

Kellyanne Conway, President and CEO
the polling company™, inc.

Testimony Submitted to the
Committee on the Judiciary's Constitution Subcommittee

“The Scope and Myths of *Roe v. Wade*”
March 2, 2006

Thank you for inviting me to speak about the state of polling data on *Roe v. Wade* (410 U.S. 11 (1973)). Public opinion is a powerful force in a democracy and should be collected, scrutinized and presented with the utmost care. In recent years the “latest numbers” have gone from being a footnote of journalistic evidence to leading the headlines. In many ways, the gravity assigned to public opinion is fitting in a country whose democratic government is designed to represent the will of its people. When collected fairly and accurately, national polling data provide a snapshot of American impression, opinion and even expectation, grounded in the moment of its capture, and tempered by the circumstances attending that moment.

What Makes a Good Poll?

Good polling combines the science of sound methodology with the art of writing meaningful questions which are objectively drawn, easily understandable, and likely to lead to insightful interpretation. When a pollster follows proper methods, a telephone survey fielded over several nights of 800 to 1,200 randomly sampled Americans can accurately register the opinions of the nation. The sample must also be gathered so that it is representative of the population; otherwise the results are not able to be generalized to the larger group. A skilled methodologist is able to manage these steps to reduce the amount of error in the survey, which for a national sample should be around $\pm 3\%$.

Questions must be carefully crafted so that the wording will mean the same thing to all participants and ordered from general to specific so that they do not bias the responses. Poorly worded instruments include double barreled questions that make it impossible to know which portion responses are directed towards. It is also important to balance positive and negative options so that opinions are not pushed in either direction. The pollster must be also careful to avoid asking questions that the respondent likely lacks the capacity to answer (e.g., “when do you think the Iraq war will end?”) and using “feel good phraseology” to generate a particular answer (e.g., “do you oppose or support protecting the environment?”).

Public opinion data on abortion represent a particularly interesting case study within my craft. Too often, results of bad polling questions are used to manufacture or shape public opinion rather than to measure or reflect it. The impact of the numbers on national conversations and deliberations on abortion rights and restrictions should not, and cannot, be ignored. Justices and legislators do not discount the public's attitudes on abortion when adjudicating and designing abortion laws.

For these reasons, I would like to present the major myths concerning polling on abortion and *Roe v. Wade*.

Myth: All Abortion Questions are Created Equal

Complex issues like abortion cannot be fully measured just on one dimension. It is irresponsible to simply ask “are you pro-life or pro-choice?” about an issue that includes religion, morality, science, medicine, politics, gender and law. All facets must be considered in order to reach a valid measure of opinion. Further, “choice” is a common word that represents a core American value that when presented alone, is difficult to disagree with for many Americans.

When we do ask that question, we compare it with an individual’s answers on other aspects of the abortion debate, such as mandatory waiting period and notification of parents or spouses. We find that many Americans who label themselves as “pro-choice” also favor limiting the availability of abortions.

When given a “this-or-that,” “black-or-white” option the data lean more pro-choice, Support for the pro-life camp appears when specific types or instances surrounding abortions are given, typically introduced on a graduated scale. Insightful abortion questions reveal that while most people will support abortion in some cases, a much smaller number support unfettered access to the procedure.

For example, CNN/ USA Today/ Gallup routinely ask if abortion should be illegal or legal under any, most or only a few circumstances. This certainly is a better way to ask the question than a simple “thumbs up or down,” given the natural progress of a woman’s pregnancy and maturity of a fetus over the nine months of pregnancy. That said, the choices presented do not help us deepen our understanding of what a respondent may have had in mind when she or he selected a particular position over the others.

“With respect to the abortion issue, would you consider yourself to be pro-choice or pro-life?”

53%	Pro-choice
42%	Pro-life
2%	Unsure
1%	Mixed/Neither (Vol.)
2%	Don’t Know What Terms Mean (Vol.)

CNN/ USA Today/ Gallup Poll (January 2006)
N=1,003 Adults nationwide MoE ± 3%

<p>CNN/ USA Today/ Gallup Do you think abortions should be legal only under any circumstances, only under certain circumstances, or illegal in all circumstances? [If legal only under certain circumstances ask:] Do you think abortion should be legal in most circumstances or only in a few circumstances?</p> <p>November 2005, N=1,006 Adults nationwide, MoE ±3%</p>	<table><tr><td>26%</td><td>Legal Under Any Circumstances</td></tr><tr><td>16%</td><td>Legal Under Most Circumstances</td></tr><tr><td>39%</td><td>Legal Only in a Few Circumstances</td></tr><tr><td>16%</td><td>Illegal in All Circumstances</td></tr><tr><td>3%</td><td>No Opinion (Vol.)</td></tr></table>	26%	Legal Under Any Circumstances	16%	Legal Under Most Circumstances	39%	Legal Only in a Few Circumstances	16%	Illegal in All Circumstances	3%	No Opinion (Vol.)
26%	Legal Under Any Circumstances										
16%	Legal Under Most Circumstances										
39%	Legal Only in a Few Circumstances										
16%	Illegal in All Circumstances										
3%	No Opinion (Vol.)										

For example, making a decision between “most” and “a few” circumstances may require the respondent to know factually what reasons women usually have abortions.¹ Even so, a plurality of adults (39%) believe that abortions should be legal only in “a few” circumstances. Respondents have no option but to hazard their best guess as to what each

¹ No public available polling data has been collected on the public’s knowledge and understanding of *Roe*.

answer choice means. We have no idea how those “few” or “most” circumstances translate to the average American.

The Alan Guttmacher Institute which collects national abortion statistics reports that the top three reasons for terminating pregnancies are: 1) having a baby would interfere with work, school or other responsibilities; 2) they cannot afford a child; 3) they do not want to be a single parent or are having problems with their husband or partner. A superior polling question might present these facts about the circumstances that lead to most abortions before asking those respondents to opine “under which circumstances” they would allow abortions.

Another example of a less-than-stellar abortion question comes from a NBC/ *Wall Street Journal* poll. Here the abortion issue is framed according to a conventional sound-bite of the abortion rights movement, asking if “the choice on abortion should be left up to the woman and her doctor?” Remarkably, only 55% agreed with that seemingly powerful statement. Still, the combination of the use of “choice” and mentioning a doctor, which suggests that the abortion may be medically necessary, swings a greater percentage of the public towards abortion on demand. Further, only one middle-of-the-road choice is offered: “legal only cases of rape/incest/risk to woman’s life.”

<p>NBC/Wall Street Journal “Which of the following best represents your views about abortion...The choice on abortion should be left up to the woman and her doctor, abortion should be legal only in cases in which pregnancy results from rape or incest or when the life of the woman is at risk, or abortion should be illegal in all circumstances.”</p> <p>May 2005, N= 1,005 Adults nationwide, MoE ±3.1%</p>	<table> <tr> <td>55%</td> <td>Should Be Left up to a Woman and Her Doctor</td> </tr> <tr> <td>29%</td> <td>Legal Only in Cases of Rape/Incest/Risk to Woman’s Life</td> </tr> <tr> <td>14%</td> <td>Illegal in All Circumstances</td> </tr> <tr> <td>2%</td> <td>Not Sure (Vol.)</td> </tr> </table>	55%	Should Be Left up to a Woman and Her Doctor	29%	Legal Only in Cases of Rape/Incest/Risk to Woman’s Life	14%	Illegal in All Circumstances	2%	Not Sure (Vol.)
55%	Should Be Left up to a Woman and Her Doctor								
29%	Legal Only in Cases of Rape/Incest/Risk to Woman’s Life								
14%	Illegal in All Circumstances								
2%	Not Sure (Vol.)								

Some questions even go so far as to leave out reasonable answer categories. CBS News in January of this year asked adults nationwide about their personal feelings on abortion without offering “not permitted at all” as a choice. The other side of the equation, “life,” and more specifically, the life or rights of the fetus, is excluded from the question altogether. Even with such an egregious omission, 5% volunteered this position.

<p>CBS News “What is your personal feeling about abortion? It should be permitted in all cases; It should be permitted, but subject to greater restrictions than it is now; It should be permitted only in cases such as rape, incest and to save the woman's life; It should only be permitted to save the woman's life.”</p> <p>January 2006 N= 1,151 Adults nationwide MoE MoE ±3%</p>	<table> <tr> <td>27%</td> <td>Permitted in All Cases</td> </tr> <tr> <td>15%</td> <td>Permitted But Greater Restrictions Than Now</td> </tr> <tr> <td>33%</td> <td>Permitted Only If Rape, Incest or to Save Woman’s Life</td> </tr> <tr> <td>17%</td> <td>Only Permitted To Save the Woman’s Life</td> </tr> <tr> <td>5%</td> <td>Not Permitted at All. (Vol.)</td> </tr> <tr> <td>3%</td> <td>Do Not Know (Vol.)</td> </tr> </table>	27%	Permitted in All Cases	15%	Permitted But Greater Restrictions Than Now	33%	Permitted Only If Rape, Incest or to Save Woman’s Life	17%	Only Permitted To Save the Woman’s Life	5%	Not Permitted at All. (Vol.)	3%	Do Not Know (Vol.)
27%	Permitted in All Cases												
15%	Permitted But Greater Restrictions Than Now												
33%	Permitted Only If Rape, Incest or to Save Woman’s Life												
17%	Only Permitted To Save the Woman’s Life												
5%	Not Permitted at All. (Vol.)												
3%	Do Not Know (Vol.)												

Accordingly, it seems fairer and more efficient to ask survey respondents about abortion by providing them multiple, graduated options and language from *Roe v. Wade* itself.² We have done this in our own work, and the results are telling.

In one such survey, the results to this question were: 16% believe that abortion should be “prohibited in all circumstances” and another 15% affirm that abortion should be legal only to save life of mother. Nearly one-quarter (24%) believes that abortion should be legal only in cases of rape, incest, or to save the life of the mother. Combined, more than half (55%) who favor stronger restrictions than are provided in *Roe v. Wade*. Twenty-one percent believe that abortions should be legal for any reason, but not after the first three months of pregnancy (using the Supreme Court’s language in *Roe v. Wade*). That leaves a remaining 7% who feel abortions should be legal for any reason, but not after the first six months of pregnancy and 9% who support legal abortions at any time, for any reason. In total, 16% of Americans decisively support the legal abortions of babies after the third month, or first trimester, of pregnancy.

<p><i>the polling company, inc.</i>TM/<i>Lake Snell Perry Associates</i> “Which of the following statements most closely reflects your position on the issue of abortion? Abortions should be prohibited in all circumstances; abortions should be legal only to save the life of the mother; abortions should be legal in cases of rape, incest or to save the life of the mother; abortions should be legal for any reason, but not after the first three months of pregnancy; abortions should be legal for any reason, but not after the first six months of pregnancy; abortions should be allowed at any time during a woman’s pregnancy and for any reason.”</p> <p>March 2005, N= 800 Adults nationwide, MoE ±3%, Split Sample</p>	16%	Prohibited in All Circumstances
	15%	Legal Only to Save Life of Mother
	24%	Legal Only in Cases of Rape, Incest, or to Save Life of Mother
	21%	Abortions Should be Legal for Any Reason, but not after the First Three Months of Pregnancy
	7%	Abortions Should be Legal for Any Reason, but not after the First Six Months of Pregnancy
	9%	Abortions Should be Allowed at Any Time, Any Reason
	9%	Don’t Know/ Refused (Vol.)

Americans consistently respond in a more “pro-life” manner when asked questions that provide graduated answer categories. In another poll conducted by **the polling company, inc.**TM/**WomanTrend**,³ (62%) of respondents chose one of the three pro-life positions in the survey, including prohibiting abortion under all circumstances (17%) or allowing it rare circumstances like saving the life of the mother (14%) or in cases of rape, incest, or to save the life of the mother (31%).

² Polling by **the polling company, inc.**TM/**Lake Snell Perry Associates** represents collaboration with Celinda Lake, who has been a pollster for the Democratic National Committee (DNC), the Democratic Governor's Association (DGA), EMILY’s List, The White House Project and Planned Parenthood among many others. These data appear in the book co-authored by Mrs. Conway and Ms. Lake. *What Women Really Want: How American Women Are Quietly Erasing Political, Racial, Class and Religious Lines to Change the Way We Live* (Free Press, October 2005).

³ This poll was commissioned by the National Right to Life Committee and The Susan B. Anthony List.

In contrast, 35% of respondents aligned themselves with one of the three pro-choice positions in the survey, the bulk of which would allow first-trimester abortions only (21%). An additional 4% would permit second trimester procedures. Notably, only 10% of Americans agree with abortion on demand, saying they support abortion for any reason at any time during a woman’s pregnancy. This number has declined sharply over the 33 years since *Roe v. Wade*, and certainly within the past 10 years since partial-birth abortion was introduced to the American consciousness.

<p><i>the polling company, inc.</i>™ “Which of the following statements most closely reflects your position on the issue of abortion? Abortions should never be legal; abortions should be legal only when the life of the mother is in danger; abortions should be legal only when the life of the mother is in danger or in cases of rape or incest; abortions should be legal for any reason during the first three months, abortions should be legal for any reason during the first three months, but not after the first six months of pregnancy; abortions should be legal for any reason at any time during a woman’s pregnancy.” (RESPONSES ARE ROTATED RANDOMLY)</p> <p style="text-align: right;">April 2005, N= 1,000 Adults nationwide, MoE ±3%</p>	17%	Abortion Should Never Be Legal
	14%	Legal Only When Mother’s Life in Danger
	31%	Legal Only in Cases of Rape, Incest, or Mother’s Life in Danger
	21%	Abortions Should be Legal for Any Reason During First 3 Months
	4%	Abortions Should be Legal for Any Reason During First 6 Months
	10%	Abortions Should be Legal at Any Time, Any Reason
	3%	Unsure/ Don’t Know/ Refused (Vol.)

Another myth about *Roe v. Wade* that is discredited through the polling data is that abortion is “a woman’s issue” and as such, is favored much more by women than men. This stereotype is played out by candidates of both major political parties many times during the average election cycle, especially when a male candidate attempts to “reach out to women.”

Yet, an examination of the cross-tabs from the aforementioned question reveals that women and young adults do not hold considerably more radical positions on abortion than the rest of the population. In fact, women were 4 points more likely than men to believe that “abortion should never be legal” (19%- 15%, respectively), while men were 4 points more likely than women to agree that “abortion should be legal for any reason at any time during a woman’s pregnancy” (12%- 8%, respectively).

Age variations were also evident in respondents’ positions regarding abortion. Groups aged 45-54 years old and 65+ were more likely than all other age groups to support prohibiting abortion under all circumstances. Young adults aged 18-24 were more likely than most to believe that “abortion should be legal only when the life of the mother is in danger or in cases of rape or incest” (36%- 31%). Respondents between the ages of 35-44 were 4 points more likely than the average respondent to be “pro-abortion” (39%- 35%) using the six-point scale.

It is also important to remember that while abortion is an important issue to many Americans; it is not the only issue of concern. When asked which issue was most

important in deciding how to cast a ballot in 2004, many other concerns trumped abortion in importance. The economy (14%), the War in Iraq (14%), Social Security and Medicare (10%) topped the list; abortion was the top voting priority for only 3% of adults.⁴

Myth: The Majority of the American Public Supports Roe v. Wade

The recent confirmations of Supreme Court Chief Justice John Roberts and Justice Samuel Alito have brought a considerable amount of attention to the 1973 *Roe v. Wade* decision. During the Judge Alito hearings, the soon-to-be Justice fielded at least 101 questions on abortion. That is nearly two-in-ten of the total (18%), and outnumbers the amount queries on any other topic.

“Would you like to see the Supreme Court make it harder to get an abortion than it is now, make it easier to get an abortion than it is now, or leave the ability to get an abortion the same as it is now?”

42% HARDER
45% SAME
11% EASIER
2% NO OPINION (Vol.)

ABC/ *Washington Post* (December 2005)
N=1,003 Adults nationwide MoE ± 3%

The American public, in contrast, seemed less concerned about Judge Alito’s position on abortion than the Senators holding the hearings and the press covering them. When asked: “How important is it to you that Alito agrees with your position on abortion?” in an ABC News/ *Washington Post* poll, a majority (55%) felt that it was of low importance.

In the same poll, Americans were asked if they would like to see the Supreme Court make it harder or easier to get an abortion than it is now, or keep availability the same. Only 11% favored relaxing abortion rules, while almost even percentages wanted the laws to be *more* restrictive (42%) or stay the same (45%).

Recent polling has reported that robust numbers of Americans agree with upholding *Roe*. In fact, as measured by a CNN/ *USA Today*/Gallup Poll, more adults were behind the ruling in early 2006 than in late 2005, potentially because of the emphasis on abortion in the John Roberts and Samuel Alito confirmations. However, their question is another example of irresponsible polling: “Turning to abortion: Would you like to see the Supreme Court overturn its 1973 *Roe versus Wade* decision concerning

“Turning to abortion: Would you like to see the Supreme Court overturn its 1973 *Roe versus Wade* decision concerning abortion, or not?”⁵

	Yes, Overturn	No, Do Not Overturn	Unsure
January 2006	25%	66%	9%
October 2005	28%	63%	9%

⁴ the polling company, inc.TM/ Lake Snell Perry Associates (March 2005) N= 800 adults nationwide, MoE ± 3% Published in *What Women Really Want: How American Women Are Quietly Erasing Political, Racial, Class and Religious Lines to Change the Way We Live* (Free Press, October 2005).

⁵ CNN/ USA Today/ Gallup Poll. N=1,006 Adults nationwide MoE ±3% .

abortion, or not?” No context is given, the public is supposed to know exactly what *Roe v. Wade* is along with the consequences of overturning it.

Unfortunately, omissions like those are the norm and when extra information is supplied it is often leading or incomplete. Some call *Roe v. Wade* a “landmark decision,” or say it “legalized abortion,” or “established a constitutional right for women to obtain legal abortions in this country” without specifying the restrictions provided in the ruling. Questions never give a complete understanding of the case or include language which would explain its ruling: states were not allowed to ban abortion during the first trimester, while regulations on abortion were legal in the last six months of pregnancy.

The Supreme Court legalized abortion 32 years ago in the ruling known as *Roe vs. Wade*. If that case came before the court again, would you want Alito to vote to uphold *Roe vs. Wade*, or vote to overturn it? *Same question asked in early November 2005*

12/05	11/05	
61%	64%	UPHOLD
35%	31%	OVERTURN
4%	5%	NO OPINION

ABC News/ *Washington Post*. (December 2005)
N=1,003 Adults nationwide MoE ±3%

In December 2005, ABC News/ *Washington Post* also asked the American public how they would want Alito to vote on the issue of abortion. Here, the question language suggests that overturning *Roe v. Wade* would outlaw abortion completely. Just over six-in-ten wanted Justice Alito to cast a ballot for upholding *Roe v. Wade* although that number decreased within the margin of error (61% v. 64%) in a month’s time. Measured in this manner, a majority of conservatives, Evangelicals and weekly churchgoers would support an Alito vote against the case. Registered Democrats and Independents and self-identified liberals and moderates, along with those who do not practice religion, non-Evangelical Protestants and those who rarely attend church were more likely than most to want Alito to uphold the controversial ruling.

Roe v. Wade	Uphold	Overturn
<i>All (December 2005)</i>	61%	35%
Women	64%	33%
Men	58%	37%
Democrats	70%	27%
Independents	69%	29%
Republicans	47%	47%
Liberals	73%	25%
Moderates	72%	26%
Conservatives	44%	50%
No religion	86%	12%
Catholic	59%	37%
Evangelical Protestant	42%	53%
Non-Evangelical Protestant	75%	22%
Weekly churchgoer	41%	54%
Monthly churchgoer	61%	36%
Less often/ never	78%	19%

However, there is a clear disjunction between the numbers of voters who support the specific provisions of the ruling and those who say they would like to see *Roe v. Wade* upheld. In 1973, Justice Blackburn concluded that abortion should be available in the first three months of pregnancy and that the states should be given the ability to regulate abortion in the final trimesters with respect to concerns about the woman’s health. When asked if abortion should be legal in terms of months like *Roe v. Wade* does, a combined

55% of Americans prefer at least some regulation of abortion in the first three months of pregnancy.⁶ It is imperative that polling questions go beyond the simple categorizations of “for or against.” Without clarification, many individuals may believe that overturning the 32- year-old ruling will outlaw abortion entirely.

Furthermore, *Roe v. Wade* specifically outlines broad provisions for exemptions well beyond rape, incest and saving the mother’s life, including claims of emotional, psychological and social health as well as the considerations of a woman’s age and station in life. In essence the ruling has left open the door for states to allow late-term abortions for almost any reason, despite the fact that majorities of voters in states where this question has been tested have echoed the sentiments of nationwide samples in calling for the outlawing of these late-term abortions altogether.

These sweeping allowances fly in the face of the vast majority of public opinion. In 2003, CNN/ *USA Today*/ Gallup Poll⁷ found that 68% of adults think that abortion should be illegal “in the second three months of pregnancy” and that number rises to an eye-popping 84% “in the last three months of pregnancy.” Let me stress how unusual it is for eight-in-ten Americans to agree on anything.

The American public is also clearly against abortions for economic reasons, as 61% say it should be *illegal* “when the woman or family cannot afford to raise the child.” Clearly, a careful interpretation of polling data demonstrates that fewer people support the tenets of *Roe v. Wade* than is suggested by an up or down, pro-life or pro-choice question.

Concluding Thoughts

The methodology and phraseology of public opinion polling on abortion should be as carefully considered as the results. In cases where the American public is given a fair chance to voice their opinions on the complex considerations associated with this issue, it is evident that most Americans do not support abortion on demand and the broad provisions outlined in *Roe v. Wade*. And it is unclear whether people even understand what *Roe* itself provides.

The need for responsible polling is amplified when, as here, the issue at hand is both complicated and changeable. Different things take place over the course of a pregnancy, and, thanks to the Internet and sonograms, most Americans are aware of that. If the underlying issue is not static, perhaps the public’s view of it is also non-static. This dynamism and openness should be present in any questions that deign to test the public’s impressions, opinions or expectations about it, particularly as those data shape public discourse and inform legislative action. Thank you.

⁶ the polling company, inc.TM/ Lake Snell Perry Associates (March 2005) N= 800 adults nationwide, MoE ± 3% Split Sample Published in *What Women Really Want: How American Women Are Quietly Erasing Political, Racial, Class and Religious Lines to Change the Way We Live* (Free Press, October 2005).

⁷ January 2003, N= 1,002 adults nationwide, MoE ± 3% .