

Claude Draft of Dobbs Opinion

August 13, 2023

Here is an outline of a potential Supreme Court opinion that would accept the petitioner's position and uphold the constitutionality of Mississippi's 15-week abortion ban:

I. The right to abortion is not protected by the Constitution.

A. The Constitution makes no mention of abortion. Nothing in the text or structure implies a right to abortion.

B. Abortion is not a liberty protected by due process. Our due process precedents protect specific enumerated rights and liberties deeply rooted in history and tradition. But there is no history or tradition supporting a due process right to abortion. To the contrary, abortion was illegal at common law and prohibited by most states when the 14th Amendment was adopted.

C. Arguments about bodily autonomy and equality do not justify creating a right to abortion. The Constitution does not mention these broad concepts either. And even if it protects autonomy in some spheres, that does not support a right to end a potential human life.

II. Roe and Casey were egregiously wrong to recognize a right to abortion and should be overruled.

A. The viability framework invented in Roe and affirmed in Casey has no basis in the Constitution. It improperly prevents states from regulating abortion as they see fit.

B. Roe and Casey have proven unworkable. The undue burden standard is subjective and impossible for courts to apply in a principled, consistent way.

C. Roe and Casey have damaged the democratic process, poisoned public discourse, and injected the Court into a controversy it can never resolve.

D. Changes since Roe and Casey have undermined their factual premises about fetal development, maternal health risks, contraception, and more.

E. Reliance interests do not support retaining these egregiously wrong decisions. Casey's stare decisis analysis was misguided. Reliance interests are minimal for controversial procedural rulings on deeply divisive social issues.

III. Mississippi's law is constitutional.

A. The 15-week ban rationally relates to the state's legitimate interests in protecting the lives of unborn children, women's health, and medical ethics. Under rational basis review, that is all that is required to uphold the law.

B. Even if heightened scrutiny applied, the law would satisfy it. The state has compelling interests at 15 weeks, when an unborn child has taken on the human form and abortion entails significant health risks. The law promotes these interests in a narrowly tailored fashion.

IV. The decision below is reversed. States have broad discretion to regulate abortion as they see fit. No heightened scrutiny should apply. The 15-week law is constitutional, and the injunction against it is vacated.

This outlines an opinion accepting the petitioner's arguments, overruling Roe and Casey, finding no right to abortion in the Constitution, and upholding the 15-week abortion ban under rational basis review. The opinion reverses the lower courts' judgment striking down the law.