

# **Sounding the Legitimacy Alarm Bell: When Does the Media Discuss the U.S. Supreme Court's Legitimacy?**

Rachael Houston \*

## **Introduction**

On June 24, 2022, in *Dobbs v. Jackson Women's Health Organization*,<sup>1</sup> the U.S. Supreme Court overturned *Roe v. Wade*,<sup>2</sup> the landmark decision recognizing a woman's constitutional right to have an abortion. The *Dobbs* decision paved the way for states to curtail or outright ban abortion rights.<sup>3</sup> Various news outlets reported on the decision from different angles. CNN called it a "blockbuster ruling" and suggested that only conservatives seized the moment.<sup>4</sup> MSNBC compared the ruling to slavery,<sup>5</sup> and *The Washington Post* said it would further degrade democracy.<sup>6</sup> These news stories share a negative view of the decision, implying that the Court made the wrong choice in overturning *Roe*. In contrast, Fox News, in a story titled

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<sup>1</sup> *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022)

<sup>2</sup> *Roe v. Wade*, 410 U.S. 113 (1973)

<sup>3</sup> Just weeks after the decision, thirteen state trigger bans went into effect and abortion became illegal in multiple states. See Center for Reproductive Rights, *After Roe Fell: Abortion Laws by State*, <https://reproductiverights.org/maps/abortion-laws-by-state/>.

<sup>4</sup> Joan Biskupic, *Supreme Court conservatives are poised to deal another blow to abortion rights*, CNN, <https://www.cnn.com/2022/06/24/politics/conservative-supreme-court-analysis-roe-dobbs/index.html/> (June 25, 2022, 5:48 AM).

<sup>5</sup> Ja'han Jones, *We need to call abortion bans what they are: Slavery*, MSNBC: THE REIDOUT BLOG (June 29, 2022, 4:18 PM), <https://www.msnbc.com/the-reidout/reidout-blog/abortion-bans-slavery-rcna35885/>.

<sup>6</sup> Wendy Brown, *Alito's Dobbs decision undermines states' rights*, WASH. POST (June 27, 2022, 3:07 PM), <https://www.washingtonpost.com/outlook/2022/06/27/alito-dobbs-decision-states-rights/>.

“Why Supreme Court Abortion Decision Empowers Women,”<sup>7</sup> emphasized that “*Roe*’s legacy is one of unwanted abortions.”<sup>8</sup> *Dobbs* was a win for Fox News, as it restored women’s power. These articles suggest that media outlets with a political bias can use positive or negative language when covering the Supreme Court’s decisions.

These media outlets cover the Court in such ways because they openly promote a particular political ideology through endorsements, donations, ownership, or slant in coverage. They cater to audiences with similar political beliefs and tailor their coverage accordingly.<sup>9</sup> For example, Fox News was created by Rupert Murdoch to appeal to a conservative audience. So, its content is purposefully conservative and assessed as right-leaning by media bias charts.<sup>10</sup> As a result, polling data reveals that Republicans trust Fox News more than any other outlet.<sup>11</sup> At the same time, Robert “Ted” Turner, the founder of CNN, is a donor to left-progressive causes and political campaigns.<sup>12</sup> His network attracts many Democrats, with around eight in ten Democrats claiming that CNN is their main news source.<sup>13</sup> This suggests that the U.S. Supreme Court coverage can be contentious and polarizing, particularly for controversial cases with political implications.

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<sup>7</sup> Erin Hawley, *Why Supreme Court abortion decision empowers women*, FOX NEWS (June 25, 2022 7:00 AM), <https://www.foxnews.com/opinion/supreme-court-abortion-decision-empowers-women>.

<sup>8</sup> *Id.*

<sup>9</sup> Herman and Chomsky’s Propaganda Model (PM) posits that various elements play a pivotal role in molding the dissemination and impact of news media coverage. Among these elements, two stand out as particularly significant: the extent of a newspaper’s geographic reach and the deliberate focus on particular demographic segments or the inherent political ideology of the media entity. ANDREA PRAT & DAVID STRÖMBERG, *THE POLITICAL ECONOMY OF MASS MEDIA* 135 (Daron Acemoglu et al. eds., 2013).

<sup>10</sup> See Ad Fontes Media, *Fox News Bias and Reliability*, <https://adfontesmedia.com/fox-news-bias-and-reliability/>

<sup>11</sup> See John Gramlich, *Five facts about Fox News*, PEW RSCH. CTR. (Apr. 8, 2020), <https://www.pewresearch.org/fact-tank/2020/04/08/five-facts-about-fox-news/>.

<sup>12</sup> Forbes, *Ted Turner’s Plans to Save the World*, (September 21, 2011), <https://www.forbes.com/sites/kerenblankfeld/2011/09/21/ted-turners-plans-to-save-the-world/#597a19694d72> (accessed September 21, 2020).

<sup>13</sup> Elizabeth Grieco, *Americans Main Sources for Political News Vary by Party and Age*, PEW RSCH. CTR. (April 1, 2020), <https://www.pewresearch.org/fact-tank/2020/04/01/americans-main-sources-for-political-news-vary-by-party-and-age/>.

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One of the angles, or frames that media outlets consider when discussing the Supreme Court is its institutional legitimacy.<sup>14</sup> When the Court issues a decision with which an outlet disagrees politically or ideologically, an outlet will sometimes discuss the decision's implications for the Court's legitimacy.<sup>15</sup> For instance, toward the end of the Court's 2021 Term, when the Court had just released *Dobbs*,<sup>16</sup> Ariane de Vogue, a CNN Supreme Court Reporter, wrote, "Not only are the nine judges reshaping contours of social issues that drive the public debate, but they are also working to salvage the institutional legitimacy of their own branch of government."<sup>17</sup> Here, she suggests that the Court's legitimacy is damaged and will need much repair after this ruling. Fox News, in contrast, wrote an article highlighting Senate Republican Leader Mitch McConnell's role in *Dobbs*.<sup>18</sup> In the article, McConnell is quoted as saying, "If anybody's been attacking the Court and its legitimacy, it's been the political left in this country up to and even including the decision of the Speaker [Pelosi] to sit on the court security bill we passed on a voice vote in the Senate last month, for an entire month."<sup>19</sup> In this story, Fox frames the Court's legitimacy as only being attacked by the political left.

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<sup>14</sup> According to Paul D'Angelo, a frame is, "a written, spoken, graphical, or visual message modality that a communicator uses to contextualize a topic, such as a person, event, episode, or issue, within a text transmitted to receivers by means of mediation." See PAUL D'ANGELO, *Framing: Media frames*, in THE INTERNATIONAL ENCYCLOPEDIA OF MEDIA EFFECTS 1 (Patrick Rössler ed. 1st ed. 2017).

<sup>15</sup> Indeed, even if a media outlet espouses itself as a nonpartisan outlet or an outlet that is not ideologically bent, the Interactive Media Bias Chart reveals that every media outlet has an ideological bias one way or the other. See <https://adfontesmedia.com/interactive-media-bias-chart/>.

<sup>16</sup> *Dobbs*, 142 S. Ct. 2228, *supra* note 1

<sup>17</sup> Ariane de Vogue, *Supreme Court has 29 opinions remaining in a one-month sprint to end controversial term*, CNN, <https://www.cnn.com/2022/06/05/politics/supreme-court-june-opinions/index.html/> (June 8, 2022, 11:12 AM).

<sup>18</sup> Tyler Olson, *How Mitch McConnell playing 'long game' shaped the Supreme Court and led to the end of abortion landmark Roe*, FOX NEWS, <https://www.foxnews.com/politics/mitch-mcconnell-dark-lord-shaped-supreme-court-led-end-abortion-landmark-roe> (June 29, 2022 8:10 AM).

<sup>19</sup> *Id.*

It makes sense why ideologically left-leaning media outlets would want to frame the Court's legitimacy as in decline after a decision like *Dobbs*. This was a decision with which Democrats largely disagree; roughly 80 percent of Democrats say abortion should be legal in all or most cases.<sup>20</sup> Perhaps framing the Court as losing its legitimacy expresses the general sentiment that the Court made a decision that is not popular to the 'public,' and that there may be negative consequences for the Court by continuing to make such decisions. In contrast, Republicans viewed the decision as a triumph, with approximately 62 percent of them disapproving of abortion.<sup>21</sup> Right-leaning media outlets want to discuss the Court's legitimacy positively, and discredit accusations of any legitimacy crisis (as seen above), to express approval for the Court and its recent decision.

While prior research in political science and law have investigated how partisan frames of the Court can negatively affect public support for the institution,<sup>22</sup> little attention has been paid to how media outlets discuss the Court's legitimacy. While the examples provided suggest that the media can employ legitimacy as a framing device, it is unclear whether this pattern is consistently observed. In other words, were legitimacy stories only written in response to *Dobbs*? As a result, we must ask the following question: how and to what extent do media organizations use legitimacy in their reporting on the U.S. Supreme Court?

To answer this question, I collected online print news stories from 1989 to February 17, 2023, which discuss the Court's legitimacy from media outlets spanning the ideological and political spectrum.<sup>23</sup>

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<sup>20</sup> See Hannah Hartig, *About Six in Ten Americans Say Abortion Should be Legal in All or Most Cases*, PEW RSCH. CTR. (June 13, 2022), <https://www.pewresearch.org/fact-tank/2022/06/13/about-six-in-ten-americans-say-abortion-should-be-legal-in-all-or-most-cases-2/>.

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., Vanessa A. Baird & Amy Gangl, *Shattering the myth of legality: The impact of the media's framing of Supreme Court procedures on perceptions of fairness*, 27 POL. PSYCH., 597–614 (2006); Stephen P. Nicholson & Robert M. Howard, *Framing support for the Supreme Court in the aftermath of Bush v. Gore*, 65 J. POL., 676–695 (2003); Matthew P. Hitt & Kathleen Searles, *Media coverage and public approval of the U.S. Supreme Court*, 35 POL. COMMUN., 566–586 (2018).

<sup>23</sup> The web scrapping tool reviewed articles from the outlets (CNN, Fox News, MSNBC, *The Washington Post*, *The New York Times*, and *The Wall Street Journal*) across their entire online platforms. 1989 is the first time the web scrapper picked up a story that discusses the Court's legitimacy. The article was written by *The Washington Post* and discusses the legitimacy of the Court in the aftermath of *Roe v.*

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This includes CNN, Fox News, MSNBC, *The Washington Post*, *The New York Times*, and *The Wall Street Journal*. For each article, the time and context in which it discussed the Court's legitimacy is collected. This Article provides us with novel insights into the extent to which these media outlets cover and discuss the Court's legitimacy. I argue that using legitimacy as a frame may be at the expense of the Court's actual legitimacy, which is required to survive as an institution.<sup>24</sup>

This Article proceeds as follows. Part II briefly explains the Court's legitimacy and why preserving it is important. Part III investigates the current law and political science literature about media framing of the Court and its potential impact on public attitudes toward the Court. In Part IV, I analyze how the media uses the Court's legitimacy in articles and summarize key takeaways from this data. Part V concludes with remarks about the media's role in shaping public attitudes and the potential consequences of the media's coverage of the Court's legitimacy.

### **I. The US Supreme Court's Legitimacy**

"We don't have an army. We don't have any money. The only way we get people to do what we say that they should do is because people respect us and respect our fairness."<sup>25</sup>

- Justice Elena Kagan

Justice Elena Kagan summarizes the Court's legitimacy nicely in layman's terms. The Supreme Court requires public support to fulfill its constitutional and political duties, even if it means standing against

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Wade (1973). See Bob Woodward, *The Abortion Papers*, WASH. POST (Jan. 22, 1989), <https://www.washingtonpost.com/archive/opinions/1989/01/22/the-abortion-papers/ce695bcc-a7f9-4b09-bd57-8d7efff37a46/>.

<sup>24</sup> A discussion of the Court's legitimacy can be found in Part II.

<sup>25</sup> Christine Wang, *Supreme Court must stay out of partisan politics to preserve its legitimacy, Kagan and Sotomayor say*, CNBC (Oct. 6, 2018), <https://www.cnbc.com/2018/10/06/supreme-courts-elena-kagan-sonia-sotomayor-avoid-partisan-politics.html>.

public opinion at times.<sup>26</sup> If the Court does not have public support, it can be punished for its disagreeable decisions, and/or its decisions can be ignored entirely. The Court, unlike other institutions, requires public support because it lacks an electoral connection to provide itself legitimacy.<sup>27</sup> To provide an example of the importance of preserving the Court's legitimacy, consider *Bush v. Gore* (2000).<sup>28</sup> The Court's decision was adhered to primarily due to the institution's legitimacy.<sup>29</sup> Gallup, for instance, found that 52% of adults agreed with the Supreme Court's decision to give Bush the presidency.<sup>30</sup> However, roughly 80% of Americans accepted Bush as the "legitimate" president after the Court's ruling.<sup>31</sup> The fact that many people accepted a decision they disagreed with highlights the importance of the Court's legitimacy in securing compliance with its rulings.

Legitimacy can be defined as the psychological perception among individuals connected to an authority, institution, or social arrangement that it is appropriate, proper, and just.<sup>32</sup> This definition encompasses the idea that people must believe in the validity of the decisions made or rules created by those in positions of authority. In the case of the Supreme Court, this translates to the belief that the Court is the appropriate institution to rule on the cases it hears. To maintain legitimacy, the justices must persuade the public that they have the authority and ability to make these decisions that affect

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<sup>26</sup> Gregory A. Caldeira & James L. Gibson, *The etiology of public support for the Supreme Court*, 36 AM. J. POL. SCI. 635, 635 (1992).

<sup>27</sup> Institutions that have an electoral connection can provide themselves legitimacy because actors within these institutions are held accountable for their decisions through elections. There are two types of support for the Court in the form of legitimacy. The first, diffuse support, is often used interchangeably with institutional loyalty, institutional commitment, and institutional legitimacy. It is an unwillingness to make or accept fundamental changes in the functions of the institution. *See id.* at 638. The second type of support is specific support. This is the satisfaction with the performance of a political institution. *See id.* at 1126.

<sup>28</sup> *Bush v. Gore*, 531 U.S. 98 (2000)

<sup>29</sup> James L. Gibson & Gregory A. Caldeira, *Knowing the Supreme Court? A reconsideration of public ignorance of the High Court*, 71 J. POL. 429, 429–441 (2009); James L. Gibson et al., *Measuring attitudes toward the United States Supreme Court*, 47 AM. J. POL. SCI. 354, 354–367 (2003).

<sup>30</sup> David W. Moore, *Eight in Ten Americans to Accept Bush as "Legitimate" President*, GALLUP (Dec. 14, 2000), <https://news.gallup.com/poll/2212/eight-ten-americans-accept-bush-legitimate-president.aspx>.

<sup>31</sup> *Id.*

<sup>32</sup> Tom R. Tyler, *Psychological perspectives on legitimacy and legitimation*, 57 ANN. REV. PSYCH. 375, 375–400 (2006).

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people's lives. Ultimately, legitimacy is a type of power that allows authorities to shape the behavior of others.

Given its significance, the Supreme Court's legitimacy has been extensively studied by scholars over the years.<sup>33</sup> They have examined the factors that affect public support for the institution, including exposure to and knowledge of the Court.<sup>34</sup> The media plays a vital role in shaping public support for the Court by providing accessible and timely coverage of the justices' decision-making processes.<sup>35</sup> Without the media reporting on the Court, the public would have to rely solely on lengthy opinions and hours-long oral arguments to learn about the institution and its rulings.<sup>36</sup> This indicates that the public must heavily depend on the news media to be informed about the Court, which ultimately can affect their support towards the Court and feelings towards its institutional legitimacy.

## II. Media Framing of the US Supreme Court

In recent years, media coverage, including the U.S. Supreme Court coverage, has become increasingly politicized.<sup>37</sup> Media outlets commonly frame the Court as "another political institution," discussing its procedures and decision-making processes in ways that

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<sup>33</sup> Brandon L. Bartels & Christopher D. Johnston, *On the Ideological Foundations of Supreme Court Legitimacy in the American Public*, 57 AM. J. POL. SCI. 184 (2013); James L. Gibson & Michael J. Nelson, *The Legitimacy of the U.S. Supreme Court: Conventional Wisdoms and Recent Challenges Thereto*, 10 ANN. REV. L. & SOC. SCI. 201 (2014); Daniels Epps & Ganesh Sitaraman, *How to Save the Supreme Court*, 148 YALE L.J. 148 (2019); Yoo, J. C. In Defense of the Court's Legitimacy, 68 U. CHI. L. REV. 775 (2001)

<sup>34</sup> James L. Gibson & Gregory A. Caldeira, *Knowing the Supreme Court? A reconsideration of public ignorance of the High Court*, 71 J. POL. 429, 429–441 (2009); James L. Gibson et al., *Measuring attitudes toward the United States Supreme Court*, 47 AM. J. POL. SCI. 354, 354–367 (2003).

<sup>35</sup> This includes coverage when the Court places a case on its docket, hearing the case on its merits at oral argument, and decision coverage.

<sup>36</sup> Matthew P. Hitt & Kathleen Searles, *Media coverage and public approval of the U.S. Supreme Court*, 35 POL. COMM'N 566, 566–586 (2018).

<sup>37</sup> Matthew S. Levendusky, *Why do partisan media polarize viewers?*, 57 AM. J. POL. SCI. 611, 611–623 (2013).

suggest they benefit one political party over another.<sup>38</sup> Viewing the Court and its operations as part of the political process is problematic since perceiving its decisions as politicized can erode support for the institution.

Several studies have investigated the impact of partisan media coverage on public support for the Court directly. Scholars Baird and Gangl ran an experiment and found that exposure to news reports politicizing Court proceedings can decrease public support for the institution.<sup>39</sup> Similarly, exposure to politicized behavior during the Affordable Care Act deliberations caused people to withdraw support from the Court.<sup>40</sup> Nicholson and Howard investigated various frames used to discuss the Court's ruling in *Bush v. Gore* (2000).<sup>41</sup> They found that framing the decision in terms of ending the election reduced people's support of the Court.<sup>42</sup> Hitt and Searles demonstrated that media coverage focused on political winners or losers in Supreme Court decisions, known as "game frames," can reduce acceptance and agreement with Court decisions.<sup>43</sup> Ultimately, these studies illustrate that politicized media coverage can undermine public confidence in the Court and foster a belief that its decisions are driven by politics rather than legal principles.

### III. Media Coverage of the U.S. Supreme Court's Legitimacy

To explore the extent to which media outlets discuss the Supreme Court's legitimacy, I collected online print news stories about the U.S. Supreme Court from the following outlets: CNN, Fox News, MSNBC, *The Washington Post*, *The New York Times*, and *The Wall Street Journal*. I choose these outlets to represent a diversity of

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<sup>38</sup> Logan Strother & Shana K. Gadarian, *Public Perceptions of the Supreme Court: How Policy Disagreement Affects Legitimacy*, 20 THE FORUM 87 (2022).

<sup>39</sup> Vanessa A. Baird & Amy Gangl, *Shattering the myth of legality: The impact of the media's framing of Supreme Court procedures on perceptions of fairness*, 27 POL. PSYCH., 597–614 (2006).

<sup>40</sup> *Id.*

<sup>41</sup> *Bush*, 531 U.S. 98, *supra* note 28. Stephen P. Nicholson & Robert M. Howard, *framing support for the Supreme Court in the aftermath of Bush v. Gore*, 65 J. POL. 676, 676–695 (2003).

<sup>42</sup> *Id.*

<sup>43</sup> Matthew P. Hitt & Kathleen Searles, *Media coverage and public approval of the U.S. Supreme Court*, 35 POL. COMMUN 566, 566–586 (2018).



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coverage in terms of geographic region, format of coverage, and ideological leaning.<sup>44</sup> Moreover, I focus on online coverage rather than broadcast or print stories from these outlets since most Americans obtain their news from news websites, indicating that stories covering the Court's legitimacy are likely to receive the most views in an online format.<sup>45</sup>

I collected the stories from these outlets' databases using a web scraping tool to extract stories from the Google search engine.<sup>46</sup> For each news site listed above, I used three terms: "Supreme," "Court," and "legit." For MSNBC, for example, my Google search was "site:msnbc.com Supreme Court legit." I use "legit" to capture stories that include the words "legitimate," "legitimacy," "illegitimate," and "illegitimacy." The stories in the dataset range from 1989 to 2023. I compiled stories from each news site into separate spreadsheets that included these three terms and then enlisted research assistants to review each story to confirm that it pertained specifically to the U.S. Supreme Court. Some stories pertained to the legitimacy of courts in

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<sup>44</sup> CNN is headquartered in Atlanta, Georgia. MSNBC, Fox News, Wall Street Journal, and The New York Times are headquartered in New York, New York. The Washington Post is headquartered in Washington, D.C. CNN, MSNBC, and Fox are broadcast outlets while The Washington Post, The New York Times, and The Wall Street Journal are newspaper outlets. CNN, MSNBC, The New York Times, and The Washington Post are ideologically left-leaning, while Fox News and Wall Street Journal are ideologically right-leaning according to the Interactive Media Bias Chart. See AD FONTES MEDIA, <https://adfontesmedia.com/> (last visited September 29, 2023).

<sup>45</sup> Elisa Shearer, *More than eight in ten Americans get news from digital devices*, PEW RESEARCH (January 12, 2021), <https://www.pewresearch.org/short-reads/2021/01/12/more-than-eight-in-ten-americans-get-news-from-digital-devices/>.

<sup>46</sup> Web scraping tools are software programmed to sift through databases and extract information. See IMPREVA, *Web Scraping*, <https://www.imprevia.com/learn/application-security/web-scraping-attack/#:~:text=Web%20scraping%20tools%20are%20software,Extract%20and%20transform%20content/> (last visited [Month Day, Year]).

other countries, while others were links to blog sites that cited multiple articles, video links, or broken URLs.<sup>47</sup>

After a team of research assistants reviewed the stories and ensured their relevance, the dataset, in total, contained 743 stories: 50 from CNN, 152 from Fox News, 48 from MSNBC,<sup>48</sup> 212 from *The Washington Post*, 190 from *The New York Times*, and 91 from *The Wall Street Journal*. Interestingly, *The Washington Post* discussed the Court's legitimacy the most often, while MSNBC only discusses the Court's legitimacy 48 times over our 34-year period.

I first turn to a bird's-eye view of the data. Figure 1 plots all 743 stories by date. From a quick glance, it is easy to see that discussion of the Court's legitimacy in the media is a newer trend that began to pick up in 2018 and soared in 2022. In fact, before 2018, very few stories were produced each year that discuss the Court's legitimacy.

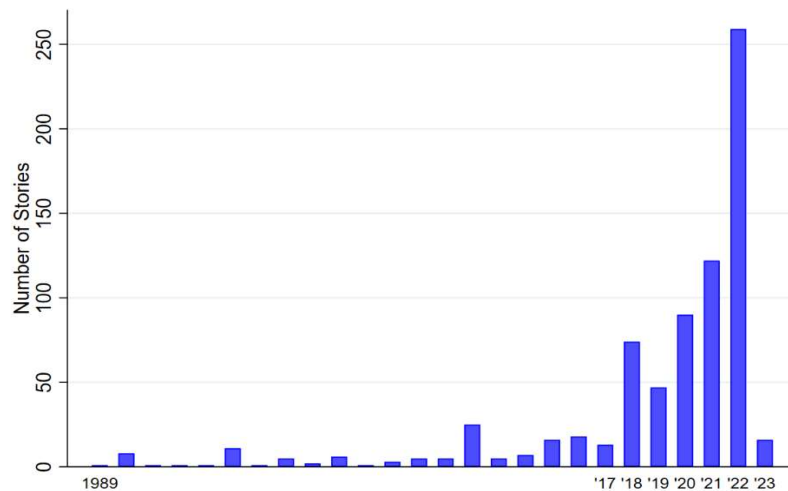
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<sup>47</sup> I do not parse out opinion pieces from editorial pieces in the data analysis. This is because I argue that all coverage is coverage. These news outlets still choose to publish select opinion pieces on their websites for their audiences to read.

<sup>48</sup> MSNBC captures stories from MSNBC and NBC. There were no news stories picked up from CNBC. For information about the differences between MSNBC, NBC, and CNBC, see Logan, *What Are The Differences Between NBC, CNBC, And MSNBC (Explained)*, ALL THE DIFFERENCES, <https://allthedifferences.com/what-are-the-differences-between-nbc-cnbc-and-msnbc/> (June 19, 2022).

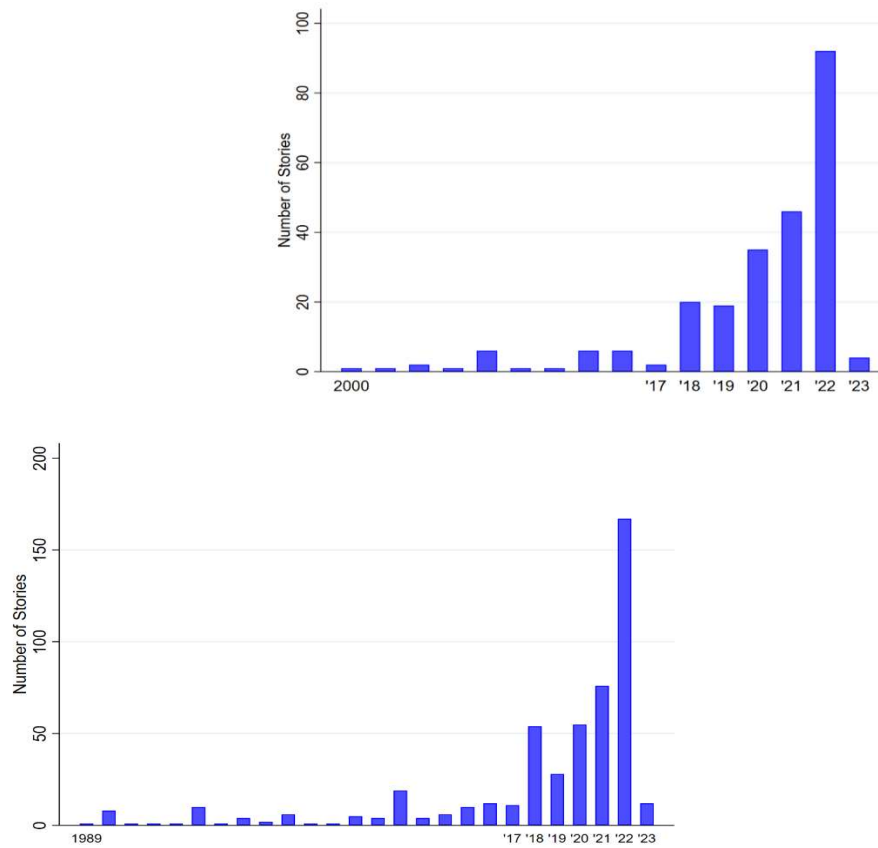
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**Figure 1: Number of Stories Produced that Mention Court Legitimacy by Year**



To see whether this trend is exclusively due to conservative or liberal coverage of the Court, I disaggregate the data by ideological leaning. Figure 2 displays the number of conservative and liberal stories about the Court's legitimacy. The graphs in Figure 2 show the same pattern observed in Figure 1: coverage of the Court's legitimacy has steadily increased in conservative and liberal outlets since 2018. This suggests that discussions about the Court's legitimacy are not limited to a single ideological perspective.

**Figure 2: Number of Liberal (Left) and Conservative (Right) Stories Produced that Mention Court Legitimacy by Year**



2018 was the start of this upward trend of media outlets discussing legitimacy. The question then becomes: What happened in 2018 for media outlets to discuss the Court's legitimacy? To investigate this question, a thematic analysis approach is used to categorize how each outlet used the Court's legitimacy in their

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stories.<sup>49</sup> With this approach, five themes emerged from the articles: *Case*, *Confirmation Process*, *Procedure*, *Ethics*, and *Misc*.<sup>50</sup>

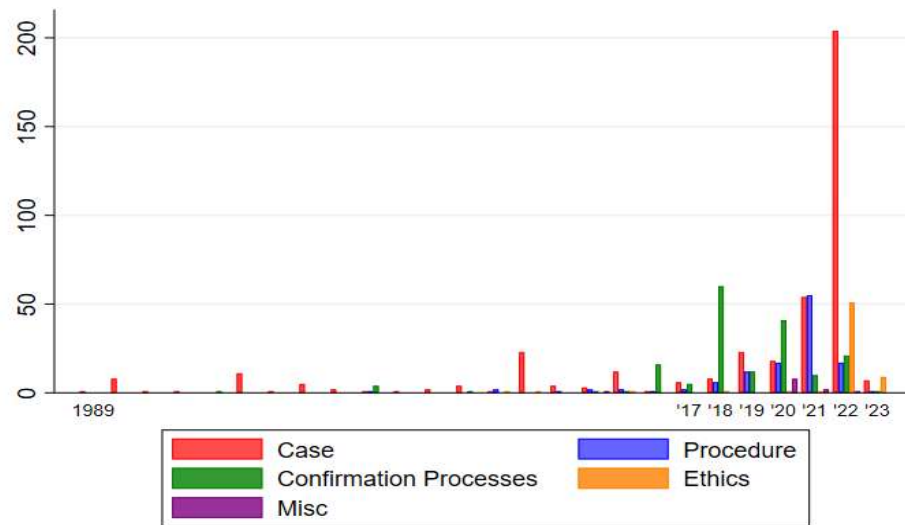
*Case* is simply whether the article discussed the legitimacy of the Court in reference to a specific case. *Confirmation Process* captures if legitimacy is used to discuss a retirement, nomination, hearing, or confirmation of a justice. *Procedure* records the internal mechanics of the Court's operations including the use of the shadow docket, term limits, and court packing (or expansion).<sup>51</sup> *Ethics* summarizes stories that talk about the legitimacy of the Court in relation to ethical concerns at the Court, including leaks, scandals, recusals, and the need for a Supreme Court code of ethics. Finally, *Misc* captures very few stories that did not neatly fit into at least one of these four categories, which included stories about Chief Justice John Roberts presiding over the impeachment trial and the Court's legitimacy in reference to the 2020 election. Figure 3 breaks down Figure 1 by theme.

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<sup>49</sup> "Thematic analysis is a qualitative data analysis method that involves reading through a data set (such as transcripts from in depth interviews or focus groups), and identifying patterns in meaning across the data to derive themes." See Delve Tool, *How to do thematic analysis*, <https://delvetool.com/blog/thematicanalysis>. (Sep. 29 2023).

<sup>50</sup> Categories are not mutually exclusive. For example, a story could be coded as *Case* and *Ethics*. An example of this would be a story about the *Dobbs* leak.

<sup>51</sup> For more detail about the current Court packing or Court expansion debate, see Smith, David. (2023, May 21). Democrats Fight to Expand a "Broken and Illegitimate" Supreme Court. The Guardian, <https://www.theguardian.com/law/2023/may/21/supreme-court-expansion-democrats>.

**Figure 3: Number of Legitimacy Themes by Year**

From a quick glance at Figure 3, confirmation process discussions dominated legitimacy coverage in 2018—the year Justice Brett Kavanaugh was confirmed to the Court. Sixty stories were produced about his confirmation process spanning the ideological spectrum. This is in stark contrast to the five stories produced about Neil Gorsuch’s confirmation the previous year. During this period, *The Wall Street Journal* wrote an opinion piece titled “Why They’ll Never Stop Targeting Kavanaugh” with the subheader, “The Continuing Assault Reflects Both a Fixation And An Effort To Deprive The Court Of Its Legitimacy.”<sup>52</sup> Fox News wrote a similar story at the time and called Kavanaugh’s confirmation “[T]he beginning of a new battle for Democrats, who are now shifting their message to threaten possible impeachment against the newest high court justice and question the legitimacy of the Supreme Court itself.”<sup>53</sup> Indeed, this message of targeting the Court’s legitimacy was coming from the left-leaning outlets in the dataset—and perhaps because of the failed attempt to

<sup>52</sup> Peggy Noonan, *Why They’ll Never Stop Targeting Kavanaugh*, (September 19, 2019), WALL ST. J., <https://www.wsj.com/articles/why-theyll-never-stop-targeting-kavanaugh-11568933484/>.

<sup>53</sup> Brooke Singman, *Dems Wage War on Kavanaugh, court: New battles over legitimacy, impeachment, recusal*, Fox News, (October 8, 2018, 6:51 PM), <https://www.foxnews.com/politics/dems-wage-war-on-kavanaugh-court-new-battles-over-legitimacy-impeachment-recusal>.

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appoint Judge Merrick Garland to the high court just a year prior in 2016.<sup>54</sup> MSNBC indicates this, “If Senate Majority Leader Mitch McConnell pushes Kavanaugh across the finish line, he’ll get another nominee on the court by a party-line (or close to it) vote — but at great cost to the Supreme Court’s legitimacy, especially after Merrick Garland.”<sup>55</sup> According to an opinion piece in *The New York Times*, the Court has become an intensely partisan institution, and unless a course correction occurs, the Court risks facing a legitimacy crisis.<sup>56</sup> In recent years, particularly in 2018, left-leaning media outlets have begun to frame the Court’s legitimacy as an issue and have used it to voice their opposition to the Court’s operations, including the selection of justices. While Kavanaugh received the most media coverage during his confirmation hearing, according to Figure 3’s green line, Justice Amy Coney Barrett comes in second for coverage during her 2020 confirmation. At the time, there was controversy about former President Donald Trump waiting until the results of the 2020 Election before potentially naming someone to the Court.<sup>57</sup> This controversy is captured throughout 41 articles written about her confirmation. In an opinion piece written by The Editorial Board in *The New York Times*, it was stated that the installation of Barrett, a deeply conservative jurist, to a lifetime seat just days before an election was straining the legitimacy of the Court.<sup>58</sup> The *Wall Street Journal* used similar rhetoric

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<sup>54</sup> Ron Elving, *What Happened with Merrick Garland in 2016 and Why It Matters Now*, NPR (June 29, 2018, 5:00 AM), <https://www.npr.org/2018/06/29/624467256/what-happened-with-merrick-garland-in-2016-and-why-it-matters-now>.

<sup>55</sup> Chuck Todd, Mark Murray, et al., *The Fight Over Kavanaugh Ended Up Damaging Almost Everybody*, NBC NEWS (Oct. 4, 2018, 9:03 AM), <https://www.nbcnews.com/politics/first-read/fight-over-kavanaugh-ended-damaging-almost-everybody-n916586>.

<sup>56</sup> David Leonhardt, *The Supreme Court is Coming Apart*, N.Y. TIMES, Sept. 23, 2018, at A27.

<sup>57</sup> Sam Gringlas, *Trump Says GOP Should Select a New Supreme Court Justice ‘Without Delay’*, Nat’l Pub. Radio (2020, Sept. 19, 11:39 AM), <https://www.npr.org/sections/death-of-ruth-bader-ginsburg/2020/09/19/914776960/trump-says-gop-should-select-a-new-supreme-court-justice-without-delay>.

<sup>58</sup> The Editorial Board, *The Republican Party’s Supreme Court*, N.Y. TIMES, Oct. 26, 2020, at A26.

in an opinion piece, framing Democrats as boycotting Barrett's confirmation because it is a 'sham' and 'illegitimate.'<sup>59</sup> "All their [Democrats] talk about a 'sham vote,' a 'power grab,' and an 'illegitimate process' is a way to demean and undermine the Supreme Court."<sup>60</sup>

In 2022, Justice Ketanji Brown Jackson's confirmation process produced 21 stories that mentioned legitimacy, which is significantly fewer than the number of stories produced during the confirmation processes of Kavanaugh and Barrett. While Kavanaugh had controversy around the sexual assault allegations by Christine Blasey Ford,<sup>61</sup> and Barrett's confirmation was questioned for its timing,<sup>62</sup> there was nothing out of the ordinary for Jackson's confirmation.<sup>63</sup> Of the stories that connect Jackson to legitimacy, many discuss her position on packing, or expanding, the Court with more justices.<sup>64</sup> The

<sup>59</sup> The Editorial Board, *The Rhetoric of Court Packing is Here*, WALL ST. J. (Oct. 22, 2020, 6:32 PM), <https://www.wsj.com/articles/the-rhetoric-of-court-packing-is-here-11603405939/>.

<sup>60</sup> The Editorial Board, *The Rhetoric of Court Packing is Here*, WALL ST. J. (Oct. 22, 2020, 6:32 PM), <https://www.wsj.com/articles/the-rhetoric-of-court-packing-is-here-11603405939/>.

<sup>61</sup> For more information about the sexual assault allegations, see, e.g., Meg Anderson, *Who Is Christine Blasey Ford, The Woman Accusing Brett Kavanaugh Of Sexual Assault?*, NAT'L PUB. RADIO (Sept. 17, 2018 3:30 PM), <https://www.npr.org/2018/09/17/648803684/who-is-christine-blasey-ford-the-woman-accusing-brett-kavanaugh-of-sexual-assault/>.

<sup>62</sup> Ed Pilkington & David Smith, *Amy Coney Barrett confirmed to Supreme Court in major victory for US conservatives*, THE GUARDIAN (Oct. 27, 2020, 8:44 PM), <https://www.theguardian.com/us-news/2020/oct/26/amy-coney-barrett-confirmed-supreme-court-justice-vote>.

<sup>63</sup> This is apart from her prior sentencing of individuals involved with child porn. For more information about this, see Devin Dwyer, *Fact check: Judge Ketanji Brown Jackson child porn sentences 'pretty mainstream'*, ABC NEWS (Mar. 21, 2022, 9:02 PM), <https://abcnews.go.com/Politics/fact-check-judge-ketanji-brown-jackson-child-porn/story?id=83565833>.

<sup>64</sup> See, e.g., Marsha Blackburn, *Biden Supreme Court nominee – Americans deserve answers from Ketanji Brown Jackson*, FOX NEWS (Mar. 20, 2022 9:59 AM), <https://www.foxnews.com/opinion/biden-supreme-court-nominee-ketanji-brown-jackson-sen-marsha-blackburn>; Adam White, *Will Ketanji Brown Jackson Defend the Supreme Court's Legitimacy?*, WALL ST. J. (Mar. 18, 2022 6:19 PM), <https://www.wsj.com/articles/will-ketanji-brown-jackson-defend-the-supreme-courts-legitimacy-nominee-confirmation-hearing-11647637453/>; Joan Biskupic, *Confirmation hearings to spotlight rightward trajectory of America's highest court*, CNN; <https://www.cnn.com/2022/03/20/politics/supreme-court-direction-justices-conservative/index.html/> (Mar. 21, 2022, 4:17 PM).



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proposal of adding more justices to the Supreme Court is primarily driven by the idea that it would shift the conservative majority of the Court.<sup>65</sup> In an opinion piece by Fox News, Representative Marsha Blackburn disagrees with Court packing or expanding and says that she stands with Justice Breyer to reject such attempts: “I am grateful that he chose to stand firmly against the radical mob that is threatening to dismantle the institutional legitimacy of our nation’s highest court for pure political gain. Judge Jackson should similarly reject the Democrats’ calls to expand the number of justices on the Supreme Court. Anything less is disqualifying.”<sup>66</sup>

In an opinion piece published in *The Wall Street Journal*, the legitimacy of the Court is described as being in doubt, with the possibility of court-packing and other extreme measures no longer being off the table.<sup>67</sup> The piece goes on to explain that attacks on the Court’s legitimacy are dangerous, as judicial legitimacy is a critical aspect of the institution’s functioning.<sup>68</sup> Liberal outlets primarily focused on the composition of the Court in relation to Justice Ketanji Brown Jackson’s confirmation. For example, an article from CNN titled “Confirmation Hearings to Spotlight Rightward Trajectory of America’s Highest Court” highlighted Jackson’s status as the first black woman nominated to the Court, while also emphasizing the conservative supermajority’s control over the Court.<sup>69</sup> The article

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<sup>65</sup> Marianne Levine, *Liberal push to expand Supreme Court is all but dead among Hill Dems*, POLITICO (April 26, 2021, 4:30 AM), <https://www.politico.com/news/2021/04/26/liberals-expand-supreme-court-democrats-484562>.

<sup>66</sup> Marsha Blackburn, *Biden Supreme Court nominee – Americans deserve answers from Ketanji Brown Jackson*, FOX NEWS (Mar. 20, 2022 9:59 AM), [https://www.foxnews.com/opinion/biden-supreme-court-nominee-ketanji-brown-jackson-sen-marsha-blackburn\\_](https://www.foxnews.com/opinion/biden-supreme-court-nominee-ketanji-brown-jackson-sen-marsha-blackburn_)

<sup>67</sup> Adam White, *Will Ketanji Brown Jackson Defend the Supreme Court’s Legitimacy?*, WALL ST. J. (Mar. 18, 2022 6:19 PM), <https://www.wsj.com/articles/will-ketanji-brown-jackson-defend-the-supreme-courts-legitimacy-nominee-confirmation-hearing-11647637453/>.

<sup>68</sup> *Id.*

<sup>69</sup> Joan Biskupic, *Confirmation hearings to spotlight rightward trajectory of America’s highest court*, CNN, [https://www.cnn.com/2022/03/20/politics/supreme-court-direction-justices-conservative/index.html/\\_](https://www.cnn.com/2022/03/20/politics/supreme-court-direction-justices-conservative/index.html/_) (Mar. 21, 2022, 4:17 PM).

argues that this composition undermines the institutional legitimacy of the Court.<sup>70</sup>

Moving past *Confirmations*, Figure 3 reveals that discussions involving *Procedure* increased in 2021. A closer look at the data reveals that discussions about packing (or expanding) the Court and term limits began a year prior to Jackson's confirmation. In 2021, President Biden issued an executive order to establish the Presidential Commission on the Supreme Court of the United States.<sup>71</sup> According to the accompanying press release, the Commission's main purpose is to provide a comprehensive analysis of the key arguments for and against Supreme Court reform in the contemporary public debate.<sup>72</sup> According to an opinion piece from *The New York Times*, the decline in the Court's approval rating over the past decade calls for term limits as a solution.<sup>73</sup> The piece suggests that 18 years is too long to address the crisis in Supreme Court functioning and legitimacy.<sup>74</sup>

In an opinion piece published by CNN, the author argues that the Supreme Court's declining approval rating reflects the institution's weakened legitimacy due to its shift towards partisanship.<sup>75</sup> The author suggests that this presents an opportunity for a national conversation on potential reforms that could make the Court less divisive, less partisan, and more trusted by a vast majority of citizens.<sup>76</sup> While these stories frame these reforms as helping the Court's legitimacy, many conservative-leaning stories disagree. In a story published by Fox News, the author credits Jennifer Rubin, a Washington Post columnist,

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<sup>70</sup> *Id.*

<sup>71</sup> Press Release, The White House, President Biden to Sign Executive Order Creating the Presidential Commission on the Supreme Court of the United States (Apr. 09, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/09/president-biden-to-sign-executive-order-creating-the-presidential-commission-on-the-supreme-court-of-the-united-states/>.

<sup>72</sup> *Id.*

<sup>73</sup> Robert Dixon, *The New York Times*, *Why the Supreme Court Needs (Short) Term limits*, N. Y. TIMES (December 31, 2021), <https://www.nytimes.com/2021/12/31/opinion/supreme-court-term-limits.html>.

<sup>74</sup> Jeffery Jones, *Approval of U.S. Supreme Court Down to 40%, a New Low*, GALLUP (Sept. 23, 2021), <https://news.gallup.com/poll/354908/approval-supreme-court-down-new-low.aspx>.

<sup>75</sup> Fareed Zakaria, *Opinion: The Supreme Court's legitimacy is in danger*, CNN (Oct. 1, 2022, 11:31 AM), <https://www.cnn.com/2022/10/01/opinions/fareed-zakaria-supreme-court-opinion/index.html/>.

<sup>76</sup> *Id.*

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for advocating for expanding the Court and adding term limits.<sup>77</sup> The article suggests that Rubin believes term limits and court-packing could help restore the Court's reputation, which she sees as being undermined by conservative justices issuing opinions that she disagrees with.<sup>78</sup> According to the article, Rubin is using reform tactics to suppress the power of the conservative justices on the Court.<sup>79</sup>

The yellow bar, which represents *Ethics*, is not visible in Figure 3 until 2022. In that year, three notable events at the Court prompted discussion about ethics: the leak of a draft of *Dobbs* (2022),<sup>80</sup> Justice Samuel Alito's *Hobby Lobby* (2014) disclosure,<sup>81</sup> and political actions of Justice Clarence Thomas's wife.<sup>82</sup> Media outlets produced 51 stories about *Ethics* in 2022, compared to just one in the previous year. Broadly, media outlets had a consensus about the *Dobbs* leak: it was bad for the Court's legitimacy. In an article by Fox, the president of the Heritage Foundation was quoted as saying, "Leaks sow distrust in the court, undermine the legitimacy of the court."<sup>83</sup> As for Alito, *The Washington Post* also indicated this second leak threatens legitimacy:

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<sup>77</sup> Alexander Hall, *Jennifer Rubin claims 'tone-deaf' Supreme Court destroyed 'its own integrity,' calls for court packing*, FOX NEWS (Sept. 12, 2022, 10:36 PM), <https://www.foxnews.com/media/jennifer-rubin-claims-tone-deaf-supreme-court-destroyed-own-integrity-calls-court-packing>.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> For information about the *Dobbs* leak, see, e.g., Amy Howe, *Supreme Court investigators fail to identify who leaked Dobbs opinion*, SCOTUSBLOG (Jan. 19, 2023, at 4:25 PM), <https://www.scotusblog.com/2023/01/supreme-court-investigators-fail-to-identify-who-leaked-dobbs-opinion>.

<sup>81</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). For information about the disclosure, see, e.g., Ellena Erskine, *Reverend who accused Alito of 2014 leak in Hobby Lobby speaks before House Judiciary Committee*, SCOTUSBLOG (Dec. 9, 2022, 4:45 PM), <https://www.scotusblog.com/2022/12/reverend-who-accused-alito-of-2014-leak-in-hobby-lobby-speaks-before-house-judiciary-committee/>.

<sup>82</sup> For information about political actions taken by Clarence Thomas' wife, see, e.g., Adam Liptak, *Justice Thomas Ruled on Election Cases. Should His Wife's Texts Have Stopped Him?*, N.Y. TIMES, Mar. 25, 2022, at A1.

<sup>83</sup> Michael Lee, *Expert says SCOTUS leak sows distrust, outlines four 'potential crimes'*, Fox News (May 4, 2022 1:12 PM), <https://www.foxnews.com/us/expert-says-scotus-leak-sows-distrust-outlines-four-potential-crimes>.

“The episode added to growing debate over the legitimacy and behind-the-scenes operations of the Supreme Court at a time when public approval of the court has sunk to historic lows.”<sup>84</sup> Other articles addressed ethical concerns related to Justice Clarence Thomas, who some believed should have recused himself from cases involving the 2020 election due to his wife’s text messages.<sup>85</sup> According to one professor quoted in *The Washington Post*, “If the court can’t police itself, Congress is going to have to step in to protect the integrity, legitimacy and reputation of the court.”<sup>86</sup>

Moving past *Ethics*, the tallest blue bar in Figure 3 represents *Case*. In 2022, the most legitimate mentions came from stories about the Court’s cases. To get a sense of these cases, Table 1 categorizes all the cases discussed during 2022. A case must either capture the public’s attention or be considered salient to receive media coverage. All 21 cases in Table 1 concern public issues: abortion, healthcare, gun rights, elections, LGBTQ+ rights, First Amendment liberties, environment, police, and affirmative action.<sup>87</sup> Further, these cases are only discussed once or twice across all the media outlets in the dataset, apart from *Dobbs v. Jackson Women’s Health* (2022). In 2022, *Dobbs* received extensive coverage, with 184 stories produced that connected the case to the Court’s legitimacy.

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<sup>84</sup> Robert Barnes & Ann Marimow, *Justice Alito denies disclosing 2014 Hobby Lobby opinion in advance*, WASH. POST (Nov. 19, 2022, 6:00 PM), <https://www.washingtonpost.com/politics/2022/11/19/alito-hobby-lobby-supreme-court-nyt/>.

<sup>85</sup> See, e.g., Sahil Kapur, *Clarence Thomas faces growing pressure to step aside from Jan. 6 cases*, NBC NEWS (March 29, 2022, 3:48 PM), <https://www.nbcnews.com/politics/white-house/clarence-thomas-faces-growing-pressure-step-jan-6-cases-rcna22034>.

<sup>86</sup> Robert Barnes & Ann Marimow, *Ethics experts see Ginni Thomas’s texts as a problem for Supreme Court*, WASH. POST (Mar. 22, 2022, 9:45 PM), <https://www.washingtonpost.com/politics/2022/03/25/clarence-thomas-ginni-thomas/>.

<sup>87</sup> For a discussion on salient Supreme Court cases, see Tom S. Clark et al., *Measuring the political salience of Supreme Court cases*, 3 J. L. & COURTS 37 (2015).

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**Table 1: List of Cases Discussed in 2022**

<b>Case Name</b>	<b>Issue</b>	<b>Frequency</b>
<i>303 Creative LLC v. Elenis (Pending)</i>	First Amendment	1
<i>Bostock v. Clayton County (2020)</i>	LGBTQ+	1
<i>Burwell v. Hobby Lobby Stores, Inc. (2014)</i>	Healthcare	1
<i>Bush v. Gore (2000)</i>	Election	1
<i>Dobbs v. Jackson Women's Health (2022)</i>	Abortion	184
<i>Egbert v. Boule (2022)</i>	Police	1
<i>Louisiana v. American Rivers (2022)</i>	Environment	2
<i>Merrill v. Milligan (Pending)</i>	Election	2
<i>Moore v. Harper (Pending)</i>	Election	2
<i>National Federation of Independent Business v. Sebelius (2012)</i>	Healthcare	1
<i>New York State Rifle &amp; Pistol Association Inc. v. Bruen (2022)</i>	Gun Rights	4
<i>Obergefell v. Hodges (2015)</i>	LGBTQ+	1
<i>Rucho v. Common Cause (2019)</i>	Election	2
<i>Sackett v. EPA (Pending)</i>	Environment	1
<i>Students for Fair Admissions v. University of North Carolina (Pending)</i>	Affirmative Action	2
<i>Trump v. United States (2022)</i>	Trump	1
<i>Vega v. Tekoh (2022)</i>	Police	1
<i>West Virginia v. EPA (2022)</i>	Environment	2
<i>Whole Woman's Health v. Jackson (2021)</i>	Abortion	1
<i>Wisconsin Legislature v. Wisconsin Elections Commission (2022)</i>	Election	1
<i>Kennedy v. Bremerton School District (2022)</i>	First Amendment	1
<i>Brnovich v. Democratic National Committee (2021)</i>	Election	1

And in fact, *Dobbs* received the most coverage of any case across all 34 years. Table 2 reveals this trend by displaying the top ten cases across all stories. In total, 238 stories were written that connect the Court's decision in *Dobbs* to its legitimacy. The second most cited case was *National Federation of Independent Business v. Sebelius* (2012),<sup>88</sup> and the third most cited was *Bush v. Gore* (2000). Interestingly, after each of these cases was decided, the Supreme Court experienced unusually large drops in support.<sup>89</sup>

**Table 2: Top 10 Cases Across All Years**

Case Name	Issue	Frequency
<i>Dobbs v. Jackson Women's Health</i> (2022)	Abortion	238
<i>National Federation of Independent Business v. Sebelius</i> (2012)	Healthcare	28
<i>Bush v. Gore</i> (2000)	Election	18
<i>Planned Parenthood v. Casey</i> (1992)	Abortion	13
<i>June Medical Services, LLC v. Russo</i> (2020)	Abortion	9
<i>Bostock v. Clayton County</i> (2020)	LGBTQ+	6
<i>Department of Commerce v. New York</i> (2019)	Census	6
<i>Obergefell v. Hodges</i> (2015)	LGBTQ+	6
<i>Whole Woman's Health v. Jackson</i> (2021)	Abortion	5
<i>Department of Homeland Security v. Regents of the University of California</i> (2020)	DACA	4

<sup>88</sup> 567 U.S. 519 (2012).

<sup>89</sup> *Supreme Court*, GALLUP, <https://news.gallup.com/poll/4732/supreme-court.aspx/> (Last visited [Mo.] [Day], 2023).

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Table 3 provides a breakdown of *Dobbs* coverage by media outlet. Fox News and *The Washington Post* produced the most coverage linking *Dobbs* to the Court's legitimacy. Interestingly, Fox focused on Democrats' concerns about the Court's legitimacy.<sup>90</sup> For instance, in one article, Fox News stated that "'Legitimacy' has become the new buzzword - especially among some Democrats," implying that only the 'left' had concerns about the Court's legitimacy in light of the *Dobbs* decision.<sup>91</sup> Similarly, *The Washington Post* published an opinion piece titled "Ignore the progressives' howling about the Supreme Court's 'legitimacy'," which dismissed progressive concerns by stating that "[N]othing about the court's legitimacy has changed" and that it was simply a matter of differing judicial philosophies.<sup>92</sup> The piece suggested that progressives should "[M]obilize to turn the tide in their favor" if they disagreed with the Court's direction.

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<sup>90</sup> See, e.g., Jonathan Turley, *Supreme Court's term closes with political, media leaders questioning "legitimacy" – and that's alarming*, FOX NEWS (June 29, 2022), <https://www.foxnews.com/opinion/supreme-courts-term-ends-with-political-media-leaders-questioning-legitimacy-alarming>; Gabriel Hays, *New York Times Blasts Supreme Court as "judicial arm of the Republican Party": "squandered" its "legitimacy"*, FOX NEWS (October 1, 2022), <https://www.foxnews.com/media/new-york-times-blasts-supreme-court-judicial-arm-republican-party-squandered-legitimacy>; Laura Kornick, *Supreme Court's "minoritarian tyranny" has caused "crisis of governmental legitimacy," Wapo's Max Boot writes*, FOX NEWS (June 28, 2022), <https://www.foxnews.com/media/supreme-courts-minoritarian-tyranny-caused-crisis-governmental-legitimacy-wapos-max-boot>.

<sup>91</sup> Shannon Bream & Bill Mears, *Supreme Court looks ahead to new term amid internal upheaval, shaky public confidence*, FOX NEWS (Oct. 1, 2022), <https://www.foxnews.com/politics/supreme-court-looks-ahead-new-term-amid-internal-upheaval-shaky-public-confidence>.

<sup>92</sup> Henry Olsen, *Ignore the progressives' howling about the Supreme Court's 'legitimacy'*, THE WASH. POST (July 1, 2022 3:09 PM), <https://www.washingtonpost.com/opinions/2022/07/01/supreme-court-abortion-roe-ignore-progressive-complaints-legitimacy/>.

**Table 3: Coverage of Dobbs v. Jackson Women's Health by News Outlet**

Name of Outlet	Medium	Ideological Leaning	Frequency
CNN	Broadcast	Left	23
Fox News	Broadcast	Right	64
MSNBC	Broadcast	Left	16
<i>The Washington Post</i>	Print	Left	64
<i>The New York Times</i>	Print	Left	50
<i>The Wall Street Journal</i>	Print	Right	21

However, *The Washington Post* also published articles suggesting that the Supreme Court justices themselves are aware of the importance of public perception of the Court's legitimacy.<sup>93</sup> *The Post* argued that while the justices rely on public respect for the Court's legitimacy, they may not have complete control over improving public approval for the Court.<sup>94</sup> *The New York Times* also expressed a similar sentiment.<sup>95</sup> They reported on the potential impact of overturning *Roe v. Wade*,<sup>96</sup> noting that the Supreme Court's poll numbers have been declining and that many Americans believe the Court is a partisan institution.<sup>97</sup> The article suggests that the Court relies on respect and

<sup>93</sup> See, e.g., Robert Barnes. Supreme Court, dogged by questions of legitimacy, is ready to resume. *The Washington Post*, October 1, 2022, <https://www.washingtonpost.com/politics/2022/09/29/supreme-court-roberts-kagan-legitimacy/>; Robert Barnes & Seung Min Kim. Supreme Court Observers See Trouble Ahead as public approval of justices erodes. *THE WASH. POST* (Sept. 27, 2021, 5:36 PM), [https://www.washingtonpost.com/politics/courts\\_law/supreme-court-public-opinion/2021/09/25/379b51ec-1c6c-11ec-bcb8-0cb135811007\\_story.html](https://www.washingtonpost.com/politics/courts_law/supreme-court-public-opinion/2021/09/25/379b51ec-1c6c-11ec-bcb8-0cb135811007_story.html).

<sup>94</sup> See, e.g., Paul M. Collins & Artemus Ward, Analysis | why have so many Americans come to mistrust the Supreme Court? *THE WASH. POST* (Sept. 29, 2022, 7:00 AM), <https://www.washingtonpost.com/politics/2022/09/30/supreme-court-new-term-public-approval/>.

<sup>95</sup> Mary Ziegler, *The End of Roe is Coming, and It Is Coming Soon*, *N.Y. TIMES* (Dec. 1, 2021), <https://nytimes.com/2021/12/01/opinion/supreme-court-abortion-mississippi-law.html/>.

<sup>96</sup> *Roe*, 410 U.S. 113, *supra* note 2

<sup>97</sup> Ziegler, *supra* note 95.



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soft power for its legitimacy and that a decision to overturn *Roe*<sup>98</sup> could further erode public trust in the Court.<sup>99</sup>

In contrast to Fox, CNN primarily focused on public disapproval of the Court. In one article, they highlighted that the Court's institutional legitimacy was under attack and that much of the public did not approve of the justices' job performance.<sup>100</sup> They framed the Court as already facing disapproval, potentially due to its conservative majority, even before it had decided on *Dobbs*.<sup>101</sup> For example, CNN stated that the Court would hear some of the most divisive issues of the day "at a time when the Court's institutional legitimacy is under attack."<sup>102</sup> An opinion piece by MSNBC expressed concerns about the legitimacy of the Court, claiming that at least five members of the Supreme Court are willing to ignore past decisions and manipulate the law to achieve conservative goals, indicating that the Court's conservative majority may not prioritize adhering to precedent.<sup>103</sup>

Cases received the most discussion out of any of the five themes, and that is dominated by *Dobbs* coverage. Figure 4 displays the percentages that each theme received coverage. In total, cases comprised roughly half of the coverage, which suggests that media outlets are more likely to bring up the Court's legitimacy when dealing with a particular case.

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<sup>98</sup> *Id.*

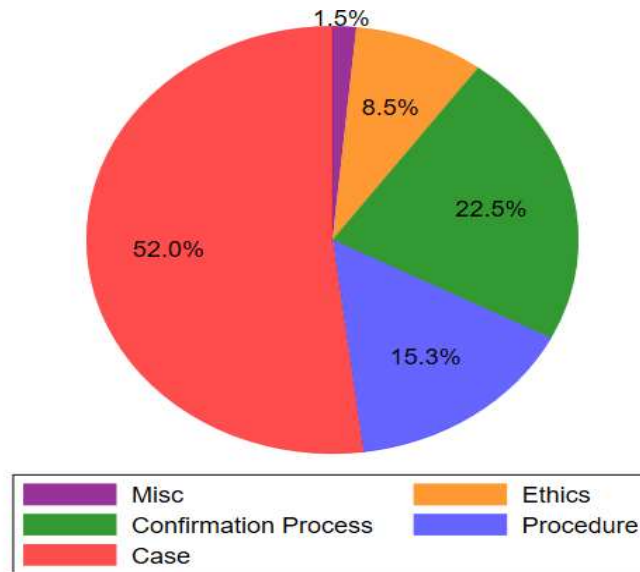
<sup>99</sup> Mary Ziegler, *The End of Roe is Coming, and It Is Coming Soon*, N.Y. TIMES (Dec. 1, 2021), <https://www.nytimes.com/2021/12/01/opinion/supreme-court-abortion-mississippi-law.html/>.

<sup>100</sup> Ariana de Vogue, *Supreme Court's new term could see landmark rulings on abortion, guns and vouchers*, CNN, <https://www.cnn.com/2021/10/03/politics/supreme-court-term-opener/index.html/> (Oct. 4, 2021 9:20 AM).

<sup>101</sup> *Dobbs*, 142 S. Ct. 2228

<sup>102</sup> Ariana de Vogue, *Supreme Court's new term could see landmark rulings on abortion, guns and vouchers*, CNN, <https://www.cnn.com/2021/10/03/politics/supreme-court-term-opener/index.html/> (Oct. 4, 2021 9:20 AM).

<sup>103</sup> Jessica Levinson, *How Samuel Alito's hypocrisy is fueling the crisis at the Supreme Court*, MSNBC (Oct. 29, 2022, 6:00 AM), MSNBC, <https://www.msnbc.com/opinion/msnbc-opinion/alito-s-abortion-decision-showed-total-lack-integrity-n1300368/>.

**Figure 4: Legitimacy Mentions Across All Story Types and Years**

#### IV. Conclusion

This article highlights several main findings about the discussion of the legitimacy of the U.S. Supreme Court in media outlets. First, legitimacy was only recently introduced as a popular topic of discussion, starting with Kavanaugh's confirmation process. Second, the discussion about legitimacy was not biased towards any ideological leaning but was rather influenced by political party controversies. Third, while the legitimacy of the Court was discussed in various stories, case coverage, especially *Dobbs v. Jackson Women's Health*, dominated the discourse, with the highest disapproval ratings for the Court coming after the decision in *Dobbs*.<sup>104</sup> While this Article does not directly examine the impact of media coverage on people's perceptions of the Court's legitimacy, it is well-known that the media plays a significant role in shaping public opinion, including the perception of the Court's legitimacy. Repeatedly highlighting issues of legitimacy can lead to greater public scrutiny, which can be both positive and negative. Increased scrutiny can lead to greater accountability and pressure on the Court to maintain its

<sup>104</sup> *Supreme Court*, GALLUP, <https://news.gallup.com/poll/4732/supreme-court.aspx/> (Last visited Sept. 29, 2023).

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institutional legitimacy. However, if the media's coverage is consistently critical (as we saw in examples in this Article), it can erode public trust in the Court, ultimately undermining its legitimacy. Given the gravity of the issue at hand, media outlets must be mindful of the impact of their coverage on public perceptions when discussing the legitimacy of the Court.