

**An Analysis of Variation in the Restrictiveness of
State Abortion Legislation Introduced in 2023**

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Acknowledgments

I am extremely grateful for all the hard work, editing, efforts, and advice from Professor Jenna Bednar. Without her help, this thesis would not have been possible. Her help allowed me to create the backbone of the thesis and develop a better understanding of state policies and laws and how they interact. Professor Bednar contributed in many ways throughout this past year of work and deserves recognition for her time spent assisting with this endeavor.

Many thanks to Anne Manuel for her support throughout this thesis as she was a great beta reader to test my writing on. Her work in narrowing the scope of the project and developing a deeper understanding of the semantics and details of the paper lent itself well to creating this overall project. Her support has been invaluable throughout this past year.

I'd like to acknowledge Sheila Jensen for her support and expertise on this project. Her help in editing and reading this thesis allowed me to iron out the details and information throughout the thesis. She took the time and attention to detail to proofread this thesis and deserves recognition for her hard work.

Also, I'd like to thank my family for their never ending support and helping me make it through this past year researching and writing about a topic that I am passionate about.

Abstract

The abortion debate has been salient for over 50 years, since 1973, with the most recent update in the debate coming with the *Dobbs* decision in 2022, giving state's the power to regulate abortions without federal input. This paper focuses on the year 2023 – post *Dobbs* – as the reference point for the future of the abortion debate throughout the United States. In collecting data from over 300 pieces of legislation or ballot initiatives that were introduced in state legislatures in the year 2023, this paper analyzes the restrictiveness level of this legislation to find correlation for the level of restrictiveness. While there is evidence that the partisanship of the legislative sponsor plays a significant role in whether the legislation is protective or restrictive of abortion rights, there is very minimal support for the hypothesis that the median voter or direct democracy play a role in the level of restrictiveness – due to lack of data and weak trends. Future recommendations for this research include analyzing a larger time frame of state abortion legislation, or expanding the dataset to include court decisions, as they have played a role in the debate over the past 50 years. Throughout this paper, the main question at hand is what accounts for the variation in restrictiveness of state-level legislation regarding abortion rights in the 2023 legislative year?

Introduction

The abortion debate has been a salient issue for the general public since the decision of *Roe v Wade* in 1973. *Roe* (1973) allowed women the right to abortion, as protected by the Constitution's 14th Amendment, until fetal viability. With this decision, the woman's choice to have an abortion was hers alone and did not have government influence – until fetal viability. There have been many bills and pieces of legislation over the past 50 years that have further splintered both sides of this debate. In just the year 2023 – which is the focus of this paper – there were 289 pieces of legislation introduced at the state legislative level, and 21 bill initiatives that could be on the 2023 or 2024 ballots. This legislation was introduced as referendums, amendments, ballot initiatives, or simple legislative bills. Of this legislation, Democrats introduced 120 bills, Republicans introduced 167, and the combination of Nonpartisan, Bipartisan, and Progressive parties introduced six bills. All of this collected legislation is the main topic of the paper, which explores why this legislation differs in the level of restrictiveness in abortion rights – if it's because of the median voter, partisanship of the legislative sponsor, and direct democracy.

With the abortion debate becoming more salient in light of *Dobbs* (2022), it is important to understand how states reacted to this Supreme Court ruling. This paper lends itself to that research by collecting data of all legislation introduced in the year 2023 regarding abortion and analyzing how the median voter, partisanship, and direct democracy play a role in legislation surrounding abortion rights. Some states had as many as 16 bills introduced, while others had one. Upon analysis of this data, it was clear that there is a relationship between partisanship and the restrictiveness of the legislation – Democrats are more protective; Republicans are more

restrictive – but there was no clear indication that the median voter or direct democracy played a significant and patterned role in the introduction of abortion legislation.

Abortion has been debated through its morals, efficacies, and principles since before modern medicine was invented. Prior to 1973, all states in the United States made their own judgements and laws on abortions, most of them outlawing the procedure for the majority of women, especially those in underprivileged communities. In 1973 with the *Roe v Wade* decision, the Supreme Court ruled that abortions in the first two trimesters of pregnancy were legal, it was in the third trimester of pregnancy that the fetus becomes a viable human being that the state had an interest in protecting. Justice Harry Blackmun wrote, “We conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.” (*Roe v. Wade*, 1973) In this 7-2 decision, the Supreme Court made the issue of abortion a federal level issue and ruled that states could not regulate abortion until the fetal viability in the third trimester. This standard would change several times over the following 50 years, with the most recent change ceding the power back to the states, and would shape the abortion debate throughout the country. There are several factors that have led to the heightening state of the abortion debate, but the Supreme Court is the most prominent driving factor with its Constitutional rulings.

In 1976 in *Planned Parenthood of Central Missouri v Danforth*, the Supreme Court argued that the greater burden of pregnancy lies with the woman, so the decision rests with her (Cohan, 1986). Following this decision in 1976, several more court cases passed on both the federal and state level deciding that the abortion law lies with the states, rather than the federal government, as decided in *Dobbs* in 2022. Rather than having a centralized government allowing the right to abortion, each individual state now has the autonomy to make abortion restrictions

and decisions for the woman. This causes a decentralization of abortion rights, and prevents overall protection for women seeking abortions everywhere in the US.

About two decades later, the next landmark Supreme Court decision came out – *Planned Parenthood of Southeastern Pennsylvania v Casey* (1992). The Supreme Court decided to affirm *Roe* (1973) and shift to a new standard of regulating abortions throughout the country (*Planned Parenthood of Southeastern Pennsylvania v Casey*, 1992). This decision came at a time of strong political debate around the issue that influenced the case prior to reaching the Supreme Court. Evangelical Christians – who were anti-abortion – became central to the Republican National Conference’s strategy to win the presidential election. So in the election year of 1992, the Supreme Court made the landmark decision of *Casey* (1992) to protect the right to abortion, but limit how available the procedure is to women in every state. The decision held that women had the right to abortions as defined in *Roe*, but there is a compelling interest of the state to protect a viable fetus’s life. There was an exception at any point in viability for protecting the life of the woman. Because of this standard, in the subsequent decades, the nation’s federal court system has seen a multitude of court cases on abortion regulations in every state, some of which the courts have struck down, and others the court has ruled favorable upon. In all cases, the states are able to make their own regulations but have a central, federal regulation to abide by.

In light of the passage of *Dobbs v Jackson Women’s Health Center* on June 24, 2022, there is no national federal standard governing anti-abortion legislation. Federally, Congress has shifted to a conservative majority in the most recent midterm election in fall of 2022, following the passage of *Dobbs* in 2022 (*Dobbs v Jackson Women’s Health Center*, 2022). This shift to the right leads the nation’s federal laws to have more conservative leaning policies. Beyond the conservative majority shaping policy, it also begins to shape the mindsets of fellow conservatives

and Americans in general. This conservative majority could have influence on how the states operate, as the states tend to follow the federal standards and government when making legislation. This conservative shift lends the country's policies and standards to become far more limiting toward abortion access and reproductive rights, as the conservative Republican party's ideology around abortion is deemed "pro-life". This "pro-life" term is relevant as Republicans are more likely to restrict access to abortion because they believe life begins prior to birth. That said, the Democrat party has adopted the term "pro-choice" in the abortion rights debate throughout the country. This means that more liberal, left-leaning policies tend to be more protective and expansive for the right to obtain an abortion. These policies and ideals at the federal level start to shape how state legislatures and policy makers view and contribute to debates on controversial topics like abortion rights.

However, with the decision of *Dobbs* (2022) giving individual states the legislative authority to make their own laws surrounding reproductive health care, there is much more variance in the introduced and passed legislation, because some states have a left-leaning legislature, others have a right-leaning legislature, and some have a split legislature. Because of these various divides in the legislature, the legislation that ends up passing depends on the partisanship of each branch in the legislature (Edwards, Barrett, & Peake, 1997). A liberal governor likely would not sign a conservative bill, and a very conservative majority in the state Senate is less likely to pass a liberal bill that originated in the state House of Representatives or Assembly. Ten states have a divided government, meaning that the three branches of the state government are not aligned in partisanship. For example, the state of Wisconsin has a Democratic governor, but a Republican Senate and House of Representatives. While this does not mean that no legislation gets passed because of the misalignment, it indicates that legislation

is more likely to be bipartisan or less extreme on the conservative side. Both kinds of legislation are introduced in every state, but the partisanship of the state's legislature and governor determine how likely the legislation is to pass through the legislature and become law. To put this into context of the abortion debate, this means that legislation can be difficult to pass at the state level because of the divided makeup of government. Liberal legislation would be more protective of reproductive health care and the right to abortion, while conservative legislation would be more restrictive.

Nearly every state has legislation either protecting or restricting access to abortions as seen in Figure 1. States place restrictions on gestational periods, informed consent, clinical requirements, and other restrictions that abortion providers or those receiving an abortion must legally follow to perform or obtain abortion services. According to the Guttmacher Institute, as of 2011, at least 424 restrictive abortion policies had been passed and implemented by state legislatures, comprising more than one-third of all abortion restrictions enacted since *Roe v Wade* (1973). Within the span of just nine years, these legislative restrictions were passed by several states, indicating a heightened state of the abortion debate between 2011 and 2020. Since the passage of *Dobbs* in June of 2022, there were 83 legislative acts related to abortion that passed in the second half of 2022, according to Guttmacher Institute. Abortion has developed into a polarized political environment.

National State Restrictiveness as of 2023

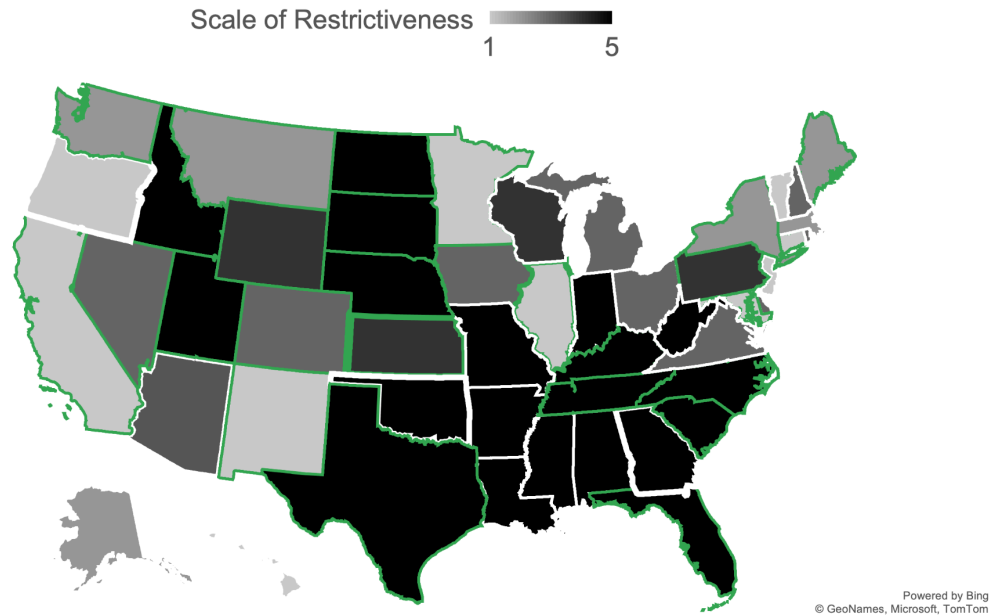


Figure 1

Graph depicts the current state of abortion legislation in the US. Those states that are darker black represent the most restrictive states. Those states that are lighter gray represent the most protective states regarding abortion rights. The states that are outlined in green are states that have passed legislation in 2023 regarding abortion rights.

As seen in Figure 1 above, it is clear that there is variance in abortion legislation across the US. With the darker states representing the most restrictive policies, and the lighter states representing the most protective policies, it is clear there is a distinction among states regarding their stances on abortion as passed into law. This graphic shows all the legislation that has been passed by each state since the *Roe* (1973) decision in 1973. Nearly 50 years later, the states outlined in green indicate that the state passed legislation in 2023, since the *Dobbs* (2022) decision. Providing this sense of what the current state of abortion legislation looks like in the US sets up the rest of this paper to dive deeper into the case study of 2023, post *Dobbs* (2022).

An analysis of each state's abortion legislation provides critical context to the understanding of the extreme divide within the national debate on this issue. For example in 2022, Michigan utilized referendums and successfully blocked its 1931 abortion ban and then

enshrined reproductive freedom in its constitution; while Texas passed its infamous heartbeat bill, further restricting and criminalizing access to abortion. The variation in legislation creates a significant difference in the landscape of access to abortion and possible criminal repercussions within each state. This paper will look at the content of these abortion laws, analyze when they were originally written and the process by which they were passed and by whom, and the language utilized to accomplish that. In doing so, this paper will analyze these key differences in the legislation to understand the differing extent of restrictiveness to abortion access for each state. This content is important to better understand how deep the anti-abortion rhetoric goes within different states, and to understand where it is originating from within the different laws. In light of the *Dobbs* (2022) decision, understanding the causes of variation in abortion legislation – the main goal of this paper – is relevant to every branch of political society everywhere in the United States today, even within the political campaigns of Democrats and Republicans.

Literature Review

Given that the abortion debate is so salient, there is an abundance of literature surrounding the debate itself, but little previous research into how the Supreme Court's *Dobbs* decision affected the debate. In analyzing the current literature, this paper splits it into four main sections: the debate itself, the median voter theorem, partisanship's role in the debate, and how direct democracy works. All of these are pertinent to the prior hypotheses and lay out where assumptions and definitions come from regarding each topic.

The Current State of Abortion Legislation

Following the passage of *Roe v Wade* in January 1973, from 1973 to 1989, 48 states passed 306 different measures to restrict the access to abortions (Devins, 2009). Since then and with the passage of *Planned Parenthood of Southeastern Pennsylvania v Casey* in 1992, these

laws have revolved around several restrictions – including the gestational period in which abortion can be performed. These laws may have exceptions built in, but the impact of the gestational period restriction is one of the most impactful restrictions to a woman’s ability to obtain an abortion. This paper will go on to analyze the different pieces of legislation to determine how protective or restrictive they are in the grand scheme of state-wide legislation throughout the United States.

One of the most common forms of restrictive abortion legislation involves gestational limits. There are 47 states with gestational restrictions ranging from “heartbeat laws” to twenty-four week bans (Deal, 2022). Majority of these states impose a twenty to twenty-two week ban which is just prior to the beginning of the third trimester of pregnancy. It is estimated that over one million abortions are performed annually, 53% of which were medication abortions in 2020 alone (Diamant, et al, 2023), which are safe during the first ten weeks of pregnancy. Of these 47 states with gestational restrictions on abortions, fourteen of them place a restriction on medication abortions due to their gestational limits. However, surgical abortions – which have seen a significant decline in light of medication abortion availability – are performed up to the third trimester when the government has a compelling interest in protecting the life of the medically termed fetus. In 2020 overall, 93% of abortions occurred in the first trimester – up to a thirteen-week gestational period – and 6% occurred between fourteen and twenty weeks of the gestational period (Diamant, et al, 2023). In light of this, the gestational restrictions affect about 7% of all abortions performed annually, but gestational restrictions prior to 13 weeks would impact a woman’s access to abortion. According to *Roe* (1973), these gestational restrictions were the consideration in restricting a woman’s access to obtain an abortion. Now that *Dobbs*

(2022) has overturned *Roe* (1973), these gestational restrictions are more common, set earlier in the pregnancy, and left up to the individual states.

State legislatures have also enacted legislation that places restrictions on the actual provider of abortions. Leading up to the *Dobbs* (2022) decision, several states passed legislation requiring abortion providers and clinics to follow specific procedures when performing abortions (Cohan, 1986). This resulted in a significant decline in abortion providers and clinics across the country. In fact, “following the passage of some of the most stringent abortion restrictions in the country, the number of abortion providers fell from 41 in 2013 to 19 in mid-2016” (Bentele, et al, 2018).

The most common restrictions imposed on abortion providers are TRAP (Targeted Regulation of Abortion Providers) laws that require providers to comply with facility, personnel, and procedural regulations that do not apply to other medical fields (Bentele, et al, 2018). Beyond just contributing to a decline in abortion providers, it also increases the financial burden on women that have to travel farther to receive service and results in abortions being performed at later gestational periods. Examples of such legislation include TRAP laws, mandatory counseling, mandatory waiting periods, and the requirement of ultrasound images of the pregnancy. The laws are intended to delay and deter women from having the procedure performed. Another example of deterrent measures subjects women to detailed and graphic descriptions of the surgical procedure of abortion and exaggerated and out of perspective images of fetal development while never contemplating the woman whose body is hosting the pregnancy (Hill, 2021). These requirements do not change the circumstances by which the woman has made the difficult decision to end her pregnancy and therefore do not impact her decision to terminate but may in fact traumatize or villainize her for her choice.

Since the passage of *Casey* in 1992, the lack of state or federal funding for abortions – i.e. the restriction of Medicaid – has created another substantial burden for women seeking abortions. This affects minority subgroups the most (New, 2011). The Alan Guttmacher Institute, conducted surveys periodically to gather information about the restrictions in place on abortion access, and who is marginally affected by such restrictions. One of the most common findings of surveys by the Alan Guttmacher Institute (AGI) and Center for Disease Control (CDC) is that restrictions on Medicaid funding for abortion procedures leads to a consistent reduction in state-level abortion rates (Perreira, et al, 2020). The Federal Hyde Amendment restricts the usage of any Medicaid or federal funding for abortion procedures, placing the entire financial burden on the woman (Bentele, et al, 2018, Medoff, 2008).

Beyond just the restriction of Medicaid funding, several states also prohibit forms of using state government funding to contract or teach the abortion procedure (Bentele, et al, 2018, Medoff, 2008); therefore, reducing the numbers of qualified practitioners to provide abortion services. These measures are intended to reduce abortion rates within states, and the withholding of funding for abortion procedures is found to be correlated to a significant decrease in abortion rates. In 2009, 23% of Medicaid-eligible women in Ohio and 18% in Georgia were unable to obtain a desired abortion due to the withholding of funding in a voluntary abortion procedure (Henshaw, et al, 2009). The inability for women to obtain abortions due to financial restrictions has had a “positive impact on a woman’s decision to use the [birth control] pill” (Felkey, 2014). However, the pill is not always a viable option, as it is a preventative measure, not a solution, to getting an abortion. This limitation in funding has significant implications for the future of the abortion debate, considering it is a major factor in decreasing abortion rates within states across the US.

The criminalization of abortion has different implications in every state. In Texas, criminalization of abortion means that both the woman and the provider can face fines and jail time for their actions in violation of the state legislation; Oklahoma adopted a very similar law (Davis, 2022). Georgia went so far as to include “a fetus or embryo” in its constitutional definition of a “natural person” (Davis, 2022). Some other terms used by states to refer to the medically deemed “fetus” within the various state legislation are “unborn child,” “unborn infant,” and “fetus.” Once the abortion occurs, some states refer to the fetus outside of the womb as the “born alive infant,” thereby giving the fetus rights if it is alive when aborted from the woman. This level of restriction within abortion restricts the woman’s ability to obtain an abortion, creating a gap in abortion statistics as wealthier and more able-bodied women would be able to travel to obtain abortions in other cities, or states. Some states are beginning to attempt to restrict interstate travel for the purpose of obtaining an abortion, but have been widely unsuccessful due to interstate commerce being regulated federally rather than on the state level. Such restrictions and criminalization place further hardship on women with unintended pregnancies which *Roe* (1973) and *Casey* (1992) have both protected through the “undue burden” standard preventing this type of harm on the woman.

The increasing rate of criminalizing abortions and restricting providers has led to significant decreases in abortion throughout the country. Each state can protect or restrict the operation of abortion-specific clinics, termed “reproductive health service centers.” Some states place restrictions requiring physicians performing the procedure to have admitting privileges at a nearby hospital. Another restriction requires all abortions to be performed in a hospital, rather than a clinic or resource center. This criminalization affects clinics and abortion providers as 95% of abortions are performed in freestanding clinics, with 5% in hospitals or physician’s

offices (Hill, 2021). These measures affect 95% of abortions in clinics rather than those performed in hospitals and physician offices.

There are eight states with so-called “heartbeat bills”, several of which indicate that it is criminal for a woman to obtain an abortion past the gestational limit (Deal, 2022) when a fetal heartbeat can be detected, which can be as early as five and a half weeks – a woman can be unaware she is even pregnant. Majority of these laws impose criminal penalties on the physicians or other individuals who provide the abortions (Dube, 2022). The most prominent case is Texas’ latest legislation criminalizing the woman for aborting her fetus, and criminalizing the medical provider for performing the procedure. This level of criminalization directed at the pregnant woman is unique to Texas, but the criminalization of the abortion provider is common among more restrictive states. Women have been forced to travel across state lines – assuming they can afford it – to receive an abortion in a state that doesn’t criminalize the procedure. This requirement more harshly impacts women of lower socioeconomic status as they may not have the resources to both travel to a different state and obtain their abortion. Justice Kavanaugh – in the *Dobbs* (2022) decision – asserted that women would still be able to travel across state lines in this capacity (Davis, 2022). That said, the Supreme Court decision still allowed states to control legislation on abortion, but the dissenting opinion – written by Justices Breyer, Kagan, and Sotomayor – stressed the dire impact on women caused by the criminalization of abortion (Davis, 2022).

To further criminalize abortions, some states have enacted mechanisms to allow private citizens to sue those who assisted with the abortion procedures (Davis, 2022). This self-reporting mechanism causes much disparity, especially in marginalized communities of women who face harsher consequences because of these laws. Something that has been considered by several

states is the criminalization of extraterritorial abortions (Hill, 2021). In doing so, states are hindering doctors from performing abortions in other states and throwing up barriers to women obtaining the procedures out of state. While Justice Kavanaugh affirmed the federal “right to travel” – which gives out of state visitors the same legal rights as the state citizens – this legal consideration is a hindrance on many women, as states will continue this effort, even in contrast to the federal law until they are told to stop.

With the passage of abortion bans in eleven states, millions of women no longer have access to abortion procedures within their state borders, without facing prosecution. The Department of Justice intervened in Idaho’s abortion ban and prohibited the state from criminalizing medical providers who perform abortions in emergency situations (Diamondstein, 2022). Medical providers are still considered liable for any abortion procedures they perform within Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming (Dube, 2022). All of these states provide an exception in the case of the life of the woman, and four of these states provide exceptions to pregnancies conceived as a result of rape or incest. Beyond that, the woman's preservation of life or physical health is an exception to these near total bans in six of the eleven states (Dube, 2022). Even then, the exception for the woman’s life or physical health is dependent on her facing irreversible physical impairment or a medical emergency (Dube, 2022).

The Effects of the Median Voter on Constituencies and Candidates

According to the median voter theorem, policy makers must listen to the median voter of their constituency to gain the most support. In particular, within our governmental structure in the United States, a successful government requires that legislators represent the preferences of their constituents (Barber, 2016). This indicates that the median voter theorem should hold true

for policy makers. However, many studies have proved that policy makers tend to lean more extreme than their constituency.

In general, “the more polarized political parties are, the less most of us care about the political process.” (King, 2012) This leads to intensified political competition and debates, which in turn polarizes the constituents, and can sway the median voter. Because of this, legislators take positions that diverge from their district’s median voter. According to Gerber and Lewis’ study, there is a positive, but weak, relationship between legislator behavior and the district median voter preference. Their study found that this relationship yielded a positive R^2 value of 0.37, but once their model accounted for party ideology, the R^2 fit was 0.92 (Gerber & Lewis, 2004). This shows that legislators are more aligned with party ideology than with the median voter of their constituents. The expected median voter has a right wing bias if the right wing is favored to win the given election – same for the left wing (Cukierman & Spiegel, 2003). Because of this trend, legislators pay more attention to their party’s ideological stances, and therefore take more extreme stances than their constituency’s median voter (Barber, 2016).

However, in more homogenous districts, legislators are more constrained by their median voter, since their party is almost guaranteed the win, and they are not competing against the opposing party, but rather an opposing candidate in the same party. District median preferences are a better predictor of legislator’s behavior in homogenous districts (Gerber & Lewis, 2004). In general, heterogeneous districts have more inherent competition and therefore have more extreme policy stances. When considering all districts, the average policy is close to the median voter, but individual policies are more divergent from the median voter overall (Battista, Peress, Richman, 2022). This convergence on the median voter is due to extreme policies on both sides, that even each other out to become a more median policy. According to Barber, for nearly every

Senator, 75% of voters are less extreme than their representative Senator (Barber, 2016), further proving that representatives are more extreme due to a multitude of reasons.

Donors have a large influence and representatives take the stance of those helping to fund their campaigns, as without the funding, they would not be able to run the campaign. For instance, Senators are “ideologically closest to their contributors and furthest from the average voter.” (Barber, 2016) Donors are more extreme than the median voter, but have more influence on the ideology of the candidate, pushing the candidate’s policy and stances to become more extreme, too. Another possibility for the extremism of candidates is their primary voters. When competing in the primary, candidates want to gain the most support of their political party in order to be on the ballot for the general election. However, the constituents that vote in primaries are more ideologically extreme than the general median voter (Barber, 2016). This further contributes to candidates becoming more ideologically extreme because they need the primary nomination before they can be on the general election ballot.

When it comes to the state legislature, representatives are more plentiful than the federal legislature. This can lead to more extreme state legislatures because they have less constituents to cater to, making them more extreme than the overall electorate. In the case of the federal Senator’s median and the Governor, the position of the median voter has a statistically significant effect on the position of their preferences – making them over-responsive to the position of the median voter (Battista, Peress, Richman, 2022). This is because the state Senators and Governor have the entire population of the state to represent. In Congress, votes are more consistent with a member’s basic ideological preferences, making their ideology the best predictor for how the representative will vote (King, 2012). Because of this relationship, it is important to note that political polarization and party competition go hand in hand in politics. This lends to political

candidate's concerns about losing their "base" if they try to appeal too much to the "center" or median voter (Jones, Sirianni, Fu, 2022). Which further contributes to the issue of representation in the case of the median voter.

As political candidates are finding votes, they are more likely to stay within their party, and, within their ideological stances. Candidates will utilize resources to mobilize voters who are most ideologically proximate and support them (Jones, Sirianni, Fu, 2022) – meaning that they are not attracting the median voter. In contrast, the candidate that is not favored by the electorate has a stronger incentive to pursue a strategy of "ambiguity" so voters do not perceive them as "losing" in their stance (Highton, 2004). Vote-optimizing candidates will adjust their position to reflect the ideological distribution of typical voters overall (Jones, Sirianni, Fu, 2022). This overall leads to most candidates obfuscating when their position is in the minority in order to appear to be more centrist or align more with the median voter.

The Role of Partisanship in the Abortion Legislation Making Process

According to the "2023 State & Legislative Partisan Composition" tracker, there are 23 state legislatures controlled by Republicans, 17 state legislatures controlled by Democrats, and ten divided state legislatures. There are 20 states that have abortion bans in place during the first trimester of pregnancy as of 2022 (Deal, 2022). These 20 states have a variety of legislative restrictions including abortion bans, heartbeat laws, eight-week bans, and fifteen-week bans in place. Partisanship comes into play with these restrictions as 17 of the 20 states with abortion restrictions during the first trimester are controlled by Republicans, with the remaining three states having a Republican controlled legislature and Democratic governor (Deal, 2022). Several studies have analyzed and proven that issues like abortion access are partisan and play into the

divisions between Democratic and Republican parties (Bentele, et al, 2018, Kim, et al, 2023, New, 2011, Norrande, et al, 1999, Perreria, et al, 2020).

During the passage of these laws, part of the legislative process includes judicial oversight. State supreme courts in Republican-controlled states considered anti-abortion laws much more than those in Democratic-controlled states. “State courts in Republican-controlled states struck down 16 out of 24 anti-abortion state laws while upholding eight of them,” while Democratic controlled states considered one piece of legislation and struck it down (Kim, et al, 2023). Democratic states see less anti-abortion legislation go up to state courts, indicating that either the legislation restricting abortions is not extreme enough to warrant a court decision, or there are minimal restrictions on abortion legislatively in Democrat-controlled states. Republican states have more legislation go up to state courts, because they pass abortion legislative measures that either the governor will veto, or will be in violation of federal statutes that require the courts to make a decision on the legislation.

Given this, state courts in Republican controlled states see restrictive legislation more often, yet they uphold some legislative measures due to public opinion and the previous “undue burden” standard of *Casey* (1992). While it is true that more legislation is introduced in Republican controlled state legislatures, it is incorrect to assume that there is a linear impact of partisan strength, as the legislation must still meet voting thresholds to pass into law with both branches of the legislature with enough votes to overcome a veto by the governor if it comes to that (Bentele, et al, 2018). Scholars have discovered that “full Republican control increased the year-to-year rate of passage of restrictions,” indicating that stronger majority Republican states will have fewer barriers to passing legislation restricting abortion access (Bentele, et al, 2018). However, the majority of the previously stated 17 states are controlled by a significant majority

of Republicans, and the threshold needed to pass the piece of legislation would not include Democrats, unless the legislature needs to overcome the governor's veto, which then leads to some kind of collaboration between Democrats and Republicans. If this collaboration is not met to overcome the governor's veto, as is the case in most states, then the legislation will be struck down.

Another major component of partisanship within the state legislatures that contributes to the passage of abortion restrictions is the religiosity and religious presence within the state. Evangelical presence within Republican states has been proven to increase the rate of passage of abortion restrictions (Bentele, et al, 2018). Other than Evangelical presence, pro-life and pro-choice advocacy groups lobby for Republicans and Democrats respectively, and therefore, contribute to the stance of the political party on abortion access. In order for the Republican party to gain financial support from the Right to Life organizations and other anti-abortion organizations, the party enacts strict abortion requirements (Norrander, et al, 1999). These large religious groups contribute to the growing divide in the abortion debate as they contribute fiscally and lobby for their respective political party. Overall, this significant influence of religion on the passage of restrictive abortion legislation further contributes to the partisan divide in the issue of abortion access.

In 2007, the Supreme Court decided in a 5-4 decision to uphold the 2003 Federal Partial-Birth Abortion Ban Act in *Gonzales v Carhart* (Jackson, 2011). This decision came from a majority conservative court, as seven of the nine justices were appointed by Republican Presidents. This major finding created a nationwide ban on a specific type of abortion that occurred in approximately 2200 to 5000 abortions in the second trimester annually prior to 2007 (Tanne, 2007). Such a small portion of abortions are defined in the Federal Partial-Birth Abortion

Ban Act; however, many Republicans and pro-life supporters deem this passage a significant success as it inhibits women from obtaining abortions during the third trimester. About 1.3 million abortions occurred annually, indicating that as little as 0.2% to 1% of all abortions were “Partial Birth Abortions” as defined by the federal ban (Tanne, 2007). In 2003 when this ban passed Congress, Republicans – the anti-abortion party – controlled both the House and the Senate. The federal ban was passed with a Republican controlled Congress, and a seven conservative justice majority sitting on the Supreme Court, indicating further that partisanship is critical to the creation of restrictive abortion policies throughout the US.

Direct Democracy in the State Ballot Initiative Process

Direct democracy in the United States is majoritarianism in the voting populous. Laws are adopted by representatives instead of the people because the founders of government didn’t trust the people to rule themselves, thereby creating this indirect system of political representation (Chemerinsky, 2007). There are some skeptics of the ballot initiative process due to the constitutionality of the language on the ballot. There is no step in the process to determine if the initiative is constitutional, because it is trying to alter or contribute to the state’s constitution; also because the initiative doesn’t ask voters about the constitutionality of their initiative (Carter, 2011). However, this process lends to enshrining specific rights and ideas into the constitutions of the states. One such right is abortion. According to the Third Way, a center-left think tank, “ballot measures are the surest way to protect access to abortion and enshrine this right into state constitutions for long-term security.” (Third Way, 2023) In this instance, 16 states allow for citizen initiated ballot measures to amend state constitutions, thereby giving voting power back to the people.

Throughout much of the 1990s and early 2000s, states were attempting to ban “partial birth abortions,” which was done through ballot initiatives written by polarized groups and citizens. Many of these initiatives did not reach the ballot due to their polarizing nature and complexity at times (Carter, 2011). Because of how often ballot initiatives are used, Carter refers to ballot initiatives as the fourth branch of government affecting key issues like abortion law throughout the United States (Carter, 2011). However, this process of direct democracy lacks the deliberations and amendments process that contributes to “good policy making” and less controversial measures (Carter, 2011). This form of direct democracy can lead to more inflammatory rhetoric and contested debates, while not allowing for nuances in the legislation – which can be found in discussions.

Given that over 40 states allow the citizens to vote on ballot initiatives during general elections, there is a formalized process in each state for putting an initiative on the ballot. In most cases, the state requires a certain number or percentage of voter signatures to put the initiative on the ballot. These ballot qualifications vary state to state with a low required percentage of voter signatures being 2% in North Dakota, and a high required percentage of voter signatures being 15% in Wyoming (Tolbert, Lowenstein, Donovan, 1998; Banducci, 1998). For example, in California, it takes millions of dollars to get an initiative on the ballot due to the manpower needed to gather enough signatures (Chemerinsky, 2007). This expensive and resource intensive process makes it difficult to aggregate enough signatures to put the initiative on the ballot.

Every state counts the percentage of voter signatures differently – for some it’s a percentage of those who voted in the last gubernatorial election, or it’s a percentage of the voting population (Tolbert, Lowenstein, Donovan, 1998; Milita, 2015). Some states are more complex in how they calculate the number of signatures required to get the proposition on the ballot. In

particular, there can be geographic constraints on how many signatures must be from different districts. Majority of states don't have this geographic requirement, lending to the theory that there is a possibility of regional population imbalances, which creates minority voter suppression (Tolbert and Smith, 2006).

There are other legal requirements to getting an initiative on the ballot including the single subject rule. All ballot propositions may address one subject at a time – if the state court decides a proposition covers more than one subject, it can be stricken down and removed from circulation (Cooter & Gilbert, 2010; Tolbert, Lowenstein, Donovan, 1998). Another requirement is the simple description of the initiative that goes on the ballot (Tolbert, Lowenstein, Donovan, 1998). This short summary and title may influence the voter based on language or other implications provided in the summary. The short summary also increases transparency into the purpose of the proposition by telling the voter, in understandable terms, what they are voting for or against (Cooter & Gilbert, 2010).

Each state's various restrictions on proposing a ballot initiative contribute to how the proponents of the proposition examine their wording and complexity of the initiative. In her 2015 article, Milita says, "Restrictiveness in the laws governing initiative ballot access has an indirect positive effect on initiative passage; greater restrictiveness makes it so that the proposals that get on the ballot tend to be less complex, which in turn, makes them more likely to pass." (Milita, 2015) This indicates the simplicity that most ballot initiatives have, given how restricted they are in subject matter by the state judicial and legislative systems. The length of the initiative also impacts the likelihood of passage. Longer initiatives give voters more opportunity to disagree with some part of it, and therefore are less likely to pass than shorter initiatives (Milita, 2015). Because of all these nuances, polarizing issues reach the initiative stage – including

abortion rights. The initiative process focuses on the median voter, given the required amount of signatures and approvals. The consequences of passing a bill that the median voter doesn't support is the voting population creating various ballot initiatives.

Given the median voter's major role in passing a ballot initiative into law, there are multiple perspectives on each polarizing topic. Sometimes the legislature or competing interest groups will put opposing or alternate initiatives on the ballot to confuse voters and have their own interests represented; this opposition arises from structural, political, and cultural factors (Banducci, 1998). In another attempt to block a ballot initiative, legislators or conflicting interest groups will utilize negative spending against the purpose of the initiative. This "negative spending" is more prevalent and effective than the spending of the proponents of the initiative (Banducci, 1998). Negative spending refers to spending that contradicts to other groups and their goals, sometimes creating inflammatory campaigns and rhetoric to alienate voters from the opposition.

Because ballot initiatives are a long and arduous process, those with significant resources have the ability to get their initiatives on the ballot for the election. Special interest groups and large citizen run organizations have the resources and ability to go through the initiative process. Legislators leverage a variety of interest groups' support while campaigning and once elected the interest groups focus is often no longer recognized (Banducci, 1998). Stronger interest groups want to utilize the initiative process because it is the best way to push policy and agenda setting to legislators (Gerber, 1998). Also, weaker political parties will turn to this initiative process because it is the best way to have their interests enshrined into law (Banducci, 1998). Those with the most resources – money, manpower, influence – are the ones able to pass ballot initiatives onto the ballot in the next election cycle.

Hypotheses

Following are my hypotheses on why some states have more protective versus restrictive legislation regulating abortion. These hypotheses shape the data collection, results, and discussion to show how the amalgamation of the research presents in the abortion debate on a state by state level.

Hypothesis #1: The state legislature will introduce legislation that coincides with the overall state median voter. States that have a Republican median voter will introduce more restrictive legislation; while states with a Democratic median voter will introduce more protective legislation.

Median voters within the state represent where the average voter lies on the spectrum of liberal to conservative. There can be several sub-categories of median voters within each state based on legislative districting. Beyond that, there is an ideal median voter that is not swayed by gerrymandering of the various districts. The separate districts in each state are subject to gerrymandering whereby districts are drawn to best suit the incumbent's political strategy, and therefore change the median voter's pattern from liberal or conservative. A state with a large number of districts and gerrymandering may be less representative of the actual state median voter in their state legislature because of the magnitude of districts and gerrymandering that the party in control does.

Gerrymandering and its subsequent effects on the representation of the median voter in the legislature can result in an inaccurate portrayal of the median voter's stance on abortion. Liberal mindsets are perceived to be more protective of abortion rights, while conservative mindsets are perceived to be more restrictive. The assumption is that the effects of the median voter are direct, in that a state with a conservative (Republican) median voter will pass more restrictive abortion legislation. Meanwhile, states with more liberal (Democrat) median voters

will pass legislation that is more protective of abortion. The median voter is the controlling political party within the state – Democrat, Republican, or divided. With the effects of gerrymandering, the median voter may not always represent the true mindset of the state, however it can still be a representation of what legislation the state is able to pass through the legislature and governor.

Hypothesis #2: The partisanship will have an effect on the introduction of legislation. Republican legislators will introduce more restrictive legislation, while Democratic legislators will introduce more protective legislation.

The makeup of the state legislature directly affects the introduction of abortion legislation in that state because of the relationship between abortion rights and partisanship. A Republican sponsor will have more restrictive legislation, while a Democratic sponsor will have more protective legislation. Every state has three branches of government, except for Nebraska, which has two. These branches of government are the House of Representatives – or Assembly – the Senate, and the Governor. The Senate and House are comprised of representatives from several districts drawn throughout the given state. They are elected by their district’s population. The governor on the other hand, is elected by all the population in the state, not on a district by district basis. This mixture of democracy theoretically leads to a well-balanced governing body. However, it also means that both Democrats and Republicans can control the state together, with one party having an edge with control of two branches of government. Gerrymandering also plays a significant role in determining control of the state House and Senate as they are elected by their district, which has its lines drawn every ten years by the controlling party. Gerrymandering can therefore play a role in who is elected, and which party takes control of a given legislative branch of government.

Overall, this paper’s assumption is that legislatures comprised of majority conservatives

or Republicans are more likely to pass stricter abortion legislation, and legislatures made up of majority liberals and Democrats are more likely to pass legislation protecting abortion rights. States with more moderate or mixed legislatures are more likely to pass abortion legislation that represents the state's voting population, as the legislation must pass through all three branches of government. States with both parties in control of different branches of government will have more moderate legislation passed because it must pass through both parties in order to be signed into law. The legislative sponsor's party affiliation is also determinant on how restrictive the legislation will be towards abortion rights. And so it follows that a Republican sponsor will have more restrictive legislation, while a Democratic sponsor will have more protective legislation.

Hypothesis #3: Though ballot initiatives are voted on by the entire state's population, direct democracy will lead to less restrictive legislation introduced in the state.

Direct democracy occurs with the passage of ballot initiatives and referendums that the legislature puts on the ballot. The population of the state votes directly on the legislation that will be enacted post-election. When direct democracy is employed, the composition of the state legislature has no impact on the passage of ballot initiatives. The passage of this type of legislation is more reliant on the makeup of the state as a whole, whether it has more liberal or conservative representation. As a whole, our nation has shifted to having a more liberal mindset when it comes to abortion rights. According to Gallup, 34% of Americans believe abortion should be legal under any circumstances, and 51% believe abortion should be legal in certain circumstances (Inc, 2023). This lends to the assumption that the majority of Americans believe abortions should be legal in some way.

If this assumption is true, the effects of direct democracy will have an impact on the passage of **less** restrictive abortion legislation through ballot initiatives, assuming the legislature

follows through and enacts the legislation, based on the shift in American views on abortion to a more positive and protective stance. It also follows that no matter whether liberal minded groups or conservative minded groups introduce the bill, it will overall be more protective of abortion rights since it relies on the voting population's opinions.

Methodology

Data Collection

This paper began data analysis by searching each of the 50 states' legislation websites. The search was then limited to the most recent legislative term in the 2023 legislative year to capture the legislation that passed post the *Dobbs* (2022) decision, which is the focus of this paper. If the state's legislative website was not accessible, data collection utilized the LegiScan website to find more legislation – with the same search criteria – yielding a robust data collection. This focuses the data collection to legislation that was introduced in 2023, as that is the period in question. Specific terms were utilized to search for legislation related to reproductive rights in each individual state. The search terms used for each state are listed below:

- “Abortion”
- “Reproductive rights”
- “Fetus”
- “Unborn child”
- “Pregnancy”

These terms enabled consistency in every state and revealed the legislation that most related to protecting and restricting abortions in each state. These terms were chosen because they are most related to the debate on abortion rights throughout the country. These terms are the most

common among protective or restrictive abortion legislation, because they refer to abortion and what is aborted in the process of the abortion procedure. This provided the most relevant legislation to sort through and yielded the highest number of pieces of legislation in the bill process in each state, and therefore offered the most data to analyze. Overall, a total of 286 pieces of legislation from all fifty states were collected, with as many as 16 bills and as few as one bill in each state.

After obtaining this significant amount of legislation and bills, each bill or law was analyzed to determine if it pertained to rights, restrictions, and protections surrounding abortion, or if it yielded legislation that was not applicable and did not discuss abortion or reproductive rights at all. The legislation was read; its purpose and its intended effect on the state's population was noted. These notes consisted of quotes from the legislation, the intended purpose of the legislation, and who the legislation was targeting with its restriction or protection. The direct language was included, like "fundamental right", "right to privacy", "born alive infant", and many other terms that were unique to individual pieces of legislation. The variety in legislation led to several purposes in most pieces of legislation, further contributing to the diversity in the data collected. The sponsor of the legislation and the district and party they represented were also noted. This information determines what types of legislation each party is passing and will contribute to the analysis on the effect of legislative makeup on the passage of restrictive versus protective legislation on abortion rights and procedures in each state.

Other than recording the purpose of the legislation and the sponsor and details about them, analysis also included the status of the bill or law. Its stage in the legislative process, including whether it is stuck in committee, in the process of voting, voted into law by the legislature, and signed by the governor were noted. This distinction of what stage the legislation

is in will show how far along states are, and, in turn, how likely the legislation is to pass through the state's legislature. Legislation was also collected that died in committees, failed to pass during the vote, or was vetoed by the governor. This gives a more holistic picture of what the legislative landscape is in each state because it indicates what level of restriction or protection that each state's legislature is willing to accept, and how far is too far for these restrictions or protections. Data was collected on the ending vote of legislation that passed through the legislature and was signed into law by the governor, or on the legislation that didn't pass the vote or was vetoed by the governor. In doing so, this will reveal the impact of the party affiliation of each state's legislative makeup on the passage of the legislation because the voting numbers will relate to the legislative makeup in each branch of the state's legislature. This will help when testing the hypothesis of whether legislative makeup and party affiliation has an effect on the level of restrictiveness of the legislation on abortion rights in the state.

After collecting data on the various pieces of legislation that is passed by the legislatures in each state, Ballotpedia.com was utilized to find various ballot initiatives on abortion rights in each state. The search terms are:

- "Abortion"
- "Reproductive rights"

Fewer terms were chosen because ballot initiatives are more direct, easier for the general populace to digest, and use less legal jargon and terminology. Because of this, results for ballot initiatives in some, but not all states, focused on those that gave the legislation making power to the voters of that state. Overall, 21 ballot initiatives were collected with as few as zero and as many as two ballot initiatives in each of the fifty states. While this yielded less results than legislation searching did, this will support the hypothesis of whether giving the policy making

decisions to the voters of the state will affect the restrictiveness of the legislation that passes into law in that state. Once these ballot initiatives were searched, similar notes were taken on the content of the legislation, including its purpose, whether it was protecting or restricting abortion in the state, and how it was affecting the ability of the woman to obtain an abortion. Wherever possible, the group or party putting forth the ballot initiatives were noted. The language of the summary that is provided on the actual ballot to determine how the people voting would view and interpret the ballot initiative was noted without doing further research on it.

After gathering all of this information, an analysis was undertaken to determine how restrictive or protective each piece of legislation was in comparison to others. The legislation was then ranked on a scale of one to five – with one being most protective and five being most restrictive, and three as neutral or combination of protective and restrictive. An example of a ranking of five would be a bill that restricts the ability to obtain an abortion in the first eight weeks, with or without exceptions to protect the woman’s life, health, or in the case of rape, or incest. In contrast, an example of a one would be ability to obtain an abortion up to 39 weeks with exceptions for rape, incest, or saving the woman’s life or health. An example of a ranking of three would be a restriction on gestational age to second trimester, but allows for other medical practitioners such as a registered nurse or physician’s assistant to administer the abortion – this both expands and restricts the ability to obtain an abortion.

Data Visualization

A table was created with all the data from the various pieces of legislation and ballot initiatives, as seen in the “**Results**” section. This table shows the comparison, state by state, of the restrictiveness and the party that proposed the legislation. This visual comparison makes it

easier to decipher the synthesized data in a clear and visual way, creating an understandable data set. This will allow the results to be clear and concise and further answer the research question about the restrictiveness and criminalization of abortions in various states, while also confirming or countering my hypotheses.

When building the table for data visualization and synthesis specific columns were created for comparison. The categories for these columns are what party the sponsor of the bill is affiliated with (Democrat, Republican, etc.), and whether the overall bill is intended to protect or restrict access to the woman's right to obtain an abortion. Examples of this could be if the bill makes Medicaid funding and federal funds available for abortion services and procedures, this would be protective and expand access to abortion. If the bill restricts access to Medicaid or federal funding for abortions, that would be restrictive to obtaining access to an abortion. Another more obvious piece of legislation that is common is in regard to the limits on abortions dependent on the gestational age of the fetus, with earlier limits – like first trimester – being more restrictive and later limits – like third trimester – being more protective and expansive. These categories are important in the visualization of the data because they contribute to the overall picture framing abortion legislation in all the states throughout the USA, and are therefore part of the data visualization table.

Results

	Total	Democrat	Republican	Nonpartisan	Bipartisan	Progressive	Restrict	Protect
Alabama	5	2	3	0	0	0	3	2
Alaska	2	0	2	0	0	0	2	0
Arizona	4	1	2	0	0	0	2	2
Arkansas	2	0	1	0	0	0	1	1
California	10	10	0	0	0	0	0	10
Colorado	4	2	0	0	0	0	1	3
Connecticut	8	7	1	0	0	0	1	7
Delaware	1	1	0	0	0	0	0	1
Florida	4	0	2	0	0	0	2	2
Georgia	6	4	2	0	0	0	3	3
Hawaii	7	3	4	0	0	0	4	3
Idaho	4	0	4	0	0	0	4	0
Illinois	2	1	1	0	0	0	1	1
Indiana	2	1	1	0	0	0	2	0
Iowa	2	0	2	0	0	0	2	0
Kansas	5	0	5	0	0	0	5	0
Kentucky	1	0	1	0	0	0	1	0
Louisiana	7	5	2	0	0	0	2	5
Maine	11	5	6	0	0	0	5	6
Maryland	6	1	4	0	0	0	2	4
Massachusetts	5	4	1	0	0	0	3	2
Michigan	16	4	12	0	0	0	10	6
Minnesota	10	4	6	0	0	0	8	2
Mississippi	3	3	0	0	0	0	1	2
Missouri	14	6	6	0	0	0	11	3
Montana	14	4	9	0	0	0	10	4
Nebraska	5	0	2	1	0	0	3	2
Nevada	5	4	0	0	0	0	0	5
New Hampshire	6	3	3	0	0	0	3	3
New Jersey	9	0	9	0	0	0	8	1
New Mexico	7	1	6	0	0	0	6	1
New York	13	6	6	0	0	0	5	8
North Carolina	7	3	4	0	0	0	3	4
North Dakota	3	0	3	0	0	0	2	1
Ohio	2	0	1	0	0	0	1	1
Oklahoma	4	1	3	0	0	0	3	1
Oregon	8	0	8	0	0	0	7	1
Pennsylvania	10	6	4	0	0	0	7	3
Rhode Island	4	1	0	0	3	0	3	1
South Carolina	15	8	7	0	0	0	10	5
South Dakota	3	0	2	0	0	0	1	2
Tennessee	8	4	4	0	0	0	3	5
Texas	12	8	4	0	0	0	5	7
Utah	4	1	3	0	0	0	4	0
Vermont	4	1	2	0	0	1	0	4
Virginia	1	1	0	0	0	0	0	1
Washington	8	2	5	0	0	0	3	5
West Virginia	8	0	7	0	1	0	6	2
Wisconsin	6	1	5	0	0	0	3	3
Wyoming	3	1	2	0	0	0	3	0

Figure 2

Break down of each state's total legislation in the bill or initiative process. Further categorized by party affiliation of the legislative sponsor of the bill from within the state. Lastly, the data is broken down by the language of the legislation in its intent to restrict or protect the right to obtain an abortion within the state.

This chart provides insight into what the abortion legislation landscape looks like throughout the US in the year 2023. This data was collected from the span of October 2023 to January 2024, encompassing the most recent legislative session, and is the most up to date information on abortion legislation in each state. Figure 2 captures the overall synthesis of the data collected, showcasing what categories each state's abortion legislation falls into. From this graphic, it is easy to see how many pieces of legislation each state has in the bill process in 2023, what party the legislative sponsor identifies with, and how many of those legislation restricts versus protects abortion rights in the state. For example, Maine has eleven pieces of legislation in the policy process, with five introduced by Democrats, six introduced by Republicans; and five legislation that restricts the right to abortion, with six protecting it. Something to note about this table is that it includes five different political party identifications. In the case of Nebraska, it is a unicameral state legislature, meaning there is more opportunity for nonpartisan legislation as they have members of multiple parties represented. Other states – like Rhode Island – have bipartisan legislation, allowing inter-party cooperation within the state legislature.

Within this data, there were 21 bill initiatives started in 16 states for either the 2023 or the 2024 ballots in the November elections. These bill initiatives are noted in a later graphic depicting how restrictive they proved to be. In the legislative process, the bill is introduced by a member of a specific party. However, in the bill process, the initiative is introduced by a group, organization, or individual in the state with an interest in the passage of the bill. These sponsors can be affiliated with a political party or not, but they all have some stake in the passage of the initiative.

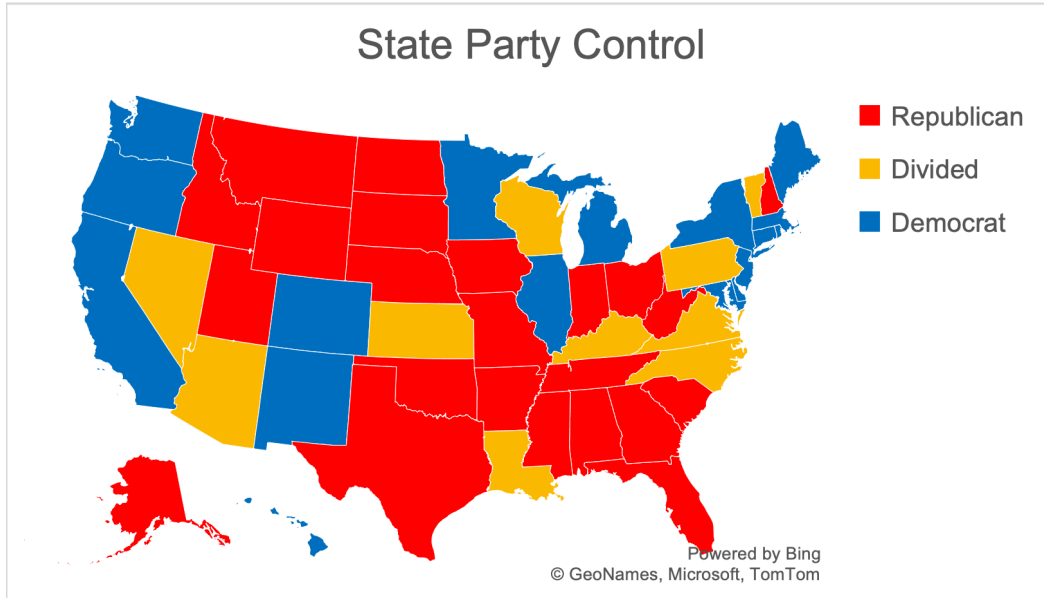


Figure 3

Overall look at which political party controls each state’s government. Democrat (blue) indicates that both the legislature and governor’s office are Democratic; Republican (red) indicates that both the legislature and the governor’s office are Republican; and Divided (yellow) indicates that two different parties control the legislature compared to the governor’s office.

Within Figure 3, the outline of partisanship for each state is showcased. In states that are blue, the Democratic party has majority control over the state legislature, as well as control of the governor’s office. The same is true of red states for the Republican party. In yellow states, the majority party of the state legislature and party control of the governor’s office are different. This map is informational to show partisanship of the different states, allowing the second hypothesis about the state partisan makeup to be further analyzed in the “**Discussion**” section of this paper.

		Legislative Sponsor Party				
		Democrat	Republican	Nonpartisan	Bipartisan	Progressive
State Party Control	Democrat	52	69	0	3	0
	Republican	46	73	1	1	0
	Divided	22	25	0	0	1

Figure 4

Insight into which political parties are passing legislation in states with Democratic, Republican, or Divided governments. States with Democratic control are in blue on the left; party affiliation of the sponsor of the piece of legislation is recognized on the top row.

This table further breaks down and analyzes how many pieces of legislation were introduced by each party within different state’s governments to show how many pieces of legislation each party introduced within different politically affiliated states. For example, the intersection of “Democrat” and “Democrat” of 52 indicates that a total of 52 pieces of legislation were introduced by Democratic representatives in a state that is controlled by the Democratic party. Another example would be the intersection of “Bipartisan” and “Republican” of one, indicating that one piece of legislation was introduced by a bipartisan sponsor in a Republican controlled state government. Figure 4 demonstrates the relationship between state political control and legislative sponsorship. Further in the “**Discussion**” section, this paper will analyze how this relationship perpetuates throughout the data set.

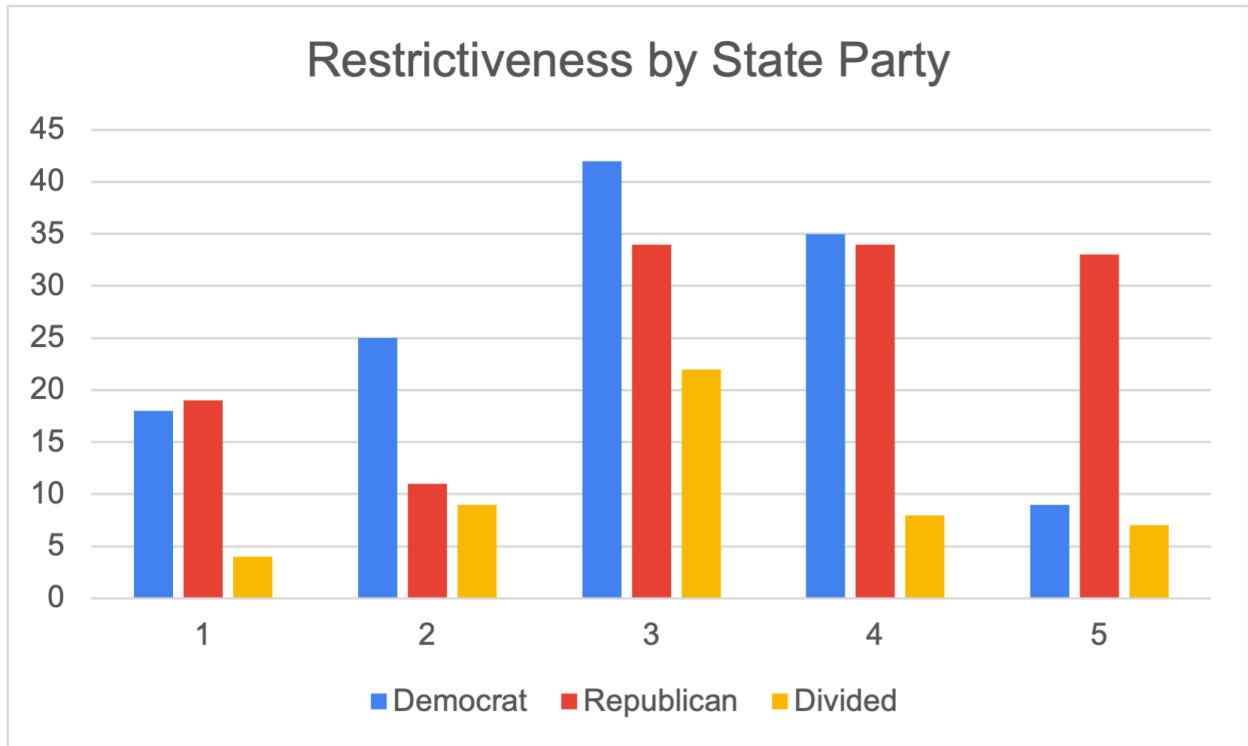


Figure 5

Analysis of how many bills are in each level of restrictiveness, with a score of one being the most protective, and a score of five being the most restrictive. It is further categorized into the party control of the state, with Democrat, Republican, and divided governments in consideration.

This graphic shows the total number of bills in each level of restrictiveness, further broken down by which party controls the state government. For example, state governments controlled by Republicans are skewed towards the left, indicating they have a higher restrictiveness score on average. This means that Republican controlled governments tend to put out more restrictive legislation, on average. In contrast, Democratic state governments have a shape similar to a bell curve because they create legislation that is ranked between a two and a four on the restrictiveness scale. State governments that are divided are also shaped like a bell curve, with most legislation being ranked a three overall, indicating that it is between protective and restrictive, without leaning too much one way or another.

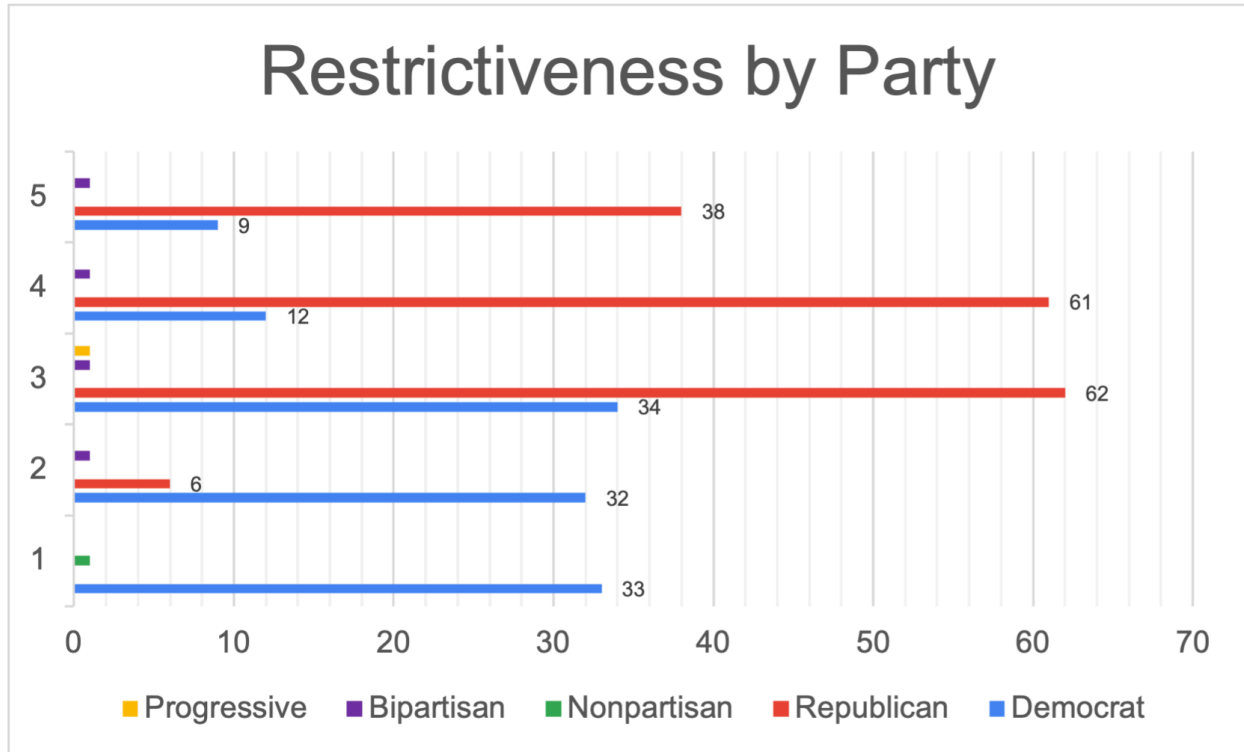


Figure 6

Break down of the legislative sponsor's level of restrictiveness. The legend on the bottom defines which colors represent each legislative sponsorship political party affiliation. The graph indicates the total count of bills in each level of restrictiveness, with one being the most protective, and five being the most restrictive. Three represents the legislation is neither majority restrictive, nor majority protective.

Figure 6 depicts the range of restrictiveness of the legislation that different political parties introduced throughout the US. In this graph, the color code is on the bottom legend, depicting which political party the legislative sponsor represents. Contrary to Figure 5, this graphic is meant to show how the sponsorship party compares to the level of restrictiveness of the legislation that was introduced. In this case, Republican introduced legislation has a strong left skew to be more restrictive with 38 pieces of legislation with a score of five. On the other hand, Democrat introduced legislation has a less strong skew to the right with a lower level of restrictiveness of one, two, or three. This graphic defines which party introduces more restrictive legislation overall, shown in the skews of the graphics. It is also important to note that Nonpartisan, Bipartisan, and Progressive sponsors have all introduced varying degrees of restrictive legislation too.

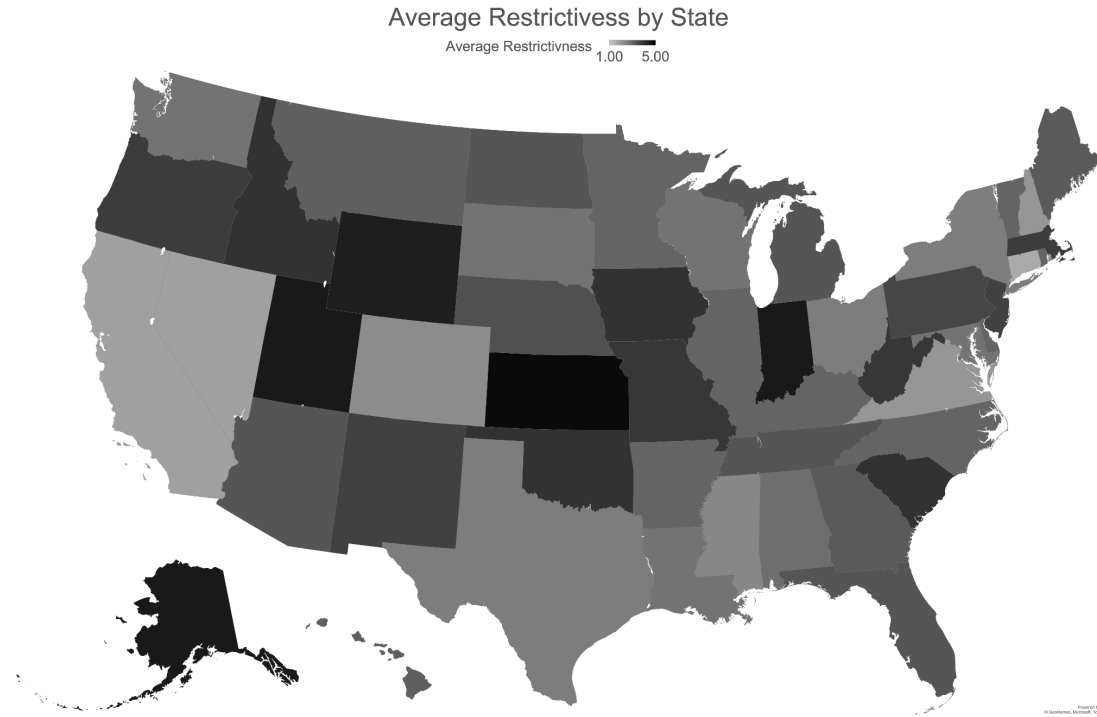


Figure 7

Image depicting the varying average restrictiveness scores for each state. The average restrictiveness for each state was calculated and placed on the same one to five scale. The color scale is at the top of the graphic with a lower restrictiveness score being a lighter color shade of gray, and the darker black being a higher restrictiveness score of five.

This figure can be analyzed together with Figure 3 to know what the average restrictiveness of abortion legislation is for each state, compared to the state political party control. This map depicts that states that are lightly colored tend to be more protective of abortion rights within their introduced legislation – California, for example. In contrast, states like Indiana have a high average restrictiveness of closer to five, meaning that the most restrictive abortion legislation was introduced within the state in 2023. By comparing and contrasting this map with Figure 3, one can analyze how the median voter affects the level of restrictiveness in abortion legislation introduced by the state. In the “Discussion” section, this will be further analyzed, coming to a conclusion about an earlier hypothesis that states that have a liberal median voter – driven by the state party control – will introduce more protective

legislation. States with a more conservative median voter will introduce more restrictive abortion legislation.

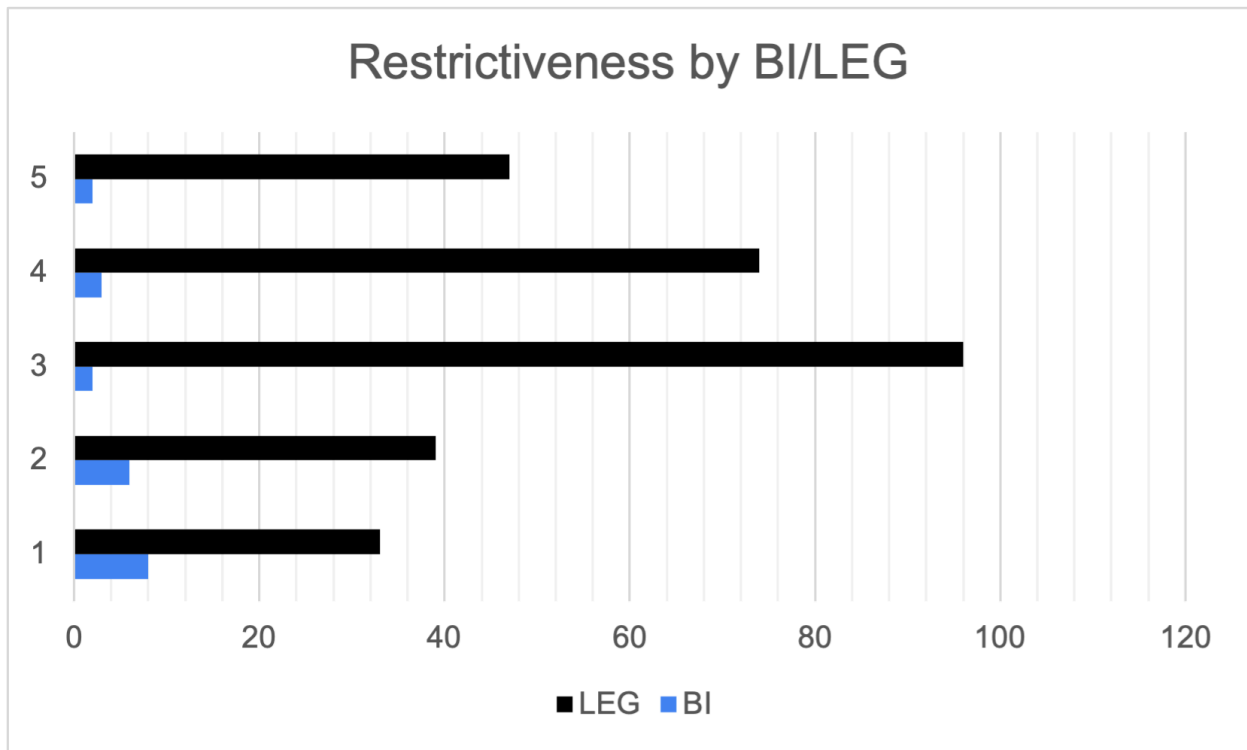


Figure 8

A brief analysis of how restrictive legislation introduced in the state legislature versus bill initiatives are. There is a clear right skew for bill initiatives, and left skew for legislation. The code “LEG” encompasses legislation introduced by the state legislature. The code “BI” encompasses bill initiatives that are introduced by various groups, organizations, or individuals within the state.

Figure 8 shows how restrictive legislature-introduced legislation compares to community-introduced bill initiatives. In this case, bill initiatives tend to skew towards more protective with a slight right skew towards a score of one. On the other hand, legislation in the bill process tends to skew towards the left with a score of three, four, or five on average. This contributes to the earlier hypothesis that bill initiatives introduced by the community are protective of abortion rights overall. This will be discussed further in the “**Discussion**” section.

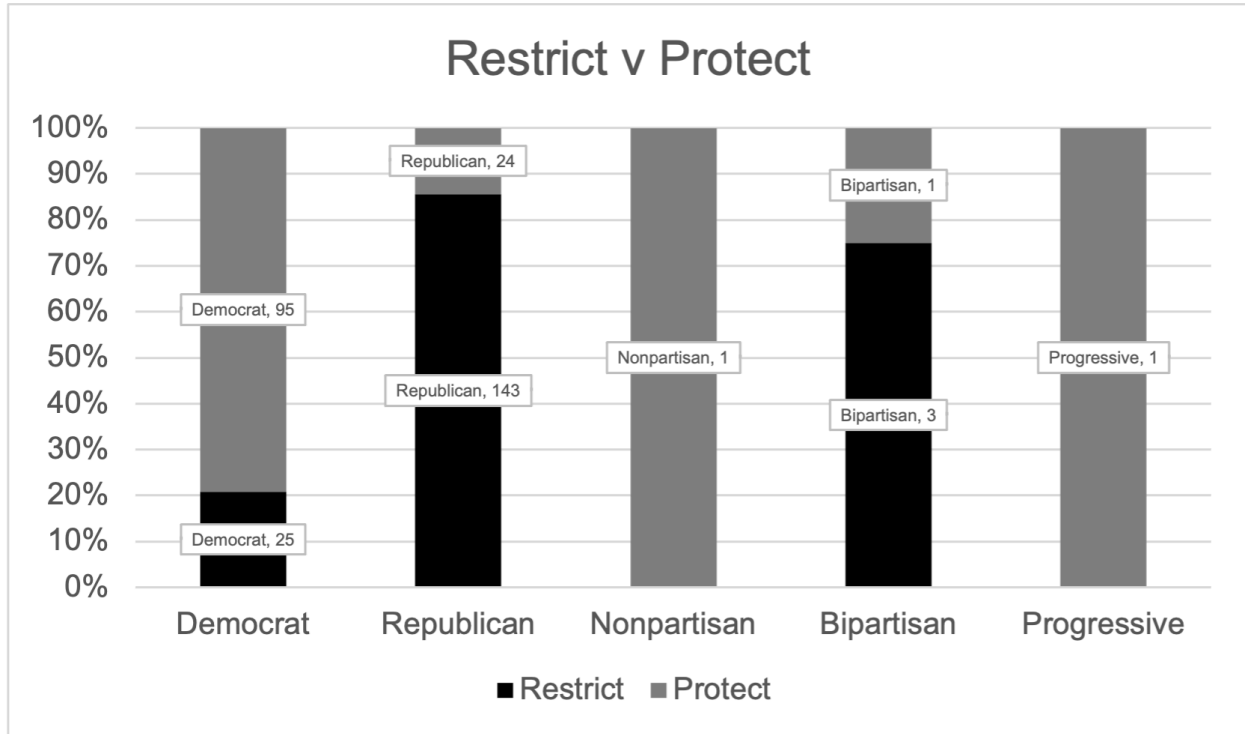


Figure 9

Depiction of the comparison of the total number of legislation introduced by each political party and how many are protective versus restrictive. In this graphic, light gray means the legislation protects abortion rights, and black means it restricts abortion rights. This graphic is broken up by percentage to show a direct comparison of the makeup of legislation introduced by each political party.

This graphic shows how each political party’s legislation compares to other political parties in restricting versus protecting abortion rights. Approximately 20% of legislation, or 25 bills, introduced by Democrats are restrictive, while about 80% or 95 bills, introduced are protective. This indicates that Democrats introduced more protective legislation than restrictive throughout the year 2023. In contrast, Republicans introduced 143 bills, or about 85% restrictive legislation, and 24, or about 15%, protective legislation. Meaning that Republicans introduced a significant majority of restrictive legislation. This graphic supports the hypothesis that relates to the influence of partisanship on the introduction of protective versus restrictive legislation.

Discussion

Following is a review of the hypotheses based on three main ideas drawn from the data analysis. The first – the median voter, as shown by the party makeup of the state legislature and governor contributes to how restrictive or protective the legislation is, with a more liberal median voter (Democratic controlled states) introducing more protective legislation, and conservative median voters (Republican controlled states) introducing more restrictive legislation. The second – partisanship plays an important role in whether the legislation protects or restricts abortion rights, with Democrats becoming more protective, and Republicans more restrictive. The third – there would be a difference in how protective or restrictive legislation is regarding abortion rights if it was introduced by the public versus policy makers, with public introduced bill initiatives being more protective overall.

Throughout the data collection, several trends emerged through analysis of the 310 pieces of legislation or bill initiatives. As shown in Figure 2, a comprehensive analysis of each state's legislation shows that certain states had varying levels of legislation introduced by each party. In most cases, the relationship between the total number of bills that were protective and restrictive related to which party introduced the legislation. As shown in Figure 9, by a significant majority, Democrats introduced protective legislation, Republicans introduced restrictive legislation. This is further supported by the breakdown of each state that Figure 2 provides. In states like Alabama, there were three pieces of legislation introduced by Republicans, and two by Democrats. Complementing that, there were three pieces of legislation that were restrictive, and two that were protective.

Beyond using these two graphics, when analyzing the data set, it became clear that Democratic-introduced legislation varied in restrictiveness, hovering around scores of one, two,

or three. Meanwhile, Republican-introduced legislation scored a three, four, or five. This was true regardless of which state introduced the bills. As shown in Figure 3, the state party control varied, but when compared to what the states passed, the state partisanship didn't seem to matter when introducing abortion legislation. This indicates that the sponsor's political affiliation was important, regardless of the state they were located in.

When comparing state partisanship to abortion legislation that was introduced, there is somewhat of a pattern. In defining the median voter, previous literature has many definitions of who represents the median voter and how to come about this conclusion. Since this work doesn't focus on how to calculate the median voter, it is defined by the partisan makeup of the state – whether the governor's and legislature party affiliation are the same or different. In this definition, the results can be seen in Figure 3. To compare how the median voter matches with levels of restrictiveness in the legislation introduced within the state, compare Figure 3 and Figure 7. Figure 3 is the state's partisan makeup – Democrat, Republican, or divided. Meanwhile, Figure 7 depicts each state's average restrictiveness score. In overlaying these two figures, it is clear the most restrictive eleven states are Republican, with the exception of Kansas – which has a Republican legislature and Democratic governor.

The Republican median voter has a restrictiveness score of at least three or higher in 17 states out of 23 Republican controlled states. On the other hand, of Democrat controlled states, with a more liberal median voter, nine of 16 states had a restrictiveness score of three or lower. This data suggests that there is somewhat of a trend for conservative median voters (Republican controlled states) to tend to have more restrictive legislation, and liberal median voters (Democratic controlled states) to tend to have more protective legislation. However, with the dispersing of states throughout the restrictiveness score as shown in comparing Figures 3 and 7,

there is no clear answer for whether the median voter is a good measure of which states will introduce more restrictive legislation. Even though this trend exists, it cannot predict the most restrictive state, Kansas – with an average score of 4.80 – as having the highest score because it doesn't have a defined median voter since it is a divided government.

In continuation with this argument, Figure 1 shows the restrictiveness of each state's current laws surrounding abortion – meaning signed by the governor or passed on the ballot. In comparing Figure 1 with Figure 7, it is interesting to see that there is no real pattern between the restrictiveness of legislation that the state introduced in 2023 and the overall restrictiveness of the law in the state. When comparing Figure 1 with Figure 3, there seems to be more correlation between Republican states passing more restrictive legislation and Democratic states passing more protective legislation over the past 50 years. However, in terms of this paper, the focus is more on the legislation introduced in 2023 rather than over the past 50 years. That said, there seems to be a slight correlation between the median voter of the state (as shown in Figure 3), and the legislation that passed in 2023. For instance, Texas passed legislation in 2023 that was ranked a five in restrictiveness, indicating restriction of abortion rights, and has a Republican median voter. Further, Washington passed legislation ranked a two in restrictiveness, indicating protection of abortion rights, and has a Democratic median voter. This is not true of every state, with some having divided governments that are both restrictive and protective, there is no definitive conclusion drawn about the restrictiveness of abortion legislation from comparing the state laws (Figure 1) with the median voter (Figure 3) and the average restrictiveness of introduced legislation (Figure 7).

Another indication that the median voter does not influence whether the state is going to introduce more protective versus restrictive legislation is Figure 5. This figure depicts each

state's partisan makeup in contrast to their restrictiveness of legislation introduced by counting the number of bills in each restrictiveness score. With this graphic, it is clear that there is somewhat of a pattern, but doesn't provide any evidence as to whether the median voter can predict whether the legislation introduced will be restrictive or protective. The noticeable pattern emerges as a bell shaped curve for both divided governments and Democratic governments. However, there is a right skew for the Republican governments suggesting that a Republican median voter has restrictive legislation, but there is not a strong enough skew to confirm the hypothesis of a conservative median voter leading to restrictive legislation introduced.

In analyzing Figure 4, there is no correlation between what party controls the state legislature and the legislative sponsor's party affiliation for introducing legislation. In other words, a Democratic controlled state does not indicate that there will be more Democratic introduced legislation. However, for Republican controlled states, there is more Republican introduced legislation than Democratic introduced legislation. There is no indication that the median voter of the state leads to more conservative (Republican) or liberal (Democrat) legislation as evidenced by an even split of Democratic and Republican introduced legislation in a divided state government. The conclusion is that the median voter of the state's government does not provide strong evidence that the same political affiliation will introduce more legislation.

To further the argument for partisanship, in looking at Figure 6, it demonstrates that there is a relationship between the legislative sponsor's political affiliation and the restrictiveness of the legislation that is introduced. There is a significant left skew for Republican introduced legislation in the restrictiveness level with the majority of legislation sitting at a score of three, four, or five. All in all, 99 of 167 Republican-introduced legislation were restrictive with a score

of four or five. In comparison, Democratic introduced legislation also had a slight right skew in regards to restrictiveness with the majority of the legislation sitting at a score of one, two, or three. Overall, 65 of 120 Democrat-introduced legislation had a restrictiveness score of one or two, indicating that it was protective.

Something worth noting in Figure 6 is the extremes of each political parties' legislation. With Republican introduced legislation, there are 38 pieces of legislation ranked the most restrictive at a five; but, no legislation ranked the most protective at a one. In contrast, Democrat-introduced legislation had 33 pieces of legislation ranked the most protective at a score of one; and nine pieces of legislation ranked the most restrictive at a score of five. This brings on an important observation from the data collected: Republicans are more predictable than Democrats in the restrictiveness of the legislation that they introduce. A piece of legislation introduced by a Republican has at least a three in the restrictiveness ranking; meanwhile, a piece of legislation introduced by a Democrat is less than a three in rank, but could be up to a five in rank.

Furthering this argument that partisanship seems to play a role in the restrictiveness score of the legislation introduced, Figure 9 provides a very easy to understand visual that further supports this hypothesis. In Figure 9, the split between "Protect" and "Restrict" is very predictable in that Democrats have 80% of the legislation introduced as "Protect"; and Republicans have 85% of the legislation introduced as "Restrict". This contributes to the overall hypothesis that partisanship of the legislative sponsor is a predictor of whether the legislation will protect or restrict abortion rights. Something to note is that Nonpartisan and Progressive legislation seems to be protective, but there is not enough data to support this claim as there is one piece of legislation introduced by each party.

To analyze the third hypothesis about the effects of direct democracy on the restrictiveness of legislation, Figure 8 provides some insights. Within this graph, it is clear there is some trend within the data set of 289 pieces of legislation and 21 bill initiatives. The hypothesis that bill initiatives and direct democracy lead to more protective legislation seems to hold true given this dataset. While the data encompasses one calendar year of legislation, there is a significant amount of legislation to analyze, but not a significant enough amount of bill initiatives to come to a definitive conclusion. The data trends suggest that bill initiatives are more protective, with a skew of the data towards protective abortion rights. Contrary to that, the data for legislation suggests that legislative sponsors will introduce more restrictive legislation, as evidenced by a bell curve, with more weight on the restrictive scores. Because of the lack of data for bill initiatives due to the constraints of the year 2023, no definitive conclusion can be drawn regarding the hypothesis that direct democracy through usage of bill initiatives leads to more protective legislation overall. There is room for future research with a more extensive dataset of abortion bill initiatives over the course of 50 years from the passage of *Roe*.

While there was a definitive answer to the effects of partisanship on abortion legislation – Republican legislation is more restrictive; Democratic legislation is more protective – there was no clear and definitive answer to the questions of the effects of median voters or direct democracy on the restrictiveness of abortion legislation due to lack of sufficient data. Recommendations for future research include expanding the dataset to cover a longer time frame of state abortion legislation as it is such a salient topic in modern day America. Another consideration that was not accounted for in this paper is the usage of the court system to strike down various pieces of legislation or definitions. Many state and district courts have ruled on state abortion legislation, which led to the ultimate *Dobbs* decision in 2022. This could lead to a

more inclusive discussion with more context as to where the debate rests in the public eye to provide more insight and information as to what that will look like for voters in the polls.

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