

**Insider Regulation: The Role of Bill Type in Predicting Legislative Success**

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## INTRODUCTION

According to a Guttmacher Institute report, between 2011 and 2013, more state level anti-abortion legislation passed in the United States than in the previous 10 years (Boonstra & Nash 2014). The report caused quite a stir in the reproductive health world and in the progressive news cycle, with outlets like ThinkProgress and The Huffington Post reporting the findings (Bassett 2014; Culp-Ressler 2014). Yet, to my knowledge, no scholars have attempted to theoretically explain or empirically analyze why and how this major legislative shift in increased abortion restrictions occurred. This study will examine what accounts for this recent rise in the passage of these bills by examining which factors are important for the success of anti-abortion bills at the state and regional levels. In particular, the study will focus on whether and how the introduction of different types of anti-abortion bills impact whether or not a bill passes.

Bill type is theoretically important because it may represent an insider tactic used by social movement actors, together with state actors, to create social change (Soule, McAdam, McCarthy, and Su 1999). Yet, despite studies that show social movement actors influence legislative efforts (Esacove 2004; Amenta, Neal, Chiarello, & Su 2006), no studies have examined type of restriction as a predictor of the success or failure of anti-abortion bills.

## UNDERSTANDING SUCCESS OF ANTI-ABORTION LEGISLATION

Economists and political scientists attempting to explain the success of anti-abortion legislation have focused on five major determinants: abortion demand, partisan party control, interested advocacy groups, state political ideology, and abortion attitudes of the public (Camobreco and Barnello 2008; Medoff 2012; Medoff & Dennis 2011; Norrander & Wilcox 1999). Despite the efforts of scholars to theorize about the importance of varying types of legislation, prior studies do not examine whether and how *type* of proposed bill affects

subsequent legislative success or failure. To the extent that these studies do emphasize type of legislation, they treat legislation type as a dependent variable, measuring how many different types of anti-abortion legislation have already been enacted (Camobreco and Barnello 2008; Norrander & Wilcox 1999). These studies fail to account for the fact that bill type is known before a law becomes enacted and therefore may be related to whether or not a bill passes.

Even studies that acknowledge the potential importance that different types of bills have on impacting bill passage fail to fully account for the role of bill type on legislative outcomes. Medoff and Dennis (2011), for example, argue that regulation which seeks to limit abortion providers' ability to practice medicine results in a different kind of practical restriction than legislation which attempts to communicate a state's negative attitude towards abortion via pro-life measures like waiting periods. Instead of creating stigma against abortion related to morality, legislation regulating providers' care impacts demand side availability of abortion by restricting access to abortion. However, their study samples for legislation which impacts providers that is already in effect and fails to compare what Medoff and Dennis refer to as "moralizing" (2011:952) legislation to provider impact legislation.

In large part, the failure to examine bill type is due to the data limitations of prior studies. Most often, studies examine whether or not any legislation is enacted, not whether or not a bill passes. This methodology fails to recognize the process through which a bill becomes a law and what factors, even within supportive or restrictive legislative contexts for abortion law, lead to a bill's passage. In this study, I rely on a unique data set I constructed that includes information on anti-abortion bills proposed in the United States between 2001 and 2013. Due to the focus on bills, my analysis offers insight about trends in anti-abortion legislation that are not evident when examining only whether or not a state has enacted laws.

Understanding how the type of legislation influences a bill's success is important because of the relationship between social movements and different types of legislative opportunities (Esacove 2004). For example, the tactics used by the pro-life movement to support a waiting period bill may promote the idea that these laws give women more time to think about a potentially damaging decision, while efforts surrounding a bill focused on regulating clinic distance from a hospital may emphasize making abortion safer and preventing death during abortion. Ultimately, however, while the strategies related to these bills and potential practical outcomes of these different types of regulation vary, they all aim to restrict abortion. Different forms of abortion restriction are strategically important for those wishing to control abortion because the passage of multiple forms of restrictive legislation constrains abortion access and directly circumvents challenging the constitutional protection of a right to abortion.

#### INSIDER TACTICS FOR RESTRICTING ABORTION

Within sociology there is an existent body of literature that treats bill and legislation type as important to social movement actors' strategies to advance a pro-life agenda (Esacove 2004; Halva-Neubauer & Zeigler 2010; Peach 1994; Weitz & Yanow 2008). These studies focus on specific legislative examples (Esacove 2004) or explain the history of the pro-life movement by giving examples of successful legislative gains throughout time (Rohlinger 2015). Yet, no studies in sociology emphasize whether and how bill type explains variation in legislative success or failure over time. Given the volume of prior studies that focus on the history of the pro-life movement (Halva-Neubauer & Zeigler 2010; Peach 1994; Weitz & Yanow 2008), the lack of examination of anti-abortion bill type as a predictor of bill success is surprising. This study considers bill as a potential insider tactic (Splater-Roth & Schreiber 1995; Soule et al.

1999), using this body of literature to provide further support for an examination of bill type as an important predictor of bill success.

Insider social movement tactics are understood as collective action that occurs within the political arena to influence movement outcomes (Splater-Roth & Schreiber 1995; Soule et al. 1999). In the pro-life movement, one desired movement outcome is the success of anti-abortion bills. Bill type is important to consider as an insider strategy because it captures what laws represent both ideologically and strategically. Early pro-life movement actors, as I discuss later in more detail, focused on attempting to reverse the *Roe v. Wade* court decision-- a monumental task (Halva-Neubauer & Zeigler 2010). However, as the movement has grown and as avenues for passing different forms of legislation have opened up, pro-life actors have shifted to lobbying for and introducing a wide array of different types of restrictive legislation.

I argue that proposing different types of anti-abortion bills is beneficial for a number of tactical reasons that extend beyond the logistic function of an individual law. First, different types of bills may be more effective given the cultural context in which they are proposed. For example, if mainstream media describes a negative story about abortion providers, bills focused on regulating providers may be more effective than bills which are not related to regulating providers. Second, the passage of many different forms of anti-abortion bills may have a cumulative effect on restricting abortion. NeJaime (2012) notes that one important goal of the pro-life movement is to pass as many different forms of anti-abortion regulation as possible. Thus, implementing such a strategy may lead to considerable restriction of abortion access without having to overturn the constitutionally protected right to abortion granted under *Roe v. Wade*. In states with a multitude of restrictions, pro-life actors need not fight for the federal illegality of abortion as the combination of various anti-abortion restrictions creates a context in



which widespread access has become untenable. This is the case in Mississippi, for example, where restrictive legislation has left only one abortion clinic in operation for the entire state (L'Heureux 2016).

In an attempt to highlight the importance of bill type in legislative outcomes and its connection to insider tactics, this section will examine the importance of bill type in two areas: the role of the United States pro-life movement in shaping anti-abortion legislation and the role of policy exchanges in diffusion of model policy.

In the early stage of the pro-life movement, varied forms of legislation were not a viable option for restricting access to abortion. Based on the medical privacy framework (Peach 2014), *Roe v. Wade* set strong boundaries for the regulation of abortion. As a result, no restrictions were permitted within the first trimester of pregnancy. The decision was touted by its supporters as a major success for women's rights advocates (Mylchreest 1995), and has (at least partially) protected access to abortion in the United States until today.

Yet, despite the strengths of *Roe v. Wade*, pro-life activism has persisted. Initially, legislative efforts focused on constructing a narrative of fetal personhood to turn public opinion against abortion (Halva-Neubauer & Zeigler 2010). Arguments about the life of a child, the killing of infants, and the innate human rights of a fetus were common features of this pro-life narrative. In the 1980s, during the Reagan and Bush administrations, support for the pro-life movement grew. With increased political support came a shift in the political landscape and two Supreme Court cases that developed states' legislative ability to regulate abortion. This shifted pro-life legislative strategies from federally restricting abortion access to the implementation of different forms of restrictive state legislation.

In 1989, the decision in *Webster v. Reproductive Health* allowed states to individually regulate abortion, leading to a more diverse abortion policy landscape across regions and states (Cassidy 1995). In 1992 *Casey v. Reproductive Health* dramatically altered the legal framework set forward after *Roe v. Wade* by abolishing the emphasis on medical privacy and instead developing a new standard for legislation focused on preventing “undue burden.” Any regulation could now be put forward provided that it was deemed to be ultimately “beneficial” to the patient and was not ruled to cause significant burden to the patient (Halva-Neubauer & Zeigler 2010; Peach 2014).

Together the two court decisions created an expanded political arena for pro-life actors pushing anti-abortion legislation. State actors now had the ability to propose all types of legislation across the U.S., testing the new undue burden standard. Since then, anti-abortion legislation has been consistently successfully implemented in regions and areas most conservative towards abortion, while failing in states with more liberal attitudes. The relationship between social movement actors and state actors in the legislative context is known (NeJaime 2012), with research showing that conservative social movement organization promote policy in state contexts (Haider-Marekl 2001).

Although this discussion sets the stage for understanding how bill type may relate to insider tactics, it does not provide evidence that this is a strategy that pro-life actors actually utilize. However, studies do show that pro-life movement actors actively affect legislative trends in the regulation of abortion. One example comes from Esacove (2004) who discusses the rise of partial-birth abortion bans due to the framing efforts of the pro-life movement. The case of “partial-birth abortion,” a non-medical term for abortion created by social movement actors,

highlights how opportunities seized by social movement actors may lead to the creation of new forms of restrictive legislation.

At a 1992 meeting of the National Abortion Federation, a physician presented on a new technique of dilation and excavation abortion for patients who were pregnant for more than 20 weeks that reduced cervical damage, increased patient safety, and protected future fertility. Pro-life activists obtained documents from this meeting and reframed the procedure as “partial-birth abortion” (Esacove 2004:74). By capitalizing on disseminating misinformation about a poorly understood medical procedure, pro-life activists constructed abortion doctors utilizing “partial-birth abortion” as brutal and barbaric (Weitz & Yanow 2008). Many state legislatures worked with pro-life activists to introduced partial-birth abortion bans, culminating in 2003 when George W. Bush signed a federal level partial-birth abortion ban. This example highlights the active involvement of pro-life social movement actors in shaping efforts to develop and implement different forms of anti-abortion legislation.

Although the previous discussion highlights how social movement actors have influenced abortion legislation, it fails to tell a comprehensive story about the relationship between social movement and state actors in the context of anti-abortion regulation. To better understand the influence of social movement organizations on state actors, it is important to consider the role of model policy and policy exchanges (Garrett and Jansa 2015). Model policies are blanket bills created by policy exchanges, which are non-governmental agencies that advise legislators on which bills should be proposed and supported in a given legislative session. Model policies are particularly useful because they provide a complete template for legislators who, then, do not have to draft their own bills. Instead, they can download a model bill available on the official websites of policy exchanges.

For conservative legislation, the most famous policy exchange is the American Legislative Exchange Council (ALEC). ALEC supports a range of conservative measures, including anti-abortion bills, and policy created by this exchange council has become an integral part of conservative implementation (Anderson and Doncik 2016). More relevant for my study, however, is the policy exchange council known as American's United for Life (AUL). While AUL is perhaps best known for their legal defense fund and active involvement in pro-life litigation efforts (Southworth 2008), AUL also has a policy arm that functions in a similar manner to ALEC. AUL produces easily accessible model bills for policy makers to sponsor, but unlike ALEC, AUL focuses on proposing only model pro-life bills (see AUL's 2016 Model Legislation and Policy Guide).

According to Garrett and Jansa (2015), who to date have done the most detailed investigation of AUL's impact on state policy, AUL has been active in the planning and drafting of anti-abortion legislation for decades. Their efforts go as far back as contributing to the Hyde Amendment, which has banned the use of public funds for abortion since 1976, and continue to the present as AUL pushed for the "Federal Abortion Mandate Opt-Out Act" as an amendment to the Affordable Care Act in 2013. Given the known involvement of AUL with the regulation of insurance coverage for abortion, Garrett and Jansa focus their analysis on these types of laws. Using textual comparison, the authors find similarity between a number of state laws and model policy proposed by AUL, suggesting that the AUL is central to the diffusion of these restrictive anti-abortion insurance policies.

While my study does not examine textual similarity between bills, findings about the similarity of legislation helps to justify an analytic emphasis on how bill type affects the success of anti-abortion legislation. In addition, I consider state, regional, and national factors consistent

with findings from prior studies as well as the time period in which bills were proposed. Thus, my thesis offers insight into how different bill types may be related to insider tactics that help to account for the greater success of anti-abortion legislation in the 2011-13 time period.

#### 2011-2013: UNIQUE CONTEXTS, UNIQUE BILL SUCCESS?

As discussed previously, Boonstra and Nash (2014) revealed increases in the implementation of anti-abortion legislation in the 2011-2013 time period. Research suggests that that tactics used by social movement actors (and associated state actors) may not remain stable over time (McCammon 2012). For example, what works for one period of time may no longer be an effective strategy given the influence of countermovements (Meyer and Staggenborg 1996), changes in cultural and political contexts (McCammon 2012), and/or decreased interest of movement actors in particular tactics (Galli 2016). As a result, I compare trends in bill type during a period already considered to be unique to an earlier relatively stable period. Because we know that a shift has occurred between 2011 and 2013, such a comparison may help specify *why* this shift occurred.

There are a number of factors that may be related to increased passage and implementation of anti-abortion legislation in 2011-13. Some are political. For example, this period witnessed an increase in the number of Republican politicians in state House and Senates (Cillizza 2015). Because partisanship is related to successful enactment of anti-abortion legislation (Medoff 2012; Medoff and Dennis 2011), it is not surprising that 2011-13 was a period of growing anti-abortion legislation. However, other factors were also in play which relate more heavily to bill type as a potential form of insider tactic.

First, 2010 saw the passage of the Affordable Care Act (ACA), making 2011 the first full session after the passage of the ACA. It is thus possible that shifts may have occurred because of

the implementation of this federal legislation. As discussed earlier, Garrett and Jansa (2015) noted that AUL proposed model legislation that directly responded to the ACA by placing restrictions on state insurance exchanges from covering elective abortion procedures. It is possible that one of the changes leading to more bills passed in the the 2011-13 time period was an increased passage of bills which limit taxpayer responsibility towards abortion, a tactical conservative response to progressive federal health care expansion.

Second, while not trying to explain increases in legislation, Boonstra and Nash (2014) point to rise in the implementation of legislation designed to regulate abortion providers.<sup>1</sup> Cultural contexts at this time may have primed support such legislation. In 2011, for example, Dr. Kermit Gosnell was prosecuted for conducting illegal abortions that violated viability laws in unsanitary conditions leading to patient deaths. The Philadelphia Health Department was also criticized for failing to conduct clinic inspections of Gosnell's health center, despite past complaints (Kliff 2013). Public attention to inaction by the Philadelphia Health Department and Kermit Gosnell's crimes may have created a context that was particularly favorable for legislation that regulated providers between 2011-2013.

In sum, studies need to be conducted to understand how bill type, an important tool for activists and organizations in their interactions with lawmakers, influences the success or failure of proposed anti-abortion bills. Recent history provides a prime case for examination, which no previous scholars have considered. Therefore, my examination of legislative bill type will consider two hypotheses: (1) bill type will significantly predict passage anti-abortion bills net of other variables, and (2) effects for bill type will depend on when bills are passed, whether in 2001-10 or 2011-13.

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<sup>1</sup> Most often this form of regulation is referred to as Targeted Regulation of Abortion Providers or TRAP legislation.

## DATA AND METHODS

### *Sample*

Data come from a unique dataset that I constructed to track legislative outcomes of abortion restriction across all 50 states between 2001 and 2013. This dataset was constructed using searches of individual state legislative archives. If a text search function was available for the state, I searched the term “abortion.” These searches garnered information about the content of the bill and the legislative history associated with the bill, which I used to ascertain whether the bill passed and if a major House or Senate vote occurred. If a text search function was not available, I used subject indices that contained a list of all bills in a session organized into different subject categories. Generally speaking, abortion is a category in these indices, but if it was not, I used information in the index to identify which subject category contained abortion bills. I then used state legislative archive searches based on bill number to match bills in the subject index to their legislative history. Complete legislative records were found for 46 states, while Massachusetts, Kansas, Oregon, and Rhode Island had legislative records for only part of the complete time period.<sup>2</sup>

In conjunction with bill outcomes, the dataset contains a variety of state and regional demographics, information about state partisan composition, and variables associated with the previously examined determinants of successful abortion legislation (Camobreco and Barnello 2008; Medoff 2012; Medoff & Dennis 2011; Norrander & Wilcox 1999). The dataset as a whole contains of 2,256 anti-abortion bills. In this total sample, the overall rate of passage for bills is

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<sup>2</sup> While these states had only partial data available, I do not expect the missing data to impact final regression results. Data from Massachusetts and Kansas were available from 2010-2013. Data from Oregon was available from 2007-2013. Data from Rhode Island was available from 2003-2013. During the time periods that were available, these states were not found to contain a mass of anti-abortion legislation. In fact, only 8 bills in the analysis are from these states and only 1 of these bills passed.

8.4%, a relatively low rate of positive occurrence. Although many anti-abortion bills are proposed each year, the nature of the bill and its relationship to the legislative process affects its actual possibility of passage. For example, a common legislative strategy is to introduce both a House and Senate version of a bill even though both identical versions of the bill will not pass. Ultimately, the House or Senate version will be chosen and substituted for both versions, yet proposing the bill in both the House and Senate early in session leads to expediting of the joint chamber legislative process, which requires a full House and Senate vote. Additionally, some bills are known to be legally unsound at the time of introduction, but they are proposed to spark conversation or gain media attention. One example is bills which assign fetuses a lawyer in a court case, leaving a pregnant person to defend herself against the fetus in order to gain access to an abortion. Clearly, these bills will be shot down immediately within the courts if passed. Legislators know this and do not pass these forms of legislation (even if they may entertain them in a committee or subcommittee hearing).

Because of the low passage rate for the total sample, and issues with the nature of certain proposed legislation, I concentrate on a subset of 431 bills that were voted on during a full House or Senate convening. This focuses my analysis on bills which have a higher possibility of passing. The overall passage rate for this sample is 43.9%.

### *Plan of Analysis and Measures*

This study has a three-pronged analytical strategy. First, I assess shifts in legislative outcomes, bill types, and other characteristics, emphasizing differences between 2001-10 and 2011-13. Second, I estimate binomial logistic regression models to estimate whether and how bill type and period independently affect legislative bill outcomes net of other attributes. Third, I consider whether effects for bill type vary by period net of other variables.



My dependent variable is *legislative outcome* which is dichotomous variable. Non-passage of a bill is coded as a “0” and passage of a bill is coded as a “1.”

My first independent variable of interest is *bill type*. Using the information I collected about the specific aims of the bill being proposed, I created a unique coding based on a bill’s perceived objectives and common frames that social scientists identify as being associated with each type of bill (Esacove 2004; Gordon 1999; Harris 1997; Mercier, Buchbinder, & Bryant 2016; Medoff & Dennis 2011).

These efforts produced five different categories of bill type: fetal/infant protection, women protection, minor protection/parental rights, provider impact, and taxpayer protection. Fetal/infant protection bills include complete bans on all abortions, infant born alive bans, gender and race selection bans, disability selection bans, fetal legal representation requirements, fetal anesthesia requirements, mandated studies of fetal pain capability, lethal injection abortion bans, and abortion bans based on weeks of pregnancy. Women protection bills included informed consent laws, coercion education and/or prevention laws, ultrasound requirement bills, waiting period bills, spousal notification bills, and incapacitated party protection bills. Minor protection/parental rights bills include parental consent and notification bills, bills regulating education about abortion to minors, bills preventing non-parental parties from assisting minors in obtaining an abortion, counseling proof for minors, requiring certain age limits, and categorizing those less than 18 years of age having an abortion as sexually assaulted. Protection from provider bills includes any legislation that targets abortion providers, such as ambulatory surgical center requirements and hospital admitting privilege requirements, restrictions on medical abortion prescribing, conscience opt-out bills, malpractice bills, medical liability bills, telemedicine bans, and state mandated reporting requirements. Taxpayer protection refers to bills that prevent the

use of public funds for abortion, bills that prevent state insurance plans from covering abortion, bills that prohibit the department of health from involvement in abortion, and bills that prohibit abortions being performed by public officials.

Although most bills fell into one of these five categories, 26 reflected combinations of different bill types. To allow the bill categories to remain mutually exclusive, I dropped these mixed bills from the analysis. In addition, I used fetal protection bill type as the reference category because it is one of the original arguments and types of legislative strategies found in the early post-Roe era (Joy 2014). Other bill types were assigned arbitrary numbers between “2” and “5” so that they could be included in the model as a nominal variable.

The other independent variable of main interest is *time period*, which is coded as a dummy variable. Bills proposed between 2001 and 2010 are coded as a “0” and bills proposed between 2011 and 2013 are coded as a “1.” This dichotomization compares what prior studies about anti-abortion bill passage describe as a relatively stable period (2001-10) to a period of change (2011-13).

In addition, I include a series of controls in the models. From prior studies, I include variables that capture determinants of the implementation of anti-abortion legislation: partisan party control, interested advocacy groups, and abortion attitudes of the public (Camobreco and Barnello 2008; Medoff 2012; Medoff & Dennis 2011).<sup>3</sup>

I measure *partisan party control* in two ways: legislative control and constituent ideology. The former is a dichotomous measure where “0” represents at least one branch of

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<sup>3</sup> The final determinant identified in the literature, demand for abortion, was dropped from the analysis because of multicollinearity due to the strong negative correlation between year and decreasing abortion rates in the United States (Finer and Zola 2016).

government that is not Republican controlled. A “1” represents Republican control of the House, Republican control of Senate, and a Republican governor.<sup>4</sup>

*Constituent ideology* is captured by Cook’s Partisan Voting Index. This measure assesses how strong a state leans Republican or Democrat. I dichotomized this measure; all states that lean Democratic are represented by a “0” and states that lean Republican are represented by a “1.” This measure is lagged by one year to ensure appropriate temporal order between the independent and dependent variables.

A scale of median regional attitudes towards abortion was used to capture *abortion attitudes of the public*. This scale was created using a series of seven General Social Survey measures that assess attitudes towards abortion in different scenarios. The scaling of multiple questions was used to capture the complex nature of attitudes towards abortion that a simple question (i.e. “Do you support access to abortion”) alone cannot address. A score of 0 indicates a very low level of support for abortion access, while a score of 7 represents a very high level of support for abortion access. The scale was collected from all respondents within a given census region, then averaged for a period of 5 years. This measure was lagged to ensure appropriate temporal order between the independent and dependent variables.

In order to construct a variable for interested advocacy groups, I replicated the operationalization used by Medoff (2012) and Medoff and Davis (2011) which captures *interested religious organizations*. Catholic denominations have been empirically shown to actively organize against abortion, and the presence of a large Catholic population can influence pro-life activity in an area (Jelen & Wilcox 2003; Meyers & Staggenborg 1996).<sup>5</sup> For each state,

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<sup>4</sup> Because Nevada is a unicameral, non-partisan legislature it is excluded from the regression analysis.

<sup>5</sup> Previous studies use proportion of the population that is Catholic and proportion of the population that is Protestant Evangelical to measure interested advocacy groups. Because of issues of multicollinearity, only proportion of Catholic constituents is used in the models for this study.

I used total population was taken from the American Community Survey and religion composition was taken from the U.S. Religious Census to create a proportion of religious individuals within state. To prevent issues with time-order, I used religious composition from the 2000 survey for the 2001-2010 period, and from the 2010 survey for 2011-13.

I also include controls that studies argue are related to abortion access and rates (Guttmacher 2014; Pruitt & Vanegas 2015). Because reproductive healthcare access disproportionately affects working class women and women of color (Gurr 2011; Zucker 2014), I want to assess whether legislators may be alienating these particular populations. One measure I use is *state income inequality*, captured by the Gini Index taken from the American Community Survey and lagged by one year. For *state racial and ethnic composition* measures, I use lagged percent of the population that is Latino and/or Hispanic, and lagged percent that is black or African American from the U.S. Census.

## RESULTS

Table 1 provides descriptive statistics for the data. These results show that of the legislative bills that reach a major vote, 43.8% (or just less than half) pass. However, we also see a significant difference in the percent of bills passed between 2001-10 and 2011-13. Although 37.8% of these bills passed from 2001-10, a larger share (53.4%) of bills passed from 2011-13. Another significant difference across the two periods appears for the percent of proposed bills in states with full Republican control: 26.6% of bills in 2001-10 were proposed in states with total Republican control, compared to 72.5% of bills proposed in 2011-13 in completely Republican controlled states. Additionally, more bills were proposed in 2011-13 in census regions with higher positive attitudes toward abortion, states with a higher percent of Hispanics or Latinos

residents, states with higher economic inequality, and states with fewer Catholic residents compared to 2001-10.

**Table 1: Descriptive Statistics for Anti-Abortion Bills with A Major Vote 2001-2013**

	Total	2001-2010	2011-2013
% Passed	43.85	37.87	54.43 ***
% Republican Controlled	43.85	26.64	72.48 ***
% Republican Cook Index	72.39	71.64	74.21
Mean GSS Attitudinal Scale	5.31	5.12	5.63 ***
Mean % Percent Catholic	15.43	16.24	14.06 *
Mean Gini Index	59.86	59.70	60.27 *
Mean % Black	12.46	12.59	12.29
Mean % Hispanic/Latino	8.44	8.41	8.70 *
<b>Bill Type</b>			
% Fetal Protection	18.60	16.18	22.93
% Women Protection	30.23	35.66	21.02 **
% Parental Rights	16.05	18.75	11.46 **
% Provider Impact	21.86	22.06	21.02
% Taxpayer Protection	13.26	7.35	23.57 **
<b>n</b>	<b>431</b>	<b>275</b>	<b>159</b>

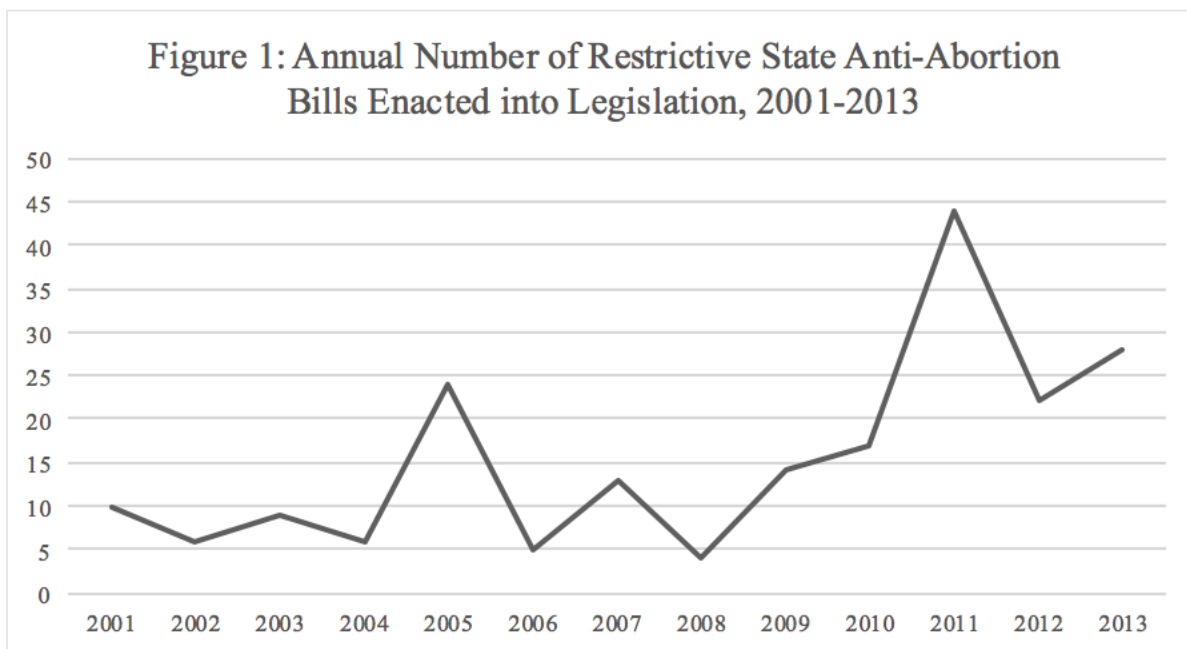
\*\*\* p<.001; \*\* p<.01; \*p<.05

For all continuous variables, t-test are used

For all categorical variables, two sample tests of proportion are used

Table 1 provides some support for shifts in the use of different types of bills. Over time, significant increases occurred for taxpayer protection bills, which accounted for 7.4% of bills from 2001-10 but 23.6% of bills in 2011-13. Other types of bills became less popular. Women protection bills decreased in popularity, representing only 21.0% of bills in 2011-13, compared to 35.7% in 2001-10. Parental rights bills accounted for 18.8% of all bills in 2001-10, but only 11.5% between 2011-13. Moreover, there were no significant shifts in provider impacts or fetal protection bills proposed across time periods.

While these results do not tell us which variables are important in explaining bill passage, the results clearly support differences across the two periods. The distinctiveness of 2011-13 is also clear when examining the amount of passed bills by year.<sup>6</sup> We can see an increase in the number of new laws passed from 2011-13, as well as a major rise in the amount of legislation proposed. Before 2011, the number of new anti-abortion laws was greatest in 2005, when 24 bills were passed. By comparison, 44 bills were passed in 2011, almost double the amount of legislation passed in 2005. While 108 bills passed in regular sessions between 2001 and 2010, 94 bills became laws between 2011 and 2013. Thus, almost half of all passed bills (approximately 47%) in my sample were enacted in the three-year period between 2011 and 2013.



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<sup>6</sup> Although I did not find the same results as Boonstra and Nash (2014) wherein more legislation was enacted between 2011 and 2013 than had been in the previous 10 years, I did find a higher amount of bills passed in 2011-2013 as compared to 2001-2010. I do not find these differences, although large in our final count of passed legislation, overly concerning as Boonstra and Nash examined special sessions as well as regular legislative sessions and utilized a different data set which may have operationalized anti-abortion legislation differently than myself. Their operationalization of variables and associated data source are difficult to obtain as they were unavailable to academics upon my request of the Guttmacher Institute.

So far, my analysis supports the idea that 2011-13 was a unique period during which a high number of bills passed. Additionally, other measures (such as partisanship of state government) varied significantly between 2001-10 and 2011-13. However, what these descriptive statistics cannot speak to are whether and how period and bill type impact bill success net of controls, and whether the effect of bill type varies by time period.

To answer these questions, I present three binomial logistic regression models. The first predicts bill passage using traditional anti-abortion legislation determinants identified in prior studies as well as other controls. The second model adds the time period variable and the categorical variable for different types of bills. The final model includes an interaction between time period and bill type.

Model 1 of Table 2 shows that state partisan composition significantly predicts legislative success. States where the House, Senate, and Governor's office are Republican controlled have 4.94 times the odds of passing a bill compared to state governments with incomplete Republican control at the 99.9% level of confidence. However, this predictive power only applies for legislative partisanship; state political ideology is not significant in Model 1. Additionally, demographic composition in the form of percent of the state's population that is Hispanic/Latino significantly reduces the odds of bill passage. For each one-unit increase in percent of the state's population that is Hispanic/Latino, bills have .97 times the odds of passing at the 95% level of confidence.

**Table 2: Predicting Passage for Anti-Abortion Bills, 2001-2013**

	Model 1	Model 2	Model 3
<b>Traditional Measures</b>			
<i>Partisan Control</i>			
Completely Republican (ref=no)	4.94 ***	4.60 ***	4.90 ***
<i>State Political Ideology</i>			
Cook Partisan Index	1.67	1.75	1.72
<i>Abortion Attitudes</i>			
GSS Attitudinal Scale	0.76	0.71 *	0.71 *
<i>Invested Religious Organization</i>			
Percent Catholic	1.00	1.00	1.00
<b>Controls</b>			
Gini Index	1.04	1.04	1.06
Percent Black	0.99	0.99	0.99
Percent Hispanic/Latino	0.97 *	0.97 *	0.96 *
<b>Bill Types and Interactions</b>			
Year (ref=2001-2010)		1.07	0.24
Bill Type(ref= Fetal Protection)			
Women Protection		0.73	0.39 *
Parental Rights		0.83	0.27 *
Provider Impact		0.81	0.31 *
Taxpayer Protection		1.22	0.86
Year*Bill Type			
2011-2013*Women Protection			3.81
2011-2013*Parental Rights			18.83 **
2011-2013*Provider Impact			9.42 **
2011-2013*Taxpayer Protection			2.57
<hr/>			
N	408	407	407
Log Likelihood	-242.3	-240.44	-232.38
Pseudo R <sup>2</sup>	0.13	0.13	0.16

\*\*\* p<.001; \*\* p<.01; \*p<.05

All coefficients presented as odds ratios



In Model 2 (Table 2) a dichotomous measure for time period, as well a nominal variable representing bill type are added into the model. In this model, bill type and time period are not independently found to be significant predictors of bill success. Because of this, the first hypothesis that bill type will be a significant predictor of bill success must be rejected. However, legislative partisanship is still found to be a significant predictor. Bills have 4.60 times the odds of passage in states where all three branches of the state government are controlled by the Republican party, compared to bills in states with incomplete Republican control (significant at 99.9%). Also consistent with Model 1, the state's percent Hispanic/Latino population negatively predicts bill success (significant at 95%). Finally, Model 2 reveals that attitudes towards abortion are a significant predictor at the 95% level of confidence. For each one level increase in positive attitudes towards abortion, the likelihood of bill passage has 0.71 times the odds of passing.

Although results from Model 2 show no independent effects of time period or bill type, Model 3 (Table 2) assess whether the effects for bill type vary by time period by including an interaction term between time period and bill type. It is with the introduction of this interaction term that support for the second hypothesis, a significant interaction effect between time period and bill type, is found. From 2001-10, women protection bills, parental rights bills, and provider impact bills had significantly lower odds of passage than fetal protection bills. By contrast, from 2011-13, parental rights bills and provider impact bills were significantly more likely to pass than fetal protection bills.

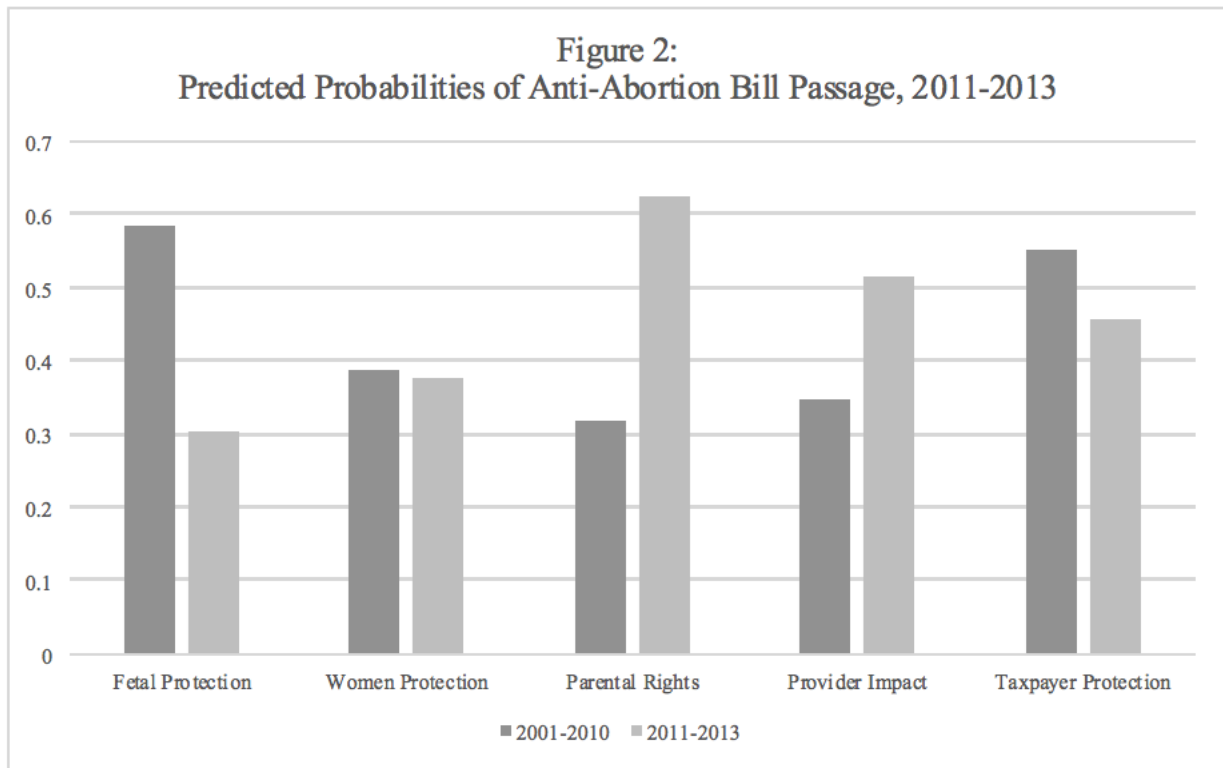


Figure 2 visually displays these results by presenting predicted probabilities for the passage of different bills types in the 2001-10 and 2011-13 time periods. Across the two periods, fetal protection bills decline in probability of passage relative to other types of bills. In 2001-10, the predicted probability of passage for fetal protection bills was approximately 0.60, while in 2011-13, the corresponding probability of passage drops to approximately 0.30. This result contrasts the findings in the descriptive analysis (see Table 1) which did not show a significant shift in proposed fetal protection bills across the two time periods. Fetal protection bills were not less likely to be proposed in 2011-13 as compared to 2001-10, but they were less likely to pass in 2011-13 relative to most other types of bills.

Model 3 also shows that in 2001-2010, three different bill types were less likely to pass than in 2011-13: women protection bills, parental rights bills, and provider impact bills. Women protection bills in 2001-10 had 0.39 the odds of passing. Parental rights bills in 2001-10 had 0.27

times the odds of passing and provider impact bills had 0.31 times the odds of passing (all of these results were significant at the 95% level of confidence).

This analysis also reveals important shifts associated with parental rights and provider impact legislative bills. From 2001-10 the predicted probability of passage for parental rights bills was approximately 0.32, but by 2011-13 the predicted probability increased to 0.63. Figure 2 also shows that, in the 2011-13, parental rights bills had the highest probability of passage compared to any other type of bills. The rising success in parental rights bills is surprising in light of earlier descriptive analysis (see Table 1), which shows parental rights bills were significantly less likely to be proposed in 2011-13 compared to 2001-10.

In addition to the increased success of parental rights bills, provider impact bills were also significantly more likely to pass in 2011-13 as compared to 2001-10. Figure 2 shows that the probability of passage for provider impact bills rises from 0.35 to 0.52. This increase exists despite the fact that provider impact bills were no more likely across the two periods (see Table 1).

Finally, none of the significant effects from previous models were washed out by the addition of the interaction between bill type and period. Model 3 shows similar significant effects of legislative partisanship, regional abortion attitudes, and percent Hispanic or Latino compared to Model 2.

## DISCUSSION AND CONCLUSION

This study focuses on the relationship between bill type and the success of anti-abortion legislation over time, and suggests that bill type may be related to insider tactics. As such, bill type is understood as important for predicting the success of anti-abortion bills. This study examined both the 2001-10 and 2011-13 time periods, the latter of which was a distinctive period

for the passage of anti-abortion legislation. Focusing on these two time periods allowed me to compare which bill types are most frequently introduced and which are most likely to pass. While this study does not attempt to show a causal relationship between insider mobilization (such as policy exchanges or organized efforts by pro-life actors to mobilize around a certain bill type) and types of bills introduced and passed, it contextualizes the importance of considering bill type as a predictor of bill success. The empirical findings of this study show that bill type helps explain time period differences in the passage of anti-abortion bills, an effect which exists even when previously theorized major determinants are included in the model as controls.

Overall, the analysis in this study leads to a few key findings. First and foremost, while there is no support for the first hypothesis in this study, that bill type will be a significant predictor of legislative success, hypothesis two, that there will be significant shifts in the which types of bills are predictors of passage in 2011-2013 as compared to 2001-2010, is well supported. Bill type alone is not a predictor of legislative success. However, bill type interacts with time period as a significant predictor of bill passage. Women protection bills, parental rights bills, and provider impact bills have significantly lower odds of passing in 2001-10 relative to fetal protection bill. Parental rights bills and provider impact bills have significantly higher odds of passing between 2011-13. Because of this, there is support for the idea that bill type is an important predictor of bill success, particularly in explaining unique time period differences.

The types of bills that become more likely to pass in the 2011-13 time period must be contextualized to understand why the 2011-13 time period might impact rates of certain types bills' passage. The finding that provider impact bills were more likely to pass in this time period fits with arguments made by Boonstra and Nash (2014). In addition, the cultural context at this time may have made bills restricting providers seem particularly strong to both pro-life state and

social movement actors. The Kermit Gosnell case was being prosecuted in 2011, with national media attention focused on the case. This may have created a context that made passing bills which regulate providers particularly attractive over the 2011-2013 time period.

The findings related to parental rights laws, however, are more surprising. Parental consent and notification laws have been a common form of legislation in the United States for decades, being upheld as constitutional in *Planned Parenthood v. Casey* in 1992. Why would parental rights legislation take off in the 2011-13 time period? It is possible that public health centered arguments related to concerns about providers contributed to support for the passage of these bills. However, there is another potential explanation for the rise in passage of this legislation. An interesting possibility for future studies is the examination of parental consent and notification laws for textual similarity, similar to the work undertaken by Garrett and Jansa (2015). It is possible that shifts in support of this legislation could be related to new model policy suggested in this time period that was particularly successful.

One final note of interest concerns taxpayer protection legislation. While taxpayer protection bills were more likely to be proposed in 2011-13, they were not more likely to pass in 2011-13 compared to traditional fetal protection bills. In collecting bills from this time period, it was clear that a large amount of bills were a reaction to the the implementation of the ACA, attempting to regulate the coverage of abortion in insurance policies offered through state exchanges. While shifts occurred in proposing these bills, these bill types as a whole were no more likely to pass than traditional fetal protection legislation. This finding shows the enduring power of certain types of bills (in this case fetal protection) even with the introduction of an entirely new kind of bill.

The second contribution of this study to the literature involves its relationship to the previously studied major determinants of passage for state anti-abortion legislation. The only significant previous determinants within this study are Republican control of the state government and abortion attitudes of the public. Conservatism associated with Republican governmental control was the only previously studied determinant that was significant in all three of the models. This shows the importance of examining not only legislation that is on the books, but also the process through which a bill becomes a law when considering the implementation of anti-abortion legislation. While these previously identified determinants may predict whether or not legislation exists, they are not all significant predictors of whether or not a bill becomes a law. This suggests that further examination of predicting the success of anti-abortion bills is warranted and the process remains underspecified in the literature.

The finding that the percentage of Hispanic or Latino population in a state where a bill is proposed is a consistent negative predictor for the passage of anti-abortion legislation is more surprising, particularly as ethnicity is an understudied variable in predicting the passage of anti-abortion legislation. These effects hold even when including a variable controlling for region (see Appendix). While it is outside of the scope of this study, future analyses may focus on the relationship between ethnic and racial identity and lawmaking when examining the impact of total Hispanic and/or Latino population on anti-abortion legislation.

Beyond these theoretical and empirical implications, this research may have major implications for organizations working to promote access to abortion in the United States. In attempting to understand what contributes to a bills success or failure for anti-abortion measures, this research can be used by those interested in defeating anti-abortion bills to understand how type of bills matters, what kinds of bill have been the most popular in recent time periods, and

how regional, state, and political factors impact a bills success or failure. In attempting to gather data for this proposed research, it became evident to the author that many non-profit organizations who work to defeat anti-abortion legislation do not have the resources to research legislative outcomes or collect information on historical trends of anti-abortion bills and legislation.

While this study contributes to our understanding of the role of bill type for anti-abortion legislation, it is not without limits. The first limitation is my choice to dichotomize time period. Although I believe the dichotomization of years into two distinct time periods was warranted for this particular analysis, as this study was primarily focused the introduction of a new variable (bill type) and as this time-period was identified as important, future research may analyze time in a more longitudinally rigorous way, to see if year to year shifts are evident in bill type success.

An additional limitation of this research was its focus on regular legislative sessions. As far as I know, this is the first study to predict anti-abortion bill passage relative to all failed legislation. Other studies utilize the presence or non-presence of a law already on the books in each state (Camobreco and Barnello 2008; Medoff 2012; Medoff & Dennis 2011; Norrande & Wilcox 1999). The current analysis could be made even more detailed by the creation of a data set which includes not only bills from regular legislative session, but also special legislative session.

These limitations aside, this study highlights the significant role that bill type plays in explaining an important time period difference in anti-abortion bill passage and links bill type to the literature surrounding insider tactic. Additionally, this study utilized a unique dataset, allowing for the analysis of an under examined unit of analysis, the anti-abortion bill.

APPENDIX

**Table 3: Predicting Legislative Passive for Bills with a Major Vote**

	Model 1	Model 2	Model 3
<b>Traditional Model</b>			
<i>Partisan Control</i>			
Total Rep. Control (ref=no)	6.45 ***	5.67 ***	6.17 ***
<i>State Political Ideology</i>			
Cook Partisan Index	1.09	1.12	1.05
<i>Abortion Attitudes</i>			
GSS Attitudinal Scale	0.71	0.65 *	0.69
<i>Invested Religious Groups</i>			
Percent Catholic	1.02	1.02	1.02
<b>Controls</b>			
Gini Index	1.04	1.04	1.06
Percent Black	0.94 ***	0.94 ***	0.93 ***
Percent Hispanic/Latino	0.98	0.97	0.96 *
Region (ref=Northeast)			
Midwest	1.26	1.29	1.44
South	4.22 **	4.62 **	6.54 ***
West	5.55 **	5.86 **	6.19 ***
<b>Independent Variables</b>			
Year (ref=2001-2010)		1.23	0.29 *
Bill Type(ref= Fetal Protection)			
Women Protection		0.74	0.42
Parental Rights		0.8	0.25 *
Provider Impact		0.89	0.34 *
Taxpayer Protection		1.26	1.11
Year*Bill Type			
2011-2013*Women Protection			3.08
2011-2013*Parental Rights			19.40 **
2011-2013*Provider Impact			10.40 **
2011-2013*Taxpayer Protection			1.90
<hr/>			
N	408	407	407
Log Likelihood	-233.2	-230.89	-222.31
Pseudo R <sup>2</sup>	0.16	0.17	0.20

\*\*\* p<.001; \*\* p<.01; \*p<.05  
 All coefficients presented as odds ratios



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