

GETTING ON THE RADAR SCREEN: HOMESCHOOLING LITIGATION AS AGENDA SETTING, 1972-2007*

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Since the legalization of homeschooling in 1972, litigation by homeschooling adversaries has shaped the legal frameworks regulating its practice. Adjudicating between complementary theoretical claims, we examine whether homeschooling litigation trends—specifically the ability of either side to set the agenda by getting on court dockets—reflect concerns over contentious educational practices and policies or broader cultural and political dynamics. We employ a unique longitudinal dataset on precedent-setting state and federal cases (1972-2007). Analyses show that litigation trends remained largely unaffected by changing educational dynamics, except via racialized status competition dynamics. Instead, litigation trends primarily reflect political and cultural factors, including the liberalization of public attitudes on socially contentious issues. Most importantly, mobilization and countermobilization dynamics have driven the ability of homeschooling rivals to use the courts for agenda-setting purposes. Our results highlight how political and cultural contexts shape movements' ability to set policy agendas through the courts.

In 1972, the U.S. Supreme Court decision *Wisconsin v. Yoder* initiated the legalization of homeschooling, which essentially had been outlawed since compulsory education became the norm in the early twentieth century (Provasnik 2006). Initially, homeschooling was perceived as a fringe movement consisting of marginalized and unconventional families, many of whom had real or perceived ties to 1960s countercultural movements (Stevens 2001). At that time, conservatives regarded homeschooling as “bizarre, kooky, harmful to children, [and] something that should be put to a stop” (Southworth 2008: 169).

However, since the 1980s, homeschooling has moved into the mainstream, leading to classic countermovement dynamics. On one hand, the rise of legal mobilization around home-schooling, at first largely driven by the Home School Legal Defense Association (HSLDA), legitimated homeschooling by mounting successful legal challenges. The size and influence of the secular, liberal wing of the movement withered so that “the religious right remains the loudest, most organized voice in the home-schooling movement” to date (Yuracko 2008: 127, fn 17; also see Stevens 2001). Consequently, homeschooling is now championed as an exemplary conservative issue, leading Ron Paul to introduce the Family Education Freedom Act of 2000 by stating that “home-schooling parents are among the most committed activists in the cause of advancing individual liberty, constitutional government, and traditional values” (Paul 2000, E636).

On the other hand, parallel to other social movements, successful litigation by the HSLDA and other homeschooling advocates drew opponents to challenge these early court victories (Dorf and Tarrow 2014; Gaither 2008; Meyer and Staggenborg 1996; Teles 2008). This countermobilization by constituents opposed to expanding the legalization of homeschooling (largely initiated by local and state government entities, and teacher unions) came to dwarf the initial

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wave of pro-homeschooling litigation so much that, by 2007, homeschooling opponents had initiated about twice as many cases as homeschooling advocates.

Because the mainstreaming of the homeschooling movement has not been merely tied to a few early court victories but to sustained legal mobilization by movement adversaries on both sides, we examine the factors that have shaped the odds of any precedent-setting homeschooling cases reaching the courts. In contrast to other scholars, we choose not to look at litigation outcomes or court victories per se, because legal mobilization is a complex process that begins long before courts render decisions. Getting on the dockets of influential courts is key to shaping policy agendas and legitimating the issue to the broader public (Burstein 1991; Kessler 1990; McCann 1994; Rosenberg 1991). Moreover, getting on the docket has significant downstream and long-term implications, especially on the geographic context in which a decision will have precedential impact. Thus, we treat getting on court dockets as an important component of legal mobilization, regardless of the outcome of the case. Indeed, by focusing on litigation as an important mechanism for agenda setting, we seek to contribute to a longstanding issue in social movement research: how to conceptualize and operationalize social movement “success” (Amenta, Caren, Chiarello, and Su 2010; Gamson 1975).

Scholars focusing on agenda setting and the courts often look to the structure of courts or to the role of judicial preferences and ideologies as important factors shaping dockets (Segal and Spaeth 2002). Sociologists instead have focused on movement strategies, such as legal framing, or resources that shape litigation outcomes (McCammon, Muse, Newman, and Terrell 2007; Pedriana 2006). We contend that, their valuable contributions notwithstanding, both sets of scholarship focus rather narrowly on either the legal institution or the social movement, often ignoring the broader political and social contexts that might shape judicial agenda setting.

This article presents the first systematic, quantitative analysis of homeschooling-related litigation. Specifically, we ask: *under which conditions have state and federal appellate courts agreed to adjudicate precedent-setting homeschooling cases?* To address this question, we focus on the role of educational context (e.g., class- and race-based status competition dynamics and school choice policies), the broader political dynamics, and mobilization by homeschooling adversaries.

Our analyses seek to make empirical and theoretical contributions to literature on social movements and political sociology. To that end, we conduct random-effects pooled time series analyses that draw on original data collection of state and federal appellate cases spanning 36 years, from the initial legalization of homeschooling in 1972 to 2007. This period encompasses virtually all precedent-setting court cases on the issue of homeschooling decided in federal and state courts.

Our findings show that the courts’ decisions to hear a homeschooling-related case are fundamentally a political phenomenon linked to organized interest groups on both sides of the issue. In addition, we find that racialized educational dynamics related to segregation and school choice had a poignant effect, whereas homeschooling laws per se had no apparent effects. These findings highlight the impact of social stratification on legal trends, combined with long-term cultural and political dynamics (including countermobilization dynamics) on legal mobilization and judicial decision making.

THE HOMESCHOOLING MOVEMENT (HSM)

The homeschooling movement (HSM) is a political phenomenon mostly embedded in a larger neoconservative movement, centered around the issue of school choice (Apple 2000; Gross, Medvetz, and Russell 2011; Kantor and Lowe 2006; Sikkink 2003). Though contemporary homeschooling has its roots in 1960s’ progressive educational reform movements designed to introduce new pedagogical, curricular, and organizational elements into the existing school system, the HSM – especially its lobbying organizations—became increasingly aligned with socially conservative constituencies in the 1970s, including what has become known as the conservative legal movement (Coltrane and Hickman 1992; Crespino 2007; Stevens 2001; Teles 2008). Thus, the contemporary HSM is held together by an uneasy alliance of social

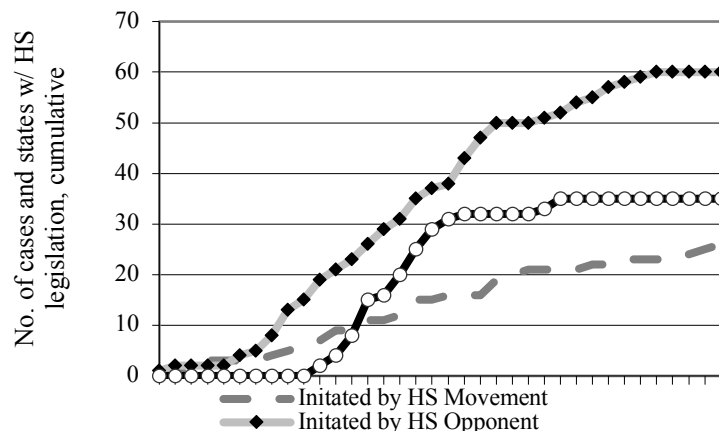
conservatives and libertarians. Indeed, the policy goals of HSM advocacy groups not only dovetail those of the broader conservative legal movement, but they are echoed in central goals codified in the *No Child Left Behind Act* of 2002, whose skeptics have argued that its combination of choice-related provisions eviscerated the public school system (Aurini and Davies 2005; Gross, Medvetz, and Russell 2011; Vinovskis 2009; Yuracko 2008).

Some researchers consider the HSM a radical challenge to comprehensive public education (Apple 2000; Aurini and Davies 2005; Levy 2009; Plank and Boyd 1994). Homeschooling laws and litigation predate other school choice reforms couched in parents' rights campaigns, such as accountability movements (Kantor and Lowe 2006; Ravitch 2000; Vinovskis 2009; Warren and Kulick 2007), anti-busing campaigns, privatization (esp. charter schools; see Renzulli and Roscigno 2005; Stoddard and Corcoran 2007), vouchers and tax cuts, as well as direct challenges to compulsory education laws (Teles 2008; Vinovskis 2009).

Statistics on homeschooling serve as further corroborating evidence of the HSM's growing legitimacy. Since the 1990s, the number of students homeschooled nationwide has increased markedly, especially in the wake of provisions in the *No Child Left Behind Act* (2002) that facilitated homeschooling. According to NCES estimates, homeschooled students increased from 850,000 (1.7% of school-age population) to roughly 1.5 million (2.9% of total) between 1999 and 2007. Though the growth curve has slowed in recent years, it has continued to trend upward, reaching roughly 1.8 million in 2012, and it is expected to catch up with Catholic school enrollments within this decade (NCEA 2016; NCES 2007, 2008, 2015; Ray 2003; Rudner 1999).

Similar to the growth in numbers homeschooled, the HSM's ability to influence education policy has grown markedly over time, even as its early judicial successes gave rise to sustained legal countermobilization by local and state governments as well as teachers' unions. Like other school choice reforms of this era, the HSM has successfully broadened the judicial and legislative basis for homeschooling in virtually all states on the basis that parents, rather than the state, should have control over children's education. The Homeschooling Legal Defense Association (HSLDA), which formed in 1983, has played a key role in homeschooling advocacy, especially in the 1980s and 1990s (the movement's most active and successful litigation period). Descriptive analysis shows the trends in court cases initiated by homeschooling supporters and by opponents. As figure 1 shows, homeschooling supporters, many of whom cooperated with the HSLDA, consistently initiated precedent-setting court cases

Figure 1. Passage of Initial State Laws, Number of Homeschooling Court Cases initiated by HSM Supporters and Opponents, 1972-2007



Sources: WestLaw, www.hslda.org, Levy (2007)

Note: The ■■■ line indicates the timing of homeschooling laws. It does not include the following three states that passed homeschooling statutes prior to the 1972 Yoder decision: Oklahoma (1907), Nevada (1956), and Utah (1957).

(with a steeper growth curve from 1982-1995), but they were outstripped by their opponents starting in the late 1970s.

Despite early successes, by the mid-1980s cases initiated by the HSM began to stall in courts as opponents mounted legal challenges (Gaither 2008; Knowles, Marlow, and Muchmore 1992; Stevens 2001). The HSM shifted tactics towards lobbying and began pressing for favorable homeschooling legislation, a successful adaptation also observed in other movements (Warren and Kulick 2007; Werum and Winders 2001). By the late 1990s, the HSM's main efforts revolved around broadening existing laws favorable to homeschooling, indicating that homeschooling had succeeded in becoming institutionalized.

SOCIAL MOVEMENTS, THE COURTS, AND AGENDA SETTING

Courts play a powerful role in contemporary policymaking. Social movements across the political spectrum increasingly look towards the courts as powerful arenas to make claims, attract attention, and advance their policy agendas (Kessler 1990; Meyer and Boutcher 2007). Pioneered by progressive movements as early as the 1930s, this strategy diffused to conservative groups decades later, sparking a growing body of scholarship on legal mobilization among conservative movements (Southworth 2008; Teles 2008; Wilson 2013).

Law and social movement scholarship has generally focused on two broad sets of research questions: are the courts an effective venue for advancing the substantive policy goals of social movements?; what effect does legal mobilization have for social movements themselves, such as building a "rights consciousness" among movement constituents or drawing media attention to a policy issue (McCann 1994; Rosenberg 1991; Scheingold 2004)? Both research strands advance important insights about the relationship between law and social movements, even as they frequently portray a pessimistic view of legal advocacy on substantive social change (e.g., Handler 1978; Meyer and Boutcher 2007; Rosenberg 1991; Scheingold 2004).

Early research on legal mobilization focused on the strategic use of litigation by movements, typically analyzing whether litigation led to movement-intended outcomes (Burstein 1991). For example, Gerald Rosenberg's (1991) classic study on civil rights litigation targeting desegregation and voting rights demonstrated that litigation—even when successful in terms of judicial decisions—did not lead to significant advancement of civil rights in these policy areas. Rather, Rosenberg argues, the courts can only affect social change when other political institutions align with them to implement the decision. Relatedly, some scholars have argued that the impact of legal strategies will typically be limited or moderate, in part because elites and professionals dominate the use of this strategy (Meyer and Boutcher 2007; Piven and Cloward 1977). Moreover, skeptics of legal mobilization suggest that the strategy saps energy from broader political (and potentially more effective) forms of organizing and mass mobilization (but see Boutcher 2010; Cummings and Eagly 2000; McCann 1994).

Subsequent scholarship sought to "decenter" legal mobilization from the formal institution of the courts, instead placing the movement at the center of the analysis (McCann 1994). These studies focused not on the direct, causal links between movements, court decisions, and social reform, but on law's constitutive power in shaping social movements. This approach opened up questions about the symbolic role that law plays for a variety of movement dynamics, such as framing (Pedriana 2006; Stobaugh and Snow 2010), resource mobilization (Boutcher 2013), interorganizational relationships (Levitsky 2006), and the broader political and legal opportunities that activists face (Andersen 2005; Hilson 2002). However, the role of agenda setting in the courts has remained largely unexamined. We see agenda setting as consistent with the constitutive turn in legal mobilization scholarship, and we argue that the very act of claiming and filing a legal case can have important constitutive effects for movements, irrespective of the ultimate outcome of the case (NeJaime 2012).

We see agenda setting as operating at the intersection between courts, (counter)movements, and the broader political and social contexts in which both sets of actors are embedded. As legal

mobilization scholars have long demonstrated, courts and social movements do not operate in isolation of each other, nor do they operate outside of broader, contemporaneous political and cultural contexts surrounding the issue at hand (McCann 1994; Meyer and Boutcher 2007). For instance, political scientists have long studied and demonstrated the importance of public opinion trends as a key extralegal factor that shapes judicial outcomes (Calvin, Collins, Jr., and Eshbaugh-Soha 2011; McGuire and Stimson 2004; Mishler and Sheehan 1996).

In this article, we focus on two distinct sets of extralegal contexts that might shape agenda setting in the courts. First, courts may be more likely to hear a case in response to the context surrounding the particular policy issue at stake. Thus, in the case of homeschooling, public education dynamics might affect the likelihood that a court will agree to hear a challenge. Alternatively, courts may be inclined to respond to broader social and political contexts, including movement/countermovement dynamics and public opinion trends. Below, we discuss in detail how these two extralegal contexts might shape agenda setting around homeschooling.

EDUCATIONAL POLICIES AND PRACTICES

We test whether educational policies and practices actually shape the odds that a court will agree to hear a homeschooling-related case. Sociologists of education have shown that race- and class-driven status competition dynamics in the school system typically manifest themselves around issues of school safety, school quality, and school choice (Aurini and Davies 2005; Eitle and Eitle 2004; Goyette, Farrie, and Freely 2012; Sikkink and Emerson 2008). NCES surveys show (and HSM advocacy groups consistently make the argument) that parental concerns about school safety and school quality rank high among the reasons homeschoolers provide for withdrawing children from schools (Apple 2000; NCES 2007, 2008; Ray 2003; Stevens 2001).

Parents' perceptions of school safety and actual disciplinary practices have shaped public debate and influenced policy changes related to school choice (Arum 2003). As proxies for school safety concerns, we examine the impact of two kinds of school disciplinary practices: corporal punishment (common in many states until the mid-1980s) and suspensions have both been widely argued or even assumed to serve as effective ways to ensure school safety, even as evidence continues to mount that they are implemented in a racially discriminatory manner (Arum 2003; Eitle and Eitle 2004; Perry and Morris 2014; Skiba, Michael, Nardo, and Peterson 2002). At the very least, arguments for such disciplinary actions have been used to create the public perception that zero-tolerance policies help make schools safe.¹ Litigation odds could increase where parents perceive schools as undesirable, either because of insufficiently used or overused disciplinary practices. Conversely, if schools are perceived as effective at managing discipline (i.e., by suspending students considered undesirable or ill-behaved, thus minimizing exposure of well-behaved children to "troublemakers"), school choice options that facilitate withdrawing children from the public school system might seem less pertinent. This dynamic could lead to an inverse relationship between suspensions and homeschooling litigation odds.

Homeschooling proponents also express concerns about public school quality (Kunzman 2009; Ray 2003; Rudner 1999; Stevens 2001). As proxies for public school quality we examine how aggregate-level academic achievement affects the odds of precedent-setting homeschooling court cases being heard. If the popularity of homeschooling is indeed related to concerns about perceived (lack of) public school quality, then homeschooling litigation odds might decrease with increasing academic achievement levels.

Litigation trends also may be affected by student assignment practices, which are known to shape school racial composition (Eitle and Eitle 2004; Frankenberg 2009; Orfield, Bachmeier, James, and Eitle 1997; Saporito and Sohoni 2006). We know that public perceptions regarding the quality of schools are strongly tied to student composition, leading to "white flight" from urban and public-school systems across the country. In fact, racial resegregation has been increasing in recent decades, even as the overall percentage of nonwhite students in the public-school system has been growing steadily.² Thus, we test directly for school racial

segregation effects. Higher levels of racial segregation also are associated with lower suspension rates, suggesting that both practices reflect racialized status competition dynamics (Eitle and Eitle 2004; Levy 2009; Sikkink and Emerson 2008; Stoddard and Corcoran 2007). In essence, we treat racial segregation as gauging both (perceived) school quality and school choice dynamics, and hypothesize that homeschooling litigation odds decrease in states where schools are highly segregated by race.

Finally, homeschooling is often portrayed as an extension of more established forms of school choice that include private and charter schools, tying the increasing prevalence and regulation of homeschooling to policies intended to apply free-market principles throughout the education sector (Ravitch 2000; Vinovskis 2009). Our analyses use several proxies to test this claim. A thriving private-school sector frequently signals a racially and socioeconomically fragmented school system and may legitimate opting out of the public school system more generally (Aurini and Davies 2005; Crespino 2007; Plank and Boyd 1994; Saporito and Sohoni 2006). We suspect that litigation odds might rise in states with a well-developed private school sector, because if the public school system is already fragmented, courts may be inclined to hear other cases dealing with strategies to opt out of the public system (Tyack, James, and Benavot 1987). Similarly, existing charter or homeschooling laws perceived as too lax or too restrictive might increase the odds that either side will try to sue (Reese 2005).

POLITICAL AND CULTURAL OPPORTUNITIES

Alternatively, courts may be more responsive to broader political and cultural opportunities rather than to the issue-specific, educational dynamics discussed above. This perspective is shared by scholars who view policy developments as the result of interaction between the state and other political actors (Amenta, Carruthers, and Zylan 1992; Andrews and Biggs 2006; Quadagno 1994; Skrentny 2002). Thus, we examine how homeschooling litigation odds are shaped by movement/countermovement mobilization dynamics (Andrews and Biggs 2006; Meyer and Staggenborg 1996; Werum and Winders 2001), as well as public opinion trends and changing ideologies among political elites (Haider-Markel 2001; Skrentny 1996; Teles 2008).

Social movement scholars have long demonstrated how political and cultural opportunities affect the ability of social movement adversaries to influence policies, including judicial agendas. Scholars have shown how political and cultural opportunities have shaped social movement strategies (and outcomes) across the policy spectrum, ranging from suffrage (Cornwall, Brayden, Legerski, Dahlin, and Schiffman 2007; Faupel and Werum 2011; McCammon, Campbell, Granberg, and Mowery 2001) over welfare and pensions (Amenta, Carruthers, and Zylan 1992; Orloff 1993; Quadagno 1994), to gay rights (Frank and McEneaney 1999; Werum and Winders 2001), the environment (Hooks and Smith 2004; McCright and Dunlap 2003; Olzak and Soule 2009), and education (e.g., Andrews 2002; Ravitch 2000). Note that evidence suggests neoconservative movements, including those related to educational reforms, are equally affected by changing political and cultural opportunities (Arum 2003; Skrentny 1996, 2002; Stevens 2001; Teles 2008).

To that end, we use proxies to gauge how changes in public opinion as well as in the ideology of elected government officials may have shaped the odds of courts hearing cases on homeschooling. Generally speaking, societal liberalism towards social issues is associated with strong support for the public school system (Haider-Markel 2001; Renzulli and Roscigno 2005). Thus, we expect homeschooling litigation odds to decrease, as broad cultural norms shift towards social liberalism. Yet, it is unclear whether attitudes among political elites at the state level might affect the odds of precedent-setting homeschooling court cases getting on the docket.

Finally, we examine the influence of homeschooling movement adversaries, by focusing specifically on the impact of the HSLDA, grassroots mobilization on behalf of homeschoolers, and teacher unions. We expect homeschooling to become part of the courts' agenda when and where the HSM is strong, and teacher unions have weak support. Moreover, social movements

often thrive on adversarial relationships, as a well-organized opposition may actually promote further mobilization (e.g., Andrews 2002; Dorf and Tarrow 2014; Meyer and Staggenborg 1996). Hence, litigation odds may rise when both sides are strong, making homeschooling an issue hotly contested in courts.

DATA AND METHODS

Our pooled time series dataset ranges from 1972 to 2007, creating a matrix of 1,800 state-years (36 years x 50 states). Table 1 shows that the most active litigation period began in the late 1970s and ended in the mid to late 1990s. Litigation initiatives are dominated by Midwestern

Table 1. State Years with at Least One Homeschooling-Related Court Case 1972-2007

State	Yrs. with Homeschooling-Related Court Cases	State-Years with at least one case	State	Yrs. with Homeschooling-Related Court Cases	State-Years with at least one case
<i>1st Federal Court Circuit</i>			<i>7th Federal Court Circuit</i>		
MA	1972 , 1987, 1998, 1999	4	IL	1972, 1974, 1985	3
ME	1972 , 1988	2	IN	1972, 1974, 1985 , 2007	4
NH	1972 , 1974	2	WI	1972, 1974 , 1982, 1985	4
RI	1972	1			
<i>2nd Federal Court Circuit</i>			<i>8th Federal Court Circuit</i>		
CT	1972, 1988	2	AR	1972 , 1984, 1985, 1988 , 1992	5
NY	1972 , 1977, 1978, 1988	4	IA	1972 , 1981, 1985 , 1987, 1988 , 1992, 1993	7
VT	1972, 1988 , 1990, 2000, 2003	5	MN	1972, 1985, 1988 , 1991	4
<i>3rd Federal Court Circuit</i>			MO	1972 , 1980, 1982, 1985, 1988 , 2001	6
DE	1972, 1990, 2006	3	NE	1972 , 1984, 1985, 1988 , 2002	5
NJ	1972, 1990, 2001, 2006	4	ND	1972 , 1980, 1985 , 1986, 1988 , 1989	7
PA	1972, 1975, 1990, 2006	4	SD	1992, 1972, 1985, 1988	3
<i>4th Federal Court Circuit</i>			<i>9th Federal Court Circuit</i>		
MD	1972, 1983, 1993, 1995, 1999	5	AK	1972, 2000	2
NC	1972 , 1979, 1980, 1983, 1985, 1993, 1995, 1999	8	AZ	1972, 2000	2
SC	1972, 1983, 1991, 1993, 1995, 1999	6	CA	1972 , 1977, 1996, 2000	4
VA	1972, 1982, 1983, 1993, 1995, 1999	6	ID	1972, 2000	2
WV	1972, 1981, 1983, 1993, 1995, 1999	6	MT	1972, 2000	2
			NV	1972, 2000	2
			OR	1972 , 1982, 2000	3
			HI	1972, 2000	2
			WA	1972, 2000	2
<i>5th Federal Court Circuit</i>			<i>10th Federal Court Circuit</i>		
LA	1972 , 1982	2	CO	1972 , 1988, 1998	3
MS	1972	1	KS	1972 , 1983, 1998	3
TX	1972 , 1986, 1991, 1994	4	NM	1972 , 1983, 1998	3
			OK	1972, 1998	2
			UT	1972, 1998	2
			WY	1972, 1998	2
<i>6th Federal Court Circuit</i>			<i>11th Federal Court Circuit</i>		
KY	1972 , 1979, 1980, 1991	4	AL	1972 , 1979, 1980, 1981, 1992	5
MI	1972, 1980, 1991 , 1993	4	FL	1972 , 1973, 1985	3
OH	1972 , 1979, 1980 , 1986, 1987, 1988, 1989, 1991 , 1997, 2005	10	GA	1972 , 1983	2
TN	1972, 1980, 1991 , 1993	4			

Note: Bold font = state-years with at least one case from a federal-level appellate court.

states, especially those belonging to the 6th and 8th federal circuit (e.g., OH, ND, IA), and by states belonging to the storied 4th circuit (MD, NC, SC, VA, WV), which had played a key role in the NAACP's stepwise strategy to dismantle Jim Crow laws (Kluger 1976). We include 87 court cases consisting of 71 state-level and 16 federal-level appellate court cases (incl. *Yoder*). Because the federal cases apply to more than one state, those become de-facto weighted by the number of states in their respective circuit, leading to $n = 185$ state-years with at least one case.³

We combine primary data analysis (e.g. content coding of court cases) with the analysis of existing statistics from government or interest group sources. Table 2 provides detailed information about the sources and statistical properties of all variables.

Analytic Approach

Our outcome variable gauges whether federal or state courts heard a homeschooling-related case in a given state-year and is therefore dichotomous. To estimate the odds of courts hearing a case, we use random-effects logistic models, which take into account that observations within states are correlated over time. We chose random-effects (RE) models over fixed-effects (FE) models, because a Hausman test showed that both models produce the same estimates (i.e., differences were nonsignificant). In contrast to RE models, FE models assume that predictors are correlated with time-constant, state-level differences and therefore FE models subtract out all time-constant, between-state variation. Eliminating between-state variation makes the estimation process less efficient and is only justified when the FE estimators are significantly different from the RE estimators (tested via Hausman test). In our analyses this was not the case, and we therefore report estimators of the efficient random-effects models (FE results are available upon request) (Frees 2004; Wooldridge 2003).

Dependent Variable

We used *WestLaw* to collect the population of state and federal court cases that dealt with homeschooling issues. Once a case was identified using a systematic set of search terms,⁴ we used content analysis to determine which cases to include. We excluded court cases that did not deal with homeschooling per se, were conflated with other topics that concern both "home" and "school" dynamics, or were adjudicated in lower-level courts.⁵

Overall, our analysis includes the population of precedent-setting homeschooling cases, i.e., those that reached the appellate level in state or federal courts (also see Arum 2003: 49). Of the 171 court cases found by means of the initial *WestLaw* search, we kept 71 state-level and 15 federal-level court cases in the analysis, plus the 1972 USSC decision in *Yoder*. To construct our dependent variable, we aggregated all court cases by state and year, giving us a total of 185 state-years with at least one homeschooling-related lawsuit (see table 1). Thus, our dependent variable is coded "0" for state-years with no cases, and "1" when there is at least one state- or federal-level case.

Independent Variables

Educational policies and practices. We measure school safety via percent of K-12 students hit by a teacher per state-year and percent of K-12 students suspended from school per state-year. Both measures are based on data collected by the U.S. Department of Education's Office of Civil Rights (OCR 2008). To adjust for variation due to the OCR's random sampling of school districts within states, the hitting and suspension measures represent five-year moving averages within each state. To measure school quality, we include % high school graduates taking the SAT and the average math SAT score in a given state. We derive both measures from the Digest of Educational Statistics (NCES).

Table 2. Variable Overview

Variable	Description	Source	Mean	Std. Dev
<i>Homeschooling-Related Court Case</i>	Dummy: 1 = at least one case in a state-year; 0 = none	WestLaw	0.1	0.3
<i>Percent Foreign-Born Residents</i>	Percent of foreign-born residents relative to total state population in given state-year	Statistical Abstracts (1970, 80, 90, 2000), Migration Policy Institute (2006)	5.5	4.8
<i>Percent Geographic Diffusion (HS Laws)</i>	Number of neighboring states with at least one homeschooling law relative to total number of neighboring states in given state-year	Map of the United States, Renzulli and Roscigno (2005)	25.4	30.3
<i>Year (centered at 1972)</i>	Calendar year		17.5	10.4
<i>Percent Students hit by Teacher</i>	Percent students hit by teachers in given state-year	Office for Civil Rights (1968-2006 time series files)	1.4	2.4
<i>Percent Suspensions</i>	Percent students suspended in given state-year	Office for Civil Rights (1968-2006 time series files)	3.8	2.3
<i>Percent SAT taken</i>	Percent of high school graduates taking the SAT in given state-year	Digest of Ed. Statistics (1982, 89-95, 97, 98, 2000-07)	31.1	25.8
<i>Math SAT</i>	Average SAT math scores in given state-year	Digest of Educational Statistics (1975, 80, 81, 83, 1985-2007)	510.9	39.4
<i>Index of Dissimilarity</i>	State-level school segregation in given state-year. Index ranges from 0 (integrated) to 1 (segregated)	Office for Civil Rights (1968-2006 time series files)	0.4	0.2
<i>Private Enrollment</i>	Total enrollment in private schools in 10,000s in given state-year	Digest of Educational Statistics (72, 76, 78, 80, 89, 91, 93, 95, 97, 99, 2001, 03)	10.6	13.3
<i>Homeschooling Law</i>	Dummy: 1 = state has passed homeschooling law; 0 = not yet passed	www.heartland.org, www.hslda.org, Levy (2009)	0.5	0.5
<i>Charter School Score</i>	Rating of states' charter school laws in a given state-year. Score ranges from 0 (hard to open charter school) to 1 (easy to open charter school)	Center for Education Report (2009)	0.2	0.3
<i>Regional Societal Liberalism</i>	Factor of 9 GSS items regarding societal liberalism attitudes in given year and broad census region. Z-Score. Index ranges from -2.9 (very conservative) to 1.9 (very liberal)	General Social Survey (1972-2007, different years interpolated for different items)	0.0	1.0
<i>Political Elite Liberalism</i>	Ideological position of a state government in given state-year. Z-score. Scale ranges from -2.1 (very conservative) to 2.1 (very liberal)	Berry et al. (1998)	0.0	1.0
<i>Home School Legal Defense Association HSLDA Involvement</i>	Dummy: 1= HSLDA exists in given year, 0=HSLDA does not yet exist in year	HSLDA website (www.hslda.org)	0.7	0.5
	Annual, national-level count of HSLDA legal and extra-legal support of homeschoolers and lobbying efforts on the state or federal level. Self-reported quarterly by HSLDA via Court Report publication	HSLDA Court Report (www.hslda.org)	46.3	46.0
<i>Number of Homeschooling Magazines</i>	Number of homeschooling magazines in given year	Ulrich's Periodical Directory (1971-2007)	12.1	7.9
<i>Percent Nat. Ed. Assn. Members</i>	NEA membership relative to total state population in given state-year	NEA Annual Handbook (1971-2007)	1.0	0.4

To gauge whether racially based school assignment dynamics affect the odds of homeschooling-related lawsuits, we include the racial composition of public school districts, derived from the Office for Civil Rights (OCR 2008) data. To construct the Index of Dissimilarity (D), we first compare racial composition in each school district with the overall racial composition of the state's school-age population (K-12). Next, we aggregate differences at the state level. Analyses reported contrast whites and non-whites. The index ranges from "0" (schools are completely racially integrated) to "1" (schools are completely segregated).⁶

To gauge the impact of school choice in general on homeschooling litigation trends, our analyses include the number of students enrolled in private schools (in 1,000s) in a given state and year (NCES). Additionally, we capture state-level variation in the availability of alternative providers, by controlling for whether states have already passed their first homeschooling law (derived from HSLDA, Levy 2009),⁷ and by including an index gauging the restrictiveness of existing charter school legislation in a given state and year (Renzulli and Roscigno 2005). A value of "1" implies that laws make it easy to open a new charter school. A value of "0" means there is either no law yet or that laws are very restrictive.

Political and Cultural Opportunities

We also examine the impact of changing cultural and political opportunities on litigation trends. To gauge the degree to which attitudes towards social issues have changed since 1972, we include two measures and their interaction. We construct a regional societal liberalism index aggregated to reflect the nine census regions identified in the General Social Survey (GSS) (state-level data unavailable). The index is based on public opinion trends regarding eight different GSS items that range from views on freedom of speech for socialists, atheists, and homosexuals, to religious and childrearing philosophies. To avoid model overspecification, we use factor analysis to combine the eight items (factor loadings between 0.67-0.95), which results in an index that ranges from -2.9 to 1.9. A higher value on societal liberalism reflects a more socially progressive/liberal attitude.⁸

To complement our public-opinion based measure, we also employ a variable that gauges state-level political elite liberalism, which gauges the ideological position of the governor and the dominant party in each legislative chamber in a given state (for more detailed description see Berry, Ringquist, Fording and Hanson 1998). Policymakers' ideological position is measured on a scale from zero to 100, where zero indicates a very conservative position and 100 a very liberal one. We standardized the scale to have a mean of zero and a standard deviation of one. Because regional trends regarding social attitudes may condition the degree to which voters support state-level politicians with liberal perspectives, we also introduce an interaction term.

To measure the strength of the HSM and its opponents we include five variables. Two of these measures assess the strength of homeschooling proponents: first, a dichotomous variable for the HSLDA is coded "1" for all years since 1983, when the HSLDA was founded as a national advocacy group. Arguably, being able to deploy lobbyists on a national scale serves as an excellent indicator of movement resources, as it captures movement professionalization (Staggenborg 1991). The second indicator of the HSM strength is the annual level of HSLDA involvement in homeschooling matters across the country in a given year. This measure is based on a content analysis of the quarterly published HSLDA Court Report (accessed on HSLDA website), in which the HSLDA reports all actions taken in the past three months. Our final indicator of HSM strength is the number of homeschooling magazines in existence in any given year, derived from Ulrich's Periodical Directory.⁹ These magazines are published by and for homeschooling parents. Alternatively, this measure could be used to gauge the movement's grassroots strength, or as a proxy for the strength of homeschoolers as an interest group. All HSM measures are aggregated to the national-level, as the HSLDA and HSM magazines operate on that level. For instance, analyses of the Court Report publications showed that the

HSLDA uses the same lawyers for all (pre-)legal involvement across the U.S. Likewise, HSM magazines are distributed and addressed to audiences in all U.S. states. To our knowledge, no reliable state-level data exist on HSLDA membership, or even on the number of students home schooled.

Because social movements thrive on adversarial relationships, our analyses also include National Education Association (NEA) membership (relative to state population, as cited in the *NEA Annual Handbooks*, table 1). The NEA is the country's largest and most influential professional employee organization. It represents employees of the public-school system from pre-K through post-secondary and maintains affiliates in every state.¹⁰ Finally, because friction between movement adversaries often energizes both sides, we enter an interaction term that measures the effect of active countermobilization by the HSM and NEA opposition.

Control Variables

Our analyses include the percent foreign-born population (U.S. Census Bureau data) to account for general demographic trends that affect the racial composition of neighborhoods and schools.¹¹ Emulating related research on other school choice policies (Renzulli and Evans 2005; Renzulli and Roscigno 2005), we include a diffusion measure to control for "ripple effects" across state borders and policy venues (from laws to court cases). Specifically, this measure gauges whether homeschooling legislation in the neighboring state at an earlier time influences the odds of homeschooling-related court cases being heard in the focal state.¹² Finally, to account for linear time trends we control for time using the year variable that is centered at 1972.

RESULTS

Table 3 on the following page shows the estimated odds ratios from the random-effects models. Because results for partial and full models are stable, our discussion below focuses on the full model (model 5).

How Do Educational Policies and Practices Affect Litigation Odds?

Results suggest that neither school quality nor school safety affect litigation odds, as indicated by the nonsignificant coefficients. This means that, despite frequently stated concerns by homeschooling advocacy groups, perceptions regarding the overall school quality (measured here by SAT participation and performance trends) and safety (measured in terms of disciplinary practices) in a given state appears to have no effect on the odds of precedent-setting homeschooling cases.

In contrast, we observe poignant effects of school choice dynamics related to class- and racially based status competition. Specifically, private school enrollment significantly increases litigation odds (OR=1.028): For each increase of 10,000 private-school students, litigation odds increase by 2.8 percent. Most importantly, racial segregation drastically reduces the odds of courts hearing a homeschooling-related court case (OR = 0.151). This means that a state with a low Dissimilarity Index ($D = 0.33$) has 8.9% probability of hearing a law (predicted probability = $\exp(a+bX)/(1+\exp(a+bX))$), assuming all other characteristics are set to their mean. In comparison, the probability of hearing a case in an equivalent state with high segregation ($D = 0.66$) is only 5%. Similarly, in states in which charter schools (which can be public, private, or hybrid) are considered easy to establish, the odds of homeschooling litigation almost triple (OR = 2.822). In contrast, existing homeschooling legislation in a given state-year does not affect litigation odds.

Table 3. Determinants of Homeschooling Litigation

	Model 1	Model 2	Model 3	Model 4	Model 5
Controls					
Percent Foreign-Born	0.968	0.883***	0.981	0.976	0.902***
Percent Geographic Difference	1.008*	1.007*	1.004	1.005	1.001
Year	0.940***	0.950**	0.759***	0.756 ***	0.786***
Educational Policies and Practices					
Percent Students Hit		1.028			0.948
Percent Students Suspended		0.916			0.903
Percent SAT Taken		1.007			1.001
Math SAT		1.000			0.999
School Segregation		0.114***			0.151**
Private School Enrollment		1.037***			1.028**
Homeschooling Law		1.010			0.682
Charter School Score		2.014			2.822*
Cultural and Political Opportunity Structure					
Societal Liberalism			0.796	0.729	0.526*
Political Elite Liberalism			1.117	1.143	1.198
Political Elite * Societal Liberalism				1.002	1.006
HSLDA			4.827***	5.347 ***	5.853***
HSLDA Involvement			0.997	0.980 **	0.982*
Number of HS Magazines			1.277***	1.283 ***	1.266***
NEA Members			0.854	0.422 *	0.377*
NEA * HSLDA Involvement				1.016 **	1.015*
Intercept	0.285***	0.558	0.248***	0.453	1.540
N (state-years)	1800	1800	1800	1800	1800
N (states)	50	50	50	50	50
LL	-570	-557	-547	-544	-532
BIC	1177	1211	1180	1186	1221

Note: Random-effects logistic regression with odds ratios. Dependent variable: at least one homeschooling court case per state-year; * p<0.05, ** p<0.01, *** p<0.001 (two-tailed)

How Do Political and Cultural Opportunities Affect Litigation Odds?

With regard to public opinion, increased acceptance of socially liberal norms at the national level is associated with decreased odds of homeschooling litigation. With each unit increase in societal liberalism, homeschooling litigation odds decrease by a factor of 0.526. Put differently: they become almost half as likely. Yet, the ideological position of state government officials, as well as the interaction between social and political elite liberalism, is nonsignificant, meaning that the effect of liberalism among political elites on homeschooling litigation is not moderated by public opinion trends.

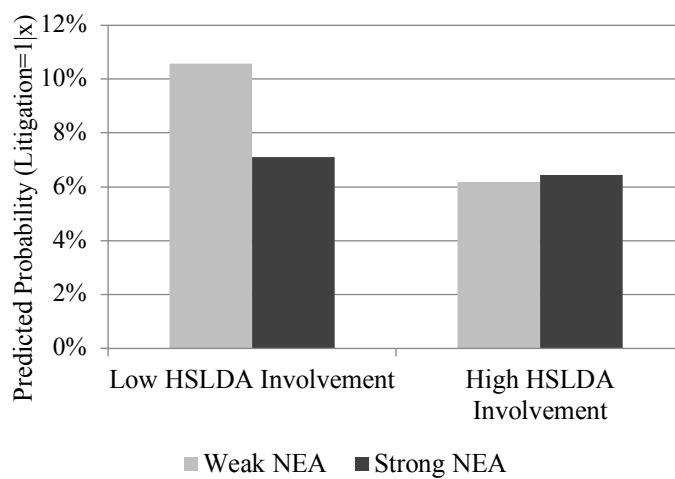
With regard to the role of HSM advocacy, analyses show that the existence of the HSLDA is associated with a profound rise in the likelihood of litigation (OR=5.853). This means that, once the HSLDA was founded in 1983, the odds of precedent-setting homeschooling litigation increased almost six-fold. Similarly, the number of homeschooling magazines (proxy for interest-group/grassroots movement strength), shows a positive effect, increasing litigation odds by 27% for each additional magazine (OR=1.266).

In contrast, the level of HSLDA activities in a given year is associated with lower litigation odds (OR=0.982), meaning that with each additional incident, litigation odds decrease by 1.8% ($1/0.982=1.018$). It is possible that greater HSLDA involvement is a reaction to a greater countermovement that also reduces litigation odds. That is, the narrative in the court reports often described families who reached out to the HSLDA for help after they have been contacted by the school board, social workers, and other state entities.

As expected, the organizational strength of homeschooling opponents (i.e. NEA) has a significant dampening effect on litigation odds (OR = 0.377). That is, when NEA membership relative to the state population grows by one percentage point, the odds of a court hearing homeschooling-related cases decrease almost three-fold ($1/0.377=2.65$). The interaction effect shows that even though NEA membership can dampen homeschooling litigation odds, this dampening effect weakens slightly when HSLDA involvement is high (Meyer and Staggenborg 1996).

Figure 2 illustrates this interaction and shows the predicted probability of a court case being heard given varying levels of HSM involvement and NEA strength. Figure 2 demonstrates that

Figure 2. Predicted Litigation Probability, by NEA and HSLDA Involvement



Note: Probabilities of seeing a court case are based on estimated log odds in Model 5, Table 3. Low and high values of HSLDA involvement and NEA membership represent 23rd and 75th percentile: HSLDA involvement low=0, high=73; NEA weak=0.72, strong=1.17, all other controls set to sample means.

when HSLDA involvement levels are low, the presence of a strong NEA noticeably reduces the probability of a case making the docket – from 11% to 7%. When HSLDA involvement is high, the probability of a court case being heard is lower overall. NEA membership no longer affects litigation odds as the predicted probability is close to 6% in both cases. Taken together, this indicates that a strong NEA only decreases litigation odds when HSLDA involvement is low.

DISCUSSION

Our project is motivated by a seemingly simple question: Under which conditions have state and federal courts agreed to adjudicate precedent-setting homeschooling cases?

As a case in point, we examine how educational policies and practices plus broader cultural and political opportunities have shaped the odds of homeschooling-related litigation between 1972 and 2007. Our analyses are grounded in explanations used by sociologists of education and by political sociologists.

How Educational Policies and Practices Affect Litigation Odds

Our analyses indicate that the Homeschooling Movement (HSM) has not existed in a political vacuum but instead reflects a broader educational policy context entailing choice-based reform efforts. In essence, factors that gauge the prevalence of school choice play an important role in whether a case makes it on the court docket, whereas issues directly related to school quality (measured by SAT taking and performance patterns) and school safety (disciplinary practices) do not affect the odds of homeschooling litigation. In other words: notwithstanding media and movement discourse citing concerns over public school quality and school safety as reasons for the expanding the homeschooling sector (Bauman 2002; Knowles, Marlow, and Muchmore 1992; Kunzman 2009; Stevens 2001), our analyses suggest that homeschooling litigation trends have nothing to do with the quality of public schools.

In contrast, class- and race- based status competition dynamics directly related to school choice markedly influence homeschooling litigation trends. Our analyses suggest the de-facto fragmentation of the public school system plays a key role in courts' likelihood of hearing these homeschooling cases. Notably, the three factors that consistently produce strong effects on litigation odds gauge degrees of separation between different groups: the pervasiveness of racial segregation, the size of the private school sector, and the deregulation of charter schools. While high levels of racial segregation decrease homeschooling litigation odds, laws facilitating the creation of charter schools as well as higher private enrollment rates (separation by SES and race) increase litigation odds. Sociologists of education would interpret our findings as suggesting that different forms of fragmentation affecting the public school system essentially serve as a way to manage class- and race-based status competition processes in more subtle ways (Aurini and Davies 2005; Eitle and Eitle 2004; Levy 2009; Saporito and Sohoni 2006), creating a domino effect that also has shaped homeschooling litigation trends.

The role of private schools in status competition processes has been well documented (Andrews 2002; Crespino 2007; Karabel 2005; Renzulli and Roscigno 2005). Private schools tend to recruit students from higher socioeconomic backgrounds, who otherwise would have attended more economically and racially diverse public schools. For charter schools, the evidence points to a bimodal pattern related to the selection bias in who attends them: Most charter schools and their students "fail" by conventional measures (performance, graduation), though a select few schools do excel (usually those whose selection of students is not shaped by residential boundaries) (Paino, Boylan, and Renzulli 2017; Renzulli and Evans 2005).

Homeschooling may be regarded as the ultimate form of private education, leading to its increased politicization and increased litigation odds, especially in states that facilitate a thriving private/charter school sector. This may suggest that in states where public schools are

perceived as weak, all school choice alternatives thrive, especially if private and homeschooling constituencies do not overlap much (Kantor and Lowe 2006; Plank and Boyd 1994; Ravitch 2010).

Similarly, suspensions are designed to remove students perceived as undesirable from the student body, even though evidence overwhelmingly indicates that these disciplinary measures have a disproportionate impact on minority students and boys, turning suspensions into an alternative mechanism for de facto resegregation (Annamma, Morrison, and Jackson 2014; Eitle and Eitle 2004; Perry and Morris 2014; Skiba et al. 2002). Independently, some of our models also suggest that states practicing high levels of racial segregation face lower homeschooling litigation odds, possibly because states in which school-level student bodies are more homogeneous by race and class make litigation less attractive to homeschooling advocates.

To summarize, the combined negative effect of racial segregation and positive effects of school choice policies on homeschooling litigation odds suggest that when public schools are perceived to manage status competition between different groups “successfully” (essentially by separating delinquents and minority students from the main population), alternative school choice options like homeschooling acquire less political urgency and attract less court attention (e.g., Andrews 2002; Saporito and Sohoni 2006). Conversely, in states where public schools are more integrated and inclusive, status competition concerns lead to an increase in calls for more school choice, including but not limited to homeschooling.

We conclude that, movement discourse about school quality notwithstanding, homeschooling litigation odds seem to reflect race- and class-based status competition dynamics, an observation that reflects research on school choice dynamics more general (Andrews 2002; Levy 2009; Renzulli and Roscigno 2005; Saporito and Sohoni 2006). Moreover, our results also show that these educational dynamics, while subordinate in our analyses, operate independently of political and cultural opportunities.

How Political and Cultural Opportunities Affect Litigation Odds

Our results strongly support the idea that changing cultural and political dynamics, including concurrent mobilization by homeschooling adversaries, have shaped the odds of agenda-setting litigation. When regional public opinion trends moved towards social liberalism, homeschooling litigation odds decreased, meaning that courts responded to changes in public opinions that indicate decreasing support for a host of socially conservative issues (ranging from gender roles to public school prayer). Such a decrease in odds of getting on the docket might also indicate that efforts to portray the homeschooling movement and its agenda as part of a larger neoconservative movement are a propos, despite occasional efforts of the movement to describe itself as politically nonpartisan.

Most importantly, concurrent political mobilization by homeschooling advocates and their opponents also produces strong effects on litigation odds. As expected, both professional (HSLDA) and grassroots/interest-group mobilization (magazines) by homeschooling advocacy groups increases litigation odds. In contrast, higher levels of HSLDA involvement actually decrease litigation odds, perhaps because HSLDA involvement in many smaller disputes prevents them from becoming a lawsuit. Similarly, stronger teacher unions (NEA) decrease litigation odds, especially when the HSLDA involvement is weaker. This finding informs earlier research showing that teacher unions had selective effects on 1990s charter school regulation (Renzulli and Roscigno 2005; Stoddard and Corcoran 2007). Moreover, Tal Levy (2009) suggests that the NEA has had limited influence on homeschooling regulations because the issue did not make the union’s radar screen. Unlike charter schools, homeschooling was not perceived as a threat to unions because it did not directly involve their main constituents.

While union strength as such dampens litigation odds, this effect is weakened by a strong HSM counter-mobilization, resulting in litigation odds that are actually greatest when both the NEA and HSM are strong (figure 2). We conclude that precedent-setting homeschooling cases

are more likely to reach the courts when both movement and countermovement forces are simultaneously mobilized. This bolsters a significant body of research demonstrating that all movements benefit from well-organized opposition (see Gamson and Meyer 1996; Meyer and Minkoff 2004; Meyer and Staggenborg 1996).

CONCLUSION

To summarize, using homeschooling litigation trends as a case in point, our findings indicate that efforts by movement adversaries to use the courts for agenda-setting purposes have been shaped primarily by changes in broader political and cultural trends, plus to some degree by class- and race-based status competition dynamics. They have not been shaped by issue-specific collective “grievances” or perceived problems related to the quality or safety of public education.

Specifically, educational policies and practices that augment fragmentation of the public school system and concomitant status competition dynamics have played a pertinent role in shaping the likelihood that courts will hear a homeschooling case. Yet, the odds of homeschooling litigation reaching the courts appear more strongly driven by political and (counter) mobilization dynamics, such as shifts in attitudes among the general public, and by simultaneous mobilization among movement adversaries. The latter likely is linked to the rise of a broader conservative legal movement (and response to it) that has sought to influence a range of policy arenas, including taxation, education, and family policy (e.g., Gross, Medvetz, and Russell 2011; Powell, Bolzendahl, Geist, and Steelman 2010; Skrentny 1996, 2002; Teles 2008). In sum, courts play a powerful yet nonpartisan role in agenda-setting and contemporary policymaking on this issue.

This article makes three specific empirical contributions. First, our findings contribute to the significant body of extant research on the policy impact of social movements, most of which has focused on legislative outcomes at state and federal levels or on the impact of rare events, such as Supreme Court cases (e.g., Amenta et al. 2010; McCammon et al. 2001; Meyer and Minkoff 2004; Soule and Olzak 2004). Our focus on state and federal court cases addresses recent calls to broaden the scope of inquiry by examining judicial trends and agenda-setting tactics as a movement outcome (e.g., Baumgartner and Mahoney 2005; Kessler 1990; Meyer and Boutcher 2007; Teles 2008).

Moreover, we show why it is important to conceptualize social movement “success” beyond the mere passage or implementation of policies to include the early part of the political process focused on getting an issue on the “radar screen” of important political institutions. Our findings also support a large extant body of research that documents the key role (counter) movement mobilization dynamics play in shaping policy reforms (see e.g., Andrews 2002; Dorf and Tarrow 2014; Meyer and Staggenborg 1996).

Second, our study also addresses recent critiques of social movement scholarship that tend to treat law as a static institution and focus on law/policy enactment as a movement outcome (Barclay, Jones, and Marshall 2011). Law and legal institutions occupy an important constitutive role for social movements that cannot simply be reduced to a court decision or a passage of a new policy. Rather, “law provides a symbolically rich medium that social movements use to construct and to circulate meaning both within the movement and in their relations with others outside of the movement” (Barclay et al. 2011: 3). Our analysis highlights the role of appellate courts as an agenda-setting venue that can legitimate controversial policy issues and is embedded in broader political and cultural contexts (Meyer and Boutcher 2007). It also underscores how ostensibly unrelated political and cultural factors shape a movement’s ability to set court agendas.

Finally, our findings also contribute to the sociology of education literature, which has paid scant attention to how social movements have affected educational policy via legislatures and courts (but see: Renzulli and Evans 2005; Renzulli and Roscigno 2005; Skrentny 1996; Warren and Kulick 2007). Especially, given that legal mobilization around homeschooling predates that

of related school choice reforms, readers may be well advised to interpret our findings regarding the HSM as indicative of dynamics that have shaped other school-choice related policy reforms (Aurini and Davies 2005; Kantor and Lowe 2006; Levy 2009; Plank and Boyd 1994).

To what extent can we generalize from the agenda-setting dynamics involving the HSM and its adversaries to other movements? Though this is a case study of a single policy issue, we believe that similar dynamics shape the agenda-setting capacity of other movements. Our main findings essentially confirm extant research showing that broad sociocultural and political dynamics—as well as (counter)movement and organizational dynamics related to resource mobilization—can affect a variety of movement outcomes. Future research should examine whether our main findings do indeed carry over to legal mobilization regarding other policy issues. Although we found only limited support for the argument that substantive dynamics (here: educational practices and policies) affected the courts' decision to hear a homeschooling case, this may not hold true for other policy domains. Courts may be more responsive to the substantive policy context when wading into some policy issues than into others.

While our study sheds light on important and complex dynamics that have shaped homeschooling litigation dynamics since the 1970s, our findings also raise additional questions. We focus on state-level dynamics, but local demographic and political factors likely play an important role in whether homeschooling litigation is initiated and pursued to the appellate level. While beyond the scope of our current project, future studies may seek to examine what precipitates initial litigation in local courts. To date, extant literature using this approach has tended to rely on historically based comparative case studies (Karabel 2005; Kluger 1976; Provasnik 2006; Sikkink 2003). Future analyses of litigation trends at the local level might also provide valuable insights about the extent of race- and class-based status competition dynamics, which typically take place at the local level (within school districts). Given the highly aggregated level of our analysis, it is possible that our state-level estimates provide a conservative estimate of how status competition affects litigation dynamics. We call for future analyses to build on extant literature (e.g., Saporito and Sohoni 2006) that involves a systematic comparison of local school districts, where there is more variation with regard to school quality, disciplinary practices, and school choice options. This will help assess more accurately the degree to which the courts' response to homeschooling-related cases is related to changes in the educational system per se, or to broader socio-political and movement dynamics.

NOTES

¹ Currently, thirty-one states (plus Washington DC) outlaw corporal punishment at school; nineteen states (mostly in the South) still permit it, though reports of it being used have been declining for years. Descriptive analyses of state-level data from the Office of Civil Rights show an inverse trend between the number of students hit and those suspended from school. This indicates that suspensions serve as a replacement and substitution for corporal punishment. Empirical research suggests that—all else being equal—both forms of discipline are disproportionately applied to boys and to students who are members of minority groups or disabled, thus contributing to the school-to-prison pipeline (Annamma et al. 2014; Arum 2003; Eitle and Eitle 2004; Perry and Morris 2014; Skiba et al. 2002).

² For instance, according to the U.S. Department of Education, since 2014, non-white students have constituted the majority (>50%) of public school students. This trend mirrors—and in fact leads—general demographic trends that lead the U.S. Census Bureau to expect that, by 2030, more than half of the U.S. population will classify themselves as non-white. For a fuller discussion of racial segregation trends in the U.S., see e.g., Saporito and Sohoni (2006) or NCES (2015).

³ E.g., if a federal case originates in Michigan, it applies to all states in the 6th federal court circuit. We apply federal cases to all states within a court circuit because empirical research shows that social movements and government actors collaborate across state lines to drive or stop appeals to federal courts (e.g., Goelzhauser and Vouvalis 2013). This is confirmed by additional analyses in which we applied federal cases only to the origination state (available on request). In these analyses all movement variables became nonsignificant.

⁴ For intercoder reliability two project members used *WestLaw*'s "KeySearch" tool. We searched Key Search's lists of topics and subtopics for the term "homeschooling" and "home schooling," which is found in the KeySearch categories: "Compulsory Attendance" within the larger category of "Public Secondary and Elementary Schools," which is contained within the broader category of "Education." To capture cases that dealt in substance with homeschooling but

were classified elsewhere, we searched the umbrella category “Compulsory Attendance.” This yielded several cases we would have missed had we used only the narrower search term “home schooling.” “Certification for Home Schooling” is the second KeySearch subcategory in which the term “home schooling” was found; it is subsumed under “Teachers and Education Professionals,” which itself is found under “Public Secondary and Elementary Schools” contained in the category of “Education.” Additional information is available on request.

⁵ For instance, we dropped 10 of 13 NY homeschooling cases, all of which were decided in family courts, because they were primarily local and lacked precedential value (specific cases available on request).

⁶ We use the OCR 1968-2006 *Time Series Civil Rights Data Collection*. Averages reported spiked in 1976 and 2000 due to a different sampling strategy. Thus, we dropped those data points and interpolated instead. The comparison category “non-Whites” includes African Americans, Asians, Latino and other non-White groups.

⁷ Three states passed homeschooling statutes earlier: Oklahoma (1907), Nevada (1956), and Utah (1957). These were set to “1” starting with the first year of our analysis.

⁸ The eight GSS measures are (1) public school prayer, (2) sex education in school, (3) spanking children, (4) whether working moms can have close relationships with their kids, (5) allowing antireligionists to teach at the post-secondary level, (6) allowing socialists to teach at the post-secondary level, (7) allowing homosexuals to teach at the post-secondary level, and (8) permitting homosexuals to speak publicly. As state-level trends are not available in the public-use file, we disaggregate by census region.

⁹ *Ulrich's* occasionally lists the number of subscriptions and number of issues published per year. However, that information is self-reported (by the publication), and it is often missing completely. Thus, those could not be used as reliable measure of HSM strength—a limitation that has become ever more pronounced with the continued shift towards digital media consumption.

¹⁰ For the following state-years NEA membership fluctuated greatly, possibly due to reporting errors or non-reported changes in membership calculation: 1973 (WI, VA, TX, NY), 1974 (NY), 1975 (OH, NC, MA, GA), 1976 (TX, TN, CA), 1977 (NY), 1979 (LA), 1982 (SC), 1986 (NJ), 1988 (FL), 1989 (PA), 1999 (MN), 2001 (FL). We deleted and interpolated these years, which did not change the overall results.

¹¹ In analyses not reported here, we employed the following controls (nonsignificant and removed for parsimony): % black population, percent nonwhite population, per capita disposable income, GDP per capita, female labor force participation, % unemployment, percent of population with a tertiary degree, number of counties per state (total and relative to state population), and the number of school districts (total, relative to school-age population, and to the number of counties).

¹² In analyses not reported here, we also included: diffusion effect of laws on geographically neighboring states, diffusion effect of homeschooling court victories on states in the same circuit, and diffusion of court victories on geographically neighboring states. All results were substantively similar to those reported here. Of course, diffusion processes are much more nuanced than the ways captured in the current analysis. Diffusion can play out through different mechanisms other than geography and across different stages of the policy process (Karch 2007, 2012). Although theorizing diffusion effects is not our primary focus and is beyond the scope of the current paper, we do think that more work can focus on the relationship between social movements and diffusion processes in the study of policy innovations, especially as it differs across stages of the policy process. We thank reviewer two for drawing our attention to this insight.

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