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Life as We Know It

Framing Fetal Viability in Federal Abortion Caselaw

By Claire McGovern Daly

This study examines how the United States Federal Courts have framed questions of fetal viability, fetal rights, and women's rights in abortion cases from the past three years, from June 2019 to January 2022, using the following frames: the right to abortion, the post-viability fetal right to life, the pre-viability embryonic right to life, the recognition of fetal heartbeat, and abortion as a crime. In cases in which the court supported abortion rights, the most common frame found in their opinions is the right to abortion, often specified as a civil, human, or women's right. Yet the conditionality of this right is emphasized in two-thirds of the cases, with the courts clarifying that abortion is only a right prior to fetal viability as stated by *Roe v. Wade*. On the other hand, cases in which the court restricted abortion rights most often used the frame of the pre-viability embryonic right to life. Unlike the pro-abortion rights argument which focused more so on legal precedent and the protected rights of the pregnant person, this argument is more morally focused on the belief that life begins at conception. Fetal viability matters far less to the anti-abortion rights argument as they are far more focused on the potential for life rather than whether the fetus or embryo could survive outside the womb at an exact moment in time.

“Beliefs about the rightness or wrongness of abortion both represent and illuminate our most cherished beliefs about the world, about motherhood, and about what it means to be human.” –Kristin Luker, *Abortion and the Politics of Motherhood*

I. Introduction

Abortion in the United States is almost legally synonymous with *Roe v. Wade*, the 1973 Supreme Court case which determined that the Constitutional right to privacy recognizes a person's right to terminate their pregnancy via abortion before reaching fetal viability, or likely survival outside the womb. Yet fetal viability has become a changing point in time due to scientific advances such as fetal surgery inside the womb and neonatal intensive care units, making this essential legal distinction increasingly precarious for patients seeking abortions. This thesis examines how the U.S. Federal Courts have framed questions of fetal viability, fetal rights, and women's rights in abortion cases from 2019-2022 using the following frames: the right to abortion, the post-viability fetal right to life, the pre-viability embryonic right to life, the recognition of fetal heartbeat, and abortion as a crime.

Before commencing my research, I had several theories as to what I would find based on my literature review. In terms of framing, I hypothesized that the right to abortion, specifically in relation to women's rights and bodily autonomy, would be a key tenet of the pro-choice argument. I theorized that the pre-viability embryonic right to life and abortion as crime frames, as well as the post-viability fetal right to life and recognition of fetal heartbeat frames to a lesser extent, would incorporate religious themes such as the concept of souls. I thought that these latter two frames, the post-viability fetal right to life and recognition of fetal heartbeat, would focus more so on the physicality of the fetus and its resemblance to a baby outside the womb in order to claim its humanity. This all ties into the abortion as a crime frame, which I hypothesized would compare abortion to the killing of or murder of human life.

I also believed that when discussing any potential fetal rights from the pro-choice perspective, the focus would be more so on post-viability fetal rights to protect the ideology of *Roe v. Wade*, which emphasizes fetal viability as the marker of possible state intervention in abortion. In general, I suspected that both the post-viability fetal right to life frame and the pre-viability embryonic right to life frame would be far more prominent in pro-life argumentation than in the pro-choice cases, as they are fighting to prioritize fetal rights in the abortion debate.

In the end, my research uncovered a far different judicial incorporation of fetal viability than I originally anticipated. In cases in which the court supported abortion rights, the most common frame found in their opinions is the right to abortion, often specified as a civil, human, or women's right. Yet the conditionality of this right is notably emphasized in two-thirds of the cases, with the courts clarifying that abortion is only a right prior to fetal viability as stated by *Roe v. Wade*. This finding supports my hypothesis that abortion as a women's right would be a central tenet of the pro-choice argument. Predictably due to the importance of judicial precedent in the United States, the pro-abortion rights arguments link *Roe v. Wade* strongly to the continued support of the conditional right to abortion.

On the other hand, cases in which the court restricted abortion rights most often used the frame of the pre-viability embryonic right to life. Unlike the pro-abortion rights argument which focused more so on legal precedent and the protected rights of the pregnant person, this argument is more morally focused on the belief that life begins at conception. Fetal viability matters far less to the anti-abortion rights argument as they are far more focused on the potential for post-birth life rather than whether the fetus or embryo could survive outside the womb at that exact moment in time. This focus on pre-viability embryonic rights was unexpected as fetal viability is such an important aspect of judicial precedent on abortion, since it is central to *Roe v. Wade*. Such a finding suggests that changing fetal viability due to medical advancements may not impact the anti-abortion rights movement as much as previously anticipated.

When discussing abortion, it is essential to note that while abortion is certainly a women's rights issue, it does not only affect women; and, to pretend so would be to erase the experience of transgender, nonbinary, and intersex people. For succinctness and to match language from my sources, this thesis will generally refer to women in the biological sense of having a uterus and 'female' reproductive capabilities. This is not meant

to diminish any person's experience of gender, and I hope that future work will be able to more adequately examine the abortion debate in the LGBTQ+ context.

II. Prior Research

The abortion debate is one of the most contentious topics in America, with each side vehemently opposing the other's ideology. The status of the embryo is a central aspect of this debate, with the pro-life side equating an embryo to the life of a child and the pro-choice side seeing the embryo as a possible life in the future but not the present. As Kristin Luker explains in her 1985 book *Abortion and the Politics of Motherhood*, "those who oppose abortion usually begin by stipulating that since the embryo is an unborn child, abortion is morally equivalent to murder. But for those who accept abortion [...] the embryo has the capacity to become a child but it is not a child yet, and it therefore belongs in a very different moral category."¹

The ambiguity of the moral and civil status of the embryo poses a profound challenge, as Luker argues that embryos "are located on a continuum that stretches from a single sex cell (an egg or a sperm) to a newborn human infant."² Thus, there is not a clear-cut scientific answer to the status of an embryo, exemplifying how "the abortion debate is not about 'facts' but about how to weigh, measure, and assess facts."³ As Luker articulates, "a decision about the moral status of the embryo is an implicit statement about the role of children and women in modern American society."⁴ Since the abortion debate revolves around the interpretation of science from biological fields such as gynecology and embryology, it is important to critically examine the extent to which this science may be biased against women. Such bias is exemplified by the 'one-sex model' of human anatomy that prevailed through much of human history, which Jill Fisher discusses in her book *Gender and the Science of Difference: Cultural Politics of Contemporary Science and Medicine* (2020). This model argued that biological women were simply males who did not properly develop their reproductive anatomy, thus making women the "the imperfect sex."⁵

A. *The Myth of Value-Free Science*

Objectivity as an uninterested position that enables access to unsullied truth is one of the central tenets of Western science, yet the 'objective' observer has traditionally been linked to the characterization of scientists as representative of the dominant power structure: white, cisgender male, heterosexual, able-bodied. This has led both consciously and unconsciously to science that discriminates against marginalized groups who are not adequately represented in science or whose knowledge is not taken as seriously.

Evelyn Fox Keller describes how science and knowledge production have historically been characterized as 'masculine' in her book *Reflections on Gender and Science* (1985). The scientific mind is traditionally seen as autonomous and clearly distinct from nature and the specific object of study, thus allegedly removing any perceived scientific bias resulting from the "commingling of subject and object."⁶ This conception of bias in science is critical as Keller explains that the subject and object of scientific inquiry are characterized as male and female respectively, with masculinity connoting "autonomy, separation, and distance" in science.⁷ The feminine characterization is left for the objects of study, which are viewed as exemplifying "dependency and subjectivity" rather than autonomy.⁸

1 Luker, *Abortion and the Politics of Motherhood*, 2.

2 Luker, *Abortion and the Politics of Motherhood*, 4.

3 Luker, *Abortion and the Politics of Motherhood*, 5.

4 Luker, *Abortion and the Politics of Motherhood*, 7-8.

5 Fisher, *Gender and the Science of Difference*, 6.

6 Keller, *Reflections on Gender and Science*, 79.

7 Keller, *Reflections on Gender and Science*, 79.

8 Keller, *Reflections on Gender and Science*, 89.

Fisher writes, “what scientists observe is often subject to what they already believe is true and is usually in sync with broader society’s culture and values.”⁹ In her book *Myths of Gender: Biological Theories about Women and Men* (1985), Anne Fausto-Sterling describes this phenomenon of implicit scientific discrimination in the context of gender, writing that “these scientists peer through the prism of everyday culture, using the colors so separated to highlight their questions, design their experiments, and interpret their results. More often than not their hidden agendas, non-conscious and thus unarticulated, bear strong resemblances to broader social agendas.”¹⁰ In the case of embryos, we see the enforcement of traditional gender roles and concepts of motherhood in the restriction of women’s reproductive autonomy.

Fisher fights the idea of science as a purely objective production of facts, writing that “science is usually depicted as the process of revealing preexisting Truths about the natural world. Yet facts are produced by individuals who use tools and methods that structure what claims can be made.”¹¹ Fisher emphasizes the institutional aspect of science, in which individuals make the determinations of which questions, methods, and results are valid. This does not mean that all science is inherently biased but rather that “all science is interested;” meaning all research is rooted in what the scientists think is important due to their society’s values.¹² As Ruth Hubbard writes in her piece “Science, Facts, and Feminism” (1988), “Facts [are not] just out there. Every fact has a factor, a maker” and “making facts is a social enterprise.”¹³

Keller works to imagine science without the entrenched trappings of gender biases, arguing that such science must have room for constant growth and recognize the ever-changing nature of “any claim to universal truth.”¹⁴ The current scientific claims of universality and intellectual hegemony are, according to Keller, “by their very nature, political rather than scientific.”¹⁵ This is extremely relevant to the politicization of abortion, turning a supposed issue of science into a partisan debate on women’s legal bodily freedom.

Fisher provides a lens through which to interrogate this social enterprise of science, arguing for the importance of critical analysis of scientific evidence and its behind-the-scenes mechanics. She writes in the same vein as Keller that science must be contextualized in a historical framework that demonstrates the shifts in the pursuit of knowledge over time. Additionally, Fisher claims that contemporary scientific research must be critically analyzed in the same way as historical scientific inquiry in order to examine the continuous impacts of social and cultural norms.

This consistent reevaluation of science is essential in the context of gender discrimination, as Fisher points out, “patriarchal ideas have heavily shaped the pursuit of science, and science has supported the patriarchal system by naturalizing its norms and values.”¹⁶ Science is influenced by patriarchal society, and in turn, science influences the norms of future society. Therefore when courts claim to base their decisions off of science, they may very well be reinforcing the gender biases hidden in them. Both the pro-choice and pro-life contingents argue that science is on their side, it simply depends on which science is deemed trustworthy.

B. Rights and Personhood

Since 1973, abortion rights in America have stemmed from *Roe v. Wade*, which set out the legal framework for abortion regulation. As Mary Ziegler expresses in her book *Abortion and the Law in America: Roe v. Wade to the Present*, “it was not until fetal viability, the point at which survival was possible outside the womb, that the states could act to protect fetal life.”¹⁷ *Roe v. Wade* and subsequent legal judgments have

9 Fisher, *Gender and the Science of Difference*, 3.

10 Fausto-Sterling, *Myths of Gender*, 9.

11 Fisher, *Gender and the Science of Difference*, 2.

12 Fisher, *Gender and the Science of Difference*, 5.

13 Hubbard, “Science, Facts, and Feminism.”

14 Keller, *Reflections on Gender and Science*, 179.

15 Keller, *Reflections on Gender and Science*, 179.

16 Fisher, *Gender and the Science of Difference*, 3.

17 Ziegler, *Abortion and the Law in America*, 23.

demonstrated a balancing of the right to bodily autonomy and the nebulous nature of the right to life. Whether the fetus is seen as a person is essential for whether they are entitled to the right to life before birth because. As Luker explains, “virtually all of us agree that babies are persons and that persons have [...] basic rights.”¹⁸ Thus, “determining the morality of abortion depends upon determining whether or not the embryo is a full-fledged person,” which is a controversial philosophical question that depends on which factors are considered defining of personhood.¹⁹

Abortion is inherently a women’s rights issue, as Luker points out that women “have vested social interests in whether the embryo is defined as a baby or as a fetus.”²⁰ In her piece “Shooting the Mother: Fetal Photography and the Politics of Disappearance,” Carol Stabile examines the conceptual association of women with “nature, feminized environments, and motherhood” and argues that any attempt to separate women from the expectation of motherhood provokes an intense societal reaction as we have seen in the abortion debate.²¹ Stabile points out that historically, women’s interests have always been viewed as subservient to the interests of the family, which, in this case, transforms into the rights of the fetus.²² Any potential ‘fetal personhood’ is thus dependent “upon the erasure of female bodies and the reduction of women to passive, reproductive machines.”²³

Pro-life ideology has thus moved from the erasure of female subjectivity and sexuality to the material repression of female bodies through abortion bans.²⁴ As Stabile sums up, “if the docile female body can no longer be sufficiently disciplined through ideology, it must nonetheless be disciplined. And it is in the spheres of legal and medical discourses that the repressive state apparatus has begun to operate with much more evident violence.”²⁵

III. Methods

[See Table 1. Court Cases in Dataset]

My research consisted of a qualitative framing analysis of found data in the form of U.S. federal court opinions on abortion from the past three years. I chose qualitative analysis because I wanted to focus on how abortion and fetal viability were discussed in the judicial framework through a feminist scientific lens. The nature of court opinions also lent itself best to qualitative research through a framing analysis.

I analyzed all fifteen federal cases in which abortion rights were a central topic beginning with 2019 and continuing to the present, as shown in Table 1. This dataset consisted of two District Court cases, eleven Court of Appeals cases, and two Supreme Court cases. In each case, the plaintiffs were abortion providers seeking to protect their own or their patients’ rights or in a few cases, they were individuals seeking to protect their own rights. In all but *J.D. v. Azar*, which was leveled against the federal government, the defendants were various states and their government representatives. Nine court decisions sided with the plaintiffs, five of the court decisions sided with the defendants, and one case, *Hopkins v. Jegley*, is still ongoing.

The frames which I used to code my analysis were the right to abortion, the post-viability fetal right to life, the pre-viability embryonic right to life, the recognition of fetal heartbeat, and abortion as crime. I identified these frames based on my literature review, which included *Abortion and the Politics of Motherhood* by Kristin Luker, *Abortion and the Law in America* by Mary Ziegler, and the study “Framing the Abortion Debate: Organizational Resources, Media Strategies, and Movement-Counter-movement Dynamics” by Deana

18 Luker, *Abortion and the Politics of Motherhood*, 5

19 Luker, *Abortion and the Politics of Motherhood*, 6.

20 Luker, *Abortion and the Politics of Motherhood*, 7.

21 Stabile, “Shooting the Mother,” 179.

22 Stabile, “Shooting the Mother,” 180.

23 Stabile, “Shooting the Mother,” 180.

24 Stabile, “Shooting the Mother,” 180.

25 Stabile, “Shooting the Mother,” 181.

A. Rohlinger. Rohlinger's study examines how ideologically opposed social movement organizations in the abortion debate, the pro-choice National Organization for Women and pro-life Concerned Women for America, obtain media coverage. Table 2 shows the identification of each frame in my prior research.

[See Table 2. Frame Origins]

I read through each case and coded the majority opinions according to my frames. My codification was based on my own understanding of the meaning, although I did flag several keywords related to specific frames as detailed in Table 3. For the right to abortion, I often looked for phrases such as "women's rights," "human rights," or "the right to choose." For the post-viability fetal right to life, I looked for argumentation based on the fetus earning the human right to life upon reaching fetal viability such as "life begins at viability" or the prohibition of abortion specifically after fetal viability. The frame of the pre-viability embryonic right to life was in a similar vein in its defense of fetal rights, but focused on the argument that "life begins at conception" rather than at fetal viability, often using keywords such as "unborn child" or "potential life." The recognition of the fetal heartbeat frame is based on more contemporary cases in which fetal rights activists have argued that a perceived fetal "heartbeat" marks the beginning of human life. Lastly, the frame of abortion as a crime refers to anytime abortion in general is referred to as a criminal act, using keywords including "felony," "kill" or "murder," and of course "crime."

[See Table 3. Frame Keyword Examples]

IV. Findings

[See Table 4. Abortion Frame Counts by Case]

A. Individual Frame Analysis

During my research, I uncovered a variety of framing combinations for the concepts of fetal viability, fetal rights, and women's rights. The most common frame is the right to abortion, as shown in Table 4. Post-viability fetal right to life and pre-viability right to life are almost exactly tied for second place, with the post-viability fetal right to life frame being found one more time than the other. Recognition of fetal heartbeat was second least common, followed closely by abortion as a crime. The following sections detail the specifics of how each frame was found in my research along with examples of each.

Right to Abortion

The frame of the right to abortion can be found in many different interrelated formats in judicial cases: abortion as a general women's right, abortion as a constitutional right, patients' right to abortion asserted by abortion providers, and the conditionality of the right to abortion as specifically pre-viability.

Abortion as a general women's right is the broadest format of the frame, covering instances when abortion is referred to as a women's right without explicit conditionality. The right to abortion is referred to as part of the "the woman's liberty interest" in several cases including *Hopkins v. Jegley* which concerned four Arkansas laws, the Arkansas Unborn Child Protection from Dismemberment Abortion Act, the Sex Discrimination by Abortion Prohibition Act, an amendment concerning the disposition of fetal remains, and an amendment concerning the maintenance of forensic samples from abortions performed on a minor. This case notably describes abortion as part of the woman's liberty interest in defining her "own concept of existence, of

meaning, of the universe, and of the mystery of human life.”²⁶

As the constitution is the highest law of the land, it is understandable that a number of cases reference it to defend abortion as a right through the language of abortion as a constitutional right. In the Planned Parenthood S. Atl. v. Wilson case, which concerned the prohibition of abortion after the detection of fetal heartbeat in South Carolina, the opinion states the right to end a pregnancy is included in the “constitutional rights of South Carolinians.”²⁷

Further specification of the right to abortion frame is found when fetal viability enters the equation, as the judicial assertion of the right to abortion is often coupled with the conditionality of the right. This argument is exemplified in cases such as Planned Parenthood S. Atl. v. Wilson, which states that “courts considering the constitutionality of laws that ban abortions beginning at a gestational age prior to viability have universally invalidated those laws.”²⁸

Post-Viability Fetal Right to Life

The conditionality of the right to abortion goes hand in hand with the frame of the post-viability fetal right to life, which identifies fetal viability as the point at which fetal rights surpass the autonomy of the pregnant person. Whereas judicial precedent protects the right to abortion before viability as previously discussed, the regulation and even prohibition of post-viability abortion are often framed using the post-viability fetal right to life.

The real-life significance of this frame is demonstrated in the case Planned Parenthood Tenn. & N. Miss. v. Slatery, which concerns the language used by Tennessee physicians to describe chemical abortion via mifepristone to their patients. The statutes referred to in this state that “if a viable child is prematurely born alive in the course of an abortion, the physician performing the abortion has a legal obligation to take steps to preserve the life and health of the child,” clearly demonstrating the legal consequences of fetal viability on the pregnant person, fetus, and medical team.²⁹

Pre-Viability Embryonic Right to Life

Similar yet distinct from the post-viability fetal right to life is the pre-viability embryonic right to life, which is based on the belief that life begins at conception and fetal viability does not change the value of fetal life. This frame can be found in descriptions of the embryo or fetus as a living human, unborn child, or potential life. Despite not yet being born, the embryo or fetus is referred to as an example of human life in several cases. In *Reprod. Health Servs. of Planned Parenthood of the St. Louis Region v. Parson*, abortion is referred to as “the loss of innocent human life.”³⁰

Even more common is the description of the fetus as an example of an ‘unborn’ life, with the fetus referred to as an “unborn child” numerous times in 10 different cases. *Little Rock Family Planning Servs. v. Rutledge* calls for “respect for the life of the unborn,” describing the fetus as “an unborn child [that] has taken on the human form in all relevant respects.”

In a similar vein, the embryonic right to life frame is found in the recurring idea of the fetus’s ‘potential life.’ For example, *June Med. Servs. L.L.C. v. Russo* examines the State’s interest in “protecting the potentiality of human life” in regard to fetuses.³¹

26 *Hopkins v. Jegley*, 968 F.3d 912, 5.

27 *Planned Parenthood S. Atl. v. Wilson*, 527 F. Supp. 3d 801, 9.

28 *Planned Parenthood S. Atl. v. Wilson*, 527 F. Supp. 3d 801, 6-7.

29 *Planned Parenthood Tenn. & N. Miss. v. Slatery*, 523 F. Supp. 3d 985, 15.

30 *Reprod. Health Servs. of Planned Parenthood of the St. Louis Region v. Parson*, 1 F.4th 552, 13.

31 *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 35.

Recognition of Fetal Heartbeat

Another frame used to claim fetal life is recognition of the so-called fetal “heartbeat.” According to *Jackson Women’s Health Org. v. Dobbs*, a case which concerned a Mississippi bill criminalizing abortions after the detection of a fetal heartbeat unless there was a serious risk to the patient of “substantial and irreversible” bodily injury or death, the fetal heartbeat is defined as a “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.”³² However many parties, such as the ones in the case, disagree about when this “heartbeat” begins.

Expanding beyond the mere detection of fetal heartbeat is the criminalization of abortion specifically post-heartbeat. *Whole Woman’s Health v. Jackson* concerns a Texas law prohibiting post-heartbeat abortion, which it describes as “performing or inducing an abortion if the physician detected a fetal heartbeat.”³³ The law allows for exceptions only if “a medical emergency prevents compliance.”³⁴

Abortion as Crime

Beyond fetal heartbeat-specific laws, the abortion as crime frame demonstrates how the act of abortion is demonized even in judicial opinions. This is exemplified in *Bryant v. Woodall*, which discusses how “North Carolina criminalizes the procurement or administration of abortion as a felony, and has done so for the past 140 years.”³⁵

[See Figure 1. Frame Percentages for Cases Siding with Abortion Providers]

B. Pro-Choice Judicial Argumentation

My analysis of the pro-choice judicial argumentation is based on the prevalent frames in the cases siding with the abortion providers and individuals asserting their abortion right. I hypothesized that the right to abortion, specifically in relation to women’s rights and bodily autonomy, would be a key tenet of the pro-choice argument. I also thought that when discussing any potential fetal rights from the pro-choice perspective, the focus would be more so on post-viability fetal rights in order to protect the ideology of *Roe v. Wade* due to its emphasis on fetal viability as the marker of possible state intervention in abortion.

In cases in which the court supported abortion rights, the most common frame found in their opinions was the right to abortion, as shown in Figure 1, often specified as a civil, human, or women’s right. Yet the conditionality of this right was emphasized quite frequently, with the courts clarifying that abortion was only a right prior to fetal viability as stated by *Roe v. Wade*. This finding supports my hypothesis that abortion as a women’s right would be a central tenet of the pro-choice argument. Predictably due to the importance of judicial precedence in the United States, the pro-abortion rights arguments linked *Roe v. Wade* strongly to the continued support of the right to abortion. These findings are exemplified in my two example cases: *J.D. v. Azar* (2019) and *Memphis Ctr. for Reprod. Health v. Slatery* (2021).

32 *Jackson Women’s Health Org. v. Dobbs*, 951 F.3d 246, 2.

33 *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 4.

34 *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 8.

35 *Bryant v. Woodall*, 1 F.4th 280, 8.

1. J.D. v. Azar

The J.D. v. Azar (2019) case concerned a 2017 federal policy that prevented unaccompanied “alien” minors from obtaining pre-viability abortions while in the custody of the Office of Refugee Resettlement (ORR). The case was a class action lawsuit initiated by the plaintiff, J.D., on behalf of herself and other minors similarly situated in order to exert the constitutional right to abortion without government intervention before fetal viability. The defendant was Alex Michael Azar II, then U.S. Secretary of Health and Human Services, representing the government’s argument that denial of abortion access was not in violation of Roe v. Wade precedent and that the ORR was in fact protecting minors by preventing abortions.

In this case, the Court of Appeals for the District of Columbia Circuit sided with the plaintiffs, as shown in Table 1. The court held that the government’s prevention of abortion access for minors in ORR custody unduly burdened the constitutional right to terminate one’s pregnancy before fetal viability, as constitutionally protected by the Supreme Court. As detailed in Table 4, the court’s opinion in J.D. v. Azar demonstrates the frames of the right to abortion, post-viability fetal right to life, pre-viability embryonic right to life, and abortion as crime.

Right to Abortion

The court utilizes the abortion as a right frame to support its decision to uphold Supreme Court precedent for the constitutional right to pre-viability abortion access. This is demonstrated by the court’s statement that “a person has a constitutional right to terminate her pregnancy” and to “make her own reproductive choices,” thus emphasizing the protected bodily autonomy of the plaintiffs.³⁶ The court also argues that “the government may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability,” strongly affirming the right to abortion according to Roe v. Wade.³⁷

Post-Viability Fetal Right to Life

The post-viability fetal right to life frame is also used by the court in J.D. v. Azar to emphasize the conditionality of the abortion right as protected prior to viability. Based on the precedent of Roe v. Wade, the court writes that “under binding Supreme Court precedent, a person has a constitutional right to terminate her pregnancy before fetal viability, and the government cannot unduly burden her decision.”³⁸ According to the court’s interpretation of this precedent, the government is unduly burdening this constitutional right by preventing the minors in ORR custody from electing to have abortions. This conditionality of abortion as a right only “before fetal viability” is reiterated twelve times over the course of the opinion.

Pre-Viability Embryonic Right to Life

Whereas the prior two frames are used to advance the court’s own opinion, the pre-viability embryonic right to life frame is used to demonstrate the irrationality of the opposing argument of the defendants. The fetal right to life frame is illustrated in the court’s use of quotes from Scott Lloyd, Director of the ORR, in which Lloyd portrays abortion as the destruction of a human life rather than of embryonic matter. In reference to a plaintiff who had become pregnant as the result of rape, Lloyd is quoted as saying that the Office of Refugee Resettlement provides refuge “to all the minors in our care, including their unborn children,” demonstrating the frame of the pre-viability embryonic right to life through the characterization of the embryo or fetus as an ‘unborn child.’³⁹ By including these quotes in the opinion, the court works to destabilize the opposition and

36. *J.D. v. Azar*, 925 F.3d 1291, 12-17.

37. *J.D. v. Azar*, 925 F.3d 1291, 17.

38. *J.D. v. Azar*, 925 F.3d 1291, 12.

39. *J.D. v. Azar*, 925 F.3d 1291, 16.

make them appear outrageous.

Abortion as Crime

Continuing their use of outlandish quotes from Lloyd, the court reflects its perception of the invalidity of the abortion as a crime frame. The court quotes Lloyd as saying “we are being asked to participate in killing a human being in our care [and] we ought to choose [to] protect life rather than to destroy it” —in reference to allowing for the choice to abort.⁴⁰ This brings in the frame of abortion as a crime, with Lloyd equating aborting a fetus to killing a human. Such a characterization demonstrates the perceived absurdity of the defense’s argument in the eyes of the court, leading them to side with the plaintiff and author a pro-choice opinion.

2. Memphis Ctr. for Reprod. Health v. Slatery

The Memphis Ctr. for Reprod. Health v. Slatery (2021) case centered on a Tennessee bill that imposed “one of the strictest abortion regulations in the country.”⁴¹ The law is comprised of two different abortion restrictions: the banning of abortion after the detection of the so-called “fetal heartbeat” and the banning of abortion if the physician “knows” that the reasoning for the abortion is based on the fetus’s race, sex, or Down syndrome diagnosis.⁴² Both of these bans can be overturned by an affirmative-defense provision if the abortion is necessary to avoid a medical emergency according to the physician. The plaintiffs consisted of four reproductive-health centers and two physicians, Dr. Kimberly Looney and Dr. Nikki Zite, suing on behalf of themselves and their patients. They argued that the law imposed an undue burden on pre-viability abortions and that the medical emergency exceptions were unconstitutionally vague. On behalf of the state of Tennessee, the defendants consisted of Attorney General Herbert H. Slatery III, the Commissioner of the Tennessee Department of Health, the Chair of the Board for Licensing Health Care Facilities, the President of the Tennessee Board of Medical Examiners, and several local District Attorneys. The state opposed the plaintiffs’ argument, claiming that the law was valid.

Siding with the plaintiffs as shown in Table 1, the Court of Appeals for the Sixth Circuit affirmed the lower court’s judgment that the law was unconstitutional because, whether the state likes it or not, “access to pre-viability abortion is a constitutionally protected right” according to Supreme Court precedent.^{43,44} Thus, “if a regulation is a substantial obstacle to a woman seeking an abortion, it is invalid.”⁴⁵ In summarizing the case and arguing its own opinion, the court utilizes all five frames of the right to abortion, the post-viability fetal right to life, the pre-viability embryonic right to life, the recognition of fetal heartbeat, and abortion as a crime.

Right to Abortion

In upholding their judgment on the unconstitutionality of the law in question, the court relies heavily on the frame of the right to abortion to further their argument. According to Memphis Ctr. for Reprod. Health v. Slatery, a person has a Constitutional right “to choose whether to carry a pregnancy to term” and to “access to safe and legal abortion.”⁴⁶ This opinion points out the role that misogyny plays in the abortion debate and the historical legal overreach toward women’s bodies, arguing that the judiciary “exists as a check on majoritarian rule” and “has a duty to protect the Constitutional rights, including privacy and bodily autonomy, of those within its borders, even—or especially—if the relevant class of people ‘has been subjected to a tradition of

40 J.D. v. Azar, 925 F.3d 1291, 16.

41 Memphis Ctr. for Reprod. Health v. Slatery, 14 F.4th 409, 10.

42 Memphis Ctr. for Reprod. Health v. Slatery, 14 F.4th 409, 10.

43 Memphis Ctr. for Reprod. Health v. Slatery, 14 F.4th 409, 29.

44 Memphis Ctr. for Reprod. Health v. Slatery, 14 F.4th 409, 11.

45 Memphis Ctr. for Reprod. Health v. Slatery, 14 F.4th 409, 32.

46 Memphis Ctr. for Reprod. Health v. Slatery, 14 F.4th 409, 29-32.

disfavor by our laws.”⁴⁷ Through the use of the right to abortion frame and its connection to women’s rights, the court is able to connect its pro-choice decision to the idea of fighting the historical marginalization of women.

Post-Viability Fetal Right to Life

Yet as in other pro-choice cases basing their argument on the precedent of *Roe v. Wade*, the court also uses the post-viability fetal right to life frame to illustrate the conditionality of the right to abortion. The court states that “the Supreme Court made clear that ‘viability’ is ‘the relevant point at which a State may begin limiting women’s access to abortion for reasons unrelated to maternal health,’”⁴⁸ and thus “‘a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.’”⁴⁹ By utilizing the post-viability fetal right to life frame to invoke *Roe v. Wade*, the court affirms its argument through judicial precedent as is found to be common for pro-choice decisions.

Pre-Viability Embryonic Right to Life

The opinion only includes reference to the rights of the fetus when the court quotes a declaration from attorney and professor of bioethics O. Carter Snead on behalf of the state’s defense. Basing his argument on the laws governing protections for human subjects of federally-funded research, Snead suggests that “unborn children ... have interests that must be respected and honored.”⁵⁰ Yet the court declines to further this claim, demonstrating a balancing of rights that favors the right of women to choose before any potential fetal rights.

Recognition of Fetal Heartbeat

The recognition of fetal heartbeat is reflected when the court discusses the law that “criminalizes abortion upon the detection of a ‘fetal heartbeat.’”⁵¹ Similar to the previous pre-viability embryonic right life frame, however, the court does not utilize this frame in its own opinion, thus demonstrating disagreement. Even the fact that the court puts fetal heartbeat in quotes reflects how it is not seen as a reliable scientific claim in the eyes of the court.

Abortion as Crime

The theme of abortion as a crime is found many times in this case since the law at the center of the case criminalizes abortion, but interestingly it is only used to describe the law and the argument of the state rather than a reflection of the court’s own opinion. The bill makes it a Class C felony for physicians “to perform an abortion on a patient at specified ‘gestational ages,’ all of them pre-viability,” or “to perform, induce, or attempt to perform or induce an abortion if the physician ‘knows that the woman is seeking the abortion because of’ the sex of the fetus, the race of the fetus, or ‘a prenatal diagnosis, test, or screening indicating Down syndrome or the potential for Down syndrome.’”^{52, 53} According to the court, a Class C felony “is punishable by three to 15 years of imprisonment and a fine of up to \$10,000.”⁵⁴ Such a harsh punishment for performing an abortion is in turn used to reinforce the court’s judgment of the law as unconstitutional. By striking down this law, the court demonstrates rejection of the pro-life ideology behind the abortion as a crime frame in favor of the pro-choice right to abortion.

47 *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 32.

48 *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 19.

49 *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 20.

50 *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 16.

51 *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 11.

52 *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 11.

53 *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 12.

54 *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 2.

C. Pro-Life Judicial Argumentation

My analysis of the pro-life judicial argumentation is based on the prevalent frames in the cases siding with the State in regulating or prohibiting abortion. I suspected that both the post-viability fetal right to life frame and the pre-viability embryonic right to life frame would be far more prominent in pro-life argumentation than in the pro-choice cases, as they are fighting to prioritize fetal rights in the abortion debate.

The cases in which the court restricted abortion rights most often used the frame of the pre-viability embryonic right to life, as shown in Figure 2. Unlike the pro-abortion rights argument which focused more so on legal precedent and the protected rights of the pregnant person, this argument is more morally focused on the belief that life begins at conception. Fetal viability matters far less to the anti-abortion rights argument as they are far more focused on the potentiality of life rather than whether the fetus or embryo could survive outside the womb at that exact moment in time. This was unexpected as fetal viability is often such an important aspect of judicial decisions on abortion and suggests that changing fetal viability due to medical advancements may not impact the anti-abortion rights movement as much. These findings are exemplified in my two example cases: *Whole Woman’s Health v. Paxton* (2021) and *Bristol Reg’l Women’s Ctr., P.C. v. Slatery* (2021).

1. *Whole Woman’s Health v. Paxton*

The Court of Appeals case *Whole Woman’s Health v. Paxton* (2021) concerned a Texas law prohibiting a particular type of dilation and evacuation (D&E) abortion method, the type of surgical method used for abortions after the first trimester. The bill refers to this specific D&E method as “‘live dismemberment’ because doctors use forceps to separate, terminate, and remove the fetus.”⁵⁵ To be in accordance with this law, physicians are required to “use alternative fetal death methods” when performing abortions.⁵⁶

The plaintiffs in this case consisted of six abortion clinics, namely *Whole Woman’s Health*, and five individual doctors who provide abortions. They argued that the law amounted to a complete ban on standard D&E abortions and would thus prevent patients from being able to terminate a pregnancy in the second trimester when surgical abortion is necessary. While the bill may not directly apply to them, the plaintiffs argued that it was facially unconstitutional, meaning it “would impose a substantial obstacle on a ‘large fraction’ of women in the relevant circumstances.”⁵⁷ The defendants representing the state of Texas included Attorney General of Texas Ken Paxton along with the Criminal District Attorneys for Tarrant County and McLennan County. On behalf of the state, the defendants argue that the law does not constitute an undue burden because “there are safe and available alternatives for causing fetal death without forceps.”⁵⁸

While the District Court for the Western District of Texas originally declared this law facially unconstitutional, the Court of Appeals for the Fifth Circuit disagreed and ruled in the state’s favor that the law was constitutional, as shown in Table 1. According to the Court of Appeals, the District Court’s decision was incorrect because it misread Supreme Court precedent in *Planned Parenthood of Southeastern Pennsylvania v. Casey* and *Gonzales v. Carhart* by dismissing the state’s interest in “respecting fetal life” and improperly evaluating the bill’s burdens under the Casey undue burden test.^{59, 60} The court opinion demonstrates the frames of the right to abortion, the pre-viability embryonic right to life, and abortion as crime.

55 *Whole Woman’s Health v. Paxton*, 10 F.4th 430, 9.

56 *Whole Woman’s Health v. Paxton*, 10 F.4th 430, 9.

57 *Whole Woman’s Health v. Paxton*, 10 F.4th 430, 13.

58 *Whole Woman’s Health v. Paxton*, 10 F.4th 430, 11.

59 *Whole Woman’s Health v. Paxton*, 10 F.4th 430, 17.

60 *Whole Woman’s Health v. Paxton*, 10 F.4th 430, 10.

Right to Abortion

While the court's opinion is restricting the right to abortion, the frame of the right to abortion is still used by the court to argue that their reversal of the lower court's judgment does not violate judicial precedent. When evaluating the precedent of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the Court of Appeals identified three principles: the right of a person "to choose to have an abortion before viability," the power of the state "to restrict abortions after fetal viability," and the legitimate interests of the state "in protecting the health of the woman and the life of the fetus" throughout the duration of the pregnancy.⁶¹ These principles respectively exemplify the frames of the right to abortion, the post-viability fetal right to life, and the pre-viability embryonic right to life. In the following portions of the court opinion, it becomes clear that they are willing to restrict the right to abortion to submit to the interests of the state in "protecting" the fetus.

Pre-Viability Embryonic Right to Life

The court's prioritization of the embryo in its decision is reflected through extensive use of the pre-viability embryonic right to life frame. The embryo or fetus is referred to as an "unborn child" six times over the course of the *Whole Woman's Health v. Paxton* opinion. This language is expanded upon with the description of so-called 'live dismemberment' abortion, quoted from the bill in question as "an abortion in which a person, with the purpose of causing the death of an unborn child, dismembers the living unborn child and extracts the unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, a piece of the unborn child's body to cut or rip the piece from the body."⁶² By utilizing the framing of fetal rights, the goal of this description is clearly to make abortion seem gory and violent, and even murderous with the description of the fetus as a 'living unborn child' being 'dismembered.'⁶³ The court is therefore able to inspire outrage and disgust in the reader that will in turn make them against such procedures. The bill also works to humanize the fetus by discussing "the unborn child's body," portraying the fetus as an autonomous being with a distinctly living body separate from gestation.⁶⁴ This is echoed later in the case, when the court quotes the *Gonzales v. Carhart* case's description of the fetus as "a child assuming the human form."⁶⁵ The court emphasizes the fetal similarity to a living human child in order to convince the reader that the abortions in question are violence against children rather than the removal of pre-viability fetal cells.

Abortion as Crime

While the case revolves around a law that outlaws a certain method of abortion, the court surprisingly refrains from using the abortion as a crime frame to promote its argument. This is likely to make the decision seem like less of an encroachment on the right to abortion, which the court works to achieve by emphasizing the other methods available for abortion. Even if the court does believe that abortion is a crime, they are choosing to attack an aspect of the right to abortion rather than the entire right itself, a far larger and more difficult battle left for the pro-life movement as a whole.

2. *Bristol Reg'l Women's Ctr., P.C. v. Slatery*

The *Bristol Regional Women's Center, P.C. v. Slatery* (2021) case centered on a Tennessee state law requiring women to undergo a 48-hour waiting period before receiving an abortion. This waiting period begins

61 *Whole Woman's Health v. Paxton*, 10 F.4th 430, 12.

62 *Whole Woman's Health v. Paxton*, 10 F.4th 430, 10.

63 *Whole Woman's Health v. Paxton*, 10 F.4th 430, 10.

64 *Whole Woman's Health v. Paxton*, 10 F.4th 430, 10.

65 *Whole Woman's Health v. Paxton*, 10 F.4th 430, 17.

once the patient's physician has informed them in person of the pregnancy, the gestational age of the fetus, the alternatives to abortion, and the medical risks of abortion and pregnancy. The waiting period could only be reduced to 24 hours by a court order. The plaintiffs consisted of four abortion providers and one physician arguing on behalf of themselves and their patients. They alleged that the waiting period in question burdened access to abortion and was therefore facially unconstitutional. The defendants representing Tennessee included Attorney General of Tennessee Herbert H. Slatery along with the Commissioner of the Tennessee Department of Health, the President of the Tennessee Board of Medical Examiners, and the District Attorneys General of Nashville, Shelby County, and Sullivan County. They argued that the law was constitutional because Supreme Court precedent in *Planned Parenthood v. Casey* upheld a similar 24-hour waiting period prior to abortions.

Ultimately in this case, the Court of Appeals for the Sixth Circuit sided with the state and upheld the law as facially constitutional, as shown in Table 1. According to the court, Tennessee's strong "interest in protecting the life of the unborn" constituted a rational basis for enacting a pre-abortion waiting period.⁶⁶ The plaintiffs attempted to argue that the law placed an undue burden on the right to abortion for women who would miss the pre-viability cutoff date for legal abortion due to the waiting period, women with medical conditions which increase the risk of delaying the procedure, and women who are survivors of rape, incest, or violence. However, the plaintiffs failed to present the court with "discrete and well-defined" examples.⁶⁷

Pre-Viability Embryonic Right to Life

The court's opinion in *Bristol Regional Women's Center, P.C. v. Slatery* is based primarily on pre-viability embryonic right to life framing. This is clearly demonstrated by the court's argument that "the purpose of the law is to advance the state's legitimate interest in protecting unborn life."⁶⁸ By classifying the goal of protecting embryos as legitimate, the court demonstrates affirmation of the pre-viability embryonic right to life. According to the court, the point of the law in question is "to ensure more time for an expectant mother to make an informed decision in the hope that she will choose life," thus demonstrating pro-life sentiment by referring to the embryo or fetus as a 'life' in opposition to abortion.⁶⁹ Similarly, the court describes the fetus as a "child" to be carried to term three times throughout the opinion. As in other pro-life opinions, the court equates fetuses with children in an attempt to humanize them and make abortion appear an immoral act of violence.

V. Discussion

As I have conducted this research, my thesis question has only become increasingly more relevant to the current political climate. With a conservative majority in the Supreme Court, it appears likely that *Roe v. Wade* will be overturned in the near future. This summer the Supreme Court will give its decision on *Dobbs v. Jackson Women's Health Organization*, a continuation of the Court of Appeals case *Jackson Women's Health Org. v. Dobbs*, 951 F.3d 246, as listed in Table 1. This case directly concerns fetal viability, as the law in question prohibits abortion based on fetal age as early as 15 weeks, according to Jon Shimabukuro's report "Fetal Viability and Judge Amy Coney Barrett."⁷⁰ Mississippi argues against the *Roe v. Wade* viability standard in this case, contending that it "does not accommodate a greater understanding of prenatal life" such as recognition of potential fetal pain from an age of 10-12 weeks.⁷¹

Ziegler also flagged the debate around fetal pain as a rising issue, as many states have begun to pass fetal pain laws which attempt to prohibit abortion before viability. According to Ziegler, this poses a major threat to *Roe v. Wade* since "if the Court allowed states to ban abortion when some (but not all) experts believed that fetal pain was possible, then other medically contested justifications could also pass muster, and the states could

66 *Bristol Reg'l Women's Ctr., P.C. v. Slatery*, 7 F.4th 478, 7.

67 *Bristol Reg'l Women's Ctr., P.C. v. Slatery*, 7 F.4th 478, 12.

68 *Bristol Reg'l Women's Ctr., P.C. v. Slatery*, 7 F.4th 478, 14.

69 *Bristol Reg'l Women's Ctr., P.C. v. Slatery*, 7 F.4th 478, 14.

70 Shimabukuro, "Fetal Viability and Judge Amy Coney Barrett," 2.

71 Shimabukuro, "Fetal Viability and Judge Amy Coney Barrett," 2.

ban abortion earlier in pregnancy.”⁷²

In her dissent to *Roe*, then Supreme Court Justice Sandra Day O’Connor argued that *Roe v. Wade* was inherently weak due to the changing age of fetal viability. According to Ziegler, “O’Connor reasoned that the date of viability changed as technology improved, and abortion became safe later in pregnancy. These shifts, O’Connor argued, made *Roe*’s trimester framework unworkable, encouraging courts to pretend to act as science review boards.”⁷³

Going into my research I expected O’Connor’s line of argumentation to be much more common in the pro-life judgments, yet fetal viability was brought up much more rarely in these cases than I hypothesized. In fact, my analysis showed that fetal viability was a more important aspect of the abortion debate on the pro-choice side than on the pro-life side. Since *Roe v. Wade* is a central aspect of the pro-choice legal argumentation, its conditional right to abortion based on fetal viability becomes a central topic in cases that support such a right to abortion. Whereas much of the pro-life argumentation used theoretical morals rather than concrete viability to promote their ideology. In the eyes of the pro-life movement, the embryo is equivalent to a living baby from conception, making the point of fetal viability far less relevant than anticipated.

With *Roe v. Wade* likely on the chopping block, courts and legislators will have to decide how instead to regulate abortion, if it is even allowed at all. Even without the threat of the conservative Supreme Court majority, O’Connor’s criticism of fetal viability as the demarcation point for legal versus illegal abortion is an increasing threat to *Roe* as lifesaving technological progress for premature babies has pushed the potential age of fetal viability earlier and earlier.

The central question of the abortion debate is thus becoming more apparent: when balancing women’s rights and fetal rights, who wins? Judges who favor judicial restraint will struggle to find the answer in the Constitution, which does not even mention women. To preserve the right to abortion, women’s full equality and bodily autonomy must be realized and protected in a country that appears to favor their capacity for motherhood over their personhood.

VI. Conclusion

Through an examination of the most recent federal abortion cases, this thesis works to understand how U.S. federal courts have framed the contentious questions of fetal viability, fetal rights, and women’s rights. To answer this question, I completed a framing analysis utilizing the following frames: the right to abortion, the post-viability fetal right to life, the pre-viability embryonic right to life, the recognition of fetal heartbeat, and abortion as a crime. Based on my analysis of the fifteen federal court cases on abortion ranging from 2019 to the time of publication in 2022, I determined that the most common judicial frame is the right to abortion, occurring 94 times. Following that, post-viability fetal right to life and pre-viability right to life were almost equally as common with 59 and 58 occurrences respectively. Recognition of fetal heartbeat was second to last with 19 occurrences, followed closely by abortion as a crime with 16 occurrences.

My research of pro-choice judicial decisions yielded results that affirmed my hypotheses, as the most common frame used was the right to abortion and, notably, its conditional nature under the fetal viability provision of *Roe v. Wade*. While courts fight to protect the right to abortion, it is only pre-viability abortions that are actually protected. My findings for the pro-life judicial argument were far less predictable, as the most common frame was the pre-viability embryonic right to life, with far less focus on fetal viability or legal precedent. The pro-life judicial argument focused instead on the moral belief of the prioritization of the ‘life’ of the embryo beginning at conception, rather than determining potential rights based on whether the fetus could actually survive outside the womb at the given point in time.

⁷² Ziegler, *Abortion and the Law in America*, 190.

⁷³ Ziegler, *Abortion and the Law in America*, 75.

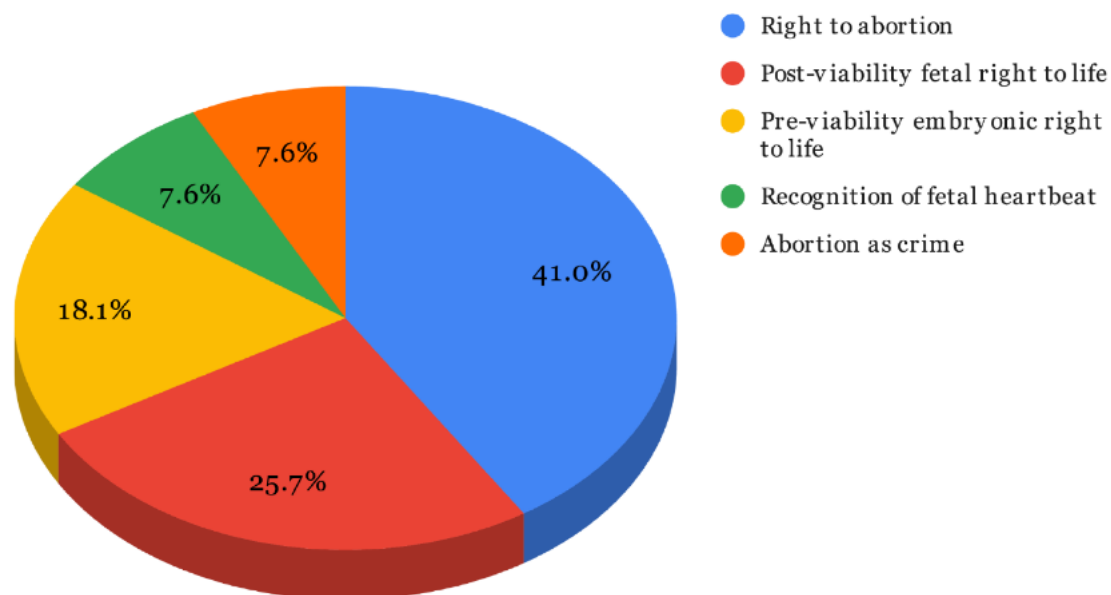
With the conservative majority Supreme Court likely planning to overturn *Roe v. Wade*, it appears that a shift from fetal viability as a determinant of women's rights and fetal rights is imminent. While many focus on what rights the fetus is entitled to, if any, it is essential to protect the intrinsic human rights of women. Fetal viability has been an essential part of abortion legality for almost half a century, but the factors determining the right to abortion may change dramatically in the near future.

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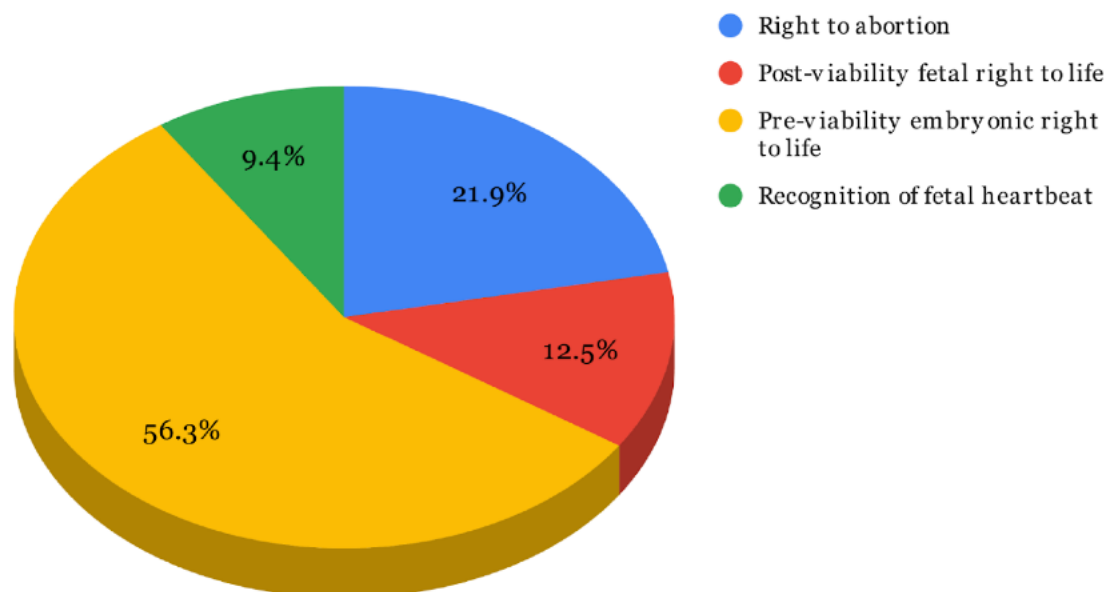
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Figure 1. Frame Percentages for Cases Siding with Abortion Providers



Caption: In cases where the court sided with abortion providers for a pro-choice decision, the most common frame on average was the right to abortion.

Figure 2. Frame Percentages for Cases Siding with the State



Caption: In cases where the court sided with the state against abortion rights, the most common frame on average was the pre-viability embryonic right to life.

Table 1. Court Cases in Dataset

Case	Court Level	Date	Plaintiff	Defendant	Court Decision
<i>J.D. v. Azar</i>	Court of Appeals	June 14, 2019	Individual(s)	Federal Government	Pro-Choice
<i>Jackson Women's Health Org. v. Dobbs</i>	Court of Appeals	February 20, 2020	Abortion Provider(s)	State	Pro-Choice
<i>June Med. Servs. L.L.C. v. Russo</i>	Supreme Court	June 29, 2020	Abortion Provider(s)	State	Pro-Choice
<i>Little Rock Family Planning Servs. v. Rutledge</i>	Court of Appeals	January 5, 2021	Abortion Provider(s)	State	Pro-Choice
<i>Planned Parenthood Tenn. & N. Miss. v. Slatery</i>	District Court	February 26, 2021	Abortion Provider(s)	State	Pro-Choice
<i>Planned Parenthood S. Atl. v. Wilson</i>	District Court	March 19, 2021	Abortion Provider(s)	State	Pro-Choice
<i>Reprod. Health Servs. of Planned Parenthood of the St. Louis Region v. Parson</i>	Court of Appeals	June 9, 2021	Abortion Provider(s)	State	Pro-Choice
<i>Bryant v. Woodall</i>	Court of Appeals	June 16, 2021	Abortion Provider(s)	State	Pro-Choice
<i>Memphis Ctr. for Reprod. Health v. Slatery</i>	Court of Appeals	September 10, 2021	Abortion Provider(s)	State	Pro-Choice
<i>Hopkins v. Jegley</i>	Court of Appeals	August 7, 2020	Abortion Provider(s)	State	Ongoing
<i>EMWomen's Surgical Ctr., P.S.C. v. Friedlander</i>	Court of Appeals	October 16, 2020	Abortion Provider(s)	State	Pro-Life
<i>Bristol Reg'l Women's Ctr., P.C. v. Slatery</i>	Court of Appeals	August 5, 2021	Abortion Provider(s)	State	Pro-Life
<i>Whole Woman's Health v. Paxton</i>	Court of Appeals	August 18, 2021	Abortion Provider(s)	State	Pro-Life
<i>Whole Woman's Health v. Jackson</i>	Supreme Court	December 10, 2021	Abortion Provider(s)	State	Pro-Life
<i>Planned Parenthood Gulf Coast, Inc. v. Phillips</i>	Court of Appeals	January 20, 2022	Abortion Provider(s), Individual(s)	State	Pro-Life

Caption: My dataset consisted of two District Court cases, eleven Court of Appeals cases, and two Supreme Court cases. The majority of plaintiffs were abortion providers and the majority of the defendants were states. Nine court decisions sided with the plaintiffs (pro-choice), five of the court decisions sided with the defendants (pro-life), and one case is still ongoing.

Table 2. Frame Origins

Frame	Original Research
Right to abortion	Rohlinger
Post-viability fetal right to life	Luker; Ziegler; Rohlinger
Pre-viability embryonic right to life	Luker; Ziegler; Rohlinger
Recognition of fetal heartbeat	Luker; Ziegler
Abortion as crime	Luker; Ziegler

Caption: Both of the fetal rights frames were found in all three sources, fetal heartbeat and abortion as crime were found in Luker and Ziegler's books, and the right to abortion was found in Rohlinger's study.

Table 3. Frame Keyword Examples

Frame	Keywords
Right to abortion	"women's rights," "human rights," "right to choose"
Post-viability fetal right to life	"life begins at viability"
Pre-viability embryonic right to life	"life begins at conception," "unborn child," "potential life"
Recognition of fetal heartbeat	"fetal heartbeat"
Abortion as crime	"felony," "kill," "murder," "crime"

Caption: While I performed my framing analysis based on concepts rather than exact linguistic patterns, I found a number of keywords recurring in my analysis of each frame.

Table 4. Abortion Frame Counts by Case

CASE OPINIONS	FRAMES				
	Right to abortion	Post-viability fetal right to life	Pre-viability embryonic right to life	Recognition of fetal heartbeat	Abortion as crime
<i>J.D. v. Azar</i>	20	14	2	0	1
<i>Jackson Women's Health Org. v. Dobbs</i>	0	0	0	2	1
<i>Jane Med. Servs. L.L.C. v. Russo</i>	10	1	5	0	0
<i>Hopkins v. Jegley</i>	1	1	2	0	0
<i>EMWomen's Surgical Ctr., P.S.C. v. Friedlander</i>	4	2	0	0	0
<i>Little Rock Family Planning Servs. v. Rutledge</i>	11	8	7	0	0
<i>Planned Parenthood Tenn. & N. Miss. v. Slatery</i>	4	1	9	2	5
<i>Planned Parenthood S. Atl. v. Wilson</i>	14	11	4	8	1
<i>Reprod. Health Servs. of Planned Parenthood of the St. Louis Region v. Parson</i>	12	6	3	2	2
<i>Bryant v. Woodall</i>	0	0	0	0	1
<i>Bristol Reg'l Women's Ctr., P.C. v. Slatery</i>	0	0	10	0	0
<i>Whole Woman's Health v. Paxton</i>	2	2	7	0	0
<i>Memphis Ctr. for Reprod. Health v. Slatery</i>	15	13	8	2	5
<i>Whole Woman's Health v. Jackson</i>	0	0	1	3	0
<i>Planned Parenthood Gulf Coast, Inc. v. Phillips</i>	1	0	0	0	0
Totals	94	59	58	19	16

Caption: The most common frame is the right to abortion. Post-viability fetal right to life and pre-viability right to life were almost equally as common following that. Recognition of fetal heartbeat was second least common, followed closely by abortion as a crime.