IN SEARCH OF LOST RELIANCE: REVISITING THE SUPREME COURT'S USE OF RELIANCE IN STARE DECISIS ANALYSIS

BRIAN ROBERTS

INTRODUCTION

With recent landmark cases such as *Dobbs* [1] and *Loper Bright*[2] that have discarded decades-old precedent, the Supreme Court has become embroiled in public controversy over its treatment of precedent, traditionally subject to stare decisis—the idea that we should treat like cases alike. The judiciary relies on the public's perception for power and legitimacy; neither able to directly control the purse of the United States nor able to dictate the standing army, courts instead gain their influence from the public's perception of the judiciary.[3] Stare decisis addresses this need for legitimacy by constraining judges, ensuring they do not yield to personal biases but act as neutral arbiters.[4] The Court's decision to overturn longstanding cases such as *Roe* and *Chevron* has led to increased public scrutiny, with many beginning to question the Court's impartiality. Considering these developments, analysis of the Court's treatment of stare decisis is due.

Stare decisis is the legal principle that courts should "abide by, or adhere to, decided cases."[5] It is a longstanding and fundamental feature of the United States's court system.[6] Stare decisis has been a significant feature of the common law system because it helps reduce incentives for challenging previously decided cases, fosters evenhanded decision making, contributes

---

1. Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).
2. Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).
3. Kathleen M. Sullivan, *The Jurisprudence of the Rehnquist Court*, 22 NOVA L. REV. 743, 749 (1998).
4. *See also id.* (highlighting the fact that some decisions may be explained by the Court's need to preserve legitimacy). Professor Sullivan contends that Justices may favor results that favor a decision that the Justice would not have reached on their own to "diffuse any suspicion that they are caving in to political pressure." *Id. See also* David Cole, *Obamacare Upheld: How and Why Did Justice Roberts Do It?*, THE NATION (June 28, 2012), https://www.thenation.com/article/archive/obamacare-upheld-how-and-why-did-justice-roberts-do-it/ [https://perma.cc/HY5N-NY6A] ("I cannot but think that at the back of Roberts's mind was the Court's institutional standing. Had the law been struck down on 'party lines,' the Court's reputation would be seriously undermined." (discussing Chief Justice Roberts's decision to side with the Court's liberal Justices and uphold the Affordable Care Act in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012))).
5. 18 MOORE'S FEDERAL PRACTICE, § 134.01 (Matthew Bender 3d ed., 2015 supp.) (quoting Planned Parenthood v. Casey, 505 U.S. 833, 954 (1992) (Rehnquist, C.J., concurring)).
6. *Id.*

to the actual and perceived integrity of the judicial process, and restrains judicial hubris.[7] The Supreme Court considers many factors when deciding whether to follow stare decisis or to overrule a previous decision.[8] Paramount among the factors routinely used by the Supreme Court are the reliance interests at stake in deciding to overrule the decision.[9]

The reliance-interest factor requires the Court to consider whether overruling the challenged decision would create special hardships.[10] People and businesses structure their lives according to their expectations of their legal rights and obligations as articulated in judicial opinions.[11] These expectations are in turn strengthened by the principle of stare decisis.[12] Operating under this reliance on judicial precedent, people's lives may be disrupted and expectations upset when a precedent is overturned.[13] As an illustrative example, one may look to the *Dobbs* decision. *Dobbs* had immediate and far-reaching consequences as people began to reorder their lives according to the Supreme Court's pronouncement.[14] The preservation of these expectation interests is a critical component of what gives the judicial system its authority and power.[15]

The judiciary also gains its power through maintaining an appearance as a neutral arbiter. If the Court's use and analysis of stare decisis does not appear to be neutral, the Court risks damaging its authority.[16] The Court must therefore maintain a workable, neutral framework to utilize in its stare decisis analysis. Unfortunately, the Court's current use of reliance has been anything but neutral. While there are a few types of reliance that the Court has used when deciding to overturn precedent, reliance interests are often a

---

7. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 263–64 (2022).

8. *See* 18 MOORE'S FEDERAL PRACTICE, *supra* note 5, § 134.06 (providing a list of eleven factors that the Supreme Court may use when deciding whether to overrule prior precedent or not).

9. *Id.*; Randy J. Kozel, *Stare Decisis as Judicial Doctrine*, 67 WASH. & LEE L. REV. 411, 414 (2010). *See also* Nina Varsava, *Precedent, Reliance, and* Dobbs, 136 HARV. L. REV. 1845, 1860 (2023) (noting that Justice Gorsuch suggested reliance of the public in constitutionally protected liberties is one of the most important kinds of reliance interests for the Court to consider).

10. Kozel, *supra* note 9, at 414.

11. Varsava, *supra* note 9, at 1846.

12. *Id.*

13. *Id.*

14 After *Dobbs*, many clinics began providing more abortions, significantly driven by increased out-of-state patients. Further, some clinics have begun mailing abortion-inducing medication to patients out of state through telehealth appointments. Lily Lau, Mei Liu & Brad Jones, *Post*-Dobbs *Era: Evolving Abortion Care Restrictions and Public Health Impact*, 116 AM. J. PUB. HEALTH 317, 317 (2026).

15. Kozel, *supra* note 9, at 414–15 (arguing that because reliance interests are critical to the values of stare decisis, doctrinal reform is necessary to create a more consistent stare decisis analysis).

16. Joseph Daniel Ura & Allison Higgins Merrill, *The Supreme Court and Public Opinion*, in THE OXFORD HANDBOOK OF U.S. JUDICIAL BEHAVIOR 432, 442 (Lee Epstein & Stephanie A. Lindquist eds., 2017) (discussing the relationship with politically salient decisions and their impact on the Court's legitimacy).

determinative factor in the Court's analysis. But the Court's reliance-interest analysis often lacks clear and manageable standards. This has led to the Court being criticized for its ability to "massage the scope and nature of affected interests to discard . . . precedent."[17]

Recent cases like *Dobbs* and *Loper Bright* illuminate how the Court analyzes precedent and reliance interests. In both *Dobbs* and *Loper Bright*, the Court assesses reliance costs and whether to overturn precedent.[18] In *Dobbs*, Justice Alito's opinion addressed tangible and intangible reliance on *Roe*[19] and *Casey*[20] to determine whether the reliance costs outweighed overturning *Casey*.[21] In doing so, Alito noted that the unplanned nature of abortions leads to intangible reliance on the right to abortion.[22] He further reasoned that the Court is ill-suited to evaluate claims of intangible reliance.[23] Therefore, his opinion reasoned that reliance interests did not weigh in *Casey*'s favor.[24] In *Loper Bright*, decided two years later, Chief Justice Roberts affirmatively denied that the *Chevron* doctrine had engendered any "meaningful" reliance.[25] In fact, Roberts went as far as declaring that *Chevron* "affirmatively destroys" reliance interests.[26] He reached this conclusion by claiming that the *Chevron* deference doctrine acts as a license to agencies to change positions as many times as they wish.[27]

Dobbs and *Loper Bright* both fall within the most famous and consequential landmark cases of the Supreme Court's history, along with

17. Note, *The Thrust and Parry of Stare Decisis in the Roberts Court*, 137 HARV. L. REV. 684, 693 (2023) [hereinafter Note, *Thrust and Parry*] (arguing Justices will minimize reliance interests and dismiss them as either insufficiently concrete or limited in extent).

18. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 287–90 (2022) (stating that concrete reliance interests arise when "advance planning of great precision is most obviously a necessity," and that, when the Court is unable to find reliance in this traditional sense, it cannot assess nonconcrete, intangible forms of reliance because it is ill-equipped to do so (quoting Planned Parenthood v. Casey, 505 U.S. 833, 856 (1992))); Loper Bright Enters. v. Raimondo, 603 U.S. 369, 410–12 (2024) (holding that *Chevron* deference fosters unwarranted instability, creating an "eternal fog of uncertainty" (discussing Chevron USA Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984) (holding that courts should defer to the interpretation of federal agencies when legislation is ambiguous))). *See also* Varsava, *supra* note 9, at 1911–12 (providing commentary on the Court's analysis of reliance interests in *Dobbs* and the impact of *Dobbs* as precedent about precedent on future cases).

19. Roe v. Wade, 410 U.S. 113 (1973).

20. Planned Parenthood v. Casey, 505 U.S. 833 (1992).

21. *Dobbs*, 597 U.S. at 287–90 (holding that, when a concrete reliance interest is asserted, the Court can adequately assess the claim but cannot assess claims relying on intangible forms of reliance that are difficult for Courts, or anyone, to evaluate).

22. *Id.* at 288.

23. *Id.*

24. *Id.* at 290.

25. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 410 (2024).

26. *Id.*

27. *Id.* at 410–11.

cases like *Plessy*[28] and *Brown*.[29] Such landmark cases generate outsize publicity. When the Supreme Court decides to overturn landmark cases, it can undermine the principles of stare decisis it claims to value—namely, the values of fostering neutrality, protecting the perceived integrity of the Supreme Court, and restraining Justices. Without clear workable guidelines on how to properly evaluate reliance interests, the Court risks fashioning creative arguments to satisfy its interpretive goals. In turn, this will only erode the Court's legitimacy and image. A better framework is necessary.

This Note argues for a new framework for evaluating reliance interests in the Court's stare decisis analysis. It asserts that certain types of reliance should not be accounted for in the Court's analysis. Instead, to improve analytical workability and the values that stare decisis aims to promote, the Supreme Court should adopt more objective standards to evaluate the strength of precedent. By adopting this approach to stare decisis analysis, the Court will prevent the deterioration of its perceived integrity and constrain judges.[30]

Part I begins by describing the principle of stare decisis in more detail, giving its history within American jurisprudence and its use through the modern-day Supreme Court. Part II analyzes the Court's use of the reliance cost factor in various cases to illustrate how the Court manipulates reliance cost to reach its favored decision. Finally, Part III provides commentary on how to transform reliance interest jurisprudence in its current form as an ineffectual subjective factor in stare decisis analysis to a more workable and objective standard that can provide fairer results.

I. DOCTRINAL HISTORY

A. Stare Decisis

Stare decisis is the legal principle that courts should "abide by, or adhere to, decided cases."[31] The principle predates Blackstone and influenced the

---

28. Plessy v. Ferguson, 163 U.S. 537 (1896).

29. Brown v. Bd. of Educ., 347 U.S. 483 (1954). Both *Plessy* and *Brown* were discussed within *Casey* to illustrate the need for a deeper evaluation of the reliance interests at stake in *Casey* and to demonstrate stare decisis demanded adherence to *Roe*. Planned Parenthood v. Casey, 505 U.S. 833, 862–64 (1992).

30. Alexander Lazaro Mills, *Reliance by Whom? The False Premise of Societal Reliance in Stare Decisis Analysis*, 92 N.Y.U. L. REV. 2094, 2096 (2017) (arguing that using reliance analysis within the stare decisis calculus is untenable because the idea that public opinion factors into the Court's decisions undermines the Court's conception of legitimacy).

31. 18 MOORE'S FEDERAL PRACTICE, *supra* note 5, § 134.01 (quoting *Casey*, 505 U.S. at 954 (Rehnquist, C.J., concurring)).

Founding Fathers.[32] Hamilton discussed stare decisis in the Federalist Papers, stating that to avoid arbitrary decisions, it is indispensable that courts be bound by rules and precedents to define and point out their duties in the cases before them.[33] Madison took note that written laws had a degree of uncertainty and, consequently, a range of indeterminacy.[34] For Madison, early interpreters of a statute or constitutional provision could provide a permissible construction, and subsequent interpreters would be bound to follow that interpretation.[35] If subsequent interpreters remained convinced that the interpretation given to the statute or constitutional provision went beyond the range of ambiguity, then there would no longer be a presumption that the previous interpretation was permissible.[36] One exception raised frequently by judges involved property.[37] If legal title had passed or transactions conducted in accordance with prior precedent, a reliance interest would take root, providing reason to adhere to precedent.[38]

Prior to 1916, stare decisis had only been mentioned in forty published Supreme Court opinions.[39] Justice Brandeis helped shape the Court's prior stare decisis analysis into a coherent framework.[40] This culminated in Justice Brandeis's storied dissent in *Burnet v. Coronado Oil & Gas Co.*[41] This dissent is still cited for both its weak and strong stare decisis applications.[42] In *Coronado Oil*, Justice Brandeis remarked that stare decisis is not an "inexorable command" and is at its weakest in cases involving the Constitution, because any correction through legislative action would be "practically impossible."[43] However, Justice Brandeis also identified stare decisis as "the wise policy, because in most matters it is more important that

32. Michael Gentithes, *Janus-Faced Judging: How the Supreme Court is Radically Weakening Stare Decisis*, 62 WM. & MARY L. REV. 83, 93 n.31 (2020) (listing two historical theories of when stare decisis may have developed). *See generally* David C. Walker, *Presidential Power Policies*, 114 L. LIBR. J. 167, 168–71 (2022) (providing a history of the development of stare decisis from the reign of King Henry II to Blackstone and its legal realist critics).

33. Caleb Nelson, *Stare Decisis and Demonstrably Erroneous Precedents*, 87 VA. L. REV. 1, 9 (2001).

34. *Id.* at 11.

35. *Id.* at 13.

36. *Id.* at 14. *See also id.* at 19 (detailing how this framework was widespread throughout the states).

37. *Id.* at 20.

38. *Id.* at 20–21.

39. Gentithes, *supra* note 32, at 93, 93 n.33 ("[T]he vast majority of these early stare decisis references involved no analysis. . . . Instead . . . the maxim usually served a simple rhetorical function." (quoting Colin Starger, *The Dialectic of Stare Decisis Doctrine*, *in* PRECEDENT IN THE UNITED STATES SUPREME COURT 19, 29 (Christopher J. Peters ed., 2013))).

40. Gentithes, *supra* note 32, at 93.

41. 285 U.S. 393 (1932) (Brandeis, J., dissenting).

42. Gentithes, *supra* note 32, at 93–94. *See generally* Nelson, *supra* note 33, at 50–53 (for discussion on weak and strong stare decisis).

43. 285 U.S. at 405–07.

the applicable rule of law be settled than that it be settled right."[44] These comments became the backbone of modern stare decisis analysis.[45] Following Justice Brandeis's dissent, discussion of stare decisis and its proper application have become much more common.[46]

Stare decisis is an important feature of the judicial system.[47] It helps advance the notion of a "rule of law," the concept that judges have a duty to apply the law evenly and consistently to all cases.[48] Stare decisis provides a policy of self-restraint that makes the law a safe basis for individual planning and increasing stability.[49] This self-restraint is achieved by keeping jurisprudential disagreements between Justices in check.[50] In addition to stability, stare decisis also promotes efficiency by eliminating the need for the Court to revisit issues.[51] The doctrine can also promote equality and legitimacy.[52] Adhering to precedent strengthens the idea that courts act as neutral arbiters who treat similarly situated individuals alike. Americans take comfort in the knowledge that all are treated the same under

---

44. *Id.* at 406.

45. *Compare* Gentithes, *supra* note 32, at 93–95 (stating that Justice Brandeis appeared to suggest that poorly reasoned precedents could be overruled, similar to how Justices seeking to utilize a weak stare decisis focus primarily on the quality of the reasoning when determining whether to overrule precedent) *with* Gentithes, *supra* note 32, at 96 (noting Justice O'Connor's opinion in *Arizona v. Rumsey*, claiming that prior decisions, no matter how substantively incorrect, could only be overturned when some "special justification" was present (quoting Arizona v. Rumsey, 467 U.S. 203, 212 (1984))).

46. See *Dobbs*, 597 U.S. 215, and *Casey*, 505 U.S. 833, for discussions on how to apply stare decisis analysis.

47. 18 MOORE'S FEDERAL PRACTICE, *supra* note 5, § 134.01.

48. William S. Consovoy, *The Rehnquist Court and the End of Constitutional Stare Decisis: Casey, Dickerson and the Consequences of Pragmatic Adjudication*, 2002 UTAH L. REV. 53, 59 (2002) (quoting HENRY M. HART, JR. & ALBERT M. SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW 139–43 (William N. Eskridge, Jr. & Philip P. Frickey eds., 1994)).

49. Varsava, *supra* note 9, at 1849–51 (stating that stability and predictability are the primary goals of the "first layer" of stare decisis).

50. Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1722 (2013) ("Absent a presumption in favor of keeping precedent, and absent the system of written opinions on which stare decisis depends, new majorities could brush away a prior decision without explanation."). *See also* Richard H. Fallon, Jr., *Stare Decisis and the Constitution: An Essay on Constitutional Methodology*, 76 N.Y.U. L. REV. 570, 570 (2001) ("The force of the doctrine . . . lies in its propensity to perpetuate what was initially judicial error or to block reconsideration of what was at least arguably judicial error.").

51. Consovoy, *supra* note 48, at 60–61 (noting how the administrative burden of evaluating like cases anew would be "overwhelming" and result in an inefficient use of judicial resources).

52. *Id.* at 61–63.

the law.[53] In a similar vein, the concept of reliance has also been advanced as a justification for the doctrine.[54] When a court upholds a prior decision, even if imperfect, it creates stability by demonstrating the court's preference for predictable laws over the pursuit of perfection.

The current Court is less convinced by these benefits. In response to the Court's willingness to overturn landmark cases such as *Dobbs* and *Loper Bright*, citizens urged President Biden to pack the Supreme Court,[55] called for sitting Justices to be impeached,[56] and soured on the Court—all leading to a historic decline in the public's opinion of the Court.[57] To illustrate, in his confirmation hearing, Justice Kavanaugh replied to the question on how he would rule on a challenge to *Roe* by responding, "[*Roe*] is settled as a precedent of the Supreme Court, entitled the respect under principles of

53. *Id.* at 61. *See also id.* at 61 n.36 (arguing that the true value of stare decisis is in the social context rather than in the legal context). Importantly, not all Americans share this sentiment. And indeed, over our nation's history various groups have been treated differently under our laws. There are many illustrative cases, but Equal Protection Clause litigation demonstrates this well. *See, e.g.*, Yick Wo v. Hopkins, 118 U.S. 356 (1886) (Chinese immigrants claiming discrimination); Plessy v. Ferguson, 163 U.S. 537 (1896) (Black Americans claiming discrimination); United States v. Virginia, 518 U.S. 515 (1996) (women claiming discrimination); Students for Fair Admissions, Inc. v. President & Fellows of Harvard College, 600 U.S. 181 (2023) (Asian-American students claiming discrimination).

54. *Id.* at 63. *See also* Payne v. Tennessee, 501 U.S. 808, 827 (1991) ("Stare decisis . . . fosters reliance on judicial decisions." (emphasis omitted)).

55. Jordan Rubin, *Planned Parenthood Wants to Pack the Court*, MSNBC (May 15, 2023, 3:32 p.m.), https://www.msnbc.com/deadline-white-house/deadline-legal-blog/planned-parenthood-supreme-court-packing-abortion-rcna84426 [https://perma.cc/BWD4-AEH9] (detailing calls by Planned Parenthood's CEO for expanded courts and term limits). *See also ICYMI: Pressley, Markey, Warren, Advocates Call for Major Supreme Court Reforms*, CONGRESSWOMAN AYANNA PRESSLEY (Apr. 24, 2023), https://pressley.house.gov/2023/04/24/icymi-pressley-markey-warren-advocates-call-for-major-supreme-court-reforms/ [https://perma.cc/9WX2-SWT3] (announcing attempts of Congresswoman Pressley and Senators Markey and Warren to advocate for a Supreme Court expansion in a twenty-stop nationwide tour).

56. Frederic J. Frommer, *'I Would Vote to Impeach Him Right Now'*, POLITICO, (Sept. 16, 2022, 4:30 a.m.), https://www.politico.com/news/magazine/2022/09/16/when-republicans-tried-to-impeach-a-supreme-court-justice-00056744 [https://perma.cc/4JHD-X87L] (noting Congresswoman Alexandria Ocasio-Cortez's anger at Justices Kavanaugh and Gorsuch for voting to overturn *Roe* after remarks suggesting they would not overturn *Roe* and considering their votes to overturn *Roe* an impeachable offense). *See also* Victoria Bekiempis, Roe v. Wade*: Senators Say Trump Supreme Court Nominees Misled Them*, THE GUARDIAN, (June 25, 2022, 12:42 p.m.), https://www.theguardian.com/us-news/2022/jun/25/gorsuch-kavanaugh-misled-senators-roe-v-wade [https://perma.cc/HQ2Z-QZVW] (detailing beliefs of Senators Collins and Manchin that they were deceived by both Justices regarding how they would vote on cases on the right to abortion).

57. Joseph Copeland, *Favorable Views of Supreme Court Remain Near Historic Low*, PEW RSCH. CTR. (Sept. 3, 2025), https://www.pewresearch.org/short-reads/2025/09/03/favorable-views-of-supreme-court-remain-near-historic-low/ [https://perma.cc/XV6J-8LZU] (finding that half of Americans have an unfavorable view of the Supreme Court, near a three-decade low). This public opinion is an example of specific support. Diffuse support for the Court, despite recent controversial decisions, remains relatively constant. *Supreme Court*, GALLUP, https://news.gallup.com/poll/4732/supreme-court.aspx [https://perma.cc/DP53-VE8C] (measuring public confidence in the Supreme Court over time).

stare decisis."[58] Justice Kavanaugh then proceeded to join the majority overturning *Roe* in the *Dobbs* decision.[59] His vote against *Roe* after stating that he believed it settled precedent angered many citizens and senators alike. Of course, his decision to join the Court in overturning *Roe* is not strictly inconsistent with his confirmation hearing's response; however, his decision does raise questions on how much deference he gave *Roe*'s status as precedent when deciding *Dobbs*.

B. The Forms of Stare Decisis

There are two types of stare decisis present within the legal system: vertical and horizontal stare decisis.[60] Vertical stare decisis requires lower courts to follow the decisions of higher courts; horizontal stare decisis is a court's practice of deferring to its own decisions.[61] Vertical stare decisis is widely considered settled and is followed by lower courts without much controversy.[62] Horizontal stare decisis is a much more unsettled issue, however, and debates continue on the proper application of horizontal stare decisis.[63] One reason that horizontal stare decisis is not as settled as vertical stare decisis is that the practice behind horizontal stare decisis—being bound to the decisions made by predecessors—is an uncommon practice in non-judicial settings.[64]

Further, the relative power of horizontal stare decisis can change depending on the court.[65] For example, it is essentially nonexistent in district courts, a strong, "absolute" rule in courts of appeals, and a "soft" rule within the Supreme Court.[66] Precedents have also been divided into categories that carry different strengths.[67] Statutory precedents receive a "super-strong"

---

58. Becky Sullivan, *What Conservative Justices Said—and Didn't Say—About* Roe *at Their Confirmations*, NPR (June 24, 2022, 3:44 p.m.), https://www.npr.org/2022/05/03/1096108319/roe-v-wade-alito-conservative-justices-confirmation-hearings [https://perma.cc/JPJ9-BRKL].

59. Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).

60. Walker, *supra* note 32, at 171.

61. *Id.*

62. Frederick Schauer, *Stare Decisis—Rhetoric and Reality in the Supreme Court*, 2018 SUP. CT. REV. 121, 124–25 (2018) (analogizing vertical precedent to the practice of a private following the orders of their sergeants or captains and calling vertical precedent a "widely accepted feature" of our judicial system).

63. *Id.* at 125. *See also* Walker, *supra* note 32, at 171 (noting how the principle of stare decisis differs among states in practice). Justice Scalia was a prominent critic of horizontal stare decisis. *See* Schauer, *supra* note 62, at 126–27 (noting that while Justice Scalia often criticized the idea of stare decisis, he acknowledged its pragmatic or principled virtue).

64. Schauer, *supra* note 62, at 125–26 (claiming "we do not expect presidents or members of Congress to make the same decisions as their predecessors").

65. Barrett, *supra* note 50, at 1712–13.

66. *Id.* at 1713.

67. *Id.*

stare decisis effect, common-law cases receive medium effect, and constitutional cases typically receive the weakest effect and are the easiest to overrule.[68]

In addition to vertical and horizontal stare decisis, there is strong and weak stare decisis.[69] Under a strong stare decisis framework, a court will follow precedent unless there is a special justification to overrule it.[70] For example, the precedent may have proven itself unworkable or is causing issues.[71] Conversely, the weak stare decisis framework begins by asking whether the precedent reflects a permissible or impermissible view of the underlying law.[72] If the Court determines that the precedent does reflect a permissible view of the law, it will then proceed under the strong stare decisis framework.[73] Conversely, if the precedent is an impermissible view of law, the Court will deem the precedent to be demonstrably erroneous, and the precedent will be destined to be overturned unless there is a practical reason for adhering to it.[74] The weakened form of stare decisis has been advocated as better for society because it permits society to challenge the propositions of the Constitution and allows the Court to navigate controversial areas while leaving room for reconsideration.[75] In recent years, this weakened form of stare decisis has become a cornerstone of the Roberts Court's jurisprudence.[76] However, the weakened form has proven to be malleable, giving Justices considerable leeway when deciding whether

68. *Id.*

69. Nelson, *supra* note 33, at 53.

70. Gentithes, *supra* note 32, at 87–88 (including precedents that defy workability, are subject to special reliance interests, are remnants of abandoned doctrine, or were based on facts that have changed significantly—causing the rule to be no longer applicable as potential justifications a court may consider).

71. Nelson, *supra* note 33, at 53.

72. *Id.*

73. *Id.*

74. *Id. See also* Gentithes, *supra* note 32, at 87 (describing the weak tradition of stare decisis as positing poor reasoning as a substantive consideration in determining whether to overrule precedent); Michael Gentithes, *Concrete Reliance on Stare Decisis in a Post*-Dobbs *World*, 14 CONLAWNOW 1, 2–3 (2022) (asserting that Justice Brandeis's famous statements that "[s]tare decisis is not . . . a universal, inexorable command" and "[the] Court must, in order to reach sound conclusions, feel free to bring its opinions into agreement with experience and with facts newly ascertained" provided fodder for the evolution of strong and weak stare decisis (emphasis omitted)).

75. Barrett, *supra* note 50, at 1723–24 (acknowledging Post and Siegel's arguments that "[b]acklash to judicial decisions . . . demonstrates that for some constitutional questions, authoritative settlement is neither possible nor desirable" (quoting Robert Post & Reva Siegel, Roe *Rage: Democratic Constitutionalism and Backlash*, 42 HARV. C.R.-C.L. L. REV. 373, 378 (2007))).

76. *See* Gentithes, *supra* note 74, at 1 (noting how *Dobbs* has elevated a weakened form of stare decisis and its rise over the recent decades).

to follow precedent.[77] This malleability has been abused by Supreme Court Justices to advance preferred outcomes.[78]

C. Reliance Interests

When the Supreme Court decides to revisit a prior precedent, it engages in a multi-factor analysis.[79] The Court may consider if the precedent has become unworkable, if the decision was well-reasoned, and whether the precedent has had any disruptive effects on other areas of law.[80] Additionally, the Court will look to the reliance interests at stake.[81] Because courts expect individuals to order their lives according to the laws of the nation, courts must determine how strong reliance on precedent has become. If reliance on precedent is strong enough, the court may determine that the precedent warrants deference.

Professor Kozel has identified four types of reliance interests: specific, governmental, doctrinal, and societal.[82] Specific reliance is perhaps the most obvious form of reliance; it exists when an individual takes action or orders their affairs in dependence on the rule set forth in a precedent.[83] Governmental reliance occurs when the legislative and executive branches act on reliance of the Supreme Court's rulings.[84] Doctrinal reliance refers to reliance by the Supreme Court itself on its prior precedent.[85] Because precedent tends to build on itself, if a "foundational" precedent is overruled, the structure of the precedent that other cases rely on may be upset, causing

---

77. Note, *Thrust and Parry*, *supra* note 17, at 684–85 (arguing that stare decisis is not "'a bedrock principle of the rule of law' but rather a malleable rhetorical tool" that provides Justices "rhetorical cover for overturning precedent, even when its applicability is indisputable" (quoting Geoffrey R. Stone, *The Roberts Court, Stare Decisis, and the Future of Constitutional Law*, 82 TUL. L. REV. 1533, 1537 (2008))).

78. Charles J. Cooper, *Stare Decisis: Precedent and Principle in Constitutional Adjudication*, 73 CORNELL L. REV. 401, 402, 404–05 (1988) (calling stare decisis a "doctrine of convenience" for both liberals and conservatives because it is inherently subjective, leaving many justices unable to resist the temptation to manipulate it); *see also* Barrett, *supra* note 50, at 1714 ("Thus, some living constitutionalists have argued for freedom to overrule lest precedent hinder progress, and some originalists have argued for freedom to overrule lest doctrine trump the document.").

79. *See* 18 MOORE'S FEDERAL PRACTICE, *supra* note 5, § 134.06 (providing a list of eleven factors that the Supreme Court may use when deciding whether to overrule prior precedent or not).

80. *Id.*

81. Kozel, *supra* note 9, at 414.

82. *Id.* at 452.

83. Mills, *supra* note 30, at 2103.

84. Kozel, *supra* note 9, at 454.

85. *Id.* at 459.

uncertainty.[86] Finally, societal reliance refers to the effect precedent has had on shaping societal perceptions about our country, government, and rights.[87]

II. ADDRESSING THE USE OF RELIANCE IN STARE DECISIS ANALYSIS

A. Use of Stare Decisis in the Supreme Court

An infamous case that illustrates stare decisis at its maximum power is *Federal Baseball*.[88] *Federal Baseball* involved the precursors to the modern-day MLB: the National League of Professional Base Ball Clubs and American League of Professional Base Ball Clubs.[89] Both clubs were sued for violating antitrust laws and conspiring to monopolize the baseball business.[90] Much as today, clubs were located in cities across the United States.[91] Teams traveled across state lines to compete for league pennants and the World Championship.[92] Because competition was interstate, the plaintiff, a member of a smaller baseball league competing with the two bigger leagues, argued that the two leagues engaged in interstate commerce and violated antitrust laws by conspiring to monopolize the baseball business.[93]

Surprisingly, the Court held that the baseball leagues had not violated antitrust rules because the teams' interstate travel was "a mere incident, not [an] essential" component to the exhibition of baseball games.[94] Despite this ruling, the Court refused to extend the holding to any other organization that attempted to offer a similar incidental-travel argument.[95] Despite rejecting the reasoning of *Federal Baseball* on numerous occasions, however, the Court continued to allow baseball to be effectively immune from antitrust

86. *Id. See also* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 472 (2024) (Kagan, J., dissenting) (labeling *Chevron* as "more than a single decision" because the Supreme Court had upheld an agency's reasonable interpretation of a statute at least seventy times and lower courts had applied *Chevron*'s framework thousands of times).

87. Kozel, *supra* note 9, at 460.

88. Fed. Baseball Club, Inc. v. Nat'l League of Pro. Baseball Clubs, 259 U.S. 200 (1922).

89. *Id.* at 207.

90. *Id.*

91. *Id.* at 208.

92. *Id.*

93. *Id.* at 207–08.

94. *Id.* at 209.

95. *See, e.g.*, Hart v. B.F. Keith Vaudeville Exch., 262 U.S. 271, 274 (1923) (holding, the very next term after *Federal Baseball*, that "what in general is incidental, in some instances may rise to a magnitude that requires it to be considered independently"); United States v. Int'l Boxing Club, 348 U.S. 236 (1955) (refusing to extend antitrust exemption to the sport of boxing); Radovich v. Nat'l Football League, 352 U.S. 445 (1957) (refusing to extend antitrust exemption to football).

laws.[96] The key reason that the Supreme Court has upheld the antitrust exception for what is now the MLB was the reliance by the baseball leagues on the Court's decision to exclude the sport from antitrust laws and the subsequent investment on that reliance.[97] *Federal Baseball* and the cases that followed are strong examples of how entrenched reliance may justify preserving precedent.

Roe and its progeny, *Casey* and *Dobbs*, have likewise been important Supreme Court cases not only for their landmark rulings on the constitutional right to abortion, but also for the reliance interest analysis expounded in the Court's opinions.[98] *Roe* established a constitutionally recognized right to an abortion.[99] In *Roe*, the majority conceded that states have an interest in protecting fetal life but balanced this interest against a woman's right to privacy and autonomy over her body.[100] The Court balanced these interests by creating a trimester framework that dictated when abortions could be performed.[101] *Roe* faced immense criticism immediately following its pronouncement from both the public and scholars.[102] Numerous challenges were subsequently brought before the Court, with *Casey* being the most consequential challenge to *Roe*.[103]

---

96. *See Nat'l Football League*, 352 U.S. at 450–52 (providing a history where the Court has refused to extend or overturn *Federal Baseball*). *See also* 15 U.S.C.A. § 26b (West) (describing the scope of antitrust laws to professional major league baseball); 15 U.S.C.A. § 1291 (West) (exempting professional baseball from antitrust laws pertaining to the broadcasting of sports).

97. *See* United States v. Shubert, 348 U.S. 222, 229–30 (1955) (recognizing that for thirty years, *Federal Baseball* excluded baseball from antitrust laws and during that period, in reliance on the *Federal Baseball* precedent, the business had grown and developed); *see also* Toolson v. N.Y. Yankees, Inc., 346 U.S. 356 (1953) (discussing how baseball had developed on its understanding that it was not subject to antitrust laws and any changes should come from the legislature). The Court seems to defer to precedent *because* the legislature had not acted to subject the sport to antitrust laws. *But see* Flood v. Kuhn, 407 U.S. 258, 288 (1972) (Douglas, J., dissenting) ("[t]he unbroken silence of Congress should not prevent us from correcting our own mistakes" and the erroneous decision of *Federal Baseball*.).

98. *See* Planned Parenthood v. Casey, 505 U.S. 833, 856 (1992) (detailing how people have organized their affairs and lives for two decades in reliance that abortion would be available); Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 288 (2022) (labeling the reliance interests asserted in *Casey* as "novel" and "intangible" and stating that traditional reliance issues were not present because abortions are an unplanned activity).

99. Roe v. Wade, 410 U.S. 113, 154 (1973) (holding that the right to privacy included a right to an abortion, considered against state interests in regulation).

100. *Id.* at 162–64.

101. *Id.* at 164 (stating that during the first trimester, a woman's right to an abortion is left to her and her physician; when she reaches the second trimester, the state has an interest in potential human life and can, if it chooses, regulate abortion in ways reasonably related to maternal health; in the final trimester, a state can regulate, and even outlaw, abortion).

102. *See* John Hart Ely, *The Wages of Crying Wolf: A Comment on* Roe v. Wade, 82 YALE L.J. 920 (1973).

103. *See Casey*, 505 U.S. at 844 ("Joining the respondents as *amicus curiae*, the United States, as it has done in five other cases in the last decade, again asks us to overrule *Roe*.").

In *Casey*, a group of physicians and abortion clinics challenged a Pennsylvania statute requiring minors to receive informed consent and married women to give their husbands notice of their intended abortion.[104] In the Court's stare decisis analysis, the Court began by looking at whether *Roe* had proven unworkable, and operated under a strong stare decisis framework.[105] The Court quickly moved onto the reliance interests present, where it spent three paragraphs analyzing the reliance of women on *Roe*.[106] The *Casey* opinion began with an admission that traditional reliance considerations, which typically occur in property and contract cases, were not present.[107] The plurality then rejected the view that reliance on the right to abortion can be limited to specific instances of sexual activity.[108] Instead, the Court asserted that such a view refuses to acknowledge the fact that for decades people have "organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail."[109] The Court further reasoned that a woman's ability to participate equally in the economy and in the social life of the nation had been aided by their ability to control their reproductive lives.[110] While the plurality admitted that the reliance on *Roe* could not be quantitatively measured, they asserted that neither could the cost of overruling *Roe*.[111] *Casey* adopted an expansive view of reliance interests, claiming that people have structured their lives in reliance on the availability of abortion.[112] That sweeping view of reliance on personal decisions and planning sufficed to justify keeping *Roe*'s central holding in the plurality's opinion.[113] *Casey* did, however, replace *Roe*'s trimester scheme with a new undue burden standard.[114]

Dobbs dealt the death blow to *Roe* and *Casey*, rejecting much of the reasoning underlying the two cases.[115] In *Dobbs*, a challenge was brought

---

104. *Id.* at 844–45.

105. *Id.* at 855 (dismissing the unworkability of *Roe* in two sentences before moving onto the reliance interests at stake).

106. *Id.* at 855–56.

107. *Id.* ("Since the classic case for weighing reliance heavily in favor of following the earlier rule occurs in the commercial context . . . it is no cause for surprise that some would find no reliance worthy of consideration in support of *Roe*.").

108. *Id.* at 856.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* at 874–79 (stating that where state regulation imposes an undue burden on a woman's ability to receive an abortion, "the power of the State reach[es] into the heart of the liberty protected by the Due Process Clause"—violating a constitutional right).

115. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 231, 268 (2022) (calling *Roe* an "abuse of judicial authority" and "egregiously wrong").

against a Mississippi law that generally banned abortions after fifteen weeks.[116] The opinion began its legal analysis by looking to whether the Fourteenth Amendment's reference to "liberty" protects a right to abortions.[117] To do so, the majority engaged in a lengthy thirty-five-paragraph analysis on the history of the Fourteenth Amendment and of abortion in both the U.S. and abroad.[118] After reaching the conclusion that *Roe* and *Casey*'s right to abortion is an impermissible reading of the Fourteenth Amendment—an example proceeding under a weak stare decisis framework—the Court then began analyzing its stare decisis factors.[119]

In its stare decisis analysis, the majority maintained that the lack of concrete reliance interests weighed in favor of overruling *Casey*.[120] The *Dobbs* majority then quoted *Casey*, where the plurality described abortion as an unplanned activity, and cast aside any contention that conventional, concrete reliance interests were present.[121] The majority then claimed the Court is ill-equipped to measure intangible forms of reliance and proceeded to overturn *Roe*.[122] Notably, the dissent echoed the *Casey* plurality, claiming "women now of childbearing age have grown up expecting that they would be able to avail themselves of *Roe*'s and *Casey*'s protections."[123]

Beyond the abortion rights cases discussed above, the Supreme Court has also dismissed reliance interests if those who have relied on the precedent can quickly reorder their lives in response to the Court's new rule.[124] The Court then weighs reliance interests against any countervailing

116. *Id.* at 230.
117. *Id.* at 234.
118. *Id.* at 235–50.
119. *Id.* at 263.
120. *Id.* at 287–88.
121. *Id.*
122. *Id.* at 288–89.
123. *Id.* at 405 (Breyer, Sotomayor, & Kagan, JJ., dissenting).
124. *See, e.g.*, Montejo v. Louisiana, 556 U.S. 778, 793 (2009) (where Justice Scalia argues that any criminal who has relied on the precedent of *Jackson* to "order his affairs" would be capable of adjusting to the new rule pronounced by the Court (discussing Michigan v. Jackson, 475 U.S. 625 (1986) (holding that once a defendant has invoked his right to counsel, police may not initiate interrogation of the defendant and any confessions received during an invalid interrogation cannot be used against the defendant), *overruled by* Montejo v. Louisiana, 556 U.S. 778 (2009))).

interests in overturning precedent.[125] In each case, the Court must make a value decision, deciding whether there has been sufficient reliance on the precedent that overturning it would lead to injustice.

B. Problems in the Supreme Court's Use of Reliance Interests

The Supreme Court is wise to consider the reliance that society has placed on the Court's previous decisions. Stable legal systems provide immense benefits, such as providing predictability and improving efficiency. While the Court has acknowledged the importance of considering reliance interests, the Court has not always been consistent in its evaluation of reliance. The Court has struggled in determining precisely when there has been *sufficient* reliance to justify preserving precedent.[126] While hard and fast delineation is difficult and likely ill-advised due to the nature of individualized claims and the desire to achieve substantive justice for aggrieved parties, the standard present in the Supreme Court's jurisprudence is unsustainable if the Court wishes to maintain long-term legitimacy. *Federal Baseball*'s holding may not anger many Americans, but controversial decisions such as *Dobbs* threaten to irreparably harm the Court's reputation.[127] If the Supreme Court is to continue to be seen as a neutral, fair arbiter that aims to pursue equal justice under law, then the Court's reliance interest analysis must have clearer parameters.

Karl Llewellyn once remarked that case law precedents are malleable and subject to conflicting applications.[128] His framework provides an opportunity to demonstrate that stare decisis, like other interpretive canons, are easily manipulated.[129] While stare decisis's manipulability itself does

---

125. *See* Arizona v. Gant, 556 U.S. 332, 349 (2009) (acknowledging police officers' reliance on the *Belton* rule pronounced by the Court but rejecting it as enough to prevent the Court from overruling *Belton* because of a countervailing interest that individuals share in having their constitutional rights protected outweighs police officers' reliance interests (discussing New York v. Belton, 453 U.S. 454, 460 (1981) (holding that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile"))); Ramos v. Louisiana, 590 U.S. 83, 108–11 (2020) (The Court noted how the reliance interests involved did not rely on a property interest and instead on the fact law enforcement may need to retry some cases. However, the Court found the constitutional rights of defendants to outweigh the reliance interests involved.).

126. *See* Consovoy, *supra* note 48, at 64 ("In the end, the point at which reliance reaches a level of societal/political importance is fairly indeterminate. Despite not being readily discernible . . . reliance arguments have been of critical import in constitutional adjudication.").

127. *See* Ura & Merrill, *supra* note 16, at 441 (arguing that public opinion in the long run may be impacted by the Court delivering opinions contrary to the public's demands). *But see* Ura & Merrill, *supra* note 16, at 449 (describing a legitimization theory that claims that the public may sour on the Supreme Court in the short term after politically salient decisions, but adopt the Court's view over time).

128. Anita S. Krishnakumar, *Dueling Canons*, 65 DUKE L.J. 909, 916 (2016).

129. Note, *Thrust and Parry*, *supra* note 17, at 685.

not lead to the conclusion that precedent should hold no value, it is an important issue because precedent's value is called into question more frequently in hard cases.[130] Further, when stare decisis is, or perceived as, manipulated, Justices are more likely to be considered unrestrained.[131] Looking at the cases discussed above, it can be difficult to reconcile the Court's use of reliance in each case. But it is possible to find patterns in the Court's decisions by examining the types of reliance present in each case.

C. A New Framework

Professor Kozel provides a strong framework for understanding reliance interests, but improvement is possible. Professor Kozel lists specific reliance as an independent category.[132] But specific reliance may best be understood as a sub-category of the other three—societal, governmental, and doctrinal. For example, societal reliance may be specific or not. Citizens may reorder their lives and affairs after a landmark Supreme Court case, or they may not. Non-specific societal reliance is likely the most common type of reliance. Most judicial decisions do not have an immediate, far-reaching impact on society that causes people to, in the short term, adjust their lives. Considering the *Dobbs* decision and the language used there, reliance may be either tangible or intangible.[133] There may be tangible—or intangible—governmental, commercial, or societal reliance.[134] Tangible reliance has historically been viewed similarly to investment-based reliance. The Supreme Court has treated contract and title cases—which both utilize tangible-reliance arguments—differently from other reliance-based arguments.[135] When people enter into legally binding contracts and transactions in reliance that a law will remain in force, that reliance is offered more deference than intangible psychological reliance. The

130. *Id.*

131. Krishnakumar, *supra* note 128, at 916.

132. Kozel, *supra* note 9, at 453–54.

133. Supreme Court opinions such as *Dobbs* use both tangible and concrete reliance interchangeably. For consistency, this Note will use tangible reliance.

134. While Professor Kozel lists doctrinal reliance, such reliance should not factor in a court's reliance analysis and has been excluded from the proposed framework of this Note. This is because such reliance cannot be tangible. The judiciary cannot expend monetary resources or contract around the precedent the Court sets. Because intangible reliance should not factor into stare decisis analysis, as discussed in Part III *infra*, doctrinal reliance is not discussed here and should not factor into stare decisis analysis.

135. *Cf.* Nelson, *supra* note 33, at 20–21 (stating that cases concerning title and transactions—themselves a type of contract—have historically been treated uniquely among reliance-based arguments due to their use of tangible reliance). Consequently, cases not involving tangible reliance and using other forms of reliance argument would be treated differently than simple contract, title, or transaction cases.

Supreme Court has implicitly acknowledged tangible and intangible reliance and used both to justify preserving precedent.

Governmental reliance here is largely the same as Professor Kozel describes, however, it may be tangible or intangible. Governmental reliance here is not limited to merely the executive and legislative branches. Instead, it may encompass local governments, such as police departments. These governmental bodies may act in reliance on precedent, either in a tangible or intangible manner. Tangible governmental reliance may involve legislative branches—state or federal—relying on precedent in their decision to pass a new law that expends monetary resources of the government. Intangible governmental reliance occurs when government bodies rely on a precedent, but do not expend any monetary resources on that reliance. For example, intangible governmental reliance may involve police officers who rely on Supreme Court precedent in their day-to-day operations and interactions with alleged criminals.[136]

Citizens United is an example of intangible governmental reliance.[137] In the landmark case, the Supreme Court dismissed Congress's reliance on previous precedent.[138] Congress's ban on political speech, thought to be constitutional, was brushed aside in the Court's stare decisis analysis.[139] The Court opined that considering Congress's reliance may run afoul of the Court's duty to "say what the law is" because legislative acts should not prevent them from overruling precedent.[140] The Supreme Court, in essence, told Congress that it should not rely on the Court's own precedent.[141]

Commercial reliance is where a corporation or similar entity relies on precedent in making business decisions that expend monetary resources or commit future resources to a project. The aftermath of *Federal Baseball*, where baseball leagues continued to expand and make investments in reliance on the Supreme Court's holding, is an example of tangible

---

136. *See, e.g.*, Dickerson v. United States, 530 U.S. 428, 439, 443 (2000) (stating that the *Miranda* opinion's goal was to provide constitutional guidance to law enforcement agencies to follow, which then became embedded in routine police practices (discussing Miranda v. Arizona, 384 U.S. 436 (1966))).

137. Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010) (holding that Congress's reliance on the belief that a ban on corporations spending money on political speech was constitutional could not be a compelling interest for stare decisis purposes).

138. *Id.* at 365 (discussing Congress's unjustified reliance on the Supreme Court's earlier ruling in *Austin v. Mich. Chamber of Com.*, 494 U.S. 652 (1990)).

139. *Id.* (stating "[l]egislatures may have enacted bans on corporate expenditures believing that those bans were constitutional. This is not a compelling interest for *stare decisis*").

140. *Id.* (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803)).

141. However, Congress's own inaction sometimes serves as a judicial bellwether for the Court. *See, e.g.*, Toolson v. N.Y. Yankees, Inc., 346 U.S. 356, 357 (1953) ("Without re-examination of the underlying issues, the judgments below are affirmed on the authority of [*Federal Baseball*] *so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws*." (emphasis added)).

commercial reliance. There, the two growing leagues continued to invest money into their business model by acquiring more teams.[142] To repudiate the Court's own holding after expressly granting the leagues antitrust immunity would have caused irreparable financial harm to these leagues.

Intangible commercial reliance is akin to intangible societal reliance. Intangible commercial reliance occurs when businesses begin to predict legal developments and rely on those judgments to plan business strategies. For example, under the *Chevron* deference doctrine, agencies were given broad deference in their interpretation of statutes. Corporations could rely on the existence of the *Chevron* deference precedent when planning their compliance strategies.

Finally, societal reliance is akin to that seen in *Roe*, *Casey*, and *Dobbs* where the Court considered whether individuals and families across the United States had relied on the right to an abortion in structuring their lives. Tangible societal reliance would include decisions that expend a family's monetary resources such as moving, buying a new house, or arranging legal documents according to precedent. Intangible societal reliance may involve individuals taking mental note of a new precedent, but without spending any money to reorder their lives. For example, the Supreme Court noted that criminals typically do not change their criminal activity because police officers must read them their Miranda rights.[143]

Professor Kozel's doctrinal reliance may also be viewed within my proposed framework but will not be discussed here. Doctrinal reliance is better addressed in a discussion of the Court's treatment of precedent. While the Supreme Court has created precedent on how they treat precedent,[144] reliance on this precedent-on-precedent is fundamentally different from reliance by outside branches of government or businesses and individuals. Further, this Note attempts to discuss how the Court responds to reliance by outside actors in stare decisis analysis, not how the Court's Justices believe the Court should treat its own precedent. Doctrinal reliance is an important topic for further research but has little application within the Supreme Court's own reliance analysis.

---

142. *See Toolson*, 346 U.S. at 357 ("The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation.").

143. Montejo v. Louisiana, 556 U.S. 778, 793 (2009) ("Any criminal defendant learned enough to order his affairs based on the rule announced in *Jackson* would also be perfectly capable of interacting with the police on his own." (discussing Michigan v. Jackson, 475 U.S. 625 (1986))). *See also* United States v. Gaudin, 515 U.S. 506, 521 (1995) (holding that stare decisis does not carry its normal weight in cases where procedural rules are at stake, which do not "serve as a guide to lawful behavior").

144. *See generally* Nina Varsava, *Precedent on Precedent*, 169 U. PA. L. REV. ONLINE 118 (2020).

D. Revisiting Reliance

Casey and *Dobbs* focus extensively on societal reliance on *Roe*'s precedent.[145] *Casey* acknowledged that the right to an abortion did not provide the same reliance that contract or property cases engender, but reliance on the right was nonetheless similar to the reliance in those cases.[146] The Court reasoned that society's reliance on the right, while intangible, was forceful and significant. The plurality opinion dismissed arguments that labeled any reliance as *de minimis*.[147] *Dobbs* latched onto *Casey*'s concession that reliance was not concrete and claimed societal reliance on the right to an abortion was unascertainable due to the reliance being intangible.[148] In their brief to the Court, Jackson Women's Health Organization relied on the Court's precedent upholding the right to an abortion as its main argument.[149] Missing from the brief, however, is any mention of the reliance engendered by the precedent. The brief merely argues the Court should respect the precedent because it *is* precedent. While reliance is one of many factors the Court considers, the opportunity to discuss the reliance on the right to an abortion that *Roe* and *Casey* created and affirmed was missed. A Brandeis-style brief that contained statistics on the prevalence of abortion and the widespread reliance on the right may have proven more effective in establishing tangible societal reliance. While tangible reliance may not rescue all cases from being overturned, reframing the reliance at stake may be a powerful tool in helping the Court reevaluate the factors at hand.

There exists some difficulty in establishing tangible societal reliance because there may be many reasons for the decisions individuals and families make. Did a woman move from a state like Texas, which has much more restrictive abortion laws, to Nevada, which recognized and

---

145. *Compare* Planned Parenthood v. Casey, 505 U.S. 833, 855–56 (1992) (the *Casey* plurality focuses on how a woman may shape her life in reliance of the availability of the right to an abortion and its impact on women being able to participate equally in the economy) *with* Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 287–89 (2022) (meanwhile, the *Dobbs* majority rejects any notion that concrete reliance interests are at issue and then proceeds to claim to be unable to measure intangible reliance interests).

146. *Casey*, 505 U.S. at 856.

147. *Id.* ("To eliminate the issue of reliance . . . however, one would need to limit cognizable reliance to specific instances of sexual activity.")

148. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 287–91 (2022).

149. Brief for Respondents at 11–12, *Dobbs*, 597 U.S. 215 (No. 19-1392) ("[T]he Court could simply do what the State requested in its petition: 'clarify,' under this Court's existing precedents, 'whether abortion prohibitions before viability are always unconstitutional.' The answer to that question is undoubtedly 'yes,' as this Court has repeatedly held." (citation omitted)).

safeguarded the right to an abortion before *Dobbs*,[150] *because* of *Dobbs* or because of a job offer? Could *both* the job opportunity and knowledge that Nevada safeguarded a right to abortion have played a role in the decision? Without empirical data, any attempt at arguing for tangible societal reliance is sure to be a lost cause. Producing statistical data that demonstrates some tangible reliance on a perceived right to abortion will help, but that is only one piece of stare decisis analysis. It will not be sufficient to guarantee a victory, but it is a factor in favor of preserving precedent because a court should prefer tangible over nontangible reliance.

Federal Baseball's progeny relies on a specific reliance on the part of the baseball leagues after *Federal Baseball* and Congress's subsequent inaction. This is best described as tangible commercial reliance. The Supreme Court, when asked to revisit *Federal Baseball*, refused to act, despite severely restricting the holding in *Federal Baseball* to its facts.[151] The substantial investments made by the growing leagues were central to the Court's decision. Without these investments, it is unlikely that the Court would have continued to refuse to revisit *Federal Baseball*. The specific commercial reliance *in conjunction* with congressional inaction created a strong incentive for judicial restraint.

In later cases, the Court continued to restrict *Federal Baseball* to its facts when other organizations attempted to bring similar arguments.[152] In *Hart v. B.F. Keith Vaudeville Exchange*, the Court rejected a traveling theater group's argument that their interstate travel was merely incidental to their exhibitions of theatrical shows.[153] *Hart* was decided the term immediately after *Federal Baseball*. If there was a perfect time to overrule the Court's decision, the following term would have been the best opportunity. The Court's reluctance to overturn *Federal Baseball* can be explained by business investments expended after the Court's decision. Precedent resulting from tangible commercial reliance is among the toughest precedent to overturn. Businesses have grown and consolidated over the 20th and 21st centuries. They are no longer small American companies operating in one country but multinational conglomerates with worldwide operations. If the Supreme Court overturns a prior precedent, that decision could have

150. NEV. CONST. art. 1, § 25 (establishing a fundamental right to reproductive freedom, including decisions about pregnancy and abortion).

151. Toolson v. N.Y. Yankees, Inc., 346 U.S. 356, 357 (1953).

152. *See also Toolson*, 346 U.S. 356; Flood v. Kuhn, 407 U.S. 258, 258–88 (1972) (prioritizing the MLB's reliance on *Federal Baseball* over the more expansive post-*Wickard* view of interstate commerce in refusing to expressly overrule *Federal Baseball* (discussing Wickard v. Filburn, 317 U.S. 111 (1942))). *See generally* Marc Edelman & John T. Holden, *Baseball's Anticompetitive Antitrust Exemption*, 65 B.C. L. REV. 1695 (2024).

153. Hart v. B.F. Keith Vaudeville Exch., 262 U.S. 271, 272–73 (1923).

a significant impact on a company's ability to keep a key department or maintain an operation. Such a decision could cost the American—and global—economy billions of dollars as multiple companies adjust to new decisions.

This treatment of reliance in stare decisis analysis is similar to the treatment of detrimental reliance in contract cases. A party's detrimental reliance may provide a ground for relief to a harmed party. In limited circumstances, a party's justified reliance—where the party takes action with expectations that the other party will fulfill the contractual obligations promised—may allow the party to bring a claim against the other party. A court will allow the aggrieved party to bring a claim when reliance has been justified. In a comparable manner, courts decide whether the justified reliance on prior precedent warrants the preservation of precedent. Courts look at the financial investments made on reliance on prior decisions; this explains why cases involving title and contracts are given extra weight in the Court's analysis.

III. TRANSFORMING THE RELIANCE INTEREST FACTOR

The costs associated with overturning settled precedent are a constraint on courts, potentially deterring them from overruling precedent. If the court can reframe the reliance interests to fit their personal preferences, then the constraining effect will be lost, and Justices will be empowered to overrule precedent. Both outcomes illustrate a perplexing picture of how stare decisis operates at the Supreme Court and the inefficiencies it brings. By transforming a crucial factor in stare decisis analysis into a more objective and workable factor, courts can begin to move away from inefficiency and towards more efficient and fair outcomes.

A. Measuring Reliance

An issue with reliance is that it is notoriously difficult to ascertain the costs borne from reliance. Some of these "costs" are non-monetary and instead are purely psychological—such as a belief in the stability of the present legal landscape. An abortion clinic may have monetary costs it can point to—namely, its start-up and operational costs—as a cost of relying on the Court's precedent. But what about a woman's reliance on *Roe* and

Casey?[154] She may expect that the abortion clinic down the road will remain open, but she likely does not have an investment in the abortion clinic's operation. Taking this further, how different is the reliance between a woman who is in her twenties or thirties to that of a three-year-old child or to a seventy-five-year-old woman? How do we evaluate this reliance on *Roe* and *Casey* in light of the fact that numerous news media outlets reported the cases would likely be overturned?[155] After the leaked draft opinion stated *Dobbs* would end the right to abortion?[156] These illustrations demonstrate the difficulty in creating objective criteria to evaluate reliance interests.[157]

In *Casey*, the plurality recognized the difficulty in evaluating intangible reliance interests, stating that while "the effect of reliance on *Roe* cannot be exactly measured, neither can the certain cost of overruling *Roe*."[158] It is this intangible reliance that the *Dobbs* majority relied on to overturn *Casey*.[159] Psychological reliance, a form of intangible societal reliance, cannot, and should not, be weighed by courts in reliance interest analysis. Psychological reliance is inherently difficult to measure. Without quantitative analysis,

---

154. *See, e.g.*, discussion of *Dobbs, supra* Part II.A. In *Dobbs*, the majority asserts that there is no traditional concrete reliance interests at stake because getting an abortion is, generally, an unplanned activity. The dissent accuses the majority of ignoring the "perfectly, viscerally concrete" reliance interests of women in America and details how women will now change their lives in response. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 287–88, 410 (2022).

155. *See* Julie Rovner, *If High Court Reverses* Roe v. Wade*, 22 States Likely to Ban Abortion*, NPR (July 10, 2018, 1:21 PM), https://www.npr.org/sections/health-shots/2018/07/10/627666535/if-high-court-reverses-roe-v-wade-22-states-likely-to-ban-abortion [https://perma.cc/CNZ7-AC6K] (stating in 2018, nearly four years before *Dobbs*, that it is a "not a question of if; it's a question of . . . when" the Supreme Court will overturn *Roe*); Quoctrung Bui et al., *What Happens if* Roe v. Wade *is Overturned?*, N.Y. TIMES (Oct. 15, 2020), https://www.nytimes.com/interactive/2020/10/15/upshot/what-happens-if-roe-is-overturned.html [https://perma.cc/5VMM-YJX7] (noting, in 2020, almost two years before *Dobbs*, the increased likelihood of *Roe* being overturned with Justice Barrett's confirmation to the Court). *See also* Nelson, *supra* note 33, at 64 (arguing that people's expectations are partly shaped by their knowledge of courts' use of stare decisis and may be "fairly sure" that the court will overrule a decision at the "next opportunity" given).

156. *See* Josh Gerstein & Alexander Ward, *Supreme Court Has Voted to Overturn Abortion Rights, Draft Opinion Shows*, POLITICO (May 2, 2022, 8:32 p.m.), https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion-00029473 [https://perma.cc/34PQ-UN3P] (revealing a draft opinion where the Supreme Court had voted to overturn *Roe*); *see also* Mark Sherman & Zeke Miller, *Report: Supreme Court Draft Suggests* Roe *Could be Overturned*, ASSOCIATED PRESS (May 3, 2022, 9:01 a.m.), https://apnews.com/article/supreme-court-abortion-draft-opinion-07439f9fc4542f1500ab78dfd34036b1 [https://perma.cc/49VJ-8TLR] (signaling that the Supreme Court was poised to overturn *Roe*).

157. For a discussion on whether individuals are ever justified on relying on precedent, see Michael Stokes Paulsen, *Abrogating Stare Decisis by Statute: May Congress Remove the Precedential Effect of* Roe *and* Casey*?*, 109 YALE L.J. 1535, 1554 n.49 (2000) (arguing that people should rely on precedent only to the extent it can be predicted that courts will adhere to the decision as correct and that because courts have never represented stare decisis as an absolute rule of adherence to precedent, there can be no reason to believe that judicial precedent will remain the same).

158. Planned Parenthood v. Casey, 505 U.S. 833, 856 (1992).

159. *Dobbs*, 597 U.S. at 268.

psychological and intangible societal reliance is easily manipulated to advance an outcome-driven analysis. Courts do not recognize psychological reliance in detrimental reliance cases in contract law; they likewise should not recognize intangible reliance in stare decisis analysis.

To improve the Supreme Court's use of reliance interests in stare decisis analysis, only tangible reliance should be considered. Tangible reliance is a more concrete and readily traceable reliance that cannot be as easily manipulated as intangible reliance. It is more in line with a substantive justice framework where courts attempt to provide relief and protection for significant investment and reasonable societal expectations. While the law is everchanging and people ought to expect a healthy amount of change in our laws as years pass, preserving a slightly less perfect precedent may be preferred to upsetting the norms and expectations. This is not to say that tangible reliance will always prevent outcome-driven analysis by courts. As evidenced by *Casey*'s attempt to cast societal reliance as tangible,[160] courts will attempt to reframe society's reliance on precedent as concrete and tangible. But without quantifiable and exacting demonstrations of reliance, a stricter framework that allows only tangible reliance to be considered will function as a screen for true, measurable, and meaningful reliance.

B. Reliance Interests v. Reliance Costs

Measuring the economic costs a business incurs relying on a court's precedent is much easier than measuring an individual's intangible costs, like psychological reliance. Another difficulty lies in the fact that individuals tend to lack the resources of the nation's largest corporations. Thus, while individuals incur costs that are measurable, most will never incur costs similar to large corporations. This may limit someone's ability to argue that there has been meaningful tangible reliance made because of precedent.

One option is to eliminate intangible individual or societal reliance in stare decisis analysis. This argument has been advanced, in different forms, by scholars.[161] These scholars head in the correct direction, but they do not

160. *Casey*, 505 U.S. at 856 ("[W]hile the effect of reliance on *Roe* cannot be exactly measured, neither can the certain cost of overruling *Roe* for people who have ordered their thinking and living around that case be dismissed.").

161. *See generally* Lucas S. Stegman, *Rebalancing the Scales: Why the Reliance Interests of Law Enforcement Should be Irrelevant to Questions of Constitutional Stare Decisis*, 11 CRIM. L. PRAC. 37 (2021) (arguing that law enforcement's reliance on a previous precedent should not be considered in stare decisis analysis for criminal procedure precedent); Mills, *supra* note 30 (arguing that societal reliance should not be considered in stare decisis analysis); Paulsen, *supra* note 157, at 1554 (claiming individuals may not have reason to rely on precedent).

ultimately reach the destination. Courts invoke reliance interests to protect monetary investments and previous transactions involving title—labeled tangible reliance earlier. And while courts attempt to protect these economic transactions, it does not prevent them from overruling precedent; instead, the reliance interest must be weighed against announcing a correct, or improved, law. Sometimes, overturning an incorrect holding may be more inefficient and costly than overturning precedent that has engendered significant, tangible, and measurable reliance.[162] However, all things being equal, a court will typically want to preserve a precedent that has engendered substantial reliance that is measurable and demonstrable. Thus, eliminating intangible reliance from the acceptable types of reliance that the Court takes into consideration would lead to better decision-making at the Supreme Court.

While the Court has stated that stare decisis serves some psychological purpose by being "rooted in the psychologic need to satisfy reasonable expectations," a system that only considers tangible reliance will not distort reasonable expectations.[163] There is a proper balance between rigid adherence to precedent and a system that places no weight on precedent. Individuals must come to expect some instability in precedent.[164] If the Supreme Court signals that it will begin to consider only tangible forms of reliance, the public will be on notice that intangible reliance, such as psychological reliance, will no longer be considered. Further, this proposed framework is not new. The Court has recently expressed its view that different reliance interests should be given less weight. For example, in *Citizens United*, the Court held that the reliance interest the legislature holds on precedent should be given less weight than those who are structuring transactions.[165]

Tying together the pieces, a new framework for analyzing reliance interests within stare decisis analysis may look as follows. First, when confronted with a case that fits squarely within a prior precedent, the Court will begin by noting the level of disagreement within its ranks. If there is a mere disagreement, then the Court will proceed under a strong stare decisis

---

162. This is where the court often asks whether the circumstances have changed drastically enough—or whether the precedent has become unworkable—to justify overruling precedent.

163. Helvering v. Hallock, 309 U.S. 106, 119 (1940).

164. In fact, Judge Easterbrook claims that law *ought* to be unstable. Frank H. Easterbrook, *Stability and Reliability in Judicial Decisions*, 73 CORNELL L. REV. 422, 423 (1988) (claiming that with the gift of hindsight, the ability to overrule cases and improve our country's body of law creates unstable precedent—for the benefit of society).

165. Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010) (holding that Congress's reliance interest that a ban on corporations spending money on political speech was not a compelling interest for stare decisis purposes).

framework and keep the precedent unless there is a special justification to overrule it.[166] If the Court determines there is no justification for overruling the precedent, then analysis ends there and reliance interests are not considered.[167] If the Court determines that there are special justifications for reconsidering the precedent, then stare decisis analysis begins with the Court determining the type of reliance at stake. After this determination, the Court will then determine whether the reliance is tangible or intangible. If there is tangible reliance, the court must properly weigh this consideration with the other stare decisis factors. A finding of tangible reliance interests will militate against overruling precedent while a determination of intangible reliance will weaken the need to refrain from overturning precedent.

If the Court, or a majority of the Court, believes that the previous case is obviously wrong, then the Court will proceed under a presumption of either weak or strong stare decisis.[168] The Court must decide whether the precedent in question reflects a permissible or impermissible view of underlying law. If the Court determines that the precedent reflects a permissible view of the law, then it will proceed under the strong stare decisis framework described above. If, however, the Court deems the precedent to be an impermissible view of law, the Court will proceed under the weak stare decisis framework and the precedent will be declared erroneous.[169] The Court will then

166. *See* Gentithes, *supra* note 32, at 87–88 (such criteria include whether the precedent defies workability, is subject to special reliance interests, is a mere remnant of abandoned doctrine, or is based upon facts that have changed so significantly that the rule is no longer applicable). *See also* Payne v. Tennessee, 501 U.S. 808, 849 (1991) (Marshall & Blackmun, JJ., dissenting) (including the criteria of the advent of subsequent changes or development in the law that undermine a decision's rationale, the need to reconcile a decision with experience and facts newly ascertained, and a showing that a particular precedent has become detrimental to coherence and consistency in the law).

167. For an example of strong stare decisis analysis that searches for special justification in the face of disagreement among the Court, see Dickerson v. United States, 530 U.S. 428, 443 (2000) ("We do not think there is such justification for overruling *Miranda*. *Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture." (discussing Miranda v. Arizona, 384 U.S. 436 (1966))).

168. *See* Gentithes, *supra* note 32, at 114 (explaining poor reasoning is a condition precedent to stare decisis analysis). He claims that poor reasoning may motivate a Justice to begin thinking about whether to overrule a previous case; in effect, poor reasoning triggers stare decisis analysis. *Id.* at 114–15.

169. Professor Gentithes objects to Professor Nelson's suggestion that demonstrably erroneous precedent should be given a rebuttable presumption for being overturned and asserts this will require Justices to apply their own interpretive methodologies, which will produce varied, dichotomous results. However, this rebuttable presumption merely leads to the next step of stare decisis analysis, which includes more objective standards, such as the framework described here. It seems unlikely that an objective test will be created that determines when to begin stare decisis analysis. A rigid, formalistic rule may well become under-inclusive of the precedents worthy of reconsideration. A flexible, subjective test may be more suitable for determining when to *begin* stare decisis analysis while a more objective standard should be applied for determining when to *overturn* a precedent. *See* Gentithes, *supra* note 32, at 120–23 for his discussion on Professor Nelson's approach.

presume the case should be overruled, and if there is no practical reason for adhering to it, the precedent shall be overturned. At this stage, the Court may consider the reliance interests at stake. If there is tangible reliance, then the Court may assess whether to overturn precedent by considering the impact it will have on the affected parties. A finding of intangible reliance would support a decision to overturn the precedent because the precedent is both erroneous and has not engendered any clear and measurable reliance to the decision.

Under a third possibility, the Court may decide that a prior case's reasoning is clearly erroneous. This standard is tougher to meet than mere disagreement. A five-to-four majority may not be enough to dictate that a prior decision is clearly erroneous. Defining clearly erroneous is beyond the scope of this Note. But if the Court adopts the view that a precedent's reasoning is clearly erroneous, then the Court will proceed directly under the weak stare decisis framework. Unless there is a practical reason for adhering to the precedent, the Court should discard the precedent.

Utilizing this framework will provide the Supreme Court with a structured stare decisis framework that is more difficult to abuse than the Court's current framework, which lacks any judicially manageable standards. This framework will limit the ability to engage in outcome-driven analysis and lend more legitimacy to the Court. Further, this proposed framework has historical roots.[170] As discussed in Part I.A, cases involving property and title were often viewed as an exception to traditional stare decisis analysis and demanded greater weight to precedent.[171] Further, the Supreme Court has itself held repeatedly that stare decisis is at its weakest in cases involving procedural and evidentiary rules.[172] This is because psychological reliance is difficult to measure, and the restructuring of lives from psychological reliance is easier to accomplish than with tangible reliance. Conversely, by placing greater weight on cases where there is tangible reliance, courts demonstrate respect for how individuals have structured their lives around the law while still allowing the judiciary to correct erroneous law.

---

170. *See* Nelson, *supra* note 33, at 36 n.127 (citing a number of cases showing that cases involving rules of property or generating commercial reliance interests often were given a greater weight to precedent). Nelson also quotes Justice McKean of the Pennsylvania Supreme Court, who states that preference of having property rights known and settled is better than what the exact rule is. *Id.* at 36–37.

171. *See id.* at 20–21.

172. Payne v. Tennessee, 501 U.S. 808, 851 (1991) (Marshall & Blackmun, JJ., dissenting). *See also* Montejo v. Louisiana, 556 U.S. 778, 793 (2009) (a case younger than twenty years and in which the Court states that any individual who can incorporate the lessons of a previous precedent can incorporate the lessons of the new precedent overruling an earlier procedural rule); United States v. Gaudin, 515 U.S. 506, 521 (1995) (holding that stare decisis is weaker in cases where procedural rules are at stake).

CONCLUSION

The Supreme Court's overturning of landmark cases such as *Roe* and *Chevron* has led to increased public scrutiny due to their controversial character and the Court's analysis of stare decisis in these cases. Both *Dobbs* and *Loper Bright* directly discussed reliance interests in the Court's analysis of stare decisis and demonstrated the Court's willingness to revisit precedent under a weak stare decisis framework. With the Court more willing to revisit prior precedent, it is more important than ever to create judicially manageable standards for the Court's stare decisis analysis.[173]

Instituting this new analytical framework will further allow the Court to revisit previous precedent under a new lens. The Court will be able to determine whether such precedent is a valuable legal rule or can be discarded with minimal effect on the public. This new proposed framework is neither a rigid, formalistic rule nor a spineless standard that can be easily manipulated. Instead, it allows for some flexibility to determine the reliance interests at stake and to inquire into the expenses that overturning precedent would impose on all affected parties.[174]

The proposed framework starts with asking whether the law in question is a permissible reading of law and leads the Court to engage in either a strong or weak stare decisis analysis. Once the Court determines that it will proceed to analyze whether to overturn the precedent, the Court will undertake its conventional stare decisis analysis. If the reliance interests at stake are tangible, the Court should carefully weigh the factor with the other stare decisis factors to determine whether to overturn the prior case. While the Court is not bound to precedent if there is tangible reliance, it must thoroughly analyze whether the outcome justifies unsettling the reliance interests at stake. If the Court determines the reliance interests of the parties are intangible, the Court must disregard the reliance.

Of course, the inquiry does not end there. There are other factors the

---

173. *See* Gentithes, *supra* note 32, at 116 ("If stare decisis does anything, it at least occasionally constrains Justices from overturning a case with which they disagree. To perform even that minimal function, it must appeal to some objective criteria beyond individual Justices' interpretive methodologies.").

174. This is an important consideration because courts do not incur the costs of change, at least directly. The burden of the change in law must instead fall on the public. Because the judiciary cannot incur the costs of change, it is wise policy to ensure proposed changes are properly examined such that any costs are weighed against the benefits. Carefully considering whether precedent has engendered tangible or intangible reliance aids courts in properly weighing the costs associated with change. *See generally* Richard A. Epstein, *Beware of Legal Transitions: A Presumptive Vote for the Reliance Interest*, 13 J. CONTEMP. LEGAL ISSUES 69 (2003) (arguing for a presumption against transitions in legal rules). *See also* Mills, *supra* note 30, at 2101 (arguing that because business and contracts can require extensive planning, changes in law may be particularly disruptive and lead to suboptimal levels of investment).

Court must consider and balance when engaging in its stare decisis analysis. Those factors are beyond the scope of this Note. While the other factors in stare decisis are not discussed here, this Note's proposed framework could help discipline the Court's messy stare decisis analysis. This framework attempts to provide a systematic approach that will help the Court maintain a reputation for being fair and neutral. To further develop a better analytical framework for stare decisis, future developments in other stare decisis factors are warranted. Clear, rigid rules are unlikely to result from future developments, but providing more objective standards will help aid in clawing back the Court's ability to engage in results-oriented decision making and aid in protecting the Court's legitimacy.