

MORE THAN DOBBS V. JACKSON WOMEN'S HEALTH ORGANIZATION: VOICE CRYING OUT IN THE WILDERNESS

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Abstract

The United States Supreme Court decision *Dobbs v. Jackson Women's Health Organization* corrected *Roe v. Wade*, a problem existing for almost half a century (forty-nine years) in the usurpation of power in abortion jurisprudence in the United States. *Roe* had arrogated to the federal court the final say on this 'police power,' legalizing abortion effectively through all nine months of pregnancy—representing, among other things, both an abuse of judicial power and a violation of federalism. *Dobbs* returned the question to the states. Anger has arisen as a result of overturning *Roe*, of a kind similarly seen by the pro-life camp at the time of *Roe*'s enactment. For years on end, *Roe* has shown itself to be an unresolved question and the root of growing hostility. Despite the concessions of many in *Roe*'s favor that abortion is an issue 'rightfully belonging to the states, according to the division of power between state and federal government,' the public insists *Dobbs* was purposed in a 'step back for women's rights,' and in doing so expose themselves as ignorant, evil, or both. While the question of federalism and state's rights continues to amass attention in legal circles debating these things, an important element has been ignored, namely morality. Inasmuch as one can appreciate the discussions concerning constitutional law, they cannot be separated from the implications of permitting *even* states the exercise of judgment on the permissibility of abortions and its cut-off time. Not only

is this detachment frightening, but also the disassociation, rhetoric, and deviation that has captured this younger generation of Americans. As are the efforts to silence those dissenting concerning, with the consequences of past's atrocities serving as sufficient evidence for why. Abortion itself is rooted in a much greater problem than is realized today, its connections tracing back to the not-so-long-ago 'primitive' practice of infanticide and child murder. Moreover, as time has progressed, there has been a shift in the attitudes towards human beings—of all ages and classes—as persons no longer deserving of the same nurture, care, and respect. This is true of beliefs surrounding the applicability of Darwinism and Eugenics. Conception, when life begins, happens to be the most practical place to begin. The decision delivered by Justice Samuel Alito, for which so many protest, finds its place in the context of a combination of influences of individuals, events, and movements. The conflict between these two radically different positions on abortion, both wrong, warrants deliberation. We ought to revert to the Biblically mandated order of God in our consideration of such individuals as persons, as opposed to imperfectly rendering decisions based on feelings, emotion, and 'reason' of what law holds precedence. *Roe*, *Planned Parenthood of Southeastern Pennsylvania v. Casey*—a case virtually obliterating *Roe*, applying a different standard of review, meanwhile upholding its essential ruling—and *Dobbs*, together form part of the most important Supreme Court cases in relation to abortion (an unfortunate reality). For reasons other than law, people point to various reasons why abortion should continue to receive protection—constitutional or otherwise. *Dobbs*, reinvigorating the never-settled passions of people, afforded the ripe situation ideal for a thorough analysis.

The founding of this nation and its contributions to the greatness we have for so long enjoyed stem from an understanding that some laws supersede others. From the Revolutionary War to notable acts of civil disobedience, it has been widely accepted that some laws, for their unjust or wrongful nature, are simply ones that should not be followed. Such is the direction of the Bible, foretelling the disaster of humanity and the struggle for righteousness to prevail over those of evil. This, then, the problem and

pandemic of abortion, must be viewed through the Bible’s lens, for it is only by doing so that we recognize these preborn persons as the overlooked we are responsible to (as Proverbs 24:11 says) “rescue from being taken away to death.” We have reached a point where we argue these matters on an intellectual basis or purely on misinformation, all the while failing to recall that each one is worthy of dignity. Without exception, the preservation of life must be prioritized. Now and forever, it is never justified to murder an innocent preborn human being in the womb.

Introduction

The divide between pro-lifers and abortion advocates on the question of abortion is one of the greatest and most contentious debates in America right now. Existing without recourse from the inception of the Supreme Court decision *Roe v. Wade* (1973),¹ almost fifty years later, Christians, Conservatives, Republicans, and many others, have found some relief in *Dobbs v. Jackson Women’s Health Organization* (2022).² Contrastingly, since *Dobbs* found its way on the Court’s docket (and its leak on May 2, 2022),³ individuals of professions and backgrounds of all kinds have

¹ *Roe v. Wade*, 410 U.S. 113 (1973).

² *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392, slip op. (U.S. June 24, 2022).

³ An underpublicized event, where a significant portion of one of *Dobbs*’ first drafts was leaked by one of the Court’s own to Politico—likely for the purpose of mobilizing lobbyists, petitioners, and organizations to respond. Little attention was paid to this historically unimaginable event. Even now, this has been of little concern. See Read Justice Alito’s Initial Draft Abortion Opinion Which Would Overturn *Roe v. Wade*, POLITICO (May 2, 2022), <https://www.politico.com/news/2022/05/02/read-justice-alito-initial-abortion-opinion-overturn-roe-v-wade-pdf-00029504>. See also Amy Howe, *Supreme Court Investigators Fail to Identify Who Leaked Dobbs Opinion*, SCOTUSBLOG (Jan. 19, 2023, 4:25 PM), <https://www.scotusblog.com/2023/01/supreme-court-investigators-fail-to-identify-who-leaked-dobbs-opinion/> and Ramon Antonio Vargas, *Brett Kavanaugh Assassination Plot: Man Indicted*, THE GUARDIAN (June 15, 2022),

already been at pen to paper (or more accurately to phones and computer screens) writing to the world of their abhorrence of, what they feel, a terrifying consequence for ‘women’s rights.’ Indignation has reached its peak, expressed in and by various public forums, popular search results, and influential figures.⁴ From policy to educational institutions to social media, we are overwhelmed with the dishonesty and hatred of Liberals and Democrats in America,⁵ “those who hate the one who . . . tells the truth.”⁶ We are in a dangerous period of time, a pivotal point in history, with censorship by various platforms and news agencies a growing concern—the internet age significantly altering how it is that we perceive others and go about our lives. While many have already begun to undertake studies and investigations on what President Joe Biden deems an “outrageous”⁷ decision, this paper discusses and uncovers the truth, what few know or dare say about *Dobbs*. Opposition to the belief that ‘choice’ outweighs the value of the preborn is severely unpopular, a position severely underrepresented in mainstream media, and it is with this purpose of rectification that this paper is undertaken. Despite the apparent liberal bias shared by various media outlets and influential individuals, the neglect of integrity, moral courage, and understanding of the sanctity of life—I write, purposefully and intentionally, to express

<https://www.theguardian.com/us-news/2022/jun/15/brett-kavanaugh-assassination-plot-man-indicted>.

⁴ See generally Savannah Roberts, *Celebrity Reactions to Roe v. Wade: Olivia Rodrigo, Billie Eilish, Taylor Swift & More*, CAPITAL FM (June 27, 2022, 15:18), <https://www.capitalfm.com/news/celebrity-reactions-roe-v-wade-olivia-rodrigo-billie-eilish-taylor-swift/>; Danielle Cohen, *Celebrities and Politicians React to the End of Roe*, THE CUT, <https://www.thecut.com/2022/06/celebrities-politicians-reactions-dobb-end-of-ro.html> (last modified June 26, 2022).

⁵ See generally *John* 15:18.

⁶ *Amos* 5:10. See generally *1 Corinthians* 1:18 and *Galatians* 4:16.

⁷ *Remarks by President Biden in Press Conference | Madrid, Spain*, THE WHITE HOUSE (June 30, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/06/30/remarks-by-president-biden-in-press-conference-madrid-spain/>.

gratitude for what my prayers and that of Christians all over the nation⁸ resulted in—a win for the preborn, a win for life.

In this article, I set out to demonstrate the *Dobbs* decision but one step in the right direction with respect to abortion. *Roe* created a deep wound in our country, simultaneously confirming man’s capacity to do evil. Apart from the law, many other cogs were and are at work. Beginning by defining terms, I explain what the abortion ‘procedure’ actually is and state the landscape of the main positions within the pro-abortion camp. This is succeeded by an outline of the history that has led to and supported the belief that the status of personhood is conditional upon one’s say-so—both overtly, as with human sacrifices—and incrementally, with theories and experimentation. These underlying sentiments continue to provoke mobilization through people and their propositions today—only in (apparently) unnoticeable ways.⁹ Discussion is devoted in some degree to two conversely related dispositions to reality—namely, the Bible and secularism,¹⁰ and what contributions each has made, throughout. Finally, a look at the law governing abortion jurisprudence right now, to whom this power belongs, what Court cases have said, and why they are insufficient as they are and unreasonable for its expectations—not addressing the materiality of an abortion. If not already evident—this paper seeks to condemn the practice of abortion and its adamant defense. I conclude with the argument that abortion must be outlawed nationally, the Bible serving as the foundation for this judgment.

Abortion Procedure: What is Abortion?

Abortion is the intentional expulsion of a human fetus with the purpose of ensuring its inability to reach maturity. It is when a pregnancy is ended

⁸ See generally *Matthew* 5:13-16 (Christians are the salt that keeps the world from spoiling).

⁹ See generally *Ecclesiastes* 1:9.

¹⁰ See generally *Psalms* 14:1; 33:12 (it is foolishness; secularism is not a neutral worldview).

so that it does not result in the birth of a child.¹¹ It is a means of denying life to humans, murder¹²—distinct from ‘killing’ for its calculated nature and the innocence of the victim.¹³ Biblically and in reality, this is evil, demonstrative of wickedness, depravity, those of a debased mind,¹⁴ and a failed society.¹⁵ A common point of debate has been the acceptable cut-off time, namely the point in the pregnancy where it is deemed unacceptable—medically, morally, and personally—that an abortion be performed. In other words, where to draw this line.

The human body is characterized by uniformity—each neuron, bone, and organ—with observable, objective differences in the anatomy of the man and the woman.¹⁶ Design is evident. The womb is unique in that its sole role is to support and sustain the growth and maturation of a fetus. For its degree of dependence, size, and location—purely for reasons that they cannot be seen and are unable to ‘prove’ their worth¹⁷—the preborn are left designated to the lowest rungs of society, deemed not to possess the qualities requisite to value. From the moment of fertilization or *conception*,¹⁸ all the biological components of a human being are present: DNA, sex, eye color, and other characteristics already determined. ‘Life begets life’; the rapid cell multiplication and regeneration cannot be attributed to anything else. Placing emphasis on the fetus’ ability to survive outside the womb, *viability*,¹⁹ is inconsistent at best and a far

¹¹ *Abortion*, PREGNANCY BIRTH & BABY,

<https://www.pregnancybirthbaby.org.au/abortion> (last visited Mar. 30, 2023).

¹² See *Exodus* 20:13.

¹³ See generally *Exodus* 23:7.

¹⁴ See generally *Romans* 1:28-32.

¹⁵ See generally *2 Kings* 8:12.

¹⁶ See generally *Genesis* 1:27.

¹⁷ But see *Psalms* 8:2.

¹⁸ Any other ‘line’ is arbitrary. See *infra* note 137. See generally *Exodus* 21:22-25 and compare *Luke* 1:41-44 with *John* 1:23.

¹⁹ The point is now measured at twenty-two weeks or five months; in 1973, it was twenty-eight weeks or seven months. See *Roe v. Wade*, 410 U.S. 113, 163 (1973). See also Annie Sinsabaugh & Meghna Chakrabarti, *The Question of Fetal Viability and*

worse assessment than the previous, already poor *quickenings* standard held in the 1800s.²⁰

Of the existing abortion procedures employed in America, there are four that are most common.²¹ These are divided into three stages or *trimesters*. The framework now in use, divided by one to twelve weeks;²² thirteen to twenty-seven weeks; and twenty-eight weeks to birth, respectively, consists of the temporal restrictions abortion—a blind procedure—is based on.²³ Procedures Chemical Abortion Pill, Suction Dilation and Curettage (D&C), Dilation and Evacuation (D&E), and Early Labor Induction apply on the basis of the fetal gestational development period, with the first two types exclusive to the first trimester. As of 2016, second-trimester abortions (then fourteen to twenty-four weeks or three to six months)²⁴ were recorded at 88% of all abortions, by far the most common. According to more recent statistics by the Centers for Disease Control and Prevention, it is now responsible for 6% or 37,220 preborn

How it's Changing the Abortion Debate, WBUR (Dec. 14, 2021), <https://www.wbur.org/onpoint/2021/12/14/how-a-mississippi-supreme-court-case-is-changing-the-abortion-debate>.

²⁰ Roughly sixteen to eighteen weeks or four months. *See infra* Section, The 1800s in America.

²¹ *See Aspiration Abortion*, ABORTION PROCEDURES, <https://www.abortionprocedures.com/aspiration/> (last visited Mar. 29, 2023) (a visual representation of each of these procedures).

²² Beginning on the first day of the last menstruation period (LMP).

²³ This was created and established in *Roe v. Wade*, now how the stages of gestation are most commonly differentiated.

²⁴ With the increasing advancements in medical technology it is now possible to support fetuses at younger gestation periods, begging the question of why it is when the fetus can survive outside of the womb that the trimester framework is constructed around.

babies,²⁵ 93% occurring in the first trimester (576,905 a year).²⁶ This, however, is to be expected with the heightened use of other forms of contraceptives, the advent of ‘more effective’ readily accessible birth control, and the proclivities to dispose of any sign of life at the onset of its manifestation. The increased awareness of sex and its consequences, too, is a contributor.

The first-trimester abortion, Suction Dilation and Curettage, is typically done using a suction device (a powerful vacuum). If the fetus is twelve weeks old or less—the width of the hand or smaller—the entire procedure is done using this instrument. The fetus is so small that its limbs and head break apart easily, often disposed of with trash.²⁷ The second-trimester abortion, Dilation and Evacuation, is more involved, also known as dismemberment abortion. In this procedure, a tool called a Sopher clamp (a grasping instrument with rows of sharp ‘teeth’; eleven inches long with twelve millimeter wide jaws) is inserted into the cervix following dilation

²⁵ Katherine Kortsmit et al., *Abortion Surveillance—United States, 2020*, SURVEILLANCE SUMMARIES 1–27 (Nov. 25, 2022), <https://www.cdc.gov/mmwr/volumes/71/ss/ss7110a1.htm#:~:text=The%20annual%20number%20of%20deaths>.

²⁶ Jeff Diamant & Besheer Mohamed, *What the Data Says about Abortion in the U.S.*, PEW RESEARCH CENTER (Jan. 11, 2023), <https://www.pewresearch.org/fact-tank/2023/01/11/what-the-data-says-about-abortion-in-the-u-s-2/>.

²⁷ See generally *Doe No. 1 v. Attorney General of Indiana*, No. 1:20-cv-03247-RLY-MJD. See also *Images of Aborted Babies—Retrieved from the Trash Dumpster Behind the Abortion Mill*, PRIESTS FOR LIFE, <https://www.priestsforlife.org/graphic-images/index.aspx?gid=6&sid=17> (last visited Mar. 28, 2023) (an organization frequently searching for and properly burying the remains of fetuses); Monica Miller, *Aborted Baby Found in the Trash, and a Last Work of Mercy*, CRISIS MAGAZINE (July 16, 2021), <https://www.crisismagazine.com/opinion/aborted-baby-found-in-the-trash-and-a-last-work-of-mercy>; Kristi Burton Brown, *Fetal Disposition: The Abuses and the Law*, LOZIER INSTITUTE (Dec. 6, 2016), <https://lozierinstitute.org/fetaldisposition/>; *Justice for the Five*, PROGRESSIVE ANTI-ABORTION UPRISING, <https://paaunow.org/justiceforthefive> (last visited Mar. 29, 2023) (viewer discretion is advised).

and repeatedly used to grab limbs—arms and legs one at a time—and tear apart spine, intestines, heart, lungs, and tissue. The abortionist then crushes the skull and pulls the shards out; “sometimes a little face comes back and stares . . . at you.”²⁸ They know they have successfully done so if a white substance leaks out of the cervix—this would be the brain. Finally, limbs are counted for inventory to ensure the mother²⁹ does not later develop an infection.

Third-trimester abortions, as rare as they are claimed to be, have remained a steady 1-1.4% annually throughout the last couple of years, for reasons no different than that given for abortions in earlier terms of pregnancy.³⁰ The late-term abortion procedure Early Labor Induction consists of injection and stillbirth. This procedure, the baby at this point viable (able to survive outside of the womb) and almost fully formed,³¹ takes roughly three to four days to complete. First, a chemical, digoxin (potassium chloride), is administered via injection through the abdomen or cervix into the baby’s head, torso, or heart. Digoxin is helpful for treating heart conditions, but high dosages, as is true for both abortions

²⁸ *Dr. Anthony Levatino’s Testimony*, C-SPAN (May 23, 2012), <https://www.c-span.org/video/?c4554570/user-clip-dr-anthony-levatinos-testimony>. See also *Planned Parenthood Exposed: Examining Abortion Procedures and Medical Ethics at the Nation’s Largest Abortion Provider*, Testimony of Anthony Levatino, MD, JD before the Comm. on the Judiciary, U.S. H.R., (Oct. 8, 2015), <https://docs.house.gov/meetings/JU/JU00/20151008/104048/HHRG-114-JU00-Wstate-LevatinoA-20151008.pdf>.

²⁹ To call such women ‘mothers’ is merely appropriately identifying and acknowledging the existence of the baby—regardless of the fact that they participated in and assisted their execution.

³⁰ See *Abortions Later in Pregnancy*, KFF (Dec. 5, 2019), <https://www.kff.org/womens-health-policy/fact-sheet/abortions-later-in-pregnancy/>.

³¹ See *Embryonic Development*, UNSW EMBRYOLOGY, https://embryology.med.unsw.edu.au/embryology/index.php/Embryonic_Development (last visited Mar. 31, 2023).

and criminals for the death penalty,³² force the individual into cardiac arrest. (Sometimes more than one is administered due to the baby’s size and strength.) The baby then dies, and laminaria (dehydrated seaweed) is inserted into the cervix for dilation. Following a two-day period wherein the mother carries around her dead child, she typically delivers the baby into a toilet.³³ In each of these procedures, adverse complications, both short- and long-term risks, are likely to result—particularly hemorrhage, lacerations, uterine perforations, infection, excessive bleeding, maternal death, and greater risk of loss for future pregnancies due to abortion-related trauma to uterus and cervix.³⁴

Abortion in the U.S. Today

Individuals professing adherence to *Roe*’s judgment—that a woman has a constitutionally protected choice to have an abortion up until the point of viability, based on the ‘right of privacy’—are unknowledgeable as to its absurdity. Society has become increasingly ‘women-centered,’ with abortion reduced to an event paraded around the streets with signs. It is an indicator or measure of who belongs to the ‘in-group’ and who is ‘woke.’ When the pattern of an unquestioning and uncritical attitude is extrapolated to society, we see pessimism to be reasoned. Ideas on abortion have evolved from arguments stating it to be a minority view (‘safe, legal, and rare’³⁵), not a question worth delving into (“We are not

³² See *Overview of Lethal Injection Protocols*, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/executions/lethal-injection/overview-of-lethal-injection-protocols> (last visited Mar. 11, 2023).

³³ See *supra* note 28.

³⁴ *Supra* note 21. See also Karima R. Sajadi-Ernazarova & Christopher L. Martinez, *Abortion Complications*, NATIONAL LIBRARY OF MEDICINE, <https://www.ncbi.nlm.nih.gov/books/NBK430793/> (last modified May 23, 2022).

³⁵ See William J. Clinton, *Message to the House of Representatives Returning Without Approval Partial Birth Abortion Legislation*, THE AMERICAN PRESIDENCY PROJECT (Apr. 10, 1996), <https://www.presidency.ucsb.edu/documents/message-the-house-representatives-returning-without-approval-partial-birth-abortion-0>; Bill Clinton, *Safe,*

deciding questions about the value of life before birth”³⁶), and claims that if it were discovered that it was responsible for taking life, laws securing their protection would be upheld (see *Analysis*). It was long held an insane notion that anyone should believe women—*mothers*—desired to murder their babies for whatever reason.³⁷ What life means has been distorted,³⁸ susceptible to majority whims and interests. Following *Dobbs*, President Biden said the following:

This fall, *Roe* is on the ballot. Personal freedoms are on the ballot. The right to privacy, liberty, equality, they’re all on the ballot. Until then, I will do all in my power to protect a woman’s right in states where they will face the consequences of today’s decision.³⁹

Now discriminatory when it comes to who enjoys this ‘privilege,’ law is no longer reflective of reason. In contrast, President Joe Biden previously expressed as a Senator only sixteen years ago:

I do not view abortion as a choice and a right. I think it’s always a tragedy, and I think that it should be rare and safe, and I think we should be focusing on how to limit the number of abortions. There ought to be . . . a common ground and consensus [on how] to do that.⁴⁰

Legal, and Rare, C-SPAN (Jan. 22, 1993), <https://www.c-span.org/video/?c4823633/user-clip-bill-clinton-january-22-1993-safe-legal-rare>.

³⁶ *Roe*, 410 U.S. at 159.

³⁷ *Id.* at 153.

³⁸ *See generally* *Isaiah* 5:20.

³⁹ *Remarks by President Biden on the Supreme Court Decision to Overturn Roe v. Wade*, THE WHITE HOUSE (June 24, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/06/24/remarks-by-president-biden-on-the-supreme-court-decision-to-overturn-roe-v-wade/>.

⁴⁰ Rebecca Klar, *Biden Says He Doesn’t See Abortion ‘as a Choice and a Right’ in Unearthed 2006 video*, THE HILL (June 13, 2019),

He said, moreover, that the Court went too far in *Roe*, not believing “a woman has the sole right to say what should happen to her body.”⁴¹

The political spectrum of Right and Left, Republican and Democrat, respectively, has faced a tremendous transformation in terms of belief systems and ideologies. Formerly issues concerned minimizing tax, capitalism, free market (*laissez-faire*) policies, and disagreements over small or expansive government. Gone are these days; absurdity now permeating every facet of human existence. The screams for *Roe*’s codification have taken over mainstream media, with consideration for morality irrelevant. The irony in ‘pro-choice,’ as these advocates of murder render themselves, is that only one ‘choice’ is considered.⁴²

Three categories of excuses are offered by abortion advocates to justify abortion. These consist of reasons identified as immediately affecting the ‘woman’; the belief in a ‘holistic pro-life’ position (the underlying assumption being that pro-lifers care only for the birth itself); and the position that excludes oneself from any involvement in others’ affairs. These are addressed in turn.

<https://thehill.com/homenews/campaign/448473-biden-says-he-doesnt-see-abortion-as-a-choice-and-a-right-in-unearthed-2006/>.

⁴¹ Kitty Kelley, *Death and the All-American Boy*, WASHINGTONIAN (June 1, 1974), <https://www.washingtonian.com/1974/06/01/joe-biden-kitty-kelley-1974-profile-death-and-the-all-american-boy/>.

⁴² See *Presidential Debate in Baltimore (Anderson-Reagan)*, THE AMERICAN PRESIDENCY PROJECT (Sept. 21, 1980), <https://www.presidency.ucsb.edu/documents/presidential-debate-baltimore-reagan-anderson> (“With regard to the freedom of the individual for choice with regard to abortion, there’s one individual who’s not being considered at all. That’s the one who is being aborted. And I’ve noticed that everybody that is for abortion has already been born”).

Firstly, abortion proponents assert in its defense the following: [1] Inconvenience⁴³ from its effect on one's education, career, or disinterest in the responsibilities associated with caring for a child;⁴⁴ [2] Financial difficulties; [3] Unreadiness; [4] Relationship strain and dysfunction (or lack thereof); [5] Infant disabilities; [6] That it is the 'woman's body'; [7] That the fetus is 'not a baby'; [8] Health reasons, either of the mother's health or risk of death or the baby's; and [9] pregnancy resulting from rape or incest.

Pregnancy is not the product of accidents. The consequences of the actions bringing about its occurrence may not be intentional or desired, but the actions in themselves (often) were. These, though, are designed to be within the confines of marriage.⁴⁵ Deviation from what God has prescribed and commanded has repercussions,⁴⁶ and it is an abdication, dereliction of duty, and irresponsibility to seek abortion as a refuge. The aforementioned examples, particularly those serving as an emotional appeal⁴⁷ to deceptively elicit and evoke sympathy (such as citing instances of children and teenagers being raped), when used—consciously or not—negates the fact that the masses of people in support of *Roe*, or more specifically, *Roe*'s ruling, are truly disinterested in its legitimacy. For instance, that Norma McCorvey, the 'Jane Roe' of *Roe v. Wade*, lied concerning how she became pregnant (fallaciously asserting that she was gang raped) means nothing. *Roe* is a disguise, mask, and excuse. Fringe cases, such as rape—extreme examples—are used for incredibly dishonest reasons, distractions from the central ones—abortion on demand. We do

⁴³ See also *Romans* 2:8-9.

⁴⁴ See Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, GUTTMACHER INSTITUTE (Sept. 1, 2005), <https://www.guttmacher.org/journals/psrh/2005/reasons-us-women-have-abortions-quantitative-and-qualitative-perspectives> (cites this as the predominant reason).

⁴⁵ See generally *Genesis* 2:24, 1 *Corinthians* 6:9; 7:2 and 1 *Thessalonians* 4:3-5.

⁴⁶ See generally *Numbers* 32:23 and *Galatians* 6:7.

⁴⁷ See generally *Dobbs v. Jackson Women's Health Org.*, No. 19-1392, slip op. (U.S. June 24, 2022) at 86-118 (Breyer, J., Sotomayor, J., and Kagan, J., dissenting).

not need to hypothesize whether such exceptions alone would be received favorably—cases such as *Doe v. Bolton*⁴⁸ show us they were not.

Language has also been manipulated for this purpose: The use of ‘woman’ over ‘mother,’ innocuous as it may seem, conditions the mind to detach the weight and relevance of what it means to be one. The impersonal reference disrupts the connection and distinction that exists between the two. Similarly, fetus means ‘small child’ in Latin, merely a word designating a stage of development, yet society has been convinced and led to believe that it is synonymous with a ‘clump of cells.’ It is a tactic that produces arguments like The Violinists’ Scenario.⁴⁹ ‘Pro-choice’ itself is a construction, designed to give the appearance of being in favor of liberty and freedom when in actuality, the question concerns the rights of another who is stripped of *their* ability to ‘choose.’ Abortion is both an act of selfishness and narcissistic entitlement; no ‘choice’ is present in the same way that it is not an option afforded for any other human being. Other fallacious assertions are proposed concerning the consequences of the *Dobbs* ruling, such as that women will no longer be able to obtain treatment for an ectopic pregnancy—whereby implantation usually occurs outside the uterus in the fallopian tube. This dishonesty requires little more than the explanation that this rare situation involves only the removal of the area surrounding the embryo or zygote, whereas abortion is directed at the body. Most life-threatening pregnancy-related illnesses and diseases occur long after the baby is viable, wherein delivery of the baby is the best course of action for both mother and child.

⁴⁸ *Doe v. Bolton*, 410 U.S. 179. See *infra* Section *Doe v. Bolton*.

⁴⁹ See generally Judith Jarvis Thomson, *A Defense of Abortion*, 1 PHIL. & PUB. AFFAIRS 47–66 (1971) (maintaining that a woman is within her right to refuse to support the development of her child if she desires it not to be so in the same way that no obligation would be present if one found themselves in a situation where they were attached to a human being they had never met, the only match for another’s assistance of blood, oxygen supply, and nutrients, and asked to be conjoined for a period of nine months).

In rape, despite the baby having been conceived as a result of a criminal act, they have no fault of their own. It is the crime of the father, and to subject the consequence of that crime—a living, breathing baby—to suffer a sentence of death is both unfair and unjust.⁵⁰ If we consider why it is that rape is wrong, we see that its nature is one identical to abortion: A stronger party taking advantage of and attacking a vulnerable party—the baby even more so, wholly unable to defend itself, and in the most intimate of locations—where protection is the expectation. Even so, less than one percent of abortions are a result of rape,⁵¹ and less so a mother’s death. Adoption is always an option—giving the baby to a loving home, perhaps unable to have children of their own, and who would love them as if they were. Several Churches and pro-life pregnancy centers and organizations take them in without question⁵² (despite claims saying otherwise). Rape is undeniably horrific. The offender should feel the full force of the law, liable, and be punished accordingly. In these situations, I firmly believe castration is called for, if not death. Abortion, though, does not ‘unrape’ the woman, and more violence does not relieve or diminish the suffering felt. The severity of the trauma involved cannot be reduced to such a ‘quick fix.’ In fact, doing so is insensitive, minimizing the struggle contained in overcoming the impression of travesties as these. The Bible’s instructions provide a better solution than what society prescribes.⁵³ God offers a consistent value system, as opposed to the

⁵⁰ Being of the pro-life position and simultaneously demanding the death penalty for convicted criminals is internally consistent for the reason that the penalty hinges on guilt. God does not punish one according to the sins of his father (*Ezekiel* 18:20). It is no different in this situation.

⁵¹ *Supra* note 44.

⁵² See generally Jan Diehm & Katy Hall, *One Thing Red States Do Better Than Blue States*, HUFFPOST, https://www.huffpost.com/entry/giving-back_n_3781505 (last modified Dec. 6, 2017) (Christians and Conservatives are the greatest contributors to charity in both time and money).

⁵³ See *Deuteronomy* 22:25-27.

forever-changing societal norms.⁵⁴ Likely the only good to come of this terrible situation are the babies themselves.⁵⁵

The kind of discrimination involved in permitting abortions in cases of rape, if consistently implemented for all pregnancies resulting from this, could not be discerned and differentiated from those who were conceived consensually through the use of ultrasounds alone. Instead, a child's life depends on whether they are wanted or not. We are understandably sympathetic to the suffering of these children, inclined to permit whatever is necessary to undo the damage and return them to the state they were at first. However, two people are involved here, not one, and the assaulter often does not act alone. Parents are responsible for their children—where were they, and what were they doing at the time of the crime? How did the child find themselves in the situation that they did, to begin with? Were signs ignored? Neglect and inattentiveness are contributions—these questions must be asked. Measures should have been taken to safeguard against this. Moreover, when we consider what exactly it is that we are permitting these children to be subject to—the ripping and tearing apart of a human inside of them—I think we would not be so quick to believe this an appropriate remedy. The trauma that this is paired with is irreconcilable. Even at such a young age, these young mothers (for indeed, these are what they are, though we would hope it were not so) often have enough maturity to understand the options of life and death.⁵⁶ At this time, the body *is* equipped to handle pregnancy.

Second—the belief in a stance that is ‘holistically pro-life.’ This is the idea where individuals consider who has more policies and those of more quality on advancing the welfare of the populace. Notable absurdities have been advanced, such as the suggestion that Democrats are

⁵⁴ See generally Rich Lowry, *A Travesty in New York*, NATIONAL REVIEW (Feb. 12, 2019), <https://www.nationalreview.com/2019/02/new-york-state-reproductive-health-act-unjust-inhumane/>.

⁵⁵ See generally *Psalm 127:3*.

⁵⁶ See generally Live Action, *Pregnant from Rape at 14, Crystal Rejected Abortion*, YOUTUBE (Aug. 9, 2019), <https://www.youtube.com/watch?v=LsEG0U104n8>.

responsible for the decline in abortions.⁵⁷ The least we ought to stand for is the legal protection of babies in the womb. Disapproval of legalized murder is quite literally the minimum requirement.⁵⁸ This eliminates the party, who, together with pro-abortion organizations such as NARAL (National Abortion Rights Action League) and Planned Parenthood (the leading abortion provider in this country), have sought the expansion of access to abortion through nine months both federally⁵⁹ and all state levels; promised to codify *Roe*, making state restrictions on abortion impossible; to overturn Hyde⁶⁰—an amendment responsible for saving millions of lives, and barring federal tax dollars being sent to abortion clinics;⁶¹ and who refused to support the Born Alive Infant Survivors

⁵⁷ See *Changes in State Legislative Seats During the Obama Presidency*, BALLOTPEDIA,

https://ballotpedia.org/Changes_in_state_legislative_seats_during_the_Obama_presidency (last visited Dec. 26, 2022) (during these periods it is found—and with respect to Obama’s second term in particular—that Republicans had control of both House and Senate). See also Samantha Putterman, *Graph: U.S. Abortion Rate During Different Presidents*, POLITIFACT (Sept. 25, 2020),

<https://www.politifact.com/factchecks/2020/sep/25/facebook-posts/graph-us-abortion-rate-during-different-presidents/> (asserting that the effects of these policies, as opposed to criminalization, are responsible for lower numbers). That one would assume it was not the party pushing against the expansion of this practice is baffling.

⁵⁸ See generally Allie B. Stuckey, *Abortion*, INSTAGRAM,

<https://www.instagram.com/alliebstuckey/?hl=en> (last visited Mar. 29, 2023).

⁵⁹ See generally Alexandra Desanctis, *Kamala Harris’ Abortion Absolutism*, NATIONAL REVIEW (Aug. 12, 2020), <https://www.nationalreview.com/corner/kamala-harriss-abortion-absolutism/>. Many are so oblivious as to insist that abortion is a difficult problem to tackle for all involved. This is simply not true, for many revel in this evil and have gone to great lengths to emphasize this.

⁶⁰ S. 142, 113th Cong. (2013) (enacted); upheld by a five to four split decision in *Harris v. McRae*, 448 U.S. 297 (1980).

⁶¹ See generally Michael J. New, *Hyde @ 40 Analyzing the Impact of the Hyde Amendment*, THE LOZIER INSTITUTE (Sept. 2016), https://lozierinstitute.org/wp-content/uploads/2016/09/OP_hyde_9.28.3.pdf.

Protection Act.⁶² Several bills, like AB 2223⁶³ and Virginia’s ‘Infanticide Bill,’⁶⁴ have been created against this purpose, meaning, for instance, that in the event of a failed abortion, doctors are permitted to leave these infants to die on the medical table. Mothers have testified to being denied an ultrasound and other options being obscured. It is one agenda they are after, and it is not without economic success that they do so.

Third and finally, others acknowledge this wickedness and yet support it by saying that while they personally are not in favor of abortion, they have no place to dictate what others can or cannot do—that it is not their place to get ‘involved.’ One cannot be pro-life for his or herself in the same way that we cannot be personally against (for instance) racism or any other social ill, harm, or injustice.⁶⁵ Women also, self-acclaimed feminists, are responsible for discouraging and criticizing men for expressing their views and reservations about abortion. To this—not only was a majority of seven men responsible for deciding *Roe v. Wade*, one woman, Justice Amy C. Barrett, voting in favor of its overturning, but morality is not specific to gender. We, as a country (ideally), do not prohibit or restrict expression on the basis of classifications such as these.

When any of the above is used to say that “abortion is necessary,” it is saying to “millions of people who were conceived in or have overcome these circumstances that their life is not valuable. Our worth as humans isn’t conditional; it is inherent.”⁶⁶

⁶² H.R. 619, 117th Cong. (2021).

⁶³ AB 2223, 2021-2022 Leg., Reg. Sess. (Cal. 2022) (enacted). See Greg Burt, *After Huge Public Outcry, But Serious Problems Remain*, CALIFORNIA FAMILY COUNCIL (May 20, 2022), <https://www.californiafamily.org/2022/05/infanticide-bill-amended-after-huge-public-outcry-but-serious-problems-remain/>.

⁶⁴ H.B. 2491, Va. Sess. Laws Serv. (2019).

⁶⁵ See generally Maurice Ogden, *Hangman*, JEWISH LEARNING MATTERS, <https://www.jewishlearningmatters.com/Images/userfiles/TheHangman.pdf> (last visited Mar. 11, 2023) (a narration demonstrating the consequences of cowardice).

⁶⁶ Lila Rose (@LilaGraceRose), TWITTER (May 20, 2019, 11:10 AM), <https://twitter.com/lilagracerose/status/1130490967578955776?lang=en>.

Historical Background

More than sixty-four million babies have been aborted since 1973,⁶⁷ 40% of which are black,⁶⁸—roughly “five times” more than the white woman.⁶⁹ The historical record has been construed to obscure the reality and perception of abortion’s immorality.⁷⁰ Despite the present ‘liberalization’ of views, outcries of a remnant vehemently protesting this violence could always be heard. Regardless, acceptability does not conflate with rightness. Aside from the known ‘progression’⁷¹ in law, a less-understood development in philosophies circulated alongside it.

Ancient Sacrifices

Human sacrifice is a practice existing since the time of ancient civilizations. Newborn babies have been a preferred target for purposes

⁶⁷ *Abortion in the United States*, NATIONAL RIGHT TO LIFE COMMITTEE, <https://nrlc.org/uploads/factsheets/FS01AbortionintheUS.pdf> (last modified Jan. 2022).

⁶⁸ See generally Margaret Sanger, *Letter to Dr. C.J. Gamble* (Dec. 10, 1939), SMITH COLLEGE LIBRARIES, <https://libex.smith.edu/omeka/files/original/d6358bc3053c93183295bf2df1c0c931.pdf> (“We do not want word to go out that we want to exterminate the Negro population”) and Sofia Infante, *Margaret Sanger’s Little-Known Connection to the Klu Klux Klan*, HLI (Mar. 24, 2021), <https://www.hli.org/resources/margaret-sanger-kkk/>. More than a third of black babies are aborted than born. The divide is significant and rooted in a problem visible today.

⁶⁹ Susan A. Cohen, *Abortion and Women of Color: The Bigger Picture*, GUTTMACHER POLICY REVIEW (Aug. 6, 2008), <https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture>. See also Christina Daniels et al., *The Effects of Abortion on the Black Community* (June 2015), <https://www.congress.gov/115/meeting/house/106562/witnesses/HHRG-115-JU10-Wstate-ParkerS-20171101-SD001.pdf>.

⁷⁰ See *Figure 2*.

⁷¹ For in reality it is regressive.

such as material blessings and physical favors—selected and singled out from society for their weakness and vulnerability. The Aztecs, for instance, carved out still-beating hearts⁷² to the gods of sun, rain, and war. Incas left their young beside altars to freeze to death to sun god Inti for flourishing crops. Canaanites offered their infants into the flames of the god Molech⁷³ for prosperity, mothers smiling and dancing for an acceptable offering. Drums, too, loudly played to drown out the baby’s screams “that the father might not hear the voice of his son, and his heart might not be moved.”⁷⁴ It is from these atrocities that abortion extends—a beginning point for the travesty realized in this practice. The same attitudes and beliefs furnishing these inhumane sentiments support those directed towards the victims of abortion. In the same way that men stored babies’ ashes in glass jars in the wall of Jericho,⁷⁵ so today, human sacrifice is equally condoned and openly applauded in our culture. Distinctions do not, and should not, exist on the basis of birth—born or preborn. Bias is demonstrated by those asserting otherwise. The mechanisms through which abortion operates were not as attainable at this time. Naturally, this meant that murder involved those who were reachable, happening to be newborn babies. This later, though, and quickly, translated into the deaths of babies inside the womb through, for instance, injury inflicted on pregnant mothers.⁷⁶

Arguments for abortion are not of modern social or legal invention. The following section explores some theoretical foundations for ideas that

⁷² Dave Roos, *Human Sacrifice: Why the Aztecs Practiced This Gory Ritual*, HISTORY (Oct. 11, 2018), <https://www.history.com/news/aztec-human-sacrifice-religion>.

⁷³ See generally *Jeremiah* 19:4-5.

⁷⁴ Marco Margaritoff, *The True History Of Moloch, The Ancient God Of Child Sacrifice*, ALL THAT’S INTERESTING, (Oct. 2, 2021), <https://allthatsinteresting.com/moloch>.

⁷⁵ The city fell down by the command of God, its walls never again rebuilt. See *Joshua* 6:26 and the chapter for context.

⁷⁶ See generally *supra* note 54.

instilled internal hostility for people and promulgated that some were inferior to others.

Overpopulation, Social Darwinism, and Eugenics

Thomas R. Malthus, the eighteenth-century economist, is best known for his theory of population growth, ‘overpopulation,’⁷⁷ and its consequences. For ideas of what would come of limited resources and competition, he deduced that a crisis of famine and calamity would result. From this idea, the Malthusian growth model⁷⁸ was born. Scientists later discredited him in that greater yields in agricultural output results were attributed to the production of the very individuals he believed the existence of to be responsible for future harm. Even so, billionaires disregard this proven error, donating to Planned Parenthood regardless.⁷⁹ Others did so to combat this ‘problem’: “Warren [Buffett] conceptualiz[ing] in macroeconomic terms . . . had a [M]althusian dread that overpopulation would aggravate problems in all other areas—such as

⁷⁷ *But see* Luke Rogers, *U.S. Population Grew in 2021, Slowest Rate Since Founding of the Nation*, U.S. CENSUS BUREAU (Dec. 22, 2021), <https://www.census.gov/library/stories/2021/12/us-population-grew-in-2021-slowest-rate-since-founding-of-the-nation.html>. Max Roser et al., *World Population Growth*, OUR WORLD IN DATA, <https://ourworldindata.org/world-population-growth> (last visited Mar. 11, 2023) (we are currently in a population decline). *See generally* Janet Adamy & Anthony DeBarros, *U.S. Births Increase for First Time Since 2014*, THE WALL STREET JOURNAL (May 24, 2022), <https://www.wsj.com/articles/u-s-births-increase-for-first-time-since-2014-11653364861>.

⁷⁸ A chart demonstrating upwards exponential growth and the point where the world would descend into starvation based on population.

⁷⁹ *See generally* Leslie Albrecht, *These Billionaire Philanthropists Spoke Out Against Overturning Roe v. Wade—But That Support Does Not Always Translate to Funding Abortion*, MARKETWATCH, <https://www.marketwatch.com/story/some-billionaire-philanthropists-spoke-out-against-overturning-roe-v-wade-but-that-support-doesnt-always-mean-they-provide-funding-11651864570> (last modified May 12, 2022).

food, housing, even human survival.”⁸⁰ Several other wealthy individuals have taken such a vested interest in ‘philanthropy,’⁸¹ for which many have noted that without such funding, “abortion would not be nearly as prevalent as it is.”⁸² This blatant denial of science⁸³ is troubling, and these individuals’ other endeavors in this vein equally terrifying.⁸⁴

Charles Darwin was influenced in no small way by Malthus in the development of natural selection.⁸⁵ Major disruptions occurred due to the propagation of the absurdity of evolution and the mechanism through which it was achieved. Immense fury arose because Darwin removed the hand of God as being over these processes—and rightly so, as most of the scientific findings had, until this point, come out of monasteries.⁸⁶ Sir Francis Galton, Darwin’s half-cousin and recognized as the ‘father of eugenics,’ extended social Darwinism, the sociological expansion of the theory of evolution, in application to humans.⁸⁷ He worked to promote the ideal of perfecting the human race by, as he put it, getting rid of its

⁸⁰ ROGER LOWENSTEIN, *BUFFETT: THE MAKING OF AN AMERICAN CAPITALIST* 345 (Random House, 1995).

⁸¹ See generally Live Action, *The Billionaires Behind Abortion*, YOUTUBE (July 29, 2020), <https://www.youtube.com/watch?v=UnzbQzvGISU>.

⁸² *Id.*

⁸³ See generally *World Population Living in Extreme Poverty, 1820-2015*, OUR WORLD IN DATA, <https://ourworldindata.org/grapher/world-population-in-extreme-poverty-absolute> (last visited Mar. 11, 2023).

⁸⁴ See generally Ceri Parker, *8 Predictions for the World in 2030*, WORLD ECONOMIC FORUM (Nov. 12, 2016), <https://www.weforum.org/agenda/2016/11/8-predictions-for-the-world-in-2030/> (predicting that by 2030 we’d own “nothing, and be happy”).

⁸⁵ See generally CHARLES DARWIN, *THE AUTOBIOGRAPHY OF CHARLES DARWIN* 119-21 (Nora Barlow ed., 1958) (the mechanism evolution operates through—in essence those with the best traits for survival pass on their phenotypes through reproduction).

⁸⁶ Gregor Mendel, a monk and devout Catholic, is an example, known today as the father of genetics.

⁸⁷ Better known as the ‘survival of the fittest’ (placing the burden of one’s survival, in every respect, on the individual), a term coined by Herbert Spencer and later attributed to Darwin. See generally *Lochner v. New York*, 198 U.S. 45, 60 (1905).

‘undesirables’ while multiplying its ‘desirables.’ This was the basis for ‘positive’ and ‘negative’ eugenics, promoting that which encouraged reproduction between those he deemed to be ‘fit,’⁸⁸ namely the aristocrats, and discouraging those he felt were not—essentially everyone else.⁸⁹ He used genealogical records to make these determinations, feeling these connections revelatory of genetic superiority and inferiority, respectively. More modern suggestions have even been made of introducing a “fertility control agent . . . in [the] water supply.”⁹⁰ With respect to the continuation of eugenics today through abortion, despite the realization by some of the interconnectedness of the two and that eugenics is most efficiently achieved through it,⁹¹ eugenics is endorsed by way of inaction. Feelings directed against it (eugenics and its supporters), therefore, are inconsequential if the avenue through which it is achieved remains regarded with strong commitment. Similarly seen are the attitudes acquired concerning the value of human life, a radical position held today without thought.

⁸⁸ See generally *Buck v. Bell*, 274 U.S. 200 (1927) (upheld a Virginia law allowing the forced sterilization of individuals considered afflicted with a hereditary form of insanity, imbecility, and “feeble-minded[ness]” using the Fourteenth Amendment).

⁸⁹ See generally *Relative Social Inadequacy of the Several Nativity Groups and Immigrant Races in the United States*, EUGENICS ARCHIVE, http://www.eugenicsarchive.org/eugenics/image_header.pl?id=936&detailed=1 (last visited Mar. 12, 2023) (a chart created in 1922 by Harry Laughlin, officer of the ERAA, purporting to show the relative social inadequacy of various immigrant races by rank in the U.S.—measuring feeble-mindedness, insanity, crime, epilepsy, tuberculosis, blindness, deafness, deformity, and dependency).

⁹⁰ Bernard Berelson, *Beyond Family Planning*, 38 *STUDIES IN FAMILY PLANNING* 1, 2 (1969) (for a eugenics-driven purpose).

⁹¹ Though perhaps ‘designer babies’ or the creation of a particular phenotype may come to mind. See generally Matt Slick, *List of Quotes from Margaret Sanger*, CARM (Feb. 20, 2009), <https://carm.org/abortion/notes-sanger-margaret/> (“Eugenics is . . . the most adequate and thorough avenue to the solution of racial, political, and social problems”).

The 1800s in America

The latter half of the nineteenth century was dominated by a concern for morality and hedonism. Victorian society, for instance, began to “condemn women seeking abortions as selfish . . . , immoral . . . , and [as] shirking the duty of motherhood.” This prevailed into the twentieth century until reform was sought by lawmakers and clergy. Abortion fell into the category of “quackery,”⁹² the promotion of fraudulent medical practices doctors sought to stop. The mothers believed that before quickening, the point where movement is discerned (often by kicking and jumping), “aborting [their baby] was perfectly proper,” thinking “that the embryo was not alive.”⁹³ These abortions had often been self-induced by coat hangers, knitting needles, and various other instruments, herbs, and potions to mask fornication and adultery—often needing medical assistance due to these botched attempts. Realizing the prevalence of this issue, the immorality of abortion, and adverse health consequences, doctors sought to make changes that criminalized the actions of physicians—who were not ignorant and had an understanding of the scientific evidence. “Thus . . . , [they] could condemn the ‘sin’ without the necessity of condemning the ‘sinner.’”⁹⁴ Reasons have also been said to include competition amongst physicians for status and concerns of white depopulation due to frequent abortions, growing immigration, and their resulting high fertility rates.⁹⁵ In essence, this concern can be properly attributed to racism, eugenics, and similarly advanced ideas. The campaign’s purpose, though, had more to do with the value of the embryo than these. Their mission as an establishment was to uproot all sources of misinformation in a profession they esteemed so highly as

⁹² See e.g. Amber Dushman, *Ads and Labels from Early 20th-Century Health Fraud Promotions*, AMA JOURNAL OF ETHICS (Nov. 2018), <https://journalofethics.ama-assn.org/article/ads-and-labels-early-20th-century-health-fraud-promotions/2018-11> (last visited Mar. 13, 2023).

⁹³ KELLY D. WEISBERG, *MODERN FAMILY LAW: CASES AND MATERIALS* 38-39, 4th ed. (New York: Wolters Kluwer Legal & Regulatory Solutions, 2020).

⁹⁴ *Id.* (Something they should not have done.)

⁹⁵ *Id.*

having been factually intelligent.⁹⁶

Feminism

Hence I have always frankly admitted that abortion is murder, the extermination of the powerless by the powerful. Liberals, for the most part, have shrunk from facing the ethical consequences of their embrace of abortion, which results in the annihilation of concrete individuals and not just clumps of insensate tissue.⁹⁷

Camille Paglia

‘Feminism’ is generally known as women’s liberation, the advocacy for equality in life. Instead, the feminist movement has been, in every sense of the word, a plague motivated by the utter destruction of gender roles,⁹⁸ the pursuit of the state’s further economic and political control,⁹⁹ and the movement away from Biblically established norms. It is responsible for four main movements, often referred to as divided by waves: 1848-1920 (suffrage; re-evaluation of traditional gender norms—Betty Friedan); 1963-1980s (reproductive freedom); 1990s- (sexuality and intersectionality); Present Day. With these revolutions, women have been possessed with a lust and credulity for all things perverse,¹⁰⁰ ingesting the abortion rhetoric and propaganda without a moment’s thought. Seemingly overnight, the toleration and celebration of such things as the hyper-sexualization of our culture and youth have become a norm and

⁹⁶ *Id.*

⁹⁷ Camille Paglia, *Fresh Blood for the Vampire*, THE SALON (Sept. 10, 2008), <https://www.salon.com/test/2008/09/10/paglia/> (a third wave feminist).

⁹⁸ See e.g. *America when Feminized—1920*, TENNESSEE VIRTUAL ARCHIVE, <https://teva.contentdm.oclc.org/digital/collection/p15138coll27/id/6/> (last visited Mar. 15, 2023).

⁹⁹ See also REFLECTIONS AND WARNINGS: AN INTERVIEW WITH AARON RUSSO (Alex Jones 2009).

¹⁰⁰ See generally *Jeremiah* 8:5.

reality—something deeply inconsistent with America’s history and most of the world.

Women are convinced to pursue and prioritize their careers over the creation of family. This is the fruit of feminism—that a mother has the freedom to abort her baby if she believes that they will ‘get in the way.’ It is characteristic, also, of her masculinization and the emasculation of men. On her deathbed, however, she will not wish she had ‘punched in’ one more time, but will remember the root of the deep anguish experienced following that decision to terminate her pregnancy—to murder a baby. Women are meant to be mothers—everyone presently existing had one. Though equipped with ignorance, obsession with and deification of their ‘bodily autonomy,’ and euphemisms such as ‘healthcare,’ ‘freedom,’ and ‘choice’—the reality is that these permanent ‘solutions’ are ones that will leave her with a distress so unfathomable it is likely she will self-medicate through drugs, alcohol, and even prostitution. Murder is not as great as we are told it is. Testimonies from mothers who have actually had them say as much.¹⁰¹ These are choices that haunt a person for the rest of their life.

Roe v. Wade

Roe v. Wade marked the point in our country’s history when all respect for life was lost—colored by a history replete with examples of deceit and dishonesty. A plan contrived for the purpose of securing the protection of this evil,¹⁰² *Roe* was chosen by a temporary committee of four, something later determined—in all practical senses—to have been done so mistakenly.¹⁰³

¹⁰¹ See generally Michael Knowles, *This is What a Mother Looks Like After an Abortion*, YOUTUBE (Mar. 13, 2023),

<https://www.youtube.com/watch?v=vG33DjJ38zw&t=196s>.

¹⁰² See generally *John* 3:19.

¹⁰³ See *infra* note 116.

I. Facts

In 1968, Norma McCorvey,¹⁰⁴ the infamous Jane Roe,¹⁰⁵ single, twenty-one years old, and struggling financially, became pregnant with her third child. She surrendered custody of the first to her mother, the second to adoption, and initially sought adoption for the third.¹⁰⁶ Texas, where she resided, having the strictest laws on abortion (like others, even in cases of documented incest or rape), permitted abortions only in those rare circumstances where the mother's life was at risk or in danger: The Texas criminal abortion statute, articles 1191-1194, 1196 of the penal code rendered it “[a] crime to procure an abortion or to attempt one, except with respect to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.”¹⁰⁷ Laws legalizing abortion could only be found in a handful of states, (unsurprisingly) California and New York¹⁰⁸ being two of the few. However, McCorvey did not have the means to travel and thus was unable to obtain one (and, in fact, never did). McCorvey visited local Dallas attorney Henry McCluskey to organize an adoption, but being a friend to a recently graduated lawyer, referred her to Sarah Weddington and Linda Coffee. During a conversation she got drunk in,¹⁰⁹ a regular user and abuser of drugs and alcohol, McCorvey found herself convinced to file a suit that would

¹⁰⁴ *Testimony of Norma McCorvey, The Former Roe of Roe v. Wade, Subcomm. on the Const. of the S. Judiciary Comm.*, (June 23, 2005),

<https://www.judiciary.senate.gov/imo/media/doc/McCorvey%20Testimony%20062305.pdf>.

¹⁰⁵ Legal pseudonyms are used in place of names to protect the interests of children (also often substituted for initials).

¹⁰⁶ See Joshua Prager, *Jane Roe's Baby Tells Her Story*, THE ATLANTIC (Sept. 9, 2021), <https://www.theatlantic.com/politics/archive/2021/09/jane-roe-v-wade-baby-norma-mccorvey/620009/> (commonly referred to as the *Roe* baby, Shelley Lynn Thornton lives today, and here shares her experience living as an adopted child, “born unwanted”).

¹⁰⁷ Tex. Penal Code §§ 1191-1194, 1196 (2022).

¹⁰⁸ See *Figure 2*.

¹⁰⁹ See generally REVERSING ROE: THE NORMA MCCORVEY STORY (Donehey & Associates 2010).

challenge the relevant Texas laws. It is in this way that a mentally troubled, emotionally neglected, disturbed, and unstable woman became the face of the movement.¹¹⁰

II. Procedural Posture and Background

Early on in our system, Congress had permitted private citizens challenging the constitutionality of state or federal statutes and seeking injunctions to prohibit their enforcement to bring their case before a three-judge district court.¹¹¹ For this reason, McCorvey brought her case to the U.S. District Court for the Northern District of Texas, Co-counsel Coffee expecting a sympathetic bench having clerked for District Judge Sarah T. Hughes. “The parties sought both declaratory and injunctive relief, meaning they wanted the courts to rule on the constitutionality of the statutes [in addition] to prohibit[ing] enforcement of these statutes.”¹¹² In 1970, District Judges Hughes, William M. Taylor, and Fifth Circuit Court of Appeals Judge Irving L. Goldberg, while holding the Texas abortion statute invalid, predominantly on the Ninth Amendment,¹¹³ disposed of *Roe* on summary judgment and motion to dismiss, declining to issue an injunction against its enforcement on the grounds that federal intrusion into state affairs was unwarranted—having a limited number of affidavits and no evidentiary record from trial court.

Roe was joined in her action by James Hallford, a physician with two criminal prosecutions pending against him, and J & M Doe,¹¹⁴ who were challenging the law because M was advised to avoid pregnancy for health reasons. The District Court found both McCorvey and Hallford to have *standing* (the necessary legal capacity to bring a case before a court) to

¹¹⁰ *Id.* See generally *infra* note 117.

¹¹¹ 28 U.S.C. § 2281 (2021).

¹¹² Daniel J. Castellano, *Legal Issues of Roe v. Wade*, ARCANES KNOWLEDGE (Aug. 1, 2012), <http://www.arcaneknowledge.org/histpoli/roe.htm>.

¹¹³ *Roe v. Wade*, 314 F. Supp. 1217 (N.D. Tex. 1970).

¹¹⁴ See generally *supra* note 105.

sue, having presented *justiciable* (a matter capable of being decided by a court) claims. However, the Does failed to allege facts sufficient to state a present *controversy*¹¹⁵ (an actual dispute required to obtain jurisdiction) and were dismissed. The three (Roe, Hallford, and the Does) appealed the denial of injunctive relief directly to the Supreme Court, not going through the normal adversarial process nor submitting to an intermediate appellate review. Without a factual record (trial, expert witnesses, presentation of witnesses), McCorvey’s factual circumstances (like the rape allegation she was encouraged by her lawyers to fabricate and later recounted)¹¹⁶ were not significant to the outcome. All the statements made concerning the impact of various variables, such as the struggles of women, were founded purely on assumptions.¹¹⁷ Ultrasounds, for instance, were not mentioned in the briefs or oral argument, coming into the commercial marketplace sometime after (and permanently changing public opinion).¹¹⁸ The oral arguments, too, provided nothing of substance, fraught with confusion as to what it was that was being argued. It is for this reason that the Court had nothing to draw from to support its claims, something severely evident in the opinion. Society assumes that there had been a history of fighting for this ‘right,’ that *Roe* marked the point where this was respected—however, feminists were the last ones to join the movement, behind doctors and population control movements in the 1950s.¹¹⁹ Legislative sessions centered on enacting exceptions to the traditional prohibition failed, the reform effort coming to an end likely due to its failure to correspond with public views.¹²⁰ In the late 1960s, with the addition and assistance of civil liberties groups, the movement

¹¹⁵ *Roe*, 410 U.S. at 114.

¹¹⁶ See AKA JANE ROE (FX Networks 2020).

¹¹⁷ *Roe v. Wade*, LANDMARK CASES, <https://landmarkcases.c-span.org/Case/12/Roe-v.-Wade> (last visited Mar. 11, 2023).

¹¹⁸ *Id.*

¹¹⁹ *Id.* See also Richard Nixon, *Statement About Policy on Abortions at Military Base Hospitals in the United States*, THE AMERICAN PRESIDENCY PROJECT (Apr. 3, 1971), <https://www.presidency.ucsb.edu/documents/statement-about-policy-abortions-military-base-hospitals-the-united-states>.

¹²⁰ *Supra* note 117.

was reinvigorated.

Attorney Jay Floyd, representing defendant Dallas District Attorney Henry Wade, maintained that a fetus is defined as a person within the meaning of the Fourteenth Amendment. It was, therefore, the Court's duty to preserve a respect for that life, even if the 'right of privacy,' never explicitly guaranteed by the Constitution, was implicated. Argued twice before the Supreme Court, the first on December 13, 1971, and the second rescheduled for argument at the beginning of the next term, October 11, 1972, the question transformed into whether there was a constitutional right to abortion. *Roe v. Wade* was not unique, but one of twenty other test cases that had come down before it, including *Abramowicz v. Lefkowitz*,¹²¹ *Doe v. Bolton*,¹²² *People v. Belous*,¹²³ *Abele v. Markle*,¹²⁴ *Younger v. Harris*,¹²⁵ and *United States v. Vuitch*.¹²⁶

Doe v. Bolton

A similar situation, as alluded to, arose concerning a certain Sandra Cano, or Mary Doe, the pseudonym used in *Doe v. Bolton*. Cano, also poor, was a twenty-two-year-old mother of three, who, after becoming pregnant with the fourth, sought legal help to get custody of the children she had put up for adoption earlier and divorce then-husband Joe Bensing. She met with lawyer Margie Pitts Hames, who filed suit on Cano's behalf, but to obtain an abortion. Cano maintains she never intended to receive an abortion, saying that it was not her signature on any of the documents

¹²¹ *Abramowicz v. Lefkowitz*, CENTER FOR CONSTITUTIONAL RIGHTS, <https://ccrjustice.org/home/what-we-do/our-cases/abramowicz-v-lefkowitz> (last modified Jan. 25, 2010).

¹²² *Doe v. Bolton*, 410 U.S. 179 (1973).

¹²³ *People v. Belous*, 71 Cal. 2d 954 (1969).

¹²⁴ *Abele v. Markle*, 452 F.2d 1121 (2d Cir. 1971).

¹²⁵ *Younger v. Harris*, 401 U.S. 37 (1971) (maintaining that the Court was to abstain from hearing civil rights cases brought by persons currently being prosecuted).

¹²⁶ *United States v. Vuitch*, 402 U.S. 62 (1971).

which stated her agreement to have one,¹²⁷ fleeing to Oklahoma upon learning of this. The lawsuit filed against Georgia Attorney General Arthur K. Bolton challenged the law permitting abortions only in the case of rape, severe fetal deformity, or threat to the mother. The Georgia law¹²⁸ involved in *Doe, Roe*'s sister case, was different, having been a reform law inspired by the ALI (American Law Institute) model penal code—an organization working overtime to liberalize several prohibitions and restrictions—with various exceptions (listed) despite not having been in effect for very long. This, too, went to Court without an appellate review or factual record, who agreed to hear it on April 22, 1971. *Doe* is the basis for many bills expanding access to abortion; the Reproductive Health Act (RHA) is one.¹²⁹ *Doe* and *Roe* were to be read together, but *Roe* became the lead case.

III. Holding

On January 22, 1973, the decision was made. Chief Justice Warren Burger assigned Justice Harry A. Blackmun,¹³⁰ a Nixon nominee,¹³¹ to write the opinion. *Roe* had been affirmed in both a majority of seven and with the retirements (Justices Hugo Black and John Marshall Harlan II), deaths (Justice Black), and subsequent new confirmations (Justices Lewis F. Powell and William H. Rehnquist), a nine majority of seven to two (Justices Rehnquist and Byron R. White dissenting). Abortion was articulated as a right like those relating to marriage, procreation, and

¹²⁷ See *The Consequences of Roe v. Wade and Doe v. Bolton*, Subcomm. on the Const., C.R. and Prop. Rights, U.S. S., Comm. on the Judiciary, 109th Cong., 3, 6-9 (June 23, 2005).

¹²⁸ GA. CODE ANN. § 26-1202 (1972).

¹²⁹ See generally Alexandra Desanctis, *New York State Senate Passes Bill Permitting Abortions up to Birth*, NATIONAL REVIEW (Jan. 22, 2019), <https://www.nationalreview.com/corner/new-york-state-senate-passes-expansive-abortion-bill/>.

¹³⁰ He was chosen both times, believing himself to be more qualified than the other justices on the changes that occurred in the medical profession.

¹³¹ He had initially been a Conservative Justice.

rearing one's children. It was made a private matter using the First, Fourth, Fifth, Ninth, and Fourteenth Amendments (the Substantive Due Process invoked), the idea being that there are elements of privacy in the freedom of thought, the ability to make decisions, and the right to act on a decision regardless of community beliefs that an action is contrary to the public good and state interests. The Texas restriction on abortion was found unconstitutional on the grounds that the statute was too vague, overly broad, and impinged on the rights reserved to people—not meeting the narrowly tailored criteria the Court had set.¹³² Typically the type of case presented here, McCorvey already having the baby, would become *moot*—meaning no longer significant, debatable, or open to discussion—but the Court said that pregnancy was capable of repetition and that such cases would seldom survive if the Court were to be so rigid,¹³³ and accepted the case. Hallford was dismissed without the Court looking at the *merits* (the inherent rights and wrongs of a case), stating that a defendant in a pending state criminal case cannot affirmatively challenge in a federal court the statutes under which the state is prosecuting him.¹³⁴ The Does were dismissed for not having suffered harm (*ripeness*). The Court applied strict scrutiny to the abortion statute and disagreed with Texas that the fetus is a person within the language and meaning of the Fourteenth Amendment.¹³⁵

IV. Reasoning

The majority opinion began with an analysis of the Greek and Roman

¹³² Rational basis, intermediate or heightened scrutiny, and strict scrutiny are different levels of judicial review used by courts to evaluate the constitutionality of law or government actions affecting classes and groups of people (age, sex, race). These typically apply to certain types of cases and situations with an increasing burden on the government to prove why a law should stand (legitimate interest, important government interest and the law substantially relating to that interest, compelling government interest and narrowly tailored to meet that purpose).

¹³³ *Roe*, 410 U.S. at 125.

¹³⁴ *Id.* at 126. *Supra* note 125 (the controlling case).

¹³⁵ *Roe*, 410 U.S. at 157-58.

ancient attitudes, the Hippocratic oath, and the general set of lines and principles that medical professionals used (the relevance of which is not explained). Next, common law and quickening—‘a starting point on the discussion concerning when life begins,’ and a discussion on American law (Connecticut in 1821—the first state to regulate abortion). This was followed by the how: Victorian social concern; medical procedure; state interest in protecting life, and religious and philosophical traditions. Justice Blackmun claimed that these prohibitions were not of common-law origin and that because they had not been enacted prior to the nineteenth century, they were not historically rooted enough to be germane—completely disregarding the true historical record for its prohibition (both common and statutory law). He maintained that there had never been a concept of fetal personhood in the law,¹³⁶ so the state’s interest was not seen to sufficiently outweigh the ‘woman’s choice.’

Of particular legal importance is the creation of a “less than desirable,”¹³⁷ “rigid”¹³⁸ three-trimester framework, an arbitrary analysis (“dicta”),¹³⁹ of a kind of balance that might be developed by a legislature.¹⁴⁰ Because the right to abortion was not “absolute,”¹⁴¹ it was said to be subject to a balance against state interests of preservation, the Court needing to do no more than to note that the state’s interest grows stronger as the woman approaches term¹⁴²: it is “not for . . . the judiciary, especially at this point in the development of man’s knowledge, to speculate or to specify when life begins.”¹⁴³ With risks to ‘health and safety’ increasing by the term, the first trimester was said to be ‘relatively safe’; states could have virtually no restrictions during this period. In the second trimester, some

¹³⁶ *Id.*

¹³⁷ Harry A. Blackmun Papers, LIBRARY OF CONGRESS.

¹³⁸ *Id.*

¹³⁹ *Id.* (Used to refer to non-binding or peripheral aspects of a decision.)

¹⁴⁰ John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 YALE L. J. 920 (1973).

¹⁴¹ *Roe*, 410 U.S. at 154.

¹⁴² *Id.* at 163.

¹⁴³ *Id.* at 159.

restrictions were permissible in order to protect the health and safety of the mother, and in the third trimester, a ban, with the great exception of life and health—defined to include all factors physical, physiological, familial, and general wellbeing.¹⁴⁴ The opinion drew predominantly from two precedents, *Griswold v. Connecticut*¹⁴⁵ and *Eisenstadt v. Baird*.¹⁴⁶

Griswold concerned a statute prohibiting the use and distribution of contraceptives. These, though, had not been enforced, and so as a test to the statute Estelle T. Griswold, executive director of Planned Parenthood, and Dr. Charles L. Buxton, professor at Yale Medical School, purposefully got themselves arrested for the latter. On June 7, 1965, the Court held that married couples had a right to use contraception with a prescription issued by a doctor and that, as this issue concerned a marriage between two people, the state had no right to interfere: “Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.”¹⁴⁷ The law was struck down—not so much that the exercise of the police powers was overly broad, but that the implications of the law, i.e. what had to be done for it to be enforceable, were “repulsive.”¹⁴⁸ The prohibition involved the portion that involved the “use” of the contraception, not its regulation.¹⁴⁹ This was established using the Fourteenth Amendment, *Griswold incorporating* (making the provision binding on states through the Fourteenth Amendment’s Due Process Clause) the right of privacy, and therefore making it a federally protected right that states cannot infringe. A right to contraception was never recognized.¹⁵⁰ Justice William O. Douglas, writing the majority opinion, said that it was suggested by “penumbras, formed by emanations from those guarantees

¹⁴⁴ See *Doe*, 410 U.S. at 192.

¹⁴⁵ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

¹⁴⁶ *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

¹⁴⁷ *Griswold*, 381 U.S. at 485-86.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

that help give them life and substance”¹⁵¹—elements of the Bill of Rights (First, Third, Fourth, Fifth, and Ninth Amendments).

Notwithstanding, there was a lack of consensus among the Justices, who expressed varying views as to how this right to privacy was derived, the debate arising as to the role of the Supreme Court in constitutional interpretation. Justice Arthur Goldberg, concurring, focused on the Ninth Amendment, founded on the contract theorist idea. Justice Black, dissenting, said that as a literalist who believes in using the exact language of the Constitution, finding no mention of the sort, rejects the notion that unelected judges in a democracy should have the latitude to conjure up and infer the existence of ‘rights’ not explicitly expressed and provided for whenever one so chose to. He agreed that there are some unspecified rights but strongly disagreed that those on the Supreme Court should be the ones to discover them, that if the American people wished to do so by passing an amendment (specified in Article V), this is a legitimate process which they may do so through.

Eisenstadt, an ‘equal protection’ case decided on March 22, 1972, extended this ‘right to privacy’ to all relationships, regardless of marital status. The case concerned a professor at Boston University, William Baird, who, in 1967, gave a nineteen-year-old woman Emko Vaginal Foam following a lecture on birth control and overpopulation.¹⁵² He was charged with a felony for distributing contraceptives to an unmarried person, having been unlicensed to do so. Drawing from both the Fourteenth Amendment and now *Griswold*, the Court made access to contraceptive use and possession available to unmarried couples as well. These two cases, *Griswold* and *Eisenstadt*, together formed the foundation for legalized murder: “If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally

¹⁵¹ *Id.* at 484.

¹⁵² Not a coincidence.

affecting a person as the decision whether to bear or beget a child.”¹⁵³ Justice William J. Brennan wrote in language intentionally crafted to apply in the context of abortion.

Planned Parenthood of Southeastern Pennsylvania v. Casey

In advance of addressing *Dobbs*, *Casey*, a case decided ten years prior, merits consideration. Planned Parenthood sued Pennsylvania Governor Robert P. Casey in a federal court for the purpose of challenging the creation of five restrictions in Pennsylvania law—the Abortion Control Act of 1982.¹⁵⁴ These included requiring informed consent to the abortion—doctors to provide information concerning the stages of fetal development and the availability of adoption services before the abortion could be performed; minors needing parental consent of at least one parent or a court waiver; married women having to sign a statement indicating spousal notification; a twenty-four hour waiting period; and the facilities having to comply with specific reporting requirements. The U.S. District Court found in favor of Planned Parenthood. However, on appeal the Third Circuit Court of Appeals affirmed in part and reversed in part—upholding the majority of the provisions in the Pennsylvania statute except for the spousal notification requirement for the belief that it renders women subordinate to their husbands and concern of domestic abuse and coercion in relationships. The Supreme Court took the case for review to decide whether the Pennsylvania restriction requiring a waiting period and informed consent was constitutional. Split five to four, they held no, reaffirming *Roe*, however, using the Fourteenth Amendment Due Process clause—both Substantive and Procedural, with no explanation as to why or how. *Casey*, moreover, overturned *Roe*’s viability analysis framework in favor of a lowered standard of review—the ‘undue burden’ test initially proposed in *Akron v. Akron Center for Reproductive Health*.¹⁵⁵ For reasons such as the liberty to choose and

¹⁵³ Eisenstadt v. Baird, 405 U.S. 438, 453 (1972) (emphasis omitted).

¹⁵⁴ 18 PA. CONST. STA. §§3203–3220 (1990).

¹⁵⁵ City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (1983).

profound spiritual and moral difficulty in terminating the pregnancy, the *Casey* Court held that the case was sufficient in solving the abortion problem once and for all. The dissent, however, astutely expressed concern with the availability of abortion and stated that the standard should have been lowered to a rational basis.

Dobbs v. Jackson Women’s Health Organization

Roe v. Wade and *Planned Parenthood v. Casey* haunt our country, hav[ing] no basis in the Constitution . . . , no home in our history or traditions. They’ve damaged the democratic process. They’ve poisoned the law. They’ve choked off compromise. For 50 years, they’ve kept this court at the center of a political battle that it can never resolve . . . Nowhere else does this court recognize a right to end a human life.¹⁵⁶

Mississippi Solicitor General Scott Stewart

Dobbs begins, in part, with the only licensed abortion clinic in Mississippi—Jackson Women’s Health Organization—filing a lawsuit in the federal district court challenging Mississippi’s 2018 Gestational Age Act. The Act restricted abortion to fifteen weeks with exceptions for cases of severe fetal abnormality and medical emergencies:

Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly 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.¹⁵⁷

¹⁵⁶ *Dobbs v. Jackson Women’s Health Organization*, OYEZ (Dec. 1, 2021), <https://www.oyez.org/cases/2021/19-1392> (oral argument).

¹⁵⁷ Gestational Age Act, Miss. Code § 41-41-191(4)(b) (2019).

The organization won in the Southern District of Mississippi on summary judgment, holding the state law unconstitutional, and the U.S. Court of Appeals for the Fifth Circuit affirmed. Petitioner Thomas E. Dobbs, a state health officer of the Mississippi Department of Health, challenged these lower court decisions, filing a petition for certiorari on June 15, 2020. The Court granted the writ on May 17, 2021, to address whether all pre-viability prohibitions on ‘elective’ abortions were unconstitutional, in other words, if no other line but the viability line would stand. On December 1, 2021, the case was argued, and it was clear that *Roe* and *Casey*, after almost fifty long years of fight in the courts, were to be overturned. Respondents Julie Rikelman and U.S. Solicitor General Elizabeth B. Prelogar asserted that this was a violation of the Court’s precedents and insisted that there were “no half-measures”¹⁵⁸ (–reaffirm *Roe* and *Casey* or overrule them in their entirety), the viability line being the central holding of those cases. Mississippi Solicitor General Scott Stewart emphasized bringing the abortion problem to the states,¹⁵⁹ arguing that *Roe* and *Casey* had been wrongly decided and that the Act constitutionally satisfied the rational-basis review. The Supreme Court listened, and in a six to three split decision (Chief Justice John G. Roberts concurring in judgment; Justices Sonia M. Sotomayor, Stephen G. Breyer, and Elena Kagan dissenting), overturned *Roe* and *Casey*, reversing the Fifth Circuit’s judgment and remanding the case for further proceedings consistent with the Court’s opinion.

As Stewart stated, abortion is distinctly different¹⁶⁰ from all other cases decided by the Court, with no other case coming anywhere close in terms of anger and frustration. *Roe* represents one of the few cases so controversial and contentious that almost all Americans know it by name. It has short-circuited the democratic process, eliminating the recourse through which those opposed to abortion could lobby the government for change. *Roe* took the ‘right of privacy’ beyond the context it was intended

¹⁵⁸ Julie Rikelman et al., Brief for Respondents, *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392 (U.S. Dec. 1, 2021).

¹⁵⁹ *Supra* note 156.

¹⁶⁰ *See Roe*, 410 U.S. at 159.

to encompass—protections for criminals and citizens from unwarranted governmental intrusion.¹⁶¹ While *Casey* opened the door to greater state power and regulation on abortion, poorly defined and unworkable, producing confusion in how to apply the undue burden standard, the Court determined *Roe* was “egregiously wrong on the day it was decided”¹⁶² and *Casey* wrong for upholding it.

The Court described the ways in which *Roe* erred—in reasoning, its failure to consider the Constitution, history, state laws, and falsely claiming that abortion had never been a crime under the common law. Bracton, Coke, Hale, and Blackstone are cited as authorities in this respect.¹⁶³ *Roe* conflated a woman’s individuality to mean possession of ‘reproductive freedom’ without legitimately considering its failure to qualify under the test for unenumerated rights.¹⁶⁴ Echoed in *Roe*’s dissent, the right to abortion is found nowhere in the Constitution,¹⁶⁵ nor can it trace its roots to the founding of America. Until the latter part of the twentieth century, such a right was unknown. When the Fourteenth Amendment was adopted, three-fourths of states had made abortion a crime in all stages of pregnancy, with no suggestion from the records that it had to do with abortions and the freedom to have them. Nor did women at this time rely on abortion to ‘organize their lives’ or find it essential to one’s existence—a claim that could be similarly misused to permit drug use and

¹⁶¹ *Supra* note 140 at 929.

¹⁶² *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, slip op. at 44 (U.S. June 24, 2022). *See also Barrett Confirmation Hearing, Day 2 Part 2*, C-SPAN (Oct. 13, 2020), <https://www.c-span.org/video/?476316-4/barrett-confirmation-hearing-day-2-part-2>.

¹⁶³ *Id.* at 12-26.

¹⁶⁴ *McDonald v. Chicago*, 561 U. S. 742, 744 (citing “fundamental to the Nation’s scheme of ordered liberty” or “deeply rooted in this Nation’s history and tradition” to answer if it applies to the national and state governments). *See generally* *Washington v. Glucksberg*, 521 U.S. 702 (1997) (holding that the Constitution does not guarantee the right to physician-assisted suicide).

¹⁶⁵ *Roe*, 410 U.S. at 222 (White, J., dissenting).

prostitution. The Court also rejected the proposition¹⁶⁶ that the Equal Protection Clause supports the theory of facilitating equal participation both economically and socially, that this is not an issue of sex—measures relating to health and safety applying. Maternity leave is mandated by law in many cases, safe haven laws exist, and so are adoption services available. *Dobbs*' dissenters did little to demonstrate much else.

Casey, the Court said, did not consider the question and only relied on *stare decisis*, creating a test without using *Roe* other than in status.¹⁶⁷ *Stare decisis* has many qualities, the Court explains, like reducing incentives to challenge prior decisions, saving costs and time in the courts, and respecting the judgment of those who have wrestled with the question. However, some of the Court's most important decisions had to do with overruling precedent—*Brown v. Board of Education*¹⁶⁸ is just one example. The Court concludes that there is a rational basis for which the Act was created—the protection of the life of the preborn. Chief Justice Roberts, while concurring in the judgment, advocated for a refining of *Casey*, something that permitted abortion up until fifteen weeks. However, the majority explained that this is neither feasible nor practical, given that the Court would be forced to maintain the same abuse that *Roe* and *Casey* had been predicated on—lies,¹⁶⁹ drawing a line arbitrarily, and

¹⁶⁶ *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (Ginsburg, J., concurring); amicus curiae brief of the American Civil Liberties Union.

¹⁶⁷ *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, slip op. at 56 (U.S. June 24, 2022).

¹⁶⁸ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) (overruling *Plessy v. Ferguson* under the same Fourteenth Amendment that had established the 'separate but equal' doctrine).

¹⁶⁹ See also Bernard Nathanson, *How the Abortion Movement Started: Deceit and Lies*, *BMJ* (Mar. 2, 2011), <https://www.bmj.com/rapid-response/2011/11/03/how-abortion-movement-started-deceit-and-lies-dr-nathanson>; DOROTHY E. MCBRIDE & JENNIFER L. KEYS, *ABORTION IN THE UNITED STATES: A REFERENCE HANDBOOK* 194 (2d ed. 2008); Newsweek Staff, *Roe v. Roe: The Woman Behind the Famous Abortion Case*, *NEWSWEEK* (Aug. 20, 1995), <https://www.newsweek.com/roe-v-roe-woman-behind-famous-abortion-case-newsweek-1985-182364>. *Supra* note 106.

facing the challenges for subsequent lines (fourteen weeks, thirteen, and so on). Notably, Justice Clarence Thomas called for the re-evaluation of some of the other Substantive Due Process cases—*Griswold v. Connecticut*, *Lawrence v. Texas*,¹⁷⁰ and *Obergefell v. Hodges*¹⁷¹ being some of the few.

The Question of Federalism

The Court returned the question of abortion to the states to decide in accordance with the interests of its constituents, saying that the federal government had no authority to make this the rule of law (*Roe*) for the whole nation. Federalism, the division of power between the states and the federal government, is apparent in the structure of the Constitution. The provisions of this separation of powers stem from the first three Articles (I, II, III) of the Constitution, describing the roles of the legislative, executive, and judicial branches, among other areas. Beginning with *McCulloch v. Maryland* in 1819 and cases since then, these boundaries have been defined and redefined continuously. Various theories have emerged concerning this system and how to determine roles when jurisdiction overlaps, but regardless of the principles and doctrines over the years, what remains is the understanding that “it [the federal government] can exercise only the powers granted to it.”¹⁷² *Dobbs* returned the issue to the states, with the realization that the Burger Court had, and those after it erred. Since then, varying abortion and trigger laws have taken effect,¹⁷³ and recently California¹⁷⁴ and New York have made

¹⁷⁰ *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹⁷¹ *Obergefell v. Hodges*, 576 U.S. 644 (2015) (case dealing with same-sex relationships and the permission to marry).

¹⁷² *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819).

¹⁷³ See generally Nicole Dube et al., *State Abortion Laws Enacted Post-Dobbs Decision*, OFFICE OF LEGISLATIVE RESEARCH (Sept. 22, 2022), <https://cga.ct.gov/2022/rpt/pdf/2022-R-0227.pdf>.

¹⁷⁴ See generally Constitutional Right to Reproductive Freedom, 2022 Cal. Stat. SCA-10 (proposition 1 in November 8, 2022 election—the winning yes vote meant the Constitution, according to the California State Legislative Analyst’s Office “would be

efforts of their own.¹⁷⁵ Federalism is designed to ensure enough distribution of power to prevent its concentration in the hands of a select few unaccountable elites,

but the meaning of the Constitution does not change with the ebb and flow of [public opinion]. We frequently are told in more general words that the Constitution must be construed in the light of the present [T]o say, if that be intended, that the words of the Constitution mean today what they did not mean when written—that is, that they do . . . apply to a situation now to which they would [not] have applied then—is to rob that instrument of the essential element which continues it in force as the people have made it until they, and not their official agents, have made it otherwise The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation. To miss the point of difference between the two is to miss all that the phrase “supreme law of the land” stands for and to convert what was intended.¹⁷⁶

Congress and the public shamefully ignore the reality that the Court’s job does not involve finding a ‘home’ for laws but rather judging by the written words of the Constitution. Granted, interpretations have been broad, too broad at times, and expansive, but this does not neglect the simple fact that it is to the legislatures we ought to look to for its creation, not the Courts. This, in and of itself, denies its very purpose, that which they were originally and always designed to do.

changed to expressly include existing rights to reproductive freedom—such as the right to choose whether or not to have an abortion and use contraceptives”).

¹⁷⁵ See generally *Abortion Laws by State*, CENTER FOR REPRODUCTIVE RIGHTS, <https://reproductiverights.org/maps/abortion-laws-by-state/> (last visited Mar. 8, 2023).

¹⁷⁶ *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 402-04 (1937) (Sutherland, J., dissenting) (citation omitted).

To many, the Constitution remains the ‘perfect answer’ for our ‘secular’ questions, said to have been “made for people of fundamentally differing views,”¹⁷⁷ indeed giving the appearance that this is true. Until only recently, though, the understanding of our existence was rooted in God and of the Christian God specifically. We act on the foundation of theists. William O. Douglas, not a conservative Justice writing for the majority, said, “we are a religious people whose institutions presuppose a Supreme being. When the state accommodates its schedule to the religious needs of our people, it acts in the best of our traditions.”¹⁷⁸ “Our Constitution [moreover] was made only for a moral and religious People.”¹⁷⁹ The Court’s views have, however, evolved.¹⁸⁰

Analysis

Justice Blackmun (*Roe*’s author) admits that if “[prenatal] personhood is established [the case for abortion] collapses, for the fetus’ right to life would then be guaranteed specifically by the [Fourteenth]

¹⁷⁷ *Lochner*, 198 U.S. at 76 (Holmes, J., dissenting).

¹⁷⁸ *Zorach v. Clauson*, 343 U.S. 306, 314 (1952).

¹⁷⁹ *From John Adams to Massachusetts Militia*, NATIONAL ARCHIVES (Oct. 11, 1798), <https://founders.archives.gov/documents/Adams/99-02-02-3102>. See also *Mordecia Ham Evangelistic Ass’n v. Matthews*, 189 S.W.2d 524 (Ky. Ct. App. 1945) (“Democracy is the outgrowth of Christianity. Although the constitutional decree of freedom of religion and worship embraces any faith, ours is a Christian nation”) (citations omitted) and *Church of the Holy Trinity v. United States*, 143 U.S. 457, 465-66 (1892). See generally *Parallel Concepts between the U.S. Constitution & the Bible*, NATIONAL CENTER FOR CONSTITUTIONAL STUDIES, <https://nccs.net/blogs/articles/parallel-concepts-between-the-u-s-constitution-the-bible?comment=129989804277#comments> (last visited Feb. 4, 2023).

¹⁸⁰ See generally *Engel v. Vitale*, 370 U.S. 421 (1962), *School District of Abington Township v. Schempp* 374 U.S. 203 (1963), *Van Orden v. Perry*, 545 U.S. 677 (2005) and Ethan Tong, *The History and Meaning Behind the Separation of Church and State*, FIRST LIBERTY INSTITUTE (July 22, 2022), <https://firstliberty.org/news/history-behind-the-separation-of-church-and-state/>.

Amendment.”¹⁸¹ Thus, the case rests on, and is supported by, the dehumanization and depersonalization of “an entire group of human beings because they are young and in the womb.”¹⁸² “Abortion is no different from all other human rights injustices involving the denial of personhood”¹⁸³

Killing babies should not be up for debate . . . [,] courts to decide . . . [,] democracy to vote on . . . [, or] elected official[s] to ‘legalize.’ Killing an innocent baby is always heinous, always unjust, always wrong[, a]nd unjust laws or rulings can never change that.¹⁸⁴

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Abortion ought to be criminalized through the very amendment used to protect its procurement (the Fourteenth Amendment),¹⁸⁵ neither for the federal nor state government to allow. At no point prior to *Roe* had it been mentioned that these statutes were constitutionally suspect. The ‘right to privacy’ had been manufactured, without delineating with what respect this referred and where the limits were to be drawn. Dissenting in *Roe*, Justice White famously said that the Court took the concept of liberty too far, “an exercise of raw judicial power.”¹⁸⁶ “Liberty is not guaranteed absolutely against deprivation, only against deprivation without due process of the law,”¹⁸⁷ to be constrained within the strictures of morality. Today’s society and culture have been largely captured by a perspective that is functionally atheist, an epistemology and worldview utterly rejecting God and His laws. Indeed it is insulting that the Court has even

¹⁸¹ *Roe*, 410 U.S. at 157-58.

¹⁸² Live Action, *The True Story Behind Roe v. Wade*, YOUTUBE (Jan. 22, 2020), <https://www.youtube.com/watch?v=yIiTGfDT4IM>.

¹⁸³ *Id.*

¹⁸⁴ Lila Rose (@LilaGraceRose), TWITTER (Nov. 4, 2020, 1:33 PM) (emphasis omitted), <https://twitter.com/lilagracerose/status/1324057097453989888?lang=en>.

¹⁸⁵ See U.S. CONST. amend. XIV, § 1.

¹⁸⁶ *Roe*, 410 U.S. at 222 (1973) (White, J., dissenting).

¹⁸⁷ *Id.* at 173 (Rehnquist, J., dissenting).

recognized corporations as persons¹⁸⁸ and draft cards deserving of constitutional protection.¹⁸⁹ However, part of the outrage over *Dobbs* concerns a misunderstanding of what it actually did—returning to the states the ‘choice’ to decide, something—the destruction of fetal life—that should not have even been allowed to begin with. Even so, many are possessed with a forceful passion, insisting that we all follow the same law, that babies must be murdered.

Conclusion

“*Dobbs* leaves us asking what it means to be American,”¹⁹⁰ where abortion is fought for through motivation by emotion and ignorance, and the Court considers it a trivial matter that a mother comes to the realization only after the procedure has been performed that “she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her [pre]born child.”¹⁹¹ The world, particularly America,¹⁹² says babies are better off dead.¹⁹³ Like the fall of man,¹⁹⁴ we have become a nation blind to wrongdoing and injustice, fallen to corruption, accepting all that which subsequently has incurred the wrath of God.¹⁹⁵ The *Roe* Court had

¹⁸⁸ See *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

¹⁸⁹ See *United States v. O’Brien*, 391 U.S. 367 (1968).

¹⁹⁰ Micah P. Veillon, *Dobbs, Federalism, And Green Day*, THE AMERICAN CONSERVATIVE (June 29, 2022), <https://www.theamericanconservative.com/dobbs-federalism-and-green-day/>.

¹⁹¹ *Gonzales v. Carhart*, 550 U.S. 124, 159-60 (2007).

¹⁹² See generally Mary Szoch & Joy Zavalick, *Most Countries Do Not Allow Abortion Through All 9 Months. Dobbs Can Give U.S. Chance to Join Rest of World*, FAMILY RESEARCH COUNCIL, <https://www.frc.org/get.cfm?i=PV21L02> (last visited Mar. 8, 2023) (the U.S. is one of seven nations worldwide to have permitted abortion through all nine months).

¹⁹³ See generally *John* 10:10. See also *supra* note 91 (“The most merciful thing that a family does to one of its infant members is to kill it”).

¹⁹⁴ See generally *Genesis* 3.

¹⁹⁵ See generally *Genesis* 9:5-6 and *Leviticus* 24:17.

severely underestimated the consequences of their decision¹⁹⁶—baselessly documenting these regulations as though they were legislation. *Dobbs* is only the beginning of the remedy. Abortion has been considered a ‘right’ and ‘healthcare’ for long enough. Still, today, many consider this to have been ‘stripped’ from them, pointing to even Justice Barrett’s confirmation as an example of political abuse. From history, ideologies, and law, it is clear that abortion is evil. Whatever the reason, that baby—the one enduring the suffering of inescapable death—is undeniably human, and it is undeniably murder to do anything but seek its protection. Hannah Arendt was right in what she said concerning ‘the banality of evil’;¹⁹⁷ without a eulogy, publicization, or report of its pervasiveness, preborn babies are murdered every second,¹⁹⁸ a staggering 2,383 a day¹⁹⁹—more than the number of death by car crash (100),²⁰⁰ smoking (1,300),²⁰¹ and heart disease (2,353).²⁰² The word ‘abortion’ has been so normalized to the extent of desensitization, a clean word for a quite literally bloody²⁰³ and inhumane practice. It is ‘plan b’ when faced with the consequences of the poor (often promiscuous) choices prior. *Roe* was

¹⁹⁶ See *supra* note 137.

¹⁹⁷ See generally HANNAH ARENDT, EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL (1963). See also *Jeremiah* 17:9 and *Mark* 7:20-23.

¹⁹⁸ See *Number of Abortions in US & Worldwide*, NUMBER OF ABORTIONS, <http://www.numberofabortions.com> (last visited Mar. 11, 2023). See generally Campaign Life TV, *The Silent Scream, 1984*, YOUTUBE (Aug. 30, 2022), <https://www.youtube.com/watch?v=hstRrYsbffM>.

¹⁹⁹ Rachel K. Jones et al., *Abortion Incidence and Service Availability in the United States, 2020*, 54 PERSP. ON SEXUAL & REPRODUCTIVE HEALTH 128-141 (2022).

²⁰⁰ *Traffic Safety Facts*, DOT HS 812 961, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (Nov. 2020).

²⁰¹ *Diseases and Death*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/diseases-and-death.html (last visited Mar. 9, 2023).

²⁰² *Heart Disease and Stroke Statistics—2020 Update*, AMERICAN HEART ASSOCIATION (Jan. 29, 2020), <https://professional.heart.org/en/science-news/heart-disease-and-stroke-statistics-2020-update>.

²⁰³ *Leviticus* 17:14a.

always wrong; *Dobbs* merely highlighted its deficiencies. “The Constitution places its trust in the people,”²⁰⁴ assuming that people are moral enough to make their own choices, but as Alexander Hamilton put it, “government [has] been instituted at all . . . [b]ecause the passions of men will not conform to the dictates of reason and justice, without constraint.”²⁰⁵ That *Roe* successfully wedged itself into the law for so many years in an attempt to cement itself in the fabric of society means even less when stood beside *Plessy v. Ferguson*,²⁰⁶ the legal basis for Jim Crow laws in the U.S. for roughly just as long. It is not enough to only look at the law, ignoring the reality surrounding the prevalence of abortion and its support. *Roe* and what it stands for has played a dominant role in politics,²⁰⁷ a reminder of the lengths man will go to in doing what God hates,²⁰⁸ but truer still, the persecution faced at the hand of those silencing its protest. *Roe* was not right because it was decided; it was wrong because it was. Mothers today are persuaded to murder their own children, pressured to do so by the culture. However, it is not normal and it should not be. Regret, depression, anxiety, self-hatred, self-destruction, grief, sickness, emotional turmoil—these are the consequences. The daunting question of ‘what if’ presses into the depths of a person’s mind and soul. It stains a person, scars, and internally wounds. Abortion is not empowering; it destroys the gift of God. A death is a death no matter the age or size. Abortionists and their advocates prey on fear, but these lies are soon uncovered. In the face of a world that seeks to shed any ounce

²⁰⁴ *Supra* note 156.

²⁰⁵ THE FEDERALIST NO. 15 (Alexander Hamilton).

²⁰⁶ *Plessy v. Ferguson*, 163 U.S. 537 (1896) (which upheld the constitutionality of racial segregation laws for public facilities under the ‘separate but equal’ doctrine). *See also supra* note 168.

²⁰⁷ *See generally Barrett Confirmation Hearing, Day 2 Part 1*, C-SPAN (Oct. 13, 2020), <https://www.c-span.org/video/?476316-1/barrett-confirmation-hearing-day-2-part-1> and *Sotomayor Confirmation Hearing, Day 2, Part 5*, C-SPAN (July 14, 2009), <https://www.c-span.org/video/?287701-104/sotomayor-confirmation-hearing-day-2-part-5>.

²⁰⁸ *See generally Proverbs* 6:16-19.

of maternal sensibilities²⁰⁹—resist them. Abortion is not a ‘woman’s issue’ but a life issue. We are to be the voice for the voiceless.²¹⁰ “Therefore, choose life.”

²⁰⁹ See generally *Matthew* 24:12.

²¹⁰ See generally *Isaiah* 40:3, *Proverbs* 31:8. See also *Psalms* 82:3-4.

Figures

Figure 1. Four Years to Roe Timeline.



