

The Supreme Court's draft opinion on overturning Roe v. Wade, annotated



From left, Justices Samuel A. Alito Jr., Brett M. Kavanaugh, Clarence Thomas, Neil M. Gorsuch and Amy Coney Barrett. (Fred Schilling/Collection of the Supreme Court of the United States/Washington Post illustration)

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May 3, 2022

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The Supreme Court appears potentially [poised to overturn Roe v. Wade](#), the landmark case enshrining a constitutional right to an abortion, according to a leaked [draft opinion](#) obtained and published by Politico on Monday night.

Chief Justice John G. Roberts Jr. on Tuesday [confirmed the authenticity of the draft opinion](#), which is written by Justice Samuel Alito, in *Dobbs v. Jackson Women's Health Organization*. But he emphasized that it “does not represent a decision by the court or the final position of any member on the issues in the case.” He said the court is investigating the extraordinary breach.

That said, Politico reported that five justices — Alito, Clarence Thomas, Neil M. Gorsuch, Brett M. Kavanaugh, and Amy Coney Barrett — have agreed to overturn the half-century-old precedent, and the draft opinion by Alito, one of the court's two staunchest conservatives, could serve as a road map for how they would eventually do it.



Draft opinion in Dobbs v. Jackson

This draft opinion written and circulated by Justice Alito — obtained by Politico and confirmed by Chief Justice John Roberts as authentic — lays out the reasoning for striking down Roe v. Wade.

[Explore the entire draft](#) 🔍

Below are some crucial sections of the draft opinion, with annotations providing analysis and background. Some of the legal jargon and citations are cleaned up for readability.

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JUSTICE ALITO delivered the opinion of the Court.

Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently that a human person comes into being

at conception and that abortion ends an innocent life. Others feel just as strongly that any regulation of abortion invades a woman's right to control her own body and prevents women from achieving full equality. Still others in a third group think that abortion should be allowed under some but not all circumstances, and those within this group hold a variety of views about the particular restrictions that should be imposed.

Click or tap the highlighted passages for additional analysis.

For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens. Then, in 1973, this Court decided *Roe v. Wade*, 410 U.S. 113. Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one. It did not claim that American law or the common law had ever recognized such a right, and its survey of history ranged from the constitutionally irrelevant (*e.g.*, its discussion of abortion in antiquity) to the plainly incorrect (*e.g.*, its assertion that abortion was probably never a crime under the common law). After cataloguing a wealth of other information having no bearing on the meaning of the Constitution, the opinion concluded with a numbered set of rules much like those that might be found in a statute enacted by a legislature.¹

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Under this scheme, each trimester of pregnancy was regulated differently, but the most critical line was drawn at roughly the end of the second trimester, which, at the time, corresponded to the point at which a fetus was thought *to* achieve "viability," *i.e.*, the ability to survive outside the womb. Although the Court acknowledged that States had a legitimate interest in protecting "potential life," it found that this interest could not justify any restriction on pre-viability abortions. The Court did not explain the basis for this line, and even abortion supporters have found it hard to defend *Roe's* reasoning. One prominent constitutional scholar wrote that he "would vote for a statute very much like the

one the Court end[ed] up drafting” if he were “a legislator,” but his assessment of *Roe* was memorable and brutal: *Roe* was “not constitutional law” at all and gave almost no sense of an obligation to try to be.”²

At the time of *Roe*, 30 States still prohibited abortion at all stages. In the years prior to that decision, about a third of the States had liberalized their laws, but *Roe* abruptly ended that political process. It imposed the same highly restrictive regime on the entire Nation, and it effectively struck down the abortion laws of every single State. As Justice Byron White aptly put it in his dissent, the decision represented the “exercise of raw judicial power,” 410 U. S., at 222, and it sparked a national controversy that has embittered our political culture for a half-century.

Eventually, in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), the Court revisited *Roe*, but the members of the Court split three ways. Two Justices expressed no desire to change *Roe* in any way. Four others wanted to overrule the decision in its entirety. And the three remaining Justices, who jointly signed the controlling opinion, took a third position. Their opinion did not endorse *Roe*'s reasoning, and it even hinted that one or more of its authors might have “reservations” about whether the Constitution protects a right to abortion.³ But the opinion concluded that *stare decisis*, which calls for prior decisions to be followed in most instances, required adherence to what it called *Roe*'s “central holding” — that a State may not constitutionally protect fetal life before “viability” — even if that holding was wrong. Anything less, the opinion claimed, would undermine respect for this Court and the rule of law.

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Paradoxically, the judgment in *Casey* did a fair amount of overruling. Several important abortion decisions were overruled *in toto*, and *Roe* itself was overruled in part. *Casey* threw out *Roe*'s trimester scheme and substituted a new rule of uncertain origin under which States were forbidden to adopt any regulation that imposed an “undue burden” on a woman's right to have an abortion. The decision provided no clear guidance about the difference between

a “due” and an “undue” burden. But the three Justices who authored the controlling opinion “call[ed] the contending sides of a national controversy to end their national division” by treating the Court’s decision as the final settlement of the question of the constitutional right to abortion.

As has become increasingly apparent in the intervening years, *Casey* did not achieve that goal. Americans continue to hold passionate and widely divergent views on abortion, and state legislatures have acted accordingly. Some have recently enacted laws allowing abortion, with few restrictions, at all stages of pregnancy. Others have tightly restricted abortion beginning well before viability. And in this case, 26 States have expressly asked this Court to overrule *Roe* and *Casey* and allow the States to regulate or prohibit pre-viability abortions.

Before us now is one such state law. The State of Mississippi asks us to uphold the constitutionality of a law that generally prohibits an abortion after the fifteenth week of pregnancy — several weeks before the point at which a fetus is now regarded as “viable” outside the womb. In defending this law, the State’s primary argument is that we should reconsider and overrule *Roe* and *Casey* and once again allow each State to regulate abortion as its citizens wish. On the other side, respondents and the Solicitor General ask us to reaffirm *Roe* and *Casey*, and they contend that the Mississippi law cannot stand if we do so. Allowing Mississippi to prohibit abortions after 15 weeks of pregnancy, they argue, “would be no different than overruling *Casey* and *Roe* entirely.” They contend that “no half-measures” are available and that we must either reaffirm or overrule *Roe* and *Casey*.

We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely — the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be “deeply rooted in this Nation’s his-

tory and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U. S. 702, 721 (1997).⁴

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The right to abortion does not fall within this category. Until the latter part of the 20th century, such a right was entirely unknown in American law. Indeed, when the Fourteenth Amendment was adopted, three quarters of the States made abortion a crime at all stages of pregnancy. The abortion right is also critically different from any other right that this Court has held to fall within the Fourteenth Amendment’s protection of “liberty.” *Roe*’s defenders characterize the abortion right as similar to the rights recognized in past decisions involving matters such as intimate sexual relations, contraception, and marriage, but abortion is fundamentally different, as both *Roe* and *Casey* acknowledged, because it destroys what those decisions called “fetal life” and what the law now before us describes as an “unborn human being.”⁵

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Stare decisis, the doctrine on which *Casey*’s controlling opinion was based, does not compel unending adherence to *Roe*’s abuse of judicial authority. *Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division.⁶

It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives. “The permissibility of abortion, and the limitations, upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting.” *Casey*, 505 U. S., at 979 (Scalia, J., concurring in the judgment in part and dissenting in part). That is what the Constitution and the rule of law demand.

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We briefly address one additional constitutional provision that some of respondents' amici have now offered as yet another potential home for the abortion right: the Fourteenth Amendment's Equal Protection Clause. Neither *Roe* nor *Casey* saw fit to invoke this theory, and it is squarely foreclosed by our precedents, which establish that a State's regulation of abortion is not a sex-based classification and is thus not subject to the "heightened scrutiny" that applies to such classifications. The regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a "mere pretext[] designed to effect an invidious discrimination against members of one sex or the other." And, as the Court has stated, the "goal of preventing abortion" does not constitute "invidiously discriminatory animus against women." Accordingly, laws regulating or prohibiting abortion are not subject to heightened scrutiny. Rather, they are governed by the same standard of review as other health and safety measures.⁷

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Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. Zero. None.⁸ No state constitutional provision had recognized such a right. Until a few years before *Roe* was handed down, no federal or state court had recognized such a right. Nor had any scholarly treatise of which we are aware. And although law review articles are not reticent about advocating new rights, the earliest article proposing a constitutional right to abortion that has come to our attention was published only a few years before *Roe*.

Not only was there no support for such a constitutional right until shortly before *Roe*, but abortion had long been a *crime* in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time of the adoption of the Fourteenth Amendment, three-quarters of the States had made abortion a crime at any stage of pregnancy, and the remaining States would soon follow.

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In this country during the 19th century, the vast majority of the States enacted statutes criminalizing abortion at all stages of pregnancy. By 1868, when the Fourteenth Amendment was ratified, three-quarters of the States, 28 out of 37, had enacted statutes making abortion a crime even if it was performed before quickening. Of the nine States that had not yet criminalized abortion at all stages, all but one did so by 1910. The trend in the territories that would become the last 13 States was similar: all of them criminalized abortion at all stages of pregnancy between 1850 (the Kingdom of Hawaii) and 1919 (New Mexico). By the end of the 1950s, according to the *Roe* Court's own count, statutes in all but four States and the District of Columbia prohibited abortion "however and whenever performed, unless done to save or preserve the life of the mother."

This overwhelming consensus endured until the day *Roe* was decided. At that time, also by the *Roe* Court's own count, a substantial majority — 30 States — still prohibited abortion at all stages except to save the life of the mother. And though *Roe* discerned a "trend toward liberalization" in about "one-third of the States," those States still criminalized some abortions and regulated them more stringently than *Roe* would allow. In short, the "Court's opinion in *Roe* itself convincingly refutes the notion that the abortion liberty is deeply rooted in the history or tradition of our people."⁹

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The Court in *Roe* could have said of abortion exactly what *Glucksberg* said of assisted suicide: “Attitudes toward [abortion] have changed since Bracton, but our laws have consistently condemned, and continue to prohibit, [that practice].”¹⁰

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Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, and *Casey* described it as the freedom to make “intimate and personal choices” that are “central to personal dignity and autonomy.” *Casey* elaborated: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”

The Court did not claim that this broadly framed right is absolute, and no such claim would be plausible. While individuals are certainly free *to think* and *to say* what they wish about “existence,” “meaning,” the “universe,” and “the mystery of human life,” they are not always free *to act* in accordance with those thoughts. License *to act* on the basis of such beliefs may correspond to one of the many understandings of “liberty,” but it is certainly not “ordered liberty.”

Ordered liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed “potential life.” But the people of the various States may evaluate those interests differently.¹¹ In some States, voters may believe that the abortion right should be more even more extensive than the right that *Roe* and *Casey* recognized. Voters

in other States may wish to impose tight restrictions based on their belief that abortion destroys an “unborn human being.” Our Nation’s historical understanding of ordered liberty does not prevent the people’s elected representatives from deciding how abortion should be regulated.

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Nor does the right to obtain an abortion have a sound basis in precedent. *Casey* relied on cases involving the right to marry a person of a different race, *Loving v. Virginia*, 388 U.S. 1 (1967); the right to marry while in prison, *Turner v. Safley*, 482 U. S. 78 (1987); the right to obtain contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965), *Eisenstadt v. Baird*, 405 U. S. 438 (1972), *Carey v. Population Services International*, 431 U.S. 678 (1977); the right to reside with relatives, *Moore v. East Cleveland*, 431 U.S. 494 (1977); the right to make decisions about the education of one’s children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Meyer v. Nebraska*, 262 U.S. 390 (1923); the right not to be sterilized without consent, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); and the right in certain circumstances not to undergo involuntary surgery, forced administration of drugs, or other substantially similar procedures, *Winston v. Lee*, 470 U.S. 753 (1985), *Washington v. Harper*, 494 U. S. 210 (1990), *Rochin v. California*, 342 U. S. 165 (1952). Respondents and the Solicitor General also rely on *post-Casey* decisions like *Lawrence v. Texas*, 539 U.S. 558 (2003) (right to engage in private, consensual sexual acts), and *Obergefell v. Hodges*, 576 U.S. 644 (2015) (right to marry a person of the same sex).

These attempts to justify abortion through appeals to a broader right to autonomy and to define one’s “concept of existence” prove too much. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. None of these rights has any claim to being deeply rooted in history.

What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions

acknowledged: Abortion destroys what those decisions call “potential life” and what the law at issue in this case regards as the life of an “unborn human being.” None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. They are therefore inapposite.¹² They do not support the right to obtain an abortion, and by the same token, our conclusion that the Constitution does not confer such a right does not undermine them in any way.

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We next consider whether the doctrine of *stare decisis* counsels continued acceptance of *Roe* and *Casey*. *Stare decisis* plays an important role in our case law, and we have explained that it serves many valuable ends. It protects the interests of those who have taken action in reliance on a past decision. It “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.” It fosters “evenhanded” decision making by requiring that like cases be decided in a like manner. It “contributes to the actual and perceived integrity of the judicial process.” And it restrains judicial hubris and reminds us to respect the judgment of those who grappled with important questions in the past. “Precedent is a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges.” N. Gorsuch, *A Republic If You Can Keep It* 217 (2019).

We have long recognized, however, that *stare decisis* is “not an inexorable command,” and it “is at its weakest when we interpret the Constitution.” It has been said that it is sometimes more important that an issue “be settled than that it be settled right.” But when it comes to the interpretation of the Constitution — the “great charter of our liberties,” which was meant “to endure through a long lapse of ages” — we place a high value on having the matter “settled right.” In addition, when one of our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake. An erro-

neous constitutional decision can be fixed by amending the Constitution, but our Constitution is notoriously hard to amend. Therefore, in appropriate circumstances we must be willing to reconsider and if necessary overrule constitutional decisions.

Some of our most important constitutional decisions have overruled prior precedents. We mention three. In *Brown v. Board of Education*, the Court repudiated the “separate but equal” doctrine, which had allowed States to maintain racially segregated schools and other facilities. In so doing, the Court overruled the infamous decision in *Plessy v. Ferguson*, along with six other Supreme Court precedents that had applied the separate-but-equal rule.

In *West Coast Hotel Co. v. Parrish*, the Court overruled *Adkins v. Children's Hospital of D.C.*, which had held that a law setting minimum wages for women violated the “liberty” protected by the Fifth Amendment's Due Process Clause. *West Coast Hotel* signaled the demise of an entire line of important precedents that had protected an individual liberty right against state and federal health and welfare legislation.

Finally, in *West Virginia Bd. of Ed. v. Barnette*, after the lapse of only three years, the Court overruled *Minersville School Dist. v. Gobitis* and held that public school students could not be compelled to salute the flag in violation of their sincere beliefs. *Barnette* stands out because nothing had changed during the intervening period other than the Court's belated recognition that its earlier decision had been seriously wrong.

On many other occasions, this Court has overruled important constitutional decisions. We include a partial list in the footnote that follows. Without these decisions, American constitutional law as we know it would be unrecognizable, and this would be a different country.

No Justice of this Court has ever argued that the Court should *never* overrule a constitutional decision, but overruling a precedent is a serious matter. It is not a step that should be taken lightly. Our cases have attempted to provide a

framework for deciding when a precedent should be overruled, and they have identified factors that should be considered in making such a decision.

In this case, five factors weigh strongly in favor of over ruling *Roe* and *Casey*: the nature of their error, the quality of their reasoning, the “workability” of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance.¹³

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The nature of the Court's error. An erroneous interpretation of the Constitution is always important, but some are more damaging than others.

The infamous decision in *Plessy v. Ferguson, supra*, was one such decision. It betrayed our commitment to “equality under law.” It was “egregiously wrong” on the day it was decided, and as the Solicitor General agreed at oral argument, it should have been overruled at the earliest opportunity.

Roe was also egregiously wrong and deeply damaging. For reasons already explained, *Roe*'s constitutional analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed.¹⁴

Roe was on a collision course with the Constitution from the day it was decided, and *Casey* perpetuated its errors, and the errors do not concern some arcane corner of the law of little importance to the American people. Rather, wielding nothing but “raw judicial power,” the Court usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people. *Casey* described itself as calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. Those on the losing side—those who sought to advance the state's interest in fetal life could no longer seek to persuade their

elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*. “*Roe* fanned into life an issue that has inflamed our national politics in general, and has obscured with its smoke the selection of Justices to this Court in particular, ever since.” *Casey*, 505 U. S., at 995-996 (Scalia, J., concurring in part and dissenting in part). Together, *Roe* and *Casey* represent an error that cannot be allowed to stand.¹⁵

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The quality of the reasoning. ... The weaknesses in *Roe*'s reasoning are well-known. Without any grounding in the constitutional text, history, or precedent, it imposed on the entire country a detailed set of rules much like those that one might expect to find in a statute or regulation. Dividing pregnancy into three trimesters, the Court imposed special rules for each. During the first trimester, the Court announced, “the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman’s attending physician.” After that point, a State’s interest in regulating abortion for the sake of a woman’s health became compelling, and accordingly, a State could “regulate the abortion procedure in ways that are reasonably related to maternal health.” Finally, “in the stage subsequent to viability,” which in 1973 roughly coincided with the beginning of the third trimester, the State’s interest in “the potentiality of human life” became compelling, and therefore a State could “regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.”

This elaborate scheme was the Court’s own brainchild. Neither party advocated the trimester framework; nor did either party or any amicus argue that “viability” should mark the point at which the scope of the abortion right and a State’s regulatory authority should be substantially transformed.

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Not only did this scheme resemble the work of a legislature, but the Court made little effort to explain how these rules could be deduced from any of the sources on which constitutional decisions are usually based. We have already discussed *Roe*'s treatment of constitutional text, and the opinion failed to show that history, precedent, or any other cited source supported its scheme.

Roe featured a lengthy survey of history, but much of its discussion was irrelevant, and the Court made no effort to explain why it was included. For example, multiple paragraphs were devoted to an account of the views and practices of ancient civilizations where infanticide was widely accepted. When it came to the most important historical fact — how the States regulated abortion when the Fourteenth Amendment was adopted — the Court said almost nothing. It allowed that States had tightened their abortion laws “in the middle and late 19th century,” but it implied that these laws might have been enacted, not to protect fetal life, but to further “a Victorian social concern” about “illicit sexual conduct.”

Roe's failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Relying on two discredited articles by an abortion advocate, the Court erroneously suggested — contrary to Bracton, Coke, Hale, Blackstone, and a wealth of other authority — that the common law had probably never really treated post-quickening abortion as a crime.¹⁶ (“[I]t now appear[s] doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.”) This erroneous understanding appears to have played an important part in the Court's thinking because the opinion cited “the lenity of the common law” as one of the four factors that informed its decision.

After surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee. This included a lengthy account of the “position of the American Medical Association” and “[t]he position of the American Public Health Association,” as well as the vote by the American Bar Association’s House of Delegates in February 1972 on proposed abortion legislation. Also noted were a British judicial decision handed down in 1939 and a new British abortion law enacted in 1967. The Court did not explain why these sources shed light on the meaning of the Constitution, and not one of them adopted or advocated anything like the scheme that *Roe* imposed on the country.

Finally, after all this, the Court turned to precedent. Citing a broad array of cases, the Court found support for a constitutional “right of personal privacy,” but it conflated two very different meanings of the term: the right to shield information from disclosure and the right to make and implement important personal decisions without governmental interference. Only the cases involving this second sense of the term could have any possible relevance to the abortion issue, and some of the cases in that category involved personal decisions that were obviously very, very far afield. See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (right to send children to religious school); *Meyer v. Nebraska*, 262 U.S. 390 (1937) (right to have children receive German language instruction).

What remained was a handful of cases having something to do with marriage, *Loving v. Virginia*, 388 U.S. 1 (1967) (right to marry a person of a different race), or procreation, *Skinner v. Oklahoma*, 316 U.S. 535 (1942) (right not to be sterilized); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (right of married persons to obtain contraceptives); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (same, for unmarried persons). But none of these decisions involved what is distinctive about abortion: its effect on what *Roe* termed “potential life.”

When the Court summarized the basis for the scheme it imposed on the country, it asserted that its rules were “consistent with” the following: (1) “the relative

weights of the respective interests involved,” (2) “the lessons and examples of medical and legal history,” (3) the lenity of the common law,” and (4) “the demands of the profound problems of the present day.” Put aside the second and third factors, which were based on the Court’s flawed account of history, and what remains are precisely the sort of considerations that legislative bodies often take into account when they draw lines that accommodate competing interests. The scheme *Roe* produced *looked* like legislation, and the Court provided the sort of explanation that might be expected from a legislative body.¹⁷

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Having shown that traditional *stare decisis* factors do not weigh in favor of retaining *Roe* or *Casey*, we must address one final argument that featured prominently in the *Casey* plurality opinion.

The argument was cast in different terms, but stated simply, it was essentially as follows. The American people’s belief in the rule of law would be shaken if they lost respect for this Court as an institution that decides important cases based on principle, not “social and political pressures.” There is a special danger that the public will perceive a decision as having been made for unprincipled reasons when the Court overrules a controversial “watershed” decision, such as *Roe*. A decision overruling *Roe* would be perceived as having been made “under fire” and as a “surrender to political pressure,” and therefore the preservation of public approval of the Court weighs heavily in favor of retaining *Roe*.

This analysis starts out on the right foot but ultimately veers off course. The *Casey* plurality was certainly right that it is important for the public to perceive that our decisions are based on principle, and we should make every effort to achieve that objective by issuing opinions that care fully show how a proper understanding of the law leads to the results we reach. But we cannot exceed the scope of our authority under the Constitution, and we cannot allow our decisions to be affected by any extraneous influences such as concern about the

public's reaction to our work. That is true both when we initially decide a constitutional issue and when we consider whether to overrule a prior decision.¹⁸ As Chief Justice Rehnquist explained, “The Judicial Branch derives its legitimacy, not from following public opinion, but from deciding by its best lights whether legislative enactments of the popular branches of Government comport with the Constitution. The doctrine of *stare decisis* is an adjunct of this duty and should be no more subject to the vagaries of public opinion than is the basic judicial task.” In suggesting otherwise, the *Casey* plurality went beyond this Court's role in our constitutional system.

The *Casey* plurality “call[ed] the contending sides of a national controversy to end their national division,” and claimed the authority to impose a permanent settlement of the issue of a constitutional abortion right simply by saying that the matter was closed. That unprecedented claim exceeded the power vested in us by the Constitution. As Hamilton famously put it, the Constitution gives the judiciary “neither Force nor Will.” Our sole authority is to exercise “judgment” — which is to say, the authority to judge what the law means and how it should apply to the case at hand. The Court has no authority to decree that an erroneous precedent is *permanently* exempt from evaluation under traditional *stare decisis* principles. A precedent of this Court is subject to the usual principles of *stare decisis* under which adherence to precedent is the norm but not an inexorable command. If the rule were otherwise, erroneous decisions like *Plessy* and *Lochner* would still be the law. That is not how *stare decisis* operates.

The *Casey* plurality also misjudged the practical limits of this Court's influence. *Roe* certainly did not succeed in ending division on the issue of abortion. On the contrary, *Roe* “inflamed” a national issue that has remained bitterly divisive for the past half-century. See *Casey*, 505 U.S., at 995 (Scalia, J., dissenting); see also R.B. Ginsburg, *Speaking in a Judicial Voice*, 67 N.Y.U. L. Rev. 1185, 1208 (1992) (*Roe* may have “halted a political process,” “prolonged divisiveness,” and “deferred stable settlement of the issue.”).¹⁹ And for the past 30 years, *Casey* has done the same.

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Neither decision has ended debate over the issue of a constitutional right to obtain an abortion. Indeed, in this case, 26 States expressly ask us to overrule *Roe* and *Casey* and to return the issue of abortion to the people and their elected representatives. This Court's inability to end debate on the issue should not have been surprising. This Court cannot bring about the permanent resolution of a rancorous national controversy simply by dictating a settlement and telling the people to move on. Whatever influence the Court may have on public attitudes must stem from the strength of our opinions, not an attempt to exercise "raw judicial power."

We do not pretend to know how our political system or society will respond to today's decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision.²⁰ We can only do our job, which is to interpret the law, apply long-standing principles of *stare decisis*, and decide this case accordingly.

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We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.

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We must now decide what standard will govern if state abortion regulations undergo constitutional challenge and whether the law before us satisfies the appropriate standard.

Under our precedents, rational-basis review is the appropriate standard for such challenges. As we have explained, procuring an abortion is not a fundamental

constitutional right because such a right has no basis in the Constitution's text or in our Nation's history.

It follows that the States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot “substitute their social and economic beliefs for the judgment of legislative bodies.” That respect for a legislature’s judgment applies even when the laws at issue concern matters of great social significance and moral substance. A law regulating abortion, like other health and welfare laws, is entitled to a “strong presumption of validity.” It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. These legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability.²¹

These legitimate interests justify Mississippi’s Gestational Age Act. Except “in a medical emergency or in the case of a severe fetal abnormality,” the statute prohibits abortion “if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.” The Mississippi Legislature’s findings recount the stages of “human prenatal development” and assert the State’s interest in “protecting the life of the unborn.” The legislature also found that abortions performed after fifteen weeks typically use the dilation and evacuation procedure, and the legislature found the use of this procedure “for non-therapeutic or elective reasons [to be] a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession.” These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondent’s constitutional challenge must fail.

We end this opinion where we began. Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We

now overrule those decisions and return that authority to the people and their elected representatives.

The judgment of the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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