UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

19–1392

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, et al., PETITIONER	**v.**	**JACKSON WOMEN'S HEALTH ORGANIZATION, et al.**

on writ of certiorari to the united states court of appeals for the fifth circuit

June 24, 2023

AUTO GENERATED OPINION SUMMARIES

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CHIEF JUSTICE ROBERTS OPINION

SUPREME COURT OF THE UNITED STATES

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NARRATIVE SUMMARY OF OPINION OF THE COURT DELIVERED BY JUSTICE SAMUEL ALITO

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I

Mississippi's Gestational Age Act, as per Miss. Code Ann. §41–41–191 (2018), stipulates that, barring a medical emergency or significant fetal abnormalities, an abortion cannot be performed or induced if the probable gestational age of the fetus exceeds fifteen weeks. This law is grounded on a series of factual findings by the legislature. It states that apart from the United States, only six countries permit nontherapeutic or elective abortions beyond twenty weeks of gestation, and charts the developmental progress of an unborn human being from 5 weeks gestational age, when the heart begins to beat, through to the 12th week when it asserts the unborn human being has assumed 'the human form' in all relevant respects. It concludes that most abortions after 15 weeks involve procedures that are inhumane, endanger the mother's life, and degrade the medical profession.

Respondents to this Act, namely the Jackson Women's Health Organization and one of its physicians, filed a suit on the Act's enactment day, positing that it violated the established constitutional right to abortion. They received summary judgment in the District Court, with the ruling that 'viability marks the earliest point at which the State's interest in fetal life is constitutionally sufficient to impose a legislative ban on nontherapeutic abortions,' and that the 15 weeks specified by Mississippi law precede viability. The Fifth Circuit upheld the ruling.

This Court granted certiorari to determine if 'all pre-viability bans on elective abortions are unconstitutional.' Petitioners primarily argue that both Roe and Casey were wrongly adjudicated and that the Mississippi Gestational Age Act should meet constitutional muster because it

satisfies rational-basis review. Respondents counterargue that upholding the Mississippi law would amount to overruling both Casey and Roe. Respondents maintain that 'no half-measures' exist in this context: We must either uphold or strike down Roe and Casey.

II

The crux of our deliberation revolves around whether the Constitution, when interpreted accurately, bestows a right to procure an abortion. Interestingly, this fundamental question was sidestepped in the controlling opinion of Casey, which instead underlined Roe's "central holding" leaning heavily upon the doctrine of stare decisis. We assert, however, a proper deployment of stare decisis mandates a thorough evaluation of the foundation upon which Roe was constructed. See infra, at 45–56.

Shifting focus to the crucial question overlooked by the Casey plurality, our approach unfolds in three stages. Commencing with the yardstick employed by our preceding cases to distinguish whether the Fourteenth Amendment's mention of "liberty" defends a specific right. Next, we assess if the right in question in this case is embodied in our Nation's history and tradition and if it forms an integral part of the "ordered liberty" as we understand it. Concluding, we ponder if a right to procure an abortion constitutes a broader entrenched right that garners support from other precedents.

A

1

The interpretation of the Constitution should begin with "the language of the instrument," Gibbons v. Ogden, which presents a "fixed standard" for discerning the intent of our founding document, 1 J. Story, Commentaries on the Constitution of the United States §399, p. 383 (1833). The Constitution gives no explicit recognition of a right to abortion; hence, those asserting its protection must demonstrate its implied presence in the constitutional text.

Roe's analysis of the constitutional text was rather loose. It claimed that the right to abortion, not stated in the Constitution, is part of privacy rights, which too find no mention. See 410 U. S., at 152–153. Privacy rights, it suggested, sprang from five different constitutional provisions — the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. Id., at 152.

Roe left open three plausible ways these constitutional provisions might protect abortion rights. One option suggested it was "founded . . . in the Ninth Amendment's reservation of rights to the people." Id., at 153. Another suggested the right was anchored in the First, Fourth, or Fifth Amendments or a combination thereof, incorporated into the Fourteenth Amendment's Due

Process Clause, like many other Bill of Rights provisions. The third path suggested that the First, Fourth, and Fifth Amendments might have no role and that the right is merely a component of the “liberty” ensured by the Fourteenth Amendment's Due Process Clause. Roe projected a sense that the Fourteenth Amendment was the key driver, but its core message appeared to be that the right to an abortion could be located somewhere within the Constitution and finding its exact location was not critical.

The Casey court did not support Roe’s ambiguous analysis, instead basing its judgment exclusively on the belief that the right to an abortion is part of the “liberty” safeguarded by the Fourteenth Amendment's Due Process Clause.

Prior to in-depth discussion of this theory, the additional constitutional provision cited by the respondents' amici as another possible basis for abortion rights, the Fourteenth Amendment’s Equal Protection Clause, warrants brief attention. This theory was not invoked by either Roe or Casey, and our precedents unequivocally preclude it. Our precedents affirm that a State’s regulation of abortion is not a sex-based categorization and is thus not subject to the “heightened scrutiny” such categorizations attract. A regulation of a medical process that only one sex can undertake does not invite heightened constitutional scrutiny unless the regulation is a “mere pretex[t] designed to effect an invidious discrimination against the sexes” Geduldig v. Aiello, 417 U.S. 484, 496, n. 20 (1974). As the Court has stated, the “goal of preventing abortion” does not indicate “invidiously discriminatory animus” against women. Bray v. Alexandria Women’s Health Clinic, 506 U.S. 263, 273–274 (1993). Therefore laws regulating or prohibiting abortion do not call for heightened scrutiny; they are guided by the same standard of review as other health and safety measures.

Having addressed this new theory, we now focus on Casey’s bold contention that the right to have an abortion is an element of the “liberty” safeguarded by the Fourteenth Amendment's Due Process Clause.

2

The underlying hypothesis of this argument—that the Fourteenth Amendment’s Due Process Clause offers substantive, as well as procedural protections for “liberty”—is one of longstanding controversy. But our verdicts hold that the Due Process Clause safeguards two categories of substantive rights.

The first category comprises rights vouched for by the first eight Amendments. Originally, they applied only to the Federal Government, but current Court interpretation expands the Due Process Clause of the Fourteenth Amendment to “incorporate” the bulk of these rights, making them equally valid for all States. The second category—being called into question

here—includes a select list of fundamental rights, which find no explicit reference in the Constitution.

To determine whether a right falls under either category, the Court analyzes whether the right is "deeply rooted in [our] history and tradition" and if it is critical to our national "scheme of ordered liberty." This exploration includes careful examination of the history of the given right.

Recent instances include Justice Ginsburg's opinion in Timbs—holding that the protection against excessive fines, as per the Eighth Amendment, as "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition"— which traced the same back to Magna Carta, Blackstone's Commentaries, and 35 of the 37 state constitutions extant at the Fourteenth Amendment's ratification.

A similar exploration occurred in McDonald, concluding that the Fourteenth Amendment safeguards the right to keep and bear arms. This evaluation examined the roots of the Second Amendment, the debates around adopting the Fourteenth Amendment, state constitutions active during the ratification, contemporary federal laws, and other historical evidence. Only post this comprehensive study did the opinion deduce that "the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty."

These cases concern the Fourteenth Amendment's protection of rights explicitly expressed in the Bill of Rights, and it would be anomalous if similar historical backing were not required for a supposed right not stated anywhere in the Constitution. In Glucksberg, the Court, ruling that the Due Process Clause does not guarantee a right to assisted suicide, surveyed over 700 years of the "Anglo-American common-law tradition," underscoring that a fundamental right must be "objectively, deeply rooted in this Nation's history and tradition."

Such historical inquiries are crucial whenever we weigh whether to recognize a new aspect of the "liberty" ensured by the Due Process Clause. The term "liberty" is broad. As Lincoln pointed out: "We all declare for Liberty; but we do not all mean the same thing." In an essay, Isaiah Berlin recorded that "historians of ideas" identified over 200 different contexts for its use.

Interpreting the Fourteenth Amendment's "liberty," we must resist our propensity to conflate that Amendment's protections with our passionate views about the liberty that Americans should have. That's why the Court has long hesitated to recognize rights not explicitly listed in the Constitution. "Substantive due process has at times been a treacherous field for this Court," and has occasionally led us to encroach authority bestowed by the Constitution to the electorate. We should exercise utmost care whenever asked to pioneer this field, to avoid the Due Process Clause's protected liberty from subtly mutating into the policy preferences of Court Members.

Sometimes, when the Court has disregarded the "[a]ppropriate limits" imposed by respect for history's lessons, it has descended into aimless judicial policymaking, as in the discredited decision of Lochner v. New York. The court should not fall into such a trap. Instead, guided by the history and tradition defining the core components of our Nation's concept of ordered liberty, we must ponder the meaning of "liberty" in the Fourteenth Amendment. When we undertake this exploration for the present case, the clear conclusion is that the Fourteenth Amendment does not protect abortion rights.

B

The historical evidence presented points to a clear consensus: until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. Notably, abortion was considered a crime in every state under common law and was treated with severe consequences. In the years leading up to Roe v. Wade, only a handful of court decisions and scholarly treatises advocated for a constitutional right to abortion. However, these sources are vastly outweighed by the long-standing common law tradition that deemed abortion as illegal and punishable.

At common law, abortion was considered a crime at least as soon as the fetus showed the first signs of life, usually around the 16th to 18th week of pregnancy—a period known as quickening. This is corroborated by numerous common-law authorities, including Blackstone, Coke, and Hale. Legal treatises dating back as far as the 13th century echo the same sentiment.

Additionally, English cases dating back to the 13th century substantiate these treatises, showing that abortion was indeed considered a crime. For example, in 1732, Eleanor Beare was convicted of "destroying the Foetus in the Womb" and sentenced to public punishment and imprisonment.

While a pre-quickening abortion was not classified as homicide, it was by no means permissible at common law. Evidence from the 18th century onward indicates even pre-quickening abortions were harshly censured.

The early American Blackstone's Commentaries echoed the English common law: abortion was considered a heinous misdemeanor, and manuals from the 18th century stated that anyone undertaking an abortion would be guilty of murder if the woman died as a result.

During the 19th century, a large majority of the States enacted statutes criminalizing abortion at all stages of pregnancy. A wave of statutory reforms, led by England, saw abortion, even those pre-quickening, deemed unlawful. This consensus endured up until Roe v. Wade in 1973.

Respondents and their amici are unable to provide persuasive answers to this historical evidence. Their attempts to dismiss the significance of these criminal statutes are inadequate and unsupported by historical sources. Their speculation on the motives behind these laws does not undermine the established history showing abortion was universally treated as criminal and illegal.

In conclusion, analyses of common law authorities and historical state statutes reveal that there is no deeply-rooted constitutional right to abortion in the nation's history and tradition. Instead, they show an unbroken tradition of prohibiting abortion, demonstrating the states' ability to regulate abortion. Regardless of our personal views, we are obliged to interpret the constitutionality of abortion based on this historical evidence.

C

Instead of asserting the deep-seated character of the right to abortion, proponents of Roe and Casey argue this right is a fundamental component of a larger entrenched right. This more expansive right is framed by Roe as a right to privacy, and by Casey as the liberty to make "intimate and personal choices," fundamental to personal dignity and autonomy. However, this broader liberty is not, and indeed cannot be, absolute. While individuals are undeniably entitled to their thoughts and expressions about existential matters, they are not invariably free to act in line with these thoughts. An unconditional license to act on such beliefs may align with one interpretation of "liberty" but certainly not with "ordered liberty."

Ordered liberty delineates limits and intersections between rival interests. Roe and Casey both established a specific balance between the interests of a woman seeking an abortion and the interests of what was termed "potential life". However, the perspectives of different States will invariably differ, with some populations possibly supporting a more extensive abortion right than that acknowledged by Roe and Casey, while others might wish to impose severe restrictions based on their belief that abortion eradicates an "unborn human being". Our historical understanding of ordered liberty does not bar the people's elected representatives from legislating on abortion.

Moreover, the right to procure an abortion lacks a solid foundation in precedent. The effort to legitimize abortion through invocation of a broader right to freedom of choice or to define one's "concept of existence" proves excessive. Those criteria could potentially legalize rights to drug abuse, prostitution, and similar activities, none of which can legitimately claim historical roots.

Abortion significantly differs from the rights recognized in the precedents that Roe and Casey relied upon, as abortion terminates what those decisions designated as "potential life" and what the current law identifies as an "unborn human being". None of the other cited rulings involve

the profound moral discord elicited by abortion, thus drawing a clear distinction. These precedents, therefore, neither corroborate the right to have an abortion nor are they threatened by our conclusion that the Constitution does not guarantee such a right.

While distinguishing the abortion right from other rights, it is not essential to challenge Casey's assertion that the practices of States at the Fourteenth Amendment's adoption do not demarcate the sphere of liberty the Amendment protects. Abortion is not a modern issue; it has provoked deliberation among lawmakers for centuries, and the moral query it prompts is timeless.

While the reinstitution of Roe and Casey does not contend that new scientific knowledge necessitates a different answer to the moral query, they argue that social shifts necessitate recognition of a constitutional right to abortion. They maintain that without accessible abortion, people's freedom to choose their desired relationships will be constrained, and women will face disadvantage compared to men in professional and other ventures.

Contradicting this, critics of Roe and Casey, who advocate stricter abortion regulations, point to significant societal changes. They highlight developments like changed attitudes toward unwed pregnancy, laws prohibiting pregnancy-based discrimination, guaranteed leave entitlements for pregnancy and childbirth, medical cost coverage by insurance or government aid, prevalence of "safe haven" laws, the reduced fear for a newborn's future after adoption, and renewed appreciation for fetal life.

While both positions proffer significant policy contentions, proponents of Roe and Casey must demonstrate that this Court is authorized to assess those claims and preside over State abortion regulation. Having failed to make their case, the Court is compelled to return that authority to the people's elected representatives.

D

1

The dissent openly acknowledges its inability to establish a constitutional right to abortion as a firmly founded, “ ‘deeply rooted’ ” one that is embedded in this Nation's history and tradition. There is a glaring absence of pre-Roe authority in support of such a right- whether it be constitutional provisions, statutes, judicial precedents, or scholarly treatises. Additionally, the dissent does not counter the historical reality that abortions, post-quickening, were prohibited under common law, and later laws increasingly criminalized pre-quickening abortions. Further, it remains undisputed that by 1868, a significant majority of States had implemented statutes restricting abortion at all stages of pregnancy.

The dissent's disregard for this extensive tradition significantly weakens its argument. Our firmly established approach to substantive-due-process analysis necessitates that an unnamed right be deeply embedded in our history and traditions before it can be recognized as a part of the "liberty" safeguarded by the Due Process Clause. However, despite asserting adherence to stare decisis, the dissent fails to seriously tackle this crucial precedent.

2

The inability of the dissent to argue for abortion rights as an inherent part of our Nation's history and tradition forces it to posit that the “constitutional tradition” is an evolving entity that is influenced by our historical progression and judicial precedents. This abstract formulation offers no evident limitations on what Justice White referred to as the “exercise of raw judicial power," creating an indiscernible boundary of restraint.

The dissent attempts to obscure its weakness by misinterpreting our implementation of Glucksberg, implying that our investigation is limited to "the legal status of abortion in the 19th century". However, our analysis expands well beyond this timeframe, encompassing periods where it was decisively acknowledged that laws prohibiting abortions were justifiable exercises of state regulatory power. Today, more than half of our States are advocating for us to overrule Roe and Casey, illustrating the dissent's inability to prove that a right to abortion is part of our national tradition.

3

What is most conspicuous about the dissent is the lack of serious discussion on the States' right to protect fetal life. This disregard is revealed starkly in the analogy it draws between abortion rights and those dealt with in the cases of Griswold (contraception), Eisenstadt (same), Lawrence (sexual conduct with member of the same sex), and Obergefell (same-sex marriage). This attempt to kindle fears around the potential endangerment of these rights is unfounded. More significantly, the dissent's comparison reveals a dismissive stance on the protection of what Roe termed "potential life". Griswold, Eisenstadt, Lawrence, and Obergefell rights do not involve the destruction of "potential life" as abortion does.

Our opinion does not hinge upon when prenatal life deserves rights enjoyed after birth. The dissent, on the other hand, insists on imposing a specific theory on when rights of personhood begin. According to their argument, the Constitution mandates States to consider a fetus as devoid of even the most fundamental human right- the right to live- until a certain arbitrary point in the pregnancy. Neither our Constitution nor our Nation's legal traditions authorize the court to adopt such a "theory of life".

III

We consider next whether the doctrine of stare decisis advocates for the continuous recognition of Roe and Casey. Stare decisis, an important element in our jurisprudence, serves numerous valuable functions. It safeguards the interests of those who have made decisions predicated on a prior ruling. See Casey, 505 U. S., at 856 (joint opinion); see also Payne v. Tennessee, 501 U.S. 808, 828 (1991). It "diminishes incentives for challenging established precedents, conserving resources of both parties and courts through the avoidance of infinite relitigation." Kimble, 576 U. S., at 455. Similarly, it promotes "equal" decision-making by ensuring analogous cases are adjudicated in a consistent manner. Payne, 501 U. S., at 827. It "bolsters both the actual and perceived integrity of the judicial process." Ibid. In addition, it curbs judicial arrogance, underscoring the necessity of respecting the wisdom of previous judgments. "Precedent serves as a repository and transmitter of the learning acquired over generations, a wellspring of established wisdom deeper than that available to any single judge or panel of judges." N. Gorsuch, A Republic, If You Can Keep It 217 (2019).

We have invariably acknowledged that stare decisis is "not inflexible," Pearson v. Callahan, 555 U.S. 223, 233 (2009) (internal quotation marks omitted), and its power is notably diminished when we interpret the Constitution, Agostini v. Felton, 521 U.S. 203, 235 (1997). It is often argued that settling an issue can sometimes be more important than getting it right. Kimble, 576 U. S., at 455 (quoting Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)). However, in the interpretation of the Constitution—the "grand charter of our freedoms," designed "to endure across long eras," Martin v. Hunter's Lessee, 1 Wheat. 304, 326 (1816) (opinion for the Court by Story, J.)—we place immense value on getting it right. Furthermore, erroneous constitutional decisions, unless corrected by us, typically remain. Such errors can only be rectified by a constitutional amendment—a difficult and arduous process. See Art. V; Kimble, 576 U. S., at 456. Therefore, we must remain prepared to reflect, reconsider, and, if required, reverse constitutional decisions under appropriate circumstances.

Many of our pivotal constitutional decisions have overturned previous precedents. Here, we highlight three. In Brown v. Board of Education, 347 U.S. 483 (1954), the Court rejected the "separate but equal" doctrine, which had authorized states to maintain racial segregation in schools and other facilities. Id., at 488 (internal quotation marks omitted). This decision reversed the notorious verdict in Plessy v. Ferguson, 163 U.S. 537 (1896), as well as six other Supreme Court precedents that had supported the separate-but-equal principle. See Brown, 347 U. S., at 491.

In West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937), the Court overturned Adkins v. Children's Hospital of D. C., 261 U.S. 525 (1923), which had determined that a law setting minimum wages for women violated the "liberty" protected by the Fifth Amendment's Due

Process Clause. Id., at 545. West Coast Hotel signaled an end to a significant line of precedents that had guarded individual liberties against state and federal health and welfare legislation. See Lochner v. New York, 198 U.S. 45 (1905) (voiding a law setting maximum working hours); Coppage v. Kansas, 236 U.S. 1 (1915) (voiding a law forbidding contracts that bar employees from unionizing); Jay Burns Baking Co. v. Bryan, 264 U.S. 504 (1924) (voiding laws dictating the weight of bread loaves).

Then, in West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624 (1943), only three years later, the Court reversed Minersville School Dist. v. Gobitis, 310 U.S. 586 (1940), declaring that public school students could not be coerced to salute the flag contrary to their sincere beliefs. Barnette stands out because the only change during the intervening period was the Court's overdue recognition of the severe errors in its previous decision.

This Court has reversed crucial constitutional decisions many times. American constitutional law as we know it would be unrecognizable and this would be a different country without these verdicts (we include a partial list in the following footnote[48]).

No Justice of this Court has ever suggested that the Court should abstain from overruling a constitutional decision, but the reversal of a precedent is a grave matter. Such a step should not be taken casually. Our precedents have tried to establish a framework for deciding when a precedent should be overturned, identifying factors that need to be considered in such a decision. Janus v. State, County, and Municipal Employees, 585 U. S. ___, ___–___ (2018) (slip op., at 34–35); Ramos v. Louisiana, 590 U. S. ___, ___–___ (2020) (Kavanaugh, J., concurring in part) (slip op., at 7–9).

In this case, five factors favor strongly the suggestion to overrule Roe and Casey: their error's nature, the reasoning's quality, the rules they imposed on the country's "workability," their disruptive impact on other legal areas, and the absence of concrete reliance.

A

The gravity of the Court's mistake. An incorrect interpretation of the Constitution is invariably significant, though some prove more detrimental than others. Plessy v. Ferguson was such a case that deprecated our pledge to "equality before the law." 163 U. S., at 562 (Harlan, J., dissenting). It was starkly "egregiously wrong" upon its ruling, as noted by Justice Kavanaugh in Ramos, 590 U. S., at ___ (opinion of Kavanaugh, J.) (slip op., at 7). In accord with the Solicitor General's agreement during an oral argument, it should have been overturned at the earliest opportunity, see Tr. of Oral Arg. 92–93.

Roe was not only egregiously wrong but also extremely damaging. Reasons comprising its flawed constitutional analysis were straying greatly from any reasonable interpretation of related constitutional provisions. From inception, Roe was in conflict with the Constitution, perpetuated by Casey's errors. These errors extend beyond any obscure aspect of law unimportant to the American public. Instead, solely employing "raw judicial power," Roe, 410 U. S., at 222 (White, J., dissenting), the Court overstepped its power and decided a question having deep moral and social relevance that the Constitution clearly leaves to the people. Although Casey presented itself as inviting both sides of the national controversy to resolve their debate, it effectively declared a victor. Those on the losing side — parties advocating for the State's interest in fetal life — could not persuade their elected representatives to adopt policies aligned with their views any more. The Court bypassed the democratic process, barring a large number of Americans who expressed dissent from Roe. "Roe breathed life into an issue that has fueled our national politics broadly and, with its smoke, has blurred the selection of Justices to this Court specifically, since then." Casey, 505 U. S., at 995–996 (opinion of Scalia, J.). Roe and Casey, combined, symbolize an error that mustn't persist.

The Court has historically overturned decisions that improperly removed issues from people and the democratic process, as indicated by its paramount decision in West Coast Hotel. Justice White subsequently elucidated that "decisions that locate in the Constitution principles or values not genuinely read into the document, usurp the authority of the people. Such decisions signify choices that the people never opted for and are unable to repudiate through remedial legislation. Thus, it is critical for this Court to retain the power to return authority to its rightful holders by rectifying constitutional decisions that upon reconsideration, are determined to be erroneous." Thornburgh, 476 U. S., at 787 (dissenting opinion).

B

The strength of the argumentation. According to our precedents, the robustness of the reasoning adopted in a prior case plays a crucial role in determining whether it should be revisited. As highlighted in Janus, 585 U. S., at ___ (slip op., at 38), and Ramos, 590 U. S., at ___–___ (opinion of Kavanaugh, J.) (slip op., at 7–8). In Part II, supra, we outlined why Roe was incorrectly adjudicated; however, that judgment constitutes more than just error. Its foundation was notably frail.

Roe detected an implied constitutional right to secure an abortion, yet it failed to anchor this finding in the text, historic context, or precedent. It leaned on a mistaken historical narrative; gave significant weight to issues irrelevant to the Constitution's interpretation; overlooked the fundamental difference between the precedents it rested on and the issue the court was called to address; contrived a complex set of rules, assigning distinct restrictions to different trimesters of pregnancy, yet failed to clarify how this cryptic code could be drawn from the Constitution, the

history of abortion laws, prior precedents, or any other cited source; finally, it issued a pivotal rule—that States cannot guard fetal life before “viability”—that was neither proposed by any party nor convincingly justified. The reasoning adopted by Roe was swiftly met with severe academic censure—even from advocates of expanded access to abortion.

While affirming Roe’s core determination, the Casey plurality deliberately refrained from endorsing most of its reasoning. It updated the textual basis for the right to abortion, stayed silent on Roe’s mistaken historical narrative, and discarded the trimester framework. It replaced that system, nonetheless, with an arbitrary “undue burden” test and leaned on an extraordinary version of stare decisis that, as we elaborate below, our Court had never previously applied, nor has invoked since.

1

The flaws in Roe’s reasoning have gained popular recognition. Devoid of any foundation in the Constitution’s text, history, or precedent, it imposed on the entire country a detailed set of rules similar to those typically found in a statute or regulation. See 410 U. S., at 163–164. Breaking pregnancy down into three trimesters, the Court assigned distinct rules to each stage.

This intricate system was solely the invention of the Court. Neither party advocated the trimester framework; nor did any party or amicus propose "viability" as the point at which the scope of the abortion right and a State’s regulatory authority should be significantly altered. Yet, Roe drew up a scheme resembling legislation, providing the kind of justification typically delivered by legislative bodies without explaining how the proposed rules could be deduced from the traditional sources of constitutional decision-making. Furthermore, Roe failed to provide any clear rationale behind the drawn lines.

This inconsistent demarcation has found little endorsement among philosophers and ethicists who have sought to justify an abortion right. Even if one considers that "personhood" begins when a certain attribute or a combination of attributes is acquired, it’s challenging to comprehend why viability should denote the initiation of "personhood."

The viability guideline, which Casey termed Roe’s central rule, lacks logic. It’s revealing that almost all other countries consistently avoid such a line. The Court thus exercised raw judicial power to constitutionally impose a uniform viability rule that granted the States less freedom to regulate abortion than the majority of Western democracies.

Despite the weaknesses of Roe’s rationale, its implications have been sequentially extended in subsequent years. Justice White criticized the Court for its “uncontrolled imposition of its own

extrajudicial value preferences," and the United States as amicus curiae urged the Court to overrule Roe six times prior to and including the Casey precedent.

2

Almost 20 years later, when Casey revisited Roe, hardly any of Roe's rationale was defended or maintained. Yet Casey did nothing to bolster Roe's rationale nor remedy overt flaws in Roe's reasoning. The justices forming the majority in Casey endorsed Roe's key holding, albeit hinting that a majority might not have believed it to be accurate, provided no new support for the abortion right other than Roe being a precedent, and enforced a new, problematic test with no substantial grounding in constitutional text, history, or precedent.

As elaborated subsequently, Casey also implemented a unique version of the doctrine of stare decisis. This new doctrine overlooked the profound wrongness of the decision in Roe and attributed significant value to a vague form of reliance with little or no basis in prior case law. Stare decisis does not command the preservation of such a decision.

C

Workability. Our precedents advise that crucial to the decision to overrule a precedent is its workability - its capacity for consistent, predictable understanding and application. Montejo v. Louisiana, 556 U.S. 778, 792 (2009); Patterson v. McLean Credit Union, 491 U.S. 164, 173 (1989); Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 283–284 (1988). Casey's "undue burden" test has performed poorly by this standard.

1

The problems begin with the very concept of an "undue burden", which, as Justice Scalia pointed out for Casey, is "inherently standardless" and sways heavily depending on the individual judge's interpretation. The Casey plurality attempted to add explicit rules for the test, leading to further complexities. These include the vagueness of what qualifies as a "substantial obstacle" and the continued confusion around its meaning and application due to changing factors, particularly for different women.

The Casey ruling gave no clear guidance on certain terminologies and the standards for constitutionality. These unclear definitions culminated in the confounding term, "unnecessary health regulations," which added a third ambiguous term to complicate the matter further. All regulations apply differently to every woman based on an array of unique factors; Victoria regulations can cause confusion and disagreement around the definition of substantiality.

2

The difficulty in application started surfacing immediately in Casey itself. Justice Stevens, applying the same test, reached a different result. Former Chief Justice Rehnquist appropriately asserted that “the undue burden standard presents nothing more workable than the trimester framework.”

The application of the “undue burden” test continued to generate disagreement in later cases. In Whole Woman’s Health, the court adopted the cost-benefit test, but five years later, the interpretation was discarded in June Medical. The differing opinions and lack of consensus exhibited that the undue burden standard is “not built to last.”

3

Further evidence of the unworkability is seen in the experience of the Courts of Appeals. Casey has created a long list of conflicting judgments in the circuit courts concerning various aspects of the undue burden framework, rules, and procedures. Courts of Appeals have also struggled with the complexities of the large-fraction-of-relevant-cases standards and acknowledged other issues with Casey.

Repeatedly, Casey’s “undue burden” test has proven to be unworkable. Extracted from ambiguity, it breeds confusion and unpredictability amongst all levels of judiciary. Sticking with this standard threatens the "evenhanded, predictable, and consistent development of legal principles.” Payne, 501 U. S., at 827.

D

Impact on unrelated legal fields. Roe and Casey have inadvertently skewed many unrelated but essential legal doctrines, thereby bolstering the argument for their overturning. Refer to Ramos, 590 U. S., at ___ (opinion of Kavanaugh, J.) (slip op., at 8); Janus, 585 U. S., at ___ (slip op., at 34).

This Court's members have consistently decried that "no legal rule or guideline is durable against capricious nullification by this Court when its application is required in a case concerning state-regulated abortion.” Thornburgh, 476 U. S., at 814 (O’Connor, J., dissenting); see also Madsen v. Women’s Health Center, Inc., 512 U.S. 753, 785 (1994) (Scalia, J., concurring in judgment in part and dissenting in part); Whole Woman’s Health, 579 U. S., at 631–633 (Thomas, J., dissenting); id., at 645–666, 678–684 (Alito, J., dissenting); June Medical, 591 U. S., at ___–___ (Gorsuch, J., dissenting) (slip op., at 1–15).

The abortion-related cases have weakened the rigid standard for facial constitutional challenges. [60] They have dismissed the Court's third-party standing doctrine. [61] They have made light of conventional res judicata principles. [62] They have discounted the usual rules on the severability of unconstitutional clauses, [63] besides infringing on the rule that legislation should, when feasible, be interpreted to circumvent unconstitutionality. [64] They have also contorted First Amendment doctrines. [65]
Whenever the affirmation of a novel doctrine necessitates courts to create exemptions to ages-old background rules, it indicates that the doctrine "has faltered in providing the 'principled and coherent' expansion of the law as purported by stare decisis." Id., at ___ (Thomas, J., dissenting) (slip op., at 19) (citing Vasquez v. Hillery, 474 U.S. 254, 265 (1986)).

E

Dependent factors. We turn our attention to whether overturning Roe and Casey would significantly disrupt the reliance interests. See Ramos, 590, U.S., at ___ (opinion of Kavanaugh, J.) (slip op., at 15); Janus, 585 U. S., at ___–___ (slip op., at 34–35).
1
Standard reliance interests emerge "where advanced planning with great precision is significant." Casey 505 U. S., at 856 (joint opinion); see also Payne, 501 U. S., at 828. Casey admitted that regular reliance interests were irrelevant as an abortion is almost always an "unexpected activity," with "reproductive planning taking rapid account of any instant restoration of state authority to ban abortions." 505 U. S., at 856. Given these reasons, we concur with Casey's plurality that standard, substantial dependence factors are not relevant here.
2
Unsuccessful in discovering reliance in the conventional scenario, Casey's controlling opinion identified a more elusive form of dependence. It stated that individuals structured their personal relationships and decisions around "the provision of abortion in case contraception fails" and women's ability to excel in national economic and social scenes was made easier by their power to control their reproductive destinities." Ibid. Yet, this court is unfit to evaluate "broad assertions about the national psyche." Id., at 957 (opinion of Rehnquist, C. J.). Casey's reliance concept finds insignificant support from our cases, which underscore very tangible reliance interests, as they emerge in "cases concerning property and contract rights." Payne, 501 U. S., at 828.

When a concrete reliance interest is claimed, courts are capable of appraising the claim, but gauging the unconventional and elusive form of reliance agreed upon by the Casey plurality is a different matter altogether. This form of reliance depends on a hard-to-assess empirical issue—the impact of the abortion right on society and specifically on women. The arguing sides in this case present enthusiastic and conflicting assertions about the effect of the right to abortion on women's lives. Compare Brief for Petitioners 34–36; Brief for Women Scholars et al. as

Amici Curiae 13-20, 29-41, with Brief for Respondents 36–41; Brief for National Women's Law Center et al. as Amici Curiae 15–32. Both sides also dispute the fetus's status. This Court lacks the authority and qualifications to adjudge these disputes, and the Casey plurality's conjectures and weighing of the fetus and mother's relative importance diverge from the “original constitutional proposition” that “courts do not replace their social and economic beliefs for the judgement of legislative bodies.” Ferguson v. Skrupa, 372 U.S. 726, 729–730 (1963).
Our ruling sends the abortion matter back to those legislative bodies, providing women on either side of the abortion debate the chance to influence the legislative process by swaying public opinion, lobbying legislators, voting, and running for political office. Women are not devoid of electoral or political influence. An interesting observation is that the percentage of women who register and vote consistently surpasses the percentage of men who do the same.[66] In the recent election in November 2020, women, who constitute about 51.5 percent of Mississippi's population,[67] made up 55.5 percent of the voters who cast their ballots.[68]
3
Unable to prove concrete reliance on Roe and Casey, the Solicitor General proposes that overturning those decisions could “endanger the Court's precedents asserting that the Due Process Clause safeguards other rights.” Brief for United States 26 (citing Obergefell, 576 U.S. 644; Lawrence, 539 U.S. 558; Griswold, 381 U. S. 479). In reasons we've previously discussed, this is incorrect. Casey's plurality recognized that “abortion is a unique act” because it ends “life or potential life.” 505 U. S., at 852; see also Roe, 410 U. S., at 159 (abortion is “inherently different from marital intimacy,” “marriage,” or “procreation”). To ensure our ruling isn't misunderstood or misrepresented, we stress that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should cast doubt on precedents that do not involve abortion.

IV

Having established that conventional stare decisis aspects do not influence the preservation of Roe or Casey, we should then take on one last argument that had substantial influence in the Casey plurality opinion. To put simply in different terms, the argument was that if the American individuals' faith in law were to be disturbed by losing respect for this Court as an institution that settles vital issues based on principle instead of "social and political pressures," (505 U. S., at 865). The special threat here is the public will interpret a decision made without principled reasons when the Court overrules a controversial "watershed" decision like Roe (505 U. S., at 866–867). A move to overrule Roe would likely be seen as a capitulation to political influence, hence maintaining public affirmation of the Court strongly encourages preserving Roe (see 505 U. S., at 869).

Although the analysis initiates correctly, it veers away eventually. The Casey plurality correctly noted that it's crucial for the public to perceive our decisions are based on principle, and we

should strive to attain that objective by issuing opinions which show how correct understanding of the law directs our outcomes. However, we must remain within our constitutional authority boundaries and our decisions should not be influenced by external factors, concern about the public's reaction to our work, for instance (Cf. Texas v. Johnson, 491 U.S. 397 (1989); Brown, 347 U.S. 483). This is applicable when deciding on a constitutional issue as well as when mulling over whether to overrule a prior decision. As Chief Justice Rehnquist defined, "The Judicial Branch gets its legitimacy, not from the public opinion, but from deciding whether legislative enactments of the popular branches of Government are constitutional. Stare decisis principle is a byproduct of this duty, and should not be easily swayed by public sentiment just as the basic judicial chore." (Casey, 505 U. S., at 963) Hence, The Casey plurality exceeded this Court’s constitutional role.

The Casey plurality case ended the national split on a national level, and claimed the authority to impose a final settlement solely by stating the abortion constitutional right matter was closed (Id., at 867). This unprecedented claim goes beyond the power the Constitution vested in us. As famously quoted by Alexander Hamilton, the Constitution provides the judiciary "neither Force nor Will," (The Federalist No. 78, p. 523, J. Cooke ed. 1961) our sole authority is to exercise "judgment"—that is, to judge what the law implies and its application in perspective of the presented case. The Court has no authority to declare that an erroneous judgment is forever exempted from evaluation under conventional stare decisis principles. A precedent of this Court is susceptible to the normal stare decisis principles where adherence to principles is the norm, but not an unbending command. If the regulations were different, erroneous decisions such as Plessy and Lochner would still be upheld. This isn't how stare decisis operates.

Furthermore, the Casey plurality misapprehended this Court's influence limits. Roe did not conclude the abortion division, instead it worsened the national issue, which has remained a heated contention for the past fifty years. (Casey, 505 U. S., at 995 opinion of Scalia, J.; see also R. Ginsburg, Speaking in a Judicial Voice, 67 N. Y. U. L. Rev. 1185, 1208, 1992). The same thing applies to Casey during the past thirty years. Both decisions did not end the constitutional right to an abortion debate. In fact, in this case, twenty-six States overtly implore us to overrule Roe and Casey and return the abortion issue to the public and their elective representatives. The Court's inability to condense the debate on the issue is unsurprising. This Court can't resolve a contentious national debate by domination and directing people to move on. The Court's influence on public attitudes must originate from the strength of our ruling rather than an attempt to exercise "raw judicial power" (Roe, 410 U. S., at 222, White, J., dissenting).

We don't assume or predetermine how our political system or society will react to our verdict today overruling Roe and Casey. Even if we could anticipate the outcome, we would have no authority to let that knowledge affect our ruling. Our job is to interpret the law, apply the stare decisis principles, and conclude the case accordingly. Thus, we affirm that the Constitution does

not provide a right to abortion. Roe and Casey should be overruled, and return the authority to regulate abortion to the public and their elective representatives.

V

A

1

The dissent posits that we have discarded the principle of stare decisis, post, at 30. However, this claim is unfounded and it is the dissent's interpretation of stare decisis that deviates from tradition. The dissent's central argument is that the Court should never - or almost never - overrule a glaringly incorrect constitutional precedent unless the Court can point to significant legal or factual shifts that undermine the original foundation of the decision. Post, at 37. It cites landmark cases like Brown v. Board of Education, 347 U.S. 483, and others that overturned previous precedents, claiming they responded to altered laws and societal changes in attitudes. Post, at 43. However, this argument subtly insinuates that only the passage of time and evolving circumstances justified these decisions, and not the simple recognition that the cases they overruled were profoundly mistaken from inception.

Contrary to the dissent's new concept of stare decisis, the Court has never inferred that overruling Plessy was not justified until more than half a century of state-sanctioned segregation had transpired, and generations of Black school children had endured all of its effects. Post, at 44–45. Consider also West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, which overruled Minersville School Dist. v. Gobitis, 310 U.S. 586, only three years after it was issued. In both cases, Jehovah’s Witness children, for religious reasons, refused to salute the flag or recite the pledge of allegiance. The Barnette court did not attribute its reassessment of these issues to any legal or factual developments. Hence, if the Court adhered to the dissent's reimagined stare decisis, Gobitis would have remained, leading to continued First Amendment violations for an indefinite period.

While precedents deserve respect, occasionally the Court makes an error, and sometimes an unjust decision of grave significance is made. In such cases, stare decisis should not restrict the Court. Indeed, the dissent concedes that a decision could be overturned "just because it is terribly wrong," yet fails to clarify when this would apply. Post, at 45.

2

Assuming the dissent's argument is correct - that a glaringly wrong decision should almost never be overturned unless "major legal or factual changes" later expose its errors - a revisitation of Roe and Casey would be entirely justified. We have previously noted numerous post-Casey developments, see supra, at 33–34, 59–63; however, the most significant shift may be the Casey plurality's unheeded call for the divisive sides of the abortion debate to unite, 505 U. S., at 867.

This unity has not been realized, and there is no evidence to suggest that upholding Roe would achieve what Casey failed to.

The dissent remains undaunted and argues that the ongoing controversy surrounding Roe and Casey necessitates the upholding of those precedents. See post, at 55–57. It describes Casey as a "precedent about precedent" indelibly protected from further reconsideration under traditional stare decisis principles. See post, at 57. However, we dispute this argument, noting that Casey was innovative in its refusal to examine Roe, based on the national controversy it sparked. No subsequent case has drawn from this precedent. Our decision today merely employs long-established factors of stare decisis rather than adopting the dissent's selective application of the doctrine to abortion cases only.

3

Lastly, the dissent implies that our decision undermines Griswold, Eisenstadt, Lawrence, and Obergefell. Post, at 4–5, 26–27, n. 8. Yet, we have categorically assured that "[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion." Supra, at 66. We elaborate on why this is the case: rights relating to contraception and same-sex relationships are inherently distinct from the right to abortion. The latter uniquely involves what Roe and Casey dubbed "potential life," Roe, 410 U. S., at 150 (emphasis deleted); Casey, 505 U. S., at 852, meaning a right to abortion cannot be defended by analogies drawn to the rights recognized in the other cases or by "appeals to a broader right to autonomy." Supra, at 32. Our position couldn't be more explicit. Furthermore - discounting the fact these cases can be distinguished - the dissent overlooks another key point: each precedent must independently undergo its own stare decisis analysis, and the determining factors like dependence and functionality vary between these cases and those concerning abortion.

B

We shift our attention to the judgment's concurrence, which criticizes us for deciding on the retention or overruling of Roe and Casey. This concurrence—referred to for simplicity as "the concurrence"—proposes a more measured course, defending this based on what it deems a straightforward stare decisis analysis. This concurrence suggests deferring to another day the decision to reject any right to an abortion outright, advocating rather that should the Constitution protect such a right, it ends once women have had a reasonable opportunity to access abortion. However, the concurrence fails to define specifically what duration would permit such an opportunity but suggests that the 15-week period permitted under Mississippi's law would suffice, at least in the absence of rare circumstances.

This methodology is severely problematic, evidenced by the lack of endorsement from either party. As has been recalled, both parties, alongside the Solicitor General, have life or death against Roe and Casey. And when this specific approach proposed by the concurrence was broached during the oral argument, both respondents and the Solicitor General vehemently rejected it. The concurrence's unpopularity is further supported by it not having been suggested in any of the over 130 amicus briefs filed in this case. The approach of the concurrence would inoffensively do the same thing it criticizes Roe for: Preemptively constructing a test that no party or amicus urged the Court to adopt.

The most egregious flaw in the concurrence’s approach is its failure to provide a ground principled basis. The concurrence suggests discarding the rule from Roe and Casey that a woman's right to terminate her pregnancy extends until the fetus is viable outside the womb. Nevertheless, this rule was integral to the rulings in Roe and Casey. Stare decisis is a doctrine of conservation, not transformation. Consequently, the proposal of a new rule that dismisses the viability rule is indefensible on stare decisis grounds.

While the concurrence infers the viability standard could be separated from the constitutional right recognized and discarded without disturbing past precedent, such a claim is simply errant. The relation of Roe's trimester rule to viability, and viability's critical role in subsequent abortion decisions, are testament to this. The importance of the viability rule was confirmed unequivocally when Roe was reconsidered in Casey. It was defined as Roe’s central holding and affirmed as the right of the woman to choose to have an abortion before viability. Our following cases have continuously recognized this fundamental viability rule.

The proposed new rule by the concurrence is not only inconsistent with Casey’s explicit language but is also contrary to judgments in that case and later abortion cases. Thus, the new reasonable opportunity rule presented by the concurrence cannot be justified by stare decisis. If to be law, it must be self-supporting. However, the concurrence fails to demonstrate this rule as an accurate interpretation of the Constitution. It neither claims that the right to a realistic opportunity to obtain an abortion is deeply rooted in this Nation’s history and tradition nor offers any alternate theory showing support for this new rule in the Constitution.

The concurrence proposes to postpone rejecting any right to an abortion, the consideration of which would not be deferred for long. Some states have imposed shorter abortion deadlines than Mississippi's, meaning that if only the constitutionality of Mississippi's 15-week rule is upheld, we would soon be invoked to rule on the constitutionality of a myriad of laws with shorter deadlines or no deadline. The adoption of this measured course proposed by the concurrence would result in significant upheaval until the Court addressed this deferred question.

Stating what this new rule from the concurrence concretely means would be a demanding task. For instance, necessary decisions would include identifying the relevant percentage if pegging the reasonable opportunity period to the point when a certain fraction of women make that choice. Clarification would also be needed on the concurrence's vague reference to "rare circumstances" justifying exceptions and on whether factors other than promptness in decision-making might affect the availability of a reasonable opportunity.

In essence, the concurrence's search for a middle ground merely delays the inevitable confrontation of the question we now decide. It merely prolongs the controversy generated by Roe and Casey. Facing the real issue without further deferral serves the Court and the country best.

VI

We are compelled to now render a decision on the guiding principle to be applied if state abortion regulations are subjected to constitutional questioning, and ascertain if the law presently under our scrutiny satisfies this respective standard.

A

Our precedents dictate that the rational-basis review serves as the appropriate standard for challenges of this nature. Asserting that procuring an abortion constitutes a fundamental constitutional right lacks grounding in both the Constitution's text and our nation's historical context. This deduction suggests that States possess the constitutional leverage to induce regulations on abortions, provided their motivations are legitimate. Should such regulations find themselves under constitutional scrutiny, courts are not constitutionally permitted to supplant their social and economic beliefs for those embedded within legislative body judgments. An integral facet to understand is that this deference to a legislature's judgment remains binding even when the laws presented are intertwined with matters bearing extensive social importance and moral substance.

A law that intends to regulate abortion, as with other health and welfare laws, enjoys a "strong presumption of validity". Its existence can only be upheld if the legislature could have rationally presumed it would cater to legitimate state interests. These interests can span several areas, including the safeguarding and preservation of prenatal life at every developmental stage; the enforcement of maternal health and safety; the eradication of specifically brutal or primitive medical procedures; the maintenance of the medical profession's integrity; the alleviation of fetal pain; and the prohibition of discrimination predicated on factors such as race, sex, or disability.

B

The Mississippi Gestational Age Act finds legitimate support from the state's interests. Except "in a medical emergency or in the case of a severe fetal abnormality," the Act precludes abortions "if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." (Miss. Code Ann. §41–41–191(4)(b)). The Mississippi legislature eloquently elucidates the progression of "human prenatal development," whilst asserting a rightful state interest in "protecting the life of the unborn" (§2(b)(i)).

Further substantiating their rigorous examination, the Legislature reflected on the fact that abortions conducted post fifteenth week predominantly involve a dilation and evacuation procedure. Deeming this particular process "a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession," when performed for nontherapeutic or elective reasons, it backed its claim with substantial evidence (§2(b)(i)(8); see also Gonzales, 550 U. S., at 135–143).

With these legitimate interests in place, a rational basis for the Gestational Age Act becomes discernible. Following this logic, it would be sound to conclude that the respondents' constitutional challenge lacks merit.

VII

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.