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THE HIDDEN FACES OF THE COURT

On the Unobserved Conflicts among the Friends of
the Supreme Court of the United States.

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Abstract

The Supreme Court of the United States has during a long time held an important role in forming the application of American public policy. This study aims to answer the question of what ideological conflict dimensions is present in the context of interest groups attempting to influence the court using amicus curiae briefs. Also, it examines if the participation of interest groups is part of a pattern over several cases or rather isolated to individual issues. Although there exists earlier research concerned with the influence of interest groups on the Supreme Court, the ideological dimensions to their activities has been left unexplored. This study aims to remedy that shortcoming. The conflict of petitioner against respondent is used as an ideological benchmark, affiliations are distributed to the participating interest groups by categorization of their submitted briefs. The ideological dimensions of liberal and conservative, as well as a second dimension of libertarian and authoritarian is investigated. It is concluded that the interest groups submitting amicus curiae is primarily focused on the individual issues of the cases rather than their participation being part of a strategy to influence the court on a wider range of issues. However, among those interest groups participating in more than one case a conflict dimension of liberal and conservative is identified. The result of the study leads to the conclusion that further research with regards to the ideological dimensions of interest groups and the Supreme Court should primarily focus on the context of individual cases.

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The Purpose of the Study

The Supreme Court of the United States has for a long time played a vital part in shaping American politics. To a great extent, it has been able to influence the implementation of political policy within areas such as gun rights, health care and civil rights. This study is concerned with determining whether research within this field provides a viable way of observing the ideology of interest groups. The aim is to identify the dimensions of the ideological conflicts among the groups attempting to influence the decisions of the court through amicus curiae briefs.

Furthermore, it has the purpose to determine if a dimension of conflict that is coinciding with the conflict dimension of more than one singular case can be identified. If such an additional dimension would exist it would imply the need of further study the aggregate ideological conflict among interest groups in the Supreme Court. In this study, I examine the amicus curiae briefs that were submitted to the court in connection to cases concerned with issues of civil liberties and determine if an additional ideological pattern stretching over several cases exist. Prior research focused on amicus curiae briefs have looked at the influence of interest groups on the outcome of the cases, the ideological component to interest groups participation has largely been left out, something this study seeks to remedy.

Because of the absence of prior research about political ideology and its relationship to the workings of the Supreme Court, the theoretical viewpoint of this study will be to investigate the influence of lobbying through amicus curiae briefs in individual cases. The study investigates whether the study of aggregate ideological conflicts in the context of the Supreme Court are worthwhile pursuing. I intend to investigate the ideological consistency among amicus curiae briefs submitted by the same actors over several cases. By doing so I hope to broaden the understanding regarding whether lobby organizations are concerned with single issues or a particular view of civil liberties in general when working against the Supreme Court.

Theory and Prior Research

As mentioned, very little research exists concerning the underlying ideology of interest groups engaged in Supreme Court cases.

First in this section, a short segment concerned with the field of interest group research has been included followed by an account for the possibility for interest groups on having influence with regards to the Supreme Court. Secondly, the issue of what type of power could be attributed to the interest groups activity with regards to amicus curiae is explored. Lastly, I set up a theoretical framework for evaluating those conflicts.

Interest groups in existing literature?

In order to be able to conduct a study, the object of the inquiry must be properly defined.

Encyclopaedia Britannica defines interest group as “any association of individuals or organizations, usually formally organized, that, on the basis of one or more shared concerns, attempts to influence public policy in its favour” (Thomas, 2016).

Due to the fact that the main role of the Supreme Court is to comment and decide the legality of a policy emanating from decisions taken in other venues inside or outside government, it is important to take into account the context in which each decision is made.

The research concerned with interest group influence has so far been unable to produce an accumulation of knowledge and coherence in its findings. Furthermore, there exist no coherent consensus in methodology how to approach the subject most effectively. However, taking the context into account seems to be an essential part in the evaluation of interest group influence on political decision-making. Baumgartner and Leech (1998) consist of a comprehensive review of the research performed during the period of 1950 to 1995. They concluded that no coherent approach to study interest group exists and the as a field of research it could best be described as fragmented both with concern to theory and to empirical research. It was also pointed out that there exists a fundamental problem with concern to accumulating research. The research of good quality that was conducted within the field also tended to be limited in relevance with respect to the broader picture (Baumgartner & Leech, 1998, pp. 20-21). In Hojnaki et al. (2012) the evolution within the field since Baumgartner and Leech (1998) can be observed. They conclude that although significant progress has been made during the years passed some of the issues identified remained unresolved (Hojnaki et al., 2012 pp. 380). However, they are positive to the tendency of fewer case studies in favour of studies dealing with larger number of interest groups and issues (Hojnaki et al., 2012 pp. 390-391). They suggested, as one of the most important aims of the field to be increasing the understanding of interest group ability to take part in the process

of producing public policy. They propose among other things that a focus must be put on attempting to integrate the research concerned with interest groups with other fields of political science. By doing this the context in which they are active will be better understood and also the relationship between interest groups and policy making (Hojnaki et al, 2012, pp 393-394).

From the results of the reviews of the field performed by Baumgartner, Leech and Hojnaki et al. it is obvious that the greatest inconvenience that scientists face in studying the field of interest group is the still the lack of context in relation to the actual policy making processes. This points in the direction of the fact that to be able to perform successful studies within this field great attention must be given to the particular environment where interest groups interact with other political actors.

[How are interest groups able to influence the Supreme Court of the United States?](#)

Because of the great implications that a decision from the Supreme Court may have on the implementation of policy it is essential to determine in what respect there exist a possibility for interest groups to be able to influence the rulings of the Supreme Court. This because it also will give an indication of the power interest groups may have in shaping public policy. Two possible ways is to either focus on the outcome of the cases that lies behind the rulings, or by attempting to influence the decision that will constitute the rulings. One common method for interest groups to participate in the process of affecting the decisions of the Supreme Court is using amicus curiae briefs. These briefs are present in virtually every case that is presented to the court. The briefs include legal arguments concerned with the issues of a case. The briefs often take a stance in favour of either the position of the petitioner or the respondent in a case. However, it is also possible to submit briefs which do not argue for one side or the other, but only wants to put a certain argument to the courts attention. Collins (2004) concludes that it is through the arguments in the brief that interest groups can influence the Supreme Court. The briefs broaden the scope of possible rulings and might influence the judges to change their opinion based on the new perspectives presented (Collins, 2004, pp. 807-808, 822). According to Collins, the number of briefs may influence the outcome in that the side which gets the most briefs in their favour also holds a better chance of winning the case (Collins, 2004, pp. 825). The most accurate method of determining the extent to which an appointment of a judge to the Supreme Court will face opposition in the United States Senate is to study the actions of interest groups, the reason behind

this is that interest group activity serves as an indicator of the strength of the mobilized resistance (Caldeira & Wright, 1998, pp. 521). Caldeira claims that through using their knowledge within an area of policy, interest groups can influence the decisions of the members of the senate. The nature of the interest groups influence on the elected senators resides in their ability to convey information and argumentation, hence exploiting the senator's disadvantages with regards to knowledge. Through these insecurities, they are then being able to supply their own views on the nomination to the senators and ensure that the information they provide is in accordance with the image that they want to present (Caldeira & Wright, 1998, pp.521).

Using information and argumentation in the briefs of amicus curiae the interest groups are able to present their point of view to the bench of the Supreme Court. They may through this method influence the views of the judges, hence change the outcome. The result of amicus curiae being the main method used by interest groups to affect the Supreme Court decisions, points towards information and argumentation based upon a organisations own system of beliefs as being the most important mean of influencing the court. Caldeira and Wright (1998) can confirm that there exists an influence from active interest groups on the Senate decisions whether to confirm the nominations of judges. As Collins (2004) also claims, this can be attributed to the ability of these organisations to use information and argumentation to implement their own ideas among decision makers.

[What is the nature of the conflict among interest groups?](#)

An organisation's power can consist of an ability to relay the nature and benefits of own value-system to another actor in such a way that this second party is inclined to either replace or at least modify parts of its own system (Nye, 2004, pp.7). Although the focus of observing such power has mainly focused on states within an international context, it is claimed that this type of power also resides within non-governmental interest groups (Nye 2004, pp.15). The revolution with regards to information has also increased the importance of these NGOs in international politics and according to Nye (2004), these organizations have a particular efficiency in their ability to transfer and process information, which has given them potential to exercise this "soft power" in order to achieve their own goals, promote their own values and to challenge governments.

Nye (2004) primary focus is on international politics the interpretation of NGO's as bearers of certain values and which can influence other organizations to adjust that entities own system. This process seems however to have resemblance to the dynamics which Collins (2004) as well as Candeira and Wright (1998) describes in relation to the interest groups concerned with influencing the Supreme Court. A relevant question which can be derived from this observation is what sort of conflict dynamic can be expected from several organizations with conflicting values are attempting to influence the decisions made by the court. To be able to identify the conflicts that may exist between different interest groups in the context of influencing the Supreme Court, first it has to be determined what kind of power is relevant to this context.

One of the most influential modern debates with regards to power has been the one concerned with whether it has one, two or three dimensions. The one-dimensional power-theory claims that three conditions had to be met to state a power relation. First, the effect from the power exercised must follow from the action performed by the actor. Secondly, there must exist a conduit between the actor and the respondent through which power may be exercised. Thirdly, the situation must be of such nature that the respondent would not have acted if pressure had not been exercised from the actor (Dahl, 1957, pp. 204).

The one-dimensional power theory was however challenged by Bachrach and Baratz (1962) and their two-dimensional view of power. It was argued that the one-dimensional perspective was too exclusively concerned with decision-making in perspective to power. Their view was that by doing so no account was taken to the context in which the decision was made (Bachrach & Baratz, 1962, pp. 948). The individual or group that possesses the ability to control the content of the issues that eventually will be put forward for decision making also possesses power (Bachrach & Baratz, 1962, pp. 949). Bachrach and Baratz (1962) demanded a greater focus on the power that resides in the process of determining which issues should be subject for decision-making. Their attempt of broadening the earlier defined decision-making approach to power resulted in a more complex view of the dynamics of power conflicts.

However, according to Lukes (1974/2005) this second face of power was still too concerned with observable conflict as a condition for power (Lukes 1974/2005, pp. 25). Bachrach and Baratz (1962) was criticized by Lukes (1974/2005) for still being too individualistic in their approach to

bias, as he claims that they do not sufficiently separated the individualistic from the institutional and structural power dimensions (Lukes 1974/2005, pp. 25).

The third dimension allows for power being recognized in contexts where it cannot be observed. Although hidden from immediate view, power relationships are not disqualified from being defined to the same extent as if it had been exercised in the open. The absence of a conflict could indicate an exercise of power to the same degree as if there was an identifiable conflict to observe (Lukes, 1974/2005, pp. 27). An issue being held back from the agenda may be the result of latent conflicts within the society. In such a latent conflict the focus is on the disagreement between those who exercises power and those interests that are not allowed to take part in the decision-process. These interests may not just be limited to individual actors, but may as well be consisting of other types of social forces as well as institutional protocols (Lukes, 1974/2005, pp.28).

Through the third dimension presented by Lukes (1974/2005) the structural traits which tends to affect the exercise of power are also considered. While the decision-making and the agenda-setting, powers could be said to be represented by the judges and parties of the cases brought before the court, the position of the interest groups seems more complex and more in line with the power-dimension presented by Lukes (1974/2005). The conflict is hidden from immediate view, even to the interest groups themselves since the amicus curiae briefs restrict their participation. In the court the briefs represents the interest groups, and it is in that form that the conflicts between the interest groups will be presented to the judges.

[How can the conflicts within the framework of amicus curiae become observable?](#)

To identify the conflict among the briefs that are submitted to the court a framework is needed to be able to interpret the political positions taken by the interest groups. This is important since it is through these lenses that one can classify different interest groups and then compare their positions with regards to the decisions taken by the court.

Feldman and Johnston (2014) further develops the framework by Schwartz (1992) that indicates that social and economic attitudes exist on two dimensions which does not necessarily correlates with each other. That the existence of a certain end of one dimension together with one end of the

other dimension does not mean that this correlation of ideology looks the same everywhere. For social values tradition, security and conformity are the main themes, which are set against autonomy of the individual and self-direction (Johnston & Feldman, 2014: pp. 340). Schwartz (1992) defines conformity as a value, which is, based upon the notion of behaviour that would hurt others physically or emotionally and breaks with the social framework of norms and expectations (Schwartz, 1992: pp. 9). He defines self-direction as a value, which promotes freedom of choice in thought and action and is based upon individual autonomy (Schwartz, 1992: pp. 5-7). Feldman and Johnston (2014) concluded that the two-dimensional model of political ideology was more accurate in portraying political preferences. They also found that the need of reduction of uncertainty does seem to have an inverse relationship with respect to economic conservatism than what it is often considered to have with social conservatism (Johnston & Feldman, 2014: pp. 346-347).

The two-dimensional model for identifying ideological positions is dependent on values. The earlier discussions concerning organizations and interest groups aiming to influence the Supreme Court in particular have been dealing with transmission of values. Hence, it could be argued that the use of values to evaluating the conflict among the interest groups briefs together with the conventional one-dimensional positions consistent with the American political landscape would be a reasonable approach to take in determining the ideological patterns with respect to the interest group attempting to influence the Supreme Court using *amicus curiae* briefs.

Demarcation and Hypothesis

This study is set out to examine the ideological conflicts that are present among the interest groups submitting *amicus curiae* briefs to cases brought before the Supreme Court of the United States. In particular, whether there exist, over the course of several cases participating interest groups that are having interests in several diverse types of issues with respect to civil liberties. It will aim to identify aggregate latent conflicts among the participating groups by examining their positions across multiple cases. In the case of identifying such conflicts its aim is also to determine whether or not the conflict among the interest groups does have more than one dimension. If so would be the case, it would have implication of how to view the consequences of interest group participation at the court.

Hypothesis set: A

Hypothesis 1

H1: There are interest group submitting amicus curiae briefs to multiple cases even if they are not concerned the same type of issue.

Hypothesis set: B

Assumption I: If participating in two cases concerned with two different issues.

Hypotesis 2

H2: There exist a first dimension of aggregate conflict between the interest groups submitting amicus curiae briefs.

Hypothesis set: C

Assumption II: If participating in three cases concerned with three different issues.

Hypothesis 3

H3: There exist a first dimension of aggregate conflict between the interest groups submitting amicus curiae briefs.

Hypothesis 4

H4: There exist a second dimension of aggregate conflict between the interest groups submitting amicus curiae briefs.

Methodology

Choice of Methodology

To test the hypotheses, I employ a new method. I identify interest groups that is participating in more than one case of the Supreme Court and what side they support in each case. I then compare their preferences of parties to that of predetermined sets representing different positions on a specified conflict dimension. By doing this it can be determined if a conflict along that dimension is present among the selected cases. The method has been constructed to suit the context in which this study is conducted and to my knowledge not been used before in any environment. Through this choice of conduct I will be able to get a simple, but powerful categorization of the

differences in opinion. On an aggregate level, it can also be used to identify the ideology of an organization in a straightforward and transparent manner.

Using the Supreme Court and amicus curie briefs is a conscious decision. The formalities which are present during these conditions and the formalized way in which the attempted influence from the submitting parties are made creates a unique opportunity to study the conflict dimensions of the participating interest groups. Unlike other types of lobbying that primarily occurs behind closed doors, amicus curiae provide a publicly available record of attempts of influence. By using publicly available data it also provides transparency to the enquiries provided in this paper and makes the results easy to replicate. It creates an opportunity of formulating coding schemes that enables replicability and limits the normative parts of the study, although such tendencies never can be completely removed.

An alternative to this approach could have been to do a text analysis. A qualitative text analysis would however have been problematic due to the great number of briefs and the fact that many of them have a lengthy format. However, the fact that the texts often follow a strict form would perhaps have made it easier to choose the more relevant parts of each brief and enable systematisation. It would however have been hard and time-consuming to be able to process enough documents to establish a conflict line over several different cases.

A second alternative would have been quantitative text analysis. With new software, as for example Wordfish it would have been possible to process big parts of information and establish data over several cases. However, the greatest challenge would be to extract the right information from each document. It would also be more challenging and not as concrete in the coding process and identifying the position of each interest group. To make it work properly more time would be needed than could be possible under the conditions given for this study.

Limitations of chosen methodology

The data used in this study, which is concerned with three cases, was directly taken from the briefs that were submitted to the court. It has its focus on three cases concerned with civil liberties with high profile and high amount of polarization in order to maximizing the chances of identifying dimensions of conflict between the participating interest groups. The study is

designed through observing the positions taken by various interest groups in relation to these cases. This was done to be able to identify aggregate ideological positions and by doing so identify whether there exist ideological conflicts among the participating groups. Although it has a limited scope the profile of the cases can give relevance to the answers in respect to whether or not any dimensions of conflict can be identified.

The Dimensions of Conflict

The first dimension of conflict

To evaluate the ideological conflicts, present among the interest groups presenting their briefs to the Supreme Court I must establish appropriate dimensions. The most intuitive first dimension can be derived from the structure of the court itself, since every case being represented by two polarizing parties, one petitioner and one respondent. I let the two opposing parties constitute the base for the first dimension and by doing so it is then possible to choose the appropriate cases and determine whether the positions taken by the interest groups would be consistent with the choice that would be assumed if they had acted from the chosen ideological dimension. Because the aim for the study is to identify conflicts which are present among cases, to be able to identify a first dimensional conflict a pattern among a minimum of two cases must be established. In this study the first dimension will represent the conflict line between liberal and conservative views. Determining what position will coincide with which party of the case will be determined by studying polls on the issues.

The second dimension of conflict

In this study the second dimension will be defined using the two-dimensional model of ideology. By using cases, which are concerned with three different areas, another dimension can be identified. To assume the existence of a first dimension is essential to be able to determine additional dimensions. By adding an additional case there is a possibility that some interest groups have diverted from the position they had in the previous case. In order to establish a second conflict dimension, a pattern among a minimum of three cases must be established. An additional case must be added to the existing two reflecting the first dimension. This is done to be able to evaluate whether divergences from the identified first dimension can be identified. The

second dimension in the case of this study will be libertarian and authoritarian, derived from the two-dimensional ideological system presented by Feldman and Johnston (2014). In this case the positions will be defined by the libertarian being concerned with self-direction while the authoritarian concerned with conformity. To identify a second dimension, it must be possible to identify a divergence from the liberal and conservative dimension. Otherwise, the conflict will remain hidden and still be regarded as a one-dimensional conflict between the liberal and conservative positions.

The Choice of Cases

The criteria must be set up in order to maximize the chances of being able to identify a second dimension of conflict if one would exist in relation to the chosen cases. To be appropriate cases for investigating the existence of a second dimension of conflict within the Supreme Court two criteria must be met. The first is concerned with the polarization of the issue. To meet this criteria, the case must involve an issue, which polarizes liberals and conservatives to such an extent that an observable conflict can be identified. The second criteria deal with the profile of the case. To meet these criteria, the case must be regarded as having greater public attention than other cases that are presented to the court. Based on the set criteria's, the following cases has been selected:

A. The first case of choice is *District of Columbia v. Heller*, 554 U.S. 570 (2008), which was a case concerned with gun control. The central conflict of the case was whether the Second Amendment to the constitution of the United States prevented laws restricting individuals from possessing firearms. The respondents were supporting the notion of the possession of guns being a constitutional right, while the petitioners opposed the notion.

B. The second case of choice is *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), which was a case concerned with same-sex marriage. The central conflict of the case was whether same-sex couple had a constitutional right to marry. The respondent opposed the notion that same-sex marriage was a constitutional right, while petitioners supported the notion.

C. The third and last case of choice is *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 994 (2016), which was a case concerned with abortion. The central conflict of the case was whether high requirements on abortion clinics restrict women from accessing abortion. The respondents

oppose the notion that the requirement infringes on women's rights to abortion, while petitioner's supports the notion.

On the choices of cases and identification of the first dimension (liberal and conservative)

To answer whether the cases in question will pass the first criteria and determined to be polarizing liberals and conservatives we use polling data. In February 2015, a poll from CNN/ORC found that 75 % of democrats and 42 % of republican supporting gay marriage as a constitutional right compared to 24 % of democrats and 55 % of republicans who argues that it is not (CNN/ORC, 2015a). Although the republicans seem to be split on the issue it is clear according to this survey that more republicans oppose it than embraces it and that the difference between the two parties are significant. Worth noting is the fact that if one looks upon the answers given by those who have identified themselves as liberal or conservative the results are strikingly similar to those with party-identification, which seems to give credence to this as a possible proxy. 81 % of liberals opposed to 43% of conservatives favour the notion that gay marriage should be a right granted by the constitution (CNN/ORC, 2015a). The case of *Whole Women's Health v. Hellerstedt* is determine to meet the first criteria.

Because *District of Columbia v. Heller* was set in 2008 recent polls over the attitudes to stricter gun controls will not be an ideal tool to evaluate this criterion. But since no appropriate poll exist from this period, a more recent poll will be used. In October 2015, the CNN/ORC poll estimated that 74 % of the democrats and 20 % of the republicans favoured stricter gun control while 25 % of democrats and 76 % of republicans opposed it. Once again, the same dynamic can be observed if one would compare the answers of those identifying themselves as liberals with those that identified themselves as conservatives. 74 % of liberals compared to 27 % of conservatives favoured gun control (CNN/ORC, 2015b). Hence, this indicates that the criterion of polarization will be met by the case of *District of Columbia v. Heller* as well.

As for the case of *Obergefell v. Hodges* a Gallup poll from May 2014 shows that 27 % of the republicans and 67 % of the democrats consider themselves pro-choice, while 69 % of the republicans and 28 % of democrats considered themselves pro-life (Gallup, 2014). The result from the study as the prior two does indicate polarization between the two parties and hence meeting the criterion of polarization. Unlike the polls presented by CNN/ORC the Gallup study

did not have the option of identification as liberal or conservative included. However, the assumption will still be made that the result from the Gallup study with concern with attitudes towards abortion can be used as a proxy for the purpose of this study and equal democrat and republican to liberal and conservative.

Whether the cases pass the second criterion concerned with its height of profile as a case will be answered through the number of individual organizations that participated through either submitting a brief themselves or cooperating with each other on a submitting one to the court. To put it all into perspective a comparison will be made to other cases concerned with civil liberties. The numbers were gathered in connection to the completion of this study by studying the submitted briefs of the cases in question. The case of *Snyder v. Phelps*, 562 U.S. 443 (2011) concerned with ruling on the issue of free speech in relation to the protests made by Westboro Baptist Church in connection to the burial of a US Marine killed in the Iraq war. Before *Snyder v. Phelps* was heard briefs was submitted with representation of 36 interest groups. The case of *Kelo v. The City of New London*, 545 U.S. 469 (2005) is concerned with eminent domain where the government extracts property from a private owner to transfer to another private owner in order to promote the public interest of economic development. Before this case was heard by the court 117 interest groups had participated by submitting briefs. The last case of reference is *Boumediene v. Bush*, 553 U.S. 723 (2008) a case concerned with the whether the prisoners of Guantanamo Bay Prison had the constitutional right to challenge the United States in its courts with respect to their imprisonment. Before hearing this case the court had received briefs with 21 interest groups represented. With these three cases given a benchmark it can be noted that before the case of *District of Columbia v. Heller* 222 interest groups had participated by submitting briefs. In the case of *Whole Woman's Health v. Hellerstedt* number of participating interest groups amounted to 229. In the case of *Obergefell v. Hodges* 659 interest groups were represented in the submitted briefs. With respect to the fact that the three benchmark-cases were not unimportant in respect to issues or potential consequences and the number of participating interest groups makes them appropriate to use in the study. Although this comparison cannot fully put the three chosen cases into an absolute or empirically satisfactory position it remains an indication of a high profile with regards to cases of civil liberties. By making this assumption the three chosen cases can then be regarded as having passed the criteria of being cases with a high profile.

On identifying the Positions of the Second Dimension (Libertarian and Authoritarian)

Along the libertarian and authoritarian position according to the fundamental values of individual autonomy against the conformity of society normative assumptions about the definition of these terms must be made. This second dimension is different from the first dimension, which were based upon the party identification of liberal and conservative. The authoritarian and libertarian on the other hand comes from the social and economic dimensions defined by Schwartz (1992). The libertarian and authoritarian position in relation to the three-presented cases will be formulated as follows:

District of Columbia v. Heller (2008)

The libertarian position: Coincide with the conservative position (respondent).

Assumption behind position: Because it concerns an individual right of possessing a firearm. Can be seen as a question of self-direction.

The authoritarian position: Coincide with the liberal position (petitioner).

Assumption behind position: Because it concerns a question of controlling the ability of others than the government of having the means to be able to use force against others, which creates uncertainty. Can be seen as a question of conformity.

Obergefell v. Hodges (2015)

The libertarian position: Coincides with the liberal position (petitioner).

Assumption behind position: Because it concerns the individual right of choosing whom a person wants to marry. Can be seen as a question of self-direction.

The authoritarian position: Coincides with the conservative position (respondent).

Assumption behind position: Because it concerns a practice that is seen as a social institution with a long tradition and which has been performed among the majority of people over a long time in the same way. A way of maintaining a society unified. Can be seen as a question of conformity.

Whole Woman's Health v. Hellerstedt (2016)

The libertarian position: Coincides with the liberal position (petitioner).

Assumption behind the position: Because it concerns the individual right of deciding over one's own body. Can be seen as a question of self-direction.

Problematizing the positions: Can also be seen as a question of the future individual self-direction of the foetus and therefore must be kept alive until it can decide for itself. However, self-direction being emphasised as the value of making one own choices and the foetus is not able to decide over its own body makes the mothers right to choose the more libertarian stance under the conditions given.

The authoritarian position: Coincides with the conservative position (respondent).

Assumption behind the position: Can be seen as a question of personal security of the foetus and its inability to protect itself. Furthermore, it can be seen as practice that threatens the tradition of valuing human life and society in the long run. Can be seen as a question of conformity.

Data specification

Multiple parties could submit a brief. From the individual brief, the name of the individuals and organisations as well as whether these would support the petitioners or the respondents of the case was extracted. By connecting the names with the party that their briefs support a data set was created. Since this study is only concerned with interest groups, all individuals were excluded as well as all public organizations. Furthermore, all the interest groups, who have submitted briefs, which do not support either party of the case, were excluded from the data set. Lastly, all organizations, which only participate in one single case, were excluded, because they do not provide any possibility of being used to compare positions over more than one case.

Identifying parties and positions

Each organization will be ideologically identified through observing which parties it has supported in each of the three cases. Whether a position is regarded as liberal or conservative is determined by the polarization illustrated by the earlier presented polls concerning the issues of the cases. These definitions can be summarized by the following table where green represents supporting the petitioner (the liberal position) and red means supporting the respondents (the conservative position). This constitutes the coding scheme of the inquiry.

	Liberal	Conservative	Libertarian	Authoritarian
A	Green	Red	Red	Green
B	Green	Red	Green	Red
C	Green	Red	Green	Red

The support of either the petitioner or the respondents of the cases also represent each position. From these observations the following definitions of participating organizations can be identified.

If organization participating in two cases:

- Supporting the petitioners in cases A and B, A and C or B and C define the liberal organization. In short, choosing to support the liberal position in two of the cases.
- Supporting the respondents in cases A and B, A and C or B and C define the conservative organization. In short, choosing to support the conservative position in two of the cases.

If organization participating in all three cases:

- The liberal organization is defined by supporting the petitioners in cases A, B and C. In short, choosing to support the liberal position in all cases.
- The conservative organization is defined by supporting the respondents in cases A, B and C. In short, choosing to support the conservative position in all cases.
- The libertarian organization is defined by supporting the respondent in case A and supporting the petitioners in case B and C. In short, choosing the conservative position in case A and the liberal position in case B and C.

- The authoritarian organization is defined by supporting the petitioner in case A and supporting the respondents in case B and C. In short, choosing the liberal position in case A and the conservative positions in case B and C.

The Framework of Interpretation

To identify the first dimension of conflict two cases is required. The two cases must share common participating interest groups. Groups that support the liberal position as well as groups that support the conservative position in both cases must be present. If this criterion is not met a first dimension cannot be established between the two cases and an aggregate pattern of a liberal and conservative conflict cannot be identified. Hence, the hypothesis of the existence of a dimension of conflict between the conservative and liberal positions has then been refuted. The null-hypothesis of hypothesis 2 and 3 will hold.

In order to add a second dimension of conflict a third case must be added. If an interest groups that earlier had supported conservative positions would support the liberal position, that would be a group which no longer would be regarded as conservative. Analogues are true for liberal groups, which in the third case would choose the conservative stance. That is, if the dimensional conflict between liberal and conservative were broken, a new dimension with two new positions would emerge. The conflict would then be two-dimensional. However, if this criterion is not met an aggregate pattern of a libertarian and authoritarian conflict cannot be identified. Hence, the hypothesis of the existence of a dimension of conflict between the libertarian and authoritarian positions has then been refuted. The null hypothesis of hypothesis 4 will hold.

Because of the fact that there are two types of groups that will emerge after taking out the groups only present in one case, which is important to bear in mind since the different amount of cases will mean different restrictions of what conclusions can be drawn from the data. In the case of groups present in all three cases a two-dimensional conflict would be possible to identify among the three cases. However, in the case of organizations only present in two cases it is only possible to identify a singular dimension of conflict between conservative and liberal positions. If no groups, which participate in more than one singular case, can be identified, the notion that

interest groups will submit briefs to multiple cases even if they are not concerned with the same type of issue will be refuted. The null hypothesis for Hypothesis 1 will hold.

The Case of Three

For those groups that are present in all three cases the analysis will determine their position. The positions would in addition to liberal, conservative; libertarian and authoritarian also include two outlier positions for those groups that would have supported the parties of the three cases in such a pattern that it would not be recognized by any of the presented position patterns. They would be indicators of neither of the dimensions of conflict being present. It makes the hypothesis of existence of the dimensions refutable. If there were representation of all four defined positions there would also follow that there exist a two-dimensional conflict including the positions of liberal, conservative, libertarian and authoritarian among the three-presented cases. If only three of the defined positions would be represented it would exist a triangular conflict. A triangular conflict would hence be defined as a two-dimensional conflict where only one party of the second dimension is present.

The Case of Two

For those groups that are only present in two of the cases it will not be possible to identify them as libertarian or authoritarian. Hence, it is not possible to identify a second dimension of conflict by the position of individual groups. Instead one is forced to consider the relationship that exists between the cases. It will be possible to evaluate the positions of the cases two and two. It would be possible to decide whether or not there was a one dimension of conflict present if those groups which had supported either the conservative or liberal alternative in one case would continue to do so in the other. In addition to these two outliers would also be present in the analysis. The first emerges if the group in the first one had supported the liberal alternative, but chose the conservative one in the second case. The second outlier emerges if the group in the first case chose to support the conservative alternative, but chose the liberal one in the second case. Moreover, if outliers would be the only present combination, no dimension of conflict can be identified between liberal and conservative positions. Hence, it would not be possible to recognize any dimension of conflict at all. As in the case of organizations present in all three cases this makes the hypothesis of the existence of a dimension of conflict refutable. If all three comparisons would have a one-dimension conflict present, it would be a one-dimensional conflict between liberal and conservative positions present among all the three cases.

Results

From 257 briefs 1107 positions of interest groups in relation to the three cases was secured. After removing positions of not supporting any party in a case and removing all interest groups that only participated in a singular case 90 positions held by 43 individual interest groups remained. Among these interest groups 4 had been submitting briefs to all three cases and 39 had submitted briefs to two of the cases. In set I the result from the group of interest groups participating in all cases will be presented. In set II to set IV the results from the group of interest groups participating in two of the cases will be presented.

The results among the participating interest groups were coded according with the presented schemes to identify their overall position. Three of the interest groups had supported the petitioning party in all three cases and could hence be identified as liberal. One organization had supported the respondent party in all three cases and could hence be identified as conservative. There were no organization with a libertarian or authoritarian position.

Liberal	Conservative	Libertarian	Authoritarian	Total
3	1	0	0	4

Set I: Interest groups participating in all cases.

Set II to set IV was analysed through cross-tables two and two. Each of the four middle portions of each table represents one of the four presented coded positions based upon whether the interest group chose to support the petitioner or respondents in each of the two cases.

		B		
		Petitioner	Respondent	Total
A	Petitioner	7	0	7
	Respondent	1	3	4
	Total	8	3	11

Set II: Washington DC v. Heller (A) / Obergefell v. Hodges (B)

The results of the 11 interest groups submitting briefs both to case A and B are presented in set II. 7 interest groups had been supporting the petitioners in both cases as hence were identified as being liberal. 3 interest groups had been supporting the respondents in both cases and hence were

identified as being conservative. One organization had been supporting the respondent in case A and the petitioner in case B. No organization of the other type of outlier has been identified.

		C		
		Petitioner	Respondent	Total
A	Petitioner	4	0	4
	Respondent	0	3	3
	Total	4	3	7

Set III: Washington DC v. Heller (A) / Whole Women’s Health v. Hellerstedt (C)

The results of the 7 interest groups submitting briefs both to case A and C are presented in set III. 4 interest groups had been supporting the petitioners in both cases as hence were identified as being liberal. 3 interest groups had been supporting the respondents in both cases and hence were identified as being conservative. No interest groups were identified as being outliers.

		C		
		Petitioner	Respondent	Total
B	Petitioner	21	0	21
	Respondent	0	8	8
	Total	21	8	29

Set IV: Obergefell v. Hodges (B) / Whole Women’s Health (C)

The results of the 29 interest groups submitting briefs both to case B and C are presented in set IV. 21 interest groups had been supporting the petitioners in both cases as hence were identified as being liberal. 8 interest groups had been supporting the respondents in both cases and hence were identified as being conservative. No interest groups were identified as being outliers.

Discussion

Hypothesis set: 1

There are interest group submitting amicus curiae briefs to multiple cases even if they are not concern the same type of issue.

The reduction from the initial 1107 interest group positions to merely 90 implies that in the context of these three cases most organizations was participating in submitting briefs to the Supreme Court based on interest in a singular issue. Whether these organizations may have interest in other cases it is not possible for this study to say. This implies however, that the tendency for interest groups to participate in more than a particular case was very weak with respect to these three cases. The consequence of so few interest groups having a presence in more than one case is that any type of dimension of conflict present among the cases are probably weak. However, 43 organizations did participate in more than one case and hence proved to have broader interest than that which could be represented by a singular case. Consequently, the null-hypothesis of hypothesis 1 does not hold. Hence there are interest groups submitting amicus curiae briefs to multiple cases even if they do not involve the same type of issue.

Hypothesis set: 2

There exists a first dimension of aggregate conflict between the interest groups submitting amicus curiae briefs in two cases.

Among the interest groups participating in two cases it can be concluded that the case for a one-dimensional conflict among the cases are supported by the results from evaluating the interest groups which had submitted briefs to more than one of the cases. In all sets except set III only two distinct positions were identified. Either the participating groups supported the petitioners or the respondents over all cases in which they had submitted briefs. Furthermore, in the case of set III this pattern was strongly dominant. The pattern itself can be identified with the liberal and conservative position respectively. Hence, the result supports a view in which these two positions predominantly constitute a dimension of conflict in these cases. Consequently, the null-hypothesis of hypothesis 2 does not hold. Hence, there exist a first dimension of aggregate conflict between the interest groups submitting amicus curiae briefs in two of the three cases.

Hypothesis set: 3

There exists a first dimension of aggregate conflict between the interest groups submitting amicus curiae briefs in three cases.

Among the interest groups participating in three cases it can be concluded that the case for a one-dimensional conflict among the cases are supported by the results from evaluating the interest groups which had submitted briefs to more than one of the cases. Either the participating groups supported the petitioners or the respondents over all three cases. The pattern itself can be identified with the liberal and conservative position respectively. Hence, the result supports a view in which these two positions predominantly constitute a dimension of conflict in these cases. Consequently, the null-hypothesis of hypothesis 3 does not hold. Hence, there exist a first dimension of aggregate conflict between the interest groups submitting amicus curiae briefs in all three cases.

Hypothesis set: 4

There exist a second dimension of aggregate conflict between the interest groups submitting amicus curiae briefs in all three cases.

Among the interest groups participating in three cases it can be concluded that the case for a two-dimensional conflict among the cases are not supported by the results from evaluating the interest groups which had submitted briefs to more than one of the cases. Either the participating groups supported the petitioners or the respondents over all three cases. No pattern has been identified as being libertarian and authoritarian respectively. Hence, the results do not support a view in which these two positions predominantly constitute a dimension of conflict in these cases.

Consequently, the null-hypothesis of hypothesis 4 does hold. Hence, there exist no second dimension of aggregate conflict between the interest groups submitting amicus curiae briefs in all three cases.

Furthermore, the value-framework based upon Schwartz (1992) definition of self-direction and conformity did not hold as the basis for a second dimension of conflict with concern to these three cases.

Only in the case of set III for hypothesis 2 an outlier could be identified. The outlier was according to the definitions of the various positions an organization, which held the position of supporting the respondent in the case of *District of Columbia v. Heller* and supporting the petitioner in *Obergefell v. Hodges*. However, the overall position identification of this particular organization cannot be determined by the means supplied by this study. Because of this particular combination of position within those two cases, this organization is closest to resembling a

libertarian organization by this study's means of identification. However, because not being present in case C this cannot be fully determined.

Conclusion

In this study, I have been able to determine that among the three cases of interest there are organizations that possess a broader interest in cases concerning civil liberties. However, most interest group that attempted to influence the Supreme Court were only having an interest for a specific type of question and did not participate in of the other cases. The study was also able to show that there existed an aggregated conflict along the dimension of liberal and conservative among those organizations that participated in all three cases. In addition, similar results were shown in regards to those organizations that only participated in two of the three cases.

However, the main objective of this study was to investigate whether there existed a second dimension of conflict among the interest groups submitting briefs to the Supreme Court of the United States. To determine if further research should be committed to the ideological conflicts among the participating interest groups on a multiple case level. On the basis of the chosen cases and the qualitative choices of analysis such a dimension could not be empirically identified.

Hence, it was in the case of the three evaluated cases shown that the dimension of conformity and self-direction, based on the definitions from Schwartz (1992) was not possible to establish as a second dimension with regards to the participating organizations. Although it was limited in scope the study concerned itself with high profiled cases concerning polarizing issues within the environment of American politics. It could hence be argued that if such an aggregate conflict of ideology among interest would have existed it should have been present in the result. The relative small amount of interest groups that did participate in all three cases did not have ideological conflict among themselves that differed from the liberal and conservative dimension of American politics. In the context of these three court cases no additional benefit was given by adding a second dimension to the conflict among the participating interest groups.

The same one-dimensional conflict could be found among the interest groups participating in two of the three cases. Because of the large amount of interest groups participating in the individual cases and relatively few of them participated in more than one case, all the relationships stemming from comparing the cases two-by-two must be considered weak. Except for one group

there was nothing in their choices of support that could not be explained by the ideological perspective of liberal and conservative.

The result indicates that the interest groups taking part by submitting amicus curiae to the Supreme Court do so to influence the outcome of individual issues. One possible explanation which must be investigated further is that interest groups in general may have a narrow focus with regards to the issues they are interested in. That they are founded to promote a certain kind of issues and tend to remain active in those areas instead of broadening their field of interest.

While in this case no second dimension could be identified, it would be too early to disqualify this objective entirely, because of the limited scope of the study. If there was a possible way of more effectively handle the gathering and processing of the submitted briefs, with sufficiently large amount of cases, a more distinct answer could be given to the question whether further research within the area of aggregate ideological conflict is warranted or not. With these limitations in mind the results from studying these three cases of the Supreme Court does however strongly indicate that the ideological conflicts among interest groups over several cases are at best weak. The study indicates that the reason for studying the ideological conflicts on a level other than case by case and evaluated out of any other measurement than the liberal and conservative dimension are few. It follows therefore that any fruitful research concerned with this subject should focus on the ideological conflicts between interest groups within the framework of individual cases.

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