Abortion Rights

Dobbs v. Jackson Women's Health Organization

United States Supreme Court

(5 – 1 - 3)

2022


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Justice Samuel Alito

(1908 - 1999)

Samuel Alito

Issues

Is Roe v. Wade still constitutional?

Is there a Constitutional right to abortion?

Is there a Constitutional right to privacy?

Can abortion be meaningfully tied to fetus viability?

Background

- The State of Mississippi adopted the Gestational Age Act in 2018 prohibiting abortions after 15 weeks.
- At the time the only one health facility in the state offering abortion services was a Jackson Women's Health Organization in Jackson, Mississippi.
- The law was enacted for the express purpose of challenging Roe v. Wade.
- Anti-abortion forces hoped that the new conservative majority on the Supreme Court was ready to reconsider the 50 year old decision.

Gestational Age Act § 41-41-191

Mississippi 2018

Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform, induce, or attempt to perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.

Basic Facts

- Jackson Women's Health Organization and one of its doctors filed a lawsuit in federal district court challenging the law.
- The district court enjoined Mississippi from enforcing the law in accordance with Supreme Court precedents (Roe v. Wade).
- The U.S. Court of Appeals for the Fifth Circuit affirmed.

The Majority Opinion

For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens.

Then, in 1973, this Court decided *Roe v. Wade*.

Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one.

The Majority Opinion

We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of Roe… now chiefly rely—the Due Process Clause of the Fourteenth Amendment.

It is time to heed the Constitution and return the issue of abortion to the people's elected representatives. . . .

The Majority Opinion

Stare decisis, the doctrine on which *Casey*'s controlling opinion was based, does not compel unending adherence to *Roe*'s abuse of judicial authority. *Roe* was egregiously wrong from the start.

The Constitution makes no express reference to a right to obtain an abortion, and therefore those who claim that it protects such a right much show that the right is somehow implicit in the constitutional text…

The Majority Opinion

In interpreting what is meant by the Fourteenth Amendment's reference to 'liberty,' we must guard against the natural human tendency to confuse what the Amendment protects with our own ardent views about the liberty that Americans should enjoy.

Instead, [we must be] guided by the history and tradition that map the essential components of our Nation's concept of ordered liberty…

The Majority Opinion

[A] right to abortion is not deeply rooted in the Nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973 . . .

The Majority Opinion

[T]o ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion . . .

From the Kavanaugh Concurrence

[This ruling will not] affect other precedents involving issues such as contraception and marriage—in particular, the decisions in *Griswold v. Connecticut* . . . , *Eisenstadt v. Baird* . . . , *Loving v. Virginia* . . . , and *Obergefell v. Hodges* . . .

I emphasize what the Court today states: Overruling *Roe* does not mean the overruling of those precedents and does not threaten or cast doubt on those precedents.

From the Clarence Thomas Concurrence

[I]n future cases, we should reconsider all of this Court's substantive process cases, including Griswold, Lawrence and Obergefell.

Because any substantive due process decision is "demonstrably erroneous", we have a duty to "correct the error" established in those precedents . . .

From the John Roberts Concurrence

I would take a more measured course… [T]he viability line established by *Roe* and *Casey* …never made any sense.

Our abortion precedents describe the right at issue as a woman's right to choose to terminate her pregnancy. That right should therefore extend far enough to ensure a reasonable opportunity to choose, but need not extend any further— certainly not all the way to viability.

I see no sound basis for questioning the adequacy of that opportunity.

The Breyer/Sotomayor/Kagan Dissent

The right *Roe*… recognized does not stand alone. To the contrary, the Court has linked it for decades to other settled freedoms involving bodily integrity, familial relationships, and procreation.

Most obviously, the right to terminate a pregnancy arose straight out of the right to purchase and use contraception. In turn, those rights led, more recently, to rights of same-sex intimacy and marriage.

Either the mass of the majority's opinion is hypocrisy, or additional constitutional rights are under threat. It is one or the other.