Interest Groups and the Death Penalty:
Whether and How Interest Groups Have Changed How They Frame the Issue of Capital Punishment to the Supreme Court via Amici Curiae Briefs

by
Joseph R. Linebarger

A THESIS

Submitted to

Oregon State University

Honors College

in partial fulfillment of
the requirements for the
degree of

Honors Baccalaureate of Arts in Political Science
(Honors Associate)

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AN ABSTRACT OF THE THESIS

Joseph R. Linebarger for the degree of Honors Baccalaureate of Arts in Political Science presented on March 6, 2020. Title: Interest Groups and the Death Penalty: Whether and How Interest Groups Have Changed How They Frame the Issue of Capital Punishment to the Supreme Court via Amici Curiae Briefs.

Abstract approved:_____

Rorie Solberg

This thesis examines whether and how interest groups concerned with capital punishment change how they frame the issue when advocating before the Supreme Court via amicus curiae briefs over time. I measured the frequency of frames used throughout amicus briefs submitted in cases pertaining to how the death penalty could be physically applied, who could receive a death sentence, and which crimes could warrant a death sentence. While I found a spike in frequency for the a couple of frames, overall there seems to be more consistency in the arguments used regarding the death penalty than has been found in major abortion cases over time.

Key Words: death penalty, interest groups, amicus curiae, Supreme Court, change, frames

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Honors Baccalaureate Arts in Political Science project of Joseph R. Linebarger presented on March 6, 2020.

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Toni Doolen, Dean, Oregon State University Honors College

I understand that my project will become part of the permanent collection of Oregon State University, Honors College. My signature below authorizes release of my project to any reader upon request.

Joseph R. Linebarger, Author

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Chapter I

Introduction

Capital punishment, also known as the death penalty, is the lawful execution of an individual as punishment for a crime. The death penalty is prevalent in many conceptions of justice, dating back to the earliest known codified laws. The first known death penalty laws can be found in the legal code of King Hammurabi of Babylon from the 18th Century BCE (Death Penalty Information Center, n.d.). Additionally, the death penalty appears in the holy texts of the Abrahamic religions as a punishment for certain sins. In the biblical Old Testament, for instance, blashphemy, murder, adultery, and homosexuality are some of the sins which warrant a death sentence (Leviticus 24:16, Joshua 20:3, Leviticus 20:10, Leviticus 20:13). These millennia-old historical and religous conceptions of justice signify the historical importance of the death penalty, which is still exercised in the United States.

Although capital punishment is legal at a federal level, it remains a divisive issue for states. As of 2020, 25 of the 50 American states allow the death penalty, 21 states do not have a death penalty, and 4 states operate under a governor-imposed moratorium on the death penalty (Death Penalty Information Center, n.d.). Even so, the federal government and the 21 states which use capital punishment are limited in how they do so. Death sentences must be implemented in accordance with the standards derived from the Eighth Amendment to the Constitution of the United States. The

Amendment forbids the infliction of “cruel and unusual punishments” (U.S. Const. Amend. VIII). While the language of the text is broad and the explicit boundaries of acceptable punishment are not established in the Cruel and Unusual Punishments Clause itself, the specific confines of capital punishment within the American justice system rest heavily on the interpretive powers of the Supreme Court (Epstein and Kobylka, 1992, page 2).

The Supreme Court has been consistent in its position affirming the constitutionality of the death penalty. Since *Gregg v. Georgia* (1976) affirmed the general constitutionality of the death penalty, the question has remained effectively settled (Bill of Rights Institute, n.d.). However, the death penalty’s applicability in various situations has remained contentious, and the Supreme Court has addressed matters like how the death penalty can be implemented, who can receive a death sentence, and which crimes warrant a death sentence (*Baze v. Rees*, 2008; *Glossip v. Gross*, 2015; *Bucklew v. Precythe*, 2019; *Thompson v. Oklahoma*, 1988; *Stanford v. Kentucky*, 1989; *Atkins v. Virginia*, 2002; *Roper v. Simmons*, 2005; *Madison v. Alabama* 2018; *Edmund v. Florida*, 1982; *Kennedy v. Louisiana*, 2008).

Although cases concerning the death penalty are mainly disputes between states and offenders sentenced to death, the cases have also been opportunities for interest groups to pursue policy goals. Unlike some other areas of law, a test case is a less viable advocacy strategy given the significance of the outcome to the individual defendant (Wasby 1983); therefore, groups more often weigh in by submitting amicus curiae briefs to the Supreme Court that explain their view of the law and the case

(Banner, 2003, as cited in Collins, 2007). An amicus brief is one of the most common methods that groups use to persuade the Court to rule a particular way and in so doing, effect policy change or defend the status quo (Epstein and Kobylka, 1992, page 26). Although there is little evidence that the arguments adopted by the Court are uniquely tied to amicus briefs, research has shown that the general strategy of lobbying the Court has some degree of influence over the Court's ruling (Spriggs and Wahlbeck, 1997, Songer and Sheehan, 1993, as cited in Solberg and Waltenburg, 2006; Collins, 2007). Furthermore, in their attempts to persuade the Court, interest groups may collectively change their strategy of appeal over time by changing the framework of their arguments (Moyer, Balcom, and Benton, 2020). How and why interest groups appeal to the Court and change the framework of their arguments over time deserves more attention (but see Moyer, Balcom, and Benton, 2020). Examining the arguments groups use, and how those arguments change over time, can provide insight into how the Court makes decisions and how groups outside of government seek to influence those decisions. The death penalty serves as a viable platform for this type of investigation because it is a highly salient issue with two clear and opposing positions that are mirrored in public opinion and public policy debates regarding the application of capital punishment and the moral and political ideas associated with the death penalty.

My research asks whether and how interest groups concerned with capital punishment have changed their arguments over time in appealing to the Supreme Court through amicus briefs. I answer this question by examining three different areas of death penalty cases:

1. Cases concerning how the death penalty is physically administered
2. Cases concerning who can be sentenced to death
3. Cases concerning which crimes are compatible with a death sentence

After identifying the main frames or arguments used by interest groups before the Court, I measured the change in the frequency of frames and discern whether there has been a change over time.

I hypothesize that the amicus briefs will show some degree of change over time mainly because previous research has indicated that interest groups tweak their strategy in relation to developments in Court doctrine (Moyer, Balcom, and Benton, 2020). As the Supreme Court adjusts their precedent in these three areas of death penalty jurisprudence, I expect that groups will respond by strategically changing their appeals regarding the moral, political and legal dilemmas surrounding capital punishment. The thesis proceeds as follows: First, I will cover what previous research has indicated about the behavior of interest groups and their influence on the Supreme Court. Next, I will explain my methodology--how I identified my sample of cases and the individual frames used in the amicus briefs. Then, I will analyze the results of my research and whether or not my findings confirm my hypothesis. Last, I will conclude the thesis by discussing the larger implications of my findings and next steps for future research.

Chapter II

Literature Review

Political interest groups are organizations that seek to steer government policy in a particular direction. In the United States, interest groups achieve policy changes through a number of avenues. For instance, interest groups pressure Congress by lobbying for particular legislation. They also assist members of Congress by providing data to support their mutual interests as well as help draft legislation. Interest groups are also involved in electoral campaigns, mainly through the use of Political Action Committees (PACs) (USHistory.org, n.d.). Interest groups work with and lobby the executive branch, helping to write rules and regulations and offering comments on new policies. Interest groups pursue these same activities at the state level, working with state legislatures, executives and bureaucracies all in pursuit of policy goals that align with their mission and membership.

Interest groups also engage the courts in a variety of ways, though these methods differ from what types of pressure can be used in other political institutions. They bring test cases, they support or oppose judicial candidates at the federal and state level, and they file briefs in support of legal positions all in an effort to secure their policy goals. The purpose of this study, however, is mainly focused on how interest groups engage the United States Supreme Court. It is widely accepted that interest groups turn to the Court in order to cement their policy objectives into law, which

happens when the Court rules in their favor (Epstein and Kobylka, 1992, page 26). Interest groups effectively lobby the judicial process by submitting amicus curiae briefs to the Supreme Court. Amicus curiae, or “friend of the Court,” briefs present legal, policy, and social scientific information to the Court while almost always advocate for a particular outcome (Banner, 2003, as cited in Collins, 2007). Their function is to argue a cause beyond the specific facts of the case in order to influence the decision of the Supreme Court as it relates to broader policy (Epstein, 1985, Epstein and Kobylka, 1992, Wasby 1995, as cited in Collins, 2007). Interest groups are interested in the wider precedent the Court sets rather than the specific outcome of the individual case.

The success of lobbying the Court for specific policy outcomes, however, is not as evident as it is in the legislative arena. Interest groups cannot control the strength of any particular case, which ultimately affects how the Court may side. Additionally, there is little evidence that shows that the arguments adopted by the Court can be uniquely tied to amicus briefs (Spriggs and Wahlbeck, 1997, Songer and Sheehan, 1993, as cited in Solberg and Waltenburg, 2006). In spite of these limitations, groups file briefs as a means of maintaining their organizations. Briefs prove to members that the group is working on their behalf and is attentive to the policy goals of the group (Solberg and Waltenburg, 2006). Therefore, interest groups persist in lobbying the Court not only on the possibility of the Court accepting their arguments, but also as an opportunity to promulgate ideas and desired policies.

Evidence suggests that the broad policy knowledge possessed by interest groups actually garners a judicial demand from the Court (Epstein and Knight 1998,

1999, Spriggs and Wahlbeck 1997, Maltzman, Spriggs, and Wahlbeck, 2000, Murphy 1964, Kearney and Merrill 2000, as cited in Collins, 2007). The justices rarely deny requests to file amicus briefs because the vast range of complex subject matter in the Court's workload necessarily means that Justices often operate in a state of incomplete information. In light of this, there is a judicial demand for amicus briefs which inform the Justices of important background or technical details; the broader policy implications of potential decisions; and the norms in regard to precedents (Epstein and Knight 1998, 1999, Spriggs and Wahlbeck 1997, Maltzman, Spriggs, and Wahlbeck, 2000, Murphy 1964, Kearney and Merrill 2000, as cited in Collins, 2007). While it has been hard for scholars to find evidence of the influence of an individual brief, evidence has shown that a higher quantity of ideologically conservative amicus briefs increases the odds that the Court would decide in a conservative direction increases, whereas the odds that the Court would produce a liberal outcome coincides with a higher quantity of ideologically liberal briefs (Collins, 2007). This finding suggests that vocal and multiple amicus briefs have an observable impact on the Court's behavior. If vocal interest groups can sway the Court ideologically, it follows that interest groups may also influence the Court towards particular policy outcomes.

While research shows that these briefs can influence the ideological direction of the outcome, there is less evidence that briefs can help shape the scope or breadth of the policy embedded in the Court's opinions (Songer and Sheehan, 1993, as cited in Solberg and Waltenburg, 2006). Still, amicus briefs are an important link between the policy aims of interest groups and the Court's final decision. Interest groups use their

briefs to frame a policy differently and strengthen the odds of influencing the Court in a new direction or to enhance the status quo, especially in cases pertaining to hot-button social issues. For example, evidence has shown that in the matter of abortion, pro-life interest groups have shifted their framing of the issue over time, from a moral opposition to a greater emphasis on harm to women and science. This shift reflected a change in public-outreach strategy among pro-life groups, possibly as a response to a shift in Court doctrine following *Planned Parenthood v. Casey* (1992) which stressed the relationship between abortion regulations and women's health (Moyer, Balcom, and Benton, 2020). It is possible that similar trends exist in other areas of the law where interest groups tweak their strategy to appeal to the Supreme Court as its doctrine develops over time.

Prior research has shed light on the important relationship interest groups have to the Supreme Court through their submission of amicus curiae briefs and how certain interest groups have altered how they frame issues over time (Collins, 2007; Moyer, Balcom, and Benton, 2020). My research aims to explore whether interest groups' arguments to the Supreme Court have changed over time in the area of death penalty litigation.

Chapter III

Research Methods

My research question involves determining whether interest groups have changed or altered their arguments regarding the application of the death penalty over time. In order to answer this question, I have to determine which U.S. Supreme Court cases are appropriate for inclusion and then identify arguments have been presented to the Court over time. First, I will discuss how I identify the arguments and then detail case selection. Last, I will explain how I apply these sets of data to my research question.

Identifying Frames

To isolate the arguments presented to the Court, I must identify the various frames used in the briefs. Research in political communication has basically recognized frames as structures which make sense of certain aspects or issues. Ewick and Silbey (1998) suggest that frames are “the interpretive frameworks ‘that operate to define and pattern social life’” (Ewick and Silbey, 1998, as cited in Marshall, 2003). Nelson, Oxley, and Clawson (1997) offer a similar description, defining framing “as the process by which a source (a newspaper or television news story, or perhaps a single individual) defines the essential problem underlying a particular social or political issue.” Frames could also be said to provide a “scheme of interpretation” which “helps individuals make

sense of the world around them" (Goffman, 1974, as cited in Moyer, Balcom, and Benton, 2020). The framing of an issue therefore relates to the scheme by which the interpretive message pertaining to the given issue is presented. For my purposes, the frame provides the definition of the legal arguments presented to the Court.

A great example framing can be seen in the issue of abortion where pro-life interest groups never use the term 'fetus', but instead use terms such as "unborn children, 'children in the womb', 'viable unborn', and so on (*Webster v. Reproductive Health Services*, 1989, Woliver, 1998, 238, Webster Brief 20, as cited in Moyer, Balcolm, and Benton, 2020). The highlighted aspect of the abortion issue in this example is presented as the 'unborn child', a label which attempts to make sense of the complexities and morality surrounding the topic of pregnancy and abortion. The manner in which the issue is presented, typically through language, essentially simplifies a complex issue.

It must be noted, for the sake of clarity and proper identification, that frames are distinct from persuasive arguments. Persuasive arguments present new information with the aim of changing the audience's beliefs. Frames, on the other hand, do not present new information or directly change an individual's beliefs. Rather, frames seek to change how an individual weighs the importance of certain values or beliefs by "activating information *already at [an individual's] disposal* (Nelson, Oxley, and Clawson, 1997, emphasis in original). Therefore, when I am identifying frames in my research, I am not necessarily looking for *arguments* or information. Instead, I am identifying the common terms or phrases within the arguments that function as basic interpretations of

the issue that prioritize certain values and beliefs relative to others. These are the characteristics of frames.

In my research, I isolated frames by identifying similar arguments and boiling down these arguments to their essential assertions or phrases to find their basic commonalities. These basic commonalities indicate the use of the same frame. For example, suppose I have identified the following arguments:

1. In the realm of capital punishment in particular, individualized consideration is a constitutional requirement.
2. Eligibility for capital punishment should continue to be determined on an individualized, case-by-case basis.
3. The Court should require all states to apply the criteria on a case-by-case basis focusing on the moral culpability of the defendant.
4. Factors vary from individual to individual, and sentencing authorities should be afforded an opportunity to consider these differences in determining the appropriate punishment for the crime.

All four of these arguments assert a similar point even though they may use different language and present different data for support. Common terms like “individualized”, “individual”, and “case-by-case basis” can be singled out as they all reflect the essential points of their arguments - that punishment should be *individualized*, as opposed to the implied alternative, *categorical*. Therefore, their common frame is *individualized punishment*. Once similar arguments have been identified and paired together, it is relatively straightforward to find their basic collective points and boil them down to a

single frame. Once the frame is isolated, the analysis then becomes a simple matching game, where common arguments are matched with their shared frames.

Selection and Research of Cases

In regards to frames, my research question asks whether there have been changes in their use over time in death penalty cases heard by the Supreme Court. I have chosen to avoid the constitutionality of the death penalty in general, as that issue was conclusively decided in the case *Gregg v. Georgia* (1976), meaning I would not have been able to test my hypothesis of whether frames changed over time. However, there has been influential litigation revolving around various applications or other aspects of the death penalty. I have identified three main areas of case law pertaining to the death penalty that I can use to test my hypothesis. These areas are:

1. Cases concerning how the death penalty is administered
2. Cases concerning who can be sentenced to death
3. Cases concerning which crimes are compatible with a death sentence.

Within each of the three categories, I found all cases that were directly relevant to one of these three issue areas. For example, cases like *Thompson v. Oklahoma* (1988) which involved the death sentence of a fifteen year old is directly related to the question of who can be sentenced to death. Cases that were *tangentially* related to the question but were not *directly* related were excluded. One example of such a case is *Penry v. Lynaugh* (1989) which tangentially involved the constitutionality of a mentally

disabled person being sentenced to death but primarily concerned the specific question of proper jury and sentencing procedure rather than addressing the broader question of who can justifiably receive capital punishment for their crimes.

Because my research focuses on interest groups lobbying the Court to influence the direction of policy, it is necessary that I only examine amicus briefs from groups that take a side and offer arguments for that side. In other words, the data I collect must come from parties interested in either curtailing the reach of capital punishment, maintaining the status quo or extending the reach of the death penalty so that I can seperately measure frames from both sides. Therefore, briefs submitted in favor of neither side were excluded from my research. Additionally, using amicus curiae briefs guarantees that the arguments from either side are vested in the broader issue and precedent, rather focused on the instant case.

To find and access the amicus briefs, I primarily used the online resource *Nexis Uni*. Using this resource, I was able to search for a case and access all of its briefs. This worked for all cases with only one exception. For the case *Atkins v. Virginia* (2002) I had to access the amicus briefs through *Westlaw* as they were unavailable on *Nexis Uni*.

Method of Analysis

While reading through the amicus briefs, I cataloged potential data by highlighting and taking note of arguments I found within each brief. By the end of my research, I had a detailed catalog of every relevant brief and by extension, all the arguments that were submitted to the Court through these amicus briefs. I organized the

catalog by segregating cases into the three main areas of interest pertaining to the death penalty, which I previously mentioned. Furthermore, within each section for each case, I separated proponent briefs from opponent briefs. This method of categorization was intended to facilitate the pairing of similar arguments. By categorizing the briefs, I was able to gain a better understanding of the general similarities within each category, which then assisted me in observing a larger trend. It was by this simple, yet methodical, process of note taking that I was able to collect my data.

Once my catalog was complete and my raw data collected, I began to take account of what frames were presented, assign names to these frames, and record their frequency. The frequency is a simple count of how many briefs contained a given frame. By quantifying and comparing the frequency of these frames across different cases, I am able to assess whether there was change in the frames presented to the Court over time.

I expected that the frequency of any given frame would not be constant across the cases and the change over time would be signified by a noticeable shift in the frequency, an increase or decrease, that is not explained by the particulars of an individual case. In other words, I am looking for inconsistencies in frame frequency where case-specific variables can be reasonably ruled out.

As the number of briefs is small, to determine if the frames have changed over time requires the application of well-reasoned judgement in my assessment of the data rather than the use of a statistical test. A subtle increase or decrease in a frame's frequency is expected and, therefore, is not considered an indication of change over

time. Rather, only a clear or self evident shift in frequency will be considered an indicator of change over time.

Chapter IV

Results and Analysis

The sections below include the names and descriptions of frames identified as well as the frequency of the appearance of the frames in the amicus briefs. For a detailed list of the amicus briefs in each case, see the appendix.

How the Death Penalty is Physically Administered

Table 1.1: Name and Description of Frames Found for How the Death Penalty is Physically Administered (Proponent Briefs)

Frame	Description
No Painless Death	Protection against cruel and unusual punishment does not guarantee a right to a painless death
Heavy Burden	Offenders carry the heavy burden of presenting an acceptable, alternative method of execution rather than simply challenging the state's protocol
Consensus For	National consensus supports the lethal injection
No Delays	Criminals are incentivized to delay their execution by dragging out the litigation process which minimizes the retributive effect, therefore delays should be minimized
No Risk	There is no risk of severe pain
Legislative/ Federalism	State legislatures should be allowed

	flexibility to adopt their own capital-sentencing laws without judicial interference

Table 1.2: Frequency of Frames for How the Death Penalty is Physically Administered (Proponent Briefs)

Frame	Freq. Baze v. Rees (2008) (n=2)	Freq. Glossip v. Gross (2015) (n=3)	Freq. Bucklew v. Precythe (2019) (n=2)
No Painless Death	2	2	0
Heavy Burden	1	2	1
Consensus For	1	1	0
No Delays	1	1	1
No Risk	0	1	0
Legislative/ Federalism	0	1	1

I have determined that there are not enough briefs to produce a confident conclusion to my initial research question of change in frames over time. It is impossible to discern general trends from two or three briefs per case. It is like asking two or three people for their opinions in 2008 and then asking three other people for their opinions in 2015. Yes, there may be some clear differences in opinion between these two sets of people, but the very small number of subjects limits the ability of the questioner to discern whether these differences are representative of a general change in attitude over time or whether they are simply the product of marginal distinctions between

individuals. The same could be said about the number of briefs, especially on the proponent side which is at a comparative disadvantage of 7 amicus briefs to the opponent side's 18. Therefore, any shift in the data will be met with skepticism on my part, as these differences do not necessarily signify a clear change over time.

One observation I have made in analyzing frames is that there are some frames that are case-specific, meaning they only pertain to the particular facts of one case and therefore do not appear in any other cases. These case-specific frames cannot convey any general trends or inferences beyond the particular case and must be excluded from the larger picture of frame trends. With that said, I do not believe any of the frames above in tables 1.1 and 1.2 are case-specific frames. They all appear to pertain to the broad issue of lethal injections rather than the facts of a given case in particular. This is not surprising considering the similar subject matter of all three cases. *Baze* and *Glossip* both deal with the constitutionality of lethal injection drugs whereas *Bucklew* asks whether the constitutionality of the method still applies to an individual with a unique medical condition.

Almost all of the frames appear in at least two of the three cases, with *No Risk* being the only exception. I do not believe that *No Risk* is specific to *Glossip*, but is instead simply an uncommon frame, seeing as most proponent briefs I observed addressed the risk of severe pain by either minimizing the importance of pain in executions (*No Painless Death*) or requiring the offender to demonstrate that there is an unnecessary risk when compared to other feasible alternative methods of execution (*Heavy Burden*). This general framework does not deny that a risk of severe pain exists

but rather seeks to replace the focus on pain with other considerations. In light of this trend, *No Risk* is uncommon because in framing the issue this way, it negates the existence of pain rather than negating the factor of pain, which cuts against the general framework on the proponent side. While collapsing the two similar frames of *No Risk* and *No Painless Death* into one frame would perhaps mitigate the lack of data, I believe doing so would be counterintuitive to what I am trying to measure in this study. For example, if it was shown that *No Risk* had replaced *No Painless Death* in common usage over time, I would recognize this transition as a shift in outlook rather than the continuation of a similar frame.

No Painless Death is the most popular frame used in both *Baze* and *Glossip* but is not even mentioned once in *Bucklew*. There does not appear to be any particular facts within *Bucklew* which would prevent the frame's use, meaning that the reason why there was a sudden dropoff is not immediately clear. While I could recognize this dropoff as a possible shift, the minimal amount of data is not enough to determine whether there has been a clear change over time. Unlike the opponent side, the proponent side suffers from a deficiency of briefs. There is simply not enough data to prove that there was a clear shift in the use of *No Painless Death*.

Heavy Burden and *No Delays* appear by all accounts to have remained relatively consistent throughout all three cases. Although it is not mentioned in *Bucklew, Consensus For* also appears to be relatively consistent because it is mentioned once in *Baze* and *Glossip*. Additionally, *Legislative/Federalism* seems to be less prevalent but is still mentioned once in *Glossip* and *Bucklew*, making it relatively consistent.

Although I do not believe there to be enough briefs to make a confident conclusion, there are some inferences I can make in relation to the data. Because the proponent side is primarily comprised of state entities, a large portion of frames relate to state interests concerning the death penalty, thereby advocating for a policy favorable to the state justice systems. *Heavy Burden* and *No Delays*, for instance, are consistent frames that show a state demand to expedite the execution process and minimize the amount of hoops lawmakers would have to jump through in order to find a suitable method of execution. Additionally, *Legislative/Federalism* asserts that states and their legislative bodies have the right to a certain degree of flexibility in how they implement the death penalty, rather than a federal body proscribing a strict procedure to them. These frames are applicable to a variety of fact patterns which appear in death penalty cases; therefore, we should expect them to remain relatively consistent.

Table 1.3: Name and Description of Frames Found for How the Death Penalty is Physically Administered (Opponent Briefs)

Frame	Description
Risk of Pain	There is a risk of severe pain
Evolving Standards of Decency (ESD)	Cruel and Unusual Punishment is not static but changes alongside the society's Evolving Standards of Decency
Judiciary	Judicial scrutiny of state death penalty procedures is warranted to prevent abuse
No State Transparency	States have shown a lack of transparency and responsibility in their death penalty laws/procedures
Consensus Against	National consensus against using the

	drug midazolam
Human Dignity	Human dignity and respect necessitate that the suffering be kept to a minimum
International	Any reference to international norms, laws, conventions, consensus, ect.
State's Burden	The state carries the burden of selecting a constitutional method of punishment, not the prisoner

Table 1.4: Frequency of Frames for How the Death Penalty is Physically Administered (Opponent Briefs)

Frame	**Freq. Baze v. Rees (2008)** (n=4)	**Freq. Glossip v. Gross (2015)** (n=8)	**Freq. Bucklew v. Precythe (2019)** (n=6)
Risk of Pain	3	7	5
ESD	1	4	0
Judiciary	1	2	0
No State Transparency	2	2	1
Consensus Against	0	1	0
Life Value	0	2	0
International	0	1	2
State's Burden	0	1	1

Although the quantity of briefs for the opponent's side is greater than the proponent side and thus makes conclusions a bit more reliable, a grain of salt should

still be taken when examining shifts in the data. With more briefs, the more a shift in the data is likely to indicate a general pattern and I am more likely to recognize it as such in my analysis. Yet, it should also be recognized that there is still a possibility, like there was on the proponent side, that the relatively small sample sizes mean that a shift in the data could be attributed to marginal discrepancies between one or two briefs rather than represent a clear change in frame usage over time.

Risk of Pain appears to be the most prevalent frame in this section by far. It appears in 3 out of 4 briefs in *Baze*, 7 out of 8 briefs in *Glossip*, and 5 out of 6 briefs in *Bucklew*, making its frequency entirely consistent over time. *Evolving Standards of Decency (ESD)*, however, does not appear to be consistent at all. While it appears once in *Baze*, there is a jump in frequency in *Glossip* and then a complete absence in *Bucklew*. While I was very reluctant to consider the minor change in frequency of *No Painless Death* because of the lack of briefs on the proponent side, this opponent side has many more briefs for each case. Therefore, such a shift necessarily carries more weight. Because the three cases are quite similar in their subject matter and the frames are broad, I cannot reasonably attribute such a shift to the specifics of any given case. Therefore, it appears that there was an abrupt increase in the frequency of *ESD* exclusively for *Glossip*, followed by an abrupt decrease in frequency. The explanation for such a shift is unclear.

Although *Judiciary, No State Transparency*, and *State's Burden,* were all less frequent frames, they appear to be relatively consistent. *International* appears to have enjoyed a very slight increase over time but seeing as it is a minor frame and did not

increase by much, I do not view it as a clear shift. Both *Consensus Against* and *Life Value* appear to be outliers as they are only found in *Glossip*. While there is no immediate reason to suspect that the specifics of the case may have encouraged different kinds of arguments, of all three cases *Glossip* attained the most amicus briefs, with an additionally wide range of frames (seeing as all eight frames found in this section were also present in the briefs for *Glossip*).

In regards to how the death penalty can be physically administered, it can be concluded that no clear change appeared on the proponent side while the only clear change to appear on the opponent side was a sharp increase in *ESD* exclusively for *Glossip v. Gross* (2015). Although *ESD* was the only frame that I can confidently claim demonstrated a clear change over time, there are other inferences I can generally draw from the data on the opponent side. The individual's risk of experiencing extreme pain appears to be the dominant and constant concern of the opponent side, however secondary concern is skepticism of state lawmakers (*No State Transparency*) which could be remedied by the oversight of a judicial body (*Judiciary*) or even the application of international laws and norms (*International*).

Who Can Be Sentenced to Death

Table 2.1: Name and Description of Frames Found for Who the Death Penalty Applies to (Proponent Briefs)

Frame	Description
Individualism	Offenders should be tried on an individual basis

Legislative/Federalism	State legislatures should be allowed flexibility to adopt their own capital-sentencing laws without judicial interference
Adult Character	An offender possessing adult characteristics should be treated as an adult offender
Heavy Burden (For Consensus)	Accused bears the heavy burden of establishing that there is a national consensus against executing the mentally disabled
No consensus	There is no national consensus on executing minors or the mentally disabled
Slippery Slope	If minors are categorically exempt from the death penalty then it will create a slippery slope precedent where other age groups will claim to be exempt as well.
Moral culpability	The offender is morally culpable, therefore their execution is not disproportionate to their offense
Memory	The memory of the offender does not matter in regards to punishment, rather it is the memory of the victims and community that matter
Need Retribution	Capital punishment is meant to express society's moral outrage for an offense
D/R apply	Deterrence and retribution still apply to an offender who does not remember the crime
No Risk	There is no heightened risk of erroneous conviction

Table 2.2: Frequency of Frames in Who the Death Penalty Applies to (Proponent Briefs)

Frame	**Freq. Thompson v. OK (1988)** (n=1)	**Freq. Atkins v. VA (2002)** (n=2)	**Freq. Roper v. Simmons (2005)** (n=2)	**Freq. Madison v. AL (2018)** (n=2)
Individualism	1	1	2	0
Legislative/Federalism	1	2	0	1
Adult Character	1	0	1	0
Heavy Burden	0	1	0	0
No consensus	0	1	1	0
Slippery Slope	1	0	0	0
Moral culpability	0	0	1	0
Memory	0	0	0	2
Need Retribution	0	0	0	1
D/R Apply	0	0	0	1
No Risk	0	0	0	1

First, I should note that the data is stretched somewhat thin in that the number of briefs and never exceeds two per case, yet the data covers a timespan of thirty years. Like the proponent side in the previous section, I find the amount of data I gathered to convey some information into the differences in frame usage across those thirty years

but ultimately the differences in the data points are not serviceable in constructing a bigger pattern of clear changes over time.

I find it necessary to explain the distinction between the cases as many of the frames appear to be case-specific. Although some of the general inferences gathered from the case-specific frames are insightful in understanding the overarching philosophy of the proponent side, case-specific frames ultimately pertain to specific subject matter that is inconsistent with the remainder of relevant cases and are therefore not helpful in analyzing patterns across the board. *Thompson* and *Roper* appear to be the most similar in their subject matter, as both deal with capital punishment of minor offenders (individuals who were under the age of 18 at the time of their offense). *Atkins* involves an offender who is mentally disabled while *Madison* involves an offender who has no memory of their offense because of several strokes.

Adult Character appears to be specific to *Thompson* and *Roper*, as it does not appear in any other case, obviously because it only applies to youthful offenders. Frames case-specific to *Madison* include *Memory*, *Need Retribution*, *D/R Apply*, and *No Risk* as most of them generally pertain to concerns over executing someone with no recollection of their crime. *Heavy Burden*, *Slippery Slope*, and *Moral Culpability* all appear to be outliers as well as being case-specific. *No Consensus* appears to be somewhat consistent, as it is shared by *Atkins* and *Roper*, although it is a very minor frame.

Overall, there does not appear to be a clear change over time for any of the frames above. However, *Individualism* and *Legislative/Federalism* appear to be the

most consistent frames. Both frames are broad and generally seek to answer the broader question of who can receive the death penalty. *Individualism* highlights the dominant view on the proponent side that all sentencing, including sentencing for capital punishment, should be determined on an individual level rather than a categorical level. Under this view, the proportionality of the sentence to the crime and the moral culpability of an individual offender are key factors in determining the suitability of a punishment and both can and should be determined on an individual basis. *Legislative/Federalism* signifies the view that states are entitled to a certain degree of flexibility in determining its own standards for who can be sentenced to death. Under this view, states can make laws which reflect the population's will better than a national uniform standard could.

Table 2.3: Name and Description of Frames Found for Who the Death Penalty Applies to (Opponent Briefs)

Frame	Description
Evolving Standards of Decency (ESD)	Cruel and Unusual Punishment is not static but changes alongside the society's Evolving Standards of Decency
International	Any reference to international norms, laws, conventions, consensus, ect.
Legal Dist.	There are numerous legal distinctions between persons under 18 years of age and persons over 18 years of age
No D/R	Deterrence and retribution do not apply to minor offenders (or offenders who do not remember the crime)
Cogn Underdev	Minors are cognitively underdeveloped

	and make stupid choices without fully realizing the consequences
Less Culpability	Offenders who are categorically less culpable than average adults cannot be sentenced to death because it would be disproportionate.
Categ Diff	Adolescents and the mentally disabled are categorically different than adults, intellectually and emotionally
Consensus Against	National consensus against executing minors or mentally disabled people
Risk of Error	Presents a special risk of error that is unacceptable for capital punishment sentences
Race	Racial disparity in death sentences
Capacity	Youth is a temporary state and minor offenders have the capacity for growth and development
Line-draw	A categorical line needs to be drawn somewhere
No Retribution	Retribution is ineffective at providing emotional closure and forgiving the offenders should be prioritized
Value Life	The value of human life makes the death penalty immoral
Unusual	Capital punishment for minors is so rarely applied that it is literally ‘unusual’ and therefore violates the “cruel and unusual” clause of the 8th Amendment
No Understanding	Offender lacks a rational understanding of their crime, making their execution unconstitutional

Table 2.4: Frequency of Frames in Who the Death Penalty Applies to (Opponent Briefs)

Frame	Freq. Thompson v. OK (1988) (n=7)	Freq. Stanford v. KY (1989) (n=1)	Freq. Atkins v. VA (2002) (n=3)	Freq. Roper v. Simmons (2005) (n=13)	Freq. Madison v. AL (2018) (n=1)
ESD	4	0	1	4	0
International	5	1	0	7	0
Legal Dist.	3	1	0	1	0
No D/R	4	1	0	2	1
Cogn Underdev	2	0	0	3	0
Less Culpability	1	0	2	3	0
Categ Diff	1	0	1	0	0
Consensus Against	0	0	2	1	0
Risk of Error	0	0	2	4	0
Race	0	0	0	1	0
Capacity	0	0	0	4	0
Line-draw	0	0	0	1	0
No Retribution	0	0	0	2	0
Value Life	0	0	0	1	0
Unusual	0	0	0	1	0
No Understandi	0	0	0	0	1

ng					

With generally more briefs per case, shifts in frame usage could more reliably be interpreted as indications of change over time. While not perfect, this model was definitely serviceable in properly analyzing potential trends and reaching conclusions.

The opponent side of this section contained the most briefs, and by extension the most data. One brief from the case *Stanford v. Kentucky* (1989), which also pertains to a minor offender, is included on the opponent's side. However, the same issue that was present in the proponent side, namely the amount of case-specific frames, still persisted. *Race, Line-draw, No Retribution, Value Life, Unusual,* and *No Understanding* appear to be uncommon frames. *Capacity* is specific to minor offender cases, although it does not appear in *Thompson* or *Stanford*.

Risk of Error appears in both *Atkins* and *Roper*. This could very well indicate a general shift over time. Similarly to *Risk of Error*, *Consensus Against* appears in both *Atkins* and *Roper*, although it appears to be a more minor frame. *Categ Diff* appears in *Thompson* and *Atkins*, although it is a very minor frame. If any of these frames could be credibly considered to demonstrate clear change over time, it would potentially be *Risk of Error*.

Less Culpability and *No D/R* appear relatively consistent. *Cogn Underdev*, *Legal Dist,* and *International* all appear to have a consistency which is specific to cases involving offenders under the age of 18. Additionally, *ESD* seems to be relatively consistent. In general, all of these consistent frames seek to characterize either minors

or the mentally disabled as being categorically exempt from capital punishment. They lack certain attributes that are necessary for a death sentence to be proportional (*Less Culpability*, *No D/R*, *Cong Underdev*) or they are categorically protected from such punishment from societal norms (*Legal Dist*, *International*, *ESD*). While these frames are relatively consistent, *Risk of Error* is the only frame to have demonstrated change over time.

Which Crimes are Compatible With a Death Sentence

Table 3.1: Name and Description of Frames Found for Which Crimes Warrant the Death Penalty (Proponent Briefs)

Frame	Description
Moral Culpability	Moral culpability is an integral and sufficient justification for punishment
Proportionality	Punishment must be proportional to the moral gravity of the crime
Retribution	Retributive justice ought to be served, by execution if necessary
Utilitarian Shortcomings	The utilitarian theory of punishment distorts the concept of criminal justice by prioritizing societal good regardless of an offender's just desserts.
Intent Not Important	One can bear moral and legal responsibility for their actions, regardless of their original intent
Individualism	Offenders should be tried on an individual basis
Evolving Standards of Decency (ESD) is Not a Departure	The doctrine of Evolving Standards of Decency is not inherently a departure

	from capital punishment, but simply reflects what society finds appropirate
Deterrence	Capital punishment has a deterant effect on crime
No Ban on Non Homicide	There is no categorical ban of the death sentence in all cases of nonhomicide rape
Legislative/Federalism	State legislatures should be allowed flexibility to adopt their own capital-sentencing laws without judicial interference
Child Rape is Not Adult Rape	Child rape is categorically not adult rape, therefore the prohibition of the death penalty for cases of adult rape naturally do not encompass cases of child rape
No Consensus (No Debate)	There cannot be a national consensus because the Court has effectively silenced debate

Table 3.2: Frequency of Frames in Which Crimes Warrant the Death Penalty (Proponent Briefs)

Frames	**Freq. Edmund v. Florida (1982)** (n=2)	**Freq. Kennedy v. LA (2008)** (n=2)
Moral Culpability	2	0
Proportionality	1	1
Retribution	2	0
Utilitarian Shortcomings	1	0
Intent Not Important	1	0
Individualism	1	0

ESD is Not a Departure	1	1
Deterrence	1	0
No Ban on Non Homicide	0	1
Legislative/Federalism	0	2
Child Rape is Not Adult Rape	0	1
No Consensus (No Debate)	0	1

Before I compared any of the data above, I was immediately concerned with the limited amount of data there was in this category. There are only two cases, twenty-six years apart, pertaining to two different crimes (a robbery which inadvertently resulted in the death of two victims in the case of *Edmund;* and nonhomicidal child rape in the case in the case of *Kennedy*), with only two briefs each. Already, I find the amount of data insufficient to properly claim whether or not there has been a clear change over time.

There are a couple of consistent frames that appear in both cases such as *Proportionality* and *Evolving Standards of Decency (ESD) is Not a Departure*, but all other frames appear in exclusively one of the cases but not the other. All that these two cases tell me is that different arguments were used to address two distinct constitutional questions in two different decades. It is almost impossible to see a larger trend from these two distant points with very little connection. Although these cases definitely fall within the scope of answering which crimes are compatible with a death sentence, the questions presented in each case reside at polar opposite sides of the spectrum.

Essentially, I cannot confidently reach a conclusion based on the little information I have.

Table 3.3: Name and Description of Frames Found for Which Crimes Warrant the Death Penalty (Opponent Briefs)

Frame	Description
No Contribution to Goals of Punishment	Capital punishment for child rape makes no measurable contribution to acceptable goals of punishment but is rather needless pain and suffering
Worsen Underreporting	Executing child rapists would reduce the likelihood that abuse will be reported
Incentivize Killing	By imposing the death penalty for child molestation, offenders will be incentivized to murder their victims
Undermine Healing	The victim's healing process would be undermined by an extensive capital punishment trial or the moral equivilancy of child rape with murder
Child Susceptibility	Children are susceptible to suggestion and not always reliable as witnesses
Risk of Error	Presents a special risk of error that is unacceptable for capital punishment sentences
International	Any reference to international norms, laws, conventions, consensus, ect.
Race	Racial disparity in death sentences
Disproportionate	The death penalty is a disproportionate punishment to rape
Not Enough Resources	The public defense system is over-burdened with not enough resources to meet the uniquely demanding task of death penalty cases

Table 3.4: Frequency of Frames in Which Crimes Warrant the Death Penalty (Opponent Briefs)

Frame	Freq. Kennedy v. LA (2008) (n=6)
No Contribution to Goals of Punishment	1
Worsen Underreporting	2
Incentivize Killing	2
Undermine Healing	2
Child Susceptibility	2
Risk of Error	2
International	1
Race	1
Disproportionate	1
Not Enough Resources	1

The opponent side of this section tells me even *less* than the proponent section did, which was essentially nothing. Unfortunately, there were no opponent briefs submitted to *Edmund*. With only one case to analyze, I could not draw any conclusions to change over time even if I wanted to.

Chapter V

Conclusion

The change over time that I was looking for would show if and how interest groups have adjusted their arguments over time. I found two instances of a clear change in frame frequency over time. The first instance was *ESD* in the opponent section of how the death penalty is physically applied, which showed an abrupt increase in the reliance on the "Evolving Standards of Decency" doctrine for *Glossip* (2015) but a complete dropoff in its use for *Bucklew* (2019). The second instance was *Risk of Error* in the opponent section of who can be sentenced to death, which did not appear until the 2000's in *Atkins* (2002) and *Roper* (2005). Although I was able to find these two examples of frames clearly shifting in frequency over time, which could potentially signify interest groups changing their approach as Court doctrine evolves, this appears to be the exception to the rule. I found, where there was sufficient data, that in the vast majority of cases, frames were relatively consistent or frames were case-specific or outliers. The vast majority of frames used in cases related to the death penalty simply do not show any major change over time. Thus, my hypothesis appears to have been largely incorrect.

One possible explanation for the lack of change is that interest groups are relatively consistent in their position regarding capital punishment and that the arguments in this area of case law are more static than in the instance of abortion and

the right to privacy (Moyer, Balcom, and Benton, 2020). It is possible that *Gregg v. Georgia* effectively settled the constitutionality of the death penalty whereas the constitutional right to an abortion received more pushback. This could explain the differences between the pro-life interest groups and death penalty interest groups.

One of the biggest shortcomings in the research, however, was the lack of data. With relatively few cases and few cases to compare, it is hard to conclude whether or not there has been a clear shift in the trend of frame frequency. This was the case in the proponent sections, which were smaller than their rival opponent sections. I do not think it was a coincidence that the two changes in frequency I found came from opponent sections. With more data, it was generally easier to spot changes in the pattern. The largest lack of data, however, was in the section concerning which crimes are compatible with a death sentence. It was essentially impossible for me to see any pattern because there was simply not enough data from which to draw a confident conclusion. Perhaps the Supreme Court was not the proper venue to observe amicus activity as very few cases make it the highest level of the Judicial branch. Instead, more data may have been obtained if I looked at the federal Courts of Appeals.

However, in many instances I was able to make inferences from what little data I had to show the general framework of both sides on the issue. On the issue of the physical administration of the death penalty, the two main contentions were over the level of pain and the legitimacy of state procedures. Proponents minimized the issue importance of pain in determining constitutionality (*No Painless Death*) and supporting state interests over the offender's interests (*Heavy Burden*, *No Delays*, *Legislative*

Federalism). Opponents stressed the risk of unnecessary and severe pain (*Risk of Pain*), questioned the legitimacy of state operations (*No State Transparency*), advocated for the intervention of the Courts (*Judiciary*), and supported the supremacy of societal norms and international standards over state action (*ESD*, *International*).

On the issue of who can be sentenced to death, the main contentions were over individual versus categorical sentencing and state power versus societal norms. The proponents supported individualized sentencing (*Individualism*) and favored state flexibility in determining what sentencing standards they would adopt (*Legislative/Federalism*). Opponents sought categorical protection of minors and the mentally disabled from death sentences (*Less Culpability*, *No D/R*, *Cong Underdev*) and stressed the importance of societal norms and international standards (*Legal Dist*, *International*, *ESD*).

On the issue of which crimes can warrant a death sentence, the contention seems to be over matching the punishment to the proportionality of the crime versus practical considerations and risks. Proponents appear to prioritize a sense of retribution (*Retribution*), a need for a harsh punishment to proportionally match the moral gravity of the crime (*Moral Culpability*, *Proportionality*), and the right of states to determine what punishments match the crime (*ESD is Not a Departure*, *Legislative/Federalism*). Opponents mainly stress practical concerns and risks if a death sentence were imposed on certain crimes like child rape (*Worsen Underreporting*, *Incentivize Killing*, *Undermine Healing*, *Child Susceptibility*, *Risk of Error*) that could potentially be detrimental to both the victim and the perpetrator.

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Appendix

Example of Catalog Notes and Structure

Who Can be Sentenced to Death

Thompson v. Oklahoma (1988)

For

BRIEF OF AMICI CURIAE FOR RESPONDENT OKLAHOMA BY KENTUCKY AND ALABAMA, ARIZONA, CONNECTICUT, DELAWARE, FLORIDA, IDAHO, KANSAS, MISSISSIPPI, MISSOURI, MONTANA, NEVADA, NEW MEXICO, NORTH CAROLINA, PENNSYLVANIA, SOUTH CAROLINA, UTAH, VIRGINIA AND WYOMING

- Eligibility for capital punishment should continue to be determined on an individualized, case-by-case basis. The states must be allowed to punish capital offenders consistently, according to the defendants' relative degree of culpability rather than simply by their birthdate. Maturity and sophistication are factors which vary from individual to individual, and sentencers should be afforded an opportunity to consider these differences in determining the appropriate punishment for the crime.
    - A capital offender's chronological age is but one of the various circumstances the legislatures and courts should take into account. It is not the only relevant consideration, nor is it always the most important. Maturity and sophistication are factors which vary from individual to individual.
- Backed up by Court precedent: Judiciary takes limited role, defers to legislatures
- Common amongst DP States: of the thirty-six death penalty states, Oklahoma is among the twenty-five which authorize capital punishment for youthful offenders
- It is as a matter of convenience and economy that privileges and disabilities are conferred upon youths, to protect them as well as the adults with whom they interact.
    - Immaturity must be assumed of minors because to try every minor as an adult would simply be a waste.
    - That presumption must give way, however, in instances where the accused, having engaged in proscribed activity, and being possessed of adult characteristics, deserves punishment as an adult offender.
- Consistency: capital offenders otherwise factually and legally indistinguishable be eligible for vastly different punishment simply by reason of their birthdates
    - The states have a compelling interest in promoting consistent results, which in turn foster public confidence in the criminal justice system.
    - Surely the Constitution allows states to consider factors other than chronological age in determining whether an offender is a youth or an adult
- None of the studies relied upon by the petitioner claim that youthful offenders invariably are less mature or sophisticated than adults. While it has been suggested that youthful offenders generally behave more impulsively than adults, there are many exceptions to the rule

    - Many of the capital crimes committed by youthful offenders demonstrate the same degree of cruelty and premeditation seen in capital cases involving adult offenders
- Slippery slope precedent: other age groups must be exempted from capital punishment, e.g., minors, "young adults", the elderly, and that juveniles must be exempted from life imprisonment if they may be criminally punished at all
- Unreasonable double-standard?: The petitioner and his supporters would not hesitate to conclude that an adult having the mental and emotional maturity of a six-year-old child should be spared from capital punishment. They are willing to consider individual differences in that kind of situation, yet would refuse to do so where a fully mature seventeen-year-old offender is concerned.

<u>Against</u>

BRIEF FOR AMICUS CURIAE DEFENSE FOR CHILDREN INTERNATIONAL-USA

- this Court must look not only to prevailing standards, practices and attitudes within the United States, but also to those obtaining in the international community
- 18 is the age at which laws in the United States recognize or accord certain faculties, prerogatives and rights to young persons
    - the right to vote in federal elections
    - enlist in the armed forces without parental consent
    - marry without parental consent
    - Most states also show solicitude for the young by requiring them to be either eighteen or twenty-one before they can consume alcoholic beverages.
    - the laws protect persons below the age of civil majority by not giving them the unfettered right to enter into contracts
- The grave issue of life or death should not be left to the vagaries of the uninformed opinions, local prejudices and parochial passions of the day, and to fortuitous circumstances of time and place, particularly where it concerns the young who are supposed to be the wards of society (Basically, it shouldn't be left to democracy or States)
- execution of youths below the age of eighteen at the time of commission of the crime is unquestionably prohibited by international law, law to which the United States is clearly subject and which this Court is competent and duty-bound to uphold and apply
    - The International Court of Justice has noted that obligations of States "concerning the basic rights of the human person" are obligations "towards the international community as a whole
    - It has also stated in regard to the Genocide Convention that "in such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest
- The execution of William Wayne Thompson, and others like him, is not "the best that mankind has to give" our children. It would be the ultimate betrayal of a sacred trust of civilization.

List of Briefs Used

How the Death Penalty is Administered

Case	Proponent Briefs	Opponent Briefs
Baze v. Rees (2008)	• Brief for the United States as Amicus Curiae Supporting Respondents • Brief Amicus Curiae of the Criminal Justice Legal Foundation in Support of Respondents	• Brief of Drs. Kevin Concannon, Dennis Geiser, Carolyn Kerr, Glenn Pettifer, and Sheila Robertson as Amici Curiae in Support of Petitioners • Brief for the Fordham University School of Law, Louis Stein Center for Law and Ethics as Amicus Curiae in Support of Petitioners • Brief of Amici Curiae Critical Care Providers and Clinical Ethicists in Support of Petitioners • Brief Amicus Curiae of the American Civil Liberties Union, the ACLU of Kentucky, and the Rutherford Institute in Support of Petitioners
Glossip v. Gross (2015)	• Brief for State of Florida as Amicus Curiae in Support of Respondents • Brief for Alabama, Arizona, Arkansas, Colorado, Connecticut, Georgia, Idaho, Louisiana, Nevada, Tennessee, Texas, Utah, & Wyoming as Amici Curiae Supporting Respondents • Brief Amicus Curiae of the Criminal Justice Legal Foundation in Support of Respondents	• Amicus Brief in Support of Petitioners by the National Consensus Project the Promise of Justice Initiative • Brief of the Innocence Project as Amicus Curiae in Support of Petitioners • Brief of Amicus Curiae National Catholic Reporter in Support of Petitioners • Brief of the Advocates for Human Rights as Amicus Curiae in Support of Petitioners • Brief of Former State Attorneys General as Amici Curiae in Support of Petitioners • Brief of Amicus Curiae the Rutherford Institute in Support of Petitioners • Brief of Amicus Curiae National Association of Criminal Defense Lawyers in Support of Petitioners • Brief for the Louis Stein Center for Law and Ethics at Fordham University School of Law as Amicus Curiae in Support of Petitioners
Bucklew v. Precythe (2019)	• Brief of Arizona Voice for Crime Victims, Inc., and Melissa Sanders as Amici Curiae in Support of Respondents • Brief for the States of Texas, Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Mississippi, Nebraska, South Carolina, Tennessee, Utah, and Wyoming as Amicus Curiae in Support of Respondents	• Brief of Scholars and of Academics of Constitutional Law as Amicus Curiae in Support of Petitioner • Brief of Former Judges and Prosecutors Amici Curiae in Support of Petitioner • Brief of Amici Curiae Pharmacy, Medicine, and Health Policy Experts in Support of Petitioner • Brief of Amici Curiae Former Corrections Officials Supporting Petitioner • Brief for Amici Curiae Megan McCracken and Jennifer Moreno in

		Support of Petitioner • Brief Amici Curiae of the American Civil Liberties Union and the ACLU of Missouri in Support of Petitioner
Total	7	18

Who the Death Penalty Applies to

Case	Proponent Briefs	Opponent Briefs
Thompson v. Oklahoma (1988)	• Brief of Amici Curiae for respondent Oklahoma by Kentucky and Alabama, Arizona , Connecticut, Delaware, Florida, Idaho, Kansas, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina, Pennsylvania, South Carolina, Utah, Virginia, and Wyoming	• Brief for Amicus Curiae Defense for Children International-USA • Brief of the Child Welfare League of America, National Council on Crime and Delinquency, Children's Defense Fund, National Association of Social Workers, National Black Child Development Institute, National Network of Runaway and Youth Services, National Youth Advocate Program, and American Youth Work Center as Amici Curiae in Support of Petitioner • Brief of the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association as Amici Curiae in Support of Petitioner • Brief for Amicus Curiae International Human rights Law Group in Support of Petitioner • Brief of the National Legal Aid and Defender Association, the National Association of Criminal Defense Lawyers, and the American Jewish Committee as Amici Curiae in Support of Petitioner • Brief of Amicus Curiae the American Bar Association • Brief for Amicus Curiae Amnesty International in Support of Petitioner
Stanford v. Kentucky (1989)	[None]	• Brief of the Office of the Capital Collateral Representative for the State of Florida, as Amicus Curiae in Support of Petitioner
Atkins v. Virginia (2002)	• Brief of the States of Alabama, Mississippi, Nevada, South Carolina, and Utah as Amici Curiae in Support of Respondent • Brief Amicus Curiae of the Criminal Justice Legal Foundation in Support of Respondent	• Brief of the American Association on Mental Retardation, the Arc of the United States, the American Orthopsychiatric Association, Physicians for Human Rights, the American Network of Community Options and Resources, the Joseph P. Kennedy, Jr. Foundation, the Judge David L. Bazelon Center for Mental

		Health Law, and the National Association of Protection and Advocacy Systems as Amici Curiae in Support of Petitioner • Brief of American Psychological Association, American Psychiatric Association, and American Academy of Psychiatry and the Law as Amici Curiae in Support of Petitioner • Brief Amicus Curiae of the American Civil Liberties Union, the ACLU of North Carolina, and the Equal Justice Initiative of Alabama, in Support of Petitioner
Roper v. Simmons (2005)	• Brief of the States of Alabama, Delaware, Oklahoma, Texas, Utah, and Virginia as Amici Curiae in Support of Petitioner • Brief of Amici Curiae Justice for All Alliance in Support of Petitioner	• Brief of the NAACP Legal Defense and Educational Fund, Inc., the American Civil Liberties Union, the National Association of Criminal Defense Lawyers, the National Bar Association, the National Urban League Institute for Opportunity and Equality, the National Black Police Association, the National Conference of Black Lawyers, and the National Black Law Students Association, as Amici Curiae in Support of Respondent • Brief of the Constitution Project as Amicus Curiae in Support of Respondent • Brief of Amici Curiae President James Earl Carter, Jr., President Frederik Willem de Klerk, President Mikhail Sergeyevich Gorbachev, President Oscar Arias Sanchez, President Lech Walesa, Shirin Ebadi, Adolfo Perez Esquivel, the Dalai Lama, Mairead Corrigan Maguire, Dr. Joseph Rotblat, Archbishop Desmond Tutu, Betty Williams, Jody Williams, American Friends Service Committee, Amnesty International, International Physicians for the Prevention of Nuclear War, and the Pugwash Conferences on Science and World Affairs (Nobel Peace Prize Laureates) in Support of Respondent • Brief of Amici Curiae Former U.S. Diplomats Morton Abramowitz, Stephen W. Bosworth, Stuart E. Eizenstat, John C. Kornblum, Phyllis E. Oakley, Thomas R. Pickering, Felix G. Rohatyn, J. Stapleton Roy, and Frank G. Wisner in Support of Respondent • Brief for the American Psychological Association, and the Missouri Psychological Association as Amici Curiae Supporting Respondent • Brief Amicus Curiae of the American Bar Association in Support of the Respondent • Brief of the National Legal AId and Defender Association, as Amicus Curiae in Support of Respondent

		• Brief of the Coalition for Juvenile Justice as Amicus Curiae in Support of Respondent • Brief of the American Medical Association, American Psychiatric Association, American Society for Adolescent Psychiatry, American Academy of Child & Adolescent Psychiatry, American Academy of Psychiatry and the Law, National Association of Social Workers, Missouri Chapter of the National Association of Social Workers, and National Mental Health Association as Amici Curiae in Support of respondent • Brief for the Human Rights Committee of the Bar of England and Wales, Human Rights Advocates, Human Rights Watch, and the World Organization for Human Rights USA as Amici Curiae in Support of Respondent • Brief Amici Curiae of the United States Conference of Catholic Bishops and Other Religious Organizations in Support of Respondent • Brief of Amici Curiae the European Union and Members of the International Community in Support of Respondent • Brief of Amici Curiae Murder Victims' Families for Reconciliation in Support of Respondent
Madison v. Alabama (2018)	• Brief of Amicus Curiae National Association of Police Organizations in Support of Respondent • Brief for the States of Texas, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, South Carolina, and Tennessee as Amici Curiae in Support of Respondent	• Brief for the American Psychological Association and American Psychiatric Association as Amici Curiae in Support of Petitioner
Total	7	25

Which Crimes Warrant the Death Penalty

Case	Proponent Briefs	Opponent Briefs
Edmund v. Florida (1982)	• Brief of the States of Arizona, Arkansas, California, Georgia, Mississippi, Missouri, Nebraski, New Mexico, Tennessee, Texas, Utah in Support of Respondent, Amici Curiae • Brief of Amicus Curiae the Washington Legal Foundation	[None]
Kennedy v. Louisiana (2008)	• Brief of Texas, Alabama, Colorado, Idaho, Mississippi, Missouri, Oklahoma, South Carolina, and Washington as Amici Curiae Supporting Respondent • Brief of Amici Curiae Missouri Governor Matt Blunt and Members of Missouri General Assembly in Support of Respondent	• Brief of the National Association of Social Workers; the National Association of Social Workers, Louisiana Chapter; the Naitonal Alliance to End Sexual Violence; the Louisiana Foundation Against Sexual Assault; the Texas Associaiton Against Sexual Assault; the New Jersey Coaltion Against Sexual Assault; and the Minnesota Coalition Against Sexual Assault as Amici Curiae in Support of Petitioner • Brief of the National Association of Criminal Defense Lawyers and Twelve Innocence Projects as Amici Curiae in Support of Petitioner • Brief Amici Curiae of Leading British Law Associations, Scholars, Queen's Counsel and Former Law Lords in Support of Petitioner Patrick Kennedy • Brief Amicus Curiae of the American Civil Liberties Union, the ACLU of Louisiana, and the NAACP Legal Defense and Educational Fund, Inc., in Support of Petitioner • Brief of Amici Curiae the Louisiana Association of Criminal Defense Lawyers and the Louisiana Public Defenders Association in Support of Petitioner • Brief of the National Association of Criminal Defense Lawyers as Amicus Curiae in Support of Petitioner
Total	4	6