

**Influenced by Power or Reasons?
The Role of Amicus Curiae in Constitutional Court Decision-making**

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In what way do amicus curiae or interested party briefs shape the decisions of constitutional courts outside of the United States? Using a unique dataset of over 900 amicus curiae briefs from the Bulgarian Constitutional Court, hearing cases of constitutional review and legal interpretation, we analyze the Court's propensities to both borrow language from briefs and to cite the identity of interested parties. We find that the Court is more inclined to incorporate language from briefs by powerful government actors rather than non-governmental groups. Further, the Court's alignment with the governing coalition and the type of constitutional review also influence the propensity to borrow language from briefs. However, the BCC does not appear to favor citing any particular interested party. These results question whether the briefing process in Bulgaria lives up to democratic expectations for including less powerful civil society viewpoints into decision-making. The study is one of the few of its kind to explore how the reasoning found within amicus curiae influences an important national high court outside of the United States.

We would like to thank Roberto Alas, Paul Johnson, Samad Karimov, Vivian Kalu, and H.M. Kim for valuable research assistance on this project. The paper benefited greatly from comments received at the European Political Science Association Annual Meeting in Prague in 2022 and from anonymous reviewers and the editors of EEPS.

The use of *amicus curiae* or interested party briefs by apex national courts has the potential to democratize judicial decision-making by allowing new ideas and seldom heard voices to reach counter majoritarian courts.¹ However, despite such ideals, decision-making is just as likely to be co-opted by powerful governmental and non-governmental actors as well as elite interests. While the role of *amicus curiae* on the United States Supreme Court has been explored extensively using a wide range of methods², their influence has been rarely studied empirically in other national high courts.³ Furthermore, as in other areas of judicial scholarship, determinants of decision-making have often revolved around easily coded case outcomes and votes, with little attention to judicial opinions.⁴ Studying the reasoning and text of these decisions outside the United States within a large-N empirical context has evaded many scholars due to the limited availability of *amicus curiae* and the need for translating court documents. This article thus adds to the growing scholarship on the influence of *amicus curiae* briefs on decision-making on the Bulgarian Constitutional Court (BCC), a powerful and well-respected court in a country that is one of the newest members of the European Union.

The influence of *amicus curiae* or interested party briefs (hereinafter “briefs”) on high court decision-making in new democracies, such as Bulgaria, is an especially important area of inquiry as it sheds light on the transparency of the Court’s decision-making processes and whether the Court operates in an isolated manner or is willing to consider the opinions of important government actors and civil society.⁵ As noted by Collins⁶ in an influential review piece, “rich insights”⁷ can be gained from the study of briefs outside of the United States. Analyzing interested party briefs allow questions about whether important assumptions about the influence of briefs in the U.S. are even pertinent on other high courts where interest group

involvement in litigation and other matters has been more limited. Additionally, the research on amicus on the U.S. Supreme Court may have “skewed our understanding”⁸ of the use and goals of briefs by interest groups and judges in other countries.

A focus on briefs by amici curiae, “friends of the court” or interested parties outside of the American context is also appropriate in the era of democratic backsliding and attacks on courts and the rule of law. Amid public criticism of would-be autocrats attacking their own courts,⁹ scholars may seek to determine whether courts are subject to more subtle forms of manipulation through the use of amicus curiae briefs or whether courts can fortify their stature by well-reasoned decisions which encompass many viewpoints. This article seeks to provide a response to Collins’ call for more work on the influence of amicus curiae outside the American context by focusing on the decisions of the powerful Bulgarian Constitutional Court in both its constitutional review¹⁰ decisions and those involving constitutional interpretation. The focus on the BCC is especially timely as Bulgaria is one of the newer members of the European Union whose Court has not been subject to attacks by increasingly authoritarian leaders as in Poland and Hungary. Further, the study of the BCC tells us much about legal development and the work of civil society after this country’s democratic transition in 1990.

I. Literature on amicus briefs in high court decision-making

While there has been no shortage of research on the influence of amicus curiae briefs on the U.S. Supreme Court,¹¹ their impact on decision-making on other national high courts has received much less attention, although there have been several studies on the use of amicus curiae on the Canadian Supreme Court¹² as well as on international courts.¹³ Of the U.S. focused literature, inquiries focus quite substantially on who files briefs and why.¹⁴ Further, a number of studies highlight the impact of the number of briefs and their ideological direction on U.S.

Supreme Court decision-making.¹⁵ In the comparative context, Collins and McCarthy¹⁶ find that institutional features and rules drive the submission of briefs on eleven English speaking high courts.

A number of studies of the U.S. Supreme Court have focused on how the policy positions of groups filing briefs influence case outcomes or judges' votes.¹⁷ Although these studies add much to our understanding of the role of briefs in judicial decision-making, it is difficult to ascertain whether all groups filing briefs have well defined policy preferences and whether they seek to influence policy at all. Some actors file briefs for reasons of organizational maintenance,¹⁸ to claim credit for their interaction with the court and the outcome should they prevail. Additionally, it is unclear if the Court reads and considers all the briefs submitted and whether they have their intended impact.¹⁹

Additional studies pertinent to our inquiry focus on how the reasoning within briefs influence courts' or judges' decisions. This focus on the content of opinions appropriately highlights the role of courts' decisions in a democracy namely to provide "reasoned justification" for the court's position, not just a decision on a specific case.²⁰ Studying the reasoning of judges allows scholars to determine what facets of a case are most influential. Sophisticated reasoning by the courts further can add to their stature. As such, justices may borrow language from interested party briefs to bolster the strength of their decisions. Courts might want to produce decisions that would be respected by external actors and to that end, they might want to infer the preferences of relevant players and the broader consequences of their decisions.²¹ Because there might be significant uncertainty as to how decisions would be evaluated by broader audiences, briefs could provide feedback and additional information to justices.²² They also can provide a measure of public support for a court's decision.

In response to the need to study judicial reasoning, some studies of the U.S. Supreme Court focus specifically on the content of the interested party briefs and the extent to which they shape majority opinions, arguing that the overlap between the language used in the briefs and that in the majority opinion provides evidence of the influence of these briefs on judicial decision-making. To analyze this overlap, scholars have employed plagiarism software to evaluate the extent to which justices borrow exact language from briefs in their majority opinions.²³ These studies assert that justices tend to borrow language from briefs that have better quality, come from credible interested parties, and reiterate arguments from other sources.

Another indicator of the impact of briefs on judges' reasoning is the tendency of justices to cite briefs by the name of the interested party submitting them in majority opinions. Over time, the U.S. Supreme Court has increased its citations of the identity of the non-party brief writer.²⁴ Citing the identity of parties filing the brief within a court decision provides a public acknowledgement of the influence of that party on the Court's decision-making which may involve some strategic choices about what parties to cite by name.²⁵ Distinguishing between the two distinct uses of briefs (*i. e.* borrowing language or citing the identity of the party) "provides a unique opportunity to understand the extent to which justices balance policy preferences and legitimacy concerns."²⁶ As such, our analysis of the BCC's use of briefs focuses both on borrowed language and citations to specific parties filing them.

In the next section we provide information on the Bulgarian Constitutional Court or BCC so that we can distinguish it from the U.S. Supreme Court's institutional context. Key features of this Kelsian Court are important for determining specific predictions related to this Court's use of briefs which diverge from the expectations regarding the U.S. Supreme Court context.

II. Background on the Bulgarian Constitutional Court

This study focuses on the Bulgarian Constitutional Court (BCC), a fourth branch of the government which is outside of the regular judiciary. While the Court has strong prerogatives,²⁷ it has not yet suffered constitutional crises, as in other Eastern European countries. The BCC, along with similar courts in Romania, Slovakia, and Slovenia, has become an important political actor²⁸ and has remained a well-respected institution, despite some allegedly politicized decisions. From 1991 to 1997, when the country was ruled by mostly left-wing governments, the BCC had a center-right majority and was able to prevent the reversal of market-oriented reforms.²⁹ The Court, however, has been accused of exploiting conflicts between the judiciary and the executive and supporting the ordinary judiciary on important cases to magnify its own influence.³⁰ According to several experts, the “super independence” of the Bulgarian judiciary and the BCC have made them “self-serving and corporatist.”³¹

The BCC has mandatory review and therefore has limited discretion to avoid consideration of any properly filed cases. The BCC has two kinds of abstract review powers. First, the BCC has the abstract power to determine the constitutionality of laws after they have been enacted without a case and controversy unless a proposed law is inconsistent with international laws or treaties (See Bulgarian Constitution, Article 149(1)(2)). If the Court finds a law unconstitutional, it must be stricken. Second, the BCC may abstractly, without a case or controversy, offer “binding” interpretations of the Constitution (Article 149(1)(1); see Sadurski 2008: 98) in the context of legislation that is being reviewed. This occurs in cases where parliament has written broad legislation or not considered all of its implications. As indicated by Schwartz,³² this abstract interpretive power, afforded many courts, but not the U.S. Supreme Court, “is the clearest manifestation of the special advisory nature of these courts and their

primary mission” to assist officials in legislating and governing “according to the law and the constitution” (26). The power to interpret statutes allows constitutional courts endowed with this power to “ ‘create’ the constitution” through the development of doctrine when no real dispute exists. It also may allow a court to appear either deferential to the legislature or more activist as interpretation does not require striking down a statute outright. Due to the BCC’s abstract review powers, many see the Court as “a substitute for a second legislative chamber to play a role similar to the Senate.”³³ Most of the constitutional review and interpretive cases decided by the BCC involve the review of legislation passed by the National Assembly convocation at the time of the review.

Several mechanisms insulate BCC judges from political pressure. The Court’s 12 justices serve nine-year nonrenewable terms. Judges’ terms are staggered, so that 4 justices are replaced every three years. The Court uses a majority rule requiring that more than half of the judges (*i.e.* 7 of 12 judges) agree. There is a minimum quorum requirement and for most decisions, 9 judges must be present for a vote to be considered valid (abstentions are not allowed). Judges who disagree with the majority write “dissenting opinions” which become a part of the public record. Justices on the BCC are largely self-disciplined and the BCC itself decides under what conditions a judge must resign.³⁴ To appoint constitutional justices, Bulgaria uses a mixed system, where the National Assembly, the President, and the Supreme Court of Cassation (SCC) with the Supreme Administrative Court (SAC), the country’s top appellate and administrative courts, choose four judges a piece. The mixed selection system is thought to improve judicial independence and make “it virtually impossible for a single political force to colonize the Court.”³⁵

The BCC reviews the constitutionality of laws and interprets them in the abstract when cases are referred to it by particular political actors, namely, the president, no less than one-fifth of all members of the National Assembly, the Council of Ministers, the SCC and SAC, the Prosecutor General (PG), the Ombudsman (since 2006), and the Supreme Bar Council (since 2015). These actors are not parties to the case in the sense of parties to litigation in the United States. No other individuals or entities can refer cases to the Court.

The inclusiveness of the decision-making process of the Court is enhanced by the participation of “interested parties” through the filing of briefs. This procedure is not unique to Bulgaria, but applies to many high courts in Europe.³⁶ If the Court designates (or constitutes) a person or a body as an interested party, they may, but are not required to file a brief with the Court stating their position on the law’s constitutionality. Normally, the referring party requests that a number of interested parties be constituted as such by the Court. Governmental and non-governmental parties may submit a request to be constituted as an interested party, however, only the Court selects the interested parties. Each case includes different combinations of interested parties, and it is not unusual for differences of opinions to arise within and between branches of government or for these branches to disagree with the positions of non-governmental actors (who may also disagree among themselves). In contrast to other countries that utilize the same procedure, the positions of the interested parties are published in the *State Gazette* along with the decisions of the Court and the opinions of the dissenting judges.

Despite many safeguards to ensure the BCC’s independence, the Bulgarian PG is a particularly powerful actor that can influence the BCC’s decisions by referring cases or submitting briefs. The ability of the PG to initiate an investigation against judges can be a powerful deterrent and discourage constitutional justices from alienating the PG. There is a

widespread perception among experts and the public that the “bringing of charges” and the preliminary investigations are the most significant instrument of unchecked prosecutorial power used against politicians, members of the government, and magistrates.³⁷ Unlike judges from the regular judiciary, members of parliament, or other magistrates, the PG has not yet initiated pre-trial investigations against BCC judges. Still, the ability of the PG to potentially initiate investigations against any judge or even to start a pre-trial investigation or to bring charges not subject to judicial review and in the absence of strong evidence can discourage justices from alienating the powerful PG.

III. Predictions regarding the use of amicus briefs: borrowing language and citing interested parties’ identity

As shown above, there are few studies that focus on the influence of the reasoning found in briefs and their citation on high court decision-making and of this literature its emphasis on the U.S. Supreme Court has precluded a more general understanding of their influence in newer democracies, many which follow the civil law tradition with high courts styled on the Kelsian model of constitutional review. There are reasons to suggest that there are different assumptions related to the use and influence of briefs in common law countries versus civil law countries and on countries with concrete review rather than abstract review. Common law courts with concrete review generally decide cases within a “case and controversy” and thus are constrained by the facts and law of a particular case they hear. These courts, therefore, follow the reasoning of powerful special interest groups that address the concerns of a particular case. In abstract review cases, which courts such as the BCC decide, special interest concerns may be of less importance when answering broader questions about whether a law is constitutional or not.

Courts may be more likely to find that briefs submitted by government actors are more reliable, trustworthy, and legally sound than those submitted by civil society and special interest

groups for a variety of reasons. Governmental actors are repeat players and experienced litigators. As such, the Court may be more willing to follow the reasoning of government briefs because government actors have built powerful reputations before the Court due to the frequency of their appearance before the Court and their perceived prestige and legal acumen.³⁸

Additionally, unlike the U.S. Supreme Court, most constitutional courts, including the BCC, do not control their agenda and instead have mandatory review. As a result, such courts' dockets are filled with cases involving many diverse issues which the justices would not have chosen to decide under a discretionary review or of which they lack the expertise. In these instances, justices will seek information from trusted actors whose reasoning is thought to be legally justified and informative. It is likely that government actors submitting briefs are more trusted and influential to the BCC than civil society or special interest groups. Based on the above arguments, we predict:

Hypothesis 1a. The Court is more likely to incorporate the reasoning from briefs submitted from powerful governmental actors than non-governmental actors or civil society.

Our expectations about the effect of interested party briefs on majority opinions are somewhat different with respect to citations to the interested parties' identity, in contrast to just borrowing language from those briefs with no attribution. Citations are a more visible and overt form of influence of interested parties on majority opinions. While justices might draw on the legal reasoning of governmental actors, they might be unwilling to reveal the name of the interested party they borrowed from as they do not want to appear beholden to or dependent on powerful governmental actors. A similar finding was made by Canelo,³⁹ who found that the U.S. Supreme Court judges may attempt "to mask political behavior"⁴⁰ due to legitimacy concerns. Such incentives might be especially strong in former communist countries where after decades of

“telephone justice,” courts and justices want to appear insulated from state pressure and disassociate themselves from the government.

Hypothesis 1b. The Court is less likely to cite the identity of interested parties filing briefs when they are powerful governmental actors as opposed to non-governmental actors or civil society.

Of the government briefs that the Court considers, certain government actors may be more influential than others. Extensive literature of the U.S. Supreme Court has well-established that this Court is more likely to follow the reasoning of U.S. prosecutors as compared to other governmental actors as they are repeat players, have legal acumen and experience writing briefs.⁴¹ This expectation may be even greater on certain courts, especially those with Soviet-styled prosecutors whose historical power and lack of accountability has continued throughout the democratic period. The BCC also has been found to follow the PG’s preferred decisional outcome⁴² for a variety of reasons. Due to the long tenure of the Procurator General and his control over the Supreme Judicial Council or SJC, the governing body of the judiciary, BCC judges face strong incentives to avoid alienating the PG, especially if they plan on continuing with careers in the judiciary or politics, which many do. While the Procurator General has not targeted BCC justices, if they later move to the regular judiciary, they could still become a target of an investigation and possible suspension, which the Procurator has done against regular judges and a significant number of politicians. Finally, the PG is just as likely to be viewed as providing trusted legal reasoning and considered as a trusted repeat player. Based on the above arguments, we predict:

Hypothesis 2a: The Court is more likely to incorporate the reasoning from briefs submitted by the Procurator General than other actors.

Turning to citations to the PG’s briefs specifically, we expect the opposite relationship. Even though incumbent Bulgarian PGs are sometimes appointees of previous governments, they are

usually seen as agents of the executive. In line with the reasoning behind Hypothesis 1b, we expect justices to cite briefs by the Procurator General less often. We hypothesize:

Hypothesis 2b: The Court is less likely to cite briefs submitted by the Procurator General than other actors.

As mentioned in the literature review, the ideology of individual judges and courts may influence decision-making. While attitudinalists suggest that judges' political preferences guide their decisions,⁴³ strategic scholars suggest that if courts are significantly aligned with the governing party their decisions are less likely to be overturned and judges are less likely to be punished. Although this influential literature has guided much of the study of judicial politics, it has been mainly applied to empirical studies which only look at binary preferences of judges and courts (ie. outcomes and votes). Despite this limitation, courts may be more likely to craft their own decisions and justifications with less outside influence when they are closely aligned to the governing coalition and have less fear that their decisions will be overturned, or their jobs compromised. As such, when the Court is more politically aligned with the governing parties, it may be less inclined to provide decisions based on the justified reasoning found in government and other briefs. Furthermore, when the Court is highly aligned with the government, the need for the reasoning of the decision to appeal to the broader public to save the Court from government reprisals is less important. As a result, we predict:

Hypothesis 3a: The Court is less likely to incorporate the reasoning from all interested party briefs as the Court's alignment with the government increases.

We have a similar expectation about the BCC's use of citations when it is politically aligned with the governing coalition. Given that citations are a more visible form of influence of interested parties, we expect the justices to avoid citing briefs when they are politically aligned with the government, in order to demonstrate their independence. We predict:

Hypothesis 3b. The Court is less likely to cite interested party briefs as the Court's alignment with the government increases.

Hypothesis 3a and 3b should be conditioned by the type of review in which the BCC is engaged. As mentioned above, the BCC has the power to find laws unconstitutional in abstract review. Additionally, the Court has the power to offer interpretations of the constitution related to laws under review. Scholars have indicated that judicial behavior and the influence of judges' political preferences should vary by constitutional review type which sets the context for judges' decision-making.⁴⁴ Similarly, we should expect differences when judges are engaged in abstract constitutional review versus constitutional interpretation. As suggested by Stone Sweet,⁴⁵ judges' decisions related to constitutional interpretation are easily remedied by the legislature if they disagree with the court's interpretation and knowing this may influence judges who want to avoid such overrides. However, because constitutional interpretation related to a statute may lend itself to more creativity,⁴⁶ an aligned court will want to justify its interpretation with arguments from interested parties to help avoid a legislative override and to fortify the Court's reputation for well-considered decisions. The need to do this will increase as the Court becomes more aligned with the government as some of the interpretations may be at odds with what the government wants. However, as argued previously, the need to cite the name of the brief writer should decrease with an aligned court.

H4a: The Court is more likely to incorporate the reasoning from all interested party briefs as the Court's alignment with the government increases and it is engaged in constitutional interpretation rather than striking down a law outright.

H4b: The Court is less likely to cite interested parties revealed in briefs as the Court's alignment with the government increases and it is engaged in constitutional interpretation rather than striking down a law outright.

IV. Data and Research Strategy

We analyze both how the BCC borrows language from briefs and how it cites to interested parties by name and thus have two distinct dependent variables. For the analysis on borrowing language, the dependent variable is the percentage of textual similarity between the majority opinions of the BCC and the briefs submitted by interested parties in each decision. We collected all opinions and briefs issued from 2000 to 2012 directly from the BCC website. We gathered data on 145 majority decisions and a total of 918 briefs. In total, we collected, cleaned, and analyzed 1,063 court documents. The number of briefs submitted per case varies widely—for some cases only a single brief was submitted, and for others, up to 26 briefs were submitted, with an average of about 6 briefs per court case. The subject of the majority decisions and the briefs also varies. For example, some decisions focus on interbranch conflict, while others discuss freedom of religion, military service, and property law. The briefs also vary in scope, length, and support. The submitted briefs represent a wide assortment of sectors, such as actors within the Bulgarian government, organized business interests, labor unions, scholars, and non-governmental organizations. Notably, from across the Bulgarian government, the Procurator General (PG), along with the Supreme Cassation Court, the Council of Ministers, National Assembly, Ministry of Labor, Ministry of Finance, and Ministry of Justice often submitted briefs. Across unions and other associations, such as the Bulgarian Union of Jurists and the Bulgarian Union of Lawyers were frequent actors. Lastly, NGOs, such as the Association for European Integration and Human Rights and Bulgarian Lawyers for Human Rights Foundation, submitted briefs regularly.

We conducted a series of steps to ready our amicus briefs and majority opinions to generate our borrowed language similarity and word count variables. Each document gathered

from the Court was written in Bulgarian and in typed text, though the documents initially varied in their usability. Some documents collected directly from the website were in an easily useable format—in which the text could be converted to a standard text document (TXT file) for translation. Other documents, however, were more difficult to use. Many of the documents were image files in portable document format, which means that the text could not be copied or easily converted to a standard text document. For these, we converted the documents to portable graphics format, or image files, and subsequently used optical character recognition (OCR) to extract the Bulgarian text from the documents. Specifically, we used a system software called Tesseract, which is a commonly used optical character recognition engine. After OCR conversion, each document gathered from the Court's website was converted into a separate and new text document.

The next step was to translate the documents originally written in Bulgarian, which makes text analysis difficult, as most software used to conduct text analysis can only process text in English and a small number of other languages. To circumvent this problem, we translated the documents to English using Google Translate which has been found useful and accurate for text analysis.⁴⁷ Additionally, a native speaker inspected a random sample of documents and confirmed that Google Translate provides highly accurate translations, albeit with some imperfections. Once the documents were converted to standard text documents and translated, we used the plagiarism software WcopyFind to measure the similarity between each brief and its corresponding majority opinion.

Generally following the approach of Collins et al.,⁴⁸ we set the shortest phrase to match at 6 words and the shortest text string to be 100 characters. Additionally, we set the minimum percent of matching words in a string of words to 80% and the maximum number of

imperfections in a string to two words. This allows us to still capture similarities even though there may have been slight differences in some of the words or phrases used. We also ignore all punctuation, numbers, and letter cases and allow the software to skip non-words and words longer than 20 characters. Those settings are the default (recommended parameters), which have become the standard in the literature.⁴⁹

WcopyFind reports what percentage of the Court majority opinion matches with the brief, which provides us with an idea of the extent to which the court borrows language and integrates it into its written opinion. The WcopyFind reports also provide side-by-side comparisons of the two text documents and highlights the similarity across the documents so that the copied text is easily identifiable. This allows us to identify whether the facts of the case are being copied from the briefs or whether the substantive arguments are being copied. Generally, the software highlights similarities across arguments more than it highlights the facts of each case. The majority opinions do not tend to engage with language in the briefs in a negative way—arguments that the Court is critical of, it can simply choose not to include in the majority opinion. This is consistent with the findings of Collins and Ennis.⁵⁰ Ultimately, we use these reports to code for our key dependent variable *Percentage of borrowed language*, defined as the percentage of similarity between the majority opinion and each brief submitted for a given court case. Of 918 similarity scores, on average, the BCC borrows phrases from each brief for about 5.5% of each written opinion. The standard deviation across these reports is 5.8%. The lowest reported similarity was 0%, and the highest reported similarity was 47%.

In order to fully understand what we mean by borrowed language; we provide an example below.⁵¹ The BCC's majority opinion in Decision 2 of 2002 demonstrates the BCC following the "reasoning" of a particular brief. In this case, the BCC was requested by the PG to

make a mandatory interpretation of Articles 98 and 100 of the Constitution indicating that the Bulgarian President appoints and dismisses by decree heads of diplomatic missions and permanent representatives of the armed forces and international organizations. The question was whether proposals by the Council of Ministers to appoint or dismiss were separate administrative acts that could be subject to judicial review by the constitutional court. The BCC followed the reasoning in the brief of the Council of Ministers as the majority indicated it was following the Council's brief and more importantly it cited specifically the language of the Council of Ministers which said that the *proposals* by the Council were separate administrative acts distinct from the presidential *decrees* to appoint or dismiss, the latter only subject to review by the Constitutional Court, not the former. It should be noted that not all common phrases or sentences identified by the software capture borrowed legal reasoning. Often, the same language is used because both the majority decision and the interested party brief draw on a law or previous decision of the court.

In our empirical analysis, the unit of analysis is the individual brief. Given that the dependent variable for this part of the analysis is a proportion, OLS regression is inappropriate. Instead, we use fractional logit model, a quasi-likelihood method estimated as a generalized linear model.⁵² To account for the fact that majority opinions appear in the data multiple times, we cluster by case. For the citation analysis, we are interested in whether the BCC identifies and cites to a specific interested party filing a brief. For this analysis, the dependent variable is coded "1" if the BCC cites to a particular brief and "0" otherwise. For this part of the analysis, we use a logit model and cluster on case. In our sample, 55 % of the briefs were cited explicitly by the interested parties' names in the majority opinion. Virtually all the uses of borrowing or citing to interested party briefs are positive or neutral.

Main variables of interest

Our main area of inquiry focuses on the extent that the type of party filing a brief influences the amount that the BCC follows its reasoning in its majority opinion or cites to the party. As noted previously, the briefing procedure might expose courts to different voices and unpopular or minority opinions allowing the Court to serve as a counter-majoritarian institution. However, it is also likely that the Court could be co-opted by powerful government interests which could be troubling in a relatively young democracy. To explore these issues, we include several main variables of interest related to the identity of the parties filing the briefs and the political composition of the BCC itself as well as control variables related to attributes of the briefs themselves, such as the total number filed on a case and the word count of each brief and majority opinion. We use these variables of interest with both dependent variables.

As to identity of interested party, we explore whether the entity filing a brief was a national government actor (excluding the PG) filing a brief or whether the interested party was specifically the PG. *National Governmental brief* is coded “1” if the brief was submitted by a national branch of government, or governmental state or agency, excluding the PG, and zero otherwise. Some of the examples of national government entities filing briefs with the BCC are the President, National Assembly, and Ministry of Justice.⁵³

PG brief indicates whether a brief was submitted by the PG.⁵⁴ The opinions of the Solicitor General or Procurator General are likely to have a stronger impact on majority opinions compared to other actors, including governmental ones, due to the fact that the procurator is a significant governmental actor and due to its status as a repeat player and trusted legal voice.⁵⁵ In the case of the U.S. Solicitor General specific words and reasoning from its briefs influence the majority opinions of the U.S. Supreme Court.⁵⁶

We also analyze the influence of local government actors that file briefs. *Local government* is a variable that refers to whether the brief was filed by a local government actor and included such entities as the National Association of the Municipalities in the Republic of Bulgaria, the Governor of Sofia, the Sofia Procuracy of Appeals, the National Union of the Bulgarian Municipalities, and the Varna Court of Appeals. Although not analyzing amicus briefs specifically, scholars have shown that high courts adjudicate matters differently depending on whether they represent national concerns with high political salience or more local concerns.⁵⁷

The influence of special interest groups in court litigation is well established in the literature⁵⁸ but is predominantly studied in the context of the U.S. judiciary in which special interest groups can represent litigants in a case and controversy in court or in putting forth influential arguments in amicus briefs.⁵⁹ We code *Public interest groups*, as a binary variable, indicating the identity and type of group filing a brief. Some examples of public interest groups include: the Helsinki Observer Association, the Institute for Modern Politics, and the Institute for Public Environment Development. We also analyze the impact of briefs from other types of groups, denoted by the variable *Trade unions and peak pssociations* which include the Bulgarian Chamber of Commerce and Industry and the Bulgarian Industrial Association.

Economic/Professional organizations identifies organizations such as the Bulgarian Crafts Chamber, the Bulgarian Diplomatic Society, the Bulgarian Judges Association, and the Chamber of the Investigators in Bulgaria. The base group consists of other groups such as think tanks and research institutions.

Additional important variables include *Interpretive decision* and *Percent court aligned*. A case was coded as interpretive using a binary variable if the Court provided an interpretation of the constitution as allowed under the Bulgarian Constitution. Court's may decide cases

differently depending on whether they are striking down a law completely or interpreting a provision of the constitution.⁶⁰ The *Percent court aligned* variable was created by determining the percent of judges who were aligned with the ruling coalition in Parliament on every case. We did this first by determining which judges on each case were aligned with the ruling coalition and then determining the number aligned over the total number of judges on a specific case.⁶¹

Control variables

Control variables capture features of the case and the briefs. *Complex case* captures especially complex issues where legal acumen might be required. BCC judges might tend to rely more on external outside opinions and to borrow more language from them if the case is complex. Following Vanberg,⁶² a case is coded as complex if it involves “economic regulation, state-mandated social insurance (unemployment, health, and retirement insurance), civil servant compensation, taxation, federal budget issues and party finance.”

We include the variable *Number of briefs* for each case. Justices might be less inclined to borrow language from an individual interested party when many briefs are filed in a case. Based on personal interviews with a number of BCC justices, the BCC is likely to request briefs for cases that are considered more important or salient. Salient cases receive significant amounts of coverage and attention and are subject to more public scrutiny. Assuming that the number of briefs submitted per case is a good proxy for salience, it is not straightforward to infer *a priori* in which direction the salience of a case will affect the extent to which the Court borrows language in its majority opinion. It might be the case that the Court will defer more to opinions it perceives as more legitimate and in line with public opinion and as a consequence, the Court might adopt more language from such briefs. On the other hand, the justices might be more cautious when

incorporating language from briefs, realizing that they are subject to heavier scrutiny because of the salience of the case.

We also control for the number of words in the brief (*Word count, brief*) and the majority opinion (*Word count, majority*). To determine the word count, we removed all punctuations and numbers from the translated documents. Next, we transformed each document to lower case text. After converting to lower case, we tokenized the text. In other words, we separated the sentences into separate tokens, or words, to be able to take out stop words. For context, stop words are words that often add little value to a sentence, such as articles or prepositions. We use an existing and commonly used stop word list from the Natural Language Toolkit in Python. Finally, after taking out stop words, we count each word to generate word counts. The cleaning of data in this way is a common practice when using text as data. This provides us with an imperfect but consistent count of the number of words in each document.

V. Empirical Results

The main results appear in Tables 1 and 3, showing the coefficients on the regression analysis and Tables 2 and 4 showing the corresponding predictive probabilities for substantive meaning. Across the two tables, regressions 1 and 4 capture all variables described above except for the *Percent court aligned* variable and regressions 2 and 5 include it. Regressions 3 and 6 include an interaction term of *Percent court aligned* and *Interpretive decision*.

Borrowed Language Results

In Table 1, *Governmental Brief* is positive and statistically significant, suggesting that justices on the BCC are more likely to borrow language from briefs submitted from governmental or state actors, in line with Hypothesis 1a.

<Table 1 here>

In Table 2, we show the values of the dependent variable when we change our main binary explanatory variables (*Governmental Brief* and *PG Brief*) from 0 to 1 and our continuous variables from the mean to one standard deviation above it (*Percentage Court Aligned*).

According to these results, the justices tend to borrow more than double the amount from briefs submitted by governmental actors (with the exception of the PG) compared to those submitted by non-governmental actors. Changing the value of *Governmental Brief* from 0 to 1 increases the proportion of borrowed language by 110%. This important finding suggests that when their behavior might get unnoticed (as quite often the governmental briefs are not cited), justices borrow much more heavily from governmental sources.

<Table 2 here>

In line with *Hypothesis 2*, the justices tend to borrow more from briefs submitted by the Procurator General. The coefficient for the *PG Brief* variable is positive and statistically significant and its effect is also substantively significant. Compared with other briefs, the BCC adopts 67% more language when the brief is filed by the PG. This is in line with Collins, Corley, and Hamner's⁶³ findings for the US Solicitor General, where our effects are substantively even stronger. To what extent the Bulgarian constitutional justices borrow more language from the PG because they consider his briefs to be of higher quality or because they tend to defer to the expressed preferences of this powerful actor would require additional investigation, but in any case, this is an interesting finding.

Regarding the other main explanatory variable, *Percentage Court Aligned with the Governing Coalition*, is statistically significant in regressions 2 and 3. The interaction of this variable with *Interpretative Decision*, has a significant conditional effect. According to results from Model 3, the most comprehensive model, *Interpretative Decision* and *Percentage Court*

Aligned both have negative and statistically significant coefficients, and their interaction term has a positive and statistically significant coefficient. In substantive terms, as shown in Table 2, for decisions that are not interpretative, increasing *Percentage Court Aligned* from its mean value to one standard deviation above the mean is associated with a 13% drop in borrowed language. However, for interpretative decisions, increasing *Percentage Court Aligned* from its mean value to one standard deviation above the mean is associated with a 15% increase in the amount of borrowed language. Interpretative decisions decipher the normative sense of constitutional provisions and do not seek to review the constitutionality of laws enacted by the National Assembly. According to a former chair of the BCC, the interpretative decisions are “without a doubt” the most important decisions of the BCC - “The interpretative decisions complete the constitution, they derive its meaning...They create mandatory interpretations for constitutional norms.”⁶⁴ This identified conditional effect indicates that while in general the justices tend to voice more independent reasoned opinions when they are less worried about enforcement of those decisions by an ideologically aligned executive, when it comes to interpretative decisions, the dynamic is different. Justices seem to be more concerned about their perceived legitimacy and subsequent enforcement and draw more on the language in the briefs.

Turning to the controls, we find that justices tend to borrow more from longer briefs—*Word Count, brief* and *Word count, majority* have statistically significant, but substantively small effects. Salience, captured by *Number of Briefs*, has a negative and statistically significant coefficient, indicating that justices borrow less language from briefs on salient cases. It appears that justices may be spending more time developing their own arguments on cases that are likely to get more attention. The complexity of the case does not seem to matter. The variable is not statistically significant in Model 1 and Model 2 and in Model 3 reaches statistical significance

only at the 90% confidence level. Model 3, the more complete model, is the better fitting model as far as the AIC and Model 1 as far as the BIC.

In Tables 3 and 4, we use alternative categorizations of interested parties classifying them into a greater number of groups, namely, *National Government*, *Local Government*, *Public Interest Group*, *Trade Union/Peak Association*, *Other Economic and Professional Groups*. The base group is all other interested parties, described above and in the appendix. Using the alternative classification, we find that *National Government*, *Public Interest Group* and *PG Brief* have a positive and statistically significant coefficient in all regressions. *National Government* (excluding the Procurator General) has the greatest substantive impact—changing its value from 0 to 1 is associated with a 156% increase in borrowed language, compared to a 60% increase for *Public Interest Group* and 100% for *PG Brief*. It is an important substantively that organizations outside the formal government institutions have a substantial impact on the language of the court. The results with respect to the control variables are similar to those from Models 1-3. Saliency captured by *Number of Briefs* has a negative and significant coefficient in all models, while *Word Count, brief* has a positive and significant coefficient and *Word count, majority* a negative and significant coefficient in all models. *Case Complexity* has a positive, and significant coefficient (at the 90% confidence level) only in Model 3.

<Table 3 here>

Whether a decision was interpretive and whether it was decided by an aligned court are both statistically significant in these models. Interacting these two variables provides results consistent with our prior models. The AIC/BIC results do not provide definitive results. The AIC is lowest for Model 6 and the BIC lowest for Model 4.

<Table 4 here>

Citations Results

The relationships and variables that predict the tendency to borrow language do not have explanatory power with respect to citations. In our models that only include governmental actors (similar to Table 1), the only significant variable related to who is submitting the brief (and only at the 90% significance level) is the *Governmental brief* and only when it appears in the first regression. All other variables in these models and those which include non-governmental actors are insignificant, except for *Word count, brief* which is significant, but substantively meaningless.⁶⁵ As we expected, citations seem to be driven by a different dynamic. The results are not in line with Hypotheses 1b-3b. The effects are insignificant, indicating that justices are not less likely to cite briefs submitted by governmental actors or the PG nor when they are politically aligned with the government. The alternative classification of interest groups does not improve the explanatory power of the regressions. These results suggest that justices treat citations differently. While they might be willing to borrow language more heavily from certain actors, they are unwilling to acknowledge this openly as to avoid appearing politically influenced.

Implications and Conclusion

The study focused on how briefs influence the decisions of a powerful and important national apex court outside of the United States. We chose to focus on the Bulgarian Constitutional Court as it is a good example of a court that has not yet been attacked by powerful government actors as in Hungary and Poland and it uses publicly available briefs on all decisions, a main limitation of studying briefs outside of a few common law and international courts.⁶⁶ The inquiry also focuses on whether briefs improve the decision-making and

legitimacy of counter majoritarian courts and whether these courts' decisions consider the reasons provided by unpopular groups.

Despite the submission of such briefs, the BCC is more likely to borrow language from more established and powerful government elites, including the PG, rather than non-governmental or special interest groups. While a prior study showed that the BCC follows the decision or position of the PG,⁶⁷ it did not reveal whether the Court was simply following the PG's preferred outcome on a case or something more. The BCC's use of the PG's language in the majority opinion suggests that the PG's influence goes beyond just signaling an outcome to the Court about a preferred position.

While the results suggest that the democratic impetus underlying the availability of the briefing process to interest groups is not realized in the decisions of the Court itself, the results do not tell us whether interested parties have alternative motives for using the briefing process such as organizational maintenance. Further research should attempt to determine what benefits non-governmental groups receive from filing these briefs. The research also has shown that judges' and courts' political alignment with the government is an important determinant of decision-making. However, rather than simply suggesting that the Court is willing to follow the position of the government for fear of reprisal, the research has shown an incongruity. The Court is less inclined to follow the reasoning from briefs when it is closely aligned with the government. As such, aligned courts may have more decisional independence as to reasoned justifications versus outcomes than the traditional attitudinal model suggests. This result, however, is conditioned on the type of constitutional review. In the study of democratic transitions and legal development, further inquiry should be made as to whether the Bulgarian government chose to use the interested party procedure to signal transparency and meet EU

conditionality. Additional research could shed light on whether the briefing process is substantively meaningful to the Court.

Table 1. Percentage of borrowed brief language in majority opinion

	(1)	(2)	(3)
Government brief	0.77*** (0.09)	0.78*** (0.09)	0.78*** (0.10)
PG brief	0.53** (0.26)	0.54** (0.24)	0.50** (0.25)
Complex case	0.10 (0.09)	0.09 (0.08)	0.15* (0.08)
Number of briefs	-0.07*** (0.02)	-0.07*** (0.02)	-0.07*** (0.02)
Word count, brief	0.00*** (0.00)	0.00*** (0.00)	0.00*** (0.00)
Word count majority	-0.00*** (0.00)	-0.00*** (0.00)	-0.00*** (0.00)
Percent court aligned		-0.43*** (0.16)	-0.66*** (0.16)
Interpretive decision			-0.46** (0.23)
Court aligned * Interpretive decision			1.37*** (0.48)
Constant	-3.11*** (0.17)	-2.90*** (0.17)	-2.91*** (0.18)
AIC	384.87	384.31	373.87
BIC	418.62	422.84	421.67
Observations	918	912	880

*Entries are fractional logit estimates. Standard errors are clustered by case. Standard errors in parentheses; *** p<0.01, ** p<0.05, * p<0.10.

Table 2. Substantive effects of main explanatory variables in Table 1

	<i>Dependent Variable</i>	
Governmental brief =0	0.030 (0.025-0.036)	
Governmental brief =1	0.063 (0.058-0.068)	+ 110% Change
PG brief=0	0.030 (0.025-0.036)	
PG brief=1	0.05 (0.027-0.070)	+ 67% Change
Interpretative decision =0 % Court aligned at μ	0.030 (0.025-0.036)	
Interpretative decision =0 % Court aligned 1 s.d. above μ	0.026 (0.021-0.031)	-13% Change
Interpretative decision =1 % Court aligned at μ	0.033 (0.025-0.041)	
Interpretative decision =1 % Court aligned 1 s.d. above μ	0.038 (0.027-0.050)	+ 15% Change

*Estimates from Model 3. Dummy variables are set at 0, continuous variables are set at their means (95 percent confidence interval in parenthesis). μ = mean; s.d.= standard deviation.

Table 3. Percentage of borrowed brief language in majority opinion

	(4)	(5)	(6)
National government brief	0.97*** (0.24)	0.98*** (0.25)	1.01*** (0.24)
Local government brief	0.42 (0.33)	0.41 (0.36)	0.49 (0.35)
Public interest group	0.51* (0.27)	0.48* (0.27)	0.51* (0.27)
Trade Unions/peak associations	0.11 (0.30)	0.12 (0.30)	0.18 (0.30)
Other economic/professional	-0.02 (0.29)	-0.02 (0.30)	0.04 (0.30)
PG brief	0.71** (0.36)	0.71** (0.35)	0.71** (0.36)
Complex case	0.11 (0.09)	0.10 (0.08)	0.16* (0.08)
Number of briefs	-0.06*** (0.01)	-0.06*** (0.01)	-0.06*** (0.02)
Word count, brief	0.00*** (0.00)	0.00*** (0.00)	0.00*** (0.00)
Word count, majority	-0.00*** (0.00)	-0.00*** (0.00)	-0.00*** (0.00)
Percent court aligned		-0.43*** (0.15)	-0.66*** (0.16)
Interpretive			-0.43* (0.24)
Court aligned * Interpretive			1.36*** (0.50)
Constant	-3.29*** (0.26)	-3.07*** (0.26)	-3.12*** (0.26)
AIC	392.08	391.54	381.16
BIC	445.12	449.33	448.08
Observations	918	912	880

*Entries are fractional logit estimates. Standard errors are clustered by case.

Table 4. Substantive effects of main explanatory variables in Table 2

	<i>Dependent Variable</i>	
National Government=0	0.025 (0.013-0.036)	
National Government=1	0.064 (0.059-0.069)	+ 156 % Change
Local Government=0	0.025 (0.014-0.036)	
Local Government=1	0.039 (0.020-0.058)	+ 56 % Change
Public Interest Group=0	0.025 (0.013-0.036)	
Public Interest Group=1	0.040 (0.031-0.049)	+ 60 % Change
Trade Union/PA=0	0.025 (0.013-0.036)	
Trade Union/PA=1	0.030 (0.020-0.038)	+ 8 % Change
Econ./Prof. Group =0	0.025 (0.013-0.036)	
Econ/Prof. Group=1	0.026 (0.017-0.034)	+ 4% Change
PG brief=0	0.025 (0.013-0.036)	
PG brief=1	0.05 (0.027-0.070)	+ 100 % Change
Interpretative decision =0 % Court aligned at μ	0.104 (0.070-0.138)	
Interpretative decision =0 % Court aligned at 1 s.d. above μ	0.120 (0.060-0.180)	+16% Change
Interpretative decision =1 % Court aligned at μ	0.071 (0.057-0.085)	
Interpretative decision =1 % Court aligned at 1 s.d. above μ	0.082 (0.063-0.101)	+ 15 % Change

*Estimates from Model 6. Dummy variables are set at 0, continuous variables are set at their means (95 percent confidence interval in parenthesis). μ = mean; s.d.= standard deviation

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- ² See P. Collins, “The Use of Amicus Briefs,” *Annual Review of Law and Social Science* 14, no. 1 (2018): 219-237.
- ³ While there are few studies on the use of amicus on national high courts, several scholars have written about their importance and analyzed their content in cases before the Court of Justice of the European Union. See M. P. Granger, “When Governments Go to Luxembourg...: the Influence of Governments on the Court of Justice,” *European Law Review* 29, no. 1 (2004): 3-31; M. Favale, M. Kretschmer, P. L. C. Torremans, “Who is Steering the Jurisprudence of the European Court of Justice? The Influence of Member State Submissions on Copyright Law,” *The Modern Law Review* 83, no. 4 (2020): 831-860; J. Dederke and D. Naurin, “Friends of the Court? Why EU Governments File Observations before the Court of Justice,” *European Journal of Political Research* 57, no. 4 (2018): 867-882.
- ⁴ B. Friedman, “Taking Law Seriously,” *Perspectives on Politics*, no. 4 (2006): 261-76.
- ⁵ We refer to briefs here as interested party briefs filed by actors who did not refer the case to the court, nor are litigants.
- ⁶ Collins, “The Use of Amicus Briefs.”
- ⁷ *Ibid*, 223.
- ⁸ *Ibid*, 231.
- ⁹ The European Court of Justice has upheld conditioning European Union member state financing on a country’s respect for the principles of the rule of law (See, Judgments in Cases C-156/21 Hungary v Parliament and Council and C-157/21 Poland v Parliament and Council).
- ¹⁰ Constitutional review refers to the power of courts to strike down legislation, decrees, and regulations as violations of a nation’s constitution. See G. Vanberg, *The Politics of Constitutional Review in Germany* (New York: Cambridge University Press, 2005).
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- ¹³ See L. Bartholomeusz, “The Amicus Curiae before International Courts and Tribunals,” *Non-State Actors and International Law* 5, no. 3 (2005): 209-286; R. A. Cichowski, “The European Court of Human Rights, Amicus Curiae, and Violence against Women,” *Law & Society Review* 50, no. 4 (2016): 890-919; A. V. Dolidze, “Making International Property Law: the Role of Amici Curiae in International Judicial Decision making,” *Syracuse Journal of International Law*

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¹⁴ Collins, “The Use of Amicus Briefs.”

¹⁵ See K. S. Canelo, “The Supreme Court, Ideology, and the Decision to Cite or Borrow from Amicus Curiae Briefs,” *American Politics Research* 50, no. 2 (2022): 255-264; P. Collins, “Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation,” *Law & Society Review* 38, no. 4 (2004): 807-832; P. Collins, *Friends of the Supreme Court: Interest Groups and Judicial Decision-making* (New York: Oxford University Press, 2008); P. Collins, “Amici Curiae and Dissensus on the U.S. Supreme Court,” *Journal of Empirical Legal Studies* 5, no. 1 (2008): 143-170; L. Epstein and J. Knight, “Mapping out the Strategic Terrain: The Informational Rule of Amici Curiae,” in *Supreme Court Decision-making: New Institutional Approaches*, ed. C. W. Clayton and H. Gilman, 215-235 (Chicago: University of Chicago Press, 1998); Hazelton and Hinkle, *Persuading the Supreme Court*; J. Kearney and T. Merrill, “The Influence of Amicus Curiae Briefs on the Supreme Court,” *University of Pennsylvania Law Review* 148, no. 3 (2000): 743-855.

¹⁶ P. Collins and L. McCarthy, “Friends and Interveners: Interest Group Litigation in a Comparative Context,” *Journal of Law and Courts* 5, no. 1 (2017): 55-80.

¹⁷ J. C. Box-Steffensmeier and M. Hitt, “Quality over Quantity: Amici Influence and Judicial Decision-making,” *American Political Science Review* 107, no. 3 (2013): 446-460; G. Caldiera and J. Wright, “Amici Curiae before the Supreme Court: Who Participates, When and How Much?” *Journal of Politics* 52, no. 3 (1990): 782-806; Collins, *Friends of the Supreme Court*; Collins, “Amici Curiae and Dissensus on the U.S. Supreme Court.”; Kearney and Merrill, “The Influence of Amicus Curiae Briefs on the Supreme Court.”; but see C. B. Wofford, “Assessing the Anecdotes: Amicus Curiae, Legal Rules, and the U.S. Supreme Court,” *Justice System Journal* 36, no. 3 (2015): 274-294 indicating that the influence of briefs requesting a rule change is conditioned on the brief writers’ sharing of a litigant’s position.

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²⁰ See B. Friedman, “Taking Law Seriously,” *Perspectives on Politics* 4, no. 2 (2006): 261-276, 266.

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⁴⁶ Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe*, 26.

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⁵¹ See Appendix A1 for more details on these and other examples.

⁵² L. Papke and J. Wooldridge, "Econometric Methods for Fractional Response Variables with an Application to 401(k) Plan Participation Rates," *Journal of Applied Econometrics* no. 11 (1996): 619-632.

⁵³ See Appendix A2 for a list of examples of these and other Bulgarian entities filing briefs.

⁵⁴ The PG can refer a case or submit a brief but cannot do both for the same case. The ability of the PG to submit a brief is not unique from a comparative perspective.

⁵⁵ M. A. Bailey, B. Kamoie, and F. Maltzman, "Signals from the tenth justice: The political role of the solicitor general in Supreme Court decision making," *American Journal of Political Science* 49, no. 1 (2005): 72-85; Black and Owens, *The Solicitor General and the United States Supreme Court*; Bagashka and Tiede, "The Influence of Procurator Generals in Constitutional Review."

⁵⁶ P. M. Collins, P. Corley, and J. Hamner, "The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content," *Law & Society Review* 49, no. 4 (2015): 917-944.

⁵⁷ L. D. Pellegrina, and N. Garoupa, “Choosing between the Government and the Regions: An Empirical Analysis of the Italian Constitutional Court Decisions,” *European Journal of Political Research* 52, no. 4 (2013): 558-580.

⁵⁸ W. M. Landes and R. Posner, “The Independent Judiciary in an Interest-Group Perspective,” *The Journal of Law and Economics* 18, no. 3 (1975): 875-901; C. R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (University of Chicago Press, 1998).

⁵⁹ See Collins, Corley, and Hamner, “The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content.”

⁶⁰ Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe*; Sadurski, *Rights before Courts*.

⁶¹ See Appendix A3 for more information on how the *Percent court aligned* variable was coded in relation to the ruling coalition..

⁶² Vanberg, *The Politics of Constitutional Review in Germany*, 104.

⁶³ Collins, Corley, and Hamner, “The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content.”

⁶⁴ Author interview of BCC judge, June 2016, Sofia.

⁶⁵ Appendix A4, shows the null results for citing the identity of the interested party.. While we could have chosen not to discuss the literature on determinants of citation practice and not to reveal our null results, we believe that there is utility in providing the null results because they “carry valuable information and consequently, have potentially major implications for science and policy” (Laitin et al. (2021: 428).

⁶⁶ Collins, “The Use of Amicus Briefs.”

⁶⁷ Bagashka and Tiede, “The Influence of Procurator Generals in Constitutional Review.”

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Appendix

Appendix 1. Examples of borrowed language

This appendix provides examples of borrowed language from briefs in the majority decision. The underlined portion shows the borrowed language.

1. Example 1. Appearing in main text

Decision No 2 of 28 March 2002. Phrases underlined are borrowed from the brief of the Council of Ministers:

The written opinion of the Council of Ministers states that the proposals of the Council of Ministers (CoM) and the Supreme Judicial Council (SJC) under Article 98, item 6, Article 100, paragraph 2 and Article 129, paragraph 2 of The Constitution is, in fact, decisions of these bodies, which reflect their formed will and constitute the exercise of sovereign powers. The legal consequences of these acts consist primarily in the emergence of the right of the President to issue or refuse to issue a decree appointing or dismissing the person concerned; they also give rise to rights and obligations for the persons indicated in the proposals, as well as for all other persons whose rights may be affected by them. In this sense, the legal consequences of the proposals are independent and completely different from the legal consequences of the President's decree and are subject to judicial review by the Supreme Administrative Court (SAC). It is argued that the adoption of the opposite thesis would be contrary to the constitutional principle of separation of powers.

In final resolution:

The appointment and dismissal of the persons under Art. 98, item 6, Art. 100, para 2 and Art. 129, para 2 of the Constitution shall be done by a decree of the President, who may only be attacked for unconstitutionality before the Constitutional Court. The legal security and the extremely important public functions of the heads of the diplomatic missions and permanent representatives of the Republic of Bulgaria in international organizations, of the senior command staff of the Armed Forces, of the chairmen of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General require stability of their appointments. and release. They cannot be made subject to a later decision of a court examining the legality of the preparatory act.

2. Example 2

Decision 4 of 8 July 2008. Phrases underlined are borrowed from the brief of the National Court of Auditors

It is constitutionally inadmissible by law to assign the government to fulfill a specific obligation in practice by drawing up in practice the relevant acts for confiscation and provision of the

property described in the legal provision - public state property. The Council of Ministers could not carry out these actions without the consent of the institutions whose interests are affected in this case - the Prosecutor's Office of the Republic of Bulgaria and the National Audit Office. It is constitutionally unacceptable to resolve issues related to the material provision of a state agency at the expense of confiscation of the use of property - public property. property of constitutionally established and independent bodies of executive power, thus affecting their constitutional status. The National Assembly may not resolve issues related to the confiscation and provision of property - public state property, in violation of basic constitutional principles.

3. Example 3.

Decision 11 of 22 November 2011. Phrases underlined are borrowed from the brief of the Council of Ministers.

The procedure for extending the term of office abroad is not legally regulated. Obliging the Minister of Foreign Affairs to issue an order terminating the long-term business trip of the head of the foreign mission due to the expiration of his term abroad, and before issuing a decree for his release, the Diplomatic Service Act circumvents the provision of Art. 98, item 6 of the Constitution and practically enables the Minister of Foreign Affairs to exercise a power which the basic law of the country has reserved exclusively for the President of the Republic... In this case, the Constitution excludes any interference of any of the authorities in the assessment and election of the other authority, as well as the forcible imposition of the will of one institution in relation to another, as far as the long-term and strategic interests of the nation are concerned.

Appendix 2. Alternative classifications of interested parties

Table A2.1. provides alternative classifications to the identity of interested parties and examples. These classifications are used in Tables 3 and 4 of the main text and this appendix Table A4.2.

Table A2.1. Alternative classifications of interested parties

<i>Brief Category</i>	<i>Description</i>	<i>Examples</i>
National Government	National government branches, national agencies and institutions	<i>Bulgarian Army Headquarters, Bulgarian National Audit Office, Central Electoral Commission, Council of Ministers</i>
Local Government	Local, regional, municipal government, institutions, and agencies	<i>Sofia Court of Appeals, Governor of Sofia, National Association of the Municipalities in Bulgaria</i>
Public Interest Group	Identity groups (ethnic, religious, minority), cause groups (environmental, human rights, consumer associations), leisure groups (art, music, sports)	<i>Association of European Integration and Human Rights, Bulgarian Consumer Federation, Women's Democratic Union, Seventh Day Adventists Church</i>
Trade Union/Peak Association	Labor unions, employer peak associations involved in collective bargaining	<i>Bulgarian Chamber of Commerce and Industry, Bulgarian Industrial Association, Confederation of Independent Syndicates in Bulgaria</i>
Other Economic/Professional Groups	Organizations of professional individuals, other economic and business groups	<i>Association of Bulgarian Film Directors, Civic Organization of the Waste Management Traders, Bulgarian Soccer League</i>
Other	Networks without formal organizations, think tanks, research institutions, foundations that do not rely on membership for maintenance, universities, persons	<i>Sofia Technical University, Commission for Data Protection, persons</i>

Appendix 3. Detailed explanation of coding of the variable *Percent court aligned*

The *Percent court aligned* variable was calculated for each case by dividing the number of judges that were aligned with the government coalition by the number of judges on each case. BCC judges are appointed by the three branches of government in a multiparty system which has exhibited significant shifts in the governing coalition’s composition. It is thought that judges will favor the governing coalition when judges’ own political preferences are aligned with it and that judges’ disagreements on cases will be based on their political preferences (Hanretty 2014). We code judges’ political alignment by determining whether each judge is affiliated with any of the parties of the governing coalition at the time of constitutional review (See Table A3.1 below). For most of the judges, we use the party of the judge’s appointer as a proxy for the judge’s political preference as has been done in numerous studies (George 2001; Brudney et al. 1999; Schatzenbach and Tiller 2008). Judges appointed by the president are assigned his party and judges appointed by the National Assembly are assigned the party of the quota choosing the judge. Judges chosen by the SCA and SCC have various affiliations although some are non-partisan. To confirm the coding, we independently researched the background of each judge from newspapers and scholarly articles and the BCC’s own website.

Judges’ alignment with the government was determined by analyzing the judges’ political associations with the parties of the governing coalition for National Assemblies 36 through 41, which constituted the six governments which existed during the time period of our study. We did not determine judges’ alignment for cases that occurred during several interim governments when prime ministers lost votes of confidence. These interim governments generally served very short time periods during which few, if any cases, were heard by the BCC.

Table A3.1. Parties in governing coalition

National Assembly	Seats held by parties in governing coalition
NA 36	110 UDF + 24 DPS
NA 37	125 BSP
NA 38	137 UDF
NA 39	120 Simeon NSDV + 51 UDF + 2 BSP functionaries
NA 40	82 BSP + 53 Simeon + 34 DPS
NA 41	116 GERB

Party abbreviations: UDF (Union of Democratic Forces); BSP (Bulgarian Socialist Party); NDSV (National Movement for Stability and Progress); GERB (Citizens for European Development of Bulgaria); DPS (Movement for Rights and Freedoms). The number of seats held by each of the parties in the governing coalition came from the Interparliamentary Union.

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Appendix A4. Results when dependent variables is *Cited identity of interested parties*.

Tables A4.1 and A4.2 below provide the results for the logit regressions related to the citation of specific interested parties by name. The dependent variable is a binary variable indicating whether the majority opinion cites to or specifically names interested parties that authored briefs in its opinion. The independent variables are those appearing in Tables 1 and 3 of the main text

Table A4.1. Cited identity of interested parties in majority opinion

VARIABLES	(1)	(2)	(3)
Government brief	0.35* (0.20)	0.32 (0.20)	0.32 (0.21)
PG brief	-0.46 (0.48)	-0.48 (0.50)	-0.89 (0.68)
Complex case	-0.09 (0.32)	-0.05 (0.32)	0.20 (0.34)
Number of briefs	0.01 (0.05)	0.01 (0.05)	0.03 (0.05)
Word count, brief	-0.00** (0.00)	-0.00** (0.00)	-0.00** (0.00)
Word count, majority	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)
% Court Aligned		0.74 (0.69)	0.54 (0.75)
Interpretive decision			0.24 (1.16)
% Court Aligned * Interpretive decision			3.01 (2.62)
Constant	-0.24 (0.40)	-0.62 (0.51)	-0.95* (0.55)
Observations	919	913	881

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1

Table A4.2. Cited Identity of interested parties in majority opinion

	(1)	(2)	(3)
National government brief	0.36 (0.41)	0.35 (0.41)	0.51 (0.39)
Local government brief	-0.39 (0.74)	-0.50 (0.76)	-0.32 (0.78)
Public interest group	0.29 (0.44)	0.33 (0.43)	0.50 (0.41)
Trade unions/peak associations	-0.47 (0.59)	-0.45 (0.59)	-0.32 (0.59)
Other economic/professional	-0.09 (0.48)	-0.09 (0.47)	0.09 (0.46)
PG brief	-0.47 (0.61)	-0.47 (0.62)	-0.74 (0.76)
Complex case	-0.03 (0.33)	0.01 (0.33)	0.26 (0.34)
Number of briefs	0.01 (0.05)	0.01 (0.05)	0.03 (0.05)
Word count, brief	-0.00*** (0.00)	-0.00*** (0.00)	-0.00** (0.00)
Word count, majority	0.00 (0.00)	0.00 (0.00)	0.00 (0.00)
Percent court aligned		0.75 (0.69)	0.56 (0.74)
Interpretive decision			0.22 (1.15)
Court aligned * Interpretive			3.06 (2.62)
Constant	-0.18 (0.52)	-0.58 (0.61)	-1.06* (0.63)
Observations	919	913	881

Robust standard errors in parentheses

*** p<0.01, ** p<0.05, * p<0.1