

The impact of external actors on judicial decision-making

Evidence from the German Federal Constitutional Court

David M. Grundmanns*
University of Mannheim

Abstract. Highest courts make final decisions but lack the means to enforce them. Consequently, their external environment can change utility calculations behind judicial decision-making, as well as the subsequent policy implementation by governments. This raises the question: How do external actors impact judicial decision-making? I will investigate the impact external actors take on judicial decision-making at the German Federal Constitutional Court. External actors, which constitutes the sets of actors which are not formally involved in a legal question, differ in their scope of issues, goals and resources from other well studied actors, such as governments. This shapes their opportunities for influence-taking. In this article, I examine how judicial decision-making is impacted by external actors filing briefs with the court. I argue that external actors provide information and impact decision transparency. Decision transparency is a pivotal moderator of a given case and its outcome, especially in the study of the strategic interaction of courts and governments. In consequence, understanding the influence of external actors on constitutional court procedures has major implications for our understanding of how external actor shapes the interaction between the political and the judicial sphere. Further, I discuss motivations for external actors to file briefs at the Supreme Court of the United States and assess to what extent they are applicable to Kelsenian-type constitutional courts.

*PhD Candidate, Graduate School of Economic and Social Sciences, University of Mannheim.
Associate Researcher, Collaborative Research Center 884 "Political Economy of Reforms", University of Mannheim, B6, 30-32, D-68131, Mannheim, Germany (david.grundmanns@mzes.uni-mannheim.de).

1 Introduction

External actors frequently step to courts to engage with ongoing cases. They can appear as friends of the court and file written statements in so called amicus briefs. The practice of filing amici briefs traditionally is a way for judges to attain information surrounding the case. Many actors however also state their preferred decision and argue their stance on the case. Amicus briefs constitute a potential opportunity for influence taking. By providing information and arguments, external actors influence judges' decisions.

External actors are parties not directly involved in litigation, and without authority to implement legislation, namely intermediary organizations such as NGOs and lobby groups. Briefs by governments to defend their statutes are usually understood as threats of non-compliance (Krehbiel, 2016). Without formal power to legislate, external actors cannot constitute a noncompliance threat. Two questions arise: How do external actors influence judges in their decision-making? Why do external actors spend time and resources to craft convincing statements? This article sets out to explain the influence external actors take on judicial behaviour. I argue that external actors influence judicial behaviour in two ways: First, they act as information providers and can attempt to take influence through their written statements. Second, their presence impacts the courts' management of public awareness. Judges respond to external actors by increasing the transparency surrounding a case, i.e. facilitating public hearings and publishing press releases when external actors file briefs.

To explain the engagement of external actors, I build my argument on two motivations brought forward in the judicial politics literature (cf e.g. Caldeira and Wright, 1990; Collins, 2018; Epstein, 1993; Hansford, 2004; Solberg and Waltenburg, 2006): (a) influence-taking on judicial decision-making and (b) organizational maintenance. If actors are able to influence judicial decision-making, they may attempt to influence

outcomes to their favor. One may simply argue that policy influence is the ultimate goal of any actor, but policy influence may be hard to achieve merely by words. Additionally, even if policy influence is possible, actors compete with each other in their attempt to influence judges, and many actors may lack the resources and legal expertise compared to legal teams representing the government.

However, just like politicians account for both, policy and office (cf. Strøm and Müller, 1999), I argue that intermediary organizations account for policy and organizational maintenance. External actors use the publicity surrounding a court proceeding at a federal constitutional court to tend to organizational maintenance, e.g. funding, membership and credit claiming. The benefit in spending resources is increasing the strength and reputation of the organization itself. This article raises some insights whether these motivations can be achieved at a Kelsenian constitutional court, namely the German Federal Constitutional Court (GFCC). As judges appear to respond to briefs, external actors may have a reasonable chance to be heard by judges. Additionally, by incentivizing the judges to facilitate oral hearings and filing press releases, external actors have a potential platform for organizational maintenance. Where external actors act as information providers, they can help create this platform of public awareness: In complex cases oral hearings are less likely to occur without their engagement. This dynamic may be beneficial to judges and external actors alike, as each may seek transparency to their own benefit.

Important strands of research are concerned with who lobbies our politicians, but surprisingly little research is conducted on who lobbies one of the key institutions of democracies: constitutional courts. The article contributes to the judicial politics literature in three important ways: First, by understanding how external actors lobby the court we deepen our understanding of judicial behaviour. Judges take several important decisions, i.e. to facilitate oral hearings or publish press releases. These decisions are not solely impacted by a bilateral interaction between judges and governments. Instead,

external actors' behaviour is influential as I will illustrate throughout this article. Second, systematic evidence on external actors influence at highest courts is rare, especially if one were to look for evidence beyond the Supreme Court of the United States (SCOTUS). I will provide new empirical evidence on the influence external actors take on judges at constitutional courts. Additionally, I illustrate to what extent the goals of external actors established in the literature on the SCOTUS are in reach for external actors stepping to the GFCC. Third, the article reveals that external actors can offset the reduced benefits of oral hearings to judges ruling on complex cases. This has important implications on our understanding of when judges utilize transparency to rule against governments.

2 External actors and the strategic interaction at courts

Constitutional courts are authorized to review the constitutionality of existing or proposed law. They commonly do so in response to a claim filed with the court and first, decide whether to review it or not. In simple terms, if they decide to review it, they will discuss the legal requirements for review and the law itself. Finally, they reach a decision on whether a claim is justified and the concerned law unconstitutional, or a claim is not justified and the law is constitutional. Before doing so, they will hear the two opposing parties, e.g. plaintiff and defendant, and review their legal argument. Additionally, other actors may join the legal opponents, judges may call upon experts to provide information on the case, and other external actors may file statements to provide information or a legal argument to support either side. I am particularly interested in what motivates external actors to do so. This article aids our understanding on what aims actors pursue when they speak to the court. This enriches our understanding of whether and how they influence judicial and political actors.

2.1 Constitutional court proceedings as strategic interactions

Consider some of the long-standing models of judicial behaviour (see e.g. Parcelle Jr. et al., 2011: 29-49). The legal model argues that judges' choices are based on formal law and their training at law school (George and Epstein, 1992). The attitudinal model argues that judges are motivated by individual preferences and pursue to meet their preferences with their action (Segal and Spaeth, 2002; cf. Weinshall-Margel, 2011), given the reality of law and the case at hand (cf. Weinshall et al., 2018: 336-337). To cite German judges Müller, judges "take part in modeling the toolkit that keeps this society together [...] and herein are able to realize their own visions, own ideas on the basis of the constitution".¹

The strategic model assumes judges are strategic actors who respond to other actors (Epstein and Knight, 1998, 1999; Murphy, 1964; Collins and McCarthy, 2017). Thus, judges act in a way they reap the most benefit at lowest possible cost, given their knowledge and expectation about the behaviour of other actors (Epstein et al., 2013). Judges are further constrained by the institutional setting, i.e. rules regulate their power. For example, some judges are tenured for life, whereas others are limited and this likely influences their decision-making calculus (cf. Tiede, 2020). I assume that judges are strategic actors who pursue a goal, but they possess no force to implement their decisions. They rely on actors to impose costs on non-compliant governments. The literature on transparency suggest that judges induce transparency to empower them against the government (Krehbiel, 2016; Staton, 2010; Vanberg, 2005). This provides a first explanation why judges are attentive to the behaviour of other actors. Citizens impose costs on political actors with their vote. A government is less likely to deviate from judicial decision if it costs them reelection. Judges care for their reputation, public opinion and issue salience because these factors constitute their power vis-à-vis the government.

¹The quote is from an interview as part of a short documentary produced by and about the GFCC.

Two prominent ways to induce transparency brought forward by the literature are oral hearings and press releases. Oral hearings are public events, attended and reported by journalists and therefore assumed to increase the visibility of a court proceeding and surrounding events, namely legislative and executive action (Krehbiel, 2016; Vanberg, 2005). For example, while cameras are commonly forbidden in court rooms, the German Federal Constitutional Court (GFCC) occasionally allows camera recordings of the start and the verdict of court proceedings. Similarly, scholars argue that press releases by courts increase the transparency surrounding court decisions as well (Staton, 2006; Meyer, 2020). In my work, I will examine how external actors can influence the transparency surrounding court decisions, to better understand an important concept to explain judicial decision-making.

2.2 External actors stepping to the courts

The interaction of highest courts and governments is a fundamental pillar of checks and balances and has received rich scholarly attention (e.g. Hönnige, 2008, 2009; Hönnige and Gschwend, 2010; Engst, 2021; Vanberg, 2005). As such, I am interested in what ways actors other than the governing majority and the court, which I term external actors, have their interests represented and can constrain, or empower, courts and governments. As courts and governments make decisions with lasting consequences for law, and whole societies, commonly referred to as path dependency (Stone Sweet, 2002), it is all the more relevant to learn how external actors, who have no formal power to implement policy, can have their voices heard, and influence policy outcomes. These external actors, just like judges and politicians, often pursue their own preferences. In what follows, I will discuss several types of external actors, and how they can approach the court.

External actors are parties not involved as defendants or plaintiffs, and not in a position of power to implement policy. They can however speak to the court, commonly

upon invitation, but perhaps also by taking initiative to do so. As information providers they may participate in the case, but similar to witnesses, they are not a party of litigation. We can broadly distinguish three sets of external actors: (1) political actors, such as opposition parties, legislative minority groups and individual politicians, who may propose policy, but lack legislative power to implement it (so this definition excludes governing majorities); (2) interest groups, such as NGOs, local and specialized lobby groups and similar organized interests, e.g. trade unions; and (3) experts, who do not represent any sincere preferences, but are commonly invited to provide information to the court.

Why do external actors seek to have their voices heard by the judges? What goals do they pursue, and are they successful in doing so? These questions have been comprehensively addressed for the Supreme Court of the United States (Caldeira and Wright, 1990; Collins, 2018; Epstein, 1993; Hansford, 2004; Solberg and Waltenburg, 2006). Foremost, a growing set of different organized interests file briefs with the Court and do so increasingly in recent decades (Epstein, 1993; Collins and McCarthy, 2017; Hansford, 2004). As external actors file briefs repeatedly, they build legal expertise, which can positively impact their influence on the court (Epstein, 1993; Hansford, 2004; Johnson et al., 2006).

A common opportunity to step in front of the court are amicus briefs (Caldeira and Wright, 1988, 1990; Collins and McCarthy, 2017; Epstein, 1993; Epstein and Knight, 1999; Garcia, 2008; Hansford, 2004; Wofford, 2020). Amicus briefs are written statements that can be filed with the court, in which actors can provide information on the case, on implications and on their preferred outcome. In the classic sense of *amicus curiae*, the court calls upon 'friends' to provide information (Supreme Court Rule 37; Collins, 2018: 224). These friends are commonly highly accredited actors in the related area of expertise, that a court may seek information about. However, when scholars, esp. political scientists, refer to amicus briefs, written statements filed to the court, we

usually do not just mean experts without any notable, or at least influential, personal interest in the outcome of a court proceeding. Instead, information is usually provided by partisan actors as well. Intuitively, political actors usually pursue partisan interests, but so do interest groups and NGOs. The latter group of actors is established specifically to pursue a certain set of goals at any given time. For example, Greenpeace is interested in protecting Earth against human-caused harm and unlikely to advocate in favour of increased pollution, be it to sustain economic growth or any other reason. Amnesty International is unlikely to ever endorse torture, as they seek to protect human rights. Nevertheless do these actors step to the court in a similar role to that of 'friends of the court'. Indeed, they pursue a set of interest, but this is in most cases well known and judges can account for that. They may provide new information to judges and in consequence influence their decision-making.

Filing briefs is arguably costly and requires expertise. For governments as frequent actors at the court and with access to a large pool of expertise and resources, the tangible costs of filing briefs may be negligible (Caldeira and Wright, 1990). In contrast, smaller NGOs and organized interests may be more selective when to file briefs (Caldeira and Wright, 1990). They seek to maximize their goals of policy influence, organizational maintenance and mobilization (Caldeira and Wright, 1990; Hansford, 2004; Hollis-Brusky and Wilson, 2017: 132; Solberg and Waltenburg, 2006). Constrained by costs, they file briefs when they deem it most efficient, and decide to file them alone, or join briefs of other actors (Caldeira and Wright, 1990; Solberg and Waltenburg, 2006). To communicate with the court requires expertise, that is often expensive to come by. Further, writing a brief does not guarantee it ever meets a judge's eyes. Many times law clerks may read it, but the judges will not. Even if read, whether external actors do actually make convincing arguments to the judges is all but guaranteed (Collins, 2018: 230; Lynch, 2004). Similar arguments may be made for oral hearings.

There is evidence that briefs impact judicial-decision making at various courts (e.g.

Bailey et al., 2005; Canelo, 2022; Collins et al., 2015; Collins, 2018; Mann and Fronk, 2021; Manzi and Hall, 2017), especially if briefs run against the expectations of the court, i.e. an ideologically close party opposes the court unexpectedly (Bailey et al., 2005; Collins, 2018; Manzi and Hall, 2017). To what extent ideological congruence to filing actors matters itself is debated (cf. Caldeira and Wright, 1990; Collins, 2018; Johnson et al., 2006), but expertise seems to positively impact the chance of successful influence on judges (Hansford, 2004; Johnson et al., 2006; McGuire, 1995). However, the impact of briefs on judicial decision making has not been formalized and empirical evidence outside the U.S. literature is scarce.

3 The ways for external actors to take influence

Courts lack the means to implement and enforce their decision (Hamilton 1788, *Federalist No. 78*). As judges depend on other actors, they are prone to be influenced by their environment. In other words external factors impact their decision-making on top of sincere preference and regard to formal law. They strategically manage public awareness to pressure governments into compliance. If they intend to successfully rule against a government, they increase public awareness by oral hearings or press releases when it is effective to do so (Krehbiel, 2016; Staton, 2006). If a court anticipates that they will not successfully challenge the government, they will attempt to hide their formal weakness in enforcing their decision in a similar manner, e.g. by writing vague opinions (Staton and Vanberg, 2008; Sternberg, 2019). Due to their dependence on public audiences, judges are concerned with their reputation. Courts seek to build an image of a panel of non-partisan experts that function within a transparent and accessible institution to garner the support of the public.

I consider two ways in which external actors can influence judges. First, they can provide convincing arguments which is the intended function of amici briefs. Judges

are experts, of course, but one cannot be an expert in every area of expertise. This makes judges more easily influenced in issues they have less expertise in (cf. Szmer and Ginn, 2014). Just like scientists focus on selected sets of literature they read and contribute to, judges vary in their degree of knowledge over different areas of law. The core function of amicus briefs is to provide a channel which judges can use to gather information. For eligible actors, amicus curiae briefs provide the opportunity to discuss policy implications, societal consequences, legal arguments, background information, data, precedence and values (Caldeira and Wright, 1990; Collins, 2007: 58; Epstein and Knight, 1998, 1999; Hansford, 2004), especially when actors provide a unique information (Spriggs and Wahlbeck, 1997).

Second, the awareness of external actors towards the court constitutes a part of overall public awareness (cf. Krehbiel, 2016; Spriggs and Wahlbeck, 1997; Vanberg, 2005). Further, I argue that their engagement alters public awareness, e.g., by influencing a court's decision to hold oral hearings or release press releases. By influencing the court's management of public awareness, external actors can alter the incentives of judicial and political decision-making. They influence transparency by monitoring political and judicial behaviour as well as processing information for public audiences.

I assume court proceedings to be strategic interactions (cf. e.g. Epstein and Knight, 1998; Hönnige and Gschwend, 2010; Murphy, 1964). Thus, I argue that external actors are motivated in reaping rewards by investing time and resources into their engagement with the court. When they decide to craft a written statement, they do so hoping to influence the outcome and increase their organizational strength.

Consider first the aspect of information provision which may influence judges by revealing new and convincing information, perspectives and arguments. Not only may external actors rival with the preferences of judges themselves, they also do rival with other actors of varying nature, i.e. political, judicial and public entities, which attempt to provide information of their own. The judges are potentially faced with a varied

set of perspectives vowing for their attention. Assumably, judges regard statements more so if they originate by a powerful and visible actor, such as governments. If they oppose a government, subsequent non-compliance may reveal a court's weakness. A similar mechanism cannot unfold if actors have no implementation power as is the case for external actors by definition. In consequence, I assume that the more powerful an actor is in policy making, the more influence they have on the decision outcome. However, this does not imply that written statements by external actors are simply ignored because they lack formal power. While most external actors do not constitute a direct threat to the court, as they do not actually take formal action in policy making, the information they provide may still be useful to judges.

As external actors cannot threaten non-compliance, judges do not facilitate oral hearings to rule against these actors, as is the case with governments (cf. Krehbiel, 2016). Instead, I assume that external actors, by filing briefs, incentivize judges to facilitate oral hearings for a different reason. External actors are information providers to judges. Their presence opens up the floor for an exchange of arguments to improve the deliberative quality of court proceedings, and therefore amend the information judges have available to reach their decision. For the aforementioned reasons, this should be driven by external actor participation, and not their specific position on a claim.

Hypothesis 1: As external actors engage with the court, judges are incentivized to facilitate oral hearings to gather information.

Support for this hypothesis provides evidence that briefs are used to convey information and that judges acknowledge the engagement of external actors. If external actors can impact public awareness through oral hearings and have a chance to be heard by judges, then these are viable incentives for external actors to spend time and resources in crafting briefs. The public awareness by oral hearings may provide fruitful grounds to tend to organizational maintenance, and at the same time, external actors have their

voices heard, which may influence judicial opinion-formation. I derive the following observable implication:

Observable Implication: If external actors engage with court proceedings, judges are more likely to facilitate oral hearings compared to cases where external actors are not engaged with a court proceeding.

In a similar manner, the literature highlights the role of press releases as another option for judges to selectively impact the transparency surrounding their decision (Staton, 2006; Meyer, 2020). Thus, I expect that judges respond to the engagement of external actors by communicating to public audiences via press releases. The more external actors step to the court, the more likely judges should be to publish press releases, as they can anticipate their communiqué to be read by a bigger audience, compared to where none or very few external actors engage with the court. At the same time, press releases are much cheaper to produce compared to oral hearings. This has implications, as press releases deliver much less to report on compared to oral hearings. First, there is no chance for video footage or recording of the hearing. At some courts, like the French Conseil Constitutionnel (FCC), the president of court may propose to publish records of public hearings. At other courts, like the GFCC, any recordings of oral hearings are entirely forbidden, but at most courts journalists can audit the hearing in person and report on it. The opening of public hearings are nevertheless selectively broadcasted live, even at the GFCC.² Previous scholarship has already advanced evidence on the GFCC that the court is more likely to publish press releases following oral hearings. Where public awareness has already been activated, judges are likely to publish press releases. There is two intuitive arguments to do so: First, if so desired, judges can attempt to further promote the case to increase the transparency. Second, as a hearing has already increased public awareness, press releases allow judges to favorably communicate their decision to public audiences.

²see BVerfGG §17a; §25a, citealp[cf.]]Vanberg2005a: 103

Hypothesis 2: As external actors engage with the court, judges are incentivized to release press releases.

Oral hearings are a stronger but more costly option to increase public awareness. Unlike press releases, they also do provide a fruitful platform for information exchange.³ In contrast, press releases are one-sided communication, where a court, the sender, addresses whomever may listen. Thus, they are best suited to manage public awareness, but ill suited to achieve deliberative quality. If judges respond to external actors with press releases, this would support the assumption that judges care about their public image and spend resources to maintain it. I derive the following observable implication:

Observable Implication: If external actors engage with court proceedings, judges are more likely to publish press releases compared proceedings without any engagement by external actors.

In what follows, I will present my strategy to test the proposed hypothesis on senate proceedings of the German Federal Constitutional Court. The raised empirical evidence helps to understand how external actors influence judicial decision-making. Additionally, I raise new evidence on what benefits external actors can and cannot expect through their engagement at constitutional courts to outline their capacity for influence-taking and judicial maintenance.

4 Data & Case Selection

To analyse the engagement and influence of external actors at constitutional courts, I will examine 952 senate decisions of the German Federal Constitutional Court from 1990 to 2017. The GFCC is a Kelsenian Court (Kelsen, 2008 [1931]; Shapiro and Stone 1994) with strong institutional capacities (Engst, 2021: ch. 3) and strong levels of

³The participation of experts is strongly associated with oral hearings, but not with press releases, even if removing oral hearing as a predictor of press releases. This provides evidence that oral hearings, while utilizable as a strategic tool, serve their formal purpose: To deliver a communication platform that allows for an exchange information and arguments.

institutional support (Epstein and Knight, 1998: 157-159; Kranenpohl, 2010: 392-403; Sieberer, 2006; Vanberg, 2005: 197). The judges to the German Federal Constitutional Court are selected by supermajorities in two legislative chambers (Hönnige, 2009: 965). Senate decisions can be regarded as the most salient and most important of the GFCC's decisions. The GFCC consists of two senates with separate responsibilities over issue areas. The senates come together to make a decision only after an initial claim has not been unanimously decided by a chamber of three judges based on the previously developed legal doctrine of the court. In consequence, senate decisions are important for at least one of the reasons: they regard new issues, they likely develop legal doctrine or they cannot easily be decided unanimously.

The German Federal Constitutional Court is an excellent case to analyze the impact of external actors on judicial decision-making for multiple reasons. First, it has served as a role-model for many Courts especially in Eastern Europe (e.g. Engst, 2021: ch. 3; Hönnige, 2008: 526; Hönnige and Gschwend, 2010: 508; Hönnige, 2011; Vanberg, 2005). Second, there is sufficient variance in hearings at the court, all the while we have a substantial set of cases where the court has authority to facilitate oral hearings.⁴ In comparison, e.g. the FCC by default has public hearings for priority questions of constitutionality (QPC) decisions, but there are no hearings intended for reviewing the constitutionality of ordinary law (DC) decisions. Third, a similar argument can be made for press releases. While the GFCC is increasingly publishing press releases, it does so selectively. Again, that is an important distinction e.g. to the FCC, which always publishes press releases. The lack of a strategic choice does not grant the opportunity to analyze the impact of external actors on key aspects of judicial behaviour. Fourth, the court has a long history of external actor engagement, especially regarding senate decisions, and consistently over all substantially important proceeding types.⁵ In

⁴Whether or not an oral hearing is held can either be decided by the court, or the group of plaintiffs and defendants, conditional on the procedure type (cf. BVerfGG §25; §46a.2; §48.2; §55.1; §61.2; §66a; §82.3; §82a.3; §93d.1; §94.5; §96c)

⁵In most procedures, the government is empowered by law to file an amicus brief in response, but

comparison, the FCC only systematically reports external actor contributions in DC decisions since 2017; at the Israeli High Court of Judges external actor filing briefs spiked as in the mid 2000s, after the first amicus brief was recorded in 1999 (Doron et al., 2015).

For the sample of 952 senate decisions, all briefs have been coded to document the filing actors and the position expressed in their written statement as (1) neutral, (2) supporting the claim or (3) rejecting the claim. The coding strategy has previously been applied to political actors and proven reliable with an intercoder reliability 96% across a random sample of 100 senate decisions. Subsequently, the filing actors have been categorized into exclusive groups: (1) the government, (2) other political actors than the government, (3) judicial actors, (4) external actors, (5) experts, (6) others.⁶

The outcome variable for the first hypothesis is a Court's decision to hold an oral hearing. To test the first hypothesis, I reduce the sample to the set of decision initially coded by Vanberg (2005) and expanded by Krehbiel (2016) where the court has authority over whether an oral hearing will be held.⁷ The variable *Hearing* is coded 1 if the Court held an oral hearing and 0 otherwise. I expect that when external actors engage with the court, the court is more likely to conduct oral hearings for two reasons: External actors can act as a cataclyst in the Court's effort to raise public awareness against threats of non-compliance and external actors can provide further information in oral hearings. Additionally, the court's responsiveness to external actors may be beneficial for their institutional support. I measure external actors engagement by whether they have filed a brief to an ongoing court proceeding before hearings. The variable *External actor filed* is coded 1 if any actor categorized as an external actor has filed a brief, and 0

which other actors are eligible to file briefs depends on who constitutes the group of plaintiffs, defendants, or otherwise involved actors in the corresponding case, or prior case at lower courts that lead to the initiation of the proceeding (cf. BVerfGG §23a; §77; §82.2; §83; §84; §85.2; §94; §96.2).

⁶For an actor to be coded as an expert, the actor has to be explicitly mentioned as an expert by the court in the written decision. Governments and political parties are excluded in any case. Other actors include the involved legal parties and anonymized person or businesses

⁷The sample includes 391 senate decisions from 1991 to 2014.

otherwise. Filing briefs requires resources, and those arguably weigh in much higher for external actors than governments. If filing briefs is rewarded with increasing the chances of being heard, and increasing the chances of increasing public awareness, that provides an intuitive explanation as to why external actors engage in the practice of filing briefs. Being heard gives them a shot to take influence, and public awareness is beneficial for organizational maintenance. The actor can use the public awareness to promote their cause and their efficacy.

Regarding the second hypothesis, the outcome variable *Press Release Publication* is coded 1 when the court has published a press release, and 0 otherwise. To test the second hypothesis that the engagement of external actors incentivize judges to create additional workload and craft a press release, I will estimate of external actors filing a brief on the publication of press releases. I assume that the presence of external actors provides a first audience for the court's potential press release. A press release helps the court to appear responsive and transparent to external actors with relatively little effort. Further, the external actors may process press releases for their own media publications they create for organizational maintenance or campaigning on specific issues. I assume that external actors promote courts to be transparent, i.e. communicate to the public. Through press releases and external actors, information may also be processed to be better understood by public audiences, esp. for complex cases.

In line with Krehbiel and to account for the complexity of cases, I draw on the dichotomous coding scheme that categorizes cases into complex and simple issue areas. Cases regarding "complex" issues are coded 0, whereas "simple" are coded as 1.⁸ The GFCC is a twin court composed of two chambers, called senate. I account to the unique institutional structure of the GFCC and include the variable *Second* that is coded 1 when a decision is made by the second senate, and 0 when a decision is made by the

⁸Complex issues involve taxation, budgets, economic regulation, social insurance, civil servant compensation, and party finance; simple issues involve institutional disputes, family law, judicial process, individual rights, asylum rights, military conscription (Krehbiel, 2016 997; cf. Vanberg, 2005).

first senate. The senates have authority over different issue areas and only very rarely get involved with the decisions of the other senate.⁹ Further controls include whether another court has filed a brief. Briefs by other courts potentially provide information reliably and well before an oral hearing. Lower court briefs may even replace oral hearings as a tool of information provision. If any lower court files a brief, *Court Brief* is coded 1. If a federal statute is involved in the senate decision, the variable *Federal Law* is coded 1, and 0 for subnational statutes (cf. Krehbiel, 2016).

Additionally, I account for experts filing briefs with the court as an alternative provider of information. Further, I expect that where experts file briefs, they may reveal to judges the need and availability of additional information which they could receive directly from the expert in a subsequent oral hearing. Thus, I measure the effect of experts filing briefs. The variable *Expert filed* is coded 1 if an actor has filed a brief whom has been explicitly referred to as an expert by the court in the written decision, and 0 otherwise.

5 Empirical Analysis

Table 1 displays the results of three logistic regressions to test hypothesis 1, that external actor's engagement incentivizes judges to hold oral hearings. Model 1 analyzes the effect of external actors filing briefs on the occurrence of oral hearings, not accounting for any interaction effects with case complexity. As expected, when external actors file briefs, judges are more likely to hold an oral hearing. While this provides initial evidence for hypothesis 1, that external actors incentivize judges to hold oral hearings, we learn little about why they do so.

In an alternative model specification I find that there is no substantive difference

⁹Formally, the first senate is concerned with basic rights and liberties, whereas the second senate is concerned with government practice and disputes between organs. In practice, this is not fully enforced anymore, as responsibilities may be reassigned yearly (Schlaich and Koriath, 2015: 38; BVerfGG §14; Federal Law Gazette 1993 Part I No. 74: 2492).

Table 1: Logistic regressions to estimate occurrence of oral hearings

	Hearing		
	1	2	3
No Government Brief	-.96** (.41)	-1.00** (.41)	-2.26** (1.10)
External Actor (EA) filed	.74*** (.27)		1.23*** (.40)
Expert filed			1.29*** (.40)
Case Complexity (CC)	3.05*** (.83)	3.04*** (.82)	3.25*** (.91)
Second Senate	.28 (.28)	.23 (.27)	.23 (.28)
Court Brief	.36 (.25)	.38 (.25)	.32 (.25)
Federal Law	.50 (.34)	.54 (.34)	.79** (.36)
EA filed in support		.71*** (.27)	
No Govt. Brief x Cc			1.35 (1.19)
EA filed x CC			-.90* (.53)
Constant	-2.13*** (.39)	-2.06*** (.38)	-2.96*** (.51)
Observations	391	391	391
Log Likelihood	-197.56	-197.93	-192.75
Akaike Inf. Crit.	409.11	409.87	405.50

Notes:

*p < .1 **p < .05 ***p < .01.

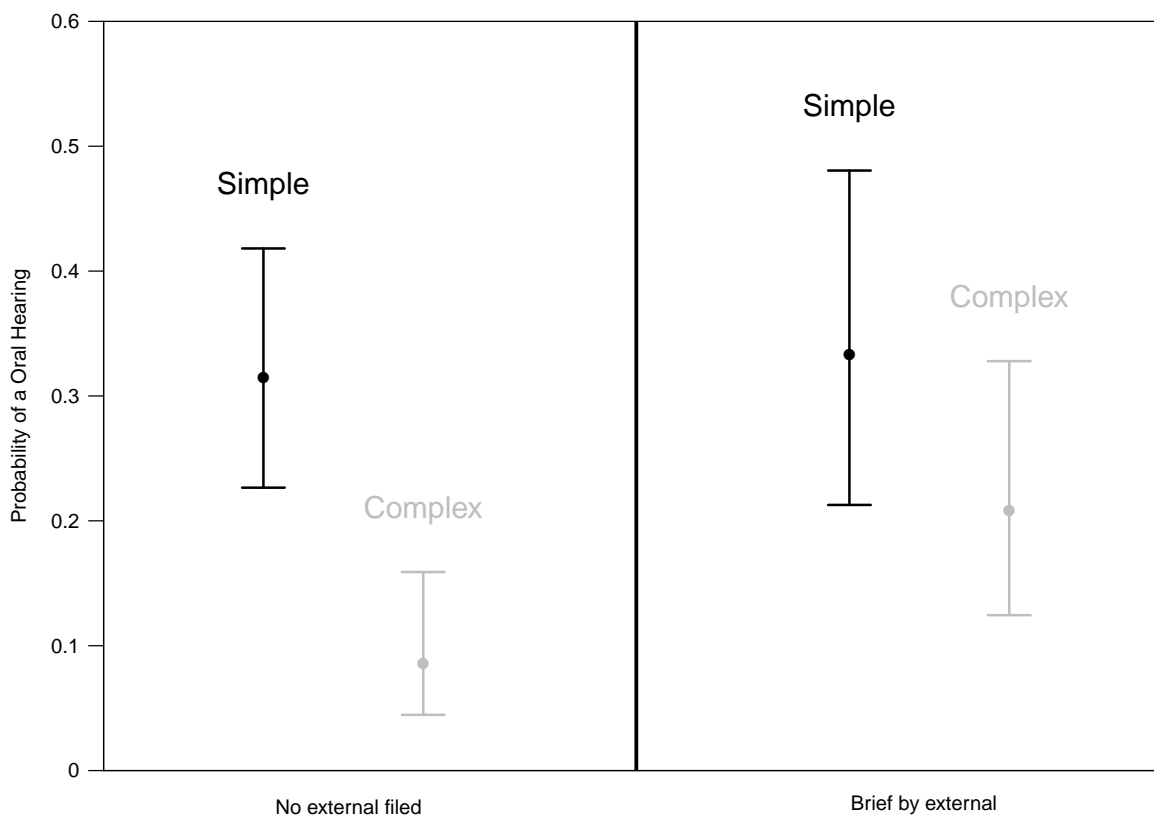
in the effect of briefs filed compared to briefs filed in support of the complainant in the simple model. However, supporting briefs do not capture the distinct effect on simple and complex cases found in Model 3 (Table 1). This is not too surprising, given the variables are highly positively correlated (.8). I previously assumed that as external actors lack the power to implement policy. Thus, I argue their presence is more meaningful as information providers and as catalysts of public awareness compared to being an actual threat to the court. This should be the case especially for a strong court such as the GFCC, which enjoys particular strong levels of institutional support.

Compared to the baseline models (see Appendix, Table 2, Model 1 and Model 4) presented by Krehbiel (2016), I omit the number of total briefs from the analysis as this is directly related to external actor briefs, but I have checked the presented results to account for the total number of briefs filed by external actors, which is said to proxy case salience (Spriggs and Wahlbeck, 1997; Vanberg, 2005). An alternative report on the impact of the total number of briefs filed by external actors on the occurrence of press release publication is presented in Figure 3 (Appendix).

To better understand how external actors affect the judicial decision to facilitate oral hearings, I adopt the strategy to control for case complexity (cf. Vanberg, 2005) and additionally estimate the difference in effects of external actors filing briefs in simple and complex cases on the occurrence of oral hearings in Model 3 (Table 1). Assuming that external actors do not only proxy prior salience, but also can be information providers, their presence should be helpful in making complex cases publicly accessible. I account for experts filing briefs, which are neutral and well-suited information providers. Their presence may explain the information provision aspect in motivating oral hearings.

Model 3 reveals that there is a substantive difference in the effect of external actor briefs on oral hearings, although the regression only reports a significant difference at the 90% confidence level. Figure 1 reports the difference in probability of oral hearings

Figure 1: Effect of external actor filing briefs on the occurrence of oral hearings

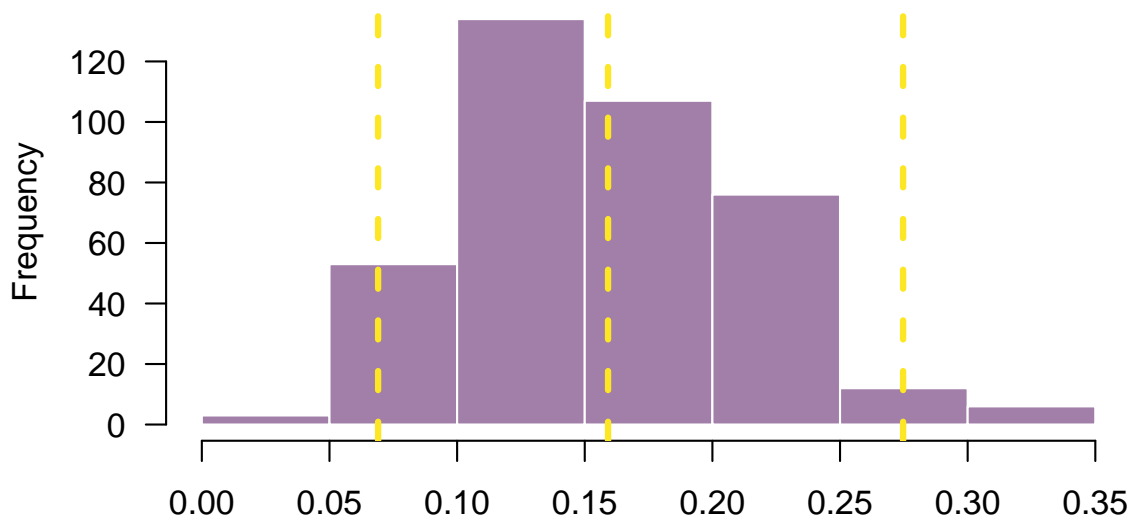


Note: The points indicate predicted probabilities of oral hearings being with their corresponding 95% confidence intervals. The left panel shows predicted probabilities when no external actor has filed a brief, the right panel shows the same when any external actor has filed. Black indicators are depicted for cases coded as simple, whereas gray indicators are depicted for complex cases. All other variables are kept at their observed medians. The estimates are based on Table 1, Model 3.

occurring for simple and complex cases as estimated by Model 3. The left panel shows the difference when no external actor has filed a brief, whereas the right panel when any external actor has done so. As expected and in line with the argument that oral hearings are most effective to raise public awareness on simple issues (Krehbiel, 2016), I find that oral hearings are more likely for simple cases than for complex cases when no external actor has filed a brief.

The striking findings are revealed at second glance: First, when any external actor has filed a brief, the difference in the likelihood of an oral hearing being held by the judges between simple and complex cases becomes insignificant. Second, oral hearings are held significantly more likely in complex cases when any external actor has filed a brief compared to when no external actor engages with the court. The estimated first differences based on Model 3 are reported in Figure 2. This evidence speaks in favor of hypothesis 1, that external actor’s engagement incentivizes judges to hold oral hearings, and it has numerous implications for our understanding of judicial behaviour and the engagement of external actors at constitutional court.

Figure 2: First Differences in predicted probabilities of oral hearings



First differences in the predicted probability of oral hearing occurrence

Note: The first difference reported are based on Model 3, Table 1. The predicted probabilities in complex cases when no external actor has filed a brief are subtracted from the predicted probabilities in complex cases when an external actor has filed a brief, for 391 expected values calculated for each scenario respectively. The difference is the difference in effect of external actor brief

Regarding judicial behaviour, the evidence suggests that judges regard external actors in their decision-making. Specifically, they likely regard them as potential information providers even when accounting for the presence of experts, as their presence makes a significant difference in their decision to hold oral hearings in complex cases, where filing actors could be heard and questioned. Additionally, external actors may be able to process complex information related to the case and distribute it to target audiences in the public, which may make oral hearings more useful as a strategic tool in cases it is otherwise not.

Krehbiel (2016) establishes that a government can signal a credible threat of noncompliance through their briefs. Little speaks for the argument that a similar assumption applies to briefs of external actors. As external actors possess no formal power in policy-making, they cannot pose a noncompliance threat. As such, it is not too surprising that whether or not any external actor has filed a brief appears not to impact the occurrence of oral hearings in simple cases.

For external actors, they can be assured that their engagement in senate decisions at the GFCC is not an unreasonable waste of time and resources. For one, they have a good chance of being heard, especially when the judges are in need of further information. Their role as an information provider leads judges to lend them an ear. Additionally, their engagement can make court proceedings accessible to public audiences which may not have been easily accessible if no external actor engaged the court. As a democratic distribution, this increase in transparency is surely desirable, so external actors do positively affect democratic functions of one of the pillar institutions in systems of separated powers, constitutional courts. In designing constitutional courts, including external actors may be an intuitive step to bolster the legitimacy of the institution as a whole.

The capacity of external actors to increase transparency becomes apparent from the evidence raised on hypothesis 2 as well. On a sample of 717 senate decisions drawing on

Table 2: Logistic regressions to estimate the publication of press releases

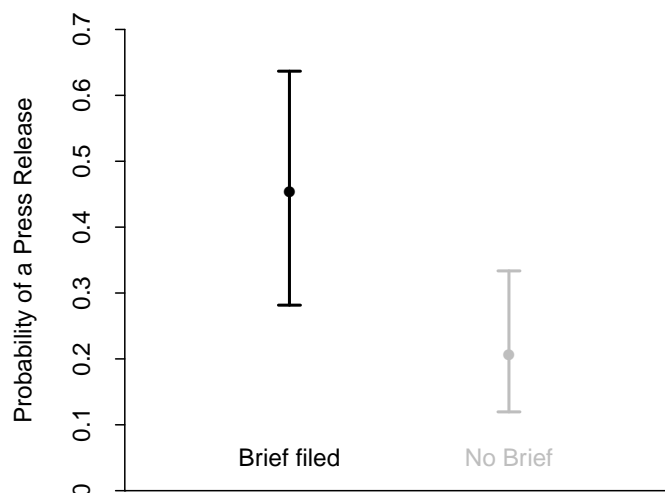
	Press Release Publication	
	1	2
External Actor filed	1.16*** (.32)	.87** (.34)
No Government Brief	-.88*** (.25)	-.88*** (.27)
Status Quo Change		1.02*** (.38)
Lower Court Overrule		.76 (.56)
Hearing	.36 (.30)	.39 (.32)
Multiple dockets	-7.14*** (1.03)	-13.91 (535.41)
Dissenting Op	.25 (.44)	.26 (.49)
Second	.12 (.23)	.10 (.25)
Constant	1.20*** (.28)	1.23*** (.31)
Observations	717	479
Log Likelihood	-275.93	-241.76
Akaike Inf. Crit.	565.86	501.52

Notes: *p < .1, **p < .05, ***p < .01

data raised by Meyer (2020) I estimate logistic regressions with press release publication as the outcome variable. I find that external actors positively impact the publication of press releases. The logistic regression model to estimate the occurrence of press releases on has controls to account for whether the federal government has filed a brief, whether an oral hearing has occurred, whether any judge of the senate has filed a dissenting opinion, whether the decision was made by the second senate and whether the senate decision merges multiple dockets in the decision. The effect of external actor briefs on the probability of press releases is visually illustrated in Figure 3. The results are

robust to model specifications accounting for briefs by several other groups of actors, as well as status quo changes and lower court overrulings (Meyer, 2020).

Figure 3: Effect of Briefs on Press Release Publication



Note: The points indicate predicted probabilities of press release publication when any external actors has filed a brief (black) and when no external actor has filed a brief (gray) with their corresponding 95% confidence intervals. All other variables are kept at their observed medians. The estimates are based on Table 2, Model 1.

The evidence supports hypothesis 2, that external actors incentivize judges to publish press releases. Intuitively, external actors are a known audience, so the press release of judges will likely be heard, which increases its utility. Further, the court may do so in an attempt to increase their reputation as a transparent and responsive court, especially as the German Federal Constitutional Court does file press releases selectively. External actors may feel more efficacious where the court files an additional press release, and may use it for their own public relation purposes. Thus, external actors enhance the transparency of constitutional court decisions, and this may also benefit organizational maintenance by external actors.

What does the evidence suggest about the strategic behaviour of external actors? In simple decisions, they cannot hope to make a big difference to the strategic interaction between courts and governments. They can however hope to use the platform for

organizational maintenance. Further evidence is needed on whether they actually do so successfully. In complex cases, which may appear to be not so promising for organizational maintenance, their engagement could be surprisingly beneficial. For one, their engagement may make the difference by making complex more accessible. Second, they may have a real shot at being heard as providers of information, potentially influencing judges' opinion-formation. From the empirical evidence, external actors should be well motivated to file briefs to their own benefit.

6 Discussion

This article set out to understand how external actors can influence judicial behaviour on constitutional courts. The results suggest that external actors act as information providers and can make complex cases more accessible to the public. Additionally, external actors increase the transparency of judicial practice, as their engagement incentivizes not only oral hearings, but also the publication of press releases by the judges. This has several important implications: External actors impact the strategic interaction between courts and governments, as they impact the occurrence of oral hearings which raise public awareness. As external actors provide and process information in complex cases, we learn more about the incentives of judges to hold oral hearings. Their engagement also potentially raises public awareness in cases we previously assumed oral hearings to be ineffective.

I provide new evidence to show whether well-established theories about external actors' motivations to file briefs at the SCOTUS are applicable to Kelsenian-type constitutional courts. As external actors can act as information providers, this gives them a channel to take influence. Further research faces an exciting challenge to assess the extent of external actors in the opinion-formation of judges. Additionally, external actors find fruitful grounds at the court for organizational maintenance. Not only

may external actors capitalize on the court's efforts to raise public awareness, they also incentivizes judges to do so. If that is not enough to argue that organizational maintenance is definitely an option for external actors, it appears reasonable that external actors can also capitalize on the increase in public awareness not only towards the court proceeding, but towards the related policy issues. This should prove beneficial to recruit members, mobilize protest or secure funds.

To summarize, external actors provide information and influence transparency. Their role as an information provider is prominent in their impact on oral hearings in complex cases. If external actors were merely signaling case salience, then we would expect their presence to positively impact the occurrence of oral hearings in simple and complex cases alike. Instead, I argue that external actors provide information and arguments that can be discussed in oral hearings. Further, they may be able to process information in complex cases to make it more accessible to public audiences. Press releases by the court could target such external actors, so they can use it as a reference for their own public communication strategy.

The article presents new insights on external actors and their influence on judicial decision-making. As courts strive for more accessibility and transparency to foster their reputation as a democratic institution, they tend to report on and respond to external actors engagement more systematically in recent years. This provides researchers with exciting new opportunities to analyze judicial behaviour and how the increasingly important participation of outside actors matters to judicial decision-making of highest courts. We know very little yet about who lobbies the court, despite the important role constitutional courts play in shaping society.

References

- Bailey, M. A., B. Kamoie, and F. Maltzman (2005). Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision. *American Journal of Political Science* 49 (1): 72–85.
- Caldeira, G. A. and J. R. Wright (1988). Organized Interests and Agenda Setting in the U.S. Supreme Court. 82 (4): 1109–1127.
- Caldeira, G. A. and J. R. Wright (1990). Amici Curiae Before the Supreme Court: Who Participates, When, and How Much? *The Journal of Politics* 52 (3): 782–806.
- Canelo, K. S. (2022). The Supreme Court, Ideology, and the Decision to Cite or Borrow from Amicus Curiae Briefs. *American Politics Research* 50 (2): 255–264.
- Collins, P. M. (2007). Lobbyists before the U.S. Supreme Court: Investigating the influence of amicus curiae briefs. *Political Research Quarterly* 60 (1): 55–70.
- Collins, P. M. (2018). The use of amicus briefs. *Annual Review of Law and Social Science* 14: 219–237.
- Collins, P. M., P. C. Corley, and J. Hamner (2015). The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content. *Law and Society Review* 49 (4): 917–944.
- Collins, P. M. J. and L. A. McCarthy (2017). Friends and Interveners. Interest Group Litigation in a Comparative Context. *Journal of Law and Courts* 5 (1): 55–80.
- Doron, I. I., M. Totry-Jubran, G. Enosh, and T. Regev (2015). An American Friend in an Israeli Court: An Empirical Perspective. *Israel Law Review* 48 (2): 145–164.
- Engst, B. G. (2021). *The Two Faces of Judicial Power: Dynamics of Judicial-Political Bargaining*. Cham: Palgrave Macmillan.

- Epstein, L. (1993). Interest Group Litigation During the Rehnquist Court Era. *Journal of Law and Politics* 9 (4): 639–717.
- Epstein, L. and J. Knight (1998). *The Choices Justices Make*. Washington, D.C.: CQ Press.
- Epstein, L. and J. Knight (1999). Mapping out the strategic terrain: The informational role of amici curiae. In C. W. Clayton and H. Gillman (Eds.), *Supreme Court decision-making: New Institutional Approaches*, pp. 215–235. Chicago: University of Chicago Press.
- Epstein, L., W. M. Landes, and R. A. Posner (2013). *The Behavior of Federal Judges. A Theoretical & Empirical Study of Rational Choice*. Harvard University Press.
- Garcia, R. J. (2008). A Democratic Theory of Amicus Advocacy. *Florida State University Law Review* 35 (2): 315–358.
- George, T. E. and L. Epstein (1992). On the Nature of Supreme Court Decision Making. *American Political Science Review* 86 (2): 323–337.
- Hansford, T. G. (2004). Lobbying strategies, venue selection, and organized interest involvement at the U.S. Supreme court. *American Politics Research* 32 (2): 170–197.
- Hollis-Brusky, A. and J. C. Wilson (2017). Playing for the Rules: How and Why New Christian Right Public Interest Law Firms Invest in Secular Litigation. *Law and Policy* 39 (2): 121–141.
- Hönnige, C. (2008). Verfassungsgerichte in den EU-Staaten: Wahlverfahren, Kompetenzen und Organisationsprinzipien. *Zeitschrift für Staats- und Europawissenschaften* 6 (3): 524–553.
- Hönnige, C. (2009). The electoral connection: How the pivotal judge affects oppositional success at European constitutional courts. *West European Politics* 32 (5): 963–984.

- Hönnige, C. (2011). Beyond judicialization: Why we need more comparative research about constitutional courts. *European Political Science* 10 (3): 346–358.
- Hönnige, C. and T. Gschwend (2010). Das Bundesverfassungsgericht im politischen System der BRD – ein unbekanntes Wesen? *Politische Vierteljahresschrift* 51: 507–530.
- Johnson, T. R., P. J. Wahlbeck, and J. F. Spriggs (2006). The Influence of Oral Arguments on the U.S. Supreme Court. *American Political Science Review* 100 (1): 99–113.
- Kelsen, H. (2008). *Wer soll der Hüter der Verfassung sein? Abhandlungen zur Theorie der Verfassungsgerichtsbarkeit in der pluralistischen, parlamentarischen Demokratie.* [1931]. Tübingen: Mohr Siebeck.
- Kranenpohl, U. (2010). *Hinter dem Schleier des Beratungsgeheimnisses. Der Willensbildungs- und Entscheidungsprozess des Bundesverfassungsgerichts.* Wiesbaden: VS Verlag für Sozialwissenschaften.
- Krehbiel, J. N. (2016). The Politics of Judicial Procedures: The Role of Public Oral Hearings in the German Constitutional Court. *American Journal of Political Science* 60 (4): 990–1005.
- Lynch, K. J. (2004). Best Friends? Supreme Court Law Clerks on Effective Amicus Curiae Briefs. *Journal of Law and Politics* 20: 33–75.
- Mann, R. and M. Fronk (2021). Assessing the Influence of Amici on Supreme Court Decision Making. *Journal of Empirical Legal Studies* 18 (4): 700–741.
- Manzi, L. and M. E. Hall (2017). Friends You Can Trust: A Signaling Theory of Interest Group Litigation Before the U.S. Supreme Court. *Law and Society Review* 51 (3): 704–734.
- McGuire, K. T. (1995). Repeat players in the supreme court: The role of experienced lawyers in litigation success. *The Journal of Politics* 57 (1): 187–196.

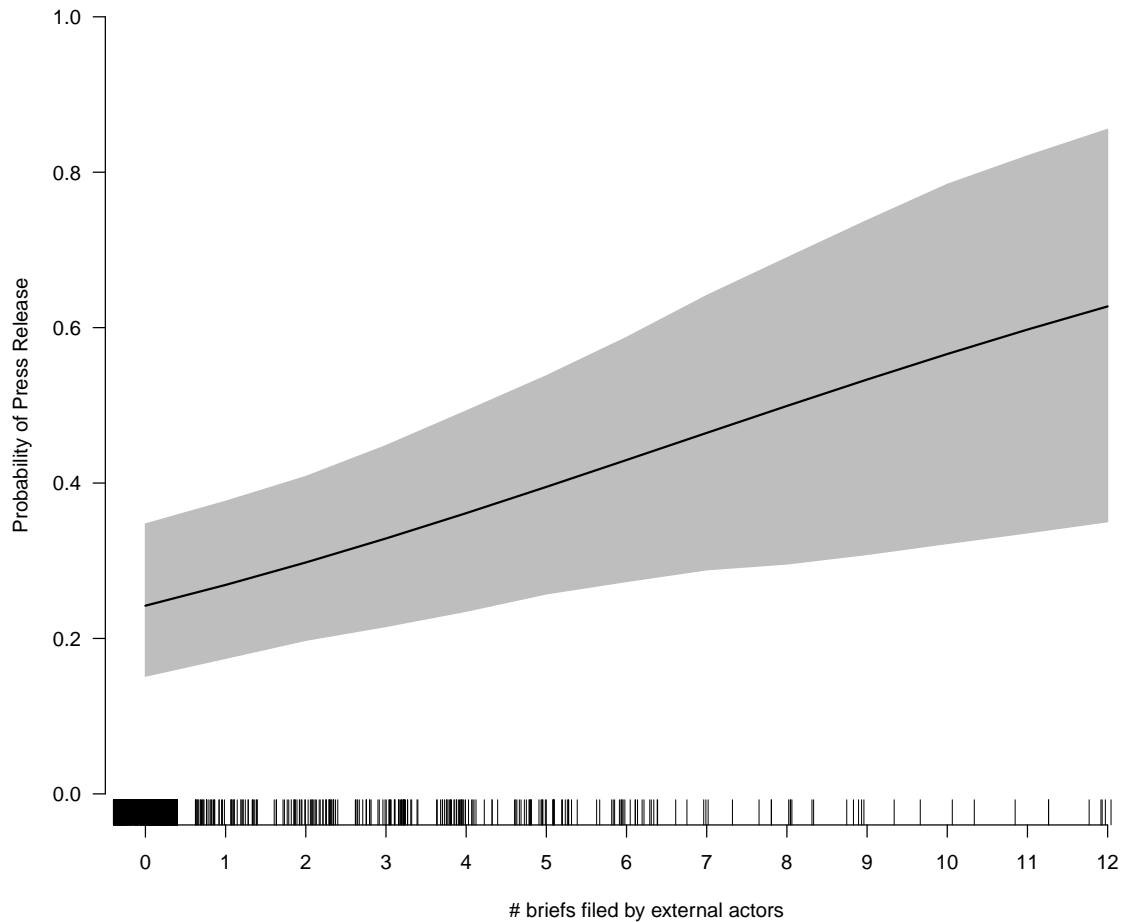
- Meyer, P. (2020). Judicial public relations: Determinants of press release publication by constitutional courts. *Politics* 40 (4): 477–493.
- Murphy, W. F. (1964). *Elements of Judicial Strategy*. New Orleans: Quid Pro Books.
- Parcelle Jr., R. L., B. W. Curry, and B. W. Marshall (2011). *Decision Making by the Modern Supreme Court*. Cambridge: Cambridge University Press.
- Schlaich, K. and S. Koriöth (2015). *Das Bundesverfassungsgericht. Stellung, Verfahren Entscheidungen* (10th ed.). München: C.H. Beck.
- Segal, J. A. and H. J. Spaeth (2002). *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press.
- Shapiro, M. and A. Stone (1994). The New Constitutional Politics of Europe. *Comparative Political Studies* 26 (4): 397–420.
- Sieberer, U. (2006). Strategische Zurückhaltung von Verfassungsgerichten. Gewaltenteilungsvorstellungen und die Grenzen der Justizialisierung. *Zeitschrift für Politikwissenschaft* 16 (4): 1299–1323.
- Solberg, R. S. and E. N. Waltenburg (2006). Why do interest groups engage the judiciary? Policy wishes and structural needs. *Social Science Quarterly* 87 (3): 558–572.
- Spriggs, J. F. I. and P. J. Wahlbeck (1997). Amicus Curiae and the Role of Information at the Supreme Court. *Political Research Quarterly* 50 (2): 365–386.
- Staton, J. K. (2006). Constitutional review and the selective promotion of case results. *American Journal of Political Science* 50 (1): 98–112.
- Staton, J. K. (2010). *Judicial power and strategic communication in Mexico*. Cambridge: Cambridge University Press.

- Staton, J. K. and G. Vanberg (2008). The value of vagueness: Delegation, defiance, and judicial opinions. *American Journal of Political Science* 52 (3): 504–519.
- Sternberg, S. (2019). *No Public, No Power? Analyzing the Importance of Public Support for Constitutional Review with Novel Data and Machine Learning Methods*. Ph. D. thesis, Graduate School of Economic and Social Sciences at the University of Mannheim.
- Stone Sweet, A. (2002). Path Dependence, Precedent, and Judicial Power. In A. Stone Sweet and M. Shapiro (Eds.), *On Law, Politics, and Judicialization*, pp. 112–135. Oxford University Press.
- Strøm, K. and W. C. Müller (1999). Political Parties and Hard Choices. In W. C. Müller and K. Strøm (Eds.), *Policy, Office, or Votes?: How Political Parties in Western Europe Make Hard Decisions*, pp. 1–35. Cambridge University Press.
- Szmer, J. and M. H. Ginn (2014). Examining the Effects of Information, Attorney Capability, and Amicus Participation on U.S. Supreme Court Decision Making. *American Politics Research* 42 (3): 441–471.
- Tiede, L. B. (2020). Mixed Judicial Selection and Constitutional Review. *Comparative Political Studies* 53 (7): 1092–1123.
- Vanberg, G. (2005). *The Politics of Constitutional Review in Germany*. Cambridge: Cambridge University Press.
- Weinshall, K., U. Sommer, and Y. Ritov (2018). Ideological influences on governance and regulation: The comparative case of supreme courts. *Regulation and Governance* 12 (3): 334–352.
- Weinshall-Margel, K. (2011). Attitudinal and Neo-Institutional Models of Supreme Court Decision Making: An Empirical and Comparative Perspective from Israel. *Journal of Empirical Legal Studies* 8 (3): 556–586.

Wofford, C. B. (2020). "Why Try? Comparing the Aims of Parties and Amici in U.S. Supreme Court Litigation". *Justice System Journal* 41 (2): 81–97.

Appendix

Figure 4: Effect of the number of external actors who filed briefs on the probability of press release publication



Note: The plot reports predicted probabilities of press release publication over a range of number of briefs filed by external actors in a senate proceeding. Estimates are based on Table 2, Model 1, but with *number of briefs filed by external actor* replacing the dichotomous *External actor filed* measure. The corresponding logistic regression model for 717 senate decisions is not reported herein.

Table 3: Logistic regressions to estimate the occurrence of oral hearings

	Hearing				
	1	2	3	4	5
No Government Brief	-.88 (.40)	-.96 (.41)	-1.00 (.41)	-1.80 (1.04)	-2.26 (1.10)
External Actor filed		.74 (.27)			1.23 (.40)
Expert filed		3.05 (.83)	3.04 (.82)		3.25 (.91)
Case Complexity (CC)				.77 (.27)	1.29 (.40)
Second Senate	.40 (.27)	.28 (.28)	.23 (.27)	.40 (.27)	.23 (.28)
Total Briefs	.17 (.04)			.16 (.04)	
Court Brief	.35 (.25)	.36 (.25)	.38 (.25)	.35 (.25)	.32 (.25)
Federal Law	.74 (.34)	.50 (.34)	.54 (.34)	.92 (.35)	.79 (.36)
E.A. filed in support			.71 (.27)		
Complainant Support				.16 (.31)	
No Govt. Brief x Cc				.98 (1.15)	1.35 (1.19)
E.A. filed x CC					-.90 (.53)
Constant	-2.68 (.42)	-2.13 (.39)	-2.06 (.38)	-3.19 (.49)	-2.96 (.51)
Observations	391	391	391	391	391
Log Likelihood	-200.59	-197.56	-197.93	-194.89	-192.75
Akaike Inf. Crit.	413.18	409.11	409.87	407.77	405.50

Notes:

*p < .1 **p < .05 ***p < .01.

Table 3 reports the previous models in Table 1 to test my first hypothesis: Model 2, Model 3 and Model 5 are the same as Model 1-3 in Table 1. Model 1 and Model 4 reproduce Model 1 and Model 2 in Krehbiel's (2016) seminal work on "The Politics of Judicial Procedures: The Role of Public Oral Hearings in the German Constitutional Court" for the sample of senate decisions analyzed in the article. The models were originally estimated to test (and support) the Noncompliance Risk and Effectiveness Hypotheses.

The noncompliance hypothesis states that a court is more likely to hold a hearing when the government poses a credible threat of noncompliance, measured by the government filing a brief in defense of the statute. The effectiveness hypothesis states that "when faced with a risk of noncompliance, a court is more likely to hold public oral hearings for cases in which a hearing will be most effective at increasing public awareness" (Krehbiel, 2016: 995). He finds that the court "is more likely to hold a hearing for cases involving 'simple' issue areas, but only when faced with a risk of noncompliance" (Krehbiel, 2016: 1001). Thus, I include the interaction as a control when analyzing the differential impact of external actor briefs on oral hearings in 'simple' and 'complex' issues.