

# LAW & COURTS NEWSLETTER

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NEWSLETTER OF THE LAW & COURTS SECTION

AMERICAN POLITICAL SCIENCE ASSOCIATION

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## Note from Section Chair

LISA HOLMES, UNIVERSITY OF VERMONT

I am honored to serve as chair of the Law and Courts Section this year, and am grateful for all those who serve the section throughout the year. In coming into this role, I have benefited in particular from the advice I have received from recent section chairs, especially our immediate past chair Rich Pacelle. Rich continued the recent practice of bringing the chair-elect into section business in a way that is helpful without being onerous. Last year, I shadowed Rich during his year as section chair, as Rich did the previous year during Susan Burgess' tenure as chair. I appreciated Rich's approach of including me in conversations and emails while always being careful not to burden the job of chair-elect. I think the section benefits from this practice by giving the section's incoming chair a better sense of the regular features of the job (such as staffing award committees for the spring) as well as the particular initiatives that arise in any given year. This year, Chair-Elect Pam Corley and I will continue to follow this new approach to section leadership and I hope that Pam will find it as helpful as I have.

One particular section initiative I benefited from following last year was the work involved in moving the *Journal of Law and Courts* from the University of Chicago Press to Cambridge University Press. The move to a new publisher was necessary, but also came at a fortuitous time for the journal and the section. The journal's inaugural issue was published in 2013. In the years the journal has been operating, our field has seen some other field-specific journals cease operation, which makes the place the section's journal holds all the more significant. The move to Cambridge will allow the journal to grow strategically and in doing so will meet the needs of the section and its members. As journal editor Tom Clark has outlined in his communications to the section, the journal and those who publish in it will also benefit from Cambridge's marketing, open-access agreements, and faster copy-editing and typesetting practices. On behalf of the section I would like to thank Tom and Rich for their leadership during this transition. Our section also owes a debt to Jon Gurstelle at APSA, whose expertise and efforts were vital in landing our journal at a place where it will flourish moving forward.

Other important section outlets are in a period of consistency after leadership and other changes in recent years. The *Law and Courts Book Review* remains an excellent and valued resource under the editorial leadership of Jolly Emrey and Monica Lineberger. The section's newsletter continues to be an invaluable source for articles, announcements, and information one year into Daniel Lempert's term as editor. The Law & Courts Listserv serves the section as a source for announcements, reminders, and information. The section's reach has also been improved by having a social media presence and website. Many thanks to the Listserv moderators (Todd Curry, Michael Fix, Gbemende Johnson, and Michael Romano) and the webmaster team (Shane

Gleason, David Hughes, and Allison Trocheset) for their work on the section's behalf.

As I came into the chair position after APSA in September, I was struck by how much there is to be optimistic about, in terms of the work of the section and its members. However, I am also attentive to ongoing concerns expressed about the challenges inherent in writing and teaching about law and courts in the current political environment. At the executive committee meeting in September, members of the Recruitment, Retention, and Equality Committee addressed a number of these concerns. Of course, some of the work of this important committee addresses ongoing section challenges related to race, ethnicity, and gender, and other important components of having a truly diverse and inclusive professional community. In the current political environment, I share the concerns expressed at that meeting about the experiences of our colleagues who live and work in states where the political climate has become increasingly hostile to their scholarship and teaching. Our section alone cannot resolve these broader societal and political problems, of course, but I intend to dedicate a good portion of my time as section chair to supporting and assisting section members who are experiencing particular pressure and stress at this challenging time. I would like to thank Gbemende Johnson and Shane Gleason, co-chairs of the Recruitment, Retention, and Equality Committee, and all the members of their committee who are working to determine how the section may best provide support and assistance this year and beyond. I encourage section members to contact me with thoughts on how the section may better serve all members of our community.

I was fortunate to have the opportunity to see as many section members as I did at APSA in Montreal. After two years of holding the section's business meeting remotely, it was a sincere pleasure to be able to discuss section business and applaud those receiving awards in person. A particular note of appreciation is due to Susan Johnson, who as section treasurer had the challenging task of scheduling the section's reception, as well as the business and executive committee meetings. Susan did a wonderful job planning the reception under circumstances where it was difficult to predict how many people would be in attendance. Her efforts afforded those in attendance the opportunity to chat informally and comfortably in a way that has not been feasible for a few years. I am grateful to Susan and am also looking forward to seeing colleagues at next year's conference in Los Angeles. I will conclude by thanking those whose terms ended at APSA in September. On behalf of the section, thank you to Rich Pacelle for serving as chair, Nikol Alexander-Floyd for her service as secretary, and Laura Moyer, Daniel Naurin, and Teena Wilhelm for their contributions on the executive committee.

## Note from Editor

DANIEL LEMPERT, SUNY POTSDAM

I am happy to present Volume 32, Issue 2 of *Law & Courts Newsletter*. This issue includes contributions from Lawrence Baum, Matthew Reid Krell, and Gerald Rosenberg. The Better Get To Know feature includes interviews with editorial board members Pedro Magalhães and Sophia Wilson; a special thanks to Pedro and Sophia, as well as to Lydia Tiede (appearing in a future issue) for volunteering to answer the questions on short notice when the originally planned interview subjects went MIA. Please also note the call for nominations for the annual section awards, and the contact information for committee members, on page 52.

Baum gives a particularly lucid procedural description of the Supreme Court's so-called "shadow docket" and discusses patterns in docket applications, 2005–2021. Certainly, the shadow docket has started receiving more attention from legal commentators and the popular press of late; still, its operation was a bit vaguer to me than I'd like to admit. Baum's article did much to clarify my understanding. (Those interested the shadow docket should also note Stephen Vladeck's forthcoming Book to Watch For on page 50, and editorial board members Ben Johnson and Logan Strother's working paper linked [here](#).)

Krell introduces a [database](#) of journals that publish law and courts work. More than a list of journals, the database is designed to help scholars in our subfield decide *which* journals are most likely hospitable to various kinds of law and courts work. Over the years, I have spoken to many colleagues who have been uncertain about where to turn, especially after trying *Journal of Law and Courts*. Krell's database should serve to ameliorate this uncertainty. The database is designed to be dynamic and crowd-sourced, so please contribute to it, in addition to viewing it!

Rosenberg's timely article, based on an excerpt from his forthcoming revision of *The Hollow Hope* (see Books to Watch For, page 50), discusses the impact of the *Dobbs* decision on abortion access in the United States. Rosenberg marshals much impressive evidence indicating that the consequences of the Court's recent decision may be less wide-ranging than commonly assumed. Thanks to Malcolm Feeley for suggesting the *Newsletter* as a venue for this thought-provoking contribution.

Finally, I would like to thank the *Newsletter* editorial board for their counsel and assistance, and to wish readers the best for the new year.

# Applications for Supreme Court Stays: Patterns in Responses by Justices and the Court

LAWRENCE BAUM, OHIO STATE UNIVERSITY<sup>1</sup>

Two years ago, I presented in this *Newsletter* an exploratory study of voting in the Supreme Court on applications for stays and related actions (Baum 2020). At that time, this segment of the Court’s “shadow docket” was beginning to garner more attention from observers of the Court. My primary goal was to encourage scholars in our section to join in analyzing this part of the Court’s work.

By now, several law and courts scholars in political science are engaged in research on this topic, and the shadow docket was the subject of a panel at the 2022 Midwest conference. I am pleased about this activity, but my article had little or nothing to do with it. Rather, it reflected a set of interrelated developments that underlined the importance of applications for stays (see Vladeck 2021).

The most fundamental development is continuing growth in the importance of stay applications in the Supreme Court. Governments and interest groups increasingly apply for stays as a means to advance their policy goals, and the Court increasingly uses these applications as a basis for significant actions on issues such as immigration, election rules, and the COVID pandemic.<sup>2</sup> And the continuing growth in attention to stays by legal scholars and the news media, along with controversy within the Court over its handling of these applications (*Merrill v. Mulligan* 2022), have made it difficult to ignore this part of the Court’s work.<sup>3</sup>

Reasonably enough, interest in Supreme Court stays has focused on the most consequential issues that the justices address. But I think it is also important to understand how the Court responds to the full set of stay applications, ranging from those that constitute efforts to shape major policies or political outcomes to those that arise from the problems and grievances of specific individuals. In this article I present an overview of the Court’s actions on stay applications in the Roberts Court from the 2005 term through the 2021 term. I focus on description of patterns in what the Court does, though I also point to questions of explanation that merit attention in future research.

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<sup>1</sup>I appreciate the suggestions that I received from the two members of the *Newsletter*’s Board who served as reviewers for this article.

<sup>2</sup>The general perception of this change is supported by amicus filings in cases involving applications for stays. These filings were rare in the early Roberts Court, gradually became less rare, and are now common. In the 2020 and 2021 terms, 18 percent of all applications were accompanied by amicus briefs.

<sup>3</sup>Legal scholar Stephen Vladeck has played a key role in calling attention to the Court’s responses to stay applications, beginning with his 2019 article in the *Harvard Law Review*. His forthcoming book (Vladeck 2023) examines developments in the Court’s use of the shadow docket since 2017.

I analyze two sets of cases. The first is a 50 percent sample of all the applications submitted in the 2005–2021 terms that sought stays of action by a lower court or another government body, vacating of stays issued by lower courts, and analogous actions on injunctions ( $n = 1391$ ).<sup>4</sup> For the sake of simplicity, I will refer simply to applications for stays, which dominate this part of the Court’s work numerically.<sup>5</sup> The second is the full set of stay applications on which the Court as a whole reached decisions from the beginning of the 2005 term through the end of the 2021 term ( $n = 978$ ). Information on these two datasets is provided in the Appendix to this article.

Applications for stays are efforts to block action by a lower court or another government body temporarily, though the Court’s action on a stay application may effectively resolve the dispute that gave rise to the application (AliKhan 2021). Some stay applications are brought in conjunction with a pending or planned petition for certiorari after a lower court (usually a federal court of appeals) has acted.<sup>6</sup> Others are brought before lower courts have reached final decisions, and such applications are far more common in cases in which the issues are important for politics or policy. The Court’s willingness to reach into the lower courts to protect or block government policies has been an important feature of its actions on stay applications during the past half dozen years.

## Overview

The procedures for the Court’s handling of stay applications can be summarized briefly.<sup>7</sup> Litigants submit applications for stays to the relevant circuit justice. That justice can rule on the application or forward it to the Court as a whole. If the justice grants the application, with rare exceptions that

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<sup>4</sup>It is worth emphasizing that because I analyzed a 50 percent sample, percentages presented in the article may deviate slightly from what would be found in the universe of applications. One implication is that when I refer to justices as never taking a particular action, it is possible that that action did occur in the other half of the cases.

<sup>5</sup>A small minority of applications seek both a stay and another remedy, usually an injunction. If these applications are treated as applications for stays, in the sample for the 2005–2021 terms 89 percent of all applications asked for a stay, 3 percent for vacating of a stay, and 7 percent for an injunction or vacating of an injunction. Applications for stays and for injunctions were granted at similar rates.

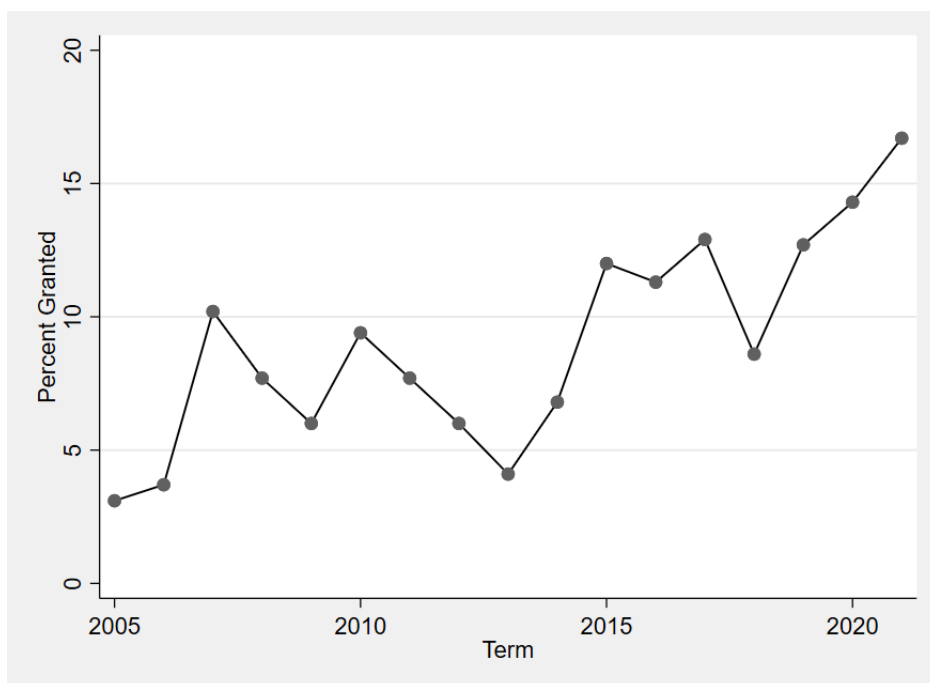
<sup>6</sup>The linking of case documents with the docket sheets beginning with the 2018 term made it possible to ascertain the stage at which the great majority of applications were submitted. In the 2018 and 2019 terms, 69 percent of the applications were associated with actual or pending certiorari petitions. In the 2020 and 2021 terms, the proportion dropped to 50 percent. That change paralleled the growing frequency of applications asking the Court to intervene in disputes over policy and politics.

Cases with both stay applications and certiorari petitions are illustrated by *Grigalanz v. Grigalanz*, 20-8032, 21A17 (2021). The petition for certiorari was submitted on February 5, followed by the petitioner’s application for a stay, submitted to Circuit Justice Barrett on July 21. Justice Barrett denied the application on July 27 (the applicant did not renew the application with a second justice), and the Court denied the petition for certiorari on October 4.

<sup>7</sup>These procedures are discussed in detail in Shapiro et al. (2019, chs. 17–18).

ruling is final.<sup>8</sup> If the justice denies the application, the litigant can renew the application to a second justice of the litigant's choosing. That second justice in turn can rule on the application or refer it to the Court as a whole.

As a group, applicants have a poor rate of success in the Court: in the 2005–2021 terms, the grant rate for applications relating to stays and injunctions was only 9 percent.<sup>9</sup> That low success rate is striking in one sense, because a substantial proportion of applicants seek stays only for the relatively short period until the Court addresses a pending or forthcoming petition for certiorari. However, as Figure 1 shows, the grant rate has been considerably higher in recent terms than it was in the early Roberts Court. And the highest rate for a single term came in 2021, when one-sixth of the applications were successful.



**Figure 1.** Grant Rate for Applications Related to Stays and Injunctions, by Term (defined by docket number).

The overall grant rate reflects decisions by both individual justices and the Court as a whole. To get a sense of what happens in the Court's responses to stay applications, it is necessary to work through each stage of decision making in the Court.

<sup>8</sup>The two overrulings of grants that I know of came in disputes over the executions of Julius and Ethel Rosenberg for espionage (*Rosenberg v. United States* 1953) and U.S. bombing of Cambodia (*Holtzman v. Schlesinger* 1973).

<sup>9</sup>If a justice or the full Court grants an application, they may do so fully or in part. Partial grants are fairly rare, accounting for about 6 percent of all grants during the Roberts Court, so I combine them with full grants in describing the actions of individual justices and the full Court.

### Action by Individual Justices

The first stage, and the only one in which all applications are considered, is action by the circuit justice. Of course, circuit justices have three choices: to grant an application, to deny it, or to refer it to the full Court for consideration. They very seldom grant applications—only 1.5 percent of the time in the 2005–2021 terms. (Circuit justices sometimes issue what are called administrative stays, freezing the status quo until they or the Court as a whole rule on the stay application. I leave those actions aside.) Thus, the operative question for a circuit justice is almost always whether to deny the application or to refer it to the Court. Overall, justices in the Roberts Court denied 54 percent of the applications and referred 45 percent to the Court. Those rates vary from term to term, but there has been no meaningful trend in their relative frequency.

These percentages mask an enormous difference between one category of applications and all the others. Pending executions have been the subject of about one-third of the applications during the Roberts Court, greatly outnumbering any other subject matter.<sup>10</sup> As Table 1 shows, circuit justices routinely refer cases involving stays of execution to the full Court. But in other cases, circuit justices mostly deny applications.

Subject Matter	Granted	Denied	Referred to Court
Stay of Execution	0.9	3.1	96.0
Other Subjects	1.7	80.8	17.5

**Table 1.** Disposition of Applications by Circuit Justices, Stays of Execution and Other Subjects, in Percentages.

Explanation of circuit justices' choices to refer or to deny the non-execution applications requires extensive study, but I can note a few patterns that hint at possible explanations. Organizations did far better than individuals: although 71 percent of these applications were filed by individuals, they accounted for only 29 percent of the referred applications.<sup>11</sup> Of course, organizational applicants were nearly always represented by attorneys. Among individuals, those who were represented by attorneys enjoyed a degree of success, with a grant rate of 3 percent and a referral rate of 18 percent. Those who applied without an attorney had no success at all: in the sample of cases that I analyzed, *every* pro se application was denied. In the 2018–2021 terms, circuit justices referred 72 percent of the applications raising political or policy issues, compared with

<sup>10</sup>That proportion is artificially high, because prisoners who seek last-minute stays of execution frequently submit multiple applications. But even adjusting for these duplications, executions are by far the most common subjects of stay applications.

<sup>11</sup>Those percentages understate the difference between individuals and organizations, because applications were coded on the basis of the first-listed applicant (the only applicant for which information was available during most of the study period), and some first-listed individuals had organizations as co-applicants.



9 percent of the others.<sup>12</sup> And with a few arguable exceptions, circuit justices referred all the applications that raised the most important issues.<sup>13</sup>

The second stage of the process is relevant to the great majority of applications that do not involve executions, because the circuit justice has denied the application. Perhaps surprisingly, only 18 percent of litigants whose applications were denied by a circuit justice made use of the right to have their application forwarded to a different justice. When a second justice did receive an application, that justice *never* granted the applicant's request and denied the request only 10 percent of the time. In the remainder of the cases, these justices referred the application to the full Court.<sup>14</sup>

### Action by the Full Court

As a result of the processes I have described so far, the applications that the full Court considers fall into three subsets that are quite different from each other. The cases involving stays of execution are special in their subject matter. They also stand out because circuit justices refer these cases to the full Court almost automatically. Thus, they reach the Court without any action by individual justices that provides much information about their possible merits. The applications referred to the Court by a second justice come with a negative presumption attached to them, because the circuit justice has already ruled against granting relief to the applicant. In contrast, the non-execution applications referred by the circuit justice carry a presumption that they should be taken seriously, because the circuit justice did not deny them unilaterally as they do most of the time on subjects other than execution.<sup>15</sup>

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<sup>12</sup>Assignment of cases to these two categories is necessarily an inexact matter. My criterion for "political or policy" was whether the outcome for the application would be likely to affect a significant public policy or the success of political parties or candidates for office. The great majority of cases would fit clearly into one category or the other no matter how this criterion was operationalized, but there certainly were some ambiguous cases on the policy side.

I could not code this variable for terms prior to 2018, because the Court did not link case documents to the online docket sheets and the scope of many cases was impossible to ascertain. But for the whole study period, leaving aside stays of execution, 96 percent of the applications supported by amicus briefs were referred to the Court, compared with 13 percent of other applications.

<sup>13</sup>Of course, my judgment about "the most important issues" has considerable subjectivity to it. But I think that by anyone's judgment, the justices today almost always refer applications that involve major policy questions.

The current pattern reflects a considerable decline in the role of circuit justices since the late twentieth century, when they sometimes ruled on quite consequential applications, often granted stays, and wrote a substantial number of opinions on stay applications (see Matetsky 2016, 9–12).

<sup>14</sup>These percentages include execution cases. Because few applications involving stays of execution were denied by circuit justices and even fewer were renewed with another justice, the percentages for non-execution cases are quite similar to those for all cases in which the circuit justice denied an application.

<sup>15</sup>For the whole study period, about half (53.3%) of the applications heard by the Court

The Court's record, based on the dataset that includes all the cases decided by the full Court, shows that its responses did vary quite substantially across the three subsets.<sup>16</sup> The Court *never* granted the request for action in an application that was denied by the circuit justice, and it rejected 90 percent of the applications involving executions. But it granted relief to applicants in 41 percent of the non-execution cases referred by the circuit justice. Each of these three subsets merits some discussion.

1.) It is noteworthy that the Roberts Court always ratifies rulings against applications by circuit justices, though the Court's Rule 22.4 advertises the Court's predilection: "except when the denial is without prejudice, a renewed application is not favored." Further, justices seldom record disagreement with ratifications of denials. I located only one instance in which any justices announced dissents from denials of these applications (*Respect Maine PAC v. McKee* 2010).

What accounts for this level of futility? In all likelihood, two mutually reinforcing factors are responsible. The first is that circuit justices are careful not to deny applications whose acceptance by the full Court is a real possibility. This seems to be because they feel a duty to represent their colleagues' views accurately (*Schlesinger v. Holtzman* 1973, 1310) and perhaps because they want to avoid any chance that their judgments would effectively be reversed by those colleagues. The second is that, as its rules proclaim, the Court as a whole treats renewed applications with extreme skepticism. This skepticism could reflect either (or both) confidence in the judgments of circuit justices or a desire to deter renewed applications. In any event, the low rate of "appeals" after a circuit justice denies applications is richly justified by the outcomes for the applicants who do appeal.

2.) The 10 percent success rate for applications in cases involving stays of execution is a bit deceptive. Prisoners were successful only 7 percent of the time, but governments that sought to vacate stays of execution received that relief 50 percent of the time. Put differently, there were more than eleven times as many applications from prisoners as there were applications from governments, but the latter accounted for about two-fifths of all grants. The low rate of success for prisoners in the Roberts Court is part of a long-term trend away from granting stays of execution (Felleman and Wright 1964, 1005–6; Veilleux 1996, 2554–55), a trend that undoubtedly reflects changes in the

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involved executions and about one quarter fell in each of the other two categories (24.0% were referred by the circuit justice and 22.7% by a second justice). If I had not consolidated multiple applications involving executions on which the Court ruled on the same day, that category would have been even more dominant. Over the course of the Roberts Court, execution cases have declined in absolute numbers and as a share of all applications heard by the full Court as the numbers of executions have declined. There has been no clear trend in the share for non-execution applications referred by a second justice. The share for non-execution applications referred by the circuit justice has grown quite substantially, from 7.3 percent in the 2005–2007 terms to 52.3 percent in the 2019–2021 terms.

<sup>16</sup>The patterns of action by the Court that are described in this section are based on the dataset that includes all cases decided by the full Court.

Court's collective attitude toward the death penalty and habeas corpus. Justices announced dissents in 24 percent of the execution cases, with dissents more common in cases in which the Court ruled in favor of the defendant.

3.) The final subset is the non-execution applications that were referred to the full Court by the circuit justice. If we think of the circuit justice's forwarding of an application to the Court as the equivalent of putting a certiorari petition on the discuss list, the 41 percent success rate for this subset is considerably higher than the proportion of the certiorari petitions on the discuss list that the Court grants.<sup>17</sup> Trends in this proportion across the study period are a bit difficult to track, because circuit justices referred relatively few non-execution cases to the full Court in the early years of the Roberts Court, but the success rate in recent terms has been close to the rate for the study period as a whole.

One noteworthy attribute of this subset of cases is the frequency of announced dissents—overall, 50 percent. In 34 percent of the cases, or 68 percent of the cases with any announced dissents, there were at least three dissenting votes. Thus, even if there were no unannounced dissents, which seems quite unlikely, the overall level of dissensus in these cases would be very substantial—more or less comparable to that in the Court's decisions on the merits in some terms. The announced dissent rate has been especially high in recent years, and it was at 74 percent in the 2020 and 2021 terms. For the Roberts Court as a whole, the proportion of cases in this subset with grants of the relief sought, announced dissenting votes, or both was 64 percent. The proportion for the 2016–2021 terms was 73 percent. Clearly, justices in the current era take seriously the cases that are referred to them by the circuit justice.

### Some Concluding Thoughts

Scholars, news reporters, and others have told us a good deal about the Supreme Court's responses to the most consequential applications for stays. The presentation of broad patterns in those responses in this article is intended to complement that body of work. Some of the study's findings underline trends in the content of applications and in the Court's treatment of those applications that have been documented in other research on this portion of the shadow docket. The findings as a whole depict broader patterns in the applications for stays that are submitted to the Court and in the treatment of those applications by individual justices and the full Court.

Most of the attention given to applications for stays has focused on the applications that the full Court receives. That focus is appropriate, because most of the applications with substantial implications for politics and public policy go to all the justices. But only a slight majority of applications reach the full Court, and it is useful to keep the other applications in mind. For

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<sup>17</sup>In 2018, Justice Kennedy said that the Court puts about 500 cases on the discuss list each year (Coyle 2018). Of course, in the current era the Court grants certiorari in fewer than 100 cases each term.

me, the most striking finding of the study was that the applications addressed by the full Court fall into three distinct categories that evoke quite different responses from the justices. That pattern is intriguing in itself, and it should be taken into account in studies of the Court's treatment of stay applications.

I hope that other findings of the study suggest lines of research to scholars who are interested in stay applications and the Court's treatment of them.<sup>18</sup> In any event, both the growing importance of this segment of the Court's work and what it can tell us about judicial behavior fully justify the attention that members of this section are giving to it. I look forward to the reports of their research.

### Appendix on Datasets Analyzed in the Article

Analyses of the full set of applications submitted to the Court were based on a dataset that contains a 50 percent sample of applications brought to the Court in the 2005–2021 terms. These cases were identified from the Court's docket sheets. Stay applications have docket numbers with "A"s (e.g., 18A240). Except for a brief period in 2020–2021, the preponderance of cases with A docket numbers are applications for extensions of time, typically for submission of certiorari petitions. For that reason, it is a laborious task (for those of us without expertise in data scraping) to go through all the cases with A docket numbers on the Court's website in order to find the small minority that are stay cases. I made my labor more manageable by looking at only half the A cases, specifically those with docket numbers ending with 1, 3, 6, 8, and 0. This sampling produced a set of 1391 cases. Cases in which individual justices and the Court did not reach a judgment about an application, about 5 percent of the total, were excluded from analyses of the responses to applications.

For this dataset I defined Supreme Court terms on the basis of the docket numbers; a case whose docket number began with 21A was treated as part of the 2021 term. Because the Clerk's office of the Court begins a term in July, this means that a term as thus defined includes cases that individual justices or the Court addressed prior to what we usually think of as the beginning of the Court's term in early October. Thus the study includes a few cases that the Court addressed between July and September of 2005.

Analyses of the applications on which the full Court ruled were based on a dataset that contains the universe of such cases from the beginning of the 2005 Term as conventionally defined (the first Monday in October) through the end of the 2021 Term (just before the first Monday in October). These cases were identified almost entirely from entries in the Court's Journal for each term; there were a few cases omitted from the Journal that I identified from other sources.

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<sup>18</sup>One member of the *Newsletter's* Board who reviewed this article made several very good suggestions for further research, primarily on the actions of individual justices. One example is comparison of justices in their responses to applications as circuit justices.

In contrast with the first dataset, the unit of analysis in this dataset is the Court’s decision rather than the docket number. Based on this rule, decisions on multiple applications by the same party that the Court ruled on in the same day (the great majority of these involved stays of execution) were counted once, and a case was counted as a grant if any of the applications were granted. (Similarly, cases were counted as having a dissent if there was a dissent on any of the applications.) If the Court ruled on an application at different times, each ruling was counted separately. Based on those counting rules, there was a total of 978 cases in the dataset. It should be kept in mind that the counting rule described in this paragraph makes the two datasets non-comparable in the proportion of execution cases and also produces a smaller total number of cases than would a study of the decisions by the full Court that counted each application.

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# Introducing the Law & Courts Venues Journal List

MATTHEW REID KRELL, WASHBURN UNIVERSITY SCHOOL OF LAW

On Sunday, July 10, 2022, a colleague and I submitted a new manuscript for review to *Justice System Journal*. On Wednesday, July 13, Amy Steigerwalt, *JSJ*'s editor, announced that it was ceasing publication and would not be accepting new submissions. On Dr. Steigerwalt's recommendation, my co-author and I withdrew our piece and began to discuss alternative venues.

After compiling some data on information for six or seven journals for us to choose from, it occurred to me that other folks might find the information useful or may be able to contribute based on their own experiences. With that, I'd like to introduce the *Law and Courts Venues* dataset ("dataset" makes it feel very pretentious, given that right now there are about twenty journals listed). I have uploaded the dataset as a Google Sheet [here](#) and invite you to make use of it to identify journals that you and your students can publish in; and to add to it based on the places where you have landed your law and courts research. In the rest of this piece, I'd like to explain how to code a journal for the dataset so that you can read it and add to it.

**Journal:** This is simply the name of the journal. Please provide the whole name, not just an abbreviation.

**Editor:** Here I list the first editor named if there's an editorial team, or if editors are listed by subfield, I list the person who works on "law and courts" or "public law." If there is an identifiable "public law" person on the editorial team (such as Julie Novkov at *APSR*), I list them.

**Word Count:** If in their instructions to authors or submission guidelines, the journal provides a hard word limit or soft guidelines for length preferences, they are listed here. Journals that have multiple categories of articles (for example, the *JOP* distinction between "research articles" and "short articles") have a parenthetical for the shorter category.

**Citation Requirement:** If a journal requires that citations be provided in a particular format upon initial submission, this requirement is listed. For example, *Political Science Quarterly* requires that submissions have citations formatted in Chicago Manual of Style method, using *endnotes* (specifically not *footnotes*). If a journal accepts submissions without formatting requirements but requires formatting on acceptance, it is listed as "none on submission."

**Table Placement:** If a journal expects that tables and figures be distributed in the main text of the paper in their approximate placements on publication, it is listed as "Main Text." If a journal expects tables and figures to be placed at the end of the text as a separate appendix with their locations flagged "TABLE X ABOUT HERE," then it is listed as "Separate." Journals that express no preference or explicitly state that they do not care are listed as "Agnostic."

Figures: *Political Science Research and Methods* and *American Journal of Political Science* explicitly state that they prefer data to be expressed in figures rather than tables where possible. *Journal of Law and Courts* and *American Political Science Review* both explicitly remind authors in their guidelines that figures are difficult to reproduce and ask for high-quality output. While neither journal states that they will reject papers with low-quality figures, they are listed as “arguably deprecated” in this field so that scholars without experience generating figures will be cautious in how they choose to report results. Similarly, when entering new journals into the spreadsheet, I encourage you to consider what resources and skills a graduate student may have in deciding how to code for things like this. All other journals thus far have expressed no preference.

DA-RT: This field encompasses many different types of policies surrounding replicability and research transparency. If a journal will not publish a piece without authors submitting their data and processing protocol for replication, or an explanation of why that is impossible, this field is listed as “Required.” Journals that “recommend” or “request” data submission for replication are listed as “Requested,” and journals that “provide the opportunity” for replication are listed as “Optional.” Journals that do not have a DA-RT policy are missing observations (I’m open to someone going in and filling those gaps with something for clarity’s sake.)

Footnotes: If a journal has an express policy regarding the use of footnotes over endnotes, or vice versa, it is noted here. Journals that express no preference are missing data.

Other Notes: This field is for noting anything idiosyncratic about the journal that would be useful for folks consulting the list. For example, if a journal has onerous and unique pre-submission formatting requirements that make it difficult to turn a piece around that you’ve prepared for a different journal, this is noted. In addition, if a journal is on a processing hiatus or charges a submission fee, that would be noted here. If an observation is repeated across lots of journals, it may be appropriate to break that issue out into its own field.

Entered By: Take credit for your service, please.

There is also an “articles” sheet, which is where you should feel free to enter your own recent publications. I’ve entered one sample article in law and courts for each journal already in the dataset, so you can evaluate where work like yours gets published. Most of this sheet is relatively self-explanatory, but there’s a few things to flag for your attention:

Journal: This field is a drop-down menu; if the journal you published in does not appear in the “journals” sheet, you can’t enter your article! If you think this design choice is intended to incentivize you to add to the journal list, you would be correct.

Data Strategy: Another drop-down menu, allowing you to list the approach you take to data in your article. The choices are quantitative, qualitative, and non-empirical (for pieces that are purely theoretical). Rather than attempt to



wade into the discussion over the boundaries between these categories, I will simply encourage you to be thoughtful about how you categorize your work.

**Geographic Focus:** This field allows you to state what part of the world your article focuses on. If your piece is comparative and focuses on a region, please state the region (such as “Southern Africa”); if it’s comparative but pulls cases using non-geographic criteria, please list the cases (such as “United States, Latin America, and Spain”).

**Rejected At?:** This field is optional; but if you are comfortable listing the places that you submitted your piece where it was rejected, this information will help the subfield to develop an understanding of what doesn’t get accepted at certain journals. This will help us to target our submissions more precisely and perhaps reduce the likelihood of desk rejects.

I don’t mean to suggest that this is some sort of fantastically field-changing piece of service that I’m doing. But I know that as a graduate student, I often struggled with knowing where to send my work (heck, I still do, sometimes). I would encourage folks to make use of this list and add to it. I can’t speak for anyone but myself, but I don’t see the knowledge of what journals will publish our work as some sort of trade secret which must be distributed via whisper network.

In addition, this list provides a service not encompassed by Paul Musgrave’s [journal list](#), which neither lists *Journal of Law and Courts* as of this writing nor recognizes public law as a separate subfield in the discipline at all. It thus supports the specific interests of this subfield in a way that other collections of journals don’t. It also provides specific information on journal expectations that Dr. Musgrave’s list doesn’t.

Of course, editors rotate in and out, and some editorial teams will be more open to law and courts work than others, and so the list must be maintained and updated. This is why I’ve set this up for crowd-sourcing; so that it can be maintained and corrected as it gets out of date. As with all crowd-sourced resources, we will have to be careful to police it from bad actors. You’re always welcome to email me at [matthew.krell@washburn.edu](mailto:matthew.krell@washburn.edu) (my current institutional affiliation) or [matthewrkrell@mrklaw.org](mailto:matthewrkrell@mrklaw.org) (my email from my practice days, which will be permanent) if there are larger issues that can’t be fixed with a quick edit. To allay any concerns, let me note that Google Sheets maintains an archive of edits that the sheet owner can access, so if the dataset gets vandalized I can roll back to the last good version.

I am also compiling a list of presses and book series that publish the kind of work that we do in this section. If there is interest in *that* list, please contact me.

# Abortion After Dobbs

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As of June 24, 2022, there was no longer a constitutional right to abortion. In overturning *Roe v. Wade* (1973) in its *Dobbs* (2022) decision, the Supreme Court turned the issue of abortion over to the political process. I have argued previously that in contrast to *Brown*, where the Court's decision was not implemented, there was partial implementation of *Roe* for two main reasons. First, there was a demand for the service and public and elite support for it. Second, by allowing market forces to meet that demand, that is by allowing clinics to perform abortions, the obstacle presented by the unwillingness of most hospitals to provide abortion services was largely overcome.<sup>1</sup>

What does this argument suggest will occur now that there is no longer a constitutional right to abortion? It suggests that in the short run abortion will be banned or severely limited in many states. However, it also suggests that in the long run access to abortion will be roughly similar to, or perhaps better than, it was by the end of 2021. The overturning of *Roe* has not reduced demand for the service. Nor has it dampened public and elite support for it. Indeed, if anything, the effect of *Dobbs* has been to increase support for abortion access. In the pages that follow I explore the likely effect of *Dobbs* in the years to come.

As of the second half of 2022, the political and legal landscape of abortion access was rapidly changing. While some states acted quickly to ban abortion (Kitchener et al. 2022), there was a great deal of uncertainty about abortion laws in other states. Questions arose in several states about whether pre-*Roe* laws that banned abortion, some from the nineteenth century, came into force or were superseded by more recent laws. In some states, decisions by judges, both state and federal, put a hold on abortion bans, finding they violated state constitutions or were too vague or too old. Several of these decisions were overturned by higher courts, then reinstated, then overturned. For example, the laws in Louisiana and Kentucky changed four and three times, respectively, between the issuance of *Dobbs* in late June and early August 2022. In late November the Georgia Supreme Court put on hold a lower state court ruling striking down Georgia's six-week abortion ban. The ultimate fate of the law now depends on the final decision of the Georgia Supreme Court (Sasani 2022). Describing abortion law in Utah in early August, the director of surgical services at the Planned Parenthood Association of Utah commented, "It changed day by day and hour by hour" (quoted in McCann 2022a).

Abortion laws in many states will likely be in flux for several election cycles. Given the frequency of changes, accurately tracking them is a challenge. That said, as of late December 2022 abortion was banned in the thirteen states of

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<sup>1</sup>See *The Hollow Hope: Can Courts Bring About Social Change?* 3rd ed. (forthcoming 2023), chapter 6, and chapter 6 of the two earlier editions.

Alabama, Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, West Virginia and Wisconsin. Except in Oklahoma and West Virginia the laws make no exceptions for rape or incest. There were gestational limits on when abortions can be performed in Georgia (6 weeks), Arizona and Florida (15 weeks), and North Carolina (20 weeks). Adding to the turmoil, in the eight states of Indiana, Iowa, North Dakota, Montana, Ohio, South Carolina, Utah, and Wyoming, judges have blocked laws restricting or banning abortions, at least temporarily. At the same time, abortion was legally protected in twenty-five states plus Washington, D.C.<sup>2</sup> (McCann et al., 2022). In 2020 those twenty-five states plus Washington, D.C. performed nearly 66 percent of all abortions.<sup>3</sup> Adding the three states of Arizona, Florida, and North Carolina, which have gestational limits on abortion that will permit virtually all abortions to be performed, raises the percentage to 79%.<sup>4</sup> Thus, it is highly likely that at the very least abortion will continue to be available in states that performed between two-thirds and more than three-quarters of abortions in 2020.

The fluid situation of abortion access is well illustrated by legal and political activity in Kansas. On April 26, 2019, the Supreme Court of Kansas, by a vote of 6–1, interpreted Section 1 of the Kansas Constitution Bill of Rights to protect a woman’s right to terminate an unwanted pregnancy. The Court held that the Kansas Constitution “protects all Kansans’ natural right of personal autonomy, which includes the right to control one’s own body, to assert bodily integrity, and to exercise self-determination. This right allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy” (*Hodes & Nauser, MDs v. Schmidt* 2019). Kansas governor Laura Kelly praised the decision, saying she was “pleased” that the decision “conclusively respects and recognizes” a women’s right to choose (quoted in Wax-Thibodeaux and Gowen 2019). And, as discussed below, in August 2022 Kansas voters overwhelmingly rejected the “Kansas No State Constitutional Right to Abortion Amendment,” which would have overturned the decision (“Kansas No State Constitutional Right to Abortion Amendment” 2022).

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<sup>2</sup>AK, CA, CO, CT, DE, HI, IL, KS, MA, ME, MD, MI, MN, NE, NH, NJ, NM, NV, NY, OR, PA, RI, VA, VT & WA. In Kansas and Nebraska, abortion was permitted up to 22 weeks of pregnancy. In Massachusetts, Michigan, Nevada, New Hampshire and Pennsylvania abortion was permitted up to 24 weeks of pregnancy. The other states permit abortion up to viability or with no restrictions.

<sup>3</sup>The most reliable data on the number of abortions are reported by the Guttmacher Institute which conducts national surveys of abortion providers. As of December 2022 its most recent data were from its 2020 survey (Jones, Kirstein and Philbin 2022).

<sup>4</sup>The most important of the three states is Florida. In 2020, 77,400 abortions were performed in Florida, 8.3 percent of the U.S. total (Jones, Kirstein and Philbin 2022). As of December 2022, Florida permitted abortion up to fifteen weeks of pregnancy. Changes in its abortion laws will have a major effect on abortion access, particularly in the southern states. Given that Ron DeSantis, Florida’s Republican Governor, is widely believed to be considering a presidential run, changes in Florida’s abortion laws will likely reflect his assessment of public opinion among both Republican primary voters and the general electorate.

In addition to states that will protect access to abortion in a post-*Dobbs* world, abortion providers in many of those states are expanding their facilities and services. One example is the creation of a center in southern Illinois to help women seeking abortions with travel needs, lodging, and childcare. Created largely for women seeking abortions from states surrounding Illinois that have or will likely ban abortion, the “Regional Logistics Center” is operated jointly by Reproductive Health Services of Planned Parenthood of the St. Louis Region and Hope Clinic for Women, an abortion clinic in Granite City, Illinois, not far from St. Louis. Illinois governor J. B. Pritzker spoke at the ribbon-cutting on January 21, 2022, praising the Center for “lifesaving and life-changing work.” The *Chicago Tribune* reported that the two clinics have “already invested \$10 million for additional staffing, infrastructure and clinical capacity to ‘prepare for a post-*Roe* reality’” (Lourgos 2022). Also, at the end of August 2021, the Chicago Department of Public Health made a \$500,000 grant to the Chicago Abortion Fund and Planned Parenthood of Illinois to help women traveling to Illinois to access abortion services (Malagón 2022). Expanded access in states like Illinois will make it easier for women in states that ban abortion to access abortion services.

What about poor women? This is a particular concern because the Guttmacher Institute found in 2017 that the majority of abortion patients were poor or low income (Jones, Witwer, and Jerman 2019, 10). Examining the economic status of abortion patients in 2014, Guttmacher found that 49 percent of abortion patients had income below the federal poverty level. An additional 26 percent were low income (Jerman, Jones, and Onda 2016; Sanger-Katz, Miller, and Bui 2021). Even with *Roe* in place, the barriers some states put in the way of women seeking abortions, such as the limited number of clinics, waiting periods requiring multiple visits, and the distance from their homes to an abortion provider, made obtaining an abortion difficult for poor women. With *Roe* overturned, and many states banning abortion, the barriers have become even greater.

Financial aid is increasingly available to poor women seeking abortions. In 2017 sixteen states provided Medicaid funding for abortions. Those states performed 51 percent of all abortions in 2017. The increasing availability of medication abortion (discussed below) will also reduce the barriers to, and the cost of, an abortion, helping poor women. There are also organizations that work to address the need of poor women such as Planned Parenthood. In addition, other groups, such as the National Network of Abortion Funds, provide financial and emotional support for poor women seeking abortions. Focusing on the “intersections of racial, economic, and reproductive justice,” the National Network of Abortion Funds “builds power with members to remove financial and logistical barriers to abortion access.” In addition to paying for abortions, the Network also helps arrange and provide financial support for transportation, lodging, childcare, translation, and other services women seeking abortions may need. In fiscal year 2019 the Network of “over 90 grass-

roots organizations . . . directly supported 56,155 people” to obtain abortions.<sup>5</sup> Citing data from the Network, Lerer and Peters report that groups spent “at least \$9.4 million in 2020, an increase from \$4 million in 2017” (2021). The combination of Medicaid funding in some states, private financial support nationwide, and medication abortion will help reduce the barriers poor women face in obtaining abortions in a post-*Roe* world.

A good example of the support system being created to help women obtain the resources they need to access abortions is in Illinois, which is likely to become “an island of abortion access for people in the Midwest and the South” (McCann 2022b). The Planned Parenthood facility in Fairview Heights in southern Illinois, for example, has created a “first-of-its-kind call center” to help women from states where abortion is banned. The call center’s staff “work to schedule flights; book bus tickets, ride shares and hotels; find child care for patients; and help them figure out how to pay for it all.” The staff connects patients with “national and local abortion funds, nonprofits that help cover the cost of the procedure and travel” (McCann 2022b). It may very well become a model for other states where abortion remains legal.

In addition to states providing money and other resources to women seeking abortions who live in states that prohibit them, and established women’s groups expanding their services, other, private groups, are being created. For example, Elevated Access, a recently founded Illinois nonprofit, has recruited nearly 1,000 volunteer small-craft pilots to fly people seeking abortion care to states where abortion is protected. Although potentially illegal in some states, surveillance and detection is virtually impossible. Small planes can fly to small, regional airports. As one volunteer pilot explained, pilots are not required to file flight plans: “Nobody’s asking you why you’re there. You don’t have to go through security. There’s no tickets, there’s no baggage check. You don’t even have to tell them your name. All they need to know is your weight.” In addition to providing flights, the volunteer pilots pay for fuel (Fishman 2022).

It is likely that in the long run abortion will continue to be available in most states. This is because there is likely to remain a large demand for access to safe and legal abortion<sup>6</sup> and there is majority support for it in the majority of states. Voters will demand it and states will likely respond to that demand. In an elegant and insightful sentence, Lucas Powe Jr. described *Roe* as the “gift that keeps on giving—to Republicans” (2009, 311). His insight is that with *Roe* in place pro-choice voters haven’t given a great deal of weight to a candidate’s position on the legality of abortion. In practice, anti-abortion voters have been more highly motivated to vote for anti-abortion candidates than pro-choice voters have been to vote for pro-choice candidates. It is possible, if not likely, that now that *Roe* has been overturned, pro-choice voters will place greater weight on a candidate’s position on abortion than they did while *Roe* was in place. And because there is majority support in most states to protect

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<sup>5</sup>National Network of Abortion Funds, <https://abortionfunds.org/>.

<sup>6</sup>The 2020 Guttmacher Institute study of abortion providers found that about one in five pregnancies ended in abortion (Jones, Philbin, et al. 2022).

a woman's choice to terminate an unwanted pregnancy, and Republicans are hostile to this right, this will hurt Republican candidates. Either Republican candidates will change their positions or they will lose office.

There is evidence that Democratic voters are weighing candidates' positions on abortion more heavily than they have in the past. In late September 2018, with the midterm election approaching, Pew found that 61 percent of Democrats said that a candidate's position on abortion was "very important" to their vote, compared to only 44 percent of Republicans. For Republicans this was only a 1 percentage point change since 2008. For Democrats, however, the importance of a candidate's views in abortion increased 14 percentage points since 2014 and 23 points since 2008. This is an increase of 61 percent in the percentage of Democrats who said a candidate's position on abortion was very important in 2018 compared to 2008 (Pew Research Center 2018, 20). There is also evidence that Democratic voters are putting more weight on candidates' position on abortion than are Republican voters. In a December 2021 poll, Morning Consult found that in thinking about the 2022 midterm election 37 percent of Democrats said it was more important to vote for a candidate who agrees with their abortion stance even if they disagree on other issues. This was 5 percentage points higher than the 32 percent of Republicans who agreed (Galvin 2021).

Polls taken in May and June 2022, after the leak of Justice Alito's draft opinion in *Dobbs* but before the decision was announced, registered an increased focus on abortion and an increased emphasis on it by pro-choice voters. When asked whether abortion or the state of the economy mattered most to them by Suffolk University in its June 2022 poll for *USA Today*, nearly a quarter of respondents (23 percent) chose abortion, a striking result given inflation and high gas prices in June 2022 (2022, question 14). In an ABC News/Ipsos poll in early June, 63 percent of respondent said abortion would be "extremely" or "very important" to their vote in the November 2022 midterm elections (ABC News/Ipsos 2022, wave 44, question 23). The June Suffolk University poll found 42 percent of respondents saying they would not vote for a candidate with whom they disagreed on abortion even if they agreed with the candidate on other issues (versus 41 percent who would) (2022, question 12). Polls done by PBS/NPR, Quinnipiac University, and the Kaiser Family Foundation addressed the question of how respondents would vote. In May 2022 the Kaiser poll reported that 52 percent of respondents were more likely to vote for a candidate who "wants to protect access" to abortion, compared to 27 percent who preferred a candidate who "wants to limit access," a 25-point difference (Kaiser Family Foundation 2022a, question 2). A Quinnipiac University poll taken a few days later found similar results. Forty-one percent of respondents said they were "more likely" to vote for a candidate who supports abortion rights, compared to 22 percent who said they were less likely, a difference of 19 percentage points (Quinnipiac University 2022, question 29). A PBS/NPR poll taken right after the *Dobbs* decision found that 51 percent of respondents would "definitely vote for" a candidate who supported a "federal

law to restore *Roe* versus *Wade* and the right to abortion” compared to 36 percent who would “definitely vote against” such a candidate, a difference of 15 percentage points (PBS News Hour/NPR/Marist 2022, question 10). Finally, another CBS News poll taken right after *Dobbs* reported 50 percent of Democrats saying that the overturning of *Dobbs* made them more likely to vote in the 2022 midterm election, compared to only 20 percent of Republicans, a difference of 30 percentage points. The 50 percent of Democrats saying that the overturning of *Dobbs* made them more likely to vote was 10 percentage points higher than the response to a hypothetical question in May 2022 about whether overturning *Roe* would make them more likely to vote (De Pinto et al. 2022).

The *Dobbs* decision may create a backlash in support of abortion access and political candidates who favor it. There was a massive turnout for the August 2022 Kansas primary, approximately 45 percent higher than in the 2020 primary, which was in a presidential election year. Preliminary data suggest that registered Democrats turned out at a higher rate than registered Republicans, atypical for Kansas (Cohn 2022). The landslide approval of abortion access also suggests that many unaffiliated and Republican voters supported it. And the outcome was not the result of a lackadaisical effort by anti-abortion proponents. On election eve, before the votes were counted, Kansans for Life spokesperson Danielle Underwood praised their efforts as the “largest grassroots mobilization in Kansas history” (quoted in Tidd 2022).

Growing support for abortion access predates *Dobbs*, however. In the spring of 2022, before the Court struck down *Roe*, Americans appeared to be reacting negatively to the possibility that the Supreme Court would do so. In a January 2022 poll, Gallup reported a “rare shift” in public opinion on abortion (Younis 2022). Since 2001 Gallup has been asking respondents whether they were satisfied or dissatisfied with abortion laws. Until this poll, more respondents who said they were dissatisfied wanted abortion laws to be stricter. However, Lydia Saad, Gallup’s director of social research, reported that the January 2022 poll found, “for the first time ever,” that “people who are dissatisfied with abortion laws are more dissatisfied because they want them to be less strict rather than more strict” (Gallup 2022).

It is also the case that younger people are more supportive of abortion than older people. A Pew poll in January 2017 found that respondents under fifty were 9 percentage points more supportive of *Roe* than those fifty or older (Fingerhut 2017). A May 2018 Gallup poll found 12 and 13-percentage-point differences between respondents eighteen to twenty-nine and those over sixty-five on pro-choice identification, the belief that abortion should be legal under any circumstances, and the belief that abortion is morally acceptable (Saad 2018). A 2022 Pew poll found that 70 percent of respondents aged eighteen to twenty-nine supported abortion being legal in all or most cases, 16 percentage points higher than those aged fifty to sixty-four (Pew Research Center 2022). The December 2021 Morning Consult poll referred to above found similar results. Sixty-one percent of respondents twenty-four or younger supported

abortion being legal in all or most cases, as did 55 percent of those eighteen to thirty-four. Among those sixty-five and older the percentage dropped to 53 percent, 8 percentage points lower than with the youngest cohort (Galvin 2021). And in a late June/early July 2022 Morning Consult poll, 70 percent of respondents under twenty-five said abortion should be legal in most or all cases, an increase of 9 percentage points from Morning Consult's December 2021 poll (Carter 2022).

Summarizing the Gallup findings, Saad (2018) writes, the “current findings by age aren't new [...] . Adults 18 to 29 and 30 to 49 have consistently been the most pro-choice, and those age 65 and older the least.” Unless many younger Americans change their views as they age, these findings suggest that support for safe and legal abortion will, at the very least, remain steady and more likely increase over time.

In early May 2022 the Kaiser Family Foundation asked a national sample of women aged eighteen to forty-nine living in states with trigger laws or pre-*Roe* abortion bans in place whether abortion would continue to be legal if *Roe* was overturned. A majority thought abortion would continue to be legal (13 percent) or were not sure (42 percent) (Kaiser Family Foundation 2022a, question 36). Immediately after *Dobbs*, a Morning Consult poll reported that just over two in five voters (41 percent) said they had seen, read, or heard “a lot” about the decision (Yokley 2022). This means, of course, that approximately 60 percent of respondents weren't paying much attention. It is likely that as more people learn that their states severely limit or ban abortion, support for abortion access will grow.

In addition to public support for abortion access there has also been an outpouring of support from elected officials and major employers. President Biden condemned the *Dobbs* decision, calling it “outrageous.” He called for Congress to pass legislation codifying *Roe v. Wade* and urged the Senate to suspend the filibuster in order to act. He called the decision a “mistake” and pledged “to do everything in my power, which I legally can do in terms of executive orders, as well as push the Congress and the public.” He also urged supporters of abortion access to “vote, show up and vote. Vote in the off-year and vote, vote, vote” (quoted in Shear and Tankersley 2022).

President Biden was joined by other government and elected officials in support for abortion access. Secretary of Health and Human Services Xavier Becerra met with several Democratic governors to talk about steps the federal government can take to maintain access to abortion (Shear and Tankersley 2022). The day after the decision, thirty-four Democratic senators sent President Biden a letter criticizing what they called the Court's “unprecedented assault on women” and calling for the president to “combat these attacks and take immediate action to use the full force of the federal government to protect access to abortion” (U.S. Cong., Senate 2022). Attorneys general in twenty-one states and the District of Columbia issued a joint statement reassuring out-of-state patients that they would protect their access to abortion (Hubler and Smith 2022). The Democratic Governors Association launched a “Protect



Reproductive Rights Fund” targeting gubernatorial races in nine states where abortion access was at risk (Democratic Governors Association 2022). Even many world leaders criticized the decision.

While the Vatican issued a statement praising the decision, the prime ministers of Canada, the United Kingdom, Spain, Denmark, and New Zealand, as well as the United Nations High Commissioner for Human Rights and the head of the World Health Organization, among others, spoke out against the decision, with Canada’s Prime Minister Justin Trudeau calling it “horrific” (Soto 2022; Farrer 2022). The decision was castigated as a “catastrophic blow to the lives of millions of women, girls and pregnant people” in a statement signed by more than one hundred global health organizations (International Federation of Gynecology and Obstetrics 2022).

Many lawyers also condemned the decision. In a statement issued after the decision was announced, Reginald Turner, president of the American Bar Association (ABA), reiterated the ABA’s commitment to “doing all it can to support reproductive choice.” Further, he stated that “in addition to supporting reproductive choice, the ABA opposes the criminal prosecution of any person for having an abortion” (ABA 2022). In a remarkable statement, ninety elected prosecutors from thirty states and the District of Columbia announced they would not prosecute “those who seek, provide, or support abortions” (Fair and Just Prosecution 2022a). The prosecutors, collectively representing more than ninety-one million people, including “over 28.5 million from 12 states where abortion is now banned or likely to be banned,” wrote that “criminalizing and prosecuting individuals who seek or provide abortion care makes a mockery of justice” (Fair and Just Prosecution 2022b).<sup>7</sup> In anticipation of *Roe* being overturned, and states trying to prosecute women who have abortions or abortion providers, a group of twenty-three “major law firms” announced an alliance to provide *pro bono* legal assistance. The firms will provide *pro bono* representation when women and providers face “civil suits and criminal charges related to seeking or providing abortions” (Love 2022). The amount of *pro bono* resources that major corporate law firms are committing to supporting abortion rights is remarkable. From the date of the *Dobbs* decision through October 2022, for example, Arnold & Porter dedicated 5,360 hours of *pro bono* work to reproductive rights, compared to 1,257 hours in the same period the year before. Lawyers at Boies Schiller Flexner spent an estimated 1,500 hours, worth \$1 million, in protecting reproductive rights. And at Lowenstein Sandler, *pro bono* hours shot up 156% (Love 2022).

Medical organization in the United States also criticized the decision. The president of the American Medical Association, an “historically conservative group” (Zernike 2022), called the decision “egregious” and an “assault on reproductive health” (Resneck 2022; McGroarty 2022). The American College of Obstetricians and Gynecologists condemned “this devastating decision,”

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<sup>7</sup>For a moving explanation by the Virginia Commonwealth’s attorney for Fairfax County for why he won’t prosecute women for having abortions or their providers, see Descano (2022).

calling it “a direct blow to bodily autonomy, reproductive health, patient safety and health equity in the United States.” And the American Academy of Family Physicians wrote that it was “disappointed and disheartened” by the decision (Hartnett and Devereaux 2022).

Major corporations and employers responded to the likelihood of *Roe* being overturned and then to the *Dobbs* decision by announcing policies to provide assistance to employees seeking abortions in states which ban them. The assistance included reimbursing costs for travel, food and lodging, and the abortion procedure itself if not covered under the company’s health plans. Some companies offered to relocate employees working in states that banned abortion to states where it was permitted. Within a couple of weeks of *Dobbs*, “Don’t Ban Equality,” a coalition of businesses, reported that nearly seven hundred companies had signed a letter opposing restrictions on abortion access. By the end of June 2022, a week after the decision, major businesses with policies assisting employees to obtain abortions in states that prohibited them included Accenture, Adobe, Airbnb, Amazon, Apple, Bank of America, Ben & Jerry’s, BlackRock, Bloomberg L.P., Boston Consulting Group, Box, Bumble, BuzzFeed, Citigroup, Chobani, Condé Nast, Culture Amp, CVS Health Corp., Danone North America, Dell, Deloitte U.S., Dick’s Sporting Goods, Discord, DoorDash, Estée Lauder, Expedia, Fidelity, Ford Motor, Goldman Sachs, Google, H&M, Hewlett-Packard, Ikea U.S., Impossible Foods, Intuit, Johnson & Johnson, JPMorgan Chase, KPMG U.S., Levi Strauss, Lyft, Macy’s, Mastercard, Match Group, Meta, Microsoft, Neiman Marcus Group, Netflix, The New York Times Company, Nike, Nordstrom, OpenSea, Paramount, Patagonia, PayPal, PricewaterhouseCoopers, Procter & Gamble, Ralph Lauren, Reddit, Rivian, Salesforce, Sephora, Snap, Starbucks, Target, Tesla, The Body Shop, Uber, UnitedHealth Group, URBN, Vanguard, Vimeo, Vox Media, Walt Disney, Warner Brothers, Wells Fargo, Yahoo, Yelp, Zillow (E. Goldberg 2022a, 2022b; Don’t Ban Equality 2022).

This list is likely to grow because there is majority support for these policies. More than half of respondents to the late June/early July 2022 Morning Consult poll supported allowing employees to relocate to states where abortion access is protected, covering medical, travel, and lodging expenses for employees who travel to another state to access abortion care, and donating money to organizations working to protect abortion access (Carter 2022).

The reaction of several of Indiana’s largest employers to the enactment of the Indiana law banning abortion illustrates this point. A spokesperson for Cummins, which employs more than ten thousand people in Indiana, stated that the law would “impede our ability to attract and retain top talent.” A spokesperson for the pharmaceutical company Ely Lilly, which also employs more than ten thousand Indiana residents, said that as a result of the law the company would be “forced to plan for more employment growth outside our home state.” Both companies, along with Kroger and Salesforce, which have large numbers of employees in Indiana, had previously announced they would provide travel expenses for employees seeking reproductive services no longer

legal in Indiana. But the Lilly spokesperson worried that financial support “may not be enough for some current and potential employees” (Kelley 2022).

As the preceding discussion suggests, public opinion on abortion, and laws regulating it, are dynamic, not static. The legal landscape is likely to look different in two or three election cycles than it does in 2022. This is principally because public opinion supports abortion access and pro-choice voters appear to be increasingly motivated by the issue. After the Kansas abortion vote, Nate Cohn analyzed the likely outcome of an abortion referendum in all fifty states. He estimated that “around 65 percent of voters nationwide would reject a similar initiative to roll back abortion rights, including in more than 40 of the 50 states.” He projected that support for abortion access would drop below 50 percent in only seven states. In four of those states, support was between 48 and 49 percent. As Cohn concluded, if “abortion rights wins 59 percent support in Kansas, it’s doing even better than that nationwide” (Cohn 2022).

It is likely, too, that one effect of *Dobbs* will be to mobilize supporters of abortion access and de-mobilize opponents. *Roe* had the reverse effect, catalyzing and nationalizing abortion opponents and de-mobilizing supporters. On the pro-choice side, the activities described above, as well as the successful efforts to place abortion referenda on election ballots (discussed below), is evidence that pro-choice supporters are mobilizing. As for abortion opponents, Tom McClusky, president of the anti-abortion group March for Life Action, worried that there are “going to be those who claim victory and walk away [...]. Most donors want to fund a fight. They want to fund warriors, not Samaritans” (quoted in Lerer and Peters 2021).

In the November 2022 election, abortion was on the ballot in the five states of California, Kentucky, Michigan, Montana, and Vermont. In Kentucky voters were asked whether they supported adding language to the state constitution prohibiting it from being interpreted to establish a state constitutional right to abortion. In Montana voters decided whether infants “born alive at any stage of development are legal persons” who “require medical care.” In California, Michigan and Vermont voters were asked whether they wanted to add a constitutional right to abortion to their state constitutions (“2022 Abortion-Related Ballot Measures” 2022).

Proponents of abortion access won all five contests with margins of fifty-four points in Vermont (77-23), thirty-four points in California (67-33), and fourteen points in Michigan (57-43). The Montana measure was defeated by fourteen points (43-57). Only in Kentucky was the vote close, with the anti-abortion measure losing by four points (48-52).<sup>8</sup> It appears likely that in 2023 and 2024 voters in at least the seven states of Florida, Iowa, New York, Oklahoma, Pennsylvania, South Dakota, and Washington will have the opportunity to change state laws (“Abortion on the Ballot,” n.d.). The more chances voters have to weigh in on abortion access, the more likely it is that access will

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<sup>8</sup>Interestingly, Cohn (2022), in the article referred to earlier, predicted that if protecting abortion rights was on the ballot in Kentucky, it would win the support of 53 percent of voters, off by only 1 percentage point.

be protected. Indeed, some abortion opponents are urging their supporters to oppose ballot initiatives. At a meeting of the National Association of Christian Lawmakers after the midterms, Sue Liebel, the director of state affairs for Susan B. Anthony Pro-Life America, urged her audience to avoid ballot initiatives (Zernike 2022).

Republican elected officials and candidates are taking note of the changing electoral dynamics, particularly after the Kansas vote. Writing in the *New York Times*, Weisman and Glueck (2022) noted that “Republican candidates, facing a stark reality check from Kansas voters, are softening their once-uncompromising stands against abortion as they move toward the general election, recognizing that strict bans are unpopular and that the issue may be a major driver in the fall campaigns.” Clearly, abortion is not the only issue motivating voters. But it has the potential to make a difference in both turnout and results. Most politicians will be unwilling to risk their jobs and careers by opposing popular sentiment.

### 2022 Midterm Election

The 2022 midterm election provides evidence of wide-scale support for abortion rights. Given President Biden’s low approval rating, high inflation, and the historic pattern of candidates of the president’s party losing seats in midterm elections, a “Red Tsunami” was expected. However, Democrats held the Senate and limited their loss of House seats to single digits, the best midterm results for the president’s party in decades. Part of the reason appears to be support for abortion rights. As Lerer and Dias put it, “overturning *Roe v. Wade* appears to have flipped the script” (2022). In the months after *Dobbs* and before the election, Gallup recorded the highest ever proportion of respondents naming abortion as the most important issue facing the country (Newport 2022). Many Democratic candidates stressed protecting abortion rights and castigated Republicans as committed to taking them away. The ad-tracking firm AdImpact found that Democratic candidates spent nearly *half a billion* dollars on ads mentioning abortion, more than twice the amount they spent on crime, the next closest issue (Lerer and Dias 2022).

Both the exit polls and election results suggest abortion rights made a difference, helping Democratic candidates. Interestingly, Cohn found that the issue was more important in red states, where abortion rights were threatened, than in blue states, where voters could reasonably expect them to be protected. Comparing Pennsylvania, where the Republican gubernatorial candidate opposed abortion rights, to New York, where abortion rights appeared safe, Cohn noted the different results. In Pennsylvania Democrats swept every competitive House seat, flipped a Senate seat, won the governorship in a landslide, and won a majority in the State House for the first time in more than a decade. Flipping the State House was a “shock” to political leaders, including the victorious Democrats (Caruso and Meyer 2022). Exit polls reported that in Pennsylvania abortion was the top issue on voters’ minds. In

the Senate contest those selecting abortion as the top issue voted almost 4 to 1 for Democrat John Fetterman. In neighboring New York, where abortion access is protected, Republicans won all but one of the state's seven competitive congressional districts and gave Democratic Governor Kathy Hochul a much closer than expected race (Cohn 2022). In Michigan, where a constitutional amendment protecting abortion rights was on the ballot, abortion was named as the top issue by nearly half of all voters (Lerer and Dias 2022). Those voters supported Governor Whitmer, who was easily re-elected, by better than three to one (77 percent to 22 percent) (Stanage 2022). Democrats won control of both houses of the state legislature, too, giving them control of both the legislature and the governorship for the first time in 40 years (Lerer and Dias 2022).

Nationwide, voters who chose abortion as their top issue broke more than 3 to 1 for Democrats (76% to 23%) (Stanage 2022). While 31 percent of voters named inflation as their top issue, abortion was a close second, named by 27 percent. Among those voters naming abortion, roughly 6 in 10 felt negatively about the *Dobbs* decision, with nearly 4 in 10 expressing anger. Forty-three percent of voters who backed a Democratic candidate ranked abortion as their top issue (Edwards-Levy 2022).

There is also direct evidence that *Dobbs* mobilized pro-choice women to register to vote and to vote for candidates taking pro-choice positions. Sommer et al. (2022) analyzed voter registration in North Carolina three months before and three months after the Court's decision. They found that the "ruling mobilized women and created an uptick in [the] voter registration gender gap, absent in previous midterms. This trend is evident at the level of individual registrants and aggregately at the county level." They also found that the new female registrations were "overwhelmingly Democrats" and in "their 20s," the age group with the highest abortion rate.

### Contraception and Medication Abortion

It is also possible that abortion may recede as a political issue for two reasons. First, if contraceptive use, particularly long-acting reversible contraception (LARC) and use of emergency contraceptives, continues to increase, then the number of unwanted pregnancies will continue to decrease, lowering the demand for abortion. If most or all pregnancies are intended then there will be fewer abortions, presumably only for fetal deformities or to protect the life or health of pregnant women. Fewer abortions will likely reduce the intensity of political conflict.

Second, the increasing availability of early medication abortions makes abortions much easier to obtain than surgical abortions, especially in states that ban or heavily restrict abortions. It also makes abortion a less public procedure, potentially lessening conflict. A medication abortion is a nonsurgical procedure in which a woman wishing to terminate a pregnancy takes two drugs, Mifepristone and Misoprostol. In essence, the drugs cause the woman

to go through a process that is very similar to an early miscarriage. Depending on state law, women can take the drugs at home. The FDA has approved use of the drugs up to seventy days, approximately ten weeks, after a women's last menstrual period. The drugs are safe and effective, with one study reporting an efficacy rate of "more than 95" percent and another study from the Kaiser Family Foundation reporting a success rate of 99.6 percent "if the pills are administered at 9 weeks' gestation or less" (Donovan 2018, 42; Kaiser Family Foundation 2022b). In 2016 the FDA reviewed Mifepristone. It concluded that "its efficacy and safety have become well-established by both research and experience, and serious complications have proven to be extremely rare" (Center for Drug Evaluation and Research 2016, 12). Importantly, on December 16, 2021, the FDA issued a regulation allowing women to access Mifepristone by mail instead of requiring them to obtain the pills in person (Misoprostol has long been available by prescription) (U.S. Food and Drug Administration 2021; Belluck 2021). This means that women seeking abortions in the first ten weeks of pregnancy can obtain a prescription for the pills from a physician and take them in the privacy of their homes. In addition, where state law allows it, women can "meet" with their physicians over the Internet, so-called telemedicine, and obtain a prescription for the drugs.

The percentage of women undergoing medication abortions is soaring. In 2014, early medication abortions accounted for 29 percent of all abortions and 31 percent of all nonhospital abortions, an increase of 7 percentage points from 2011 (Jones and Jerman 2017, 21, 24). Importantly, the percentage of nonspecialized clinics and physicians' offices that offered medication abortions in 2014 increased by 26 percent and 20 percent, respectively, from 2011. In the Guttmacher Institute's 2014 study Jones and Jerman found that the overwhelming majority of both abortion clinics (99.8 percent) and nonspecialized clinics (88 percent) offered early medication abortions (Jones and Jerman 2017, 22). By 2017 there were a reported 339,640 medication abortions, approximately 39 percent of all abortions performed that year and an increase of nearly 27 percent in just three years (Jones, Witwer, and Jerman 2019, Table 6, 20).

Indeed, while the number of abortions declined by 33 percent from 2001 to 2017, the percentage of medication abortions increased from 5 percent of all abortions in 2001 to 39 percent in 2017 (Miller and Sanger-Katz 2019). And it seems likely that the number of medication abortions will continue to grow.<sup>9</sup> In 2020, for example, in states such as Indiana, Kansas, and Minnesota, medication abortion accounted for a majority of abortions (Belluck 2021). Preliminary nationwide data from Guttmacher's 2020 census of all abortion providers suggest that in that year 54 percent of all abortions were medication abortions (Jones, Nash, et al. 2022). The important point is that

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<sup>9</sup>Data from the CDC for 2019 suggests that 42 percent of all abortions were medication abortions. However, the data do not include abortions in California, Maryland, and New Hampshire and are generally not as complete as the surveys conducted by the Guttmacher Institute (Belluck 2021).

early medication abortion doesn't require either dedicated abortion clinics or surgical facilities. In some states the pills can be prescribed by telemedicine, making abortion available in locations without abortion providers. The medication is also available via the Internet, discussed below. Overall, medication abortion has the potential to make legal restrictions such as highly restrictive clinic regulations, waiting periods, and even abortion bans less effective. It also has the potential to reduce the number of targets for anti-abortion protesters by reducing the demand for abortion clinics. In essence, early medication abortions make abortions less visible and easier to obtain. If their use continues to grow it may reduce political conflict and render restrictive laws less effective.

In response to the ease and accessibility of medication abortion, anti-abortion legislators in several states have attempted to limit or ban access to the pills. As of December 2022, the Guttmacher Institute found that twenty-nine states required clinicians who administer the pills to be physicians, eighteen states effectively banned telemedicine prescriptions by requiring that the clinician providing the pills be physically present when they are taken, and five states put limits on the time during pregnancy in which the pills can be taken (although as of December 2022 courts have enjoined the laws, either temporarily or permanently, in three of these states) (Guttmacher Institute 2022). However, these restrictions are relatively easy to evade. In states that restrict women from obtaining medication abortion pills by telemedicine, women can travel to a state that allows it and receive a prescription. "They may be in any location within that state for their telehealth visit, even a car, and may receive the pills at any address in the state" (Belluck 2021; see also McCann 2022b). When they receive the pills they can bring them home and take them in the privacy of their own home. Marjorie Dannenfelser, with the anti-abortion group the Susan B. Anthony List, acknowledged the situation, noting that "medication abortion is shifting the battle lines ... because it's secret. It's behind closed doors" (quoted in McCammon 2021).

In addition, there are numerous organizations within the United States that will prescribe and send the pills to women where legal.<sup>10</sup> And there are several international groups that are beyond the reach of state laws. One such group is Aid Access, based in Austria. It is led by Dr. Rebecca Gomperts, a women's rights activist. Its mission statement "is to create social justice and improve the health status and human rights of women who do not have the possibility of accessing local abortion services" (Aid Access, n.d.). In December 2021, Dr. Gomperts "confirmed she has been prescribing the medication to women in Texas—who then receive the drugs by mail from a pharmacy in India—even after the state's law [banning medication abortion after seven weeks] went into effect" (Kitroeff 2021). Her services and the prescriptions are relatively inexpensive, \$110 as of the fall of 2021 (Adams 2021). She is

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<sup>10</sup>A quick Internet search in January 2022 identified numerous groups including but not limited to, the National Women's Health Network, Hey Jane, My Choix, Whole Woman's Health, and Planned Parenthood.

also urging both physicians and women to obtain prescriptions in advance, which she is willing to write, to be kept on hand in the event of a future unwanted pregnancy (Adams 2021). Women's rights activists in Mexico are acting similarly. For example, Verónica Cruz, a Mexican women's rights activist, is building "networks to ferry the abortion pills north of the border or send them by mail—something they've already started doing and now plan to expand" (Kitroeff 2021). It will be exceedingly difficult for states to prevent non-U.S.-based groups from prescribing and sending the pills to women in the United States. Focusing on the Mexico-Texas network, Kitroeff reports that "anti-abortion groups acknowledge that criminally punishing activists who distribute the pills, especially if they are from Mexico, may prove difficult. They would have to be caught and arrested in Texas, or extradited, experts say" (2021). Thus, the efficacy of medication abortions, and the relative ease with which women can obtain the pills, have the potential to render restrictions and bans on abortion less effective. They also have the potential of lowering political conflict over abortion by reducing the need for clinics and other physical sites where abortions are performed.

In addition to banning telemedicine appointments for the purpose of prescribing abortion pills, and making their use illegal, some states may try to prohibit women from traveling to other states to obtain abortions or abortion pills or extradite patients or providers in those states. If such laws are passed, they will likely be ineffective, in part because almost all Americans oppose prosecuting women for traveling to other states to obtain abortions. A Kaiser poll conducted in May 2022 found opposition from 80 percent of respondents to laws making it a crime for a woman to cross state lines to get an abortion and a Monmouth University poll taken immediately after *Dobbs* found opposition to such laws from 87 percent of respondents! (Kaiser Family Foundation 2022a, question 47; Monmouth University 2022, question 15). Laws prohibiting interstate travel will be ineffective because state police lack the resources to detain and interrogate all women, even all young women, traveling interstate. Any state that tried would likely face immediate pushback from its citizens. Also, as Justice Kavanaugh noted in his concurring opinion in *Dobbs*, such laws are likely unconstitutional. It will also prove impossible for states to seize abortion pills sent through the mail or secretly brought into a state. The inability of states to curtail the circulation and use of illegal narcotics is a case in point. Extradition requests will almost certainly be denied. Governors from at least ten states have issued executive orders protecting abortion providers and patients in their states from extradition to states than ban abortion and refusing cooperation with attempts to interfere with abortion services. Connecticut enacted legislation preventing abortion providers from being extradited to other states and barring state authorities from cooperating with abortion investigations from a patient's home state. Similar legislation was enacted in Delaware and New Jersey (Belluck 2022; McDermott, Mulvihill, and Schoenbaum 2022). Additional states are likely to act as well. Finally, Google announced that it will delete abortion clinic



visits from the location history of its users, preventing officials in states that ban abortion from tracking abortion patients. It also announced that it would allow users to more quickly delete multiple menstruation logs stored on Fit-bit devices, protecting those logs from being used by officials in anti-abortion states to identify pregnancies (Grant 2022).

### Legal Abortions Post-*Dobbs*

How has *Dobbs* affected the number of abortions? Obtaining accurate information is well-nigh impossible. The Guttmacher Institute reports that in 2020 the thirteen states that ban abortion performed 112,460 abortions. That number will surely rise as court cases challenging abortion bans are resolved. However, the Society of Family Planning is sponsoring an ongoing study, “We-Count,” that “aims to capture the shifts in abortion access by state” in the aftermath of *Dobbs*. Researchers developed a database of all providers of abortion services in early 2022. Starting in April 2022, providers were asked to provide monthly counts of the number of legal abortions they performed. Seventy-nine percent of providers, who provide 82 percent of all abortions, agreed to provide data. Comparing the number of abortions performed by these providers in April and August 2022, WeCount found a good deal of change. The responses indicated an increase of 11 percent in the number of abortions in states where abortion access is protected. Among the states with the largest increase in the number of abortions performed between April and August are North Carolina (37%), Kansas (36%), Colorado (33%), and Illinois (28%). In contrast, in the states of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, all of which prohibited abortion after *Dobbs*, there was a 96 percent decrease in the number of abortions performed. Overall, WeCount estimates that nationally the number of abortions performed decreased by six percent.

The WeCount study does not include self-managed or “medication” abortions, discussed above. A study published in the *Journal of the American Medical Association* in November 2022 estimated the change post-*Dobbs* in the number of women self-managing abortions by gathering anonymous data on requests for medications made to AidAccess, the Austrian nonprofit. During the period studied there were 42,259 requests from women in 30 states. While every state showed an increase, the states with the largest increases per 100,000 female residents, unsurprisingly, were five of the states which banned abortion after *Dobbs*, Alabama, Arkansas, Louisiana, Mississippi, and Oklahoma. Comparing requests from before *Dobbs* to those made after *Dobbs* through the end of August 2022, the researchers found an increase in the number of requests of more than two and a-half times. Putting these two studies together, Bhatia, Miller and Sanger-Katz estimate that the number of abortions fell by about two percent in the first two months after *Dobbs*. This estimate doesn’t include women who accessed abortion medication through other providers outside of the mainstream medical system or who traveled to Mexico to obtain an abortion or abortion-inducing medication. As one abortion rights activist put it,

“There is a large undercount of people who are self-managing their abortions, absolutely . . . Because people are sourcing them [the drugs] in their communities and because they are getting them in lots of different ways” (quoted in Bhatia, Miller and Sanger-Katz 2022).

These data suggest that many women living in states that ban or severely restrict abortion are finding ways to terminate unwanted pregnancies. In fact, they have been doing so pre-*Dobbs*. Abortion services were very difficult to access pre-*Dobbs* in almost all of the states that prohibited abortion post-*Dobbs*. In Missouri and South Dakota, for example, there were only 170 and 130 abortions, respectively, performed in 2020. Of the states that ban abortion post-*Dobbs*, only in Tennessee and Texas were there more than 10,000 abortions performed in 2020. Large numbers of women residing in the states which banned abortion post-*Dobbs*, and who obtained abortions in 2020, traveled to other states to access abortion services.

This is not meant to diminish the real challenges many women face, the inability of some women to end unwanted pregnancies, and the disproportionate burden faced by poor women and many women of color. But, as Bhatia, Miller and Sanger-Katz note, medication abortion is “available to nearly anyone with an internet connection and a mailing address.” According to abortion rights activist Erin Matson, this means that the “primary risk in this post-*Roe* America is legal and not medical” (quoted in Kusisto 2022).

Again, none of this is meant to minimize the short-term effects of *Dobbs* on women seeking to terminate unwanted pregnancies, particularly poor women. There will be a period of adjustment as women in restrictive states learn about laws in their states and the options they have. In a sophisticated econometric model, written in 2019, Myers, Jones, and Upadhyay estimated that there would be a 12.8 percent decrease in the number of abortions in the “immediate aftermath of a *Roe* reversal” (2019, 372). “In the short-run,” they wrote, “our estimates suggest that increased travel distances alone are likely to prevent 93,546–143,561 women from obtaining abortion care in the first year following a reversal of *Roe*” (2019, 373). As dire as these estimates will be for the women involved, abortion access in many states was restricted prior to *Dobbs*. A 2022 study of abortion travel found that in 2017 8 percent of women seeking abortions, approximately 69,000 women, left their state of residence to obtain abortions. The study found that in twelve states more than a quarter of patients traveled out of state to obtain an abortion and in four states—Mississippi, Missouri, South Carolina, and Wyoming—more than half of women seeking abortions left their state of residence (Smith et al. 2022). And in 2020, 9 percent of women who obtained abortions left their state of residence to access them, including 15 percent of women living in twenty-nine states (Maddow-Zimet and Kost 2022). While the data and analysis presented in this article suggest that the Myers, Jones, and Upadhyay estimate is too high, the key point is that the short-term effect of *Dobbs* will be to severely limit or prohibit abortion in states that already make abortion access difficult.

## Conclusion

Over the long run overturning the constitutional right to abortion may have less of an effect on abortion access and the number of abortions than anti-abortion activists hope for and pro-choice activists fear. As with too many policies, poor women and many women of color will bear the brunt of abortion restrictions, at least in the short run. But given the number of states that will protect access to abortion; the growing practice of telemedicine and medication abortions; support from business groups, political leaders, and the public; and the creation of groups both domestic and foreign that can supply medication to women seeking medication abortions and help women obtain the reproductive care they seek, a good deal of access to abortion is likely to remain. As long as large numbers of women seek abortions, and majorities support their ability to do so, changing the constitutional right to abortion may not dramatically alter its accessibility or use. The market condition that allowed *Roe* to have an effect, albeit unevenly, will likely also allow most women seeking abortions in the post-*Dobbs* world to be able to obtain them.

To sum up, despite the rhetoric surrounding *Roe* and *Dobbs*, the Court's decisions have had and will have less of an impact on abortion access than most people believe. Constitutional rights as announced by the Court matter, but they matter less than public demand for abortion access and support for that access from the public at large and business and political elites.

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# **Better Get to Know: Pedro Magalhães**

QUESTIONS BY: RYAN BLACK, MICHIGAN STATE

Pedro C. Magalhães is a Research Fellow at the Institute of Social Sciences of the University of Lisbon, Portugal. He earned his PhD in Political Science from The Ohio State University in 2003.

**Tell me a little about your background and how you got to where you are today.**

I got my undergraduate degree in Sociology in Portugal, where I got particularly interested in Political Sociology and Sociology of Law. Through a conjunction of happy incidents, I ended up collaborating on a chapter on democratization and the organization of the judiciary in Southern Europe. This made me realize that the way U.S.-based scholars were looking at the political role of the judiciary was much more interesting—for my taste—than what was being done in Europe at the time. I went to Ohio State for my PhD and wrote my dissertation on the constitutional courts of Spain and Portugal. Upon returning home, I realized work and funding opportunities in the sub-field remained too limited, which led to focus more on survey research, public opinion, and political support. However, I never abandoned judicial politics as an interest, and in the last few years, I have been working increasingly on courts and public opinion.

**If you weren't a political scientist, what would you be instead?**

Maybe a lawyer, maybe an economist. But always academia, I'm afraid.

**What are you working on now?**

Several things at the same time, as usual, but united by a concern with populism, judicial independence, and public attitudes towards the legal system. I find it intriguing that political projects that undermine the institutional integrity of the judiciary—say, in places like Hungary or Poland—are met with less public resistance than what one might at first imagine. I'm interested in how the political predispositions of citizens shape their reactions to attacks on the judiciary and how the rhetoric of populist politicians can frame the role of courts and judges in such a way as to undermine public resistance to government encroachment. The papers I'm currently working on are all directly or indirectly related to this.

**Best book on your office shelves people may be surprised by?**

I have an old, wonderful collection of the relevant texts in the debate between Carl Schmitt and Hans Kelsen about “the guardian of the Constitution.” I return there with some regularity, and I am always amazed by how the terms of the debate about the role of constitutions and constitutional review in a democracy and many of the possible answers to the dilemmas it raises are so clearly advanced there. And I see Kelsen as an intellectual giant and a “force for good” in this debate.

**What's some good work other than your own that you've read recently and would recommend?**

There's so much great work coming out constantly that it's almost impossible to keep up. Thinking about the most recent things I've read, I liked a lot a piece by Fabio de Sá e Silva about law and illiberalism in the *Annual Review of Law and Social Science*. I have also been enjoying pretty much all that Miles Armaly has published recently. There's also a recent working paper circulating by George Tsebelis about judicial independence, constitutional rigidity, and judicial vetoes that I thought was as engaging as everything else he does.

**What's your workspace setup like?**

Although I do spend a lot of time at the office, I love to work in coffee shops and parks. Lisbon has very gentle weather, so it's often pleasant to sit outside. I always carry my backpack with what I need at each moment. Most important of all, it is the act of leaving the office and moving from one place to another that I find fulfilling: it is when the best ideas tend to occur.

**What apps, software, or tools can't you live without?**

I wouldn't be able to survive without something as simple as Calendar and the multiple daily reminders I place there for myself and the people I work with. [Scite.ai](#) has been useful in finding what articles cite others while giving me the context of those citations. Stata for statistical analysis, though I've been working more and more with R: the learning curve is less steep when one can rely on the tutorials many generous people make available. One thing that will probably sound very weird is that I still do a lot of graphs with Excel. The defaults are terrible, but I love tinkering with all the options until I get what I want. It's surprising what you can do, and I like the notion of doing figures without ever losing track of the actual data they are representing. But it's just a personal quirk, I am not really recommending it...

**What do you listen to while you work?**

J. S. Bach, mostly. My kids laugh at how monotonous my yearly Spotify flashbacks are.

**Favorite research and teaching hacks?**

I work in a research institute where, besides political scientists, there are also sociologists, historians, social psychologists, geographers, economists, and anthropologists. My favorite research hack is simply to attend their seminars once in a while. It's a bit mysterious how a talk on a seemingly unrelated topic and from a completely different perspective can suddenly give ideas relevant to your own work, but the truth is that it happens. Specialization and ultra-specialization were inevitable in the development of the social sciences, but this has caused an excessive narrowing of perspective. It's good to step back occasionally.

**How do you recharge? What do you do when you want to forget about work?**

Hiking, traveling, eating out/in with family and friends, summer vacations in the Azores islands (for 13 years now and counting). And walking around Lisbon pretending I'm a tourist in my own city.

**What everyday thing are you better at than everyone else? What's your secret?**

There's nothing I'm better at than everyone else, but I do think I'm good at coordinating colleagues around projects and papers. I checked Scopus the other day, and it tells me I've written articles with 84 different co-authors. That's probably the thing I'm most proud of in my career. I guess the secret, if there's one, is to seek people who know more about their stuff than I do, trust and delegate, and put no more pressure on anyone than the pressure I can demonstrate I put on myself.

**What's your biggest struggle in being a faculty member? How do you try to address it?**

Balancing teaching and research with administrative tasks, for sure. Most European universities are understaffed in comparison with US institutions. I'm aware that things are changing for the worse there as well, but I think many scholars working in the US would be astounded by the kind of things we need to do besides teaching and research. One way to address the problem is to include hiring administrative support in our research grants to complement the permanent staff, but there are limits to what that can achieve. The other thing is to keep in close communication with the staff in multiple ways: sometimes, a brief in-person talk can solve problems that increasingly irritated e-mail exchanges will only make worse.

**What's the best advice you ever received?**

A few weeks before going to Ohio State, I met one of my future dissertation advisors (Richard Gunther) in Madrid. He set me aside and told me we had to talk about a very serious issue. I was terrified: I hadn't even started the program; what could be so serious already? He told me that I had to get season tickets for the Buckeyes as soon as possible. I had no clue of what he was talking about, but that was corrected immediately upon arrival in Columbus. I did get those tickets every year and enjoyed the whole football craziness immensely. I take this as a more general message that I try to convey to students: work is fine, but don't forget to play. The other good advice I got and that I also pass to students is to never get worked up with journal rejections: there's a degree of randomness we will never control, and the best remedy is to immediately rethink, rework, and resubmit.

**What's the greatest idea you've had that you don't want to do yourself?**

I don't think I have the necessary skills, but it would be great if someone would examine kinship ties among legal, judicial, and political elites within Eu-

ropean countries. Particularly in civil law systems, like Italy, France, Spain, or Portugal, it's relatively easy to detect entire families from which legal scholars, big-name attorneys, high court judges, and high-ranking public officials have originated, often in connection to particularly influential law schools. This is probably more important than recognized, but I don't know of studies that systematically examine the phenomenon and its implications.

**Which junior and senior persons would you like to see answer these same questions?**

Jon Kåre Skiple and Henrik Litleré Bentsen are two young and very promising Norwegian scholars I have had the fortune to work with and I would be curious to know their answers. Not sure if they count as "senior"—it surely seems so on the basis of their great contribution already—but I would also love to read Amanda Driscoll's or Michael J. Nelson's responses.

# Better Get to Know: Sophia Wilson

QUESTIONS BY: RYAN BLACK, MICHIGAN STATE

Dr. Sophia Wilson is Associate Professor of Political Science, Southern Illinois University Edwardsville and President, American Association for Ukrainian Studies.

**Tell me a little about your background and how you got to where you are today.**

I study human rights, social mobilization and nation-building—in Ukraine and other post-Soviet states. University of Washington’s Law and Society track (for my Ph.D.) inspired me to see state-society relations through the lens of legal meanings. My path was heavily affected by intensive fieldwork: having long discussions with judges and police in Tajikistan and Azerbaijan, who eventually opened up about how they violate legal code, and lawyers-revolutionaries in Ukraine, who took tremendous risks to push back against legalization of authoritarianism in their country.

**If you weren’t a political scientist, what would you be instead?**

I would be miserable.

**What are you working on now?**

I’m finishing my book *The Ukrainian Maidan Revolution: Restoring Democracy and Reawakening Russian Imperialism*, while starting new book projects: *What are Fascism, Communism and Democracy: A Guide to Political Regimes*, and an edited volume *Russia’s Genocide against Ukraine*.

**Best book on your office shelves people may be surprised by?**

A signed copy of *Bus Ride to Justice* by Fred D. Gray. I was fortunate to have met Fred Gray in person, and through his book I re-learned the striking similarities between U.S. Civil Rights lawyers and Ukrainian cause lawyers during the Maidan revolution. Faith in social justice determines human history, because there are people who are ‘ahead of their time’—they devote their lives to battles others view as hopeless.

Fred Gray also taught me about 15-year-old Claudette Colvin, who refused to give up her bus seat nine months before Rosa Parks. Gray’s failure to defend Claudette in court taught him how to succeed next time—when he defended Parks.

**What’s some good work other than your own that you’ve read recently and would recommend?**

*The Emergence of Ukraine* (Ed. Kasyanov et al)—a masterful archival work, analyzing letters of German military commanders during World War I. Authors show the fascinating transformation of German commanders’ views of Ukraine: while at the beginning they viewed it as a resource, with time they started supporting the idea of Ukraine’s sovereignty for its own sake.

**What's your workspace setup like? What apps, software, or tools can't you live without?**

I just need a computer and a bunch of notebooks—so I can write.

**What do you listen to while you work?**

*Skofka, Kalush, Odyn v Kanoe*—Ukrainian hip-hop and folk music is empowering: if Ukrainians can have the strength to resist and create despite unthinkable atrocities, I have no right to give up.

**Favorite research and teaching hacks?**

Asking people what they think.

**How do you recharge? What do you do when you want to forget about work?**

Swimming, walking and travelling. Nature has tremendous healing powers.

**What everyday thing are you better at than everyone else? What's your secret?**

I'm Ukrainian.

**What's your biggest struggle in being a faculty member? How do you try to address it?**

Being a female and an immigrant: you have to work harder to earn people's trust.

**What's the best advice you ever received?**

I once mentioned to my (amazing) mentor Dr. David Goetze that my grandma was the one who told me Santa Claus did not exist. Sometime later, when I said I didn't write that week due to a lack of inspiration, he said, "I can see that. But remember what your grandma told you: Santa Claus does not exist."

**What's the greatest idea you've had that you don't want to do yourself?**

The key role of Ukraine in World War II: Hitler was obsessed about Ukraine, planning to starve Ukrainians and occupy the land; millions of Ukrainian soldiers fought against the Nazis, millions of Ukrainian civilians were killed—and yet there is no book about this.

**Which junior and senior persons would you like to see answer these same questions?**

Kristina Hook, Assistant Professor of Conflict Management at Kennesaw State University's School of Conflict Management, Peacebuilding, and Development (specializing in genocide and mass atrocity prevention).

Jayanth Krishnan, Milt and Judi Stewart Professor of Law at Indiana University Maurer School of Law, Director, Milt and Judi Stewart Center on the Global Legal Profession (specializing in immigration law).

## Books To Watch For

Gary Bugh. **Incorporation of the Bill of Rights: An Accounting of the Supreme Court's Extension of Federal Civil Liberties to the States.** Peter Lang, 2023. ([website](#)).

Which Bill of Rights' protections has the Supreme Court extended to the states? To find out, *Incorporation of the Bill of Rights* reviews what justices in their written opinions regard as the incorporation status and case for every enumerated federal right. Approaching the Bill of Rights in the order of its amendments and rights, the book devotes one chapter to each civil liberty, describing the Court's view of the right at the state level. Along with finding that the Court has incorporated nearly the entire Bill of Rights, this book offers new insights about unincorporated rights and the role of lower courts, while also addressing the judiciary's various theoretical defenses for protecting civil liberties from state infringement. Among the surprises revealed along the way is that a few well-known Bill of Rights' guarantees—such as the Fifth Amendment right to due process of law—remain unincorporated and for different reasons. This inventory of incorporated rights is an essential resource for law and political science scholars, teachers, and students, as well as for practitioners at all levels of government. In detailing a core area of constitutional law, the book serves as a reminder about the importance of incorporation, which adds a layer of protection against government abuse throughout the United States.

Janice Gallagher. **Bootstrap Justice: The Search for Mexico's Disappeared.** Oxford University Press, 2022. ([website](#)).

Since 2006, more than 85,000 people have disappeared in Mexico. These disappearances remain largely unsolved: disappeared people are rarely found, and the Mexican state almost never investigates or prosecutes those responsible. Despite this, people not only continue to report disappearances, but many devote their lives to answering the question, "where are they?" Given the risks and institutional barriers, why and how do people mobilize for justice in states with rampant impunity and weak rule of law?

In *Bootstrap Justice*, Janice Gallagher leverages over a decade of ethnographic research to explain what enables the sustained mobilization of family members of the disappeared and analyze how configurations of political power between state and criminal actors shape what is possible for them to achieve. She follows three families from before the disappearance of their loved ones through their transformations into sophisticated and strategic victim advocates and activists. Gallagher supplements these individual narratives with an analysis of the evolving political opportunities for mobilization within Mexico. By centering the perspectives of people whose lives have been upended by the disappearance of their loved ones, *Bootstrap Justice* offers a unique window into how citizens respond to weak and corrupt institutions. Gallagher focuses on the overlooked role of informal relationships and dynamics in shaping substantive legal and human rights outcomes and highlights how



pioneering independent and creative work-arounds can compensate for state inaction. While top-down efforts, such as judicial reforms, technical assistance, and changes in political leadership are important parts of addressing impunity, policymakers and scholars alike have much to learn from the bottom-up—and by following the path that citizens themselves have worn within the labyrinth of state judicial bureaucracies.

Morgan L.W. Hazelton, Rachael K. Hinkle, and Michael J. Nelson. **The Elevator Effect: Contact and Collegiality in the American Judiciary.** Oxford University Press, 2023.

Appellate judges wield enormous influence in the United States. Their decisions define the scope of legislative and executive power, adjudicate relationships between the federal government and the states, and determine the breadth of individuals' rights and liberties. But, compared to their colleagues on trial courts, they face a significant constraint on their power: their colleagues.

*The Elevator Effect: Contact and Collegiality in the American Judiciary* presents a comprehensive, first of its kind examination of the importance of interpersonal relationships among judges for judicial decision-making and legal development. Regarding decision-making, the authors demonstrate that more frequent interpersonal contact among judges diminishes the role of ideology in judicial decision-making to the point where it is both substantively and statistically imperceptible. This finding stands in stark contrast to judicial decision-making accounts that present ideology as an unwavering determinant of judicial choice. With regard to legal development, the book shows that collegiality affects both the language that judges use to express their disagreement with one another and the precedents they choose to support their arguments. Thus, the overriding argument of *The Elevator Effect* is that collegiality affects nearly every aspect of judicial behavior.

The authors draw on an impressive and unique original collection of data, going as far back as the American founding, to untangle the relationship between judges' interpersonal relationships and the law they produce. The Elevator Effect presents a clear and highly readable narrative backed by analysis of judicial behavior throughout the U.S. federal judicial hierarchy to demonstrate that the institutional structure in which judges operate substantially tempers judicial behavior. Written in a broad and accessible style, this book will captivate students across a range of disciplines, such as law, political sciences, and empirical legal studies, and also policymakers and the public.

R. Shep Melnick. **The Crucible of Desegregation.** University of Chicago Press, May 2023. ([website](#)).

In 1954, the Supreme Court delivered the landmark decision of *Brown v. Board of Education*—establishing the right to attend a desegregated school as a national constitutional right—but the decision contained fundamental ambiguities. The Supreme Court has never offered a clear definition of what

desegregation means or laid out a framework for evaluating competing interpretations. In *The Crucible of Desegregation*, R. Shep Melnick examines the evolution of federal school desegregation policy from 1954 through the termination of desegregation orders in the first decades of the twenty-first century, combining legal analysis with a focus on institutional relations, particularly the interactions between federal judges and administrators. Melnick argues that years of ambiguous, inconsistent, and meandering Court decisions left lower court judges adrift, forced to apply contradictory Supreme Court precedents in a wide variety of highly charged political and educational contexts. As a result, desegregation policy has been a patchwork, with lower court judges playing a crucial role and with little opportunity to analyze what worked and what didn't. *The Crucible of Desegregation* reveals persistent patterns and disagreements that continue to roil education policy.

Gerald Rosenberg. **The Hollow Hope: Can Courts Bring About Social Change?, 3rd edition.** University of Chicago Press, Spring 2023. ([website](#)).

The 3rd edition is a major revision, updating, revising, and expanding the material on civil rights, abortion, women's rights and marriage equality. In particular, it analyzes the re-segregation of public schools, showing how the conditions necessary for courts to produce progressive change waned, limiting judicial efficacy. With abortion, the analysis shows that opposition from a small but intense minority, and the alignment of the Republican Party with it, produced obstacles to abortion access. At the same time, increased access to effective contraception has reduced the demand for abortion. The book considers how the overturning of *Roe* will affect abortion access (see the article in this newsletter). With women's rights, the analysis finds that deeply embedded cultural antipathy to gender equality, and the institutionally gendered nature of employment, create barriers to change. The chapters on marriage equality, extensively re-written, find massive cultural change independent of judicial action that made court decisions possible and led to marriage equality.

Philippa Strum. **On Account of Sex: Ruth Bader Ginsburg and the Making of Gender Equality Law.** University of Kansas Press, 2022. ([website](#)).

This is the first book to detail RBG's gender equality litigation of the 1970s, demonstrating the ways in which both sex discrimination in her life and the burgeoning women's movement contributed to her decision to attack gender stereotyping—for both men and women.

Stephen Vladeck. **The Shadow Docket: How the Supreme Court Uses Stealth Rulings to Amass Power and Undermine the Republic.** Basic Books, May 2023. ([website](#)).

The Supreme Court has always had the authority to issue emergency rulings in exceptional circumstances. But since 2017, the Court has dramatically expanded its use of the behind-the-scenes "shadow docket," regularly making decisions that affect millions of Americans without public hearings and with-

out explanation, through cryptic late-night rulings that leave lawyers—and citizens—scrambling.

The Court’s conservative majority has used the shadow docket to green-light restrictive voting laws and bans on abortion, and to curtail immigration and COVID vaccine mandates. But whether or not one supports the results in these cases, Americans of all political stripes should be worried about what the shadow docket portends for the rule of law. This rigorous yet accessible book issues an urgent call to bring the Court back into the light. .

## Other Announcements

Rebecca Reid, Todd Curry (University of Texas at El Paso), and Mark Hurwitz (Western Michigan University) have received a grant from the National Science Foundation to support the research project: “**Build and Broaden: Indigenous Peoples Before United States Courts: A Systematic Examination**” ([link](#)). This project will analyze all cases involving Indigenous Peoples and Nations in state supreme courts, U.S. Courts of Appeals, and the U.S. Supreme Court, from 1960 through 2020. The sovereignty of Indigenous Peoples and Nations in the United States is recognized in the Constitution. However, over time judicial decisions and legislative enactments delegated authority over indigenous policy to the states, which benefit little from preserving and protecting indigenous rights. The result is that Indigenous Peoples and Nations have received limited judicial redress from courts in the United States (see Reid and Curry, *Journal of Law and Courts* 2021).

Employing quantitative and qualitative data and inquiry, the research will assess testable hypotheses that capture audience-based and representative theories of judicial behavior, as well as other hypotheses based on institutional constraints facing courts. The project’s theoretical foundation necessarily diverges from the extant literature, since the issue of indigenous sovereignty does not apply to other underrepresented groups. By systematically tracing these cases across the judicial hierarchy, the project will evaluate how courts are exposed to disparate political pressures and institutional constraints with respect to indigenous rights. The result will be the first systematic, large-scale, longitudinal analysis of judicial decision making in indigenous affairs. Please send any questions or comments about this project to [rareid@utep.edu](mailto:rareid@utep.edu), [tacurry@utep.edu](mailto:tacurry@utep.edu), or [mark.hurwitz@wmich.edu](mailto:mark.hurwitz@wmich.edu).

## Call for Award Nominations

The Section invites nominations for its annual awards. Please submit nominations to the committee members listed below by March 15.

### Best Graduate Student Paper Award Committee

Name	Affiliation	Email Address
Teena Wilhelm (chair)	University of Georgia	twilhelm@uga.edu
Mark Hurwitz	Western Michigan University	mark.hurwitz@wmich.edu
Andrew O'Geen	Davidson College	anogeen@davidson.edu
Natalie Rogol	Rhode Island College	nrogol@ric.edu
Elisha Savchak-Trogdon	Elon University	esavchaktrogdon@elon.edu

### Best Journal Article Award Committee

Name	Affiliation	Email Address
Benjamin Kassow (chair)	Univ. of North Dakota	benjamin.kassow@UND.edu
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### Lasting Contribution Award Committee

Name	Affiliation	Email Address
Vanessa Baird (chair)	University of Colorado-Boulder	vanessa.baird@colorado.edu
Elizabeth Lane	Louisiana State University	elane8@lsu.edu
Raul Sanchez-Urribarri	La Trobe University	R.Sanchezu@latrobe.edu.au
Logan Strother	Purdue University	lstrothe@purdue.edu
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## Call for Submissions

*Law and Courts Newsletter* publishes articles, research notes, features, commentaries, and announcements of interest to members of APSA's Law and Courts Section. The various substantive topics falling under the umbrella of "law & courts" are welcome, as are methodological approaches from across the discipline of political science. I am particularly interested in receiving the following types of submissions:

**Descriptions of Datasets.** Creators of publicly-available datasets potentially useful for Section members' research or teaching may submit descriptions of their datasets. Although the datasets should be relatively new, it is acceptable for the data to have been used and described in previously published research. Submissions should describe (and link to) the dataset, give practical advice about viewing and analyzing the data, and explain how the data might be used in Section members' research or teaching (including for undergraduate student research). Submissions describing relevant software or other tools are also encouraged.

**Research Notes.** These submissions should be approximately 2,000 words in length (a target, not a limit), and may be theory-focused or empirics-focused. The former should present theoretical arguments relevant to law & courts literature, but need not involve concurrent empirical testing. The latter should present empirical results—including adequately powered "null results"—with only the most necessary literature review and theoretical discussion included directly. Replications and extensions are also welcome. I hope that these notes will inspire research ideas for readers, spur collaboration among Section members on projects greater in scope, and prevent duplication of effort caused by the file drawer problem (i.e., the systematic non-publication of null results).

**Reviews of Recent Developments in the Literature.** These submissions should be literature reviews of approximately 4,000 words focused on recent developments in active areas of law & courts research. A review should summarize and analyze recent developments in a line of research, and suggest open questions and opportunities for further research. Authors should aim their reviews at readers who research and teach in law & courts, but are not necessarily specialists in the area of research discussed. I seek such submissions particularly from graduate students, whose prospectuses, dissertation chapters, etc., may form the basis for such reviews. I hope that these reviews will provide Section members with a convenient means of keeping up with the literature across the law & courts field.

In addition, the *Newsletter* solicits research articles (including research about the Section), commentaries about the profession, proposals for symposia, and announcements (including of newly-published books) that are of interest to Section members.

### Instructions for Authors

Submissions are accepted on a rolling basis. Scholarly submissions will typically be reviewed by the editor and one editorial board member. Submissions and questions about possible submissions should be emailed to [lnapsa@gmail.com](mailto:lnapsa@gmail.com). Initial submissions should be sent in PDF format and may be written in Word (LibreOffice, etc.) or TeX. Authors should follow *APSR* formatting, as described in the *APSA Style Manual*. Submissions need not be blinded. Please avoid footnotes and endnotes unless absolutely necessary, and aim for concision. Appendices are encouraged for information that is relevant but not of primary importance. Upon publication, I ask that authors consider posting replication data and code for articles involving statistical analysis.

Section members who have written books they would like to see featured should email basic information about the book, including a 1-2 paragraph description, to [lnapsa@gmail.com](mailto:lnapsa@gmail.com).

–Daniel Lempert, Editor

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