
The Dobbs Opinions Summarized

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Majority Opinion

- Roe and Casey must be overruled because they are “egregiously wrong” and “deeply damaging” because they limited the options of people opposed to abortion
 - Stare Decisis is not an “inexorable command,” and at its weakest when the Court interprets the Constitution
 - Why are Roe and Casey “egregiously wrong”?
 - No right to abortion in Constitutional text
 - Abortion not protected as a fundamental “liberty” right because right to abortion not “deeply rooted” in English or US common law; in 1868 when 14th Amendment adopted, majority of states criminalized abortion (and its irrelevant that the motives for the bans may have been to enforce women’s “natural maternal role,” and increase white middle and upper class birthrate in response to increased immigration)
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Majority opinion con't

- Roe and Casey also “egregiously wrong” because viability line is a legislative judgment/judicial policymaking; how to balance the interests of a fetus against the interests of a “mother” is also a legislative judgment
 - Roe and Casey “inflamed national politics”
 - They have proved to be “unworkable” because lower courts (and Supreme Court Justices) have differed on applying the “substantial burden” standard to differing factual situations
 - No “concrete” reliance interest by women on this “intangible” right--unlike when economic or property rights at stake. Getting an abortion is “unplanned activity;” yet going forward women can engage in “reproductive planning” to take account of abortion no longer being an option. (the “planned” unplanned pregnancy, rape, fetal anomaly or dire health risk that arises during pregnancy???)
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Majority Forecloses Equal Protection Challenges to Abortion Bans

Majority reaches out to address equal protection/women's equal citizenship arguments raised by amici, but not raised by parties

- Equal protection arguments “squarely foreclosed by our precedents” – *Geduldig v. Aiello* (1974) held that distinctions based on pregnancy are NOT based on sex
 - Women have political power and can exercise it to influence abortion laws – so not a “discrete and insular minority” in the *Carolene Products* sense
 - Changes in law and society since 1973 mean that women no longer disadvantaged by pregnancy: no more stigma to unwed pregnancy; affordable health insurance available; laws against pregnancy discrimination; family and medical leave (unpaid)
 - Going forward abortion legislation will be evaluated – like any other economic or medical regulation – under rational basis review, ie. did the legislature have some rational basis for the choice it made? Notes that a preference to protect fetal life will always be a rational basis
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Majority Tries to Reassure that Other Privacy/Liberty Precedents Not Affected

- Roe relied on cases finding a privacy/intimate association liberty right to use and get information about contraception (Griswold and Eisenstadt) and to procreational choice (Skinner – forced sterilization)
 - Later cases relied on Roe, Griswold, etc. to find liberty right to consensual “sodomy” (Lawrence v. Texas) and to same-sex marriage (Obergefell)
 - Dobbs majority says their decision does not call these other privacy rights into question because “abortion is different” – it destroys “potential life” and an “unborn human being”
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Kavanaugh concurrence

- Constitution is “neutral” on abortion because it is not explicitly mentioned; overruling Roe and Casey and returning abortion question to legislatures “restores the Court and the Constitution to a position of neutrality”
 - Agrees that the Constitution does not “freeze” our rights to those recognized in 1791 or 1868, but the proper way to recognize new rights is through legislative or constitutional amendment processes. It is through those practices of “democratic self-government that we end national division on contentious issues
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Roberts Concurrence

- Concurs in result – upholding MS post-15 week abortion ban – but does not concur in overruling of Roe and Casey
 - Judicial restraint says we should decide only the narrow question presented to us – whether the viability line of Roe and Casey is constitutionally required
 - An incremental approach, continuing the “chipping away” at Roe and abortion access.... Expressing hope that each “chip” will help get the public better prepared if eventually the Court has to take a case presenting the ultimate question of whether to overrule completely
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Thomas concurrence

- Griswold, Lawrence, Obergefell are all “fundamentally erroneous” and all the privacy/liberty cases should be overruled
 - There is no such thing as “substantive due process” – the Due Process clause is about Process/procedure, not the substance of any rights
 - Only specifically enumerated rights should be protected by the Constitution – recognizing any rights that are not specifically mentioned in the Constitution is inevitably judicial policymaking
 - A “right to an abortion is ultimately a policy goal in desperate search of a shifting constitutional justification,” from bodily integrity, to women’s equal citizenship, to personal autonomy in matters of family and medical care.
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The Dissent – jointly written by Breyer, Kagan, and Sotomayor

- Roe and Casey respected women as autonomous beings, and recognized that granting women full equality means giving them substantial choice over this most personal and consequential of all life decisions
 - Roe and Casey struck a balance between women's interests and state interests; constitutional balancing tests are not illegitimate, rather are essential and often used when rights, values and goals conflict
 - Majority decision is not neutral –it means the state can force a woman to bring a pregnancy to term even at the steepest personal and familial costs ... and this means that “a woman has no rights to speak of.”
 - Toothless rational basis test will permit all sorts of restrictions, which will fall hardest on poor women who cannot fly to distant states
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Dissent, cont

- Notable for its extensive discussion of impact on women and their families, chastises the majority for ignoring the practical impact on women
 - “Fundamentally disagrees” with majority on application of stare decisis factors; contends that people have relied on knowing they have the right to make a hugely consequential life decision
 - Majority is using history inconsistently (comparing Bruen, NY concealed carry gun case) and cherry picking only that history supportive of its predetermined preferred outcome
 - Majority is intellectually dishonest when it says rights to contraception, sexual intimacy, and same sex marriage are not at risk: Griswold, Lawrence, Obergefell “are all part of the same constitutional fabric” and none of these other rights are deeply rooted in history – they have been illegal for as long or longer than abortion
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