

Roe V. Wade Overturned: The Impact of a Biased Supreme Court in the United States

Yiwen Zhang^{1,a,*}

¹*Qibao Dwight High School, Shanghai, 200000, China*

a. ywzhang_bella@qibaodwight.org

**corresponding author*

Abstract: In 1970, Norma McCorvey, going by the name Jane Roe, retained attorneys Sarah Weddington and Linda Coffee to represent her in U.S. federal court against the local district attorney, Henry Wade, accusing that the Texas abortion law was unconstitutional. On January 22, 1973, the Supreme Court voted 7 to 2 in favor of “Jane Roe” and abortion was henceforth legal. However, the Court did not categorize abortion as an absolute right to privacy, but rather balanced it against maternal health and the protection of fetal life. The reasons behind its ongoing controversy are explored in the context of the June 24, 2022, event in which the U.S. Supreme Court overturned its previous decision in *Roe v. Wade*. Traces the reasons for the current imbalance between Republicans and Democrats on the U.S. Court by analyzing the past biographies of the nine current U.S. Supreme Court justices. Explore the causes of the politicization of the Court and the potential negative harms it brings to society. It also looks at the attitudes of the president, the government, and social organizations to find possible future improvement measures.

Keywords: Politicization of the courts, justice, human rights

1. Introduction

In 1970, Norma McCorvey, going by the name Jane Roe, retained attorneys Sarah Weddington and Linda Coffee to help her in U.S. federal court by against the local district attorney, Henry Wade, accusing that the Texas abortion law was unconstitutional [1]. At first, the Supreme Court hearing focused solely on jurisdictional issues. After lengthy discussion and drafting of opinions, the Supreme Court voted 7 to 2 in support of “Jane Roe” (Norma McCorvey), and abortion was henceforth legal on January 22, 1973. Although the issue has been controversial for the American public, *Roe v. Wade* remains a landmark case in American history because it established the concept that abortion is constitutional. Although abortion is not explicitly mentioned in the U.S. Constitution, the Supreme Court, after examining the right to privacy section of the Constitution, held that the right to privacy is covered by the U.S. Constitution’s guarantee of liberty, which protects pregnant women’s right to decide whether to have an abortion. The Court said there was no evidence that the use of the word “person” in Constitution implied that it included the fetus, which is inconsistent with Catholic doctrine.

At the same time, however, the Court did not categorize abortion as an absolute right to privacy, but rather balanced it against maternal health and the protection of fetal life. To this end, the Court developed the pregnancy framework. The U.S. Supreme Court has established a “three-stage standard”

that allows pregnant women to decide for themselves whether to have an abortion in the early stages of pregnancy (the first three months of pregnancy). The states have no right to interfere. In the second trimester (middle trimester), states may restrict, but not completely prohibit, abortion because of maternal health concerns. In late pregnancy (second trimester), States can enact regulations to prevent or forbid abortions to protect the human fetus, unless the life of the intended mother is at risk. The Texas abortion statute was deemed unconstitutional and struck down.

In 2018, a new law was proposed in Mississippi - banning abortions after 15 weeks of pregnancy except in special circumstances. In March 2018, Jackson Women's Health, Mississippi's exclusive abortion clinic, prosecuted state Department of Health officials. Based on *Roe v. Wade* and *Planned Parenthood v. Casey*, the courts that followed prevented the implementation of Mississippi's law. In 2020, the Mississippi government asked the Supreme Court to rehear the case. On June 24, 2022, the Supreme Court's decision, while sustaining the Mississippi legislation, reversed *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992). The Court held that the U.S. Constitution grants no abortion rights. This not only affected the situation of women in the United States, but also had an impact on the judiciary and popular attitudes in the United States. Most controversially, the Supreme Court's ruling is considered to be the result of human intervention.

2. Case Description

Should the fetus be considered a human being? This question is a constant controversy between abortionists and anti-abortionists. In the United States, which is currently the most restrictive country in the world in terms of abortion, arguments of whether and under what circumstances pregnant women have the right to abortion have always existed. Recently, however, a U.S. Supreme Court decision tilted in favor of the anti-abortion camp.

This decision overturned a ruling of the U.S. Supreme Court that has been in place since *Roe v. Wade* in 1973. *Roe v. Wade* took place in Texas, one of the states with the toughest abortion bans in the United States. A young pregnant woman sued the state of Texas, asking the state to lift the abortion ban. Ultimately, the U.S. Federal Supreme Court voted 7-2 to affirm that women's rights to decide whether to pursue pregnancy are guaranteed by constitutional mandates of personal autonomy and privacy, which is equivalent to acknowledging the legalization of abortion in the United States. The impact of *Roe v. Wade* was so far-reaching that it affected other U.S. states as well. However, pro-life anti-abortion advocates have been trying to overturn this decision. The public has asked American politicians to take a stand on the issue of abortion. Abortion has evolved from a legal rights issue to a political issue. And the June 24, 2022, Supreme Court decision completely overturned *Roe v. Wade*, meaning that abortion is no longer constitutionally protected in the United States.

The Supreme Court Justice Alito found that the 1973 Supreme Court decision in *Roe v. Wade* was "an entirely wrong decision". He argued that the issue did not properly belong in the Constitution. In fact, Alito's draft was leaked in May. In the draft, he explicitly wrote that he would try to overturn *Roe v. Wade* [2]. The Supreme Court's current justices, Clarence Thomas, Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett, also from the Conservative Party, have agreed to take a stand against abortion. On June 24, the Supreme Court decided whether *Roe v. Wade* would be overturned nationwide with its ruling on Mississippi's abortion law. Samuel Alito, Clarence Thomas, Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett, all from the Conservative Party, voted to strike down *Roe v. Wade*. Stephen Gerald Breyer, Sonia Sotomayor and Elena Kagan from the Democratic Party opposed the repeal of *Roe v. Wade*. Chief Justice John G. Roberts, Jr. (known as a "moderate conservative") only supported the decision to upholds Mississippi abortion law, but has no intention of reversing *Roe v. Wade*. The swing vote, however, did not change the outcome. Since then, *Roe v. Wade* has been overturned and the right to abortion is no longer protected by the Constitution, but by

state laws enacted by individual state governments in the United States.

However, as mentioned earlier, the abortion issue has become more of a political issue than a legal one in the U.S. During the 2016 Trump election, he made a specific campaign promise, in an effort to garner more conservative votes, that he would appoint justices who would overturn *Roe v. Wade* (Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett) [3]. His own problematic stance on abortion has also been evident in his participation in numerous March for Life marches. After *Roe v. Wade* was overturned on June 24, a growing number of people began to question whether abortion rights had become a tool in the fight for votes. How can nine grand justices who are not elected by citizens make a choice for all American citizens?

The following parts begin with exploring the nine justices on the Supreme Court, examining why they made their final choices and how partisanship influenced the creation of the bill. Then, the paper further investigates the current situation in the United States, suggests possible solutions, and predicts whether the current judicial structure in the United States can have any impact in the future.

3. Nine Judges' Attitudes Towards the Anti-Abortion Act and Their Impact

3.1. Nine Judges' Attitudes

In a survey of the nine justices' childhood, family composition, upbringing and work experience, it is easy to see that family environment, religious beliefs, race, and upbringing have all influenced their values and choices. However, it must be worth noting that abortion is a very complex issue in the United States, which is influenced by many factors such as religious beliefs and values. We cannot simply infer the positions of the nine justices on abortion by their upbringing and their positions on women's rights, LGBT and other controversial issues. For example, Neil Gorsuch, from the conservative camp, is a Protestant Catholic who has made many rulings on statutes that are friendly to the LGBT community. His mother was also the country's first female-identified Environmental Protection Agency Administrator. However, he is staunchly anti-abortion, having opposed the revocation of Louisiana's abortion restrictions and refusing to sanction Texas for improper enforcement of the Heartbeat Act. Therefore, it is entirely unworkable to try to infer the positions of the nine justices on abortion by the degree of openness they held when confronted with other controversial issues; it is the tendency to take positions that they began to show early in their legal careers that can be used as evidence.

Refocusing on the abortion issue, religious beliefs were undoubtedly one of the most significant factors in shaping the positions of each of the nine justices. For example, of the six Republican justices (Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh, Amy Coney Barrett, and John G. Roberts, Jr.), two grew up in Catholic schools and the remaining four are Catholic. Although six of the nine justices currently serving on the U.S. Supreme Court are of the Catholic faith, that does not mean they all hold the same position. In fact, the moderationist John G. Roberts, Jr. endorsed women's selection of family planning clinic services and refused to join the prevailing view in *Dobbs v. Jackson Women's Health Organization* (which reversed *Roe v. Wade*), but he believed that abortion needed to be subject to some conditions. That's why he still supports the decision to uphold Mississippi's abortion law and to some extent urged the Court to overturn *Roe v. Wade*. Overall, however, all six justices of the Catholic faith have treated abortion very harshly. Their attitudes are reflected in their past work in their legal careers. Clarence Thomas took an anti-abortion stance as early as 1992 in *Roe v. Wade*. However, he was unsuccessful at the time. Samuel Alito dissented early on in *Planned Parenthood v. Casey* (which overturned restrictions requiring married women to first notify their husbands when seeking an abortion). Amy Coney Barrett, despite being a woman, has taken a very conservative stance on the abortion issue. It is possible whether this was influenced by the fact that she came from a family of six girls and one boy, and that her mother was a housewife.

She has been called a “favorite of the Christian right and social conservatives,” and Amy Coney Barrett joined Clarence Thomas and Samuel Alito in rejecting a petition to block a Texas law banning abortion. They joined Brett Kavanaugh in rejecting a petition to sanction Texas’ improper enforcement of the Heartbeat Act.

It is worth noting that two of the six justices from the conservative wing have faced allegations of sexual harassment. At the official confirmation meeting for Clarence Thomas’ appointment to the bench, he was implicated in a sexual harassment allegation against Department of Education employee Anita Hill, an accusation Thomas declared to be a deliberate political smear. He argued that Anita Hill and her political supporters had concocted a lie to try to keep black conservatives like Thomas off the Supreme Court. The other is Brett Kavanaugh, who, however, faces an even more serious situation. He has faced sexual harassment allegations from four women (one of whom later withdrew her allegations). The most serious allegation came from Christine Blasey Ford, who was a classmate of Brett Kavanaugh’s at Georgetown Prep High School. She claims that Brett Kavanaugh tried to rape her in the early 1980s. Although Ford’s allegations were not confirmed by the White House due to the passage of time and lack of evidence, it did go some way to discrediting Brett Kavanaugh in the Senate. In addition, Brett Kavanaugh was accused of preferring good-looking, feminine female students when selecting legal assistants. Of his 48 legal assistants, 25 were women, which was inconsistent with the judge’s general preference for same-gender legal assistants. This resulted in Brett Kavanaugh receiving only 51.02 percent of the vote in his Senate confirmation, the second lowest number of votes ever for a judge, just 0.04 percent higher than first-place finisher Stanley Matthews. When Brett Kavanaugh became a Supreme Court justice, he hired an all-female legal team, something that has never been done before in the history of Supreme Court justices.

All three justices from the Democratic Party supported female abortion. Notably, Stephen Gerald Breyer and Elena Kagan are both from Jewish families, and Sonia Sotomayor is a woman of color who has struck down abortion laws in Nebraska, Louisiana, and Texas. He joined Sonia Sotomayor and Elena Kagan in agreeing that women should choose services from Planned Parenthood clinics, and opposed private citizens suing abortion providers in *Whole Woman’s Health v. Jackson* [1].

A simple count shows that six of the nine justices of the U.S. Supreme Court are conservatives. All of them are of the Catholic faith, which happens to oppose female abortion extremely harshly. The ratio of men to women is 5:1, with only one woman, Amy Coney Barrett, and the other five men. There are only three Democrats who are open and supportive of abortion, with a 2:1 ratio of men to women, and only one male, Stephen Gerald Breyer. The simple statistic points to an extreme imbalance between Democrats and Republicans among the nine justices. This makes one wonder if the appointment of the nine justices, which will affect the entire U.S. judicial system, has been influenced by partisan political struggles.

3.2. The Result of Manipulation by Politicians

The status quo of judges from the Republican Party becoming the majority of the U.S. Supreme Court cannot be separated from the efforts of former President Trump. He is the president who appointed the largest number of Supreme Court justices other than President Reagan. Brett Kavanaugh, Neil Gorsuch and Amy Coney Barrett from the Republican Party were all appointed during Trump’s time in office. Trump’s impact on the U.S. judicial system does not stop there. During his four years in office, he appointed a total of 54 federal appellate judges. Federal appellate courts are different from ordinary courts in that they have the final say on most legal appeals in the country. That’s why it’s all the more important to be cautious about the appointment of federal appellate judges. Trump’s predecessor in office - Barack Obama - appointed just 55 federal appellate judges in eight years. In contrast, Trump’s speed of appointment of federal appellate judges is clearly unusual. At such a “frenetic” pace, the balance of the appellate courts was succeeded in being “flipped” by Trump, from

a Democratic-appointed majority to a Republican-appointed majority. [4]

The reason Trump has gone to such lengths to appoint new judges is to keep the promises he made to the Republican Party during the 2016 election. In the 2016 election, Trump will not only need to stand out in a field of primary candidates, also from the Republican Party, but also compete against Hillary Clinton from the Democratic Party. That is why he needs full support from the Republican Party. The statistics show that conservative Republicans and liberal Democrats both believe the president's attitude toward the Supreme Court appointments and the abortion issue are factors to consider. About a third in four Republicans who are conservative and lean Republican (77%) state the issue of Supreme Court appointments is extremely significant to their vote [5]. During the campaign, he promised to fill the court with conservative judges in order to gain conservative votes. To dispel public suspicion of Trump's conservative status, he released a list of his potential picks for the U.S. Supreme Court when he was still a candidate. The list was not curated by Trump alone, but came from the Federalist Society, the largest conservative legal activist group in the United States. This has undoubtedly led to a substantial rise in conservative trust in Trump. And Trump's friend, Senate Majority Leader Mitch McConnell, provided a lot of help in Trump's process of appointing Republican judges. McConnell also offered Trump a Supreme Court seat, changing Senate rules to speed up the confirmation of Trump's judges [6]. It is clear that the current imbalance in the ratio of judges on the U.S. Supreme Court is the result of artificial interference by politicians. For Republicans, this is a good thing; but for America as a whole, the president's abuse of power could lead to some negative consequences affecting society.

3.3. Possible Harms of Manipulation

This shows that political elections and partisanship have had a direct impact on the appointment of Supreme Court justices. Then it is a question to consider whether politicians represented by Trump will influence the making and passing of laws. The judicial system is considered to be supposed to be independent. Individual judges and the judiciary in general are expected to be impartial and independent of all external pressures and of each other so that those in their presence and the wider public can be assured that their cases will be decided fairly and unbiasedly. Only then will judges be able to provide fair and just justice to the American public. In recent years, however, the tendency to politicize the courts has led to a significant decline in the American public's trust in the Supreme Court. Willow Research conducted a survey in November 2018 of a sample of more than 1,000 Americans aged 16 and older. The results showed that only 37 percent of Americans express trust in the courts and the judiciary [7]. Most people believe that the rich parties have an advantage in court, while the poor and minorities are at a detriment. On the eve of *Roe v. Wade* being retried in 2022, public confidence in the Supreme Court has declined. The number of Democrats who believe the Supreme Court is still trustworthy has dropped from 30 percent to 13 percent, and independents have dropped from 40 percent to 25 percent. But thanks to Republican justices occupying the majority of the Supreme Court, the number of Republicans who still trust the Supreme Court rose from 37 percent to 39 percent [8].

There are two main reasons for this result. One is that since the beginning of Trump's time in office, he has bluntly used political tactics to attack justices with views contrary to his own. On Feb. 24, Trump took aim at U.S. Supreme Court Justices Sonia Sotomayor and Ruth Bader Ginsburg, asking the two justices to disqualify from any case in which he was engaged. This is because Sonia Sotomayor opposed the Trump administration's policy of denying green cards to immigrants; while Ruth Bader Ginsburg had opposed Trump during the 2016 election. Adopting political tactics to threaten the justices could affect the Supreme Court's decision and make the outcome less fair and just [9]. Another reason is that many of the rulings made by the conservative-held Supreme Court have turned out to be at odds with what the people think. Conservatives' more traditional views on

issues such as abortion, LGBT, and affirmative action conflict with the current overall open and inclusive social climate in the United States. For example, in the case of a Roman Catholic adoption agency in Philadelphia, the agency was accused of discriminating against adoptive parents of non-mainstream sexual orientation [1]. And judges from the Republican Party largely sided with the agency. Lace's example, among many others, reinforces suspicion of the court, as Supreme Court justices are perceived as an elite group of people high up and distant from real life. There is a growing belief that the Court's decisions should take into account what the people think, otherwise it would be contrary to the original purpose for which the Court was established.

And for women who are pregnant, the overturning of *Roe v. Wade* means that in many states, they can no longer seek abortion help from hospitals or abortion clinics [10]. For women who do not have the financial means to travel to another state to get an abortion and get a better post-surgical recuperation, the problem becomes even more difficult. Some have had to purchase abortion drugs online. Most of these sites come from countries where abortion is legal, such as Canada and Mexico. They are then required to perform their own abortions at home. Although these sites will provide remote guidance from a doctor, the dangers are obviously substantially higher [11]. These women may face permanent physical damage, and all of this suffering stems from the Supreme Act overturning *Roe v. Wade* on June 4. Women's rights have been further narrowed.

4. Suggestions

Commenting in Voice of America (VOA) in response to the Supreme Court overturning the *Roe v. Wade* decision, incumbent President Biden said, "It's very clear that the health and lives of women in our country are now at risk. This is a sad day for the country." He condemned the ruling, but implored protesters to remain peaceful (as marches by opponents are happening across the U.S.) He called on the American people to use their votes to elect leaders who support abortion rights. U.S. Solicitor General Merrick Garland in a declaration said that the Justice Department "strongly opposes the decision of the Supreme Court" and "will spare no effort to protect and promote reproductive freedom. This ruling is the worst-case scenario, but it is not the end of the fight," said Mini Timmaraju, president of the National Abortion Rights League - Pro-Choice America, the leading abortion rights organization, in a statement. Eight out of ten Americans support the right to legal abortion, and they will not rest. there will be elections in November, and extremist politicians will learn a lesson: when you support our rights, we support your seats" [12].

In the past, many abortion clinics in the United States have closed down because of funding problems. There have been many restrictions on funding support for abortion clinics because of anti-abortionists in the government. So private foundations have taken on more responsibility. After *Roe v. Wade* was overturned, these private foundations have taken on a more important role than ever before in states like South Dakota where abortion is banned. In the first three weeks since the Supreme Court overturned *Roe v. Wade*, the National Abortion Fund Network collected nearly 11 million dollars on behalf of local foundations, more than all the abortion funds the Network distributed in 2020 whole year [13]. However, private funds alone may not be the answer to the current situation in the United States, as demand is rising at the same time. The pressures on abortion clinics are socially systemic, such as physical attacks on clinics and health care providers by anti-abortion advocates, insurance companies not accepting abortions, etc. The only way to fundamentally reverse the current situation is to get the government involved by way of constant pressure from pro-abortion advocates.

5. Conclusion

Roe v. Wade is unique in that with this case, the Supreme Court affirmed that abortion is constitutionally protected. This was based on a study of the right to privacy section of the U.S.

Constitution and a consideration of all aspects of maternal and fetal health. However, the June 24 Supreme Court reversal of the earlier Roe v. Wade decision means that the Supreme Court can withdraw or overturn the earlier Supreme Court decision. Even constitutionally protected interests can be overturned. This has led to concerns ranging from the public to government officials in the United States. This is because this example directly demonstrates that any interest that is not explicitly written in the Constitution can be overturned. However, as time goes on, more and more new human rights issues arise regarding abortion, LGBT, etc., which are things that were not considered in the days when the U.S. Constitution was written. Overturning Roe v. Wade has somewhat delayed the evolution of the U.S. Constitution with the times. And the Supreme Court's credibility has been diminished to some extent. After Roe v. Wade was overturned, state governments have been able to enact laws to prohibit women from exercising their right to abortion in early pregnancy. States no longer need to try to issue bans to make abortion unfeasible without overturning Roe v. Wade, as they did in the past. Obviously, everything from the U.S. Supreme Court to the state courts will be affected.

References

- [1] "Roe v. Wade." Wikipedia, Wikimedia Foundation, 13 Sept. 2022, en.wikipedia.org/wiki/Roe_v._Wade.
- [2] "Roe v. Wade: Why Did the U.S. High Court Ruling Nearly Half a Century Ago Spark Repeated Group Protests about Abortion Rights?" BBC News Chinese, BBC, 5 May 2022, www.bbc.com/zhongwen/simp/world-61320676.
- [3] "Trump Vows to Nominate a Woman for US Supreme Court Vacancy within a Week." The Guardian, Guardian News and Media, 20 Sept. 2020, www.theguardian.com/us-news/2020/sep/20/trump-vows-to-nominate-a-woman-for-us-supreme-court-vacancy-within-a-week.
- [4] Gramlich, John. "How Trump Compares with Other Recent Presidents in Appointing Federal Judges." Pew Research Center, Pew Research Center, 28 Jan. 2022, www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/.
- [5] Pew Research Center "4. Top Voting Issues in 2016 Election." Pew Research Center - U.S. Politics & Policy, Pew Research Center, 30 May 2020, www.pewresearch.org/politics/2016/07/07/4-top-voting-issues-in-2016-election/.
- [6] "How McConnell's Bid to Reshape the Federal Judiciary Extends beyond the Supreme Court." PBS, Public Broadcasting Service, 16 Oct. 2020, www.pbs.org/wgbh/frontline/article/how-mcconnell-and-the-senate-helped-trump-set-records-in-appointing-judges/.
- [7] Willow Research, "Do Americans Have Confidence in the Courts?" Willow Research, 6 May 2020, willowresearch.com/american-confidence-courts/.
- [8] Jones, Jeffrey M. "Confidence in U.S. Supreme Court Sinks to Historic Low." Gallup.com, Gallup, 21 Sept. 2022, news.gallup.com/poll/394103/confidence-supreme-court-sinks-historic-low.aspx.
- [9] Bannon, Alicia, et al. "In His Own Words: The President's Attacks on the Courts." Brennan Center for Justice, 30 Aug. 2022, www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts.
- [10] "Abortion Laws by State." Center for Reproductive Rights, 25 Aug. 2022, reproductiverights.org/maps/abortion-laws-by-state/.
- [11] Ventas, Leire. "I Need an Abortion': The Text That Gets Pills Sent in Secret." BBC News, BBC, 25 Aug. 2022, www.bbc.com/news/world-us-canada-61874921.
- [12] Joe Biden Said It Was a Sad Day after the US Supreme Court Overturned a Ruling Protecting Abortion Rights, and Republican Leaders Hailed a Historic Victory." VOA, VOA, 25 June 2022, www.voachinese.com/a/us-supreme-court-overturns-historic-abortion-ruling-20220624/6632334.html.
- [13] Levi, Ryan, and Dan Gorenstein. "The Role of Independent Funds to Help People Access Abortion Is Growing." NPR, NPR, 25 July 2022, www.npr.org/sections/health-shots/2022/07/25/1112938261/the-role-of-independent-funds-to-help-people-access-abortion-is-growing.