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The Supreme Court and Morality Policy Adoption in the American States

The Impact of Constitutional Context

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Morality policy studies are generally constructed around the theoretical perspective of democratic responsiveness, whereby factors such as religious affiliation of citizens, public opinion, and partisanship affect adoption. The author expands morality policy theory to include the U.S. Supreme Court. She creates a measure of the “constitutional context” state legislators are faced with when debating morality policy proposals and develops a series of hypotheses regarding its effect on morality policy adoption. She tests these hypotheses by employing an event history model of state abortion policy adoptions from 1973 to 2000. The results indicate that the constitutional context has a significant effect on abortion policy adoption; however, its effect is conditioned by the state political environment.

Keywords: *Supreme Court; morality policy; state legislatures*

With its power of judicial review, the U.S. Supreme Court has a profound effect on the policy-making environment in the American states. As Canon and Johnson (1999, 199) noted, “The Court’s exercise of judicial review of state and local laws is its most important and most often used policy-making tool in modern times.” While this is potentially important for any policy, it is particularly important for morality policies, which codify values into law (Meier 1994; Mooney and Lee 1995; Gormley 1986; K. B. Smith 2001). Due to the constitutional issues morality policies raise regarding personal liberties such as freedom of speech and expression, privacy, or the separation of church and state, morality policies are especially likely to be challenged at the highest level of the federal judicial system.¹

The Supreme Court has been particularly active in the past several decades in its review of morality policies. Abortion, perhaps the most hotly contested morality policy to date, was the subject of more than twenty-five opinions issued by the Supreme Court between 1973 and 2000. Other morality policies have also frequented the docket of the Court numerous times. For example, the Supreme Court has heard more than fifteen cases dealing with the separation of church and state since its controversial decision banning organized school prayer (*Engel v. Vitale* 1962). In addition, more than ten opinions have been issued regarding obscenity and adult entertainment businesses.

Despite the active role the Supreme Court has played regarding morality policies, no study to date has investigated the effect of the Supreme Court on morality policy adoption. Indeed, as Canon (1992, 646) pointed out, “Although subject to frequent speculation, questions about the catalytic role of Supreme Court decisions have not been empirically researched.” In this article, I extend morality policy theory by explicitly incorporating the role of the Supreme Court and how it may interact with the state political environment to affect morality policy adoption. I introduce a typology of “constitutional contexts” that characterizes the state policy-making environment when morality policies are under consideration. I then develop a series of hypotheses regarding its effect on morality policy adoption, and test these hypotheses by employing an event history model of state abortion policy adoptions from 1973 to 2000. The results indicate that the constitutional context has a significant effect on abortion policy adoption; however, its effect is strongly conditioned by the state political environment.

The Study of Morality Policies

Morality policies, which some refer to as social regulatory policies or culture war issues, include a broad range of policies that are fundamentally similar because they elicit support or opposition based largely upon

individuals' core values. Such policies are characterized as a debate over first principles where at least one group involved portrays an issue in terms of morality or sin and uses moral arguments to support a policy position (Gormley 1986; Meier 1994; Mooney and Lee 1995; Haider-Markel and Meier 1996; Mooney 2001). Examples of morality policy issues include abortion, gay rights, gambling, capital punishment, sex education, pornography, physician-assisted suicide, school prayer, and posting the Ten Commandments.

Following Lowi's (1972) insight that different types of policies lead to different types of political activity, an important endeavor of morality policy scholars has been to delineate the characteristics of morality policies and how those characteristics affect political considerations. A key question asked in early studies of morality policies was, How might the characteristics of morality policies differ from economic policies and, in turn, how might these differences affect the policy-making process (e.g., Tatalovich and Daynes 1998; Meier 1994; Nice 1992; T. A. Smith 1975; Mooney and Lee 1995)?

Morality policy scholars have shown that the characteristics of morality policies differ in important ways from economic policies. In addition to debate centering around first principles or core values, morality policies are technically simple, highly salient, and have a relatively higher level of citizen participation (Mooney and Lee 1995; Haider-Markel and Meier 1996; Meier 1994, 2001; Gormley 1986; Carmines and Stimson 1980). This, in turn, has been theorized to alter the politics surrounding morality policy issues. Namely, morality policy is expected to engender a greater degree of democratic responsiveness from elected officials than nonmorality policies. These highly salient, nontechnical policies make it more difficult for politicians to avoid public scrutiny, thus forcing them to respond in a manner that is more consistent with public demands than compared to less salient, highly technical policies. Mooney (2001, 10) noted that this may be either "out of a sense of democratic duty or electoral self-interest."

The focus on democratic responsiveness as a theoretical construct to study morality policy adoption has led scholars to examine the effects of traditional variables (e.g., socioeconomic indicators) that have typically been important predictors of state policy adoption, in addition to variables that measure citizens' values. The results of these studies have been fairly consistent and show that the adoption of morality policies is not driven by socioeconomic variables, such as state wealth or urbanization (e.g., Mooney

and Lee 1995; Pierce and Miller 2001; Haider-Markel and Meier 1996). Rather, morality policy adoptions are related to factors that reflect the distribution of citizens' values (such as religious forces), public opinion, salience, and political variables such as the party affiliation of elected officials or electoral competition (e.g., Mooney and Lee 1995; Haider-Markel and Meier 1996; K. B. Smith 2001; Norrander and Wilcox 2001; Haider-Markel 2001).

Morality Policy and the Supreme Court

Despite its high level of involvement in this policy area, existing studies have not fully incorporated the Supreme Court in quantitative studies of state policy making. Several studies do, however, examine the impact and/or implementation of state policies following a Supreme Court ruling, primarily through the use of descriptive analyses. The focus of these studies varies, as do their findings. For example, Rosenberg (1991) assessed the impact of *Roe v. Wade* by examining changes in the provision of abortion. Noting the rise in abortions performed prior to *Roe* and the resistance of most hospitals in the country to perform abortions following *Roe*, Rosenberg claimed that "the Court is far less responsible for the changes that occurred than most people think" (201).

Glick's (1994) examination of state right-to-die laws and the *Cruzan* decision is another example of a descriptive analysis of change following a Court decision. Unlike Rosenberg (1991), however, Glick focused on state reaction to the Supreme Court ruling. Glick found that after *Cruzan* there was an increase in right-to-die legislation, primarily through amending existing laws, and a shift in the content of the laws to comply with the ruling. Glick concluded that his findings suggest the need to "include Supreme Court decisions . . . in the study of state policy innovation" (221).

Similarly, Canon and Johnson (1999, 125) examined the reaction of officeholders to judicial decisions, noting that "researchers have directed most of their attention to congressional reactions to Supreme Court policies; they have seldom examined how state legislatures react to judicial policies." Their discussion describes ways legislatures have attempted to limit the effect of a Court decision by adopting laws that work around the ruling or do not directly conflict with a decision (e.g., requiring a minute of silence for meditation at the beginning of the school day rather than a prayer).

Practically every piece of scholarship on morality policies includes a discussion of relevant U.S. Supreme Court decisions.² These discussions of the Court, however, typically provide background information about the policy of interest or descriptive analyses. Below, I develop a theory of the Supreme Court's role in state policy making that moves the Court from the periphery to the center of theoretical and empirical considerations involving morality policy adoption. More specifically, I examine how Supreme Court decisions influence the policy-making environment in state legislatures, thus affecting the adoption of morality policies.

Incorporating the Supreme Court into a Theory of Morality Policy Making

Given the frequency with which the Court is involved in disputes over morality policies, state legislators are likely to be attentive to the Supreme Court when weighing adoption decisions. Glick (1970, 275) noted that judicial review "establishes a direct policy-making link between courts and other officials." Similarly, Vanberg (2001, 348) stated, "Legislative behavior may be conditioned by anticipation of constitutional review." The Supreme Court's power of judicial review thus creates what I refer to as "constitutional contexts," which are based on the known or assumed future position of the Supreme Court regarding a policy proposal. The constitutional contexts are expected to have a direct effect on morality policy adoption.

Four Constitutional Contexts

There are four types of constitutional contexts that affect the state policy-making environment when legislators debate morality policy issues. I term the contexts *unknown*, *unconstitutional*, *constitutional*, and *suspect*.

Unknown. When legislators consider a morality policy for adoption and there is no Supreme Court decision that addresses the policy, the constitutional context is *unknown*. In this context, there is no clear indication from the Court regarding the constitutionality of the policy under consideration. Legislators debating policy adoptions in this context are essentially working with a clean slate, rather than within or around an existing Court ruling.

Constitutional. The highly contentious nature of morality policies often results in a Court challenge and an official declaration of the policy as either constitutional or unconstitutional by the Supreme Court. Once the Court has declared a policy is *constitutional*, states

that are considering adoption of the policy are doing so in a policy-making environment free from constitutional conflict. Adoption of a policy in this context has a greater sense of legitimacy and permanence since it has already received the Supreme Court's blessing.

Unconstitutional. When the context is *unconstitutional*, the language of the Court's opinion is clear and adoption of a blatantly unconstitutional policy is largely symbolic. In this context, the opinion of the Court is unambiguous and leaves no room for alternative interpretations.

Suspect. A fourth context exists that is, perhaps, not as obvious as the other three. In some opinions, the Court officially declares that a law violates the Constitution, but, either through implicit or explicit wording, indicates that certain modifications to the policy might receive a different hearing from the Court. Even though the official declaration by the Court is that the law is unconstitutional, when one reads the opinion, there appear to be loopholes. States could later use those loopholes to adopt a slightly modified version of the policy that would still meet their objective and also have a chance at passing constitutional muster in the future. In other words, when the language in the decision has seemingly left the door open for states to modify a policy and try again for a new hearing before the Court, legislators are working in a policy-making environment where the constitutional context is *suspect*.

Applying the Constitutional Contexts: Postviability Care Laws

To illustrate the constitutional contexts and their importance to state policy making, I provide a short discussion of Pennsylvania's attempt to adopt a postviability care law, the response of the Supreme Court, and the action taken by other states regarding this contentious abortion policy.

In 1974, Pennsylvania legislators passed the Pennsylvania Abortion Control Act, which included a provision that required a physician to exercise the same care to preserve a viable fetus' life and health as would be required if the fetus had been intended to be born alive. This type of provision is known as a postviability care law. At the time Pennsylvania wrote its postviability requirement, no Court opinion existed on this facet of abortion policy. Hence, when the legislature debated the provision, the constitutional context of the policy was unknown.

The Act was challenged, and in 1979, the U.S. Supreme Court decided in *Colautti v. Franklin* that

Pennsylvania's postviability care requirement was unconstitutional. Though Pennsylvania's law was officially deemed unconstitutional, the language employed by the Court seemed to indicate that if states made it clear that the woman's health superseded that of the fetus, such laws might be considered differently. The Court wrote in *Colautti v. Franklin*,

The standard-of-care provision is likewise impermissibly vague. It is uncertain whether the statute permits the physician to consider his duty to the patient to be paramount to his duty to the fetus, or whether it requires the physician to make a "trade-off" between the patient's health and increased chances of fetal survival. Where conflicting duties of such magnitude are involved, there must be greater statutory precision before a physician may be subjected to possible criminal sanctions.

Therefore, the context in which states considered postviability laws after the *Colautti* decision is considered suspect because the Court seemed to give states a way to make a standard-of-care provision constitutional—by writing the law to make it clear that the physician's primary duty is to the woman.³ Some states responded by adopting postviability care laws that explicitly stated that the life and health of the woman superseded that of the fetus. Others adopted laws that required a second physician to be present to assume care of the fetus, while the care of the woman would be the primary physician's responsibility. Within a few years, this law made its way to the Supreme Court where the Court decided in *Planned Parenthood v. Ashcroft* (1983) that postviability standard of care laws requiring the presence of a second physician were constitutional. After the *Planned Parenthood* decision, state legislatures debating the adoption of this policy would do so knowing the Court had deemed it constitutional.

The Direct Effect of Constitutional Context on Morality Policy Adoption

In addition to factors such as constituency opinion, interest group and party pressures, and personal preferences, we should expect state legislators to consider the constitutional context, as dictated by the controlling Supreme Court opinion, when making adoption decisions. Even when the Court's decisions are unpopular or individuals disagree with them, the Court's "authority generally continues to be accepted" (Petrick

1968, 6). Indeed, as Petrick (1968, 6) noted, "the Supreme Court and its chief legitimizing technique—judicial review—have become valid institutions in the American political process." In addition, in democracies where the Supreme Court has a high level of public support, such as in the United States, legislators are generally expected to respect the integrity of the Court (Vanberg 2001).

I expect morality policy adoption to be most likely when conflict with the Constitution is not present. This occurs in two contexts: unknown and constitutional. In the unknown context, legislators may anticipate Court involvement in the future, but it is not certain, and therefore there is no obvious conflict with the Constitution. When the context is constitutional, the Court has given states the green light for adoption. Constitutionality removes conflict with the Court and lends a certain form of legitimacy and permanency to a policy.

Adoption in the suspect context almost ensures a challenge, thus resulting in the Court's having another opportunity to strike down the law or deem it worthy of constitutionality. Vanberg (2001, 348) asserted that justices "may attempt to anticipate how legislative majorities will respond to the court's ruling and these anticipations can shape judicial behavior." Some legislators may pursue such policies, therefore, if they have been given guidance by previous Court decisions regarding modification of the existing policy or if there is ambiguous language in the opinion. Policy adoption in this context, therefore, is expected to be somewhat less likely compared to the unknown and constitutional contexts, where no conflict with the Court exists.

Finally, adoption is expected to be least likely to occur when the context influencing the policy-making environment is unconstitutional. Demand for unconstitutional policies is expected to be low, and legislators are unlikely to be advocates for adopting policies that the Supreme Court has clearly declared unconstitutional. Adoption in the unconstitutional context will almost certainly be accompanied by high fiscal and electoral risks that elected officials will want to avoid. It would thus be reasonable to expect unconstitutional morality policies would rarely, if ever, enjoy serious debate in the state houses, much less adoption. Scholars have noted that legislative non-compliance with judicial decisions has the strong potential to create a negative public backlash in democracies, thus prompting "legislative majorities to respect judicial decisions as well as the institutional integrity of a court" (Vanberg 2001, 347; see

also Vanberg 2000; Leuchtenburg 1995). In addition, the Court may strike down a law, but has no real means to enforce or implement its decision (Rosenberg 1991). This fact serves to emphasize the reliance of the Court on public support as a means to pressure the legislature to act in accordance with its decisions. Therefore, despite the fact that *across the states* demand for unconstitutional policies is likely to be low and the political and fiscal risks high for elected officials, within *particular states* public support for morality policies is expected to be high and to outweigh secular concerns of constitutionality, thus resulting in the adoption of unconstitutional morality policies.

These expectations regarding the direct effect of constitutional context on morality policy adoption are summarized in Hypothesis 1:

Hypothesis 1: Morality policy adoption will be most likely when the context is unknown or constitutional, and least likely when the context is unconstitutional.

Testing the Theory: Abortion Policy Adoption in the States

Abortion is, perhaps, the quintessential morality policy. For most people, it is an issue that is highly informed by religious values, it is technically simple, and remains as salient today as it was more than thirty years ago following the *Roe* decision. Despite the high level of salience, this contentious morality policy has maintained over several decades, there is a relative paucity of research examining abortion policy adoption in the American states. As McFarlane and Meier (2001, 96) noted, “after the *Webster* decision in 1989, research on state abortion policy burgeoned. For the most part, however, this work did not analyze the determinants of abortion policy.”⁴

The few studies that have examined abortion policy adoption have yielded important insights into what drives abortion policy making in the states. For example, an increase in female legislators appears to decrease the number of abortion policy adoptions in the states (Hansen 1993; Berkman and O’Connor 1993). In addition, when public opinion is split or slightly favors one side, prolife interest groups are more likely to impact policy (Cohen and Barrilleaux 1993). Other scholars have focused on parental consent and public funding policies, but the findings regarding the determinants of adoption of these two abortion policies have been mixed (Wetstein 1996; Norrander and Wilcox 2001; McFarlane and Meier 2001).

In this article, I contribute to this body of knowledge in two important ways. First, I incorporate the Supreme Court into the empirical model by testing both the direct and mediating effects of the constitutional context on abortion policy adoption. Second, I employ a longitudinal design (specifically event history) to examine state abortion policy adoptions for the entire post-*Roe* period. In contrast, most studies of abortion policy employ cross-sectional designs or examine a relatively short time period.⁵ Given the frequency with which states adopt abortion regulations, it seems particularly important to capture changes in state sociopolitical environments to assess the determinants of abortion policy adoption.

Dependent Variable

The dependent variable for this analysis is based on the adoption dates of five alternative (restrictive) abortion policies across the states for the period from 1973 to 2000.⁶ They are (1) parental consent requirements, (2) detailed informed consent laws, (3) postviability care laws requiring use of the technique most likely to save the life of the fetus, (4) twenty-four-hour wait laws, and (5) spousal consent laws. These are some of the most widely debated abortion policies in the states and all have been the subject of Supreme Court decisions.⁷ There were a total of eighty-nine *original* adoptions of the five policies from 1973 to 2000.⁸

Independent Variables

Constitutional context. Based on the relevant Supreme Court decisions, for each specific policy I coded each state-year from 1973 to 2000 as either *Unknown*, *Unconstitutional*, *Suspect*, or *Constitutional* to indicate the constitutional context.⁹ Based on this information, I then created a series of dummy variables to represent the four constitutional contexts. As hypothesized above, abortion policy adoption is expected to be most likely in the unknown and constitutional contexts, and least likely in the unconstitutional context.

Elected officials. Past research has consistently shown that the party identification of elected officials strongly influences morality policy making (Haider-Markel 2001). As one would expect, the findings suggest that Republicans are generally more supportive of restrictive or conservative morality policies (e.g., anti-gay-rights policies, abortion regulations, posting the Ten Commandments), and tend to oppose expansive or liberal morality policies (e.g., civil unions, stem-cell research, emergency contraception). Democrats, on the other hand, are more likely to support expansive or

liberal morality policies and oppose those that are restrictive. I therefore include *%Republican* as an independent variable in the analysis, measured as the average percentage of Republicans in each chamber of the state legislature. The variable *%Republican* is expected to have a positive effect on the adoption of state abortion policies.

Female representation. In addition to partisan polarization, there is gender polarization on policy issues in the legislature as well (Bratton and Haynie 1999). Evidence suggests that female legislators are more ideologically liberal and thus more apt to oppose restrictive morality policies than their male counterparts (Welch 1985; Burrell 1994; Berkman and O'Connor 1993). Furthermore, female Democratic legislators are more prochoice than all other members of the state legislature, and Republican female legislators are more prochoice than their male Republican counterparts (Berkman and O'Connor 1993; Swers 1998). This being the case, I also include *%Female*, measured as the average percentage of women in the state legislature. *%Female* is expected to have a negative effect on abortion policy adoption.

Mass public. Public opinion has long been shown to be related to public policy outcomes, both at the national and state levels (Page and Shapiro 1992; Wlezien 1995; Stimson, MacKuen, and Erikson 1995; Erikson, Wright, and McIver 1989; Brace et al. 2002). Based on this research, I include the Brace et al. (2002) measure of state-level abortion opinion, labeled *Public Opinion*.¹⁰ This measure is calculated from General Social Survey (GSS) data, and is based on an index of six GSS items that measure abortion attitudes. The final measure is created by calculating the average index value for each state over the period 1973 to 2000. The variable has a range of 0 to 6, and is coded so that the higher the score, the greater the opposition to abortion in the state.¹¹ As constructed, this variable is expected to have a positive effect on restrictive abortion policy adoption.

Interest group effects. Research on interest group activity and morality policy adoptions has not been extensive or uniform, yet the existing evidence suggests that interest groups often have an important effect on policy decisions (Haider-Markel 2001; Haider-Markel and Meier 1996). As policy advocates, or as policy adversaries, interest groups are expected to influence the adoption of morality policies by organizing grassroots support for lobbying efforts, and acting as important information providers to state legislators (Norrand and Wilcox 2001; Berkman and O'Connor 1993; Hansen 1993; Meier and McFarlane 1993; McFarlane and Meier 2001; Hojnacki and Kimball 1999; Wright 1996; Fowler

and Shaiko 1987). Not only can they provide information regarding policy adoptions in other states, they may also reduce uncertainty by predicting how the Court will view a policy.

Two religious groups are expected to play a critical role in organizing their members around conservative or restrictive morality policy issues, and are thus utilized as proxy measures of prolife interest group potential. Fabrizio (2001) showed that the Roman Catholic Church has evolved into an active and powerful interest group on morality policy issues. The Christian Right has also become a highly organized force on morality policy issues by mobilizing Protestant Fundamentalist churches (Wilcox 1996). Accordingly, I include *%Fundamentalist*, measured as the percentage of evangelical and Mormon adherents of the state population, and *%Catholic*, measured as the percentage of Catholic adherents of the state population.

I also include a measure of prochoice interest group potential, *%Pro-Choice*, which was created by (1) estimating an individual level model of prochoice activism from GSS data and then (2) applying the coefficient estimates to available census data for each state and year across the period 1973 to 2000.¹² The first two interest group variables, *%Fundamentalist* and *%Catholic*, are expected to be positively related to abortion policy adoption. The third interest group variable, *%Pro-Choice*, is expected to be negatively related to abortion policy adoption.

Party of the governor. As with state legislators, governors may also be influenced by party pressures or their personal values when considering abortion policies. The governor, however, answers to a statewide constituency at election time, whereas state legislators represent a smaller, more homogeneous group of constituents (Barilleaux and Berkman 2003). Thus, while state legislators may have the freedom to express a more intensely partisan view regarding morality policies, the governor is likely to avoid conflict by distancing herself from controversial proposals. Consequently, I include *Republican Gov*, coded as a dichotomous variable with Republican governors coded as one and Democratic governors coded as zero. I expect this variable to have a modest effect on abortion policy adoptions.¹³

Neighbor adoptions. State policy adoptions are often influenced by a neighboring state's adoption (see especially Walker 1969; Gray 1973). This diffusion effect is expected due to learning, emulation, competition, or even pressure exerted by citizens who become aware that a neighboring state adopted a desirable policy. Therefore, I include *Neighbor Adopt*, measured as the percentage of bordering states that adopted the policy in the previous year.

This variable is expected to have a positive effect on the adoption of restrictive abortion policies.

Estimation Technique

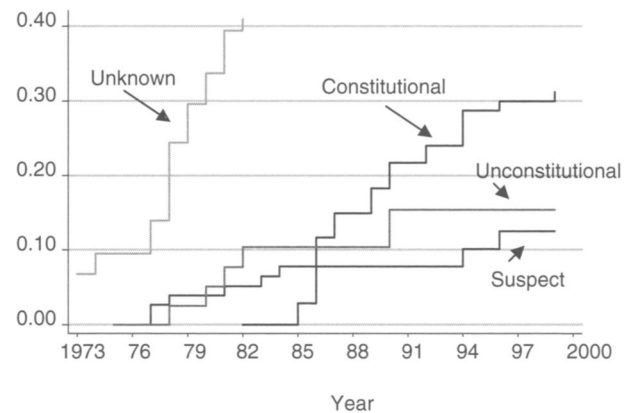
To examine the determinants of abortion policy adoption, I employ an event history model. In brief, event history analysis refers to a variety of statistical procedures utilized to analyze the time to the occurrence of an event (Cleves, Gould, and Gutierrez 2002; Box-Steffensmeier and Jones 1997). The event of interest in this study is the adoption of restrictive state abortion policies covering the post-*Roe* time period from 1973 to 2000.¹⁴ The first adoptions of each policy are dropped from the analysis as this study does not focus on policy invention but, rather, the influences on subsequent adoptions.¹⁵ A total of eighty adoptions remained.

The type of model utilized is a repeated events analysis, where each state is at risk of adopting up to five different abortion policies during the time of study (Box-Steffensmeier and Zorn 2002). Duration models for repeated events raise some unique estimation concerns. First, in some repeated event data the baseline hazard rate may differ across event types (Box-Steffensmeier and Zorn 2002). Estimation of a stratified model showed no significant differences in the baseline hazard rate across the five abortion policies. A second important issue to consider is whether the effects of the independent variables should be expected to vary across event occurrences (Box-Steffensmeier and Zorn 2002). In this analysis, the data are pooled to gain more efficient estimates, as there are no expectations that the covariates should vary across event occurrences (i.e., different types of abortion policies). A final concern when estimating a repeated events model is error correlation within units (i.e., states) across different event types (see Box-Steffensmeier and Zorn 2002, 1071). To deal with the potential problem of error correlation within units, I estimate robust standard errors that account for clustering within states (Therneau 2000; Box-Steffensmeier and Zorn 2002). I utilize a parametric model, the Weibull regression model, to examine the determinants of abortion policy adoption in the states.¹⁶

Results

Figure 1 illustrates the Nelson-Aalen cumulative hazard estimates by constitutional context. The figure shows that the cumulative hazard (i.e., the risk of adoption) was greatest when the context was unknown. From the mid-1970s to early 1980s, there was little

Figure 1
Nelson-Aalen Cumulative Hazard Estimates,
by Constitutional Context



Note: Each line represents an estimate of the Nelson-Aalen Cumulative Hazard of abortion policy adoption in each context.

discernable difference in the cumulative hazard estimates for the suspect and unconstitutional contexts. The risk of abortion policy adoption appears to be slightly greater in the unconstitutional context compared to the suspect context after the early 1980s.

As indicated in the graph, the Supreme Court either struck down state laws regulating abortion or issued ambiguous (i.e., suspect) decisions until the early 1980s. At that point, the risk of adoption became noticeably greater when the context was constitutional compared to when the context was suspect or unconstitutional. A Weibull model is employed to determine if the differences between the risk of adoption in the four constitutional contexts is statistically significant when control variables are included.

The results of the multivariate model are partially supportive of Hypothesis 1 and the cumulative hazard estimates displayed in Figure 1. Adoption was hypothesized to be most likely to occur in the unknown and constitutional contexts due to a lack of constitutional conflict, and was expected to be more likely to occur in the suspect context than in the unconstitutional context. As Table 1 shows, abortion policy adoption was significantly more likely to occur in the *Unknown* context than in the *Unconstitutional* and *Suspect* contexts.¹⁷ The results show that the risk of abortion policy adoption is not statistically different between the *Unknown* and *Constitutional* contexts, as expected.

The variables *%Republican*, *%Catholic*, *Public Opinion*, and *Neighbor Adopt* had a statistically significant positive effect on abortion policy adoption, holding all other variables constant. Two variables

Table 1
Weibull Regression Results for the Impact of Constitutional Context on
Abortion Policy Adoption in the American States, 1973-2000

Variable	Coefficient (Full Model)	Coefficient (Reduced Model)	Percentage Change in the Hazard Rate
%Female	-0.05* (.03)	-0.06* (.04)	-50
%Republican	0.03*** (.01)	0.03*** (.01)	54
Public Opinion	1.12** (.60)	1.21** (.59)	89
%Catholic	0.04*** (.01)	0.04*** (.01)	53
%Pro-Choice	-0.48* (.35)	-0.48** (.35)	-37
Neighbor Adopt	2.48*** (.77)	2.53*** (.78)	69
Republican Gov	-0.003 (.28)	—	—
%Fundamentalist	0.006 (.01)	—	—
Unknown	(reference category)	(reference category)	(reference category)
Unconstitutional	-1.61*** (.46)	-1.58*** (.46)	-36
Suspect	-1.93*** (.47)	-1.91*** (.45)	-37
Constitutional	-0.54 (.48)	-0.51 (.48)	-16
Log-likelihood	-217.86	-217.97	—
χ^2 (Wald)	84.05***	80.13***	—
<i>N</i> (adoptions)	4,918 (80)	4,918 (80)	—

Note: Coefficients are reported in the table with robust standard errors, adjusted for clustering by state, in parentheses. Unknown *N* (adoptions) = 1,314 (49); Unconstitutional *N* (adoptions) = 1,366 (9); Suspect *N* (adoptions) = 1,292 (7); Constitutional *N* (adoptions) = 946 (15). * $p < .10$. ** $p < .05$. *** $p < .01$ (one-tailed test).

had a statistically significant negative effect on abortion policy adoptions in the states. As %*Female* increased, the risk of abortion policy adoption decreased, holding all other variables constant. Similarly, an increase in %*Pro-Choice* resulted in a reduction in the risk of abortion policy adoption.

Two variables, %*Fundamentalist* and *Republican Gov*, were not statistically significant. Perhaps the fragmented interests of the Christian Right, compared to Catholic groups that focus almost exclusively on abortion, help explain why they are less effective at influencing abortion policy adoption. The model is reestimated after dropping these variables and results of the reduced model are displayed in the third column of Table 1.

The fourth column in Table 1 displays the percentage change in the hazard of abortion policy adoption associated with a one standard deviation increase in each independent variable. The results show that a one standard deviation increase in *Public Opinion* increases the hazard of abortion policy adoption by 89 percent, holding all other variables constant. A one standard deviation increase in %*Republican* and %*Catholic* results in a similar increase in the hazard of adoption of 54 and 53 percent, respectively. Hence, the hazard of abortion policy adoption in a state legislature comprised of approximately 56 percent Republicans compared to a state legislature comprised of approximately 38 percent Republicans would be 54 percent greater, holding all other variables constant. The variable

Neighbor Adopt represents the percentage of bordering states that adopted an abortion policy in the previous year. A one standard deviation increase in *Neighbor Adopt* increases the hazard of abortion policy adoption by 69 percent, holding all other variables constant.

Two variables, %*Female* and %*Pro-Choice*, had a statistically significant negative effect on abortion policy adoption. A one standard deviation increase in %*Female* decreases the hazard of abortion policy adoption by 50 percent. Hence, the hazard of abortion policy adoption in a state legislature comprised of approximately 23 percent female legislators compared to a state legislature comprised of approximately 14 percent female legislators would be 50 percent less, holding all other variables constant. A one standard deviation increase in %*Pro-Choice* yields a decrease in the hazard of abortion policy adoption of 37 percent, holding all other variables constant.

The Conditional Effect of Constitutional Context on Morality Policy Adoption

Thus far, the results indicate that states are significantly more likely to adopt an abortion policy when conflict does not exist with the Court (i.e., in the unknown and constitutional contexts) compared to when conflict does exist with the Courts (i.e., in the suspect and unconstitutional contexts). These results lend strong support to the contention that the policy-making process in state legislatures is influenced by

the Supreme Court, in addition to more conventional indicators of the state political environment. In this section of the article, I test the possibility that the constitutional context may also be expected to affect morality policy making by mediating the effect of political variables on policy adoption. I consider the impact of two important characteristics of elected officials: partisanship and gender.¹⁸

As noted above, the existing literature suggests that Republican legislators are more likely to favor restrictive abortion policies than Democrats, and female legislators (both Democrats and Republicans) are more likely to oppose restrictive abortion policies compared to their male counterparts (e.g., Haider-Markel 2001; Welch 1985; Burrell 1994; Berkman and O'Connor 1993). In light of the previous analysis, however, we might expect the degree of polarization on morality policies to vary across the constitutional context. Specifically, it is plausible to expect that both partisan and gender polarization will be most likely when legislators' considerations are free of constitutional conflict. This is the case in two specific contexts—unknown and constitutional. In each of these contexts, legislators are free to rely on partisan or personal preferences to guide their decisions without the added consideration that adoption of a given policy may violate the Constitution.

When the context is unconstitutional or suspect, partisanship and gender are expected to have a smaller effect on morality policy adoption, due to conflict with the Constitution. In the unconstitutional context, adoption is explicitly in conflict with the Supreme Court. Likewise, when debating a morality policy that is of suspect constitutionality, the potential for constitutional conflict will likely inhibit many legislators from voting their preference. Legislators are expected to uphold the U.S. Constitution, which may lead them to defer to the Court despite their personal predilection for a policy. In addition, adoption of a policy that is in conflict with a Court decision may result in expensive legal battles and will likely anger voters who support the Court decision as well as those who are ambivalent regarding the policy. Thus, adoption of a policy that is in conflict with the Supreme Court may have electoral repercussions for legislators. These expectations are summarized below in Hypothesis 2:

Hypothesis 2: The effect of partisan control and gender on morality policy adoption is expected to be greater when constitutional conflict is absent (unknown and constitutional contexts), than when constitutional conflict is present (unconstitutional and suspect contexts).

To test Hypothesis 2, I first collapsed the four constitutional contexts into a dichotomous variable that summarizes the policy-making environment legislators are working in when considering adoption of a morality policy. This variable, labeled *No Conflict*, takes on a value of one in either the constitutional or the unknown contexts, as the Supreme Court has either not issued a decision regarding the policy (unknown context) or it has deemed the policy constitutional (constitutional context). In contrast, this variable is equal to zero when the Supreme Court has either explicitly declared that the policy in question violates the Constitution (unconstitutional context), or has issued a decision that is vague and potentially leaves some room for states to maneuver (suspect context). Hypothesis 2 can then be formally tested by examining the coefficients for the following variables, which were constructed based on the values of *No Conflict*:

$\%Female (No\ Conflict) = \%Female$
when *No Conflict* = 1, and 0 otherwise,

$\%Female (Conflict) = \%Female$
when *No Conflict* = 0, and 0 otherwise,

$\%Republican (No\ Conflict) = \%Republican$
when *No Conflict* = 1, and 0 otherwise,

$\%Republican (Conflict) = \%Republican$
when *No Conflict* = 0, and 0 otherwise.

As shown in Table 2, there is strong support for Hypothesis 2. This can clearly be seen by an inspection of the coefficients representing the conditional effects of *%Female* and *%Republican*. As anticipated, the effect of both *%Female* and *%Republican* on abortion policy adoption is strong and statistically significant when there is no conflict with the Court. The estimates show that a one standard deviation increase in *%Female* is expected to result in a 77 percent decrease in the risk of abortion policy adoption when constitutional conflict is absent.

Similarly, the coefficient estimates indicate that when constitutional conflict is absent, a one standard deviation increase in *%Republican* would result, on average, in an increased risk of adoption of about 92 percent.

In sum, these results clearly show that Supreme Court decisions can potentially have a significant effect on the policy-making environment in the states. Not only does the presence of conflict directly affect policy makers' motivation to adopt controversial morality policies, but the prospect of challenging the Supreme Court fundamentally alters the importance of traditional political cleavages on abortion policy outcomes as well.

Table 2
Weibull Regression Results for an Interactive
Model of Abortion Policy Adoption in the
American States, 1973-2000

Variable	Coefficient	Percentage Change in the Hazard Rate
%Female (Conflict)	0.01 (.04)	10
%Female (No Conflict)	-0.09** (.04)	-77
%Republican (Conflict)	-0.01 (.02)	-23
%Republican (No Conflict)	0.04*** (.01)	92
No Conflict	0.86* (.57)	68
Public Opinion	1.12** (.61)	78
%Catholic	0.04*** (.01)	53
%Pro-Choice	-0.50* (.35)	-38
Neighbor Adopt	2.62*** (.74)	76
Log-likelihood	-215.87	—
χ^2 (Wald)	89.79***	—
<i>N</i> (adoptions)	4,918 (80)	—

Note: Coefficients are reported in the table with robust standard errors, adjusted for clustering by state, in parentheses. Unknown *N* (adoptions) = 1,314 (49); Unconstitutional *N* (adoptions) = 1,366 (9); Suspect *N* (adoptions) = 1,292 (7); Constitutional *N* (adoptions) = 946 (15).

* $p < .10$. ** $p < .05$. *** $p < .01$ (one-tailed test).

Conclusion

Legislative debates about morality policies such as abortion, gay marriage, posting the Ten Commandments, and others often motivate citizens to express their opinion about these highly salient, nontechnical policies. Citizen opinion is often expressed via demonstrations on the Capitol steps, through individual phone calls, letters, or e-mails directly to legislators, as well as through organized efforts by interest groups. Many scholars have taken note of this often intense involvement of the citizenry in morality policy debates and utilize democratic responsiveness as a theoretical construct for studying the adoption of morality policies (e.g., Norrander and Wilcox 2001; K. B. Smith 2001; Mooney and Lee 1995).

Morality policies, however, often raise important constitutional questions that are ultimately answered by the U.S. Supreme Court. Broadly, these questions most often involve First Amendment and privacy issues. In the past several decades, for example, the Supreme Court has issued multiple decisions regarding abortion, school prayer, posting the Ten Commandments, the death penalty, gay rights, adult entertainment, and physician-assisted suicide. Accordingly, some scholars have focused on the Court's exercise of judicial review of morality policies and how states react to or implement a

Supreme Court decision (e.g., Glick 1994; Canon and Johnson 1999; Rosenberg 1991).

In this article, I examined how Supreme Court decisions influence the policy-making environment in state legislatures, in addition to variables relevant to the democratic responsiveness thesis. Given the extensive involvement of the Court in this genre of policy, it seems particularly important that empirical models examining the determinants of morality policy adoption include the impact of Court decisions on state legislative policy making. The findings suggest that states are not simply passive recipients of Court policy to which they respond; nor do legislators simply respond to constituent demand or follow personal preferences on these highly contentious policies. Three important points follow.

First, the Supreme Court plays a direct role in abortion policy adoption in state legislatures. Morality policy studies typically address the importance of Supreme Court decisions, but until now, a direct effect of Court decisions on morality policy adoption had not been demonstrated. States are most likely to adopt abortion policies prior to Court involvement and after the Court has deemed a policy constitutional. That states are more likely to adopt constitutional abortion policies than unconstitutional or suspect abortion policies is not surprising. More interesting, perhaps, and meriting further study, is the rapid diffusion of abortion policies prior to Court involvement. In several instances, numerous adoptions were made by states while a policy was under consideration by the Court. Rather than wait to see if the Court decided a policy was constitutional, states adopted while the constitutional context was unknown. Perhaps legislators wanted to take advantage of the opportunity to adopt prior to the Court decision in anticipation of an unconstitutional ruling, or perhaps states were attempting to send a clear message to the Court regarding desire for the policy. While it is difficult to know the motivation of individual legislators in this situation, it is clear that the Court directly affects the adoption of abortion policies.

Second, constitutional context mediates the effect of gender and partisan polarization on abortion policy adoption in the American states. Consistent with previous research, this study shows that legislators' party affiliation and gender, as well as constituent pressure from religious-based groups and others affect decisions in the state houses regarding adoption of morality policies. Party affiliation and gender of legislators, however, is most likely to affect adoption of abortion policies when there is no conflict with the Supreme Court. This indicates that legislators are sensitive to the power of the Court and perhaps reticent to vote

their pure ideological or personal views on this contentious morality policy.

Third, intergovernmental influences on state morality policy making merit additional attention. The effect of intergovernmental action on other areas of state policy has been examined (e.g., unfunded mandates), and morality policy adoption appears to also be affected by

intergovernmental activity. This research shows that state abortion policy adoption is subject to influence by the Supreme Court's power of judicial review, as well as by state-level attributes typically shown to influence morality policy making. Future studies should continue to examine this intergovernmental dimension of state morality policy making.

Appendix

The Supreme Court and Morality Policy Adoption in the American States: The Impact of Constitutional Context

A. U.S. Supreme Court Cases regarding Post-Roe Abortion Laws

Year	State	Case	Ruling	Main Points
1973	GA	Doe v. Bolton (companion case to Roe v. Wade)	7-2	Ruled unconstitutional: requirement that abortion be performed in accredited hospital, requirement for approval by hospital abortion committee, requirement for confirmation of abortion decision of attending physician by two independent physicians, requirement that woman be a Georgia resident.
1975	VA	Bigelow v. Virginia	7-2	Ruled constitutional: organizations from another state may advertise abortion services in another state's newspapers.
1975	CT	Connecticut v. Menillo	9-0	Ruled constitutional: a law stating it is a criminal act for a nonphysician to perform abortions.
1976	MO	Planned Parenthood of Missouri v. Danforth	6-3	Ruled unconstitutional: requirement for spousal consent with emergency clause, parental consent, prohibition of saline amniocentesis after first trimester, requirement that physician exercise professional care to preserve life and health of the fetus. Ruled constitutional: definition of viability as point when fetus is "potentially able to live outside mother's womb, albeit with artificial aid," basic informed consent requirements, reporting and record keeping requirements.
1977	MO	Poelker v. Doe	6-3	Ruled constitutional: state may choose to publicly finance hospitals for childbirth but not for nontherapeutic abortions.
1977	CT	Maher v. Doe	6-3	Ruled constitutional: state Medicaid is not required to pay for nontherapeutic abortions simply because it pays for childbirth.
1977	PA	Beal v. Doe	6-3	Ruled constitutional: state's refusal to extend Medicaid coverage to nontherapeutic abortions is not inconsistent with Title XIX of Social Security Act.
1979	PA	Colautti v. Franklin	6-3	Ruled unconstitutional: requirement for professional care standard if fetus was viable, requirement for abortion technique used that gave fetus best chance of living.
1979	MA	Bellotti v. Baird	8-1	Ruled unconstitutional: court may withhold abortion from a minor whom the court had found to be mature and fully competent, requirement for parental consultation or notification in every instance. Court indicated parental consent with confidential judicial bypass option for mature minors or if abortion was in minor's best interest despite maturity might receive different hearing.

(continued)

Appendix (continued)

1980	NY	Harris v. McRae	5-4	Ruled constitutional: state is not obligated under Title XIX to pay for medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment; Hyde Amendment's funding restrictions constitutional.
1980	IL	Williams v. Zbaraz	5-4	Ruled constitutional: state is not obligated under Title XIX to pay for medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment.
1981	UT	H.L. v. Matheson	6-3	Ruled constitutional: requirement that physician "notify, if possible" the parents or guardian of a minor seeking an abortion.
1983	MO	Planned Parenthood Assn. v. Ashcroft	6-3	Ruled unconstitutional: requirement for second-trimester hospitalization. Ruled constitutional: requirement for a pathology report for all abortions, requirement that a second physician be present during postviability abortions to provide care to the fetus, requirement for minors to secure parental consent with a judicial bypass option.
1983	OH	Akron v. Akron Center for Reproductive Health	6-3	Ruled unconstitutional: requirement for second-trimester hospitalization, blanket parental consent, detailed informed consent, twenty-four-hour wait period, requirement for "humane and sanitary" disposal of fetal remains.
1983	VA	Simopoulos v. Virginia	8-1	Ruled constitutional: second-trimester abortions performed in licensed hospital where "hospital" included outpatient facilities.
1986	PA	Thornburgh v. American College of Obstetrics and Gynecology	5-4	Ruled unconstitutional: requirement for detailed informed consent, requirement for report of extensive information about woman seeking abortion, requirement that same care given to a viable aborted fetus as to a prematurely born infant of same gestational age, requirement for second physician present during postviability abortion to care for fetus with no provision for emergency abortion to be done with only one physician.
1989	MO	Webster v. Reproductive Health Services	5-4	Ruled constitutional: prohibition on use of public funds, employees, or facilities for the purpose of "encouraging or counseling" a woman to have an abortion not necessary to save her life, requirement for viability tests if physician suspects gestational age of twenty-plus weeks.
1990	OH	Ohio v. Akron Center for Reproductive Health	6-3	Ruled constitutional: detailed parental notification and judicial bypass option.
1990	MN	Hodgson v. Minnesota	5-4	Ruled constitutional: two-parent notification requirement if judicial bypass option provided, forty-eight-hour wait after parental notification.
1991	—	Rust v. Sullivan	5-4	Ruled constitutional: prohibition of employees of family planning clinics that receive federal funds under Title X of the Public Health Service Act from any discussion of abortion.
1992	PA	Planned Parenthood of Southeastern PA v. Casey	5-4	Ruled unconstitutional: requirement of spousal notification, requirement for woman to report why she did not notify her husband. Ruled constitutional: requirements for detailed informed consent, twenty-four-hour wait, parental consent with a judicial bypass option, record keeping and reports. Reaffirmed the essential holding of Roe v. Wade, but rejected the trimester framework.

(continued)

Appendix (continued)

1993	—	Bray v. Alexandria Clinic	6-3	Ruled constitutional: antiabortion demonstrations at abortion clinics.
1994	FL	Madsen v. Women's Health Center, Inc.	6-3	Ruled unconstitutional: requirement for blanket ban on "images observable" (placards) outside abortion clinics, prohibition of protestors within three hundred feet around clinic from approaching patients who did not consent to talk, requirement of a three-hundred-foot buffer zone around homes of abortion clinic staff. Ruled constitutional: thirty-six-foot buffer zone around abortion clinic entrances and driveways, noise restrictions.
1997	NY	Schenck v. Pro-Choice Network of Western New York	8-1	Ruled unconstitutional: prohibition of protestors within fifteen feet of any person or vehicle seeking access to or leaving an abortion clinic ("floating buffer zone"). Ruled constitutional: prohibition of protestors from demonstrating within fifteen feet of abortion clinic doorways, entrances, parking lot entrances, and driveways ("fixed buffer zone").
2000	CO	Hill v. Colorado	7-2	Ruled constitutional: unlawful within one hundred feet of a health care facility's entrance to approach within eight feet of another person without that person's consent to pass "a leaflet or handbill to, display a sign to, or engage in oral protest, education, or counseling with that person."
2000	NE	Stenberg v. Carhart	5-4	Ruled unconstitutional: prohibition of partial-birth abortion technique (late-term abortion) unless it was necessary to save the physical life of the woman.

B. Classification of the Four Constitutional Contexts

Five different abortion policies were utilized in the construction of the dependent variable for the statistical analysis. The five policies were parental consent, twenty-four-hour waiting periods, detailed informed consent, postviability care laws requiring the use of the technique most likely to save the fetus, and spousal consent. For each policy, the constitutional context was coded for all years from 1973 to 2000.

The following tables and discussion explain the coding of the constitutional contexts for the relevant Supreme Court cases for each of the five abortion policies utilized as the dependent variable. Most of the Court decisions were handed down in the summer months after most legislatures concluded their sessions. Therefore, the constitutional context does not change until the following year. For example, *Planned Parenthood v. Danforth* was handed down July 1, 1976, so the constitutional context for parental consent did not change until 1977. The *Colautti v. Franklin* (1979) decision, however, was handed down in January, so the postviability contexts changed in 1979.

In the *Planned Parenthood v. Danforth* and *Bellotti v. Baird* decisions, the Court ruled parental consent requirements unconstitutional, but the language in both decisions indicated that parental consent requirements that did not provide absolute veto power to a parent would potentially be viewed differently. In *Danforth*, the Court referred to "blanket" parental consent laws and pointed out that minors also enjoy protection under the Constitution, stating, "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights. It remains, then, to examine whether there is any significant state interest in conditioning an abortion on the consent of a parent or person in loco parentis that is not present in the case of an adult."

In *Bellotti*, the Massachusetts parental consent requirement with a judicial bypass was deemed unconstitutional as it required parental notification in every instance and permitted the court to decide not to grant a minor an abortion even if she had been found mature enough to make the decision. In this case, the Court left nothing to question as to what states needed to do to meet their requirements for a constitutional parental consent requirement:

Table B1
Constitutional Contexts for Parental Consent,
1973-2000

Year	Controlling Court Decision	Constitutional Context
1973	Roe v. Wade	Unknown
1974		Unknown
1975		Unknown
1976	Planned Parenthood v. Danforth	Unknown
1977		Suspect
1978		Suspect
1979	Bellotti v. Baird	Suspect
1980		Suspect
1981		Suspect
1982		Suspect
1983	Planned Parenthood v. Ashcroft	Suspect
1984		Constitutional
1985		Constitutional
1986		Constitutional
1987		Constitutional
1988		Constitutional
1989		Constitutional
1990		Constitutional
1991		Constitutional
1992		Constitutional
1993		Constitutional
1994		Constitutional
1995		Constitutional
1996		Constitutional
1997		Constitutional
1998		Constitutional
1999		Constitutional
2000		Constitutional

Table B2
Constitutional Contexts for Twenty-Four-Hour
Wait Laws, 1973-2000

Year	Controlling Court Decision	Constitutional Context
1973	Roe v. Wade	Unknown
1974		Unknown
1975		Unknown
1976		Unknown
1977		Unknown
1978		Unknown
1979		Unknown
1980		Unknown
1981		Unknown
1982		Unknown
1983	Akron v. Akron Center for Reproductive Health	Unknown
1984		Unconstitutional
1985		Unconstitutional
1986	Thornburgh v. American College of Obstetrics and Gynecology	Unconstitutional
1987		Unconstitutional
1988		Unconstitutional
1989		Unconstitutional
1990		Unconstitutional
1991		Unconstitutional
1992	Planned Parenthood v. Casey	Unconstitutional
1993		Constitutional
1994		Constitutional
1995		Constitutional
1996		Constitutional
1997		Constitutional
1998		Constitutional
1999		Constitutional
2000		Constitutional

We therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained. A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes; or (2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained.

States thus responded by adopting parental consent requirements that followed the outlines the Court had provided in *Bellotti*, and within a few years they were

deemed constitutional in *Planned Parenthood v. Ashcroft* (1983).

The Court was very clear in its ruling in *Akron* that requiring a woman to wait twenty-four hours after signing a consent form was unconstitutional. The decision stated,

"We find that Akron has failed to demonstrate that any legitimate state interest is furthered by an arbitrary and inflexible waiting period. There is no evidence suggesting that the abortion procedure will be performed more safely. Nor are we convinced that the State's legitimate concern that the woman's decision be informed is reasonably served by requiring a 24-hour delay as a matter of course."

The Court went on to say that if a woman is ready to give her written consent and proceed with the abortion, "a State may not demand that she delay the effectuation of that decision." In *Thornburgh* (1986), the Court again invalidated detailed informed consent requirements. The Court changed course, however, in the *Casey* (1992)

Table B3
Constitutional Contexts for Detailed Informed Consent Laws, 1973-2000

Year	Controlling Court Decision	Constitutional Context
1973	Roe v. Wade	Unknown
1974		Unknown
1975		Unknown
1976		Unknown
1977		Unknown
1978		Unknown
1979		Unknown
1980		Unknown
1981		Unknown
1982		Unknown
1983	Akron v. Akron Center for Reproductive Health	Unknown
1984		Unconstitutional
1985		Unconstitutional
1986	Thornburgh v. American College of Obstetrics and Gynecology	Unconstitutional
1987		Unconstitutional
1988		Unconstitutional
1989		Unconstitutional
1990		Unconstitutional
1991		Unconstitutional
1992	Planned Parenthood v. Casey	Unconstitutional
1993		Constitutional
1994		Constitutional
1995		Constitutional
1996		Constitutional
1997		Constitutional
1998		Constitutional
1999		Constitutional
2000		Constitutional

Table B4
Constitutional Contexts for Postviability Care Technique Laws, 1973-2000

Year	Controlling Court Decision	Constitutional Context
1973	Roe v. Wade	Unknown
1974		Unknown
1975		Unknown
1976		Unknown
1977		Unknown
1978		Unknown
1979	Colautti v. Franklin	Suspect
1980		Suspect
1981		Suspect
1982		Suspect
1983		Suspect
1984		Suspect
1985		Suspect
1986	Thornburgh v. American College of Obstetrics and Gynecology	Suspect
1987		Suspect
1988		Suspect
1989		Suspect
1990		Suspect
1991		Suspect
1992		Suspect
1993		Suspect
1994		Suspect
1995		Suspect
1996		Suspect
1997		Suspect
1998		Suspect
1999		Suspect
2000		Suspect

decision and deemed twenty-four-hour waiting periods constitutional.

In *Akron* and again in *Thornburgh* three years later, the Court left no doubt regarding their unconstitutional ruling on detailed informed consent laws. The decision in *Akron* read in part, "It is fair to say that much of the information required is designed not to inform the woman's consent but rather to persuade her to withhold it altogether." The Court also objected to the requirements noting that they intruded on the discretion of the physician.

In *Thornburgh*, the Court picked up on this theme, but used even more pointed language. The decision stated that the detailed informed consent requirements "seem to us to be nothing less than an outright attempt to wedge the Commonwealth's message discouraging abortion into the privacy of the informed-consent dialogue between the woman and her physician." The Court concluded by calling the requirements "state medicine imposed upon the

woman" and later concluded by saying, "This type of compelled information is the antithesis of informed consent." The Court left no room for doubt as to its position that detailed informed consent laws were unconstitutional. Again, however, in the *Casey* decision, the Court changed its mind and ruled that detailed informed consent requirements were constitutional.

In the *Colautti* decision, the Court stated that the vague construction of the language in the statute made it unclear if the physician's duty to the patient (woman) was paramount to that of preserving the life of the fetus. The Court referred to requiring the physician to make a "trade off" between the woman's health and "additional percentage points of fetal survival." The Court went on to say that the state must be more precise in its statute before threatening criminal sanctions for noncompliant physicians. These statements all indicate that a statute that was clear in its preference for preserving the woman's life and health over the fetus might receive a different hearing from the Court.

Table B5
Constitutional Contexts for Spousal Consent
Laws, 1973-2000

Year	Controlling Court Decision	Constitutional Context
1973	Roe v. Wade	Unknown
1974		Unknown
1975		Unknown
1976	Planned Parenthood v. Danforth	Unknown
1977		Unconstitutional
1978		Unconstitutional
1979		Unconstitutional
1980		Unconstitutional
1981		Unconstitutional
1982		Unconstitutional
1983		Unconstitutional
1984		Unconstitutional
1985		Unconstitutional
1986		Unconstitutional
1987		Unconstitutional
1988	Unconstitutional	
1989	Unconstitutional	
1990	Unconstitutional	
1991	Unconstitutional	
1992	Planned Parenthood v. Casey	Unconstitutional
1993		Unconstitutional
1994		Unconstitutional
1995		Unconstitutional
1996		Unconstitutional
1997		Unconstitutional
1998		Unconstitutional
1999		Unconstitutional
2000	Unconstitutional	

In *Thornburgh*, the Court simply reiterated the point that there could be no “trade off” between the life and health of the woman and the fetus. At issue was a statute that allowed for use of the technique most likely to save the fetus unless it would pose a “significantly greater medical risk” to the woman. To date, the *Thornburgh* decision stands as the controlling case regarding policies dictating the use of an abortion technique most likely to save the fetus.

In *Planned Parenthood v. Danforth* (1976), the Supreme Court declared Missouri’s spousal consent requirement unconstitutional. While the Court acknowledged the “importance of the marital relationship in our society” and that “the decision whether to undergo or to forego an abortion may have profound effect on the future of any marriage,” the Court made it clear that the State could not assign to the spouse unilateral veto power over the abortion decision. Again, in 1992, the Court clearly deemed spousal consent requirements unconstitutional in the

Casey decision, citing research that most women do consult their spouse before an abortion, but that fear of abuse is often the reason some women do not. The Court thus found that spousal consent constituted an undue burden.

C. Construction and Validation of the Pro-Choice Interest Group Potential Variable

The pro-choice interest group potential variable was constructed in two stages. First, I conducted an individual-level analysis predicting female participation in pro-choice interest group activity utilizing General Social Survey (GSS) data. Second, I used the coefficients from the individual-level model, along with corresponding aggregate level data for the fifty states, to generate predicted state-level values of the dependent variable, which thus serves as my measure of pro-choice interest group potential.

Individual-Level Analysis

The dependent variable in the individual-level analysis was a dichotomous variable indicating that female respondents had either joined a women’s rights group, had given money to a women’s rights group, or had written to a public official on behalf of a women’s rights group. Specifically, the question wording for the variables was as follows:

1. Have you ever joined an organization concerned with women’s rights? (response: 1 = yes, 0 = no)
2. Have you ever given money to an organization concerned with this issue? (response: 1 = yes, 0 = no)
3. Have you ever written a letter to a public official expressing your views on women’s rights? (response: 1 = yes, 0 = no)

The independent variables utilized in the first individual-level analysis were based on theoretical considerations and availability of state-level data. They were taken from the GSS and were as follows:

1. *Race* (coded 1 for white and 0 otherwise). White women were expected to be more likely than women of color to join women’s rights organizations and participate politically through donations and lobbying efforts due to historical patterns of political participation.

2. *Degree* (coded 1 for bachelor's degree or greater and 0 otherwise). Women with a higher degree of education are expected to be more liberal and more politically active than their less educated counterparts.
3. *Age* (coded 1 if between the ages of twenty-seven and forty and 0 otherwise). Selection of the age variable was based largely on observations of women who attend women's rights rallies and the assumption that the majority of those women are in their late twenties to late thirties. The assumption is that women in their late twenties have formed ideological positions on many of the issues that comprise "women's rights" and view themselves as having a stake in the achievement of women's rights goals such as equity in pay, reproductive rights, etc. This makes women in this age group more likely to join a women's rights group, donate money, or lobby an elected official concerning these issues.
4. *Work status* (coded 1 if worked full-time, part-time, or had a job but was not currently at work due to illness, vacation, or strike and 0 otherwise). Women who work are expected to be more concerned with women's rights issues, such as pay equity, sexual harassment and abortion, than their counterparts who work in the home (see McFarlane and Meier 2001).

A logit analysis was performed and there was strong support for all the independent variables except race. The race variable was not close to significance with a p -value of .22. The age variable was significant with a p -value of .06, work status was significant at the .05 level, and degree exerted the strongest effect and was highly significant with a p -value of .000. Results of the analysis are presented in Table C1.

Table C1
Individual-Level Logit Analysis for Pro-Choice Interest Group Potential

Independent Variable	Coefficient	Standard Error
Race	0.49	.40
Degree	1.26***	.25
Age	0.43*	.23
Work status	0.44**	.23
Constant	-2.66***	.42

Note: Number of observations = 590. Log-likelihood = -255.62.
* $p < .10$. ** $p < .05$. *** $p < .01$.

A second individual-level analysis was constructed utilizing the four variables above and one additional variable measuring "feminist attitude," based on the sum of the responses to the following two questions from the GSS:

1. Women should take care of running their homes and leave running the country to men. (response: 0 = agree, 0.5 = don't know, 1 = disagree)
2. Most men are better suited emotionally for politics than women. (response: 0 = agree, 0.5 = don't know, 1 = disagree)

The results of the second analysis that includes the measure of a "feminist attitude" show that it is statistically significant. *Degree* continues to have the largest coefficient and remains highly significant with a p -value of .000. *Work status* and *Age* are still significant, but now at the .10 level. *Race* is not significant in this model either. The results of the second analysis are in Table C2.

Table C2
Expanded Individual-Level Logit Analysis for Pro-Choice Interest Group Potential

Independent Variable	Coefficient	Standard Error
Race	0.43	.41
Degree	1.18****	.26
Age	0.38*	.23
Work status	0.38*	.23
Feminist attitude	0.38**	.18
Constant	-3.13****	.48

Note: Number of Observations: 583 Log likelihood: -250.39
* $p < .10$. ** $p < .05$. **** $p < .001$.

State-Level Measure

To construct a state-level measure for pro-choice interest group potential, I first collected state data from 1970, 1980, 1990, and 2000 Census sources for the variables *Degree*, *Age*, and *Work status*. Data for the intervening years were estimated through linear interpolation. The denominator for each variable is the number of women in the state, and all variables are measured on the same measurement scale as the individual-level analysis.

1. *Degree*: The proportion of women with a bachelor's degree or higher.
2. *Age*: The proportion of women aged twenty-seven to forty.

3. *Work status*: The proportion of women in the workforce either full-time, part-time, or currently employed but off work at the moment.
4. *Feminist attitude*: State-level measure of feminism taken from Brace et al. (2002) that utilized the two GSS questions and response categories described above. Range of the variable is 0 to 2, with higher scores indicating more acceptant of women's rights.

I then created the state-level measure by using the coefficients from the individual-level analysis, along with the state-level data, to generate predicted probabilities for the dependent variable for each state and year. Thus, the final measure can be interpreted as an estimate of the probability that a randomly selected female from a state is a pro-choice activist. Or alternatively, as an estimate of the proportion of women in the state that are pro-choice.

Validating the Measure

Two attempts were made to validate the measure. I estimated the correlation between the pro-choice interest group potential measure and the percentage of women elected to state legislatures from 1973 to 2000. It stands to reason that states that elect women to office are also likely to be states with women who have the potential to be mobilized politically for women's rights issues. The correlation between the pro-choice interest group potential measure and the percentage of women in the state legislatures was strong at .68.

I also obtained state-level National Abortion Rights Action League (NARAL) membership data for one year, 1990, from McFarlane and Meier (2001). The Pearson's r value for this correlation was even stronger, at .76. Based on these two correlations, I conclude that the pro-choice interest group potential variable is a reasonably valid measure.

Notes

1. While the beginning point for most of these cases is in the lower courts, I focus solely on the effect of the U.S. Supreme Court. I do so for three reasons. First, due to the constitutional issues that surround morality policies, the party that is unhappy with a lower court ruling will have the opportunity to receive a new hearing in a higher court until reaching the Supreme Court. Thus, there is a sense of finality associated with the Supreme Court that is not present with the lower courts. Second, the reach of the Supreme Court is nationwide; a Supreme Court decision affects every state equally. Third, collecting and analyzing data on abortion cases from every lower court ruling in the fifty states was well beyond the scope of this project.

2. Some examples include pornography (Daynes 1998; K. B. Smith 2001), abortion (McFarlane and Meier 2001; Tatalovich 1997), death penalty (Steger and Steel 1998), censorship and movie ratings system (Brisbin 2001), and physician-assisted suicide (Glick and Hutchinson 2001).

3. To consider the context "unconstitutional," the Court would have had to clearly state the standard-of-care provision was impermissible without indicating any way that the states could change the wording of the law to possibly receive a different decision.

4. Scholars have examined many facets of abortion policy such as public opinion about abortion (e.g., Cook, Jelen, and Wilcox 1992), interest group activity (e.g., Cohen and Barrilleaux 1993), legislative voting behavior (e.g., Tatalovich and Schier 1993), and policy adoption and outcomes (e.g., McFarlane and Meier 2001; Wetstein 1996).

5. Berry and Berry (1990) noted that the effect of state characteristics that vary from year to year are not captured in cross-sectional models.

6. Adoption dates for each policy were coded by the author by searching state statutes. I searched the index for each year for each state using keywords such as abortion, fetus, maternal, child, and embryo. I also searched under chapter headings such as public health and safety, criminal code, public finance, vital statistics, and health. Most states had excellent indexing, but for states that did not, I supplemented these sources with searches at state Web sites or, in a few cases, I contacted state librarians for additional information. I used "state report cards" from the National Abortion Rights Action League (NARAL) Pro-Choice America Web site and information from the Alan Guttmacher Institute Web site to cross-check the data for consistency.

7. I chose not to include public funding policies in the analyses. Public funding of abortions is multidimensional in that welfare and morality are intertwined. Some may support a woman's right to terminate a pregnancy but not with tax payers' dollars.

8. In other words, if a state adopted a parental consent policy in 1980 and amended that policy in 1984, only the initial adoption in 1980 is included in the analysis.

9. See the appendixes for further details regarding the coding of the constitutional contexts.

10. Others have used state ideology to measure abortion opinion (Hansen 1993), but state ideology may not necessarily mirror abortion opinion. Some have utilized data from the 1990 Voter Research and Surveys Exit Polls, which included an opinion question on abortion in forty-two states (Cohen and Barrilleaux 1993; Cook, Jelen, and Wilcox 1993; Goggin and Wlezien 1993). One problem with these data is that two of the excluded states, Utah and Louisiana, are the two states that have passed the most restrictive abortion policies in the country (Norrander and Wilcox 2001). Norrander and Wilcox (2001) created a state-level abortion opinion measure by pooling the 1988, 1990, and 1992 Senate National Election Study (SNES) surveys. While this measure is certainly better than other proxies or direct measures of abortion opinion that suffer from various flaws, it also has drawbacks as a measure of abortion opinion. For one thing, the data are taken from small samples and only cover three years (1988, 1990, and 1992). These surveys were conducted at a time of heated debate over abortion that culminated in the *Webster* (1989) and *Casey* (1992) decisions that tilted favor to more restrictive state abortion regulations being permitted by the Supreme Court. For these reasons, I utilize the Brace et al measure of state-level abortion opinion as discussed in the following note.

11. Six states are excluded from the Brace et al. (2002) measure: Hawaii, Idaho, Maine, Nebraska, Nevada, and New Mexico. To estimate values for these missing states, I regressed Brace's measure on Norrander and Wilcox's (2001) measure of abortion opinion and used the coefficients to compute predicted values for the missing states. The Pearson's r -value for the two measures is .82. I compared results for the variable *Public Opinion* by running the models with the predicted values for the missing states included in the analysis and by excluding those states. The coefficient for *Public Opinion* is 1.39 with a p -value of .01 in the reduced model (compared to 1.21 and significant at the .05 level when the predicted values are included). This indicates that the predicted values I generated are not inflating the impact of the variable. In addition, the original measure is scaled so that the higher the score, the more prochoice public opinion is in a state. I reversed the scale as we tend to think of the effect of public opinion on policy adoption in positive terms.

12. See the appendixes for full details of the construction for this variable, along with evidence of measurement validity.

13. There were a few Independent governors, and they were also coded zero.

14. In this study, 1973 is the start point for two reasons: the *Roe v. Wade* decision was handed down in 1973, thus voiding state abortion laws, and the decision came in January that afforded states the opportunity to adopt abortion regulations in their 1973 legislative sessions. The study ends at 2000, which means that states adopting (or not adopting) abortion policies of interest after 2000 are treated as Right-censored (see Box-Steffensmeier and Jones 1997).

15. After removing the initial adoptions from the data set, the first subsequent adoption for all the policies was 1974.

16. In estimating data in survival analysis, the researcher has a choice between nonparametric models and parametric models. These models differ regarding assumptions of the baseline hazard, which refers to the hazard of failure (adoption) only as a function of time, without considering independent variables (Kleinbaum 1996). Nonparametric models, such as the Cox model, do not assume any particular shape of the baseline hazard over time (Cleves, Gould, and Gutierrez 2002). The disadvantage of a nonparametric model is that because it does not specify a functional form of the baseline hazard, it produces less efficient estimates of the coefficients than a parametric model (Collett 1994; Box-Steffensmeier and Jones 1997; Cleves, Gould, and Gutierrez 2002). In addition to examining theory for guidance regarding the expected shape of the baseline hazard over time, statistical tests can be utilized to determine if a parametric model is the appropriate estimation technique. Upon conducting these tests, I determined that the Weibull regression model, a parametric model, was the most appropriate estimation technique for my data. I first fit the Cox model and then examined the shape of the baseline hazard function, as recommended by Box-Steffensmeier and Jones (1997). I then computed Cox-Snell residuals and plotted them against the Nelson-Aalen cumulative hazard function as a test of the goodness of fit of the Cox model (Cleves, Gould, and Gutierrez 2002). There was a lack of fit between the Cox model and the data, indicating that the Cox model was not the appropriate estimation technique. The Weibull model is the correct choice when data exhibit monotone hazard rates (see Cleves, Gould, and Gutierrez 2002, 207-14). The data utilized in these analyses exhibit a monotonically increasing shape of the hazard function.

17. When the unconstitutional context is specified as the reference category, abortion policy adoption is statistically significantly more likely to occur in the unknown and constitutional contexts, but not in the suspect context. The Wald test statistic was significant at .000.

18. State legislators are expected to be attentive to the dictates of the Supreme Court. Thus, partisanship and gender of state legislators are examined in the conditional model. In contrast, Catholics, for example, are less likely to be swayed to change their position on the abortion issue based on a Supreme Court ruling. Similarly, public opinion regarding abortion has been fairly steady over the decades since *Roe*, despite numerous Court decisions striking down various state abortion policies. Opinion regarding abortion and most morality policies are driven by individuals' personal belief systems. They have no perceived obligation, as do elected officials, to consider the position of the Supreme Court regarding abortion policy when forming a personal opinion on the issue.

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