



Civics is all around us. There is a lot to know about the government and how “We the People” interact with the government and each other. Let’s help each other expand our civic literacy.

On May 2, 2022, a [draft majority opinion](#) in the case of [Dobbs v. Jackson Women’s Health Organization](#) was leaked to the press. This controversial case already had the nation’s attention because the decision in the case has the potential to overturn [Roe v. Wade](#) (1973) and [Casey v. Planned Parenthood](#) (1993).

With a decision anticipated in late June, the leak of the draft majority opinion sparked a rare [rebuke](#) from the Chief Justice of the United States. In a written statement, Chief Justice John Roberts said,



Chief Justice John Roberts

“To the extent this betrayal of the confidences of the Court was intended to undermine the integrity of our operations, it will not succeed. The work of the Court will not be affected in any way.

We at the Court are blessed to have a workforce – permanent employees and law clerks alike – intensely loyal to the institution and dedicated to the rule of law. Court employees have an exemplary and important tradition of respecting the confidentiality of the judicial process and upholding the trust of the Court. This was a singular and egregious breach of that trust that is an affront to the Court and the community of public servants who work here.

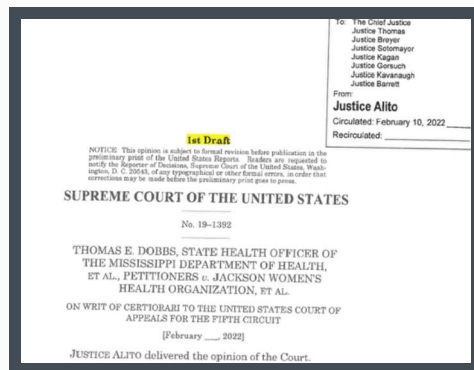
I have directed the Marshal of the Court to launch an investigation into the source of the leak.”

So, what happens after a case has been argued before the Supreme Court but before an official opinion is rendered? Why does a leaked draft opinion matter so much?

There is a long-standing tradition of confidentiality around the deliberation process of the Court. Known as the [conference](#), after a case is argued before the Court, the justices hold a preliminary vote to determine where each justice falls in deciding the case. In descending order, the junior associate justice begins the conference by explaining their reasoning behind their view of the case. Once every justice has shared their reasoning, a vote is taken. Based on that vote, a justice will be assigned to write a draft majority opinion. The chief justice typically chooses which justice will write the draft, however, the chief justice must be in the majority. If the chief justice sides with the minority, then the senior associate justice assigns the majority opinion. Currently, [Justice Clarence Thomas](#) is the senior associate justice. The justice assigned to write the draft majority opinion often consults with the other justices and amends their opinion based on suggestions. This fluidity highlights the importance of the opinion drafting process. Often, justices who fall in the minority write dissenting opinions, which outline their reasoning justifying why they disagree with the majority.

Based on the evolution of the draft majority opinion, [justices may change their vote and reasoning](#), potentially changing the outcome of the case. This means that a draft majority opinion could become a draft dissenting opinion. Or, a draft dissenting opinion could become a draft majority opinion. Historically, it is not until the decision is announced to the public that the case outcome becomes known.

Despite the shroud of confidentiality, the unprecedented leak of the draft majority opinion in [Dobbs](#) has implications for the Supreme Court and the nation. [While this is not the first leak to ever come from the Court](#), it is the first to showcase an entire majority decision prior to its public release. While there is little doubt the draft majority opinion will become the majority opinion, it is still important to highlight what is known about the conference and the ways in which the justices go about writing their draft opinions. As the Court’s Public Affairs Office stated after the leak, *“Justices circulate draft opinions internally as a routine and essential part of the Court’s confidential deliberative work. Although the document described in yesterday’s reports is authentic, it does not represent a decision by the Court or the final position of any member on the issues in the case.”*



To Think and To Do: Justice Ruth Bader Ginsburg said, *“at the Supreme Court, those who know don’t talk, and those who talk don’t know.”* What do you think Justice Ginsburg meant when she said this? Explain.

Learn MORE:

- [History of Supreme Court Leaks](#), from Slate



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