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Ten Legal Reasons to Reject *Roe*

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Decisions of the U.S. Supreme Court rarely attract much public interest. One news cycle and a few op-eds are probably the norm for even the most important and sweeping decisions.

But one Supreme Court decision eclipses all others in the past century. Far from being forgotten, in the almost 50 years since *Roe v. Wade* announced that the "constitutional" right to privacy encompasses a woman's decision to abort her child, including late-term abortions, its fame (or infamy) just keeps growing.

How *Roe* is Perceived

For many Americans, *Roe* is a symptom of and catalyst for a continuing decline in American culture and institutions. It represents a tragic failure of the government, an abdication of its duty to defend the vulnerable and innocent. The judicially-created regime permitting abortion on request throughout all nine months of pregnancy has eroded principles on which this nation was founded – the sanctity of life, the equal dignity of all, and impartial justice. Even the fundamental principle of self-government is shaken when unelected judges can overturn the will of the people expressed in the laws of 50 states – as evidenced by the nearly 500 bills affirming life that have been advanced just this year in state legislatures.[1] And how does one begin to assess the meaning and impact of destroying the lives of over 60 million children in the United States?

Many other Americans hold a very different view of *Roe v. Wade*. They see *Roe* as being immutable, permanent, and "settled law." Abortion is, they argue, a constitutional right. End of discussion. In the decades after *Roe*, the abortion license has been elevated by some to the stature of "freedom of speech," "trial by jury," and other bedrock American principles.

It is not surprising that many people share this distorted view of Supreme Court precedent allowing late term abortions. For almost 50 years the abortion industry has refined and perfected this message. Advocates like Planned Parenthood's former president, Gloria Feldt, proclaimed (with no apparent irony) that through *Roe* "women were guaranteed the basic human right to make their own childbearing choices – a right as intrinsic as the right to breathe and to walk, to work and to think, to speak our truths, to thrive, to learn, and to love."[2] What "love" has to do with paying an abortion provider to kill and dispose of your unborn child is anyone's guess.

Protecting this "right" to late-term abortions has also become a lodestar for abortion advocates and the politicians who support their agenda. Any event or policy affecting a child before or near birth is minutely scrutinized for its potential to undermine *Roe v. Wade*. Anyone and anything that threatens the shaky "constitutionality" of *Roe* must be stopped. For example, state laws that punish violent attacks on unborn children

and their mothers are ironically denounced by abortion advocates as schemes designed to chip away at the constitutional rights of women. Even expanding eligibility under the State Children's Health Insurance Program to provide prenatal care to children from conception onward is condemned as "a guerilla attack on abortion rights."[3]

Allegiance to maintaining late-term abortions has become the *sine qua non* for presidential and even congressional aspirants of one political party. Pro-life Democrats on Capitol Hill are now about as common as unicorns. Fealty to abortion has become a litmus test used by many politicians in evaluating judicial nominees. Individuals who have received the American Bar Association's highest recommendation based on their knowledge of law, their integrity and judicial temperament have been put through a "high-tech lynching" (as Justice Clarence Thomas described his confirmation hearings), personal smears (Justice Brett Kavanaugh), and attacks on one's religious beliefs and practices (Justice Amy Coney Barrett). Who can forget Sen. Dianne Feinstein's opposition to Justice Coney Barrett because "The [Catholic] dogma lives loudly within you…"?

Ignoring the fact that judges are supposed to be impartial and not prejudge cases that come before them, candidate Hillary Clinton in 2016 unapologetically announced having a pro-abortion litmus test for judicial nominees. In the 2019-2020 campaign season, numerous Democratic presidential candidates abandoned all pretense of selecting future judges based on their legal knowledge, integrity, impartiality, temperament, etc. What really mattered was that the nominees would "honor the Constitution" and precedent like Roe.[4]

But are the Constitution and abortion case law really synonymous? This article addresses these questions and the widespread assumption that *Roe* deserves a measure of deference as a landmark of constitutional law (notwithstanding its immoral outcome). Legally speaking, *Roe* began the judicial intervention into abortion policy and led to the continuation of late-term abortions. Few decisions in the history of the Supreme Court have cried out so loudly for review, on both moral and legal grounds.

Who Says So?

Among the legal scholars who have roundly criticized the Court's ruling in *Roe* as not being grounded in the U.S. Constitution are the following:

- Six justices of the U.S. Supreme Court – unfortunately not simultaneously seated – Justices White, Rehnquist, Scalia, Thomas, Kennedy[5] and O'Connor.[6]

- Virtually every recognized constitutional scholar who has published a book or article on *Roe* – including many, like Harvard's Laurence Tribe, who

support *Roe*'s outcome on other grounds (although he has switched grounds over the years).[7]

- The late Constitutional law professor John Hart Ely (Yale, Harvard, and Stanford law schools) stated: *Roe v. Wade* "is bad because it is bad constitutional law, or rather because it is not constitutional law and gives almost no sense of an obligation to try to be"[8]; and

- Edward Lazarus, a former law clerk to *Roe's* author, Justice Harry Blackmun, who writes:

  As a matter of constitutional interpretation and judicial method, Roe *borders on the indefensible. I say this as someone utterly committed to the right to choose, as someone who believes such a right has grounding elsewhere in the Constitution instead of where* Roe *placed it, and as someone who loved* Roe*'s author like a grandfather. ...*

  What, exactly, is the problem with Roe*? The problem, I believe, is that it has little connection to the Constitutional right it purportedly interpreted. A constitutional right to privacy broad enough to include abortion has no meaningful foundation in constitutional text, history, or precedent. ... The proof of* Roe*'s failings comes not from the writings of those unsympathetic to women's rights, but from the decision itself and the friends who have tried to sustain it. Justice Blackmun's opinion provides essentially no reasoning in support of its holding. And in the ... years since* Roe*'s announcement, no one has produced a convincing defense of* Roe *on its own terms.*[9]

Ten Legal Reasons to Reject *Roe*

1. *The Court's decision in* Roe v. Wade *exceeded its constitutional authority.*

Under the legal system established by the United States Constitution, the power to make laws is vested in Congress and retained by state legislatures. It is *not* the role of the Supreme Court to substitute the policy preferences of its members for those expressed in laws enacted by the people's elected representatives. The role of the judiciary in constitutional review is to determine if the law being challenged infringes on a constitutionally protected right.

Justice O'Connor reiterates this principle, quoting Chief Justice Warren Burger:

> *Irrespective of what we may believe is wise or prudent policy in this difficult area, "the Constitution does not constitute us as 'Platonic Guardians' nor does it vest in this Court the authority to strike down laws because they do not meet our standards of desirable social policy, 'wisdom,' or 'common sense.'"*[10]

In *Roe v. Wade* and its companion case, *Doe v. Bolton*, however, the Court struck down criminal laws of Texas and Georgia which outlawed certain abortions by finding that these laws (and those of the other 48 states) violated a "right of privacy" that "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Such a right is nowhere mentioned in the Constitution nor derivable from values embodied therein.

In his dissenting opinion in *Doe v. Bolton*, Justice Byron White, joined by Justice William Rehnquist, wrote:

> *I find nothing in the language or history of the Constitution to support the Court's judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers ... and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes. The upshot is that the people and the legislatures of the 50 states are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the mother, on the other hand. As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but, in my view, its judgment is an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court.*

2. *The Court misrepresents the history of abortion practice and attitudes toward abortion.*

The apparent purpose of the *Roe* opinion's long historical excursion is to create the impression that abortion had been widely practiced and unpunished until the appearance of restrictive laws in the prudishly Victorian 19th century. One example is adequate to show how distorted is Justice Harry Blackmun's rendition of history. He must overcome a huge hurdle in the person of Hippocrates, the "Father of Medicine," and his famous Oath which guided medical ethics for over 2,000 years. The Oath provides in part: "I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to produce abortion."[11] This enduring standard was followed until the *Roe* era and is reflected in Declarations of the World Medical Association through 1968: "I will maintain the utmost respect for human life, from the time of conception. ..."[12] But Justice Blackmun dismisses this universal, unbroken ethical tradition as nothing more than the manifesto of a fringe Greek sect, the Pythagoreans, to which Hippocrates is alleged by someone to have belonged.

3. ***The majority opinion in* Roe *wrongly characterizes the common law of England regarding the status of abortion.***

The Court's strained analysis and its conclusion – "it now appears doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus" – are rejected by many legal scholars.[13]

William Blackstone's *Commentaries on the Laws of England* (1765-1769), an exhaustive and definitive discussion of English common law as it was adopted by the United States, shows that the lives of unborn children were valued and protected, even if their beginning point was still thought to be "quickening" rather than conception:

> *Life is the immediate gift of God, a right inherent by nature in every individual; and it begins in contemplation of law as soon as the infant is able to stir in the mother's womb. For if a woman is quick with child, and by a potion, or otherwise, killeth it in her womb ... this, though not murder, was by the ancient law homicide or manslaughter. But at present it is not looked upon in quite so atrocious a light, though it remains a very heinous misdemeanor.*[14]

Until well into the 19th century, it was assumed that a child's life may not begin – and certainly could not be proven to have begun to satisfy criminal evidentiary standards – prior to the time his or her movements were felt by the mother ("quickening"), at approximately 16-18 weeks' gestation. The *Roe* Court looks at the distinction in common law concerning abortions attempted before or after "quickening," and wrongly infers that the law allowed women great latitude to abort their children in the early months of pregnancy. This is akin to claiming that people had a general right to spread computer viruses before laws were enacted criminalizing such acts.

4. ***The Court distorts the purpose and legal weight of state criminal abortion statutes.***

In the 19th century, in virtually every state and territory, laws were enacted to define abortion as a crime throughout pregnancy. They contained only narrow exceptions, generally permitting abortion only if needed to preserve the mother's life. The primary reason for stricter abortion laws, according to their legislative histories, was to afford greater protection to unborn children. This reflected a heightened appreciation of prenatal life based on new medical knowledge. It is significant that the medical profession spearheaded efforts to afford greater protection to unborn lives than had been recognized under the common law's archaic "quickening" distinction.

The existence of such laws, and their clear purpose of protecting the unborn, rebuts the Court's claim that abortion has always been considered a liberty enjoyed by women. These laws show broad acceptance of the view that the life of an unborn child is valuable and should be protected unless the mother's life is at risk. In that case, of course,

both mother and child were likely to perish, given the primitive care then available for infants born prematurely.

How does the Court get around the impressive body of laws giving clear effect to the states' interest in protecting unborn lives? It attempts to devalue them by ascribing a completely different purpose: the desire to protect the mother's life and health from a risky surgical procedure. Applying the maxim "if the reason for a law has ceased to exist, the law no longer serves any purpose," the Court declares that abortion is now "safer than childbirth." Therefore, laws banning abortion have outlived their purpose. Incidentally, the "safer than childbirth" claim has been found to be unsupported due to a gross definitional distortion of "maternal mortality" and shoddy statistics on abortion-related deaths, explored in other articles.[15]

5. *A privacy right to decide to have an abortion has no foundation in the text or history of the Constitution.*

Roe v. Wade locates a pregnant woman's "constitutional" right of privacy to decide whether or not to abort her child either "in the Fourteenth Amendment's concept of personal liberty ..., as we feel it is, or ... in the Ninth Amendment's reservation of rights to the people."

The Court does not even make a pretense of examining the intent of the drafters of the Fourteenth Amendment, to determine if it was meant to protect a privacy interest in abortion. Clearly it was not. The Fourteenth Amendment was not intended to create any new rights, but to secure to all persons, notably including freed slaves and their descendants, the rights and liberties already guaranteed by the Constitution.

Several rhetorical devices are used to mask this absence of constitutional grounding. The Court mentions several specifically enumerated rights which concern an aspect of privacy, for example, the Fourth Amendment's "right of the people to be secure in their houses, papers, and effects, against unreasonable searches and seizures." However, the Court fails to connect these to the newly found "right" to abortion because no logical connection exists.

Justice Blackmun attempts to graft abortion onto the line of decisions recognizing privacy/liberty rights in the following spheres: marriage (*Loving v. Virginia*, striking down a state ban on interracial marriage); childrearing (*Meyer v. Nebraska* and *Pierce v. Society of Sisters*, upholding parental decision-making regarding their children's education); procreation (*Skinner v. Oklahoma*, finding unconstitutional a state law mandating sterilization of inmates found guilty of certain crimes); and contraceptive use by a married couple (*Griswold v. Connecticut*). Certainly, marriage and building and raising a family are fundamental aspects of human life that predate human laws and nations. They are implicit in the concept of liberty and the pursuit of happiness, although

even these rights are subject to state limitation, such as laws against bigamy, incest, and child abuse and neglect.

But abortion does not fit neatly among these spheres of privacy. It *negates* them. Abortion is not akin to childrearing; it is child destruction.

A pregnant woman's right to abort nullifies a man's right to procreate upheld in "*Skinner*." He is denied the right to have children; *Roe* permits him only the possibility of fathering a child, whom his mate can then have destroyed in utero without his knowledge or consent.

The fear of government intruding into the marital bedroom by searching for evidence of contraceptive use drove the *Griswold* Court to find a privacy right for couples to use contraception in the "penumbras, formed by emanations from" various guarantees in the Bill of Rights. But however closely abortion and contraception may be linked in purpose and effect, they are worlds apart in terms of privacy.

In addition, a "privacy right" large enough to encompass abortion could also be applied to virtually any conduct performed outside the public view, including child abuse, possession of child pornography, and use of illicit drugs.
The liberty interest to be protected from state regulation is never defined in *Roe*. Instead, the Court describes at some length the hardships some women face, *not from pregnancy*, but from raising children:

> *Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by childcare. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it.*

By this reasoning, one might argue that *Roe's* liberty encompasses ridding oneself of unwanted toddlers!

Ordinarily, the defense of rights requires us to forgo lethal methods and use means likely to create the least harm to others. We may not, for example, surround our house and yard with a high voltage fence to deter trespassers. This principle is upended in the abortion context. Adoption, for example, would effectively eliminate all the "hardships" of raising "unwanted" children by non-lethal means.

6. ***Although it reads the Fourteenth Amendment extremely expansively to include a right of privacy to decide whether to abort a child, the Court in*** **Roe** ***adopts an unjustifiably narrow construction of the meaning of "persons" to exclude unborn children.***

Much is made of the fact that "person" as used elsewhere in the Constitution does not refer to unborn children when, for example, discussing qualifications for public office or census-taking. That point proves nothing. The Supreme Court has held that corporations are "persons" within the meaning of the Fourteenth Amendment,[16] and they are *not* counted in the census, *nor* can a corporation grow up to be president.

The *Roe* Court also ignored the clear and uncontested biological evidence before them that individual human lives begin at conception: "We need not resolve the difficult question of when life begins." This is a question determined by science, not philosophers or theologians or politicians. But while seeming to sidestep the question, the Court in fact resolved the question *at birth*, by allowing abortion to be legal throughout pregnancy. In the same vein, the Court refers to the unborn child as only a "potential life" although, from the point of view of science, he or she is an *actual life* from the moment of his or her conception.

The *Roe* opinion states that a contrary finding on "personhood" (i.e., that an unborn child is a person) would produce the opposite result—presumably foreclosing the mother's "privacy right" to an abortion. But one does not have to be a "person" in the full constitutional sense for a state to validly protect one's life. Dogs can be protected from killing although they are not "persons."[17] And under the Endangered Species Act (ESA), people are prosecuted, fined and jailed for acts that may harm creatures, such as sea turtles, that are not "persons" in the full constitutional sense. Sea turtles are protected not only after they are hatched, but even while in the egg. In fact, each sea turtle egg removed from its nest constitutes a separate violation under the ESA, (see penalty schedule) regardless of whether the sea turtle egg contained an embryo that was alive or "quick" or "viable" or even already deceased at the time of the taking.

7. ***The Roe Court assumed the role of a legislature in establishing the trimester framework.***

Roe holds that in the first trimester of pregnancy, the mother's "privacy interest" in an abortion trumps state regulation. From the end of the first trimester to the child's "viability" – which the Court presumed to be no earlier than 26 weeks – the state can regulate abortion practice only in ways reasonably related to advancing the mother's health. In the final trimester, the state – in the interest of protecting the "potential life" of the child – can regulate and even proscribe abortion, except where necessary to preserve

the mother's "life or health." *Health* (see point 8 below) is the exception that swallows the rule.

Pre-decision memoranda among members of the *Roe* Court acknowledged the serious flaw in establishing arbitrary, rigid time frames. Justice Blackmun himself admitted it was arbitrary.[18] A reply memorandum from Justice Potter Stewart stated:

> *One of my concerns with your opinion as presently written is ... in its fixing of the end of the first trimester as the critical point for valid state action. ... I wonder about the desirability of the dicta being quite so inflexibly "legislative."*
>
> *My present inclination would be to allow the States more latitude to make policy judgments.*[19]

Geoffrey R. Stone, a law clerk to Justice Brennan when *Roe* was decided, has been quoted as saying: "Everyone in the Supreme Court, all the justices, all the law clerks knew it was 'legislative' or 'arbitrary.'"[20]

Justices O'Connor, White, and Rehnquist denounced the arbitrary trimester framework in O'Connor's dissenting opinion in *Akron* in 1982:

> *[There] is no justification in law or logic for the trimester framework adopted in* Roe *and employed by the Court today. ... [That] framework is clearly an unworkable means of balancing the fundamental right and the compelling state interests that are indisputably implicated.*

The majority opinion of Justice Rehnquist in *Webster v. Reproductive Health Services* in 1989 states:

> *The key elements of the Roe framework – trimesters and viability – are not found in the text of the Constitution or in any place else one would expect to find a constitutional principle. ... the result has been a web of legal rules that have become increasingly intricate, resembling a code of regulations rather than a body of constitutional doctrine. As Justice White has put it, the trimester framework has left this Court to serve as the country's "ex officio medical board with powers to approve or disapprove medical and operative practices and standards throughout the United States."*

8. *What* Roe *gives,* Doe *takes away.*

Many Americans believe that abortion is legal only in the first trimester (or first and second trimester). Many pollsters and media outlets continue to characterize *Roe v. Wade* as the case which "legalized abortions in the first three months after

conception."[21] While nearly all states have attempted to ban abortion at some point before full-term birth, their efforts have been largely symbolic due to *Roe*'s "health exception." As noted above, under *Roe,* all state laws restricting abortion must contain a "health" exception. Health is defined in *Roe's* companion case, *Doe v. Bolton*, as including "all factors — physical, emotional, psychological, familial, and the woman's age — relevant to the wellbeing of the patient. All these factors may relate to health." This definition negates the state's interest in protecting the child, and results in abortion on request throughout all nine months of pregnancy. The fact that the Court buries its improbably broad definition of health in the largely unread opinion in *Doe v. Bolton* makes it no less devastating.

9. *The Court describes the right to abortion as "fundamental."*

The Supreme Court has found certain rights fundamental. Expressed or implied in the Constitution, they are considered "deeply rooted in the history and traditions" of the American people or "implicit in the concept of ordered liberty," such as the free exercise of religion, the right to marry, the right to a fair trial, and equal protection under the law. A state law infringing on a fundamental right is reviewed under a rigorous "strict scrutiny" standard. In effect, there is a presumption against constitutionality.
The *Roe* Court claims abortion is fundamental on the ground that it is lurking in the penumbras and emanations of the Bill of Rights or the Fourteenth Amendment, along with privacy rights like contraceptive use. It is ludicrous to claim abortion is deeply rooted in American history or traditions or that our governmental system of "ordered liberty" implicitly demands the right to destroy one's child, but this was an effective way to foreclose state regulation of abortion. The strict scrutiny test was later abandoned in *Planned Parenthood v. Casey*.

10. *Despite the rigid specificity of the trimester framework, the opinion gives little guidance to states concerning the permissible scope of abortion regulation.*

Abortion decisions that followed *Roe* chronologically have not followed *Roe* jurisprudentially. Many decisions have five separate opinions filed, often with no more than three justices concurring on most points. Eight separate opinions were filed in *Stenberg v. Carhart* (which effectively nullified laws in over two dozen states banning partial-birth abortion).

The 1992 decision in *Planned Parenthood of Southeastern Pa. v. Casey* could have resulted in *Roe's* reversal. The *Casey* Joint Opinion (there being no majority opinion) comes close to conceding that *Roe* was wrongly decided:

> *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.*

Instead they jettisoned *Roe*'s trimester framework and standard of legislative review, but kept *Roe* alive: Chief Justice Rehnquist's dissent in *Casey*, in which he is joined in part by Justices White, Scalia, and Thomas states:

> 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. ...* Roe *analyzed abortion regulation under a rigid trimester framework, a framework that has guided this Court's decision-making for 19 years. The joint opinion rejects that framework. ...*
>
> *Whatever the "central holding" of* Roe *that is left after the joint opinion finishe[d] ...* Roe *continues to exist, but only in the way a storefront on a western movie set exists: a mere façade to give the illusion of reality.*

And later in that dissent:

> 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 façade, 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.*

Roe v. Wade *must be reversed*

Contrary to popular opinion or knowledge, decisions of the U.S. Supreme Court are "often" reversed.[22] *Stare decisis* (let the decision stand) does not prevent reversal when the constitutional interpretation of a prior ruling is later understood to be flawed. Justice Rehnquist's dissent in *Casey* notes that the Court "has overruled in whole or part 34 of its previous constitutional decisions" in the preceding 21 years. It is the Court's duty to reverse wrongly decided rulings. "Justices take an oath to uphold the Constitution — not the glosses of their predecessors."[23]

The *Casey* plurality weighed the "integrity of the Court" (its reputation for being above political considerations) as more important than fidelity to the Constitution and, not incidentally, more important than the continuing destruction of now over 60 million children. *Roe* must be reversed to restore integrity to the Court, meaning to the

Constitution, political rights to the people and their elected representatives, and most importantly, the right to life to children in the womb.

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[1] Arina O. Grossu, "Overview of U.S Pro-Life Bills and Provisions Advanced and Laws Enacted from January to May 2021," *Charlotte Lozier Institute*, June 8, 2021, https://lozierinstitute.org/overview-of-u-s-pro-life-bills-and-provisions-advanced-and-laws-enacted-from-january-to-may-2021-pro-life-banner-year-as-states-continue-to-reject-the-radical-abortion-agenda/.

[2] Address to the Planned Parenthood Political Academy, Washington, D.C., July 23, 2002.

[3] Bob Herbert, "Sneak Attack," *New York Times*, Feb. 4, 2002, A23, https://www.nytimes.com/2002/02/04/opinion/sneak-attack.html.

[4] Max Greenwood, "2020 Dems Break Political Taboos by Endorsing Litmus Tests," *The Hill*, May 22, 2019, https://thehill.com/homenews/campaign/444914-2020-dems-break-political-taboos-by-endorsing-litmus-tests.

[5] *Webster v. Reproductive Health Svcs.*, 492 U.S. 490 (1989), https://supreme.justia.com/cases/federal/us/492/490/.

[6] Dissenting opinions in *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983), https://supreme.justia.com/cases/federal/us/462/416/, and *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986), https://www.law.cornell.edu/supremecourt/text/476/74.

[7] See Dennis J. Horan, *et al.*, *Abortion and the Constitution* (Washington, D.C., 1987), 57-88, and John T. Noonan, Jr., *A Private Choice* (New York 1979), 20-32, for overviews of the major scholarly criticism of *Roe*.

[8] John Hart Ely, "The Wages of Crying Wolf: A Comment on *Roe v. Wade*," *Yale Law Review*, vol. 82, no. 5 (1973), 947**.**

[9] Edward Lazarus, "The Lingering Problems of *Roe v. Wade*," Oct. 03, 2002, https://supreme.findlaw.com/legal-commentary/the-lingering-problems-with-roe-v-wade-and-why-the-recent-senate-hearings-on-michael-mcconnells-nomination-only-underlined-them.html.

[10] *Akron v. Akron Ctr. for Reprod. Health*, *supra* (O'Connor, J., dissenting), quoting *Plyler v. Doe, 457 U.S. 202, 457 U.S 242* (1982) (Burger, C.J., dissenting).

[11] Hippocrates, "The Oath of Hippocrates," *Harvard Classics*, vol. 38 (New York 2001), https://www.bartleby.com/38/1/1.html.
[12] *Declaration of Geneva* (1948), amended by the 22nd World Medical Assembly at Sydney, Australia, August 1968, https://www.wma.net/wp-content/uploads/2018/07/Decl-of-Geneva-v1968-1.pdf.
[13] See, *e.g.*, Robert M. Byrn, "An American Tragedy: The Supreme Court on Abortion," *Fordham Law Review*, vol. 41, no. 4 (May 1973), 807-862, and Joseph W. Dellapenna, "The History of Abortion: Technology, Morality, and Law," *University of Pittsburgh Law Review*, vol. 40, no. 3 (Spring 1979), 359-428.
[14] William Blackstone, *Commentaries on the Laws of England* (Oxford 1765-1769), 125-126, https://avalon.law.yale.edu/18th_century/blackstone_bk1ch1.asp.
[15] See Marmion, Patrick J., and Ingrid Skop, "Induced Abortion and Increased Risk of Maternal Mortality," *The Linacre Quarterly*, vol, 87, no. 3 (2020), 302-210, https://journals.sagepub.com/doi/10.1177/0024363920922687; James Studnicki, *et al.*, "Improving Maternal Outcomes: Comprehensive Reporting for All Pregnancy Outcomes," *Open Journal of Preventative Medicine*, vol. 7, no. 8 (2017), https://www.scirp.org/journal/PaperInformation.aspx?PaperID=78764&#abstract.
[16] "Under the designation of 'person' there is no doubt that a private corporation is included" in *Pembina Consolidated Silver Mining Milling Co. v. Pennsylvania*, 125 U.S. 181 (1888).
[17] Ely, *supra* note 6.
[18] Memorandum to the Conference (Blackmun, J.), Nov. 21, 1972.
[19] Memorandum to the Conference (Stewart, J.), Dec. 14, 1972, reproduced in Bob Woodward, "The Abortion Papers," *The Washington Post,* Jan. 22, 1989, https://www.washingtonpost.com/archive/opinions/1989/01/22/the-abortion-papers/ce695bcc-a7f9-4b09-bd57-8d7efff37a46/.
[20] Woodward, *supra*.
[21] Michael J. New, "Americans Don't Really Support Roe v. Wade," *LifeNews.com*, May 21, 2021, https://www.lifenews.com/2021/05/21/americans-dont-really-support-roe-v-wade-which-allows-abortions-up-to-birth-heres-why/.
[22] Justice Brandeis said this in 1932. See Horan, *et al.*, *supra* at 5.
[23] Horan, *supra* at 11.