Playground Politics:
Bullies, Interest Groups, and the Courts

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Abstract

Whether as the notorious bully himself, his squirming victims, or the silent observer of the harassment, most people have been involved in bullying in some manner. In the past decade, interest groups devoted to eradicating childhood harassment have developed, and many of them are applying pressure to the courts to make what was once dismissed as juvenile antics actionable under the law. This project explores the tactics of anti-bullying interest groups and the success of anti-bullying litigation. Through this dual analysis, the project compares the tactics of groups working to halt harassment based on students' perceived or actual homosexuality with the tactics of groups pursuing protections against bullying in general. The project concludes that while cases in which the petitioner was harassed based on perceived or actual homosexuality has little effect on the case's outcome, groups interested in this sort of harassment tend to pursue litigation and legislation more aggressively than other groups. While the anti-bullying movement is still developing, the inertia provided by groups concerned with GLBT issues may strengthen the entire movement in the future.

For many children, bullying at school is a part of childhood that they will eventually outgrow. Whether the child is the harasser or the harassed, eventually the acts will become nothing but a distant memory. But some children, like thirteen-year-old Jared High, never get the chance to outgrow bullying. After an older student, known by students, teachers, and administrators to frequently harass other children, assaulted Jared in gym class, he became severely depressed. Six days after his thirteenth birthday, Jared called his father at work to say goodbye and shot himself while still on the phone. Jared died instantly. [1]

To cope with her grief, Jared's mother, Brenda High, founded Bully Police USA, an advocacy group that works to combat bullying in schools. Bully Police USA works to educate schools, students, and parents about the effects of bullying, focusing especially on adult's ability stop bullying as soon as it becomes a problem. High's group also has become engaged in the political process, working to get anti-bullying laws passed in states across the country.

Jared and Brenda's story, unfortunately, is not entirely unique. Student-on-student harassment often has devastating consequences and has been attributed to over seventy-five percent of youth suicides.[2] Perhaps because of this, Bully Police USA is one of several groups of concerned advocates working on the local, state, and national levels to combat bullying in schools through the political process. Though some groups, like Bully Police USA, focus on state legislation, others feel that the court system is the best way to address the problem. If different groups select different strategies, what factors influence these

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[1] High, Brenda, "Jared's Story," (1999): http://www.bullypolice.org/brenda.html.
[2] GenderPAC, "Back to School, Drop the Labels; Bullying Facts," http://www.gpac.org/youth/dtl/bullyingfacts.pdf.

strategy decisions? Does the past success of a particular strategy influence group decisions, or are other factors at play?

Groups that turn to the courts usually relate bullying to sexual harassment case law, often making a claim for relief to be granted under Title IX. Title IX was passed in 1972 to protect against discrimination on the basis of sex in education.[3] Specifically, it states that, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."[4]

At first glance the connection between Title IX and bullying seems to be a tenuous one at best. Title IX has been applied in the past to cases involving both teacher-on-student and student-on-student sexual harassment. According to the Supreme Court, Title IX on its own does not prohibit student-on-student harassment in schools unless the harassment is based on sex, and many scholars agree that applying Title IX to bullying will ultimately fail. According to these scholars, unless the Supreme Court rules definitively on the issue, this failure will continue.[5] Citizens and scholars alike acknowledge that the court system's ability to bring about major social change by itself is limited; furthermore, a litigation-based strategy absorbs resources that may be better spent on other targets.[6] If student-on-student harassment suits based on Title IX do not often succeed in the courts, why, then, are groups promoting Title IX litigation as a strategy to eliminate bullying?

In this study, I examine the factors influencing the strategic choices of anti-bullying advocates. Interest groups strategy is an important aspect of American politics. For the

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[3] Kosse, Susan Kosse and Wrightand Robert H. Wright, "How to Best Confront the Bully: Should Title IX or Anti-Bullying Statutes be the Answer?" Duke Journal of Gender Law & Policy, 12, 53 (2005): 57.
[4] Title IX of the Education Amendments of 1972, 20 U.S.C §§ 1681
[5] Kosse and Wright71.
[6] Rosenberg, Gerald N., *The Hollow Hope*, University of Chicago Press, 1991, 10.

purposes of my study, I define strategy in several ways. In the most literal sense, a group's strategy is its plan for achieving the goals of both the organization and its members. This plan can be manifested in ways, from the group's structure to its financial choices.[7] For example, strategic choices are closely linked to decisions about resource allocation. Participating in the court system is an extremely expensive process. A single amicus brief can cost up to $15,000.[8] If a group decides to spend funds on litigation, less money will be allocated to public mobilization, awareness campaigns and lobbying. As interest group involvement in politics is so prevalent, understanding strategy becomes all the more important. By determining the factors that may influence groups' decisions, scholars may better understand how groups' decisions in turn affect the policy process.

Furthermore, with regards to public policy, this research sheds light on the extent to which Title IX has been stretched beyond its initial intent to accommodate new forms of discrimination. Some scholars argue that the expansion of Title IX to protect against things like student-on-student harassment distort the statute beyond its original intent.[9] Bullying litigation seems to be at a crossroads: is Title IX strong enough to protect students against harassment in school or is new legislation necessary? My research thus contributes to the literature by explaining the best way to attack the bullying problem through public policy.

In order to determine how anti-bullying interest groups select their strategy, I must first conduct an analysis of the groups themselves. From human rights organizations to advocacy groups for the gay, lesbian, bisexual, transgender and questioning community to groups of public school administrators, the anti-bullying movement is composed of a diverse collection of interests. Does a group's specific interest in bullying determine its strategy? Are certain

[7] Rosenberg 45.
[8] Caldierra and Wright 810.
[9] Bernstein, David, E. *You Can't Say That!*: *The Growing Threat to Civil Liberties from Antidiscrimination Law*, Cato Institute: 2003, 45.

types of groups more likely than others to become involved in anti-bullying litigation? Do certain groups more actively seek another strategy? I continue my study with an analysis of recent anti-bullying litigation. Do Title IX arguments succeed in the courts? Is another, more successful argument or strategy being used to combat bullying?

I answer these questions through a two-part study. First, I analyze the strategies of eleven anti-bullying interest groups. Next, I assess the success of pursing anti-bullying litigation with a study of recent cases in federal district and state supreme courts. I then compare the results of these studies. If groups are choosing to litigate at a high rate, to what extent is the success of this strategy influencing this decision? My study sheds light on the reasons groups may become involved in litigation and what better tactics groups might adopt.

By gaining insights into why groups choose specific strategies, political scientists can better understand the dynamics between these actors and the government. Since the anti-bullying movement is a relatively new one, this insight will allow us to predict the future of the debate and perhaps of Title IX. Will an eventual decision Supreme Court impact the effect of previous Title IX case law? Will a new statute be necessary? My study will provide insight into these and other important questions regarding the future of such policies.

In this paper, I utilize a two-party study of interest group strategy and argument choice in litigation to examine the extent to which anti-bullying interest groups select their strategies. In the first section of my paper, I examine the relevant literature in order to establish the factors that inform interest group strategy, the reasons that interest groups decide to litigate, and how anti-bullying litigation has developed thus far. In the second part of my paper, I develop and implement a strategy for determining the extent to which a strategy's actual effectiveness impacts a group's decision to pursue a specific path of advocacy.

Overall, my findings indicate that a group's interest in bullying does slightly affect its strategy choice. Groups that advocate for the rights of gay, lesbian, bisexual and transgender people in particular seem to litigate more aggressively than others. Despite these groups' comparative interest in litigation, anti-bullying arguments before the courts involving perceived or actual homosexuality do not succeed at higher rates than other arguments. The reasons that groups may choose to litigate regardless of this fact usually serve the groups' other interests in some manner, whether it be recruiting new members, generating new donations, or making a point about a larger issue. I conclude my paper with insights into the health of the anti-bullying movement and predictions for its future.

REVIEW OF THE LITERATURE

Interest Groups and Political Change

Interest group influence has increased dramatically in the American political system. Existing scholarship on policy-making illuminates this trend. In 1996, Thurber presented an analysis of policy subsystems in American politics. He defines policy subsystems as "networks of actors, the substantive policy domain with which they are concerned, and various modes of decision making … organized to make focused demands on policy makers…"[10] This model recognizes that governments are influenced by both official and unofficial actors with specific policy agendas. Thurber argues that while the subsystem model allows for a wide representation of interests, not all groups will succeed in advancing their goals.[11] Therefore, group strategy is essential and must be carefully organized and executed.

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[10] Thurber, James, "Political Power and Policy Subsystems in American Politics," *Agenda for Excellence, Administering the State*, ed. B. Guy Peters and Bert A. Rockman, Chatham, NJ, Chatham House, 1996, 82.
[11] Thurber 101.

Members of interest groups play an important role on how groups develop their strategies. Barakso's analysis of the National Organization for Women (NOW) provides insight into this process as she examines how group members are, or have the potential to be, involved in the decision-making process. She argues that, "[t]he greater the potential influence of the group members on the formation of policy and priorities, the more likely they are to become actively involved in the group."[12] Such groups would then naturally make decisions more representative of their members' goals. According to this model, interest groups can be a viable outlet for individual political participation.

Individuals may impact an individual group's policy choices, but can an interest group catalyze real policy change? Since many interest groups are organized as a reaction to a perceived problem in society, change in policy the groups' primary goal. [13] Baumgartner argues that a group's impact is dependent on the number of other groups engaged in the specific issue.[14] If a group's voice is one of very few, the group that may find "a quiet policy corner in which to request the insertion a few lines of legislative language"[15] may be able to make a policy transformation.

Interest Groups and the Courts

In the past few decades, the American judiciary has become increasingly involved in the policy making process. Few academics would contest this fact. Many, however, *would* contest the court system's ability to decisively impact legal change. Rosenberg presents two views of the Supreme Court that accurately depict this ongoing argument: the Constrained

[12] Barakso, Maryannm "Civic Engagement and Voluntary Associations: Reconsidering the Role of the Governance Structures of Advocacy Groups," Polity, 37, 3, (July 2005), 321.
[13] Hunter, Kennith G., et al, "Societal Complexity and Interest-Group Lobbying in the American States," *The Journal of* Politics, 53, 2, (1991), 489.
[14] Baumgartner, Frank R. and Beth L. Leech, "Interest Niches and Policy Bandwagons: Patterns of Interest Group Involvement in National Politics," *The Journal of Politics,* 63, 4, (2001), 1192.
[15] Ibid.

Court and the Dynamic Court.[16] The Constrained view of judiciary as dependent on others to carry out decisions acknowledges the many limitations of the court system as a pathway to real social change.[17] In contrast, the Dynamic view sees the courts' isolation as their main strategic advantage when compared to other branches of government since it gives them freedom from the "electoral constraints and institutional arrangements that stymie change."[18]

Rosenberg himself settles on a more moderate theory that he deems "the Flypaper Court." This theory proposes that the courts best facilitate social change when the political climate is hospitable.[19] While activists determined to effect social change are often attracted to the courts, they may not always be the best forum in which to do so. These individuals and their causes become trapped in the judiciary, restricted by the institution itself. The natural framework of our government greatly restricts the judiciary's ability to implement changes. Without the cooperation and, therefore, agreement of other branches, court decisions are essentially unenforceable.[20]

Regardless of this relative powerlessness, groups do turn to them in search of a means to promote specific causes or pieces of legislation. However, the literature is conflicted as to the extent tow hich to which both groups and citizens use the courts.[21] O'Connor and Epstein, for example, argue that many groups engage in the political system through the courts.[22] The filing of amicus curiae briefs is the most common and quantifiable method of measuring such participation at the Supreme Court level.[23] From an analysis of these filings, O'Connor and

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[16] Rosenberg, Gerald N., *The Hollow Hope,* Chicago: University of Chicago Press, 1991, 2.
[17] Rosenberg 10.
[18] Rosenberg 23.
[19] Rosenberg 336.
[20] Rosenberg 337.
[21] Grossman. Joel B. et al, "Dimensions of Institutional Participation: Who Uses the Courts, and How?" *The Journal of Politics*, 44, 1, (1982), 86.
[22] O' Connor, Karen and Lee Epstein, "Amicus Curiae Participation in U.S. Supreme Court Litigation: An Appraisal of Hakman's 'Folklore,'" *Law & Society* Review, 16, 2, (1981- 1982) 317.
[23] O' Connor and Epstein 314

Epstein have concluded that interest group participation through amicus briefs has become standard practice.[24]

Other research, however, indicates that the litigation is not as popular as a method of interest group participation as some would assume. One study examining state courts revealed that in four out of five of the examined states, about 75 percent of plaintiffs were individuals rather than groups.[25] The researchers offered several theories to explain this phenomenon. First, perhaps the courts are not integrated into the political culture as much as other scholars have assumed. Also, courts and their relative political integration may differ greatly between jurisdictions; one part of the country may foster particularly politicized courts while others may not.[26] Finally, groups could resort to institutions besides the courts to lobby for change.[27]

Scholars have also determined the influence of such interest groups on the court system. Factors such as court membership[28] or the positions of other political actors[29] also effect the effectiveness of activities, but interest groups are now "regular players in Court litigation…. "[30] Epstein and Kobylka have identified several reasons why groups turn to the courts, namely as their desire to transform their ideas into law, set the political agenda, or promote awareness of a cause. [31] These groups may attempt to achieve their goals through a variety of tactics, but the authors argue that careful choice of the legal argument itself is the

[24] O' Connor and Epstein 318.
[25] Grossman et. al. 98.
[26] Grossman et al 113.
[27] Grossman et al 113.
[28] Epstein, Lee and Joseph F. Koblka, *The Supreme Court and Legal Change: Abortion and the Death Penalty,* Chapel Hill: North Carolina University Press, 1992., 13.
[29] Epstein and Kobylka 22.
[30] Epstein and Kobylka 25.
[31] Epstein and Kobylka 27.

most effective tactic to promote legal change.[32] Essentially, it is the law and legal arguments themselves that ultimately influence judicial outcomes.[33]

Some lawyers recognize the potential benefit of interest group involvement in the courts. Though infrequently, some attorneys actively seek interest groups to submit amicus briefs in hopes of attracting attention to their cases.[34] These lawyers acknowledge McGuire's belief that, "interest groups are among the most influential players in judicial politics."[35] While interest group involvement may not guarantee a case's success, it may gain additionally media attention, public support, and even financial resources.

Scholars frequently measure interest group involvement in an issue by examining the amicus briefs that groups have filed in support of relevant cases. Often, amicus briefs present arguments that provide clues to the groups' interests in the case. However, Songer and Sheehan examine the effect of amici on a case's success in the Supreme Court and found no connection between the two.[36] If amicius briefs have so little impact on cases' success, why then do interest groups pour their limited resources into amicus briefs? Songer and Sheehan suggest that the groups may not only be attempting to influence the court, but may also be hoping to please their own members, establish their position clearly and publicly, or generate press about a case to mobilize public opinion.[37] In this case then, many groups may still view amicus briefs and other support of legislation as a worthwhile investment. The belief that amici have uses besides aiding a particular side in winning a case provides an alternate

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[32] Epstein and Kobylka 307.
[33] Epstein and Kobylka 8.
[34] McGuire, Kevin T., "Amici Curiae and Strategies for Gaining Access to the Supreme Court," *Political Research Quarterly*, 47, 4, (1994), 835.
[35] Ibid.
[36] Songer, Donald R. and Reginald S. Sheehan, "Interest Group Success in the Courts: Amicus Participation in the Supreme Court," *Political Research Quarterly*, 46, 2, (1993), 350.
[37] Songer and Sheehan 351.

reason for anti-bullying interest groups to turn to the courts. Even if a case fails, both the groups, the members, and the issues surrounding the cases may benefit.

Why are groups attracted to the Supreme Court in particular? Olson argues that they are not merely attracted to the Supreme Court for its potential for glamour, but mostly through an evaluative calculation of their likelihood. Groups thus evaluate their political and legal resources compared to their opponents when they make the decision to litigate.[38] According to Olson, other factors have significantly less weight in the groups' decisions.

Other scholars have shown that interest groups do take other factors into consideration, however. According to some of these scholars, groups who frequently appear before have more success than those that participate in frequently.[39] Therefore, a group's prominence and visibility in the judicial and political arena directly affects its ability to change policy. A desire to gain this visibility may fuel the anti-bullying movement's involvement in the judiciary.

Eskridge argues that the judicial interpretation of various statues evolves in response to changes in the ideological, academic, or political climates.[40] Because statutory law is more complicated than other types and involves more complex, authoritative texts, courts are not bound to strict interpretations.[41] This increased freedom leads groups to choose to pursue statutory claims instead of constitutional ones.[42]

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[38] Olson, Susan M., "Interest-Group Litigation in the Federal District Court: Beyond the Political Disadvantage Theory," *The Journal of Politics*, 52, 3, (1990), 854.
[39] Ibid.
[40] Eskridge, William N., Jr., "Channeling: Identity-Based Social Movements and Public Law," *University of Pennsylvania Law Review*, 150, 1, (2001) 419.
[41] Eskridge 203.
[42] Ibid.

Some groups have used the court with great success. The NAACP, for example, plotted to attack racial segregation through legal channels as early the 1930s.[43] The campaign was planned carefully to secure decisions based on broad principle, rather than idiosyncratic cases.[44] Kruger's *Simple Justice* chronicles the NAACP Legal Defense Fund's path toward the historic *Brown v. Board of Education Decision*.[45] As early as 1939, Thurgood Marshall began his litigation campaign against racism. He began at the newly formed NAACP Legal Defense and Education Fund, Inc. with just himself and a secretary. Marshall began to travel the country speaking on behalf of the organization's plan to bring "every kind of case in every kind of place" before the courts.[46] Over the next decade and half, a highly motivated team of leaders successfully implemented a calculated plan to bring successful litigation to the courts. These efforts led to a historic victory in 1954 when Thurgood Marshall successfully argued *Brown v. Board of Education*.[47] In the case of the NAACP, careful planning led to success.

However, groups must be flexible in their plans to litigate. A study by Wasby revealed that interest group litigation is built upon cases brought to the organization's attention rather than the other way around. Therefore, the nature and direction of that litigation may be largely beyond litigators' control.[48] Not all groups can successfully plan litigation as the NAACP did.

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[43] Bell, Derrick, "Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation," *The Yale Law Journal,* 85, 4, (1976) 473.
[44] Bell 473.
[45] Kruger, Richard, *Simple Justice: The History of* Brown v. Board of Education *and Black America's Struggle for Equality,* (New York: Borzoi, 1976) 221.
[46] Kruger 223.
[47] Kruger 561.
[48] Wasby, Stephen L, "How Planned is 'Planned Litigation'?" *American Bar Foundation Research Journal,* 9, 1, (1984) 83.

Title IX and the Courts

Many bullying interest groups' strategies lead them to pursue Title IX litigation. The connection between Title IX and bullying, however, is rather weak. Initially, the courts questioned whether Congress originally intended Title IX to address sexual harassment at all.[49] In fact, a case pertaining to sexual harassment and Title IX was not introduced into the courts until the early 1990s, in *Gebser v. Lago Vista Independent School District,* which involved sexual harassment of a middle school student by her teacher.[50] In this case, the Court outlined a two part standard for determining school's liability under Title IX. First, a school official with authority to act must have adequate knowledge of the harassment and this official must fail to respond in an appropriate manner.[51] This standard is a relatively difficult one to meet, since the school is not required to stop the harassment but rather just to respond in a manner that the Court deemed adequate.[52]

In *Davis v. Monroe County Education*, the Supreme Court first addressed peer-on-peer sexual harassment. In this case, the school district was held liable for its failure to intervene and act on behalf of the student.[53] The Court held that a school could only be liable under Title IX for "deliberate indifference" to acts of sexual harassment. The harassment must be so "severe, pervasive, and objectively offensive," that the victim is deprived of educational opportunities.[54] This standard, however, is difficult to meet. Cases are not frequently deemed severe enough to meet the standard, and even then they are, the circuit courts hesitate to hold schools liable for harassment.[55]

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[49] Ibid.
[50] Gebser v. Lago Vista Independent Sch. Dist. 524 U.S. 274 (1998)
[51] *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998).
[52] Kosse and WrightKosse and Wright 58.
[53] *Davis v. Monroe County Board of Education*, 526 U.S. 663 (1999)
[54] Davis, at 649.
[55] Kosse and Wrigh t61.

Some interest groups advocate for bullying to be protected under Title IX. From harassment based on perceived homosexuality to all forms of bullying, groups are attempting to solve address this problem through Title IX litigation.[56] However, according to many scholars' analysis of legal trends, courts rarely find statutes the protect against gender discrimination to also protect against bullying in the workplace and in schools, even when the bullying is based on perceived sexual orientation.[57] Litigants have filed claims based on Title VII and Title IX for cases based on sexual orientation in the past with limited success. Cases like *Price Waterhouse v. Hopkins*, *Oncale v. Sundowner Offshore Services, Inc*., and *Rene v. MGM Grand Hotel, Inc.* have demonstrated shortcomings of trying to address harassment based on sexuality under Title IX. By failing to decisively identify anti-gay harassment as harassment based on sex, the courts have provided employers with significant loopholes when the sexuality of a plaintiff is at the root of the harassment. The courts are unwilling recognize sexual orientation as connected to sex and gender. Unless the courts do make such a ruling, Title VII and Title IX claims involving sexual orientation will usually fail.[58]

Weiner asserts that litigants should have more success in applying Title IX to harassment based on sexual orientation. Case law demonstrates that judges in Title IX cases are more likely to rule in favor of the plaintiffs, often actively searching for a way to do so.[59] Because victims of harassment in schools are children, rather than adults, schools must assure their student's safety to fulfill their educational mission.[60] While the courts have thus

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[56] Bochenek, Michael and A. Widney Brown, Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual, and Transgender Students in U.S. Schools, Washington: Human Rights Watch, 2001, 45.
[57] Bochenek 5.
[58] Weiner, Courtney, "Sex Education: Recognizing Anti-Gay Harassment as Sex Discrimination Under Title VII and Title IX," *Columbia Human Rights Law Review*, 37, 189, (2005), 212.
[59] Weiner 227.
[60] Weiner 221.

far been careful to distinguish between sexual orientation and gender discrimination, Weiner argues that eliminating this distinction is the best strategy for combating harassment based on sexual orientation.

However, other scholars have feel that creating specific anti-bullying statutes is the best solution. Kosse and Wright argue that a combination of Title IX protections and anti-bullying legislation is necessary to sufficiently protect against harassment. This necessity is due in part to the fact that Title IX does not force schools to specifically draft anti-bullying policies, a component that Kosse and Wright claim is necessary to protect students.[61] Furthermore, the statute's requirement that harassment be "sufficiently severe, persistent, or pervasive" is beyond the scope of most bullying.[62] Therefore, to eliminate the problem, the government must both amend Title IX and implement statutory plans specifically geared toward bullying.

Scholars have addressed interest group strategy and effectiveness in the courts and the potential for Title IX as a form of protection against bullying, but the literature raises as many questions as it answers. If interest groups produce little change regardless of the funds and resources that they devote to supporting litigation, why do anti-bullying groups turn to the courts for answers? Since Title IX's weaknesses require that it be amended or supported by a more specific piece of legislation, another strategy would logically be more effective. Existing scholarship does not specifically address this puzzle. Through this research, I will assess the strategies of various anti-bullying groups in applying Title IX this issue. Through an analysis of the group's perception of the courts, the political climate, and the potential implications for Title IX's overall effectiveness as a statute, I will provide insight into the process by which interest groups select their ultimate strategies.

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[61] Kosse and Wright 69.
[62] Kosse and WrightKossee and Wright 70.

METHODS

Hypotheses

In order to evaluate interest groups' anti-bullying strategies, I methodically analyze the current group climate. Though many groups turn to the courts, I hypothesize that because of the research of Kosse and Wright and Weiner, anti-bullying groups that attempt to litigate will be unsuccessful. The current literate indicates that no statutory or constitutional provision currently provides plaintiffs with protections from bullying.

Methodological Overview

This study utilizes a two-part analysis to evaluate anti-bullying interest groups' strategies. First, I identified eleven interest groups actively seeking to combat bullying in schools. These groups fell into two main categories: those interested in harassment of students based on perceived or actual homosexuality and those interested in bullying that did not involve the students' sexuality. I then assessed the litigation and legislation tactics of groups within each of these two categories.

In the second part of my study, I assessed the potential for the success of litigation, a primary strategy used by groups, by examining trends in used bullying litigation. I reviewed all bullying litigation from 1999 until the present and sorted cases into two main groups: those involving harassment based on actual or perceived homosexuality and those involving harassment based on other factors. I then broke down the cases by arguments used by the plaintiff while also measuring whether certain arguments succeeded at higher rates in cases involving homosexuality. Through my two-part analysis, I was able to not only test whether GLBT interest groups utilized different strategies when fighting bullying, but also if GLBT interest groups litigate with greater success.

Analysis of Active Interest Groups

The final groups included in the study were: BullyPoliceUSA, the Center for Responsible Internet Use (CRIU), Gender Public Advocacy Coalition (GenderPAC), Gays and Lesbian Advocates Against Defamation (GLAAD), Gay and Lesbian Support and Education Network (GLSEN), the Human Rights Campaign (HRC), Human Rights Watch (HRW), Lambda Legal, the National Parent Teacher Association (National PTA), the National School Boards Association, and Parents, Families, and Friends of Lesbians and Gays (PFLAG).

The groups in my study became involved in the bullying debate for myriad reasons. The groups also diverse memberships. Two of the groups, the National School Boards Association and the National PTA each were comprised of a network of educators. Lambda Legal's membership consisted mostly of attorneys interested in and working to promote GLBT issues. BullyPoliceUSA and the Center for Responsible Internet Use both are made up of parents whose children were affected by bullying.

Some groups were founded because of personal experience. For instance, BullyPoliceUSA was founded by was founded by Brenda High, mother of a thirteen-year-old boy whose 1999 suicide has been attributed to depression resulting from bullying. High used the group to aid the healing process and now works to unite parents and educators through her crusade.[63] Other groups focus on a specific type of bullying. For example, CRIU was founded to address cyberbullying, a new trend among students in which harassment occurs via the webpages, instant messages, email, blogs, text messages and other forms of "new media."[64] Other groups focus on a special subset of bullying victims. In the case of this study,

[63] http://www.bullypolice.org/brenda.html.
[64] CRIU page

a majority of groups centered their efforts on harassment against GLBT students. Such groups included GenderPAC, GLAAD, PFLAG, GLSEN, HRC, HRW, and Lambda Legal. Other groups, such as National PTA and the National Association of School Boards, focus specifically on the responsibilities and issues especially pertinent to parents and school officials. The GLBT subgroup became paramount to my study.

In order to assess the groups' strategies, I analyzed several indicators. First, I examined each group's tactics, indicating whether they used litigation and legislation. If they used either of these, I indicated whether they tracked litigation or legislation or if they were involved in other ways. Involvement in litigation could include submitting amicus curiae in relevant cases or actually sponsoring litigation. Involvement in legislation could include offering suggestions for new legislation or supporting existing initiatives. Then, I conducted my analysis, testing to find if GBLT interest had an impact on groups' strategies.

Analysis of Litigation

In order to assess the success of anti-bullying litigation, I examined recent cases in both federal district and state supreme courts. Since my study focuses on the application of Title IX to student-on-student harassment cases, I examined only those claims brought after 1999. In order to do so, I conducted a series of LexisNexis searches of District and State Supreme Court cases. In my first search, I used the terms "bullying AND schools," in the second I used "harassment AND schools," and in the last I used "Title IX AND harassment."

My final sample for my legal analysis included 22 cases. I read each of these cases, identifying arguments used by the plaintiffs in bringing the claim. Through this process, I was able to identify legal arguments for the claims, which included Title IX, theFourteenth Amendment, state anti-bullying statutes, the First Amendment, and the Individuals with

Disabilities Education Act (IDEA). Based on this initial assessment, I coded the arguments in the cases based on four main categories: Title IX, the Fourteenth Amendment, Both Title IX and the Fourteenth Amendment, and Other.

Next, I evaluated the success of each of the claims in each case. The vast majority of the cases involved motions for summary judgment, brought by the plaintiff, the defendant, or both. I therefore classified a successful case as one in which the judge ruled in favor of the plaintiff either by denying the defendant's motion for summary judgment, by granting the plaintiff's motion, or by both denying the defendant's motion while also granting the plaintiff's motion. Based on these criteria, I classified cases as either successful or unsuccessful.

Finally, I reexamined the facts of the cases in hopes of determining what factors present in the fact pattern influenced the outcome of the case. Specially, I coded for whether the defendant was harassed based on his or her perceived homosexuality. Some anti-bullying groups, specifically those interested in protecting the rights of GLBT students, advocate for Title IX protection for such harassment. Because of this debate, I felt that studying the actual success of such claims in court was a necessary element of my study.

RESULTS

Analysis of Interest groups

The interest groups included in my study were most easily broken into two groups: 1.) those interested in bullying specifically against gay, lesbian, bisexual, transgender, or questioning students and 2,) students perceived as being members of these groups or those interested in bullying and its effects on all children.

[Insert Table 1]

As Table 1 demonstrates, the majority of the groups included in my study focus specifically on combating bullying against GBLT students. Since GLBT groups are focused on a particular aspect of bullying rather than the general phenomena, I felt that their efforts may be distinct from those of other groups. Additionally, since some scholars have suggested that extending Title IX litigation to GLBT harassment would be the logical next step in such litigation, I felt that perhaps these groups would be more likely to pursue those strategies. [65]

[Insert Table II]

As Table 2 demonstrates, this is correct. Of the seven groups that used litigation, six of them were those with a GLBT interest in bullying. Only one non-GLBT interest group, the National School Boards Association, used litigation. The rest of the groups did not use litigation at all as a strategy.

Because I defined "Use of Litigation" somewhat broadly, I divided these groups into two main categories: those that simply tracked litigation, and those that actually became involved in the process, either through the submission of amicus curiae briefs or through sponsoring the litigation.

The majority of the groups only tracked litigation, rather than getting involved on a more costly and time-intensive manner.. The only groups that sponsored legislation were those with a GLBT interest. Though only a third of GLBT groups that were involved in litigation also sponsored it, this result suggests that such groups are using litigation more aggressively than other groups.

[65] Kosse and Wright 58.

Many groups promoted state and federal legislation as a solution to bullying. Since the connection between Title IX and bullying, even against GLBT students, is a weak one at best, state or federal statutes may provide a more effective solution.

[Insert Table 3]

As Table 3 shows, groups with a GLBT interest in bullying were also more likely than general groups to use legislation as a tactic. Of the GLBT groups, only Lambda Legal, a group that specifically focuses on litigation, did not track or sponsor legislation as well. The non-GLBT interest groups were split evenly between those who did and did not use legislation as a tactic.

Similar to the groups engaged in bullying litigation, groups were involved in bullying legislation in two main ways. Some groups, such as PFLAG, tracked anti-bullying legislation, publishing pamplets or online content with information about proposed anti-bullying laws. Bully Police USA took a more local approach as it focused on legislation at a state-wide level, giving each state a "grade" based on whether they had an anti-bullying law, and if they did what level of protection it gave. States without laws received a failing grade of "F," while Stateswith especially strong anti-bullying legislation received up to an "A++."[66]

[Insert Table 4]

As Table 4 demonstrates, a group's interest in bullying does not seem to impact how it uses legislation as a tactic for change. Groups with a GBLT interest are no more or less likely to support legislation than groups without a GLBT interest. Though all groups with a non-GLBT interest in bullying tracked and supported legislation, the small number of this sample

[66] BullyPolice.org, "Does Your State Have an Anti-Bullying Law," April 22, 2008, http://www.bullypolice.org/.

prevents us from drawing decisive conclusions about the likelihood of such groups to become involved in this way.

Analysis of Litigation

In the 22 cases in my analysis, plaintiff used numerous arguments to uphold their claims. However, which argument the plaintiff chose seemed to have little impact on the outcome of the case. Few cases were decided in favor of the plaintiff, and of those that were, no single strategy emerged as most successful.

[Insert Table 5]

As Table 5 shows, litigants in these cases did not pursue a particular type of argument more frequently than others. Fifteen plaintiffs pursued relief under Title IX alone, the Fourteenth Amendment alone, or under a claim that incorporated both of these. These cases, 68.2 percent of the total, comprised a majority of the bullying claims in this study. This majority was split evenly between the three categories of Title IX, the Fourteenth Amendment, or both. The final category, other, was comprised of claims under the First Amendment, state statutes, or IDEA. These seven cases made up 31.8 percent of the total. Differences in the facts aside, the spread of the arguments seems to indicate that no one strategy dominates bullying claims. Since bullying claims are a relatively new area of the law in which the Supreme Court has yet to hand down a definitive opinion, a single successful strategy has yet to emerge.

[Insert Table 6]

The lack of a dominant strategy is probably related to the fact that few plaintiffs have successfully pursued a Title IX bullying claim. As Table 6 demonstrates, the vast majority of

claims were unsuccessful. In fact, only four of the 22 plaintiffs won their cases, for an overall success rate of 18.1 percent.

Of the cases in which the plaintiff did make a successful claim, the results were split fairly evenly among the categories of argument. One plaintiff made a successful Title IX claims in *Bashus v. Plattsmouth Community Schools.* Brandon Bashus, the plaintiff in this case, was a ninth grader at Plattsmouth High School, when he was asexually harassed by a twelfth-grader during football practice. Another student harassed Bashus by "exposing his genitals and touching the plaintiff in an unwelcome and offensive manner, thus humiliating, embarrassing, and intimidating the plaintiff."[67] In the case, the defendant had filed a motion to dismiss based on a lack of evidence that the school was deliberately indifferent to the harassment Bashus experienced. However, because the judge felt that the plaintiff may have been able to prove a set of facts that would entitle him to relief under Title IX, the defendant's motion was denied.[68] While this case is measured as a success according to the criteria establish for this study, it hardly represents a decisive victory for groups interested in pursing Title IX claims for bullying. Bashus was not awarded actual damages, nor was a sweeping precedent set.

In *Montgomery v. Independent School District*, the plaintiff filed successful claims under both Title IX and the Fourteenth Amendment. In *Montgomery*, the plaintiff experienced extensive verbal and physical harassment based on both his perceived sexual orientation and failure to meet his harassers' stereotypical expectations of masculinity. Predictably, the federal district court dismissed the claim that he was harassed based on his sexual orientation, since Title IX only protects against discrimination based on sex. However, the plaintiff's claim that

[67] Bashus v. Plattsmouth Community School District 2006 U.S. Dist. LEXIS 56565.
[68] Ibid.

he was harassed based on his gender expression was deemed acceptable, and the court stated that the precedent set forth in *Oncale* could apply here. Since the male-on-male sexual harassment here involved not only slurs based on homosexuality, but also more severe forms of harassment such as requesting sexual favors, grabbing the plaintiff's buttocks and inner thighs, and subjecting him to simulated anal rape, the court denied the defendant's motion for summary judgment.

Two of the successful cases fell in the "Other" category. In the first of these cases, *L.W. v. Toms River Regional Schools Board of Education*, the student filed a claim under the New Jersey Law Against Discrimination. This statute states makes it unlawful to "deny an individual the advantages, facilities or privileges of a public accommodation on the basis of an individual's affectation or sexual orientation."[69] Because the harassment was clearly based on L.W.'s perceived homosexuality and the administrators failed to provide the plaintiff with the protections specified in the statute, the case was decided in favor of the plaintiff and damages were awarded. The success of this case seems to indicate that in situations where harassment is clearly based on perceived sexual orientation rather than gender expression, a new state statute may provide more protection than existing federal laws or jurisprudence.

The second case, *K.M v. Hyde Park Central*, was decided in favor of the plaintiff based on an IDEA claim. The plaintiff made a successful claim by focusing not on the bullying aspect, but instead on the denial of protections that K.M. was guaranteed based on his disability. Again, it seems that filing a claim based not on bullying itself but on a separated but related issue, is one possible route to a successful case.

[69] Case page 2.

No plaintiff brought a successful Fourteenth Amendment claim on its own. Though 22.7 percent of plaintiffs pursued this strategy, this result is unsurprising. Courts have previously ruled that schools are not bound by the due process clause to protect students from assault by other students, "even where the schools knew or should have known of the danger presented."[70] The only exception exists in a situation in which the state has *created* the danger.[71]

In *Scruggs v. Meridian*, the plaintiff was subjected to harassment so severe that it was attributed to his eventual suicide. However, even when the school placed the plaintiff in a group with a student who had previously assaulted him, the District Court found that the school's actions were not so severe as to merit a due process claim. The standards for a successful bullying claim pursuant to the Fourteenth Amendment are so high that a decision in favor of the plaintiff seems unattainable.

[Insert Table 7]

Of the four cases that involved perceived homosexuality only two succeeded. In one of the case that did succeed, *Montgomery v. Independent School District,* the claim that he was harassed based on his perceived homosexuality was rejected; the case only succeeded because the plaintiff filed an additional claim that he was discriminated based on his lack of conformity to gender stereotypes. The second successful case, *L.W. v. Toms River*, was based not on a Title IX claim but instead on a claim pursuant to a state statute. These results seems to underscore the dominant conclusion of my study: bullying claims based on Title IX are largely unsuccessful.

[Insert Figure I]

[70] Santucci v. Newark Valley Sch. Dist. No. 3:05-CV-0971, 2005 U.S. Dist. LEXIS 2620. 2005 WL 2739104 at * 3.
[71] Scruggs v. Meridian 38.

The number of claims increased from Davis to the present. Since the bullying movement is a new and growing one, this fact is unsurprising. The number of claims peaked in 2005 and then dipped slightly in 2006, rising again in 2007. Though the claims did increase over time, with a difference of only six claims from the lowest to highest point. Given my sample six, this is an immense increase. This trend indicates that the bullying victims are turning to the courts more frequently over time. In the past nine years, the anti-bullying movement has gained significant momentum.

DISCUSSION

Though the anti-bullying movement is still a new one, this study unearthed several trends. In the first part of my study, GLBT groups did participate in litigation at a heightened level when compared to non-GLBT groups. However, both subgroups participated in legislation at an equal level. Since a case in which harassment based on perceived or actual homosexuality would, in theory, have a more legitimate Title IX claim, the tendency for GLBT groups to litigate more aggressively seems logical.

The second part of my study suggests that groups that do litigate rarely succeed. Over nine years, only four groups advanced successful claims. This finding indicates that bullying arguments usually fail in court. While most claims fail, bullying litigation has increased over time at a rather rapid rate. Since plaintiffs are not receiving relief in the courts, those actors who choose to litigate must be seeking other benefits.

Though the litigants for the cases in my study used a variety of legal arguments, no single argument emerged as most successful. Relevant literature indicates that Title IX arguments would be most pertinent for bullying claims,[72] but litigants in fact made claims under the

[72] Kosse and Wright 61

Fourteenth Amendment or made a hybrid claim of both Title IX and the Fourteenth Amendment with similar frequency.

A fourth group of litigants used "Other" strategies, including claims pursuant to state statutes. No one argument in the "other" category seemed most successful. Two claims that incorporated Title IX were successful, though in one of those cases, the litigants also pursued a Fourteenth Amendment claim. The other two successful cases pursued a IDEA claim and a claim to a New Jersey Anti-discrimination statute. Essentially, while nearly half the litigants pursued a claim involving Title IX, only two were successful. Use of the Fourteenth Amendment led to one successful claims, and the successful "Other" claims were largely based on unique fact patterns, not the use of an extremely effective strategy specific to bullying. Individuals are seeking relief from bullying through the courts and appear to be doing so at an increasing rate, but most claims fail.

Of the two successful claims that incorporated Title IX, only one, *Montgomery v. Independent School District*, involved perceived homosexuality. Even in this claim, the case was successful not because the discrimination based on sexuality but because it was based on failure to conform to gender stereotypes. As noted in the case itself, the Supreme Court has already ruled that such discrimination falls under sex discrimination in *Price Waterhouse*. Since even cases that involve perceived homosexuality have little success under Title IX, it seems that the courts are unwilling to extend the statutes protection to victims of harassment that is not clearly and explicitly based on sex.

If both Title IX and other arguments are not successful in courts, why do interest groups continue to litigate? The bulk of groups in my case study chose to be involved in litigation in some way. Most of these groups (71.4 percent) were only minimally involved, tracking it on

their websites rather than actually devoting resources to *amicus curiae* or actually sponsoring litigation. However, since the interest groups in my study were not-for-profits, any devotion of resources to this strategy demonstrates an interest. If these groups are devoting time and other resources to a largely unsuccessful strategy, they must see perceive the involvement itself as valuable for other reasons, instead of just merely securing a favorable outcome.

Many groups resisted further involvement in the courts. This resistance may be a strategic choice. Of the groups who used litigation in some way, only two actually sponsored litigation. One of these groups, Lambda Legal, focuses on litigating GLBT issues, so its reasons for involvement reflect the organization's main purpose rather than a specific interest in bullying. The other group, GenderPAC, has submitted several amici for other cases involving GLBT issues. GenderPAC may not be involved in bullying litigation soley in order to win a single case. In fact, this decision is likely part of a comprehensive response to crimes against the GBLT community, not to bullying specifically.

Why did only GLBT groups choose to become increasingly involved in litigation? Though the nature of the groups themselves may predispose them to choose a more aggressive litigation strategy, other theories may also explain this pattern. First, as previously mentioned, this heightened involvement could be part of the groups' comprehensive strategy to deal with harassment based on sexual orientation or gender identity. By becoming involved in as many cases as possible that deal with GLBT issues, the organizations can gain increased publicity and hopefully make a larger impact, just as Songer and Sheehan have suggested many groups do.[73] GLBT groups may also take a more active stance because of the nature of the bullying that GLBT students face. Though certainly bullying based on perceived homosexuality is not

[73] Songer and Sheehan 350.

always the most damaging, often such harassment can become violent or can cause violent behavior.

According to GenderPAC, students harassed based on actual or perceived sexual orientation are more than twice as likely to plan a suicide attempt as peers harassed for other reasons.[74] Based on this increased potential for harm, these groups may be compelled to pursue the most aggressive litigation strategy possible. Groups may also perceive harassment based on sexual orientation or gender identification as more easily contested in the courts than other forms of bullying. Scholars have argued that for various reasons, a Title IX argument in such cases may be stronger and thus successful at a higher rate.[75] This perceived increase in chance for success may motivate groups to take a more aggressive approach. However, if this is the case, the groups may not be following the courts closely, since bullying claims based on perceived homosexuality are no more successful than those based on other circumstance.

While most groups in my study used litigation in some way, every group was somehow involved in the legislative process. There are several reasons for this First, while a court decision in favor of a victim of bullying may provide some additional protections, a law holding schools responsible for harassment would likely draw more administrative attention and thus yield better results. Many scholars, and in fact, some groups in our study, argue that passing anti-bullying laws is simply a better strategy than litigating.[76] Since bullying litigation is largely unsuccessfully, a state or federal statute may be necessary to provide adequate protection. Until such a law is passed, pursuing this essential change could be more worthwhile than pressing forward with suits that will likely fail.[77]

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[74] GenderPAC, "Back to School, Drop the Labels; Bullying Facts," http://www.gpac.org/youth/dtl/bullyingfacts.pdf.
[75] Kosse and Wright 59.
[76] Kosse and Wright.
[77] Ibid.

Groups may also feel that passing anti-bullying laws will be a faster process than pursing litigation. Indeed, though the legislative process may be slowed by election cycles or warring between political parties, litigating a single bullying case may take several years.[78] Groups may in fact take advantage of the increased impact that public opinion may have on legislation when compared to litigation. Since bullying affects or has affected many people, grassroots mobilization for change would be one of the most effective tactics to seek change. Such a campaign could have a great impact on member of Congress or state legislators, who are more vulnerable to public opinion, but may have a lesser impact on judges.

Finally, lobbying for anti-bullying legislation may be a more financially feasible tactic for many groups. Actively participating in the courts is a rather expensive tactic; an amicus brief can cost up to fifteen thousand dollars to produce.[79] Legislative solutions may often be arrived at through less expensive means, such as public education, grassroots mobilization, or direct contact with legislators.

Of the groups that use legislation, GLBT groups were no more likely to pursue aggressive strategies than other groups. Three out of six GLBT groups that used litigation both tracked and sponsored legislation while both of the non-GLBT groups that used litigation tracked and sponsored legislation. Though the sample here is too small to make decisive claims about the types of groups that choose to litigate, the study seems to indicate that GLBT interest has little impact on a group's decision to sponsor current or suggest new legislation.

No matter the groups' interest in bullying, one thing is clear: Title IX litigation is, at this point in time, insufficient in and of itself to stop bullying. The claim raised in by Kosse and

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[79] Caldierra and Wright 810.

Wright is probably correct: both statues and Title IX are necessary to eliminate bullying. Only by pursuing this dual strategy will these groups succeed.

CONCLUSION

My research sought address two main questions: first, in what ways do anti-bullying groups' interests in bullying impact their strategy choices, and second, how do anti-bullying cases fare in the courts? This study's analysis of group strategies demonstrates that GLBT interest groups choose to litigate at a higher rate than other interest groups. Of the groups that choose to litigate, GLBT interest groups also become more actively engaged than other groups. However, GLBT interest had no measurable impact on group's tendencies to turn to legislation.

Though GLBT groups may be more likely to use litigation, they are no more likely to succeed than other groups. The majority of the claims included in my study were denied in court. No single argument emerged as more successful than the others, and cases in which the harassment was based on perceived or actual homosexuality were no more likely than other cases to succeed.

The results of this study indicate that anti-bullying interest groups are engaged in what remains an emergent movement. Groups have failed to collectively identify a successful strategy, investing their time instead into numerous initiatives. Meanwhile the dominant and most expensive strategy, litigation, fails.

In light of these somewhat disheartening conclusions, how can the anti-bullying movement increase its rate of success? Literature about social movements offers two main suggestions. First, according to Rubenstein,[80] a successful movement should establish a

[80] Rubenstein, William B., "Divided We Litigate: Addressing Disputes among Group Members and Lawyers in Civil Rights Campaigns," *The Yale Law Journal*, 106, 6, (1997): 1625.

common identity, and second, according to Klandermans,[81] a movement must provide proper incentives for mobilization.

Rubenstein's theory is most pertinent to anti-bullying interest groups. As a new movement, developing a common identity is paramount to its success.[82] Whether groups allow individual students to become involved in the decision-making process, develop a consensus among group leaders, or involve experts in the field such as educators, the movement must select a single method for defining the anti-bullying issue.[83] Currently, groups' inability to agree on strategy is limiting the success of the movement.[84]

The anti-bullying movement must bridge its divide between GLBT groups and non-GLBT groups. Longley agrees that positive relationships between groups are essential in ensuring a movement's success.[85] Groups that aggressively pursue alliances with other groups are likely to strengthen their campaign through these associations. Likewise, groups that actively combat groups with different viewpoints tend to fail since they have unnecessarily devoted precious resources to a cause other that for which the group was established.[86] According to this theory then, the anti-bullying movement would be best served to solidify an alliance between different types of groups.

Though the GLBT and non-GLBT factions do have different interests in bullying, they share an ultimate goal: eliminating student-on-student harassment. Other interests must be set aside in order to select a single strategy and thus facilitate the movements' success. If this

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[81] Klandermans, Bert, "A Theoretical Framework for Comparisons of Social Movement Participation," *Sociological Forum*, 8, 3, (1993): 385.
[82] Rubenstein 1643.
[83] Ibid.
[84] Rubenstein 1640.
[85] Longley, Lawrence D., "Interest Group Interaction in a Legislative System," *The Journal of Politics,* 29, 3, (1967): 641.
[86] Longley 658.

union is impossible, the anti-bullying movement may be best served to split, allowing GLBT groups and non-GLBT groups to pursue the goals separately.

However, a split movement would likely be even weaker than the current movement. The non-GLBT groups range from groups concerned with all human rights issues like Human Rights Watch to groups of parents and educators like the National PTA to groups devoted solely to bullying like Bully Police USA. Because of the vast array of interests within this subgroup, it is unlikely that a split in the larger movement would help the groups reach a consensus. Indeed, the lower numbers in the non-GLBT subgroup in comparison to the entire movement would limit the likelihood of success even more. A large, unified movement, then, is the best solution.

The movement must also provide increased incentives for individuals to become involved. By increasing participation, the movement will be able to gain public awareness and grow as it so desperately needs to. By motivating the public to become involved and decreasing barriers to participation, the movement will ensure this participation. The anti-bullying movement must convince individuals that it can and will successfully change the situation. [87]

In order to do so, the movement must target the population that it wishes to engage.[88] Right now, the movement successful provides individuals with personal reasons to become involved, termed selective incentives by social movement theorists. Students who have been bullied or the parents of such students eagerly join the movement. Similarly, members or allies of the GLBT community also become involved. Both of these groups are likely to have been

[87] Klandermans 385.
[88] Klandermans 398.

directly and personally impacted by bullying, so it is simple for the movement to solicit their engagement.

However, the movement current fails to provide a compelling reason for the masses to become engaged. These reasons, also known as collective incentives,[89] must motivate individuals besides those who have been personally affected by bullying. In order to do so, the anti-bullying movement must seek unlikely bedfellows, reaching out to as many groups as possible that may be linked to the movement, however subtle.[90] The movement should also seek to gain more universal relevance, conveying to the public that bullying is a serious problem worthy of ample attention.

As the anti-bullying movement continues to develop its focus and expand its base, its battles in the courts and in the legislatures is likely to continue. Though litigation has brought the movement few victories in the courtrooms of the past decade, this study suggests that groups that do choose to litigate view the strategy as beneficial in other ways. As future studies provide more insight in to why groups select certain strategies and as anti-bullying case law continues to develop, this relationship should eventually become clearer.

[89] Ibid.
[90] Ibid.

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Appendix A: Tables

Table 1: Types of Groups included in Study

	GLBT Interest	No GLBT Interest
Number of Groups	7	4
Percentage of Groups	63.6%	36.3%
Names of Groups	Human Rights Campaign PFLAG GLADD GLSEN Human Rights Watch Lambda Legal Gender PAC	National School Board Association

Table 2: Use of Litigation by Interest in Bullying

	Does Not Use Litigation	**Only Tracks Litigation**	**Tracks and Sponsor Litigation**
GLBT Interest	Human Rights Campaign	PFLAG GLADD GLSEN Human Rights Watch	Lambda Legal GenderPAC
Total	1	4	2
No GLBT Interest	BullyPoliceUSA Center for Responsible Internet Use	National School Board Association	
Total	3	1	0

Table 3: Use of Legislation by Interest in Bullying

	Uses Legislation	**Does Not Use Legislation**
GLBT Interest	GenderPAC GLADD GLSEN Human Rights Campaign Human Rights Watch PFLAG	Lambda Legal
Total	6	1
Percentage of Subgroup	85.71%	16.67%
No GLBT Interest	Bully Police USA National PTA	Center for Responsible Internet Use National School Boards Association
Total	2	2
Percentage of Subgroup	50.00%	50.00%

Table 4: Type of Involvement in Legislation by Interest in Bullying

	Only Tracks Legislation	**Tracks and Supports Legislation**
GLBT Interest	PFLAG GLADD GenderPAC	Human Rights Campaign Human Rights Watch GLSEN
Total	3	3
No GLBT Interest		Bully Police USA National PTA
Total	0	2

Table 5: Frequency of Claims in Bullying Cases

	Title IX	14th Amendment	Both	Other
Number of Cases	5	5	5	7
Percentage of Cases	22.72%	22.72%	22.72%	31.81%
Names of Cases	Bashus v. Plattsmouth Community School District (2006) Andree v. New Haven Board of Education (2006) Wilson v. Bedmont Independent School District (2001) Siewert v. Spencer-Owen Community School District (2007) Doe v. Unified School District (2007)	Smith v. Guillford (2005) Murko v. Shelton (2005) Risica v. Dumas (2006) Smith v. Port Hope Area School District (2007) Scruggs v. Meridian (2005)	Montgomery v. Independent School District (2000) K.F. v. Marriot (2001) Dawson v. Grove Public School (2007) Doe v. Pacifica (2007) Patterson v. Hudson Area School District (2007)	Saxe v. State College (1999) L.W. v. Toms River Independent Schools (2005) K.M. v. Hyde Park Central (2005) Barmore v. Aidala (2005) Washington v. Pierce (2005) Wentworth v. Hendrickson (2006) Brennan v. Regional School District Board of Education (2007)

Table 6: Success of Bullying Cases Based on Claim

	Title IX	**14th Amendment**	**Both**	**Other**
Plaintiff Won	Bashus v. Plattsmouth Community School (2006)		Montgomery v. Independent SD (2000)	LW v Toms River Independent Schools (2005) K.M. v. Hyde Park Central (2005)
Number of cases	1	0	1	2
Defendant Won	Andree v. New Haven BOE (2006) Wilson v. Bedmont Independent SD (2001) Seiwert v. Spencer-Owen Community SD (2007) Doe v. Unified SD (2007)	Smith v. Guillford (2005) Murko v. Shelton (2005) Risica v. Dumas (2006) Smith v. Port Hope Area SD (2007) Scruggs v. Meridian (2005	Patterson v. Husdon Area SD (2007) K.F. v. Mariott (2001) Dawson v. Grove Public (2007) Doe v. Pacifica (2007)	Barmore v. Aidala (2005) Saxe v. State College (1999) Wentworth v. Hendrickson (2006) Brennan v. Regional SD BOE (2007) Washington v. Pierce (2005)
Number of cases	4	5	4	5

Table 7: Success of Claims based on Perceived Homosexuality

	Homosexuality a factor in bullying	**No homosexuality as a factor in bullying**
Plaintiff won	L.W. and L.G. v. Toms River Regional School (2005) Montgomery v. Independent SD (2000)	K.M. v. Hyde Park Central (2005) Bashus v. Plattsmouth Community Schools (2006)
Defendant won	Saxe v. State College (1999) KF v. Mariott (2001) Smith v. Guillford (2005) Wentworth v. Hendrickson (2006) Doe v. Pacifica (2006) Andree v. New Haven BOE (2006) Patterson v. Hudson (2007) Seiwert (2007) Dawson v. Grove Public (2007)	Wilson v. Bedmont Independent SD (2001) Barmore v. Aidala (2005) Murko v. Shelton (2005) Risica v. Dumas (2006) Brennan v. Regional SD BOE (2007) Smith v. Port Hope Area SD (2007) Doe v. Unified SD (2007) Scruggs v. Meridian (2005) Washington v. Pierce (2005)

Appendix B: Figures

Figure 1: Bullying Cases Over Time