the Congress of the United States as Amici Curiae	Harris v. McRae, 448 U.S. 297 (1980)	1974–1985	224	15	104D, 135R	Bipartisan	Y	I
Brief Amici Curiae of the Affirmative Action Coordinating Center, the National Conference of Black Lawyers, the National Lawyers Guild, the Center for Constitutional Rights, the Center for Urban Law, Hon. Parren J. Mitchell, Member of Congress	Fullilove v. Klutznick, 448 U.S. 448 (1980)	1974–1985	1	0	1D, 0R	All D	Y	F
Brief of Amici Curiae, Congressman Robert W. Kastenmeier, Congressman Don Edwards and Senator Carl Levin	Rostker v. Goldberg, 453 U.S. 57 (1981)	1974–1985	2	1	3D, 0R	All D	Y	F
Brief of Amici Curiae, Congressman Lawrence P. McDonald, Congressman Newt Gingrich, Congressman John M. Ashbrook, Senator Jake Garn, Senator Orrin G. Hatch, and the Washington Legal Foundation	Rostker v. Goldberg, 453 U.S. 57 (1981)	1974–1985	3	2	1D, 4R	Lean R	“	“

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amici Curiae for Hon. Claude Pepper, Hon. Geraldine A. Ferraro, Hon. Tom Lantos, Hon. Bruce F. Vento, Hon. Thomas J. Downey, Hon. Mary Rose Oaker, Hon. Ron Wyden, Hon. John L. Burton, Hon. Henry A. Waxman, Hon. William Ratchford, Hon. James M. Jeffers, Hon. Barney Frank, Hon. Edward R. Roybal, Members of Congress as Amici Curiae	Lehman v. Nakshian, 453 U.S. 156 (1981)	1974–1985	13	0	12D, 1R	Lean D	N	F
Brief Amici Curiae on Behalf of Certain Members of Congress and Organizations (In Support of Appellee)	McCarty v. McCarty, 453 U.S. 210 (1981)	1974–1985	8	0	5D, 3R	Bipartisan	N	I
Brief Amicus Curiae Submitted on Behalf of National Citizens Committee for Broadcasting, National Black Media Coalition, Americans for Democratic Action, United Food & Commercial Workers International Union, Stewart Rawlings Mott, National Unity Campaign for John Anderson, James L. Buckley, National Education Association, Rep. Albert Gore, Jr., Rep. Bill Frenzel, and Jerome Barron	CBS, Inc. v. Federal Communications Commission, 453 U.S. 367 (1981)	1974–1985	2	0	1D, 1R	Bipartisan	Y	S
Brief Amici Curiae	Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981)	1974–1985	20	3	18D, 5R	Lean D	Y	I

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief as Amici Curiae of the Honorable Max Baucus, the Honorable Mark N. Andrews, the Honorable Quentin N. Burdick, the Honorable Dennis Deconcini, the Honorable John Melcher, the Honorable Hank Brown, the Honorable Byron L. Dorgan, the Honorable Ray Kogovsek, the Honorable Michael E. Lowry, the Honorable Ron Marlenee, the Honorable Jim Santini, the Honorable Allen Byron Swift, the Honorable Pat Williams, the Honorable Timothy E. Wirth in Support of Appellees	Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981)	1974–1985	0	14	11D, 3R	Lean D	“	“
Brief as Amicus Curiae of Several Members of Congress in Support of Respondents	Weinberger v. Rossi, 456 U.S. 25 (1982)	1974–1985	4	0	2D, 2R	Bipartisan	N	F
Brief Amici Curiae on Behalf of Birch Bayh, Robert Drinan, Don Edwards, Edith Green, Patsy Minkand and Patricia Schroeder	North Haven Board of Education v. Bell, 456 U.S. 512 (1982)	1974–1985	2	0	2D, 0R	All D	Y	F
Brief Amicus Curiae of Senator Orrin G. Hatch and Representatives John D. Dingell, Robert K. Dornan, Barney Frank, Albert Gore, Jr., A. Toby Moffett and Patricia Schroeder, Members of Congress, in Support of Respondent	Nixon v. Fitzgerald, 457 U.S. 731 (1982)	1974–1985	6	1	5D, 2R	Lean D	Y	S

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for Honorable Bobbi Fielder, Member of Congress as Amicus Curiae	Crawford v. Board of Education of Los Angeles, 458 U.S. 527 (1982)	1974–1985	1	0	0D, 1R	All R	N	S
Brief Amici Curiae of the N.A.A.C.P. Legal Defense and Educational Fund, Inc. and the Congressional Black Caucus in Support of Appellees	Rogers v. Lodge, 458 U.S. 613 (1982)	1974–1985	18	0	18D, 0R	All D (Congressional Black Caucus)	N	F
Brief of Congressman Trent Lott as Amicus Curiae	Bob Jones University v. United States, 461 U.S. 574 (1983)	1974–1985	1	0	0D, 1R	All R	Y	S
Brief of United States Representative Silvio O. Conte Amicus Curiae	United States v. Ptasynski, 462 U.S. 74 (1983)	1974–1985	1	0	0D, 1R	All R	N	I
Brief Amici Curiae of Senator Don Nickles, Congressmen Mickey Edwards, Jack Fields, RonPaul and the Washington Legal Foundation	United States v. Ptasynski, 462 U.S. 74 (1983)	1974–1985	3	1	0D, 4R	All R	“	“

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amicus Curiae of Representatives Patricia Schroeder, Dante B. Fascell, Morris K. Udall, Shirley Chisholm, Bruce F. Vento, Donald Joseph Albosta, Geraldine Ferraro, Mike Lowry, Thomas E. Petri, and Senator William Proxmire, Members of Congress, and the National Taxpayers Union, in Support of Petitioner	Bush v. Lucas, 462 U.S. 367 (1983)	1974–1985	9	1	9D, 1R	Lean D	N	S
Brief of Certain Members of the United States House of Representatives, amici curiae	Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983)	1974–1985	9	0	9D, 0R	All D	Y	I

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of the Honorable Claudine C. Schneider, Gary Ackerman, Michael A. Andrews, Anthony C. Beilenson, William S. Broomfield, Sala Burton, Rod Chandler, Barber B. Conable, Jr., Alan Cranston, George W. Crockett, Jr., Norman E. D'Amours, Robert W. Davis, Bob Dole, Byron L. Dorgan, Don Edwards, Cooper Evans, Lane Evans, Walter E. Fauntroy, Vic Fazio, Geraldine A. Ferraro, Barney Frank, Dan Glickman, William H. Gray III, Bill Green, James M. Jeffords, Nancy L. Johnson, Marcy Kaptur, Barbara B. Kennelly, William Lehman, Mickey Leland, Mel Levine, John R. McKernan, Jr., Stewart B. McKinney, Buddy MacKay, Lynn Martin, Barbara A. Mikulski, Norman Y. Mineta, Bruce A. Morrison, Mary Rose Oaker, James R. Ollin, Rob Packwood, Claude Pepper, Edward R. Roybal, Patricia Schroeder, Paul Simon, Olympia J. Snowe, Estaban Edward Torres, James Weaver, Ted Weiss, Howard Wolpe of the United States Congress, as Amici Curiae	Grove City College v. Bell 465 U.S. 555 (1984)	1974-1985	47	3	35D, 15R	Lean D	Y	F
Brief of Amici Curiae Senators Alan Cranston, Robert J. Dole, Orrin Hatch, Edward M. Kennedy, Claiborne Pell, Robert T. Stafford, Lowell P. Weicker, Jr., and Representatives Mario Biaggi, Don Edwards, William D. Ford, James M. Jeffords, George Miller, Austin J. Murphy, and Pat Williams in Support of Respondent	Consolidated Rail Corp. v. Darrone 465 U.S. 624 (1984)	1974-1985	7	7	8D, 6R	Bipartisan	N	F

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of American Federation of Government Employees, AFL-CIO, and James L. Oberstar, Member of Congress, as Amici Curiae	Heckler v. Mathews, 465 U.S. 728 (1984)	1974–1985	1	0	1D, 0R	All D	N	I
Brief for the Undersigned Senators and Representatives as Amicus Curiae	Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752 (1984)	1974–1985	10	9	17D, 2R	Lean D	N	I
Brief of Amici Curiae in Support of Respondent	Immigration and Naturalization Service v. Stevic, 467 U.S. 407 (1984)	1974–1985	3	0	3D, 0R	All D	N	I
Brief on Behalf of Petitioners in 5 Cases Pending Before the Court of Appeals for the Federal Circuit, Mary Rose Oakar, Member of Congress, and Patricia Schroeder, Member of Congress, as Amici Curiae	Lindahl v. Office of Personnel Management, 470 U.S. 768 (1985)	1974–1985	2	0	2D, 0R	All D	N	I
Brief of Amicus Curiae Lowell P. Weicker, Jr. in Support of Appellees	Wallace v. Jaffree, 472 U.S. 38 (1985)	1974–1985	0	1	0D, 1R	All R	Y	S

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for U.S. Senators Alphonse M. D'Amato, Daniel P. Moynihan, and U.S. Representatives Hamilton Fish, Robert Garcia, John J. LaFalce, Stanley L. Lundine, Charles E. Schumer, and George C. Wortley as Amici Curiae in Support of Petitioners	Northeast Bancorp Inc. v. Federal Reserve System, 472 U.S. 159 (1985)	1974–1985	6	2	5D, 3R	Bipartisan	Y	I
Brief Amici Curiae of the National Association for the Advancement of Colored People, Members of the Congressional Black Caucus' Haitian Refugee and Caribbean Task Forces and of the Congressional Hispanic Caucus, the Chairman of the Congressional Black Caucus, the National Conference of Black Lawyers, The Southern Christian Leadership Conference, and the Mexican American Legal Defense and Educational Fund in Support of Petitioners	Jean v. Nelson, 472 U.S. 846 (1985)	1974–1985	8	0	8D, 0R	All D	N	F
Brief Amici Curiae in Support of Respondent on Behalf of Senator Alan Cranston, Senator Claiborne Pell, Senator Robert Stafford, Senator Lowell Weicker, Representative Mario Biaggi, Representative Don Edwards, Representative William Ford, Representative James Jeffords, and Representative George Miller	Atascadero State Hospital v. Scanlon, 473 U.S. 234 (1985)	1974–1985	5	4	6D, 3R	Lean D	N	I

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Amici Curiae of the American Jewish Congress on Behalf of Itself, the National Jewish Community Relations Advisory Council, the Committee for Public Education and Religious Liberty, Inc., and Representative Don Edwards	Bender v. Williamsport Area School District, 475 U.S. 534 (1986)	1974–1985	1	0	1D, 0R	All D	N	S
Brief Amicus Curiae of Senator Bob Packwood (R-Ore.), Representative Don Edwards (D-Calif.) and Certain Other Members of the Congress of the United States in Support of Appellees.	Diamond v. Charles, 476 U.S. 54 (1986)	1974–1985	68	13	70D, 11R	Lean D	N	S
Brief Amicus Curiae of U.S. Sen. Gordon J. Humphrey (R-N.H.), U.S. Sen. Orrin G. Hatch (R-Utah), U.S. Rep. Christopher H. Smith (R-N.J.), U.S. Rep. Alan B. Mullohan (D-W.Va.) and Certain Other Members of the Congress of the United States in Support of Appellants	Diamond v. Charles, 476 U.S. 54 (1986)	1974–1985	68	14	18D, 64R	Lean R	“	“
Brief Amicus Curiae of Congressional Coalition in Support of Respondents	Wygant v. Jackson Board of Education, 476 U.S. 267 (1986)	1974–1985	9	0	8D, 1R	Lean D	Y	S
Brief Amicus Curiae of Hon. Orrin G. Hatch and Austin J. Murphy, Members of the Congress of the United States, in Support of Petitioner, Margaret M. Heckler	Bowen v. American Hospital Association, 476 U.S. 610 (1986)	1974–1985	1	1	1D, 1R	Bipartisan	Y	I

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amicus Curiae of Senator Bob Packwood (R-Ore.), Representative Don Edwards (D-Calif.) and Certain Other Members of the Congress of the United States in Support of Appellees.	Thornburgh v. American College of Obstetricians and Gynecologists 476 U.S. 747 (1986)	1974–1985	68	13	70D, 11R	Lean D	Y	S
Brief Amicus Curiae of U.S. Sen. Gordon J. Humphrey (R-N.H.), U.S. Sen. Orrin G. Hatch (R-Utah), U.S. Rep. Christopher H. Smith (R-N.J.), U.S. Rep. Alan B. Mullohan (D-W.Va.) and Certain Other Members of the Congress of the United States in Support of Appellants	Thornburgh v. American College of Obstetricians and Gynecologists 476 U.S. 747 (1986)	1974–1985	69	13	18D, 64R	Lean R	“	“
Brief of Amici Curiae Members of Congress in Support of Respondent	Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)	1974–1985	28	1	23D, 6R	Lean D	Y	F
Brief of Amici Curiae Congressmen Thomas J. Bliley, Jr., Philip M. Crane, William E. Dannemeyer, Newt Gingrich and the Washington Legal Foundation in Support of Petitioners (Filed with Written Consent)	Riverside v. Rivera, 477 U.S. 561 (1986)	1974–1985	4	0	0D, 4R	All R	N	I

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amicus Curiae of Food Research and Action Center; the Honorable Mickey Leland, Member of Congress; American Federation of State, County and Municipal Employees; American Public Health Association; Bread for the World; Center for Law and Social Policy; Community Life Services, Inc.; International Union, United Automobile, Aerospace and Agricultural Implement Workers of America—Uaw; National Legal Aid and Defender Association; Public Voice for Food and Health Policy; United Food and Commerical Workers; and Tomasa Montanez, Urging Affirmance	Lyng v. Castillo, 477 U.S. 635 (1986)	1974–1985	1	0	1D, 0R	All D	Y	F
Brief of Senators Dennis DeConcini, Robert J. Dole, Charles E. Grassley, Edward M. Kennedy, Charles McC. Mathias, Jr., and Howard M. Metzenbaum, and Representatives Don Edwards, Hamilton Fish, Jr., Peter W. Rodino, Jr., and F. James Sensenbrenner as Amici Curiae in Support of Appellees	Thornburg v. Gingles, 478 U.S. 30 (1986)	1974–1985	4	6	5D, 5R	Bipartisan	N	F
Amicus Curiae Brief of the Members of the California Democratic Congressional Delegation	Davis v. Bandemer, 478 U.S. 109 (1986)	1974–1985	27	1	28D, 0R	All D	Y	S
Brief for Amici Curiae Representatives F. James Sensenbrenner, Jr., John Conyers, Jr., Howard Coble, and Howard L. Berman in Support of Respondent	Eldred v. Ashcroft, 537 U.S. 186 (2003)	2002–2013	4	0	2D, 2R	Bipartisan	N	F

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Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Senator Orrin G. Hatch as Amicus Curiae in Support of Respondent	Eldred v. Ashcroft, 537 U.S. 186 (2003)	2002-2013	0	1	0D, 1R	All R	-	-
Brief for Amici Curiae Senators Patrick Leahy, Orrin Hatch, Robert Torricelli and Charles Schumer, Representatives John Conyers, Lindsey Graham and Jerrold Nadler, and the Association of Communications Enterprises in Support of Repondents	F.C.C. v. NextWave Personal Communications Inc., 537 U.S. 293 (2003)	2002-2013	3	4	5D, 2R	Lean D	N	I
Brief Amici Curiae of the National Association for the Advancement of Colored People, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Congressional Black Caucus in Support of Appellants	Branch v. Smith, 538 U.S. 254 (2003)	2002-2013	39	0	38D, 1R	Lean D (Congressional Black Caucus)	N	F
Brief of Washington Legal Foundation; Allied Educational Foundation; U.S. Reps. Bob Barr, Joe Barton, John Doolittle, Walter Jones, and Lamar Smith; and U.S. Senator Jesse Helms as Amici Curiae in Support of Petitioners	Demore v. Kim, 538 U.S. 510 (2003)	2002-2013	5	1	0D, 6R	All R	N	I
Brief of Amici Curiae Senators Christopher Dodd and Edward M. Kennedy, and Representatives Patricia Schroeder, Marge Roukema and George Miller in Support of Respondents	Nevada Dept. of Human Resources v. Hibbs, 538 U.S. 721 (2003)	2002-2013	34	15	47D, 1R, 1I	Lean D	Y	F

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amici Curiae of Senator Trent Lott, Congressman Charles W. “Chip” Pickering, Congressman Mark Souder, and Congressman Roger F. Wicker in Support of Appellants	United States v. American Library Ass'n, Inc., 539 U.S. 194 (2003)	2002-2013	3	1	0D, 4R	All R	Y	F
Brief of Members of the United States Congress as Amici Curiae in Support of Respondents	Gratz v. Bollinger, 539 U.S. 244 (2003)	2002-2013	59	1	60D, 0R	All D	Y	S
Brief of John Conyers, Jr., Member of Congress; John D. Dingell, Member of Congress; Charles B. Rangel, Member of Congress; Fortney Pete Stark, Member of Congress; Edward J. Markey, Member of Congress; George Miller, Member of Congress; Dale E. Kildee, Member of Congress; Martin Frost, Member of Congress; Robert T. Matsui, Member of Congress; Martin Olav Sabo, Member of Congress; Barney Frank, Member of Congress; Steny H. Hoyer, Member of Congress; et al., as Amici Curiae in Support of Respondents	Gratz v. Bollinger, 539 U.S. 244 (2003)	2002-2013	112	0	111D, 0R, 1I	All D	"	"
Brief of Representative Richard A. Gephardt, et al., as Amici Curiae Supporting Respondents	Gratz v. Bollinger, 539 U.S. 244 (2003)	2002-2013	7	0	7D, 0R	All D	"	"

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of John Conyers, Jr., Member of Congress; John D. Dingell, Member of Congress; Charles B. Rangel, Member of Congress; Fortney Pete Stark, Member of Congress; Edward J. Markey, Member of Congress; George Miller, Member of Congress; Dale E. Kildee, Member of Congress; Martin Frost, Member of Congress; Robert T. Matsui, Member of Congress; Martin Olav Sabo, Member of Congress; Barney Frank, Member of Congress; Steny H. Hoyer, Member of Congress; et al., as Amici Curiae in Support of Respondents	Grutter v. Bollinger, 539 U.S. 306 (2003)	2002-2013	112	0	111D, 0R, 1I	All D	Y	S
Brief of Representative Richard A. Gephardt, et al., as Amici Curiae Supporting Respondents	Grutter v. Bollinger, 539 U.S. 306 (2003)	2002-2013	7	0	7D, 0R	All D	“	“
Brief of Rep. Henry A. Waxman and 51 Other Members of Congress as Amici Curiae in Support of Respondent	Am. Ins. Ass'n v. Garamendi, 539 U.S. 396 (2003)	2002-2013	48	3	45D, 6R	Lean D	N	S
Amicus Curiae Brief in Support of Respondent by Members of the United States Congress, Representatives Dennis J. Kucinich, Bernard Sanders, Corrine Brown, and Bob Filner	Nike, Inc. v. Kasky, 539 U.S. 654 (2003)	2002-2013	4	0	4D, 0R	All D	Y	S

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Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYT/FP)	Social/Institutional/Federalism (S/I/F)
Brief of Amici Curiae Representatives Castle and Price, and Representatives Allen, Andrews, Baird, Bass, Boehlert, Cardin, Eshoo, Frank, Gilchrest, Greenwood, Holt, Houghton, Nancy L. Johnson, Leach, John Lewis, Kenneth Lucas, Maloney, Petri, Platts, Ramstad, Schiff, Simmons, and Tom Udall in Support of Appellees	McCormell v. Federal Election Com'n., 540 U.S. 93 (2003)	2002-2013	25	0	13D, 12R	Bipartisan	Y	F
Brief of the Honorable Fred Thompson as Amicus Curiae in Support of Defendants-Appellees	McCormell v. Federal Election Com'n., 540 U.S. 93 (2003)	2002-2013	0	1	0D, 1R	All R	"	"
Brief for United States Senators John Cornyn, Jon Kyl, Lindsey O. Graham, Larry E. Craig, and Saxby Chambliss, Chairman and Members of the Senate Subcommittee on the Constitution, Civil Rights, and Property Rights, as Amicus Curiae in Support of Petitioners	Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004)	2002-2013	0	5	0D, 5R	All R	Y	S
Brief for the United States Senate as Amicus Curiae Supporting Petitioners	Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004)	2002-2013	0	SLC (brief not included in analysis)				
Brief for the Bipartisan Legal Advisory Group of the United States House of Representatives as Amicus Curiae in Support of Petitioners	Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004)	2002-2013	BLAG (brief not included in analysis)	0				

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amici Curiae of United States Senators, George Allen, Sam Brownback, James Inhofe, Trent Lott, Zell Miller, and Ted Stevens, and United States Representatives Robert Aderholt, Todd Akin, Rodney Alexander, Cass Ballenger, J. Gresham Barrett, Roscoe Bartlett, Bob Beauprez, Sanford Bishop, Marsha Blackburn, Roy Blunt, Ken Calvert, Chris Cannon, Tom Cole, Michael Collins, Philip Crane, John Culberson, Jo Ann Davis, Mario Diaz-Balart, John Doolittle, Jeff Flake, Randy Forbes, Trent Franks, Scott Garrett, Phil Gingrey, Virgil Goode, Gil Gutknecht, Melissa Hart, Jeb Hensarling, Wally Herger, Peter Hoekstra, Duncan Hunter, Johnny Isakson, Ernest Istook, Walter Jones, Ric Keller, Steve King, Jack Kingston, John Kline, Frank Lucas, Donald Manzullo, Jim Marshall, John McHugh, Gary Miller, Jeff Miller, Sue Myrick, Bob Ney, Doug Ose, C.L. Otter, Steve Pearce, Charles Pickering, Joseph Pitts, Jim Ryun, Edward Schrock, Pete Sessions, John Shadegg, John Shimkus, Mark Souder, John Sullivan, Lee Terry, Dave Weldon, M.D., Roger Wicker, and Joe Wilson, and The Committee to Protect the Pledge Supporting Petitioners	Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004)	2002–2013	62	6	4D, 64R	Lean R	“	“

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for Idaho Governor Dirk Kempthorne, United States Senator Mike Crapo, United States Representative Mike Simpson, United States Representative C.L. “Butch” Otter, President Pro Tempore of the Idaho State Senate Robert L. Geddes, and Speaker of the Idaho House of Representatives Bruce Newcomb as Amici Curiae in Support of Petitioner Elk Grove Unified School District, et al.	Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004)	2002-2013	2	1	0D, 3R	All R	“	“
Brief of Amici Curiae, United States Congress Member Ron Paul, California State Assembly Member Ray Haynes, Gilbert Armijo, National Lawyers Association, Traditional Values Coalition, Traditional Values Coalition Education & Legal Institute, Campaign for California Families, Pastors Information Resource Council, the Pro-Family Law Center, West Covina Unified School District, the Louisiana Family Forum, Cathy Fitzgerald, Daniel S. Hahn, Lawrence Spicher, Mark Cooper, Natisha Cooper, Lana Loza, Janice Walker, Evelyn Bradley, Marjorie Silveira, in Support of Petitioners’ Petition for Writ of Certiorari.	Elk Grove Unified School District v. Newdow, 542 U.S. 1 (2004)	2002-2013	1	0	1R	All R	’	’
Brief for Amicus Curiae Senators Edward M. Kennedy, John McCain, Bob Graham and Representatives John D. Dingell, Charlie Norwood, George Miller, and Charles B. Rangel in Support of Respondents	Aetna Health Inc. v. Davila, 542 U.S. 200 (2004)	2002-2013	4	3	5D, 2R	Lean D	Y	I

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for United States Senators John Cornyn and Larry E. Craig as Amicus Curiae in Support of Donald H. Rumsfeld	Hamdi v. Rumsfeld, 542 U.S. 507 (2004)	2002-2013	0	2	0D, 2R	All R	Y	F
Brief of the Center for American Unity, Friends of Immigration Law Enforcement, National Center on Citizenship and Immigration, and Representatives Steve King, Dana Rohrabacher, Lamar S. Smith, Thomas G. Tancredo, Roscoe Bartlett, Mac Collins, Joe Barton, and John J. Duncan, Jr. As Amici Curiae Supporting Affirmance	Hamdi v. Rumsfeld, 542 U.S. 507 (2004)	2002-2013	8	0	0D, 8R	All R	"	"
Brief of Washington Legal Foundation, U.S. Representatives Joe Barton, Walter Jones, and Lamar Smith, and Allied Educational Foundation as Amici Curiae in Support of Respondents	Hamdi v. Rumsfeld, 542 U.S. 507 (2004)	2002-2013	3	0	0D, 3R	All R	"	"
Brief of Members of the United States Congress as Amici Curiae in Support of Respondents	Granholm v. Heald, 544 U.S. 460 (2005)	2002-2013	18	2	13D, 7R	Bipartisan	Y	I

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of U.S. Representative Mark E. Souder; U.S. Representative Cass Ballenger; U.S. Representative Dan Burton; U.S. Representative Katherine Harris; U.S. Representative Ernest J. Istook, Jr.; U.S. Representative Jack Kingston; and U.S. Representative Doug Ose, as Amici Curiae in Support of Petitioners	Gonzales v. Raich, 545 U.S. 1 (2005)	2002-2013	7	0	7R, 0D	All R	Y	F
Brief Amici Curiae of United States Senator Patrick Leahy and United States Senator Orrin G. Hatch in Support of neither Party	Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd., 545 U.S. 913 (2005)	2002-2013	0	2	1D, 1R	Bipartisan	Y	F
Amicus Curiae Brief of Senators Rick Santorum, Tom Coburn, M.D., James M. Inhofe, Jim Demint, Christopher S. Bond, Larry Craig, Judd Gregg, and Sam Brownback, and Representatives Steve Chabot, Chris Smith, Jack Kingston, John Shimkus, Joseph R. Pitts, Henry Hyde, Mark Green, Todd Akin, Roscoe Bartlett, Jeff Miller, Steve King, Thomas Petri, Mark E. Souder, Pete King, Paul Ryan, Virgil H. Goode, Jr., Gene Taylor, John N. Hostettler, and Ralph Hall in Support of Petitioners	Gonzales v. Oregon, 546 U.S. 243 (2006)	2002-2013	20	8	1D, 27R	Lean R	Y	S

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for 47 Members of the United States Congress as Amici Curiae in Support of Respondents	Scheidler v. National Organization for Women, 547 U.S. 9 (2006)	2002-2013	47	0	47D, 0R	All D	N	S
Brief of Amici Curiae Original Congressional Sponsors of 18 U.S.C. § 4001(A) in Support of Petitioner	Padilla v. Hanft, 547 U.S. 1062 (2006)	2002-2013	1	0	1D, 0R	All D	Y	F
Amicus Curiae Brief of U.S. Congressman Ron Paul in Support of Petitioner	Texas State Bank v. United States, 547 U.S. 1206 (2006)	2002-2013	1	0	0D, 1R	All R	N	I
Brief for Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, and Representative Martin Meehan as Amici Curiae in Support of Respondents	Randall v. Sorrell, 548 U.S. 230 (2006)	2002-2013	2	2	2D, 2R	Bipartisan	Y	S
Brief Amici Curiae of Senator John F. Reed, Senator Thomas R. Carper, Senator Mark Dayton, Senator Richard J. Durbin, Senator Dianne Feinstein, Senator Tom Harkin, Senator Edward M. Kennedy, Senator Carl Levin, Representative Charles F. Bass, Representative Michael N. Castle, Representative James A. Leach, Representative Tom Osborne, Representative Todd Russell Platts in Support of the Respondents	Randall v. Sorrell, 548 U.S. 230 (2006)	2002-2013	5	8	8D, 5R	Bipartisan	"	"

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of United States Senator Mitch McConnell as Amicus Curiae in Support of Petitioners	Randall v. Sorrell, 548 U.S. 230 (2006)	2002-2013	0	1	0D, 1R	All R	“	“
Brief of Senators Graham and Kyl as Amicus Curiae in Support of Respondents	Hamdan v. Rumsfeld, 548 U.S. 557 (2006)	2002-2013	0	2	0D, 2R	All R	Y	F
Brief of Amici Curiae U.S. Representative Joe L. Barton in Support of the Respondents	Environmental Defense v. Duke Energy Corp., 549 U.S. 561 (2007)	2002-2013	1	0	0D, 1R	All R	Y	F
Brief of Current and Former Members of Congress Henry A. Waxman, Edward J. Markey, Fred Rooney, Andrew Maguire, Richard Ottinger, Anthony J. Moffett, and Wendell Anderson as Amicus Curiae Supporting the Petitioner	Environmental Defense v. Duke Energy Corp., 549 U.S. 561 (2007)	2002-2013	2	0	2D, 0R	All D	“	“
Brief of Amicus Curiae the Honorable Steve Chabot, Chair, Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives	Torromeo v. Town of Fremont, 549 U.S. 886 (2006)	2002-2013	0	1	0D, 1R	All R	N	I
Brief of Amici Curiae the American Civil Rights Union and Congressman Dan Lungren in Support of Petition for Writ of Certiorari	Evans v. City of Berkeley, 549 U.S. 987 (2006)	2002-2013	1	0	0D, 1R	All R	N	S

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Motion for Leave to File Amici Curiae Brief and Amici Curiae Brief of United States Congressmen Tim Murphy, Rob Bishop, Tom Feeney, Louis Gohmert, Patrick McHenry, and Paul Ryan and the Thomas More Law Center in Support of Petitioners	Fields v. Palmdale School District, 549 U.S. 1089 (2006)	2002-2013	6	0	0D, 6R	All R	N	S
Brief of Amici Curiae Congressmen Bob Filner and Tom Tancredo, on Behalf of the Iran Human Rights and Democracy Caucus of the U.S. House of Representatives, in Support of Petitioners	Rahmani v. United States, 549 U.S. 1110 (2007)	2002-2013	2	0	1D, 1R	Bipartisan	N	F
Brief of Amici Curiae, 52 Members of Congress in Support of Planned Parenthood Federation, Inc., et al.	Gonzales v. Carhart, 550 U.S. 124 (2007)	2002-2013	49	3	52D, 0R	All D	Y	S
Brief of Amici Curiae American Association of Pro Life Obstetricians and Gynecologists (AAPLOG), Senator Tom Coburn, M.D., Congressman Charles Boustany, Jr, M.D., Congressman Michael Burgess, M.D., Congressman Phil Gingrey, M.D., Congressman Dave Weldon, M.D., C. Everett Koop, M.D., Edmund D. Pellegrino, M.D. in Support of Petitioner	Gonzales v. Carhart, 550 U.S. 124 (2007)	2002-2013	4	1	0D, 5R	All R	"	"
Amicus Brief of the American Center for Law and Justice, 78 Members of Congress, and the Committee to Protect the Ban on Partial Birth Abortion in Support of Petitioner	Gonzales v. Carhart, 550 U.S. 124 (2007)	2002-2013	76	2	1D, 77R	Lean R	"	"

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Amicus Brief of the American Center for Law and Justice and 70 Members of Congress in Support of Petitioner	Gonzales v. Carhart, 550 U.S. 124 (2007)	2002-2013	67	3	1D, 69R	Lean R	"	"
Brief of Amici Curiae Congressman Ron Paul and Association of American Physicians and Surgeons in Support of Petitioner	Gonzales v. Carhart, 550 U.S. 124 (2007)	2002-2013	1	0	0D, 1R	All R	"	"
Brief for Senator Edward M. Kennedy, Senator Tom Harkin, Senator Christopher J. Dodd, Senator Russell D. Feingold, Representative George Miller, Representative Edward J. Markey, Representative Major R. Owens, Representative Lynn C. Woolsey, Representative Danny K. Davis, Representative Rush Holt, and Representative Dennis Kucinich as Amici Curiae in Support of Petitioners	Winkelman ex rel. Winkelman v. Parma City School District, 550 U.S. 516 (2007)	2002-2013	7	4	11D, 0R	All D	N	I
Brief of Amici Curiae Senators Edward M. Kennedy, Orrin G. Hatch, and Dianne Feinstein in Support of Affirmance	Claiborne v. United States, 551 U.S. 87 (2007)	2002-2013	0	3	2D, 1R	Bipartisan	N	S
Brief of United States Senator Mitch McConnell as Amicus Curiae in Support of Appellee	Federal Election Commission v. Wisconsin Right to Life, Inc., 551 U.S. 449 (2007)	2002-2013	0	1	0D, 1R	All R	Y	F

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for Amici Curiae Senators Edward M. Kennedy, Patty Murray, Maria Cantwell, Thomas Harkin, Richard J. Durbin, Barack Obama, and Ken Salazar in Support of Respondents	Parents Involved v. Seattle School Dist. No. 1, 551 U.S. 701 (2007)	2002-2013	0	7	7D, 0R	All D	Y	S
Brief of Rep. Jim McDermott et al. as Amici Curiae in Support of Respondents	Parents Involved v. Seattle School Dist. No. 1, 551 U.S. 701 (2007)	2002-2013	15	0	15D, 0R	All D	“	“
Brief of Representatives Howard Berman, Barney Frank, Zoe Lofgren and George Miller as Amici Curiae Supporting Petitioner	McDermott v. Boehner, 552 U.S. 1072 (2007)	2002-2013	4	0	4D, 0R	All D	N	F
Brief of Amicus Curiae, United States Congressman Keith Ellison, in Support of Petitioners	Crawford v. Marion County Election Board, 553 U.S. 181 (2008)	2002-2013	40	1	41D, 0R	All D	Y	F
Brief of United States Senators Mitch McConnell, Robert Bennett, Christopher S. “Kit” Bond and United States Representatives Roy Blunt, Lamar Smith and Vernon Ehlers as Amici Curiae in Support of Respondents [Federal Preemption and the Federal Help America Vote Act]	Crawford v. Marion County Election Board, 553 U.S. 181 (2008)	2002-2013	3	3	0D, 6R	All R	“	“

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYT/FP)	Social/Institutional/Federalism (S/I/F)
Brief of United States Senator Dianne Feinstein, United States Representative Robert A. Brady, and United States Representative Zoe Lofgren as Amici Curiae in Support of Petitioners [Federal Preemption]	Crawford v. Marion County Election Board, 553 U.S. 181 (2008)	2002-2013	2	1	3D, 0R	All D	"	"
Amicus Brief for the American Center for Law and Justice and Eighteen Members of Congress in Support of Petitioner	United States v. Williams, 553 U.S. 285 (2008)	2002-2013	17	1	0D, 18R	All R	N	F
Brief of Senator Charles E. Grassley as Amicus Curiae in Support of Respondents	Allison Engine Co. v. U.S. ex rel. Sanders, 553 U.S. 662 (2008)	2002-2013	0	1	0D, 1R	All R	N	I
Brief Amicus Curiae of United States Senator Arlen Specter in Support of Petitioners	Boumediene v. Bush, 553 U.S. 723 (2008)	2002-2013	0	1	0D, 1R	All R	Y	F
Brief Amicus Curiae of United States Senator Theodore F. Stevens, United States Senator Lisa Murkowski, and United States Representative Don Young in Support of Respondents	Exxon Shipping Co. v. Baker, 554 U.S. 471 (2008)	2002-2013	1	2	0D, 3R	All R	Y	I
Brief for Amici Curiae 55 Members of United States Senate, the President of the United States Senate, and 250 Members of United States House of Representatives in Support of Respondent	District of Columbia v. Heller, 554 U.S. 570 (2008)	2002-2013	250	55	76D, 229R	Lean R	Y	S

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Members of Congress as Amici Curiae in Support of Reversal	District of Columbia v. Heller, 554 U.S. 570 (2008)	2002-2013	18	0	18D, 0R	All D	*	*
Brief of Fourteen Members of the U.S. House of Representatives as Amici Curiae in Support of Petitioners	Defenders of Wildlife v. Chertoff, 554 U.S. 918 (2008)	2002-2013	14	0	14D, 0R	All D	N	I
Brief Amici Curiae of United States Senators Frank R. Lautenberg, Dianne Feinstein, and Patty Murray in Support of Petitioner	United States v. Hayes, 555 U.S. 415 (2009)	2002-2013	0	3	3D, 0R	All D	N	I
Brief of Amici Curiae Members of Congress in Support of Respondent	Wyeth v. Levine, 555 U.S. 555 (2009)	2002-2013	10	8	18D, 0R	All D	Y	I
Brief Amici Curiae of the American Center for Law & Justice and United States Representatives Charles Pickering, Roscoe Bartlett, Kevin Brady, Paul Broun, Danny Davis, John Doolittle, Mary Fallin, Trent Franks, Wally Herger, Jim Jordan, Doug Lamborn, Kenny Marchant, Jeff Miller, Marilyn Musgrave, Joe Pitts, Mark Souder, Tim Walberg and Dave Weldon In Support of Petitioner	F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502 (2009)	2002-2013	18	0	1D, 17R	Lean R	N	S

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Eleven Members of Congress, Washington Legal Foundation, Veterans United For Truth, National Veterans Organization of America, and Allied Educational Foundation, as Amici Curiae in Support of Respondents	Republic of Iraq v. <i>Beaty</i> , 556 U.S. 848 (2009)	2002-2013	8	3	11D, 0R	All D	N	I
Brief for the St. Mary's University School of Law, Center for Terrorism Law, the Honorable Joe Sestak, Member of Congress, and Distinguished American Former High-Level Military Officials, as Amici Curiae Supporting Respondents	Republic of Iraq v. <i>Beaty</i> , 556 U.S. 848 (2009)	2002-2013	1	0	1D, 0R	All D	“	“
Brief of The Honorable Congressman John Lewis as Amicus Curiae In Support of Appellees and Intervenor-Appellees	NW Austin Mun. Utility Dist. No. 1 v. Holder, 557 U.S. 193 (2009)	2002-2013	1	0	1D, 0R	All D	Y	F
Brief of Reps. John Conyers, Jr., F. James Sensenbrenner, Jr., Jerrold Nadler, and Melvin L. Watt, and Former Rep. Steve Chabot as Amici Curiae in Support of Appellees	NW Austin Mun. Utility Dist. No. 1 v. Holder, 557 U.S. 193 (2009)	2002-2013	4	0	3D, 1R	Lean D	“	“

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Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Barbara Lee, Member of Congress and Chair of the Congressional Black Caucus, Nydia Velázquez, Member of Congress and Chair of the Congressional Hispanic Caucus and Michael Honda, Member of Congress and Chair of the Congressional Asian Pacific American Caucus, et al., as Amici Curiae in Support of Appellees	NW Austin Mun. Utility Dist. No. 1 v. Holder, 557 U.S. 193 (2009)	2002-2013	76	0	76D, 0R	All D	“	“
Brief of Members of Congress as Amici Curiae in Support of Petitioner	Cuomo v. Clearing House Ass'n, 557 U.S. 519 (2009)	2002-2013	6	0	6D, 0R	All D	N	I
Brief of Members of Congress as Amici Curiae Supporting Petitioners	CropLife America v. Baykeeper, 130 S. Ct. 1505 (2010)	2002-2013	32	7	15D, 24R	Bipartisan	N	I
Brief Of Sixteen Members of the United States House of Representatives As Amici Curiae In Support Of Respondent	Graham v. Florida, 130 S. Ct. 2011 (2010)	2002-2013	16	0	0D, 16R	All R	Y	S
Brief of Senator Arlen Specter, Senator Russell D. Feingold and Representative Sheila Jackson Lee as Amici Curiae in Support of Respondents	Samantar v. Yousuf, 130 S. Ct. 2278 (2010)	2002-2013	1	2	2D, 1R	Bipartisan	N	I
Brief for Amici Curiae Representatives Carolyn Mccarthy, Mike Quigley, and 53 other Members of the United States Congress in Support of Respondents	McDonald v. City of Chicago, 130 S. Ct. 3020 (2010)	2002-2013	55	0	55D, 0R	All D	Y	S

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for Amici Curiae Senator Kay Bailey Hutchison, Senator Jon Tester, Representative Mark Souder, Representative Mike Ross, and 56 Additional Members of United States Senate and 249 Additional Members of United States House of Representatives in Support of Petitioners	McDonald v. City of Chicago, 130 S. Ct. 3020 (2010)	2002-2013	251	58	100D, 209R	Lean R	"	"
Brief Amicus Curiae of Senator Mitch McConnell in Support of Appellant	Citizens United v. Federal Election Commission, 558 U.S. 310 (2010)	2002-2013	0	1	0D, 1R	All R	Y	F
Supplemental Brief of Amici Curiae Senator John McCain, Senator Russell Feingold, Former Representative Christopher Shays, and Former Representative Martin Meehan in Support of Appellee	Citizens United v. Federal Election Commission, 558 U.S. 310 (2010)	2002-2013	2	2	2D, 2R	Bipartisan	"	"
Supplemental Brief of Amici Curiae Representatives Chris Van Hollen, David Price, Michael Castle, and John Lewis in Support of Appellee	Citizens United v. Federal Election Commission, 558 U.S. 310 (2010)	2002-2013	4	0	3D, 1R	Lean D	"	"
Brief of Senators Harry Reid, Mitch McConnell, and 40 other Members of the U.S. Senate as Amici Curiae in Support of Petitioner	Snyder v. Phelps, 131 S. Ct. 1207 (2011)	2002-2013	0	42	30D, 12R	Lean D	Y	S

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for the Goldwater Institute and U.S. Representative Trent Franks as Amici Curiae Supporting Petitioners	Arizona Christian School Tuition Org. v. Winn, 131 S. Ct. 1436 (2011)	2002-2013	1	0	0D, 1R	All R	N	S
Brief Amici Curiae of Representative Romano L. Mazzoli, Senator Arlen Specter, and Representative Howard L. Berman in Support of Petitioners	U.S. Chamber of Commerce v. Whiting, 131 S. Ct. 1968 (2011)	2002-2013	1	1	1D, 1R	Bipartisan	N	F
Brief of Senators Demint, Graham, Johanns, and Rubio as Amici Curiae in Support of Respondents	Turner v. Rogers, 131 S. Ct. 2507 (2011)	2002-2013	0	4	0D, 4R	All R	N	S
Brief Amici Curiae of Representative Fred Upton, Representative Ed Whitfield, and Senator James M. Inhofe in Support of Petitioners	American Electric Power Co. v. Connecticut, 131 S. Ct. 2527 (2011)	2002-2013	2	1	0D, 3R	All R	N	I
Brief of Rep. Henry A. Waxman as Amicus Curiae in Support of Respondents Urging Affirmance	PLIVA Inc. v. Mensing, 131 S. Ct. 2567 (2011)	2002-2013	1	0	1D, 0R	All D	N	I

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of U.S. Representative Lamar Smith, U.S. Representative Steve King, Washington Legal Foundation and Allied Educational Foundation as Amici Curiae Supporting Appellants	Martinez v. Regents of the University of California, 131 S. Ct. 2961 (2011)	2002-2013	2	0	0D, 2R	All R	N	S
Brief of Congressman Canseco as Amicus Curiae Supporting Appellants	Perez v. Perry, 132 S.Ct. 934 (2012)	2002-2013	1	0	0D, 1R	All R	Y	S
Brief of Members of Congress as Amici Curiae Support of Respondents	Douglas v. Independent Living Center of Southern California, 132 S. Ct. 1204 (2012)	2002-2013	4	3	7D, 0R	All D	N	I
Brief of Senator Tom Harkin, Representative George Miller, and Additional Members of Congress as Amici Curiae in Support of Petitioner	Coleman v. Court of Appeals of Maryland, 132 S. Ct. 1327 (2012)	2002-2013	38	5	42D, 0R, 1I	All D	N	I
Brief for Members of the United States Senate and the United States House of Representatives as Amici Curiae in Support of Petitioner	Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421 (2012)	2002-2013	11	28	23D, 15R, 1I	Bipartisan	N	F

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYT/FP)	Social/Institutional/Federalism (S/I/F)
Brief of Congressman Anthony Weiner as Amicus Curiae in Support of Petitioners M. B. Z., by His Parents and Guardians Ari Zivotofsky et ux.	Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421 (2012)	2002-2013	1	0	1D, 0R	All D	“	“
Brief of Rep. Henry A. Waxman as Amicus Curiae in Support of Petitioners	Caraco Pharmaceutical Laboratories, Ltd. V. Novo Nordisk A/S, 132 S. Ct. 1670 (2012)	2002-2013	1	0	1D, 0R	All D	N	I
Amici Curiae Brief of Members of Congress in Support of Respondent	Arizona v. United States, 132 S. Ct. 2492 (2012)	2002-2013	68	0	68D, 0R	All D	Y	F
Brief of U.S. Reps. Lamar Smith, Brian Bilbray, Dan Burton, Trent Franks, Wally Herger, Duncan Hunter, Steve King, Tom McClintock, Ted Poe, Dana Rohrabacher, Ed Royce, and David Schweikert, Washington Legal Foundation, and Allied Educational Foundation as Amici Curiae in Support of Petitioners	Arizona v. United States, 132 S. Ct. 2492 (2012)	2002-2013	12	0	0D, 12R	All R	“	“
Amici Curiae Brief of Members of Congress and the Committee to Protect America's Border in Support of Petitioners	Arizona v. United States, 132 S. Ct. 2492 (2012)	2002-2013	55	2	0D, 57R	All R	“	“

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Amici Curiae Center for Constitutional Jurisprudence, Individual Rights Foundation, Committee for Justice, Congressmen Ed Royce, Ted Poe, and Tom McClintock, and Indiana Senator Mike Delph, in Support of Petitioners	Arizona v. United States, 132 S. Ct. 2492 (2012)	2002-2013	3	0	0D, 3R	All R	“	“
Brief for United States Representatives Robert Brady, Chris Van Hollen, Zoe Lofgren and Charles Gonzalez as Amici Curiae in Support of Respondents	American Tradition Partnership, Inc. v. Bullock, 132 S. Ct. 2490 (2012)	2002-2013	4	0	4D, 0R	All D	Y	S
Brief of United States Senators Sheldon Whitehouse and John McCain as Amici Curiae in Support of Respondents	American Tradition Partnership, Inc. v. Bullock, 132 S. Ct. 2490 (2012)	2002-2013	0	2	1D, 1R	Bipartisan	“	“
Brief Amicus Curiae of Senator Mitch McConnell in Support of Petitioners	American Tradition Partnership, Inc. v. Bullock, 132 S. Ct. 2490 (2012)	2002-2013	0	1	0D, 1R	All R	“	“

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of the Family Research Council and 30 Members of the U.S. House of Representatives as Amici Curiae in Support of Petitioners	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	30	0	0D, 30R	All R	Y	I
Brief of the Family Research Council and 27 Members of the U.S. House of Representatives as Amici Curiae in Support of Petitioners and Reversal on the Issue of Severability	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	27	0	0D, 27R	All R	"	"
Amici Curiae Brief of the American Center for Law & Justice, 117 Members of The United States Congress, and More than 103,000 Supporters Of The ACLJ in Support of Petitioners and Urging Reversal on the Severability Issue	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	117	0	0D, 117R	All R	"	"
Brief of Speaker of the House John Boehner as Amicus Curiae in Support of Respondents on the Minimum Coverage Provision Issue	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	1	0	0D, 1R	All R	"	"

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Senate Majority Leader Harry Reid, House Democratic Leader Nancy Pelosi, and Congressional Leaders and Leaders of Committees of Relevant Jurisdiction as Amici Curiae in Support of Petitioners (Minimum Coverage Provision)	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	15	7	22D, 0R	All D	"	"
Brief of Members of the United States Senate as Amici Curiae in Support of Petitioners on the Issue of Severability	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	0	36	0D, 36R	All R	"	"
Brief of Members of the United States Senate as Amici Curiae in Support of Respondents on the Minimum Coverage Provision Issue	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	0	43	0D, 43R	All R	"	"
Brief of Amici Curiae Center for Constitutional Jurisprudence, Pacific Legal Foundation, Cato Institute, Congressman Denny Rehberg and Dr. Jeff Colyer in Support of Petitioners (Medicaid Spending/Coercion Issue)	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	1	0	0D, 1R	All R	"	"

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amicus Curiae of Senator Rand Paul Addressing the Minimum Coverage Provision Issue in Support of Respondents, Urging Affirmance	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	0	1	0D, 1R	All R	"	"
Amici Curiae Brief of the American Center for Law & Justice, 119 Members of the United States Congress, and More than 144,000 Supporters of the ACLJ in Support of Respondents and Urging Affirmance on the Minimum Coverage Provision, Otherwise Known as the Individual Mandate, Issue	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	119	0	0D, 119R	All R	"	"
Brief of Senate Majority Leader Harry Reid, House Democratic Leader Nancy Pelosi, and Congressional Leaders and Leaders of Committees of Relevant Jurisdiction as Amici Curiae in Support of Respondents (Medicaid)	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	15	7	22D, 0R	All D	"	"
Amici Curiae Brief of the American Center for Law & Justice, 105 Members of the United States Congress, and the Supreme Court Committee to Declare Obamacare Unconstitutional in Support of Petitioners	National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012)	2002-2013	105	0	0D, 105R	All R	"	"

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Members of Congress As Amici Curiae In Support of Petitioner	Arizona v. Inter Tribal Council of Arizona, Inc., 133 S.Ct. 2247 (2013)	2002-2013	7	0	7D, 0R	All D	Y	S
Brief of Members of Congress As Amici Curiae In Support of Petitioner	Arizona v. Inter Tribal Council of Arizona, Inc., 133 S.Ct. 2247 (2013)	2002-2013	2	0	0D, 2R	All R	"	"
Brief of Amicus Curiae Representative Henry A. Waxman in Support of Petitioner	F.T.C. v. Actavis, Inc., 133 S.Ct. 2223 (2013)	2002-2013	1	0	1D, 0R	All D	N	I
Brief of Certain Current and Former Members of Congress as Amici Curiae in Support of Respondents	Agency for Intern. Development v. Alliance for Open Society Intern., Inc., 133 S.Ct. 2321 (2013)	2002-2013	3	2	4D, 1R	Lean D	N	F
Brief of the Honorable Allen B. West, Member of Congress and Lieutenant Colonel, United States Army (Ret.), as Amicus Curiae in Support of Petitioner	Fisher v. University of Texas at Austin, 133 S.Ct. 2411 (2013)	2002-2013	1	0	0D, 1R	All R	Y	S

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Ruben Hinojosa, Member of Congress; Charles A. Gonzalez, Member of Congress; and 64 Other Members of Congress, as Amici Curiae in Support of Respondents	Fisher v. University of Texas at Austin, 133 S.Ct. 2411 (2013)	2002-2013	66	0	66D, 0R	All D	“	“
Brief of U.S. Senators Harry Reid, Tom Harkin, Richard J. Durbin, Charles E. Schumer, Patty Murray, Carl Levin, John F. Kerry, Barbara A. Mikulski, Dianne Feinstein, Barbara Boxer, Jack Reed, Mary L. Landrieu, Frank R. Lautenberg, Benjamin L. Cardin, Bernard Sanders, Christopher A. Coons, and Richard Blumenthal As Amici Curiae in Support of Respondents	Fisher v. University of Texas at Austin, 133 S.Ct. 2411 (2013)	2002-2013	0	17	16D, 0R, 1I	All D	“	“
Brief of Amici Curiae Senator Tom Harkin and Representative Henry A. Waxman in Support of Respondent	Mutual Pharmaceutical Co., Inc. v. Bartlett, 133 S.Ct. 2466 (2013)	2002-2013	1	1	2D, 0R	All D	N	S
Brief for the Honorable Congressman John Lewis as Amicus Curiae in Support of Respondents and Intervenor-Respondents	Shelby County, Ala. v. Holder, 133 S.Ct. 2612 (2013)	2002-2013	1	0	1D, 0R	All D	Y	I

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for Amici Curiae Marcia L. Fudge, Member of Congress and Chair of the Congressional Black Caucus, Rubén Hinojosa, Member of Congress and Chair of the Congressional Hispanic Caucus, and Judy Chu, Member of Congress and Chair of the Congressional Asian Pacific American Caucus, et al., in Support of Respondents	Shelby County, Ala. v. Holder, 133 S.Ct. 2612 (2013)	2002-2013	90	0	90D, 0R	All D	'	'
Brief for Senate Majority Leader Harry M. Reid as Amicus Curiae in Support of Respondents	Shelby County, Ala. v. Holder, 133 S.Ct. 2612 (2013)	2002-2013	0	1	1D, 0R	All D	'	'
Brief of Reps. F. James Sensenbrenner, Jr., John Conyers, Jr., Steve Chabot, Jerrold Nadler, Melvin L. Watt, and Robert C. Scott as Amici Curiae in Support of Respondents	Shelby County, Ala. v. Holder, 133 S.Ct. 2612 (2013)	2002-2013	6	0	4D, 2R	Lean D	'	'
Brief of Amici Curiae Current and Former Members of Congress in Support of Respondents	Adoptive Couple v. Baby Girl, 133 S.Ct. 2552 (2013)	2002-2013	3	2	4D, 1R	Lean D	N	F
	Hollingsworth v. Perry, 133 S.Ct. 2652 (2013)	2002-2013		0				
			BLAG was a respondent in this case (BLAG briefs not included in analysis)					

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of 172 Members of the U.S. House of Representatives and 40 U.S. Senators as Amici Curiae in Support of Respondent Edith Schlain Windsor, Urging Affirmance on the Merits	United States v. Windsor, 133 S.Ct. 2675 (2013)	2002-2013	172	40	210D, 0 R, 2I	All D	Y	F
Brief on the Merits of Amici Curiae United States Senators Orrin G. Hatch, Saxby Chambliss, Dan Coats, Thad Cochran, Mike Crapo, Charles Grassley, Lindsey Graham, Mitch McConnell, Richard Shelby and Roger Wicker in Support of Respondent the Bipartisan Legal Advisory Group of the U.S. House of Representatives	United States v. Windsor, 133 S.Ct. 2675 (2013)	2002-2013	0	10	0D, 10R	All R	'	'
	United States v. Windsor, 133 S.Ct. 2675 (2013)	2002-2013	BLAG was a respondent in this case (BLAG briefs not included in analysis)		0			
Brief of Amicus Curiae U.S. Representative John L. Mica in Support of Petitioner	Air Wisconsin Airlines Corp. v. Hooper, 134 S.Ct. 852 (2014)	2002-2013	1	0	0D, 1R	All R	N	F

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Democratic Members of the United States House of Representatives as Amici Curiae in Support of Appellee	McCutcheon v. Federal Election Com'n, 134 S.Ct. 1434 (2014)	2002-2013	85	0	85D, 0R	All D	Y	F
Brief of Amici Curiae Representatives Chris Van Hollen and David Price in Support of Appellee	McCutcheon v. Federal Election Com'n, 134 S.Ct. 1434 (2014)	2002-2013	2	0	2D, 0R	All D	'	'
Brief of Senator Mitch McConnell as Amicus Curiae Supporting Appellants	McCutcheon v. Federal Election Com'n, 134 S.Ct. 1434 (2014)	2002-2013	0	1	0D, 1R	All R	'	'
Brief for United States Senators Orrin G. Hatch, Dianne Feinstein, Charles E. Grassley, Edward J. Markey, John McCain, Patty Murray, and Charles E. Schumer as Amici Curiae in Support of Amy Unknown	Paroline v. United States, 134 S.Ct. 1710 (2014)	2002-2013	0	7	4D, 3R	Bipartisan	N	S
Brief of Members of Congress as Amici Curiae in Support of Petitioner	Town of Greece, N.Y. v. Galloway, 134 S.Ct. 1811 (2014)	2002-2013	49	0	1D, 48R	Lean R	Y	S

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for Members of Congress as Amici Curiae in Support of Petitioner	Town of Greece, N.Y. v. Galloway, 134 S.Ct. 1811 (2014)	2002-2013	85	0	1D, 84R	Lean R	'	'
Brief for United States Senators Marco Rubio, Lamar Alexander, John Barrasso, Roy Blunt, John Boozman, Richard Burr, Saxby Chambliss, Jeff Chiesa, Dan Coats, Bob Corker, John Cornyn, Mike Crapo, Ted Cruz, Mike Enzi, Deb Fischer, Lindsey Graham, Orrin Hatch, John Hoeven, Jim Inhofe, Johnny Isakson, Mike Johanns, Ron Johnson, Mary Landrieu, Mike Lee, Mitch McConnell, Jerry Moran, Rob Portman, Jim Risch, Pat Roberts, Tim Scott, John Thune, Pat Toomey, David Vitter, and Roger Wicker as Amici Curiae in Support of Petitioner	Town of Greece, N.Y. v. Galloway, 134 S.Ct. 1811 (2014)	2002-2013	0	34	2D, 32R	Lean R	'	'
Brief of Amici Curiae Members of Congress in Support of Respondents	Town of Greece, N.Y. v. Galloway, 134 S.Ct. 1811 (2014)	2002-2013	12	0	12D, 0R	All D	'	'

Measuring Party Polarization in Congress

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amicus Curiae of U.S. Congressman Steve Stockman, Gun Owners Fdn., Gun Owners of America, Citizens United's American Sovereignty Action Project, U.S. Justice Fdn., The Lincoln Institute, Institute on the Constitution, The Abraham Lincoln Fdn., Downsize DC Fdn., DownsizeDC.org, Policy Analysis Center, Conservative Legal Def. And Ed. Fund, and Tenth Amendment Center in Support of Petitioner	Bond v. United States, 134 S.Ct. 2077 (2014)	2002-2013	1	0	0D, 1R	All R	N	S
Brief of Current and Former Members of Congress as Amici Curiae in Support of Respondents	Scialabba v. Cuellar de Osorio, 134 S.Ct. 2191 (2014)	2002-2013	0	5	3D, 2R	Bipartisan	N	I
Brief Amicus Curiae of Congressman Steve Stockman, Former ATF Assistant Director Robert E. Sanders, Gun Owners Foundation, U.S. Justice Foundation, Gun Owners of America, Inc., Institute on the Constitution, Lincoln Institute for Research and Education, Abraham Lincoln Foundation, Conservative Legal Defense and Education Fund, Downsize DC Foundation, DownsizeDC.org, Policy Analysis Center, Oregon Firearms Federation, and Virginia Citizens Defense League in Support of Petitioner	Abramski v. United States, 134 S.Ct. 2259 (2014)	2002-2013	1	0	0D, 1R	All R	N	F

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief Amicus Curiae of Congressman Steve Stockman, Former ATF Assistant Director Robert E. Sanders, Gun Owners Foundation, U.S. Justice Foundation, Gun Owners of America, Inc., Institute on the Constitution, Lincoln Institute for Research and Education, Abraham Lincoln Foundation, Conservative Legal Defense and Education Fund, DownsizeDC.org, Downsize DC Foundation, Policy Analysis Center, Oregon Firearms Federation, Virginia Citizens Defense League, and Wisconsin Gun Owners in Support of Petitioner	Abramski v. United States, 134 S.Ct. 2259 (2014)	2002-2013	1	0	0D, 1R	All R	'	'
Brief for Current and Former Members of Congress and Staff as Amici Curiae Supporting Respondent	Halliburton Co. v. Erica P. John Fund, Inc., 134 S.Ct. 2398 (2014)	2002-2013	5	2	7D,0R	All D	N	F
Brief of Amici Curiae Senator Mitch McConnell and other Members of the United States Congress in Support of Petitioners	Utility Air Regulatory Group v. E.P.A., 134 S.Ct. 2427 (2014)	2002-2013	6	2	0D, 8R	All R	Y	F
Brief of Five U.S. Senators as Amici Curiae in Support of Petitioners	Utility Air Regulatory Group v. E.P.A., 134 S.Ct. 2427 (2014)	2002-2013	0	5	0D, 5R	All R	'	'

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief of Senate Republican Leader Mitch McConnell and 44 Other Members of the United States Senate as Amici Curiae in Support of Respondent Noel Canning	N.L.R.B. v. Noel Canning, 134 S.Ct. 2550 (2014)	2002-2013	0	45	0D, 45R	All R	Y	I
Brief of Senate Republican Leader Mitch McConnell and 44 Other Members of the United States Senate as Amici Curiae in Support of Certiorari	N.L.R.B. v. Noel Canning, 134 S.Ct. 2550 (2014)	2002-2013	0	45	0D, 45R	All R	'	'
Amicus Curiae Brief of the Speaker of the United States House of Representatives, John Boehner, in Support of Respondent	N.L.R.B. v. Noel Canning, 134 S.Ct. 2550 (2014)	2002-2013	1	0	0D, 1R	All R	'	'
Brief of Amici Curiae Members of Congress in Support of Respondents	Burwell v. Hobby Lobby Stores, Inc., 134 S.Ct. 2751 (2014)	2002-2013	72	16	2D, 86R	Lean R	Y	F
Brief of 91 Members of the United States House of Representatives as Amici Curiae in Support of the Government	Burwell v. Hobby Lobby Stores, Inc., 134 S.Ct. 2751 (2014)	2002-2013	91	0	91D, 0R	All D	'	'

Brief Name	Case Name	Time Period	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Salient (NYTFP)	Social/Institutional/Federalism (S/I/F)
Brief for United States Senators Murray, Baucus, Boxer, Brown, Cantwell, Cardin, Durbin, Feinstein, Harkin, Johnson, Leahy, Levin, Markey, Menendez, Mikulski, Reid, Sanders, Schumer, and Wyden as Amici Curiae in Support of Hobby Lobby Petitioners and Conestoga Respondents	Burwell v. Hobby Lobby Stores, Inc., 134 S.Ct. 2751 (2014)	2002-2013	0	19	18D, 0R, 1I	All D	'	'
Brief of U.S. Senators Ted Cruz, John Cornyn, Mike Lee, and David Vitter as Amici Curiae Supporting Respondents in Case No. 13-354 and Petitioners in Case No. 13-356	Burwell v. Hobby Lobby Stores, Inc., 134 S.Ct. 2751 (2014)	2002-2013	0	4	0D, 4R	All R	'	'
Brief of Amici Curiae Senators Orrin G. Hatch, Daniel R. Coats, Thad Cochran, Mike Crapo, Charles Grassley, James M. Inhofe, John McCain, Mitch McConnell, Rob Portman, Pat Roberts, & Richard Shelby, and Representatives Bob Goodlatte, Chris Smith, Lamar Smith, & Frank Wolf in Support of Hobby Lobby and Conestoga Wood, et al.	Burwell v. Hobby Lobby Stores, Inc., 134 S.Ct. 2751 (2014)	2002-2013	4	11	0D, 15R	All R	'	'

APPENDIX B: CONGRESSIONAL AMICUS FILINGS IN SELECT
 ABORTION CASES, 1973–2007

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
No Lawmaker Brief Filed	Roe v. Wade, 410 U.S. 113 (1973)							
No Lawmaker Brief Filed	Beal v. Doe, 432 U.S. 438 (1977)							
No Lawmaker Brief Filed	Maher v. Roe, 432 U.S. 464 (1977)							
No Lawmaker Brief Filed	Bellotti v. Baird, 443 U.S. 622 (1979)							

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief of Rep. Jim Wright, Rep. John J. Rhodes, Rep. Robert H. Michel, Rep. Lindy Boggs, Rep. Mary Rose Oakar, Senator William Proxmire, Senator Thomas F. Eagleton, Senator Edward Zorinsky, and Certain Other Members of the Congress of the United States as Amici Curiae	Harris v. McRae, 448 U.S. 297 (1980)	224	15	104D, 135R	Bipartisan	Democratic	Democratic	Democratic
No Lawmaker Brief Filed	City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (1983)							
Brief Amicus Curiae of Senator Bob Packwood (R-Ore.), Representative Don Edwards (D-Calif.) and Certain Other Members of the Congress of the United States in Support of Appellees.	Thornburgh v. American College of Obstetricians and Gynecologists 476 U.S. 747 (1986)	68	13	70D, 11R	Lean D	Republican	Democratic	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief Amicus Curiae of U.S. Sen. Gordon J. Humphrey (R-N.H.), U.S. Sen. Orrin G. Hatch (R-Utah), U.S. Rep. Christopher H. Smith (R-N.J.), U.S. Rep. Alan B. Mullohan (D-W.Va.) and Certain Other Members of the Congress of the United States in Support of Appellants	Thornburgh v. American College of Obstetricians and Gynecologists 476 U.S. 747 (1986)	69	13	18D, 64R	Lean R	Republican	Democratic	Republican
No Lawmaker Brief Filed	Bowen v. Kendrick, 487 U.S. 589 (1988)							

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief for Certain Members of the Congress of the United States: Senator Howard Metzenbaum (D. OH.), Senator Bob Packwood (R. OR.), Senator Barbara Mikulski (D. MD.), Representative Don Edwards (D. CA.), Representative Bill Green (R. NY), Representative Patricia Schroeder (D. CO.), Representative Olympia Snowe (R. ME.) and Certain Other Members of Congress as Amicus Curiae in Support of Appellees	Webster v. Reproductive Health Services, 492 U.S. 490 (1989)	115	25	123D, 17R	Lean D	Republican	Democratic	Republican
Brief Amici Curiae of Hon. Christopher H. Smith, Hon. Alan B. Mollohan, Hon. John C. Danforth, and Other United States Senators and Members of Congress, in Support of Appellants	Webster v. Reproductive Health Services, 492 U.S. 490 (1989)	45	9	17D, 37R	Lean R	Republican	Democratic	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief Amicus Curiae of the Center for Judicial Studies and Certain Members of Congress in Support of Appellants	Webster v. Reproductive Health Services, 492 U.S. 490 (1989)	50	5	10D, 45R	Lean R	Republican	Democratic	Republican

Measuring Party Polarization in Congress

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
<p>Brief Amici Curiae of United States Senators Gordon J. Humphrey (R-NH), Steve Symms (R-ID), and Dan Coats (R-IN) and United States Representatives Thomas J. Bliley, Jr. (R-VA), Christopher H. Smith (R-NJ), and Alan B. Mollohan (D-WV), et al. in Support of Respondent Barbara F. Vucanovich (R-NV) Henry J. Hyde (R-IL) Robert K. Dornan (R-CA) Richard K. Armey (R-TX) Ron Packard (R-CA) Duncan Hunter (R-CA) Edward R. Madigan (R-IL) W.J. (Billy) Tauzin (D-LA) Joe Barton (R-TX) Harold L. Volkmer (D-MO) Richard H. Stallings (D-ID) Clyde C. Holloway (R-LA) J. Dennis Hastert (R-IL) Robert L. Livingston (R-LA) H. James Saxton (R-NJ) Newt Gingrich (R-GA) Fred Grandy (R-IA) Norman D. Shumway (R-CA) Tom DeLay (R-TX) Douglas Applegate (D-OH) Howard C. Nielson (R-UT) Vin Weber (R-MN) Heena Ros-Lehtinen (R-FL) Tommy F. Robinson (R-AR) Jim McCreery (R-LA) Don Sundquist (R-TN) Richard H. Baker (R-LA) Austin J. Murphy (D-PA) Bob McEwen (R-OH) F. James Sensenbrenner, Jr. (R-WI) John J. Duncan, Jr. (R-TN) Michael G. Oxley (R-OH) Virginia Smith (R-NE) William E. Dannemeyer (R-CA) James M. Inhofe (R-OK) Robert C. Smith (R-NH) Earl Hutto (D-FL) Bill Emerson (R-MO) Mel Hancock (R-MO) Bob Stump (R-AZ) Robert S. Walker (R-PA) Dan Burton (R-IN) Gerald B. Solomon (R-NY) Arlan Stangeland (R-MN) Bill Paxon (R-NY) Philip M. Crane (R-IL) John J. LaFalce (D-NY) Clarence Miller (R-OH) Bill Schuette (R-MI) Jeremiah Denton (former Senator, R-AL)</p>	<p>Rust v. Sullivan, 500 U.S. 173 (1991)</p>	<p>52</p>	<p>3</p>	<p>8D, 47R</p>	<p>Lean R</p>	<p>Republican</p>	<p>Democratic</p>	<p>Democratic</p>

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief of Representatives Patricia Schroeder, et al. as Amici Curiae in Support of Petitioners	Rust v. Sullivan, 500 U.S. 173 (1991)	95	16	96D, 15R	Lean D	Republican	Democratic	Democratic
Brief Amicus Curiae of Hon. Henry J. Hyde, Hon. Christopher H. Smith, Hon. Alan B. Mollohan, Hon. Harold L. Volkmer, Hon. Robert G. Smith and Other United States Senators and Members of Congress in Support of Respondents	Planned Parenthood v. Casey, 505 U.S. 833 (1992)	38	3	9D, 32R	Lean R	Republican	Democratic	Democratic

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief for Representatives Don Edwards, Patricia Schroeder, Les Aucoin, Vic Fazio, Bill Green and Constance A. Morella; Senators Alan Cranston, Bob Packwood, Howard Metzenbaum, John Chafee, Timothy E. Wirth, William S. Cohen, Brock Adams, and Barbara Mikulski; and Certain Other Members of the Congress of the United States as Amici Curiae in Support of Petitioners	Planned Parenthood v. Casey, 505 U.S. 833 (1992)	118	29	132D, 14R, 11	Lean D	Republican	Democratic	Democratic
No Lawmaker Brief Filed	Bray v. Alexandria Clinic, 506 U.S. 263 (1993)							
No Lawmaker Brief Filed	National Organization for Women v. Scheidler I, 510 U.S. 249 (1994)							

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief of Amici Curiae Senator Barbara Boxer and Representative Nita M. Lowey and Other Members of Congress in Support of Respondent Leroy H. Carhart, M.D.	Stenberg v. Carhart, 530 U.S. 914 (1999)	71	9	74D, 5R, 11	Lean D	Democratic	Republican	Republican
Brief of Amici Curiae U.S. Rep. Charles T. Canady and Other Members of Congress in Support of Petitioners	Stenberg v. Carhart, 530 U.S. 914 (1999)	28	3	3D, 27R, 11	Lean R	Democratic	Republican	Republican
No Lawmaker Brief Filed	Hill v. Colorado, 530 U.S. 703 (2000)							
No Lawmaker Brief Filed	National Organization for Women v. Scheidler II, 537 U.S. 393 (2003)							

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief for 47 Members of the United States Congress as Amici Curiae in Support of Respondents	National Organization for Women v. Scheidler III, 547 U.S. 9 (2006)	47	0	47D, 0R	All D	Republican	Republican	Republican
Brief of Amici Curiae, 52 Members of Congress in Support of Planned Parenthood Federation, Inc., et al.	Gonzales v. Carhart, 550 U.S. 124 (2007)	49	3	52D, 0R	All D	Republican	Republican	Republican
Brief of Amici Curiae American Association of Pro Life Obstetricians and Gynecologists (AAPLOG), Senator Tom Coburn, M.D., Congressman Charles Boustany, Jr, M.D., Congressman Michael Burgess, M.D., Congressman Phil Gingrey, M.D., Congressman Dave Weldon, M.D., C. Everett Koop, M.D., Edmund D. Pellegrino, M.D. in Support of Petitioner	Gonzales v. Carhart, 550 U.S. 124 (2007)	4	1	0D, 5R	All R	Republican	Republican	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Amicus Brief of the American Center for Law and Justice, 78 Members of Congress, and the Committee to Protect the Ban on Partial Birth Abortion in Support of Petitioner	Gonzales v. Carhart, 550 U.S. 124 (2007)	76	2	1D, 77R	Lean R	Republican	Republican	Republican
Amicus Brief of the American Center for Law and Justice and 70 Members of Congress in Support of Petitioner	Gonzales v. Carhart, 550 U.S. 124 (2007)	67	3	1D, 69R	Lean R	Republican	Republican	Republican
Brief of Amici Curiae Congressman Ron Paul and Association of American Physicians and Surgeons in Support of Petitioner	Gonzales v. Carhart, 550 U.S. 124 (2007)	1	0	0D, 1R	All R	Republican	Republican	Republican

APPENDIX C: CONGRESSIONAL AMICUS FILINGS IN SELECT
 SEPARATION OF POWERS CASES, 1974–2014

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
No Lawmaker Briefs Filed	United States v. Nixon, 418 U.S. 683 (1974)					Republican	Democratic	Democratic
Brief for United States Senator Lee Metcalf	Buckley v. Valeo, 424 U.S. 1 (1976)	0	1	1D, 0R	All D	Republican	Democratic	Democratic
Brief of Senators Hugh Scott and Edward M. Kennedy, Amici Curiae	Buckley v. Valeo, 424 U.S. 1 (1976)	0	2	1D, 1R	Bipartisan	Republican	Democratic	Democratic
No Lawmaker Briefs Filed	Dames & Moore v. Regan, 453 U.S. 654 (1981)					Republican	Democratic	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
No Lawmaker Briefs Filed	N. Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982)					Republican	Democratic	Republican
Brief of Certain Members of the United States House of Representatives, amici curiae	Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983)	9	0	9D, 0R	All D	Republican	Democratic	Democratic

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
No Lawmaker Briefs Filed	Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983)	House Council was a party to the litigation				Republican	Democratic	Democratic
No Lawmaker Briefs Filed	Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983)		Senate Council was a party to the litigation			Republican	Democratic	Democratic
Brief Amicus Curiae of William H. Gray III et al., Members of Congress	Bowsher v. Synar, 478 U.S. 714 (1986)	12	0	12D, 0R	All D	Republican	Democratic	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief of Howard H. Baker, Jr., as Amicus Curiae	Bowsher v. Synar, 478 U.S. 714 (1986)	0	3	1D, 2R	Lean R	Republican	Democratic	Republican
No Lawmaker Briefs Filed	Bowsher v. Synar, 478 U.S. 714 (1986) House Council was a party to the litigation					Republican	Democratic	Republican
No Lawmaker Briefs Filed	Bowsher v. Synar, 478 U.S. 714 (1986) Senate Council was a party to the litigation					Republican	Democratic	Republican
Brief of Amici Curiae Senator John Melcher and Representatives Mike Synar and Charles E. Schumer	Burke v. Barnes, 479 U.S. 361 (1987)	2	1	3D, 0R	All D	Republican	Democratic	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
No Lawmaker Briefs Filed	Burke v. Barnes, 479 U.S. 361 (1987)	House Council was a party to the litigation				Republican	Democratic	Republican
Brief of United States Senate as Amicus Curiae	Morrison v. Olson, 487 U.S. 654 (1988)		Senate Council Amicus Brief			Republican	Democratic	Democratic
Brief of the Speaker and Leadership Group of the House of Representatives, Amici Curiae	Morrison v. Olson, 487 U.S. 654 (1988)	House Council Amicus Brief				Republican	Democratic	Democratic

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
No Lawmaker Briefs Filed	Metro. Washington Airports Auth. v. Citizens for Abateements of Aircraft Noise, Inc., 501 U.S. 252 (1991)					Republican	Democratic	Democratic
Joint Brief of the United States Senate and the Bipartisan Legal Advisory Group of the United States House of Representatives as Amici Curiae for Reversal	Raines v. Byrd, 521 U.S. 811 (1997)	Joint House and Senate Council Amicus Brief	Joint House and Senate Council Amicus Brief			Democratic	Republican	Republican
No Lawmaker Briefs Filed	Clinton v. Jones, 520 U.S. 681 (1997)					Democratic	Republican	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief for Representatives Henry A. Waxman, David E. Skaggs, and Louise M. Slaughter as Amici Curiae in Support of Appellees	Clinton v. City of New York 524 U.S. 417 (1998)	3	0	3D, 0R	All D	Democratic	Republican	Republican
Brief of Senators Robert C. Byrd, Daniel Patrick Moynihan, and Carl Levin as Amici Curiae in Support of Appellees	Clinton v. City of New York 524 U.S. 417 (1998)	0	3	3D, 0R	All D	Democratic	Republican	Republican
Brief for Congressmen Dan Burton, Gerald Solomon, and Porter Goss as Amicus Curiae in Support of Appellants	Clinton v. City of New York 524 U.S. 417 (1998)	3	0	0D, 3R	All R	Democratic	Republican	Republican
Brief of the United States Senate as Amicus Curiae for Reversal	Clinton v. City of New York 524 U.S. 417 (1998)		Senate Council Amicus Brief			Democratic	Republican	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief for United States Senators John Cornyn and Larry E. Craig as Amicus Curiae in Support of Donald H. Rumsfeld	Hamdi v. Rumsfeld 542 U.S. 507 (2004)	0	2	0D, 2R	All R	Republican	Republican	Republican
Brief of the Center for American Unity, Friends of Immigration Law Enforcement, National Center on Citizenship and Immigration, and Representatives Steve King, Dana Rohrabacher, Lamar S. Smith, Thomas G. Tancredo, Roscoe Bartlett, Mac Collins, Joe Barton, and John J. Duncan, Jr. As Amici Curiae Supporting Affirmance	Hamdi v. Rumsfeld 542 U.S. 507 (2004)	8	0	0D, 8R	All R	Republican	Republican	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief of Washington Legal Foundation, U.S. Representatives Joe Barton, Walter Jones, and Lamar Smith, and Allied Educational Foundation as Amici Curiae in Support of Respondents	Hamdi v. Rumsfeld 542 U.S. 507 (2004)	3	0	0D, 3R	All R	Republican	Republican	Republican
No Lawmaker Briefs Filed	Rasul v. Bush 542 U.S. 466 (2004)					Republican	Republican	Republican
Brief of Senators Graham and Kyl as Amicus Curiae in Support of Respondents	Hamdan v. Rumsfeld 548 U.S. 557 (2006)	0	2	0D, 2R	All R	Republican	Republican	Republican
Brief Amicus Curiae of United States Senator Arlen Specter in Support of Petitioners	Boumediene v. Bush, 553 U.S. 723 (2008)	0	1	0D, 1R	All R	Republican	Republican	Republican

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
No Lawmaker Briefs Filed	Free Enterprise Fund, 130 S.Ct. 3138 (2010)					Democratic	Democratic	Democratic
Brief for Members of the United States Senate and the United States House of Representatives as Amici Curiae in Support of Petitioner	Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421 (2012)	11	28	23D, 15R, 1I	Bipartisan	Democratic	Republican	Democratic
Brief of Congressman Anthony Weiner as Amicus Curiae in Support of Petitioners M. B. Z., by His Parents and Guardians Ari Zivotofsky et ux.	Zivotofsky ex rel. Zivotofsky v. Clinton, 132 S. Ct. 1421 (2012)	1	0	1D, 0R	All D	Democratic	Republican	Democratic

Brief Name	Case Name	Number of Representatives	Number of Senators	Party Affiliation (#R/#D)	Partisanship Classification (Bipartisan, Lean D/R, All D/R)	Party of the President	Majority Party in House	Majority Party in Senate
Brief of Senate Republican Leader Mitch McConnell and 44 Other Members of the United States Senate as Amici Curiae in Support of Respondent Noel Canning	N.L.R.B. v. Noel Canning, 134 S.Ct. 2550 (2014)	0	45	0D, 45R	All R	Democratic	Republican	Democratic
Amicus Curiae Brief of the Speaker of the United States House of Representatives, John Boehner, in Support of Respondent	N.L.R.B. v. Noel Canning, 134 S.Ct. 2550 (2014)	1	0	0D, 1R	All R	Democratic	Republican	Democratic