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**Coalition Formation and Flexible Discourse About Gun Rights  
Among Conservative Interest Groups at the US Supreme Court**

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# Coalition Formation and Flexible Discourse About Gun Rights Among Conservative Interest Groups at the US Supreme Court

Paper for publication

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### Abstract

The Second Amendment has long been a ‘hot topic’ among US conservatives, attracting diverse groups’ support. This paper proposes that shared discourse enables diverse conservative interest groups to establish coalitions while pursuing differing primary values. Gun politics accommodates diverse coalitions by being compatible with diverse value sets and not falling along ideological faultlines between bedfellows like libertarians and religious conservatives. Through qualitative content analysis of groups’ ‘friends of the court’ briefs in the landmark Supreme Court case of *D.C. v Heller* (2008), I argue that sharing a flexible discourse about gun rights is a strategic vehicle through which diverse groups pursue differing constituent priorities while sustaining coalition. These two analytical insights of the *discursive flexibility* of gun rights and its related *capacity to realize groups’ ‘real’ priorities* are mechanisms that sustain ideationally-broad coalitions. These findings help explain how diverse coalitions form and why gun politics attracts diverse support on the right.

**Key words:** gun politics, gun rights, discourse, coalition, conservative interest groups, Supreme Court, ideational, discourse flexibility

*Fein's puzzle*: “[Scholars] long been concerned with the question of how conservatives were able to craft a belief system out of dissonant first principles. They have also wondered how to think about the conservative coalition. *How did a range of different [...] groups manage to come together...?*”

(Phillips-Fein 2011, 735)

## 1. Introduction

Why conservatives co-operate amid ideational differences has been the subject of some political study, mostly from historicist and historical institutionalist perspectives (Phillips-Fein, 2011; Zelizer, 2010; Teles, 2008). The literature on American conservatism and the conservative coalition has often focused on an overarching ideational consensus as a means of uniting diverse parties. This paper addresses how far *discourse* is a mechanism enabling cohesion between diverse actors in conservative litigation at the US Supreme Court. Its animating puzzle is: how, despite ideational differences, do conservative interest groups come together in shared action in pursuit of gun rights? The research question asks: how in the landmark Supreme Court (SCOTUS) case of *D.C. versus Heller* (2008), did a variety of conservative interest groups with different, and even dissonant, first principles come together in support of gun rights? The subject of inquiry is the **mechanism** that sustains **broad support for gun rights**. This inquiry is explanatory of the broad appeal of gun rights among conservatives and therefore engages with how conservatives co-operate amid ideational differences, as well as generalizable mechanisms in coalitions of diverse actors.

I propose that sharing a flexible discourse is an explanatory mechanism of coalition among diverse conservative groups, through which groups retain their distinctive ideational goals whilst sustaining discursive unity. I develop this theoretical observation through an inductive discourse analysis among the conservative interest groups who submitted *amicus curiae* (‘friends of the court’) briefs in the landmark Supreme Court case of *D.C. versus Heller* (2008).

I find that the participating conservative interest groups pursue differing objectives in supporting gun rights; constitutional originalism<sup>1</sup> is a shared discourse whose flexibility allows it to be invoked by actors with distinctive and sometimes dissonant values. I find that this common refrain accommodates diverse issues within the single issue. I also find evidence to infer that gun rights possess a particular rhetorical and ideational

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<sup>1</sup> Also referred to as ‘textualism’ and ‘interpretivism’ (Teles 2008, 145), originalism advocates for the Constitution to be implemented in line with the intentions and contemporary provisions of the original document.

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flexibility for conservative actors: in other words, gun rights' flexibility as an issue is a key mechanism sustaining a broad coalition of conservative interest groups. I unexpectedly find a lack of direct investment in gun rights among two key actors (at Cato Institute and Institute for Justice) who funded and litigated for gun rights in *Heller*. From this, one can infer that the groups utilized the issue as a vehicle for their main ideational objectives. In this instance, gun narratives provide an adaptive discursive vehicle rather than a shared ideational framework. This is explanatory of guns' diverse support in this consequential, landmark case. It also provides a promising explanation of guns' diverse appeal on the right more generally. Furthermore, it may provide a generalizable theoretical mechanism of coalitions: i.e. that groups may unify in shared action by combining outward cohesion while retaining ideational differences.

The implications of this study are that co-ordination constitutes a better explanatory model of conservative interest group coalition than shared values in this instance. Co-ordination and shared values are competing models of coalitional behavior in political studies (Hardin, 1982; Parsons, 2007). My results yield the general theoretical insight that discursive props, deployed commonly among diverse actors, sustain coalitions in lieu of exact ideational alignment. Discourse must be given sufficient recognition as a mechanism. Of the particularistic dynamics within the Conservative Legal Movement, these results suggest that instrumental narratives may sustain its ideational breadth while retaining individual groups' specific ideational agendas. This limits the extent to which values are a necessary binding agent, as discursive mechanisms circumvent this. This negates the necessity of ideational consensus, which is commonly postulated of conservative coalitions. While it appears necessary that a discursive locus, such as gun rights, be ideationally-neutral among actors, signifying ideational compatibility is a precondition for coalitions, this constitutes a mechanism rather than ideational consensus. These findings also have the particularistic implication that constitutional originalist jurisprudence and narratives of the Constitution can operate as discursive tropes, notwithstanding any attendant values-commitment to them.

Using an inductive method, this paper's main questions are: *i) what is the mechanism for cohesion between diverse interest groups on the right* and *ii) how far do they share values?* Respectively, it identifies discourse, specifically originalism, and implies a limited role of shared values in explaining cohesion between different conservative interest groups respectively. These are the two main contributions of this paper. A third

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is my finding that the Second Amendment is instrumentalized towards different primary value sets by conservative actors and that there are differences in rationales and, accordingly, their apparent interests in gun rights between gun activist groups and conservative interest groups in *Heller*.

This paper is structured as follows. The following section briefly reviews existing literature on the questions of this research (both particularistic and general) and my theory of interest group coalition. The third section on research design outlines the case study, sample selection and use of content analysis. I then present my findings. First, it presents an inductive study of groups' discourse in their amicus briefs. I then compare CIGs' discourse to gun groups to make inferences about their commitment to guns and how uniquely their discourse is tailored to their ideational agenda. The final section of the analysis contrasts CIGs' support for guns with the four groups of the sample who submitted briefs in the subsequent landmark case of *Windsor* (2013) and inductively compares the cohesive potential of gun issues among conservative groups to equal marriage rights. The final substantive section analyses the mechanism through which diverse groups sustain shared action while retaining their constituent ends, before concluding.

## **2. Literature: Conservative Coalition and the Second Amendment**

The question of cohesion amid ideational difference is implicit but not explicitly theorized in the growing literature on conservative litigation. Research has shown the strategic dynamics of interest group participation at the Supreme Court. Hollis-Brusky and Wilson (2017) show that New Christian Right (NCR) amici participate in secular Supreme Court cases to strategically pursue their constituent goals (see also Aydin-Çakir, 2014). Hansford (2008) shows the importance of networks to communicating ideas within conservative legal circles (also Jackson, 2008; Fowler et al., 2007). While these studies provide salient insights to what motivates and facilitates conservative litigation, there is as yet no study on the theoretical mechanisms enabling cohesion amid values-difference in this literature and explanations of coalition formation among amici are scarce (Epstein and Lindquist, 2017; Collins 2017).

This paper addresses Second Amendment litigation specifically as an area of conservative legal activism. While it is not necessarily representative of all conservative behavior, it gives insight into conservative litigation broadly and specifically the role of values in coalitional dynamics therein. This anomalousness also explicates the importance of issue-selection for discursive alignment (see 4.3). The Second Amendment is not substantively discussed in conservative litigation literature; nor *Heller* despite its importance as a landmark

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victory for the right and originalism (Neily, 2010). Political studies of the Second Amendment are also scarce. Recent studies include Lacombe who proves the importance of group identity as an “ideational resource” to the National Rifle Association’s (NRA) preponderance (2019, 1344). Merry (2018) also demonstrates the NRA’s use of narrative on social media. Goss (2006) has also argued for the importance of narrative in framing gun politics. These studies contribute insights to groups’ use of discourse to generate political and social capital. Hitherto this research has concentrated on gun advocacy groups. Interest groups are less studied. This paper in part compares how interest groups’ interests in this issue differ from gun groups (see 4.2); a question so far overlooked and which pertains more broadly to how political issues may be instrumentalized or reconfigured by agents. It also uses the distinctive tool of ‘discourse’ as well as offering a distinct framework, by doing this, it adds a theoretical dimension to the gun literature in considering mechanisms versus values, which is not addressed in nor necessitated by the aforementioned studies.

Secondarily, this case addresses the conservative studies literature’s implicit puzzle of how diverse groups converge in the ‘broad church’ of American conservatism. Phillips-Fein (2011) and Zelizer (2010) argue that a key question in this literature is how conflicting first principles of differing groups have been aligned (Phillips-Fein, 2011, 735) which “entail[s] a study about how the Right built coalitions” (Zelizer, 2010, 388). Hitherto this question has been answered with ideational explanations (Dionne, 2004; Hodgson, 1996; McGirr, 2001; Young, 2016; Sager, 2006). The preponderant factor considered has been an ideational silver bullet (e.g. anticommunism for McGirr, 2001). There is no explicit debate around the mechanisms enabling cohesion and the analytical question of *whether* the ideational is a factor that coheres actors. This literature obliquely discusses outward constraints that historically catalysed cohesion between diverse conservative actors: e.g. the dominance of liberalism incentivising greater co-operation (Zelizer, 2010, 388), legal liberalism catalysing a backlash manifesting in legal conservatism (Teles, 2008, 4). However, this literature focuses on the origins of conservative movements and lacks substantive assessments of the mechanisms in specific instances of coalition. Where the role of strategy and co-ordination is implied (see Dionne 2004 on conservative coalitions as a marriage of convenience), these explanations are not theoretically-grounded.

Coverage of originalism in conservative studies literature is also scant. Teles’ authoritative book on the Conservative Legal Movement (CLM) alludes to its inception and dissemination in conservative legal circles (2008, 145). However, originalism has not yet been theorized or identified as a discourse mechanism through

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which coalitions and individual groups realize goals. This paper's findings identify originalism as the connection of shared conservative discourse in this case study. It is the first study to identify its enabling function in conservative coalitions.

While this paper is primarily concerned with the particularistic phenomenon of gun politics' broad appeal, it suggests that this 'hot topic', which has become a synecdoche of conservatism, offers generalizable insight into which subjects unite diverse ideational types and how. This is relevant to the Conservative Legal Movement. While I employ a constructivist epistemology, recognizing the culturally-embedded capacities of specific discourses, the theoretical insight of the cohering capacity of flexible discourse has general applications.

### **Discourse Coalition Theory**

This paper's engagement with theoretical questions of coalitions yields a tertiary contribution to the dispersed literature on interest group coalition<sup>2</sup>, and interest group theory and theoretical uses of discourse.<sup>3</sup> Discourse Coalition Theory (Hajer, 1995, 2006; Plehwe, 2011, 2014; see Parrilla, Almiron and Xifra, 2016 for an overview of interest group theory) is a sociological critical approach, developed to explain transnational change, which has been applied to think tanks (Pautz, 2011). Plehwe, who developed this approach, defines discourse coalitions as, "social forces acting jointly, though not necessarily in direct interaction, in pursuit of a common goal" (2011, 130). This renders redundant the need for direct co-ordination, information of which is limited in this study but whose presence main actors confirmed in first-hand interviews (2019). This paper parenthetically contributes a case study in support of this theoretical approach to shared action.

### **My definition of coalition**

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<sup>2</sup> Strategic incentives to forming coalitions have been discussed by Hanegraaf and Pritoni (2019).

<sup>3</sup> The limits of paper do not allow a full survey of this term. It applies DCT as a specific tool pertaining to coalitions. 'Discourse' was originally a Foucauldian term designating the production of knowledge that governs power relations. It has since been operationalized in political science. Pautz (2011) applies a Gramscian definition of discourse to think tanks. See [names] for an overview of this term's use. Similar attempts to discuss rhetoric and communication includes Merry applies 'Narrative Policy Framework' to the NRA (2018) (aforementioned) (which refers to storytelling (Merry 2018, 383) as a rhetorical strategy distinct from discourse, which constitutes a looser nexus of ideational nodes). Both denote linguistic uniformity as a political strategy.

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This paper observes a phenomenon of *de facto* coalition. It defines coalition here as the simultaneous support among diverse parties. It does define direct co-ordination as a prerequisite. This definition of coalition is distinct from *de jure*, or active, coalition. This paper maintains that active co-ordination is incidental to the phenomenon of shared action.

While interviews with Levy and Neily yielded significant anecdotal evidence of active co-ordination, irrespective of whether active co-ordination occurred, this study focuses on the **outcome** of discursive cohesion, not the means of its production. There is a *de facto* coalition, regardless of whether parties intended or actively sought this (notwithstanding the evidence that there was indeed active participation). DCT does not stipulate active co-ordination as a condition of coalition (Plehwe, 2011, 130). Discourse, and its capacity to be transmitted unintentionally, makes active co-ordination superfluous. This study defines *cohesion* and *coalition* between actors according to Plehwe: “social forces **acting jointly, though not necessarily in direct interaction**, in pursuit of a common goal” (2011, 130). What constitutes cohesion in this sample is alignment in arguments, rationales and language toward this goal.

This paper asks the extent to which these traits (constituting ‘discourse’) are a co-ordinative mechanism and how far shared values account for it. This paper defines ‘shared values’ as the same ideational content between actors. Values that may overlap or be compatible but are distinct and have different emphases cannot be defined thus. This paper’s inquiry is not about actors’ intentions or motivations (i.e. whether they act out of ideational commitment), though the role of strategy and teleology is parenthetically addressed.

## Values

This paper ascribes the paradigm of ‘values’ to this study of interest group coalition. The term ‘value set’ designates one’s worldview, measures of political actions’ worth and desirable outcomes (van Deth, 1984, 1995; Inglehart and Klingemann, 1979, 207). The concept is not rigorously defined as an explanatory construct in political studies (Loek et al., 2007). The author finds it illuminating because it ties to one of four key analytical models explaining collective action: values-sharing (Hardin, 1982; Parsons, 2007). The inquiry of this paper is not the causal role of values in action: but rather, how far discursive flexibility explains the shared action of diverse groups and the diverse appeal of the issue in question (gun rights). ‘Value sets’ is an appropriate paradigm in this paper. Not all groups promulgate systematized ideologies or possess intellectual frameworks like Cato and IJ. iii) Conservative is the most nebulous. Disentangling the synthetic (policy agendas)

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from the ideational is necessarily challenging; e.g. some groups (ACLJ - NCR PILF - and Heartland - ii. think tank) promulgate legal-policy objectives more than explicit values. Reducing ideational inputs to ‘value sets’ creates a common measure of the ideational content of the sampled groups.

### **3. Method**

#### **Case study: D.C. v Heller (2008)**

The landmark Supreme Court ruling of *District of Columbia v Heller* (554 U.S. 570) (2008) is a prime case study for interest group coalition on the right. The most recent Second Amendment SCOTUS case since *Miller* in 1939, it is cited as one of the most consequential Supreme Court rulings on the Second Amendment, establishing for the first time in federal law the individual’s right to keep a handgun in the home (Wilkinson, 2009, 254; O’Shea, 2009; Neily, 2010). The case involved the plaintiff, Dick Anthony Heller, who was hand-picked by Cato and IJ staff and sought to overturn the 1975 D.C. ordinance restricting handgun ownership and requiring existing arms be kept under lock and key. From its inception, *Heller* was a political case, conceived by four individuals at the libertarian think tank Cato Institute and the PILF Institute for Justice. Its express aims are to promote “textualism” (originalism) (Levy interview) and the libertarian principle of individual liberty (Clark Neily interview). By their admission, these actors were not primarily interested in guns or equally interested in the wider ideational issues.

#### **Constitutional Originalism**

This paper examines originalism as the discourse content shared by the interest groups. *Heller* has an implicit link with originalism. It has been considered a landmark victory for originalism and a foremost example of its practical application (Greene, 2009, 325; Neily, 2010), and Scalia’s (a prominent originalist) majority opinion cites originalism as an imperative of legal interpretation (Scalia, 2008, 56, 30; Neily, 2010, 186). Originalism (also referred to as “textualism” (Levy interview), ‘interpretivism’ and ‘original meaning jurisprudence’ (Teles, 2008, 145)) is a school of constitutional interpretation that promulgates the document’s original meaning and provisions (sometimes formulated as ‘intentions’) as the only legitimate guide to its present-day application (Neily, 2007, 2010; Greene, 2009; Avery and McLaughlin, 2013). Its identifying features include an emphasis on the Constitution’s historical origins, circumstances influencing its provisions and contemporary norms and practices. Originalism arose in the Conservative Legal Movement in the 1970s (Teles, 2008) and is

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associated with the Federalist Society as an eminent conservative legal network (Hansford, 2008), which shaped and promoted originalism (Teles, 2008, 145; Avery and McLaughlin, 2013, 8). Levy and Neily subscribe to this jurisprudential school (interviews), citing it as equal a motivation as the libertarian principle of individual freedom. Cato is institutionally in favor of originalist and Madisonian readings of the Constitution (Ilya Shapiro, director of Constitutional Studies at Cato, confirmed this in an interview (10 August 2020) and it is confirmed in his written output (CPR Nov/Dec 2008, 14; Shapiro, 2008). While one cannot infer it as a motivator for all 13 groups in this paper's sample, constitutional originalism is a connective tissue linking the conservative lawyers and actors in *Heller*. It is strongly present in the briefs (4.1). It is in the commonality and flexibility of the Constitution that one can perceive its capacity to be utilized by differing ideational types; i.e. functioning as a binding agent between diverse groups without the need for exact ideational alignment. While Teles traces its origins in CLM (2008, 145), originalism is yet to be considered as a mechanism among diverse conservative groups or regarding its discursive function. This paper contributes to this understudied area.

## **Research Design**

This paper employs a qualitative case study design allowing for inductive inferences. A case study that is sufficiently anomalous or representative facilitates hypothesis generation (Jack Levy, 2008). I select *Heller* as a pertinent case from which to inductively draw conclusions about the mechanism sustaining broad interest group coalitions for three reasons:

*i. Landmark case on the right:* This prominent case attracted widespread support from a range of actors, mainly but not exclusively from the right.<sup>4</sup>

Significant right-wing figures submitted briefs in support of the respondent including Edwin Meese (former Attorney General and Chair at the Heritage Foundation), Vice President Dick Cheney and 304 members of Congress of whom 228 (75%) were Republican.

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<sup>4</sup> Neily stated that the Heritage Foundation held a meeting to co-ordinate action and arguments on *Heller* (interview with Neily, 22 July 2019).

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*ii. Implicit connection with interest groups:* Heller was conceived, litigated and funded by three staff (Robert Levy, Clark Neily and Alan Gura) at two prominent interest groups (aforementioned). As the case’s Question Presented (QP) implies, it was conceived and framed as a libertarian action. Cato and IJ handpicked petitioners and engineered the action to maximize its chances of achieving an “ideological” objective (interview with Clark Neily).

*iii. Litigation as a relevant subject of political study:* Litigation is an established strategy of political influence among interest groups (Teles, 2008; Collins, 2017). Amici have a demonstrably important role in influencing legal outcomes, at least in obtaining cert. for cases to be heard at the Supreme Court (Collins, 2017). There is an established literature on conservative litigation at the Supreme Court (Hansford, 2004; Hansford and Johnson, 2008; Solowiej and Collins, 2009) and litigation and interest groups more generally (Kobylka, 1991; Scheppele and Walker, 1991). While the groups here do not directly litigate, amicus submission constitutes participation in litigation (Hollis-Brusky and Wilson, 2017; Hansford, 2008). It can therefore be included under the umbrella of conservative litigation.

This case explicates how broad coalitions are sustained in support of the Second Amendment. The ideational and discursive makeup of the gun issue has wider salience by explicating the *types* of issues and their related *discursive capacity* that enable coalitional cohesion. Gun rights’ potential anomalousness signifies a theoretical opportunity to draw broader conclusions. To this end, I inductively compare Heller with the landmark equal marriage case, *United States v Windsor* (2013), as a categorically distinct libertarian issue falling along social-libertarian lines like Heller but dividing conservatives, unlike gun rights. Comparison of this anomaly allows one to draw conclusions about the peculiar cohering capacity and ideational flexibility of gun rights.

### **Selection criteria for sample**

This study examines conservative interest groups who submitted amicus briefs in favor of the respondent (Dick Heller). This represents 13 of 47 amicus curiae briefs that were submitted in his favor in total (see [full list of amicus submissions](#)). The remaining 34 are composed of diverse parties, of which 11 are gun groups and 23 miscellaneous including academics.

### *Method of selection*

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Having selected Heller as a case study, I inductively identified the 13 sample by identifying all 47 amici's a) political orientation and b) organizational type, using the criteria was that they i) explicitly identify with a form of conservatism and ii) are a type of interest group who advocate for defined political objectives.<sup>5</sup> I bring together differing organizational types (think tanks, advocacy groups, PILFs) under the rubric of 'interest groups', like conservative litigation scholars. Teles (2008), and Hollis-Brusky and Wilson (2017) include PILFs (e.g. IJ) alongside think tanks (e.g. Cato) within the CLM. These groups also adhere to the aforementioned descriptor. (See Parrilla, Almiron and Xifra, 2016 to verify the establishing practice of discussing think tanks and PILFs under the same umbrella of 'interest groups.')

The 13-sample is the total number of conservative interest group-amici in the case. This inductive method found that all groups habitually engage in litigation and/or amicus submission as normative influencing strategies.

The question of ideational versus co-ordinating mechanisms is particularly appropriate to the subject of interest groups, which commonly participate in political action towards explicit ideological or policy goals. It pertains less well to other amici who do not by nature participate in legal cases with systematic ideational agendas, like academics. Campaigning organizations' interests are often positivistic and narrow (see 4.2). Elected representatives, such as the 304 members of Congress, can be reasonably expected to respond to electoral incentives and constraints, which produce different dynamics of coalitional behavior and litigative participation. The incommensurability of these subjects justifies concentration on multi-issue conservative interest groups. Other subjects require separate study altogether. Though gun groups exhibit overlaps in political and ideational characteristics with CIGs (Melzer, 2009; Horowitz and Anderson, 2009), they cannot be treated as a subset of conservatism. This study emphasizes that distinction, which is little explored by literature on gun groups and conservatism (aforementioned).

Some groups in this sample (ACRU, ACLJ, Cato, IJ, FML) are discussed in conservative litigation and CLM scholarship (Teles, 2008; Hollis-Brusky and Wilson, 2017). Their evidently habitual engagement in litigation and/or amicus submission and putative centrality to conservative litigation increases this study's relevance to that literature. This paper builds on some of these discussions; it extends Hollis-Brusky and Wilson's

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<sup>5</sup> I exclude Claremont Institute, Association of American Physicians and Surgeons, Paragon Foundation, Independence Institute, Conservative Legal Defense and Education Fund, and Eagle Forum Education and Legal Defense Fund, as these conservative groups were minor participants in briefs with multiple amici. Their late billing in the list of groups indicates that they came into the amici brief late (interview with Robert McNamara, 5 August 2020), and are unlikely to have influenced its content.

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findings about NCR groups’ strategic uses of secular litigation, and the spread of common strategies (Teles, 2008; Hansford 2008).

### Amici Curiae

Amicus curiae brief submission is a low-cost strategy of influence<sup>6</sup> cited as part of groups’ regular practice. Briefs provide expert information to Supreme Court Justices and favor the petitioner, respondent or neither. Cato’s amicus archives shows a 7700% increase in amicus submission between 1999 and 2018 (1 brief in 1999 compared to 78 in 2018) (Appendix A). Amicus submission to SCOTUS cases is a common practice according to literature on the subject (Caldeira and Wright, 1990; Hansford, 2008, 1). It is substantively addressed with regard to interest groups by Collins (2008) and Lindquist and Collins (2017) (see also Barker, 1967; Ennis, 1983 ; Songer and Sheehan, 1993; Spriggs and Wahlbeck, 1997).

Table 1: Interest groups’ organizational histories

Interest group	Founded	Primary location	Policy priorities	Organization type	Typology
1. American Center for Law and Justice (ACLJ)	1990	Washington, D.C.	Religious freedom	PILF (public interest law firm)	iv. New Christian Right [NCR]
2. American Civil Rights Union (ACRU)	1998	Naples, Florida	Religious, social / economic freedom	Legal organization	iii. Conservative
3. American Legislative Exchange Council (ALEC)	1973	Arlington, Virginia	Small government, free enterprise, social issues	Voluntary organization	iii. Conservative
4. Cato Institute	1974/7	Washington, D.C.	Individual / economic freedom	Think tank	i. Libertarian
5. Center for Individual Freedom (CFIF)	1998	Virginia	Small government, economic freedom	Nonprofit organization	ii. Free market
6. Foundation for Moral Law (FML)	2003	Montgomery, Alabama	First Amendment, religious freedom	Legal advocacy group	iv. New Christian Right
7. Goldwater Institute	1988	Phoenix, Arizona	Small government, free market	Think tank / litigating org	ii. Free market
8. Heartland Institute	1984	Arlington Heights, Illinois	Small government, free market	Think tank	ii. Free market
9. Institute for Justice (IJ)	1991	Arlington, Virginia	Economic Liberty, Educational choice, Private property, First Amdnt	PILF (public interest law firm)	i. Libertarian

<sup>6</sup> Cost is not a barrier to amicus submission, often requiring an in-house or consulting lawyer to draft briefs. This may explain why amicus submission became a common political strategy for large and small groups alike. Many organizations have in-house lawyers or legally-trained staff (e.g. Cato, IJ). This also reduces costs of litigation as it avoids legal fees. Neily stated that Levy’s personal expenditure on Heller was no more than a few thousand dollars, due to savings on legal advice. This is partly a result of individuals’ commitment: Heller’s litigating team worked on the case without remuneration (Neily interview).

Table 1: Interest groups' organizational histories

Interest group	Founded	Primary location	Policy priorities	Organization type	Typology
10. Libertarian National Committee	1971	Washington, D.C.	Individual / economic freedom	Committee of political party	i. Libertarian
11. Liberty Legal Institute	1997	Plano, Texas	Religious freedom	Nonprofit legal organization	iv. New Christian Right
12. Mountain States Legal Foundation (MSLF)	1977	Lakewood, Colorado	Free market	Public interest law firm	ii. Free market
13. Southeastern Legal Foundation	1976	Marietta, Georgia	limited government, individual economic freedom, free enterprise	PILF (public interest law firm)	iii. Conservative

Sources: Compiled author. (See: McGann (2008), TTCSP Global Go To Think Tanks Index Report; group websites)

### Typology of value sets

Four value sets can be extracted from the sample based their a) self-descriptions and b) policy priorities on their websites (accessed 2019). I use groups self identifications where possible, and terms employed by similar studies (for example, Hollis-Brusky and Wilson, 2017 on NCR litigation).

Table 2: Groups categorized by typology

Typology	Constituent groups	Value descriptors	Policy/Legal Areas of Priority	Total Number of Groups
<b>i. Libertarian</b>	1. Cato Institute 2. Institute for Justice 3. Libertarian National Committee	Emphasis on human freedom. Often espousing small state and market liberalization.	Individual freedom, limiting government regulation	3
<b>ii. Free Market</b>	4. CFIF 5. Goldwater Institute 6. Heartland Institute 7. Mountain States Legal Foundation	Overlaps with but distinct from libertarianism ; pragmatically interested in free markets.	Property rights and economic liberty, limiting government regulation	4
<b>iii. Conservative</b>	8. ACRU 9. ALEC 10. Southeastern Legal Foundation	Generic. Socially conservative with elements of small-state. Often neoconservative.	Small government, social conservatism, legal conservatism.	3
<b>iv. New Christian Right (NCR)</b>	11. ACLJ 12. Foundation for Moral Law 13. Liberty Legal Institute	Social conservatives, often authoritarian in contrast to libertarians; prioritizing Christian values and religious freedom.	First Amendment, religious freedom, (marriage, abortion, religion in schools)	3

Source: Compiled by author using organization websites [accessed July 2019] and Heller amicus briefs (2008)

This sample is an ideationally diverse sample with a roughly equal balance of types; a fortuitous outcome of the inductive method.

Variation in values is perceptible across the groups. The types are approximations: they are not necessarily incompatible and there are overlaps in values. This occurs between neighboring categories, notably i. and ii. Free Market (ii) contains libertarian elements (individual freedom, limiting government) but lacks its explicit identity and its classical-liberal intellectual framework. Values overlaps are also visible within individual groups: ACRU has NCR elements and Goldwater conservative elements. This notwithstanding, the types promulgate mutually distinct emphases. The dynamics of values-difference, therefore, vary according to the combination of types and groups. The greatest divergence is between libertarian (i) and NCR (iv). A contributing factor may be that both promulgate more distinct ideologies than ii. and iii. Section 4.4. explores this divergence. Notwithstanding conspicuous variation in values, all groups tacitly or explicitly identify as conservative including Cato and IJ, and conform to established definitions of conservative values (Scruton, 2017; [Stanford Encyclopaedia of Philosophy](#) [accessed August 2021]; Honderich, 1991; Nash, 1976, 27, 31). Likewise, all are unified by a shared outcome in Heller and profess commitment to the US Constitution in their briefs.

A valid question regarding this inquiry into the ideational is whether the briefs accurately represent their organization's perspectives. It is credible to interpret them thus, as briefs are submitted under organizations' auspices, including Cato's and IJ's.<sup>7</sup> The briefs explicitly claim to represent their organizations' beliefs and agendas.

#### Data and method of analysis

This paper employs content analysis to identify i) shared discourse and ii) its cohering properties. This comprises two sub-methods: quantitative content analysis (word frequency) and qualitative engagement with the briefs' arguments in context using Qualitative Document Analysis (QDA) (Wesley, 2010) (see Flick, 2013). The use of complementary mixed methods (see Seawright, 2016) is ideal for identifying discourse, whether it

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<sup>7</sup> Though Neily insists that action in Heller was undertaken privately by three individuals, Cato and IJ's briefs were submitted under their organizations' names, not theirs as individuals. Cato and IJ later claimed Heller as a victory for their organizations (Cato Policy Report September/October 2018, 16).

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is invoked in sufficient degrees to be considered discursively central, and how far it coheres to ideationally different groups.

This paper uses the 13 amicus briefs as the main source of evidence (to which it applies the aforementioned method of word frequency and QDA). It supplements this with semi-structured interviews with two of three members of Heller's litigation team (Clark Neily and Robert Levy), written correspondence with these actors, the 13 groups' media and research output (e.g. CPRs, op-eds, academic articles), and evidence of groups' orientations from their websites [accessed 2019].

### **Coding procedure**

To develop an accurate codebook, an inductive, grounded coding procedure was used. First, all 13 amicus briefs, plus the 11 gun groups for the comparison in 4.2 (making a total of 24 briefs) were coded using NVivo 11. Discursive nodes were then identified from point-blank word frequency. At the third stage, the most frequent keywords (or 'nodes') identified 5 main themes: 1. Originalism, 2. Small state, 3. Insurrectionism, 4. Founding fathers, 5. Empiricism. A qualitative reading of all briefs' main arguments was then undertaken to confirm their discursive orientation. Counts for nodes associated with originalism were then compared and an inductive finding of shared originalism was made.

As mentioned, the consistently inductive rationale for using the case of Heller, the sample and identifying the discursive nodes avoids selectiveness. This method, and Heller's significance as a lightning rod case, means that despite the inductive limitations of this qualitative study, which is primarily focused on one case, it offers inductive lessons for the wider question.

### **Method of analysis**

This paper employs the two aforementioned methods of analysis to identify discourse and its deployment. It uses i) content analysis (word frequency) to identify discourse content, the presence of shared discourse, and its distribution across the groups. ii) Comparative analysis identifies whether this discursive cohesion is peculiar to the interest groups; i.e. it is not a default argument that coheres with all groups but rather a distinctive discourse. iii) QDA analyses arguments in-context to show the ends to which they are used and whether constitutional originalism is discursively central, as well as statistically present. Word frequency and qualitative assessments of arguments were done individually for each brief (24), and this was repeated for both groups

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combined in order to compare them. Integrating quantitative word frequency with qualitative content analysis enables identification of a discourse's breadth and depth within briefs and across the sample, whilst retaining a view of arguments in-context. Multi-method analysis allows for 'triangulation' (Wesley 2010, 6). Qualitative engagement with arguments (e.g. originalist versus positivist arguments) supports hypotheses from the data. It also counterbalances the implicit disadvantages of a given method. For example, this paper uses aggregated word counts to identify points of commonality, complemented with non-aggregated word frequencies per group to ameliorate the possible tendency for high counts of a minority to overweight the average use of a node. Similarly, qualitative examination of discourse in context circumvents the potential deficiencies of selecting nodes in isolation via word frequency. Thematic analysis — which comprises these methods of multi-method content analysis, including quantitative word frequency, also known as 'syntactical analysis' (Weber, 1990, 44) and 'referential content analysis' (Krippendorf, 1980, 62) — is established in the literature as ideally-suited to identification and analysis of discourse (Kaplan, 1943, 240; Weber, 1990, 44-52). This is partly because it allows systematic discourse extraction from sources. It is apt for this paper's research question as it uncovers any embedded "ideological biases" (Sage, 2004).

Each method of analysis has a function in this paper's inquiry. They primarily established a) discourse connect and b) whether it is shared. Content analysis identifies embedded concepts; the qualitative method is close to any textual exegesis. Having identified discourse, the qualitative examination of briefs' arguments identifies cohesion. Information about groups' orientations contextualizes the briefs. This paper uses total count of nodes to make inferences about its importance. It defines nodes of 3 counts or more as discursively significant. This is appropriate given their relative unusualness and specificity, which one can use to infer the presence of a specific argument. It uses percentages to compare frequencies between the interest and gun groups.

In sum, this paper's inquiry is the **mechanism** that binds the groups. It proposes DCT as an explanatory framework for this. It does not openly ask about competing dependent variables but it does briefly address them in 5.4.

#### 4. Analysis: Discourse in the Amicus Briefs

This section explores how originalism functions as a cohesive discourse among the 13 groups. Its key findings are: (1) there is a shared discourse among a majority (10) of the 13 interest groups, constituted of constitutional

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originalism. (2) This discourse is distinctive among the interest groups compared to gun groups, which suggests that it is not overdetermined by the QP. (3) This discourse coheres diverse groups with distinct value sets. (4) Discursive cohesion in this one instance does not necessarily predict cohesion in another case on a separate issue. Values divergence remains, notwithstanding shared action and discourse in Heller; originalist discourse is redeployed by one Heller actor to the opposite end than former amici partners. These findings contribute to this paper’s conclusion that shared discourse is a cohering mechanism that binds diverse values.

### Shared Discourse: Constitutional Originalism

It is first necessary to identify whether there is a shared discourse and its content. Word frequency results from the 13 groups’ briefs show significant overlaps in the shared discourse around constitutional originalism (identified in Table 6). The inductive word frequency, combined with a qualitative assessment of all 24 arguments, identifies discursive nodes that divide into five categories: 1. Small government, 2. Originalism, 3. Founding fathers, 4. Insurrectionism, 5. Empiricism.

This paper concentrates on originalism because it is the dominant subtext of the case. Furthermore, Heller’s implicit link with originalism accounts for this decision. Heller was dubbed an “originalist victory” (Neily, 2010; Wilkinson, 2009, 256; Spivey, 2016, 106<sup>8</sup>), Levy cites originalism as his motivation in the case, and Scalia authored his majority opinion asserting it as the appropriate interpretative framework through which to read the Second Amendment. In addition, while there are multiple (generic) discursive strands in the briefs, originalism is the only jurisprudential school among them and represents a distinctive discourse on the right. Originalist nodes include keywords invoking historicism, the Constitution’s origins and contemporaneous norms, including “English”, “England”, “British”, “original”, “origins”, “tradition/al.” Four groups combine originalist discourse with constitutional interpretation (“collective [rights theory]”, “miller”).<sup>9</sup> I identify instances of originalist discourse in the briefs using four key dimensions:

Table 3:

Dimension	Key words
i. Explicit historicism	“history”, “historical”

<sup>8</sup> Though Wilkson and Spivey argue it is a pyrrhic triumph for originalism (Wilkinson, 2009; Spivey, 2016, 106), they agree it is a triumph nonetheless.

<sup>9</sup> *Miller* (1939) was the last previous Supreme Court case regarding the Second Amendment. It promulgated the ‘collective rights theory’, that the Second Amendment pertains to militias, not individuals.

Table 3:

Dimension	Key words
ii. Contextual origins	“England”, “origins”
iii. Constitutional interpretation	“miller”, collective rights theory”, “interpretation”
iv. Teleology	“purpose”, “intention”, “provisions”

Source: Author

Results show that 10 of 13 groups exhibit one or more dimension:

Table 4:

Dimension	Groups	Proportion of sample
i. Explicit historicism	ACRU, ALEC, Cato, FML, (GI), HI, IJ, MSLF	8/13
ii. Contextual origins	ACRU, (ALEC), Cato*, FML, HI, MSLF	6/13
iii. Constitutional interpretation	ACLJ, ACRU, ALEC, Cato, CFIF*, FML, HI, IJ, MSLF	8/13
iv. Teleology	ACLJ, ACRU, ALEC, Cato, FML, HI, IJ, MSLF	8/13

Source: Author

Content analysis of total counts of these key nodes are derived from word frequency analysis of all amicus briefs in NVivo. Data shows conspicuous overlap in the nodes of 7 groups. 6 groups have a full house of all four dimensions (ACRU, ALEC, Cato, FML, HI, MSLF) and IJ uses three. This shows commitment to an extensive originalist discourse weighted in half of the groups. Ten - a majority - use at least one discursive node in sufficient frequency to be considered significant. While this study, as mentioned, designates 3 or more counts as statistically significant (given they are not quotidian words, they can be reasonably inferred to correspond to a specific discursive orientation), half the groups exceed this minimum measure. The aforementioned 7 groups show high frequency rates, using at least one node on 10 or more occasions (ACRU, ALEC, Cato, FML, HI, IJ, MSLF). 8 groups use nodes from iv) Teleology 10 or more times.

There are implicit challenges in quantitatively determining the threshold at which frequencies constitute discourse. However, cross-referencing this data with a qualitative survey of their arguments affirms that groups make substantive use of originalism in their main arguments. A majority of 9 of 13 (ACLJ, ACRU, ALEC, Cato, CFIF, FML, HI, IJ, MSLF) advance substantive originalist arguments for all or most of their main arguments, including the same 7 groups with high frequencies in all four dimensions<sup>10</sup>. I use the established definition of originalism (see 2. Case study) to identify its presence in the briefs: i.e. invocations of the historical meaning, intentions, provisions and contextual norms of the constitutional amendments of 1789. I also include critiques of Miller and Collective Rights Theory, as engagement with constitutional interpretation. All arguments 13 aggregated can be reduced to three key angles of argumentation: i) historical origins, i) textual provisions/interpretation and iii) contemporary consequences or circumstances. The first two are recognizably originalist. Within these broad approaches, the main arguments utilize the key paradigms of originalism: historical provisions (ACLJ, ALEC), historical intentions (ACRU), historical origins ((ALEC to a lesser degree), Cato, FML, HI, IJ), contemporaneous ideas and norms (MSLF) and constitutional interpretation (CFIF). There is inevitable overlap between groups' arguments, not least because originalism's paradigms overlap, making it necessarily difficult to strictly taxonomize originalist arguments in the sample.

Further qualitative engagement with the 9 briefs' content confirms originalism's discursive centrality to their arguments. Arguing from i) origins, Cato, whose brief is the strongest in word frequency and substantive argument), argues primarily from the Constitution's historical content and provenance: "The English right to have and use arms belonged to individuals... and particularly protected their 'keeping' of guns for self-defense" (2008 ii-iii). While Cato's brief is perhaps the most evangelical and 'out of central casting' use of originalism in the sample, it is substantively incorporated by a majority of fellow actors. HI's first argument (of three) replicates Cato's: "I. Historical Origins and Early Interpretations" (2008, i). Likewise, FML's central argument is historicist and gives a close textual engagement with the Constitution, arguing that, "Properly interpreting the text requires reading it with an eye toward what it meant by common understanding at the time of its enactment" (2008, 2). Using the second form of originalism, (ii) textual provisions/interpretation), ALEC and CFIF engage with questions of interpretation. ALEC's summary of argument scrutinizes prevailing interpretations of, "militia" (2008, 3). CFIF's central argument faults the collective rights theory of Miller (1939);

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<sup>10</sup> Amicus briefs generally field three to four key arguments. See table of contents and 'Summary of Argument' in each brief.

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whilst this argument is not implicitly originalist, it pertains to constitutional interpretation. As a tacit critique of supposed liberal revisionism, this argument ostensibly favors an individualist reading and complements an originalist one.

These surveys show sufficient a) resemblance and b) shared paradigms to interpret originalism as a cohering discourse. There is broad employment of originalism in core arguments in a majority of briefs, and coherence of results between quantitative and qualitative surveys. Variations between types of originalist arguments are minimal, though their subject or focus may vary. This can be reasonably explained by the common incentive for co-operating amici to co-ordinate arguments to avoid duplication and cover more ground argumentatively. Levy and Neily affirm that they (at Cato and IJ) co-ordinated among amici (details unobtainable) in this manner. While there is some variation in the use of different dimensions, with highest frequencies clustering around one to two dimensions per group, all nodes are paradigmatically descended from the originalist school of thought.

There are three outliers from this pattern (LNC, LLI, SLF) which do not register significant word frequencies of originalist keywords, and do not field substantively originalist main arguments. Furthermore, there are varying degrees of originalism in the positive sample. Of the ten discursively-aligned groups, three occupy a limited **range** (fewer than three dimensions of nodes). Weak frequencies (below 10 counts) (**depth** of originalism) account for three groups; ALEC for all but one dimension, GI, and SLF with under ten frequencies in historicism and contextual origins.<sup>11</sup> There is some variation in emphasis in the originalist ten. Reflecting the frequency data picture of a 7-to-3 ratio of strong-to-moderate alignment, the most aligned 6-7 groups make exclusively originalist arguments, and 3-4 supplement originalist arguments with applied or contemporary supporting third or fourth-place arguments (e.g. HI's first argument of three discusses historical origins, the second the Second Amendment's provisions (both constituting an originalist/textualist approach) and diversifies with a third addressing the empirical question of handguns and crime (2008, i) (also CIF). Notwithstanding this, originalism is the dominant discursive strand fielded in most main arguments in the aligned groups. Only in three briefs (GI, LNC, LLI) is it absent (which make contemporary or D.C.-related arguments instead) and it is utilized as a minor argument in SLF<sup>12</sup> (the only brief to field an empirical main argument).

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<sup>11</sup> While CFIF and IJ lack some dimensions in high frequencies, especially contextual origins (ii), they each engage with two nodes - CFIF with constitutional interpretation and teleology, and IJ with historicism and teleology - in frequencies above 10.

<sup>12</sup> While SLF includes an originalist argument, it is minor and cannot be considered a full-throated adoption of the discourse. I therefore define it as an outlier from the aligned sub-group in the sample.

In brief, qualitative and quantitative surveys determine that 10 of 13 groups are discursively aligned, using originalism for main arguments: of this, 7 are strongly originalist (roughly half of the sample). This is a sufficient number to define as discursive cohesion.

How distinctive is this discourse? Is it a default, determined by the QP? While de facto alignment stands, irrespective of how far it is shared by other actors, determining whether the interest groups could be equally aligned with other types of actors, and how far this discourse is endogamous to the case or exogenously-produced, indicates how far their cohesiveness is contingent, specific to conservative groups who engage in Supreme Court activism, and thereby significant, possessing operational value specific to conservative interest groups.

### **Distinctive Discourse Among the Interest Groups**

Comparative content analysis of interest groups and gun activist groups (11 submitted briefs in Heller; see Table 5) shows higher levels of originalism among the 13 interest groups, delineating it i) as a political decision, not a default and ii) a cohesive discourse specific among the conservative interest groups. This means that the 10 aligned interest groups make a unique - not incidental - discursive choice. This implies that they can be perceived as a self-contained group and maintain practices specific to the CLM and conservative interest groups.

Aggregated frequencies of key discursive nodes, including originalist ones, are presented the part section of this section.<sup>13</sup> Data shows proportionally higher invocations of originalist nodes by the 13 interest groups than the 11 gun groups. This is true notwithstanding the differential in group size. Using percentage of text circumvents this issue. The 13 interest groups exhibit consistently higher frequencies for three of the four dimensions (the outlier being explicit historicism):

Table 5:

Dimension	Details
ii. Contextual origins	<ul style="list-style-type: none"><li>• Each node is higher among the 13 interest groups. There are equal uses of “original.” “English” and “England” are used more by the 13 by a substantial margin.</li></ul>

<sup>13</sup> Measures of this are imperfect, since there are greater absolute numbers of interest groups (13) to gun groups (11). NVivo word frequency analysis gave total word count and percentage of document. I use total counts of keywords and comparative percentages to address this.

Table 5:

Dimension	Details
iii. Constitutional interpretation	<ul style="list-style-type: none"> <li>• “Collective” 87 counts to 17 (0.10% higher), “miller” 75 to 38 counts (0.05% higher). There are even more mentions of “constitution” and “constitutional” (0.03% and 0.06% higher).</li> </ul>
iv. Teleology	<ul style="list-style-type: none"> <li>• Nodes are substantially higher among the interest groups. “Purpose” is a third higher for the 13 (40.9% higher; 93 counts to 66). “Intention” does not rank high enough to be included in the top 1001 words of the aggregated gun group briefs. “Provisions” is used almost twice more by the interest group (93 aggregated counts versus 66 counts). “Interpretation” is 143.47% higher among 13 than 11 (56 counts versus 23).</li> </ul>

Source: Author

Notwithstanding the extent to which aggregating counts overweights individual groups’ discursive nodes (e.g. Cato’s highly-originalist brief, which emphasizes the Second Amendment’s origins in English common law and social norms), 4.1 indicates that strongly originalist groups are statistically significant among the 13 with roughly similar uses among half of the sample, and a clear majority argumentatively deploying originalism.

A qualitative assessment of all 24 briefs’ individual arguments consolidates this picture. The gun briefs give more empirical arguments, use fewer originalist main arguments, often integrate these with empirical and applied arguments at greater rates than the 3 to 4 interest groups, and exhibit less strong originalist discourse overall, using fewer originalist node-dimensions. Six gun groups give empirical and applied (D.C.-related) arguments. While 6 groups make originalist arguments of some kind, only one (National Shooting Sports Association (NSSA)) makes an undiluted originalist argument using all four dimensions, compared to 6-7 interest groups. Just three groups make exclusively or mainly originalist arguments (NSSA, Second Amendment Foundation (SAF), Grassroots of South Carolina (SRSC)). SAF and SRSC use a limited discursive range of two and one dimensions respectively and combine it with empirical and applied arguments. Three groups integrate an originalist argument as one of their main arguments in a mixed bag and three use originalism as a minor point, incidental to the main argument. These have limited depth and range: originalism is a minor

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inclusion by GeorgiaCarry and Gun Owners of America (GOA), and one aforementioned use of all four dimensions (NSSA) with two (2) or one (3) used by the rest (compared to 6 and 7 interest groups using 4 and 3 respectively).

While originalism is used in the gun groups' briefs, it is more diluted, mixed with applied arguments and is not discursively varied. The mix-method evidence evinces that it is comparatively peripheral in their arguments, more sparsely deployed and less full-throated than the interest groups. Greater numbers of interest groups — 10/13 (76.9%) to 6/11 (54.54%) — are discursively-aligned with originalism, and more strongly, by 7 (53.8%) to 1 (9.09%) gun group.

Notwithstanding the inductive limitations of this small, 24-number sample and the degree to which this discourse is determined by the QP (which pertains equally to interest groups), the relatively greater concentration and centrality of originalism in the conservative interest groups indicates that it is a contingent narrative with particular value to conservative groups in the CLM. This is congruent with originalism's preponderance in the CLM (Levy interview) and their concurrent rise is established in the literature (see Teles 2008, 145) albeit scantily.

A resulting puzzle is how such diverse interest groups are bound by originalism. More specifically, how does one reconcile their use of the same discourse with their ideational differences? Do they pursue the same ideational objectives (values)? Or does the same discourse offer differing constituent utilities? If so, why does it have the capacity to cohere diverse groups?

Parenthetically, the comparison begs the question of whether the interest groups are invested in the immediate issue of guns or pursue teleological objectives. The discursive divergence between gun campaigns and interest groups implies they have divergent incentives for participation. Gun groups' greater empiricism by 6 to 1 suggests a direct investment in the real-world ramifications for gun ownership; a reasonable inference. The abstract nature of the interest groups' arguments, lesser empiricism, and commitment to jurisprudential interpretation suggests a lack of primary interest in gun rights themselves. This is substantiated by Levy and Neily's limited direct interest in the immediate issue of gun rights itself relative to related ideational issues that come out of the question of guns (interviews, 2019) and the absence of the Second Amendment in the 13 groups' listed policy priorities (websites accessed, 2019). Given this, do the interest groups' pro-Second Amendment participation have a teleological function and what role does issue-selection play in bringing together diverse conservative groups? I address this question in my discussion.

### **Cohesive Discourse Binds Groups with Distinct Value Sets**

Is the use of the same discourse indicative of shared values? While they pursue the same outcome, the briefs indicate different values as their ideational goals, in spite of shared discourse. How, then, does this discourse accommodate such diverse value sets? This section proposes flexible discourse as a mechanism enabling diverse groups to cohere in shared action; i.e. discursive cohesion does not necessarily imply or depend on values cohesion as a precondition (an analytic distinction). This paper does not claim cohesion as the **purpose** with which originalism is employed, nor are groups' motivations within this paper's remit. Regardless, it is a de facto **outcome**.

The shared discourse of originalism is notwithstanding differences in groups' values and priorities and is discursively deployed to diverse ends. By extension, it is devoid of intrinsic value-content, insofar as it is employed in Heller. The typology in section 2 indicates the groups' essential differences in values. Notwithstanding their originalist alignment, groups' ideational goals diverge along these typological lines. This is evident in groups' self-descriptions in 'Statement of Interest of Amicus Curiae' (page 1 of briefs). For example, three groups in the strongly originalist majority, ALEC and ACLJ/FML (types ii and iv) articulate distinct ideational goals: "to advance the Jeffersonian principles of free markets, limited government, federalism and individual liberty" (ALEC 2008, 1) in contrast with the NCR groups' (ACLJ and FML) main interest in the First Amendment (religious freedom) (FML 2008, 1). Tellingly, the same **discursive content** is attached to differing values and priorities. Faithfulness to the constitution is diverted towards market liberalism and individualism by the CFIF (e.g. "dedicated to defending the individual rights protected by the United States Constitution", 2008, 1), religious rights by the NCR groups, and individual freedom/containment of the state for Cato. While there is overlap in the values that neighboring types promulgate (e.g. market freedom between i. (Cato/IJ) and ii. (e.g. CFIF)), their emphases vary and therefore constitute distinct ideational goals (values), not values-sharing. Originalism, it can thus be inferred, is a flexible discursive construct, customizable to diverse value sets. The Constitution specifically is a device to which diverse actors across the right-wing spectrum can ascribe their constituent values. It is reasonable to infer that the US Constitution's primacy in political and popular culture is a structural factor that influences actors to employ it as a discursive device. This yields a particularistic insight that the Constitution is a shibboleth on the right. It also suggests theoretical parameters that circumscribe cohesive discourse: namely, a discourse or its locus must have sufficiently broad reach across

diverse parties. Notwithstanding the inductive insights for discourse coalition generally, this suggests that the Constitution possesses a unique capacity to cohere diverse groups. That incidentally implies it is aberrant.

In addition, originalist discourse is employed evenly across types. This suggests that, unless it constitutes a shared value commonly shared by all, its employment is not correlated to first principles: i.e. it lacks immanent normative values-content. This, in turn, supports the interpretation of originalist discourse in Heller as adaptable to diverse actors. An inductive survey of positively-aligned groups (i.e. those who utilize originalism strongly) show they are not confined to type. Ergo, its use is not dependent on a group’s values or ideational goals:

Table 6: Use of originalist discourse according to ideational typology

Use of originalist discourse	Number of groups	Groups
i. Libertarian	2	Cato, Institute for Justice
ii. Free Market	3	Heartland, MSLF, CFIF
iii. Conservative	1	ACRU
iv. New Christian Right	2	ACLJ, FML

Source: Author

Nor is there an apparent negative correlation between lack of originalist discourse and typology, with a similarly even distribution of **absence** or **reduced use** of originalism (combined below):

Table 7: Groups who *do not* use originalist discourse, according to ideational typology

Absence / lesser use of originalist discourse	Number of groups	Groups
i. Libertarian	1	LNC
ii. Free Market	1	GI (*if excluding CFIF)
iii. Conservative	2	ALEC, SLF
iv. New Christian Right	1	LLI

Source: Author

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While this small-N sample is not sufficiently large to extract a generalizable rule disproving a link between the use of originalism and type, relative to Heller it implies this. This suggests two possibilities: i) groups are potentially equally committed to originalist principles, and ii) originalism is flexible to diverse values. The first, pertaining to *intention*, is immaterial here. However, the *effect* (interest group alignment) is ascribable to the second.

Why does alignment on originalism not represent values-sharing in itself? Why identify it as a practice of co-ordination and not ideational? Though difficult to measure, groups may have equally strong commitments to originalism as a value in itself. This would technically constitute a form of values-sharing. Levy, for example, cites “textualism” as a key motivation in Heller. Not all actors are aligned on this: Neily cites libertarianism as his primary driver and sees originalism as a means (though notes the difficulty in separating out motives, especially when they are complementary). Any commitment to originalism as a value is therefore inconsistent across the sample and by no means present in the sample. In addition, all groups expound on differing ideational goals attendant with originalism in their briefs’ self-descriptions. This implies originalism has operational (strategic) utility, concomitant with any implicit commitment to it. It is therefore valid to identify originalism’s flexible adaptation to differing value sets as an instance of co-ordination, which necessarily limits values-sharing as an enabling mechanism for coalition. In sum, there are two key observations: i) originalism has utility and adapts to different values, and ii) it produces the outcome of cohesion.

The Second Amendment, as a specific political issue, also ostensibly has instrumental utility for interest groups in the case. No group lists the Second Amendment as a priority area on their websites (accessed August 2019). It appears only on [Name] among [No] areas. Only Cato and IJ promote Heller as a victory on their previous cases (*ibid*), which is explicable due to their role as primary actors. Its omission on their fellow amici’s websites suggests the case holds little significance for them, a fact corroborated by groups’ (e.g. ACRU) prolific amicus submission on multifarious issues ([ACRU website](#) accessed 29 August 2019). This supports Hollis-Brusky and Wilson’s view (2017) that groups [specifically, NCR PILFs] selectively engage in secular litigation beyond their natural remit to **strategically** advance their primary goals (i.e. religious rights, issues of social morality). Such participation instrumentally utilizes a given issue toward a teleological end. This inference is supported by the ‘Statement of Interests of Amicus Curiae’ briefs, which (across types) explicate ideational goals other than the Second Amendment. IJ, MSLF, and LLI (NCR) frame Heller via individualist, property rights and First Amendment issues respectively. The low cost of amicus submission can be

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reasonably assumed to incentivize legal activism outside priority areas. This increases the likelihood that participation in SCOTUS cases is undertaken for reasons other than a conviction, and may be for teleological purposes. As aforementioned, this does not preclude an earnest interest in the Second Amendment. Contextual evidence suggests, however, a degree of teleological interest in the Second Amendment. Moreover, it indicates, once more, that its capacity to be flexible towards diverse values is a key mechanism enabling interest group coalition. This implies a second mechanism for cohesion: issue neutrality and flexibility.

We can test the limitations of shared values among discursively-aligned groups in *Heller* by comparing it with a similar case involving the same actors, to which the next section is devoted.

#### **4.4. Comparative Case: Windsor**

The case of *Windsor* provides an inductive comparison to perceive how far shared values are correlated to discursive alignment between types in *Heller*. Is discursive alignment in one case a predictor of values alignment, the undertaking of shared action in others, or alignment in other policy areas? This case finds that discursively-aligned groups in *Heller* diverge here, suggesting limitations to shared values as an explanatory tool for their cohesion in *Heller*.

In the Supreme Court case of *United States v Windsor* (2013), four discursively-aligned actors (from the most strongly-aligned 7 of 13) from *Heller* submit amicus briefs for opposing sides: Cato and IJ (i); ACRU (iii) and FML (iv). The QP asked whether DOMA (the Defense of Marriage Act 1 U.S.C §7, 1996) “violate[d] the Fifth Amendment’s guarantee of equal protection of the laws” (SCOTUS majority opinion, *Windsor*, 2013) by preventing same-sex couples married under their states’ laws from collecting federal benefits. It was ruled unconstitutional in a 5-4 decision; a ruling later confirmed in *Obergefell v. Hodges* (2015).

The essential finding of this comparative is that originalist discourse does not in itself suggest values-sharing across issues, nor is it a precondition for discursive alignment. Parenthetically, this comparative reinforces the aforementioned finding that originalist discourse is not delimited to a single ideational type; it can be flexibly invoked by different actors. This comparative also indicates the importance of neutral issues that do not inflame points of ideational disagreement, as social policy is prone to. Notwithstanding the inductive limitations of this qualitative comparison, it supports findings with respect to originalism’s flexibility and that latent ideational divergences persist despite groups’ cohesion in *Heller*.

Discursive alignment in Heller is despite ideational differences in other areas

The Windsor comparative shows that groups aligned in Heller differ, and this falls along existing ideational differences. Cato and IJ favor equal rights while ACRU and FML support DOMA and traditional definitions of marriage. This division follows predetermined by values lines: libertarians (Cato, IJ) versus social conservatives (ACRU (iii), FML (NCR/iv)). As Levy's interview suggested, a persisting source of division between groups who partner on the right is social liberalism versus authoritarianism. Notably, ACLU (ACRU's liberal counterpart, which it was set up to oppose), submitted a brief in Windsor alongside Cato; Levy noted ACLU as an organization across the conventional political divide with which Cato has partnered. Significantly, actors who are furthest apart in the typology (i and iii/iv) diverge here. First principles are therefore a persistent division notwithstanding discursive alignment in Heller. We can therefore surmise that discursive cohesion arises in spite of values differences. This necessarily limits the explanatory force of values-sharing for interest group coalition in Heller.

Parenthetically, social policy's capacity to inflame divisions suggests the Second Amendment is an ideationally-neutral issue on the right, reconciling values sets that might otherwise diverge. Appropriate issue-selection is therefore a salient precondition for discursive cohesion.

A remaining question is whether Heller is an example of values alignment on a specific issue, the Second Amendment, rather than one disputing values-sharing as a mechanism in shared action. This is relevant to some extent; but a necessary distinction must be made between a shared objective (overturning the D.C. ban) and the value attached to this (e.g. individual rights, religious freedom), which are demonstrably diverse in Heller. Different values may be compatible but they do not constitute shared values. The 13 groups in Heller demonstrably frame their originalist arguments in terms of different values.

Originalist discourse is employed flexibly across types

Originalist discourse is employed by FML, showing its utility beyond Heller. FML argues that the founders' intentions and contemporary norms do not provide for homosexual marriage under the Fifth Amendment. This argument (which constitute the group's two main arguments) take precedence even over Biblical argument (its third point). Word frequency analysis of FML's brief shows the same originalist nodes from Heller: "madison" has 17 counts (0.33%), "traditional" 13 (0.25%), "english" 9 (0.18%), "history" 9 (0.18%). This constitutes a

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quintessentially originalist argument.<sup>14</sup> Even ACURJ, while not explicitly originalist, invokes historical provisions and social norms in its third argument (albeit around marriage practices and definitions historically, distinct from the of the Constitution). Significantly, originalist discourse is co-opted by FML toward an end opposed by their former amici partners in *Heller* five years earlier. Originalist discourse (or discursive cohesion more generally) is not a predictor of these partners' value positions. Nor does alignment with originalism in *Heller* preclude divergence in *Windsor*.

Furthermore, Cato and IJ do not utilize originalism in *Windsor*, potentially suggesting it is used selectively depending on its efficacy in particular circumstances. Despite submitting arguably the most originalist brief of the 13 in *Heller*, Cato instead discusses the constitutional provisions of the Fifth Amendment and court precedents. This omission by Cato and IJ reinforces the inference made in 4.3 that originalism is strategically utilized towards primary value sets; i.e. it does not necessarily constitute (but may for particular actors - e.g. Levy) a compelling end in itself. Parenthetically, this divergence in discursive use (and non-use) of originalism suggests it is not adopted in all constitutional law cases by the actors who use it in *Heller*.

### Originalism's Flexibility

The disagreement in interpretations of the Fifth Amendment by four previously-aligned actors further highlights the flexibility of originalism to be applied across groups whose principles may conflict in other areas. Incidentally, the case comparison suggests originalism may be under-theorized by right-wing actors regarding its practical applications.

### The role of issue selection in diverse group cohesion

Finally, *Windsor* highlights the importance of neutral issues that do not inflame existing ideational divisions; specifically in *Heller* the Second Amendment's neutrality on the right. This also implies that the Second Amendment is potentially anomalous in its capacity to cohere diverse parties. This concurs with literature such as Heinz et al. (2003), who found that social issues produce ideational dissonance between litigating partners.

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<sup>14</sup> FML's *Windsor* brief has different author (John A. Eisdmoe) to its *Heller* brief (Benjamin D. DuPré). Deployment of originalism in both may suggest it is an entrenched discourse within the organization. More data is required to confirm this.

## 5. Discussion: A Mechanism for Cohesion

There is sufficient evidence of shared discourse towards differing constituent ideational goals (values) among the conservative interest groups in Heller. This paper offers two key contributions herein: i) discourse (specifically, originalism) is a **mechanism** enabling coalition between diverse parties, which ii) necessarily **limits** the role of **shared values** as a mechanism. Values alignment does not necessarily attend discursive alignment. This is because discourse coheres to potentially divergent first principles. A remaining question is the precise way in which discourse functions as a mechanism of co-ordination, as opposed to one of shared values. This section addresses that question and the role of discourse, the Second Amendment and the Constitution in the particularistic context of US conservatism and litigation.

### **Conservative interest groups: strategy and diverse interests**

Section 4 indicates that a majority of the conservative interest groups come together towards a shared objective by employing the same language and arguments, not by pursuing the same primary ideational goals. The role of shared values is therefore necessarily limited.<sup>15</sup> The implications for interpretations of **conservative coalition** in this case are significant. It intimates that shared values are not the primary mechanism facilitating a common interpretation. The emergence of originalism in conservative legal circles (Teles 2008) enabled such a common rationale to arise. Literature attests to this. Teles shows that the Federalist Society was a locus for the dissemination of “‘original intent jurisprudence’” since the 1970s (2008, 145). The specificities of how it developed into shared discourse (the context and mechanisms of its transferral) requires separate study but this existing literature on originalism (while sparse, and mostly legal) provides some explanation.

We can therefore contribute a theorization of originalism (which has hitherto been lacking) through the explanatory tool of ‘discourse’, though it does not limit the genuine commitment originalism actors may have to it more broadly. This insight can be applied as an interpretative framework for conservative co-operation generally. It is one potential explanatory framework for Phillips-Fein’s puzzle that addresses ‘the conservative coalition’ more broadly. (This concept refers to the alliance of dissonant schools within US conservatism generally, in a variety of contexts.) In so doing, it responds to and validates Phillips-Fein’s implicit premise that

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<sup>15</sup> Differing constituent interests do not necessarily conflict; rather they are not **shared**, even between types i. and ii. where there is considerable overlap. There are fissures at the far edges (i and iv) along ideational lines. Divergences or relative alignment in values depend on the specific interaction of constituent types; they are not the same across all types.

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the ‘conservative coalition’ is not facilitated entirely or even mostly by shared values; a premise that has not been hitherto theoretically-framed or received precise analytical tools in answer. While a case study has limited scope for precise or universal extrapolation (and this case pertains to interest groups as a specific breed of right wing actor, whose behavior may not be reproduced by others), it offers a theoretical response with broader applications to this implicit question in the conservative studies literature. This is the secondary contribution of this case study (in addition to that for conservative litigation and the CLM).

The cohesion arising from shared discourse is not necessarily the intended but rather the de facto outcome. The cohesion is ostensibly an emergent phenomenon, due to its common utility for constituent interests. It suggests that collectivizing effort for different ends is an efficient strategy employed by interest groups. A question for literature on conservative litigation could be whether coalitions which share discourse are more efficacious than those without. Also pertaining to conservative litigation, the comparative of Windsor suggests that participation in shared action among conservative interest groups is on a case-by-case basis; i.e. coalition in one instance does not necessarily transfer to new cases, and is herein not indicative of deeper ideational agreement across policy areas. (Quantitative data is needed to explore this further.)

### **Second Amendment and conservative coalition**

In addition to shared discourse circumventing the need for shared values, the political issue at play is an important factor for cohesion among diverse interest groups. In the instance of Heller, the Second Amendment is a neutral issue enabling cohesion on a shared outcome and discourse. This may be another case of emergence, in which the Second Amendment is a fortuitously mutually effective vehicle for differing groups’ ends. An inevitable implication of this is that values matter insofar as they can either keep dormant or inflame potential divergences between first principles where they arise (between types i. and iv. for example). Values therefore cannot be seen as irrelevant in whether and how coalitions form. However, this does not contradict this paper’s foundational premise that shared values matter only to a limited extent in comparison with discourse as a mechanism in Heller.

### *Instrumentalization of the Second Amendment*

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This case constitutes an example of the Second Amendment’s apparent teleological utility on the right, notwithstanding any values-based commitment the actors may have to it. This case implies that strategic considerations at least partially underlie groups’ choice to participate. Hitherto this line of inquiry (regarding strategy in action) has been explored in CLM literature in relation to NCR litigation. Strategic selection of “high profile” secular litigation by NCR PILFs is convincingly argued by Hollis-Brusky and Wilson (2017, 128)<sup>16</sup> and Blackwell (2015) explores the teleological approach (my term) of NCR litigation on the Second Amendment specifically. Yet political studies literature on instrumentalism in conservative litigation is scant, and that on the Second Amendment even smaller. This paper extends these insights and applies them to other types of conservative groups. It is evinced in the Heller case by all 13 groups’ lack of enthusiasm for the Second Amendment outside of the case and, indeed, the lead litigators’ (Levy and Neily) admitted lack of interest in the issue.

#### *Second Amendment: Origins of a Political Issue?*

The Second Amendment’s compatibility with differing first principles may be a causal variable enabling its rise as a ‘hot topic’ on the right, as divergent groups are predisposed to agree on this area, unlike social issues such as equal marriage which unearth quiescent conflicts. Its popularity among some conservative constituencies and movements may have created an incentive for groups to participate in Second Amendment litigation (a variable requiring further research to affirm it); a factor which Hollis-Brusky and Wilson (2017) bear regarding NCR Supreme Court participation. The potential that Second Amendment activism may offer in terms of strategic realization of goals and its capacity to bind coalitions may be a structural explanation for the issue’s historical prominence since the 1980s (Spitzer, 2015). This requires, of course, more research. It addresses a question missing from the scant political studies coverage of the Second Amendment: whether values or coordination explain the emergence of ‘big issues’ in political blocs, electoral or otherwise. The particularistic insight that the Second Amendment is a neutral issue on the right may contribute to this wider question within US conservatism and more generally. It also contributes to the theoretical observation that issue selection is a

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<sup>16</sup> Hollis-Brusky and Wilson suggest that NCR PILFs [New Christian Right Public Interest Law Firms] are highly selective about which secular litigation they undertake and “despite their visible participation as amici curiae in some very high-profile Supreme Court decisions”, they “have not invested... significant... litigant resources” except in advantageous cases which fit “their religiously defined mission focus” (2017, 128).

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foundational mechanism enabling diverse coalitions, aligning with existing literature on this subject such as Heinz et al. (2003).

## **Constitution**

The instrumentalism of the Second Amendment and limited values-sharing has corresponding implications for the role of the Constitution in conservative litigation. The Constitution has an apparently cohesive effect on the right, enabling actors to affect the same rationales for their positions whilst accommodating diverse value sets. Once more, it is not possible to ascertain whether this is an *intentional* effect or de facto. However, it does indicate that its **function** (regardless of actors' intention) is as a flexible discursive device.

Relatedly, the Constitution lacks an intersubjectively stable meaning and application on the right, reflecting the variation in values arguments that actors promulgate. This likewise can feed into an understanding of the mechanisms that cohere the right, as it constitutes shared content (mechanism) and not shared paradigms (ideational).

This elicits the contentious question of whether the Constitution is a palimpsest on the right: i.e. a vehicle for a predetermined set of values and aims, which are contingent on contemporary political mores. While all briefs in a Supreme Court case are ultimately discussions of the Constitution's provisions, faithfulness to the Constitution's embedded norms and views (which are foundational to originalism) is distinct. Cato's inconsistent use of this approach to the Constitution from *Heller* to *Windsor* suggests that this particular utilization of constitutional discourse is **context-dependent**: i.e. selectively employed in instances where it is efficacious. This could paradoxically imply that, as opposed to a consistent conviction around constitutional interpretation, some groups' use of the Constitution bends to political exigencies. While more data is required to assess this, it is a relevant question implied by the results of this case study comparison.

## **Competing and Attendant Explanations**

It is pertinent to briefly consider other explanations that may contradict or complement this paper's interpretation of the cohesive effects of shared discourse as a mechanism for cohesion. In so doing, it necessarily limits the role of shared values and elaborates how shared discourse can circumvent the need for values alignment, in order to establish cohesion between diverse parties on the right. It submits that this reading has broader applications for our understanding both of conservative litigation/the CLM and 'the' conservative coalition

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(Phillips-Fein) at large, as well as contributing to the theoretical question of mechanism in coalition (see literature group on interest group coalition and DCT).

The first alternative explanation is that *originalism is a value set in itself* (briefly mentioned previously). This has some weight and certainly applies to Levy. However, it is flatly contradicted by Neily (correspondence, August 2019).<sup>17</sup> While this is not a sufficient basis for judgment in itself, as the other 12 groups' putative motivations are lacking (which is not this paper's remit), such disagreement between two primary actors in Heller is a notable indication that originalism i) does not necessarily constitute a value in itself for all actors (notwithstanding the implicit difficulties of defining what is a value or a device) and ii) was not necessarily promulgated as a primary value pursued in the case. Any value content actors ascribed to originalism does not attenuate its force as a mechanism enabling cohesion. Both explanations can work complementarily.

Nor does it necessarily contradict this paper's finding that shared values are limited between the groups. Any values the actors may share may be classified as incidental, and not sufficient to constitute 'shared values' as a mechanism for cohesion. This paper assesses the presence of shared values by whether groups i) are oriented towards a specific value set in their organizational activity generally and ii) profess interest in a particular value set (as in their 'Statements of Interest'). Briefs show sufficient divergence in these metrics, notwithstanding any overlap. This suggests that, though shared values are present to an extent between types and may be an additional factor enabling cohesion, it is a lesser factor compared with discourse as a mechanism, especially in bridging larger divergences in type and values (e.g. i. and iv.) where shared values is a less convincing factor, not least because Cato and IJ (i) do not reapply originalist discourse in Windsor. It is also less convincing in instances of weak originalism (3-4 groups). More data is required to confirm whether originalism is consistently applied by groups in the strongest-aligned category (6-7 groups) in other amicus briefs. Finally, individuals' perspectives may be a factor influencing the nature of the amicus brief. Whether values can be maintained by entire groups across multiple amicus submissions, or whether groups can even possess value systems (see Hardin, 1982) is a relevant debate here. (There is a related theoretical question of whether values *can* be located in any other unit than the individual (Parsons, 2007). It is thus difficult to ascertain whether

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<sup>17</sup> Neily insists that originalism "was not a driving force" the case.

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originalism constitutes a shared value, which necessarily constrains our ability to determine whether it is an important mechanism enabling cohesion between diverse actors.

A complementary explanation is also that there is a *minimum required amount of values cohesion* underlying interest group coalition. This is plausible and can complement this paper's hypothesis around discourse.

Another factor that may cohere the actors is their *proximity in aggregated policy preferences*. It is reasonable to infer that actors on the right find themselves on the same side recurrently. Levy and Neily report that Cato often partners with organizations on numerous cases, sometimes co-ordinating arguments. This explanation is belied by the apparent promiscuity in groups' alignment with differing amici. Levy noted in his interview (September 2019) that Cato often partners with ACLU (a liberal opposition), as well as NCR PILFs such as ACLJ and FML. That aside, this explanation may be an influential factor on group coalition. It is complementary to this paper's explanation of discourse. Discursive cohesion may be more likely to occur among groups who frequently co-ordinate and adopt the same arguments. Proximity is a distinct factor from shared values, though they could be correlated; policy preferences may signify shared ideational perspectives. This notwithstanding, it does not contradict the evidence of value difference in the amicus briefs. Proximity in policy preferences could be put into either the analytical model of co-ordination (comprising mechanism, and thus discourse) or that of shared values. It is more prone towards co-ordination for the stated reasons, though the two interact. Importantly, this explanation does not discount the cohering power of discourse in filling the gaps between differing first principles; a problem which ideational explanations cannot resolve. Inevitably, more research surveying whether the groups in question partner and/or co-ordinate around shared policy areas, and the extent to which this influences cohesion. This is, however, a different question to the role of discourse.

A final complementary explanation is *shared outcomes*. This is a prerequisite for shared discourse. Shared outcomes are a neutral factor that can couple with shared values or discourse (as explanatory frameworks). It can be read as another non-ideational factor that circumvents shared-values as a precondition for coalition. That said, it can also be read as a signifier of a shared value, no matter how unrepresentative of the broader political contests that may exist between coalition partners (e.g. ACLU and Cato in Windsor).

There are remaining areas in which this paper has limited scope to comment. The issue of motivation, which is outside this paper's focus, remains an irresolvable part of the puzzle. For one, it is difficult to measure.

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Even personal recollections of motivation are subject to change over time. Levy and Neily's recollections of their own and one another's motivations contain inconsistencies, for example. Additionally, it is hard to determine whether groups tacitly used originalism purposefully as a mechanism; from Levy and Neily's accounts, the process arose more organically. Moreover, data is not available to assess whether or how far specific coordination among the amici determined briefs' content. These omissions, which presently limit our understanding of how discursive cohesion arose in this case, could be opportunities for future research in this area. That notwithstanding, this paper contributes clear evidence of discourse and its role as a mechanism.

## 6. Conclusion

This paper proposes 'discourse' as an explanatory mechanism for cohesion among ideationally-diverse conservative interest groups in the Second Amendment case of *Heller*. It argues that employment of similar language and rationales bridges groups' rifts in values. This limits the role of shared values in this instance and suggests that it is not a critical precondition for cohesion. It primarily addresses literature on conservative litigation and the Conservative Legal Movement, in which the mechanisms enabling cohesion have been little theorized thus far.

The value of this insight is in recognizing the flexible applications of gun politics for multiple ideational types. This, in turn, is a compelling explanatory model of how diverse brands of conservatism can operate together — a question that has animated historicist and political studies of modern American conservatism (Phillips-Fein, 2011; Zelizer, 2010). Notwithstanding the ideational conflicts between socially liberal and authoritarian conservatives precluding co-operation on some subjects, it finds that flexible discourse is a key strategy for sustaining a large movement with an overarching legal and particularistic theme (gun rights), while operating to the particular ideational frameworks of constituent groups. Discourse can thus be considered a mechanism for cohesion in this instance and theorizes in part why gun politics represents a 'hot topic' on the right. While the Second Amendment is a somewhat aberrant issue (4.2), it gives insight into, partly, why particular issues may attract wide supporters. Furthermore, discourse flexibility offers a useful interpretive framework in other contexts of coalition. Lastly, the deeper critical question remains as to the role of values in political movements, and whether it is a sufficient mechanism to unite diverse parties — or which other explanations have promise (Hardin, 1982; Parsons, 2007). The author hopes to contribute to this theoretical debate, offering a case of a

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significant, albeit culturally contingent, question, suggesting that the dynamics of its coalitions may be generalizable.

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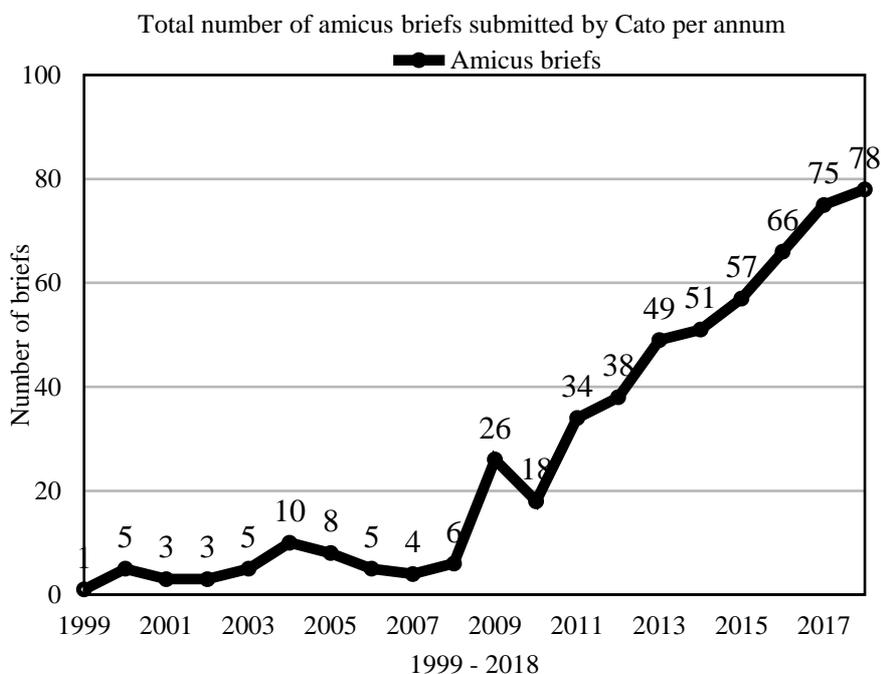
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## Appendix

Appendix A: Cato Institute’s amicus brief submissions, 1999-2018 (Cato [website](#), accessed 3 July 2019).

Source: Cato [website](#) [accessed 3 July 2019]

Appendix B: Breakdown of amicus curiae submissions in *District of Columbia v. Heller* (07-290)



Amicus briefs in support of the defendant	19
Amicus briefs in support of the respondent	47
Error briefs	1

Source: SCOTUSBlog.

Appendix C: List of interest groups sampled, and related amicus briefs (with abbreviations)

ACLJ                      American Center for Law and Justice

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ACRU	American Civil Rights Union
ALEC	American Legislative Exchange Council
Cato	Cato Institute and Professor Joyce Lee Malcolm
CFIF	Center for Individual Freedom
FML	Foundation for Moral Law
GI	Goldwater Institute
HI	Heartland Institute
IJ	Institute for Justice
LNC	Libertarian National Committee
LLI	Liberty Legal Institute
MSLF	Mountain States Legal Foundation
SLF	Southeastern Legal Foundation