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WHAT IS PUBLIC INTEREST LAW? EMPIRICAL PERSPECTIVES ON AN OLD QUESTION

Ann Southworth

asouthworth@law.uci.edu

University of California, Irvine ~ School of Law

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INTRODUCTION

In the mid-1970s, Professor Marc Galanter predicted that public interest law might improve the lot of "have-nots" by facilitating their organization into "coherent groups that have the ability to act in coordinated fashion, play long-run strategies, [and] benefit from high-grade legal services."[1] He noted that this new practice form might potentially "creat[e] a capacity for the previously unorganized to participate in the legal process in the manner of an organization" and enlist the kinds of sophisticated, intensive, long-term legal assistance that the "haves" routinely enjoy.[2] He cautioned, however, that "the 'public interest' format" could be "conscripted" by almost any imaginable interest[3] and that it "can be used to augment the representation of 'haves' as well of unorganized 'have-nots.'"[4] Along with other observers of the time, Galanter recognized that the form and rhetoric of public interest law could be deployed on behalf of groups that were not among the intended beneficiaries of the form's founders and thus advance public policy goals that those founders would have opposed.

Although the first wave of public interest lawyers and their patrons may have agreed as to how public interest law should be defined, what constituencies it should serve, and what policies

* Professor of Law, University of California, Irvine, School of Law. Thanks to Jesse Keyser for his excellent and tireless research assistance, and to Rick Abel, other Clifford Symposium participants, Carroll Seron, Jack Heinz and Scott Cummings for helpful comments.

[1] Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 141, 143–44 (1974).

[2] Marc Galanter, *Delivering Legality: Some Proposals for the Direction of Research*, 11 LAW & SOC'Y REV. 225, 240 (1976).

[3] *See* Marc Galanter, *Mega-Law and Mega-Lawyering in the Contemporary United States*, *in* THE SOCIOLOGY OF THE PROFESSIONS: LAWYERS, DOCTORS AND OTHERS 152, 171 (Robert Dingwall & Philip Lewis eds., 1983).

[4] Galanter, *supra* note 2, at 240 n.32.

it should advance,[5] those questions are now deeply contested.[6] A tremendous variety of groups now claim to speak for underrepresented constituencies, and many of those groups oppose one another. The field has also expanded in terms of the types of strategies employed and the activity's geographic scope.

Previous scholarship has analyzed various aspects of this expansion of the concept of public interest law, including the creation of scores of conservative and libertarian legal advocacy organizations in the image of public interest organizations of the political left,[7] ambitious litigation and legislative campaigns pursued by these groups,[8] and their networks.[9] Scholars have documented the "internationalization" of public interest law,[10] changes in structure and funding,[11] and the proliferation of private firms that claim the public interest mantle.[12]

My current research builds on this scholarship and relates directly to Galanter's observation about the malleability of the concept of public interest law and its availability to

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[5] *See infra* note 19 and accompanying text.

[6] Ann Southworth, *Conservative Lawyers and the Contest Over the Meaning of "Public Interest Law"*, 52 UCLA L. REV. 1223, 1224 (2005).

[7] *See* LEE EPSTEIN, CONSERVATIVES IN COURT 145 (1985); ANN SOUTHWORTH, LAWYERS OF THE RIGHT: PROFESSIONALIZING THE CONSERVATIVE COALITION 8–10 (2008); STEVEN M. TELES, THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW 267 (2008); Oliver A. Houck, *With Charity for All*, 93 YALE L.J. 1415, 1443 (1984); Southworth, *supra* note 6, at 1224.

[8] *See* HANS J. HACKER, THE CULTURE OF CONSERVATIVE CHRISTIAN LITIGATION (2005); *see also* SOUTHWORTH, *supra* note 7, at 149–67; Jayanth K. Krishnan & Kevin R. den Dulk, *So Help Me God: A Comparative Study of Religious Interest Group Litigation*, 30 GA. J. INT'L & COMP. L. 233, 242 (2002).

[9] *See* John P. Heinz, Ann Southworth & Anthony Paik, *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 LAW & SOC'Y REV. 5, 33–35 (2003); *see also* Anthony Paik, Ann Southworth & John P. Heinz, *Lawyers of the Right: Networks and Organization*, 32 LAW & SOC. INQ. 883 (2007).

[10] *See* Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 1034–35 (2008); *see also* Scott L. Cummings & Louise G. Trubek, *Globalizing Public Interest Law*, 13 UCLA J. INT'L L. & FOREIGN AFF. 1 (2008).

[11] *See* Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975–2004*, 84 N.C. L. REV. 1591 (2006); *see also* Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027 (2008).

[12] *See* Scott L. Cummings & Ann Southworth, *Between Profit and Principle: The Private Public Interest Firm*, *in* PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION (Robert Granfield & Lynn Mather eds., 2009); *see also* Scott L. Cummings, *Privatizing Public Interest Law*, 25 GEO. J. LEGAL ETHICS 1 (2011).

"haves" as well as "have-nots." It invokes the concept of "framing"—the processes by which social actors seek to influence various audiences' interpretations of reality[13]—to explore how a once reasonably contained concept has yielded to a variety of overlapping and sometimes inconsistent meanings. This research treats "public interest law" as a keyword—a phrase that assumes different meanings as it is "mobilized by different groups of social actors for different purposes."[14] It analyzes a variety of public data sources—U.S. Supreme Court briefs, legislative testimony, stories in major newspapers, organizations' websites, scholarship eligibility, student loan qualification standards, and placement materials generated by law schools and career advising services—to investigate how various actors have used the term "public interest law" and influenced our understandings about what public interest law *is*. It will explore how the evolution of the term in public discourse relates to the history of public interest legal practice.

The research is far from complete. This Article nevertheless describes some preliminary findings from two public data sources in which conflict over the meaning of the phrase "public interest law" has been particularly visible. First, it summarizes data regarding the advocacy groups' self-characterization in U.S. Supreme Court briefs, in which organizations hold unilateral control over the description of their structure and missions. Second, it considers accounts of "public interest law" groups in two major newspapers, a forum in which journalists are "both disseminators of and audiences for" competing definitions.[15] Together, these sources show that a phrase once applied to a relatively small number of organizations and practices that served a limited set of constituencies is now claimed by, and used to describe, a much larger set

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[13] Peer C. Fiss & Paul M. Hirsch, *The Discourse of Globalization: Framing and Sensemaking of an Emerging Concept*, 70 AM. SOC. REV. 29 (2005); *see also* David A. Snow et al., *Frame Alignment Processes, Micromobilization, and Movement Participation*, 51 AM. SOC. REV. 464 (1986).

[14] Amin Ghaziani & Marc J. Ventresca, *Keywords and Cultural Change: Frame Analysis of* Business Model *Public Talk, 1975–2000*, 20 SOC. FORUM 523 (2005).

[15] Fiss & Hirsch, *supra* note 13, at 47.

of organizations, actors, policy agendas, and political perspectives. These data also suggest that during a period when conservative and libertarian groups have become increasingly assertive in claiming the public interest designation, the media have used the term more cautiously.

Frame contests sometimes have significant public policy consequences.[16] The contest over the meaning of public interest law is symbolically important because the phrase conveys approval; the organizations, activities, and lawyers associated with the term are understood to enhance access to justice, or advance some vision of the public good. This struggle over discourse also carries direct and practical implications because financial benefits—such as law school scholarship eligibility, summer funding, loan forgiveness, and pro bono credit—sometimes turn on the definition of public interest law. Thus, how the phrase is used and defined is integrally related to the allocation of some types of legitimacy and resources within the American legal profession. Moreover, this contest over framing may have significant consequences for judicial decision making and public policy formation to the extent that public interest law organizations and lawyers exercise special influence tied to their perceived status as champions of underrepresented constituencies.

II. A SKETCH OF THE FIELD: DEFINITIONAL AMBIGUITY AND CONTESTED DISCOURSE

The founders of the first wave of groups to call themselves "public interest law" organizations in the late 1960s sought to use legal tools to protect the interests of constituencies that they claimed were inadequately represented in the political process and, therefore, vulnerable to the decisions of unresponsive corporate and government bureaucracies. Borrowing from earlier models, including the American Civil Liberties Union (ACLU), the National Association for the Advancement of Colored People Legal Defense and Educational Fund

[16] *See* Julie L. Andsager, *How Interest Groups Attempt to Shape Public Opinion with Competing News Frames*, 77 JOURNALISM & MASS COMM. Q. 577 (2000); *see also* William A. Gamson & Andre Modigliani, *Media Discourse and Public Opinions on Nuclear Power: A Constructionist Approach*, 95 AM. J. SOC. 1 (1989).

(LDF), and legal aid societies,[17] the new "public interest lawyers" claimed to represent large, diffuse classes of people who faced collective action problems and those who otherwise could not afford to hire lawyers.[18]

For a brief period, the term "public interest law" may have been widely understood to apply to a well-specified set of institutions, practices, and policy agendas. When a team of social scientists funded by the Ford Foundation studied and assessed "public interest law" in the mid-1970s, they reported finding "consensus" about its general definition: "[A]ctivity that (1) is undertaken by an organization in the voluntary sector; (2) provides fuller representation of underrepresented interests (would produce external benefits if successful); and (3) involves the use of law instruments, primarily litigation."[19] The authors identified eleven subject areas that "encompass[ed] the overwhelming majority of public interest law activities"[20]: civil liberties, environmental protection, consumer protection, employment, education, media reform, healthcare, welfare benefits, housing, voting, and occupational health and safety.[21] Although

[17] *See* Robert Rabin, *Lawyers for Social Change: Perspectives on Public Interest Law*, 28 STAN. L. REV. 207, 209–18 (1976).

[18] *See* Robert Borosage et al., Comment, *The New Public Interest Lawyers*, 79 YALE L.J. 1069 (1970); *see also* Benjamin W. Heineman, Jr., *In Pursuit of the Public Interest*, 84 YALE L.J. 182 (1974) (book review).

[19] Burton A. Weisbrod, *Conceptual Perspective on the Public Interest: An Economic Analysis*, *in* PUBLIC INTEREST LAW: AN ECONOMIC AND INSTITUTIONAL ANALYSIS 22 (Burton A. Weisbrod et al. eds., 1978) [hereinafter PUBLIC INTEREST LAW]. This definition is consistent with other definitions offered around the same time. *See, e.g.*, COUNCIL FOR PUB. INTEREST LAW, BALANCING THE SCALES OF JUSTICE: FINANCING PUBLIC INTEREST LAW IN AMERICA 6 (1976) ("Public interest law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests."); Gordon Harrison & Sanford M. Jaffee, *Public Interest Law Firms: New Voices for New Constituencies*, 58 A.B.A. J. 459, 459 (1972) ("Public interest law is the representation of the underrepresented in American society."); *cf.* Charles R. Halpern & John M. Cunningham, *Reflections on the New Public Interest Law: Theory and Practice at the Center for Law and Social Policy*, 59 GEO. L.J. 1095 (1971) (arguing that public interest lawyers were necessary to represent groups whose interests were underrepresented in administrative agencies and courts).

[20] Burton A. Weisbrod, *What Might Public Interest Law Accomplish: Distributional Effects*, *in* PUBLIC INTEREST LAW, *supra* note 19, at 102, 149.

[21] *See* Weisbrod, *supra* note 19, at 57 tbl.4.7.

they detected "less agreement as to the meaning of being 'underrepresented,'"[22] they nevertheless found eleven primary categories of intended beneficiaries of public interest law: the "general population"; the "[p]oor, in general"; women; prisoners; children; blacks; "Spanish-speaking people"; the mentally impaired; the elderly; Native Americans; and other racial or ethnic minorities.[23]

Ambiguous elements at the heart of the concept of public interest law—especially the notion of underrepresentation—contained the seeds of the term's potentially vast application. The practice form's vague contours and lofty label made it an inviting vehicle for all sorts of groups that appreciated the potential advantages of enlisting lawyers in the nonprofit sector in their efforts to achieve public policy goals. Since the mid-1970s, lawyers and their patrons have founded hundreds of "public interest law" organizations. Many of those groups have advocated for the liberal policy agendas associated with the first wave of public interest law—civil liberties, civil rights, environmental and consumer protection, the expansion of welfare benefits and housing for the poor, media reform, and occupational health and safety. But conservatives have also entered the fray, establishing a set of institutions that claim to speak for different constituencies whose interests have collided with the policy agendas of the first wave of public interest law groups, such as taxpayers, small business owners, crime victims, poor whites, and religious people, among others.[24] These organizations have pursued causes associated with the

[22] *Id*. at 29.

[23] *See id.* at 58 tbl.4.8; *accord Federal Criminal Code, Amnesty, Gun Control, Bank Secrecy Are Debated by the House of Delegates*, 61 A.B.A. J. 1079, 1084 (1975) (reporting on ABA House of Delegates resolution, which stated that it is the professional responsibility of each lawyer to provide "public interest legal services" and defining the phrase as: "a legal service provided without fee or at a substantially reduced fee, which falls into one or more of the following areas: poverty law, civil rights law, public rights law, charitable organization representation, administration of justice"); COUNCIL FOR PUB. INTEREST LAW, *supra* note 19, at 6–7 ("[T]he ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the poor, environmentalists, consumers, racial and ethnic minorities, and others.").

[24] *See* SOUTHWORTH, *supra* note 7, at 9–33.

political right—for example, advocating against school busing, abortion, affirmative action, unions, gun control, and gay rights, and in favor of tougher criminal laws and enforcement, tort reform, school vouchers, and a greater role for religion in the public sphere.[25] The first conservative public interest law groups were crude imitations of their most successful liberal counterparts; as described in a scathing report by conservative critic Michael Horowitz for the Scaife Foundation in the late 1970s, many of these organizations were widely perceived as "hyphenated 'public interest' pretenders."[26] Since then, however, conservative public interest organizations have become more specialized, sophisticated, and effective.[27]

In addition to the tremendous expansion of the types of political missions espoused by groups that call themselves public interest law organizations, the field has also grown in terms of the strategies employed by such organizations and the geographic reach of their agendas. The first public interest law organizations focused primarily on advocacy in courts and administrative agencies, but today many of them employ broader tactical repertoires that include legislative strategies, grassroots organizing, and sophisticated media campaigns.[28] Lawyers have also experimented with new forms of transnational advocacy and efforts to bring international human rights concepts to bear domestically.[29] And while lawyers in private firms have long engaged in

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[25] *See id.*

[26] Michael Horowitz, The Public Interest Law Movement: An Analysis with Special Reference to the Role and Practices of Conservative Public Interest Law Firms 1 (1980) (unpublished memorandum) (on file with author).

[27] Southworth, *supra* note 6, at 1255–62.

[28] For case studies documenting the broad range of strategies employed by lawyers serving movements and their sophistication regarding the limitations of litigation, see Michael McCann & Helena Silverstein, *Rethinking Law's "Allurements": A Relational Analysis of Social Movement Lawyers in the United States*, *in* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 261 (Austin Sarat & Stuart Scheingold eds., 1998). *See also* Ann Southworth, *Lawyers and the "Myth of Rights" in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469 (1999); Scott L. Cummings & Douglas NeJaime, *Lawyering for Marriage Equality*, 57 UCLA L. REV. 1235 (2010).

[29] *See* Yves Dezalay & Bryant G. Garth, *Constructing Law Out of Power: Investing in Human Rights as an Alternative Political Strategy*, *in* CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA 354, 360 (Austin Sarat & Stuart Scheingold eds., 2001); *see also* Cummings & Trubek, *supra* note 10, at 25–26.

pro bono and law reform work,[30] private sector lawyers may now play a larger role in the overall public interest law industry than they did in the 1970s.[31]

Thus, a concept that was once understood to apply primarily to liberal causes, pursued through litigation and administrative advocacy in the United States by lawyers working in the nonprofit sector, has given way to a much more varied and contested set of understandings. Liberal and conservative public interest law groups, pursuing opposing policy agendas, dispute the legitimacy of each other's claims to serve constituencies that are truly disadvantaged in the political process.[32] Friendly critics of purely procedural definitions of public interest law have asked rhetorically whether lawyers who represent groups that are "underrepresented" because their purposes are abhorrent—such as Nazis, pedophiles, terrorists, and serial killers—fall within the definition of public interest law.[33] Some lawyers for poor people eschew traditional forms of advocacy in the name of community organizing,[34] raising questions about whether such work qualifies as "public interest *law*."[35] Private firms devote considerable time to pro bono and impact work, and some private sector firms call themselves "private public interest law firms,"

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[30] *See* Joel F. Handler et al., *The Public Interest Law Industry, in* PUBLIC INTEREST LAW, *supra* note 19, at 42, 47–49.

[31] For a discussion of the role of pro bono in meeting the legal needs of the poor, see Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1 (2004). *See also* Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 LAW & SOC'Y REV. 79 (2007). For further discussion on the cause-oriented work of small "private public interest law firms," see Cummings & Southworth, *supra* note 12.

[32] *See, e.g.*, Nancy Blodgett, *The Ralph Naders of the Right*, A.B.A. J., May 1984, at 71 (quoting Ralph Nader, who said that conservative public interest law firms were "agents of corporations and not public interest law firms"); Paul C. Gerber, *The Pacific Legal Foundation: Its Goal Is Deregulation*, CAL. LAW., Nov. 1981, at 26, 28 (quoting Robert L. Gnaizda, a senior attorney of Public Advocates, Inc., who asserted that "The Pacific Legal Foundation is a public interest law firm in the same way that catsup is a vegetable under Reagan's new school lunch guidelines"); Edwin Meese III, *Foreword* to BRINGING JUSTICE TO THE PEOPLE, at i, ii (Lee Edwards ed. 2004) (describing leaders of liberal advocacy groups as "so-called public interest lawyers").

[33] ALAN K. CHEN & SCOTT L. CUMMINGS, PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE 14 (2013).

[34] *See, e.g.*, William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 456 (1994).

[35] *See* CHEN & CUMMINGS, *supra* note 33, at 29.

but there are no settled criteria for distinguishing such firms from their commercial counterparts.[36] Plaintiffs' lawyers sometimes pursue changes in the practices of corporations and government actors,[37] but the idea that they might be viewed as a species of public interest lawyer meets resistance from those who insist that public interest lawyers' motives must be altruistic.[38] Thus, there is considerable disagreement today about what "public interest law" means, and to what organizations and lawyers the term applies.[39]

Some scholars have struggled to specify the boundaries of public interest law in order to describe its features and characteristics, defend its premises, and evaluate its efficacy as a mechanism for remedying social, political, and economic disadvantage. Laura Beth Nielsen and Catherine Albiston, for example, have defined public interest law groups as "organizations in the

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[36] *See* Cummings & Southworth, *supra* note 12, at 184 ("Distinguishing private public interest firms from their commercial counterparts is . . . challenging . . . ."); *see also* BERNARD KOTEEN OFFICE OF PUB. INTEREST ADVISING AT HARVARD LAW SCHOOL, PRIVATE PUBLIC INTEREST AND PLAINTIFF'S FIRM GUIDE 3 (2010) ("There is no official test for what makes a firm a private public interest law firm. It is a somewhat elastic term, used to describe private, for-profit firms that dedicate at least a significant portion of their caseload to matters that have some broad social, political, or economic impact."); *cf.* Heineman, *supra* note 18, at 185 n.10 (defining a private firm as a public interest law firm "when it spends more than 25[%] of its time on public interest practice").

[37] *See* Howard M. Erichson, *Doing Good, Doing Well*, 57 VAND. L. REV. 2087, 2090–91 (2004) (arguing that mass torts "combine the disparate worlds of personal injury litigation and public interest law practice" and that tort lawyers tend to be motivated partly by "social change objectives"); *see also* Lars Noah, *Rewarding Regulatory Compliance: The Pursuit of Symmetry in Products Liability*, 88 GEO. L.J. 2147, 2164 (2000) (noting that plaintiffs' lawyers and public interest lawyers are "close allies"); *cf.* Martin H. Redish, *Class Actions and the Democratic Difficulty: Rethinking the Intersection of Private Litigation and Public Goals*, 2003 U. CHI. LEGAL F. 71, 79–82 (2003) (noting that a plaintiffs' lawyer motivated solely by financial gain might nevertheless further the public interest by deterring corporate illegality).

[38] *See, e.g.*, David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 CALIF. L. REV. 209, 210 n.1 (2003) ("[A] public-interest lawyer is a lawyer for whom making money is not the primary purpose for taking the case . . . ."); Andrew Jay McClurg, *Fight Club: Doctors vs. Lawyers—A Peace Plan Grounded in Self-Interest*, 88 TEMPLE L. REV. 309, 350 (2011) ("Plaintiffs' personal injury lawyers are not public interest lawyers. The most successful ones are among the wealthiest professionals in America.").

[39] *See* STUART A. SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING 5 (2004) ("[T]o talk about public interest lawyering is to take on irresolvable disputes about what is, or is not, in the public interest."); *see also* Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 FORDHAM L. REV. 719, 729–30 (2001) ("Today, people use the term 'public interest' law as a gloss for a wide range of sometimes contradictory lawyering categories."); Scott L. Cummings, *The Pursuit of Legal Rights—and Beyond*, 59 UCLA L. REV. 506, 517 (2012) ("[F]orty years after the invention of public interest law, we no longer have a working definition of what exactly it is."); Rhode, *supra* note 11, at 2029 ("[There are no] rigorous, widely accepted criteria for determining what constitutes a 'public interest' legal organization . . . .").

voluntary sector that employ at least one lawyer at least part time, and whose activities (1) seek to produce significant benefits for those who are external to the organization's participants, and (2) involve at least one adjudicatory strategy."[40] Others have adopted a broader conception that does not require that organizations engage in litigation provided they invoke law in some larger sense. In her research on prominent public interest legal organizations' priorities, strategies, and funding, Deborah Rhode has defined the category "to include nonprofit tax-exempt groups that attempt[] to use law to achieve social objectives."[41] Scott Cummings has proposed applying the term only to "legal activities that advance the interests and causes of constituencies that are disadvantaged in the private market or the political process *relative to more powerful social actors*."[42] Under this definition, he suggests, public interest law ordinarily involves using "legal means to challenge corporate or governmental policies and practices."[43]

While the forgoing scholarship attempts to define public interest law in order to examine and evaluate the organizations, lawyers, and practices associated with it, my current research asks a different set of empirical questions. It makes the definitional battle itself the central focus of inquiry.

This Article presents preliminary data about two arenas in which actors construct the meaning of public interest law: in organizations' use of the label to describe themselves in U.S. Supreme Court litigation, and in two major newspapers' use of the phrase. It focuses on the extent to which the claims that conservative and libertarian groups have made in their briefs match the media's portrayal of those groups.

[40] Nielsen & Albiston, *supra* note 11, at 1601.
[41] Rhode, *supra* note 11, at 2029.
[42] Cummings, *supra* note 39, at 523.
[43] *Id.* at 524.

For purposes of this preliminary analysis, I group together organizations that pursue a broad range of policy agendas associated with the American political right. I do not attempt to assess whether the policy positions that these organizations take are really "conservative" in intellectual or philosophical terms. Nor do I mean to suggest that all of these groups are similar; they are not. Their policy agendas appeal to different strands of the American political right, including social conservatives, libertarians, and business interests, and some of these causes are in significant tension—sometimes outright conflict—with one another.[44] But all of the organizations grouped together as "conservative/libertarian" share a feature that is relevant to the question of how the political valence of public interest law has changed since the 1970s: all of them pursue policy agendas associated with the coalition that has consistently coalesced behind the Republican Party during the past several decades.

Organizations that file U.S. Supreme Court briefs often introduce themselves to the Court with short descriptions of their form and purposes. As authors of, or signatories to, these briefs, organizations have substantial control over the self-descriptions contained in the briefs. To qualify for 501(c)(3) tax exempt charitable status, legal advocacy organizations must be organized and operated exclusively for exempt purposes.[45] Organizations that claim 501(c)(3) charitable status must ensure that their self-descriptions in briefs (and other publications) are consistent with their claims that they operate for exempt charitable purposes. But they can easily do so without invoking the phrase "public interest law." Nonprofit organizations that choose to describe themselves as "public interest law" organizations are laying claim to a term—a frame—

[44] *See* SOUTHWORTH, *supra* note 7, at 4–5, 175–81.

[45] I.R.C. § 510(c)(3) (2006). Exempt charitable purposes include "[r]elief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency." 26 C.F.R. § 1.501(c)(3)-1 (2012).

that is linked with the legal profession's long-standing aspiration to promote access to justice and give voice to "have-nots."

The media are another site on which various social groups, institutions, and ideologies "struggle over the definition and construction of social reality."[46] Unlike briefs, in which organizations generally can present themselves as public interest law groups without any significant external influence, media accounts of the organizations' work are mediated by journalists and editors, who essentially serve as "brokers" in this process.[47] Although journalists are consumers of frames provided by their sources, they are not passive recipients. Journalists' working norms and practices influence the process. Stories based on information supplied in press releases, briefs, and official proceedings may tend to favor interpretations offered by the organizations themselves, while stories based on interviews initiated by the reporter, or based on the reporter's independent research and analysis, may tend to favor competing interpretations.[48] The balance norm in journalism pushes toward including both "conservative" and "liberal" interpretations. Reporters' presentations may also be affected by their perceptions of readers' expectations.

III. THE RESEARCH AND PRELIMINARY DATA

A. U.S. Supreme Court Briefs

I searched two online databases, LexisNexis and Gale's *The Making of Modern Law: U.S. Supreme Court Records and Briefs*, for all U.S. Supreme Court filings from 1960 through 2011 in which the phrase "public interest law" or "public interest legal" (public interest law/legal) appeared. Although a broader search for all "public interest" organizations might

[46] Fiss & Hirsch, *supra* note 13, at 34 (quoting 5 MASS COMMUNICATION REVIEW YEARBOOK (Michael Gurevitch & Mark R. Levy eds., 1985)).
[47] *Id.* at 33; *see also* Gamson & Modigliani, *supra* note 16, at 3 (noting that media both reflect public discourse and contribute to its creation).
[48] Gamson & Modigliani, *supra* note 16, at 8.

have turned up some law groups, it also would have included organizations run by scientists, theologians, professors, economists, and doctors. Sorting through those to find the law-related groups would have been a massive undertaking.

From 1973, when the first such brief was filed, through 2011, over 1,400 such documents were filed on behalf of almost 300 organizations. In 1,281 of those filings, the phrase "public interest law" or "public interest legal" appeared in an organization's name or self-description. The vast majority of those—1,217 (95%)—were amicus briefs, in which a statement of the amicus curiae's identity is required by Rule 29 of the Federal Rules of Appellate Procedure, but they also included twenty-three party briefs, twenty-four petitions for certiorari, and other miscellaneous filings.

The organizations characterized as public interest law groups include many well-established groups associated with left-of-center political agendas, such as the ACLU, Alliance for Justice, Asian Pacific Legal Center, California Rural Legal Assistance, Center for Constitutional Rights, Center for Law and Social Policy, Center for Law and the Public Interest, Children's Defense Fund, Disability Rights Advocates, Environmental Defense Fund, Equal Rights Advocates, Lambda Legal Defense, Lawyers' Committee for Civil Rights Under Law, Mexican-American Legal Defense and Education Fund (MALDEF), LDF, NOW Legal Defense and Education Fund (now Legal Momentum), National Center for Youth Law, National Women's Law Center, Natural Resources Defense Council (NRDC), Public Advocates, Public Citizen Litigation Group, Sierra Club Legal Defense Fund (now EarthJustice), Western Center on Law and Poverty, and Youth Law Center. They also included a large variety of well-known conservative and libertarian organizations, such as the Pacific Legal Foundation, National Chamber Litigation Center, Southeastern Legal Foundation, Washington Legal Foundation,

Institute for Justice, Landmark Legal Foundation, Mountain States Legal Foundation, Center for Individual Rights, American Center for Law and Justice, Liberty Counsel, and Alliance Defense Fund.

To assess (in very crude terms) the overall political composition of organizations filing these briefs and trends in their participation in Supreme Court litigation, I assigned all of the organizations to one of two broad categories: (1) conservative and libertarian; or (2) "other." I based the conservative and libertarian designations on my prior research for a book about lawyers of the political right[49] and on my review of the organizations' mission statements. I recognize that the assignment of organizations to the conservative and libertarian category involves an interpretive judgment about the groups' purposes. Therefore, I have listed all forty-seven organizations in that category in the Appendix, so that readers may independently evaluate the designations.

Conservative and libertarian groups are well represented among the organizations that have most often claimed the "public interest law" or "public interest legal" labels in U.S. Supreme Court briefs. Table 1 lists the organizations that have described themselves as public interest law groups in five or more Supreme Court briefs since 1970. Conservative and libertarian groups appear in bold typeface.

TABLE 1: ORGANIZATIONS MOST FREQUENTLY DESCRIBED AS "PUBLIC INTEREST LAW/LEGAL" IN SUPREME COURT BRIEFS, 1970–2011

Organization	**First Brief**	**# of Briefs**
Washington Legal Foundation	**1981**	**308**
Mountain States Legal Foundation	**1978**	**72**
Trial Lawyers for Public Justice (now Public Justice)	1988	69
Institute for Justice	**1991**	**58**
Pacific Legal Foundation	**1974**	**56**

[49] *See* SOUTHWORTH, *supra* note 7.

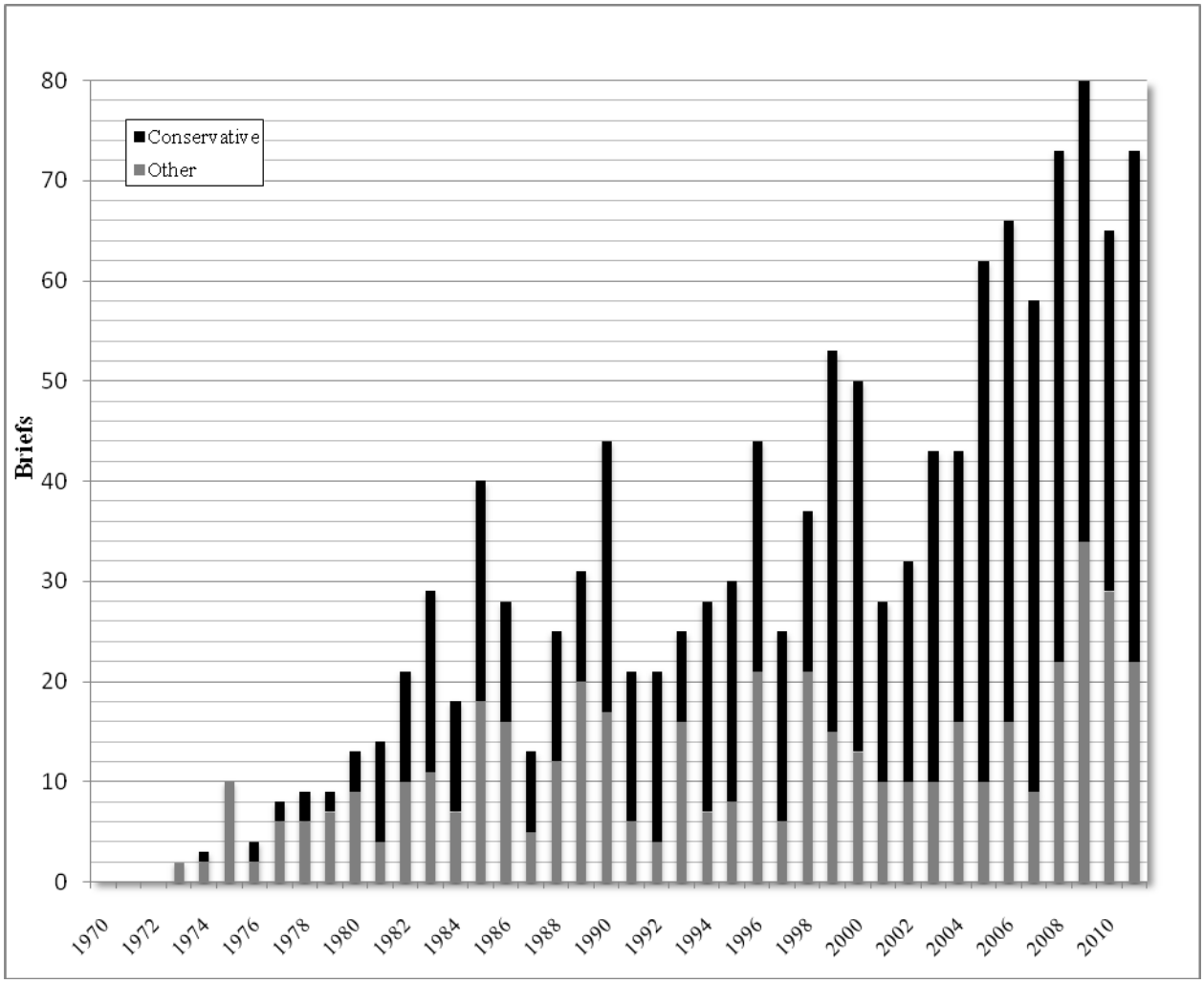
Equal Rights Advocates	1977	45
Legal Foundation of America	**1981**	**40**
National Federation of Independent Business Small Business Legal Center	**2004**	**37**
New England Legal Foundation	**1982**	**35**
American Center for Law and Justice	**1992**	**31**
Public Interest Law Center of Philadelphia	1975	31
Women's Law Project	1977	29
California Women's Law Center	1993	21
Claremont Institute Center for Constitutional Jurisprudence	**1999**	**21**
Legal Aid Society–Employment Law Center	1987	20
Center for Individual Rights	**1990**	**18**
Northwest Women's Law Center	1982	18
Alliance Defense Fund	**2003**	**17**
Center for Public Interest Law	1984	15
Defenders of Property Rights	**1991**	**15**
Juvenile Law Center	1987	15
Becket Fund for Religious Liberty	**1997**	**14**
Landmark Legal Foundation	**1987**	**14**
Southeastern Legal Foundation	**1977**	**14**
Thomas More Law Center	**2000**	**14**
Atlantic Legal Foundation	**1989**	**13**
National Center for Lesbian Rights	1989	12
Youth Law Center	1977	12
Asian Pacific American Legal Center	2005	11
Connecticut Women's Education and Legal Fund	1980	11
Lambda Legal	1990	11
Asian Law Caucus	1991	10
Center for Law in the Public Interest	1975	9
Gulf & Great Plains Legal Foundation (now Landmark Legal Foundation)	**1982**	**9**
NAACP Legal Defense Fund	1975	9
National Health Law Program	1988	8
National Legal Foundation	**1999**	**8**
Public Advocates, Inc.	1975	8
Oregonians in Action Legal Center	**1996**	**7**
Alliance for Justice	1983	6
Asian Law Alliance	2001	6
Center for Law and Social Policy	1986	6
Center for Public Representation	1987	6
Council for Public Interest Law	1977	6
Gay and Lesbian Advocates and Defenders	1995	6
Global Rights	1982	6
Public Counsel	1999	6
Americans United for Life	**1989**	**5**

Center on National Labor Policy	1978	5
National Gay Rights Advocates	1986	5
New York Lawyers for the Public Interest	1987	5
Northwest Legal Foundation	**1994**	**5**

Below, Figure 1 shows the number of U.S. Supreme Court briefs on behalf of all organizations that described themselves as "public interest law" or "public interest legal" groups since 1970. The portion of the bar in black corresponds with briefs filed by the conservative and libertarian groups listed in the Appendix, while the grey portion reflects filings by all other groups. Overall, the figure shows a dramatic increase in the number of briefs filed by organizations that characterize themselves as public interest groups. It also demonstrates a significant rise in such filings by conservative and libertarian organizations and a striking increase in their share of the total number of briefs filed by self-described "public interest law/legal" groups during that period.

Collectively, the forty-seven conservative and libertarian organizations listed in the Appendix filed 812 of the 1,281 briefs filed by "public interest law/legal" organizations from 1970 to 2011—almost two-thirds of all Supreme Court briefs filed by groups describing themselves as "public interest law/legal" organizations during that period.

FIGURE 1: U.S. SUPREME COURT BRIEFS FILED BY "PUBLIC INTEREST LAW/LEGAL" GROUPS, 1970–2011



These data do not necessarily mean that conservative and libertarian groups file more Supreme Court briefs than liberal organizations. Rather, it shows a disparity in the number of briefs by groups *self-identifying* as public interest law organizations in those briefs. Some of the most well-established legal advocacy groups typically do not use the phrase "public interest law" or "public interest legal" to describe themselves; rather, they adopt different frames—for example, civil rights, social justice, or civil liberties—to characterize their missions. The most obvious examples are the ACLU and LDF, which served as primary models for the first wave of

public interest law organizations in the late 1960s. These organizations occasionally appear as "public interest law" groups in U.S. Supreme Court briefs and are, therefore, among the "other" organizations that appear in the data. However, these "other" organizations have long described their missions in terms of particular substantive agendas rather than the procedural justice rationale of public interest law.[50] The ACLU, for example, typically characterizes itself as "a nationwide, nonprofit, nonpartisan organization . . . dedicated to the principles of liberty and equality embodied in the Constitution.""[51] Similarly, LDF ordinarily describes itself as "a non-profit legal organization established to assist African Americans and other people of color in securing their civil and constitutional rights."[52] The NRDC, another organization associated with the liberal vanguard of public interest law,[53] calls itself "a non-profit conservation organization."[54] All three groups are highly active in U.S. Supreme Court litigation. Indeed, it is likely that each of them has filed more briefs than any of the organizations in Table 1, with the possible exception of the Washington Legal Foundation.[55] Thus, while conservative and libertarian groups have aggressively courted the "public interest law" label in Supreme Court briefs, progressives, including some of the most iconic liberal legal advocacy organizations, often have relied on other language to describe their form and purposes.

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[50] *See* David R. Esquivel, Note, *The Identity Crisis in Public Interest Law*, 46 DUKE L.J. 327, 342–43 (1996).

[51] *See, e.g.*, Brief for the ACLU as Amicus Curiae Supporting Respondents at 1, Fisher v. Univ. of Tex. at Austin, 132 S. Ct. 1536 (2012) (No. 11-345), 2012 U.S. S. Ct. Briefs LEXIS 3361.

[52] *See, e.g.*, Brief for the ACLU et al. as Amici Curiae Supporting Respondents at 1a, Douglas v. Indep. Living Ctr. of S. Cal., Inc., 132 S. Ct. 1204 (2011) (Nos. 09-958, 09-1158, 10-283), 2011 U.S. S. Ct. Briefs LEXIS 947.

[53] *See* David M. Trubek, *Environmental Defense, I: Introduction to Interest Group Advocacy in Complex Disputes*, *in* PUBLIC INTEREST LAW, *supra* note 19, at 151 (calling the NRDC one of the "largest foundation and membership-supported [public interest law] firms").

[54] *See, e.g.*, Brief for the American Bird Conservancy et al. as Amici Curiae Supporting Respondent at 2, Nat'l Ass'n of Homebuilders v. Defenders of Wildlife, 551 U.S. 644 (2007) (Nos. 06-340, 06-549), 2007 U.S. S. Ct. Briefs LEXIS 306.

[55] I have not yet calculated exact counts of filings by these groups from 1960 through 2011. Since 1980, however, LDF has filed 211 briefs, the NRDC has filed 90, and the ACLU and its affiliates have filed over 1,000.

Nor do these data show that the conservative and libertarian "public interest law/legal" organizations that most frequently participate in Supreme Court litigation are especially influential. As noted above, all but sixty-four of the 1,281 briefs included in Figure 1 are amicus briefs. The rise of amicus participation by "public interest law/legal" groups correlates with a larger trend of dramatically increased amicus participation in Supreme Court litigation since the 1960s,[56] though evidence regarding the influence of amicus briefs on judicial outcomes is inconclusive.[57] In theory at least, amicus briefs might shape the Court's decisions by supplying useful information relevant to the merits of the decision, or by signaling the preferences of various affected interest groups.[58] The frequency of references to amici and quotations from amicus briefs in the Supreme Court decisions has increased over time, which suggests some impact on the Court's decisions.[59] The stunning number of briefs submitted by conservative and libertarian public interest law groups may indicate an expectation by such groups that their efforts will contribute to litigation success. That expectation may, in turn, reflect the

[56] *See* ANDREW JAY KOSHNER, SOLVING THE PUZZLE OF INTEREST GROUP LITIGATION 7–11 (1998) (documenting a steady increase in the percentage of cases with at least one amicus brief from 1950 to 1994); *see also* Joseph D. Kearney & Thomas W. Merrill, *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 U. PA. L. REV. 743, 751–52 (2000) (finding that the incidence of amicus curiae participation in the Supreme Court has increased dramatically since 1960).

[57] *See* Paul M. Collins, Jr., *Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation*, 38 LAW & SOC'Y REV. 807 (2004) (finding that amicus participation increases litigation success); *see also* Gregg Ivers & Karen O'Connor, *Friends as Foes: The Amicus Curiae Participation and Effectiveness of the American Civil Liberties Union and Americans for Effective Law Enforcement in Criminal Cases, 1969–1982*, 9 LAW & POL'Y 161, 172 (1987) (finding that amicus participation by two advocacy groups, the ACLU and Americans for Effective Law Enforcement, influenced litigation outcomes, but only when the Court was ideologically predisposed to rule in favor of the outcomes they supported); Kearney & Merrill, *supra* note 56, at 797–98 (finding that in cases in which the Solicitor General did not participate as amicus or party, disparities of amicus support were associated with greater success); Kevin T. McGuire, *Obscenity, Libertarian Values, and Decision Making in the Supreme Court*, 18 AM. POL. Q. 47, 48 (1990) (finding a significant relationship between the level of amicus participation and litigation success); Donald R. Songer & Reginald S. Sheehan, *Interest Group Success in the Courts: Amicus Participation in the Supreme Court*, 46 POL. RES. Q. 339 (1993) (finding no evidence of amicus participants' influence).

[58] *See* Kearney & Merrill, *supra* note 56, at 774–87; *see also* Collins, Jr., *supra* note 57, at 811–16.

[59] *See* Kearney & Merrill, *supra* note 56, at 756–58.

increasingly conservative composition of the Court. But amicus activity may relate just as much to organizations' expectations regarding potential internal benefits—such as attracting members and patrons and generating publicity—as to any realistic prospect of influencing the Court's decisions.[60] The large number of briefs filed by conservative and libertarian groups may say more about their "organizational maintenance" objectives—their interest in taking positions that will promote their survival as organizations—than it does about their actual influence on the Supreme Court.[61]

Although these data do not demonstrate that conservative and libertarian public interest law groups are especially active and influential in Supreme Court litigation, they strongly indicate that these organizations attach importance to the "public interest" designation and actively seek to be regarded as public interest law groups by the Court and other potential "audiences" for their briefs. They also suggest that, in this arena of activity, conservative and libertarian groups have courted the "public interest law" label more aggressively than their liberal counterparts over the past several decades. My future research will examine the various other ways that nonprofit advocacy groups characterize their structures and missions in Supreme Court briefs, and systematically compare the litigation activity of organizations that use those other frames with those that call themselves public interest law groups.

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[60] *See* Lee Epstein, *Interest Group Litigation During the Rehnquist Court Era*, 9 J.L. & POL. 639, 675–76 (1993) (citing evidence that interest groups litigate for "organizational maintenance" reasons). The preliminary data presented here do not capture some of the factors that may differentiate effective briefs from inconsequential ones, especially their quality, the extent to which they present arguments and information not included in other briefs, and whether they support respondents or petitioners. *Cf.* Kearney & Merrill, *supra* note 56, at 749; Kevin T. McGuire, *Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success*, 57 J. POL. 187, 194 (1995).

[61] *See* EPSTEIN, *supra* note 7, at 675–76.

B. Major Newspapers: The New York Times *and* Wall Street Journal

To begin to understand how newspapers picked up the language of public interest law, and how and when they have used it to identify organizations claiming to represent various underrepresented constituencies, I compiled all mentions of "public interest law" or "public interest legal" from 1960 to 2011 in articles, editorials, and op-ed pieces in two major national newspapers: the *New York Times* and *Wall Street Journal*. There were 1,135 such articles, editorials, and op-eds applying the term to a total of 214 identifiable organizations.[62] The first of those articles appeared in 1970.

Only twenty-four of the 214 identifiable organizations were conservative or libertarian groups.[63] But, among the organizations most frequently described as "public interest law/legal" in these newspapers from 1970 to 2011, conservative and libertarian groups are well represented; nine of the thirty-six organizations with eight or more mentions are conservative or libertarian. Those organizations are listed in Table 2 in order of the frequency of their designation, with conservative and libertarian groups highlighted in bold typeface. All but four of the

[62] In another 177 instances, the terms "public interest law" or "public interest legal" appeared in advertisements or letters to the editor.

[63] These groups are the American Center for Law and Justice, American Legal Foundation, Americans United for Life, Atlantic Legal Foundation, Becket Fund for Religious Liberty, Capital Legal Foundation, Center for Individual Rights, Federalist Society, Individual Rights Foundation, Institute for Justice, Judicial Watch, Landmark Legal Foundation, Liberty Counsel, Mid-America Legal Foundation, Mid-Atlantic Legal Foundation, Mountain States Legal Foundation, National Chamber Litigation Center, National Legal Foundation, New England Legal Foundation, Pacific Legal Foundation, Rutherford Institute, Southeastern Legal Foundation, Thomas More Law Center, and Washington Legal Foundation. All but four of these organizations—Capital Legal Foundation, Federalist Society, Individual Rights Foundation, and Rutherford Institute—were among the organizations that described themselves as "public interest law/legal" organizations in Supreme Court briefs in the same period. The Federalist Society does not litigate and, in fact, does not take formal positions on public policy matters. The Capital Legal Foundation no longer exists.

organizations in this list are among those that described themselves as "public interest law/legal" organizations in Supreme Court briefs.[64]

TABLE 2: ORGANIZATIONS LABELED AS "PUBLIC INTEREST LAW/ LEGAL" IN THE *NEW YORK TIMES* AND THE *WALL STREET JOURNAL*, 1970–2011

Organization	**Number of Mentions**
Media Access Project	85
Institute for Justice	**76**
Natural Resources Defense Council	43
Washington Legal Foundation	**39**
Public Advocates	38
Mountain States Legal Foundation	**33**
Pacific Legal Foundation	**33**
Center for Law and Social Policy	28
Public Interest Law Center of Philadelphia	28
Capital Legal Foundation	**24**
Council for Public Interest Law	24
Center for Individual Rights	**23**
Trial Lawyers for Public Justice	23
Public Citizen	22
Center for Law in the Public Interest	21
Center for Constitutional Rights	18
Tax Analysts and Advocates	18
National Gay Rights Advocates	16
Becket Fund for Religious Liberty	**15**
American Center for Law and Justice	**13**
Citizens Communications Center	13
Food Research and Action Center	12
Public Interest Law Center	12
Brennan Center for Justice	11
Center for Public Interest Law	11

[64] The only exceptions are the Brennan Center for Justice, Capital Legal Foundation, the Legal Resources Centre, and the National Association for Public Interest Law (now Equal Justice Works). The Brennan Center typically does not use public interest law" or "public interest legal" in its self-descriptions in briefs, instead calling itself "a nonpartisan public policy and law institute focused on the fundamental issues of democracy and justice." *See, e.g.*, Brief for the Nat'l Ass'n of Criminal Defense Lawyers et al. as Amici Curiae Supporting Petitioner at 1–2, Turner v. Rogers, 131 S. Ct. 2507 (2011) (No. 10-10), 2011 U.S. S. Ct. Briefs LEXIS 33. The Capital Legal Foundation was a regional conservative legal organization established under the umbrella of the National Legal Center for the Public Interest in the 1970s, but it is now defunct. The Legal Resources Centre is a South African human rights organization. Equal Justice Works does not litigate; it seeks to promote "opportunities for law students and lawyers that provide the training and skills that enable them to provide effective representation to underserved communities and causes." *About the Organization*, EQUAL JUSTICE WORKS, http://www.equaljusticeworks.org/about/history (last visited Feb. 24, 2013).

Legal Action Center	11
Legal Resources Center	11
Equal Justice Works	9
Government Accountability Project	9
Alliance for Justice	8
Business and Professional People for the Public Interest	8
Christic Institute	8
Community Rights Counsel	8
Equal Rights Advocates	8
NAACP Legal Defense Fund	8
Southeastern Legal Foundation	**8**
Americans United for Life	**7**
Environmental Defense Fund	7
Institute for Public Representation	7
Judicial Watch	**7**
Liberty Counsel	**7**
Landmark Legal Foundation	**6**
Public Interest Law Center of New Jersey	6
Puerto Rican Legal Defense and Education Fund	6
California Rural Legal Assistance	5
Thomas More Law Center	**5**
Youth Law Center	5

Several of the conservative and libertarian groups that have most actively promoted their own characterization as public interest law groups in Supreme Court filings—those that filed five or more such briefs—have not drawn that label from either the *New York Times* or the *Wall Street Journal*.[65] Future research will examine the alternative descriptions that journalists and editors have applied to these organizations.

To begin to assess overall trends during this period and potential differences in these newspapers' coverage, I logged the number of mentions by year. Figures 2 and 3 show the numbers of times "public interest law" or "public interest legal" applied to particular organizations in the *New York Times* and *Wall Street Journal* respectively for each year from

[65] Those organizations are the Legal Foundation of America, Alliance Defense Fund, New England Legal Foundation, Claremont Institute's Center for Constitutional Jurisprudence, National Federation of Independent Business Small Business Legal Center, Defenders of Property Rights, Oregonians in Action Legal Center, and Northwest Legal Foundation.

1970 to 2011. The black portions of the bars represent the total number of mentions attributable to conservative and libertarian organizations, while the grey portions represent mentions of all other organizations.

FIGURE 2: MENTIONS OF "PUBLIC INTEREST LAW/LEGAL" ORGANIZATIONS IN THE *NEW YORK TIMES*, 1970–2011

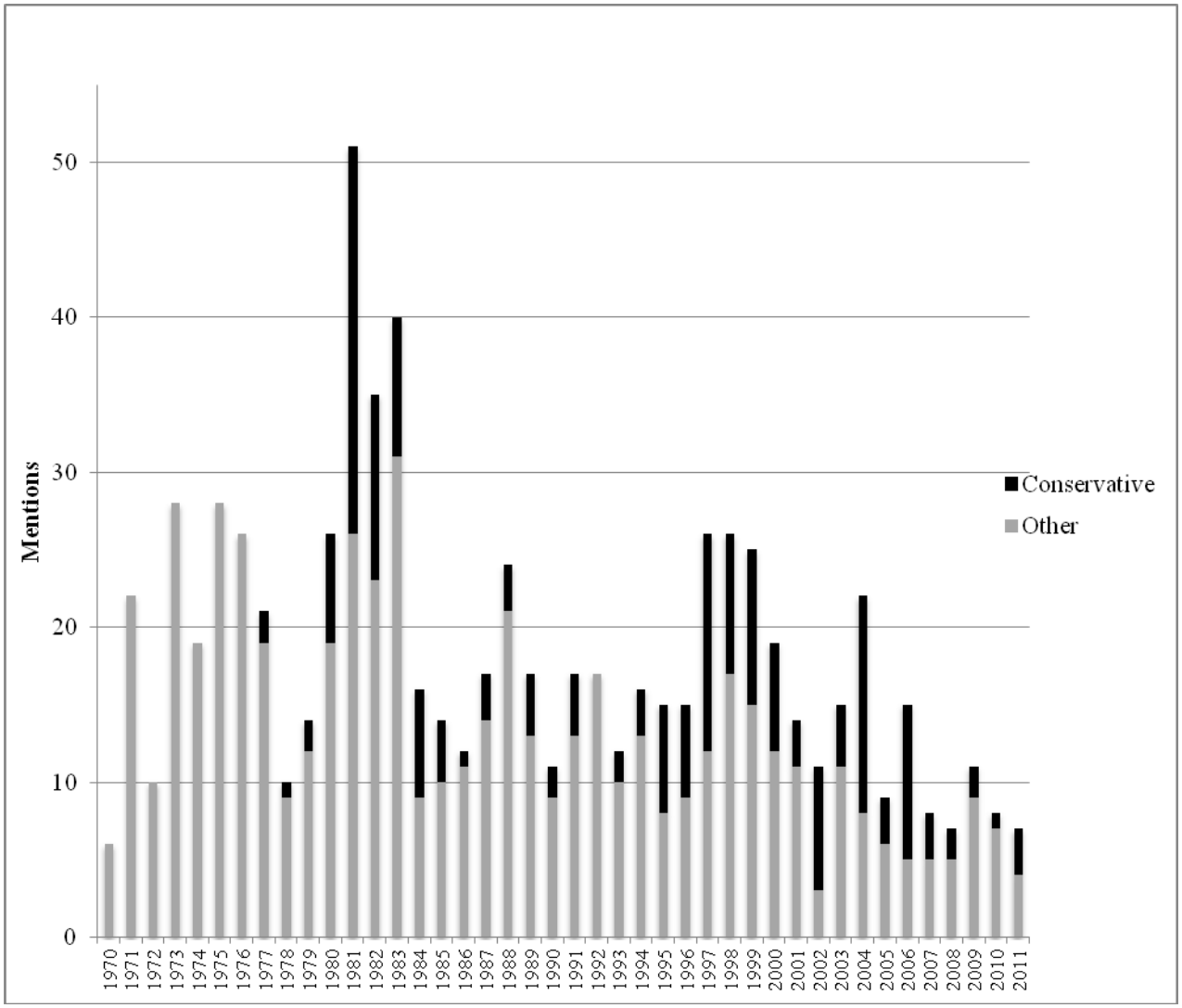
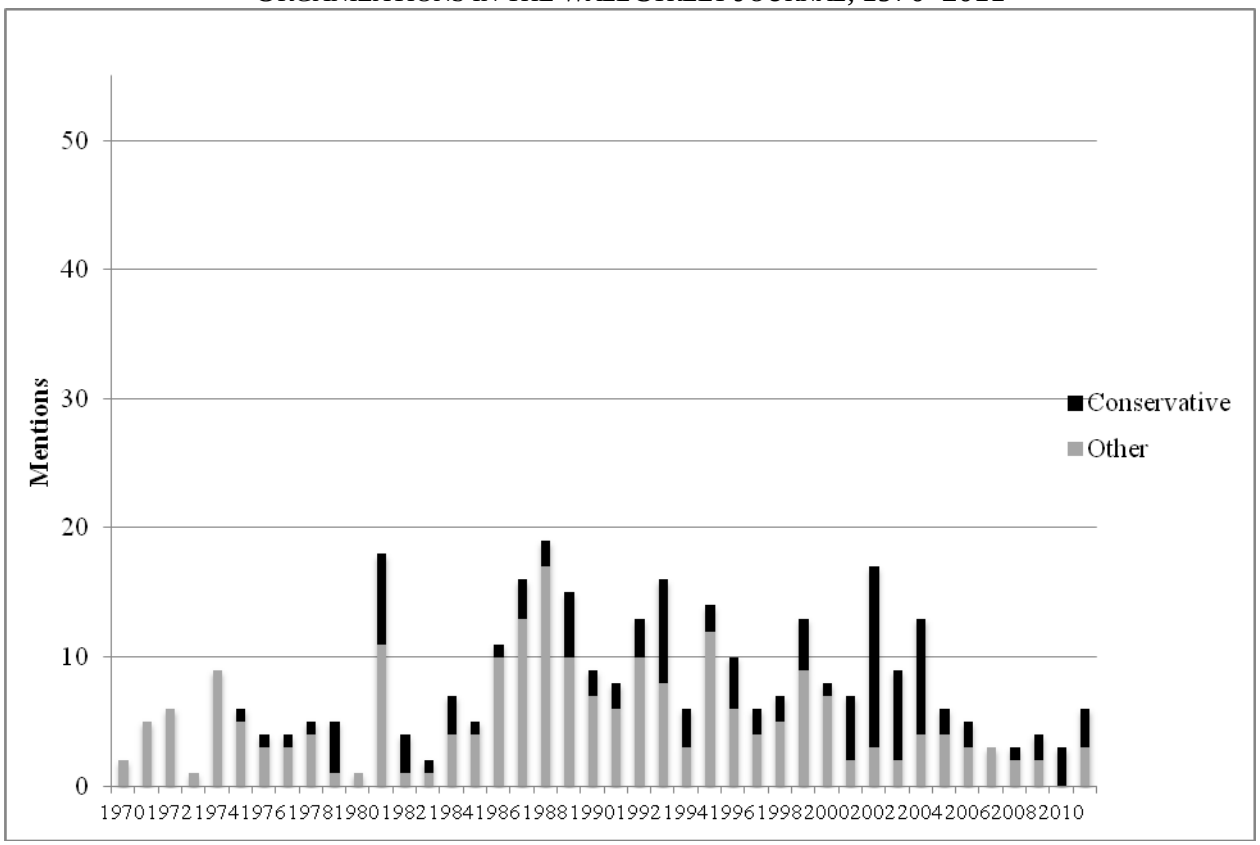


FIGURE 3: MENTIONS OF "PUBLIC INTEREST LAW/LEGAL" ORGANIZATIONS IN THE *WALL STREET JOURNAL*, 1970–2011



These data show that both newspapers began to apply the terms "public interest law" or "public interest legal" to conservative and libertarian groups soon after the organizations started to claim the term for themselves in the mid-1970s. Thereafter, both newspapers frequently applied the label to conservative and libertarian groups, but those organizations did not constitute nearly as large a proportion of groups characterized as such in the newspapers as they did in Supreme Court briefs. Overall, conservative and libertarian groups comprised a somewhat higher proportion of "public interest law/legal" groups in the *Wall Street Journal* than in the *New York Times*; from 1970 to 2011, they accounted for 115 of 331 (35%) of such mentions in the *Wall Street Journal* and 197 of 762 (26%) of such mentions in the *New York Times*. In both newspapers, use of the phrase to describe identifiable groups has gradually declined since 2004, even though the filing of Supreme Court briefs by such groups has continued unabated.

Although the frequency of newspapers' use of "public interest law/legal" to describe organizations may indicate something about how the meaning of the phrase has changed and how it has stretched to encompass advocates for new constituencies, the counts themselves can be misleading because the context of the media's use of the phrase is often essential for understanding the meaning conveyed by this description. Reporters and editors sometimes reveal a great deal in their choice of punctuation—for example, whether the phrase "public interest law" appears in quotation marks or not.[66] They sometimes attach modifiers to the phrase as applied to particular organizations—for example, "liberal,"[67] "conservative,"[68] "libertarian,"[69] "business-oriented,"[70] "industry-funded,"[71] "Christian,"[72] "pro-life,"[73] "bipartisan [and] ecumenical,"[74] "self-described,"[75] and "so-called."[76] They elaborate with short descriptions of

[66] *See, e.g.*, William M. Bulkeley & Diane Tracy, *Lead-Paint Case May Stir Round of Product Suits*, WALL ST. J., Nov. 18, 1987, at 35 (referring to Trial Lawyers for Public Justice); Thomas E. Ricks, *Big TV Retailer Helps Suppliers, Cable Firms, Damages Direct Sellers*, WALL ST. J., May 13, 1987, at 1 (referring to Media Access Project).

[67] *See, e.g.*, Clifford D. May, *Robert Wallach: An Eccentric with Friends in High Places*, N.Y. TIMES, June 22, 1987, at B6 (referring to Public Advocates).

[68] *See, e.g.*, Stuart Taylor, Jr., *Senate Backs "Veto" of Watt's Move*, N.Y. TIMES, Oct. 10, 1981, at 10 (referring to Mountain States Legal Foundation); *Float Like a Butterfly*, WALL ST. J., Dec. 26, 1978, at 6 (referring to the Pacific Legal Foundation).

[69] *See, e.g.*, Steven A. Holmes, *Political Right's Point Man on Race*, N.Y. TIMES, Nov. 16, 1997, at 24 (referring to the Institute for Justice); John Simons, *Hogs on a Web? CFTC Defends Internet Rules*, WALL ST. J., May 6, 1999, at C1 (referring to the Institute for Justice).

[70] *See, e.g.*, Warren Weaver, Jr., *The Chamber's Public Interest Law Firm*, N.Y. TIMES, Mar. 31, 1977, at D1 (referring to the National Chamber Litigation Center); Stephen Wermiel, *High Court Faces Big Nuclear-Power Cases, Including Ruling on California Restrictions*, WALL ST. J., Nov. 26, 1982, at 15 (referring to Pacific Legal Foundation).

[71] John Simons, *New Internet Privacy Laws Appear Less Likely with Release of New Survey*, WALL ST. J., May 13, 1999, at B9 (referring to the Center for Democracy and Technology).

[72] James Dao, *Sleepy Election Is Jolted by Evolution*, N.Y. TIMES, May 17, 2005, at A12 (referring to the Thomas More Law Center).

[73] *See, e.g.*, Marcia Chambers, *Initiator of 'Baby Doe' Case Unshaken*, N.Y. TIMES, Nov. 13, 1983, at 45 (referring to Americans United for Life Legal Defense Fund).

[74] *See, e.g.*, George Judson, *A Snowman and Santa Make Jersey City's Holiday Scene Legal, a Judge Rules*, N.Y. TIMES, Dec. 19, 1995, at B4.

[75] *See, e.g.*, Bret Stephens, *Mind the GAP*, WALL ST. J., Sept. 4, 2007, at A16.

[76] John B. Oakes, Editorial, *Watt's Very Wrong*, N.Y. TIMES, Dec. 31, 1980, at A15 (referring to the Mountain States Legal Foundation).

the organizations' missions, such as, "a public interest law firm that defends traditional marriage" (describing the Liberty Counsel);[77] "a public interest law firm that litigates against abortion" (describing the Americans United for Life);[78] "a public interest law firm that argues for wider expression of religious, and generally Christian traditions" (describing the Becket Fund for Religious Liberty);[79] and "a public interest law and policy center that supports the death penalty" (describing the Washington Legal Foundation).[80] Some of the descriptions convey thinly veiled criticism. A *New York Times* story on the Mountain States Legal Foundation, for example, called it "a public interest law group supported by Western mining, timber and industrial companies."[81]

IV. CONCLUSION

The phrase "public interest law" may once have been understood to apply to a relatively small number of organizations and lawyers serving a limited set of constituencies, but the sources reviewed in this Article demonstrate that the term is now used to describe a much larger set of groups, advocates, and policy agendas. These "public interest law/legal" organizations take opposing sides of nearly every divisive social and economic issue of our time; they advocate for gun control as well as gun rights, for environmental protection and property rights, for stronger protections for organized labor and for the "right to work," for pro-choice and pro-life positions, and for diversity initiatives and the end of affirmative action. All of these groups claim the special professional legitimacy that the "public interest law" label confers. Conservative and libertarian organizations have aggressively asserted their public interest law status in Supreme Court briefs, and collectively they account for roughly two-thirds of all briefs

[77] Adam Liptak, *Parental Rights Upheld for Lesbian Ex-Partner,* Aug. 5, 2006, N.Y. TIMES, at A11.
[78] Linda Greenhouse, *Justices Reaffirm Abortion Access for Emergencies*, N.Y. TIMES, Jan. 19, 2006, at A1.
[79] Ronald Smothers, *Police Officers' Beards Set off Constitutional Debate*, N.Y. TIMES, June 26, 1998, at B5.
[80] Gustav Niebuhr, *Governor Grants Pope's Plea for Life of a Missouri Inmate*, N.Y. TIMES, Jan. 29, 1999, at A1.
[81] Seth S. King, *Watt Vows to Shun Conflicts Cases*, N.Y. TIMES, Jan. 9, 1981, at A14.

filed by groups that have described themselves as "public interest law" or "public interest legal" organizations in Supreme Court briefs since 1970. They have been somewhat less successful, however, in securing that tag from the two major newspapers considered here, which may suggest that they may not yet enjoy the legitimacy they seek.

Future research will examine the resources that public interest law organizations command, the alternative frames that legal advocacy groups sometimes employ, and how journalists and editors mediate the use of these characterizations of organizations' purposes and form. A content analysis of the briefs and news stories should reveal critical contextual elements not considered in this preliminary examination of the data. The research will consider possible differences in the use of the phrase "public interest law" in two national newspapers with different political orientations, at least on their editorial pages. It will examine how the trends described in this Article might relate to other variables, such as election cycles, differences between merits briefs and amicus briefs, the composition of the Supreme Court, and newspapers' editorial leadership. It will explore various themes associated with the phrase "public interest law" in news accounts and how the term is defined in other sources not discussed in this Article, such as legislative testimony, organizations' websites, and materials generated by law school placement offices and career services directories. A preliminary look at the latter sources suggest that they are a particularly rich source of evidence of disagreement about the boundaries of public interest law, perhaps because this is an arena in which the tangible consequences of competing definitions are particularly consequential for access to scholarships, summer stipends, loan forgiveness, and pro bono credit.

All in all, systematic examination of the discourse of public interest law should help put a finer point on exactly what we mean when we exhort lawyers to engage in this type of practice.

It might also contribute toward understanding whether the term obscures more than it reveals about the relative disadvantage of the clients represented and how policies pursued under its banner relate to the public good.

APPENDIX: CONSERVATIVE AND LIBERTARIAN ORGANIZATIONS THAT SELF-IDENTIFY AS "PUBLIC INTEREST LAW/LEGAL" GROUPS IN U.S. SUPREME COURT BRIEFS

Conservative Organization	**First Brief**
Pacific Legal Foundation	1974
National Chamber Litigation Center	1977
Southeastern Legal Foundation	1977
Mountain States Legal Foundation	1978
American Legal Foundation	1980
Legal Foundation of America	1981
Washington Legal Foundation	1981
Citizens Legal Defense Alliance Inc.	1982
Crime Victim's Legal Advocacy Institute	1982
Gulf & Great Plains Legal Foundation[82]	1982
New England Legal Foundation	1982
Americans for Effective Law Enforcement Inc.	1983
Criminal Justice Legal Foundation Inc.	1983
Free Congress Research and Education Foundation Inc.	1983
Victims' Assistance Legal Organization Inc.	1983
Mid-Atlantic Legal Foundation	1986
Landmark Legal Foundation	1987
Mid-America Legal Foundation[83]	1988
Americans United for Life	1989
Atlantic Legal Foundation	1989
Lincoln Legal Foundation	1989
Center for Individual Rights	1990
Defenders of Property Rights	1991
Institute for Justice	1991
Patriot's Defense Foundation	1991
American Center for Law and Justice	1992
Northwest Legal Foundation	1994
Law Enforcement Legal Defense Fund	1995
Oregonians in Action Legal Center	1996
Becket Fund for Religious Liberty	1997
Great Lakes Legal Foundation	1997
Rocky Mountain Family Legal Foundation	1997

[82] Renamed Landmark Legal Foundation in the mid-1980s.

[83] Organization no longer exists.

Center for Constitutional Jurisprudence	1999
National Legal Foundation	1999
Thomas More Law Center	2000
Alliance Defense Fund	2003
Judicial Watch Inc.	2003
Liberty Institute	2004
National Federation of Independent Business Small Business Legal Center	2004
Texas Justice Foundation	2004
Advocates for Faith & Freedom	2005
American Unity Legal Defense Fund	2006
European Centre for Law and Justice	2006
Life Legal Defense Foundation	2006
Allied Educational Fund	2008
U. S. Bill of Rights Foundation	2008
Liberty Counsel	2009