

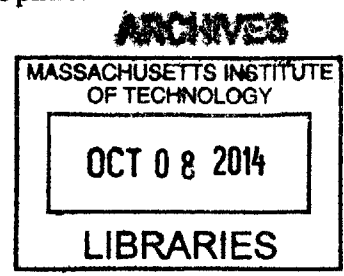
What Do Abortion Policies Accomplish?
Understanding How Abortion Laws and Court Cases Affect Public Opinion

by

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Submitted to the Department of Political Science in Partial Fulfillment of the Requirements for
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ABSTRACT

Abortion is a loaded, controversial, and divisive sociocultural and political term, concept, and debate. Yet little empirical research has been conducted to examine what effects abortion rights legislation and court cases have had on the public and our society. After analyzing a broad overview of the history of the abortion rights debate in the US, I conduct bivariate and multivariate regression analyses from 1972-2004 using NES and personally-collected data to see how these laws and court opinions in various states at the individual level influence public opinion of abortion rights and of the government. In the end, I conclude that, of the possible iterated relationships therefrom, anti-choice policies have statistically significant impacts on both how people view abortion rights and their own state governments. In doing so, I challenge extant models that describe the interaction between public opinion and policy. I also further develop the idea of Policy Overreach, where policymakers go “too far”—at least, in the eyes of the public—in setting anti-choice policies, causing the public to retaliate in various ways. Not only does this thesis answer some important questions, but also introduces new measures, concepts, questions, and data for future research into this important area of study.

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I. Introduction

A. State of Abortion Rights in the US

Abortion has been a polarizing issue in the United States since the landmark 1973 U.S. Supreme Court decision in the case of *Roe v. Wade*, which said that women have a constitutionally protected right to have an abortion, with caveats on the trimester of the pregnancy and states' vested interest in the supposed rights of the unborn.¹ Given *Roe* and subsequent Court cases on national-level laws and cases, there have not been many laws and cases put in place at the federal level regarding abortion. But there has been extensive action at the state-level; especially after the Court handed down its opinion in *Planned Parenthood v. Casey* in 1992, which ordered that states cannot implement laws and cases that prove to be an “undue burden” for women² seeking access to an abortion while also upholding the values and central holding expressed in *Roe*.³ Indeed, many states saw an opportunity to introduce various restrictions on abortion rights. “Abortion opponents continue to use legislative bills to pass full bans on ways to administer an abortion in one state, only to watch them spread.”⁴ Thus, to this day, there have been hundreds of laws passed in dozens of states across the country restricting access to abortion. A great deal of this legislation has been passed very recently—within the last couple of years—though there is still a great deal to learn from laws passed back to the times of *Roe*.

But there may be a light ahead for the pro-choice movement. In some areas, the public has blocked anti-choice laws, and in others, the public has supported and helped enact pro-choice laws.

¹ *Roe v. Wade*, 410 U.S. 113 (1973).

² I recognize that the term “woman” is typically used to refer to one’s gender identity of being a woman, and “female” is typically used to refer to one’s biological sex. Of course, gender and sex are distinct identities. But for the purposes of this thesis, both “woman” and “female” will be used to reference any individual, regardless of their sex or gender, who has the ability to get pregnant, and thus the ability to choose whether to give birth to the fetus within or to end the pregnancy. This hopefully addresses the fact that someone who identifies as a man could conceivably get pregnant.

³ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

⁴ Robin Marty, “The Next Battle in the Abortion Wars,” *Politico Magazine*, February 17, 2014, pp. 3.

For instance, time and again the people in a given state have voted down ballot measures that would define a fetus as a person or ban abortion after a certain number of weeks, and have voted into office pro-choice politicians. And in 2013, “[t]wice as many pro-choice measures as the prior year were enacted at the state level.”⁵ Clearly, victories have been won on both side of the abortion rights battle; yet many would agree that the anti-choice movement have been winning and continue to do so today.

B. Questions to Consider

With all of these laws and cases—passed by the legislative and judicial branches of the state governments—I question what effect they have had on public opinion. If laws and cases have been the driving force on public opinion of the government and on abortion rights (which in turn could affect other aspects of public policy) then that could mean that the battle for more or less pro- and anti-choice laws and cases is even more important than it is currently believed to be. Nevertheless, note that, given data limitations (discussed in Chapter 5), the true level of analysis for Chapter 6 will be at the individual level.

Why might those involved with the anti-choice movement keep fighting for those very laws and cases if they are not influencing how people think about abortion rights? Other explanations could be that they want to convey certain messages to the public or simply stand up for their deeply-held values and beliefs. Moreover, some say that all of these laws and cases are part of a broader trend “to provoke a Supreme Court review of the durability of the *Roe v. Wade* decision.”⁶ Or, it could be the case that certain laws and cases have an impact while others do not,

⁵ Ilyse Hogue, “2014: The Year the Pro-Choice Crowd Fights Back,” *Politico Magazine*, January 21, 2014.

⁶ *Ibid.*, pp. 2. Note that more discussion on how people view the Court vis-à-vis *Roe* and whether it will or should be overturned will be provided in Chapters 2 and 3.

which could mean that efforts need to be refocused on only a few key potential laws and cases. In the end, this thesis could change how we think of and analyze abortion laws and cases in the US.

C. Outline of Thesis

Beyond this introduction, I provide a brief historical overview of abortion rights in America throughout the 20th and 21st centuries, with a main focus on the debate at the national level in the post-*Roe* era. There will also be some discussion of the effects felt at the state level due to *Casey* and other important far-reaching cases. My intent is for this analysis to provide a foundation for the reader while considering my quantitative analyses and conclusions. In the next chapter, I provide a detailed literature review to highlight where new research is needed to better understand the complex issues of abortion rights and public opinion. Both Chapters 2 and 3 will be referenced throughout this thesis, as they are informative as a strong foundation to build upon. With all of these data in mind, the reader can finally proceed to my hypotheses and subsequently the variables and their operationalization I use to test my hypotheses. Thereafter, the reader will find my quantitative analysis and the conclusions I draw therefrom.

The quantitative analysis includes bivariate and multivariate regression analyses to estimate the relationship between anti-choice laws and cases and public opinion on abortion rights and on the government. The individual level analysis includes a distinct way of understanding public opinion data for the state governments. That is, this variable can only describe public opinion on the state government as a whole by virtue of the proxy measurements I utilize, as discussed in further detail in Chapter 5. Notwithstanding these drawbacks, these data should still provide useful insight into the relationships between abortion rights policies and public opinion.

II. Historical Overview

A. Introduction

Planned Parenthood has recently started a new discussion on how to better frame the abortion debate with a variety of phrases, in attempts of convincing more individuals to be pro-choice. Instead of using terms like “pro-choice” and “pro-life”,⁷ they found that people responded to describing the choice of abortion within a list of options, thereby setting it on an equal level with other choices for that pregnancy.⁸ Plus, the terms “pro-choice” and “pro-life” were themselves polarizing because many Americans (as discussed below) are somewhere “in the middle.”⁹ In addition, they found that the term “abortion” has become so stigmatized and “dirty” that many survey participants polled responded better to phrases like “the choice to end a pregnancy.”¹⁰ Simply given these facts, it is clear that abortion is a politically explosive topic. Further, we can see that paying attention to the phrasing of these questions is extremely important to fully understand what the results mean.

Because attempting to write almost all of the history of abortion would take a dense, hefty book (or series of books), this chapter will have a narrowed focus.¹¹ Specifically, this chapter will focus on the history of abortion rights as they have become a part of a national debate on women’s reproductive rights. With this absorption, abortion has transformed into a politicized issue.

⁷ Throughout this thesis, I will use “pro-life” and “anti-choice” interchangeably, with more frequency in use on the latter term.

⁸ For instance, people responded better when the choice of abortion was placed in a list with keeping the child or adopting, rather than leaving it by itself, which the term “pro-choice” does.

⁹ That is, many Americans would permit abortion in certain cases, like rape or incest, or with certain regulations, like a waiting period or parental consent for minors.

¹⁰ This paragraph is based on my personal experience from interning for Senator John Kerry in the summer of 2012. At the first briefing I attended, Planned Parenthood presented a one-hour discussion on this topic, partially prompting the interest in this topic in the first place.

¹¹ Interestingly, though, historian Joseph Dellapenna has tried to write a very comprehensive overview of the history of abortion in world history. Joseph Dellapenna, *Dispelling the Myths of Abortion History* (Durham, North Carolina: Carolina Academic Press, 2006). Others have done the same.

Simultaneously, the issue has influenced the women's rights movement to a great deal alongside (and as a part of) the second wave of feminism. Consequently, the topic of abortion has helped divide the public and a plethora of groups.¹²

While such a chapter may seem daunting, I have limited my principal scope to a couple of decades in American history. I will mainly focus on the 1960s-1990s, with *Roe v. Wade* (1973) and *Casey* (1992) as turning points, while also examining a bit of the history of the time both before and after this frame. In the end, while analyzing the effects of these decades of interest that we can see today, I will lay a path for Chapter 3 to expound upon how abortion laws and court cases and public opinion interact and have changed over time. Therefore, as will be developed throughout the discussion of this chapter, I will be able to make cogent conclusions around the impact abortion rights have had in larger debates and trends, such as the sorting by ideology for the Democratic and Republican Parties.

Most importantly, though, this chapter, in conjunction with the literature review in Chapter 3, will lead me to my hypotheses in Chapter 4. Before theorizing as to what effects anti-choice laws and cases have, I must understand the context surrounding such interesting and complicated questions. Part of this comes from an historical analysis, provided in this chapter. Such an analysis is particularly important in this thesis because the timeframe of interest for my quantitative analysis in Chapter 6 is 1972-2004. Additionally, part of this context will come from the next chapter where I will see a great array of theories yielding varying (and, admittedly, sometimes contradictory) conclusions that will help me frame my hypotheses.

B. Abortion Politics in American History

¹² In writing such a chapter, it can be easy to look at abortion in a vacuum, which is dangerous, since doing so yields inaccuracies. That is, it would be foolish to claim that abortion is the sole cause for splitting public opinion in general. Clearly, how abortion rights have been discussed has influenced how different groups view abortion itself, and how their different creeds and ideologies have changed has been influenced by numerous issues and events in history.

B.1. Pre-1950s

Before the 1950s, abortion was not as important an issue as one might think. For many years, the public regarded abortion as just another form of birth control, much like Planned Parenthood and other pro-choice organizations and individuals would like to see happen today. However, as far back as the 1850s and 1860s, many doctors¹³ started pushing for laws to be passed to regulate, and sometimes outright ban, abortion. On an altruistic level, some wanted to protect women who might be having abortions performed on them by dangerous quack doctors. At the same time, others (perhaps even most) wanted to guard their professional authority from these other doctors who were undermining it, as well as increase the birth rate of the preferred native-born babies (in their eyes) of these White women.¹⁴ Even with these laws, real enforcement of these laws did not start taking place until the turn of the century.¹⁵

Many of the arguments made against abortion in the 19th century carried into and intensified during the early 20th century. Women explained that they chose not to have an abortion because they wanted to foster their womanhood, defined in terms of the traditional role of birthing and rearing children; whereas male doctors claimed that they did not perform abortions because they wanted to preserve their manhood, defined in terms of allowing women to perform their supposedly natural duties.¹⁶ Despite the claims of protecting manhood or womanhood, many White women still received abortions from doctors. Nonetheless, those who seemed to need this form of birth control more were those who were already oppressed—and were the ones who made

¹³ Clearly, in the 19th century, almost all of the professional physicians were men. The fact that men dominated the discourse around abortion is not uncommon, as it continues through most of the 20th century, and, some might argue, to today.

¹⁴ David Allyn, *Make Love Not War: The Sexual Revolution: An Unfettered History* (New York: Little, Brown and Company, 2000), pp. 260.

¹⁵ Leslie Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (Los Angeles: University of California Press, 1997), pp. 15.

¹⁶ *Ibid.*, pp. 10-13.

up the majority of the deaths due to abortion during this time period. Albeit laws were in place against abortion, many White women were able to circumvent these laws because the one exception was so-called therapeutic abortions that could be approved by a psychologist; the caveat, though, is that essentially *only* middle- and upper-class White women were the ones who were able to afford a psychologist in the first place. Hence, they were the ones who were able to have abortions—a privilege they enjoyed immensely.¹⁷

B.2. 1950s

As the 20th century progressed, the crackdown on abortions continued intensely during the 1950s.¹⁸ For a variety of reasons, many groups formed to try to decriminalize the practice of abortion.¹⁹ For example, men still dominated the controversial debate and wanted the right to perform abortions in order to control the population in the way they saw fit. In particular, they wanted to extend the right to choose an abortion to all women. Since White women were already able to obtain abortions in a *de facto* sense, many doctors wanted the undesirables (*i.e.*, poor women of color, in their eyes) to be able to receive the same operation.²⁰ Even organizations that typically touted women's rights as the basis for their actions—*e.g.*, Planned Parenthood—internalized this notion that abortions should be performed based on the doctors' best interest. In 1955, Planned Parenthood held a small national conference (that they did not publicize nationally) to bring together a group of (male) doctors to discuss the issue of abortion. Eventually, the resulting document of the conference stated that abortion was best for the rights of the doctors,²¹ not of the

¹⁷ *Ibid.*, pp. 203-211.

¹⁸ Allyn, *Make Love, Not War*, pp. 261-264.

¹⁹ Reagan, *When Abortion Was a Crime*, pp. 15.

²⁰ Indeed, it is striking that historian Reagan notes: "Despite the hazardous character of abortion, women were not the first to articulate publicly and politically their dissatisfaction with the law." *Ibid.*, pp. 208, 217.

²¹ For example, the doctors wanted to protect themselves from the liability of practicing abortions, despite what the law said.

women.²² Here, it is important to note that the doctors not only wanted the decision of whether to terminate a pregnancy or not in *their* hands, they specifically wanted it *out of* the hands of the woman and of the government.

However, not all national organizations shared this view. The American Law Institute (ALI), for instance, advocated for the legalization of abortion.²³ Their reasons included the provision of shielding doctors from potential liability. *In addition*, they cited reasons that focused on the rights of the woman and her body. The ALI wanted to legalize abortion in the cases that would protect the health of the mother, or if the fetus had some sort of defect, or if the pregnancy was the result of rape or incest.²⁴

B.3. 1960s

Although the second wave of feminism was bubbling and the civil rights movement was progressing very well (and the sexual revolution was underway) the conversation around abortion rights was still largely framed by doctors and psychiatrists. In fact, some of the national organizations claiming to be for women's rights still held true to what these male doctors were saying, and started advocating the same beliefs. Planned Parenthood, for instance, continued to maintain similar views to those of these medical professionals. They specifically targeted urban and poor women of color when educating people about abortion. Indeed, their education was more in the form of strongly encouraging these women to get an abortion, which was their own way of practicing population control.²⁵

²² Reagan, *When Abortion Was a Crime*, pp. 219.

²³ Interestingly, in keeping in line with the theme of men (with power and privilege) dominating the conversation, the ALI was made up almost solely of men, as members were lawyers, judges, *etc.*

²⁴ Reagan, *When Abortion Was a Crime*, pp. 220-221.

²⁵ *Ibid.*, pp. 230-232.

Other prominent male figures against abortion bans were politicians and judges. Some state legislatures began to repeal their abortion criminalization laws altogether. In other states where this route did not prove promising, opponents of these laws relied on the courts.²⁶ Some law firms and advocacy groups, like the American Civil Liberties Union (ACLU), spearheaded initiatives to bring down these laws in court, and were fairly successful. With the entrance of these groups into the fray, the debate moved away from doctors' rights, and started to center more on women's rights, specifically in the context of the Constitution.²⁷ Not all politicians, though, wanted to get involved—especially not at the national level. During the 1960s, no prominent political party mentioned abortion (even euphemistically) in their party's platforms.²⁸

Furthermore, many groups began to recognize abortion rights as an issue that was encompassed under the broader topics of women's rights and sexual freedom.²⁹ Many feminists tried to frame abortion around the woman's experience, claiming that women were the only real experts on the subject.³⁰ With this seemingly subtle shift in the political debate, these feminists laid the groundwork for how abortion would come to be viewed by the pro-choice movement for essentially the next four decades.³¹ Some organizations began to call for a complete overhaul of

²⁶ Ibid., pp. 234-236.

²⁷ Nadine Strossen, "The American Civil Liberties Union and Women's Rights," *New York University Law Review*. Vol. 66, N.Y.U. Rev. (Dec. 1, 1991), pp. 1940-1962.

²⁸ Donald Bruce Johnson and Kirk H. Porter, *National Party Platforms, 1840-1972* (Urbana, IL: University of Illinois Press, 1973), pp. 574-768.

²⁹ For this premise, many also saw women's rights, including the right to choose an abortion, within the scope of human rights, in general. For instance, the United Nations had declared that all people, whether single or in a relationship, had the right to choose the number and spacing of children that they wanted. Ruth Dixon-Mueller, *Population Policy & Women's Rights: Transforming Reproductive Choice* (West London, Connecticut: Praeger Publishers, 1993), pp. 13. Moreover, many also used the label of civil right for the right of a woman to choose an abortion. Historians Greenhouse and Siegel recount how the National Organization of Women (NOW) referred to abortion as a civil right within their Bill of Rights. Plus, prominent radical feminist Betty Friedan titled one of her essays by referring to abortion as a woman's civil right. Barbara Greenhouse and Reva B. Siegel (eds.), *Before Roe v. Wade: Voices that Shaped the Abortion Debate before the Supreme Court's Ruling* (New York: Kaplan Publishing, 2010), pp. 35-40.

³⁰ Reagan, *When Abortion Was a Crime*, pp. 229-230.

³¹ See, e.g., historian Ruth Dixon-Mueller's discussion around this shift in discourse. She examines particularly how the debate around abortion has changed its form from the patriarchal basis to a feminist one that rejects and seeks to

the system.³² Of these, some called for reform at a rather radical level that left the choice almost entirely up to the woman in the situation.³³ Other organizations formed around a similar premise, but sought to cover the entire ground of women's rights, which of course included abortion rights.³⁴ Despite their best efforts and despite their claims to the contrary, these feminists did not deliver to all women. Indeed, the second wave of feminism itself focused primarily on wealthy White (cis-gender, heterosexual) women. This sort of classism and racism seeped into the realm of abortion, and poor women of color were still disproportionately underrepresented and ignored in these discussions, and were thus still unable to get abortions if they wanted one.³⁵

With the pro-choice side gaining traction and support,³⁶ those on the "other" side (not quite pro-life yet) began to speak up. In particular, religious institutions were the most vocal against the abortion rights movement.³⁷ The Catholic Church staked out their position relatively early on, and in a rather extreme way. Pope Paul VI wrote on July 29, 1968 that, in addition to contraception and sex for reasons other than procreation being sinful and wrong, "abortion[s], even for therapeutic reasons, are to be absolutely excluded as lawful means of regulating the number of children."³⁸ While some Catholics of course were in favor of abortion, or at least not so extremely

overcome the necessary premise of male power and privilege. Dixon-Mueller, *Population Policy & Women's Rights*, pp. 23, 32.

³² Some feminists and feminist organizations resorted to radical notions and tactics, yet at the very least, they helped awaken the sentiments for reform in others' minds. Allyn, *Make Love, Not War*, pp. 264-265. Also, see: Dixon-Mueller, *Population Policy & Women's Rights*, pp. 38-39.

³³ For instance, see the Society for Humane Abortion, which was founded in the early 1960s to put women, not physicians, at the forefront of the abortion rights movement. Reagan, *When Abortion Was a Crime*, pp. 223-224.

³⁴ The National Organization of Women (NOW), which was founded in 1966, is a prime example. Dixon-Mueller, *Population Policy & Women's Rights*, pp. 44-45.

³⁵ *Ibid.*, pp. 47.

³⁶ This side admittedly already consisted of the male physicians and the overall medical establishment and institutions, and in the 1960s gained feminists and sexual revolutionaries, so it may not seem surprising that it would be the winning faction, at least contemporaneously.

³⁷ For the purposes of this chapter, religious institutions shall be considered interest groups, on par with NOW and Planned Parenthood.

³⁸ Supreme Pontiff Paul VI, *Human Vitae, Encyclical Letter of July 29, 1968*, printed in Greenhouse and Siegel, *Before Roe v. Wade*, pp. 73-77.

against them, the most prominent and vocal Catholics were just as radical as the Pope. Many Catholic Bishops, as well as figures from other religions, wrote letters and other documents on behalf of their own congregation members applauding the stance the Pope took, and providing their own justifications for such advocacy.³⁹ Chapter 3 will take up this description of the Catholic Church's views of abortion in some more depth.

Thus, as the conversation turned from men and their manhood toward women and their rights over their bodies (whether those rights be called women's, human, or civil), some state laws were changed and repealed. Many feminists, radical and otherwise, and others fighting for sexual freedoms, were the ones to take charge in these social fights. At the same time, there was a great deal of backlash from more conservative individuals and groups, such as religious institutions. Hence, clear (and persistent) sides in the abortion debate started to form. In the 1960s, many men and women were on the side of allowing abortion: the men for the protection of the doctor's authority in practicing medicine with female patients, and the women for this shift in conversation towards women's and human rights. As will be discussed later, this shift in the discussion over abortion will actually cause this unlikely partnership to dissolve (to a certain extent).

B.4. 1970s

"By 1970, recommendations for repeal of restrictive abortion laws were sweeping the country," with support coming from many organizations, including the League of Women Voters and the Young Women's Christian Association (in addition to those that had already been on board).⁴⁰ Nevertheless, those who wanted to keep these laws on the books were gaining in force and numbers. One significant step was when President Nixon brought this issue to the national

³⁹ Greenhouse and Siegel, *Before Roe v. Wade*, pp.77-115.

⁴⁰ Dixon-Mueller, *Population Policy & Women's Rights*, pp. 46.

spotlight.⁴¹ With this choice, Nixon effectively politicized an issue that had heretofore mainly been a medical one.

Ergo, many who did not want to become political on this matter beforehand were essentially forced to do so. Political parties thus began to talk more about women's issues and abortion (albeit euphemistically) in their party platforms. While the Democratic Party was very explicit in its support of the Equal Rights Amendment and legal protection against sex discrimination, it was not as explicit in talking about family planning, stating meekly that people should be able to freely "determine and achieve the number and spacing of their children."⁴² Similarly, the Republican Party was immensely direct in its call for an end to sex discrimination and for equal employment opportunities for women, yet was just as ambiguous when talking about women's roles in the family, and in family planning.⁴³ Whereas some lesser-known parties were much more open to the idea of permitting or opposing abortion—such as the People's Party,⁴⁴ the Prohibition Party,⁴⁵ and the Socialist Workers Party⁴⁶—the two most prominent parties in American politics were not yet ready to take a definite stance in the early-mid 1970s (at least, not in their national party platforms).

While the political parties were not prepared to take a side on these issues, the courts certainly were. "In the brief period from 1970-1972, now-familiar constitutional claims emerge[d]

⁴¹ In particular, he spoke out publicly against abortion, denouncing it much like the Pope had. *Ibid.*, pp. 66.

⁴² Johnson and Porter, *National Party Platforms*, pp. 782-820.

⁴³ *Ibid.*, pp. 847-882.

⁴⁴ "Society should not control women's reproductive functions. We must abolish laws that limit access to birth control information and devices, or that govern abortions. The government should support birth control and abortion clinics staffed by qualified personnel. We oppose forced abortions and sterilizations." *Ibid.*, pp. 870.

⁴⁵ The Prohibition Party has time and again opposed abortion. *Ibid.*, pp. 844.

⁴⁶ In the section entitled "End the Oppression of Women": "Laws restricting abortions deny women the right to choose whether to bear children. The Socialist Workers Party calls for repeal of all anti-abortion laws and removal of all restrictions on contraceptive information and devices. End forced sterilization." *Ibid.*, pp. 888. Interestingly, the Socialist Workers Party is also one of the first to call for equal civil and human rights for gay people. *Ibid.*, pp. 889.

from the crucible of political conflict.”⁴⁷ At the end of this period that Greenhouse and Siegel mention, *Roe* seems like somewhat of a natural culmination of pro-choice litigation efforts. In *Roe*, a Texas resident, with the pseudonym Jane Roe, wanted an abortion to end her pregnancy. Unfortunately, though, Texas, as with many other states at the time, had a law that prohibited women from obtaining an abortion—unless continuing the pregnancy could endanger the woman’s life. The question before the Court was then: Is there a constitutional right that allows a woman to choose to have an abortion? In a 7-2 decision written by Justice Blackmun, the answer was yes—to an extent.

Perhaps just as surprising as the decision *per se* is the Court’s justification thereof. Relying on the constitutional right to privacy determined in *Griswold v. Connecticut* in 1965,⁴⁸ the Court declared that during the first trimester of the pregnancy, the government cannot interfere because the woman seeking an abortion has autonomy over her own body. Importantly, though, the argument also relied on the fact that the Court believed doctors to be more responsible and knowledgeable about this decision, thereby giving them some latitude in any given case. As discussed above, this particular point has been at the forefront of the abortion rights debate for well over a century, and so is not surprisingly found here (especially since all of the justices on the Court at that time were male). Nonetheless, the Court continued to say that a state can impose some restrictions—albeit not an outright ban—on abortion in the second trimester, depending on the state’s level of interest. And for the third trimester, the Court ruled that the state could levy even greater restrictions.⁴⁹ As discussed later, though, many of the states were uncertain about where this left them, and so many took a hands-off approach—until the early 1990s.

⁴⁷ Greenhouse and Siegel, *Before Roe v. Wade*, pp. 120.

⁴⁸ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

⁴⁹ *Roe v. Wade*, 410 U.S. 113 (1973).

While *Roe v. Wade* itself focused on a pregnant woman's right to privacy coupled with the doctor's rights as a medical professional weighed against the state's interest in protecting potential life,⁵⁰ many subsequent cases brought issues that *Roe* (perhaps purposely) avoided—that is, restrictions on abortion.⁵¹ In addition to the constitutional arguments of privacy and liberty, and the lack of a state interest, many proponents of abortion rights have brought up, as the appellants Jane Roe, et al., did in their brief before the Supreme Court, that medical practices have made abortion much safer than before.⁵²

Nonetheless, it is crucial to note that most of the policymaking vis-à-vis abortion rights has been done at the state level. While Congress has, every year since the passage of the Hyde Amendment 1977, included restriction after restriction on public funding of abortion, the Supreme Court has been largely silent on abortion rights, although the few times it has ruled on the issue, the cases have generally been far-reaching. For instance, in 1976 the Court ruled in *Planned Parenthood v. Danforth* that a state cannot require spousal consent (a restriction also struck down in *Casey* in 1992) nor parental consent for a minor.⁵³ However, the Court then clarified in the 1979 case *Bellotti v. Baird* its position on parental consent by stating that the state can require parental consent for an unmarried minor if there is a judicial bypass option, where the minor would have to instead seek a judge's approval.⁵⁴ In just a few years, the Court again reaffirmed its position on a woman's right to choose. In *Akron v. Akron for Reproductive Health*, the Court struck down anti-abortion provisions like a 24 hour waiting period, informed consent requirement for all women,

⁵⁰ *Ibid.*

⁵¹ Matthew E. Wetstein, *Abortion Rates in the United States: The Influence of Opinion and Policy* (Albany, New York: State University of New York Press, 1996), pp. 17.

⁵² *Roe v. Wade*, 314 F. Supp. 1217, 1222-24 (1970), printed in Greenhouse and Siegel, *Before Roe v. Wade*, pp. 230-238.

⁵³ *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976).

⁵⁴ *Bellotti v. Baird*, 443 U.S. 622 (1979).

and parental consent requirement for unmarried minors, among others.⁵⁵ Essentially, until *Casey*, which really opened the floodgates for states to implement anti-choice laws and cases (as discussed below), the Court had held up its commitment to pro-choice values, which kept many states at bay vis-à-vis implementing anti-abortion statutes.

Along with more liberal courts, the public as a mass seemed to be warming up to the idea of abortion rights.⁵⁶ However, the increase of support seemed to have hit a ceiling in this decade. At some point in the mid-1970s, the support for abortion rights stabilized,⁵⁷ even when controlling for party identification.⁵⁸ Nevertheless, this point will be challenged and further discussed in Chapter 3. Yet with what seems like some sort of consensus (or relative indifference?) among the American public and those in power, it makes sense that there were no high-profile pro-choice marches in the 1970s.⁵⁹ If the laws and cases were being changed in their favor, it is understandable that they would not have much against which to protest or complain. And while there were no pro-choice marches, there were very few pro-life marches, again underscoring the fact that sentiments on either side of the debate were not that strong.⁶⁰

Interestingly, many early supporters of abortion rights came from the Republican Party.⁶¹ In fact, more Republicans were in favor of abortion than Democrats for some time.⁶² The main

⁵⁵ *Akron v. Akron for Reproductive Health*, 462 U.S. 416 (1983).

⁵⁶ Wetstein, *Abortion Rates in the United States*, pp. 39.

⁵⁷ Elizabeth Adell Cook, Ted G. Jelen, and Clyde Wilcox, *Between Two Absolutes: Public Opinion and the Politics of Abortion* (Boulder, Colorado: Westview Press, Inc., 1992), pp. 37-40.

⁵⁸ Wetstein, *Abortion Rates in the United States*, pp. 66-67.

⁵⁹ Barbara Hinkson Craig and David M. O'Brien, *Abortion and American Politics* (Chatham, New Jersey: Chatham House Publishers, Inc., 1993), pp. 51.

⁶⁰ *Ibid.*

⁶¹ Interestingly, though, opinion on abortion might not have much of an impact on other areas other than abortion itself, inherently. Political scientist Maris Vinovskis has run multivariate regressions to determine how much the opinion on abortion in 1976 (which had basically stabilized at this point) affected the presidential election. He concludes "that one's position on abortion was not a good predictor, by itself, of whether one voted for Ford or Carter. In fact, voters did not divide in any consistent pattern for Carter or Ford on the basis of their own attitudes on abortion." Maris A. Vinovskis, "Abortion and the Presidential Election of 1976: A Multivariate Analysis of Voting Behavior," *Michigan Law Review*, Vol. 77, No. 7, Symposium on the Law and Politics of Abortion (Aug., 1979), pp. 1765.

⁶² Greenhouse and Siegel, *Before Roe v. Wade*, pp. 113-115.

reason is that at this time, the political parties were largely regional instead of ideological (as we are most familiar with them today). In other words, there were Northern Democrats from New England who were coupled (mostly historically) with Southern Democrats from the South. Overwhelmingly, as compared to the Republicans, the Democrats also had Catholics, Jews, and other religious voters. Republicans, on the other hand, had mostly the West and Midwest. Both parties, then, had conservatives and liberals. But in the 1970s, many witnessed the Republican Party reach out to these conservative members of the Democratic Party to get them to vote with their Party based on their positions on major issues such as abortion.⁶³

Despite the progress that had been made for the pro-choice movement to this point, many issues around classism and racism persisted. The reason, though, was not something that the reformers had much control over. While they were focusing on abortion rights, they were not necessarily also focusing on socioeconomic equality. Thus, although the courts were leaning more liberal regarding social issues like abortion, they did not seem to be leaning in the same direction vis-à-vis economic issues. Reagan posits: “The class inequities under the framework of legalized abortion arose not from the women’s movement or the cases presented to the Court, but from the Court’s unwillingness to address economic inequality.”⁶⁴ Hence, those who benefited from these pro-choice wins were mainly those who could already afford an abortion

B.5. 1980s

By 1980, political parties began to develop decisive views on abortion. In the Democratic platform of 1980, they state: “The Democratic Party supports the 1973 Supreme Court decision on abortion rights as the law of the land and opposes any constitutional amendment to restrict or

⁶³ On August 5, 1972, Louis Cassels wrote a column in which he commented on how much of an influence the issue of abortion has had on partisanship and ideology becoming more and more aligned, printed in *Ibid.*, pp. 212-215.

⁶⁴ Reagan, *When Abortion Was a Crime*, pp. 245.

overturn that decision.”⁶⁵ Furthermore, during their national convention of the same year, the Democratic Party stated that reproductive freedom, including abortion, was “a fundamental human right” that should not have “restrictions on funding for health services for the poor that deny poor women especially the right to exercise a constitutionally-guaranteed right to privacy.”⁶⁶ With these statements in such clear opposition to many religious individuals’ beliefs on abortion, it is no wonder that they would want to switch to the Republican Party, discussed below.

The Republican Party’s platform of 1980 reflects President Nixon’s position on the issue: “[W]e affirm our support of a constitutional amendment to restore protection of the right to life for unborn children.”⁶⁷ This very particular phrase, “right to life,” will have very important and long-lasting effects on the anti-abortion movement, which will be discussed in further detail below. From this seemingly simple phrase, anti-abortionists will develop the label “pro-life” for themselves. At the convention, the Republican Party affirmed their position with the same language in 1980,⁶⁸ and then strengthened their position in 1984 and 1988 by adding that they “endorse legislation to make clear that the Fourteenth Amendment’s⁶⁹ protections apply to unborn children.”⁷⁰ Beyond the Republican Party’s anti-abortion stance, President Reagan announced in a position paper at a 1984 United Nations International Conference on Population in Mexico City that the U.S. does not think of abortion as an acceptable component of family planning programs.⁷¹

⁶⁵ Donald Bruce Johnson, *National Party Platforms of 1980* (Urbana, Illinois: University of Illinois Press, 1982), pp. 47.

⁶⁶ In 1984 and 1988, the Democratic Party held similar beliefs with virtually the same language. *National Party Conventions, 1831-2008* (Washington, D.C.: CQ Press, 2010), pp. 163-167.

⁶⁷ Johnson, *National Party Platforms of 1980*, pp.183.

⁶⁸ *Ibid.*, pp. 161.

⁶⁹ Presumably, this reference is to the first section of the Fourteenth Amendment, which I write here for descriptive purposes. §1 of the 14th Amendment reads: “All *persons born* or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State *deprive any person of life*, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (emphasis added). U.S. Const., amend. XIV, §1.

⁷⁰ Johnson, *National Party Platforms of 1980*, pp. 169-173.

⁷¹ Printed in Dixon-Mueller, *Population Policy & Women’s Rights*, pp. 72-73.

Sensing that they might be losing followers, those in support of abortion rights attempted to restructure their arguments to be about *choice* and removing government interference in individuals' lives. Hinging on the idea of privacy from government, the pro-choice movement was thus relying on typically conservative points of view, clearly trying to draw in that crowd.⁷² For some time, their tactics seemed to be working, as the Democratic Party retained many of their more conservative-leaning members, including religious individuals in the South.

Nonetheless, the Supreme Court itself was becoming more conservative, thanks to Reagan and Bush, Sr., appointees. Hence, many abortion-related cases of the late 1970s and the 1980s led to the Court scaling back on the rights of women to choose an abortion. Many of the decisions allowed states to place more and more restrictions on women—see, *e.g.*, *Baird* discussed above. Since most liberals in the Democratic Party denounced and opposed these restrictions placed on abortion, the conservatives that were once in the party had more reason to leave the Party for the Republicans.

Better sorting into the parties based on ideological grounds took place partly because of the split in the abortion debate. This phenomenon, coupled with Reagan's drive toward a stronger form of conservatism, formed a new so-called New Right movement. Here, conservatives (a.k.a., Republicans, now) on the "new" right clung on to the idea that a fetus had a right to life, and so abortion began to be equated with murder. Moreover, since a lot of these restrictions were most harmful for young, poor, and/or single women, as well as women of color, the New Right is sometimes associated with attacking these communities. Plus, a lot of these communities have tended to lean more liberal and are typically found in the Democratic Party, for similar reasons.⁷³

⁷² William Saletan, *Bearing Right: How Conservatives Won the Abortion War* (Berkeley, California: University of California Press, 2003), pp. 4-6.

⁷³ Reagan, *When Abortion Was a Crime*, pp. 148-149.

Such relationships between partisanship and other demographic characteristics will be discussed in further detail in Chapter 3.

Whereas the New Right movement was started partly to protest the gains made by the pro-choice movement of the 1960s and 1970s, the pro-choice community had, during much of the 1980s, become too complacent. Thus, when seeing the gains that had been made against them in the 1980s, they had to “re-awaken”. That is, many people dismissed ideas of the new pro-life movement, thinking that their achievements (including especially *Roe*) were safe from their enemies. Thus, they were at a disadvantage in the late 1980s because they were not as well organized as they had been earlier, or as compared to the New Right movement. When they did awaken, they tried to compensate for lost time and ground. In 1986, there was a prominent pro-choice march with 80,000 people, and three years later, two more marches with 300,000 and 150,000 people, respectively. The pro-choice movement was clearly trying to make up for what they perceived to be lost time.⁷⁴

B.6. 1990s

Despite the attempts of the pro-choice movement, given that they were behind and that they had lost a lot of their supporters, the New Right movement continued to gain traction; they were adamant about pursuing more restrictions on abortion.⁷⁵ For instance, the Supreme Court (now much more conservative than in the 1960s and 1970s) upheld many more restrictions on abortion, including ones that made it much more difficult for poor women and women of color to have access to safe and healthy abortion clinics.⁷⁶ Interestingly, part of the New Right’s arguments

⁷⁴ Craig and O’Brien, *Abortion and American Politics*, pp. 51, 61-63.

⁷⁵ In fact, many had a vision of the Supreme Court fully overruling *Roe* as their end-goal.

⁷⁶ Dixon-Mueller, *Population Policy & Women’s Rights*, pp. 75.

hedged on a new idea that a woman having complete control over the spacing of children (via, e.g., abortion) could have detrimental impacts upon her alleged economic rights.⁷⁷

Just as *Roe* was a decisive turning point in the abortion debate, so too were *Webster v. Reproductive Health Services* (1989)⁷⁸ and *Planned Parenthood v. Casey* (1992).⁷⁹ The former case upheld state-imposed restrictions in Missouri on public funds being spent on facilities or employees dealing with abortions, thus making it more difficult for lower-class women who would not be able to afford those services otherwise. Such restrictions had already been placed on federal funds with the Hyde Amendment. *Webster* is typically seen as the first in the Court's one-two hit for the pro-choice movement, with *Casey* to follow only three years later. After remaining relatively silent on the issue of abortion, the Court seemed to have finally awakened and decided to scale back on the underlying principles of *Roe*. Policymakers and anti-choice activists at the state level took notice and began planning court challenges to pro-choice laws and drafting anti-choice legislation to further restrict a woman's access to abortion.

Not coincidentally, 1989 is the first year that the National Abortion and Reproductive Rights Action League (NARAL), published its annual *Who Decides?* report that provides some data on national and state laws and cases—either pro-choice or anti-choice. They then “grade” each state, where most have, ever since, received subpar or failing marks. Such a publication helps highlight some important laws and cases in any given year, but does not provide a full picture. And recently (since 2006), NARAL has taken a different direction with the publication: it now provides a brief summary of particular laws and cases passed in that year, to yield more time to give a cumulative snapshot of each state's status with regard to abortion rights.⁸⁰

⁷⁷ *Ibid.*, pp. 119.

⁷⁸ *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

⁷⁹ *Planned Parenthood v. Casey* (1992).

⁸⁰ National Abortion and Reproductive Rights Action League: Pro-Choice America, *Who Decides?*

Casey is an important case in its own right because in it the Court upheld a great deal of restrictions (three, to be precise) in Pennsylvania while only striking down one, though they still upheld their precedent of *Roe*—at least *in principle*. Specifically, the Court only struck down the husband notification requirement, which had said that if a married woman wanted to have an abortion, she must notify her husband first. This particular provision was ruled unconstitutional because it did not pass the Court’s new test on what is an acceptable state-imposed limitation on abortion. That is, the law could not present an “undue burden” on the woman’s right to choose an abortion, which is defined by the Court as a “substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.”⁸¹

Still, under this new “undue burden” test, the Court was clearly leaning more conservative than what was ruled in *Roe*. This is evidenced by the fact that the Court upheld the requirement of informed consent, which means that a woman must be “educated” about what an abortion is and what possible side effects might manifest before she can consent to having an abortion. However, many have seen through this false façade of pretending to “help” women because such education is typically demeaning toward women and is often false or misleading (*e.g.*, citing bogus science studies to claim that having an abortion can lead to higher risks of breast cancer).⁸²

The Court also upheld the 24 hour period that a woman must wait after she gives her informed consent before she can have the procedure. Contemporaneously, many states are experimenting with how long they can push these waiting periods before it becomes an “undue burden,” including trying to exclude certain days of the week and types of days. The longest current

22 annual editions, accessed at <<http://www.prochoiceamerica.org/government-and-you/who-decides/>>. NARAL and this specific publication are discussed in further detail in Chapter 9 (Appendix A).

⁸¹ *Planned Parenthood v. Casey* (1992).

⁸² Chinué Turner Richardson and Elizabeth Nash, “Misinformed Consent: The Medical Accuracy of State-Developed Abortion Counseling Materials,” *Guttmacher Policy Review*, Vol. 9, No. 4 (Fall, 2004), accessed at <<http://www.guttmacher.org/pubs/gpr/09/4/gpr090406.html>>.

waiting period is 72 hours (*excluding* weekends and holidays) in South Dakota—a restriction implemented in 2013. Interestingly, Planned Parenthood decided to stop pursuing the legal challenge against this law (without much explanation).⁸³ Those in favor of these waiting periods claim that they are trying to protect women from making decisions that they may later regret by forcing them to wait between being “educated” and having the procedure. Yet, many recognize that since the information they are provided is biased and usually false, and since almost all women know what they are signing up for, this type of law is just another restriction on women’s access to safe abortions.

In *Casey*, the Court upheld another restriction that Pennsylvania had placed on women seeking an abortion—a restriction they had already upheld in *Baird*. This restriction says that a minor must obtain parental consent to have an abortion, albeit with a judicial bypass option. That is, a minor has to have at least one parent consent to her having an abortion, or, if she did not want to or could not get consent from her parent, she could try to get permission from a judge. This particular restriction had been in place at the state level for quite some time—notably in Alabama. Such a restriction is unique in that, after upholding its existence *per se*, the exact application depends on each case. While states can have this restriction, whenever a child seeks a judicial bypass, she has to individually and personally go to the court to seek one, which means that each ruling of the judicial bypass option is unique. If she does not receive the permission of the court, she will typically try to appeal. Generally, she is judged based on her academic performance, her work ethic, her job status (if applicable), her criminal record (if any), and other allegedly decent measures of whether or not she is “mature enough” to make this decision without parental consent.

⁸³ David Bailey, “South Dakota Governor Signs Extended Abortion Wait Period Law,” *Reuters*, Mar. 8, 2013, accessed at <<http://www.reuters.com/article/2013/03/08/us-usa-abortion-southdakota-idUSBRE92711L20130308>>.

Clearly, the New Right was winning compared to the pro-choice movement. Indeed, after the supposed victories of *Webster* and *Casey*, the New Right started to take up the issue of so-called “partial-birth” abortions, which were actually just late-term abortions (though they would not make significant gains in this area until the 2000s). The phrasing difference is important because the pro-life movement wanted to muster as much public outcry against late-term abortions as possible. Since they noticed that some would probably think of “late-term abortions” in the same way they think about abortions in general, they changed the wording to evoke a more visceral, negative reaction—ergo, “*partial-birth* abortions.”

B.7. 2000s-present

With the dawn of the new millennium, the New Right shifted their focus almost entirely to the late-term abortions, and were able to successfully lobby Congress to pass legislation to ban them with the so-called Partial-Birth Abortion Act of 2003,⁸⁴ and then convince the Court to uphold such legislation in *Gonzales v. Carhart* in 2007.⁸⁵ Consequently, some have stated outright that the conservatives have won the abortion issue; that, despite *Roe*, conservatives were able to scale it back to a point of almost insignificance.⁸⁶ Saletan sums it up fairly succinctly: “Liberals haven’t won the struggle for abortion rights. Conservatives have.”⁸⁷ In fact, conservatives have tried expanding the rationale behind their anti-choice attitudes.

The rhetoric today of the anti-choice movement has evolved to include (in addition to the fetus’s “right to life”) the claim that these restrictions on a woman’s right to choose are in some way helping the woman and her health. The strategy behind this shift in dialogue has grown from the liberals’ focus on abortion as a feminist issue: that a woman has a right to make her own

⁸⁴ Partial-Birth Abortion Act of 2003, 18 U.S.C. §1531.

⁸⁵ *Gonzales v. Carhart*, 550 U.S. 124 (2007).

⁸⁶ Wetstein, *Abortion Rates in the United States*, pp. 31-32.

⁸⁷ Saletan, *Bearing Right*, pp. 2.

healthcare decisions without governmental interference. Here, the anti-choice movement claims that a woman needs a lengthy waiting period and needs to hear about (usually false and misleading) information regarding the procedure because this is such a large, important decision. Of course the decision should not be made lightly; but one must wonder why it is set apart from other “similarly low-risk medical procedures?” This very fact has led some members of Congress to introduce legislation that “would prohibit states from singling out reproductive health care providers with oppressive requirements that grossly exceed what is necessary to ensure high standards of care.”⁸⁸

Although this bill has virtually no chance of passing the Republican-controlled House, its introduction and subsequent debate may help shape the debate moving forward. The bill could force some anti-choice leaders to side with the prominent anti-choice state legislative director of the National Right to Life Committee, Mary Spaulding Balch, who recently conceded that “abortions—including riskier second-trimester abortions—carry fewer risks of death than vaginal births, cesarean sections, and plastic surgery procedures, such as facelifts and liposuction.” Indeed, Balch wonders how the anti-choice movement plans to win with rhetoric around protecting women when other procedures like liposuction are riskier yet fail to be targets of legal and political scrutiny and debate. Balch instead urges people to focus on the supposed life of the fetus without any facades of other motives. Perhaps this bill will partially help show people’s true colors.⁸⁹

C. Conclusion

The history of abortion in the U.S. is sometimes unknown and vague, and sometimes contradictory because the law on the books does not necessarily match the action taking place on

⁸⁸ Nancy Northup, “An Opportunity for Congress to Stand Up for Women,” *MSNBC*, July 14, 2014, accessed at <<http://www.msnbc.com/msnbc/congress-stand-womens-health-abortion>>.

⁸⁹ Sofia Resnick, “National Right to Life Director Admits Pregnancy Is Riskier than Abortion,” *RH Reality Check*, July 2, 2014, accessed at <<http://rhrealitycheck.org/article/2014/07/02/national-right-life-director-admits-pregnancy-risky-abortion/>>.

the ground. However, it is quite clear that prior to the 1960s, most of the call for abortion legalization came from men who had very different motives than the feminists who called for the same in the 1960s and 1970s. Still, they achieved what they wanted with *Roe*—but for how long? From the 1980s to today, many have witnessed just how much the New Right conservatives have been able to trim back on abortion rights. One of the major reasons why this was possible was because of just how divisive the issue of abortion is both across party lines and the ideological spectrum. Indeed, it is quite clear that abortion was a contributing factor in sorting people into political parties by their ideology instead of by their region of residence.

Today, we associate ideology with partisanship. People are usually surprised to find a conservative Democrat or liberal Republican. This phenomenon is relatively new, as the parties used to be divided more by region than by any other characteristic. To best understand why conservative Democrats joined the Republicans, and their ideological opponents from the Republicans joined the Democrats, one has to understand the major divisive issues that were at the forefront of American politics while this partisan split occurred. The Democratic Party used to be a powerhouse for most of the 20th century. However, the 1980s and 1990s (most especially with the House turnover of parties in 1994) saw the Democratic Party losing a lot of its power. This loss of power can be attributed to many things, as noted throughout this chapter. Part of this loss came from the fact that many conservative Southerners joined the more conservative Republican Party (after sticking with the Democratic Party because of political historical issues during and after the Civil War). Thus, the Republican Party gained many more conservatives. Additionally, they recruited a lot of the right-winged religious folks, like the Catholics and Protestants who had almost always voted with the Democratic Party. Hence, the parties became split along an ideological line, as opposed to a regional one.

Abortion figures into the ideological sorting because the 1980s saw the rise of the New Right movement that was anti-abortion because of its “pro-life” mantra against “killing” the unborn (yet “alive”) fetus. Once the liberals focused more on the fact that abortion rights were a part of women’s rights, thereby dropping the focus on the privacy and government intrusion issues, the conservatives found it much easier (and much more aligned with their views) to switch to the Republican Party with the New Right movement occurring therein. With the New Right, the Republicans controlled the White House during the 1980s and early 1990s, and so had a lot of conservative Supreme Court Justice appointees to the bench, which made the Court itself more conservative. This conservative ideology contributed to its approach in dealing with controversial abortion issues.

With successes at the national level, the New Right then turned to the states. The members of this movement had already seen that the Court and Congress had been wary of touching abortion after *Roe*. And even in *Casey* itself, the Court had a unique opinion that was co-authored by three justices, clearly showing that the Court was fairly unsure of where it stood on abortion rights. Yet that proved to be sufficient for the New Right’s purposes, for *Casey* still gave states a more relaxed standard (the “undue burden” standard) to follow in placing restrictions on a woman’s access to abortion. In actuality, even as far back as *Webster* (which, although not as groundbreaking as *Casey*, still helped pave the path thereto) in 1989, many realized that the states would soon have more leeway in what they could do regarding abortions. This is further evidenced by the fact that national organizations like NARAL⁹⁰ started taking serious notice of abortion policy at the state level, for they understood how impactful these decisions would be on abortion rights across the country.

⁹⁰ NARAL’s annual publication on the state of abortion policies (*de facto* and *de jure*) was first published in 1989.

After laying an historical foundation in this chapter, Chapter 3 presents extant literature regarding the quantitative analyses of interest for this thesis. That is, it will examine how abortion rights laws and court cases relate to public opinion.

III. Literature Review

A. Introduction

Throughout this literature review, three main points will arise. One is that despite some general agreements on public opinion research, even as it relates to various policies, these conclusions do not sufficiently address the relationship between public policies and public opinion. Another point is that the extant literature on what influences an individual's public opinion on abortion is generally unsatisfactory. And finally, the current literature gives some hope for addressing the effects of abortion rights laws and court decisions on public opinion.

B. Public Opinion and Public Policy

This section is meant to underscore why the relationship between public opinion and policy can plausibly be in the direction of public opinion influencing policy. That is, many scholars have researched and shown that people's attitudes can help guide policymakers in crafting policies. This section is simply meant to acknowledge and discuss some issues related to reverse causality concerns for the hypotheses delineated in Chapter 4.

In his seminal work, "The Nature of Belief Systems," Converse underscores the extent to which individuals are (un)informed. Indeed, he estimates only about 3.5% of the population are what he would consider highly informed, with about 17.5% at the lowest level.⁹¹ With this skewed distribution towards the American public being highly uninformed, one should wonder how this low level of knowledge will influence these individuals' political attitudes. After all, in a normative sense, if they are highly uninformed, will they make the best possible decisions with regard to various policies? Perhaps we can discount Converse's study because of some measurement

⁹¹ Philip E. Converse, "The Nature of Belief Systems in Mass Publics" in *Ideology and Discontent*, David Apter (ed.) (London: Free Press of Glencoe, 1964).

issues,⁹² although there might still be a concern that those who have a low level of information on politics will vote in a way inconsistent with those who have a high level of information.⁹³ And given that the levels of knowledge in the public at an aggregate level have remained approximately consistent dating back to the 1940s, one could have concerns over how these effects have shaped the country over the 20th century. Yet Carpini and Keeter continue to say that individuals can still change their particular opinion based on their individual level of knowledge, which will change over time and space.⁹⁴ Adding in the findings of Page and Shapiro will help paint a brighter picture since the American public—notwithstanding their (on average) low levels of information—have voted in rational and predictable ways over most of the 20th century.⁹⁵

Since this debate over the relationship between how much Americans know and how that very level of knowledge impacts their political attitudes and behavior continues today, some researchers have turned to measurement issues that should be addressed. Perhaps one of the most critical scholars on measuring public opinion is Burstein. He posits that the ideal way to measure an individual's *true* opinion is not to ask for their attitude in a general sense, but rather how they feel about a particular piece of legislation. After all, many researchers use a more general attitude measurement (*e.g.*, the answer to the question: “How do you feel about abortion?”) and then compare that response to see how the respondent feels about specific pieces of legislation (*e.g.*, “How do you feel about Congress’s recent legislation banning late-term (or “partial-birth”)

⁹² Christopher H. Achen, “Mass Political Attitudes and the Survey Response,” *The American Political Science Review*, Vol. 69, No. 4 (Dec., 1975), pp. 1218-1231.

⁹³ Larry M. Bartels, “Uninformed Votes: Information Effects in Presidential Elections,” *American Journal of Political Science*, Vol. 40, No. 1 (Feb., 1996), pp. 194-230.

⁹⁴ Michael X. Delli Carpini and Scott Keeter, *What Americans Know about Politics and Why It Matters* (New Haven: Yale University Press, 1996).

⁹⁵ Benjamin Page and Robert Shapiro, *The Rational Public: Fifty Years of Trends in Americans’ Policy Preferences* (Chicago: University of Chicago Press, 1992).

abortions?”), even though those are technically two separate questions. Thus, the respondent’s opinion may differ.⁹⁶

Yet one ought to wonder: are people as concerned with *each* piece of legislation passed or *each* decision a court hands down? Wildavsky shows that most people who have political attitudes towards change use abstract values to justify their positions on different bills, which means that using general questions is not altogether unreasonable.⁹⁷ Furthermore, Burstein’s concerns can be addressed by using measurements on a multi-item scale. That is, for something like abortion, instead of asking, “Do you think a woman should have the choice to have an abortion?” the question should be, “Do you think a woman should have the choice to have an abortion in the following circumstances...?” Wagenaar, et al., show how this question change better captures individuals’ opinion on alcohol restrictions.⁹⁸ The measurement from the NES that will be used follows a similar pattern, giving promise for assessing one’s true feelings on abortion rights.

Regarding public opinion on abortion, some may show concern in examining changes because the general opinion on abortion has remained essentially steady over time.⁹⁹ Some have even gone so far as to say that, “With respect to the debate over abortion rights, the American public is no more divided now than in the past.”¹⁰⁰ At the same time, some argue that support has

⁹⁶ Paul Burstein, *American Public Opinion, Advocacy, and Policy in Congress* (New York: Cambridge University Press, 2014).

⁹⁷ Aaron Wildavsky, “Political Implications of Budget Reform,” *Public Administration Review*, Vol. 21, No. 4 (Autumn, 1961), pp. 183-190.

⁹⁸ Alexander C. Wagenaar, Eileen M. Harwood, Traci L. Toomey, Charles E. Denk, and Kay M. Zander, “Public Opinion on Alcohol Policies in the United States: Results from a National Survey,” *Journal of Public Health Policy*, Vol. 21, No. 3 (2000), pp. 303-327.

⁹⁹ Greg D. Adams, “Abortion: Evidence of an Issue Evolution,” *American Journal of Political Science*, Vol. 41, No. 3 (July, 1997), pp. 718-737; and Everett Carl Ladd and Karlyn H. Bowman, *Public Opinion about Abortion* (Washington, D.C.: AEI Press, 1999).

¹⁰⁰ Ted Mouw and Michael E. Sobel, “Culture Wars and Opinion Polarization: The Case of Abortion,” *American Journal of Sociology*, Vol. 106, No. 4 (Jan., 2001), pp. 913-943.

been steadily declining over time,¹⁰¹ or that support has yet to reach a plateau.¹⁰² With conflicting views—due mainly to measurement issues¹⁰³—more research in this area is thusly warranted. Figure 1 provides some supporting data that attitudes toward abortion on the national scale have remained fairly consistent across time. Nonetheless, these claims have been made at the *national, aggregate* level, thereby missing out on nuances at the individual and state levels—the former of which is where my research fits in nicely. After all, since abortion has helped sort individuals into the Republican and Democratic parties over the last few decades,¹⁰⁴ one should clearly see that individual-level opinion on abortion has been fluctuating over time.

Much of the extant literature has focused on addressing the impact that public opinion has had on public policy. One of the biggest reasons for doing so is to assess how “democratic” the country really is. After all, if the government does not pay attention to the public’s opinion on a given issue, does that mean our representative democracy is simply not working? However, researchers have found that there is an impact of public opinion on representatives’ behavior. But they have *also* found that the relationship works in the other direction (see, especially, sub-section D below). Indeed, Norrander shows that there is a complex path model that connects past and current policies and past and current public opinion,¹⁰⁵ and Jacobs corroborates such a story.¹⁰⁶ From my data, one would most likely find the same pattern for abortion rights. But before

¹⁰¹ William G. Mayer, *The Changing American Mind: How and Why American Public Opinion Changed between 1960 and 1988* (Ann Arbor: University of Michigan Press, 1993).

¹⁰² James A. Stimson, *Tides of Consent: How Public Opinion Shapes American Politics* (Cambridge: Cambridge University Press, 2004).

¹⁰³ Adams, “Abortion.”

¹⁰⁴ Adams, “Abortion”; Gary Miller and Norman Schofield, “Activists and Partisan Realignment in the United States,” *American Political Science Review*, Vol. 97, No. 2 (May, 2003), pp. 245-260; Donald Green, Bradley Palmquist, and Eric Schickler, *Partisan Hearts and Minds* (New Haven, CT: Yale University Press, 2004); and Louis Cassels (August 5, 1972), printed in Linda Greenhouse and Reva Siegel, *Before Roe v. Wade*.

¹⁰⁵ Barbara Norrander, “The Multi-Layered Impact of Public Opinion on Capital Punishment Implementation in the American States,” *Political Science Quarterly*, Vol. 53, No. 4 (Dec., 2000), pp. 771-793.

¹⁰⁶ Lawrence R. Jacobs, “The Recoil Effect: Public Opinion and Policymaking in the U.S. and Britain,” *Comparative Politics*, Vol. 24, No. 2 (Jan., 1992), pp. 199-217.

addressing how public policy influences public opinion on abortion, it is important to briefly address the relationship in the other direction. After all, reverse causality can definitely be concerning for the questions at hand.

While some believe that the public's opinion does not have much of an impact on public policy, their measurements are typically at a national, aggregate level instead of teasing apart which particular policies and their relationship to opinion.¹⁰⁷ For abortion in particular, some argue that legislators simply vote their conscience instead of following the public's mood.¹⁰⁸ At the same time, some simply question the legitimacy of trying to prove the relationship at all, claiming that one cannot "sor[t] the individual effects of each [public opinion or interest group influence]," although "both are strongly associated with state policy after controls for a variety of other variables" are taken into consideration.¹⁰⁹ But this conclusion is probably largely constrained by the limited timeframe (1988-1992) in their study, which means that the relationship should still be examined, especially over a longer time period.

Yet others show that the public's mood can constrain policymakers. Usually the rationale is that elites take notice of what the public thinks because they are at risk of being voted out of office.¹¹⁰ This argument has also proven to exist at the state level,¹¹¹ even for issues related to abortion.¹¹² But one might wonder how this would influence unelected officials, *e.g.*, judges. This

¹⁰⁷ Burstein, *American Public Opinion*.

¹⁰⁸ Adams, "Abortion."

¹⁰⁹ Barbara Norrander and Clyde Wilcox, "Public Opinion and Policymaking in the States: The Case of Post-Roe Abortion Policy," *Policy Studies Journal*, Vol. 27, No. 4 (1999), pp. 707-722.

¹¹⁰ James A. Stimson, Michael B. Mackuen, and Robert S. Erikson, "Dynamic Representation," *The American Political Science Review*, Vol. 89, No. 3 (Sept., 1995), pp. 543-565.

¹¹¹ Elizabeth Adell Cook, Frederick Hartwig, and Clyde Wilcox, "The Abortion Issue down Ticket: The Virginia Lieutenant Governor's Race of 1989," *Women & Politics*, Vol. 12, No. 4 (1992), pp. 5-17.

¹¹² Matthew E. Wetstein and Robert B. Albritton, "Effects of Public Opinion on Abortion Policies and Use in the American States," *Oxford University Press*, Vol. 25, No. 4 (Autumn, 1995), pp. 91-105; and Marshall H. Medoff, "The Determinants and Impact of State Abortion Restrictions," *American Journal of Economics and Sociology*, Vol. 61, No. 2 (Apr., 2002), pp. 481-493.

same relationship has been shown to hold for the unelected justices on the Supreme Court.¹¹³ Thus, one could translate this finding to the state level. And at the state level, this conclusion could hold more weight since many judges are actually democratically elected by the people, which means they are therefore at risk of being rotated through office by their constituents, just as the legislators are.

The literature cited throughout this section has shown that public opinion can place some constraints on policymakers as they craft policy. While this direction of causation most likely holds for various issues, including abortion rights, there is still more literature to be discussed that highlights the reasons for believing that the causal direction can also point in the other direction. That is, literature discussed below will show that policies can and do influence people's attitudes.

C. Influences on Public Opinion of Abortion

Understanding the influences on an individual's view of abortion is important to understand what extraneous variables—*i.e.*, variables beyond measurements of state policies and state court decisions—to take into account when conducting regression analyses. Some researchers' claims, however, should first be acknowledged and dismissed. For instance, some claim that measurements of the number of professional women within a state is important,¹¹⁴ as is someone's support for euthanasia,¹¹⁵ though the theoretical linkages are unclear. Others might

¹¹³ "Public mood directly constrains the justices' behavior and Court's policy outcomes." Christopher J. Casillas, Peter K. Enns, and Patrick C. Wohlfarth, "How Public Opinion Constrains the U.S. Supreme Court," *American Journal of Political Science*, Vol. 55, No. 1 (2011), pp. 74-88.

¹¹⁴ Michael B. Berkman and Robert E. O'Connor, "Do Women Legislators Matter? Female Legislators and State Abortion Policy," *American Politics Research*, Vol. 21, No. 1 (Jan., 1993), pp. 102-124.

¹¹⁵ Cook, et al., *Between Two Absolutes*.

argue that genetics play a role in someone forming their political attitudes,¹¹⁶ though that relationship is dubious at best.¹¹⁷

Many factors have been shown to influence how someone feels about abortion. Nevertheless, in the interest of not throwing in too many control variables into the multivariate regression analyses (see Chapters 5 and 6), not all can be taken into account. The six control variables taken into account, as discussed below, are the ones that have consistently been shown to have a direct relationship to public opinion on abortion, while others have been shown to have a similar relationship in only a few studies. For instance, despite influence on one's opinion on social issues like abortion, age,¹¹⁸ education,¹¹⁹ and marital status¹²⁰ will not be taken into consideration. Education, although influential on one's opinion on abortion, is also highly correlated with income, and so having just income ought to be sufficient for the purposes of this thesis.¹²¹ Beyond demographics, some posit that one's strongest core beliefs are the driving forces behind one's political attitudes.¹²² However, the measurement of strong core beliefs that may underlie one's feelings toward abortion is unfortunately not readily available, and, in any case, is

¹¹⁶ John R. Alford, Carolyn L. Funk, and John R. Hubbing, "Are Political Orientations Genetically Transmitted?" *The American Political Science Review*, Vol. 99, No. 2 (May, 2005), pp. 153-167; and Evan Charney, "Genes and Ideology," *Perspectives on Politics*, Vol. 6, No. 2 (June, 2008), pp. 299-319.

¹¹⁷ Jon Beckwith and Corey A. Morris, "Twin Studies of Political Behavior: Untenable Assumptions?" *Perspectives on Politics*, Vol. 6, No. 4 (Dec., 2008).

¹¹⁸ Michael Hout, "Abortion Politics in the United States, 1972-1994: From Single Issue to Ideology," *Gender Issues*, Vol. 17, No. 2 (Mar., 1999), pp. 3-34; and Ilse Cornelis, Alain Van Hiel, Arne Roets, and Malgorzata Kossowska, "Age Differences in Conservatism: Evidence on the Mediating Effects of Personality and Cognitive Style," *Journal of Personality*, Vol. 77, No. 1 (Feb., 2009), pp. 51-87.

¹¹⁹ Donald Granberg and Beth Wellman Granberg, "Abortion Attitudes, 1965-1980: Trends and Determinants," *Family Planning Perspectives*, Vol. 12, No. 5 (Sept.-Oct., 1980), pp. 250-261.

¹²⁰ Cook, et al., *Between Two Absolutes*.

¹²¹ Wetstein, *Abortion Rates in the United States*, pp. 80-81.

¹²² Stanley Feldman, "Structure and Consistency in Public Opinion: The Role of Core Beliefs and Values," *American Journal of Political Science*, Vol. 32, No. 2 (May, 1988), pp. 416-440; William G. Jacoby, "Value Choices and American Public Opinion," *American Journal of Political Science*, Vol. 50, No. 3 (July, 2006), pp. 706-723; and Swedlow and Mikel L. Wyckoff, "Value Preferences and Ideological Structuring of Attitudes in American Public Opinion," *American Politics Research*, Vol. 36, No. 6 (Nov., 2009), pp. 1048-1087.

most likely already influenced by one's demographic characteristics. After all, one's core beliefs will most likely be correlated to their ideology or (lack of) religion.

The six control variables to be used are based on demographic characteristics that have been shown to have an influence on public opinion. Ideology has proven to be a strong factor in shaping one's opinion on abortion (liberals favor allowing abortion more so than conservatives),¹²³ as has partisanship (Democrats more so than Republicans).¹²⁴ It has also been shown that women generally favor permitting the choice of abortion over men,¹²⁵ as well as Blacks more so than Whites more so than Hispanics more so than Asians.¹²⁶ And as discussed above, income, which is highly correlated with education, will be utilized.¹²⁷

One important relationship to understand is that between religion and opinion on abortion. For instance, Cook, et al., argue that the following relationships between various religions and attitudes toward abortion exist: Atheists and Agnostics approve of abortion more so than Jews more so than Catholics more so than Protestants more so than "Others."¹²⁸ However, their position that Catholics favor abortion more so than Protestants has been proven to be essentially false.¹²⁹ This is because the Catholic Church has been adamant about opposing abortion—indeed, they were one of the first religious institutions to denounce the practice of abortion, as discussed in Chapter 2. Some have even gone so far as to comment that they may be among the most influential influences in leading the charge against abortion.¹³⁰ These facts, coupled with the delineation that

¹²³ Cook, et al., *Between Two Absolutes*.

¹²⁴ Jacobs, "The Recoil Effect"; and Mitchell Killian and Clyde Wilcox, "Do Abortion Attitudes Lead to Party Switching?" *Political Research Quarterly*, Vol. 61, No. 4 (Dec., 2008), pp. 561-573.

¹²⁵ Granberg and Granberg, "Abortion Attitudes."

¹²⁶ Cook, et al., *Between Two Absolutes*.

¹²⁷ Wetstein, *Abortion Rates in the United States*.

¹²⁸ Cook, et al., *Between Two Absolutes*.

¹²⁹ Berkman and O'Connor, "Do Women Legislators Matter?"

¹³⁰ David R. Morgan and Kenneth J. Meier, "Politics and Morality: The Effect of Religion on Referenda Voting," *Social Science Quarterly*, Vol. 61, No. 1 (June, 1980), pp. 144-148; and Elizabeth Adell Cook, Ted. G. Jelen, and

Protestants have been transforming into more of a liberal religion,¹³¹ mean that Catholicism above all other religions should be taken into consideration as a control variable.

D. Public Policy and Public Opinion

As touched upon above, while many scholars have shown that the public can constrain how their representatives and policymakers make decisions, the reverse is also true. That is, the public can still be influenced by these laws and court cases that are passed by their representatives. After Goggin analyzes the influence of the public's mood on policymakers, he concedes that the relationship would most likely *also* work in the other direction. That is, he calls for researchers to examine abortion policies as the independent variable and then see how political attitudes form as a result (*i.e.*, the dependent variables).¹³² Indeed, as Goggin and others show, these various policies and court cases have helped strengthen and mobilize both the pro-choice¹³³ and anti-choice movements.¹³⁴ Thus, I take up Goggin's challenge in this thesis. Various mechanisms for this relationship will be discussed in turn below.

The most common mechanism that has been researched is that the general public takes opinion cues from elites. One way that this could work is by Zaller's RAC model of elite cue-taking: people Receive the cues, Accept them if they are consistent with their prior held beliefs, and then Sample them based on the issue that is salient. If they take this cue, when asked about

Clyde Wilcox, "Catholicism and Abortion Attitudes in the American States: A Contextual Analysis," *Journal for the Scientific Study of Religion*, Vol. 32, No. 3 (1993), pp. 223-230.

¹³¹ Jeff Manza and Clem Brooks, *Social Cleavages and Political Change: Voter Alignments and US Party Coalitions* (New York: Oxford University Press, 1999).

¹³² Malcolm L. Goggin, "Understanding the New Politics of Abortion: A Framework and Agenda for Research," *American Politics Research*, Vol. 21, No. 4 (1993), pp. 4-30.

¹³³ Berkman and O'Connor, "Do Women Legislators Matter?"

¹³⁴ Goggin, "Understanding the New Politics of Abortion"; Cook, et al., "Catholicism and Abortion"; and Melody Rose, *Safe, Legal, and Unavailable? Abortion Politics in the United States* (Washington, D.C.: CQ Press, 2007). Even Supreme Court Justice Ginsburg said: "The court had given opponents of access to abortion a target [*i.e.*, *Roe*] to aim at relentlessly." Associated Press, "Ginsburg Says *Roe* Gave Abortion Opponents Target," *USA Today*, May 12, 2013, accessed at <<http://www.usatoday.com/story/news/nation/2013/05/11/ginsburg-abortion-roe-wade/2153083/>>.

their attitude towards a particular issue or policy, they will take what the preference that is most prominent at the top of their head, Zaller argues. This phenomenon seems plausible and could definitely apply to abortion rights. That is, if people read or hear about these cues from the elites, and if those cues are consistent with what people already think, then their opinion could strengthen. Note, though, that Zaller posits that the intermediary effect between policymakers and the public is the media. Those in the media, he argues, are the ones who are funneling the information through to the public.¹³⁵

Other scholars agree with Zaller: the media is the funnel between the decisions of the policymakers and the public. In their study on welfare support in the 1990s, Schneider and Jacoby found that as the media shifted their content in coverage of welfare policies, the public's support for and against these policies shifted along with the media's messages. Despite the pronounced shift, though, they found that the public mood rebounded—so to speak—as this very opinion change was just temporary.¹³⁶ Such a conclusion seems to be aligned with Stimson's argument that public opinion changes to somewhat massive shifts to the political system—*e.g.*, in this case, significant alterations in welfare policy at the national level—but then returns to a similar level as to what it had been at before.

Beyond this finding, though, Schneider and Jacoby conclude that when there is some conflict in the messages that the public receives from elites, there is an even more significant change in public opinion.¹³⁷ It is not inconceivable to see how this can apply to abortion rights. After all, elites have been (and continue to be) very vocal about their stance on abortion rights. And as Chapter 2 showed, the Democratic and Republican Parties themselves have been

¹³⁵ John Zaller, *The Nature and Origins of Mass Opinion* (New York: Cambridge University Press, 1992).

¹³⁶ Sandra K. Schneider and William G. Jacoby, "Elite Discourse and American Public Opinion: The Case of Welfare Spending," *Political Research Quarterly*, Vol. 58, No. 3 (Sept., 2005), pp. 367-379.

¹³⁷ *Ibid.*, pp. 377

consistently fighting over how public policy should treat a woman's right to choose whether to have an abortion. A case in point is the heated debate over abortion in the 2004 Presidential election where President Bush was essentially against abortion in virtually all instances and his opponent Senator Kerry was basically for permitting a woman to have the right to choose.¹³⁸ This phenomenon has also played out at the state level. For instance, in the 1989 Virginia race for Lieutenant Governor, abortion became a hot topic in the campaign as the election drew nearer. This race was almost immediately following *Webster*, which, Cook, et al., argue, means that candidates in state races essentially *had* to take a stance on abortion.¹³⁹

Beyond direct contact between elites and the public, the fact that individuals interact with one another needs to be taken into consideration. Druckman and Nelson show that elite cues are taken by people if, after receiving the cues, these individuals have interpersonal conversations with other like-minded people. However, if there are conflicting perspectives in these conversations, the cues might not be taken.¹⁴⁰ This finding could also hold true for abortion rights. Since abortion is such a controversial and divisive issue, many people would most likely not feel comfortable discussing abortion with those who disagree. After all, if someone has a pro-choice outlook on abortion, then discussing this issue with an anti-choice individual could yield a heated debate without a clear resolution. As Druckman and Nelson show, people are not wont to change their attitudes based on a conversation with someone who holds a contrary view to one that they have. Plus, given that abortion is closely tied to religion (as discussed above and in Chapter 2), someone

¹³⁸ "Bush v. Kerry at a Glance: How Republican, Democrat Stand on Key Issues," *NBC News*, Sept. 22, 2004, accessed at <<http://www.nbcnews.com/id/4448630/ns/politics/t/bush-vs-kerry-glance/#.U31oZfldWSp>>.

¹³⁹ Cook, et al., "The Abortion Issue down Ticket."

¹⁴⁰ James N. Druckman and Kjersten R. Nelson, "Framing and Deliberation: How Citizens' Conversations Limit Elite Influence," *American Journal of Political Science*, Vol. 47, No. 4 (Oct., 2003), pp. 729-745.

whose feelings towards abortion rely on the tenants of their faith would most likely *not* change those feelings just because of a conversation.

Perhaps the contact does not need an intermediary mechanism. But unlike my question of how elites give cues based on the policies that they pass, others have studied how the government can directly *manipulate* the public's opinion. In a long-term historical study, historian Jacobs examines the American government's attempts at manipulating the public's attitudes towards various issues and towards the government as well. He paints a picture of the tricks that various administrations have used throughout the 20th century, starting with Wilson and continuing through FDR and Kennedy—and, of course, through today. While the government of course is concerned with how the public views them, and therefore will create policy that takes the public's feelings into account, those same policymakers to try to persuade the public to hold the views that they (the policymakers) already hold themselves.¹⁴¹

Some of this manipulation comes through the media, as discussed above, but also through direct contact between the representatives and the mass. This direct contact has come in the form of the government talking directly to the public, like FDR did with the first radio address or governors have done by using their bully pulpit. In addition, this direct contact can be the public paying attention to the policies that their legislature are passing and the types of decisions that their (elected) judges and justices have handed down. Jacobs attempts to tell a pseudo-optimistic story by underscoring how the government *not only* attempts to directly manipulate the public, *but also* uses mechanisms like public opinion polling to assess how the public views them and the policies that they are setting. This latter phenomenon seems promising, in a normative sense, since a

¹⁴¹ Jacobs, "The Recoil Effect."

representatives in a democracy are supposed to pay attention to their constituents and follow their opinion—at least, to an extent.

Nonetheless, Jacobs ends his article on a rather pessimistic (or cautious) note: “The standing danger...is that previous political and institutional constraints on the public opinion apparatus will erode, enabling greater manipulation of public opinion.”¹⁴² Note that this article was published in 1992, which means that, if those were concerns at that time, one should be concerned that, after two decades of huge technological progress and government influence in the public’s affairs, these constraints Jacobs discusses *could* have eroded. Thus, the government could be gaining ground vis-à-vis manipulating the public’s opinion, at least through the mechanisms discussed above.

Part of this manipulation can occur based on the policies and court decisions that are handed down. But this phenomenon begs the question: how does the public respond to bills being passed by their state legislature or cases being decided by their state’s highest court? Adams takes up a similar question vis-à-vis abortion but relies on roll call votes in Congress of legislation dealing with abortion. From his study, he concludes that the elites convey their messages to the masses with their votes, and then the people take these as cues for how they should shape their opinion on abortion. His study, however, is rather limited, in that he just looks at the timeframe of 1972-1994, missing out on Congressional legislation post-1994. Plus, his study focuses on national level policies, thus missing out on the state-level legislation, which is greater in number, and probably greater in salience to the public.¹⁴³ Thus, a shift in focus to the individual level to get at (at least *some* of) these nuances is in order. Yet the fact that he found that this relationship exists gives confidence that even more promising results could be found for this thesis.

¹⁴² *Ibid.*, pp. 213.

¹⁴³ Adams, “Abortion.”

In addition to one's "inner circle" being an intermediary factor, scholars have analyzed how the party in power has influenced public opinion. This is particularly relevant for my thesis because people's partisanship has been shown to have a large influence on their attitude towards abortion. Additionally, the relationship between policies on abortion and public opinion on abortion rights could depend on the party in control at the time. Indeed, Erikson, et al., claim that a state's abortion policies is directly related to the public's opinion on abortion as well as the ratio of their legislators' Democratic members compared to Republican members.¹⁴⁴ This relationship will be examined by the other question of interest in this thesis: how abortion policies influence or interact with the public's opinion of their government.

In fact, Klingman and Lammers show that there is a high correlation between how liberal or conservative a state's policy is and the public's general attitudes towards the issues related to that policy as well as their ideological leanings in general.¹⁴⁵ This thesis could add to this understanding by allowing one to trace a direct causal chain between how the policies that a state passes influences the public's attitude towards not only abortion rights but also towards their government. Given that the proxy measurement of the public's approval of their state government (discussed in Chapter 5) is based on the ideology of both the public and the government, this relationship should pan out rather nicely.

Indeed, there is reason to believe that the public pays attention to the government's policies and will change their opinion of the body that passes said policy or hands down said decision. Caldeira shows that this relationship exists for the Supreme Court. That is, if people have some belief about an issue and the Court hands down a decision that happens to align with the people's

¹⁴⁴ Robert S. Erikson, Gerald C. Wright, Jr., and John P. McIver, "Political Parties, Public Opinion, and State Policy in the United States," *American Political Science Review*, Vol. 83, No. 3 (Sept., 1989), pp. 729-750.

¹⁴⁵ David Klingman and William W. Lammers, "The 'General Policy Liberalism' Factor in American State Politics," *American Journal of Political Science*, Vol. 28, No. 3 (Aug., 1984), pp. 598-610.

belief, then the people will be more likely to look favorably upon the Court.¹⁴⁶ Norrander and Urofsky independently find a similar relationship with salient cases—which would definitely include cases dealing with abortion, *e.g.*, *Roe*.¹⁴⁷ It is not altogether improbable to extend this argument to the state level. If a person's state's highest court decides a case in the way that they want, then it would be understandable to think that the person would view the court more favorably. At the state level, this effect could be even more pronounced than at the national level since many judges are elected, meaning that the public have more of a concern for and connection to their state court, compared to the Supreme Court.

For considerations of people's attitudes towards the courts, one should also note how people describe certain judges and decisions. No matter the ruling, people may look unfavorably on the court if they perceive the judges as “judicial activists.” However, this label is typically reserved for judges when the person in question does not agree with the decision that judge has handed down or written. The concept of judicial activism has a long history, but the actual usage of the word came into popular dialogue beginning with the Warren Court and continuing into the 1970s and 1980s with the rise of the New Right (see Chapter 2 for more detail), with *Roe* serving as a prominent example that antiabortion individuals pointed to when describing how judicial activism plays out in the courts. Many people labeled the Court “activist” because they did not like the outcome of *Roe*. Interestingly enough, the definition of activism we see today—which is usually defined in the negative, where the judges *did not* adhere to the history and/or text of the

¹⁴⁶ Gregory A. Caldeira, “Neither the Purse nor the Sword: Dynamics of Public Confidence in the Supreme Court,” *The American Political Science Review*, Vol. 80, No. 4 (Dec., 1986), pp. 1209-1226.

¹⁴⁷ Norrander, “The Multi-Layered Impact of Public Opinion”; and Melvin L. Urofsky (ed.) *The Public Debate over Controversial Supreme Court Decisions* (Washington, D.C.: CQ Press, 2006). Another scholar, Rosenberg, tries to discredit these findings by claiming that the Court has no impact on public opinion, especially on abortion and women's rights: “In the area of public opinion, abortion, and women's rights...evidence for extra-judicial influence is lacking.” Yet Rosenberg's study is rather limited in that he is simply looking at cross-sectional data, which gives me all the more reason to use a time series analysis. Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring about Social Change?* (Chicago: The University of Chicago Press, 1991), pp. 241.

Constitution—was mainly formed by activists, professors, and politicians instead of legal elites (*i.e.*, lawyers and the judges themselves).¹⁴⁸

However, when that did not seem to work in mobilizing the populace for the anti-choice movement, the focal point shifted to promoting so-called “originalism.” Originalism meant that people tried to convince the Court to look at the history and text of the Constitution instead of, *e.g.*, “finding” the penumbras of privacy in *Griswold v. Connecticut*, which later informed their decision in *Roe*.¹⁴⁹ Understanding when a decision is originalist or not usually comes down to the rhetoric used in the ruling.¹⁵⁰ For instance, the Massachusetts Supreme Court case of *Goodridge v. Department of Public Health* in 2003, which held that the legal denial of marriage equality was unconstitutional,¹⁵¹ is labeled by some as an example of judicial activism. Teller and Miller explain this rationale with the understanding of the rhetoric the judges used. The plurality (and holding) opinion of the court contained legal analysis above all else, which is the invocation of legal precedent and history. This analysis was distinctive from the dissenting opinions’ reliance on the lack of scientific inquiry into same-sex child rearing and public consensus against same-sex marriage. Essentially, this seemingly undemocratic ruling,¹⁵² along with cases like *Roe*, enticed many to call the court activist.¹⁵³

¹⁴⁸ Mary Ziegler, “Grassroots Originalism: Judicial Activism Arguments, the Abortion Debate, and the Politics of Judicial Philosophy,” *University of Louisville Law Review*, Vol. 51, No. 201 (Winter, 2012), pp. 201-238.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.* and Dave Teller and Eric Carl Miller, “Rhetoric, Rationality, and Judicial Activism: The Case of Hillary Goodridge v. Department of Public Health,” *Advances in the History of Rhetoric*, Vol 15, No. 2 (Oct., 2012), pp. 185-203.

¹⁵¹ That is, under the Massachusetts Constitution, not necessarily the US Constitution. *Goodridge v. Department of Public Health* (2003).

¹⁵² “Undemocratic” in the sense that since these judges are unelected by the people at large, their rulings, when not based on policy decided by popular means—*e.g.*, by their state legislature or by popular referendum—are simply undemocratic, in that they do not necessarily reflect the will of the people. In fact, the court did not really consider what the will of the people was in making their decision.

¹⁵³ Teller and Miller, “Rhetoric, Rationality, and Judicial Activism.”

Those against judicial activism claim that the court in question is ignoring the will of the people.¹⁵⁴ This fear is one of the main reasons why the individual states have mostly elected judges and various methods to overturn court decisions, including the popular referendum to amend their state constitution. With regard to abortion, such amendments have sometimes focused on denying public funding of abortion after the state's highest court had ruled that denying such funding amounted to sex discrimination.¹⁵⁵ In addition to the actions people take in response to activist decisions, individuals' attitudes toward that court could change as well, although that hypothesis is rarely tested and when it has been the effect seems to be more indirect than anything.¹⁵⁶ Nevertheless, it remains true that "an unusually controversial court decision appears able to cross the attention threshold some of those for whom the judicial system is not a matter of everyday concern,"¹⁵⁷ giving hope that people may indeed change their attitude on the court based on what decision they have handed down.

In addition to analyzing the relationship between a court and the subsequent public opinion change for the court, understanding the relationship between the laws passed by the legislature and the subsequent changes in public opinion on the legislature is important. At the national level, it seems that members of Congress do not follow the public's guidance and instead vote their conscience when it comes to abortion.¹⁵⁸ Yet the expected relationship has at least held up at the state level when it comes to abortion rights.¹⁵⁹

¹⁵⁴ Ziegler, pp. 237.

¹⁵⁵ Kenneth P. Miller, "Defining Rights in the States: Judicial Activism and Popular Response," *Albany Law Review*, Vol. 76, No. 4 (2013), pp. 2061-2103.

¹⁵⁶ Richard Lehne and John Reynolds, "The Impact of Judicial Activism on Public Opinion," *American Journal of Political Science*, Vol. 22, No. 4 (Nov., 1978), pp. 896-904.

¹⁵⁷ *Ibid.*, pp. 901.

¹⁵⁸ Adams, "Abortion."

¹⁵⁹ Cook, et al., "Abortion Issue down Ticket."

Thus far, the myriad ways that a state's policies and decisions could impact the public's opinion on both the very issues of those policies and on the government *per se* have been underscored. Some mechanisms could be the media, interpersonal discussions, and various demographic characteristics like partisanship and ideology. Certainly, these are factors at play in developing this relationship. However, it would also prove to be interesting to see how abortion policy influences people's attitudes in the long-term. That is, much of this research has focused on the immediate impacts of various policies and court decisions. These tools ought to be used to develop hypotheses related to this direct impact. But examination into how policies change public opinion over a long period is also warranted. For example, someone thinking about abortion in 2000 will likely think to abortion policies in their state that might have been on the books since the 1980s, though they only see these policies *today*. Alternatively, perhaps even more prominent of an example, people still use *Roe* as justification for their opinion for or against abortion, thus showing the long-term impact of certain policies and court decisions.

I will refer to this phenomenon as a cumulative effect, where policies and decisions essentially build upon one another, yielding the *status quo* of abortion rights. The precise measurement of these effects will be discussed in Chapter 5. Another way to conceive of this effect is how Meier and McFarlane describe it: policy inertia. That is, in looking at the 1980s, they find that decisions on whether or not to fund abortions with public funds depends on, among other factors, the inertia of policies in place.¹⁶⁰ If such inertia of past policies can influence policymakers, why could it not also do the same for the public? While this argument follows the causal pathway from abortion policies to the *policymakers'* (*i.e.*, the *elites'*) attitudes towards abortion, it does not necessarily address that pathway pointing instead to the *public's* attitude towards abortion.

¹⁶⁰ Kenneth J. Meier and Deborah R. McFarlane, "State Policies on Funding of Abortions: A Pooled Time Series Analysis," *Social Science Quarterly*, Vol. 73, No. 3 (Sept., 1992), pp. 690-698.

Perhaps one of the most important studies was one alluded to earlier. Norrander's findings convincingly underscore a complex causal pathway system that connects past and present policies and public opinion. Note that while she examines people's opinion on the death penalty, her conclusions can be applied elsewhere, including to abortion rights.¹⁶¹ In describing her pathway system, she describes the Reverse Linkage Model that can be applied to the questions of interest for this thesis: "A reverse linkage model simply suggests that causality runs from policy to opinion. Under this model, prior policies influence current opinion by lending an air of legitimacy to positions incorporated in public programs."¹⁶² She justifies this model with what she calls the legitimization effect, which is essentially the idea that with the policies already on the books—its mere presence—people have not only become accustomed to it but also *so used to it* that they believe it ought to be that way for the particular issue at hand.

Here it is important to add that Norrander finds that past and current policy directly influence current opinion, but past opinion does not. She concludes that, "Past opinion...is not directly linked to current opinion," and that, "[C]ontinuity in state public opinion came from the reverse linkage model."¹⁶³ Although she admits that past opinion can *indirectly* influence current opinion, she clarifies that this only occurs through the mechanism that is the past policy already in place.

While Norrander is mainly concerned with the implementation of the death penalty at the state level (*i.e.*, with the cases where death sentences were actually carried out), she concedes that her data¹⁶⁴ support more than her hypothesis, which states that only the *implementation* of public

¹⁶¹ This point in particular will be discussed in much greater depth below and in Chapter 6 when discussing the regression results found in Chapter 8.

¹⁶² Norrander, "The Multi-Layered Impact," pp. 775

¹⁶³ *Ibid.*, pp. 786.

¹⁶⁴ As an interesting aside, one could have a more similar set-up to Norrander's article vis-à-vis abortion by studying public opinion of abortion and abortion rates, the number of abortion doctors, and the like, which would be the best measurement for the "implementation" of abortion policies.

policy causes the legitimation for the public. “[T]he *presence* of a law, rather than implementation practices, is the sufficient condition to produce the legitimation effect.”¹⁶⁵ Thus, while some researchers have analyzed how abortion policies have impacted the “implementation”¹⁶⁶ of that policy—*e.g.*, by looking at how many women have chosen to have an abortion—the decision to focus on the passage and existence of public policy should still yield results similar to Norrander’s. That is, if the cumulative effect holds, then the legitimation effect will most likely be the mechanism at play. That is, if a particular law is present in the state, then that mere presence can cause people to change their mind to fit within the lines of that policy.

The fact that Norrander focuses on the death penalty while this thesis focuses on abortion should not hinder the hypotheses created herein. Indeed, there are admittedly three significant differences and two striking similarities between the history of the death penalty and of abortion.

Three of the most significant differences would probably be that abortion is more of a controversial and hot-button issue than the death penalty, that public opinion on abortion is more complex in the current debate than opinion on the death penalty, and that there are significantly more pregnancies terminated in this country compared to murderers executed. Abortion is a controversial, complex, and highly salient issue that divides people into more than just “pro-life” and “pro-choice”: the majority of people want to allow abortion in only *some* instances. On the other hand, the death penalty divides people into either the “in favor” or “opposed” camp—with the majority of Americans almost always supporting the death penalty for murderers (at least since Gallup’s first poll on the subject in 1937).¹⁶⁷ Furthermore, having more abortions means more cases (a larger N) for this thesis—compared to the relatively few numbers of persons executed

¹⁶⁵ Emphasis added. *Ibid.*, pp. 784.

¹⁶⁶ For lack of a better word.

¹⁶⁷ Gallup. *Gallup Poll, Historical Trends: Death Penalty*. [Public opinion poll and results]. Accessed at <<http://www.gallup.com/poll/1606/death-penalty.aspx>>.

under the death penalty—which means that the results could be more telling and robust in this thesis. Therefore, these differences actually seem to bolster the hypotheses and (eventually) results of this thesis.

At the same time, there are two very important similarities that also underscore the link between Norrander’s research on the death penalty and this thesis’s research on abortion. The first is that both capital punishment and abortion are largely seen as “morality policies.”¹⁶⁸ While Norrander ponders how her results could relate to something like welfare reform, which is not typically considered to be a morality policy, finding that direct connection with abortion is readily apparent. Additionally, Norrander points out that the other criterion for the policy type is satisfied by welfare reform. This other point is whether the policy has historically had “significant disruptions”: “[E]ven when a disruption occurs in a policy arena...prior practices and opinions may still be important determinants of the nature of current policy.”¹⁶⁹

For capital punishment the major disruptions were *Furman v. Georgia*,¹⁷⁰ which yielded what many consider a *de facto* ban on capital punishment in America, and the case that clarified and partially overturned that decision, *Gregg v. Georgia*.¹⁷¹ For abortion, there have been various disruptions of various magnitudes. Certainly *Roe*, *Webster*, and *Casey* were majorly disruptive Court decisions, and the Hyde Amendment and the Partial Birth Abortion Ban Act were majorly disruptive Congressional pieces of legislation. At the state level, the disruptions have occurred to a much greater extent as states pile on restriction after restriction. Thus, both the death penalty and

¹⁶⁸ While some may put forward an argument that another similarity between abortion and the death penalty is that each policy allows for the termination or execution of a living person. However, given that there is currently no federal or state law or constitutional amendment that has ruled that fetuses are persons, this particular assertion will not be discussed.

¹⁶⁹ Norrander, “The Multi-Layered Impact,” pp. 786-787.

¹⁷⁰ *Furman v. Georgia*, 408 U.S. 238 (1972).

¹⁷¹ *Gregg v. Georgia*, 428 U.S. 153 (1976).

abortion can be considered morality policies that have historically had major disruptions vis-à-vis policy and public opinion.

E. Conclusion

In the end, the literature underscores demographic and other influences on someone's opinion on abortion rights. It examines the relationship between public policy and public opinion on abortion. After acknowledging the most-studied direction of said relationship—*i.e.*, that public opinion can drive policy—the relationship has been found to work in the other direction. That is, there has been research that shows that policies can influence the public's opinion on both issues like abortion and on the government and policymakers. Yet while this literature provides a great deal of empirically-tested conclusions, the precise questions of interest concern abortion rights, which is an issue infrequently covered in this literature. And most of the time when abortion is considered, researchers examine the topic at the national level.¹⁷²

But perhaps the most useful tool derived from this literature is the theoretical framework necessary to lay out my hypotheses in Chapter 4. I hope to answer Goggin's call for action by using theories of elite cue-taking, as well as Norrander's Reverse Linkage Model and ideas of legitimation effects, to explain how the states' legislatures' laws and courts' decisions influence the public's opinion on both the issue at hand, abortion, and the government itself. Therefore, the relationship between public opinion and public policy should pan out not only for the influence of the former on the latter, but also for the impacts that the latter can and does have on the former.

¹⁷² This statement is not meant to slight any researchers for focusing on national-level policies over state-level policies or lower level policies. In fact, in researching for this thesis, it became quite clear that the amount of work and resources it takes to conduct this kind of research at the state (or lower) level can serve as valid justification for their choices.

IV. Hypotheses

This thesis will address two overarching hypotheses, all within the US.¹⁷³ The first is that, as the state legislative and judicial branches of government create anti-choice laws and hand down court decisions on abortion rights (*i.e.*, rights that restrict women's access to abortion), the public will become less supportive of abortion rights, on net. Undoubtedly, as discussed in Chapter 3, some people become motivated to fight even more for or against abortion rights after an abortion law has passed or a court decision has been handed down. But in the end, the net should be a decrease in public approval of abortion.

The second hypothesis is more neutral: that these laws and decisions will simply influence public opinion in some noticeable way. These two claims are based on a causal mechanism wherein a change in elite opinion—as demonstrated by various policies being passed and implemented by said elite—will cause a statistically significant change in public opinion. That is, if elite opinion became more anti-choice, those who are already anti-choice would become *more* anti-choice, though not necessarily to the same degree; and those who are pro-choice will be strengthened in their views of wanting the law to allow a woman to choose an abortion. And given this effect, some individuals will most likely look at their government in a more favorable light while others will most likely view them less favorably. The underlying principles for this elite cue-taking by the public have been delineated in Chapter 3, especially following Norrander's complex model pathway between public opinion in the past and present and laws that have been on the books for quite some time and those laws that have just been passed.

Here, then, are the two overarching hypotheses listed out:

¹⁷³ This thesis will only focus on the states listed in Chapter 9 (Appendix A), and has excluded Washington, D.C., Puerto Rico, Guam, and the Virgin Islands. See also Chapter 5.

H1: As the state legislative or judicial branch in a given state pass anti-choice policies on abortion rights, the public will, on net, become less supportive of abortion.

H2: As the state legislative or judicial branch in a given state pass anti-choice policies on abortion rights, the public's attitude toward their government will change.

The reader should notice that from the two overarching hypotheses come what essentially amounts to four "sub-hypotheses," so to speak. These sub-hypotheses can be fully listed out as such:¹⁷⁴

H1.1: As the state legislature in a given state pass anti-choice laws, the public in that state will become less supportive of abortion, on net.

H1.2: As the highest state court in a given state hand down anti-choice decisions, the public in that state will become less supportive of abortion, on net.

H2.1: As the state legislature in a given state pass anti-choice bills, the public in that state will change their attitude towards the state government.

H2.2: As the highest state court in a given state hands down anti-choice decisions, the public in that state will change their attitude towards the state government.

Because of the limiting nature of the NES data, these hypotheses will be tested at the individual level. While there are certainly more nuances at the state level, examining these laws and public opinion data at the individual level still allows for a closer examination (compared to the national level) at the relationship abortion rights legislation and court decisions, and public opinion on abortion rights and on the government. These hypotheses will be tested in two ways. One is to see how abortion laws and court decisions have influence public opinion in an immediate sense.¹⁷⁵ The other is to understand how these anti-choice laws and court cases impact public opinion in a long-term, cumulative sense. All models will be discuss in Chapters 5 and 6.

¹⁷⁴ When referring to these sub-hypotheses in this thesis, I will sometimes simply state "H1.1" or "hypothesis H1.1."

¹⁷⁵ Notably, having four sub-hypotheses, each tested twice, will mean that eight regression models will be needed.

While state level analysis would be ideal, using individual level data should still prove to be interesting. After all, much of the literature to date (as discussed in Chapter 3) has focused on the national level laws and public opinion. Hence, at the very least this thesis will allow for analysis at the individual level, allowing for more nuance that the aggregated data for the national-level analysis cannot quite reach.

Still, the national level data can provide some insight into how various pieces of legislation from Congress and court decisions from the Supreme Court influence public opinion. As will be discussed in Chapter 6, these relationships could still potentially pan out at the national level. Figure 1 in Chapter 8 provides a quick glance at public opinion on abortion at the national level graphed over the timeframe 1975 to 2004. Note that some key pieces of legislation and Court cases on the graph have been added to allow for the reader to examine how these laws might have impacted public opinion. Figure 2 in Chapter 8 then provides a quick glance at public opinion on Congress and on the Court from 1973 to 2004. And again these same pieces of legislation and Court decisions have been added. These pieces of congressional legislation and the Court decisions were chosen based on the historical analysis discussed in Chapter 2. Further discussion of these figures will be provided in Chapter 6.

V. Variables¹⁷⁶ & Operationalization

A. Dependent Variables

I have two dependent variables at the individual level. One dependent variable will be the average public opinion on abortion rights per year, according to the American National Election Surveys (NES), which consistently asks for opinion on abortion rights. And the other dependent variable will be the average public opinion of the state governments.¹⁷⁷ Unfortunately, the NES does not ask for the respondent's state of resident, as they are national-level surveys that are not meant to be representative of the state-level samples. Thus, I will be using the NES data provided at the simple individual-level taken directly from the survey's results.

When asking for the respondent's opinion on abortion rights, the responses are recorded on a 1-4 scale. However, the wording of the question, which is indeed significant, has changed over time. Before and including 1980 the question on a woman's right to choose in the NES asked respondents to rate their approval of a woman's right to choose in a general sense—*i.e.*, in more of a *de facto* or perhaps moral sense, compared to a *de jure* or legal sense. The respondent could then choose from a scale of 1 to 4—with 1 being that the respondent thinks a woman should never have the right to choose, 2 being that the respondent thinks a woman should be able to choose an abortion in the extreme cases of rape and incest and in the interests of the health of the mother (*i.e.*, keeping the fetus would be detrimental or fatal to the health of the mother), 3 being that the respondent thinks that a woman should be able to choose an abortion in those same situations and

¹⁷⁶ For all variables, any "other" or "N/A" or similar options were coded as "missing" since very few respondents chose these options, and since they do not really tell much of anything.

¹⁷⁷ Note that this variable will actually be the average public opinion of the state legislatures. However, I believe that it can be used as a proxy for the public opinion of the state judiciary. Thus, I think I can use this measurement for both variables of interest. However, given the nature of the variable (*i.e.*, since I am using it for public opinion on both branches of the state government), I will refer to this variable as public opinion on the government.

if the woman is in a difficult economic or personal situation, and 4 being that the respondent thinks that a woman should be able to choose an abortion for whatever reason.

Including and after 1980, respondents were asked about their opinion about abortion rights vis-à-vis the law. They could then select from a very similar 1-4 scale, though the caveat “legally” was added before the word “choose” (*i.e.*, “the woman could *legally* choose to have an abortion”). In doing my analysis, I have collapsed all of these questions into one mean for greater ease in statistical analysis. Furthermore, collapsing these together allows me to expand the end-range of the study from 1980 to 2004. The data available in the NES have been aggregated at the national level. Nevertheless, the survey provides individual level data readily available in the NES.

In order to measure public opinion of state-level legislatures and highest courts, I have had to use a proxy measurement because there is no consistently administered survey that asks for public opinion of each state-level government. While some surveys have been administered by various researchers, they have usually been for one or a couple of years, and then only for one or a select few states. Ideally, there would be data available from a survey similar to the NES but at the state level. Such data would provide a direct measurement between the public’s opinion of their state government’s legislative and judicial branches. Without these data, though, a proxy measurement needs to be utilized. While various scholars have used different proxies for such a measurement, I have decided to use a measurement of how closely the people’s ideology matches the ideology of their state government. I posit that if the people’s ideology is closely matched to that of their state government, then they will have a more favorable rating of them. Note, though, that the measurement for the state government ideology is truly a measurement of the state legislature’s average ideology.

For my timeframe (1972-2004), I have used a proxy measurement constructed by myself. This is a modified measurement designed by Berry, et al., in two different research papers¹⁷⁸ and Wright, et al., in another.¹⁷⁹ The latter leads me to use a proxy measurement for public opinion of the state government (POSG) per year that is the absolute value of the difference between the public ideology (PubIdeo) and government ideology (GovIdeo), with values ranging from 0 to 1. I posit that the lower the distance between the two entities' ideologies—*i.e.*, the more that the PubIdeo matches the GovIdeo—the more the public will approve of the government. Thus, for instance, if the distance (*i.e.*, difference) were 0, then the public would have, based on my measurement, an essentially 100% approval rating of the state government. On the other hand, if the distance were 1, then the public would have a 0% approval rating of the state government.

$$\textit{Equation 1: POSG} = |\textit{PubIdeo} - \textit{GovIdeo}|$$

With such a measurement, I can see that the more the public's average ideology in a given state matches the averaged ideology of the state government, the more they would likely approve of their state government. The public ideology data and the state legislature ideology data are readily available from a dataset published by Richard C. Fording at the University of Kentucky.¹⁸⁰ Thus, Equation 1 should be utilized with these data. However, Fording's data are given in percentages and the two measurements of ideology are separated, so the actual equation I used to

¹⁷⁸ William D. Berry, Evan J. Ringquist, Richard C. Fording, and Russell L. Hanson, "Measuring Citizen and Government Ideology in the American States, 1960-93," *American Journal of Political Science*, Vol. 42, No. 1 (Jan., 1998), pp. 327-348; and William D. Berry, Richard, C. Fording, Evan J. Ringquist, Russell L. Hanson, and Carl E. Klarner, "Measuring Citizen and Government Ideology in the U.S. States: A Re-appraisal," *State Politics & Policy Quarterly*, Vol. 10, No. 2 (Summer 2010), pp. 117-135.

¹⁷⁹ Gerald C. Wright, Jr., Robert S. Erikson, and John P. McIver, "Public Opinion and Policy Liberalism in the American States," *American Journal of Political Science*, Vol. 31, No. 4 (Nov., 1987), pp. 980-1001.

¹⁸⁰ Replication Data for Measuring Citizen and Government Ideology, updated, 1960-2004 (<http://thedata.harvard.edu/dvn/dv/rfording/faces/study/StudyPage.xhtml?globalId=hdl:1902.1/10570>) TIME SERIES CUMULATIVE DATA FILE [dataset]. Richard C. Fording, University of Kentucky, 2009.

create the public opinion of the state government is given by Equation 2. The format of Equation 2 allows for an easy 0-1 scale as discussed above.

$$\text{Equation 2: } POSG = 1 - (|PubIdeo - GovIdeo|/100)$$

The format of Equation 2 allows for an easy 0-1 scale as discussed above. The distance between the public's ideology and the government's ideology is originally on a 0-100 scale, which is why I then divide this difference by 100. This result provides a 0-1 scale where 0 means that the public has a highest possible rating of the state government, and so I subtract this value from 1 to produce a value that is more intuitive for the reader: 0 means that the public has 0% favorability of the state government and 1 means that the public has a completely favorable outlook on their state government.

Note that these data and subsequent equation results are ultimately for the people's opinion on their state *legislature*, given that the data from Fording's dataset are for the state legislature's ideology but not that of the state's highest court. Nonetheless, I will use this measurement of the people's opinion of their state legislature as a proxy for their opinion of their state's highest court as well. Admittedly, the ideal situation would be to have a direct measurement of the public's approval of the state's highest court, as is available for the measurement of the public's approval of the Supreme Court at the national level. Without these data being available, though, the next best situation would be to utilize Equation 2, but with similar data available for the state legislature's average ideology per year; that is, with data that provide the judiciary's average ideology per year. Absent this, the state legislature's average ideology can be used as a proxy. This yields the variable that will ultimately be called Government Approval. For ease of reading, these

two variables will simply be referred to as Abortion or Government Approval throughout this thesis.¹⁸¹

B. Independent Variables

I examine four independent variables: two for the state legislature and two for the state's highest court.¹⁸² I look at laws implemented by the legislative branches and court cases decided by the highest court at state levels (*i.e.*, the state legislature and the state supreme or superior court). Thus, the two main variables here are court decisions and legislation at state levels; however, they will each be measured in two different ways, as discussed below, thus yielding four total independent variables. All relevant¹⁸³ cases and laws that I found have been coded by me on a 0-1 scale with 1 being that the legislation in question contains solely anti-choice restrictions, 0.5 being that the legislation contains some anti-choice restrictions and some pro-choice protections, and 0 being that the law or case contains solely pro-choice protections.¹⁸⁴

To utilize these measurements in the regression models in Chapter 6, I use four variables. For the state legislature, each year I calculated the average of the anti-choice laws they passed; for instance, if they passed an anti-choice bill (coded as 1) and a pro-choice bill (coded as 0) during the same year, that year their average would be: $(1+0)/2=0.5$. Having this variable allows me to

¹⁸¹ There are various other methods of measuring public opinion of state governments via different proxies. Another popular method is to use the election results for the state representatives in question. However, the voting proxy is non-ideal, I argue, because of the selection bias of those who choose to vote, which does not necessarily represent the population at large. Furthermore, this proxy does not take into account the will and desire of policymakers to retire—nor their untimely death.

¹⁸² The executive branch behaviors could be considered statistically irrelevant since no state governor has issued an executive order regarding abortion. However, note that one *could* examine the times when a governor has vetoed an abortion law (and then potentially whether or not the legislature overrode said veto) or times when the governor has (un)officially spoken out against a particular state court decision.

¹⁸³ I say “relevant” because there seems to be a debate in the literature and research of what exactly counts as an “anti-choice” or “pro-choice” law or case. For more information, please see Appendix A.

¹⁸⁴ Admittedly, the coding is rather arbitrary, but under the circumstances, besides having a coding system that is more granular (*e.g.*, 0, 0.25, 0.5, 0.75, and 1), there is not necessarily a better method for coding these measures for this statistical modeling. However, given that the vast majority of laws and decisions have been coded 0 or 1, this is a virtually moot point. For more information on the original coding I have done for these laws and decisions, please see Appendix A.

analyze how the average public opinion (the dependent variable) was *immediately* influenced by the average law or case found in the immediate past. For instance, in looking at the average opinion in the year 1980, I would use the average abortion bill by the legislature in the years 1978 and 1979 to examine how the legislation might have influenced the public opinion in an immediate sense.

As Stimson argues, large events can have immediate impacts on public opinion, though the effects may taper off over time. And Schneider and Jacoby show that public support for an issue like welfare can change dramatically after a certain law is passed or discussed but then return to the level it had been at previously. Then, for the state's judicial branch, each year I used this same method to measure the average of the abortion rights-related decisions they handed down that year to provide the variable necessary to run the regression of how the court's decisions had an immediate impact on public opinion.

Thus, this methodology yields two independent variables that examine the immediate effects of averaged laws and court cases at the individual level. The immediate effects of the legislation will be referred to as Legislation Average, and the immediate effects of the decisions will be referred to as Judicial Average.

In addition to examining the immediate effects of the laws and decisions, I look at the long-term or cumulative effect. That is, someone's political attitudes in a given year could be influenced by events beyond the immediate past, whether or not they were politically conscious (or even alive) at the time of said events. For example, public opinion in 2004 would still most likely be influenced by a court's decision upholding certain restrictions back in the 1980s because that decision had long-lasting effects that can still be felt today (if it had not been overturned by a subsequent court). Indeed, Norrander shows that, at least for the death penalty, the mere presence of a prior law can

still provide a form of legitimation (as she refers to the phenomenon) for the public to look to when they form their opinion on the issue to which the law pertains. Thus, for each year I summed the average anti-choice law (for the legislature) or court decision (for the court) for all preceding years.

I will analyze the cumulative effects of the laws and decisions by first summing each state's average level of anti-choice laws and court decisions. For instance, if a state had an average anti-choice piece of legislation of 1 for four of the preceding ten years of the year in question then their cumulative total for this variable's measurement would be 4. The sum of the legislation will be referred to as Legislation Cumulative and the sum of the court cases will be referred to as Judicial Cumulative.

All cases and laws have been found through some combination of the following sources: LexisNexis Academic, the Oyez Project at the Chicago-Kent School of Law, Hein Online, and Justia—and then compiled by myself into datasets.¹⁸⁵ An important note is that these data sources unfortunately still were not exhaustive of all state laws and highest court decisions. Indeed, laws for only 26 states and court cases for 34 states were available. For the specific states studied, please see Appendix A. While this issue is clearly non-ideal, it should not pose too significant of a burden on analysis. If I were to find a relationship after quantitative analysis in Chapter 6 then one possible interpretation *could be* that the relationship only holds for these particular states. However, given that this analysis (with the legislation and with the court cases) has a majority of states present, the relationship could mean that further study including more states¹⁸⁶ would be promising. On the other hand, if I were to find that no relationship exists, that would most likely mean that the same result would hold when including more states, though it could be that these results are unique to these sets of states.

¹⁸⁵ These datasets are available upon request to the author.

¹⁸⁶ Or within the states themselves. See also Chapter 7 and Appendix B.

C. Control Variables

For the multivariate regressions that I run, I will utilize the following control variables, as shown in Table 2: gender identity,¹⁸⁷ racial identity,¹⁸⁸ family income level, ideology, party identity, and religious identity.¹⁸⁹ These variables have been measured in the NES surveys. Gender identity is coded as a dummy variable where 0 is for Female and 1 is for Male and racial identity is also a dummy variable coded as 1 for White and 0 for non-White.¹⁹⁰ Family income level has been coded in strata. Family income level has been measured in one of five given categories. The respondent's income is placed in a category depending on where it falls in one of the following percentile ranges: 1 means that the respondent has an income in the 0th-16th percentile, 2 means that they have an income in the 17th-33rd percentile, 3 means that they have an income in the 34th-67th percentile, 4 means that they have an income in the 68th-95th percentile, and 5 means that they have an income in the 96th-100th percentile.

¹⁸⁷ As someone who identifies outside of the generic gender binary of man and woman, I always find it necessary to comment on the limiting characteristic of using a coding system of 0 and 1 for Woman and Man for gender identity. While I of course think that surveys could be conducted better to include more identities, I recognize that not all surveys and individuals are necessarily so progressive, so trying to use identities outside of the binary would prove to require a lot more education. Plus, since I am relying on these surveys that were administered without me, I must utilize the data I am provided.

¹⁸⁸ Racial identity is asked for in different ways by different surveys. For instance, some ask for White versus non-White, while others have breakdowns of different categories of racial identities within the non-White category—*e.g.*, Black, Hispanic, etc.

¹⁸⁹ As with racial identity, there are various ways that different surveys measure religious identity. For instance, some give a breakdown of Christianity versus other religious identities, while others just list Christianity as a broad category versus other religious identities. Admittedly, having a breakdown of Christianity is more ideal given that different sects within the overarching belief system have different views on abortion rights. Furthermore, religiosity or intensity of respondent's religion can be interesting to study, as two people may both identify as Catholic, for example, but one may be much more devout than the other, thus affecting their belief system, which includes their attitudes towards abortion rights.

¹⁹⁰ Note that this variable was constructed from the NES question that asked for the respondent's race within what a 6-category variable, where 1 is White, 2 is Black, 3 is Asian, 4 is Native American, 5 is Hispanic, and 7 is Other. For the purposes of having a readily available dummy variable, this variable was recoded so that anything but 1 was coded as 0. I decided to utilize this 6-category measurement over the simple 2-category measurement of 1 is White and 0 is Other because I believe that limiting someone to stating that their race is either White or "Other" could deter them from answering honestly or at all.

Further, ideology is measured by the respondent's self-placed point on a 9-point 0-8 Likert scale that measures ideology strength, where 0 is extremely liberal and 8 is extremely conservative. In addition, respondents placed themselves on a 7-point 1-7 Likert Scale for party identity strength, where 1 is strongly Democratic and 7 is strongly Republican. And finally, religious identity is coded as 1 for Protestant, 2 for Roman Catholic, 3 for Jewish, and 4 for "Other."¹⁹¹ However, in the interest of using a religious variable that is usable for easy analysis in regressions, I created a dummy variable for whether or not someone identifies as Catholic. That is, 1 is for someone who is Catholic and 0 is for someone who identifies as Protestant, Jewish, or Other. This particular religion was selected for the reasons stated in the thorough discussion in Chapter 3, which indicated that Catholicism has consistently been the most prominent and influential of religions in the U.S. when it comes to opinion about abortion rights. Indeed, Chapter 2 corroborates this by showing that the Catholic Church was one of the first religious institutions to publicly denounce abortion. While Catholics have been traditionally sometimes more liberal than not, when it comes to abortion, that simply does not hold. Because of their religious doctrine, including the purported infallibility of the Church leader—who continues to denounce abortion and reproductive justice¹⁹²—Catholics remain, as a group, statistically more likely to oppose than support abortion.

¹⁹¹ Notably, "Other" includes anything not listed, which means that even those who do not identify with any religion or as Atheist would be counted here. Clearly, that is non-ideal given that there is a large difference, at least vis-à-vis religious identity, between someone who identifies as religious outside of the three options—e.g., Muslim—and someone who identifies as Atheist. The NES and other surveys also have other questions about religious identity, but this question was used consistently throughout the timeframe of interest in this thesis. Yet, also note that this category includes those who responded as "Don't Know" or "N/A", which is unlike the other variables.

¹⁹² See, e.g., recent comments from Pope Francis: "Abortion compounds the grief of many women who now carry with them deep physical and spiritual wounds after succumbing to the pressure of a secular culture which devalues God's gift of sexuality and *the right to life of the unborn*" (emphasis added). I added the emphasis to the last phrase to highlight the "right to life" rhetoric of the anti-choice (i.e., "pro-life") movement. Josephine McKenna, "Pope Francis Speaks Out on Abortion," *The Huffington Post*, Apr. 26, 2014, accessed at <http://www.huffingtonpost.com/2014/04/26/pope-francis-abortion_n_5215862.html>.

For family income level, ideology, and party identity I rescaled the variables to 0-1, with 0 being the minimum measurement possible of the variable in question and 1 being the maximum measurement possible. Gender, religion, and race are already 0-1 dummy variables, as discussed above.

For descriptive statistics and correlation coefficient matrices of all variables, where appropriate, please see Tables 1 and 2, respectively. The results in all tables in Chapter 8 will be discussed in detail in Chapter 6.

VI. Quantitative Analyses

A. National Level Analysis

Before delving into the discussion of the tables in Chapter 8, Figures 1 and 2 merit some discussion. Here, as with Chapter 2, the main reason for this is to give the reader a sense of how the national level data help with understanding federal laws and court decisions as compared against public opinion. Conclusions to be drawn from these figures could prove useful when analyzing subsequent regression results.

The national level data in Figures 1 and 2 provide some insight into how various pieces of legislation from Congress and court decisions from the Supreme Court could influence public opinion. These data have been collected from Gallup, which has asked for the public's opinion on Congress multiple times almost every year since 1974.¹⁹³ Thus, these data are preferable to the NES because that survey is only administered every two years—or even less frequently. The approval rating for each time that Gallup took the poll has been averaged into an overall approval rating for each year. For the Court, Gallup's historical question (dating back to 1973) on the level of confidence that the public has in the Court is used, since the question on approval rating did not date back past the early 1990s. The respondents' who answered "Great deal" or "Quite a lot" have been the ones included in this analysis.¹⁹⁴

Figure 1 in Chapter 8 provides a quick glance at public opinion on abortion at the national level from 1975 to 2004.¹⁹⁵ Figure 2 in Chapter 8 provides a graph of how public opinion on both Congress and the Supreme Court have tracked over time, from 1973 to 2004. Note that some key

¹⁹³ Gallup. *Gallup Poll, Historical Trends: Congress*. [Public opinion poll and results]. Accessed at <<http://www.gallup.com/poll/1600/congress-public.aspx>>.

¹⁹⁴ Gallup. *Gallup Poll, Historical Trends: Supreme Court*. [Public opinion poll and results]. Accessed at <<http://www.gallup.com/poll/4732/supreme-court.aspx>>.

¹⁹⁵ Gallup. *Gallup Poll, Historical Trends: Abortion*. [Public opinion poll and results]. Accessed at <<http://www.gallup.com/poll/1576/abortion.aspx>>.

pieces of legislation and Court cases have been added to the graph to allow for quick examination into how these laws might have impacted public opinion. These pieces of legislation (the Hyde Amendment (1977) and the Partial-Birth Abortion Ban Act (2003)) and the Court decisions (*Roe* (1973), *Webster* (1989), and *Casey* (1992)) were chosen based on the historical analysis discussed in Chapter 2.

Figure 1 underscores the fact that public opinion on abortion has hovered around the same levels throughout this timeframe. This is in line with most of the extant literature discussed in Chapter 3. Nonetheless, the “Legal under Any Circumstances” trend shows that in the early 1990s, the public’s approval of allowing abortion under any circumstances increased relatively dramatically—by about ten percentage points. Based on the historical analysis provided in Chapter 2, the rise of the New Right (including, especially, the 12 years of having strongly conservative presidents) and their aggressive anti-choice agenda probably helped mobilize the pro-choice movement and thereby allowed them to better mobilize the public to support their cause. In addition to Reagan and Bush, Sr., I posit that the two Court decisions, *Webster* and *Casey*, which both seemed like anti-choice wins,¹⁹⁶ also gave the pro-choice movement further motivation to mobilize more so than they had been doing previously.

Figure 2 tracks public opinion of either Congress or the Supreme Court from 1973 to 2004, with the same major laws and Court decisions placed there for comparison and reference. The Court’s approval has remained relatively the same, suggesting that their Court decisions have not had much impact on how the public feels towards them with regard to their confidence in the Court. This is most likely because the public pays scant attention to the Court and knows very little about it. On the other hand, Congress’s approval has varied dramatically, most likely because that

¹⁹⁶ That is, they were the first major cases that really opened the floodgates such that states could impose restrictions on a woman’s right to choose, subject to the “undue burden” standard. For more information, see Chapter 2.

branch is consistently covered in the media, and so the public is at least somewhat aware of what they are doing. Given how scattered the data points are for Congress's approval rating, it is very difficult to try to map the major laws that they have passed onto this trend. One of the largest jumps is in the early 2000s, no doubt (mostly) because of 9/11; otherwise, the story is hard to tell.

As a note, bivariate and multivariate regression analyses were run at the national level for legislation passed by Congress and cases decided by the Supreme Court. The hypotheses in Chapter 4 can be translated to the national level, and the variable measurements and operationalization outlined in Chapter 5 were similarly applied to the national level laws and decisions. The methodology used is similar to that described below in the individual-level analysis. However, none of these regressions returned statistically significant results, and were thus not included. The most likely reason they were not significant with regard to opinion on abortion is because Figure 1 shows that abortion attitudes have remained fairly consistent over time (at the aggregate level). And Figure 2 shows a similar trend with Supreme Court approval, whereas the trend for Congress approval suggests that much more is at play than the legislation that Congress passes relating to abortion.

Despite these findings that seem to disprove the national-level version of my hypotheses, there is still merit in analyzing the more nuanced individual-level opinion within the states.

B. Methodology of Individual Level Analyses

My first main hypothesis (consisting of sub-hypotheses H1.1 and H1.2) is that after abortion laws are passed and court decisions are handed down, abortion approval will, on net, decrease. Those who are already leaning anti-choice will be further strengthened in their anti-choice beliefs, as they are receiving and accepting elite cues to this effect. On the other hand, those who are pro-choice will reject these cues and may or may not have their pro-choice views

strengthened. Those on the fence, though, may receive these cues and simply follow what their legislators and judges have to say on the issue of abortion rights. Thus, I run bivariate and multivariate regressions to test how legislation and court decisions impact public opinion on abortion rights at the individual level. This variable will be referred to as Abortion Approval.

I analyze the immediate effects of the laws passed by looking at the average legislation and court decisions in a given two-year period before measuring public opinion (these variables will be referred to as Legislation Average and Judicial Average, respectively). Then I analyze the cumulative effects of laws, as Norrander describes, to see how laws on the books influence public opinion of today. The variables for the cumulative effects will be referred to as Legislation Cumulative and Judicial Cumulative.

I follow a similar methodology for my other main hypothesis, which says that legislation and court decisions will influence public opinion on the government in a certain way. It is most likely the case that those who are already anti-choice will look more favorably upon their government (referred to as the Government Approval variable) if the law they pass is anti-choice in nature; and those who are pro-choice will most likely view their government in a more negative light. As with my first hypothesis, I will examine both the immediate effects of the law and the cumulative effects.

C. Methodology of Individual Level Analysis

The NES survey data are already provided at the individual level. The controls and Abortion Approval were collected from the NES in one dataset; the legislation and court decisions, as well as Government Approval, were coded by myself (see Chapter 5 and Appendix A) into another dataset. To merge the datasets, I collapsed the latter dataset into averages per year, and

then merged that into the former (NES) dataset by the year. This methodology has yielded some issues—especially with heteroskedasticity—which will be addressed below.

Tables 1-10 provide the data and results of this individual level analysis. Table 1 provides descriptive statistics of the variables. Then Table 2 shows the correlation coefficients for the variables. Tables 3-10 display the results of the bivariate and multivariate regressions run to test my hypotheses. Tables 3 and 4 test H1.1, 5 and 6 test H1.2, 7 and 8 test H2.1, and 9 and 10 test H2.2. Note that all bivariate regressions that have been run yield statistically significant regression coefficients, which means that each regression also warrants a multivariate regression analysis that includes the necessary control variables. Further, each hypothesis (*e.g.*, H1.1) is tested by each the Average and Cumulative totals of either the legislation or court decisions in that year; hence, Table 3 displays results of the multivariate regression analyses run for the effect of Legislation Average on Abortion Approval, and Table 4 displays results for the effect of Legislation Cumulative on Abortion Approval. And so on with the rest of the tables and hypotheses.

H. Descriptive Statistics of Individual Level Analysis

Table 1 presents the descriptive statistics for all variables in my hypotheses at the individual level. Here the approval ratings match our expectations. For Abortion Approval, the average person approves of abortion in at least some instances—with a slight leaning towards reducing restrictions on a woman's right to choose. Government Approval is relatively high, with a small range between the minimum and maximum. Part of this could be explained by how the Government Approval measurements were constructed (comparing the people's ideology to their state legislature's ideology; see Chapter 5), where the people will most likely vote for legislators who are aligned with them ideologically anyways, thus meaning that they are more likely going to approve of the job they are doing. Nonetheless, this could also be influenced by the fact that the

state legislators are closer to the people in their daily lives and are more swayed by the desires of the public, which causes the people to approve of them to a greater extent.

The control variable statistics show us that, on average, a respondent is female and White. Indeed there seem to be quite a few White respondents to the NES survey, compared to non-White persons. Further, more often than not, the respondent will be of a religion (or no religion) other than Catholicism, and will be of a slightly lower middle class income level. And finally, the average respondent is seemingly contradictorily conservative and yet also Democratic. This phenomenon is probably best explained by the fact that the analysis covers the time period of 1972-2004, which includes the time of the South transitioning to being Republican instead of Democratic—all while staying mostly conservative. (See also Chapter 2.)

For the dependent variables, the average state legislation is much more restrictive than not when it comes to allowing a woman the right to choose to have an abortion or not. Indeed, of the legislation coded in the relevant states (see Chapter 5 and especially Appendix A), the average piece in a given year is at least somewhat restrictive (with a minimum value of .56 for Legislation Average). This shows that a lot of legislation has a great deal of provisions regarding abortion wrapped into one bill, where some provisions can be anti-choice (*e.g.*, instituting a waiting period) while also implementing pro-choice provisions (*e.g.*, allowing public funding of abortion for low-income women who choose to have one). And of course, more anti-choice legislation added over time produces higher values in Legislation Cumulative, as one can also see with the court decisions when comparing Judicial Average to Judicial Cumulative.

Interestingly, with regard to Judicial Average, the average court decision is just slightly more anti-choice than not, which is strikingly different than Legislation Average. Part of this could be explained by the reach of the decisions compared to the legislation. That is, a piece of legislation

is more likely to cover a great deal of ground (*i.e.*, include many provisions, as illustrated in the preceding paragraph), whereas a court's decision will more likely just address one particular issue. Furthermore, disparate court decisions may all address one particular issue but each individual decision could be different *vis-à-vis* whether or not it is anti-choice. For instance, Alabama's Supreme Court has a great deal of decisions regarding their parental consent requirement, which, per the US Supreme Court's rulings, must include a judicial bypass option if the minor is deemed sufficiently mature and competent to make the decision of whether or not to terminate her pregnancy. Even within the same year, Alabama's Supreme Court could decide to allow one minor to choose an abortion—perhaps given her grades, her volunteer work, etc.—while not allowing another minor to do the same—perhaps given her (low) grades, her criminal record, etc. And as with the Legislation variables, these all add together to create the values found for Judicial Cumulative.

D. Correlation Coefficients of Individual Level Analysis

Many of the correlation coefficients found in Table 2 are relatively weak (*i.e.*, $r < .2$ and even many $r < .1$ or $r < .05$), suggesting little relationship between the variables of interest. At the same time, some correlation coefficients are relatively high (*i.e.*, $r > .6$ and even some $r > .7$). In these cases, one must wonder how the relationship will play out in the regressions to be run. Most of these high correlation coefficients correspond to the independent variables (*i.e.*, the legislation and court cases) being run against the Government Approval dependent variable. This could be explained by the fact that both were in the same dataset that was later averaged per year to then be able to merge with the NES dataset. However, the multivariate regressions run in the next section will better show what is at play here.

E. Regression Results of Individual Level Analysis

Given the results of the regular regressions run in Stata, I tested for¹⁹⁷ and found heteroskedasticity in some of the data—most especially within the regressions containing the dependent variable Government Approval. Thus, those relevant regressions have been re-run to yield robust standard errors.¹⁹⁸ An interesting note to point out is that all but one multivariate regression run yields statistically significant results for the regression coefficients of the variables of interest to the hypotheses in this thesis.

Tables 3 and 4 test two different versions of H1.1, which states that as more anti-choice legislation is passed at the state level, the less people will approve of abortion rights. Table 3 (4) shows the results of the bivariate and multivariate regression coefficients for Legislation Average (Cumulative) run against Abortion Approval. Interestingly, Legislation Average proves to be the only independent variable that does not hold statistically significant weight when run against Abortion Approval—whether in the bivariate (-.08)¹⁹⁹ or multivariate model (-.04).²⁰⁰ This result suggests that despite the average legislation being anti-choice in the states, the public will not immediately respond with less support for a woman’s right to choose an abortion. Yet when Legislation Cumulative is run against Abortion Approval,²⁰¹ there is a statistically significant result—in both the bivariate (.09)²⁰² and multivariate (.08)²⁰³ models. Even after the six controls are introduced, the regression coefficient only decreases slightly, suggesting that as states pass more and more anti-choice legislation, people will have a slight increase in support of abortion rights. Perhaps Norrander’s legitimation model does not apply to abortion, but, in any case, it

¹⁹⁷ Here I relied on the heteroskedasticity tests found in Stata, including the Breusch-Paga/Cook-Weisberg Test for Heteroskedasticity.

¹⁹⁸ Here, I used the “xtreg” command in Stata with the “vce(robust)” option.

¹⁹⁹ With a standard error of .09 and $p > .05$, this regression coefficient is not statistically significant.

²⁰⁰ With a standard error of .1 and $p > .05$, this regression coefficient is not statistically significant.

²⁰¹ Here, because of the presence of heteroskedasticity, the results include other relevant statistical information (*e.g.*, R^2 within) since the regressions were re-ran to account for this and yielded robust standard errors.

²⁰² With a standard error of .01 and $p < .01$, this regression coefficient is statistically significant.

²⁰³ With a standard error of .01 and $p < .01$, this regression coefficient is statistically significant.

seems that people retaliate against their state legislators, thinking they have gone too far, and therefore believe that women need more choice and fewer restrictions when it comes to deciding whether or not to terminate her pregnancy.

Also addressing the first hypothesis of anti-choice legislation and court decisions influencing public opinion on abortion rights, Tables 5 and 6 display results of the bivariate and multivariate regression coefficients for H1.2. H1.2 states that as the highest courts in the states hand down anti-choice decisions, the people will support abortion rights less. Despite the findings of the state legislatures (above) with Legislation Average (*i.e.*, no statistically significant results), when Judicial Average is run against Abortion Approval (Table 5), both the bivariate $(-.05)^{204}$ and multivariate $(-.04)^{205}$ regression coefficients are statistically significant. The same goes for the bivariate $(.15)^{206}$ and multivariate $(.15)^{207}$ regression coefficients for Judicial Cumulative found in Table 6,²⁰⁸ but with the opposite sign. This seemingly anomalous finding suggests that the immediate reaction of the court's anti-choice decision creates less approval from the public of abortion rights; perhaps the people are simply caught up in the immediate aftermath of the court's ruling. Compared to legislation, there tend to be fewer court decisions, thus making each one a bit more apparent to the public (especially on a controversial issue like abortion). Yet it seems that this immediate effect gives way to the cumulative effect of people support abortion rights more so than before, as they did with situation that includes Legislation Cumulative.

In addition to estimating the relationships between legislation and court decisions and public approval of abortion (*i.e.*, H1.1 and H1.2), this analysis includes the regressions run to

²⁰⁴ With a standard error of .01 and $p < .01$, this regression coefficient is statistically significant.

²⁰⁵ With a standard error of .01 and $p < .01$, this regression coefficient is statistically significant.

²⁰⁶ With a standard error of .01 and $p < .01$, this regression coefficient is statistically significant.

²⁰⁷ With a standard error of .01 and $p < .01$, this regression coefficient is statistically significant.

²⁰⁸ See also footnote 201.

estimate the relationships between legislation and court cases and the public's approval of their state government (*i.e.*, H2.1 and H2.2). Tables 7 and 8 present the results of these regressions run to test H2.1. Table 7's bivariate (.14)²⁰⁹ and multivariate (.14)²¹⁰ regression coefficients are both statistically significant and show that in the immediate aftermath of anti-choice legislation being passed, the people will have a higher favorability of their state government. This result could go hand-in-hand with the immediate result that people will also follow their highest state court's anti-choice ruling and have a lower approval rating for a woman's right to choose. Furthermore, Table 8's bivariate (-.07)²¹¹ and multivariate (-.06)²¹² regression coefficients show us that over time, despite the immediate reactions outlined in Table 7, people will look less favorably upon their state government because of the cumulative amount of anti-choice legislation being passed.

And rounding out the hypotheses, Tables 9 and 10 present the results of the estimations for the relationship discussed in H2.2, which says that as the state's highest court hands down more anti-choice rulings, the people will look more favorably upon their state government. Table 9 corroborates this story with statistically significant, positive bivariate (.03)²¹³ and multivariate (.02)²¹⁴ regression coefficients. That is, at least when it comes to the immediate reaction of the public after an anti-choice ruling is handed down. But over time, with more and more anti-choice rulings, the people will begin to lose their confidence in their state government. Table 10 shows us this result with the bivariate (-.12)²¹⁵ and multivariate (-.12)²¹⁶ regression coefficients (both) being statistically significant. Perhaps the people believe that the court has gone too far with more

²⁰⁹ With a standard error of .001 and $p < .01$, this regression coefficient is statistically significant.

²¹⁰ With a standard error of .002 and $p < .01$, this regression coefficient is statistically significant.

²¹¹ With a standard error of .0003 and $p < .01$, this regression coefficient is statistically significant.

²¹² With a standard error of .001 and $p < .01$, this regression coefficient is statistically significant.

²¹³ With a standard error of .001 and $p < .01$, this regression coefficient is statistically significant.

²¹⁴ With a standard error of .001 and $p < .01$, this regression coefficient is statistically significant.

²¹⁵ With a standard error of .00004 and $p < .01$, this regression coefficient is statistically significant.

²¹⁶ With a standard error of .001 and $p < .01$, this regression coefficient is statistically significant.

and more anti-choice rulings. After all, the majority of people believe that abortion should be allowed in *some* instances; and there are in fact more people who believe that abortion should be allowed in *all* instances compared to *banning* abortion in *all* instances.

F. Discussion of Individual Level Analysis

F.1. Introduction

The discussion of the individual level quantitative analysis performed and discussed above is best done by discussing the hypotheses separately, and then underscoring some interesting trends in the findings. Considering each sub-hypothesis (*i.e.*, H1.1, H1.2, H2.1, and H2.2) in turn also allows the exploration of the differences between the immediate and long-term effects of these anti-choice laws and court decisions.

Given the complexity of these hypotheses and the regression results, this section will be broken into sub-sections. Past this introduction (F.1), F.2 will address hypotheses H1.1 and H1.2. Then F.3 consists of the discussion on hypotheses H2.1 and H2.2. Thereafter, the remaining sub-sections provide some more detailed discussion on important themes and trends noted in the first three sub-sections. F.4 extends the explanation of the results of testing H2.2 by examining how they could be understood in light of the scholarship on judicial activism. Next, F.5 critiques Norrander's Reverse Linkage Model and her idea of the legitimation effect. Finally, after offering further critiques at the NES data in F.6, a conclusion will follow in F.7 to summarize the arguments and conclusions of the preceding six sub-sections.

F.2. Hypotheses H1.1 and H2.2

Recall H1.1: as state legislatures pass anti-choice laws, their constituents will approve of a woman's right to choose less. The first thing to note here is that of all the hypotheses, the one tested in Table 3 shows us that this relationship simply does not hold statistically significant

weight. That is, people do not have an immediate reaction vis-à-vis public opinion of abortion rights when their state legislatures pass anti-choice measures into law. Perhaps their state legislatures are already creating laws that reflect the feelings of the people, and so the people are simply seeing their own wishes come to fruition. Yet Chapter 3 shows that many legislators will vote their conscience on these morality-type issues. Alternatively, people's opinions on abortion rights could just not include the immediate impact of new abortion laws being passed. However, this is not as plausible given the results of the other regression models discussed in the following sub-sections.

Although that immediate effect might not be in place here, Table 4 gives some hope for H1.1 yet. Instead of the people's opinion on abortion rights changing right away (measured by Legislation Average), their opinions do seem to change as those laws remain on the books for some time (measured by Legislation Cumulative). Specifically, in the multivariate model—controlling for six demographic characteristics of the populace—this cumulative body of legislation seems to have a slight increase (of about 8 percentage points) in the people's approval of abortion rights. While this finding is the reverse of what H1.1 predicted, it is nonetheless very interesting. At first glance, one can see that this definitely calls into question Norrander's legitimation model—as later results will also do. Norrander had posited that people would alter their views to fit within the *status quo* view of the law. For Norrander, a conclusion was that people would look more favorably upon the death penalty if their state had had capital punishment as a legitimate option for more and more years in the past. Here, though, it seems that people will look more favorably upon abortion rights, in spite of the growing number of anti-choice laws being passed by their state legislatures.

The shifting landscape of abortion policy at the state level could also explain the results of Table 3. Because of the ever-changing policies around abortion rights, people might not be wont to change their opinion of abortion just because a new law is passed. After all, a given state can have multiple bills passed in just one year (most especially in the recent past). Maybe people are waiting to see how things will pan out later. Will these provisions stand? Will they be struck down by a court? It could seem premature to many citizens to shape their opinion on abortion rights based on a new law just passed. However, having these laws on the books for some time will show them just what their state thinks of a woman's right to choose. And having too many restrictions will make them support abortion rights even more.

Along with H1.1, H1.2 similarly posits that with more anti-choice court decisions passed, the less people will approve of abortion rights. Table 5 shows that this could be true. Within just a little while after a court decision has been handed down, people will most likely decrease their support of abortion rights by about 4 percentage points (according to the multivariate model). Having this result for the courts but not the legislatures is intriguing, to say the least. Part of the reason could be that people have more confidence in what the courts are saying because they are generally expected to be (a bit) more apolitical—*i.e.*, a bit more removed from the partisan bickering. People could also believe what the courts say more so than the legislatures because attaining the position of that high bench could signal to the people those judges' intelligence, knowledge, professionalism, ethical duties, etc.

Moreover, court decisions are issued much less frequently—even at the state level—than legislatures' bills are passed. So when a bill is passed, people may not immediately react because they know other bills will most likely come soon and therefore might want to see how things pan out. But with a court decision, that may be the only one that term (*vis-à-vis* abortion rights). And

typically a court decision is more “final” than a piece of legislation. After all, legislation is easier to overturn with the courts—or with elections, recalls, popular referenda, etc. At the same time, though, a court decision, could be circumvented with new legislation, although this route is rather challenging. Or, the decision could entirely overturned with amendments or subsequent court cases, either of which is also relatively challenging.

This immediate effect found in testing H1.1 (in Table 5) gives credence to the elite cue-taking model outlined in Chapter 3. Many scholars have time and again shown that people will follow what their elites have said and presented to them—at least on some issues in some instances. Here, it seems that people are taking those cues based on the actual court decisions their state’s highest court is handing down. While they may not be taking cues from their legislators, they do seem to be doing so from their state judges. People could take the cues for a number of reasons. One is that they may not have already formed their opinions on the particularities of abortion rights—which restrictions should be put into place? Given the myriad restrictions that could possibly be put into place, they may not have thought about certain ones, or may not have heard all of the arguments on either side to make an informed decision.

For example, they could be on the fence about the informed consent provision in their state’s law. This provision seems *prima facie* like a good idea to many: after all, who would not want more information about this seemingly invasive procedure? But they may also see women in the news claiming that they do not support this measure because of the delay it causes women in obtaining an abortion. Furthermore, they could learn that the information that is provided is usually written by politicians, and usually includes plainly inaccurate and misleading information. But then after seeing the court’s decision and hearing about it from, *e.g.*, the media or a friend (it is

doubtful they would actually read the decision *per se*) they may lean more towards allowing that restrictive provision because the court believes it to be valid.

Despite this finding of an immediate effect in Table 5, Table 6 calls H1.2 into question yet again. Although there seems to be a slight immediate effect, the multivariate model for the long-term judicial impact yields a positive regression coefficient (.15) that suggests that people will come to support abortion rights more—which seems to fly in the face of judicial opposition. This finding complements what was found for H1.1: the immediate impact may be negative or slight (or null), but the long-term impact is clearly for the public to favor abortion rights.

The explanation for this phenomenon I will label as Policy Overreach: as policymakers implement policies further and further from the people's ideal points (that is, of where people think the policy should be), they will react by changing their collective attitude to shift the policy back towards that (collective) ideal point. Essentially, the people will collectively tell their policymakers that they have *gone too far*—that they have overreached. For abortion rights, it seems that as the judges hand down more and more anti-choice decisions, the people will try to tell them that they are going too far, in part, by increasing their support for abortion rights. This phenomenon of Policy Overreach can also be seen in a more ostentatious manner when a governor vetoes an anti-choice bill, as a Missouri governor recently did to a bill extending their state's 24-hour waiting period to 72 hours.²¹⁷

F.3. Hypotheses H2.1 and H2.2

This notion of Policy Overreach can also be extended to include the findings from H2.1 and H2.2 in Tables 7-10. Both sub-hypotheses exhibit similar trends. That is, they both have a

²¹⁷ Governor Nixon explains: “Lengthening the mandate to “at least” 72 hours serves no demonstrable purpose.” James Queally, “Missouri Governor Vetoes Bill Requiring 72-hour Abortion Waits,” *Los Angeles Times*, July 2, 2014, accessed at <<http://www.latimes.com/nation/nationnow/la-na-nn-missouri-abortion-20140702-story.html>>.

positive impact in the immediate sense, but a negative impact in the long-term, cumulative sense. H2.1 states that people will change their opinion about government (in one way or another) after their legislatures pass more anti-choice laws. H2.2 has a similar dependent variable but substitutes the judiciary's court decisions for the independent variable of interest. For both, in the multivariate model with the six control variables, the regression coefficients for these independent variables were statistically significant.

In the immediate sense, after the state legislature passes an anti-choice measure, or a state supreme court hands down an anti-choice decision, the people will support their government more. For the legislature, this finding (.14 multivariate regression coefficient, $p < .01$) could suggest that the legislature has simply been listening to the people and has passed a new bill tailored to their desires. After all, the legislators are greater in number compared to the courts and are supposed to be closer to their constituents. And they have been elected there by the people and can be recalled just as easily. So they could simply be carrying out their constitutional duties.

Yet it must also be acknowledged that the measurement of the government approval comes from how closely the legislators' ideologies match up with their constituents' ideologies. This proxy measurement could distort the public's support of the government by overestimating this effect. That is, there could be some redundancy in the measurement. This argument around the proxy measurement could also be extended to the judiciary, since the people elect the legislators and often those judges—directly or indirectly (*i.e.*, through their legislators' choice of approving the governor's judicial appointments). Moreover, the very measurement itself contains wording with changing meaning over time. By constructing a measurement based on ideologies, one must keep in mind that these very ideologies and their definitions have changed over time.

Nevertheless, after an anti-choice court decision, it seems that the people look more favorably upon their government (.02 multivariate regression coefficient; $p < .01$): their support increases by about 2 percentage points. This finding seems to go hand-in-hand with that in Table 5. After all, if the people agree with the court on the anti-choice measurement, seen with their greater disapproval of abortion rights, then they will be more likely to support the court. That is, because the people agree with the decision, they will be more likely to support the body that handed down that decision—here, the state supreme or superior court.

Yet as seen before, the immediate effect sometimes dissipates as time wears on. When it comes to the cumulative effect of either legislation or court decisions, people seem to have found their tipping point. Over time, as state legislatures pass more anti-choice bills, their public support decreases by about 6 percentage points in the multivariate model; and as state high courts hand down more and more anti-choice decisions, their public support goes down about 12 percentage points. This means that the courts and legislators cannot simply rely on isolated incidents of creating anti-choice decisions and laws to gauge how much the public supports them. If they did this, they would find that in just one average instance the public may look more favorably upon them for passing another anti-choice bill. But doing this will not show them the long-term picture, which demonstrates that people will begin to resist as more and more anti-choice measures are put (and kept) in place. While some short-term legislators who are only worried about the immediately upcoming election may not care—given that this cumulative effect happens over an extended time—they *should* pay attention because this does affect the public's view of the government and how legitimate they think it is.

F.4. Hypothesis H2.2, the Courts, and Judicial Activism

This backlash against the courts, though, as seen in H2.2, is a net effect. That is, with more anti-choice cases, the result cannot suggest that *all* citizens will look less favorably upon the courts. Indeed, many who are already anti-choice will most likely look a lot more favorably upon the courts for ruling in their desired direction. Yet even the set of anti-choice individuals may include some who are actually somewhere in the middle between allowing abortions under any circumstances and denying abortion under all circumstances. In fact, this middle ground is where most Americans stand. Figure 1 attests to the fact that the majority of Americans have consistently held the view that abortion should be legal under “Some Circumstances.” Thus, if a Court produces a completely anti-choice result, those who are in the middle but perhaps leaning anti-choice may still think a bit less of the court for not allowing more leeway or choice for the woman.

And of course those who are already pro-choice will see such anti-choice decisions as yet another attack on a woman’s right to choose. Thus, they will most likely look a great deal less favorably on the court. However, this may be painting the set of pro-choice individuals with too broad a stroke. As with the anti-choice movement, there are clearly pro-choice individuals who fall somewhere in the middle of this debate—that is, they may want *some* restrictions.²¹⁸ Hence, those who are in the middle may think slightly less favorably upon the court because they still recognize that there should be some restrictions on abortion. At the same time, those who are completely pro-choice—*i.e.*, those in Figure 1 who believe that abortion should be legal under “Any Circumstances”—which is about a fifth to a third of the population depending on the precise year, will probably look a lot less favorably on the Court. And they may do a successful job at mobilizing and convincing others to think less of the Court. Yet they are somewhat outnumbered

²¹⁸ And as seen from the opening anecdote to Chapter 2, these individuals may or may not choose to call themselves “pro-choice.”

by those who fall in the middle, which helps explain why the exact coefficient is still relatively small, at about -.04.

This relatively small coefficient constant of -.04 could also be attributed, at least partially, to the public's distaste of so-called judicial activism (as discussed in Chapter 3). That is, someone could view a decision favorably (*i.e.*, agree with the outcome) but may look unfavorably on the court that handed down such a decision simply because they do not believe that they should be involved in the first place. However, the exact definition of "judicial activism" (versus "judicial restraint" or "legal professionalism") depends on whom one asks. Some legal scholars point out that justices who hand down an unfavorable opinion to someone are thereafter labeled as judicial activists—simply because it was unfavorable.²¹⁹ Others purport that a justice is labeled an activist if they rule on a highly controversial and/or moral issue—because these issues, they say, should be decided democratically via elected representatives or even popular referenda.²²⁰

Each point has some validity to it, but suffice to say for the purposes of this thesis that the public's distrust and dislike of judicial activism could help explain the result of the multivariate regression model for H2.2: there is a slight decrease of public approval of the state courts after they hand down more and more anti-choice decisions. Interestingly, this conclusion runs counter to that found in Lehne and Reynolds' study of the New Jersey Supreme Court's ruling on funding of public education. In this, they found that people did not change their opinion of the court despite the controversial ruling where many did view the court as "legislating from the bench"—a popular phrase used when describing judicial activism. Perhaps an explanation for our differences in findings is that Lehne and Reynolds only focused on one decision in one state at one time

²¹⁹ Ziegler, "Grassroots Originalism."

²²⁰ Miller, "Defining Rights in the States."

(September 1975 to October 1976).²²¹ On the other hand, I am examining multiple decisions in numerous states. Further, the difference could come down to the issue area, where more people could be concerned by, or upset over, a court decision on abortion compared to funding public schools.

F.5. Critiques of Norrander's Reverse Linkage Model and Legitimation Effect

The preceding particular finding also runs counter to Norrander's theory. She suggests that the Reverse Linkage Model, which says that past policies influence current public opinion, is caused by the idea of legitimation. That is, as people become accustomed to the laws on the books, and as more and more laws are passed on a certain issue, they begin to accept these laws as legitimate. Thus, she concludes, the public mood should follow the direction of the policy change.²²² Yet here the results suggest that with more anti-choice laws people would probably support abortion more and do support the government less. Thus, instead of legitimation, this phenomenon suggests that people have an opposite reaction, where their opinion runs contrary to the policies that have been changed.

If either governing body goes too far, what does that mean for the people who are supposed to follow those laws? Here again is this idea of Policy Overreach—indeed, an expanded version of this notion. As seen before, the public will retaliate against government if they have seen *too many* anti-choice laws or court decisions. Since the majority of people want to allow abortion in some instances, having too many restrictions on a woman's right to choose will most likely cause them to disapprove of their government. Their government has gone too far—it has overreached. The notion of Policy Overreach seems to be contradictory to Norrander's legitimation model. After all, Norrander posits that the longer a policy has been in place, the more legitimate it may seem to

²²¹ Lehne and Reynolds, "The Impact of Judicial Activism," pp. 898.

²²² Norrander, "The Multi-Layered Impact."

the public. But here it seems that the longer a policy has been in place, the *less* legitimate the *governing body* is (and, somewhat, the law, as seen in Table 6). Perhaps the distinction of the law versus the governing body is what separates the legitimation model from Policy Overreach; or perhaps it is the difference between capital punishment and abortion rights.

One important difference to highlight for this discussion is that the death penalty is a bit more black and white, so to speak. While there have been discussions around *when* to apply the death penalty—*i.e.*, to which criminals?—the answer is most usually for murderers.²²³ Thus, the question generally elicits a simple yes or no answer. And so the legislation that allows the death penalty—and even the subsequent court case that upholds it—will have little else to say. On the other hand, abortion legislation clearly has a multitude of potential provisions beyond whether or not it should be allowed. Others ask: In what instances? For whom? How old? When during the pregnancy? Do we have an obligation to pay for it publicly? In addition, there are probably many other clarification questions that have not yet been asked. Thus, while abortion has always been (technically) “legal” (to some degree) in the US since *Roe*, there have been a variety of manifestations of abortion policy around the country.

And even within states, the landscape of abortion policy can change rapidly compared to the death penalty. If a state passes and keeps capital punishment as a viable option, then that law will most likely simply remain on the books. Then people can see people being executed time and again and become somewhat adjusted to that (morally, ethically, etc.), as Norrander posits. But with abortion, the law may allow abortion one year and then restrict it somehow the next, then the next year it restricts access to abortion yet again—and again, and so on. Hence, people see the end results of their time and notice that there are simply too many restrictions, causing them to want

²²³ This is why Gallup and other pollsters qualify their questions on supporting the death penalty or not with the clause “for those convicted of murder” or something of that sort. See especially Chapter 3 for more discussion on this point.

more support for abortion. This greater support is measured by a higher approval rating of abortion rights in this thesis's data. Since most people want to allow abortion in some instances, having too many restrictions can make them want to show their support for abortion rights even more so when asked about their opinion in the NES survey.

Despite some differences, Norrander's Reverse Linkage Model still seems to be at play for many instances—though not necessarily due to the legitimization effect. As the state legislatures and courts pass more anti-choice bills and hand down more anti-choice decisions, respectively, people over time will begin to look *less* favorably upon their state government and *more* favorably upon a woman's right to choose. These two consequences seem to go together. That is, people who support a woman's right to choose will most likely view their state government as attacking those same rights. Therefore, the public is looking back—looking in *reverse*—at all of these policies that have been mounting on top of each other.

Although the people's opinion on abortion rights may or may not have been swayed at the time—and although their opinion may have shifted towards the direction of the policy itself after it was passed—the people seem to eventually come to the conclusion that enough is enough. They seem to be tired of this direction that the issue of abortion rights has been heading vis-à-vis policy. Perhaps their numbers have increased at pro-choice rallies or anti-government protests. Or they could be protesting or trying to get their voices heard in other ways. In any case, further research into this area of how people are practically showing their increased support for abortion rights and decreased support of their government would be very valuable to the political science, policymaking, and political communities.

F.6. Critiques of the NES Data

But when it comes to support for abortion rights (the dependent variable in both hypotheses H1.1 and H1.2), one could rely on other lines of reasoning to interpret these findings. For instance, the notion of the 1-4 scale of abortion approval used by the NES has itself changed over time—from asking about abortion in a general to a legal sense. Perhaps conflating the two in my measurements would not have been the best thing to do. Regardless, beyond the measurements there could be another mechanism. That is, people’s perception of this 1-4 scale could change over time based on the laws being passed and the court decisions being rendered. While the 1 and 4 options are seemingly absolute in nature,²²⁴ the intermediary options give a great deal of room for interpretation. A thought experiment could best illustrate the nature of these measurements across individuals, states, and time.

Picture someone in a state in 1982 who sees anti-choice court decisions being handed down. According to these findings, they would most likely immediately look less favorably upon abortion rights and (perhaps subsequently) more favorably upon their state government. Thus, they may think of themselves as a 2 on the 1-4 scale of Abortion Approval. But in 2002, after 20 years of anti-choice court cases someone else (or even the same person, hypothetically speaking) in that state could see more anti-choice decisions as overkill, as going too far. Since this person already believes that abortion should be allowed in at least some cases (hence the 2 instead of a 1), they may reevaluate their feelings towards abortion rights. If they thought that a 2 had meant the state of abortion rights back in 1982, is a 2 different now in 2002? After all, abortion is still technically legal and allowed in very rare instances (according to their state’s anti-choice court decisions), so it should not qualify for a 1. Perhaps that 2 they had back in 1982 actually should have been a 3. If 2 means the state they have in 2002, then they would no longer subscribe to that number.

²²⁴ To recap from Chapter 5, the 1 option indicates that the respondent does not support abortion in *any* instance, while the 4 option means that the respondent supports a woman’s right to choose in *any* instance.

This thought experiment allows one to see how more and more anti-choice provisions can influence people's perceptions of what is too restrictive—what is too much of an undue burden, to use the Court's words from *Casey*. This then provides at least one potential mechanism for Policy Overreach to take place. Another mechanism could be that people's actual opinion on abortion rights have developed over time. Imagine the same scenario above, except this time the person really did feel like putting a 2 down in 1982. At that time, they really did think that the state should be that restrictive—indeed, as restrictive as they now are in 2002. But perhaps after seeing all of these anti-choice measures being put into place, they have changed their mind. Maybe they have met people who have had abortions, or they have heard the stories of women who have found it increasingly difficult to have one.²²⁵ Maybe they changed their definition of “life,” “person,” and/or “viability.” No matter the reason, they could have still changed their opinion by becoming more supportive of abortion. As a result, they may now put down a 3 (or a 4, though that radical of a shift is unlikely), which shows their increased support of abortion rights.

F.7. Conclusion

In all, there seem to be two phenomena at play in this quantitative analysis. One is the elite cue-taking model discussed in-depth in the literature review in Chapter 3. Immediately after a law is passed or a court decision is handed down, people will change their attitudes on that policy issue area (here, abortion rights) to align with the new law or court opinion. Consequently, they will then look more favorably upon their state government for passing down that law. Or, if they have already increased support for their government for some other reason, *that* increased support may

²²⁵ This could be especially true because of the increased awareness-raising that many pro-choice activists have been doing, including creating a site like 1in3, which gives voice to the one in three women in America who will, at some point in her life, choose to have an abortion. “1 in 3 Campaign,” *Advocates for Youth*, accessed at <<http://www.1in3campaign.org/en/>>.

be the reason for them to agree and change their opinion on abortion rights accordingly. In either case, the people are following along with their government policymakers—their elites.

Perhaps the more interesting finding, though, is that of Policy Overreach. This phenomenon could potentially challenge Norrander's legitimation effect, or simply address a separate issue and be unrelated to Norrander's theory. In the Policy Overreach model, people have found that their government has gone too far when restricting abortion. While they mostly agree that there should be some restrictions in place, putting on too many can cause problems. That idea of "too many" may not be quantifiable by any given individual who wants some restrictions (*i.e.*, those who select 2 or 3 on the NES survey).²²⁶ Yet it is a concept that people have in their mind; it is something that they would be able to identify if the opportunity or experience presents itself. In fact, that very opportunity presents itself by seeing the end product of these anti-choice pieces of legislation and court opinions. By having all of these measurements in place, the people can judge for themselves if their state government has gone too far or not.

Simply put, the immediate effects can probably be best explained by the elite cue-taking model, whereas the cumulative effects can most likely be best explained by the Policy Overreach model. In the end, the methodology and data utilized for this quantitative analysis are useful for further research into the connection between public policy and public opinion. It is important to note that these findings give more credence to the theories and results shown by others researchers like Goggin and Norrander, in which public policy has been revealed to be a contributing factor to change in public opinion. Yet the findings also raise questions about these researchers' theories.

²²⁶ Clearly, someone who selects 1 believes that *no* amount of restrictions is "too many" (indeed, that any amount that is not completely restrictive could be "too few"), and someone who selects 4 would think that *any* amount of restrictions would qualify as "too many."

For instance, some of these findings run counter to Norrander's, underscoring the fact that the legitimization effect does not hold in this instance.

VII. Conclusion

A. Implications for Policy and Public Opinion Research

The findings in Chapter 6 give credence to both the elite cue-taking model and the idea of Policy Overreach, which posits that there is a tipping point in lawmaking, where lawmakers and judges simply go too far in setting policy. In this case, they have gone too far in setting anti-choice laws and court decisions. Although the people may have an increased support of their state government immediately after a law is passed or opinion is issued (via elite cues being passed from politicians and judges to the people), said support turns to disapproval over the long-term. Furthermore, although the people may alter their attitudes towards abortion slightly to align with the new court decision immediately handed down, over the long haul they will change their attitudes to suggest that they are actually more pro-choice than they were previously.

But an important question is: should the government care? Practically speaking, yes, because they are elected (many judges are elected at the state level) and so they would want public support for re-election. Further, if the judges want the public to stand behind their decisions and actually follow them, they need the public's support. On the other hand, speaking a bit more abstractly, courts are meant to be outside of the influence of the public's whims. That is, the courts are supposed to make decisions based on existing law and the state constitution, rather than create laws themselves—or, at least, that is what many would argue. Therefore, some could tell the courts that, despite the negative public backlash, they ought to just continue their job per usual.

The argument could be that no matter how the people might respond, the courts should make their decisions based on the letter and the spirit of the law, rather than on what the majority of the people may want. After all, the Founding Fathers set up the state governments such that their legislatures would have the closest connections to the people. Unlike the courts, where only

some states have elected judges, all states have directly elected state legislators, meaning that *they* are the ones who are supposed to listen to and vote based on what their constituents actually want. Thus, since I had found a connection between the legislative policies—whether via the immediate effect measured by Legislation Average or Legislation Cumulative—and public opinion of either abortion or the government, these legislators *should* take notice. Again, they need to think pragmatically: they want to be re-elected.

These findings also have repercussions for the field of research into how public policy influences public opinion. Norrander and others have found that people become accustomed to certain policies and therefore associate them with what must be legitimate or right. But the reverse seems to be true in this instance: as more anti-choice laws are passed, or more anti-choice decisions are handed down, by the government, the people think less of the government and (probably) more of abortion. Perhaps abortion is an exception to Norrander’s legitimization effect because many people already have some notions of what they think about abortion, with most believing that a woman should be able to choose in at least *some* cases (see Figure 1). And so with more anti-choice laws and court decisions, people might see these as going “too far,” thus replacing the legitimization effect with public backlash vis-à-vis opinion.

B. Recommendations for Activists

Beyond implications of this research for government and for the field of political science, there are also some recommendations that become readily available from the findings—recommendations specifically for pro-choice organizations and for the movement as a whole. Many wonder how they, with limited resources, time, and money, can be the most effective in terms of shaping abortion policy. Alternatively, some wonder how to be most effective in changing

people's attitudes toward abortion. Each question has a different answer, yet each depends on which branch and which level of government to focus on.

At the national level, it seems that policies have little to no influence on public opinion. Still, Congress and the Supreme Court manage to provide different types of legislation and court cases, respectively—some pro-choice, some anti-choice, and some a mix of the two. The Court in particular has been more renowned as pro-choice since *Roe*, although it has definitely been leaning further anti-choice since *Casey*. Additionally, each piece of legislation passed and each Court case decided almost always (at least vis-à-vis abortion rights) yields a far-reaching decision. While some Court cases may be narrowly tailored to fit just that situation, this is more the exception than the rule. And whereas a Court decision striking down spousal consent laws in one state (*e.g.*, in Pennsylvania in *Casey*) would effectively strike spousal consent laws in all states, if a state supreme court did the same, it would only apply to that state. Therefore, it is clearly worthwhile to try to influence and shape policy at the national level—at least, for the sake of implementing the policy that the person or group wants (whether pro-choice or anti-choice).

This sentiment of trying to shape policy is also present at the state level. Many journalists and scholars have noted that the state legislatures are where the action is taking place vis-à-vis abortion rights.²²⁷ Some actions have been favorable in the eyes of the pro-choice movement while most have been more favorable to those who are anti-choice. Yet there may be some hope left for those who are pro-choice, as there have been more and more pro-choice provisions being passed in the states, and sometimes even anti-choice restrictions taken down. And it seems that this trend is slowly arching towards helping women who want to have a choice on whether or not they can terminate their pregnancy.²²⁸

²²⁷ See, *e.g.*, NARAL, *Who Decides?*

²²⁸ Marty, "The Next Battle in the Abortion Wars."

Moreover, many in the pro-choice movement have followed suit of those fighting for same-sex marriage: they have turned to the courts to air their grievances and to seek justice.²²⁹ For instance, very recently a federal judge struck down an Alabama law that would have effectively forced all but two clinics in the state to close that provide abortion services. The anti-choice law in place is a new type of law that other states have tried to implement (and other federal justices have also recently struck down), in which the “doctors at abortion clinics [must] have admitting privileges at local hospitals.” While the state defends the law in court by claiming that it better protects the health of the woman, they simultaneously betray their real feelings for why they like that law by stating that they disagree with this ruling because they want to “fight for the rights of the unborn,” in the words of Alabama’s Governor Bentley (where is the mention of protecting the health of the mother here?).²³⁰

Nevertheless, if the intention is to change people’s attitudes towards either abortion or the government, people should redirect their attention to the states instead of the federal government. Moreover, they must be cautious in assessing the damage²³¹ of a particular piece of legislation or court decision. In the immediate aftermath, they will most likely observe increased support for the government and decreased support for abortion rights. This will most likely be concerning; many may think that they are losing this war. However, they can take solace in knowing that these shifting attitudes are only temporary. In fact, over the long term, the people will eventually feel like the government is going too far—hence Policy Overreach. While this may still not be as great

²²⁹ For marriage equality, see, *e.g.*, a recent article on court cases striking down same-sex marriage bans finding its way to the US Supreme Court. Steve Friess, “Same-Sex Marriage Foes Hope to Turn Tide at Mega-Hearing in Cincinnati,” *Al Jazeera*, Aug. 5, 2014, accessed at <<http://america.aljazeera.com/articles/2014/8/5/marathon-court-casesamesexmarriagebansthisweekinohio.html>>.

²³⁰ Elliott C. McLaughlin, “Federal Judge: Abortion like Right to Bear Arms,” *CNN*, Aug. 5, 2014, accessed at <<http://www.cnn.com/2014/08/05/justice/alabama-abortion-federal-court-ruling/index.html>>.

²³¹ At least, “damages” that are defined by the standards set forth by the individuals’ pro-choice views.

a victory as they want—after all, many pro-choice individuals would probably want to allow abortion in *all* instances—it is still certainly something to celebrate.

And these changes in opinion can further impact future policy. After all, Norrander's Reverse Linkage Model—which still held up under the analyses in this thesis—acknowledges that future policy and opinion are necessarily intertwined with and influenced by past policy and opinion. Thus, if the long-term opinion of abortion rights tends towards approval, and the long-term opinion of the state government enacting anti-choice laws and court decisions tends towards disapproval, future policy may be more pro-choice than anti-choice. Despite some claiming that conservatives have won the abortion war,²³² the (perhaps distant) future could prove them wrong. The conservatives may have won the battles thus far—from *Roe* till now. But if even the 32-year period of this study (1972-2004) shows that over time opinion tends towards the pro-choice side of the abortion rights debate, then maybe 2036 or so will be a time that pro-choice individuals can take pride in the state of abortion rights policies.

C. Further Research

Further research can expand on the coding I have done (see Appendix A) by: including other related states' laws and court cases and potentially looking at lower-level legislation and decisions (*e.g.*, county or city). Also, case studies of particular states (or even other countries for an international comparison) could help look into these hypotheses more in-depth. This would allow people to see how particular laws and decisions might have changed public opinion in one way or another, rather than simply looking at a time-series data analysis.

In addition, other research can analyze other facets within the laws and decisions—*e.g.*, within judicial decisions, one can take into account the vote split, or within legislation, one can

²³² See, *e.g.*, Saletan, *Bearing Right*.

look at who voted for what and if the executive branch vetoed the bill and subsequently if the legislature overrode such a veto. Moreover, my datasets outline the different types of restrictions (and how many of each) put into place by each law. This thesis examines how the laws overall are anti-choice or not, without necessarily taking into account the various weights each law might deserve. For instance, one law may just implement a 24-hour waiting period requirement for getting an abortion, while another might implement a 24-hour waiting period *and* a parental consent requirement. Also, further research can use other or additional controls, such as different racial and religious identities, and religiosity (in addition to religious identity).

Additionally, further research should be done into the realm of Policy Overreach. Researchers should analyze how “too much” policy (at least, in one direction or another) influences not only people’s political attitudes, but also their political behavior. That is, they can study how people change in their voting or campaign donating because of the overreaching done by their policymakers. Or they can study how (often), when, and why people assemble to support or oppose that side of an issue or even just their government in itself. Studying this idea of overreach can yield interesting results of where the tipping point is for the populace. And it even raises intriguing questions, such as, how can the policymakers *find* this tipping point?

D. Final Thoughts

All hypotheses (in *most* respects) proved to be true at the individual level—except for the immediate effects found in H1.1, where Legislation Average did not prove to be related to Abortion Approval.

Overall, I think that this thesis still contributes a great deal to the field of public opinion research as it relates to legislation, court decisions, and the issue of abortion rights. I believe that the idea of Policy Overreach will especially be an interesting idea to examine in further detail,

whether regarding abortion rights or another issue. After viewing the historical analysis in Chapter 2 and the extant literature in Chapter 3, I developed four hypotheses in Chapter 4, none of which had been directly studied before. Then, using some original data and various statistical techniques discussed in Chapter 5, I ran bivariate and multivariate regressions in Chapter 6 (with results in Chapter 8) to test my data.

Finally, I am glad that more empirical research has been done into the area of abortion rights laws, court decisions regarding abortion, and public opinion. Although much speculation and anecdotal evidence have yielded great theories, there is more need for empirical study into how these important issues impact people and society. I hope some of the new theories, methodologies, and measurements produced herein will prove useful for further research into not only abortion rights but also other social issues.

VIII. Figures & Tables

Figure 1.—National Average Abortion Approval Rating, 1975-2004

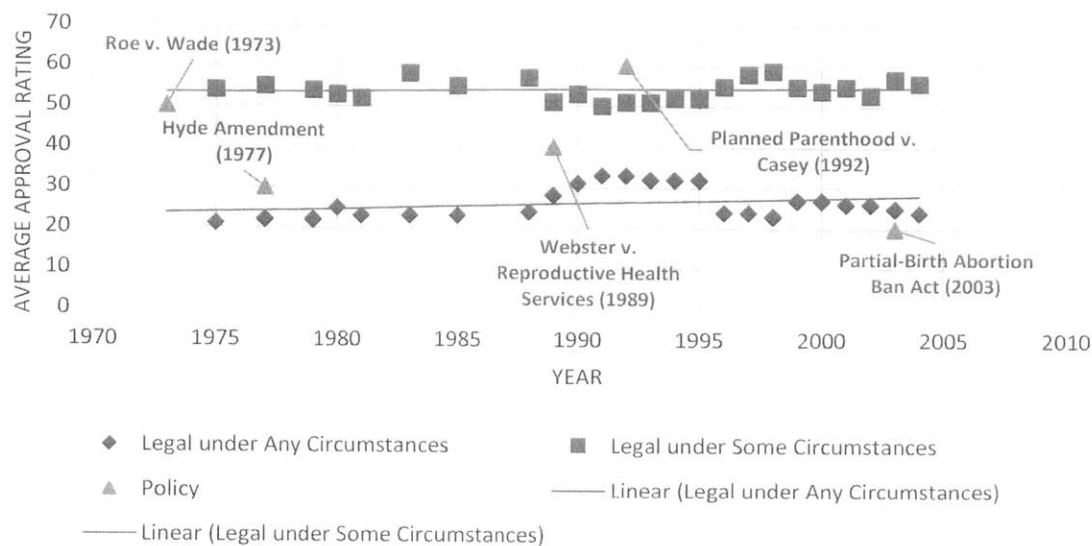
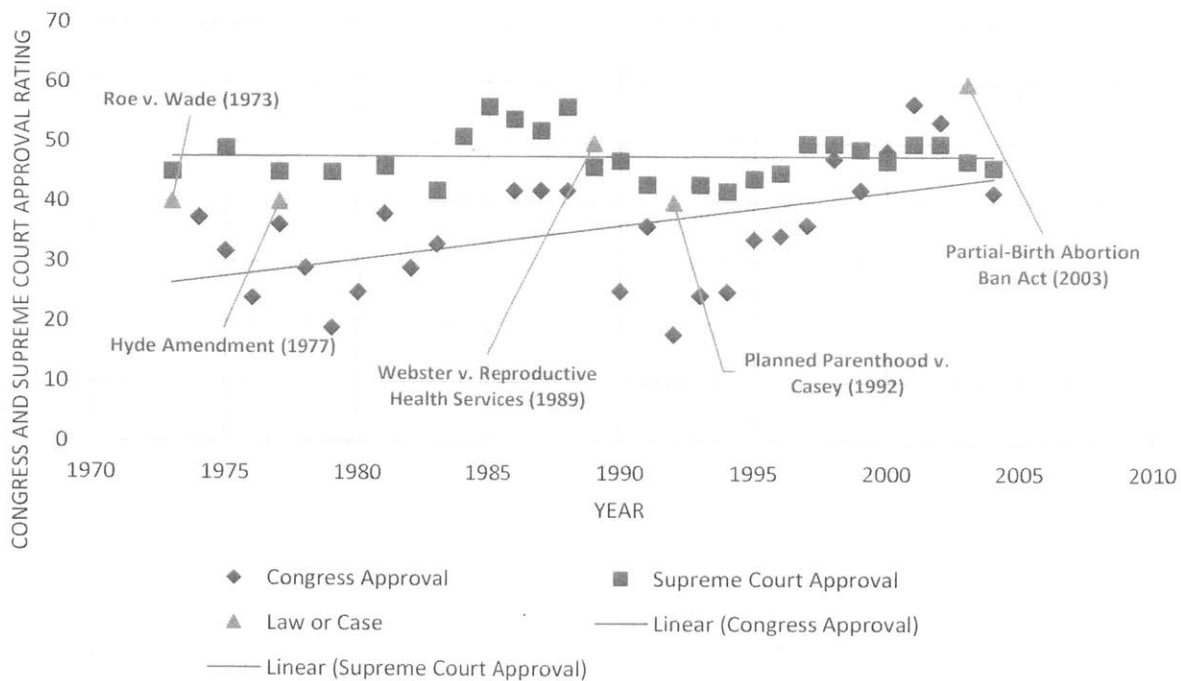


Figure 2.—National Average Congress Approval Rating and Supreme Court Confidence Level, 1973-2004



Note on both Figures: Major Supreme Court cases and Congressional legislation have been added to the graph to show how public opinion has trended over the years along with these laws. These particular pieces of legislation and Court decisions were chosen because of the historical analysis in Chapter 2. All data gathered from Gallup. Congress approval rating is based on the question directly related; Court rating based on level of confidence public has. See Chapter 6 for more information.

Table 1.—Descriptive Statistics for All Variables

Variable	N	Mean	Std. Dev.	Min.	Max.
Year	32122	--	--	1972	2004
Abortion Approval	27673	.59	.36	0	1
Government Approval	32123	.86	.03	.8	.91
Male	32122	.44	.5	0	1
White	31915	.8	.4	0	1
Catholic	31852	.24	.43	0	1
Income	27786	.47	.29	0	1
Conservative	22116	.54	.23	0	1
Republican	31810	.45	.34	0	1
Legislation Average	32123	.86	.03	.56	1
Legislation Cumulative	32123	1.53	.34	1	2.89
Judicial Average	30509	.52	.27	0	1
Judicial Cumulative	32123	.93	.22	.6	1.5

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Abortion Approval is the approval on a 0-1 scale where 1 is to always permit an abortion and 0 is to never permit one; Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Government Approval is the public approval rating of the government on a 0-1 scale where 0 means the public completely disapproves of the government and 1 means they completely approve of them; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year.

Table 2.—Correlation Coefficients Matrix for All Variables, 1972-2004

Variable	Abortion Approval	Government Approval	Male	White	Catholic	Income	Conservative	Republican	Legislation Average	Legislation Cumulative	Judicial Average	Judicial Cumulative
Abortion Approval	1	--	--	--	--	--	--	--	--	--	--	--
Government Approval	-.06	1	--	--	--	--	--	--	--	--	--	--
Male	-.005	-.006	1	--	--	--	--	--	--	--	--	--
White	.05	.07	.03	1	--	--	--	--	--	--	--	--
Catholic	-.09	-.02	.02	.02	1	--	--	--	--	--	--	--
Income	.13	.04	.12	.17	.06	1	--	--	--	--	--	--
Conservative	-.25	-.03	.05	.1	-.03	.06	1	--	--	--	--	--
Republican	-.09	-.03	.06	.23	-.08	.15	.43	1	--	--	--	--
Legislation Average	0	.31	-.01	.04	-.002	.007	-.003	-.02	1	--	--	--
Legislation Cumulative	.06	-.63	.02	-.1	.009	-.03	.02	.03	-.67	1	--	--
Judicial Average	-.04	.36	0	.02	.006	.005	-.02	-.03	.02	-.03	1	--
Judicial Cumulative	.07	-.73	.02	-.1	.01	-.04	.01	.03	-.61	.93	-.03	1

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Abortion Approval is the approval on a 0-1 scale where 1 is to always permit an abortion and 0 is to never permit one; Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Government Approval is the public approval rating of the government on a 0-1 scale where 0 means the public completely disapproves of the government and 1 means they completely approve of them; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year.

Table 3.—Bivariate and Multivariate Regressions for Legislation Average, 1972-2004

Dependent Variable: Abortion Approval								
Legislation Average	-.08 (.09)	--	--	--	--	--	--	-.04 (.1)
Male	--	.02 (.004)***	--	--	--	--	--	-.005 (.01)
White	--	--	.06 (.01)***	--	--	--	--	.05 (.01)***
Catholic	--	--	--	-.09 (.01)***	--	--	--	-.09 (.01)***
Income	--	--	--	--	.22 (.01)***	--	--	.18 (.01)***
Conservative	--	--	--	--	--	-.4 (.01)***	--	-.4 (.01)***
Republican	--	--	--	--	--	--	-.04 (.01)***	-.02 (.01)*
Intercept	.64 (.09)***	.58 (.003)***	.54 (.01)***	.6 (.002)***	.49 (.004)***	.84 (.01)***	.61 (.004)***	.82 (.1)***
RMSE	.36	.36	.35	.36	.35	.34	.34	.33
R ²	0	0	.005	.004	.03	.06	.06	.1
N	27673	27673	27509	27501	25223	18974	18974	17298

* $p < .05$ ** $p < .01$ *** $p < .001$

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Abortion Approval is the approval on a 0-1 scale where 1 is to always permit an abortion and 0 is to never permit one; Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year. All standard errors are robust.

Table 4.—Bivariate and Multivariate Regressions for Legislation Cumulative, 1972-2004

Dependent Variable: Abortion Approval								
Legislation Cumulative	.09 (.01)***	--	--	--	--	--	--	.08 (.01)***
Male	--	.02 (.004)***	--	--	--	--	--	-.01 (.01)
White	--	--	.06 (.01)***	--	--	--	--	.06 (.01)***
Catholic	--	--	--	-.08 (.01)***	--	--	--	-.05 (.01)***
Income	--	--	--	--	.22 (.01)***	--	--	.17 (.01)***
Conservative	--	--	--	--	--	-.38 (.01)***	--	-.3 (.01)***
Republican	--	--	--	--	--	--	-.04 (.01)***	-.02 (.01)***
Intercept	.46 (.01)***	.58 (.003)***	.54 (.01)***	.6 (.002)***	.49 (.004)***	.84 (.01)***	.61 (.004)***	.82 (.1)***
RMSE	--	.36	.35	.36	.35	.34	.34	--
R ²	--	0	.005	.004	.03	.06	.06	--
R ² within	.005	--	--	--	--	--	--	.001
R ² between	.007	--	--	--	--	--	--	.1
R ² overall	.007	--	--	--	--	--	--	.11
N	27673	27673	27509	27501	25223	18974	18974	17298

* $p < .05$ ** $p < .01$ *** $p < .001$

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Abortion Approval is the approval on a 0-1 scale where 1 is to always permit an abortion and 0 is to never permit one; Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year. All standard errors are robust.

Table 5.—Bivariate and Multivariate Regressions for Judicial Average, 1972-2004

Dependent Variable: Abortion Approval								
Judicial Average	-.05 (.01)***	--	--	--	--	--	--	-.04 (.01)***
Male	--	.02 (.004)***	--	--	--	--	--	-.004 (.005)
White	--	--	.06 (.01)***	--	--	--	--	.05 (.01)***
Catholic	--	--	--	-.09 (.01)***	--	--	--	-.05 (.01)***
Income	--	--	--	--	.22 (.01)***	--	--	.18 (.01)***
Conservative	--	--	--	--	--	-.38 (.01)***	--	-.4 (.01)***
Republican	--	--	--	--	--	--	-.04 (.01)***	-.02 (.01)*
Intercept	.62 (.005)***	.58 (.003)***	.54 (.01)***	.6 (.002)***	.49 (.004)***	.84 (.01)***	.61 (.004)***	.77 (.01)***
RMSE	.36	.36	.35	.36	.35	.34	.34	.33
R ²	0	0	.005	.004	.03	.06	.06	.1
N	26084	27673	27509	27501	25223	18974	18974	16406

* $p < .05$ ** $p < .01$ *** $p < .001$

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Abortion Approval is the approval on a 0-1 scale where 1 is to always permit an abortion and 0 is to never permit one; Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year. All standard errors are robust.

Table 6.—Bivariate and Multivariate Regressions for Judicial Cumulative, 1972-2004

Dependent Variable: Abortion Approval								
Judicial Cumulative	.15 (.01)***	--	--	--	--	--	--	.15 (.01)***
Male	--	.02 (.004)***	--	--	--	--	--	-.01 (.01)
White	--	--	.06 (.01)***	--	--	--	--	.06 (.01)***
Catholic	--	--	--	-.09 (.01)***	--	--	--	-.05 (.01)***
Income	--	--	--	--	.22 (.01)***	--	--	.17 (.01)***
Conservative	--	--	--	--	--	-.38 (.01)***	--	-.34 (.01)***
Republican	--	--	--	--	--	--	-.04 (.01)***	-.02 (.01)**
Intercept	.46 (.01)***	.58 (.003)***	.54 (.01)***	.6 (.002)***	.49 (.004)***	.84 (.01)***	.61 (.004)***	.57 (.02)***
RMSE	--	.36	.35	.36	.35	.34	.34	--
R ²	--	0	.005	.004	.03	.06	.06	--
R ² within	.0004	--	--	--	--	--	--	.001
R ² between	.01	--	--	--	--	--	--	.1
R ² overall	.01	--	--	--	--	--	--	.11
N	27673	27673	27509	27501	25223	18974	18974	17298

* $p < .05$ ** $p < .01$ *** $p < .001$

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Abortion Approval is the approval on a 0-1 scale where 1 is to always permit an abortion and 0 is to never permit one; Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year. All standard errors are robust.

Table 7.—Bivariate and Multivariate Regressions for Legislation Average, 1972-2004

Dependent Variable: Government Approval								
Legislation Average	.14 (.001)***	--	--	--	--	--	--	.14 (.002)***
Male	--	0 (--)	--	--	--	--	--	0 (--)
White	--	--	.006 (0)***	--	--	--	--	.01 (.001)***
Catholic	--	--	--	-.002 (0)***	--	--	--	-.002 (.001)***
Income	--	--	--	--	.003 (.001)	--	--	.001 (.001)**
Conservative	--	--	--	--	--	-.004 (.001)***	--	-.002 (.001)
Republican	--	--	--	--	--	--	-.005 (.001)***	-.004 (.001)***
Intercept	.72 (.001)***	.86 (0)***	.86 (0)***	.86 (0)***	.86 (0)***	.86 (.001)***	.86 (0)***	.46 (.002)***
RMSE	.03	.03	.03	.03	.03	.03	.03	--
R ²	.16	0	.006	0	0	0	.002	--
R ² within	--	--	--	--	--	--	--	.001
R ² between	--	--	--	--	--	--	--	.14
R ² overall	--	--	--	--	--	--	--	.11
N	32123	32122	31915	31852	27786	22116	31810	19000

* $p < .05$ ** $p < .01$ *** $p < .001$

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Government Approval is the public approval rating of the government on a 0-1 scale where 0 means the public completely disapproves of the government and 1 means they completely approve of them; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year. All standard errors are robust.

Table 8.—Bivariate and Multivariate Regressions for Legislation Cumulative, 1972-2004

Dependent Variable: Government Approval								
Legislation Cumulative	-.07 (.0003)***	--	--	--	--	--	--	-.06 (.001)***
Male	--	0 (--)	--	--	--	--	--	0 (--)
White	--	--	.006 (0)***	--	--	--	--	.001 (.001)
Catholic	--	--	--	-.002 (0)***	--	--	--	-.001 (.0004)**
Income	--	--	--	--	.003 (.001)	--	--	.001 (.001)
Conservative	--	--	--	--	--	-.004 (.001)***	--	0 (--)
Republican	--	--	--	--	--	--	-.005 (.001)***	-.002 (.001)*
Intercept	.97 (.001)***	.86 (0)***	.86 (0)***	.86 (0)***	.86 (0)***	.86 (.001)***	.86 (0)***	.96 (.001)***
RMSE	--	.03	.03	.03	.03	.03	.03	--
R ²	--	0	.006	0	0	0	.002	--
R ² within	.0003	--	--	--	--	--	--	.1
R ² between	.52	--	--	--	--	--	--	.45
R ² overall	.49	--	--	--	--	--	--	.41
N	32122	32122	31915	31852	27786	22116	31810	19000

* $p < .05$ ** $p < .01$ *** $p < .001$

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Government Approval is the public approval rating of the government on a 0-1 scale where 0 means the public completely disapproves of the government and 1 means they completely approve of them; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year. All standard errors are robust.

Table 9.—Bivariate and Multivariate Regressions for Judicial Average, 1972-2004

Dependent Variable: Government Approval								
Judicial Average	.03 (.001)***	--	--	--	--	--	--	.02 (.001)***
Male	--	0 (--)	--	--	--	--	--	0 (--)
White	--	--	.006 (0)***	--	--	--	--	.006 (.001)***
Catholic	--	--	--	-.002 (0)***	--	--	--	-.002 (.001)**
Income	--	--	--	--	.003 (.001)	--	--	.003 (.001)
Conservative	--	--	--	--	--	-.004 (.001)***	--	-.002 (.001)*
Republican	--	--	--	--	--	--	-.005 (.001)***	-.004 (.001)***
Intercept	.85 (.0004)***	.86 (0)***	.86 (0)***	.86 (0)***	.86 (0)***	.86 (.001)***	.86 (0)***	.84 (.001)***
RMSE	.03	.03	.03	.03	.03	.03	.03	.03
R ²	.04	0	.006	0	0	0	.002	.1
N	30509	32122	31915	31852	27786	22116	31810	18101

* $p < .05$ ** $p < .01$ *** $p < .001$

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Government Approval is the public approval rating of the government on a 0-1 scale where 0 means the public completely disapproves of the government and 1 means they completely approve of them; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year. All standard errors are robust.

Table 10.—Bivariate and Multivariate Regressions for Judicial Cumulative, 1972-2004

Dependent Variable: Government Approval								
Judicial Cumulative	-.12 (.0004)***	--	--	--	--	--	--	-.12 (.001)***
Male	--	0 (--)	--	--	--	--	--	0 (--)
White	--	--	.006 (0)***	--	--	--	--	0 (--)
Catholic	--	--	--	-.002 (0)***	--	--	--	-.001 (.0004)*
Income	--	--	--	--	.001 (.001)	--	--	.001 (.001)
Conservative	--	--	--	--	--	-.004 (.001)***	--	-.001 (.001)
Republican	--	--	--	--	--	--	-.005 (.001)***	-.001 (.001)*
Intercept	.97 (.004)***	.86 (0)***	.86 (0)***	.86 (0)***	.86 (0)***	.86 (.001)***	.86 (0)***	.97 (.001)***
RMSE	--	.03	.03	.03	.03	.03	.03	--
R ²	--	0	.006	0	0	0	.002	--
R ² within	.003	--	--	--	--	--	--	.005
R ² between	.7	--	--	--	--	--	--	.63
R ² overall	.64	--	--	--	--	--	--	.55
N	32122	32122	31915	31852	27786	22116	31810	19000

* $p < .05$ ** $p < .01$ *** $p < .001$

Note: All variables have been calculated based on data available from the National Election Studies (NES) or gathered by myself. The variables signify the following: Male is a dummy variable where 1 is Male and 0 is Female; White is a dummy variable where 1 is White and 0 is non-White; Catholic is a dummy variable where 1 is Catholic and 0 is non-Catholic; Income is a leveled variable scaled to 0-1 where 1 is the highest quintile for family income and 0 is the lowest quintile for family income; Conservative is on a 0-1 scale where 0 is strongly liberal and 1 is strongly conservative; Republican is on a 0-1 scale where 0 is strongly Democratic and 1 is strongly Republican; Government Approval is the public approval rating of the government on a 0-1 scale where 0 means the public completely disapproves of the government and 1 means they completely approve of them; Legislation Average (Judicial Average) is the average legislation (court decision) regarding abortion where 0 means that the legislation (decision) is completely pro-choice and 1 means it is completely anti-choice; and Legislation Cumulative (Judicial Cumulative) is the average cumulative total of anti-choice legislation (court decision), which means that the higher the variable's value, the more anti-choice pieces of legislation (decisions) there were in that given year. All standard errors are robust.

IX. Appendices

Appendix A – Coding

Given the unprecedented nature of much of this research and these data, when coding the laws and cases, I could have used many different methods and measurements. Here, then, I diverge slightly from other organizations like the National Abortion and Reproductive Rights Action League (NARAL), which, in its annual *Who Decides?* publication, uses the terms “anti-choice” and “pro-choice” in a broader sense than I do. For the purposes of this thesis, I strictly examine the laws and cases that directly impact a woman’s right to choose an abortion. For instance, I use laws and cases like waiting limits, ultrasound requirements, and informed consent laws as “anti-choice,” and fixed buffer zones for protestors, protections for personal information of women who obtain an abortion in a clinic or hospital, and the simple legal declaration that a woman has a right to choose to have an abortion (*e.g.*, in *Roe v. Wade*) as “pro-choice” laws.

Other organizations like NARAL include laws and cases like mere statements made by the legislature that they lean one way or the other in the abortion rights debate, restrictions and protections of the use of contraceptives, regulation of sexual education, and regulation of speech advertising abortion rights and ballot measures as potential laws and cases. Furthermore, other laws and cases that have been excluded in my analysis are *prima facie* unconstitutional laws—*e.g.*, a state law that says that abortion at all times and in all forms is forbidden—laws and cases that have been introduced or debated but not passed by the legislature or ruled on by the court, and cases that have been dismissed without a decision by the court.

Moreover, NARAL’s *Who Decides?* publication does not provide a list of laws passed in each state per year, but rather the “current state” that each state is in per year. That is, they provide each state with a grade that they have calculated based on that state’s laws *at that time*. Though

this hints at the fact that NARAL most likely has a database somewhere with these laws, requests by myself (and even by the MIT Libraries) to use their datasets have been consistently rejected—purportedly for “staff shortages.”

Note that, unlike NARAL, I include legislative measures that have been passed by the legislature *but vetoed by the executive without an override*. I chose to do this because I am looking at the direct link between the law passed by the legislature and how it affects the public opinion of that legislature, which most likely does not (but could) involve whether or not the executive allowed it to be enacted. Yet if this does prove to have a different impact, then that would be providing an answer to a different question—something beyond the scope of this thesis. Moreover, this choice on my part should not significantly affect my results since very few laws passed by the legislature are vetoed by the governor.

Furthermore, when looking at judicial cases, I include cases for specific individuals that may possibly simply reinforce precedent and case precedent. For instance, parental consent cases come before multiple state courts every few years, where some are favorable for the teenager seeking an abortion and others are not. Yet, each case is impactful in its own right, so to speak, despite how far-reaching or narrow it may. And finally, I will note that two states (Oklahoma and Texas) have two highest courts (each with its own distinct jurisdiction), so both have been taken into account for each state, though a distinction between the two with regard to the analysis of this paper has not been made.

I decided to include solely the decisions of the highest courts at the state level. One major reason to do this was that there would be hundreds, if not thousands, of more cases to have to read and code, which would be beyond the time available for the writing of this thesis. Another is that the decisions at the highest levels would most likely be the most well-known and far-reaching

cases and laws and cases. However, this does miss out on lower court decisions, including those that were not accepted on appeal at the higher courts. In fact, these cases themselves would actually require a great deal of in-person research since many of these cases at the trial court level have not been and are not routinely published. Further research, then, should include these measured variables.

As briefly mentioned in Chapter 5, my datasets are rather limited given the databases from which they were constructed. And the databases might even have been limited with how many laws and court cases they provided, though not every state has had a case regarding abortion reach its highest court. Hence, state laws are only provided in 26 states and state court decisions are only provided in 34 states. The states with available state laws include the following: CT, MA, NJ, NY, PA, IL, MI, WI, MO, NE, ND, SD, AL, LA, MS, SC, KY, TN, WV, AZ, CO, ID, NV, UT, CA, and VA. The states with available court cases include the following: CT, MA, RI, VT, DE, NJ, NY, IL, MI, OH, MN, MO, NE, ND, SD, VA, AL, AR, FL, LA, MS, NC, TX, SC, KY, MD, OK, WY, AZ, CO, WY, CA, OR, and WA . Ideally, of course, it would be best to have data available for *all* state laws and court cases.

Finally, I understand that my rhetoric in this thesis would most likely suggest that I identify as pro-choice and liberal, which could raise suspicions about how I coded policies. This is a valid concern. However, I believe that my definition of an anti-choice policy—one that places a restriction on a woman’s right to choose—is non-subjective. Even the Supreme Court in *Casey* admitted that the restrictions like a waiting period are technically “burdens,” though they are allowed so long as they are not “undue” in nature. For this thesis, I am not necessarily concerned with the question of whether a particular stipulation or restriction is “undue,” but rather just with the question of whether that provision is in actuality a restriction on a woman’s right to choose.

Appendix B - Measurement Limitations

As with any other survey, the NES has its own limitations, such as social desirability bias, potentially confusing questions, selection bias, and other biases. Moreover, the scale used by the NES to gauge public opinion on abortion rights is limiting: it asks about one's preference for a woman's right to choose on a 1-4 scale, which misses out on the nuances of someone's personal attitudes on abortion. That is, someone could say that they think a woman should have an abortion in certain cases but not others.

Potential extraneous variables could include broader and/or independent trends in public opinion. For instance, the case could be that in general over this 32-year period there has been a gradual shift to the right (*vis-à-vis* ideology) regarding social and/or political issues for some unmeasured reason. Or, there could be a general trend where people's favorability of their government has been steadily declining. While multivariate regressions help alleviate some of these concerns, there are still some present.

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