

May 3, 2022

To: The Nine Justices of the Supreme Court
President Biden and Vice President Harris
Senators Charles Schumer and Mitch McConnell
House Representatives Nancy Pelosi, Steny Hoyer, and Kevin McCarthy
Alexis McGill Johnson, President/CEO of Planned Parenthood

Re: Implications of the draft opinion 19-1392 on Dobbs v. Jackson

The draft opinion, if finalized, would decimate personal rights and the scope of the Federal Government. I believe the Supreme Court Justices have not fully considered the implications of their opinion on the country.

Specifically, I am focusing on “The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including ... the Due Process Clause of the Fourteenth Amendment.”¹ Setting aside the rights of women specifically for the moment, consider the ways that statement could be applied.

The MILITARY has the Army, Navy, and Marines mentioned by the Constitution (Section 8), but the Air Force and Space Force are not referenced, therefore they should not exist, or should be managed by each State as needed.

COMPUTER TECHNOLOGY AND THE INTERNET certainly didn't exist in the 18th century, so federal regulations by the FCC are not supported by the Constitution. Each State should decide how to manage these technologies.

TRANSPORTATION only consisted of walking, horseback, or carriage in the 18th century, so the DOT should only manage roads and maybe cars. Trains, aviation, and private space travel did not exist, so NASA, the FAA, and FRA should be funded by each State's needs.

RADIO AND TELEVISION are not protected by the Constitution, so the FCC should be disbanded and managed by each state.

You get the idea. Using a Constitutional view that is hyper-loyal to the Founding Fathers makes the United States of America just the States of America. **If the States do not coordinate agreement on critical fundamental human rights, then we are no longer a country any more than the European Union.** The EU is primarily an economic market, but also with an eye toward preventing conflict among

¹ <https://www.politico.com/f/?id=00000180-874f-dd36-a38c-c74f98520000>

its members. If the United States Supreme Court cannot agree on fundamental human rights, then the United States is also just a union to provide economic and security coordination.²

Getting back to the specifics of abortion, a critical problem with allowing bans on medical procedures is the fundamental right of bodily autonomy. The AMA Code of Ethics includes “A patient who has decision-making capacity may accept or refuse any recommended medical intervention.”³ This right extends after death, since a person’s organs may not be used unless they explicitly gave consent. “The United States’ system for organ procurement operates under a model of expressed consent. This means that an individual will not be an organ donor unless he or she explicitly states otherwise.”⁴ **To refuse a woman the right to have an elective medical procedure performed gives her fewer rights alive than if she were dead.**

A contentious issue around abortion is determining when a fetus is viable. In short, when does life begin? Nominal gestation for a human is 40 weeks from the last menstrual period. Even then, a human newborn is quite helpless compared to nearly any other species. We can’t walk, crawl, talk, see clearly, etc.

An early standard for viability was whether a fetus could have basic life functions on its own – heartbeat, breathing. Their lungs are not functional until around 24-28 weeks’ gestation.⁵ The so-called ‘heartbeat laws’ are pointless, since heart muscle cells (cardiomyocytes) have automaticity; they contract on their own, even in a Petri dish. A heart will beat on its own, but that automatic pace can be changed in a living person by input from their brain. The presence of a heartbeat is a meaningless measure of the start of life.

As a Registered Nurse, I learned that one can sometimes keep a fetus alive born as early as 22-23 weeks, IF you have a state-of-the-art neonatal ICU available and have the insurance to help pay for it. Barely over 1% of pregnancies are terminated after 21 weeks’ gestation.⁶ Why are they done at all? I have witnessed abortions up to 24 weeks’ gestation. The only reasons for late abortion are 1) the fetus is not viable (they are missing a brain or other critical organs), 2) the mother’s life is threatened, or 3) the fetus has already died (fetal demise). Think about it for a moment. We are talking about women who have been pregnant for over five months! Past the morning sickness of first trimester, clearly showing they are pregnant, over halfway through the pregnancy. Would you end the pregnancy if you didn't have to? They wouldn't either.

Even Roe v. Wade didn’t try to define the start of life. “We need not resolve the difficult question of when life begins.”⁷ That’s a question for philosophers, gods, and Facebook.

Many “pro-life” extremists insist life begins at conception, or want to ban abortion after six weeks’ gestation, when many women don’t even know if they are pregnant. The legal implications of this are

² <https://op.europa.eu/webpub/com/eu-what-it-is/en/>

³ <https://www.ama-assn.org/delivering-care/ethics/patient-rights>

⁴ <https://journalofethics.ama-assn.org/article/presumed-vs-expressed-consent-us-and-internationally/2005-09>

⁵ <https://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/supreme-courts-response-to-the-question-when-does-life-begin>

⁶ <https://www.guttmacher.org/evidence-you-can-use/late-abortion>

⁷ <https://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/supreme-courts-response-to-the-question-when-does-life-begin>

staggering. If a fetus has status as a living person, does that mean child support must be paid retroactively to conception? What if the father of the fetus isn't known? Do Social Security payments likewise start then? Deductions for income tax? Murder charges if the mother is killed? Murder charges if the fetus is killed when the mother is injured? If the fetus aborts spontaneously, is god going to be prosecuted? The list goes on and on. Such start-of-life concepts are theoretical, not legally meaningful.

I urge the Justices of the Supreme Court to consider these facts, and the members of Congress to consider them when drafting and reviewing legislation. Thank you for your time.

Sincerely,

Jennifer Booker, PhD, RN