**Dobbs v Jackson’s Women Center**

     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.

     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 cataloging 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.

     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,"[1](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.1) 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](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.2)

     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.[3](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.3) 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.[4](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.4)

     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.[5](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.5) Four others wanted to overrule the decision in its entirety.[6](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.6) And the three remaining Justices, who jointly signed the controlling opinion, took a third position.[7](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.7) 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.[8](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.8) 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.[9](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.9) Anything less, the opinion claimed, would undermine respect for this Court and the rule of law.

     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.[10](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.10) *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.[11](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.11) 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.[12](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.12)

     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 15th 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 OF United States) 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." Brief for Respondents 43. They contend that "no half-measures" are available and that we must either reaffirm or overrule *Roe* and *Casey*. Brief for Respondents 50.

     We hold that *Roe* and *Case*y 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 history and tradition" and "implicit in the concept of ordered liberty." *Washington* v*. Glucksberg,* 521 U. S. 702, 721 (1997) (internal quotation marks omitted).

     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."[13](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.13)

     *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.

     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 judgment in part and dissenting in part). That is what the Constitution and the rule of law demand.

     The law at issue in this case, Mississippi's Gestational Age Act, see Miss. Code Ann. §41-41-191 (2018), contains this central provision: "Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform . . . or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." §4(b).[14](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.14)

     To support this Act, the legislature made a series of factual findings. It began by noting that, at the time of enactment, only six countries besides the United States "permit[ted] nontherapeutic or elective abortion-on-demand after the twentieth week of gestation."[15](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.15) §2(a). The legislature then found that at 5 or 6 weeks' gestational age an "unborn human being's heart begins beating"; at 8 weeks the "unborn human being begins to move about in the womb"; at 9 weeks "all basic physiological functions are present"; at 10 weeks "vital organs begin to function," and "[h]air, fingernails, and toenails . . . begin to form"; at 11 weeks "an unborn human being's diaphragm is developing," and he or she may "move about freely in the womb"; and at 12 weeks the "unborn human being" has "taken on 'the human form' in all relevant respects." §2(b)(i) (quoting *Gonzales* v. *Carhart*, 550 U. S. 124, 160 (2007)). It found that most abortions after 15 weeks employ "dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child," and it concluded that the "intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession." §2(b)(i)(8)…..

     We granted certiorari, 593 U. S. \_\_\_ (2021), to resolve the question whether "all pre-viability prohibitions on elective abortions are unconstitutional," Pet. for Cert. i. Petitioners' primary defense of the Mississippi Gestational Age Act is that *Roe* and *Casey* were wrongly decided and that "the Act is constitutional because it satisfies rational-basis review." Brief for Petitioners 49. Respondents answer that allowing Mississippi to ban pre-viability abortions "would be no different than overruling *Casey* and *Roe* entirely." Brief for Respondents 43. They tell us that "no half-measures" are available: We must either reaffirm or overrule *Roe* and *Casey*. Brief for Respondents 50.

     We begin by considering the critical question whether the Constitution, properly understood, confers a right to obtain an abortion. Skipping over that question, the controlling opinion in *Casey* reaffirmed *Roe*'s "central holding" based solely on the doctrine of *stare decisis*, but as we will explain, proper application of *stare decisis* required an assessment of the strength of the grounds on which *Roe* was based. See *infra,* at 45-56.

     We therefore turn to the question that the *Casey* plurality did not consider, and we address that question in three steps. First, we explain the standard that our cases have used in determining whether the Fourteenth Amendment's reference to "liberty" protects a particular right. Second, we examine whether the right at issue in this case is rooted in our Nation's history and tradition and whether it is an essential component of what we have described as "ordered liberty." Finally, we consider whether a right to obtain an abortion is part of a broader entrenched right that is supported by other precedents.

     *Roe,* however, was remarkably loose in its treatment of the constitutional text. It held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned. See 410 U. S., at 152-153. And that privacy right, *Roe* observed, had been found to spring from no fewer than five different constitutional provisions--the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. *Id.*, at 152.

     The Court's discussion left open at least three ways in which some combination of these provisions could protect the abortion right. One possibility was that the right was "founded . . . in the Ninth Amendment's reservation of rights to the people." *Id.,* at 153. Another was that the right was rooted in the First, Fourth, or Fifth Amendment, or in some combination of those provisions, and that this right had been "incorporated" into the Due Process Clause of the Fourteenth Amendment just as many other Bill of Rights provisions had by then been incorporated. *Ibid*; see also *McDonald* v. *Chicago*, 561 U. S. 742, 763-766 (2010) (majority opinion) (discussing incorporation). And a third path was that the First, Fourth, and Fifth Amendments played no role and that the right was simply a component of the "liberty" protected by the Fourteenth Amendment's Due Process Clause…

. 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.[18](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.18)…

     The underlying theory on which this argument rests--that the Fourteenth Amendment's Due Process Clause provides substantive, as well as procedural, protection for "liberty"--has long been controversial. But our decisions have held that the Due Process Clause protects two categories of substantive rights.

     The first consists of rights guaranteed by the first eight Amendments. …. The second category--which is the one in question here--comprises a select list of fundamental rights that are not mentioned anywhere in the Constitution.

     In deciding whether a right falls into either of these categories, the Court has long asked whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to our Nation's "scheme of ordered liberty." ..

     Justice Ginsburg's opinion for the Court in *Timbs* is a recent example. In concluding that the Eighth Amendment's protection against excessive fines is "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition," …

     A similar inquiry was undertaken in *McDonald*, which held that the Fourteenth Amendment protects the right to keep and bear arms. ,,,

      Historical inquiries of this nature are essential whenever we are asked to recognize a new component of the "liberty" protected by the Due Process Clause because the term "liberty" alone provides little guidance. "…..

 The Court must not fall prey to such an unprincipled approach. Instead, guided by the history and tradition that map the essential components of our Nation's concept of ordered liberty, we must ask what the *Fourteenth Amendment* means by the term "liberty." When we engage in that inquiry in the present case, the clear answer is that the Fourteenth Amendment does not protect the right to an abortion.[22](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.22)

     Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion..

. 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.

     *Roe* either ignored or misstated this history, and *Casey* declined to reconsider *Roe*'s faulty historical analysis. It is therefore important to set the record straight.

     We begin with the common law, under which abortion was a crime at least after "quickening"--*i.e.*, the first felt movement of the fetus in the womb, which usually occurs between the 16th and 18th week of pregnancy.[24](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.24)…

     English cases dating all the way back to the 13th century corroborate the treatises' statements that abortion was a crime…

     Although a pre-quickening abortion was not itself considered homicide, it does not follow that abortion was *permissible* at common law--much less that abortion was a legal *right*. …

     In sum, although common-law authorities differed on the severity of punishment for abortions committed at different points in pregnancy, none endorsed the practice. Moreover, we are aware of no common-law case or authority, and the parties have not pointed to any, that remotely suggests a positive *right* to procure an abortion at any stage of pregnancy.

     In this country, the historical record is similar. …

     The few cases available from the early colonial period corroborate that abortion was a crime…. …

     The Solicitor General offers a different explanation of the basis for the quickening rule, namely, that before quickening the common law did not regard a fetus "as having a 'separate and independent existence.' …

     At any rate, the original ground for the quickening rule is of little importance for present purposes because the rule was abandoned in the 19th century. ….

     In this country during the 19th century, the vast majority of the States enacted statutes criminalizing abortion at all stages of pregnancy…

     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 …

     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. …

     The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973. 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]." 521 U. S., at 719.

     Respondents and their *amici* have no persuasive answer to this historical evidence.

     Neither respondents nor the Solicitor General disputes the fact that by 1868 the vast majority of States criminalized abortion at all stages of pregnancy.

…     One may disagree with this belief (and our decision is not based on any view about when a State should regard prenatal life as having rights or legally cognizable interests), but even *Roe* and *Casey* did not question the good faith of abortion opponents. See, *e.g.,* *Casey*, 505 U. S., at 850 ("Men and women of good conscience can disagree . . . about the profound moral and spiritual implications of terminating a pregnancy even in its earliest stage"). And we see no reason to discount the significance of the state laws in question based on these *amici*'s suggestions about legislative motive.[41](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.41)

     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, 410 U. S., at 154, and *Casey* described it as the freedom to make "intimate and personal choices" that are "central to personal dignity and autonomy," 505 U. S., at 851. *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." *Ibid*.

     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." …

     These attempts to justify abortion through appeals to a broader right to autonomy and to define one's "concept of existence" prove too much. …

     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." See *Roe*, 410 U. S., at 159 (abortion is "inherently different"); *Casey*, 505 U. S., at 852 (abortion is "a unique act"). None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. They are therefore inapposite. 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….

     Defenders of *Roe* and *Casey* do not claim that any new scientific learning calls for a different answer to the underlying moral question, but they do contend that changes in society require the recognition of a constitutional right to obtain an abortion. Without the availability of abortion, they maintain, people will be inhibited from exercising their freedom to choose the types of relationships they desire, and women will be unable to compete with men in the workplace and in other endeavors.

     Americans who believe that abortion should be restricted press countervailing arguments about modern developments. …

     Both sides make important policy arguments, but supporters of *Roe* and *Casey* must show that this Court has the authority to weigh those arguments and decide how abortion may be regulated in the States. They have failed to make that showing, and we thus return the power to weigh those arguments to the people and their elected representatives.

     The dissent is very candid that it cannot show that a constitutional right to abortion has any foundation, let alone a " 'deeply rooted' " one, " 'in this Nation's history and tradition.' " *Glucksberg*, 521 U. S., at 721; see *post*, at 12-14 (joint opinion of Breyer, Sotomayor, and Kagan, JJ…

     The dissent's failure to engage with this long tradition is devastating to its position. We have held that the "established method of substantive-due-process analysis" requires that an unenumerated right be " 'deeply rooted in this Nation's history and tradition' " before it can be recognized as a component of the "liberty" protected in the Due Process Clause. …

     Because the dissent cannot argue that the abortion right is rooted in this Nation's history and tradition, it contends that the "constitutional tradition" is "not captured whole at a single moment," and that its "meaning gains content from the long sweep of our history and from successive judicial precedents." …

     So without support in history or relevant precedent, *Roe*'s reasoning cannot be defended even under the dissent's proposed test, and the dissent is forced to rely solely on the fact that a constitutional right to abortion was recognized in *Roe* and later decisions that accepted *Roe*'s interpretation…

     Our opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth. The dissent, by contrast, would impose on the people a particular theory about when the rights of personhood begin…

     We next consider whether the doctrine of *stare decisis* counsels continued acceptance of *Roe* and *Casey ……*

     We have long recognized, however, that *stare decisis* is "not an inexorable command,"…. Therefore, in appropriate circumstances we must be willing to reconsider and, if necessary, overrule constitutional decisions.. . .

     …. In *Brown* v. *Board of Education*, …

     In *West Coast Hotel Co.* v. *Parrish*, …

     Finally, in *West Virginia Bd. of Ed.* v. *Barnette*, …

….     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 overruling *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….

     The infamous decision in *Plessy* v. *Ferguson*, was one such decision. It betrayed our commitment to "equality before the law…

. 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.

     *Roe* found that the Constitution implicitly conferred a right to obtain an abortion, but it failed to ground its decision in text, history, or precedent. It relied on an erroneous historical narrative; it devoted great attention to and presumably relied on matters that have no bearing on the meaning of the Constitution; it disregarded the fundamental difference between the precedents on which it relied and the question before the Court; it concocted an elaborate set of rules, with different restrictions for each trimester of pregnancy, but it did not explain how this veritable code could be teased out of anything in the Constitution, the history of abortion laws, prior precedent, or any other cited source; and its most important rule (that States cannot protect fetal life prior to "viability") was never raised by any party and has never been plausibly explained. *Roe*'s reasoning quickly …

     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. …

     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…

     *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. …

     After surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee. …. 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," *id.,* at 152, but it conflated two very different meanings of the term: …

     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." *Roe*, 410 U. S.*,* at 165. 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.

     All in all, *Roe*'s reasoning was exceedingly weak, and academic commentators, including those who agreed with the decision as a matter of policy, were unsparing in their criticism. ..

     Despite *Roe*'s weaknesses, its reach was steadily extended in the years that followed. The Court struck down laws requiring that second-trimester abortions be performed only in hospitals,

     When *Casey* revisited *Roe* almost 20 years later, very little of *Roe*'s reasoning was defended or preserved. The Court abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment's Due Process Clause. The Court did not reaffirm *Roe*'s erroneous account of abortion history. In fact, none of the Justices in the majority said anything about the history of the abortion right…

     The controlling opinion criticized and rejected *Roe*'s trimester scheme, 505 U. S., at 872, and substituted a new "undue burden" test, but the basis for this test was obscure. And as we will explain, the test is full of ambiguities and is difficult to apply.

     *Casey*, in short, either refused to reaffirm or rejected important aspects of *Roe*'s analysis, failed to remedy glaring deficiencies in *Roe*'s reasoning, endorsed what it termed *Roe*'s central holding while suggesting that a majority might not have thought it was correct, provided no new support for the abortion right other than *Roe*'s status as precedent, and imposed a new and problematic test with no firm grounding in constitutional text, history, or precedent….

     *Workability*. Our precedents counsel that another important consideration in deciding whether a precedent should be overruled is whether the rule it imposes is workable--that is, whether it can be understood and applied in a consistent and predictable manner. …

     The *Casey* plurality tried to put meaning into the "undue burden" test by setting out three subsidiary rules, but these rules created their own problems. The first rule is that "a provision of law is invalid, if its purpose or effect is to place a *substantial obstacle* in the path of a woman seeking an abortion before the fetus attains viability." …

     This ambiguity is a problem, and the second rule, which applies at all stages of a pregnancy, muddies things further. It states that measures designed "to ensure that the woman's choice is informed" are constitutional so long as they do not impose "an undue burden on the right." ……

     The third rule complicates the picture even more. Under that rule, *"[u]nnecessary health* regulations that have the purpose or effect of presenting a *substantial obstacle* to a woman seeking an abortion impose an *undue burden* on the right." *Casey*, 505 U. S., at 878 (emphasis added). This rule contains no fewer than three vague terms. It includes the two already discussed--"undue burden" and "substantial obstacle"--even though they are inconsistent. And it adds a third ambiguous term when it refers to "*unnecessary* health regulations." …

     In addition to these problems, one more applies to all three rules. They all call on courts to examine a law's effect on women, but a regulation may have a very different impact on different women for a variety of reasons, including their places of residence, financial resources, family situations, work and personal obligations, knowledge about fetal development and abortion, psychological and emotional disposition and condition, and the firmness of their desire to obtain abortions. In order to determine whether a regulation presents a substantial obstacle to women, a court needs to know which set of women it should have in mind and how many of the women in this set must find that an obstacle is "substantial."

     *Casey* provided no clear answer to these questions…-Chief Justice Rehnquist aptly observed that "the undue burden standard presents nothing more workable than the trimester framework." *Id.*, at 964-966 (dissenting opinion).

     The ambiguity of the "undue burden" test also produced disagreement in later cases. In *Whole Woman's Health*, the Court adopted the cost-benefit interpretation of the test, … But The Chief Justice--who cast the deciding vote--argued that "[n]othing about *Casey* suggested that a weighing of costs and benefits of an abortion regulation was a job for the courts."

     The experience of the Courts of Appeals provides further evidence that *Casey*'s "line between" permissible and unconstitutional restrictions "has proved to be impossible to draw with precision." *Janus*, 585 U. S., at \_\_\_ (slip op., at 38).

     *Casey* has generated a long list of Circuit conflicts. Most recently, the Courts of Appeals have disagreed about whether the balancing test from *Whole Woman's Health* correctly states the undue-burden framework.[53](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.53) They have disagreed on the legality of parental notification rules.[54](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.54) They have disagreed about bans on certain dilation and evacuation procedures.[55](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.55) They have disagreed about when an increase in the time needed to reach a clinic constitutes an undue burden.[56](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.56) And they have disagreed on whether a State may regulate abortions performed because of the fetus's race, sex, or disability.[57](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.57)…

     When vindicating a doctrinal innovation requires courts to engineer exceptions to longstanding background rules, the doctrine "has failed to deliver the 'principled and intelligible' development of the law that *stare decisis* purports to secure…

     *Reliance interests.* We last consider whether overruling *Roe* and *Casey* will upend substantial reliance interests. …

     Traditional reliance interests arise "where advance planning of great precision is most obviously a necessity." *Casey*, 505 U. S., at 856 (joint opinion); see also *Payne*, 501 U. S., at 828. In *Casey*, the controlling opinion conceded that those traditional reliance interests were not implicated because getting an abortion is generally "unplanned activity," and "reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions." 505 U. S., at 856. For these reasons, we agree with the *Casey* plurality that conventional, concrete reliance interests are not present here.

     Unable to find reliance in the conventional sense, the controlling opinion in *Casey* perceived a more intangible form of reliance. It wrote that "people [had] organized intimate relationships and made choices that define their views of themselves and their places in society . . . in reliance on the availability of abortion in the event that contraception should fail" and that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives… That form of reliance depends on an empirical question that is hard for anyone--and in particular, for a court--to assess, namely, the effect of the abortion right on society and in particular on the lives of women…2. The contending sides also make conflicting arguments about the status of the fetus. …

      Our decision returns the issue of abortion to those legislative bodies, and it allows women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office. Women are not without electoral or political power…. And to ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion.

     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 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." …

     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 carefully 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. …

     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. *Id.,* at 867. That unprecedented claim exceeded the power vested in us by the Constitution. …

      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. *…*

     We do not pretend to know how our political system or society will respond to today's decision overruling *Roe* and *Casey…*

     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.

     Even if the dissent were correct in arguing that an egregiously wrong decision should (almost) never be overruled unless its mistake is later highlighted by "major legal or factual changes," reexamination of *Roe* and *Casey* would be amply justified. …

     The dissent, however, is undeterred. It contends that the "very controversy surrounding *Roe* and *Casey*" is an important *stare decisis* consideration that requires upholding those precedents. …

     Finally, the dissent suggests that our decision calls into question *Griswold*, *Eisenstadt*, *Lawrence*, and *Obergefell*. *Post*, at 4-5, 26-27, n. 8. But we have stated unequivocally that "[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion." *.*

     We now turn to the concurrence in the judgment, which reproves us for deciding whether *Roe* and *Casey* should be retained or overruled. That opinion (which for convenience we will call simply "the concurrence") recommends a "more measured course," which it defends based on what it claims is "a straightforward *stare decisis* analysis." *Post*, at 1 (opinion of Roberts, C. J.). The concurrence would "leave for another day whether to reject any right to an abortion at all," *post*, at 7, and would hold only that if the Constitution protects any such right, the right ends once women have had "a reasonable opportunity" to obtain an abortion, *post*, at 1. The concurrence does not specify what period of time is sufficient to provide such an opportunity, but it would hold that 15 weeks, the period allowed under Mississippi's law, is enough--at least "absent rare circumstances." *….*. What is more, the concurrence has not identified any of the more than 130 *amicus* briefs filed in this case that advocated its approach. The concurrence would do exactly what it criticizes *Roe* for doing: pulling "out of thin air" a test that "[n]o party or *amicus* asked the Court to adopt." *Post*, at 3….

     The concurrence's most fundamental defect is its failure to offer any principled basis for its approach. The concurrence would "discar[d]" "the rule from *Roe* and *Casey* that a woman's right to terminate her pregnancy extends up to the point that the fetus is regarded as 'viable' outside the womb." *….*

     The concurrence concedes that its approach would "not be available" if "the rationale of *Roe* and *Casey* were inextricably entangled with and dependent upon the viability standard." *…*

     When the Court reconsidered *Roe* in *Casey*, it left no doubt about the importance of the viability rule…

     Our subsequent cases have continued to recognize the centrality of the viability rule. …..

     For all these reasons, *stare decisis* cannot justify the new "reasonable opportunity" rule propounded by the concurrence….

     The concurrence would "leave for another day whether to reject any right to an abortion at all," *post*, at 7, but "another day" would not be long in coming. Some States have set deadlines for obtaining an abortion that are shorter than Mississippi's. . If we held only that Mississippi's 15-week rule is constitutional, we would soon be called upon to pass on the constitutionality of a panoply of laws with shorter deadlines or no deadline at all. The "measured course" charted by the concurrence would be fraught with turmoil until the Court answered the question that the concurrence seeks to defer.

.

     In sum, the concurrence's quest for a middle way would only put off the day when we would be forced to confront the question we now decide. The turmoil wrought by *Roe* and *Casey* would be prolonged. It is far better--for this Court and the country--to face up to the real issue without further delay….

     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. …

     A law regulating abortion, like other health and welfare laws, is entitled to a "strong presumption of validity." *Heller* v. *Doe*, 509 U. S. 312, 319 (1993). It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. *Id.,,,*

     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.

     Justice Thomas, concurring.

     I join the opinion of the Court because it correctly holds that there is no constitutional right to abortion. Respondents invoke one source for that right: the Fourteenth Amendment's guarantee that no State shall "deprive any person of life, liberty, or property without due process of law." The Court well explains why, under our substantive due process precedents, the purported right to abortion is not a form of "liberty" protected by the Due Process Clause. Such a right is neither "deeply rooted in this Nation's history and tradition" nor "implicit in the concept of ordered liberty." *Washington* v. *Glucksberg*, 521 U. S. 702, 721 (1997) (internal quotation marks omitted). "[T]he idea that the Framers of the Fourteenth Amendment understood the Due Process Clause to protect a right to abortion is farcical." *June Medical Services L. L.* *C.* v. *Russo*, 591 U. S. \_\_\_, \_\_\_ (2020) (Thomas, J., dissenting) (slip op., at 17).

     I write separately to emphasize a second, more fundamental reason why there is no abortion guarantee lurking in the Due Process Clause. Considerable historical evidence indicates that "due process of law" merely required executive and judicial actors to comply with legislative enactments and the common law when depriving a person of life, liberty, or property…

     As I have previously explained, "substantive due process" is an oxymoron that "lack[s] any basis in the Constitution." *…*

     The Court today declines to disturb substantive due process jurisprudence generally or the doctrine's application in other, specific contexts. Cases like *Griswold* v. *Connecticut*, 381 U. S. 479 (1965) (right of married persons to obtain contraceptives)[\*](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.*); *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 same-sex marriage), are not at issue. The Court's abortion cases are unique…

     For that reason, in future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is "demonstrably erroneous…). At least three dangers favor jettisoning the doctrine entirely.

     First, "substantive due process exalts judges at the expense of the People from whom they derive their authority." *Ibid*. Because the Due Process Clause "speaks only to 'process,' the Court has long struggled to define what substantive rights it protects." *…* example, once this Court identifies a "fundamental" right for one class of individuals, it invokes the Equal Protection Clause to demand exacting scrutiny of statutes that deny the right to others….

     Third, substantive due process is often wielded to "disastrous ends." *Gamble*, 587 U. S., at \_\_\_ (Thomas, J., concurring) (slip op., at 16). For instance, in *Dred Scott* v. *Sandford*, 19 How. 393 (1857), the Court invoked a species of substantive due process to announce that Congress was powerless to emancipate slaves brought into the federal territories. ...

**\*  \*  \***

     Because the Court properly applies our substantive due process precedents to reject the fabrication of a constitutional right to abortion, and because this case does not present the opportunity to reject substantive due process entirely, I join the Court's opinion. But, in future cases, we should "follow the text of the Constitution, which sets forth certain substantive rights that cannot be taken away, and adds, beyond that, a right to due process when life, liberty, or property is to be taken away." *Carlton*, 512 U. S., at 42 (opinion of Scalia, J.). Substantive due process conflicts with that textual command and has harmed our country in many ways. Accordingly, we should eliminate it from our jurisprudence at the earliest opportunity.

Kavanaugh, J., concurring

     I write separately to explain my additional views about why *Roe* was wrongly decided, why *Roe* should be overruled at this time, and the future implications of today's decision.

     Abortion is a profoundly difficult and contentious issue because it presents an irreconcilable conflict between the interests of a pregnant woman who seeks an abortion and the interests in protecting fetal life. The interests on both sides of the abortion issue are extraordinarily weighty.

….

     The issue before this Court, however, is not the policy or morality of abortion. The issue before this Court is what the Constitution says about abortion.The Constitution does not take sides on the issue of abortion. The text of the Constitution does not refer to or encompass abortion. To be sure, this Court has held that the Constitution protects unenumerated rights that are deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty. But a right to abortion is not deeply rooted in American history and tradition, as the Court today thoroughly explains.[1](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.1)

     On the question of abortion, the Constitution is therefore neither pro-life nor pro-choice. The Constitution is neutral and leaves the issue for the people and their elected representatives to resolve through the democratic process in the States or Congress--like the numerous other difficult questions of American social and economic policy that …

     Some *amicus* briefs argue that the Court today should not only overrule *Roe* and return to a position of judicial neutrality on abortion, but should go further and hold that the Constitution *outlaws* abortion throughout the United States. …

     To be clear, then, the Court's decision today *does not* *outlaw* abortion throughout the United States. On the contrary, the Court's decision properly leaves the question of abortion for the people and their elected representatives in the democratic process. Through that democratic process, the people and their representatives may decide to allow or limit abortion. As Justice Scalia stated, the "States may, if they wish, permit abortion on demand, but the Constitution does not *require* them to do so." *…*

     In arguing for a *constitutional* right to abortion that would override the people's choices in the democratic process, the plaintiff Jackson Women's Health Organization and its *amici* emphasize that the Constitution does not freeze the American people's rights as of 1791 or 1868. I fully agree. To begin, I agree that constitutional rights apply to situations that were unforeseen in 1791 or 1868--such as applying the First Amendment to the Internet or the Fourth Amendment to cars. Moreover, the Constitution authorizes the creation of new rights--state and federal, statutory and constitutional. But when it comes to creating new rights, the Constitution directs the people to the various processes of democratic self-government contemplated by the Constitution--state legislation, state constitutional amendments, federal legislation, and federal constitutional amendments. .

     The more difficult question in this case is *stare decisis*--that is, whether to overrule the *Roe* decision.

     The principle of *stare decisis* requires respect for the Court's precedents and for the accumulated wisdom of the judges who have previously addressed the same issue. *Stare decisis* is rooted in Article III of the Constitution and is fundamental to the American judicial system and to the stability of American law.

     Adherence to precedent is the norm, and *stare decisis* imposes a high bar before this Court may overrule a precedent. This Court's history shows, however, that *stare decisis* is not absolute, and indeed cannot be absolute. Otherwise, as the Court today explains, many long-since-overruled cases such as *Plessy* v. *Ferguson*, 163 U. S. 537 (1896); *Lochner* v. *New* *York*, 198 U. S. 45 (1905); *Minersville School Dist.* v. *Gobitis*, 310 U. S. 586 (1940); and *Bowers* v. *Hardwick*, 478 U. S. 186 (1986), would never have been overruled and would still be the law…...

     But that history alone does not answer the critical question: When precisely should the Court overrule an erroneous constitutional precedent? The history of *stare decisis* in this Court establishes that a constitutional precedent may be overruled only when (i) the prior decision is not just wrong, but is egregiously wrong, (ii) the prior decision has caused significant negative jurisprudential or real-world consequences, and (iii) overruling the prior decision would not unduly upset legitimate reliance interests. See *Ramos* v. *Louisiana*, 590 U. S. \_\_\_, \_\_\_−\_\_\_ (2020) (Kavanaugh, J., concurring in part) (slip op., at 7−8)….

     I have deep and unyielding respect for the Justices who wrote the *Casey* plurality opinion. And I respect the *Casey* plurality's good-faith effort to locate some middle ground or compromise that could resolve this controversy for America.

     But as has become increasingly evident over time, *Casey*'s well-intentioned effort did not resolve the abortion debate. ….

     In short, *Casey*'s *stare decisis* analysisrested in part on a predictive judgment about the future development of state laws and of the people's views on the abortion issue. But that predictive judgment has not borne out. As the Court today explains, the experience over the last 30 years conflicts with *Casey*'s predictive judgment and therefore undermines *Casey*'s precedential force.[5](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.5)

     In any event, although *Casey* is relevant to the *stare decisis* analysis, the question of whether to overrule *Roe* cannot be dictated by *Casey* alone. To illustrate that *stare decisis* point, consider an example. Suppose that in 1924 this Court had expressly reaffirmed *Plessy* v. *Ferguson* and upheld the States' authority to segregate people on the basis of race. Would the Court in *Brown* some 30 years later in 1954 have reaffirmed *Plessy* and upheld racially segregated schools simply because of that intervening 1924 precedent? Surely the answer is no.

     In sum, I agree with the Court's application today of the principles of *stare decisis* and its conclusion that *Roe* should be overruled.

…Overruling *Roe* does *not* mean the overruling of those precedents, and does *not* threaten or cast doubt on those precedents.

     *Second*, as I see it, some of the other abortion-related legal questions raised by today's decision are not especially difficult as a constitutional matter. .

     The Court's decision today properly returns the Court to a position of judicial neutrality on the issue of abortion, and properly restores the people's authority to resolve the issue of abortion through the processes of democratic selfgovernment established by the Constitution…..

     Since 1973, more than 20 Justices of this Court have now grappled with the divisive issue of abortion. I greatly respect all of the Justices, past and present, who have done so. Amidst extraordinary controversy and challenges, all of them have addressed the abortion issue in good faith after careful deliberation, and based on their sincere understandings of the Constitution and of precedent. I have endeavored to do the same.

     In my judgment, on the issue of abortion, the Constitution is neither pro-life nor pro-choice. The Constitution is neutral, and this Court likewise must be scrupulously neutral. The Court today properly heeds the constitutional principle of judicial neutrality and returns the issue of abortion to the people and their elected representatives in the democratic process.

Roberts, C. J., concurring in judgment

     We granted certiorari to decide one question: "Whether all pre-viability prohibitions on elective abortions are unconstitutional." …

     Today, the Court nonetheless rules for Mississippi by doing just that. I would take a more measured course. I agree with the Court that the viability line established by *Roe* and *Casey* should be discarded under a straightforward *stare decisis* analysis. That line never made any sense. Our abortion precedents describe the right at issue as a woman's right to choose to terminate her pregnancy. That right should therefore extend far enough to ensure a reasonable opportunity to choose, but need not extend any further--certainly not all the way to viability. …

     But that is all I would say, out of adherence to a simple yet fundamental principle of judicial restraint: If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more. Perhaps we are not always perfect in following that command, and certainly there are cases that warrant an exception. But this is not one of them. Surely we should adhere closely to principles of judicial restraint here

     Let me begin with my agreement with the Court, on the only question we need decide here: whether to retain the rule from *Roe* and *Casey* that a woman's right to terminate her pregnancy extends up to the point that the fetus is regarded as "viable" outside the womb. I agree that this rule should be discarded.

     First, this Court seriously erred in *Roe* in adopting viability as the earliest point at which a State may legislate to advance its substantial interests in the area of abortion. See *ante,* at 50-53. *Roe* set forth a rigid three-part framework anchored to viability, which more closely resembled a regulatory code than a body of constitutional law

It is thus hardly surprising that neither *Roe* nor *Casey* made a persuasive or even colorable argument for why the time for terminating a pregnancy must extend to viability. The Court's jurisprudence on this issue is a textbook illustration of the perils of deciding a question neither presented nor briefed. As has been often noted, *Roe*'s defense of the line boiled down to the circular assertion that the State's interest is compelling only when an unborn child can live outside the womb, because that is when the unborn child can live outside the womb. …

     In short, the viability rule was created outside the ordinary course of litigation, is and always has been completely unreasoned, and fails to take account of state interests since recognized as legitimate.

     …None of this, however, requires that wealsotake the dramatic step of altogether eliminating the abortion right first recognized in *Roe*. Mississippi itself previously argued as much to this Court in this litigation.

     When the State petitioned for our review, its basic request was straightforward: "clarify whether abortion prohibitions before viability are always unconstitutional." Pet. for Cert. 14. The State made a number of strong arguments that the answer is no, *id.*, at 15-26--arguments that, as discussed, I find persuasive…

     After we granted certiorari, however, Mississippi changed course. In its principal brief, the State bluntly announced that the Court should overrule *Roe* and *Casey*. …

     The Court now rewards that gambit, noting three times that the parties presented "no half-measures" and argued that "we must either reaffirm or overrule *Roe* and *Casey*." *Ante,* at5, 8, 72. Given those two options, the majority picks the latter.

     This framing is not accurate. In its brief on the merits, Mississippi in fact argued at length that a decision simply rejecting the viability rule would result in a judgment in its favor….

     The Court in *Roe* just chose to address both issues in one opinion: It first recognized a right to "choose to terminate [a] pregnancy" under the Constitution, see 410 U. S., at 129-159, and then, having done so, explained that a line should be drawn at viability such that a State could not proscribe abortion before that period, see *id.*, at 163. The viability line is a separate rule fleshing out the metes and bounds of *Roe*'s core holding. Applying principles of *stare decisis*, I would excise that additional rule--and only that rule--from our jurisprudence.

     Both the Court's opinion and the dissent display a relentless freedom from doubt on the legal issue that I cannot share. I am not sure, for example, that a ban on terminating a pregnancy from the moment of conception must be treated the same under the Constitution as a ban after fifteen weeks. A thoughtful Member of this Court once counseled that the difficulty of a question "admonishes us to observe the wise limitations on our function and to confine ourselves to deciding only what is necessary to the disposition of the immediate case." *Whitehouse* v. *Illinois Central R. Co.*, 349 U. S. 366, 372-373 (1955) (Frankfurter, J., for the Court). I would decide the question we granted review to answer--whether the previously recognized abortion right bars all abortion restrictions prior to viability, such that a ban on abortions after fifteen weeks of pregnancy is necessarily unlawful. The answer to that question is no, and there is no need to go further to decide this case.

     I therefore concur only in the judgment.

Breyer, Sotomayor, and Kagan, JJ., dissenting

     Justice Breyer, Justice Sotomayor, and Justice Kagan, dissenting.

     For half a century, *Roe* v. *Wade*, 410 U. S. 113 (1973), and *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992), have protected the liberty and equality of women. *Roe* held, and *Casey* reaffirmed, that the Constitution safeguards a woman's right to decide for herself whether to bear a child. *Roe* held, and *Casey* reaffirmed, that in the first stages of pregnancy, the government could not make that choice for women. The government could not control a woman's body or the course of a woman's life: It could not determine what the woman's future would be.

     *Roe* and *Casey* well understood the difficulty and divisiveness of the abortion issue. The Court knew that Americans hold profoundly different views about the "moral[ity]" of "terminating a pregnancy, even in its earliest stage." *Casey*, 505 U. S., at 850. And the Court recognized that "the State has legitimate interests from the outset of the pregnancy in protecting" the "life of the fetus that may become a child." *Id.*, at 846. So the Court struck a balance, as it often does when values and goals compete. It held that the State could prohibit abortions after fetal viability, so long as the ban contained exceptions to safeguard a woman's life or health. It held that even before viability, the State could regulate the abortion procedure in multiple and meaningful ways. But until the viability line was crossed, the Court held, a State could not impose a "substantial obstacle" on a woman's "right to elect the procedure" as she (not the government) thought proper, in light of all the circumstances and complexities of her own life. *Ibid.*

     Today, the Court discards that balance. It says that from the very moment of fertilization, a woman has no rights to speak of. A State can force her to bring a pregnancy to term, even at the steepest personal and familial costs. An abortion restriction, the majority holds, is permissible whenever rational, the lowest level of scrutiny known to the law. And because, as the Court has often stated, protecting fetal life is rational, States will feel free to enact all manner of restrictions. The Mississippi law at issue here bars abortions after the 15th week of pregnancy. Under the majority's ruling, though, another State's law could do so after ten weeks, or five or three or one--or, again, from the moment of fertilization. …

     Enforcement of all these draconian restrictions will also be left largely to the States' devices.

     The majority tries to hide the geographically expansive effects of its holding. Today's decision, the majority says, permits "each State" to address abortion as it pleases. *Ante*,at 79. That is cold comfort, of course, for the poor woman who cannot get the money to fly to a distant State for a procedure. Above all others, women lacking financial resources will suffer from today's decision. In any event, interstate restrictions will also soon be in the offing. After this decision, some States may block women from traveling out of State to obtain abortions, or even from receiving abortion medications from out of State. Some may criminalize efforts, including the provision of information or funding, to help women gain access to other States' abortion services. Most threatening of all, no language in today's decision stops the Federal Government from prohibiting abortions nationwide, once again from the moment of conception and without exceptions for rape or incest. If that happens, "

     Whatever the exact scope of the coming laws, one result of today's decision is certain: the curtailment of women's rights, and of their status as free and equal citizens. ..

     And no one should be confident that this majority is done with its work. The right *Roe* and *Casey* recognized does not stand alone. …. So one of two things must be true. Either the majority does not really believe in its own reasoning. Or if it does, all rights that have no history stretching back to the mid-19th century are insecure. Either the mass of the majority's opinion is hypocrisy, or additional constitutional rights are under threat. It is one or the other.

      One piece of evidence on that score seems especially salient…. No recent developments, in either law or fact, have eroded …or cast doubt on those precedents. Nothing, in short, has changed. Indeed, the Court in *Casey* already found all of that to be true. *Casey* is a precedent about precedent. It reviewed the same arguments made here in support of overruling *Roe*, and it found that doing so was not warranted. The Court reverses course today for one reason and one reason only: because the composition of this Court has changed. *Stare decisis*, this Court has often said, "contributes to the actual and perceived integrity of the judicial process" by ensuring that decisions are "founded in the law rather than in the proclivities of individuals." *..*). Today, the proclivities of individuals rule. The Court departs from its obligation to faithfully and impartially apply the law. We dissent.

     We start with *Roe* and *Casey*, and with their deep connections to a broad swath of this Court's precedents. To hear the majority tell the tale, *Roe* and *Casey* are aberrations: They came from nowhere, went nowhere--and so are easy to excise from this Nation's constitutional law. That is not true. After describing the decisions themselves, we explain how they are rooted in--and themselves led to--other rights giving individuals control over their bodies and their most personal and intimate associations. ,,, ..   The majority makes this change based on a single question: Did the reproductive right recognized in *Roe* and *Casey* exist in "1868, the year when the Fourteenth Amendment was ratified"? *Ante*, at 23. The majority says (and with this much we agree) that the answer to this question is no: In 1868, there was no nationwide right to end a pregnancy, and no thought that the Fourteenth Amendment provided one.

     …. Common-law authorities did not treat abortion as a crime before "quickening"--the point when the fetus moved in the womb.[2](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.2) And early American law followed the common-law rule.[3](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.3) So the criminal law of that early time might be taken as roughly consonant with *Roe*'s and *Casey*'s different treatment of early and late abortions. Better, then, to move forward in time. On the other side of 1868, the majority occasionally notes that many States barred abortion up to the time of *Roe*. See *ante*, at 24, 36. That is convenient for the majority, but it is window dressing. As the same majority (plus one) just informed us, "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text." *New York State Rifle & Pistol Assn., Inc.*, 597 U. S., at \_\_\_-\_\_\_ (slip op., at 27-28). Had the pre-*Roe* liberalization of abortion laws occurred more quickly and more widely in the 20th century, the majority would say (once again) that only the ratifiers' views are germane.

     The majority's core legal postulate, then, is that we in the 21st century must read the Fourteenth Amendment just as its ratifiers did.

 But, of course, "people" did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women's liberty, or for their capacity to participate as equal members of our Nation…. …

     So how is it that, as *Casey* said, our Constitution, read now, grants rights to women, though it did not in 1868? How is it that our Constitution subjects discrimination against them to heightened judicial scrutiny? How is it that our Constitution, through the Fourteenth Amendment's liberty clause, guarantees access to contraception (also not legally protected in 1868) so that women can decide for themselves whether and when to bear a child? How is it that until today, that same constitutional clause protected a woman's right, in the event contraception failed, to end a pregnancy in its earlier stages?

     The answer is that this Court has rejected the majority's pinched view of how to read our Constitution. "..

     Nowhere has that approach been more prevalent than in construing the majestic but open-ended words of the Fourteenth Amendment--the guarantees of "liberty" and "equality" for all. And nowhere has that approach produced prouder moments, for this country and the Court. …(consider Loving and Obegefeld)

     That does not mean anything goes. The majority wishes people to think there are but two alternatives: (1) accept the original applications of the Fourteenth Amendment and no others, or (2) surrender to judges' "own ardent views," ungrounded in law, about the "liberty that Americans should enjoy." *,,,* For now, our point is different: It is that applications of liberty and equality can evolve while remaining grounded in constitutional principles, constitutional history, and constitutional precedents…Yet they also must recognize that the constitutional "tradition" of this country is not captured whole at a single moment..

     All that is what *Casey* understood. *Casey* explicitly rejected the present majority's method. "[T]he specific practices of States at the time of the adoption of the Fourteenth Amendment," *Casey* stated, do not "mark[ ] the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects. . . Whatever was true in 1868, "[i]t is settled now, as it was when the Court heard arguments in *Roe* v. *Wade*, that the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood." *…*

     And that conclusion still held good, until the Court's intervention here. It was settled at the time of *Roe*, settled at the time of *Casey*, and settled yesterday that the Constitution places limits on a State's power to assert control over an individual's body and most personal decisionmaking. A multitude of decisions supporting that principle led to *Roe*'s recognition and *Casey*'s reaffirmation of the right to choose;

     And eliminating that right, we need to say before further describing our precedents, is not taking a "neutral" position, as Justice Kavanaugh tries to argue. His idea is that neutrality lies in giving the abortion issue to the States, where some can go one way and some another. But would he say that the Court is being "scrupulously neutral" if it allowed New York and California to ban all the guns they want? *Ante*, at 3.If the Court allowed some States to use unanimous juries and others not? If the Court told the States: Decide for yourselves whether to put restrictions on church attendance? We could go on--and in fact we will. Suppose Justice Kavanaugh were to say (in line with the majority opinion) that the rights we just listed are more textually or historically grounded than the right to choose. What, then, of the right to contraception or same-sex marriage? Would it be "scrupulously neutral" for the Court to eliminate those rights too? The point of all these examples is that when it comes to rights, the Court does not act "neutrally" when it leaves everything up to the States. Rather, the Court acts neutrally when it protects the right against all comers. And to apply that point to the case here: When the Court decimates a right women have held for 50 years, the Court is not being "scrupulously neutral." It is instead taking sides: against women who wish to exercise the right, and for States (like Mississippi) that want to bar them from doing so. Justice Kavanaugh cannot obscure that point by appropriating the rhetoric of even-handedness…

     Consider first, then, the line of this Court's cases protecting "bodily integrity." *…*. Or to put it more simply: Everyone, including women, owns their own bodies. . . .

     . There are few greater incursions on a body than forcing a woman to complete a pregnancy and give birth.

     So too, *Roe* and *Casey* fit neatly into a long line of decisions protecting from government intrusion a wealth of private choices about family matters, child rearing, intimate relationships, and procreation….

     Throughout our history, the sphere of protected liberty has expanded, bringing in individuals formerly excluded. In that way, the constitutional values of liberty and equality go hand in hand; …

     *Casey* similarly recognized the need to extend the constitutional sphere of liberty to a previously excluded group. The Court then understood, as the majority today does not, that the men who ratified the Fourteenth Amendment and wrote the state laws of the time did not view women as full and equal citizens. ,,,. "The ability of women to participate equally" in the "life of the Nation"--in all its economic, social, political, and legal aspects--"has been facilitated by their ability to control their reproductive lives." *Id.*, at 856. Without the ability to decide whether and when to have children, women could not--in the way men took for granted--determine how they would live their lives, and how they would contribute to the society around them….

     Faced with all these connections between *Roe/Casey* and judicial decisions recognizing other constitutional rights, the majority tells everyone not to worry. It can (so it says) neatly extract the right to choose from the constitutional edifice without affecting any associated rights,,,. Should the audience for these too-much-repeated protestations be duly satisfied? We think not.

     The first problem with the majority's account comes from Justice Thomas's concurrence--which makes clear he is not with the program. In saying that nothing in today's opinion casts doubt on non-abortion precedents, …So at least one Justice is planning to use the ticket of today's decision again and again and again.

     Even placing the concurrence to the side, the assurance in today's opinion still does not work. Or at least that is so if the majority is serious about its sole reason for overturning *Roe* and *Casey*: the legal status of abortion in the 19th century. Except in the places quoted above, the state interest in protecting fetal life plays no part in the majority's analysis. To the contrary, the majority takes pride in not expressing a view "about the status of the fetus…. .. According to the majority, no liberty interest is present--because (and only because) the law offered no protection to the woman's choice in the 19th century. …. So if the majority is right in its legal analysis, all those decisions were wrong, and all those matters properly belong to the States too--whatever the particular state interests involved. And if that is true, it is impossible to understand (as a matter of logic and principle) how the majority can say that its opinion today does not threaten--does not even "undermine"--any number of other constitutional rights. *Ante*, at 32.[8](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.8)

     Nor does it even help just to take the majority at its word. Assume the majority is sincere in saying, for whatever reason, that it will go so far and no further. Scout's honor. Still, the future significance of today's opinion will be decided in the future. … We hope that we will not join Justice Scalia in the book of prophets. But we cannot understand how anyone can be confident that today's opinion will be the last of its kind.

.     Anyway, today's decision, taken on its own, is catastrophic enough. We dissent

     By overruling *Roe*, *Casey*, and more than 20 cases reaffirming or applying the constitutional right to abortion, the majority abandons *stare decisis*, a principle central to the rule of law*.* "*Stare decisis*" means "to stand by things decided

    … *Stare decisis* also "contributes to the integrity of our constitutional system of government" by ensuring that decisions "are founded in the law rather than in the proclivities of individuals." *….*.

     That means the Court may not overrule a decision, even a constitutional one, without a "special justification." *…* *Stare decisis* is, of course, not an "inexorable command"; it is sometimes appropriate to overrule an earlier decision. *..* But the Court must have a good reason to do so over and above the belief "that the precedent was wrongly decided… "[I]t is not alone sufficient that we would decide a case differently now than we did then." …

     The majority today lists some 30 of our cases as overruling precedent, and argues that they support overruling *Roe* and *Casey*. But none does, as further described below and in the Appendix. ... And in the rest, the Court relied on one or more of the traditional *stare decisis* factors in reaching its conclusion. The Court found, for example, (1) a change in legal doctrine that undermined or made obsolete the earlier decision; (2) a factual change that had the same effect; or (3) an absence of reliance because the earlier decision was less than a decade old. (The majority is wrong when it says that we insist on a test of changed law or fact alone, although that is present in most of the cases. … None of those factors apply here: Nothing--and in particular, no significant legal or factual change--supports overturning a half-century of settled law giving women control over their reproductive lives.      First, for all the reasons we have given, *Roe* and *Casey* were correct…. S., at 638; *supra*, at 7. However divisive, a right is not at the people's mercy.

     In any event "[w]hether or not we . . . agree" with a prior precedent is the beginning, not the end, of our analysis--and the remaining "principles of *stare decisis* weigh heavily against overruling" *..*

     And indeed, the majority comes close to conceding that point. The majority barely mentions any legal or factual changes that have occurred since *Roe* and *Casey*. It suggests that the two decisions are hard for courts to implement, but cannot prove its case.,,, (Majority view)makes radical change too easy and too fast, based on nothing more than the new views of new judges. The majority has overruled *Roe* and *Casey* for one and only one reason: because it has always despised them, and now it has the votes to discard them. The majority thereby substitutes a rule by judges for the rule of law.

     Contrary to the majority's view, there is nothing unworkable about *Casey*'s "undue burden" standard. Its primary focus on whether a State has placed a "substantial obstacle" on a woman seeking an abortion is "the sort of inquiry familiar to judges across a variety of contexts." …     General standards, like the undue burden standard, are ubiquitous in the law, and particularly in constitutional adjudication…

     And the undue burden standard has given rise to no unusual difficulties. Of course, it has provoked some disagreement among judges. *…* This Court mostly does not even grant certiorari on one-year-old, one-to-one Circuit splits, because we know that a bit of disagreement is an inevitable part of our legal system. To borrow an old saying that might apply here: Not one or even a couple of swallows can make the majority's summer.

     Anyone concerned about workability should consider the majority's substitute standard. The majority says a law regulating or banning abortion "must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests." *...* This Court will surely face critical questions about how that test applies

     Finally, the majority's ruling today invites a host of questions about interstate conflicts.. Far from removing the Court from the abortion issue, the majority puts the Court at the center of the coming "interjurisdictional abortion wars." *Id.*, at \_\_\_(draft, at 1).

     In short, the majority does not save judges from unwieldy tests or extricate them from the sphere of controversy. To the contrary, it discards a known, workable, and predictable standard in favor of something novel and probably far more complicated. It forces the Court to wade further into hotly contested issues, including moral and philosophical ones, that the majority criticizes *Roe* and *Casey* for addressing.

     When overruling constitutional precedent, the Court has almost always pointed to major legal or factual changes undermining a decision's original basis

     The majority briefly notes the growing prevalence of safe haven laws and demand for adoption, see *ante*, at 34, and nn. 45-46, but, to the degree that these are changes at all, they too are irrelevant.[16](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.16) …Neither reduces the health risks or financial costs of going through pregnancy and childbirth. Moreover, the choice to give up parental rights after giving birth is altogether different from the choice not to carry a pregnancy to term. The reality is that few women denied an abortion will choose adoption.[17](https://caselaw.findlaw.com/court/us-supreme-court/19-1392.html#FNopinion1.17)

     The only notable change we can see since *Roe* and *Casey* cuts in favor of adhering to precedent: It is that American abortion law has become more and more aligned with other nations. ..

     In sum, the majority can point to neither legal nor factual developments in support of its decision. Nothing that has happened in this country or the world in recent decades undermines the core insight of *Roe* and *Casey*. It continues to be true that, within the constraints those decisions established, a woman, not the government, should choose whether she will bear the burdens of pregnancy, childbirth, and parenting….

     In support of its holding, see *ante*, at 40, the majority invokes two watershed cases overruling prior constitutional precedents: *West Coast Hotel Co.* v. *Parrish* and *Brown* v. *Board of Education*. But those decisions, unlike today's, responded to changed law and to changed facts and attitudes that had taken hold throughout society. As *Casey* recognized, the two cases are relevant only to show--by stark contrast--how unjustified overturning the right to choose is. ,,,, 300 U. S., at 398. There was no escaping the need for *Adkins* to go.

     *Brown* v. *Board of Education* overruled *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), along with its doctrine of "separate but equal." By 1954, decades of Jim Crow had made clear what *Plessy*'s turn of phrase actually meant: "inherent[ ] [in]equal[ity]." *Brown*, 347 U. S., at 495. Segregation was not, and could not ever be, consistent with the Reconstruction Amendments, …

     The majority says that in recognizing those changes, we are implicitly supporting the half-century interlude between *Plessy* and *Brown*. That is not so. First, if the *Brown* Court had used the majority's method of constitutional construction, it might not ever have overruled *Plessy*…

     *Casey* itself addressed both *West Coast Hotel* and *Brown*, and found that neither supported *Roe*'s overruling. …

     That is just as much so today, because *Roe* and *Casey* continue to reflect, not diverge from, broad trends in American society. …

     One last consideration counsels against the majority's ruling: the very controversy surrounding *Roe* and *Casey*. The majority accuses *Casey* of acting outside the bounds of the law to quell the conflict over abortion--of imposing an unprincipled "settlement" of the issue in an effort to end "national division." *Ante*, at 67. But that is not what *Casey* did.

     Consider how the majority itself summarizes this aspect of *Casey*:

"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.' " *Ante*, at 66-67 (citations omitted).,,,). We fear that today's decision, departing from *stare decisis* for no legitimate reason, is its own loaded weapon. Weakening *stare decisis* threatens to upend bedrock legal doctrines, far beyond any single decision. Weakening *stare decisis* creates profound legal instability. And as *Casey* recognized, weakening *stare decisis* in a hotly contested case like this one calls into question this Court's commitment to legal principle. It makes the Court appear not restrained but aggressive, not modest but grasping. In all those ways, today's decision takes aim, we fear, at the rule of law.

. And the doctrine of *stare decisis*--a critical element of the rule of law--stands foursquare behind their continued existence. The right those decisions established and preserved is embedded in our constitutional law, both originating in and leading to other rights protecting bodily integrity, personal autonomy, and family relationships. The abortion right is also embedded in the lives of women--shaping their expectations, influencing their choices about relationships and work, supporting (as all reproductive rights do) their social and economic equality. Since the right's recognition (and affirmation), nothing has changed to support what the majority does today. Neither law nor facts nor attitudes have provided any new reasons to reach a different result than *Roe* and *Casey* did. All that has changed is this Court.

     Mississippi--and other States too--knew exactly what they were doing in ginning up new legal challenges to *Roe* and *Casey*. …). But as Mississippi grew ever more confident in its prospects, it resolved to go all in. It urged the Court to overrule *Roe* and *Casey*. Nothing but everything would be enough.

..

     And now the other shoe drops, courtesy of that same five-person majority. (We believe that The Chief Justice's opinion is wrong too, but no one should think that there is not a large difference between upholding a 15-week ban on the grounds he does and allowing States to prohibit abortion from the time of conception.) Now a new and bare majority of this Court--acting at practically the first moment possible--overrules *Roe* and *Casey*

      *Casey* itself made the last point in explaining why it would not overrule *Roe*--though some members of its majority might not have joined *Roe* in the first instance. ,,, to this Court and to the system of law which it is our abiding mission to serve." *Ibid.* For overruling *Roe*, *Casey* concluded, the Court would pay a "terrible price." 505 U. S., at 864.

     The Justices who wrote those words--O'Connor, Kennedy, and Souter--they were judges of wisdom. They would not have won any contests for the kind of ideological purity some court watchers want Justices to deliver. But if there were awards for Justices who left this Court better than they found it? And who for that reason left this country better? And the rule of law stronger? Sign those Justices up….