Ten Points to Understand About the *Dobbs* Supreme Court Case on Abortion

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On December 13, 1971, the US Supreme Court heard oral arguments in the case of *Roe vs. Wade,* which permitted abortion throughout pregnancy. Almost exactly 50 years later, on December 1, 2021, the same Court heard oral arguments in the case that could reverse it, *Dobbs vs. Jackson Women's Health Organization.*

This brief summary will assist you to understand this case and explain it to others.

1. The American people want to protect their children, including their youngest children in the womb. The pro-life side in this case is asking the Court to let them do that. The State of Mississippi tried to do that and a federal court told them they could not protect babies who were too young to survive outside the womb. The Court refused to even consider the evidence that Mississippi legislators had used to conclude that they should protect these children starting at 15 weeks gestation, through the Gestational Age Act passed in 2018.

2. In accepting this case back in May of 2021, the Supreme Court agreed to answer the question of whether all bans on elective abortion prior to viability (now about 22 weeks into pregnancy) are unconstitutional. This question arises from the fact that *Roe vs. Wade,* as well as *Planned Parenthood vs. Casey* pointed to viability as the dividing line, before which the state **may not prohibit** abortion, and after which it may do so in certain circumstances.

3. Abortion is not mentioned in the Constitution, nor is viability, nor is the notion that the state cannot protect unborn babies. Nor are these ideas found in the objective, deeply rooted history, traditions, or legal practices of our country. On the contrary, when the 14th Amendment was adopted – which the pro-abortion side points to as the source of the "right" to have an abortion – 30 out of the 37 existing states prohibited abortion. Therefore, as the prolife side argues in this case, this "right" to abortion cannot be considered a "Constitutional right."

4. The Supreme Court has made clear in its abortion decisions that the states have certain interests that they can pursue, from the onset of pregnancy. Among these interests are the life in the womb, the health of the mother, and the integrity of the medical profession. The states pursue these interests by passing laws that advance them, as Mississippi did in this case.

5. But while the Courts say the states have these interests, they tie their hands and prevent them from acting upon them when they, the Courts, insist that protecting babies, moms and doctors from abortion prior to viability is unconstitutional.

6. This "viability" boundary line has taken policymaking on abortion away from the people and their elected representatives, and put it in the hands of unelected judges. It has made the Supreme Court the national medical review board on abortion, unlike it does with any other medical procedure.

7. This unnatural role for the Supreme Court has caused tremendous confusion, because the Court keeps changing the guidance it gives to lower courts and to legislatures about what kind of abortion-related laws are constitutional. Judges, including Supreme Court Justices, disagree on their

interpretation of the standards, leaving both the courts and the legislatures unsure of what they should do regarding abortion policy.

8. Therefore, Mississippi is asking the Court to start evaluating abortion laws the same way as other kinds of laws, by allowing what is called a "rational basis review." In other words, if a law is rationally related to a legitimate state interest, that should be enough for it to be considered constitutional, without having to undergo any other heightened standard of scrutiny. In this way, policy-making on abortion can return to the people and their elected lawmakers, who are more equipped than the courts to gather and consider evidence, have public debate and hearings, utilize the amendment process, and make changes in the law to keep up with modern developments.

9. A key argument in this case is precisely those modern developments in science, research, law and culture that have provided much more accommodation and support for pregnant mothers to have their children, and that have allowed us to know those children in the womb as medical science's newest patients. The proliferation of pregnancy centers, including medical clinics, and the Safe Haven laws in all 50 states give mothers who cannot raise their children far more options than they had at the time of *Roe.* Research on the harm abortion does to women, men and families, furthermore, has strengthened the interests of the states in preventing such harm.

10. The Courts are being asked to reject the idea that the advancement of women somehow depends on the availability of abortion. The fact that women advanced in society prior to the legalization of abortion, and continue to advance despite a decline in abortions, is just one reason why such an assertion is ridiculous. The Court should reject it and is being asked not only to uphold Mississippi's law, but to reverse the erroneous, unworkable and damaging precedents of *Roe vs. Wade* and *Planned Parenthood vs. Casey.*

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