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After *Dobbs*: The Partisan and Gender Dynamics of Legislating on Abortion in Congress

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Abstract: I examine the partisan and gender dynamics that shape Congressional policymaking on abortion since the early 1990s. I demonstrate how the movement of abortion from an issue that split the parties to a litmus test that defines what it means to be a Democrat or Republican has impacted policymaking. I highlight the increasingly central role female lawmakers play in crafting policy and shaping party messaging. Throughout this period, Democratic women are the most aggressive proponents for abortion rights and have expanded their influence over the party's agenda. Meanwhile, Republican women were divided on the issue through the early 2000s and had limited influence on the party's decision making. Since the Tea Party wave of 2010 brought more pro-life women to office, Republican women are pivotal players and will influence the direction of party strategy and legislating in the Post-*Roe* environment.

Keywords: U.S. Congress, gender politics, abortion, *Roe v. Wade*, *Dobbs v. Jackson Women's Health Organization*

In September 2021, Carolyn Maloney (D-NY), the chair of the House Oversight Committee, called a hearing on “Examining the Urgent Need to Protect and Expand Abortion Rights and Access in the United States.”¹ *Roe v. Wade* was under threat from a new Texas law banning abortion at 6 weeks of pregnancy and the Supreme Court would soon overturn the decision, paving the way for states to ban or severely restrict the procedure. At the hearing, three congresswomen of color, Barbara Lee (D-CA), Cori Bush (D-MO), and Pramila Jayapal (D-WA), each testified about the very personal circumstances of their own abortions to focus public attention on the need to protect reproductive rights. For the Republicans, Kat Cammack (R-FL) spoke about her mother's decision to reject medical advice to terminate her high risk pregnancy. Cammack was speaking for the mothers who decided to have their babies in difficult

¹ The hearing can be viewed at <https://www.youtube.com/watch?v=0GGLVE4uvvo>.

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circumstances and the unborn children (Raman 2021). The hearing provides a snapshot of each party's effort to influence public opinion and the direction of abortion policy as we enter the post-*Roe* era. In today's Congress, abortion politics is starkly partisan and gendered. With social conservatives a dominant force in the Republican Party and women's rights groups a key constituency for Democrats, the parties are completely polarized on the issue. Examining congressional policy-making on abortion since the early 1990s illuminates the evolution of party strategizing around reproductive health and highlights the increasingly central role female lawmakers play in crafting policy, influencing which proposals go to the floor, and shaping their party's messaging efforts to rally public opinion to their side.

1 Understanding the Dynamics of Legislating on Abortion

Legislating on reproductive health in Congress focuses on two paths: efforts to limit federal funding through the appropriations process and stand-alone bills to restrict abortion or to codify the right to access abortion services. The early 1990s represent an important inflection point in how Congress deals with abortion and set the stage for the contemporary partisan conflict. Two Supreme Court decisions, *Webster v. Reproductive Health Services* (1989) and *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) reaffirmed the right to abortion found in *Roe* but allowed states to pass restrictions that would not create an "undue burden" on the ability to access abortion. In response, pro-life groups pivoted from pursuing a human life amendment overturning *Roe* to lobbying for incremental reforms like parental notification and bans on late-term abortions. They also focused on judicial nominations to change the makeup of the court (Ainsworth and Hall 2011; Ziegler 2022). The increasing number of avenues for legislating on abortion coincided with the 1992 elections that elevated a pro-choice Democratic president to the White House who would chip away at 12 years of Republican executive actions to restrict abortion and appoint judges who supported abortion rights to the Supreme Court. Described as the "Year of the Woman," the 1992 elections also brought more women to Congress, particularly Democratic women. In the years since, a gender gap opened up in women's representation with Democrats electing more women than Republicans (Elder 2021). Democratic women are the most aggressive proponents for abortion rights.

Two years later, there was another major shift in the balance of power in Washington that upended the equilibrium of abortion politics. The 1994 Republican Revolution ended 40 years of Democratic control of the House of Representatives.

Shut out of the Clinton administration, pro-life groups turned to the Republican majority in Congress. As Speaker, Newt Gingrich (R-GA) decided to pursue multiple abortion policy riders on the must-pass appropriations bills, escalating the fight. The National Right to Life Committee, the oldest pro-life organization, scored 25 House votes in the 104th Congress (1995–96), which remains the largest number of votes on abortion in a single Congress (Rolfes-Haase and Swers 2022).

Over the years, efforts to restrict federal funding for abortion have continuously ensnared the appropriations process. For example, the Hyde amendment prohibits using federal Medicaid funds for abortions except in limited cases such as rape, incest, and preserving the life of the mother. Similarly, provisions in other appropriations bills bar international family planning funding to groups that perform or lobby for abortion, block the District of Columbia from funding abortion care with federal or local funds, prohibit the Federal Employee Health Benefit Plan from covering abortion, and prevent women from utilizing their own private funds to obtain abortions on overseas military bases (Ainsworth and Hall 2011; Shimabukuro 2022).

The Affordable Care Act also includes provisions to prevent the premium tax credits and subsidies from being used to pay for insurance plans that cover abortion (Shimabukuro 2022; Swers 2017). In 2010, Chris Smith (R-NJ), the longtime chair of the House Pro-Life Caucus, first introduced H.R. 5939, the No Taxpayer Funding for Abortion Act, a bill that codifies prohibitions of federal funding into law eliminating the need for annual battles in the appropriations process. When Republicans took over Congress in the 2010 Tea Party wave, this bill became one of the leadership bills, the first 10 bills introduced in a Congress that represent the party's top agenda items. It has passed the House in every Republican-controlled Congress (112th–115th) and is again one of the leadership bills in the current 2023–24 Congress.²

Inserting funding restrictions into appropriations bills and authorizing legislation like the Affordable Care Act and the annual National Defense Authorization are the most consistent avenues for enacting abortion restrictions. More rarely, when one party controls both Congress and the presidency, it has shepherded stand-alone legislation into law. Republicans' most high profile successes were passed during the George W. Bush administration. The Partial Birth Abortion Ban Act bans late-term abortions and the Unborn Victims of Violence Act created separate punishments for harming a fetus, in addition to the person carrying the child, while committing a federal crime. The law was seen as a potential step toward creating personhood

² The bills that passed the House are HR 3, No Taxpayer Funding for Abortion Act (112th Congress) and HR 7, No Taxpayer Funding for Abortion and Abortion Insurance Full Disclosure Act of 2014 (113th Congress), 2015 (114th Congress), and 2017 (115th Congress). The bill is again designated as HR 7 in the current 118th Congress.

rights for the unborn (Swers 2013). During the Clinton administration, Democrats passed the FACE (Freedom of Access to Clinic Entrances) Act which sought to protect abortion providers and patients from violent protests at abortion facilities (Swers 2002). In the contemporary Congress, characterized by tight electoral competition and small margins for the majority party, it is difficult for members to pass legislation broadening or restricting abortion rights even when they control both houses of Congress and the presidency. During the Clinton administration, Democrats' Freedom of Choice Act, which would have codified *Roe*, passed out of committee in the House and Senate but never advanced to the floor in either chamber.³

After the Supreme Court overturned *Roe v. Wade* in 2022, focusing public attention on abortion rights, Democrats tried to legislate access to abortion by passing the Women's Health Protection Act through the House (Karni 2022). However, Democrats did not have a filibuster-proof majority of 60 votes, and without the support of Joe Manchin (D-WV), they could not garner even a simple majority to pass the bill through the evenly divided Senate (DeBonis and Roubein 2022). Going forward, major policy change will require control of the presidency and Congress with supermajorities in the Senate. As a result, lawmakers will continue to leverage the must-pass appropriations bills and authorizations, particularly the National Defense Authorization, which has a history of annual passage, to advance their abortion-related policy goals.

2 Voting on Abortion from Internal Partisan Divisions to Unified Party Polarization

As one of the most contentious social issues on the national agenda with active interest groups who are entrenched powerbrokers within each party, abortion-related issues are among the most frequently voted on in Congress (Sanbonmatsu 2002; Wolbrecht 2000). Since the 1990s, voting on abortion-related proposals evolved from an issue that split the parties to one that is consistently partisan. Through the early 2000s, Democrats had a contingent of largely male pro-life Democrats. For Republicans, being pro-choice on abortion was one of the defining features of being a moderate (Oldmixon 2005; Swers 2002). In research with Kelly Rolfes-Haase, I examined House votes scored by the National Right to Life Committee (NRLC), the organization with the longest history of scoring abortion votes, from the 103rd to the

³ The Freedom of Choice Act (HR 25 and S 25) was sponsored by key party leaders, Don Edwards (D-CA) chair of the Judiciary Committee's Subcommittee on Civil Liberties and Civil Rights in the House and majority leader George Mitchell (D-ME) in the Senate. The bill was reintroduced in subsequent Congresses but never taken up by a committee.

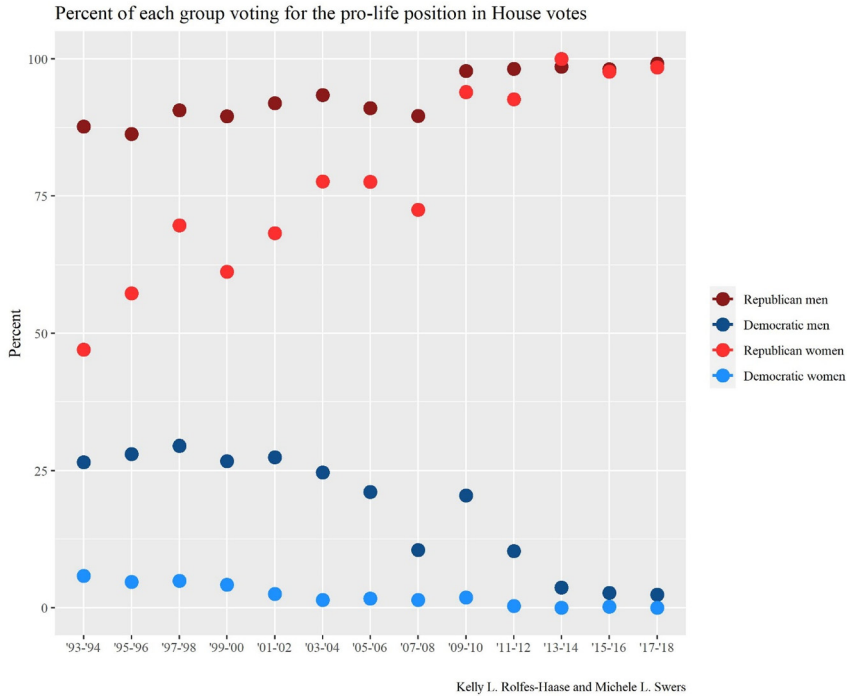


Figure 1: Percent support of the NRLC's pro-life position by party and gender 1993–2018.

115th Congresses (1993–2018). Figure 1 shows the percentage of votes cast in favor of the pro-life position by Republican and Democratic men and women. Republican women defected from the pro-life position on 50 % of the votes on abortion in the Democratic controlled 103rd Congress (1993–94).

After Republicans took control of Congress in the 1994 Republican Revolution, they escalated the conflict by increasing the number of riders on appropriations bills and other proposals to restrict abortion. Yet, between the 104th and 107th Congresses (1995–2002), Republican women still voted against the pro-life position about 30–35 % of the time. As more conservative women were elected, Republican women continued to cast 25 % of their votes against the NRLC position through the end of the George W. Bush administration (110th Congress). However, Republican women fell in line with their male colleagues by the Obama presidency and today's Republican men and women generally vote universally pro-life. Meanwhile, Democratic men defected from their party to cast pro-life votes about 25 % of the time through most of the George W. Bush administration. However, they largely fell in line when Democrats took back control in the 110th Congress (2007–08). Just as Republicans vote

uniformly pro-life, since 2011 Democrats generally vote in lockstep supporting abortion rights.

In the 1990s and early 2000s, when there was a contingent of members who dissented from their party's position on abortion, leadership sometimes had to put alternative amendments on the floor to placate that subset of the caucus. For example, during the Clinton administration, when Republicans would put restrictive abortion riders on appropriations bills, the leadership would sometimes allow side by side amendments where a moderate Republican could offer a pro-choice amendment to counter or soften a pro-life proposal such as amendments to reduce funding cuts to Title X family planning programs or initiatives to reverse the Mexico City policy (which bans funding for international family planning organizations that perform or lobby for abortions). As Oldmixon describes in an interview with a Republican staffer, the pro-choice members "have, on occasion, gone to the leadership saying, 'What are you doing? We're taking up too many abortion [votes] ... and he will have an opportunity to offer an amendment basically to replace or substitute'" (Oldmixon 2005, 175). Thus, the pro-choice members were given the opportunity to demonstrate their independence, however the outcome still reflected the preferences of the majority party caucus.

On the Democratic side, during the debate over President Obama's signature healthcare bill, a group of pro-life Democrats leveraged their numbers to compel Speaker Nancy Pelosi (D-CA) to allow a vote on an amendment to prohibit federal subsidies from being used to buy insurance plans that included abortion coverage. While the language was softened in the Senate bill, President Obama still had to issue an executive order reiterating commitment to the Hyde amendment to get these Democrats to support the final bill (Swers 2017). Most recently, despite an overwhelmingly pro-choice caucus, Joe Manchin's (D-WV) opposition meant that Senate Democrats could not get a majority of their caucus in the 50-50 Senate to support a bill to reverse the Supreme Court's decision by legislating a right to abortion (Karni 2022).

The complete polarization of the parties on reproductive health policy largely occurred through replacement rather than conversion (Adams 1997; Karol 2009). Less urban districts in the South and Midwestern states like Ohio and Michigan moved away from Democrats and the caucus became more uniformly liberal. Similarly, pro-choice Republicans who often hailed from urban and suburban districts in the Northeast were replaced by Democrats as the center of the party moved to the South and Midwest (Lee 2016). As women's rights organizations increased their influence in the Democratic Party and social conservatives gained prominence among Republicans, only pro-choice Democrats and pro-life Republicans could credibly compete for nomination to office (Sanbonmatsu 2002; Wolbrecht 2000). Indeed, the parties' donor pools want to give to candidates who align with their

party's position on abortion, while pro-life and pro-choice groups raise and spend millions in independent expenditures to elect like-minded candidates (Crowder-Meyer and Cooperman 2018; Ziegler 2022).

The small minority of long serving members who are out of step with their party on abortion generally change their position, particularly if they harbor ambitions for higher office or leadership positions within the party or on committees. For example, Democratic men with presidential ambitions became more pro-choice over time, including Democratic minority leader Richard Gephardt (MO) and Senators Al Gore (TN) and John Kerry (MA) (Karol 2009). After a long Senate career opposing taxpayer funding of abortion and under pressure from women's groups and more pro-choice competitors for the 2020 presidential nomination, Joe Biden (DE) reversed his position and declared his opposition to the Hyde amendment which bars federal Medicaid funding for abortion (Megerian 2022).

On the Republican side, the current Appropriations Committee chair, Kay Granger (R-TX), called herself a "pro-choice Republican" in a 2007 interview and opposed the NRLC position on several votes related to cuts and restrictions on domestic and international family planning programs and the development of RU486.⁴ While she has been a consistent pro-life vote since the Obama presidency, her 2020 primary opponent tried to use her past record to cast doubt among conservative voters (Bowman 2020). Today, Granger will champion pro-life appropriations riders against the Biden administration and a Democratic caucus that is newly energized on the issue since *Dobbs*.

3 Party Messaging, Issue Framing, and the Battle for Public Opinion

With Democrats voting pro-choice and Republicans pro-life, the pivotal decisions facing members and party leaders concern what issues to bring to the floor. In a highly partisan and polarized Congress, the decision of which bills to place on the floor is not simply an effort to shape public policy. Irrespective of their chances of becoming law, the bills that reach the floor are vehicles for party messaging to the base and efforts to move broader opinion to increase voter support for the party (Lee 2016). Party leaders want to energize their core supporters but also must consider the electoral imperatives of their marginal members, particularly when majority control is determined by a handful of seats as it has been in recent elections.

⁴ Based on author's analysis of National Right to Life Committee vote scores.

Up until the *Dobbs* decision, public opinion was remarkably static and ambivalent about abortion. Gallup polling indicates that since 1976 the majority of the public believes that abortion should be “legal only under certain circumstances.” Meanwhile, less than one-third of the public thinks abortion should be “legal under any circumstances.” Despite 14 states implementing near total bans since *Roe* was overturned,⁵ only between 13 and 23 % of the public ever favored making abortion “illegal in all circumstances.” (Fiorina 2017; Gallup n.d.). Similarly, since 1972, the General Social Survey measures support for abortion in specific circumstances. Large majorities support abortion in cases of rape, incest, or when the woman’s health is endangered. However, the public is more conflicted when individuals are seeking an abortion because their family cannot afford more children, they do not want to be a single parent, or they are married and do not want more children (Fiorina 2017).⁶ Given public ambivalence, the parties and their interest group allies must carefully frame issues to garner popular support.

Research on campaign messaging and party issue ownership demonstrates that parties develop reputations for expertise with the public on specific issues and try to focus attention on issues that favor them (Petrocik 1996; Sellers 2010; Sides 2006). With regard to abortion, Democrats and their pro-choice allies gain more public support when they can frame the discussion around women’s health and autonomy. Republicans and their pro-life allies achieve more success when they can focus attention on the unborn child. In their eight-year effort to pass the Partial Birth Abortion Ban, a prohibition on late term abortions, Gallup polling indicates Republicans moved public support for the legislation from 57 % of Americans in 1996 to 68 % in 2003, when the law was passed (Freedman 2003). The term “partial-birth abortion” is not a medical term; it was coined by the National Right to Life Committee and employed by Republicans to evoke an emotional response to a practice they characterized as akin to infanticide. Through graphic descriptions and photos of partially delivered fetuses, Republicans directed public attention to the unborn child. In response, Democratic messaging emphasizing the rarity of late term abortions and highlighting the need for exceptions that protect the woman’s health in addition to her life did not gain traction (Sellers 2010; Swers 2013).

⁵ New York Times tracks changes in state laws regarding abortion. At the time of this writing there are 14 states with total abortion bans (New York Times 2023).

⁶ The General Social Survey question asks “Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if: (1) The woman’s health is seriously endangered (2) She became pregnant as a result of rape (3) There is a strong chance of serious defect in the baby (4) The family has low income and cannot afford any more children (5) She is not married and does not want to marry the man (6) She is married and does not want any more children” (Fiorina 2017).

To move public opinion, the parties will also try to trespass on each other's issues by repurposing the other party's rhetoric to support their own position (Holian 2004; Jerit 2008; Sides 2006). For example, to counter accusations that pro-life policies harm women, pro-life legislators and groups emphasize that restrictions need to be adopted to protect women's physical and emotional health. Thus, bills making it a crime to take teenagers across state lines to obtain an abortion without parental consent are described as protecting teenagers from exploitation (Reingold et al. 2021; Roberti 2021). Similarly, in the recent federal district court case concerning abortion pills, the pro-life litigants argued that the FDA should not have approved the medication because it harms women's health (Belluck and McCann 2023).

When faced with an issue that favors the other party, the parties will also use policy frames that emphasize aspects of an issue that favor their party (Holian 2004; Jerit 2008; Sides 2006). Since the public perceives contraception as integral to women's health, Republicans have difficulty countering Democratic family planning initiatives. Indeed, a 2019 PRRI poll indicates that 77 % of the public, including 89 % of Democrats and 64 % of Republicans, believe that government funded insurance programs like Medicaid should cover the cost of birth control (PRRI Staff 2019). Similarly, the Obama administration's contraception mandate that requires employers to cover contraception as part of the required preventive health benefits package is widely supported. A 2017 Kaiser Family Foundation poll found 68 % of the public supports requiring private employers to cover prescription birth control for their employees, including 81 % of Democrats, 68 % of Independents, and 54 % of Republicans (Kirzinger et al. 2017).

However, when the Obama administration first issued a broad rule requiring employers with religious objections to cover contraceptive services, Republicans declared their opposition to the mandate as a violation of religious freedom. This allowed Republicans to avoid talking about women's health and embrace an issue frame more associated with the party (Swers 2017, 2018). The message reduced support among Republicans and the Supreme Court later narrowed the mandate based on religious freedom concerns. Demonstrating the potency of this messaging, VanSickle-Ward and Wallsten (2019) report that, between 2011 and 2014, public polling showed a widening partisan gap in support for the contraception mandate as Democrats responded to party messaging about women's health and Republicans were influenced by party messaging that emphasized religious freedom.

Finally, to counter the opposition party's popular messaging and provide cover to their own members, the parties will develop alternative proposals to modify a policy in a way that aligns more with the goals of the party and its allies (Jerit 2008; Sellers 2010). In the case of partial birth abortion, House and Senate Democrats offered alternative bans that would allow exceptions for a woman's health and not just her life. With these alternative bills, Democratic legislators could mollify their

pro-choice allies and argue to voters that they supported a ban, but one that would protect women's health and aligned with the framework established by the Supreme Court in *Roe v. Wade* (Sellers 2010; Swers 2013). Similarly, in the fight over President Obama's contraception mandate, Republicans rallied around an amendment offered by Senator Roy Blunt (MO) that would create a broad conscience exemption for employers who did not want to provide birth control to their employees. Thus Republicans could argue that they support women's health and contraceptive coverage as long as the religious freedom of employers was protected, an important issue for their social conservative base (Swers 2017).

4 The Balance of Institutional Power Limits What the Parties Can Achieve

Ultimately, success depends both on winning the messaging battle and the balance of power across the institutions of government. The dynamics of which party holds the presidency, who wields majority control in Congress, and the size of the congressional majorities shapes the playing field for what the parties can achieve. After passing a Partial Birth Abortion ban through the House and Senate multiple times, Republicans were only able to pass the bill into law when they controlled the House and Senate and George W. Bush was elected president. With partial birth abortion, Republicans gained enough Democratic support to avoid concerns about a filibuster. For Democrats pursuing the Affordable Care Act and the reproductive health provisions it contained, the party had to rely on the budget reconciliation process, which allows legislation to pass with a majority vote rather than the 60 votes required to avert a filibuster.

When the party does not have unified control of government with a filibuster-proof majority in the Senate or the ability to leverage must pass legislation like appropriations bills to enact abortion policy riders, they must rely on executive actions to achieve their policy goals. Republicans for many years tried to prohibit Planned Parenthood from receiving federal funds through the Title X family planning program because it is one of the country's largest abortion providers. However, their wide-ranging efforts did not achieve success until President Trump was elected. While federal funds are not allowed to be used for abortions, pro-life groups and their Republican allies in Congress argue that money is fungible and money for family planning services like pap smears, breast exams, and contraception should not go to organizations that provide abortion (Dannenfelser 2020). In 2007, when Democrats controlled the House and George W. Bush was president, future vice president Mike Pence (R-IN) offered the first amendment defunding Planned

Parenthood to the appropriations bill that funds the Department of Health and Human Services (Swers 2018).⁷ Republicans continued to try to defund Planned Parenthood via the appropriations process throughout the Obama administration. They threatened to shut down the government over the issue in 2011 and 2015. When a pro-life group released videos suggesting Planned Parenthood sells fetal body parts, House Republicans appointed a special committee to investigate the organization (Swers 2017; 2018).

None of these efforts bore fruit until President Trump came into office. As a Republican leadership staffer explained, “The groups are obsessed with Planned Parenthood. The best hope for us is that they don’t score a bill where we still give Planned Parenthood funding. We tried to defund it in the health care bill, but the bill did not pass. We tried an investigative committee with Planned Parenthood but it did not really help. They did some hearings that were a little controversial but no one really talked about the committee they [pro-life groups] are still upset that Planned Parenthood gets funding and the HHS [Department of Health and Human Services] has to list how much money each center across the country is getting so the groups can see this and this fuels their anger about Planned Parenthood.”⁸

With President Trump in office, Republicans utilized the Congressional Review Act, a law that allows Congress to nullify recently passed regulations, to rescind an Obama administration rule that prohibited states from blocking Title X family planning grants to health care providers that offer abortion. Even using this filibuster-proof procedure, Republicans had to rely on Vice President Mike Pence to break a tie after Republican Senators Susan Collins (ME) and Lisa Murkowski (AK) joined Democrats in opposing the bill (Kim and Ehley 2017).

Unable to pass further restrictive bills through the legislative process, Republicans relied on President Trump to advance abortion restrictions. As the Republican leadership staffer explained, “Some of the urgency went away when Trump became president because he reinstated the Mexico City policy [that denies international family planning funding to groups that provide or lobby for abortions] and the groups can get regulatory action which dissipates their anger.”⁹ Indeed, after Republicans lost their majority in 2018, the Trump administration issued a rule denying Title X funding to entities that provide referrals for abortion and Planned Parenthood withdrew from the program (Belluck 2019). Yet, executive action does not have the permanency of laws passed by Congress. The Biden administration

7 See floor debate on the Pence amendment to HR 3043 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008 Congressional Record July 19, 2007 p. H8154-H8157.

8 Republican leadership staffer interview with the author, September 14, 2018.

9 Republican leadership staffer interview with the author, September 14, 2018.

issued a rule that reversed the Trump policy, and recipients of Title X funds including Planned Parenthood are again allowed to provide referrals for abortion (Goldstein 2021).

5 How Democratic and Republican Women Shape Abortion Policy

Women members play a central role in their parties' efforts to influence opinion and in the strategic decisions concerning which policies to pursue on the floor. Abortion policy reaches into highly sensitive subjects concerning the role of women in American society and the nature of the family. Policies related to reproductive health have a disproportionate impact on women and both parties seek to harness women's moral authority to advance their policy positions. Democratic women are the most aggressive advocates for pro-choice policies. By contrast, Republican women were more ideologically divided from the 1990s through the early 2000s with some women holding pro-choice views on specific policies and others more uniformly pro-life. Since the 2010 Tea Party wave, Republican women, particularly in the House, are taking a more prominent leadership role in advancing pro-life policies.

5.1 Democratic Women are a Driving Force in the Party's Support for Abortion Rights

As the party associated with women's rights, Democratic women's engagement of abortion politics reflects both their strong personal commitment to reproductive rights and the party's desire to capitalize on their moral authority to mobilize their voters, activists, and donors. As one Senate Democratic staffer explained, "It is a win-win for them because they believe in it and they are playing to the women constituency, showing women voters that Democrats care about women's issues and Republicans are hurting them. It is best to have a woman delivering that message." (quoted in Swers 2013, pp. 117–118.) Because of the intensity of their commitment, Democratic women are the most likely to spend their political capital to support abortion rights by sponsoring bills and amendments, writing letters and conducting oversight of relevant executive agencies, calling press conferences, speaking on the floor, and engaging with the media. Senate Democratic women can also use their prerogatives as a Senator to try to force action from the executive branch. Thus, Patty Murray (WA) and Hillary Clinton (NY) placed holds on George W. Bush's nominee to lead the FDA to force the agency to take action on an application to make Plan B, the

morning after pill, available to women over 18 without a prescription (Swers 2013). The most active women on reproductive health issues generally hail from the most safely Democratic and strongly liberal districts and states.

From the early 1990s, Democratic women have taken the lead in combatting Republican efforts to utilize the appropriations bills and the National Defense Authorization Act to restrict funding for and access to abortion. A review of the National Right to Life Committee's vote scores from the 103rd to the current 118th Congress indicates that Democratic women have sponsored almost all of the floor amendments to eliminate restrictions such as those regarding Medicaid funding (Hyde amendment), insurance coverage in the federal employee health benefit plan, use of local funds in Washington D.C., the Mexico City policy to deny international family planning money to entities that provide or lobby for abortions, limitations on access to abortion for women in the military, and more.¹⁰ The Clinton administration saw the most frequent floor battles on appropriations and National Defense Authorization riders, as the 1994 elections elevated Republicans to the majority for the first time since *Roe* was decided in 1973. During these years, the Democratic caucus also included a significant contingent of pro-life, largely male legislators who voted to support funding restrictions. Women with seats on the relevant committees generally spearheaded the amendments including House Appropriations members Rosa DeLauro (CT), Nita Lowey (NY), and Nancy Pelosi (CA) and Armed Services Committee members Loretta Sanchez (CA), Susan Davis (CA), and Jane Harman (CA). D.C. delegate Eleanor Holmes-Norton led the opposition to efforts to restrict abortion access for Washington, D.C. residents. In the Senate, Patty Murray (WA) and Barbara Boxer (CA) were particularly active in fighting such restrictions (Dodson 2006; Swers 2002, 2013).

Because Democrats have consistently elected more women to Congress since the 1992 election, Democratic women now have more seniority which means they sit on more prestigious committees like Appropriations and Armed Services in larger numbers and are more likely to hold committee and subcommittee chairmanships. These women then leverage those positions to advocate for abortion rights. For example, during the fight over President Obama's contraception mandate, Carolyn Maloney (NY) and Eleanor Holmes Norton (DC) staged a walkout during a Republican-led hearing meant to highlight the mandate's assault on religious freedom. Maloney and Holmes-Norton objected to the fact that no female witnesses were speaking on this women's health issue and that Democrats were blocked from including as a witness Sandra Fluke, a woman who did not have contraceptive coverage as a student at a Catholic institution, Georgetown Law School (Feder 2012). To further elevate the issue as a matter of women's health rather than religious

10 Review of National Right to Life Committee (NRLC) Vote Scores by the author.

freedom, minority leader Nancy Pelosi (D-CA) scheduled a hearing outside of the committee process with Fluke as the only witness (Jackson 2012).

As chair of the Oversight Committee from October 2019¹¹ through 2022, Maloney held multiple hearings related to abortion rights including the hearing that spotlighted the personal testimony of Barbara Lee (CA), Cori Bush (MO), and Pramila Jayapal (Raman 2021). Similarly, after the *Dobbs* draft leak, Patty Murray (WA) utilized her chairmanship of the Senate's Health, Education, Labor, and Pensions (HELP) Committee to join with Ron Wyden (OR), the Finance Committee chair, to launch an investigation into complaints that insurance companies are violating the ACA's contraception mandate by denying coverage or forcing patients to pay out of pocket.¹² Murray wanted to highlight both the importance of insuring access to contraception and the threat to that access since the Supreme Court case protecting contraception, *Griswold v. Connecticut*, like *Roe* relies on a right to privacy (Diamond 2022). Now chairing the Senate Appropriations Committee, Murray is expected to vigorously protect programs that fund women's health services and will work to loosen restrictions on federal support for reproductive services. Rosa DeLauro (CT) similarly championed abortion rights during her tenure as chair and will continue to do so as ranking member of the House Appropriations Committee (Swers 2022).

When Democrats control the majority, Democratic women push the party to advance reproductive rights. During the debate over the Affordable Care Act, Democratic women were particularly adamant about including women's health services from prenatal care to contraception in the package of services that insurance companies need to provide (Swers 2013, 2017). Concerns over how broad to make the religious exemption to the contraception mandate plagued the Obama administration from the beginning. The Supreme Court ultimately heard multiple challenges to the mandate. When the rule was being drafted, left-leaning Catholic institutions and Catholic politicians, including Vice President Biden and Obama's former chief of staff Bill Daley, urged the president to broaden the exemptions. Meanwhile, the women officeholders and women's groups argued for an expansive rule that protected women working for religiously affiliated institutions like Catholic hospitals and universities (Brownstein 2012; Swers 2017).

Democratic women have also been at the forefront of efforts to overturn federal funding restrictions on abortion. The 1992 election brought in a contingent of Black

¹¹ Maloney became acting chair after the death of Chairman Elijah Cummings (MD). She was elected to chair in October 2019 and served through the 117th Congress (2021–2022) (LeBlanc 2019). In 2022, she lost her primary, when she and Jerry Nadler were drawn into the same New York district.

¹² Carolyn Maloney (NY) conducted a similar investigation through the House Oversight Committee (Weixel 2022b). Female House members and Senators have signed onto letters urging the Biden administration to increase enforcement of the contraception mandate (Diamond 2022; Williams 2023).

and Latina women who were elected in newly created majority/minority districts. These women were particularly vocal about eliminating the Hyde amendment that prohibited federal Medicaid funds from being spent to provide abortions for their low-income constituents. However, as new members they lacked the institutional power to advance the issue and were also hampered by the fact that male Democrats in key leadership and committee positions supported the limits (Dodson 2006). By the time of President Obama's election, the Democratic caucus was more uniformly pro-choice, but opposing federal funding for abortion was perceived as a long-standing compromise that Democrats needed to accept to pass the appropriations bills that keep government running. Furthermore, a group of male pro-life Democrats ensured that Hyde amendment protections would be followed when the Affordable Care Act was passed in order to prevent government subsidies from paying for health plans that cover abortion (Swers 2017).

Hillary Clinton shifted the debate during her 2016 presidential run when her campaign included repeal of the Hyde amendment in the Democratic platform, as part of an effort to address the demands of minority women's organizations that focus on reproductive justice (Redden 2016).¹³ With a large new class of progressive women elected in 2018, including a historic number of minority women, pressure to repeal the Hyde amendment increased. Pro-choice female Democrats, led by Pro-Choice Caucus chairs Barbara Lee (CA) and Diana DeGette (CO), pressured Speaker Nancy Pelosi and the new Appropriations Committee chair, Nita Lowey (NY), to eliminate the Hyde amendment—but they could not overcome the opposition of a Republican-controlled Senate and President Trump (Ferris and Caygle 2020). With multiple female Senators running in the 2020 Democratic presidential primaries, support for repealing the Hyde amendment became a focus of the nomination race. Under pressure from women's groups, Joe Biden reversed his longstanding support for the Hyde amendment (Megerian 2022). In the House, Rosa DeLauro (CT), Debbie Wasserman Schultz (FL), and Marcy Kaptur (OH), the three women competing to replace retiring Appropriations Committee Nita Lowey (NY), all committed to eliminating the Hyde amendment.¹⁴ When DeLauro won the gavel, she struck the provision from the House Appropriations bill (Weixel 2021). However, it was restored in final negotiations. As women continue to amass more power in the Democratic caucus and opposition to the Hyde amendment becomes a norm within

¹³ Clinton's running mate, Tim Kaine (VA) was a longtime supporter of the Hyde amendment (Redden 2016).

¹⁴ Marcy Kaptur (OH) is the longest serving female House member. First elected in 1982, she previously supported the Hyde amendment and took more conservative stands on abortion than most Democratic women but became more liberal on the issue as the caucus moved to the left (Shuitt 2020).

the party, Democratic women will be at the forefront of efforts to eliminate federal funding restrictions.

5.2 Initially Divided, Republican Women Are now Central Figures in the Pursuit of Pro-life Policy

Whereas Democratic women have long played a central role in their party's strategic positioning and policymaking efforts on abortion, Republican women have evolved from an ideologically divided cohort with limited influence on the party's decision-making to a prominent force in crafting party messaging and shaping policy on abortion. Many of the Republican women serving in Congress during the Clinton administration and through the presidency of George W. Bush were pro-choice. Knowing that they were out of step with the social conservative base of the party, pro-choice women largely tried to avoid public engagement of the issue to avoid alienating colleagues whose support they needed on other priorities. Furthermore, both pro-choice and pro-life Republican women did not want to be active on abortion issues because they did not want these issues to take over their agenda—nor did they want to be tagged as a member focused on women's issues (Dodson 2006; Swers 2002).

As a result, only two pro-choice Republican women ever offered alternative floor amendments to counter the multiple pro-life riders Republicans added to appropriations and authorization bills throughout the Clinton presidency. Jan Meyers (KS) and Connie Morella (MD) both offered amendments in the 104th Congress (1995–1996) to prevent Republicans from reinstating the Mexico City policy which denies international family planning funds to groups that provide or lobby for abortion access.¹⁵ Otherwise, the moderate pro-choice women let male colleagues with seats on relevant committees offer pro-choice alternatives. They quietly voted for these amendments and lobbied behind the scenes for the party to take up fewer abortion riders (Dodson 2006; Swers 2018). Through the Bush administration, the dwindling number of pro-choice women were most likely to defect on issues that related to women's autonomy, particularly domestic and international family planning and proposals that allow women in the military to utilize their own funds to pay for abortions (Rolfes-Hasse and Swers 2022).

Similarly, the small cohort of Republican women serving in the Senate also took more liberal stances on abortion rights than their male colleagues did through the

15 Morella offered her amendment to HR 1561 Foreign Relations Authorization Act, Fiscal Years 1996 and 1997 and Meyers had an amendment to HR 1868 Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996.

Clinton and Bush administrations. Like their House counterparts, neither the pro-choice or pro-life leaning female Senators wanted to take a leadership role on the issue. For example, Elizabeth Dole (NC), the most pro-life senator elected before the 2010 Tea Party wave, refused a leadership request to join the Judiciary Committee because she did not want to become the face of the issue in battles over judicial nominations. As the most vocal abortion rights supporter of the group, Olympia Snowe (ME) often served as the lead or only Republican cosponsor of pro-choice proposals, while the other women senators avoided most engagement with the issue beyond voting. Behind the scenes, Snowe and Susan Collins (ME) helped craft the Democratic leadership's alternative partial birth abortion proposal that would include a health exception. Snowe, Collins, and Lisa Murkowski (AK) all opposed efforts to defund Planned Parenthood (Swers 2013).

While these women took pro-choice stands on policy, they did not center abortion in their judicial nomination votes. It is important for party members to support the President's nominees and the public does not generally tie a senator's vote for a nominee to the decisions they will make years later on the court. However, if a senator opposes their president's nominee, they will immediately face backlash from colleagues and groups aligned with the party and could invite a primary challenge (Swers 2013). Thus, among the women, only Murkowski has ever voted against a Republican president's nominee to the Supreme Court. She opposed Brett Kavanaugh based on the controversy surrounding sexual assault allegations against the justice and not his abortion stance (Cheney 2018).¹⁶

With Republican women reluctant to take the lead, Republican men predominantly spearheaded the legislative push for restrictions by sponsoring almost all of the amendments seeking to restrict abortion funding and access on appropriations riders and authorizing legislation. Before 2010, only two women sponsored pro-life bills that received votes on the House floor. Ileana Ros-Lehtinen (FL) sponsored a bill that would make it a federal crime to take a child across state lines to have an abortion without parental consent. Melissa Hart's (PA) Unborn Victims of Violence Act, which created a separate crime for harming a fetus during commission of a federal crime, became law. Hart took over the bill after the original House sponsor, Lindsay Graham (SC), was elected to the Senate.¹⁷

16 Christine Blasey Ford accused Brett Kavanaugh of sexually assaulting her when they were teenagers. She testified against him during his confirmation hearings and Kavanaugh forcefully denied the accusations (Cheney 2018).

17 Ros-Lehtinen's Child Custody Protection Act passed the House in the 105th (HR 3682), 106th (HR1218), and 107th (HR476) Congresses. The Unborn Victims of Violence Act was first offered by Lindsay Graham (SC) in the House (HR 2436) and Mike DeWine (OH) in the Senate (S1673) in the 106th Congress.

With Democrats continually denouncing Republicans as engaged in a war on women or harming women's health, Republicans recognized that they needed to spotlight pro-life women. Marjorie Dannenfelser, the leader of Susan B. Anthony List, wrote in her memoir that she started the organization because Republicans needed "the voices of pro-life women legislators to counter the dozens of [Democratic] congresswomen who spoke with authority and vigor in defense of abortion" (Dannenfelser 2020, p. 78). As much as possible, Republicans recruit women to speak in favor of their proposals on the floor and at press conferences. As one Republican staffer explained, "Republican leaders will ask women to speak when they know the Democrats will have their women out to demagogue an issue. By having women speak ... they get women to put a smiley, soft face on issues and prevent Republicans from looking like mean ogres." (quoted in Swers 2002, p. 25).

The 2010 Tea Party election marked a distinct shift in Republican women's engagement with abortion. A new cohort of pro-life women, particularly in the House, were eager to champion anti-abortion policies. Planned Parenthood defunding and family planning are difficult issues for Republicans as Democrats can more easily frame them as matters of women's health (VanSickle-Ward and Wallsten 2019). In 2015, when pro-life groups became incensed by videos alleging that Planned Parenthood sells fetal tissue for research, Republican women took the lead in mounting the party's response. In the Senate, Joni Ernst (IA) led a leadership-appointed working group to examine the videos; the Senate then voted on Ernst's bill to defund Planned Parenthood and divert the money to community health centers (Swers 2018).

In the House, Speaker Boehner (OH) appointed Marsha Blackburn (TN) to chair a special committee, the Select Investigative Panel on Infant Lives, to examine Planned Parenthood and the fetal tissue procurement industry. While minority leader Nancy Pelosi (CA) denounced the committee as "the Select Committee to Attack Women's Health," Republicans appointed an even number of Republican women and men to showcase the conservative women and insulate the party from Democrats' anti-women's health critique (Swers 2018). Blackburn highlighted her chairmanship of the committee in her video announcing her 2018 bid for the Senate.¹⁸ The House also voted on several proposals by Diane Black (TN) to defund Planned Parenthood. Explaining the importance of pro-life Republican women, a former leadership staffer said "There was a point where Republican leaders decided they did not want to have men carrying these abortion bills. They wanted to have women. It is not the best look for the party to have older white men to be the face of the party on abortion."¹⁹

¹⁸ See Marsha Blackburn "Why I'm Running" <https://www.youtube.com/watch?v=wxSPO4V7FYI>

¹⁹ Former Republican leadership staffer interview with the author, April 20, 2023.

Given the importance of Republican women to the party's abortion policy agenda, any public disagreement among the women about the direction of policy can derail a proposal and harm the party's reputation. In 2015, Republicans planned to bring the Pain-Capable Unborn Child Protection Act to the floor to coincide with the annual March for Life. The bill would ban abortion after 20 weeks. However, some pro-life Republican women objected to the fact that the rape exception only applied to women who had reported the rape to the police. These women argued that rape is a traumatic event and most rapes go unreported. Other pro-life women asserted that there should only be an exception for the life of the mother and did not support an exception for rape and incest. The conflict forced Republican leadership to pull the bill—a huge embarrassment, since Republicans always pass a bill to coincide with the March for Life to rally the base. Ultimately, then Conference Chair Cathy McMorris-Rodgers (WA) brokered a compromise with the bill's opponents and pro-life groups that allowed a new version to pass (Swers 2018). The controversy surrounding the 20-week ban highlights the important role that Republican women will play if Republicans decide to pursue a national ban in the future.

6 The Future of Abortion Politics after *Dobbs*

The *Dobbs* decision upended the politics of abortion by returning responsibility for regulating the issue to the political process. Congress faces a new landscape with public opinion in flux and states taking aggressive action to restrict or protect abortion rights. Additional court cases are also drawing public scrutiny, particularly a federal district court decision to ban abortion pills nationwide that could end up at the Supreme Court (Barnes and Marimow 2023). Constant media coverage of each new development keeps the issue at the top of voters' minds. With a divided Congress, immediate national legislative action is stalled. Instead, the Democratic and Republican parties are navigating how to frame the issue to achieve their electoral and policy goals. Democratic and Republican women will be key players in this new environment.

6.1 Democratic Efforts to Protect Abortion Rights Post-*Roe*

Overturning *Roe v. Wade* unsettled the equilibrium of public opinion. According to Pew Research, 62 % of Americans believe abortion should be legal in all or most cases, while only 36 % want abortion to be illegal in all or most cases. Democrats report the largest changes in opinion as support for abortion in all or most cases rose from 63 % in 2007 to 84 % in 2023 (Pew Research 2023). With public opinion on their

side and Democratic voters energized by the issue, abortion is a central focus of Democratic electoral strategy. Democrats credit the issue with limiting their 2022 midterm losses and delivering victories in key states with abortion initiatives on the ballot (Levine and Otterbein 2022). Democratic messaging frames abortion as health care and emphasizes the threat that the *Dobbs* decision poses to the more popular issue of contraception.

In the lead up to the 2022 midterms, Democratic women led efforts to put bills on the floor protecting abortion rights and access to contraception. When news of the *Dobbs* decision leaked, Senate Democrats created a group led by Patty Murray (WA) that included female members of the Senate's leadership team including Elizabeth Warren (MA), Amy Klobuchar (MN), Debbie Stabenow (MI), Catherine Cortez-Masto (NV), and Tammy Baldwin (WI) to coordinate the caucus's response through hearings and future votes (Levine 2022). In the House, Democrats passed several bills to protect access to abortion. Judy Chu's Women's Health Protection Act would have codified the protections in *Roe-v-Wade*. Bills by Lizzie Fletcher (TX) and Kathy Manning (NC), respectively, would have protected women who travel out of state for an abortion and guarantee access to contraception. All three bills were blocked in the Senate (Karni 2022; Sotomayor and Caldwell 2022).

Without a filibuster-proof Senate majority, and now with a Republican-controlled House, Democrats cannot pass legislation to protect abortion rights. Therefore, from the initial leak of the *Dobbs* decision, Democrats began pressuring the Biden administration to use executive actions. Democratic women are at the forefront of these efforts urging President Biden to declare a public health emergency and trying to get the FDA to ease access to abortion pills and approve over-the-counter birth control. They are also pressuring the administration to expand support for women in the military who need to travel out of state for an abortion and increase privacy protections for health information to protect women who utilize abortion pills or travel from states with restrictive laws, among other actions (Luthra 2022; Luthra and Becker 2022; Mitchell 2023; Weixel 2022a). As Republican states continue to pass restrictions, Democrats face more demands for executive and legislative action. They will also have to navigate a progressive base that wants more expansive protections for late term abortions rather than restoring the framework of *Roe*, which allows states to limit abortions post-viability (Olstein and Messerly 2023).

6.2 Republicans Search for Consensus on Abortion Restrictions

Without the guardrails of *Roe*, conservative states are passing a plethora of abortion restrictions including total bans that do not have exceptions for rape and incest,

6-week fetal heartbeat bills, and bans on abortion pills (New York Times 2023). Each new bill passed brings more media attention. However, polling indicates these more stringent restrictions are not popular. PRRI found that 72 % of Americans oppose full abortion bans that only include exceptions for the life of the mother and 63 % oppose the 6-week fetal heartbeat bans (PRRI Staff 2023). Pew Research reports that 53 % of Americans believe medication abortion should be legal in their state, including 73 % of Democrats and 35 % of Republicans, while only 22 % want it to be illegal (Hartig 2023). A Republican campaign strategist laments that the “Republican Party has lost the argument on who is more extreme ... After we won *Dobbs*, the same types of respondents that would vote Republican when presented with the most extreme positions on the left, third trimester on demand abortions post birth, now say that does not bother me anymore because Republicans overstepped ... Until Democrats push back [by passing bills to codify or go beyond *Roe*] the Republicans will come across as more extreme with educated women. Now they are the dog that caught the car.”²⁰ Given this difficult political landscape, Republicans are struggling to develop a unified message and are relying on Republican women to defend the party and help them craft a policy response.

While the states are moving aggressively to pass restrictions, the national party is divided. Republican messaging centers on accusing the Democrats of supporting abortion on demand until birth. However, there is disagreement over whether to support a national ban and at how many weeks or whether to leave the issue to the states (Zanona, Grayer, and Fox 2023). The conundrum has rattled the 2024 presidential primary where frontrunner Donald Trump has said it is an issue for the states and suggested he could support a 15-week ban, while other candidates are similarly flummoxed by the issue (Knutson 2023). Polling indicates that only 12 % of Americans want Congress to pass a national ban, with 22 % of Republicans supporting a national ban and a majority (54 %) of Republicans preferring the issue be left to the states (PRRI Staff 2023). Republicans recognize the danger and have not reintroduced the 20-week bans that passed in previous Congresses or a new 15-week ban suggested by Lindsay Graham (SC) as a compromise position. Instead, to align with the March for Life, House Republicans voted on Ann Wagner’s (MO) Born Alive bill requiring providers to give care to infants that survive an attempted abortion and a resolution condemning violence against pro-life facilities. Wanting to move public attention away from abortion, they even scrapped plans to also vote on the bill to codify the Hyde amendment and eliminate all taxpayer funding of abortion (Sotomayor and Roubein 2023).

20 Republican campaign strategist interview with the author, March 28, 2023.

Looking ahead, Republicans will continue to rely on Republican women to deflect Democratic attacks and to chart a course forward. When Democrats passed bills through the House codifying *Roe* and protecting contraception, Republican women led the party's response. With the Democratic contraception bill, the most difficult area for Republicans, the party forced a vote on an alternative by Ashley Hinson (IA) that makes birth control available over the counter for adults over 18 but excludes emergency contraception drugs like Plan B, allowing Republicans to argue they support contraception. When Patty Murray (WA) tried to get a vote on a bill to increase funding for Title X family planning programs, Joni Ernst (IA) blocked it on behalf of Republicans and touted her support for contraception, noting her sponsorship of the Senate version of the Hinson bill (Sotomayor and Caldwell 2022). Contraception will remain a difficult issue for Republicans. A former leadership staffer explains, "Over-the-counter birth control is contentious. The really religious Catholic members don't like it. Republican women who are pushing it think pragmatically that if you want to reduce unwanted pregnancies you need to make birth control more available."²¹

Now that Republicans control the House majority, Republican women's support is essential for bringing policies forward. Yet, there is division among the women. Women such as Kat Cammack (FL), who co-chairs the House Pro-Life Caucus, and Cindy Hyde-Smith (MS), who chairs the Senate Pro-Life Caucus, will likely support strong restrictions. Indeed, Hyde-Smith was the only senator to publicly applaud the district court decision banning abortion pills (Meyer and Caldwell 2023). By contrast, Nancy Mace (SC) is the most outspoken House member urging Republicans to stop legislating on abortion, seek compromise, and support contraception (Zanona, Grayer, and Fox 2023). The former leadership staffer asserts that Republican women will play a big role in what the conference decides to do on abortion: "Some Republicans are doctrinaire and strictly pro-life. They want it all banned. The more compromise-minded members will listen to the women members' perspective. All Republicans are pro-life, but the women members view the issue more personally than the men ... The women Republicans are pushing the men to express empathy and sound reasonable. For some on the far right in districts that vote Republican by 47 %, they will say they never want abortion and no exceptions and will not listen to anyone, but people with competitive elections will try to push their colleagues to occupy the middle, where the public is."²²

Heading into the 2024 elections, both parties are trying to win control of Congress and the presidency. The coming balance of power will determine the parameters of what each party can achieve. Still, Democrats and Republicans in

²¹ Former Republican leadership staffer interview with the author, April 20, 2023.

²² Former Republican leadership staffer interview with the author, April 20, 2023.

Congress will be working to frame messages that can win public support as they try to balance the demands of their bases with the need to align with prevailing public sentiment. Women officeholders in both parties will be pivotal figures in their party's quest to shape the future of abortion policy.

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