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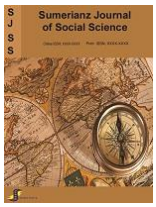

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From Roe to Dobbs: How the Supreme Court of the United States (Scotus) Muddled Through Half a Century Women's Reproductive Rights/ Abortion from Enshrinement to Dissolution

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Abstract

This study explores the evolution of U.S. Supreme Court ruling from (Tribe, 1973). That is, how the ruling in Roe which codified the right of women to abortion and the precedent set survived the test of time for more than half century until the Dobbs Case whose ruling overturned the enshrined privacy right of women. It also examines how states took advantage of contradictions and inconsistencies in decades of Supreme Court rulings to pass anti-abortion laws which were challenged with its cases reverted to the courts, thereby creating a revolving door scenario for litigants and states as well as prolife and prochoice groups over abortion. In the analysis, the author identified the role politics played in the "packing" of the Supreme Court with conservative judges who are committed to overturning Roe based on their "judicial restraint" doctrine that follows the lead of the legislature in interpreting the law and denying the enshrined and codified rights of women to abortion. Furthermore, the authors suggest various mitigation strategies to rectify the situation and codify the rights of women to access abortion through scenarios and options such as the use of federal powers through "executive order" to guarantee the principle of free interstate movement and commerce that will allow abortion seeking women to freely move from anti-abortion and pro-life states to those of pro-choice where abortion is allowed without penalty; the institution of term limit for judicial appointees to override the current life-long appointments; expansion of the Supreme Court beyond the current nine justices to allow the inclusion by appointment of more liberal judges who will likely interpret the law based on "Judicial Activism" doctrine and principles and interpretation of the constitution in a manner consistent with the spirit of the time and the challenging needs of the nation; suspension or removal of the "filibuster" to allow vote in the senate and possible passage of federal legislation to codify Roe, and constitutional amendment even though it has a slim chance of ratification. The authors conclude with the clear statement that the fight for women's right to reproductive rights/abortion and the codification of Roe though legislation does not end with the Dobbs by the U.S. Supreme Court ruling, but rather just a reboot that has triggered the beginning of a new fight to restore the reproductive rights of Americans.

Keywords: Ambulatory surgery; Ultrasound procedure; Partial birth abortion; Late term abortion; Strict scrutiny; Pro-life; Trimester pregnancy; Hyde amendment; Informed consent; Judicial bypass; Pro-choice; Undue burden; Saline injection; Fetal viability; Intact dilation and extraction; Requisite exception; Parental consent; Confidential abortion; Substantial obstacle; Avoidance distance; Judicial precedent; Stare decisis; Reproductive choice; Planned parenthood; Right to choice; Bodily integrity; Procreative liberty/ freedom; Reproductive right.

1. Introduction

Since the inception of the United States following the writing of American constitution in 1787 and its ratification in 1788 and its operation since 1789, American women have fought for their constitutional rights all along and in all spheres of their lives. For example, the right of women to vote took decades to come to fruition following lengthy, difficult, and sustained struggle resulting in the passage by the U.S. congress of the 19th amendment, which was passed on June 4, 1919, and ratified on august 18, 1920 that granted women the right to vote. The fight to preserve the rights of women to abortion has been fought over centuries and as such is generational. Between 1700 and 1800, all states allowed abortion before any signs of fetal life or movement known as "quickening" state could be felt or dictated.

Next, between 1850 and 1900, almost all the states starting with Massachusetts passed anti-abortion laws throughout the three trimesters or the overall period of pregnancy, with some exceptions involving situations under which the life of the woman carrying the pregnancy is under threat or in danger. From 1962 to 1973, up to seventeen states amended or changed their laws to permit abortion for pregnant women in cases of rape, fetal damage, and threat to mother's health. With only the state of Pennsylvania failing or refusing to lift its total ban on abortion, other states including Alaska, New York, Washington, and Hawaii allowed abortion only if it is relevance and necessity are the decisions of the woman carrying the pregnancy and that of her doctor or physician.

Now the fight has shifted to abortion in terms of securing women's fundamental right to abortion for American women in the later parts of the 19th and the 20th century. Under such situations in which abortion debates, issues and state actions have become cyclical in nature, many states have now passed laws to limit the rights of women to abortion. Although this fight over abortion has been fought in both legislative and judicial arenas, it did not gain much prominence until the Supreme Court ruling in the Gruber *et al.* (1999a) case which is the focus of this research. This study traces the evolution of the U.S. judicial debate and decisions over the rights of women to abortion from the Gruber *et al.* (1999a) decision that codified abortion to the Hobbs V. Jackson Women's Health Organization (2022) ruling by the U.S. Supreme Court decision overturning Gruber *et al.* (1999a) decision, and judicial precedent of over fifty years.

The first case under review is Gruber *et al.* (1999a). Here, the Supreme Court ruled that the constitution guarantees a woman's right to private, and that even though states can prohibit abortion in late pregnancy, it must permit it if the life and health of the mother is in danger. The second case is the Planned Moss (1976) case in which the court overturned Missouri law that required women to obtain their husbands' consent before having abortion. The third case is Greenhouse and Reva (2010) in which the Supreme Court upheld the Hyde Amendment to the U.S. Social Security Act, restricting the use of Medicaid funds for abortion even under the conditions of rape, incest and endangerment of the life and health of the woman.

The fourth case is Cates and Grimes (1981) in which the Supreme Court upheld Missouri law banning the use of public employees and facilities to facilitate abortion and the requirement that abortion doctors conduct tests for viability beginning at 24 weeks of gestation.

The fifth case is that of Pilpel and Zuckerman In this case, the Supreme Court nullified a Minnesota law requiring minors to notify both of their parents before abortion; and holding that minors must be granted judicial bypass option regarding parental consent rules. In the sixth case, -Planned Moss (1976), the Supreme Court ruling allowed states to regulate abortion if their laws do not create "undue burden" or place 'substantial obstacles" to women in their efforts to access abortion. In the next case, Breen and Scaperlanda (2006), The Supreme Court struck down Nebraska law banning partial birth abortion. Another case in line is (Charo, 2007). In this case, the Supreme Court upheld a federal law, Maureen (1999) that prohibited certain specific abortion procedures.

Also, the Supreme Court in Greenhouse and Reva (2010) ruling overturned Texas law requiring abortion clinics to abide by the same regulations as ambulatory surgery Centers, like maintaining minimal hallway widths and mandating doctors at abortion clinics to have or secure admitting privileges at a hospital within thirty (30) miles. The court ruled that the Texas law placed "undue burden" on women seeking abortion in violation of the (Wharton *et al.*, 2006) ruling. Finally, in The Hobbs V. Jackson Women's Health Organization (2022) ruling, the Supreme Court overturned Gruber *et al.* (1999b) decision which guaranteed a woman's right to abortion. Despite stating that the U.S. constitution does not confer or grant to any person the right to abortion, it then reverted or rolled back abortion regulation and decision powers to the states.

2. Literature Review

There has been much scholarly research on the topic of abortion that are designed to inform our understanding of the topic, including existing research and debates relevant to the issues of the rights of women to abortion. There is significant variance between different states on the question of abortion. Since the Supreme Court passed its dictate in Roe v. Wade, abortion has technically been legal across the country. Even though this is true, there have also been states more than willing to restrict abortion in ways that are only slightly within the law. For instance, some states such as Oklahoma, Texas and Louisiana have shown a willingness to restrict the operation of clinics that offer abortion services. Others have cut funding or put onerous restrictions on women to make those them think twice about their decision to seek an abortion. The literature suggests that the split in how states have dealt with abortion can be explained by several different factors impacting the economic, cultural, social, and political realities within those states.

Boland and Katziye (2008), in their research write that when looking at the general abortion trends around the world, there has been a movement toward greater liberalization of those policies. As the authors note in their take on

the context of the situation, there is currently a concerted effort to shut down abortion through state-level policies, and these efforts often get the most attention. Even given these highly publicized trends, the authors note that there has generally been a movement toward liberalization, with more countries and states expanding the ways in which individuals can get an abortion. The authors posit that the reason for this is a greater emphasis on the impact of abortion restrictions on women's human rights. Specifically, the authors suggest that when the discourse over abortion has shifted to a conversation over women's rights, there has been a resulting movement toward greater liberalization in policy.

Castle (2011), in her investigation seeks to provide some explanation for why, even in a world where abortion has become more liberalized, there are some states that have pushed for further abortion restriction. Her research reveals that more liberalized abortion measures might be self-defeating in these places; meaning that as abortion is liberalized across the globe, the strongest movements against abortion access are strengthened and emboldened. The researcher notes that it has becomes clear that in parts of the Bible Belt, such as the southern states of the United States there are strong, organized movements that help to fight against abortion access. According to the author, the reason why some states have more restrictive policies is because, in local and state politics, and notes that it is possible for anti-abortion interests to have a greater impact. In the Bible Belt, the author argues that there is an interconnectedness in the culture that allows for more political pressure to be exerted. She discusses several different groups that can have an impact, including the Catholic Church, the evangelical movement, and others. Noting that because these groups are very involved in politics, they can use their money to influence elections and put pressure on political candidates. This, she concludes, helps to explain why anti-abortion policies have had an easier time in some states than in others.

Finer and Fine (2013), provide an explanation regarding the reasons why there are critical differences among the different states in their approaches to abortion. Focusing on the idea of a strong women's rights movement, they argued that women's rights movements have done an excellent job of raising awareness and countering the conservative narrative about the realities of abortion. They argue that while anti-abortion forces have focused on the plight of the fetus, in places where abortion has been protected and expanded, it has often been because of a strongly organized women's human rights movement. Next, they observe that in states where abortion rights have been successfully rolled back, it is mainly because there is not a currently existing women's human rights structure to counter the narratives from anti-abortion forces. Further, they argue that in states where there is not a strong human rights and women's rights movement, it may just be because the cultural leaning of the states is so conservative that even a strong abortion rights movement activities and actions would not have been strong enough to make a difference. Regardless, the authors finally suggest that states with abortion rollbacks policies have been those states where there are no special interest groups well organized and strong enough to fight on behalf of women to secure access to abortion.

Jacobs and Maria (2015), propose something slightly different that might help to explain the lack of a strong women's human rights movement in places where highly restrictive policies have been put into place. Specifically, these authors argue that in parts of the country where there are more restrictions, women are much more likely to use highly available and effective contraceptives. It is perhaps true that women adjust their behavior because they know that an abortion is not an option for them if they happen to get pregnant. It might also be true that in these places, women are not as mobilized against abortion because they are less likely to need an abortion. This is another way of explaining how the embedded cultural power structure has not only served to produce abortion restrictions, but also served to beat down any opposition to these laws. Nevertheless, they concluded by stating that to prevent unwanted pregnancies, it is important to ensure women's access to highly effective contraceptive methods especially when access to abortions is limited.

Myers and Daniel (2019) sought to update the body of evidence on parental notification and consent laws. Hence, the authors looked at policies from 1992 to 2017. The year 1992 has significance in this context because it was the year of the Supreme Court's decision in (Wharton *et al.*, 2006), which, while reaffirming U.S. Supreme Court decision in Gruber *et al.* (1999b), it allowed states to regulate abortion if those restrictions do not constitute an "undue burden" on the woman seeking an abortion. This marked the beginning of an upward trend in increasingly restrictive state policies. Using a difference-in-difference research design, the authors conclude that these laws increased births to teens by three percent and resulted in a half million additional teen births between 1992 and 2017. These effects varied greatly by avoidance distance, or how far a minor would have to travel to obtain a confidential abortion.

Ananat *et al.* (2009), examine those cohorts' outcomes during adulthood. The authors extend the set of instrumental variables to include travel distance to the nearest state where abortion is legal, and "latent cost" of abortion in that state, which considers many factors, such as high levels of social stigma against abortion. The researchers identified states with high latent costs as those where you would expect lower rates of abortion even when it is legal. This is determined using a measure of states' political attitudes combined with a measure of illegal abortion rates by state before 1970.

This study relied on Census data (from 2000) to capture adult characteristics of cohorts born between 1965 and 1979. Their estimates suggest that abortion legalization shifted the distribution of education upward, with the odds of graduating college increasing among cohorts after legalization. Similar effects are found for receipt of public assistance and odds of being a single parent. A child that would have been born in the absence of abortion access would have been 12 to 31 percent less likely to graduate college and 73 to 194 percent more likely to receive public assistance, as compared with existing cohorts. The Researchers concluded that these results or findings support the findings of some other researchers that cohort outcomes improved with abortion legalization.

Foster *et al.* (2018a), found that existing children in the households of women who were denied abortions were more likely to be living below the federal poverty level several years later than existing children of women who received abortions. The authors conclude that abortion may be driven by the economic burden of additional children on parents.

In a second study by Foster *et al.* (2018b) examine the impacts on economic well-being for cohorts of living children, and found that the children born as a result of denied abortions were more likely to live below the federal poverty level and to live in households unable to afford basic living expenses, compared with *subsequent children* born to women who received abortions. This indicates that, beyond the number of children in the household, denied abortions resulted in additional economic hardship that continued for several years and signals that control over timing of childbearing is as economically important as total childbearing. That is, when abortion is legalized, the composition of births may change to include fewer births to poor and/or unintentional parents.

Gruber *et al.* (1999b), use a difference-in-differences strategy to compare childhood poverty rate trends in the five repeal states relative to other states. The authors use 1980 Census data. They compare how poverty status changed between cohorts born just after repeal is conducted in "repeal" states to those born just before. To account for how poverty may have been changing over time in the absence of abortion legislation, they then compared the difference in terms of how poverty changes across those two cohorts in non-repeal states versus repeal states. Next, the authors find evidence of selection effects on the average living child in terms of poverty status. Results show that abortion legalization reduced the percentage of the cohort living in poverty by 0.54 percentage points (from a base of 18.7 percent).

The researchers' findings are similar for receipt of welfare: abortion legalization lowered the rates of welfare receipt by 0.41 percentage points from an average of 10.6 percent. The authors also find reductions in the share of children living in single-parent households (by 0.87 percentage points, from a base of 18.6 percent), which have greater odds of being below the poverty level. The authors conducted additional analyses while stratifying by family structure and found that the changes in poverty were driven entirely by corresponding changes in family structure distribution. This means that fewer children were living in poverty due to a reduction in the odds of living in a single-parent household rather than a change to the average parental income. Estimates are also provided for the child that would have been born in the absence of abortion legalization. Compared with the average child born into that cohort, the estimates suggest that the averted child would have been 48 percent more likely to live in poverty, with their poverty rates 9.3 percentage points higher (from a base of 18.8 percent). On the other hand, the averted child would have also been 44 percent more likely to use public assistance, with rates 4.8 percentage points higher (from a base of 10.6 percent).

Borelli (2011) examines the impact of exposure to Parental involvement laws are restrictions on abortion that require minors to either notify parents of an abortion or receive their consent to obtain the procedure during adolescence in the 1980s and 1990s on educational outcomes measured at ages 21 to 32. The author includes fixed effects for state-of-birth, year-of-age, and five-year birth cohort. The author found that although effects were small and insignificant for White women, exposure to a restrictive environment was associated with a lower probability of completing high school for Black women. The author noted that consistent with those results, small (but statistically significant) effects were found for completion of some college among White women, but with larger effects found for Black women. The Researcher concluded that Black women were five to seven percent less likely to complete some college in a restrictive environment, while the White women's probability of completing some college decreased by less than two percent.

Whitaker (2011) research was designed to examine effects of abortion access on high school graduation rates of the next generation. Whitaker uses individual-level data and ethnicity controls, instead of estimation of the percentage of the cohort that is non-White. In contrast to approached by some other investigators, Whitaker finds improvements only for Black men, whose high school graduation rates increased. His results indicate insignificant change in high school graduation rates for other groups. Nevertheless, the study concluded that abortion legalization increased the economic status of later generations during childhood and potentially increased certain educational outcomes (such as high school and college graduation) later in life. These impacts the researcher claimed operated both through improving the economic status of parents, as well as changing the composition of births so that a higher proportion are born to more-advantaged parents. Joyce *et al.* (2006) find that a Texas parental notification law passed in 2000 was associated with a decline in abortions among 15- to 17-year-olds. Some studies have also found parental notification and mandatory waiting periods to be associated with an increase in minors' out-of-state travel for abortion.

3. From Roe To Dobbs: Selected Landmark Supreme Court Cases And Decisions In Sequence

Now, the fight has shifted to abortion in terms of securing women's fundamental right to abortion. Many states have passed laws to limit the rights of women to abortion. This fight has long been fought in legislative and judicial arenas and did not gain prominence until the Supreme Court ruling in the case:

3.1. Roe V. Wade (1973)

This landmark case struck down a Texas law that prohibited abortion except to save a woman's life and affirmed a woman's constitutional right to decide whether to continue a pregnancy. In this case, the Supreme Court of the United States (SCOTUS), using time and legal limits argued that in the first trimester of pregnancy, states

have no real interest in protecting a woman's or mother's health and that in this time frame, states can only require basic health safeguards of protecting a woman's health and life but cannot limit her access to abortion.

In the second trimester of pregnancy, which the supreme Court presented as the end of the first trimester and a time when people are convinced of fetal viability, that the state has compelling interest in protecting the health and life of a mother. As a result, the apex court noted, states can then regulate abortion only based on protecting the health and life of the mother.

With respect to the third trimester, a period in which the court claimed was period after point of fetal viability, the Supreme Court as a matter of legal standard stated that states have compelling and convincing interest in protecting the fetal or "potential" life. As such, it argued that states can under such circumstances restrict or even ban abortion if the processes and procedures can be allowed, especially when a mother's life or health is at risk or in danger.

Regardless of the Supreme Court ruling in Roe V. Wade, many states, including Missouri, still passed laws designed to challenge as well as circumvent the enforcement of the Roe V. Wade precedent until the filing of the case.

3.2. Planned Parenthood of Central Missouri v. Danforth (1976).

In this Danforth case, the court struck down a Missouri law that required married women to get their husbands' consent prior to initiation of an abortion or related procedures. In this Wharton *et al.* (2006) did not only invalidate broad portions or aspects of Missouri's abortion law including those which banned abortions by "saline injection" procedures, it also required a married woman to obtain the consent of her husband before the initiation of abortion, as well as securing the consent of parents before an abortion could be performed on their minor or teenage daughter. It is worth noting that in this case, the court approved in principle, but without explanation or any convincing evidence of the need for informed consent prior to abortion procedures. Although this is a lesser-known or less popular case about abortion, it was still an important one in terms of providing the template and roadmap of the ruling and legal direction and arguments of the court with respect to abortion debate. By removing the requirement that a married woman get her husband's consent to have an abortion, the courts undoubtedly in this case recognized a woman's autonomous right to control her reproductive health.

Regardless of this ruling, the abortion scuffle never came to an end. Rather, it migrated to the Legislative bodies both on the state and federal levels where its debate heated up. In the same year of the Planned Parenthood V. Danforth ruling, 1976, the United States Congress passed the Hyde Amendment which banned the use of federal funding to pay for abortions through Medicaid program. It should be noted that this amendment was proposed by Illinois Congressman Henry J. Hyde to the departments of labor and Health, Education and welfare, Appropriation Act of 1977. This Hyde Amendment constitutionality was later upheld by the United States Supreme Court in Greenhouse and Reva (2010). It should be noted that under the amended versions of the Hyde amendment, federal funding for abortion services for women participating in Medicaid program was restricted. Then, came the challenge, as well as put the Hyde Amendment provision of barring federal funding for abortions under test in the Harris v. McRae, 1980 case.

3.3. Harris v. Mcrae (1980)

The Hyde Amendment of 1976 prohibits women from using Medicaid to pay for abortions, except in cases of rape, incest, or endangerment to the woman's health. While Harris v. McRae, 1980 court case was a victory for pro-life groups and opponents of Roe V. Wade ruling who argued against using citizens' tax dollars to promote abortions. It was a defeat for abortion proponents such as pro-choice groups who wanted to expand abortion access across states and the federation. In detail, the Hyde Amendment forbids federal taxpayer dollars from being used to pay for abortion, except in cases of rape, incest, or danger to a woman's life. Since this proposal is a legislative provision rather than law, it required U.S. Congress to renew it annually. To do this, it is attached as a rider to the yearly appropriations bill, which in the context of a legislative procedure bill or legislative draft is an additional or extra provision added to a bill or other legislative measures under consideration which have little or no connection to the subject matter of the bill. In certain cases, riders are regarded as log-rolling measures.

Given the fact that (Greenhouse and Reva, 2010) unsuccessfully challenged the constitutionality of the Hyde Amendment in 1980, pro-life congressmen have refused to pass the annual appropriations bill which demands congressional reauthorization every year in other to keep the government operating effectively unless it embraces the Hyde Amendment, a rider provisions. In this (Greenhouse and Reva, 2010) ruling or judgement, the Court upheld the federal "Hyde Amendment provisions that restricted funding to only those abortions sought in response to the fact that the mother's life was in danger. The court unequivocally stated that there is no constitutional right for a woman to have an abortion at public expense unless the pregnancy emanates from incest or rape. As a matter of fact, since 1994, the Hyde Amendment has allowed or permitted the use of federal funds for abortions pursuant to the fact that such pregnancies occurred because of rape or incest. In some way, this ruling appears somewhat consistent with the Gruber *et al.* (1999b) ruling in which abortions rights are preserved under certain conditions and circumstances. Regardless of this (Greenhouse and Reva, 2010) court decision preserving a conditional woman's right to abortion, many states still set up roadblocks and conditions that create unnecessary burden to women to deter them from seeking abortion. These state-based strategies designed to impede a woman's right and freedom to seek abortion did not receive enough legal attention until it became an issue in the case of City of Prieto (1983).

3.4. City of Akron v. Akron Center for Reproductive Health (1983)

In terms of context, Ohio law required that abortions be performed in a hospital; imposed a 24-hour waiting period (one day) before abortions and their procedures be carried out. Furthermore, the Ohio state law required doctors to clearly inform women abortion seekers that life begins at conception, a law that contradicts Roe V. Wade Supreme Court Ruling that states have no real interest in protecting a woman's or mother's health and that in this trimester pregnancy time frame, states can only require basic health safeguards of protecting a woman's health and life but cannot limit her access to abortion. In this City of Akron v. Akron Center for Reproductive Health, 1983 ruling, the Court ruled the challenged provisions of the Ohio statute were unconstitutional due to the fact that they infringed upon or undermined a woman's right to abortion and violated specific provisions of Gruber *et al.* (1999b).

In this judgement, the Court invalidated informed consent requirements that included information on the medical risks of abortion, fetal development, alternatives to abortion, and a 24-hour or one-day waiting period. Also banned or invalidated by the court were provisions related to parental consent without judicial bypass, a provision requiring abortions to be performed only in hospitals rather than in Abortion Clinics, Planned Parenthood health Centers or doctor's personal clinics after the first trimester. Finally, the court overturned the Ohio state statute requesting that abortion seekers and their doctors are required to ensure or guarantee that fetal remains emanating from abortion procedures be disposed of in a "humane and sanitary" manner.

3.5. Weber v. Reproductive Health Services (1989)

Regarding the context of this case Webster v. Reproductive Health Services, 1989, the state of Missouri passed law prohibiting public employees and public facilities from partaking in abortions, and, required that doctors test fetuses for viability at 20 weeks.
In its ruling, the court upheld this Missouri law prohibiting public employees and public facilities from partaking in abortions, and required that doctors test fetuses for viability at 20 weeks. This ruling appeared to constitute a crack in the (Gruber *et al.*, 1999b) when the high court decided Cates and Grimes (1981) regarding a Missouri statute that prohibited public facilities from being used to conduct abortions as well as barred public health workers from performing abortions unless the life of the mother was at risk. The Missouri state statute also defined life as beginning at conception and as such, directed physicians to perform fetal viability tests on women who were 20 or more weeks pregnant and seeking abortions.

In a 5-4 decision, the U. S. Supreme Court upheld the constitutionality of the Missouri State statute. Chief Justice William Rehnquist, who wrote the Majority opinion stated that the law's declaration that life begins at conception, does not contradict *Roe* because the declaration is contained in the statute's preamble and thus should have no real impact on access to abortion. The majority opinion also reflected the fact that banning or prohibiting the use of public or government workers or facilities to perform abortions is acceptable given the fact that the right to an abortion codified in Greenhouse and Reva (2010) ruling omitted or excluded the right to government assistance in obtaining one. The 5-4 majority Supreme Court Justices also ruled that the requirement of viability testing at 20 weeks prescribed by the Missouri State statute is consistent with the law and therefore constitutional.

In fact, this ruling was given impetus by the Harris v. McRae, 1980 ruling that argued that even though women have the right to an abortion, they do not have the right to a state-funded abortion. The (Cates and Grimes, 1981) ruling or decision had asserted that it was constitutional to test fetal viability starting at 20 weeks of pregnancy, pursuant to the fact that the Gruber *et al.* (1999a) Supreme Court decision had left the door open permitting states to fill the vacuum by abolishing or outlawing abortion post viability.

It should be recalled that in the Webster v. Reproductive Health Services (1989) ruling, the High Court upheld a Missouri statute which denied state funding and state employee participation in performing, providing counseling for abortion, but declined to uphold a provision requiring doctors to test for fetal viability before aborting a fetus of 20 weeks' gestation or older.
this ruling did not end the scuffle on Greenhouse and Reva (2010) ruling upholding the rights of women to abortion. This triggered the modification of a Minnesota law that required both parents to be notified before a minor could get an abortion. Although the new Minnesota State law required only one parent to be notified as well as mandating that a judicial bypass must be provided or made available to every minor seeking an abortion. Thus, this Minnesota law came under strict constitutional test and scrutiny in the Hodgson v. Minnesota, 1990 case.

3.6. Hodgson v. Minnesota (1990)

The modified or amended Minnesota law required both parents to be notified before a minor could get an abortion. Although the new Minnesota State law required only one parent to be notified as well as mandating that a judicial bypass must be provided or made available to every minor seeking an abortion. Regardless of that ruling, both the proponents and opponents of abortion were not completely satisfied with the ruling. While the pro-life activists wanted the Minnesota law upheld in full, the pro-choice activists wanted it completely dismissed, thus leaving the abortion debate not resolved and hanging in the balance.

This is because the judicial bypass allows a person to go before a judge and have a legal requirement waived. The Court ruled that Minnesota's law could only stand if minors had the option to go before a judge who could release them from the requirement of notifying both parents before getting an abortion. Moreover, it changed the requirement of two-parent consent to one-parent consent because of the prevalence of single-parent households in Minnesota. The uniqueness of this case is that despite the fact that several states currently have disparate parental notification provisions in their abortion laws, the Davis (1990) case guarantees that minors in these states enjoy the judicial bypass option.

3.7. Planned Parenthood v. Casey (1992)

Prior to the emergence of this Wharton *et al.* (2006), many states had passed or enacted abortion laws restricting the rights and access of women to abortion as long as there is no "substantial obstacles" or "undue burden" for women seeking an abortion. In the state of Pennsylvania there was law requiring specific "informed consent" and a 24-hour (one-day) waiting period before getting an abortion by women. It should be noted that this Pennsylvania law was upheld by the U.S. Supreme Court in 1992, because it provides women the opportunity and option to bypass some of its requirements if they could prove it would cause them unnecessary and undue burden. The (Wharton *et al.,* 2006) was not only unique, but significant because it set the "undue burden" precedent, which opened the Pandora's Box and door for more restrictions on women seeking abortion.

This Wharton et al. (2006) involved a challenge to a wide- range of abortion law provisions that included an informed-consent requirement and a 24-hour (One-day) waiting period for women seeking abortions. Next, the Pennsylvania statute required a minor to obtain the consent of at least one parent or guardian, as well as for a wife or spouse to inform her husband of intent and plans to terminate or get rid of her pregnancy. In the cases of both the minor and spousal requirements, various waivers were made available for extenuating circumstances. In other words, various waivers intending to lessen the apparent or real seriousness or severity of situations associated with abortion were provided. This lawsuit challenged this Pennsylvania law requiring specific "informed consent" and a 24-hour waiting period for women before getting an abortion.

In its ruling, the Court noted that states could require parental consent for a minor's abortion if judicial bypass option is included or made available. Furthermore, the court require a waiting period between the time a woman is seeking abortion and the time she can obtain an abortion, as well as requires detailed "informed consent" including medical information regarding the abortion. Moreover, the court ruled that the State could not require a signed statement from the woman that she had given notice to her husband or spouse, if any, before accessing or undergoing the abortion procedure.

One of the notable takeaways in the (Wharton *et al.,* 2006) ruling is that the court appeared to have replaced "strict scrutiny" standard with "undue burden" standard which is both new and less rigorous. For example, under the new constitutional standard as interpreted by the court, regulating abortion before the point of fetal viability would be deemed unconstitutional only if it imposed an undue burden on the right of a woman to access abortion to terminate her pregnancy.

3.8. Stenberg v. Carhart (2000)

Before Breen and Scaperlanda (2006) case, the state of Nebraska law instituted a law banning partial birth abortion which set a roadmap for other states to follow. The term "Partial birth abortion" is another name of synonym used for a medical procedure called intact dilation and extraction; a medical procedure in which a fetus is removed intact from the uterus, which sometimes requires collapsing its skull. This method is known to be used only in situations or conditions where abortions and fetal miscarriages take place after the 16th week of pregnancy.

In the year 2000, the U.S. Supreme Court accepted this Breen and Scaperlanda (2006) case challenging the constitutionality of this Nebraska law prohibiting partial-birth abortion. In its ruling, the U.S. Supreme Court ruled that the Nebraska's ban on partial-birth abortion was unconstitutional stated that it was striking down Nebraska's statute on two grounds. First, the absence of an exception to ban abortion for the "health of the mother" and secondly, the Court found the description of the partial-birth abortion procedure to be "vague", unclear, and potentially including other mid- and late-term abortion procedures. In other words, argued the Supreme Court, Nebraska's ban on this partial birth abortion procedure was unconstitutional, because there was no exception for preserving a woman's health, and because the wording of the law was so vague that it could outlaw other methods of abortion as well. As a matter of fact, this ruling is consistent with the Gruber *et al.* (1999a) ruling that preserved a woman's right to abortion particularly when the life and health of the woman is in danger, regardless of the stage or trimester of the pregnancy.

Despite the Supreme Court's ruling in a 5-4 decision, that the Nebraska law violated the Constitution as interpreted in Moss (1976) and in Gruber *et al.* (1999a) *respectively and the fact* that the Nebraska statute lacked the "requisite exception "for the preservation of the health and life of the abortion seeking mother. The U.S. Congress passed in 2002 during the Administration of President George W. Bush. The Partial-Birth Abortion Act signed into law in 2002, appeared almost and nearly identical copycat to the Nebraska law that had been struck down by Breen and Scaperlanda (2006). This became the first federal law banning the intact dilation and extraction (partial birth abortion) procedure.

3.9. Gonzalez v. Carhart (2007)

In the(Charo, 2007), the U.S. Supreme Court upheld the federal ban on partial-birth abortion, passed by Congress and signed into law by President Bush in 2003. The main impact of this Charo (2007) is that it effectively reversed the Breen and Scaperlanda (2006) decision, which had previously struck down the Nebraska bans on partial-birth abortion. It was also a very significant and impactful case because it upheld the ban without making any exception to protecting a woman's health or life as codified in Gruber *et al.* (1999a). With the Supreme Court reversing course and upholding the federal ban by a vote of 5-4, it gave abortion opponents a major victory and prompting many states to consider passing tougher restrictions on abortion against women in multiple states. The ruling was equally significant because the apex court declared the federal statute to be constitutional even though it does not contain an explicit exception in cases in which a woman's health is in danger. Thus, it was a significant departure from earlier abortion rulings, including the *Stenberg* decision, which require that laws restricting abortion

include such a health provision and Gruber *et al.* (1999a) that reserved the rights of women to abortion particularly when their health and lives are in danger or under threat.

The *decision in the (Charo, 2007) by the U.S. Supreme Court not only gave impetus to several states especially conservative and red states* across the United States but rather emboldened them to step up efforts to regulate abortion. For example, several states, particularly southern states including Alabama, Arizona, Florida, Kansas, Louisiana, Mississippi, North Carolina, Oklahoma, Texas, and Virginia were emboldened to enact laws requiring physicians to perform ultrasound procedures prior to administering abortion procedures even to the extent of passing draconian laws that narrowly and in some cases completely outlaw or take away exceptions of rape and incest to abortion beginning at 20 weeks into a pregnancy:

3.10. Whole Woman's Health v. Hellerstedt (2016)

With the (Charo, 2007) decision by the U.S. Supreme Court that effectively reversed the (Breen and Scaperlanda, 2006) decision, which had previously struck down the Nebraska bans on partial-birth abortion, the State of Texas passed law that imposed strict requirements on abortion clinics. For example, Texas state law required doctors at abortion clinics to have admitting privileges at a hospital within 30 miles of the center, and required or mandated that abortion clinics to abide by the same regulations as ambulatory surgery centers (such as having minimum hallway widths). In reaction, The Whole Woman's Health Clinic in Texas sued to challenge John Hellerstedt, the Commissioner of the Texas Department of State Health Services, over the stated state mandates. In its ruling, the declared the Texas law unconstitutional; on the ground that it violated the Planned Parenthood v. Casey, 1992 court ruling that set the "undue burden" standard, in its 2016 ruling that these Texas statute restrictions placed an "undue burden' on women seeking an abortion.

3.11. Dobbs v. Jackson Women" S Health Organization (2022): The Last Straw That Broke The Carmel's Back

Prior to this Supreme Court ruling, the State of Mississippi had passed law prohibiting abortions after the 15th week of pregnancy. In challenge of the Mississippi state abortion laws, Jackson Women's Health Organization quickly challenged the law, and in November 2018 the US District Court for the Southern District of Mississippi ruled in the clinic's favor. In December 2019, the Fifth Circuit unanimously upheld the lower court's decision. Mississippi state then appealed the ruling to the Supreme Court in October 2021 where justices heard oral arguments in Dobbs v. Jackson Women's Health Organization in December. The high court effectively struck down Gruber *et al.* (1999a) decision which protects a woman's right to an abortion in the first 24 weeks. In the new ruling, the U.S. Supreme Court has reverted regulation to the states, many of which had statutes banning or severely restricting abortion. In the Supreme Court majority opinion delivered by Justice Samuel Alito, the apex court declared that the constitution of the United States does not confer a right to abortion to any person. Therefore, stated Justice Samuel Alito "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives," Justice Samuel Alito delivered in the opinion for the court, which was joined by Justices Clarence Thomas, Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett all of whom are conservative Justice. In the ruling, Chief Justice John Roberts delivered a concurring opinion while the court's three liberal justices, Stephen Breyer, Sonia Sotomayor, and Elena Kagan took a dissenting opinion.

In this ruling, the U.S. Supreme court overruled or overturned Gruber *et al.* (1999a) as well as Moss (1976) case thereby eliminating the constitutional right of women to abortion and granting or giving individual states the full power to regulate any aspects of abortion not preempted by federal law. This Supreme Court ruling in Dobbs V. Jackson Women's Health Organization (2022) marked the end of Roe V. Wade case thereby eliminating more than half a century legal precedent. With this ruling, America's legal position or situation of the right of women to abortion has now been returned to its original legal positions preceding Roe and sowing the seed of distrust, confusion and anarchy regarding the courts/ judiciary system and the constitution.

4. Conclusion

Even though the U.S. Supreme Court in Dobbs V. Women's Health Organization (2022) overturned the Gruber *et al.* (1999a) ruling and precedent thereby destroying more than half a century legal precedent, the fight for women's right to abortion is still not over. Some other approaches or pathways, including political may be explored to guarantee women the choice to make healthcare decisions affecting their life over abortion.

Among the political pathways to restoring women's rights to abortion rests on the evolution of the United State into a "one-party" instead of "divided party" government that is likely to spur legislations against abortion policies. In this case, control of the total apparatus of government by U.S. Democratic Party as opposed to Republican Party which is major party with party platform that is anti-Choice and against the right of women to abortion will eventually lead to the codification of Roe V. Wade through legislation. One of the reasons why the more than half a century legal precedent of Roe V. Wade was overturned is because of the ideological packing of the courts. This in effect constituted a threat to abortion because of legal interpretations based on "judicial restraint" a legal doctrine that judges' own philosophies or preferences should not guide or get in the way of their interpretation of the law; but rather should follow the lead of the legislature, rather than adopting the judicial activism doctrine whose interpretation of the U.S. .constitution holds that the spirit of the times and the needs of the nation can legitimately influence judicial decisions.

It is worth noting that the future of Women abortion rights during and after the Trump presidency is bleak. He ran his presidential campaign on the promise of electing judges who would overturn the Gruber *et al.* (1999a)

ruling. Hence, it is not a surprise that he appointed three conservative judges to the U.S. Supreme court who would carry out his bidding in terms of fighting to overturn Roe V. Wade enshrined abortion rights to women seeking abortion. The three former President Donald Trump's appointees to the Supreme Court include (Carolyn, 2018), Epstein *et al*. (2007) and Barrett (2013) who are conservatives. Even the addition of Justice Ketanji Brown Jackson, a liberal to the U.S. Supreme Court, who was confirmed by the Senate following her nomination in 2022 by President Joe Biden, would not make any difference due to shortfalls in the votes.

One of the options available to the Democratic Party with pro-choice abortion policy in its platform is for President Joseph Biden, a staunch supporter of Roe V. Wade ruling is to use the Executive Order to undercut the reserved powers of the states that ban abortion and penalize women who cross state borders to access abortion in other states. This Executive Order power will support federal power of regulation of interstate commerce and travels to sustain the rights and ability of women from states than ban abortion to be able to travel to states that permit abortion without harassment, physical or legal threats and hindrance.

Nevertheless, the long-term hope and possibility of codifying Roe V. Wade decision into law is possible only if the filibuster is done away with. The filibuster is a legislative tactic used by a minority group of members of the U.S. Senate in opposition of a bill to prevent its passage, despite the bill having enough simple majority supporters to pass it. This tactic requires taking advantage of the rule that 60 votes in the senate are needed to stop the unnecessary debate on a bill so that it can be voted on. The breaking of the filibuster is an uphill task, given that fact that the current Senate is evenly divided. There are fifty Republican Party Senators and fifty Democratic Party Senators. To break a tie will require the vote of Vice President Kamala Harris.

Another legislative option open to the Democratic Party to restore the rights of women to abortion is to reconstitute or reform the Judiciary with enjoys a life-long appointment and can be removed through impeachment. This may require the imposition of term limits that limit the number of years they can serve on the court and / or expansion of Supreme Court beyond nine justices. The next available step toward the codification of Roe V. Wade decision is through a constitutional amendment which shall be proposed by a two-thirds vote of both Houses of Congress (House and Senate) or the request of two-thirds of the fifty states by convention. Then, such amendment will have to be ratified by three-fourths of the state legislatures, or three-fourths of conventions called in each state for ratification. With the divided government in the United States and time factor, this option appears mute or dead-on arrival and should therefore not an attractive option for exploration.

With the Dobbs case ruling moving abortion decision powers to state legislatures, the abortion struggle has now shifted to states where voters vote as to whether to codify abortion rights in their states and constitutions to safeguard the right of women to abortion. Test cases of such have already occurred in Kansas and Michigan states where women overwhelmingly voted to preserve women's rights to abortion. Such votes in bellwether, swing, or battle ground state like Michigan in which the Democratic and Republican party both have a good chance of winning as well as Kansas, a red state that predominantly votes for in support of the Republican Party is nothing but a microcosm of what is to happen in the future and in fact a handwriting on the wall regarding abortion.

This process of fighting to save the rights of women to abortion is likely to drag on for decades and depends on party control of the apparatus of Government - Presidency and Congress. Till then, the confusion and lack of respect for many decades of legal precedence displayed by the conservative Supreme Court of the United State in Dobbs V. Women's Health Organization (2022) case will continue to reverberate, sow the seeds of confusion, trigger litigation upon litigation and judicial appeal upon appeal. To conclude, the fight over women's rights to abortion is not yet over but rather is just beginning. In other words, it is just in its conceptual and embryonic stage.

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