

ARTÍCULO DE INVESTIGACIÓN

Winning and Losing in Constitutional Review: Studying the Determinants of Litigants' Success in the Uruguayan Supreme Court (1989-2021)

Ganar y perder en el control constitucional: un estudio de los factores determinantes del éxito de los litigantes en la Corte Suprema de Uruguay (1989-2021)

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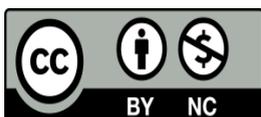
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ABSTRACT The literature on judicial politics posits that powerful litigants, the "haves", tend to prevail in court. Nevertheless, the evidence regarding litigants' success remains inconclusive and is limited to a few advanced democracies and some in Latin America. This article tests the generalizability of extant arguments within the unexplored context of the Uruguayan Supreme Court of Justice (SCJ). Using an original database of the SCJ's decisions on the constitutionality of laws issued between 1989 and 2021, we explore



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the applicability of party capability theory and its extensions. The findings of this study indicate that the advantage held by those with greater resources is conditional on the issue at stake and is mostly limited to economic issues. These findings offer a nuanced understanding of party capability theory and extend its study to a previously unexplored case in the Global South.

KEYWORDS Party capability, Uruguay, Supreme Court, unconstitutionality, litigants.

RESUMEN La literatura sobre política judicial sostiene que los litigantes poderosos, conocidos como los "haves", tienden a prevalecer en los tribunales de justicia. Sin embargo, la evidencia disponible es aún limitada y poco concluyente, circunscripta principalmente a democracias avanzadas y a algunos países de América Latina. Este artículo examina esos argumentos en el caso, hasta ahora inexplorado, de la Suprema Corte de Justicia (SCJ) de Uruguay. A partir de una base de datos original de sentencias sobre control de constitucionalidad emitidas por la SCJ entre 1989 y 2021, evaluamos la teoría de la capacidad de las partes y sus derivados. Nuestros resultados muestran que la ventaja de los actores con mayores recursos depende del tema sobre el que se litiga y se manifiesta sobre todo en asuntos económicos. Estos hallazgos aportan nueva evidencia a la teoría de la capacidad de las partes y amplían su alcance al analizar un caso hasta ahora inexplorado del Sur Global.

PALABRAS CLAVE Capacidad de las partes, Uruguay, Suprema Corte, Inconstitucionalidad, Litigantes.

Introduction

Which actors are most successful in protecting their interests before the apex or constitutional courts, and what issues are at stake? The party capability theory posits that litigants with substantial resources ("the haves") tend to achieve greater success in court than their less resourced counterparts, the "have-nots".¹ Moreover, the extant research highlights that the nature of the right under litigation also plays a key role in shaping outcomes².

1. GALANTER (1974) p. 125.

2. HERMANSEN *et al.* (2023) p. 5; MANNING y RANDAZZO (2009) p. 245.

Many empirical tests of these hypotheses have been conducted on advanced democracies, particularly the United States³. While both explanations find some empirical support, other findings raise questions and present contrasting perspectives (Sheehan *et al.*, 2013; Wheeler *et al.*, 1987)⁴.

In Latin America, the question of who gains access to apex courts and who benefits from their decisions remains understudied, with a few notable exceptions. Research on litigation before supreme or constitutional courts—particularly in Argentina, Colombia, and Brazil—generally supports the party capability theory⁵. Several studies have been conducted that focus on specific policy domains, such as social rights or taxation. The findings of these studies vary by country and policy area. For instance, the Colombian Constitutional Court and the Sala IV of Costa Rica's Supreme Court have been recognized for their role in safeguarding the socio-economic rights of vulnerable populations⁶, whereas empirical work on health litigation in Brazil⁷ and tax litigation in Mexico, Guatemala, Colombia, and Uruguay has revealed biases that appear to favor of wealthier sectors⁸. These findings are consistent with broader assessments indicating that Latin American courts have historically exhibited an "elite (and conservative) bias, both in terms of the judges who compose them and the litigants who approach them"⁹.

Overall, this literature shows that litigation patterns vary significantly across countries in terms of who litigates, what issues are raised, and the parties that prevail. However, despite the growing interest in judicial politics in the region, research has disproportionately focused on high-profile or exceptional cases, leaving many other cases unexplored.

This article addresses this gap by examining the case of Uruguay, a country that remains largely absent from the extant literature despite offering a particularly compelling setting. Uruguay is distinguished by its long-standing democracy, strong rule of law, and its institutionalized party system¹⁰. Despite its traditional reputation as a non-litigious environment with limited constitutional review powers¹¹, Uruguay has experienced a significant increase in constitutional litigation since the mid-2000s,

3. SONGER & SHEEHAN (1992) p. 235; SONGER *et al.* (1999) p. 811; SZMER *et al.* (2016) p. 65.

4. SHEEHAN *et al.* (2013) p. 16; WHEELER *et al.* (1987) pp. 408-412.

5. MURO *et al.* (2018) p. 4; PÁEZ (2023) p. 3; TAYLOR (2008) p. 84.

6. WILSON (2009) p. 73.

7. FERRAZ (2011) p. 1646.

8. MAHON *et al.* (2015) pp. 21-23.

9. KAPISZEWSKI *et al.* (2021) p. 32.

10. JOIGNANT *et al.* (2017) p. 4; MAINWARING *et al.* (2018) p. 35.

11. TAYLOR (2008) p. 84.

despite the absence of institutional reform¹². Moreover, this use has been effective in protecting the interests of specific elite economic sectors, such as landowners or media organization proprietors, who have been impacted by regulations or taxes¹³.

Beyond these prominent cases and anecdotal accounts, however, we know little regarding the broader universe of litigants who access the Court, the issues they raise, and their relative rates of success. To address this gap, an analysis was conducted of all constitutionality claims that were filed before Uruguay's Supreme Court of Justice (SCJ) from 1989 to 2021. The present analysis was based on a novel, purpose-built dataset comprising 8,709 decisions.

Our main hypothesis, derived from the party capability theory, posits that litigants with greater resources, particularly businesses, are more likely to succeed, compared to individuals. However, we posit that resource advantage alone does not determine success. Instead, outcomes are shaped by the interaction between actor type and issue area. Resourceful litigants are especially likely to prevail in domains where they have strong material stakes and relative advantages over the general population. To test these expectations, we employ logistic regression models to estimate the probability of success based on litigant type, issue area, and their interaction.

This study makes a significant contribution to the field of comparative literature on judicial politics in Latin America by empirically testing these arguments in a previously unexplored context. The objective of this study is to expand the empirical foundation of Latin American judicial studies, which have tended to focus on a select group of large countries, particularly Brazil, Argentina, Chile, and Mexico¹⁴. The findings indicate that, while "the haves" (particularly businesses) demonstrate better performance in court compared to individuals, this advantage is conditional on the issue upon dispute, thereby offering a more nuanced perspective of party capability theory.

The article proceeds as follows: The subsequent section delineates the theoretical framework and expounds upon the primary hypotheses. We then proceed to explain the case selection process and the methodological approach employed, followed by an overview of Uruguay's legal and political framework. The empirical section analyzes court activation and litigant success using descriptive and multivariate techniques. In addition, we present a qualitative illustration of how business litigants have used litigation to successfully challenge economic regulations. The final section of the text discusses how the findings relate to existing theories and suggests avenues for future research.

12. ANTÍA & VAIRO (2019) pp. 69-76.

13. ANTÍA & VAIRO (2023) pp. 155-159.

14. KAPISZEWSKI & TIEDE (2021) p. 209.

Theoretical Framework: Explaining Litigant Success before the Court

Scholars have advanced several explanations for why some litigants are more successful than others before apex courts. A dominant theory is party capability theory, which posits that actors with superior financial and organizational resources—the "haves"—are more likely to prevail than their less advantaged counterparts—the "have-nots"¹⁵. Their advantage stems from superior material resources, access to superior legal representation, repeat-player status, and favorable laws on their side. It has been demonstrated that judges may also exhibit implicit bias in favor of resourceful parties^{16,17}.

Within this framework, individuals are typically expected to fare worse than businesses or state actors, given their limited financial resources, their inability to hire competent legal counsel, and their relative inexperience¹⁸. The Government is believed to enjoy "a fundamental advantage that flows from the fact that it sets the rules by which cases are brought and decisions are made. It is the government officials, specifically judges, who make the decisions"¹⁹.

However, the empirical support for party capability theory is subject to variation. Numerous empirical studies, particularly those focusing on United States appellate courts, offer evidence that is largely consistent with the predictions of party capability theory²⁰. However, other studies focusing on the U.S. state supreme courts suggest only a modest relative advantage for the "haves"²¹. Furthermore, Sheehan *et al.*,²² find that while different categories of litigants have different success rates before the United States Supreme Court, these differences do not consistently favor litigants with greater resources.

15. GALANTER (1974) p. 125.

16. WHEELER *et al.* (1987) pp. 408-412.

17. A related yet discrete body of scholarship focuses on legal mobilization, which examines when, how, and why actors turn to law to advance their goals (see Vanhala, 2011, 2018; Taylor, 2020). Rather than emphasizing resource-based disparities in litigation outcomes, legal mobilization approaches underscore the strategic and political processes that influence actors' decisions to engage courts in the first place. This perspective complements party capability theory, emphasizing that disparities in litigant success are, at least in part, a function of who mobilizes the law before cases ever reach courts.

18. ATKINS (1991) pp. 884-885; GALANTER (1974) p. 125; MCCORMICK (1993) pp. 523-524; SONGER & SHEEHAN (1992) p. 235.

19. KRITZER (2003) p. 361

20. SONGER *et al.* (1999) p. 811; SONGER & SHEEHAN (1992) p. 235; SZMER *et al.* (2016) p. 65.

21. WHEELER *et al.* (1987) pp. 408-412.

22. SHEEHAN *et al.* (1992) p. 464.

Looking at other countries, studies have found less conclusive evidence and a greater degree of variation in who wins and who loses in the highest appellate courts²³. For instance, supreme courts in the Philippines and Israel have a propensity to rule in favor of weaker parties due to strategic or ideological reasons²⁴. Furthermore, as part of a strategy to bolster its legitimacy as an international court, the European Court of Justice "disproportionately favors the rights claims raised by individuals over the economic claims raised by businesses, even though businesses consistently boast larger and more experienced legal teams²⁵."

Adding to the extant literature, Skiple *et al.*²⁶ offer a comparative analysis of Scandinavian courts, suggesting that the influence of litigant status on case outcomes is shaped by specific institutional features of the courts, particularly the type of docket. Their findings indicate that in mandatory dockets—where courts lack discretion to filter out low-merit cases—litigation patterns largely reflect the strategic decisions of the litigants themselves, resulting in a higher likelihood of success for high-status litigants. In contrast, in discretionary dockets, wherein courts exercise discretion over case selection based on their legal or policy significance, this process has the potential to mitigate litigant asymmetries²⁷.

Studies in Latin America have identified partial support for the party capability theory. It has been repeatedly demonstrated by these studies that litigation, access and success tend to be skewed toward wealthier and better-resourced actors. For instance, Taylor²⁸ found that the Brazilian Supreme Court tends to rule in favor of state actors over non-state actors and corporatist interests linked to legal professional associations. In Argentina, Muro *et al.*²⁹ investigated the existence of representational advantage by exploring the Supreme Court's authority to reject appeals on formal grounds. Their research emphasizes the significance of the representational advantage, demonstrating that a higher proportion of appeals dismissed on formal grounds involve individual appellants rather than business entities. Finally, Páez's³⁰ research focused on collective litigation cases within the Colombian Council of State, which is the nation's highest administrative court. This research provides partial support for the party capability theory, in that the national government has the highest success

23. SHEEHAN *et al.* (2013) p. 16.

24. DOTAN (1999) p. 1061; HAYNIE (1994) pp. 769-770.

25. HERMANSEN *et al.* (2023) p. 4.

26. SKIPLE *et al.* (2021) pp. 110-113.

27. See also Brace *et al.* (2012, pp. 497-498).

28. TAYLOR (2008) p. 84.

29. MURO *et al.* (2018) p. 4.

30. PÁEZ (2023) p. 3.

rate in litigation. However, the study also suggests that individuals are more likely to prevail compared to stronger parties, such as local governments³¹.

A complementary line of inquiry emphasizes that the issue under litigation matters for determining outcomes³². According to this perspective, structural resource asymmetries between litigants are consequential depending on the subject matter. For instance, Manning and Randazzo³³ demonstrate that "have-nots" are more likely to succeed in U.S. appellate health policy cases. Conversely, Muro *et al.*³⁴ ascertain that individuals face greater disadvantages in labor-related appeals in Argentina. Consequently, the discrepancy in success gap between litigant types is greater in areas of law where systemic resource disparities are more pronounced³⁵. Moreover, the apex courts of Colombia, India, and South Africa tend to rule in favor of both political and economic elites and relatively powerless litigants in cases concerning free speech³⁶. Similarly, Hermansen *et al.* (2023) show that the European Court of Justice tends to prioritize individual rights claims, particularly in instances where these claims involve rights that must be pursued individually.

When considered as a whole, this body of work indicates that the party capability theory captures key dynamics, but it must be refined to account for contextual variation across legal systems and issue areas. Building on this literature, we delineate between two categories of resources that influence litigant capacity. *Material resources* refer to actors' economic and organizational means to initiate and sustain litigation. Conversely, legal resources capture access to specialized *legal counsel* or in-house legal teams.

31. This is consistent with findings from other empirical studies that document a bias in favor of wealthier sectors in specific areas of law, such as health litigation in Brazil (Ferraz 2011, p. 1646; Da Silva & Terrazas 2011, p. 845). However, it contrasts with research that examines the broader, indirect effects of court decisions beyond the immediate litigants—such as Brinks & Gauri (2012) p. 7 who find that health litigation in Brazil has a distributionally neutral impact overall.

32. HANRETTY (2020) pp. 239-261; HERMANSEN *et al.* (2023) p. 242; MANNING y RANDAZZO (2009) p. 245; PÁEZ (2023) p. 6.

33. MANNING & RANDAZZO (2009) p. 245.

34. MURO *et al.* (2018) p. 4.

35. MURO *et al.* (2018) p. 12.

36. BOTERO *et al.* (2021) p. 332.

Drawing on these insights, this article evaluates three hypotheses within the Uruguayan context:

H1: Litigants endowed with greater resources, such as businesses or state institutions, are more likely to succeed in court compared to individuals.

H2: The issue under dispute exerts a significant influence on the outcomes of cases.

H3: The impact of litigant type and issue area interact: the "haves" are particularly likely to achieve success in cases where they hold strong interests and resource advantages in comparison to the general population.

Case Selection and Methods

Case Selection

This article makes a significant contribution to the expanding literature on litigant outcomes in Latin American courts by examining the case of Uruguay—a stable and competitive democracy. The following characteristics make Uruguay especially well-suited for investigating the determinants of success in constitutional litigation before its Supreme Court.

First, Uruguay is a consolidated democracy with one of the lowest levels of inequality in Latin America³⁷. In such a context, one might expect relatively equal access to justice and more uniform success rates across different categories of litigants, potentially challenging the expectations of party capability theory. Indeed, international indicators suggest that Uruguay performs comparatively well in terms of the "justice gap." While 28% of the population reports having unmet legal needs, this figure is significantly lower than the global median of 50%³⁸. Concurrently, the institutional framework of the Supreme Court in Uruguay introduces factors that may favor resourceful actors. The SCJ functions within the framework of a mandatory docket system, meaning it must review all constitutional claims that meet the formal standing requirements. As noted in the literature, such systems tend to amplify the strategic advantages of high-capability litigants³⁹. These contrasting expectations make Uruguay a compelling case for analysis.

37. WORLD BANK (2024).

38. WORLD JUSTICE PROJECT (2023) p. 37; Trujillo (2023, p. 10) reports a lower estimate, indicating that the justice gap affects approximately 12% of the Uruguayan population.

39. SKIPLE *et al.* (2021) p. 111.

Secondly, in contrast to many of its regional peers, Uruguay has not implemented significant judicial or constitutional reforms during the democratic period. In contrast to the cases of Brazil and Mexico, where the expansion of constitutional rights and the greater judicial powers have reshaped court behavior⁴⁰, Uruguay's framework for constitutional review has remained relatively stable. However, despite this institutional continuity, the use of constitutional litigation has increased steadily since the mid-2000s (see Figure 1)⁴¹. This combination of institutional stability and the escalating judicialization makes Uruguay an ideal setting to explore whether and how resource asymmetries are reflected in court outcomes.

Finally, empirical research on high courts in Latin America has tended to concentrate on a select group of large countries⁴². By directing the study's attention toward Uruguay, it serves to expand the empirical foundation for comparative judicial politics in the region. Additionally, it assesses the scope conditions of widely accepted theoretical frameworks within a relatively neglected setting.

Data and Methods

In order to investigate how litigant type and issue area shape success before the SCJ, we draw on an original database comprising all constitutional review decisions issued by the Court between 1989 and 2021. This dataset encompasses a total of 8,709 rulings, covering the universe of cases in which the SCJ reviewed the constitutionality of laws during the specified period. For each decision, a systematic coding scheme was employed to code key variables. These included the outcome of the judicial decision, the law and articles under challenge, the issue under dispute, and the type of litigant.

A significant portion of these rulings (7,062) are *anticipated decisions*, meaning they reproduce previous judgments without elaborating new reasoning^{43 44}. In substantive terms, these anticipated decisions are indistinguishable from the Supreme Court's other unconstitutionality judgments. The distinction can be found in the fact that, for pragmatic reasons, namely, when the Court is confronted with a high volume of cases on the same issue, it issues an anticipated decision, thereby reiterating the precedent established in a previous ruling. From a legal standpoint, these anticipated decisions are essentially equivalent to ordinary judgments.

40. BRINKS & BLASS (2017) p. 313; RÍOS-FIGUEROA & TAYLOR (2006) p. 744.

41. ANTÍA & VAIRO (2023) p. 150.

42. KAPISZEWSKI & TIEDE (2021) p. 209.

43. *Código General del Proceso*, Law 15.982 art. 519, 1988.

44. Article 519 on *Anticipated Decisions* establishes that "At any stage of the proceedings, and regardless of the status of the corresponding procedure, the Supreme Court of Justice may resolve the matter, once any of the following circumstances has been established:

Furthermore, due to administrative considerations, the Court does not publish the majority of these anticipated decisions in the National Jurisprudence Database. Consequently, full data regarding the litigating parties are unavailable. Accordingly, in our analysis, we determined the type of litigant and issue category based on the original decision to which the anticipated resolution refers.

The empirical analysis is executed in two stages. First, we provide descriptive statistics on litigation patterns by actor and issue area. Secondly, we estimate a series of logistic regression models with robust standard errors to estimate the likelihood of different types of litigants and issues prevailing in court, including interaction terms between litigant type and issue. This design enables us to test not only whether specific types of actors are more successful, but also the conditions under which advantage materializes⁴⁵.

Litigant types are categorized into four mutually exclusive groups: individuals, businesses, state institutions, and other organizations (see Table 1)⁴⁶. In accordance with extant literature on the subject, individuals are regarded as "have-nots," while businesses and state actors are presumed to have greater legal and material resources⁴⁷. For the purposes of the logistic regression models, litigant type was operationalized through four dummy variables, with individuals serving as the reference category.

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1. That the petition has been filed by one of the parties with the clear purpose of unnecessarily delaying or hindering the main proceedings on the merits of the case.
 2. That there is existing jurisprudence on the issue raised and that the Court declares its intention to uphold its previous position."

45. Although identifying repeat litigants would be valuable, this information is not available in the text of the Court's decisions.

46. The litigant categories of "state institutions" and "other organizations" include a diverse range of actors with distinct logics and resources. However, the number of cases in each category (130 and 44 respectively) is too small to support a separate statistical analysis.

47. CHEN *et al.* (2015) p. 94; PÁEZ (2023) p. 3; SHEEHAN *et al.* (1992) p. 464; SONGER *et al.* (1999) p. 811.

Table 1.
Type of litigants.

Litigant	Examples
Individual	An individual or group of individuals who appear before the Court in a private capacity, i.e., not as representatives of a business, employer, or public agency.
Business	Entities engaged in commercial, industrial, or professional activities with the primary objective of generating profit. This category includes individuals litigating in relation to their economic activities or as employers.
State institution	Public sector entities such as ministries, regional governments, public companies, and the judiciary.
Other organizations	Non-profit entities including civil associations, trade unions, cooperatives, and political parties.

Source: own elaboration.

In turn, issue areas are grouped into four categories: economic claims, individual rights, criminal law, and others, with individual rights serving as the reference category in the models (see Table 2).

Table 2.
Issue areas.

Issue area	Examples
Criminal law	Minor offenses, criminal due process, and crimes against humanity.
Economic claims	Taxation, labor, and the regulation of economic activities.
Individual rights	Socio-economic, civil and political rights.
Other	State and government regulation, professional activities regulation, and other issues.

Source: own elaboration.

Given our theoretical focus on the interaction between litigant type and issue area in shaping outcomes before the Court, interaction terms are included in the regression models. Specifically, the study examines whether certain litigant types—such as businesses or state institutions—are more likely to succeed in specific issue areas than others. In all cases, the reference category is individuals litigating individual rights claims. This is based on the assumption that such litigants typically have the fewest material and legal resources at their disposal.

In addition, we include a control variable to capture whether the success preceding the SCJ differs in instances where the court's decision reiterates a previous decision. The *inter partes* effect of the SCJ sentences poses a statistical challenge, since many cases involve repeated decisions (*anticipated decisions*, see above) that may not be independent. The extant research underscores the importance of addressing this mode of operation in other courts with a similar institutional design⁴⁸. To mitigate this issue, we first introduce a dummy variable that assumes the value of "1" in instances where the outcome corresponds to an *anticipated decision*. The objective of this inclusion is to capture the effect of identical decisions, and to observe whether the effects of our independent variables are robust in this specific context. Secondly, we test our hypothesis in a subset of court decisions, specifically limited to ordinary rulings, while excluding anticipated decisions.

Finally, previous research has demonstrated that the variation in litigant success rates may be indicative not only of disparities in resources, but also of the ideological preferences of judges⁴⁹. However, in the case of Uruguay, systematic information on judicial ideology is not available⁵⁰, which limits the ability to control directly for this factor. To partially address this limitation, we adjust our models for clustered standard errors based on the *composition of the Court*. This proxy variable captures the varying configurations of the SCJ over time, recognizing that (a) the same collective actor—a particular Court composition—may issue multiple rulings on the same law, and (b) each Court may hold relatively stable preferences that influence its decisions.

Formally, we test our hypotheses by estimating four logistic regression models. In this context, " p_i " represents the probability of the litigant winning a given case. The models are specified as follows⁵¹:

$$(Model\ 1)\ \ln\ \frac{p_i}{1-p_i} = \beta_0 + \beta_1 Business_i + \beta_2 State\ institution_i + \beta_3 Other\ organization_i + \beta_4 Anticipated\ Decision_i + \epsilon_i$$

48. CASTAGNOLA *et al.* (2024) p. 216.

49. CHEN *et al.* (2015) p. 94.

50. Unlike other cases where the appointment process of apex court judges offers insight into their ideological orientation, Uruguay's selection mechanism makes such inferences particularly challenging. See discussion in the main text.

51. In instances where a petition challenges multiple legal provisions, the petition is considered successful if at least one of the contested provisions is declared unconstitutional.

$$\text{(Model 2)} \ln \frac{p_i}{1-p_i} = \beta_0 + \beta_1 \text{Business}_i + \beta_2 \text{State institution}_i + \beta_3 \text{Other organization}_i + \\ \beta_4 \text{Economic Claim}_i + \beta_5 \text{Criminal Law}_i + \beta_6 \text{Other Issues}_i + \beta_7 \text{Anticipated Decision}_i + \epsilon_i$$

$$\text{(Model 3)} \ln \frac{p_i}{1-p_i} = \beta_0 + \beta_1 \text{Business}_i + \beta_2 \text{State institution}_i + \beta_3 \text{Other organization}_i + \\ \beta_4 \text{Economic Claim}_i + \beta_5 \text{Criminal Law}_i + \beta_6 \text{Other Issues}_i + \\ \beta_7 \text{Business}_i: \text{Economic Claim}_i + \beta_8 \text{Business}_i: \text{Criminal Law}_i + \beta_9 \text{Business}_i: \text{Other Issues}_i + \\ \beta_{10} \text{State institution}_i: \text{Economic Claim}_i + \beta_{11} \text{State institution}_i: \text{Criminal Law}_i \\ + \beta_{12} \text{State institution}_i: \text{Other Issues}_i + \\ \beta_{13} \text{Other organization}_i: \text{Economic Claim}_i + \beta_{14} \text{Other organization}_i: \text{Criminal Law}_i + \\ \beta_{15} \text{Other organization}_i: \text{Other Issues}_i + \\ \beta_{16} \text{Anticipated Decision}_i + \epsilon_i$$

Model 4 employs the same specification as Model 3, yet it is implemented in a subset of court decisions that excludes anticipated decisions. As noted, this procedure serves as a robustness check to assess whether the observed effects hold when repeated decisions are excluded from the analysis.

The Legal and Political Framework in Uruguay: Expanding Court Activation in a Context of Restrictive but Stable Legal Opportunities

Uruguay's legal and political framework is characterized by a stable constitutional foundation and institutional arrangements that provide balanced checks on power. At the core of its democratic system are the elected branches of the government—executive and legislative—and political parties embedded within an institutionalized, programmatic party system⁵². The judiciary—led by the Supreme Court of Justice—has traditionally played a secondary role within the public sphere.

52. KITSCHOLT *et al.* (2010) p. 220.

The origins of Uruguay's SCJ can be traced back to the 1830 High Court of Justice. The institutional design of the aforementioned entity was codified in the 1934 Constitution and finalized in the 1966 constitutional reform⁵³. The SCJ is entrusted with the responsibility of overseeing the judiciary and reviewing the constitutionality of legislation. It operates within a civil law tradition, and its rulings—as well as those of appellate courts—are not binding on lower courts⁵⁴.

With respect to its institutional design, the SCJ is regarded as relatively autonomous yet possesses limited authority⁵⁵. The Court is comprised of five members who serve a ten-year term without immediate reappointment and must retire at age 70⁵⁶. Appointments are made by the General Assembly—comprising both chambers of the legislature—and require a special two-thirds majority⁵⁷. Since 1985, approximately half of the appointments have been made through this consensus-based process, while the remaining appointments have resulted from the automatic succession rule⁵⁸. The Constitution also fixes the number of justices⁵⁹, thereby preventing court-packing. Furthermore, it allows for dismissal only in cases of serious criminal offenses - a provision that has never been invoked.

Uruguay's mechanism of constitutional review is centralized, concrete, and has *inter partes* effects⁶⁰. In this system, claims of unconstitutionality are decided directly by the SCJ and do not reach it through an appeals process. Access to constitutional review is constrained by stringent standing requirements, which stipulate that only parties directly and personally affected by a law—or judges who have ruled on the matter—may request such a review⁶¹. These constraints are more stringent than in many other Latin American jurisdictions⁶².

53. GROS ESPIELL (2012) p. 615.

54. BRINKS (2008) pp. 195-202.

55. ANTÍA & VAIRO (2019) p. 67; BRINKS & BLASS (2017) p. 316.

56. Constitución de la República de Uruguay, de 1967. art. 237, 1967.

57. Constitución de la República de Uruguay, de 1967. art. 236, 1967.

58. ANTÍA *et al.* (2024) p. 16.

59. Constitución de la República de Uruguay, de 1967. art. 235, 1967.

60. See Ríos-Figueroa (2011, p. 48).

61. Constitución de la República de Uruguay, de 1967. art. 258, 1967.

62. BRINKS & BLASS (2017) p. 316.

Moreover, the SCJ cannot invalidate an entire law. If a law is deemed unconstitutional, the ruling is applicable exclusively to the specific provisions challenged and are limited to the parties involved (*inter partes effect*)⁶³. When considered in conjunction with the SCJ's lack of control over its docket, these features serve to reinforce the Court's reactive nature. That is to say, the Court responds solely to the demands presented in concrete cases, rather than exercising broad policy-making powers.

Despite its limited authority and restrictive access regulations, the SCJ has experienced a marked increase in litigation in recent decades. The subsequent section examines this expansion empirically, focusing on who activates the Court, what types of issues are litigated, and which actors are most likely to prevail.

The Activation of the SCJ: Empirical Results

Who activates the Court?

Although the judiciary has traditionally played a secondary role in Uruguay's political system, recent decades have witnessed an increase in the judicial presence. The SCJ has gained relevance in the country's institutional landscape, as reflected in the increasing number of petitions received and the declaration of unconstitutionality of several key laws⁶⁴.

As shown in Figure 1, the number of unconstitutionality petitions increased steadily from the 1990s to the 2000s, encompassing 309 different laws and producing two major peaks in court activation. The first occurred in 2010, when 1,334 petitions were submitted to challenge the Labor Procedure Law (2009), a statute designed to establish an autonomous procedure to safeguard workers' rights in disputes. Employers contested specific provisions, leading the SCJ to rule them unconstitutional in most cases (1,182 rulings). The second peak occurred between 2017 and 2019, when 3,998 petitions contested the Minor Offences Law (2013), which amended the Criminal Code to criminalize certain behaviors in public spaces. The Court declared the law unconstitutional in 3,041 cases⁶⁵.

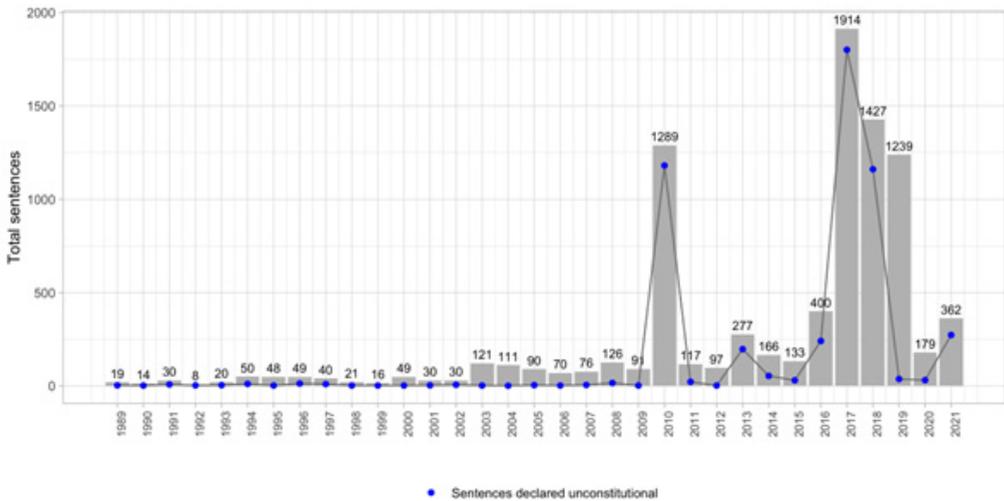
63. Constitución, art. 258, 1967.

64. ANTÍA & VAIRO (2019) p. 73; ANTÍA & VAIRO (2023), p. 150.

65. The numerous rulings in favor of plaintiffs led authorities to enact Laws 18,847 (2011) and 19,679 (2018) to address the grounds for unconstitutionality in the Labor Procedure Law and Minor Offences Law, respectively, effectively bringing an end to the wave of petitions.

Figure 1.

SCJ Activation through Constitutional Review: Number of Rulings and Declarations of Unconstitutionality (1989–2021).



Source: Database compiled by the authors.

Concurrently with the increase in case volume, the percentage of rulings declaring a law unconstitutional increased from 15% in 1989 to 94% in 2017, with an average of 26% over the entire period. However, given that a considerable number of rulings are anticipated decisions, it is more precise to consider solely ordinary rulings when assessing litigant success. Within this subset, the average success rate is 18%, rising from 16% in 1989 to 31% in 2017⁶⁶.

Our dataset shows that individuals initiated most cases (74.1%), followed by businesses (23.9%). State institutions accounted for 1.5% of cases, and other organizations—including political parties, trade unions, and business associations—represented just 0.5%.

The nature of the claims varies significantly according to the litigant type. As Table 3 shows, most individual petitions (69.3%) are associated with criminal law, particularly challenges to the Minor Offences Law. The next most prevalent category pertains to individual rights (19.1%), with cases focusing on socio-economic claims—such as access to housing, health services, and pensions. In contrast, businesses overwhelm-

66. Castagnola et al. (2024) p. 226. Uruguay's outcomes are comparable to those of the Mexican Supreme Court, which declared laws unconstitutional in 18% of constitutional disputes and 24% of constitutional actions. However, these figures are lower than those reported for the Supreme Courts of Argentina (37%) and Paraguay (45%), as well as the Colombian Constitutional Court (37%).

ingly litigated economic claims (93%), including challenges to the Labor Procedure Law, tax provisions, and regulations affecting economic activity. Most claims by state institutions (58.5%) also fall into this category, while individuals rarely pursue economic claims (10.4%).

Table 3.
Distribution of Litigants by Issue Area (Percentage).

	Individual	Business	State institution	Other organization	Total
Economic claims	10.4	93.0	58.5	54.5	31.1
Individual rights	19.1	4.6	13.8	36.4	15.7
Criminal law	69.3	0.4	15.4	0	51.5
Other issues	1.2	2.0	12.3	9.1	1.7
Total	100	100	100	100	100

Source: Database created by the authors.

Who wins at the SCJ? On which issues do they succeed?

Descriptive analysis

To assess patterns of judicial success, we begin with a descriptive analysis of litigant outcomes in constitutionality claims. As shown in Table 4, the success rates of litigation vary considerably among different types of litigants and across various issue areas. Businesses demonstrated the highest overall success rate at 68.6%, followed by individuals at 57%, and state institutions at 41.5%. Other organizations—including unions, political parties, and civil society groups—exhibit the lowest success rate, at 27.3%.

Disaggregating by issue area reveals further variation. Businesses and state institutions demonstrate particularly high performance in economic claims, with success rates of 73.4% and 57.9%, respectively. In contrast, individuals—who account for most filings—exhibit remarkably disparate outcomes: they achieve success in 71.3% of criminal law cases, but only in 25.2% of individual rights claims and 23% of economic claims. This pattern suggests that both the actor type and the issue area influence the probability of a favorable ruling.

Table 4.

Litigation Success Rate by Type of Litigant and Issue Area (N).

Issue	Individual	Business	State Institution	Other organization
Economic claims	23% (153)	73.4% (1,410)	57.9% (44)	37.5% (9)
Individual rights	25.2% (309)	0% (0)	16.7% (3)	18.8% (3)
Criminal law	71.3% (3,168)	0% (0)	15% (3)	0% (0)
Other issues	10.1% (8)	4.9% (2)	25% (4)	0% (0)
Total	57% (6,418)	68.6% (2,066)	41,5% (130)	27.3% (44)

Source: Database compiled by the authors.

Multivariate analysis

To more precisely identify the factors that shape litigant success, we estimate a series of logistic regression models presented in Table 5. Apart from Model 4, all models control for the type of decision (anticipated vs. ordinary) and adjust for clustered standard errors based on court composition.

Across all models, the constant term (β_0) —representing the log-odds of success for the reference category (individuals litigating individual rights)—is negative and statistically significant, confirming that this group has a baseline probability of success below 0.5.

Table 5.
Logistic regressions for the probability of litigant success.

	Model 1	Model 2	Model 3	Model 4
<i>Type of Litigant</i>				
Business	0.68 (1.11)	1.1 (0.71)	-13.9*** (0.79)	-14.83*** (0.36)
State institutions	0.74 (0.59)	0.98 (0.57)	0.176 (0.91)	0.167 (1.04)
Other organization	-0.39 (0.75)	0.26 (0.55)	-0.04 (0.89)	1.35 (0.66)
<i>Issue</i>				
Economic claims		-0.90 (0.64)	0.302 (0.73)	1.23** (0.39)
Criminal law		1.7 (1.2)	1.57 (1.17)	1.59*** (0.34)
Other Issues		-0.9 (0.85)	-0.44 (0.71)	0.06 (0.54)
<i>Business x Issue</i>				
Business x Economic claims			15.56*** (1.11)	15.76*** (0.74)
Business x Criminal law			-0.86 (1.37)	-1.59** (0.56)
Business x Other Issues			12.65*** (1.08)	15.11*** (0.86)
<i>State institution x Issue</i>				
State institution x Economic claims			1.54 (1.08)	1.33 (1.28)
State institution x Criminal law			-1.11 (2.0)	-0.76 (1.67)
State institution x Other Issues			1.54 (0.96)	1.41 (0.92)
<i>Other organization x Issue</i>				
Other organization x Economic claims			0.73 (1.26)	-2.41*** (0.70)
Other organization x Other Issues			-12.74*** (1.08)	-16.24*** (1.08)
<i>Anticipated Decision</i>	2.40 *** (0.59)	2.0*** (0.43)	1.8*** (0.41)	
Constant	-1.75 *** (0.44)	-2.65*** (0.71)	-2.38*** (0.66)	-2.73*** (0.30)
Observations	8,658	8,658	8,658	1,618
AIC	10,130	9,547	9,413	1,379
Nagelkerke R ²	0.22	0.30	0.32	0.17

Note: * p<0.05; ** p<0.01; *** p<0.001

Model 1 examines litigant type alone and finds that neither businesses, state institutions, nor other organizations differ significantly from individuals in their probability of success before the Court. Consequently, these findings therefore do not provide empirical support for H1, which showed that resourceful actors would fare better overall. Model 2 incorporates additional issue areas but finds that, on their own, economic, criminal, and other issues do not significantly differ from individual rights in their likelihood of success. Thus, H2, which proposed a direct effect of the issue area, is also not supported in isolation.

In both models, only anticipated decisions and the constant are significant. The positive coefficient for anticipated decisions indicates that litigants are more likely to succeed in this type of case compared to the reference group. This effect may be indicative of strategic behavior exhibited by litigants, who, observing the Court's prior rulings, imitate previously successful claims with the expectation of achieving a similar outcome. In this sense, anticipated decisions not only reproduce legal precedent but may also signal to potential litigants which challenges are more likely to succeed.

However, Model 3 incorporates interaction terms between litigant type and issue area, thereby revealing robust and statistically significant conditional effects. Notably, businesses demonstrated a higher probability of success in economic claims and "other" issues compared to individuals litigating individual rights cases. In contrast, the interaction between business litigants and criminal law is negative and statistically significant, indicating lower success rates in that domain⁶⁷. While the main coefficient for business litigants is negative in Model 3, its interpretation must be understood within the full interaction structure. As this is a multiplicative model, the effect of business litigants is subject to variation according to the specific issue area and therefore cannot be read in isolation (see Brambor *et al.*, 2006).

To facilitate interpretation and illustrate the magnitude of these effects, Figure 2 presents predicted changes in success probabilities for each litigant–issue combination. For instance, it is estimated that a business challenging an economic regulation would achieve a success probability that is 0.4 points higher than an individual litigating an individual rights case, holding all other variables constant at zero⁶⁸. These results support H3, which posits that businesses are more successful when challenging laws in areas where they have greater resources and stronger interests than the general population.

67. Nevertheless, the coefficient for business litigants (excluding interactions) is significant and negative (1), because there are no cases of businesses successfully challenging laws in the area of individual rights.

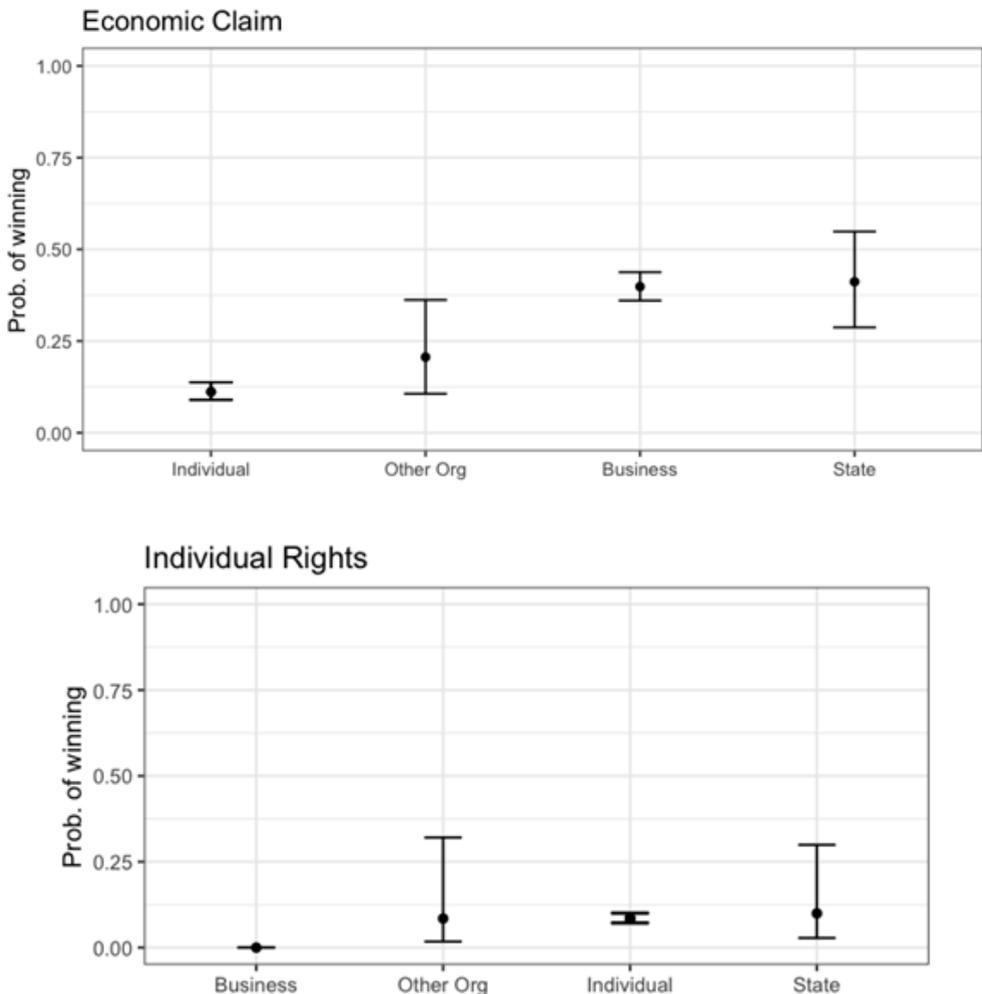
68. In Model 3, to calculate the predicted probability, we sum the coefficients: $0+1+4+9=-2.4+-13.9+0.30+15.6 = -0.4$. To convert this log-odds value to a probability, we apply the inverse logit function: $e^{-0.41}+e^{-0.4}=0.4$.

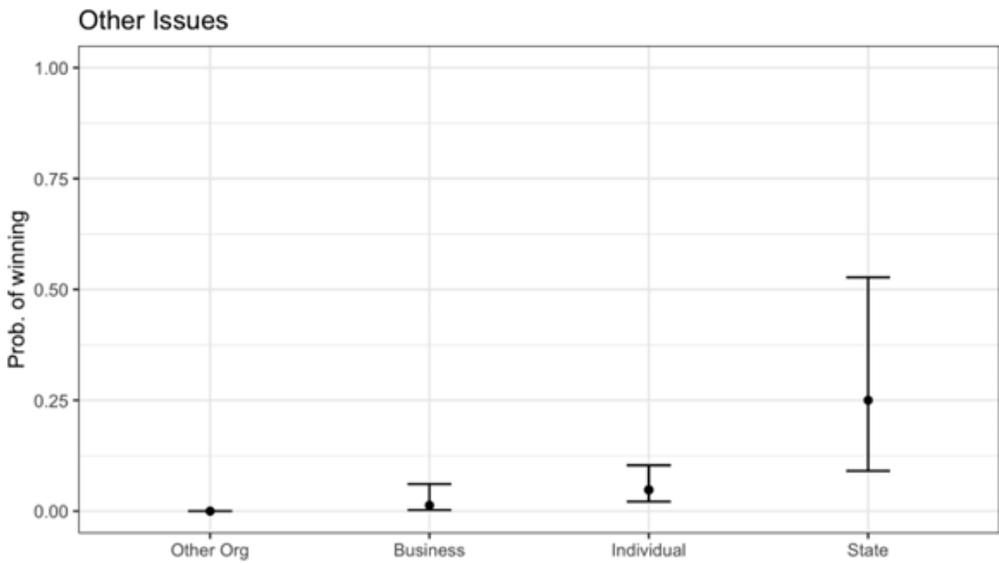
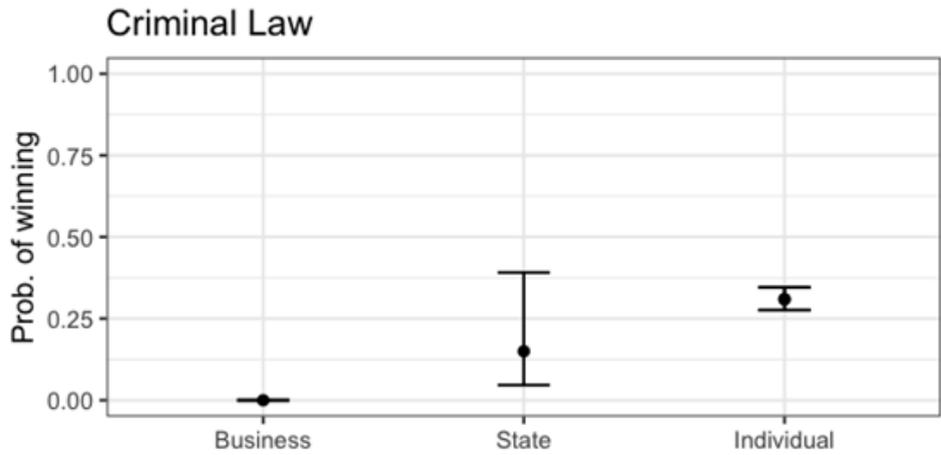
In contrast, state institutions have not demonstrated a statistically significant discrepancy in success rates relative to individuals across any given issue area. Their interaction terms are not statistically significant, indicating that state actors do not consistently demonstrate higher performance compared to other litigants, even in areas where they might be expected to have institutional advantages. Other organizations, on the other hand, exhibit a pronounced disadvantage. They are significantly less likely to succeed in economic and residual issue areas, compared to individuals bringing individual rights claims.

Across all models, the anticipated decision variable maintains a positive and highly significant, indicating that litigants are substantially more likely to win in cases that affirm prior favorable rulings.

Figure 2.

Predicted probability of litigant success by type of litigant and issue area.





Note: Predicted probabilities of interaction effects, with 95% confidence intervals, ordered by coefficient size. The estimates presented herein are based on Model 3.

It is important to note that model 4 excludes anticipated decisions to assess the robustness of these findings. The main patterns hold: businesses retain a substantial advantage in economic and "other" issue areas. In contrast to Model 3, however, the interaction term between business litigants and criminal law becomes statistically significant and negative. A similar pattern has been observed in other organizations involved in litigation in economic claims (see Table 4; see also Figure 3 in the Appendix).

When considered as a whole, the regression results provide strong support for H3, the interaction hypothesis. They show that neither actor type (H1) nor the issue area (H2) alone account for the success of litigation. It is only through a comprehensive examination of the interaction between these two factors that we can uncover the conditional advantage held by resourceful actors within specific domains, particularly in cases where they possess material stakes.

Judicial Strategies of Business Litigants: The Case of the ICIR Tax⁶⁹

To complement the statistical analysis, we now turn to an example that illustrates one of the central patterns identified in the empirical findings: the use of judicial venues by business litigants to successfully challenge regulations in the economic realm. As shown in the quantitative analysis, businesses demonstrate a strong tendency to prevail in cases involving economic issues—particularly those affecting their material interests. The subsequent illustration proffers concrete insight into the legal and political strategies that underpin these outcomes (Dryzek, 2025).

According to our database, successful business litigants before the SCJ include media companies, rural landowners, employers, international logistics firms, river transport companies, and concessionaires of sanitation and drinking water services. These actors have challenged laws regulating labor and media, as well as taxes and other economic policies. Among these cases, the challenge to the constitutionality of the ICIR (*Impuesto a la Concentración de Inmuebles Rurales*) is particularly noteworthy as a revealing example.

69. This section draws from a previous case study that was conducted by some of the authors (Antía & Vairo 2023, pp. 156-159; see also Rius 2015, pp. 89-91).

The ICIR, established in 2011 by a center-left government, was conceived as a progressive tax measure aimed at curbing land concentration and providing financial support for rural road infrastructure. It applied to large rural properties over 2,000 hectares, affecting just 2.5% of landowners—specifically, those who held control of 36% of Uruguay's rural land (Statement of the purpose of the bill, *Diario de Sesiones de la Cámara de Representantes* 2011). Despite its narrow scope, the tax provoked vehement opposition from prominent rural business associations, namely the *Asociación Rural de Uruguay* (Uruguayan Rural Association, ARU) and the *Federación Rural de Uruguay* (Uruguayan Rural Federation, FRU)⁷⁰. While these interest groups lacked direct influence over the governing coalition, they maintained close ties with opposition parties. These parties publicly opposed the measure but could not block its passage through Congress.

As these associations found themselves unable to halt the ICIR's approval through legislative means, they appealed to the SCJ. They mobilized substantial resources, encouraged affiliated landowners to initiate lawsuits, and hired prominent legal experts to represent them. Both associations secured the legal services of Dr. Gonzalo Aguirre Ramírez—a renowned constitutional lawyer and former vice president during the 1990–95 National Party administration. Dr. Aguirre Ramírez had previously sponsored some legal actions challenging the ICIR⁷¹ and ultimately filed 130 lawsuits⁷². A review of public records reveals that a significant number of rural landowners have submitted individual petitions, including the president of the *Secretariado Uruguayo de la Lana* (Uruguayan Wool Secretariat), and leading figures from agricultural associations⁷³. The legal strategy of the ICIR was predicated on the claim that the ICIR had duplicated existing taxes, thereby violating constitutional prohibitions on overlapping taxation.

From 2012 to 2013, a total of 168 separate lawsuits were filed, and the SCJ issued repeated rulings in favor of the plaintiffs, thereby striking down key provisions of the tax (e.g., Sentences 17/2013 and 30/2013)⁷⁴. In each decision, the Court determined that Articles 1 and 2 of the ICIR law were unconstitutional.

70. FEDERACIÓN RURAL DEL URUGUAY (2011).

71. RÓMBOLI (2012).

72. AGUIRRE (2013).

73. BÚSQUEDA (2012).

74. In the 168 rulings that declared the law unconstitutional, 161 were *anticipated decisions* that reiterated the precedent established in a previous judgment (in particular, Sentence No. 45/2013).

Confronted with this consistent judicial stance, the government ultimately repealed the ICIR and replaced it with a revised wealth tax designed to withstand constitutional scrutiny. The newly implemented measure was once again challenged before the SCJ (e.g., Sentence 738/2014). However, on this occasion, the Court upheld its constitutionality.

This case exemplifies how business groups—particularly those with access to resources and legal expertise—can effectively employ judicial strategies to block tax policies they perceive as contrary to their interests. This case offers a clear illustration of one of the mechanisms through which the "haves" succeed in court. This, in turn, reinforces the broader empirical finding that actor success depends not only on their characteristics, but also on the nature of the legal issue at stake.

Conclusion

This article examined the following research questions: who turns to the Supreme Court of Justice in Uruguay to challenge the constitutionality of laws, what kinds of issues are raised, and which actors are more likely to succeed. Drawing on party capability theory and its derivatives, we tested three competing hypotheses using a novel dataset covering all constitutional review cases decided by the Uruguayan Supreme Court from 1989 to 2021.

The initial two hypotheses—which emphasize litigant type and issue area, respectively—do not find empirical support in our analysis. Contrary to expectations from party capability theory, being a state institution or a business does not significantly increase the likelihood of judicial success. Likewise, certain types of legal issues are not systematically associated with higher win rates. However, the third hypothesis—which focuses on the interaction between actor type and issue area—receives strong empirical support. The results show that the probability of success is contingent upon the alignment between the litigant's profile and the subject matter of the case. In particular, business litigants are significantly more likely to succeed in cases involving economic claims, while their chances diminish or become statistically insignificant in other issue areas. These findings imply that structural advantages may only translate into favorable outcomes under specific conditions.

This pattern was further illustrated by the ICIR tax case, wherein powerful rural business associations mobilized their resources to challenge a redistributive tax before the Court. The associations were unsuccessful in the legislative arena, but found an alternative path in the judiciary. By coordinating litigation efforts, securing experienced legal counsel, and targeting a policy that directly affected their core interests, these actors leveraged their advantages in a domain where their stakes were high.

Our research makes several contributions to the field. Firstly, it broadens the empirical scope of party capability theory to a previously unexplored context, thereby testing its core assumptions in a civil law country with a relatively small "justice gap". Secondly, it introduces nuance to the theory by demonstrating that the advantages of the "haves" are conditional upon the specific issue under consideration. Businesses tend to demonstrate success in issue areas that align with their material interests. Meanwhile, other organizations and individuals confront more challenging circumstances—unless they receive external legal assistance or activate the Court in areas where the jurisprudence is favorable.

These findings indicate a necessity for further investigation into the mechanisms that underlie these patterns. Future research should examine litigants' organizational resources and legal support networks directly, rather than assuming them from group categories⁷⁵. It should also explore how the presence—or absence—of legal support structures can impact the reduction of inequality in access to constitutional justice⁷⁶. In Uruguay, for instance, university legal clinics have enhanced individual litigants' access to the Court in cases involving high-cost medicines⁷⁷.

Finally, a more comprehensive understanding of judicial outcomes would be enhanced by the incorporation of variables that are not addressed by party capability theory. These include judges' ideological leanings, their institutional role conceptions, and broader political dynamics⁷⁸. While certain of these dimensions are difficult to measure in Uruguay's institutional setting, they likely interact with litigant strategies in shaping Court decisions.

Despite these limitations, this study offers the inaugural systematic examination of litigant success before the Uruguayan Supreme Court in constitutional review cases. We show that judicial outcomes are structured by a complex interplay of actors, issues, and institutional constraints. These findings contribute to the broader literature on judicial politics in Latin America and offer a foundation for future work on legal mobilization, judicial access, and the redistributive implications of constitutional review.

75. SZMER *et al.* (2016) p. 65.

76. EPP (1998) pp. 17-23.

77. ANTÍA *et al.* (2023) p. 1315; BLANCO & CERETTA (2021) p. 37.

78. ANSOLABEHRE *et al.* (2022) p. 2; HILBINK (2012) p. 590.

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Author Contributions

All authors contributed equally to all aspects of this article.

Conflict of interest

The authors declare no conflict of interest.

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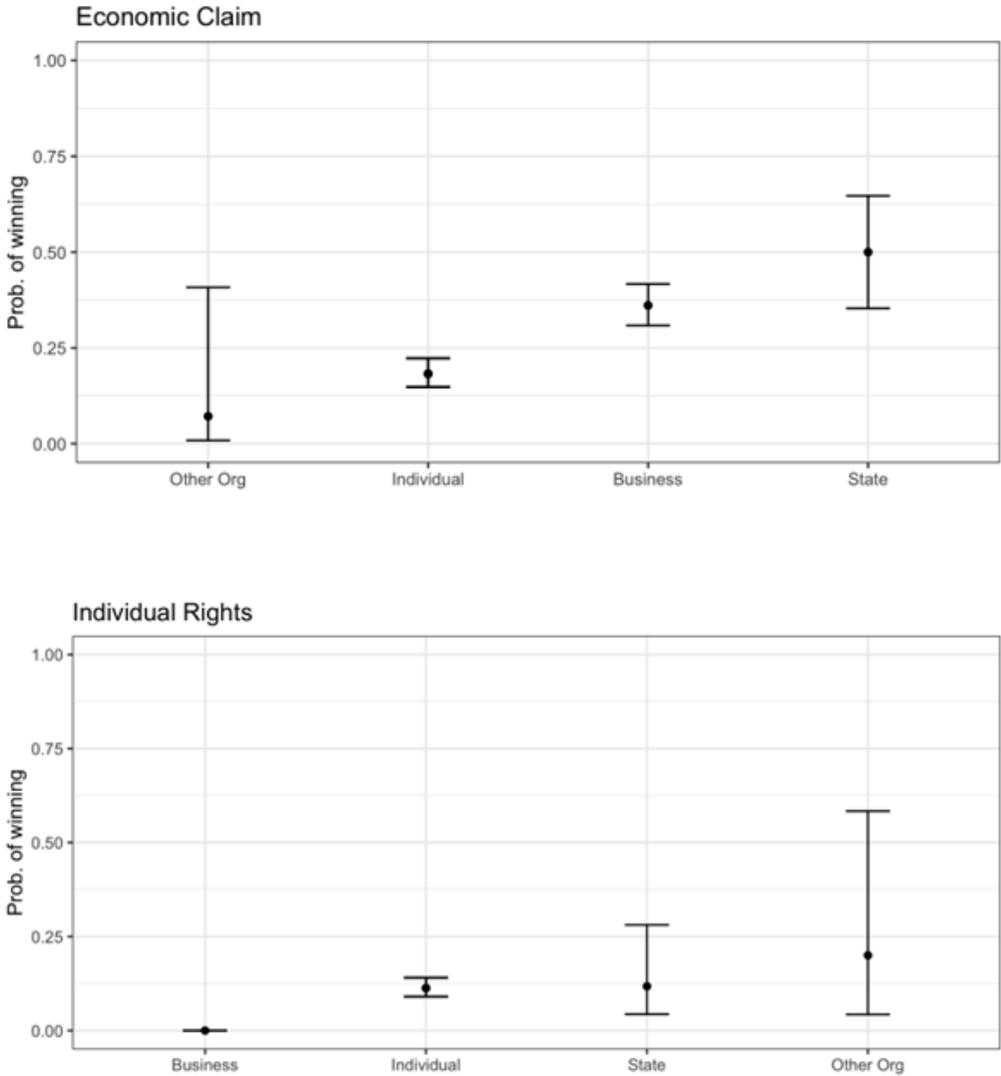
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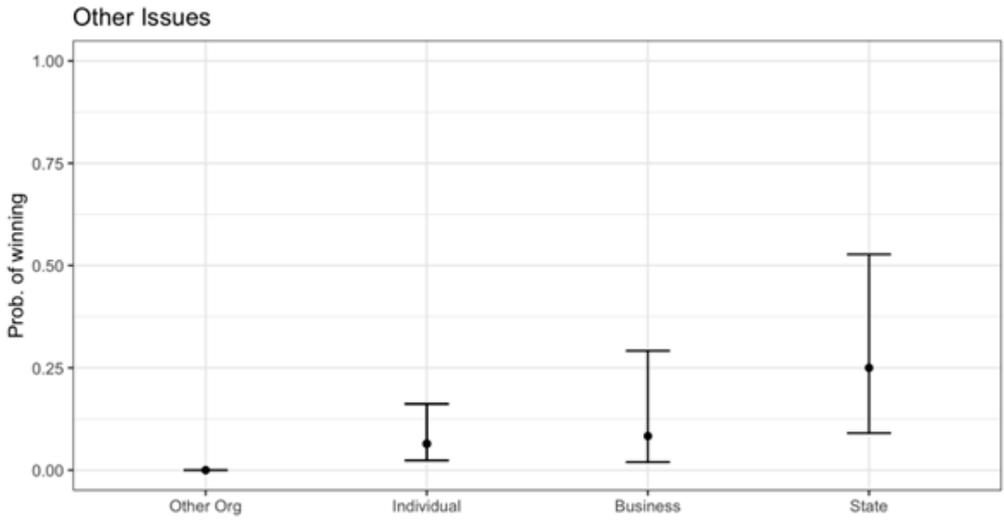
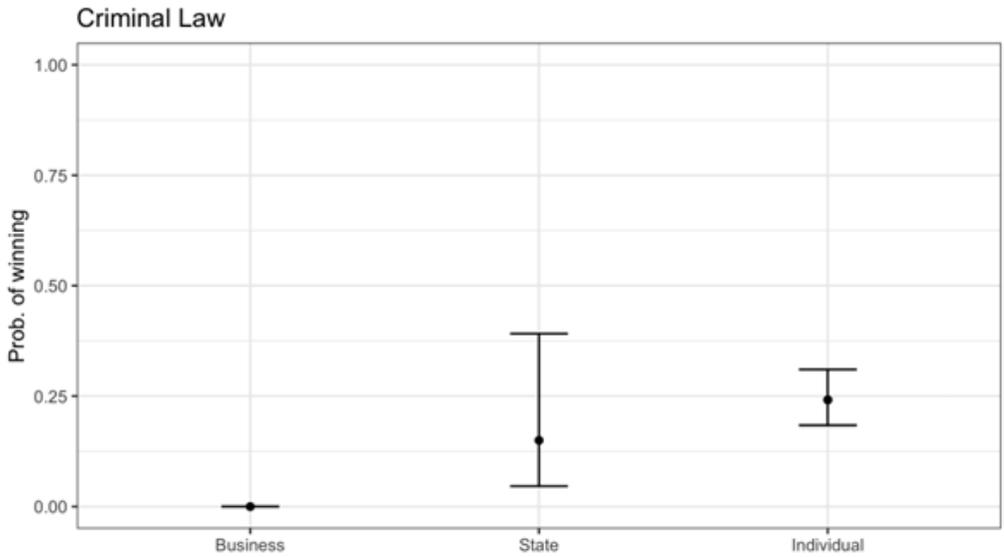
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Appendix

Figure 3.

Predicted Probability of Litigant Success by Type of Litigant and Issue Area (Excluding Anticipated Decisions).





Note: Based on Model 4. Error bars represent 95% confidence intervals.