OCTOBER TERM, 1991 833

Syllabus

PLANNED PARENTHOOD OF SOUTHEASTERN
PENNSYLVANIA ET AL. *v.* CASEY, GOVERNOR
OF PENNSYLVANIA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

No. 91–744. Argued April 22, 1992—Decided June 29, 1992\*

At issue are five provisions of the Pennsylvania Abortion Control Act of 1982: § 3205, which requires that a woman seeking an abortion give her informed consent prior to the procedure, and specifies that she be pro­vided with certain information at least 24 hours before the abortion is performed; § 3206, which mandates the informed consent of one parent for a minor to obtain an abortion, but provides a judicial bypass proce­dure; § 3209, which commands that, unless certain exceptions apply, a married woman seeking an abortion must sign a statement indicating that she has notified her husband; § 3203, which defines a “medical emer­gency” that will excuse compliance with the foregoing requirements; and §§3207(b), 3214(a), and 3214(f), which impose certain reporting re­quirements on facilities providing abortion services. Before any of the provisions took effect, the petitioners, five abortion clinics and a physi­cian representing himself and a class of doctors who provide abortion services, brought this suit seeking a declaratory judgment that each of the provisions was unconstitutional on its face, as well as injunctive relief. The District Court held all the provisions unconstitutional and permanently enjoined their enforcement. The Court of Appeals af­firmed in part and reversed in part, striking down the husband notifica­tion provision but upholding the others.

*Held:* The judgment in No. 91–902 is affirmed; the judgment in No. 91–744

is affirmed in part and reversed in part, and the case is remanded.

947 F. 2d 682: No. 91–902, affirmed; No. 91–744, affirmed in part, reversed

in part, and remanded.

†Briefs of *amici curiae* were filed for the State of New York et al. by *Robert Abrams,* Attorney General of New York, *Jerry Boone,* Solicitor General, *Mary Ellen Burns,* Chief Assistant Attorney General, and *San­ford M. Cohen, Donna I. Dennis, Marjorie Fujiki,* and *Shelley B. Mayer,* Assistant Attorneys General, and *John McKernan,* Governor of Maine, and *Michael E. Carpenter,* Attorney General, *Richard Blumenthal,* At­torney General of Connecticut, *Charles M. Oberly III,* Attorney General of Delaware, *Warren Price III,* Attorney General of Hawaii, *Roland W. Burris,* Attorney General of Illinois, *Bonnie J. Campbell,* Attorney Gen­eral of Iowa, *J. Joseph Curran, Jr.,* Attorney General of Maryland, *Scott Harshbarger,* Attorney General of Massachusetts, *Frankie Sue Del Papa,* Attorney General of Nevada, *Robert J. Del Tufo,* Attorney General of New Jersey, *Tom Udall,* Attorney General of New Mexico*, Lacy H. Thornburg,* Attorney General of North Carolina, *James E. O’Neil,* Attorney General of Rhode Island, *Dan Morales,* Attorney General of Texas, *Jeffrey L. Amestoy,* Attorney General of Vermont, and *John Payton,* Corporation Counsel of District of Columbia; for the State of Utah by *R. Paul Van Dam,* Attorney General, and *Mary Anne Q. Wood,* Special Assistant At­torney General; for the City of New York et al. by *O. Peter Sherwood, Conrad Harper, Janice Goodman, Leonard J. Koerner, Lorna Bade Good­man, Gail Rubin,* and *Julie Mertus;* for 178 Organizations by *Pamela S.*

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**Justice O’Connor**

I

Liberty finds no refuge in a jurisprudence of doubt. Yet 19 years after our holding that the Constitution protects a woman’s right to terminate her pregnancy in its early stages, *Roe* v. *Wade,* 410 U. S. 113 (1973), that definition of liberty is still questioned. Joining the respondents as *amicus curiae,* the United States, as it has done in five other cases in the last decade, again asks us to overrule *Roe.* See Brief for Respondents 104–117; Brief for United States as *Amicus Curiae* 8.

At issue in these cases are five provisions of the Penn­sylvania Abortion Control Act of 1982, as amended in 1988 and 1989. 18 Pa. Cons. Stat. §§ 3203–3220 (1990). Relevant portions of the Act are set forth in the Appendix. *Infra,* at 902. The Act requires that a woman seeking an abortion give her informed consent prior to the abortion procedure, and specifies that she be provided with certain information at least 24 hours before the abortion is performed. § 3205. For a minor to obtain an abortion, the Act requires the in­formed consent of one of her parents, but provides for a judi­cial bypass option if the minor does not wish to or cannot obtain a parent’s consent. § 3206. Another provision of the Act requires that, unless certain exceptions apply, a married woman seeking an abortion must sign a statement indicating that she has notified her husband of her intended abortion. § 3209. The Act exempts compliance with these three re­quirements in the event of a “medical emergency,” which is defined in § 3203 of the Act. See §§ 3203, 3205(a), 3206(a), 3209(c). In addition to the above provisions regulating the performance of abortions, the Act imposes certain reporting requirements on facilities that provide abortion services. §§ 3207(b), 3214(a), 3214(f).

Before any of these provisions took effect, the petitioners, who are five abortion clinics and one physician representing himself as well as a class of physicians who provide abortion services, brought this suit seeking declaratory and injunctive relief. Each provision was challenged as unconstitutional on its face. The District Court entered a preliminary injunc­tion against the enforcement of the regulations, and, after a 3-day bench trial, held all the provisions at issue here uncon­stitutional, entering a permanent injunction against Pennsyl­vania’s enforcement of them. 744 F. Supp. 1323 (ED Pa. 1990). The Court of Appeals for the Third Circuit affirmed in part and reversed in part, upholding all of the regulations except for the husband notification requirement. 947 F. 2d 682 (1991). We granted certiorari. 502 U. S. 1056 (1992).

The Court of Appeals found it necessary to follow an elabo­rate course of reasoning even to identify the first premise to use to determine whether the statute enacted by Pennsylva­nia meets constitutional standards. See 947 F. 2d, at 687– 698. And at oral argument in this Court, the attorney for the parties challenging the statute took the position that none of the enactments can be upheld without overruling *Roe* v. *Wade.* Tr. of Oral Arg. 5–6. We disagree with that analysis; but we acknowledge that our decisions after *Roe* cast doubt upon the meaning and reach of its holding. Fur­ther, The ChIef JUStICe admits that he would overrule the central holding of *Roe* and adopt the rational relationship test as the sole criterion of constitutionality. See *post,* at 944, 966. State and federal courts as well as legislatures throughout the Union must have guidance as they seek to address this subject in conformance with the Constitution. Given these premises, we find it imperative to review once more the principles that define the rights of the woman and the legitimate authority of the State respecting the termina­tion of pregnancies by abortion procedures.

After considering the fundamental constitutional ques­tions resolved by *Roe,* principles of institutional integrity,and the rule of *stare decisis,* we are led to conclude this: the essential holding of *Roe* v. *Wade* should be retained and once again reaffirmed.

It must be stated at the outset and with clarity that *Roe*’s essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State’s interests are not strong enough to support a prohibi­tion of abortion or the imposition of a substantial obstacle to the woman’s effective right to elect the procedure. Second is a confirmation of the State’s power to restrict abortions after fetal viability, if the law contains exceptions for preg­nancies which endanger the woman’s life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. These principles do not contradict one another; and we ad­here to each.

II

Constitutional protection of the woman’s decision to termi­nate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment. It declares that no State shall “deprive any person of life, liberty, or property, without due process of law.” The controlling word in the cases before us is “liberty.” Although a literal reading of the Clause might suggest that it governs only the procedures by which a State may deprive persons of liberty, for at least 105 years, since *Mugler* v. *Kansas,* 123 U. S. 623, 660–661 (1887), the Clause has been understood to contain a substantive component as well, one “barring certain government actions regardless of the fairness of the procedures used to implement them.” *Daniels* v. *Williams,* 474 U. S. 327, 331 (1986). As Justice Brandeis (joined by Justice Holmes) observed, “[d]espite ar­guments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth

Amendment applies to matters of substantive law as well as to matters of procedure. Thus all fundamental rights com­prised within the term liberty are protected by the Federal Constitution from invasion by the States.” *Whitney* v. *California,* 274 U. S. 357, 373 (1927) (concurring opinion). “[T]he guaranties of due process, though having their roots in Magna Carta’s *‘per legem terrae’* and considered as proce­dural safeguards ‘against executive usurpation and tyranny,’ have in this country ‘become bulwarks also against arbitrary legislation.’” *Poe* v. *Ullman,* 367 U. S. 497, 541 (1961) (Har­lan, J., dissenting from dismissal on jurisdictional grounds) (quoting *Hurtado* v. *California,* 110 U. S. 516, 532 (1884)).

The most familiar of the substantive liberties protected by the Fourteenth Amendment are those recognized by the Bill of Rights. We have held that the Due Process Clause of the Fourteenth Amendment incorporates most of the Bill of Rights against the States. See, *e. g., Duncan* v. *Louisiana,* 391 U. S. 145, 147–148 (1968). It is tempting, as a means of curbing the discretion of federal judges, to suppose that lib­erty encompasses no more than those rights already guar­anteed to the individual against federal interference by the express provisions of the first eight Amendments to the Constitution. See *Adamson* v. *California,* 332 U. S. 46, 68–92 (1947) (Black, J., dissenting). But of course this Court has never accepted that view.

It is also tempting, for the same reason, to suppose that the Due Process Clause protects only those practices, defined at the most specific level, that were protected against gov­ernment interference by other rules of law when the Four­teenth Amendment was ratified. See *Michael H.* v. *Gerald D.,* 491 U. S. 110, 127–128, n. 6 (1989) (opinion of Scalia, J.). But such a view would be inconsistent with our law. It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. We have vin­dicated this principle before. Marriage is mentioned no­where in the Bill of Rights and interracial marriage was illgal in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause in *Loving* v. *Virginia,* 388 U. S. 1, 12 (1967) (relying, in an opinion for eight Justices, on the Due Process Clause). Similar examples may be found in *Turner* v. *Safley,* 482 U. S. 78, 94–99 (1987); in *Carey* v. *Population Services International,* 431 U. S. 678, 684–686 (1977); in *Griswold* v. *Connecticut,* 381 U. S. 479, 481–482 (1965), as well as in the separate opinions of a majority of the Members of the Court in that case, *id.,* at 486–488 (Goldberg, J., joined by Warren, C. J., and Brennan, J., concurring) (expressly rely­ing on due process), *id.,* at 500–502 (Harlan, J., concurring in judgment) (same), *id.,* at 502–507 (WhIte, J., concurring in judgment) (same); in *Pierce* v. *Society of Sisters,* 268 U. S. 510, 534–535 (1925); and in *Meyer* v. *Nebraska,* 262 U. S. 390, 399–403 (1923).

Neither the Bill of Rights nor the specific practices of States at the time of the adoption of the Fourteenth Amend­ment marks the outer limits of the substantive sphere of lib­erty which the Fourteenth Amendment protects. See U. S. Const., Amdt. 9. As the second Justice Harlan recognized: . . .

These considerations begin our analysis of the woman’s in­terest in terminating her pregnancy but cannot end it, for this reason: though the abortion decision may originate within the zone of conscience and belief, it is more than a philosophic exercise. Abortion is a unique act. It is an act fraught with consequences for others: for the woman who must live with the implications of her decision; for the per­sons who perform and assist in the procedure; for the spouse, family, and society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life; and, de­pending on one’s beliefs, for the life or potential life that is aborted. Though abortion is conduct, it does not follow that the State is entitled to proscribe it in all instances. That is because the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law. The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear. That these sacrifices have from the beginning of the human race been endured by woman with a pride that enno­bles her in the eyes of others and gives to the infant a bond of love cannot alone be grounds for the State to insist she make the sacrifice. Her suffering is too intimate and per­sonal for the State to insist, without more, upon its own vi­sion of the woman’s role, however dominant that vision has been in the course of our history and our culture. The des­tiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.

It should be recognized, moreover, that in some critical respects the abortion decision is of the same character as the decision to use contraception, to which *Griswold* v. *Connecti­cut, Eisenstadt* v. *Baird,* and *Carey* v. *Population Services International* afford constitutional protection. We have no doubt as to the correctness of those decisions. They support the reasoning in *Roe* relating to the woman’s liberty because they involve personal decisions concerning not only the meaning of procreation but also human responsibility and re­spect for it. As with abortion, reasonable people will have differences of opinion about these matters. One view is based on such reverence for the wonder of creation that any pregnancy ought to be welcomed and carried to full term no matter how difficult it will be to provide for the child and ensure its well-being. Another is that the inability to pro­vide for the nurture and care of the infant is a cruelty to the child and an anguish to the parent. These are intimate views with infinite variations, and their deep, personal char­acter underlay our decisions in *Griswold, Eisenstadt,* and *Carey.* The same concerns are present when the woman confronts the reality that, perhaps despite her attempts to avoid it, she has become pregnant.

It was this dimension of personal liberty that *Roe* sought to protect, and its holding invoked the reasoning and the tradition of the precedents we have discussed, granting pro­tection to substantive liberties of the person. *Roe* was, of course, an extension of those cases and, as the decision itself indicated, the separate States could act in some degree to further their own legitimate interests in protecting prenatal life. The extent to which the legislatures of the States might act to outweigh the interests of the woman in choosing to terminate her pregnancy was a subject of debate both in *Roe* itself and in decisions following it.

While we appreciate the weight of the arguments made on behalf of the State in the cases before us, arguments which in their ultimate formulation conclude that *Roe* should be overruled, the reservations any of us may have in reaf­firming the central holding of *Roe* are outweighed by the explication of individual liberty we have given combined with the force of *stare decisis.* We turn now to that doctrine.

III
A

The obligation to follow precedent begins with necessity, and a contrary necessity marks its outer limit. With Car­dozo, we recognize that no judicial system could do society’s work if it eyed each issue afresh in every case that raised it. See B. Cardozo, The Nature of the Judicial Process 149 (1921). Indeed, the very concept of the rule of law underly­ing our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable. See Powell, Stare Decisis and Judicial Restraint, 1991 Jour­nal of Supreme Court History 13, 16. At the other extreme, a different necessity would make itself felt if a prior judicial ruling should come to be seen so clearly as error that its enforcement was for that very reason doomed.

Even when the decision to overrule a prior case is not, as in the rare, latter instance, virtually foreordained, it is com­mon wisdom that the rule of *stare decisis* is not an “inexora­ble command,” and certainly it is not such in every constitu­tional case, see *Burnet* v. *Coronado Oil & Gas Co.,* 285 U. S. 393, 405–411 (1932) (Brandeis, J., dissenting). See also *Payne* v. *Tennessee,* 501 U. S. 808, 842 (1991) (SOUter, J., joined by KennedY , J., concurring); *Arizona* v. *Rumsey,* 467 U. S. 203, 212 (1984). Rather, when this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case. Thus, for exam­ple, we may ask whether the rule has proven to be intolera­ble simply in defying practical workability, *Swift & Co.* v. *Wickham,* 382 U. S. 111, 116 (1965); whether the rule is sub- j ect to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation, *e. g., United States* v. *Title Ins. & Trust*

*Co.,* 265 U. S. 472, 486 (1924); whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine, see *Patterson* v. *McLean Credit Union,* 491 U. S. 164, 173–174 (1989); or whether facts have so changed, or come to be seen so differ­ently, as to have robbed the old rule of significant application or justification, *e. g., Burnet, supra,* at 412 (Brandeis, J., dissenting).

So in this case we may enquire whether *Roe*’s central rule has been found unworkable; whether the rule’s limitation on state power could be removed without serious inequity to those who have relied upon it or significant damage to the stability of the society governed by it; whether the law’s growth in the intervening years has left *Roe’s* central rule a doctrinal anachronism discounted by society; and whether *Roe*’s premises of fact have so far changed in the ensuing two decades as to render its central holding somehow irrelevant or unjustifiable in dealing with the issue it addressed.

1

Although *Roe* has engendered opposition, it has in no sense proven “unworkable,” see *Garcia* v. *San Antonio Metropoli­tan Transit Authority,* 469 U. S. 528, 546 (1985), represent­ing as it does a simple limitation beyond which a state law is unenforceable. While *Roe* has, of course, required judicial assessment of state laws affecting the exercise of the choice guaranteed against government infringement, and although the need for such review will remain as a consequence of today’s decision, the required determinations fall within judi­cial competence.

2

The inquiry into reliance counts the cost of a rule’s repudi­ation as it would fall on those who have relied reasonably on the rule’s continued application. Since the classic case for weighing reliance heavily in favor of following the earlier rule occurs in the commercial context, see *Payne* v. *Tennessee, supra,* at 828, where advance planning of great precision is most obviously a necessity, it is no cause for surprise that some would find no reliance worthy of consideration in sup­port of *Roe.*

While neither respondents nor their *amici* in so many words deny that the abortion right invites some reliance prior to its actual exercise, one can readily imagine an argu­ment stressing the dissimilarity of this case to one involving property or contract. Abortion is customarily chosen as an unplanned response to the consequence of unplanned activity or to the failure of conventional birth control, and except on the assumption that no intercourse would have occurred but for *Roe*’s holding, such behavior may appear to justify no reliance claim. Even if reliance could be claimed on that unrealistic assumption, the argument might run, any reliance interest would be *de minimis.* This argument would be premised on the hypothesis that reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.

To eliminate the issue of reliance that easily, however, one would need to limit cognizable reliance to specific instances of sexual activity. But to do this would be simply to refuse to face the fact that for two decades of economic and social developments, people have 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. The 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. See, *e. g.,* R. Petchesky, Abor­tion and Woman’s Choice 109, 133, n. 7 (rev. ed. 1990). The Constitution serves human values, and while the effect of reliance on *Roe* cannot be exactly measured, neither can the certain cost of overruling *Roe* for people who have ordered their thinking and living around that case be dismissed.

No evolution of legal principle has left *Roe*’s doctrinal foot­ings weaker than they were in 1973. No development of constitutional law since the case was decided has implicitly or explicitly left *Roe* behind as a mere survivor of obsolete constitutional thinking.

It will be recognized, of course, that *Roe* stands at an in­tersection of two lines of decisions, but in whichever doc­trinal category one reads the case, the result for present pur­poses will be the same. The *Roe* Court itself placed its holding in the succession of cases most prominently exempli­fied by *Griswold* v. *Connecticut,* 381 U. S. 479 (1965). See *Roe,* 410 U. S., at 152–153. When it is so seen, *Roe* is clearly in no jeopardy, since subsequent constitutional developments have neither disturbed, nor do they threaten to diminish, the scope of recognized protection accorded to the liberty relat­ing to intimate relationships, the family, and decisions about whether or not to beget or bear a child. See, *e. g., Carey* v. *Population Services International,* 431 U. S. 678 (1977); *Moore* v. *East Cleveland,* 431 U. S. 494 (1977).

*Roe,* however, may be seen not only as an exemplar of *Griswold* liberty but as a rule (whether or not mistaken) of personal autonomy and bodily integrity, with doctrinal affin­ity to cases recognizing limits on governmental power to mandate medical treatment or to bar its rejection. If so, our cases since *Roe* accord with *Roe*’s view that a State’s interest in the protection of life falls short of justifying any plenary override of individual liberty claims. *Cruzan* v. *Di­rector, Mo. Dept. of Health,* 497 U. S. 261, 278 (1990); cf., *e. g., Riggins* v. *Nevada,* 504 U. S. 127, 135 (1992); *Washington* v. *Harper,* 494 U. S. 210 (1990); see also, *e. g., Rochin* v. *Califor­nia,* 342 U. S. 165 (1952); *Jacobson* v. *Massachusetts,* 197 U. S. 11, 24–30 (1905).

Finally, one could classify *Roe* as *sui generis.* If the case is so viewed, then there clearly has been no erosion of its central determination. The original holding resting on the

concurrence of seven Members of the Court in 1973 was ex­pressly affirmed by a majority of six in 1983, see *Akron* v. *Akron Center for Reproductive Health, Inc.,* 462 U. S. 416 *(Akron I),* and by a majority of five in 1986**,** see *Thornburgh* v. *American College of Obstetricians and Gynecologists,* 476 U. S. 747, expressing adherence to the constitutional ruling despite legislative efforts in some States to test its limits. More recently, in *Webster* v. *Reproductive Health Services,* 492 U. S. 490 (1989), although two of the present authors questioned the trimester framework in a way con­sistent with our judgment today, see *id.,* at 518 (Rehnquist, C. J., joined by White and Kennedy, JJ.); *id.,* at 529 (O’Connor, J., concurring in part and concurring in judg­ment), a majority of the Court either decided to reaffirm or declined to address the constitutional validity of the central holding of *Roe.* See *Webster,* 492 U. S., at 521 (Rehnquist, C. J., joined by White and Kennedy, JJ.); *id.,* at 525–526 (O’Connor, J., concurring in part and concurring in judg­ment); *id.,* at 537, 553 (Blackmun, J., joined by Brennan and Marshall, JJ., concurring in part and dissenting in part); *id.,* at 561–563 (Stevens, J., concurring in part and dissent­ing in part).

Nor will courts building upon *Roe* be likely to hand down erroneous decisions as a consequence. Even on the assump­tion that the central holding of *Roe* was in error, that error would go only to the strength of the state interest in fetal protection, not to the recognition afforded by the Constitu­tion to the woman’s liberty. The latter aspect of the decision fits comfortably within the framework of the Court’s prior decisions, including *Skinner* v. *Oklahoma ex rel. William­son,* 316 U. S. 535 (1942); *Griswold, supra; Loving* v. *Vir­ginia,* 388 U. S. 1 (1967); and *Eisenstadt* v. *Baird,* 405 U. S. 438 (1972), the holdings of which are “not a series of isolated points,” but mark a “rational continuum.” *Poe* v. *Ullman,* 367 U. S., at 543 (Harlan, J., dissenting). As we described in *Carey* v. *Population Services International, supra,* the lib­erty which encompasses those decisions

“includes ‘the interest in independence in making cer­tain kinds of important decisions.’ While the outer lim­its of this aspect of [protected liberty] have not been marked by the Court, it is clear that among the decisions that an individual may make without unjustified gov­ernment interference are personal decisions ‘relating to marriage, procreation, contraception, family relation­ships, and child rearing and education.’” 431 U. S., at 684–685 (citations omitted).

The soundness of this prong of the *Roe* analysis is apparent from a consideration of the alternative. If indeed the wom­an’s interest in deciding whether to bear and beget a child had not been recognized as in *Roe,* the State might as readily restrict a woman’s right to choose to carry a pregnancy to term as to terminate it, to further asserted state interests in population control, or eugenics, for example. Yet *Roe* has been sensibly relied upon to counter any such suggestions. *E. g., Arnold* v. *Board of Education of Escambia County, Ala.,* 880 F. 2d 305, 311 (CA11 1989) (relying upon *Roe* and concluding that government officials violate the Constitution by coercing a minor to have an abortion); *Avery* v. *County of Burke,* 660 F. 2d 111, 115 (CA4 1981) (county agency inducing teenage girl to undergo unwanted sterilization on the basis of misrepresentation that she had sickle cell trait); see also *In re Quinlan,* 70 N. J. 10, 355 A. 2d 647 (relying on *Roe* in finding a right to terminate medical treatment), cert. denied *sub nom. Garger* v. *New Jersey,* 429 U. S. 922 (1976)). In any event, because *Roe*’s scope is confined by the fact of its concern with postconception potential life, a concern other­wise likely to be implicated only by some forms of contracep­tion protected independently under *Griswold* and later cases, any error in *Roe* is unlikely to have serious ramifica­tions in future cases.

We have seen how time has overtaken some of *Roe*’s fac­tual assumptions: advances in maternal health care allow for abortions safe to the mother later in pregnancy than was true in 1973, see *Akron I, supra,* at 429, n. 11, and advances in neonatal care have advanced viability to a point somewhat earlier. Compare *Roe,* 410 U. S., at 160, with *Webster, supra,* at 515–516 (opinion of Rehnquist, C. J.); see *Akron I,* 462 U. S., at 457, and n. 5 (O’Connor, J., dissenting). But these facts go only to the scheme of time limits on the real­ization of competing interests, and the divergences from the factual premises of 1973 have no bearing on the validity of *Roe*’s central holding, that viability marks the earliest point at which the State’s interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abor­tions. The soundness or unsoundness of that constitutional judgment in no sense turns on whether viability occurs at approximately 28 weeks, as was usual at the time of *Roe,* at 23 to 24 weeks, as it sometimes does today, or at some mo­ment even slightly earlier in pregnancy, as it may if fetal respiratory capacity can somehow be enhanced in the future. Whenever it may occur, the attainment of viability may con­tinue to serve as the critical fact, just as it has done since *Roe* was decided; which is to say that no change in *Roe*’s factual underpinning has left its central holding obsolete, and none supports an argument for overruling it.

5

The sum of the precedential enquiry to this point shows *Roe*’s underpinnings unweakened in any way affecting its central holding. While it has engendered disapproval, it has not been unworkable. An entire generation has come of age free to assume *Roe*’s concept of liberty in defining the capac­ity of women to act in society, and to make reproductive deci­sions; no erosion of principle going to liberty or personal au­tonomy has left *Roe*’s central holding a doctrinal remnant;

*Roe* portends no developments at odds with other precedent for the analysis of personal liberty; and no changes of fact have rendered viability more or less appropriate as the point at which the balance of interests tips. Within the bounds of normal *stare decisis* analysis, then, and subject to the consid­erations on which it customarily turns, the stronger argu­ment is for affirming *Roe*’s central holding, with whatever degree of personal reluctance any of us may have, not for overruling it.

B

In a less significant case, *stare decisis* analysis could, and would, stop at the point we have reached. But the sustained and widespread debate *Roe* has provoked calls for some com­parison between that case and others of comparable dimen­sion that have responded to national controversies and taken on the impress of the controversies addressed. Only two such decisional lines from the past century present them­selves for examination, and in each instance the result reached by the Court accorded with the principles we apply today.

The first example is that line of cases identified with *Lochner* v. *New York,* 198 U. S. 45 (1905), which imposed sub­stantive limitations on legislation limiting economic auton­omy in favor of health and welfare regulation, adopting, in Justice Holmes’s view, the theory of laissez-faire. *Id.,* at 75 (dissenting opinion). The *Lochner* decisions were exempli­fied by *Adkins* v. *Children’s Hospital of District of Colum­bia,* 261 U. S. 525 (1923), in which this Court held it to be an infringement of constitutionally protected liberty of contract to require the employers of adult women to satisfy minimum wage standards. Fourteen years later, *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379 (1937), signaled the demise of *Lochner* by overruling *Adkins.* In the meantime, the De­pression had come and, with it, the lesson that seemed un­mistakable to most people by 1937, that the interpretation of contractual freedom protected in *Adkins* rested on fundamentally false factual assumptions about the capacity of a relatively unregulated market to satisfy minimal levels of human welfare. See *West Coast Hotel Co., supra,* at 399. As Justice Jackson wrote of the constitutional crisis of 1937 shortly before he came on the bench: “The older world of *laissez faire* was recognized everywhere outside the Court to be dead.” The Struggle for Judicial Supremacy 85 (1941). The facts upon which the earlier case had premised a consti­tutional resolution of social controversy had proven to be un­true, and history’s demonstration of their untruth not only justified but required the new choice of constitutional princi­ple that *West Coast Hotel* announced. Of course, it was true that the Court lost something by its misperception, or its lack of prescience, and the Court-packing crisis only magni­fied the loss; but the clear demonstration that the facts of economic life were different from those previously assumed warranted the repudiation of the old law.

The second comparison that 20th century history invites is with the cases employing the separate-but-equal rule for applying the Fourteenth Amendment’s equal protection guarantee. They began with *Plessy* v. *Ferguson,* 163 U. S. 537 (1896), holding that legislatively mandated racial segre­gation in public transportation works no denial of equal pro­tection, rejecting the argument that racial separation en­forced by the legal machinery of American society treats the black race as inferior. The *Plessy* Court considered “the underlying fallacy of the plaintiff’s argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construc­tion upon it.” *Id.,* at 551. Whether, as a matter of histori­cal fact, the Justices in the *Plessy* majority believed this or not, see *id.,* at 557, 562 (Harlan, J., dissenting), this under­standing of the implication of segregation was the stated jus­tification for the Court’s opinion. But this understanding ofthe facts and the rule it was stated to justify were repudi­ated in *Brown* v. *Board of Education,* 347 U. S. 483 (1954) *(Brown I).* As one commentator observed, the question be­fore the Court in *Brown* was “whether discrimination in­heres in that segregation which is imposed by law in the twentieth century in certain specific states in the American Union. And that question has meaning and can find an an­swer only on the ground of history and of common knowledge about the facts of life in the times and places aforesaid.” Black, The Lawfulness of the Segregation Decisions, 69 Yale L. J. 421, 427 (1960).

The Court in *Brown* addressed these facts of life by ob­serving that whatever may have been the understanding in *Plessy*’s time of the power of segregation to stigmatize those who were segregated with a “badge of inferiority,” it was clear by 1954 that legally sanctioned segregation had just such an effect, to the point that racially separate public educational facilities were deemed inherently unequal. 347 U. S., at 494–495. Society’s understanding of the facts upon which a constitutional ruling was sought in 1954 was thus fundamentally different from the basis claimed for the deci­sion in 1896. While we think *Plessy* was wrong the day it was decided, see *Plessy, supra,* at 552–564 (Harlan, J., dis­senting), we must also recognize that the *Plessy* Court’s ex­planation for its decision was so clearly at odds with the facts apparent to the Court in 1954 that the decision to reexamine *Plessy* was on this ground alone not only justified but required.

*West Coast Hotel* and *Brown* each rested on facts, or an understanding of facts, changed from those which furnished the claimed justifications for the earlier constitutional resolu­tions. Each case was comprehensible as the Court’s re­sponse to facts that the country could understand, or had come to understand already, but which the Court of an ear­lier day, as its own declarations disclosed, had not been able to perceive. As the decisions were thus comprehensible

they were also defensible, not merely as the victories of one doctrinal school over another by dint of numbers (victories though they were), but as applications of constitutional prin­ciple to facts as they had not been seen by the Court before. In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations, and the thought­ful part of the Nation could accept each decision to overrule a prior case as a response to the Court’s constitutional duty.

Because the cases before us present no such occasion it could be seen as no such response. Because neither the fac­tual underpinnings of *Roe*’s central holding nor our under­standing of it has changed (and because no other indication of weakened precedent has been shown), the Court could not pretend to be reexamining the prior law with any justifica­tion beyond a present doctrinal disposition to come out dif­ferently from the Court of 1973. To overrule prior law for no other reason than that would run counter to the view repeated in our cases, that a decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided. See*, e. g., Mitchell* v. *W. T. Grant Co.,* 416 U. S. 600, 636 (1974) (Stewart, J., dissenting) (“A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the Government. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve”); *Mapp* v. *Ohio,* 367 U. S. 643, 677 (1961) (Harlan, J., dissenting).

C

The examination of the conditions justifying the repudia­tion of *Adkins* by *West Coast Hotel* and *Plessy* by *Brown* is enough to suggest the terrible price that would have been paid if the Court had not overruled as it did. In the present cases, however, as our analysis to this point makes clear, the terrible price would be paid for overruling. Our analysis would not be complete, however, without explaining why overruling *Roe*’s central holding would not only reach an un­justifiable result under principles of *stare decisis,* but would seriously weaken the Court’s capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law. To understand why this would be so it is necessary to understand the source of this Court’s authority, the conditions necessary for its preservation, and its relationship to the country’s understanding of itself as a constitutional Republic.

The root of American governmental power is revealed most clearly in the instance of the power conferred by the Constitution upon the Judiciary of the United States and spe­cifically upon this Court. As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor de­gree, it cannot independently coerce obedience to its decrees. The Court’s power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Na­tion’s law means and to declare what it demands.

The underlying substance of this legitimacy is of course the warrant for the Court’s decisions in the Constitution and the lesser sources of legal principle on which the Court draws. That substance is expressed in the Court’s opinions, and our contemporary understanding is such that a decision without principled justification would be no judicial act at all. But even when justification is furnished by apposite legal principle, something more is required. Because not every conscientious claim of principled justification will be accepted as such, the justification claimed must be beyond dispute. The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is

obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.

The need for principled action to be perceived as such is implicated to some degree whenever this, or any other appel­late court, overrules a prior case. This is not to say, of course, that this Court cannot give a perfectly satisfactory explanation in most cases. People understand that some of the Constitution’s language is hard to fathom and that the Court’s Justices are sometimes able to perceive significant facts or to understand principles of law that eluded their predecessors and that justify departures from existing deci­sions. However upsetting it may be to those most directly affected when one judicially derived rule replaces another, the country can accept some correction of error without nec­essarily questioning the legitimacy of the Court.

In two circumstances, however, the Court would almost certainly fail to receive the benefit of the doubt in overruling prior cases. There is, first, a point beyond which frequent overruling would overtax the country’s belief in the Court’s good faith. Despite the variety of reasons that may inform and justify a decision to overrule, we cannot forget that such a decision is usually perceived (and perceived correctly) as, at the least, a statement that a prior decision was wrong. There is a limit to the amount of error that can plausibly be imputed to prior Courts. If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation.

That first circumstance can be described as hypothetical; the second is to the point here and now. Where, in the per­formance of its judicial duties, the Court decides a case in such a way as to resolve the sort of intensely divisive contro­versy reflected in *Roe* and those rare, comparable cases, its decision has a dimension that the resolution of the normal case does not carry. It is the dimension present whenever the Court’s interpretation of the Constitution calls the con­tending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution.

The Court is not asked to do this very often, having thus addressed the Nation only twice in our lifetime, in the deci­sions of *Brown* and *Roe.* But when the Court does act in this way, its decision requires an equally rare precedential force to counter the inevitable efforts to overturn it and to thwart its implementation. Some of those efforts may be mere unprincipled emotional reactions; others may proceed from principles worthy of profound respect. But whatever the premises of opposition may be, only the most convincing justification under accepted standards of precedent could suf­fice to demonstrate that a later decision overruling the first was anything but a surrender to political pressure, and an unjustified repudiation of the principle on which the Court staked its authority in the first instance. So to overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court’s legitimacy beyond any serious question. Cf. *Brown* v. *Board of Education,* 349 U. S. 294, 300 (1955) *(Brown II)* (“[I]t should go without saying that the vitality of th[e] con­stitutional principles [announced in *Brown I,*] cannot be al­lowed to yield simply because of disagreement with them”).

The country’s loss of confidence in the Judiciary would be underscored by an equally certain and equally reasonable condemnation for another failing in overruling unnecessarily and under pressure. Some cost will be paid by anyone who approves or implements a constitutional decision where it is unpopular, or who refuses to work to undermine the decision or to force its reversal. The price may be criticism or ostra­cism, or it may be violence. An extra price will be paid by those who themselves disapprove of the decision’s results when viewed outside of constitutional terms, but who never­theless struggle to accept it, because they respect the rule of law. To all those who will be so tested by following, the Court implicitly undertakes to remain steadfast, lest in the end a price be paid for nothing. The promise of constancy, once given, binds its maker for as long as the power to stand by the decision survives and the understanding of the issue has not changed so fundamentally as to render the commit­ment obsolete. From the obligation of this promise this Court cannot and should not assume any exemption when duty requires it to decide a case in conformance with the Constitution. A willing breach of it would be nothing less than a breach of faith, and no Court that broke its faith with the people could sensibly expect credit for principle in the decision by which it did that.

It is true that diminished legitimacy may be restored, but only slowly. Unlike the political branches, a Court thus weakened could not seek to regain its position with a new mandate from the voters, and even if the Court could some­how go to the polls, the loss of its principled character could not be retrieved by the casting of so many votes. Like the character of an individual, the legitimacy of the Court must be earned over time. So, indeed, must be the character of a Nation of people who aspire to live according to the rule of law. Their belief in themselves as such a people is not readily separable from their understanding of the Court in­vested with the authority to decide their constitutional cases and speak before all others for their constitutional ideals. If the Court’s legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals. The Court’s concern with legitimacy is not for the sake of the Court, but for the sake of the Nation to which it is responsible.

The Court’s duty in the present cases is clear. In 1973, it confronted the already-divisive issue of governmental power

*Opinion of O’Connor, KennedY, and Souter, JJ.*

to limit personal choice to undergo abortion, for which it pro­vided a new resolution based on the due process guaranteed by the Fourteenth Amendment. Whether or not a new so­cial consensus is developing on that issue, its divisiveness is no less today than in 1973, and pressure to overrule the deci­sion, like pressure to retain it, has grown only more intense. A decision to overrule *Roe*’s essential holding under the ex­isting circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court’s legitimacy, and to the Nation’s commitment to the rule of law. It is therefore imperative to adhere to the es­sence of *Roe*’s original decision, and we do so today.

IV

From what we have said so far it follows that it is a consti­tutional liberty of the woman to have some freedom to termi­nate her pregnancy. We conclude that the basic decision in *Roe* was based on a constitutional analysis which we cannot now repudiate. The woman’s liberty is not so unlimited, however, that from the outset the State cannot show its con­cern for the life of the unborn, and at a later point in fetal development the State’s interest in life has sufficient force so that the right of the woman to terminate the pregnancy can be restricted.

That brings us, of course, to the point where much criti­cism has been directed at *Roe,* a criticism that always inheres when the Court draws a specific rule from what in the Con­stitution is but a general standard. We conclude, however, that the urgent claims of the woman to retain the ultimate control over her destiny and her body, claims implicit in the meaning of liberty, require us to perform that function. Lib­erty must not be extinguished for want of a line that is clear. And it falls to us to give some real substance to the woman’s liberty to determine whether to carry her pregnancy to full term.

We conclude the line should be drawn at viability, so that before that time the woman has a right to choose to termi­nate her pregnancy. We adhere to this principle for two reasons. First, as we have said, is the doctrine of *stare deci­sis.* Any judicial act of line-drawing may seem somewhat arbitrary, but *Roe* was a reasoned statement, elaborated with great care. We have twice reaffirmed it in the face of great opposition. See *Thornburgh* v. *American College of Obste­tricians and Gynecologists,* 476 U. S., at 759; *Akron I*, 462 U. S., at 419–420. Although we must overrule those parts of *Thornburgh* and *Akron I* which, in our view, are inconsistent with *Roe*’s statement that the State has a legitimate interest in promoting the life or potential life of the unborn, see *infra,* at 882–883, the central premise of those cases repre­sents an unbroken commitment by this Court to the essential holding of *Roe.* It is that premise which we reaffirm today.

The second reason is that the concept of viability, as we noted in *Roe,* is the time at which there is a realistic possibil­ity of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in rea­son and all fairness be the object of state protection that now overrides the rights of the woman. See *Roe* v. *Wade,* 410 U. S., at 163. Consistent with other constitutional norms, legislatures may draw lines which appear arbitrary without the necessity of offering a justification. But courts may not. We must justify the lines we draw. And there is no line other than viability which is more workable. To be sure, as we have said, there may be some medical developments that affect the precise point of viability, see *supra,* at 860, but this is an imprecision within tolerable limits given that the medical community and all those who must apply its discov­eries will continue to explore the matter. The viability line also has, as a practical matter, an element of fairness. In some broad sense it might be said that a woman who fails to act before viability has consented to the State’s intervention on behalf of the developing child.

The woman’s right to terminate her pregnancy before via­bility is the most central principle of *Roe* v. *Wade.* It is a rule of law and a component of liberty we cannot renounce.

On the other side of the equation is the interest of the State in the protection of potential life. The *Roe* Court rec­ognized the State’s “important and legitimate interest in protecting the potentiality of human life.” *Roe, supra,* at 162. The weight to be given this state interest, not the strength of the woman’s interest, was the difficult question faced in *Roe.* We do not need to say whether each of us, had we been Members of the Court when the valuation of the state interest came before it as an original matter, would have concluded, as the *Roe* Court did, that its weight is insuf­ficient to justify a ban on abortions prior to viability even when it is subject to certain exceptions. The matter is not before us in the first instance, and coming as it does after nearly 20 years of litigation in *Roe*’s wake we are satisfied that the immediate question is not the soundness of *Roe*’s resolution of the issue, but the precedential force that must be accorded to its holding. And we have concluded that the essential holding of *Roe* should be reaffirmed.

Yet it must be remembered that *Roe* v. *Wade* speaks with clarity in establishing not only the woman’s liberty but also the State’s “important and legitimate interest in potential life.” *Roe, supra,* at 163. That portion of the decision in *Roe* has been given too little acknowledgment and implemen­tation by the Court in its subsequent cases. Those cases decided that any regulation touching upon the abortion deci­sion must survive strict scrutiny, to be sustained only if drawn in narrow terms to further a compelling state inter­est. See, *e. g., Akron I, supra,* at 427. Not all of the cases decided under that formulation can be reconciled with the holding in *Roe* itself that the State has legitimate interests in the health of the woman and in protecting the potential life within her. In resolving this tension, we choose to rely upon *Roe,* as against the later cases. *Roe* established a trimester framework to govern abortion regulations. Under this elaborate but rigid construct, al­most no regulation at all is permitted during the first trimes­ter of pregnancy; regulations designed to protect the wom­an’s health, but not to further the State’s interest in potential life, are permitted during the second trimester; and during the third trimester, when the fetus is viable, prohibitions are permitted provided the life or health of the mother is not at stake. *Roe, supra,* at 163–166. Most of our cases since *Roe* have involved the application of rules derived from the tri­mester framework. See, *e. g., Thornburgh* v. *American Col­lege of Obstetricians and Gynecologists, supra; Akron I, supra.*

The trimester framework no doubt was erected to ensure that the woman’s right to choose not become so subordinate to the State’s interest in promoting fetal life that her choice exists in theory but not in fact. We do not agree, however, that the trimester approach is necessary to accomplish this objective. A framework of this rigidity was unnecessary and in its later interpretation sometimes contradicted the State’s permissible exercise of its powers.

Though the woman has a right to choose to terminate or continue her pregnancy before viability, it does not at all follow that the State is prohibited from taking steps to en­sure that this choice is thoughtful and informed. Even in the earliest stages of pregnancy, the State may enact rules and regulations designed to encourage her to know that there are philosophic and social arguments of great weight that can be brought to bear in favor of continuing the preg­nancy to full term and that there are procedures and institu­tions to allow adoption of unwanted children as well as a certain degree of state assistance if the mother chooses to raise the child herself. “‘[T]he Constitution does not forbid a State or city, pursuant to democratic processes, from ex­pressing a preference for normal childbirth.’” *Webster* v. *Reproductive Health Services,* 492 U. S., at 511 (opinion of the Court) (quoting *Poelker* v. *Doe,* 432 U. S. 519, 521 (1977)). It follows that States are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning. This, too, we find consistent with *Roe*’s central premises, and indeed the inevi­table consequence of our holding that the State has an inter­est in protecting the life of the unborn.

We reject the trimester framework, which we do not con­sider to be part of the essential holding of *Roe.* See *Webster* v. *Reproductive Health Services,* 492 U. S., at 518 (opinion of RehnqUISt, C. J.); *id.,* at 529 (O’Connor, J., concurring in part and concurring in judgment) (describing the trimester framework as “problematic”). Measures aimed at ensuring that a woman’s choice contemplates the consequences for the fetus do not necessarily interfere with the right recognized in *Roe,* although those measures have been found to be incon­sistent with the rigid trimester framework announced in that case. A logical reading of the central holding in *Roe* itself, and a necessary reconciliation of the liberty of the woman and the interest of the State in promoting prenatal life, re­quire, in our view, that we abandon the trimester framework as a rigid prohibition on all previability regulation aimed at the protection of fetal life. The trimester framework suf­fers from these basic flaws: in its formulation it misconceives the nature of the pregnant woman’s interest; and in practice it undervalues the State’s interest in potential life, as recog­nized in *Roe.*

As our jurisprudence relating to all liberties save perhaps abortion has recognized, not every law which makes a right more difficult to exercise is, *ipso facto,* an infringement of that right. An example clarifies the point. We have held that not every ballot access limitation amounts to an in­fringement of the right to vote. Rather, the States are granted substantial flexibility in establishing the framework within which voters choose the candidates for whom they.wish to . Opinion of Justice Stevens

I

II

My disagreement with the joint opinion begins with its understanding of the trimester framework established in *Roe.* Contrary to the suggestion of the joint opinion, *ante,* at 876, it is not a “contradiction” to recognize that the State may have a legitimate interest in potential human life and, at the same time, to conclude that that interest does not justify the regulation of abortion before viability (although other interests, such as maternal health, may). The fact that the State’s interest is legitimate does not tell us when, if ever, that interest outweighs the pregnant woman’s inter­est in personal liberty. It is appropriate, therefore, to con­sider more carefully the nature of the interests at stake.

Justice Blackmun, concurring in part, concurring in the judgment in part, and dissenting in part.

Three years ago, in *Webster* v. *Reproductive Health Serv­ices,* 492 U. S. 490 (1989), four Members of this Court ap­peared poised to “cas[t] into darkness the hopes and visions of every woman in this country” who had come to believe that the Constitution guaranteed her the right to reproduc­tive choice. *Id.,* at 557 (BlaCKmUn, J., dissenting). See *id.,* at 499 (plurality opinion of RehnqUISt, C. J., joined by WhIte and KennedY, JJ.); *id.,* at 532 (SCalIa, J., concurring in part and concurring in judgment). All that remained be­tween the promise of *Roe* and the darkness of the plurality was a single, flickering flame. Decisions since *Webster* gave little reason to hope that this flame would cast much light. See, *e. g., Ohio* v. *Akron Center for Reproductive Health,* 497 U. S. 502, 524 (1990) (BlaCKmUn, J., dissenting). But now, just when so many expected the darkness to fall, the flame has grown bright.

I do not underestimate the significance of today’s joint opinion. Yet I remain steadfast in my belief that the right to reproductive choice is entitled to the full protection afforded by this Court before *Webster.* And I fear for the darkness as four Justices anxiously await the single vote necessary to extinguish the light.

I

Make no mistake, the joint opinion of JUStICeS O’COnnOr, KennedY , and SOUter is an act of personal courage and constitutional principle. In contrast to previous decisions in which JUStICeS O’COnnOr and KennedY postponed recon­sideration of *Roe* v. *Wade,* 410 U. S. 113 (1973), the authors of the joint opinion today join JUStICe SteVenS and me in concluding that “the essential holding of *Roe* v. *Wade* should be retained and once again reaffirmed.” *Ante,* at 846. In brief, five Members of this Court today recognize that “the Constitution protects a woman’s right to terminate her preg­nancy in its early stages.” *Ante,* at 844.

A fervent view of individual liberty and the force of *stare decisis* have led the Court to this conclusion.

 III

At long last, The ChIef JUStICe and those who have joined him admit it. Gone are the contentions that the issue need not be (or has not been) considered. There, on the first page, for all to see, is what was expected: “We believe that *Roe* was wrongly decided, and that it can and should be over­ruled consistently with our traditional approach to *stare de­cisis* in constitutional cases.” *Post,* at 944. If there is much reason to applaud the advances made by the joint opinion today, there is far more to fear from The ChIef JUStICe’s opinion.

The ChIef JUStICe’s criticism of *Roe* follows from his stunted conception of individual liberty. While recognizing that the Due Process Clause protects more than simple phys­ical liberty, he then goes on to construe this Court’s personal- liberty cases as establishing only a laundry list of particular rights, rather than a principled account of how these particu­lar rights are grounded in a more general right of privacy. *Post,* at 951. This constricted view is reinforced by The ChIef JUStICe’s exclusive reliance on tradition as a source of fundamental rights. He argues that the record in favor of a right to abortion is no stronger than the record in *Mi­chael H.* v. *Gerald D.,* 491 U. S. 110 (1989), where the plural­ity found no fundamental right to visitation privileges by an adulterous father, or in *Bowers* v. *Hardwick,* 478 U. S. 186 (1986), where the Court found no fundamental right to en­gage in homosexual sodomy, or in a case involving the “‘fir­ing [of] a gun . . . into another person’s body.’” *Post,* at 951–952. In The ChIef JUStICe’s world, a woman consider­ing whether to terminate a pregnancy is entitled to no more protection than adulterers, murderers, and so-called sexual deviates.11 Given The ChIef JUStICe’s exclusive reliance on tradition, people using contraceptives seem the next likely candidate for his list of outcasts.

Even more shocking than The ChIef JUStICe’s cramped notion of individual liberty is his complete omission of any discussion of the effects that compelled childbirth and moth­erhood have on women’s lives. The only expression of con­cern with women’s health is purely instrumental—for The ChIef JUStICe, only women’s *psychological* health is a con­cern, and only to the extent that he assumes that every woman who decides to have an abortion does so without seri­ous consideration of the moral implications of her decision. *Post,* at 967–968. In short, The ChIef JUStICe’s view of the State’s compelling interest in maternal health has less to do with health than it does with compelling women to be maternal.

Nor does The ChIef JUStICe give any serious consider­ation to the doctrine of *stare decisis.* For The ChIef JUS­tICe, the facts that gave rise to *Roe* are surprisingly simple: “women become pregnant, there is a point somewhere, de­pending on medical technology, where a fetus becomes via­ble, and women give birth to children.” *Post,* at 955. This characterization of the issue thus allows The ChIef JUStICe quickly to discard the joint opinion’s reliance argument by asserting that “reproductive planning could take virtually immediate account of” a decision overruling *Roe. Post,* at 956 (internal quotation marks omitted).

The ChIef JUStICe’s narrow conception of individual lib­erty and *stare decisis* leads him to propose the same stand­ard of review proposed by the plurality in *Webster.* “States may regulate abortion procedures in ways rationally related to a legitimate state interest. *Williamson* v. *Lee Optical of Oklahoma, Inc.,* 348 U. S. 483, 491 (1955); cf. *Stanley* v. *Illi­nois,* 405 U. S. 645, 651–653 (1972).” *Post,* at 966. Opinion of RehnqUISt, C. J.

**ChIef Justice Rehnquist with whom Justices White, Scalia and Thomas join concurring in the judgment in part and dissenting in part.**

The joint opinion, following its newly minted variation on *stare decisis,* retains the outer shell of *Roe* v. *Wade,* 410 U. S. 113 (1973), but beats a wholesale retreat from the substance of that case. We believe that *Roe* was wrongly decided, and that it can and should be overruled consistently with our traditional approach to *stare decisis* in constitutional cases. We would adopt the approach of the plurality in *Webster* v. *Reproductive Health Services,* 492 U. S. 490 (1989), and up­hold the challenged provisions of the Pennsylvania statute in their entirety.

I . . .

II

The joint opinion of JUStICeS O’COnnOr, KennedY , and SOUter cannot bring itself to say that *Roe* was correct as an original matter, but the authors are of the view that “the immediate question is not the soundness of *Roe*’s resolution of the issue, but the precedential force that must be accorded to its holding.” *Ante,* at 871. Instead of claiming that *Roe*was correct as a matter of original constitutional interpreta­tion, the opinion therefore contains an elaborate discussion of *stare decisis.* This discussion of the principle of *stare decisis* appears to be almost entirely dicta, because the joint opinion does not apply that principle in dealing with *Roe. Roe* de­cided that a woman had a fundamental right to an abortion. The joint opinion rejects that view. *Roe* decided that abor­tion regulations were to be subjected to “strict scrutiny” and could be justified only in the light of “compelling state in­terests.” The joint opinion rejects that view. *Ante,* at 872–873; see *Roe* v. *Wade, supra,* at 162–164. *Roe* analyzed abortion regulation under a rigid trimester framework, a framework which has guided this Court’s decisionmaking for 19 years. The joint opinion rejects that framework. *Ante,* at 873.

*Stare decisis* is defined in Black’s Law Dictionary as mean­ing “to abide by, or adhere to, decided cases.” Black’s Law Dictionary 1406 (6th ed. 1990). Whatever the “central hold­ing” of *Roe* that is left after the joint opinion finishes dissect­ing it is surely not the result of that principle. While pur­porting to adhere to precedent, the joint opinion instead revises it. *Roe* continues to exist, but only in the way a storefront on a western movie set exists: a mere facade to give the illusion of reality. Decisions following *Roe,* such as *Akron* v. *Akron Center for Reproductive Health, Inc.,* 462 U. S. 416 (1983), and *Thornburgh* v. *American College of Obstetricians and Gynecologists,* 476 U. S. 747 (1986), are frankly overruled in part under the “undue burden” standard expounded in the joint opinion. *Ante,* at 881–884.

In our view, authentic principles of *stare decisis* do not require that any portion of the reasoning in *Roe* be kept in­tact. “*Stare decisis* is not . . . a universal, inexorable com­mand,” especially in cases involving the interpretation of the Federal Constitution. *Burnet* v. *Coronado Oil & Gas Co.,* 285 U. S. 393, 405 (1932) (Brandeis, J., dissenting). Errone­ous decisions in such constitutional cases are uniquely dura­ble, because correction through legislative action, save for constitutional amendment, is impossible. It is therefore our duty to reconsider constitutional interpretations that “de­par[t] from a proper understanding” of the Constitution. *Garcia* v. *San Antonio Metropolitan Transit Authority,* 469 U. S., at 557; see *United States* v. *Scott,* 437 U. S. 82, 101 (1978) (“ ‘[I]n cases involving the Federal Constitution, . . . [t]he Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function’” (quoting *Burnet* v. *Coronado Oil & Gas Co., supra,* at 406–408 (Brandeis, J., dissenting))); *Smith* v. *Allwright,* 321 U. S. 649, 665 (1944). Our constitutional watch does not cease merely because we have spoken before on an issue; when it becomes clear that a prior constitutional interpretation is unsound we are obliged to reexamine the question. See, *e. g., West Virginia Bd. of Ed.* v. *Barnette,* 319 U. S. 624, 642 (1943); *Erie R. Co.* v. *Tompkins,* 304 U. S. 64, 74–78 (1938).

The joint opinion discusses several *stare decisis* factors which, it asserts, point toward retaining a portion of *Roe.* Two of these factors are that the main “factual underpin­ning” of *Roe* has remained the same, and that its doctrinal foundation is no weaker now than it was in 1973. *Ante,* at 857–860. Of course, what might be called the basic facts which gave rise to *Roe* have remained the same—women be­come pregnant, there is a point somewhere, depending on medical technology, where a fetus becomes viable, and women give birth to children. But this is only to say that the same facts which gave rise to *Roe* will continue to give rise to similar cases. It is not a reason, in and of itself, why those cases must be decided in the same incorrect manner as was the first case to deal with the question. And surely there is no requirement, in considering whether to depart from *stare decisis* in a constitutional case, that a decision be more wrong now than it was at the time it was rendered. If that were true, the most outlandish constitutional decision could survive forever, based simply on the fact that it was no more outlandish later than it was when originally rendered.

Nor does the joint opinion faithfully follow this alleged re­quirement. The opinion frankly concludes that *Roe* and its progeny were wrong in failing to recognize that the State’s interests in maternal health and in the protection of unborn human life exist throughout pregnancy. *Ante,* at 871–873. But there is no indication that these components of *Roe* are any more incorrect at this juncture than they were at its inception.

The joint opinion also points to the reliance interests in­volved in this context in its effort to explain why precedent must be followed for precedent’s sake. Certainly it is true that where reliance is truly at issue, as in the case of judicial decisions that have formed the basis for private decisions, “[c]onsiderations in favor of *stare decisis* are at their acme.” *Payne* v. *Tennessee,* 501 U. S., at 828. But, as the joint opin­ion apparently agrees, *ante,* at 855–856, any traditional no­tion of reliance is not applicable here. The Court today cuts back on the protection afforded by *Roe,* and no one claims that this action defeats any reliance interest in the disa­vowed trimester framework. Similarly, reliance interests would not be diminished were the Court to go further and acknowledge the full error of *Roe,* as “reproductive planning could take virtually immediate account of” this action. *Ante,* at 856.

The joint opinion thus turns to what can only be described as an unconventional—and unconvincing—notion of reliance, a view based on the surmise that the availability of abortion since *Roe* has led to “two decades of economic and social developments” that would be undercut if the error of *Roe* were recognized. *Ante,* at 856. The joint opinion’s asser­tion of this fact is undeveloped and totally conclusory. In fact, one cannot be sure to what economic and social develop­ments the opinion is referring. Surely it is dubious to sug­gest that women have reached their “places in society” in reliance upon *Roe,* rather than as a result of their determina­tion to obtain higher education and compete with men in the job market, and of society’s increasing recognition of their ability to fill positions that were previously thought to be reserved only for men. *Ante,* at 856.

In the end, having failed to put forth any evidence to prove any true reliance, the joint opinion’s argument is based solely on generalized assertions about the national psyche, on a be­lief that the people of this country have grown accustomed to the *Roe* decision over the last 19 years and have “ordered their thinking and living around” it. *Ante,* at 856. As an initial matter, one might inquire how the joint opinion can view the “central holding” of *Roe* as so deeply rooted in our constitutional culture, when it so casually uproots and dis­poses of that same decision’s trimester framework. Further­more, at various points in the past, the same could have been said about this Court’s erroneous decisions that the Constitu­tion allowed “separate but equal” treatment of minorities, see *Plessy* v. *Ferguson,* 163 U. S. 537 (1896), or that “liberty” under the Due Process Clause protected “freedom of con­tract,” see *Adkins* v. *Children’s Hospital of District of Co­lumbia,* 261 U. S. 525 (1923); *Lochner* v. *New York,* 198 U. S. 45 (1905). The “separate but equal” doctrine lasted 58 years after *Plessy,* and *Lochner*’s protection of contractual free­dom lasted 32 years. However, the simple fact that a gener­ation or more had grown used to these major decisions did not prevent the Court from correcting its errors in those cases, nor should it prevent us from correctly interpreting the Constitution here. See *Brown* v. *Board of Education,* 347 U. S. 483 (1954) (rejecting the “separate but equal” doc­trine); *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379 (1937) (overruling *Adkins* v. *Children’s Hospital, supra,* in uphold­ing Washington’s minimum wage law).

Apparently realizing that conventional *stare decisis* princi­ples do not support its position, the joint opinion advances a belief that retaining a portion of *Roe* is necessary to protect the “legitimacy” of this Court. *Ante,* at 861–869. Because the Court must take care to render decisions “grounded truly in principle,” and not simply as political and social com­promises, *ante,* at 865, the joint opinion properly declares it to be this Court’s duty to ignore the public criticism and protest that may arise as a result of a decision. Few would quarrel with this statement, although it may be doubted that Members of this Court, holding their tenure as they do dur­ing constitutional “good behavior,” are at all likely to be in­timidated by such public protests.

But the joint opinion goes on to state that when the Court “resolve[s] the sort of intensely divisive controversy re­flected in *Roe* and those rare, comparable cases,” its decision is exempt from reconsideration under established principles of *stare decisis* in constitutional cases. *Ante,* at 866. This is so, the joint opinion contends, because in those “intensely divisive” cases the Court has “call[ed] the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution,” and must therefore take special care not to be perceived as “surrender[ing] to political pressure” and continued opposi­tion. *Ante,* at 866, 867. This is a truly novel principle, one which is contrary to both the Court’s historical practice and to the Court’s traditional willingness to tolerate criticism of its opinions. Under this principle, when the Court has ruled on a divisive issue, it is apparently prevented from overrul­ing that decision for the sole reason that it was incorrect, *unless opposition to the original decision has died away.*

The first difficulty with this principle lies in its assumption that cases that are “intensely divisive” can be readily distin­guished from those that are not. The question of whether a particular issue is “intensely divisive” enough to qualify for special protection is entirely subjective and dependent on the individual assumptions of the Members of this Court. In addition, because the Court’s duty is to ignore public opinion and criticism on issues that come before it, its Members are in perhaps the worst position to judge whether a decision divides the Nation deeply enough to justify such uncommon protection. Although many of the Court’s decisions divide the populace to a large degree, we have not previously on that account shied away from applying normal rules of *stare decisis* when urged to reconsider earlier decisions. Over the past 21 years, for example, the Court has overruled in whole or in part 34 of its previous constitutional decisions. See *Payne* v. *Tennessee, supra,* at 828–830, and n. 1 (listing cases).

The joint opinion picks out and discusses two prior Court rulings that it believes are of the “intensely divisive” variety, and concludes that they are of comparable dimension to *Roe. Ante,* at 861–864 (discussing *Lochner* v. *New York, supra,* and *Plessy* v. *Ferguson, supra*). It appears to us very odd indeed that the joint opinion chooses as benchmarks two cases in which the Court chose *not* to adhere to erroneous constitutional precedent, but instead enhanced its stature by acknowledging and correcting its error, apparently in viola­tion of the joint opinion’s “legitimacy” principle. See *West Coast Hotel Co.* v. *Parrish, supra; Brown* v. *Board of Educa­tion, supra.* One might also wonder how it is that the joint opinion puts these, and not others, in the “intensely divisive” category, and how it assumes that these are the only two lines of cases of comparable dimension to *Roe.* There is no reason to think that either *Plessy* or *Lochner* produced the sort of public protest when they were decided that *Roe* did. There were undoubtedly large segments of the bench and bar who agreed with the dissenting views in those cases, but surely that cannot be what the Court means when it uses the term “intensely divisive,” or many other cases would have to be added to the list. In terms of public protest, however, *Roe,* so far as we know, was unique. But just as the Court should not respond to that sort of protest by retreating from the decision simply to allay the concerns of the protesters, it should likewise not respond by determining to adhere to the decision at all costs lest it *seem* to be retreating under fire. Public protests should not alter the normal application of *stare decisis,* lest perfectly lawful protest activity be penal­ized by the Court itself.

Taking the joint opinion on its own terms, we doubt that its distinction between *Roe,* on the one hand, and *Plessy* and *Lochner,* on the other, withstands analysis. The joint opin­ion acknowledges that the Court improved its stature by overruling *Plessy* in *Brown* on a deeply divisive issue. And our decision in *West Coast Hotel,* which overruled *Adkins* v. *Children’s Hospital, supra,* and *Lochner,* was rendered at a time when Congress was considering President Franklin Roosevelt’s proposal to “reorganize” this Court and enable him to name six additional Justices in the event that any Member of the Court over the age of 70 did not elect to retire. It is difficult to imagine a situation in which the Court would face more intense opposition to a prior ruling than it did at that time, and, under the general principle pro­claimed in the joint opinion, the Court seemingly should have responded to this opposition by stubbornly refusing to re­examine the *Lochner* rationale, lest it lose legitimacy by appearing to “overrule under fire.” *Ante,* at 867.

The joint opinion agrees that the Court’s stature would have been seriously damaged if in *Brown* and *West Coast Hotel* it had dug in its heels and refused to apply normal principles of *stare decisis* to the earlier decisions. But the opinion contends that the Court was entitled to overrule *Plessy* and *Lochner* in those cases, despite the existence of opposition to the original decisions, only because both the Nation and the Court had learned new lessons in the interim. This is at best a feebly supported, *post hoc* rationalization for those decisions.

For example, the opinion asserts that the Court could jus­tifiably overrule its decision in *Lochner* only because the De­pression had convinced “most people” that constitutional pro­tection of contractual freedom contributed to an that failed to protect the welfare of all. *Ante,* at 861. Surely the joint opinion does not mean to suggest that people saw this Court’s failure to uphold minimum wage statutes as the cause of the Great Depression! In any event, the *Loch­ner* Court did not base its rule upon the policy judgment that an unregulated market was fundamental to a stable econ­omy; it simple believed, erroneously, that “liberty” under the Due Process Clause protected the “right to make a contract.” *Lochner* v. *New York,* 198 U. S., at 53. Nor is it the case that the people of this Nation only discovered the dangers of extreme laissez-faire economics because of the Depression. State laws regulating maximum hours and minimum wages were in existence well before that time. A Utah statute of that sort enacted in 1896 was involved in our decision in *Holden* v. *Hardy,* 169 U. S. 366 (1898), and other States fol­lowed suit shortly afterwards, see, *e. g., Muller* v. *Oregon,* 208 U. S. 412 (1908); *Bunting* v. *Oregon,* 243 U. S. 426 (1917). These statutes were indeed enacted because of a belief on the part of their sponsors that “freedom of contract” did not protect the welfare of workers, demonstrating that that be­lief manifested itself more than a generation before the Great Depression. Whether “most people” had come to share it in the hard times of the 1930’s is, insofar as anything the joint opinion advances, entirely speculative. The crucial failing at that time was not that workers were not paid a fair wage, but that there was no work available at *any* wage.

When the Court finally recognized its error in *West Coast Hotel,* it did not engage in the *post hoc* rationalization that the joint opinion attributes to it today; it did not state that *Lochner* had been based on an economic view that had fallen into disfavor, and that it therefore should be overruled. Chief Justice Hughes in his opinion for the Court simply rec­ognized what Justice Holmes had previously recognized in his *Lochner* dissent, that “[t]he Constitution does not speak of freedom of contract.” *West Coast Hotel Co.* v. *Parrish,* 300 U. S., at 391; *Lochner* v. *New York, supra,* at 75 (Holmes,J., dissenting) (“[A] constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*”). Although the Court did acknowledge in the last paragraph of its opinion the state of affairs during the then- current Depression, the theme of the opinion is that the Court had been mistaken as a matter of constitutional law when it embraced “freedom of contract” 32 years previously.

The joint opinion also agrees that the Court acted properly in rejecting the doctrine of “separate but equal” in *Brown.* In fact, the opinion lauds *Brown* in comparing it to *Roe. Ante,* at 867. This is strange, in that under the opinion’s “legitimacy” principle the Court would seemingly have been forced to adhere to its erroneous decision in *Plessy* because of its “intensely divisive” character. To us, adherence to *Roe* today under the guise of “legitimacy” would seem to resemble more closely adherence to *Plessy* on the same ground. Fortunately, the Court did not choose that option in *Brown,* and instead frankly repudiated *Plessy.* The joint opinion concludes that such repudiation was justified only be­cause of newly discovered evidence that segregation had the effect of treating one race as inferior to another. But it can hardly be argued that this was not urged upon those who decided *Plessy,* as Justice Harlan observed in his dissent that the law at issue “puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law.” *Plessy* v. *Ferguson,* 163 U. S., at 562. It is clear that the same arguments made before the Court in *Brown* were made in *Plessy* as well. The Court in *Brown* simply recognized, as Justice Harlan had recognized beforehand, that the Fourteenth Amendment does not permit racial seg­regation. The rule of *Brown* is not tied to popular opinion about the evils of segregation; it is a judgment that the Equal Protection Clause does not permit racial segregation, no matter whether the public might come to believe that it is beneficial. On that ground it stands, and on that ground alone the Court was justified in properly concluding that the *Plessy* Court had erred.

There is also a suggestion in the joint opinion that the propriety of overruling a “divisive” decision depends in part on whether “most people” would now agree that it should be overruled. Either the demise of opposition or its progres­sion to substantial popular agreement apparently is required to allow the Court to reconsider a divisive decision. How such agreement would be ascertained, short of a public opin­ion poll, the joint opinion does not say. But surely even the suggestion is totally at war with the idea of “legitimacy” in whose name it is invoked. The Judicial Branch derives its legitimacy, not from following public opinion, but from decid­ing by its best lights whether legislative enactments of the popular branches of Government comport with the Constitu­tion. The doctrine of *stare decisis* is an adjunct of this duty, and should be no more subject to the vagaries of public opin­ion than is the basic judicial task.

There are other reasons why the joint opinion’s discussion of legitimacy is unconvincing as well. In assuming that the Court is perceived as “surrender[ing] to political pressure” when it overrules a controversial decision, *ante,* at 867, the joint opinion forgets that there are two sides to any contro­versy. The joint opinion asserts that, in order to protect its legitimacy, the Court must refrain from overruling a contro­versial decision lest it be viewed as favoring those who op­pose the decision. But a decision to *adhere* to prior prece­dent is subject to the same criticism, for in such a case one can easily argue that the Court is responding to those who have demonstrated in favor of the original decision. The decision in *Roe* has engendered large demonstrations, includ­ing repeated marches on this Court and on Congress, both in opposition to and in support of that opinion. A decision either way on *Roe* can therefore be perceived as favoring one group or the other. But this perceived dilemma arises only if one assumes, as the joint opinion does, that the Courtshould make its decisions with a view toward speculative public perceptions. If one assumes instead, as the Court surely did in both *Brown* and *West Coast Hotel,* that the Court’s legitimacy is enhanced by faithful interpretation of the Constitution irrespective of public opposition, such self- engendered difficulties may be put to one side.

*Roe* is not this Court’s only decision to generate conflict. Our decisions in some recent capital cases, and in *Bowers* v. *Hardwick,* 478 U. S. 186 (1986), have also engendered demon­strations in opposition. The joint opinion’s message to such protesters appears to be that they must cease their activities in order to serve their cause, because their protests will only cement in place a decision which by normal standards of *stare decisis* should be reconsidered. Nearly a century ago, Justice David J. Brewer of this Court, in an article discussing criticism of its decisions, observed that “many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all.” Justice Brewer on “The Nation’s Anchor,” 57 Albany L. J. 166, 169 (1898). This was good advice to the Court then, as it is today. Strong and often misguided criticism of a decision should not render the decision immune from reconsideration, lest a fe­tish for legitimacy penalize freedom of expression.

The end result of the joint opinion’s paeans of praise for legitimacy is the enunciation of a brand new standard for evaluating state regulation of a woman’s right to abortion— the “undue burden” standard.. . .

The sum of the joint opinion’s labors in the name of *stare decisis* and “legitimacy” is this: *Roe* v. *Wade* stands as a sort of judicial Potemkin Village, which may be pointed out to passers-by as a monument to the importance of adhering to precedent. But behind the facade, an entirely new method of analysis, without any roots in constitutional law, is im­ported to decide the constitutionality of state laws regulat­ing abortion. Neither *stare decisis* nor “legitimacy” are truly served by such an effort.

**Justice Scalia dissenting in part, concurring in part. .**

*Any* regulation of abortion that is intended to advance what the joint opinion concedes is the State’s “substantial” interest in protecting unborn life will be “calculated [to] hinder” a decision to have an abortion. It thus seems more accurate to say that the joint opinion would uphold abortion regulations only if they do not *unduly* hin­der the woman’s decision. That, of course, brings us right back to square one: Defining an “undue burden” as an “undue hindrance” (or a “substantial obstacle”) hardly “clarifies” the test. Consciously or not, the joint opinion’s verbal shell game will conceal raw judicial policy choices concerning what is “appropriate” abortion legislation.

The ultimately standardless nature of the “undue burden” inquiry is a reflection of the underlying fact that the concept has no principled or coherent legal basis. As The ChIef JUStICe points out, *Roe*’s strict-scrutiny standard “at least had a recognized basis in constitutional law at the time *Roe* was decided,” *ante,* at 964, while “[t]he same cannot be said for the ‘undue burden’ standard, which is created largely out of whole cloth by the authors of the joint opinion,” *ibid.* The joint opinion is flatly wrong in asserting that “our jurispru­dence relating to all liberties save perhaps abortion has rec­ognized” the permissibility of laws that do not impose an “undue burden.” *Ante,* at 873. It argues that the abortion right is similar to other rights in that a law “not designed to strike at the right itself, [but which] has the incidental effect of making it more difficult or more expensive to [exercise the right,]” is not invalid. *Ante,* at 874. I agree, indeed I have

.forcefully urged, that a law of general applicability which places only an incidental burden on a fundamental right does not infringe that right, see *R. A. V.* v. *St. Paul,* 505 U. S. 377, 389–390 (1992); *Employment Div., Dept. of Human Re­sources of Ore.* v. *Smith,* 494 U. S. 872, 878–882 (1990), but that principle does not establish the quite different (and quite dangerous) proposition that a law which *directly* regulates a fundamental right will not be found to violate the Consti­tution unless it imposes an “undue burden.” It is that, of course, which is at issue here: Pennsylvania has *consciously and directly* regulated conduct that our cases have held is constitutionally protected. The appropriate analogy, there­fore, is that of a state law requiring purchasers of religious books to endure a 24-hour waiting period, or to pay a nomi­nal additional tax of 1¢. The joint opinion cannot possibly be correct in suggesting that we would uphold such legis­lation on the ground that it does not impose a “substantial obstacle” to the exercise of First Amendment rights. The “undue burden” standard is not at all the generally applicable principle the joint opinion pretends it to be; rather, it is a unique concept created specially for these cases, to preserve some judicial foothold in this ill-gotten territory. In claim­ing otherwise, the three Justices show their willingness to place all constitutional rights at risk in an effort to preserve what they deem the “central holding in *Roe.*” *Ante,* at 873.. .

The Court’s reliance upon *stare decisis* can best be de­scribed as contrived. It insists upon the necessity of adher­ing not to all of *Roe,* but only to what it calls the “central holding.” It seems to me that *stare decisis* ought to be ap­plied even to the doctrine of *stare decisis,* and I confess never to have heard of this new, keep-what-you-want-and-throw­away-the-rest version. I wonder whether, as applied to *Marbury* v. *Madison,* 1 Cranch 137 (1803), for example, the new version of *stare decisis* would be satisfied if we allowed courts to review the constitutionality of only those statutes that (like the one in *Marbury*) pertain to the jurisdiction of the courts.

I am certainly not in a good position to dispute that the Court *has saved* the “central holding” of *Roe,* since to do that effectively I would have to know what the Court has saved, which in turn would require me to understand (as I do not) what the “undue burden” test means. I must confess, however, that I have always thought, and I think a lot of other people have always thought, that the arbitrary trimes­ter framework, which the Court today discards, was quite as central to *Roe* as the arbitrary viability test, which the Court today retains. It seems particularly ungrateful to carve the trimester framework out of the core of *Roe,* since its very rigidity (in sharp contrast to the utter indeterminability of the “undue burden” test) is probably the only reason the Court is able to say, in urging *stare decisis,* that *Roe* “has in no sense proven ‘unworkable,’” *ante,* at 855. I suppose the Court is entitled to call a “central holding” whatever it wants to call a “central holding”—which is, come to think of it, per­haps one of the difficulties with this modified version of *stare decisis.* I thought I might note, however, that the following portions of *Roe* have not been saved:

* Under *Roe,* requiring that a woman seeking an abortion be provided truthful information about abortion before giv­ing informed written consent is unconstitutional, if the infor­mation is designed to influence her choice. *Thornburgh,* 476 U. S., at 759–765; *Akron I,* 462 U. S., at 442–445. Under the joint opinion’s “undue burden” regime (as applied today, at least) such a requirement is constitutional. *Ante,* at 881–885.
* Under *Roe,* requiring that information be provided by a doctor, rather than by nonphysician counselors, is unconstitu­tional. *Akron I, supra,* at 446–449. Under the “undue bur­den” regime (as applied today, at least) it is not. *Ante,* at 884–885.
* Under *Roe,* requiring a 24-hour waiting period between the time the woman gives her informed consent and the time of the abortion is unconstitutional. *Akron I, supra,* at 449– 451. Under the “undue burden” regime (as applied today, at least) it is not. *Ante,* at 885–887.
* Under *Roe,* requiring detailed reports that include demo­graphic data about each woman who seeks an abortion and various information about each abortion is unconstitutional. *Thornburgh, supra,* at 765–768. Under the “undue burden” regime (as applied today, at least) it generally is not. *Ante,* at 900–901.

**“Where, in the performance of its judicial duties, the Court decides a case in such a way as to resolve the sort of intensely divisive controversy reflected in *Roe*... , its decision has a dimension that the resolu­tion of the normal case does not carry. It is the di­mension present whenever the Court’s interpretation of the Constitution calls the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Con­stitution.”** *Ante,* at 866–867.

The Court’s description of the place of *Roe* in the social history of the United States is unrecognizable. Not only did *Roe* not, as the Court suggests, *resolve* the deeply divisive issue of abortion; it did more than anything else to nourish it, by elevating it to the national level where it is infinitely more difficult to resolve. National politics were not plagued by abortion protests, national abortion lobbying, or abortion marches on Congress before *Roe* v. *Wade* was decided. Pro­found disagreement existed among our citizens over the issue—as it does over other issues, such as the death pen­alty—but that disagreement was being worked out at the state level. As with many other issues, the division of senti­ment within each State was not as closely balanced as it was among the population of the Nation as a whole, meaning not only that more people would be satisfied with the results of state-by-state resolution, but also that those results would be more stable. Pre-*Roe,* moreover, political compromise was possible.

*Roe*’s mandate for abortion on demand destroyed the com­promises of the past, rendered compromise impossible for the future, and required the entire issue to be resolved uni­formly, at the national level. At the same time, *Roe* created a vast new class of abortion consumers and abortion propo­nents by eliminating the moral opprobrium that had attached to the act. (“If the Constitution *guarantees* abortion, how can it be bad?”—not an accurate line of thought, but a natu­ral one.) Many favor all of those developments, and it is not for me to say that they are wrong. But to portray *Roe* as the statesmanlike “settlement” of a divisive issue, a jurispru­dential Peace of Westphalia that is worth preserving, is noth­ing less than Orwellian. *Roe* fanned into life an issue that has inflamed our national politics in general, and has ob­scured with its smoke the selection of Justices to this Court

in particular, ever since. And by keeping us in the abortion- umpiring business, it is the perpetuation of that disruption, rather than of any *Pax Roeana,* that the Court’s new major­ity decrees.

**“[T]o overrule under fire . . . would subvert the Court’s legitimacy....**

**“. . . To all those who will be.. . tested by follow­ing, the Court implicitly undertakes to remain stead­fast . . . . The promise of constancy, once given, binds its maker for as long as the power to stand by the decision survives and. . . the commitment [is not] obsolete. . . .**

**“[The American people’s] belief in themselves as . . . a people [who aspire to live according to the rule of law] is not readily separable from their under­standing of the Court invested with the authority to decide their constitutional cases and speak before all others for their constitutional ideals. If the Court’s legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals.”** *Ante,* at 867–868.

The Imperial Judiciary lives. It is instructive to compare this Nietzschean vision of us unelected, life-tenured judges— leading a Volk who will be “tested by following,” and whose very “belief in themselves” is mystically bound up in their “understanding” of a Court that “speak[s] before all others for their constitutional ideals”—with the somewhat more modest role envisioned for these lawyers by the Founders.

“The judiciary . . . has . . . no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment... .” The Federalist No. 78, pp. 393–394 (G. Wills ed. 1982).

Or, again, to compare this ecstasy of a Supreme Court in
which there is, especially on controversial matters, noshadow of change or hint of alteration (“There is a limit to the amount of error that can plausibly be imputed to prior Courts,” *ante,* at 866), with the more democratic views of a more humble man:

“[T]he candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Su­preme Court,. . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribu­nal.” A. Lincoln, First Inaugural Address (Mar. 4, 1861), reprinted in Inaugural Addresses of the Presidents of the United States, S. Doc. No. 101–10, p. 139 (1989).

It is particularly difficult, in the circumstances of the pres­ent decision, to sit still for the Court’s lengthy lecture upon the virtues of “constancy,” *ante,* at 868, of “remain[ing] steadfast,” *ibid.,* and adhering to “principle,” *ante, passim.* Among the five Justices who purportedly adhere to *Roe,* at most three agree upon the *principle* that constitutes adher­ence (the joint opinion’s “undue burden” standard)—and that principle is inconsistent with *Roe.* See 410 U. S., at 154– 156.7 To make matters worse, two of the three, in order thus to remain steadfast, had to abandon previously stated positions. See n. 4, *supra;* see *supra,* at 988–990. It is be­yond me how the Court expects these accommodations to be accepted “as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make.” *Ante,* at 865–866. The only principle the Court “adheres” to, it seems to me, is the principle that the Court must be seen as standing by *Roe.* That is not a principle of law (which is what I thought the Court was talking about), but a principle of *Realpolitik*—and a wrong one at that.

I cannot agree with, indeed I am appalled by, the Court’s suggestion that the decision whether to stand by an errone­ous constitutional decision must be strongly influenced— *against* overruling, no less—by the substantial and continu­ing public opposition the decision has generated. The Court’s judgment that any other course would “subvert the Court’s legitimacy” must be another consequence of reading the error-filled history book that described the deeply di­vided country brought together by *Roe.* In my history book, the Court was covered with dishonor and deprived of legitimacy by *Dred Scott* v. *Sandford,* 19 How. 393 (1857), an erroneous (and widely opposed) opinion that it did not aban­don, rather than by *West Coast Hotel Co.* v. *Parrish,* 300 U. S. 379 (1937), which produced the famous “switch in time” from the Court’s erroneous (and widely opposed) constitutional op­position to the social measures of the New Deal. (Both *Dred Scott* and one line of the cases resisting the New Deal rested upon the concept of “substantive due process” that the Court praises and employs today. Indeed, *Dred Scott* was “very possibly the first application of substantive due process in the Supreme Court, the original precedent for *Lochner* v. *New York* and *Roe* v. *Wade.*” D. Currie, The Constitution in the Supreme Court 271 (1985) (footnotes omitted).)

But whether it would “subvert the Court’s legitimacy” or not, the notion that we would decide a case differently from the way we otherwise would have in order to show that we can stand firm against public disapproval is frightening. It is a bad enough idea, even in the head of someone like me, who believes that the text of the Constitution, and our tradi­tions, say what they say and there is no fiddling with them. But when it is in the mind of a Court that believes the Constitution has an evolving meaning, see *ante,* at 848; that the Ninth Amendment’s reference to “othe[r]” rights is not a dis­claimer, but a charter for action, *ibid.;* and that the function of this Court is to “speak before all others for [the people’s] constitutional ideals” unrestrained by meaningful text or tra­dition—then the notion that the Court must adhere to a deci­sion for as long as the decision faces “great opposition” and the Court is “under fire” acquires a character of almost czar­ist arrogance. We are offended by these marchers who de­scend upon us, every year on the anniversary of *Roe,* to pro­test our saying that the Constitution requires what our society has never thought the Constitution requires. These people who refuse to be “tested by following” must be taught a lesson. We have no Cossacks, but at least we can stubbornly refuse to abandon an erroneous opinion that we might otherwise change—to show how little they intimidate us.

Of course, as The ChIef JUStICe points out, we have been subjected to what the Court calls “‘political pressure’” by *both* sides of this issue. *Ante,* at 963. Maybe today’s deci­sion *not* to overrule *Roe* will be seen as buckling to pressure from *that* direction. Instead of engaging in the hopeless task of predicting public perception—a job not for lawyers but for political campaign managers—the Justices should do what is *legally* right by asking two questions: (1) Was *Roe* correctly decided? (2) Has *Roe* succeeded in producing a settled body of law? If the answer to both questions is no, *Roe* should undoubtedly be overruled.

In truth, I am as distressed as the Court is—and ex­pressed my distress several years ago, see *Webster,* 492 U. S., at 535—about the “political pressure” directed to the Court: the marches, the mail, the protests aimed at inducing us to change our opinions. How upsetting it is, that so many of our citizens (good people, not lawless ones, on both sides of this abortion issue, and on various sides of other issues as well) think that we Justices should properly take into account their views, as though we were engaged not in ascer­taining an objective law but in determining some kind of social consensus. The Court would profit, I think, from giv­ing less attention to the *fact* of this distressing phenomenon, and more attention to the *cause* of it. That cause permeates today’s opinion: a new mode of constitutional adjudication that relies not upon text and traditional practice to deter­mine the law, but upon what the Court calls “reasoned judg­ment,” *ante,* at 849, which turns out to be nothing but philo­sophical predilection and moral intuition. All manner of “liberties,” the Court tells us, inhere in the Constitution and are enforceable by this Court—not just those mentioned in the text or established in the traditions of our society. *Ante,* at 847–849. Why even the Ninth Amendment—which says only that “[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”—is, despite our contrary understanding for almost 200 years, a literally boundless source of additional, unnamed, unhinted-at “rights,” definable and enforceable by us, through “reasoned judgment.” *Ante,* at 848–849.

What makes all this relevant to the bothersome application of “political pressure” against the Court are the twin facts that the American people love democracy and the American people are not fools. As long as this Court thought (and the people thought) that we Justices were doing essentially lawyers’ work up here—reading text and discerning our society’s traditional understanding of that text—the public pretty much left us alone. Texts and traditions are facts to study, not convictions to demonstrate about. But if in real­ity our process of constitutional adjudication consists primar­ily of making *value judgments;* if we can ignore a long and clear tradition clarifying an ambiguous text, as we did, for example, five days ago in declaring unconstitutional invoca­tions and benedictions at public high school graduation cere­monies, *Lee* v. *Weisman,* 505 U. S. 577 (1992); if , as I say, our pronouncement of constitutional law rests primarily on value judgments, then a free and intelligent people’s attitude to­wards us can be expected to be (*ought* to be) quite different. The people know that their value judgments are quite as good as those taught in any law school—maybe better. If, indeed, the “liberties” protected by the Constitution are, as the Court says, undefined and unbounded, then the people *should* demonstrate, to protest that we do not implement *their* values instead of *ours.* Not only that, but confirmation hearings for new Justices *should* deteriorate into question­and-answer sessions in which Senators go through a list of their constituents’ most favored and most disfavored alleged constitutional rights, and seek the nominee’s commitment to support or oppose them. Value judgments, after all, should be voted on, not dictated; and if our Constitution has some­how accidently committed them to the Supreme Court, at least we can have a sort of plebiscite each time a new nomi­nee to that body is put forward. JUStICe BlaCKmUn not only regards this prospect with equanimity, he solicits it. *Ante,* at 943.

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There is a poignant aspect to today’s opinion. Its length, and what might be called its epic tone, suggest that its au­thors believe they are bringing to an end a troublesome era in the history of our Nation and of our Court. “It is the dimension” of authority, they say, to “cal[l] the contending sides of national controversy to end their national division by accepting a common mandate rooted in the Constitution.” *Ante,* at 867.

There comes vividly to mind a portrait by Emanuel Leutze that hangs in the Harvard Law School: Roger Brooke Taney, painted in 1859, the 82d year of his life, the 24th of his Chief Justiceship, the second after his opinion in *Dred Scott.* He is all in black, sitting in a shadowed red armchair, left hand resting upon a pad of paper in his lap, right hand hanging limply, almost lifelessly, beside the inner arm of the chair. He sits facing the viewer and staring straight out. There seems to be on his face, and in his deep-set eyes, an expres­sion of profound sadness and disillusionment. Perhaps he always looked that way, even when dwelling upon the happi­est of thoughts. But those of us who know how the lustre of his great Chief Justiceship came to be eclipsed by *Dred Scott* cannot help believing that he had that case—its already apparent consequences for the Court and its soon-to-be­played-out consequences for the Nation—burning on his mind. I expect that two years earlier he, too, had thought himself “call[ing] the contending sides of national contro­versy to end their national division by accepting a common mandate rooted in the Constitution.”

It is no more realistic for us in this litigation, than it was for him in that, to think that an issue of the sort they both involved—an issue involving life and death, freedom and subjugation—can be “speedily and finally settled” by the Su­preme Court, as President James Buchanan in his inaugural address said the issue of slavery in the territories would be. See Inaugural Addresses of the Presidents of the United States, S. Doc. No. 101–10, p. 126 (1989). Quite to the con­trary, by foreclosing all democratic outlet for the deep pas­sions this issue arouses, by banishing the issue from the po­litical forum that gives all participants, even the losers, the satisfaction of a fair hearing and an honest fight, by continu­ing the imposition of a rigid national rule instead of allowing for regional differences, the Court merely prolongs and in­tensifies the anguish.

We should get out of this area, where we have no right to be, and where we do neither ourselves nor the country any good by remaining.