

ABORTION POLICY IN MEXICO: A CHANGING ROLE FOR THE SUPREME COURT

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INTRODUCTION

Starting in the year 2000, just as Mexico was transitioning from a one-party authoritarian regime to a multi-party democracy, a slow process to liberalize abortion laws began. The effort was driven by feminist activists and left parties and culminated in a series of Supreme Court rulings in 2021 and 2023 that opened the path to decriminalization of abortion across the country. Until 2018, abortion policy debates largely took place in state

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legislatures while the Supreme Court affirmed the autonomy of state governments to regulate abortion however they chose. As a result, there was a radical diversity of abortion laws across the country. In some jurisdictions, abortion was legal and available for free in government clinics. In other parts of the country, women who had abortions were charged with murder and imprisoned for twenty or more years. After 2018, the Supreme Court began to take a central role in determining abortion policy across the country. What explains the transformation of abortion politics over the past two decades and the changing role of the Supreme Court? Rather than analyzing the legal arguments of Supreme Court decisions, this paper focuses on the political causes of Supreme Court behavior. It examines the votes of Supreme Court justices on abortion cases since 2000 to understand the interplay between federal judicial review and subnational policy decisions. It finds that the liberalization of abortion laws in Mexico and the changing behavior of the Supreme Court has been the result of strategic litigation by feminist groups, massive feminist mobilization, and electoral victories of left parties. In contrast to common wisdom about the Supreme Court in the United States, in Mexico, there is little relationship between the ideology of the president who appoints the justice and the voting record of the judge. Instead, there is some suggestive evidence that justices finishing their terms may be more likely to rule in accordance with the preferences of the sitting president to enhance their career opportunities after leaving the Court. Judicial reforms undertaken during the transition to democracy greatly enhanced the ability of the Supreme Court to address controversial issues such as abortion.

I. DEMOCRATIZATION AND THE JUDICIARY IN MEXICO

During most of the twentieth century, Mexico was governed by an authoritarian one-party system.¹ A transition to multiparty democracy took place in the 1990s and ended in the victory of opposition party candidate Vicente Fox for the presidency in 2000.² Under one-party rule (1928-2000), power was highly centralized in the hands of the President, who resolved

¹ See Jodi Finkel, *Judicial Reform as Insurance Policy: Mexico in the 1990s*, 47 *LAT. AM. POL. & SOC'Y* 87, 91 (2005); Silvia Inclán Oseguera, *Judicial Reform in Mexico: Political Insurance or the Search for Political Legitimacy?*, 62 *POL. RSCH. Q.* 753, 754 (2009); Julio Ríos-Figueroa, *Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994-2002*, 49 *LAT. AM. POL. & SOC'Y* 31 (2007).

² See Finkel, *supra* note 1, at 91.

disputes between different territorial levels and branches of government.³ The judiciary and the legislature remained weak and subservient to the executive throughout the period of one-party rule.⁴ A major reform to strengthen the judiciary was carried out in 1994 as part of the transition to democracy.⁵ Judicialization of politics increased in Mexico's new multiparty democracy. Before 1994, the only access to judicial review came through the amparo suit.⁶ According to Pou Giménez:

The amparo is a writ that citizens can file to denounce before a federal judge—not any judge: it is a semi-centralized system—that a public authority has violated her constitutional rights. It broadly protects against acts and norms from all authorities: the police, the administration, judges, the legislative branch, etc. It can operate as a habeas corpus, as a way to activate the judicial review of legislation, or as a forum where federal judges check whether other judges have adjudicated the conflicts between private parties with due respect for fundamental rights, thus ensuring horizontal enforcement (*Drittwirkung*). Rulings against statutes have *inter pars* effects and result in their disapplication in the case at hand.⁷

The 1994 judicial reforms gave the federal judiciary the power of abstract review, and further reforms in 1999 strengthened the amparo.⁸ Since 1994, various government institutions have had the power to file an “Act of Unconstitutionality” to challenge the constitutionality of statutes.⁹ The federal judiciary can also review “Constitutional Controversies” to resolve disputes between different government branches and territorial levels.¹⁰ Since 2011, all judges have had the power to review the constitutionality of statutes, but lower judges cannot create precedents and must abide by precedents set by higher-level judges.¹¹

³ See Finkel, *supra* note 1, at 91; Osegura, *supra* note 1, at 764; Ríos-Figueroa, *supra* note 1, at 35.

⁴ See Finkel, *supra* note 1, at 91; Osegura, *supra* note 1, at 765; Ríos-Figueroa, *supra* note 1, at 35.

⁵ See Finkel, *supra* note 1, at 87; Osegura, *supra* note 1, at 753; Ríos-Figueroa, *supra* note 1, at 37.

⁶ See Ríos-Figueroa, *supra* note 1, at 38.

⁷ Francisca Pou Giménez, *The Constitution of Mexico*, in THE OXFORD HANDBOOK OF CONST. L IN LATIN AM. 203, 223 (Conrado Hübner Mendes et al. eds., 2022).

⁸ See *id.* at 222-23.

⁹ See *id.*

¹⁰ See *id.* at 223.

¹¹ *Id.* at 223-24.

The Supreme Court is made up of eleven Justices who serve fifteen-year terms.¹² The Senate chooses justices from a list of three candidates provided by the President.¹³ Senators publicly question the three candidates about the technical aspects of the law and their judicial experience.¹⁴ Two-thirds of the Senators present must vote in favor to confirm one of the designees.¹⁵ If the Senate does not act within thirty days, the President can choose the justice from the slate of three.¹⁶ If the Senate rejects all three candidates, the President must send another slate of three candidates to the Senate.¹⁷ If the Senate rejects the second slate, the President can appoint anyone to the bench.¹⁸ There was not a lot of interest group involvement in the selection of judges, and the process was not especially politicized by partisan conflict until 2023.¹⁹ In 2023, the Senate rejected the first slate of candidates sent by López Obrador because opposition parties considered all three candidates close loyal partisans to the President rather than legal experts.²⁰

Gender equality and reproductive rights are explicitly guaranteed in the Mexican Constitution. Since 1974, Article 4 of the Mexican Constitution has included a statement of gender equality: “Men and women are equal before the law,” and a statement guaranteeing reproductive rights: “Everyone has the right to decide in a free, responsible, and informed manner about the number and spacing of their children,” thus enshrining access to contraception as a constitutional right.²¹ In 2014, the Mexican Constitution was amended to guarantee gender parity in the candidacies for all legislative elections, meaning no more than half of the candidates for legislative positions can be of the same gender.²² The parity provision was

¹² See Finkel, *supra* note 1, at 91-92.

¹³ See *id.* at 91.

¹⁴ See *id.* at 91-92.

¹⁵ See *id.* at 91.

¹⁶ See Diana Lastiri, *Del Senado al "dedazo" presidencial, así es la ruta para designar a la nueva ministra de la Corte*, PROCESO (Nov. 16, 2023), <https://www.proceso.com.mx/nacional/2023/11/16/del-senado-al-dedazo-presidencial-asi-es-la-ruta-para-designar-la-nueva-ministra-de-la-corte-318602.html>.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See Georgina Zerega, *El Senado rechaza la terna para la Suprema Corte enviada por López Obrador*, EL PAÍS (Nov. 30, 2023), <https://elpais.com/mexico/2023-11-30/el-senado-rechaza-la-terna-para-la-suprema-corte-enviada-por-lopez-obrador.html>.

²¹ Constitución Política de los Estados Unidos Mexicanos, CP, Art. 4, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014.

²² See *id.* at Art. 41.

updated in 2019 to require “parity in everything,” including all elective and appointed offices in the country.²³

Mexico has a federal system with thirty-one states and Mexico City (with political institutions similar to the other thirty-one states). Each state has its own courts and criminal code that regulate abortion. The federal penal code applies only to federal territories.

The transition to democracy in Mexico strengthened the judiciary and generated more judicialization of politics as more political actors began to use strategic litigation to promote their interests. The transition to democracy also created a more polarized partisan environment, with the left and the right providing radically different visions for the future of Mexico, setting the stage for intense conflict over abortion policy.²⁴

II. ABORTION POLICY IN MEXICO: PARTY IDEOLOGY AND ABORTION

The Institutional Revolutionary Party (PRI) dominated the authoritarian one-party system that controlled Mexican politics through most of the twentieth century. While the party often espoused revolutionary rhetoric, in reality, it is a pragmatic and centrist party. It has a strong anticlerical tradition and was often at odds with the Catholic Church.²⁵ The PRI has had a somewhat ambivalent attitude towards abortion. Since the 1970s, the PRI government provided access to contraception and encouraged family planning.²⁶ Some members of the PRI have pushed to legalize abortion, but fear of conflict with the Catholic Church often held back more progressive policy. PRI governors signed abortion decriminalization laws in Oaxaca and Hidalgo.²⁷ Ernesto Zedillo from the PRI was the last president in the authoritarian era and governed over the transition to a multiparty democracy (1994-2000).²⁸ Zedillo was responsible for the judicial reforms of 1994.²⁹ Enrique Peña Nieto from the PRI was president from 2012 to 2018. The cases that decriminalized abortion in 2021 were originally brought by members of Peña Nieto’s administration.

²³ See *id.*

²⁴ See Oseguera, *supra* note 1, at 762.

²⁵ See generally Ríos-Figueroa, *supra* note 1.

²⁶ See Caroline Beer, *Making Abortion Laws in Mexico: Salience and Autonomy in the Policymaking Process*, 50 COMPAR. POL. 41 (2017).

²⁷ See Caroline Beer, *Contradicciones y conflicto entre la Cuarta Transformación y el movimiento feminista*, 28 POLÍTICA Y GOBIERNO 9 (2021).

²⁸ See Ríos-Figueroa, *supra* note 1, at 38.

²⁹ See Oseguera, *supra* note 1, at 753.

The National Action Party (PAN) is a conservative, Catholic party.³⁰ President Vicente Fox (2000-2006) and President Felipe Calderón (2006-2012) were PAN members.³¹ The PAN has deeply opposed any type of liberalization of abortion laws and has led efforts to adopt fetal life amendments and further criminalize abortion.³²

Early decriminalization efforts were led by the leftist Party of the Democratic Revolution (PRD). Andrés Manuel López Obrador, mayor of Mexico City from 2000 to 2006, was the PRD's presidential candidate in 2006 and 2012.³³ After narrowly losing the 2012 presidential election, he left the PRD and started a new party, Morena.³⁴ Morena is a populist left party that has demonized the traditional parties, weakened governing institutions, and centralized power.³⁵ López Obrador won the presidential elections in 2018 with Morena. López Obrador has not been publicly supportive of abortion rights. While mayor of Mexico City, he blocked legislative efforts to decriminalize abortion. Abortion was decriminalized just after he left office.³⁶ As president, he refused to take a public position either for or against legalizing abortion and maintained that the question of abortion should be resolved with a national referendum.³⁷ Feminists disagree, arguing that public opinion should not determine basic human rights.³⁸ López Obrador has also engaged in substantial conflict with the feminist movement and has been critical of the massive feminist mobilizations during his presidency, characterizing the feminist leaders as pawns of the conservative opposition.³⁹ See Table 1 for a list of recent Mexican Presidents.

³⁰ See Beer, *supra* note 26.

³¹ See *id.* at 52; see Marta Lamas, *La despenalización del aborto en México*, 220 NUESTRA SOCIEDAD 154, 167 (2009).

³² See Beer, *supra* note 26, at 54.

³³ See generally *id.*

³⁴ See Beer, *supra* note 27, at 11.

³⁵ See *id.* at 9.

³⁶ See *id.* at 11.

³⁷ See *id.*

³⁸ See Jessica Xantomila, *Rechazan feministas propuesta de AMLO sobre consulta para legalizar aborto*, LA JORNADA (Jan. 6, 2021), <https://www.jornada.com.mx/noticia/2021/01/06/sociedad/rechazan-feministas-propuesta-de-amlo-sobre-consulta-para-legalizar-aborto-3774>.

³⁹ See Beer, *supra* note 27; Daniela Cerva Cerna, *La protesta feminista en México. La misoginia en el discurso institucional y en las redes sociodigitales*, 65 REVISTA MEXICANA DE CIENCIAS POLÍTICAS Y SOCIALES 177, 193 (2020).

Table 1. Mexican Presidents			
<i>Name</i>	<i>Years in Office</i>	<i>Party</i>	<i>Abortion Cases</i>
Ernesto Zedillo	1994-2000	PRI	No major cases, major judicial reform
Vicente Fox	2000-2006	PAN	Mexico City “Ley Robles”
Felipe Calderón	2006-2012	PAN	Mexico City decriminalization Emergency Contraception Fetal Life Amendment
Enrique Peña Nieto	2012-2018	PRI	Multiple amparo suits
Andrés Manuel López Obrador	2018-2024	Morena	Coahuila Decriminalization Fetal Life Amendment

While López Obrador has not publicly supported legalized abortion, many people in his government have. Olga Sánchez Cordero, a former Supreme Court Justice and prominent feminist, served as López Obrador’s Secretary of Gobernación, the second most powerful position in government.⁴⁰ Upon taking office, she stated that she would push for a nationwide liberalization of abortion laws. Members of Morena proposed a bill in the federal legislature to decriminalize abortion nationwide in 2019, but it stalled without support from many members of Morena (and no support from the conservative religious parties).⁴¹ Since Argentina legalized abortion in late 2020, there has been increasing pressure from women’s groups for the López Obrador administration to follow suit.⁴² But in January 2021 (as midterm election campaigns were starting), Olga Sánchez Cordero announced that there would be no federal push for abortion liberalization.⁴³

Female members of López Obrador’s Morena party led efforts to decriminalize abortion in Oaxaca (2019), Veracruz (2021), and Hidalgo (2021). However, votes from Morena helped defeat bills decriminalizing abortion in Hidalgo and Quintana Roo in 2019. Also, decriminalization bills failed in Baja California Sur and Puebla in 2021. While López Obrador has

⁴⁰ See Beer, *supra* note 27, at 11-12.

⁴¹ See Grupo de Información en Reproducción Elegida (GIRE), *Constitucionalidad de la ley sobre aborto en la Ciudad de México*, GIRE 5, 9 (2009).

⁴² See Beer, *supra* note 27, at 13.

⁴³ See *id.*

not been especially sympathetic to the feminist movement, many members of his Morena party have pushed for feminist reforms, including the decriminalization of abortion.⁴⁴

III. HISTORICAL OVERVIEW OF ABORTION POLICY

Abortion has been illegal in Mexico since Spanish colonization.⁴⁵ After the Revolution in the early twentieth century, the 1931 Federal Penal Code continued to criminalize abortion in most cases but permitted exceptions to the general ban in the case of rape and to protect the life of the mother.⁴⁶ Most of the state penal codes included similar language on abortion as the federal penal code, though the state of Yucatán allowed abortion for economic reasons.⁴⁷ These codes remained unchanged until the late 1970s and early 1980s when about half of the states added new legal exemptions for either the health of the mother or for fetal abnormality.⁴⁸ There were a few efforts to liberalize abortion laws in the 1990s further. Most notably, the Chiapas state legislature passed a bill to decriminalize abortion in 1990, but the governor vetoed the bill.⁴⁹ President de la Madrid proposed a federal bill to liberalize abortion, but it was withdrawn before a vote.⁵⁰

The topic of abortion emerged as a central political issue in 1999 when the case of a thirteen-year-old girl named Paulina was widely covered in the national press.⁵¹ Paulina became pregnant after a man broke into her home and raped her.⁵² She and her mother requested an abortion under the rape exemption in the state of Baja California, where they lived, but officials at the public hospital refused to provide an abortion, and a thirteen-year-old rape victim was forced to carry the fetus to term.⁵³ Since Paulina's case, abortion has remained highly salient in Mexican politics.⁵⁴ This particular

⁴⁴ *See id.*

⁴⁵ Beer, *supra* note 26, at 42.

⁴⁶ *Id.* at 49.

⁴⁷ *Id.* at 48.

⁴⁸ *See* Adriana Nohemi Ortiz-Ortega, *The Feminist Demand for Legal Abortion: A Disruption of the Mexican State and Catholic Church Relations (1871-1995)* (1996) (Ph.D. dissertation, Yale University) (ProQuest).

⁴⁹ Beer, *supra* note 26, at 52.

⁵⁰ *Id.*

⁵¹ *See Historia de Paulina*, PROCESO (Jan. 30, 2002), <https://www.proceso.com.mx/nacional/2002/1/30/historia-de-paulina-64173.html>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *See* Rosario Cruz Taracena, *Análisis del discurso sobre el aborto en la prensa mexicana: El caso Paulina* (2004) (M.A. thesis, CIESAS) (on file with author); PROCESO, *supra* note 51.

story made national headlines because of the work of feminist organizations that supported Paulina and publicized her case, sparking a polarized debate. After the transition to democracy in 2000, politics in Mexico became ideologically polarized between the conservative Catholic party PAN that held the presidency, and the secular left party PRD that governed Mexico City, the most important subnational jurisdiction.⁵⁵ In response to the Paulina case, a number of conservative states attempted to eliminate the rape exemption from their penal codes,⁵⁶ while more liberal states created new mechanisms to ensure access to abortion in cases where it was legal.

The policymaking process for abortion law in Mexico evinces a complex interplay between federal court decisions and subnational legislation within a context shaped by social movement activism and partisan politics. The Supreme Court first engaged with the issue of abortion after Mexico City added new legal exceptions for abortion in 2000.⁵⁷ Mexico City was at the forefront of progressive change on abortion.⁵⁸ In response to the Paulina tragedy, the Mexico City legislature added new exceptions to the general ban on abortion.⁵⁹ In addition to already existing exceptions for rape and safeguarding the life of the mother, the new reforms allowed the procedure in the case of fetal malformation, the risk to the health of the pregnant person, and non-consensual artificial insemination.⁶⁰ These reforms also established regulations to guarantee access to abortion in cases when it was legal.⁶¹ Members of the conservative PAN party in the Mexico City legislature challenged the constitutionality of the reforms. The Supreme Court heard the case and upheld the reforms.

Most abortions remained illegal in Mexico until 2007, when the Mexico City government reformed the criminal code, allowing abortion for any reason during the first twelve weeks of pregnancy.⁶² Since these reforms, abortion has been provided free of cost in public clinics in the

⁵⁵ See Beer, *supra* note 26.

⁵⁶ See Martín Diego Rodríguez, *Niegan derecho a abortar a joven violada*, LA JORNADA (May 5, 2008), <https://www.jornada.com.mx/2008/05/05/index.php?section=estados&article=044n1est>; see Beer, *supra* note 26.

⁵⁷ See María Luisa Sánchez Fuentes, Jennifer Paine & Brook Elliott-Buettner, *The Decriminalisation of Abortion in Mexico City: How Did Abortion Rights Become a Political Priority?*, 16 GENDER & DEV. 345 (2008).

⁵⁸ See *id.*

⁵⁹ See Lamas, *supra* note 31.

⁶⁰ See *id.*

⁶¹ See *id.*

⁶² In the first year after Mexico City decriminalized abortion, the procedure was carried out more than 7,000 times in public hospitals. See GIRE, *supra* note 41.

city.⁶³ The reforms were intentionally written to include language similar to the 2000 reforms deemed constitutional by the Supreme Court. Thus, “during the first twelve weeks of gestation” was added as a new exception to the general ban on abortion.⁶⁴ Although conservatives challenged the constitutionality of the new reforms in the Supreme Court, they were upheld.⁶⁵ In response to their loss in the Supreme Court, the anti-abortion movement gained new momentum, and an anti-abortion backlash unfolded in other states across the country.⁶⁶ Conservative activists and the PAN party turned to state legislatures to try to prevent further liberalization of abortion. In just one year (from 2008 to 2009), fifteen states added language to their state constitutions declaring that life begins at the moment of conception.⁶⁷ By 2021, twenty-one (of the thirty-two) states had enacted constitutional amendments protecting life from the moment of conception. Feminist groups challenged the constitutionality of these fetal life amendments, but in 2011, the court upheld these state provisions, thus establishing nearly unfettered state autonomy over abortion policy.

Other states replicated some of the advances made in Mexico City, and the federal government took steps to ensure access to abortion in cases where it was legal. The PRD governor of Guerrero proposed a bill to decriminalize abortion in 2014, but it was tabled in the face of intense opposition. No other state decriminalized abortion until 2019, after two important Supreme Court decisions.⁶⁸ The first expanded the rape exemption in 2018, ruling that abortion was always legal in the case of rape and that no legal authorization was necessary to access abortion services after rape.⁶⁹ The second, in 2019, affirmed that abortion was always legal when the woman’s health was at risk, ruling that abortion access is necessary to ensure the constitutional right to health.⁷⁰ These two cases signaled an important shift in the national abortion debate. Following these decisions, in September 2019, the state of Oaxaca decriminalized abortion during the first twelve weeks of gestation. Women deputies from Morena pushed for the changes to the penal code to liberalize abortion policy,

⁶³ See Sánchez Fuentes et al., *supra* note 57.

⁶⁴ See *id.*

⁶⁵ See Beer, *supra* note 26.

⁶⁶ See *id.*

⁶⁷ See *id.*

⁶⁸ See generally Alba Ruibal, *Using Constitutional Courts to Advance Abortion Rights in Latin America*, 23 INT’L FEMINIST J. POL. 579 (2021).

⁶⁹ See *id.*

⁷⁰ See *id.*

especially Laura Estrada Mauro, the coordinator for Morena in the state legislature.⁷¹ The reforms were passed with the support of legislators from Morena, the Workers Party (PT), and Mujeres Independientes (Independent Women). The bill was signed into law by Governor Murat Hinojosa from the PRI.

During the summer of 2021 (just *after* the 2021 midterm elections in June), two more states, Hidalgo and Veracruz, decriminalized abortion. The state of Hidalgo became the third subnational entity to decriminalize abortion in Mexico. Like Oaxaca, the bill was pushed by legislators from Morena and signed by Governor Omar Fayad of the PRI. In Veracruz, Morena had twenty-three of thirty-five seats in the legislature. All twenty-three deputies from Morena voted to decriminalize abortion, as well as the deputies from PRD and MC. The Governor of Veracruz, who signed the legislation, was also from Morena.

Perhaps emboldened by the legislative action, after these three state legislatures decriminalized abortion, the Supreme Court released three decisions in the fall of 2021. The cases were all brought during President Peña Nieto's (from the centrist PRI) term by his Attorney General and the Commission on Human Rights. The first decision ruled unconstitutional the Coahuila state penal code that completely criminalized abortion. In the second case, the Court ruled against the Sinaloa state constitution's declaration that life begins at conception.⁷² The Court ruled that the state of Sinaloa did not have the authority to determine when life began; rather, the federal government did.⁷³ Between the Supreme Court rulings on abortion from fall 2021 until January 2024, eight more state legislatures decriminalized abortion: Coahuila, Baja California, Baja California Sur, Colima, Sinaloa, Guerrero Quintana Roo, and Aguascalientes for a total of twelve subnational entities where abortion is not criminalized during the first twelve weeks of gestation.⁷⁴

In September of 2023, the Supreme Court struck down the criminalization of abortion in the federal penal code.⁷⁵ This ruling made

⁷¹ See generally Beer, *supra* note 27.

⁷² See Melissa S. Ayala García, *Caso Sinaloa y aborto: sentencias que no decepcionan*, NEXOS (Sept. 28, 2022), <https://eljuegodelacorte.nexos.com.mx/caso-sinaloa-y-aborto-sentencias-que-no-decepcionan/>.

⁷³ See *id.*

⁷⁴ See Simon Romero & Emiliano Rodríguez Mega, *Mexico's Supreme Court Decriminalizes Abortion Nationwide*, N.Y. TIMES (Sept. 6, 2023), <https://www.nytimes.com/2023/09/06/world/americas/mexico-abortion-decriminalize-supreme-court.html>.

⁷⁵ See *id.*

abortion legal in all federal health institutions, even in the twenty states where abortion continues to be illegal.⁷⁶ The court stated that the “criminalization of abortion constitutes an act of gender-based violence and discrimination, as it perpetuates the stereotype that women and people with the capacity to get pregnant can only freely exercise their sexuality to procreate and reinforces the gender role that imposes motherhood as a compulsory destiny.”⁷⁷

Thus, following the expectations of judicial federalism, we see federal court decisions shaping the policymaking process for subnational legislatures, and state legislatures influencing the decisions of the Court. Liberalizations of abortion laws in Mexico began in state legislatures where left parties had won the majority and were upheld by the Supreme Court in the face of significant national pressure against the reforms.⁷⁸ Some states decriminalized abortion, while others further criminalized abortion by granting legal personhood to fetuses and charging women who had abortions with murder. From 2000 until 2018, the Supreme Court acted to uphold states’ autonomy, allowing both policies to decriminalize and further criminalize abortion. The tendency to uphold state laws both in favor of legal abortion and against can partly be explained by the fact that the Mexican Constitution requires a two-thirds supermajority for the Supreme Court to overturn local laws.⁷⁹ There was a simple majority in favor of decriminalizing abortion during most of this time, but not a supermajority. Explanations of changes in abortion policy from 2000 to 2018 focused on explaining why some states enacted liberalizing reforms and other states enacted conservative reforms. Methodologically, these studies focused on subnational comparisons, highlighting differences among states. Hypotheses examined the variation of the influence of the Catholic Church, the ideology of the party in power, and the strength of feminist groups across states.⁸⁰ Since the Supreme Court’s rulings upheld state autonomy during this period, scholarly research generally did not focus on the Supreme Court as a factor.⁸¹ Since 2018, the Supreme Court

⁷⁶ *See id.*

⁷⁷ *Id.*

⁷⁸ *See* Sánchez Fuentes et al., *supra* note 57.

⁷⁹ *See* Beer, *supra* note 26.

⁸⁰ *See* Beer, *supra* note 26; Camilla Reuterswärd, *Pro-Life and Feminist Mobilization in the Struggle over Abortion in Mexico: Church Networks, Elite Alliances, and Partisan Context*, 63 *LAT. AM. POL. & SOC’Y* 21 (2021).

⁸¹ *See* Beer, *supra* note 26.

has played a central role in establishing abortion law, overriding state legislatures. What explains this change in court behavior?

IV. COURTS AND POLITICAL CHANGE

While existing analyses of abortion policymaking in Mexico have focused on state legislatures and subnational politics, an explanation of changes to abortion policy since 2018 requires a new focus on the national level and the Supreme Court. International human rights cases, especially the *Artavia Murillo v. Costa Rica* case at the InterAmerican Court of Human Rights have been important in shaping court decisions in the region.⁸²

Abortion was decriminalized in Uruguay and Argentina in the national legislature, but courts have taken a central role in establishing abortion policy in many other countries across Latin America in recent decades,⁸³ enacting progressive legal changes regarding reproductive rights.⁸⁴ Colombia's 2006 Supreme Court order to liberalize abortion laws marked the beginning of greater judicial involvement in the politics of abortion in Latin America.⁸⁵ Courts increased access to abortion by expanding exemptions to general bans in Brazil and Argentina in 2012 and Bolivia in 2014.⁸⁶ Courts in Mexico and Chile affirmed the constitutionality of legislative actions to liberalize abortion, but courts in El Salvador and Costa Rica upheld the criminalization of abortion.⁸⁷ In 2022, the Colombian Supreme Court decriminalized abortion for any reason during the first twenty-four weeks of gestation. Courts may be more likely to liberalize abortion laws than legislatures because they are more elite, they focus on legal arguments rather than religious or moral arguments, and courts are more insulated from religious pressure and less responsive to public opinion than legislatures.⁸⁸ Transitions to democracy across the region created constitutional courts with judicial review powers that provided greater opportunities for a judicial path to reproductive rights. Not only have

⁸² See *Artavia Murillo et al. v. Costa Rica*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No.12361 (Nov. 28, 2012).

⁸³ See Agustina Ramón Michel et al., *Abortion as an Essential Health Service in Latin America During the COVID-19 Pandemic, and Partisan Context*, 3 FRONTIERS IN GLOB. WOMEN'S HEALTH 1 (2022).

⁸⁴ See Ruibal, *supra* note 68.

⁸⁵ See *id.*

⁸⁶ See *id.*

⁸⁷ See Ramón Michel et al., *supra* note 83.

⁸⁸ See Ruibal, *supra* note 68.

Courts ruled in favor of greater access to abortion care in many countries across Latin America, but Courts have also encouraged public discussion of abortion and provided a public forum that is less dominated by religious actors.⁸⁹

Just as scholars of abortion politics in the United States have pointed to the complex interplay among activists, state legislatures, and federal courts in determining abortion policy outcomes in the US, similar patterns have emerged in Mexico's federation. Wilson's description of abortion politics in the US could also describe abortion politics in Mexico:

"A cycle is created where the Court speaks, activists and legislators experiment, and abortion providers and supporters challenge the legislative results in court, whereupon the cycle starts again."⁹⁰

Patton finds that state abortion policy adoption in the US is strongly influenced by Supreme Court decisions.⁹¹ She outlines four types of constitutional contexts: unknown, unconstitutional, constitutional, and suspect.⁹² Patton finds that policy adoption is most likely to occur when the constitutionality of the proposal is affirmed or unknown.⁹³ Policies are least likely to be adopted by states when they are clearly unconstitutional.⁹⁴ Thus, abortion policymaking in the United States followed a pattern whereby a new court decision led to a wave of replication of now clearly constitutional reforms.⁹⁵ Then, activists would push for further restrictions with unknown or suspect constitutionality, which would require a new court decision, and the cycle would begin again.⁹⁶

In a federal system such as Mexico with vertical judicial review, we should expect to see the interaction between subnational legislatures and federal courts because federal courts can set limits for allowable subnational policy options.⁹⁷ Federal judicial review of subnational legislation is an important component of federalism.⁹⁸ In fact, federalism

⁸⁹ *See id.*

⁹⁰ Joshua C. Wilson, *Striving to Rollback or Protect Roe: State Legislation and the Trump-Era Politics of Abortion*, 50 PUBLIUS: J. FEDERALISM 370, 372 (2020).

⁹¹ *See* Dana Patton, *The Supreme Court and Morality Policy Adoption in the American States: The Impact of Constitutional Context*, 60 POL. RSCH. Q. 468 (2007).

⁹² *See id.*

⁹³ *See id.*

⁹⁴ *See id.*

⁹⁵ *See id.*

⁹⁶ *See id.*

⁹⁷ *See* Jonathan P. Kstellec, *How Courts Structure State-Level Representation*, 18 STATE POL. & POL'Y Q. 27 (2018).

⁹⁸ *See* Jonathan P. Kstellec, *Judicial Federalism and Representation*, 6 J. L. & CTS. 51 (2018).

may lead to a stronger judiciary because the central government may use vertical judicial review to rein in the excesses of subnational jurisdictions.⁹⁹

During the transition to democracy in Mexico, President Ernesto Zedillo (1994-2000) strengthened the judiciary to rein in the authoritarian excesses of some state governors.¹⁰⁰ While Kastellec argues that courts can only set floors for constitutional rights, not ceilings, that depends on how constitutional rights are defined.¹⁰¹ This is particularly tricky when considering abortion laws because decisions may consider the constitutional rights of pregnant people or they may consider the constitutional rights of a fetus. A higher “floor” of rights for a fetus implies a lower “ceiling” of rights for pregnant people. It is certainly possible for a federal court to impose a ceiling on rights for pregnant people by providing a “floor” for constitutional rights for a fetus.

Kastellec argues that subnational policy innovation is more likely when there are low federal floors for rights protection.¹⁰² He points to the case of LGBTQ rights in the USA, where state courts and policymakers were more active when federal floors for LGBTQ rights were low.¹⁰³ Early efforts for greater LGBTQ rights recognition in the USA focused on state courts in more liberal states. The pattern of abortion policymaking in the USA provides an example of an opposite pattern where *Roe* provided a high floor for women’s rights, which led to extensive state legislation to undermine the court’s decision by lowering the “ceiling.”¹⁰⁴ Others have found a more complex pattern, such as the rush to pass new state laws in anticipation of a new court ruling, either to pressure the Court or to set the stage for the anticipated result of the new ruling.¹⁰⁵ Wilson finds that in the years leading up to the overruling of *Roe v. Wade*, changes in the court's ideological makeup incentivized new legislative activity that was unconstitutional to push the courts to overturn *Roe v. Wade*.¹⁰⁶

Evidence from Mexico suggests that early innovation to extend rights will likely come from subnational governments. Then courts weigh in later after a number of subnational units adopt reforms. Court rulings are likely to influence new legislative responses at the state level.

⁹⁹ See Barry Friedman & Erin F. Delaney, *Becoming Supreme: The Federal Foundation of Judicial Supremacy*, 111 COLUM. L. REV. 1137 (2011).

¹⁰⁰ See Finkel, *supra* note 1.

¹⁰¹ See Kastellec, *supra* note 98, at 52.

¹⁰² See *id.* at 65.

¹⁰³ See *id.* at 79.

¹⁰⁴ See Kastellec, *supra* note 98.

¹⁰⁵ See Patton, *supra* note 91; Wilson, *supra* note 90.

¹⁰⁶ See Wilson, *supra* note 90.

V. FEMINIST MOBILIZATION

In Mexico, the changing Supreme Court decisions on abortion were influenced by feminist activism.¹⁰⁷ Legal, professional feminist activists from the Information Group on Reproductive Choice (known by its Spanish acronym GIRE) built alliances with legal networks and designed amparo cases and constitutional challenges to push the courts to liberalize abortion access.¹⁰⁸ Massive mobilization of young feminists in street protests drew public attention to the horrific everyday consequences of gender inequality in Mexico.

Ruibal and Fernández-Anderson¹⁰⁹ distinguish between three different strategies used to promote greater access to abortion services in Argentina. The first strategy, *political* mobilization, is emphasized in much of the literature. The second strategy, *legal* mobilization, includes the activism of feminist lawyers and public health professionals pushing judicial strategies to make change through the courts.¹¹⁰ Legal mobilization requires a professionalized sector within the feminist movement with technical expertise to bring legal cases.¹¹¹ The third strategy emphasized by Ruibal and Fernández-Anderson is direct action to promote safe self-induced abortion through the distribution of information and telephone hotlines.¹¹²

After courts across Latin America gained new powers of judicial review, social movements began to make demands in the language of constitutional rights and used strategic litigation to gain greater access to legal abortion.¹¹³ Success also required that the Courts were receptive to feminist demands and accessible to social group participation. The Supreme Court in Mexico greatly increased access and social participation in 2008 as they decided the case about Mexico City's abortion decriminalization law.¹¹⁴

¹⁰⁷ See Sánchez Fuentes et al., *supra* note 57.

¹⁰⁸ See *id.*

¹⁰⁹ See Alba Ruibal & Cora Fernandez Anderson, *Legal Obstacles and Social Change: Strategies of the Abortion Rights Movement in Argentina*, 8 POL. GRPS. & IDENTITIES 698 (2018).

¹¹⁰ See *id.*

¹¹¹ See *id.*

¹¹² See Alba Ruibal, *Moving Constitutional Courts for Social Change in Latin America*, 53 LASA FORUM 30 (2022).

¹¹³ See Alba Ruibal, *Federalism and Subnational Legal Mobilization: Feminist Litigation Strategies in Salta, Argentina*, 52 LAW & SOC'Y REV. 928 (2018); Ruibal, *supra* note 68.

¹¹⁴ See Ruibal, *supra* note 112; Alba Ruibal, *Feminismo, religión y democracia en el proceso de legalización del aborto en la Ciudad de México*, 27 ESTUDIOS 13 (2012).

Strategic litigation by feminist activists has been central to the changes in the Supreme Court regarding abortion. The Information Group on Reproductive Choice (GIRE), founded in Mexico City in 1992, is the main feminist group advocating for the decriminalization of abortion in Mexico.¹¹⁵ They developed relationships with legal scholars and helped train feminist lawyers to bring into the movement.¹¹⁶ Since its foundation, it has worked to promote reasoned debate on reproductive rights in the media, engaged with public officials to promote gender equality policies, and used strategic litigation to promote policy change on abortion.¹¹⁷ GIRE engages in legal accompaniment of cases, juridical research, and technical assistance.¹¹⁸ GIRE coordinated and prepared *amicus curiae* briefs from NGOs and academics to support abortion decriminalization in the courts.¹¹⁹ Feminist legal activists have succeeded in getting allies into influential positions in the Courts. Zarembeg and Almeida's¹²⁰ network analysis of the Mexican feminist movement finds that next to GIRE, the strongest node of contact in feminist networks is the Supreme Court. Zarembeg and Almeida quote activists who point to the importance of feminist clerks and legal advisors in the Supreme Court who help promote feminist arguments.¹²¹

Massive feminist mobilization erupted in Mexico in 2019, following smaller protests starting in 2016 and increasing with the spread of the #MeToo movement from the USA in 2017 and similar movements across Latin America.¹²² The Mexican movement had its roots in women's activism in Ciudad Juárez in the 1990s to protest the violence against women at the US-Mexico border. Argentine activists inspired by the Mexican movement started "Ni Una Menos" in 2015, which in turn inspired more activism in Mexico.¹²³ "Ni Una Menos" evolved to include broader

¹¹⁵ See Lamas, *supra* note 31.

¹¹⁶ See *id.*

¹¹⁷ See Sánchez Fuentes et al., *supra* note 57.

¹¹⁸ Grupo de Información en Reproducción Elegida (GIRE), *Caso Sinaloa: el derecho a interrumpir el embarazo frente el derecho a la vida desde la concepción*, NEXOS (Sept. 2021), <https://eljuegodelacorte.nexos.com.mx/caso-sinaloa-el-derecho-a-interrumpir-el-embarazo-frente-el-derecho-a-la-vida-desde-la-concepcion/>.

¹¹⁹ See Sánchez Fuentes et al., *supra* note 57, at 357.

¹²⁰ GISELA ZAREMBERG & DEBORA REZENDE DE ALMEIDA, *FEMINISMS IN LATIN AMERICA : PRO-CHOICE NESTED NETWORKS IN MEXICO AND BRAZIL* (Maria Victoria Murillo et al. eds., Cambridge Univ. Press 2022).

¹²¹ *Id.* at 47.

¹²² See Cerna, *supra* note 39, at 180.

¹²³ Jaclyn Diaz, *How #NiUnaMenos Grew from the Streets of Argentina into a Regional Women's Movement*, NAT'L PUB. RADIO (NPR) (Oct. 15, 2021, 5:00 AM),

demands for gender equality, and in 2018, the Argentine Marea Verde (Green Wave) protests began calling for the legalization of abortion.¹²⁴

In Mexico City on International Women's Day, March 8, 2020, nearly 100,000 people marched in protest of the gruesome murders of Ingrid Escamilla and 7-year-old Fatima.¹²⁵ On September 4, 2020, feminist protesters occupied the National Human Rights Commission Offices and turned it into a shelter for victims of violence.¹²⁶ A year later, on International Women's Day, March 8, 2021, another massive march turned violent, and 81 people were injured.¹²⁷

While most of the feminist mobilizations in Mexico during the few years preceding the Supreme Court's decision in 2021 were focused on gender violence, not abortion, there are important links between demands for government protection against gender violence and demands to decriminalize abortion. Early efforts to liberalize abortion laws in Mexico focused on access to abortion for victims of rape. Rape is a common cause of unwanted pregnancy, and pregnancy in children is almost always the result of rape.¹²⁸ There have been some very high-profile cases of men killing their pregnant girlfriends because of unwanted pregnancies. The Argentine movement "Ni Una Menos" was inspired by the death of fourteen-year-old Chiara Paéz, who was killed by her boyfriend because of her pregnancy.¹²⁹ Many feminists have argued that a lack of access to basic healthcare, including abortion care, is a form of sexual violence. In 2023, the Mexican Supreme Court agreed, recognizing the criminalization of abortion as a form of violence against women. There are also important institutional links between antiviolence organizations and abortion rights groups. The Mexican group Marea Verde, inspired by the Argentine Marea

<https://www.npr.org/2021/10/15/1043908435/how-niunamenos-grew-from-the-streets-of-argentina-into-a-regional-womens-movement>.

¹²⁴ *Id.*

¹²⁵ Paulina Villegas, *In Mexico, Women Go on Strike Nationwide to Protest Violence*, N.Y. TIMES (Mar. 9, 2020), <https://www.nytimes.com/2020/03/09/world/americas/mexico-women-strike-protest.html>.

¹²⁶ https://elpais.com/mexico/2020-09-07/la-toma-de-la-comision-de-derechos-humanos-de-mexico-exhibe-las-carencias-en-la-ayuda-a-las-victimas.html?event=regonetap&event_log=regonetap&prod=REGONETAP&o=regonetap

¹²⁷ Maria Abi-Habib & Oscar Lopez, *A Women's March in Mexico City Turns Violent, With at Least 81 Injured*, N. Y. TIMES (Mar. 8, 2021), <https://www.nytimes.com/2021/03/08/world/americas/mexico-city-womens-day-protest.html>.

¹²⁸ IPAS, SALUD ACCESO DERECHOS, VIOLENCIA SEXUAL Y EMBARAZO INFANTIL EN MEXICO: UN PROBLEMA DE SALUD PUBLICA Y DERECHOS HUMANOS (Laura Andrade, ed., 2018).

¹²⁹ See Diaz, *supra* note 123.

Verde Movement, was founded in June 2018 by Renata Villarreal from Cancun.¹³⁰ The goal of Marea Verde is to eradicate violence against women *and* legalize abortion. In November 2020, Marea Verde activists occupied the state legislatures in Puebla and Quintana Roo, demanding the decriminalization of abortion.¹³¹

Daby and Moseley trace the process to decriminalize abortion in Argentina to the “Ni Una Menos” movement that started in 2015 to protest violence against women.¹³² The movement for reproductive rights in Argentina built upon the organizational framework and the political base of the “Ni Una Menos” movement and borrowed the social justice framing from the anti-violence movement, focusing on the unequal effects of abortion restrictions across economic groups and the heavy costs paid by those without economic resources, emphasizing the dangers of clandestine abortion.¹³³ This focus on public health and maternal mortality is connected with the “Ni Una Menos” discourse. An official “Ni Una Menos” manifesto described a woman serving a prison term for abortion as a victim of patriarchal violence.¹³⁴

VI. THE RISE OF LEFT PARTIES

Changes in Court behavior can also be attributed to the rising influence of the left. When new parties win presidential elections they can change the makeup of the courts, and justices may try to appeal strategically to the interests of sitting presidents. Left parties have been proponents of gender equality across the globe.¹³⁵

Partisan politics has been central in U.S. abortion policy adoption. Leftist women seem to be especially important. In the U.S., leftist women leaders are effective in blocking conservative policy adoption, but not in promoting liberalizing reforms.¹³⁶

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Mariela Daby & Mason W. Moseley, *Feminist Mobilization and the Abortion Debate in Latin America: Lessons from Argentina*, 18 *POL. & GENDER* 1, 27-30 (2022).

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Merike Blofield & Christina Ewig, *The Left Turn and Abortion Politics in Latin America*, 24 *SOCIAL POLITICS: INTERNATIONAL STUDIES IN GENDER, STATE & SOCIETY* 481, 481 (2017); ELISABETH J. FRIEDMAN, *SEEKING RIGHTS FROM THE LEFT: GENDER, SEXUALITY, AND THE LATIN AMERICAN PINK TIDE* (Duke University Press. 2019).

¹³⁶ Rebecca J. Kreitzer, *Politics and Morality in State Abortion Policy*, 15 *STATE POLITICS & POLICY QUARTERLY* 41, 58 (2015).

The ideological composition of the court is a central variable in studies of the U.S. Supreme Court. As Republican appointees to the U.S. Supreme Court shifted the ideological composition of the court in the 1980s, dissenting opinions against the court's majority support for abortion rights increased in prominence. These dissents invigorated anti-abortion activism and new efforts to restrict abortion at the state level. The *Casey* decision in 1992 allowed many new abortion restrictions and inspired further state-level action to restrict abortion access.¹³⁷ After the election of Donald Trump in 2016, the reality that the Supreme Court might soon overturn federal protection of abortion inspired a spate of radical abortion bans that were patently unconstitutional under current precedent.¹³⁸ And in 2022, the Right in the US achieved its goal of overturning *Roe v. Wade* after President Trump had appointed three new conservative Supreme Court justices. It seems likely that a similar tendency of ideological influence would influence the Mexican Court, but in the opposite direction as the Left has increased its influence.

VII. HYPOTHESES

Why was there a shift in the Court's behavior, from affirming subnational autonomy for abortion law to national decriminalization? Why did the Court take a central role in abortion law after 2018? This section examines hypotheses that the change in court behavior regarding abortion in Mexico can be explained by the increasing electoral influence of the left and the rise in feminist activism.

Hypothesis 1. The ideological makeup of the court will influence court decisions: Justices will vote according to the ideology of the appointing president. As the left appoints more justices, the Court is more likely to rule in favor of abortion.

Hypothesis 2. The ideology of the sitting president will influence court decisions because the President can pressure justices, especially those who are leaving the Court soon. Those justices may promote the interests of the sitting President in order to enhance their career options after leaving the Court. Thus, we are likely to see more decisions in favor of abortion when a left president is in power.

¹³⁷ See generally, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 533 U.S. 833 (1992).

¹³⁸ See Wilson, *supra* note 90.

Hypothesis 3. More intense feminist mobilization and feminist strategic litigation will influence Court decisions and lead to greater liberalization of abortion laws.

Following the logic of Hypothesis 1, we would expect justices to rule on controversial issues in ways that are consistent with the preferences of the president who nominated them. Thus, we might expect that the justices nominated by Vicente Fox (2000-2006) and Felipe Calderón (2006-2012) from the conservative, Catholic PAN would be more likely to rule against efforts to liberalize abortion laws. And we would expect judges appointed by Ernesto Zedillo (1994-2000) and Peña Nieto (2012-2018) from the centrist, secular PRI and López Obrador (2018-2024) from the populist left Morena to be more sympathetic to reproductive rights. However, because the selection of Supreme Court justices was not especially politicized, Presidents may not have had a lot of information about prospective judges. Therefore, we may see some misalignment between the President's ideology and their appointee's votes.

Alternatively, following the logic of Hypothesis 2, we would expect to see justices who are nearing the end of their terms ruling in accordance with the preferences of the current president in the hopes of winning an appointment to an important position in the executive branch when their term is over. This alternative hypothesis is consistent with common understandings of how the PRI functioned under one-party authoritarian rule. There was a longstanding practice under the PRI's authoritarian rule of term limits being used so that the party leaders could control public officials.¹³⁹ Traditionally, a position in the Supreme Court was not seen as an especially prestigious or influential position, but rather a stepping stone to more powerful positions.¹⁴⁰ As a result, there were high turnover rates for Supreme Court Justices, and many went on to serve in important political posts immediately after leaving the Court.¹⁴¹ Thus, a convergence with the preferences of the sitting president, as the justice leaves the bench, may be more important than the ideology of the appointing president.

Finally, Hypothesis 3 contends that more feminist strategic litigation bringing cases and seeding feminist legal experts in the judiciary is an important factor in shifting Supreme Court rulings. Moreover, massive

¹³⁹ Luis Javier Garrido, *The Crisis of Presidentialismo, in MEXICO'S ALTERNATIVE POLITICAL FUTURES* (Wayne A. Cornelius, et al. eds., 1989).

¹⁴⁰ Pilar Domingo, *Judicial Independence: The Politics of the Supreme Court in Mexico*, 32 J. OF LAT. AM. STUD. 705, 723 (2000).

¹⁴¹ Beatriz Magaloni, *Authoritarianism, Democracy, and the Supreme Court: Horizontal Exchange and the Rule of Law in Mexico, in DEMOCRATIC ACCOUNTABILITY IN LATIN AMERICA* (Scott Mainwaring & Christopher Welna eds., 2003).

feminist mobilization brings attention to the consequences of gender inequality and may generate new public and court sympathy for feminist demands.

It is also important to consider that Courts may enact change slowly in a strategic attempt to avoid overplaying their power and getting too far ahead of public opinion. Courts do not want to see their rulings not enforced; thus, they may prefer incremental change. This preference may explain the gradual progression toward the legalization of abortion.

VIII. EVIDENCE

A. Ideological Influence of Presidents

This section analyzes how the ideologies of the appointing president and the sitting president relate to justices' votes on abortion cases. While each case on abortion addresses different legal issues, and there are many reasons justices may vote in favor of abortion access in one case and against it in another, this section uses a simple political analysis to assess which justices vote in favor of greater abortion access and which vote against greater abortion access. In each table below the vote on the left side of the table represents a vote to increase abortion access, while a vote on the right side of the table represents a vote to decrease abortion access. Names are in bold if the nature of their vote changed from earlier votes. After the name of each justice is the president who appointed them and the year they left the Court (or for those still on the court in 2024, the year their term ends).

The Supreme Court first engaged with the issue of abortion after Mexico City added new legal exceptions to the ban on abortion (for safeguarding the health of the mother, fetal malformation, and non-consensual artificial insemination) in 2000, a reform known as the "Robles Law." Conservative members of the Mexico City legislative assembly challenged the constitutionality of the new legal exceptions (Acción de Inconstitucionalidad 10/2000). In 2002, the Supreme Court upheld the new reforms with a vote of 7 to 4.¹⁴²

¹⁴² Aborto. Requisitos para que se configure la excusa absolutoria prevista en el artículo 334, fracción III, del Código penal para el distrito federal, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Novena Época, Tomo XV, Marzo de 2002, Tesis P./J. 10/2000, página 878 (Mex.).

Mexico City's new legal exemptions "Ley Robles" 2002 Acción de Inconstitucionalidad 10/2000 ¹⁴³	
*author of decision	
Justices to uphold law 7	Justices to overturn 4
Juventino Victor Castro y Castro Appointed by: Zedillo Left the Court in: 2003	José Vicente Aguinaco Alemán Appointed by: Zedillo Left the Court in: 2003
Humberto Román Palacios Appointed by: Zedillo Left the Court in: 2004	Juan Díaz Romero Appointed by: de la Madrid (1986-1994); Zedillo Left the Court in: 2006
Mariano Azuela Güitrón Appointed by: de la Madrid, (1983-1994;) Zedillo Left the Court in: 2009	Salvador Aguirre Anguiano Appointed by: Zedillo Left the Court in: 2012
Genaro Góngora Pimentel Appointed by: Zedillo Left the Court in: 2009	Guillermo I. Ortiz Mayagoitia Appointed by: Zedillo Left the Court in: 2012
José de Jesús Gudiño Pelayo Appointed by: Zedillo Left the Court in: 2010	
Juan N. Silva Meza Appointed by: Zedillo Left the Court in: 2015	
*Olga Sánchez Cordero Appointed by: Zedillo Left the Court in: 2015	

In 2002, all of the justices had been appointed by Ernesto Zedillo from the PRI. Zedillo reformed the judiciary in 1994 and appointed a new Court, keeping just two ministers from the previous court. All of Zedillo's appointees were still on the bench two years into Vicente Fox's presidential term. Therefore, all votes for and against were from justices appointed by President Zedillo from the centrist, secular PRI.

¹⁴³ *Id.*

It is also important to note that although the 2002 decision allowed the new abortion liberalization, the opinion was framed in conservative language and upheld the right to life of the fetus. According to Madrazo and Vela:

For the court, the fact that the conduct was not technically “decriminalized” was key. The bottom line is this: the state is still sending the message that abortion is wrong (it is illegal), but it chooses not to punish under certain conditions as long as the court affirmed [sic] once again, all the requisites established by the law are fulfilled. The constitutionality of the reform lies in the fact that, under its terms, abortion remains a crime.¹⁴⁴

The Supreme Court again took up the issue of abortion after Mexico City further decriminalized the procedure in 2007. Legislators intentionally structured the new reforms to resemble the Robles Law, simply adding “during the first twelve weeks of gestation” to the list of exemptions to the general criminalization of abortion. The National Human Rights Commission (CNDH), which was controlled by appointees of the Conservative PAN President, challenged the constitutionality of Mexico City’s new law (Acción de Inconstitucionalidad 147/2007).¹⁴⁵ The court established an unusually participatory process to decide the case. They invited experts to present evidence, accepted amicus briefs, and held open public forums to inform their deliberations.¹⁴⁶ In 2008, the Court ruled 8-3 to uphold the Mexico City law.¹⁴⁷

Mexico City law to decriminalize abortion, 2008	
Acción de Inconstitucionalidad 146/2007 y su acumulada 147/2007 ¹⁴⁸	
*author of decision	
Justices to uphold 8	Justices to overturn 3

¹⁴⁴ Alejandro Madrazo & Estefania Vela, *The Mexican Supreme Court's (Sexual) Revolution?*, 89 TEX. L. REV. 1863, 1871 (2011).

¹⁴⁵ *Id.* at 1874-77. See Despenalización del aborto antes de las 12 semanas de gestación, Pleno de la Suprema Corte de Justicia [SCJN], *Semanario Judicial de la Federación y su Gaceta, Novena Época*, Tomo XXIX, Marzo de 2009, Tesis P./J. 147/2007, página 1581 (Mex.) [hereinafter Mexico Abortion Decriminalization Case].

¹⁴⁶ See Ruibal, *supra* note 68, at 593-94.

¹⁴⁷ Mexico Abortion Decriminalization Case, *supra* note 145.

¹⁴⁸ *Id.*

Genaro Góngora Pimentel Appointed by: Zedillo Left the Court in: 2009	Mariano Azuela Güitrón Appointed by: Zedillo Left the Court in: 2009
José de Jesús Gudiño Pelayo, Appointed by Zedillo Left the Court in: 2010	Salvador Aguirre Anguiano Appointed by: Zedillo Left the Court in: 2012
Juan N. Silva Meza, Appointed by: Zedillo, Left the Court in: 2015	Guillermo I. Ortiz Mayagoitia, Appointed by: Zedillo Left the Court in: 2012
Olga Sánchez Cordero Appointed by: Zedillo Left the Court in: 2015	
*José Ramón Cossío Díaz Appointed by: Fox Left the Court in: 2018	
Sergio Valls Hernández Appointed by: Fox Left the Court in: 2014	
Margarita Beatriz Luna Ramos Appointed by: Fox Left the Court in: 2019	
José Fernando Franco González-Salas Appointed by: Fox Left the Court in: 2021	

The ruling found that there was no constitutional obligation to criminalize abortion.¹⁴⁹ While both this opinion and the 2002 opinion allowed greater liberalization of abortion, this opinion reversed the finding of 2002 that the fetus has a right to life.¹⁵⁰

All three of the justices who voted against the Mexico City law decriminalizing abortion were appointed by Ernesto Zedillo, from the

¹⁴⁹ *Id.*

¹⁵⁰ Madrazo & Vela, *supra* note 144, at 1876.

centrist PRI. Four of the eight voting to uphold the law were appointed by Vicente Fox, from the conservative PAN. All three of the justices who opposed the law were in line to leave the court while Calderón (from the conservative PAN) was still in office.¹⁵¹ Their votes may have been a strategic attempt to curry favor with the sitting president in the hopes of landing a job in the executive branch when their term was up. Azuela Güitrón voted in favor of abortion liberalization in 2002 but against it in 2008.¹⁵² Perhaps this reflects some influence from the sitting president, though he was 73 when he left office and was not appointed to any powerful positions after he left the court. Sergio Aguirre Anguiano also voted against the reforms. He had been a member of PAN, attended the conservative Law School at the Autonomous University of Guadalajara and had always been conservative.¹⁵³ Zedillo appointed him, but Zedillo had appointed a number of prominent members of the PAN, including the attorney general, as part of his effort to democratize the one-party system.¹⁵⁴ Guillermo Ortiz Mayagoitia had not been considered especially conservative, and some commentators suggested Calderón had pressured him to vote against abortion, but like Aguirre Anguiano, he had also voted against abortion in 2002.¹⁵⁵

In 2009, the governor of Jalisco from the conservative PAN filed a constitutional controversy against the federal government and the Secretary of Health (Controversia Constitucional 54/2009).¹⁵⁶ The new Health Law (Norma Oficial Mexicana NOM-190-SSA2-2005) required public health clinics to provide emergency contraception to victims of sexual violence. The state of Jalisco argued that emergency contraception was abortive and, therefore, illegal. The Court held that emergency contraception was a method of contraception and not abortion. The Court confirmed the

¹⁵¹ Mexico Abortion Decriminalization Case, *supra* note 145.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See Edgar González Ruiz, *Aborto: el Clero, la Derecha y la Corte*, CONTRALINEA (Oct. 2011), <https://contralinea.com.mx/opinion/aborto-el-clero-la-derecha-y-la-corte/>.

¹⁵⁶ Controversia constitucional. La modificación a la norma oficial mexicana nom-190-ssa1-1999. Prestación de servicios de salud. Criterios para la atención médica de la violencia familiar, para quedar como nom-046-ssa2-2005. Violencia familiar, sexual y contra las mujeres. Criterios para la prevención y atención, publicada en el diario oficial de la federación el 16 de abril de 2009, no vulnera los principios de legalidad, reserva de ley y seguridad jurídica. controversia constitucional. Una norma oficial mexicana en materia de salubridad general es aplicable en todas las entidades que componen el sistema nacional de salud, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Novena Época, Tomo XXXIII, Enero de 2011, Tesis P./J. 54/2009, página 2779 (Mex.) [hereinafter Controversial Constitution Case].

constitutionality of the Health Law with a unanimous 9-0 decision. It ruled that all federal, state, and municipal health agencies (including Jalisco, which brought the suit) must provide access to emergency contraception.¹⁵⁷

Emergency Contraception 2010 Controversia Constitucional 54/2009 ¹⁵⁸	
*author of decision	
Justices to uphold Health Law 9	Justices absent 2
Guillermo I. Ortiz Mayagoitia Appointed by: Zedillo Left the Court in: 2012	José de Jesús Gudiño Pelayo Appointed by: Zedillo Left the Court in: 2010
Juan N. Silva Meza Appointed by: Zedillo Left the Court in: 2015	Salvador Aguirre Anguiano Appointed by: Zedillo Left the Court in: 2012
Olga Sánchez Cordero Appointed by: Zedillo Left the Court in: 2015	
*José Ramón Cossío Díaz Appointed by: Fox Left the Court in: 2018	
Sergio Valls Hernández Appointed by: Fox Left the Court in: 2014	
Margarita Beatriz Luna Ramos Appointed by: Fox Left the Court in: 2019	
José Fernando Franco González Salas Appointed by: Fox Left the Court in: 2021	

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

Arturo Zaldívar Lelo de Larrea Appointed by: Calderón Left the Court in: 2023	
Luis María Aguilar Morales Appointed by: Calderón Left the Court in: 2023	

After the Supreme Court upheld Mexico City's decriminalization of abortion, conservatives turned to state legislatures to forestall decriminalization in other states.¹⁵⁹ Within just one year (from 2008 to 2009), fifteen states had adopted constitutional amendments declaring that life begins at conception.¹⁶⁰ Feminist groups challenged these fetal life amendments with parallel cases in 2009 (Acción de Inconstitucionalidad 11/2009 and 62/2009).¹⁶¹ In 2011, the Court upheld the constitutionality of the fetal life amendments in Baja California and San Luis Potosí. The vote was 7 to 4, with the majority voting to overturn the fetal life amendments, but the Constitution requires a two-thirds majority (8/11 votes) to overturn a state law.¹⁶²

Fetal Life Amendments 2011	
Acción de Inconstitucionalidad 11/2009 and 62/2009 ¹⁶³	
*author of decision	
Justices opposed 7 (strike down)	Justices in favor 4 (uphold)

¹⁵⁹ *Constituciones que Protegen la Vida desde la Concepción*, GIRE (2018), <https://gire.org.mx/plataforma/constituciones-que-protecten-la-vida-desde-la-concepcion/>.

¹⁶⁰ GIRE, *supra* note 159.

¹⁶¹ See La vida humana prenatal, las mujeres y los derechos humanos, Pleno de la Suprema Corte de Justicia [SCJN], *Semanario Judicial de la Federación y su Gaceta*, Novena Época, Septiembre de 2009, Tesis P./J. 11/2009 y 62/2009 (Mex.).

¹⁶² *See id.*

¹⁶³ *See id.*

Juan N. Silva Meza Appointed by: Zedillo Left the Court in: 2015	Salvador Aguirre Anguiano Appointed by: Zedillo Left the Court in: 2012
Olga Sánchez Cordero Appointed by: Zedillo Left the Court in: 2015	Guillermo I. Ortiz Mayagoitia, Appointed by: Zedillo Left the Court in: 2012
José Ramón Cossío Díaz Appointed by: Fox Left the Court in: 2018	*Margarita Beatriz Luna Ramos Appointed by: Fox Left the Court in: 2019
Sergio Valls Hernández Appointed by: Fox Left the Court in: 2014	Jorge Mario Pardo Rebolledo Appointed by: Calderón Leaves Court in: 2026
José Fernando Franco González-Salas Appointed by: Fox Left the Court in: 2021	
Arturo Zaldívar Lelo de Larrea Appointed by: Calderón Left the Court in: 2023	
Luis María Aguilar Morales Appointed by: Calderón Left the Court in: 2024	

The two justices still on the Court who voted against Mexico City's decriminalization both voted to uphold the fetal life amendments, along with a new member whom conservative President Calderón had recently appointed. Luna Ramos, who had voted to uphold Mexico City's decriminalization, switched sides to uphold the fetal life amendments. Some news reports implied that Calderón had also pressured Luna Ramos into voting to uphold the fetal life amendments.¹⁶⁴

¹⁶⁴ Andrea Becerril & Roberto Garduño, *Calderón viola la Carta Magna, acusan legisladores de PRD y PT*, LAJORNADA POLITICA (Oct. 2011), <https://www.jornada.com.mx/2011/10/01/politica/002n2pol>.

In 2014, the Court voted unanimously to order the immediate release from prison of an indigenous woman in Guerrero who was sentenced to 22 years in prison for having an abortion (Amparo Directo 21/2012).¹⁶⁵

Amparo Directo 21/2012 ¹⁶⁶ (full court does not hear amparo suits)	
*author of decusion	
Justices in favor 5	Justices opposed 0
*Olga Sánchez Cordero Appointed by: Zedillo Left the Court in: 2015	
José Ramón Cossío Díaz Appointed by: Fox Left the Court in: 2018	
Arturo Zaldívar Lelo de Larrea, Appointed by: Calderón Left the Court in: 2023	
Jorge Mario Pardo Rebolledo Appointed by: Calderón Leaves Court in: 2026	
Alfredo Gutiérrez Ortiz Mena Appointed by: Calderón Leaves Court in: 2027	

In 2017, two amparo suits were brought by rape victims who had been denied abortion care (Amparo en Revisión 601/2017) (Amparo en Revisión 1170/2017).¹⁶⁷ Amparo en Revisión 601/2017 was brought by the parents of

¹⁶⁵ Amparo a mujer indígena por violación a sus derechos fundamentales de defensa adecuada y presunción de inocencia en su vertiente de regla probatoria y estándar de prueba, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Enero de 2014, Tesis P./J. 21/2012 (Mex.).

¹⁶⁶ *Id.*

¹⁶⁷ *See* Interrupción legal del embarazo de un producto con alteraciones congénitas concebido como consecuencia de una violación sexual, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, abril de 2018, Tesis P./J. 601/2017 (Mex.) [hereinafter Child Abortion Cases]; Eflexionar sobre las obligaciones a cargo de los juzgadores

a young child who had been raped and denied abortion in the state of Morelos.¹⁶⁸ Amparo en Revisión 1170/2017 was brought by a woman in Oaxaca.¹⁶⁹ In 2018, the Court upheld the rape exception and ruled that authorization from the Public Ministry was not required to obtain an abortion in the case of rape.¹⁷⁰

Amparo en Revisión 601/2017 and 1170/2017 ¹⁷¹	
*author of decusion	
Justices in favor 5	Justices opposed 0
Margarita Beatriz Luna Ramos Appointed by: Fox Left the Court in: 2019	
*José Fernando Franco González-Salas Appointed by: Fox Left the Court in: 2021	
Alberto Pérez Dayán Appointed by: Calderón Leaves Court in: 2027	
Javier Laynez Potisek Appointed by: Peña Nieto Leaves Court in: 2030	
Eduardo Medina Mora Appointed by: Peña Nieto Left the Court in: 2019	

durante la tramitación de los juicios de amparo en que se reclame la negativa a practicar la interrupción legal del embarazo, y se aduzca la actualización de tratos crueles e inhumanos equiparables a tortura, relacionadas, por ejemplo, con el otorgamiento de la suspensión de plano. también se podrá emitir un criterio que defina si el término de la gestación durante la tramitación del juicio de amparo actualiza la causa de improcedencia prevista en el artículo 61, fracción xxii, de la ley de la materia a la luz de las reformas constitucionales en materia de derechos humanos y amparo y, además, se podrán definir estándares y criterios relacionados con los efectos reparadores del amparo, Pleno de la Suprema Corte de Justicia [SCJN], *Semanario Judicial de la Federación y su Gaceta*, abril de 2018, Tesis P./J. 1170/2017 (Mex.) [hereinafter Oaxaca Rape Exception Case].

¹⁶⁸ See Child Abortion Case, *supra* note 167.

¹⁶⁹ See Oaxaca Rape Exception Case, *supra* note 167.

¹⁷⁰ *Id.*

¹⁷¹ See *id.*; Child Abortion Case, *supra* note 167.

In May 2019, the court ruled unanimously that abortion is legal when the mother's health is at risk (Amparo en Revisión 1388/2015).¹⁷² The Court ruled that the right to health implies a right to terminate a pregnancy, therefore, access to therapeutic abortion is a constitutional right. It also included a broad definition of health, including physical, mental, and social well-being.¹⁷³ Because the case did not explicitly refer to criminal law, the ruling remained silent on the constitutionality of the criminalization of abortion.¹⁷⁴ An important part of the case involved technical issues about amparo suits.¹⁷⁵ A lower court had rejected the case because the petitioner had already had an abortion in Mexico City before the case came to court. The decision to hear the amparo was important for the use of an amparo for abortion litigation because cases will likely never be resolved in less than nine months, so the pregnancy at issue will no longer exist by the time the case is heard.¹⁷⁶ If amparos are thrown out because the pregnancy no longer exists, then the amparo cannot be used to address abortion access. The Supreme Court held that an amparo suit could proceed even though the pregnancy had been terminated.¹⁷⁷

Amparo en Revisión 1388/2015 ¹⁷⁸ (full court does not hear amparo suits)	
*author of decision	
Justices in favor 5	Justices opposed 0
Luis María Aguilar Morales Appointed by: Calderón	

¹⁷² Melissa S. Ayala Garía, *La Corte y el aborto terapéutico: un derecho de todas*, NEXOS (May 2019), <https://eljuegodelacorte.nexos.com.mx/la-corte-y-el-aborto-terapeutico-un-derecho-de-todas/>. See also En el presente caso, esta Primera Sala debe resolver si los funcionarios y la institución pública de salud que representan y que fueron señaladas como autoridades responsables incumplieron con las obligaciones que les impone el derecho constitucional a la protección de la salud, al negarse a practicarle una interrupción de embarazo por causas de salud a la señora Marisa, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Mayo de 2019, Tesis P./J. 1388/2015 (Mex.) [hereinafter Mother's Health at Risk Case].

¹⁷³ See GIRE, *supra* note 118.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Estefanía Vela Barba, *The Mexican Supreme Court's Latest Abortion Ruling: In Formalities, A Path to Decriminalization*, REPROHEALTHLAW BLOG (Nov. 1, 2019), <https://ilg2.org/2019/11/01/the-mexican-supreme-courts-latest-abortion-ruling-in-between-formalities-a-path-to-decriminalization/>.

¹⁷⁷ Mother's Health at Risk Case, *supra* note 172.

¹⁷⁸ Mother's Health at Risk Case, *supra* note 172.

<p>Left the Court in: 2024</p> <p>Jorge Mario Pardo Rebolledo Appointed by: Calderón Leaves Court in: 2026</p> <p>*Alfredo Gutiérrez Ortiz Mena Appointed by: Calderón Leaves Court in: 2027</p> <p>Norma Lucía Piña Hernández Appointed by: Peña Nieto Leaves Court in: 2030</p> <p>Juan Luis González Alcántara Carrancá Appointed by: López Obrador Leaves Court in: 2033</p>	
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The amparo suits in 2018 and 2019 substantially liberalized abortion access in the case of rape and safeguarding the health of the mother, effectively decriminalizing many more cases and significantly increasing access to abortion.

In 2020, the Court rejected an opportunity to decriminalize abortion with Amparos 1191/2017 and 636/2019.¹⁷⁹ In April of 2016, a Declaration of Gender Violence Alert was issued for the state of Veracruz. The National Commission to Prevent and Eradicate Violence against Women (Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres CONAVIM) and the National Institute of Women (Instituto Nacional de Mujeres INMUJERES) issued a report in response to the alert that recommended the state change the criminal code to decriminalize abortion

¹⁷⁹ See La problemática jurídica a resolver por esta Primera Sala de la Suprema Corte de Justicia de la Nación, consiste en analizar la legalidad de la resolución trece de junio de dos mil diecisiete, por medio de la cual se declaró cumplida la ejecutoria del juicio de amparo directo 176/2017, dictada por el Cuarto Tribunal Colegiado en Materia Civil del Primer Circuito, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Abril de 2018, Tesis P./J. 1191/2017 (Mex.) [hereinafter Amparo 1191 Case]; Problemática jurídica a resolver. En el caso, se advierte que el Congreso del Estado de Veracruz (recurrente), hace valer diversos argumentos con los que pretende desvirtuar la legalidad del pronunciamiento emitido por el Juez de Distrito en relación con la concesión del amparo, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Julio de 2020, Tesis P./J. 636/2020 (Mex.) [hereinafter Amparo 636 Case].

during the first twelve weeks of gestation, add a legal exemption if the woman's health is at risk, and eliminate the ninety-day window for abortion in the case of rape.¹⁸⁰ These changes would harmonize the local criminal code with the national Victim's Law, NOM-046. Based on this report, some members of the local legislature proposed changes to the criminal code to decriminalize abortion, but the legislature rejected the changes. Feminist groups filed an amparo and a district judge ordered the state legislature to follow the recommendations of the CONAVIM/INMUJERES report.¹⁸¹ The state legislature refused to comply with the judicial order, so the conflict went to the Supreme Court. In July 2020, the Supreme Court overturned the district judge's orders to reform the Veracruz criminal code.¹⁸² The logic of this case was more legalistic than substantive; the court found that the amparo suit had not been properly argued.¹⁸³

Acción de Amparo 1191/2017 and 636/2019 ¹⁸⁴ (full court does not hear amparo suits)	
*author of decision	
Justices in favor 1	Justices opposed 4
Juan Luis González Alcántara Carrancá Appointed by: López	Jorge Mario Pardo Rebolledo Appointed by: Calderón Leaves Court in: 2026

¹⁸⁰ See INSTITUTO NACIONAL DE MUJERES, INFORME DE LAS ACCIONES, (Agosto 4 de 2016), https://www.gob.mx/cms/uploads/attachment/file/747600/5.3._Informe_estatal_Veracruz_.pdf (Mex.).

¹⁸¹ See *id.*

¹⁸² Gloria Leticia Díaz, *Fallo de SCJN sobre aborto deja en 'estado de indefensión a las mujeres de Veracruz'*: ONG, PROCESO, (July 29, 2020), <https://www.proceso.com.mx/nacional/2020/7/29/fallo-de-scnj-sobre-aborto-deja-en-estado-de-indefension-las-mujeres-de-veracruz-ong-246932.html>.

¹⁸³ Anayeli García Martínez, *Desecha Primera Sala de la SCJN amparo por Agravio comparado en Veracruz en materia de aborto*, CIMACNOTICIAS (July 29, 2020), <https://cimacnoticias.com.mx/2020/07/29/desecha-primera-sala-de-la-scnj-amparo-por-agravio-comparado-en-veracruz-en-materia-de-aborto/#gsc.tab=0>.

¹⁸⁴ Amparo 1191 Case, *supra* note 179; Amparo 636 Case, *supra* note 179.

<p>Obrador Leaves Court in: 2033</p>	<p>Alfredo Gutiérrez Ortiz Mena Appointed by: Calderón Leaves Court in: 2027</p> <p>*Norma Lucía Piña Hernández Appointed by: Peña Nieto Leaves Court in: 2030</p> <p>Ana Margarita Ríos Farjat Appointed by: López Obrador Leaves Court in: 2034</p>
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In fall 2021, the Mexican Supreme Court handed down three important decisions that provided important precedent for the decriminalization of abortion across the country. While the Supreme Court rulings did not immediately legalize abortion across the entire country, they did provide an important path for decriminalization in other states, and abortion will likely be legal in most of the country within a few years. The first of the 2021 abortion decisions struck down the law criminalizing abortion in the state of Coahuila.¹⁸⁵ The case was brought by Peña Nieto's Federal Attorney General's Office. The decision was unanimous, 10-0, with one justice absent. The ruling was also retroactive in that anyone imprisoned for the crime of abortion should be released, and no woman could be tried for the crime of abortion in the country without violating the Supreme Court's order.¹⁸⁶ While the ruling only strikes down the law in Coahuila, the recent reforms to the judiciary mean that all future judges must follow the findings of this case. Therefore, in states where abortion remains illegal, if a pregnant person requests an abortion at a medical center and it is denied, they can challenge the decision in the courts with an amparo suit and the medical center will be required to provide the abortion services.

¹⁸⁵ See Temas. Aborto, derecho a decidir, derechos de las mujeres y personas con capacidad de gestar, autodeterminación en materia de maternidad, autonomía reproductiva, libertad reproductiva, derecho a la salud, derecho a la igualdad jurídica, autonomía personal, libre desarrollo de la personalidad, violencia de género, integridad sexual, violación entre cónyuges, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Septiembre de 2021, Tesis P./J. 148/2017 (Mex.) [hereinafter Coahuila Case].

¹⁸⁶ Fernanda Rodríguez-Pliego, *La "marea verde" llega a la Corte Suprema mexicana*, NUEVA SOCIEDAD, Oct. 2021, <https://www.nuso.org/articulo/se-aprobo-o-no-el-aborto-en-mexico/>.

Coahuila Penal Code's criminalization of abortion, 2021 Acción de Inconstitucionalidad 148/2017 ¹⁸⁷	
*author of decision	
Justices in favor (strike down) 10	Justices absent 1
<p>José Fernando Franco González-Salas Appointed by: Fox Left the Court in: 2021</p> <p>Arturo Zaldívar Lelo de Larrea Appointed by: Calderón Left the Court in: 2023</p> <p>*Luis María Aguilar Morales Appointed by: Calderón Left the Court in: 2024</p> <p>Alfredo Gutiérrez Ortiz Mena Appointed by: Calderón Leaves Court in: 2027</p> <p>Alberto Pérez Dayán Appointed by: Calderón Leaves Court in: 2027</p> <p>Javier Laynez Potisek Appointed by: Peña Nieto Leaves Court in: 2030</p> <p>Norma Lucía Piña Hernández Appointed by: Peña Nieto Leaves Court in: 2030</p> <p>Juan Luis González Alcántara Carrancá Appointed by: López Obrador Leaves Court in: 2033</p>	<p>Jorge Mario Pardo Rebolledo Appointed by: Calderón Left the Court in: 2026</p>

¹⁸⁷ See Coahuila Case, *supra* note 185.

Yasmín Esquivel Mossa Appointed by: López Obrador Leaves Court in: 2034 Ana Margarita Ríos Farjat Appointed by: López Obrador Leaves Court in: 2034	
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The second case in the Fall of 2021 rejected the fetal personhood amendments (Acción de Inconstitucionalidad 106/2018 and its accumulated 107/2018).¹⁸⁸ The case was brought by deputies from the Sinaloa State Legislature and the National Commission for Human Rights. The Court ruled that states cannot establish a right to life from the moment of conception because states do not have the authority to determine when life begins, that power is reserved for the federal government.¹⁸⁹ Moreover, the Court built on the precedents of 1388/2015 and 148/2017 and found that the language in the state constitution of Sinaloa protecting life from the moment of conception was also unconstitutional because it allowed for unacceptable state intervention in the bodies of pregnant people, which affects women's right to health, life, and not to be discriminated against.¹⁹⁰

Sinaloa Fetal Personhood, 2021	
Acción de Inconstitucionalidad 106/2018 y su acumulada 107/2018 ¹⁹¹ *author of decision	
Justices in favor (strike down) 10	Justices absent 1
José Fernando Franco González-Salas Appointed by: Fox Left the Court in: 2021	Jorge Mario Pardo Rebolledo Appointed by: Calderón Leaves Court in: 2026

¹⁸⁸ Tema. Determinar si el artículo 4 Bis A, fracción I, de la Constitución Política del Estado de Sinaloa es constitucional, al establecer que desde el momento en que un individuo es concebido entra bajo la protección de la Ley correspondiente hasta su muerte, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Septiembre de 2021, Tesis P./J. 106/2018 y su acumulada 107/2018 (Mex.) [hereinafter the Sinaloa State Legislature Case].

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* See also Irlanda D. Ávalos Núñez, Melissa S. Ayala García & Patricia Cruz Marín, *Conversación. El fin del aborto como derecho constitucional: las implicaciones de Dobbs v. Jackson*, NEXOS (June 28, 2022), <https://eljuegodelacorte.nexos.com.mx/el-fin-del-aborto-como-derecho-constitucional-las-implicaciones-de-dobbs-v-jackson/>.

¹⁹¹ See Sinaloa State Legislature Case, *supra* note 188.

<p>Arturo Zaldívar Lelo de Larrea Appointed by: Calderón Left the Court in: 2023</p> <p>Luis María Aguilar Morales Appointed by: Calderón Left the Court in: 2024</p> <p>*Alfredo Gutiérrez Ortiz Mena Appointed by: Calderón Leaves Court in: 2027</p> <p>Alberto Pérez Dayán Appointed by: Calderón Leaves Court in: 2027</p> <p>Javier Laynez Potisek Appointed by: Peña Nieto Leaves Court in: 2030</p> <p>Norma Lucía Piña Hernández Appointed by: Peña Nieto Leaves Court in: 2030</p> <p>Juan Luis González Alcántara Carrancá Appointed by: López Obrador Leaves Court in: 2033</p> <p>Yasmín Esquivel Mossa Appointed by: López Obrador Leaves Court in: 2034</p> <p>Ana Margarita Ríos Farjat Appointed by: López Obrador Leaves Court in: 2034</p>	
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The third case (Acción de Inconstitucionalidad 54/2018) found unconstitutional a rule in the General Health Law that granted doctors the

right to conscientious objection.¹⁹² The Court held that the rule did not provide sufficient regulation to ensure access to health care and the rights of patients.¹⁹³ The case was brought by the National Commission for Human Rights.

Conscientious objection, 2021 Acción de Inconstitucionalidad 54/2018 ¹⁹⁴	
*author of decision	
Justices in favor 9	Justices absent 2
<p>José Fernando Franco González-Salas Appointed by: Fox Left the Court in: 2021</p> <p>Arturo Zaldívar Lelo de Larrea Appointed by: Calderón Left the Court in: 2023</p> <p>*Luis María Aguilar Morales Appointed by: Calderón Left the Court in: 2024</p> <p>Jorge Mario Pardo Rebolledo Appointed by: Calderón Leaves Court in: 2026</p> <p>Alfredo Gutiérrez Ortiz Mena Appointed by: Calderón Leaves Court in: 2027</p> <p>Javier Laynez Potisek Appointed by: Peña Nieto Leaves Court in: 2030</p>	<p>Alberto Gelacio Pérez Dayán Appointed by: Calderón Leaves Court in: 2027</p> <p>Yasmín Esquivel Mossa Appointed by: López Obrador Leaves Court in: 2034</p>

¹⁹² Presentación de la acción, autoridades emisora y promulgadora, y norma impugnada. Preceptos constitucionales que se estiman vulnerados, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federación y su Gaceta, Ciudad de México. Acuerdo del Tribunal Pleno de la Suprema Corte de Justicia de la Nación, Septiembre de 2021, Tesis P./J. 54/2021 (Mex.).

¹⁹³ *Id.*

¹⁹⁴ *Id.*

Norma Lucía Piña Hernández Appointed by: Peña Nieto Leaves Court in: 2030	
Juan Luis González Alcántara Carrancá Appointed by: López Obrador Leaves Court in: 2033	
Ana Margarita Ríos Farjat Appointed by: López Obrador Leaves Court in: 2034	

In all three of the 2021 decisions, five of the justices voting to expand abortion access had been appointed by presidents from the conservative Catholic PAN. In just ten years, the Court switched from upholding fetal life provisions in state constitutions in 2011 to striking them down in 2021 with surprising unanimous votes and radical shifts in abortion law. Changes in the membership of the Supreme Court can help explain why there were different outcomes on fetal personhood in 2021 than in 2011. The only justice who voted to uphold fetal life amendments in 2011 on the Court in 2021 was Pardo Rebolledo, and he was absent from the unanimous ruling in 2021. Across all the abortion cases, the party of the president who appointed the justice is not patently related to votes on abortion. All three justices who voted to overturn Mexico City's 2007 decriminalization were appointed by Zedillo (from the centrist, secular PRI), while half of those who voted to uphold the law were appointed by Fox (from the rightist, Catholic PAN). In 2021, half of the justices who voted to decriminalize abortion were appointed by Fox or Calderón, both from the conservative, Catholic PAN. Moreover, the main proponent of abortion access (and gender equality more broadly) was the Court's President (2019-2022) Arturo Zaldívar Lelo de Larrea. He was appointed in 2009 by Calderón, from the conservative Catholic PAN. Zaldívar was born in the conservative state of Querétaro, one of the two states that do not allow abortion to save the life of the mother. He attended Catholic schools and studied law at the conservative Escuela Libre de Derecho (the Alma Mater of Calderón and several other prominent conservatives) and earned a Ph.D. in Law at UNAM with a specialization in amparo law. He was a professor at UNAM

and had a private practice for 25 years.¹⁹⁵ He was an unusual pick for the court because he had no judicial experience and was considered an outside candidate.¹⁹⁶ Calderón thought he would be conservative, but he turned out to be very independent. During his early time on the bench, he allied with feminist (and future Secretary of Gobernación) Olga Sánchez Cordero.¹⁹⁷ Zaldívar is active on social media and gives lots of interviews. Zaldívar saw abortion as a class issue as much as a feminist issue and was influenced by the feminist protests.¹⁹⁸

When justices do not serve a life term, perhaps we should expect them to strategically rule in the interests of the president who will be in power when they leave the Court (in the hopes of getting appointed to a good position when they leave the Court) rather than stay loyal to preferences of the president who nominated them. Former Supreme Court Justice Arturo Zaldívar may provide a good example of this tendency. In 2023, Zaldívar stepped down early from the Court to serve in the presidential campaign of Claudia Sheinbaum, perhaps suggesting an alliance with Sheinbaum's political mentor, President López Obrador. Zaldívar has been criticized for being too close and too accommodating to López Obrador.¹⁹⁹ Zaldívar was appointed by conservative Calderón but ruled against his personal interests in an important case (the ABC Daycare case).²⁰⁰ When Peña Nieto was elected, Zaldívar moved towards the center to support the new president's

¹⁹⁵ See Natalie Kitroeff, *How Mexico's Top Justice, Raised Catholic, Became an Abortion Rights Champion*, THE NEW YORK TIMES (July 9, 2022), <https://www.nytimes.com/2022/07/09/world/americas/mexico-abortion-chief-justice.html>.

¹⁹⁶ See *id.*

¹⁹⁷ *Senadora Olga María del Carmen Sánchez Cordero Dávila*, SENADO GOB, <https://www.senado.gob.mx/65/senador/1276> (last visited Mar. 16, 2024). Olga Sánchez Cordero also went on to hold many prominent political positions after leaving the court in 2015. She was Senator in 2018, Secretary of Gobernación in 2018, and President of the Senate 2021-2022. However, Sánchez Cordero's political career started after Peña Nieto's term, and she has been appointed to leadership roles by Morena, not the PRI. Thus it seems unlikely she ruled in favor of Peña Nieto at the end of her term in the hopes promoting her political career.

¹⁹⁸ See Kitroeff, *supra* note 195.

¹⁹⁹ See Zedryk Raziel, *Las cuatro transformaciones de Arturo Zaldívar: el ministro apuesta su futuro político al proyecto presidencial de Claudia Sheinbaum*, EL PAÍS (Nov. 7, 2023, 11:30 PM), <https://elpais.com/mexico/2023-11-08/las-cuatro-transformaciones-de-arturo-zaldivar-el-ministro-apuesta-su-futuro-politico-al-proyecto-presidencial-de-claudia-sheinbaum.html#?rel=mas>; Kitroeff, *supra* note 195.

²⁰⁰ Derecho a la salud. Es un derecho fundamental de titularidad universal, cuya satisfacción corresponde tanto a la federación como a los estados en sus respectivos ámbitos de competencia, Pleno de la Suprema Corte de Justicia [SCJN], *Semanario Judicial de la Federación y su Gaceta*, Novena Época, Tomo XXXII, Noviembre de 2010, Tesis P./J. 1/2009, página 875 (Mex.) [hereinafter ABC Daycare Case].

positions, and then he moved to the left after López Obrador was elected in 2018.²⁰¹

B. Feminist Activism

Evidence also suggests that feminist activism influenced the changing role of the Supreme Court in Mexico's abortion policy. GIRE's professionalized legal expertise put multiple cases in front of the Supreme Court. The feminist mobilizations have reshaped the abortion debate by empowering young women and drawing attention to the horrors of many women's daily experiences with violent misogyny. The protests also brought demands for abortion into the public consciousness and bolstered the strategic litigation efforts already underway by more traditional feminist groups. The legal cases that liberalized abortion law reached the Supreme Court because of the activism of professionalized feminist legal scholars working with GIRE. GIRE developed technical expertise and made alliances with legal experts to file cases. Together, the professionalized feminist lawyers and the protesters on the street helped shift public opinion and the Court's opinion on issues related to gender equality.

The Supreme Court Justices cited the Marea Verde feminist movement in their analysis of the 2021 abortion cases.²⁰² The President of the Supreme Court, Arturo Zaldívar, emphasized the role of feminist mobilization in influencing the court. In an interview, Zaldívar stated:

...this trio of historic decisions is not an accomplishment of the Supreme Court. It is an achievement that women have won through hard work, fighting for their freedoms for years. It is a conquest of the young women who have taken to the streets all over the world to demand their sexual and reproductive rights. It is their voices and their arguments that have been unmasking the oppressive structures

²⁰¹ See Raziel, *supra* note 196; *Yo no intervengo en asuntos de otros poderes*: López Obrador aseveró que no se interpone en los asuntos de Morena en el Senado, INFOBAE (Sep. 2, 2022, 10:36 AM), <https://www.infobae.com/america/mexico/2022/09/02/yo-no-intervengo-en-asuntos-de-otros-poderes-lopez-obrador-asevero-que-no-se-interpone-en-los-asuntos-de-morena-en-el-senado/>. López Obrador bemoaned the independence of the judges he selected ““Me equivoqué porque hice propuestas, pero ya una vez que propuse ya por el cargo, o porque cambiaron de parecer, ya no están pensando en el proceso de transformación y en hacer justicia”, expresó en la mañana del 2 de septiembre pasado en referencia a Juan Luis González Alcántara (2018), Margarita Ríos-Farjat (2019), Yasmín Esquivel (2019) y Loretta Ortiz Ahlf (2021),” (INFOBAE 2022).

²⁰² Rodríguez-Pliego, *supra* note 155.

and have given new significance to what it means to live in equality.²⁰³

Zaldívar credited the women's movement with advances in women's rights and raising the public consciousness in the country. He stated, "It kept getting harder and harder to go against their legitimate demands. They're getting killed, they're getting raped, no one listens to them."²⁰⁴

CONCLUSION

The Supreme Court took on a central role in the abortion policy debate in 2018 after the election of leftist President Andrés Manuel López Obrador. The growing electoral power of the Left is related to the changing behavior of the Supreme Court, but not because the Left has been able to change the ideological makeup of the Courts through new appointments. In the cases examined here, there appears to be very little relationship between the ideology of the president who appoints a justice and how the justice votes. Insofar as presidential preferences influence the Court, it seems the sitting president may have some influence over justices, especially those whose term is ending and may be looking to start a political career after leaving the Court. The largest factors affecting the changing behavior of the Court are generational changes in the Court and the changes in the broader political climate. These changes are largely a consequence of feminist activism.

²⁰³ Arturo Zaldívar, *Arturo Zaldívar: La conquista del derecho a decidir en México*, WASHINGTON POST (Oct. 3, 2021), <https://www.washingtonpost.com/es/post-opinion/2021/10/03/scjn-despenalizacion-del-aborto-objecion-conciencia-mexico-zaldivar/>. "Con todo, esta triada de decisiones históricas no es un mérito de la Suprema Corte. Es un logro que han conquistado las mujeres a pulso, luchando durante años por sus libertades. Es una conquista de las jóvenes que en todo el mundo han salido a las calles para exigir sus derechos sexuales y reproductivos. Son sus voces y sus argumentos los que han ido desenmascarando a las estructuras opresoras y han resignificado lo que implica vivir en igualdad."

²⁰⁴ Natalie Kitroeff, *How Mexico's Top Justice, Raised Catholic, Became an Abortion Rights Champion*, N. Y. TIMES (July 9, 2022), <https://www.nytimes.com/2022/07/09/world/americas/mexico-abortion-chief-justice.html>.