

Briefs of Amicus Curiae

INTRODUCTION



Harvard Model
Congress Asia

Purpose of the Brief

In the US Appellate court system, judges are not popularly elected or controlled by congressional interference or direct influence from the executive branch. Because the courts are so secluded from the other parts of the American government, there is a risk that judges become out of touch with the circumstances surrounding their rulings. To counteract this tendency, it has long been held that judges should take into consideration the input of any interested party to a case under their consideration. These parties make themselves known through briefs of Amicus Curiae.

Use of Amicus Briefs in US Judicial Practice

Literally meaning “Friend of the Court” in Latin, an Amicus brief is a short document that informs the judges of how their ruling will affect the workings of the society. And while these briefs were originally designed to be informative rather than persuasive, in more recent judicial history the briefs have been used to more actively try to affect the outcome of cases. For example, if a case involves environmental regulation, an environmental lobbyist group might file an amicus brief urging the court to uphold the regulation. On the other hand, the chemical industry would also likely file its own Amicus brief, one that argued to the court that more regulation would harm the economy or be otherwise inadvisable.

Additionally, the office of the President, Attorney General, and Solicitor General nearly always file briefs on cases involving the federal constitution. Likewise, in cases involving state laws, Governors often file their own briefs.

Restrictions on filing

There are restrictions on who can actually be a “friend of the court.” The “friend” must be “invited” by either of the parties or any of the justices. However, there is an exception: Literally *any governmental actor* can file an Amicus Curiae brief. Even so, the court prefers only to read those briefs that present new perspectives on the case. Since more persuasive briefs are given by the lawyers for the parties involved



(petitioner and respondent), the Amicus brief should present an outsider's interpretation of the legal issues involved.

Harvard Model Congress Asia Amicus Curiae Briefs

In the government simulation that you will be participating in, the judicial branch will happily consider *any* briefs filed to them by any other part of the conference. A docket of the Supreme Court will be available at Congressional Services at all time during the conference. Briefs may be composed by any delegate and submitted to congressional services before the time when the relevant case is heard. Before the court decides the case, the justices will consider all arguments and briefs, including those filed in Amicus form.

On the next page please find an example of two shortened briefs that would be appropriate for Harvard Model Congress Asia.

EXAMPLE 1: A PERSUASIVE BRIEF

Author: General David Petraeus, General, Commander of US Forces in Iraq

Case: The court is considering a fictional case of whether to uphold the detention of prisoners in Guantanamo Bay, Cuba. The petitioner in the case are the prisoners, the respondent in the case is the USA.

Brief:

While it is understandable that the court must weigh heavily the rights of the prisoner, the court must also consider the effect of releasing these prisoners on the continued effort of the War on Terror. It is to inform the court of this effect that I write this brief.

Releasing a large number of militant prisoners from Guantanamo Bay would have a major rallying effect on the morale of insurgents that the US forces under my command combat on a daily basis. Knowing that their fellow terrorists have been freed would, in my opinion, lead them to redouble their efforts at expelling the remaining US forces on the ground in Iraq. This would lead me, as commander, to expect renewed hostility, significantly increased militancy, and, in the end, greater casualties, both military and civilian, American and Iraqi.

While I realize that this court's duty is to uphold the constitution, even when it is difficult or impractical to do so, I urge the court also to consider the practical effects of their ruling. To release these prisoners is to make more likely the killing of soldiers and of innocents.



As General of the United States combined forces in Iraq, I strongly urge you to find for the respondent, the United States of America.

EXAMPLE 2: AN INFORMATIVE BRIEF

Author: Steven Levitt, Economist, University of Chicago

Case: The court is considering a fictitious case regarding abortion. The petitioner asserts her right to an abortion, while the respondent, the state of South Carolina, asserts that the law it passed outlawing abortion should stand

Brief:

The department of economics understands that the court must consider the legal constitutionality of the abortion law, but feels that the practical effect of abortion laws must also be considered to judge the true nature of a ruling in a society. Recently, I have written extensively on the subject of abortion laws and their effect on crime, the subject of my brief today.

A study conducted by myself and colleagues found that the 1973 *Roe v. Wade* decision that made abortion legal in all of the United States is also probably the main reason why crime rates fell in the 1990's. Since unwanted children of broken homes are the most likely to turn to crime during their adolescence and early adulthood, abortion's proliferation likely reduced the number of criminals—and therefore crime—in the 18-30 years that followed the decision.

I respectfully urge the court to consider their ruling in light of this evidence.

