

11-2023

A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States

Morgan Peck
Vanderbilt University Law School

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [Health Law and Policy Commons](#), [International Law Commons](#), and the [Medical Jurisprudence Commons](#)

Recommended Citation

Morgan Peck, A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States, 56 *Vanderbilt Law Review* 1385 (2023)
Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol56/iss5/6>

This Note is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.



DATE DOWNLOADED: Fri Nov 1 11:15:43 2024

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Bluebook 21st ed.

Morgan Peck, A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States, 56 VAND. J. TRANSNAT'L L. 1385 (November 2023).

ALWD 7th ed.

Morgan Peck, A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States, 56 Vand. J. Transnat'l L. 1385 (2023).

APA 7th ed.

Peck, Morgan. (2023). new green wave: lessons from argentina's marea verde for legalizing abortion over religious opposition in the united states. Vanderbilt Journal of Transnational Law, 56(5), 1385-1422.

Chicago 17th ed.

Morgan Peck, "A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States," Vanderbilt Journal of Transnational Law 56, no. 5 (November 2023): 1385-1422

McGill Guide 9th ed.

Morgan Peck, "A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States" (2023) 56:5 Vand J Transnat'l L 1385.

AGLC 4th ed.

Morgan Peck, 'A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States' (2023) 56(5) Vanderbilt Journal of Transnational Law 1385

MLA 9th ed.

Peck, Morgan. "A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States." Vanderbilt Journal of Transnational Law, vol. 56, no. 5, November 2023, pp. 1385-1422. HeinOnline.

OSCOLA 4th ed.

Morgan Peck, 'A New Green Wave: Lessons from Argentina's Marea Verde for Legalizing Abortion over Religious Opposition in the United States' (2023) 56 Vand J Transnat'l L 1385

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Provided by:

Vanderbilt University Law School

A New Green Wave: Lessons from Argentina’s *Marea Verde* for Legalizing Abortion over Religious Opposition in the United States

ABSTRACT

The reproductive rights arena has experienced great upheaval in recent years, particularly regarding access to legal abortion. This Note analyzes recent notable reversals of domestic abortion law: Argentina’s 2020 legalization of elective early-term abortions and the US Supreme Court’s 2022 overruling of a constitutional right to an abortion. This analysis studies the impact of religion, particularly Catholicism, on abortion rights in both countries in order to determine how to overcome and even leverage religion to build more robust abortion rights in a post-Dobbs United States.

US abortion rights advocates should follow the successful strategy of la Marea Verde in Argentina of national legislation enshrining abortion rights. In order to leverage the support of the religiously affiliated US voting populations who may be left out of the mainstream abortion debate (e.g., those who are anti-abortion but pro-choice), such legislation should enshrine views and policies that support the life and dignity of the pregnant (and later parenting) person and their children.

TABLE OF CONTENTS

I.	INTRODUCTION	1386
II.	BACKGROUND	1388
	A. The Establishment of—and Attacks on—the Right to Abortion in the United States.....	1389
	B. The Slow Creation of Abortion Rights in Argentina through the Judiciary and Legislature	1393
	C. The Sociological Pipeline between the United States and Argentina.....	1398
III.	ANALYSIS.....	1399
	A. Different Approaches to Legal Personhood ...	1402
	1. The United States – Judicial Approaches.....	1403
	2. The United States – Legislative Approaches.....	1404
	3. Argentina – Judicial Approaches.....	1405

4.	Argentina – Legislative Approaches	1405
B.	Balancing the Pregnant Person’s Life in the Abortion Debate	1406
C.	The Role of Organized Religion.....	1407
D.	The Judiciary as a Forum for Conservative Religious Ideologies against Abortion.....	1410
IV.	SOLUTION	1412
A.	Hurdles to Legalizing Abortion in the United States.....	1413
B.	Structural Approach to Rebuilding Abortion Rights in the United States.....	1416
C.	Argentina as a Legislative Model for the United States	1417
V.	CONCLUSION	1420

I. INTRODUCTION

In June 2022, the US Supreme Court overturned the constitutional protections for elective pre-viability abortion first established in *Roe v. Wade*,¹ reversing fifty years of baseline abortion rights in all fifty states and turning the decision over to the states.² Some states took swift action to severely restrict or completely ban abortion,³ while others attempted to extend legal personhood and its protections to the unborn.⁴

Two years earlier, on the other side of the equator, Argentina’s Senate legalized elective early-term abortion. This legislative triumph came after decades of organizing from the reproductive rights

1. See 410 U.S. 113 (1973).

2. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2279 (2022) (“*Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.”); Nina Totenberg & Sarah McCammon, *Supreme Court Overturns Roe v. Wade, Ending Right to Abortion Upheld for Decades*, NPR (June 24, 2022, 10:43 AM), <https://www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn> [https://perma.cc/982P-XZLZ] (archived Aug. 21, 2023).

3. Totenberg & McCammon, *supra* note 2; see ARK. CODE ANN. § 5-61-304 (effective June 24, 2022) (“triggering” a total ban on abortion with the sole exception of threat to the life of the mother); see also H.R. 4776, 124th Gen. Assemb. (S.C. 2022) (effective June 17, 2022) (increasing protections to any provider, practitioner, or insurer of health services for refusing any participation in abortion services for sake of their conscience).

4. See, e.g., Jill Nolin, *Court Rules Georgia’s Strict Anti-Abortion Law with ‘Personhood’ Clause is Now in Effect*, GA. RECORDER (July 20, 2022, 4:44 PM), <https://georgiarecorder.com/2022/07/20/court-rules-georgias-strict-anti-abortion-law-with-personhood-clause-is-now-in-effect/> [https://perma.cc/ZV88-VNN6] (archived Aug. 21, 2023) (describing the “personhood” provision in the law that recognizes the unborn as a “natural person”).

movement, one monumental but ineffective Argentine Supreme Court case,⁵ and one failed legislative effort.⁶ Before the two countries' recent reversals, Argentina followed the United States' legal model in many ways, including utilizing *Roe* in the 2012 Argentina Supreme Court case that paved the way for the momentous Senate vote eight years later.⁷ The similar legal structures around the right to abortion in the two countries before 2020 make their recent divergence on the matter worthy of further exploration.

One understudied aspect is the influence of religion on laws governing abortion domestically and internationally. Understanding that impact could help explain the legal reality and future of reproductive rights in the United States, Argentina, and beyond. Christianity has long been a powerful force in the politics and social norms of both countries.⁸ Perhaps no organized Christian sect has more adamantly and strategically opposed abortion and other reproductive rights than the Roman Catholic Church.⁹ The various abortion laws and their underlying logic regarding abortion access are

5. See Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 13/3/2012, "F., A.L. s/ medida autosatisfactiva," Fallos (2012-335-197) (Arg.); Andrea F. Noguera, *Argentina's Path to Legalizing Abortion: A Comparative Analysis of Ireland, the United States, and Argentina*, 25 SW. J. INT'L L. 356, 358–59 (2019) (detailing the lack of compliance with the Supreme Court's ruling in *F., A.L.*).

6. See Elena Moore, *Argentina Legalizes Abortion in Historic Senate Vote*, NPR (Dec. 30, 2020, 2:23 AM), <https://www.npr.org/2020/12/30/951001451/argentina-legalizes-abortion-in-historic-senate-vote> [<https://perma.cc/4W4C-4ELA>] (archived Aug. 21, 2023); Noguera, *supra* note 5, at 359.

7. See *F., A.L.*, 335 Fallos 197 (Arg.) (citing *Roe v. Wade*, 410 U.S. 113 (1973)) (establishing the right to abortion in certain cases); Noguera, *supra* note 5, at 358–59 (explaining the ways in which Argentina used the United States Constitution and case law in constructing its own respective areas of law).

8. While recognizing the presence and influence of other religions in these countries, this Note focuses on Christianity based on its dominance in the social, legal, and political fabric of both countries. See FORTUNATO MALLIMACI, VERONICA GIMENEZ BELIVEAU & JUAN CRUZ ESQUIVEL, SECOND NATIONAL SURVEY ON RELIGIOUS BELIEFS AND ATTITUDES IN ARGENTINA 10 (2019) (in 2019, 82.6% and 62.9% of the total Argentine population identified as Christian and Catholic, respectively); PEW RSCH. CTR., MODELING THE FUTURE OF RELIGION IN AMERICA (2022), <https://www.pewresearch.org/religion/2022/09/13/modeling-the-future-of-religion-in-america/> [<https://perma.cc/S7LW-RALS>] (archived Aug. 21, 2023) (estimating that roughly 64% of Americans identified as Christian in 2020).

9. See *Respect for Unborn Human Life: The Church's Constant Teaching*, U.S. CONF. CATH. BISHOPS, <https://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/respect-for-unborn-human-life> [<https://perma.cc/7QX7-X8FY>] (archived Aug. 21, 2023) [hereinafter USCCB]; PAUL VI, *HUMANAE VITAE* (1968) (reemphasizing the Church's doctrine that the use of any form of contraception to prevent conception is intrinsically sinful); see also MARY ZIEGLER, *DOLLARS FOR LIFE: THE ANTI-ABORTION MOVEMENT AND THE FALL OF THE REPUBLICAN ESTABLISHMENT* 4 (2022) (showing an early example of organized Catholic opposition to the first abortion reform legislation).

inextricably linked to other reproductive rights under the law.¹⁰ Therefore, a new legal regime reinstating abortion rights in the United States needs to reckon with the religious forces at play so that it can last and protect all those impacted by reproductive rights—which is to say, every member of society, present and future.

This Note examines the role Christianity, particularly Roman Catholicism, played in influencing abortion laws in the United States and Argentina and offers a solution for new federal protections of abortion rights in the United States. Part II discusses the evolution of abortion rights in both countries, from their foundations to their recent reversals. Part III scrutinizes the ways in which religious ideology factored into the different logical frameworks utilized by the different parties involved in the fight for abortion access, the relevant tactics employed, and the subsequent outcomes. Considering the impact in Argentina of US jurisprudence regarding abortion rights, the recent legal revolution in Argentina based on *Roe* may reinvigorate its influence in the United States. Accordingly, Part IV imagines how the US abortion rights movement can successfully push for similar legislation to the current law in Argentina: one federal law recognizing the right to elective abortion rooted in the pregnant person's autonomy and dignity (the "IVE Law"),¹¹ and another that creates federal social support programs for the mother and child in the early years of the child's life (the "1,000-Day Law").¹² This federal legislative framework can offer a crucial middle ground for more moderate or liberal Christians and Catholics by offering more robust practical support of the lives responsible for and created through the pregnancy, thus fostering enough electoral support to secure legislative victory.

II. BACKGROUND

This Part covers the development of abortion law in the United States and Argentina, including recent changes. It also examines the sociolegal pipeline between the two countries and how the recent

10. See, e.g., REBECCA TODD PETERS, TRUST WOMEN: A PROGRESSIVE CHRISTIAN ARGUMENT FOR REPRODUCTIVE JUSTICE 54–58 (2018) (arguing that the conservative Christian ideology behind abortion restrictions and bans also motivates regulating other reproductive rights, limiting sexual education to abstinence-only, and criminalizing pregnancy-adjacent actions and outcomes).

11. See Law No. 27610, Jan. 15, 2021, Ley del Acceso a la Interrupción Voluntaria del Embarazo [Interrupción Voluntaria del Embarazo] [IVE Law] [34.562] B.O. 3 (Arg.), art. 3, <https://www.boletinoficial.gob.ar/detalleAviso/primera/239807/20210115> [https://perma.cc/96BR-FMWW] (archived Aug. 21, 2023); Kim D. Ricardo, *Was Justice Ginsburg Roe-ghl? Reimagining U.S. Abortion Discourse in the Wake of Argentina's Marea Verde*, 48 MITCHELL HAMLINE L. REV. 128, 133 (2022).

12. Law No. 27611, Jan. 15, 2021, Ley Nacional de Atención y Cuidado Integral de la Salud Durante el Embarazo y la Primera Infancia [Salud Durante el Embarazo y la Primera Infancia] [1,000-Day Law] [34.562] B.O. 8 (Arg.).

abortion rights progress in Argentina can be translated to the United States' legal landscape.

A. *The Establishment of—and Attacks on—the Right to Abortion in the United States*

In 1973, the US Supreme Court issued its decision in *Roe v. Wade*, recognizing a constitutional right to an abortion before the point of fetal viability.¹³ This landmark ruling followed a growing but limited effort in some states to legalize abortion.¹⁴ The seven-member majority based the right largely in the privacy doctrine derived from the Due Process Clause of the Fourteenth Amendment, as established in Court precedent.¹⁵ It also noted that legal personhood has never been extended to the unborn fetus “in the whole sense.”¹⁶ Notably, it centered fetal viability (as defined by medical professionals) in the woman’s right to an abortion, and it recognized the state’s interest in protecting the potential life of the fetus as compelling only at the point of viability.¹⁷

The monumental *Roe* decision, which eventually received majority support in public opinion,¹⁸ soon faced backlash on judicial, legislative, and social fronts. Anti-abortion advocates quickly organized to test the boundaries of the new right and weaken it where possible. One of these attacks culminated in the Supreme Court revisiting the framework of *Roe* nineteen years later in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.¹⁹ In its plurality opinion, the Court weakened *Roe* by holding that no regulation can *unduly* burden a woman’s ability to receive an abortion.²⁰ Despite making room for the state’s interest in regulating abortion, *Casey* ultimately left intact the constitutional right to an abortion before fetal viability.²¹ The Court formally adopted this undue burden standard twenty-five years later in *Whole Woman’s Health v. Hellerstedt*.²² In the already-tense legal and social atmosphere around abortion rights and access at the time, the Court clarified that the new standard was a balancing test to review “health-

13. See 410 U.S. 113, 162–63 (1973).

14. KIMALA PRICE, REPRODUCTIVE POLITICS IN THE UNITED STATES 41–42 (2022).

15. *Roe*, 410 U.S. at 153–54.

16. *Id.* at 162.

17. *Id.* at 163–64.

18. Lydia Saad, *Public Opinion About Abortion — An In-Depth Review*, GALLUP (Jan. 22, 2002), <https://news.gallup.com/poll/9904/public-opinion-about-abortion-indepth-review.aspx> [https://perma.cc/UPA2-S77H] (archived Aug. 21, 2023).

19. 505 U.S. 833 (1992).

20. *Id.* at 878.

21. *Id.*

22. 579 U.S. 582 (2016).

justified abortion restrictions,”²³ an apparent weakening of the right in practice.

Many states continued to adopt increasingly restrictive abortion bills, many of which prohibited elective abortions even before fetal viability. One such category of these bills were commonly known as “fetal heartbeat” bills, a strategic misnomer created by anti-abortion advocates to describe the stage at which rhythmic electrical activity is first detectable in a fetus, although a recognizable heart has not yet formed.²⁴ Texas enacted one such bill, prompting swift pre-enforcement challenges.²⁵ Mississippi then adopted its own ban on abortion after the fifteenth week of pregnancy, which is before the point of viability.²⁶ This controversial and carefully crafted measure formed the basis for the Supreme Court challenge to abortion rights in *Dobbs v. Jackson Women’s Health Organization*.²⁷ Rather than simply upholding Mississippi’s statute, a five-justice majority of the Court explicitly overruled *Roe* and *Casey*.²⁸ The Court thus abandoned the long-standing viability standard for elective abortions—the one constant in its shifting jurisprudence on the subject²⁹—and swept aside all federal constitutional protections, returning abortion regulations to the full decision-making power of the states.³⁰

Throughout the legal evolution from *Roe* to *Dobbs*, religiously affiliated groups engaged in ardent activism to undermine abortion practices and protections, lobbied for legislative change, and protested abortion in the United States. The early years of the anti-abortion movement were primarily led by religious groups like the Roman Catholic-sponsored National Right to Life Committee and fundamental

23. Noguera, *supra* note 5, at 361.

24. See Christina Han & Cara C. Heuser, *Antiabortion Heartbeat Bills Are Neither Morally nor Legally Sound*, SCI. AM. (Jan. 23, 2023), <https://www.scientificamerican.com/article/antiabortion-heartbeat-bills-are-neither-morally-nor-legally-sound/> [<https://perma.cc/ZY8X-FKJW>] (archived Aug. 21, 2023). The first “fetal heartbeat” legislation was introduced in Ohio in 2011. See *id.*

25. Larissa Jimenez, *60 Days After Dobbs: State Legal Developments on Abortion*, BRENNAN CTR. FOR JUST. (Aug. 24, 2022), <https://www.brennancenter.org/our-work/research-reports/60-days-after-dobbs-state-legal-developments-abortion> [<https://perma.cc/EBV4-P6JP>] (archived Aug. 21, 2023); see *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522 (2021) (allowing the law to stand as the lawsuit proceeded).

26. See H.R. 1510, 2018 Leg., Reg. Sess. (Miss. 2018) (codified at MISS. CODE ANN. § 41-41-191) (banning abortion after the fifteenth week of pregnancy); Madison Stacey, *What is Fetal Viability, and How Does it Impact Abortion Cases?*, WTHR (May 12, 2022) <https://www.wthr.com/article/news/health/fetal-viability-explained/531-c39665b1-1bcd-46d3-88be-4620894b23a5> [<https://perma.cc/TC39-MA3F>] (archived Aug. 21, 2023) (explaining that the current general consensus is that a fetus becomes viable between twenty-three and twenty-four weeks of gestation).

27. See 142 S. Ct. 2228 (2022).

28. *Id.* at 2279; see also *id.* at 2310–11 (Roberts, C.J., concurring in judgment) (clarifying his vote was for the judgment upholding the state law, not overruling the Court’s precedent).

29. Ricardo, *supra* note 11, at 141.

30. See *Dobbs*, 142 S. Ct. at 2279.

evangelical Christian leaders such as Jerry Falwell and Pat Robertson, along with their respective organizations.³¹ The different approaches of these groups—championing fetal rights by the former, imposing a strict patriarchal vision by the latter—promoted the same inherent religious beliefs about pregnancy: life begins at conception; therefore, abortion is murder, and no woman can have a moral or legal “right” to “choose” an abortion.³² In recent years, other groups such as Americans United for Life and Concerned Women for America have stepped into the forefront, shifting the rhetoric (as the names of their organizations suggest) to concern for women and the potentially psychologically harmful effects of abortion.³³ These groups still employ conservative religious morals and ideology, but now as the underpinnings, rather than explicit focus, of a new rhetorical framework more palatable to the US public at large.³⁴ The softened rhetoric employed by these and other religiously affiliated organizations worked its way into the mainstream anti-abortion arguments as a strategy to win more support among the public.

The influence of implicit religious ideology in abortion politics has revealed itself in the presidential arena as well. Increased use of explicitly religious arguments against abortion, in addition to pronouncements against abortion during President Reagan’s presidency, showed the rise and power of the new Christian Right in the late 1970s and early 1980s.³⁵ This rise also coincided with the moment in which abortion became a more visibly partisan issue.³⁶ Explicitly religious arguments espoused during this era set the stage for a more general religiosity being called upon in politicians’ public arguments and a more loosely based morality that could evoke that previous rhetoric. For example, President George W. Bush, whose early pronouncements against abortion largely relied on specific religious reasons, shifted to more general morality arguments during his presidency.³⁷ One such argument called for creating “a culture of life”—which the president borrowed from Pope John Paul II.³⁸

By comparison, religiously affiliated groups who were more sympathetic to the pro-choice movement were significantly more subdued. For example, Catholic feminists were largely silent on the

31. PETERS, *supra* note 10, at 55.

32. *See id.*

33. *Id.* at 55–56.

34. *See* Ted G. Jelen & Brendan Morris, *Presidential Abortion Rhetoric and Religion*, in WHOSE GOD RULES? IS THE UNITED STATES A SECULAR NATION OR A THEOLOGICAL DEMOCRACY? 123, 128 (Nathan C. Walker & Edwin J. Greenlee, eds. 2011).

35. *Id.* at 126–27.

36. *Id.* at 127.

37. *Id.*

38. *Id.* at 130.

issue of abortion around the era of *Roe* and beyond.³⁹ Any support voiced was usually for other women advocating for the legal right to choose, and typically done behind the scenes, while maintaining a firm opposition to abortion as a practice.⁴⁰ Within this more liberal religious population, people make a distinction between their beliefs on abortion and on the choice to have an abortion: they find a way to be both anti-abortion and pro-choice in the most literal sense of the two terms, that is, against the practice of abortion, but in support of a pregnant person's ability to choose to have an abortion.⁴¹ Following *Roe*, these individual beliefs usually manifested in mostly reserved support for pro-choice advocates rather than in organized collectives and campaigns.⁴² Religious rhetoric has also been used by politicians and policymakers who publicly identify as pro-choice.⁴³ Additionally, President Joseph Biden, a practicing Catholic, has supported a woman's right to choose during his presidency, though not as ardently as advocates wish.⁴⁴ On the whole, however, the pro-choice religious collective in the United States has not been nearly as organized or active in shaping the law and policy around abortion as the anti-choice⁴⁵ movement.⁴⁶

As more politically conservative Christians joined the Supreme Court,⁴⁷ hope among the anti-choice movement grew stronger. When the ruling in *Dobbs* was officially announced in June, following an unprecedented leak of the draft majority opinion to the press,⁴⁸ anti-

39. See MARY J. HENOLD, CATHOLIC AND FEMINIST: THE SURPRISING HISTORY OF THE AMERICAN CATHOLIC FEMINIST MOVEMENT 221 (2008).

40. See *id.* at 221–22.

41. See *id.*

42. See *id.* at 222.

43. See Jelen & Morris, *supra* note 34, at 133.

44. See Amanda Becker, *Abortion Rights Advocates Want to Hear More from Joe Biden*, 19TH (Dec. 7, 2021), <https://19thnews.org/2021/12/joe-biden-abortion/> [<https://perma.cc/2RV5-BGEN>] (archived Aug. 21, 2023).

45. Although this Note sometimes uses the term “anti-abortion,” which is the more common term for the relevant movement, it more frequently uses the term “anti-choice” to focus the language on the primary distinction for this legal discussion: the right and practical ability to choose to have an abortion. This Note uses “anti-abortion” when the source calls for it or to reflect the nuanced approach of opposing the practice, supporting the choice, and seeking to ultimately make the practice no longer necessary.

46. See, e.g., PETERS, *supra* note 10, at 56 (showing the statistics on legislation restricting abortion since *Roe*).

47. See David Crary, *If Barrett Joins, Supreme Court Would Have Six Catholics*, AP NEWS (Sept. 26, 2020), <https://apnews.com/article/us-supreme-court-ruth-bader-ginsburg-archive-courts-donald-trump-987e5fb6de8a1a29d1cbb00bf1f1948c> [<https://perma.cc/HU9D-3HXE>] (archived Aug. 21, 2023) (discussing the conservative religious Justices on the bench).

48. Josh Gerstein & Alexander Ward, *Supreme Court has Voted to Overturn Abortion Rights, Draft Opinion Shows*, POLITICO (May 3, 2022, 2:14 PM), <https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473> [<https://perma.cc/S25B-DPDB>] (archived Aug. 21, 2023); see also Charlie Savage & Adam Liptak, *Supreme Court Says It Hasn't Identified Person Who Leaked Draft Abortion Opinion*, N.Y. TIMES (Jan. 19, 2023), <https://www.nytimes.com>

choice groups waiting outside the Supreme Court welcomed the news with cheers and tears of joy.⁴⁹

B. *The Slow Creation of Abortion Rights in Argentina through the Judiciary and Legislature*

In contrast to the legalized abortion regime that existed nationwide in the United States between *Roe* and *Dobbs*, access to abortion and reproductive care has historically been significantly restricted in the predominantly Catholic country of Argentina.⁵⁰ The Argentine Constitution officially declares the federal government's support of the Roman Catholic faith,⁵¹ and, as of 2019, almost sixty-three percent of the population identify as Roman Catholic,⁵² which is a recent decrease compared to prior years.⁵³ The main opponents to abortion rights in Argentina throughout its history have been the "religious right," including, in large part, conservative Catholics.⁵⁴

The Catholic Church has been a powerful player in Argentina's political and social structure throughout its history. The brief but brutal *junta militar* ("military dictatorship" in Spanish) that controlled the country shortly after *Roe* enjoyed public collaboration from Church leaders in the country due in part to *junta* initiatives on conservative and traditional values, including preserving the patriarchal family structure, and roles therein, and the Church's prominence in the fabric

/2023/01/19/us/politics/supreme-court-leak-roe.html [https://perma.cc/V65F-NEGN] (archived Aug. 21, 2023) (reporting that the Supreme Court's investigation into the leak has been unable to uncover any strong suspects).

49. See Adam Liptak, *In 6-to-3 Ruling, Supreme Court Ends Nearly 50 Years of Abortion Rights*, N.Y. TIMES (June 24, 2022), <https://www.nytimes.com/2022/06/24/us/roe-wade-overturned-supreme-court.html> [https://perma.cc/US4W-33CV] (archived Aug. 21, 2023).

50. See CÓDIGO PENAL [CÓD. PEN.] [CRIMINAL CODE] art. 86 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/norma.htm> [https://perma.cc/Q4Z7-36K5] (archived Aug. 21, 2023), *translated in Abortion: Argentina*, HUM. RTS. WATCH, <https://www.hrw.org/legacy/women/abortion/argentina.html> [https://perma.cc/SU86-45HX] (archived Aug. 21, 2023); see also Mallimaci, Beliveau & Esquivel, *supra* note 8.

51. See Art. 2, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.), *translated in Argentina 1853 (reinst. 1983, rev. 1994)*, CONSTITUTE PROJECT, https://www.constituteproject.org/constitution/Argentina_1994?lang=en [https://perma.cc/R7VE-AVYV] (archived Aug. 21, 2023).

52. U.S. DEP'T OF STATE: OFFICE OF INT'L RELIGIOUS FREEDOM, 2019 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: ARGENTINA 2 (2009), <https://www.state.gov/reports/2019-report-on-international-religious-freedom/argentina/> [https://perma.cc/WT8U-UNGC] (archived Aug. 21, 2023).

53. See Chara Scroope, *Argentine Culture: Religion*, CULTURAL ATLAS, <https://culturalatlas.sbs.com.au/argentine-culture/argentine-culture-religion> [https://perma.cc/6TNN-BJYR] (archived Aug. 21, 2023) (estimating around 92% self-identified Roman Catholics in Argentina, with less than 20% practicing, as of 2018).

54. Ricardo, *supra* note 11, at 180.

of Argentine society.⁵⁵ Liberal Catholics, which included both professed religious and lay individuals, were targeted and severely punished for even allegedly threatening the power of the *junta* either through express activism or their ordinary lives—and the majority of Church leadership, despite numerous pleas for aid and intercession, remained silent.⁵⁶

In 1984, following the end of the *junta*,⁵⁷ the Argentine legislature passed Article 86 of the National Criminal Code, which banned abortion and recognized only two scenarios in which a woman may qualify for exceptions from legal punishment for an abortion: (1) where the pregnancy posed a risk to the woman's life or health, and (2) where the pregnancy was a result of rape and she was "idiotic or insane."⁵⁸ The end of the *junta* also saw the return of exiled activists, many of whom were influenced and invigorated by the second wave of feminism in the United States.⁵⁹ This group led the charge to advocate for further protections and rights in Argentina, including reproductive rights.⁶⁰

The Argentine Supreme Court expanded the rape exception for criminal punishment by interpreting it to cover all women in its landmark 2012 *F., A.L.* decision.⁶¹ *F., A.L.* followed *Roe* by adopting the balancing test of the women's interests and the state's interests, as well as recognizing "no absolute right to prenatal life."⁶² Most strikingly, *F., A.L.* "went beyond the right to privacy" to establish abortion as a human right that the government must guarantee.⁶³ The Court also incorporated key elements of international human rights law into the Argentine Constitution and applied it to the interpretation

55. See Pierre-Louis Le Goff, *The Role of the Church in Argentina: An Historic Confession by the Argentine Catholic Church*, BROWN UNIV. LIB. <https://library.brown.edu/create/modernlatinamerica/chapters/chapter-9-argentina/moments-in-argentine-history/an-historic-confession-by-the-argentine-catholic-church/> (last visited Oct. 29, 2023) [<https://perma.cc/QX6M-FYUT>] (archived Nov. 11, 2023) (listing "ultra-conservative Catholicism" as a "defining characteristic" of the *junta*); see generally EMILIO MIGNONE, WITNESS TO THE TRUTH (1988) (providing a narrative example of the *junta* initiatives and Church leadership's involvement).

56. See Le Goff, *supra* note 55 (describing the Argentine Church's "pact of silence" and a later report confirming meetings between church and *junta* leaders); MIGNONE, *supra* note 55 (providing narratives of individuals targeted by the *junta* and their family members' unsuccessful pleas to Argentine Church leaders).

57. Ricardo, *supra* note 11, at 147.

58. CÓD. PEN. art. 86 (Arg.).

59. See Cora Fernández Anderson, *Legalising Abortion in Argentina: Social Movements and Multi-Party Coalitions*, 14 J. POL. LATIN AM. 143, 150–51 (2022).

60. *Id.*

61. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 13/7/2012, "F., A.L. / medida autosatisfactiva," Fallos (2012-335-197, ¶ 15) (Arg.); see Noguera, *supra* note 5, at 358.

62. Noguera, *supra* note 5, at 366. The Argentine Supreme Court also adopted the standing justification for women who are no longer pregnant that was used in *Roe*. *Id.* at 365.

63. *Id.* at 358, 365–66.

and framework of abortion rights in the country.⁶⁴ The human rights framework, which focused on rights recognized as inseparable from the inherent dignity and autonomy of women and girls, better fit Argentina's sociopolitical context given its experience under the previous dictatorship.⁶⁵ The focus on international law, which did not prominently factor in either the *Roe* majority or the *Dobbs* dissent, also recognized that some international organizations emphasize abortion services as "a matter of health and human rights."⁶⁶

Despite this unprecedented, expansive decision for the country, the newly established legal framework and the subsequent restrictive judicial interpretations thereof proved ineffective in protecting abortion access.⁶⁷ Medical professionals and local government officials complied with the judicially recognized human right to abortion inconsistently at best.⁶⁸ Women still faced dangerous risks when seeking abortion services outside of the non-punishable parameters. For decades preceding *F., A.L.*, pregnant women in Argentina were more likely to die from complications related to having an unsafe abortion than any other causes of maternal morbidity.⁶⁹ Up until December 2020, women risked prosecution if their pregnancy "did not end in live births," even including involuntary miscarriages.⁷⁰ Over 1,500 criminal abortion cases were still pending as the Senate considered adopting the Voluntary Termination of Pregnancy Law (otherwise known as the IVE Law for its initials in Spanish).⁷¹

In the *F., A.L.* decision, the Argentine Supreme Court looked heavily to international law and treaties around human rights to structure the right to abortion in its constitutional framework. On the other hand, neither *Roe* nor *Dobbs* took any meaningful consideration of international law or practices around abortion rights.⁷² In a later keynote speech, Justice Alito, the author of the *Dobbs* opinion, publicly

64. See *id.* at 366; Ricardo, *supra* note 11, at 182–83.

65. Lynn M. Morgan, *Reproductive Rights or Reproductive Justice? Lessons from Argentina*, 17 HEALTH & HUM. RTS. J. 136, 136 (2015).

66. Ricardo, *supra* note 11, at 183.

67. See Alba Ruibal & Cora Fernandez Anderson, *Legal Obstacles and Social Change: Strategies of the Abortion Rights Movement in Argentina*, 8 POL. GRPS. & IDENTITIES 698, 701 (2018).

68. Noguera, *supra* note 5, at 368.

69. Ricardo, *supra* note 11, at 148; see also Ruibal & Anderson, *supra* note 67, at 701.

70. Ricardo, *supra* note 11, at 148.

71. *Id.* at 149; *La Criminalización por Aborto y Otros Eventos Obstétricos en la Argentina*, CELS CENTRO DE ESTUDIOS LEGALES Y SOCIALES [Center for Legal and Social Studies] (Dec. 28, 2020) (Arg.), <https://www.cels.org.ar/web/publicaciones/la-criminalizacion-por-aborto-y-otros-eventos-obstetricos-en-la-argentina/> [https://perma.cc/SM96-WA7H] (archived Aug. 22, 2023).

72. Cf. *Roe v. Wade*, 410 U.S. 113 (1973); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

joked about international leaders' criticisms of the decision in the following months.⁷³ In other words, what was an accountability and inspiration mechanism for the Argentine Supreme Court's recognition of a constitutional right to abortion did not have such an influence on the US Supreme Court's jurisprudence establishing—then erasing—that same right. Nevertheless, the logic and framework of the international law approach can still prove useful in re-establishing federal protections for abortion access in the United States.

Like the anti-choice movement in the United States that launched multiple legislative and judicial attacks on the rights recognized in *Roe*,⁷⁴ abortion rights activists in Argentina launched a multi-pronged attack on the lack of access to abortion in their country—armed with the judicially recognized right to those services. The abortion rights movement in Argentina earned the name *la Marea Verde* (“the Green Wave” in Spanish) from the ubiquitous green color used by its members during protests and other activism. The National Campaign for Legal, Safe, and Cost-Free Abortion (“the Campaign”), which included over 300 organizations and formed part of *la Marea Verde*, engaged in a decades-long project securing incremental change through policy, litigation efforts, and affirmative programs offering services to pregnant persons.⁷⁵

The first and perhaps most conventional prong of this coordinated attack in Argentina was national legislation, spearheaded by the Campaign.⁷⁶ The Campaign employed its tiered structure to leverage support from various stakeholders, including securing buy-in from political elites and forming a multi-party coalition within the Argentine government.⁷⁷ The legislative approach also required significant work in the social realm; the movement changed the conversation about the strictly taboo subject of abortion and consequently removed some of the public stigma about it.⁷⁸ This, in turn, made support for such legislation no longer politically fatal.⁷⁹

The second prong was a “parallel rights and public health” awareness strategy run by lawyers and public health professionals alike.⁸⁰ This approach involved influencing the judiciary and

73. See Matt Murphy, *Samuel Alito: Top US Judge Mocks World Leaders Over Abortion Ruling*, BBC (July 29, 2022), <https://www.bbc.com/news/world-us-canada-62344354> [<https://perma.cc/576E-NU6B>] (archived Aug. 23, 2023); *U.S. Supreme Court Justice Samuel Alito Delivers Keynote Address at 2022 Notre Dame Religious Liberty Summit in Rome*, NOTRE DAME L. SCH. (July 28, 2022), <https://law.nd.edu/news-events/news/2022-religious-liberty-summit-rome-justice-samuel-alito-keynote/> [<https://perma.cc/P3FU-64YF>] (archived Aug. 23, 2023).

74. See *supra* Part II.A.

75. See Ruibal & Anderson, *supra* note 67, at 702, 705–706.

76. See *id.* at 699.

77. See Anderson, *supra* note 59, at 144–45.

78. See *id.* at 150.

79. See *id.*

80. See Ruibal & Anderson, *supra* note 67, at 699.

legislative guidelines through trainings on the state of the law and the dominant human rights and public health concerns at play.⁸¹

The third prong was direct services, performed by a coalition of grassroots organizations dedicated to making safe abortions actually happen, regardless of the possible legal ramifications.⁸²

Starting in 2016, the legislative arm of the Campaign introduced an abortion legalization measure seven times, with some adjustments.⁸³ The measure made it to a vote in the national legislature in 2018, but it ultimately failed.⁸⁴ Then, in 2020, with a new, more sympathetic president and increased public support for abortion rights,⁸⁵ the Senate took up the proposed IVE Law.⁸⁶

The bill called for the legalization of elective abortion up to fourteen weeks into the pregnancy.⁸⁷ It also framed the choice to have an abortion as belonging to the pregnant person,⁸⁸ and pertaining to their “health, equality, and dignity,”⁸⁹ rather than deferring to medical experts or the state’s interest in the potential life.⁹⁰ Drawing from the *F., A.L.* decision, the IVE bill expanded and strengthened abortion rights in Argentina by codifying the rape exception to explicitly apply to anyone and waiving the judicial decree requirement for girls under the age of thirteen.⁹¹ Additionally, it guaranteed the right to receive abortion services and care within the health system, post-abortion care without judgment, and effective contraception and basic education on sexual and reproductive health, with exceptions or opt-out methods for medical practitioners whose religious beliefs do not support the voluntary termination of a pregnancy.⁹² An accompanying bill took an additional step by ordering the creation of programs to support

81. *See id.* This strategy was informed in part by the US indications model: facilitating legalization by changing societal attitudes about and associations with abortion. *See infra* Part II.C.

82. *See* Ruibal & Anderson, *supra* note 67, at 699.

83. *See id.* at 703.

84. *See id.*; Moore, *supra* note 6.

85. *See* Moore, *supra* note 6; Ricardo, *supra* note 11, at 150.

86. *See* Law No. 27610, Jan. 15, 2021, Ley del Acceso a la Interrupción Voluntaria del Embarazo [Interrupción Voluntaria del Embarazo] [IVE Law] [34.562] B.O. 3 (Arg.).

87. *Id.*

88. The law intentionally uses gender-neutral language to recognize groups other than cisgender women, such as non-binary and transgender persons, who can become pregnant. *See id.* at art. 1.

89. Ricardo, *supra* note 11, at 133.

90. *Cf. Roe v. Wade*, 410 U.S. 113, 163–64 (1973). The IVE Law avoids these deference points in *Roe* in part because fourteen weeks rests well before the recognized point of fetal viability. *See* Stacey, *supra* note 26 (the current consensus is that a fetus becomes viable around weeks twenty-three and twenty-four of gestation).

91. IVE Law art. 16.

92. *Id.* at arts. 6, 10–13.

pregnant persons, mothers, and children.⁹³ These safety net programs include “improved healthcare and nutritional services” for the person’s pregnancy (about thirty-four weeks) and first three years of the child’s life—about 1,000 days, giving the law its colloquial name.⁹⁴

Unsurprisingly, the Catholic Church actively spoke out in uncompromising opposition to the abortion protections at the center of the proposed legislation.⁹⁵ The growing presence of evangelicals in the country also worked against the legislation.⁹⁶ When it came time for the Senate to vote, however, *la Marea Verde* came out victorious. This time, it was the pro-choice advocates’ turn to cheer and cry for joy.

C. *The Sociolegal Pipeline between the United States and Argentina*

When Argentina reinstated and amended its new constitution in the 1980s and 1990s after the end of its last military dictatorship,⁹⁷ it drew inspiration from some key concepts and provisions in the US Constitution.⁹⁸ It also incorporated some US case law in constructing its own jurisprudence.⁹⁹ One such important case was *Roe*; the Argentine Supreme Court used the core rulings of *Roe* to set the theoretical framework for its decision in *F., A.L.*, then incorporated international human rights law to create a more expansive legal view of abortion rights.¹⁰⁰

Outside of the strictly legal landscape, the parallel rights-lobbying collective of the abortion rights movement in Argentina used the “indications model” to set the pathway for the legalization of abortion rights, like advocates in the United States did before.¹⁰¹ This model aims to influence the key actors implementing and enforcing the abortion ban, such as doctors and judges, in their decisions regarding exceptions thereto; by increasing the recognized exceptions to criminal punishment under the existing abortion laws, advocates can expand access to abortion and pave the way for less restrictive laws.¹⁰² Additionally, the grassroots organizers of the movement went beyond the legal system to increase access to and destigmatize abortion,

93. Law No. 27611, Jan. 15, 2021, *Ley Nacional de Atención y Cuidado Integral de la Salud Durante el Embarazo y la Primera Infancia* [Salud Durante el Embarazo y la Primera Infancia] [1,000-Day Law] [34.562] B.O. 8 (Arg.).

94. Ricardo, *supra* note 11, at 133; *see also* 1,000-Day Law.

95. *See* Katy Watson, *Argentina Abortion: Senate Approves Legislation in Historic Decision*, BBC (Dec. 30, 2020), <https://www.bbc.com/news/world-latin-america-55475036> [<https://perma.cc/6TE5-B5EQ>] (archived Aug. 21, 2023).

96. *See id.*

97. CONST. NAC. (Arg.).

98. *See* Noguera, *supra* note 5, at 358 (explaining the ways in which Argentina used the US Constitution and case law in constructing its own respective areas of law).

99. *Id.*

100. *Id.*

101. Ruibal & Anderson, *supra* note 67, at 708.

102. *See id.*

following a model similar to that used by reproductive rights advocates in the pre-*Roe* era (the 1960s and 1970s) in the United States.¹⁰³ These efforts helped open the conversation about abortion and reproductive rights to prime the country before the critical 2020 Senate vote on the IVE bill.¹⁰⁴ The newly strengthened legislative model of abortion rights protections, which has weathered strong religious opposition to secure a victory with the passage of the IVE Law, can be imported to the United States as inspiration for its abortion rights movement's next steps.

The Argentine abortion rights movement focused its legal strategy on bolstering the judiciary's recognition of abortion rights through legislation preserving a minimum right to pre-viability elective abortions. This successful strategy provides a practical example that, with some necessary modifications for the United States' political and religious context, may prove effective for resecuring federal protections for abortion rights in the United States without the previous constitutional support established in *Roe*.

III. ANALYSIS

The impact of the *Dobbs* decision—removing all constitutional protections for the right to choose to have an abortion in the United States—has been swift and chaotic, introducing many direct and collateral issues for women's health and pregnancies.¹⁰⁵ The shift of decision-making power over abortion access to state legislatures has created massive uncertainty about the law, resulting in gaps in health care, threat of harm to women and pregnant people, and medical professionals' hesitation or outright refusal to provide critical care that could be categorized as abortions.¹⁰⁶ In addition to this confusion, some states took definitive and prompt action to outlaw abortion and pass more restrictive laws for the protection of the fetus, some of which relied more or less explicitly on religious ideology about life.¹⁰⁷

103. *Id.*

104. *See id.* at 706.

105. *See* Carrie Feibel, Emily Kwong & Rachel Carlson, *Abortion Laws in Texas Are Disrupting Maternal Care*, NPR (Aug. 4, 2022, 12:10 AM ET), <https://www.npr.org/2022/07/26/1113731553/abortion-laws-in-texas-are-disrupting-maternal-care> [<https://perma.cc/C69C-GRPF>] (archived Aug. 21, 2023).

106. *See id.* (one Texas woman who suffered a miscarriage was unable to immediately receive requisite medical care due to Texas' six-week abortion ban).

107. *See, e.g.*, Merrilee Gasser, *Arkansas' Trigger Law Makes Abortion Illegal in Most Circumstances*, CTR. SQUARE (June 24, 2022) https://www.thecentersquare.com/arkansas/article_345dcb9a-f402-11ec-81af-2f4672732cb7.html [<https://perma.cc/PLX3-DE2R>] (archived Aug. 21, 2023) (the law explicitly states that life begins at conception and that a fetus is a human being).

Moreover, this special brand of legal and medical chaos casts the United States in a decidedly negative light on the global stage. Perhaps most embarrassing is the clash with international agreements that require protection of the rights of women and girls, many of which tie into pregnancy and reproductive rights.¹⁰⁸ While the United States is not a ratified member of some of these agreements,¹⁰⁹ it does have binding responsibilities under others, namely the International Covenant on Civil and Political Rights (ICCPR).¹¹⁰ The ICCPR protects, among others, the rights to life,¹¹¹ privacy,¹¹² and equal protection of the law,¹¹³ which the U.N. Human Rights Committee (UNHRC) has recognized as creating an obligation for states parties to protect access to safe and legal abortion within their borders.¹¹⁴ In the current vacuum of federal legal protections for abortion rights in the

108. The Special Rapporteur on violence against women emphasized that government failures to protect women's autonomy and safety while pregnant "may constitute a violation of a woman's right to life, in addition to the violation of her reproductive rights," and her "right to security of the person" as outlined in the Convention on the Elimination of Discrimination Against Women. Frances Raday, *Culture, Religion and Women's International Human Rights*, in *WOMEN'S RIGHTS AND RELIGIOUS LAW: DOMESTIC AND INTERNATIONAL PERSPECTIVES* 14, 24 (Fareeda Banda & Lisa Fishbayn Joffe, eds. 2016).

109. See, e.g., G.A. Res. 34/180, Convention on the Elimination of Discrimination Against Women [CEDAW] (Dec. 18, 1979); see also *Access to Safe and Legal Abortion: Urgent Call for United States to Adhere to Women's Rights Convention*, UN Committee, UN HUM. RTS. OFF. HIGH COMM'R [OHC] (Jul. 1, 2022), <https://www.ohchr.org/en/statements/2022/07/access-safe-and-legal-abortion-urgent-call-united-states-adhere-womens-rights> [<https://perma.cc/NXX9-S52X>] (archived Aug. 21, 2023).

110. See International Covenant on Civil and Political Rights, Oct. 5, 1977 [U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. 54781-01], 999 U.N.T.S. 171 [hereinafter ICCPR]; Ahan Gadkari & Sofia Dash, Student Commentary, *The US Position on Abortion and International Human Rights Law*, JURIST (July 25, 2022), <https://www.jurist.org/commentary/2022/07/gadkari-dash-dobbs-international-human-rights/> [<https://perma.cc/Z57G-HLNC>] (archived Nov. 11, 2023) (the US ratified the ICCPR in 1992, making it the "supreme law of the land").

111. ICCPR, *supra* note 110, art. 6.

112. *Id.* at art. 17.

113. *Id.* at art. 26.

114. See Livio Zilli, *The UN Human Rights Committee's General Comment 36 on the Right to Life and the Right to Abortion*, OPINIO JURIS (June 3, 2019), <https://opiniojuris.org/2019/03/06/the-un-human-rights-committees-general-comment-36-on-the-right-to-life-and-the-right-to-abortion/#:~:text=safe%20legal%20and%20effective%20access,the%20ICCPR%20begins%20at%20birth> [<https://perma.cc/9CKN-8YAA>] (archived Nov. 16, 2023) (highlighting General Comment 36 as a "(re)affirmation that... safe legal and effective access to abortion" falls within the right to life under the ICCPR). Per recent UNHRC decisions, even forcing a woman to choose between travelling outside of the country for an abortion and keeping the unwanted or nonviable pregnancy is a violation of the ICCPR. See Gadkari & Dash, *supra* note 110 (the UNHRC found such a coerced choice, created by Ireland's abortion ban, to be an "invasive interference" in violation of Article 17); see also *id.* (the UNHRC found Ireland's ban on abortion as of 2016 to violate Articles 7 (prohibition on torture or other cruel inhuman or degrading treatment), 17, and 26).

United States, allowing states to regulate abortion access in such a way that effectively eliminates it does not satisfy the United States' international obligations and may in fact violate them.¹¹⁵

The anti-choice movement in the United States, primarily led by religiously affiliated or aligned organizations, successfully chipped away at protections for abortion at the state level.¹¹⁶ Eventually, it secured the reversal of the singular federal protection of abortion rights previously recognized by the highest court in the country as embedded within the US Constitution.¹¹⁷ The anti-choice movement in Argentina, also with prominent religious affiliations and support, employed a similar chipping-away approach after the country's highest court recognized a more expansive right to abortion as part of its constitution.¹¹⁸ However, the abortion rights movement in Argentina met the religious opposition with a robust, multi-pronged strategy that beat back the opposition's efforts.¹¹⁹ In the United States, the religious opposition to abortion was a significant factor in the lead-up to and ultimate reversal of *Roe*.¹²⁰ As a result, US women and people able to become pregnant are now left to deal with the repercussions of that reversal—regardless of their own beliefs.

Compared to the pre-*Dobbs* protections for abortion in the United States, the outcome of the recent legislative victory in Argentina offers less substantive protection. The IVE Law only guarantees a right to an elective abortion up to fourteen weeks into the pregnancy and maintains the preexisting exceptions for abortions beyond that point.¹²¹ Meanwhile, the previous *Roe–Casey* framework guaranteed that right before viability and permitted a balancing test in the second trimester, giving states and doctors latitude in authorizing an abortion to protect the mother.¹²² However, other parts of the IVE Law, namely those that recognize a right to sexual education and post-abortion care, offer greater support than currently exists at the federal level in the United States.¹²³ Additionally, the second part of the legislative

115. See Gadkari & Dash, *supra* note 110 (drawing a parallel between the previous situation in Ireland and the current situation in the United States).

116. See *supra* Part II.A.

117. See *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2279 (2022).

118. See Ricardo, *supra* note 11, at 180.

119. See *id.*; Ruibal & Anderson, *supra* note 67, at 699.

120. See Ruth Graham, 'Will We Keep Marching?' *On Roe's 50th Anniversary, Abortion Opponents Reach a Crossroads*, N.Y. TIMES (Jan. 19, 2023), <https://www.nytimes.com/2023/01/19/us/abortion-roe-v-wade-50th-anniversary.html> [<https://perma.cc/V45L-HQ8B>] (archived Aug. 21, 2023).

121. See Law No. 27610, Jan. 15, 2021, Ley del Acceso a la Interrupción Voluntaria del Embarazo [Interrupción Voluntaria del Embarazo] [IVE Law] [34.562] B.O. 3 (Arg.), art. 16.

122. See *Roe v. Wade*, 410 U.S. 113, 163–64 (1973); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 878 (1992).

123. See IVE Law arts. 1, 13.

victory, the 1,000-Day Law, established federally-created social support programs for mothers and children under three years of age.¹²⁴ The US Congress has contemplated but ultimately abandoned similar proposals to support mothers and children.¹²⁵ Therefore, the development and enactment of the IVE and 1,000-Day Laws offer a timely comparison case as well as some insights into the way forward for the abortion rights movement in the United States.

This Part analyzes some of the relevant religious-based ideologies around abortion and the tactics utilized to codify them into or prevent them from becoming law. Some of the most salient ideologies are the concept of personhood and the moral balancing act between the unborn and the pregnant person. A key part of this analysis involves looking at the effect of religiously affiliated or motivated groups' work on the public discourse and legal framework around abortion and the right to choose to have an abortion. After discussing the influence that religious opposition to abortion rights had on the law in the United States and Argentina, this Part looks at the ways in which the abortion rights movements in each country responded to that opposition—and what lessons they show about countering and overcoming such obstacles.

A. *Different Approaches to Legal Personhood*

Fundamental to the debate on abortion is the personhood status of the fetus. A theory of complete fetal personhood—that is, the theory that a fetus enjoys equal and complete human rights at every stage of its development—owes its roots in large part to the Christian doctrine of life lasting from conception until natural death.¹²⁶ In the United States as well as in Argentina, this is largely expounded by overtly religious advocates against abortion, including politicians.¹²⁷ The Argentine government's attorney in *F., A.L.* even adopted this theory in his case against permitting the young rape victim to receive an abortion.¹²⁸ However, that is not the current federal law in either

124. See Law No. 27611, Jan. 15, 2021, Ley Nacional de Atención y Cuidado Integral de la Salud Durante el Embarazo y la Primera Infancia [Salud Durante el Embarazo y la Primera Infancia] [1,000-Day Law] [34.562] B.O. 8 (Arg.).

125. See Gabrielle Pepin & John C. Austin, *With Federal Child Care Legislation Abandoned, It's Up to States to Help Working Families*, BROOKINGS (Feb. 13, 2023), <https://www.brookings.edu/blog/the-avenue/2023/02/13/with-federal-child-care-legislation-abandoned-its-up-to-states-to-help-working-families/> [https://perma.cc/DVX3-CSAT] (archived Aug. 23, 2023).

126. PETERS, *supra* note 10, at 133.

127. See Sarah McCammon & Mallika Seshadri, *At the First March for Life Post-Roe, Anti-Abortion Activists Say Fight Isn't Over*, NPR (Jan. 20, 2023, 8:36 PM ET), <https://www.npr.org/2023/01/20/1150276020/march-for-life-post-roe-anti-abortion-activists> [https://perma.cc/GBK9-N8ZP] (archived Aug. 23, 2023); Elizabeth Landers, *Vice President Mike Pence Speech Right at Home at March for Life*, CNN (Jan. 27, 2017), <https://www.cnn.com/2017/01/27/politics/mike-pence-march-for-life-speech/index.html> [https://perma.cc/U8U4-C3T6] (archived Aug. 23, 2023).

128. See Ricardo, *supra* note 11, at 181.

country, despite some legislative and judicial efforts to the contrary.¹²⁹ In US case law, *Roe* dismissed the concept of complete fetal personhood,¹³⁰ which *Dobbs* arguably did not displace.¹³¹ However, it formed a compromise by recognizing the state's interest in the *potential* life of the fetus—in other words, their *potential* personhood.¹³²

1. The United States – Judicial Approaches

The *Dobbs* opinion covered opposing stances on the appropriate theory of personhood for the fetus. The dissent, jointly authored by Justices Breyer, Sotomayor, and Kagan, emphasized the full personhood of the pregnant woman over the potential life of the fetus before viability.¹³³ While the Alito-authored majority claimed to not take a stance on which theory of personhood should prevail under the Constitution,¹³⁴ it used language and arguments usually used in support of the theory of complete fetal personhood. For example, the majority wrote “that *many* people now have a new appreciation of fetal *life* and that when prospective parents who want to have a child view a sonogram, they typically have no doubt that what they see is their daughter or son.”¹³⁵ However, that same logic underpins laws at the state and local level, largely championed by conservative Christians, that require pregnant women to first undergo an ultrasound, see the sonogram of the developing fetus, and hear a description of the fetus before going through with an abortion.¹³⁶

On the whole, the majority in *Dobbs* seemingly gives more airtime to arguments generally proposed by “Americans who believe that abortion should be restricted” based on “modern developments” than

129. See, e.g., Nolin, *supra* note 4 (example of how personhood statutes have failed in the United States).

130. See *Roe vs. Wade*, 410 U.S. 113, 162 (1973).

131. See *Dobbs vs. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261 (2022). This also tracks international treaties recognizing a right to life *upon* birth and not before. See Zilli, *supra* note 114.

132. See *Roe*, 410 U.S. at 163.

133. See, e.g., *Dobbs*, 142 S. Ct. at 2317 (“Respecting a woman as an autonomous being, and granting her full equality, meant giving her substantial choice over this most personal and most consequential of all life decisions.”).

134. See *id.* at 2261.

135. *Id.* at 2259 (emphasis added) (citing the policy stance of Americans seeking to limit abortion). Notably, the majority does not cite to any specific studies or briefs in support of this proposition. See *id.*

136. See *Requirements for Ultrasound*, GUTTMACHER INST. (Jan. 1, 2023), <https://www.guttmacher.org/state-policy/explore/requirements-ultrasound> (last visited Jan. 22, 2023) [<https://perma.cc/4D67-4NF8>] (archived Aug. 12, 2023); see also Mary Ann Castle, *Abortion in the United States' Bible Belt: Organizing for Power and Empowerment*, 8 REPROD. HEALTH 2–3 (highlighting the Oklahoma ultrasound laws as an example of the political alliance between conservative state legislators and Catholic groups).

those espoused by the “[d]efenders of *Roe* and *Casey*.”¹³⁷ However, it expressly did not decide “if and when prenatal life is entitled to any of the rights enjoyed after birth.”¹³⁸ This caveat survived the following judicial term; in October 2022, the Supreme Court declined an appeal from, among others, the organization Catholics for Life which challenged the Rhode Island Supreme Court’s ruling that “fetuses lacked the proper legal standing [as plaintiffs] to challenge a 2019 [Rhode Island] state law codifying the right to abortion in line with” the now-defunct *Roe*.¹³⁹

2. The United States – Legislative Approaches

In the years after *Roe*, there was a push to recognize the theory of complete fetal personhood within the Court’s framework through state legislation requiring additional steps that a pregnant person must take in order to obtain an abortion. A common example is the requirement to see a sonogram of the fetus and wait for at least twenty-four hours before undergoing the procedure.¹⁴⁰ As the state-level legislative attacks on *Roe* increased in strength and number, the attempts at legislative recognition of fetal personhood as complete and equal to any other personhood became more explicit. This took the form of the strategically named “heartbeat” bills,¹⁴¹ outright bans on abortion without even the exceptions that receive clear general social support,¹⁴² and explicit fetal personhood laws like the one adopted in Georgia.¹⁴³ The infiltration and entrenchment in the law of religious views on the beginning of life necessarily impact the lives and liberties of others, regardless of their own personal beliefs and situations.

137. *Dobbs*, 142 S. Ct. at 2258–59.

138. *Id.* at 2261. The terminology alone is noteworthy, since it arguably weighs in favor of recognizing the legal life of the fetus. However, this may also reflect biological and ethical arguments on life beginning at conception. See Jelen & Morris, *supra* note 34, at 123–24.

139. Nate Raymond, *U.S. Supreme Court Rebuffs Fetal Personhood Appeal*, REUTERS (Oct. 11, 2022, 10:38 AM EDT), <https://www.reuters.com/legal/us-supreme-court-rebuffs-fetal-personhood-appeal-2022-10-11/> [<https://perma.cc/ASS7-EX44>] (archived Aug. 12, 2023).

140. GUTTMACHER INST., *supra* note 136.

141. See, e.g., *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 530 (2021) (Texas Senate Bill 8 prohibited abortions “if the physician detected a fetal heartbeat for the unborn child’ unless a medical emergency prevents compliance”).

142. See, e.g., Merrilee Gasser, *Arkansas’ Trigger Law Makes Abortion Illegal in Most Circumstances*, CTR. SQUARE (June 24, 2022) (the law explicitly recognized life beginning at conception and the fetus as a human being); see also PETERS, *supra* note 10, at 133 (most Americans support abortion to save a pregnant person’s life); McCammon & Seshadri, *supra* note 127 (a majority of Americans support legal abortion in all or most cases). These bans came to be known as “trigger bans” since they could not go into effect so long as *Roe* was good law. See Jimenez, *supra* note 25.

143. See Nolin, *supra* note 4; Jimenez, *supra* note 25.

After *Dobbs*, the revitalized anti-choice fight persists in the legislature and courts,¹⁴⁴ making studying and understanding each approach particularly important in the pursuit of legally protected reproductive rights.

3. Argentina – Judicial Approaches

Conservative religious arguments in support of complete fetal personhood explicitly appeared on the record in the *F., A.L.* case. The prosecutor, standing in the place of “unborn children,” insisted that the Argentine government was “obligated to protect life from the moment of conception.”¹⁴⁵ He based this argument on an explicit provision of the country’s constitution,¹⁴⁶ which reads, in relevant part, that Congress has the power to “legislate and promote positive measures guaranteeing true equal opportunities and treatment, the full benefit and exercise of the rights recognized by this Constitution and by the international treaties on human rights in force, particularly referring to children, women, the aged, and disabled persons.”¹⁴⁷

The Argentine Supreme Court expressly rejected this interpretation of the government’s duty as applying to a pre-viable fetus, finding the provision instead to more heavily favor the government’s duty to protect the pregnant woman (or in the case at hand, girl) during and after the pregnancy.¹⁴⁸ In support of its holding, the Court pointed to the “vibrant debate” about the fetal right to life during the 1994 Constitutional Convention and the lack of clear consensus in the resulting document.¹⁴⁹ Additionally, the Court showcased that international treaties, which—under the Argentine constitution’s own provisions—carry the same authority as the constitution, recognized a conditional fetal right to life, not an unconditional one,¹⁵⁰ further rebutting an absolute theory of complete fetal personhood.

4. Argentina – Legislative Approaches

Because the judicial approaches did not achieve solid success until 2012, and then only inspired inconsistent compliance,¹⁵¹ abortion rights advocates had to turn towards legislation to combat the religious

144. See Graham, *supra* note 120.

145. Ricardo, *supra* note 11, at 181.

146. *Id.*

147. Art. 75 ¶ 23, CONST. NAC.

148. Ricardo, *supra* note 11, at 181–82; Noguera, *supra* note 5, at 366–67.

149. Ricardo, *supra* note 11, at 182 (citing *F., A.L.*, 335 Fallos 197, ¶ 9).

150. *Id.* at 182–83.

151. Ruibal & Anderson, *supra* note 67, at 702–3.

view of life from conception that was firmly entrenched in Argentine society.¹⁵² By limiting the IVE Law's protections to fourteen weeks into the pregnancy, the movement also avoided, perhaps intentionally, a more complicated debate about the personhood of a viable fetus. The lawmaking approach was bolstered by non-legislative campaigns to support the personhood and dignity of the pregnant person through public health education and facilitating their access to abortion services.¹⁵³

B. *Balancing the Pregnant Person's Life in the Abortion Debate*

The abortion debate necessarily implicates the pregnant person's right to life, broadly speaking, which consequently complicates the morals of the typical pro-life vs. pro-choice framing in proposed legislation.

The dominant view and practice in the United States is that "abortion is justifiable to save the life of a pregnant woman."¹⁵⁴ In a post-*Dobbs* world, sixty percent of Americans support legal abortion in all or most cases.¹⁵⁵ Even forty-six percent of those who support banning abortion in all or most cases believe it should still be legal when the pregnant person's life or health is in danger.¹⁵⁶ This reflects the competing and ultimately countervailing value of the pregnant person's life in the balance. In this alternative line of moral balancing, the additional concern for the very likely psychological harm a woman might endure by carrying a pregnancy that, for example, was the result of a sexual assault, or that cannot possibly result in a viable birth, carries practically determinative weight.¹⁵⁷ Thus, that likely devastating impact on the woman's life justifies a termination of the pregnancy for rape, incest, or fetal incompatibility with life.¹⁵⁸

Once again, the majority and dissent in *Dobbs* differed in how they balanced the implicit moralities of the abortion debate. The majority framed the issue only in terms of ending the fetal life without seriously considering the additional moral implications raised in the pro-choice arguments.¹⁵⁹ The dissent, on the other hand, did not hesitate to

152. As recently as 2009, a majority of the population believed abortion was never justifiable. See Anderson, *supra* note 59, at 152. This strong disapproval of abortion extended well beyond the population of practicing Catholics, showing the pervasive influence of the Catholic church on Argentine social norms. See *id.*

153. See Ruibal & Anderson, *supra* note 67, at 699; *supra* Part II.B.

154. PETERS, *supra* note 10, at 133.

155. McCammon & Seshadri, *supra* note 127 (twenty-six and thirty-four percent, respectively).

156. *America's Abortion Quandary*, PEW RSCH. CTR. (May 6, 2022), <https://www.pewresearch.org/religion/2022/05/06/americas-abortion-quandary/> [<https://perma.cc/3K48-THGV>] (archived Aug. 23, 2023).

157. PETERS, *supra* note 10, at 131–32.

158. See *id.*

159. See *Dobbs vs. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2258 (2022).

expound and examine the broader moral consequences for US society at large of the revocation of the right to pre-viability abortion.¹⁶⁰ Namely, the three dissenting justices discussed in detail the dignitary, physical, and emotional harms for people capable of becoming pregnant facing unwanted pregnancies and the amplification thereof likely caused by the Court's decision to gut federal constitutional protections for abortion rights.¹⁶¹ One particularly poignant section laid out the dismal statistics about maternal mortality and poverty in Mississippi, the state whose abortion legislation was at issue in *Dobbs*.¹⁶² The dissent also addressed the harms faced by an additional group of persons caught up in this morality balancing act: the children born to impoverished, overburdened, or simply underprepared mothers.¹⁶³

In Argentina, the law has recently shifted to espouse a broader view of reproductive rights. The view recognized by the Argentine Supreme Court in *F., A.L.*, and codified through the IVE Law, was that abortion and general reproductive autonomy are human rights, rather than mere privacy rights—as they were under *Roe* and its progeny.¹⁶⁴ The IVE Law focused on the pregnant person's "health, equality, and dignity" in recognizing their abortion rights before and after fourteen weeks.¹⁶⁵ It also recognized a more inclusive understanding of who can become pregnant and therefore need abortion services.¹⁶⁶ In passing the IVE and 1,000-Day Laws, the Senate bolstered this view explicitly in the legislative text and implicitly in the policies enacted.¹⁶⁷

C. *The Role of Organized Religion*

Recognizing the variety within faith traditions and the deeply individual experience of faith, a common thread across both Argentina and the United States is organized religion fueling, or at least inspiring, organized opposition to legal abortion access. A large part of this opposition comes from organized Christian and Catholic groups,

160. *See, e.g., id.* at 2318–19.

161. *See id.*

162. *Id.* at 2339–40 (Mississippi has the highest rate of infant mortality of any state in the United States).

163. *See id.*

164. *See* Law No. 27610, Jan. 15, 2021, Ley del Acceso a la Interrupción Voluntaria del Embarazo [Interrupción Voluntaria del Embarazo] [IVE Law] [34.562] B.O. 3 (Arg.), arts. 1–3; Noguera, *supra* note 5, at 358.

165. Ricardo, *supra* note 11, at 133.

166. *See* IVE Law art. 1 (granting the right to an elective abortion and post-abortion care to women and persons with other gender identities who can become pregnant).

167. *See* IVE Law; Law No. 27611, Jan. 15, 2021, Ley Nacional de Atención y Cuidado Integral de la Salud Durante el Embarazo y la Primera Infancia [Salud Durante el Embarazo y la Primera Infancia] [1,000-Day Law] [34.562] B.O. 8 (Arg.).

who utilized campaign strategies, their leaders' platforms, financial resources, and other tools to influence society and lawmakers to oppose abortion access in any form.¹⁶⁸

The Catholic Church has historically and currently presented a well-organized, well-funded, and generally united front against abortion.¹⁶⁹ The Church's institutional and global nature allows for the dispersion of ideologies and tactical support for anti-abortion movements in both countries. Pope Francis, the global head of the Catholic Church, has been very outspoken against the practice and legalization of abortion.¹⁷⁰ His influence as the Catholic pope is amplified in Argentina, his home country, where he served as a priest and diocesan leader for decades.¹⁷¹ In the United States, the Conference of Catholic Bishops has also regularly spoken out against abortion in the post-*Roe* era and, in its most recent elections, installed staunchly anti-abortion leaders, including its president.¹⁷²

Outside of Church leadership are Catholics who support a growing movement among Christians to protect women's right to choose whether to become a mother. Across Latin America, including in Argentina, one such group in that movement is called *Mujer, hágase tu voluntad* (roughly, "Woman, your will be done"), inspired by the Biblical story of the Virgin Mary being consulted by God's messenger angel before becoming the mother-to-be of Jesus Christ.¹⁷³ A similar group in the United States is Catholics for Choice, which has an international focus.¹⁷⁴ Both groups have organized demonstrations and campaigns to change the public discourse around abortion and reproductive rights from a religious Catholic perspective to, in part, change the minds of voters and lawmakers.¹⁷⁵

Argentina's national identity as a predominantly Catholic country was a formidable obstacle that the IVE Law successfully cleared. The abortion rights movement in Ireland, a historically and deeply Catholic country, also managed to clear this national identity obstacle when it

168. See USCCB, *supra* note 9; ZIEGLER, *supra* note 9, at 50–53.

169. See *supra* note 9.

170. See Noguera, *supra* note 5, at 383–84.

171. See *Pope Francis*, U.S. CONF. CATH. BISHOPS, <https://www.usccb.org/popes/pope-francis> (last visited Aug. 23, 2023) [<https://perma.cc/CC8G-7996>] (archived Aug. 23, 2023).

172. Elizabeth Dias, *U.S. Catholic Bishops Elect Leaders for Anti-Abortion Fight*, N.Y. TIMES (Nov. 15, 2022), <https://www.nytimes.com/2022/11/15/us/us-catholic-bishops-abortion.html> [<https://perma.cc/2P4G-N4EQ>] (archived Aug. 23, 2023).

173. Lizeth J. Piza, *Mujer, Hágase tu Voluntad: Una Campaña que Vincula la Religión con el Derecho al Aborto* [‘Woman, Your Will be Done’: a Campaign that Links Religion with the Right to Abortion], INFOBAE (Sept. 28, 2022), <https://www.proquest.com/docview/2719439484?parentSessionId=MFyinz7fOJjQzcvSiP40lPjr0M3%2FDaw%2BYBmtt3Q%2BCUk%3D&accountid=14816> [<https://perma.cc/B79H-CVT4>] (archived Aug. 23, 2023).

174. See *Who We Are*, CATHS. FOR CHOICE, <https://www.catholicsforchoice.org/who-we-are/> [<https://perma.cc/4MR8-VQZJ>] (archived Aug. 23, 2023).

175. See *id.*; Piza, *supra* note 173.

amended its constitution in a nationwide referendum in 2018 to allow abortions.¹⁷⁶ Notably, at the time, the Catholic Church and its leaders did not step in to support its anti-abortion doctrine within the Irish legal structure and Catholic identity; instead, the Church largely stayed silent during the referendum, in large part due to the national reckoning over alleged and proven clerical abuse of children.¹⁷⁷ In contrast, leaders of the Catholic Church in Argentina, including native Argentinian Pope Francis himself, were very vocal in their opposition to legalizing abortion in any form.¹⁷⁸ Nevertheless, the Argentine legislature voted the IVE bill into law, albeit not by an overwhelming majority.¹⁷⁹

Despite its own national reckoning with rampant allegations and confirmations of clerical abuse of children,¹⁸⁰ the US Catholic Church did not back down from the abortion access conversation during the era of *Roe*,¹⁸¹ and its voice is only growing stronger since the *Dobbs* decision. In fact, since *Dobbs*, the US Catholic Church has elected leadership that is more staunchly anti-abortion to focus on such efforts throughout the country.¹⁸² This is another similarity to the role and position of the Church during the abortion legalization debates in Argentina that can shine a light on potentially successful next steps for the US abortion rights movement.

In the United States, where political expenditures are a controversial yet increasingly protected form of speech, religiously affiliated groups contributed significant amounts of money to back certain anti-choice organizations and politicians.¹⁸³ This financial quid pro quo increasingly aligned the religious pro-life movement with increasingly amenable conservative social and political leaders.¹⁸⁴

176. See Noguera, *supra* note 5, at 385.

177. *Id.* at 387.

178. *Id.* at 384.

179. See Watson, *supra* note 95 (the IVE bill received thirty-eight votes in favor, twenty-nine against, and one abstention).

180. See, e.g., *Across the Nation, Priest Sexual Abuse Cases Haunt Catholic Parishes*, USA TODAY (Aug. 23, 2017, 10:40 PM), <https://www.usatoday.com/story/news/2017/08/23/priest-sexual-abuse-cases-catholic-parishes-nationwide/569221001/> [<https://perma.cc/Y5E6-A9CW>] (archived Aug. 23, 2023).

181. See PETERS, *supra* note 10, at 55–57.

182. See Dias, *supra* note 172.

183. ZIEGLER, *supra* note 9, at 51–54.

184. *Id.* at 31, 41–42, 50–53.

D. *The Judiciary as a Forum for Conservative Religious Ideologies against Abortion*

In both countries preceding the recent judicial and legislative decisions, the judiciary became a frequent battleground for conservative religious ideologies around abortion rights and access.¹⁸⁵ The arguments and strategies may have been different, and the ultimate national outcomes of those battles were definitely opposite; nonetheless, conservative religion operated in both countries similarly as an obstacle to abortion rights.

The US Supreme Court's adjustments to the legal protections for abortion gave anti-choice advocates leverage in their fight to limit or totally ban abortion in the United States. The conservative Christian response to the adjusted evaluation standards created by the *Casey* plurality was to target and diminish state-level access to abortion.¹⁸⁶ The volume of resulting legislation, though not wholly crafted by conservative Christians, is astounding. Between 2011 and 2016, over 330 state laws restricting abortion came into effect; in the previous ten years, only 189 such laws took effect.¹⁸⁷

Across that legislation, the dominant, almost uniform rhetorical theme was "concern for women," which seemingly aligned with the religious pro-life framework.¹⁸⁸ However, that same rhetoric relied on arguably paternalistic beliefs, common in the early religious anti-choice movement,¹⁸⁹ about women's perceived decision-making ability in terminating a pregnancy.¹⁹⁰ The laws further memorialized that paternalistic rhetoric by legally restricting women's autonomy to execute their rights and care for their reproductive needs.¹⁹¹ The states became the battleground on which conservative Christians wielded their religious ideologies to test the constitutional right to an abortion and advanced those ideologies to the national level through the judiciary.¹⁹²

Intriguingly, the winning side in the battle over choice in both the United States and Argentina, although ideologically opposed, found great success through a common legislative strategy—model legislation. The US anti-abortion group Americans United for Life

185. See PETERS, *supra* note 10, at 56–57; Ricardo, *supra* note 11, at 180.

186. See PETERS, *supra* note 10, at 56–57; *supra* Part II.A.

187. PETERS, *supra* note 10, at 54.

188. See *id.* at 57.

189. See *supra* Part II.A.

190. See PETERS, *supra* note 10, at 57.

191. See *id.* at 54, 57; *supra* Part II.A; see also Rick Rojas, *Inside the Last Abortion Clinic in Mississippi*, N.Y. TIMES (Nov. 30, 2021), <https://www.nytimes.com/2021/11/30/us/mississippi-abortion-clinic-supreme-court.html> [https://perma.cc/V5SK-QA43] (archived Aug. 23, 2023) (by the time *Dobbs* reached the Supreme Court, there was only one abortion clinic to serve the entire state, including an increasing number of patients from Texas).

192. See PETERS, *supra* note 10, at 57.

“draft[ed] and circulat[ed] model legislation in statehouses across” the United States to ban abortion without exceptions.¹⁹³ This draft legislation tactic also formed part of the successful strategy of the Campaign in Argentina.¹⁹⁴ The Campaign wrote the bill that eventually became the IVE Law, reintroducing it seven times with some changes over the years.¹⁹⁵

For some, the IVE Law in Argentina serves as an alternative reality for a United States that never had *Roe*, which effectively cut off the social debate on abortion at the constitutional level.¹⁹⁶ Although *Roe* enshrined an important right into law, it came down during a time when the public attitudes on abortion were very much in flux, a social reality addressed by Justice Ruth Bader Ginsburg in her recurring critiques of the case.¹⁹⁷ Abortion’s lack of settled social status, as Justice Ginsburg recognized, ultimately supported Justice Alito’s argument in overturning *Roe* that abortion could be neither settled law nor a settled right.¹⁹⁸ In Argentina, the abortion rights movement was able to address conservative religious ideologies on abortion in the courts, legislature, and public discourse to create a more well-rounded and publicly supported right to abortion, even if more limited than that created in *Roe*.¹⁹⁹

The battle over the pregnant person’s value in the moral balancing within the abortion legalization debate has taken place in both the judicial and legislative arenas. When the courts became an “alternative means of defending conservative religious values” in Argentina, abortion rights advocates were able to successfully counter “dominant religious discourses” on sexuality and pregnancy “with science, bioethics, and the law,” a tactic also employed in the sphere of public discourse.²⁰⁰ Regardless, the arena of the judiciary offered a strong spotlight (and facilitated memorialization) of the conservative religious arguments employed in the anti-abortion movement to codify a certain image of women’s reproductive roles.²⁰¹ To provide better footing for judicial recognition of the pregnant person’s centrality in the moral balance, pro-choice advocates are pushing the battle back to the legislative arena, which proved successful in Argentina and can do so in the United States as well.²⁰²

193. *Id.*

194. *See* Ruibal & Anderson, *supra* note 67, at 699.

195. *Id.*

196. *See* Ricardo, *supra* note 11, at 131; *see also* *Dobbs vs. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2265 (2022).

197. *See* Ricardo, *supra* note 11, at 131.

198. *See* *Dobbs*, 142 S. Ct. at 2279.

199. *See id.* at 180.

200. *See* Ricardo, *supra* note 11, at 180.

201. *See id.*

202. *See id.* at 132.

IV. SOLUTION

As Andrea Noguera predicted in her 2019 article, legislation was the more successful route than litigation for securing abortion access in law and practice in Argentina.²⁰³ Perhaps ironically, the successful passage of the IVE and 1,000-Day Laws offers a guide for the US abortion rights movement in a post-*Dobbs* world. Admittedly, the IVE Law is neither a perfect nor satisfactory export to the United States. As previously discussed, fourteen weeks is a shorter period than the viability framework previously enshrined in the United States jurisprudence.²⁰⁴ Additionally, the path to passage was a battle up until the vote, and may still be far from over.²⁰⁵ Nonetheless, the strategies employed to overcome the various obstacles to codifying legal abortion access through the IVE Law can be utilized by abortion rights advocates in the United States to once again secure and strengthen nationwide access to legal and safe abortion. Furthermore, the decidedly modern views, including on gender, enshrined in the Argentine IVE Law²⁰⁶ show more awareness of the social complexities around pregnancy; thus, the law is more likely to adapt to the increasingly nuanced conversations around gender and bodily autonomy in the twenty-first century.

The United States has already left its mark on the social and legal landscape of Argentina, including on abortion rights.²⁰⁷ The flow of this transnational sociolegal pipeline, already primed on the issue of abortion, can reverse to export the gains made for abortion rights in Argentina to the United States, which would benefit women and society in general.

To overcome the religion obstacle to abortion legalization, the US abortion rights movement should follow the Argentine model. It should propose and promote national legislation that mirrors the IVE Law's holistic framework of the pregnant person's autonomy and dignity but with a timeline that better follows the *Roe–Casey* viability balancing framework.²⁰⁸ Crucial to this model's success in the United States is accompanying legislation creating federal social support programs for the pregnant person and child during pregnancy and the early years of the child's life, which can build a unique coalition of liberal and

203. See Noguera, *supra* note 5, at 358–59 (comparing the judicial strategy in the United States to the legislative strategy in Ireland to find guidance for Argentina).

204. See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 878 (1992) (describing the viability framework).

205. See Moore, *supra* note 6; Ricardo, *supra* note 11, at 147–50.

206. See, e.g., Law No. 27610, Jan. 15, 2021, Ley del Acceso a la Interrupción Voluntaria del Embarazo [Interrupción Voluntaria del Embarazo] [IVE Law] [34.562] B.O. 3 (Arg.), art. 1 (including persons with other gender identities who are capable of becoming pregnant in the law's protections).

207. See discussion *supra* Part II.C.

208. See *Roe v. Wade*, 410 U.S. 113, 163–64 (1973); *Casey*, 505 U.S. at 878.

moderate Christian groups similar to the Campaign's secular coalition-building in Argentina.²⁰⁹

A. *Hurdles to Legalizing Abortion in the United States*

The role of religion in politics is a significant hurdle to passing policies protecting abortion rights and access. Despite its deeply rooted Catholic national identity, Argentina's political party structure is not firmly entrenched in religion, in part due to the confluence of politics and religion during the *junta*.²¹⁰ This relative secularization was key for the Campaign in its mobilization of support across the multiple parties for legalization of abortion and its ultimate success.²¹¹ Politics in the United States, on the other hand, are not as separated from religion and religiosity. The strong trend connecting the Republican party with conservative religion apparently arose in part from the anti-abortion movement's goal to find firm political support to advance legislation and enforcement around the right to fetal life.²¹² Nonetheless, at the time of the Supreme Court's ruling in *Dobbs*, at least two of the top Democrats in the US government—President Biden and Speaker of the House Nancy Pelosi—were prominent Catholics who sometimes directly referenced their faiths in the course of their duties.²¹³ Across the political spectrum, religion is very much tied into

209. See Anderson, *supra* note 59, at 151, 154–56. In March 2023, the Women's Health Protection Act, which established a statutory right for medical practitioners to provide abortion services and for patients to receive those services free from certain government interventions, was reintroduced in both houses of the US Congress. *Women's Health Protection Act (WHPA)*, CTR. FOR REPROD. RTS. (Mar. 30, 2023), <https://reproductiverights.org/the-womens-health-protection-act-federal-legislation-to-protect-the-right-to-access-abortion-care/> [<https://perma.cc/2HLX-5GR8>] (archived Aug. 23, 2023). This legislation creates more protections in the pre-viability stage (which does not currently have as much popular support) and does not come with social support programs. See *id.*; Women's Health Protection Act of 2023, S. 701, 118th Cong (2023). It also is unlikely to pass in the Senate given the past two unsuccessful attempts with the same legislation. See CTR. FOR REPROD. RTS., *supra* note 209.

210. See Anderson, *supra* note 59 at 152–53.

211. *Id.* at 144.

212. See ZIEGLER, *supra* note 9, at x, 50–53.

213. See Maureen Gropp, *Why Joe Biden's Faith-Based 'Equity' Agenda is Getting Pushback from Religious Conservatives*, USA TODAY (Feb. 4, 2021), <https://www.usatoday.com/story/news/politics/2021/02/04/bidens-faith-based-equity-agenda-counters-trumps-religious-freedom-protections/4376093001/> [<https://perma.cc/8ZN7-6MC5>] (archived Aug. 23, 2023); Zack Budryk, *Pelosi: 'I Don't Know if the President Understands About Prayer or People Who Pray'*, HILL (Feb. 6, 2020), <https://thehill.com/homenews/house/481823-pelosi-i-dont-know-if-the-president-understands-about-prayer-or-people-who/> [<https://perma.cc/WCY7-E8YN>] (archived Aug. 23, 2023) (both Speaker Pelosi Representative and Representative Mitt Romney cited their faith in their political actions about President Trump).

US politics, with increasing legal and political protections,²¹⁴ and therefore needs to be either overcome or leveraged in passing such sensitive legislation as abortion rights protections.

The United States has some additional dynamics that any solution to reinstating abortion rights at the federal level would have to appropriately address. For one, although party polarization exists in both countries, the polarization gripping the United States is at a historically rare high²¹⁵—made worse by its predominately two-party structure—whereas Argentina has a broader range of parties and coalitions.²¹⁶ The United States' two-party system seems to effectively lock politicians into their parties, forcing most to stick to the status quo even in the face of extreme causes and policy opinions, or else risk political suicide. For example, although a noticeable number of top Republicans quickly condemned then-President Donald Trump for his role in the riots that attacked the Capitol on January 6, 2021, many of them eventually fell back into the party line of support or silence towards Trump's involvement.²¹⁷ The most prominent of the few exceptions, Wyoming Representative Elizabeth Cheney, who served as vice chair on the House select committee investigating the Capitol attacks, faced incredible backlash from her Republican colleagues, lost re-election, and was symbolically kicked out of the Wyoming Republican Party.²¹⁸ A strong coalition, therefore, may insulate politicians from potentially severe career consequences to incentivize supporting national abortion rights legislation.

The organized strength of the religiously based anti-choice movement in the United States is another unique dynamic with which to contend. The Campaign in Argentina successfully built a pro-choice coalition between its member organizations as well as with a critical

214. See, e.g., *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. ___ (2022) (recognizing a public school employee's practice of post-game religious prayer on school grounds as constitutionally protected and valid under the Free Exercise and Establishment Clauses).

215. See Michael Dimock & Richard Wike, *America is Exceptional in Its Political Divide*, PEW (Mar. 29, 2021), <https://www.pewtrusts.org/en/trust/archive/winter-2021/america-is-exceptional-in-its-political-divide> [https://perma.cc/9ZCE-HV9X] (archived Aug. 19, 2023).

216. See Anderson, *supra* note 59, at 153 (describing some of the various political parties in Argentina).

217. See John Haltiwanger, *Key Republicans Went from Blaming Trump for the Deadly Capitol Attack to Fighting His Impeachment in Just 3 Weeks*, BUS. INSIDER (Jan. 26, 2021), <https://www.businessinsider.com/gop-went-from-blaming-trump-capitol-attack-fighting-his-impeachment-2021-1> [https://perma.cc/H2NT-RC2U] (archived Aug. 19, 2023).

218. See Eric Cortellessa, *Liz Cheney Loses Wyoming Republican Primary in Race Defined by Her Criticism of Trump*, TIME (Aug. 16, 2022), <https://time.com/6206659/liz-cheney-loses-primary-wyoming/> [https://perma.cc/EKA9-6U28] (archived Aug. 19, 2023); *Wyoming Republican Party Stops Recognizing Liz Cheney as Member*, GUARDIAN (Nov. 15, 2021), <https://www.theguardian.com/us-news/2021/nov/15/liz-cheney-wyoming-republican-party-trump> [https://perma.cc/7BGH-MF2E] (archived Aug. 19, 2023).

mass of political elites within Argentina's political institution.²¹⁹ That model has also succeeded in the United States, though on the opposite side. The US anti-choice movement developed very strong ties to the conservative and right-wing political institution that served to prioritize bans on abortion and similar reproductive rights, while eroding most of the middle ground within the cause or the party.²²⁰ The pro-choice movement in the United States needs to not only fortify its existing political ties, but also build new ties to those who have been edged out of the Republican party.²²¹ This will allow the movement to build a multi-party coalition like the one led by the Campaign that successfully codified federal abortion protections in Argentina.²²²

An additional and arguably unusual hurdle that US pro-choice advocates must tackle is the federal government's inconsistent stance on international human rights treaties regarding women's rights. Critical to the decision in *Brown v. Board of Education*, the key precedent hailed by the *Dobbs* majority,²²³ was the United States' attempt to tout itself as a bastion of democracy and human rights against the Soviet Union, an image that was gravely undermined by its abysmal treatment of African Americans and violations of their civil rights.²²⁴ However, the United States has still not ratified the central international human rights agreements recognizing and protecting the rights of women, including in their reproductive autonomy, that formed the basis of abortion rights in Argentina through its constitutional adoption of those agreements.²²⁵ Pressure to officially join those agreements and recognize the women's rights therein as human rights—thus triggering a legal obligation to protect them—has not effectively persuaded the US Congress to take such action.²²⁶ While this may spell some difficulty for a human rights approach to the installation of abortion rights at the federal level, the United States' obligations under the ICCPR may very well require similar

219. Anderson, *supra* note 59, at 151, 154–56.

220. See, e.g., ZIEGLER, *supra* note 9, at xi (discussing the hyper-polarization of the Republican Party towards right-wing issues).

221. See, e.g., *id.*

222. See Anderson, *supra* note 59, at 157.

223. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2262, 2309 (2022).

224. See Aryeh Neier, *Brown v. Board of Ed: Key Cold War Weapon*, REUTERS (May 14, 2014), <https://www.reuters.com/article/idUS408043084620140514> [https://perma.cc/QX4M-6LVX] (archived Aug. 19, 2023).

225. See Ruibal & Anderson, *supra* note 67, at 705.

226. See OHC, *supra* note 109; Melanne Verveer & Rangita de Silva de Alwis, *Why Ratifying the Convention on the Elimination of Discrimination against Women (CEDAW) is Good for America's Domestic Policy*, GEO. INST. FOR WOMEN, PEACE & SECURITY (Feb. 18, 2021), <https://giwps.georgetown.edu/why-ratifying-the-convention-on-the-elimination-of-discrimination-against-women-cedaw-is-good-for-americas-domestic-policy/> [https://perma.cc/SS57-5VQ3] (archived Aug. 19, 2023).

protections.²²⁷ Accordingly, pro-choice advocates should leverage these existing obligations to clear this unique hurdle.

B. *Structural Approach to Rebuilding Abortion Rights in the United States*

The multi-pronged approach used by the Argentine abortion rights movement is especially instructive given that the new strategy of anti-choice advocates in the United States is much more localized and scattered. Without baseline constitutional protection, abortion rights advocates must now contend with the legal, legislative, and social discourse around abortion rights and reproductive autonomy on both the state and federal levels. However, the central goal should be to resecure a federal backstop for abortion rights.

The first prong was national legislation. In Argentina, given the strength of the Catholic Church's organized opposition to the legislation and the pervasive societal norms informed by that opposition, the Campaign's legislation efforts arguably succeeded in large part due to its ability to effectively join and mobilize support along secular lines.²²⁸ Advocates in the United States will need to go beyond secular lines to leverage support from certain religious groups pushed out of the conversation in order to secure strong enough support for new national legislation enshrining a right to abortion.

The second prong was a parallel rights campaign. The Argentine movement focused on public health officials and members of the judiciary.²²⁹ This strategy was influenced by the indications model utilized in the United States to facilitate legalization through recognizing an increasing number of scenarios—that is, pregnant persons—which should be exempted from criminal punishment under existing abortion bans, eventually overturning them.²³⁰ While this strategy's previous success in the United States shows the groundwork is already in place and could support a second success, public opinion in the United States, including among the medical profession, is already largely in support of abortion, particularly in cases where the pregnant person's health or life is in danger.²³¹ Furthermore, the numerous federal judges appointed by former Republican President Trump are unlikely to be similarly leveraged.²³² Therefore, such a strategy would have diminishing returns in the United States now.

227. See *supra* notes 110, 114–15.

228. See Anderson, *supra* note 59, at 147.

229. See Ruibal & Anderson, *supra* note 67, at 699.

230. See *id.* at 704.

231. See PETERS, *supra* note 10, at 133; PEW RSCH. CTR., *supra* note 156.

232. See Josh Gerstein & Kyle Cheney, *Trump Judges Are on a Tear*, POLITICO (Sept. 12, 2022), <https://www.politico.com/news/2022/09/12/trump-judges-mar-a-lago-courts-00056071> [<https://perma.cc/S7GM-7SDW>] (archived Aug. 22, 2023).

The third prong, access to abortion services, is already somewhat in effect in the United States. After the *Dobbs* ruling, such services jumped in demand and news coverage.²³³ Individual actors and organizations stepped up, with strategies for crossing state lines to receive abortion care where it was still legal and services that shipped abortifacient pills to states that banned abortion.²³⁴ Companies also adopted new policies meant to financially support those who would have to travel to receive abortion care.²³⁵ For the most part, however, these have been efforts of individual entities or smaller partnerships, bolstered by online dissemination and promotion of relevant information as well as media coverage,²³⁶ and not a robust coalition of hundreds of organizations with different skillsets and resources like that in Argentina.²³⁷ Further complicating these efforts is the rapidly changing legal landscape surrounding different abortion methods, including criminal and civil penalties targeting even helping someone cross state lines to seek an abortion.²³⁸

Given the swift state-level legislative changes to abortion access and reproductive rights in general since *Dobbs*, the national legislation prong is arguably the most important tool in resecuring and redefining the right to abortion in the United States.

C. *Argentina as a Legislative Model for the United States*

The IVE Law provides a template for similar federal legislation that the United States could adopt. The law's text crafts a robust and better-grounded right to bodily autonomy in reproductive care than *Roe* offered and that tracks more of the contemporaneous conversation about abortion rights. The IVE Law outlines a fairly comprehensive view of reproductive rights for women and other persons who can become pregnant. The law built the new right to elective abortions during the first fourteen weeks of the pregnancy within the existing

233. See, e.g., Oriana Gonzalez & Ashley Gold, *Abortion Pill Demand Soaring Following Roe's Demise*, AXIOS (July 19, 2022), <https://www.axios.com/2022/07/18/abortion-pills-mifepristone-misoprostol-demand> [https://perma.cc/Q8PC-NGEF] (archived Aug. 22, 2023).

234. See *id.*

235. See Becky Sullivan, *The Pentagon Will Pay for Service Members to Travel for Abortions*, NPR (Oct. 20, 2022), <https://www.npr.org/2022/10/20/1130316976/pentagon-abortion-travel> [https://perma.cc/BW5S-X2SM] (archived Aug. 22, 2023); Stephen Miller, *Companies Are Announcing Abortion-Travel Benefits Following Dobbs Decision*, SHRM (June 27, 2022), <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/companies-announce-abortion-travel-benefits-following-dobbs-decision.aspx> [https://perma.cc/7XDV-STFC] (archived Aug. 22, 2023).

236. See *supra* note 235.

237. See Ruibal & Anderson, *supra* note 67, at 702, 706.

238. See Jimenez, *supra* note 25.

framework of exceptions recognized in the criminal code and clarified by the Supreme Court in its *F., A.L.* decision.²³⁹ It also combines opt-out methods for medical practitioners whose religious beliefs do not support the voluntary termination of a pregnancy with a duty to provide a timely good-faith referral to another practitioner,²⁴⁰ thus preventing religious beliefs from blocking medical care.²⁴¹ The US legislation should include belief exceptions—necessary under First Amendment protections²⁴²—with the referral obligation to best protect and implement the new legal reality.²⁴³

The decision in *Dobbs* holding that there is no constitutional right to an abortion does not foreclose federal legislation that establishes such a right, or at least a legal baseline which states cannot undermine. For the *Dobbs* majority, the lack of firm societal and legal resolution on abortion rights at the time of *Roe* called for a legislative answer, not a judicial one; in the absence of such federal legislation, that function goes to the states.²⁴⁴ Federal legislators can fill that gap under its necessary and proper power.²⁴⁵ Politicians and abortion advocates could (and likely would) argue about extending the coverage of the law beyond fourteen weeks.²⁴⁶ However, given current public opinion on access to voluntary abortions,²⁴⁷ that may prove to be a workable baseline that fosters more collaboration than conflict. The new legislation could also work in the balancing tests within the previous *Roe–Casey* framework for non-punishable abortions beyond the first trimester.²⁴⁸ Regardless, the legislation should not merely codify *Roe*²⁴⁹ but should follow the Argentine model in building a more

239. See Law No. 27610, Jan. 15, 2021, Ley del Acceso a la Interrupción Voluntaria del Embarazo [Interrupción Voluntaria del Embarazo] [IVE Law] [34.562] B.O. 3 (Arg.), art. 16; Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 13/3/2012, “F., A.L. s/ medida autosatisfactiva,” Fallos (2012-335-197) (Arg.).

240. IVE Law art. 10.

241. This is a particularly significant issue in the United States given the prevalence of Catholic health care organizations and providers. See *Catholic Health Care in the United States*, CATH. HEALTH ASS’N AM. (updated Apr. 2023), <https://www.chausa.org/about/about/facts-statistics#:~:text=Updated%20April%202023&text=Comprised%20of%20more%20than%20600,for%20in%20a%20Catholic%20hospital> (“Every day, more than one in seven patients in the U.S. is cared for in a Catholic hospital.”) [<https://perma.cc/P8B8-3SSA>] (archived Aug. 22, 2023).

242. See U.S. CONST. amend. I (protecting the free exercise of religion).

243. Current belief exceptions in US law do not include a referral obligation. See 42 U.S.C. § 300a-7.

244. See *Dobbs vs. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2277 (2022).

245. See U.S. CONST. art. I § 8.

246. See, e.g., Gestational Age Act, ch. 393, § 1, 2018 Miss. Laws (codified at MISS. CODE ANN. § 41-41-191) (fifteen-week ban); Texas Heartbeat Act (codified at TEX. HEALTH & SAFETY CODE § 171.201 et seq.) (six-week ban).

247. See PETERS, *supra* note 10, at 133; McCammon & Seshadri, *supra* note 123.

248. See *Roe v. Wade*, 410 U.S. 113, 163–64 (1973); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 878 (1992).

249. This was, and still is, a suggested strategy post-*Dobbs*. See Seung Min Kim, *Biden Vows Abortion Legislation as Top Priority Next Year*, AP (Oct. 18, 2022), <https://apnews.com/article/abortion-2022-midterm-elections-biden-health-congress->

robust recognition of bodily autonomy and consequent protection of abortion rights without infringing on that autonomy.

Importantly, the US abortion rights movement could leverage the pro-life social safety program policy to secure support from persons who identify within the Christian faith and find themselves ideologically on the fence about abortion rights under the law.²⁵⁰ Argentina's 1,000-Day Law offers a strategic middle ground between pro-choice and pro-life proponents by providing social safety nets for child-bearing parents and children²⁵¹ that reflect the core beliefs—if not the exact policy goals—of members of the pro-life movement in the United States.²⁵² Supporting the pregnant person during pregnancy and the early years of the child's life exemplifies the type of legislation that fits right into the pro-life beliefs of this more liberal religious population

Such “pro-life” legislation could leverage crucial support for the accompanying pro-choice legislation. Many political analysts argue that the political power of this middle group was clearly showcased in the United States' 2022 midterm elections, the first major election after *Dobbs* and multiple abortion bans (some triggered by *Dobbs* and some newly enacted) went into effect.²⁵³ During the midterms, the predicted “Red Wave” of Republican candidates easily sweeping into elected office largely stalled,²⁵⁴ and ballot measures set to restrict abortion access or criminalize medical providers who performed abortion services failed.²⁵⁵ The abortion rights movement should act quickly with energizing legislation like that proposed here to harness this middle group's political power and usher the Green Wave across the United States.

f3ffadd1d55625a4af7b87f6b691fbbc [https://perma.cc/4J2N-2BB6] (archived Aug. 22, 2023).

250. See HENOLD, *supra* note 39, at 221–22.

251. Law No. 27611, Jan. 15, 2021, Ley Nacional de Atención y Cuidado Integral de la Salud Durante el Embarazo y la Primera Infancia [Salud Durante el Embarazo y la Primera Infancia] [1,000-Day Law] [34.562] B.O. 8 (Arg.).

252. See Graham, *supra* note 120.

253. See Jimenez, *supra* note 25.

254. See Bernd Debusmann Jr. & Natalie Sherman, *US Midterms: Why a Republican 'Wave' Never Happened*, BBC (Nov. 9, 2022), <https://www.bbc.com/news/world-us-canada-63569850> [https://perma.cc/YZ3W-JHYD] (archived Aug. 22, 2023).

255. See, e.g., Mitch Smith & Katie Glueck, *Kansas Votes to Preserve Abortion Rights in Its Constitution*, N.Y. TIMES (Aug. 2, 2022), <https://www.nytimes.com/2022/08/02/us/kansas-abortion-rights-vote.html> (Kansas voters blocked an amendment that would have eliminated abortion protections at the state level) [https://perma.cc/VH5L-LGVE] (archived Aug. 22, 2023).

V. CONCLUSION

The passage of the IVE and 1,000-Day Laws, as well as the preliminary success of the prior *F., A.L.* decision, shows that the Argentine abortion rights movement's strategies successfully overcame (at least in part) the religion obstacle to reproductive rights. While the fourteen-week limit on elective abortions is modest, it is nonetheless a significant departure from the country's history as recently as the beginning of the twenty-first century—and, currently, more protection than that offered on the national level to women and pregnant persons in the United States. Additionally, growing international pressure regarding women's equality and rights is barreling down on governments securing reproductive rights for its citizens.

As seen in *Dobbs*, the United States failed to overcome the obstacle of religion in protecting reproductive rights. Despite global trends towards secularization, religion—particularly the Catholic Church—remains a very real factor in the sociolegal and political landscapes of the United States and Argentina. Accordingly, any strategy to reinstate and strengthen abortion rights in the United States needs to properly address the role of religious opposition thereto and leverage its weaknesses. The United States played a significant role in Argentina's post-*junta* legal structure, especially around abortion rights. However, the United States' legal structure supporting abortion rights has been largely stagnant since *Roe*.

At this moment in history, Latin America is a region experiencing its own dynamism on reproductive rights and other social issues, although not necessarily in every country or even on all the same issues.²⁵⁶ This facilitates social and legal innovation that is more modern, nuanced, and inclusive; consequently, this fuels more robust protections. The combination of Argentina's IVE and 1,000-Day Laws is a prime example of this: it recognizes the ability to become pregnant outside of traditional gender constraints; it pulls from a distinctly human rights framework; and it provides an innovative social support program, recognizing the different societal opportunities and expectations for pregnant and mothering people.²⁵⁷ It was by no means a complete win, especially considering the preceding hard-fought legislative and political battle. Nonetheless, it presents an exciting framework for a new Green Wave in the United States, washing over

256. See Anderson, *supra* 59, at 146.

257. Law No. 27610, Jan. 15, 2021, Ley del Acceso a la Interrupción Voluntaria del Embarazo [Interrupción Voluntaria del Embarazo] [IVE Law] [34.562] B.O. 3 (Arg.); Law No. 27611, Jan. 15, 2021, Ley Nacional de Atención y Cuidado Integral de la Salud Durante el Embarazo y la Primera Infancia [Salud Durante el Embarazo y la Primera Infancia] [1,000-Day Law] [34.562] B.O. 8 (Arg.).

recent conservative Christian wins in the judiciary and legislatures to build more robust reproductive rights through national legislation.

*Morgan Peck**

* J.D. Candidate, Class of 2024. I would like to thank Professor Ellen Clayton for her subject-matter expertise and guidance on this Note. I would also like to thank Joey Vettiankal, Zachary Orr, and the other editors and staff of the *Vanderbilt Journal of Transnational Law* for their work on this Note. I am especially grateful to Brady Morris for his invaluable support, including his insight on international law, throughout the writing and publication process.

