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Lobbying by Brief: Unveiling the Dominance of Amicus Lobbying in the Development of Business Law

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LOBBYING BY BRIEF: UNVEILING THE DOMINANCE OF AMICUS LOBBYING IN THE DEVELOPMENT OF BUSINESS LAW

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This Article uncovers the pervasive and significant impact of business law *Amicus Lobbying*, a strategic tactic whereby lobby groups have commandeered the amicus curiae filing process in state courts to shape business law according to their interests.

The Article makes three primary contributions to the literature. First, it presents the only comprehensive dataset of amicus curiae filings in business law cases. This hand-collected dataset encompasses nearly all business law amicus curiae filings from 2005 to 2022 in the key jurisdictions of New York, California, Delaware, Texas, and Nevada. Second, it reveals a striking empirical finding: lobby groups account for 67% of all amicus curiae filings in the dataset, with a high rate of success in persuading courts to adopt their positions. Finally, the Article provides a normative assessment of Amicus Lobbying in business law and proposes policy recommendations designed to ensure a more balanced representation of stakeholder interests.

By shedding light on this understudied phenomenon, this Article aims to stimulate critical discourse on the intersection of lobbying, judicial decision-making, and business law formation. It offers valuable insights for scholars, practitioners, and policymakers engaged in the ongoing debate over the appropriate role and influence of interest groups in shaping legal doctrine.

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INTRODUCTION

The amicus curiae process provides non-litigants with an opportunity to convince the courts of a certain legal position.[1] While litigation is concerned with resolving the dispute between the relevant parties, the precedent set by any particular litigation may impact society as a whole.[2] It therefore makes sense, at least on first impression, to allow

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[1] *See* Samuel Krislov, *The Amicus Curiae Brief: From Friendship to Advocacy*, 72 YALE L.J. 694 (1963) (describing the roles and historical development of amicus curiae in the United States's judicial system).

[2] *See, e.g.*, Arthur L. Goodheart, *Determining the Ratio Decidendi of a Case*, 40 YALE L.J. 161 (1930) (providing an early scholarly account of binding precedent); Marcel Kahan & Michael Klausner, *Standardization and Innovation in Corporate Contracting (or "The Economics of Boilerplate")*, 83 VA. L. REV. 713, 719-23

others with stakes in the relevant precedent to express their opinions. It may allow the courts to be sensitive to the impact on non-litigants, and it may provide the judges with a source of expertise not otherwise available to them. Business law adjudication is certainly no exception. But does the business law amicus curiae process truly serve these interests? Is our business law really informed by a diverse set of stakeholders spread across various socioeconomic positions, or is it controlled by a defined set of repeat players? Are certain interest groups more successful in changing business law than ordinary people? Are these amicus curiae filers, as their Latin name suggests, "friends of the court," or friends of the industry?

This Article provides the first empirical and normative approach to answering these all-important questions. First, we curate a unique and comprehensive dataset of business law amicus curiae filings. Second, we investigate this one-of-a-kind dataset to determine if certain groups have disproportionate rates of success in persuading the courts of their varying positions. Third, we demonstrate that certain lobby groups engaged in business law amicus curiae filings, or, in short, *Amicus Lobbying*, have a disproportionate impact on business law jurisprudence. Lastly, moving from the empirical to the normative, we theorize the form and function of Amicus Lobbying. We conclude that, as a matter of policy, business law Amicus Lobbying needs correcting, and we develop both federal and state-based interventions to that effect.

Business law, broadly understood, is a product of both federal and state law.[3] But while empirical investigations of the amicus curiae process in the Supreme Court are commonplace,[4] similar

(1997) (providing a theoretical and empirical analysis of how precedent impacts contracting in the business law context).

[3] *See, e.g.*, ROBERTA ROMANO, THE GENIUS OF AMERICAN CORPORATE LAW 1-4 (1993) (providing a seminal account of the impact of the state-based nature of corporate law)*;* Mark Roe, *Delaware's Competition*, 117 HARV. L. REV. 588 (2003) (analyzing the role of federal intervention in corporate law); Jennifer J. Johnson, *Private Placements: A Regulatory Black Hole*, 35 DEL. J. CORP. L. 151, 157 (2010) (discussing the foundations of federal-based and state-based securities regulation).

[4] *See* Joseph D. Kearney & Thomas W. Merrill, *The Influence of Amicus Curiae*

investigations in the state level are few and far between.[5] More importantly, existing investigations of the amicus curiae process at the state level have been focused on the state as a whole rather than the field of business law.[6] Because business transactions and disputes are heavily impacted by state laws and business interactions are often complex and spread across multiple states,[7] an investigation of Amicus Lobbying in business law requires taking a both broad and precise approach to filtering through various categories of business law cases across a subset of states in order to create a representative sample of business law amicus curiae filings.

Briefs on the Supreme Court, 148 U. PA. L. REV. 743 (2000) (providing a robust and seminal analysis of the success rates of amicus filings in the Supreme Court); (Allison Orr Larsen, *The Trouble with Amicus Facts*, 100 VA. L. REV. 1757, 1758 (2014) (arguing that factual amicus curiae fillings in the Supreme Court have become biased and unreliable); Katherine Shaw, *Friends of the Court: Evaluating the Supreme Court's Amicus Invitations*, 101 CORNELL L. REV. 1533, 1535 (2016) (demonstrating that Supreme Court amici tend to be former law clerks but that there is an increase in the proportion of first-time amici fillers); Allison Orr Larsen & Neal Devins, *The Amicus Machine*, 102 VA. L. REV. 1901, 1902 (2016) (providing a comprehensive analysis of the development of the amicus curiae process in the Supreme Court, and showing its strategic control by repeat players); Darcy Covert & Annie J. Wang, *The Loudest Voice at the Supreme Court: The Solicitor General's Dominance of Amicus Oral Argument*, 74 VAND. L. REV. 681, 683 (2021) (showing that the solicitor general rose to dominate amici oral arguments in the Supreme Court).

[5] *See, e.g.*, Matthew Laroche, Is the New York State Court of Appeals Still "Friendless?" an Empirical Study of Amicus Curiae Participation, 72 ALB. L. REV. 701, 701 (2009) (examining the amicus curiae process in New York); Sarah F. Corbally et al., *Filing of Amicus Curiae Briefs in State Courts of Last Resort*: 1960–2000, 25 JUST. SYS. J. 39 (2004) (investigating amicus curiae trends across high courts in the various states).

[6] *Id.*

[7] For instance, it is commonplace for commercial insurance companies to expect their insured to transact across multiple states. Liberty Mut. Ins. Co. v. Transit Mix Concrete & Materials Co., 06-12-00117-CV, 2013 WL 3329026, at *7 (Tex. App. June 28, 2013) ("any reasonable insurance carrier could foresee the possibility that its client would conduct business in multiple states and adjust rates or terms accordingly").

Five states—New York, California, Delaware, Texas, and Nevada—were selected due to their particularly impactful business law precedent. New York's contract law, laws of financing transactions, and business tort laws all have a significant national impact.[8] California is similar to New York, but also provides an epicenter of both venture capital disputes and insurance litigations.[9] Delaware and Nevada are the leading providers of corporate law and business associations law.[10] And Texas serves as a center for oil and gas law, real estate law, as well as a popular forum for both intellectual property and restructuring transactions.[11] The finalized dataset includes business law amicus filings from these five states between 2005 and 2022 that fall under the following business law categories: contracts, business torts and products liability, insurance, consumer law, corporate law, business associations, mergers and acquisitions, commercial law, antitrust, banking and finance (including negotiable instruments), securities regulation, real property (including landlord-tenant law), debtor—creditor law, and bankruptcy and reorganization law.

Armed with this comprehensive and novel dataset, we coded and extracted the following variables: identities of the amicus curiae filers, whether they supported the position of the plaintiff or the defendant, and whether the disposition of the case aligned with the position of the amicus curiae filing. We supplemented these coded variables with data on the time intervals of these filings and the quantity of filings in the case at hand.

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[8] *See, e.g.*, A.C. Pritchard, *London as Delaware?*, 78 U. CIN. L. REV. 473, 484 (2009) (describing New York as a leading financial center).

[9] *See, e.g.*, Darian M. Ibrahim, *Financing the Next Silicon Valley*, 87 WASH. U.L. REV. 717, 735 (2010) ("data suggest that venture capital is now becoming even more concentrated in California").

[10] *See, e.g.*, Tomer S. Stein, *Debt as Corporate Governance*, 74 HASTINGS L.J. 1281, 1315 (2023) ("While Delaware is the most important provider of corporate law, other states, in particular Nevada, have also become significant players in the market for corporate charters.").

[11] *See, e.g.*, Zachary Bray, *Texas Groundwater and Tragically Stable "Crossovers"*, 2014 B.Y.U.L. REV. 1283, 1318 (2014) ("Texas's leading role in both the oil and gas industry and as a leading jurisdiction for oil and gas law have been substantial sources of pride, both for the general populace and for the legislature and courts.").

The most notable result of this investigation became shockingly apparent—amicus lobbyists control the business law amicus curiae process—and they are good at it. Lobby groups, defined here to include any association whose main purpose is to promote or defend a defined set of law and policy positions,[12] amounted to 67% of all business law amicus curiae filings. Not only is Amicus Lobbying the main driver of these filings, but they are also able to obtain favorable results nearly 56% of the time, which is about 6.5% better than filings by non-lobby groups. Delving deeper into the identities of these amicus lobbyists reveals equally shocking results. First, only 26.7% of amicus curiae filers potentially qualify as a public interest advocacy group rather than a business centric advocacy group. Second, the data shows that the U.S. Chamber of Commerce, a controversial business-oriented lobby group,[13] is the leading amicus lobby group in the nation. Third, the data reveals that Amicus Lobbying is a robust, consistent, and controlling form of amicus curiae filings in each and every state within our dataset. Further yet, when we exclude public interest groups from the count, the relative superiority of amicus lobbying climbs to a 9.8% advantage compared to non-lobby groups. The relative dominance of amicus lobbying is very significant not only in and of itself, but also because lobby groups are able to sustain their advantage while appearing in such a large proportion of cases.

The policy consequences of these empirical findings are robust. In theory, the amicus curiae process can provide the courts with two related yet distinct benefits: representation and expertise. The amicus process bolsters representation by allowing the courts the ability to hear voices with stakes in the litigation that would otherwise not have access to the litigation,[14] while amicus filers can provide expertise to

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[12] This entails that businesses and individuals are intentionally excluded as their advocacy is auxiliary to their primary course of business.

[13] *See* Myriam Gilles, *"A Force Created": The U.S. Chamber of Commerce and the Politics of Corporate Immunity*, 72 DEPAUL L. REV. 139 (2022) (arguing that the U.S. Chamber of Commerce "relentlessly demonized a cornerstone of our democracy—the civil justice system—along with the lawyers and judges who operate within its confines").

[14] *See* Kearney & Merrill, *supra* note 4, at 748. ("amicus briefs on this view should be important to the judicial process because of the signals that they convey about how interested groups want particular cases decided").

the courts they do not possess or otherwise have access to.[15] In principle, one may attempt to argue that Amicus Lobbying provides exactly that. But even if we concede that amicus lobbyists provide needed expertise, it is doubtful whether they are driven by objective standards. And even were it to be objective, the dataset proves it is certainly not representative of a diverse set of stakeholders. Lobbying, whether through amicus filings or otherwise, is a controversial process.[16] Inside the courts, however, we have an even greater pause for concern—common law development of business law precedent is intended, by design, to stand outside the vagaries of politics.[17] However, with such a robust control by Amicus Lobbying, this Article shows it is at best unclear whether this is the case.

We therefore suggest two solutions to the problem of Amicus Lobbying in business law. First, we suggest a federalization of the business law amicus curiae process that establishes uniformity, disclosure of filings and interest in litigation, and a centralized and publicly available dataset of these filings. Second, we suggest state and local law initiatives that would require, in certain important legal disputes of first impression, the subsidization of amicus curiae filings by stakeholders who would not otherwise be able to organize and pay for such a legal service. Amicus Lobbying is disproportionally impacting business law, and there is an acute need for interventions to return amicus filers as "friends of the court" rather than friends of the industry.

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[15] *Id.* ("amicus briefs are assumed to have an impact on this process insofar as they contain new information--legal arguments and background factual material--that would be relevant to persons seeking the correct result in light of established legal norms").

[16] Lloyd Hitoshi Mayer, *What Is This "Lobbying" That We Are So Worried About?*, 26 YALE L. & POL'Y REV. 485, 486 (2008) ("Lobbyists and the groups they represent often bring useful information to policymakers . . . Yet lobbying also has a long history as a pejorative term.").

[17] George Priest, *The Common Law Process and the Selection of Efficient Legal Rules*, 6 J. LEGAL STUD. 65 (1977) (providing a seminal account of efficiency in the selection of common law adjudication as a method of rulemaking). Common law is not, of course, always the preferable method. But it has been the primary method chosen in the field of business law.

This Article unfolds in three parts. Part I explains the law and process of amicus curiae filings at the state level. Part II provides the empirical findings of this Article and demonstrates that Amicus Lobbying has a disproportionate impact on business law. Part III draws out the normative and policy implications of these findings and suggests federal and state law intervention designed to level the playing field. A short Conclusion follows.

I. THE LAW AND PROCESS OF AMICUS CURIAE IN STATE COURTS

The common law system is inherently *second-personal*: litigation is designed as a mechanism for the resolution of legal disputes between the parties, rather than an open forum for society, or a particular community, as a whole.[18] The strong historical and normative reasons for this foundational structure tie back to the separation between the judicial and the political, and the commitment to the requirements of "standing."[19] The amicus curiae process is thus somewhat enigmatic. It provides an exceptional mechanism that allows those without standing to express their opinions on a litigation they are not a party to.[20] This process exists both on a federal level and on a state level, and it has a few consistent legal features that allow it to live and flourish in our otherwise adversarial and second-personal system of justice.[21] This Part describes these features.

The most essential feature of the amicus curiae process is *judicial discretion*. Regardless of the approach that a particular jurisdiction

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[18] *See* STEPHEN DARWALL, THE SECOND-PERSON STANDPOINT: MORALITY, RESPECT, AND ACCOUNTABILITY 5-9 (2006); Alex Stein, *Second-Personal Evidence*, in PHILOSOPHICAL FOUNDATIONS OF EVIDENCE LAW 96 (Christian Dahlman, Alex Stein and Giovanni Tuzet, eds., 2021).

[19] *Cf.* William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221, 222-26 (1988) (explaining the rationales and historical development of the standing doctrine and offering a criticism).

[20] *See, e.g.*, Mass. R. App. P. 17 (outlining the amicus curiae requirements in Massachusetts and not demanding that amici be a party to the litigation).

[21] *See id.* (providing an example of a state court amicus curiae process); U.S. Sup. Ct. R. 37 (providing an example of a federal court amicus curiae process).

takes to the amicus curiae process, the courts are never under any obligation to consider or adopt a position taken by an amicus filer.[22] This means that amicus curiae filings can only have persuasive rather than legal significance.[23] The discretionary nature of amici filings is inherent in the requirement that only those whose rights are directly impacted by the litigation are deserving of their day in court.[24] These considerations are also similarly reflected in both the constitutional requirement of standing in federal courts and in the similar state-imposed standing requirements in state courts.[25]

A corollary to judicial discretion over amicus curiae filings is a *lack of transparency* over the impact of amicus filings. Judges are not required to address the arguments presented in amici filings, nor are they required to disclose if a certain filing moved the needle in their thinking on the relevant legal dispute.[26] For instance, imagine that a judge is considering whether employees of a public benefit corporation can assert third party contractual claims against the corporation's directors. Imagine further that this question is an issue of first impression for this state. Given the significant impact this litigation may have on all business entities in the state, various lobby groups have decided to file an amicus curiae. Regardless of whether the judge was to hold that such third-party claims are permissible or not, the judge does not have to cite the amicus in their opinion.

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[22] This is codified in rules requiring that the courts grant leave to file an amicus curiae motion. *See, e.g.*, Mass. R. App. P. 17 ("brief of an amicus curiae may be filed only (1) by leave of the appellate court or a single justice granted on motion"); N.Y. Comp. Codes R. & Regs. tit. 22, § 500.23 ("any non-party other than the Attorney General seeking to file an amicus brief on an appeal, certified question or motion for leave to appeal must obtain permission by motion").

[23] This is because the courts do not have to address discretionary legal arguments they do not desire to.

[24] TransUnion LLC v. Ramirez, 594 U.S. 413, 433, 141 S. Ct. 2190, 2209, 210 L. Ed. 2d 568 (2021) (analyzing the "injury-in-fact" requirements in federal standing doctrine).

[25] *Id.*; Wyatt Sassman, *A Survey of Constitutional Standing in State Courts*, 8 KY. J. EQUINE, AGRIC. & NAT. RESOURCES L. 349 (2016) (surveying state law standing requirements).

[26] *See* sources cited in notes 21, 22 (not requiring the outlining of reasons for addressing or not addressing amicus curiae filings).

Instead, the judge is free to simply cite the relevant case law that supports their position. This means that even if an amicus lobby group was successful in convincing the judge in blocking such employee claims, the public would not know that. Put differently, the amicus curiae process can operate, and often does operate, in the shadows of the judicial system. The persuasiveness and effectiveness of Amicus Lobbying is therefore empirically difficult to assess due to its stealth nature.

Delving deeper into the nature of amicus curiae filings, it is important to note that there are two types: invited and uninvited.[27] Uninvited amici are amicus curiae filings that a party independently decides to file with the court in the hopes that judges will address their arguments.[28] Invited amici, on the other hand, are amicus curiae filings that the relevant court requests.[29] This distinction is potentially important as it reveals the likelihood that a court would be persuaded by a filing. The distinction may also be potentially telling as to whether a certain amicus curiae filing is motivated by lobbying efforts, or not. Lastly, it may also be argued that an invited amicus curiae filing is more likely to be objective and informative. This position may not be accurate, however, as without further evidence, it is equally possible that the courts themselves are already predisposed to request amicus curiae filings from lobbying groups. While Part II addresses this Article's process for classifying a filing as Amicus Lobbying at length, at this juncture, suffice it to say that invited amici are not a significant part of the business law amicus curiae universe. Our study reveals that they comprise only 1.9% of the total number of filings.

Structurally, amicus curiae filings take a fairly consistent form across the various states.[30] A few structural elements of the filing are worth nothing here. First, the cover letter of amicus curiae filings will

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[27] Krislov, *supra* note 1, at 715–16 ("the Court can in many cases effect its policy without having to deny permission to file briefs. With its clearly stated residual powers to grant or deny permission, and its unformalized power to invite amicus curiae to file briefs.").

[28] *Id.*

[29] *Id.*

[30] *See* sources cited in *supra* note 22. *See also* Cal. R. Ct. 8.487 (providing a consistent approach in California).

reference the case, the filers of the amicus, and any counsel to the amicus curiae filers themselves. This reveals an underappreciated feature of amici: not only are certain legal positions actively supported by activist lobbyists, but those lobbyists are also often able to hire their own set of counsel.[31] In fact, as discussed in greater depth below, law firms representing amici filers tend to be repeat players with institutional knowledge.[32] For instance, the law firm of Horvitz & Levy LLP is the leading counsel for business law amici filers in the state of California.[33] Second, the amicus filers will state their interest in the legal dispute.[34] This statement of interest will typically include the reasons why the filer is interested in the relevant legal questions and a disclosure statement admitting or denying drafting or monetary involvement by any of the parties to the litigation (or their counsel).[35] This element of the filing is important because it is designed, at least presumably, to allow the courts to detect bias or lack of objectivity in amicus curiae filings. Third, the amicus curiae filing will state its desired legal holding.[36] This element of the filing can take various different forms. In some cases, amicus curiae filings address the entirety of a legal dispute and explicitly ask the court to hold for either the plaintiff or the defendant.[37] In other cases, however, amicus curiae address only some of the legal questions that the court must resolve.[38] When amici concentrate on only some, but not all, of the legal

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[31] *See* Appendix below (showing the frequency of law firm engagement in business law amicus curiae filings).

[32] *Id.*

[33] *Id.*

[34] *See e.g.*, Cal. R. Ct. 8.200 ("the application must state the applicant's interest and explain how the proposed amicus curiae brief will assist the court in deciding the matter").

[35] *Id.* ("The application must also identify: (A) Any party or any counsel for a party in the pending appeal who: (i) Authored the proposed amicus brief in whole or in part; or (ii) Made a monetary contribution intended to fund the preparation or submission of the brief; and (B) Every person or entity who made a monetary contribution intended to fund the preparation or submission of the brief, other than the amicus curiae, its members, or its counsel in the pending appeal.").

[36] *Id.*

[37] *See, e.g.*, Cal. R. Ct. 8.200 ("The covers of the application and proposed brief must identify the party the applicant supports, if any.").

[38] *Id.* ("if any").

questions at hand, the amici's position may not necessitate an ultimate resolution for either the plaintiff or the defendant.[39] For example, imagine that customers of a local bank sue the bank for state-based fraud claims, and one of the questions presented to the court is whether the bank has a presumptive duty to disclose certain consumer information. The second question presented to the court is whether there is sufficient evidence of fraud to survive a summary judgment motion by the bank even absent such a presumption. If an amicus curiae filer motivated to lobby against such a consumer-friendly presumption were to opine on the presumption question only, they may include a filing that does not address the ultimate resolution of the case—whether such a case should or should not survive summary judgment. This feature is important to note as it reveals the complexity of detecting lobbying efforts in amicus curiae filings: it cannot always be a simple exercise of looking whether the filer is advocating for a holding. It sometimes requires a comprehensive understanding of the relevant legal disputes and their impact on the ultimate resolution of the case. Part II below addresses our empirical approach to such amicus curiae filings.[40]

Together, the law and process of amicus curiae is mostly flexible and discretionary. Both the filers and the courts may address any, all, or none of the legal questions in the case or the amicus filing, respectively. Further, the judges may consider an amicus curiae filing but not address it in their decisions, thereby robbing the public of the opportunity to easily observe the impact that such a filing may have had on the holding. The filing may be either welcomed or interventionist in nature, and the filers may be tied to one of the parties, or not directly so. Further yet, the filing may be a product of sophisticated actors and their counsel, or the product of individuals acting unilaterally. The totality of these circumstances demonstrates the fundamentally stealth nature of this process: the existence and impact of these filings are difficult to detect and understand at the scale this article aims to accomplish.

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[39] *Id.*

[40] *See infra* Part II.

The following Part shows how our unique and comprehensive dataset, and novel empirical investigation, closes this gap and sheds much needed light on the business law amicus curiae process.

II. FRIENDS OF THE COURT OR FRIENDS OF THE INDUSTRY?

In this Part, we describe the construction of our dataset of business law amicus curiae briefs, present the main empirical findings deriving therefrom, and examine their significance.

A. The Dataset

1. The Construction of the Dataset

One of the most important contributions of this study is assembling the only dataset of amicus curiae briefs in business law. While other scholars have focused on how and to what extent non-parties participate in the U.S. Supreme Court's decision-making process through the submission of amicus curiae,[41] this is the first study to examine the amicus curiae process in the narrower context of business law. Because many business law disputes take place at the state court level, this study focuses on state courts exclusively, and does not include amicus curiae briefs filed in federal courts.[42] As discussed below, it is not straightforward to collect amicus curiae briefs that have been filed in state courts, especially going further back in time. Unlike the U.S. Supreme Court, state courts have not created online electronic dockets that allow for easy search of amicus curiae briefs, nor have the main legal research services themselves set up their databases to allow for a tailored search of amicus curiae briefs (e.g., by creating certain filters that would allow a user to conduct a limited search, in a given jurisdiction, and during a specified time period).[43]

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[41] *See* sources cited in *supra* note 4.

[42] *See supra* note 3 and accompanying text.

[43] This is apparent from searches of the various state filing databases and searches of publicly available engines and databases such as Westlaw, Lexis+, and Bloomberg.

As a result, to create this dataset, we had to individually hand collect amicus curiae briefs using three popular legal research services: (1) Westlaw, (2) Lexis+, and (3) Bloomberg. Using these three legal research services, we ran text-based searches using search terms such as "amicus curiae" and "amici curie" on state court case dockets to locate and download amicus curiae briefs filed from 2005 to 2022. The set of applicable cases was narrowed to include only those related to business law. Within this smaller set of cases, our analysis focused on five states of central importance in business law: (1) New York, (2) California, (3) Delaware, (4) Nevada, and (5) Texas. New York is a state where contract law and laws of financing transactions have significant national impact.[44] California resembles New York and serves as the epicenter of both venture capital disputes and insurance litigation.[45] Delaware and Nevada are the leading providers of corporate law.[46] And Texas is a center for oil and gas, real estate law, and restructuring transactions.[47] The total number of amicus curiae briefs in our final dataset was 1,138.

After downloading each amicus brief from the legal research services, we first hand-coded variables so that the data can be read directly from the amicus curiae filing document itself. Key variables of this type included jurisdiction, name of the amicus filer,[48] the law firm representing the primary amicus filer, and the date the amicus was filed. Next, relying on various secondary sources, including, for example, the institutional homepage of the amicus filer, we supplemented the dataset with additional information related to the amicus filer not captured in the amicus curiae document itself. Key variables of this type included filer group category of the amicus filer, for-profit status, and career if the filer was an individual, and not a group. We did this for all filers listed in the amicus brief. A full list of

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[44] *See supra* note 8.

[45] *See supra* note 9.

[46] *See supra* note 10.

[47] *See supra* note 11.

[48] Some amici briefs have more than one filer. Indeed, the average number of filers per amicus brief is 1.8. For simplicity, the first filer listed on the cover page is referred to as the "primary filer."

the variables contained in our dataset and corresponding descriptions is available in the Appendix.[49]

Although most of the variables in our dataset are self-explanatory and can be located either in the amicus curiae document or the corresponding case docket, two variables require further explanation: (1) case category, and (2) case disposition. First, as noted, the analysis investigates amicus lobbying activity in business law cases. This Article defines the term, "business law," to include the following case categories: Tort/Product Liability, Insurance, Contract/Sales, Corporate/Partnership/Mergers & Acquisitions, Banking & Finance/Negotiable Instruments, Real Property/Landlord-Tenant, Debtor-Creditor/Mortgages & Liens/Bankruptcy, Consumer, and Antitrust & Trade. These case categories were taken directly from the list of categories that the legal research services use to classify cases contained in their database. To be sure, this list is not exhaustive. That said, our motivation was to analyze amicus curiae filings in a set of cases that most would readily agree fall under a conventional definition of business law. An investigation of different case categories, or, indeed, amicus filing activity in other jurisdictions, including federal district courts, is left as an interesting project for future research.

Second, with respect to the classification of case disposition, we followed the categorization procedure outlined by Professors Kearney and Merrill in their classic study of the influence of amicus curiae briefs in the U.S. Supreme Court.[50] Seeking to model case disposition as a binary variable, we adopted the same basic disposition categories of "petitioner wins" ("*p-wins*") and "petitioner loses" ("*p-loses*"), with a case falling into the "*mixed result*" category only in those rare instances where a case contained a truly mixed result.[51] Specifically, the disposition of each individual case was coded as follows. A case was categorized as "petitioner loses" if petitioner failed to obtain relief from the lower court's judgment.[52] As a result, cases where the lower court judgment was reported as "affirmed" were

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[49] *See* Appendix below.

[50] Kearney & Merrill, *supra* note 4, at 842-47.

[51] *Id.*

[52] *Id.*

coded as "petitioner loses."[53] Other cases coded as "petitioner loses" included judgments reported as "affirmed in part," "affirmed by an equally divided Court," "dismissed," and "dismissed as improvidently granted."[54] Conversely, cases where the lower court's judgment was reported as "reversed" or "vacated" were classified as "petitioner wins," because each represents a setting aside of a lower court's judgment.[55] Other cases coded as "petitioner wins" included judgments reported as "reversed in part," "vacated in part," "reversed in part, vacated in part," and "set aside."[56]

Although the case category and case disposition variables certainly could have been classified according to our own individualized assessment of each individual case, we choose not to do so, echoing the justifications provided by Kearney and Merrill, for a couple of reasons.[57] First, such "reclassification" would have necessitated individually evaluating each case in our dataset—a process that not only would have been significantly more time-consuming than our more mechanical classification procedure, but that also would have required close subjective determinations in some cases as to whether the case should, in fact, be categorized as "petitioner wins" or "petitioner loses." The fact that our classification procedure is relatively automated means that our dataset is more easily reproducible and confirmable by others. Second, in a review of a subset of cases, our subjective determinations did not deviate from the categories produced by our more mechanical classification procedure. For these reasons, we declined to adopt a more laborious and discretionary (and possibly biased) classification procedure.

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[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] A small number of cases where the judgment was reported as "affirmed in part, reversed in part" were analyzed more closely. If the court, in fact, resolved the issue addressed in the applicable amicus curiae filing, then the case was categorized as either "petitioner wins" or "petitioner loses," accordingly. Only if the case truly contained a mixed result from the petitioner's perspective was the case categorized as "mixed result."

[57] *See* Kearney & Merrill, *supra* note 4, at 843 n.25.

2. Summary Statistics

This subpart presents some basic summary statistics. To begin with, Table 1 displays the distribution of amicus briefs across the five states represented in our dataset.

Table 1. Amicus Briefs by State

State	Frequency	Percentage
California	404	35.5%
Texas	315	27.7%
New York	206	18.1%
Nevada	116	10.2%
Delaware	97	8.5%

As Table 1 demonstrates, the number of amicus briefs filed in each state is not linearly related to the total population of each state.[58] The frequency of amicus curiae briefs filed in Delaware, for instance, is disproportionately high, likely reflecting the outsized role that Delaware plays in corporate law, and business law more generally.[59] Likewise, the frequency of amicus filings in California is also disproportionately high, indicative, perhaps, of the relatively high level of litigation activity in that state.[60]

[58] For instance, while the California population (approximately 39.24 million) is roughly 32 times larger than the Delaware population (approximately 1 million), California only has approximately 4 times more business law amicus curiae filings from 2005 to 2022. *See* Census Bureau, *Quick Facts, Delaware and California*, available at https://www.census.gov/quickfacts/fact/table/DE/PST045223.

[59] *Id.*

[60] See Institute for Legal Reform, *California's Lawsuit Climate Ranked Among*

In terms of case characteristics, amicus curiae briefs were filed more frequently in state supreme courts than in lower courts. Specifically, 81.2% of the amicus briefs in our dataset were filed in state supreme courts. The remaining 18.8% were filled in state appellate courts.[61] Similarly, on average, amicus briefs were filed more frequently on behalf of the petitioner. On average, 51.5% of amicus briefs were filed on behalf of the petitioner, while only 40.1% of amicus briefs were filed on behalf of the respondent. The remaining 8.4% were filed on behalf of neither party. Finally, almost all the amicus briefs in the dataset were uninvited, with only 1.9% of all amicus briefs filed in response to an invitation by the court. Interestingly, this empirical finding suggests that amicus curiae activity may be better described not as a reactive process, with a court seeking to hear voices with stakes in the litigation that would otherwise not have access to the judicial system or from a source of expertise that the court does not possess, but, rather, as a proactive process, with the amicus filer actively looking to obtain a specific judicial outcome by interjecting itself into an ongoing litigation with important precedential implications.

In terms of the case categories outlined above, the amicus curiae filings in our dataset are roughly equally distributed across the various case categories. Table 2 shows the distribution of amicus briefs by case category.

Table 2. Amicus Briefs by Case Category

Case Category	**Frequency**	**Percentage**
Tort/Product Liability	268	23.6%

Nation's Worst, available at https://instituteforlegalreform.com/press-release/californias-lawsuit-climate-ranked-among-nations-worst/ (September, 2019).

[61] Fourteen of the amicus briefs in our dataset were filed in the Delaware Court of Chancery.

Insurance	241	21.2%
Contracts/Sales	163	14.3%
Corporate/Partnerships/Mergers & Acquisitions	112	9.8%
Banking & Finance/Negotiable Instruments	111	9.8%
Real Property/Landlord-Tenant	87	7.6%
Debtor-Creditor/Mortgages & Liens/Bankruptcy	62	5.4%
Consumer	46	4.0%
Antitrust & Trade	21	1.8%

The most common type of dispute is tort. Maybe surprisingly, insurance came second. Antitrust is the least common case category in our dataset, indicative of the fact, perhaps, that federal courts have exclusive jurisdiction over federal antitrust claims and that state antitrust claims can be heard in state courts but may be removed to a federal court when the state law claims supplement a federal claim, which will often be true if the alleged anticompetitive conduct is national in scope.[62]

[62] In 2005, the Class Action Fairness Act has also permitted certain class action litigations that would otherwise be heard in a state court to be removed to a federal court. *See* Christine P. Bartholomew, *Antitrust Class Actions in the Wake of Procedural Reform*, 97 IND. L.J. 1315, 1321–24 (2022); 28 U.S.C.A. § 1332 (West).

B. The Prevalence of Amicus Lobbying

This subpart presents the main findings of an empirical analysis of our hand-collected dataset. The discussion to follow is separated into key findings related to (1) amicus filers, and (2) law firms representing these filers.

1. Amicus Filers

The first big question that we sought to answer is whether the business law amicus curiae process represents a diverse set of stakeholders distributed across various socioeconomic positions or, rather, is controlled by a defined set of repeat players. To help answer this question, Table 3 shows the distribution of amicus curiae briefs by filer category.

Table 3. Amicus Briefs by Filer Category

Filer Category	Frequency	Percentage
Lobbying Group	761	66.9%
Industry/Corporation	200	17.6%
Individual (*non-professor*)	65	5.7%
Government Agency	56	4.9%
Individual (*professor*)	52	4.6%
Union	3	< 0.1%

Strikingly, Table 1 demonstrates that lobbying groups dominate or control the business law amicus curiae process. Approximately seventy percent of all amicus briefs in our dataset were filed by lobbying groups. Amicus briefs filed by individuals, on the other hand, which includes both professors and non-professors, accounted for only approximately ten percent of all amicus curiae filings. This observation about the prevalence of lobbying groups constitutes the main finding of our empirical investigation.

Delving behind the curtain and into the definitions used for this finding, this Article defined Lobbying Group to include any group whose main purpose is to promote or defend a well-defined set of legal or policy positions. In the United States, lobbying groups can use the judicial branch of government to exert influence over law and policy. Oftentimes, this involves filing a lawsuit. This Article, however, investigates a related, albeit somewhat overlooked, channel of lobbying activity aimed at the judiciary: the filing of an amicus curiae brief. A lobbying group in this study is categorized as either: (1) a business association (or trade association), or (2) a public interest advocacy group. A business association (or trade association) is defined as any group that is founded or funded by or for companies operating in a specific industry, but that does not engage in operative business themselves.[63] A business association promotes the best interests of their respective industry, at least from their own perspective, through a variety of public relations activities including publishing, advertising, and, most relevant to this Article, lobbying.[64]

A public interest advocacy group, by contrast, is defined as any group that exists primarily to promote a common good that extends beyond the narrow economic self-interests of its members or supporters.[65] Unlike business associations (or trade associations), these groups pursue public policy objectives that provide benefits to the public at large, or, at the very least, to a larger population than the group's own membership.[66] Public interest groups can play an important role in

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[63] *See supra* note 12 and accompanying text.

[64] *Id.*

[65] *See, e.g.*, PAUL FAIRCLOUGH & PHILIP LYNCH, UK GOVERNMENT & POLITICS (4th ed., 2013).

[66] *Id.*

representing otherwise neglected sectors of the population.[67] These groups also tend to be more inclusive, often attempting to maximize their popular support, and generally do not have as many restrictions on group membership as business associations (or trade associations).[68]

These distinctions notwithstanding, we counted public interest advocacy groups as part of the lobbying group category because any distinction between business associations and public interest advocacy groups is a normative point subject to reasonable disagreement. As we also show below, even if we assume that the distinctions are normatively significant and correct, public interest advocacy groups present a minority of the lobbying group in our dataset, thereby not ultimately changing the overall empirical conclusions of our research. It is worth noting, however, that once we exclude public interest advocacy group, we find that the success rate of amicus lobbying jumps to 9.8%.

Table 4 displays the corresponding distribution of lobbying groups by category type.

Table 4. Lobbying Groups by Category Type

Lobbying Group Type	Frequency	Percentage
Business Association/Trade Association	558	73.3%
Public Interest Advocacy Group	203	26.7%

Significantly, almost three-quarters of the lobbying groups in our dataset are business associations (or trade associations). This

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[67] *See* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 141, 143 (1974) (providing an analysis of the potential benefits of public interest groups).

[68] *See* Oliver A. Houck, *With Charity for All*, 93 YALE L.J. 1415, 1424 (1984) (discussing the potential pluralism benefits of public interest groups).

empirical finding tentatively supports the view that organized groups in society with greater financial resources at their disposal can more frequently influence the decision-making processes of government, including the judicial branch. This finding is robust across states. Specifically, the state specific findings laid out in Table 3A confirm that lobbying groups dominate amicus activity in all five states. In fact, the percentage of lobbying groups in each state is strikingly similar, demonstrating that the disproportionate amicus filing between business associations (or trade associations) and public interest advocacy groups is not driven by only one or two states.[69] Across all states in this study, lobbying groups who represent the interests of "big business" dominate the amicus curiae process. This is a significant empirical result: *in business law cases, the parties who primarily participate in the state court decision-making process through the submission of amicus curiae can, in general, be described less as friends of the court, and more as friends of the industry*.

To identify the lobbying groups driving this amicus filing activity, Table 5 lists the top twenty lobbying groups in terms of the number of amicus briefs filed during our study period.

Table 5. Top 20 Lobbying Groups

Filer	**Frequency**
U.S. Chamber of Commerce	77
American Insurance Association	33
United Policyholders	31

[69] Table 3A also shows that a disproportionate share of the amicus briefs, in Delaware, were filed by law professors. Again, this is likely due to the oversized impact that Delaware has on corporate law.

Complex Insurance Claims Litigation Association	22
Product Liability Advisory Council	20
Consumer Attorneys of California	20
National Association of Manufacturers	19
Civil Justice Association of California	18
California Bankers Association	15
Texas Civil Justice League	14
Texas Oil & Gas Association	13
California Chamber of Commerce	11
Delaware Trial Lawyers Association	11
Pacific Legal Foundation	11
American Bankers Association	10
Texas Association of Business	10
American Tort Reform Association	9
National Association of Mutual Insurance Companies	9

Table 5 suggests that the business law amicus curiae process is controlled by a defined set of repeat players.[70] Representing more than five percent of the amicus briefs in our dataset, for example, the U.S. Chamber of Commerce filed the most amicus curiae briefs, more than two times the number of the next highest filer. The U.S. Chamber of Commerce is the largest lobbying group in the United States.[71] Although the U.S. Chamber of Commerce asserts that it represents over three million American businesses, one study revealed that ninety-four percent of its income derives from only approximately fifteen-hundred businesses, many of which are large international firms.[72]

Views vary widely regarding the role that the U.S. Chamber of Commerce plays in American society.[73] Some see it as an important counterweight to an increasingly powerful federal government or various labor and consumer protection movements.[74] Others, however, have described its role in quite negative terms.[75] Labelling the U.S. Chamber of Commerce as the "single most influential organization in American politics, outside the Republican and Democratic Parties apparatuses," author, Alyssa Katz, for instance, describes the organization as "a well-funded influence machine seeking to build an economy where government becomes a tool of big business" that has metastasized, over time, into a fighting force

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[70] The Appendix provides a list of just the top ten public interest advocacy groups.

[71] *See* Catherine Rocchi, Note, *Climate Protagonists? Strategic Misrepresentation and Corporate Resistance to Climate Legislation*, 74 STAN. L. REV. 1153, 1198 n.11.

[72] *See* David Brodwin, *The Chamber's Secrets*, U.S. NEWS & WORLD REPORT, Oct. 25, 2015.

[73] *Compare* Gilles, *supra* note 13 (arguing that the U.S. Chamber of Commerce has been a negative influence on democracy) *with* Suzanne P. Clark, *An Enduring Mission and a Vision for the Future*, available at https://www.uschamber.com/small-business/enduring-mission-and-vision-the-future (Feb. 09, 2021) ("and it is the enduring mission of the U.S. Chamber of Commerce to help those job creators strengthen our economy and expand opportunity—now and for future generations").

[74] *Id.*

[75] Gilles, *supra* note 13, at 142.

designed to protect the worst excesses of American business.[76] Along similar lines, Professor Myriam Gilles has described the U.S. Chamber of Commerce as having transformed, over time, from "a public-minded, apolitical organization intent on providing enlightened economic policymaking advice for the benefit of the nation into its current form—a partisan enterprise focused on securing, among other things, broad and lasting corporate immunity from suit."[77] Without drawing any broader normative conclusions, our empirical analysis confirms that the U.S. Chamber of Commerce, as in other areas of policy influence, is likewise a significant participant in the shadow effort to influence judicial decision-making through the submission of amicus curiae briefs.[78]

Another influential filer is United Policyholders, that filed more amicus briefs than any other public interest group advocacy group. The United Policyholders is a national non-profit group that advocates in support of consumers of all types of insurance.[79] This group does not take money from insurance companies.[80] Interestingly, our analysis reveals substantial filing activity by both consumers of insurance as well as the insurance industry itself. In our dataset, for example, the American Insurance Association, an

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[76] ALYSSA KATZ, THE INFLUENCE MACHINE: THE U.S. CHAMBER OF COMMERCE AND THE CORPORATE CAPTURE OF AMERICAN LIFE (2015).

[77] Gilles, *supra* note 13; *see also* Christopher P. Bogart, *The Case for Litigation Financing*, 42 LITIG. 46, 49 (2016) ("It is well known that the Chamber of Commerce is . . . generally critical of litigation in all forms [and is engaged in] an overarching effort to limit the use of the judicial process, regardless of the merits.").

[78] *See* David L. Franklin, *What Kind of Business-Friendly Court? Explaining the Chamber of Commerce's Success at the Roberts Court*, 49 SANTA CLARA L. REV. 1019, 1025-26 ("The brief filed by the Chamber ... are uniformly excellent ... [e]xcept for the Solicitor General representing the United States, no single entity has more influence on what cases the Supreme Court decides and how it decides them than the National Chamber Litigation Center [formed as an affiliate of the U.S. Chamber of Commerce to advocate for businesses at every level of the United States judicial system].").

[79] Amici Briefs Support Policyholders' Rico Claims Against Humana Humana Inc. v. Forsyth, 15 Andrews Civ. Rico Litig. Rep. 11 (1998).

[80] United Policy Holders, *Our Mission*, available at: https://uphelp.org/about/ ("No insurance companies underwrite or fund our programs").

insurance industry trade association representing approximately three hundred insurance companies that provide property or casualty insurance in the United States,[81] filed the second most amicus briefs. As one possible explanation, insurance policies, compared to other commercial contractual agreements, constitute a more standardized contract that does not vary as much across insurance companies or policyholders.[82] As such, a judicially mandated change or alteration to a common contractual provision in a standardized insurance policy impacts not only the litigation parties but all consumers of insurance products more broadly.[83] These more wide-ranging benefits incentivize collective action that is less likely in the case of relatively more individualized, highly negotiated contracts between two or more business actors where the impact of the litigation is generally confined to the contracting parties themselves.

Finally, our analysis highlights a potential counterweight to the outsized influence of lobbying groups in the business law amicus curiae process. Specifically, Table 4 demonstrates that approximately five percent of all amicus briefs in our dataset were filed by professors. Indeed, this small group of individuals filed almost as many amicus curiae briefs as all other individual filers combined. In Delaware, the number is even larger, with 16.5% of all amicus briefs filed by professors, the vast majority of whom were, not surprisingly perhaps, professors of law. This is a striking number and testifies to the importance of law professors in providing an additional voice, as a possible counterbalancing force to that of industry, to help shape and inform judicial decision-making on a wide range of business law issues or matters, providing a critical link between scholarly expertise and the judicial application of business law. Arguably, the varied perspective offered by an individual professor, who is relatively unchained from the pressures of collective lobbying groups, can, in

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[81] APCI, *About*, available at: https://www.apci.org/about/.

[82] Daniel Schwarcz, *The Role of Courts in the Evolution of Standard Form Contracts: An Insurance Case Study*, 46 B.Y.U.L. REV. 471, 474 (2020) ("insurance policies have traditionally been drafted by a private entity known as the Insurance Services Office (ISO), resulting in the rough standardization of insurance policies across different insurance companies").

[83] *Id.* at 480-500 (providing a robust theoretical and empirical analysis of the impact of judicial interpretation of insurance contracts).

some cases, be as integral to the disposition of a case as those submitted on behalf of the petitioner or respondent.

In many ways, the role of law professors in business law cases parallels observed amicus activity at the highest court, where amicus curiae briefs filed by law professors have become a mainstay of modern U.S. Supreme Court litigation.[84] Indeed, many believe that a party can no longer win a Supreme Court case without first assembling a portfolio of "Brandeis briefs" from historians, social scientists, physicians, and other individuals who can communicate their expertise to the Supreme Court as amici[85]—a process that has been described as an "arms race" between Supreme Court litigants.[86] As experts in specific fields of law, law professor can provide an informed legal analysis on a wide variety of legal issues from a relatively neutral or unbiased perspective that can be persuasive to courts. Surveys support this claim. A survey of U.S. Supreme Court law clerks, for example, found that "[t]he overwhelming majority of clerks (88%) indicated that they would be inclined to give an amicus brief filed by an academic closer attention [than most other amicus briefs]—at least initially."[87] Likewise, a nationwide survey of federal judges found that "all of the Supreme Court [Justices who responded] indicated that law professors are moderately helpful to the [adjudicatory] process, as did 56.6% of Circuit Court respondents and 52.8% of District Court respondents."[88]

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[84] During the 2010 Term, for example, in which the Supreme Court decided eighty-five cases, the Court received fifty-six briefs on behalf of groups of self-identified legal scholars or law professors, with at least one such brief being filed in thirty cases, or more than a third of the total. See Richard H. Fallon, Jr, *Scholars' Briefs and the Vocation of a Law Professor*, 4 J. LEGAL ANALYSIS 223, 224–25 (2012).

[85] *See* Allison Orr Larsen & Neal Devins, *supra* note 4, at 1921 (stating submissions at the Supreme Court have increased eight hundred percent since 1954 and ninety-five percent between 1995 and 2015—a phenomenon that the authors term "The Amicus Machine").

[86] *See* A.E. Dick Howard, *The Changing Face of the Supreme Court*, 101 VA. L. REV. 231, 274-75 (2015).

[87] *See* Kelly J. Lynch, *Best Friends? Supreme Court Law Clerks on Effective Amicus Curiae Briefs*, 20 J.L. & POL. 33, 52 (2004); *see also* Richard H. Fallon, Jr., *supra* note 84, at 223.

[88] *See* Linda Sandstrom Simard, *An Empirical Study of Amici Curiae in Federal*

2. Law Firms

In addition to amicus filers, this study also investigates whether the amicus curiae process involved a defined set of law firms who act as repeat players in the submission of amicus curiae briefs in state court business law disputes. Table 3A in the Appendix lists the top twenty law firms in terms of the number of times a law firm appeared as independent counsel for an amicus curiae filer. Several law firms appear to be repeat players. The law firm, Horvitz & Levy, LLP, for example, which is the largest law firm in the nation specializing exclusively in civil appellate litigation,[89] represented amicus filers in thirty-one cases. Likewise, the law firm, Shook, Hardy & Bacon, LLP, a national complex litigation firm that has represented nearly three-quarters of the Fortune 100,[90] was independent counsel for an amicus curiae filer in seventeen cases. Many large international law firms also participate in this amicus curiae process, including Covington & Burling, LLP, Greenberg Traurig, LLP, Gibson, Dunn & Crutcher, LLP, and Sidley Austin, LLP.[91] These are large, typically defense-side, firms that often represent industry in a variety of business law matters. Their repeated participation in the business law amicus curiae process suggests that these firms might also play a key role in this shadow channel of influence over the judiciary, having developed a legal expertise in this form of lobbying activity that can be provided to their clients at a lucrative price. Working in conjunction with specific lobbying groups, these law firms potentially play an important role in an influence machine that litigants use to maximize their likelihood of a successful disposition of the case.

Finally, as noted, the cover letter of an amicus curiae filing provides the name of independent counsel for the amicus filer and lists that counsel's address. Associating this address with the amicus curiae filing, we define a filing as having "Out-of-State Counsel" if the state in which the amicus brief was filed differs from the state in which

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Court: A Fine Balance of Access, Efficiency, and Adversarialism, 27 REV. LITIG. 669, 698–99 (2008).

[89] Horzitz & Levy, LLP, *Firm History*, available at: https://www.horvitzlevy.com/firm-history.

[90] Shook, Hardy & Bacon, *About*, available at: https://www.shb.com/about.

[91] *See* Appendix Table 3A below.

counsel for the amicus filer was located (and, correspondingly, as having "In-State Counsel" if the state in which the amicus brief was filed is the same as the state in which counsel for the amicus filer was located).

Table 6 displays the distribution of amicus filings by law firm type, both in Delaware specifically, as well as in the other four states represented in our hand-collected dataset.

Table 6. Amicus Briefs by Law Firm Type

Type of Counsel	Jurisdiction	Frequency	Percentage
In-State Counsel	Not Delaware	1,056	85.5%
Out-of-State Counsel		194	15.5%
In-State Counsel	Delaware	103	60.6%
Out-of-State Counsel		67	39.4%

In approximately twenty percent of all amicus filings, counsel for the amicus filer was categorized as out-of-state. In Delaware, this number is even higher, with approximately forty percent of the amicus filings having out-of-state counsel—more than double the number in the other states in our dataset. This result suggests, especially in Delaware, a potentially outsized influence of out-of-state actors on state corporate law, many of whom are based in Washington, D.C., or in state capitals. The disproportionate presence of out-of-state counsel in Delaware might not be terribly surprising given the large number of national, publicly traded corporations that choose to incorporate in Delaware.[92] More than sixty percent of all Fortune 500 companies

[92] Delaware Division of Corporations, About the Division of Corporations., available at: https://corp.delaware.gov/aboutagency/ ("The State of Delaware is a leading domicile for U.S. and international corporations. More than 1,000,000

are incorporated in Delaware including, for instance, Alphabet, Amazon, and Comcast.[93] These firms would be expected to be represented by large national firms headquartered in major cities. The amicus curiae filers, however, and their associated counsel, lack this concrete link to the state in which the amicus brief was filed. Contrary to the actual litigants in the case, the amicus filers are likely to represent truly out-of-state interests.

This might not be a problem. Amicus filings by out-of-state actors might allow a court to hear a voice with a significant stake in the dispute that would otherwise not have access to the litigation or provide a court with expertise on technical matters that it does not otherwise possess.[94] But it might also constitute an undesirable infringement upon state sovereignty. Wholly out-of-state interests with no tangible connection to the state can, by filing an amicus curiae brief, use an ongoing litigation between disputing parties, who are constitutionally required to have minimum contacts with the state, as a hook to, in effect, push the law of a state in which they do not reside or otherwise have minimum contacts in a favorable direction. Arguably, one ought to have a greater connection to a state in which one seeks to alter existing law. To the extent that a defined set of repeat players operate in all fifty states, amicus lobbying facilitates, if only to a small degree, a sort of quasi-federalization of state corporate law, where a select number of organizations engage in a coordinated shadow effort to push the law in all fifty states in a certain direction. In this narrow sense, U.S. corporate law acts less as a system of autonomous social laboratories, with each state offering a distinct sets of default rules from which all business entities can choose, and more as a quasi-centralized system tending to generate a roughly uniform body of law shaped, in the shadows, by small number of influence peddlers situated in a few select major cities, including the nation's capital.

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business entities have made Delaware their legal home.").

[93] *Id.* ("more than 66% of the Fortune 500 have chosen Delaware as their legal home").

[94] *See infra* Part III.A.

C. The Success Rate of Amicus Lobbying

Having found that amicus lobbying, as this term has been defined here, is the main driver of amicus filing activity in state court business law cases, this subpart investigates whether the lobbying groups that dominate this channel of influence can use this activity to obtain a litigation advantage. To answer this question, we examine specifically whether having a lobbying group file an amicus curiae brief increases the probability of a successful disposition of the case. Formally, we denote an amicus filing as a "success" if either the amicus brief was filed on behalf of the petitioner and the petitioner wins (as defined above) or the brief was filed on behalf of the respondent and the petitioner loses. Likewise, we define an amicus brief as "not a success" if either the amicus brief was filed on behalf of the petitioner and the petitioner loses (as defined above) or the brief was filed on behalf of the respondent and the petitioner wins. Using this definition of success, Table 7 compares the success rates for lobbying groups and non-lobbying groups, respectively.

Table 7. Success Rate by Lobbying Group

Lobbying Status	Successful Disposition	Frequency	Percentage
Non-Lobbying Groups	No	151	50.5%
	Yes	148	49.5%
Lobbying Groups	No	262	44.1%
	Yes	332	55.9%

Notably, Table 7 shows that cases where a lobbying group files an amicus brief are resolved favorably nearly fifty-six percent of the time, which is about 6.5 percentage points higher than the success rate in cases where a non-lobbying group files an amicus brief. A regression analysis confirms that this 6.5-percentage point difference is

statistically significant.[95] That is, the probability of a successful disposition of the case is greater when the primary amicus filer is a lobbying group rather than a non-lobbying group. When the primary filer is not a lobbying group, the case is favorably resolved less than half the time. When the primary amicus filer is a lobbying group, by contrast, the case is favorably resolved more than half the time—and by a relatively significant margin. Additionally, when we exclude public interest groups from the count, the relative superiority of amicus lobbying climbs to a 9.8% advantage compared to non-lobby groups.[96] It is important to note that this relative dominance of amicus lobbying is not only very significant in and of itself, but also because lobby groups are able to sustain their advantage while appearing in such a large proportion of cases. Overall, the difference in success rates indicates that lobbying groups not only dominate the business law amicus curiae process, but that they are good at it as well.

This finding, however, must be interpreted with a fair measure of caution and is presented only as evidence, but not conclusive proof, of a potentially positive impact of an amicus filing by a lobbying group on the disposition of a case. Table 7 does not present statistical evidence of causality, and so we make no claim of having established a causal relationship.[97] This study has not examined an exogenous

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[95] Regressing the "Success" variable against a dummy indicator for whether the filer was a lobbying group confirms that this difference is statistically significant at a confidence level of ninety percent. Specifically, the regression intercept and coefficient estimates were 0.49 and 0.06, respectively. The standard error of our coefficient estimate was equal to 0.04, which implies a t-value of 1.81 and a p-value of 0.07.

[96] Regressing the "Success" variable now against a dummy indicator for whether the filer was a lobbying group that represent business associations (as opposed to a lobbying group that represents public interest advocacy groups) confirms that this difference is statistically significant at a confidence level of *ninety-nine percent*. Specifically, the regression intercept and coefficient estimates were 0.49 and 0.1, respectively. The standard error of our coefficient estimate was equal to 0.03, which implies a t-value of 2.96.

[97] *See also* R. Betsy Emmert, *The Corporate Clique in the Courtroom: a Jurisprudential Study of the Success and Influence of Amicus Curiae Briefs Filed by the U.S. Chamber of Commerce During the 2014-2017 Terms of the U.S. Supreme Court*, 87 U. CIN. L. REV. 227, 245 (2018) ("Without additional insight – such as personal testimony by the Justices or by their clerks, or textual citation

change in amicus filings by lobbying groups that would allow us to confidently identify a causal relationship between such filings and litigation success rates. Nor has this study made any attempt to control for other factors that might explain the observed difference in success rates. Lobbying groups, for instance, might represent parties who have relatively more financial resources. This financial advantage might work to increase the probability of a successful disposition of a case in several different ways, including the filing of an amicus brief by a lobbying group. In other words, filings by lobbying groups and a litigant's financial resources might be positively correlated, and financial resources may be, in turn, positively correlated with litigation success. Under this view, having a lobbying group file an amicus brief is simply one of several ways that a relatively well-funded party can leverage its comparative financial advantage into a litigation win. Alternatively, lobbying groups might simply be better than other amicus filers at identifying cases with a relatively high probability of success. That is, lobbying groups, more so than other amicus filers, can allocate scarce resources to litigation more effectively than other filers who are more likely to invest in losing cases with relatively low probabilities of litigation success.[98]

Hence, while not conclusive of a causal relationship, the observed difference in Table 7 is, nevertheless, suggestive and shows that, whatever the underlying reason, the filing of an amicus brief by a lobbying group has a disproportionate impact on judicial decision-making in business law. Indeed, this result conforms with the commonsense conclusion that lobbying groups would not incur the expense of an amicus filing if they did not believe that this filing would help move the judiciary toward their desired disposition of the case. Of course, lobbying groups can be wrong. This analysis, however, tentatively suggests that they are not and that, for lobbying groups in

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to the Chamber's briefs in the Court's opinion – a truly bona fide relationship between the Chamber's amicus activity and the Court's response cannot be definitively established.").

[98] It might also be that, in some cases, litigation success is not what motivates the filing of an amicus curiae brief. An amicus filer might simply want to make a public statement in support of a specific issue or cause and is not particularly concerned with whether the party on whose behalf the amicus brief was filed ultimately wins or loses.

particular, amicus lobbying is a meaningful way to influence public policy, and business law more specifically.

III. POLICY IMPLICATIONS

Part III answers two main questions: (A) Is the robust control of Amicus Lobbying on business law a mostly positive or negative reality? and (B) What legal and policy interventions may be put in place to combat the vices of business law Amicus Lobbying? To provide a comprehensive normative and policy analysis of the virtues and vices of business law Amicus Lobbying, we first theorize the potential benefits of amicus curiae filings generally and then show their shortcomings in the context of business law Amicus Lobbying specifically. Amicus curiae hold the potential benefits of providing for greater inclusion of stakeholder representation as well as the provision of judicial access to expertise. In the business law Amicus Lobbying context, however, there are strong empirical reasons to doubt that objective expertise is often available, and even if it is available, it is certainly not representative of a wide array of stakeholders. To the contrary, it is mostly a representation of lobby groups. To level the amicus curiae playing field, this Part suggests policy and legal reform proposals to both federal and state law.

A. The Virtues and Vices of Amicus Lobbying

Amicus Lobbying controls business law amicus curiae, but how should we normatively assess its impact? Answering this question requires first an understanding of the benefits and determinants of amicus curiae generally and then an incorporation of the lobbying overlay. Let us proceed in this order.

The potential benefits of amicus curiae divide into two kinds: representation and expertise. The representation benefit captures the courts' ability to utilize the amicus curiae process in order to hear voices with stakes in the litigation that would otherwise not have the opportunity to do so. In order to be a party to a litigation, one must have a right or duty that is being impacted by the dispute at hand.[99]

[99] *See supra notes* 19 and 25.

This is why litigation is often described as an adversarial proceeding, and why it can be conceptualized as a second-personal system of adjudication.[100] The commitment to the second-personal nature of litigation is embedded in both the constitutional and the state-based requirements of standing, as well as in various aspects of both federal and state rules of civil procedure.[101] The impact of common law precedent, however, is not limited to the parties standing in front of the court.[102] This creates an asymmetry between impact and representation: not all those impacted by a court's decision have the right to have their arguments heard in court.

The reach of business law precedent beyond the litigating parties is particularly pronounced. It is particularly pronounced because business law jurisdictions tend to gain popularity in specific markets and legal fields and, subsequently, become business law hubs.[103] For instance, Delaware is the leading jurisdiction for the formation of corporations and limited liability companies, and New York is a leading jurisdiction for financing transactions.[104] Followingly, once a jurisdiction has achieved these economies of scale, its' impact rises exponentially with the number of impacted parties it attracts. Consequently, business law precedent is often exceedingly impactful on groups of people who do not typically have a right to have their opinion on the matter expressed.

It is at this juncture that the amicus curiae process may provide the benefit of representation. It is an avenue for those with stakes in the precedent, but not the specific litigation, to express their view. In turn, this can provide the judges with the benefit of more fully understanding the impact that their decision may have on society. Together, this opens up the possibility for common law development that is sensitive to the various pluralistic interests that may be impacted by the development of the doctrine. For example, if two insurance companies are dueling in court over whether a life partner's expected income should be treated as a liability on a balance sheet,

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[100] *See supra* note 18 and accompanying text.

[101] *See supra notes* 19 and 25.

[102] *See supra* note 2.

[103] *See supra notes 8*–11.

[104] *Id.*

but the decision may also impact insurance consumers who believe that it should, an amicus curiae filing may be the appropriate avenue to express this opinion and interest.

Access to expertise is another potential benefit of the amicus curiae process. When litigating disputes, judges are often in need of expertise that they do not possess and that the parties may not provide them with as part of their argumentation.[105] For instance, a dispute regarding whether a force majeure clause in a merger agreement excuses performance on the grounds of a pandemic may require the court to investigate how such contractual provisions are typically drafted.[106] But since judges only see the limited number of merger agreements that end up in court, they may be in need of an objective opinion by those who are very familiar with the mergers and acquisitions market. They may therefore invite an amicus brief by a lawyer or a law professor who can opine on the typical structure of such a contractual provision. As another example, consider the fact that judges are sometimes required to estimate the legal position of a foreign jurisdiction as part of their analysis. In these cases, the amicus curiae process may be a welcomed avenue for receiving the necessary expertise. Indeed, the amicus curiae process may provide the benefit of improving business law opinions due to access to other fields (for instance, finance, accounting, economics, sociology, and even the natural sciences). Together, the benefits of representation and expertise may render the amicus curiae process an extremely valuable judicial mechanism for the improvement of business law.

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[105] For instance, consider a litigation regarding the complex word of antitrust. *See* Carl N. Pickerill, *Specialized Adjudication in an Administrative Forum: Bridging the Gap Between Public and Private Law*, 82 NOTRE DAME L. REV. 1605 (2007) ("What if antitrust litigants could, instead of litigating their cases before federal courts of limited expertise, litigate them before a hall-of-fame antitrust panel composed of Richard Posner, Robert Pitovsky, and Herbert Hovenkamp?").

[106] *See* Tomer S. Stein, *Rules vs. Standards in Private Ordering*, 70 BUFF. L. REV. 1835, 1885–86 (2022) (analyzing the contractual nature of such a dispute) (citing the example of AB Stable VIII LLC v. Maps Hotels & Resorts One LLC, C.A. No. 2020-0310-JTL, 2020 WL 7024929 (Del. Ch. Nov. 30, 2020), aff'd, 268 A.3d 198 (Del. 2021).).

Prior to discussing these potential benefits in the context of Amicus Lobbying, it is important to note that while representation and expertise are conceptually distinct, they are related to one another. First, while expert knowledge is sometimes agreed, other times it is under a reasonable dispute.[107] This means that receiving a well-balanced picture of the expert knowledge may also require the representation of multiple groups. Second, since the interests of certain groups may be tainted by their motivation to achieve a certain legal result, a lack of representation may create an environment in which expertise is sacrificed for a pre-committed agenda.

Enter lobby groups. The impact of lobby groups on society is a well-studied topic with various opinions as to its worth and effect.[108] While some see it as a source of corruption and greed, others see it as a vehicle for well natured activism.[109] The impact of lobbyists on the amicus curiae process generally has also not gone unnoticed.[110] Expectedly, policy makers have even suggested laws that aim to curtail such lobbying efforts.[111] This Article tackles only a portion of the great lobbying debates: the impact of Amicus Lobbying on the development of business law.

Since the benefits of the amicus curiae process are ensconced within the values of expertise and representation, the question is whether there are strong reasons to believe that the robust control of Amicus Lobbying over the business law amicus curiae process is likely to support these values. We believe that the answer is more likely no. To the contrary, Amicus Lobbying is far more likely to reduce both representation and expertise, and, in turn, politicize and polarize the otherwise gradual development of business law.

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[107] *See* Mark Moffett, *Reasonable Disagreement and Rational Group Inquiry*, 4 Episteme 352, 353–67 (2007).

[108] *See* Richard L. Hasen, *Lobbying, Rent-Seeking, and the Constitution*, 64 STAN. L. REV. 191 (2012) (discussing the various motivations of, and views on, lobbying).

[109] *Id.* at 194-95.

[110] *See* Sheldon Whitehouse, *A Flood of Judicial Lobbying: Amicus Influence and Funding Transparency*, 131 YALE L.J. FORUM 141 (2021) ("the prevalence of anonymously funded amicus curiae briefs at the Supreme Court has expanded").

[111] S. 1411, 116th Cong. (2019).

To begin, there is no reason to think that lobby groups possess expert knowledge that is needed by the courts. Lobby groups may know about the market for lobbyists, or the interests of their constituents, but there is no independent reason to think that they possess the knowledge a particular expert, be it a scientist, economist, or some other expert, would bring to the court. To the extent a lobby group is providing expertise, it would have to do so by hiring and paying an expert to do their bidding. At this point, however, the purpose of the expert's amicus is clear and is trained by the pre-committed interest for which they were hired. This is not to say that such filings may never provide the value of expertise to the court, but it does show that it is more likely to be a justification for the subjective and political judgment of the particular lobby group. In certain cases, of course, a lobby group may even be correct in their position, but the nature of lobby groups' hired-experts renders expertise inseparable from bias.

It may be objected, at this juncture, that lobby group bias is not normatively distinct from any other bias, and hence not a defeating problem for Amicus Lobbying. We disagree. While bias is a common trait of all those who are committed to a certain policy position, bias is regulated by a healthy procedure when representation of multiple stakeholders is available.[112] In the business law amicus curiae realm, however, such representation is not available. Instead, Amicus Lobbying rules the land, and their impact is dominating.[113] This means that the bias of the powers that be is not effectively regulated by the pervasiveness of dissenting opinions. Some may yet attempt to argue that lobby groups themselves are a fair and balanced representation of all stakeholders. This position is dubious at best. Politicians across the political map have proposed and supported regulations against lobby groups exactly because it is unlikely that they represent the interests of all interested parties.[114] Even those lobby groups most successful in attaining the image of neutrality have not evaded the criticism of capital driven bias. For example, while the

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[112] *See* Ilya Rudyak, *Promoting Equality Through Empirical Desert*, 7 TEX. A&M L. REV. 187, 201 (2019) (explaining the epistemic and normative concept of "reflective equilibrium"—a well-known method for regulating bias through the consideration of pluralistic opinion).

[113] *See supra* Part II.

[114] *See supra* note 108, at 191.

Chamber of Commerce of the United States of America claims to be a large federation representing the interests of business small and large, it has often been criticized for catering to the interests of large institutional businesses only.[115] And even if not so biased vis-à-vis large and small business, there is no reason to think that such a lobby group would represent the interests, or the agreed expert opinion, that consumers would support.

In sum, Amicus Lobbying both controls the business law amicus curiae market and likely impacts it for the worse. The representation and expertise benefits of amicus curiae are likely outweighed, at least in the business law realm, by the bias and politicization imparted by the disproportionate impact of the lobby groups. The following Section proposes Federal and State law reform to combat these negative impacts.

B. Leveling the Playing Field

Business law Amicus Lobbying should be fixed by a two-tiered approach. First, the courts and the public need to have access to the identity and conflicts that amicus lobbyists bring to business law. Due to the inherent difficulties of observing the aggregate impact of Amicus Lobbying, and the fragmented regulation of such filings by the various states, the disproportionate impact of Amicus Lobbying on business law has evaded review and response. To solve this issue, we propose the federalizing and centralization of Amicus Lobbying filing and disclosure. Second, the states need to ensure adequate representation of all stakeholders in important legal issues. To effectuate this legal change, we propose the subsidization of amicus curiae representations in legal issues of first impression.

1. Federalizing Amicus Curiae

Lobby groups are regulated by both law and public opinion. But business law Amicus Lobbying has evaded both regulatory forces due to its stealth nature. To combat this problem, the federal government should intervene and create a centralized and standardized filing and disclosure system that would make apparent what is now, but for this

[115] *See supra notes 72* and 73.

Article, a hidden feature of our business law: the disproportionate impact of Amicus Lobbying.

The structure of this disclosure system can be designed in a direct and streamlined manner that would not be overly cumbersome or expensive for its filers. The system can be modeled based on the SEC's public filing system, known as EDGAR.[116] Concretely, the disclosure system would both provide itemized disclosure requirements with specific guidelines and establish a web-based database to which the disclosure documents must be uploaded. The disclosure requirements should demand the following items: 1. The legal name of the amicus curiae filer or filing entity; 2. The names of any legal counsel and other parties that participated in the drafting or funding of the amicus curiae; 3. A conflict of interest statement disclosing if the amicus is motivated by or related to an interest in the success of one of the parties independently of the legal dispute at hand; and 4. A brief statement of the holding and legal positions advocated for in the filing.

Establishing such a disclosure regime would allow the courts and the various jurisdictions to observe fully, and on an ongoing basis, what this Article has begun to uncover: whether amicus curiae filers are friends of the court or friends of the industry. It may be objected that such a mandatory disclosure system would be prohibitively expensive and would, therefore, create an undue chilling effect on amicus curiae filing. This objection is mistaken as a matter practical policy. The disclosure items required by this proposal are not different from what amicus curiae filers are already disclosing in their state filings. The added costs are therefore limited to the short duration of time required for uploading a file with nearly identical content to another website. Any chilling effect on amicus curiae filings will thus not be due to the added costs. It may be the case that some reduction in amicus curiae filings would be observed, but this reduction would likely be driven by a reluctance to make public what was once done in the shadows of the judicial system. There are, admittedly, strong reasons to think that non-lobby amicus curiae filers already suffering from a lack of representation in the process would be unduly curtailed

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[116] *See* Alison M. Pear, *Understanding the Information Contained in EDGAR Filings*, L.A. LAW., at 8 (2011).

by yet another procedural hurdle. As discussed below, this issue is precisely one of the problems addressed by the subsidization policy we propose to be implemented at the state level.

Prior to moving to the second tier of our proposed policy solutions, it is important to briefly discuss whether the federal government has the power and authority to implement such an intervention in the state's amicus curiae process. While federal government intervention in state courts is undoubtedly limited, the business law arena provides an exceptional context. Since Amicus lobbying likely has a robust and systematic impact on interstate commerce, the federal government will be authorized to create the disclosure system discussed in this Section under the broad sweep of the Commerce Clause.[117]

2. State and Local Interventions

Adequate and centralized disclosure of Amicus Lobbying in business law will provide significant benefits, but it would not itself be sufficient. Disclosure would allow the detection of bias and disproportionate impact, but it would not increase filings from those not ordinarily represented in amicus curiae filings. Increasing such filings requires both the identification of the barriers to entry that prevent them and the removal or reduction of such barriers.

The barriers preventing amicus curiae filings by underrepresented stakeholders mimic the barriers of litigants without access to counsel. The costs of coordination and ability to plead strong and persuasive legal arguments through an amicus curiae filing are high. While a group of banking consumers, for instance, may have strong reasons to believe that a certain spike in interest rates is unlawful, it is quite another skillset to be able to put such reasons in legal terms and file such legal arguments appropriately. While those with direct harm and standing may, in certain cases, be able to combat these costs through class actions and legal defense funds, similar programs do not exist in the amicus curiae world. This explains why we see the dominance of

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[117] United States v. Morrison, 529 U.S. 598, 608–09, 120 S. Ct. 1740, 1749 (2000) ("modern Commerce Clause jurisprudence has 'identified three broad categories of activity that Congress may regulate under its commerce power' . . . 'First, Congress may regulate the use of the channels of interstate commerce'").

Amicus Lobbying outpacing representation by other groups with interest in the relevant precedent.

To increase access and representation, we propose the subsidization of amicus curiae filings in business law issues of first impression. The states should dedicate funds that would allow the payment of legal fees to groups of people who have an interest in the precedent but are not otherwise represented by an amicus curiae filing. Going back to our banking consumers example, this would mean that the state would provide the funds necessary for the consumer to hire an amici counsel to file their position appropriately. The subsidy will also be used to offset any filing and disclosure compliance costs as well.

It is necessary to address the appropriate concern of whether such a funding program would be economically viable for the states. We believe it is both viable and would provide a net benefit in the long run. First, the subsidization of such filings should not be available in every case, but only in those cases that the judges classify as issues of first impression. This would significantly limit the number of funding instances. Second, the monetary benefits of a successful amicus curiae process cannot be ignored. If a state were to guarantee a more representative business law amicus curiae process, the precedent developed by the judges is likely to develop in a more considered and fair way, thereby providing benefits that accrue exponentially over time with the development of doctrine. Additionally, guaranteeing such a process would attract more businesses and transactions to that state, thereby providing the incidental monetary benefits collected from both taxes and reputational gains.

Cohesively, a regime requiring disclosure and centralizing filing, as well as a subsidy of representation, would make significant strides towards rescuing the business law amicus curiae process. It would both reveal the hidden impact of Amicus Lobbying and increase representation in the development of business law precedent.

CONCLUSION

This Article uncovers the controlling and disproportionate impact of Amicus Lobbying on the development of business law. Unlike what their Latin moniker suggests, the filers of business law amicus curiae

are friends of the industry and not friends of the court. This Article developed, coded, and presented the only dataset of business law amicus curiae filings, empirically investigated it, and revealed the dominance of Amicus Lobbying over the development of business law.

Recognizing the impact and tentacular hold that Amicus Lobbying has on business law, we proposed a two-tiered policy reform designed to alleviate this acute problem. First, the federal government should intervene to create a centralized and uniform disclosure database of business law Amicus Lobbying, and second, the states should subsidize the representation of stakeholders in the amicus curiae process.

APPENDIX

This Appendix provides a list of variables and corresponding definitions as well as several additional tables.

A. Variable Definitions

This subpart describes the variables used in our analysis.

1. Case Variables.

Variable Name	Description
Case Name	Name of case.
Case Citation	Legal citation.
Jurisdiction	Name of court in which amicus curiae brief was filed.
District	Name of judicial district in which amicus brief was filed.
State	Name of state in which amicus curiae brief was filed.
Respondent	Respondent in case.
Petitioner	Petitioner in case.
Case Category	Category of case as determined by legal research service.
Date Case Commenced	Date of first filing in case.

Total Briefs	Total number of briefs filed in case as recorded on docket provided by legal research service.
Disposition Date	Date of disposition of case.
Disposition	Binary variable denoting whether petitioner wins or loses case.

2. Amicus Filer Variables.

Variable Name	**Description**
Filer Name	Name of amicus curiae filer.
On Behalf Of	Name of party on whose behalf amicus curiae brief was filed.
Law Firm	Name of counsel for amicus curiae filer.
Law Firm City	City where counsel for amicus filer is located.
Individual/Group	Binary variable indicating whether amicus curiae filer is an individual or not.
Individual Career	Binary variable indicating whether amicus curiae filer is a professor or not.
Group Category	Category of amicus curiae filer if a group.
Private/Public	Binary variable indicating whether amicus curiae filer is private entity if filer is a group.

For-Profit/Not-for-Profit	Binary variable indicating whether amicus curiae filer is for-profit entity if filer is a group.
Date Amicus Filed	Date amicus curiae brief was filed.

B. Additional Tables

This subpart provides additional tables.

Table 1A. Amicus Briefs by Filer Type and State

Filer Type	State	Frequency	Percentage
Lobbying Group	California	285	70.7%
Industry/Corporation		64	15.9%
Government Agency		29	7.2%
Individual		14	3.5%
Professor		11	2.7%
Lobbying Group	Delaware	68	70.1%
Professor		16	16.5%
Individual		6	6.2%
Industry/Corporation		6	6.2%

Government Agency		1	< 0.1%
Lobbying Group	Nevada	59	50.9%
Industry/Corporation		37	31.9%
Government Agency		11	9.5%
Individual		6	5.2%
Union		3	< 0.1%
Lobbying Group	New York	139	67.5%
Industry/Corporation		35	17.0%
Government Agency		11	5.3%
Professor		11	5.3%
Individual		10	4.9%
Lobbying Group	Texas	210	66.7%
Industry/Corporation		58	18.4%
Individual		29	9.2%
Professor		14	4.4%
Government Agency		4	< 0.1%

Table 2A. Top 10 Public Interest Advocacy Groups

Filer	**Frequency**
United Policyholders	31
Consumer Attorneys of California	16
Civil Justice Association of California	14
Nevada Justice Association	11
National Association of Consumer Advocates	8
Texas Association of Defense Counsel	8
National Consumer Law Center	7
Washington Legal Foundation	6
AARP Foundation Litigation	5
Center for Responsible Lending	4

Table 3A. Top 20 Law Firms

Law Firm	Frequency
Horvitz & Levy, LLP	31
Shook, Hardy & Bacon, LLP	17
Mayer, Brown, Rowe & Maw, LLP	14
Covington & Burling, LLP	13
Roger P. Croteau & Associates, LTD	13
Reed Smith, LLP	12
Greenberg Traurig, LLP	10
Lewis Roca Rothgerber Christie LLP	10
Cokinos, Bosien & Young, PC	9
Young, Conaway Stargatt & Taylor, LLP	9
Fisher, Johnson & Huguenard, LLP	8
Gibson, Dunn & Crutcher, LLP	8
Kim Gilbert Ebron	8
Bailey Kennedy, LLP	7

Baker Botts, LLP	7
Crowell & Moring, LLP	7
Sidley Austin, LLP	7
Thompson, Coe, Cousins & Irons, LLP	7
Wiley Rein & Fielding, LLP	7
Wilmer Cutler Pickering Hale & Dorr, LLP	7

Table 4A. Amicus Briefs by Case Category

Case Category	State	Frequency	Percentage
Tort/Product Liability	California	104	25.7%
Insurance		85	21.0%
Banking & Finance/Negotiable Instruments		74	18.3%
Consumer		41	10.1%
Contracts/Sales		39	9.7%
Corporate/Partnerships/Mergers & Acquisitions		26	6.4%

Real Property/Landlord-Tenant		19	4.7%
Antitrust & Trade		13	3.2%
Debtor-Creditor/Mortgages & Liens/Bankruptcy		3	0.1%
Corporate/Partnerships/Mergers & Acquisitions	Delaware	39	40.2%
Insurance		21	21.6%
Tort/Product Liability		21	21.6%
Contract/Sales		6	6.2%
Banking & Finance/Negotiable Instruments		5	5.2%
Real Property/Landlord-Tenant		4	4.1%
Antitrust & Trade		1	1%
Debtor-Creditor/Mortgages & Liens/Bankruptcy	Nevada	44	37.9%
Insurance		25	21.6%
Tort/Product Liability		19	16.4%
Contracts/Sales		15	12.9%

Banking & Finance/Negotiable Instruments		6	5.2%
Consumer		4	3.4%
Real Property/Landlord-Tenant		2	1.7%
Antitrust & Trade		1	0.9%
Tort/Product Liability	New York	46	25.7%
Insurance		37	20.7%
Contracts/Sales		36	20.1%
Corporate/Partnerships/Mergers & Acquisitions		20	11.2%
Real Property/Landlord-Tenant		16	8.9%
Debtor-Creditor/Mortgages & Liens/Bankruptcy		15	8.4%
Banking & Finance/Negotiable Instruments		6	3.4%
Antitrust & Trade		2	1.1%
Consumer		1	0.6%
Tort/Product Liability	Texas	78	24.8%
Insurance		73	23.2%

Contracts/Sales		67	21.3%
Real Property/Landlord-Tenant		46	14.6%
Corporate/Partnerships/Mergers & Acquisitions		27	8.6%
Banking & Finance/Negotiable Instruments		20	6.3%
Antitrust & Trade		4	1.2%