

Empirical SCOTUS

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Bringing Cases in an Unusual Term: Top Petitioners and Cert Amici

Posted by [ADAM FELDMAN](#) on [JANUARY 25, 2017](#)

There are certain criteria that indicate or signal the importance of a Supreme Court petition to the Court –experienced SCOTUS counsel on the cert briefs, federal governmental involvement, and cert stage amicus briefs – just to name a few. Although there is no surefire way to predict whether the Court will grant cert in a case, these factors all correlate with cert grant frequency.

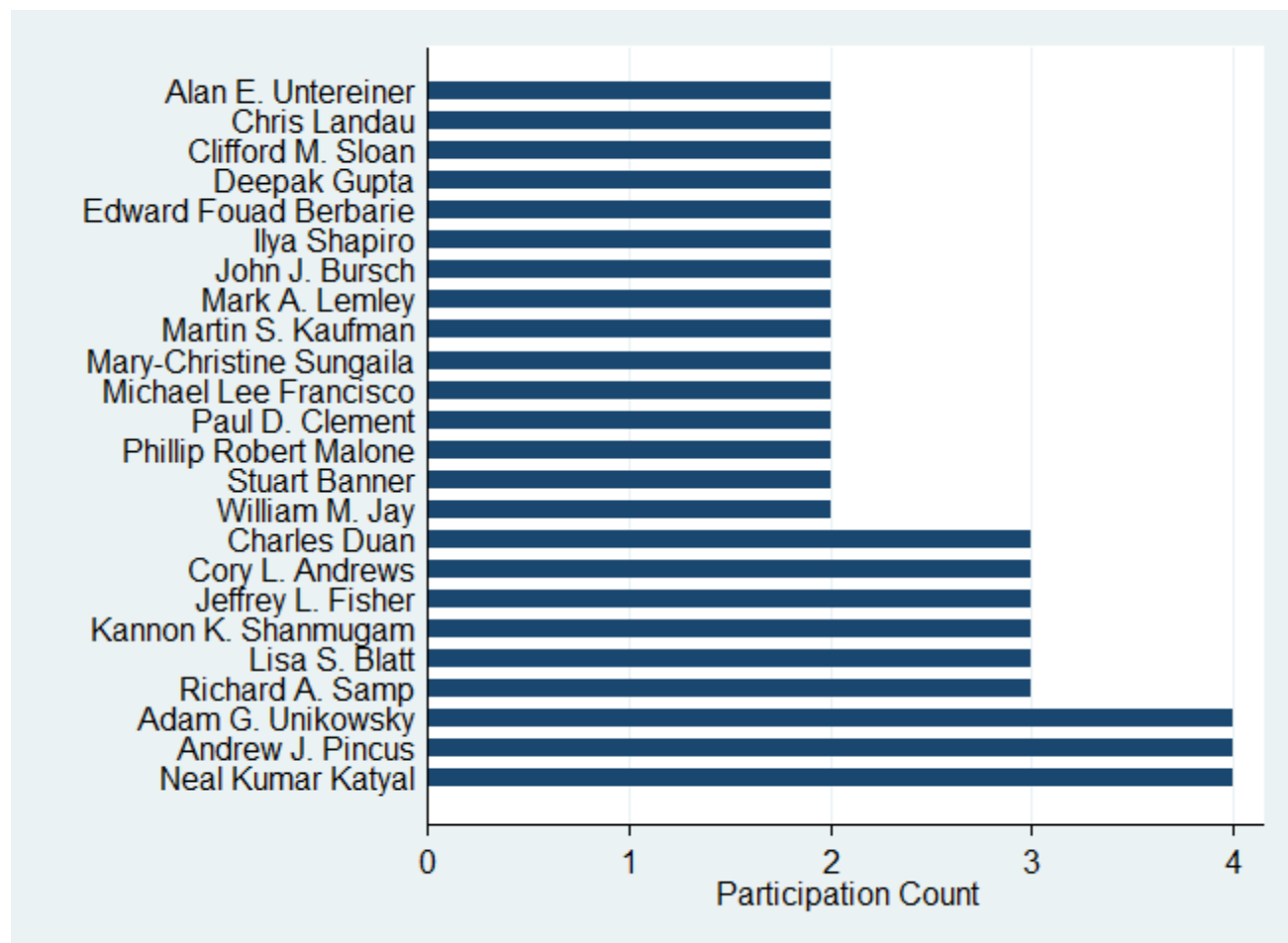
But what about in this “[unusual term](#)” at the Supreme Court with only eight justices? At some level, it was really anyone’s guess as to which cases the Justices would take up – especially after their [slow start](#) case granting cert. Still, as the data in this post shows, the same criteria for picking cases holds up fairly well.

Take for example the Office of the Solicitor General (OSG). Looking back at a [previous post](#) analyzing US involvement at the cert stage, the Court subsequently granted five of the eight petitions with outstanding calls for the views of the Solicitor General (CVSGs) at the time and four of six petitions from the U.S. government.

This post focuses on this term’s participation at the two other levels. Specifically, it looks at the attorneys and firms / interest groups associated with cert petitions and cert amici briefs. It also looks at the cases in the Court’s current pipeline with the greatest number of amicus briefs filed at the cert stage as well as those involved in these cases at the cert level.

Attorneys and Firms

To examine the attorneys that brought the most successful petitions to the Supreme Court so far this term I combine attorneys on the petitioners’ briefs with attorneys on the cert stage amici filings to get participation counts. Below are the attorneys involved in two or more granted cases.



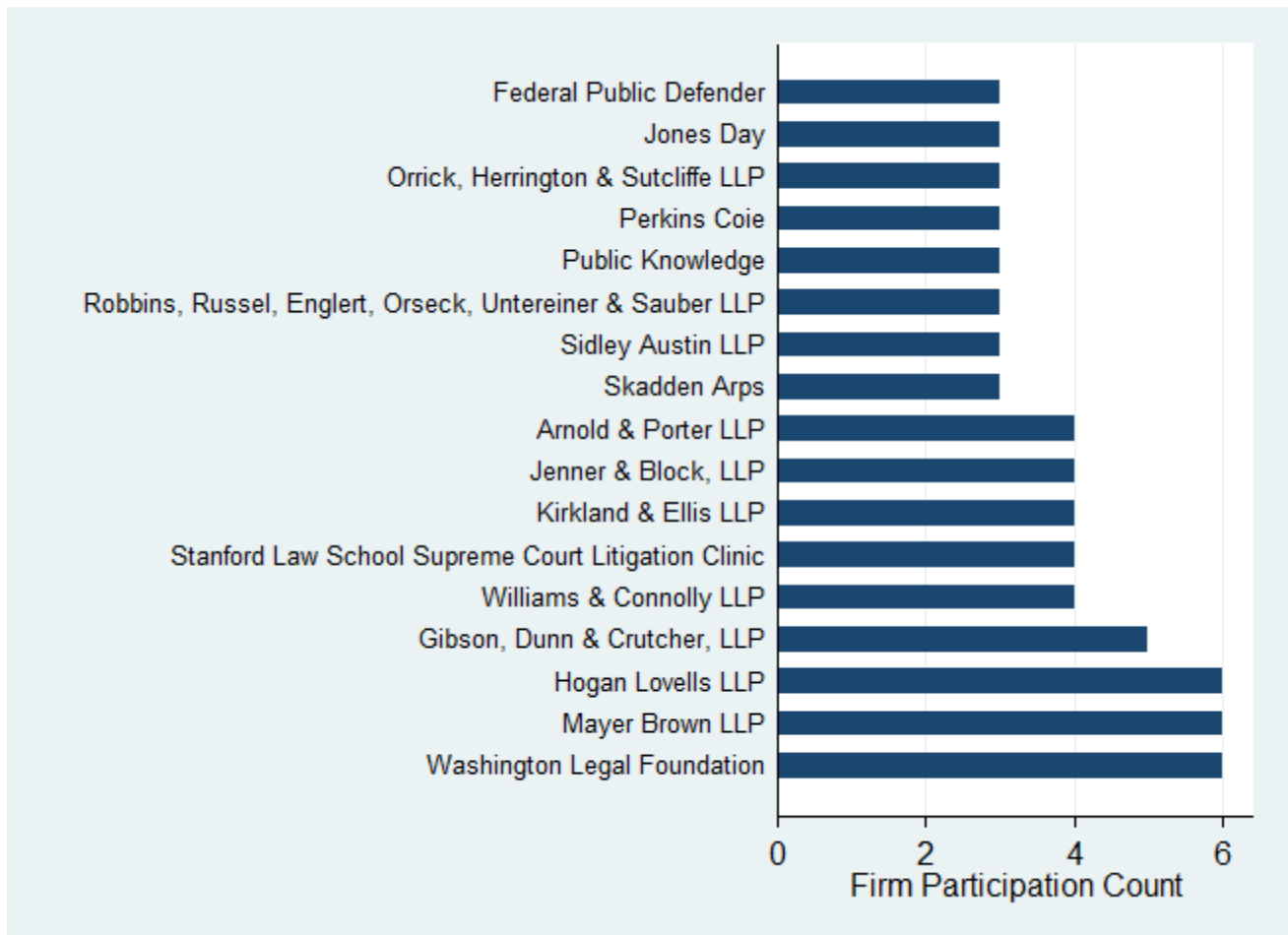
In contrast to the “unusual” nature of the term, these attorneys are, for the most part, veteran Supreme Court attorneys for the most part. Hogan Lovells’ [Neal Katyal](#) is the **only attorney with four granted cases as petitioning counsel** as Jenner & Block’s [Adam Unikowsky](#) is counsel of record on three successful petitions as well as on one cert stage amicus brief in a granted case and Mayer Brown’s [Andrew Pincus](#) is counsel on two granted petitions and two later granted cert stage amicus briefs. The attorneys that led to three grants apiece are of no less caliber. Williams & Connolly’s [Kannon Shanmugam](#) has a history of experience in the OSG and is [in the conversation for the next United States Solicitor General](#). Arnold & Porter’s [Lisa Blatt](#) has been a Supreme Court fixture in recent years as has [Jeffrey Fisher](#) from Stanford Law School’s Supreme Court Legal Clinic.

The other three attorneys with three briefs leading to grants are experienced interest group counsel – [Richard Samp](#) and [Cory Andrews](#) both from the [Washington Legal Foundation](#) and [Charles Duan](#) from [Public Knowledge](#).

While much can be said about all of these attorneys there are a few more points worthy of note. [Stuart Banner](#) heads up UCLA’s relatively new Supreme Court Clinic which has

been quite involved in active Supreme Court litigation and [Deepak Gupta](#), along with his normal SCOTUS caseload, is one of the lead lawyers in the Emoluments Clause case filed by the group [CREW \(Citizens for Responsibility and Ethics in Washington\)](#) against the Trump administration.

The list of firms that were involved in three or more grants (which obviously tracks similarly to the attorneys already mentioned) is below:



Many of the top firms on the list were already mentioned. For [Mayer Brown](#), [Timothy Bishop](#) and [Michael Kimberly](#) were attorneys on successful cert petitions along with Andrew Pincus. For [Hogan Lovells](#), [Jessica Ellsworth](#) was counsel on a cert stage amicus brief while [Bruce Oakley](#) was counsel on a successful cert petition. [Gibson Dunn](#) has a smattering of five different attorneys in the five cases with [Andrew S. Tulumello](#) and [Miguel A. Estrada](#) as attorneys on successful petitions and [Douglas R. Cox](#), [Matthew D. McGill](#), and [Richard W. Mark](#) as attorneys on cert stage amicus briefs in granted cases.

It is also worth mentioning that the Washington Legal Foundation was involved in far more successful cert stage filings than any of the other participating interest groups by quite a large margin.

Cases

Many of the granted cases this term had multiple cert stage amicus filings. The ones with the most were *Gloucester County School Board v. G.G.* with fourteen, *Impression Products v. Lexmark Int'l* with eight, the consolidated cases of *Ernst & Young LLP v. Morris* also with eight, and *TC Heartland LLC v. Kraft Foods Group Brands LLC* with seven.

Currently pending a decision on cert, there are eleven cases with four or more cert stage briefs (these counts were located with the aid of certpool.com). These cases are (in order of most cert stage filings to least): [Jorge Ortiz v. United States](#) with ten, [Independence Institute v. Federal Election Commission](#) (on appeal) with ten, [Florence Doyle v. Taxpayers for Public Education](#) with nine, [Freddie Mathis v. McDonald](#) with five, and several with four including *Sonoco Products v. Michigan Department of Treasury*, *Joseph Jesner, et al. v. Arab Bank*, *Dot Foods v. WA Department of Revenue*, *Christopher J. Christie v. National Collegiate Athletic Association*, *Calvin Gary Walker v. Texas*, *Arboleda A. Ortiz v. United States*, and *Amir Meshal v. Chris Higgenbotham*.

That is not to say cert amici briefs necessarily lead to grants. In 2016, [Sequenom v. Ariosa Diagnostics](#) was denied with twenty cert stage amicus briefs, [Stormans v. Wiesman](#) was denied with fourteen, and [Sissel v. Department of Health and Human Services](#) was denied with ten. [According to one study](#), while cert stage amicus participation is increasing, this increase in filings is crowding out the importance of each individual brief.

All of the currently pending petitions are worth watching – especially the [Christie / New Jersey sports betting case](#) which has recently garnered much [media attention](#) and in which the Court recently sent out a CVSG.

On Twitter: [@AdamSFeldman](#)

Research assistance provided by: [@SamuelPMorse](#)

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