

## Abortion in the United States: The Road to Vague Legislation

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*Roe v. Wade was one of the first landmark cases instituting abortion policies in the United States. While legislation regarding abortion has been modified since 1973, the state of the nation has also changed as it has become increasingly polarized. Abortion legislation was introduced as an attempt to solve a privacy issue. However, over time, the discourse around abortion turned away from its legality in terms of privacy to also include discussion about healthcare and the morality of the legislation itself. Vague legislation yields uncertainty for the future of abortion policies.*

### Introduction

In 1973, the Supreme Court finalized the decision of the *Roe v. Wade* case. The final verdict deemed that abortion was constitutional based on privacy rights as detailed in the 1st, 4th, 5th, 9th, and 14th Amendments.<sup>3</sup> However, this landmark decision left room for individual states to interpret the holding in the way they saw fit. This led to various arguments among governmental actors and court cases brought to the judiciary over the past few decades. Considering Congress' and the Supreme Court's framing of the issue in terms of privacy, why have interest groups and the public utilized the frames of morality and healthcare when advocating for or against legal abortion? Moreover, how has the framing of these issues caused immense inaction during the policymaking process? While the Legislative and Judiciary branches debate over the legality of privacy concerning the right to abortion, interest groups and the public have been pushing the two branches to consider morality and healthcare as aspects of the right to abortion. Confusion regarding what the most important argument is for either being against or in support of abortion has led to controversial and vague legislation. This paper will discuss the history of abortion policies, how the Legislative and Judiciary branches have dealt with the issues addressed in the 1973 Supreme Court case, as well as how interest groups and the public face those problems as constituents.

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<sup>3</sup> "Roe v. Wade." Oyez.



## Background *Major Events*

In 1973 during the *Roe v. Wade* court battle, the Supreme Court decided on the basis of the Due Process Clause of the 14th Amendment that every woman has the right to privacy regarding their choice to have an abortion. However, state doctrines still vary in opinion regarding whether to prioritize their interest in protecting women's health or to prioritize the "potentiality of human life" and so state laws are left to debate over these opinions.<sup>4</sup> Thus, the law states that during the first trimester states could not regulate a woman's choice. In the second trimester, a state can impose regulations only insofar as the mother's health is at risk. Then, in the third trimester, states have complete control as to whether or not to prohibit abortion except in cases of saving the mother's life. Even though the 1973 Supreme Court case stated a woman's right to privacy protects a woman's right to choose, the case also stated, "...the decision leaves the state free to place increasing restrictions on abortion as the period of pregnancy lengthens, so long as those restrictions are tailored to the recognized state interests."<sup>5</sup> This sanction has allowed states to apply restrictions as they see fit, which caused great controversy. Since the *Roe v. Wade* decision essentially concluded that the right to privacy and state's rights were not mutually exclusive, there was bound to be tension between the two.

No more than six years later, *Webster v. Reproductive Health Services* was another major case brought to the Supreme Court that debated the constitutionality of Missouri legislation that imposed major regulations on abortion, to the extent that it appeared to violate *Roe*. The final Court decision dictated that, "...a regulation imposed on a lawful abortion is not unconstitutional unless it unduly burdens the right to seek an abortion," which seems to negate the trimester ruling set in place a few years earlier by *Roe*. In addition to the *Webster* ruling not conforming to the *Roe v. Wade* decision, the *Webster* ruling is just as vague as *Roe* in terms of defining the restrictions and put even more power into the hands of the state with regards to abortion legislation.<sup>6</sup>

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<sup>4</sup> "Roe v. Wade."

<sup>5</sup> "Roe v. Wade, 410 U.S. 113 (1973)." Justia Law.

<sup>6</sup> "Webster v. Reproductive Health Svcs., 492 U.S. 490 (1989)." Justia Law.



### ***Current State of Affairs***

Currently, 43 states prohibit abortion after a certain number of weeks have passed since conception and 45 states have laws that permit individual healthcare providers to refuse to perform abortions. Additionally, 12 states block private insurance plans from covering the medical expenses of an abortion. In 33 states, it is against the law to use public funds, for those who are enrolled in Medicaid, for coverage of an abortion except, "...where the woman's life is in danger or the pregnancy is the result of rape or incest."<sup>7</sup> Since there is no immutable or established federal law regarding abortion, legislation is continually being changed or amended. For instance, on March 9th, 2021, Governor Hutchinson of Arkansas signed SB6 into law, thereby prohibiting abortion in all cases with the only exception being to save the mother's life in medical emergencies.<sup>8</sup> This law goes against the Supreme Court case rulings, as it disrupts a woman's privacy, and yet, it took effect in June 2021. This law is one of 66 state legislations that were introduced in 2021 with the end goal of a whole or partial prohibition of abortion.<sup>9</sup>

On the other hand, in 2018, Oregon and Washington both passed legislation requiring health plans to cover abortion and maternal care, including contraception.<sup>10</sup> More recently, on April 13th, 2021, the Biden Administration changed federal government policy about contraception delivery. They announced that because of the COVID-19 pandemic, abortion pills would be allowed to be sent to patients through mail. This sparked even more controversy between groups who oppose the right to abortion and groups that believe that this is a step in the correct direction for abortion rights.<sup>11</sup>

### ***Key Stakeholders***

Social movements such as the Pro-Choice and Pro-Life groups are both very active in the public sphere and have been extraordinarily outspoken in their responses to the Biden Administration's decision.

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<sup>7</sup> "An Overview of Abortion Laws." Guttmacher Institute. (April 5, 2021).

<sup>8</sup> "Governor Hutchinson Issues Statement on Signing of SB6." Arkansas Governor Asa Hutchinson.

<sup>9</sup> "State Legislation Tracker." Guttmacher Institute. (April 1, 2021).

<sup>10</sup> Anusha Ravi. "How the U.S. Health Insurance System Excludes Abortion." Center for American Progress.

<sup>11</sup> Abigail Abrams. "Why Abortion Pills Are The Next Battle Over Abortion Rights." Time. Time, April 14, 2021.



Pro-Choice advocates look at the decision to allow abortion pills to be sent through mail as a win for reproductive health while Pro-Lifers see this decision as “...catastrophic loss of life by mail.”<sup>12</sup> Each year, Pro-Life groups meet nationally and march in major cities across the US, most notably including Washington DC, in support of the unborn and Pro-Choice groups host fundraiser events featuring speakers and discussions on the importance of the freedom of choice as a “fundamental human right.”<sup>13</sup> Traditionally, Pro-Life activists focus on the morality of abortion and human rights, while Pro-Choice supporters focus on reproductive health and a different interpretation of human rights.<sup>14</sup> Both groups focus on what they believe is advocacy for human rights, but on opposite sides of the political spectrum. This leads to major strife on a public level.

Planned Parenthood is viewed underneath the umbrella term Pro-Choice. They are the nation's largest provider for women's reproductive health and extensive advocates for the Pro-Choice movement. As well as acting as healthcare providers, they also defend the right to an abortion when it is attacked by Congress and the Supreme Court alongside the Center for Reproductive Rights, which is actively working to eliminate laws that restrict reproductive rights.<sup>15</sup> Both groups are heavily involved in the policy narrative regarding abortion.<sup>16</sup> On the other side, the Heritage Fund, a conservative think tank, conducts research and distributes articles against abortion. There are also organizations such as March for Life which is an organization that unites once a year to march across major cities in support of the ban of abortion.<sup>17</sup> Additionally, those in power, such as judges in the courts and members of Congress, are heavily involved in making sure legislation swings in favor of their respective ideology or party. Personal stance and

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<sup>12</sup> Carlie Porterfield. “Biden Administration To Allow Abortion Pills Via Telemedicine And Mail.” *Forbes*. Forbes Magazine, April 13, 2021.

<sup>13</sup> “State Marches Near You.” March for Life. April 8, 2021; “Abortion Access.” NARAL Pro-Choice America, July 30, 2019.

<sup>14</sup> Lucy Jackson and Gill Valentine. “Performing ‘Moral Resistance’? Pro-Life and Pro-Choice Activism in Public Space.” *Space and Culture* 20, no. 2. 201. 222.

<sup>15</sup> “Who We Are.” Planned Parenthood.

<sup>16</sup> “Abortion.” Center for Reproductive Rights. April 19, 2021.

<sup>17</sup> “Pro-Life Organizations: EWTN.” EWTN Global Catholic Television Network.



religion play a role in policy-makers' decisions regardless of if they are subject to voters' views or not.<sup>18</sup>

### ***Recent Action and Inaction***

On an institutional level there is action among states regarding legislation about the right to an abortion. However, legislation that both prohibits or expands that right is often challenged in the courts. It has been that way since the *Roe v. Wade* decision was finalized. There is concern that *Roe* could be overturned on a federal level, thus, states have taken the matter into their own hands to protect the right to an abortion. Currently, *Roe v. Wade* is constantly being undermined by a few states, and not every piece of legislation breaking with the precedent set by *Roe* is being reviewed by the courts.<sup>19</sup> With the constant back and forth between restricting and allowing abortion, the process has been described by Nancy Northup, CEO of the Center for Reproductive Rights, as, "...hollowed out by a game of constitutional whack-a-mole."<sup>20</sup>

From the perspective of those whom the laws affect, it is frustrating to have to consistently pay attention to these changes because rules and regulations are constantly changing: restrictions are being added, taken away, and debated in the courts. Nancy Northup, the author of the opinion piece quoted above, outlines the exact reason as to why there is so much discourse between the members of the courts or Congress and between the institutions and the actors. At the beginning of her piece, she wrote, "...the Constitution protects our personal liberty and dignity to make such decisions for ourselves," but further down wrote, "...treat[ing] abortion for what it is: health care."<sup>21</sup> Institutions are debating on a constitutional level, but actors are focused on the healthcare and moral aspect, which explains the discourse between the two groups.<sup>22</sup>

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<sup>18</sup> Byron W. Daynes and Raymond Tatalovich. "Religious Influence and Congressional Voting on Abortion." *Journal for the Scientific Study of Religion* 23, no. 2 1984. 199.

<sup>19</sup> Elizabeth Nash, Guttmacher Institute, and Megan K. Donovan. "Ensuring Access to Abortion at the State Level: Selected Examples and Lessons." Guttmacher Institute, August 21, 2019.

<sup>20</sup> Nancy Northup. "Opinion | It's Time for Congress to Stop the States from Playing Whack-a-Mole with Abortion." *The Washington Post*. WP Company, June 29, 2020.

<sup>21</sup> Northup, "Opinion | It's Time for Congress to Stop the States from Playing Whack-a-Mole with Abortion."

<sup>22</sup> Northup, "Opinion | It's Time for Congress to Stop the States from Playing Whack-a-Mole with Abortion."



## Institutions

### *Legislative Branch*

It is important to understand the current state of Congress before explaining why there is so much trouble moving forward in the policymaking process surrounding abortion. The two contemporary problems with Congress include congressional dysfunction and increasing polarization among the parties. Congressional dysfunction occurs for a multitude of reasons, but the main reason is that of increased polarization which leads to Congress not being able to pass any major legislation that could create a meaningful change. Without a functioning Congress, other institutions, such as the Executive and the Judicial branch, are required to make changes or pass (or veto) laws, which is supposed to be the primary job of the Legislative branch. Originally, when the Constitution was written, Congress was established as the first branch of the U.S. Government. Political researcher and writer Kevin Koser states that, "...congress is given all lawmaking power and complete authority over raising revenues. The national legislature has the authority to identify problems, craft policies and establish agencies to execute its policies."<sup>23</sup> Even though Congress was originally granted those powers in particular, the other branches have had to step in due to Congress's lack of progress and the slowing effect of bureaucracy. This action in the Executive and Judiciary throws the balance of power off because what was supposed to be Congress' role exclusively is now being performed by the other branches. The solution to this problem would be for Congress to take back the control of legislation, but that is proven near impossible due to the overabundance of polarization.<sup>24</sup>

Polarization occurs when tension draws political parties farther away from the other parties and closer to themselves as demonstrated in Figure 1.<sup>25</sup> D'Antonio wrote, "All complex societies are characterized by a high degree of internal tension and conflict... their [polarization's] intensity makes difficult the kind of compromise which has sustained the

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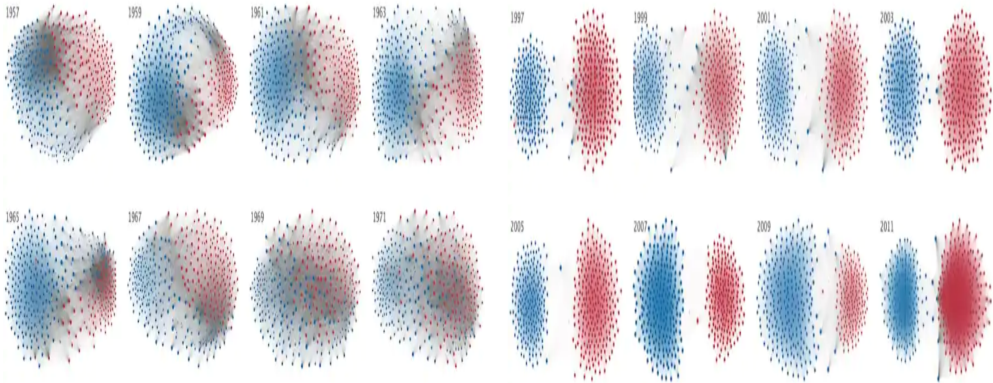
<sup>23</sup> K, Koser. "Restoring Congress as the First Branch". *R Street Institute*. (2016). 2.

<sup>24</sup> Koser, 11.

<sup>25</sup> Christopher Ingraham. "A Stunning Visualization of Our Divided Congress." *The Washington Post*. (WP Company, April 26, 2019).



two-party system.”<sup>26</sup> Figure 1 from The Washington Post shows how over time political parties in the House of Representatives have begun to only vote along their party lines and almost never with the other side. Figure 1 ranges from the years 1975-1982 on the left and from 1997-2011 on the right.<sup>27</sup>



*Figure 1*

S. M. Theriault claims that Republicans and Democrats have become so polarized over time because of their policy agenda, which is the list of policies the House and Senate are to discuss and pass, which has shifted over time in favor of policies that are, “...more prone to party conflict, like abortion.”<sup>28</sup> Therefore, Congress has an incredibly difficult time trying to get a majority vote for any legislation that either completely prohibits or allows abortion. Members of Congress will not distance themselves from their party’s view about what they believe the Constitution states in terms of human rights, in fear of being ostracized by their own party.<sup>29</sup>

<sup>26</sup> William V. D’Antonio, Tuch, Steven A., and Baker, Josiah R.. *Religion, Politics, and Polarization : How Religiopolitical Conflict Is Changing Congress and American Democracy*. Lanham, MD: Rowman & Littlefield Publishers, 2013. 17.

<sup>27</sup> Ingraham. “A Stunning Visualization of Our Divided Congress.”

<sup>28</sup> J.W. Kingdon. “Agendas, Alternatives, and Public Policies.” Boston, MA: Little, Brown and Company. 3; S.M. Theriault. “A Review of ‘Beyond Ideology: Politics, Principles, and Partisanship in the US Senate’”. *Congress & the Presidency*. 2010. 324.

<sup>29</sup> Sarah E. Anderson and Daniel Butler. “Analysis | Biden Wants to Bring Democrats and Republicans Together. Here’s Why That’s so Challenging.” The Washington Post. WP Company, December 19, 2020.



### *Judiciary Branch*

Those on the Supreme Court are not elected by the people as they have to be nominated by the President and approved by the Senate before they can sit on the bench. As Justices, their role is to be apolitical and remain neutral about the cases they hear, only abiding by the previously upheld laws and the Constitution.<sup>30</sup> However, just as polarization is plaguing the Legislative branch, debates over Judicial Activism versus restraint and over politicization are afflicting the Judiciary branch. Judicial Activism refers to the Court striking down or overturning legislation. In contrast, Judicial Restraint is defined as the understanding, "...that Justices ought to avoid usurping powers belonging to the legislature and executive."<sup>31</sup> The divide in the Court is less clear than the divide in Congress because polarization separates members of Congress by party, while the debate of Judicial Activism versus restraint can change on a case by case basis, and is not purely a matter of ideological alignment. In 2013, the late Justice Ginsburg stated that the courts took too much liberty in utilizing Judicial Activism and defended the action in the name of respecting Congress' motives as well as protecting minorities who may be disproportionately affected by said legislation.<sup>32</sup> Those listed reasons alone do not account for all the uses of Judicial Activism which is why there remains so much controversy.

Over time, Supreme Court Justices have transitioned from being neutral advocates of the Court to being politicized actors. It is theorized that this change likely happened because presidents opt to nominate Judges who will vote along their party's lines rather than remain neutral. The politicization of the Court accounts for the use of Judicial Activism because now judges vote along their ideological lines which creates contention among those who wish to remain neutral and those who wish votes were cast in their ideological favor. Figure 2 shows that between the years 1918-2018, political alignments of Supreme Court Justices have shifted.<sup>33</sup>

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<sup>30</sup> Martin Quinn. "Supreme Court Justices Are Increasingly Political." *The Economist*. The Economist Newspaper.

<sup>31</sup> Adam Liptak. "How Activist Is the Supreme Court?" *The New York Times*. The New York Times, October 12, 2013; Barton Swaim. "Politics: When Pundits Hold Court." *The Wall Street Journal*. Dow Jones & Company, March 26, 2021.

<sup>32</sup> Liptak, "How Activist Is the Supreme Court?"

<sup>33</sup> Quinn, "Supreme Court Justices Are Increasingly Political."





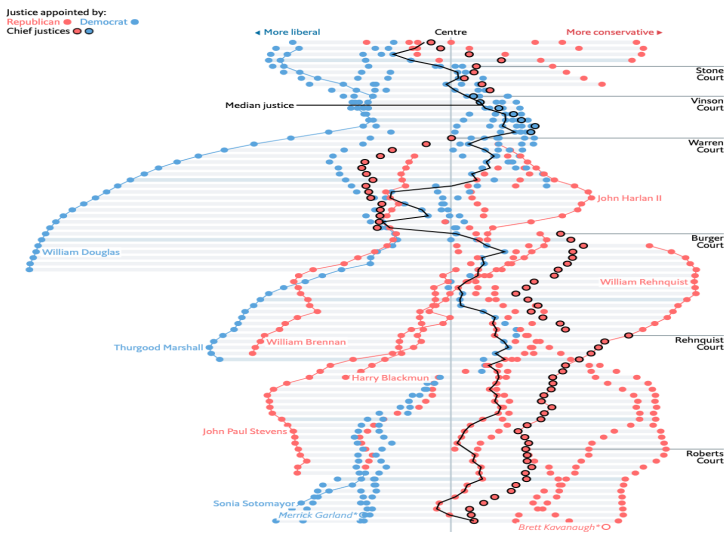


Figure 2

At the top of the graph, the median ideology was just about in the center and all the dots are closer to the center while towards the bottom of the graph, representing more recent years, the dots are considerably more spread out by party. However, in the graph there also seems to be a shift to the more “liberal” side regardless of whether a Democrat or Republican nominated the Justice. Tracking shifts in ideology is now more important than ever because with this data, political scientists can predict Justices’ voting patterns and whether a particular Justice may use Judicial Activism or Restraint.<sup>34</sup>

Regarding the decision of *Roe v. Wade* and subsequent legislation, there are two main bodies of thought. The Judicial Activist side claims that the courts had the right to interpret that the 14th Amendment gives Americans the right to privacy and thus, the right to an abortion. The Judicial Restraint side argues that the former side took too much liberty in their interpretation and granted more rights than the Constitution truly allows. The author of *Why all Americans should want Roe v. Wade overturned--regardless of their views on abortion*, Paul Stark, argues that both the Justices on the bench during *Roe v. Wade* and those who are currently debating over passing legislation in favor of the original decision are fighting for a cause with no real rationale. He writes,

<sup>34</sup> Quinn, “Supreme Court Justices Are Increasingly Political.”



“Supreme Court Justices are not lawmakers. They are judges who are supposed to interpret and apply the law that already exists.”<sup>35</sup> Supreme Court Justices, once nominated and approved, remain on the bench until the end of their lives or until they choose to retire. The only way to change a Supreme Court ruling is to change the Constitution or to have another Supreme Court case to change the ruling, thus Justices are the ones holding themselves accountable to the democratic process.<sup>36</sup>

## Actors

### *Interest Groups*

Interest groups are organizations that constantly watch for bills that may be beneficial or harmful to their cause and push their agenda to the forefront of legislators’ agenda through discussion and persuasion.<sup>37</sup> These groups are able to persuade legislators through lobbying which is defined as: “...an attempt by a group to influence the policy process through persuasion of government officials.”<sup>38</sup> Legislators are elected officials, so while they are working for their own agenda, it is also imperative that they work in favor of the public so that they continue to be re-elected. Lobbyists provide information to legislators about specific legislation and its possible outcomes and provide intel on what the public supports and opposes.<sup>39</sup> Politicians have become increasingly dependent on lobbyists to know the positions the voting members of their party hold so they do not deviate from it. L. Drutman and S. Teles even go so far as to claim Congress has lost the ability to research and make decisions on its own about policies because of the high volume of Congressional dysfunction. The most polarized members of Congress heed advice from the biased interest groups which further divides the already divided Legislative branch. Discussion between the Congress and the interest

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<sup>35</sup> Paul Stark. "Why all Americans should want Roe v. Wade overturned--regardless of their views on abortion: A reversal of the Supreme Court's abortion ruling would be pro-Constitution and pro-democracy." *National Right to Life News*. January 2019. 9.

<sup>36</sup> Quinn, "Supreme Court Justices Are Increasingly Political."

<sup>37</sup> J. Gelman. "Rewarding Dysfunction: Interest Groups and Intended Legislative Failure." *Legislative Studies Quarterly*. 2017. 666.

<sup>38</sup> T.J. Lowi, Ginsberg, B., Shepsle, K.A. and Ansolabehere, S. "Groups and Interests" in *American Government: Power and Purpose*. 2019. 571.

<sup>39</sup> Lowi, 574.



groups cause rifts which, in turn, means that no substantial legislation is passed which continues debates.<sup>40</sup>

The Legislative and Judiciary branches are essentially deadlocked in their debates, forcing interest groups to use alternative points of discussion to get their associations' interests to the forefront of the decision makers' minds. Groups utilize grassroots campaigns to get the public on their side. Planned Parenthood and March For Life both use lobbying events to push their agenda on Capitol Hill.<sup>41</sup> These events lobby for their respective views on abortion in regard to healthcare. For example, Planned Parenthood held one of its largest Lobby Days back in 2018. Supporters and advocates gathered to attack the Trump-Pence Administration on their restrictive reproductive health bills.<sup>42</sup> In contrast, starting in 1974, March for Life planned their first march in Washington a year after the *Roe v. Wade* decision, and continues to march each year to commemorate the decision. They follow this action by lobbying legislative leaders on policies which they view as being in favor of women's health.<sup>43</sup> Because the lobbying industry has grown exponentially and members of Congress rely heavily on lobbyists to provide pertinent information, more and more money is being funneled into Pro-Life and Pro-Choice lobbyists as seen in Figure 3 and Figure 4, respectively.

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<sup>40</sup> L. Drutman, & Teles, S. "Why Congress Relies on Lobbyists Instead of Thinking for Itself". *The Atlantic*. 2015.

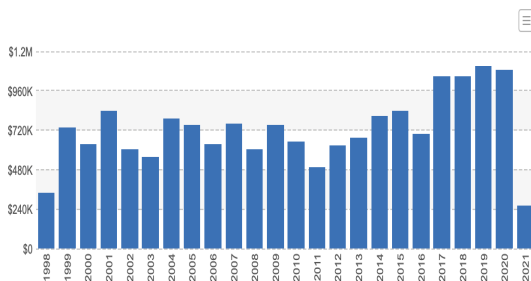
<sup>41</sup> Lowi, 576.

<sup>42</sup> "Planned Parenthood Holds Largest Lobby Day Ever." Planned Parenthood. April 26, 2018.

<sup>43</sup> "About the March for Life." March for Life. July 27, 2020.



Annual Lobbying on Abortion Policy/Anti-Abortion



Annual Lobbying on Abortion Policy/Pro-Abortion Rights

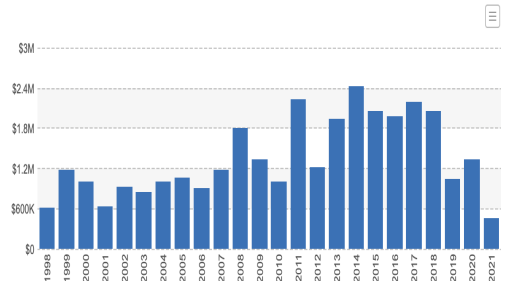


Figure 3

Figure 4

Figure 3 ranges from \$0-\$1.2 Million per year while Figure 4 ranges from \$0-\$3 Million.<sup>44</sup> While Pro-Choice interest groups have consistently spent more on lobbyists, Pro-Life interest groups are maintaining a somewhat steady incline in spending. Both sides attempt to persuade legislators to create legislation in favor of their agenda and switch the debate away from privacy into a discussion of women’s health.

**Public Opinion**

There is a longstanding discussion as to whether or not the general public impacts public policy. The main argument states that public opinion could be more or less impactful depending on the amount of issue salience. Saliency refers to how important an issue is to the public, the more important it is, the more likely citizens will use the policy to make their decision on Election Day, which could change the direction of legislation or at least put it on Congress’s agenda to be debated further.<sup>45</sup> While interest groups pour hundreds of thousands of dollars yearly into lobbying support for their side, the general public is not as politically motivated, leading to a lack of issue salience. As of 2019, about 61% of Americans believe that abortion should be legal in

<sup>44</sup> “Abortion Policy/Anti-Abortion Lobbying Profile.” OpenSecrets; “Abortion Policy/Pro-Abortion Rights Lobbying Profile.” OpenSecrets.

<sup>45</sup> P. Burstein. “The Impact of Public Opinion on Public Policy: A Review and an Agenda”. *Political Research Quarterly*. 2003. 30.



either all or at least most cases.<sup>46</sup> While that percentage is above the majority, there are two issues: questions still remain regarding complete legalization versus partial legalization, and just because a policy is popular in the majority does not mean it is automatically put into law. Dylan Matthews writes in his article, *Remember That Study Saying America is an Oligarchy? 3 Rebuttals Say it's Wrong* that democracy entails compromise and both sides end up “winning” about half of the time.<sup>47</sup>

There will never be a general consensus in the public regarding abortion for two reasons. First, Matthews states that “...most Americans aren't very politically engaged — and most don't *want* to be politically engaged, preferring that professional policymakers make decisions for them, so long as the economy stays on track.”<sup>48</sup> Policies regarding abortion only truly affect women and, more specifically, those are who are looking to have an abortion, as abortion is considered women’s healthcare. While the general public can have an opinion on the policy, a smaller percentage of the public would be actively affected by its implementation. Abortion policy is not as salient of an issue as others because it affects a smaller percentage of voters. Second, there is no real compromise between those who want abortion legalized and those who do not. The general public is debating whether or not abortion is murder because it is a less politicized question than a discussion of the Constitution or healthcare. The two main responses are that abortion is, “...the same thing as murdering a child,” and “...abortion is not murder because a fetus isn’t a person” with a few responses in between as shown in Figure 5.<sup>49</sup>

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<sup>46</sup> “Public Opinion on Abortion.” Pew Research Center's Religion & Public Life Project. July 7, 2020.

<sup>47</sup> Dylan Matthews. “Remember that Study Saying America is an Oligarchy? 3 Rebuttals Say It’s Wrong”. *Vox*. 2016.

<sup>48</sup> Matthews, “Remember that Study Saying America is an Oligarchy? 3 Rebuttals Say It’s Wrong”.

<sup>49</sup> Everett C. Ladd and Bowman, Karlyn H.. *Public Opinion about Abortion*. Washington: American Enterprise Institute for Public Policy Research. 1997. 3; Ladd, 19.



|                        | <i>Murder</i> | <i>Not Murder</i> | <i>Depends<sup>a</sup></i> |
|------------------------|---------------|-------------------|----------------------------|
| Nov. 1983 <sup>b</sup> | 57            | 30                | na                         |
| Nov. 1985              | 54            | 35                | na                         |
| Dec. 1985              | 55            | 35                | na                         |
| Aug. 1987              | 50            | 35                | na                         |
| Apr. 1989              | 48            | 40                | 4                          |
| July 1989 <sup>c</sup> | 40            | 47                | 7                          |
| Jan. 1995              | 46            | 41                | 5                          |
| Jan. 1998              | 50            | 38                | 5                          |

*Figure 5*

While Figure 5 only goes through 1998, by 2019 the public became increasingly divided, especially through their political associations. About 38% of adults believe abortion should be illegal in most or all situations, while 61% of adults believe abortion should be legal in most or all situations, and 1% have no opinion on the matter.<sup>50</sup> There can be no true compromise between the two groups because now the discussion is not about abortion directly, but whether or not the fetus is human and whether or not abortion should be labeled as murder. There is little to no middle ground between people who believe it is murder and those who do not.<sup>51</sup> When it comes to impacting Congress, there is no generalized stance, just a divided one, and it is near impossible to create legislation that will not be controversial and be challenged in courts.

### **Conclusion**

In conclusion, Congress and the courts debate the legality of abortion through the lens of the Constitution and the right to privacy. The consequences of polarization and the use of Judicial Activism and Restraint have made it impossible for any new progress from the legislative branch because of strict divisions of ideology. In turn, interest groups fund lobbyists to persuade legislators from a healthcare perspective to create legislation in favor of their position and to break from the debate on privacy. Thus, as the public is not generally politically engaged, they tend to debate abortion on a non-political level. Regardless of the institution or the actor, the conclusion remains the same for

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<sup>50</sup> “Public Opinion on Abortion.”

<sup>51</sup> Ladd, 3.



abortion policies; there is no policy that would be satisfactory to both sides. With increased lobbyist spending from interest groups further polarizing Congress, courts taking over some of the Legislative Branch's duties, and the general public's inability to compromise, the future of abortion policies remains a game of whack-a-mole.<sup>52</sup> This results in an unsatisfying conclusion as policies will be changed depending on the majority in Congress, challenged in the courts regardless of the outcome, and interest groups will continue to mobilize to try to gain favor either way, and the public will fight for what it believes is truly right.

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<sup>52</sup> Northup. "Opinion | It's Time for Congress to Stop the States from Playing Whack-a-Mole with Abortion."



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