

The November 2022 Midterm Elections - Abortion

Background and Facts

When the Fourteenth Amendment was adopted in 1868, three quarters of the States made abortion a crime at all stages of pregnancy.

In 1965, the Supreme Court struck down a law prohibiting the distribution of birth control to married couples.

In 1972, the Supreme Court struck down a law prohibiting the distribution of contraceptives to unmarried adults.

On January 22, 1973, the Supreme Court issued its decision on *Roe v. Wade* and struck down a Texas law banning abortion, effectively legalizing the procedure nationwide. In the majority opinion, the court declared a woman's right to an abortion was implicit in the right to privacy protected by the 14th Amendment. The court declared that the choice to end a pregnancy in the first trimester was solely up to the woman. In the second trimester, the government could regulate abortion, although not ban it. In the third trimester, the state could prohibit abortion to protect a fetus that could survive on its own outside the womb, except when the woman's health was in danger.

[First trimester – Week 1-13 / Second trimester – Week 14-26 / Third trimester - Week 27 to birth at around 40 weeks]

On June 29, 1992, in *Planned Parenthood v. Casey*, the Supreme Court ruled that states could not ban elective abortions prior to the point of fetal viability. This decision struck down *Roe v. Wade's* pregnancy trimester framework in favor of a fetal viability standard, typically 23-24 weeks into a pregnancy.

There have been a number of other proposed abortion-related laws - The Heartbeat Protection Act (6 weeks) and the Pain-Capable Unborn Child Protection Act (15 weeks).

In March 2018, the Mississippi Legislature passed the *Gestational Age Act*, which banned any abortion operation after the first 15 weeks of pregnancy, with exceptions for a medical emergency or severe fetal abnormality. The medical emergency exception allows abortions to save the life of a pregnant woman. The severe fetal abnormality exception allows abortions of fetuses whose defects will leave them incapable of living outside the womb.

The day after the *Gestational Age Act* was passed, the Jackson Women's Health Organization and one of its doctors sued the state to challenge the Act's constitutionality. Thomas E. Dobbs was the state health officer with the Mississippi State Department of Health. The case was heard by Judge Carlton Reeves of the U.S. District Court for the Southern District of Mississippi. Reeves ruled for the clinic and placed an injunction on Mississippi enjoining

it from enforcing the Act. The state of Mississippi filed its appeal to the U.S. Supreme Court in June 2020.

During the oral arguments at the U.S. Supreme Court in December 2021, Mississippi was represented by Scott G. Stewart, who argued that the U.S. Constitution does not directly guarantee a right to abortion. He also argued for overturning *Roe* and *Casey* on the basis that those decisions were unworkable and new facts had come to light. Scientific knowledge had grown about “what we know the child is doing and looks like.” We also now know that fetuses are fully human even very early in gestation, and that fetuses can detect pain and respond to it at 10–12 weeks. New medical advances with viability are now at odds with past assumptions. One of the issues to be decided was Mississippi’s 15-week ban versus the fetal viability standard in *Casey* at 23-24 weeks into a pregnancy.

On May 2, 2022, POLITICO Magazine released a leaked draft of the Supreme Court’s majority opinion. Samuel Alito's draft called the *Roe* decision “egregiously wrong from the start,” arguing that abortion is not listed in the Constitution as a protected right and that the Constitution allowed states to legislate abortion restrictions or guarantees under the Tenth Amendment.

Chief Justice John Roberts directed the Marshal of the U.S. Supreme Court to investigate the news leak. He stated that this betrayal of the confidences of the Court was intended to undermine the integrity of its operations, and the attempt would not succeed. Within hours of the news of the leak, both pro-abortion rights protesters and anti-abortion counter-protesters gathered outside the Supreme Court building in Washington, D.C. and elsewhere in the country.

House Republican leadership issued a joint statement that called the leak “a clearly coordinated campaign to intimidate and obstruct the Justices.” Subsequently, a man from California was arrested for attempted murder for an alleged assassination plot targeting Justice Brett Kavanaugh.

On June 24, 2022, the Court issued its decision on *Dobbs v. Jackson Women’s Health Organization*. By a vote of 6–3, the U.S. Supreme Court reversed the lower court rulings, and held that abortion was not a protected right under the Constitution, overturning both *Roe* and *Casey*, and returned the decision regarding abortion regulations back to the states.

As noted above, Justice Samuel Alito wrote the majority opinion, stating: We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely – the Due Process Clause of the Fourteenth Amendment.

Justice Brett Kavanaugh wrote separately, making multiple comments, one of which was that it would still be unconstitutional to prohibit a woman from going to another state to seek an abortion under the right to travel.

Writing separately, Chief Justice John Roberts concurred in the judgment. He believed the Court should reverse the Fifth Circuit's opinion on the Mississippi law and that “the viability line established by *Roe* and *Casey* should be discarded”. He also wrote that abortion regulations should “extend far enough to ensure a reasonable opportunity to choose, but need not extend any further.”

The overturning of *Roe* did not make abortion illegal nationwide. No state bans abortion when a woman’s life is in danger.

The pro-abortion lobby and the Democrat Party want to impose on the entire country abortion on-demand, even up until the moment of birth, paid for by taxpayers. Following the *Dobbs* decision, Democrats in Congress passed two bills to enhance abortion rights. The *Women’s Health Protection Act of 2022* would prevent states from restricting abortions before fetal viability and prevent states from blocking access to abortion services. The *Ensuring Access to Abortion Act of 2022* would prevent states from blocking travel to another state to obtain an abortion. Both bills passed primarily on party lines but did not pass the Senate.

The Hyde Amendment

The Hyde Amendment is a legislative provision barring the use of federal funds (more commonly known as taxpayers’ funds) to pay for an abortion, except to save the life of the woman, or if the pregnancy arises from incest or rape. Planned Parenthood and its local affiliates receive over 40% of its revenue, an average of over \$500 million each year, from the government, most of which come from Medicaid reimbursements and grants from government agencies, such as the Department of Health and Human Services.

On our website in the platform for **The Party of Personal Freedom**, we make the following statement about abortion: *Recognizing that abortion is a sensitive issue and that people can hold good-faith views on all sides, we believe that government should be kept out of this matter entirely. No government funds should ever be expended to provide for abortions.*

Unfortunately, with the 1973 *Roe v. Wade* decision, our federal government violated the Tenth Amendment for 49 years. *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.* This particular provision of the U.S. Constitution has now been re-established in the *Dobbs* decision.

The funding provided to Planned Parenthood makes a mockery of the Hyde Amendment. Our federal government should follow that particular legislative provision, and cease any

further funding to Planned Parenthood. They can raise their own funds from the pro-abortion lobby.

The Effect on the 2022 Midterm Elections

The Supreme Court made an erroneous decision in 1973 in *Roe v. Wade*. There was never a constitutional right to abortion based on some perceived “right to privacy” under the Fourteenth Amendment. Unfortunately, that is contrary to what was repeated (constantly) by the mainstream media. It was also disheartening to hear that many people were under the impression that *Roe v. Wade* was an actual law that was passed by the previous Supreme Court. (The judiciary does not write our country’s laws). Did any of that matter to the pundits in the mainstream media? No. Were any of the Background Facts listed above adequately communicated to the public? Hardly. The media was intent on advancing the Democrat narrative.

Polling is an imprecise science. However, recent polls show that approximately - 73% of Americans agree - An unborn baby is a human being.

(The ongoing debate is - At what point does a fetus becomes a baby?)

67% of Americans support legal abortion in the first trimester of a pregnancy.

36% of Americans support legal abortions in the second trimester.

65% of Americans agree that it is wrong to allow abortions after 15 weeks when unborn babies can suck their thumb and feel pain.

Do these poll results reflect the basic values that are generally held by most Americans? We hope so. Did the voters in the 18-30 age group vote their values? It’s hard to tell.