

## Syllabus

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**SUPREME COURT OF THE UNITED STATES**

## Syllabus

**DOBBS, STATE HEALTH OFFICER OF THE  
MISSISSIPPI DEPARTMENT OF HEALTH, ET AL. v.  
JACKSON WOMEN’S HEALTH ORGANIZATION ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT**

No. 19–1392. Argued December 1, 2021—Decided June 24, 2022

Mississippi’s Gestational Age Act provides that “[e]xcept in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform . . . or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.” Miss. Code Ann. §41–41–191. Respondents—Jackson Women’s Health Organization, an abortion clinic, and one of its doctors—challenged the Act in Federal District Court, alleging that it violated this Court’s precedents establishing a constitutional right to abortion, in particular *Roe v. Wade*, 410 U. S. 113, and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833. The District Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning that Mississippi’s 15-week restriction on abortion violates this Court’s cases forbidding States to ban abortion pre-viability. The Fifth Circuit affirmed. Before this Court, petitioners defend the Act on the grounds that *Roe* and *Casey* were wrongly decided and that the Act is constitutional because it satisfies rational-basis review.

*Held:* The Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives. Pp. 8–79.

(a) The critical question is whether the Constitution, properly understood, confers a right to obtain an abortion. *Casey*’s controlling opinion skipped over that question and reaffirmed *Roe* solely on the basis of *stare decisis*. A proper application of *stare decisis*, however, requires an assessment of the strength of the grounds on which *Roe*

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was based. The Court therefore turns to the question that the *Casey* plurality did not consider. Pp. 8–32.

(1) First, the Court reviews the standard that the Court's cases have used to determine whether the Fourteenth Amendment's reference to "liberty" protects a particular right. The Constitution makes no express reference to a right to obtain an abortion, but several constitutional provisions have been offered as potential homes for an implicit constitutional right. *Roe* held that the abortion right is part of a right to privacy that springs from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. See 410 U. S., at 152–153. The *Casey* Court grounded its decision solely on the theory that the right to obtain an abortion is part of the "liberty" protected by the Fourteenth Amendment's Due Process Clause. Others have suggested that support can be found in the Fourteenth Amendment's Equal Protection Clause, but that theory is squarely foreclosed by the Court's precedents, which establish that a State's regulation of abortion is not a sex-based classification and is thus not subject to the heightened scrutiny that applies to such classifications. See *Geduldig v. Aiello*, 417 U. S. 484, 496, n. 20; *Bray v. Alexandria Women's Health Clinic*, 506 U. S. 263, 273–274. Rather, regulations and prohibitions of abortion are governed by the same standard of review as other health and safety measures. Pp. 9–11.

(2) Next, the Court examines whether the right to obtain an abortion is rooted in the Nation's history and tradition and whether it is an essential component of "ordered liberty." The Court finds that the right to abortion is not deeply rooted in the Nation's history and tradition. The underlying theory on which *Casey* rested—that the Fourteenth Amendment's Due Process Clause provides substantive, as well as procedural, protection for "liberty"—has long been controversial.

The Court's decisions have held that the Due Process Clause protects two categories of substantive rights—those rights guaranteed by the first eight Amendments to the Constitution and those rights deemed fundamental that are not mentioned anywhere in the Constitution. In deciding whether a right falls into either of these categories, the question is whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to this Nation's "scheme of ordered liberty." *Timbs v. Indiana*, 586 U. S. \_\_\_, \_\_\_ (internal quotation marks omitted). The term "liberty" alone provides little guidance. Thus, historical inquiries are essential whenever the Court is asked to recognize a new component of the "liberty" interest protected by the Due Process Clause. In interpreting what is meant by "liberty," the Court must guard against the natural human tendency to confuse what the Fourteenth Amendment protects with the Court's own ardent views about the liberty that Americans should enjoy. For this reason,

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the Court has been “reluctant” to recognize rights that are not mentioned in the Constitution. *Collins v. Harker Heights*, 503 U. S. 115, 125.

Guided by the history and tradition that map the essential components of the Nation’s concept of ordered liberty, the Court finds the Fourteenth Amendment clearly does not protect the right to an abortion. Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right. Until a few years before *Roe*, no federal or state court had recognized such a right. Nor had any scholarly treatise. Indeed, abortion had long been a *crime* in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time the Fourteenth Amendment was adopted, three-quarters of the States had made abortion a crime at any stage of pregnancy. This consensus endured until the day *Roe* was decided. *Roe* either ignored or misstated this history, and *Casey* declined to reconsider *Roe*’s faulty historical analysis.

Respondents’ argument that this history does not matter flies in the face of the standard the Court has applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment. The Solicitor General repeats *Roe*’s claim that it is “doubtful . . . abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus,” 410 U. S., at 136, but the great common-law authorities—Bracton, Coke, Hale, and Blackstone—all wrote that a post-quickening abortion was a crime. Moreover, many authorities asserted that even a pre-quickening abortion was “unlawful” and that, as a result, an abortionist was guilty of murder if the woman died from the attempt. The Solicitor General suggests that history supports an abortion right because of the common law’s failure to criminalize abortion before quickening, but the insistence on quickening was not universal, see *Mills v. Commonwealth*, 13 Pa. 631, 633; *State v. Slagle*, 83 N. C. 630, 632, and regardless, the fact that many States in the late 18th and early 19th century did not criminalize pre-quickening abortions does not mean that anyone thought the States lacked the authority to do so.

Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, 410 U. S., at 154, and *Casey* described it as the freedom to make “intimate and personal choices” that are “central to personal dignity and autonomy,” 505 U. S., at 851. Ordered

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liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed “potential life.” *Roe*, 410 U. S., at 150; *Casey*, 505 U. S., at 852. But the people of the various States may evaluate those interests differently. The Nation’s historical understanding of ordered liberty does not prevent the people’s elected representatives from deciding how abortion should be regulated. Pp. 11–30.

(3) Finally, the Court considers whether a right to obtain an abortion is part of a broader entrenched right that is supported by other precedents. The Court concludes the right to obtain an abortion cannot be justified as a component of such a right. Attempts to justify abortion through appeals to a broader right to autonomy and to define one’s “concept of existence” prove too much. *Casey*, 505 U. S., at 851. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion is different because it destroys what *Roe* termed “potential life” and what the law challenged in this case calls an “unborn human being.” None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. Accordingly, those cases do not support the right to obtain an abortion, and the Court’s conclusion that the Constitution does not confer such a right does not undermine them in any way. Pp. 30–32.

(b) The doctrine of *stare decisis* does not counsel continued acceptance of *Roe* and *Casey*. *Stare decisis* plays an important role and protects the interests of those who have taken action in reliance on a past decision. It “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.” *Kimble v. Marvel Entertainment, LLC*, 576 U. S. 446, 455. It “contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U. S. 808, 827. And it restrains judicial hubris by respecting the judgment of those who grappled with important questions in the past. But *stare decisis* is not an inexorable command, *Pearson v. Callahan*, 555 U. S. 223, 233, and “is at its weakest when [the Court] interpret[s] the Constitution,” *Agostini v. Felton*, 521 U. S. 203, 235. Some of the Court’s most important constitutional decisions have overruled prior precedents. See, e.g., *Brown v. Board of Education*, 347 U. S. 483, 491 (overruling the infamous decision in *Plessy v. Ferguson*, 163 U. S. 537, and its progeny).

The Court’s cases have identified factors that should be considered in deciding when a precedent should be overruled. *Janus v. State, County, and Municipal Employees*, 585 U. S. \_\_\_, \_\_\_–\_\_\_. Five factors

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discussed below weigh strongly in favor of overruling *Roe* and *Casey*. Pp. 39–66.

(1) *The nature of the Court’s error.* Like the infamous decision in *Plessy v. Ferguson*, *Roe* was also egregiously wrong and on a collision course with the Constitution from the day it was decided. *Casey* perpetuated its errors, calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. Those on the losing side—those who sought to advance the State’s interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who disagreed with *Roe*. Pp. 43–45.

(2) *The quality of the reasoning.* Without any grounding in the constitutional text, history, or precedent, *Roe* imposed on the entire country a detailed set of rules for pregnancy divided into trimesters much like those that one might expect to find in a statute or regulation. See 410 U. S., at 163–164. *Roe*’s failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Then, after surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee, and did not explain why the sources on which it relied shed light on the meaning of the Constitution. As to precedent, citing a broad array of cases, the Court found support for a constitutional “right of personal privacy.” *Id.*, at 152. But *Roe* conflated the right to shield information from disclosure and the right to make and implement important personal decisions without governmental interference. See *Whalen v. Roe*, 429 U. S. 589, 599–600. None of these decisions involved what is distinctive about abortion: its effect on what *Roe* termed “potential life.” When the Court summarized the basis for the scheme it imposed on the country, it asserted that its rules were “consistent with,” among other things, “the relative weights of the respective interests involved” and “the demands of the profound problems of the present day.” *Roe*, 410 U. S., at 165. These are precisely the sort of considerations that legislative bodies often take into account when they draw lines that accommodate competing interests. The scheme *Roe* produced looked like legislation, and the Court provided the sort of explanation that might be expected from a legislative body. An even more glaring deficiency was *Roe*’s failure to justify the critical distinction it drew between pre- and post-viability abortions. See *id.*, at 163. The arbitrary viability line, which *Casey* termed *Roe*’s central rule, has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. The most obvious problem with any such

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argument is that viability has changed over time and is heavily dependent on factors—such as medical advances and the availability of quality medical care—that have nothing to do with the characteristics of a fetus.

When *Casey* revisited *Roe* almost 20 years later, it reaffirmed *Roe*'s central holding, but pointedly refrained from endorsing most of its reasoning. The Court abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment's Due Process Clause. 505 U. S., at 846. The controlling opinion criticized and rejected *Roe*'s trimester scheme, 505 U. S., at 872, and substituted a new and obscure “undue burden” test. *Casey*, in short, either refused to reaffirm or rejected important aspects of *Roe*'s analysis, failed to remedy glaring deficiencies in *Roe*'s reasoning, endorsed what it termed *Roe*'s central holding while suggesting that a majority might not have thought it was correct, provided no new support for the abortion right other than *Roe*'s status as precedent, and imposed a new test with no firm grounding in constitutional text, history, or precedent. Pp. 45–56.

(3) *Workability*. Deciding whether a precedent should be overruled depends in part on whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner. *Casey*'s “undue burden” test has scored poorly on the workability scale. The *Casey* plurality tried to put meaning into the “undue burden” test by setting out three subsidiary rules, but these rules created their own problems. And the difficulty of applying *Casey*'s new rules surfaced in that very case. Compare 505 U. S., at 881–887, with *id.*, at 920–922 (Stevens, J., concurring in part and dissenting in part). The experience of the Courts of Appeals provides further evidence that *Casey*'s “line between” permissible and unconstitutional restrictions “has proved to be impossible to draw with precision.” *Janus*, 585 U. S., at \_\_\_\_\_. *Casey* has generated a long list of Circuit conflicts. Continued adherence to *Casey*'s unworkable “undue burden” test would undermine, not advance, the “evenhanded, predictable, and consistent development of legal principles.” *Payne*, 501 U. S., at 827. Pp. 56–62.

(4) *Effect on other areas of law*. *Roe* and *Casey* have led to the distortion of many important but unrelated legal doctrines, and that effect provides further support for overruling those decisions. See *Ramos v. Louisiana*, 590 U. S. \_\_\_, \_\_\_ (KAVANAUGH, J., concurring in part). Pp. 62–63.

(5) *Reliance interests*. Overruling *Roe* and *Casey* will not upend concrete reliance interests like those that develop in “cases involving property and contract rights.” *Payne*, 501 U. S., at 828. In *Casey*, the controlling opinion conceded that traditional reliance interests were

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not implicated because getting an abortion is generally “unplanned activity,” and “reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.” 505 U. S., at 856. Instead, the opinion perceived a more intangible form of reliance, namely, that “people [had] 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” and that “[t]he 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.” *Ibid.* The contending sides in this case make impassioned and conflicting arguments about the effects of the abortion right on the lives of women as well as the status of the fetus. The *Casey* plurality’s speculative attempt to weigh the relative importance of the interests of the fetus and the mother represent a departure from the “original constitutional proposition” that “courts do not substitute their social and economic beliefs for the judgment of legislative bodies.” *Ferguson v. Skrupa*, 372 U. S. 726, 729–730.

The Solicitor General suggests that overruling *Roe* and *Casey* would threaten the protection of other rights under the Due Process Clause. The Court emphasizes that this decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion. Pp. 63–66.

(c) *Casey* identified another concern, namely, the danger that the public will perceive a decision overruling a controversial “watershed” decision, such as *Roe*, as influenced by political considerations or public opinion. 505 U. S., at 866–867. But the Court cannot allow its decisions to be affected by such extraneous concerns. A precedent of this Court is subject to the usual principles of *stare decisis* under which adherence to precedent is the norm but not an inexorable command. If the rule were otherwise, erroneous decisions like *Plessy* would still be the law. The Court’s job is to interpret the law, apply longstanding principles of *stare decisis*, and decide this case accordingly. Pp. 66–69.

(d) Under the Court’s precedents, rational-basis review is the appropriate standard to apply when state abortion regulations undergo constitutional challenge. Given that procuring an abortion is not a fundamental constitutional right, it follows that the States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot “substitute their social and economic beliefs for the judgment of legislative bodies.” *Ferguson*, 372 U. S., at 729–730. That applies even when the laws at issue concern matters of great social significance and moral substance. A law regulating abortion, like other health and welfare laws, is entitled to a

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“strong presumption of validity.” *Heller v. Doe*, 509 U. S. 312, 319. It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. *Id.*, at 320.

Mississippi’s Gestational Age Act is supported by the Mississippi Legislature’s specific findings, which include the State’s asserted interest in “protecting the life of the unborn.” §2(b)(i). These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondents’ constitutional challenge must fail. Pp. 76–78.

(e) Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. The Court overrules those decisions and returns that authority to the people and their elected representatives. Pp. 78–79.

945 F. 3d 265, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which THOMAS, GORSUCH, KAVANAUGH, and BARRETT, JJ., joined. THOMAS, J., and KAVANAUGH, J., filed concurring opinions. ROBERTS, C. J., filed an opinion concurring in the judgment. BREYER, SOTOMAYOR, and KAGAN, JJ., filed a dissenting opinion.



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**SUPREME COURT OF THE UNITED STATES**

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No. 19–1392

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THOMAS E. DOBBS, STATE HEALTH OFFICER OF  
THE MISSISSIPPI DEPARTMENT OF HEALTH,  
ET AL., PETITIONERS *v.* JACKSON WOMEN'S  
HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[June 24, 2022]

JUSTICE ALITO delivered the opinion of the Court.

Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently that a human person comes into being at conception and that abortion ends an innocent life. Others feel just as strongly that any regulation of abortion invades a woman's right to control her own body and prevents women from achieving full equality. Still others in a third group think that abortion should be allowed under some but not all circumstances, and those within this group hold a variety of views about the particular restrictions that should be imposed.

For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens. Then, in 1973, this Court decided *Roe v. Wade*, 410 U. S. 113. Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one. It did not claim that American law or the common law had ever recognized

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such a right, and its survey of history ranged from the constitutionally irrelevant (*e.g.*, its discussion of abortion in antiquity) to the plainly incorrect (*e.g.*, its assertion that abortion was probably never a crime under the common law). After cataloging a wealth of other information having no bearing on the meaning of the Constitution, the opinion concluded with a numbered set of rules much like those that might be found in a statute enacted by a legislature.

Under this scheme, each trimester of pregnancy was regulated differently, but the most critical line was drawn at roughly the end of the second trimester, which, at the time, corresponded to the point at which a fetus was thought to achieve “viability,” *i.e.*, the ability to survive outside the womb. Although the Court acknowledged that States had a legitimate interest in protecting “potential life,”<sup>1</sup> it found that this interest could not justify any restriction on pre-viability abortions. The Court did not explain the basis for this line, and even abortion supporters have found it hard to defend *Roe*'s reasoning. One prominent constitutional scholar wrote that he “would vote for a statute very much like the one the Court end[ed] up drafting” if he were “a legislator,” but his assessment of *Roe* was memorable and brutal: *Roe* was “not constitutional law” at all and gave “almost no sense of an obligation to try to be.”<sup>2</sup>

At the time of *Roe*, 30 States still prohibited abortion at all stages. In the years prior to that decision, about a third of the States had liberalized their laws, but *Roe* abruptly ended that political process. It imposed the same highly restrictive regime on the entire Nation, and it effectively struck down the abortion laws of every single State.<sup>3</sup> As

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<sup>1</sup> *Roe v. Wade*, 410 U. S. 113, 163 (1973).

<sup>2</sup> J. Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 *Yale L. J.* 920, 926, 947 (1973) (Ely) (emphasis deleted).

<sup>3</sup> L. Tribe, *Foreword: Toward a Model of Roles in the Due Process of Life and Law*, 87 *Harv. L. Rev.* 1, 2 (1973) (Tribe).

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Justice Byron White aptly put it in his dissent, the decision represented the “exercise of raw judicial power,” 410 U. S., at 222, and it sparked a national controversy that has embittered our political culture for a half century.<sup>4</sup>

Eventually, in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), the Court revisited *Roe*, but the Members of the Court split three ways. Two Justices expressed no desire to change *Roe* in any way.<sup>5</sup> Four others wanted to overrule the decision in its entirety.<sup>6</sup> And the three remaining Justices, who jointly signed the controlling opinion, took a third position.<sup>7</sup> Their opinion did not endorse *Roe*’s reasoning, and it even hinted that one or more of its authors might have “reservations” about whether the Constitution protects a right to abortion.<sup>8</sup> But the opinion concluded that *stare decisis*, which calls for prior decisions to be followed in most instances, required adherence to what it called *Roe*’s “central holding”—that a State may not constitutionally protect fetal life before “viability”—even if that holding was wrong.<sup>9</sup> Anything less, the opinion claimed, would undermine respect for this Court and the rule of law.

Paradoxically, the judgment in *Casey* did a fair amount of overruling. Several important abortion decisions were

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<sup>4</sup>See R. Ginsburg, *Speaking in a Judicial Voice*, 67 N. Y. U. L. Rev. 1185, 1208 (1992) (“*Roe* . . . halted a political process that was moving in a reform direction and thereby, I believed, prolonged divisiveness and deferred stable settlement of the issue”).

<sup>5</sup>See 505 U. S., at 911 (Stevens, J., concurring in part and dissenting in part); *id.*, at 922 (Blackmun, J., concurring in part, concurring in judgment in part, and dissenting in part).

<sup>6</sup>See *id.*, at 944 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); *id.*, at 979 (Scalia, J., concurring in judgment in part and dissenting in part).

<sup>7</sup>See *id.*, at 843 (joint opinion of O’Connor, Kennedy, and Souter, JJ.).

<sup>8</sup>*Id.*, at 853.

<sup>9</sup>*Id.*, at 860.

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overruled *in toto*, and *Roe* itself was overruled in part.<sup>10</sup> *Casey* threw out *Roe*'s trimester scheme and substituted a new rule of uncertain origin under which States were forbidden to adopt any regulation that imposed an "undue burden" on a woman's right to have an abortion.<sup>11</sup> The decision provided no clear guidance about the difference between a "due" and an "undue" burden. But the three Justices who authored the controlling opinion "call[ed] the contending sides of a national controversy to end their national division" by treating the Court's decision as the final settlement of the question of the constitutional right to abortion.<sup>12</sup>

As has become increasingly apparent in the intervening years, *Casey* did not achieve that goal. Americans continue to hold passionate and widely divergent views on abortion, and state legislatures have acted accordingly. Some have recently enacted laws allowing abortion, with few restrictions, at all stages of pregnancy. Others have tightly restricted abortion beginning well before viability. And in this case, 26 States have expressly asked this Court to overrule *Roe* and *Casey* and allow the States to regulate or prohibit pre-viability abortions.

Before us now is one such state law. The State of Mississippi asks us to uphold the constitutionality of a law that generally prohibits an abortion after the 15th week of pregnancy—several weeks before the point at which a fetus is now regarded as "viable" outside the womb. In defending this law, the State's primary argument is that we should reconsider and overrule *Roe* and *Casey* and once again allow each State to regulate abortion as its citizens wish. On the other side, respondents and the Solicitor General ask us to

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<sup>10</sup> *Id.*, at 861, 870, 873 (overruling *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)).

<sup>11</sup> 505 U. S., at 874.

<sup>12</sup> *Id.*, at 867.

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reaffirm *Roe* and *Casey*, and they contend that the Mississippi law cannot stand if we do so. Allowing Mississippi to prohibit abortions after 15 weeks of pregnancy, they argue, “would be no different than overruling *Casey* and *Roe* entirely.” Brief for Respondents 43. They contend that “no half-measures” are available and that we must either reaffirm or overrule *Roe* and *Casey*. Brief for Respondents 50.

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. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.” *Washington v. Glucksberg*, 521 U. S. 702, 721 (1997) (internal quotation marks omitted).

The right to abortion does not fall within this category. Until the latter part of the 20th century, such a right was entirely unknown in American law. Indeed, when the Fourteenth Amendment was adopted, three quarters of the States made abortion a crime at all stages of pregnancy. The abortion right is also critically different from any other right that this Court has held to fall within the Fourteenth Amendment’s protection of “liberty.” *Roe*’s defenders characterize the abortion right as similar to the rights recognized in past decisions involving matters such as intimate sexual relations, contraception, and marriage, but abortion is fundamentally different, as both *Roe* and *Casey* acknowledged, because it destroys what those decisions called “fetal life” and what the law now before us describes as an “unborn human being.”<sup>13</sup>

*Stare decisis*, the doctrine on which *Casey*’s controlling

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<sup>13</sup>Miss. Code Ann. §41–41–191(4)(b) (2018).

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opinion was based, does not compel unending adherence to *Roe*'s abuse of judicial authority. *Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division.

It is time to heed the Constitution and return the issue of abortion to the people's elected representatives. "The permissibility of abortion, and the limitations, upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting." *Casey*, 505 U. S., at 979 (Scalia, J., concurring in judgment in part and dissenting in part). That is what the Constitution and the rule of law demand.

## I

The law at issue in this case, Mississippi's Gestational Age Act, see Miss. Code Ann. §41-41-191 (2018), contains this central provision: "Except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform . . . or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." §4(b).<sup>14</sup>

To support this Act, the legislature made a series of factual findings. It began by noting that, at the time of enactment, only six countries besides the United States "permit[ted] nontherapeutic or elective abortion-on-demand after the twentieth week of gestation."<sup>15</sup> §2(a). The legisla-

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<sup>14</sup>The Act defines "gestational age" to be "the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman." §3(f).

<sup>15</sup>Those other six countries were Canada, China, the Netherlands,

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ture then found that at 5 or 6 weeks' gestational age an "unborn human being's heart begins beating"; at 8 weeks the "unborn human being begins to move about in the womb"; at 9 weeks "all basic physiological functions are present"; at 10 weeks "vital organs begin to function," and "[h]air, fingernails, and toenails . . . begin to form"; at 11 weeks "an unborn human being's diaphragm is developing," and he or she may "move about freely in the womb"; and at 12 weeks the "unborn human being" has "taken on 'the human form' in all relevant respects." §2(b)(i) (quoting *Gonzales v. Carhart*, 550 U. S. 124, 160 (2007)). It found that most abortions after 15 weeks employ "dilation and evacuation procedures which involve the use of surgical instruments to crush and tear the unborn child," and it concluded that the "intentional commitment of such acts for nontherapeutic or elective reasons is a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession." §2(b)(i)(8).

Respondents are an abortion clinic, Jackson Women's Health Organization, and one of its doctors. On the day the Gestational Age Act was enacted, respondents filed suit in Federal District Court against various Mississippi officials, alleging that the Act violated this Court's precedents establishing a constitutional right to abortion. The District

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North Korea, Singapore, and Vietnam. See A. Baglini, Charlotte Lozier Institute, *Gestational Limits on Abortion in the United States Compared to International Norms 6–7* (2014); M. Lee, *Is the United States One of Seven Countries That "Allow Elective Abortions After 20 Weeks of Pregnancy?"* Wash. Post (Oct. 8, 2017), [www.washingtonpost.com/news/fact-checker/wp/2017/10/09/is-the-united-states-one-of-seven-countries-that-allow-elective-abortions-after-20-weeks-of-preganacy](http://www.washingtonpost.com/news/fact-checker/wp/2017/10/09/is-the-united-states-one-of-seven-countries-that-allow-elective-abortions-after-20-weeks-of-preganacy) (stating that the claim made by the Mississippi Legislature and the Charlotte Lozier Institute was "backed by data"). A more recent compilation from the Center for Reproductive Rights indicates that Iceland and Guinea-Bissau are now also similarly permissive. See *The World's Abortion Laws*, Center for Reproductive Rights (Feb. 23, 2021), <https://reproductiverights.org/maps/worlds-abortion-laws/>.

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Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning 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” and that 15 weeks’ gestational age is “prior to viability.” *Jackson Women’s Health Org. v. Currier*, 349 F. Supp. 3d 536, 539–540 (SD Miss. 2019) (internal quotation marks omitted). The Fifth Circuit affirmed. 945 F. 3d 265 (2019).

We granted certiorari, 593 U. S. \_\_\_ (2021), to resolve the question whether “all pre-viability prohibitions on elective abortions are unconstitutional,” Pet. for Cert. i. Petitioners’ primary defense of the Mississippi Gestational Age Act is that *Roe* and *Casey* were wrongly decided and that “the Act is constitutional because it satisfies rational-basis review.” Brief for Petitioners 49. Respondents answer that allowing Mississippi to ban pre-viability abortions “would be no different than overruling *Casey* and *Roe* entirely.” Brief for Respondents 43. They tell us that “no half-measures” are available: We must either reaffirm or overrule *Roe* and *Casey*. Brief for Respondents 50.

## II

We begin by considering the critical question whether the Constitution, properly understood, confers a right to obtain an abortion. Skipping over that question, the controlling opinion in *Casey* reaffirmed *Roe*’s “central holding” based solely on the doctrine of *stare decisis*, but as we will explain, proper application of *stare decisis* required an assessment of the strength of the grounds on which *Roe* was based. See *infra*, at 45–56.

We therefore turn to the question that the *Casey* plurality did not consider, and we address that question in three steps. First, we explain the standard that our cases have used in determining whether the Fourteenth Amendment’s reference to “liberty” protects a particular right. Second,



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we examine whether the right at issue in this case is rooted in our Nation’s history and tradition and whether it is an essential component of what we have described as “ordered liberty.” Finally, we consider whether a right to obtain an abortion is part of a broader entrenched right that is supported by other precedents.

## A

## 1

Constitutional analysis must begin with “the language of the instrument,” *Gibbons v. Ogden*, 9 Wheat. 1, 186–189 (1824), which offers a “fixed standard” for ascertaining what our founding document means, 1 J. Story, *Commentaries on the Constitution of the United States* §399, p. 383 (1833). The Constitution makes no express reference to a right to obtain an abortion, and therefore those who claim that it protects such a right must show that the right is somehow implicit in the constitutional text.

*Roe*, however, was remarkably loose in its treatment of the constitutional text. It held that the abortion right, which is not mentioned in the Constitution, is part of a right to privacy, which is also not mentioned. See 410 U. S., at 152–153. And that privacy right, *Roe* observed, had been found to spring from no fewer than five different constitutional provisions—the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. *Id.*, at 152.

The Court’s discussion left open at least three ways in which some combination of these provisions could protect the abortion right. One possibility was that the right was “founded . . . in the Ninth Amendment’s reservation of rights to the people.” *Id.*, at 153. Another was that the right was rooted in the First, Fourth, or Fifth Amendment, or in some combination of those provisions, and that this right had been “incorporated” into the Due Process Clause of the Fourteenth Amendment just as many other Bill of Rights provisions had by then been incorporated. *Ibid*; see

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also *McDonald v. Chicago*, 561 U. S. 742, 763–766 (2010) (majority opinion) (discussing incorporation). And a third path was that the First, Fourth, and Fifth Amendments played no role and that the right was simply a component of the “liberty” protected by the Fourteenth Amendment’s Due Process Clause. *Roe*, 410 U. S., at 153. *Roe* expressed the “feel[ing]” that the Fourteenth Amendment was the provision that did the work, but its message seemed to be that the abortion right could be found *somewhere* in the Constitution and that specifying its exact location was not of paramount importance.<sup>16</sup> The *Casey* Court did not defend this unfocused analysis and instead grounded its decision solely on the theory that the right to obtain an abortion is part of the “liberty” protected by the Fourteenth Amendment’s Due Process Clause.

We discuss this theory in depth below, but before doing so, we briefly address one additional constitutional provision that some of respondents’ *amici* have now offered as yet another potential home for the abortion right: the Fourteenth Amendment’s Equal Protection Clause. See Brief for United States as *Amicus Curiae* 24 (Brief for United States); see also Brief for Equal Protection Constitutional Law Scholars as *Amici Curiae*. Neither *Roe* nor *Casey* saw fit to invoke this theory, and it is squarely foreclosed by our precedents, which establish that a State’s regulation of abortion is not a sex-based classification and is thus not subject to the “heightened scrutiny” that applies to such classifications.<sup>17</sup> The regulation of a medical procedure that

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<sup>16</sup>The Court’s words were as follows: “This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” 410 U. S., at 153.

<sup>17</sup>See, e.g., *Sessions v. Morales-Santana*, 582 U. S. 47, \_\_\_ (2017) (slip op., at 8).

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only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a “mere pretext[t] designed to effect an invidious discrimination against members of one sex or the other.” *Geduldig v. Aiello*, 417 U. S. 484, 496, n. 20 (1974). And as the Court has stated, the “goal of preventing abortion” does not constitute “invidiously discriminatory animus” against women. *Bray v. Alexandria Women’s Health Clinic*, 506 U. S. 263, 273–274 (1993) (internal quotation marks omitted). Accordingly, laws regulating or prohibiting abortion are not subject to heightened scrutiny. Rather, they are governed by the same standard of review as other health and safety measures.<sup>18</sup>

With this new theory addressed, we turn to *Casey*’s bold assertion that the abortion right is an aspect of the “liberty” protected by the Due Process Clause of the Fourteenth Amendment. 505 U. S., at 846; Brief for Respondents 17; Brief for United States 21–22.

## 2

The underlying theory on which this argument rests—that the Fourteenth Amendment’s Due Process Clause provides substantive, as well as procedural, protection for “liberty”—has long been controversial. But our decisions have held that the Due Process Clause protects two categories of substantive rights.

The first consists of rights guaranteed by the first eight Amendments. Those Amendments originally applied only to the Federal Government, *Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243, 247–251 (1833) (opinion for the Court by Marshall, C. J.), but this Court has held that the Due Process Clause of the Fourteenth Amendment “incorporates” the great majority of those rights and thus makes them equally applicable to the States. See *McDonald*, 561

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<sup>18</sup>We discuss this standard in Part VI of this opinion.

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U. S., at 763–767, and nn. 12–13. The second category—which is the one in question here—comprises a select list of fundamental rights that are not mentioned anywhere in the Constitution.

In deciding whether a right falls into either of these categories, the Court has long asked whether the right is “deeply rooted in [our] history and tradition” and whether it is essential to our Nation’s “scheme of ordered liberty.” *Timbs v. Indiana*, 586 U. S. \_\_\_, \_\_\_ (2019) (slip op., at 3) (internal quotation marks omitted); *McDonald*, 561 U. S., at 764, 767 (internal quotation marks omitted); *Glucksberg*, 521 U. S., at 721 (internal quotation marks omitted).<sup>19</sup> And in conducting this inquiry, we have engaged in a careful analysis of the history of the right at issue.

Justice Ginsburg’s opinion for the Court in *Timbs* is a recent example. In concluding that the Eighth Amendment’s protection against excessive fines is “fundamental to our scheme of ordered liberty” and “deeply rooted in this Nation’s history and tradition,” 586 U. S., at \_\_\_ (slip op., at 7) (internal quotation marks omitted), her opinion traced the right back to Magna Carta, Blackstone’s Commentaries, and 35 of the 37 state constitutions in effect at the ratification of the Fourteenth Amendment. 586 U. S., at \_\_\_–\_\_\_ (slip op., at 3–7).

A similar inquiry was undertaken in *McDonald*, which held that the Fourteenth Amendment protects the right to keep and bear arms. The lead opinion surveyed the origins of the Second Amendment, the debates in Congress about

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<sup>19</sup>See also, *e.g.*, *Duncan v. Louisiana*, 391 U. S. 145, 148 (1968) (asking whether “a right is among those ‘fundamental principles of liberty and justice which lie at the base of our civil and political institutions’”); *Palko v. Connecticut*, 302 U. S. 319, 325 (1937) (requiring “a ‘principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental’” (quoting *Snyder v. Massachusetts*, 291 U. S. 97, 105 (1934))).

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the adoption of the Fourteenth Amendment, the state constitutions in effect when that Amendment was ratified (at least 22 of the 37 States protected the right to keep and bear arms), federal laws enacted during the same period, and other relevant historical evidence. 561 U. S., at 767–777. Only then did the opinion conclude that “the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.” *Id.*, at 778; see also *id.*, at 822–850 (THOMAS, J., concurring in part and concurring in judgment) (surveying history and reaching the same result under the Fourteenth Amendment’s Privileges or Immunities Clause).

*Timbs* and *McDonald* concerned the question whether the Fourteenth Amendment protects rights that are expressly set out in the Bill of Rights, and it would be anomalous if similar historical support were not required when a putative right is not mentioned anywhere in the Constitution. Thus, in *Glucksberg*, which held that the Due Process Clause does not confer a right to assisted suicide, the Court surveyed more than 700 years of “Anglo-American common law tradition,” 521 U. S., at 711, and made clear that a fundamental right must be “objectively, deeply rooted in this Nation’s history and tradition,” *id.*, at 720–721.

Historical inquiries of this nature are essential whenever we are asked to recognize a new component of the “liberty” protected by the Due Process Clause because the term “liberty” alone provides little guidance. “Liberty” is a capacious term. As Lincoln once said: “We all declare for Liberty; but in using the same word we do not all mean the same thing.”<sup>20</sup> In a well-known essay, Isaiah Berlin reported that “[h]istorians of ideas” had cataloged more than

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<sup>20</sup>Address at Sanitary Fair at Baltimore, Md. (Apr. 18, 1864), reprinted in 7 *The Collected Works of Abraham Lincoln* 301 (R. Basler ed. 1953).

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200 different senses in which the term had been used.<sup>21</sup>

In interpreting what is meant by the Fourteenth Amendment's reference to "liberty," we must guard against the natural human tendency to confuse what that Amendment protects with our own ardent views about the liberty that Americans should enjoy. That is why the Court has long been "reluctant" to recognize rights that are not mentioned in the Constitution. *Collins v. Harker Heights*, 503 U. S. 115, 125 (1992). "Substantive due process has at times been a treacherous field for this Court," *Moore v. East Cleveland*, 431 U. S. 494, 503 (1977) (plurality opinion), and it has sometimes led the Court to usurp authority that the Constitution entrusts to the people's elected representatives. See *Regents of Univ. of Mich. v. Ewing*, 474 U. S. 214, 225–226 (1985). As the Court cautioned in *Glucksberg*, "[w]e must . . . exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court." 521 U. S., at 720 (internal quotation marks and citation omitted).

On occasion, when the Court has ignored the "[a]ppropriate limits" imposed by "respect for the teachings of history," *Moore*, 431 U. S., at 503 (plurality opinion), it has fallen into the freewheeling judicial policymaking that characterized discredited decisions such as *Lochner v. New York*, 198 U. S. 45 (1905). The Court must not fall prey to such an unprincipled approach. Instead, guided by the history and tradition that map the essential components of our Nation's concept of ordered liberty, we must ask what the *Fourteenth Amendment* means by the term "liberty." When we engage in that inquiry in the present case, the clear answer is that the Fourteenth Amendment does not protect

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<sup>21</sup>Four Essays on Liberty 121 (1969).

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the right to an abortion.<sup>22</sup>

B  
1

Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. No state constitutional provision had recognized such a right. Until a few years before *Roe* was handed down, no federal or state court had recognized such a right. Nor had any scholarly treatise of which we are aware. And although law review articles are not reticent about advocating new rights, the earliest article proposing a constitutional right to abortion that has come to our attention was published only a few years before *Roe*.<sup>23</sup>

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<sup>22</sup>That is true regardless of whether we look to the Amendment's Due Process Clause or its Privileges or Immunities Clause. Some scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights. See, e.g., *McDonald v. Chicago*, 561 U. S. 742, 813–850 (2010) (THOMAS, J., concurring in part and concurring in judgment); *Duncan*, 391 U. S., at 165–166 (Black, J., concurring); A. Amar, *Bill of Rights: Creation and Reconstruction* 163–180 (1998) (Amar); J. Ely, *Democracy and Distrust* 22–30 (1980); 2 W. Crosskey, *Politics and the Constitution in the History of the United States* 1089–1095 (1953). But even on that view, such a right would need to be rooted in the Nation's history and tradition. See *Corfield v. Coryell*, 6 F. Cas. 546, 551–552 (No. 3,230) (CC ED Pa. 1823) (describing unenumerated rights under the Privileges and Immunities Clause, Art. IV, §2, as those “fundamental” rights “which have, at all times, been enjoyed by the citizens of the several states”); Amar 176 (relying on *Corfield* to interpret the Privileges or Immunities Clause); cf. *McDonald*, 561 U. S., at 819–820, 832, 854 (opinion of THOMAS, J.) (reserving the question whether the Privileges or Immunities Clause protects “any rights besides those enumerated in the Constitution”).

<sup>23</sup>See R. Lucas, *Federal Constitutional Limitations on the Enforcement and Administration of State Abortion Statutes*, 46 N. C. L. Rev. 730 (1968) (Lucas); see also D. Garrow, *Liberty and Sexuality* 334–335 (1994) (Garrow) (stating that Lucas was “undeniably the first person to fully

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Not only was there no support for such a constitutional right until shortly before *Roe*, but abortion had long been a *crime* in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time of the adoption of the Fourteenth Amendment, three-quarters of the States had made abortion a crime at any stage of pregnancy, and the remaining States would soon follow.

*Roe* either ignored or misstated this history, and *Casey* declined to reconsider *Roe*'s faulty historical analysis. It is therefore important to set the record straight.

2

a

We begin with the common law, under which abortion was a crime at least after “quickening”—*i.e.*, the first felt movement of the fetus in the womb, which usually occurs between the 16th and 18th week of pregnancy.<sup>24</sup>

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articulate on paper” the argument that “a woman’s right to choose abortion was a fundamental individual freedom protected by the U. S. Constitution’s guarantee of personal liberty”).

<sup>24</sup>The exact meaning of “quickening” is subject to some debate. Compare Brief for Scholars of Jurisprudence as *Amici Curiae* 12–14, and n. 32 (emphasis deleted) (“‘a quick child’” meant simply a “live” child, and under the era’s outdated knowledge of embryology, a fetus was thought to become “quick” at around the sixth week of pregnancy), with Brief for American Historical Association et al. as *Amici Curiae* 6, n. 2 (“quick” and “quickening” consistently meant “the woman’s perception of fetal movement”). We need not wade into this debate. First, it suffices for present purposes to show that abortion was criminal by *at least* the 16th or 18th week of pregnancy. Second, as we will show, during the relevant period—*i.e.*, the period surrounding the enactment of the Fourteenth Amendment—the quickening distinction was abandoned as States criminalized abortion at all stages of pregnancy. See *infra*, at 21–



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The “eminent common-law authorities (Blackstone, Coke, Hale, and the like),” *Kahler v. Kansas*, 589 U. S. \_\_\_\_, \_\_\_\_ (2020) (slip op., at 7), *all* describe abortion after quickening as criminal. Henry de Bracton’s 13th-century treatise explained that if a person has “struck a pregnant woman, or has given her poison, whereby he has caused abortion, if the foetus be already formed and animated, and particularly if it be animated, he commits homicide.” 2 *De Legibus et Consuetudinibus Angliae* 279 (T. Twiss ed. 1879); see also 1 *Fleta*, c. 23, reprinted in 72 *Selden Soc.* 60–61 (H. Richardson & G. Sayles eds. 1955) (13th-century treatise).<sup>25</sup>

Sir Edward Coke’s 17th-century treatise likewise asserted that abortion of a quick child was “murder” if the “childe be born alive” and a “great misprision” if the “childe dieth in her body.” 3 *Institutes of the Laws of England* 50–51 (1644). (“Misprision” referred to “some heynous offence under the degree of felony.” *Id.*, at 139.) Two treatises by Sir Matthew Hale likewise described abortion of a quick child who died in the womb as a “great crime” and a “great misprision.” *Pleas of the Crown* 53 (P. Glazebrook ed. 1972); 1 *History of the Pleas of the Crown* 433 (1736) (Hale). And writing near the time of the adoption of our Constitution, William Blackstone explained that abortion of a “quick” child was “by the ancient law homicide or manslaughter” (citing Bracton), and at least a very “heinous misdemeanor” (citing Coke). 1 *Commentaries on the Laws of England* 129–130 (7th ed. 1775) (Blackstone).

English cases dating all the way back to the 13th century corroborate the treatises’ statements that abortion was a crime. See generally J. Dellapenna, *Dispelling the Myths*

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25.

<sup>25</sup> Even before Bracton’s time, English law imposed punishment for the killing of a fetus. See *Leges Henrici Primi* 222–223 (L. Downer ed. 1972) (imposing penalty for any abortion and treating a woman who aborted a “quick” child “as if she were a murderer”).

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of Abortion History 126, and n. 16, 134–142, 188–194, and nn. 84–86 (2006) (Dellapenna); J. Keown, *Abortion, Doctors and the Law* 3–12 (1988) (Keown). In 1732, for example, Eleanor Beare was convicted of “destroying the Foetus in the Womb” of another woman and “thereby causing her to miscarry.”<sup>26</sup> For that crime and another “misdemeanor,” Beare was sentenced to two days in the pillory and three years’ imprisonment.<sup>27</sup>

Although a pre-quickening abortion was not itself considered homicide, it does not follow that abortion was *permissible* at common law—much less that abortion was a legal *right*. Cf. *Glucksberg*, 521 U. S., at 713 (removal of “common law’s harsh sanctions did not represent an acceptance of suicide”). Quite to the contrary, in the 1732 case mentioned above, the judge said of the charge of abortion (with no mention of quickening) that he had “never met with a case so barbarous and unnatural.”<sup>28</sup> Similarly, an indictment from 1602, which did not distinguish between a pre-quickening and post-quickening abortion, described abortion as “pernicious” and “against the peace of our Lady the Queen, her crown and dignity.” Keown 7 (discussing *R. v. Webb*, Calendar of Assize Records, Surrey Indictments 512 (1980)).

That the common law did not condone even pre-quickening abortions is confirmed by what one might call a proto-felony-murder rule. Hale and Blackstone explained a way in which a pre-quickening abortion could rise to the level of a homicide. Hale wrote that if a physician gave a woman “with child” a “potion” to cause an abortion, and the woman died, it was “murder” because the potion was given “*unlawfully* to destroy her child within her.” 1 Hale 429–430 (emphasis added). As Blackstone explained, to be

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<sup>26</sup> 2 Gentleman’s Magazine 931 (Aug. 1732).

<sup>27</sup> *Id.*, at 932.

<sup>28</sup> *Ibid.*

## Opinion of the Court

“murder” a killing had to be done with “malice aforethought, . . . either express or implied.” 4 Blackstone 198 (emphasis deleted). In the case of an abortionist, Blackstone wrote, “the law will imply [malice]” for the same reason that it would imply malice if a person who intended to kill one person accidentally killed a different person:

“[I]f one shoots at A and misses *him*, but kills B, this is murder; because of the previous felonious intent, which the law transfers from one to the other. The same is the case, where one lays poison for A; and B, against whom the prisoner had no malicious intent, takes it, and it kills him; this is likewise murder. *So also*, if one gives *a woman with child* a medicine to procure abortion, and it operates so violently as to kill the woman, *this is murder* in the person who gave it.” *Id.*, at 200–201 (emphasis added; footnote omitted).<sup>29</sup>

Notably, Blackstone, like Hale, did not state that this proto-felony-murder rule required that the woman be “with quick child”—only that she be “with child.” *Id.*, at 201. And it is revealing that Hale and Blackstone treated abortionists differently from *other* physicians or surgeons who caused the death of a patient “without any intent of doing [the patient] any bodily hurt.” Hale 429; see 4 Blackstone 197. These other physicians—even if “unlicensed”—would not be “guilty of murder or manslaughter.” Hale 429. But a physician performing an abortion would, precisely because his aim was an “unlawful” one.

In sum, although common-law authorities differed on the severity of punishment for abortions committed at different

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<sup>29</sup>Other treatises restated the same rule. See 1 W. Russell & C. Greaves, *Crimes and Misdemeanors* 540 (5th ed. 1845) (“So where a person gave medicine to a woman to procure an abortion, and where a person put skewers into the woman for the same purpose, by which in both cases the women were killed, these acts were clearly held to be murder” (footnotes omitted)); 1 E. East, *Pleas of the Crown* 230 (1803) (similar).

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points in pregnancy, none endorsed the practice. Moreover, we are aware of no common-law case or authority, and the parties have not pointed to any, that remotely suggests a positive *right* to procure an abortion at any stage of pregnancy.

## b

In this country, the historical record is similar. The “most important early American edition of Blackstone’s Commentaries,” *District of Columbia v. Heller*, 554 U. S. 570, 594 (2008), reported Blackstone’s statement that abortion of a quick child was at least “a heinous misdemeanor,” 2 St. George Tucker, *Blackstone’s Commentaries* 129–130 (1803), and that edition also included Blackstone’s discussion of the proto-felony-murder rule, 5 *id.*, at 200–201. Manuals for justices of the peace printed in the Colonies in the 18th century typically restated the common-law rule on abortion, and some manuals repeated Hale’s and Blackstone’s statements that anyone who prescribed medication “unlawfully to destroy the child” would be guilty of murder if the woman died. See, e.g., J. Parker, *Conductor Generalis* 220 (1788); 2 R. Burn, *Justice of the Peace, and Parish Officer* 221–222 (7th ed. 1762) (English manual stating the same).<sup>30</sup>

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<sup>30</sup> For manuals restating one or both rules, see J. Davis, *Criminal Law* 96, 102–103, 339 (1838); *Conductor Generalis* 194–195 (1801) (printed in Philadelphia); *Conductor Generalis* 194–195 (1794) (printed in Albany); *Conductor Generalis* 220 (1788) (printed in New York); *Conductor Generalis* 198 (1749) (printed in New York); G. Webb, *Office and Authority of a Justice of Peace* 232 (1736) (printed in Williamsburg); *Conductor Generalis* 161 (1722) (printed in Philadelphia); see also J. Conley, *Doing It by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America*, 6 *J. Legal Hist.* 257, 265, 267 (1985) (noting that these manuals were the justices’ “primary source of legal reference” and of “practical value for a wider audience than the justices”).

For cases stating the proto-felony-murder rule, see, e.g., *Commonwealth v. Parker*, 50 Mass. 263, 265 (1845); *People v. Sessions*, 58 Mich.

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The few cases available from the early colonial period corroborate that abortion was a crime. See generally Delapenna 215–228 (collecting cases). In Maryland in 1652, for example, an indictment charged that a man “Murtherously endeavoured to destroy or Murther the Child by him begotten in the Womb.” *Proprietary v. Mitchell*, 10 Md. Archives 80, 183 (1652) (W. Browne ed. 1891). And by the 19th century, courts frequently explained that the common law made abortion of a quick child a crime. See, e.g., *Smith v. Gaffard*, 31 Ala. 45, 51 (1857); *Smith v. State*, 33 Me. 48, 55 (1851); *State v. Cooper*, 22 N. J. L. 52, 52–55 (1849); *Commonwealth v. Parker*, 50 Mass. 263, 264–268 (1845).

## c

The original ground for drawing a distinction between pre- and post-quickening abortions is not entirely clear, but some have attributed the rule to the difficulty of proving that a pre-quickening fetus was alive. At that time, there were no scientific methods for detecting pregnancy in its early stages,<sup>31</sup> and thus, as one court put it in 1872: “[U]ntil the period of quickening there is no *evidence* of life; and whatever may be said of the feotus, the law has fixed upon this period of gestation as the time when the child is endowed with life” because “foetal movements are the first clearly marked and well defined *evidences of life*.” *Evans v. People*, 49 N. Y. 86, 90 (emphasis added); *Cooper*, 22 N. J. L., at 56 (“In contemplation of law life commences at the moment of quickening, at that moment when the embryo gives *the first physical proof of life*, no matter when it first received it” (emphasis added)).

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594, 595–596, 26 N. W. 291, 292–293 (1886); *State v. Moore*, 25 Iowa 128, 131–132 (1868); *Smith v. State*, 33 Me. 48, 54–55 (1851).

<sup>31</sup>See E. Rigby, *A System of Midwifery* 73 (1841) (“Under all circumstances, the diagnosis of pregnancy must ever be difficult and obscure during the early months”); see also *id.*, at 74–80 (discussing rudimentary techniques for detecting early pregnancy); A. Taylor, *A Manual of Medical Jurisprudence* 418–421 (6th Am. ed. 1866) (same).

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The Solicitor General offers a different explanation of the basis for the quickening rule, namely, that before quickening the common law did not regard a fetus “as having a ‘separate and independent existence.’” Brief for United States 26 (quoting *Parker*, 50 Mass., at 266). But the case on which the Solicitor General relies for this proposition also suggested that the criminal law’s quickening rule was out of step with the treatment of prenatal life in other areas of law, noting that “to many purposes, in reference to civil rights, an infant *in ventre sa mere* is regarded as a person in being.” *Ibid.* (citing 1 Blackstone 129); see also *Evans*, 49 N. Y., at 89; *Mills v. Commonwealth*, 13 Pa. 631, 633 (1850); *Morrow v. Scott*, 7 Ga. 535, 537 (1849); *Hall v. Hancock*, 32 Mass. 255, 258 (1834); *Thellusson v. Woodford*, 4 Ves. 227, 321–322, 31 Eng. Rep. 117, 163 (1789).

At any rate, the original ground for the quickening rule is of little importance for present purposes because the rule was abandoned in the 19th century. During that period, treatise writers and commentators criticized the quickening distinction as “neither in accordance with the result of medical experience, nor with the principles of the common law.” F. Wharton, *Criminal Law* §1220, p. 606 (rev. 4th ed. 1857) (footnotes omitted); see also J. Beck, *Researches in Medicine and Medical Jurisprudence* 26–28 (2d ed. 1835) (describing the quickening distinction as “absurd” and “injurious”).<sup>32</sup> In 1803, the British Parliament made abortion

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<sup>32</sup>See *Mitchell v. Commonwealth*, 78 Ky. 204, 209–210 (1879) (acknowledging the common-law rule but arguing that “the law should punish abortions and miscarriages, willfully produced, at any time during the period of gestation”); *Mills v. Commonwealth*, 13 Pa., 631, 633 (1850) (the quickening rule “never ought to have been the law anywhere”); J. Bishop, *Commentaries on the Law of Statutory Crimes* §744, p. 471 (1873) (“If we look at the reason of the law, we shall prefer” a rule that “discard[s] this doctrine of the necessity of a quickening”); I. Dana, Report of the Committee on the Production of Abortion, in 5 Transactions

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a crime at all stages of pregnancy and authorized the imposition of severe punishment. See Lord Ellenborough’s Act, 43 Geo. 3, c. 58 (1803). One scholar has suggested that Parliament’s decision “may partly have been attributable to the medical man’s concern that fetal life should be protected by the law at all stages of gestation.” Keown 22.

In this country during the 19th century, the vast majority of the States enacted statutes criminalizing abortion at all stages of pregnancy. See Appendix A, *infra* (listing state statutory provisions in chronological order).<sup>33</sup> By 1868, the year when the Fourteenth Amendment was ratified, three-quarters of the States, 28 out of 37, had enacted statutes making abortion a crime even if it was performed before quickening.<sup>34</sup> See *ibid.* Of the nine States that had not yet

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of the Maine Medical Association 37–39 (1866); Report on Criminal Abortion, in 12 Transactions of the American Medical Association 75–77 (1859); W. Guy, Principles of Medical Forensics 133–134 (1845); J. Chitty, Practical Treatise on Medical Jurisprudence 438 (2d Am. ed. 1836); 1 T. Beck & J. Beck, Elements of Medical Jurisprudence 293 (5th ed. 1823); 2 T. Percival, The Works, Literary, Moral and Medical 430 (1807); see also Keown 38–39 (collecting English authorities).

<sup>33</sup>See generally Dellapenna 315–319 (cataloging the development of the law in the States); E. Quay, Justifiable Abortion—Medical and Legal Foundations, 49 Geo. L. J. 395, 435–437, 447–520 (1961) (Quay) (same); J. Witherspoon, Reexamining *Roe*: Nineteenth-Century Abortion Statutes and The Fourteenth Amendment, 17 St. Mary’s L. J. 29, 34–36 (1985) (Witherspoon) (same).

<sup>34</sup>Some scholars assert that only 27 States prohibited abortion at all stages. See, e.g., Dellapenna 315; Witherspoon 34–35, and n. 15. Those scholars appear to have overlooked Rhode Island, which criminalized abortion at all stages in 1861. See Acts and Resolves R. I. 1861, ch. 371, §1, p. 133 (criminalizing the attempt to “procure the miscarriage” of “any pregnant woman” or “any woman supposed by such person to be pregnant,” without mention of quickening). The *amicus* brief for the American Historical Association asserts that only 26 States prohibited abortion at all stages, but that brief incorrectly excludes West Virginia and Nebraska from its count. Compare Brief for American Historical Association 27–28 (citing Quay), with Appendix A, *infra*.

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criminalized abortion at all stages, all but one did so by 1910. See *ibid.*

The trend in the Territories that would become the last 13 States was similar: All of them criminalized abortion at all stages of pregnancy between 1850 (the Kingdom of Hawaii) and 1919 (New Mexico). See Appendix B, *infra*; see also *Casey*, 505 U. S., at 952 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); Dellapenna 317–319. By the end of the 1950s, according to the *Roe* Court's own count, statutes in all but four States and the District of Columbia prohibited abortion “however and whenever performed, unless done to save or preserve the life of the mother.” 410 U. S., at 139.<sup>35</sup>

This overwhelming consensus endured until the day *Roe* was decided. At that time, also by the *Roe* Court's own count, a substantial majority—30 States—still prohibited abortion at all stages except to save the life of the mother. See *id.*, at 118, and n. 2 (listing States). And though *Roe* discerned a “trend toward liberalization” in about “one-third of the States,” those States still criminalized some abortions and regulated them more stringently than *Roe* would allow. *Id.*, at 140, and n. 37; Tribe 2. In short, the

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<sup>35</sup>The statutes of three States (Massachusetts, New Jersey, and Pennsylvania) prohibited abortions performed “unlawfully” or “without lawful justification.” *Roe*, 410 U. S., at 139 (internal quotation marks omitted). In Massachusetts, case law held that abortion was allowed when, according to the judgment of physicians in the relevant community, the procedure was necessary to preserve the woman's life or her physical or emotional health. *Commonwealth v. Wheeler*, 315 Mass. 394, 395, 53 N. E. 2d 4, 5 (1944). In the other two States, however, there is no clear support in case law for the proposition that abortion was lawful where the mother's life was not at risk. See *State v. Brandenburg*, 137 N. J. L. 124, 58 A. 2d 709 (1948); *Commonwealth v. Trombetta*, 131 Pa. Super. 487, 200 A. 107 (1938).

Statutes in the two remaining jurisdictions (the District of Columbia and Alabama) permitted “abortion to preserve the mother's health.” *Roe*, 410 U. S., at 139. Case law in those jurisdictions does not clarify the breadth of these exceptions.



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“Court’s opinion in *Roe* itself convincingly refutes the notion that the abortion liberty is deeply rooted in the history or tradition of our people.” *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U. S. 747, 793 (1986) (White, J., dissenting).

d

The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation’s history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973. The Court in *Roe* could have said of abortion exactly what *Glucksberg* said of assisted suicide: “Attitudes toward [abortion] have changed since Bracton, but our laws have consistently condemned, and continue to prohibit, [that practice].” 521 U. S., at 719.

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Respondents and their *amici* have no persuasive answer to this historical evidence.

Neither respondents nor the Solicitor General disputes the fact that by 1868 the vast majority of States criminalized abortion at all stages of pregnancy. See Brief for Petitioners 12–13; see also Brief for American Historical Association et al. as *Amici Curiae* 27–28, and nn. 14–15 (conceding that 26 out of 37 States prohibited abortion before quickening); Tr. of Oral Arg. 74–75 (respondents’ counsel conceding the same). Instead, respondents are forced to argue that it “does [not] matter that some States prohibited abortion at the time *Roe* was decided or when the Fourteenth Amendment was adopted.” Brief for Respondents 21. But that argument flies in the face of the standard we have applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment.

Not only are respondents and their *amici* unable to show

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that a constitutional right to abortion was established when the Fourteenth Amendment was adopted, but they have found no support for the existence of an abortion right that predates the latter part of the 20th century—no state constitutional provision, no statute, no judicial decision, no learned treatise. The earliest sources called to our attention are a few district court and state court decisions decided shortly before *Roe* and a small number of law review articles from the same time period.<sup>36</sup>

A few of respondents' *amici* muster historical arguments, but they are very weak. The Solicitor General repeats *Roe*'s claim that it is "‘doubtful’ . . . ‘abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.’" Brief for United States 26 (quoting *Roe*, 410 U. S., at 136). But as we have seen, great common-law authorities like Bracton, Coke, Hale, and Blackstone all wrote that a post-quickening abortion was a crime—and a serious one at that. Moreover, Hale and Blackstone (and many other authorities following them) asserted that even a pre-quickening abortion was "unlawful" and that, as a result, an abortionist was guilty of murder if the woman died from the attempt.

Instead of following these authorities, *Roe* relied largely on two articles by a pro-abortion advocate who claimed that Coke had intentionally misstated the common law because of his strong anti-abortion views.<sup>37</sup> These articles have

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<sup>36</sup>See 410 U. S., at 154–155 (collecting cases decided between 1970 and 1973); C. Means, *The Phoenix of Abortional Freedom: Is a Penumbra or Ninth-Amendment Right About To Arise From the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty?* 17 N. Y. L. Forum 335, 337–339 (1971) (Means II); C. Means, *The Law of New York Concerning Abortion and the Status of the Foetus, 1664–1968: A Case of Cessation of Constitutionality*, 14 N. Y. L. Forum 411 (1968) (Means I); Lucas 730.

<sup>37</sup>See 410 U. S., at 136, n. 26 (citing Means II); 410 U. S., at 132–133, n. 21 (citing Means I).

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been discredited,<sup>38</sup> and it has come to light that even members of Jane Roe’s legal team did not regard them as serious scholarship. An internal memorandum characterized this author’s work as donning “the guise of impartial scholarship while advancing the proper ideological goals.”<sup>39</sup> Continued reliance on such scholarship is unsupportable.

The Solicitor General next suggests that history supports an abortion right because the common law’s failure to criminalize abortion before quickening means that “at the Founding and for decades thereafter, women generally could terminate a pregnancy, at least in its early stages.”<sup>40</sup> Brief for United States 26–27; see also Brief for Respondents 21. But the insistence on quickening was not universal, see *Mills*, 13 Pa., at 633; *State v. Slagle*, 83 N. C. 630, 632 (1880), and regardless, the fact that many States in the

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<sup>38</sup>For critiques of Means’s work, see, e.g., Dellapenna 143–152, 325–331; Keown 3–12; J. Finnis, “Shameless Acts” in Colorado: Abuse of Scholarship in Constitutional Cases, 7 *Academic Questions* 10, 11–12 (1994); R. Destro, Abortion and the Constitution: The Need for a Life-Protective Amendment, 63 *Cal. L. Rev.* 1250, 1267–1282 (1975); R. Byrn, An American Tragedy: The Supreme Court on Abortion, 41 *Ford. L. Rev.* 807, 814–829 (1973).

<sup>39</sup>Garrow 500–501, and n. 41 (internal quotation marks omitted).

<sup>40</sup>In any event, *Roe*, *Casey*, and other related abortion decisions imposed substantial restrictions on a State’s capacity to regulate abortions performed after quickening. See, e.g., *June Medical Services L. L. C. v. Russo*, 591 U. S. \_\_\_\_ (2020) (holding a law requiring doctors performing abortions to secure admitting privileges to be unconstitutional); *Whole Woman’s Health v. Hellerstedt*, 579 U. S. 582 (2016) (similar); *Casey*, 505 U. S., at 846 (declaring that prohibitions on “abortion before viability” are unconstitutional); *id.*, at 887–898 (holding that a spousal notification provision was unconstitutional). In addition, *Doe v. Bolton*, 410 U. S. 179 (1973), has been interpreted by some to protect a broad right to obtain an abortion at any stage of pregnancy provided that a physician is willing to certify that it is needed due to a woman’s “emotional” needs or “familial” concerns. *Id.*, at 192. See, e.g., *Women’s Medical Professional Corp. v. Voinovich*, 130 F. 3d 187, 209 (CA6 1997), cert. denied, 523 U. S. 1036 (1998); but see *id.*, at 1039 (THOMAS, J., dissenting from denial of certiorari).

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late 18th and early 19th century did not criminalize pre-quickening abortions does not mean that anyone thought the States lacked the authority to do so. When legislatures began to exercise that authority as the century wore on, no one, as far as we are aware, argued that the laws they enacted violated a fundamental right. That is not surprising since common-law authorities had repeatedly condemned abortion and described it as an “unlawful” act without regard to whether it occurred before or after quickening. See *supra*, at 16–21.

Another *amicus* brief relied upon by respondents (see Brief for Respondents 21) tries to dismiss the significance of the state criminal statutes that were in effect when the Fourteenth Amendment was adopted by suggesting that they were enacted for illegitimate reasons. According to this account, which is based almost entirely on statements made by one prominent proponent of the statutes, important motives for the laws were the fear that Catholic immigrants were having more babies than Protestants and that the availability of abortion was leading White Protestant women to “shir[k their] maternal duties.” Brief for American Historical Association et al. as *Amici Curiae* 20.

Resort to this argument is a testament to the lack of any real historical support for the right that *Roe* and *Casey* recognized. This Court has long disfavored arguments based on alleged legislative motives. See, e.g., *Erie v. Pap’s A. M.*, 529 U. S. 277, 292 (2000) (plurality opinion); *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 652 (1994); *United States v. O’Brien*, 391 U. S. 367, 383 (1968); *Arizona v. California*, 283 U. S. 423, 455 (1931) (collecting cases). The Court has recognized that inquiries into legislative motives “are a hazardous matter.” *O’Brien*, 391 U. S., at 383. Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, we

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have been reluctant to attribute those motives to the legislative body as a whole. “What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it.” *Id.*, at 384.

Here, the argument about legislative motive is not even based on statements by legislators, but on statements made by a few supporters of the new 19th-century abortion laws, and it is quite a leap to attribute these motives to all the legislators whose votes were responsible for the enactment of those laws. Recall that at the time of the adoption of the Fourteenth Amendment, over three-quarters of the States had adopted statutes criminalizing abortion (usually at all stages of pregnancy), and that from the early 20th century until the day *Roe* was handed down, every single State had such a law on its books. Are we to believe that the hundreds of lawmakers whose votes were needed to enact these laws were motivated by hostility to Catholics and women?

There is ample evidence that the passage of these laws was instead spurred by a sincere belief that abortion kills a human being. Many judicial decisions from the late 19th and early 20th centuries made that point. See, e.g., *Nash v. Meyer*, 54 Idaho 283, 301, 31 P. 2d 273, 280 (1934); *State v. Ausplund*, 86 Ore. 121, 131–132, 167 P. 1019, 1022–1023 (1917); *Trent v. State*, 15 Ala. App. 485, 488, 73 S. 834, 836 (1916); *State v. Miller*, 90 Kan. 230, 233, 133 P. 878, 879 (1913); *State v. Tippie*, 89 Ohio St. 35, 39–40, 105 N. E. 75, 77 (1913); *State v. Gedicke*, 43 N. J. L. 86, 90 (1881); *Dougherty v. People*, 1 Colo. 514, 522–523 (1873); *State v. Moore*, 25 Iowa 128, 131–132 (1868); *Smith*, 33 Me., at 57; see also *Memphis Center for Reproductive Health v. Slatery*, 14 F. 4th 409, 446, and n. 11 (CA6 2021) (Thapar, J., concurring in judgment in part and dissenting in part) (citing cases).

One may disagree with this belief (and our decision is not based on any view about when a State should regard prenatal life as having rights or legally cognizable interests),

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but even *Roe* and *Casey* did not question the good faith of abortion opponents. See, e.g., *Casey*, 505 U. S., at 850 (“Men and women of good conscience can disagree . . . about the profound moral and spiritual implications of terminating a pregnancy even in its earliest stage”). And we see no reason to discount the significance of the state laws in question based on these *amici*’s suggestions about legislative motive.<sup>41</sup>

## C

## 1

Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, 410 U. S., at 154, and *Casey* described it as the freedom to make “intimate and personal choices” that are “central to personal dignity and autonomy,” 505 U. S., at 851. *Casey* elaborated: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” *Ibid.*

The Court did not claim that this broadly framed right is absolute, and no such claim would be plausible. While individuals are certainly free *to think* and *to say* what they

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<sup>41</sup>Other *amicus* briefs present arguments about the motives of proponents of liberal access to abortion. They note that some such supporters have been motivated by a desire to suppress the size of the African-American population. See Brief for African-American Organization et al. as *Amici Curiae* 14–21; see also *Box v. Planned Parenthood of Ind. and Ky., Inc.*, 587 U. S. \_\_\_, \_\_\_–\_\_\_ (2019) (THOMAS, J., concurring) (slip op., at 1–4). And it is beyond dispute that *Roe* has had that demographic effect. A highly disproportionate percentage of aborted fetuses are Black. See, e.g., Dept. of Health and Human Servs., Centers for Disease Control and Prevention (CDC), K. Kortsmit et al., Abortion Surveillance—United States, 2019, 70 Morbidity and Mortality Report, Surveillance Summaries, p. 20 (Nov. 26, 2021) (Table 6). For our part, we do not question the motives of either those who have supported or those who have opposed laws restricting abortions.

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wish about “existence,” “meaning,” the “universe,” and “the mystery of human life,” they are not always free *to act* in accordance with those thoughts. License to act on the basis of such beliefs may correspond to one of the many understandings of “liberty,” but it is certainly not “ordered liberty.”

Ordered liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed “potential life.” *Roe*, 410 U. S., at 150 (emphasis deleted); *Casey*, 505 U. S., at 852. But the people of the various States may evaluate those interests differently. In some States, voters may believe that the abortion right should be even more extensive than the right that *Roe* and *Casey* recognized. Voters in other States may wish to impose tight restrictions based on their belief that abortion destroys an “unborn human being.” Miss. Code Ann. §41–41–191(4)(b). Our Nation’s historical understanding of ordered liberty does not prevent the people’s elected representatives from deciding how abortion should be regulated.

Nor does the right to obtain an abortion have a sound basis in precedent. *Casey* relied on cases involving the right to marry a person of a different race, *Loving v. Virginia*, 388 U. S. 1 (1967); the right to marry while in prison, *Turner v. Safley*, 482 U. S. 78 (1987); the right to obtain contraceptives, *Griswold v. Connecticut*, 381 U. S. 479 (1965), *Eisenstadt v. Baird*, 405 U. S. 438 (1972), *Carey v. Population Services Int’l*, 431 U. S. 678 (1977); the right to reside with relatives, *Moore v. East Cleveland*, 431 U. S. 494 (1977); the right to make decisions about the education of one’s children, *Pierce v. Society of Sisters*, 268 U. S. 510 (1925), *Meyer v. Nebraska*, 262 U. S. 390 (1923); the right not to be sterilized without consent, *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942); and the right in certain circumstances not to undergo involuntary surgery, forced

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administration of drugs, or other substantially similar procedures, *Winston v. Lee*, 470 U. S. 753 (1985), *Washington v. Harper*, 494 U. S. 210 (1990), *Rochin v. California*, 342 U. S. 165 (1952). Respondents and the Solicitor General also rely on post-*Casey* decisions like *Lawrence v. Texas*, 539 U. S. 558 (2003) (right to engage in private, consensual sexual acts), and *Obergefell v. Hodges*, 576 U. S. 644 (2015) (right to marry a person of the same sex). See Brief for Respondents 18; Brief for United States 23–24.

These attempts to justify abortion through appeals to a broader right to autonomy and to define one's "concept of existence" prove too much. *Casey*, 505 U. S., at 851. Those criteria, at a high level of generality, could license fundamental rights to illicit drug use, prostitution, and the like. See *Compassion in Dying v. Washington*, 85 F. 3d 1440, 1444 (CA9 1996) (O'Scannlain, J., dissenting from denial of rehearing en banc). None of these rights has any claim to being deeply rooted in history. *Id.*, at 1440, 1445.

What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion destroys what those decisions call "potential life" and what the law at issue in this case regards as the life of an "unborn human being." See *Roe*, 410 U. S., at 159 (abortion is "inherently different"); *Casey*, 505 U. S., at 852 (abortion is "a unique act"). None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. They are therefore inapposite. They do not support the right to obtain an abortion, and by the same token, our conclusion that the Constitution does not confer such a right does not undermine them in any way.

## 2

In drawing this critical distinction between the abortion right and other rights, it is not necessary to dispute *Casey*'s claim (which we accept for the sake of argument) that "the



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specific practices of States at the time of the adoption of the Fourteenth Amendment” do not “mar[k] the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects.” 505 U. S., at 848. Abortion is nothing new. It has been addressed by lawmakers for centuries, and the fundamental moral question that it poses is ageless.

Defenders of *Roe* and *Casey* do not claim that any new scientific learning calls for a different answer to the underlying moral question, but they do contend that changes in society require the recognition of a constitutional right to obtain an abortion. Without the availability of abortion, they maintain, people will be inhibited from exercising their freedom to choose the types of relationships they desire, and women will be unable to compete with men in the workplace and in other endeavors.

Americans who believe that abortion should be restricted press countervailing arguments about modern developments. They note that attitudes about the pregnancy of unmarried women have changed drastically; that federal and state laws ban discrimination on the basis of pregnancy;<sup>42</sup> that leave for pregnancy and childbirth are now guaranteed by law in many cases;<sup>43</sup> that the costs of medical care asso-

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<sup>42</sup>See, e.g., Pregnancy Discrimination Act, 92 Stat. 2076, 42 U. S. C. §2000e(k) (federal law prohibiting pregnancy discrimination in employment); Dept. of Labor, Women’s Bureau, Employment Protections for Workers Who Are Pregnant or Nursing, <https://www.dol.gov/agencies/wb/pregnant-nursing-employment-protections> (showing that 46 States and the District of Columbia have employment protections against pregnancy discrimination).

<sup>43</sup>See, e.g., Family and Medical Leave Act of 1993, 107 Stat. 9, 29 U. S. C. §2612 (federal law guaranteeing employment leave for pregnancy and birth); Bureau of Labor Statistics, Access to Paid and Unpaid Family Leave in 2018, <https://www.bls.gov/opub/ted/2019/access-to-paid->

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ciated with pregnancy are covered by insurance or government assistance;<sup>44</sup> that States have increasingly adopted “safe haven” laws, which generally allow women to drop off babies anonymously;<sup>45</sup> and that a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.<sup>46</sup> They also claim that many people now have a new appreciation of fetal life and that when prospective parents who want to have a child view a sonogram, they typically have no doubt that what they see is their daughter or son.

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and-unpaid-family-leave-in-2018.htm (showing that 89 percent of civilian workers had access to unpaid family leave in 2018).

<sup>44</sup>The Affordable Care Act (ACA) requires non-grandfathered health plans in the individual and small group markets to cover certain essential health benefits, which include maternity and newborn care. See 124 Stat. 163, 42 U. S. C. §18022(b)(1)(D). The ACA also prohibits annual limits, see §300gg–11, and limits annual cost-sharing obligations on such benefits, §18022(c). State Medicaid plans must provide coverage for pregnancy-related services—including, but not limited to, prenatal care, delivery, and postpartum care—as well as services for other conditions that might complicate the pregnancy. 42 CFR §§440.210(a)(2)(i)–(ii) (2020). State Medicaid plans are also prohibited from imposing deductions, cost-sharing, or similar charges for pregnancy-related services for pregnant women. 42 U. S. C. §§1396o(a)(2)(B), (b)(2)(B).

<sup>45</sup>Since *Casey*, all 50 States and the District of Columbia have enacted such laws. Dept. of Health and Human Servs., Children’s Bureau, Infant Safe Haven Laws 1–2 (2016), <https://www.childwelfare.gov/pubPDFs/safehaven.pdf> (noting that safe haven laws began in Texas in 1999).

<sup>46</sup>See, e.g., CDC, Adoption Experiences of Women and Men and Demand for Children To Adopt by Women 18–44 Years of Age in the United States 16 (Aug. 2008) (“[N]early 1 million women were seeking to adopt children in 2002 (*i.e.*, they were in demand for a child), whereas the domestic supply of infants relinquished at birth or within the first month of life and available to be adopted had become virtually nonexistent”); CDC, National Center for Health Statistics, Adoption and Nonbiological Parenting, [https://www.cdc.gov/nchs/nsfg/key\\_statistics/a-keystat.htm#adoption](https://www.cdc.gov/nchs/nsfg/key_statistics/a-keystat.htm#adoption) (showing that approximately 3.1 million women between the ages of 18–49 had ever “[t]aken steps to adopt a child” based on data collected from 2015–2019).

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Both sides make important policy arguments, but supporters of *Roe* and *Casey* must show that this Court has the authority to weigh those arguments and decide how abortion may be regulated in the States. They have failed to make that showing, and we thus return the power to weigh those arguments to the people and their elected representatives.

## D

## 1

The dissent is very candid that it cannot show that a constitutional right to abortion has any foundation, let alone a “deeply rooted” one, “in this Nation’s history and tradition.” *Glucksberg*, 521 U. S., at 721; see *post*, at 12–14 (joint opinion of BREYER, SOTOMAYOR, and KAGAN, JJ.). The dissent does not identify *any* pre-*Roe* authority that supports such a right—no state constitutional provision or statute, no federal or state judicial precedent, not even a scholarly treatise. Compare *post*, at 12–14, n. 2, with *supra*, at 15–16, and n. 23. Nor does the dissent dispute the fact that abortion was illegal at common law at least after quickening; that the 19th century saw a trend toward criminalization of pre-quickening abortions; that by 1868, a supermajority of States (at least 26 of 37) had enacted statutes criminalizing abortion at all stages of pregnancy; that by the late 1950s at least 46 States prohibited abortion “however and whenever performed” except if necessary to save “the life of the mother,” *Roe*, 410 U. S., at 139; and that when *Roe* was decided in 1973 similar statutes were still in effect in 30 States. Compare *post*, at 12–14, nn. 2–3, with *supra*, at 23–25, and nn. 33–34.<sup>47</sup>

The dissent’s failure to engage with this long tradition is

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<sup>47</sup>By way of contrast, at the time *Griswold v. Connecticut*, 381 U. S. 479 (1965), was decided, the Connecticut statute at issue was an extreme outlier. See Brief for Planned Parenthood Federation of America, Inc. as *Amicus Curiae* in *Griswold v. Connecticut*, O. T. 1964, No. 496, p. 27.

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devastating to its position. We have held that the “established method of substantive-due-process analysis” requires that an unenumerated right be “deeply rooted in this Nation’s history and tradition” before it can be recognized as a component of the “liberty” protected in the Due Process Clause. *Glucksberg*, 521 U. S., at 721; cf. *Timbs*, 586 U. S., at \_\_\_ (slip op., at 7). But despite the dissent’s professed fidelity to *stare decisis*, it fails to seriously engage with that important precedent—which it cannot possibly satisfy.

The dissent attempts to obscure this failure by misrepresenting our application of *Glucksberg*. The dissent suggests that we have focused only on “the legal status of abortion in the 19th century,” *post*, at 26, but our review of this Nation’s tradition extends well past that period. As explained, for more than a century after 1868—including “another half-century” after women gained the constitutional right to vote in 1920, see *post*, at 15; Amdt. 19—it was firmly established that laws prohibiting abortion like the Texas law at issue in *Roe* were permissible exercises of state regulatory authority. And today, another half century later, more than half of the States have asked us to overrule *Roe* and *Casey*. The dissent cannot establish that a right to abortion has *ever* been part of this Nation’s tradition.

## 2

Because the dissent cannot argue that the abortion right is rooted in this Nation’s history and tradition, it contends that the “constitutional tradition” is “not captured whole at a single moment,” and that its “meaning gains content from the long sweep of our history and from successive judicial precedents.” *Post*, at 18 (internal quotation marks omitted). This vague formulation imposes no clear restraints on what Justice White called the “exercise of raw judicial power,” *Roe*, 410 U. S., at 222 (dissenting opinion), and while the dissent claims that its standard “does not mean

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anything goes,” *post*, at 17, any real restraints are hard to discern.

The largely limitless reach of the dissenters’ standard is illustrated by the way they apply it here. First, if the “long sweep of history” imposes any restraint on the recognition of unenumerated rights, then *Roe* was surely wrong, since abortion was never allowed (except to save the life of the mother) in a majority of States for over 100 years before that decision was handed down. Second, it is impossible to defend *Roe* based on prior precedent because all of the precedents *Roe* cited, including *Griswold* and *Eisenstadt*, were critically different for a reason that we have explained: None of those cases involved the destruction of what *Roe* called “potential life.” See *supra*, at 32.

So without support in history or relevant precedent, *Roe*’s reasoning cannot be defended even under the dissent’s proposed test, and the dissent is forced to rely solely on the fact that a constitutional right to abortion was recognized in *Roe* and later decisions that accepted *Roe*’s interpretation. Under the doctrine of *stare decisis*, those precedents are entitled to careful and respectful consideration, and we engage in that analysis below. But as the Court has reiterated time and time again, adherence to precedent is not “‘an inexorable command.’” *Kimble v. Marvel Entertainment, LLC*, 576 U. S. 446, 455 (2015). There are occasions when past decisions should be overruled, and as we will explain, this is one of them.

## 3

The most striking feature of the dissent is the absence of any serious discussion of the legitimacy of the States’ interest in protecting fetal life. This is evident in the analogy that the dissent draws between the abortion right and the rights recognized in *Griswold* (contraception), *Eisenstadt* (same), *Lawrence* (sexual conduct with member of the same sex), and *Obergefell* (same-sex marriage). Perhaps this is

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designed to stoke unfounded fear that our decision will imperil those other rights, but the dissent's analogy is objectionable for a more important reason: what it reveals about the dissent's views on the protection of what *Roe* called "potential life." The exercise of the rights at issue in *Griswold*, *Eisenstadt*, *Lawrence*, and *Obergefell* does not destroy a "potential life," but an abortion has that effect. So if the rights at issue in those cases are fundamentally the same as the right recognized in *Roe* and *Casey*, the implication is clear: The Constitution does not permit the States to regard the destruction of a "potential life" as a matter of any significance.

That view is evident throughout the dissent. The dissent has much to say about the effects of pregnancy on women, the burdens of motherhood, and the difficulties faced by poor women. These are important concerns. However, the dissent evinces no similar regard for a State's interest in protecting prenatal life. The dissent repeatedly praises the "balance," *post*, at 2, 6, 8, 10, 12, that the viability line strikes between a woman's liberty interest and the State's interest in prenatal life. But for reasons we discuss later, see *infra*, at 50–54, 55–56, and given in the opinion of THE CHIEF JUSTICE, *post*, at 2–5 (opinion concurring in judgment), the viability line makes no sense. It was not adequately justified in *Roe*, and the dissent does not even try to defend it today. Nor does it identify any other point in a pregnancy after which a State is permitted to prohibit the destruction of a fetus.

Our opinion is not based on any view about if and when prenatal life is entitled to any of the rights enjoyed after birth. The dissent, by contrast, would impose on the people a particular theory about when the rights of personhood begin. According to the dissent, the Constitution *requires* the States to regard a fetus as lacking even the most basic human right—to live—at least until an arbitrary point in a pregnancy has passed. Nothing in the Constitution or in

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our Nation’s legal traditions authorizes the Court to adopt that “theory of life.” *Post*, at 8.

## III

We next consider whether the doctrine of *stare decisis* counsels continued acceptance of *Roe* and *Casey*. *Stare decisis* plays an important role in our case law, and we have explained that it serves many valuable ends. It protects the interests of those who have taken action in reliance on a past decision. See *Casey*, 505 U. S., at 856 (joint opinion); see also *Payne v. Tennessee*, 501 U. S. 808, 828 (1991). It “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.” *Kimble*, 576 U. S., at 455. It fosters “evenhanded” decisionmaking by requiring that like cases be decided in a like manner. *Payne*, 501 U. S., at 827. It “contributes to the actual and perceived integrity of the judicial process.” *Ibid*. And it restrains judicial hubris and reminds us to respect the judgment of those who have grappled with important questions in the past. “Precedent is a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges.” N. Gorsuch, *A Republic, If You Can Keep It* 217 (2019).

We have long recognized, however, that *stare decisis* is “not an inexorable command,” *Pearson v. Callahan*, 555 U. S. 223, 233 (2009) (internal quotation marks omitted), and it “is at its weakest when we interpret the Constitution,” *Agostini v. Felton*, 521 U. S. 203, 235 (1997). It has been said that it is sometimes more important that an issue “be settled than that it be settled right.” *Kimble*, 576 U. S., at 455 (quoting *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting)). But when it comes to the interpretation of the Constitution—the “great charter of our liberties,” which was meant “to en-

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ture through a long lapse of ages,” *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 326 (1816) (opinion for the Court by Story, J.)—we place a high value on having the matter “settled right.” In addition, when one of our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake. An erroneous constitutional decision can be fixed by amending the Constitution, but our Constitution is notoriously hard to amend. See Art. V; *Kimble*, 576 U. S., at 456. Therefore, in appropriate circumstances we must be willing to reconsider and, if necessary, overrule constitutional decisions.

Some of our most important constitutional decisions have overruled prior precedents. We mention three. In *Brown v. Board of Education*, 347 U. S. 483 (1954), the Court repudiated the “separate but equal” doctrine, which had allowed States to maintain racially segregated schools and other facilities. *Id.*, at 488 (internal quotation marks omitted). In so doing, the Court overruled the infamous decision in *Plessy v. Ferguson*, 163 U. S. 537 (1896), along with six other Supreme Court precedents that had applied the separate-but-equal rule. See *Brown*, 347 U. S., at 491.

In *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937), the Court overruled *Adkins v. Children’s Hospital of D. C.*, 261 U. S. 525 (1923), which had held that a law setting minimum wages for women violated the “liberty” protected by the Fifth Amendment’s Due Process Clause. *Id.*, at 545. *West Coast Hotel* signaled the demise of an entire line of important precedents that had protected an individual liberty right against state and federal health and welfare legislation. See *Lochner v. New York*, 198 U. S. 45 (1905) (holding invalid a law setting maximum working hours); *Coppage v. Kansas*, 236 U. S. 1 (1915) (holding invalid a law banning contracts forbidding employees to join a union); *Jay Burns Baking Co. v. Bryan*, 264 U. S. 504 (1924) (holding invalid laws fixing the weight of loaves of bread).

Finally, in *West Virginia Bd. of Ed. v. Barnette*, 319 U. S.



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624 (1943), after the lapse of only three years, the Court overruled *Minersville School Dist. v. Gobitis*, 310 U. S. 586 (1940), and held that public school students could not be compelled to salute the flag in violation of their sincere beliefs. *Barnette* stands out because nothing had changed during the intervening period other than the Court's belated recognition that its earlier decision had been seriously wrong.

On many other occasions, this Court has overruled important constitutional decisions. (We include a partial list in the footnote that follows.<sup>48</sup>) Without these decisions,

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<sup>48</sup>See, e.g., *Obergefell v. Hodges*, 576 U. S. 644 (2015) (right to same-sex marriage), overruling *Baker v. Nelson*, 409 U. S. 810 (1972); *Citizens United v. Federal Election Comm'n*, 558 U. S. 310 (2010) (right to engage in campaign-related speech), overruling *Austin v. Michigan Chamber of Commerce*, 494 U. S. 652 (1990), and partially overruling *McConnell v. Federal Election Comm'n*, 540 U. S. 93 (2003); *Montejo v. Louisiana*, 556 U. S. 778 (2009) (Sixth Amendment right to counsel), overruling *Michigan v. Jackson*, 475 U. S. 625 (1986); *Crawford v. Washington*, 541 U. S. 36 (2004) (Sixth Amendment right to confront witnesses), overruling *Ohio v. Roberts*, 448 U. S. 56 (1980); *Lawrence v. Texas*, 539 U. S. 558 (2003) (right to engage in consensual, same-sex intimacy in one's home), overruling *Bowers v. Hardwick*, 478 U. S. 186 (1986); *Ring v. Arizona*, 536 U. S. 584 (2002) (Sixth Amendment right to a jury trial in capital prosecutions), overruling *Walton v. Arizona*, 497 U. S. 639 (1990); *Agostini v. Felton*, 521 U. S. 203 (1997) (evaluating whether government aid violates the Establishment Clause), overruling *Aguilar v. Felton*, 473 U. S. 402 (1985), and *School Dist. of Grand Rapids v. Ball*, 473 U. S. 373 (1985); *Seminole Tribe of Fla. v. Florida*, 517 U. S. 44 (1996) (lack of congressional power under the Indian Commerce Clause to abrogate States' Eleventh Amendment immunity), overruling *Pennsylvania v. Union Gas Co.*, 491 U. S. 1 (1989); *Payne v. Tennessee*, 501 U. S. 808 (1991) (the Eighth Amendment does not erect a *per se* bar to the admission of victim impact evidence during the penalty phase of a capital trial), overruling *Booth v. Maryland*, 482 U. S. 496 (1987), and *South Carolina v. Gathers*, 490 U. S. 805 (1989); *Batson v. Kentucky*, 476 U. S. 79 (1986) (the Equal Protection Clause guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race), overruling *Swain v. Alabama*, 380 U. S. 202 (1965); *Garcia v. San Antonio*

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*Metropolitan Transit Authority*, 469 U. S. 528, 530 (1985) (rejecting the principle that the Commerce Clause does not empower Congress to enforce requirements, such as minimum wage laws, against the States “in areas of traditional governmental functions”), overruling *National League of Cities v. Usery*, 426 U. S. 833 (1976); *Illinois v. Gates*, 462 U. S. 213 (1983) (the Fourth Amendment requires a totality of the circumstances approach for determining whether an informant’s tip establishes probable cause), overruling *Aguilar v. Texas*, 378 U. S. 108 (1964), and *Spinelli v. United States*, 393 U. S. 410 (1969); *United States v. Scott*, 437 U. S. 82 (1978) (the Double Jeopardy Clause does not apply to Government appeals from orders granting defense motions to terminate a trial before verdict), overruling *United States v. Jenkins*, 420 U. S. 358 (1975); *Craig v. Boren*, 429 U. S. 190 (1976) (gender-based classifications are subject to intermediate scrutiny under the Equal Protection Clause), overruling *Goesaert v. Cleary*, 335 U. S. 464 (1948); *Taylor v. Louisiana*, 419 U. S. 522 (1975) (jury system which operates to exclude women from jury service violates the defendant’s Sixth and Fourteenth Amendment right to an impartial jury), overruling *Hoyt v. Florida*, 368 U. S. 57 (1961); *Brandenburg v. Ohio*, 395 U. S. 444 (1969) (*per curiam*) (the mere advocacy of violence is protected under the First Amendment unless it is directed to incite or produce imminent lawless action), overruling *Whitney v. California*, 274 U. S. 357 (1927); *Katz v. United States*, 389 U. S. 347, 351 (1967) (Fourth Amendment “protects people, not places,” and extends to what a person “seeks to preserve as private”), overruling *Olmstead v. United States*, 277 U. S. 438 (1928), and *Goldman v. United States*, 316 U. S. 129 (1942); *Miranda v. Arizona*, 384 U. S. 436 (1966) (procedural safeguards to protect the Fifth Amendment privilege against self-incrimination), overruling *Crooker v. California*, 357 U. S. 433 (1958), and *Cicenia v. Lagay*, 357 U. S. 504 (1958); *Malloy v. Hogan*, 378 U. S. 1 (1964) (the Fifth Amendment privilege against self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States), overruling *Twining v. New Jersey*, 211 U. S. 78 (1908), and *Adamson v. California*, 332 U. S. 46 (1947); *Wesberry v. Sanders*, 376 U. S. 1, 7–8 (1964) (congressional districts should be apportioned so that “as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s”), overruling in effect *Colegrove v. Green*, 328 U. S. 549 (1946); *Gideon v. Wainwright*, 372 U. S. 335 (1963) (right to counsel for indigent defendant in a criminal prosecution in state court under the Sixth and Fourteenth Amendments), overruling *Betts v. Brady*, 316 U. S. 455 (1942); *Baker v. Carr*, 369 U. S. 186 (1962) (federal courts have jurisdiction to consider constitutional challenges to state re-districting plans), effectively overruling in part *Colegrove*, 328 U. S. 549;

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American constitutional law as we know it would be unrecognizable, and this would be a different country.

No Justice of this Court has ever argued that the Court should *never* overrule a constitutional decision, but overruling a precedent is a serious matter. It is not a step that should be taken lightly. Our cases have attempted to provide a framework for deciding when a precedent should be overruled, and they have identified factors that should be considered in making such a decision. *Janus v. State, County, and Municipal Employees*, 585 U. S. \_\_\_\_, \_\_\_\_–\_\_\_\_ (2018) (slip op., at 34–35); *Ramos v. Louisiana*, 590 U. S. \_\_\_\_, \_\_\_\_–\_\_\_\_ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 7–9).

In this case, five factors weigh strongly in favor of overruling *Roe* and *Casey*: the nature of their error, the quality of their reasoning, the “workability” of the rules they imposed on the country, their disruptive effect on other areas of the law, and the absence of concrete reliance.

## A

*The nature of the Court’s error.* An erroneous interpretation of the Constitution is always important, but some are more damaging than others.

The infamous decision in *Plessy v. Ferguson*, was one

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*Mapp v. Ohio*, 367 U. S. 643 (1961) (the exclusionary rule regarding the inadmissibility of evidence obtained in violation of the Fourth Amendment applies to the States), overruling *Wolf v. Colorado*, 338 U. S. 25 (1949); *Smith v. Allwright*, 321 U. S. 649 (1944) (racial restrictions on the right to vote in primary elections violates the Equal Protection Clause of the Fourteenth Amendment), overruling *Grovey v. Townsend*, 295 U. S. 45 (1935); *United States v. Darby*, 312 U. S. 100 (1941) (congressional power to regulate employment conditions under the Commerce Clause), overruling *Hammer v. Dagenhart*, 247 U. S. 251 (1918); *Erie R. Co. v. Tompkins*, 304 U. S. 64 (1938) (Congress does not have the power to declare substantive rules of common law; a federal court sitting in diversity jurisdiction must apply the substantive state law), overruling *Swift v. Tyson*, 16 Pet. 1 (1842).

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such decision. It betrayed our commitment to “equality before the law.” 163 U. S., at 562 (Harlan, J., dissenting). It was “egregiously wrong” on the day it was decided, see *Ramos*, 590 U. S., at \_\_\_ (opinion of KAVANAUGH, J.) (slip op., at 7), and as the Solicitor General agreed at oral argument, it should have been overruled at the earliest opportunity, see Tr. of Oral Arg. 92–93.

*Roe* was also egregiously wrong and deeply damaging. For reasons already explained, *Roe*'s constitutional analysis was far outside the bounds of any reasonable interpretation of the various constitutional provisions to which it vaguely pointed.

*Roe* was on a collision course with the Constitution from the day it was decided, *Casey* perpetuated its errors, and those errors do not concern some arcane corner of the law of little importance to the American people. Rather, wielding nothing but “raw judicial power,” *Roe*, 410 U. S., at 222 (White, J., dissenting), the Court usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people. *Casey* described itself as calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. Those on the losing side—those who sought to advance the State's interest in fetal life—could no longer seek to persuade their elected representatives to adopt policies consistent with their views. The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect from *Roe*. “*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.” *Casey*, 505 U. S., at 995–996 (opinion of Scalia, J.). Together, *Roe* and *Casey* represent an error that cannot be allowed to stand.

As the Court's landmark decision in *West Coast Hotel* illustrates, the Court has previously overruled decisions that

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wrongly removed an issue from the people and the democratic process. As Justice White later explained, “decisions that find in the Constitution principles or values that cannot fairly be read into that document usurp the people’s authority, for such decisions represent choices that the people have never made and that they cannot disavow through corrective legislation. For this reason, it is essential that this Court maintain the power to restore authority to its proper possessors by correcting constitutional decisions that, on reconsideration, are found to be mistaken.” *Thornburgh*, 476 U. S., at 787 (dissenting opinion).

## B

*The quality of the reasoning.* Under our precedents, the quality of the reasoning in a prior case has an important bearing on whether it should be reconsidered. See *Janus*, 585 U. S., at \_\_\_\_ (slip op., at 38); *Ramos*, 590 U. S., at \_\_\_\_–\_\_\_\_ (opinion of KAVANAUGH, J.) (slip op., at 7–8). In Part II, *supra*, we explained why *Roe* was incorrectly decided, but that decision was more than just wrong. It stood on exceptionally weak grounds.

*Roe* found that the Constitution implicitly conferred a right to obtain an abortion, but it failed to ground its decision in text, history, or precedent. It relied on an erroneous historical narrative; it devoted great attention to and presumably relied on matters that have no bearing on the meaning of the Constitution; it disregarded the fundamental difference between the precedents on which it relied and the question before the Court; it concocted an elaborate set of rules, with different restrictions for each trimester of pregnancy, but it did not explain how this veritable code could be teased out of anything in the Constitution, the history of abortion laws, prior precedent, or any other cited source; and its most important rule (that States cannot protect fetal life prior to “viability”) was never raised by any

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party and has never been plausibly explained. *Roe's* reasoning quickly drew scathing scholarly criticism, even from supporters of broad access to abortion.

The *Casey* plurality, while reaffirming *Roe's* central holding, pointedly refrained from endorsing most of its reasoning. It revised the textual basis for the abortion right, silently abandoned *Roe's* erroneous historical narrative, and jettisoned the trimester framework. But it replaced that scheme with an arbitrary "undue burden" test and relied on an exceptional version of *stare decisis* that, as explained below, this Court had never before applied and has never invoked since.

1

a

The weaknesses in *Roe's* reasoning are well-known. Without any grounding in the constitutional text, history, or precedent, it imposed on the entire country a detailed set of rules much like those that one might expect to find in a statute or regulation. See 410 U. S., at 163–164. Dividing pregnancy into three trimesters, the Court imposed special rules for each. During the first trimester, the Court announced, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." *Id.*, at 164. After that point, a State's interest in regulating abortion for the sake of a woman's health became compelling, and accordingly, a State could "regulate the abortion procedure in ways that are reasonably related to maternal health." *Ibid.* Finally, in "the stage subsequent to viability," which in 1973 roughly coincided with the beginning of the third trimester, the State's interest in "the potentiality of human life" became compelling, and therefore a State could "regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." *Id.*, at 164–165.

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This elaborate scheme was the Court’s own brainchild. Neither party advocated the trimester framework; nor did either party or any *amicus* argue that “viability” should mark the point at which the scope of the abortion right and a State’s regulatory authority should be substantially transformed. See Brief for Appellant and Brief for Appellee in *Roe v. Wade*, O. T. 1972, No. 70–18; see also C. Forsythe, *Abuse of Discretion: The Inside Story of Roe v. Wade* 127, 141 (2012).

## b

Not only did this scheme resemble the work of a legislature, but the Court made little effort to explain how these rules could be deduced from any of the sources on which constitutional decisions are usually based. We have already discussed *Roe*’s treatment of constitutional text, and the opinion failed to show that history, precedent, or any other cited source supported its scheme.

*Roe* featured a lengthy survey of history, but much of its discussion was irrelevant, and the Court made no effort to explain why it was included. For example, multiple paragraphs were devoted to an account of the views and practices of ancient civilizations where infanticide was widely accepted. See 410 U. S., at 130–132 (discussing ancient Greek and Roman practices).<sup>49</sup> When it came to the most important historical fact—how the States regulated abortion when the Fourteenth Amendment was adopted—the Court said almost nothing. It allowed that States had tightened their abortion laws “in the middle and late 19th century,” *id.*, at 139, but it implied that these laws might have

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<sup>49</sup>See, e.g., C. Patterson, “Not Worth the Rearing”: The Causes of Infant Exposure in Ancient Greece, 115 *Transactions Am. Philosophical Assn.* 103, 111–123 (1985); A. Cameron, *The Exposure of Children and Greek Ethics*, 46 *Classical Rev.* 105–108 (1932); H. Bennett, *The Exposure of Infants in Ancient Rome*, 18 *Classical J.* 341–351 (1923); W. Harris, *Child-Exposure in the Roman Empire*, 84 *J. Roman Studies* 1 (1994).

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been enacted not to protect fetal life but to further “a Victorian social concern” about “illicit sexual conduct,” *id.*, at 148.

*Roe*'s failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Relying on two discredited articles by an abortion advocate, the Court erroneously suggested—contrary to Bracton, Coke, Hale, Blackstone, and a wealth of other authority—that the common law had probably never really treated post-quickening abortion as a crime. See *id.*, at 136 (“[I]t now appear[s] doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus”). This erroneous understanding appears to have played an important part in the Court's thinking because the opinion cited “the lenity of the common law” as one of the four factors that informed its decision. *Id.*, at 165.

After surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee. This included a lengthy account of the “position of the American Medical Association” and “[t]he position of the American Public Health Association,” as well as the vote by the American Bar Association's House of Delegates in February 1972 on proposed abortion legislation. *Id.*, at 141, 144, 146 (emphasis deleted). Also noted were a British judicial decision handed down in 1939 and a new British abortion law enacted in 1967. *Id.*, at 137–138. The Court did not explain why these sources shed light on the meaning of the Constitution, and not one of them adopted or advocated anything like the scheme that *Roe* imposed on the country.

Finally, after all this, the Court turned to precedent. Citing a broad array of cases, the Court found support for a constitutional “right of personal privacy,” *id.*, at 152, but it conflated two very different meanings of the term: the right



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to shield information from disclosure and the right to make and implement important personal decisions without governmental interference. See *Whalen v. Roe*, 429 U. S. 589, 599–600 (1977). Only the cases involving this second sense of the term could have any possible relevance to the abortion issue, and some of the cases in that category involved personal decisions that were obviously very, very far afield. See *Pierce*, 268 U. S. 510 (right to send children to religious school); *Meyer*, 262 U. S. 390 (right to have children receive German language instruction).

What remained was a handful of cases having something to do with marriage, *Loving*, 388 U. S. 1 (right to marry a person of a different race), or procreation, *Skinner*, 316 U. S. 535 (right not to be sterilized); *Griswold*, 381 U. S. 479 (right of married persons to obtain contraceptives); *Eisenstadt*, 405 U. S. 438 (same, for unmarried persons). But none of these decisions involved what is distinctive about abortion: its effect on what *Roe* termed “potential life.”

When the Court summarized the basis for the scheme it imposed on the country, it asserted that its rules were “consistent with” the following: (1) “the relative weights of the respective interests involved,” (2) “the lessons and examples of medical and legal history,” (3) “the lenity of the common law,” and (4) “the demands of the profound problems of the present day.” *Roe*, 410 U. S., at 165. Put aside the second and third factors, which were based on the Court’s flawed account of history, and what remains are precisely the sort of considerations that legislative bodies often take into account when they draw lines that accommodate competing interests. The scheme *Roe* produced *looked* like legislation, and the Court provided the sort of explanation that might be expected from a legislative body.

## c

What *Roe* did not provide was any cogent justification for the lines it drew. Why, for example, does a State have no

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authority to regulate first trimester abortions for the purpose of protecting a woman's health? The Court's only explanation was that mortality rates for abortion at that stage were lower than the mortality rates for childbirth. *Id.*, at 163. But the Court did not explain why mortality rates were the only factor that a State could legitimately consider. Many health and safety regulations aim to avoid adverse health consequences short of death. And the Court did not explain why it departed from the normal rule that courts defer to the judgments of legislatures "in areas fraught with medical and scientific uncertainties." *Marshall v. United States*, 414 U. S. 417, 427 (1974).

An even more glaring deficiency was *Roe's* failure to justify the critical distinction it drew between pre- and post-viability abortions. Here is the Court's entire explanation:

"With respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the womb." 410 U. S., at 163.

As Professor Laurence Tribe has written, "[c]learly, this mistakes 'a definition for a syllogism.'" Tribe 4 (quoting Ely 924). The definition of a "viable" fetus is one that is capable of surviving outside the womb, but why is this the point at which the State's interest becomes compelling? If, as *Roe* held, a State's interest in protecting prenatal life is compelling "after viability," 410 U. S., at 163, why isn't that interest "equally compelling before viability"? *Webster v. Reproductive Health Services*, 492 U. S. 490, 519 (1989) (plurality opinion) (quoting *Thornburgh*, 476 U. S., at 795 (White, J., dissenting)). *Roe* did not say, and no explanation is apparent.

This arbitrary line has not found much support among philosophers and ethicists who have attempted to justify a right to abortion. Some have argued that a fetus should not

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be entitled to legal protection until it acquires the characteristics that they regard as defining what it means to be a “person.” Among the characteristics that have been offered as essential attributes of “personhood” are sentience, self-awareness, the ability to reason, or some combination thereof.<sup>50</sup> By this logic, it would be an open question whether even born individuals, including young children or those afflicted with certain developmental or medical conditions, merit protection as “persons.” But even if one takes the view that “personhood” begins when a certain attribute or combination of attributes is acquired, it is very hard to see why viability should mark the point where “personhood” begins.

The most obvious problem with any such argument is that viability is heavily dependent on factors that have nothing to do with the characteristics of a fetus. One is the

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<sup>50</sup>See, e.g., P. Singer, *Rethinking Life & Death* 218 (1994) (defining a person as “a being with awareness of her or his own existence over time, and the capacity to have wants and plans for the future”); B. Steinbock, *Life Before Birth: The Moral and Legal Status of Embryos and Fetuses* 9–13 (1992) (arguing that “the possession of interests is both necessary and sufficient for moral status” and that the “capacity for conscious awareness is a necessary condition for the possession of interests” (emphasis deleted)); M. Warren, *On the Moral and Legal Status of Abortion*, 57 *The Monist* 1, 5 (1973) (arguing that, to qualify as a person, a being must have at least one of five traits that are “central to the concept of personhood”: (1) “consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain”; (2) “reasoning (the developed capacity to solve new and relatively complex problems)”; (3) “self-motivated activity (activity which is relatively independent of either genetic or direct external control)”; (4) “the capacity to communicate, by whatever means, messages of an indefinite variety of types”; and (5) “the presence of self-concepts, and self-awareness, either individual or racial, or both” (emphasis deleted)); M. Tooley, *Abortion & Infanticide*, 2 *Philosophy & Pub. Affairs* 37, 49 (Autumn 1972) (arguing that “having a right to life presupposes that one is capable of desiring to continue existing as a subject of experiences and other mental states”).

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state of neonatal care at a particular point in time. Due to the development of new equipment and improved practices, the viability line has changed over the years. In the 19th century, a fetus may not have been viable until the 32d or 33d week of pregnancy or even later.<sup>51</sup> When *Roe* was decided, viability was gauged at roughly 28 weeks. See 410 U. S., at 160. Today, respondents draw the line at 23 or 24 weeks. Brief for Respondents 8. So, according to *Roe*'s logic, States now have a compelling interest in protecting a fetus with a gestational age of, say, 26 weeks, but in 1973 States did not have an interest in protecting an identical fetus. How can that be?

Viability also depends on the "quality of the available medical facilities." *Colautti v. Franklin*, 439 U. S. 379, 396 (1979). Thus, a 24-week-old fetus may be viable if a woman gives birth in a city with hospitals that provide advanced care for very premature babies, but if the woman travels to a remote area far from any such hospital, the fetus may no longer be viable. On what ground could the constitutional status of a fetus depend on the pregnant woman's location? And if viability is meant to mark a line having universal moral significance, can it be that a fetus that is viable in a big city in the United States has a privileged moral status

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<sup>51</sup> See W. Lusk, *Science and the Art of Midwifery* 74–75 (1882) (explaining that "[w]ith care, the life of a child born within [the eighth month of pregnancy] may be preserved"); *id.*, at 326 ("Where the choice lies with the physician, the provocation of labor is usually deferred until the thirty-third or thirty-fourth week"); J. Beck, *Researches in Medicine and Medical Jurisprudence* 68 (2d ed. 1835) ("Although children born before the completion of the seventh month have occasionally survived, and been reared, yet in a medico-legal point of view, no child ought to be considered as capable of sustaining an independent existence until the seventh month has been fully completed"); see also J. Baker, *The Incubator and the Medical Discovery of the Premature Infant*, *J. Perinatology* 322 (2000) (explaining that, in the 19th century, infants born at seven to eight months' gestation were unlikely to survive beyond "the first days of life").

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not enjoyed by an identical fetus in a remote area of a poor country?

In addition, as the Court once explained, viability is not really a hard-and-fast line. *Ibid.* A physician determining a particular fetus's odds of surviving outside the womb must consider "a number of variables," including "gestational age," "fetal weight," a woman's "general health and nutrition," the "quality of the available medical facilities," and other factors. *Id.*, at 395–396. It is thus "only with difficulty" that a physician can estimate the "probability" of a particular fetus's survival. *Id.*, at 396. And even if each fetus's probability of survival could be ascertained with certainty, settling on a "probabilit[y] of survival" that should count as "viability" is another matter. *Ibid.* Is a fetus viable with a 10 percent chance of survival? 25 percent? 50 percent? Can such a judgment be made by a State? And can a State specify a gestational age limit that applies in all cases? Or must these difficult questions be left entirely to the individual "attending physician on the particular facts of the case before him"? *Id.*, at 388.

The viability line, which *Casey* termed *Roe's* central rule, makes no sense, and it is telling that other countries almost uniformly eschew such a line.<sup>52</sup> The Court thus asserted raw judicial power to impose, as a matter of constitutional law, a uniform viability rule that allowed the States less freedom to regulate abortion than the majority of western democracies enjoy.

## d

All in all, *Roe's* reasoning was exceedingly weak, and academic commentators, including those who agreed with the

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<sup>52</sup>According to the Center for Reproductive Rights, only the United States and the Netherlands use viability as a gestational limit on the availability of abortion on-request. See Center for Reproductive Rights, The World's Abortion Laws (Feb. 23, 2021), <https://reproductiverights.org/maps/worlds-abortion-laws>.

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decision as a matter of policy, were unsparing in their criticism. John Hart Ely famously wrote that *Roe* was “not constitutional law and g[ave] almost no sense of an obligation to try to be.” Ely 947 (emphasis deleted). Archibald Cox, who served as Solicitor General under President Kennedy, commented that *Roe* “read[s] like a set of hospital rules and regulations” that “[n]either historian, layman, nor lawyer will be persuaded . . . are part of . . . the Constitution.” *The Role of the Supreme Court in American Government* 113–114 (1976). Laurence Tribe wrote that “even if there is a need to divide pregnancy into several segments with lines that clearly identify the limits of governmental power, ‘interest-balancing’ of the form the Court pursues fails to justify any of the lines actually drawn.” Tribe 4–5. Mark Tushnet termed *Roe* a “totally unreasoned judicial opinion.” *Red, White, and Blue: A Critical Analysis of Constitutional Law* 54 (1988). See also P. Bobbitt, *Constitutional Fate* 157 (1982); A. Amar, *Foreword: The Document and the Doctrine*, 114 *Harv. L. Rev.* 26, 110 (2000).

Despite *Roe*'s weaknesses, its reach was steadily extended in the years that followed. The Court struck down laws requiring that second-trimester abortions be performed only in hospitals, *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U. S. 416, 433–439 (1983); that minors obtain parental consent, *Planned Parenthood of Central Mo. v. Danforth*, 428 U. S. 52, 74 (1976); that women give written consent after being informed of the status of the developing prenatal life and the risks of abortion, *Akron*, 462 U. S., at 442–445; that women wait 24 hours for an abortion, *id.*, at 449–451; that a physician determine viability in a particular manner, *Colautti*, 439 U. S., at 390–397; that a physician performing a post-viability abortion use the technique most likely to preserve the life of the fetus, *id.*, at 397–401; and that fetal remains be treated in a humane and sanitary manner, *Akron*, 462 U. S., at 451–452.

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Justice White complained that the Court was engaging in “unrestrained imposition of its own extraconstitutional value preferences.” *Thornburgh*, 476 U. S., at 794 (dissenting opinion). And the United States as *amicus curiae* asked the Court to overrule *Roe* five times in the decade before *Casey*, see 505 U. S., at 844 (joint opinion), and then asked the Court to overrule it once more in *Casey* itself.

## 2

When *Casey* revisited *Roe* almost 20 years later, very little of *Roe*’s reasoning was defended or preserved. The Court abandoned any reliance on a privacy right and instead grounded the abortion right entirely on the Fourteenth Amendment’s Due Process Clause. 505 U. S., at 846. The Court did not reaffirm *Roe*’s erroneous account of abortion history. In fact, none of the Justices in the majority said anything about the history of the abortion right. And as for precedent, the Court relied on essentially the same body of cases that *Roe* had cited. Thus, with respect to the standard grounds for constitutional decisionmaking—text, history, and precedent—*Casey* did not attempt to bolster *Roe*’s reasoning.

The Court also made no real effort to remedy one of the greatest weaknesses in *Roe*’s analysis: its much-criticized discussion of viability. The Court retained what it called *Roe*’s “central holding”—that a State may not regulate pre-viability abortions for the purpose of protecting fetal life—but it provided no principled defense of the viability line. 505 U. S., at 860, 870–871. Instead, it merely rephrased what *Roe* had said, stating that viability marked the point at which “the independent existence of a second life can in reason and fairness be the object of state protection that now overrides the rights of the woman.” 505 U. S., at 870. Why “reason and fairness” demanded that the line be drawn at viability the Court did not explain. And the Justices who authored the controlling opinion conspicuously

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failed to say that they agreed with the viability rule; instead, they candidly acknowledged “the reservations [some] of us may have in reaffirming [that] holding of *Roe*.” *Id.*, at 853.

The controlling opinion criticized and rejected *Roe*'s trimester scheme, 505 U. S., at 872, and substituted a new “undue burden” test, but the basis for this test was obscure. And as we will explain, the test is full of ambiguities and is difficult to apply.

*Casey*, in short, either refused to reaffirm or rejected important aspects of *Roe*'s analysis, failed to remedy glaring deficiencies in *Roe*'s reasoning, endorsed what it termed *Roe*'s central holding while suggesting that a majority might not have thought it was correct, provided no new support for the abortion right other than *Roe*'s status as precedent, and imposed a new and problematic test with no firm grounding in constitutional text, history, or precedent.

As discussed below, *Casey* also deployed a novel version of the doctrine of *stare decisis*. See *infra*, at 64–69. This new doctrine did not account for the profound wrongness of the decision in *Roe*, and placed great weight on an intangible form of reliance with little if any basis in prior case law. *Stare decisis* does not command the preservation of such a decision.

## C

*Workability*. Our precedents counsel that another important consideration in deciding whether a precedent should be overruled is whether the rule it imposes is workable—that is, whether it can be understood and applied in a consistent and predictable manner. *Montejo v. Louisiana*, 556 U. S. 778, 792 (2009); *Patterson v. McLean Credit Union*, 491 U. S. 164, 173 (1989); *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U. S. 271, 283–284 (1988). *Casey*'s “undue burden” test has scored poorly on the workability scale.



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## 1

Problems begin with the very concept of an “undue burden.” As Justice Scalia noted in his *Casey* partial dissent, determining whether a burden is “due” or “undue” is “inherently standardless.” 505 U. S., at 992; see also *June Medical Services L. L. C. v. Russo*, 591 U. S. \_\_\_\_, \_\_\_\_ (2020) (GORSUCH, J., dissenting) (slip op., at 17) (“[W]hether a burden is deemed undue depends heavily on which factors the judge considers and how much weight he accords each of them” (internal quotation marks and alterations omitted)).

The *Casey* plurality tried to put meaning into the “undue burden” test by setting out three subsidiary rules, but these rules created their own problems. The first rule is that “a provision of law is invalid, if its purpose or effect is to place a *substantial obstacle* in the path of a woman seeking an abortion before the fetus attains viability.” 505 U. S., at 878 (emphasis added); see also *id.*, at 877. But whether a particular obstacle qualifies as “substantial” is often open to reasonable debate. In the sense relevant here, “substantial” means “of ample or considerable amount, quantity, or size.” Random House Webster’s Unabridged Dictionary 1897 (2d ed. 2001). Huge burdens are plainly “substantial,” and trivial ones are not, but in between these extremes, there is a wide gray area.

This ambiguity is a problem, and the second rule, which applies at all stages of a pregnancy, muddies things further. It states that measures designed “to ensure that the woman’s choice is informed” are constitutional so long as they do not impose “an undue burden on the right.” *Casey*, 505 U. S., at 878. To the extent that this rule applies to pre-viability abortions, it overlaps with the first rule and appears to impose a different standard. Consider a law that imposes an insubstantial obstacle but serves little purpose. As applied to a pre-viability abortion, would such a regulation be constitutional on the ground that it does not impose a “*substantial obstacle*”? Or would it be unconstitutional on

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the ground that it creates an “*undue* burden” because the burden it imposes, though slight, outweighs its negligible benefits? *Casey* does not say, and this ambiguity would lead to confusion down the line. Compare *June Medical*, 591 U. S., at \_\_\_–\_\_\_ (plurality opinion) (slip op., at 1–2), with *id.*, at \_\_\_–\_\_\_ (ROBERTS, C. J., concurring) (slip op., at 5–6).

The third rule complicates the picture even more. Under that rule, “[u]nnecessary health regulations that have the purpose or effect of presenting a *substantial* obstacle to a woman seeking an abortion impose an *undue* burden on the right.” *Casey*, 505 U. S., at 878 (emphasis added). This rule contains no fewer than three vague terms. It includes the two already discussed—“undue burden” and “substantial obstacle”—even though they are inconsistent. And it adds a third ambiguous term when it refers to “unnecessary health regulations.” The term “necessary” has a range of meanings—from “essential” to merely “useful.” See Black’s Law Dictionary 928 (5th ed. 1979); American Heritage Dictionary of the English Language 877 (1971). *Casey* did not explain the sense in which the term is used in this rule.

In addition to these problems, one more applies to all three rules. They all call on courts to examine a law’s effect on women, but a regulation may have a very different impact on different women for a variety of reasons, including their places of residence, financial resources, family situations, work and personal obligations, knowledge about fetal development and abortion, psychological and emotional disposition and condition, and the firmness of their desire to obtain abortions. In order to determine whether a regulation presents a substantial obstacle to women, a court needs to know which set of women it should have in mind and how many of the women in this set must find that an obstacle is “substantial.”

*Casey* provided no clear answer to these questions. It said that a regulation is unconstitutional if it imposes a

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substantial obstacle “in a large fraction of cases in which [it] is relevant,” 505 U. S., at 895, but there is obviously no clear line between a fraction that is “large” and one that is not. Nor is it clear what the Court meant by “cases in which” a regulation is “relevant.” These ambiguities have caused confusion and disagreement. Compare *Whole Woman’s Health v. Hellerstedt*, 579 U. S. 582, 627–628 (2016), with *id.*, at 666–667, and n. 11 (ALITO, J., dissenting).

## 2

The difficulty of applying *Casey*’s new rules surfaced in that very case. The controlling opinion found that Pennsylvania’s 24-hour waiting period requirement and its informed-consent provision did not impose “undue burden[s],” *Casey*, 505 U. S., at 881–887, but Justice Stevens, applying the same test, reached the opposite result, *id.*, at 920–922 (opinion concurring in part and dissenting in part). That did not bode well, and then-Chief Justice Rehnquist aptly observed that “the undue burden standard presents nothing more workable than the trimester framework.” *Id.*, at 964–966 (dissenting opinion).

The ambiguity of the “undue burden” test also produced disagreement in later cases. In *Whole Woman’s Health*, the Court adopted the cost-benefit interpretation of the test, stating that “[t]he rule announced in *Casey* . . . requires that courts consider the burdens a law imposes on abortion access *together with the benefits those laws confer*.” 579 U. S., at 607 (emphasis added). But five years later, a majority of the Justices rejected that interpretation. See *June Medical*, 591 U. S. \_\_\_\_\_. Four Justices reaffirmed *Whole Woman’s Health*’s instruction to “weigh” a law’s “benefits” against “the burdens it imposes on abortion access.” 591 U. S., at \_\_\_\_ (plurality opinion) (slip op., at 2) (internal quotation marks omitted). But THE CHIEF JUSTICE—who cast

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the deciding vote—argued that “[n]othing about *Casey* suggested that a weighing of costs and benefits of an abortion regulation was a job for the courts.” *Id.*, at \_\_\_ (opinion concurring in judgment) (slip op., at 6). And the four Justices in dissent rejected the plurality’s interpretation of *Casey*. See 591 U. S., at \_\_\_ (opinion of ALITO, J., joined in relevant part by THOMAS, GORSUCH, and KAVANAUGH, JJ.) (slip op., at 4); *id.*, at \_\_\_–\_\_\_ (opinion of GORSUCH, J.) (slip op., at 15–18); *id.*, at \_\_\_–\_\_\_ (opinion of KAVANAUGH, J.) (slip op., at 1–2) (“[F]ive Members of the Court reject the *Whole Woman’s Health* cost-benefit standard”).

This Court’s experience applying *Casey* has confirmed Chief Justice Rehnquist’s prescient diagnosis that the undue-burden standard was “not built to last.” *Casey*, 505 U. S., at 965 (opinion concurring in judgment in part and dissenting in part).

## 3

The experience of the Courts of Appeals provides further evidence that *Casey*’s “line between” permissible and unconstitutional restrictions “has proved to be impossible to draw with precision.” *Janus*, 585 U. S., at \_\_\_ (slip op., at 38).

*Casey* has generated a long list of Circuit conflicts. Most recently, the Courts of Appeals have disagreed about whether the balancing test from *Whole Woman’s Health* correctly states the undue-burden framework.<sup>53</sup> They have disagreed on the legality of parental notification rules.<sup>54</sup>

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<sup>53</sup> Compare *Whole Woman’s Health v. Paxton*, 10 F. 4th 430, 440 (CA5 2021), *EMW Women’s Surgical Center, P.S.C. v. Friedlander*, 978 F. 3d 418, 437 (CA6 2020), and *Hopkins v. Jegley*, 968 F. 3d 912, 915 (CA8 2020) (*per curiam*), with *Planned Parenthood of Ind. & Ky., Inc. v. Box*, 991 F. 3d 740, 751–752 (CA7 2021).

<sup>54</sup> Compare *Planned Parenthood of Blue Ridge v. Camblos*, 155 F. 3d 352, 367 (CA4 1998), with *Planned Parenthood of Ind. & Ky., Inc. v. Ad-*

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They have disagreed about bans on certain dilation and evacuation procedures.<sup>55</sup> They have disagreed about when an increase in the time needed to reach a clinic constitutes an undue burden.<sup>56</sup> And they have disagreed on whether a State may regulate abortions performed because of the fetus's race, sex, or disability.<sup>57</sup>

The Courts of Appeals have experienced particular difficulty in applying the large-fraction-of-relevant-cases test. They have criticized the assignment while reaching unpredictable results.<sup>58</sup> And they have candidly outlined *Casey*'s many other problems.<sup>59</sup>

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*ams*, 937 F. 3d 973, 985–990 (CA7 2019), cert. granted, judgment vacated, 591 U. S. \_\_\_\_ (2020), and *Planned Parenthood, Sioux Falls Clinic v. Miller*, 63 F. 3d 1452, 1460 (CA8 1995).

<sup>55</sup> Compare *Whole Woman's Health v. Paxton*, 10 F. 4th, at 435–436, with *West Ala. Women's Center v. Williamson*, 900 F. 3d 1310, 1319, 1327 (CA11 2018), and *EMW Women's Surgical Center, P.S.C. v. Friedlander*, 960 F. 3d 785, 806–808 (CA6 2020).

<sup>56</sup> Compare *Tucson Woman's Clinic v. Eden*, 379 F. 3d 531, 541 (CA9 2004), with *Women's Medical Professional Corp. v. Baird*, 438 F. 3d 595, 605 (CA6 2006), and *Greenville Women's Clinic v. Bryant*, 222 F. 3d 157, 171–172 (CA4 2000).

<sup>57</sup> Compare *Preterm-Cleveland v. McCloud*, 994 F. 3d 512, 520–535 (CA6 2021), with *Little Rock Family Planning Servs. v. Rutledge*, 984 F. 3d 682, 688–690 (CA8 2021).

<sup>58</sup> See, e.g., *Bristol Regional Women's Center, P.C. v. Slatery*, 7 F. 4th 478, 485 (CA6 2021); *Reproductive Health Servs. v. Strange*, 3 F. 4th 1240, 1269 (CA11 2021) (*per curiam*); *June Medical Servs., L.L.C. v. Gee*, 905 F. 3d 787, 814 (CA5 2020), rev'd, 591 U. S. \_\_\_\_; *Preterm-Cleveland*, 994 F. 3d, at 534; *Planned Parenthood of Ark. & Eastern Okla. v. Jegley*, 864 F. 3d 953, 958–960 (CA8 2017); *McCormack v. Hertzog*, 788 F. 3d 1017, 1029–1030 (CA9 2015); compare *A Womans Choice-East Side Womens Clinic v. Newman*, 305 F. 3d 684, 699 (CA7 2002) (Coffey, J., concurring), with *id.*, at 708 (Wood, J., dissenting).

<sup>59</sup> See, e.g., *Memphis Center for Reproductive Health v. Slatery*, 14 F. 4th 409, 451 (CA6 2021) (Thapar, J., concurring in judgment in part and dissenting in part); *Preterm-Cleveland*, 994 F. 3d, at 524; *Planned Parenthood of Ind. & Ky., Inc. v. Commissioner of Ind. State Dept. of*

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*Casey's* “undue burden” test has proved to be unworkable. “[P]lucked from nowhere,” 505 U. S., at 965 (opinion of Rehnquist, C. J.), it “seems calculated to perpetuate give-it-a-try litigation” before judges assigned an unwieldy and inappropriate task. *Lehnert v. Ferris Faculty Assn.*, 500 U. S. 507, 551 (1991) (Scalia, J., concurring in judgment in part and dissenting in part). Continued adherence to that standard would undermine, not advance, the “evenhanded, predictable, and consistent development of legal principles.” *Payne*, 501 U. S., at 827.

## D

*Effect on other areas of law.* *Roe* and *Casey* have led to the distortion of many important but unrelated legal doctrines, and that effect provides further support for overruling those decisions. See *Ramos*, 590 U. S., at \_\_\_ (opinion of KAVANAUGH, J.) (slip op., at 8); *Janus*, 585 U. S., at \_\_\_ (slip op., at 34).

Members of this Court have repeatedly lamented that “no legal rule or doctrine is safe from ad hoc nullification by this Court when an occasion for its application arises in a case involving state regulation of abortion.” *Thornburgh*, 476 U. S., at 814 (O’Connor, J., dissenting); see *Madsen v. Women’s Health Center, Inc.*, 512 U. S. 753, 785 (1994) (Scalia, J., concurring in judgment in part and dissenting

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*Health*, 888 F. 3d 300, 313 (CA7 2018) (Manion, J., concurring in judgment in part and dissenting in part); *Planned Parenthood of Ind. & Ky., Inc. v. Box*, 949 F. 3d 997, 999 (CA7 2019) (Easterbrook, J., concurring in denial of reh’g en banc) (“How much burden is ‘undue’ is a matter of judgment, which depends on what the burden would be . . . and whether that burden is excessive (a matter of weighing costs against benefits, which one judge is apt to do differently from another, and which judges as a group are apt to do differently from state legislators)”); *National Abortion Federation v. Gonzales*, 437 F. 3d 278, 290–296 (CA2 2006) (Walker, C. J., concurring); *Planned Parenthood of Rocky Mountains Servs. Corp. v. Owens*, 287 F. 3d 910, 931 (CA10 2002) (Baldock, J., dissenting).

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in part); *Whole Woman's Health*, 579 U. S., at 631–633 (THOMAS, J., dissenting); *id.*, at 645–666, 678–684 (ALITO, J., dissenting); *June Medical*, 591 U. S., at \_\_\_\_–\_\_\_\_ (GORSUCH, J., dissenting) (slip op., at 1–15).

The Court's abortion cases have diluted the strict standard for facial constitutional challenges.<sup>60</sup> They have ignored the Court's third-party standing doctrine.<sup>61</sup> They have disregarded standard *res judicata* principles.<sup>62</sup> They have flouted the ordinary rules on the severability of unconstitutional provisions,<sup>63</sup> as well as the rule that statutes should be read where possible to avoid unconstitutionality.<sup>64</sup> And they have distorted First Amendment doctrines.<sup>65</sup>

When vindicating a doctrinal innovation requires courts to engineer exceptions to longstanding background rules, the doctrine “has failed to deliver the ‘principled and intelligible’ development of the law that *stare decisis* purports to secure.” *Id.*, at \_\_\_\_ (THOMAS, J., dissenting) (slip op., at 19) (quoting *Vasquez v. Hillery*, 474 U. S. 254, 265 (1986)).

## E

*Reliance interests.* We last consider whether overruling *Roe* and *Casey* will upend substantial reliance interests.

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<sup>60</sup> Compare *United States v. Salerno*, 481 U. S. 739, 745 (1987), with *Casey*, 505 U. S., at 895; see also *supra*, at 56–59.

<sup>61</sup> Compare *Warth v. Seldin*, 422 U. S. 490, 499 (1975), and *Elk Grove Unified School Dist. v. Newdow*, 542 U. S. 1, 15, 17–18 (2004), with *June Medical*, 591 U. S., at \_\_\_\_ (ALITO, J., dissenting) (slip op., at 28), *id.*, at \_\_\_\_–\_\_\_\_ (GORSUCH, J., dissenting) (slip op., at 6–7) (collecting cases), and *Whole Woman's Health*, 579 U. S., at 632, n. 1 (THOMAS, J., dissenting).

<sup>62</sup> Compare *id.*, at 598–606 (majority opinion), with *id.*, at 645–666 (ALITO, J., dissenting).

<sup>63</sup> Compare *id.*, at 623–626 (majority opinion), with *id.*, at 644–645 (ALITO, J., dissenting).

<sup>64</sup> See *Stenberg v. Carhart*, 530 U. S. 914, 977–978 (2000) (Kennedy, J., dissenting); *id.*, at 996–997 (THOMAS, J., dissenting).

<sup>65</sup> See *Hill v. Colorado*, 530 U. S. 703, 741–742 (2000) (Scalia, J., dissenting); *id.*, at 765 (Kennedy, J., dissenting).

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See *Ramos*, 590 U. S., at \_\_\_ (opinion of KAVANAUGH, J.) (slip op., at 15); *Janus*, 585 U. S., at \_\_\_–\_\_\_ (slip op., at 34–35).

## 1

Traditional reliance interests arise “where advance planning of great precision is most obviously a necessity.” *Casey*, 505 U. S., at 856 (joint opinion); see also *Payne*, 501 U. S., at 828. In *Casey*, the controlling opinion conceded that those traditional reliance interests were not implicated because getting an abortion is generally “unplanned activity,” and “reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions.” 505 U. S., at 856. For these reasons, we agree with the *Casey* plurality that conventional, concrete reliance interests are not present here.

## 2

Unable to find reliance in the conventional sense, the controlling opinion in *Casey* perceived a more intangible form of reliance. It wrote that “people [had] 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” and that “[t]he 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.” *Ibid.* But this Court is ill-equipped to assess “generalized assertions about the national psyche.” *Id.*, at 957 (opinion of Rehnquist, C. J.). *Casey*’s notion of reliance thus finds little support in our cases, which instead emphasize very concrete reliance interests, like those that develop in “cases involving property and contract rights.” *Payne*, 501 U. S., at 828.

When a concrete reliance interest is asserted, courts are equipped to evaluate the claim, but assessing the novel and



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intangible form of reliance endorsed by the *Casey* plurality is another matter. That form of reliance depends on an empirical question that is hard for anyone—and in particular, for a court—to assess, namely, the effect of the abortion right on society and in particular on the lives of women. The contending sides in this case make impassioned and conflicting arguments about the effects of the abortion right on the lives of women. Compare Brief for Petitioners 34–36; Brief for Women Scholars et al. as *Amici Curiae* 13–20, 29–41, with Brief for Respondents 36–41; Brief for National Women’s Law Center et al. as *Amici Curiae* 15–32. The contending sides also make conflicting arguments about the status of the fetus. This Court has neither the authority nor the expertise to adjudicate those disputes, and the *Casey* plurality’s speculations and weighing of the relative importance of the fetus and mother represent a departure from the “original constitutional proposition” that “courts do not substitute their social and economic beliefs for the judgment of legislative bodies.” *Ferguson v. Skrupa*, 372 U. S. 726, 729–730 (1963).

Our decision returns the issue of abortion to those legislative bodies, and it allows women on both sides of the abortion issue to seek to affect the legislative process by influencing public opinion, lobbying legislators, voting, and running for office. Women are not without electoral or political power. It is noteworthy that the percentage of women who register to vote and cast ballots is consistently higher than the percentage of men who do so.<sup>66</sup> In the last election in November 2020, women, who make up around 51.5 percent of the population of Mississippi,<sup>67</sup> constituted

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<sup>66</sup>See Dept. of Commerce, U. S. Census Bureau (Census Bureau), *An Analysis of the 2018 Congressional Election* 6 (Dec. 2021) (Fig. 5) (showing that women made up over 50 percent of the voting population in every congressional election between 1978 and 2018).

<sup>67</sup>Census Bureau, *QuickFacts, Mississippi* (July 1, 2021), <https://www.census.gov/quickfacts/mississippi>.

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55.5 percent of the voters who cast ballots.<sup>68</sup>

## 3

Unable to show concrete reliance on *Roe* and *Casey* themselves, the Solicitor General suggests that overruling those decisions would “threaten the Court’s precedents holding that the Due Process Clause protects other rights.” Brief for United States 26 (citing *Obergefell*, 576 U. S. 644; *Lawrence*, 539 U. S. 558; *Griswold*, 381 U. S. 479). That is not correct for reasons we have already discussed. As even the *Casey* plurality recognized, “[a]bortion is a unique act” because it terminates “life or potential life.” 505 U. S., at 852; see also *Roe*, 410 U. S., at 159 (abortion is “inherently different from marital intimacy,” “marriage,” or “procreation”). And to ensure that our decision is not misunderstood or mischaracterized, we emphasize that our decision concerns the constitutional right to abortion and no other right. Nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion.

## IV

Having shown that traditional *stare decisis* factors do not weigh in favor of retaining *Roe* or *Casey*, we must address one final argument that featured prominently in the *Casey* plurality opinion.

The argument was cast in different terms, but stated simply, it was essentially as follows. The American people’s belief in the rule of law would be shaken if they lost respect for this Court as an institution that decides important cases based on principle, not “social and political pressures.” 505 U. S., at 865. There is a special danger that the public will

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census.gov/quickfacts/MS.

<sup>68</sup> Census Bureau, Voting and Registration in the Election of November 2020, Table 4b: Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

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perceive a decision as having been made for unprincipled reasons when the Court overrules a controversial “watershed” decision, such as *Roe*. 505 U. S., at 866–867. A decision overruling *Roe* would be perceived as having been made “under fire” and as a “surrender to political pressure,” 505 U. S., at 867, and therefore the preservation of public approval of the Court weighs heavily in favor of retaining *Roe*, see 505 U. S., at 869.

This analysis starts out on the right foot but ultimately veers off course. The *Casey* plurality was certainly right that it is important for the public to perceive that our decisions are based on principle, and we should make every effort to achieve that objective by issuing opinions that carefully show how a proper understanding of the law leads to the results we reach. But we cannot exceed the scope of our authority under the Constitution, and we cannot allow our decisions to be affected by any extraneous influences such as concern about the public’s reaction to our work. Cf. *Texas v. Johnson*, 491 U. S. 397 (1989); *Brown*, 347 U. S. 483. That is true both when we initially decide a constitutional issue *and* when we consider whether to overrule a prior decision. As Chief Justice Rehnquist explained, “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.” *Casey*, 505 U. S., at 963 (opinion concurring in judgment in part and dissenting in part). In suggesting otherwise, the *Casey* plurality went beyond this Court’s role in our constitutional system.

The *Casey* plurality “call[ed] the contending sides of a national controversy to end their national division,” and claimed the authority to impose a permanent settlement of the issue of a constitutional abortion right simply by saying

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that the matter was closed. *Id.*, at 867. That unprecedented claim exceeded the power vested in us by the Constitution. As Alexander Hamilton famously put it, the Constitution gives the judiciary “neither Force nor Will.” The Federalist No. 78, p. 523 (J. Cooke ed. 1961). Our sole authority is to exercise “judgment”—which is to say, the authority to judge what the law means and how it should apply to the case at hand. *Ibid.* The Court has no authority to decree that an erroneous precedent is *permanently* exempt from evaluation under traditional *stare decisis* principles. A precedent of this Court is subject to the usual principles of *stare decisis* under which adherence to precedent is the norm but not an inexorable command. If the rule were otherwise, erroneous decisions like *Plessy* and *Lochner* would still be the law. That is not how *stare decisis* operates.

The *Casey* plurality also misjudged the practical limits of this Court’s influence. *Roe* certainly did not succeed in ending division on the issue of abortion. On the contrary, *Roe* “inflamed” a national issue that has remained bitterly divisive for the past half century. *Casey*, 505 U. S., at 995 (opinion of Scalia, J.); see also R. Ginsburg, Speaking in a Judicial Voice, 67 N. Y. U. L. Rev. 1185, 1208 (1992) (*Roe* may have “halted a political process,” “prolonged divisiveness,” and “deferred stable settlement of the issue”). And for the past 30 years, *Casey* has done the same.

Neither decision has ended debate over the issue of a constitutional right to obtain an abortion. Indeed, in this case, 26 States expressly ask us to overrule *Roe* and *Casey* and to return the issue of abortion to the people and their elected representatives. This Court’s inability to end debate on the issue should not have been surprising. This Court cannot bring about the permanent resolution of a rancorous national controversy simply by dictating a settlement and telling the people to move on. Whatever influence the Court may have on public attitudes must stem from the

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strength of our opinions, not an attempt to exercise “raw judicial power.” *Roe*, 410 U. S., at 222 (White, J., dissenting).

We do not pretend to know how our political system or society will respond to today’s decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision. We can only do our job, which is to interpret the law, apply longstanding principles of *stare decisis*, and decide this case accordingly.

We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.

V  
A  
1

The dissent argues that we have “abandon[ed]” *stare decisis, post*, at 30, but we have done no such thing, and it is the dissent’s understanding of *stare decisis* that breaks with tradition. The dissent’s foundational contention is that the Court should never (or perhaps almost never) overrule an egregiously wrong constitutional precedent unless the Court can “poin[t] to major legal or factual changes undermining [the] decision’s original basis.” *Post*, at 37. To support this contention, the dissent claims that *Brown v. Board of Education*, 347 U. S. 483, and other landmark cases overruling prior precedents “responded to changed law and to changed facts and attitudes that had taken hold throughout society.” *Post*, at 43. The unmistakable implication of this argument is that only the passage of time and new developments justified those decisions. Recognition that the cases they overruled were egregiously wrong on the day they were handed down was not enough.

The Court has never adopted this strange new version of

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*stare decisis*—and with good reason. Does the dissent really maintain that overruling *Plessy* was not justified until the country had experienced more than a half-century of state-sanctioned segregation and generations of Black school children had suffered all its effects? *Post*, at 44–45.

Here is another example. On the dissent's view, it must have been wrong for *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, to overrule *Minersville School Dist. v. Gobitis*, 310 U. S. 586, a bare three years after it was handed down. In both cases, children who were Jehovah's Witnesses refused on religious grounds to salute the flag or recite the pledge of allegiance. The *Barnette* Court did not claim that its reexamination of the issue was prompted by any intervening legal or factual developments, so if the Court had followed the dissent's new version of *stare decisis*, it would have been compelled to adhere to *Gobitis* and countenance continued First Amendment violations for some unspecified period.

Precedents should be respected, but sometimes the Court errs, and occasionally the Court issues an important decision that is egregiously wrong. When that happens, *stare decisis* is not a straitjacket. And indeed, the dissent eventually admits that a decision *could* “be overruled just because it is terribly wrong,” though the dissent does not explain when that would be so. *Post*, at 45.

## 2

Even if the dissent were correct in arguing that an egregiously wrong decision should (almost) never be overruled unless its mistake is later highlighted by “major legal or factual changes,” reexamination of *Roe* and *Casey* would be amply justified. We have already mentioned a number of post-*Casey* developments, see *supra*, at 33–34, 59–63, but the most profound change may be the failure of the *Casey* plurality's call for “the contending sides” in the controversy about abortion “to end their national division,” 505 U. S., at

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867. That has not happened, and there is no reason to think that another decision sticking with *Roe* would achieve what *Casey* could not.

The dissent, however, is undeterred. It contends that the “very controversy surrounding *Roe* and *Casey*” is an important *stare decisis* consideration that requires upholding those precedents. See *post*, at 55–57. The dissent characterizes *Casey* as a “precedent about precedent” that is permanently shielded from further evaluation under traditional *stare decisis* principles. See *post*, at 57. But as we have explained, *Casey* broke new ground when it treated the national controversy provoked by *Roe* as a ground for refusing to reconsider that decision, and no subsequent case has relied on that factor. Our decision today simply applies longstanding *stare decisis* factors instead of applying a version of the doctrine that seems to apply only in abortion cases.

## 3

Finally, the dissent suggests that our decision calls into question *Griswold*, *Eisenstadt*, *Lawrence*, and *Obergefell*. *Post*, at 4–5, 26–27, n. 8. But we have stated unequivocally that “[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion.” *Supra*, at 66. We have also explained why that is so: rights regarding contraception and same-sex relationships are inherently different from the right to abortion because the latter (as we have stressed) uniquely involves what *Roe* and *Casey* termed “potential life.” *Roe*, 410 U. S., at 150 (emphasis deleted); *Casey*, 505 U. S., at 852. Therefore, a right to abortion cannot be justified by a purported analogy to the rights recognized in those other cases or by “appeals to a broader right to autonomy.” *Supra*, at 32. It is hard to see how we could be clearer. Moreover, even putting aside that these cases are distinguishable, there is a further point that the dissent ignores: Each precedent is subject to its own *stare*

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*decisis* analysis, and the factors that our doctrine instructs us to consider like reliance and workability are different for these cases than for our abortion jurisprudence.

## B

## 1

We now turn to the concurrence in the judgment, which reproves us for deciding whether *Roe* and *Casey* should be retained or overruled. That opinion (which for convenience we will call simply “the concurrence”) recommends a “more measured course,” which it defends based on what it claims is “a straightforward *stare decisis* analysis.” *Post*, at 1 (opinion of ROBERTS, C. J.). The concurrence would “leave for another day whether to reject any right to an abortion at all,” *post*, at 7, and would hold only that if the Constitution protects any such right, the right ends once women have had “a reasonable opportunity” to obtain an abortion, *post*, at 1. The concurrence does not specify what period of time is sufficient to provide such an opportunity, but it would hold that 15 weeks, the period allowed under Mississippi’s law, is enough—at least “absent rare circumstances.” *Post*, at 2, 10.

There are serious problems with this approach, and it is revealing that nothing like it was recommended by either party. As we have recounted, both parties and the Solicitor General have urged us either to reaffirm or overrule *Roe* and *Casey*. See *supra*, at 4–5. And when the specific approach advanced by the concurrence was broached at oral argument, both respondents and the Solicitor General emphatically rejected it. Respondents’ counsel termed it “completely unworkable” and “less principled and less workable than viability.” Tr. of Oral Arg. 54. The Solicitor General argued that abandoning the viability line would leave courts and others with “no continued guidance.” *Id.*, at 101. What is more, the concurrence has not identified any of the



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more than 130 *amicus* briefs filed in this case that advocated its approach. The concurrence would do exactly what it criticizes *Roe* for doing: pulling “out of thin air” a test that “[n]o party or *amicus* asked the Court to adopt.” *Post*, at 3.

## 2

The concurrence’s most fundamental defect is its failure to offer any principled basis for its approach. The concurrence would “discar[d]” “the rule from *Roe* and *Casey* that a woman’s right to terminate her pregnancy extends up to the point that the fetus is regarded as ‘viable’ outside the womb.” *Post*, at 2. But this rule was a critical component of the holdings in *Roe* and *Casey*, and *stare decisis* is “a doctrine of preservation, not transformation,” *Citizens United v. Federal Election Comm’n*, 558 U. S. 310, 384 (2010) (ROBERTS, C. J., concurring). Therefore, a new rule that discards the viability rule cannot be defended on *stare decisis* grounds.

The concurrence concedes that its approach would “not be available” if “the rationale of *Roe* and *Casey* were inextricably entangled with and dependent upon the viability standard.” *Post*, at 7. But the concurrence asserts that the viability line is separable from the constitutional right they recognized, and can therefore be “discarded” without disturbing any past precedent. *Post*, at 7–8. That is simply incorrect.

*Roe*’s trimester rule was expressly tied to viability, see 410 U. S., at 163–164, and viability played a critical role in later abortion decisions. For example, in *Planned Parenthood of Central Mo. v. Danforth*, 428 U. S. 52, the Court reiterated *Roe*’s rule that a “State may regulate an abortion to protect the life of the fetus and even may proscribe abortion” at “the stage *subsequent to viability*.” 428 U. S., at 61 (emphasis added). The Court then rejected a challenge to Missouri’s definition of viability, holding that the State’s definition was consistent with *Roe*’s. 428 U. S.,

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at 63–64. If viability was not an essential part of the rule adopted in *Roe*, the Court would have had no need to make that comparison.

The holding in *Colautti v. Franklin*, 439 U. S. 379, is even more instructive. In that case, the Court noted that prior cases had “stressed viability” and reiterated that “[v]iability is the critical point” under *Roe*. 439 U. S., at 388–389. It then struck down Pennsylvania’s definition of viability, *id.*, at 389–394, and it is hard to see how the Court could have done that if *Roe*’s discussion of viability was not part of its holding.

When the Court reconsidered *Roe* in *Casey*, it left no doubt about the importance of the viability rule. It described the rule as *Roe*’s “central holding,” 505 U. S., at 860, and repeatedly stated that the right it reaffirmed was “the right of the woman to choose to have an abortion *before viability*.” *Id.*, at 846 (emphasis added). See *id.*, at 871 (“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” (emphasis added)); *id.*, at 872 (A “woman has a right to choose to terminate or continue her pregnancy *before viability*” (emphasis added)); *id.*, at 879 (“[A] State may not prohibit any woman from making the ultimate decision to terminate her pregnancy *before viability*” (emphasis added)).

Our subsequent cases have continued to recognize the centrality of the viability rule. See *Whole Women’s Health*, 579 U. S., at 589–590 (“[A] provision of law is constitutionally invalid, if the ‘purpose or effect’ of the provision ‘is to place a substantial obstacle in the path of a woman seeking an abortion *before the fetus attains viability*’” (emphasis deleted and added)); *id.*, at 627 (“[W]e now use ‘*viability*’ as the relevant point at which a State may begin limiting women’s access to abortion for reasons unrelated to maternal health” (emphasis added)).

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Not only is the new rule proposed by the concurrence inconsistent with *Casey*'s unambiguous "language," *post*, at 8, it is also contrary to the judgment in that case and later abortion cases. In *Casey*, the Court held that Pennsylvania's spousal-notification provision was facially unconstitutional, not just that it was unconstitutional as applied to abortions sought prior to the time when a woman has had a reasonable opportunity to choose. See 505 U. S., at 887–898. The same is true of *Whole Women's Health*, which held that certain rules that required physicians performing abortions to have admitting privileges at a nearby hospital were facially unconstitutional because they placed "a substantial obstacle in the path of women seeking a *previably abortion*." 579 U. S., at 591 (emphasis added).

For all these reasons, *stare decisis* cannot justify the new "reasonable opportunity" rule propounded by the concurrence. If that rule is to become the law of the land, it must stand on its own, but the concurrence makes no attempt to show that this rule represents a correct interpretation of the Constitution. The concurrence does not claim that the right to a reasonable opportunity to obtain an abortion is "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty." *Glucksberg*, 521 U. S., at 720–721. Nor does it propound any other theory that could show that the Constitution supports its new rule. And if the Constitution protects a woman's right to obtain an abortion, the opinion does not explain why that right should end after the point at which all "reasonable" women will have decided whether to seek an abortion. While the concurrence is moved by a desire for judicial minimalism, "we cannot embrace a narrow ground of decision simply because it is narrow; it must also be right." *Citizens United*, 558 U. S., at 375 (ROBERTS, C. J., concurring). For the reasons that we have explained, the concurrence's approach is not.

## Opinion of the Court

## 3

The concurrence would “leave for another day whether to reject any right to an abortion at all,” *post*, at 7, but “another day” would not be long in coming. Some States have set deadlines for obtaining an abortion that are shorter than Mississippi’s. See, e.g., *Memphis Center for Reproductive Health v. Slatery*, 14 F. 4th, at 414 (considering law with bans “at cascading intervals of two to three weeks” beginning at six weeks), reh’g en banc granted, 14 F. 4th 550 (CA6 2021). If we held only that Mississippi’s 15-week rule is constitutional, we would soon be called upon to pass on the constitutionality of a panoply of laws with shorter deadlines or no deadline at all. The “measured course” charted by the concurrence would be fraught with turmoil until the Court answered the question that the concurrence seeks to defer.

Even if the Court ultimately adopted the new rule suggested by the concurrence, we would be faced with the difficult problem of spelling out what it means. For example, if the period required to give women a “reasonable” opportunity to obtain an abortion were pegged, as the concurrence seems to suggest, at the point when a certain percentage of women make that choice, see *post*, at 1–2, 9–10, we would have to identify the relevant percentage. It would also be necessary to explain what the concurrence means when it refers to “rare circumstances” that might justify an exception. *Post*, at 10. And if this new right aims to give women a reasonable opportunity to get an abortion, it would be necessary to decide whether factors other than promptness in deciding might have a bearing on whether such an opportunity was available.

In sum, the concurrence’s quest for a middle way would only put off the day when we would be forced to confront the question we now decide. The turmoil wrought by *Roe* and *Casey* would be prolonged. It is far better—for this Court

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and the country—to face up to the real issue without further delay.

## VI

We must now decide what standard will govern if state abortion regulations undergo constitutional challenge and whether the law before us satisfies the appropriate standard.

## A

Under our precedents, rational-basis review is the appropriate standard for such challenges. As we have explained, procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution’s text or in our Nation’s history. See *supra*, at 8–39.

It follows that the States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot “substitute their social and economic beliefs for the judgment of legislative bodies.” *Ferguson*, 372 U. S., at 729–730; see also *Dandridge v. Williams*, 397 U. S. 471, 484–486 (1970); *United States v. Carolene Products Co.*, 304 U. S. 144, 152 (1938). That respect for a legislature’s judgment applies even when the laws at issue concern matters of great social significance and moral substance. See, e.g., *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U. S. 356, 365–368 (2001) (“treatment of the disabled”); *Glucksberg*, 521 U. S., at 728 (“assisted suicide”); *San Antonio Independent School Dist. v. Rodriguez*, 411 U. S. 1, 32–35, 55 (1973) (“financing public education”).

A law regulating abortion, like other health and welfare laws, is entitled to a “strong presumption of validity.”  *Heller v. Doe*, 509 U. S. 312, 319 (1993). It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests. *Id.*, at 320; *FCC v. Beach Communications, Inc.*, 508 U. S.

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307, 313 (1993); *New Orleans v. Dukes*, 427 U. S. 297, 303 (1976) (*per curiam*); *Williamson v. Lee Optical of Okla., Inc.*, 348 U. S. 483, 491 (1955). These legitimate interests include respect for and preservation of prenatal life at all stages of development, *Gonzales*, 550 U. S., at 157–158; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability. See *id.*, at 156–157; *Roe*, 410 U. S., at 150; cf. *Glucksberg*, 521 U. S., at 728–731 (identifying similar interests).

## B

These legitimate interests justify Mississippi's Gestational Age Act. Except "in a medical emergency or in the case of a severe fetal abnormality," the statute prohibits abortion "if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." Miss. Code Ann. §41–41–191(4)(b). The Mississippi Legislature's findings recount the stages of "human prenatal development" and assert the State's interest in "protecting the life of the unborn." §2(b)(i). The legislature also found that abortions performed after 15 weeks typically use the dilation and evacuation procedure, and the legislature found the use of this procedure "for nontherapeutic or elective reasons [to be] a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession." §2(b)(i)(8); see also *Gonzales*, 550 U. S., at 135–143 (describing such procedures). These legitimate interests provide a rational basis for the Gestational Age Act, and it follows that respondents' constitutional challenge must fail.

## VII

We end this opinion where we began. Abortion presents

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a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.

The judgment of the Fifth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

## APPENDICES

## A

This appendix contains statutes criminalizing abortion at all stages of pregnancy in the States existing in 1868. The statutes appear in chronological order.

**1. Missouri (1825):**

Sec. 12. “That every person who shall wilfully and maliciously administer or cause to be administered to or taken by any person, any poison, or other noxious, poisonous or destructive substance or liquid, with an intention to harm him or her thereby to murder, or thereby *to cause or procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall suffer imprisonment not exceeding seven years, and be fined not exceeding three thousand dollars.”<sup>69</sup>

**2. Illinois (1827):**

Sec. 46. “Every person who shall wilfully and maliciously administer, or cause to be administered to, or taken by any person, any poison, or other noxious or

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<sup>69</sup>1825 Mo. Laws p. 283 (emphasis added); see also, Mo. Rev. Stat., Art. II, §§10, 36 (1835) (extending liability to abortions performed by instrument and establishing differential penalties for pre- and post-quickening abortion) (emphasis added).

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destructive substance or liquid, with an intention to cause the death of such person, *or to procure the miscarriage of any woman, then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and be fined in a sum not exceeding one thousand dollars.”<sup>70</sup>

### 3. New York (1828):

Sec. 9. “Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.”

Sec. 21. “Every person who shall willfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument of other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose; shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.”<sup>71</sup>

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<sup>70</sup>Ill. Rev. Code §46 (1827) (emphasis added); see also Ill. Rev. Code §46 (1833) (same); 1867 Ill. Laws p. 89 (extending liability to abortions “by means of any instrument[s]” and raising penalties to imprisonment “not less than two nor more than ten years”).

<sup>71</sup>N. Y. Rev. Stat., pt. 4, ch. 1, Tit. 2, §9 (emphasis added); Tit. 6, §21



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**4. Ohio (1834):**

Sec. 1. “Be it enacted by the General Assembly of State of Ohio, That any physician, or other person, who shall wilfully administer *to any pregnant woman* any medicine, drug, substance, or thing whatever, or shall use any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.”

Sec. 2. “That any physician, or other person, who shall administer *to any woman pregnant with a quick child*, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case of the death of such child or mother in consequence thereof, be deemed guilty of high misdemeanor, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than seven years, nor less than one year.”<sup>72</sup>

**5. Indiana (1835):**

Sec. 3. “That every person who shall wilfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with intent

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(1828) (emphasis added); 1829 N. Y. Laws p. 19 (codifying these provisions in the revised statutes).

<sup>72</sup> 1834 Ohio Laws pp. 20–21 (emphasis deleted and added).

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thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, shall upon conviction be punished by imprisonment in the county jail any term of [time] not exceeding twelve months and be fined any sum not exceeding five hundred dollars.”<sup>73</sup>

**6. Maine (1840):**

Sec. 13. “Every person, who shall administer *to any woman pregnant with child, whether such child be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done as necessary to preserve the life of the mother, shall be punished by imprisonment in the state prison, not more than five years, or by fine, not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.”

Sec. 14. “Every person, who shall administer *to any woman, pregnant with child, whether such child shall be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same shall have been done, as necessary to preserve her life, shall be punished by imprisonment in the county jail, not more than one year, or by fine, not exceeding one thousand dollars.”<sup>74</sup>

**7. Alabama (1841):**

Sec. 2. “Every person who shall wilfully administer *to any pregnant woman* any medicines, drugs, substance or thing whatever, or shall use and employ any

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<sup>73</sup> 1835 Ind. Laws p. 66 (emphasis added).

<sup>74</sup> Me. Rev. Stat., Tit. 12, ch. 160, §§13–14 (1840) (emphasis added).

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instrument or means whatever with intent thereby to procure the miscarriage of such woman, unless the same shall be necessary to preserve her life, or shall have been advised by a respectable physician to be necessary for that purpose, shall upon conviction, be punished by fine not exceeding five hundred dollars, and by imprisonment in the county jail, not less than three, and not exceeding six months.”<sup>75</sup>

**8. Massachusetts (1845):**

Ch. 27. “Whoever, maliciously or without lawful justification, with intent to cause and procure the miscarriage of a woman then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow, any poison, drug, medicine or noxious thing, or shall cause or procure her with like intent, to take or swallow any poison, drug, medicine or noxious thing; and whoever maliciously and without lawful justification, shall use any instrument or means whatever with the like intent, and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned not more than twenty years, nor less than five years in the State Prison; and if the woman doth not die in consequence thereof, such offender shall be guilty of a misdemeanor, and shall be punished by imprisonment not exceeding seven years, nor less than one year, in the state prison or house of correction, or common jail, and by fine not exceeding two thousand dollars.”<sup>76</sup>

**9. Michigan (1846):**

Sec. 33. “Every person who shall administer to any

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<sup>75</sup> 1841 Ala. Acts p. 143 (emphasis added).

<sup>76</sup> 1845 Mass. Acts p. 406 (emphasis added).

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*woman pregnant with a quick child*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter.”

Sec. 34. “Every person who shall wilfully administer to any pregnant woman any medicine, drug, substance or thing whatever, or shall employ any instrument or other means whatever, with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in a county jail not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.”<sup>77</sup>

**10. Vermont (1846):**

Sec. 1. “Whoever maliciously, or without lawful justification with intent to cause and procure the miscarriage of a woman, then pregnant with child, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine or noxious thing, or shall cause or procure her, with like intent, to take or swallow any poison, drug, medicine or noxious thing, and whoever maliciously and without lawful justification, shall use any instrument or means whatever, with the like intent, and every person, with the like intent, knowingly aiding and assisting such offenders, shall be deemed guilty of felony, if the woman die in consequence thereof, and shall be imprisoned in

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<sup>77</sup>Mich. Rev. Stat., Tit. 30, ch. 153, §§33–34 (1846) (emphasis added).

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the state prison, not more than ten years, nor less than five years; and if the woman does not die in consequence thereof, such offenders shall be deemed guilty of a misdemeanor; and shall be punished by imprisonment in the state prison not exceeding three years, nor less than one year, and pay a fine not exceeding two hundred dollars.”<sup>78</sup>

**11. Virginia (1848):**

Sec. 9. “Any free person who shall administer *to any pregnant woman*, any medicine, drug or substance whatever, or use or employ any instrument or other means with intent thereby to destroy the child with which such woman may be pregnant, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, unless the same shall have been done to preserve the life of such woman, shall be punished, if the death of a quick child be thereby produced, by confinement in the penitentiary, for not less than one nor more than five years, or if the death of a child, not quick, be thereby produced, by confinement in the jail for not less than one nor more than twelve months.”<sup>79</sup>

**12. New Hampshire (1849):**

Sec. 1. “That every person, who shall wilfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or means whatever with intent thereby to procure the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished by imprisonment in the county jail

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<sup>78</sup> 1846 Vt. Acts & Resolves pp. 34–35 (emphasis added).

<sup>79</sup> 1848 Va. Acts p. 96 (emphasis added).

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not more than one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment at the discretion of the Court.”

Sec. 2. “Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug or substance whatever, or shall use or employ any instrument or means whatever, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for such purpose, shall, upon conviction, be punished by fine not exceeding one thousand dollars, and by confinement to hard labor not less than one year, nor more than ten years.”<sup>80</sup>

### 13. New Jersey (1849):

“That if any person or persons, maliciously or without lawful justification, with intent to cause and procure the miscarriage *of a woman then pregnant with child*, shall administer to her, prescribe for her, or advise or direct her to take or swallow any poison, drug, medicine, or noxious thing; and if any person or persons maliciously, and without lawful justification, shall use any instrument or means whatever, with the like intent; and every person, with the like intent, knowingly aiding and assisting such offender or offenders, shall, on conviction thereof, be adjudged guilty of a high misdemeanor; and if the woman die in consequence thereof, shall be punished by fine, not exceeding one thousand dollars, or imprisonment at hard labour for any term not exceeding fifteen years, or both; and if the woman doth not die in consequence thereof, such offender shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by fine, not exceed-

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<sup>80</sup> 1849 N. H. Laws p. 708 (emphasis added).

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ing five hundred dollars, or imprisonment at hard labour, for any term not exceeding seven years, or both.”<sup>81</sup>

**14. California (1850):**

Sec. 45. “And every person who shall administer or cause to be administered or taken, any medical substances, or shall use or cause to be used any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the State Prison for a term not less than two years, nor more than five years: Provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.”<sup>82</sup>

**15. Texas (1854):**

Sec. 1. “If any person, with the intent to procure the miscarriage *of any woman being with child*, unlawfully and maliciously shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use any instrument or any means whatever, with like intent, every such offender, and every person counselling or aiding or abetting such offender, shall be punished by confinement to hard labor in the Penitentiary not exceeding ten years.”<sup>83</sup>

**16. Louisiana (1856):**

Sec. 24. “Whoever shall feloniously administer or cause to be administered any drug, potion, or any other thing to any woman, for the purpose of procuring a premature delivery, and whoever shall administer or

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<sup>81</sup> 1849 N. J. Laws pp. 266–267 (emphasis added).

<sup>82</sup> 1850 Cal. Stats. p. 233 (emphasis added and deleted).

<sup>83</sup> 1854 Tex. Gen. Laws p. 58 (emphasis added).

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cause to be administered *to any woman pregnant with child*, any drug, potion, or any other thing, for the purpose of procuring abortion, or a premature delivery, shall be imprisoned at hard labor, for not less than one, nor more than ten years.”<sup>84</sup>

**17. Iowa (1858):**

Sec. 1. “That every person who shall willfully administer *to any pregnant woman*, any medicine, drug, substance or thing whatever, or shall use or employ any instrument or other means whatever, with the intent thereby to procure the miscarriage of any such woman, unless the same shall be necessary to preserve the life of such woman, shall upon conviction thereof, be punished by imprisonment in the county jail for a term of not exceeding one year, and be fined in a sum not exceeding one thousand dollars.”<sup>85</sup>

**18. Wisconsin (1858):**

Sec. 11. “Every person who shall administer *to any woman pregnant with a child* any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.”<sup>86</sup>

Sec. 58. “Every person who shall administer *to any pregnant woman*, or prescribe for any such woman, or advise or procure any such woman to take, any medicine, drug, or substance or thing whatever, or shall use

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<sup>84</sup>La. Rev. Stat. §24 (1856) (emphasis added).

<sup>85</sup>1858 Iowa Acts p. 93 (codified in Iowa Rev. Laws §4221) (emphasis added).

<sup>86</sup>Wis. Rev. Stat., ch. 164, §11, ch. 169, §58 (1858) (emphasis added).



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or employ any instrument or other means whatever, or advise or procure the same to be used, with intent thereby to procure the miscarriage of any such woman, shall upon conviction be punished by imprisonment in a county jail, not more than one year nor less than three months, or by fine, not exceeding five hundred dollars, or by both fine and imprisonment, at the discretion of the court.”

**19. Kansas (1859):**

Sec. 10. “Every person who shall administer *to any woman, pregnant with a quick child*, any medicine, drug or substance whatsoever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by a physician to be necessary for that purpose, shall be deemed guilty of manslaughter in the second degree.”

Sec. 37. “Every physician or other person who shall wilfully administer *to any pregnant woman* any medicine, drug or substance whatsoever, or shall use or employ any instrument or means whatsoever, with intent thereby to procure abortion or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.”<sup>87</sup>

**20. Connecticut (1860):**

Sec. 1. “That any person with intent *to procure the*

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<sup>87</sup>1859 Kan. Laws pp. 233, 237 (emphasis added).

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*miscarriage or abortion of any woman*, shall give or administer to her, prescribe for her, or advise, or direct, or cause or procure her to take, any medicine, drug or substance whatever, or use or advise the use of any instrument, or other means whatever, with the like intent, unless the same shall have been necessary to preserve the life of such woman, or of her unborn child, shall be deemed guilty of felony, and upon due conviction thereof shall be punished by imprisonment in the Connecticut state prison, not more than five years or less than one year, or by a fine of one thousand dollars, or both, at the discretion of the court.”<sup>88</sup>

**21. Pennsylvania (1860):**

Sec. 87. “If any person shall unlawfully administer to any woman, pregnant or quick with child, or supposed and believed to be pregnant or quick with child, any drug, poison, or other substance whatsoever, or shall unlawfully use any instrument or other means whatsoever, with the intent to procure the miscarriage of such woman, and such woman, or any child with which she may be quick, shall die in consequence of either of said unlawful acts, the person so offending shall be guilty of felony, and shall be sentenced to pay a fine not exceeding five hundred dollars, and to undergo an imprisonment, by separate or solitary confinement at labor, not exceeding seven years.”

Sec. 88. “If any person, with intent to procure the miscarriage of any woman, shall unlawfully administer to her any poison, drug or substance whatsoever, or shall unlawfully use any instrument, or other means whatsoever, with the like intent, such person shall be guilty of felony, and being thereof convicted, shall be sentenced to pay a fine not exceeding five hundred dol-

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<sup>88</sup> 1860 Conn. Pub. Acts p. 65 (emphasis added).

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lars, and undergo an imprisonment, by separate or solitary confinement at labor, not exceeding three years.”<sup>89</sup>

**22. Rhode Island (1861):**

Sec. 1. “Every person who shall be convicted of wilfully administering *to any pregnant woman, or to any woman supposed by such person to be pregnant*, anything whatever, or shall employ any means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be imprisoned not exceeding one year, or fined not exceeding one thousand dollars.”<sup>90</sup>

**23. Nevada (1861):**

Sec. 42. “[E]very person who shall administer, or cause to be administered or taken, any medicinal substance, or shall use, or cause to be used, any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison, for a term not less than two years, nor more than five years; provided, that no physician shall be affected by the last clause of this section, who, in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.”<sup>91</sup>

**24. West Virginia (1863):**

*West Virginia’s Constitution adopted the laws of Virginia when it became its own State:*

“Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries

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<sup>89</sup> 1861 Pa. Laws pp. 404–405 (emphasis added).

<sup>90</sup> R. I. Acts & Resolves p. 133 (emphasis added).

<sup>91</sup> 1861 Nev. Laws p. 63 (emphasis added and deleted).

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of the State of West Virginia, when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature.”<sup>92</sup>

*The Virginia law in force in 1863 stated:*

Sec. 8. “Any free person who shall administer to, or cause to be taken, *by a woman*, any drug or other thing, or use any means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and shall thereby destroy such child, or produce such abortion or miscarriage, shall be confined in the penitentiary not less than one, nor more than five years. No person, by reason of any act mentioned in this section, shall be punishable where such act is done in good faith, with the intention of saving the life of such woman or child.”<sup>93</sup>

**25. Oregon (1864):**

Sec. 509. “If any person shall administer *to any woman pregnant with child*, any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter.”<sup>94</sup>

**26. Nebraska (1866):**

Sec. 42. “Every person who shall willfully and maliciously administer or cause to be administered to or taken by any person, any poison or other noxious or destructive substance or liquid, with the intention to

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<sup>92</sup>W. Va. Const., Art. XI, §8 (1862).

<sup>93</sup>Va. Code, Tit. 54, ch. 191, §8 (1849) (emphasis added); see also W. Va. Code, ch. 144, §8 (1870) (similar).

<sup>94</sup>Ore. Gen. Laws, Crim. Code, ch. 43, §509 (1865).

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cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year and not more than seven years. And every person who shall administer or cause to be administered or taken, any such poison, substance or liquid, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years in the penitentiary, and fined in a sum not exceeding one thousand dollars.”<sup>95</sup>

**27. Maryland (1868):**

Sec. 2. “And be it enacted, That any person who shall knowingly advertise, print, publish, distribute or circulate, or knowingly cause to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper notice, advertisement or reference containing words or language, giving or conveying any notice, hint or reference to any person, or to the name of any person real or fictitious, from whom; or to any place, house, shop or office, when any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever; for the purpose of producing abortion, or who shall knowingly sell, or cause to be sold any such poison, drug, mixture, preparation, medicine or noxious thing or instrument of any kind whatever; or where any advice, direction, information or knowledge may be obtained *for the purpose of causing the miscarriage or abortion of any woman pregnant with child, at any period of her pregnancy*, or shall knowingly sell or cause to be sold any medicine, or who shall knowingly use or cause to be used any means

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<sup>95</sup>Neb. Rev. Stat., Tit. 4, ch. 4, §42 (1866) (emphasis added); see also Neb. Gen. Stat., ch. 58, §§6, 39 (1873) (expanding criminal liability for abortions by other means, including instruments).

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whatsoever for that purpose, shall be punished by imprisonment in the penitentiary for not less than three years, or by a fine of not less than five hundred nor more than one thousand dollars, or by both, in the discretion of the Court; and in case of fine being imposed, one half thereof shall be paid to the State of Maryland, and one-half to the School Fund of the city or county where the offence was committed; provided, however, that nothing herein contained shall be construed so as to prohibit the supervision and management by a regular practitioner of medicine of all cases of abortion occurring spontaneously, either as the result of accident, constitutional debility, or any other natural cause, or the production of abortion by a regular practitioner of medicine when, after consulting with one or more respectable physicians, he shall be satisfied that the foetus is dead, or that no other method will secure the safety of the mother.”<sup>96</sup>

**28. Florida (1868):**

Ch. 3, Sec. 11. “Every person who shall administer *to any woman pregnant with a quick child* any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.”

Ch. 8, Sec. 9. “Whoever, with intent *to procure miscarriage of any woman*, unlawfully administers to her, or advises, or prescribes for her, or causes to be taken by her, any poison, drug, medicine, or other noxious thing, or unlawfully uses any instrument or other

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<sup>96</sup> 1868 Md. Laws p. 315 (emphasis deleted and added).

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means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman does not die in consequence thereof, be punished by imprisonment in the State penitentiary not exceeding seven years, nor less than one year, or by fine not exceeding one thousand dollars.”<sup>97</sup>

**29. Minnesota (1873):**

Sec. 1. “That any person who shall administer *to any woman with child*, or prescribe for any such woman, or suggest to, or advise, or procure her to take any medicine, drug, substance or thing whatever, or who shall use or employ, or advise or suggest the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for a term not more than ten (10) years nor less than three (3) years.”

Sec. 2. “Any person who shall administer *to any woman with child*, or prescribe, or procure, or provide for any such woman, or suggest to, or advise, or procure any such woman to take any medicine, drug, substance or thing whatever, or shall use or employ, or suggest, or advise the use or employment of any instrument or other means or force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall upon conviction thereof be punished by imprisonment in the state prison for a term not more than two years nor less than

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<sup>97</sup>1868 Fla. Laws, ch. 1637, pp. 64, 97 (emphasis added).

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one year, or by fine not more than five thousand dollars nor less than five hundred dollars, or by such fine and imprisonment both, at the discretion of the court.”<sup>98</sup>

**30. Arkansas (1875):**

Sec. 1. “That it shall be unlawful for any one to administer or prescribe any medicine or drugs *to any woman with child*, with intent to produce an abortion, or premature delivery of any foetus before the period of quickening, or to produce or attempt to produce such abortion by any other means; and any person offending against the provision of this section, shall be fined in any sum not exceeding one thousand (\$1000) dollars, and imprisoned in the penitentiary not less than one (1) nor more than five (5) years; provided, that this section shall not apply to any abortion produced by any regular practicing physician, for the purpose of saving the mother’s life.”<sup>99</sup>

**31. Georgia (1876):**

Sec. 2. “That every person who shall administer *to any woman pregnant with a child*, any medicine, drug, or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or mother be thereby produced, be declared guilty of an assault with intent to murder.”

Sec. 3. “That any person who shall wilfully administer *to any pregnant woman* any medicine, drug or substance, or anything whatever, or shall employ any instrument or means whatever, with intent thereby to

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<sup>98</sup> 1873 Minn. Laws pp. 117–118 (emphasis added).

<sup>99</sup> 1875 Ark. Acts p. 5 (emphasis added and deleted).



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procure the miscarriage or abortion of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by two physicians to be necessary for that purpose, shall, upon conviction, be punished as prescribed in section 4310 of the Revised Code of Georgia.”<sup>100</sup>

**32. North Carolina (1881):**

Sec. 1. “That every person who shall wilfully administer to any woman either pregnant or quick with child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy said child, unless the same shall have been necessary to preserve the life of such mother, shall be guilty of a felony, and shall be imprisoned in the state penitentiary for not less than one year nor more than ten years, and be fined at the discretion of the court.”

Sec. 2. “That every person who shall administer to any pregnant woman, or prescribe for any such woman, or advise and procure such woman to take any medicine, drug or any thing whatsoever, with intent thereby to procure the miscarriage of any such woman, or to injure or destroy such woman, or shall use any instrument or application for any of the above purposes, shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned in the jail or state penitentiary for not less than one year or more than five years, and fined at the discretion of the court.”<sup>101</sup>

**33. Delaware (1883):**

Sec. 2. “Every person who, with the intent to procure

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<sup>100</sup> 1876 Ga. Acts & Resolutions p. 113 (emphasis added).

<sup>101</sup> 1881 N. C. Sess. Laws pp. 584–585 (emphasis added).

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the miscarriage of *any pregnant woman or women supposed by such person to be pregnant*, unless the same be necessary to preserve her life, shall administer to her, advise, or prescribe for her, or cause to be taken by her any poison, drug, medicine, or other noxious thing, or shall use any instrument or other means whatsoever, or shall aid, assist, or counsel any person so intending to procure a miscarriage, whether said miscarriage be accomplished or not, shall be guilty of a felony, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars and be imprisoned for a term not exceeding five years nor less than one year.”<sup>102</sup>

**34. Tennessee (1883):**

Sec. 1. “That every person who shall administer to *any woman pregnant with child, whether such child be quick or not*, any medicine, drug or substance whatever, or shall use or employ any instrument, or other means whatever with intent to destroy such child, and shall thereby destroy such child before its birth, unless the same shall have been done with a view to preserve the life of the mother, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.”

Sec. 2. “Every person who shall administer any substance with the intention to *procure the miscarriage of a woman then being with child*, or shall use or employ any instrument or other means with such intent, unless the same shall have been done with a view to preserve the life of such mother, shall be punished by imprisonment in the penitentiary not less than one nor more than three years.”<sup>103</sup>

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<sup>102</sup> 1883 Del. Laws, ch. 226 (emphasis added).

<sup>103</sup> 1883 Tenn. Acts pp. 188–189 (emphasis added).

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**35. South Carolina (1883):**

Sec. 1. “That any person who shall administer *to any woman with child*, or prescribe for any such woman, or suggest to or advise or procure her to take, any medicine, substance, drug or thing whatever, or who shall use or employ, or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, unless the same shall have been necessary to preserve her life, or the life of such child, shall, in case the death of such child or of such woman results in whole or in part therefrom, be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the Penitentiary for a term not more than twenty years nor less than five years.”

Sec. 2. “That any person who shall administer *to any woman with child*, or prescribe or procure or provide for any such woman, or advise or procure any such woman to take, any medicine, drug, substance or thing whatever, or shall use or employ or advise the use or employment of, any instrument or other means of force whatever, with intent thereby to cause or procure the miscarriage or abortion or premature labor of any such woman, shall, upon conviction thereof, be punished by imprisonment in the Penitentiary for a term not more than five years, or by fine not more than five thousand dollars, or by such fine and imprisonment both, at the discretion of the Court; but no conviction shall be had under the provisions of Section 1 or 2 of this Act upon the uncorroborated evidence of such woman.”<sup>104</sup>

**36. Kentucky (1910):**

Sec. 1. “It shall be unlawful for any person to prescribe or administer *to any pregnant woman, or to any*

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<sup>104</sup> 1883 S. C. Acts pp. 547–548 (emphasis added).

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*woman whom he has reason to believe pregnant, at any time during the period of gestation, any drug, medicine or substance, whatsoever, with the intent thereby to procure the miscarriage of such woman, or with like intent, to use any instrument or means whatsoever, unless such miscarriage is necessary to preserve her life; and any person so offending, shall be punished by a fine of not less than five hundred nor more than one thousand dollars, and imprisoned in the State prison for not less than one nor more than ten years."*

Sec. 2. "If by reason of any of the acts described in Section 1 hereof, the miscarriage of such woman is procured, and she does miscarry, causing the death of the unborn child, whether before or after quickening time, the person so offending shall be guilty of a felony, and confined in the penitentiary for not less than two, nor more than twenty-one years."

Sec. 3. "If, by reason of the commission of any of the acts described in Section 1 hereof, the woman to whom such drug or substance has been administered, or upon whom such instrument has been used, shall die, the person offending shall be punished as now prescribed by law, for the offense of murder or manslaughter, as the facts may justify."

Sec. 4. "The consent of the woman to the performance of the operation or administering of the medicines or substances, referred to, shall be no defense, and she shall be a competent witness in any prosecution under this act, and for that purpose she shall not be considered an accomplice."<sup>105</sup>

**37. Mississippi (1952):**

Sec. 1. "Whoever, by means of any instrument, medicine, drug, or other means whatever shall willfully and

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<sup>105</sup> 1910 Ky. Acts pp. 189–190 (emphasis added).

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knowingly cause *any woman pregnant with child* to abort or miscarry, or attempts to procure or produce an abortion or miscarriage, unless the same were done as necessary for the preservation of the mother's life, shall be imprisoned in the state penitentiary no less than one (1) year, nor more than ten (10) years; or if the death of the mother results therefrom, the person procuring, causing, or attempting to procure or cause the abortion or miscarriage shall be guilty of murder.”

Sec. 2. “No act prohibited in section 1 hereof shall be considered as necessary for the preservation of the mother's life unless upon the prior advice, in writing, of two reputable licensed physicians.”

Sec. 3. “The license of any physician or nurse shall be automatically revoked upon conviction under the provisions of this act.”<sup>106</sup>

## B

This appendix contains statutes criminalizing abortion at all stages in each of the Territories that became States and in the District of Columbia. The statutes appear in chronological order of enactment.

**1. Hawaii (1850):**

Sec. 1. “Whoever maliciously, without lawful justification, administers, or causes or procures to be administered any poison or noxious thing *to a woman then with child*, in order to produce her mis-carriage, or maliciously uses any instrument or other means with like intent, shall, if such woman be then quick with child, be punished by fine not exceeding one thousand dollars and imprisonment at hard labor not more than five years. And if she be then not quick with child, shall be punished by a fine not exceeding five hundred dollars,

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<sup>106</sup>1952 Miss. Laws p. 289 (codified at Miss. Code Ann. §2223 (1956) (emphasis added)).

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and imprisonment at hard labor not more than two years.”

Sec. 2. “Where means of causing abortion are used for the purpose of saving the life of the woman, the surgeon or other person using such means is lawfully justified.”<sup>107</sup>

## 2. Washington (1854):

Sec. 37. “Every person who shall administer *to any woman pregnant with a quick child*, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child or of such mother be thereby produced, on conviction thereof, be imprisoned in the penitentiary not more than twenty years, nor less than one year.”

Sec. 38. “Every person who shall administer *to any pregnant woman, or to any woman who he supposes to be pregnant*, any medicine, drug, or substance whatever, or shall use or employ any instrument, or other means, thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall on conviction thereof, be imprisoned in the penitentiary not more than five years, nor less than one year, or be imprisoned in the county jail not more than twelve months, nor less than one month, and be fined in any sum not exceeding one thousand dollars.”<sup>108</sup>

## 3. Colorado (1861):

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<sup>107</sup>Haw. Penal Code, ch. 12, §§1–2 (1850) (emphasis added). Hawaii became a State in 1959. See Presidential Proclamation No. 3309, 73 Stat. c74–c75.

<sup>108</sup>Terr. of Wash. Stat., ch. 2, §§37–38, p. 81 (1854) (emphasis added). Washington became a State in 1889. See Presidential Proclamation No. 8, 26 Stat. 1552–1553.

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Sec. 42. “[E]very person who shall administer substance or liquid, or who shall use or cause to be used any instrument, of whatsoever kind, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, and fined in a sum not exceeding one thousand dollars; and if any woman, by reason of such treatment, shall die, the person or persons administering, or causing to be administered, such poison, substance or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished accordingly.”<sup>109</sup>

**4. Idaho (1864):**

Sec. 42. “[E]very person who shall administer or cause to be administered, or taken, any medicinal substance, or shall use or cause to be used, any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the territorial prison for a term not less than two years, nor more than five years: *Provided*, That no physician shall be effected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.”<sup>110</sup>

**5. Montana (1864):**

Sec. 41. “[E]very person who shall administer, or cause to be administered, or taken, any medicinal substance, or shall use, or cause to be used, any instru-

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<sup>109</sup> 1861 Terr. of Colo. Gen. Laws pp. 296–297. Colorado became a State in 1876. See Presidential Proclamation No. 7, 19 Stat. 665–666.

<sup>110</sup> 1863–1864 Terr. of Idaho Laws p. 443. Idaho became a State in 1890. See 26 Stat. 215–219.

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ments whatever, with the intention *to produce the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years. *Provided*, That no physician shall be affected by the last clause of this section, who in the discharge of his professional duties deems it necessary to produce the miscarriage of any woman in order to save her life.”<sup>111</sup>

**6. Arizona (1865):**

Sec. 45. “[E]very person who shall administer or cause to be administered or taken, any medicinal substances, or shall use or cause to be used any instruments whatever, with the intention *to procure the miscarriage of any woman then being with child*, and shall be thereof duly convicted, shall be punished by imprisonment in the Territorial prison for a term not less than two years nor more than five years: *Provided*, that no physician shall be affected by the last clause of this section, who in the discharge of his professional duties, deems it necessary to produce the miscarriage of any woman in order to save her life.”<sup>112</sup>

**7. Wyoming (1869):**

Sec. 25. “[A]ny person who shall administer, or cause to be administered, or taken, any such poison, substance or liquid, or who shall use, or cause to be used, any instrument of whatsoever kind, with the intention *to procure the miscarriage of any woman then being with child*, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three

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<sup>111</sup> 1864 Terr. of Mont. Laws p. 184. Montana became a State in 1889. See Presidential Proclamation No. 7, 26 Stat. 1551–1552.

<sup>112</sup> Howell Code, ch. 10, §45 (1865). Arizona became a State in 1912. See Presidential Proclamation of Feb. 14, 1912, 37 Stat. 1728–1729.



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years, in the penitentiary, and fined in a sum not exceeding one thousand dollars; and if any woman by reason of such treatment shall die, the person, or persons, administering, or causing to be administered such poison, substance, or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished by imprisonment for a term not less than three years in the penitentiary, and fined in a sum not exceeding one thousand dollars, unless it appear that such miscarriage was procured or attempted by, or under advice of a physician or surgeon, with intent to save the life of such woman, or to prevent serious and permanent bodily injury to her.”<sup>113</sup>

**8. Utah (1876):**

Sec. 142. “Every person who provides, supplies, or administers *to any pregnant woman*, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than two nor more than ten years.”<sup>114</sup>

**9. North Dakota (1877):**

Sec. 337. “Every person who administers *to any pregnant woman*, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs

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<sup>113</sup> 1869 Terr. of Wyo. Gen. Laws p. 104 (emphasis added). Wyoming became a State in 1889. See 26 Stat. 222–226.

<sup>114</sup> Terr. of Utah Comp. Laws §1972 (1876) (emphasis added). Utah became a State in 1896. See Presidential Proclamation No. 9, 29 Stat. 876–877.

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any instrument, or other means whatever with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the territorial prison not exceeding three years, or in a county jail not exceeding one year.”<sup>115</sup>

**10. South Dakota (1877):** *Same as North Dakota.*

**11. Oklahoma (1890):**

Sec. 2187. “Every person who administers *to any pregnant woman*, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the Territorial prison not exceeding three years, or in a county jail not exceeding one year.”<sup>116</sup>

**12. Alaska (1899):**

Sec. 8. “That if any person shall administer *to any woman pregnant with a child* any medicine, drug, or substance whatever, or shall use any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed

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<sup>115</sup>Dakota Penal Code §337 (1877) (codified at N. D. Rev. Code §7177 (1895)), and S. D. Rev. Penal Code Ann. §337 (1883). North and South Dakota became States in 1889. See Presidential Proclamation No. 5, 26 Stat. 1548–1551.

<sup>116</sup>Okla. Stat. §2187 (1890) (emphasis added). Oklahoma became a State in 1907. See Presidential Proclamation of Nov. 16, 1907, 35 Stat. 2160–2161.

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guilty of manslaughter, and shall be punished accordingly.”<sup>117</sup>

**13. New Mexico (1919):**

Sec. 1. “Any person who shall administer *to any pregnant woman any medicine*, drug or substance whatever, or attempt by operation or any other method or means to produce an abortion or miscarriage upon such woman, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than two thousand (\$2,000.00) Dollars, nor less than five hundred (\$500.00) Dollars, or imprisoned in the penitentiary for a period of not less than one nor more than five years, or by both such fine and imprisonment in the discretion of the court trying the case.”

Sec. 2. “Any person committing such act or acts mentioned in section one hereof which shall culminate in the death of the woman shall be deemed guilty of murder in the second degree; *Provided*, however, an abortion may be produced when two physicians licensed to practice in the State of New Mexico, in consultation, deem it necessary to preserve the life of the woman, or to prevent serious and permanent bodily injury.”

Sec. 3. “For the purpose of the act, the term “pregnancy” is defined as that condition of a woman *from the date of conception to the birth of her child*.”<sup>118</sup>

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**District of Columbia (1901):**

Sec. 809. “Whoever, with intent *to procure the miscarriage of any woman*, prescribes or administers to her

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<sup>117</sup>1899 Alaska Sess. Laws ch. 2, p. 3 (emphasis added). Alaska became a State in 1959. See Presidential Proclamation No. 3269, 73 Stat. c16.

<sup>118</sup>N. M. Laws p. 6 (emphasis added). New Mexico became a State in 1912. See Presidential Proclamation of Jan. 6, 1912, 37 Stat. 1723–1724.

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any medicine, drug, or substance whatever, or with like intent uses any instrument or means, unless when necessary to preserve her life or health and under the direction of a competent licensed practitioner of medicine, shall be imprisoned for not more than five years; or if the woman or her child dies in consequence of such act, by imprisonment for not less than three nor more than twenty years.”<sup>119</sup>

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<sup>119</sup> §809, 31 Stat. 1322 (1901) (emphasis added).