Courts-First Federalism: How Model Legislation Becomes Impact Litigation

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States and interest groups are facilitating a redistribution of government powers under a new courts-first federalism. States are working to claw back powers while interest groups drafting model laws strategically tailor them to skirt the limits of federal law and, once adopted by states, prompt federal courts to review them as parties litigate to clarify their rights. States do not need to be completely successful in litigation to shift the balance of state–national power. Testing this argument, we find that the US Supreme Court grants review to 17% of model laws in our sample produced by the American Legislative Exchange Council (ALEC), whereas merely 1% of other cases are granted certiorari. Ultimately, the states and ALEC were partly successful in constraining federal power. Thus, the combination of model legislation, impact litigation, and courts-first federalism becomes a tool for states to draw power to themselves and from the federal government.

A small but growing body of literature demonstrates the important role that model legislation plays in shaping political movements and achieving policy aims, particularly for well-organized and resource-rich advocacy groups (Anderson and Donchik 2016; Callaghan, Karch, and Kroeger 2020; Collingwood, El-Khatib, and O'Brien et al. 2019; Cooper et al. 2016; Garrett and Jansa 2015; Hertel-Fernandez 2014; 2019; Hertel-Fernandez, Skocpol, and Lynch 2016; Kroeger, Karch, and Callaghan 2022). Under this method of policy advocacy, model legislation is proposed, allied lobbyist groups and affiliated legislators advance the suggested laws through statehouses, and the model legislation is ultimately adopted into state codes in some form. Sometimes the text appears verbatim; at other times it is modified through the normal legislative process. Bill copying has been recognized for decades in state policy diffusion (Walker 1969), but more recent research shows the limitations of copying and pasting legislation across the very different social, economic, and political contexts of the states (Dorrell and Jansa 2022; Hansen and Jansa 2021; Jansa, Hansen, and Gray 2019). We argue that the effects of model legislation are less understood than previously realized. Namely, organizations are leveraging the American federal system and a courts-first federalism to plant the seeds for federal cases in state law, ultimately producing court cases that reach the US Supreme Court. This leg-judicial diffusion, which includes horizontal state-to-state diffusion and vertical state-to-federal influence through the courts, has substantial implications for the shifting paradigm for federalism in the United States.

Model legislation is a device used to disseminate a template of language that carries policy innovations, often those particularly well aligned with the interests of certain groups or political parties (Collingwood, El-Khatib, and O'Brien et al. 2019). Many organizations craft model legislation to offer to state legislators. One advocate of this method of achieving its policy aims is the American Legislative Exchange Council (ALEC), which produces model legislation with the input of state legislators, corporate funders, and other interests. ALEC then sustains relationships with state legislators who introduce and vote on its model laws in state legislatures (DeMora, Collingwood, and Ninci 2019; Hertel-Fernandez 2018). It has historically focused on legislation, but in the past four years ALEC has begun writing amicus briefs to persuade courts in favor of their aims.[1] Although this is a minor part of their influence efforts, having only authored a small number of amicus briefs, it indicates the group's growing attention to litigation as an avenue for furthering policy

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goals. Further, it illustrates a strategic approach to using the American federalist structure to achieve policy aims through multiple venues. This type of venue shopping uses state legislatures to ultimately reach friendly federal courts. ALEC is not the only organization that takes this approach, but we focus on ALEC because of the availability of its model laws and the body of work in political science highlighting the organization's outsize influence on American state politics (Hertel-Fernandez 2019). For states, there is a natural incentive to adopt laws that test the boundaries of federal law when the result may be a redistribution of power from the federal government toward the states.

Because groups that draft model legislation are the architects of the underlying laws litigated, they can effectively direct the attention of the court system. In addition, if a court strikes down parts of a state code derived from model legislation, the groups can then attempt to iterate and collaborate with states to amend their laws to achieve similar policy goals as originally intended while remaining within the bounds of court decisions; this happened in Texas after the decision in *Veasey v. Abbott* struck down what began as ALEC model legislation. This ability awards such groups a distinct advantage over those focused solely on impact litigation that must await the ingredients of a test case to proceed: interest groups generating model laws can manufacture the necessary conditions. Further, this alters the norms of American federalism by placing states in a position to steer the making of federal law, thus potentially binding 49 sister states to the initiative of a single state.

But why model legislation? Advocacy organizations can also seed impact litigation in state laws through traditional lobbying. This activity is, however, far more difficult to observe. Examining bill text, how that text spreads horizontally across the states, and then how those laws become a pretext for impact litigation offers an opportunity to study this currently unrecognized but real pathway for policy change. Our purpose in this article is to raise attention to this pathway, situate it within policy diffusion theory, offer an initial test of the argument with ALEC legislation, and discuss a path forward for additional research.

In this reflection, we present an argument for an emergent courts-first federalism that also advances policy diffusion theory by considering the linkages between state legislatures and state and federal courts. We begin by discussing what impact legislation is and how it is used to achieve policy aims. We then consider the emergence of a courts-first federalism in the United States. We follow this by reviewing what is currently known about the role of model legislation, particularly that produced by ALEC, in state lawmaking. Next, we pull these two seemingly disparate strands together into a theory of leg-judicial diffusion before presenting a preliminary test of our argument using 45 observations of enacted ALEC model legislation, 11 of which ultimately shaped federal

court decisions. Finally, we discuss the broad implications of the theory for how political scientists think about federalism, policy innovation, and the linkages between state and federal institutions. We also examine the practical implications of this strategy, paying special attention to recent court decisions and the potential growth in use of this policy diffusion strategy.

What Is Impact Litigation?

Impact litigation is the use of the court system—primarily the federal court system—and its powers to achieve political goals with implications for people far beyond the parties to the case. There are two types of impact litigation: planned and unplanned. Planned impact litigation is explicitly political and is objective driven. Unplanned impact litigation was not orchestrated specifically to serve political ends in the same manner as planned impact litigation but might achieve similar results as a byproduct of the litigation (Center for Human Rights & Humanitarian Law 2016).

Numerous organizations pursue impact litigation, some as their only means of policy influence. In fact, impact litigation can be more cost effective for smaller and less-resourced advocacy organizations seeking broad policy change through the courts because major law firms often will take such cases on a pro-bono basis and private litigants can use their own resources to bring cases challenging state laws. It can affect national change without a costly, sustained 50-state or federal lobbying campaign, instead leveraging private resources toward common objectives. This implies the belief that the courts can be the preferable means for realizing policy goals (Center for Human Rights & Humanitarian Law 2016). Some pursue climate-related aims,[2] others focus on civil rights,[3] and many large firms accept clients who are unable to pay for services as part of their impact litigation efforts, though their policy goals beyond helping poorer clients are unclear.[4] Strategic efforts to derive policy change from court decisions have resulted in numerous Supreme Court cases, perhaps most notably and controversially in the overturned decision in *Roe v. Wade*, where attorneys for Jane Roe (Norma McCorvey) sought out a potential plaintiff with the goal of overturning a Texas abortion law (Solly 2022). This dynamic, involving attorneys who seek a plaintiff through whom they can challenge state laws, illustrates the process by which leg-judicial diffusion begins, as policy-oriented groups seek to challenge state laws with the hope of ultimately making national law through federal courts.

Court-First Federalism

We term the state leveraging of federal judicial power "court-first federalism." It signals a shift in the federal power paradigm, whereby states implicitly recognize courts as a primary avenue for national policy making, thus bypassing

Congress and the more traditional vertical diffusion of ideas from states to the national legislature (Karch and Rosenthal 2016). Gridlock in Congress, Republican success in winning majorities in state legislatures, and the conservative composition of the Supreme Court have prompted some states and policy advocates, like ALEC, to pursue this courts-first strategy (Konisky and Nolette 2021). Additionally, high-profile Supreme Court cases such as *Sebelius* and *Dobbs* have highlighted the Court's power to resolve disputes over the distribution of powers among federal and state governments. In those cases, like others, states sought to challenge the legal status quo dictated by congressional enactment or Court precedent. In such cases, states enact laws that press the limits of federal law, triggering federal court review on the issue of federal preemption. In this context, states stand only to benefit, because though their state laws are not nationalized through federal court decisions, they will either successfully reduce federal powers in relation to their own or return to the legal status quo, as illustrated in figure 1.

Court-first federalism involves states effectively proposing a redistribution of state and federal powers in the favor of states. Figure 1, displayed like a linear programming model, demonstrates the benefits of courts-first federalism for states. As depicted, there are numerous feasible solution regions and one optimal solution region, each of which increases state powers simply by moving above the federal power baseline established by the US Constitution and federal laws. Because the federal power baseline is already determined when states enact laws that instigate litigation, in no case would the results of the litigation

reduce state powers. This is not to say that federal actors (the President, Congress, federal courts, etc.) are not also strategic in their behavior. But it recognizes a particular strategy among advocacy organizations and sympathetic states aiming to change the balance of state–federal power. At worst, states could have their laws struck down as unenforceable. In this circumstance, they would arrive at Feasible Solution 1 at the conclusion of the litigation, meaning the power dynamic is unchanged as the federal power baseline is reaffirmed. However, Feasible Solutions 2–4 would increase state powers relative to federal powers, though states would fail to reach the Optimal Solution: winning the litigation. Solutions in these ranges could take many forms but might look something like the outcome of *Sebelius*, where states lost the case but succeeded in constraining some federal powers, thereby increasing their own scopes of power. The optimal solution, however, represents a winning case at the US Supreme Court for states that prefer the new policy position, which is their most desirable outcome.

Each set of institutions—state legislatures and federal courts—is necessary to the other's lawmaking in this context, because courts must have a basis on which to act. However, unlike cooperative federalism, the institutions are not acting in concert (Zimmerman 2001). Instead, states are urging the Supreme Court to review issues of their choosing. It is not a co-optive process, however, because states cannot determine the outcomes of the cases derived from their laws.

Although states have long played an obvious role in creating the ingredients for test cases by passing legislation

Figure 1
Optimal and Suboptimal Litigation Outcomes for States
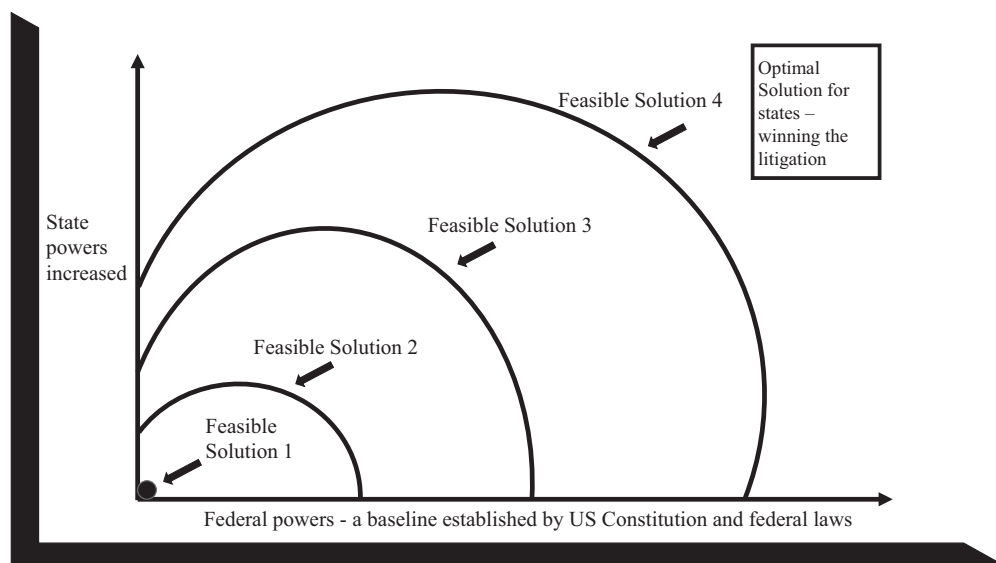
—perhaps even deliberately instigating the creation of new federal precedent in some instances—a coordinated effort to leverage state lawmaking powers to initiate judicial lawmaking is a newer phenomenon (Center for Human Rights & Humanitarian Law 2016). By repeatedly testing —or crossing—the bounds of federal precedent, states can help steer the making of federal law. Those states are often guided by groups like ALEC through model laws. Recent analyses of American power sharing highlight federal government punitiveness toward lower governments and a resurgent public interest in state and local lawmaking (Goelzhauser and Konisky 2020; Konisky and Nolette 2021). Although some analyses have noted a trend of state legislatures instigating Supreme Court lawmaking, they have not defined or developed it as a standalone theory of American federalism (Konisky and Nolette 2021). By passing laws that test the limits of US federal laws, states can prompt federal courts to reconsider precedent opinions or consider the constitutionality of federal laws, thus allowing states to effectively elicit federal action and increase their powers relative to federal powers.

Model Legislation, ALEC, and Policy Diffusion

Legislating is a costly activity. It takes time to develop appropriate policy expertise to craft legislation, particularly for highly complex problems. In fact, the spread of policy innovations tends to be slower and less complete for complex policies compared to less complex ones (Karch 2007; Mallinson 2016; Menon and Mallinson 2022; Nicholson-Crotty 2009). Further, legislatures may be able to parallel-process many policy proposals through topical committees, but they must still serial-process the ultimate passage of legislation (Jones 1994). Whereas policy invention tends to be driven by ideological actors, borrowing is the byproduct of more pragmatic considerations (Parinandi 2020). Legislative resources are an important consideration in whether states will borrow bill text, with less professionalized legislatures borrowing more (Jansa, Hansen, and Gray 2019). Plagiarizing bill text, however, can be a less productive approach to lawmaking (Dorrell and Jansa 2022); that is, policy plagiarism undermines the *policy* goals of legislators, but those are not the only relevant goals when legislating (Klein 2016; Schlesinger 1966), a point we revisit. In the end, policy adoption motivated by imitation, competition, or coercion can lead to the spread of bad policies (Shipan and Volden 2021). Further research finds that party affiliation, among other factors such as innovativeness, plays a significant role in the adoption of certain policy types (Yingling and Mallinson 2020). This is not surprising given that ALEC's agenda-driven model legislation has proven successful in disseminating policy ideas aligned with conservative political thought (Garrett and Jansa 2015; Hertel-Fernandez 2019).

Efforts to drive policy learning among legislators are more effective when ideologically aligned actors work together than when bipartisan efforts are attempted (Pereira 2022). Public officials are more likely to back a policy when it is endorsed by co-partisans or ideological peers or has been adopted in an ideologically similar location (Butler and Pereira 2018; Butler et al. 2017; Grossback, Nicholson-Crotty, and Peterson 2004). That being the case, it is significant that bills introduced by Republican state legislators in separate states share more textual similarities than those introduced by Democrats in differing states (Linder et al. 2020). This is an especially predictable revelation given the "super interest group" status that ALEC has developed through "sustained organizational influence," whereby it acts as the central entity holding together a network of organizations with similar policy aims (DeMora, Collingwood, and Ninci 2019).

ALEC's sustained organizational influence is a form of network policy diffusion that has proven fruitful on several policy fronts (Collingwood, El-Khatib, and O'Brien et al. 2019). For example, the organization has proven especially influential in the diffusion of laws opposed to sanctuary cities for illegal immigrants, laws in support of voter registration requirements, laws expanding privatization of prisons, and laws supportive of school choice, to name but a few examples (Anderson and Donchik 2016; Collingwood, El-Khatib, and O'Brien et al. 2019; Cooper et al. 2016). Although it is not determinative that states will pass model legislation, so-called copycat legislation has been effective in certain areas (Kroeger, Karch, and Callaghan 2022). When ALEC was hacked in 2011, its model bills were posted online on the website ALECexposed.org. These exposed model laws now serve as the foundation for studies on the organization's influence on state lawmaking and policy diffusion.

Although ALEC has been particularly effective in its efforts to pass conservative legislation, it is not the only organization that influences state policy through model legislation. The State Innovation Exchange was founded in 2012 as a counterbalance to ALEC in promoting progressive policies. The Uniform Law Commission offers hundreds of model laws and tracks their progress in the states. The Tenth Amendment Center promotes the concept of states nullifying federal laws. The National Association of Insurance Commissioners also offers more than 200 model laws regulating state-based insurance (Alexander, Grace, and Luo 2022). Any of these, and hundreds of other organizations, could conceivably engage in seeding impact litigation in their model legislation.

Additionally, although this article is primarily concerned with model laws as a means for testing our novel theory of leg-judicial diffusion and a courts-first framework of federalism, we note that model legislation is not the lone avenue for such change. More traditional lobbying efforts, entirely separate from the production of model

laws, could stir similar change. Although such efforts would be harder to study empirically because of the lack of text traceability, they are also viable routes for reaching high courts. In addition, state legislatures are not the lone route for state-level actors to influence national change through courts. For example, among the many routes to the US Supreme Court, state executive branch officials, such as solicitor generals and secretaries of state, can be influenced to pursue litigation or make decisions that stir litigation and result in outcomes like those of leg-judicial diffusion.

Scholars tend to consider either the horizontal (local-to-local or state-to-state) or vertical (local-to-state, state-to-federal, or federal-to-state) dynamics of policy innovation diffusion. For example, pressure from local governments can be relieved by state action on uniform rules for problems like smoking and plastic bag bans (Shipan and Volden 2006; 2008). Federal issue attention and financial incentives can induce state innovation (Clouser McCann, Shipan, and Volden 2015; Karch 2006; 2012; Karch and Rose 2019; Welch and Thompson 1980). And there is the classic view of states as laboratories of democracy whose new ideas can bubble up to influence national policy (Mooney 2021). Much of the decades of work on diffusion, however, focuses on a single institution: legislatures.

Although it has received far less attention than legislative diffusion, judicial diffusion has garnered some attention from researchers (Hinkle and Nelson 2016; 2018; Matthews 2024). Like legislative diffusion, judicial ideas in the form of precedent opinions diffuse across states, with the sex and group membership of judges and justices serving as important determinants of borrowing (Hinkle and Nelson 2016). State proximity and judge prestige are also important factors in a state's reliance on other states' precedent when forming their own. Additionally, because state judicial officials are not bound by the precedent of sister states, it is noteworthy that some judges are persuaded to recycle ideas from other state judicial officials based on political factors (Hinkle and Nelson 2016). Like legislation, opinions can effectively diffuse upward as cases are appealed to higher courts. And like some policy innovations that diffuse among states according to each states' measured innovativeness (Yingling and Mallinson 2020), the same variable was shown to be important to the diffusion of judicial doctrines among state court systems (Canon and Baum 1981).

The study of judicial and legislative diffusion remains siloed, even though state legislation often serves as the impetus for the creation of new federal law through precedent opinions in federal courts (Center for Human Rights & Humanitarian Law 2016). This chasm exists despite apparent similarities in the diffusion of innovations among state legislatures and separately among state judiciaries, with professionalism acting as a key indicator of innovation in both instances (Caldeira 1985; Jansa,

Hansen, and Gray 2019). Importantly, some courts have shown an eagerness to innovate but can only do so when presented by litigants with an opportunity to make new laws (Canon and Baum 1981). One reason for the differences between legislative and judicial diffusion is this ability to create innovations, which belongs to legislatures, and the requirement to await opportunities to innovate in the case of judicial systems. Further, partly because of data limitations, scholars have not well considered how policy ideas travel across branches (Boehmke et al. 2021) nor how organizations like ALEC might use this type of diffusion to achieve their policy goals. It is to this type of cross-institutional diffusion that we now turn. Because interest groups producing model laws can reliably access state legislatures and influence policy adoption, they can also access federal courts through their proffered laws with greater frequency than traditional litigants via leg-judicial diffusion and the trend toward courts-first federalism.

Leg-Judicial Diffusion

We pull the two strands of our argument together into our concept of leg-judicial diffusion. Figure 2 captures four different pathways of policy diffusion in the American federal system.[5] Panel (a) represents the horizontal diffusion of policy innovations from legislature to legislature. Panel (b) captures the parallel diffusion of judicial precedent between courts in different states. Panel (c) addresses the Brandeisian diffusion of ideas from the states to the federal government (i.e., Congress). Finally, panel (d) captures our theory of leg-judicial diffusion, which merges the three prior pathways into a single understanding of diffusion across branches, states, and levels of government within the American federal system.

Even though precedent may diffuse among state supreme courts, we focus on vertical diffusion from statehouses to federal courts because the vertical diffusion of ideas to the federal level is more aligned with the traditional aims of impact litigation. Given that the entire nation is within the purview of the US Supreme Court, it is the goal for most impact litigation to reach that Court through the appeal process, thus nationalizing policy through a decision favorable to their interests. Additional goals of impact legislation include clarifying existing law and raising awareness of policy issues. Because of our focus on state laws litigated in federal courts, the cases in our sample pertain to the US Constitution and questions of federal preemption of state law.

Nationalization of policy has often sprung from efforts of private litigants to defeat state laws or from states' efforts to challenge the limits of federal law. In *Dobbs v. Jackson Women's Health Organization* and in *Roe v. Wade*, which *Dobbs* overturned, the litigations that resulted in new Supreme Court precedent began as efforts to defeat state laws. Following the decision in *Roe*, which overturned a Texas law, the Supreme Court upheld *Roe* in *Planned*

Figure 2
Four Diffusion Pathways in American Federalism

a. Horizontal Diffusion

b. Judicial Diffusion

c. Vertical Diffusion

d. Leg-Judicial Diffusion
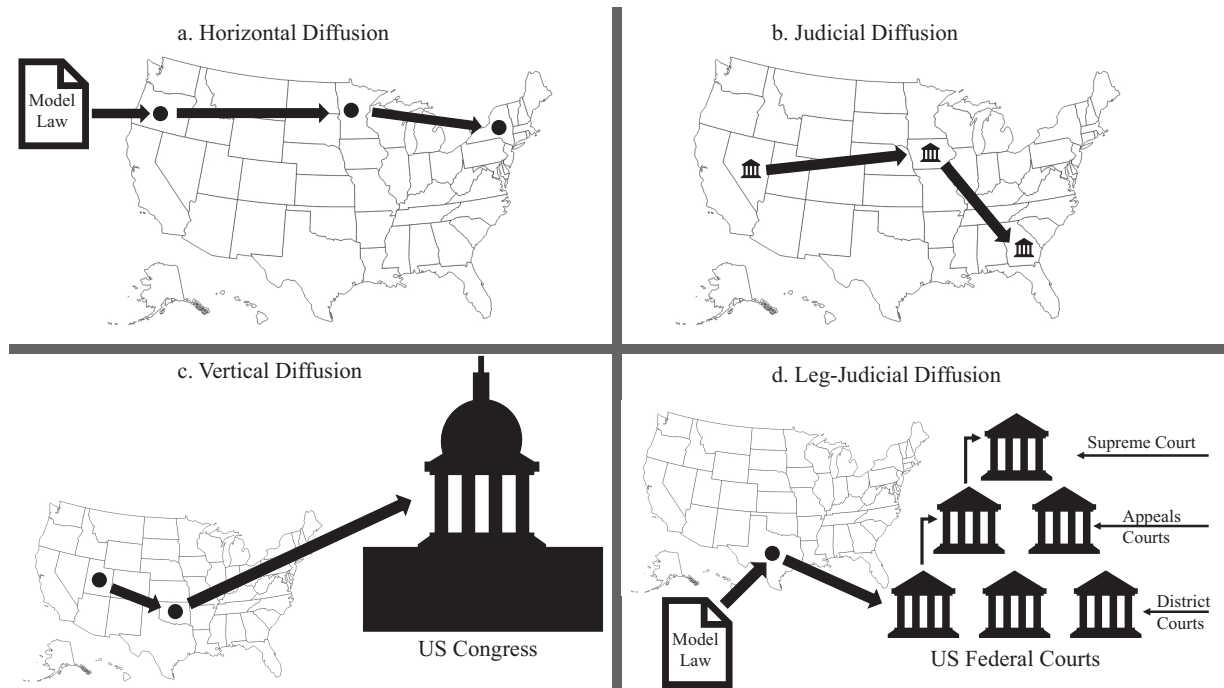
Parenthood v. Casey, in which the Court introduced the "undue burden" test (*Planned Parenthood v. Casey*, 505 U.S. 833 (1992)). Following *Casey*, many states passed laws banning elective abortions after 20 weeks of pregnancy (Paulk 2013). These laws stood, leading many to believe that 20 weeks of pregnancy was the furthest point where states could prohibit abortion without violating *Casey's* undue burden test. The decision in *Dobbs*, however, concerned a Mississippi law that proscribed most abortions after 15 weeks. Thus, the Mississippi law brought *Roe* and its progeny *Casey* into the Supreme Court's focus.

The series of events leading from *Roe* to *Casey* to *Dobbs* illustrates not only how state laws can influence federal lawmaking but also how a state law that challenges or exceeds the limits of Supreme Court precedent can elicit action from the Court. Considering the influence wielded by many interest groups, it is evident that model laws proposed by them could be adopted by states and ultimately result in new federal precedents that expand their influence nationally. In fact, influence groups could work strategically to identify areas of Supreme Court precedent or federal legislative enactments that they hope to influence, draft laws that address those issues, and instigate the series of events that lead to new Supreme Court rulings. This article explores that pathway—from model legislation

to Supreme Court decision—using ALEC model laws. We term this *leg-judicial diffusion* and argue that it is not restricted to ALEC but is part of a larger change in the paradigm of US federalism that looks to federal courts as the primary method for recalibrating the balance of powers. Also emblematic of this change is the success of the Federalist Society Affiliate Network in seating its members in federal courts (Bird and McGee 2023). Thus, model laws, once adopted into state code, sometimes become the basis for litigation in federal courts, forming a channel of diffusion that flows from states legislatures upward to federal courts.

Although similar in several ways, the study of legislative diffusion and that of judicial diffusion have remained siloed. ALEC, given its stature among state-level lobbying organizations, is perhaps best positioned to produce state laws that test the boundaries of US Supreme Court decisions or present an opportunity for the Court to overturn precedent. As we note earlier, it is certainly not the only such organization. Yet it has documentable examples of litigation deriving from the adoption of their model legislation. Additionally, ALEC is the only interest group producing model laws with a large and old enough sample to permit this study. We turn now to using ALEC model legislation to provide a preliminary test of our arguments.

A Preliminary Test of the Argument

Because ALEC's efforts to cultivate a network for policy diffusion have proven fruitful, there are an array of studies inspecting the networks, language, and actors critical to the group's successes. These studies often include quantitative text analysis of model legislation and adopted laws to measure the similarity of model laws to those adopted, as well as the further diffusion of model language that has been altered by adopting states (Collingwood, El-Khatib, and O'Brien 2019; Jackman 2013). This process of state-led innovation that draws on the language of ALEC model bills has inspired several studies on the factors influencing how and whether states adopt model legislation and how they revise the proffered laws (Glick 2012; Jansa, Hansen, and Gray 2019). To access model legislation for the purpose of text-based analyses, researchers have often drawn on the database offered by ALECexposed.org (Collingwood, El-Khatib, and O'Brien et al. 2019; DeMora, Collingwood, and Ninci 2019). In addition to textual analyses, researchers have sometimes used regression analysis to demonstrate the relationship between certain variables, such as ALEC membership and model legislation adoption across the states (Collingwood, El-Khatib, and O'Brien et al. 2019).

In our preliminary test of our arguments, we used a multifaceted set of methodologies to track the diffusion of ALEC model legislation from ALEC to state legislatures and then to federal courts. We began by identifying a sample of laws and related precedential cases to use in this study. To do so, we first used the database of ALEC state model legislation provided on ALECexposed.com to identify model laws put forward by ALEC and enacted by states. We searched ALECexposed.com for each US state, keeping record of the state enactments identified on the site while excluding bills that were introduced but not adopted from the sample. Second, we used a sample from a Brookings Institution study that identified additional instances where ALEC model laws detailed on ALECexposed.com were introduced and adopted by state legislatures (Jackman 2013). As before, we included only enacted laws from the Brookings sample in our own. Having identified the model laws and the state laws where they were adopted through these sources, we next searched for the areas of state code affected by the adoption of these various laws. Once identified, we searched for litigation concerning those parts of code using LexisNexis. We then identified only the federal courts where precedent derived from the interpretation of such laws and noted their respective jurisdictions. Finally, we analyzed the jurisdictions in which ALEC model legislation language was adopted as state law, where it was adopted as court precedent, or both. In some instances, precedent will only clarify the boundaries of the law within that respective jurisdiction.

Our sample includes enacted state laws derived from ALEC model legislation from 2005 to 2012. Although data that are 10 years old or more may be undesirable in other studies, for our purposes that data are advantageous: the time elapsed from the end of our sample period allows for litigation to begin and progress through state and federal court systems. Exhausting appeals to higher courts takes a substantial amount of time. The sample includes 45 state laws derived from model laws, of which 11 resulted in litigation in federal courts. Although 11 litigations may seem few, *Dobbs* demonstrates the impact a single case may have on federal and state law. Among the federal court cases in our sample is *NFIB v. Sebelius* (via consolidation of the appellate court case stemming from *Florida ex rel. Bondi. v. U.S. Dept. of Health and Human Services*), where the Supreme Court upheld the Affordable Care Act and limited federal punitive power toward states. In total, the cases in our sample resulted in nearly 11,000 subsequent case citations, demonstrating the importance of the precedence spurred by these model laws. These 11 cases were drawn or inspired by a smaller set of ALEC model laws. The sample includes two cases related to the No Sanctuary Cities for Illegal Immigrants Act, seven concerning their Freedom of Choice in Healthcare Act, and another two related to their Voter ID Act. Although it is not clear how often other forms of legislation result in litigation, the conversion rate of enacted model laws to federal precedent is far higher than that of proposed laws in the US Congress, illustrating why some advocacy groups might opt for leg-judicial diffusion rather than lobbying Congress to stir federal lawmaking.

Nearly one-quarter (24.44%) of the enacted ALEC laws included in our sample became the subject of litigation in federal courts. Of the court cases resulting from these ALEC-derived laws included in our sample, there were two US Supreme Court decisions and three federal Appeals Court decisions. Thus, in five instances observed, ALEC model laws spurred federal law. Compare that conversion rate with the average 3.1% enactment rate of every Congress from the 107th to the 117th Congress (Gov Track 2022). In the span of 11 Congresses and nearly two decades, enactment rates floated between a low of 2% and a high of 5%. Even though litigations can be notoriously protracted, in comparison to these congressional enactment rates, the potential appeal of leg-judicial diffusion as a channel for policy change becomes apparent.

Moreover, ALEC's model laws in our sample have triggered US Supreme Court decisions with far greater frequency than the average for cases seeking review by the Court. In an average year, the US Supreme Court receives 7,000–8,000 petitions for Writs of Certiorari, the formal request submitted to the Court asking it to take an appeal and rule on a case. Of those, around 80 are granted a full review. That means 1% to 1.1% of petitions are successful in accessing the US Supreme Court (2022). In contrast,

Figure 3
Sebelius Outcome
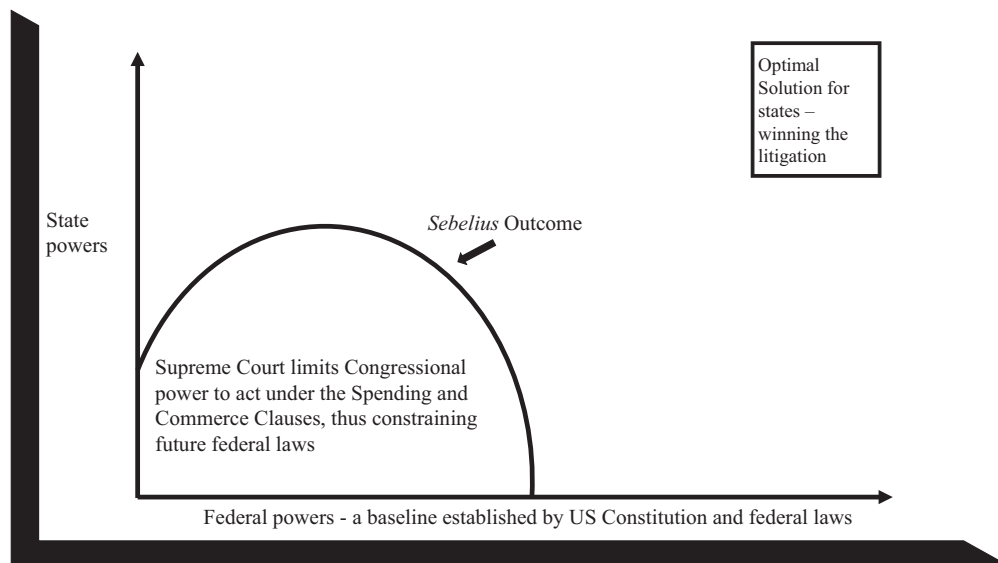
18% of the enacted laws in our sample that produced federal litigation resulted in US Supreme Court decisions. There is, thus, a chasm in Supreme Court access between litigation deriving from model laws and litigants generally.

The 45 ALEC-inspired bills in our sample resulted in the court cases of *U.S. v. Alabama*, *People First of Alabama v. Merrill*, *Florida ex rel. Bondi. v. U.S. Dept. of Health and Human Services* (consolidated into *NFIB v. Sebelius*), *Arizona v. U.S.*, and *Veasey v. Abbott*. This demonstrates that there exists a pathway of diffusion beginning with states and leading to federal courts. Though there are only five cases listed here, seven states that adopted various versions of ALEC's "Freedom of Choice in Healthcare Act" became parties in *Florida ex rel. Bondi v. U.S. Dept. of Health and Human Services*. That case was first decided in Northern Florida District Court before it was appealed to the 11th Circuit, where it was dubbed "*Florida v. U.S. Dep't of Health & Human Serv.*" This case was consolidated into *NFIB v. Sebelius* when the US Supreme Court granted review to three similar cases. There, states challenged the constitutionality of the Affordable Care Act on multiple grounds. Though the states lost the case, they successfully constrained federal powers to act under the Commerce and Spending Clauses of the US Constitution, as illustrated in figure 3.

Returning to our demonstration of power struggles under courts-first federalism, figure 3, like figure 1, is akin to a linear programming model that shows how state and federal powers fluctuate on the conclusion of a litigation that follows the pathway of leg-judicial diffusion. In *Sebelius*, the Court upheld the Affordable Care Act, an act of Congress, as constitutional. However, it did constrain federal power, thus enlarging state powers. In a sense, governmental powers in the United States are finite and dictated by the Constitution, yet states and the federal government have struggled over those finite powers since the founding (Hartog 1987). In this case, the Court held that some provisions of the act were beyond the limits of the Spending and Commerce Clause, ruling that the Commerce Clause does not permit the federal government to compel the unwilling to participate in commerce and the Spending Clause does not allow Congress to threaten loss of all federal Medicaid funding for refusal to comply with its expansion. Thus, although the states in the suit lost the case and failed to achieve the optimal solution, they reached a suboptimal solution in *Sebelius* that still improved their position in the power struggle with the federal government.

The cases in our sample, most notably *Sebelius*, demonstrate that states can instigate federal court review of federal laws. Not only can states elicit review via these means but also, in *Sebelius*, they recaptured some powers circumscribed by federal law. In more recent cases not included in our sample, such as *Dobbs*, states have not only initiated review and reclaimed powers but have also reached their optimal solution by winning the litigation.

Additionally, one case in the sample, *Veasey v. Abbott*, demonstrates a key advantage of model legislation over impact litigation: iteration. We have outlined the processes for changing policy through model legislation and impact litigation, but what becomes of those efforts if the Supreme Court rules against the interest group's desires? With impact litigation, the interest group must secure

funding, a new plaintiff, and a new legal question to present if they hope to defeat a state law after the Supreme Court rules against their preferences. Because the underlying state law at issue has likely not changed, the impact litigation efforts have probably already exhausted their legal theories to no avail and have no recourse. However, impact litigation can treat a Supreme Court decision against their interests as a blueprint. The decision tells them where they ran afoul and allows them to iterate on the defeated law by introducing new model laws that avoid the pitfalls of its predecessor. This was what happened after the decision in *Veasey v. Abbott.* Under a model law approach, interest groups can learn from failure, whereas impact litigations are likely all-or-nothing propositions.

There are few textual similarities between ALEC model legislation and associated court opinions. However, to the extent there are similarities, most pertain to determinative language in the law that the court is evaluating. For example, the words the "privileges and immunities of United States citizens" appears verbatim in both the ALEC model law titled the "No Sanctuary Cities for Illegal Immigrants Act" and the associated court case in our sample, *US v. Arizona.* In that case, the US Supreme Court's majority opinion, authored by Justice Kennedy, struck down three of the four provisions at stake in the Arizona law on federal preemption grounds, saying that "the state may not pursue policies that undermine federal law." Justice Kennedy's declaration criticizes the apparent intent of the Arizona legislature and further bolsters the notion that interest groups may sometimes write model laws with the prospect of legal challenges in mind. ALEC's recent authorship of amicus briefs supports the notion that the organization has adopted this channel of diffusion as part of its influence efforts (ALEC 2022).

This is notable because the few similarities are evidence of ALEC's ability to explicitly indicate the parts of law they hope to test, and courts have little alternative but to address those wishes in their decisions because they are expressed in the text of the state statute at issue in the litigation. Courts do not draw from the text of ALEC model laws in the same manner that state legislatures often do; instead, courts are compelled to address the ideas first formulated by ALEC. This is demonstrated most clearly in *Arizona v. US*, although the case ultimately hinged on a preemption question rather than a constitutionality issue. In this case, the words the "privileges and immunities of United States citizens" appears verbatim in both the ALEC model law titled the "No Sanctuary Cities for Illegal Immigrants Act" and the associated court case. But such direct language copying is rare.

Table 1 shows the outcomes of each of the cases from our sample. ALEC's successes in state legislatures have translated to federal courts with mixed results. For example, ALEC's model laws laid the groundwork for the US Supreme Court's *NFIB v. Sebelius* decision. There, the states that adopted ALEC's laws hoped to see the US Supreme Court declare numerous provisions of the Affordable Care Act unconstitutional. Instead, the Court

Table 1
Outcome of Federal Court Cases Influenced by ALEC Model Legislation

Enacting state	Federal court cases	Outcome	Subsequent case citations
Alabama	*US v. Alabama*	State law struck down in part, rendering it partially unenforceable	71
Alabama	*People First of Alabama v. Merrill*	State law ruled unconstitutional as applied; state enjoined from enforcement (the law cannot be enforced)	3
Arizona	*Arizona v. U.S.*	Preempted by federal law in part, upheld in part with an opportunity for the Arizona State Supreme Court to construe the law (the law is partially unenforceable and the other provisions remaining in question will depend on state court interpretation)	884
Florida, Georgia, Idaho, Kansas, Louisiana, Missouri, Ohio, Virginia	*Florida ex rel. Bondi v. US Dept. of Health and Human Services, Florida ex rel. Atty. Gen. v. US Dept. of Health and Human Services Sebelius*	The Affordable Care Act was upheld but federal power was curtailed	9,101
Texas	*Veasey v. Abbott*	The state law was ruled unconstitutional in part, remanded in part, and vacated in part (the law is partially unenforceable and the other provisions remaining in question will depend on state court interpretation)	745

upheld the law but ruled that some of its features were not constitutional, and it constrained federal power to penalize states for refusal to take part in Medicaid expansion. This was not the full slate of outcomes desired by these state plaintiffs, but it did offer them a few silver linings: it upset the new status quo established by the law; ruled many facets of the law unconstitutional, thus providing a potential basis for similar future laws to be struck down; and constrained federal power by saying that the federal government cannot negotiate by "putting a gun to the head" of states through the threat of lost funding. Similarly, in *Arizona v. U.S.*, the Court ruled that the ALEC-inspired law was preempted by federal law in part but allowed some of its provisions to remain in place for the time being.

On its face, this ruling may seem to be a net loss for ALEC's interests. Yet, the goal in many of these cases was to challenge the limits of federal laws. Challenging the legal status quo to no avail is not a loss, because it only leaves litigants in the position that they were in before. If the primary goal for states was to constrain federal powers and reinvigorate their own, the cases listed earlier did partly accomplish that mission. For example, in *Sebelius*, Chief Justice Roberts declared that Congress had done more than encourage states to adopt its preferred policies, instead compelling adoption of those laws by using financial inducements as a "gun to the head." Although the states that were parties to that case lost the litigation, they did improve their standing in relation to federal powers through Roberts's pronouncements. Any new constraint on federal powers moves states into a stronger position relative to the federal government and its powers. Although other cases in the sample appear less successful from states' perspectives, their challenge of the legal status quo only returned them to same power position they held before.

Discussion and Conclusion

The research seeking to understand the complex dynamics of policy making in the American federal system has thus far focused largely on legislative diffusion and, to a far lesser extent, judicial diffusion (Hinkle and Nelson 2016; 2018; Mallinson 2021). There has not been, however, an examination of the diffusion of policy innovations from legislative to judicial branches. Our research demonstrates for the first time that model legislation accomplishes many of the goals of impact litigation by producing numerous, high-profile federal court cases that raise policy issue awareness and improve clarity on legal issues while achieving cross-branch and vertical diffusion. Further, we demonstrate that state-level model laws can become federal legal precedent. Moreover, we empirically show for the first time that leg-judicial diffusion is a channel for changing federal law. Not only is it a viable avenue for policy change but ALEC also succeeded in putting litigated cases before the US Supreme Court 18% of the time compared

to about 1% for all other cases (Michigan Law 2022). Cross-branch diffusion warrants much greater attention among policy diffusion and state politics scholars; promising data efforts are underway to support such an effort (Boehmke et al. 2021).

We also empirically demonstrate that some states are practicing courts-first federalism, whereby they attempt to steer the making of federal law by prodding courts, not Congress, to make laws. In much the same way in which state governors propose a state budget to be vetted and voted on by their legislatures, state legislatures are effectively proposing new interpretations of precedent or constitutional law to the federal courts that then contemplate and decide on those cases. This is significant because it signifies a departure from the previously studied forms of federalism, such as cooperative or competitive federalism (Dye 1990; Zimmerman 2001). Here, state legislatures are bypassing the traditional, primary channels of federal lawmaking and instead proceeding directly to the courts, thereby removing the federal legislative and executive branches entirely from the process. This is logical from a state's perspective because states possess limited control in the diffusion of their ideas up to Congress but can direct the attention of the courts to the issues of their choosing and create opportunities to make new precedent through the passage of laws that test the limits of existing court-made law. Additionally, as the data in Table 1 suggest, some states may engage more (and more successfully) in these efforts than others. Alabama appears twice on the list in table 1, possibly demonstrating that some states have pursued the leg-judicial diffusion strategy more deliberately than others.

This is a phenomenon worthy of further study, because the ability of political interest groups to orchestrate the generation of precedent from the judiciary, a branch intended to be apolitical, is not only understudied but is also an important consideration when pondering the true balance of powers in the US system of government. It is also essential to understanding the political currents that likely influence the judiciary, though these forces may not be easily visible. ALEC's work has resulted in the diffusion of policy ideas not only horizontally across states, their legislatures, and their court systems (Garrett and Jansa 2015; Hertel-Fernandez 2019) but also vertically to federal courts. Thus, groups like ALEC that focus on the diffusion of state legislation can prompt courts to inspect the language of their proposed legislation, now adopted by at least one state, and determine its legality. If determined to be legal, the high-profile nature of the case and its legal backing provide adequate fodder to spur the further diffusion of the core idea promoted by the interest group. It also sets national precedent that affects other states. The ongoing political and policy fallout of the *Dobbs* decision illustrates the significant ripple effects of the US Supreme Court ruling on a single state's law.

Also significant is the discovery of a third path of impact litigation. Between planned and unplanned impact litigation lies the process described in this article, in which model legislation is codified and later tested in court, producing precedent (Center for Human Rights & Humanitarian Law 2016). We have dubbed this third path "leg-judicial diffusion," because it is the flow of ideas from legislatures to courts, although the core ideas embedded there originate with interest groups. Via this process, interest groups can either "pass the ball," so to speak, to their ideologically aligned colleagues in the impact litigation realm who can litigate cases arising under adopted laws derived from model legislation, or they may leverage the resources of private parties who may inadvertently serve the interest group's goals by contesting these laws in court. Because impact litigation has become prevalent, with large law firms and interest groups alike taking part, it seems most likely that leg-judicial diffusion will be part of concerted efforts in which interest groups propose language, state legislatures adopt it, and like-minded impact litigants bring suit in federal court seeking the maximal effect on federal law achievable. This reduces the likelihood that state courts could play a role in narrowing the leg-judicial diffusion pathway. Further, as noted, the ability of states and interest groups to challenge federal precedent directly and unequivocally in their model laws and enactments will likely increase the likelihood of such cases landing in federal rather than state court.

The unique merits and shortcomings of this third path of impact litigation are most apparent when contrasted with an example drawn from more traditional, planned impact litigation. The Cato Institute (2018) funded the impact litigation efforts of a set of libertarian lawyers who hoped to bring a constitutional challenge to Washington, DC's, handgun restrictions before the US Supreme Court. The law had been challenged before by criminal defendants, but the attorneys thought they stood a greater chance of success if they gathered a group of law-abiding plaintiffs who hoped to possess handguns for self-defense. The attorneys gathered six such plaintiffs, many of whom offered emotionally compelling backstories. For example, one plaintiff had warded off attackers who targeted him for his sexual orientation by using a handgun when living in another city but could not legally possess such a weapon in Washington, DC. Another plaintiff was authorized to legally carry a handgun while protecting federal employees as part of his job as a security guard in the city but not for personal protection after work, even though he lived in the same city where he worked. The litigation eventually reached the US Supreme Court, which rendered a landmark decision in favor of the plaintiffs *(D.C. v. Heller)*, saying that the Second Amendment to the US Constitution protects an individual right to carry handguns, thus declaring the law unconstitutional.

To orchestrate this successful planned impact litigation effort, the attorneys who initiated the process had to find a state or locality with an existing law to challenge, secure funding, identify and recruit a group of ideal plaintiffs, and then argue a successful case on the merits of the law, as is typically the case for such litigation efforts (Cato Institute 2018; Center for Human Rights & Humanitarian Law 2016). In contrast, impact litigation carried out via leg-judicial diffusion relies on third parties to initiate, fund, and pursue their litigation. In this way, interest groups can potentially generate a higher volume of cases with less expense and effort.

The trade-off for groups like ALEC is that they substitute efficiency for control. Under traditional, planned impact litigation, a party works on a single case that it controls from start to finish. ALEC, in contrast, may have little control over ensuing litigation. However, the organization has worked to fill that influence gap by filing amicus briefs (ALEC 2022). Which strategy is most effective is unclear, in part because it is difficult to identify traditional impact litigation efforts that are unsuccessful or not publicly documented. Nevertheless, each strategy boasts its own set of merits. Moreover, these strategies are not mutually exclusive: an interest group could exert greater control over the process of leg-judicial diffusion from beginning to end by litigating cases related to the enacted portions of code derived from the model laws themselves. This would make ALEC, and similar groups, a new, more holistic kind of influence operation.

Although the possible relative cost efficiencies of leg-judicial diffusion are apparent, the influence operation within state legislatures that may be necessary to pass model laws can pose a challenge to the feasibility of this model. States may also be resistant to the ensuing legal battles deriving from the passage of laws that may ultimately trigger US Supreme Court review. And although part of the reason for the rise of leg-judicial diffusion may be the inertia of the US Congress, state houses also face increasing polarization and resulting gridlock (Shor and McCarty 2022). Even then, there are 50 state legislatures to target, so the potential avenues for influencing law are more numerous. Although the challenges of traditional impact litigation are significant, the number of precursors needed to run a successful leg-judicial diffusion campaign may prove too significant to organizations that lack the state-level networks needed to instigate state lawmaking. However, although this article is concerned with model laws—and model laws provide an opportunity to empirically measure the success of leg-judicial diffusion—the production of model laws is not strictly necessary to this avenue of policy change. Rather, traditional lobbying efforts can achieve the same ends by influencing state-level actors in the legislative and executive branches.

Our argument and preliminary findings offer several possibilities for further study. First, one could create a

network analysis of the entities producing model legislation, their legislation-focused counterparts, and the organizations and individuals who ultimately litigate these laws in court. Second, one could study whether or how interest groups might intentionally design their laws to produce litigation and further study how that litigation subsequently expands the jurisdictions in which those ideas become law, focusing on policy areas not considered in this article. Third, one could study the feedback loop between litigation and subsequent state policy adoption that brings a given policy closer in line with the desires of a group like ALEC or other interest groups. For example, one could hypothesize that litigation that rises to the US Supreme Court catalyzes further adoption of the law at the heart of the dispute in that case. Fourth, although its merits as an avenue for policy change are outlined here, a study that more closely examines the merits of a court-first framework for federalism, such as leg-judicial diffusion, relative to other models of federalism would be a worthy topic for exploration. Finally, substantial work will need to be done to identify the use of the leg-judicial pathway by organizations other than ALEC. This process will require examining other model legislation that results in state and federal litigation. Researchers will need to unpack the extent to which the pretext for subsequent litigation was baked into the model bills.

Finally, we believe that the definition and study of policy diffusion should be broadened to encompass the process described here, where groups such as ALEC create model laws that are later adopted by state legislatures and serve as the precursor elements for significant federal court decisions—even when those decisions curtail enforcement of the state legislation or clarify legal boundaries in a manner contrary to the policy aims of the organization. This sort of diffusion is significant for several reasons. First, our proposed redefinition of policy diffusion is more holistic. As of now, most studies on the topic focus on the spread of ideas among legislatures. Under our proposed expansion of the term, it would encompass ideation, adoption, and judicial consideration, plus any reiteration and readoption of such laws following a court decision. Moreover, our expansion of the term could also encompass the rare instances when the US Congress overrules federal court decisions. Second, the separation of powers between legislatures and judiciaries necessitates study of this theory of policy diffusion because the life cycle of policy extends beyond legislative adoption, and without consideration of judicial interventions, reiterations of policy may be overlooked in study samples. *Veasey v. Abbott* further supports this assertion: after the Fifth Circuit declared much of the legislation unconstitutional, ALEC worked with the Texas statehouse to iterate on the law, hoping to work around the Court's clarification. Though their efforts failed when the revised law was again struck down in court, this demonstrates the value of mere

clarifications of the law resulting from impact litigation and its importance to the study of policy diffusion.

Notes

1 https://alec.org/periodical/amicus-briefs/.
2 E.g., https://earthjustice.org.
3 E.g., https://publiccounsel.org.
4 E.g., https://www.akingump.com/en/.
5 We do not claim that these are the only four, because local-to-state diffusion and federal coercion are not represented. However, they are not directly pertinent to the type of diffusion we consider.

References

ALEC. 2022. *Archive: Amicus Briefs.* American Legislative Exchange Council, September 20, 2022, https://alec.org/periodical/amicus-briefs/.

Alexander, Charlotte, Martin F. Grace, and Jingshu Luo. 2022. "The Market for Model Laws: The Diffusion of NAIC's Model Laws." https://ssrn.com/abstract=4211697.

Anderson, Gary L., and Liliana Montoro Donchik. 2016. "Privatizing Schooling and Policy Making: The American Legislative Exchange Council and New Political and Discursive Strategies of Education Governance." *Educational Policy* 30 (2): 322–64.

Bird, Christine C., and Zachary A. McGee. 2023. "Looking Forward: Interest Group Legal Strategy and Federalist Society Affiliation in the United States Circuit Courts of Appeal." *Polity* 55 (2): 389´99.

Boehmke, Frederick J., Bruce Desmarais, William Franko, Jeffrey J. Harden, Scott J. Lacombe, Yu-Ru Lin, Robert J. McGrath, Jason Windett, and Louai Magbol. 2021. "SPABaT: A New Dataset on State Policymaking across Branches and Time." Paper presented at the American Political Science Association Annual Meeting, Seattle.

Butler, Daniel M., and Miguel M. Pereira. 2018. "TRENDS: How Does Partisanship Influence Policy Diffusion?" *Political Research Quarterly* 71 (4): 801–12.

Butler, Daniel M., Craig Volden, Adam M. Dynes, and Boris Shor. 2017. "Ideology, Learning, and Policy Diffusion: Experimental Evidence." *American Journal of Political Science* 61 (1): 37–49.

Caldeira, Gregory A. 1985. "Constitutional Change in America: Dynamics of Ratification under Article V." *Publius* 15 (4): 29–49.

Callaghan, Timothy, Andrew Karch, and Mary Kroeger. 2020. "Model State Legislation and Intergovernmental Tensions over the Affordable Care Act, Common Core, and the Second Amendment." *Publius* 50 (3): 518–39.

Canon, Bradley C., and Lawrence Baum. 1981. "Patterns of Adoption of Tort Law Innovations: An Application of Diffusion Theory to Judicial Doctrines." *American Political Science Review* 75 (4): 975–87.

Cato Institute. 2018. "The Right to Keep and Bear Arms: 10 Years after Heller." *Cato Policy Report*. Washington, DC: Cato Institute.

Center for Human Rights & Humanitarian Law. 2016. *Impact Litigation: An Introductory Guide*. Washington, DC: American University Washington College of Law.

Clouser McCann, Pamela J., Charles R. Shipan, and Craig Volden. 2015. "Top-Down Federalism: State Policy Responses to National Government Discussions." *Publius* 45 (4): 495–525.

Collingwood, Loren, Stephen Omar El-Khatib, and Benjamin Gonzalez O'Brien. 2019. "Sustained Organizational Influence: American Legislative Exchange Council and the Diffusion of Anti-Sanctuary Policy." *Policy Studies Journal* 47 (3): 735–73.

Cooper, Rebecca, Caroline Heldman, Alissa R. Ackerman, and Victoria A. Farrar-Meyers. 2016. "Hidden Corporate Profits in the U.S. Prison System: The Unorthodox Policy-Making of the American Legislative Exchange Council." *Contemporary Justice Review* 19 (3): 380–400.

DeMora, Stephanie L., Loren Collingwood, and Adriana Ninci. 2019. "The Role of Super Interest Groups in Public Policy Diffusion." *Policy & Politics* 47 (4): 513–41.

Dorrell, Robert M., and Joshua M. Jansa. 2022. "Copy, Paste, Legislate, Succeed? The Effect of Policy Plagiarism on Policy Success." *Policy & Politics* 50 (4): 605–23.

Dye, Thomas R. 1990. *American Federalism: Competition among Governments*. Lexington, MA: Lexington Books.

Garrett, Kristin N., and Joshua M. Jansa. 2015. "Interest Group Influence in Policy Diffusion Networks." *State Politics & Policy Quarterly* 15 (3): 387–417.

Glick, David M. 2012. "Learning by Mimicking and Modifying: A Model of Policy Knowledge Diffusion with Evidence from Legal Implementation." *Journal of Law, Economics, and Organization* 30 (2): 339–70.

Goelzhauser, Greg, and David M. Konisky. 2020. "The State of American Federalism 2019–2020: Polarized and Punitive Intergovernmental Relations." *Publius* 50 (3): 311–43.

Gov Track. 2022. *Statistics and Historical Comparison*. Civic Impulse, September 26, 2022. https://www.govtrack.us/congress/bills/statistics.

Grossback, Lawrence J., Sean Nicholson-Crotty, and David A. M. Peterson. 2004. "Ideology and Learning in Policy Diffusion." *American Politics Research* 32 (5): 521–45.

Hansen, Eric R., and Joshua M. Jansa. 2021. "Complexity, Resources and Text Borrowing in State Legislatures." *Journal of Public Policy* 41 (4): 752–75.

Hartog, Hendrik. 1987. "The Constitution of Aspiration and "The Rights That Belong to Us All."'" *Journal of American History* 74 (3): 1013–34.

Hertel-Fernandez, Alexander. 2014. "Who Passes Business's 'Model Bills'? Policy Capacity and Corporate Influence in U.S. State Politics." *Perspectives on Politics* 12 (3): 582–602.

Hertel-Fernandez, Alexander. 2018. "Policy Feedback as Political Weapon: Conservative Advocacy and the Demobilization of the Public Sector Labor Movement." *Perspectives on Politics* 16 (2): 364–79.

Hertel-Fernandez, Alexander. 2019. *State Capture: How Conservative Activists, Big Businesses, and Wealthy Donors Reshaped the American States*. New York: Oxford University Press.

Hertel-Fernandez, Alexander, Theda Skocpol, and Daniel Lynch. 2016. "Business Associations, Conservative Networks, and the Ongoing Republican War over Medicaid Expansion." *Journal of Health Politics, Policy and Law* 41 (2): 239–86.

Hinkle, Rachael K., and Michael J. Nelson. 2016. "The Transmission of Legal Precedent among State Supreme Courts in the Twenty-First Century." *State Politics & Policy Quarterly* 16 (4): 391–410.

Hinkle, Rachael K., and Michael J. Nelson. 2018. "The Intergroup Foundations of Policy Influence." *Political Research Quarterly* 71 (4): 729–42.

Jackman, Molly. 2013. *ALEC's Influence over Lawmaking in State Legislatures*. Brookings Institution, December 6, 2013. https://www.brookings.edu/articles/alecs-influence-over-lawmaking-in-state-legislatures/.

Jansa, Joshua M., Eric R. Hansen, and Virginia H. Gray. 2019. "Copy and Paste Lawmaking: Legislative Professionalism and Policy Reinvention in the States." *American Politics Research* 47 (4): 739–67.

Jones, Bryan D. 1994. *Reconceiving Decision-Making in Democratic Politics*. Chicago: University of Chicago Press.

Karch, Andrew. 2006. "National Intervention and the Diffusion of Policy Innovations." *American Politics Research* 34 (4): 403–26.

Karch, Andrew. 2007. *Democratic Laboratories: Policy Diffusion among the American States*. Ann Arbor: University of Michigan Press.

Karch, Andrew. 2012. "Vertical Diffusion and the Policy-Making Process: The Politics of Embryonic Stem Cell Research." *Political Research Quarterly* 65 (1): 48–61.

Karch, Andrew, and Shanna Rose. 2019. *Responsive States: Federalism and American Public Policy*. Cambridge: Cambridge University Press.

Karch, Andrew, and Aaron Rosenthal. 2016. "Vertical Diffusion and the Shifting Politics of Electronic Commerce." *State Politics & Policy Quarterly* 16 (1): 22–43.

Klein, Elad. 2016. "Electoral Rules and Party Switching: How Legislators Prioritize Their Goals." *Legislative Studies Quarterly* 41 (3): 715–38.

Konisky, David M., and Paul Nolette. 2021. "The State of American Federalism, 2020–2021: Deepening Partisanship amid Tumultuous Times." *Publius* 51 (3): 327–64.

Kroeger, Mary A., Andrew Karch, and Timothy Callaghan. 2022. "Model Bills, State Imitation, and the Political Safeguards of Federalism." *Legislative Studies Quarterly* 47 (4): 855–84.

Linder, Fridolin, Bruce Desmarais, Matthew Burgess, and Eugenia Giraudy. 2020. "Text as Policy: Measuring Policy Similarity through Bill Text Reuse." *Policy Studies Journal* 48 (2): 546–74.

Mallinson, Daniel J. 2016. "Building a Better Speed Trap: Measuring Policy Adoption Speed in the American States." *State Politics & Policy Quarterly* 16 (1): 98–120.

Mallinson, Daniel J. 2021. "Growth and Gaps: A Meta-Review of Policy Diffusion Studies in the American States." *Policy & Politics* 49 (3): 369–89.

Matthews, Abigail A. 2024. "Learning from and Emulating Their Peers: Policy Diffusion in the Courts." *State Politics & Policy Quarterly* 1–10.

Menon, Aravind, and Daniel J Mallinson. 2022. "Policy Diffusion Speed: A Replication Study Using the State Policy Innovation and Diffusion Database." *Political Studies Review* 20 (4): 702-7–16.

Michigan Law. 2022. *U.S. Supreme Court Research Guide.* University of Michigan, June 10, 2022. https://libguides.law.umich.edu/scotus.

Mooney, Christopher Z. 2021. *The Study of US State Policy Diffusion: What Hath Walker Wrought?* Cambridge: Cambridge University Press.

Nicholson-Crotty, Sean. 2009. "The Politics of Diffusion: Public Policy in the American States." *Journal of Politics* 71 (1): 192–205.

Parinandi, Srinivas C. 2020. "Policy Inventing and Borrowing among State Legislatures." *American Journal of Political Science* 64 (4): 852–68.

Paulk, Lauren. 2013. "What Is an 'Undue Burden'? The Casey Standard as Applied to Informed Consent Provisions." *UCLA Journal of Gender and Law* 20 (1): 71–109.

Pereira, Miguel M. 2022. "How Do Public Officials Learn about Policy? A Field Experiment on Policy Diffusion." *British Journal of Political Science* 52 (3): 1428–35.

Schlesinger, Joseph. 1966. *Ambition and Politics: Political Careers in the United States.* Chicago: Rand McNally.

Shipan, Charles R., and Craig Volden. 2006. "Bottom-up Federalism: The Diffusion of Antismoking Policies from U.S. Cities to States." *American Journal of Political Science* 50 (4): 825–43.

Shipan, Charles R., and Craig Volden. 2008. "The Mechanisms of Policy Diffusion." *American Journal of Political Science* 52 (4): 840–57.

Shipan, Charles R., and Craig Volden. 2021. *Why Bad Policies Spread (and Good Ones Don't).* New York: Cambridge University Press.

Shor, Boris, and Nolan McCarty. 2022. "Two Decades of Polarization in American State Legislatures." *Journal of Political Institutions and Political Economy* 3 (3–4): 343–70.

Solly, Meilan. 2022. "Who Was Norma McCorvey, the Woman behind Roe v. Wade?" *Smithsonian Magazine*, June 24, 2022. https://www.smithsonianmag.com/smart-news/who-was-norma-mccorvey-the-woman-behind-roe-v-wade-180980311/.

US Supreme Court. 2022. *A Reporter's Guide to Applications Pending before the Supreme Court of the United States.* Washington, DC: US Supreme Court.

Walker, Jack L. 1969. "The Diffusion of Innovations among the American States." *American Political Science Review* 63 (3): 880–99.

Welch, Susan, and Kay Thompson. 1980. "The Impact of Federal Incentives on State Policy Innovation." *American Journal of Political Science* 24 (4): 715–29.

Yingling, Dylan L., and Daniel J. Mallinson. 2020. "Explaining Variation in Evidence-Based Policy Making in the American States." *Evidence & Policy* 16 (4): 579–96.

Zimmerman, Joseph F. 2001. "National-State Relations: Cooperative Federalism in the Twentieth Century." *Publius* 31 (2): 15–30.