

**"Resistance of Supreme Court Case Law by State
Legislatures: Analyzing the Contextual Factors of
Restrictive State Abortion Policies"**

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Hunter W. Adams

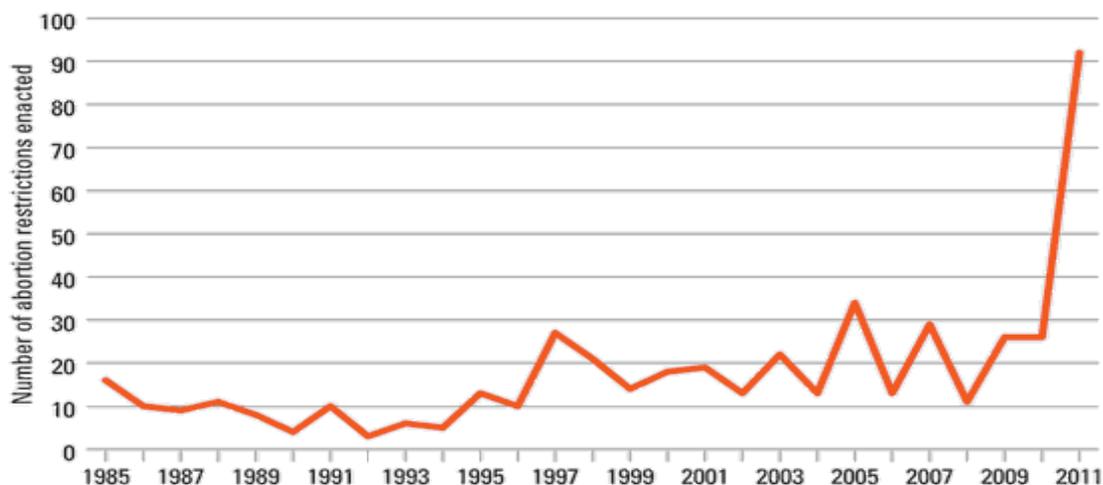
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Advisor: Dr. Claire Wofford

Introduction

SIMPLY UNPRECEDENTED

States enacted 92 provisions restricting abortion in 2011, nearly triple the previous record of 34 in 2005.



Note: This analysis refers to reproductive health and rights-related "provisions," rather than bills or laws, since bills introduced and eventually enacted in the states may contain multiple relevant provisions. Source: Reference 1.

www.guttmacher.org

In the years 2010 and 2011, the arena of American politics witnessed a dramatic increase in the regulatory provisions issued by state legislatures regarding abortion. This exponential increase marked a highpoint in the polarization of reproductive rights and abortion politics within the United States. As the graph provided by the Guttenmacher Institute indicates, state legislatures successfully passed an unprecedented number of provisions regulating abortion. These provision were not only being passed in states that were traditionally "hostile" to abortion, but also by a plethora of states that were previously considered "neutral, middle-ground" states. In past decade, middle-ground states quickly became hostile states and hostile states became even more hostile regarding abortion. These hostile states were nearly totally responsible for the record increase in abortion restrictions in 2011 (Gold and Nash 2012). Such a seismic shift in abortion policy certainly merits the curiosity of policy analysts and researchers, but research becomes

more imperative when one considers the original source of abortion policy: the Supreme Court.

The relationship shared between state legislatures and the Supreme Court merits scholarly analysis due to the inherent nature of American government. The dynamic between the Court and legislatures is predicated on the crux of checks and balances that defines how any legislative body and the judiciary come into and conflict with each other. While the Court utilizes its ability to check other governmental bodies through judicial review, it also requires these actors to comply with the very decisions that it renders. Thus, state legislatures are indelibly important in the implementation of Supreme Court case law. The policies produced by state legislatures can, perhaps, more directly affect their constituency than Federal policy, and this very fact makes state legislatures a crucial link between the public and the Supreme Court. Of course, the state legislatures which the Court rely on to enforce its decisions may not fully comply with such case law. Certain pressures and contextual factors may exist which would cause state legislatures to resist decisions by the Court that do not fully align with the policy preferences of the state legislatures. Given the fact that state legislatures play such an important role in implementing Supreme Court case law, their resistance, at least to a certain degree, dilutes the power of the Supreme Court to command respect through judicial review.

This particular scenario of state legislative resistance of Supreme Court case law can be seen in the previously mentioned increase of restrictive abortion policies created by states in 2010 and 2011. The Court established that a woman has a right to an abortion in *Roe v Wade* (1973), and it has consistently reaffirmed that basic right in its decisions since *Roe*. While the Court has allowed greater regulation by the states beginning with its

decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), it has not fundamentally altered the legal rule that a woman has a right to an abortion. With that fact in mind, it is crucial to understand that resistant policies do not necessarily mean that they are unconstitutional. Rather, policies which constitute legislative resistance are ones which impede the full application of fundamental, landmark decisions rendered by the Court such as in *Roe*. A restrictive abortion policy created by a state may very well be constitutional, but it can also impede a woman's ability to access abortion. Thus it can be argued that the state is resisting the abortion case law of *Roe v Wade* through that policy.

The framing of restrictive abortion policies as resistance is a key point for my research as abortion politics are often analyzed from a policy standpoint rather than in the context of legislative-judicial relationships. The notion of resistance implies that the policies which restrict abortion access are not just purely regulatory measures passed by state legislatures. Such policies, which directly or indirectly restrict a woman's access to abortion, are passed in order to limit the implementation of the Court's decision in *Roe*. Their very existence serves to illuminate the dynamic and crucial relationship between state legislatures and the Supreme Court.

Thus it is the premise and goal of my research to understand the political and contextual factors which exist in the states that recently passed the record amount of abortion regulations seen in 2010 and 2011. In order to do so I will first explore the literature and findings of previous researchers regarding the relationship between state legislatures and the Supreme Court as well as literature examining the contextual factors surrounding abortion politics within the states. Next, I will conduct a quantitative analysis of contextual factors that I have selected as independent variables and a dependent

variable I have created to reflect state legislative resistance. By identifying contextual factors that cause legislative resistance of abortion case law, it is my hope that I will reveal that, given certain political and contextual pressures, state legislatures will resist decisions by the Supreme Court

Literature Review

Introduction

Previous research examining the relationship between state legislatures and the Supreme Court can be described as thin at best. As political actors, state legislatures may be presumed to be subordinate and obedient to the Supreme Court; causing researchers to gloss over a potentially dynamic relationship. The current literature that does study the relationship between state legislatures and the Supreme Court focuses primarily on how the Supreme Court, in addition to other factors, is taken into account by state legislatures when deciding to pass laws (Hoekstra 2009, Patton 2007). Additional research with respect to state legislatures focuses on their relationship with other judicial actors such as state supreme courts (Langer and Brace, 2005). Even then, the literature examining the dynamics between state legislatures and the judiciary with the state legislature as the unit of analysis is sparse. This review will extrapolate the relevant information from that literature in addition to exploring the wealth of research done in regards to state abortion policy.

State Legislatures and the Supreme Court.

Because the Supreme Court holds significant agency on how it chooses to handle and set policy, attention should be directed to the relationship the Supreme Court has with

state legislatures. This relationship is particularly important to analyze considering the Court strikes down state laws more frequently than federal laws (Caldeira and McCrone 1992); meaning state legislatures are clearly key actors in the implementation of Supreme Court decisions. Despite this fact, more attention is generally given to Congressional responses to the Supreme Court rather than state legislatures (Cannon and Johnson 1999). Nonetheless, there are still important and useful articles which examine that relationship.

Valerie Hoekstra's (2009) work provides an excellent starting point for examining the relationship between state legislatures and the Supreme Court. Her work is based on the understanding that Congresspersons (Martin 1998, Shipan 1997) as well as lower courts (Benesh and Reddick 2002, Hoekstra 2005) are constrained by the Supreme Court in their ability to implement their own policy preferences. Despite this information provided by the previous researchers, Hoekstra felt the question of when state legislatures will follow Supreme Court preference was still unanswered. In order to answer that question, she chose the topic of minimum wage legislation for women and conducted a quantitative examination of how state legislatures treated that particular policy with respect to Supreme Court precedent. Her results overwhelmingly showed that legislation that was predicted to be opposed by the Supreme Court was significantly less likely to be passed than if the Court indicated a willingness to uphold it. She concluded that the desire for policy longevity surpassed the policy preferences of the legislators and constituents.

Dana Patton's (2007) analysis of abortion policy in the light of constitutional context further supports the notion that state governments are constrained in their preferences by the presence of the Supreme Court. Her research showed that state legislatures were more likely to pass abortion policies when it was clear that the policies were constitutional and

would be upheld by the court. These results may not be particularly surprising, but they are important in their confirmation of a restrictive relationship between state legislatures and the Supreme Court. They show that the Supreme Court is respected by state legislatures because state legislators desire policy longevity above all else.

One might theorize, then, that rulings by the Supreme Court which allow states to create policies that were previously disallowed by the Court would lead to the newly permitted policies being adopted by state legislatures who want to do so. This is proven to be the case in Henry Glick's (2007) research regarding the policy of "right to die" laws. He examined right to die policies prior to and after the permissive ruling in *Cruzan v Director, Missouri Department of Health* (1990) and tried to determine how the Court's ruling affected those policies. In that ruling, the Court held that Missouri's policy of requiring evidence of an incompetent's wishes for withdrawal of life-sustaining treatment was constitutional. Glick found that states already regulating the right to die continued to do so after being permitted by the Court and even states that did not previously have a policy created a new one within the scope of the new ruling. Where the previously mentioned articles presented a constraining relationship between the Court and state governments, Glick reveals a permissive relationship as well. Not only can the Supreme Court limit the policy preferences of a state legislature; it can also create a window of opportunity and spark new policy.

A common theme pervasive in these articles is a pragmatic and political respect that legislatures hold for the highest arbiter of the law. Whether these state actors hold some noble political respect for the Court or simply desire their policies to not be struck down, it is clear that the Court plays a crucial role in how they shape their policy decisions and

behavior (Baum 1975). This, of course, follows logically with the check that judicial review is intended to have on legislatures' power.

State Legislatures and the State Judiciary

Although the research that specifically examines the relationship between state legislatures and the Supreme Court is lacking, there is additional research which examines the relationship between state legislatures and the state judiciary. While other actors within the judiciary such as state courts certainly maintain a good deal of agency, they are largely constrained by the Supreme Court (Hoekstra 2005). Because of this, research examining judicial actors other than the Supreme Court will still reveal important information as to how the Supreme Court may have an indirect relationship to state legislatures.

Researchers Elizabeth Stiles and Emily Bowen (2007) utilize a quantitative analysis to examine the relationship between state legislatures and state supreme courts. By implementing a "cost-transaction analysis", they found that bills were less likely to be passed in a state legislature when the court was considered ideologically "extreme". They suspect that more ideologically extreme courts were more likely to modify or overturn laws than moderate courts. Because of this, legislatures are reluctant to expend political capital and pass legislation in a potentially hostile judicial environment due to the desire for policy survival. This is conclusion consistent with the aforementioned literature regarding state legislatures and the Supreme Court, and it is clear that judicial review strongly mitigates legislative outcomes.

Stiles and Bowen mention a particularly important factor to consider when examining the legislative/judicial relationship: environment. The concept of “environment” is crucial when conducting a policy analysis as it refers to the contextual factors surrounding a particular policy area. All of the previously mentioned research points to environment as a necessary factor for understanding how state legislatures interact the judiciary. Vanberg (2007) produces a seminal work which takes into account lack of transparency in the policy environment. That particular point is crucial and was not fully considered in the previously mentioned articles: that legislatures and courts cannot perfectly predict the others’ actions. If both actors are unable to fully predict how the other will react, then one would presume that their decisions will be altered by a political “fog of war,” so to speak. With that point in mind, Vanberg structures a game-theory model to predict both legislative and judicial behavior and then tests that model on the German Constitutional Court. He finds that the salient, contextual factors surrounding a particular policy are immeasurably influential in predicting if and how a particular policy will be particularly successful.

Political environment is also a significant factor in predicting whether a policy will be created by the judiciary or by the legislatures (Roch and Howard 2008). The research conducted by Roch and Howard analyzed the policy of education finance reform at the state level. They quantitatively defined the state’s political environment into three types of factors: political, legal, and strategic factors. They successfully predicted when each institution was more likely to be the passer of education finance laws. These results fall in line with the key point that Vanberg made: that once contextual factors are taken into account, legislative and judicial behavior can be predicted.

It is obvious that the relationship between state legislatures and the judiciary is highly complex and dynamic. Their relationship with each other is contingent upon a variety of environmental factors which affect their reaction to the other's actions. When there is sufficient knowledge on the part of state legislatures, research shows they will structure their policy outputs depending on the expected reaction of the judiciary to that policy.

Legislative Resistance

Although it is clear from the literature that state legislatures respect the Supreme Court (and judiciary), what would cause those legislatures to resist the Court? What contextual factors would exist that would make state legislatures push the boundaries of Supreme Court case law? My research seeks to answer those particular questions and draws from relevant literature that provides answers with respect to other legislative/judicial actors.

In certain political environments, legislatures are under significant pressure to resist a court's decision that does not align with the legislators' policy preferences. (Meernik and Ignani, 2005). Meernik and Ignani's research analyzes legislative responses to the Court's striking down laws as unconstitutional. By conducting a quantitative analysis of Congressional "attacks" on Supreme Court decisions that struck down state laws, they hope to identify statistical trends in why Congress will retaliate against the Court. After conducting their analysis of responses from 1973 to 1990, they found that electoral pressure was a significant predictor of the existence and extent of Congressional attacks. This confirmation serves to fill in a missing piece to the portrait of legislative-judicial

relationship. Where the previously mentioned literature showed that legislatures were constrained by the Court, Meernik and Ignani demonstrated that contextual factors would also ignite legislative counterattacks. This dynamic confirms, to a certain extent, what would be expected within the intended system of checks and balances: legislatures are ignited by constituency and tempered by the judiciary.

Resistance of Abortion Case Law by State Legislatures

With that dynamic in mind, it now becomes necessary to focus on the literature surrounding the topic policy of this research: abortion. Research by Michael New (2011) statistically confirms that there was a dramatic increase in restrictive abortion policies enacted by states, and that they were responsible for decreased abortion rates. Although the Supreme Court allowed greater regulation of abortion by the states, it has consistently reaffirmed abortion as a constitutional right. New's findings suggest that state legislatures are resisting abortion case law by significantly decreasing a woman's ability to access it. My research hopes to identify the environmental factors causing this resistance, and thus it is necessary to review literature which discusses these factors.

Dana Patton (2007) provides an excellent stepping-stone from research regarding legislative-judicial analysis to abortion because her research on morality policies in the light of constitutional context does both. She defines the factor "constitutional context" as the stance of the Supreme Court has taken (if it has) on a particular area of abortion policy at the time of that policy's passing. She defines the constitutional context as either being: unconstitutional, unknown, suspect, and constitutional. By taking into account constitutional context, she finds that states were desirous of passing long lasting

legislation. When they knew or were unsure that a potential abortion policy would be stuck down, they were less likely to pass that bill at all. She also demonstrated other contextual factors that predicted policy output: partisan control, public opinion, religion, interest group influence, and amount of woman legislators. Her research, though, took place in 2007 and the most dramatic increases in abortion restriction policies occurred in 2010 and 2011. Thus it is necessary to reevaluate the context within a state as of 2011.

Leo Kahane's (1994) research provides an excellent resource for understanding how the contextual that Patton used to predict a state's abortion policy interact with each other. He hypothesizes that the determining factors can be broken down into two interconnected levels: the ideology of the governmental actors and the preferences of the constituency. His results indicate that the more beholden an actor was to a constituency, the more likely that the constituency would determine his/her abortion position. Likewise, the opposite is true as well: the less responsive an actor had to be to a constituency, the more likely his/her abortion position would be determined by his/her own ideology. Further research done regarding direct democracy found that states with a higher amount of initiatives and referenda were more responsive to public opinion on abortion policy (Arceneaux 2002). It is clear from this research then that a significant contextual force driving the abortion policy output of state legislatures is public opinion.

This insinuates that electoral pressures are shaping the abortion policy preferences of legislative actors and indeed this is found to be the case (Kahane 1994, Highton 2004, Calfano 2010). There are certainly other factors within public opinion that shape a constituency's influence on the policy output. Calfano (2010) examines the way in which abortion preferences are "branded" by evangelical and catholic pro-life interests. He shows

that the attendees' positions regarding abortion were significantly affected by the way their churches' branded abortion policy. Given the conclusions found by these aforementioned researchers, I will include measures of public opinion and religion as predictive contextual factors.

Some researches have attempted to define abortion politics as a redistributive policy rather than a morality policy (Medoff 2011). His work showed that the only significant factor predicting state implementation of TRAP laws was party control and not the percentage of a state's population that is Catholic, public anti-abortion attitudes, state political ideology, or the abortion rate in a state. In hopes of explaining this discrepancy other research have shown that abortion policy is actually both a redistributive and a morality policy (Roh 2008). Nonetheless, this leads me to include measures of partisan control and state governmental institutions as controls when examining the contextual factors which cause resistance.

Despite the discrepancies within the literature surround the contextual causes for abortion policy, the fact remains that state legislatures have been increasingly and successfully restricting abortion (New 2011). Within the dynamic established between legislative-judicial relations, one would expect a judicial retaliation. This has not been the case though, as the Court has been hesitant to enter itself within the realm of abortion politics and make a large decision (Devins 2009). Therefore, there is greater need for research and analysis of the relationship between state legislatures and the Supreme Court in light of the resistance legislatures have exhibited in their abortion policies.

Data, Hypotheses, and Methods

Variable Coding

Dependent Variable

Resistance

For my analysis, I have created an ordinal variable labeled “*Resistance*” which ranks the degree to which states resist abortion case law through restrictive policies. Each state’s *Resistance* is coded 1 to 5 with 1 being the least resistant (fully complying with abortion case law) and 5 being the most resistant. This coding is based on the 2013 National Abortion and Reproductive Rights Action League’s report card of state grades released in the annual report: “Who Decides: The Status of Women’s Reproductive Rights in the United States”. The report card assigns a “grade” to a state which represents the degree to which a woman has access to reproductive services in that state. The grades, ranked from most access to least amount of access, are: A+, A, A-, B+, B, B-, C+, C, C-, D+, D, D-, and F. Using the state grades, I converted all A’s to a 1, B’s to a 2, C’s to a 3, D’s to a 4, and F’s to a 5.

NARAL assigns the grades by adding or subtracting points based on the respective state laws in particular policy areas. The policy areas and point schema are as follows: abortion ban(s) (- up to 80 points), biased counseling and mandatory delays (- up to 25 points), contraceptive equity (+ up to 20 points), counseling bans/gag rule (- up to 10 points), crises pregnancy centers (- up to 15 points), emergency contraception (+ up to 25 points), freedom of choice acts (+ up to 55 points), guaranteed access to prescriptions (+ up to 10 points), insurance prohibition for abortion (- up to 35 points), low income women’s access to abortion (- up to 25 points), low income women’s access to family planning (+ up to 5 points), post-viability abortion restriction (- up to 10 points), protection against clinic

violence (+ up to 15 points), public facilities and public employee restriction (- up to 10 points), refusal to provide medical services (- up to 20 points), restriction on young women's access to abortion (- up to 25 points), state constitutional protection (+ up to 20 points), targeted regulation of abortion providers (TRAP) (- up to 30 points).

Independent Variables

Public Opinion/Ideology

My first measure of public opinion, labeled “%PubOpAgainst”, is coded as a ratio variable with values indicating the percentage of a state's population which believes abortion should be illegal in most cases. This data comes from the 2013 publication “Widening Regional Divide over Abortion Laws” by the Pew Research Center. By using aggregate data from three previous surveys conducted in 2012, public opinion data regarding abortion was reported in terms of eight “regions” which states were placed into. For my own dataset, each state within a region received that region's opinion poll percentage. It is necessary to note that a state specific measure of public opinion regarding abortion would increase the statistical validity of this variable, but a credible measure was not available at the time of this research. The regions, their respective states, and the percentage of population within those regions that believes abortion should be illegal in most cases are as follows: New England (CT, MA, ME, NH, RI, VT) 20%, Pacific Coast (AK, CA, HI, OR, WA) 30%, Mid-Atlantic (DC, DE, MD, NY, NJ, PA) 33%, Mountain West (AZ, CO, ID, MT, NM, NV, UT, WY) 36%, Great Lakes (IL, IN, MI, OH, WI) 41%, South Atlantic (FL, GA, NC, SC, VA, WV) 42%, Midwest (IA, KS, MN, MO, NE, ND, SD) 47%, South Central (AL, AR, KY, LA, MS, OK, TN, TX) 52%.

In addition to the public opinion poll, I have included a measure of the citizen ideology within a particular state labeled “Citizen Ideology”. The variable is an ordinal variable and coded so that lower values indicate a conservative leaning citizenry and higher values indicate a liberal leaning citizenry. The mean value of the variable is 47.76292. This data comes from the 2010 revision of 1960-2010 citizen ideology series originally released by Berry et. al in 1998.

State Government Legislative Positions

I have included two separate ordinal variables which reflect the positions of state government institutions regarding abortion. The variables are labeled: “State House Position”, and “State Senate Position”. The state house and state senate each receive a numerical representation of their respective positions. A “3” indicates the institution is opposed to abortion, a “2” indicates a mixed position, and a “1” indicates a positive position towards abortion. This data comes from NARAL’s 2013 report: “Who Decides: The Status of Women’s Reproductive Rights in the United States”. By analyzing policy preferences and platforms of state governors and legislators, NARAL labeled the actors as “pro-choice”, “mixed-choice”, and “anti-choice”.

Partisan Control of State Legislatures

I have included two separate dichotomous variables which reflect the controlling party of the state legislative bodies. The variables are labeled: “State House Party” and “State Senate Party”. I coded Democrat controlled institutions as a “1” and Republican controlled institutions as a “2”. These variables reflect the party of the governor and

controlling parties in state legislatures as of 2014. This data was gathered from the report: “2014 State and Legislative Partisan Control” released January 31, 2014 by the National Conference of State Legislatures.

State Government Ideology

In order to account for the degree to which a state government is liberal or conservative, I have included a variable reflected state government ideology labeled “StateGovIdeology”. This variable is coded as an ordinal variable so that lower values indicate more conservative state governments and higher values indicate liberal governments. This data was gathered from the 2010 revision of 1960-2010 government ideology series originally released by Berry et. al in 1998.

Religion

With respect to religion, I created three variables to represent the relative presence of religion within a state. The variables are labeled: “%Very Religious,” “%Protestant,” and “%Catholic”.

The ratio variable %Very Religious is coded as the percentage of citizens within a state who identify themselves as being very religious. Data for this variable comes from a “State of the States” report released by Gallup on February 4, 2014. Gallup found this data through phone interviews conducted in 2013. Based on responses given, Gallup classified a respondent as very religious if they say religion is an important part of their daily lives and that they attend religious services every week or almost every week. Margins of error for

individual states are no greater than ± 6 percentage points, and are ± 3 percentage points in most states.

The ratio variables “%Protestant” and “%Catholic” represent the percentage of a state’s citizenry who identify as Protestant or as Catholic. This data comes from a “State of the State” report by Gallup released on February 5, 2014. Gallup found this data through phone interviews conducted in 2013. Margins of error for individual states are no greater than ± 6 percentage points, and are ± 3 percentage points in most states.

Hypotheses

Public Opinion/Ideology

Given the fact that state legislatures are comprised of elected representatives, I theorize that the legislatures’ treatment of abortion case law will reflect its constituency’s opinion. Specifically, the more that a state’s citizenry is opposed to abortion, the more resistant the state will be to abortion case law. Research has consistently shown that public opinion is related to policy outcomes, and abortion is a particularly divisive topic given its saliency and relative simplicity (Patton 2007). Therefore, one would expect that, because abortion is an issue that draws strong opinions within a constituency, public opinion will have a strong effect on the policy output of a state.

H1: As the public opinion against abortion increases, Resistance will increase

A more general measure of citizen ideology is also expected to correlate with resistance. I included a measure of ideology in order to examine the relationship that overall ideological preferences will have in regards to abortion policy. I predict that the

more “conservative” a state’s citizenry is, the more resistant its state legislature will be regarding abortion. While my first hypothesis accounts for a citizenry’s specific opinion of abortion, this hypothesis will reveal how the larger ideological stances of a citizenry within a state affects abortion case law. Thus, both H1 and H2 in conjunction will demonstrate how influential the mass public is in causing state legislatures to resist the Supreme Court.

H2: As Citizen Ideology increases (more liberal), Resistance will decrease.

State Government

These hypotheses are crucial to this study as they directly examine the relationship between state institutions’ preferences and the resulting actions. I expect the relationship to be correlated given abortion policy is created by these institutions. It is important that these institutions be analyzed separately rather than together due to the basic nature of each institution. State senators may have a greater ability to express/have controversial position regarding abortion since they tend to be less hierarchical than state houses due to the smaller number of members. Given that fact, I would expect a stronger relationship between State Senate Position and Resistance than between State House Position. Of course, each of these institutions must work together to produce policy, and so I would also expect a relationship between resistance and both institutions when they are in agreement.

H3: As the State House Position against abortion increases, Resistance will increase

H4: As State Senate Position against abortion increases, Resistance will increase

The influence of political parties on the policy outputs of states is well known and vast (Gray and Hanson 2008). Generally, the Republican Party is more supportive of restrictive/conservative policies regarding abortion, and the Democratic Party opposes restrictive policies in favor of expansive ones. (Patton 2008). Both parties pressure their

members to produce policies that fall in line with their respective party's platform, and these hypotheses will demonstrate how effective party pressure is in producing restrictive abortion policy. I expect, then, that Republican controlled institutions will be more likely resist abortion case law. Specifically, I expect a stronger relationship to be seen between State House Position and Resistance due to the previously mentioned fact that State Houses tend to be more hierarchical and subject to partisan control.

H5: As State House Party increases (Republican controlled), Resistance will increase.

H6: As State Senate Party increases (Republican controlled), Resistance will increase.

I have included this hypothesis in order to account for the degree to which how conservative or liberal a state government may be. Where the institutional positions reflect an institution's specific opinion towards abortion and partisan control reflects the controlling party, this measure will demonstrate the affect that governmental ideology has on abortion. I expect that the more conservative that a state government is, the more resistant it will be to abortion case law.

H7: As the State Government Ideology becomes more liberal, Resistance will decrease

Religion

It can be argued that religion is the single largest driving force behind the abortion politics in American politics. In general, religious institutions have consistently stood in opposition to abortion case law and advocated for restrictive policies in that area. Abortion is labeled as a controversial morality policy, and the role religion plays within the controversy must be considered. The effect religion can have is two part: it influences the preferences of its

members, and religious institutions themselves can act as or generate interest groups (Patton 2008). To account for both of these effects, I have created three hypotheses which examine the effect religion may have

H8 looks to see the effect that a very religious constituency may have on policy output. If a large percentage of the constituency is very religious, it can be assumed that religion plays a role in shaping the ideology of that constituency. The more prevalent that religion is within the political environment of a state, the state will be expected to have a greater resistance of abortion case law.

H9 and H10 examine the effect that Protestantism and Catholicism have in shaping abortion policy of a state. While both denominations tend to oppose abortion, I expect %Catholic to have a slightly stronger effect. This is due to the fact that Protestantism is fragmented into various denominations, while the Catholic Church exists as a single organized institution. So despite the higher prevalence of Protestantism in the United States, the Catholic Church may be more influential as a single interest group. On the other hand, the strong prevalence of Protestant denominations can be very influential in creating support for restrictive abortion policies. Nonetheless, %Protestant and %Catholic are both expected to predict resistance by the state legislature.

H8: As the percentage of the citizenry which self-identifies as very religious increases, Resistance will increase.

H9: As the percentage of the citizenry which self-identifies as Protestant increases, Resistance will increase.

H10: As the percentage of the citizenry which self-identifies as Catholic increases, Resistance will increase.

Methodology

In order to empirically test the above-mentioned hypotheses, I will utilize an ordered logit regression model at a 95% confidence interval. This model has been chosen as it best analyses ordinal dependent variables. The statistical software program Stata will be utilized to conduct the analysis.

Results, Analysis, and Discussion

Results

Table: Ordered Logit Regression Model of Independent Variables' effect on State Resistance

Independent Variable	Coefficient	Standard Error	z	P> z
PubOpAgainst	-.1190838	.1187206	-1.00	0.316
StateHousePosition	-.3711123	1.098639	-0.34	0.736
StateSenatePosition	2.48298	.83701	2.97	0.003
StateHouseParty	3.456685	1.399399	2.47	0.014
StateSenateParty	-1.359667	1.235897	-1.10	0.271
CitizenIdeology	-.1315709	.0719585	-1.83	0.067
%VeryReligious	.3796785	.145638	2.61	0.009
%Protestant	.1435667	.0721767	1.99	0.047
%Catholic	.2704066	.1036389	2.61	0.009
StateGovIdeology	.0092403	.0276038	0.33	0.738

Analysis

The table presented above displays the results of the ordered logit regression model that was calculated using STATA 13.1.

Public Opinion/Ideology

With a p-value of 0.316, the measure of public opinion is a statistically insignificant predictor of a state's level of resistance. This outcome is particularly surprising given the expectation that legislatures' policy output would be correlated with its constituency's policy preferences. Because it is highly insignificant, this leads me to assume that the measure used was not a direct enough measure of each state's public opinion regarding abortion. Because the opinion percentages were broken down into broad regions, rather than state by state, there may have not been enough variance within the variable to properly run a statistical analysis. Thus there is insufficient evidence to conclude that public opinion does or does not affect a state's abortion policy, and further research with access to a more direct measure of public opinion should be conducted to better explore the relationship.

The variable measuring a citizenry's ideological preferences resulted in having a slightly insignificant effect on a state's level of resistance. Despite being slightly insignificant, the negative coefficient still confirms the predicted correlation between citizen ideology and a state's abortion policy. The results indicate that as the public ideology become more liberal, the state resistance of abortion case law decreases. While both public opinion and public ideology resulted in statistically insignificant outcomes, the near-significant correlation between ideology and resistance suggests that there is a relationship between a state's abortion policy and the citizenry's policy preferences.

State Government Variables

The variables measuring the affect of various governmental factors revealed very interesting trends as to the determinants of a state government's policy outputs. The variables that measured the house and senate's position regarding abortion showed a significant relationship between the senate's position and resistance and an insignificant relationship between house position and resistance. On the other hand, the converse was true in terms of party control: the relationship between senate party and resistance was insignificant and house party and resistance was significant.

With a p-value of 0.763, there is no statistical evidence that a state's house of representatives' position on abortion predicted that state's resistance of abortion case law. A p-value of .003 and a positive coefficient confirms that a state's senate position does indeed correlate with that state's abortion policy. In short, states with senates desirous of restrictive abortion policies were more likely to have restrictive abortion policies. The fact that there was confirmed relationship between senates but not houses suggests that senators can better act on their personal policy preferences whereas house members are restricted in some manner.

The statistically significant p-value of 0.014 and positive coefficient leads me to believe that political parties are better able to implement platform goals in state houses; whereas the insignificant p-value of .271 suggests parties are less effective in state senates. States whose houses were controlled by Republicans were more likely to resist abortion case law. Because houses generally have more members and feature a party-based hierarchy, this relationship suggests that Republican controlled houses can create abortion policy outcomes that align with the party platform. The totality of statistical evidence

regarding position and parties reaffirms the basic understanding that house members are restricted by hierarchical party pressures and senators are able to act on their personal policy preferences.

Of course, it is important to remember that state legislative bodies work together in order to produce policy. Thus, a state's abortion policy will be contingent on a variety of intrastate contextual factors beyond position, party control, and ideology. The insignificant p-value of 0.738 for state government ideology suggests that there are indeed other factors which greatly influence a state's abortion policy beyond the state government's ideology.

Religion

All measures examining the effect religion has on a state's level of resistance were significant. Because of this, these results are perhaps the most valid and reliable of all variables predicting legislative resistance. These models also confirm the understanding that the divisiveness of abortion as a political issue is rooted in religious reasons.

The first measure of religion, percent religious, had a p-value of 0.009 and a positive coefficient. This fully confirms the hypothesis that as the percentage of highly religious citizens increases, resistance produced by the state government will increase. The highly significant p-value reaffirms the use of percent religious as a measure of the general presence of religion in a state. This suggests that, as a contextual factor, religion is largely responsible for creating a political environment conducive for resistance of abortion case law.

The second and third measures of religion sought to examine the effect that different denominations of religion had on a state's level of resistance. With a positive

coefficient and a p-value of 0.032, the percentage of a state's citizenry which was Protestant was a successful predictor of that state's abortion policy. The greater the percentage of a state's citizens who identified as protestant, the more likely that state would pass restrictive abortion policies. Similar results were also found when examining the effect of Catholicism. The positive coefficient and p-value of 0.009 reveals a statistically significant relationship between the percentage of a state's citizenry who identity as Catholic and that state's level of resistance. The prediction that as percent catholic increased, resistance would increase was confirmed. Although this relationship has a lower p-value than the relationship between Protestantism and abortion policy, there is not enough evidence to gauge the relative effect that each denomination has. Further statistical modeling would be required to reveal that effect. Nonetheless, the results confirm that Protestantism and Catholicism significantly.

Discussion

It is well known that the production of policy state legislatures is a complex process that is subject to a plethora of pressures and factors that influence the process of producing policy. It is also well known that these pressure and factors may vary state to state, and the environments in which one state produces policy may vary greatly in a different state. Thus, an analysis of these pressures and factors serve to better illuminate intrastate conditions which may lead to policy production within that state. The goal of my analysis with regards to legislative resistance to abortion case law was two part: to reveal the contextual factors which predict restrictive abortion policy and, in doing so, reveal the types of factors which may cause a state legislature to resist Court decisions. While the

results of the quantitative analysis were surprising in some aspects, they also successfully revealed very strong and interesting relationships with respect to state legislatures and the Supreme Court.

Abortion Politics

I would like to begin my discussion of my analysis by looking at my specific results and their significance with regards to abortion politics. I believe that my most valid and consistent predictors of a state's abortion policy were the variables which measured the religious environment within that state. All the results were consistent with each other, and further reinforce the understanding that abortion politics are structured around religion to a very large degree. Religion, of course, plays a very large role in not only shaping the political and moral ideology of its followers (and thus voters within a state) but religious institutions can also act as interest groups themselves. So it may be reasonable to conclude that not only is abortion policy being determined by the strongly held beliefs of a constituency, but also by interest group influence as well. Further research which specifically measures interest group influence can perhaps better confirm this conclusion.

My results which weakly show that public ideology also influenced a state's abortion policy serves to further confirm the obvious fact that representative democratic institutions like state legislatures are going to be inevitably responsive to their institutions. Statistically speaking, my results are not strongly significant and it is difficult to extrapolate rigorous conclusions without mentioning concerns of validity and generalizability. Although my results were weak, it would be unwise to cast aside public ideology and public opinion as non-significant factors. I am inclined to believe that my statistical analysis and

variables did not accurately reflect the ideological and political beliefs of the constituency, and future research with better access to such measures would reveal that a citizenry's opinion and ideology do indeed influence the abortion policy of a state as suggested by the slightly insignificant results of the public ideology variable.

The results in terms of my state governmental variable are perhaps the most perplexing and difficult to extrapolate valid conclusions. In one manner they serve to reinforce the general understanding of how state governmental bodies function. Larger numbered bodies such as the house of representatives tend to feature a more hierarchical, party run structure whereas senates may allow for greater expression of personal positions by senators. In the end, my general measure of how liberal or conservative a state's government was overall was insignificant. This leads me to conclude that the relative variation of governmental structure from state to state makes a quantitative analysis difficult to run. Each state has its own constitution, and therefore a different methodology for producing and passing bills. There may simply be too many differences in how state governments are structured to draw broad conclusions with regards to a state's abortion policy. Simply put, in one state party control may be a much more significant factor than in another, even though both may have similar abortion policy. Thus, a qualitative analysis of the structures state governments may better reveal how state governmental factors influence a state's abortion policy.

State Legislative Resistance of Supreme Court Case Law

It now becomes necessary to direct the focus of this discussion to the original topic of this research: state legislatures and the Supreme Court. First, it must be noted that the

specific conclusions drawn from my quantitative analysis do not necessarily mean that my variables apply to all scenarios involving the Court and state legislatures, per se. That is, I am not trying to conclude that religious factors will cause a state to resist Supreme Court case law, but rather that there are broader conclusions to be drawn from the fact that religious factors have caused states to resist *Roe* case law. I will discuss the significance factors later, but an analysis of the type of case law and policy which abortion is, must be conducted.

The types of decisions which the Supreme Court renders will invariably effect the degree to which state legislatures will resist, if at all. Abortion case law serves as an excellent specimen possessing the necessary characteristics which may lead to legislative resistance. Of course, there are necessary legal factors which must exist; the decision of the court must effect state legislatures in some way and constitute a policy realm which state legislature can even create policy in. Rulings such as *Roe v Wade* and *Brown v Board of Education* (1954) are excellent examples of decisions which directly affected legislatures and were met with resistance. The rulings of the court must also be relatively simple (from a legal/political standpoint) and salient in order for enough controversy to be generated and policy to be produced. A ruling by the court that is highly technical and does not affect enough people in a significant way will not merit the expenditure of legal capital by state legislatures to resist that ruling. Abortion case law clearly meets these qualifications as it is a fairly simple and nontechnical issue to grasp, it directly affects a vast amount of people, and has remained a consistently controversial topic politically speaking. In sum, abortion case law serves as an excellent example of the type of case which would be met with resistance because of the attributes it possesses case law.

Attention must now be directed to the core purpose of my research: the contextual factors which exist to cause legislative resistance. The results certainly revealed interesting trends, but the most interesting and enlightening were the variables concerning religion. The religious variables perhaps best explain the deeper causes of legislative resistance because of the very nature of religion and respect for the Court. As I previously mentioned, I do not conclude that it is specifically religion itself which would cause a state legislature to resist a Supreme Court decision. Rather, religion as an institution and a concept commands a respect which rivals that which the Court also demands. In the case of abortion politics, the constituencies and consequently the state legislatures are resisting the Court because the respect demanded by religion outweighs the respect the Court demands for its decisions. A basic tenet of judicial review is that the Court is unable to enforce its own decisions. Ironically, it must rely on a quasi-religious respect for itself as an institution and its decisions. One can see this even in the temple-like structure of the court itself (appropriately named the "Temple of Justice") with its neoclassical architecture making it resemble an American Parthenon. This could not better demonstrate the notion that respect is necessary for a Supreme Court decision to effectively have weight. The resistance against abortion case law then has occurred because state legislatures have a diminished respect for *Roe* due to an equally powerful respect demanded by religion. Using this point one can conclude that a state legislature will resist Supreme Court case law when its respect for that case law is diminished.

Of course the question is begged as to whether policies be characterized as resistance if the Court does not strike them down or even approves of them? Although the Court has displayed leniency in its allowance of abortion restrictions in its more recent

rulings, the fact remains that the basic right to an abortion created in *Roe* is still the law. Even if the Court has yet to reject the recent regulatory measures, the measures themselves still constitute resistance. It is important to remember that resistance has been defined as policies which impede the application of basic case law (in this case *Roe*) and that state legislatures resist against case law rather than the Court itself. So until the Court fundamentally alters or overturns the right that it originally established, any policy that restricts a woman's right to an abortion is, to some degree, resistance against *Roe v Wade*. The fact that the Court has continually allowed for such restrictive policies and has remained relatively quiet with regards to the upwelling of resistant policies in 2010 and 2011 causes one to speculate as to whether the Court is tacitly allowing its own respect to be diminished and its precedent to be resisted. The answer to this question is beyond the scope of my research, but its implications are obvious and fairly dire.

In sum, my findings serve to show that state legislatures are under a wide variety of pressures and influences when they produce policy. There are a variety of theories which explain when exactly policy is produced, but there is a general consensus that constituent demands and governmental factors are overwhelmingly important in determining policy outcomes. In terms of abortion politics, my analysis has demonstrated that this is indeed found to be the case. Abortion politics are an excellent resource to study the relationship between state legislatures and the Supreme Court. Any rulings by the Supreme Court command respect in order to have any real, pragmatic effect. When rulings are controversial such as the case with abortion politics, then that respect may be drawn into question. When an entity such as religion draws equal respect that the Court draws, then the respect for the Court may be diminished even further. These conditions then result in

the resistance of the controversial case law, and this is exactly the case in unprecedented numbers of restrictive abortion regulations passed by state legislatures in 2010 and 2011.

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