

American University Washington College of Law

Digital Commons @ American University Washington College of Law

Presentations

Public Discourse

2024

The Rhetoric of Abortion in Amicus Briefs

Jamie Abrams

Follow this and additional works at: https://digitalcommons.wcl.american.edu/pub_disc_presentations



Part of the [Constitutional Law Commons](#), [Legal Education Commons](#), and the [Legal Writing and Research Commons](#)



The Rhetoric of Abortion in Amicus Briefs

Jamie R. Abrams, American University
Washington College of Law

and

Amanda Potts, University of Cardiff

Overview of the study

- **Legal-linguistic analysis of amicus briefs from landmark abortion cases (Roe/Doe, Casey, Dobbs)**
 - Makes use of methods from *corpus linguistics* to calculate statistical patterns of language
 - More objective, allows for large-scale analysis
- **Guiding questions**
 - What purposes supported the amici engagement?
 - How are the principal parties in abortion care (Pregnant person, fetus, physician) discursively represented over time?
 - How is abortion itself rhetorically framed and how has that changed over time?

Case/Role	access	neither	restrict	total
Roe & Doe	7	1	10	18
academic	0	1	0	1
government entities and individuals	0	0	2	2
medical	2	0	1	3
organizations (law and community)	4	0	4	8
religious	1	0	1	2
unaffiliated individual(s)	0	0	2	2
Casey	10	0	24	34
academic	1	0	0	1
government entities and individuals	2	0	4	6
medical	2	0	2	4
organizations (law and community)	5	0	14	19
religious	0	0	3	3
unaffiliated individual(s)	0	0	1	1
Dobbs	50	2	85	137
academic	9	1	9	19
government entities and individuals	7	0	10	17
medical	4	1	6	11
organizations (law and community)	25	0	39	64
religious	3	0	14	17
unaffiliated individual(s)	2	0	7	9

Organizational Amici

Case	Restrict	Access
Roe / Doe	<p>Sought personhood transparently, while retaining abortion exceptions</p> <p>Explicitly before the Court</p>	<p>Laser-focused on the harms to women of color and poor women (<i>poor</i> and <i>non-white</i> most over-represented)</p> <p>A range of legal arguments presented (e.g., 14th, 13th, 8th)</p>
Dobbs	<p>Enduring focus on personhood</p> <p>Implicitly before the Court</p>	<p>More incremental arguments to hold the line (e.g., <i>rule of law, relied on</i>)</p> <p>Shifting rights framing (<i>right to decide, access to abortion, to control their</i>)</p> <p>Laser-focused on harms, but tense usage shifted to future</p>

Religious Amici

Case	Restrict	Access
Dobbs	<p>5th keywords eugenics, more frequent relative to the corpus than Christian or God</p> <p>Engagement with Justice Thomas</p> <p>Dominant language of <i>in</i> and <i>out of the womb</i> and <i>image of God</i></p> <p>Adds reverence to the fetus</p>	<p>Much more predictable dominant terms aligning with the role of religious amici, such as <i>religion, faith, belief, church, and God</i>.</p> <p>Dominant usages of <i>secular, pluralism, and diversity</i> as well as <i>oppression, persecution, and divisive</i></p> <p>Telling the cautionary story of politicizing religion</p>

Academic Amici

Case	Restrict	Access
Dobbs	<p>Emphasis on <i>9th Amendment, Bill of Rights, original meaning, reconstruction, natural, elective, enumerate, and unborn human beings</i></p> <p>Frequency of <i>right to elective abortion</i> seeking to marginalize the procedure</p>	<p>Laser focused on on substantive due process defense and stare decisis (<i>Roe and Casey, due process clause, 14th amend., common law, history and tradition</i>)</p> <p><i>Stereotype and sex-role</i> dominance reinforce equal protection strategy</p> <p>Disproportionate harms (<i>black, racial, mile, travel, distance</i>)</p>

Medical Amici

Case	Restrict	Access
Dobbs	<p>Relied on words associated with medical processes (e.g., <i>amniotic, blood, fluid, placenta, complication</i>)</p> <p>Shifted to medical agenda (<i>fetal pain</i>).</p> <p>#1 and #2 most overused words relative to the corpora were <i>breast</i> and <i>cancer</i>, for example.</p>	<p>More holistically focused with words like <i>patient, care, experience, effective</i>.</p> <p>Describing the lives of patients who come to need care. Debunking reasons for abortion (e.g., <i>sterilization, contraceptive failure</i>).</p>

Government Amici

Roe / Doe	Offered uniquely particularized reasons (e.g., similar legislation and introducing CN precedent to the Court). Offered a role <i>because of</i> their geography.
Casey	One briefs from each position (of the 4 to restrict and 2 to expand) each had nominal effort at bi-partisan coalition
Dobbs	Reflects widescale laborious efforts to bring together large coalitions because of their view alignment (e.g., 896 State Legislators) <i>Restrict briefs: democratic process focus on legislature and legislator as well as elect, regulation, and legislation.</i> <i>Access briefs: focus on rule of law and stare decisis</i>

Contrasting Depictions of the Pregnant Person: Access v. Restrict Briefs

Social Actor	Access Briefs	Restrict Briefs
Pregnant Person	<p>Woman is the most common naming strategy.</p> <p>Favor whole <i>body</i>.</p> <p>Access brief collocates include <i>force</i> and <i>deny</i>, which constructs a (restriction of) right-based argument around <i>women</i></p>	<p>Favor <i>womb</i> and other atomistic references.</p> <p>Restrict brief collocates include <i>help</i>, <i>represent</i>, <i>elect</i>, and <i>hurt</i>. These focus on representation of a small subsection of privileged <i>women</i> (who are <i>elected</i> to office or <i>represented</i> in government)</p> <p>Minor trend toward construction of informally described medical care (i.e. <i>help</i>) and harms (i.e. <i>hurt</i>).</p>

Contrasting Depictions of the Fetus: Access v. Restrict Briefs

Social Actor	Access Briefs	Restrict Briefs
Fetus	<p>Fetus is largely absent</p> <p>When referenced, it is an object (declare, define, or give), or in references to prior jurisprudence</p>	<p>Favor terms for pre-birth beings (fetus, unborn, preborn) and post-birth beings (baby, child)</p> <p>Visceral accounts of medical procedures, indicating possible ineptitude, violence in the procedure, coopting criminological terminology.</p> <p><i>Child</i>, top modifiers include <i>unborn</i>, <i>preborn</i>, <i>innocent</i>, and <i>dead</i>; top modifiers for <i>baby</i> are <i>preborn</i>, <i>unborn</i>, <i>previsible</i>, <i>term</i>, <i>aborted</i>, <i>imperfect</i>, <i>innocent</i>, <i>small</i>, and <i>black</i></p> <p>Juxtaposition of these recognizable traits against modifiers of violence (<i>dead</i> in the case of <i>child</i>; <i>aborted</i> in the case of <i>baby</i>) is a powerful strategy of creating horror once personhood has been identified</p>

Contrasting Depictions of the Doctors

Access v. Restrict Briefs

Social Actor	Access Briefs	Restrict Briefs
Physician	<p>Preference for physician, doctor, provider.</p> <p>Modifiers of physician: licensed, allopathic, private, skilled, sympathetic, second, family, many, other.</p> <p>A positive semantic prosody; physician is educated, approachable, and numerous</p> <p>Shift over time from depictions as individual to entities.</p>	<p>Preference for abortionist, surgeon, clinic</p> <p>Modifiers of abortionist: back-alley, unskilled, inept, low-priced, backroom, quack, illegal, inexpensive, neighborhood, dangerous</p> <p>A 'bogeyman' actor who threatens pregnant people seeking abortions</p> <p>Shift over time from depictions as individual to entities.</p>

Absent Actors

Where did the women go?

- Very limited number of verbs with *woman* as subject (e.g. *suffer, undergo, seek, face, experience*)
- these lack material agency

Where did the doctors go?

- The appearance of the word **provider** increases dramatically over the term of our corpus: 5.81/million in Roe/Doe -> 127.67 in Casey -> 319.88 in Dobbs
- Almost always “abortion provider” and “healthcare provider”
- Intended as a synonym with *physician*
 - But abortion access briefs increasingly deviate over time from the clearer medical and health lenses of *obstetrician, gynecologist, physician, or doctor*, which situated the *physician* as a trusted decision-maker
 - Using *provider* runs counter to the previous pattern of medicalization
 - The *physician* had a positive semantic prosody established over decades which is substituted for a de-medicalized alternative.
- The **visible 'human' is omitted** and exchanged for an entity
- Contributes to a narrative of provision of goods and services (under capitalism) rather than medical care (which aligns more neatly with socialist values inscribed in discourses of vulnerability)

Fetal personification in restrict briefs dominates

Abortion Framing: Language Referring to Rights

ACCESS

- Accordingly, Justices of this Court have long acknowledged the fundamental *equality* principles that underlie the constitutional right to an abortion.
- The Constitution of the United States guarantees that citizens shall retain the liberty--that has come to be known as the "right of privacy"--to conduct their personal lives with *dignity* and without unwarranted State interference.
- Rather, the State seeks to override the personal right to control one's own body and *dignity* and make the choice—one of “the most intimate and personal choices a person may make in a lifetime.”

RESTRICT

- As it did in *Brown*, the Court should again review changes in facts and law in the almost 50 years since *Roe* in light of its constitutional duty to uphold human *dignity* and to treat human beings with *equality* under the law.
- These lies rob infants in the womb of their humanity, *dignity*, and divinely created existence.

Key Findings

Amicus engagement over time

- Ever greater number of briefs
- Proliferation of false 'bipartisan' briefs and medical/religious restrict briefs distorting interests
- Failure to provide use and bring perspective or value

Social actor representation

- Fetal personhood dominates despite not being before the Court; pregnant people are disempowered; physicians are demonized
- Overall, human actors are removed in favor of entities

Abortion as a right

- Risks framing were present on both sides, but these were mobilized differently
- Access briefs emphasized (intersectional) risks of unwanted pregnancy and burden of parenting
- Restrict briefs told the story of the risks of abortion, to argue to limit or remove abortion entirely