

16 Jun 2022

Honourable Samuel A Alito Jr
Supreme Court of the United States
1 First Street NE
Washington, DC 20543

Your Honour,

May it please the court, I am writing to you today to express to you my profound distress and dissatisfaction with the contents of the recently leaked first draft of a potential majority opinion in the case of *Dobbs v. Jackson Women's Health Org.*¹

I firmly believe that the draft opinion proposing that *Roe v. Wade*² and *Planned Parenthood v. Casey*³ be overruled entirely in favour of returning the question of a woman's right to an abortion back to the state legislatures to be an appalling repudiation of the Supreme Court's well-established custom of *stare decisis* culminating in a dreadful and savage curtailing of a woman's right to autonomy in decisions pertaining to her body.

I don't claim to be a lawyer learned in the fine intricacies of constitutional law. I'm sure you may well be wondering what my qualifications might be in offering this quasi-*amicus curiae* brief. The only solace I can offer you in that regard is that I am a 52 year-old white man with a very panoramic physique and a face better suited for the recent mask requirements than most.

But considering that people just like me have been making these sorts of important decisions concerning women in spite of what women may think best for their own well-being is something that has been happening in legislatures all across this country prior to the adoption of the Constitution, perhaps a bit of common sense from a more familiar perspective might be of benefit to us all.

It is abundantly clear that the majority on the Court who would join the draft *Dobbs*⁴ opinion desire to wash the Court's hands of the issue of abortion once and for all and make the question someone else's problem and remanding this issue to the state legislatures would certainly accomplish that goal.

¹ No. 19-1392

² *Roe v. Wade*, 410 U. S. 113 (1973)

³ *Planned Parenthood v. Casey*, 505 U. S. 833 (1992)

⁴ Draft opinion, p 6: "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 (Sealia, J, concurring in the judgment in part and dissenting in part). That is what the Constitution and the rule of law demand."

Unfortunately, remanding this issue to the state legislatures would be an egregiously poor decision for the following reasons:

- The state legislatures have generally become increasingly less representative and accountable to the constituents who supposedly elect them. This is particularly apparent where I live in North Carolina where the General Assembly has been allowed by the Court to effectively choose the voters they wish to have rather than the voters being allowed to choose their representatives in districts that are drawn fairly without partisan influence or racial dilution/packing.
 - *Citizens United v. FEC*⁵ and subsequent decisions has essentially allowed unlimited and unregulated funding for political candidates by Super PACs
 - *Shelby County v. Holder*⁶ effectively gutted the Voting Rights Act of 1965 allowing for adoption of various voting restrictions including an ID requirement that predominantly targeted African-Americans “with almost surgical precision” before being struck down in 2016⁷ and 2019⁸. These provisions would have likely been enjoined by the pre-clearance requirements of the VRA.
 - *Cooper v. Harris*⁹ which struck down the 1st and 12th districts as racially biased in the maps drawn after the 2010 Census.
 - *Rucho v. Common Cause*¹⁰ where the Court recognised the extreme partisan gerrymander¹¹ of the 2016 district maps but failed to provide effective relief to the citizens of North Carolina from the harm of a Congressional delegation that does not reflect the actual political affiliations of its citizens.
- Certain matters should not be decided on the basis of majority vote by anyone, much less elected legislatures regardless of our historic affinity for representative democracy. When it comes to a person’s right to choose what is appropriate for their own body, the only vote that should matter is the person involved. When one considers that women bear a disproportionate amount of the physical and mental burden of pregnancy as well as the very real risks up to and including her death, the concepts of liberty enshrined in the Preamble and elsewhere in the Constitution demand no less.

Making matters worse is that several legislatures have “trigger laws” banning abortions ready to go into effect the moment this decision is signed and announced in the Court. Many of these

⁵ *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)

⁶ *Shelby County v. Holder*, 570 U.S. 529 (2013)

⁷ *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 215 (4th Cir. 2016)

⁸ *N.C. State Conference of NAACP v. Cooper*, 430 F. Supp. 3d 15 (M.D.N.C. 2019)

⁹ *Cooper v. Harris*, 581 U.S. ____ (2017)

¹⁰ *Rucho v. Common Cause*, No. 18-422, 588 U.S. ____ (2019)

¹¹ "I propose that we draw the maps to give a partisan advantage to 10 Republicans and three Democrats, because I do not believe it's possible to draw a map with 11 Republicans and two Democrats." -- Rep David R Lewis, co-chairman of the General Assembly redistricting committee

draconian laws, if enacted, would impose a myriad of burdens and penalties overwhelmingly falling upon women who become pregnant that could vary wildly from state to state.

Many of these new laws contain no provisions allowing for abortions in cases where the woman was raped or incest was involved. It's bad enough that an unfortunate woman in such a jurisdiction could be conceivably forced by the state to carry the foetus to term but she might well be forced to confer parental rights including visitation¹² to the person who raped her. Being raped is traumatic enough as it is but the idea that the rapist can continue to have any relationship with the resulting child is as horrifyingly cruel and demeaning to the mother as the original crime itself.

Other proposed laws would making getting an abortion or aiding another in obtaining an abortion a criminal act, in some cases tantamount to being charged with murder even if the woman is fortunate enough to be able to travel to a state which does not have the same restrictions her home state does.

Many poor and BIPOC women will likely not be able to afford such a trip and the attendant costs of the procedure as well as the time away from work so even in jurisdictions with more favourable laws vis-à-vis abortion, she may well be prevented from practically obtaining legal and safe care. Likewise, these prohibitions will also fall heavily upon transgendered and non-binary individuals who often find that abortion providers to be their only safe access to necessary care and support.

And what of the father who was equally responsible for conception?

Whilst most men do the right thing and choose to support the mother and child, it is by no means guaranteed and the woman can again find herself all alone with a child and no support. Perhaps the courts might well remedy this inequitable state of affairs but that's only if she has the wherewithal to have her interests and case properly represented before the courts in the first instance and they choose to actually enforce parental responsibility and the father actually does follow through on the ordered actions.

If abortion becomes criminalised or rendered effectively impossible to obtain safely, then many women truly won't have a choice at all and effectively be forced to carry the foetus to term and in so doing become an involuntary labourer to the benefit of the state. Her state might well provide financial and other support during this forced pregnancy but it's equally likely that state legislatures will find other matters much more politically palatable for funding and the woman is left to fend for herself. Even mandating that states that outlaw abortion completely also be

¹² <https://www.mylifetime.com/movies/you-cant-take-my-daughter/articles/how-parental-rights-for-rapists-vary-by-state>

financially responsible for the pregnancy and costs after birth would not outweigh the disproportionate physical, mental, and financial burden the woman will be forced to endure.

I could go on and on about the variations on the theme involving miscarriages, still births, and other pregnancy complications that could potentially threaten the life of the mother but the point I'm making should be crystal clear. In a post-*Roe* world, many jurisdictions would effectively force a woman to bring every conception to term.

That is why I found it fascinating that there is not one mention of the Thirteenth Amendment¹³ in the original *Roe* decision, the subsequent affirmation in *Casey*, or this draft opinion for *Dobbs*.

By creating an environment where a woman is potentially forced to carry to term by order of the state, she's effectively relegated to the status of a second-class citizen at best without the merest inkling of the basic dignity of the human right of self-determination and autonomy.

It's bad enough that women are still consistently paid significantly less than men for the same work and often have to be three or four times better than the men to be considered half as good. Much progress had been made over the past fifty years by the late Justice Ginsburg toward getting the law and society to treat women with the respect they deserve and that frankly men would demand is about to be reversed and the day that happens will be a dark day indeed.

Roe and *Casey* were not perfect by any means. I don't think anyone who has read the law and appreciates the rich tradition of Constitutional law would disagree with that opinion.

But they were much better than the dark alternative seriously curtailing the basic human rights of women in that draft opinion for *Dobbs* that seems inevitable at this writing. An opinion that in its current form would bring shame and dishonour upon the Supreme Court which was supposed to be the one institution of our national government that would act as the safety valve against tyranny against the interests of the people.

So why is a 52 year-old fat white man writing to you about this?

It comes down to this very simple reality: **if that decision is announced as-is, I will have to look my 15 year-old daughter whom I love more than my own life in the eye and tell her that her country's laws now consider her a second-class citizen where a legislature may take a vote to remove the control over what happens to her own body from her.**

¹³ Amendment XIII, Section 1: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

And then I'll have to apologise to her because our society will have failed her.

Your honour, that is my post-*Roe* reality.

I'm hopeful that the vehement reaction to the leaked draft opinion might well have encouraged you and your fellow Justices to perhaps consider the issue of abortion as a matter of basic human rights and seriously reconsider the flawed and cowardly remedy of remanding the responsibility for regulating abortion to the states.

One could dare to dream that *stare decisis* may well rule the day and recognise that whilst *Roe* and *Casey* are not perfect decisions, they were the most workable ones for the time and especially now in the hyper-polarised political environment we currently find ourselves.

Perhaps the Court might well come up with a standard it feels is far more workable and fair than *Casey's* arguably muddled one that I'd agree not only didn't settle the debate over abortion, it made things far worse by allowing laws like the Mississippi statute in question or absurd laws like the Texas "heartbeat" statute which could potentially make the woman guilty of a criminal act before she's even aware she's pregnant!

Or the Court might well find that defining a standard is as elusive as it was in *Roe* and *Casey* and let the various courts litigate their way to an eventual standard.

But most importantly, I hope and pray that basic human compassion and respect for the dignity of a human being to choose for herself will become the law of the land.

Yours ever,

Erik Williams