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CIVIL LIBERTIES AND SPECIAL INTERESTS IN SUPREME COURT JURISPRUDENCE

by

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This thesis is dedicated to the memory of Justice Ruth Bader Ginsburg and her immeasurable contribution to the advancement of equality rights in America.

The fulfilled work submitted with this thesis is my exclusive intellectual property. Information and material derived from other sources has been credited appropriately. I am fully aware that any misrepresentation in connection with this declaration may at any time result in the immediate revocation of the degree.

PREFACE:

In 1973, the Warren Court issued the landmark *Roe v. Wade* decision and established the constitutional protection of a woman's right to choose to have an abortion, anchoring it in the Fourteenth Amendment's right of privacy that the Court had first extracted a decade earlier. The decision reaffirmed the principle of equality and followed a series of previous decisions that had solidified the Supreme Court's role as a safe keeper of individual rights.

Almost 50 years later, the Roberts Court overturned *Roe* on the principal argument that abortion is not deeply rooted in the Nation's history and traditions, reversing a decades-long precedent that had become the law of the land and ensured the women's equal participation in society. Although the *Dobbs* decision was met with an immediate public and political uproar, the ruling was indeed the culmination of a persistent effort to remove the constitutionality abortion and usher an era of further curtailment of equality rights.

This master's thesis explores the parallel rise of the conservative movement and the religious right in the aftermath of *Roe,* their gradual infiltration in the legal academia and the federal judiciary; specifically, the conservative influence in Supreme Court appointments and its significance for debated civil liberties issues.

The thesis also examines the role of interest groups in political participation and the impact of the *Citizens United* decision in the formation of super PACs that have forever altered the political landscape and the special interests' reach in the judiciary.

Finally, it addresses the organized interests' diverse ways of influence in the Supreme Court, focusing mostly on the current composition of the Roberts Court and assessing its current reputational and institutional standing following a series of highly unpopular decisions that have sidelined equality rights in light of religious liberty claims.

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"Power, not reason, is the new currency of this Court's decisionmaking … The Court reverses course today for one reason and one reason only: because the composition of this Court has changed." These scathing statements penned by Justices Sotomayor, Breyer, and Kagan in the dissenting opinion of *Dobbs v. Jackson Women's Health Organization* – a decision that shockingly reversed a 50-year-old precedent on the previously constitutionally-protected right to abortion – perfectly encapsulate the deepening distrust among the Supreme Court Justices, which is a reflection of growing polarization that has come to define the American political system in recent years.

The Supreme Court is an indispensable part of the checks and balances system, as it is the highest court in the federal judicial system, equipped with the power to interpret laws passed by the legislative and the executive branches. (USA.gov, 2021) The Framers envisioned the judicial branch as the independent, but also the "weakest" part of the government, since it has no influence on the "purse" and has to rely on the other branches to enforce its decisions. (Cavalli, 2013) (Patterson, 2019) (Hemel, 2021)

However, in 1803, with the landmark *Marbury v. Madison* decision, the Supreme Court ruled that "a legislative act contrary to the Constitution is not law" and established a precedent of examining and upholding whether a law is constitutional or not - what came to be known as "judicial review". (Patterson, 2019) (McCay, 2013) (Hemel, 2021) When the judicial review was later extended over state acts, it expanded the Court's authority and established its national jurisdiction, producing an ever-changing political role for the Court and influencing virtually all the aspects of American life. (McCay, 2013) (Cavalli, 2013) (Hemel, 2021)

In recent history, the Supreme Court championed and safeguarded individual freedoms, with a specialized focus on amplifying the spectrum of civil liberties in social issues. The number of such cases brought to the Court culminated in the 1960s when civil liberties issues dominated its docket for the first time. (Baum, 2019) People who felt that their liberties had been violated by government actions and private institutions felt encouraged to bring their cases to the Court, as it responded positively in cases involving violation of equal treatment. (Baum, 2019)

Landmark decisions based on the interpretation of substantive due process and the equal protection clause of the Fourteenth Amendment addressed issues such as segregation (*Brown v. Board of Education*), contraception (*Griswold v. Connecticut*, *Eisenstadt v. Baird*), voters

participation (*Reynold v. Sims*), interracial marriage (*Loving v. Virginia*), abortion (*Roe v. Wade, Planned Parenthood v. Casey*), sexual orientation and activity (*Lawrence v. Texas*) and same-sex marriage (*Obergefell v. Hodges*) among others. At the same time, the Supreme Court also ruled upon a range of controversial issues such as public displays of religion (*Engel v. Vitale*), procedural rights of criminal defendants (*Gideon v. Wainwright, Miranda v. Arizona*), and freedom of the press (*New York Times v. Sullivan*).

The expansion of civil liberties is arguably the Court's most defining work over the last seventy years and it helped solidify its status as the gatekeeper of civil liberties in violation of state laws, gaining both public opinion appraisal and favorable media portrayal, especially in comparison with other governmental branches. (Devins & Baum, 2019)

Furthermore, the Supreme Court Justices have traditionally displayed significant cohesion as a group and prided themselves as being a collegial institution that operated above the political fray. (Devins & Baum, 2019) The lack of partisan divide that characterized the Warren, Burger, and Rehnquist Courts was underlined in important cases, where both liberal and conservative Justices found common ground on cross-cutting issues, such as abortion. (Baum, 2019)

Roe v. Wade was famously decided by a 7-2 vote, with five Republican and two Democratic appointees in the majority opinion. (Baum, 2019) It is difficult to imagine such collegiality today, as the Roberts Court marked a new era of unusually partisan conflict where, for the first time in its history, the Court has had substantial ideological divisions that coincide with expressed party lines. (Devins & Baum, 2019) (McCay, 2013) (Hemel, 2021)

This partisan and ideological split among the Justices should not come as a surprise because the Supreme Court, as part of the government structure, is a political institution by definition, and as such it is defined by the political and social environment in which the Justices work. (Patterson, 2019) Nevertheless, the effect that increasing polarization has had on both the nomination and confirmation processes of Supreme Court Justices is striking. (Devins & Baum, 2019) (Hemel, 2021)

Party-line voting is the new norm, with no prospect of either Democrats or Republicans crossing lines in the selection of nominees, not even in the case of moderate candidates. (Devins & Baum, 2019) (Baum, 2019) Mitch McConnell, the Senate Republican leader who blocked

the nomination of centrist liberal Merrick Garland in 2016, called it the most consequential decision he's ever made. (Devins & Baum, 2019)

President Trump's subsequent appointments of Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett did not come without controversy. Gorsuch's confirmation was on such narrow margin that it was only made possible through the elimination of the filibuster; Kavanaugh's hearing was plagued by sexual harassment allegations that, surprisingly, did not derail his confirmation prospects - he was, instead, defended against his critics; lastly, Barrett's fast-track confirmation just one week before the 2020 Presidential elections, further accentuated partisan sorting and the rush to solidify a conservative majority that the Supreme Court had not seen since the 1930s, pre-New Deal era. (Devins & Baum, 2019) (Biskupic, 2020)

President Biden's most recent nomination and confirmation of Ketanji Brown Jackson, while significant – Jackson is the first African-American female Justice in history to serve on the Court – it still did not alter the 6-3 conservative majority, as she replaced Stephen Breyer, a since-retired liberal Justice. (Gambino & Greve, 2022)

Historically, Court decision-making recognized societal norms and refrained from conflict with the media and the public opinion. (Baum & Devins, 2010) (McCay, 2013) While it is apparent that the current composition of the Court finds itself increasingly detached from a majority of the American public, it is also evident that the Court reflects, rather than shapes, broader changes in the society. (Baum, 2019)

One such change emerged with the rise of the conservative movement that was pivotal in the institutionalization of formal groups focused on the promotion of conservative ideology with the aim of advancing their views while counterbalancing what they had perceived as "liberal bias" within the legal professional and academic community that was largely left-leaning between the 1950s-1980s. (Devins & Baum, 2019) (Fritze, 2022)

The urge to put ideology on the forefront can be linked to a general dissatisfaction of the conservatives who were opposed to strong federal government interventions in the social and economic lives of Americans, often considering these interventions as forceful of racial integration and a special treatment to minorities and people of color. (Williamson, et al., 2011)

There was also bitterness over the expansion of civil liberties, aided by Republican appointees to the Supreme Court between the 1950s-1980s. (Baum & Devins, 2010) (Baum, 2019) (Fritze, 2022) The succeeding Courts further expanded constitutional protections on a range of civil issues, including bodily autonomy and reproductive rights - the latter being an anathema for the conservative community. (Bravin, 2022)

The appointments of Justices Blackmun (Nixon), Stevens (Ford), Kennedy (Reagan) diverged from conservative expectations, developing a moderate or, worse, liberal record during much of their tenure. (McCay, 2013) (Baum, 2019) President Nixon repeatedly complained about the "Washington-Georgetown social set" and the influence of what he perceived as a predominantly liberal-leaning legal elite on the Justices once they sat on the Court. (Devins & Baum, 2019)

This liberal legal establishment was bolstered by the social changes of the 1960s. The work of organizations such as the American Civil Liberties Union (ACLU) and the National Association for the Advancement of Colored People Legal Defense and Educational Fund (LDF), joined by new public interest law firms, allowed the Court to broaden its interpretations of constitutional rights. (Baum, 2019) (Devins & Baum, 2019)

At the same time, legal academia and the American Bar Association also adopted a more liberal orientation. (Baum & Devins, 2010) In the absence of competing conservative networks, progressive positions on civil rights issues became more prominent, reinforcing the pre-existing liberal stance of Democratic appointees and reluctantly moving moderate Republican appointees to the left/center - securing them praise by legal scholars and the establishment media. (Baum & Devins, 2010) (Devins & Baum, 2019)

The Reagan administration under Attorney General Meese channeled the growing frustration among conservative circles and developed a strategy to gradually make conservatism more mainstream and acceptable in the American society. (Devins & Baum, 2019) Their focus centered on reshaping judicial appointments by placing an emphasis on ideology as the prevailing selection criterion among candidates. Ideological considerations took a central role in the screening process, calling for a thorough vetting of federal judicial nominees. (Devins & Baum, 2019) (Epstein & Posner, 2022) Supreme Court appointments would become the

ultimate strategic tool to advance a comprehensive ideological agenda that would eventually help tackle the “excesses” of previous Courts. (Bravin, 2022)

Meanwhile, the efforts of conservative groups such as the Olin Foundation helped establish conservative bases in American law schools with a focus on law and economics - both seen as tools to advocate against government intrusion in the free markets. (Devins & Baum, 2019) Through funding of workshops, journals, scholarships, and fellowships the Olin Foundation opted sought to legitimize the conservative identity among students and legal academics. (Devins & Baum, 2019)

However, the real conservative counterrevolution came from more modest origins.

Invigorated by Reagan’s election and inspired by his ideology, a group of students from the law schools of Yale, Harvard, and the University of Chicago established the Federalist Society in 1982, initially as a scholarly organization with the aim to challenge dominant liberal views in elite law schools through open debates in conferences and symposiums. (Kruse, 2018) (Montgomery, 2019) (Fritze, 2022)

The gatherings, often with the attendance of prominent conservative academics such as Professor Scalia, the first faculty adviser to one of the founding chapters at the University of Chicago, quickly gained momentum. (Kruse, 2018) (Fletcher, 2005) Student chapters spread to other campuses, catching the attention of Attorney General Meese who approached the Federalist graduates to work in the Reagan administration. (Bravin, 2022)

In the years that followed since its formation, the Federalist Society rose in influence as a networking association and incubator of conservative ideas. (Montgomery, 2019) It is the leading propagator of originalism and textualism, two legal theories that have reshaped Supreme Court decision-making, especially on civil liberties issues. (Toobin, 2017) (Cole, 2022) (Reichmann, 2023) (Fritze, 2022) These theories support adherence to the original text and wording of the Constitution and come in direct contrast with living constitutionalism, the more progressive and expansive interpretation of the Constitution that served as the basis for many of the most important decisions of the past decades. (Stramaglia, 2019) (Montgomery, 2019) (Fritze, 2022)

In addition to being a reference group for conservative law students and lawyers, with more than 200 student chapters and 90 lawyers' chapters across the country, it is also a hub for grooming and vetting conservative proponents in the federal judiciary. (Montgomery, 2019) In this aspect, its members affect policy-making, even though the Society vehemently denies lobbying for legislation, taking policy positions, or sponsoring/endorsing nominees and candidates for public service. (Fredrickson & Segall, 2020) (The Federalist Society, 2023)

The Federalist Society has become one of the most powerful legal organizations in history, with intellectual reach and political clout that no other legal group can match. (Mandery, 2019) Several of its members have filtered into successive Republican executive positions and into the federal courts. Justices Scalia and Thomas, appointed by Presidents Reagan and H. W. Bush, were members of the Society. (Montgomery, 2019) Approximately half of President Bush Jr's nominees to the federal bench were Federalist Society members, as were Samuel Alito and John Roberts - his appointees to the Supreme Court. (Devins & Baum, 2019)

The biggest breakthrough, though, came with the election of Donald Trump. During his campaign, Trump pledged that, if elected, he would appoint pro-life Justices to overturn *Roe v. Wade* and presented a list of 25 potential Supreme Court nominees, announcing that they had "all been picked by the Federalist Society". (Baum, 2019) (Littlefield, 2021) (Fritze, 2022)

Leonard Leo, the former executive vice president of the Society who also became President Trump's judicial advisor, coordinated the process that resulted in the successful confirmations of Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. (Kruse, 2018) (Mandery, 2019) (Montgomery, 2019) (Littlefield, 2021) The fact that all sitting Republican-appointed Justices have been Federalist Society members further stresses the role of the organization as a mediating institution between individuals and organizations who exercise political influence. (Devins & Baum, 2019)

An often-overlooked milestone of the Federalist Society and the conservative legal movement in general revolves around the decades-long efforts to weaken campaign finance regulations, with support from corporations. (Graves, 2022) (Przybyla, 2023) These efforts culminated in the 2010 Supreme Court's *Citizens United v. FEC* ruling which opened the doors for corporations, unions, and wealthy individuals to contribute unlimited amounts of money to political activities through 501(c)(4) non-profit groups, allowing them to remain anonymous.

By invoking the First Amendment on corporations, the ruling struck down BCRA's most important protections regarding campaign financing, unleashing corporate and special interest money. (Vogel, 2010) (Wertheimer, 2012) (Shribman, 2020) (Cavalli, 2013)

The Judicial Crisis Network (JCN), a 501(c)(4) non-profit advocacy organization founded in 2005 to promote judicial candidates has been instrumental in the successful nominations and appointments of conservatives in the federal courts. (Novak, 2017)

In reference to the Supreme Court, the JCN spent $15 million in campaigns to support the nominations of Alito and Roberts in 2005. In 2016, under the leadership of Carrie Severino, a former law clerk to Justice Thomas, the JCN spent more than $7 million to successfully keep Merrick Garland's nomination out and in 2017, committed to spend $10 million in advocacy for nominee Neil Gorsuch. (Weber, 2017) (Baum, 2019) The JCN also spent more than $4.5 million in campaign ads supporting controversial nominee Brett Kavanaugh. (Wheeler, 2018) In the aftermath of Justice Ruth Bader Ginsburg's death, the JCN launched a $2.2 million campaign in support of President Trump's nomination of Amy Coney Barrett who replaced Ginsburg's seat 38 days after her passing. (Soellner, 2020)

While the Federalist Society has had a crucial role in the instigation of the conservative ideology in the legal field, the conservative movement's efforts have been benefited from some parallel developments.

Apart from the libertarian conservatives that had always been against government interference in the economic domain, the Court's refusal to reconsider the school prayer rulings, the continuation of affirmative action, and the *Planned Parenthood v. Casey* ruling that reaffirmed abortion, galvanized the rightwing base of the Republican party and mobilized Evangelical conservatives against the federal government and the Court itself. (Devins & Baum, 2019) (Williamson, et al., 2011)

The rise of the Tea Party movement coupled with the rise of conservative media outlets have cultivated a sense of collective identity and a rebranding of conservative Republicanism by forging more extreme views on issues involving immigration, minorities, women, and LGBTQ rights. (Grossmann & Hopkins, 2015) (Williamson, et al., 2011) Fox News has been leading these efforts, echoing and intensifying conservative viewpoints, altering mainstream public

debate, and functioning more like a national social movement organization rather than a cable news channel. Political commentators such as Laura Ingraham, a former law clerk to Justice Thomas, have become increasingly influential, having a growing reach on conservative audiences. (Grossmann & Hopkins, 2015) (Williamson, et al., 2011)

Furthermore, the "advent of a media echo chamber" has been magnified by the conservative blogosphere where individuals seek out content that backs their pre-existing beliefs and share this content with an increasingly homogeneous social network, in a lot of cases giving prominence to non-factual conspiracy theories. (Devins & Baum, 2019)

The conservative legal movement's ascendance in influence and power has largely been one-sided for a number of reasons.

As previously explained, the ideological leaning of legal elites during much of the 20th century was leftward. (Devins & Baum, 2019) The trend began with the New Deal era that oversaw the massive growth of government, encompassing the modern welfare and regulatory state for the first time in modern history. (Tichenor & Harris, 2002-2003) These social and institutional advancements inspired a new generation of lawyers to engage in civic life. (Devins & Baum, 2019) As they later moved into leading positions in the profession, they witnessed the parallel mobilization of organized interests and social movements in pursuit of policy goals focused mainly on civil rights issues.

ACLU became the model organization in litigation involving women's rights, minorities, capital punishment, whereas LDF engaged in substantial activity in areas concerning voting rights, school desegregation, and employment. Both organizations had a profound impact on the legal thinking and methodology that spanned across many decades. (Baum, 2019)

The effect of civil libertarianism was also evident in the Warren Court - much less so in the Burger Court, which, however, did not overrule and of the major precedents set by the Warren Court. The Justices who joined the Court as liberals included both Democratic and Republican appointees. (Devins & Baum, 2019)

Because President Carter did not have the opportunity to appoint any Justices, every appointment between 1969 and 1992 was made from Republican presidents. (Baum, 2019)

(Hemel, 2021) Although these appointments tilted the balance to the conservative side, the Court remained relatively moderate in civil liberties issues. (McCay, 2013) (Baum, 2019) At the same time, an entire generation of potential Justices who were liberal Democrats had virtually no chance of winning appointments. (Baum, 2019) (Hemel, 2021)

Legal academia shared the liberalism of the rest of the legal elite, as did mainstream media - something that remains true to this day, even if there are now distinct career paths for conservatives and liberals in the legal profession**.** (Talbot, 2022) As the conservative movement was taking off, there were no liberal organizations comparable to the Federalist Society because there was no need for such organizations on the liberal side at the time - the elite segment of the legal profession was favorable to liberal positions in the second half of the 20th century. (Devins & Baum, 2019)

By the time the American Constitution Society (ACS) was formed in 2001, following the *Bush v. Gore* decision that sent shockwaves to the legal establishment, almost 20 years had passed since the first Federalist Society conference in 1982 and the organization had already established itself as a hugely effective network among legal conservatives. (Mandery, 2019) (Montgomery, 2019)

The ACS was established as the liberal counterweight to the Federalist Society, mirroring its operations by sponsoring conferences and panels, creating student and lawyers chapters, and funding education projects. (Montgomery, 2019) Justices Breyer, Ginsburg, and Sotomayor have, notably, been keynote speakers at the national conventions. (Devins & Baum, 2019) Still, its reach is narrower compared to the Federalist Society and it does not dominate the disperse liberal legal network. (Mandery, 2019) (Devins & Baum, 2019)

According to the ACS website, its mission is to "support and advocate for laws and legal systems that strengthen our democratic legitimacy, uphold the rule of law, and redress the founding failures of our Constitution and enduring inequities in our laws in pursuit of realized equality". (American Constitution Society, 2023)

This statement, while enticing, is also diffuse because it alludes to political, rather than legal, principles. It also seems to be lacking in focus, which is a common theme in liberal politics that have been predisposed to supporting individual social causes and advancing the interests

of diverse pro-government interest groups, often on a short-term performance, which may cause intergroup conflict and internal disorganization. (Grossmann & Hopkins, 2015) (Mandery, 2019)

Conservatives, on the other hand, insist on the language of first principles, maintain relative unity in pursuing shared policy goals, and have demonstrated interest in building lasting infrastructure that has benefitted from a base of big donors, including libertarian industrialists (Koch brothers, Mercer family) and powerful think tanks (Heritage Foundation, Cato Institute). (Grossmann & Hopkins, 2015) (Mandery, 2019) This strategy has, so far, led to their preferred outcomes as recent history has demonstrated that ideological movements, even when incorporating nationalist elements, are easier to manage than coalitions of constituent groups expressing multiple social identities. (Grossmann & Hopkins, 2015)

In essence, the increasing ideological distance between liberals and conservatives in the legal realm is largely a story of changes that have occurred in the Republican party and the direction it has taken since the 1980s. (Grossmann & Hopkins, 2015) (Baum, 2019) Conservative ideology is the key unifying force within the Republican party and, as such, it has been the central theme and primary consideration regarding judicial appointments. (Grossmann & Hopkins, 2015) (Devins & Baum, 2019)

On the other hand, Democratic Justices are more homogenous than they were in the past, but they are not extremely liberal. (Baum, 2019) This is mainly because the Democratic party is more of a "rainbow" coalition of racial, religious, economic, and sexual minorities, focusing not only in ideology, but also in advancing diversity and rewarding constituent interests. (Grossmann & Hopkins, 2015) (Baum, 2019) With so many varied considerations, it should come as no surprise that Presidents Clinton, Obama, and Biden have not appointed strong liberals to the Court - at least to the extent that these appointments could offer some serious competition to the united ideological front of their conservative counterparts. (Baum, 2019) (Devins & Baum, 2019)

Interest groups have always been a predominant force in Washington politics. Without undermining the growing percentage of Americans who vote - a trend that particularly shone in the last presidential elections - the percentage of voter participation in the U.S. and turnout remains significantly lower compared to other advanced democracies that vote at higher levels. (Eksterowicz, et al., 1994)

Diverse ways of American citizen participation that extend beyond the polls include; contacting public officials and expressing their opinions through phone calls, letters, emails, or face-to-face meetings; participating in, contributing to, and/or working directly for candidates' campaigns; protesting publicly with the intention of social, political, or economic change; and most frequently, participating in grassroots movements and special interest groups. (Cavalli, 2013) (Eksterowicz, et al., 1994) (Longley, 2021)

Interest group participation is an indirect and very effective way of political participation for the vast majority of Americans. To be sure, interest groups by definition are nongovernmental organizations and associations that devote a core part of their actions in advocating toward the implementation of policies on behalf of their members. (Heaney & Strickland, 2015)

In a broad sense, interest groups encompass every area of public participation and citizen involvement and may include private corporations, unions, trade associations; however, not all groups are political - many are social clubs, service organizations, charities, hobby and religious groups. (Eksterowicz, et al., 1994) (Heaney & Strickland, 2015) (McCay, 2013) Approximately three-quarters of Americans belong to at least one group and contribute financially or in time - oftentimes both - to an array of interests that align with their political, moral, and recreational inclinations. (Eksterowicz, et al., 1994) (McCay, 2013)

Participation in associations has been an essential part of the American citizenry DNA since the formation of the nation, something that has been noted by Alexis de Tocqueville in his classic book "Democracy in America". (Patterson, 2019) (Eksterowicz, et al., 1994) The growth of organized, systematic interest groups politics can be traced to the end of the 19th century, but most importantly during the Progressive era, when a wave of groups was mobilized in pursuit of policy goals on diverse issues such as suffrage, child labor, segregation. (Tichenor & Harris, 2002-2003) Organized interests targeted federal actors who welcomed and encouraged this form of engagement as it coincided with the parallel growth of big government.

Some of the most notable associations created in that era include the Chamber of Commerce, the American Federation of Labor (today's AFL-CIO), the American Medical Association (AMA), and the National Association of Manufacturers - on the front of civil liberties, NAACP was formed in an effort to promote equality for African Americans and fight against systemic segregation. (Eksterowicz, et al., 1994) (Tichenor & Harris, 2002-2003)

The New Deal era witnessed a further expansion of organized interest activity, which was, again, concurrent with the post-war reinforcement of big government policies that became the blueprint for the modern welfare and regulatory state. (Tichenor & Harris, 2002-2003) Interest groups were recognized as institutional partners by the FDR administration and became decisive forces in progressive and regulatory policy-making that oversaw the creation of the Social Security Act, the Federal Housing Administration, the Securities and Exchange Commission, and the Food and Drug Administration. (Tichenor & Harris, 2002-2003) (Britannica, 2023)

However, the real shift in interest group formation took place from the 1960s and onward. Approximately 40% of the associations with Washington offices were formed between 1960-1980. (Eksterowicz, et al., 1994) The social movements of the 1960s relied heavily on public protest, activism, and in many cases took part in nonviolent acts of civil disobedience as a way to address injustices. (Patterson, 2019) Their successful and continuous advocacy led to the adoption of landmark federal legislation: The Civil Rights Act of 1964 and the Voting Rights Act of 1965. (Eksterowicz, et al., 1994) (McCay, 2013)

Women's issues, racial equality, environmental protection inspired the proliferation of cause-oriented organizations such as the National Organization for Women (NOW), Common Cause, Students for a Democratic Society (SDS), Greenpeace. At the same time, a number of conservative, religious-right organizations such as Operation Rescue (an antiabortion group), Christian Coalition, and the Heritage Foundation also emerged in the late 1970s to countervail the influence of the more liberal ones. (Eksterowicz, et al., 1994)

Today, almost every significant cause in American society is represented by groups. Their formation and outreach have benefited enormously from the technological advancements in communications technologies, facilitating the access and participation of millions of citizens who seek engagement and advancement of the interests they share. (Eksterowicz, et al., 1994)

Interest group identities vary and while some may constitute membership groups that rely on voluntary contributions, other groups may be associations with mandatory fees or citizens groups with selective incentives that may include material benefits. (Patterson, 2019) (Cavalli, 2013) With regards to a social movement's strive for long-term influence, as already evidenced, a more "institutional" approach is required to raise awareness and build upon collective moral commitment. (Eksterowicz, et al., 1994)

Organized groups and associations that work on behalf of social movements most frequently further their efforts and help to solidify their impact in society - on a micro or macro level. Whereas many groups form around a specific cause, some groups are publicly represented through political entrepreneurs or well-known individuals who serve as patrons and take the lead in their operation. (Eksterowicz, et al., 1994)

With the government's role expanding through the 1960s and 1970s, federal agencies worked on the implementation of a decentralized system by stimulating and subsidizing organizations with state and local officials, social workers, educators, and professionals - mixing public and private components. (Eksterowicz, et al., 1994)

The influence of interest groups on government level has been a point of intense debate throughout the years. According to the pluralist point of view, competition between the varied interests in the American system would result in counterbalancing among them and bring about moderate public policies and a broad range of interests' representation in the society. (Eksterowicz, et al., 1994) (Patterson, 2019) However, it is safe to say that this is an outdated view as organized interests that seek to influence policymaking have been mostly associated with negative connotations by the public opinion, as a result of their lobbying activities. (Eksterowicz, et al., 1994) (Patterson, 2019)

Interest groups hire lobbying firms with the intention of influencing the decisions of elected officials and committees in favorable positions to their causes. (Cavalli, 2013) (Eksterowicz, et al., 1994) Corporations and sufficiently large groups and associations, have their own paid staff lobbyists in Washington DC in order to advocate the scope of their activities and exert influence from a more powerful position. (Patterson, 2019) (Eksterowicz, et al., 1994)

The broad influence of interest groups in policymaking has also been articulated in the "subgovernment model of public policy" analysis that has gained ground among scholars and students. (Cavalli, 2013) According to this analysis, each area of public policy is influenced by an "iron triangle" subgovernment model - an intertwinement between congressional committees, the executive agency, and interest groups that push for specific policy fixes. (Cavalli, 2013) (Patterson, 2019)

Lobbying is not limited to cause-related advocacy and can extend to even more influential tactics. (Patterson, 2019) One such lobbying tactic - controversial in nature and scope but also firmly established in terms of practice - is electioneering, the process under which groups aim to influence voters in favor of or against political candidates and parties. (Eksterowicz, et al., 1994) Electioneering may cover all major aspects of political campaigning, including the display and distribution of campaign materials, sponsoring official events, hosting televised rallies and debates. (Cornell Law School, 2023)

The driving forces behind electioneering are the political action committees (PACs) - organizations that specialize in raising and funneling campaign funds to candidates, ballot initiatives, and legislation. (Eksterowicz, et al., 1994) (Cavalli, 2013)

Since their creation in the 1940s and through the latter half of the 20th century, PACs have served as the financial vehicle and pioneer of strategies that were instrumental in transforming political campaigning in the U.S. (Charnock, 2020)

Between the 1940s and early 1970s, PACs were largely unregulated, however, their mounting influence led to the adoption of the Federal Election Campaign Acts (FECA) which established the Federal Election Committee (FEC) as an official mechanism to oversee campaign practices; sought to sever the ability of PACs to influence the election process by requiring them to register with the federal government; limited the amount of allowed contributions to federal campaigns; and established a system of public funding for presidential nominations and elections. (Cavalli, 2013) However, some of these measures were short-lived. In 1976, the Supreme Court upheld that candidate spending fell under protection of speech and, as such, limits on independent expenditures were unconstitutional. (Cavalli, 2013)

According to *Buckley v. Valeo*, contribution limits applied only to "express advocacy" - wording that explicitly advocated in favor of or against a candidate. (Cavalli, 2013) (Jones, 2023) This decision laid the groundwork for "soft money" contributions - an indirect way of campaigning which relies on issue ads and party-building activities that are not subject to restrictions. (Cavalli, 2013) (Evers-Hillstrom, et al., 2020)

With the technological advancements of the 1980s and 1990s, issue ads became an attractive concept for political campaigning, given the lack of limitations when compared to monetary contributions and the multiple new forms of media that they could be funneled to (radio, cable television, print press, and the novel, but fast-growing, Internet). (Cavalli, 2013)

Indeed, by the late 1990s, issue ads were dominating the airwaves before every election, having effectively bypassed the FECA regulations and rendering contribution limits meaningless. (Cavalli, 2013) In the early 2000s, the Bipartisan Campaign Reform Act (BCRA) was enacted into law as an attempt to control the flow of funding in federal elections. The BCRA placed restrictions on political-party spending by banning parties from using soft money and restricting their ability to run issue ads; however, no restrictions were placed on interest groups, creating a loophole that was exploited by party members who now channeled their activities into tax-exempt 527 groups. (Cavalli, 2013)

According to the *Buckley* decision, soft money contributions are not considered campaigning so as long as these groups didn't engage in direct campaigning activity by expressly advocating for the election (or defeat) of specific candidates, they could still run politically focused ads and be perfectly legal. (Jones, 2023) (Cavalli, 2013)

While PACs and issue ads maintained a prominent role in political campaigning through the early 2000s, the catalyst for campaign financing and the American party system as a whole came in the form of the *Citizens United v. FEC* ruling in 2010. (Evers-Hillstrom, et al., 2020) With this monumental decision, the Supreme Court's majority opinion argued that corporations, including nonprofits and unions, were allowed to spend unlimited amounts of money in campaign advertising. (Cavalli, 2013) (Evers-Hillstrom, et al., 2020)

The argument relied on the *Buckley* precedent and professed that limiting independent political spending of corporations and groups violated the First Amendment's protection of speech; such

limits were, therefore, unconstitutional. (Cavalli, 2013) On the rationale that they form "associations of citizens", the Court accorded personal rights to corporations and unions and allowed them to use their own money for political activities - essentially overturning election spending restrictions that date back to 100 years. (Parramore, 2009) (Toobin, 2012) (Cavalli, 2013)

The ruling was almost immediately scrutinized among progressive legal and political circles; President Obama, being one of its most high-profile opponents, gave a dire warning that the decision *"will open the floodgates for special interests — including foreign corporations — to spend without limit in our elections."* (Vogel, 2010) (Toobin, 2012)

President Obama's concerns over the potentially massive and detrimental effect of *Citizens United* on elections financing can be traced to a combination of factors that collectively emboldened the explosion of big money and altered the landscape of political campaigning. Chronic gridlock within the FEC, a number of court decisions that further scaled back on limitations in campaign finance law combined with inaction from Congress in codifying reasonable restrictions on corporate financing, allowed for a huge shift in the balance of power from political parties to non-party outside groups that flooded the elections with approximately $4.5 billion in campaign expenditures and electioneering communications over the decade that followed. (Evers-Hillstrom, et al., 2020) (Lee, 2010)

It is important to note that while *Citizens United* enabled corporate spending in federal campaign finance, the actual fundraising part was addressed in a separate decision issued by a federal court later in 2010. (Murse, 2019)

In *SpeechNow.org v. FEC,* the United States Court of Appeals for the District of Columbia Circuit applied the precedent of *Citizens United* and ruled that PACs may raise unlimited funding not only from individuals, but from corporations and unions as well under the premise that said contributions are not directly funneled to candidates. (Murse, 2019) (Evers-Hillstrom, et al., 2020) (Garrett, 2016) This consequential decision paved the way for the creation of super PACs or independent expenditure-only committees (IEOCs) that can raise and spend unlimited amounts of money in political advertising or fund related services, such as voter canvassing. (Garrett, 2016)

Whereas the outcome of *Citizens United* and *SpeechNow* didn't immediately resonate with the American public - in 2012, nearly half of Americans didn't know what the term "super PACs" referred to - a majority of those who were aware of the changes in independent campaign expenditures, believed that the new rules would have a negative effect on the 2012 presidential elections according to a Pew Research survey published in that year. (Pew Research Center, 2012)

Skeptics aside, and judging by actual numbers, the decade that followed was by far the most expensive in the history of U.S. elections. (Evers-Hillstrom, et al., 2020)

In 2010, super PACs, then amounting to just 83, raised close to $90 million and spent approximately $60 million in campaigning. Within just 2 years, the number of registered super PACs jumped to 1275, having raised more than $800 million and spent more than $600 million for the 2012 elections. The highly debated 2016 election cycle, observed super PACS - now counting to 2393 - raising more than $1.7 billion and breaking the ceiling of $1 billion in expenditures. Ever more aggressively, 2276 super PACs raised almost $3.5 billion and spent more than $2.2 billion in the 2020 elections. (Evers-Hillstrom, et al., 2020) (OpenSecrets, 2023) As of 2023, 2476 groups organized as super PACS reported receipts of more than $2.7 billion and expenditures of almost $1.5 billion in the 2021-2022 cycle. (OpenSecrets, 2023)

Taking into account the above figures, it is worth noting that throughout the past 13 years there has been an almost steady ratio of conservative and liberal super PACs tied to 60/40 percent respectively, which also coincides with the striking rise of the conservative movement. (OpenSecrets, 2023) Notwithstanding ideological and political orientation, super PACs have garnered additional criticism because of their link to secret spending organizations, otherwise known as "dark money" groups. (Evers-Hillstrom, et al., 2020)

This term refers to 501(c) nonprofit and tax-exempt organizations that can accept unlimited contributions without being required to publicly disclose their donors. (Cavalli, 2013) Similar to the 527 groups, 501(c) groups are also permitted to finance political campaigning, as long as they don't directly contribute to federal candidates and election spending is not their primary cause. (Evers-Hillstrom, et al., 2020) (Ghosh, 2022) Their non-disclosure structure allows individual donors and organizations to remain anonymous and operate in secrecy - a tactic that has been criticized for eroding transparency and favoring a culture of magnified, undue

influence by wealthy individuals and special interests (including for-profit corporations and unions). (PIRG, 2012) (Lee, 2010) (Wertheimer, 2012) (Campaign Legal Center, 2011)

Even though super PACs disclose their contributions and expenditures as per the FEC regulations, the anonymity shield of 501(c) groups allows for the true sources of campaign funding to remain unknown, creating confusion and undermining the voters' ability to understand where the super PACs' contributions originate from. (Cavalli, 2013) (Ghosh, 2022) (Campaign Legal Center, 2011)

It is estimated that these secretive groups collectively spent close to $1 billion on elections over the last decade, with many of the dark money groups being funded primarily by top 1% individuals and major corporations. (Evers-Hillstrom, et al., 2020) A more worrying trend, and one that was especially highlighted in the 2016 elections foreign interference, is the influx of money from foreign companies into some of these groups which raises questions about the origins of these contributions and their legality, as foreign nationals and foreign-owned corporations are prohibited from spending in U.S. elections. (Evers-Hillstrom, et al., 2020)

By having such a strong hold on the election campaigning, the special interests' reach goes well beyond politics, infiltrating the American society on a deeper level.

Candidates, with the help of the organizations behind them, campaign on hot-button issues that their constituents care about and can be as diverse as criminal justice, immigration reform, minority rights, gun control, healthcare, drug epidemic, economy, energy, climate change, trade policies. (Campaign Legal Center, 2011) Financing is one of the most crucial components to the success of a candidate's campaign; the level and quality of resources affects exposure, enhances the outreach, and can ultimately determine the outcome. (Wertheimer, 2012) Under this premise, equal participation in the American democracy - "one person, one vote" - can be clearly disrupted by the disproportionate representation of candidates, which affects every step of the electoral process, leading up to Congress. (PIRG, 2012)

Once in office, elected officials and lawmakers often have to weigh both their constituents' demands and the interests that helped get them elected in the first place. This dichotomy mirrors their willingness or reluctance in taking action on specific pieces of legislation with greater consequences for the society as a whole. Deep-seated polarization and legislative gridlock in

Congress have contributed to a stalling, or worse yet, backsliding in federal policies concerning not only hot-button issues, but also formerly well-established civil rights. (Glenza, 2021)

The sheer volume of activities and massive expenditure of resources demonstrate that special interests are very influential in politics, from campaigning to legislation, but one often overlooked component is their influence on the courts. By mapping out the campaign process, organized interests are able to obtain proximity to political candidates, both on congressional and on executive level. Following a successful campaign run, this proximity can be leveraged on many fronts, including the federal judicial appointments where the growing polarization in politics is having a powerful effect in the confirmation process. As a case in point, President Trump's judicial nominees and subsequent appointments were all famously vetted by leading conservative organizations with ties to funds and 501(c) groups that had generously contributed to his campaign. (Massoglia & Perez, 2019)

Recent appointments to the Supreme Court followed the same pattern, cementing an already-existing conservative majority. Not surprisingly, the Roberts Court has exhibited a questionable track record in civil liberties and social policies, as shown in key decisions regarding healthcare (*NFIB v. Sebelius*), voting rights (*Shelby County v. Holder*), religion (*Burnwell v. Hobby Lobby*), forced arbitration (*AT&T v. Concepcion*), and the defunding of unions (*Janus v. AFSCME*). More recently, the current conservative supermajority has delivered some devastating rulings on environmental regulations (*West Virginia v. E.P.A.*), gun control (*NYSRPA v. Bruen*) and, more famously, abortion rights (*Dobbs v. Jackson Women's Health Organization*).

Because special interests are particularly keen in shaping government policy, the Supreme Court, as an institution, is especially important as its decisions can have a broad application on national policy. (Baum, 2019) (Hemel, 2021)

As the highest court in land and the final stopping point for many politically sensitive issues, the Supreme Court's opinion regarding legal rules applies to the nation as a whole and, therefore, affects millions of people - even if they are not directly involved as parties during litigation. (Baum, 2019) (Bonica & Sen, 2021) (Hemel, 2021)

This particularity was recognized by interest groups which, having pioneered the scope of political influence, strategically intensified their focus on the Court aiming on decisions that have a far-reaching effect in the government and the society as a whole. (Hakman, 1966) (Hansford, 2004)

In the first half of the 20th century and up to 1930s, the Supreme Court was mostly focused on business and economic affairs with a scarce presence in civil liberties issues. (McCay, 2013) (Devins & Baum, 2019) During this time, interest group participation was equally limited and with lawyers who either lacked or had little experience arguing before the Supreme Court. NAACP LDF and ACLU were the two leading organizations that consistently engaged with cases involving racial segregation, criminal justice, and gender discrimination, gradually building a network of lawyers who developed expertise and long-term strategies in Supreme Court litigation. As pioneers, both of these groups served as the blueprint for future interest group activity and played a key role in expanding the civil liberties agenda by bringing relevant cases to the Court. (Baum, 2019)

Over the second half of the 20th century, the Supreme Court progressively developed a specialized focus on civil liberties issues which has since remained a constant. (Baum, 2019) In terms of legal protection, civil liberties is a broad category because it encompasses the fundamental rights which ensure a life of dignity within the society: the right to a fair procedure, the right to equal treatment by the government and private institutions, and certain substantive rights such as the freedom of speech and expression, as well as the highly-debated right to privacy, which was first recognized in 1965 (*Griswold v. Connecticut*) - nearly 200 years after the provisions of the Bill of Rights were written. (Cavalli, 2013) (McCay, 2013)

The social changes of the era and favorable public opinion over the expansion of civil rights across socially and economically disenfranchised groups, criminal defendants, and minorities enhanced the work of interest groups. (Baum, 2019)

At the same time, the Justices' own interest in protecting individual liberties reflected upon the rulings of both the liberal Warren and the "transitional" Burger Court. (Baum & Devins, 2010) Due to the prominence of civil liberties issues in its agenda, the Supreme Court has been instrumental in shaping policy in this area - much more so than the executive and legislative branches that have previously dealt with such issues at a lower priority. (Baum, 2019)

The Supreme Court gives full consideration to cases that involve: a conflict among lower courts; a decision that is in conflict with Court precedent; an issue that has been left open by the Court in a prior case; tension among prior Court decisions. (Schweitzer, 2003) The presence of a conflict among lower courts remains by far the most important criterion in the case selection, as it elaborates the Supreme Court's role as a policymaker. (Baum, 2019)

The interest groups' influence in the certiorari process is crucial, especially when taking into consideration that the Supreme Court grants full review to an average of 80 cases each term, or approximately 1% of the cases that enter its docket per year. (Huchen & Kastellec, 2023)

In a majority of civil liberties cases, interest groups can initiate cases either directly as litigant parties or by undertaking the sponsorship of cases on behalf of another party. (Collins Jr., 2009) (Collins Jr., 2018)

Assuming that an interest group has a legal arm and can be represented in Court, direct participation in the litigation process is important for two reasons: First, an interest group will most probably have the necessary resources to introduce cases that may not have been able to reach the Court otherwise and second, the group in question can directly challenge a law or policy as a litigant which in, high-stake cases, can raise the group's profile and attract more members and financial contributions. (Hakman, 1966) (Hansford, 2004) (Collins Jr., 2018)

Similarly, through the practice of sponsoring and providing legal services, interest groups are able to influence the course of cases they undertake and, on a grand scale, support the legal protection of civil liberties that would not have been possible without interest group action. (Hakman, 1966) (Collins Jr., 2018) Depending on their level of resources and reputation, some interest groups are able to develop long-term litigation strategies and expertise in areas where they seek to shape the legal policy. (Hansford, 2004) (Collins Jr., 2007) (Collins Jr & Solowiej, 2008)

On civil liberties issues, the Supreme Court decides a case on two levels; On a first level, the Court makes a decision on the merits and either reaffirms or reverses the lower court's decision. (Hansford, 2004) At this stage, interest groups may attempt to secure relief for a particular litigant arguing against the government's alleged infringement of the litigant's rights. (Collins

Jr., 2007) On a second, and more outreaching level, the Court's majority opinion will examine a broader legal policy to be adopted and, therefore, set a legal precedent. (Collins Jr., 2007)

Lobbying in the context of judicial decision-making is by default structured and formalized, as procedural rules bar circumstantial communication with the Justices. (Hakman, 1966) (Collins Jr & Solowiej, 2008) (Huchen & Kastellec, 2023) Legal advocacy on behalf of a party can be perceived as a form of lobbying and when referring to organized interests, advocacy generally comes through the use of amicus briefs. (Collins Jr., 2007) (Huchen & Kastellec, 2023)

Amicus briefs may be submitted at the certiorari and/or at the merits stage. (Baum, 2019) When a writ of certiorari is accompanied by amicus briefs, it's usually a sign that the case has broader policy implications and is worthy of review. (Collins Jr & Solowiej, 2008) (Collins Jr., 2018) During this stage, organized interests may urge the Court to either grant or deny review. (Huchen & Kastellec, 2023) At the merits stage, the Court, having agreed to hear a case, is open to arguments from third parties. (Huchen & Kastellec, 2023) Organized interests are, then, able to present arguments in favor or against a particular ruling, provide the Court with researched information relevant to the case and ultimately seek to (re)shape public policy, especially when the conditions allow for successful policy influence. (Hansford, 2004) (Hansford, 2004) (Collins Jr., 2007)

The first recorded amicus brief was filed 200 years ago in the case *Green v. Biddle* (1823) and since then, the amicus briefs have become a staple in Supreme Court practice, allowing interest groups to participate in the litigation process when they are not a direct party to the dispute. (Collins Jr., 2009) (Collins Jr., 2018) (Franze & Anderson, 2020) These briefs present the Court with social, scientific, and factual information, alternative legal positions and perspectives regarding the policy implications of the potential decision with the aim to persuade or influence the Court in endorsing a particular policy outcome. (Hansford, 2004) (Collins Jr., 2007) (Collins Jr., 2009) (Collins Jr., 2018)

In Supreme Court advocacy, amicus briefs remain one of the most frequently used mechanisms that interests use to turn their economic, political, and social preferences into law. (Collins Jr., 2007) (Collins Jr & Solowiej, 2008) (Collins Jr., 2018)

It should be noted that even though their "friends of the court" name implies neutrality, amicus briefs are, in fact, adversarial and almost always urge the Court to adopt specific policy on a disputed issue. (Collins Jr., 2007) (Collins Jr & Solowiej, 2008) Connecting this to the adversarial system, a basic component of the American jurisprudence, Justices are likely to act favorably toward the most persuasively-argued position. (Collins Jr., 2009)

By providing the Court with rounded and well-researched information on the potential consequences of a decision, amici reinforce the arguments of the direct litigants and advocate for specific policy outcomes. (Collins Jr., 2018) In some occasions, amicus briefs may be filed contrary to the ideological position of the party they represent, aiming to stir the Justices' attention who might be inclined to perceive them as more credible. (Collins Jr., 2018) Even though the Justices may be set in pursuing their own policy goals, they are also legal thinkers and, therefore, possibly receptive to these tools of persuasion. (Collins Jr., 2007)

Amici may include individuals, corporations, public advocacy organizations, public interest law firms, unions, trade associations, and local governments among others. (Collins Jr., 2018) They strategically target relatively information-poor and/or complex cases that have the potential for significant policy impact, as the ultimate mission is obtaining their policy goals. (Hansford, 2004) (Hansford, 2004) (Collins Jr., 2018)

When those policy goals are met and their arguments are reflected in the majority opinion, amici can take credit and attract media attention in high-profile cases. (Hakman, 1966) (Hansford, 2004) Media coverage is of outmost importance for membership interests, as their successful influence in policy outcomes will highlight their activity, help maintain existing members and attract potential new members and donors. (Hansford, 2004) (Collins Jr., 2018)

In terms of Supreme Court activity, amicus filings have skyrocketed over the past decade, with amici participating in 98% of all argued cases and filing an average of 800 briefs during each term. (Larsen & Devins, 2016) This level of participation represents an astonishing 800% increase from the 1950s and a 95% increase from mid-90s. As a comparison, *Roe v. Wade* produced a total of 23 amicus briefs, while more than 140 briefs were filed in *Dobbs v. Jackson Women's Health Organization*, the case that overturned *Roe* 50 years later. (Franze & Anderson, 2020)

Justices, on their end, have increasingly become reliant on amicus briefs, citing them in almost half of their rulings. (Franze & Anderson, 2020) Between 2010-2020, liberal Justices relied on an average 40% amicus citation rate, with the highest rates found in Justices Ginsburg (46%) and Kagan (45%). The conservative justices cited amici at much lower rates - 31% (Alito) at their highest and 18% (Thomas) and 14% (Kavanaugh) at their lowest. (Franze & Anderson, 2020)

As a general rule, cases accompanied by a large number of amicus briefs are more likely to produce concurring and dissenting opinions as the number of briefs demonstrates the importance of the case and provides the Justices with the foundation to create separate opinions. (Collins Jr., 2018)

Information provided by repeat players is often considered more credible, as amici with a history of lobbying the Court and a reputation for quality briefs receive more attention and they are expected to exert more influence over policy outcomes than newcomers or single shotters. (Hansford, 2004) (Larsen & Devins, 2016) (Franze & Anderson, 2020) According to an (anonymous) survey of Supreme Court law clerks, 88% admitted that they pay careful attention to amicus briefs written by renowned attorneys. (Larsen & Devins, 2016) (Huchen & Kastellec, 2023)

Due to its frequent participation and unique position, the federal government - represented by the Office of Solicitor General (OSG) - is the most impactful interest group in Supreme Court litigation. (Baum, 2019) (Toobin, 2012) The OSG supervises and conducts all federal litigation in the Court, serving as an advisor and advocate of the Court while representing the executive branch and carrying out the president's policies. (Baum, 2019) Because of its unique position, the OSG is entrusted by the Justices to provide the Court with high-quality briefs including valuable and, otherwise, unattainable information on the policy ramifications and practical consequences of a potential decision. (Larsen & Devins, 2016) (Baum, 2019) The Office's selectivity in filing gives higher credibility to the government-filed petitions which tend to be viewed more favorably by the Court. (Baum, 2019) (Toobin, 2012) (Larsen & Devins, 2016)

The Supreme Court frequently invites the OSG to provide amicus filings at the certiorari stage, when the Justices want to examine the government's views on a specific case. (Baum, 2019) On their end, the OSG often asks permission - which is almost always granted by the Court -

to participate in oral arguments in cases of interest for the federal government. (Baum, 2019) Government briefs are among the most cited in the Justices' majority, concurring, and dissenting opinions, holding a distinct value because of their institutional credibility. (Franze & Anderson, 2020) Justice Ginsburg once called the OSG a "true friend of the Court" and approximately 70% of the law clerks have singled out the OSG as the most important amicus filer. (Larsen & Devins, 2016)

For all the invaluable contributions of the OSG, it should be noted that in civil liberties issues, the ideological coloration of the administration in charge frequently affects the Office's position - for instance, on the issue of abortion, the government's briefs during Republican administrations advocated for state restrictions, while briefs filed during Democratic administrations challenged restrictions. (Baum, 2019)

The dramatic rise of amicus curiae activity in the Supreme Court is also linked to the Supreme Court Bar, an elite association of top-notch lawyers, former clerks, and OSG alumni as leading members. (Larsen & Devins, 2016)

The Supreme Court Bar has been instrumental in developing a sophisticated "amicus strategy", also referred to as "amicus machine", due to the highly reputable repeat players who submit a sheer volume of substantially reliable amicus briefs that the Justices can count on for excellent advocacy, critical factual claims, and legal arguments. (Larsen & Devins, 2016) (Huchen & Kastellec, 2023)

Keenly aware of the amicus briefs' value in signaling a petition's importance, these legal experts are able to recognize cert-worthy cases in advance, placing themselves in an advantageous position of seeking or developing briefs while the cases are pending in lower courts. (Larsen & Devins, 2016) (Huchen & Kastellec, 2023) Moreover, they coordinate and prepare the final brief filings together with the Supreme Court clerks, suggesting where the political and academic elite stand on issues presented before the Court. (Huchen & Kastellec, 2023)

Referring to the Supreme Court Bar, Justice Kennedy was quoted saying: "They basically are just a step ahead of us in identifying the cases that we'll take a look at ... They are on the front lines and they apply the same standards as the Justices." (Larsen & Devins, 2016)

With regards to influence, the "amicus machine" effect is comparable to the role of the OSG as it produces a reputation and expertise market and helps to build the Court's case docket. At the same time, according to Justice Roberts, the Supreme Court Bar serves as a critical counterweight to the OSG specialists, as it can diffuse the advantage of this Office to an expanded group of people and, therefore, increase the number of credible practitioners who can have access to the Court when their interests are at stake. (Larsen & Devins, 2016)

A crucial contributor to the above-mentioned instruments of influence is the Supreme Court clerk, one of the most coveted positions in the legal profession. (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023) With only about 36 clerks selected for each term, this position is among the most reputable placements for graduating law students. (Huchen & Kastellec, 2023)

The Supreme Court clerkships typically last for a year and during that time the clerks are exposed to the inner workings of the Court and acquire an intimate understanding of the institution and its policies. (McGuire, 2000) (Peppers & Zorn, 2008) Upon finishing their tenure, they are able to leverage the experience and networking associated with this position in highly-regarded and well-compensated jobs in the government, academia, or lucrative careers in prestigious law firms across the country. (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023)

The clerks' role in the Court has grown exponentially through the years. In the late 19th century, the duties of the "legal secretary" at the time, were mundane and revolved mostly around stenography and other secretarial tasks. (Peppers & Zorn, 2008) By the early 20th century, the Congress had authorized Justices to hire both a clerk and a stenographer, which allowed the clerks to assume legal duties and more substantive responsibilities, including reviewing certiorari petitions. (Peppers & Zorn, 2008) Since the 1950s, clerks have also assumed drafting opinions. (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023)

Over the past 30 years, Justices have come to rely heavily on their clerks by broadening their duties beyond the already critical task of managing the flow of cases that enter the docket. (Peppers & Zorn, 2008) In addition to reviewing about 10,000 certiorari petitions and writing memoranda with recommendations to grant or deny review, the law clerks also write bench memoranda to prepare the Justices for oral argument, as well as the first drafts of the majority, concurring, and dissenting opinions. (McGuire, 2000) (Larsen & Devins, 2016)

Due to the multi-faceted nature of this job, the mechanisms of influence on judicial behavior are varied. (Peppers & Zorn, 2008) When reviewing cert petitions, clerks assess and evaluate the submitted information in order to summarize it in memoranda and make relevant recommendations on whether full review should be granted or not. (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023) The Justices then review the memoranda to determine which cases will be heard during each term. At the merits stage, clerks prepare bench memoranda with compelling arguments about a legal doctrine or precedent that will support (or sway) the Justice's preferred outcome. (McGuire, 2000) (Peppers & Zorn, 2008) Furthermore, when preparing the first drafts of opinions, clerks research the facts and law relevant for the case, often gaining informational advantages that can allow them to steer decisions in a particular direction. (McGuire, 2000) (Peppers & Zorn, 2008)

Aside from the institutional expertise, clerks also enjoy the advantage of immediate access and proximity to the Justices, so they can exert influence in other ways, such as informal conversations where they can express their policy preferences. (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023)

Candidates for these highly sought-after positions bear similar characteristics with their Justices, namely elite education and ideological compatibility. (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023) Harvard, Yale, Stanford, the University of Chicago, and Columbia are the five law schools that have historically provided the Court with the greatest number of clerks. (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023)

When it comes to compatibility, Justices tend to choose like-minded clerks who mirror or are very closely aligned with their overall legal and policy perspectives. (Peppers & Zorn, 2008)

In the past two decades, clerkship has been affected by partisanship and the Justices' ideological profiles and policy preferences play a key role in the makeup of the clerks in their chambers. (Peppers & Zorn, 2008) The professional relationship between Justices and their clerks today is largely determined by a shared judicial ideology and the selection process follows the same pattern as the Justices' nomination process. (Peppers & Zorn, 2008) Ideologically liberal Justices are most likely to choose clerks whose political party affiliation is Democratic whereas conservative Justices will come from a pool of candidates affiliated with the Republican party. (Peppers & Zorn, 2008)

In addition to the influence in the chambers, Supreme Court clerkship is one of the most obvious cases of revolving door in the federal judiciary. (McGuire, 2000) (Huchen & Kastellec, 2023)

As already mentioned, upon completion of their clerkship, Supreme Court clerks can virtually dictate any career path they wish to follow. (Peppers & Zorn, 2008) When choosing to branch out into litigation, former clerks are valuable assets in the wider attorney community for many reasons. (McGuire, 2000) (Huchen & Kastellec, 2023) Their government experience guarantees numerous connections that are useful to the lobbyists when the need for communication arises - for this reason, Supreme Court clerks join top law firms and are usually presented with lucrative signing bonuses. (McGuire, 2000) (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023)

Additionally, having worked closely with the Justices, they understand their judicial philosophies better and they tend to be more effective advocates at the certiorari stage. (McGuire, 2000) (Huchen & Kastellec, 2023) Moreover, their past experience and exposure to the "cert pool" gives them the advantage of recognizing petitions that are most likely to receive full consideration, in terms of content quality and overall importance. (McGuire, 2000) (Peppers & Zorn, 2008) (Huchen & Kastellec, 2023)

Former clerks practicing in Washington D.C. are significantly more likely to be veterans in Supreme Court litigation - about one in sixty handles Supreme Court litigation, as compared to almost one in a thousand of non-clerks. (McGuire, 2000) Well-resourced litigants and interest groups are inclined to hire former clerks in cases that have the potential to reach the Court. (McGuire, 2000) (Huchen & Kastellec, 2023)

At the certiorari process, former clerks can influence through direct representation (working for the petitioners and filing petitions seeking review by the Court) or indirect representation (working for amici and authoring the briefs urging the Court to grant review). (Huchen & Kastellec, 2023) In the preparation of amicus briefs, former clerks often assist organized interests that lobby the Court as amici. (Huchen & Kastellec, 2023) In both cases, the presence of a former clerk on a cert petition or an amicus brief is associated with a higher probability of the Court granting review, as it indicates that the case is cert-worthy. (Huchen & Kastellec, 2023)

In comparison, their influence at the merits stage is quite limited as it can only extend to the approximately 80 cases that reach the full consideration status during each term. Still, when the Court decides to appoint an attorney to make an argument at merits stage that neither party wants to make, the choice is almost always for a former clerk - roughly one in ten has been involved in one or more cases at the merits stage. (McGuire, 2000) (Huchen & Kastellec, 2023)

The judicial processes tend to reward government experience in political advocacy and former clerks who have been in the privileged position of accumulating relationships, recognition, and institutional expertise inside the government are significantly influential. (McGuire, 2000) (Huchen & Kastellec, 2023) Their overall contribution to the Supreme Court functions has important consequences for the judicial outcomes. (McGuire, 2000) (Huchen & Kastellec, 2023)

Supreme Court Justices and their clerks, as well as federal judges, lawyers for the OSG, and Supreme Court practitioners are part of a super-elite and intertwined network whose members often wear several hats. (Larsen & Devins, 2016) (Huchen & Kastellec, 2023) The 15 former and current members of the Roberts Court are part of this elite network which is central to their professional and social standing. (Devins & Baum, 2019)

In their vast majority, the Justices who have served on the Court bear an upper-middle class upbringing and Ivy League education. (Baum & Devins, 2010) (Devins & Baum, 2019) All but four Justices who have sat on the Court since 1987 attended Harvard, Yale, or Stanford Law School; five Justices who have served on the Roberts Court clerked for a Supreme Court Justice; six were law professors at elite law schools. (Baum, 2019) (Devins & Baum, 2019)

Academia holds a significant weight in the equation; as already noted, many of the current and former Justices have also worked as professors at leading law schools and have, therefore, contributed to the shaping of future legal professionals. (Devins & Baum, 2019) Attending a top law school and working as a law professor are further indications of legal skills and are among the selection criteria for judicial positions. (Baum & Devins, 2010) Moreover, Justices make regular and sponsored appearances at law schools, bar associations, and prominent student groups where they cultivate relationships and interact with law faculty and students, many of which will become future clerks, lower-court judges, and attorneys before the Court. (Baum & Devins, 2010) (Devins & Baum, 2019) (De Vogue, 2021) Leading members of these

groups serve as editors of prominent law reviews and many former clerks become academics who address legal issues about the Court. (Baum & Devins, 2010) (Devins & Baum, 2019) In the current era of deep and defined polarization, these liaisons can reinforce the impact of the Justices' own political and ideological leanings; the Justices are most likely to respond to like-minded colleagues and, therefore, these connections may encourage them to hold a more consistent liberal or conservative line. (Devins & Baum, 2019)

The Supreme Court's notable position in legal academia can be also evidenced by the formation of Supreme Court Litigation Clinics in many of the highest-ranked universities in the U.S. (Larsen & Devins, 2016) Stanford University paved the way with creating the first Clinic in 2004 and was soon followed by Yale, Harvard, Penn, Chicago, Northwestern, UCLA, and Virginia University. Led by prominent Supreme Court Bar members, these Clinics pair Supreme Court litigators with academically-excelling students with the goal of exposing the rising legal stars to real-life practice. (Larsen & Devins, 2016) Although they offer pro-bono services, the clinics' performance should not be underestimated as it often rivals that of established firms.

Since 2016, Supreme Court Litigation Clinics have represented a party in more than 10% of the Court's docket cases, either directly by appearing before the Court or indirectly as amici. Stanford, Yale, Penn, and Virginia clinics have obtained victories in several high-profile cases. (Larsen & Devins, 2016)

Over the past half of the century, the appointed Justices have come from legal backgrounds rather than politics. (Devins & Baum, 2019) As a consequence, the legal elite community has become increasingly influential to the Court. Between 1975 and 2009, every appointment to the Supreme Court involved a sitting judge, and every new Justice from Antonin Scalia (1986) to Sonia Sotomayor (2009) was a member of a Federal Court of Appeals - the stepping stone for a significant number of Justices and an effective proxy for a larger pool of potential nominees. (Baum & Devins, 2010) (Cameron, et al., 2019)

The reference groups that the Justices partake to remain their primary source of influence as the Justices are mostly concerned about their reputation among their peers and the audiences that they care about. (Devins & Baum, 2019)

With the exception of Sandra Day O' Connor who was the last appointee to ever run for public office, the Justices seem to have little interest in seeking other offices and are not privy to public opinion. (Baum & Devins, 2010) Their lifelong appointments practically eliminate any concerns about their standing in the Court or future career paths. (Devins & Baum, 2019) In fact, any additional endeavors and fellowships are almost always tied to their Supreme Court affiliation. (Devins & Baum, 2019)

Unlike elected officials in other branches of the government, the Justices are not prone to pressure from the general public which is seen as mostly peripheral to their social status and identities. (Devins & Baum, 2019) Indeed, the public has no direct power over the Supreme Court and a large part of the Court's decisions have flown under the radar through the years. (Baum & Devins, 2010) (Baum, 2019) Nevertheless, the Justices are aware of events and developments in the American society and they might anticipate potential public backlash on controversial decisions. (Baum & Devins, 2010) (Baum, 2019) (De Vogue, 2021)

Even so, potentially negative public reaction is unlikely to influence the decision outcome as the correlation between public opinion and Supreme Court decision-making does not indicate that the Justices actively seek out the approval of the American people. (Baum & Devins, 2010) (Devins & Baum, 2019) As articulated by Justice Alito in the *Dobbs* majority opinion, "We cannot allow our decisions to be affected by any extraneous influences such as concern about the public's reaction to our work".

An indirect form of public influence on the Supreme Court would be through the election process as the Court appointees are nominated by the elected President, thus most likely to share the President's views, and confirmed by the Congress. (Baum & Devins, 2010) (Devins & Baum, 2019) The presidential selection of nominees takes into account many attributes including merit considerations, ideology, policy reliability, characteristics of diversity, and constituency appeal. (Cameron, et al., 2019)

Since the 1970s, policy reliability and ideology have become the leading criteria for Republican presidents who have worked in collaboration with conservative organizations - most famously, the Federalist Society - in order to secure reliable candidates and avoid risking ideological drifts, similar to former Republican appointees who developed moderate liberal records during their tenure in the Court. (Cameron, et al., 2019) (Devins & Baum, 2019)

Strong ideological credentials and the expectation to vote in an ideologically consistent way have led to a string of conservative appointments to the Court, which currently counts with 6 Justices all vetted by the Federalist Society. (Devins & Baum, 2019) The Justices have remained active members of the Society, participating in annual conventions and dinners, emphasizing on conservative ideological values in their speeches. In November 2022, the Federalist Society celebrated its 40th anniversary and hosted a formal dinner which counted with Justices Alito, Gorsuch, Kavanaugh, and Barrett among the audience. Justice Alito delivered remarks in honor of the legal organization and received a standing ovation from the audience when the *Dobbs* decision was hailed as "an indelible part of his legacy" by a fellow attendee. (Cole, 2022)

Democratic presidents have the tendency to favor an amplified range of attributes which include diversity, patronage, and constituency appeal. (Cameron, et al., 2019) Their candidates are most likely to have a regional pedigree or a salient diversity characteristic (gender, race, or ethnicity) and they are trusted to follow the liberal values related to the Democratic party. (Cameron, et al., 2019) It is worth mentioning that Democratic-appointed Justices are more inclined to consider judicial precedent, societal implications, and loyalty to the government of the President that appointed them, when casting their vote. In that regard, their ideological commitment might be considered weaker compared to Republican-appointed Justices for whom ideology appears to be the prevailing factor in decision-making. (Devins & Baum, 2019)

With that being said, it is fair to argue that the Justices are not single-minded maximizers of legal or policy preferences. (Devins & Baum, 2019) Instead, they adopt legal policy positions that take into account both their personal and ideological motivations. (Baum & Devins, 2010) (Baum, 2019) While they do want to interpret the law as accurately as possible, it is obvious that they also enjoy considerable freedom in making decisions based on their own perception of good policy. (Devins & Baum, 2019) They have rooting interests in the cases they decide and they establish views about which government policies are the most adequate, taking policy and legal implications into consideration as well. (Baum, 2019)

Nonetheless, the Justices' decision-making is shaped by social and political forces and their opinions and writings indicate that the Court is a product of its times. (Baum & Devins, 2010) In the current era of polarization, the balancing of the Justices' ideological views with the potential political and societal outcomes of their decisions appears to be less of a priority than

it used to be. (Baum & Devins, 2010) Justices have sorted into distinct ideological voting blocks along party lines and they identify with different reference groups, pursuing different legal policy agendas. (Baum & Devins, 2010) (Bonica & Sen, 2021)

As evidenced, politically consequential rulings over the past decade have been decided by close vote lines, with a Court majority that tends to behave more like their partisan counterparts in Congress - especially in cases with major implications for public policy. (Bonica & Sen, 2021) For those reasons, reference groups are most likely to influence the Justices' policy preferences and, therefore, Court decision-making. (Devins & Baum, 2019) (Ballingrud, 2021)

Apart from ideology and policy preferences, judicial behavior frequently reflects factors that lie outside the legal doctrine. (Epstein & Posner, 2022) Of those factors, religious affiliations are often correlated with voting outcomes - particularly in devout conservatives - which can partly explain the emergence of religion as a screening mechanism and important criterion for Republican appointments in the federal judiciary. (Talbot, 2022) (Epstein & Posner, 2022) The movement often referred to as religious or Christian right has been central in this effort. (Stolzenberg, 2020) (Philbrick, 2022)

The inception of the religious right movement can be traced back to 1863, when several Christian denominations opposing the separation of church and state and viewing the Civil War as a punishment for the omission of God from the Constitution, worked together to add a Christian amendment to the Constitution and establish the U.S. as a Christian state. (Leaming, 2023) Neither that particular proposal nor similar ones that followed until 1969 made it to Congress, however, Christian organizations remained active and continued to support conservative causes and groups relevant to each era.

The movement's real breakthrough in terms of recognition came in the late 1960s by what they perceived as a wide range of cultural and political upheavals. (Jones & Murphy, 2023) Alarmed by the social changes of the era on issues such as segregation, individual liberties, and equality, the religious right observed that the federal judiciary was turning increasingly liberal on civil liberties matters which they viewed as an infringement of their freedom in religious expression. (Jones & Murphy, 2023)

Of particular importance were the Supreme Court decisions that invalidated public prayer and devotional Bible reading in schools (*Engel v. Vitale, Abington School District v. Schempp*) and expanded abortion rights (*Roe v. Wade*), which infuriated religious groups that perceived them as an attack on traditional Christian values and symbols of a greater moral decline. (Leaming, 2023)

This sentiment was capitalized by Paul Weyrich, a Catholic political figure who coined the phrase "the Moral Majority" to articulate the common feeling of social and moral decay among conservatives and encouraged Southern Evangelical leaders to engage in politics and shift their allegiance to the Republican party. (Brownstein, 2020) (Leaming, 2023) (Jones & Murphy, 2023) Weyrich would end up co-founding the Heritage Foundation, a conservative think-tank that took a leading role in the formation of the conservative movement in the 1980s and has since had significant influence in public policy-making. (Balmer, 2014)

Although the religious right is now mostly associated with the pro-life movement and opponents of LGBTQ rights, the modern Christian movement found its footing in the aftermath of *Brown v. Board of Education* when several private religious academies were founded in response to racial desegregation in public schools. (Balmer, 2014) (Balmer, 2022)

In 1969, the year that marked the official implementation of school desegregation across the U.S., a group of African-American parents sued the Treasury Department to prevent three whites-only religious academies from obtaining tax-exempt status, arguing that their discriminatory practices were not in line with what should be considered as charitable institutions. (Balmer, 2014) (Balmer, 2022) Eventually, these schools were denied tax-exempt charitable status under the *Green v. Connally* decision of the U.S. District Court for the District of Columbia which upheld the provisions of Title VI of the Civil Rights Act, namely that racially discriminatory private schools would not be entitled to the federal tax exemption provided for charitable educational institutions. (Balmer, 2014)

This ruling upset Christian groups that regarded church-related segregation academies as being "under attack" and caught the attention of Evangelical leaders when they started receiving governmental inquiries about the racial policies in their religious schools. (Balmer, 2014) (Balmer, 2022) At the time, Evangelicals were not part of the movement and they framed their practice as exercising religious freedom rather than in defense of racial segregation. (Balmer,

2014) Still, their racially-segregated religious schools received the same treatment as the Christian ones and their charitable tax-exempt status was denied by the IRS. (Balmer, 2014)

What was perceived as government interference in their religious school communities ended up being the issue that galvanized both Christians and Evangelicals to get involved and the religious right movement started taking its current form. (Balmer, 2022) It wasn't, however, until the abortion issue came into play, showing signs that it could be used as the main vehicle for the advancement of the religious right into a proper political movement. (Balmer, 2022) (Stewart, 2022)

Roe v. Wade sparked a great deal of debate in the American society, parts of which embraced it as a sign of progress and evolution, while others treated it more suspiciously, especially after a spike in legal abortions by the late 1970s. (Balmer, 2014) For conservative Catholics, the constitutionality of abortion was seen as a moral abomination and a breach of the states' authority over the issue. (Balmer, 2014) It is noteworthy that until abortion showed potential of advancing into a political issue, Evangelicals were largely indifferent to the subject that they considered as a "Catholic issue". (Balmer, 2022)

By 1980, abortion had emerged as a central campaigning issue for the religious right, which was now a coalition of predominantly white Evangelical Protestants and conservative Catholics. (Balmer, 2022) (Stewart, 2022) Backlash against the civil rights movement and social issues that emerged during the 1970s moved Northern Catholics and Southern Evangelicals to the Republican party and brought conservatives in both groups closer together. (Brownstein, 2020) Evangelicals have since become a core part of the Republican party's electoral coalition and activist base, mobilized by a combination of opposition to civil rights and abortion rights, as well as support for religious nationalism. (Lewis, 2021)

As the religious right movement grew stronger and more influential, it attracted Mormons, Orthodox Jewish, and members of the Eastern Church who united on the premise of cultural conflict and religious freedom "under threat". (Stolzenberg, 2020) (Lewis, 2021) (Epstein & Posner, 2022) Similar to the conservative legal movement, the religious right shared the same frustration with the judicial "liberal activism", especially on civil liberties issues, and by working together they devoted resources on vetting judicial candidates based on conservative views and religious devotion, the combination of which would presumably guarantee steady

support for conservative values on the Supreme Court - unlike some of the previous Republican appointees who had not been properly vetted. (Epstein & Posner, 2022)

Conservative Catholicism in judicial selection reflected both an ideological and an institutional divergence. (Brownstein, 2020) Ideologically, conservative Catholics demonstrated religious devotion and solid commitment to conservative social causes, much in line with Evangelicals - especially regarding abortion and their common desire to curtail and, ultimately, overturn *Roe v. Wade*. (Brownstein, 2020) Institutionally, organizations such as the Federalist Society and the American Center for Law and Justice were part of a stronger legal network - from academia, to judicial clerkships, to lower court appointments - which cultivated a pool of conservative Catholic legal professionals with the credentials required to obtain a Supreme Court nomination. (Stolzenberg, 2020) These organizations then embarked on vigorous lobbying campaigns to support the most eligible candidates, all of which held conservative religious views as well. (Stolzenberg, 2020)

A particular religious denomination was not as important as the candidates' views on religion and state. (McCammon & Montanaro, 2018) (Brownstein, 2020) (Stolzenberg, 2020) The essential requirement was being under the same joint banner of "Christian", which explains the Evangelical support for 8 conservative Catholic Justices appointed to the Court since 1986 - Antonin Scalia, Anthony Kennedy, Clarence Thomas, John Roberts, Samuel Alito and Brett Kavanaugh, Neil Gorsuch (who was raised Catholic but now attends an Episcopalian church), and Amy Coney Barrett. (McCammon & Montanaro, 2018) (Brownstein, 2020) All these appointees were Christian, religiously devout, and ideologically conservative. (Epstein & Posner, 2022)

On the other hand, the liberal Justices are religiously mixed, not devout, and ideologically liberal. (Epstein & Posner, 2022) Not surprisingly, Justice Sotomayor - raised Catholic but ideologically liberal - faced staunch opposition from the religious right during her confirmation process. (Stolzenberg, 2020)

It should be pointed out that between 1790 and 1980 religious divisions in the Supreme Court were denominational rather than ideological. (Stolzenberg, 2020) The vast majority of Justices were Protestants (90 out of 101), with only 6 Catholic and 5 Jewish candidates appointed in the first 190 years of the Court's existence. (McCammon & Montanaro, 2018) (Stolzenberg,

2020) Since religion was not tied to ideology and policy preferences, the mainline Protestantism was hardly questioned and the few non-Protestant Justices did little to change the religious character of the Court and were mostly viewed as symbolic in terms of social acceptance ("Jewish seat" and "Catholic seat"). (Stolzenberg, 2020)

Today, the religious makeup of the Court includes 6 Catholic, 2 Protestant, and 1 Jewish Justices. The Roberts Court is considered to be the most pro-religion Court since the 1950s. (Stolzenberg, 2020) (Philbrick, 2022) (Epstein & Posner, 2022)

The current conservative majority is also open about their affiliation with religious and conservative groups. In July 2022, Samuel Alito, the Justice who delivered the majority opinion of *Dobbs*, gave the keynote address for Notre Dame Law School's Religious Liberty Initiative and discussed how religious freedom had been challenged throughout history. (De Vogue, 2022) After stating that "religious liberty is under attack in many places because it is dangerous to those who want to hold complete power", he addressed the challenge to "convince people that religious liberty is worth defending if they don't think that religion is a good thing that deserves protection", echoing his previous statement at a Federalist Society convention that "in certain quarters, religious liberty is fast becoming a disfavored right… is in danger of becoming a second-class right". (Liptak, 2021) (De Vogue, 2022) (Talbot, 2022)

During the same time, a published report on Rob Schenck, an Evangelical minister and former leader of "Faith and Action", claimed that over the course of 23 years, his organization recruited and coached wealthy volunteers to wine and dine Justices Thomas, Alito, and Scalia while pushing conservative positions on abortion, homosexuality, and gun restrictions. The ultimate goal was to create an ecosystem of support so that the conservative Justices felt more confident and assertive in upholding conservative views. The program called "Operation High Court" included financing expensive dinners, social activities and trips, and joint prayer sessions with the Justices. (Canellos & Gerstein, 2022)

In late 2020, Justice Barrett's confirmation solidified not only the conservative majority, but also the de facto protection of religious rights. (Brownstein, 2020) (Posner, 2020) (Liptak, 2021) (Shaw, 2023) In addition to being the first Justice with a law degree from an elite Catholic university, Barrett has longtime professional affiliations with the Alliance Defending Freedom (ADF), an Evangelical Christian legal group that litigates on behalf of religious rights

in cases involving abortion, LGBTQ rights, and church-state separation. (Brownstein, 2020) (Epstein & Posner, 2022) (Talbot, 2022) (Arnold, 2023) She has also served as an instructor in the ADF's Blackstone Fellowship, a Christian-themed legal training program for exceptional students, and has been tied to "People of Praise", a religious covenant otherwise described as a cult. (Graham, 2018) (Brownstein, 2020) (Posner, 2020) (Talbot, 2022)

In spite of the obvious religious bias tied to her candidacy, Senator Graham stated that "This is the first time in American history that we've nominated a woman who's unashamedly pro-life and embraces her (Roman Catholic) faith without apology". (McEvoy, 2020)

Since the confirmation of Justice Barrett and the consolidation of a religious majority, the Court has broken with previous jurisprudence, embracing judicial activism and intervention in religious liberty issues. (Epstein & Posner, 2022) (Harvard Law Review, 2023)

Traditionally, cases dealing with challenges on applicable law between religion and the government are decided on the Constitution's two major religious clauses: the Free Exercise clause which sets a floor on the minimum standard protection of religion by the government, and the Establishment clause which sets a ceiling on the maximum level of permissible federal support for religion. (RCP, 2020)

Earlier Courts, especially Warren and Burger, relied on both clauses to protect minority or non-mainstream religions, casting pro-religion votes in cases where minorities challenged laws and anti-religion votes in cases where a law advanced a mainstream religion, thus reflecting the era's liberal "sensibility" in protecting vulnerable minorities from hostile majorities. (Liptak, 2021) (Epstein & Posner, 2022)

The Roberts' Court, instead, has been increasingly using the religious clauses to defend mainstream Christian organizations that are arguing restrictions by secular laws or liberal constitutional protections. (Liptak, 2021) (Epstein & Posner, 2022) (Shaw, 2023) Since 2005, the Roberts Court has ruled in favor of religion 83% of the time in orally argued cases. (Philbrick, 2022) (Epstein & Posner, 2022) As a comparison, the Warren, Burger, and Rehnquist Courts - all led by chief Justices who were also appointed by Republican presidents - voted in favor of religion 46%, 51%, and 58% of the time respectively. (Philbrick, 2022)

In the past 3 years, the pro-religion approach has been emboldened by a radical shift in the Court's religious exemption doctrine. (Harvard Law Review, 2023) (Shaw, 2023)

Beginning in 2020, and throughout the COVID-19 pandemic, various religious organizations challenged state restrictions on Free Exercise grounds. (Epstein & Posner, 2022) The Court, drawing from the shadow docket, started reviewing such cases and granting emergency relief in favor of religious activity. (Liptak, 2021) (De Vogue, 2021) (Harvard Law Review, 2023) In *Roman Catholic Diocese of Brooklyn v. Cuomo*, the Court ruled that the Free Exercise clause was violated on grounds of discrimination against religious activities (indoor gathering limits in worship houses) when no such limits were imposed on comparable secular ones (gatherings in stores, factories, and schools). (Harvard Law Review, 2023)

In *Tandon v. Newsom* (2021), a case challenging Governor Newsom's COVID-19 executive order on indoor gathering limitations, the Court took the Free Exercise jurisprudence one step further by ruling that government regulations are not neutral and generally applicable when they treat *any* comparable secular activity more favorably than religious exercise - essentially eliminating the previously-held comparability requirement on weighing the government's interest in applying a law. (Harvard Law Review, 2023)

A few months later, in *Fulton v. City of Philadelphia*, the Supreme Court market yet another shift in its religious exemption doctrine. (Epstein & Posner, 2022) (Harvard Law Review, 2023) This case involved a religious foster care organization that refused to offer services to same-sex couples and was subsequently denied a contract renewal over non-compliance with Philadelphia's anti-discriminatory regulation. (Harvard Law Review, 2023) Catholic Social Services (CSS), the agency in question, argued that their opposition in confirming same-sex couples as foster parents was on religious grounds and, therefore, an exercise of their religious freedom. (Liptak, 2021) (Posner, 2020) (Harvard Law Review, 2023) The Supreme Court sided with CSS and reversed the lower courts' upholding of Philadelphia's law as neutral, ruling that the city's refusal to renew their contract with the agency violated the Free Exercise clause. (Lewis, 2021) (Harvard Law Review, 2023)

Fulton was extremely important for two reasons: First, it broke with the precedent set in *Employment Division, Department of Human Resources of Oregon v. Smith* (1990) - a decision which held that neutral and generally applicable laws that *incidentally* burden religious liberty

are not in violation of the First Amendment, unless said laws impermissibly target religion. (Harvard Law Review, 2023) Furthermore, by focusing on Philadelphia's standard foster care contract, and specifically on a clause that permitted discretionary exemptions, the Court's majority ruled that the *possibility* of an exemption rendered Philadelphia's law not generally applicable, even though the City had never invoked the clause to grant an exemption. (Harvard Law Review, 2023)

In essence, the Court reversed the lower court's decision which was in line with the *Smith* precedent, and ruled that the possibility of a discretionary exemption flags the law as not generally applicable, and therefore, the government has no compelling interest in denying an exemption, whether that be secular or religious. (Harvard Law Review, 2023) It should be pointed out that until 2021, the Court had never found that a law could violate the First Amendment on the basis of a mere possibility of secular or religious exemption, no matter if it had ever been granted or not. (Harvard Law Review, 2023)

Taken together, these Supreme Court decisions signal a major shift in the religious exemption doctrine as the Court has essentially established that any law potentially exempting secular activity is not generally applicable to religious activities either. (Harvard Law Review, 2023) The possibility of a secular exemption implies that an exemption cannot be denied to a religious claimant either and the existence of a secular exemption alone suggests that the government's interest is not compelling and the law is not neutral. (Harvard Law Review, 2023)

This interpretation of religious exemptions presents many challenges for the constitutional standing of civil liberties when they are questioned over religious liberty claims. (Harvard Law Review, 2023) First, it eliminates the comparability requirement which previously weighed the government's interest in both secular and religious exemptions. (Harvard Law Review, 2023) Additionally, the precedent set can be used to weaponize religious exemption claims against any constitutionally sound law that may be unpopular among religious groups. (Liptak, 2021) (Harvard Law Review, 2023) (Beasly, 2023) (Jones & Murphy, 2023) Because religious liberty is broadly protected in the Constitution by both the Free Exercise and the Establishment clauses, practically any belief or practice rooted in religion can serve as the basis for an exemption claim. (Harvard Law Review, 2023)

At the same time, a majority of laws on antidiscrimination, employment, and public accommodation among others, contain secular exemptions. Since religious beliefs are so diverse, these laws are now susceptible to Free Exercise challenges in light of the Supreme Court's religious exemption doctrine. (Harvard Law Review, 2023)

As a general observation, it is worth noting that since 2020, the Roberts Court has been consistently elevating the constitutional importance of religious liberty rights, applying the Free Exercise Clause expansively and consistently weakening the Establishment Clause; defending, therefore, religious claims and indirectly benefitting mainstream Christian organizations. (Epstein & Posner, 2022) (Jones & Murphy, 2023)

On the highest court level, plaintiffs have been granted relief on religious grounds from: complying with the contraception mandate created under the Affordable Care Act (*Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*), providing services to LGBTQ people (*Fulton v. City of Philadelphia, 303 Creative LLC v. Elenis*), and, as previously noted, adapting to pandemic healthcare directives (*Roman Catholic Diocese of Brooklyn v. Cuomo, Tandon v. Newsom*). (Posner, 2020) (Liptak, 2021) (Harvard Law Review, 2023)

In October 2023, the Supreme Court handed down another decision which disputed the application of anti-discrimination law in public accommodations with the First Amendment's right to free speech. (Shaw, 2023) (Jones & Murphy, 2023)

In *303 Creative LLC v. Elenis*, the Court relied on the compelled speech doctrine which prohibits the government from forcing individuals to express ideas that they disagree with, and ruled that a Christian graphic designer would not be compelled to create art that violated her religious beliefs - in this case, designing wedding websites for same-sex ceremonies. (Jones & Murphy, 2023) The plaintiff argued that Colorado's public accommodation law which prohibits discrimination on the basis of sexual orientation (among other things), obliged her to choose between her business and her religious beliefs. (Shaw, 2023) The Supreme Court agreed with her and the ruling was praised as "the latest in a trend of victories for free speech and religious liberty" and "a resounding victory for freedom and expression" among leading conservative religious organizations. (Closson, 2023) (Jones & Murphy, 2023)

While this decision is yet another indication of the Court majority's expanded use of the religious clauses and the exemption doctrine, it is also proof of the Court's tendency to prioritize the First Amendment's freedom of speech and religion at the expense of the Fourteenth Amendment's equality and privacy rights - especially if these clash with religious liberty. (Posner, 2020) (Epstein & Posner, 2022) (Talbot, 2022) (Harvard Law Review, 2023) (Shaw, 2023)

As illustrated, equality protection for minorities has been repetitively framed as violation of other Americans' right to exercise their religion whereas the Free Exercise clause has been broadened to cover not just religious acts but, increasingly, social and public activities - thus, stepping on equality rights. (Posner, 2020) (Talbot, 2022) (Harvard Law Review, 2023) (Beasly, 2023) (Jones & Murphy, 2023)

The risks ahead are visible: full citizenship, inclusion, and equal treatment of minorities can be considered threatened not only in terms of expression but also regarding inclusion in the commercial and economic realm when businesses refuse to accommodate them, citing religious beliefs. (Harvard Law Review, 2023) (Beasly, 2023) (Jones & Murphy, 2023) At the same time, religious groups, emboldened by the recent decisions, have already begun challenging an array of laws on issues that are in conflict with their beliefs, such as contraception, abortion access, and LBGTQ rights. (Posner, 2020) (Harvard Law Review, 2023)

Anti-discrimination laws are especially vulnerable to free speech and free exercise claims, with a risk of depriving the government of its ability to enforce the laws designed to protect minorities from facing discrimination (now religion-based). (Beasly, 2023) (Harvard Law Review, 2023) (Shaw, 2023) (Jones & Murphy, 2023) Federal courts will now bear the responsibility of determining the exact point that a secular exemption renders a law no longer generally applicable and, therefore, unconstitutional when faced with a religious exemption claim. (Harvard Law Review, 2023)

From a historical standpoint, it is important to keep in mind that religious liberty has served as a basis for challenging civil rights legislation. (Harvard Law Review, 2023) In the past century, it was invoked when defending the separate-but-equal doctrine and anti-miscegenation laws that banned interracial marriage. (Harvard Law Review, 2023) (Beasly, 2023) Today, religious freedom has advanced to a central cause for the conservative movement and its constitutional

standing in the First Amendment has repeatedly prevailed when confronted with rights that collide with the conservative cultural agenda. (Epstein & Posner, 2022) (Beasly, 2023)

Drawing a parallel, it appears that the conservative religious organizations have taken a page from the civil rights movement and gone to the courts with the goal of expanding religious rights and gaining political ground. (Epstein & Posner, 2022) (Littlefield, 2021) Their decades-long efforts have culminated into this era of a Supreme Court majority that is exceptionally receptive to religious freedom claims, even if these are championed at the cost of other constitutionally protected rights. (Posner, 2020) (Epstein & Posner, 2022) By doing so, religious freedom has become undisputedly politicized and, therefore, subject to be used as a means to further or restrict rights that may or may not be favored by the religious political crowd. In this context, it would not be an outreach to presume that once-settled legal protections for civil liberties issues may be called into question - or revisited altogether - and it remains doubtful if they will survive being tested against repeated and expansive religious exemption claims. (Harvard Law Review, 2023)

Perhaps the most publicized and controversial win for the religious right came in June 2022 with the *Dobbs v. Jackson Women's Health Organization* decision which overturned *Roe v. Wade* and *Planned Parenthood v. Casey*, marking a resounding victory and vindication of the movement's decades-long battle to politicize and remove the constitutional right to abortion. (Balmer, 2022) (Fritze, 2022) (Fritze, 2023)

For the first time in its history, the Supreme Court departed from the precedent of overturning decisions only to grant broader constitutional rights and overruled itself to de-constitutionalize a previously protected right, undoing 50 years of constitutional abortion protection. (Smith, 2021) (Cruickshank, 2022) (WhiteHouse.gov, 2022)

As outlined previously, abortion did not become a mobilizing force for the religious right until the late 1970s. (Balmer, 2022) (Stewart, 2022) When *Roe* was first issued, most Protestant Republicans supported it and Evangelicals were largely indifferent on the issue. (Balmer, 2014) The Southern Baptist Convention passed resolutions in 1971 and 1974 in support of abortion law and praised the passage of *Roe*, declaring that "religious liberty, human equality and justice are advanced by the Supreme Court abortion decision". (Balmer, 2022) (Stewart, 2022) However, as soon as it became clear that school segregation - the religious right's original

focus - lacked the potential of becoming a central political cause that would unify conservatives across multiple religious denominations, abortion became a focal point to express the anxieties about the perceived social "ills" of the era - civil rights movement, women's liberation and the emergence of LGBTQ rights. (Balmer, 2022) (Stewart, 2022) (Jones & Murphy, 2023)

Nevertheless, it still took considerable effort by Republican political activists, such as Paul Weyrich and Phyllis Schlafly, to force the Republican party to change its views on the issue as until then, legal abortion had been supported by many Republicans. (Glenza, 2021) (Stewart, 2022) As a case in point, in 1967 Ronald Reagan, then-Governor of California, passed the most liberal abortion law in the country whereas in 1980, he voiced support for a constitutional amendment to ban abortion, after having been elected President with the backing of the "New Right" coalition of economic conservatives and the Christian right. (Balmer, 2014) (Stewart, 2022)

It is also essential to consider the background of *Roe v. Wade*; a decision that was preceded by decades of activism from women's groups, clergy, and doctors who worked together to reform criminal abortion laws that had resulted in illegal and botched operations, disproportionally affecting people of color and low income. (Glenza, 2021) In a 7-2 decision, the all-male Burger Court recognized the profound impact of pregnancy in a woman's life, both in the physical risks associated with carrying to term and childbirth but also in the right of equal participation, acknowledging abortion as a fundamental right in a woman's life and future. (HUB - Johns Hopkins University, 2022) (Fritze, 2022) (Glenza, 2021)

The decision was anchored in the Ninth and Fourteenth Amendments and protected a woman's right to privacy when choosing to terminate a pregnancy on a trimester framework that sought to balance competing interests by establishing an autonomous right to abortion on the first trimester, potential government regulation but no abortion outlawing on the second trimester, and abortion bans with exceptions to safeguard a woman's life on the third trimester. (Cittadino, 2022) (LeMoult, 2022) (HUB - Johns Hopkins University, 2022) In terms of historical context on constitutionally-protected reproductive rights, abortion joined contraception which was legalized for unmarried couples just a year earlier. (Glenza, 2021)

Successful anti-abortion lobbying in the 1980s and 1990s resulted in the gradual weakening of abortion protection by the Court. *Webster v. Reproductive Health Services*, a nominal 1989

case, allowed states to prohibit abortion procedures performed in state clinics or by state employees. (BBC, 2022)

In 1992, *Planned Parenthood v. Casey* ended the trimester framework and introduced the viability standard which allowed states to restrict abortions even in the first trimester as long as they didn't pose an "undue burden" on a woman's right to choose. (Glenza, 2021) (HUB - Johns Hopkins University, 2022) (Fritze, 2022) (LeMoult, 2022)

This decision ushered a new era of abortion restrictions, which came to be known as "Trap laws" - Targeted Restrictions on Abortion Providers. (Glenza, 2021) Trap laws were successful in limiting abortion access in more than 23 states by imposing rules such as building requirements (procedure room size, hall and corridor width), hospital relationships (obligatory transfer agreements with hospitals in states where abortion is hostile), location requirements (specific distance between abortion facilities and a local hospital), and reporting requirements (judicial or parental approval for a legal abortion or forcing abortion providers to deliver private medical information to the state government). (Planned Parenthood, 2023) (Guttmacher Institute, 2023)

Regardless of the new restrictions, pro-life advocates were still disappointed that the Supreme Court upheld *Roe* with *Casey* and for the next three decades much of the abortion litigation was centered on what constitutes undue burden and how far states could push this to further restrict access to abortion. (Alliance Defending Freedom, 2023)

The real breakthrough for the "legal army" of the religious right, as represented by ADF, would come in 2018 when the state of Mississippi introduced the *Gestational Age Act* (HB 1510), a law that bans abortions after 15 weeks, except in cases of medical emergency or severe fetal abnormality. (Littlefield, 2021) (Alliance Defending Freedom, 2023) The law was based on a model bill drafted by ADF in 2017 which, according to the organization, "protected life at the 15-week mark to serve three compelling state interests: protecting unborn human life, advancing women's health, and safeguarding the integrity of the medical profession." (Alliance Defending Freedom, 2023) The model bill was drafted with the intent to get the first-trimester limitations in place and provoke a legal battle that would make its way to the Court of Appeals and eventually reach the Supreme Court. (Littlefield, 2021)

The day that HB 1510 was to go into effect, Jackson Women's Health Organization, the state's last remaining abortion clinic, sued Thomas E. Dobbs, state health officer with the Mississippi State Department of Health, challenging the constitutionality of the law and asking for an emergency injunction. (Staley & Guo, 2021) (Alliance Defending Freedom, 2023) The district court granted the preliminary injunction and permanently enjoined HB 1510, ruling that the 15-week mark violated the due process right of women seeking pre-viability abortions in Mississippi. (Staley & Guo, 2021) The Fifth Circuit Court of Appeals unanimously upheld the district court's decision, maintaining Casey's viability precedent. (Staley & Guo, 2021) In June 2020, Mississippi filed a petition for certiorari and the Supreme Court granted full review in May 2021. (Alliance Defending Freedom, 2023)

This development was praised by the religious right, as for the first time in a century, they counted with a Supreme Court conservative supermajority and *Dobbs* represented the first case in which the legal battle would be focused on the constitutionality of the abortion procedure as a whole and not on the regulation of the abortion timeframe, as previous decisions had done. (Littlefield, 2021) (Green, 2022) (Fritze, 2022)

During the oral arguments of December 2021, the conservative Justices gave a clear signal of their intention to fully revisit *Roe* by openly questioning the role of abortion in the founding of the nation and arguing that there is no such right explicitly written in the Constitution. (Howe, 2021) Additionally, the Justices showed willingness to put aside the 50-year-old precedent, claiming that stare decisis is not as central to abortion as it is to other rights and likening *Roe* to *Plessy v. Ferguson*, an 1896 decision that made Jim Crow segregation possible and was subsequently overturned 58 years later by *Brown v. Board of Education*. (Howe, 2021)

Interestingly enough, the majority was focused on discussing the constitutionality of abortion based on originalism interpretations rather than its significance in preserving privacy rights related to bodily autonomy and family planning. (Howe, 2021) By suggesting safe haven laws as an alternative to abortion, the majority dismissed not only the equal participation interests of pregnant women but also the health risks and financial costs related to pregnancy and childbirth. (Howe, 2021) (Talbot, 2022)

Five months later, a working draft of the majority opinion was leaked to the press - an unprecedented revelation and a rare breach of the Court's secrecy regarding its internal

deliberations. (Gerstein & Ward, 2022) (HUB - Johns Hopkins University, 2022) The leak stirred immediate reaction as it confirmed the Court's intention to overrule *Roe* and *Casey* and lift the constitutional protection of abortion, delegating the authority back to the states. (Gerstein, 2022) (Gerstein & Ward, 2022) The conservative Justices condemned the leak as a "shock" and a "threat to the judicial decision-making process", with Justice Alito claiming that it made Justices the "targets of assassination". (Vlachou, 2022)

At the same time, the draft's leak is said to have dashed Justice Roberts' efforts for some cross-ideological compromise that would preserve the constitutional right to abortion, a position that was also highlighted in his concurring opinion which upheld Mississippi's 15-week ban but opposed the overruling of *Roe*. (Biskupic, 2022) (Cruickshank, 2022)

Indeed, when the final ruling was officially released in June 2022, it was almost identical to the leaked draft except for the addition of paragraphs responding to the dissent. (Deese, 2022) The majority opinion, authored by Justice Alito and joined by Justices Kavanaugh, Gorsuch, and Barrett, justified the reversal of *Roe* by describing it as "egregiously wrong from the start" and "far outside the bounds of any reasonable interpretation", only to reach the "inescapable conclusion that a right to abortion is not deeply rooted in the Nation's history and traditions". (Gerstein, 2022) (Gerstein & Ward, 2022) (Cruickshank, 2022) (Mohapatra, 2023) To support this argument, Justice Alito reviewed the history of abortion laws at the time the Fourteenth Amendment was enacted (1868), ignoring the extensive analysis undertaken in the original *Roe* decision. (Cruickshank, 2022)

By focusing almost entirely in the state's interest in protecting fetal life, the *Dobbs* majority opinion was devoid of nuance regarding any meaningful recognition of unwanted pregnancy in instances of rape, incest, or otherwise, and paid no heed to the complexity of the various competing interests that the Supreme Court had previously acknowledged and tried to balance in *Roe* and *Casey*. (Cruickshank, 2022)

In contrast, the dissenting opinion put women on the front and focused on the effects of abortion's constitutional reversal in their present and future. (Cruickshank, 2022) The dissenting Justices argued that in *Roe* and *Casey* the Supreme Court had considered and balanced both countervailing interests and the women's right to self-determination by having control over their reproductive lives. (HUB - Johns Hopkins University, 2022) The dissent

made the case that the right to abortion, along with other rights protecting bodily integrity, personal autonomy, and family relationships, are embedded in the constitutional law and the 50-year-old precedent ensured the core principle of equality that had allowed women to fully participate in the nation's political, social, and economic life.

By abandoning stare decisis, the Roberts Court was not only diminishing the women's expectations for individual control over their bodies but it was also undermining its own legitimacy as it failed to exercise judicial restraint and preserve what had constituted the law of the land for decades.

Additionally, the dissenting opinion addressed the extreme state laws already in place which include bans extending to all forms of abortion with no exceptions in case of rape or incest, before reaching the conclusion that these laws will disproportionally affect vulnerable minorities and women of limited financial means who lack the resources required to cross state lines and access legal abortion.

In the immediate aftermath of *Dobbs,* 13 states had trigger laws banning abortion, poised to go into effect immediately or days after the overruling of *Roe*. (Deese, 2022) (Fritze, 2023) In 6 of those states, the abortion bans were temporarily blocked by restraining orders, only to be reinstated in the following months. (Sherman & Witherspoon, 2023)

As of November 2023, abortion is banned in 21 states, of which 16 states have abortion bans from conception or after six weeks (AL, AR, GA, ID, IN, KY, LA, MO, MS, ND, OK, SC, SD, TN, TX, WV) and 5 states after 12-18 weeks (AZ, FL, NC, NE, UT), many with no exceptions in cases of rape or incest. (Sherman & Witherspoon, 2023) Approximately 22 million women and girls of reproductive age are currently living in states were abortion is severely restricted or completely inaccessible. (McCammon & Elliott, 2023)

In 4 states abortion bans are currently blocked, making abortion legal until viability (IA, MT, WI, WY). (Sherman & Witherspoon, 2023) 25 states plus Washington D.C. have legalized abortion until viability or with no limit (AK, CA, CO, CT, DE, HI, IL, KS, MA, MD, ME, MI, MN, NH, NJ, NM, NV, NY, OH, OR, PA, RI, VA, VT, WA). (Sherman & Witherspoon, 2023) With abortion bans affecting entire regions in the southeast and Midwest, neighboring states are becoming hubs for abortion access with a huge increase in calls to organizations that

provide funding and assistance for people who cross state lines. (McCammon & Elliott, 2023) Many states have passed shield laws to protect abortion providers and patients from out-of-state prosecution, aggressive litigation, or courts issuing surveillance orders to investigate abortion procedures. (McCammon & Elliott, 2023) (Panetta & Rummler, 2023)

Blue states and local municipalities have also been substantially increasing funding for abortion and other reproductive health services. (Panetta & Rummler, 2023) (McCammon, 2023) According to the National Institute for Reproductive Health (NIRH), the amount has more than tripled since *Dobbs* and is currently well over $200 million, with a large portion of it allocated in abortion funds and support networks that cover travel, procedure and other associated costs for struggling patients affected by state bans. (McCammon & Elliott, 2023) Connecticut, Maryland, California, New Mexico, and New Jersey are just few of the states that have either set aside or pledged millions of dollars in state funding to deal with the exponential demand from out-of-state patients. (HUB - Johns Hopkins University, 2022) (McCammon, 2023)

Another dimension of the *Dobbs* decision is a political one. Minutes into the announcement of the ruling, President Biden addressed the nation condemning the decision as a "tragic error" of the Supreme Court and vying to restore abortion protections as a federal law. (WhiteHouse.gov, 2022) In his public address, he vowed to protect access to abortion in all forms as well as out-of-state patients who may face challenges from local officials trying to interfere with their right to travel to have the procedure. (WhiteHouse.gov, 2022) He also repeatedly highlighted the need to elect more senators and representatives that would help codify *Roe* and state leaders who would protect abortion at a local level. (WhiteHouse.gov, 2022)

His remarks marked a clear departure from the Democratic approach that for years avoided talking openly about abortion, despite being the party associated with pro-choice views. (Robillard & Vagianos, 2022) (Keith, 2023) In the months leading to the *Dobbs* decision, the threat of losing a right that women had relied on for 50 years enraged and mobilized people across party lines, something that was identified by the Democratic party which stepped up and openly embraced abortion as a core values issue. (Keith, 2023)

Indeed, abortion rights played a significant role in the 2022 midterm elections and transformed not only the political strategy of Democratic candidates but also the political game around abortion. (Keith, 2023) (Montanaro, 2023)

When *Roe v. Wade* was in place, abortion politics for Republicans relied heavily on pro-life campaigning and activism, blaming the Democrats for abortion's constitutional standing and pressuring for more limitations. (Keith, 2023) With the constitutionality of abortion overruled, it was now Democrats who centered their campaigning on abortion, calling it an essential human right and a matter of freedom, painting the Republicans as extremists who discriminate against women and deny equal rights to half of the U.S. population. (Keith, 2023) In terms of financial investment, Democrats spent approximately $360 million on pro-choice ads and events in the campaign trail leading up to the elections while Republicans remained mostly quiet on the issue after having established their win with *Dobbs*. (Keith, 2023)

The reshaping of abortion politics defied historical trends, performing unexpectedly well in the key swing states of Arizona, Nevada, Georgia, Michigan, Pennsylvania, and Wisconsin. (Robillard & Vagianos, 2022) The abortion-rights candidate or position prevailed in seven states that held ballot initiatives regarding the legality of the procedure: California, Vermont, Montana, Michigan, Kansas, Kentucky, and Ohio. (Vagianos, 2022) For the first time in 40 years, the Democratic party flipped both chambers of legislature in Michigan, where abortion was literally on the ballot, as the residents voted 56% in favor of a state referendum that established a constitutional right to abortion and contraception. (Robillard & Vagianos, 2022) (Keith, 2023)

Essentially, abortion rights proved to be a winning issue that was protected in every state where it was on the ballot, including red and purple states - Kentucky and Montana, two deeply Republican states that have historically opposed abortion, voted against anti-abortion ballot initiatives. (Vagianos, 2022) (Fritze, 2023)

It is important to note that the winning strike of the Democratic party in the 2022 midterm elections was largely due to increased motivation of partisan Democrats and independents that voted overwhelmingly in favor of pro-choice candidates in key races. (Robillard & Vagianos, 2022) Devoted Republicans had little impact, but the mobilization and anger over the loss of an established right were enough to change the election course in several states. (Robillard & Vagianos, 2022)

According to a KFF polling published in May 2023, four in ten voters (42%) believe that the Democratic party best represents their views on abortion, compared to one in four (26%) who

say that they feel better represented by the Republican party. (Kearney, et al., 2023) Furthermore, the Democratic party has a prevailing advantage among women aged 18 to 49, half of which (45%) say that their views on abortion are best represented by the Democrats. (Kearney, et al., 2023)

Almost one and a half years after the *Dobbs* decision, abortion access remains uneven across the U.S. and the abortion issue is all but resolved. Aside from the states that have now-legal abortion bans, many states with no explicit abortion bans have nonetheless imposed regulations which create significant barriers and limitations in abortion access that in many cases equal outright banning. (Felix & Sobel, 2023) These regulations include mandatory waiting periods and ultrasounds, bans on telehealth for abortion care, parental/guardian consent requirement for minors, and limiting the pool of abortion providers to licensed physicians. (Felix & Sobel, 2023)

It is notable that two thirds (73%) of U.S. adults believe that abortion bans make the doctors' effort to safely treat patients more difficult and may lead to unnecessary health problems, especially in cases of major complications. (Kearney, et al., 2023) This figure includes 82% of Democrats and nearly half (47%) of Republicans. (Kearney, et al., 2023)

Evidently, while *Dobbs* overturned 50 years of precedent and the constitutional right to abortion, it is obvious that it failed to resolve pending issues - most importantly, how federal courts will respond to an imminent public health crisis of enormous magnitude that will affect entire regions of the U.S. with no-exception abortion bans in place. (Brownstein, 2023)

For these reasons, abortion remains both an unsettled and an unsettling issue, poised to play an important role in the presidential election as well. (Montanaro, 2023) (Kearney, et al., 2023) Looking ahead to 2024, 53% of the voters say abortion is one of the important factors in their decision-making, compared to 16% who say that it is not as important of a consideration. (Kearney, et al., 2023) Three in ten voters say they will only vote for a candidate who shares their views on abortion, which includes 46% of the Democratic voters and 35% of all women. (Kearney, et al., 2023)

As the political and legal implications of *Dobbs* continue to evolve, it is certain that only rarely has a Supreme Court decision had such a profound impact so quickly on the lives of so many people. (Fritze, 2023)

In his public address regarding the *Dobbs* decision, President Biden explicitly said that "the conservative majority showed how extreme and far removed it is from the majority of the U.S." (WhiteHouse.gov, 2022) Recent polling tends to agree, as the Supreme Court is currently sitting on a historically low approval rate, with over half of the U.S. population (54%) expressing an unfavorable opinion and viewing the Court as conservative and "middle of the road". (Hemel, 2021) (Pew Research Center, 2023) This demographic includes majorities of adults across gender, race, and ethnic groups - 57% women, 68% African-American, 55% Hispanic, 54% Asian, and 51% white adults. (Pew Research Center, 2023) These figures should not come as a surprise as they follow a series of high-profile rulings striking down the use of affirmative action in college admissions, invalidating President Biden's student loan forgiveness plan, and sidelining LGBTQ rights. (Pew Research Center, 2023)

Alarmingly and in addition to the dismantling of federal protection in abortion rights, the conservative majority indicated that the *Dobbs* case could serve as a blueprint for decimating other constitutional rights that are guaranteed by the substantive due process of the Fourteenth Amendment. (Cruickshank, 2022) (Cittadino, 2022) (Mohapatra, 2023) In his concurring opinion, Justice Thomas suggested that the Supreme Court "should reconsider all of its substantive due process precedents, including the right to *Griswold*, *Lawrence*, and *Obergefell*". (Cruickshank, 2022) (Cittadino, 2022) These cases have provided protection for not explicitly written rights, including contraception, same-sex sexual conduct, and same-sex marriage. (Cittadino, 2022) (Mohapatra, 2023) While it is difficult to predict what right may be next in line, the wording suggests that the Court's majority is in an era of further rights retractions. (Littlefield, 2021) (Shaw, 2023) (Jones & Murphy, 2023) (Mohapatra, 2023)

The Court's consistent expansion of religious exemption in anti-bias laws hasn't gone unnoticed either as 35% of Americans view the Court as "friendly" toward religion and 42% believe that the recent decisions have helped Christians and hurt non-religious people. (Pew Research Center, 2022) As a further indication of both public disapproval and the Court's distancing from the U.S. public majority, 83% of all adults oppose the idea of Justices bringing their own religious beliefs to bear in deciding major cases. (Pew Research Center, 2022)

Similarly, the Supreme Court appears to be extraordinarily unpopular with young Americans, as recent polling found that just 30% of adults under the age of 30 have a positive impression of the Court. (Pew Research Center, 2023)

The under-30s of voting age, otherwise known as Gen Z, are a demographic of approximately 69 million young people and comprise the most racially and ethnically diverse generation of Americans in history - poised to become the first majority nonwhite generation by 2026. (Pew Research Center, 2020) (Headley & Cohen, 2023) (Smith, 2023) Together with millennials, they amount to 142 million people or approximately half of the current U.S. population. Both millennials and Gen Z hold more liberal views than older generations on issues such as immigration reform, criminal justice, gun control, environmental protection and climate change. (Pew Research Center, 2020) In their vast majority, they look to the government to solve problems, a sharp departure from older generations that in large numbers trusted businesses or individuals. (Pew Research Center, 2020)

It is also noteworthy that both generations of young Americans are the least religious in history - 44% of millennials and 48% of Gen Zers have identified as religiously unaffiliated. (Smith, 2023) Over 60% are in favor of increased diversity and inclusivity, sharing similar views on gender and family; almost half in both groups believe that same-sex marriage and interracial marriage are good for the society. (Pew Research Center, 2020)

Gen Zers have also demonstrated greater civic engagement compared to their older counterparts, showing up at an overall 27% in the 2022 midterm elections and 31% in the battleground states - the second highest turnout among young voters in 30 years. (Lopez, 2022) Alarmed by the erosion of progressive values in the governmental branches, Gen Zers voted overwhelmingly Democratic, helping the candidates to secure wins in nearly every battleground statewide race and grow their majority in the Senate. (Lopez, 2022) (Guerrero, 2023)

Looking forward, millennials and Gen Zers will represent approximately 48.5% of votes in the 2024 presidential election and more than half (54.10%) in 2028. (Smith, 2023) It is also worth mentioning that millennials are the first generation in American history that hasn’t become more conservative with age and Gen Zers appear to be following in their progressive footsteps. (Guerrero, 2023)

In light of the recent decisions on the expansion of gun rights (*NYSRPA v. Bruen*) and the narrowing of environmental regulations (*West Virginia v. EPA*, *Sackett v. EPA*), it should be no wonder that the younger generations are deeply distrustful and disapproving of the Court's job. (Waldman, 2023)

Concluding, it is important to acknowledge that even though the Supreme Court has demonstrated considerable independence from public opinion and social trends, this freedom is not total. (Baum, 2019) To a large extent, the Court is a majoritarian institution, as its policies have historically tended to coincide with those of policy makers in other governmental branches and the American society as a whole. (Baum & Devins, 2010) This tendency is reflected in several processes which include the appointments of Justices, pressures on the Court by the legislative and executive branches, and the effects of societal changes on the Justices' opinion. (Baum & Devins, 2010)

By consistently losing public and political support, the Court's legitimacy and relevancy are at risk of being gradually undermined - particularly on issues involving protections of civil liberties where there is already too little support in reversing earlier decisions. (Baum, 2019) Conversely, state legislatures and the judiciary will be required to step up and safeguard protections for their citizens under public pressure, especially since federal fixes on politically consequential issues are unlikely given the current partisan polarization in Congress. Nevertheless, millions of Americans will still suffer the consequences of the civil liberties' reversal, especially minorities located in deep red states. (WhiteHouse.gov, 2022)

While it is evident that recent cases with major implications for public policy have been decided mostly along ideological lines, it is also apparent that the ideological composition of the Court has become a major battleground for partisan conflict, particularly in salient issues involving individual liberties questions. (Bonica & Sen, 2021)

The Roberts Court's willingness to dismantle constitutional protections for fundamental rights combined with the Congress' inability to establish nationwide protection due to the filibuster and congressional dysfunction, have now brought state governments to the center and important civil liberties issues are now in danger of being used as tools of citizen pressure or even abuse, depending on the governments' political coloration. (Glenza, 2021) (Brownstein, 2023) (Mohapatra, 2023)

The visible deterioration of civil liberties across the country has also made headlines globally with the U.S., for the first time in its history, making the list of backsliding democracies in the International IDEA's Global State of Democracy reports of 2021 and 2022. (Porterfield, 2021) (IDEA, 2022)

The accelerating polarization across all branches has led to growing governmental dysfunction and a widespread decline in the lack of trust in institutions by the general public. (Montanaro, 2023) The Supreme Court's role as the independent branch and safekeeper of individual liberties is more important now than ever, yet its recent track record has repeatedly indicated that conservative activism has given way to impartiality and civil liberties issues, as well as the Court's own credibility in public eyes, have suffered the worst blow. (Waldman, 2023)

Taking everything into account, there have been some silver linings recently that were, nonetheless, seen as the exception rather than the rule.

On *Allen v. Milligan*, the Court defied expectations by upholding, instead of dismantling, Section 2 of the Voting Rights Act (VRA) on redistricting and stroke down a gerrymandered congressional map in Alabama, preserving longstanding safeguards against racism in U.S. elections. (Millhiser, 2023) This decision was praised as one of the Court's most reassuring in years - particularly when considering the precedent of *Shelby County v. Holder*, a 2013 decision that stroke down Section 4 of the VRA and enabled state preclearance, precipitating an era of restrictive voter laws, gerrymandering, and unequal access to the ballot. (Sneed, 2021)

In another unexpected move, the Supreme Court granted full stay in a case concerning the FDA's approval of mifepristone, a widely used abortion pill, and blocked a lower court's ruling which limited access to the abortion medication. (Dwyer & Hutzler, 2023) The emergency stay was received as a sign of relief, rather than a cause for celebration given the *Dobbs* precedent. (Washington Post Editorial, 2023)

From *Citizens United* to *Shelby County* and from *Obergefell* to *Dobbs*, the Roberts Court has been altering the political and societal landscape of the U.S., provoking political responses not only regarding the consequences of its rulings but also on the institutional role of the Court itself. (Wolf, 2023)

As a national policy maker, the Supreme Court is not immune from changing social norms and, as part of the larger society, its decision-making will overtime reflect changing social conditions. (Baum & Devins, 2010)

To be certain, the Court's increased conservatism since the 1970s is an indication of both changing attitudes in the general public as well as a growth in litigation by conservative groups. (Baum, 2019) Given the current climate of polarization that extends from the governmental branches through the American public, it is evident that the Court can simultaneously be a product of its times and at odds with a majority of the public opinion, federal, and state officials. (Baum & Devins, 2010) Even so, lacking concrete sources of power, the Supreme Court depends on public legitimacy in order to secure compliance and enforcement of its decisions and fight off attacks on its institutional power. (Baum & Devins, 2010) (Devins & Baum, 2019)

The Roberts Court's aggressive conservative judicial activism combined with continuous revelations about the conservative Justices' financial ties to Republican billionaires and dark money groups have resulted in the collapse of public confidence in the Court's job, motivating calls for a structural reform with term limits and a binding ethics code for the Justices. (Toobin, 2012) (Biskupic, 2021) (Hemel, 2021) (Wolf, 2023) (Lubet, 2023) (Durkee, 2023)

It remains to be seen whether the Roberts Court will be able to balance the competing demands of America's diverse population or risk alienating the rising generations and jeopardize its own legitimacy and effectiveness as a policy maker by pursuing a partisan agenda that protects conservative religious liberty interests at the expense of equality rights for all citizens. (Brownstein, 2020) (Feldman, 2022) (Shaw, 2023)

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