SUPREME COURT OF THE UNITED STATES

No. 19–1392

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 THOMAS, concurring.

I join the opinion of the Court because it correctly holds that there is no constitutional right to abortion. Respondents invoke one source for that right: the Fourteenth Amendment's guarantee that no State shall "deprive any person of life, liberty, or property without due process of law." The Court well explains why, under our substantive due process precedents, the purported right to abortion is not a form of "liberty" protected by the Due Process Clause. Such a right is neither "deeply rooted in this Nation's history and tradition" nor "implicit in the concept of ordered liberty." *Washington* v. *Glucksberg*, 521 U. S. 702, 721 (1997) (internal quotation marks omitted). "[T]he idea that the Framers of the Fourteenth Amendment understood the Due Process Clause to protect a right to abortion is farcical." *June Medical Services L. L. C.* v. *Russo*, 591 U. S. ___, ___ (2020) (THOMAS, J., dissenting) (slip op., at 17).

I write separately to emphasize a second, more fundamental reason why there is no abortion guarantee lurking in the Due Process Clause. Considerable historical evidence indicates that "due process of law" merely required executive and judicial actors to comply with legislative enactments and the common law when depriving a person of

life, liberty, or property. See, *e.g., Johnson* v. *United States*, 576 U. S. 591, 623 (2015) (THOMAS, J., concurring in judgment). Other sources, by contrast, suggest that "due process of law" prohibited legislatures "from authorizing the deprivation of a person's life, liberty, or property without providing him the customary procedures to which freemen were entitled by the old law of England." *United States* v. *Vaello Madero*, 596 U. S. ___, ____ (2022) (THOMAS, J., concurring) (slip op., at 3) (internal quotation marks omitted). Either way, the Due Process Clause at most guarantees *process*. It does not, as the Court's substantive due process cases suppose, "forbi[d] the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided." *Reno* v. *Flores*, 507 U. S. 292, 302 (1993); see also, *e.g., Collins* v. *Harker Heights*, 503 U. S. 115, 125 (1992).

As I have previously explained, "substantive due process" is an oxymoron that "lack[s] any basis in the Constitution." *Johnson*, 576 U. S., at 607–608 (opinion of THOMAS, J.); see also, *e.g., Vaello Madero*, 596 U. S., at ___ (THOMAS, J., concurring) (slip op., at 3) ("[T]ext and history provide little support for modern substantive due process doctrine"). "The notion that a constitutional provision that guarantees only 'process' before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words." *McDonald* v. *Chicago*, 561 U. S. 742, 811 (2010) (THOMAS, J., concurring in part and concurring in judgment); see also *United States* v. *Carlton*, 512 U. S. 26, 40 (1994) (Scalia, J., concurring in judgment). The resolution of this case is thus straightforward. Because the Due Process Clause does not secure *any* substantive rights, it does not secure a right to abortion.

The Court today declines to disturb substantive due process jurisprudence generally or the doctrine's application in other, specific contexts. Cases like *Griswold* v. *Connecticut*,

381 U. S. 479 (1965) (right of married persons to obtain contraceptives)*; *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 same-sex marriage), are not at issue. The Court's abortion cases are unique, see *ante,* at 31–32, 66, 71–72, and no party has asked us to decide "whether our entire Fourteenth Amendment jurisprudence must be preserved or revised," *McDonald*, 561 U. S., at 813 (opinion of THOMAS, J.). Thus, I agree that "[n]othing in [the Court's] opinion should be understood to cast doubt on precedents that do not concern abortion." *Ante,* at 66.

For that reason, in future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is "demonstrably erroneous," *Ramos* v. *Louisiana*, 590 U. S. ___, ___ (2020) (THOMAS, J., concurring in judgment) (slip op., at 7), we have a duty to "correct the error" established in those precedents, *Gamble* v. *United States*, 587 U. S. ___, ___ (2019) (THOMAS, J., concurring) (slip op., at 9). After overruling these demonstrably erroneous decisions, the question would remain whether other constitutional provisions guarantee the myriad rights that our substantive due process cases have generated. For example, we could consider whether any of the rights announced in this Court's substantive due process cases are "privileges or immunities of citizens of the United States" protected by the Fourteenth Amendment. Amdt.

**Griswold* v. *Connecticut* purported not to rely on the Due Process Clause, but rather reasoned "that specific guarantees in the Bill of Rights"—including rights enumerated in the First, Third, Fourth, Fifth, and Ninth Amendments—"have penumbras, formed by emanations," that create "zones of privacy." 381 U. S., at 484. Since *Griswold,* the Court, perhaps recognizing the facial absurdity of *Griswold*'s penumbral argument, has characterized the decision as one rooted in substantive due process. See, *e.g., Obergefell* v. *Hodges*, 576 U. S. 644, 663 (2015); *Washington* v. *Glucksberg*, 521 U. S. 702, 720 (1997).

14, §1; see *McDonald*, 561 U. S., at 806 (opinion of THOMAS, J.). To answer that question, we would need to decide important antecedent questions, including whether the Privileges or Immunities Clause protects *any* rights that are not enumerated in the Constitution and, if so, how to identify those rights. See *id.*, at 854. That said, even if the Clause does protect unenumerated rights, the Court conclusively demonstrates that abortion is not one of them under any plausible interpretive approach. See *ante,* at 15, n. 22.

Moreover, apart from being a demonstrably incorrect reading of the Due Process Clause, the "legal fiction" of substantive due process is "particularly dangerous." *McDonald*, 561 U. S., at 811 (opinion of THOMAS, J.); accord, *Obergefell*, 576 U. S., at 722 (THOMAS, J., dissenting). At least three dangers favor jettisoning the doctrine entirely.

First, "substantive due process exalts judges at the expense of the People from whom they derive their authority." *Ibid.* Because the Due Process Clause "speaks only to 'process,' the Court has long struggled to define what substantive rights it protects." *Timbs* v. *Indiana*, 586 U. S. ___, ___ (2019) (THOMAS, J., concurring in judgment) (slip op., at 2) (internal quotation marks omitted). In practice, the Court's approach for identifying those "fundamental" rights "unquestionably involves policymaking rather than neutral legal analysis." *Carlton*, 512 U. S., at 41–42 (opinion of Scalia, J.); see also *McDonald*, 561 U. S., at 812 (opinion of THOMAS, J.) (substantive due process is "a jurisprudence devoid of a guiding principle"). The Court divines new rights in line with "its own, extraconstitutional value preferences" and nullifies state laws that do not align with the judicially created guarantees. *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U. S. 747, 794 (1986) (White, J., dissenting).

Nowhere is this exaltation of judicial policymaking clearer than this Court's abortion jurisprudence. In *Roe* v. *Wade*, 410 U. S. 113 (1973), the Court divined a right to

abortion because it "fe[lt]" that "the Fourteenth Amendment's concept of personal liberty" included a "right of privacy" that "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Id.,* at 153. In *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992), the Court likewise identified an abortion guarantee in "the liberty protected by the Fourteenth Amendment," but, rather than a "right of privacy," it invoked an ethereal "right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." *Id.*, at 851. As the Court's preferred manifestation of "liberty" changed, so, too, did the test used to protect it, as *Roe*'s author lamented. See *Casey*, 505 U. S., at 930 (Blackmun, J., concurring in part and dissenting in part) ("[T]he *Roe* framework is far more administrable, and far less manipulable, than the 'undue burden' standard").

Now, in this case, the nature of the purported "liberty" supporting the abortion right has shifted yet again. Respondents and the United States propose no fewer than three different interests that supposedly spring from the Due Process Clause. They include "bodily integrity," "personal autonomy in matters of family, medical care, and faith," Brief for Respondents 21, and "women's equal citizenship," Brief for United States as *Amicus Curiae* 24. That 50 years have passed since *Roe* and abortion advocates still cannot coherently articulate the right (or rights) at stake proves the obvious: The right to abortion is ultimately a policy goal in desperate search of a constitutional justification.

Second, substantive due process distorts other areas of constitutional law. For example, once this Court identifies a "fundamental" right for one class of individuals, it invokes the Equal Protection Clause to demand exacting scrutiny of statutes that deny the right to others. See, *e.g., Eisenstadt* v. *Baird*, 405 U. S. 438, 453–454 (1972) (relying on *Griswold* to invalidate a state statute prohibiting distribution

of contraceptives to unmarried persons). Statutory classifications implicating certain "nonfundamental" rights, meanwhile, receive only cursory review. See, *e.g., Armour* v. *Indianapolis*, 566 U. S. 673, 680 (2012). Similarly, this Court deems unconstitutionally "vague" or "overbroad" those laws that impinge on its preferred rights, while letting slide those laws that implicate supposedly lesser values. See, *e.g.*, *Johnson*, 576 U. S., at 618–621 (opinion of THOMAS, J.); *United States* v. *Sineneng-Smith*, 590 U. S. ___, ___–___ (2020) (THOMAS, J., concurring) (slip op., at 3–5). "In fact, our vagueness doctrine served as the basis for the first draft of the majority opinion in *Roe* v. *Wade*," and it since has been "deployed . . . to nullify even mild regulations of the abortion industry." *Johnson,* 576 U. S., at 620–621 (opinion of THOMAS, J.). Therefore, regardless of the doctrinal context, the Court often "demand[s] extra justifications for encroachments" on "preferred rights" while "relax[ing] purportedly higher standards of review for less-preferred rights." *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. 582, 640–642 (2016) (THOMAS, J., dissenting). Substantive due process is the core inspiration for many of the Court's constitutionally unmoored policy judgments.

Third, substantive due process is often wielded to "disastrous ends." *Gamble*, 587 U. S., at ___ (THOMAS, J., concurring) (slip op., at 16). For instance, in *Dred Scott* v. *Sandford*, 19 How. 393 (1857), the Court invoked a species of substantive due process to announce that Congress was powerless to emancipate slaves brought into the federal territories. See *id.,* at 452. While *Dred Scott* "was overruled on the battlefields of the Civil War and by constitutional amendment after Appomattox," *Obergefell*, 576 U. S., at 696 (ROBERTS, C. J., dissenting), that overruling was "[p]urchased at the price of immeasurable human suffering," *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 240 (1995) (THOMAS, J., concurring in part and concurring in judgment). Now today, the Court rightly overrules *Roe* and

Casey—two of this Court's "most notoriously incorrect" substantive due process decisions, *Timbs*, 586 U. S., at ___ (opinion of THOMAS, J.) (slip op., at 2)—after more than 63 million abortions have been performed, see National Right to Life Committee, Abortion Statistics (Jan. 2022), https://www.nrlc.org/uploads/factsheets/FS01AbortionintheUS.pdf. The harm caused by this Court's forays into substantive due process remains immeasurable.

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Because the Court properly applies our substantive due process precedents to reject the fabrication of a constitutional right to abortion, and because this case does not present the opportunity to reject substantive due process entirely, I join the Court's opinion. But, in future cases, we should "follow the text of the Constitution, which sets forth certain substantive rights that cannot be taken away, and adds, beyond that, a right to due process when life, liberty, or property is to be taken away." *Carlton*, 512 U. S., at 42 (opinion of Scalia, J.). Substantive due process conflicts with that textual command and has harmed our country in many ways. Accordingly, we should eliminate it from our jurisprudence at the earliest opportunity.

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

[June 24, 2022]

JUSTICE KAVANAUGH, concurring.

I write separately to explain my additional views about why *Roe* was wrongly decided, why *Roe* should be overruled at this time, and the future implications of today's decision.

I

Abortion is a profoundly difficult and contentious issue because it presents an irreconcilable conflict between the interests of a pregnant woman who seeks an abortion and the interests in protecting fetal life. The interests on both sides of the abortion issue are extraordinarily weighty.

On the one side, many pro-choice advocates forcefully argue that the ability to obtain an abortion is critically important for women's personal and professional lives, and for women's health. They contend that the widespread availability of abortion has been essential for women to advance in society and to achieve greater equality over the last 50 years. And they maintain that women must have the freedom to choose for themselves whether to have an abortion.

On the other side, many pro-life advocates forcefully argue that a fetus is a human life. They contend that all human life should be protected as a matter of human dignity

and fundamental morality. And they stress that a significant percentage of Americans with pro-life views are women.

When it comes to abortion, one interest must prevail over the other at any given point in a pregnancy. Many Americans of good faith would prioritize the interests of the pregnant woman. Many other Americans of good faith instead would prioritize the interests in protecting fetal life—at least unless, for example, an abortion is necessary to save the life of the mother. Of course, many Americans are conflicted or have nuanced views that may vary depending on the particular time in pregnancy, or the particular circumstances of a pregnancy.

The issue before this Court, however, is not the policy or morality of abortion. The issue before this Court is what the Constitution says about abortion. The Constitution does not take sides on the issue of abortion. The text of the Constitution does not refer to or encompass abortion. To be sure, this Court has held that the Constitution protects unenumerated rights that are deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty. But a right to abortion is not deeply rooted in American history and tradition, as the Court today thoroughly explains.[1]

On the question of abortion, the Constitution is therefore neither pro-life nor pro-choice. The Constitution is neutral and leaves the issue for the people and their elected representatives to resolve through the democratic process in the

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[1]The Court's opinion today also recounts the pre-constitutional common-law history in England. That English history supplies background information on the issue of abortion. As I see it, the dispositive point in analyzing American history and tradition for purposes of the Fourteenth Amendment inquiry is that abortion was largely prohibited in most American States as of 1868 when the Fourteenth Amendment was ratified, and that abortion remained largely prohibited in most American States until *Roe* was decided in 1973.

States or Congress—like the numerous other difficult questions of American social and economic policy that the Constitution does not address.

Because the Constitution is neutral on the issue of abortion, this Court also must be scrupulously neutral. The nine unelected Members of this Court do not possess the constitutional authority to override the democratic process and to decree either a pro-life or a pro-choice abortion policy for all 330 million people in the United States.

Instead of adhering to the Constitution's neutrality, the Court in *Roe* took sides on the issue and unilaterally decreed that abortion was legal throughout the United States up to the point of viability (about 24 weeks of pregnancy). The Court's decision today properly returns the Court to a position of neutrality and restores the people's authority to address the issue of abortion through the processes of democratic self-government established by the Constitution.

Some *amicus* briefs argue that the Court today should not only overrule *Roe* and return to a position of judicial neutrality on abortion, but should go further and hold that the Constitution *outlaws* abortion throughout the United States. No Justice of this Court has ever advanced that position. I respect those who advocate for that position, just as I respect those who argue that this Court should hold that the Constitution legalizes pre-viability abortion throughout the United States. But both positions are wrong as a constitutional matter, in my view. The Constitution neither outlaws abortion nor legalizes abortion.

To be clear, then, the Court's decision today *does not outlaw* abortion throughout the United States. On the contrary, the Court's decision properly leaves the question of abortion for the people and their elected representatives in the democratic process. Through that democratic process, the people and their representatives may decide to allow or limit abortion. As Justice Scalia stated, the "States may, if they wish, permit abortion on demand, but the Constitution

does not *require* them to do so." *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 979 (1992) (opinion concurring in judgment in part and dissenting in part).

Today's decision therefore does not prevent the numerous States that readily allow abortion from continuing to readily allow abortion. That includes, if they choose, the *amici* States supporting the plaintiff in this Court: New York, California, Illinois, Maine, Massachusetts, Rhode Island, Vermont, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Michigan, Wisconsin, Minnesota, New Mexico, Colorado, Nevada, Oregon, Washington, and Hawaii. By contrast, other States may maintain laws that more strictly limit abortion. After today's decision, all of the States may evaluate the competing interests and decide how to address this consequential issue.[2]

In arguing for a *constitutional* right to abortion that would override the people's choices in the democratic process, the plaintiff Jackson Women's Health Organization and its *amici* emphasize that the Constitution does not freeze the American people's rights as of 1791 or 1868. I fully agree. To begin, I agree that constitutional rights apply to situations that were unforeseen in 1791 or 1868—such as applying the First Amendment to the Internet or the Fourth Amendment to cars. Moreover, the Constitution authorizes the creation of new rights—state and federal, statutory and constitutional. But when it comes to creating new rights, the Constitution directs the people to the various processes of democratic self-government contemplated by the Constitution—state legislation, state constitutional amendments, federal legislation, and federal constitutional

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[2] In his dissent in *Roe*, Justice Rehnquist indicated that an exception to a State's restriction on abortion would be constitutionally required when an abortion is necessary to save the life of the mother. See *Roe* v. *Wade*, 410 U. S. 113, 173 (1973). Abortion statutes traditionally and currently provide for an exception when an abortion is necessary to protect the life of the mother. Some statutes also provide other exceptions.

amendments. See generally Amdt. 9; Amdt. 10; Art. I, §8; Art. V; J. Sutton, 51 Imperfect Solutions: States and the Making of American Constitutional Law 7–21, 203–216 (2018); A. Amar, America's Constitution: A Biography 285–291, 315–347 (2005).

The Constitution does not grant the nine unelected Members of this Court the unilateral authority to rewrite the Constitution to create new rights and liberties based on our own moral or policy views. As Justice Rehnquist stated, this Court has not "been granted a roving commission, either by the Founding Fathers or by the framers of the Fourteenth Amendment, to strike down laws that are based upon notions of policy or morality suddenly found unacceptable by a majority of this Court." *Furman* v. *Georgia*, 408 U. S. 238, 467 (1972) (dissenting opinion); see *Washington* v. *Glucksberg*, 521 U. S. 702, 720–721 (1997); *Cruzan* v. *Director, Mo. Dept. of Health*, 497 U. S. 261, 292–293 (1990) (Scalia, J., concurring).

This Court therefore does not possess the authority either to declare a constitutional right to abortion *or* to declare a constitutional prohibition of abortion. See *Casey*, 505 U. S., at 953 (Rehnquist, C. J., concurring in judgment in part and dissenting in part); *id.,* at 980 (opinion of Scalia, J.); *Roe* v. *Wade*, 410 U. S. 113, 177 (1973) (Rehnquist, J., dissenting); *Doe* v. *Bolton*, 410 U. S. 179, 222 (1973) (White, J., dissenting).

In sum, the Constitution is neutral on the issue of abortion and allows the people and their elected representatives to address the issue through the democratic process. In my respectful view, the Court in *Roe* therefore erred by taking sides on the issue of abortion.

II

The more difficult question in this case is *stare decisis*—that is, whether to overrule the *Roe* decision.

The principle of *stare decisis* requires respect for the

Court's precedents and for the accumulated wisdom of the judges who have previously addressed the same issue. *Stare decisis* is rooted in Article III of the Constitution and is fundamental to the American judicial system and to the stability of American law.

Adherence to precedent is the norm, and *stare decisis* imposes a high bar before this Court may overrule a precedent. This Court's history shows, however, that *stare decisis* is not absolute, and indeed cannot be absolute. Otherwise, as the Court today explains, many long-since-overruled cases such as *Plessy* v. *Ferguson*, 163 U. S. 537 (1896); *Lochner* v. *New York*, 198 U. S. 45 (1905); *Minersville School Dist.* v. *Gobitis*, 310 U. S. 586 (1940); and *Bowers* v. *Hardwick*, 478 U. S. 186 (1986), would never have been overruled and would still be the law.

In his canonical *Burnet* opinion in 1932, Justice Brandeis stated that in "cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions." *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406–407 (1932) (dissenting opinion). That description of the Court's practice remains accurate today. Every current Member of this Court has voted to overrule precedent. And over the last 100 years beginning with Chief Justice Taft's appointment in 1921, every one of the 48 Justices appointed to this Court has voted to overrule precedent. Many of those Justices have voted to overrule a substantial number of very significant and longstanding precedents. See, *e.g.*, *Obergefell* v. *Hodges*, 576 U. S. 644 (2015) (overruling *Baker* v. *Nelson*); *Brown* v. *Board of Education*, 347 U. S. 483 (1954) (overruling *Plessy* v. *Ferguson*); *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937) (overruling *Adkins* v. *Children's Hospital of D. C.* and in effect *Lochner* v. *New York*).

But that history alone does not answer the critical question: When precisely should the Court overrule an erroneous constitutional precedent? The history of *stare decisis* in

this Court establishes that a constitutional precedent may be overruled only when (i) the prior decision is not just wrong, but is egregiously wrong, (ii) the prior decision has caused significant negative jurisprudential or real-world consequences, and (iii) overruling the prior decision would not unduly upset legitimate reliance interests. See *Ramos* v. *Louisiana*, 590 U. S. ___, ___–___ (2020) (KAVANAUGH, J., concurring in part) (slip op., at 7–8).

Applying those factors, I agree with the Court today that *Roe* should be overruled. The Court in *Roe* erroneously assigned itself the authority to decide a critically important moral and policy issue that the Constitution does not grant this Court the authority to decide. As Justice Byron White succinctly explained, *Roe* was "an improvident and extravagant exercise of the power of judicial review" because "nothing in the language or history of the Constitution" supports a constitutional right to abortion. *Bolton*, 410 U. S., at 221–222 (dissenting opinion).

Of course, the fact that a precedent is wrong, even egregiously wrong, does not alone mean that the precedent should be overruled. But as the Court today explains, *Roe* has caused significant negative jurisprudential and real-world consequences. By taking sides on a difficult and contentious issue on which the Constitution is neutral, *Roe* overreached and exceeded this Court's constitutional authority; gravely distorted the Nation's understanding of this Court's proper constitutional role; and caused significant harm to what *Roe* itself recognized as the State's "important and legitimate interest" in protecting fetal life. 410 U. S., at 162. All of that explains why tens of millions of Americans—and the 26 States that explicitly ask the Court to overrule *Roe*—do not accept *Roe* even 49 years later. Under the Court's longstanding *stare decisis* principles, *Roe*

should be overruled.[3]

But the *stare decisis* analysis here is somewhat more complicated because of *Casey*. In 1992, 19 years after *Roe*, *Casey* acknowledged the continuing dispute over *Roe*. The Court sought to find common ground that would resolve the abortion debate and end the national controversy. After careful and thoughtful consideration, the *Casey* plurality reaffirmed a right to abortion through viability (about 24 weeks), while also allowing somewhat more regulation of abortion than *Roe* had allowed.[4]

I have deep and unyielding respect for the Justices who wrote the *Casey* plurality opinion. And I respect the *Casey* plurality's good-faith effort to locate some middle ground or compromise that could resolve this controversy for America.

But as has become increasingly evident over time, *Casey*'s

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[3] I also agree with the Court's conclusion today with respect to reliance. Broad notions of societal reliance have been invoked in support of *Roe*, but the Court has not analyzed reliance in that way in the past. For example, American businesses and workers relied on *Lochner* v. *New York*, 198 U. S. 45 (1905), and *Adkins* v. *Children's Hospital of D. C.*, 261 U. S. 525 (1923), to construct a laissez-faire economy that was free of substantial regulation. In *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937), the Court nonetheless overruled *Adkins* and in effect *Lochner*. An entire region of the country relied on *Plessy* v. *Ferguson*, 163 U. S. 537 (1896), to enforce a system of racial segregation. In *Brown* v. *Board of Education*, 347 U. S. 483 (1954), the Court overruled *Plessy*. Much of American society was built around the traditional view of marriage that was upheld in *Baker* v. *Nelson*, 409 U. S. 810 (1972), and that was reflected in laws ranging from tax laws to estate laws to family laws. In *Obergefell* v. *Hodges*, 576 U. S. 644 (2015), the Court nonetheless overruled *Baker*.

[4] As the Court today notes, *Casey*'s approach to *stare decisis* pointed in two directions. *Casey* reaffirmed *Roe*'s viability line, but it expressly overruled the *Roe* trimester framework and also expressly overruled two landmark post-*Roe* abortion cases—*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). See *Casey*, 505 U. S., at 870, 872–873, 878–879, 882. *Casey* itself thus directly contradicts any notion of absolute *stare decisis* in abortion cases.

well-intentioned effort did not resolve the abortion debate. The national division has not ended. In recent years, a significant number of States have enacted abortion restrictions that directly conflict with *Roe*. Those laws cannot be dismissed as political stunts or as outlier laws. Those numerous state laws collectively represent the sincere and deeply held views of tens of millions of Americans who continue to fervently believe that allowing abortions up to 24 weeks is far too radical and far too extreme, and does not sufficiently account for what *Roe* itself recognized as the State's "important and legitimate interest" in protecting fetal life. 410 U. S., at 162. In this case, moreover, a majority of the States—26 in all—ask the Court to overrule *Roe* and return the abortion issue to the States.

In short, *Casey*'s *stare decisis* analysis rested in part on a predictive judgment about the future development of state laws and of the people's views on the abortion issue. But that predictive judgment has not borne out. As the Court today explains, the experience over the last 30 years conflicts with *Casey*'s predictive judgment and therefore undermines *Casey*'s precedential force.[5]

In any event, although *Casey* is relevant to the *stare decisis* analysis, the question of whether to overrule *Roe* cannot be dictated by *Casey* alone. To illustrate that *stare decisis* point, consider an example. Suppose that in 1924 this Court had expressly reaffirmed *Plessy* v. *Ferguson* and upheld the States' authority to segregate people on the basis of race. Would the Court in *Brown* some 30 years later in

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[5] To be clear, public opposition to a prior decision is not a basis for overruling (or reaffirming) that decision. Rather, the question of whether to overrule a precedent must be analyzed under this Court's traditional *stare decisis* factors. The only point here is that *Casey* adopted a special *stare decisis* principle with respect to *Roe* based on the idea of resolving the national controversy and ending the national division over abortion. The continued and significant opposition to *Roe*, as reflected in the laws and positions of numerous States, is relevant to assessing *Casey* on its own terms.

1954 have reaffirmed *Plessy* and upheld racially segregated schools simply because of that intervening 1924 precedent? Surely the answer is no.

In sum, I agree with the Court's application today of the principles of *stare decisis* and its conclusion that *Roe* should be overruled.

III

After today's decision, the nine Members of this Court will no longer decide the basic legality of pre-viability abortion for all 330 million Americans. That issue will be resolved by the people and their representatives in the democratic process in the States or Congress. But the parties' arguments have raised other related questions, and I address some of them here.

First is the question of how this decision will affect other precedents involving issues such as contraception and marriage—in particular, the decisions in *Griswold* v. *Connecticut*, 381 U. S. 479 (1965); *Eisenstadt* v. *Baird*, 405 U. S. 438 (1972); *Loving* v. *Virginia*, 388 U. S. 1 (1967); and *Obergefell* v. *Hodges*, 576 U. S. 644 (2015). I emphasize what the Court today states: Overruling *Roe* does *not* mean the overruling of those precedents, and does *not* threaten or cast doubt on those precedents.

Second, as I see it, some of the other abortion-related legal questions raised by today's decision are not especially difficult as a constitutional matter. For example, may a State bar a resident of that State from traveling to another State to obtain an abortion? In my view, the answer is no based on the constitutional right to interstate travel. May a State retroactively impose liability or punishment for an abortion that occurred before today's decision takes effect? In my view, the answer is no based on the Due Process Clause or the *Ex Post Facto* Clause. Cf. *Bouie* v. *City of Columbia*, 378 U. S. 347 (1964).

Other abortion-related legal questions may emerge in the

future. But this Court will no longer decide the fundamental question of whether abortion must be allowed throughout the United States through 6 weeks, or 12 weeks, or 15 weeks, or 24 weeks, or some other line. The Court will no longer decide how to evaluate the interests of the pregnant woman and the interests in protecting fetal life throughout pregnancy. Instead, those difficult moral and policy questions will be decided, as the Constitution dictates, by the people and their elected representatives through the constitutional processes of democratic self-government.

* * *

The *Roe* Court took sides on a consequential moral and policy issue that this Court had no constitutional authority to decide. By taking sides, the *Roe* Court distorted the Nation's understanding of this Court's proper role in the American constitutional system and thereby damaged the Court as an institution. As Justice Scalia explained, *Roe* "destroyed the compromises of the past, rendered compromise impossible for the future, and required the entire issue to be resolved uniformly, at the national level." *Casey*, 505 U. S., at 995 (opinion concurring in judgment in part and dissenting in part).

The Court's decision today properly returns the Court to a position of judicial neutrality on the issue of abortion, and properly restores the people's authority to resolve the issue of abortion through the processes of democratic self-government established by the Constitution.

To be sure, many Americans will disagree with the Court's decision today. That would be true no matter how the Court decided this case. Both sides on the abortion issue believe sincerely and passionately in the rightness of their cause. Especially in those difficult and fraught circumstances, the Court must scrupulously adhere to the Constitution's neutral position on the issue of abortion.

Since 1973, more than 20 Justices of this Court have now

grappled with the divisive issue of abortion. I greatly respect all of the Justices, past and present, who have done so. Amidst extraordinary controversy and challenges, all of them have addressed the abortion issue in good faith after careful deliberation, and based on their sincere understandings of the Constitution and of precedent. I have endeavored to do the same.

In my judgment, on the issue of abortion, the Constitution is neither pro-life nor pro-choice. The Constitution is neutral, and this Court likewise must be scrupulously neutral. The Court today properly heeds the constitutional principle of judicial neutrality and returns the issue of abortion to the people and their elected representatives in the democratic process.

SUPREME COURT OF THE UNITED STATES

No. 19–1392

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]

CHIEF JUSTICE ROBERTS, concurring in the judgment.

We granted certiorari to decide one question: "Whether all pre-viability prohibitions on elective abortions are unconstitutional." Pet. for Cert. i. That question is directly implicated here: Mississippi's Gestational Age Act, Miss. Code Ann. §41–41–191 (2018), generally prohibits abortion after the fifteenth week of pregnancy—several weeks before a fetus is regarded as "viable" outside the womb. In urging our review, Mississippi stated that its case was "an ideal vehicle" to "reconsider the bright-line viability rule," and that a judgment in its favor would "not require the Court to overturn" *Roe* v. *Wade*, 410 U. S. 113 (1973), and *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833 (1992). Pet. for Cert. 5.

Today, the Court nonetheless rules for Mississippi by doing just that. I would take a more measured course. I agree with the Court that the viability line established by *Roe* and *Casey* should be discarded under a straightforward *stare decisis* analysis. That line never made any sense. Our abortion precedents describe the right at issue as a woman's right to choose to terminate her pregnancy. That right should therefore extend far enough to ensure a reasonable opportunity to choose, but need not extend any further—

certainly not all the way to viability. Mississippi's law allows a woman three months to obtain an abortion, well beyond the point at which it is considered "late" to discover a pregnancy. See A. Ayoola, Late Recognition of Unintended Pregnancies, 32 Pub. Health Nursing 462 (2015) (pregnancy is discoverable and ordinarily discovered by six weeks of gestation). I see no sound basis for questioning the adequacy of that opportunity.

But that is all I would say, out of adherence to a simple yet fundamental principle of judicial restraint: If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more. Perhaps we are not always perfect in following that command, and certainly there are cases that warrant an exception. But this is not one of them. Surely we should adhere closely to principles of judicial restraint here, where the broader path the Court chooses entails repudiating a constitutional right we have not only previously recognized, but also expressly reaffirmed applying the doctrine of *stare decisis*. The Court's opinion is thoughtful and thorough, but those virtues cannot compensate for the fact that its dramatic and consequential ruling is unnecessary to decide the case before us.

I

Let me begin with my agreement with the Court, on the only question we need decide here: whether to retain 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. I agree that this rule should be discarded.

First, this Court seriously erred in *Roe* in adopting viability as the earliest point at which a State may legislate to advance its substantial interests in the area of abortion. See *ante,* at 50–53. *Roe* set forth a rigid three-part framework anchored to viability, which more closely resembled a regulatory code than a body of constitutional law. That

framework, moreover, came out of thin air. Neither the Texas statute challenged in *Roe* nor the Georgia statute at issue in its companion case, *Doe* v. *Bolton*, 410 U. S. 179 (1973), included *any* gestational age limit. No party or *amicus* asked the Court to adopt a bright line viability rule. And as for *Casey*, arguments for or against the viability rule played only a *de minimis* role in the parties' briefing and in the oral argument. See Tr. of Oral Arg. 17–18, 51 (fleeting discussion of the viability rule).

It is thus hardly surprising that neither *Roe* nor *Casey* made a persuasive or even colorable argument for why the time for terminating a pregnancy must extend to viability. The Court's jurisprudence on this issue is a textbook illustration of the perils of deciding a question neither presented nor briefed. As has been often noted, *Roe*'s defense of the line boiled down to the circular assertion that the State's interest is compelling only when an unborn child can live outside the womb, because that is when the unborn child can live outside the womb. See 410 U. S., at 163–164; see also J. Ely, The Wages of Crying Wolf: A Comment on *Roe* v. *Wade*, 82 Yale L. J. 920, 924 (1973) (*Roe*'s reasoning "mistake[s] a definition for a syllogism").

Twenty years later, the best defense of the viability line the *Casey* plurality could conjure up was workability. See 505 U. S., at 870. But see *ante,* at 53 (opinion of the Court) (discussing the difficulties in applying the viability standard). Although the plurality attempted to add more content by opining that "it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child," *Casey*, 505 U. S., at 870, that mere suggestion provides no basis for choosing viability as the critical tipping point. A similar implied consent argument could be made with respect to a law banning abortions after fifteen weeks, well beyond the point at which nearly all women are aware that they are pregnant, A. Ayoola, M. Nettleman, M. Stommel, & R. Canady, Time

of Pregnancy Recognition and Prenatal Care Use: A Population-based Study in the United States 39 (2010) (Pregnancy Recognition). The dissent, which would retain the viability line, offers no justification for it either.

This Court's jurisprudence since *Casey,* moreover, has "eroded" the "underpinnings" of the viability line, such as they were. *United States* v. *Gaudin*, 515 U. S. 506, 521 (1995). The viability line is a relic of a time when we recognized only two state interests warranting regulation of abortion: maternal health and protection of "potential life." *Roe*, 410 U. S., at 162–163. That changed with *Gonzales* v. *Carhart*, 550 U. S. 124 (2007). There, we recognized a broader array of interests, such as drawing "a bright line that clearly distinguishes abortion and infanticide," maintaining societal ethics, and preserving the integrity of the medical profession. *Id.,* at 157–160. The viability line has nothing to do with advancing such permissible goals. Cf. *id.,* at 171 (Ginsburg, J., dissenting) (*Gonzales* "blur[red] the line, firmly drawn in *Casey*, between previability and postviability abortions"); see also R. Beck, *Gonzales*, *Casey*, and the Viability Rule, 103 Nw. U. L. Rev. 249, 276–279 (2009).

Consider, for example, statutes passed in a number of jurisdictions that forbid abortions after twenty weeks of pregnancy, premised on the theory that a fetus can feel pain at that stage of development. See, *e.g.,* Ala. Code §26–23B–2 (2018). Assuming that prevention of fetal pain is a legitimate state interest after *Gonzales*, there seems to be no reason why viability would be relevant to the permissibility of such laws. The same is true of laws designed to "protect[] the integrity and ethics of the medical profession" and restrict procedures likely to "coarsen society" to the "dignity of human life." *Gonzales*, 550 U. S., at 157. Mississippi's law, for instance, was premised in part on the legislature's finding that the "dilation and evacuation" procedure is a "barbaric practice, dangerous for the maternal patient, and

demeaning to the medical profession." Miss. Code Ann. §41–41–191(2)(b)(i)(8). That procedure accounts for most abortions performed after the first trimester—two weeks before the period at issue in this case—and "involve[s] the use of surgical instruments to crush and tear the unborn child apart." *Ibid.*; see also *Gonzales*, 550 U. S., at 135. Again, it would make little sense to focus on viability when evaluating a law based on these permissible goals.

In short, the viability rule was created outside the ordinary course of litigation, is and always has been completely unreasoned, and fails to take account of state interests since recognized as legitimate. It is indeed "telling that other countries almost uniformly eschew" a viability line. *Ante,* at 53 (opinion of the Court). Only a handful of countries, among them China and North Korea, permit elective abortions after twenty weeks; the rest have coalesced around a 12–week line. See The World's Abortion Laws, Center for Reproductive Rights (Feb. 23, 2021) (online source archived at www.supremecourt.gov) (Canada, China, Iceland, Guinea-Bissau, the Netherlands, North Korea, Singapore, and Vietnam permit elective abortions after twenty weeks). The Court rightly rejects the arbitrary viability rule today.

II

None of this, however, requires that we also take the dramatic step of altogether eliminating the abortion right first recognized in *Roe*. Mississippi itself previously argued as much to this Court in this litigation.

When the State petitioned for our review, its basic request was straightforward: "clarify whether abortion prohibitions before viability are always unconstitutional." Pet. for Cert. 14. The State made a number of strong arguments that the answer is no, *id.*, at 15–26—arguments that, as discussed, I find persuasive. And it went out of its way to make clear that it was *not* asking the Court to repudiate

entirely the right to choose whether to terminate a pregnancy: "To be clear, the questions presented in this petition do not require the Court to overturn *Roe* or *Casey*." *Id.,* at 5. Mississippi tempered that statement with an oblique one-sentence footnote intimating that, if the Court could not reconcile *Roe* and *Casey* with current facts or other cases, it "should not retain erroneous precedent." Pet. for Cert. 5–6, n. 1. But the State never argued that we should grant review for that purpose.

After we granted certiorari, however, Mississippi changed course. In its principal brief, the State bluntly announced that the Court should overrule *Roe* and *Casey*. The Constitution does not protect a right to an abortion, it argued, and a State should be able to prohibit elective abortions if a rational basis supports doing so. See Brief for Petitioners 12–13.

The Court now rewards that gambit, noting three times that the parties presented "no half-measures" and argued that "we must either reaffirm or overrule *Roe* and *Casey*." *Ante,* at 5, 8, 72. Given those two options, the majority picks the latter.

This framing is not accurate. In its brief on the merits, Mississippi in fact argued at length that a decision simply rejecting the viability rule would result in a judgment in its favor. See Brief for Petitioners 5, 38–48. But even if the State had not argued as much, it would not matter. There is no rule that parties can confine this Court to disposing of their case on a particular ground—let alone when review was sought and granted on a different one. Our established practice is instead not to "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Washington State Grange* v. *Washington State Republican Party*, 552 U. S. 442, 450 (2008) (quoting *Ashwander* v. *TVA*, 297 U. S. 288, 347 (1936) (Brandeis, J., concurring)); see also *United States* v. *Raines*, 362 U. S. 17, 21 (1960).

Following that "fundamental principle of judicial restraint," *Washington State Grange*, 552 U. S., at 450, we should begin with the narrowest basis for disposition, proceeding to consider a broader one only if necessary to resolve the case at hand. See, *e.g., Office of Personnel Management* v. *Richmond*, 496 U. S. 414, 423 (1990). It is only where there is no valid narrower ground of decision that we should go on to address a broader issue, such as whether a constitutional decision should be overturned. See *Federal Election Comm'n* v. *Wisconsin Right to Life, Inc.*, 551 U. S. 449, 482 (2007) (declining to address the claim that a constitutional decision should be overruled when the appellant prevailed on its narrower constitutional argument).

Here, there is a clear path to deciding this case correctly without overruling *Roe* all the way down to the studs: recognize that the viability line must be discarded, as the majority rightly does, and leave for another day whether to reject any right to an abortion at all. See *Webster* v. *Reproductive Health Services*, 492 U. S. 490, 518, 521 (1989) (plurality opinion) (rejecting *Roe*'s viability line as "rigid" and "indeterminate," while also finding "no occasion to revisit the holding of *Roe*" that, under the Constitution, a State must provide an opportunity to choose to terminate a pregnancy).

Of course, such an approach would not be available if the rationale of *Roe* and *Casey* was inextricably entangled with and dependent upon the viability standard. It is not. Our precedents in this area ground the abortion right in a woman's "right to choose." See *Carey* v. *Population Services Int'l*, 431 U. S. 678, 688–689 (1977) ("underlying foundation of the holdings" in *Roe* and *Griswold* v. *Connecticut*, 381 U. S. 479 (1965), was the "right of decision in matters of childbearing"); *Maher* v. *Roe*, 432 U. S. 464, 473 (1977) (*Roe* and other cases "recognize a constitutionally protected interest in making certain kinds of important decisions free from governmental compulsion" (internal quotation marks

omitted)); *id.*, at 473–474 (*Roe* "did not declare an unqualified constitutional right to an abortion," but instead protected "the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy" (internal quotation marks omitted)); *Webster*, 492 U. S., at 520 (plurality opinion) (*Roe* protects "the claims of a woman to decide for herself whether or not to abort a fetus she [is] carrying"); *Gonzales*, 550 U. S., at 146 (a State may not "prohibit any woman from making the ultimate decision to terminate her pregnancy"). If that is the basis for *Roe*, *Roe*'s viability line should be scrutinized from the same perspective. And there is nothing inherent in the right to choose that requires it to extend to viability or any other point, so long as a real choice is provided. See *Webster*, 492 U. S., at 519 (plurality opinion) (finding no reason "why the State's interest in protecting potential human life should come into existence only at the point of viability").

To be sure, in reaffirming the right to an abortion, *Casey* termed the viability rule *Roe*'s "central holding." 505 U. S., at 860. Other cases of ours have repeated that language. See, *e.g., Gonzales*, 550 U. S., at 145–146. But simply declaring it does not make it so. The question in *Roe* was whether there was any right to abortion in the Constitution. See Brief for Appellants and Brief for Appellees, in *Roe* v. *Wade*, O. T. 1971, No. 70–18. How far the right extended was a concern that was separate and subsidiary, and—not surprisingly—entirely unbriefed.

The Court in *Roe* just chose to address both issues in one opinion: It first recognized a right to "choose to terminate [a] pregnancy" under the Constitution, see 410 U. S., at 129–159, and then, having done so, explained that a line should be drawn at viability such that a State could not proscribe abortion before that period, see *id.*, at 163. The viability line is a separate rule fleshing out the metes and bounds of *Roe*'s core holding. Applying principles of *stare decisis*, I would excise that additional rule—and only that

rule—from our jurisprudence.

The majority lists a number of cases that have stressed the importance of the viability rule to our abortion precedents. See *ante,* at 73–74. I agree that—whether it was originally holding or dictum—the viability line is clearly part of our "past precedent," and the Court has applied it as such in several cases since *Roe*. *Ante,* at 73. My point is that *Roe* adopted two distinct rules of constitutional law: one, that a woman has the right to choose to terminate a pregnancy; two, that such right may be overridden by the State's legitimate interests when the fetus is viable outside the womb. The latter is obviously distinct from the former. I would abandon that timing rule, but see no need in this case to consider the basic right.

The Court contends that it is impossible to address *Roe*'s conclusion that the Constitution protects the woman's right to abortion, without also addressing *Roe*'s rule that the State's interests are not constitutionally adequate to justify a ban on abortion until viability. See *ibid*. But we have partially overruled precedents before, see, *e.g., United States* v. *Miller*, 471 U. S. 130, 142–144 (1985); *Daniels* v. *Williams*, 474 U. S. 327, 328–331 (1986); *Batson* v. *Kentucky*, 476 U. S. 79, 90–93 (1986), and certainly have never held that a distinct holding defining the contours of a constitutional right must be treated as part and parcel of the right itself.

Overruling the subsidiary rule is sufficient to resolve this case in Mississippi's favor. The law at issue allows abortions up through fifteen weeks, providing an adequate opportunity to exercise the right *Roe* protects. By the time a pregnant woman has reached that point, her pregnancy is well into the second trimester. Pregnancy tests are now inexpensive and accurate, and a woman ordinarily discovers she is pregnant by six weeks of gestation. See A. Branum & K. Ahrens, Trends in Timing of Pregnancy Awareness Among US Women, 21 Maternal & Child Health J. 715, 722

(2017). Almost all know by the end of the first trimester. Pregnancy Recognition 39. Safe and effective abortifacients, moreover, are now readily available, particularly during those early stages. See I. Adibi et al., Abortion, 22 Geo. J. Gender & L. 279, 303 (2021). Given all this, it is no surprise that the vast majority of abortions happen in the first trimester. See Centers for Disease Control and Prevention, Abortion Surveillance—United States 1 (2020). Presumably most of the remainder would also take place earlier if later abortions were not a legal option. Ample evidence thus suggests that a 15-week ban provides sufficient time, absent rare circumstances, for a woman "to decide for herself" whether to terminate her pregnancy. *Webster*, 492 U. S., at 520 (plurality opinion).*

III

Whether a precedent should be overruled is a question "entirely within the discretion of the court." *Hertz* v. *Woodman*, 218 U. S. 205, 212 (1910); see also *Payne* v. *Tennessee*, 501 U. S. 808, 828 (1991) (*stare decisis* is a "principle of policy"). In my respectful view, the sound exercise of that discretion should have led the Court to resolve the case on the narrower grounds set forth above, rather than overruling *Roe* and *Casey* entirely. The Court says there is no "principled basis" for this approach, *ante,* at 73, but in fact it is firmly grounded in basic principles of *stare decisis* and judicial restraint.

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*The majority contends that "nothing like [my approach] was recommended by either party." *Ante,* at 72. But as explained, Mississippi in fact pressed a similar argument in its filings before this Court. See Pet. for Cert. 15–26; Brief for Petitioners 5, 38–48 (urging the Court to reject the viability rule and reverse); Reply Brief 20–22 (same). The approach also finds support in prior opinions. See *Webster*, 492 U. S., at 518–521 (plurality opinion) (abandoning "key elements" of the *Roe* framework under *stare decisis* while declining to reconsider *Roe*'s holding that the Constitution protects the right to an abortion).

The Court's decision to overrule *Roe* and *Casey* is a serious jolt to the legal system—regardless of how you view those cases. A narrower decision rejecting the misguided viability line would be markedly less unsettling, and nothing more is needed to decide this case.

Our cases say that the effect of overruling a precedent on reliance interests is a factor to consider in deciding whether to take such a step, and respondents argue that generations of women have relied on the right to an abortion in organizing their relationships and planning their futures. Brief for Respondents 36–41; see also *Casey*, 505 U. S., at 856 (making the same point). The Court questions whether these concerns are pertinent under our precedents, see *ante,* at 64–65, but the issue would not even arise with a decision rejecting only the viability line: It cannot reasonably be argued that women have shaped their lives in part on the assumption that they would be able to abort up to viability, as opposed to fifteen weeks.

In support of its holding, the Court cites three seminal constitutional decisions that involved overruling prior precedents: *Brown* v. *Board of Education*, 347 U. S. 483 (1954), *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624 (1943), and *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937). See *ante,* at 40–41. The opinion in *Brown* was unanimous and eleven pages long; this one is neither. *Barnette* was decided only three years after the decision it overruled, three Justices having had second thoughts. And *West Coast Hotel* was issued against a backdrop of unprecedented economic despair that focused attention on the fundamental flaws of existing precedent. It also was part of a sea change in this Court's interpretation of the Constitution, "signal[ing] the demise of an entire line of important precedents," *ante,* at 40—a feature the Court expressly disclaims in today's decision, see *ante,* at 32, 66. None of these leading cases, in short, provides a template for what the Court does today.

The Court says we should consider whether to overrule *Roe* and *Casey* now, because if we delay we would be forced to consider the issue again in short order. See *ante*, at 76–77. There would be "turmoil" until we did so, according to the Court, because of existing state laws with "shorter deadlines or no deadline at all." *Ante*, at 76. But under the narrower approach proposed here, state laws outlawing abortion altogether would still violate binding precedent. And to the extent States have laws that set the cutoff date earlier than fifteen weeks, any litigation over that timeframe would proceed free of the distorting effect that the viability rule has had on our constitutional debate. The same could be true, for that matter, with respect to legislative consideration in the States. We would then be free to exercise our discretion in deciding whether and when to take up the issue, from a more informed perspective.

* * *

Both the Court's opinion and the dissent display a relentless freedom from doubt on the legal issue that I cannot share. I am not sure, for example, that a ban on terminating a pregnancy from the moment of conception must be treated the same under the Constitution as a ban after fifteen weeks. A thoughtful Member of this Court once counseled that the difficulty of a question "admonishes us to observe the wise limitations on our function and to confine ourselves to deciding only what is necessary to the disposition of the immediate case." *Whitehouse* v. *Illinois Central R. Co.*, 349 U. S. 366, 372–373 (1955) (Frankfurter, J., for the Court). I would decide the question we granted review to answer—whether the previously recognized abortion right bars all abortion restrictions prior to viability, such that a ban on abortions after fifteen weeks of pregnancy is necessarily unlawful. The answer to that question is no, and there is no need to go further to decide this case.

I therefore concur only in the judgment.