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## Dobbs v. Jackson Women's Health Organization (2022)

*Dobbs v. Jackson Women's Health Organization* is the 2022 Supreme Court case that reversed *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the decisions that originally asserted the fundamental right to an abortion prior to the viability of the fetus. *Dobbs v. Jackson* states that the Constitution does not confer a right to abortion; and, the authority to regulate abortion is “returned to the people and their elected representatives.”

Full text of *Dobbs v. Jackson Women's Health Organization (2022)*

### Facts:

The case involved Mississippi's Gestational Age Act, passed in 2018, which prohibited abortions after 15 weeks except for medical emergencies or severe fetal abnormalities. The act also applied penalties such as license suspension to abortion providers. Consequently, Jackson Women's Health organization filed suit in a federal district court and challenged the constitutionality of the Gestational Age Act. Thomas Dobbs (the petitioner) was a Mississippi State Health officer. Dobbs filed a petition for certiorari, which was granted. The Supreme Court granted writ to address whether all pre-viability prohibitions on elective abortions are unconstitutional.

### Arguments:

Mississippi, through Dobbs, argued that the Constitution does not provide a right to abortion (and as such, states can freely ban abortions if it is rationally related to legitimate government interests). Mississippi leaned on the text of the Tenth Amendment, that denies states powers like making treaties, but does not directly deny the power to restrict abortion. Additionally, Mississippi argued that “liberty” as written in the Fourteenth Amendment only implicates fundamental rights that are “deeply rooted in U.S history and tradition.” Mississippi further argued that abortion is not a fundamental right here since many states at the time of the Fourteenth Amendment's ratification had bans on abortions. Additionally, Mississippi contended that the “viability line” prevented a state from protecting its interest and was too arbitrary or subjective.

In contrast, Jackson's Women's Health Organization (“Women's Health”) argued that abortion is grounded in the Fourteenth Amendment. It asserted that physical autonomy and body integrity are “essential elements of liberty protected by the Due Process Clause.” For example, contraception is included in the word “liberty.” Women's Health also argued that abortion, or the right of a person to have possession of their own body is important in the common law tradition. Furthermore, Women's Health pointed out that federal courts have uniformly applied the viability line.

### Decision:

Justice Alito wrote the majority opinion, joined by Justices Thomas, Gorsuch, Kavanaugh, and Barrett. The Court explained that the critical question was whether the Constitution “properly understood” confers a right to obtain an abortion. The Court first stated that the Constitution makes no express references to abortion. Further, Court precedent holds that a state regulation of abortion is not a sex-based classification (and so is not subject to heightened scrutiny).

From there, the Court then established that abortion is not deeply rooted in the Nation’s history and traditions. The Court elaborated that the Due Process Clause protects only two types of substantive rights, rights guaranteed by the first eight Amendments, and rights that are deemed fundamental. As such, The Court noted that the history of abortion in the U.S is “as a crime”-- that at the time the Fourteenth Amendment was adopted, three-quarters of the States had made abortion a crime at any stage of pregnancy. The Court explained that this was true until *Roe v. Wade*—and thus, “liberty” would not recognize abortion as a fundamental right rooted in the nature, history, or traditions of the nation. Indeed, the Court stated that “*Roe* either ignored or misstated this history.”

The Court also explained that “the people of various states” may evaluate the interests between “potential life” and a “woman who wants an abortion” differently than the Court. Finally, the Court concluded that abortion is not part of a broader entrenched right—that justifying this premise “proves too much.” The Court said that linking abortion to a right to autonomy or to “define one’s concept of existence” would also license fundamental rights to “illicit drug use, [or] prostitution.”

### **Implications:**

Now that abortion is not awarded the status of a fundamental right, rational-basis review is the standard used when looking at state abortion regulations that undergo a constitutional challenge. Essentially, States may regulate abortion “for legitimate reasons” and if those laws are challenged under the Constitution, they are entitled to “a strong presumption of validity.”

[Last updated in June of 2022 by the Wex Definitions Team]

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