

Advocacy for the Powerless: How Nonprofit Advocacy Organizations Advance the Interests of the Unenfranchised.*

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Abstract

Advocacy organizations provide important policy representation for the nearly one-third of the population of the U.S. that lacks the right to vote – children, non-citizens, and people disenfranchised due to felony convictions or mental incapacity. Working on behalf of the unenfranchised poses unique challenges for these organizations. Existing scholarship fails to recognize these challenges and tends to treat all “public interest” or “citizens’ groups” as similar. This paper argues that unenfranchised people’s lack of traditional political power leads the advocacy organizations that represent them to prioritize different advocacy strategies than organizations representing other social groups. Using an original survey of nonprofit advocacy organizations, this paper finds evidence that advocacy organizations working on behalf of the unenfranchised allocate more of their policy efforts to media advocacy and litigation than do other interest groups.

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1 Introduction

In the late spring of 2018, the Trump Administration adopted what it called a “zero tolerance policy” intended to deter immigration across the US-Mexico border. This policy became more commonly known as the “family separation policy,” because it relied heavily on detention policies which separated migrant children from their parents. Nonprofit advocacy organizations from all over the US immediately stepped forward to advocate for the migrants and their children. Some of these, like the Refugee and Immigrant Center for Education and Legal Services (RAICES), based in Texas, and the Heartland Alliances National Immigrant Justice Center, based in Illinois, are groups that specialize in advocacy for non-citizens. Others, like the California-based National Center for Youth Law, focus on the representation of children. Still others, like DC-based Kids in Need of Defense (KIND), work at the intersection of these groups, focusing on advocacy for immigrant children. Whatever their specific focus, these organizations share a common characteristic; all the people they represent lack a key aspect of traditional political power. Neither migrants nor children have the right to vote.

Despite their constituencies’ lack of power, these advocacy organizations scored a number of victories in their fight against the family separation policy. Courts ordered that children be reunited with their parents, and the Trump Administration agreed to change the policy and instead detain families together. While these victories may not have been lasting, they show that advocacy organizations representing the unenfranchised are active and often effective participants in public policy making in the United States. This is puzzling. Existing political science research suggests that groups with the most financial and social capital are likely to be the best represented by advocacy organizations (Schlozman and Tierney 1986, Grossmann 2012), but unenfranchised groups generally lack both types of capital. How is it, then, that these advocacy organizations are able to get policy makers to pay attention to their interests?

While a small segment of the interest group community, these advocacy organizations represent a significant number of people – nearly a third of the people currently living in the US are unenfranchised. The characteristics of the groups that are currently legally unable to vote – children, non-citizens, and those disenfranchised due to felony convictions or mental incapacity – require them to rely on the advocacy of others, while creating unique challenges for organizations that

represent them in the policy making process. First and foremost, the unenfranchised cannot credibly threaten to vote out an elected official who ignores their interests. Additionally, their ability to assemble for protest or lobbying activities is limited by custodial arrangements or fear of state action. Further, many of them are limited in their ability to access money for political contributions or membership fees to support advocacy organizations. As a result of these limitations, advocacy organizations representing unenfranchised groups are more constrained in the advocacy tactics available to them than are organizations representing other social groups.

This paper sheds light on this under-examined aspect of American politics: the role of advocacy organizations in promoting the interests of the unenfranchised. In particular, it focuses on how the traits of the unenfranchised shape the advocacy tactics of the organizations working on their behalf. It begins from the premise that advocacy organizations are strategic actors that structure their advocacy activities to maximize their chances of success. The constraints facing those working on behalf of the unenfranchised require them to devote more time to some advocacy tactics than others. However, effective advocacy requires participating in any policy venue that is considering the represented group's interests (Holyoke, Brown and Henig 2012). So rather than choosing between tactics, strategic decisions by advocacy organizations are better categorized as prioritizing the time to spend on different tactics. I expect that advocacy organizations representing unenfranchised groups will rely more heavily on public education through the media and on litigation than organizations who advocate on behalf of other types of groups. I test my hypotheses about how groups prioritize advocacy tactics on an original survey of nonprofit advocacy organizations that includes information on the constituencies each group represents and how they divide their efforts among different advocacy tactics.

The paper proceeds as follows. First, it situates advocacy organizations' representation of the unenfranchised within the existing literature on interest group advocacy. Next, it develops a set of expectations about how the political disadvantages facing unenfranchised groups may shape how advocacy organizations representing them prioritize different advocacy strategies. Then it describes the survey data and uses it to test the expectations. It provides evidence that advocacy organizations working on behalf of the unenfranchised allocate more of their policy efforts to media advocacy and litigation than do other interest groups.

2 The Challenge of Representing the Interests of the Unenfranchised

Currently, nearly one-third of people living in the United States lack the right to vote. The unenfranchised include the 22.4% of the population who are children under age 18,¹ the 6% who are adult non-citizen residents,² the 2.5% of the population who are currently disenfranchised due to felony convictions,³ and the 0.1% of the population who are people with severe intellectual disabilities who are barred from voting under state laws.⁴ These unenfranchised groups are different from each other in many ways, but the political disadvantages they face often overlap. The first and defining disadvantage they share is that they all lack electoral power. Thus, they are unable to use the threat of punishment at the ballot box to get the attention of government officials. Additionally, many unenfranchised people lack independent resources. For example, children and people with severe intellectual disabilities may lack the ability to earn or control their own income. Similarly, people who are incarcerated often lack ready access to liquid assets and the ability to use their prison earnings outside of the facilities in which they are confined. Therefore, these groups are less likely to be able to make campaign or PAC contributions that could help them get the attention of elected policy makers. Many unenfranchised people also lack the freedom to go where they choose. People who are incarcerated are limited by the custody of the state, children are limited by the custody of their parents, and people with severe intellectual disabilities are limited by their dependence on

¹U.S. Census Bureau, QuickFacts, Population Estimates July 1, 2018, <https://www.census.gov/quickfacts/fact/table/US/PST045217>.

²The Pew Research Center reports that 25 million US residents, or approximately 7.8% of the population, are non-citizens. Gustavo Lopez, Kristen Bailik, and Jynnah Radford, *Pew Research Center*, “Key Findings about U.S. Immigrants,” September 2018, <http://www.pewresearch.org/fact-tank/2018/09/14/key-findings-about-u-s-immigrants/>. Assuming that the same percentage of that group is under 18 as in the general population, approximately 6% are non-citizen adults. Approximately 42% of this group are undocumented immigrants.

³The Sentencing Project, “State-by-State Data,” <https://www.sentencingproject.org/the-facts/#map?dataset-option=FDR>. Recent legal changes – most notably the passage of Florida’s Amendment 4, which restored the franchise to most of those in the state who have completed their sentences – may have reduced this number by a million or more, decreasing the proportion of people disenfranchised due to felonies to about 1.5% of the population. *See, e.g.,* Tim Mak, *N.P.R.*, “Over 1 Million Florida Felons Win Right To Vote With Amendment 4,” <https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4>. However, legislative interpretations of the Amendment leave the actual number of people who will be re-enfranchised in doubt.

⁴39 states have some kind of restriction on voting for people who have been adjudicated to be mentally incompetent. [Phttp://www.bazelon.org/LinkClick.aspx?fileticket=7Cp83GrVY0\%3d&tabid=315](http://www.bazelon.org/LinkClick.aspx?fileticket=7Cp83GrVY0\%3d&tabid=315), pages 5-6. It is difficult to get an accurate count of this population. The .1% used here is the estimate used by Michael McDonald and Samuel Popkin in their 2001 article, “The Myth of the Vanishing Voter.”

caregivers. This inhibits their ability to attend organizing meetings, protests, and public hearings to make their voices heard. Fear may further limit their participation in these activities. Undocumented immigrants may fear drawing attention to themselves through advocacy because they seek to avoid deportation. People disenfranchised due to felony convictions may fear retaliation if they challenge the system that currently has or formerly had supervision over them. Finally, some may not have the cognitive or language ability to advocate for themselves. Very young children and people with severe intellectual disabilities are often unable to recognize and articulate their own policy interests because of their developmental level (for children) or a temporary or permanent medical condition (for the mentally incapacitated). Some non-citizens may have limited English language skills, which may inhibit their ability to understand or contribute to policy debates. These overlapping disadvantages reduce the likelihood that members of unenfranchised populations will mobilize themselves or be directly involved in the leadership or professional staff of advocacy organizations, while simultaneously making the representation that advocacy organizations provide much more important.

While critics sometimes denounce the influence of “special interests,” the participation of advocacy groups in the policy-making process is seen by most policy makers as inevitable and even necessary. As Grossmann (2012) argues:

Organized advocates and policy makers do not ignore the broad expectation that democracy requires listening to everyone. Because it is impossible to meet in practice, Americans have collectively institutionalized an advocacy system that largely substitutes for public representation and policy deliberation (186).

In other words, advocacy organizations have become recognized representatives of social groups in the policy-making process because they play a useful role in aggregating views of those groups for policy makers (Berry 1977). For most social groups, having such advocacy organizations as intermediaries is helpful but not essential. When they seek to influence the policy-making process, they have two paths to representation: one directly through an elected official, and one that goes through an advocacy organization and then to the elected official. Figure 1 illustrates this dynamic.

For the unenfranchised, advocacy organizations represent the most common path to representation. However, the same political disadvantages that limit direct advocacy by the unenfranchised

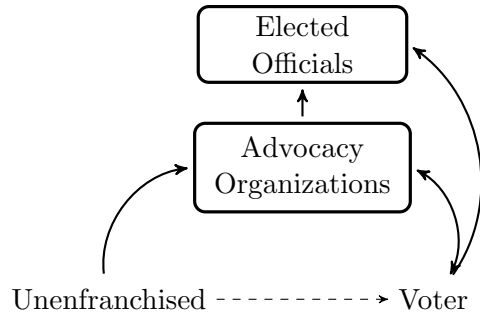


Figure 1: Paths to Representation

also constrain the activities of the advocacy organizations that represent them. To put electoral pressure on public policymakers, for example, these organizations need to convince voters to care about issues affecting the unenfranchised and to communicate those concerns to policymakers.

Previous studies of interest group advocacy have not specifically addressed the unique challenges facing organizations that represent the interests of unenfranchised people. Rather, advocacy work has been studied using two primary approaches: large scale surveys of interest groups and their lobbyists, and case studies of particular issues or groups (Baumgartner and Leech 1998). The large scale surveys tend to place groups in broad categories, which, while different from each other in key ways, also contain a great variety of interests (Schlozman and Tierney 1986, Walker 1991). In these studies, advocacy organizations that represent the interests of the unenfranchised are classified as “citizens’ groups” (Schlozman and Tierney 1986, Kollman 1998) or “public interest organizations” (Berry 1977; 1978). The term “citizens’ groups” is used to refer to all groups that are focused on some identity or connection that is not primarily economic or professional in nature – this includes groups identified by age, gender, race, legal status, or a shared interest in an issue or activity, such as the saving the environment (Schlozman and Tierney 1986, Walker 1991). Examples of citizens’ groups include the NAACP, the AARP, and the World Wildlife Fund. Public interest groups are a subset of citizens’ groups; “a public interest group is one that seeks a collective good, the achievement of which will not selectively and materially benefit the membership or activists of the organization” (Berry 1978, 385). Of the examples, only the World Wildlife Fund would cleanly fit the definition of a public interest group – both the NAACP and the AARP would be expected to seek policies that benefit groups that make up a significant part of their membership or activists, people of color and the elderly, respectively. While broad categorizations make sense

for studies providing a high-level look at the interest group landscape, they obscure important differences within the broad categories, such as how the layers of political disadvantage facing the unenfranchised may shape representation of their interests. Case studies looking at particular issues or interests, for example child abuse (Nelson 1986), civil rights (Vose 1959), or LGBT rights (Engel 2007), occasionally examine advocacy efforts on behalf of particular groups of unenfranchised people but do not offer a generalizable theory of how organizations approach advocacy on behalf of people who are excluded from the political community because they lack the right to vote.

3 Prioritization of Advocacy Tactics

Advocacy organizations have a range of options available to them in their efforts to influence public policy. They can choose to target different branches of government – legislative, executive, or judicial – or different levels of government – federal, state, or local. They can advocate in these venues directly or use demonstrations, protests, and media engagement to sway public opinion, putting indirect pressure on policymakers.

Overall, the most commonly used tactic is legislative advocacy. Approximately 98% of state lobbyists (Nownes and Freeman 1998) and 99% of Washington DC organizations (Schlozman and Tierney 1986) report testifying in legislative hearings, for example. Work in other venues is not quite as prominent, but is still substantial. Approximately three quarters of DC advocacy organizations reported engaging in administrative agency advocacy such as helping to draft regulations, rules, or guidelines (78%), and court advocacy, such as filing lawsuits or otherwise engaging in litigation (72%). Further, over a third of organizations said they were increasing their involvement in administrative agency advocacy (44%) and in litigation (38%).

Interest group scholars who have investigated the work of advocacy organizations have identified some key differences in how different types of groups engage in the policy making process. The biggest differences have been found between professional or economic interests and citizens' groups. Organizations representing professional and economic interests have long been thought to favor "inside" strategies – building close relationships with lawmakers, providing expertise, and providing campaign contributions – while organizations representing citizens' groups tend to favor "outside" strategies – appealing to the general public through the media and through grassroots actions and

organizing (Walker 1991, Schlozman and Tierney 1986). This may be because citizens' groups often feel constrained by the restrictions in the tax code that limit the amount of lobbying that charitable organizations are able to do (Berry 2003*b*). Some convergence in tactics may have occurred, however. Kollman (1998) found that inside strategies have become common for all types of groups, but that public interest groups and labor unions are still most likely to use outside strategies. On the other hand, Cameron et al. (2017) documented a shift, finding that the relatively recent trend has been for all types of groups to make heavy use of outside strategies.

Similar trends appear in studies of the use of litigation. Early studies of the civil rights and liberties cases advanced the "political disadvantage theory," which posits that groups that are disadvantaged in the political process, for example because they are unpopular or because their voting rights are restricted, are likely to turn to the courts as a matter of necessity (Vose 1959, Cortner 1968). As Cortner (1968) argued, for groups lacking political power, "[i]f they are to succeed at all in the pursuit of their goals they are almost compelled to resort to litigation." However, even the early scholars acknowledged that other groups also use litigation strategies. Subsequent studies have found that while citizens' groups turn to the courts more frequently than business or professional groups, powerful groups also turn to the courts to reinforce policy gains achieved in the political branches (Olson 1990, Epstein 1991). Grossmann (2012) found that certain constituencies were more active in the courts than others, particularly unions, professional groups, and environmental groups, but all types of constituencies have at least some involvement in litigation.

Increasingly, the literature indicates that advocacy organizations representing all kinds of groups are engaged to some degree or another in both inside and outside strategies, and in advocacy across the spectrum of available policy making venues (Grossmann 2012). Groups are likely to work in venues that are already considering their interests (Holyoke, Brown and Henig 2012). Even if advocacy organizations do not expect a favorable reception in a particular policy venue, they should be expected to invest some level of effort there if policy makers in that venue are considering issues that affect the groups they represent. This suggests that advocacy organizations are not so much choosing *which* tactics to use, but rather they are choosing how to *prioritize* their time among the many different tactics involved in their work. As strategic actors, advocacy organizations seeking to advance the interests of their constituencies should be expected to prioritize the advocacy tactics and venues that are most likely to be successful, while investing enough effort

in other venues to defend against policies that might be harmful to their group. The literature suggests that, with respect to these prioritization decisions, we should expect to see differences between advocacy organizations representing groups based on their occupation or profession and those representing citizens' groups. But there is also reason to believe that we should also expect to see differences between advocacy organizations representing voters and those representing people who are unenfranchised.

Advocacy organizations representing the unenfranchised are a subset of citizens' groups, and citizens' groups are expected to prioritize outside strategies.⁵ However, not all outside strategies are easily available to organizations representing the unenfranchised. For example, because of the limitations on many unenfranchised people's freedom of movement, to organize a protest or demonstration, advocacy organizations would need to convince others – voters – that participation was worthwhile. Thus, to use certain outside strategies like protests, advocacy organizations representing the unenfranchised first have to persuade members of the voting public to take up their cause. This means that we should expect them to prioritize strategies that could convince the public that their issues are important and that they are on the right side of those issues. Convincing voters to support the cause is also important for influencing elected officials. Elected officials often act to avoid anticipated punishment at the polls (Arnold 1992). Whether through polling numbers or direct contact from voters, evidence that the public is behind a groups' position is a powerful tool for any advocacy organization, but it is a particularly critical for those representing the unenfranchised. For most groups, when the general public opposes their position, they can still point to their own votes as a more limited form of threat to policy makers' reelection. For the unenfranchised, this tactic is not available to fall back on.

The media provides a particularly useful way engage public sympathy for a cause. The media can reach more voters more quickly and efficiently than an organization could through its own outreach efforts. This leads to the first pair of hypotheses regarding how advocacy for the unenfranchised may be different:

H1a: Advocacy organizations representing the unenfranchised will place higher priority on the use of media and public education, compared with advocacy organizations

⁵The term citizens' groups is common in the literature, and includes organizations representing the unenfranchised. I use the term for consistency with the literature, even though many of the unenfranchised are not citizens.

representing other groups.

Because business and professional groups have been found to use outside strategies less overall (Walker 1991, Kollman 1998), we should expect to see advocacy organizations representing the unenfranchised to be most distinct from those representing such groups. However, they should also use media more than other citizens' groups.

H1b: Differences in prioritization of media and public education will be greatest between advocacy organizations representing the unenfranchised and those representing business and professional groups.

Not every interest of the unenfranchised can be effectively addressed through appeals to the public. Some issues may be too technical or unpopular to make members of the voting public useful allies. In such cases, advocacy organizations need to go directly to policy makers. Political disadvantage theory suggests that the courts are the preferred venue for direct policy advocacy for the powerless. Given the layers of political disadvantage facing the unenfranchised, if this theory applies to anyone in modern policy making, it should apply to them. This leads to the second set of hypothesis:

H2a: Advocacy organizations representing the unenfranchised will place higher priority on litigation, compared with advocacy organizations representing other groups.

Unlike media, business groups and unions have been found to use litigation more than most citizens' groups (Grossmann 2012), so here we should expect to see advocacy organizations representing the unenfranchised to be most distinct from other citizens' groups.

H2b: Differences in prioritization of litigation will be greatest between advocacy organizations representing the unenfranchised and those representing other citizens' groups.

Note that all of the hypotheses concern the relative weight that advocacy organizations place on different advocacy tactics. They do not suggest that only advocacy organizations representing the unenfranchised appeal to the media or engage in litigation or that these are the *only* advocacy strategies such organizations should be expected to use. Rather, they reflect the expectation that

advocacy organizations representing all types of groups will use all available strategies, but there will be differences in the proportion of advocacy effort devoted to each, depending on the nature of their constituencies.

4 Data

To test these expectations, we need information on three types of organizations: (1) those that focus primarily on the needs and interests of the unenfranchised, (2) other citizens' groups, and (3) business or professional groups. To keep comparisons as clear as possible, I focus only on advocacy organizations, defined by Grossmann (2012) as "the subset of interest organizations that are intermediaries between public constituencies and governmental institutions" (24), rather than the full universe of interest groups. In particular, I focus on those advocacy organizations whose public constituencies are discrete and identifiable social groups, whether those groups are based on occupation, legal status (for example refugee or prisoner), or other personal characteristic (for example age, gender, race, or ethnicity).

The analysis uses an original survey of advocacy organizations I fielded in 2018. The survey includes general questions about the organization, such as questions about staffing and funding sources, questions about the policy strategies the organization uses and the frequency with which it uses each strategy, and questions about the organization's process for making decisions about its public policy work. The survey sample includes organizations identified in three ways: (1) random sampling; (2) presence in an existing dataset of Washington advocacy organizations; and (3) snowball sampling based on recommendations from survey participants who participated in a follow-up interview. To be included, organizations had to:

- Be registered with the IRS as nonprofits;
- Have revenues of at least \$50,000 a year;
- Actively seek to influence public policy;
- Focus on domestic rather than foreign policy; and
- Represent the interests of one or more discrete social group(s), based on occupation, legal status, or other personal characteristic.

The random sample was drawn from data assembled by the National Center for Charitable Statistics (NCCS) from IRS form 990 tax filings of nonprofits in 2015.⁶ The random sample was drawn from a subset of the 2015 NCCS data that was created using National Taxonomy of Exempt Entities (NTEE) codes to identify the organizations most likely to meet the study criteria.⁷ Organizations with the NTEE codes most likely to be associated with representation of unenfranchised groups were over-sampled to ensure that there would be enough of these organizations to make comparisons.⁸ Once the sample was generated, I searched the internet for each organization’s website, which was used in two ways. First, I looked at the organization’s mission statement to verify that it met the criteria for inclusion in the study. In cases where it was unclear, I defaulted to inclusion. Second, I used the website to identify appropriate contact information for use in sending the survey. The vast majority of surveys were sent via email or through a contact form on the organization’s website. Overall, surveys were sent to just over 3,900 randomly sampled organizations.

The random sample includes organizations working at the state and federal levels, and state organizations vastly outnumber federal ones. To ensure that there would be an adequate proportion of organizations working at the federal level, I used a dataset Grossmann (2012) collected on advocacy organizations active at the federal level from 1995 - 2004. Many of the organizations in this dataset came up in the random sample. Those that did not were also sent the survey. Based on inclusion in this dataset, just over 600 additional organizations received the survey.

The snowball sample is the smallest proportion of those sent the survey. I conducted interviews with a subset of the survey respondents, and I ended each conversation by asking the person I was speaking with if there were other organizations they knew through their advocacy work that they would recommend that I include in the project. Often, the interviewees made introductions or allowed me to use their names when I reached out to the organizations they recommended. Through the snowball method, I sent out approximately 250 additional surveys. Overall, about 4,750 organizations received the survey. Approximately 600 organizations answered enough of the

⁶<https://nccs.urban.org/>. Every not-for-profit organization registered with the Internal Revenue Service that is not a church and has revenues of at least \$50,000 a year is required to file a tax form 990 each year. These filings are public, and the NCCS compiled annual datasets with the key information from these tax filings from 1989 to 2015.

⁷The NTEE system is used by the IRS and NCCS to classify nonprofit organizations by their primary activities. A full list of NTEE codes can be found at: <https://nccs.urban.org/publication/irs-activity-codes>. The subset of NTEE codes used for sampling are including in the appendix as Table A1.

⁸The NTEE codes used for over-sampling are noted in appendix Table 1A.

survey to be used for at least some analysis, a response rate of 13%.⁹

Because the sample selection was not fully random and because there may be selection bias in the advocacy organizations that chose to respond, the organizations that responded to the survey differ from the larger universe of nonprofit organizations in at least three ways. First, the organizations are in the middle range of revenue compared to the full dataset of nonprofits. Table 3 compares the 2015 revenue of survey respondents to the full set of nonprofits in the NCCS data. It shows that the mean and maximum revenue of the full universe of nonprofits are quite a bit larger than those of the sample, but the median is much smaller. This reflects the fact that neither the largest or the smallest advocacy organizations responded to the survey; the bulk of responses came from mid-sized organizations.

	Mean Revenue	Median Revenue	Maximum Revenue
Survey respondents	\$2.9 million	\$897,986	\$83.5 million
Full NCCS data	\$7.638 million	\$253,234	\$90.3 billion

Table 1: Comparison of revenue reported to the I.R.S. in 2015

Second, the organizations that responded are mostly either liberal or neutral in political perspective. Very few organizations that define their mission or the group they represent in explicitly conservative terms responded; all the notable national conservative organizations to which I sent the survey either expressly declined to participate or simply never responded. Third, the survey respondents are more likely to be incorporated under IRS Code Section 501(c)(3)s than are the general population of advocacy organizations. In the subset of NCCS data from which my sample was drawn, just over half – about 54% – of advocacy organizations in 2015 were 501(c)(3)s, and 46% were incorporated under other subsections. In the survey sample approximately two-thirds are 501(c)(3)s, and about one-third are incorporated under other subsections. This is largely because the research design used an over-sample of 501(c)(3) organizations in order to ensure that the final responses included enough advocacy organizations representing the unenfranchised to provide sufficient power for analysis.¹⁰ These potential sources of bias should be kept in mind when considering

⁹This is a lower rate response rate than previous studies; Berry (2003a) noted that surveys of interest groups have generally had response rates ranging from 17% to 50%, and his own had an impressive response rate of 64%. Part of the reason for this may be survey fatigue among nonprofit leaders. Several of the survey participants who participated in follow-up interviews told me that they now receive many more survey requests than they can respond to – often several a week.

¹⁰In other work, I show that advocacy organization representing the unenfranchised are more likely to be organized under IRS Code Section 501(c)(3) than are those representing other groups, because they are more dependent on

the generalizability of the results presented here.

The outcomes of interest are drawn from organizations' responses to the following survey question:

Regarding your public policy activities, how does your organization divide its time among the following activities (in approximate percentages of effort):

- Creating and disseminating research
- Media and public education
- Demonstrations and protests
- Legislative advocacy
- Advocacy to government agencies
- Advocacy directed to the President, Governor(s) and/or Mayors
- Litigation and amicus briefs
- Influencing elections or appointments
- Other

Because responses were supposed to add up to 100%, this question provides a means to evaluate relative prioritization of different advocacy strategies. Unfortunately, approximately a third of respondents either did not complete this question, or their answers did not add up to 100%. The results presented here are based on the subset of 370 respondents whose responses added up correctly or were close enough to be easily correctable.¹¹

The distribution of percentage of effort respondents reported dedicating to media and publication is illustrated in Figure 2. The median response is 20% and the mean is 27%. Overall, media and public education seem to be an important part of many organizations advocacy mix. In contrast, litigation is one of the least prioritized strategies in the survey responses. The mean for litigation is only 2.9%; the median is 0.

foundations and other benefactors that favor giving to 501(c)(3) organizations.

¹¹I viewed the response as a math error if it added up to between 90 and 110, but not 100. For these responses, I proportionally adjusted all percentages provided so that they totaled 100%. To verify that subsetting to these responses does not skew the results, I also ran the analyses on the full set of responses, including those that do not add up to 100%. The results were substantially similar.

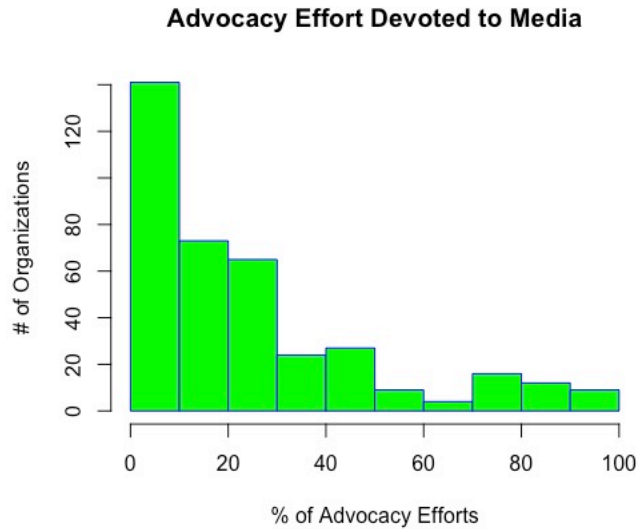


Figure 2: Distribution of survey responses about the proportion of the organizations' advocacy time allocated to media and public education.

The responses to two survey questions provide the basis separating those advocacy organizations representing primarily the unenfranchised from the other two types of groups. First, organizations were asked, “Does your organization seek to promote or defend the interests, rights, or benefits of a particular group (or groups) of people?” If the organization answered yes, they were asked how they would name or describe that group(s). Second, respondents were asked to estimate the amount of their advocacy efforts that are specifically focused on the rights or interests of the unenfranchised. The question was worded as follows:

Approximately what percentage of your organization’s policy efforts are directly targeted at promoting or defending the interests, rights, or benefits of people who lack the legal right to vote, such as children, non-citizens, or people disenfranchised due to felony convictions or mental incapacity?

For organizations that skipped this question, answers were imputed by taking mean responses from organizations representing similar populations in jurisdictions with similar enfranchisement laws.¹² Figure 3 shows the distribution of this variable among survey respondents. While a majority survey respondents report spending none of their advocacy efforts on the unenfranchised, there is variation

¹²For example, different states have different rules for whether and for how long people with felony convictions are disenfranchised. Imputation was drawn from organizations in states with similar laws.

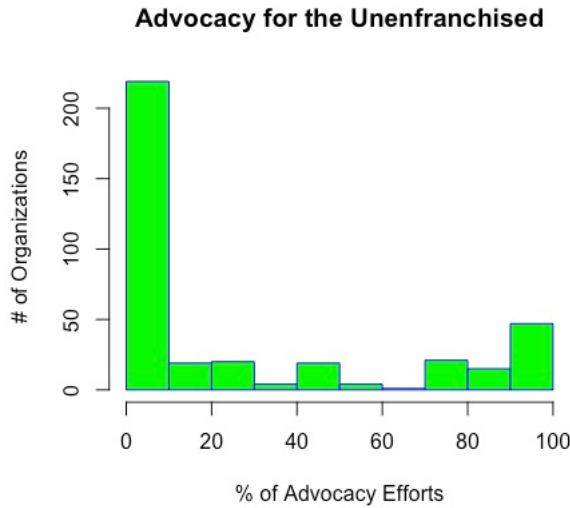


Figure 3: Distribution of survey responses about how much of the organizations' activities are specifically directed at advancing the rights and interests of the unenfranchised.

across most of the range of possible values, and a quarter of the respondents target 50% or more of their advocacy effort to the interests of unenfranchised.

An organization is coded as a professional organization if, based on its website and mission statement, it is organized around a particular occupation or profession. This includes labor unions. Professional organizations make up approximately 50% of the survey respondents. Respondents that are not professional organizations are coded as citizens' groups. Organizations from both categories reported dedicating some of their advocacy efforts to the interests of the unenfranchised. Many organizations for professionals that work with the unenfranchised consider it to be part of their mission to advocate for the people they serve. For example, teachers unions tend to devote some of their efforts to the interests of their young students, and associations of immigration lawyers work on reforms that benefit their members' non-citizen clients. Twenty-three percent of the organizations that reported spending 50% or more of their advocacy efforts representing the unenfranchised are professional organizations.

5 Analysis

To isolate the effects of group type on the prioritization of media and litigation tactics, I use nonparametric matching to compare organizations that focus their advocacy on the needs and

interests of the unenfranchised with other organizations. Although previous studies have controlled for organizational features such as revenue or staff size, I do not match on these criteria for two reasons. First, although resources may be helpful in understanding *total* effort devoted to an advocacy tactic, they do not necessarily help us to understand *relative* effort, which is the focus of this analysis. For example, while litigation is often thought to be expensive, so is legislative lobbying. It is not clear how resources would affect our expectations about which of these an organization would prioritize.¹³ Organizations with more resources should be expected to make greater use of all tactics, but not proportionally more use of any one tactic. The second reason for not matching on revenue or staff size is that they are post-treatment and endogenous. For matching purposes, we consider the decision about type of group the organization will represent as the treatment, and it is generally the first decision made in the formation of an organization. An advocacy organization does not hire staff or fund raise before knowing its purpose. Further, the choice of constituency shapes the staff who are hired and the potential sources of funding available to the organization, making these factors endogenous.¹⁴ Matching on these types of post-treatment variables could therefore lead to “spurious correlations between the treatment and the outcome” (Acharya, Blackwell and Sen 2016, 514).

In contrast to revenue and staff, it is likely that founders of advocacy organizations select which group to represent and the policy making jurisdiction in which to represent that group more or less simultaneously. Follow-up interviews I did with a subset of survey respondents support this view. For example, the founder of one children’s rights organization said that the idea for the organization came when someone complained to him that there was no organization advocating for children in his area. A national advocacy organization reported that her organization was founded after an official from an administrative agency suggested that there would be value for the agency in having advocacy on behalf of people affected by the agency’s policies. Similar accounts appear in the origin stories of many of the organizations; the organizations were founded to respond to a perceived need for advocacy for a particular group at a particular level or jurisdiction of government. Moreover,

¹³Additionally, many interviewees told me that they use pro bono counsel for amicus briefs, which was the most common litigation activity, making this activity relatively inexpensive for them. It is possible that litigation is expensive for organizations that use in-house or paid counsel and cheaper for organizations that use pro bono counsel, making the effects of resources conditional on staffing decisions that are not measured in my data.

¹⁴I argue elsewhere that the choice of group to represent structures the types of funding opportunities available to an organization, which may further structure their advocacy options.

it is possible that differences in the advocacy environments of different policy making jurisdictions could have direct effects on how the organizations working in those jurisdictions prioritize their advocacy tactics. For this reason, organizations were matched on policy jurisdiction.

On the survey, organizations were asked, “If influencing state-level policy is important to your organizations mission and activities, on which state or states does your organization focus?” The organization was matched on all states it specifically listed.¹⁵ Organizations could also be matched as working at the federal level.¹⁶ Nineteen organizations were dropped because they did not answer the question and the jurisdictions on which they focus could not be clearly determined from available information. Each organization was matched on at least one jurisdiction; The highest number of jurisdictions any one organization was matched on was 18. In the analyses that follow, treated and control units were matched using exact matching via the MatchIt package in R (Ho et al. 2011). Linear least squares models were then run on the matched, weighted data using the Zelig package (Imai, King and Lau 2008).¹⁷ Zelig uses simulation to generate expected values based on these models. Results are presented here using Zelig graphs comparing the expected values of interest for treatment and control groups. The y-axis on all of the graphs represents the proportion of the simulations in which the expected value returned was at a given level on the x-axis.

Treatment was coded in four ways. The first two, Treatments A and B, are used to test the general hypotheses (H1a and H2a) that advocacy organizations representing the unenfranchised prioritize media and litigation advocacy tactics more highly compared to all other groups. The second two, Treatments C and D, test the more specific hypotheses (H1b and H2b) about how advocacy organizations representing the unenfranchised compare to other citizens’ groups and professional groups, respectively.

For Treatment A, I coded an organization as treated if the respondent said that they spent 90% or more of their advocacy efforts working to advance the rights and interests of the unenfranchised. This compares those organizations that spend most of their advocacy efforts on the unenfranchised to all other organizations. Note that this treatment includes both citizens’ groups and professional

¹⁵The District of Columbia and Puerto Rico were treated as states for matching purposes.

¹⁶Some national organizations responded that they were active in all states. These organizations were only matched at the federal level, as their prioritization of advocacy tactics is unlikely to be tailored to specific state policy environments.

¹⁷Kosuke Imai, Gary King, and Olivia Lau. 2007. Zelig: Everyone’s Statistical Software, <http://GKing.harvard.edu/zelig>.

groups that focus 90% of their efforts on the unenfranchised. Because the existing literature expects professional organization to favor different tactics, I also test Treatment B. Organizations are coded as treated under Treatment B if respondents said they spent 75% or more of their advocacy efforts on the rights and interests of the unenfranchised *and* they are not a professional organization.¹⁸ The control group for Treatment B is all other organizations.

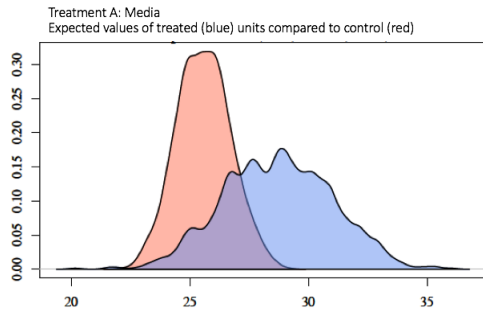


Figure 4: Expected values for percent of advocacy effort spent on media and public education. Treatment group is all organizations spending 90% or more of their advocacy time on the rights and interests of the unenfranchised. Control group is all other organizations.

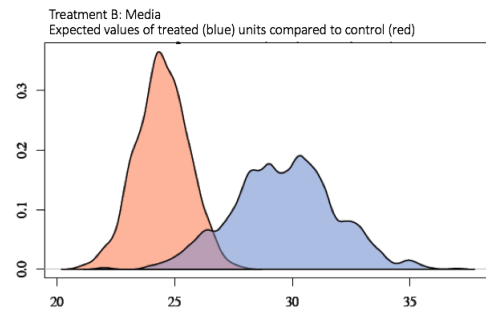


Figure 5: Expected values for percent of advocacy effort spent on media and public education. Treatment group is citizens' groups spending 75% or more of their advocacy time on the rights and interests of the unenfranchised. Control group is all other organizations.

For both treatments, we expect the treated groups to spend a higher percentage of their advocacy efforts on media (H1a) and litigation (H2a) than the control groups. The results are generally supportive. Figures 4 and 5 show some overlap in the range of simulated expected values for percentage of advocacy effort spent on media, but they suggest that organizations representing the unenfranchised spend about 5% more of their advocacy effort on media tactics than organizations representing other groups. Figures 6 and 7 show strong support for H2a. There is virtually no overlap between treatment and control groups' expected percentage of time dedicated to litigation. The analysis suggests that advocacy organizations representing the unenfranchised spend about 6% more of their advocacy effort on litigation.

The next two treatments allow us to isolate the difference between organizations representing

¹⁸I chose 75% as the cutoff because it is a natural break in the data. There is steady variation from 0-60%, but only one organization between 60-75%. Moreover, a qualitative look at the responses reveals that the organizations that responded with 75% or more that are not professional organizations are those that we would most associate with representation of the unenfranchised.

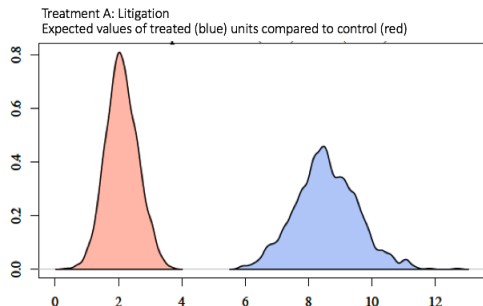


Figure 6: Expected values for percent of advocacy effort spent on litigation. Treatment group is all organizations spending 90% or more of their advocacy time on the rights and interests of the unfranchised. Control group is all other organizations.

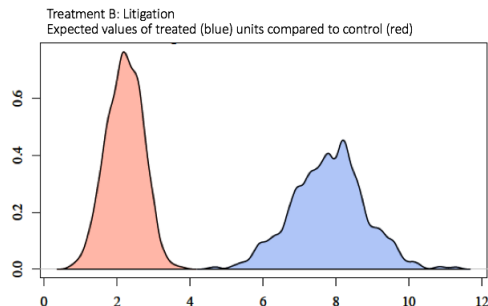


Figure 7: Expected values for percent of advocacy effort spent on litigation. Treatment group is citizens' groups spending 75% or more of their advocacy time on the rights and interests of the unfranchised. Control group is all other organizations.

the unfranchised and the two other types of organizations separately. For Treatment C, the treatment group is coded the same way as for Treatment B, but the control group consists only of other citizens' groups. Professional organizations are completely excluded from this analysis. For Treatment D, the treatment group is the same, but control group is only professional organizations; other citizens' groups are excluded from Treatment D analyses.

A comparison of Figures 8 and 9 confirms hypothesis H1b. The differences are larger and clearer between the organizations representing the unfranchised and professional organizations (Treatment D) than between the unfranchised and other citizens' groups (Treatment C).

The final comparison, between Figures 10 and 11, does not support H2b. Advocacy organizations representing the unfranchised dedicate more of their advocacy effort to litigation than both other citizens' groups and professional organizations, and the difference is slightly greater for professional organizations, rather than for citizens' groups as expected.

The analysis so far provides support for the expectation that advocacy organizations representing the unfranchised prioritize media tactics and litigation more than other groups. However, because the matching design I used matched the some of the same organizations multiple times there may be concern that a small number of organizations could be inflating the results. To ensure that this is not the case, I estimated unmatched OLS models as a robustness check. For the first models, I use the percentage of advocacy efforts that the organization reported dedicating to the

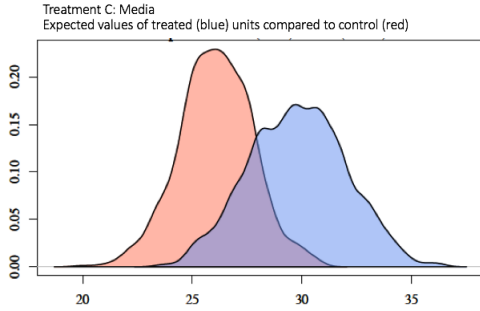


Figure 8: Expected values for percentage of advocacy efforts spent on media. Treatment group is citizens' groups spending 75% or more of their advocacy time on the rights and interests of the unenfranchised. Control group is only other citizens' groups.

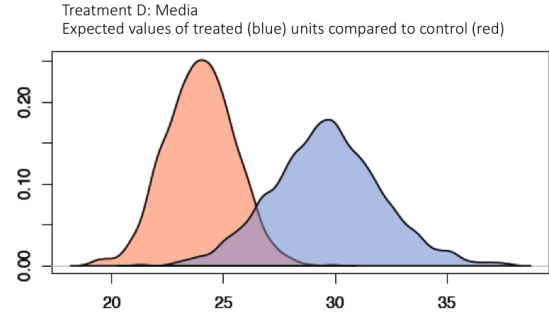


Figure 9: Expected values for percentage of advocacy efforts spent on media. Treatment group is citizens' groups spending 75% or more of their advocacy time on the rights and interests of the unenfranchised. Control group is only professional organizations.

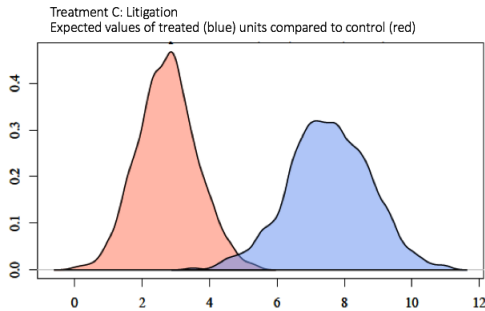


Figure 10: Expected values for percentage of advocacy efforts spent on litigation. Treatment group is citizens' groups spending 75% or more of their advocacy time on the rights and interests of the unenfranchised. Control group is only other citizens' groups.

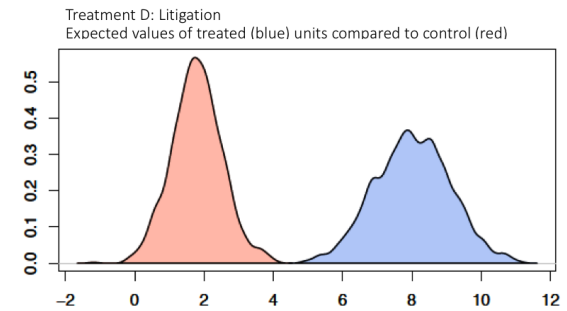


Figure 11: Expected values for percentage of advocacy efforts spent on litigation. Treatment group is citizens' groups spending 75% or more of their advocacy time on the rights and interests of the unenfranchised. Control group is only professional organizations.

needs and interests of people without the right to vote as a continuous independent variable.

The outcome of interest in the OLS models in the same as in the matching design; it is percent of advocacy efforts devoted to media (model 1) and litigation (model 2). Table 2 shows the results of the OLS regressions. Because the percentages across all advocacy activities have to add up to 100%, the dependent variables are not fully independent of one another. Model 3 shows that results are consistent when the percentages for media and litigation efforts are combined.

	<i>Dependent variable:</i>		
	Media (1)	Litigation (2)	Combined (3)
Unenfranchised	0.033 (0.036)	0.040*** (0.012)	0.072** (0.036)
Constant	25.868*** (1.663)	1.684*** (0.579)	27.552*** (1.683)
Observations	369	369	369
R ²	0.002	0.027	0.011
Adjusted R ²	-0.0004	0.024	0.008
Residual Std. Error (df = 367)	25.596	8.904	25.909
F Statistic (df = 1; 367)	0.838	10.212***	4.011**

Note: *p<0.1; **p<0.05; ***p<0.01

Table 2: Effect of % Effort on Behalf of the Unenfranchised on Advocacy Strategies

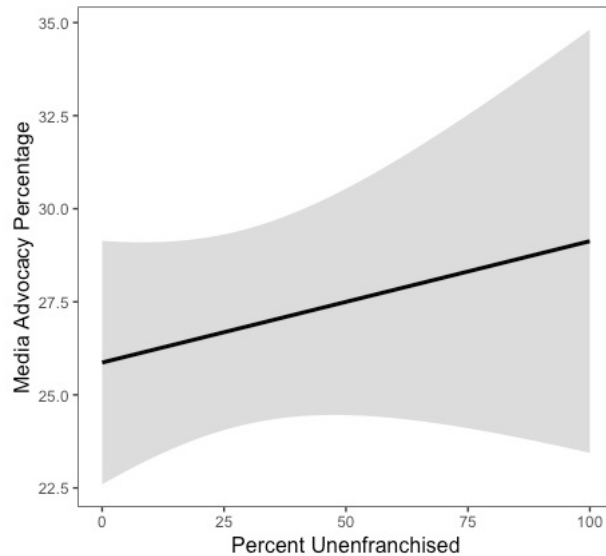


Figure 12: Effect of the percentage of effort dedicated to advocacy for the unenfranchised on the percentage of advocacy time spent on media

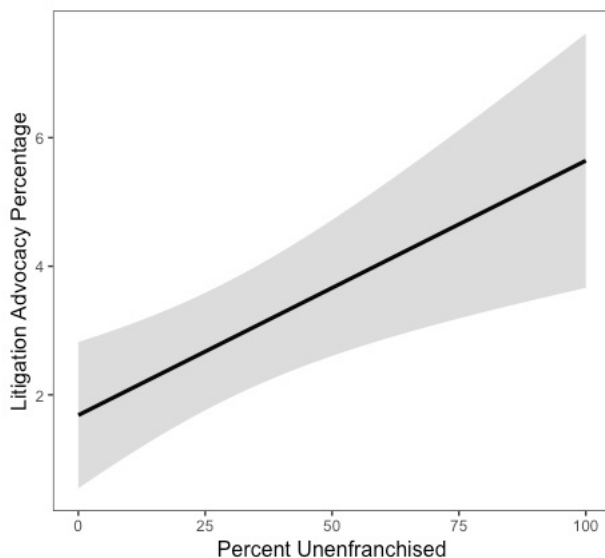


Figure 13: Effect of the percentage of effort dedicated to advocacy for the unfranchised on the percentage of advocacy time spent on litigation

Figures 12 and 13 illustrate the results of OLS regressions for media advocacy and litigation. The slope of both figures is in the expected direction, but support for H1a, the media hypothesis, is not as clear as the support for H2a, the litigation hypothesis. However, these models confirm that the findings from the matching models are consistent with the trends in the underlying data.

The continuous independent variable used for models 1 - 3 does not distinguish between professional and citizens' groups, so they do not allow us to evaluate the group specific comparisons tested with Treatments C and D in the matching models. As a robustness check for these analyses, models 4 and 5 use mutually exclusive categorical variables. The coding for unfranchised is consistent with Treatments B, C, and D in the matching analysis; an organization is coded as unfranchised if it spends 75% or more of its advocacy efforts working on behalf of the unfranchised *and* it is not coded professional. Unfranchised organizations make up about 19% of the sample. An organization is coded as *other* if it is not coded as professional or unfranchised. This category consists of citizens' groups that spend less than 75% of their efforts on issues specific to the unfranchised. It is about 31% of the sample. The professional category makes up the remaining 50% of the sample.

Table 3 and Figure 14 show the results of the categorical analysis. Because H1b expects that organizations representing the unfranchised will be most distinct from business and professional

groups with regard to media advocacy and H2b expects that they will be most distinct from other citizens' groups with regard to litigation, the excluded category is unenfranchised. Consistent with H1b, the matching analysis, and prior studies, we see that professional organizations spend much less of their advocacy time cultivating the media than do organizations representing the unenfranchised. However, model 4 suggests that advocacy organizations for the unenfranchised and other citizens' groups spend virtually the same proportion of effort on media advocacy. This is a weaker result than we see in the matching analysis, which suggest a difference. This may indicate that controlling for jurisdiction is important; variation in the media environments of different policy jurisdictions could be affecting advocacy prioritization decisions. Like the matching analysis, the categorical OLS model does not support H2b; once again the unenfranchised are most distinct from business and professional groups. The coefficient for other citizens' groups litigation effort is in the expected direction, but the difference between these groups and the unenfranchised is not clearly distinguishable from 0. Citizens' groups are more clearly distinguishable from organizations representing the unenfranchised in the matching analysis, again suggesting that controlling for policy jurisdiction is important.

	<i>Dependent variable:</i>	
	% Media (4)	% Litigation (5)
Other Citizens' Groups	-0.174 (3.852)	-1.848 (1.559)
Professional	-9.273*** (3.557)	-3.430** (1.440)
Constant	31.257*** (3.032)	5.357*** (1.227)
Observations	370	370
R ²	0.032	0.016
Adjusted R ²	0.027	0.011
Residual Std. Error (df = 367)	25.367	10.268
F Statistic (df = 2; 367)	6.039***	2.992*

Note: *p<0.1; **p<0.05; ***p<0.01

Table 3: Effect of Organization Type on Advocacy Strategies

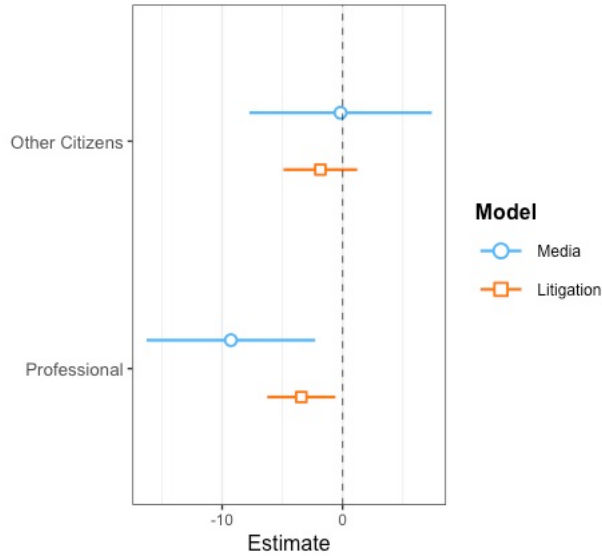


Figure 14: Effect of the type of constituency on the percentage of advocacy time spent on media and litigation. Comparison group is the unenfranchised.

6 Discussion and Conclusion

The advocacy organizations that stepped up to fight the Trump Administration’s family separation policy have made effective use of both litigation and media tactics. They sued and obtained court orders that led to reunification of many migrant families, and they continue to sue to improve conditions in detention facilities. They publicized the worst abuses of the policy through social and traditional media, and the President changed course, at least temporarily, in response to the public outrage brought on by the publicity. This paper theorizes that litigation and media tactics are important avenues to influence for all advocacy organizations representing the unenfranchised and, as strategic actors, these organizations should be expected to prioritize these tactics. The analysis supports these expectations.

The most clear result is in regard to the prioritization of litigation as an advocacy tactic. Across a range of model specifications and operationalizations, organizations that represent the unenfranchised spend a larger percentage of their advocacy efforts on litigation than other groups. This suggests that the political disadvantage theory, which has largely fallen by the wayside in the judicial politics literature, has continuing relevance. Advocacy organizations that represent the unenfranchised – groups that are politically disadvantaged in multiple, overlapping ways – are the advocacy organizations that turn to the court most frequently, at least as a proportion of their

overall advocacy efforts.

Advocacy organizations representing the unenfranchised prioritize media tactics more than business and professional groups but are less clearly distinct from other citizens' groups. Among the survey respondents, organizations representing the unenfranchised reported devoting slightly more of their time on average to media tactics than other citizens' groups, but differences are not statistically significant. The matching analysis suggests that the difference is larger when policy jurisdiction is considered, but more research is needed to know if this finding could be reproduced outside of the survey sample.

This paper provides initial evidence that there are systematic differences in prioritization of advocacy tactics between organizations representing the unenfranchised and those representing other social groups. However, readers might wonder whether, because the survey that provides the empirical basis for this analysis was fielded in 2018, these results are skewed by the particular circumstances of the Trump Administration. Actions like the family separation policy seem to uniquely target the unenfranchised in ways that might affect the way that advocacy organizations represent them. Although actions targeting the unenfranchised have received a great deal of media attention – perhaps because of the prioritization of media advocacy by the organizations representing them – the Trump Administration has adopted disruptive policies that have affected a wide range of groups. For example, policies protecting consumers, transgender people, and sexual assault victims have been rolled back. The follow-up interviews I did with a subset of survey respondents support this view – representatives of all types of groups indicated that all the rules seem to have changed under Trump. Agencies that were once reliable partners are no longer as reliable, and issues that might have seen an easy path through Congress in earlier times now face gridlock. To the extent that this has shifted prioritization of advocacy tactics, it is not clear that it has shifted it more for the unenfranchised than for other groups. Moreover, the political disadvantages that drive the theoretical expectation that the advocacy organizations will prioritize media and litigation tactics are not specific to the current environment.

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