

UNIVERSITY OF THE BASQUE COUNTRY FACULTY OF LAW

Red v. Blue: the Road to Dobbs v. Jackson Women's Health Organisation.

ARGUMENT ANALYSIS PRESENTED IN ABORTION RIGHT CASES
BEFORE THE U.S SUPREME COURT

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DEFINITIONS

Amendment - An alteration or addition made to the US Constitution.

Amicus Brief - A legal document supplied to a court of law containing advice or information relating to a case from a person or Organisation that is not directly involved in the case.

Clause - A distinct provision within a legal document, such as a constitution or a statute.

Concurrence - A written opinion by a judge who agrees with the majority decision but for different reasons.

Dissent - A written opinion by a judge who disagrees with the majority decision.

Due Process Clause - A constitutional provision that requires the government to follow fair procedures before depriving an individual of life, liberty, or property.

Impeachment -The process by which a legislative body formally levels charges against a high official of government for misconduct.

Inferior courts -Lower federal courts below the Supreme Court of the United States.

Injunction - A court order that requires a party to do or refrain from doing a particular act.

Issued to either: prohibit or compel certain conduct by the government or private parties. For example, to prevent the enforcement of a state law that is deemed unconstitutional or to require a state to comply with a federal law or court order. They might be temporary or permanent and can be issued at any stage of a legal proceeding.

Justices - the nine judges who sit on the Supreme Court of the United States.

Majority opinion - A written opinion by the majority of the judges in a case.

Overturn - To reverse a lower court's decision on appeal.

Precedent - A legal decision that serves as a guide for future similar cases.

Remand - To send a case back to a lower court for further proceedings.

Right to privacy - the right to keep personal matters and relationships confidential.

Stare decisis - The legal principle of following established precedent in deciding cases.

Substantive Due Process - A constitutional principle that protects individual rights from government interference.

Supreme Court - The highest court in the United States and the final arbiter of the US Constitution and federal law.

Writ of certiorari - A discretionary order issued by the Supreme Court that grants review of a lower court decision.

1. INTRODUCTION

The following analysis focuses on the arguments presented in the recent Supreme Court decision, *Dobbs v. Jackson Women's Health Organisation* (597 U.S., 2022). In this ruling, the Court determined that the right to abortion does not possess fundamental right protection derived from the Due Process Clause of the Fourteenth Amendment within the United States Constitution. Consequently, the Constitution itself does not confer a right to abortion, leading to the overturning of prior Supreme Court precedent that had recognized the right to abortion as a fundamental right.

As a result, statutes that may have been deemed unconstitutional based on the court's previous decisions before 2022 could now be considered constitutionally valid and enforceable. This development triggered a race among legislative bodies to enact laws either restricting, banning, modifying, or safeguarding access to abortion (Kaveny, 2023).

The primary objective of this paper is to elucidate that *Dobbs v. Jackson* is not merely an isolated Supreme Court decision but rather the outcome of a series of court rulings that failed to establish a robust foundation or enduring precedent concerning the right to abortion. Furthermore, it vividly depicts the present political and ideological fragmentation within the United States of America (Lozada, 2022).

1.1. Needed Background The on US Supreme Court: Constitution and Abortion

Since 1973, the debate surrounding the constitutional recognition of women's right to terminate a pregnancy has been intricately tied to the right to privacy enshrined in the U.S. Constitution. The broadly discussed Supreme Court case of *Roe v. Wade* (410 U.S. 113) introduced the concept of "compelling interest" that allowed states to intervene in regulating limitations to the right to abortion. This decision, unintentionally and without foreseeing the full consequences, triggered a clear divide between supporters and opponents of abortion based on the notion of "viability," the point at which the fetus is considered capable of surviving outside the mother's womb (The Editors of Encyclopaedia Britannica, 2023; Ely, 1973).

That being said, to objectively track the line of arguments presented in the opinion, it is important to understand a few key notions. Firstly, Dobbs overturned the decisions in *Roe v. Wade* (1973) and *Casey v. Planned Parenthood* (505 U.S. 833.); therefore, a closer examination of these cases is required.

Secondly, the Court is composed of eight Associate Justices and a Chief Justice. The President has the power to nominate justices, and their appointments require the advice and consent of the Senate (U.S. Senate: Judiciary, 2022). Thus, the political aspect of the judiciary deserves further observation.

Lastly, it is worth mentioning that both pro-abortion and anti-abortion advocates, along with judges, political figures, organisations, political parties, and religious entities, have heavily criticised the pivotal case *Roe v. Wade* (1973). For example, former Justice

Ruth Bader Ginsburg, expressed her criticism, stating that the judgement had halted the momentum in favour of change (Ginsburg, 2013, para. 3).

1.1.1 Premise: Question Presented to the Court

The Supreme Court justices in *Dobbs v. Jackson* had to resolve the question of “whether all pre-viability prohibitions on elective abortions are unconstitutional” (*Dobbs v. Jackson Women's Health Organisation*, 2022, p. 1). The pre-viability term alludes to the timeframe previously established; nevertheless, what is important to take into consideration is that the question was specifically crafted to allow the Court to reverse the interpretation that stated:

Constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment. It declares that no state shall “deprive any person of life, liberty, or property, without due process of law.” The controlling word in the cases before us is “liberty¹” (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 1992, p. 31).

The Court in *Dobbs* held that prior court decisions had wrongfully interpreted the US Constitution’s Due Process Clause, and moreover, the right to abortion was not protected by it. Before *Dobbs*, many attempts to overturn those rulings had been made (Ziegler, 2014). Therefore, the natural question that follows is: what was different this time that made the Court overturn a precedent that had been upheld for almost fifty years?

¹ 505 U.S. 833, 851, 1992

1.1.2 Right to Abortion: From Fundamental Right to...

Although initially appearing complex, comprehending the factors that contributed to the formation of this viewpoint reveals a rather straightforward answer: a convergence of favourable political circumstances (Kaveny, 2023, p. 142). However, while the answer may be simple, the actual attainment of this outcome proved to be far from effortless. Numerous intricate scenarios had to unfold to reach the verdict that stripped the right to abortion of its classification as a "fundamental right."²

So as not to diverge from the focus of this paper, only a mention of why the political inclines of justices matter, as well as a brief political context will be provided. These factors have been of great aid in the comprehension of the choice of arguments presented in Dobbs v. Jackson Women's Health Organisation (2022).

Two articles related to the Supreme Court explore the impact of judicial nominations and dissent in the Senate. The first article by Jozkowski et al. (2020) investigates how Justice Kavanaugh's nomination affected people's knowledge and opinions of *Roe v. Wade* (citing Attitudes About Abortion: A Comprehensive Review of Polls from the 1970s to Today)³. The authors found that people who knew more about the case were more likely to oppose Kavanaugh's nomination and support the *Roe v. Wade* decision instead. The second, by Gerhardt (2018), examines the importance of dissent in the Senate, particularly in the context of judicial nominations, arguing that

² Norrander and Wilcox (2023) examine the post-Dobbs reality of abortion policy and public opinion in the United States. McKeegan (1993) provides a historical perspective on the politics of abortion. Pilkington (2023) analyses the future of *Roe v. Wade* and increasing hostility towards abortion rights. Hamilton (2003) offers a comprehensive chronology of social and political dissent in the United States, providing broader context for the abortion debate. Mears (2020) reports on Justice Barrett's swearing-in to the Supreme Court, relevant to understanding the Court's composition during key decisions. Balkin (2022) discusses partisan entrenchment in relation to abortion and its implications for the Republican Party.

³ The article analyses the public opinion on *Roe v. Wade* and abortion, includes surveys regarding whether it should or not be a right, limitations to its access, and so on.

dissent is necessary for maintaining the rule of law and ensuring thorough vetting of nominees⁴.

1.1.3 Supreme Court Justices

The Supreme Court comprises nine justices, and when a vacancy arises, the President nominates a candidate. According to the United States Constitution, the judicial power is vested in the Supreme Court and any established inferior courts. Judges, both in the Supreme Court and inferior courts, hold office during good behavior and receive compensation that cannot be diminished during their tenure (U.S. Const. art. III, § 1).

The implication of this is that Justices hold office as long as they choose to do so, provided that health allows them, and can only be removed from office by impeachment. Thus, the need to appoint a Justice does not happen within a defined time stipulation⁵. Before the nominee is appointed, the Senate holds an audience with the nominee in which several questions are asked about their qualifications and views.

There are many exhaustive papers, books, reviews, essays, and opinions (Hamilton, 2003) that examine the historical and legislative trajectory of US political strategies to gain Senate approval. Interestingly enough, dissent⁶ has been the core method by which the Senate has demonstrated its political alliance both overtly and covertly (Gerhardt, 2018).⁷

⁴ These are part of a larger collection; "Dissent and the Rule of Law," which explores the role of dissent in modern society, covering topics such as environmental justice and government surveillance. The collection was published in response to the mobilisation of communities across the U.S. to resist the Trump administration's policies.

⁵ In all the Court's history, birth in 1790, there have been only 17 Chief Justices and 104 Associate Justices, for a total of 116 justices. Five Chief Justices had previously served as Associate Justices. Retrieved from https://www.supremecourt.gov/about/institution.aspx#:~:text=*Since%20five%20Chief%20Justices%20had,been%20116%20Justices%20in%20all.

⁶ U. S. Senate Manual, 113th Congress. S. Doc. 113-1. Standing Rules of the Senate, 10-11. Retrieved from the U.S. Government Publishing Office website: www.gpo.gov. United States Senate. Further reading on the topic of precedent includes Amar, A. R. (2012). America's unwritten constitution: the precedents and principles we live by. Basic Books.

⁷ Successful political campaigning is a minimum requirement for remaining in the Senate, and it can both promote and stifle dissent (p. 736).

Since the Supreme Court's decision in *Citizens United v. FEC* (558 U.S. 310, 2010) campaign finance has become critical for influencing party allegiance and public opinion and increasing polarisation. Loyal senators can expect greater campaign money, but for dissenting senators, the risk of receiving less monetary support is real (p. 728).

In this regard, many scholars, from various political and religious views, have pointed out the same sentiment as expressed by Kaveny (2023):

Roe was never broadly accepted as a legitimate decision in the US. It invigorated what, until that time, was a small, marginal pro-life movement. That pro-life movement, in turn, was mobilised by conservative political actors seeking a cause to motivate voters to support them (p. 135).

1.1.4 2016 Presidency Elections: Political Framework

In concluding this section, it is imperative to address the 2016 elections, wherein Donald J. Trump, a Republican candidate with a conservative platform and no prior political experience, secured the presidential victory with his "Make America Great Again" campaign (Trump, 2016). Trump's presidency notably influenced the composition of the Supreme Court, as he successfully nominated three conservative justices—Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett—who received confirmation with the support of a Republican-controlled Senate. This shift in the Court's balance holds profound ramifications for key polarizing issues in the United States, including abortion rights, LGBTQ+ rights, voting rights, and gun control (Liptak, 2020; Balkin, 2022).

1.2. Importance of Analysing the Arguments in Dobbs v. Jacksons

The implications of the right to terminate a pregnancy are highly controversial, encompassing moral, theological, philosophical, and political considerations. This complexity makes it challenging to approach the topic objectively (Ziegler, 2014). It is noteworthy that materials discussing abortion often come with inherent biases or subtle attacks on opposing positions.

The global nature of the abortion debate can be attributed to these contentious implications. Abortion has been a subject of extensive and controversial discussion, regardless of the timing of legislation in each nation (Balkin, 2022; Ganatra et al., 2017)⁸. In Europe, several countries legalised abortion in the 1960s and 1970s, and those that did not followed suit in the 1980s and 1990s. Today, abortion is legal in almost all European countries, though some have stricter laws than others. In Latin America, most countries have highly restrictive abortion laws, with only a few allowing abortions in any circumstance. Some of these laws date back to the 19th century, while others were enacted more recently (Ralston, M., & Podrebarac, E., 2008).

As of May 2023, 24 countries completely ban abortion, 41 allow it only to preserve mothers' lives and 75 make up the last big category: allow it on request. Depending on how far along the pregnancy is, a vast spectrum of legislation can be found regarding abortion upon request. The key fact to point out is that the United States is the only country that doesn't have unified legislation on abortion, leaving the task, ever since the fall of *Roe v. Wade*, to each state to go about filling the gap⁹.

⁸ To put things into perspective, de Bartolomé Cenzano, J. C. (2020), comments on the legislative history of abortion rights in Spain and the different sentiments each regulation has had, including parliament debates on the topic.

⁹ The constant development has made tracking abortion regulation a complex task. Online resources, however, such as the effort by Reproductive Rights, "World's Abortion Laws Map," accessed may 10, 2023, <https://reproductiverights.org/maps/worlds-abortion-laws/> provide a current legislative status of each state.

Despite being a controversial topic, it is a fascinating one, trying to navigate the very charged opinions, takes, and debates, specifically of *Roe v. Wade* and now *Dobbs v. Jackson*, is a challenging task. Furthermore, it seems there is no grey area; it is either for or against. It is precisely for these, that an analysis of the arguments presented in *Dobbs v. Jacksons' Women's Health Organisation* is necessary. Only then, an objective conclusion that provides the proper legal argument can be achieved.

1.3. Thesis Statement

The strongly divisive issue of abortion has been a contentious topic in the United States for decades, with the terms "pro-life¹⁰" and "pro-choice¹¹" used to represent the two opposing sides. The Supreme Court rulings of *Planned Parenthood v. Casey*, its predecessor *Roe v. Wade*, and now *Dobbs*' opinion responsible for overturning them are at the centre of the controversy (O'Brien, 2019).

This raises the question of whether any alternatives to overturning these rulings or finding a compromise that doesn't involve discussing the issue of personhood, which is at the heart of the debate, are possible at all. This thesis statement explores the possibility of finding a resolution to the abortion debate without relying on the personhood argument, leading to a more objective and constructive conversation about reproductive rights in the United States.

¹⁰ Oxford English Dictionary (Online ed.) Oxford University Press. Retrieved on March 16, 2022.

¹¹ Annalisa Merrelli wrote for Quartz in January 2017 about [its origins](#): Linda Greenhouse and Reva B. Siegel, authors of *Before Roe v. Wade: Voices that Shaped the Abortion Debate Before the Supreme Court's Ruling*, say the framing around choice was introduced by Jimmy Kimmey, the director of the Association for the Study of Abortion (ASA), who in 1972 wrote a [memo](#) (pdf, p. 50) emphasising the need "to find a phrase to counter the Right to Life slogan." Some options Kimmey floated in the memo were "Right to Choose" and "Freedom of Conscience." She did not really like either, but did say the concept of choice was preferable to that of conscience: "A woman's conscience," she wrote, "may well tell her abortion is wrong, but she may choose (and must have the right to choose) to have one anyway for compelling practical reasons."

2. LEGAL FRAMEWORK

In the case of *Dobbs v. Jackson Women's Health Organisation* (2022), the Mississippi Gestational Age Act (MS Code § 41-41-191 (2020)) faced a formidable challenge. This Act placed a strict prohibition on accessing abortions after the 15-week mark, with exceptions only for medical emergencies and severe fetal abnormalities. Its provisions included severe penalties, such as fines, imprisonment, and the revocation of medical licenses, for physicians found in violation of the 15-week limit by performing abortions beyond it.

Representing the state's sole abortion clinic, the Centre for Reproductive Rights brought this law before the court, contending that it flagrantly infringed upon the constitutional rights already established by the Supreme Court in landmark cases like *Roe v. Wade* and *Planned Parenthood v. Casey*. These pivotal precedents introduced the pivotal notion of "viability" and expanded the boundaries by permitting certain restrictions on the right to abortion, as long as they did not impose an undue burden. Both cases resolutely affirmed the inviolable nature of a woman's right to choose to have an abortion as a fundamental right. However, to the disappointment of proponents, the U.S. Court of Appeals for the Fifth Circuit upheld the Mississippi law, opining that it did not place an undue burden on the right to choose to have an abortion¹².

¹² Based on *Casey* (505 U.S. 833, 1992). The Supreme Court declined to hear an appeal of the Fifth Circuit's decision in 2019, allowing the Mississippi Gestational Age Act to remain in effect. However, in 2021, the Supreme Court agreed to hear a challenge to the law in *Dobbs v. Jackson Women's Health Organisation*.

2.1 Historical Context and Overview of the Legal Principles of *Roe v. Wade*. Subsequent Abortion and Privacy-Related Issues

To fully understand the legal implications of the Mississippi Gestational Age Act and the *Dobbs v. Jackson Women's Health Organisation* case (hereinafter *Dobbs*), it is important to examine the historical context and legal principles underlying the Supreme Court's decision in *Roe v. Wade*. The ruling established a woman's constitutional right to choose to have an abortion before the foetus reaches viability, which occurs around the 24th week of gestation¹³. The decision was based on the right to privacy implicit in the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

2.1.1 Historical Context

The nationwide legalisation and recognition of abortion as a fundamental right in 1973 have drawn significant criticism from various authors, including O'Brian (2019). This criticism can be attributed to three key factors.

Firstly, the Supreme Court's ruling established the right to abortion as a fundamental right protected under the right to privacy. In the United States, any state law that restricts a fundamental right is presumed invalid unless it passes the "scrutiny test." This principle stems from the Due Process Clause of the Fourteenth Amendment, which was initially explored in *Griswold v. Connecticut (1965)*¹⁴, where the right to privacy in contraception matters was recognised. *Eisenstadt v. Baird (1972)*¹⁵ further affirmed the connection between the right to privacy and the Due Process Clause of the Fourteenth Amendment.¹⁶

¹³ The primary holding found in *Roe v. Wade* is "A person may choose to have an abortion until a foetus becomes viable, based on the right to privacy contained in the Due Process Clause of the Fourteenth Amendment." Viability means the ability to live outside the womb, which usually happens between 24 and 28 weeks after conception.

¹⁴ 381 U.S. 479 (1965).

¹⁵ 405 U.S. 438 (1972).

¹⁶ Case versed around the question of unconstitutionality in Connecticut's statute prohibiting married couples from purchasing and using contraceptives. "...The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use

Griswold v. Connecticut (1965)¹⁷ argued that the right to privacy is associated with personal space and humorously deliberated whether the state should enforce the prohibition by entering married couples' bedrooms. Ultimately, the court declared the statute unconstitutional.¹⁸

Eisenstadt v. Baird (1972) broadens the scope by recognising that the right to privacy extends beyond confined spaces and encompasses personal actions as autonomous decisions. Additionally, the decision examined the Equal Protection Clause of the US Constitution¹⁹, as the distinction between married and unmarried couples was unconstitutional.²⁰

One could argue that several Justices who heard both *Griswold* and *Baird* also heard *Roe v. Wade*, and because of this, they already considered all possible interpretations of the Right to Privacy. Building on this precedent, considering the right goes beyond action or expression fulfilled in a specific space *Roe v. Wade* saw fit that a woman's right to choose to have an abortion was protected by the Fourteenth Amendment. Therefore, the right to privacy of the mother trumped any right the prenatal life could have, if it ever had one. The “viability” term, is what enables the argument of personhood that most *Roe* contestants use.

of contraceptives, rather than regulating their manufacture or sale, seeks to achieve its goals using having a maximum destructive impact upon that relationship. Such a law cannot stand in the light of the familiar principle, so often applied by this Court, that a "Governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

18 "I get nowhere in this case by talking about a constitutional 'right of privacy' as an emanation from one or more constitutional provisions. I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision." Dissent opinion Black, H. and Stewart, P. (1965). Dissenting opinion. *Griswold v. Connecticut*, 381 U.S. 479.

19 U.S. Const. amend. XIV, § 1.

20 Mass. Gen. Laws Ch. 272, § 21A.

Secondly, the political and financial implications of the right to abortion made different political players use it for various reasons. Interestingly, in the 1970s, many Republican politicians supported the legalisation of abortion as a means of reducing the number of children born to low-income families and minorities (Cohen, 2008; Murray, 2021). *Abortion and Women of Colour: The Bigger Picture* (p. 134–156). On the flip side, it was individual black men opposing abortion, as it was seen as a form of population control and genocide ²¹ (Kaveny, 2023, Ziegler 2014, Times, 1973). Initially, the *Roe v. Wade* decision was not a major concern for the religious right, as it was seen as a “Catholic” issue (Ziegler, 2017; Boris, 2022; Kaveny, 2023, Eisen, 2023).

Some context may be needed in regard to the US Constitution, the topic of slavery, and its direct link to reproductive rights. Though not explicitly redacted as such, the US Constitution says:

Migration or Importation of such Persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight. ²²

The U.S. Constitution, in Article I, Section 9, Clause, protected the transatlantic slave trade until 1808, after which the U.S. government prohibited it, as interpreted by the Constitution Centre's Slave Trade Clause. It was President Thomas Jefferson who, considering the deadline, passed the Act of March. 2, 1807, ch. 22, 2 Stat. 426. Act that prohibited the importation of slaves starting January 1, 1808. As Murray (2021) describes, it was this Act that made slave owners focus on enslaved women capable of childbearing as a means to expand their labour force. Thus, began the conflict of interests

²¹ City Blacks Get Most Abortions, N.Y. Times, Dec. 6, 1973, at 94, col. 3 (remarking upon “[traditional black male resistance to abortion] and the view of the “militant [black] movement” that abortion is “genocide”).

²² U.S. Const. Art. I, §9, cl.1.

regarding reproduction. On the one hand, slave owners had economic interests in the reproduction of enslaved persons; on the other, enslaved persons; had no sexual autonomy and no legal entitlement to family integrity which resulted in their having to control their reproduction.²³

Lastly, and closely related to the second reason, following the Civil War, states commenced enacting legislative restrictions on abortion, prohibiting it from the moment of conception. Furthermore, they passed laws prohibiting the distribution of abortifacients and contraceptives, as well as the dissemination of advertisements or information pertaining to them²⁴. Physicians played a leading role in advocating for the criminalisation of abortion, associating contraception and abortion with the informal "folk medicine" practised by homoeopaths and midwives, many of whom were black and Indigenous women. Their objective was to target these "non-traditional" practitioners who had historically been involved in matters of pregnancy and childbirth, in an effort to professionalise medical practise and the fields of obstetrics and gynaecology (Ziegler, 2023; Boris, 2022).

These efforts were cleverly disguised to appear as though they were driven by a concern for public welfare rather than professional self-interest. Physicians utilised language that emphasised the dangers and risks associated with abortion, claiming that it diverted women from their "natural" inclination towards marriage and motherhood,

²³ Murray notes slave owners suspected their slaves' attempts to prevent or terminate pregnancies. During this point in history, abortion was not legally proscribed if undertaken before quickening. Nevertheless, slave owners sought to deter and punish efforts to prevent or terminate pregnancies because the use of contraception and abortion had profound implications for property interests.

²⁴ E.g., Comstock Law, also known as the Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, which was passed by the U.S. Congress in 1873. See *Griswold v. Connecticut*, 381 U.S. 479 (1965).

posing physiological harm to women while jeopardising the institution of marriage and the family. It was this rhetoric that paved the way for the landmark case of *Roe v. Wade*.

Abortion was shifting from a means of controlling minorities to a tax-related concern (Ziegler, 2014, p. 1005; Kaveny, 2023, pp. 141-143). Paul Weyrich, a conservative activist and Religious Right proponent, highlights the 1970s as a pivotal moment when abortion began to be utilised in response to the Internal Revenue Service's (IRS) efforts to revoke the tax-exempt status of racially segregated institutions. It was the actions of the IRS against these institutions, rather than abortion itself, that ignited the frustration of evangelical activists in the 1970s, leading them to direct their dissatisfaction towards Jimmy Carter, a fellow evangelical, during the lead-up to the 1980 presidential election (Kaveny, 2023; Ziegler, 2014).

Abortion quickly became an ethical issue that was used to raise campaign financing. A representation of the move was *Harris v. McRae*, 448 U.S. 297 (1980), in which rather than endorsing *Roe v. Wade*, it ruled that states partaking in "Medicaid"²⁵ are not bound to subsidise medically imperative abortions for which federal reimbursement was inaccessible as an outcome of the Hyde Amendment²⁶, thus confining abortion access to those women belonging to the impoverished and minority social sector (Whitman, 2002; Cohen, 2008).

²⁵ Jointly-funded federal and state program in the United States that provides healthcare coverage to low-income individuals and families. It was created in 1965 as a part of the Social Security Act, and it is administered by the individual states, although it must adhere to federal guidelines. Centres for Medicare & Medicaid Services. (2021, April 27). <https://www.medicaid.gov/medicaid/index.html>

²⁶ Hyde Amendment. (1976). Pub. L. No. 94-439, 90 Stat. 1434. It restricted the use of federal funds for abortion. The Court also held the restriction did not violate the Fifth Amendment or the Establishment Clause of the First Amendment.

To sum up this section, at first, abortion was not targeted by the more conservative sector as a means to have control over the population. There were individuals, however, who wanted to rebel against pregnancy termination and a third private sector that had an interest in having the monopoly on who could perform the procedure. All three axes provide insight into the reason why the right to abortion was framed by the right to privacy²⁷, especially when factoring in the US history component (Boris, 2022).

2.1.2 *Legal Principles in Roe v. Wade*

The main criticism of the *Roe v. Wade* decision was not just a political and legal issue, as it shifts the right to abortion from the choice of the pregnant woman to the right for a physician not to be criminally punished when performing abortion procedures. In this regard, Ginsburg stated in her visit to the University of Chicago Law School that the decision was primarily a decision that allowed a physician to be able to perform the procedure, leaving aside women's right to have access to abortion (Justice Ruth Bader Ginsburg Offers Critique of *Roe v. Wade* During Law School Visit, University of Chicago Law School, 2013).

The plaintiff in the case, Norma McCorvey²⁸, a Texas resident, was unable to obtain an abortion as her pregnancy did not fit into the exception categories. Therefore, the statute that prohibited abortions was sought all the way to the Supreme Court²⁹³⁰.

²⁷ In other words, it was the only way to restrain external interests infer on women's decision regarding pregnancy.

²⁸The fictional name "Jane Roe" was used to protect the identity of the plaintiff, [Norma McCorvey](#). (Britannica, The Editors of Encyclopaedia.)

²⁹ Et al. Appellants: The Does a married couple that due to risk of mothers' health, had a "hypothetical" interest, and Hallaford a licensed physician also attempted to sue, however, the court denied the couple and the PhD., since one was hypothetical, and the second had pending criminal charges, for practicing abortions, therefor the constitutional court could not hear the matter.

³⁰ Other authors suggest, Roe presented the procedural question that allowed to make it a constitutional matter. The question been, can someone access a Federal Court, while holding criminal charges (Prof. Teresa Stanton Colett <https://fedsoc.org/commentary/videos/roe-v-wade-a-legal-history-part-one-to-the-court>).

Interestingly enough, this case was ruled along with *Doe v. Bolton*³¹, which defined the concept of health as something more than only physical but also psychological.³²

The opinion is quite challenging to follow, dedicating many pages to provide a historic review of the laws that have had an influence on the US³³ regarding abortion. Even though it was based on a foundation of legal precedent, including the Due Process Clause of the Fourteenth Amendment and the right to privacy,³⁴ the main problem was, that the majority opinion ended up ruling that the state could not interfere with a woman's right to choose to have an abortion before the foetus reached viability (Ely, 1973; Regan, 1979).

Arguments presented in Roe

Texas defends abortion restriction	Roe claims absolute privacy rights
States have an interest in safeguarding health, maintaining medical standards, and protecting prenatal life.	The Texas law invaded an individual's right to "liberty" under the 14th Amendment.
A foetus is a "person" protected by the 14th Amendment.	The Texas law infringed on the rights to marital, familial, and sexual privacy guaranteed by the Bill of Rights.
Protecting prenatal life from the time of conception is a compelling state interest.	The right to an abortion is absolute; a person is entitled to end a pregnancy at any time, for any reason, in any way they choose.

³¹ *Doe v. Bolton*, 410 U.S. 179 (1973).

³² Further definition was provided; however, it will be later discussed.

³³ From ancient Greek attitudes and Roman law, all the way to English law and common law. It was *Bracton, H. de. (1250-1260). On the Laws and Customs of England: Book III - Concerning Wrong*, who is cited on Roe, and thus, responsible for the term "quickening" to describe the point in a pregnancy when the foetus could be felt to move inside the womb, which was considered a significant milestone in the development of the unborn child in the context of 13th-century English law.

³⁴ *Griswold v. Connecticut*, 381 U.S. 479 (1965) and *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

The outcome was that the Due Process Clause of the Fourteenth Amendment establishes a right to privacy that extends to a woman's decision to have an abortion. While the Constitution does not explicitly mention a right to privacy, the Court had just recognised it in *Griswold* (1965). Furthermore, it encompasses a woman's control over her own body, and the decision to terminate a pregnancy is a private matter between her and her doctor. The Court also admits state interest in protecting potential lives, increases as pregnancy progresses. As a result, do right by regulating it, but cannot ban them outright before viability.

2.1.3 Subsequent Abortion and Privacy-Related Cases

The path to the *Dobbs* ruling wasn't an easy one. The high political implications of the abortion topic triggered an agenda to overturn *Roe v. Wade* and its successor (Mann and Corrado, 2014). Such a task could only be accomplished by either changing the Constitution or shifting the Courts' political inclinations (Kaveny, 2023).

As expressed by O'Brien (2019), anti-abortion activists and their Republican allies have been striving for decades to overturn the 1973 Supreme Court decision that legalised abortion. Their efforts culminated in 1992 with the *Planned Parenthood v. Casey* decision in which Justices O'Connor, Kennedy, and Souter, who were appointed by Republican presidents ³⁵, were expected to overturn *Roe v. Wade*. Instead, while still limiting its scope, it ended up confirming it. They pegged the right to abortion under the "liberty interest" of the Fourteenth Amendment's Due Process Clause. *Casey* provided a new filter

³⁵ President Ronald Reagan the first of the two, and President George H.W. Bush is the latter.

through which to limit abortion restrictions: as long as they did not impose an “undue burden”³⁶ on a woman's liberty interests.

The Conservative Party learned from this “disappointment” and became more selective in vetting Senate nominees. In addition, the Federalist Society, a legal organisation that takes an originalist approach to the Constitution, provided a channel on which to lean when appointing Justices (Kaveny, 2023).

Two examples of cases that take on the challenge of giving an opinion on abortion and privacy rights are: *Gonzales v. Carhart* (2007), a ruling that confirmed the law under review did not place an “undue burden” on a woman's right to choose to have an abortion. The object of the decision was the 2003 Partial-Birth Abortion Ban Act, which banned a specific type of late-term abortion. Later, in *Whole Woman's Health v. Hellerstedt in 2016*, the SCOTUS revoked a Texas law that imposed strict regulations on abortion providers. The ruling expressed that the law placed an undue burden on a woman's right to choose to have an abortion and that the regulations were not medically necessary.

In conclusion, the legal principles and court decisions on the subject of abortion and privacy rights in the USA have aimed to balance a woman's right to choose to have an abortion and the government's interest in regulating abortion to protect foetal and maternal health (Ziegler, 2014).

³⁶ “Only where state regulation imposes an undue burden on a woman's ability to make this decision does the power of the state reach into the heart of the liberty protected by the Due Process Clause. In our view, the undue burden standard is the appropriate means of reconciling the State's interest with the woman's constitutionally protected liberty” (Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 877, 1992).

2.2 Insight on US Constitutional Law

US constitutional law has played a central role in the debate over reproductive rights. As in any other country, changing its constitution is a complex procedure with many implications. The U.S., however, has the particularity that, in contrast with most democratic States, it still largely uses its original text from 1788. In almost 300 years, it has been the subject of 27 Amendments,³⁷ almost half of which happened in the XVIII century (The Amendments, Constitution Centre). In order to preserve it as a valid rule, the judicial review task has been bestowed upon the Supreme Court (Cong. Rsch. Serv., 2019).

Within the realm of constitutional interpretation, two prominent currents come to the fore in guiding the justices' approaches. One such current is originalism, which posits that the Constitution ought to be understood and applied in alignment with the original intent of its framers. On the opposing side, though akin yet distinct, lie instrumentalism and living constitutionalism. Both perspectives advocate for an interpretation of the Constitution that accounts for the evolving social, economic, and political milieu of the present era (On Originalism in Constitutional Interpretation, Constitution Centre)³⁸.

When deciding on a case, justices will observe the subject matter and identify in which framework of the Constitution it is found. Certain matters readily fall into distinct categories, particularly those concerning fundamental rights such as including freedom of speech (U.S. Const. amend. 1), other examples:

³⁷ 1791: Bill of Rights (Amendments I-X), XI Amendment (1795) limiting lawsuits against states in federal courts, XIII Amendment (1865) abolishing slavery, XIX Amendment (1920) granting women the right to vote, XXV Amendment (1967) establishing procedures for presidential succession and disability, and XXVII Amendment (1992) limiting the ability of Congress to give itself a pay raise, among others.

³⁸ The Living Constitution focuses on interpreting the Constitution considering contemporary values and circumstances, while Instrumentalism focuses on using the Constitution as a tool to achieve specific policy goals.

Due Process: Individuals are entitled to notice and a fair hearing before the government can take away their life, liberty, or property. A on Table 1.

Equal Protection: The Constitution prohibits states from denying any person within their jurisdiction the equal protection of the laws. Historically used to revoke laws that discriminate based on race, gender, or other protected characteristics. G on Table 1.

Those not strictly expressed will fall under a spectrum that goes from the: constitution definitely “protects” all the way through the “bans” line. The following table best explains what this means using the topic at hand as a barometer:

Table 1. Abortion an American Law: A Range of Approaches.

A	B	C	D	E	F	G
Constitution protects	Constitution is neutral	Constitution is neutral	Constitution is neutral	Constitution is neutral	Constitution is neutral	Constitution bans
	Other law protects	Other law favors	Other law is neutral	Other law discourages	Other law prohibits	

Source: Kaveny, M. C. (2023). Abortion and the law in the United States: from Roe to Dobbs and beyond.

Table 1 visually shows how the Constitution could place the topic of debate on the “neutral” spectrum. This allows states to take a stance on the topic of protecting or banning.

2.2.1 *Analysis of the Dobbs Case*

Misunderstandings abound regarding the nature and implications of the Dobbs v. Jackson Women's Health Organisation opinion (Mechmann, 2022; Girgis, 2022). The core issue revolved around the constitutionality of Mississippi's Act, which imposed significant restrictions³⁹ on abortions beyond the 15-week mark, allowing only limited exceptions. Mississippi contended that the law was essential for safeguarding fetal life, while opponents argued that it directly undermined the established right to abortion as recognized in *Roe v. Wade*.

The decision rendered by the Supreme Court in *Dobbs v. Jackson Women's Health Organisation* shed light on a significant aspect surrounding abortion jurisprudence—the Constitution's silence on the matter and its absence from the deeply rooted historical and traditional fabric of the United States (*Dobbs v. Jackson Women's Health Organisation*, 597 U.S., 2022, pp. 2-4). In clarifying the scope of the Due Process Clause, the Court distinguished between two categories of substantive rights: those explicitly protected by the first eight Amendments⁴⁰ and those regarded as fundamental⁴¹.

When examining the historical treatment of abortion, the Court highlighted its historical criminalization across the majority of states at all stages of pregnancy during the Fourteenth Amendment's ratification (*Dobbs v. Jackson Women's Health Organisation*, 597 U.S., 2022, pp. 2-4). Consequently, the Court concluded that abortion

³⁹ Exceptions were: severe foetal abnormality, medical emergency, or a medical diagnosis that the pregnancy is unlikely to survive to full term. The law does not allow exceptions for cases of rape or incest.

⁴⁰ Which implies that it is those first eight found in the Bill of Rights, those printed in the Constitution.

⁴¹ Those not found in the text are those that have been interpreted by the Court as such, e.g., marriage, privacy, interstate travel, custody of one's child(ren)... The risk with this is that even when the Supreme Court finds that something is a fundamental right, it may later withdraw its standing. See *Lochner v. New York* (1905) and *West Coast Hotel v. Parrish* (1937), regarding the right to contract, and now *Dobbs*. (*Cornell Law School Legal Information Institute*).

does not fall under a firmly established and deeply entrenched right, thereby subjecting state abortion regulations to the rational-basis review standard in constitutional challenges. This standard grants states the authority to enact regulations pertaining to abortion for legitimate reasons and bestows a strong presumption of validity upon such laws when they face constitutional scrutiny (Dobbs v. Jackson Women's Health Organisation, 597 U.S., 2022, pp. 2-4).

2.2.2 Understanding the Impact of Dobbs on Roe v. Wade

According to Kaveny (2023), the reason behind the specific overturning of Roe and Casey in Dobbs can be easily understood. The Roe decision placed the right to abortion under constitutional protection, categorising it as position A in Table 1. Casey, on the other hand, moved it from A to either B or C, depending on the state's stance, while still maintaining its constitutional protection.

However, Dobbs rephrased and reaffirmed its previous stance, asserting that the U.S. Constitution does not grant a right to abortion and that the authority to regulate abortion belongs to state representatives. Consequently, it shifted the classification of abortion from A all the way to E (Kaveny, 2023, p. 137).

2.3 Review of Relevant Legal Principles and Court Decisions related to Abortion and Privacy Rights in the United States.

The legal panorama regarding abortion restrictions has been shaped by a series of court decisions that, while attempting to provide a compromise between pro-life and pro-choice advocates, said “precedent” failed to provide a satisfactory parameter within which to legislate abortion. Though a significant development, *Casey*'s “undue burden” test allowed a state to regulate abortion only if the regulation did not create a substantial obstacle for a woman seeking an abortion. Many, however, criticised the decision since it didn’t provide a sufficient legal framework (Ziegler, 2014; Murray, 2021).

2.3.1 Court Decisions Related to Abortion and Privacy Rights

Several court decisions have upheld the constitutional protection of the right to abortion under the right to privacy. Preceding *Roe* and *Casey*, eight cases⁴² confirmed the constitutional protection established in *Roe*, while *Casey* attempted to provide a middle ground in which not all restrictions on abortion would be abolished (Ziegler, 2018).

Doe v. Bolton (1973), clarified the meaning of “health” in relation to the topic at hand, as previously mentioned. *Planned Parenthood of Central Missouri v. Danforth* (1976) imposed restrictions on abortion; an example of such is the requirement that all abortions after the first 12 weeks of pregnancy be performed in a hospital, as well as parental consent in cases where minors seek an abortion. In this same regard, *Bellotti v. Baird* (1979) challenged a Massachusetts law demanding parental consent or a court order as a requirement to access abortion. *Colautti v. Franklin* (1979) addressed a Pennsylvania

⁴² Akron: *City of Akron v. Akron Centre for Reproductive Health*, 462 U.S. 416 (1983); *H.L. v. Matheson*, 450 U.S. 398 (1981); *City of St. Louis v. Women's Health Centre*, 503 U.S. 519 (1992); *Thornburgh v. American College of Obstetricians and Gynaecologists*, 476 U.S. 747 (1986); *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989); *Hodgson v. Minnesota*, 497 U.S. 417 (1990).

law that mandated physicians determine the viability of a foetus prior to the procedure. *City of Akron v. Akron Centre for Reproductive Health* (1983) involved several abortion restrictions, mandating that all abortions after 15 weeks of pregnancy, as well as second-trimester abortions, be performed in a hospital. Finally, *Thornburgh v. American College of Obstetricians and Gynaecologists* (1986) added a 24-hour waiting period after receiving information about abortion before undergoing the procedure.

After *Casey*, “undue burden” limited the extent to which state laws that legislated abortion restrictions could be considered “unconstitutional.” For instance, before the Dobbs decision, *Stenberg v. Carhart*⁴³, abrogated a Nebraska law that prohibited "partial-birth abortion" as it failed to prove it was an exception to protect the woman's health and hindered a woman's ability to choose an abortion.

More recent cases include *Whole Woman's Health v. Hellerstedt* (2016)⁴⁴, in which the Court repealed a Texas law that imposed medically unnecessary requirements on abortion clinics, and *June Medical Services LLC v. Russo* (2020)⁴⁵, in which the Court, by applying the *Casey* test, found the Louisiana provision requiring doctors who perform abortions to have admitting privileges at a nearby hospital has been deemed unconstitutional as well.

It is worth noting that the votes in these cases were often close. In *Stenberg*, the vote was 5-4, with Justices Stevens, Souter, Ginsburg, Breyer, and O'Connor in the majority and Justices Rehnquist, Scalia, Thomas, and Kennedy in dissent. *Whole*

⁴³ 530 U.S. 914 (2000).

⁴⁴ 579 U.S. (2016).

⁴⁵ 591 U.S. (2020).

Woman's Health v. Hellerstedt held a 5-3 majority, with Justices Breyer, Kennedy, Ginsburg, Sotomayor, and Kagan in the majority and Chief Justice Roberts and Justices Alito and Thomas in dissent. Lastly, *June Medical Services LLC v. Russo* had a 5-4 majority, with Justices Breyer, Ginsburg, Sotomayor, Kagan, and Chief Justice Roberts in the majority and Justices Thomas, Alito, Gorsuch, and Kavanaugh in dissent, making it a 5-4.⁴⁶

In spite of the close vote decisions, for almost 50 years, the Supreme Court upheld the same line regarding abortion rights and the constitutional stance on them. To sum up, the Court confirmed, while still managing to point out its concerns about *Roe and Casey's* precedent: recognised the constitutional protection of the right to abortion under the right to privacy implicit in the Due Process Clause of the Fourteenth Amendment, as well as providing the *Casey* framework. Up until *Dobbs*, both foundations had been used to determine the constitutionality of abortion restriction regulations. Any state abortion restriction was required to pass the scrutiny test.

⁴⁶ Note the dissenting opinions: on the first, Justices Scalia, Thomas, Kennedy; on the second, Roberts, Alito, and Thomas (again); and lastly, Thomas (for the third time), Alito (again), Gorsuch, and Kavanaugh. (Dobbs' majority was: Thomas, Alito, Gorsuch, Barrett, Kavanaugh, and Chief Justice Roberts forming the majority, though the three latter wrote concurring opinions), and Justices Breyer, Sotomayor, and Kagan on the dissenting opinion.

3. ANALYSIS OF DOBBS V. JACKSON WOMEN'S HEALTH ORGANISATION

Despite having the political conditions to have formed such an opinion, Mississippi's abortion ban sparked renewed discussions on reproductive rights and the Court's influence on shaping social policies. It is true that the decision has been hailed as a victory for the protection of foetal life by anti-abortion advocates. Conversely, pro-choice activists have expressed concern over the potential negative consequences for women's reproductive rights (Taylor, 2020; Belu, 2022; Kaveny, 2023). Nevertheless, this section explores the legal rationale for the Supreme Court's decision used to state its arguments and its impact on future abortion cases. Additionally, yet briefly, the political and social implications will be mentioned, including its effect on the Supreme Court's balance of power, the ongoing state-level battles over reproductive rights, and the broader cultural divide between proponents and opponents of abortion rights (Balkin, 2022; Felix, Sobel and Salganicoff, 2023, Mechmann, 2022, Eisen, 2023)

3.1 Relevant Legal Principles Established in Dobbs: Overturning Precedent

Upon first examination, the *Dobbs* (2022) decision may appear to simply overturn *Roe and Casey*, but this viewpoint fails to fully comprehend the implications and magnitude of the ruling (Ziegler, 2023). The decision established that the state has a legitimate interest in protecting foetal life (Manninen, 2023), marking a significant shift from previous abortion jurisprudence. Furthermore, the decision abolished the “viability” standard as a means of prohibiting pre-viability abortion bans. The Court found the principle to be “incompatible with the central premise of the Court's abortion jurisprudence” and, as a result, it cannot be used to void and nullify pre-viability abortion restrictions.

Since the previous method was discarded, the Court provided a new standard for abortion regulations, that directly applies to pre-viability abortion bans. States are now able to regulate abortion for legitimate reasons and are entitled to a strong presumption of validity.

3.1.1 Examination of the Arguments⁴⁷

As previously discussed ⁴⁸, several Justices of the Court have been involved in past cases related to abortion, with various concurrences and dissents. In Justice Alito's dissenting opinion in *June Medical Services LLC v. Russo* (2020), he expressed his concerns about the Court's approach to abortion rights. Justice Alito criticised the majority's decision to strike down a Louisiana law, Act 620, intended to protect women's health, and he questioned the majority's interpretation of *stare decisis* and the applicable standard of review. He argued that the Court should have applied the constitutional test set out in *Casey* (1992) but instead relied on the balancing test from *Whole Woman's Health* (2016), altering the precedents established in those cases (Alito, 2020) ⁴⁹.

Furthermore, it was noted that both the plurality and Chief Justice Roberts allowed abortion providers to invoke a woman's abortion right to challenge state laws enacted to protect women's health. He criticised this approach as conflicting with the Court's general rule on third-party standing and expressed disbelief that a regulated party could invoke the rights of a third party, especially in cases not involving abortion. He argues that continuing with the bifurcation of the *Casey* precedent, as demonstrated in this case, would make it nearly impossible to uphold any state laws regulating abortion (Alito, 2020).

This excerpt from Justice Alito's opinion highlights his dissatisfaction with the Court's departure from the precedent set in *Casey* and its reliance on the *Whole Woman's Health* decision. Concurring opinions and dissents similarly expressed concerns about

⁴⁷ It may be important to mention that for the first time in the history of the Supreme Court, the Majority Opinion draft got leaked. This is further analysed in the conclusion section of this paper.

⁴⁸ See ref. 67.

⁴⁹ Alito, S. (2020). Dissenting opinion, *June Medical Services LLC v. Russo*, 591 U.S. __ (2020).

the implications of bifurcating the Casey precedent and its impact on upholding state laws related to abortion (Kaveny, 2023; Kaufman et al., 2022; Boris, 2022).

In the Main Opinion in *Dobbs*, the Court mentions five main reasons why *Roe* and *Casey* had to be overturned. The first, by quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)⁵⁰, denotes a limit to the Due Process Clause found in the Fourteenth Amendment by stating only those “*rooted in this Nation’s history and tradition*” and “*implicit in the concept of ordered liberty*” can be protected by it. Demonstrating a reliance on the originalist approach when interpreting the Constitution. In this regard, the Court expresses that there is no such thing as a Substantive Due Process Clause.

The second puts an emphasis on the quality of the reasoning. Suggesting that Justice Blackmun, when writing that the historical evidence regarding the legality of abortion was inconclusive and that the issue should be decided based on the constitutional right to privacy, erred. Not only did it fail to provide a robust, conclusive reason in relation to the right to privacy, but it also established a trimester line, which later *Casey* was not able to overcome, instead adding an arbitrary “undue burden,” which had never been done before, disregarding stare decisis.

As to the “undue burden” used as a third factor, it points out that it was too much of an ambiguous criterion to rely on. Speculation and arbitrariness are what states and the court have been left with as a result. Alito's writing explains that it failed to foster a workable scheme as too many intangibles became part of the decision process. Terms of balancing whether regulation is or is not a necessity, along with debates of what is

⁵⁰ Note that it is a 1997 case, whereas Casey was held in 1992.

“compelling interest” and questions such as when life begins, end up at the core of those discussions, subjects on which the Court cannot provide a ruling.

The last two factors are, on the one hand, the effects on other areas of law and, on the other, the absence of concrete reliance. The former argues the federal judiciary's intervention in the abortion debate has led to other areas of law being affected, such as healthcare regulations, physician-patient relationships, and informed consent requirements. All of these directly affect the right to abortion, yet they should be things the legislative power should address, not the Court.

The latter acknowledges that the doctrine of *stare decisis* gives weight to the reliance interests of those who have come to depend on *Roe v. Wade* to access the abortion procedure. What is more, the courts' finding criticises the absence of concrete evidence that demonstrates the doctrine's continued application as a factor that influences the choice to have an abortion⁵¹. While there may have been reliance on the availability of abortion in some areas of the law, such as family planning and child custody, there is no evidence that reliance on *Roe* has been a significant factor in women's decision-making about whether to have an abortion. (597 U.S., 2022, pp. 2-4).

⁵¹ Meaning, several cases relating to abortion, including *Casey*, said that the knowledge of *Roe* was what aided women seeking to have an abortion, that its existence operated as a guarantee, as legal certainty.

3.2 Argument Comparison: From Roe to Dobbs

There are various ways to compare and contrast the arguments presented by the Supreme Court in cases related to abortion. Some of these are deeply rooted in the moral and philosophical spheres, making it difficult to approach them without crossing into the metaphysical (Dworkin, 1992). A safer approach is to focus specifically on the arguments used by those Court opinions that advocate for the right to abortion under the Fourteenth Amendment Due Process Clause and those who reject the notion that the right to abortion is a constitutional right, presenting their arguments instead.

Recent cases have witnessed a shift away from the foundational principles established in Roe regarding the right to privacy. Present-day arguments frequently centre on advocating for limitations on abortions by highlighting the foetus's capacity to experience pain. Conversely, supporters of abortion rights emphasise the significance of ensuring women's health and autonomy through access to safe and legal abortion (Kaveny, 2023, pp. 134 -156).

3.2.1 Arguments Presented by the Parties and the Courts Take

Almost fifty years of jurisprudence, major social changes ⁵², historical events ⁵³, presidential controversies ⁵⁴, wars ⁵⁵, and 16 Justices, just to mention a few, have been key components that the U.S. has foregone ever since *Roe v. Wade* (1973). All of these have played a role in the very complex topic of abortion in the United States and its perception by the citizenry (O'Brian, 2019). It is this very reality that justifies not even

⁵² Rise of the women's liberation movement in the 1960s and 1970s, the widespread use of birth control, and the increasing visibility of LGBTQ+ issues.

⁵³ Watergate scandal, the end of the Vietnam War, or the 9/11 attacks, though not directly linked to abortion rights, they do have political and cultural implications for the United States.

⁵⁴ Impeachment of Bill Clinton, the disputed 2000 presidential election, the more recent allegations of voter fraud in the 2020 election, along with Donald J. Trump First and Second Impeachment.

⁵⁵ Gulf War, the wars in Iraq and Afghanistan...

mentioning every single case before the Supreme Court regarding abortion. Instead, five crucial Supreme Court opinions that span from 1973 to 2022 will be the object of the comparison with *Dobbs*, in which the shift from the right to privacy to foetal protection will be visualised: *Roe v. Wade* (1973), *Planned Parenthood v. Casey* (1992), *Stenberg v. Carhart* (2000), *Gonzales v. Carhart* (2007), *Whole Woman's Health v. Hellerstedt* (2016), *June Medical Services v. Russo* (2020), and lastly *Dobbs v. Jackson Women's Health Organisation* (2020).

The key takeaway from *Roe*, due to the extensive allusion on the previous pages, is that “[the right to privacy]... *is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.*”

The text deliberately avoided taking a stance on the topic of the beginning of life. Instead, it focused on the issue of pre-viability, affirming that during this time, abortion was a concern between the woman and her physician. It allowed for certain exceptions and considered the state's compelling interest after the 24-week mark.

To fully grasp the reasoning behind this outcome, it is necessary to take into consideration the oral arguments, as one of the questions posed to the plaintiff's attorney specifically inquired about the beginning of personhood (*Roe v. Wade*. Oyez).

One perspective suggests that the case of *Casey*⁵⁶, primarily focused on the issue of whether the precedent set by *Roe* should be upheld as *stare decisis* or overturned (Whitman, 2002). According to the plaintiffs, the decision affirmed that women possess

⁵⁶ Five controversial provisions: 1) doctors were required to inform women considering abortion about its potential negative impacts on their health; 2) women were required to give notice to husbands before obtaining an abortion; 3) children were required to get consent from a parent or guardian; 4) a 24-hour waiting period was required between deciding to have an abortion and undergoing the procedure; and 5) reporting requirements were imposed on facilities offering abortions.

a constitutional right to choose abortion, one integral to personal autonomy and dignity and protected by the Due Process Clause of the Fourteenth Amendment. Consequently, the state is prohibited from imposing an undue burden on a woman's decision to have an abortion.

On the other hand, the defendants argued that states have a legitimate interest in regulating abortion. During the oral arguments, the central point of discussion revolved around the permissible extent of state regulation on abortion without imposing an "undue burden." The court determined that the right to choose abortion is protected by the Due Process Clause before viability, and rejected the defendant's contention of a compelling state interest in preserving foetal life since conception (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, *Oyez*).

The following two cases focused on specific surgical procedures: In *Stenberg v. Carhart* (2000) the provision under review was a partial abortion procedure ban. The petitioners argued the Nebraska law inferred the women's right to choose abortion as it imposed an "undue burden" on her as well as overstepping into the "viability" line. It continued to affirm that the law was vague and violated a woman's right to equal protection by criminalising a specific abortion because it is disfavored by the state.

The counterpart brought up the procedure itself, explaining that the ban prohibits a "*gruesome and inhumane abortion procedure that is not medically necessary and lacks social value.*" In response to the petitioners' arguments, it denied vagueness or going overboard, as it banned a well-known abortion procedure and was not at all in violation of the Equal Protection Clause. Rather than targeting women or disfavored groups, the object of the ban was a specific medical procedure—not all procedures as others remained available. Concluding the ban did not impose an undue burden before viability.

The oral hearing discussed the definitions and medical necessity of the "partial-birth" abortion procedure, as well as the potential impact of the ban on women's health and the availability of alternative abortion methods. The Court used the *Casey* test and concluded the Nebraska ban was unconstitutional (*Stenberg v. Carhart*. Oyez.).

Similar to the 2000 opinion, *Gonzalez v. Carhart* (2007) deliberated over an abortion method known as intact dilation and extraction. The government argued that the surgical procedure prohibition was a must to advance respect for human life, safeguard the credibility of the medical community, and improve foetal and maternal health. Sustaining the surgery was never medically necessary, as there were far better procedures that could be used instead.

On the other hand, the defendants, which included medical professionals performing abortions, relied on arguments previously affirmed by the Court. Claiming the restriction was unlawful since it lacked an exception for cases where the mother's health was in danger. In addition, addition, it was overly broad and vague, and the surgery was occasionally necessary to preserve the health and well-being of the mother.

During oral arguments, the defendants asserted that the restriction would impede doctors from providing optimal and effective medical care to their patients, pointing out that the lack of an exception for the mother's health in the ban could lead to legal consequences for medical professionals who had to perform the surgery to protect the mother's health.

While government attorneys argued that the prohibition on partial-birth abortion was legally justified as it aimed to promote the government's interests in preserving embryonic life and upholding respect for human life. They further contended that since

there were alternative procedures available that did not jeopardise the mother's well-being, a health exception was deemed unnecessary for the ban.

In contrast to its predecessor, the majority opinion of the court concluded that the ban on partial-birth abortion did not violate the Constitution or impose an excessive burden on the right to an abortion. The ban specifically targeted the "intact D&E"⁵⁷ methods while leaving the common D&E procedure unaffected. The enforcement of the ban included requirements for the physician to have the intent to perform an intact D&E and to deliver the living foetus after specific "anatomical landmarks" had been reached. The Court determined that the ban was not constitutionally vague, overly broad, or an undue burden on the right to abortion since it was narrowly tailored to apply to a specific method.⁵⁸

In *Whole Woman's Health v. Hellerstedt* (2016), Texas argued that the law's requirements aimed to protect women's health during abortions. They claimed that provisions such as admitting privileges⁵⁹ and surgical centre requirements were intended to enhance care quality and safety.

Opponents countered that these requirements lacked medical justification and imposed unnecessary burdens, especially in rural areas. They emphasised the safety and commonality of abortions, rendering the provisions unnecessary.

⁵⁷ "D&E", "dilation and evacuation", the less commonly "intact D&E," sometimes called D&X, "Dilation and Extraction".

⁵⁸ The shift in the Court starts to be more noticeable, as just seven years prior, the same arguments were not deemed enough to withstand the Casey test. At this point the Senate and Congress had been more rigorous on confirming justices.

⁵⁹ Admitting privilege is the right granted to a doctor to admit patients to a particular hospital, effectively hospitals veto power over whether an abortion provider can continue offering care in the area. Admitting Priviledges.2023. In *Guttmacher.org*. 2023. <https://www.guttmacher.org/article/2019/10/admitting-privileges-are-back-us-supreme-court-serious-implications-abortion-access>.

Considering the overall impact on abortion access, the court concluded that the law could not enforce the need for physicians to have admitting privileges within a specific distance or for abortion facilities to meet ambulatory surgical centre standards. These requirements were deemed undue burdens without significant health benefits.

June Medical Services v. Russo (2020), the state of Louisiana argued that the admitting privileges requirement was meant to protect the health and safety of women seeking abortions. Building their justification on the position that it was necessary to ensure that women received appropriate medical care and that it did not place an undue burden.

The plaintiffs opted for similar arguments as the ones previously discussed in *Hellerstedt* (2016), completing the claim that the result would be the closure of most of Louisiana's abortion clinics, leaving only one or two clinics in the state. The most affected by the result would be particularly low-income women and those living in rural areas, who would have to endure long waits and delays. Making such a reality an “undue burden”.

Both parties to the case followed similar stances, as in *Hellerstedt*, the Court's ruling favoured the plaintiffs, agreeing that the provision placed a substantial obstacle and that the evidence presented by the state was not able to prove its imperativeness as a health necessity (*June Medical Services LLC v. Russo*. Oyez).

3.2.2 *Arguments that Lead to Dobbs and the Courts Ruling*⁶⁰

The petitioner's stance was that the state has a legitimate interest in protecting human life and the health of the foetus and mother before viability. The respondent argued that Mississippi's law imposed an undue burden and violated the established right to abortion.

During oral arguments, the justices expressed doubts about the constitutionality of the Mississippi law and its compatibility with existing abortion jurisprudence. Key topics included the viability standard set by Roe and the concept of undue burden.

More than 140 briefs ⁶¹ were submitted in preparation for the opinion, representing diverse pro-choice and pro-life perspectives. In summary, the arguments presented revolved around the same main idea. However, depending on their stance, whether pro-life or pro-choice, they either supported Mississippi's Act or Jackson's Women's Health Organisation. The arguments are as follows:

Arguments Supporting Mississippi's Gestation Act:

Viability framework: criticism of the viability standard in *Roe* and *Casey* suggests the court should create a new framework to assess the constitutionality of pre-viability elective abortion restrictions that considers all state interests.

⁶⁰ More than 140 amicus briefs were filed in *Dobbs v. Jackson Women's Health Organisation*, Erskine, E. (2021, November 30). SCOTUS FOCUS: We read all the amicus briefs in *Dobbs* so you do not have to. Retrieved from <https://www.scotusblog.com/2021/11/scotus-focus-we-read-all-the-amicus-briefs-in-dobbs-so-you-dont-have-to/>.

⁶¹ Amicus Brief: The legal brief is the document in which each party's lawyer presents their arguments to the court, including clarifications and pertinent information that would help the judges rely on the justifications presented in them (Brief, n.d.). Conversely, an amicus brief is drafted by a "friend of the court" with a vested interest in the case, who presents their arguments. Not every Supreme Court case permits the filing of third-party briefs, as it is reserved for cases with significant implications. Typically, Organisations or associations that can provide additional clarification or technical explanations will submit their briefs (Rule 29. Brief of an Amicus Curiae, n.d.). The Justices rely on the information provided in the amicus briefs as an aid in formulating their opinions, whether they are majority, concurring, or dissenting.

Against stare decisis: quite a few *amici* challenge the principle of stare decisis and advise the court not to follow it, arguing that *Roe and Casey* are not worthy of the customary respect given to prior court decisions. They contend that the abortion precedent is "erroneous and constantly changing," contradicting the values of consistency, dependability, and predictability.

Legislative authority: some focused on the idea that abortion policy should be determined by the democratically elected branches rather than the judiciary, asserting that the court has an opportunity to affirm the constitutional authority of federal and state governments to safeguard the lives and health of their citizens, both born and unborn.

Textualism and originalism: abortion precedent is not supported by the Constitution's text, history, or tradition. They argue that the right to reproductive freedom is not supported by legal tradition or the original meaning of the 14th Amendment.

Arguments opposing Mississippi:

Right to abortion: several asserted that the right to abortion is an essential one that the government cannot infringe on or deny. They urge the court to uphold *Roe* and *Casey* and strike down Mississippi's ban on abortions after 15 weeks.

Stare decisis: in support of stare decisis and suggesting that the court should adhere to *Roe* and *Casey*. the Precedent has been consistently reaffirmed, and any departure from it would undermine the court's legitimacy and stability.

Women's health: plenty amici argue the ban on abortions after 15 weeks would have severe consequences for women's health and well-being. They contend that the right to abortion is necessary to protect women's autonomy, dignity, and bodily integrity.

Discrimination: suggest the ban after 15 weeks as it disproportionately affects women of colour, low-income families, and rural areas. They assert that the state's interest in protecting foetal life does not justify such discrimination.

Ruling in Dobbs: “We hold that Roe and Casey must be overruled. The Constitution does not refer to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of Roe and Casey now chiefly rely the Due Process Clause of the Fourteenth Amendment. Justice Samuel Alito (Majority).”

4. IMPLICATIONS OF THE DOBBS DECISION

The overturn of *Roe and Casey* has significant implications for the fundamental right to privacy. For almost half a century, the Court's established legal precedent has emphasised the importance of privacy in a variety of cases involving contraception, same-sex sexual conduct, and same-sex marriage (Ziegler, 2022, Boris, 2022). However, the Dobbs ruling changed the landscape by nullifying longstanding precedents related to abortion, potentially paving the way for increased state regulation on rights related to personal autonomy. Furthermore, the implications for women's reproductive rights and for the broader concept of individual privacy, which has been a cornerstone of American jurisprudence for decades. It remains to be seen how states and advocacy groups will respond and what impact it will have on future cases related to privacy and personal autonomy (Kaufman et al., 2022).

4.1 Effect of the Dobbs decision on Reproductive Rights, Women's Health and Privacy.

By effectively leaving the abortion policy up to the states, an assortment of laws across the country result, allowing increased limitations on access to abortion (Ziegler, 2023). These will affect the most marginalised communities (Murray, 2021; Taylor, 2020), who may face increased barriers to accessing reproductive health care, and many negative consequences will be seen in both physical and mental health. Overall, the various effects include self-harm and increased suicide rates, which could include pregnant women as well as medical personnel (Desai et al., 2023).

From a different perspective, the legal consequences are a setback to the laws preexisting *Roe* or those after that that happen to be subject to the "undue burden" test. A wide misconception is that *Dobbs* made it so that abortion is not allowed (Mechmann, 2019; Jozkowski et al., 2019). Untrue affirmation and disregards the deeper, complex panorama that lies ahead, as previously expressed, the outcome of *Dobbs* was the revocation of the constitutional protection it had been shielded with. The Court intended to "correct past mistakes," as they perceived that the precedent established on abortion was not constitutional.

In *Dobbs v. Jackson Women's Health Organisation*, the Court provided illuminating examples of precedent reversals that have shaped constitutional jurisprudence. One notable case discussed was *Plessy v. Ferguson*⁶², which initially upheld the "separate but equal" doctrine but was ultimately overturned by the landmark decision in *Brown v. Board of Education*⁶³. The Court in *Brown* recognized the stark

⁶² *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁶³ *Brown v. Board of Education*, 347 U.S. 483 (1954).

inequality present in segregated educational facilities, deeming it a violation of the Equal Protection Clause. Similarly, the Court highlighted the case of *Bowers v. Hardwick*⁶⁴, which dealt with private sexual conduct among same-sex couples and was subsequently overturned by *Lawrence v. Texas*⁶⁵, due to its infringement on the Due Process Clause. Drawing upon these precedents, the Court in *Dobbs* found it necessary to overturn established precedent, thereby altering the application of the strict scrutiny test⁶⁶ to laws restricting abortion. Consequently, this shift paves the way for variations in abortion legislation among states⁶⁷.

Other repercussions go beyond the topic of abortion, as the opinion provides the precedent to debate any fundamental right that is based on the Due Process Clause. Though not in the main but in the concurring opinion, Justice Thomas states on this fact:

For that reason, in future cases, we should reconsider all of this Court’s substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is “demonstrably erroneous,” *Ramos v. Louisiana*, 590 U. S. ___, ___ (2020) (Thomas, J., concurring in judgment)

⁶⁴ *Bowers v. Hardwick*, 478 U.S. 186 (1986).

⁶⁵ *Lawrence v. Texas*, 539 U.S. 558 (2003).

⁶⁶ Common test established by the Court itself, to use in cases where rights belonging to the Fundamental Rights category, had been challenged.

⁶⁷ After *Roe*, several states opted for laws that protected abortion, others only took down the provisions that criminalised the act of performing abortions upon physicians. Which left a lot of middle ground, the only certain thing was the inability to prohibit abortion.

4.2 Future Legal Challenges Related to Abortion and Privacy Rights

Following *Roe*, in 1973, several states passed laws that protected the right to choose abortion, while others simply removed the criminal penalties for those performing abortions. This created a legal grey area; nevertheless, what was certain was the inability to prohibit abortion. Since the Supreme Court's decision in *Dobbs* (2022), this legal framework has become increasingly complicated. Many previously pending cases that were once deemed unconstitutional are now open to reinterpretation, and advocates for abortion rights can no longer rely on arguments based on constitutional protections of liberty, due process, and privacy as expressed by Kaufman (2022).

Moreover, some state constitutions that guarantee the right to make healthcare and insurance decisions are being interpreted to include the right to choose. Additionally, some religious groups have presented challenges to abortion bans by invoking their right to religious liberty, arguing that certain procedures should be allowed to be performed due to their religious beliefs (Felix, Sobel and Salganicoff, 2023). Under the same religious liberty rights, pro-life groups are pressing for abortion bans, creating a very perplexing scenario.

In summary, the legal challenges facing abortion rights today are far from simple and very layered. The *Dobbs* decision has created uncertainty and opened the door to new legal challenges, where state constitutions and religious freedom arguments add further layers of complexity to the issue.⁶⁸

⁶⁸ **Indiana** case, a group of women and a religious pro-choice Organisation argue the state's abortion ban substantially burdens their religious exercise. Specifically, the plaintiffs argue that their respective religions (Judaism, Islam, and Unitarian Universalism) direct them to obtain abortion care under circumstances that the ban does not allow. Felix, Sobel, and Salganicoff (2023), "In Wyoming and Ohio, abortion advocates argue that this amendment includes the right to make a decision about whether or not to have an abortion" (para. 4).

4.3 Considerations of the Potential Legislative Responses to the Decision.

Several potential legislative outcomes have been and could be pursued in light of the *Dobbs* decision. One option entitles Congress to enact federal legislation unifying abortion access and providing safeguards to the right to abortion throughout the United States, as well as protecting individuals' rights seeking an abortion as their state law significantly limits abortion rights. The Main Opinion alludes to this possibility, emphasising that the enactment of federal laws can harmonise the legal landscape through legislative means rather than relying solely on court opinion.

The materialisation of this first option in a post-Dobbs scenario is likely to encounter significant opposition. Especially given the prevalence of state legislation restricting abortion access ⁶⁹, it is nevertheless a possibility. An alternative approach, followed by more moderate and liberal states, focuses on expanding access to reproductive healthcare services. This route involves increasing funding for family planning initiatives and broadening Medicaid coverage for pregnancy-related care ⁷⁰. On a grander scale, there are efforts, such as leveraging state constitutions or pursuing legal action based on alternative legal theories, like the right to bodily autonomy, that have been proliferating as a response to Dobbs.

Lastly, it is crucial to acknowledge the continued influence of pharmaceutical companies in the realm of abortion regulation. Through various means such as lobbying efforts and close connections with physicians, these companies actively advocate for enhanced accessibility to early abortion procedures. Notably, recent legal actions filed in

⁶⁹ Total abortion ban: South Dakota, North Dakota, West Virginia, Missouri, Oklahoma to mention a few. Others have restrictions including, ultrasound requirement, parental consent or waiting period: Wyoming, Arizona, Nebraska...

⁷⁰ New York, Vermont, California.....: Provide abortion protection laws; from public funding to state constitutional protection.

federal courts have challenged different facets of the FDA's regulations concerning medication abortion. While some of these cases are still in their preliminary stages, their ultimate outcomes will undeniably shape both immediate and long-term considerations regarding the availability of abortion medications. Furthermore, these legal challenges prompt an inquiry into the extent to which states can impose additional restrictions beyond the parameters established by the FDA, thereby questioning the authority of this federal agency (Sobel, Salganicoff, and Felix, 2023).

Moving forward, one of the major concerns will be the development of jurisprudence across different courts and states, which will ultimately shape the legal status of the unborn. Consequently, the Supreme Court will most likely face an increased number of Equal Protection Clause cases. The disparities that exist between states regarding abortion represent the political division across that nation (Lozada, 2022).

A specific example in the post-Dobbs panorama is the sprouting of Bills such as the Texas Heartbeat Act; Senate Bill 8 (SB 8), which limit access to abortion past the sixth-week mark. According to the statute, the 6-week line is when detecting foetal heartbeat is possible. Not only does it regulate abortion bans, but also, Texas “Trigger law” under § 170A.005, encourage private citizens, or any other person, to follow suit against anyone performing, instigating, or aiding abortion procedures past the six-week limit.⁷¹

⁷¹ Said Bill was subject of constitutionality, however, the case got dismissed: 595 U. S. (2021).

5. CONCLUSIONS

The present and final chapter dedicates its pages to summarising the main takeaways from the analysis done on the arguments in *Dobbs v. Jackson Women's Health Organisation* (2022). The emphasis consists of the arguments presented to the court by the parties, the Supreme Court's main opinion, and a short comparison of abortion rights on a global scale, with a specific mention of abortion rights in Spain in light of the recent Constitutional Tribunal note. Furthermore, concurring and dissenting opinions will be observed in order to provide the full picture and thus conclude with a personal conclusion.

5.1 Summary of Key Findings

The study of US constitutional law unveils a distinct landscape that sets it apart from continental constitutional law and, indeed, Spanish constitutional law. Consequently, comprehending the cited court cases necessitated extensive reading, encompassing not only the focal point of this paper but also the broader context surrounding the Supreme Court. This in-depth exploration has underscored the significance of various aspects, including the life tenure of Justices and their selection process, methods of judicial review, the weight of precedent, and the intricate challenge of navigating the highly divisive perspectives on abortion rights.

5.1.1 *Flawed Arguments*

Dobbs exhibits a significant flaw, which can be described in simple terms as its thinly veiled political positioning on the issue of abortion. The involvement of conflicting interests among various stakeholders (Brake, 2022) makes it challenging to assert the Court maintained impartiality (Jozkowski et al., 2020). As mentioned earlier, the court received over 140 briefs from different parties, each with its own agenda, which nevertheless presented sound legal arguments and innovative perspectives that could have contributed to upholding stare decisis while still moving forward from the extra-limitation *Roe* and *Casey* made (Behind the Scenes: How the U.S. Supreme Court Decides).

It appears that the arguments presented by both the plaintiffs and defendants lack substantive content that addresses the question presented to the court, as observed both in oral and written form. On the petitioners' side, their position is evident: they consider the embryo to be a person, a claim that is practically impossible to legally sustain,

irrespective of personal religious beliefs ⁷². Furthermore, they fail to provide a clear rationale for their stance to overturn the precedents set by Roe and Casey, as they ambiguously respond to the questions posed by the Justices. As highlighted by Justice Sotomayor, the brief seems to be more of a personal critique of Casey than a well-constructed legal argument (Girgis, 2022).

The arguments presented by the defendants also present shortcomings as they heavily rely on stare decisis (Girgis, 2022). Offering three reasons why *Casey did not overturn Roe*, thus neither should they be now by *Dobbs*. When pressed for further clarification, they firmly assert that abortion is protected by liberty in bodily integrity and autonomy within the realm of family and marriage, found in the Due Process Clause as positioned by *Casey*. This can be better understood through visual representation:

Fourteenth Amendment Due Process Clause & Court Stare Decisis	
<p>Right to privacy: Marriage, family matters, contraception, education...</p> <p>Griswold (1965) & Baird (1972): The right recognised in <i>Griswold</i> was initially limited to a specific space, but later expanded to encompass personal decisions that subsequently result in actions.</p>	<p>Liberty Right: Physical Autonomy and Bodily Integrity in family matter</p> <p><i>Rochin v. California (1952), Cruzan v. MO. Dep't of Health (1992), Riggins v. Nevada (1992), Sell v. U.S. (2003):</i> Right protects against state-forced intrusions into the body.</p> <p><i>Ferguson v. City of Charleston (2001), Washington v. Glucksberg (1997):</i> physical autonomy and bodily integrity are integral components of liberty.</p>
<p>Roe (1973) built on Griswold and Baird</p> <p>Confirm the right to privacy was broad. Enough so, that allowed for the right to abortion to fall under its scope as it “<i>springs from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.</i>”</p>	<p>Dobbs (2022): Right to privacy as presented in <i>Roe</i></p> <p><i>Roe</i> saw possible that abortion right could fit under other amendments relating to privacy. <i>Casey</i> did not, thus <i>Dobbs</i> won't analyse them as viable options.</p>
<p>Casey (1992) upheld <i>Roe</i>, but only “liberty” right</p> <p>Decision solely based on “liberty” protected by the Fourteenth Amendment’s Due Process Clause.</p>	<p>Dobbs (2022): 14th Amendment and Stare Decisis</p> <p>Wrong conception that the Due Process Clause confers <u>substantive and procedural</u> protection for liberty. Precedent has confirmed it only protects: those expressed in the Constitution & those “<i>deeply rooted in [our] history and tradition</i>” and <i>whether it is essential to our Nation’s “scheme of ordered liberty.”</i>”</p>

⁷² Exceptions would be in States where religion is part of the government, such as Muslim, Jewish or Catholic States: Saudi Arabia, Israel, and Vatican City to mention some.

Two implications and dangers derived from *Casey* first, allowed state restrictions on fundamental rights as long as it did not impose an undue burden; as Pacer noted, “...allows a state to coerce citizens into adopting the state's position on moral, value-based issues, even if those moral issues involve fundamental rights... contradicts the theory... sanctity of fundamental rights, which are protected from the political process and left to the individual” Pacer (1995). Second, it provided justices with a way in which to review all fundamental rights. Insofar as non-fundamental rights could find constitutional protection under “liberty right”, yet also later be reviewed by the “undue burden” test, rather than the “strict scrutiny test” (Whitman, 2002; Devis, 2009; Girgis, 2022).

The courts' commitment to an originalist approach in interpreting the Constitution was widely recognised, and studies such as the one Jozkowski et al., (2020) conducted, expressed the anticipation that *Roe* was going to be under judicial review. Even though abortion was the topic to provide clarity on, *Dobbs* was bound to rule on fundamental rights. Providing a chance to rectify the undue burden test. This can be noted in the oral arguments, as all the questions posed by the justices aim to void the “viability” limitation, that stemmed from the “undue burden” test (Holoszyc-Pimentel, 2015).

5.1.2 Broken Glasses

As analysed by the Centre for Reproductive Rights (2022), the court used an optometry case to justify the usage of the rationale test, discussed in *Williamson v. Lee Optical of Okla., Inc* (1955)⁷³, in which it was determined that state laws which regulated corporations must only withstand rational basis review and it needed not to examine each possible reason for legislation. In so many words and without explicitly stating it, demoted the right to pregnancy termination out of the fundamental right category (Girgis, 2022).

5.1.3 Alarming implications

The core issue that is arising, not just in the US, but also in other countries, as recently seen in the Spanish Tribunal Constitutional opinion (No 32/2023), goes far beyond abortion rights. There seems to be a recurring tendency within the judiciary branch that seems to be extra-limiting its constitutional duty regarding constitutional judicial review. Author Ziegler has been closely following the abortion debate in the US and has pointed out this concern for quite some time (2014, 2022). It could be magistrates' lack of creativity, perhaps too much of a quest to defend specific doctrines, or a combination of both, that explains the courts' action and inability to provide a bridge between constitutional law and social continuous development and demands, as Dworkin signalled (1992).

⁷³ 348 U.S 483,491 (1955).

5.2 Reflections of the Dobbs Decision: Global Impact, Beyond the U.S.

Due to the usage of medical terms, moral concerns, ethical questions, political implications, and discrimination factors, the abortion topic can be hard to analyse in a rational manner. This section explores the global impact of the Dobbs decision, examining how it has influenced and triggered discussion in other nations with regard to reproductive rights. A brief examination of responses and reactions to the Dobbs decision on an international scale. The aim of this is to go back to an initial point as a way to regain perspective on the main theme of pregnancy termination.

5.2.1 Abortion Beyond the United States

It is worth noting that the Dobbs ruling had far-reaching implications on a global scale, reigniting debates on abortion rights and prompting a reassessment of existing legislation, not only within the United States but also in other nations. In response to this issue, the European Union (EU) passed a resolution through the European Parliament. Analysing the EU resolution, Hervey and Banerjee (2023) shed light on its contents, which address the worldwide challenges to abortion rights and specifically respond to potential rollbacks in the United States. The mentioned resolution cites international agreements and conventions, underscoring the Parliament's unwavering dedication to women's rights, as well as sexual and reproductive health. It strongly condemns the erosion of reproductive rights globally and calls upon the United States, including its Supreme Court and government, to uphold the principles established in *Roe v Wade* and lend support to reproductive rights (Hervey & Banerjee, 2023; European Parliament, 2022).

The resolution takes a clear stance by highlighting the negative consequences of criminalising abortion and underscoring its disproportionate impact on marginalised

groups. However, the promotion of the right to abortion in the EU Charter of Fundamental Rights faces obstacles due to the constitutional positions of certain Member States, as noted by Hervey and Banerjee (2023). These positions hinder the potential for such an amendment to materialise. Nevertheless, the EU parliament advocates for fewer limitations on abortion access across the Member States by eliminating barriers to safe and legal procedures and ensuring universal access to sexual and reproductive health and rights. It also calls upon the European Commission to provide support to each MS that does so and guarantee these rights, as well as to promote health information and education (Hervey & Banerjee, 2023; European Parliament, 2022).

In relation to the Dobbs v. Jackson Women's Health Organisation (JWHO) ruling, Kaufman et al. (2022) underscore its significance and discuss its global impact. They acknowledge the setback for abortion rights in the United States but emphasise that international human rights frameworks and laws continue to safeguard the right to abortion worldwide. The ruling isolates the United States as an exception, but it is also likely to inspire solidarity and spur action among advocates for abortion rights globally (Kaufman et al., 2022).

5.3 Analysis: Concurring and Dissent Opinions and Personal Take on the Subject

It is quite a strange reality, the one presented in the Supreme Court. The life tenure of Justices makes it so that the more SCOTUS opinions undergo analysis, the easier it is to discern the potential outcome of the opinion. The matter that was analysed had a peculiarity: many Justices had concurring or dissenting opinions on the matter prior to the opinion given in *Dobbs v. Jackson Women's Health Organisation*.

Before going into the concurring and dissenting opinions, the following information must be stated and not voided: On May 2, 2022, Politico, a political newspaper, published the Draft of the Main Opinion, which had been leaked. This had never happened before in the history of the Supreme Court. It is not as if many could have done such a deed; as Tom Goldstein (2022) points out, there are assertive speculations on who broke protocol, most likely as a way to commit those justices who had given initial approval or as a way to “rally” the pro-choice public. At its core, the opinion did not differ from the draft (Barrett, 2022, Sep. 15).⁷⁴

⁷⁴ How the leak might have happened, SCOTUSblog5, 2022, 1:20 PM), <https://www.scotusblog.com/2022/05/how-the-leak-might-have-happened/>

5.3.1 Concurring and Dissenting Opinions

Concurring votes seem to be the ones that try to shine a light on the dangers of not giving a response to the question of constitutionality presented to the court. Instead of providing an answer to the query, the opinions are giving a ruling on the topic itself, and the further implications of these can only lead to a severe distrust of the judiciary and the rule of law (Girgis, 2022).

Justice Kavanaugh agrees that *stare decisis* must be respected, yet sometimes it is flawed, and the consequences of such are so vast that it must be overturned. He maintains that the Court should adopt a neutral stance and refrain from imposing a nationwide stance, whether it's pro-life or pro-choice. The justice argues that ever since *Casey*, various rulings have departed from its original holding, thus it is not a solid precedent.

Justice Thomas concurs that the Fourteenth Amendment's Due Process Clause does not protect it because it does not fall under the concept of "liberty" as understood by the Framers of the Constitution. He further emphasises that the Due Process Clause primarily guarantees Process, not substantive rights, suggesting that the Court should reconsider its substantive due process precedents, including cases such as *Griswold v. Connecticut*, *Lawrence v. Texas*, and *Obergefell v. Hodges* as convicted that substantive due process, as a legal doctrine, lacks a constitutional basis and gives excessive power to judges.

Justice Thomas provided the most neutral stance, suggesting overturning was not imperative to solve the question presented to the court, as neither party explicitly requested to rule on overturning *Roe* or *Casey* entirely. Adveting that the Court should

have adhered to the principle of judicial restraint and ought to have decided on the narrowest possible grounds.

The dissenting opinion was supported by Justices Breyer, Kagan, and Sotomayor, who with a heavy burden predicted the negative outcome of overturning stare decisis⁷⁵. Previous rulings had limited the government's interference with a woman's choices about her body and future until foetal viability and yet the Main opinion disregards this balance and strips away women's rights and equality. Ignoring the impact of the ruling on women without means or resources could leading to unsafe abortions, physical harm, or significant personal and familial costs. In addition, the dissent accuses the majority of prioritising personal proclivities over faithfully and impartially applying the law.

5.3.2 Personal Take on the Subject

In mechanical physics, scientists have grappled with deciphering the perplexing Einstein-Podolsky-Rosen (EPR) paradox since its proposal in 1935. This enigmatic experiment involves the measurement of two entangled particles, where the act of measuring one particle instantaneously affects the other, regardless of the physical distance between them. In the domain of electromagnetism, Faraday's rotating disc experiment presents an intriguing phenomenon: when a magnet is rotated near a stationary metal disc, it induces an electric current in the disc; however, when the operation is reversed, with the magnet remaining stationary and the disc rotating, no current is induced.

Analogously, both paradoxes find a semblance of relevance when extrapolated to the topic of abortion. When the right to abortion is constrained, the development of the

⁷⁵ Dissent Opinion, p. 60.

embryo, foetus, or prenatal life is impacted, despite the considerable physical and temporal separation to legally fall under the category of person. In the second example, the pregnant woman serves as the catalyst for initiating life, while the embryo, foetus, or prenatal life does not reciprocate this influence. In essence, the woman assumes the role of the magnet in this analogy.

While physics has yet to furnish an explanation for these intriguing phenomena, which remain impartial to political, personal, or religious viewpoints, they persist as intellectual puzzles. Similarly, legislating about abortion appears equally paradoxical. The entanglement between the pregnant woman and the prenatal life establishes a connection where the deliberation surrounding the decision to terminate a pregnancy, whether considered a fundamental right or not, directly impacts the potential personhood of the developing life.

This prompts the question: Can such a paradox be resolved? Is it even possible to untangle this intricate conundrum? Applying logical reasoning, if the answer were affirmative, the topic of abortion would not elicit ongoing controversy. Conversely, if the answer leans towards the negative, as seems to be the case, the subject will inevitably continue to provoke conflicts (O'Brien, 2019). However, is not the purpose of this field precisely to establish rules and parameters that reflect and represent the society it regulates? Its aim is to foster proximity among citizens, safeguard individuals from illicit acts, and prevent arbitrary abuses of power (Ely, 1973).

In 2002, Chris Whitmann's made a similar observation in his conclusion presented in *Looking Back on Planned Parenthood v. Casey*. It seems relevant that the

concern pressed over twenty years ago remains unresolved. Not only until both sides of the debate concede on their quest that the abortion reality will meet a non-discrimination, sensible legislation.

The partisan divide between Republicans (associated with the colour red) and Democrats (affiliated with blue) has blinded them to the core conflict—the preservation of a pregnant woman's dignity, well-being, health, and autonomy. The deep ignorance and misconceptions driven by political polarisation have failed to address the profound societal implications of how abortion is perceived: as discrimination based on sex, ethnicity, and socioeconomic status.

6. REFERENCES

- Balkin, J. M. (Ed.). (2022). *What Roe v. Wade Should Have Said: The Nation's Top Legal Experts Rewrite America's Most Controversial Decision*, Revised Edition. New York University Press.
<https://doi.org/10.18574/nyu/9781479824465.001.0001>.
- Balkin, J. M. (2022, September 8). *Abortion, Partisan Entrenchment, and the Republican Party*. Yale Law School, Public Law Research Paper Forthcoming. Retrieved from SSRN: <https://ssrn.com/abstract=4215863> or <http://dx.doi.org/10.2139/ssrn.4215863>.
- Barrett, T. (Host). (2022, September). *Dobbs v. Jackson - The SCOTUS Abortion Case Episode 18*. In 4 Legal English Podcast. Retrieved from <https://4legalenglish.com/podcasts/podcast-018/SupremeCourtCases>.
- Bartolomé Cenzano (2020). *El derecho a la vida: Nuevos retos jurídicos para su disfrute con dignidad y sostenibilidad en tiempos de crisis*. *Icade. Revista De La Facultad De Derecho*, (111), 1-5. Retrieved from <https://revistas.comillas.edu/index.php/revistaicade/article/view/16956>
- Belu, D. S. (2022). *Reflections on the Repeal of Roe v. Wade*. *Gender Studies (Timișoara)*, 21(1), 1–4. <https://doi.org/10.2478/genst-2023-0001>.
- Boris, E. (2022). *History on trial: The abortion wars*. *Women's History Review*, 31(7), 1232–1238. <https://doi.org/10.1080/09612025.2022.2130127>
- Brake, D. L. (2022). *Introduction to Oxford Handbook of Feminism and Law in the U.S*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4013036
- Doherty, C. (2013). *Public Opinion on Abortion and Roe v. Wade* Pew Research Center. Pew Research Center's Religion & Public Life Project.
<https://www.pewresearch.org/religion/2013/01/22/public-opinion-on-abortion-and-roe-v-wade>
- Cohen, S. A. (2008). *Abortion and Women of Colour: The Bigger Picture*. *Guttmacher Policy Review*, 11(3), 1. <https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture>.
- Desai, A., Holliday, R., Wallis, M., Thornewill, A., Bahraini, N. H., & Borges, L. M. (2023). *Policy Changes as a Context for Moral Injury Development in the Wake of Dobbs v Jackson Women's Health Organisation*. *Obstetrics and Gynaecology*, 141(1), 15–21. <https://doi.org/10.1097/AOG.0000000000005009>.
- De Vogue, A., & Duster, C. (2020, October 28). *Associate Justice Amy Coney Barrett sworn in and greeted with a request to recuse herself in an election case*. CNN. <https://edition.cnn.com/2020/10/27/politics/justice-amy-coney-barrett-sworn-in-supreme-court/index.html>

- Dworkin, R. (1992). Unenumerated Rights: Whether and How Roe Should Be Overruled. *The University of Chicago Law Review*, 59(1), 381–432. <https://doi.org/10.2307/1599941>
- Eisen, T. (2023, March 15). Legal analysis: What Dobbs got wrong. Center for Reproductive Rights. <https://reproductiverights.org/what-dobbs-got-wrong/>
- Ely, John Hart. “The Wages of Crying Wolf: A Comment on Roe v. Wade.” *The Yale Law Journal*, vol. 82, no. 5, 1973, pp. 920–49. <https://doi.org/10.2307/795536>.
- Felix, M., Sobel, L., & Salganicoff, A. (2023, January 20). Legal challenges to state abortion bans since the Dobbs decision. Kaiser Family Foundation. <https://www.kff.org/womens-health-policy/issue-brief/legal-challenges-to-state-abortion-bans-since-the-dobbs-decision/>.
- Fishkin, Joseph, and David E. Pozen. “Asymmetric Constitutional Hardball.” *Columbia Law Review*, vol. 118, no. 3, 2018, pp. 915–82. JSTOR, <https://www.jstor.org/stable/26397699>.
- Ganatra, B., Gerdtts, C., Rossier, C., Johnson, B. R., Tunçalp, Ö., Assifi, A., Sedgh, G., Singh, S., Bankole, A., Popinchalk, A., Bearak, J., Kang, Z., & Alkema, L. (2017). Global, regional, and subregional classification of abortions by safety, 2010–14: estimates from a Bayesian hierarchical model. *The Lancet*, 390(10110), 2372–2381. [https://doi.org/10.1016/S0140-6736\(17\)31794-4](https://doi.org/10.1016/S0140-6736(17)31794-4).
- Gerhardt, M. J. (2018). Dissent in the Senate. *Yale Law Journal Forum*, 127, 728. Retrieved from <http://www.yalelawjournal.org/forum/dissent-in-the-senate>
- George, R. P. (Ed.). (2016). *Great Cases in Constitutional Law*. Princeton University Press. <https://doi.org/10.1515/9781400882724>.
- Girgis, S. (2022). Misreading and Transforming Casey for Dobbs. *Georgetown Journal of Law & Public Policy*, Georgetown Law. <https://www.law.georgetown.edu/public-policy-journal/in-print/volume-20-issue-1-winter-2022/misreading-and-transforming-casey-for-dobbs/>.
- Hamilton, N.A. (2003). *Rebels and Renegades: A Chronology of Social and Political Dissent in the United States* (1st ed.). Routledge. <https://doi.org/10.4324/9780203952863>.
- Hervey, T., & Banerjee, T. (2023). Abortion rights in EU law: Recent developments. *BioLaw Journal - Rivista Di BioDiritto*, (1S), 331–341. <https://doi.org/10.15168/2284-4503-2571>.
- Jerman, J., Jones, R. K., & Onda, T. (2016). Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008. Guttmacher Institute. <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>
- Jozkowski, K. N., Crawford, B. L., Turner, R. C., & Lo, W.-J. (2020). Knowledge and Sentiments of Roe v. Wade in the Wake of Justice Kavanaugh's Nomination to the U.S. Supreme Court. *Sexuality Research & Social Policy*, 17(2), 285–300. <https://doi.org/10.1007/s13178-019-00392-2>.

- Justice Ruth Bader Ginsburg Offers Critique of Roe v. Wade During Law School Visit. University of Chicago Law School. (2013, May 15). <https://www.law.uchicago.edu/news/justice-ruth-bader-ginsburg-offers-critique-roe-v-wade-during-law-school-visit>.
- Kaufman, R., Brown, R., Martínez Coral, C., Jacob, J., Onyango, M., & Thomasen, K. (2022). Global impacts of Dobbs v. Jackson Women's Health Organisation and abortion regression in the United States. *Sexual and Reproductive Health Matters*, 30(1), 2135574. <https://doi.org/10.1080/26410397.2022.2135574>.
- Kaveny, M. C. (2023). Abortion and the law in the United States: From Roe to Dobbs and beyond. *Theological Studies*, 84(1), 134–156. <https://doi.org/10.1177/00405639231153868>.
- Liptak, A. (2022, December 1). Supreme Court to Hear Challenge to Mississippi Abortion Law. *The New York Times*. <https://www.nytimes.com/2022/12/01/us/supreme-court-abortion-mississippi.html>.
- Lozada, C. (2022, Jul 03). How three abortion rulings reveal a fractured culture. *The Washington Post*. Retrieved from <https://ehu.idm.oclc.org/login?url=https://www.proquest.com/newspapers/how-three-abortion-rulings-reveal>.
- Mann, T.E., & Corrado, A. (2014). Party Polarisation and Campaign Finance. Brookings Institution. Retrieved from https://www.brookings.edu/wp-content/uploads/2016/06/Mann-and-Corrad_Party-Polarization-and-Campaign-Finance.pdf
- Manninen, B. A. (2023). A critical analysis of Dobbs v. Jackson Women's Health Organisation and the consequences of foetal personhood. *Cambridge Quarterly of Healthcare Ethics: The International Journal of Healthcare Ethics Committees*, 1-11, 1–11. <https://doi.org/10.1017/S0963180122000809>.
- McKeegan M. (1993). The politics of abortion: a historical perspective. *Women's health issues : official publication of the Jacobs Institute of Women's Health*, 3(3), 127–131. [https://doi.org/10.1016/s1049-3867\(05\)80245-2](https://doi.org/10.1016/s1049-3867(05)80245-2)Pilkington, E. (2023). The future of Roe: how the US became more hostile to abortion rights. *The Guardian*. <https://www.theguardian.com/us-news/2023/jun/06/future-of-roe-v-wade-abortion-rights-us>.
- Mechmann, E. (2022). The Legal Consequences of Dobbs. *The Human Life Review*, 48(3), 19–28. <https://humanlifereview.com/the-legal-consequences-of-dobbs/>
- Murray, M. (2021). Race-ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade. *Harvard Law Review*, 134(6), 2025–2102. <https://harvardlawreview.org/print/vol-134/race-ing-roe/>
- Norrander, B., & Wilcox, C. (2023). Trends in Abortion Attitudes: From Roe to Dobbs. *Public Opinion Quarterly*. <https://doi.org/10.1093/poq/nfad014>.

- Ralston, M., & Podrebarac, E. (2008, September 30). Abortion Laws Around the World. Pew Forum on Religion & Public Life. <https://www.pewresearch.org/religion/2008/09/30/abortion-laws-around-the-world/>.
- Rodríguez, R. (2023). La reforma del delito de aborto. *Revista De Derecho vLex* - Núm. 226, marzo 2023, 226, 924173240. <https://app.vlex.com/vid/reforma-delito-aborto-924173240>.
- Sanger, C. (2016). Talking About Abortion. *Social & Legal Studies*, 25(6), 651–666. <https://doi.org/10.1177/0964663916668250>
- Savage, D. G. (2020, October 26). Amy Coney Barrett confirmed as Supreme Court justice in partisan vote. *The Guardian*. <https://www.theguardian.com/law/2020/oct/26/amy-coney-barrett-confirmed-supreme-court-justice-partisan-vote>.
- Sobel, L., Salganicoff, A., & Felix, M. (2023, March 13). Legal Challenges to the FDA Approval of Medication Abortion Pills. Kaiser Family Foundation. Retrieved from <https://www.kff.org/womens-health-policy/issue-brief/legal-challenges-to-the-fda-approval-of-medication-abortion-pills/>.
- Sullum, J. (2022). There is a Reason Why Roe v. Wade's Defenders Focus on Its Results Rather Than Its Reasoning. Retrieved from <https://reason.com/2022/05/10/there-is-a-reason-why-roe-v-wades-defenders-focus-on-its-results-rather-than-its-reasoning/>.
- Taylor, J. (2020). Structural Racism and Maternal Health Among Black Women. *Journal of Law, Medicine & Ethics*, 48(3), 506-517. <https://doi.org/10.1177/1073110520958875>.
- Times, N. Y. (1973, December 6). City Blacks get most Abortions. *The New York Times*. <https://www.nytimes.com/1973/12/06/archives/city-blacks-get-most-abortion-lead-with-476-though-whites.html>.
- Trump, D. J. (2016). Acceptance speech at the Republican National Convention. Retrieved from <https://www.politico.com/story/2016/07/full-transcript-donald-trump-nomination-acceptance-speech-at-rnc-225974>
- Vogel, K.P. (2017, October 7). The ‘Resistance,’ Raising Big Money, Upends Liberal Politics. *The New York Times*. <https://www.nytimes.com/2017/10/07/us/politics/democrats-resistance-fundraising.html>
- Whitman, C. B. (2002). Looking Back on Planned Parenthood v. Casey. University of Michigan Law School Scholarship Repository. <https://repository.law.umich.edu/articles/322/>
- Ziegler, M. (2018). Beyond abortion: Roe v. Wade and the battle for privacy. Harvard University Press. <https://doi.org/10.4159/9780674919419>.

- Ziegler, M. (2017). Liberty and the Politics of Balance: The Undue Burden Test after Casey/Hellerstedt. FSU College of Law, Public Law Research Paper No. 831. <http://dx.doi.org/10.2139/ssrn.2930058>
- Ziegler, M. (2014) Beyond Backlash: Legal History, Polarisation, and Roe v. Wade, 71 WASH. & LEE L. REV. 969, Available at: <https://ir.law.fsu.edu/articles/326>.
- Ziegler, M. (2023). Roe Was Never Roe After All. The Atlantic. <https://www.theatlantic.com/ideas/archive/2023/01/roe-50-anniversary-abortion-casey/672794/>
- The Centre for Reproductive Rights. World's Abortion Laws Map: Spain Retrieved May 11, 2023, from <https://reproductiverights.org/maps/worlds-abortion-laws/?country=ESP>
- The Amendments, Constitution Centre. National Constitution Centre – constitutioncenter.org. <https://constitutioncenter.org/the-constitution/amendments>
- On Originalism in Constitutional Interpretation | Constitution Centre. . National Constitution Centre – constitutioncenter.org. <https://constitutioncenter.org/the-constitution/white-papers/on-originalism-in-constitutional-interpretation>
- Cong. Rsch. Serv., Passage of Orders, Resolutions, or Votes, Constitution Annotated, https://constitution.congress.gov/browse/essay/intro.8-1/ALDE_00001302/ (last visited May 16, 2023).
- Behind the Scenes: How the U.S. Supreme Court Decides. https://www.americanbar.org/groups/public_education/resources/reproductive-rights-us-supreme-court/behind-the-scenes-how-the-u-s-supreme-court-decides/
- European Parliament. (2022). Resolution on global threats to sexual and reproductive health and rights, and the impact of the United States Supreme Court ruling in the case of Dobbs v. Jackson Women's Health Organisation (2022/2550(RSP)). Retrieved from https://www.europarl.europa.eu/doceo/document/TA-9-2022-0479_EN.html

Oral Arguments

Roe v. Wade. Oyez. Retrieved May 17, 2023, from <https://www.oyez.org/cases/1971/70-18>

Planned Parenthood of Southeastern Pennsylvania v. Casey. Oyez. Retrieved May 11, 2023, from <https://www.oyez.org/cases/1991/91-744>

Stenberg v. Carhart. . Oyez. Retrieved May 11, 2023, from <https://www.oyez.org/cases/1999/99-830>

Gonzales v. Carhart. . Oyez. Retrieved May 11, 2023, from <https://www.oyez.org/cases/2006/05-380>

Whole Woman's Health v. Hellerstedt. Oyez. Retrieved May 11, 2023, from <https://www.oyez.org/cases/2015/15-274>

June Medical Services LLC v. Russo. Oyez. Retrieved May 11, 2023, from <https://www.oyez.org/cases/2019/18-1323>

Roe v. Wade and Supreme Court Abortion Cases. Brennan Centre for Justice. <https://www.brennancenter.org/our-work/research-reports/roe-v-wade-and-supreme-court-abortion-cases>

Court Cases

Griswold v. Connecticut, 381 U.S. 479 (1965).

Eisenstadt v. Baird, 405 U.S. 438 (1972).

Roe v. Wade, 410 U.S. 113 (1973).

Doe v. Bolton, 410 U.S. 179 (1973).

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976).

Bellotti v. Baird, 443 U.S. 622 (1979).

Harris v. McRae, 448 U.S. 297 (1980).

Akron v. Akron Centre for Reproductive Health, Inc., 462 U.S. 416 (1983).

Thornburgh v. American College of Obstetricians and Gynaecologists, 476 U.S. 747 (1986).

Webster v. Reproductive Health Services, 492 U.S. 490 (1989).

Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).

Madsen v. Women's Health Centre, Inc., 512 U.S. 753 (1994).

Stenberg v. Carhart, 530 U.S. 914 (2000).

Gonzales v. Carhart, 550 U.S. 124 (2007).

Whole Woman's Health v. Hellerstedt, 579 U.S. (2016).

June Medical Services LLC v. Russo, 591 U.S. (2020).

Dobbs v. Jackson Women's Health Organisation, 597 U.S. (2022).

Plessy v. Ferguson, 163 U.S. 537 (1896).

Brown v. Board of Education, 347 U.S. 483 (1954).

Bowers v. Hardwick, 478 U.S. 186 (1986).

Lawrence v. Texas, 539 U.S. 558 (2003).

Legislation

US Constitution

Rules of the Supreme Court of the United States

Rules of the Senate