



Mini Review

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Why Dobbs v. Jackson is Not the End of the World?



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Decided on June 24, 2022, Dobbs v. Jackson Women's Health Organization overturns the landmark Roe v. Wade, stating that the constitution does not confer the right to an abortion thereby returning regulations of this medical procedure to state officials. Several states have already moved to outright ban abortions, which may lead millions of female-bodied people to travel hundreds of miles to access abortion and general reproductive care. Thousands may be forced to carry pregnancies to term against their will, desires, goals, or wants. These forced pregnancies are expected to contribute to worsen health inequities. As it stands, the United States ranks number one in maternal mortality rates in the Western World, with Black women disproportionately affected. With the overturning of Roe, the nation should prepare for an estimated 21% increase in mortality and for Black women, an increase of 33% [1].

Multiple states have enacted abortion restrictions that have been immediately enforceable upon the overturning of Roe [2]. Theoretically, overturning Roe also increases potential for future criminalization of those who do seek to have an abortion. We have already seen a glimpse of this. A Texas woman was mistakenly charged for self-inducing an abortion in April [3]. The United States can expect to see more of these cases. Without Roe, clinicians in Michigan who perform abortions and those who receive them may be subject to felonies based on a 1931 state law, which may result in imprisonment and voter disenfranchisement, stripping their ability to participate in politics. In 2021, 55% of all persons receiving an abortion in Michigan identified as Black. If these statistics are replicated in 2022, a large number of Black women will lose their political voice [4]. Currently, a federal judge has filed an injunction blocking the law, however, prosecutors have vocalized that legal action is still permissible [5].

We will see burdens on emergency departments and the health care system. States in which abortion will remain legal

will see an influx of abortion-seekers, which will overburden their medical institutions. Contraception will become harder to find. We've already seen this in CVS, Walmart, and Rite Aid's Plan B purchase limitations [6]. Justice Clarence Thomas expressed interest in having the Supreme Court reconsider rulings on contraception, which would only worsen the current restrictions [7]. Let's consider the impact on the child welfare system. While "pro-lifers" will exalt the millions of new lives that will be brought into the world, what will happen to them after they're born? Such unwanted children could be born into families unable to afford new mouths to feed or unwilling to commit to the lifelong task of childrearing. A majority of these children could end up with child protective services. With many existing barriers to adoption, children born as a result of abortion restrictions may burden an already distressed system. If these kids belong to the system, who will then be responsible for them? Will it be the states, who think that overturning Roe is a "victory for White life" [8]? Or will it be the same federal government that will not extend the Keep Kids Fed Act, which would make school breakfast and lunches free to all students regardless of their families' incomes [9]?

With an understanding of the consequences, the question remains how was Roe v. Wade overturned in 2022? Is the real argument states versus federal rights? Federalism relates to the separation of power between the federal government and the state. By this principle, the federal government is given authority only by the enumerated power in the constitution regulating taxing, spending, and commerce. On the other hand, the states have legislative authority by police power, which allows states to enact laws to protect public health, welfare, safety, and good order. With the advent of federalism, the constitution designated that all powers not granted to the United States federal government are reserved and given to the states and that congress cannot compel state legislation or regulatory activity by the tenth amendment [10]. The states' argument is that they are protecting the welfare

of the unborn. The Texas Alliance for Life believes that "both the Declaration of Independence and the Preamble of the United States Constitution hold that the unborn child is a person who has rights and that the protection of such rights is a legitimate function of government...The states are surely acting within their authority when they protect the right to life of the youngest and most vulnerable. The states' interest in securing the blessings of liberty for our posterity is sufficient to allow the states to pass criminal laws against abortion" [11].

But here's why I think Dobbs isn't the end of the world in terms of legal abortions. The late Justice Ruth Bader Ginsburg had it right; while abortion should be a positive right, which demands government protection, *Roe v. Wade* was poorly argued. She thought that *Roe* was the wrong case on which to settle the abortion issue. She knew that the reasoning behind the 1973 ruling left abortion rights open to future persecution and overturning. The 1973 arguments were based on the "implied" right to privacy, but Ginsburg felt it would have been more durable had it been argued on the basis of the Equal Protection Clause [12]. And clearly, she was right. *Roe* made the right to privacy and the right to an abortion a fundamental right, only to be regulated during the first trimester for the health of the mother and after viability for the potential life. But it was a slippery slope. Later cases, such as *Planned Parenthood v. Casey* undermined *Roe's* precedent on reproductive rights. *Planned Parenthood v. Casey* changed the test of review from viability to undue burden and extended the interests of the state to begin at conception. While Justices O'Connor, Kennedy, and Souter, joined by Blackmun and Stevens appeared to affirm *Roe*, the ruling drastically changed how abortion cases may be viewed. This case lessened the fundamentality of the right to privacy, making it easier for the state to regulate and infringe upon this right [13]. The undue burden test is less strict than the trimester framework and opened the door for regulations such as the 24-hour rule and opened the door for states to test the limits and push boundaries.

While I don't lament the overturning of *Roe*, I do lament the millions who may suffer and die while we wait for better laws to pass or new court cases to establish equal protection under the law. It took *Roe* falling to now rebuild a stronger set of rights to protect women more durably. Meanwhile, I suggest we take action in any way we can - donate, share, support and start to build those cases.

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