

# Abortion: The History and The Data Part III

## Hobby Lobby Supreme Court Case

- A major victory which demonstrated the effectiveness of the GOPs mutually reinforcing strategies was the Hobby Lobby Case.

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Perhaps the feather in the cap of the movement architects — some of whom didn't live to see the day — was their victory in the 2014 Hobby Lobby Supreme Court case. President Obama's Affordable Care Act had mandated a long overdue reform that birth control be covered by insurance at no extra cost to the employee. The owners of the craft supply chain Hobby Lobby sought to deny their employees this contraceptive coverage, using their go-to claim that it violated their religious beliefs.<sup>428</sup> Core to the plaintiff case was the claim that the owners of Hobby Lobby believed that some forms of contraception were "abortifacients."<sup>427</sup> This term was straight out of John Willke's propaganda playbook. It suggested, with no grounding in medical fact, that birth control was tantamount to abortion.<sup>428, 429</sup> In a hotly contested 5-4 decision, the court ruled for Hobby Lobby, opening the door to the erosion of all sorts of gains in the name of moral objection. Tellingly, the court's majority wrote that the fact that the birth control did not actually cause abortions was irrelevant in this context. For a violation of religious liberty to occur, the plaintiff must only believe that it could happen.<sup>430</sup> Four of the five justices that ruled in Hobby Lobby's favor had Federalist Society ties.<sup>431</sup>

The Hobby Lobby case was a massive triumph for the Radical Right, underscoring the effectiveness of the mutually reinforcing strategies. The movement had effectively used abortion as a Trojan horse to move the goal posts, limit access to contraception, and enshrine disinformation into the legal canon. For them, it was icing on the cake that the victory undercut the ACA, a crowning achievement for the much-loathed Obama administration. They had effectively reversed one of the most significant national steps forward for gender equity in decades.

- In her written dissent Ruth Bader Ginsburg expressed concern at the precedent this decision was setting.

*Justice Ruth Bader Ginsburg wrote a dissent, joined on the merits by Justice Elena Kagan, Sonia Sotomayor, and Stephen Breyer.*

*In her dissent Ginsburg --disagreed with Alito --and worried about what other challenges might come next. : "Reading the Act expansively, as the court does, raises a host of "Me, too" questions. Can an employer in business for profit opt out of coverage for blood transfusions, vaccinations, antidepressants, or medications derived from pigs, based on the employer's sincerely held religious beliefs opposing those medical practices."*

*Ginsburg wrote , "The exemption sought by Hobby Lobby and Conestoga would override significant interests of the corporations' employees and covered dependents. It would deny legions of women who do not hold their employers' beliefs access to contraceptive coverage that the ACA would otherwise secure"*<sup>1</sup>

- She feared that this decision would be the "thin edge of the wedge" for organizations to deny people access to a broader range of things on the basis of personal religious beliefs.
- Religious freedom was initially understood to pertain to the autonomy an individual had to belief and live according to their faith. It did not extent to the right to control others on the basis of ones on faith.
- This case is part of a trend where religious freedom is being weaponized to control others. And abortion is the tip of the religious liberty spear.

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<sup>1</sup> <https://abcnews.go.com/Politics/hobby-lobby-wins-contraceptive-ruling-supreme-court/story?id=24364311>

## The Trump Administration

- Trump's positions appeared to be reflexively adopted from the world in which he operated devoid of any real principle or philosophy.
- In the 1980s and 1990s while he was operating in the very pro-choice environment of cosmopolitan New York he was openly pro-choice and even pointed to his involvement in pro-choice fundraisers.
- He has changed his party affiliation five times and eventually returned to the Republican party where he has settled.
- He also turned away from his pro-choice position to the anti choice position which has become a requirement for political survival within that party.
- Religious Right leaders were willing to back him not only because he agreed with them but because they saw him as being malleable.
- They also saw his ability to exploit anger as a useful weapon.

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Falwell and Reed seemed sure that Trump's positions and rhetoric were malleable. What was really attractive to these anti-choice leaders was his ability to tap into a deep-seated anger and anxiety that white Evangelicals felt about a country they saw as increasingly hostile to them, one where they were not in the majority and losing control of the debate.

Richard Land, the president of the Southern Baptist Convention's Ethics & Religious Liberty Commission, had pointed to so-called "anger points" to explain why the philandering Newt Gingrich was handily beating known family man Romney among Evangelicals in the 2012 presidential primary.<sup>673</sup> Gingrich had an affair while prosecuting the Clinton impeachment case and ultimately left his sick wife to marry a younger woman.<sup>674</sup> Yet for evangelical and far-right voters, his personal piousness was less important than his willingness to channel rage at anyone questioning the agenda of the Far Right. On this metric, the mild-mannered Romney couldn't compete. Going into 2016, Falwell and Reed knew that Donald Trump had cornered the market on anger points.

Trump centered raw racism in his campaign from the day he announced his run for president. "When Mexico sends its people, they're not sending their best," he belted out during his campaign announcement. "They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people."<sup>675</sup>

To many in the Far Right, Trump's comment wasn't an embarrassing lapse in message discipline, but rather a successful audition. The political culture of the right in the United States often gets divided into subcategories like "corporatists," "nationalists," "pro-lifers," and the like, but, at its core, the Far Right is both so demographically and ideologically homogeneous that "activating that group is not rocket science," according to Public Religion Research Institute's Robert Jones.<sup>676</sup> "As our country transitions for the first time to a truly multicultural democracy, we are living through a tremendous backlash, and Trump really represents that," Southern Poverty Law Center senior fellow Mark Potok told *The Huffington Post*.<sup>677</sup> While mainstream pundits were laughing at Trump's campaign launch, his target audience was watching, listening, and applauding.

In just one month, Trump went from having the lowest favorability among Republicans to being at the top of the GOP

- Trump launched his presidential campaign with an overt appeal to racists who had not had a champion of his stature in recent times.
- But his embrace of bigotry also galvanized misogynists. Prominent among them were groups in the "Manosphere" such as Men's Rights Activists (MRAs) that have come into prominence in recent years.

Men's Rights Activists, or MRAs, weren't new. They had emerged in the 1970s as part of the reaction to feminism.<sup>692</sup> Decades later, a cohort of self-aggrieved men activated by women's equality found a new home online to "reclaim their natural manhood and usurp women's social, political, and economic power."<sup>693</sup> They gathered in chat rooms and radicalized a new generation around mostly personal issues, spending hours comparing notes on message boards about how they weren't getting their due in life and love because women had ceased to know their place.

Their culture revolved around trolling feminists and women who bucked their systems, but they rarely engaged with politics and so were relatively unknown to most Americans. But in 2014, the year before Trump launched his campaign, the movement burst into popular consciousness. During what would come to be known as Gamergate, hordes of MRAs harassed female video game developers and journalists, threatening them with rape and violence.<sup>694</sup> Their sin? Creating games with female protagonists that eschewed violence.

Gamergaters relished what they considered to be a provocative opposition to political correctness.<sup>695</sup> They saw a cultural malaise that had settled on a generation of disaffected white men entering a complicated world and wanted to shift it into anger. They operated in safety from secluded corners of the internet where conspiracy theories could blossom and they could test their offensive narratives with impunity. They delighted in misogynist rhetoric, egging each other on and lambasting those who tried to erect guardrails. "Are you triggered?!"<sup>696</sup> they would jeer at anyone who tried to curb their most hateful conversations. They referred to the converted as being "red pillled" in reference to *The Matrix*, a popular movie from the late 1990s in which the protagonist has to take a red pill to see the ugly truth about reality.<sup>697</sup>

- A 2018 Washington Post article entitled *Jordan Peterson and the Return of the Men's Rights Movement* states that they emerged in the 1970s as a reaction to feminism.<sup>2</sup>
- They argue that men are the real victims of gender oppression.

*Yet for all the attention in recent months to pro-patriarchy personalities such as Peterson and the violent misogyny of incels, neither they nor their ideas are entirely new. In fact, almost as soon as second-wave feminists in the 1960s and 1970s observed (again) that women were treated unequally, men's rights activists proclaimed that, well, actually, men were the real victims of gender discrimination.*

*In 1969, an Illinois legislator named Richard Elrod introduced a series of men's equality bills to the state legislature. His bill sought to correct laws that he believed discriminated against men in favor of women.*

*It was a strange year to argue this. In 1969, it was legal to discriminate against women in college admissions. Banks regularly denied the same credit to women that they extended to men of equivalent means. [Equal pay laws](#) had been on the books for six years, but the government was overextended, skeptical about protecting female workers and unlikely to enforce the new law. Bosses and colleagues had impunity to sexually harass women at work. Husbands could legally rape their wives and their ex-wives.*

*Yet in this atmosphere, Elrod saw men as the victims of gendered inequality.*

- The context within which they are making this argument shows what they are really uncomfortable with are movements towards equality.
  - "When you are accustomed to privilege equality feels like oppression."
- MRAs are part of a broader phenomenon referred to as the "Manosphere."

*The **manosphere** is a collection of websites, blogs, and online forums promoting [masculinity](#), hostility towards women, strong [opposition to feminism](#), and exaggerated [misogyny](#).<sup>[1]</sup> The manosphere has been associated politically with the [far-right](#) and [alt-right](#).<sup>[2]</sup> Movements within*

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<sup>2</sup> <https://www.washingtonpost.com/news/made-by-history/wp/2018/07/24/before-jordan-peterson-there-were-mens-rights-activists/>

*the manosphere include the [men's rights movement](#),<sup>[3]</sup> [incels](#) (involuntary celibates),<sup>[4]</sup> [Men Going Their Own Way \(MGTOW\)](#),<sup>[5]</sup> [pick-up artists \(PUA\)](#),<sup>[6]</sup> and [fathers' rights groups](#).<sup>[7]</sup> The manosphere has been associated with [online harassment](#) as well as some [mass shootings](#) and other real-world acts of violence, and has been implicated in [radicalizing men into committing violence against women](#).<sup>[8]</sup><sup>3</sup>*

- Change, even positive change, is painful and tends to have its casualties.
- However MRAs misrepresent reality when they identify that men are the real victims of gender oppression when they are not.
- MRAs saw Trump as their hero who shared their misogyny.
- They relished his attacks on “political correctness” and his willingness to denigrate women who he felt had crossed him.
- Prior to 2016 MRAs generally shunned political involvement. But They backed Trump and helped propel him to victory.
- The MRA culture set the tone for Trump supporters to target Hillary Clinton and other women in ways that would not have been socially permissible before. Trump mirrored their narratives.

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In May 2016, New York Magazine's The Cut, published a quiz inviting readers to guess whether various misogynistic quotes originated from Donald Trump or an MRA message board. The phrases it posted included “A person who is very flat-chested is very hard to be a ten” and “All of the men, we're petrified to speak to women anymore. We may raise our voice.” It was hard to tell who said what.<sup>205</sup>

- Jordan Peterson is seen as the educated and “well put together” face of the MRA movement.
- The MRA movement and the Manosphere here are significant because their ideas and have influence far beyond people who explicitly identify as MRAs.
  - You can trace this movements trajectory from the 1970s, 2001, 2014, 2016 - it is part of the wrong stream.
- There was a natural synergy between the Radical Right, MRA misogynists, and Christian Fundamentalists in their disdain for mainstream media.
  - QAnon also employ the “red pill” narrative to describe being woken up from mainstream media's propaganda. Lots of intersections with these groups - conspiracy theorists, right wing racists, misogynists.

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MRAs had a natural synergy with the Radical Right not only in their anti-feminist politics but also in their hatred of the mainstream media. When the Gamergate leaders were being criticized by journalists for their targeted harassment against women — particularly their ruthless attacks on women of color — they cried lazy journalism and media malfeasance.<sup>712</sup> Long before Trump made cries of “fake news” central to his campaign, his new allies had begun the work of delegitimizing the fourth estate in the eyes of their followers. For MRAs, the elite media was so captured by political correctness that they could not effectively do their jobs. White supremacists were notorious for their belief the media was run by their number one enemy — the Jews.

Christian Fundamentalists, also, had long felt persecuted by journalists and believed that liberal elites controlled the media and mocked their way of life. Newt Gingrich captured the anti-media sentiment — and the anger points — during his run for president in 2012. He was asked by CNN's John King how a prior extramarital affair squared with his religious beliefs. Instead of defending himself, Gingrich exploded with rage at King, “I think the destructive, vicious, negative nature of much of the news media makes it harder to govern this country, harder to attract decent people to run for public office. I'm appalled you would begin a presidential debate on a topic like that.”<sup>713</sup>

Gingrich supporters in the audience leapt to their feet with applause. They had no trouble choosing sides in a contest between a sanctimonious hypocrite who supported their views and a mainstream media figure who they had been convinced looked down on them. The clip itself made rounds on right-wing news sites, with an overlay portraying Gingrich as a lion and King as a hunted zebra.<sup>714</sup> In their fight for their way of life, the Religious Right had long ago decided that the elite media was enemy number one.

- A common thread in the *modus operandi* of the Radical Right, Christian Fundamentalists, and the anti-choice movement is the delegitimization of science and the mainstream media.
  - This is necessary to make their targets more susceptible to receiving their misinformation.

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Many pundits retroactively gave at least partial credit for Trump's victory to his successful exploitation of underlying and persistent racism, misogyny, and xenophobia surfaced by social and economic anxiety among white working class voters afraid America was changing in a way that would leave them behind. Still, the media fell short of connecting the dots that allowed for those anxieties to be leveraged so effectively. The dots that pointed to a long and deliberate takeover of the Republican Party by a group erroneously labeled as single-issue voters. The Radical Right had become the kingmakers of the party, obfuscating their dominionist origins behind what came to be known as the "pro-life" movement. And while many noted that the GOP faithful turned out to the polls because of "abortion," almost none recognized the proxy that medical procedure had successfully become. The Trojan Horse of abortion now carried the weight of so much more. Trump understood. And the political landscape in 2016 was shaped — indeed, defined — by the deal he struck with the Radical Right.

For nearly half a century, the Radical Right had built towards this moment. Its leaders had convinced generations to have an almost Pavlovian response to the mention of abortion and had made their opposition to *Roe* an effective filter to keep out all but those most committed to their agenda. They had professionalized their operations and taken over the conservative establishment. They had prepared for a frontal attack on reproductive freedom as the tip of the spear in their agenda for control, the restoring of white Christian men to their rightful place in society as seen by Paul Weyrich, Jerry Falwell, and their fellow dominionists. And in the end, they cynically exploited their religious credentials in support of the most unqualified presidential candidate in American history — a man whose life was a rebuke of everything they claimed to value.

Their plan worked. And now America would pay the price.

## Judicial Appointments:

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A little over a week after taking office, Trump nominated Neil Gorsuch to fill the stolen Supreme Court seat that Mitch McConnell had held hostage for most of the previous year.<sup>1</sup> During the campaign, Trump had promised to nominate someone "in the mold" of the late Antonin Scalia, the far-right justice who had helped mold the Federalist Society from its very beginning. Except for the fiery temperament, Gorsuch perfectly fit the bill.<sup>1</sup>

Gorsuch had come up through the Federalist Society's networks and was listed as a Federalist Society "expert" prior to his nomination.<sup>1</sup> He was a proponent of the Radical Right's "originalist" and "textualist" philosophies, which focused solely on interpreting the language of the constitution as it was understood at the time it was written, denying the relevance of any cultural change or the real-world consequences of hardline judicial decisions.<sup>2</sup> At age 49 when he was confirmed, Gorsuch became the youngest member of the Supreme Court.<sup>3</sup>

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On June 26, 2018, just over a year after Gorsuch's confirmation, the Supreme Court handed down a decision in *NIFLA v. Becerra*.<sup>1</sup> At issue in the case was a California law that advocates had fought hard for — a law that required anti-choice crisis pregnancy centers to post signs stating that abortion services were available in the state even though they were not available on site. These fake women's health centers — like the one Scott Lloyd championed, like the one that HHS forced pregnant detainees to go to — thrived on luring women in with the illusion that they could obtain abortions. Once they had a captive audience, they subjected them to shaming and scare tactics to dissuade them from terminating their pregnancies. California sought to ensure that all women were informed about services available in the state.

In an almost unnoticed 5-4 decision, the court affirmed the rights of these centers to lie to women in the name of free speech with then-Justice Anthony Kennedy — considered the swing vote — siding with the conservative wing.<sup>2</sup> A strong dissent by the liberals showed how polarized the court was on this issue. Kennedy was the perpetual middle man providing some semblance of balance — but not for long.

- Justice Kennedy resigned two days later which paved the way for Trump to replace him with Brett Kavanaugh.
- Kavanaugh met the litmus test of hostility to Roe v. Wade. As a former White House lawyer under George W. Bush, Kavanaugh challenged the notion of Roe as “settled law of the land,” according to a 2003 email obtained by the New York Times.
- In October 2017 a teenage woman who had crossed into the United States in the previous month found out that she was pregnant. She knew immediately that she wanted an abortion.
  - Kavanaugh was part of a three judge panel that ruled to delay her abortion.
  - He argued that the other judges on the bench were creating "a new right for unlawful immigrant minors in U.S. government detention to obtain immediate abortion on demand." This is language out of the anti-choice movement’s disinformation language book.<sup>4</sup>
  - The decision was eventually reversed by the appeals court and the woman received her abortion.
  - This was his only abortion related case before his nomination and it worried civil rights activists and organizations while simultaneously boosting his stock with the Radical Right and GOP establishment.
- Louisiana is one of a number of states that have had longstanding Republican majorities in its state legislature.
- These legislatures have passed TRAP legislation (Targeted Regulation of Abortion Providers) designed to make it more difficult for abortion providers to operate and eventually force them to shut down.
- In 2019 Louisiana, a state of 4.6 million people, only had three abortion clinics.
- In February of that year the supreme court voted in a 5-4 decision to block a Louisiana law that would have seen the number of doctors eligible to perform abortions reduced to just one.
- Kavanaugh was not just in favour of the law, he wrote a dissent in which he effectively argued that the law should go into effect as it wasn’t clear it would be unduly burdensome on abortion providers and we should just go ahead and see how it played out.<sup>5</sup>
- Kavanaugh’s dissent has been **taken by many** as a clear sign that he is intent on overturning Roe v Wade.
- Ruth Bader Ginsburg had been a champion for equality throughout her career as both a lawyer and as a supreme court justice. She passed away on September 18th, 2020.
- On September 26th, 2020 Trump announced the nomination of Amy Coney Barrett to the Supreme Court.
- She is a former member of the Federalist Society.
- During her confirmation hearing she said very little that could be used against her. The Federalist Society coaches its prospective appointees in how to get through the confirmation process as smoothly as possible - without exposing perspectives they know are unpopular and that could become a stumbling block to the confirmation.
- As with Kavanaugh one has to look into their past for clues as to how they think and how they might rule on a given issue.
  - Something that was discussed at length in the media was her involvement with the People of Praise - a Christian community with a strict patriarchal hierarchy.

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<sup>4</sup> <https://www.dallasnews.com/news/politics/2018/09/07/supreme-court-hearing-kavanaugh-voted-to-delay-abortion-for-unauthorized-immigrant-teen-in-texas/>

<sup>5</sup> <https://www.theguardian.com/commentisfree/2019/feb/09/brett-kavanaugh-shows-true-colours-in-supreme-court-abortion-dissent>

- A clue that was pointed out was, after hours of interrogation before the Senate judiciary committee, she admitted that she did not see Roe v. Wade as a case that formed a “super precedent” - which is a precedent that the Supreme Court cannot overrule.
- Of the current nine members of the [Supreme Court of the United States](#), six ([Brett Kavanaugh](#), [Neil Gorsuch](#), [Clarence Thomas](#), [John Roberts](#), [Samuel Alito](#), and [Amy Coney Barrett](#)) are current or former members of the Federalist Society and who have clearly expressed views against abortion rights.
- The Federalist Society "has become one of the most influential legal organizations in history —not only shaping law students' thinking but changing American society itself by deliberately, diligently shifting the country's judiciary to the right.
- On March 3rd, 2021 Arkansas passed Bill 6 - a TRAP bill which proposed to make performing an abortion a criminal offence punishable by up to 10 years in prison, a \$100,000 fine, or both. It does not allow for exceptions in the case of rape, incest, or where there are severe foetal abnormalities.
- A Republican sponsor of the Bill had admitted that the Bill is an attempt to get the Supreme Court to overturn Roe v. Wade.
  - It is intentionally extreme in order to provoke a legal fight that will reach the supreme court where they know they have a super majority of conservative justices.
- While there is fear among some that Roe v Wade will be overturned, overturning it outright is not necessary.
- TRAP legislation is hollowing it out and leaving it a right on paper only.
- This is a similar dynamic to Religious Right's current approach to the constitution. They do not need to amend it outright. They leave it as it is written on the face of it but go inside and change how it is interpreted. It is a much more subtle approach.