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The Rhetoric of Abortion in Amicus Briefs

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The Rhetoric of Abortion in Amicus Briefs

Jamie R. Abrams and Amanda Potts*

ABSTRACT

The amicus briefs filed in landmark abortion cases before the U.S. Supreme Court serve as a barometer revealing how various constituencies talk about abortion, women, fetuses, physicians, rights, and harms over time. This article conducts an interdisciplinary legal-linguistic study of the amicus briefs that were filed in the milestone abortion cases of Roe v. Wade, Doe v. Bolton, Planned Parenthood v. Casey, and Dobbs v. Jackson Women’s Health. As the first large-scale study of all amicus briefs submitted in these key cases, this article identifies the roles of amicus briefs, analyzes their rhetorical strategies, and describes how their authors engage with the Court. Using quantitative and qualitative methods, the study reveals how the discursive construction of the pregnant person, fetus, physician, and abortion as a right have evolved over fifty years and shows why these shifts matter. In so doing, this study offers historical perspectives into evolving arguments in abortion litigation, contemporaneous insights into the status of polarized abortion politics, and future implications for amicus activity and abortion advocacy.

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I. INTRODUCTION

The abortion right has been a highly contentious legal and social issue in the United States for over a half century. Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* overturning *Roe v. Wade*, the right to terminate a pregnancy is no longer protected by the United States Constitution.¹ Alongside these bookended landmark cases which established, and then overturned, the federal right to an abortion, accompanying discourses likewise shifted radically. These circumstances present a unique opportunity to study how the representation of abortion evolved over fifty years of amici advocacy, culminating in the removal of this long-established right. The results of this legal-linguistic study offer further insights for future advocacy.

Amicus curiae ('friend-of-the-court') briefs serve as a barometer measuring how a diverse range of interested stakeholders have defined and defended the abortion right over time. Amicus briefs are filed by people, groups, or organizations who have strong interests in the subject of a case but are not parties to or directly involved in the litigation. Modern amicus brief authors generally write to assert their own individual or organizational interests, which they perceive to be "potentially jeopardized by the litigation."² Studying changes in the makeup of amicus brief authors, as well as the rhetoric used in these briefs, provides vital insights regarding both the trajectory of the Court's jurisprudence and the strategic shifts in judicial advocacy surrounding reproductive rights.³

To examine these rhetorical strategies, this article conducts an interdisciplinary legal-linguistic study using Supreme Court amicus briefs filed in *Roe v. Wade* (and its companion case *Doe v. Bolton*),⁴ *Planned Parenthood v. Casey*,⁵ and *Dobbs v. Jackson Women's Health Organization*.⁶ This study applies corpus linguistics methods to reveal how the framing of abortion has shifted over the nearly fifty years spanning these landmark cases. Corpus linguistics is a field of research that uses computational and statistical methods to describe patterns in very large collections of naturally occurring language. Analyzing the texts both quantitatively and qualitatively, we reveal how the type and tenor of amicus briefs have changed over time.

¹ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

² Linda Sandstrom Simard, *An Empirical Study of Amici Curiae in Federal Court: A Fine Balance of Access, Efficiency, and Adversarialism*, 27 REV. LITIG. 669 (2008).

³ See generally ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* (2000).

⁴ *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs*, 597 U.S. 215 (2022); *Doe v. Bolton*, 410 U.S. 179 (1973), *abrogated by Dobbs*, 597 U.S. 215 (2022).

⁵ 505 U.S. 833 (1992).

⁶ 597 U.S. at 215.

This study specifically examines shifts in the discursive representation of the principal parties in abortion care and their respective relationships: the pregnant person, the fetus, the physician, and the framing of abortion as a right. It further examines diachronic changes across briefs, as well as differing rhetorical strategies across categories of amici authors (e.g., religious groups versus medical groups), and between briefs seeking to restrict versus expand abortion access. This study's findings offer historical insights into evolving arguments in abortion litigation, contemporaneous insights into the state of abortion politics, and future implications for amicus brief activity and abortion advocacy.

This study first concludes that who is writing the amicus brief has changed markedly over time, with more briefs filed overall and a greater number of authors contributing to the briefs, replicating broader trends before the Supreme Court. This expansion in amicus brief activity, as evidenced in the abortion cases studied here, has led to a conflation of amici signatory interests (for example, when medical authors layer on to religious briefs), and a dilution of arguments (e.g., Brief of 896 State Legislators⁷).

The substance of amicus arguments in abortion cases has also changed over the past fifty years. This study's findings reveal starkly different ways of framing the pregnant person, the fetus, the physician, and the rights at stake, according to the ideological position and the identity of the amicus author(s). These divergent rhetorical approaches, in turn, reveal different strategies for depicting these actors within society and situating these rights within the constitutional framework. Notably, this article concludes that, as a whole, amicus briefs (regardless of whether seeking to restrict or expand abortion access) present pregnant people as passive and lacking full agency.

The study further concludes that narratives of fetal personhood increasingly dominate the rhetorical framing of briefs seeking to restrict abortion access, even when that issue is not explicitly before the Court. The briefs seeking to expand abortion access do not counter these personhood arguments directly, which leaves them lacking narrative agents. Instead, vulnerable pregnant people engage in faceless, corporate processes in briefs supporting abortion access. By contrast, in briefs seeking to restrict abortion access, the fetal presence is allowed to dominate. Fetuses are personified and depicted as victims of the other social actors—pregnant people and “abortionists”—in restrict briefs. This is a strategy that briefs supporting abortion access do not sufficiently counter. The briefs seeking to expand abortion access began with bold and creative arguments but later retreated to defending the *status quo* by

⁷ Brief for 896 State Legislators as Amici Curiae in Support of Respondents, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4463137.

the time the Court heard *Dobbs*. This suggests that amici arguing for abortion access wrote hoping to appeal to the institutional instincts of the Court (or Justice Roberts specifically) in *Dobbs*, as opposed to trying to position the rights and parties boldly and favorably, or even just to preserve a stronger historical record of advocacy.

The article concludes with recommended directional shifts in amici strategies to present more concretized, nuanced, and forceful arguments. It proposes institutional reforms, namely: (1) to disaggregate multiple amici author categories to avoid distortions, and; (2) to ensure amici offer distinct perspectives rather than genericized ones.

Section II describes the study's guiding research questions. Sections III and IV frame the significance of amicus brief activity before the United States Supreme Court and the dispositive litigation regarding the constitutionality of abortion that frames this dataset. Section V outlines the research methodology and describes the data. Section VI presents quantitative and qualitative analyses and provides findings. Section VII outlines the implications of this scholarship.

II. THE OBJECTIVES OF THE LEGAL-LINGUISTIC STUDY

Over the past fifty years, amicus briefs have undergone changes not only in frequency,⁸ but in tone and usage. This article is the first to comprehensively study amicus briefs in key abortion cases before the Supreme Court of the United States. We analyzed the amicus briefs in full, over time, and across categories of authors.

Three guiding questions drove the study: (1) Who are the authors of amicus briefs in landmark abortion cases, and what purposes engage them? (2) How are the principal parties in abortion care discursively represented over time in the amicus briefs? (3) How is the abortion right rhetorically framed?

First, we examined the number of briefs filed in each case, compiled information about the positions and roles of amici (both stated and actual), and then analyzed language contained therein. For example, did authors write to propose novel arguments, to clarify ambiguities, or simply to be seen engaging with the Court for external audiences? We hypothesized that these purposes would be consistent over time.

Second, we analyzed the three social actors involved (the pregnant person, the fetus, and the physician) and their relationships to other social actors (e.g., patient-physician and pregnant person-fetus). This analysis included shifts in the type and tenor of amicus brief arguments over time.

Regarding the pregnant person, the study examined the rhetorical strategies that the authors used to define women in the briefs and how they

⁸ See generally Joseph D. Kearney & Thomas W. Merrill, *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 UNIV. PA. L. REV. 743, 744 (2000).

have changed over time. Were women depicted as vessels, as mothers-in-waiting, or as full political actors with agency and decision-making competency?⁹ If there was diachronic change in depictions of women, was it only in the briefs seeking to restrict abortion access? Did depictions differ based on the role of the amici authors? We hypothesized based on the trajectory of the court's writings in this area that the briefs seeking to restrict abortion access would essentialize pregnancy as a woman's highest—if not sole—calling and that the access briefs would fully emphasize the pregnant person as an autonomous being.¹⁰

This study also examined what characteristics defined the fetus. Was the fetus increasingly more personified or medicalized? How was it depicted in relation to the pregnant woman, the physician, and the state? We hypothesized that, over time, the legal pursuit of fetal personhood would become more emboldened over time in the briefs seeking to restrict abortion access, but it was unclear if representations would shift significantly in briefs seeking to expand abortion access, or if changes would be limited by role (e.g., religious, or medical).

This study additionally explored characterizations of physicians and medical providers over time. We hypothesized that abortion providers would become increasingly demonized in briefs seeking to restrict abortion access. We were less certain of how the briefs seeking to expand abortion access would depict physicians over time.

Finally, we analyzed the rhetorical framing of the abortion right itself. Which legal frames were frequently invoked in the corpus of amicus briefs: equality, freedom, privacy, liberty, dignity? How did occurrence and usage of legal frames differ between briefs seeking to expand versus restrict abortion access? We hypothesized that abortion would be

⁹ See generally Jamie R. Abrams, *The Illusion of Autonomy in Women's Medical Decision-Making*, 42 FLA. ST. U. L. REV. 17, 38 (2014) (describing how a fetal-focused decision-making framework perpetuates an illusion of autonomy for birthing women); Dara E. Purvis, *The Rules of Maternity*, 84 TENN. L. REV. 367, 370–72 (2017) (explaining the explicitly and implicitly governing “rules of maternity” and arguing that these rules must be changed to respect mothers’ autonomy); Maya Manian, *The Irrational Woman: Informed Consent and Abortion Decision-Making*, 16 DUKE J. GENDER L. & POL’Y 223, 228 (2009) (concluding that the “woman-protective rationale adopted in *Carhart* is likely to continue to undermine the equal treatment of women as healthcare decision-makers in the abortion context and beyond”); April L. Cherry, *Roe's Legacy: The Nonconsensual Medical Treatment of Pregnant Women and Implications for Female Citizenship*, 6 U. PA. J. CONST. L. 723, 724 (2004) (“Roe’s holding has in some ways led to the derogation of women’s choices, women’s autonomy, and consequently women’s citizenship.”).

¹⁰ See generally Lucy Williams, *Making a Mother: The Supreme Court and the Constitutive Rhetoric of Motherhood*, 102 N.C. L. REV. 395 (2024) (“And when it ignores the inherited language of motherhood, it implicitly suggests that women’s bodies and perspectives are irrelevant (or, at the very least, of secondary importance) to legal issues and analyses.”).

increasingly construed through a medical and health lens for *both* restrict briefs and access briefs, with restrict briefs especially focused on the medical frame of the fetus (e.g., fetal pain) and the psychological frame of the pregnant person (e.g., abortion regret). However, we were interested to discover whether medical and health framing in access briefs might have become a proxy for the legal privacy arguments before the Court.

While we approached this research as feminist scholars with strong interests in advancing abortion access, we strove to undertake an objective study of the amici, as explored further in the discussion of methodology in Section V below.

III. THE SUPREME COURT'S JURISPRUDENCE ON THE CONSTITUTIONALITY OF ABORTION

This section frames the interdisciplinary study with a brief overview of the Supreme Court's landmark cases considering the abortion right under the United States Constitution. The Supreme Court first considered the constitutionality of abortion in *Roe v. Wade*.¹¹ Before that time, states regulated abortion.¹² While the case was not published until 1973, it was first argued in 1971 (and later reargued), and thus many of the amicus briefs date back to 1971.¹³ The case considered the federal constitutionality of existing Texas statutory provisions that made it a crime to “procure an abortion” or attempt one unless to “sav[e] the life of the mother.”¹⁴ A pregnant woman, Jane Roe, and a physician who had previously been arrested for violating these statutes filed a claim seeking an injunction.¹⁵ Their legal arguments relied on *Griswold v. Connecticut*, which held that a fundamental right to privacy sat in the “penumbra” of rights emanating from the specific guarantees in the Bill of Rights.¹⁶

¹¹ *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by* *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

¹² *Id.* at 117–18.

¹³ Meilan Solly, *Who Was Norma McCorvey, the Woman Behind Roe v. Wade?*, SMITHSONIAN MAG. (June 24, 2022), <https://www.smithsonianmag.com/smart-news/who-was-norma-mccorvey-the-woman-behind-roe-v-wade-180980311/> [<https://perma.cc/H6LS-TEBA>] (explaining that two Supreme Court justices retired prior to opening arguments in 1971; however, Justice Blackmun suggested rearguing the case to a full bench and thus, the case was reargued in October 1972); *see* Transcript of Oral Argument at 1–3, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18).

¹⁴ *Roe*, 410 U.S. at 117–18.

¹⁵ *Id.* at 120–22.

¹⁶ *Griswold v. Connecticut*, 381 U.S. 478, 483 (1965). In his concurring opinion, Justice Goldberg found the right to privacy in the 9th Amendment. *Id.* at 487 (Goldberg, J., concurring). Justice Harlan located the right to privacy in the 14th Amendment's clause ensuring that no one be deprived of liberty without due process. *Id.* at 500 (Harlan, J., concurring).

The Court considered three possible state interests that Texas had in enacting this legislation. The first—that these laws were to “discourage illicit sexual conduct”—was quickly discarded.¹⁷ The remaining two justifications were the state’s interest in protecting the health of the pregnant woman undergoing a medical procedure and the state’s interest in “protecting potential prenatal life.”¹⁸ The Court accepted these two justifications for state regulation, but then moved on to consider the timing of when the State’s interests became important enough to regulate.¹⁹

The Court concluded that the right of privacy—recognized in *Griswold*—was founded “in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action.”²⁰ This shifted the constitutional source of the right to privacy from the aforementioned “penumbra of rights” to the Fourteenth Amendment.²¹ The Court recognized the right to privacy as a fundamental right, but it also noted that this right was not absolute.²² The Court considered the competing arguments as to when the state’s interest in potential prenatal life became compelling.²³ The State argued that this right should begin at conception.²⁴ The Court held, however, that “person” as used in the United States Constitution was not consistent with the State’s fetal personhood arguments.²⁵ The Court held that it did not have to “resolve the difficult question of when life begin[s] . . . [w]hen those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus.”²⁶ According to *Roe*, the state’s compelling interest in regulating potential prenatal life began at viability, the point at which the fetus is capable of life outside the womb.²⁷

The Court set out what came to be known as the trimester framework. The State’s interest in the “health of the mother” became compelling at the end of the first trimester when “mortality in abortion may be less than mortality in childbirth.”²⁸ The Court framed abortion as a “medical decision” to be made in consultation with a physician.²⁹ It was not a

¹⁷ *Roe*, 410 U.S. at 148.

¹⁸ *Id.* at 148–50.

¹⁹ *Id.* at 153–54.

²⁰ *Id.* at 153.

²¹ *Id.*

²² *Id.* at 154.

²³ *Id.* at 155–56.

²⁴ *Id.* at 148, 159.

²⁵ *Id.* at 157–58.

²⁶ *Id.* at 159.

²⁷ *Id.* at 163.

²⁸ *Id.*

²⁹ *Id.* at 166.

woman's right to choose alone; this point was heavily critiqued in subsequent feminist scholarship.³⁰

The Court also decided *Doe v. Bolton* in 1973, after it held arguments in 1971.³¹ *Doe* involved a challenge to Georgia statutes criminalizing abortion.³² The statutes differed from those in Texas because they allowed an abortion when a physician's "best clinical judgment" concluded that "an abortion [was] necessary" if "continuation of the pregnancy would endanger the life of the pregnant women or would seriously and permanently injure her health" as well as providing exceptions for grave fetal defects and forcible or statutory rape.³³ Responding to a vagueness challenge, the Court held that "medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient."³⁴ The Court held that these health factors were all necessary to allow the physician to exercise their best medical judgment for the "benefit, not the disadvantage, of the pregnant woman."³⁵

Planned Parenthood v. Casey was then argued and decided in 1992.³⁶ It considered a number of Pennsylvania abortion regulations regarding informed consent requirements (in general and for minors), spousal notification requirements for married women, and other reporting requirements.³⁷ The case also involved a facial challenge to the statute brought by physicians seeking to enjoin enforcement, compared to an as-applied challenge to a particular plaintiff or group of plaintiffs.³⁸ The Court reaffirmed what it called the "essential holding" of *Roe v. Wade*.³⁹ It described the *Roe* holding as having three parts: (1) the woman's right to choose to terminate a pregnancy without "undue interference" from the state before viability; (2) the state's power to restrict abortions after fetal viability (with exceptions for the life and health of the woman); and, (3) the state's interest from the outset in both the "health of the woman and

³⁰ See generally Mary Ziegler, *Beyond Backlash: Legal History, Polarization, and Roe v. Wade*, 71 WASH. & LEE L. REV. 969 (2014); Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375 (1985); Linda L. Berger, Kathryn M. Stanchi, & Bridget J. Crawford, *Rewriting Judicial Opinions and the Feminist Scholarly Project*, 94 NOTRE DAME L. REV. ONLINE 1 (2018) (Symposium).

³¹ 410 U.S. 179 (1973), *abrogated by* *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

³² *Id.* at 181.

³³ *Id.* at 183–84.

³⁴ *Id.* at 192.

³⁵ *Id.* at 192–93.

³⁶ 505 U.S. 833 (1992).

³⁷ *Id.* at 844.

³⁸ *Id.* at 845.

³⁹ *Id.* at 846.

the life of the fetus.”⁴⁰ The court reasoned, “[t]hese matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.”⁴¹

The *Casey* Court declared that its holding remained consistent with *Roe*’s holding as *stare decisis* demanded.⁴² It rejected the trimester framework, which it “[did] not consider to be part of the essential holding of *Roe*.”⁴³ The Court held that, instead, an “undue burden” standard governed, “defined as having the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”⁴⁴ The Court upheld the general informed consent requirements but struck down the spousal notification requirement, which it concluded placed a substantial obstacle in the way of a woman’s decision, particularly where domestic violence was involved.⁴⁵

The Supreme Court overturned fifty years of precedent in *Roe* and *Casey* when it decided *Dobbs v. Jackson Women’s Health Organization* in June of 2022.⁴⁶ Justice Alito, writing for the majority, considered a Mississippi statute banning abortion after the fifteenth week of pregnancy, which constituted an abortion ban before the viability line that had guided the country since the *Casey* era.⁴⁷ While the question before the Court was limited to pre-viability abortion restrictions, the Court took Mississippi’s invitation to overrule *Roe* and *Casey*.⁴⁸ The Court held that the right to abortion is not “deeply rooted in this nation’s history and tradition” or “implicit in the concept of ordered liberty” and therefore the Constitution did not compel any heightened review of abortion restrictions.⁴⁹ This decision gave states the power to regulate abortion wholesale, and allowed them to even ban it entirely.

Regarding *stare decisis*, the Court concluded:

Roe was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a

⁴⁰ *Id.*

⁴¹ *Id.* at 851.

⁴² *Id.* at 861.

⁴³ *Id.* at 873.

⁴⁴ *Id.* at 877.

⁴⁵ *Id.* at 890–95.

⁴⁶ 597 U.S. 215 (2022).

⁴⁷ *Id.* at 230.

⁴⁸ *Id.* at 231.

⁴⁹ *Id.*

national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division.⁵⁰

The majority stated that it was “return[ing] the issue of abortion to the people’s elected representatives” to be decided in state legislatures.⁵¹

Justice Thomas concurred and flagged other rights that are similarly sourced from the right to privacy, such as the right to contraception and the right to same-sex marriage, which he believed were also “demonstrably erroneous.”⁵² Justice Kavanaugh further concurred, reasoning that the Court was not taking sides on the “policy or morality of abortion,” but rather that the Constitution is “neutral and leaves the issue for the people and their elected representatives to resolve through the democratic process in the State or Congress.”⁵³ Justice Roberts concurred, stating that he would have limited the question before the Court only to Mississippi’s pre-viability abortion ban, which he concluded was more consistent with principles of judicial restraint.⁵⁴ Finally, the dissenting opinion, authored by Justice Kagan, would have retained the rules set out in *Roe* and *Casey*.⁵⁵ Justice Kagan predicted sweeping harms for pregnant people following the Court’s abrogation of this precedent.⁵⁶ These cases—*Roe*, *Doe*, *Casey*, and *Dobbs*—comprise the scope of this interdisciplinary study.

IV. THE SIGNIFICANCE OF AMICUS BRIEFS TO SUPREME COURT ABORTION LITIGATION

A. *Amici* Activity Generally

Amicus briefs are submissions provided by individuals or entities that are not named litigants in the case before the court.⁵⁷ The authors are,

⁵⁰ *Id.* at 231–32.

⁵¹ *Id.* at 232.

⁵² *Id.* at 332 (Thomas, J., concurring) (noting that these issues were not before the Court in *Dobbs* but inviting future cases).

⁵³ *Id.* at 338–39 (Kavanaugh, J., concurring) (“Some *amicus* briefs argue that the Court today should not only overrule *Roe* and return to a position of judicial neutrality on abortion, but should go further and hold that the Constitution *outlaws* abortion throughout the United States. No Justice of this Court has ever advanced that position. I respect those who advocate for that position, just as I respect those who argue that this Court should hold that the Constitution legalizes pre-viability abortion throughout the United States. But both positions are wrong as a constitutional matter, in my view. The Constitution neither outlaws abortion nor legalizes abortion.”).

⁵⁴ *Id.* at 348–49 (Roberts, C.J., concurring).

⁵⁵ *Id.* at 359–60 (Kagan, J., dissenting).

⁵⁶ *Id.* at 364.

⁵⁷ SUP. CT. R. 37.1-2.

instead, interested stakeholders who want to weigh in on the litigation by sharing their experience or expertise or by advocating for a position to protect their interests. Amicus authors may also have other motives, such as showing their own constituencies that they are engaged in the matters, generating favorable public opinion, or influencing the long-term trajectory of the issues.⁵⁸

The Supreme Court accepts amicus briefs both while the case is being considered for a *writ of certiorari* and also while the parties are arguing the case on the merits.⁵⁹ Amicus authors need a counsel of record signatory who is admitted to practice before the Supreme Court.⁶⁰ Occasionally, the Court can also solicit the participation of amicus brief authors, such as the Solicitor General of the United States.⁶¹

While technical requirements govern the length and formatting of the briefs, the Court does not limit the substance or relevance. This reflects an “open door policy” of the Court toward amicus briefs.⁶² To avoid burdening the Court, it does, however, explicitly prefer briefs that bring relevant matters forward that are not already presented by the parties.⁶³ Historically, amicus briefs were at their greatest influence when filling in knowledge gaps for the Court.⁶⁴ Such relevant information might be legal or factual, with perhaps the factual information playing the most useful role.⁶⁵

The relationship of amicus briefs to the Court has changed over time, however. Historically, amici authors were much more likely to orally recite the law to the Court and to appear as lawyers, not as representatives of organizations.⁶⁶ This made the “friend of court” role much more of a professional relationship between lawyers and the Court.⁶⁷ Today, briefs are more often attributed to organizations and interest groups, which has changed the role of the amici from “a neutral, amorphous embodiment of

⁵⁸ See, e.g., Donald R. Songer & Reginald S. Sheehan, *Interest Group Success in the Courts: Amicus Participation*, 46 POL. RSCH. Q. 339, 351–52 (1993); Kearney & Merrill, *supra* note 8, at 824–25.

⁵⁹ SUP. CT. R. 37.2(a), 37.3(a).

⁶⁰ *Id.* at 37.1.

⁶¹ Samuel Krislov, *The Amicus Curiae Brief: From Friendship to Advocacy*, 72 YALE L. J. 694, 717 (1963).

⁶² Kearney & Merrill, *supra* note 8, at 761–67.

⁶³ SUP. CT. R. 37.1; James F. Spriggs, II & Paul J. Wahlbeck, *Amicus Curiae and the Role of Information at the Supreme Court*, 50 POL. RSCH. Q. 365, 366–67 (1997).

⁶⁴ Allison Orr Larsen, *The Trouble with Amicus Facts*, 100 VA. L. REV. 1757, 1760–61 (2014).

⁶⁵ *Id.* at 1761.

⁶⁶ Krislov, *supra* note 61, at 703.

⁶⁷ *Id.*

justice” into “an active participant in the interest group struggle.”⁶⁸ The modern Court now treats amici as “a potential litigant in future cases, as an ally of one of the parties, or as the representative of an interest not otherwise represented.”⁶⁹ Thus, amici play a more tactical role in the modern case,⁷⁰ with “targeted amicus briefs authored by motivated interest groups, often coordinated by the parties, and submitted by well-organized and well-funded players.”⁷¹

Historically, amicus briefs were a relatively rare genre, filed in just about ten percent of cases before the Court.⁷² Now, there is rarely a case before the Court *without* amicus briefs. The number of amicus briefs submitted in cases is also dramatically increasing over time, particularly in highly controversial cases such as those studied here.⁷³ Scholars and the Bench all hold widely diverging perspectives on whether this increase in amicus brief activity affects the outcomes of cases before the Court or whether it is more something of an ‘arms-race’ as sides compete to accumulate more briefs.⁷⁴

Professor Allison Orr Larsen’s article, *The Trouble With Amicus Facts*, concludes that the most influential type of modern amicus brief is one adding new facts to the record.⁷⁵ Larsen cites, for example, Justice Kennedy’s reliance in *Gonzales v. Carhart* on a brief asserting that women suffer psychological harms after abortion, even though that subject area was not before the lower courts and was not one of Congress’s reasons for regulating abortion.⁷⁶ Studying cases from the 2012-2013 term, Larsen finds that 61 of the 79 cases included amicus briefs that added to the Court’s factual understanding of the case.⁷⁷ Larsen contests whether supposed fact-centered briefs actually improve outcomes, and instead concludes that these briefs were more often citing unreliable claims, claims that could not be verified, or studies prepared for the litigation

⁶⁸ *Id.*

⁶⁹ *Id.* at 704.

⁷⁰ *Id.*

⁷¹ Larsen, *supra* note 64, at 1763; *see also* MORGAN L.W. HAZELTON AND RACHEL K. HINKLE, *PERSUADING THE SUPREME COURT: THE SIGNIFICANCE OF BRIEFS IN JUDICIAL DECISION-MAKING*, 96-98 (2022) (describing how amici authors coordinate with party counsel in increasingly more strategic and purposeful ways).

⁷² Kearney & Merrill, *supra* note 8, at 744.

⁷³ *See generally id.* at 753–55 (describing this historic shift as a “rising tide” and noting the voluminous filings in abortion cases specifically).

⁷⁴ *See, e.g., id.* at 745–47, 824–25 (noting that some consider amicus briefs a nuisance, others consider them burdensome, and some consider them as too entirely self-interested to be useful); *see also* Allison Orr Larsen & Neil Devine, *The Amicus Machine*, 102 VA. L. REV. 1901 (2016).

⁷⁵ *See generally* Larsen, *supra* note 64.

⁷⁶ *Id.* at 1773.

⁷⁷ *Id.* at 1761–63.

distinctly.⁷⁸ Moreover, Larsen notes, the claims were not cross-examined or vetted for reliability.⁷⁹

Prior scholarship further shows that the Court is most likely to cite amicus briefs filed by the federal government,⁸⁰ and that justices are more likely to incorporate language from an amicus brief that reflects their own ideological position.⁸¹ Generally, the more amicus briefs filed in a case, the less likely justices are to rely on language from any one brief.⁸² Further, the more language that the justices use from non-legal sources (e.g., historical or sociological context), the more likely the justices are to also borrow from amicus briefs on those same points.⁸³ The next section considers how these general trends align with the Court's engagement with amicus briefs in these abortion cases.

B. Court Reliance on Amicus Briefs in the Studied Cases

This section situates the Court's interaction with the amicus briefs in *Roe*, *Doe*, *Casey*, and *Dobbs*. The way the Court engaged with amicus briefs in the abortion cases covered by this study changed over time, echoing the general conclusions presented in Section IV.A.

In *Roe*, the Court made balanced references to amicus briefs solely on the question of when life began—the question that the Court declined to answer. The majority cited a brief by the National Right to Life Committee suggesting that some would like life to begin at conception and noting that this view was also the official view of the Catholic Church.⁸⁴ On the other hand, the Court also made a general reference to “[a]ppellants and various amici” for their position that abortion in the first trimester was safer than childbirth.⁸⁵ It referenced the position of “appellant and some amici” that women could terminate their pregnancy at any time without

⁷⁸ *Id.* at 1764–65 (noting that “[n]owhere outside the Supreme Court do we see this widespread eleventh-hour supplementation of the factual record from sources that are not subject to cross-examination or other checks on reliability”).

⁷⁹ *Id.*; see also David DeMatteo & Kellie Wiltsie, *When Amicus Curiae are Inimicus Curiae Briefs: Amicus Curiae Briefs and the Bypassing of Admissibility Standards*, 72 AM. U. L. REV. 1871, 1879 (2023) (describing how “the inclusion of unchecked and potentially biased, inaccurate, or mischaracterized expert information in *amicus curiae* briefs raises concerns about the Supreme Court’s continued reliance on these briefs when deciding whether to accept a case for review or when deciding the merits of the case”).

⁸⁰ Paul M. Collins Jr. et al., *The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content*, 49 LAW & SOC’Y REV. 917, 931 (2015).

⁸¹ *Id.* at 935–36.

⁸² *Id.* at 935, 937.

⁸³ *Id.*

⁸⁴ *Roe v. Wade*, 410 U.S. 113, 150 n.45, 161 (1973), *overruled by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

⁸⁵ *Id.* at 149.

limits.⁸⁶ The majority opinion engaged equally with briefs supporting abortion access and abortion restriction. It stated the positions objectively and then used the conflicting opinions to conclude that there was no consensus on when life began.⁸⁷ The concurrence and dissents did not engage with the amicus briefs at all.⁸⁸

In *Doe*, the Court made similar use of the amicus briefs.⁸⁹ The majority in *Doe* cited the brief of the American College of Obstetricians and Gynecologists arguing that the state improperly interfered with the “practice of their profession.”⁹⁰ The Court also referenced “[a]ppellants and various amici” for the proposition that many facilities other than hospitals were adequate to perform abortions.⁹¹ These usages of amicus briefs were balanced, and they advanced the Court’s understanding of the case before it. Notably, both *Roe* and *Doe* referred to the party and the amici in tandem, a point which is explored below.

In the opening paragraph of *Casey*, the Court engaged directly with the amicus brief filed by the United States, noting that this case was the sixth one before the Court in which the United States sought to overrule *Roe*.⁹² That was the only reference to amicus briefs in the joint opinion authored by Justice O’Connor.⁹³ In the dissent, Justice Scalia also gestured to the amicus briefs filed in *Roe* and the ten cases between *Roe* and *Casey* as a persuasive tool to discredit the Court’s prior holdings.⁹⁴ He critically stated that the “best the Court can do to explain how it [was] that the word ‘liberty’ *must* be thought to include the right to destroy human fetuses [was] to rattle off a collection of adjectives that simply decorate a value judgment and conceal a political choice.”⁹⁵ The thirty-four amicus briefs filed in the case go otherwise unaddressed in the Court’s analysis.

The Court’s usage of amicus briefs in *Dobbs* was distinctly different from the usage in *Roe/Doe* and *Casey* and from standard Court practices. First, four times in the majority opinion, Justice Alito referenced

⁸⁶ *Id.* at 153.

⁸⁷ *Id.* at 160.

⁸⁸ *Id.* at 167–71 (Stewart, J., concurring); *id.* at 171–78 (Rehnquist, J., dissenting).

⁸⁹ *Doe v. Bolton*, 410 U.S. 179 (1973), *abrogated by* *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

⁹⁰ *Id.* at 193 n.13; *see also* Brief of the American College of Obstetricians and Gynecologists et al. at 10, *Doe v. Bolton*, 410 U.S. 179 (1973) (No. 70-18).

⁹¹ *Doe*, 410 U.S. at 195.

⁹² *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 844 (1992).

⁹³ *Id.*

⁹⁴ *Id.* at 983.

⁹⁵ *Id.*

“respondents’ *amici*” or “respondents and their *amici*.”⁹⁶ The *Roe* and *Doe* Courts had similarly aligned party and amici, and scholars have noted this rhetorical phrasing as quite common.⁹⁷ By contrast, however, Justice Alito’s opinion yielded no references to “petitioners’ amici” in similarly possessive and interconnected terms, even though petitioners submitted 85 amicus briefs to respondents’ 50 briefs.⁹⁸

Amicus brief authors, by definition, are not parties to the case and are not formally working with the parties to the case. Rather, they are writing in support of *their* stated interests. Thus, Justice Alito’s references to the amici in tandem with the party (for example, “Respondents and their *amici* have no persuasive answer to this historical evidence”⁹⁹) challenged the independence of the perspectives and expertise that the amici brought to the Court. This language also undercut the credibility and standing of the *Respondents* as a party before the Court. It suggested that Mississippi was an independent party asserting its interests free of influence, while Jackson Women’s Health Organization was writing in conjunction with amici.

Having implicitly undermined the independence of amici authors and Respondents both, Justice Alito next dismissed wholesale the perspective of the amicus briefs and tried to frame these briefs as containing holes or concessions:¹⁰⁰

- Not only are respondents and their *amici* unable to show that a constitutional right to abortion was established when the Fourteenth Amendment was adopted, but they have found no support for the existence of an abortion right that predates the latter part of the 20th century—no state constitutional provision, no statute, no judicial decision, no learned treatise.¹⁰¹

⁹⁶ *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 236, 251 (2022) (stating “Respondents *amici*”). *Id.* at 250–51 (stating “Respondents and their *amici*”).

⁹⁷ Kearney & Merrill, *supra* note 8, at 759 (noting that this aggregation compromises the ability to study the influence of *amici* on the Court).

⁹⁸ *See Dobbs*, 142 U.S. at 296.

⁹⁹ *Id.* at 250 (referring to the Court’s finding that abortion has been criminalized throughout our Nation’s history “from the earliest days of the common law until 1973”).

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 251 (collecting cases decided between 1970 and 1973); C. Means, *The Phoenix of Abortional Freedom: Is a Penumbra or Ninth-Amendment Right About To Arise From the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty?*, 17 N.Y.L.F. 335, 337–39 (1971) (Means II); C. Means, *The Law of New York Concerning Abortion and the Status of the Foetus, 1664–1968: A Case of Cessation of Constitutionality*, 14 N.Y.L.F. 411 (1968) (Means I); Roy Lucas,

- Neither *Roe* nor *Casey* saw fit to invoke [the Equal Protection Clause] theory, and it is squarely foreclosed by our precedents, which establish that a State’s regulation of abortion is not a sex-based classification and is thus not subject to the “heightened scrutiny” that applies to such classifications. [Responding to an Amicus Brief of Equal Protection Constitutional Law Scholars.]¹⁰²
- A few of respondents’ *amici* muster historical arguments, but they are very weak. The Solicitor General repeats *Roe*’s claim that it is “‘doubtful’ . . . ‘abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.’”¹⁰³
- The *amicus* brief for the American Historical Association asserts that only twenty-six states prohibited abortion at all stages, but that brief incorrectly excludes West Virginia and Nebraska from its count.¹⁰⁴

The only affirmative references to amicus briefs seeking to restrict abortion access—thus ideologically supporting the majority—involved seemingly untethered gestures to race and gender. First, Justice Alito referenced a brief arguing that abortion access was “motivated by a desire to suppress the size of the African-American population.”¹⁰⁵ Justice Alito mentioned this brief, yet he quickly distanced the Court from that view and said the Court is not raising these questions.¹⁰⁶ Second, Justice Alito mentioned that briefs “about the effects of the abortion right on the lives of women” were “impassioned and conflicting” and briefs about “the status of the fetus” were “conflicting.”¹⁰⁷ Indeed, arguments presented

Federal Constitutional Limitations on the Enforcement and Administration of State Abortion Statutes, 46 N.C. L. REV. 730 (1968).

¹⁰² *Dobbs*, 597 U.S. at 236.

¹⁰³ *Id.* at 251.

¹⁰⁴ *Id.* at 248 n.34.

¹⁰⁵ *Id.* at 255 n.41.

¹⁰⁶ *See id.* (referencing the Brief for Amici Curiae African-American Organizations et al. Supporting Petitioners at *14–21, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 236, 251 (2022) (No. 19-1392), 2021 WL 3192497; *see also* *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1790 (2019) (Thomas, J., concurring); *see, e.g.*, Katherine Kortsmitt, PhD, et al., *Abortion Surveillance*, CTR. FOR DISEASE CONTROL & PREVENTION, (Nov. 25, 2021), <https://www.cdc.gov/mmwr/volumes/71/ss/ss7110a1.htm> [<https://perma.cc/286D-UZ65>] (at Table 6).

¹⁰⁷ *Dobbs*, 142 U.S. at 221.

within *all* amicus briefs before the Supreme Court may be considered “conflicting” by nature, which makes myopic references regarding race, gender, and fetal personhood perplexing.¹⁰⁸

Justice Alito similarly mentioned that the “exact meaning of ‘quickening’ [was] subject to some debate,” and thus “we need not wade into this debate.”¹⁰⁹ Yet, the relevance of ‘quickening,’ the point at which a woman could perceive her pregnancy, was not relevant to the Court’s analysis of Mississippi’s pre-viability abortion; rather, it was relevant to the historical line that the common law applied.

The lack of citations or references to ideologically aligned amicus briefs was especially noteworthy, because Justice Alito condemned his concurring colleagues for *not* citing amicus briefs.¹¹⁰ Justice Alito wrote:

What is more, the concurrence has not identified any of the more than 130 *amicus* briefs filed in this case that advocated its approach. The concurrence would do exactly what it criticizes *Roe* for doing: pulling ‘out of thin air’ a test that ‘[n]o party or *amicus* asked the Court to adopt.’¹¹¹

Justice Alito, after not citing any amicus briefs supporting his argument affirmatively, then curiously disparaged an unnamed colleague for not

¹⁰⁸ *Id.* (“The contending sides also make conflicting arguments about the status of the fetus. This Court has neither the authority nor the expertise to adjudicate those disputes, and the *Casey* plurality’s speculations and weighing of the relative importance of the fetus and mother represent a departure from the ‘original constitutional proposition’ that ‘courts do not substitute their social and economic beliefs for the judgment of legislative bodies.’” (quoting *Ferguson v. Skrupa*, 372 U.S. 726, 729–30 (1963)); *compare* Brief for Petitioners at *34–36, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), *with* Brief for Respondents at *36–41, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392); *compare* Brief for 240 Women Scholars et al. at *13–20, *29–41, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), *with* Brief for Respondents at *36–41, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392); *see also* Brief of Amici Curiae National Women’s Law Center et al. at *15–32, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392).

¹⁰⁹ *Dobbs*, 142 U.S. at 242 n.24 (“The exact meaning of ‘quickening’ is subject to some debate. . . . [w]e need not wade into this debate.”); *compare* Brief of Amici Curiae Scholars of Juris. et al. at *13–14, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392) (“a quick child” meant simply a “live” child, and under the era’s outdated knowledge of embryology, a fetus was thought to become “quick” at around the sixth week of pregnancy), *with* Brief for Amici Curiae American Historical Association et al. at *7 n.2, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392) (“quick” and “quickening” consistently meant “the woman’s perception of fetal movement”).

¹¹⁰ *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 296 (2022).

¹¹¹ *Id.*

citing an amicus brief as support. It was unclear to whom he was referring: Justice Thomas (arguing that other substantive due process rights were erroneously decided), Justice Kavanaugh (positioning the constitution as neutral on abortion), or Justice Roberts (arguing for judicial restraint).¹¹² Yet, the majority did not engage with the briefs that supported the majority holding.

Justice Alito's usage of amicus briefs was in discord with traditional reliance on aligned amicus briefs. Generally, "justices systematically incorporate language from amicus briefs into the Court's majority opinions based on their perceptions as to whether those briefs will enhance their ability to make effective law and policy."¹¹³ In *Dobbs*, Justice Alito disdainfully incorporated opposing amicus briefs instead of supportively citing aligning ones to craft his argument. Perhaps this was for fear of being affiliated with certain religiously framed arguments, which would create Establishment Clause concerns for the Court's analysis. This technique plausibly reinforces the notion that Justice Alito's opinion was an exercise in raw political power more than reasoned and supported judicial analysis, as the dissent asserted.¹¹⁴

The dissent in *Dobbs* used the amicus briefs in ways consistent with traditional usages of amicus briefs in Supreme Court jurisprudence.¹¹⁵ The dissent only cited briefs in support of its position to expand abortion access and to supplement its argument with content and context that it would not have had otherwise. It cited supportive amicus briefs describing the lack of pregnancy discrimination protections or paid leave for women in

¹¹² See *supra* text accompanying notes 52–54.

¹¹³ Collins Jr. et al., *supra* note 80, at 938.

¹¹⁴ See, e.g., Sheldon Whitehouse, *The Scheme Speech # 14: The Attack on Roe*, SHELDON WHITEHOUSE (May 10, 2022), <https://www.whitehouse.senate.gov/news/speeches/the-scheme-speech-14-the-attack-on-roe-> [<https://perma.cc/D2KX-RXFA>]. See generally Alissa Rubin Gomez, *The Feminist-Neutrality Paradox*, 127 DICK. L. REV. 673, 689 (2023) ("While *Dobbs* exposed in dramatic fashion the lack of neutrality and the selective use of stare decisis in judicial decision-making, the question for feminists becomes whether to follow suit and engage in outwardly unapologetic feminist judging, or whether instead to insist on neutrality and adherence to precedent to maintain some semblance of institutional legitimacy.").

¹¹⁵ See Collins Jr. et al., *supra* note 80 (illustrating the ways in which *amicus* briefs are often incorporated into Supreme Court decisions, such as the borrowing of language and data primarily when it supports the majority's holding).

Mississippi,¹¹⁶ the comparative state of abortion access internationally,¹¹⁷ and the lack of effective and accessible contraceptives.¹¹⁸ The dissent accordingly aligned directly with the Court's traditional uses of amicus briefs:¹¹⁹ to make persuasive arguments for a certain constitutional or statutory approach to analysis—including the reconciling of precedent—as well as to provide additional information, such as economic, legal, and policy implications of the decision.

Sections III and IV have situated Supreme Court amicus briefs in the context of the fifty-year swing between *Roe* and *Dobbs*. These sections revealed some broader trends in the volume and type of amicus activity. While affected by these overall trends, the abortion amicus briefs were unique even in this group, when considering their usage by the Court. This indicates that amicus briefs are a rich ground to consider the discursive construction of abortion, both from social and legal perspectives.

V. RESEARCH METHODOLOGY AND DATA DESCRIPTION

A. The Methods

This article deploys methods from corpus-assisted discourse studies (“CADS”) to guide our analyses of language of the law. Corpus linguistics is the study of language forms or functions relying upon quantitative analysis of computer-readable corpora (large ‘bodies’ of texts) usually containing millions or billions of words. The CADS approach focuses on the communicative (rather than, for instance, grammatical) properties of language, taking into account socio-historical context.

The aim of taking a corpus-based or a CADS approach “is the uncovering, in the discourse type under study, of what we might call *non-*

¹¹⁶ *Dobbs*, 597 U.S. at 398 (Breyer, J., dissenting) (“[Mississippi] neither bans pregnancy discrimination nor requires provision of paid parental leave.” (first citing Brief of Amicus Curiae Yale Law School Information Society Project in Support of Respondents at *13; and then Brief of Amici Curiae National Women’s Law Center et al. at 32) (“It has strict eligibility requirements for Medicaid and nutrition assistance, leaving many women and families without basic medical care or enough food.”) (citing Brief of Amici Curiae for 547 Deans, Chairs, Scholars and Public Health Pro.’s, et al. at *32–34.)).

¹¹⁷ *Id.* at 400 (“A number of countries, including New Zealand, the Netherlands, and Iceland, permit abortions up to a roughly similar time as *Roe* and *Casey* set. . . . Most Western European countries impose restrictions on abortion after 12 to 14 weeks, but they often have liberal exceptions to those time limits, including to prevent harm to a woman’s physical or mental health.) (citing Brief of International and Comparative Legal Scholars as Amici Curiae in Support of Respondents, at *18–22; Brief of European Law Professors as Amici Curiae in Support of Respondents, at *16–17)).

¹¹⁸ *Id.* at 406.

¹¹⁹ See Collins Jr. et al., *supra* note 80, at 920–22.

obvious meaning, that is, meaning which might not be readily available to naked-eye perusal.”¹²⁰ In this work, we consider discourse as “language in use,”¹²¹ a collection of “practices that systematically form the objects of which they speak.”¹²² Therefore, discursive choices (e.g., selecting *fetus* versus *baby* to refer to the same being) are meaningful and ideologically driven.

Corpus linguistics enables more objective analysis by providing methods which uncover meanings that may run counter to intuition. A CADS approach can help counter author bias, such as our self-disclosed feminist perspectives. Indeed, the “key advantage of corpus linguistics over other forms of analysis is that the computational procedures are thought to remove human cognitive, social, or political biases which may skew analysis in certain directions or even lead to faulty conclusions.”¹²³ We reviewed all findings with equal attention, using the processes detailed below.

Even the most fundamental methods from corpus linguistics are incredibly timesaving: it is nearly instantaneous to search for all instances of a word or phrase of interest and display these in their immediate context (known as concordance lines). We are also able to generate wordlists of all items in a given corpus, and to restrict these by part-of-speech, minimum frequency, and so on. There are also two important corpus linguistic methods that make use of statistical measures: keyness and collocation. When corpora have millions or billions of words, wordlists may run into the tens of thousands in length. We can compare these wordlists by generating keywords, a method which compares the wordlists of two corpora (or two subsections of a single corpus, called subcorpora) to one another. By calculating the frequency of a word/phrase in each corpus or subcorpus and taking the overall number of words into account, we derive a ‘keyness measure’ and can confidently determine significant overuse or underuse in a respective data set.¹²⁴ Any of these methods—frequency, concordance, keyness—might indicate words/phrases to analyze further. To gain an overview of an item’s ‘behavior’ in the corpus, we perform collocation analysis. Collocation is the co-occurrence of two

¹²⁰ ALAN PARTINGTON ET AL., PATTERNS AND MEANINGS IN DISCOURSE THEORY AND PRACTICE IN CORPUS-ASSISTED DISCOURSE STUDIES (CADS) 11 (John Benjamins Publ’g Co. ed., 2013).

¹²¹ GILLIAN BROWN & GEORGE YULE, DISCOURSE ANALYSIS 1 (Cambridge Univ. Press ed., 1983).

¹²² MICHEL FOUCAULT, THE ARCHAEOLOGY OF KNOWLEDGE 49 (A.M. Sheridan trans., Tavistock Publ’n Ltd. ed., 1972).

¹²³ TRIANGULATING METHODOLOGICAL APPROACHES IN CORPUS-LINGUISTIC RESEARCH 2 (Paul Baker & Jesse Egbert eds., Routledge 2016).

¹²⁴ Paul Rayson & Amanda Potts, *Analysing Keyword Lists*, in A PRACTICAL HANDBOOK OF CORPUS LINGUISTICS, 119–39 (Magali Paquot & Stefan Th. Gries eds., 2021).

items that occur in proximity to one another (often, but not necessarily, adjacently) in a corpus, with higher frequency than they appear with other items.¹²⁵ These frequently co-occurring items are called collocates. CADS scholars commonly agree that collocates are a crucial component by which words derive their meaning in use.¹²⁶

Our guiding questions focused on the: (1) identities of amici and the impact that their roles might have on the language in their briefs; (2) linguistic representation of the main parties (the pregnant person, the fetus, and the physician); and (3) construction of the abortion right itself. Using the web-based tool Sketch Engine,¹²⁷ we utilized several corpus-driven methods to arrive at some objective ‘ways into’ the data as well as to undertake analysis. In this way, our analytical approach was both corpus-based (using the data set to analyze representations of known items of interest, for instance *fetus*) and corpus-driven (allowing frequency and keyword lists to ‘drive’ analysis or expose surprising patterns of meaning, e.g., by certain amici).

Sketch Engine is a powerful online tool which allows users to upload corpora and make use of an integrated tagger, which assigns part-of-speech tags to each word and multi-word expression.¹²⁸ Users can then generate and sort word lists by part-of-speech (for instance: all nouns, listed in order of descending frequency), or group collocates by grammatical position (for instance: all adjectival modifiers of *mother*). We used Sketch Engine for all frequency, concordance, collocation, and keyness analysis.

Users can incorporate XML headers (which are simple computer-readable ‘labels’) in Sketch Engine datasets to execute search and recall functions on a number of different variables. We utilized this feature both to isolate texts which have a certain attribute (e.g., only *Roe* briefs) and to compare groups of texts with different attributes to one another (e.g., all restrict briefs to all access briefs).¹²⁹

To determine the particular style and substance of each group of amicus brief authors (e.g., those writing in academic versus religious capacities), we compared subcorpora of briefs written from the perspective

¹²⁵ TONY MCENERY & ANDREW HARDIE, *CORPUS LINGUISTICS 123* (Cambridge Univ. Press ed., 2012).

¹²⁶ PAUL BAKER, *USING CORPORA IN DISCOURSE ANALYSIS 125* (2006).

¹²⁷ Adam Kilgarriff et al., *The Sketch Engine: Ten Years On*, SPRINGER, July 10, 2014, at 7–36.

¹²⁸ *What is Sketch Engine?*, SKETCH ENGINE, <https://www.sketchengine.eu/#blue> [<https://perma.cc/49QJ-ZP5G>] (last visited Feb. 26, 2024).

¹²⁹ Amanda Potts & Federica Formato, *Women Victims of Men Who Murder: XML Mark-Up for Nomination, Collocation, and Frequency Analysis of Language of the Law*, in *THE ROUTLEDGE HANDBOOK OF LANGUAGE, GENDER, AND SEXUALITY* 602, 602–19 (Jo Angouri & Judith Baxter eds., 2021).

of a single role (often cross-categorized with a position, i.e., in support of abortion access or restriction) to the corpus as a whole. To account for variations in subcorpus sizes, we provide frequency information standardized as frequency per million words. Sketch Engine uses so-called ‘simple maths’ to determine keyness.¹³⁰ Frequencies in subcorpora are calculated and compared to one another using an ‘order of magnitude’ that can be adjusted to shift focus to higher-frequency (more common) or lower-frequency (rarer) words. We utilized a keyness or magnitude value of 100 to identify both common and rare items. We considered words and n-grams (phrases containing *n* words) to be ‘key’ if they had a Log Ratio value of over 1, indicating at least double the usage in a target subcorpus as would be expected, compared to the corpus as a whole.¹³¹ This forms the basis of analysis in Section VI.A.

To examine representations of the main social actors and the construction of abortion itself, we refrained from generating our own list of terms of reference that might be subjective or ideologically/politically skewed. Rather, to support corpus-driven exploration, we first generated wordlists of all nouns in the corpus. We reviewed each noun appearing over a minimum frequency of 10 and gave it a label if it could be feasibly related to the construction of the target referents (e.g., words related to women or rights). We then considered all items in context by reviewing concordance lines in part or whole, and reached inter-rater agreement regarding applicability of terms. We flagged nouns as relevant if: (1) they were related to a target referent (e.g., a pregnant person, fetus, physician, abortion, or right); (2) they appeared 10 times or more across the corpus, thus confirming salience; and (3) concordance analysis confirmed applicability in over 50% of instances (for instance, *girl* was considered as a potential naming strategy for a pregnant person but was discarded due to a high instance of use in organizational names, such as Girls, Inc.). Relevant nouns appear (manually grouped by semantic category, organized by descending order of frequency of category and then component lexical item) in Tables 3, 4, 5, 6, and 7.¹³²

These corpus-driven results led neatly into corpus-based forms of analysis. While “[a]ssociation patterns represent quantitative relations, measuring the extent to which features and variants are associated with

¹³⁰ *Simple Maths*, SKETCH ENGINE, <https://www.sketchengine.eu/documentation/simple-maths/> [https://perma.cc/F789-MJTT] (last visited Feb. 26, 2024); see also Adam Kilgarriff, *Simple Maths for Keywords*, in PROCEEDINGS OF CORPUS LINGUISTICS CONFERENCE (Mahlberg, M., González-Díaz, V. & Smith, C. eds., 2009).

¹³¹ Andrew Hardie, *Log Ratio – An Informal Introduction*, ESRC CENTRE FOR CORPUS APPROACHES TO SOCIAL SCIENCE, <https://cass.lancs.ac.uk/log-ratio-an-informal-introduction/> [https://perma.cc/64YC-YEBB] (last visited July 18, 2023).

¹³² See *infra* Table 3, at 443; Table 4, at 452; Table 5, at 458; Table 6, at 462; Table 7, at 466.

contextual factors,”¹³³ functional (qualitative) interpretation of these patterns is a crucial step in linguistic analysis, where researchers then make sense of meanings. Once we identified lexical items of interest, we performed collocation analysis using Sketch Engine’s Word Sketch feature. A Word Sketch is a one-page summary of a search term’s (i.e., the node’s) collocational behavior, organized into categories based on grammatical relations (e.g., words that serve as an object or subject of verbs).¹³⁴ Collocates were calculated within a span of 3 before and 3 after the ‘node’ word using logDice, a strength score which indicates the typicality (or strength) of pairings.¹³⁵ For instance, we can calculate collocates for *pregnant*, which occurs 1,168 times in the corpus. The strongest collocate is *woman*, with a logDice score of 11.63. This is because *woman* has a frequency of 1,526, of which 260 are co-occurring with *pregnant*. Another collocate for *pregnant* is *girls*, with a logDice score of 6.28. The lower score is due to the fact that, while *girls* appears 96 times in the corpus, only three of those instances co-occur with *pregnant* in the given span.

We used a further feature of Sketch Engine called Word Sketch Difference to determine whether certain words (for instance, *woman*) have differing discursive constructions in various subcorpora.¹³⁶ Word Sketch Difference generates two Word Sketches, creating collocational profiles for the word in two distinct subcorpora (for instance, all briefs arguing to restrict abortion access versus all briefs arguing to expand abortion access). Collocates are then visually plotted showing strength of preference for one subcorpus or another (or equal preference between the two, demonstrating similarities). Like Word Sketch, Word Sketch Difference utilizes logDice. We only considered logDice scores over 6 to ensure high strength of association.

Once we derived collocates, we often grouped these by semantic field (that is, category of meaning) to come to a better understanding of a node word’s use. Another related feature is semantic prosody, or an overall positive or negative sentiment that a seemingly neutral word may become

¹³³ DOUGLAS BIBER, SUSAN CONRAD, & RANDI REPPEN, *CORPUS LINGUISTICS 5* (Cambridge Univ. Press ed., 1998).

¹³⁴ *Word Sketch – Collocations and Word Combinations*, SKETCH ENGINE, <https://www.sketchengine.eu/guide/word-sketch-collocations-and-word-combinations> [<https://perma.cc/SW7Y-3BZH>] (last visited July 18, 2023).

¹³⁵ *LogDice*, SKETCH ENGINE, https://www.sketchengine.eu/my_keywords/logdice/ [<https://perma.cc/CA8V-6SZK>] (last visited Aug. 17, 2023).

¹³⁶ *Word Sketch Difference*, SKETCH ENGINE, <https://www.sketchengine.eu/guide/word-sketch-difference-compare-words/> [<https://perma.cc/4VNR-CGKJ>] (last visited Feb. 26, 2024).

imbued with via collocation.¹³⁷ For instance, if *abortionist* collocates with *back-alley*, *inept*, *backroom*, *illegal*, and *dangerous*, it can be said to have a negative semantic prosody. When comparing two words that may seem near-synonymous (*physician* and *abortionist*, for example), collocation and semantic prosody may distinguish them.¹³⁸

A small number of corpus linguistic conventions have been adopted in the presentation of data in this work. Various illustrative examples from the corpus are presented in numbered concordance lines. In these concordance lines and in the discussion, the node word(s) appears in italics.¹³⁹ In all instances, node words and collocates represent lemmas, i.e., head words with their inflections. For example, a search for *woman* also returns results for *women*, *woman's*, *women's*, and so on. Information regarding frequency or statistical measures is provided in brackets. The footnotes identify the specific amicus briefs from which exemplar concordance lines are drawn.

B. The Compiled Data Set

We compiled all amicus briefs filed in *Roe v. Wade*,¹⁴⁰ *Doe v. Bolton*,¹⁴¹ *Planned Parenthood v. Casey*,¹⁴² and *Dobbs v. Jackson*

¹³⁷ MICHAEL STUBBS, *TEXT AND CORPUS ANALYSIS* 173–74 (Blackwell Publishers ed., 1996).

¹³⁸ Richard Xiao & Tony McEnery, *Collocation, Semantic Prosody, and Near Synonymy: A Cross-Linguistic Perspective*, 27 *APPLIED LINGUISTICS*, Mar. 2006, at 103, 103–29.

¹³⁹ Note that data collection, conversion, and processing through Sketch Engine has removed the original formatting from briefs. Original usage of boldface, underline, italics, etc. is therefore not retained in concordance lines presented.

¹⁴⁰ *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). The briefs for *Roe v. Wade* and *Doe v. Bolton* came from the following source: *THE MAKING OF MODERN LAW: SUPREME COURT RECORDS AND BRIEFS, 1832–1978*, Gale Primary Sources.

¹⁴¹ *Doe v. Bolton*, 410 U.S. 179, 192 (1973), *abrogated by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (“We agree . . . that the medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the wellbeing of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment. And it is room that operates for the benefit, not the disadvantage, of the pregnant woman.”).

¹⁴² The amicus briefs filed in *Casey v. Planned Parenthood* were constructed from a search of the ProQuest Supreme Court Insights database containing briefs filed in the Supreme Court from 1975 to 2016. *Supreme Court Insight (1933–present)*, PROQUEST, <https://about.proquest.com/en/products-services/Supreme-Court-Insight/> [<https://perma.cc/9BP5-M664>] (last visited Feb. 1, 2024).

Women's Health Organization.¹⁴³ Data collection yielded the subcorpora detailed in Table 1.¹⁴⁴

Case name	No. texts	No. words	Avg. words/text
<i>Roe v. Wade</i>	15	145,373	9,692
<i>Doe v. Bolton</i>	3	12,056	4,019
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i>	34	201,104	5,915
<i>Dobbs v. Jackson Women's Health Organization</i>	137	740,777	5,407

Table 1: Description of subcorpora by case name and size.

To allow us to undertake diachronic, contrastive analysis, it was critical to retain metadata about each brief in the corpus. We made use of XML headers to tag each text with the following attributes:

- **Case:** *Roe*; *Doe*; *Casey*; and *Dobbs*.¹⁴⁵
 - These tags indicate the underlying case in which the brief was filed.
 - Where identical briefs were cross-filed in both *Roe* and *Doe*, they were tagged as *Roe* exclusively. Only briefs that were exclusively filed in *Doe* were tagged as such.
 - For quantitative analytical purposes, this study considers briefs from *Roe* and *Doe* as a single subcorpus because the Supreme Court heard them together.
- **Position:** *restrict*; *access*; and *neither*.
 - These tags reflect the amici's substantive position by which they seek to ensure that the law either provides

¹⁴³ The amicus briefs for *Dobbs v. Jackson Women's Health Organization* came from the [supremecourt.gov](https://www.supremecourt.gov) website's docket search feature (using Case No. 19-1392). SUPREME COURT OF THE UNITED STATES, <https://www.supremecourt.gov/search.aspx?Search=Case+No.+19-1392&type=Site> [<https://perma.cc/Q74K-8LV7>] (last visited Feb. 1, 2024). Author Jamie R. Abrams discloses that she was a signatory to an Amici Curiae Brief filed in support of Respondents by 547 Deans, Chairs, Scholars and Public Health Professionals, the American Public Health Association, the Guttmacher Institute, and the Center for U.S. Policy.

¹⁴⁴ Note that four groups submitted amicus briefs in *Roe/Doe*, *Casey*, and *Dobbs*. These briefs were submitted by United for Life, ACOG, National Right to Life, and Planned Parenthood.

¹⁴⁵ We set out to measure the trajectory of legal arguments over time by using *Casey* as a layover between historic extremes. In our final analysis, our most noteworthy findings mainly contrast the bookend extremes of *Roe* and *Dobbs*. Where relevant, we use *Casey* as a trajectory marker.

- access to abortion (subject to some limitations) or they seek to restrict access to abortion (by outright banning it or severely limiting access).
- Briefs were almost always coded based on their overtly stated position (in support of appellant or respondent). However, some briefs were either ambiguous or disingenuous in their position. For instance, one brief was presented to the court identifying as ‘neither’, but the substance of the brief clearly indicated a restrict position. In these instances, tags matching the substance of the argument were assigned but notes were made.¹⁴⁶
 - **Role:** *academic; government entities and individuals; medical; organizations (law and community); religious; and unaffiliated individual(s).*
 - These tags reflect the role of amici authors as evidenced by author affiliations.
 - Where role was ambivalent due to the presence of manifold association (e.g., Christian Medical and Dental Associations) or co-authorship (e.g., National Legal Foundation *and* International Conference of Evangelical Chaplain Endorsers), we reviewed the “Interest of the Amicus Curiae” section of the brief to determine the stated role of prominent significance.
 - As discussed more fully below, the classification of roles was straightforward and clear for *Roe*, *Doe*, and *Casey*. In *Dobbs*, however, it was striking how many briefs included *both* a medical perspective and a religious perspective.¹⁴⁷

A more fine-grained view of the corpus (considering the frequency of briefs submitted by case, position, and role) appears in Table 2 below. Section VI next reveals our findings.

¹⁴⁶ Brief of Biologists as Amici Curiae in Support of Neither Party at *14, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1932), 2021 WL 3375871.

¹⁴⁷ See *infra* Section VII.A.

Case/Role	Access	Neither	Restrict	Total
<i>Roe & Doe</i>	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
<i>Casey</i>	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
<i>Dobbs</i>	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

Table 2: Fine-grained description of the corpus, organized chronologically, with frequencies of briefs submitted by case, role and position.

VI. ANALYSIS OF THE CORPUS

Section A describes the various roles of amici addressing the Court and how their arguments morphed over time. Section B then considers how these authors described the key social actors in abortion care: the pregnant person, the fetus, and the physician. Section C explores how amicus briefs positioned abortion itself as a right. Representative examples from the briefs are presented in numbered lines throughout the analysis section to support our observations and conclusions.

A. Examining the Amicus Briefs by Their Authors' Societal Roles

This section examines salient meanings arising when considering subcorpora comprised of briefs grouped by role (organizational, religious, medical, academic, government, and unaffiliated individuals) compared to the corpus as a whole.

1. Organizational Amici

Organizational briefs were the most frequent category of amici authors in all three decades of cases, comprising 48.15% of the briefs in the corpus and more than 44% of the briefs in each of the three cases (8 out of 18 in *Roe/Doe*, 18 out of 34 in *Casey* and 64 out of 137 in *Dobbs*). The organizations were generally non-profit groups with a legal or community focus. By contrast, if the groups were clearly religious or medical, such as the U.S. Conference of Catholic Bishops or the American College of Pediatricians, then they were categorized as such. Representative groups writing in the organizational restrict category, for example, included the Texas Alliance for Life and the National Right to Life Committee. Representative groups writing in the organizational access category included the American Civil Liberties Union and the National Advocates for Pregnant Women.

Organizational Restrict Briefs

The briefs filed in *Roe/Doe* by organizations seeking to restrict abortion access were noticeably different from the briefs filed in later cases. In *Roe/Doe*, organizational restrict briefs wrote unreservedly seeking explicit fetal personhood. Key 3- and 4-grams include *the life of, child in the womb, right to life, and equal protection clause* (see, for instance, line 1 below). Even while pursuing fetal personhood, however, the amici maintained a carve-out for exceptions to preserve the life of the pregnant woman (see line 2). The *Roe/Doe* organizational restrict briefs also revealed how the advocates emphasized exceptions to save the life of the pregnant woman. Key n-grams such as *save the life, and necessary to save* revealed how—at that time—even the restrict briefs were more steadfast in conceding the need for an exception to save the life of the mother as part of their affirmative advocacy (see line 2).

1. The *child in the womb* meets these criteria of personhood under the Equal Protection Clause. He is human, he lives and he has his being.¹⁴⁸

¹⁴⁸ Brief of Americans United for Life, Amicus Curiae, in Support of Appellee, at *4, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 1971 WL 128055.

2. There is no sufficient necessity which justifies a law which permits the killing of the child in the womb where it is not necessary to *save the life* of his mother.¹⁴⁹

Organizational Access Briefs

The organizational access briefs in *Roe/Doe* were focused unflinchingly on telling the story of abortion restriction's disproportionate impact on women of color and poor women. For example, 3-grams like *poor and non-white* were overly represented in this subcorpus (see line 3). They were also advocating with emphasis on new and transformative arguments that were bold and all-encompassing in their quest for judicial recognition of a federal constitutional abortion right. Key n-grams such as *the Fourteenth Amendment, the Thirteenth Amendment, the Eighth Amendment, equal protection of, the right of privacy, and cruel and unusual* revealed an array of legal arguments, tightly framed in constitutional provisions. Each of these key n-grams reflected a different argument seeking to expand abortion access using different constitutional theories. This made sense historically given the transition from *Griswold* to *Roe* described in Section III above.

3. Unlike more privileged women, *poor and non-white* women are unable to shop for physicians and hospitals sympathetic to their applications, cannot afford the necessary consultations to establish that their conditions qualify them for treatment, and must largely depend on public hospitals and physicians with whom they have no personal relationship, and who operate under the government's eye, for the relief they seek.¹⁵⁰

The access organizational briefs from *Dobbs*, in contrast, revealed how advocates by then were making quite incremental arguments seeking to hold the existing abortion access line, even if that line was already vastly more restrictive than what these organizations sought.¹⁵¹ When compared to the rest of the corpus, organizational access briefs revealed key 3-grams like *rule of law, the rule of, relied on the, have relied on, and this court has*, demonstrating how the advocates for abortion access were left fighting for the *status quo* in comparatively incremental ways relative to the restrict briefs (see line 4). These briefs were written by notable organizations such as Planned Parenthood and the ACLU, which have bold

¹⁴⁹ *Id.* at *13.

¹⁵⁰ Motion for Leave to File Brief Amici Curiae in Support of Appellants and Brief Amici Curiae at *22–24, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 1971 WL 128052.

¹⁵¹ *See supra* note 30.

visions of reproductive justice enshrined in their missions.¹⁵² However, the ‘ask’ these advocates sought in *Dobbs* was preserving the incredibly bleak position of abortion access as it currently stood. The Court’s political composition likely prevented more strident advocacy.

4. By contrast, adherence to *stare decisis* and the *rule of law* sends a clear message to avoid repetitive, untenable challenges to established law.¹⁵³

Results further demonstrated organizations deploying soft, somewhat meandering, rights-framing, when examined through the keywords and n-grams. The 3-grams *access to abortion*, *right to abortion*, *right to decide*, *to abortion care*, *to control their*, and *have an abortion* were all over-represented in the organizational access briefs. This was notable because these n-grams were more passive in depicting the rights of substantive due process and the right to privacy that were before the Court. While this was surely an attempt to avoid the lightning rod that substantive due process and privacy had become to some Justices, there was a competing tension, imprecision, or defensiveness in using a range of different terms instead of addressing the right head-on. This was particularly notable given Justice Thomas’s scathing critiques suggesting that every time the Court considered abortion, it used different terminology.¹⁵⁴

The study then examined keyness of modal markers as an interesting view into the hesitancy of organizational access amici for using bold rhetorical strategies. Keyness analysis revealed overuse of 3-grams such as *more likely to* and *likely to be* in organizational access briefs. This high usage of modal phrasing showed how the briefs narrativized the disproportionate impact of abortion bans and restrictions on low-income women and women of color (see line 5). Organizational access briefs were consistent in telling the stories of harms that groups of women would

¹⁵² See, e.g., *Who We Are*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/about-us/who-we-are> [https://perma.cc/K86M-4EHH] (last visited Feb. 26, 2024) (espousing commitments to comprehensive sex education across all gender identities, expressions, and orientations and promoting policies championing a full range of sexual and reproductive healthcare); *Reproductive Freedom*, ACLU, <https://www.aclu.org/issues/reproductive-freedom> [https://perma.cc/Z5NS-BASH] (last visited Feb. 26, 2024) (working to ensure that all people can make reproductive decisions without political influence).

¹⁵³ Brief of Amici Curiae the American Civil Liberties Union and the American Civil Liberties Union of Mississippi in Support of Respondents at *24, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4311860.

¹⁵⁴ See, e.g., *Whole Women’s Health v. Hellerstedt*, 579 U.S. 582, 629 (2016) (Thomas, J., dissenting) (“Our law is now so riddled with special exceptions for special rights that our decisions deliver neither predict-ability nor the promise of a judiciary bound by the rule of law.”).

distinctly suffer, but the different legal status of abortion allowed that story to be told in the present tense in *Roe/Doe* and in the future tense in *Dobbs*. Notably, *for black women, people of color, women of color, and economic and social* were also key n-grams relative to the full body of amicus briefs.

5. Forcing a person to carry an unwanted pregnancy to term, moreover, has negative consequences for that person's children, as *they are more likely* to live below the poverty line, have lower child development scores, and enjoy poorer maternal bonding.¹⁵⁵

The organizational briefs shed light on just how far the abortion advocacy line had moved from *Roe/Doe* to *Dobbs*. Analysis of the organizational restrict briefs revealed an enduring focus on personhood and fetal interests. The organizational access briefs shifted from bold rights-defining arguments in *Roe/Doe* to the incremental defense of the *status quo* in *Dobbs*.

2. Religious Amici

Due to the ever-growing number of amicus briefs filed in each case, *Dobbs* yielded more religious amicus briefs [17, 12.41% of all briefs] than *Casey* [3, 8.82%] or *Roe/Doe* [2, 11.11%]. Despite the number of religious amicus briefs rising, however, the proportion that these represented of the whole remained roughly equal, comprising 8.82% to 12.41% over time from *Roe* to *Dobbs*.¹⁵⁶

Religious Restrict Briefs

A keyword search of the religious restrict briefs in *Dobbs* yielded two notable findings: first, the direct engagement of amici with Justice Thomas; and second, the complete erasure of the pregnant woman.

Surprisingly, the fifth ranked keyword in the religious briefs was *eugenics*; *eugenic* was twenty-first. This pair of results was striking, particularly as these words were found to be higher in the keyness ranking than words that might be expected to dominate religious briefs, such as *Christian* or *God*. The keyness associated with *eugenics* could be attributed to religious amici drawing upon the language of Justice

¹⁵⁵ Brief Amici Curiae for Organizations Dedicated to the Fight for Reproductive Justice-Mississippi in Action, et al.—in Support of Respondents at *34–35, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4340175.

¹⁵⁶ Comparing the briefs filed by religious amici seeking to restrict abortion access in *Roe* and *Doe* to the rest of the corpus did not yield significant keywords or n-grams. This was due to the small size of the *Roe/Doe* subcorpus in comparison to the *Casey/Dobbs* reference corpus.

Thomas's concurrence in *Box v. Planned Parenthood*, in which Thomas asserted that the state had a "compelling interest in preventing abortion from becoming a modern-day eugenics."¹⁵⁷ Justice Thomas's invocation of eugenics drew upon anti-abortion marketing campaigns depicting abortion as a form of racial genocide (see line 6).¹⁵⁸ Historians and Critical Race Theorists were quick to lambast Thomas's argument for its historical distortions, demonizing of black women's bodily autonomy, and turning of a blind eye towards the structural inequities that yield racial disproportionalities in abortion.¹⁵⁹ The dominance of *eugenics* in the dataset revealed that anti-abortion advocates likely hoped to appeal directly to Thomas in the event that he doubled down on this line of argument in *Dobbs*, as misguided and distorted as scholars concluded this argumentation was.¹⁶⁰

6. The links between abortion and racist *eugenics* are manifold. For openers, Margaret Sanger focused her eugenic goal to eliminate "the unfit" on minorities.¹⁶¹

Key n-grams of the religious restrict briefs additionally revealed two rhetorical strategies for seeking independent "personhood" for the fetus. First, we noted statistical over usage of *in the womb*, *outside the womb*, and *life in the womb* compared to the rest of the corpus. The overuse of grammatical structures containing *womb* was a way of removing the

¹⁵⁷ *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1787–89 (2019) (Thomas, J., concurring) ("[f]rom the beginning, birth control and abortion were promoted as means of effectuating eugenics. . . . Support for abortion can . . . be found throughout the literature on eugenics."). See generally Melissa Murray, *Racing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 HARV. L. REV. 2026, 2038–40 (2021).

¹⁵⁸ Dorothy Roberts, *Dorothy Roberts Argues that Justice Clarence Thomas's Box v. Planned Parenthood Concurrence Distorts History*, UNIV. OF PA. CAREY L. SCH. (June 6, 2019), <https://www.law.upenn.edu/live/news/9138-dorothy-roberts-argues-that-justice-clarence> [<https://perma.cc/9RJH-QUU2>] ("It is also important to place Justice Thomas's misguided eugenics argument in the context of a nationwide billboard campaign by antiabortion organizations claiming that abortions sought by black women are a form of racial genocide.").

¹⁵⁹ See, e.g., Murray, *supra* note 157; Roberts, *supra* note 158.

¹⁶⁰ See generally Reva B. Siegel & Mary Ziegler, *Abortion-Eugenics Discourse in Dobbs: A Social Movement History*, 2 J. AM. CON. HIST. 71, 72–74 (2024) (explaining how "the abortion-is-eugenics argument offers a justification for criminalizing abortion . . . suggesting that criminalizing abortion is necessary to achieving racial justice" . . . and chronicling the "multi-decade effort" to "seed[] the claim that abortion is eugenic").

¹⁶¹ Brief for Amici Curiae African-American, Hispanic, Roman Catholic and Protestant Religious and Civil Rights Organizations and Leaders Supporting Petitioners at *15, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), WL 3192497.

pregnant person from the writing and analysis (see line 7). The *womb*, as discussed elsewhere in this article, became an abstract site disconnected from the human actor.¹⁶² This avoidance foregrounded a fetal-centered analysis that conveniently ignored the physiological relationship of the womb to the pregnant person and only situated the fetus in or out of the *womb*. Another thread of key n-grams in religious briefs included phrasings of *in the image of*, and *the image of God*. This was a distinct strategy to personify and add reverence to the fetus (see line 8).

7. In fact, the child *in the womb* is a separate individual from the mother with a different genetic code, often a different blood type or gender.¹⁶³
8. Whether male or female; whether young or old; whether white or black; whether Jew or Gentile; whether small or large; whether born or preborn – all are made *in the image of God*.¹⁶⁴

Religious Access Briefs

Keywords in the *Dobbs* religious access briefs—*religion*, *faith*, *belief*, *church*, and *God*—aligned with what one would expect any religious authors to contribute, as words and concepts plainly grounded in religion.¹⁶⁵ Keywords from this subcorpus revealed a concentrated effort to respect a more expansive view of religious freedom for all, demonstrated by the keyness of words like *secular*, *pluralism*, and *diversity* (see line 9). There was also a stronger effort to tell the story of how religion misapplied in politics could be a tool of persecution in ways that were central to the nation’s founding, demonstrated by the relative overuse of words like *oppression*, *persecution*, and *divisive* (see line 10).

9. In doing so, the Ban disregards the *diversity* of religious viewpoints on when life begins.¹⁶⁶

¹⁶² See *infra* notes 218–19.

¹⁶³ Amicus Curiae Brief of Jewish Pro-Life Foundation et al. on the Merits in Support of Petitioners at *7, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3169221.

¹⁶⁴ Brief Amicus Curiae of Intercessors for America including its Intercessor Prayer Partners in Support of Petitioners at *32, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3375905.

¹⁶⁵ Analysis isolated to comparison of *Roe/Doe* and *Casey* would not provide statistically significant results, with just one religious brief on each side of the access/restrict position in *Roe/Doe* and only three religious briefs on the restrict side in *Casey*.

¹⁶⁶ Brief of Amici Curiae Catholics for Choice et al. at *25, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1391), 2021 WL 4311849.

10. Familiar with the long, sad history of religiously based strife and *oppression*, they recognized that governmental support for religion corrodes true belief, makes houses of worship beholden to the state, and coerces individuals and faith groups to conform.¹⁶⁷

The growth in religious amici activity by *Dobbs* underscored historical accounts that documented both the emergence of religious opposition to abortion as a post-*Roe* phenomenon and also larger political trends in the U.S.¹⁶⁸ The *Dobbs* religious restrict briefs tried to carry Thomas's cautions regarding "modern-day eugenics" forward and they relied heavily on the abstract *womb* to frame abortion. The religious access briefs responded, in turn, with more expected arguments about religion, particularly situating religion pluralistically and warning of the oppressive potential of narrow religious views.

3. Academic Amici

Over time, academic amicus briefs accounted for a rising proportion of those submitted overall. *Roe/Doe* and *Casey* each had a single academic authored brief submitted [constituting 5.56% and 2.94% of their respective total briefs] while *Dobbs* yielded 19 [13.87% of the total]. The academic briefs filed in *Dobbs* were split evenly between access and restrict [nine supporting each, with an additional one supporting neither]. While these remained quite evenly split between academic briefs seeking to restrict

¹⁶⁷ Brief of Americans United for Separation of Church and State, American Humanist Association, Bend the Arc: A Jewish Partnership for Justice, and Interfaith Alliance Foundation as Amici Curiae in Support of Respondents at *7, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1391), 2021 WL 4312110.

¹⁶⁸ For post-*Roe* phenomenon, *see generally* MARY ZIEGLER, *DOLLARS FOR LIFE: THE ANTI-ABORTION MOVEMENT AND THE FALL OF THE REPUBLICAN ESTABLISHMENT* (2022) (describing how the modern Republican Party became the party of conservative Christianity and how the anti-abortion movement revolutionized American politics and fixated on federal courts).

For political trends, *see* Michael J. McVicar, *The Religious Right in America*, OXFORD RSCH. ENCYCLOPEDIAS (Feb. 26, 2018), <https://oxfordre.com/religion/display/10.1093/acrefore/9780199340378.001.0001/acrefore-9780199340378-e-97> [<https://perma.cc/94TM-ACLK>] (illustrating how the Religious Right emerged in the late 1970s as a network of political actors, religious organizations, and pressure groups in the United States, primarily mobilizing white evangelical and fundamentalist Christians to promote traditional family values, free-market economics, a strong anti-Soviet foreign policy stance, and opposition to cultural shifts like abortion rights and LGBTQ+ rights; its influence impacted presidential elections and policy discussions through the 20th and into the 21st century, rooted in the historical context of conservative Protestantism and its response to social and political changes).

versus expand abortion access, the increase in frequency reflected shifts in how the briefs were used.

Academic Restrict Briefs

Key n-grams yielded by comparing the academic restrict briefs in *Dobbs* to the rest of the corpus were surprising. These briefs reflected a distinct focus on *the Ninth Amendment*, *Tenth Amendment*, *Bill of Rights*, *original meaning of*, and *unborn human beings*. Under the Ninth Amendment, the enumeration of certain rights in the Constitution “shall not be construed to deny or disparage others retained by the people.”¹⁶⁹ In *Roe*, this provision was cited supporting the constitutionality of abortion.¹⁷⁰ In *Dobbs*, the academic restrict briefs used the same language to suggest that abortion should be left to state legislatures. This reflected a flip in how the Ninth Amendment was positioned from *Roe* to *Dobbs*, underscoring the legal strategy of overturning the court’s substantive due process precedent (see line 11).

11. The Court did not embrace *the Ninth Amendment* as the source of authority for this right, but rather the Fourteenth Amendment’s Due Process Clause, under the still-controversial doctrine of “substantive due process.”¹⁷¹
12. The case for overruling is compelling because the *right to elective abortion* has no foundation under either of the approaches to implied fundamental rights that this Court has at times employed since *Roe*.¹⁷²

Other key n-grams included variations of *right to elective abortion*. The presence of this cluster indicated a clear and predictable strategy to marginalize the subject of abortion (see line 12 above). Likewise, top keywords in the academic restrict briefs included *reconstruction*, *originalist*, *elective*, *enumerate*, and *natural*. Each of these terms reflected

¹⁶⁹ *Roe v. Wade*, 410 U.S. 113, 153 (1973), *overruled by* *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (“This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”).

¹⁷⁰ *Id.* at 153.

¹⁷¹ Brief for Professors Mary Ann Glendon and O. Carter Snead as Amici Curiae in Support of Petitioners at *15, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3375877.

¹⁷² Brief of Amicus Curiae Professor Stephen G. Gilles in Support of Petitioners at *1, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3374312.

an effort to distance abortion from historical foundations. The use of *reconstruction* and *originalist* were both efforts to interpret the Fourteenth Amendment in a way that was consistent with meanings after the Civil War, whereas *enumerate* referred to the critique that substantive due process was not explicitly written in the Constitution. The keyword *elective* reflected a strategy to dismiss abortion decision-making as whimsical instead of related to pregnant people's healthcare. Finally, *natural* was a reference to natural law. This aligned with the argument that the right to abortion was not a fundamental right.

Academic Access Briefs

Keyness analysis of the academic access briefs revealed three points. First, reviewing the key n-grams in the *Dobbs* academic access briefs exposed their laser-focus on using substantive due process as the basis for the abortion right consistent with precedent. In contrast, the organizational access briefs had proffered more variations or arguments in the alternative, as discussed above. Top key n-grams included *Roe and Casey*, *access to abortion*, *the Due Process*, *Due Process Clause*, *the Fourteenth Amendment*, *the common law*, *history and tradition*, and *the constitutional right*. These phrases reflected efforts by academics to argue that abortion fell under the fundamental right to privacy, espoused under the substantive due process line of cases of the Fourteenth Amendment (see line 13). This was notable in that it was an unambiguous, direct approach. It attempted to defend the bright line of *Casey* to maintain consistency.

13. For nearly 50 years, the Supreme Court has recognized that *the Due Process Clause* of the Fourteenth Amendment protects a woman's fundamental right to decide whether to have an abortion.¹⁷³

Second, there was an over-use of *stereotype* and *sex-role* in the academic access subcorpus, indicating an effort to describe abortion restrictions as gendered burdens (see line 14). This strategy would house the abortion right under the Equal Protection Clause of the Constitution instead of the Due Process Clause. This was an important, bolder argument seeking to reposition the right to abortion.

Third, many of the keywords emphasized the disproportionate harms that result from abortion restrictions, such as *black*, *racial*, *mile*, *travel*, *distance*, and *access* (see line 15). These words told a story of hardship

¹⁷³ Brief For Constitutional Law Scholars Lee C. Bollinger et al. as Amici Curiae Supporting Respondents at *2, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4341734.

and reliance, supporting a straightforward *stare decisis* argument. These accounts showed how pregnant people had come to rely on *Roe* and *Casey*.

14. Nevertheless, Mississippi continues to rely on a mode of protecting women's health and fetal life that is rooted in impermissible sex *stereotypes* and does so by restricting access to reproductive health care.¹⁷⁴
15. If *Roe* and *Casey* were overturned (even in part), travel *distances* to abortion providers would drastically increase, impeding women's access to clinical abortions.¹⁷⁵

Analysis of the academic access briefs revealed the incrementalism of the advocacy approach by *Dobbs*, necessarily focused on merely defending the line of *Roe* and *Casey* while also offering the Court an alternative basis for its ruling. The academic restrict briefs, in contrast, demonstrated wholesale efforts to reframe the abortion right from *Roe* to *Dobbs*.

4. Medical Amici

At first glance, the number of medical briefs filed in *Roe/Doe* [3, 16.7% of all briefs], *Casey* [4, 11.76%], and *Dobbs* [11, 8.03%] seemed to be shrinking as a proportion of the overall volume of submissions in each era. This was surprising, given the medical nature of the decisions. However, as discussed below, some medical amici layered religious lenses on the medical role in *Dobbs*, thus shifting their classification in our dataset.

Medical Restrict Briefs

The rhetoric shifted greatly in the medical restrict briefs from *Roe/Doe* to *Dobbs*. *Roe/Doe* briefs had a greater variety of keywords than *Dobbs* when compared to the rest of the corpus; these included *amniotic*, *blood*, *induce*, *fluid*, *placenta*, *ectopic*, *hemorrhage*, and *complication*. These words describe some of the core biological and medical processes of pregnancy and birth. By prominently featuring these concepts, early restrict briefs positioned abortion in the medical frame with a level of accuracy and objectivity, as expected from these authors (see line 16).

¹⁷⁴ Brief of Equal Protection Constitutional Law Scholars Serena Mayeri, Melissa Murray, and Reva Siegel as Amici Curiae in Support of Respondents at *27, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4340072.

¹⁷⁵ Brief of Amici Curiae Economists in Support of Respondents at *27, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4341729.

16. In fact, even to the expert working in the best conditions, the removal of an early pregnancy after dilating the cervix can be difficult, and is not infrequently accompanied by serious complications.¹⁷⁶
17. Third, later-term abortion raises a woman's risk of developing breast cancer.¹⁷⁷
18. And new developments have provided still more evidence strengthening the conclusion that fetuses are capable of experiencing pain in the womb.¹⁷⁸

The keywords in the medical restrict briefs in *Dobbs* differed significantly from those in *Roe/Doe*. Given the stated roles and interests of these amici, a number of field-specific keywords (*fertilization, ultrasound, pre-term, uterus, medicine, scientific, tissue, and risk*) aligned with expected results. It was not surprising to see these medical words predominating in the medical briefs. Other words, however, also drawn from healthcare and medicine, were more surprising. The first and second top keywords relative to the amicus briefs as a whole were *breast* and *cancer* (see line 17 above), indicating a scientific assertion correlating abortion and breast cancer that has been robustly debunked.¹⁷⁹ *Pain* was another overused keyword in the medical amicus briefs seeking to restrict abortion access in *Dobbs*, reflecting the fetal pain argument (see line 18).¹⁸⁰

¹⁷⁶ Motion and Brief Amicus Curiae of Certain Physicians, Professors and Fellows of The American College of Obstetrics and Gynecology in Support of Appellees at *33, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 1971 WL 128057.

¹⁷⁷ Brief for American Association of Pro-Life Obstetricians and Gynecologists as Amicus Curiae in Support of Petitioners at *3, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3374404.

¹⁷⁸ Brief for the American College of Pediatricians and The Association of American Physicians & Surgeons as Amici Curiae in Support of Petitioners at *15, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1391), 2021 WL 3374498.

¹⁷⁹ THE AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, COMM. ON GYNECOLOGICAL PRAC. COMMITTEE OPINION 434: INDUCED ABORTION AND BREAST CANCER RISK 1 (2009) <https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2009/06/induced-abortion-and-breast-cancer-risk.pdf> [https://perma.cc/T8U6-F4PT] ("Early studies of the relationship between prior induced abortion and breast cancer risk were methodologically flawed. More rigorous recent studies demonstrate no causal relationship between induced abortion and a subsequent increase in breast cancer risk.").

¹⁸⁰ See Glen A. Halva-Neubauer & Sara L. Zeigler, *Promoting Fetal Personhood: The Rhetorical and Legislative Strategies of the Pro-Life Movement after Planned Parenthood v. Casey*, 2 FEMINIST FORMATIONS, Summer 2021, at 101; Kavita

Medical Access Briefs

Relative to the rest of the corpus, top keywords from the *Roe/Doe* medical access briefs depicted abortion as a (relatively safe and/or modern) medical procedure; these included *effective, physician, patient,* and *technique*. Discursive representation of pregnancy or the ability to become pregnant also characterized this set of briefs; *unwanted, contraceptive, sterilization, unwanted pregnancy, unwanted birth, grounds for the performance of, and contraceptive failure* were all within the top keywords and key n-grams (see line 19 below). Collectively, keyness analysis demonstrated that *Roe/Doe* medical access amici were contextualizing the circumstances that may necessitate an abortion, particularly those circumstances that women cannot always control.

Keywords from the *Dobbs* medical access briefs revealed conceptualizations of holistic care that differed from the restrict briefs. For example, *patient* was the fourth highest keyword compared to the rest of the corpus, revealing how the medical access briefs positioned pregnant women in relationship to physicians (see line 20). This contrasted with the medical restrict briefs, which had positioned the *womb* in relationship to the *fetus* and eviscerated the pregnant woman from the medical frame entirely. *Care* and *experience* were also in the top ten keywords for *Dobbs* medical access briefs, which helped to re-situate the pregnant person in the medical process (see line 21).

19. Even if some form of contraception is available there is likelihood of *unwanted pregnancy* since the most effective and practical contraceptives . . . can be obtained only on the prescription of a doctor whose services are denied to hundreds of thousands of poor.¹⁸¹

Shah Arora & Christina Salazar, *Fetal Pain Legislation*, AMA J. OF ETHICS, Oct. 2014, at 818, <https://journalofethics.ama-assn.org/article/fetal-pain-legislation/2014-10> [<https://perma.cc/4MG9-7DYX>]; Mary Wisniewski, '*Fetal Pain*' *Anti-Abortion Laws Spur Fierce Debate*, REUTERS (Apr. 6, 2011, 12:46 PM), <https://www.reuters.com/article/us-abortion-pain/fetal-pain-anti-abortion-laws-spur-fierce-debate-idUSTRE73572820110406> [<https://perma.cc/CY48-ADQZ>] (explaining that while fetal pain is a complex issue, pro-life activists selectively use scientific uncertainties or limited evidence to advocate for stricter abortion laws, prompting intense debates over its validity and ethical implications in the context of abortion legislation); see also Stuart W.G. Derbyshire & John C. Bockmann, *Reconsidering Fetal Pain*, J. OF MED. ETHICS, Jan. 14, 2020, at 3 ("Reports often suggest that the cortex and intact thalamocortical tracts are necessary for pain experience. Given that cortex only becomes functional and the tracts only develop after 24 weeks, many reports rule out fetal pain until the final trimester.").

¹⁸¹ Motion for Leave to File a Brief with Brief as Amici Curiae for Planned Parenthood Federation of America, Inc. and American Association of Planned

20. Instead, the medical profession's integrity is safeguarded when physicians are permitted to exercise their duty to counsel and care for *patients* based on "objective professional judgment" and ultimately respect *patients'* autonomy to make decisions about their own bodies and health.¹⁸²
21. It often takes time before patients who have decided they need to end their pregnancy can access abortion *care* given the host of logistical and financial barriers many face, including paying for the procedure, and organizing transportation, accommodation, childcare, and time off from work.¹⁸³

From *Roe* to *Dobbs*, the medical restrict briefs moved from more straightforward uses of medical terms to myopic womb-focused framings of pregnancy alongside debunked or contested depictions of abortion risks. The medical access briefs were primarily concerned with doing descriptive work in earlier cases. However, by *Dobbs*, they were situating abortion in the patient-physician relationship while telling stories of abortion access hardships instead of pregnancy hardships.

5. Government Amici

Government briefs played a role in all periods of litigation although their purposes and authorial makeup changed. In *Roe/Doe*, government entities or individuals filed 2 briefs [11.11%], in *Casey*, they filed 6 briefs [17.65%], and in *Dobbs* they filed 17 briefs [12.41%].

In *Roe/Doe*, both briefs submitted by government entities argued to restrict abortion access. One of these *Roe* briefs was filed by the Attorneys General of Arizona, Connecticut, Kentucky, Nebraska, and Utah.¹⁸⁴ Their statement of interest noted that they came together as a coalition because their respective states' statutes were similar to those in Texas.¹⁸⁵ The second restrict amicus brief was filed in *Doe* by the Attorney General and State's Attorneys of Connecticut, bringing to the Court's attention a case

Parenthood Physicians at *12, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 1971 WL 128049.

¹⁸² Brief of Amici Curiae American College of Obstetricians and Gynecologists et al. in Support of Respondents at *32, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4312120.

¹⁸³ *Id.* at *17.

¹⁸⁴ Brief Amicus Curiae of the Attorneys General of Arizona, Connecticut, Kentucky, Nebraska, and Utah at *1, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 1972 WL 136208.

¹⁸⁵ *Id.* at *2.

in California that the amici asserted supported fetal personhood.¹⁸⁶ Both of these briefs related directly to their authors' roles as elected representatives.

Casey demonstrated a public-facing use of amicus briefs to support political advocacy more than legal advocacy. Here, six briefs were filed by government entities and individuals [a jump from 11.11% to 17.65% of all briefs], with four arguing to restrict and two arguing to expand access. In this case, one restrict and one access brief self-identified their interests as submitting a "bi-partisan" brief, but then included a robust set of single-party signatories—with only a few from the other party.¹⁸⁷ Both of these briefs reflected more genericized content simply reflecting their core position—likely for the public benefit of taking a position on the case—but did not offer unique content *because* of their government roles.

The *Dobbs* briefs [7 access and 10 restrict, 12.4% of all briefs] continued the *Casey* trajectory. These briefs reflected widescale and laborious efforts to bring together large coalitions of government voices that were aligned in their viewpoints. Once the amici authors were so diffuse (e.g., 896 State Legislators¹⁸⁸), the substantive contributions necessarily became quite diluted.

Government Restrict Briefs

The government restrict briefs in *Dobbs* focused on democratic processes. They argued that state legislatures, not the Supreme Court, ought to govern. The top keywords generated when comparing *Dobbs* government restrict briefs to the rest of the corpus were *legislature* and *legislator* in first and second positions. *Elect, governor, regulation, and legislation* were also highly key when compared to the rest of the corpus; these collectively reflected the overall view that the issue of abortion belonged in the states (see line 22).

¹⁸⁶ Motion for Leave to Submit a Brief Amici Curiae Brief of Women for the Unborn et al. in Support of Appellees, *Doe v. Bolton*, 410 U.S. 179 (1973) (No. 70-18), 1971 WL 134284.

¹⁸⁷ Brief for Representatives Don Edwards et al. and Certain Other Members of the Congress of the United States as Amici Curiae in Support of Petitioners at *10, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (Nos. 91-744, 91-202), 1992 WL 12006400 ("Amici are a bipartisan group of members of the United States Congress who share a concern for the stability and integrity of our system of constitutional government"); see Brief Amicus Curiae of Hon. Henry J. Hyde et al. and Other United States Senators and Members of Congress in Support of Respondents, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (Nos. 91-744, 91-202), 1992 WL 12006415 (involving both Republican and Democratic senators and members of Congress).

¹⁸⁸ Brief of Amici Curiae 896 State Legislators in Support of Respondents, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4463137.

22. The application of rational basis review would once again afford States their proper constitutional role in protecting the health and welfare of their citizens, empowering democratically elected state *legislatures* to make considered policy decisions carefully crafted to protect the life and health of both the mother and child.¹⁸⁹

Government Access Briefs

The government access briefs defended the rule of law, with key paragraphs dominantly reflecting variations on *the rule of law* as well as *of stare decisis* (see line 23). These briefs also heavily quoted precedent, modeling the need to preserve the rule of law (see line 24). This aligned with expectation: amici serving a governmental role would likely be focused on institutions and legitimacy in ways that, for instance, academic and organizations might not be.

23. The Court should adhere to its established precedent and uphold *the rule of law* by affirming the judgment of the Fifth Circuit and striking down Mississippi's statute.¹⁹⁰
24. The Supreme Court settled the constitutional right to abortion nearly half a century ago: the Constitution guarantees every woman a "*right to terminate her pregnancy* before viability."¹⁹¹

This incremental advocacy strategy in the abortion access briefs raises future research questions regarding when and why government entities or individuals *should* weigh in as amici. Is the briefing process simply another portal to make a public statement to show constituents that government figures are engaged in the legal process as political actors? Should amici be more restricted to contributing perspectives that *only* arise by virtue of their government role or geography? We consider these questions further in Section VII.

6. Unaffiliated Individuals

There were two unaffiliated individuals who filed briefs in *Roe/Doe*, one in *Casey*, and nine in *Dobbs*, comprising 6% of the overall corpus. Of

¹⁸⁹ Brief of Amici Curiae Rep. Steve Carra and 320 State Legislators From 35 States in Support of Petitioners at *2, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3374536.

¹⁹⁰ Brief of Amici Curiae 896 State Legislators in Support of Respondents, *supra* note 188, at *4.

¹⁹¹ Brief of Amici Curiae Current and Former Prosecutors and Law Enforcement Leaders et al. at *5, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4441205 (citing *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 871 (1992); *Roe v. Wade*, 410 U.S. 113 (1973)).

the *Dobbs* briefs, only two unaffiliated individuals submitted briefs in support of abortion access, while the other seven advocated to restrict abortion. These briefs were almost exclusively authored by men, except for one filed by a group of women arguing that they were injured by second and third trimester abortions.¹⁹²

25. When it is discovered that a precedent allows targeted and continued discrimination against a *class of human beings*, this Court overrules, almost without fail.¹⁹³

The unaffiliated individuals' restrict briefs in *Dobbs* were squarely about personhood with key n-grams including *of human life*, *the life of*, *in the womb*, and *class of human beings* (see line 25 above). These four keyness results were noteworthy for two reasons. They perhaps reflected a more uninhibited depiction of the 'end game' for abortion restriction advocates. Government, academic, and organizational amici, for example, might have been more likely to write briefs with a political restraint preventing them from asking for personhood, particularly as it was not explicitly before the Court. Individual authors seem to have, paradoxically, been more intellectually honest with the Court. This raises questions about what role unaffiliated individuals can and should play in the amici process.

B. Analysis of Social Actor Representation

Next, this study compared all briefs by case (*Roe/Doe*, *Casey*, or *Dobbs*) and position (in support of abortion access or restriction) in a mixed-method quantitative and qualitative analysis of social actors present in the corpus, including the pregnant person, fetus, and physician. Collocation (as detailed in Section V.A) formed the basis of this portion of analysis. Strength of collocation is expressed as logDice (henceforth LD) in brackets following each collocate.

1. References to the Pregnant Person

Depictions of the pregnant person changed over time and across the positions of various briefs. This included how the pregnant person was depicted by life stage, by relation to others, and by anatomy. While we as

¹⁹² Brief of Amici Curiae 375 Women Injured by Second and Third Trimester Late Term Abortions and Abortion Recovery Leaders in Support of Petitioners, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3375776.

¹⁹³ Brief of Connie Weiskopf and Kristine L. Brown as Amici Curiae in Support of Petitioners at *26, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3262129.

scholars would have preferred to use more modern, gender-inclusive references (i.e., ‘pregnant person’) for these social actors in our analysis, for authenticity, we have retained the most frequent naming conventions as reflected in historical documents (e.g., ‘woman’).

Category	Lemma	Roe/Doe	Casey	Dobbs	Restrict	Access
Life Stages	woman	5256.09	5955.03	6214.57	3525.04	10211.75
	adolescent	5.35	12.35	25.11	1.21	51.02
	teenager	48.17	28.83	15.28	16.88	31.40
Relation	mother	1835.88	687.75	898.50	1308.02	472.91
	parent	765.40	473.60	217.26	394.22	253.14
	wife	133.81	798.95	33.84	148.28	249.21
	daughter ¹⁹⁴	5.35	24.71	43.67	39.78	27.47
Anatomy	womb	481.72	267.69	581.90	787.23	68.68
	body	449.60	181.20	366.82	256.78	490.47
	uterus	171.28	61.77	74.24	118.14	33.36
	cervix	90.99	12.35	76.61	107.29	5.89
	ovum	42.82	98.84	9.83	28.93	33.36

Table 3: Nouns associated with the pregnant person, organized by semantic category, and expressed in frequency/million words in respective subcorpora (case and position).¹⁹⁵ Boldface indicates the case (*Roe/Doe*, *Casey*, or *Dobbs*) and position (restrict or access) with the greatest standardized frequency of a given lemma.

a. Life Stages

The most frequent way of referring to pregnant people across all subcorpora was *woman/women*. While standardized frequency remained somewhat stable (with diachronic increases) between *Roe/Doe*, *Casey*, and *Dobbs*, there were highly notable differences in all restrict briefs [3,525.04/million] versus access briefs [10,211.75/million]. To better understand differences in usage, we calculated Word Sketch Differences and considered these by grammatical category, below.

It was surprising to find that across *both* access and restrict briefs, *woman* was quite passive. There were a very limited number of verbs with *woman* as grammatical subject (i.e., *suffer*, *undergo*, *seek*, *face*, *experience*), and these often lacked material agency (see line 26). Verbs uniquely collocating to one amicus position or the other were limited to

¹⁹⁴ This was a mixed result, referring both to the pregnant person and to the fetus or the (imagined) child of a pregnant person.

¹⁹⁵ Note that *girl* did appear in the corpus 153 times, but this was excluded from analysis due to a diverse pattern of meaning, often associated with organization names, e.g., “Girls, Inc.” A similar trend occurs with *sister*, which originally appeared under Relation, but was discovered to be associated with “Society of Sisters.”

just one each: *live* [LD 9.6] in the case of access and *serve* [LD 9.0] in the case of restrict. In access briefs, *women* were described as *living*, for instance, in geographical areas, socioeconomic states (see line 27), or for durations. This constructed the *woman* in access briefs as multifaceted but also tokenistic. She belonged to the general population, but she supported a narrative of vulnerability that described harms and undue burdens. Notably, this collocation did not construct a *woman's* interests as grounded in rights or freedoms.

In restrict briefs, *women* were described as *serving* in legislative bodies in increasing numbers since *Roe*. This was in direct contrast to the access briefs. The *woman* in restrict briefs was not general or tokenistic, but rather belonged to a very small and privileged group (for example, a *legislator* with a ratified voice). This naming strategy (see line 28) supported an argument aimed at pressing the issue of abortion back to the state level.

26. Likewise, a 2018 study found that *women* who underwent a later-term abortion were more likely to suffer from psychological distress than *women* undergoing earlier procedures.¹⁹⁶
27. But the greatest harms will fall on *women* living in poverty. For these women, the Ban will increase the costs associated with accessing abortion care, which include not only direct travel expenses, but also the cost of childcare services when they are away from home, and wages they will have to forfeit when taking time off of work.¹⁹⁷
28. The vast statistical differences between *women* serving in state legislatures in the 1970s and now show how far the Nation has come in recognizing women's valuable contributions to lawmaking.¹⁹⁸

Structures where the lemma *woman* was a grammatical object showed much greater variety. Verbs more strongly collocated in access briefs included *force* [LD 11.2] and *deny* [LD 10.3]. This constructed a rights-based argument, particularly centered around restriction. Where *women* were objects in access briefs, authors demonstrated what they might be *forced* to do with their bodies or what care they might be *denied* under law (see line 29). In restrict briefs, *women* were the objects of *help*

¹⁹⁶ Brief for American Association of Pro-Life Obstetricians and Gynecologists, *supra* note 177, at *28.

¹⁹⁷ Brief of Amici Curiae Reproductive Justice Scholars Supporting Respondents at *14, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4312136.

¹⁹⁸ Brief for Women Legislators and The Susan B. Anthony List as Amici Curiae Supporting Petitioners at *4, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3374431.

[LD 10.2], *represent* [LD 9.1], *elect* [LD 8.9], and *hurt* [LD 8.9]. Once more, there was a focus on representation of a small subsection of privileged *women* (who were *elected* to office or *represented* in government). There was a notable construction of informally described medical care (i.e., *help*) and harms (i.e., *hurt*) in restrict briefs (see line 30), though this was not highly frequent.

29. Further, there is an additional cruelty involved in forcing black *women* to gestate a fetus in Mississippi: black women in the state are almost three times more likely to die than their white counterparts due to causes related to or aggravated by pregnancy or its management.¹⁹⁹
30. The second reason or “new circumstance” is that substantial new evidence now shows that abortion hurts *women*, as does the Amici experience expressed in this Brief.²⁰⁰

A focus on the specified (and vulnerable) *woman* was further apparent in other grammatical categories of the Word Sketch Difference. Adjectival modifiers of *woman* in access briefs were *black* [LD 11.1], *white* [LD 10.3], and *young* [LD 10.7], whereas those in restrict were *single* [LD 9.4] and *amici* [LD 9.2]. Access briefs used modifiers to depict overlapping vulnerabilities of pregnancy and childbirth in certain communities already disadvantaged within the U.S. (see line 31). By contrast, the restrict briefs used modifiers to create formulaic descriptions (e.g., “single women and married couples also have constitutional rights”²⁰¹). The voice of the privileged in-group arose again with the *amici women*, whose personal testimonies stood in contrast to the general statistics about all women (or women of color, women below the poverty line, etc.) provided in access briefs (see line 32). Prepositional phrases complemented the image of vulnerability already emerging with modifiers. “Woman with” collocated with *income* [LD 12.3], *pregnancy* [LD 11.0], *resource* [LD 10.7] and *disability* [LD 9.9] in access briefs, and only with *history* [LD 11.7] in restrict briefs. The prepositional phrase “woman of” collocated in access briefs with *color* [LD 13.2], *means* [LD 10.4], *race* [LD 10.0], and *right* [LD 8.0], with no significant collocates in restrict briefs.

¹⁹⁹ Brief of Amici Curiae Reproductive Justice Scholars Supporting Respondents, *supra* note 197, at *33.

²⁰⁰ Amicus Curiae Brief of Melinda Thybault, Founder of the Moral Outcry Petition, et al. in Support of Petitioners for Reversal on the Merits at *10, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3375812.

²⁰¹ Brief Amicus Curiae on Behalf of Association of Texas Diocesan Attorneys in Support of Appellee at *5, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 1971 WL 134282.

31. The rate of severe maternal morbidity for Black *women* with a college degree was 333 per 10,000 deliveries, while the rate for white *women* with less than a high school education was 137.7.²⁰²
32. All of the Amici *Women* have personally experienced abortion in actual practice, not just theory. Amici *Women* have experienced first-hand, some multiple times, the callous reality of the abortion industry.²⁰³

Overall, the general term *woman* was the most frequent naming strategy for the pregnant person in all cases and across restrict and access briefs, but actual usage varied. Access briefs showed a greater range of agency and deployed modifiers and prepositional phrases to create varied depictions of pregnant persons potentially affected. This was likely an effort to achieve two goals. First, access advocates sought to demonstrate that Mississippi's abortion ban would present an undue burden to women. It was also likely an effort to show reliance on the *Roe* and *Casey* precedent to support *stare decisis* arguments. By contrast, restrict briefs depicted passive *women* in very narrow domains without mention of intersectional access or vulnerability issues.

b. Relation

While the access briefs had nearly three times the standardized occurrence of *woman* compared to the restrict briefs, a different pattern of social actor construction emerged prominently in the latter. The restrict briefs distinctly relied upon the language of *mother* with a relative frequency of 1,308.02/million compared to 472.91/million in access briefs. Viewing modifiers of *mother* in amicus briefs was illuminating; *low-income* [LD 9.6] and *year-old* [LD 9.0] collocated in access briefs, whereas *vulnerable* [LD 9.2] and *pregnant* [LD 11.1] collocated in restrict briefs. These usages reflected a modern advocacy strategy of depicting 'vulnerable mothers' as a justification for abortion restrictions in the restrict briefs (see line 33). In the *Roe and Doe* restrict briefs, the word *mother* was not modified by *pregnant* a single time. By *Dobbs*, however, "pregnant mother" appeared 59 times and "expectant mother" six times. This naming strategy was reliant on the framing of the fetus as a human being, which essentialized a pregnant person as a *mother* regardless of pregnancy outcome. This reinforced other strategies that personified the

²⁰² Brief of Amici Curiae Birth Equity Organizations and Scholars in Support of Respondents at *14, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4311857.

²⁰³ Amicus Curiae Brief of Melinda Thybault, Founder of the Moral Outcry Petition, *supra* note 200, at *7.

fetus in restrict briefs. The use of *pregnant mother* in *Dobbs* restrict briefs was further noteworthy because a number of these references purported to be describing *Roe* holdings (see line 34) in ways that did not align with the actual language of *Roe* (see line 35). This arguably mischaracterized the court's holding.

33. Discussion about abortion must include acknowledgment that an innocent child dies in each abortion, and that abortion poses great dangers to vulnerable *mothers*, fathers, families, and communities.²⁰⁴
34. The Court simply fashions and announces a new constitutional right for pregnant *mothers* and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes.²⁰⁵
35. Yet, the principle set forth in *Roe*, that a state's legitimate interests should weigh more heavily in the Court's analysis as the child develops and as the pregnant *mother* faces increased health risks from late term abortion, remains.²⁰⁶

This re-narrativizing twisted the legal analysis of *Roe*. In *Roe*, the court had disaggregated the two government interests supporting regulation of abortion: the health of the pregnant woman undergoing a medical procedure and the state's interest in potential prenatal life.²⁰⁷ By reverting to the language of *pregnant mother* in *Dobbs*, restrict briefs conflated the two state interests set out in *Roe* by embedding the fetus in the pregnant person's health interests (see lines 36 and 37). This distorted how *Roe* set out the two state interests, restricted the identity of women to mothers, and obscured a more diverse set of identities.

36. Here, the interests in the health of the pregnant *mother*, the humanity of the pre-born child, and the integrity of the medical

²⁰⁴ Amicus Curiae Brief of Jewish Pro-Life Foundation, *supra* note 163, at *21.

²⁰⁵ Brief of Amici Curiae Foundation to Abolish Abortion et al. in Support of Neither Party at *16, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3374551 (describing the holding in *Roe*).

²⁰⁶ Brief of Amici Curiae The National Catholic Bioethics Center et al. in Support of Petitioners at *6–7, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3374298 (citing *Roe*).

²⁰⁷ See *Roe v. Wade*, 410 U.S. 113, 150 (1973), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). The Court identified two state interests in regulating abortion. The first was for the health of the pregnant woman to ensure that the procedure was safe. *Id.* The second the Court described as “the State's interest—some phrase it in terms of duty—in protecting prenatal life.” *Id.*

profession allow the state to limit unnecessary and inhumane abortion practices.²⁰⁸

37. A pregnant *mother* has a fundamental liberty interest in maintaining her existing relationship with her child, and her personal interest in her child's life and well-being.²⁰⁹

Viewing the verb collocates of *mother* exposed yet more differences between the various subcorpora. In *Roe* and *Doe* restrict briefs, *mother* only collocated as a grammatical object with the verb *abort* (see line 38). In *Dobbs*, by contrast, the collocating verbs enacted on *mother* as an object included *pressure*, *help*, and *coerce*, most of which were distinctly disempowering and all of which took away agency from the pregnant person (see line 39). These usages (e.g., line 39) suggested that women terminating their pregnancies were doing so against their will (and under pressure from their caregivers).

38. “Responsible” physicians would hope not to abort a *mother* whose baby would be over one pound.²¹⁰
39. Pregnant *mothers* are routinely coerced into abortions at abortion clinics.²¹¹
40. As the living offspring of human *parents*, he can be nothing else but human.²¹²

The term *parent* was used with the highest frequency in *Roe/Doe*, more dominantly by briefs seeking to restrict abortion. This reflected a straightforward strategy early in the abortion litigation to situate the fetus under both parents more equally (see line 40 above), a positioning that undermined women’s bodily autonomy. The reduction in frequency of this term over time likely reflected how the abortion restriction advocates

²⁰⁸ Brief of Amici Curiae The American Association of Pro-Life Obstetricians & Gynecologists (AAPLOG) et al. in Support of Petitioners at *5, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4260330.

²⁰⁹ Brief of Amici Curiae Care Net, A National Affiliation Organization of 1,200 Pregnancy Help Centers, and Alpha Center, A South Dakota Registered Pregnancy Help Center, in Support of Petitioners at *15, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3375891.

²¹⁰ Motion for Leave to File a Brief as Amicus Curiae and Brief of Amicus Curiae Robert L. Sassone in Support of Respondent at *13, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 1971 WL 126684.

²¹¹ Brief of Amici Curiae Care Net, *supra* note 209, at *22.

²¹² Brief of Americans United for Life, Amicus Curiae, in Support of Appellee at *7, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 128055.

began to directly center the fetus (not the pregnant person) as the state's primary interest.²¹³

The briefs also depicted pregnant women relationally as wives and daughters. The use of *wife* was most dominant in the *Casey* access briefs. A Word Sketch indicated that common usages in these briefs represented the *wife* with modifiers such as *abused*, *battered*, *physically*, *abuse*, and *control*. This narrativized the categories of women who were most likely to be unduly burdened by the spousal notification requirement at issue in *Casey* (see line 41). In contrast, the most frequently occurring collocates in *Casey* restrict briefs were *husband* and *his*; this positioned the *wife* as a possession (see line 42). This was particularly surprising because the access briefs were describing spousal control over their wives (see line 41), so restrict briefs using possessive language such as that in line 42 reinforced access briefs' arguments that abusive and controlling spouses compromised women's autonomy.

41. Furthermore, the statute contains no exception for psychologically abused wives, who face as great a risk of forced pregnancy as do physically battered wives.²¹⁴
42. The fetus his *wife* carries is presumptively his child; he has legal responsibilities for the unborn child, including liability for prenatal expenses and child support.²¹⁵

Finally, the lexical item *daughter* appeared in *Dobbs* restrict briefs with notable frequency. This naming strategy was used extensively with biblical excerpts (see line 43) and to a lesser extent to personify the fetus (see line 44). Uses of *daughter* (and son, though this was less frequent) were deeply provocative. In the incorporation of Psalm 106 (see line 43), abortion was likened to child sacrifice, using terminology for post-birth beings. In line 44, the fetus was referred to as a "child" and the sex was incorporated. This personalized the narrative in a way to allow for the

²¹³ See e.g., Megan Boone & Benjamin J. McMichael, *State-Created Fetal Harm*, 109 GEO. L. J. 475 (2021) (arguing that state legislation with the purported interest in protecting fetal health actually negatively impact fetal health); Michelle Goodwin, *Fetal Protection Laws: Moral Panic and the New Constitutional Battlefield*, 102 CALIF. L. REV. 781 (2014) (concluding that the state's purported interest in fetal health undermines fetal health, thus leaving women as unequal citizens).

²¹⁴ Brief of the Pennsylvania Coalition Against Domestic Violence, The American Association of University Women, et al., as Amici Curiae in Support of the Petitioners/Cross-Respondents at *14, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (No. 91-744).

²¹⁵ Brief for the State of Utah as Amicus Curiae Supporting Respondents at *37, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (No. 91-744), 1992 WL 12006413.

imagining of a possible life that was contrasted against the violent “murder” that had been committed.

43. Clearly, the Jewish religion prohibits child sacrifice, the modern-day version being abortion Psalm 106:35-38: “They mingled with the nations and adopted their customs. They worshiped their idols, which became a snare to them. They sacrificed their sons and their *daughters* to false gods. They shed innocent blood, the blood of their sons and daughters, whom they sacrificed to the idols of Canaan, and the land was desecrated by their blood.”²¹⁶
44. Lauren (abortion at 17 weeks) “. . . I wonder what my *daughter* would be like if I'd allowed her to live & fulfil HER potentials. I miss her. It's been 29 years and I still grieve my actions and the loss of my child. I murdered my *daughter*.”²¹⁷

In sum, the restrict briefs used women’s relationships to men and children to advance their arguments, pushing a narrative of family values—regardless of the sometimes-damaging environment a particular family may nurture. The access briefs described losses of independence and control in cases of domestic violence to argue the need for women’s decision-making autonomy, both from relational and bodily perspectives.

c. Anatomy

A distinction that emerged from *Roe* to *Dobbs* was the strong preference for referring to social actors using differing terms in the anatomy category. Anatomical references began to emerge in Section VI.A above, where we described the usage of *womb* by restrict briefs (in organizational, religious, medical, and unaffiliated roles). This pattern became stark when considering social actor representation across all briefs, over time. *Roe* access briefs favored *body*, whereas *Dobbs* restrict briefs strongly favored *womb*. As demonstrated in Table 3, restrict briefs preferred specified anatomical reference overall, with higher standardized frequencies of both *uterus* and *cervix*, and nearly equitable standardized frequency across access and restrict briefs of *ovum* (largely derived from *Casey*).

45. This Court has never attempted to elaborate on why a child's ability or inability to survive outside the *womb* in the case of a

²¹⁶ Amicus Curiae Brief of Jewish Pro-Life Foundation, *supra* note 163, at *8 (quoting Psalm 106:35-38).

²¹⁷ Brief of Amici Curiae 375 Women Injured by Second and Third Trimester Late Term Abortions and Abortion Recovery Leaders in Support of Petitioners at *24, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3375776.

premature delivery has any bearing on the state's interest in protecting the child from being killed inside the *womb*.²¹⁸

46. First, as a matter of scientific, objective fact, human life, genetically distinct from the mother in whose *womb* he or she is located, comes into existence at the moment of conception.²¹⁹

A Word Sketch Difference highlighted further intriguing differences that may have motivated the authors' usage of holistic versus atomistic anatomical naming strategies, depending on their stance. Within prepositional phrases *over [x]* and *about [x]*, only *body* had collocates within the corpus, resulting in phrases: *control/sovereignty/autonomy over [their/her own] body/bodies*, and *choice/decision about [their/her own] body/bodies*. The preference for *body* in access briefs mobilized this word to argue for autonomy *over* the *body* and *about* its medical choices. In contrast, *womb* was the only item that collocated with prepositional phrases *inside* and *outside*. *Outside the womb*, the briefs described *embryo, survival, viability, and life*. *Inside the womb*, the *fetus* may either have *life* or be *killed* (see line 45 above).

With this construction, the restrict briefs told a binary story of life inside the *womb* and life outside the *womb*, which at first glance seemed to align with the viability line at issue in *Dobbs*. In so doing, however, these briefs actually isolated the *womb* as the entirety of the pregnant person, and they eviscerated the relationship of the woman's work and labor in pregnancy (see line 46 above).

2. References to the Fetus

Representations of the fetus also differed between the restrict and access briefs and changed over time. We considered how the fetus was depicted as a post-birth being, as a pre-birth being, and during the pregnancy, birth, and conception processes.

²¹⁸ Brief of Amici Curiae Robin Pierucci, M.D. and Life Legal Defense Foundation in Support of Petitioners at *7, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3262132.

²¹⁹ Brief of Amicus Curiae The American Cornerstone Institute and Its Founder/Chairman, Dr. Benjamin S. Carson, in Support of Petitioners at *27, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3374356.

Category	Lemma	Roe/Doe	Casey	Dobbs	Restrict	Access
As a post-birth being	child	6819.00	3084.59	2697.69	4115.76	2103.57
	baby	428.19	140.02	393.03	489.45	133.44
	infant	101.70	111.19	450.89	379.75	300.23
	offspring	107.05	82.37	18.56	60.28	13.74
As a pre-birth being	fetus	1059.78	658.92	1174.71	1334.55	637.74
	foetus ²²⁰	235.51	20.59	18.56	42.19	49.06
	unborn	3034.83	1807.92	1181.26	2408.69	2301.67
	preborn	5.35	28.83	187.78	215.79	1.96
Biological components	embryo	192.69	115.31	147.38	195.30	70.64
Pregnancy and birth processes	pregnancy	2130.27	1915.00	2293.74	1527.44	3304.49
	birth	974.14	836.01	719.46	729.36	845.75
	childbirth	133.81	207.43	308.87	191.68	257.06
	delivery	176.63	78.25	75.33	88.01	94.19
Conception process	conception	503.13	432.42	298.04	448.47	194.27
	fertilization	53.52	197.68	213.98	261.60	72.60

Table 4: Nouns associated with the fetus, organized by semantic category, and expressed in frequency/million words in respective subcorpora (case and position).²²¹ Boldface indicates the case (*Roe/Doe*, *Casey*, or *Dobbs*) and position (restrict or access) with the greatest standardized frequency of a given lemma.

In *Roe*, the Court wrestled with the question of when life began.²²² The government argued that it began at conception and the petitioners argued that it began at childbirth.²²³ These dueling positions were reflected in the corpus; *conception* [488.22/million] dominated in the *Roe* restrict briefs, juxtaposed to *birth* [845.75/million], *childbirth* [257.06/million] and *delivery* [94.17/million] in the *Roe* access briefs. *Roe*

²²⁰ This item has been included as an alternative spelling, but we note that its appearance is very largely attributed to a single case (Motion of American Ethical Union et al. for Leave to file a Brief as Amici Curiae in Support of the Appellants' Position, with the Proposed Brief Attached at *ii, *Doe v. Bolton*, 410 U.S. 179 (1973) (Nos. 70-40, 70-18), 1971 WL 128051), which is coded for a 'neither' position.

²²¹ Note that *partial birth* does appear in the corpus, but this was excluded from analysis due to its exclusive usage in *Dobbs*, in reference to *Gonzalez*. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022); *Gonzalez v. Carhart*, 550 U.S. 124 (2007). A small number of further items (*heartbeat*, *development* and *planned*) were found to have some association with the pregnancy/fetus and were considered for incorporation, but ultimately discarded due to their majority association with proper nouns, e.g. "Planned Parenthood."

²²² See *Roe v. Wade*, 410 U.S. 113, 160–63 (1973), *overruled by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

²²³ *Id.* at 159–60.

ultimately declined both arguments regarding fetal personhood, offering instead a “less rigid claim.”²²⁴ *Roe* held that:

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate.²²⁵

The Court’s holding plainly rejected fetal personhood even though it alluded that it need not decide. Because the issue was explicitly before the Court, the high relative frequencies of terms reflecting both sides of the personhood debate in *Roe* is thus understandable (see line 47). Over time, these terms all declined in frequency as the viability line took hold in the Court’s jurisprudence instead of these more polarized positions of conception versus childbirth.

47. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at *conception* and is continuous whether intra- or extra-uterine until death.²²⁶

Fetal personhood was not explicitly before the court after *Roe*, though aggressive legislative proposals did continue at the state and federal level.²²⁷ Reviewing the language related to the fetus in subsequent amicus briefs filed in *Casey* and *Dobbs* revealed that the fetal personhood battle continued powerfully in rhetorical strands deployed by the restrict briefs. While the terminology appeared to shift from “conception” in *Roe* to “fertilization” in *Dobbs*, the argument for personhood remained consistent

²²⁴ *See id.* at 150 (“Logically, of course, a legitimate state interest in this area need not stand or fall on acceptance of the belief that life begins at conception or at some other point prior to life birth. In assessing the State’s interest, recognition may be given to the less rigid claim that as long as at least *potential* life is involved, the State may assert interests beyond the protection of the pregnant woman alone.”) (emphasis in original).

²²⁵ *Id.* at 159.

²²⁶ Motion for Leave to File a Brief as Amicus Curiae and Brief of Amicus Curiae Robert L. Sassone in Support of Respondent, *supra* note 210, at *18.

²²⁷ Madeleine Carlisle, *Fetal Personhood Laws are a New Frontier in the Battle Over Reproductive Rights*, TIME (June 28, 2022, 4:40 PM), <https://time.com/6191886/fetal-personhood-laws-ro-abortion/> [<https://perma.cc/SGN6-DBKA>] (“[A]t least six states have . . . introduced legislation to ban abortion by establishing fetal personhood.” For example, in 2021, Arizona’s governor enacted an abortion ban that gave all unborn children at all stages of development the same rights, privileges, and immunities as American citizens).

(see line 48 below). References to the post-birth being (i.e., *child*, *baby*, *infant*, and *offspring*) were all more frequent in restrict than access briefs; except for *infant*, these were by a large margin. At first glance, that made sense, as the restrict briefs sought to continue the pregnancy to birth. At a closer glance, however, *how* these briefs referred to the post-birth beings was deeply revealing about the endgame for abortion restriction advocates.

The dominant use of the word *fetus* in the *Dobbs* restrict briefs [frequency 1,334.55/million] was noteworthy because it seemed more likely that the words *unborn* [2,408.69/million] or *preborn* [215.79/million] would be used predominantly. The word *fetus* in restrict briefs was markedly modified in ways that sought to personify the *fetus* and wield emotive strategies, with collocates including *non-viable*, *dead*, *human*, *aborted*, *viable*, *live*, *dismember*, *abort*, and *kill* (see line 49 below). In many cases, those descriptors were layered together (see line 50). At the outset, *fetus* seemed more likely to dominate in access briefs, but it ultimately only appeared at half the frequency of the restrict briefs. The access briefs, in contrast to restrict briefs, used *fetus* in straightforward, matter-of-fact, and descriptive ways (see line 51).

48. Today, amici provide the Court with evidence that shows most biologists affirm *fertilization* as the leading biological view.²²⁸
49. And, finally, isn't it a twisted logic that would kill an innocent unborn *baby* for the crime of his father!²²⁹
50. The majority of abortion procedures performed after fifteen (15) weeks' gestation are dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn *child* apart before removing the pieces of the dead *child* from the womb.²³⁰
51. And, like Blackstone, these sources explained that the reason for this principle was the legal belief that a *fetus* was not considered a cognizable life for purposes of the law until quickening.²³¹

Word Sketches of the two most frequent methods of referring to the fetus in restrict briefs—*child* and *baby*—provided interesting insights into

²²⁸ Brief of Biologists as Amici Curiae in Support of Neither Party, *supra* note 146, at *1.

²²⁹ Motion For Leave to File a Brief as Amicus Curiae and Brief of Amicus Curiae Robert L. Sassone In Support of Respondent, *supra* note 210, at *56.

²³⁰ Brief of Amici Curiae Hannah S. – A Former IVF Frozen Embryo and John and Marlene S. – Adoptive Parents of the First “Adopted” Frozen Embryo in America in Support of Petitioners at *11, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3490062.

²³¹ Brief for Amici Curiae American Historical Association and Organization of American Historians in Support of Respondents at *9, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4341742.

how these terms emotively personified the fetus. Some top modifier collocates of *child* (*unwanted, illegitimate, old*) and *baby* (*premature, newborn, and young*) did refer to post-birth children and babies. However, the large majority referred instead to fetuses. In the case of *child*, top modifiers included *unborn, preborn, innocent, and dead*; top modifiers for *baby* were *preborn, unborn, previable, term, aborted, imperfect, innocent, small, and black*. These modifiers indicating a living *child/baby* created a negative semantic prosody around *child*: even when amici authors sought to restrict abortion, children were depicted as being *unwanted* and *illegitimate*. Where modifiers instead referred to fetuses, these might indicate development stage (*previable, term*) or construct future personhood (*unborn, preborn*). Most of the modifiers, however, were non-medical in nature and constructed vulnerable identities for fetuses. They were described as *small, black, imperfect, or innocent*. Juxtaposing these recognizable traits against modifiers of violence (*dead* in the case of *child*; *aborted* in the case of *baby*) was a powerful strategy of creating horror once personhood was identified (see line 50 above).

Usage of the term *fetus* was also much more apparent in restrict briefs, occurring with over double the standardized frequency than that of access briefs. Due to the high frequency overall [$n=325$ in access, $n=1,107$ in restrict], we undertook a Word Sketch Difference between the two subcorpora. Collocates are discussed by grammatical category below.

The most striking differences appeared in common constructions where *fetus* was the grammatical object. In access briefs, *fetus* collocated as the object of *declare, define, and give*. These all appeared in relatively low frequency and referred to jurisprudence rather than human actors enacting verbal processes upon the *fetus* (line 52 below). By contrast, restrict briefs had a long list of collocating verbs. The most strongly associated of these were (in descending order of strength): *evacuate, kill, live, deliver, dismember, grab, remove*. In access briefs, the law was the agent performing actions upon the *fetus* (e.g., *declare, define*). However, in restrict briefs, it was medical professionals who undertook the verb processes on the *fetus* as an object. These processes were particularly visceral accounts of medical procedures, indicating possible ineptitude leading to prolonged procedure duration (see line 53), violence in the undertaking of the procedure (see line 54), or co-opted terminology more associated with criminology than medical care (see line 55).

52. The practical effect of both tests could be to permit state legislatures to inaccurately define the *fetus* and life, and thereby

place such restrictions on abortion, contraception, and other reproductive health care as to all but ban them.²³²

53. A doctor may make 10 to 15 passes with the forceps to evacuate the *fetus* in its entirety, though sometimes removal is completed with fewer passes.²³³
54. A long curved Mayo scissors may be necessary to decapitate and dismember the *fetus*.
55. Some doctors, especially later in the second trimester, may kill the *fetus* a day or two before performing the surgical evacuation.²³⁴

Notably, collocation between *fetus* and the verb ‘to be’ (e.g., “*fetus* is a...”) was distinctive in restrict briefs compared to access briefs in Word Sketch Difference. The collocates that follow ‘to be’ were (in descending order of strength): *person*, *being*, *human*, *life*, *entity*, and *child*. In combination with adjectival predicates of *fetus* in restrict briefs (*sensitive*, *alive*, *vulnerable*), these items (*person*, *being*, etc.) further underscored the strategy of positioning the *fetus* as a (vulnerable) person, identified in the *child/baby* discourse above. As such, the fetus as a genitive (i.e., *fetus*’s) in restrict briefs had a wide range of possessions: the amici described their *survival*, *capacity*, *awareness*, *humanity*, *heart*, *development*, *sex*, *body*, and *life*. Access texts had a single collocate under the genitive category, and this was *father*. This usage arose in two instances, both from the same brief authored by Asian American women’s groups,²³⁵ which described the anti-Asian rhetoric that arose in the criminal investigation of Purvi Patel.²³⁶

²³² Brief Amici Curiae of the Alan Guttmacher Institute et al. in Support of Planned Parenthood of Southeastern Pennsylvania et. al. at *28, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (Nos. 91-744 and 91-902).

²³³ Brief for American Association of Pro-Life Obstetricians and Gynecologists, *supra* note 177, at *14.

²³⁴ Brief of Amici Curiae 375 Women Injured By Second and Third Trimester Late Term Abortions and Melinda Thybault, Individually and Acting on Behalf of 336,214 Signers of The Moral Outcry Petition, in Support of Petitioners at *7, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4227871.

²³⁵ Brief of Amici National Asian Pacific American Women’s Forum et al. in Support of Respondents at *27–28, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4312135. *See generally* Nimra Chowdry & Stephanie Zhou, *Progress for Purvi Patel, but Targeting of Women of Color Continues*, AM. CONST. SOC’Y EXPERT F. (Aug. 11, 2016), https://www.acslaw.org/?post_type=acsblog&p=11595 [<https://perma.cc/U74Y-WVBY>].

²³⁶ Purvi Patel, an Indian American woman, was convicted and sentenced to 20 years in prison in Indiana for feticide and child neglect following an apparent self-induced abortion. This was later overturned by the Indiana Court of Appeals, who

Restrict briefs contained various ways of referring to the fetus, ranging from pre-birth and post-birth constructions. However, when considering the representation of this social actor in access briefs, the only term strongly preferred was *pregnancy*. This had a high frequency across both subcorpora [n=1,684 in access, n=1,267 in restrict]. A Word Sketch Difference of *pregnancy* between the restrict versus access subcorpora did not yield results as polarized as that of *fetus*. Access briefs uniquely had adjectival predicates for *pregnancy*; these included *unintended*, *likely*, and *due*. When considering differences in modifiers of pregnancy between access briefs (*pre-viability*, *own*, *rape-related*, *unintended*) and restrict briefs (*ectopic*, *full-term*, *subsequent*, *crisis*), a somewhat fuller picture of representation of *pregnancy* appeared. Access briefs placed more prominence on the (traumatic) circumstances of becoming pregnant (see lines 56 and 57), whereas restrict briefs focused on the circumstances of being and remaining pregnant (see line 58).

56. Sexual minority women are more likely to experience unintended pregnancies as a result of sexual violence.²³⁷
57. Approximately one in four survivors who are raped by their partners become pregnant, a rate five times the national average for rape-related pregnancy.²³⁸
58. One Japanese study revealed that 3.9% of women with previous history of legal abortion had a subsequent ectopic pregnancy.²³⁹

In summary, access briefs addressed issues of intimate violence and intersectional risk factors. In contrast, restrict briefs discussed risks only relating to the failure to continue pregnancy, such as in the heightened danger of cancers or in the inability to seek medical attention for unassociated symptoms. The detailed depiction of the life of both the post-birth *child* and the pre-birth *fetus* preferred by restrict briefs is probably not surprising to most scholars. However, there was a notable rhetorical strategy of abstracting ‘pregnancy’ (and thereby obscuring the fetus) in access briefs. While amici were seeking abortion access, there seemed to be reluctance to address the fact that a fetus was involved within the process, and that this fetus may have qualities or undergo processes

ruled that application of the feticide statute did not align with intent demonstrated by prior usage.

²³⁷ Brief for LGBTQ Organizations and Advocates as Amici Curiae in Support of Respondents at *17, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4523786.

²³⁸ Brief of Amici Curiae Legal Voice et al. in Support of Respondents at *17, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4441327.

²³⁹ Motion and Brief Amicus Curiae of Certain Physicians, Professors and Fellows, *supra* note 176, at *53.

(regardless of polarity). Scholars such as Greer Donley and Jill W. Lens have offered a way to thread that needle consistent with abortion access.²⁴⁰

3. References to the Physician

In this section, we describe discursive constructions of the final major group of social actors: physicians, represented both as individuals (e.g., *physician*, *abortionist*), and entities (i.e., *provider*, *clinic*). We uncovered usages distinctive to restrict and access amici, which are discussed below.

Category	Lemma	Roe/Doe	Casey	Dobbs	Restrict	Access
Individuals	physician	1166.83	789.95	358.09	450.88	718.20
	doctor	578.06	210.03	348.26	330.32	396.38
	abortionist	133.81	94.72	49.13	74.74	60.83
	surgeon	48.17	4.12	10.92	18.08	9.81
Entities	provider	5.35	197.68	449.80	162.75	637.74
	clinic	96.34	242.98	369.01	523.93	178.42

Table 5: Nouns associated with the physician, organized by semantic category, and expressed in frequency/million words in respective subcorpora (case and position).²⁴¹ Boldface indicates the case (*Roe/Doe*, *Casey*, or *Dobbs*) and position (restrict or access) with the greatest standardized frequency of a given lemma.

Immediately, distinct patterns in referring to the social actor of the physician emerged. As demonstrated in Table 5, this social actor was much more frequent overall in access briefs, which showed preferences for the terms *physician*, *doctor*, and *provider*. Restrict briefs, by contrast, used the terms *abortionist*, *surgeon*, and *clinic*. Both sets of briefs, therefore, made use of individual and group naming strategies to refer to those delivering abortion care.

In terms of individual agents, *physician* was the most frequent naming strategy in access briefs. Modifiers of *physician* included *licensed*, *allopathic*, *private*, *skilled*, *sympathetic*, *second*, *family*, *many*, and *other*. This usage (e.g., line 59 below) created a positive semantic prosody: the *physician* was educated, approachable, and numerous (the

²⁴⁰ Greer Donley & Jill Wieber Lens, *Abortion, Pregnancy Loss, & Subjective Fetal Personhood*, 75 VAND. L. REV. 1649 (2023) (arguing that the belief that recognizing pregnancy loss threatens abortion rights can be reconciled by understanding subjective and relational fetal value, derived from pregnancy loss research, which shows that a pregnant person's attachment to their fetus is based on individualized factors and does not imply personhood-at-conception; suggesting that abortion rights advocates can support those experiencing pregnancy loss without compromising on abortion rights through a tort law model of recognizing subjective, relational fetal value).

²⁴¹ Note that both *obstetrician* and *gynecologist* were present in the data but are not considered here due to their majority frequency in proper nouns (e.g., the American College of Obstetricians and Gynecologists).

presence of *other* and *many physicians* indicated the possibility of professional discussion and consensus). The individual naming strategy that was most frequent in restrict briefs was *abortionist*. In a Word Sketch, modifiers of *abortionist* included: *back-alley*, *unskilled*, *inept*, *low-priced*, *backroom*, *quack*, *illegal*, *inexpensive*, *neighborhood*, and *dangerous*, which created an extremely negative semantic prosody. The appearance of these actors in restrict briefs (most notably in *Roe* and *Doe*, but still present in *Casey* and *Dobbs*) constituted a ‘bogyman’ actor who threatened pregnant people seeking abortions (see line 60).

59. It is true that the poor and non-white would still be limited by obtaining treatment by the natural factors of inability to pay, not having a family *physician*, and the limited number of free or subsidized-care facilities in their communities.²⁴²
60. At the conclusion of a D&E abortion no intact fetus remains. In Dr. Carhart's words, the *abortionist* is left with “a tray full of pieces.”²⁴³

While these constructions (and accompanying semantic prosodies) clearly aligned with the objectives of authors seeking abortion access or restriction, the use of individual naming strategies (i.e., *physician*, *doctor*, *abortionist*, and *surgeon*) were all on the decline from *Roe/Doe* to *Dobbs*. Over time, in both restrict and access briefs, they were supplanted by entity naming strategies for the physician.

While *physician* was once the most frequent naming strategy [1,166.83/million in *Roe/Doe*, 358.09/million in *Dobbs*], this seems to have been replaced by *provider* [5.35/million in *Roe/Doe*, 449.80/million in *Dobbs*]. The appearance of *provider* not only increased dramatically over time but also demonstrated a notable shift in usage. The abortion access briefs used *provider* only once [5.81/million] in *Roe/Doe*, 31 times [127.67/million] in *Casey* and 293 times [319.88/million] in *Dobbs*; these appeared almost exclusively as “abortion provider” and “healthcare provider.” These usages were sometimes juxtaposed with *doctor* (see line 61 below), suggesting a more inclusive grouping.

It is striking, however, to see how access briefs deviated over time from the clearer medical and health lenses of *obstetrician*, *gynecologist*, *physician*, or *doctor*, which framed the *Roe* opinion and situated the *physician* as a trusted decision-maker. This variation may have reflected

²⁴² Motion for Leave to File Brief Amici Curiae in Support of Appellants and Brief Amici Curiae at *32, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18), 1971 WL 126688.

²⁴³ Amicus Brief of The American Center for Law and Justice and Bioethics Defense Fund in Support of Petitioners at *18, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4264277.

a strategic litigation response to the Court's problematic demonization of "abortion doctors" in *Gonzales v. Carhart*,²⁴⁴ as documented by numerous legal scholars.²⁴⁵ This strategy likely also aligned with legal movements at the state level seeking to expand abortion access beyond physicians to include nurse midwives, self-managed care, etc.

However, this rhetorical shift had two notable consequences. The first was that the use of *provider* rather than *physician* ran counter to the pattern of medicalization previously established in access briefs.²⁴⁶ *Physician* had a positive semantic prosody established over decades. *Provider* replaced it with a more genericized and de-medicalized alternative. The second effect was that, once more, the visible individual actor was omitted from access briefs and exchanged for an entity. This contributed to a narrative of the provision of goods and services (under capitalism) rather than medical care (which aligned more neatly with socialist values inscribed in discourses of vulnerability). In doing this, access briefs showed that harms to the provider-patient relationship came from abortion regulation and restriction (see line 62), another abstract conceptualization.

61. [Upholding Mississippi's ban] would also invite the criminalization of women who make the personal decision to have abortions, as well as the doctors and *providers* who safely facilitate these healthcare choices.²⁴⁷
62. Both *providers* and patients report damage to the provider-patient relationship in connection with restrictions on abortion, including limiting what information providers may share about abortion, mandating that providers share inaccurate information, and preventing providers from offering abortion care altogether.²⁴⁸

²⁴⁴ *Gonzales v. Carhart*, 550 U.S. 124 (2007) (the Congressional act banning the intact dilation and evacuation (colloquially known as "partial birth abortion") procedure is constitutional); Ellen Sweet, *Reproductive Rights and the Supreme Court: When "Activism" Goes Wrong*, 35 WOMEN'S STUD. QUARTERLY 338, 340 (2007) (discussing Justice Kennedy's framing of doctors in *Gonzales* as "abortion doctors" rather than by their actual specialty and the impact of using that language).

²⁴⁵ *Gonzales*, 550 U.S. 124 (describing the medical professionals who perform abortions as "abortion doctors"). See generally B. Jessie Hill, *Dangerous Terrain: Mapping the Female Body in Gonzales v. Carhart*, 19 COLUM. J. GENDER & L. 649 (2010).

²⁴⁶ Yvonne Lindgren, *The Rhetoric of Choice: Restoring Healthcare to the Abortion Right*, 64 HASTINGS L.J. 385 (2013).

²⁴⁷ Brief of Amici Curiae Current and Former Prosecutors and Law Enforcement Leaders et al. in Support of Respondents at *2–3, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4441205.

²⁴⁸ Brief of Local Governments as Amici Curiae in Support of Respondents at *26, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4312138.

63. Whether abortion *providers* have third-party standing to invalidate a law that protects women's health from the dangers of the late-term abortions.²⁴⁹
64. As such, the Court's insistence on treating it as a medical decision to be left solely to the “medical” judgment of the abortion *provider* is completely unwarranted.²⁵⁰

The use of *provider* was much less frequent in restrict briefs; it did not appear at all in *Roe/Doe*, 17 times [70.01/million] in *Casey*, and 118 times [128.83/million] in *Dobbs*. These usages were notably different than the access brief usages, focusing instead on third-party standing (see line 63 above), which served to distance *providers* from their interests in the case on behalf of patients, and on other strategies distancing *providers* from the medical profession entirely (see line 64). The preferred term in restrict briefs was, instead, *clinic*. As with *provider*, the use of *clinic* rose steadily over time and overtook all references to individual physicians in the restrict briefs by *Dobbs*. Viewing a Word Sketch of *clinic* in the restrict subcorpus revealed that top modifiers included *rural*, *unaffiliated*, *free-standing*, and *filthy*. This showed a disdain and distrust for the organizational location which need not be attached to individual physician-actors.

Overall, we noted a decrease over time in references to individual *physicians*, regardless of amici positions. These have been steadily replaced by a preference for the association of entities with the provision of abortion care. Access briefs used *provider* to refer abstractly to both procedural and legislative issues. Restrict briefs used *clinic* to malign the provision of medical care in these settings. Both choices had the effect of removing humanized actors, but *provider* additionally de-medicalized the discourse.

C. The Rights and Risks Framings of Abortion

Each time the Court considered the constitutionality of abortion, it also had to consider the risks and rationales that *would* support abortion, as presented by the amici. We studied the occurrence and usage of various frames (e.g., legal, medical) and considered these alongside the role identities of amicus brief authors. This section reveals shifts in how the amici described the risks that might necessitate abortion and the kinds of exceptions that state laws might need.

²⁴⁹ Brief of Amici Curiae The American Association of Pro-Life Obstetricians & Gynecologists (AAPLOG), *supra* note 208, at *i.

²⁵⁰ Brief of The Catholic Medical Association et al. as Amici Curiae in Support of Petitioners at *21, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 3192495.

1. Rights Framing

Corpus-based analysis further presented an opportunity to study how abortion was framed as a right by the various amici, both across time and from various positions. In Table 6 below, we present the most frequent rights-related lexis in all subcorpora.

Category	Lemma	Roe/Doe	Casey	Dobbs	Restrict	Access
Rights framing	liberty	867.09	1231.36	921.43	773.96	1301.00
	privacy	856.39	1107.82	219.44	452.08	496.46
	freedom	610.42	424.18	276.21	249.55	500.38
	equality	37.47	102.96	292.59	133.82	370.87
	dignity	96.34	70.01	157.21	138.64	125.59

Table 6: Nouns associated with the rights framing of abortion, expressed in frequency/million words in respective subcorpora (case and position). Boldface indicates the case (*Roe/Doe*, *Casey*, or *Dobbs*) and position (restrict or access) with the greatest standardized frequency of a given lemma.

The most frequently appearing rights framing in the corpus was *liberty*, which occurred 1,305 times in the corpus overall [969.25/million]. Looking at the relative frequency of *liberty* across cases, it was most dominant in *Casey* briefs [1,231.36/million], having risen from *Roe/Doe* [1,029.04/million]. By *Dobbs*, usage dropped off again [921.42/million]. There was a distinct preference demonstrated in distribution: *liberty* appeared in access briefs nearly twice as often as in restrict briefs [1,301.00 versus 773.96/million]. This aligned with the *Roe* substantive due process holding, in which the Court held that the *liberty* rights expressed in the Fourteenth Amendment included both procedural due process and substantive liberties, specifically the right to privacy.²⁵¹ With *Roe* solidifying the source of the right from a precedential standpoint, it made sense that the *Casey* access amici demonstrated the highest usage of *liberty*, which defended the *status quo*. This was further reinforced by the higher frequency of *privacy* in access briefs; this was the constitutional right that sat under the substantive due process liberty interest.

In addition to differences in frequency, the type of *liberty* discussed from both sides varied greatly. A Word Sketch revealed that access briefs spoke of a *personal liberty* [LD 11.3] more synonymously with autonomy (see line 65) whereas the restrict briefs spoke of liberties with modifiers like *real liberties* or *fundamental liberties* [LD 8.3], likely seeking to distance abortion from the constitution using natural rights arguments (see line 66).

²⁵¹ *Roe v. Wade*, 410 U.S. 113, 153 (1973), *overruled by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

65. The question now raised by Petitioners is whether Roe and Casey also fit within this framework as protected personal autonomy *liberty* rights.²⁵²
66. That the mother's relationship is a protected fundamental *liberty* is supported by all applicable criteria, “tradition and history;” the dictates of the natural and inalienable rights of both mother and child; “the conscience of our people,” and the “recognition of the basic values that underlie society.”²⁵³

The term *freedom* also had a relative frequency two times greater in access briefs than in restrict briefs [500.38 versus 249.55/million] and concordance analysis revealed that the *freedoms* being constructed were notably quite polarized. The *freedoms* at stake in the access briefs were the *freedom* to choose or reproductive *freedom* (see line 67). *Freedom* in the restrict briefs, in contrast, was about states' *freedom*, religious *freedom*, *freedom* of conscience of medical professionals, and the *freedom* of legislatures (see line 68).

67. The black women who were the architects of the reproductive justice framework recognized that abortion rights were essential to racial justice and reproductive *freedom*.²⁵⁴
68. For examples in *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944), this Court was faced with the contention that a state statute precluding labor by a child of tender years in distributing religious tracts was a violation of its parent's constitutional rights to *freedom* of conscience and religious practice and to freedom to bring up its child in a religion.²⁵⁵

Equality was used approximately three times more often in access briefs than restrict briefs [standardized frequency of 370.87 versus 133.82/million]. Concordance analysis showed that it was used in access briefs to highlight the gender equality principles (see lines 69 and 70 below). *Equality* was not the legal focus in *Roe* because the opinion predated the Supreme Court's use of heightened scrutiny to examine sex-based classifications. Abortion access advocates instead sought to stitch

²⁵² Brief of Anthony Hawks as Amicus Curiae in Support of Respondents at *20, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4295233.

²⁵³ Brief of Amici Curiae Care Net, *supra* note 209, at *17.

²⁵⁴ Brief of Amici Curiae Reproductive Justice Scholars Supporting Respondents, *supra* note 197, at *27.

²⁵⁵ Brief Amicus Curiae on Behalf of Association of Texas Diocesan Attorneys, in Support of Appellee, *supra* note 201, at *77.

the equality argument back in as the doctrine gained legal momentum, but they had to be conservative in their strategy because the precedent was not fully in place. In contrast, the restrict briefs used *equality* to offer another path for the Court to consider fetal personhood (see line 71). However, other than the singular access brief submitted by Equal Protection Constitutional Law Scholars (see line 69), neither access briefs nor restrict briefs as a whole seemed to engage with ‘equality’ in explicit equal protection arguments.

69. Accordingly, Justices of this Court have long acknowledged the fundamental *equality* principles that underlie the constitutional right to an abortion.²⁵⁶
70. Overruling the landmark precedents of *Roe* and *Casey* would particularly conflict with this Court's long-running recognition of basic *equality* principles.²⁵⁷
71. 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.²⁵⁸

Between *Casey* and *Dobbs*, the Supreme Court decided *Lawrence v. Texas* and *Obergefell v. Hodges*,²⁵⁹ and each case expanded the right to privacy as applied to intimate sexual conduct and same-sex marriage. These cases distinctly relied on the “double helix” of equal protection and dignity arguments.²⁶⁰ The use of *dignity* as a rights-framing legal vehicle immediately sparked dialogue among feminist scholars as to how *dignity*

²⁵⁶ Brief of Equal Protection Constitutional Law Scholars Serena Mayeri et al., *supra* note 174, at *7.

²⁵⁷ Brief for LGBTQ Organizations and Advocates, *supra* note 237, at *29.

²⁵⁸ Brief for Amici Curiae Illinois Right to Life and Dr. Steve Jacobs, J.D., Ph.D., in Support of Petitioners at *7–8, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4340072.

²⁵⁹ *Lawrence v. Texas*, 539 U.S. 558, 567 (2003) (asserting that a Texas sodomy statute, when enforced against consensual homosexual sexual conduct in private, infringed upon the right to liberty under the Due Process Clause, the Court argued that equality demands preserving the dignity of individuals by allowing them to engage in sexual relations in the privacy of their own homes); *Obergefell v. Hodges*, 576 U.S. 644, 680–81 (2015) (holding that the right to marry, inherent in the liberty of the person and protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment, ensures dignity and equality for same-sex couples, preserving their autonomy to make personal choices about marriage).

²⁶⁰ Laurence H. Tribe, *Equal Dignity: Speaking Its Name*, 129 HARV. L. REV. 16, 17 (2015) (“*Obergefell*’s chief jurisprudential achievement is to have tightly wound the double helix of Due Process and Equal Protection into a doctrine of *equal dignity*—and to have located that doctrine in a tradition of constitutional interpretation as an exercise in public education.”).

would map on to the abortion right, with some cautioning that this would be used to embolden fetal personhood instead of protecting women's autonomy.²⁶¹ Seeing a spike in the standardized frequency of *dignity* referenced in *Dobbs* briefs from both the access and restrict positions revealed this cautionary tale playing out (see line 68 above).

Both restrict and access briefs used the language of *dignity*, exposing a battle over which side would be able to 'claim' the right. In *Dobbs* restrict briefs, *dignity* was wholly centered around the *dignity* of the unborn (see line 72). The *Dobbs* access briefs were more passive and fluid in their use of *dignity*. For instance, line 73 invoked *dignity* to describe what the right to privacy means for all citizens relative to their personal lives. Line 74, in contrast, positioned *dignity* as a standalone individual right in matters involving the family. Line 75 positioned *dignity* as the right to control one's body. These divergent usages align with scholarly critiques that *dignity* would be a difficult legal frame to map onto abortion.²⁶² It is unclear if, in these briefs, *dignity* was intended to be synonymous with the right to privacy or if it was somehow different.

72. These lies rob infants in the womb of their humanity, *dignity*, and divinely created existence.²⁶³
73. 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.²⁶⁴
74. The Court has long recognized that the Constitution protects individuals' *dignity* in matters involving the family and parent-child relationships.²⁶⁵
75. 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.”²⁶⁶

²⁶¹ See, e.g., Yuvraj Joshi, *The Respectable Dignity of Obergefell v. Hodges*, 6 CALIF. L. REV. CIRCUIT 117 (2015); Victoria Baranetsky, *Aborting Dignity: The Abortion Doctrine After Gonzales v. Carhart*, 36 HARV. J.L. & GENDER 123 (2013); Reva B. Siegel, *Dignity and the Politics of Protection: Abortion Restrictions Under Casey/Carhart*, 117 YALE L.J. 1694 (2008).

²⁶² See, e.g., Siegel, *supra* note 261, at 1698–99.

²⁶³ Amicus Curiae Brief of Jewish Pro-Life Foundation, *supra* note 163, at *28.

²⁶⁴ Motion of American Ethical Union et al. for Leave to file a Brief as Amici Curiae in Support of the Appellants' Position, with the Proposed Brief Attached at *14, *Doe v. Bolton*, 410 U.S. 179 (1973) (Nos. 70-40, 70-18), 1971 WL 128051.

²⁶⁵ Brief of Amici Curiae Reproductive Justice Scholars Supporting Respondents, *supra* note 197, at *29.

²⁶⁶ Brief of Constitutional Accountability Center as Amicus Curiae in Support of Respondents at *26, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392), 2021 WL 4427025.

The access briefs revealed the amici's efforts to defend the *status quo* while layering in more timely arguments as the jurisprudence evolved. The restrict briefs demonstrated a steadfast commitment to making any rights framing apply to the fetus dominantly. In the end, Justice Alito struck down the right in a way that diverted any discussion of dignity.

2. Risk Framing

a. Risks and Exceptions to Abortion Bans

The risk framing of abortion was another important theme to explore in the corpus, for two reasons. First, risk framing provided a view into the kinds of risks that restrict amici considered adequate justification for a legislative abortion exception. It was also important to see how risks frame advocacy in support of or in opposition to abortion access.

Category	Lemma	Roe/Doe	Casey	Dobbs	Restrict	Access
Risk of pregnancy	(life/health of woman/patient/mother/person ('s life/health)	645.14	399.48	468.36	397.83	606.34
Psychological risk of pregnancy or abortion	psychological	123.11	415.95	149.57	188.07	204.08
	emotional	149.87	181.20	114.63	170.72	108.50
	depression	32.11	24.71	75.33	66.31	51.02
	suicide	187.34	65.89	85.16	128.99	37.28
Risk causing pregnancy	drug/alcohol/substance abuse	0.00	4.12	29.48	27.73	9.81
	rape	294.38	407.71	135.38	95.24	390.50
Fetal risk	incest	101.70	49.42	46.94	33.76	90.27
	assault ²⁶⁷	37.47	135.90	86.25	27.73	188.38
	defect	171.28	28.83	29.48	59.07	33.36

Table 7: Nouns associated with abortion risks, organized by semantic category, and expressed in frequency/million words in respective subcorpora (case and position). Boldface indicates the case (*Roe/Doe*, *Casey*, or *Dobbs*) and position (restrict or access) with the greatest standardized frequency of a given lemma.

²⁶⁷ In the large majority of instances, this forms part of the bi-gram “sexual assault”. However, we note the inclusion of some metaphorical usages, e.g. “an assault on free speech”. As these are infrequent, we include all instances of *assault* here.

Roe/Doe, *Casey*, and *Dobbs* all dealt with statutes containing exceptions to general abortion bans, such as allowing abortion to save the life of the pregnant person, in cases of rape or incest, or for grave fetal complications. In viewing Table 7, we identified two distinct patterns in the use of most abortion exceptions (related to rape/sexual assault, incest, and a woman's life): they were all overrepresented in access briefs, and they showed a pattern of decreasing standardized frequency/usage from earlier cases to more contemporary ones.

The appearance of *rape*, *incest*, and *assault* in access briefs can be linked to attempts to provide additional context around the conditions of pregnancy (largely through statistics; see line 76). These briefs expanded upon the exceptional circumstances which may have impacted the decision-making processes for particular pregnant people. By contrast, restrict briefs (particularly from earlier cases) focused on the actions of *rape*, *incest*, and *sexual assault* rather than any resulting pregnancy. In this context, restrict briefs presented abortion as an inadequate solution to these criminal acts (which were acknowledged as ongoing). To prevent rape and unwanted pregnancy—and therefore abortion, in the logic of this argument—some early briefs suggested, for instance, provision of birth control, sex education, and caveats about behavior (see line 77, from *Roe*).²⁶⁸ This seemed to put most of the impetus problematically on women for preventing their own sexual assaults, and did nothing to acknowledge or prevent certain abusive scenarios, including incest.

76. As many as 24 per cent of *incest* victims in one study reported that pregnancy resulted from the *sexual abuse*; researchers believe that the higher rate of pregnancy is due to the repeated assaults by men *raping* women within the family.²⁶⁹

77. . . . information about birth control, sex education, and caveats about behavior in certain social and physical contexts likely to subject a woman to attack provide a first kind of alternative to destruction of the unborn child. They at least are directed at the cause of the *rape* whereas abortion following *rape* will neither undo the *rape* nor prevent others from occurring.²⁷⁰

We noted, further, a declining trend in the appearance of abortion exceptions in amicus briefs over time. References to *rape*, *incest*, *fetal defects*, and a *woman's life* all showed the highest standardized

²⁶⁸ Brief Amicus Curiae on Behalf of Association of Texas Diocesan Attorneys, in Support of Appellee, *supra* note 201, at *111.

²⁶⁹ Brief of the Pennsylvania Coalition Against Domestic Violence, The American Association of University Women, et al., *supra* note 214, at *21.

²⁷⁰ Brief Amicus Curiae on Behalf of Association of Texas Diocesan Attorneys, in Support of Appellee, *supra* note 201, at *111.

frequencies in *Roe/Doe*. The lexical item *assault* had the highest standardized frequency in *Casey*, though this can be at least partially attributed to the various other (metaphorical and physical) “assaults” that appeared within the corpus.²⁷¹ There was no term referring to abortion exceptions that appeared as key in *Dobbs*, demonstrating the decline of prominence of this issue by 2022.

This revealed how abortion restrict briefs had become more extreme in their positions by *Dobbs*.²⁷² Many scholars and advocates seeking abortion access had pointed out the insincerity of many legislative efforts to add abortion exceptions.²⁷³ These scholars highlighted how abortion exceptions had become a form of posturing to obscure the extremism of state abortion laws.²⁷⁴ Our findings showed that the inclusion of abortion exceptions in briefs has been declining over time. This, in turn, supports scholarly arguments that restrictions on abortion have become ever more sweeping and emboldened.

b. Psychological Harms

Psychological risk to the pregnant person also featured heavily in the amicus briefs. Linguistically, this manifested most frequently in the general sense (i.e., describing *psychological* or *emotional harm, distress, or suffering*). More specific expressions of these effects also appeared (notably *depression, suicide, and drug/alcohol/substance abuse*), though much less frequently. There was a clear concentration of this risk category

²⁷¹ For instance: “It is because the basic building block of civilization has been assaulted in the 1973 landmark decision legalizing abortion.” Motion for Leave to File Brief and Brief of James J. Crook as *Amicus Curiae* Supporting Respondents at *25, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

²⁷² See Andy Sullivan, *Explainer: How Abortion Became a Divisive Issue in U.S. Politics*, REUTERS (June 24, 2022, 8:49 PM), <https://www.reuters.com/world/us/how-abortion-became-divisive-issue-us-politics-2022-06-24/> [<https://perma.cc/Q4K7-UTM7>] (illustrating that prior to *Roe*, party lines were blurred with both sides holding diverse opinions; however, with conservative mobilization, aided by concerns about family values and societal changes, there was a growing alignment of Republicans against abortion and Democrats in favor, eventually solidifying abortion as a defining issue in U.S. politics); Jennifer L. Holland, *Abolishing Abortion: The History of the Pro-Life Movement in America*, ORG. OF AM. HISTORIANS, <https://www.oah.org/tah/november-3/abolishing-abortion-the-history-of-the-pro-life-movement-in-america/> [<https://perma.cc/VVV7-PN7J>] (last visited Aug. 1, 2023) (delineating the radical shift in the abortion movement during the late 1970s and early 1980s when a surge of evangelical Christians joined the movement, revitalizing and radicalizing it, whereas in the late 1960s, evangelical scholars, pastors, and physicians held divergent views on the sinfulness of abortion).

²⁷³ Jessica Valenti, *No Abortion Limits. Ever.*, ABORTION, EVERY DAY (Sept. 2, 2022) <https://jessica.substack.com/p/no-abortion-limits-ever> [<https://perma.cc/UW7C-AHEX>].

²⁷⁴ *Id.*

in the later cases; *psychological* and *emotional* risk factors were most highly present in *Casey*, whereas *depression* and *substance abuse* were most prominently featured in *Dobbs*. While we noted some slight preferences in the access or restrict subcorpora, these were marginal. Indeed, psychological risk terms appeared with quite similar relative frequency, leaving us to investigate whether there were more notable differences in meaning around usage rather than occurrence.

Concordance analysis of *psychological* in the access briefs exposed constructions of the *psychological* risks and harms of remaining pregnant (see line 78 below), contrasted with the restrict briefs, which outlined *psychological* injuries that can result from abortion. Very similar patterns appeared in additional concordance lines, for instance, those of *emotional*. In restrict briefs, risks associated with the procedure itself were outlined (see line 79). In access briefs, the greater constellation of harm was described, outlining (for instance) emotional, physical, and sexual *abuse* that could occur against unwanted children or those who were born into abusive relationships where abortion was not an option (see line 80).

78. No exception is provided for women who fear that notifying their husbands of their planned abortion will result in physical or psychological *abuse* of someone other than themselves. An abusive husband may seek to control his wife through physical or psychological *harm* to their children, or threats of such harm.²⁷⁵
79. Women suffer horribly after abortion with devastating physical, *emotional*, *psychological*, and spiritual problems. Many regret the abortion decision and suffer in silence.²⁷⁶
80. Children of women who experience domestic violence have increased risks of *emotional*, *physical*, and sexual abuse, of developing *emotional* and behavioral problems, and of increased exposure to other adversities.²⁷⁷

Though negative outcomes (*psychological/emotional harm*, *depression*, *suicide*) were described in roughly similar terms, the paths to them were very different in sets of amicus briefs. Restrict briefs stated that these risks resulted from choosing to participate in the risky procedure of abortion itself, which would result in physical and psychological damage and regret. Access briefs argued that physical and psychological

²⁷⁵ Brief For Amicus Curiae American Psychological Association in Support of Petitioners at *8, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (Nos. 91-744 and 91-902), 1992 WL 12006399.

²⁷⁶ Amicus Curiae Brief of Jewish Pro-Life Foundation, *supra* note 163, at *22.

²⁷⁷ Amici Curiae Brief of 547 Deans, Chairs, Scholars and Public Health Professionals, et al. in Support of Respondents at 43–44, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392).

harms are both the root cause of unwanted pregnancies and the direct result of being disallowed choice in the matter of discontinuing them. In other words:

The State Legislature...asserts that the 'medical, emotional, and psychological consequences of abortion are serious and can be lasting'...That unsupported assertion reflects the same stereotypical view of women's fragile, maternal psyche espoused by nineteenth-century anti-abortion advocates. Meanwhile, the mental and emotional stress of pregnancy, childbirth, and caring for children—in an economy that discriminates against mothers and pregnant people—go entirely unmentioned.²⁷⁸

Examining the risks and rights framings of abortion across the corpora revealed a decreasing emphasis on exceptions and the emergence of psychological harms as an argument for abortion restriction.

VII. CONCLUSIONS

A. Amicus Authors

This section presents some conclusions regarding the purposes for which amici authors engaged with the Court, and some observations about their effectiveness in communicating their goals.

The tenor of *who* was writing amicus briefs changed over time in this corpus in three notable ways. First, reflecting general amici trends,²⁷⁹ there was a substantial escalation in the number of briefs submitted in each case, increasing from 18 briefs (*Roe/Doe*) to 34 briefs (*Casey*) to 137 briefs (*Dobbs*).²⁸⁰ This was accompanied by an increase in the number of writers attributed to each brief, representing a dramatic increase in overall amici engagement. This aligned with general increases in amicus volume over time.²⁸¹ Significant increases in both the number of amicus briefs filed and authors involved may have reflected increasing awareness of the stakes of the constitutionality of abortion as the composition of the Court changed.

²⁷⁸ Brief of Equal Protection Constitutional Law Scholars Serena Mayeri et al., *supra* note 174, at *17.

²⁷⁹ Songer & Sheehan, *supra* note 58, at 339–40 (concluding that this increase in amici activity had little impact).

²⁸⁰ See *supra* Table 1.

²⁸¹ Larsen, *supra* note 64, at 1757–1818 (discussing the growing number of amicus briefs the court receives and the increase in the number of citations to those briefs as statements of fact).

Beyond the increase in amici submissions, there was a further inflation when considering the volume of authors coalesced on each brief. Both access and restrict briefs in *Dobbs* comprised dramatically more sweeping coalitions of authors writing together than in *Roe/Doe* and *Casey*. This had two problematic aspects. There seemed to be a strategy equally deployed by both access and restrict amici regarding the politics of jointly submitted briefs. Beginning in *Casey*, both restrict and access amici presented a limited number of briefs as ‘bipartisan’, presumably to avoid looking ideologically entrenched. However, these briefs contained only nominal additions from across the aisle, making ‘bipartisan’ efforts somewhat performative. The effects of this are explored further in Section VII.C below, but these large coalitions tended to dilute and genericize the contributions made by amici.

Another problematic aspect arose in the alignment of co-authors across the categories of study. Regarding *Dobbs*, the restrict briefs—particularly those filed on behalf of religious groups—layered in a medical co-signatory with great frequency. This likely was an effort to soften religious perspectives consistent with the Establishment Clause.²⁸² The religious access briefs did not deploy these same practices, likely because their arguments were more consistently about pluralism and cautionary tales of religious oppression. As explored in Section VII.C below, this distorted the interests of the amici in ways that should concern the Court.

B. Representations of Social Actors in Amicus Briefs

Having established who the amici were and how the roles in which they submit briefs may have influenced the strategies in which they argued, we then analyzed language patterns more holistically. We examined the discursive representation of the main parties in amicus briefs: the pregnant person, the fetus, and the physician.

Pregnant Person

Regarding the pregnant person, the study examined the main naming strategies and changes in frequency and usage over time. We found that the usage of *woman/women* was the most frequent way to refer to the pregnant person in all cases, but that proportional representation was very

²⁸² Ganesh Sitaraman & Daniel Epps, *The Future of Supreme Court Reform*, 134 HARV. L. REV. F. 398, 401 (2021) (stating that given the political reality, any substantive, structural, Court reform is still likely a few years away); Joan E. Greve & Ed Pilkington, “*Democracy is at Risk*”: *Inside the Fight for Supreme Court Reform*, THE GUARDIAN (July 9, 2023), <https://www.theguardian.com/law/2023/jul/09/supreme-court-reform-conservative-justices> [<https://perma.cc/KWF7-9EAF>] (citing President Biden’s reticence to go to drastic measures to reform the Court).

lopsided; this word appeared much more often in access briefs than in restrict briefs. These briefs also told very different stories about the *women* referents. Restrict briefs incorporated ratified, privileged voices of *women amici* or *women* in legislatures to tell personal stories of harm or to argue that abortion was an issue for state government. By contrast, access briefs gave quantitative and qualitative accounts of marginalized or vulnerable groups of *women*, providing narratives of inequality where certain groups would experience undue burdens under increased restriction or bans on abortion.

Where access briefs showed a higher frequency for *woman/women*, restrict briefs showed a preference for the use of *mother*. Collocation of *mother* demonstrated that amici advocating to restrict abortion began to co-opt the strategy of describing marginalized groups; instead of positing that these groups would suffer undue burdens in seeking out abortion, they argued that the procedure is inherently riskier for some. Through proportionally high-frequency usage and preference of terms like *mother* and *parent*, restrict briefs essentialized *women* down to their childbearing role.

This pattern of essentializing women as child bearers was more prevalent when analyzing naming strategies from the semantic category of anatomy. Over time, the briefs increasingly referred to pregnant people by smaller, segmented, anatomical parts (e.g., *womb*) rather than in the whole (e.g., *body*). Where *body* was still used, it was preferred in access briefs to make arguments regarding bodily autonomy. By contrast, usage of items like *womb* (strongly favored by restrict briefs) described the fetal environment, effectively removing the woman and her labor from the discussion. One particularly surprising finding was that, as a whole, the amicus briefs positioned the pregnant person quite passively.

Fetus

The earliest case in our corpus, *Roe*, queued up the question of fetal personhood. Though the issue of fetal personhood has not explicitly been before the Supreme Court since, the advocacy continued to appear in restrict briefs. High prevalence of copula n-grams such as *the fetus is* in restrict briefs demonstrated that definition (and defense) of personhood was a main line of argument. Restrict briefs had much higher frequencies of naming strategies for the *fetus* and the *fetus* was increasingly personified, for instance through naming strategies associated with much older beings (such as *baby*) or collocates that created emotive narratives of harms enacted by physicians (e.g., *dangerous*).

An entirely different story was being told in access briefs. Here, *pregnancy* was the most frequent way of referring to fetal development. In this way, the pregnant person was re-centered, which might be considered positive for advocacy. However, the *fetus* was omitted,

meaning that access briefs did not directly counter the fetal personhood argument made in restrict briefs. This strategy was understandable on the one hand, as the fetal personhood question was not before the Court. However, by devoting themselves so strongly to the establishment and representation of humanized actors in their briefs, restrict amici were able to create compelling narratives.

Physician

The final group of social actors we examined were the physicians and the medical community in abortion care. Over time, we found a decrease in usage of naming strategies associated with individuals (e.g., *physician*, *surgeon*), accompanied by an increase in naming strategies associated with entities (i.e., *provider*, *clinic*) over time. Uses of *physician* and *doctor* were preferred in access briefs, and collocates of these items indicated a positive semantic prosody of trustworthy medical professionals. Restrict briefs historically preferred *abortionist* and *surgeon*, and the people who provided abortions were constructed as imprudent and dangerous. Over time, restrict amici shifted to using *clinic* and access amici preferred *provider*. Once more, we noted an increasing omission of individual agents in all amicus briefs. This was particularly noteworthy in the case of access briefs, as it demonstrated a departure from the medicalized and personalized ‘face’ of abortion care and a turn towards a faceless, corporate process. This was a strategy used in access briefs to highlight a broad range of contemporary care models and to preserve other law reform objectives, but it could not counter the pejorative depictions in restrict briefs.

C. The Objectives and Efficacy of Amicus Briefs

The Court has historically imparted the highest importance to amicus briefs filed by the United States. Justices also rely on amicus briefs when they provide historical and sociological context to add to their arguments, usually citing amici that align with their ideology.²⁸³

Those assumptions held true for the *Roe/Doe* and *Casey* opinions. The purpose of the amici took a notable shift in the *Dobbs* case, particularly in the access briefs. These seemed to have three purposes, broadly indicated by temporality. They sought to consolidate a record, tell a modern narrative, and indicate potential impacts of abortion restrictions. Access briefs generally sought to inform the historical record and detail the legal status of abortion before ‘quickening’ under the common law. They posited that *Roe* and *Casey* were workable and had yielded the kind of reliance that supported *stare decisis*. Finally, they sought to provide

²⁸³ Collins Jr. et al., *supra* note 80, at 931.

data regarding the people who would be uniquely burdened by the abortion restrictions in the future.

The access briefs on the history of abortion regulation yielded the Court's critical attention, with the *Dobbs* opinion stating that the access amici had not adequately presented the right to abortion as consistent with foundational history and tradition.²⁸⁴ Regarding women's present reliance on the availability of abortion care, the Court largely ignored the access amici to manufacture its own story. The largest swath of abortion access briefs in *Dobbs* described *future* impacts—a point that the dissent noted explicitly but which the Court dismissed entirely.

Notably, however, none of these approaches—depicting the historic, present, or future of abortion access—substantially engaged the Court with new arguments, or indeed even arguments authentic to the access amici's core values (e.g., reproductive justice). This was unequivocally a strategic reflection on where abortion politics stood at the time of *Dobbs*. Abortion access advocates were left defending an abysmal *status quo* and the litigation strategy was to hold the line, crumbling and inferior as it was. This may not, however, have been the most effective role *for amici* distinctly. While *the parties* surely must conceptualize a winnable strategy catered to the political and pragmatic realities of the case and the court composition, amici have an open door to raise arguments.

A second consideration was whether the briefs were too inclusive in *who* was writing them as to be fully effective in *what* they were writing. The organizational, government, academic, and medical briefs comprised substantial coalitions of authors coming together, seemingly seeking to influence the Court by unity, volume, and gravitas. Many briefs were stripped of nuance, individualized narratives, and/or distinctions in particularized interests (e.g. of regional locations, or of grassroots organizations). The collection of briefs overall read as a lock-step effort to show homogeneity and alignment. Attempts at providing unified voices might have paradoxically undermined the effectiveness of amici as contributors.

The brief submitted by Equal Protection Constitutional Law Scholars, Serena Mayeri, Melissa Murray, and Reva Siegel, stood out in stark contrast on this point.²⁸⁵ These scholars advocated for the Court to follow an Equal Protection Clause constitutional theory. This supplemented the necessarily more restrained position of the parties, who focused on defending the right to privacy and the viability line. While the majority did not adopt this view, it was significant enough that the Court engaged with it directly, as noted above.²⁸⁶

²⁸⁴ 597 U.S. at 231.

²⁸⁵ Brief for Equal Protection Constitutional Law Scholars Serena Mayeri et al., *supra* note 174, at *5.

²⁸⁶ See *supra* note 102 and accompanying text.

From *Roe* through *Dobbs*, restrict amici remained resolutely intent on advancing fetal personhood. They were able to adapt and evolve in response to doctrinal shifts of the Court. For example, they spoke directly to Justice Thomas by picking up on the eugenics argument from *Box v. Planned Parenthood*.²⁸⁷ Justice Alito was forced to engage with this assertion of abortion-as-eugenics, even if only to say the Court took no position. Restrict briefs in *Dobbs* were also able to engage the Court in a counter-narrative responding to the access briefs' story of harms and burdens to pregnant women. Restrict briefs told stories of women who had suffered *from* abortion, experiencing regret and psychological harms. In contrast, the access briefs did not launch their own counter-narratives, crucially in response to the enduring argument of fetal personhood. They surely did not need one, as that issue was not before the Court, but access amici might have benefited from critical engagement with these arguments.²⁸⁸ Instead of striking a uniform chord, perhaps the amici could have engaged with regional and nuanced positions on abortion to tell a more concretized story.²⁸⁹

D. Looking Ahead

As feminist scholars, we began this study from a position of (perhaps defeated) curiosity. We were seeking a deeper understanding of a tectonic legal transformation in America via a linguistic analysis of social representations. How did we get here? What's the trajectory going forward? We set out to answer this question by collecting all possible evidence left by the society's many stakeholders: senators, scholars, religious leaders, medical practitioners, and so many more. For 50 years, tens of thousands of citizens have appealed to the nation's highest Court, for reasons we have detailed. Through legal-linguistic analysis, we determined that restrict amici mounted a more relentlessly human, emotional, personal attack to pursue its political agenda. Access amici simply could not counter these arguments within conventional advocacy strategies.

For that reason, a few institutional shifts merit consideration. We noted, as many scholars have before, an inflation in both the number of amicus briefs submitted and in the number of authors attributed to each brief. This can dilute the purpose and muddy the meaning of amicus curiae. We recommend that the Court explicitly express a preference for concretized interests of amici that are unique enough to yield targeted and nuanced insights. The Court's rules should hold a stricter line in how

²⁸⁷ 139 S. Ct. 1780, 1782–93 (Thomas, J., concurring).

²⁸⁸ Donley & Lens, *supra* note 240, at 1727).

²⁸⁹ See generally Jamie R. Abrams, *Reevaluating Regional Law Reform Strategies After Dobbs*, 14 CONLAWNOW 131 (2023).

amici partner with other authors to appear before the Court. The restrict briefs, particularly, involved many ‘add-on’ medical authors to religious amicus briefs. This was likely to diffuse the core-religious focus of the amici and to make the position more palatable to the Court as it navigated Establishment Clause concerns. This aggregation, however, risks distorting amici practice. The Court should amend its rules to strengthen the usefulness of amicus briefs and to ensure that briefs provide distinctive perspectives that bring value.

The access amici likely face similar political battles before the court on other issues such as the proliferation of religious accommodations, voting rights, and anti-discrimination protections. Even the issue of abortion is hardly settled, as the Court continues to hear cases relating to medication abortion, emergency medical care, in vitro fertilization, and more. This Court’s political composition is likely entrenched for some time. Relying on large-scale national arguments that do not align with the ideologies of the Court while trying to make incrementalistic arguments is likely going to continue to be an unproductive exercise. Amici might benefit from trying more nuanced and localized arguments from within diverse geographies. They might disaggregate the pragmatic litigation realities that the party faces from the overall goals of their coalitions.

A larger conversation about the legitimacy of the Court surrounds the question of ‘where do we go from here?’ Simply stated, it is our conclusion overall that the access briefs played by the rules and the restrict briefs pushed their political agenda unabashedly. While to some degree this is understandably rooted in pragmatic politics, this reality demands further reflection within lawyering in ways that far exceed the reproductive justice movement.