NARAL and the art of playing defense: how interest groups act when they seek to protect the status quo of public policy

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NARAL and the Art of Playing Defense:
How Interest Groups Act When They Seek to Protect the
Status Quo of Public Policy

by

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Abstract

Why do interest groups take certain actions in policy debates and not others? How do groups seeking to protect the status quo of policy act? These questions, and others, cannot be answered well by the current interest group literature, and this dissertation seeks to delve into this line of research with a case study of the National Abortion Rights Action League (NARAL). While certain aspects of the interest group literature, and a large part of the venue shopping literature specifically, can help scholars understand some actions of groups like NARAL, there are a whole host of actions NARAL took that the literature misses and cannot understand or see due to common methodological and source choices. This work demonstrates that not all interest groups seek policy change, as assumed by large sections of the interest group literature, and that those seeking to protect the status quo (playing defense) often take non-conventional actions and act behind the scenes to impact public policy.
Chapter 1
Introduction

NARAL Pro-Choice America (NARAL), the nation’s oldest abortion rights interest group, has been fighting for abortion rights for over 50 years. While the organization started out fighting for this right, it has spent the last 45 years, since the right to choose was won in Roe v. Wade (1973), trying to defend this right from being revoked or restricted by those who oppose abortion. NARAL started out as an interest group fighting for policy change. Once it got what it wanted from the Supreme Court, NARAL was pushed into a defensive position trying to prevent rollbacks of, and limitations to, the right to choose. Two examples will illustrate this change from playing offense to playing defense.

Before the decision in Roe, NARAL fought against restrictive abortion laws in the states, with its biggest fight being in New York State. In 1970, NARAL saw New York as the best state in which to get a repeal bill passed, so the leaders worked with friendly legislators to get such a bill introduced that would allow for abortion in New York. The organization lobbied legislators, encouraged and facilitated citizen action in support of the bill, and published ads expressing the organization’s support. NARAL was successful in getting the bill passed and signed by Governor Rockefeller. All of these actions are expected by the interest group literature and thus confirm a lot of what we know about interest group action. However, NARAL’s actions changed after Roe.

Starting in 1973, NARAL was pushed to respond to its opponents’ actions, those of pro-life groups and politicians, to protect the right to choose. In the 1980s when it seemed inevitable that the Human Life Amendment would pass Congress, NARAL changed its focus from trying to stop passage in Congress to implementing a state-level ground game to prevent ratification by at least 13 state’s legislatures. This action in the states was related to defeating the Human Life Amendment, but because it was not a direct action against the Amendment, the current literature
less likely to see or expect it. However, these types of actions are what NARAL has been doing ever since *Roe*, but are unable to be studied by current literature due to a quantitative and aggregate data focus of most works on interest groups, which often do not take the specifics of organizations into account. When using large datasets, researchers lose the specificity of what interest groups do by aggregating them together to get a more generalized picture of what actions organizations take to impact policy.

The question is: What was different between before *Roe* and after that made NARAL act in different ways? The answer lies in the position NARAL was in. Before *Roe*, NARAL was pushing for policy change and so could act in traditional ways in whatever venue was most advantageous to achieve the organization’s policy goal: legalizing abortion. After *Roe*, NARAL was trying to keep the status quo and so had to be more creative in its actions and could not always choose where the issue of abortion was addressed. In both positions, NARAL can act to attain its goal, but the latitude of choice about where to act, when, and how is drastically limited when playing defense and trying to protect the status quo.

In its early years (1969-1973), NARAL chose where it fought for policy change—commonly referred to as venue shopping—in attempts to legalize abortion; the organization was “shopping” around and chose the best venues in which to act to reach its goals.¹ It is during this

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period the current interest group literature helps us understand and can explain many of NARAL’s actions. However, everything changed after the Supreme Court’s decision in *Roe v. Wade* (1973), which legalized abortion nationwide, and pushed NARAL to play defense.

Since *Roe*, most of the organization’s history, NARAL has been responding to the actions of anti-abortion activists, what I call “playing defense”—responding to actions of opposition in an attempt to prevent policy change and not driving the policy discussion—trying to protect a woman’s right to choose in venues from Congress to elections to the courts. We often see evidence, in the legislature and the courts, of organizations playing defense in an attempt to prevent policy change/protect the status quo of current policy, but we do not see a corresponding presence of analysis of such groups, and their actions, in the interest group literature.

NARAL often acted “behind the scenes” to affect policy, actions that are harder to study because they are not overt or easy to find evidence of. Additionally, NARAL was very engaged in elections, a venue that is rarely examined by interest group scholars as a venue related to policy change. Thus, the current interest group literature has a hard time understanding most of NARAL’s actions since *Roe* (1973) because not only do current works rarely examine organizations playing defense, it does not examine group action in all relevant venues. Elections are often missing from works examining interest group decision making despite their importance.

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to groups having an effect on policy. If much of what NARAL—the nation’s largest abortion rights organization—does is out of sight of the literature, it opens up the important questions: What can a study of NARAL (specifically) and playing defense (generally) teach us about the venues organizations choose to act in? And, what can it contribute to the literature on interest groups in the American political system?

In this dissertation, I argue that the interest group literature cannot fully explain the actions of groups like NARAL because not all interest groups seek policy change and the current literature does not make a distinction between those who are fighting for and against policy change or assume groups all are seeking change. However, many groups are playing defense and oppose policy change, often working behind the scenes, out of sight of traditional sources.

Many current studies rely on quantitative data that is public and easily available (what I refer to as public actions/data), which can lead to limited understanding of interest group action because not all action is public. Additionally, the interest group literature largely aggregates information on interest groups, instead of studying groups as the unit of analysis utilizing case studies, and is examining the likelihood of interest group action. This analysis prevents scholars from understanding the inner workings and intricacies involved in interest group actions and decisions as well as the real reasons behind why groups take certain actions instead of others. As a result, in the aggregate, we know how interest groups work, but we do not know about how interest groups that are working in different contexts adapt.

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3 Examples of such public actions are testifying before Congress and submitting an amicus brief in the courts.
I will use NARAL and most of the organization’s 50-year history of fighting to win, and prevent rollbacks to, the right to choose as a qualitative case study to help answer the questions: **What aspects of the interest group literature can explain NARAL’s actions?** Do interest groups playing defense (protect the status quo), rather than playing offense (seeking change), make decisions about where to act simply by where their opponents act or is there more to those decisions? What actions by interest groups playing defense can the literature not explain? Why does NARAL choose certain actions over others, such as acting behind the scenes instead of publicly in its attempts to protect the right to choose? And what can interest group scholars do to better understand groups playing defense in public policy battles?

This project will answer these questions through a qualitative analysis of NARAL and its actions from 1969 to 2004, the time period for which data are available from newspaper articles, interviews with past NARAL leaders, books written by NARAL’s past Presidents and Executive Directors, as well as archival documents from the Schlesinger Library at Harvard University (see more about my sources in the next chapter).

**My Methods**

As mentioned above, this work utilizes qualitative methods to make the case for studying interest groups that are seeking to protect the status quo of policy, with NARAL as the case study. This dissertation uses a broad data collection strategy, including archival documents, newspapers, interviews, and books to produce a detailed history of NARAL and its decision making. I then analyzed that history by viewing it through the lens of the interest group literature to see in what ways NARAL confirms what we already know while also shedding light on new areas of research.
This project started as a comparison of NARAL and National Right to Life Committee’s (NRLC)—the largest pro-life interest group founded in 1968—actions over time, but due to a lack of data on NRLC, this dissertation largely focuses on NARAL with the NRLC as a shadow case used for comparison. I started this dissertation by writing a 30+ year history of NARAL and its actions utilizing multiple sources for information.

To write this extensive, over three-decade history, I gathered many sources and types of data: I conducted interviews with past NARAL Executive Directors Karen Mulhauser and Kate Michelman, collected over 15,000 pages of archival documents from the NARAL collection at the Schlesinger Library at Harvard University, and read memoirs written by NARAL’s past leaders, secondary newspaper accounts, and other books on abortion policy that included some information on NARAL. I organized the information chronologically and made tables of NARAL’s actions to determine patterns of action and the type of venues the organization utilized. This analysis revealed that the organization acted at the federal and state level, utilized institutional (Congress, state legislatures, and the courts) and non-conventional (election and grassroots) venues, and employed educational tools (training and information) to strengthen the organization’s members and volunteers.

With the narrative finished, and these categories established, I was able to step back and look at NARAL’s entire story and compare what NARAL did with what existing literature would suggest it would do. This comparison showed that many of the actions I had written about in the narrative could not be explained by the venue shopping and interest group literature, even though NARAL was an interest group engaged in policy battles.

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6 The history was only about three decades despite NARAL having been around for more than 5 decades because of data limitations, discussed more below.
Instead, I found that NARAL took three overarching types of action: (1) it chose hospitable venues in which to make policy change and responded in venues where its opposition acted like the literature suggests that interest group organizations should; but, more often, (2) NARAL played defense responding to what NRLC and other political and organized interests did; and (3) flew under the radar, working behind the scenes to get things done but erasing its public footprints to not draw negative attention.

**Data Collection Methods**

When collecting all of the data that ultimately informed the 30+ year history, there were some challenges and roadblocks. I started with a content analysis of newspaper articles to gain a better understanding of the actions NARAL took and the events it was involved in over time. The plan was to have this information supplement in-depth interviews with past and present leaders from NARAL and NRLC, which I originally planned to be the bulk of my data. However, I found getting in contact with these individuals difficult. Despite multiple attempts, I could not get a response from anyone who currently worked at NARAL, and while at one time it seemed the NRLC might give me an interview, I was ultimately unable to connect with anyone despite multiple messages and having a direct contact at the organization.

Given this, I started to focus more on finding past leaders who might be more willing to discuss their involvement and NARAL’s past actions. I started with Sarah Weddington, the lawyer who won *Roe* and who served as NARAL’s Board President in the 1970s. While she said she did not think she had any information that would be helpful (she wasn’t a NARAL employee, only a Board member), she was able to connect me with Karen Mulhauser, past Executive Director from 1975-1981, who was able to tell me about some of NARAL’s actions.

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7 Karen Mulhauser, (past NARAL Executive Director), Phone Interview, April 2, 2017.
in the 1970s and 80s. I was also able to eventually track down contact information for Kate Michelman, NARAL’s Executive Director from 1985-2004, and get two interviews. These interviews, along with her book, provided me with a lot of information about the organization during her long tenure. A book by Lawrence Lader, President of NARAL at its founding and through and after the Roe decision, completed the timeline. After conducting the interviews and reading the books, I was still short on information, so I traveled to Cambridge, MA to explore NARAL’s archival documents at the Schlesinger Library. The collection includes everything from personal communication of the Executive Directors, reports to, and minutes of, the NARAL Board of Directors, staff memos, campaign and strategy documents as well as publications of the organization.

While this dissertation did not end up being the project I initially planned, the final product contributes to our understanding of interest groups in a new way by exploring how interest groups playing defense make decisions. It also paves the way for future research of other organizations playing defense and their actions.

**Key Findings**

Through my analysis of the various sources discussed above, I found that NARAL starts as the “typical” interest group seeking change to public policy (make abortion legal), where we would expect the venue shopping portion of the interest group literature to explain the organization’s actions well. Chapter 3 examines how well the literature explains NARAL’s actions and demonstrates that in the early 1970s NARAL engaged in venue shopping to legalize abortion and was able to choose hospitable venues in which to act. It also shows how some of NARAL’s later actions, in the courts and Congress, can similarly be understood by current interest group literature. However, post-Roe, the literature has a harder time explaining
NARAL’s actions, and I use Chapters 4 and 5 to layout another—largely neglected—story about how an organization makes decisions when it is “playing defense” to demonstrate why venue shopping and interest group scholars should study interest groups as the unit of analysis and use case studies, as well as non-public information and qualitative methods, to further understand interest group action and apparent inaction.

NARAL’s history from its founding in 1969 to 2004, the period for which I have data, can be roughly divided into three periods: the Pre-Roe period (1969-1973), the Roe period (1973-1980), and the Post-Roe period (1981-2004). I identified these periods by using important events in abortion history that sparked changes and new directions for NARAL and abortion policy. The pre-Roe period (1969-January 1973), the time from NARAL’s founding to when the Supreme Court ruled on Roe v. Wade, is the period when most abortion issues were taken up at the state level. The restrictive laws of the time, many of which completely banned abortion, were all state laws. No federal laws were dealing with abortion, so the only time Congress got involved was when the abortion laws of the District of Columbia were being challenged because Congress serves as the District’s legislature. During this period, NARAL mostly played offense—introducing legislation and pushing for legislative change—and the organization engaged in venue shopping.

The start of the Roe period (January 1973-1980) is marked by the decision in Roe, which thrust abortion onto the national stage. It was during this time that NARAL went on the defensive consistently for the first time and established a presence in Washington D.C., including hiring a lobbyist (Karen Mulhauser). It also began to be a more national organization, meaning the organization worked on national issues, not just state ones given the shift in focus from the

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8 Karen Mulhauser (past NARAL Executive Director), Pre-Interview Survey, e-mailed to author, March 30, 2017.
state to the national level. Before this period, the abortion issue was a state issue. However, since NARAL was forced to play defense to protect the rights won in *Roe*, the current literature has a difficult time explaining many of the organization’s actions because NARAL is unable to engage in venue shopping and is acting in non-traditional or unexpected ways (i.e. behind the scenes).

The beginning of the **post-*Roe* period (1981-2004)** is defined by the beginning of the Reagan administration because this was when the Republican Party became fully pro-life, putting a strong pro-life plank into its party platform. Reagan was also the first president to make abortion a key part of his Supreme Court picks. During this period, NARAL was still mostly playing defense, trying to stop inroads to the right to choose, except for the first two years of the Clinton Administration (1993-1994), but engaged the abortion issue on multiple fronts. It developed more and more state affiliates, fought back against Reagan’s Supreme Court nominees, and battled pro-life groups and legislators in Congress more than before.

During the pre-*Roe* period (1969-1973), NARAL’s actions fit well within the existing literature. The organization chose to act in New York State to overturn the restrictive state abortion law because NARAL President, Lawrence Lader, and the NARAL Board saw the state as a leader in the nation and believed that if New York changed its abortion law, other states would follow. NARAL introduced legislation and helped shepherd it through the legislature with two supportive sponsors. The organization even compromised on the contents of the bill when other groups wanted full out repeal because the NARAL leadership knew an imperfect repeal bill was better than current law with complete restriction. The organization lobbied. It rallied. And it bussed in citizen lobbyists to achieve its goals. NARAL directed the fight and chose where to act.

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and when to overturn the state law making abortion illegal, everything the venue shopping literature says interest groups will do when seeking policy change.\textsuperscript{10}

NARAL also worked in Washington D.C. during these early years not only to address abortion legality in Congress, which ultimately did not get far, but also to get public hospitals in the District to comply with a court case allowing abortions to be performed.

Additionally, there was one example post-\textit{Roe} where NARAL was able to engage in venue shopping. In the early 1990s, after the election of President Bill Clinton and an all Democrat Congress, NARAL was able to push for passage of multiple bills, including the Freedom of Choice Act, which would enshrine the rights from \textit{Roe} in federal law. The organization was able to engage in venue shopping after over a decade of playing defense because the federal political venues were receptive to NARAL’s policy ideas.

The literature also shows how interest groups will engage in a venue if it takes up an issue the group cares about, regardless of whether that venue is receptive to the ideas and values a group has about an issue.\textsuperscript{11} There are a few examples of this in NARAL’s history. The first was in the New York State legislature when pro-life legislators and interest groups attempted to overturn the 1970 abortion law that NARAL helped pass. NARAL fought back with everything it had to ensure abortion remained legal. Another example was when New York City was working on regulations to implement the 1970 abortion law. NARAL engaged with this process


because there were attempts to limit the impact of the law and the regulations were antithetical to the intent of the legislature. Furthermore, the organization engaged with Congress in the years following the Roe decision to fight the Human Life Amendment in the mid-1970s and early 1980s, which attempted to amend the constitution to make abortion illegal. The last two examples were in the Supreme Court when NARAL tried to get the Court to protect the right to choose in Webster v. Reproductive Health Services (1989) and Planned Parenthood of Southeastern Pennsylvania v. Casey (1992).

These examples confirm that NARAL acted in ways consistent with the existing literature about interest group decisions and venue shopping. They demonstrate that NARAL pushed for policy change in the most hospitable venue and engaged in a venue if the organization’s opposition was present or the venue took up the issue of abortion. This shows that some of NARAL’s actions, especially before Roe, can be understood through the lens of the current literature. However, given that NARAL is over 50 years old, these examples of action just scratch the surface of what the organization has done during its half-century history of fighting for, and to protect, abortion rights.

Throughout its history, NARAL took many actions that are inconsistent with what the literature expects. These actions included engaging in grassroots campaigns to affect the atmosphere in which the Justices decided Webster and Casey, acting behind the scenes when it came to certain legislation and Supreme Court nominations because the organization determined that was the best strategy at the time, and putting in place a state-level strategy to combat the Human Life Amendment if it passed instead of just fighting passage of the Amendment in Congress.
After the *Roe* decision in 1973 and the start of the *Roe* period (1973-1980), NARAL transitioned into a group seeking to protect the status quo (abortion rights). Throughout the latter part of the organization’s history (the *Roe* and post-*Roe* periods), I examine, in Chapters 4 and 5, how groups playing defense make decisions and discuss the various ways in which the blind spots of the current literature lead scholars to miss many actions of such organizations.

Even though abortion policy was “settled” in *Roe*, NARAL could not rest. Conservatives and pro-life groups were attacking the right to choose in multiple venues, and NARAL had to respond or risk losing what was won in *Roe*. According to the literature, the presence of opposition in these venues explains why NARAL acted against pro-life legislation, such as the Human Life Amendment (1970s and 80s) and pro-life Supreme Court appointments (1980s). However, there is an assumption that policy battles have a back-and-forth, that sometimes one side wins and other times the opposition wins, such as is the case with tax policy, energy policy (drilling vs. renewable energy), and many other policy issues, but this is not the case when it comes to abortion.

The Supreme Court ruled that abortion was legal under the U.S. Constitution in 1973, and NARAL was put in the position of defending that finding while pro-life groups and legislators attempted to reverse the decision or limit the availability/use of the procedure. To understand this unique policy battle requires examination of more than just easy to see public actions in policy battles, and that is where archival documents, books by past NARAL leaders, and interviews with past Executive Directors come in. They reveal the nuance of this unique policy struggle. There were also times when NARAL chose not to act or only worked “behind the scenes,” which is hard to study because it is the absence of action. The explanation for NARAL’s actions in

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various venues is more complicated than “pro-life groups acted there” or “the venue took up the issue.” Ultimately, NARAL made decisions based on whether action and what type of action would help the organization achieve its goals.

An example of such action the literature cannot explain is what NARAL did to fight against the Human Life Amendment. Starting in the mid-1970s, shortly after Roe, pro-life groups, including the National Right to Life Committee (NRLC), began pushing for an amendment to the U.S. Constitution called the Human Life Amendment. It would have overturned Roe and protected “life from its beginning to its natural end.” NARAL responded with lobbying and grassroots advocacy, which was partially responsible for the stalling of the Amendment in the summer of 1973. However, this Amendment also pushed NARAL to establish a nationwide, state-level strategy to protect Roe should the Amendment ever pass Congress and be sent to the states for ratification.

The literature would explain NARAL’s actions as being driven by its opposition’s presence in Congress, pushing for the amendment, which was part of the equation. However, there is nothing in the interest group literature that can explain why NARAL would engage in grassroots activity at the state level to affect something happening in Congress because it is an anticipatory action, nor could public data sources show such action took place because the connection between the two is not public knowledge. However, such evidence does exist in NARAL’s archival documents. NARAL assumed that the Human Life Amendment would pass

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14 Karen Mulhauser (past NARAL Executive Director), Pre-Interview Survey, e-mailed to author, March 30, 2017.
Congress, so the organization took a long-game approach and decided to fortify pro-choice support at the state level to stop ratification. The organization targeted 17 states in the hopes that 13 would be pro-choice enough to oppose ratification. By only examining public interest group action directly on the Human Life Amendment, we miss NARAL’s proactive state-level activity altogether because the action is not on the Amendment directly.

Another example of “action” that the interest group literature misses is when NARAL chose not to act or acted behind the scenes to influence a policy battle. The most striking example is NARAL’s involvement with the Roe v. Wade (1973) decision. It is a real puzzle why the nation’s most prominent abortion-rights organization sat on the sidelines and did not submit an amicus brief in the biggest abortion rights case of the century. However, this is only the conclusion when one relies on easily accessible, public information regarding the case. Despite the absence of a brief, the usual way organizations engage in the courts, NARAL was involved behind the scenes. The organization was intimately involved in preparations for the case, working closely with Sarah Weddington, the lawyer who argued and won Roe.17 This information is not widely known, however, likely because it is buried in the documents at the Schlesinger Library in Cambridge. The only information regarding NARAL’s involvement is found in a partially transcribed interview with Lawrence Lader, NARAL President at the time of the case.

Another seeming mystery is NARAL’s absence during Robert Bork’s contentious Supreme Court nomination. Given that Bork was very openly pro-life, one would expect NARAL to work against his nomination, including testifying before the Judiciary Committee, as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and American Civil Liberties Union (ACLU) did. The puzzle deepens because this lack of action came on the heels of NARAL’s claims that it opposed Bork and would actively oppose his nomination, including testifying against him. But it never did. Why would NARAL choose to be inactive on the Bork nomination after saying it would take action, and when the NRLC was supportive of this pro-life nominee who would be another vote to overturn Roe? The literature on interest groups might suggest that lack of resources was at play. Instead, archival sources and works by past NARAL leaders show that NARAL did not want to draw attention to itself or make the issue of abortion the central focus of the nomination hearings, which would draw attention away from Bork’s extremist views. However, only through examining NARAL more closely, and looking at sources that are typically not used in the interest group literature, can we understand what actions the organization took behind the scenes to oppose Bork’s nomination and why it ended up not testifying.

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20 Nomination of Robert H. Bork to be Associate Justice of the Supreme Court of the United States: hearings before the Committee on the Judiciary, United States Senate, One Hundredth Congress, first session ... September 15, 16, 17, 18, 19, 21, 22, 23, 25, 28, 29, and 30, 1987. Nomination of Robert H. Bork to be Associate Justice of the Supreme Court of the United States: hearings before the Committee on the Judiciary, United States Senate, One Hundredth Congress, first session ... September 15, 16, 17, 18, 19, 21, 22, 23, 25, 28, 29, and 30, 1987 § (1989).
These examples show that organizations have a range of options at their disposal and those options can be both hard to see and easy to misinterpret. I found that, contrary to what we may expect, some organizations choose to work behind the scenes or play a long-game instead of working directly against certain policies. These examples show the importance of digging deeper to fully understand interest group action. Without digging deeper into the archival documents, conducting interviews with past NARAL leaders, and reading books by people involved at the time, some of these actions, or choice of inaction, go unexplained, thus demonstrating the need to look past the surface. This is especially important if scholars want to understand more about groups who cannot engage in venue shopping in the traditional sense and who are resigned to fight against policy change to protect the status quo, a segment of the interest group world that is not well examined or understood by current literature. Without understanding more about interest groups, like NARAL, who are playing defense, we only understand one-half of policy debates because almost any time there is an organization seeking to change policy, there is another who wants to stop such change.

**What We Can Learn from NARAL and Abortion**

What this case study of NARAL demonstrates is that abortion, as a policy issue, is very different from most other policy areas because it was abruptly “settled” by a Supreme Court decision in 1973. The policy direction of most issues, from environmental policy to tax policy to energy or foreign policy, largely depends on who is in power at the state or federal level. Republicans usually expand oil drilling and cut taxes while Democrats reduce drilling in favor of pursuing more renewable energy and oftentimes raise taxes to fund public works projects and social services. There is a back-and-forth, and groups on both sides of these issues win sometimes and lose sometimes depending on who is in office and control of policy direction.
Although many states have passed laws limiting access to or placing restrictions on who can obtain an abortion, the legality of abortion has gone unchanged since *Roe*. The one exception to this staticity is the so-called “global gag rule,” which is a Presidential executive order that “prohibits foreign nongovernmental organizations (NGOs) who receive U.S. global health assistance from providing legal abortion services or referrals, while also barring advocacy for abortion law reform—even if it’s done with the NGO’s own, non-U.S. funds. The policy allows access to abortion only in cases of rape, incest, or when a woman’s life is at risk.”22 Typically, one of the first acts by a new President is to reinstate the gag rule if a Republican23 and repeal it if a Democrat.24

Abortion was made legal in 1973 by the Supreme Court which found a constitutional right to privacy that protected the right to choose abortion by combining various constitutional amendments, and it is still legal today. While pro-life groups and politicians have been successful in placing limitations on the use of the procedure (e.g. waiting periods and informed consent laws) and rules around receiving it (e.g. Hyde Amendment which restricts the use of Medicaid money to pay for abortions), they have been unsuccessful in making abortion illegal, despite many attempts and long periods of united Republican control of government. Given what we see with other policy issues, one might expect similar results with abortion—Republican governments making it illegal while Democratic governments make it legal again—but the divisive nature of the issue helps make this unlikely. Additionally, unlike most other policy issues, abortion was legalized by a Court decision, not by legislation, which makes it different

from issues that are set legislatively or by executive order. It is more difficult to overturn when
the Supreme Court says a right is protected by the Constitution. Congress cannot just pass a law
to change it. They would have to amend the Constitution or get the Court to overrule precedent.
Thus, instead of the winners and losers, or those pushing for policy change vs. defending it,
changing over time as the policy changes on the issue, abortion, and other Constitutionally set
issues, such as gun ownership, largely remain static in who is winning and losing and who is
playing offense and defense.

NARAL, and other pro-choice organizations, have been playing defense for most of the
last five decades, with very few exceptions. When in this situation, decision making, including
choosing in which venues to act, looks different when one side is constantly playing offense and
the other constantly playing defense. As demonstrated above, it does not mean these
organizations playing defense do not make strategic decisions, just that the organization’s
decisions are more limited and different than those pushing for policy change.

What Follows

The chapters that follow will paint a picture of an interest group that is constantly
working for abortion rights, whether that is in seeking to change current policy to expand such
rights or fighting against policy change to protect them. Chapter 2, The Strategies Groups
Take, will dive deeper into the interest group literature, my contributions, and the methods of
this dissertation. Chapter 3, NARAL and the Fight for Policy Change, discusses how
NARAL’s actions confirm what we currently know about group actions from the literature, with
a specific focus on the venue shopping literature. Most of these examples come from the pre-Roe
period (1969-1973), though there is an example in the early 1990s of NARAL being able to
engage in venue shopping due to political circumstances.
Chapter 4, When NARAL Goes Rogue: Acting Against the Venue Shopping Grain, is the first of two chapters that will explore what playing defense looks like and discusses when NARAL’s actions run contrary to what is expected by the literature. This chapter examines NARAL’s actions that can only be understood by looking at NARAL itself as an organization and using its archival documents and interviews with past leaders. It also addresses the fact that interest groups act in more than just institutional venues, which is what most of the interest group literature addresses. I argue that grassroots work and elections are venues the literature needs to include in its analysis to fully understand interest group behavior.

Chapter 5, Flying Under the Radar: Interest Groups as the Unit of Analysis, discusses how many actions by groups are out of the public eye, behind the scenes, but that those actions are just as important to understanding how interest groups act as the public ones. I address the interest group literature’s propensity to study public actions and show what can be gained by looking at other actions taken behind the scenes that require more digging to find. Thus, studying interest groups as the unit of analysis and looking below the surface of public actions adds to our understanding of how interest groups act and begins to form an explanation of how playing defense works. Chapter 6, Where Do We Go from Here, will recap the previous three chapters as well as explore future research opportunities for scholars interested in NARAL specifically as well as those who wish to expand the interest group literature to include more research on groups playing defense.
Chapter 2
The Strategies Groups Take

The interest group literature is vast, looking at a wide array of interest groups from various angles using mostly quantitative methods. What unifies this literature is the goal of understanding more about interest groups, their behavior, and the impact of such behavior. Existing studies help us understand a lot about what tactics groups utilize, what influences group action and the level of influence groups have in the policy process, as well as why people are motivated to join groups and how groups choose in which venues to act. However, even while this literature does a lot of things well, and provides a wealth of information about interest groups and their actions, it cannot explain much of NARAL’s history.

As Hojnacki et al explain in their 1996-2011 review of the interest group literature, even while the literature has become more attentive to the context within which groups operate—something Baumgartner and Leech saw as a deficiency in their review of 1950-1995 research—the literature does not build upon itself to create overarching theories; “…interest group scholars have not been able to bring common, overarching, theoretical questions to bear on ongoing streams of research.” Thus works on interest groups, while examining the same or similar topics, often stand alone and do not build upon works that came before to create a theory of interest group action or behavior. In addition to this lack of theory building, the current interest group literature, as noted by Hojnacki et al, has “more large-scale and longitudinal studies” that empirically test theories of group behavior, but this leaves out a deeper

27 Hojnacki, Kimball, Baumgartner, Berry, and Leech. “Studying Organizational Advocacy and Influence…”
understanding of interest group activities and, importantly, the motivation behind such, that can most effectively be revealed through qualitative, case study analysis.

While Baumgartner and Leech\textsuperscript{28} lamented the lack of broad-based research examining multiple groups and issues within one project, there has been some, though small change, in this practice since.\textsuperscript{29} This reality that most interest group research studies multiple groups or issues at once while engaging in quantitative analysis leaves us with a lack of understanding of why groups act. We understand that groups act and how, but we do not know why certain actions were taken over others. Only through systematic analysis of individual, or multiple, groups acting on the same issue, or type of issue,\textsuperscript{30} can scholars begin to understand what truly motivates interest groups to act in certain ways at certain times, and understand why interest groups might choose to not act, or act behind the scenes, behavior that cannot be captured by large-scale, quantitative analysis of public actions.

Overall, while the interest group literature has a broad understanding of interest group actions, behavior, and choices, the large-scale quantitative analyses cannot explain why interest groups take specific actions or why a group might be or appear to be absent from a policy debate. Without qualitative analysis of interest groups themselves as the unit of analysis, instead of lumping groups together in large datasets, scholars have a limited understanding of the reasons behind group action, which will help us understand why organizations lobby the legislature or engage in court battles. Knowing that groups act is important and interesting, but knowing why groups act in certain ways gives scholars a greater understanding of interest group behavior.

\textsuperscript{28} Baumgartner and Leech. \textit{Basic Interests}.
\textsuperscript{29} Hojnacki, Kimball, Baumgartner, Berry, and Leech. “Studying Organizational Advocacy and Influence…”
\textsuperscript{30} By “type of issue” I mean issues such as those settled by a court case, morality issues, or other such classifications.
The current interest group literature can roughly be divided into five sub-sections: resources, venue shopping, organizational maintenance, tactics and effectiveness, and group impact and participation.\(^{31}\) Each will be discussed and evaluated in turn below. Literature on resources largely examines the impact of things just as money on interest group activity, while the venue shopping literature explores how groups make decisions about where to act in their search to make policy changes. The organizational maintenance literature looks at how and why groups form and survive. Group effectiveness and which tactics they choose for lobbying and impacting policy is examined by the tactics and effectiveness literature. Finally, the group impact and participation literature looks past group action to the effect group membership has on individuals and, by extension, their actions in the world outside the group(s) individuals join.

**Resources**

Research on interest group resources, defined as money, coalition partners, and a permanent D.C. presence, shows that resources have an impact on interest group strategy and tactic decisions. Interest groups usually lobby people or venues that are sympathetic to their views,\(^{32}\) but the more resources a group has the more likely they are to extend their lobbying efforts to opponents\(^{33}\) and more venues, e.g. the bureaucracy in addition to Congress.\(^{34}\) As a

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\(^{31}\) These segments of the literature include those identified by Hojnacki et al (2012) who broke the literature down into three categories; they excluded venue shopping and resources from their categorizations which could be due to their limited scope from where they drew their sample of work for their review.


group gains more wealth, the more they will spend on lobbying, but the impact of that money is debated. Money, along with other resources such as staff or other individuals involved with the organization, can also affect the strategy an organization takes, such as the involvement of Charles Hamilton Houston and Thurgood Marshall in the NAACP’s legal battle over “separate but equal.”

Some works say that increased resources, including money, increases not only an interest group’s access but also policy successes, while others find that policy success is more about how that money is spent. An increase in resources also improves contact with policymakers and a group’s ability to provide information plays a large role in access. The more money a group has the more likely they are to engage in direct lobbying, speaking with legislators, and less likely to engage in indirect lobbying or grassroots and public opinion campaigns. The ability of a group to maintain a presence in Washington D.C. also has an impact on what a group can accomplish, as Leyden demonstrated when he studied which resources increased the likelihood of a group being asked to testify in a congressional hearing.

37 “The aspect of political skill that should be emphasized here is the ability to persuade people whose views conflict that their mutual interest will be better served by accommodating, suppressing, or avoiding the conflicts than by persisting in them.” Tushnet, p.20.
40 Rainer. “Institutional Context, Organizational Resources, and Strategic Choices.”
41 Victor. “Strategic Lobbying: Demonstrating How Legislative Context Affects Interest Groups’ Lobbying Tactics.”
Working in coalitions is another resource interest groups use to increase their likelihood of success, but whether groups form coalitions depends on the type of issue. Hojnacki and Kimball\textsuperscript{43} and Holyoke\textsuperscript{44} demonstrated that working in a coalition increases lobbying efforts and Nelson and Yackee\textsuperscript{45} found that working in a coalition has an impact on policy outcomes because the groups send a united message about policy preferences and illustrate strong support for a particular policy. Hojnacki\textsuperscript{46} explained that the likelihood a group will join a coalition is influenced by group type, the specificity of the issue they advocate for, as well as group perceptions of the policy problem. Hojnacki\textsuperscript{47} also found that the presence of organized opposition to an issue increased the likelihood of all group types joining a coalition as did the specificity of the group’s issue—the more specific, the less likely to join a coalition because the group did not want to end up fighting for issues it was not concerned with—while opposition from Congress did not impact coalition formation.

Some works also tell us that resources will impact venue decisions. Ley and Weber\textsuperscript{48} found that a group’s perception of success will impact strategy decisions, and political resources, such as larger membership size and having a legislator as a member, increase the likelihood a group will choose a political instead of a bureaucratic strategy.\textsuperscript{49} There is disagreement about how resources impact group decisions about lobbying multiple venues. McKay\textsuperscript{50} claimed that having the resource of a lobbyist housed in Washington D.C. increases lobbying in multiple

\textsuperscript{46} Hojnacki, “Interest Group’s Decisions to Join Alliances or Work Alone.”
\textsuperscript{47} Hojnacki, “Interest Group’s Decisions to Join Alliances or Work Alone.” 82.
\textsuperscript{49} Naoi and Krauss. “Who Lobbies Whom?”
venues, and McQuide\textsuperscript{51} claimed that the conflictual nature of the issue(s) the interest group is engaged in leads to lobbying fewer institutional venues. Groups are more likely to lobby a branch of government when the lobbyist has the same ideology as the dominant one in that branch, the resource of ideological agreement,\textsuperscript{52} and if a group lobbies the legislature they are more likely to lobby the bureaucracy. Groups do not tend to specialize in a certain venue, except lobbying the legislature.\textsuperscript{53}

**Venue Shopping**

Through the use of issue case studies and quantitative analysis, the venue shopping literature paints a picture of interest group activity that helps us understand what institutional venues groups choose, and when they choose them, to make a policy change. In the venue shopping literature, a venue is an institutional venue, usually Congress or state legislatures. Venues such as the Courts are studied infrequently, while venues such as elections are almost completely ignored, though there is some election literature that looks at interest group action in elections.\textsuperscript{54} Most scholars use quantitative analysis to examine when interest groups choose a certain venue, but they are not examining all political venues, or even institutional ones, since elections are often left out despite their intimate impact on policy-making—who is elected determines the direction of policy and whether an interest group has support for its issue(s)

\textsuperscript{51} McQuide, “Interest Groups, Institutions, and Divided Government. Does Party Control Matter in Choice of Institutional Lobbying Strategies?”

\textsuperscript{52} McKay, “The Decision to Lobby Bureaucrats.”


among elected officials. The literature as a whole focuses on when interest groups seek change to current policy and what impacts their choice of venue and tells us a lot about how interest groups find the right venue for their issue, often through trial and error and learning. Through the use of quantitative analysis, this research helps us understand a lot about interest group action in institutional venues. However, what this literature misses is an understanding of the interest groups themselves or how groups who play defense and want to protect the status quo act in our political environment.

Many important venue shopping studies about interest groups focus on issues and tactics and use the interest groups as a way to examine policy change and venue selection. However, these works are not interested in the groups themselves—most works utilize the groups to understand how interest groups act or what influences certain decisions regarding venue selection to advance a policy goal—and cannot understand when a group chooses not to act. For example, Ley and Weber\textsuperscript{55} examined venue selection in environmental policy-making. They sought to understand how those interest groups choose policy venues. The authors did not study the groups themselves to fully understand their actions but instead used the groups as a way to understand what influences decisions regarding a push for policy change. Another example is Ley’s article\textsuperscript{56} that examined the issue of improving air quality in Oregon’s Willamette Valley. It was the policy and how changes to it occurred through a group’s venue shopping that was of interest. Once again, he did not have an understanding of the groups themselves. A third example is Holyoke et al\textsuperscript{57} and their article on venue selection among charter schools engaging in

\textsuperscript{57} Holyoke, Brown, and Henig. “Shopping in the Political Arena.” (2012).
advocacy. While the authors engaged the schools to find out their advocacy tactics, the unit of analysis was the tactics in an attempt to understand why the schools chose to act in certain venues. The groups, in this case charter schools as advocacy organizations, were not the unit of analysis and there is no real understanding of why the schools took certain actions.

While these examples, and more, look at interest groups, they only do so in so much as the groups can help the authors understand under what circumstances groups make certain venue selections. There is no understanding of the groups themselves or their reasons behind selecting certain venues, or at times avoiding certain venues, the latter of which cannot be understood without examining the groups themselves. The authors seek to understand groups in-so-far as that information helps the author understand a group’s choice of venue to change policy. While the literature does a good job of explaining when and how groups seek change and take action, it does this less well for groups like NARAL who are not seeking policy change but instead to defend the status quo, which is why works like this dissertation are necessary.

This lack of focus on interest groups as the individual unit of analysis, with an in-depth understanding of those organizations and their actions, helps explain the venue shopping literature’s focus on policy change because those who seek change stand out when examining a policy issue. They are the ones who are seeking to “shake things up” and are pushing back on “the way it is,” so naturally their work will garner attention. However, without looking at the internal workings and decisions of the interest groups themselves it is difficult to understand why organizations make certain choices, especially those who are fighting policy change. Even the name of the body of literature itself indicates the belief that all groups get to shop around for the best venue to address their issue when this is only the case for (roughly) half of the interest groups involved in policy-making debates. What I will show in this dissertation is the value in
studying interest groups as the unit of analysis and qualitatively studying non-public actions to understand venue shopping and how groups playing defense choose where to act and their decision-making processes.

Some scholars found that interest groups usually lobby people or venues that are sympathetic to their views, but also that groups will expand conflict and lobby venues that are hostile to their views/issues if such a venue takes up an issue the group cares about. Others demonstrate that some groups will not only shop between venues at the same level of government but between levels of government if needed to find the best venue at the best level of government to address its policy concern. Partisan control or the prevailing ideology in a venue is also a strong predictor of whether groups will choose to work in a venue. Interest groups do not typically like to work in a difficult venue that is controlled by a party that is opposed to their views on an issue.

We know that what venue a group chooses will determine how its issue is handled and that groups are more likely to lobby friendly venues/government, but will get involved in an inhospitable venue if it takes up the group’s issue. The receptivity of a venue is important and

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has an impact on the level of lobbying effort. Thus, interest groups are more likely to lobby the legislature, court, bureaucracy, or executive agencies if that venue is likely to be receptive to its ideas. However, this finding conflicts with the claim that groups will get involved in an inhospitable venue if it takes up the group’s issue.

As mentioned, the venue shopping literature examines issues and public actions by interest groups seeking to make changes to policy, but not interest groups themselves or those playing defense, which is half of the interest group lobbying story. The authors examine everything from gun control and establishing protected marine areas in California to charter school lobbying and fielding burning, but the central focus is what the groups do to make policy change. The groups themselves are rarely examined. Additionally, with a few case-study exceptions, these works utilize large datasets to run regressions and other statistical analyses to predict interest group behavior under certain circumstances instead of examining what the groups are doing and why.

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69 Ley and Weber. “Policy Change and Venue Choices.”


While the works discussed above all assume groups are seeking change, some of the venue shopping literature looks at venue shopping more generally, which can help us begin to understand the groups on the other side who are unable to engage in venue shopping. Holyoke used the issue of financial modernization to test a theory about when groups choose to lobby one venue over another and found that multiple factors have an impact on whether a group lobbies a venue and their lobbying intensity. The presence of the opposition in a particular venue increases the likelihood of lobbying while opponents using grassroots tactics decrease the likelihood that a group would lobby a certain venue.

Holyoke et al used a survey of charter school advocacy to examine strategic venue selection for lobbying. They found that groups like to lobby friendly policymakers but will lobby a venue that is less hospitable if it takes up an issue the group cares about, and that more resources equal lobbying more venues. The flaw in even these works in helping us understand those groups who are playing defense is that such groups do not often have a choice of where to act. They are pushed to act in whatever venue their opposition chooses, which will most likely be inhospitable to those who want to protect the status quo.

**Organizational Maintenance**

The organizational maintenance literature, on the whole, discusses how interest groups form, why and how they come into being, and how they survive as interest groups through

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72 Holyoke. “Choosing Battlegrounds.”

gaining funding and incentivizing membership. Within this larger strain of literature, some works discuss how the internal workings of interest groups impact group decisions. Engel and Halpin and Daugbjerg explored how a group’s identity impacts its strategy choices, including venue, and how this can change over time, while Teles explored how the financial donors of an organization can impact what legislation or issues groups support or oppose to keep the donors happy. These works also demonstrate that how a group is structured, what kind of leader(s) they have, whether the group is democratic or if a group is federated or unitary in nature can impact group decisions regarding things such as where to take action, what issues to act on, and strategies for gaining financial support.

While organizational maintenance can be a factor in decision making for many interest groups, this is not the case when it comes to NARAL, at least according to the sources I had. The organization often took risks when it came to its actions, such as moving out of Congress to the states to fight the Human Life Amendment. If the organization had been unable to gain enough pro-choice strength in 13 states, and the amendment had passed (which it never did), the right to choose could have been lost, partially because NARAL chose to take a more long-game

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75 Engel. “Organizational Identity as a Constraint on Strategic Action.”


79 Wilson. *Political Organizations*.

80 Truman. *The Governmental Process*. 

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approach and move its efforts to a different venue than where the policy was. Additionally, I did not find any evidence of NARAL making decisions or taking certain actions to maintain the organization or expand membership.

**Tactics and Effectiveness**

Many works that examine interest group tactics and their effectiveness in influencing policy outcomes utilize surveys to understand which tactics groups say they are more likely to use and where they lobby to explore the correlation between certain tactics and success.

However, this literature lacks an understanding of why groups choose their tactics and certain strategies. These works ask interest groups to identify when they use direct or grassroots tactics, and whom they lobby/target. They also examine when a group is likely to submit an amicus brief in a court case, while some analyze why and find that it is primarily to impact the Court’s “policy output.” Others show how interest group involvement in court nominations impacts senators’ evaluations of the nominees.

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Some works examine what influence groups have on the court when they submit amicus briefs and the decision to submit such briefs\(^{85}\) while others show that interest group involvement in the legislature and the courts impacts policy and judicial decisions.\(^{86}\) Caldeira, Hojnacki, and Wright\(^{87}\) examined multiple types of actions interest groups take when attempting to influence federal judicial nominations, including the normal actions of testifying and lobbying senators to the rare actions of grassroots activities, such as engaging members and the public in citizen lobbying and letter writing. Victor\(^{88}\) found that the legislative context within which groups must lobby also affects tactic choices. If an issue is new, is referred to multiple committees, and the groups are working in a coalition, they are more likely to directly lobby legislators on an issue. However, if a bill is considered under a suspension of the rules and there is a threatened veto, a group is more likely to engage in indirect lobbying in an attempt to increase the pressure of public opinion on legislators’ votes. While getting to the issue of what impacts interest group choices, this work focuses on the tactics used, not strategy and decision making, which are key parts of interest group work.


\(^{88}\) Victor. “Strategic Lobbying: Demonstrating How Legislative Context Affects Interest Groups' Lobbying Tactics.”
This present knowledge allows us to understand in the aggregate when groups are more likely to target the courts over the legislature, or vice versa, and tells us that group involvement in politics influences the decisions of justices and legislators, but it tells us little about why groups choose to take a certain strategy over another—why would a group act in the court instead of the legislature and vice versa?

**Group Impact and Participation**

Another area of the interest group literature focuses on the internal and external impacts of joining and being involved in an interest group/voluntary association on members and their actions—internal meaning how membership impacts individuals and external meaning the impact people have on democracy and politics due to their involvement in voluntary associations. This focused, in-depth understanding of group members, done through case studies of individual groups, is missing from our understanding of interest groups themselves, and strategies and tactics specifically, since most works, as discussed above, utilize aggregate data and do not differentiate between types of groups. This project will attempt to use this type of in-depth methodology to study NARAL to help us understand how interest groups make strategy decisions, though not the impact of NARAL membership on members.

The research on the internal impact of group membership on individuals is far-ranging and examines issues such as identity, self-efficacy, stress, trust, and political tolerance.

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Other research demonstrates that group participation increases life satisfaction.\textsuperscript{94} The literature that examines the impact of group membership on political engagement demonstrates how group membership increases such participation,\textsuperscript{95} but that the type of group(s) one is a member of matters.\textsuperscript{96} Anderson\textsuperscript{97} examined not only the impact of the number of memberships but the context (feeling of connectedness) that members felt within their group and found that one’s sense of community has an impact on political discussion and the likelihood of voting.

**Literature Limitations and My Contribution**

While the interest group literature helps us understand a lot about interest group actions and the impact they have on policy decisions, it is limited due to its use of quantitative analysis and publicly available information. Most of these works utilize such data to predict when and where groups are likely to act in pursuit of policy change and what influences an organization’s decisions about where to act, such as resources and ideology of the branch of government. This approach limits our understanding of interest group activity. This dissertation attempts to start a new discussion about interest groups in three ways by focusing on those groups playing defense.

First, this dissertation will help us understand apparent inaction by an interest group when a group might actually be working behind the scenes. Only by diving into archival documents or


conducting interviews can scholars understand anything about nonpublic actions or deliberate decision making by interest groups to stay out of the limelight in a particular policy debate.

Second, starting with the assumption that not all interest groups seek change, a different assumption than much of the venue shopping literature, and utilizing nonpublic information, such as interviews and archival documents, leads to asking different questions than the current literature. Assuming all interest groups want to change public policy leads to only asking certain questions, such as: why are newly formed environmental groups that seek the same goal—clean air—as other groups operating in different venues?,98 “On what basis will advocates choose between these different types of venues or choose to lobby several at once?”99 “Do interest groups alter their lobbying strategies according to the legislative circumstances surrounding individual policies they wish to affect?”100 and when do interest groups choose to lobby a venue?101 to understand interest groups who are playing defense, scholars need to ask questions like those posed in the introduction to this dissertation because they are not limited by the assumption of seeking change and are more focused on the organization not just what it does.

Finally, this dissertation examines elections as a venue for interest group action, demonstrating that researchers should more often include such in their analyses of interest groups. The current interest group literature under-emphasizes the importance of certain venues such as elections when it comes to interest group action. There is campaigns-and-elections literature that examines political donations,102 but the interest group literature focuses mostly on

100 Victor. “Strategic Lobbying: Demonstrating How Legislative Context Affects Interest Groups’ Lobbying Tactics.”
101 Holyoke. “Choosing Battlegrounds”
institutional venues and interest group action within such venues because it is easy to quantify and study. However, understanding group action in the electoral venue is important because without having elected officials who agree with a group’s position on an issue, their lobbying efforts, which the interest group literature does study, will likely be fruitless.

What the literature above has in common is its focus on factors that determine action and/or likelihood of action, as well as what factors usually influence such action through quantitative analysis. This assumes interest groups get to choose when and where to act. While many of these questions could be answered qualitatively, they lend themselves to quantitative analysis using large datasets because they each seek a broad understanding of interest groups. However, starting with the idea that a group seeks to protect the status quo of policy, and will be playing defense against those trying to find the right venue in which to act to achieve policy change, as this dissertation does, will not only lead to asking different questions such as those in the introduction but will reveal a different story about what groups do and why.

By examining an interest group that is playing defense, like the National Abortion Rights Action League (NARAL), different questions begin to emerge because the analysis is less about choosing venues and what affects group choices and decisions and more about how groups respond to attempts to change policy, which is harder to understand quantitatively or in the aggregate except over time with amassed research. Additionally, asking questions like those I have posed above, or others about understanding organizations that are responding to attempts at policy change, lend themselves to qualitative analysis because strategy, and why organizations take certain actions, is not something interest groups typically share publicly. This information lies solely in an organization’s internal documents and in the minds of those who work, or worked, for the organization. Only by looking in-depth at organizations over time and their
decision making does it become evident that not all groups are seeking change or truly choosing the venue(s) in which they act but instead seek to block change by responding to the venue shopping of opponents.

Some of the literature seems to examine all groups, such as the impact of resources or likelihood of action in a certain venue, but these works still have the assumption that groups get to choose where to act. The literature rarely examines what groups who oppose change are doing or how they make their decisions about when and where to respond to those who engage in venue shopping. All groups are lumped together which prevents understanding actions of the groups on different sides of a policy debate. In other words, looking at how groups that play defense choose which venues to respond in will greatly increase our understanding of interest group action and “inaction” because when you use interest groups as your unit of analysis you can dig deeper into why they make certain choices, not just what impacts the use of certain tactics or strategies, and give a deeper explanation for action (or inaction). This project will help contribute to this line of research by using NARAL as a case study to point out how studying interest groups themselves, and especially those who play defense, can give us a deeper understanding of interest group action and venue selection.

Additionally, this literature usually does not use case studies of groups to look at interest groups. The authors instead use policy battles or policy issues to see what influences a group’s decision to act or seek change or how outside events impact the organization’s choices. Understanding the interest groups themselves and studying their internal decision making and strategy discussions is key to understanding not only why groups choose to fight for policy change (or oppose it) in certain venues but such analysis can give us an understanding of organizations playing defense and how their decisions and strategies are different from those
organizations who seek policy change. These gaps in our understanding of group decision making are issues this project attempts to address through a case study of NARAL. Using qualitative methods and looking at the internal workings and decision making of an interest group leads to a greater understanding of the motivations for action, or inaction, and offers a way to understand how groups opposed to policy change operate in the political world.

By following NARAL from its inception (1969) through the early 2000s (the period for which data is available), we can see how interest group actions and decisions support the literature discussed above, but also reveal a weakness in relying too much on quantitative analysis to understand interest group action and the lack of attention to the “other side” of policy change debates. From its founding in 1969 to the Supreme Court decision in *Roe v. Wade* (1973), NARAL’s actions fit well into the interest group literature. However, once the organization gained what it was fighting for—the right for women to choose abortion—the organization was forced onto the defensive as pro-life groups, including the NRLC, fought to roll back the rights won in *Roe*.

After *Roe*, NARAL is shut out of the option of deciding where to act, regardless of its resources or receptivity of a venue, because it is playing defense to protect the right to choose won in *Roe*. The organization is forced to respond in whatever venue(s) the pro-life movement uses to try to restrict the right to choose: Congress, state legislatures, elections, court cases, and court nominations. NARAL is often making its strategic decisions based upon how to respond directly to pro-life organizations’ actions as opposed to how to change current policy, though this is not always the case. Sometimes, as mentioned above, NARAL will deviate from the expected for strategic reasons, such as what the organization did with the Human Life Amendment (1980s) and the Robert Bork Supreme Court nomination (1987).
For the Human Life Amendment, NARAL took a long-game approach to strategy and began working at the state level to prevent ratification instead of just focusing on trying to stop the Amendment from passing in Congress. When it came to Bork’s nomination, NARAL chose strategically not to engage in public opposition, such as testifying against Bork, because it was seen as a fruitless strategy. It is only through a look at the inner workings of the organization and its decision making we can begin to understand these unexpected actions and supposed lack of action.

This project not only confirms some theories and findings in the interest group literature, it offers a critique of the literature and opens the door to new research on groups that are playing defense and constrained in their decision making. The story of NARAL confirms that when a group seeks policy change they work in venues where they have the best chance of success. It also confirms that groups will work in venues where their opposition is working regardless of whether that venue is hospitable and that groups will utilize the courts to make policy changes. However, while the story of NARAL confirms these findings, it also challenges others and the literature as a whole.

By using NARAL as a case study, I show that not all organizations want policy change, and thus are not engaging in decision making or venue shopping for such purposes. I also demonstrate that those playing defense are not able to engage in the same decision making as those seeking policy change. These groups are instead pushed to respond to what their opposition does (those pushing for policy change) in whatever venue(s) they choose. In this way, this project reveals a blind spot of the current literature—it often examines only one side of policy battles and many works make assumptions that all groups seek change.
This dissertation also demonstrates the value of studying the interest groups themselves and their internal communications and documents, not just their outward-facing, public actions in policy battles, such as those chronicled in newspapers, press releases, or by other media. By using the interest groups themselves as the unit of analysis instead of policy battles, as is often the case in interest group works, then we can begin to understand not only why organizations take certain actions, but also why groups often do not, or appear to not, engage in a policy battle. This project shows that by studying interest groups themselves, instead of just their public actions, we can gain a better understanding of what motivates groups to act and why they sometimes choose not to act.

Along these same lines, utilizing a qualitative approach to studying interest group action, instead of quantitative analysis, leads to not only asking different questions but vastly expands the data available to answer such questions. When looking at publicly available information, you are limited to what groups did. Only by examining the inner workings of organizations, through interviews and archival sources, can researchers understand anything about inaction or the reasons leaders had for taking action, choosing to not act, or acting behind the scenes. Expanding the sources utilized to understand interest group action and venue shopping will lead to a deeper understanding, and greatly expand our knowledge of, interest groups as it brings to light information that easy to study public information might not show.

This project will demonstrate both the strengths and limitations of the interest group literature to show how organizations who are playing defense act in policy and political environments. It follows the actions of NARAL over a 30+ year period,\textsuperscript{103} which includes times of receptive and hostile government venues and strategic decision making about how to respond

\textsuperscript{103} This project is limited to roughly 30 years of NARAL’s 50-year history due to data constraints and access. The period 1969-2004 are the years for which data are available (discussed more below in methods).
in the venues chosen by opponents. While a large part of what will follow offers a critique of the traditional ways of studying interest groups, it is with the intent of helping us to understand the other side of policy debates, and how organizations playing defense make decisions, as well as demonstrate the need to expand the methods of the venue shopping literature to include qualitative analysis of interest groups.

**Parts of the Literature this Project Cannot Address**

Due to the limitations of my data (as discussed above), there are a few parts of the interest group literature that this project cannot address. The first is resources and their impact on decision making. While there are some documents available from the NARAL archives at the Schlesinger Library that have budgetary information, it is incomplete and some documents are not accessible without permission from NARAL until many years from now. Some of the documents that are available only provide partial information, such as income/expenses up through a certain month in the year, while others offer inconsistent information regarding income and expenses for the organization in a given year. There are not always final, end of year budget documents available, and some documents that are available offer inconsistent year-end totals. Perhaps future researchers who will have access to all of NARAL’s budgetary documents will be able to contribute to this line of research by adding an analysis of NARAL’s resources and how that impacts the organization’s decision making.

Another portion of the literature this project does not address is group impact and participation. First, this was not the goal of the project—understanding why people joined NARAL and the benefits of such membership—but there was also little information regarding the membership of the organization in the archival documents. As for organizational maintenance, there was only one piece of information that addressed this section of the interest
group literature and it challenged findings that groups make decisions on strategy to keep donors happy. In interviews and her book, Kate Michelman mentioned how NARAL’s actions would be received by donors so I asked her how much of a consideration donors were in decision making discussions with the NARAL Board, and whether it was this one of the first things they considered when choosing strategy. She responded that NARAL “…did not make decisions based only on what [they] thought [their] donors would like…Our job was to protect and defend a woman’s right to choose and her reproductive rights. Our job was then to educate our donors as to why they needed to back that; that was how that worked.”

Future research could address these sections of the literature in more depth. Researchers could gain an understanding of the impact that NARAL, or other organizational, membership has on individuals through interviews with current and past members and more research could be done specifically to unravel the connection between NARAL’s actions, donors, and other aspects of organizational maintenance.

**Methods and Sources**

Although the literature says that interest groups will fight for policy change in hospitable (preferred) and inhospitable venues, it does not often study interest groups who play defense. These organizations make decisions from a very different vantage point than those organizations seeking change, which means their decision making could, and does, look different than those groups seeking policy change, something the current interest group literature inadequately

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104 Kate Michelman (past NARAL Executive Director, 1985-2004), Phone Interview, October 29, 2017.
explains. An organization playing defense, like NARAL, is at a distinct disadvantage in that it often cannot choose the venue(s) in which the issue(s) it cares about are dealt with. Current literature also focuses on analyzing actions that are easy to find and track using quantitative methods and says that groups will act in a venue if it takes up an issue the group cares about. However, this is a very simplistic understanding of interest groups that want to protect the status quo and leads to the question: Do interest groups playing defense (protect the status quo), rather than playing offense (seeking change), make decisions about where to act simply by where their opponents act or is there more to those decisions? To answer this, and the other questions posed in the introduction, I chose to look at the fight over abortion, specifically NARAL, which has been playing defense for most of its history.

Case Selection
I chose to focus on the issue of abortion because it is a very salient topic in the political world and it is understudied in the literature. Most works on abortion do not focus on the interest group as the unit of analysis but instead the battle over the legality of, and access to, abortion. The original goal of the project was to do a comparison of NARAL and NRLC’s actions, but due to data limitations—there are no archives for the NRLC and I could not conduct any interviews with leaders in the national organization—the project became limited to an analysis of NARAL using NRLC as a shadow case.

I used a single case study with a shadow case for many reasons. First is because, despite the fact I was unable to obtain enough information about NRLC to do a full comparison of the

two organizations, I still found the topic worthwhile to study. I incorporated NRLC as a shadow case as often as I could to show that the actions NARAL took were sometimes not all that different from those taken by a group on the other side of the abortion debate and in the “typical” position of pushing for policy change. The second reason was that I wanted to look at interest groups differently than most interest group scholars. Much of the current interest group literature is quantitative in nature and aggregates information about many groups together so we have generalizations about what groups are likely to do but little information about how they make strategic decisions. I saw a case study as an opportunity to dig deeper and find out the why behind actions such as lobbying, testifying, and submitting an amicus brief, something that is not currently well understood outside the idea that the organization wants to impact policy. I wanted to know why organizations choose to take certain actions at certain times not just that they took the action.

I also see NARAL as a paradigmatic case, or one that can “develop a metaphor or establish a school for the domain that the case concerns.”107 Since much of the interest group literature, and specifically the venue shopping literature, examines interest groups who seek policy change, and who can venue shop, I wondered how interest groups who play defense and do not want policy change act given their different circumstances. It was curious that scholars have not done much research on those organizations who play defense given that we see evidence of such action in every political venue.108 By examining NARAL as a single case study, I had the opportunity to see how an organization who, for most of its history, played defense

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108 “Bail reform supporters rally at state capitol to protect law, end mass criminalization.”; Arke, “Interest groups lobby for and against Democrats’ HR1 ahead of Friday House vote.”; Hurst, “Taxpayer-funded groups lobby to kill bill that could protect against ambush property tax hikes.”; “National Mining Association v. Environmental Protection Agency.”; “Citizens United v. Federal Election Commission.”
acted and whether that position in policy debates lead to the same or different actions than those organizations who push for policy change. However, even though this was a single case study, it does not mean we cannot learn about interest groups more broadly. NARAL represents a type of interest group—those who play defense—and this dissertation is helping to start a conversation about such groups and opens the door for other research on similarly situated organizations.

I did not select NARAL because the information I had confirmed my ideas about how groups playing defense act. As discussed below, I chose NARAL and gathered my information first, then viewed the information through the lens of the interest group literature to see how NARAL fit into that body of work. I found that often it did not because there were patterns of action that could not be adequately explained by the current interest group theories. Thus, what this case study of NARAL shows is that interest groups playing defense often act differently from those who want policy change and that that difference is worth exploring further to see how other organizations playing defense act. In this way, this dissertation is also a building block for future research on interest groups playing defense. It lays the groundwork of the idea of playing defense and what that looks like while opening up future research to confirm and expand upon my findings to show that this idea applies more broadly than NARAL.

Data Collection, Analysis, and Limitations
For this project, I used multiple qualitative methods to gather and analyze my data, which came from books, interviews, newspapers, and archival documents. The goal of the project was to get an inside picture of what happened with NARAL and its work on the issue of abortion to understand how the organization works to protect the status quo of abortion policy. To do this, I wrote an 80+ page, single-spaced, chronological story of NARAL’s history from 1969-2004 using my interviews, books, newspapers, and of course the NARAL archives, which I relied
upon heavily. Once this narrative was complete, I reviewed the NARAL story through the interest group lens to see what overall theories and patterns emerged. I found that the current interest group literature could not adequately explain many of the actions NARAL took. I then crafted my vision for my dissertation based on the information I had. It was at this point I began to retool my narrative and research questions and created a frame for the dissertation that follows.

To complete this dissertation, I first conducted a content analysis of newspaper articles to get a baseline understanding of the organization’s actions, with a full understanding that there would be gaps. It was a place to start. After this cursory analysis, I conducted interviews with past leaders of the organization, read books by two of NARAL’s past leaders, and visited the NARAL archives at the Schlesinger Library at Harvard University.

All three sources were chosen for similar reasons. First, I thought they would be the best to give me a look behind the curtain at the thought processes and deliberations of the organization. Those who were involved in the decision making know best what was going on. The interviews, books, and archives helped me see why the organization acted in certain ways as well as why, at certain times, NARAL did not take action or, more accurately, appeared to not take action. Another reason I chose these sources is that they are not often utilized by interest group scholars seeking to understand interest group action, mostly because previous works focus on quantitative analysis and such sources do not lend themselves to such examination.

One book I read was by Lawrence Lader, the first President of NARAL. His book offered great detail about NARAL’s fight in New York State to overturn the state’s restrictive abortion law in 1970 and what the organization did to win that victory. I chose to examine this book because it was the closest thing I could get to an interview with Lader, who passed away in
The limitations of this book are that I have to take what is written at face value and how I understand it. There is no opportunity to get clarification from the author. However, I am confident in my understanding of what Lader said in his book because much is confirmed or expounded upon by other sources.

The book written by Kate Michelman, NARAL Executive Director, 1985-2004, was like conducting a very detailed pre-interview, which lead to a more detailed interview (see below). Given that she published it about three years after she stepped down as NARAL’s Executive Director meant she could be more candid in what she talked about, especially because some of the events and strategy she wrote about occurred 10-15 years prior. Michelman was not giving away a secret strategy but simply detailing what the organization had done in certain situations. It was in this book I learned why NARAL did not testify against Robert Bork in 1987 and what the organization did instead working behind the scenes. The limitations of the information in this book are few not only because I also interviewed Michelman (see below) but also because she wrote it shortly after leaving NARAL, instead of years later, so her memory of the events was more fresh.

The in-depth interviews with past Executive Directors Karen Mulhauser (1975-1981) and Kate Michelman (1985-2004) allowed me to ask questions about apparent lack of action, as I saw it from the content analysis, and ask questions about why the organization took certain actions at certain times or chose not to act. These interviews were conducted in 2017 over the phone and were transcribed afterward. The interview with Mulhauser was a little over half an hour, and the two interviews with Michelman were about 2 hours total—the first was roughly 1.5 hours and the second was a 30-minute follow-up interview to get clarification on a few things.

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The two interviews with Michelman were an opportunity to dig deeper into what I knew not only from the content analysis but also from her book. While she had often spelled out the why, there were some instances where it was not exactly clear, so speaking with her was an opportunity to get clarification.

Their answers also gave me things to look for at the archives. There were times when Mulhauser was not sure about something or certain actions NARAL took, but I was able to supplement this with the archival documents in some cases. One example was court action. Mulhauser did not remember NARAL being very involved in the courts during her time as Executive Director but was not sure why. Some archival documents demonstrated that the organization saw it fit to leave legal issues to the American Civil Liberties Union (ACLU) and that NARAL should focus on legislative lobbying in the early 1980s.

Even though these interviews were valuable, they are limited in some ways. First, the information provided is one person’s point of view of the situation. If I had been able to secure more interviews, as was the original goal, I would have been able to confirm information across people who currently, or had, worked at NARAL at the same time, which would increase the validity of my information. Secondly, the interviewees are relying on their memories of events that occurred two to four decades ago, and as with any memory, time can lead to forgetting or misremembering information. However, as with the Lader book, archival documents and the Michelman book, which was written shortly after she was done being Executive Director, helped round out the story and confirmed or supported the information I received in the interviews. This is demonstrated by the fact that in the chapters that follow my citations of documents and interviews are intermingled and sometimes doubled up as a citation for the same information.
I chose to utilize the archives at the Schlesinger Library because even after reading books, examining newspaper articles, and conducting interviews, I still had questions and holes in my information that needed filling. The archives housed documents that further explained some things I already knew from the content analysis, interviews, and books, but they also revealed other information. For instance, by looking only at newspapers and publicly available sources, it appears as if NARAL was not involved in *Roe v. Wade* (1973), which is odd considering it was the case that achieved nationally what NARAL was attempting to do state-by-state in the early 1970s. However, a partially transcribed interview with Lawrence Lader I found in the archives revealed that NARAL sent some of its lawyers to D.C. to help Sarah Weddington prepare for oral arguments. The archives also revealed NARAL’s strategy to “save the court” from being overrun by pro-life Justices in the 1980s, a strategy that was conceived during a time in which NARAL was not active in the courts and something that was not discussed anywhere else.

Over the course of three trips to the Schlesinger Library during the summer of 2017, I collected over 15,000 thousand pages of documents in over 130 boxes that spanned from 1969 to the late 1990s. I identified which boxes and folders I needed to review on each trip by reviewing the box and folder names as listed in the Library catalog. I included a folder/box on my list to review if the title indicated the documents included information regarding strategy or decision making. I also included folders containing personal communications of Executive Directors, since that was a vague categorization that might include important information, along with reports to the Board or staff and minutes of meetings since those internal communications likely had information on strategy. I also reviewed any folders that included project or campaign planning, as those were also likely strategy related.
Overall, I was very liberal with what folders I requested—in many cases whole boxes, less the restricted folders\textsuperscript{110}—in case they contained something valuable. Many documents did not include strategy or decision-making information, such as form thank you letters to donors in the Executive Director personal communications and staff memos relating to hours or work policies, but my strategy was that it was better to see documents that were not useful than to miss something that would be.

I looked at everything from personal correspondence of the Executive Directors, program planning, board and committee reports, newsletters to members, executive director reports and speeches, meeting minutes, state affiliate communications and information, and more. I reviewed one box at a time, folder by folder, being sure to take photos of the box and folder numbers/name to ensure I would know where each piece of information came from. As I reviewed the documents at the Library, I took pictures of just about every document, unless it was overtly obvious it was not useful. An example would be form letters thanking people for donations to NARAL. However, such documents were few and far between. Most documents I reviewed I collected a photo of.

Once I had all of the pictures, I uploaded them to my computer and sorted them by box and folder. I then sorted everything by time period as I started by writing a chronological history of NARAL. It made the most sense to review documents in order so I could begin to see the overarching story of the organization. The next step was to go through every folder, taking a close look at every document to see if it would be helpful for my research. A document was considered useful if it discussed actions taken by NARAL, discussed acting in a certain venue or on a certain topic, explained why a certain action was being taken, or why action was not being

\textsuperscript{110} Restricted folders included those closed until a certain date, sometimes a decade into the future, and those that are closed are such until a certain date unless NARAL grants access.
taken. Any documents found to not be useful were put into a subfolder called “not usable.” I then re-reviewed every “useful” document and took detailed notes on them, pulling out quotes or sections that would be useful for my research. This closer examination demonstrated that a few more documents were not useful but most had a lot of useful information.

Even though the archives provided a treasure trove of information about NARAL, there were limitations to what data I had access to. Some documents, folders, and boxes were closed until a certain date while I needed permission from NARAL to access others, something I was unable to obtain despite several requests to the organization. While most of the information I could not access was more recent data, there were some limitations on folders and boxes with older documents. This limitation on my access to the documents could mean there are still gaps in our understanding of this organization and its actions, but future researchers who want to understand more about NARAL and the abortion fight will have access to these documents as more become available every year.

Another limitation of these documents is that they are not complete. First, the titles of some folders indicate that they are incomplete by including words such as “scattered” in the title. There was also a note in the Schlesinger catalog for the Kate Michelman series that said: “The bulk of Michelman’s records as executive director (sic) are not included here. It is presumed that they are still held at NARAL national offices.” Notes for other sections of the collection also indicate missing documents. Additionally, when examining the documents, it is clear some months or even years are missing. For instance, when looking at minutes from NARAL Board meetings or reports from the Executive Director, it is clear that some documents are missing because there is no report for a month or so. There may be no documents for those “missing”
months if there was no meeting, but given that there are long, uninterrupted stretches where these documents exist for every month indicates that they are likely just missing from the archives.\footnote{Additionally, the minutes of the Executive Committee usually start with an approval of the minutes, further evidence that there are missing documents for some months.}

Kate Michelman confirmed the incomplete nature of the archival documents in our initial interview. She mentioned that NARAL was not organized in sending documents to the Library and that it had been a goal of the organization, at least during Michelman’s tenure, to pay more attention to the archives. These comments indicate that not only did NARAL not always send documents to the Library, thus there is missing information, but also that the documents are not well organized. Thus, it is possible that some folders are improperly labeled or there are documents in folders not captured by the folder’s title. Both of these issues could lead to me having missed some documents because they were misfiled, or that some of the missing documents that NARAL never sent would have been informative to my research.

Despite the limitations of my sources noted above, I am confident in my analysis given the information I had access to. Even the interviews, which could be clouded by limitations on memory, in my opinion, are solid given the confirmation from some archival documents.

**Conclusion**

Through this qualitative analysis of NARAL’s actions, I will confirm some of what we know about interest group actions from the literature while also demonstrating the need to expand such research to groups playing defense. When NARAL was fighting for policy change, mostly pre-\textit{Roe} (1969-1973), the organization acted as the literature would expect. However, once NARAL achieved its goal of overturning restrictive state abortion laws, the organization was forced into a defensive posture by those who sought to roll back the right to choose. The
current literature has a difficult time explaining the actions of interest groups playing defense but that is due in part to a lack of focus on interest groups themselves as the unit of analysis and the dependence upon quantitative analysis of public actions. This project will show that by studying interest groups through case studies we can learn not only more about interest group actions and decision making but also be able to more effectively study and understand those groups who oppose policy change.
Chapter 3:
NARAL and the Fight for Policy Change

Introduction
While the National Abortion Rights Action League (NARAL) has done and accomplished a lot over its 50-year history, only some of the organization’s actions can be understood through the lens of the interest group literature, and mostly the venue shopping literature. Most of these actions took place during the pre-Roe period (1969-January 1973) when NARAL was actively working to change restrictive state abortion laws. However, there are examples of NARAL’s actions in the late 1980s and early 1990s (the post-Roe period, 1980-2004) that can also be understood through the lens of the venue shopping literature and confirms some interest group theories as well. These time distinctions are important because they are the only periods in which NARAL was actively trying to change public policy and choosing in which venue\textsuperscript{112} to do so. During the rest of the organization’s history, NARAL is fighting to protect the status quo and pushed by its opponents to respond in whatever venue such opponents chose to try to erode the right to choose.

When the organization was able to engage in venue shopping, NARAL often chose to work in venues that were sympathetic to the organization’s views, which the current literature tells us is where groups prefer to act.\textsuperscript{113} Examples include: the organization’s early work in New York State to overturn the state’s restrictive abortion law; when NARAL used the courts in the District of Columbia (D.C.) to force compliance by public hospitals with the new abortion law;

\textsuperscript{112} In this sense, venue takes on the meaning from the venue shopping literature and means an institutional venue like Congress, the courts, or a state legislature.
and NARAL’s actions in Congress from 1992-1994 to get pro-choice legislation passed by a Democrat Congress then by a Democrat Congress and signed by a Democrat President.

NARAL’s actions in the early 1990s also demonstrate Kingdon’s three streams model, where the political, policy, and problems “streams” all converged to make action by NARAL possible, and the notion in the literature that the prevailing ideology in a venue is a strong predictor of interest group action.

While interest groups prefer to get involved in venues that are hospitable to their views and ideas, the literature tells us groups will engage in a venue that is antithetical to the group’s opinions on an issue if that venue takes up the interest group’s issue. Throughout much of NARAL’s history, many political venues have been controlled by pro-life, Republican officials, and there are many examples of NARAL playing defense in those venues. The earliest was in the early 1970s in New York when the organization tried to stop pro-life legislators and activists from repealing the 1970 abortion law NARAL helped pass. Another was Congress in the 1970s and 80s when the organization pushed against the Hyde Amendment and the Human Life Amendment, both of which would roll back or eliminate the rights won in Roe. Finally, NARAL tried to influence the Supreme Court when it heard two cases, Webster v. Reproductive Health Services (1989) and Planned Parenthood of Southeastern Pennsylvania v. Casey (1992), that would chip away at the rights won in Roe (1973). These court cases also offer confirmation of a

114 Kingdon. *Agendas, Alternatives and Public Policies.*
larger interest group theory regarding group behavior: when interest groups submit amicus curiae it is with the goal of influencing the Court’s policy output.\textsuperscript{117}

NARAL chose to act in each of these venues for various reasons, all of which confirm our current understanding of venue shopping and some interest group theories. NARAL chose to work legislatively in New York to overturn the abortion law because the leadership believed that venue was the most likely place to achieve the change they sought and spark a domino effect across the country\textsuperscript{118} and because the organization saw the state legislature as at least somewhat accepting of making such changes\textsuperscript{119} despite the past failures of reform bills. NARAL returned to the legislative arena, and engaged in other lobbying outside direct lobbying,\textsuperscript{120} after its initial fight, because pro-life groups and legislators tried to pass a bill undoing the new abortion law the organization helped to pass. NARAL got involved because its opposition did.\textsuperscript{121} NARAL worked in the bureaucracy, and in other ways, in New York City to oppose the City’s proposed regulations because opponents of the 1970 abortion law were using the regulatory process as a way to limit the impact of the new law. Again, NARAL engaged in a venue because the issue of


\textsuperscript{120} By this, I mean NARAL engaged in actions intended to influence legislators other than talking to them, writing to them, and the like. The organization ran newspaper ads, held press conferences, and encouraged others to act as well (see more discussion below).

abortion was taken up in that venue. Finally, NARAL engaged in the courts in D.C. because it was the most hospitable venue for the issue, and its attempts to work through Congress early on were nonstarters. It was not until the 1992 election, and a pro-choice president and a Democrat Congress was sworn in in 1993, that NARAL was able to get any movement on national legislation on abortion, and even then it was still not easy despite the ideological agreement.

This chapter will discuss the various ways in which the interest group literature generally, and the venue shopping literature specifically, can help us understand NARAL’s actions. The examples below demonstrate how when NARAL was playing offense, and trying to change public policy, the organization was able to engage in venue shopping. However, chapters 4 and 5 will examine NARAL’s actions that run counter to, and challenge, the conventional wisdom of the literature and demonstrate that interest group scholars need to pay more attention to those interest groups playing defense because most of those organizations’ actions cannot be understood by current venue shopping and interest group theories, especially given the propensity of such works to utilize public information and quantitative methods.

**Working for Change in Hospitable Venues**

Before the Supreme Court ruled in *Roe v. Wade*, NARAL was able to work in venues that were hospitable to its interests, and the organization had a great deal of leeway in choosing

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where to act. This is the best scenario for interest groups because they can choose to act in a venue that is supportive of the group’s views on an issue instead of being forced to engage in an inhospitable venue that takes up an issue the group cares about (discussed more below).

Unfortunately for NARAL, there are few examples of when the organization got to engage in venue shopping and could choose a hospitable venue.

The first example of NARAL working in a hospitable venue was in New York State in the late 1960s and early 1970s. NARAL chose to focus its early legislative efforts in New York because the organization’s leadership, including NARAL’s President at the time, Lawrence Lader, saw it as the best chance to get a repeal law passed. The leadership “...thought, New York State being a pretty liberal state...[they] had a good chance of getting a bill through there, a reasonable chance, it was going to be damn hard anywhere to get a bill through.” But New York had a lot of positives. It was not just a liberal state, but there were many liberal Republicans, and “a lot of liberal Republican legislators...” NARAL’s leadership also saw New York as a national leader, so they chose to work in that state because they believed if the state repealed its abortion law, other states would follow suit.

Another example of NARAL working in a hospitable venue was when the organization worked in the District of Columbia to repeal restrictive abortion laws. NARAL’s work started in Congress but ended in the courts because public hospitals would not comply with a court ruling repealing the District’s restrictive abortion law. While not a party to the case that repealed the law, NARAL worked through Congress to achieve its goal, then moved to force compliance via legal action to ensure equal access to abortion for the poor. In this instance, NARAL chose the

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venue that would best work for the situation and that was sympathetic to the organization’s viewpoint.126

Two other examples of NARAL engaging in venue shopping, and choosing a hospitable venue, came during the post-*Roe* period in the early 1990s when Democrats controlled the federal government. During this time, NARAL chose to fight in Congress for passage of two Acts that would protect the right to choose because the timing was right: pro-choice Democrats controlled the government, the right to choose needed to be protected, as recent court cases had been chipping away at the right, and NARAL had policy solutions to protect those rights. In what follows, I will discuss each of these examples and how NARAL’s actions help confirm what we know about interest groups and venue shopping.

**New York State, Part 1: The Ideal Venue for State Change**

When NARAL first started its work to overturn restrictive state abortion laws, the organization chose to work in hospitable (although not easy) venues. It looked first to legalize abortion in Republican-controlled New York State.127 NARAL saw the state as the best opportunity for repeal success because it was seen as a national leader,128 and NARAL decided any risks of just focusing on a single state were worth taking because “[e]ven a reasonably close

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127 While abortion is seen as a vary partisan issue in today’s world, in the 1960s and early 1970s partisanship was not a big indicator of how someone felt about abortion; in fact, a completely Republican controlled government passed the 1970 abortion law. Additionally, Republicans and Democrats were on both sides of the issue and legislators from both parties lost their seats, at least in part, due to their vote on the 1970 law (discussed more below).

vote could build a successful drive in 1971; a victory now could produce an immeasurable boost for the rest of the country.”

NARAL hoped that a successful challenge to the New York State abortion law would start a domino effect and lead to the toppling of other state’s laws. Thus, the organization was heavily focused on repeal efforts in the New York legislative arena in 1970.

While Hawaii was the first state to legalize abortion, it had a residency requirement, meaning only residents of Hawaii could obtain the procedure. One reason NARAL was so involved in the passage of the Cook-Leichter bill (the bill that legalized abortion in New York State) in 1970 was that it did not have a proposed residency requirement, thus making abortion available to any woman who could get to New York. Despite the late changes to the bill that caused some pro-choice groups to ultimately oppose it, NARAL decided to take an incremental approach to change the state’s abortion law.

Efforts for reform/repeal of New York’s abortion law started well before 1970. “In the early 1960s, Assemblyman Percy E. Sutton of Manhattan introduced New York’s first bill to loosen the prohibition. In 1967, 1968 and 1969, the Assembly defeated bills to permit abortion under very limited circumstances...[B]efore 1970, the Senate majority leader, Earl W. Brydges of Niagara Falls, a staunch abortion opponent, would not allow a vote in his house.”

These attempts indicate that early on New York politicians were not supportive of reform, much less repeal, which would normally lead an interest group to not get involved in that venue due to the

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staunch opposition.\textsuperscript{133} However, NARAL was quite optimistic that New York was the right place to pass a repeal bill and that the organization would succeed given the political make-up of the state and the legislature.\textsuperscript{134} It was not until 1968 that there was a serious movement to push for repeal in the state legislature and executive.

Governor Nelson D. Rockefeller, a Republican, formed a commission in December 1968 to review the state’s abortion law and make recommendations for change. “When the Governor convened the commission, he said, ‘I am not asking whether New York’s abortion law should be changed, I am asking how it should be changed.’”\textsuperscript{135} After meeting every two weeks for more than three months, the committee offered its recommendation that was partially based upon the American Law Institute model bill that expanded the circumstances under which a woman could receive an abortion:\textsuperscript{136} abortion would be allowed if the pregnancy “‘would gravely impair the physical or mental health of the mother’...if the doctor believed ‘that the child would be born with grave physical or mental defects’...or if the pregnancy resulted from rape or incest.”\textsuperscript{137} The commission also suggested that abortion be available upon request for any woman with four or more children. This proposal was rejected in 1969 by the state legislature.\textsuperscript{138}


\textsuperscript{134} Oral History/Lawrence Lader, June 6, 2001, Laurence Lader 2004-Misc, Box 87, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.


\textsuperscript{136} Ninia Baehr, \textit{Abortion without Apology: A Radical History for the 1990s}, (Boston, MA: South End Press, 1990).

\textsuperscript{137} Guttmacher, “The Genesis of Liberalized Abortion in New York: A Personal Insight.”

At about the same time as the Rockefeller committee was making recommendations, Ruth Cusak of the National Organization for Women (NOW) and NARAL board member,\textsuperscript{139} approached “Constance Cook, a Republican Assembly member from Ithaca, and asked her to introduce a repeal bill (emphasis added).”\textsuperscript{140} Cook knew it was an uphill battle and likely that the bill would never pass because the Senate would not pass a reform bill, much less a repeal bill. Despite this, in 1969, along with Franze Leichter, a Democrat Assemblyman from New York City, Cook introduced a bill that would “repeal all abortion laws\textsuperscript{141} from the [New York] criminal code.”\textsuperscript{142} The Cook-Leichter bill ultimately passed, but the version that became law received many conservative amendments in the Assembly Codes Committee.

The organizations working to pass the Cook-Leichter bill “agreed on a campaign of letters, telegrams, phone calls, and personal visits to Albany,”\textsuperscript{143} while the overall strategy also included on-the-spot lobbying of legislators. NARAL sent out a mailing almost immediately (February 1980), and decided to focus on “the Catholic lay vote. On February 25 and March 6, [NARAL] sent lengthy telegrams to every Senator, signed by the New York State Catholic Women for Abortion Repeal and over 75 community leaders, emphasizing that ‘Many of us oppose abortion for ourselves but believe our church should not impose its will on our non-Catholic neighbors.’”\textsuperscript{144}

\textsuperscript{139} Lader. \textit{Abortion II: Making the Revolution.}
\textsuperscript{140} Baehr. \textit{Abortion without Apology}. 35.
\textsuperscript{142} Baehr. \textit{Abortion without Apology}. 35.
\textsuperscript{143} Lader. \textit{Abortion II: Making the Revolution}. 131.
\textsuperscript{144} Lader. \textit{Abortion II: Making the Revolution}. 133.
Despite Cook’s fears of defeat, the Cook-Leichter bill passed the Senate first, “31-26, with 18 Democrats and 13 Republicans voting for repeal.” Among those voting against were 18 of the 22 Catholics in the chamber. Senate Majority Leader Brydges, who in previous sessions would not even allow a vote on abortion reform, was softening to the idea of legalization, as evidenced by the fact he let the bill go up for a vote, but he did not support the Cook-Leichter bill because it did not contain certain limitations. He believed this was “the wrong way for the state to go because [New York is] a bellwether state and many other states will follow [their] lead,” and said he would vote against the bill.

Almost immediately after passage in the Senate, NARAL “mounted a campaign of letters and telegrams to the Assembly that dwarfed anything in recent decades.” Conservatives in the Assembly Codes committee would not let the bill go through in its Senate form—pure repeal—and amended the Senate bill “to prohibit abortions after 24 weeks from conception unless necessary ‘to save the life of the mother’ [with the] vote on the amendment in committee [being] 13 to 7.” Cook and Leichter agonized over the changes, but agreed to them because they

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149 Brydges wanted to have a “cutoff” point of when a woman could no longer obtain an abortion and had a bill drafted to that effect by his staff at the same time the Cook-Leichter bill was making its way through the legislature. “Brydges Easing Opposition to New Abortion Law.”
150 Kovach, “Abortion Reform Approved, 31-26, by State Senate:...”
152 Lader. Abortion II: Making the Revolution. 135.
154 Kovach. “Assembly Committee Restrictions Senate’s Abortion Reform Bill.”
believed the bill was dead in the Assembly without a 24-week limit, which had been a recommended limitation on the procedure from the Rockefeller Commission (see above).

NARAL ultimately decided to support the Cook-Leichter bill, even with the amendments, but it was neither an easy decision nor popular among pro-choice groups, including the New York NARAL Affiliate. In addition to the 24-week limit, the bill limited who could perform abortions to doctors, but NARAL was in support of allowing paramedicals (e.g. nurses or physicians assistants) to perform the procedure, which would make abortion even more widely available. This left NARAL’s Executive Committee with a tough choice—support incremental change in the form of an imperfect bill that did not meet all of the organization’s goals but would still be a large leap forward, or oppose the bill and be stuck with the current state law.

These changes led to two days of debate among the NARAL Executive Committee. The Committee recognized that compromise would be a “retreat from [the organization’s] repeal position…[but] the compromise would affect only a handful of women” since most women seeking abortion did so within 24 weeks, and most often did before 12 weeks. The Committee also “recognized that no legislature would accept paramedics in the immediate future, [so] voted to intensify [NARAL’s] campaign for the [amended] Cook bill…” NARAL opted for incremental policy change even though it was not exactly the policy change the organization wanted because it would be drastically better than the current law.

According to Lawrence Lader, NARAL Executive Committee Chairman at the time, “NARAL’s decision to continue to support the bill ‘was a matter of weighing NARAL’s

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158 Ainsworth and Hall. *Abortion Politics in Congress*.
philosophical stand against the reality of almost unrestricted abortion for thousands of women.”

As mentioned above, NARAL focused on New York because it thought the state was the best opportunity to achieve access to abortion for women, and since the law did not have a residency requirement, like Hawaii, even with the added restrictions, the procedure would be available to all women if they could get to New York. Thus, NARAL’s decision to continue to fight for passage of the Cook-Leichter bill, despite the Assembly changes, put practicality and availability of abortion above strict adherence to the organization’s position on complete repeal. When the law passed on April 10, 1970, it “...amended the State Penal Code, permitting licensed physicians to provide abortion services for any consenting woman less than 24 weeks pregnant” unless the woman’s life was in danger.

The District: Venue Shopping to Make Change
NARAL also chose to work in the relatively friendly District of Columbia because it saw a high probability of success. The organization’s actions in the District were different from in New York, though the organization continued to work in favorable venues. Given the unique situation of the District—it does not have its own legislature so Congress serves as the state legislature—NARAL had to work through Congress to try to repeal the oppressive District abortion law. NARAL’s first attempt to repeal the D.C. abortion law was through Congress, likely because that was the strategy they were most comfortable with and saw as the best chance for success. However, before NARAL could get a law passed, the District’s abortion law was

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162 Baehr, Ninia. *Abortion without Apology.*
163 Ley and Weber. “Policy Change and Venue Choices: Field Burning in Idaho and Washington.”
repealed by a court case making abortion completely legal in the District. When the main public hospital refused to comply, NARAL chose to first use the venue of public opinion to try to pressure the hospital to comply, but when that did not work, the organization chose a different venue, the courts, to force compliance as that was seen as the best way to achieve its goal. NARAL chose to work through the Courts, who had already demonstrated support for fewer abortion restrictions, to push for equality of access to abortion for the poor.

In 1969, NARAL worked with Congresswoman Shirley Chisholm and Congressman James Scheuer to repeal abortion laws in the District. However, it was a court case that led to legal abortion in D.C. On November 10, 1969, a federal court declared the District’s abortion law unconstitutional, making it the first place “in the country where abortion was completely legalized.” The decision did not require abortions to be performed in hospitals nor did they need committee approval. “Any licensed physician could perform abortion according to his best medical judgment—even in [an] office if his equipment met medical standards.”

While NARAL was not an official party to the case that repealed the law, the organization did push for implementation of the ruling by the District’s hospitals. NARAL started with a press conference on December 10, 1969. Lawrence Lader “challenged the District of Columbia Health Department to comply with the Gesell decision. The judge had ruled that the poor must have equal rights to abortion with the rich. The Health Department, [he] insisted,

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166 There is no other information on this attempted repeal.
167 Lader. *Abortion II: Making the Revolution.* 111.
168 Lader. *Abortion II: Making the Revolution.* 111.
169 The federal judge who decided the case.
must open at least five free abortion clinics. Otherwise, NARAL would launch a new confrontation”—a lawsuit or open a free clinic.\textsuperscript{170}

When the District’s “principal public hospital, D.C. General, maintained its long-standing virtual blockade [on abortion], and in the first two months of 1970 took only ten abortion cases,”\textsuperscript{171} NARAL’s Executive Committee decided to take the hospital to court. They asked the American Civil Liberties Union to handle the case and NARAL would pay for the costs. “Whereas private hospitals in the District were performing abortions for reasons of mental and physical health, the city hospital recognized only the grounds of preserving the life of a woman.”\textsuperscript{172} NARAL sued the Hospital for refusing to perform an abortion\textsuperscript{173} even though a woman had a letter from a psychiatrist recommending such,\textsuperscript{174} “on the ground that no abortions are performed except when the life or health of the mother is in danger, when there is danger that the child will be born deformed, or in cases of rape or incest.”\textsuperscript{175} “On March 20, 1970, the U.S. Court of Appeals in the District...ordered the hospital to accept abortion cases on mental health grounds after certification by one or two psychiatrists.”\textsuperscript{176}

When D.C. General still refused to perform abortions, NARAL took the hospital back to court “insisting [again] the rights of the poor were being denied. Again, the Appeals Court ruled in [NARAL’s] favor, and on May 23, with a front-page banner headline in the Washington \textit{Daily

\textsuperscript{170} Lader. \textit{Abortion II: Making the Revolution}. 112.
\textsuperscript{171} Lader. \textit{Abortion II: Making the Revolution}. 113.
\textsuperscript{175} Executive Director’s Report February 24, 1970.
\textsuperscript{176} Lader. \textit{Abortion II: Making the Revolution}. 113.
News, D.C. General finally agreed to accept 1,000 abortion patients a year on mental health grounds and to set up a special unit to accommodate them.”  

During the course of the court cases, NARAL started plans for a free clinic to demonstrate that abortion could be done safely outside of a hospital. The plan was to offer free abortions to indigent women so they would have the same options as rich women, the same thing the organization was fighting for in the courts. NARAL sent letters to obstetricians and gynecologists in D.C. explaining how safe abortions were unavailable to poor women in the District and asked them to volunteer at the NARAL clinic to provide the service to those unable of afford the procedure. However, this clinic never materialized, partially because NARAL won in court, and the District hospitals began performing more abortions.

**Congress: When Everything Falls into Place**

While the two examples of venue selection above involved NARAL choosing to act in hospitable venues to seek policy change, two other examples demonstrate two additional venue shopping literature theories. In addition to confirming that groups choose favorable venues in which to work, NARAL’s choice to work in Congress in 1992 and then during the first two years of the Clinton Presidency, 1993-1994, also demonstrate Kingdon’s three streams model of policy change and the idea that the partisanship and ideology of venues will impact a group’s venue selection.

The first example was during the 1992 election. NARAL tried to push for federal legislation enshrining *Roe* called the Freedom of Choice Act because the organization knew the

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180 Executive Director’s Report April 3, 1970.
181 Kingdon. *Agendas, Alternatives and Public Policies*.
Democrat Congress would pass it, and NARAL wanted to use the inevitable veto by President George H. W. Bush against him in the election. This bill was halted by Clinton’s campaign staffers but was taken up, along with other pro-choice legislation, after Clinton won the Presidency. In this instance, the partisanship of not only the Democrat Congress but the Republican White House impacted NARAL’s decision to pursue passage of the Freedom of Choice Act.

In 1993, Kingdon’s three streams, which says that policy change occurs when the political environment is right for change, there is an issue in need of a solution, and someone has a good solution, aligned for NARAL: pro-choice Democrats controlled Congress and the White House, there was an issue of the right to choose being chipped away by pro-life Supreme Court cases (Webster 1989 and Casey 1992), and NARAL had legislative solutions to protect that right. It was also the first time since Roe that NARAL was able to play offense and choose where to address the abortion issue instead of playing defense against pro-life legislation trying to limit the right to choose. The window of opportunity opened because pro-choice Democrats controlled both houses of Congress and the White House.

While the pro-life forces had been in the driver’s seat in Congress for the two decades since Roe, the 1992 election allowed NARAL to put pressure on President Bush and influence the election of Bill Clinton to the Presidency. Similarly, a Democrat Congress in 1992 presented NARAL with a window of opportunity to pass pro-choice legislation. The problem of limiting abortion, NARAL’s policy solutions, and the political environment all converged and presented

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184 John Kingdon’s theory of the three streams explains windows of opportunity for policy change. The theory says when the political situation is right, such as the correct party is in control of government, there is an issue to be solved, and someone has a viable policy solution, then policy change occurs. Likewise, the theory assumes that if one of these three is not present, policy change is not possible or at least very difficult.
the organization an opportunity to pass legislation that could protect a woman’s right to choose.\textsuperscript{187}

During the 1992 Presidential election, NARAL went on the offense in Congress when the organization fought to pass the Freedom of Choice Act. The reason NARAL introduced this “...legislation at the federal level [was] to secure the right to choose for all American women, regardless of future Supreme Court action involving \textit{Roe} or the state in which a woman happens to reside. By creating a statutory basis for the rights established under the \textit{Roe} decision, states [would] be prohibited from undermining those rights.”\textsuperscript{188} The Act was designed to do legislatively what \textit{Roe} did judicially—preempt all restrictive state laws to ensure all women had the right to choose abortion.

Passing the Freedom of Choice Act “emerged as a strategy in the aftermath of the 1989 \textit{Webster} decision,”\textsuperscript{189} the first case to grant states the right to put restrictions on a woman’s access to abortion, “and gained momentum as \textit{Casey}\textsuperscript{190} approached and [NARAL] faced the real possibility of \textit{Roe} being overturned.”\textsuperscript{191} However, the dangers to the right to choose that both \textit{Webster} and \textit{Casey} posed also presented a unique opportunity during an election. If both houses of Congress passed the bill, it would put President Bush in a very precarious position: he would have to veto the bill to appeal to his base so close to the election, but “[w]ith irrefutable evidence, he would demonstrate to mainstream Americans his fundamental opposition to a woman’s right to privacy and choice.”\textsuperscript{192} NARAL wanted to make Bush vetoing the bill an issue

\textsuperscript{187} Kingdon. \textit{Agendas, Alternatives and Public Policies}.
\textsuperscript{188} Freedom of Choice Act, Box 102, Affiliates Meetings, Jan-March 1990, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.
\textsuperscript{189} Kate Michelman, \textit{Protecting the Right to Choose}. (New York: Plume, 2007), 113.
\textsuperscript{190} The \textit{Casey} case expanded what type of restrictions states could place on access to abortion, thereby accelerating the momentum started with the \textit{Webster} decision, and said that restrictions were allowed so long as it did not place an “undue burden” upon a woman seeking abortion.
\textsuperscript{191} Kate Michelman, \textit{Protecting the Right to Choose}. 113.
\textsuperscript{192} Michelman. \textit{Protecting the Right to Choose}. 113.
in the Presidential election. However, it was not until after Clinton became president that any real progress was made on the bill. Ultimately, NARAL and the coalition halted work on the Freedom of Choice Act during the 1992 election because George Stephanopoulos, from the Clinton campaign, was concerned the bill would detract from the election.

After Bill Clinton, the first pro-choice president, was elected, NARAL was able to change its overall strategy from playing defense to playing offense because the country finally had a fully pro-choice president and a Democrat-controlled Congress. During the previous 12 years of Republican Presidents (Reagan and Bush), NARAL had to focus “on overturning anti-choice legislation and policies enacted by Congress” and trying to win Supreme Court cases that were aimed at chipping away abortion rights. However, in 1993, the organization launched a “three-pronged ‘Pro-Choice Agenda for the 103rd Congress’” that would protect the right to choose in multiple ways. First was the Freedom of Choice Act, second was legislation to protect women against violence at clinics (Freedom of Access to Clinic Entrances Act), and third was fighting to have national healthcare include a wide range of reproductive coverage. NARAL was going to use the favorable political environment of a pro-choice, Democrat president and Congress to “...reshape reproductive health policies and secure lasting gains for women’s reproductive rights.”

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194 Michelman. Protecting the Right to Choose. 115
197 1993-94 Biannual Report 25 Years: Promoting Reproductive Choices NARAL
After Clinton’s election, NARAL worked with a pro-choice coalition to pass the Freedom of Choice Act, but the group had some disagreements about strategy and tactics. Some coalition members “remained concerned that the bill did not address issues like Medicaid funding and parental notification...but NARAL and others in the coalition believed [the group] would more likely succeed if [they] addressed [these other issues] in parallel but separate strategies.”

NARAL’s concern was to take action on the Freedom of Choice Act while they had a politically favorable environment. Clinton had just been sworn in as the first pro-choice President, giving NARAL and other pro-choice groups “…a meaningful opportunity to move beyond the endless attacks on legal abortion and toward a positive, comprehensive vision for a pro-choice society.”

Ultimately, the Freedom of Choice Act ended up being watered down. The ideal bill would completely enshrine Roe, but the organizations had to be realistic about what could pass. Senate Majority Leader George Mitchell (D, ME) told NARAL that “‘Parental consent and Medicaid funding [were] nonstarters.’ If the Freedom of Choice Act either preempted state parental consent laws or provided Medicaid funding for abortion, senators with ambivalent views and mixed voting records on the issue would oppose the bill.”

Kate Michelman, NARAL Executive Director (1985-2004), told the coalition they needed to address Medicaid and parental notification in a parallel strategy while trying to pass the best possible bill. However, this

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200 Michelman. *Protecting the Right to Choose.* 122
201 Another example of NARAL being willing to work incrementally instead of trying to get everything the organization wanted all at once.
203 Michelman. *Protecting the Right to Choose.* 119
204 Michelman. *Protecting the Right to Choose.* 114.
continued to be a nonstarter for some in the coalition, such as the National Organization for Women who ultimately opposed the Freedom of Choice Act and actively worked to get Senators to withdraw support.

NARAL once again touted an incremental strategy to move abortion policy forward instead of taking an “all or nothing” approach and getting nothing. In a *Washington Post* op-ed, Michelman said: “If we sacrifice the Freedom of Choice Act because it does not in itself embody the entire pro-choice vision, we miss a rare opportunity to make progress.”

However, not everyone in the coalition held Michelman and NARAL’s view. Some thought that “[e]ven if it meant defeat… it was more important to insist that this single bill achieve everything… rather than accept an imperfect but still substantial step forward.”

**Conclusion**

The examples as discussed above demonstrate the conventional knowledge that when interest groups engaging in venue shopping they will choose venues that are likely to be receptive to the group’s ideas and views on an issue. Given the liberal environment in New York State, including liberal Republicans, New York was a prime location for NARAL to push for repeal of restrictive state abortion laws; working through the courts in the District, which had already demonstrated their support for liberalizing the city’s abortion laws, made sense for NARAL when trying to force compliance with the new District abortion law; and pushing for passage of the Freedom of Choice Act and Free Access to Clinic Entrances Act in a Democrat Congress to enshrine *Roe* in statute was the best option given that most Democrats were pro-choice and supported NARAL’s views on the issue. If the organization had chosen a different

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207 Michelman. *Protecting the Right to Choose.* 123.
state or tried to change the District’s laws in a different venue, NARAL might not have been as successful, even if in both instances the organization did not get 100% of what it set out to accomplish. Additionally, a Republican Congress, as was the case in the preceding 12 years under Bush and Reagan, was antithetical to NARAL’s views on abortion, so it was not going to be possible to get any pro-choice legislation through, much less signed by a Republican President, during that time so the organization needed to wait for the right time to get the legislation they wanted.

However, NARAL did not always get to choose which venues to act in, and it was certainly not always easy for NARAL to obtain policy change in the pre-

**Roe** period or protect the right to choose after **Roe**. As discussed in the following section, NARAL was often pushed to act in many inhospitable venues over the years, often in response to the pro-life group’s actions.

**Playing Defense in Inhospitable Venues**

Even though NARAL had few opportunities to choose to act in favorable venues, that does not mean NARAL sat on the sidelines the rest of the time. There are many examples of NARAL engaging in inhospitable venues when it took up the issue of abortion.  Although most of NARAL’s early work in the pre-

**Roe** period was at the state level, the organization did do some work in Congress fighting against bills that would limit abortion availability. In New York State as early as late 1970 and continuing until **Roe** in 1973, opponents to the Cook-Leichter law that NARAL helped pass, including New York Right to Life, the state chapter of the National Right to Life Committee, tried to repeal or weaken the law, so NARAL had to return to the

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legislature to fight. In this instance, a pro-life legislature took up the issue by trying to overturn the 1970 law, so NARAL got involved to try to keep abortion legal despite the ideological bent of the state legislators. The organization also got involved in the New York City battle over regulations that were trying to limit the impact of the law.

During the Roe period, January 1973-1980, NARAL also fought pro-life groups and legislators in Congress to stop the passage of the Hyde Amendment and the Human Life Amendment, bills that would prevent federal money, such as Medicaid, from being used for abortion services and place a bar on abortion in the US Constitution. During the post-Roe period (1981-2004) NARAL engaged in two Supreme Court cases, Webster (1989) and Casey (1992), that eventually chipped away at abortion rights. Finally, in the mid-1990s, during the second half of President Clinton’s first term, the organization fought in Congress against those who wanted to pass a bill that would outlaw an abortion procedure referred to by pro-life legislators and groups as “partial-birth” abortion.

While NARAL engaged in the New York State legislature and bureaucracy, Congress, and the courts in these various situations, the organization was not choosing where the abortion issue was dealt with. NARAL was pushed to respond to attempts by pro-life groups and

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211 After the passage of the 1970 law, many state legislators who supported the bill lost their 1970 primaries or general elections, such as Assemblyman George M. Michaels, a Democrat from Auburn, NY, who was the deciding vote to pass the Cook-Leichter bill in the Assembly.


legislators to roll back the right to choose wherever such challenges were made, even if the venue was controlled by pro-life legislators or had a majority of pro-life, conservative Justices. However, these examples confirm what the literature says: interest groups will get involved in an inhospitable venue if it takes up an issue that the group cares about.214

**New York State, Part 2: Defending the Status Quo**

Once the amended Cook-Leichter bill became law in New York, apathy set in among abortion-rights supporters who thought “the problem [was] solved now that New York [had] legal abortion,”215 but the fight was not over. Almost immediately there were threats to alter the new law including legislation to place a more restrictive 12-week limit and city and state regulations to limit abortions to hospitals or affiliated clinics. “In a series of emergency meetings, NARAL agreed on a policy of confrontation”216 to fight rollbacks to the 1970 law where it would oppose the attempted legislative rollbacks and regulatory restrictions wherever they were.217

Voters in New York who opposed abortion made their displeasure known in the 1970 elections, and legislators who voted for the Cook-Leichter bill from both parties lost their seats in 1970 as abortion was not yet a partisan issue as it is today. Auburn Democrat “Assemblyman

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George M. Michaels, who cast the deciding vote for reform in his chamber\textsuperscript{218} failed to receive the Democratic Party endorsement for reelection\textsuperscript{219} and lost his primary because of his vote to liberalize the state’s abortion law\textsuperscript{220} as did Republican Senator D. Clinton Dominick of Newburgh.\textsuperscript{221} A Democrat-Liberal, Mary Anne Krupsak of Amsterdam found her vote on the abortion bill being used against her in her primary to the Assembly.\textsuperscript{222} \textsuperscript{223} Krupsak did not lose her race but remained in elected office at various levels until 1987.\textsuperscript{224} This demonstrates that opposition and support for abortion came from both parties, but that the voters opposed to abortion were stronger in this “mid-term” election season. Further evidence that abortion was not a partisan issue, and that individual members were held accountable for their vote in 1970 regardless of party, was that the Republicans, who were in the majority in 1970 and brought the bill up for a vote in the legislature, only lost one seat in the State Senate and retained their 79-71 majority in the State Assembly.\textsuperscript{225} These seat changes help explain the backlash against, and increased attempts to, overturn the 1970 law in the 1971 and 1972 state legislative sessions.

NARAL took many steps in an attempt to protect the new state law including: taking out an ad in the \textit{New York Times}, holding two press conferences, one a joint press conference with Protestant and Jewish clergy who opposed changes to the law, the other with prominent,

\begin{itemize}
\item \textsuperscript{220} Michaels had previously voted against the bill but changed his vote last minute. “Denied Party Aid, Michaels to Run: Assemblyman who Backed Abortion Reform is Firm,” \textit{Aborting Political Careers}, \textit{New York Times}, June 26, 1970.
\end{itemize}
professional women speaking out against proposed changes, distributing a letter from a woman who received an abortion in New York and a “NARAL fact sheet on keeping the abortion option open beyond 20 weeks” to all New York State Legislators, and getting passengers on a train and bus going to D.C. for the Vietnam peace march to write letters to legislators on the issue.\textsuperscript{226}

NARAL’s fight to save the right to abortion in New York continued into 1971 and included attempts to alert New Yorkers to the dangerous threats to the right to choose. About 20 bills were pre-filed\textsuperscript{227} in the New York State legislature “that would weaken the 1970 Abortion Law or repeal it altogether, allowing abortion only to preserve the life of the mother.”\textsuperscript{228} Since other pro-choice groups were not taking action, NARAL attempted to fill the void and hired a public relations specialist to “concentrate part-time on alerting the state to the danger and encouraging grassroots action to combat it.”\textsuperscript{229}

In line with this, NARAL:

1) sent a memo to residents of two pivotal counties (Nassau and Suffolk) apprising them of the situation and suggesting lines of action, 2) sent a memo to all New York State organizations which support voluntary abortion recommending they write committee chairmen expressing opposition to each of the prefiled bills, 3) contacted some two dozen national and state organizations asking them to alert their membership through a newsletter or special mailing of the need for letters to legislators and newspaper editors, 4) contacted clinics where abortions are being performed to enlist their cooperation in setting up a letter-writing corner where in-state women can write their legislators while awaiting medical attention.\textsuperscript{230}


\textsuperscript{227} This means the bills were introduced after the November election but before the start of the legislative session in January 1971. No action could be taken until January, but pre-filing is a way for bills to be introduced early.

\textsuperscript{228} Executive Director’s Report February 5, 1971, Carton 1, Ex. Dir. Reports, 1971-72, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.

\textsuperscript{229} Executive Director’s Report February 5, 1971,

\textsuperscript{230} Executive Director’s Report February 5, 1971,
The letter-writing campaign involved twenty-four organizations, such as Americans for Democratic Action\textsuperscript{231} and Zero Population Growth,\textsuperscript{232} as well as seven abortion clinics. NARAL also testified before the “Senate’s health committee on the issue of lowering the abortion time limit (N.A.R.A.L. opposed this), imposing a residency requirement (also opposed), and restricting abortions to hospitals and clinics (N.A.R.A.L. held that abortions should be allowed in doctor’s offices, too)...”\textsuperscript{233}

In 1972, New York Right to Life worked with pro-life legislators to introduce and successfully pass\textsuperscript{234} the Donovan-Crawford bill,\textsuperscript{235} which repealed the 1970 abortion law that NARAL helped pass, and replace it with the “former statute allowing abortion only when [a] woman’s life is imperiled.”\textsuperscript{236} NARAL “devoted almost full time to saving the law that...served women throughout the country.”\textsuperscript{237} The organization lobbied and organized a rally at the State Capitol in addition to using its contacts across the media and medical community to put pressure on politicians.\textsuperscript{238} NARAL wanted to reorganize the coalition that fought for passage of the 1970 bill, but everyone thought the threat of Governor Rockefeller’s veto would keep the bill from being voted out of committee.

\textsuperscript{231} ADA is a liberal organization founded to keep the spirit of the New Deal alive and still exists today. For more information visit: https://adaction.org/ada-history/.
\textsuperscript{232} This organization was focused on reducing population growth and advocated for smaller family sizes; their message was stop at two, meaning every couple only replaced themselves on the earth instead of adding to the population. For more information visit: http://www.populationconnection.org/us/30-years-of-zpg/.
\textsuperscript{233} Nathanson and Ostling. Aborting America. 149.
\textsuperscript{235} Karrer. “The National Right to Life Committee.”
\textsuperscript{237} Executive Director’s Report Annual Meeting October 6-8, 1972, Carton 1, Ex. Dir. Reports, 1971-72, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.
\textsuperscript{238} Executive Director’s Report Annual Meeting October 6-8, 1972,
In April 1972, NARAL got word from Assemblyman Leichter that the Donovan-Crawford bill would be making its way to the Assembly floor.\textsuperscript{239} In response, “Lee Gidding, NARAL’s executive director, and [Lader] worked around the clock, sitting on the phones, cajoling, pleading, hammering, until [their] voices were hoarse. [Their] objective was to try to keep Donovan-Crawford bottled in committee.”\textsuperscript{240} They also took out an ad in the \textit{New York Times} to appeal to the public to oppose the bill. All of this was to no avail. Donovan-Crawford was voted out of committee. The most disturbing part of this was that Governor Rockefeller, who had previously said he would veto the bill, suggested a compromise of limiting the procedure to 16 weeks instead of the current 24 (as set in the 1970 law), thus indicating “his veto of Donovan-Crawford was no longer assured…”\textsuperscript{241}

After the Assembly Codes Committee sent Donovan-Crawford to the floor, NARAL continued lobbying in an attempt to halt the bill.

On May 3, [Lader] tramped all day through the catacombs and rabbit-warrens of the old Capitol building, and the marble sterility of the new, office adjunct, cornering legislators when they were off the floor, or their legal counsels or secretaries. In a few wavering districts, [he] had to make specific commitments of canvassing and financial help in upcoming primaries and elections...Each office reported that [NARAL’s] telegrams and phone calls had finally begun to make a dent.\textsuperscript{242}

Despite all of this, Donovan-Crawford passed both houses of the legislature and was sent to Governor Rockefeller. For fear that the Governor would not stand by his veto threat, given that he had offered a compromise bill and was getting pressure from the Catholic Church to sign the bill, NARAL “worked through the weekend to deluge the Governor with telegrams.”\textsuperscript{243} Rockefeller ultimately vetoed the bill and the 1970 law was protected.

\textsuperscript{239} Lader. \textit{Abortion II: Making the Revolution}. 198.
\textsuperscript{240} Lader. \textit{Abortion II: Making the Revolution}. 199.
\textsuperscript{241} Lader. \textit{Abortion II: Making the Revolution}. 200.
\textsuperscript{242} Lader. \textit{Abortion II: Making the Revolution}. 201.
\textsuperscript{243} Lader. \textit{Abortion II: Making the Revolution}. 206.
In addition to fighting attempted rollbacks to the 1970 abortion law, NARAL also opposed New York City guidelines that, in practice, would severely limit the impact of the 1970 law.

Because New York is the only state in which women from around the country can obtain legal abortion for any reason, NARAL...[decided to cooperate] with other groups and acted [independently] in areas not being covered by others. NARAL held hearings opposing restrictive City guidelines and testified at other hearings, in favor of easy availability of medically safe abortions, lowering the price of abortion, and attacking profiteering by profit-making referral services.244

NARAL not only expressed opposition directly to the Commissioner of Health245 but testified at the Health Board hearing to oppose regulations that would limit where an abortion could be performed.246 NARAL argued that the proposed guidelines “were not only contrary to the spirit of the new law,... [but] were entirely unworkable. If the major hospitals were to admit abortion patients to their beds, there would simply be no room there for any other medical business.”247 NARAL also issued a press release opposing the guidelines saying that they would “nullify the intent of the law and restrict the number of abortions performed by ruling out abortion in private clinics and in gynecologist’s offices.”248

However, this was not the end of the battle over the New York City regulations. The medical community continued to push back, claiming abortions outside a hospital setting would not be properly supervised, and the Board of Health ultimately sided with the doctors. The Board announced the limit would go into effect in the City’s regulations on October 19, 1971. “It was a serious setback, particularly bitter since the Board had submitted no evidence that clinics or medical groups failed to equal hospital standards. NARAL demanded the medical statistics be

244 Executive Director’s Report Annual Meeting, October 3 & 4, 1971.
246 Executive Director’s Report Annual Meeting, September 27 & 28, 1970.
247 Nathanson and Ostling. Aborting America. 71.
248 Executive Director’s Report, July 1, 1970.
brought to the public,”\(^{249}\) so the organization held a hearing and invited all NYC Board of Health members to testify. None showed up or answered the invitation. Despite the evidence presented at the hearing demonstrating that non-hospital abortions were safe, “the guidelines were incorporated into Article 42 of the Health Code on October 19, threatening to ‘make it even more difficult for women to obtain legal abortions’” in New York.”\(^{250}\)

_The Court: Protecting Roe v. Wade_

NARAL’s involvement in the courts did not take a prominent position in the organization’s strategy to preserve the right to choose until the mid-1980s. However, when it did, NARAL acted the way the interest group and venue shopping literatures would expect, as discussed below, as well as in ways it would not expect, which will be discussed in the next chapter.

NARAL’s involvement in Supreme Court cases first emerged in 1986 when the organization submitted an amicus brief in _Thornburgh v. American College of Obstetricians and Gynecologists_ and _Diamond v. Charles_.\(^ {251}\) However, it was not until _Webster v. Reproductive Health Services_ in 1989 that NARAL began getting regularly involved in the legal venue. This case involved a Missouri law that prohibited the use of public funds or facilities for performing abortions or even counseling women about the option. Missouri’s law was a perfect example of what has proven to be a highly effective strategy to weaken the foundation of Roe v. Wade: State legislatures enact restrictions that on the surface appear reasonable but in reality severely undermine the right to choose and have access to abortion.\(^ {252}\)

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\(^ {249}\) Lader. _Abortion II: Making the Revolution_. 154.

\(^ {250}\) Lader. _Abortion II: Making the Revolution_. 154.


\(^ {252}\) Michelman. _Protecting the Right to Choose_. 57.
The organization submitted two amicus briefs to the Court for the Justices to consider when ruling in the case. At the suggestion of Dawn Johnsen, NARAL’s legal director, NARAL submitted a brief that told women’s stories.253 The Women’s Voices Brief “…recorded thousands of women’s legal and illegal abortion experiences as an argument for maintaining the right to choose.”254 The second brief, entitled The Equality Brief, was signed by 77 organizations and made the argument that “…the right to abortion is properly founded in the Constitution’s guarantees of liberty, equality and freedom, and that state interference with abortion denies women the capacity to control their own lives in the most basic of ways and to participate equally in society.”255

The National Right to Life Committee also engaged in the battle over the Webster decision. The organization supported the Missouri law (the Missouri affiliate helped to draft the original bill)256 and believed the Court would overturn Roe soon (maybe even with this case),257 though the NRLC saw the upholding of any portion of the Missouri law as a win.258 The organization’s brief “…focused on the Court’s standards for reviewing the Missouri law and urged the justices to uphold [the laws] provisions.”259

Just three years after the Webster battle, which NARAL lost, the organization once again had to fight for a woman’s right to choose when the Court announced it would hear Planned...
*Parenthood of Southern Pennsylvania v. Casey* (1992). The case challenged a Pennsylvania law that restricted access to abortion by placing many barriers between a woman and making the choice to have an abortion: informed consent, a 24-hour waiting period, spousal notification, along with others.\(^{260}\)\(^{261}\) Once again NARAL and the NRLC were on opposite sides of the case. NARAL submitted an amicus brief in an attempt to convince the Court that the Pennsylvania law went too far in restricting access to abortion,\(^ {262}\) while NRLC, who saw flaws in the vague “undue burden” standard that was first presented in the *Akron* case and revisited in *Webster*,\(^ {263}\) wanted the Court to define what that meant, including the interest the state had in unborn life and maternal health throughout pregnancy.\(^ {264}\) The ideal outcome for the NRLC, along with other pro-lifers including the President, would have been a complete overturning of *Roe*.\(^ {265}\)

Once again, NARAL’s attempts were futile. The conservative Court ruled four of the five sections did not place an “undue burden” upon a woman’s right to choose and that states could put limitations on access to abortion so long as such limitations did not impose such a burden.\(^ {266}\)

The term was still undefined and was intended to signal “to the states that any restrictions on


\(^{261}\) “…the Court said that four sections of Pennsylvania’s law did not impose an undue burden on the right to abortion and were constitutional. These sections require a woman to delay an abortion for 24 hours after listening to a presentation at the medical office intended to persuade them to change her mind; require teen-agers to have the consent of one parent or a judge; specify the medical emergencies in which the other requirements will be waived, and require the doctor or clinic to make statistical reports to the state. At the same time, by a 5-4 vote, the Court struck down a fifth provision requiring a married woman to tell her husband of her intent to have an abortion.” Linda Greenhouse, “The Supreme Court; High Court, 5-4, Affirms Right to Abortion but Allows Most of Pennsylvania’s Limits,” *The New York Times*, Late Edition, June 30, 1992, Accessed February 27, 2020. LexisNexis.

\(^{262}\) 1993-94 Biannual Report 25 Years: Promoting Reproductive Choices NARAL


\(^{266}\) Linda Greenhouse, “The Supreme Court; High Court, 5-4, Affirms Right to Abortion but Allows Most of Pennsylvania’s Limits.”
abortion would still have to pass judicial review.” While *Webster* gave states more leeway in regulating abortion, *Casey* accelerated it: *Webster* gave states the right to regulate abortion, but *Casey* widened what would be considered an acceptable regulation with the “undue burden” test, which was very vague. The Court said: “An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” What makes this vague is that the Court did not define what would be a “substantial obstacle,” so that is left up to interpretation. In response to the decision, NARAL held hearings across the country on the Freedom of Choice Act and increased its lobbying to get the bill passed (see above).

NARAL’s actions against both *Webster* and *Casey* were what the venue shopping literature would expect. NARAL engaged in the Court when it became necessary—when the venue took up the issue of abortion—even though the venue was not receptive to its views on abortion. By the time of *Webster* and *Casey*, the majority of the Court was Republican appointees. These actions also confirm two interest group literature theories, the first being that organizations are “more likely to submit amicus briefs at the Supreme Court when...the

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267 Thomas. “How the Supreme Court Justice Sandra Day O'Connor Helped Preserve Abortion Rights.”
272 While the political views of the appointing president are a proxy for how a Justice will act on the Court, typically Justices appointed by Republican presidents are more conservative, and those appointed by Democrats are more liberal in their decisions, though this is not always the case.
interest [group] has participated at the Court in the past.” By the time the Court heard *Webster*, and especially by *Casey*, NARAL had already started to engage more in the Court, so it is expected the organization would engage as it had in the past. Additionally, NARAL’s actions attempting to impact the Court’s decisions, or “policy output,” confirm a large swath of literature that demonstrates organizations submit amicus curiae to influence the court’s decision making.

**Congress: Protecting the Status Quo in an Inhospitable Venue**

In 1969, NARAL worked with key Washington insiders to identify “possible avenues for action on the federal level that would focus national attention on the abortion problem and that would make abortions financially possible for the poor.” However, most of NARAL’s actions in Congress during these early years focused on limiting the negative impacts of bills on abortion. In 1970, the organization took action on the Tydings bill (H19318), “which would provide birth control services for all American women who cannot afford them.” However, the Congressional Conference Committee was considering banning funds under the act from being used for abortion. In response, NARAL used its communications to urge repeal activists to send

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276 This is all of the information available on what NARAL did on Congress to make abortion more accessible. If they took other offensive action, it is not clear what that was in the documents available.
telegrams to the Committee, one of the organization’s early grassroots efforts, telling the members to reject the ban.279 Despite NARAL’s efforts, the Tydings bill did not allow any funds under that act to be used for abortion, one of the organization’s few losses during the pre-Roe period. However, a line was added to clearly state that the ban for funds through the Tydings bill was not intended to prevent funds through other programs for being used for such purposes.280

Almost immediately after Roe, pro-life Congress members and activists began pushing for legislation to overturn the decision, and while there were quite a few battles in Congress over abortion during the Roe period (1973-1980), two stand out as the biggest and/or most important. The Human Life Amendment, originally introduced just months after Roe and supported by pro-life groups like the NRLC,281 would place a prohibition on abortion into the Constitution, thus having the effect of overturning Roe. This was followed not three years later (1976) by the introduction of the Hyde Amendment, which would eliminate the use of Medicaid funds to pay for abortions.282

The Hyde Amendment was first introduced in 1976 and was passed two years in a row in its most extreme form—preventing any federal Medicaid money from being used to pay for abortion.283 Despite its passage and subsequent upholding by the Supreme Court, NARAL did have a win the third time it came up for a vote. The Hyde Amendment had to be reauthorized every year because it passed as a rider on the HEW/Labor Appropriations bill.284 Thus, NARAL, through the efforts of the organization’s lobbyist, Carol Werner, “successfully pushed for a

279 Executive Director’s Report, December 14, 1970.
280 Executive Director’s Report, December 14, 1970.
284 History of a Movement, Box 41, High Dollar Fundraising, 1978-1980, includes grant proposals, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.
compromise to [the 1978 version of the] Hyde Amendment. The compromise allowed exceptions to funding cut-offs in cases where the woman would suffer severe and long-lasting physical health damage and in cases of reported rape and incest.**285**

The Human Life Amendment was first introduced in the 93rd Congress (1973), but it was not until the 94th Congress (1976) that the full Senate took action on the Amendment and tabled it.**286** Throughout the 1970s and 80s, most years the Amendment stalled in Committee, but there was a failed vote in 1983, the last time the amendment made it to the Senate Floor during this time.**287** Even though the Human Life Amendment never made it out of Congress, pro-life and pro-choice forces believed that it would. While groups like the NRLC worked for passage of the amendment, NARAL did everything it could to stop it, including urging members and supporters to lobby and write to their Senators and Congress members.**288** This effort in the summer of 1973 was successful as “reliable sources in Washington [said] the pro-abortion mail to legislators increased during the month of August.”**289** The organization also engaged in many different political activities to stop not only the Human Life Amendment but also the Hyde Amendment.

[NARAL] had a small lobbying team that was up on Capitol Hill, meeting with friendly members of Congress and organizing lobbying activities in DC (sic) and letter writing through the chapters…[The organization] sent out very informative monthly newsletters (paper) and encouraged chapters to meet with members of Congress when or (sic) recess. [Mulhauser] presented testimony often before House and Senate committees and organized hill visits for Board members when they were in town. [NARAL also] had

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**289** Executive Director’s Report September 17, 1973, Carton 1, Executive Director’s Reports 1973-74, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.
annual meetings of hundreds and sometime (sic) about a thousand members from around
the country and organized hill visits when they were in DC (sic).

Another instance of NARAL working in an inhospitable Congress was after the
Republicans re-took control of the House of Representatives in the 1994 elections. One attempt
by the Republican Congress to restrict abortion was to ban late-term, or as the pro-lifer’s called
it, “partial-birth” abortions (not a medical term). As Kate Michelman recognized:

“These [pro-life] activists understood what the pro-choice movement had in the case of
the Freedom of Choice Act in 1993, failed to recognize. Unable to enact their entire
agenda...they settled for what was politically possible, moving one step at a time, until,
eventually, their vision could be achieved. The ‘Who Decides?’ campaign had
repositioned a woman’s right to choose as a mainstream value, so the anti-choice
movement’s strategy was to find a way to inflame the issue and demonize abortion. The
ban on procedures provided the perfect vehicle.”

NARAL was once again playing defense and engaging in a Congressional battle because
its opponents were. Michelman called a meeting of NARAL’s senior leadership for a strategy
discussion, saying she wanted, as always, “a full debate in which everyone freely expressed their
views.”

It was obvious this bill was targeted at the heart of Roe and that it would be a difficult
public relations argument to make. The ultimate decision was to fight the bill despite warnings
from James Wagoner that it was dangerous. Women were completely absent from the discussion,
and the testimony of California woman Coreen Costello about her need for a late-term

291 Michelman. Protecting the Right to Choose. 140.
292 Kingdon. Agendas, Alternatives and Public Policies.; Baumgartner and Jones. Agendas and Instability in
293 Michelman. Protecting the Right to Choose. 141.
abortion demonstrated that no law could adequately cover all the unique circumstances women can find themselves in.

NARAL and Michelman should have heeded Wagoner’s advice as the organization made many mistakes. First, NARAL debated on its opponents’ ground and the discussion soon veered away from “Who Decides,” the organization’s most persuasive message. Additionally, Michelman’s responses about how often these abortions were performed was about post-viability abortions but clinics reported on all abortions, so it looked like NARAL was lying. She also gave incorrect information (that she had received from doctors) about the procedure that again brought the organization’s credibility into question. NARAL’s fatal error was straying from the “Who Decides?” message “into areas of medical detail that were neither [NARAL’s] expertise nor especially relevant...The central issue should have been whether politicians or women and doctors knew best what procedure was the most appropriate and safest in each complicated and individual case. [NARAL] reacted too quickly.”

The examples above demonstrate that even when a venue is antithetical to an interest group’s views on an issue, or the organization has not chosen to work in that venue previously (i.e. bureaucracy and the courts), that group will still engage in that venue when the venue takes

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294 Costello’s unborn child “had a fluid-filled head that was larger at 6 months than a full-term baby’s. Her lungs had not developed, and her body was in a rigid swan-dive position, with the backs of her feet touching her head...as Coreen’s health deteriorated, the Costellos were told by their doctor that they had to act. The excess amniotic fluid collecting in her uterus could have caused a rupture, and if the fetus died in utero, dangerous toxins could have been emitted.” Patrice Apodaca, “The Politics of Heartbreak,” The Los Angeles Times, May 7, 1996. Accessed February 25, 2020. https://www.latimes.com/archives/la-xpm-1996-05-07-ls-1236-story.html

295 Michelman. Protecting the Right to Choose. 141.

296 “After extensive public opinion research, NARAL developed the ‘Who Decides?’ message in conjunction with the pro-choice mobilization around the Supreme Court’s 1989 decision...NARAL’s ‘Who Decides?’ public education campaign in 1989 and 1990 shifted the debate from the question of whether abortion is right or wrong to the question of who makes the abortion decision—politicians or the individual woman and her physician.” Memo: Pro-Choice Strategy June 6, 1997 (confidencial), Box 232, Speeches 1992-2000, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.

297 Michelman. Protecting the Right to Choose. 142.

298 Michelman. Protecting the Right to Choose. 143.

299 Michelman. Protecting the Right to Choose. 143.
up an issue the group cares about to defend the status quo. NARAL fought against attempts in New York to roll back the 1970 abortion law and battled regulators in New York City to push for proper implementation both to protect the 1970 law not only from being repealed but from being implemented in a way the legislature did not intend. The organization also pushed back against attempts by pro-life groups and legislators in Congress to constitutionally eliminate the right to choose and limit access to certain abortion procedures. Finally, NARAL engaged in a new venue (for the organization), the courts, to prevent pro-life groups from chipping away at the right to choose won in *Roe*.

NARAL did not choose any of these venues. NARAL did not want these venues to take up the issue of abortion. However, because pro-lifers were pushing the issue, NARAL engaged in the venue in an attempt to stop attacks on the right to choose, thus demonstrating that interest groups will engage in an inhospitable venue if it takes up an issue the group cares about.

**Conclusion**

What this chapter has demonstrated is how NARAL’s actions confirm what we know about interest group behavior and venue shopping. When a group is seeking to change public policy, it will choose the venue in which it will most likely succeed and which is accepting of the group’s views on an issue. Most of these examples came from the pre-*Roe* period, though, when the circumstances were just right, NARAL was able to engage in venue shopping, though very infrequently, after *Roe v. Wade*.

NARAL chose to work to overturn New York State’s restrictive abortion law because the organization saw it as the best opportunity to pass such a law given the liberal make-up of the state, especially the presence of liberal Republicans who controlled the state government at the time. NARAL also chose to work through the courts in the District of Columbia to force
compliance with a court ruling when public hospitals refused to perform abortions for mental health reasons. Finally, NARAL chose to push for statutory reform in Congress when Democrats were in control. However, there are multiple instances where NARAL was pushed to act in certain venues because it addressed the issue of abortion.

NARAL fought back in Congress against attempts to pass the Human Life Amendment, which would have effectively overturned Roe, and pushed back against (eventually successful) attempts to prevent Medicaid money from being used for abortion services. NARAL also responded to legal attempts to chip away at the right to choose in the Supreme Court and legislative attempts to limit access to a particular type of abortion procedure—“partial-birth abortion”—when pro-life legislators in Congress tried to limit abortion access. NARAL acted in all of these instances because an inhospitable venue took up the issue of abortion, and the organization could not stand idly by and let the right to choose be lost without a fight. NARAL specifically acted in the Court to influence the decision and push the Court to protect the right to choose.

The examples discussed above demonstrate that while interest groups prefer to act in venues that are supportive of their views on issues, a group will engage in a hostile venue if it takes up an issue the group cares about. These actions to protect the status quo are sometimes necessary because a group on the other side of the debate engages in venue shopping and brings the issue to the venue to address it from their perspective (e.g. NRLC) or opposition from within the venue, such as pro-life legislators.

In the next two chapters, I will examine the many ways in which NARAL’s actions cannot be understood by the interest group literature. I will argue that our lack of understanding comes from three places. First is the fact that interest groups are not used as the unit of analysis
in the interest group literature and there are few in-depth case studies of interest groups that look at decision making and strategy decisions, both of which leave large holes in our understanding of interest group activity. Second is that the venue shopping literature specifically assumes interest groups seek policy change when in fact any time a group seeks change there is (usually) another group fighting to protect the status quo. This assumption limits the types of actions we look at and leaves us without an understanding of those who play defense and try to stop change, despite the fact we know it is happening.\(^{300}\) Finally, the current literature is unable to understand NARAL’s actions because it is heavily quantitative in nature and aggregates publicly available information to do its analysis. By largely utilizing publicly available information, scholars cannot understand actions groups take “behind the scenes” to influence policy, and the aggregation of data to understand “the many” sacrifices specificity of understanding organizations that comes from qualitative work and that can bring greater richness to our knowledge of interest group actions.

The next two chapters attempt to start a conversation about not only why it is important to study and understand groups who seek to protect the status quo and their actions, but also the best ways to study such groups. I argue in-depth, qualitative case studies are the best way, since, as I will show, not all interest group actions are public in nature. Thus, it is only through adding

nonpublic sources of group action that can be found in archival research and interviews that we can understand the full scope of interest group activity.
Chapter 4
When NARAL Goes Rogue: Acting Against the Venue Shopping Grain

Introduction
The venue shopping literature specifically, and the interest group literature more broadly, examines interest group actions in institutional venues, but those are not the only places interest groups act. These advocacy organizations also engage in the electoral arena, as evidenced by the many campaigns and elections works that examine interest group involvement in a variety of ways including some case studies, and use grassroots tactics to mobilize voters and supporters. In this chapter, I will explore non-institutional venues as well as other, non-traditional venues to demonstrate the value of not only studying additional venues but those groups, like the National Abortion Right’s Action League (NARAL), who seek to protect the status quo. I will also demonstrate the need to utilize non-public actions, and specifically, organizations’ archival documents and interviews, to understand the connection between actions organizations take in one venue and another, particularly when the connection is not overtly obvious, and how that contributes to our understanding of interest group activity.

This chapter will contribute to the interest group literature and expand our knowledge of groups playing defense by doing two things. First, it will examine NARAL’s actions that run contrary to what the interest group literature would expect to demonstrate why we need to examine interest groups as the unit of analysis rather than just their public actions. It is only by digging into interest groups as the unit of analysis that we can truly understand interest group actions, especially of those groups who are seeking to protect the status quo. Secondly, this

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The chapter will demonstrate how even though many of NARAL’s actions are those that interest groups would take to affect policy change, analysis of such actions is often missing from the interest group literature. The literature largely focuses on groups seeking policy change and does not look at groups who are playing defense to protect the status quo of policy, thus, we do not have a good understanding of the actions of interest groups that play defense.

One example of this is the battle over the Human Life Amendment in Congress in the 1970s and early 1980s. While NARAL did work in Congress to stop the Amendment (see Chapter 3), the organization believed the amendment would certainly pass and be sent to the states for ratification. NARAL attempted to learn from the failure of the Equal Rights Amendment activists and began working at the state level before the Amendment passed Congress in an attempt to prevent ratification. Evidence of this action is not obvious from looking at NARAL’s actions in Congress or state legislatures, but is present in a newspaper article and discussed more fully in the NARAL archival documents, without which it seems as if NARAL did very little to stop the Amendment. The literature cannot adequately explain these actions because NARAL was not directly acting on policy, but acting in a completely different venue from where the policy in question was being pushed, and the organization was working to prevent policy change. By using NARAL’s archival documents, I demonstrate the need to, and benefit of, studying interest groups who are playing defense to more fully understand policy battles and interest group actions regarding policy change.

Another example is NARAL’s electoral strategy called Impact 80. This program was created in response to the National Right to Life Committee (NRLC) focusing on elections and creating a 1980 election hit list—a list of pro-choice congressmen and women who the
organization was focused on defeating in the 1980 election.\textsuperscript{302} Impact 80 was a grassroots political strategy NARAL developed to elect pro-choice legislators and has nothing directly to do with directly impacting public policy. However, the strategy has the long-term effect of changing the political and policy environments because who controls the legislature controls what bills are introduced and ultimately passed. Electoral action is something groups seeking policy change (NRLC) and those playing defense (NARAL) use to affect the political environment for years to come, thus it is an important venue to study when trying to understand interest groups.\textsuperscript{303} Again, this example demonstrates the value of studying interest groups as the unit of analysis and why looking past public actions and examining archival documents is key to understanding those groups who seek to protect the status quo in addition to those engaged in venue shopping.

As explained in the previous chapter, some of NARAL’s actions in the court can be understood through the lens of the interest group literature. However, there are other, non-traditional actions that NARAL took to affect the \textit{Webster v. Reproductive Health Services} (1989) and \textit{Planned Parenthood of Southeastern Pennsylvania v. Casey} (1992) decisions. Not only did NARAL try to directly impact the decision by submitting amicus briefs (see Chapter 3) but the organization attempted to affect the environment in which the Court decided the cases by holding speak-outs and encouraging people to write to the Justices and express their views on the case. These actions are not in typical policy venues as studied by the interest group literature, though there are a few works that include grassroots action in their analysis.\textsuperscript{304} However, groups

\textsuperscript{302} 1980 Elections, Box 29, Abortion Rights Action Week 1979, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.

\textsuperscript{303} There are many works in the elections literature that examine interest group involvement in elections that demonstrates that groups engage to ensure a favorable policy environment for their issues. This way of looking at elections and interest groups would add great value to studies of interest group action. See literature review by Clyde Wilcox and Rentaro Iida in \textit{The Oxford Handbook of American Political Parties and Interest Groups} (2012) for a review of the literature.

seeking to change policy (NRLC) also engage in grassroots organizing. My research demonstrates that because interest groups on both sides of policy debates engaged in the use of grassroots tactics, it is valuable to understanding interest group actions and thus should be studied more by researchers attempting to understand advocacy organizations and their actions.

Overall, what follows will demonstrate that not only should interest group scholars look more closely at the actions of groups playing defense but also that some actions by such organizations are also taken by groups seeking policy change and are thus valuable to our understanding of what interest groups do to impact policy debates. These non-traditional venues are just as important and just as big of a part of policy battles as Congress, the courts, and state legislatures. Additionally, I also show that utilizing archival documents gives researchers a better understanding of interest group actions, especially those playing defense.

**Human Life Amendment: Working on a Congressional Bill through a State-Level Strategy**

Almost immediately after the Court ruled in *Roe v. Wade* (1973), pro-life Congress Members and activists began pushing for legislation to overturn the decision, and, while there were quite a few battles in Congress over abortion during the post-*Roe* period (1973-1980), one stands out as the biggest and/or most important. The Human Life Amendment, the first of which was introduced just months after *Roe* and supported by NRLC, would place a prohibition on abortion into the Constitution, effectively overturning *Roe*. NARAL took action to

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305 There were many iterations of the Human Life Amendment, but all had the same goal of abolishing the right to abortion and codifying that life began at conception in the Constitution: [https://web.archive.org/web/20070927034445/http://www.nchla.org/datasource/idocuments/HLAmajortexts.pdf](https://web.archive.org/web/20070927034445/http://www.nchla.org/datasource/idocuments/HLAmajortexts.pdf).

prevent the passage of this Amendment in Congress, but the organization’s major work was on a state-level strategy to counter the Constitutional Amendment should it make it out of Congress.

The Human Life Amendment was first introduced in the 93rd Congress (1973), but it was not until the 94th Congress (1976) that the full Senate took action on the Amendment and tabled it. Throughout the rest of the 1970s and into the 1980s, most years the Amendment stalled in Committee, but in the 97th Congress (1981-1983), there was a vote on the Senate floor. Early headcounts showed that only about 25 Senators opposed it (34 would be needed to block), indicating it would likely pass. The goal of the Human Life Amendment was to almost abolish legal abortion by defining “the fertilized egg as a person entitled to the full protection of the Constitution.” However, it included a provision allowing for medically necessary abortion in cases where it was needed “to prevent the death of the mother.”

Even though the Human Life Amendment never made it out of Congress, pro-life and pro-choice forces did not know it at the time, so both sides took action to achieve their goals. The NRLC identified passage of this amendment as its top priority “to restore what [the organization] thought was already [in the Constitution]—protection for human “life from its beginning to its natural end.” “At its 1978 annual convention, the NRLC announced it would step up its campaign for a human-life amendment by actively enlisting voters, establishing a ‘citizens’

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lobbying arm’ in Washington, and campaigning in state and congressional elections against its enemies.”

The NRLC strongly believed it could get Congress to pass the Human Life Amendment, as part of a long-term strategy, if the organization could first pass a federalism amendment that would give states the right to regulate abortion: “‘The suggested scenario holds that once the nation has become used to living without the freedom to abort, then we would come back with the 'human life' amendment and lock it in,’ said Dr. John Willke, president of the National Right-to-Life Committee.”

While the Human Life Amendment was an important goal, it was not the only priority the NRLC was pushing at this time. Willke argued that the organization had to simultaneously increase its action at the state level “‘making sure that state and local laws are designed to protect and defend life rather than destroy it.’” Thus, the NRLC, as well as NARAL, understood that its efforts had to involve action on the state and national levels.

In addition to attempts by pro-life groups to change the Constitution via the Human Life, and other similar, amendments through Congress, those groups, including the NRLC, eventually began a movement to call a Constitutional Convention through the states. In 1978, the NRLC began working for a Constitutional Convention, and in June 1980 at its 8th annual convention, the organization had a three-year plan to get state legislatures to vote on a constitutional amendment to prohibit abortions in all cases except to save the mother’s life.

NARAL knew a constitutional battle would be won in the states, and “To prepare for the worst, NARAL decided to ‘target’ 17 states—states in which it was assumed that, with extra money and other resources, the pro-choice groups could prevent their legislatures from ratifying such an agreement.”

In 1980, the NARAL Board of Directors decided they “…need[ed] to identify enough key states to be able to defeat a constitutional amendment if one comes out of Congress. That state organizations in those key states need to be assisted in developing strong and effective organizations.” However, it was not until 1981 when Senator Orrin Hatch (R-UT) said he planned to introduce a new constitutional amendment, and that he expected “it will pass Congress by the end of 1982” that NARAL took steps to implement this plan and returned to a state-level strategy.

If a Constitutional Amendment passed Congress, it would be sent to the states for ratification and three-quarters of them would have to approve it for it to become law. Therefore, all NARAL had to do was have a strong pro-choice presence and support in 13 states to prevent ratification. to do this, NARAL targeted 17 states in 1981/82 for special assistance to ensure that at least thirteen would be pro-choice enough to block ratification of an anti-choice amendment. The Board decided to focus their resources in “states that [stood] between

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322 Hatch was correct in his assessment. “…On 10 March 1982 the Judiciary Committee voted 10-7 to endorse the Hatch amendment proposal.” Craig and O’Brien. Abortion and American Politics. 141.
legal abortion and return to the tragedy and human suffering of illegal, unsafe and self-induced abortion.”

The NARAL Board decided on this targeting strategy because of the failure of the Equal Rights Amendment, whose supporters “concentrated on Congress and were not prepared in the states. Public opinion was on their side, yet [activists’] failure to adequately organize in the states may have cost them their issue.” NARAL was attempting to learn from the failures of the Equal Rights Amendment activists who had only concentrated on getting their Amendment through Congress and did not plan a ground game in the states to get the amendment ratified. NARAL was not going to make the same mistake, so the organization took a proactive step and started to gain strength and support in the states before the Human Life Amendment passed Congress to be ahead of the game. As Karen Mulhauser said of the situation: “‘The crisis is upon us and the danger is clear…’” the organization had to stop the Human Life Amendment in the states should it pass Congress. Thus, NARAL’s overall strategy was to be strong in enough states to prevent ratification of an anti-choice constitutional amendment should it pass Congress (as it appeared it would).

Organizations seeking to protect the status quo are not the only or the first interest groups to use state-level strategies and organizing to achieve its goals. “The organizational infrastructure of the nascent pro-life movement exploded after 1973 [and the decision in Roe v Wade.]. The NRLC founded independent state affiliates in every state in the country within eighteen months,” and the organization (as mentioned above) worked in the states to push its agenda.

Pro-life organizations, those seeking to change policy, understood that they had to fight on multiple fronts (state and federal), just like NARAL who was playing defense. Thus, the interest group literature should examine interest groups more closely to fully understand their actions because venue shoppers and those playing defense both engage in these understudied, non-traditional strategies. Gaining and having public support at the state level can be very important to achieving, or preventing, policy change. Even though some interest-group works examine groups at the state level, they are more interested in the likelihood of groups using certain actions than the nuances of why groups are taking such action and they are not examining the groups who were opposed to the policy change under study.

NARAL’s state-level actions in response to Congressional action on the Human Life Amendment is unexpected according to the venue shopping literature, even though organizations engaged in venue shopping utilized similar strategies, because NARAL while acting to stop the Amendment, took action in a completely different venue than where the policy was being discussed—Congress. This example demonstrates why it is important for researchers to expand the sources they use to archival documents and other non-public sources because it is sometimes the only way in which we can fully understand interest group actions and how actions in one venue are directly connected to actions in another. NARAL was playing a long game and looked past the immediate threat in Congress towards how to defeat the Human Life Amendment once it passed the national legislature, which NARAL and others assumed it would. However, little of the current venue shopping literature looks at group actions in this way. It is only through taking

a more holistic approach to studying interest group actions that we can see the connection between what was happening in Congress and what NARAL was doing in the states.

**Impact 80: An Indirect Effect on the Policy Environment**

In the late 1970s, NARAL started a state-level program called Impact 80 that was the organization’s first foray into the electoral venue, a venue not typically studied by interest group scholars. However, election “scholars posit that the decision [to engage in elections] is a rational choice by group leaders, who consider the organization’s policy goals and the likelihood that electoral activity would increase the chance of policy success.”\(^3\)\(^{30}\) NARAL’s strategy was in direct response to the electoral actions of pro-life organizations, specifically the National Right to Life Committee, and was geared towards the goal of stopping pro-life legislation and electing pro-choice legislators.\(^3\)\(^{31}\) What this example and strategy shows is that not only do scholars seeking to understand the actions of interest groups need to look at non-institutional venues but that those venues are used by organizations seeking policy change as well as those who are playing defense. This example also demonstrates that sometimes researchers need to dig into the organizations themselves, and their archival documents, to fully understand group actions.

During the 1978 elections, NRLC was working on a campaign for a “...constitutional amendment prohibiting abortion, except in certain instances”\(^3\)\(^{32}\) and increased its involvement in elections. “[B]y 1979 the group had created a political action committee with Maine activist Sandra Faucher as project director.”\(^3\)\(^{33}\) The organization’s drive for the amendment included

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\(^3\)\(^{31}\) In this way, what NARAL was doing could be understood by some election scholars' work, but it is not easily understood by the interest group literature since it usually does not look at elections.


\(^3\)\(^{33}\) Ziegler. *After Roe: The Lost History of the Abortion Debate*. 74.
many electoral and other activities such as enlisting the support of voters, establishing a lobbying presence in Washington D.C., and a “campaign in 11 state and Congressional elections against candidates opposing right-to-life cause.”

“In 1978 while the pro-choice movement lobbied Congress for withdrawal of the Hyde Amendment, [an amendment to the budget bill that would prevent the use of Medicaid money to pay for abortions], ‘right to life’ voters were casting critical ballots against [Democratic Senator] Dick Clark in Iowa and other pro-choice incumbents.” Right-to-Lifers turned elections into referenda on abortion votes by telling legislators they would be voted out of office if they supported the right to choose. The outcome of the 1978 elections and announcement of a NRLC 1980 anti-choice hit list of incumbents who support the right to choose made NARAL realize the organization was fighting on the wrong battlefield with the wrong weapons. NARAL needed to change focus from just lobbying elected officials after they got into office to building electoral strength in the states to help pro-choice candidates win elections so the pro-choice position would have more support, and NARAL could have more influence, in Congress.

This strategy, called Impact 80, was just the start of a long history of electoral involvement for NARAL. According to archival documents and Michelman’s book, the organization engaged in electoral politics in at least nine elections between 1980 and 2004. The Impact 80 strategy involved strengthening affiliates and training state activists in how to work on

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336 Richard C. Clark was a US senator from Iowa from 1973-1979; he was defeated for reelection in 1978. http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000448
campaigns and was when NARAL established “itself as a grassroots political organization, considerably curtailing its reactive lobbying functions and all but eliminating litigative activity.”\(^{340}\) (The resurgence of the latter is discussed more below). NARAL had been lobbying Congress since 1973, but it was not working.\(^{341}\) What was not coming through was that NARAL was “‘speaking for the mainstream,’ said [Robin] Duke [NARAL Executive Director]. Vulnerable members of Congress who are pro-choice in their hearts are afraid to vote that way because they will be targeted for defeat by anti-abortionists.”\(^{342}\) The plan was to start acting more like the organization’s opposition by engaging in elections.

Impact 80 was adopted by the NARAL Board of Directors in April of 1979 “to offset political activities of antiabortion (sic) groups”\(^{343}\) and “was designed to counter the growing perception among elected officials that it was a political liability to be pro-choice and to eventually end the erosion of the right to choose. It was decided that NARAL would place organizers in states or Congressional districts where the incumbents had been placed on the anti-choice hit list.”\(^{344}\) The organization realized “that lobbying alone [could not] change the climate of Congress, [so] IMPACT 80 was developed to mobilize the pro-choice majority to influence elections in addition to lobbying legislators.” NARAL used the “…program to identify politically inactive pro-choice citizens, to inform them of the serious threat to the status of legal abortion, and to teach them simple skills of political action.”\(^{345}\)

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\(^{340}\) Concept for Future Directions Memo, July 18, 1980.
\(^{342}\) Mann. “Pro-Abortion League Starts Playing Rough.”
NARAL [was] mounting a campaign to help pro-choice legislators, to make themselves as powerful a force as the anti-abortionists [had] made themselves. NARAL [was] going to give campaign contributions, and... swamp Congress with 1.5 million postcards saying ‘I'm pro-choice and I vote,’ and... drum up volunteers for pro-choice candidates. It [decided to do] ...all the things a political movement under attack should have been doing all along.346

This was when NARAL decided to become the political arm of the abortion rights movement. “With this single focus, NARAL could fill the void that then existed in the abortion rights coalition. Part of [the organization’s] strategy was to train politically skilled workers on the local level, who could manage campaigns as well as fill other specific jobs.”347 This was all done with a single, major goal in mind: to prevent a constitutional amendment outlawing abortion from passing in the states (discussed above) by electing candidates who supported the right to choose.348

Because the interest group literature tends to focus on institutional venues (not electoral ones) it misses such actions of groups like NRLC and NARAL. Yet, elections proved to be an important political space for both pro-life and pro-choice groups, as some in the election’s literature would agree.349 350 Without having elected officials who agree with an interest group’s position, it is not able to achieve much policy success in government, so organizations get involved in elections to ensure those who support the group’s issues are elected so it can have support when trying to make or prevent policy change in the legislature.351 Even though NARAL was engaging in classic interest group behavior as described by the venue shopping literature—

346 Mann. “Pro-Abortion League Starts Playing Rough.”
347 Nanette Falkenberg Report, Box 78, NARAL Newsletters 1982, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.
348 History of NARAL, Box 55.
349 “Other groups need for one party or ideological coalition to have control of congress to prevail, so they concentrate their resources on close elections…” Wilcox and Iida, “Interest Groups in American Elections.” 558.
350 “Ideological groups generally seek to maximize the number of legislators who share their views.” Wilcox and Iida, “Interest Groups in American Elections.” 561.
351 Wilcox and Iida, “Interest Groups in American Elections.”
choosing to take action in the same place as the organization’s opponent—they were doing it in a space not often studied: elections.

Additionally, NRLC and NARAL’s story shows that electoral venues are important to study to understand groups on both sides of policy battles. For interest groups, like NARAL, that want to protect the status quo, changing the political make-up of an institutional venue through elections is a key way to prevent policy change (get those who agree with you elected), and the Impact 80 electoral strategy is a perfect example of NARAL attempting to do just that. However, without examining NARAL as the topic of study, and using the organization’s archival documents, the connection between attempted policy change in Congress and NARAL’s electoral actions at the state level are difficult to see. On the other side, the NRLC, a group seeking to change policy and engaged in venue shopping, was also utilizing elections. Thus, what this example shows is that NARAL was engaging in the same types of behavior as an organization that the venue shopping literature would normally study, and thus there is value to examining elections to not only understand more about groups seeking policy change but also organizations seeking to protect the status quo.

The Court of Public Opinion: NARAL Acting beyond the Courtroom

As mentioned in the last chapter and above, outside of Roe, NARAL did not engage with the legal venue until the 1980s. However, while some of NARAL’s actions against the Webster v. Reproductive Health Services (1989) and Planned Parenthood of Southern Pennsylvania v. Casey (1992) cases were what the literature would expect (see Chapter 3), the organization also took some unexpected action in attempts to convince the High Court to protect the right to choose. In both instances, NARAL focused on changing public opinion and the climate in which

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352 See chapter 3 for more detailed information about the specifics of the cases.
the Court ruled on these cases, which included holding demonstrations and marches that engaged the public.\textsuperscript{353} 

Within days of the Court’s announcement that it would hear \textit{Webster} in 1989, NARAL launched a plan “...designed to affect the climate surrounding the Supreme Court’s consideration of the \textit{Webster} case and to build an active, recognizable pro-choice constituency that represents voter strength.”\textsuperscript{354} One aspect of this plan was a National Mobilization Campaign to alert Americans that the right to choose was in danger.\textsuperscript{355} The campaign was called “Millions of Voices, Silent No More,” where NARAL tried to get one million signatures of people who supported continuing constitutional protections for the right to choose.\textsuperscript{356} However, pro-choice groups were not the only ones utilizing this strategy. Pro-life groups were also mobilizing supporters to contact the Court about the \textit{Webster} case and their views on the issue of abortion.\textsuperscript{357} At the same time, NARAL utilized extensive public opinion research, including focus groups and national polling,\textsuperscript{358} to develop a new public education message, reframing the discussion about abortion as “Who Decides?” whether a woman has an abortion: politicians or the woman and her doctor.\textsuperscript{359, 360}

\textsuperscript{353} Caldeira, Hojnacki, and Wright (2000) is one work that did include grassroots and public action in its analysis of what interest groups do to impact judicial nominations, but this is the only work that I was able to find that included such in its analysis. However, it did not address how such actions might be taken in relation to a court case. 
\textsuperscript{354} Memo: Overview of Pre-Webster Organizing Plan, Box 99, Affiliate Director’s Meetings, 1989, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States. 
\textsuperscript{358} Michelman, Kate. \textit{Protecting the Right to Choose}. 66. 
\textsuperscript{360} Memo: NARAL’s Task for 1990, Box 102, Affiliates Meetings, Jan-March 1990, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.
NARAL engaged the public directly by getting them to take action and demonstrate their support for choice. As part of this engagement, NARAL orchestrated “...one of the largest pro-choice demonstrations ever held in the nation. An estimated 500,000 pro-choice Americans march[ed] on Washington, D.C.,”361 in The March for Women’s Equality, Women’s Lives, co-sponsored by NARAL, to demonstrate their support for a woman’s right to choose. NARAL organized speak-outs modeled on the 1985 Silent No More Campaign to “...provide a national day where women and men would go public with their abortion experiences. The goal of the events would be to ‘make personal’ the circumstances surrounding a woman’s decision to choose an abortion...[to] refocus the debate on women”362 as opposed to the abortion procedure itself, as the pro-life movement often did.

Just three years after the Webster battle, NARAL once again had to fight for a woman’s right to choose when the Court announced it would hear Casey (1992), which was a challenge to a Pennsylvania law that restricted access to abortion. Once again, the organization’s plan to influence the decision revolved around changing the climate in which the Court considered Casey and “to build an active, pro-choice constituency that represents voter strength in the 1992 elections.”363 Similarly to 1989, NARAL held another march and speak-outs for people to share their stories.364

NARAL knew the 1992 March for Women’s Lives had to have a strong showing. The 1989 march had exceeded the numbers at the 1986 march, so anything less than the 1989 numbers would be seen as a decrease in support for abortion rights.

361 NARAL’s 30th anniversary Journal: Our History.
362 Memo: Overview of Pre-Webster Organizing Plan.
364 Memo: Overview of Casey Field Plan.
The press, the public and those in political office in Washington and throughout the nation would judge the power and relevance of the entire women’s movement by the size and scope of this march...It was imperative that the 1992 march exceed that [1989] turnout in order to deflect media stories alleging that the strength of the pro-choice movement was in decline at exactly the moment we faced our greatest challenge in years.\textsuperscript{365}

To achieve the desired turnout, NARAL worked with state affiliates to train activists to get the message out. The organization also focused especially on states close to D.C. to increase turnout.\textsuperscript{366} However, despite all of this, the Court ruled that states could place restrictions on abortion as long as it did not constitute an “undue burden” upon the woman seeking the procedure.

What NARAL’s actions around \textit{Webster} and \textit{Casey} demonstrate is that even if the interest group literature can help us understand some of the organization’s actions in this venue (see Chapter 3) that does not mean the group is not also engaging in other unexpected actions. Holding demonstrations and trying to influence public opinion and the political climate can be just as important to influencing policy change in political venues as more traditional actions. NARAL engaged in these actions, which were just as much an attempt to influence the outcome of the Court cases as submitting an amicus brief, to defend the status quo of abortion policy. In that respect, these actions are no different from NARAL engaging in unexpected ways in the electoral venue or acting behind the scenes (see next chapter) to defend current policy. Interest groups playing defense who cannot engage in venue shopping are pushed to act in unique, often unexpected, ways to defend current policy, and this shows that, as researchers, we need to look deeper at these organizations and their internal documents to fully understand these actions.

\textsuperscript{365} Michelman. \textit{Protecting the Right to Choose}. 101.

\textsuperscript{366} Michelman. \textit{Protecting the Right to Choose}. 103.
Despite the lack of understanding of these types of grassroots actions in the literature, groups the literature focuses on—those seeking policy change and engaging in venue shopping—also use similar strategies, which makes our lack of knowledge of how these actions play into policy change and venue shopping even more surprising. Not only did pro-life groups attempt to engage the public with the *Webster* decision by encouraging them to write to the Justices, pro-life groups utilized marches to make their point as well. Every year since the *Roe* decision, pro-life demonstrators return to Washington D.C. for an annual march now referred to as the March for Life.

### Conclusion
Most of the venue shopping literature focuses on interest groups seeking policy change, and those who are responding to such change are a secondary concern. The main understanding of these groups is that they will engage in a venue if it takes up an issue a group cares about. However, as the above examples illustrate, in most policy battles when there is an organization trying to make policy change there is another who wants to protect the status quo, so those groups playing defense need as much examination and understanding as those engaging in venue shopping if we are to have a holistic understanding of venue shopping and interest group actions regarding policy. The current literature does not have a good understanding of interest groups who want to stop policy change and are always playing defense. This leads to a lack of knowledge of many interest groups and their actions, even when such groups are taking the same actions as those who seek to make policy change. When interest groups need to play defense,

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they often need to take actions that are outside the norm or think past the present situation, and these types of actions are those that the venue shopping literature has difficulty understanding, or even seeing, due to the preoccupation with those groups engaged in venue shopping for policy change and institutional venues.

As NARAL’s actions discussed above demonstrated, there were many instances where the organization had to act in ways the interest group literature does not expect. When pro-life groups and legislators tried to outlaw abortion through a constitutional amendment, NARAL turned its attention away from the policy battle over the amendment in Congress, mostly because the organization believed the amendment would likely pass, and turned to a longer-term strategy at the state level to prevent ratification. This strategic decision to protect the right to choose (status quo) is outside the realm of what the venue shopping literature expects because the policy change was occurring at the national level, but instead of fighting what the organization saw as a losing battle in Congress, NARAL chose to try to stop the amendment at the state level. The venue shopping literature would expect NARAL to fight in Congress against the amendment because that was the venue in which the organization’s opposition was pushing for policy change. However, state-level action is not exclusively used by those playing defense. The NRLC began organizing at the state level immediately after Roe and began engaging in elections before NARAL. This just further demonstrates the need to not only study groups who are fighting to protect current policy but look more at irregular venues, such as elections, because interest groups do more than engage in institutional venues to protect or change policy.

NARAL’s Impact 80 strategy is another example of action the literature does not expect but that is because elections are not often studied as a venue that groups choose to make policy change even though elections play a huge part in policy change. During the 1978 elections, pro-
life groups were successful in electing many pro-life legislators and defeating some pro-choice ones (i.e. Dick Clark in Iowa) and announced plans to target pro-choice legislators in the 1980 election. NARAL responded by establishing a state-level strategy to protect the targeted legislators. In that respect, NARAL acted as the venue shopping literature would expect—the organization responded to the actions of its opponents—but the literature does not include these actions by either side because elections are not often seen as part of making policy change by the interest group literature when in fact elections are a very large part of policy change. If those elected do not agree with a group’s views on the issue then the group will not be successful in making or preventing policy change once those elected officials start introducing and passing bills.

Finally, even though the courts are examined as a venue for policy change by some of the interest group literature and a segment of the literature on social movements, it does not examine how groups seek to use and influence the court in non-traditional ways as discussed above. The courts have long been a venue for policy change, especially for the issue of abortion and the right to choose: the right was granted by Roe v. Wade in 1973 and then limited by cases in the late 1980s (Webster) and early 1990s (Casey). Thus, by only examining public, “traditional” sources, some interest group actions involving the courts as a venue for policy change are lost. NARAL responded in ways that can be understood by the venue shopping literature theories (as discussed in the previous chapter), but as discussed above, the marches and attempts to influence the climate in which the Court decided cases are well outside the understanding of the current literature. By holding marches and trying to change the climate around the issue of abortion, NARAL was acting because of, but not directly responding to, actions of the organization’s opponents, as they did when submitting amicus briefs—a direct response to the court case.
What these examples demonstrate is the value of studying interest groups themselves as the unit of analysis, and organizations playing defense, not just those seeking to make policy change. The current literature, which mostly focuses on groups engaging in venue shopping, is only examining, at best, half of the equation of policy change, but in reality, even less because groups seeking policy change and engaging in venue shopping also engage in these unexpected actions in non-institutional venues. Thus, by only looking at the “traditional” policy change venues—Congress, the courts, and state legislatures—the literature is missing large amounts of interest group action on both sides of policy debates because there are so many other venues in which interest groups act to affect change or protect the status quo.
Chapter 5
Flying Under the Radar: Interest Groups as the Unit of Analysis

Introduction
Are all interest group actions public? Can we see everything groups are doing to affect a particular piece of legislation or court case? The short answer is no, especially if interest groups themselves are not examined as the unit of analysis. The interest group literature examines public actions—introducing legislation, testifying on legislation, submitting an amicus brief, putting out press releases and the like—because these actions leave behind data to be studied. However, only looking at such actions, and not the decision-making processes or thoughts behind them, makes it difficult to know if, or when, interest groups act behind the scenes in an attempt to influence policy.

Sometimes groups cannot take direct action to protect the status quo, so they act behind the scenes, out of the public view. It can be hard to see these actions or to study them because the groups are flying under the radar with their work. However, by using archival research and interviews with past leaders, I show that even when the National Abortion Rights Action League (NARAL) appears to be sitting on the sidelines, it is actually working very hard to influence policy because the group believed that was the best way for it to engage with the issue. Groups work under the radar when doing otherwise would negatively affect the goal they are trying to achieve.

There are multiple examples of NARAL acting behind the scenes to affect the courts and legislation that are known only to those who were there at the time or who later sift through the extensive collection of archival documents at the Schlesinger Library at Harvard. It is in these documents that lie the answer to one of the biggest puzzles about NARAL: why the organization was seemingly not involved in the biggest abortion rights case in US history, Roe v. Wade
(1973). From the outside it seems as though NARAL sat out from *Roe:* there are no press releases, there are no newspaper articles, there is no amicus brief that shows NARAL’s involvement in the case that thrust the abortion issue onto the national stage. Without examining the group as the unit of analysis, and digging through the archives, we can only assume that NARAL did not engage in the *Roe* case, though that would seem an illogical lack of action given the case’s importance and that it achieved nationally what NARAL was trying to do state-by-state.

For all of the 1970s, and most of the 1980s, there is no evidence of NARAL’s involvement in the courts, despite the presence of court nominations of pro-life judges and abortion-related court cases. However, in the archives, and the mind of the organization’s leaders at the time (e.g. Karen Mulhauser), lies an explanation for this seeming missing action and a plan NARAL was working on to engage in the courts starting in the late 1980s. These documents help us understand not only NARAL’s absence from the legal venue but also why the organization all of a sudden dove head-first into court involvement, especially with the Supreme Court, in the late 1980s.

However, despite the newfound involvement in the courts, NARAL stepped back from the Robert Bork nomination without public explanation. The organization said it would vehemently oppose Bork’s nomination, but it ultimately did not testify or take other public actions opposing him. There was no press release explaining this action and no newspaper reports on it. However, archival documents, an interview with Executive Director Kate Michelman, and Michelman’s book (published over a decade after the Bork nomination battle) reveal the reason behind the decision and what NARAL continued to do behind the scenes to defeat Bork.
The final example of NARAL flying under the radar to protect the right to choose came in the early 2000s and was a legislative battle over stem-cell research funding. The organization cared very much about continuing funding for stem-cell research. However, NARAL knew if it engaged publicly in the debate, the discussion would turn to abortion, which could hurt the fight for continued funding. This does not mean NARAL took no action. The organization simply did not act publicly or testify before a Congressional committee but did work diligently behind the scenes to get support for the bill.

These examples contrast with the last chapter in which NARAL was in a battle for public opinion. Here the battle is being fought behind the scenes. Not all interest group work on policy is public knowledge. If a group appears to be absent from a battle/debate in which it would logically engage, it is probably doing so but out of the public eye. In what follows, I will show how archival documents and in-depth interviews can help us understand interest group actions at a whole new level. I will also demonstrate that the interest group literature is missing a lot of interest group actions by not including these types of sources in their analysis of group action, especially when it comes to those playing defense.

*Roe v. Wade* and NARAL’s Apparent Absence

One of the great mysteries in abortion politics is how NARAL—the nation’s most prominent abortion rights group—did not participate in *Roe v. Wade*—the nation’s most significant abortion rights court case. However, one only comes to this conclusion by looking for “visible” evidence in the “usual” places: who submitted amicus curiae, who protested on the Supreme Court steps, or what public documents, like newspapers and press releases, reported what interest groups say they are doing or will do to push for or oppose a case. When looking at less conspicuous sources, such as archival documents, it becomes clear that this conclusion is
incorrect. NARAL did get involved in *Roe v. Wade*, but only behind the scenes, out of public view.

NARAL flew so far under the radar with its involvement in *Roe v. Wade*, not even the organization’s members knew NARAL was helping with the case. It is also unclear how much even the Board of Directors knew. There were multiple organization publications from 1970 to 1972 where NARAL updated its members/subscribers on how the case was progressing, yet never did these newsletters mention that NARAL’s lawyers were helping Sarah Weddington, the lawyer from Texas who argued and won in *Roe*, prepare for her oral arguments. Without a partially transcribed interview of Lawrence Lader being included in the NARAL archives, the organization’s involvement could still be a mystery. Understanding what NARAL did, how, and why are important for understanding how interest groups operate because it shows that public actions do not tell the whole story. We often need to look beyond public actions to fully understand interest groups, especially those who want to protect the status quo.

The seeds of *Roe v. Wade* were planted in 1969 when lawyer Sarah Weddington and other volunteers for the referral project were discussing whether the abortion information they provided to pregnant women was illegal under the Texas abortion law. The referral project was a way “to inform women about their bodies, about their rights, about available birth control, and about safe abortion. Before the referral project was set up, each of the participants had informally fielded calls from women seeking abortions.”369 With the question of whether the referral project’s work was illegal in Texas, Weddington began researching the history of the Texas abortion law, as well as abortion laws generally, to attempt to uncover the answer. While she did not find a definitive answer, her research revealed many promising leads: the Supreme Court had

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previously ruled that a right to privacy existed in the Constitution (*Griswold v. Connecticut*, 1965) and that there were certain private decisions that the government had no business interfering with. “People had challenged state abortion laws and won decisions overturning”\(^{370}\) them, and many court cases were currently in the court system across the country challenging state abortion laws.\(^ {371}\)

After further discussion with referral project volunteers and her then-husband Ron about what she found during her research, Weddington decided to attempt to file a case challenging the Texas abortion law. The group believed it would take too long to change the laws legislatively on a state-by-state basis, but a federal challenge would change all of the laws at once. Weddington worked with her law school colleague, Linda Coffee, to find a plaintiff that could help them challenge the Texas law and ended up filing two cases that would eventually be called *Roe v. Wade* and *Doe v. Wade*. The thought was that their efforts were “adding to the momentum of the litigation strategy others had already put into motion,” and they assumed one of the previously filed cases would be the “icebreaker” on the issue.\(^ {372}\) They never expected their cases to be the ones that would help all women gain access to abortion.

While NARAL was actively working for the repeal of state abortion laws during the time in which *Roe* was working its way through the courts, the organization was not openly engaged in the case like other abortion interest groups. The National Right to Life Committee “followed the case since 1970 when it first appeared in Texas before a three-judge panel,”\(^ {373}\) and while they expected an unfavorable decision, NRLC “assumed a more narrowly written one than what

\(^{370}\) Weddington. *A Question of Choice*. 47.


\(^{373}\) Karrer. “The National Right to Life Committee.”
Justice Harry Blackmun delivered.” In attempts to influence the Court’s decision, the NRLC submitted an amicus brief twice, one for each time the Court heard the case (1971 and 1972) arguing that the case was improperly handled in the lower courts and that “neither the ninth nor the fourteenth amendment prohibits a state from protecting against the destruction or abortion of human life.” Many other pro-life and pro-choice groups submitted amicus briefs, including: Women for the Unborn, Planned Parenthood Federation of America, Inc., American Association of University Women, American’s United For Life, the California Committee to Legalize Abortion, National Abortion Action Committee, Zero Population Growth, and the National Organization for Women.

Given the fact that the NRLC and many others submitted amicus briefs on both sides of the case, and that Roe ended up achieving what NARAL was attempting to do state-by-state—make abortion legal for all women—it is curious that the organization did not submit a brief. It is expected that NARAL would submit a brief because not only did many pro-life groups do so, including the NRLC, but it is the only way to “directly” influence a court case. Groups cannot lobby the Justices like they can legislators, but a brief can do something similar by allowing a group to tell the Justices what it thinks about a case, bring to bear any important information not included in the filing, and/or why it thinks a case should be decided a certain way.

377 “At its most basic level, the amicus curiae tool allows an entity that is separate from the parties to provide legal or factual information to the court, creating an appearance of neutrality which may or may not be a reality. The information presented can range from a repetition of legal arguments already before the court (in essence, an endorsement backed by the prestige of the entity offering it) to the presentation of new legal arguments or facts that inform the court of potential impacts of the litigation. More subtly, amici curiae may play a strategic role by suggesting weak legal arguments that are morally appealing (if the argument is a loser, the party may disassociate itself from the position), an educational role by presenting technical information that creates a fuller context for the court to decide the case, or a census role by providing a barometer of public opinion on an issue, particularly when a large number of entities are involved as cosponsors or separate filers of amicus briefs.” Linda Sandstrom
However, the lack of a brief does not mean that NARAL was not aware of or care about the case. The organization was closely following the case and wrote about it in the *NARAL News*, NARAL’s newsletter, three times. The Executive Director mentioned the case in four reports to the NARAL Board between May 1970 and November 1972.\(^{378}\) The Reports mentioned the court challenge had been filed,\(^{379}\) notified the Board when the Supreme Court took the case (summer 1970),\(^{380}\) mentioned they were still on the docket waiting to be heard (winter 1971),\(^{381}\) and discussed the reargument (October 1972) the month following and mentioned a decision was expected in early 1973.\(^{382}\)

NARAL’s first public mention of the *Roe* case (according to available sources) was in the Summer 1970 edition of the *NARAL News*, but all it said was that “[i]n Texas, a three-judge Federal Court ruled the state’s abortion statutes unconstitutional because they infringe on the rights of women to decide whether or not they want to bear children and because they are in violation of the ninth through fourteenth amendments to the U.S. Constitution.”\(^{383}\) While the case was not mentioned by name, it is clearly *Roe* because Weddington and Coffee planned to get a ruling by a three-judge panel in Texas.\(^{384}\) The next mention was a year later in the summer of

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\(^{378}\) These counts of mentions are based upon available documents from the Schlesinger Library. However, due to the incomplete nature of the documents there could have been more information communicated to members/subscribers or the Executive Committee that there is no record of at the Library.


1971 when the Supreme Court agreed to hear *Roe* and *Doe* the following October and that the case involved “the broad constitutional issue of a woman’s right to privacy.”

In the summer of 1972, another year later, NARAL devoted an entire page of the newsletter to the Court’s decision to hear reargument in *Roe* and *Doe*. At the time the Court first heard *Roe* (October 1971), there were two vacancies on the Court, as Justices Hugo Black and John Harlan retired from the Court on September 17th and 25th, respectively. Thus, only seven Justices heard the original argument. Louis F. Powell and William Rehnquist were appointed to replace Justices Black and Harlan by President Nixon in December 1971 and were sworn in on January 7, 1972.

The newsletter article speculated that the reargument was ordered because the Court always heard and decided a case in the same term, and they did not want to break that tradition or because there was no majority vote for either side after the first argument. The latter could have been impacted by the fact that only seven Justices heard the original argument, and maybe they decided to have *Roe* and *Doe* reargued so a full Court could decide such an important topic. This was all speculation because, as NARAL noted, the Court does not explain why it holds a case over to another term.

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390 *NARAL News*, Summer 1972,
None of the information or discussion of the case sent to members, or in the Executive Director’s reports to the NARAL Board of Directors (that are available at the archives), included the information that NARAL had its “...top lawyer down in Washington working with [Weddington]. You know how lawyers throw questions as though they were in court, and trained her…”\(^\text{391}\) because Weddington “was literally just out of law school, [and] had never practiced before the Supreme Court.”\(^\text{392}\) NARAL was highly engaged in the arguments used in the *Roe* case and actively worked to ensure it was successful, but this is not evident from reading newspapers, reviewing the list of amicus briefs, or even reviewing most internal documents of the organization. There is only one piece of evidence that NARAL had anything to do with the *Roe* case and that was a partially transcribed interview with the then President, Lawrence Lader. Without examining the archival documents of NARAL, it appears as if the largest pro-choice interest group of the time completely ignored the pinnacle case that granted women the right to privacy and the right to choose.

But why did NARAL only engage behind the scenes? A partial answer comes from Roy Lucas, a lawyer who worked for NARAL at the time of *Roe*. According to Lucas, the organization did very little in the way of casework by choice of leadership. He said that the organization contributed “virtually nothing to the court cases he was pursuing on behalf of unrestricted abortion.”\(^\text{393}\) During an internal fight among members of the Executive Committee and Lucas, “[h]e berated N.A.R.A.L. for being interested only in holding press conferences to announce or to pretend involvement in court cases in which it was in fact not involved...he portrayed the leaders as being unable even to put together a friend-of-the-court brief in either of

\(^{391}\) Oral History/Lawrence Lader, June 6, 2001.  
\(^{392}\) Oral History/Lawrence Lader, June 6, 2001.  
\(^{393}\) Nathanson and Ostling. *Aborting America.*
the two cases before the U.S. Supreme Court"\textsuperscript{394} (\textit{Roe} and \textit{Doe}). As Bernard Nathanson, a NARAL Executive Committee member at the time of \textit{Roe}, recounts, Lucas was correct in his assessments. NARAL was more focused on political lobbying and publicity than getting involved in court cases, “what turned out to be the real abortion war, waged within the quiet chambers of the federal courts.”\textsuperscript{395}

NARAL’s limited involvement with \textit{Roe v. Wade} is surprising, especially because the NRLC and other pro-life and pro-choice groups were involved and submitted amicus briefs. The organization’s public absence is so striking because ever since 1973, NARAL has been fighting to protect the rights won in that case, but in the public eye, it appears as if the organization had nothing to do with the case’s success. It is clear that NARAL knew about the case and its significance, but only archival documents reveal NARAL’s involvement: the organization was directly engaged in the actual arguing of the case rather than just trying to influence the Justice’s decision through an amicus brief. Additionally, NARAL’s lack of a brief and joining other pro-choice groups in such action, complicates this finding in the literature that groups will tend to submit amicus briefs with others who are of like mind to show strength and how many people will be impacted by a decision.\textsuperscript{396}

\textbf{NARAL’s Plan to Save the Court: Sub Public Coordination}

NARAL’s actions in the legal venue during the \textit{Roe} period (1973-1980) was just as limited as during the pre-\textit{Roe} period (1969-1973), except there is clear evidence as to why. As noted by Karen Mulhauser, NARAL lobbyist 1973-1975 and Executive Director 1975-1981,  

\textsuperscript{394} Nathanson and Ostling. \textit{Aborting America}.
\textsuperscript{395} Nathanson and Ostling. \textit{Aborting America}.
\textsuperscript{396} Collins Jr., “Friends of the Court...”
NARAL was heavily focusing on the legislative fight during much of this period, and archival documents demonstrate an intentional shift in strategy to include an electoral focus after 1980. The courts were just not something NARAL saw as part of its strategy at this time. However, after President Regan’s 1984 reelection, the organization took steps to begin a lot of legal work, though this was not public knowledge.

In a concept memo for the future direction of the organization after 1980, NARAL decided that “[l]itigative work should be left to the [American Civil Liberties Union], especially in light of the Supreme Court decision [on Hyde] and the horrifying Republican plank which, if made reality, would require that all appointed federal judges be anti-abortion…” It was at this point that NARAL decided the organization needed to focus on maintaining the activist base it created through its state-level engagement program called Impact 80 (discussed in the previous chapter).

In the post-\textit{Roe} period (1981-2004), NARAL was still focusing more on legislation than the courts. However, by the time Ronald Reagan, whom NARAL saw as one of, if not the, biggest threat to abortion rights, was re-elected President in 1984, the organization saw the need to get involved in litigation at every level. This is when NARAL came up with a plan called “Save the Court,” the first time we see large judicial involvement from the organization. Most of NARAL’s court action involved opposing Reagan’s Supreme Court nominees, but after George H. W. Bush was elected President in 1988, the organization also engaged in two very important

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397 Karen Mulhauser, (past NARAL Executive Director), Phone Interview, April 2, 2017.
398 The ACLU is an activist group that was formed after WWI when “America was gripped by the fear that the Communist Revolution that had taken place in Russia...The ACLU has evolved in the years since...into the nation’s premier defender of the rights enshrined in the U.S. Constitution.” \url{https://www.aclu.org/about/aclu-history}
399 Concept for Future Directions Memo, July 18, 1980.
400 NARAL did submit an amicus brief in the 1986 case \textit{Thornburgh v. American College of Obstetricians & Gynecologists}, as discussed in chapter 3, but that was the only legal work NARAL engaged in since \textit{Roe} according to available sources.
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Supreme Court cases: the *Webster* (1989) and *Casey* (1992) decisions (see the previous two chapters for more on these cases).

The stated goal of the 1985 Save the Court Campaign was

To play a leadership role in the development and implementation of a national and local strategy to influence federal court appointments in the next four years; and to play a leadership role in the development and implementation of strategies to identify and combat legislation and court cases designed to provide opportunities for weakening or overturning Roe v. Wade.\(^{401}\)

NARAL planned to form a coalition to counter Reagan’s nominees in his second term, to block the nomination or at least slow down the confirmation process,\(^{402}\) educate the public about how it can influence Court appointments, and identify, with the coalition, any threats to *Roe*.\(^{403}\)

While NARAL began implementing this plan in the late 1980s, when the organization opposed the elevation of Justice Rehnquist to Chief Justice and the nomination of Antonin Scalia,\(^{404}\) and onward, it is not clear that it was a concerted, connected effort with one goal. An observer of NARAL’s actions during this time might wonder why the organization was suddenly engaging in the legal venue so heavily when it had been silent on previous court cases\(^{405}\) and nominations (e.g. Sandra Day O’Connor who was nominated by Reagan in 1981)\(^{406}\) that

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\(^{401}\) Court Campaign 1985, Box 68, Correspondence, Memos, and Related (Staff) July-August 1984, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.

\(^{402}\) Memo Post-Election Strategies, Box 83, Public Funding for Abortion Campaign 1984-1985, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.

\(^{403}\) Court Campaign 1985.

\(^{404}\) Memo: Supreme Court Strategy, July 2, 1986 (Emergency Campaign Update 1), Box 95, Supreme Court Nominations 1986, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.


threatened *Roe*. Even though we can see NARAL’s actions in court cases and against Regan’s Supreme Court nominees, it is not clear that these actions are part of an organized plan to “save the Court” and a woman’s right to choose. It appears as if NARAL was opposing the nominees because they, individually, presented a threat to *Roe*.

Because these actions are only understandable as a cohesive strategy through talking with the organization’s leaders—Karen Mulhauser—and sifting through archival documents, it is another example of flying under the radar because the plan was never discussed openly nor did NARAL release a press release about this plan. It is only by examining NARAL as the unit of analysis, and using non-conventional sources for interest group works, we see that the organization’s abrupt dive into legal action had a certain purpose and was a well-thought-out strategy to protect *Roe* instead of the organization just all of a sudden deciding, or having the resources, to engage in litigation and court nominee battles.

NARAL crafted this strategy to “save the Court” because the organization believed (correctly) that President Regan would attempt to use appointments to the Supreme Court to create a pro-life majority of Justices (see more below). NARAL crafted the plan, which included testifying against conservative nominations and engaging in abortion court cases, in attempts to prevent the rollback of the right to choose. While the actual actions were public in nature, it is not clear that the actions were part of a larger strategy. This only comes to light through interviews and examination of archival materials.

**The Bork Supreme Court Nomination: Covert Action for an Overt Purpose**

As mentioned above, NARAL created a coordinated plan to save the Court and a woman’s right to choose in the mid-1980s. NARAL often engaged in the confirmation process for the Supreme Court, including offering oral testimony, but was not successful in preventing
Justice Rehnquist from becoming Chief Justice or Antonin Scalia from joining the high court in 1986, nor could the organization stop the confirmation of Clarence Thomas in 1991, despite being the first Bork coalition group to come out against his nomination. However, when Justice Lewis F. Powell announced his retirement in 1987 and President Regan nominated Robert Bork to fill his seat, NARAL’s actions looked quite different from the organization’s very public involvement with these other nominations.

NARAL saw Bork’s nomination as “...a major crisis...Bork embodied what NARAL had long warned was a serious goal of the Reagan Administration: overturning Roe v. Wade and ending legal abortion.” Given this, NARAL wanted to do everything it could to block his nomination. However, unlike with Scalia, Rehnquist, and a few years later, Clarence Thomas, NARAL did not testify against Bork, though the organization said it planned to do so as it had with the other confirmations.

Why did NARAL act differently when it came to Bork’s nomination? Why did the organization not testify against Bork, not only something NARAL said it would do but what we would expect it to do? When reading the newspapers and books on abortion/abortion policy, it is not clear why NARAL acted so differently in this case. NARAL leaders were quoted as saying they would wage a full-scale attack against Bork, including lobbying Senators. However, NARAL never testified and there is no public evidence as to why. What then did NARAL do to

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408 Michelman. Protecting the Right to Choose. 90-91.
409 Michelman. Protecting the Right to Choose. 43.
oppose a nomination the organization said it so vehemently opposed and said could threaten a woman’s right to choose? It is only clear when diving into the archival documents and NARAL Executive Director, Kate Michelman’s, 2007 book.

“The Reagan Administration was stymied in its war on abortion by both Congress—which failed to pass a number of anti-abortion bills during the Reagan years—and the courts.” Thus, the administration had to turn to altering the composition of the courts through lower and Supreme Court appointments to attain its goal of overturning Roe v. Wade. Even though President Reagan had previously appointed conservative Justices, his nomination of Bork in July 1987 “sparked a vociferous conflict because Bork was not only a very conservative judge, but he was also on record as opposing Roe v. Wade as well as affirmative action and other liberal causes.” Additionally, the nomination was an important one because Bork was nominated to fill the seat of Justice Powell, a moderate swing vote on the Court and one of the seven Justices to vote in the Majority in Roe.

According to Kate Michelman, the nomination “plunged the issue of a woman’s right to choose into a major crisis…[because] Bork embodied what NARAL had long warned was a serious goal of the Reagan Administration: overturning Roe v. Wade and ending legal abortion.” Bork’s nomination pushed “NARAL and other single-issue pro-choice

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414 Staggenborg, The Pro-choice Movement: Organization and Activism in the Abortion Conflict. 135.
416 Michelman. Protecting the Right to Choose. 43.
organizations [to join] with women’s movement organizations, civil rights groups, and civil liberties organizations in an intense campaign to defeat Bork.”

Shortly after Reagan announced the nomination, Michelman attended a meeting of groups opposing Bork held by the Leadership Conference on Civil Rights. Coalition members expressed worry about abortion groups like NARAL taking a lead role in this battle because they did not want the fight over the nomination to be framed around such a divisive issue (abortion). Michelman wanted to take the fight directly to the American people, so she hired a pollster to find out what message(s) would resonate with the public. The result was that people were worried that Bork did not believe the Constitution provided a right to privacy. Based on this, the coalition decided privacy would be the center of their campaign to oppose Bork. However, the campaign never really went forward.

During the same time, Michelman met with the Chair of the Senate Judiciary Committee, Senator Joe Biden (D, DE), who pointed out that Bork was his own worst enemy, that every time he spoke he frightened people (just like NARAL’s poll results showed). Biden said that if NARAL testified, as the organization wanted, NARAL would be the story, not Bork’s positions. Michelman “agreed that [the] best strategy was to keep the focus on Bork. He was undermining himself with every word he spoke. He had already condemned Griswold v. Connecticut and Roe v. Wade. Bork was frightening people with his own words, and additional testimony by the coalition would only be a distraction…” Michelman decided to make this argument to the coalition.

417 Staggenborg. The Pro-choice Movement: Organization and Activism in the Abortion Conflict. 135.
418 Michelman. Protecting the Right to Choose. 43-45.
419 Michelman. Protecting the Right to Choose. 43-45.
420 Michelman. Protecting the Right to Choose. 43-45.
421 Michelman. Protecting the Right to Choose. 47.
422 Kate Michelman (past NARAL Executive Director, 1985-2004), Phone Interview, October 29, 2017.
423 Michelman. Protecting the Right to Choose. 47.
It was not easy because “[d]uring one of the most visible and heavily covered political controversies in years…[Michelman had] to convince [her] colleagues to do something unusual in Washington: remain quiet.”\textsuperscript{424} Michelman argued that the coalition needed to remain focused on defeating Bork’s nomination and claimed the best strategy to do that was keeping a low profile. She explained that testifying could hurt the coalition’s chance at success\textsuperscript{425} because NARAL and the abortion issue could become the focus of the hearings, not Bork and his extreme views, which were already scaring the American public. It was a difficult argument to make, and “it took some doing and some persuading and some real hard, into the midnight hours discussion and talking about…why it would be the wrong thing…to do strategically,”\textsuperscript{426} but ultimately, the coalition members agreed they would not testify because it was not the best way forward. The coalition just let Bork keep talking, which reinforced their “message that he was radically out of step with the mainstream of American constitutional values.”\textsuperscript{427}

Not only would we expect NARAL to testify against Bork because the organization said it would and because it opposed his nomination so strongly, but also because of who supported Bork. The National Right to Life Committee (NRLC) and the American Conservative Union supported Bork’s nomination “at least in part because of his position on Roe v. Wade (sic).”\textsuperscript{428} Douglas Johnson, the NRLC legislative director and lobbyist, said “‘We don't know what Bork’s views on abortion are per se...We support him on the basis of his judicial philosophy and his position on Roe v. Wade (sic).’”\textsuperscript{429} In addition to supporting Bork’s nomination, the NRLC, along with Concerned Women of America, Moral Majority, National Conservative Political

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\item[\textsuperscript{424}] Michelman. \textit{Protecting the Right to Choose}. 46.
\item[\textsuperscript{425}] Michelman. \textit{Protecting the Right to Choose}. 47.
\item[\textsuperscript{426}] Kate Michelman (past NARAL Executive Director, 1985-2004), Phone Interview, October 29, 2017.
\item[\textsuperscript{427}] Michelman. \textit{Protecting the Right to Choose}. 48.
\item[\textsuperscript{429}] Colburn. \textit{“The Politics of Abortion.”}
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Action Committee, Conservative Caucus, and the American Conservative Union, raised money
to promote Judge Bork.\textsuperscript{430}

The fact that NARAL and the coalition members decided not to testify against Bork did
not mean they stopped trying to halt his nomination. The coalition, with NARAL as one of the
leaders, worked to mobilize voters to express their views to senators\textsuperscript{431} and lobbied to get support
from pro-choice Republicans and swing Democrats to vote against Bork. In the end, the
Judiciary Committee voted 9-5 against confirmation.\textsuperscript{432} However, “Bork insisted on taking the
fight to a Senate vote,”\textsuperscript{433} so the coalition continued lobbying, but also incorporated a grassroots
aspect to the strategy.

The coalition felt it was important for senators to hear directly from the people whose
interests they were elected to represent. Unless [they] had the support of the voting
public...chances of success were limited. It was no small task to convince the American
people that a Supreme Court nomination would have a daily impact on their lives—an
impact so serious and grave that they should actively oppose it.\textsuperscript{434}

Ultimately the coalition was successful in defeating Bork. It was through a very nontraditional
strategy, but the one that served the organizations’ best given the specific situation.

The reasons behind NARAL and the coalition not testifying against Bork, the behind the
scenes lobbying of senators after that decision was made, and the public relations strategy to get
the public engaged in the nomination, are all only found in the archival documents of NARAL
and a book published well over a decade after this all occurred. There are no newspaper stories
on anything NARAL or the coalition was doing nor was there a press release about this strategy.
The coalition and NARAL worked covertly to obtain their goal, and without digging into

\textsuperscript{431} Kate Michelman, (past NARAL Executive Director, 1985-2004), Phone Interview, October 29, 2017
\textsuperscript{432} Michelman. \textit{Protecting the Right to Choose}. 48-49.
\textsuperscript{433} Michelman. \textit{Protecting the Right to Choose}. 49.
\textsuperscript{434} Michelman. \textit{Protecting the Right to Choose}. 51
NARAL as the topic of study, we would not know about some of these actions or why the organization chose not to testify against Bork. By using the “typical” venue shopping sources, it appears as if NARAL did not act to stop Bork’s nomination despite the organization’s early vocal opposition. This just further demonstrates the need to look beyond public actions into archival sources to not only understand interest groups’ actions but also apparent inaction, something that can only be understood by looking beyond the public-facing actions of groups.

**Stem Cell Research and Abortion: Behind the Scenes Work to Protect the Larger Issue**

The final example of NARAL flying under the radar and acting behind the scenes to have an influence was in Congress in the early 2000s. Shortly after President George W. Bush was inaugurated, there was a battle over stem-cell research funding. There were two reasons why NARAL should have been involved in this battle: ending funding for stem-cell research would not only be harmful to those who needed the treatment but it would threaten abortion.

“[O]pposition to stem-cell research was part of a broader strategy to establish the embryo as a full person from the moment of fertilization—a crucial rationale for overturning *Roe v. Wade.*”

However, despite these two good reasons for involvement, NARAL was nowhere to be seen in the public battle over stem-cell research funding, despite the fact the NRLC was heavily vocal on the matter. NARAL decided that because it was seen as a single-issue organization, despite attempts in the 1990s to expand its work into more reproductive rights areas, working

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436 In April 1993, NARAL changed its name for a third time in order “[t]o ensure a comprehensive approach to reproductive health policy,” this time to National Abortion and Reproductive Rights Action League (NARAL’s 30th anniversary Journal: Our History, Box 222, 30 Years: Our History (NARAL’s 30th Anniversary Journal,), 1999, National Abortion Rights Action League Records, Harvard University, Schlesinger Library Archives, Cambridge, Massachusetts, United States.), and along with this adopted an expanded mission. The organization changed its mission to reach and connect with the majority of Americans who were complacent about protecting the right to choose and “to ensure a comprehensive approach to reproductive health policy.” (1993-94 Biannual Report 25 Years: Promoting Reproductive Choices NARAL,Box 87, Annual Reports 1988-1994, National Abortion Rights
on abortion, its involvement in the battle over funding would do more harm than good, so NARAL let scientists and other advocates take the lead. However, this does not mean that the organization was not active. NARAL worked in the background to do everything it could to get support for stem-cell research funding.

“Stem cells are cells with the potential to develop into many different types of cells...[and] serve as a repair system for the body. There are two main types of stem cells: embryonic stem cells and adult stem cells.”

This battle was over whether the federal government should fund medical research done on “spare human embryos slated for destruction at fertility clinics [which were] widely believed to hold the potential to cure many ailments.”

President Bush opposed such research in his presidential campaign. Those individuals and organizations who opposed this research being done on embryonic stem cells, abortion opponents, said Bush should keep his promise. Those “[o]n the other side [were] patients’ advocates, scientists and other supporters who argue[d] that this research has immense potential to ease suffering from Parkinson’s, diabetes and other diseases.”

Additionally, 80 U.S. Nobel laureates sent a letter to the President “urging him to not block the first flow of federal dollars for research on human embryo cells...The cells, obtained from spare human embryos slated for destruction at fertility clinics, are widely believed to hold the potential to cure many ailments, including juvenile diabetes and Parkinson’s disease.”

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440 Weiss. “Nobel Laureates Back Stem Cell Research;”
The battle over stem-cell research funding was the first reproductive related battle of the Bush administration. The anti-abortion position on the issue was firm:

‘Once an individual member of the human family comes into existence, he or she should be regarded as such, and should not be treated as raw material by the government,’ said Douglas Johnson, legislative director of the National Right to Life Committee — even if the embryos are already in existence, unused and slated to be discarded at fertility centers. He argued that research should be confined to stem cells obtained from adults,\(^441\) which the organization did not oppose.\(^442\)

Even though there were many vocal opponents and supporters of stem-cell research funding, NARAL, an organization that supported funding such research, chose to fly under the radar. The organization’s leadership knew if NARAL and other pro-choice groups got involved in the debate it would only “inflame the situation.”\(^443\) NARAL’s “public involvement would raise the issue of abortion and distract from the powerful medical and scientific arguments for the research. NARAL believed science and health organizations should assume the leading role as advocates for stem-cell research and that [NARAL] should conduct...work behind the scenes.”\(^444\) Additionally, “there were some anti-abortion rights Senators and Congresspeople who would support stem-cell research, but if they saw it as a...purely pro-choice, pro-abortion rights position...it would work against” the cause.\(^445\)

This was one of the times in which it was a strategic move to not be at the forefront of an issue “because of the way people would maybe think about the issue.”\(^446\) In this instance, NARAL strategically chose not to be at the forefront of the battle for stem-cell research funding, though the organization did a lot of work on the issue.\(^447\) Though it was a worthy fight,

\(^442\) Weiss. “Nobel Laureates Back Stem Cell Research;”
\(^443\) Michelman. *Protecting the Right to Choose.* 223-224.
\(^444\) Michelman. *Protecting the Right to Choose.* 224.
\(^445\) Kate Michelman, (past NARAL Executive Director, 1985-2004), Phone Interview, October 29, 2017.
\(^446\) Kate Michelman, (past NARAL Executive Director, 1985-2004), Phone Interview, October 29, 2017.
\(^447\) Kate Michelman, (past NARAL Executive Director, 1985-2004), Phone Interview, October 29, 2017.
NARAL’s involvement would detract from the actual issue at hand due to the divisive nature of the abortion issue that NARAL was associated with in the public’s mind (despite its other reproductive rights work).

What the battle over stem cell research indicates is that sometimes interest groups choose not to be front and center with their support (or opposition) of a matter because the group’s involvement could be detrimental to the goal. It also confirms once again that public actions are not the only way in which group’s work to influence policy and that we need to look further, at sources such as archival documents or personal accounts by group leaders, to have a full understanding of interest group actions.

**Conclusion**

There is a bias in research on interest groups towards studying events and actions that did happen because they leave behind data. Additionally, using data that is easily accessible—public information—makes research easier, though it has its limitations. It is much harder to understand what did not happen or was not done publicly because the data are harder to uncover. However, archival documents and interviews with past leaders of organizations can help researchers uncover nonpublic actions and inaction, thus gaining a deeper knowledge of interest group actions. The examples discussed above demonstrate that by only examining public actions or venues researchers can miss a lot of what interest groups do and the reasons behind such actions. We also miss out on knowing why organizations choose to stand back or not engage (or appear to not engage) in a battle over their issue in a particular venue at a particular moment in time. The interest group literature usually examines public actions, so when a group does not announce its intentions, does not act as expected, or works intentionally behind the scenes, the literature cannot study those actions because it usually does not study interest groups as units of analysis.
unto themselves. This literature currently only analyzes the groups’ public actions in policy venues.

Not only did NARAL say it was going to oppose Bork, but such action would continue work the organization had started the previous year, so NARAL’s absence was stark and lacked explanation unless one examines internal strategy documents. NARAL’s involvement in Roe is a complete mystery without examining the organization’s archival documents since the organization did not speak publicly about its involvement in preparing arguments for the case nor did it submit an amicus brief. NARAL’s absence from the stem-cell research funding battle is notable, though understandable once you read accounts by past leaders at the time (Michelman) and conduct in-depth interviews that both demonstrate the organization was quite active, though not in the typical ways expected by the venue shopping literature. Finally, the coordinated “save the Court” campaign, and NARAL’s plan to protect Roe through the Court, is impossible to know about without knowing it exists, another thing the organization did not announce, so its existence is only known via archival documents.

It is only by studying NARAL as an organization and looking deeper than public information that we can understand more fully the actions of the organization. Without diving into the archival documents and talking to past leaders of organizations, we cannot know when an interest group is choosing not to act or is acting covertly and why because there is no obvious evidence. However, archival documents can help researchers get past the bias of examining public actions because these records often provide information that is not public knowledge. Without such knowledge, we can only understand half of the equation of interest group venue selection and action because “lack of action” on the part of an interest group could just be a lack
of “public action” when in reality the group is working out of the public spotlight because it determined that is the best choice at the time.
Chapter 6
Where Do We Go from Here?

The previous three chapters have explored the various ways in which NARAL confirms and challenges the interest group literature and discussed limitations of our understanding of interest groups due to assumptions made by such literature. They also explored why scholars need to study interest groups as the unit of analysis and demonstrated how archival documents and interviews are valuable sources for understanding interest groups that are often left out by interest group scholars. Finally, these chapters started a new discussion around the need to study interest groups playing defense. Such groups are often constrained in their decision making, and scholars should study these types of groups specifically due to the different positions they are in, relative to those groups seeking change, in policy battles. In the pages that follow, I will recap the overall arguments of chapters 3-5 and discuss the next steps for researchers wanting to study NARAL specifically or other interest groups who play defense. I will also discuss how we can expand the interest group literature into additional, currently understudied, venues that are just as important as Congress, state legislatures, and the courts.

Even though NARAL was pushed to play defense after 1973, there are examples of when NARAL’s actions confirmed what we know about venue shopping and interest group action. Most examples of NARAL engaging in venue shopping came from the pre-Roe period (1969-1973) because this was the time in which NARAL was pushing for states to change their restrictive abortion laws. The organization focused its energy on New York State and was successful in obtaining policy change, even if it was not pure repeal as NARAL and other supporters wanted. NARAL was able to engage in venue shopping once again in the early 1990s when politics (Democratic government), policy solutions (Freedom of Choice Act), and
identifiable problems (Supreme Court chipping away at abortion rights) all aligned. NARAL was once again in the driver’s seat and able to choose where to engage on its own terms.

One the other hand, there were examples of when NARAL decided to engage in a policy battle because a certain venue (i.e. Congress, the courts, etc.) took up the issue of abortion. In the 1971 and 1972 New York legislative sessions, there were attempts to overturn the 1970 Cook-Leichter law, and NARAL worked tirelessly to stop them. Additionally, NARAL fought regulators in New York City when they attempted to limit the reach of the new law. The organization engaged in Congress when pro-life groups and legislators tried to limit abortion rights in the mid-1970s and early 1980s by pushing for passage of the Hyde and Human Life Amendments as well as the Court when it heard abortion-related cases.

These examples confirmed what the literature says about groups seeking out venues that are hospitable to their issue, and that groups will engage in a venue that takes up issues organizations care about. However, it also demonstrated that very little of NARAL’s actions can be understood through such a lens. The organization is over 50 years old and not only do most examples come from the first decade of NARAL’s existence, but the organization had very few opportunities to venue shop due to the nature of the issue of abortion. This led to the question, what did NARAL do the rest of the time?

For most of its history, NARAL acted very differently than the interest group literature would expect. This is because the organization was largely playing defense to protect the status quo of abortion policy, which was almost exclusively the position the organization found itself in since Roe (1973). The best example of NARAL going rogue and challenging the conventional wisdom about interest group action was the organization’s actions at the state level related to the Human Life Amendment. NARAL’s attempts to gain or keep pro-choice strength in at least 13
states to stop ratification of a pro-life constitutional amendment that had not yet passed was very unexpected because it involved acting in a venue other than where the policy battle was taking place—Congress. Additionally, the connection between the Human Life Amendment and NARAL’s state-level actions was not obvious except when talking to past organizational leaders and examining archival documents, sources much of the current interest group literature does not use.

NARAL’s out-of-the-box responses to two Supreme Court cases further demonstrated that interest group actions to affect policy are not always what is expected. Even if groups engage in traditional actions such as submitting amicus briefs, which is quite common, they can also try to influence the Justices and their decision in other ways. Holding marches to demonstrate pro-choice support or pushing people to write to the Justices about their stance on abortion is very nonconventional and actions that the interest group literature does not usually examine. Additionally, these types of actions are also taken by those seeking to change policy, not just those playing defense, which further demonstrates the need to understand such actions and how interest groups use them to affect policy battles.

I also showed the benefits of looking beyond institutional venues and to the decision making of individual organizations choosing (or not) to take action in those venues. NARAL’s response to the National Right to Life Committee’s electoral actions demonstrated that not only is the electoral venue understudied by interest group scholars seeking knowledge about how groups’ work to impact policy, but that interest groups on both sides of policy battles utilize that venue. Groups work to ensure those who agree with their views are elected to office,448 thus making it an important venue for those seeking policy change and those playing defense, as

448 “Ideological groups generally seek to maximize the number of legislators who share their views.” Wilcox and Iida, “Interest Groups in American Elections.” 561.
recognized by election scholars who study interest group involvement. These examples demonstrated that archival documents are key to fully understanding not only the actions of interest groups but the connection between seemingly unrelated actions. Therefore, the interest group literature needs to expand past traditional institutional venues when examining interest group actions and how actions in those venues are used to impact policy.

In addition to NARAL’s actions that were contrary to what is expected, others were not obvious or were intentionally taken behind the scenes. This demonstrated a gap in the literature due to its focus on public actions. The first example was NARAL’s involvement with *Roe v. Wade* (1973). There was no public information about NARAL’s involvement and the organization did not submit an amicus brief as many other organizations on both sides of the debate did, so it appeared as if NARAL was absent from this case. However, a partially transcribed interview in the organization’s archives revealed that NARAL was engaged with the planning and argument of the case. At the time, NARAL was not engaging much with the courts intentionally, which is why the lack of involvement with *Roe* might not surprise some—it was in line with what the organization was doing at the time. However, given the importance of the case, it is surprising that NARAL did not engage as other organizations did in submitting an amicus brief. This example demonstrated how all interest group actions are not public and the high-value archival documents have in understanding interest group action.

There are also examples of, and explanations for, NARAL stepping back from public action despite initially acting quite publicly. The first was the Bork Supreme Court nomination (1987). When NARAL decided not to go forward with testifying against Bork, there was no public explanation, however, archival documents and Kate Michelman’s book revealed that this was a very strategic move taken with intention. Similarly, in the early 2000s when NARAL
chose not to engage publicly on the stem-cell research funding battle, as was expected, Michelman’s book revealed why such a strategy was taken, which is not evident from public sources.

Overall, these examples demonstrated the value of exploring non-traditional sources in interest group scholarship because archival documents and interviews can reveal information that interest groups, at the time of the debate or issue, kept to themselves for strategic reasons. However, to fully understand interest group actions, we need to look below the surface and past public actions and statements to see the true reason for interest group actions as well as when they choose to not act or act in less conspicuous ways.

**Next Steps and Other Research**

While this dissertation has shed some much-needed light upon NARAL and the venue shopping literature specifically, and the interest group literature more generally, it has its limitations and is just the beginning in many ways. First, there are many documents at the Schlesinger Library that are closed until a specific date or not available unless NARAL gives specific permission to a researcher, but every year new documents become available. This means that even this dissertation is limited in its understanding of NARAL because of the limitations on the sources (discussed more in Chapter 2). In the future, this research could be confirmed, refuted, and built upon based upon what information comes to light as these additional documents are available for inspection and critique. In addition to these documents, researchers could conduct other interviews with leaders as they leave NARAL to capture their knowledge about the organization’s actions and strategy.

While chapter 3 offered many examples of NARAL’s proactive and reactive actions and how they confirm findings in the current literature, there are undoubtedly more. Future
researchers who seek more information about NARAL should use the Schlesinger Library and the documents that become available every year along with further interviews of past NARAL leaders to gain a greater understanding of when the organization’s actions confirm traditional interest group theories during the times outside the scope of this dissertation. Such research should demonstrate that during times of Democrat governmental control, such as the first two years of the Obama Administration (2008-2010), the organization was once again able to engage in venue shopping and that during much of the George W. Bush Administration, the organization was put on the defensive. If this is not the case, future research will need to try to unpack why this is the case when the venue shopping literature, and the rest of NARAL’s history, would predict it.

Chapters 4 and 5 demonstrated that organizations, especially those playing defense, do a lot more than simply venue shop and respond to actions by opponents. Interest groups often act in unexpected ways and sometimes behind the scenes to impact public policy. These two chapters revealed the need for the interest group literature to utilize archival documents and interviews more often, and to focus on interest groups themselves as the unit of analysis, instead of relying mostly on publicly available information and focusing largely on policy battles. These documents demonstrate that interest groups often act behind the scenes or take action in unexpected venues. Again, further research using newly available archival documents will likely reveal additional examples of similar actions to those discussed in these chapters, and if it does not, research would be needed to try to understand why the examples discussed here occurred at all and what sets these cases apart.

The methods used here can be applied much more broadly than NARAL and even to groups who engage in venue shopping, not just those groups playing defense. As mentioned,
most venue shopping works utilize quantitative methods, but taking a qualitative approach to study venue shopping and interest group action could lead to not only a deeper understanding of organizations but group action more generally. The more works that look at interest groups as the unit of analysis through a qualitative lens, the more information we can amass, which will lead to greater knowledge of venue shopping and interest group decision making.

Many organizations have archives across the country and the world that scholars can use to study group actions. Researchers can conduct interviews of, or read books by, past leaders of these organizations to capture information that might not be reflected in even internal documents since not every thought, idea, or reason for certain actions is captured by such. Additionally, a deep dive into an organization can lead to a much greater understanding of that organization than just studying public actions and statements because not everything is done publicly and there is always more to the story.

Using these methods to study other groups seeking to protect the status quo of policy is the best way to confirm that what I found here is not unique to NARAL but in fact ways of acting by groups playing defense. Other interest groups, such as the National Rifle Association (NRA), who are seeking to stop changes in public policy, probably engage in similar actions as NARAL given that they are similarly situated just in a different policy area. Taking the methods here and applying them to the NRA, a single-issue interest group seeking to protect the status quo of gun rights, would be a good test of my findings because even though the NRA and NARAL are focused on different policy areas, they are similarly situated in that they are playing

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449 Other case studies of the NRA have been done, such as Patterson and Singer’s 2007 article, “Targeting Success: The Enduring Power of the NRA,” but this was looking specifically at electoral involvement, which is only part of the overall story of interest group engagement.
defense, they are single-issue organizations, and the issues of abortion and gun control are both morality issues “settled” by the Constitution that people tend of have hardline views on.

Another way to apply these methods, and to expand our understanding of interest groups and venue shopping, is to focus on multi-issue interest groups. Most interest group works, including this one, look at single-issue interest groups, but there could be a real difference in strategy and actions by those who are working on multiple issues at once. One example is Planned Parenthood of America (PPA) who is a reproductive rights organization and provider. While PPA is in the same camp as NARAL when it comes to abortion, PPA also has to consider how its work on abortion will interact with its other goals of providing preventative care to millions of women. This is not a consideration single-issue interest groups need to keep in mind when engaging in advocacy, thus examining multi-issue interest groups is a whole other way to not only apply the methods used here but would strengthen the interest group literature as a whole by expanding the types of groups examined.

We also need an expansion of the interest group literature into the non-institutional venues, such as elections. These venues are not used solely by those playing defense but also by those seeking policy change. Without electing those who support a group’s issue, it is unlikely to get the policy changes or protections it seeks. When we do not examine how interest groups are utilizing these non-institutional venues, we are missing a large part of the picture when it comes to interest group action. Future research can delve more into these under or non-studied venues to gain a deeper understanding of how interest groups on both sides of a policy debate use those venues to attain their goals.

**Conclusion**
Overall, this dissertation has demonstrated the need for interest group scholars to look past publicly available information and utilize more qualitative methods when seeking to understand interest groups and their actions. It is only through delving deep into one or two groups at a time that scholars can understand the depth of action, reasons behind such actions, and apparent inaction by interest groups. This type of information is only found in archives, personal accounts, and interviews. It will not be publicly available from traditional sources such as newspapers, press releases, or Congressional or court records.

The above examination of NARAL, an organization pushed to play defense for most of its existence, showed that apparent non-action by interest groups can just mean non-public action and that those actions can play a large role in policy battles. NARAL’s role in preparing for oral argument in *Roe v. Wade* could have made the difference for a first-time lawyer (Weddington), and the organization’s decision to step back on the Bork nomination and stem-cell research funding battles could have been a deciding factor in the failure of the nomination and success of winning funding.

In addition to demonstrating that qualitative case studies can reveal apparent non-actions by interest groups, this dissertation also exposed that the purpose of all actions is not obvious even if such actions are public. NARAL’s action at the state level to stop ratification of the Human Life Amendment, even before it passed Congress, is not something the current interest group literature would include in its analysis because the state-level strategy was not a direct action against the Amendment. Thus it is not easily found or studied as an action directed towards policy change because the action was one step removed from the policy debate.

Solely relying on public information and large-scale, aggregate, quantitative analysis leads to a limited understanding of interest group activity, while qualitative, focused research
leads to a deeper understanding not only of the reasons behind why interest groups take certain action but also reveals times in which groups chose to act behind the scenes for a strategic purpose. Taken together, both qualitative and quantitative interest group research will lead to a more comprehensive awareness of when groups will act and why that neither research alone can accomplish.

This dissertation has opened the door for a new path of research on interest groups and especially those who are playing defense. The current literature uses interest groups to study a policy battle, tries to understand groups in the aggregate, and/or assumes groups are in a position to make choices about where to act. The actions and decision making of groups who seek to protect the status quo are not well understood, but the methods used here can be applied to other such organizations in an attempt to gain an overall understanding of how groups playing defense make decisions and how they differ from groups who can engage in venue shopping and seek policy change.

A goal of this dissertation was to lead other scholars to focus their research on groups playing defense and hopefully, the methods used here will be further applied to other such groups. NARAL is just one example as almost any policy battle has organizations that are fighting to prevent policy change and our knowledge of interest group action will be greatly enhanced by further studies such as this.