



Dobbs  
v.  
Jackson Women's Health Organization

ABORTION UNDER THE LAW AFTER DOBBS

“

For you created my inmost being;  
you knit me together in my  
mother's womb.

”

**PSALMS 139:13**

# History

- ▶ Abortion was legal and illegal at various times in the previous two centuries around the world.
- ▶ No uniformity before “quickening,” but fairly uniform after “quickening”
- ▶ By late 1960s abortion was illegal in most of the world
- ▶ In 1967, the AMA was strongly opposed to abortion
- ▶ Abortion was illegal in a majority of states except for the life/health of the mother
- ▶ In the late 1960’s a few states were allowing abortion up to 24 weeks for any reason
- ▶ In 1970, the AMA changed their mind on abortions
- ▶ 1971 Supreme Court overturns a DC law that permitted abortions
- ▶ 1972 Roe v. Wade is argued
- ▶ 1973 Roe decision prohibited restrictions on abortion through first trimester but allowed restrictions at third trimester and was unclear about second trimester.

# Weighing of Competing Interests



- ▶ Individual's right or liberty
- ▶ State's Interest in restricting or prohibiting behavior

## Constitutional Standards

Strict Scrutiny  
Intermediate  
Scrutiny  
Rational Basis

WHAT IS REQUIRED FOR A LAW  
TO SURVIVE THE VARIOUS  
LEVELS OF EQUAL  
PROTECTION REVIEW?

	Rational Basis Review	Intermediate Scrutiny	Strict Scrutiny
State Interest	Only needs to be <i>legitimate</i> . Can be merely conceivable – need not be actual	Must be genuine (not <i>post hoc</i> ) and <i>important</i>	State interest must be <i>compelling</i>
Law's Relation to that Interest	Must be <i>rationaly related</i> or non-arbitrary	Must be <i>substantially related</i>	Must be <i>necessary to achieve the purpose</i> – must be “narrowly tailored”

# Prior to Roe v. Wade

RATIONAL BASIS ANALYSIS WAS USED BECAUSE THE STATE CLAIMED TO HAVE AN INTEREST IN:

- (1) DISCOURAGING ILLICIT SEXUAL CONDUCT;
- (2) PROTECTING WOMEN FROM DANGEROUS PROCEDURES; AND
- (3) PROTECTING PRENATAL LIFE.

# Right to Privacy – Roe Rationale

- ▶ Not explicitly mentioned in the Constitution
- ▶ However,
  - ▶ First Amendment (speech, religion)
  - ▶ Fourth Amendment and Fifth Amendment (unreasonable search)
  - ▶ Ninth Amendment (reservation of rights to the people)
  - ▶ Penumbra of the Bill of Rights
  - ▶ Fourteenth Amendment (concept of liberty)
- ▶ Personal rights “implicit in the concept of ordered liberty”

# Substantive Due Process

- ▶ At first recognized as “economic rights” that were fundamental for a person to enjoy life and liberty in the 1930s.
- ▶ Soon spawned off into the concept of “fundamental rights”
- ▶ The U.S. Supreme Court has determined that fundamental rights protected by substantive due process are those **deeply rooted** in U.S. history and tradition, viewed in light of **evolving social norms**. These rights are not explicitly listed in the Bill of Rights, but rather are the penumbra of certain amendments that refer to or assume the existence of such rights. This has led the Supreme Court to find that personal and relational rights, as opposed to economic rights, are fundamental and protected.

Some “Fundamental Rights” as determined by the US Supreme Court:

CONTRACEPTIVES – 1965

INTER-RACIAL MARRIAGE – 1967

PRE-VIABILITY ABORTION - 1973

SAME-SEX MARRIAGE – 2015

# Roe was not an absolute grant of an absolute right!

“A State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life.”

“At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision.”

“The privacy right involved, therefore, cannot be said to be absolute.”

You do not have the right to do whatever you want with your body under substantive due process: Drug use, prostitution, suicide, etc ...

# What has been the result of Roe?

- ▶ Between 1973 and 2020 there were approximately 64 million elective abortions.
- ▶ That is the equivalent to the current total population of Florida, Georgia, Alabama, Tennessee, Mississippi, Arkansas, South Carolina, and North Carolina COMBINED.
- ▶ Covid -19 has been treated the greatest public health crisis in our life-time.
- ▶ In 2.5 years of Covid approximately 1.2 million people have died of Covid.
- ▶ On average that is less than the number of elective abortions each year.

# Along comes Dobbs

- ▶ The Supreme Court reaffirmed Roe in 1992 in Casey. Eliminated privacy rationale focused solely on substantive due process as reasoning.
- ▶ Mississippi passed law that said no elective abortions after 15 weeks.
- ▶ US Supreme Court overturned Roe and Casey and said no fundamental right to abortion because it is not “deeply rooted” in nation’s history and tradition and not an essential component of “ordered liberty.”
- ▶ Abortion is different because it destroys “potential life” or “unborn human being.” No other example of a fundamental right destroys.
- ▶ Since it is not a fundamental right state legislation is view under the lowest standard of “rational basis”

## What is next?

- ▶ Each state now can determine where to draw the line or if they want to draw one at all.
- ▶ Decisions to draw the line in the first trimester will be lawful, if rationally based to foster a legitimate state interest.
- ▶ In America, political fights are more appropriate for the legislatures than the courts. Your vote counts.
- ▶ Remember violating the law, is sin. But just because something is lawful does not mean it is without sin.

# Things to consider ...

- ▶ If life begins at conception, can there be any exception for rape or incest?
- ▶ Do we really want to have to explain all miscarriages to the government?
- ▶ If someone is required to carry a baby to term against their will, are we willing to assist?
- ▶ What role should the fathers play? Financial support? Part of the decision making?
- ▶ Will more restrictive laws force quick decisions without complete information or contemplation?



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**PSALMS 139:13**

## So, what is our role?

Not to judge

Not to fire off hostile rhetoric

But to LOVE

“Love one another. As I have loved you, so you must love one another.”

John 13:34

Support those organizations that seek to help people make informed decisions.

