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## **Backslide: A Comparison of the United States and Colombia's Recent Rulings on Abortions**

Ethan Libo

*Cardozo International & Comparative Law Review*, [libo@law.cardozo.yu.edu](mailto:libo@law.cardozo.yu.edu)

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# Backslide: A Comparison of the United States and Colombia's Recent Rulings on Abortions

By: *Ethan Libo*



In 2022, the United States Supreme Court and Colombia's Constitutional Court both handed out 5-4 decisions heading the opposite way on the issue of abortion. Historically, Latin American countries have been very strict on abortion. The Latin American populace is known to be of devout religious faith and to hold culturally conservative values.[1] However, in 2022, Colombia joined a growing trend in Latin America when the country's Constitutional Court ruled that the criminalization of abortion under twenty-four weeks is unconstitutional. [2] In 2006, the Constitutional Court upheld the criminalization of abortion. However, the Court at that time carved out exceptions when: 1) there is a threat to the mother's life; 2) the fetus is non-viable; or 3) the pregnancy is the result of rape.[3] These exceptions continue to apply in Colombia for pregnancies that are terminated after twenty-four weeks.[4]

The Colombian Constitutional Court's ruling was based on human rights protected in the country's constitution. No specific provision of the Colombian Constitution guarantees access to abortion. Instead, the decision is rooted in the need to protect people from discrimination that limits their ability to access vital healthcare.[5] Activists in favor of Colombia's decision emphasized the threat to people's health posed by the criminalization of abortion. They point to studies that show that the vast majority of abortions in the country are done illegally, placing the most intense burden on the poor and those in isolated regions of the country.[6] The bulk of legal abortions were done in the major cities. Consequently, the study shows that many people who fell under the exception of the 2006 constitutional ruling were still forced to either continue with an unwanted pregnancy or take the risk of an unsafe abortion.

A few months after the Colombian Court decriminalized abortion, the United States Supreme Court overturned the nearly half a century old precedent of *Roe v. Wade*. The *Roe* framework was different from Colombia's twenty-four week

standard. Under *Roe* a person's constitutional right to an abortion was based on the trimester. A pregnant person had unlimited access to abortion in the first trimester; in the second trimester states could regulate but not fully ban abortion; and during the third trimester a state could fully outlaw abortion.[8] *Roe* is quite moderate compared to Colombia's twenty-four week line, which encompasses almost the entirety of the first two trimesters and preserves important exceptions for the third trimester.

In comparing the United States and Colombia's abortion rulings, it should be noted that the U.S. legal system is based on common law, whereas Colombia's legal system is based on civil code.[9] This means that Colombia's legal system is primarily based on statutory law instead of jurisprudence.[10] Yet as a result of Colombia's 1991 Constitution, the court's in Colombia exercise important national influence. Specifically, Colombia's Constitutional Court exercises significant power of controversial issues like abortion, similar to countries with common law legal systems.[11] A key difference that should be noted between the United States and Colombia is that there is only one judicial jurisdiction in Colombia, as opposed to the U.S.'s federalized system.[12] Colombia's one size fits all system makes the protection of a pregnant people's right to choose even more vital. If the Colombian government criminalizes abortion, there are no state lines to cross to get an abortion. In the United States, if abortion is banned in one's home state, the person can cross state lines to terminate a pregnancy. However, it should be noted that this can lead to some of the same issues that Colombia was having under its old framework. The impact disproportionately burdens the poor who do not have the resources to travel. Even affluent U.S. citizens might run into trouble, as some lawmakers have suggested that there should be penalties for out of state abortions.[13]

There is no doubt that the United States has had a complete backslide on reproductive rights. Some proponents of the *Dobbs* decision claim that *Roe* exemplified judicial overreach and that the right to an abortion is not grounded anywhere in the Constitution. Colombia's ruling was not explicitly granted in the text of its country's Constitution either. However, it appears the Colombian legal system affords more discretion for the Court to craft policy based on abstract notions of human rights. Whether one agrees or disagrees with the inferred right to privacy underlying *Roe*, there is little doubt about the negative implications that *Dobbs* will have. Colombia, as conservative of a country as it is, or once was, recognized the harm that strict abortion laws had on its citizens. The lack of respect for reproductive healthcare, and pregnant people's autonomy, created a discriminatory healthcare system that often forced the most vulnerable people to carry out unwanted pregnancies or turn to unsafe abortions. The United States is heading in the wrong direction. Though the United States Supreme Court's selective use of textualism and literalism to overturn a fifty-year-old landmark precedent is deeply concerning, what is more concerning is the immediate harm that has already begun. Waiting for the Court to flip to a liberal majority again is not an option, Congress must act now.

***Ethan Libo is a Staff Editor at CICLR.***

[1] Julie Turkewitz, *Colombia Decriminalizes Abortion, Bolstering Trend Across Region*, N.Y. Times (Feb. 22, 2022), <https://www.nytimes.com/2022/02/22/world/americas/colombia-abortion.html> [<https://perma.cc/8A5A-2KW2>].

[2] *Id.*

[3] Ximena Casas Isaza & Catalina Martinez, *How Latin America Could Inspire and Inform the US Fight for Reproductive Justice*, Just Security (Aug. 19, 2022), <https://www.justsecurity.org/82632/how-latin-america-could-inspire-and-inform-the-us-fight-for-reproductive-justice/> [<https://perma.cc/VWC4-F62N>].

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Roe v. Wade*, 410 U.S. 113 (1973).

[8] *Id.* at 144.

[9] Angie Vega, *A Brief Explanation of Colombia's Legal System*, Michigan State University (2018),

<https://www.animallaw.info/article/brief-explanation-colombia's-legal-system> [<https://perma.cc/5AA8-3ST6>].

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] John Kruzel, *Battle Lines Emerge over out-of-state Abortion*, The Hill (July 14, 2022),

<https://thehill.com/regulation/3558330-battle-lines-emerge-over-out-of-state-abortion/> [<https://perma.cc/L5E3-W69X>].