The Supreme Court: A look at when it has reversed decisions and why

WASHINGTON – Sometimes, when the Supreme Court reverses itself on an earlier decision – in some cases, decades earlier – there is a great to-do over what it means.

In truth, though, the high court reverses itself once a year on average. Not every reversal is a full reversal, and not every reversal is stated as such in the majority opinion. But scholars and other experts understand the impact of those decisions.

Only a relative handful of cases in which the Supreme Court reversed itself could be considered blockbusters. One is Brown v. Board of Education, the 1954 decision which ruled that the "separate but equal" provisions of state law as it was applied to public accommodations were unconstitutional. The case dealt with racial segregation in Kansas schools.

In that case the justices reversed a decision which by that time was 58 years old: Plessy v. Ferguson, in which Homer Plessy, a black man, intentionally boarded the "white" car of a Louisiana train to test the state's segregation law.

John Ferguson was the state judge who denied Plessy's claim for relief, ruling that Louisiana had the right to regulate railroad companies as long as they operated within state boundaries. Ferguson's decision was upheld by both the Louisiana Supreme Court and, in 1896, by the U.S. Supreme Court.

In 1992, the high court in a 5-4 decision refused to overrule Roe v. Wade in the Planned Parenthood v. Casey case, reaffirming its "central holding," but a 7-2 majority rejected Roe's "rigid trimester framework" and – upholding most provisions of a Pennsylvania law – said a state may enact abortion regulations that do not pose an "undue burden" on the pregnant woman.

"I'm not sure I agree that the court in Casey really reversed Roe even in part, but that's a quibble," said Richard W. Garnett, a professor at the University of Notre Dame School of Law in Indiana, in a July 1 e-mail to Catholic News Service.

The question remains as to what it would take for the Supreme Court to reverse Roe v. Wade.

“You’d have to write a book to answer what societal shifts would have to take place. I can’t answer that question,” said Jeffrey M. Shaman, the Vincent de Paul professor of law at De Paul University College of Law in Chicago.

“Regardless of societal shifts, there are some members of the court, who have been on the court for a while, who have always thought Roe v. Wade was an incorrect decision, and, societal shifts aside, were willing to overrule it. But there have always been at least five justices who … have always voted to adhere to Roe vs. Wade,” he said.

“I do know Roe v. Wade, and Casey in which the court affirmed Roe v. Wade and invoked ‘stare decisis,’“ or “the decision stands,” said Mary-Rose Papandrea, an assistant professor at the Boston College Law School.

The court “invokes ‘stare decisis’ when it wants to and ignores it when it wants to,” she told CNS in a June 30 telephone interview. “It’s very convenient when it serves your purposes.”

The justices have been reluctant to narrow the scope of rights granted to citizens. In Roe v. Wade, she said, “broader societal reliance” likely colored the court’s judgment. Whatever the merits of Planned Parenthood v. Casey, Papandrea said, “society had come to rely on the availability of abortions and it became a bigger women’s rights issue.”

Both Papandrea and Shaman cited the Supreme Court’s reversal of itself in the 2003 Bowers v. Hardwick case, which overturned a 1986 high court decision ruling that states could pass laws forbidding certain kinds of sexual acts between consenting adults, as an expansion of individual rights.

Both professors noted how the Supreme Court most often overturns itself on cases related to business regulation. One business case Shaman cited bore hallmarks of societal shifts: United States v. Darby in 1941, in which case the justices reversed their 23-year-old decision in Hammer v. Dagenhart, which permitted child labor. The

number of adults thrown out of work by the Depression and a decade-long economic downturn prompted the reversal.

The justices could flex those muscles again after it ordered a rehearing in September on the McCain-Feingold campaign finance law on some of its First Amendment principles, also the subject of a 2003 high court ruling.

“There really is no hard-and-fast rule regarding the court’s ability to reverse, abandon, narrow, or expand its precedents,” Garnett said. “We are stuck with the court’s various explanations for why they do, or do not, do so in particular cases.”

“The court can overrule itself by a 5-4 vote,” Shaman said, adding that the justices may feel more comfortable about reversing an earlier ruling if the majority were larger. “I imagine that they would try to convince some of the other justices to go along with it, or some justices may decide not to vote for a ruling if it’s only going to be by a 5-to-4 decision.”

Asked to come up with a Supreme Court ruling that merited the high court reversing itself, Shaman had to think for a few minutes before offering, “Bush v. Gore, where the Supreme Court absconded with the vote of the people. …The court overruling it now would be futile.”