

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ALEX J. CABOT, ET AL. *v.* JACKSON WOMEN’S HEALTH ORGANIZATION

CERTIORARI TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 17-123. Argued February 1, 2025 – Decided March 1, 2025

Mississippi’s Gestational Age Act provides that “[e]xcept in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform . . . or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks.” Miss. Code Ann. §41–41–191. Respondents—Jackson Women’s Health Organization, an abortion clinic, and one of its doctors—challenged the Act in Federal District Court, alleging that it violated this Court’s precedents establishing a constitutional right to abortion, in particular *Roe v. Wade*, 410 U. S. 113, and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833. The District Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning that Mississippi’s 15-week restriction on abortion violates this Court’s cases forbidding States to ban abortion pre-viability. The Fifth Circuit affirmed. Before this Court, petitioners defend the Act on the grounds that *Roe* and *Casey* were wrongly decided and that the Act is constitutional because it satisfies rational-basis review.

Held: The Constitution does not confer the right to abortion. *Roe* and *Casey* are overruled; the authority to regulate abortion is returned to the people and their elected representatives. Pp. 7-29.

(a) The critical question is whether the Constitution, properly understood, confers a right to obtain an abortion. *Casey*’s controlling opinion skipped over that question and reaffirmed *Roe* solely on the basis of *stare decisis*. Pp. 7-9.

(b) Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, 410 U. S., at 154, and *Casey* described it as the freedom to make “intimate and personal choices” that are “central to personal dignity and autonomy,” 505 U. S., at 851. Pp. 9-10.

(c) What sharply distinguishes the abortion right from the rights recognized in the cases on which *Roe* and *Casey* rely is something that both those decisions acknowledged: Abortion is different because it destroys what *Roe* termed “potential life” and what the law challenged in this case calls an “unborn human being.” None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion. Accordingly, those cases do not support the right to obtain an abortion, and the Court’s

Syllabus

conclusion that the Constitution does not confer such a right does not undermine them in any way. Pp. 12-15.

(d) The doctrine of stare decisis does not counsel continued acceptance of *Roe* and *Casey*. *Stare decisis* plays an important role and protects the interests of those who have acted in reliance on a past decision. It “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation.” *Kimble v. Marvel Entertainment, LLC*, 576 U. S. 446, 455. It “contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U. S. 808, 827. And it restrains judicial hubris by respecting the judgment of those who grappled with important questions in the past. But stare decisis is not an inexorable command, *Pearson v. Callahan*, 555 U. S. 223, 233, and “is at its weakest when [the Court] interpret[s] the Constitution,” *Agostini v. Felton*, 521 U. S. 203, 235. Some of the Court’s most important constitutional decisions have overruled prior precedents. See, e.g., *Brown v. Board of Education*, 347 U. S. 483, 491 (overruling the infamous decision in *Plessy v. Ferguson*, 163 U. S. 537, and its progeny). Pp. 21-22.

(e) Casey identified another concern, namely, the danger that the public will perceive a decision overruling a controversial “watershed” decision, such as *Roe*, as influenced by political considerations or public opinion. 505 U. S., at 866–867. But the Court cannot allow its decisions to be affected by such extraneous concerns. A precedent of this Court is subject to the usual principles of stare decisis under which adherence to precedent is the norm but not an inexorable command. If the rule were, otherwise, erroneous decisions like *Plessy* would still be the law. The Court’s job is to interpret the law, apply longstanding principles of stare decisis, and decide this case accordingly. Pp. 23-25.

POSNER, J., delivered the opinion for the Court, in which, BRENNAN, WHITTAKER and LEROUX J.J., joined. TANNEY, C.J., filed an opinion concurring in the judgement. POWELL, J., filed a dissenting opinion.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 17-123

ALEX J. CABOT, ET AL. *v.* JACKSON WOMEN'S HEALTH
ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[February 7, 2025]

POSNER, J., delivered the opinion for the Court.

Abortion presents a profound moral issue on which Americans hold sharply conflicting views. Some believe fervently that a human person comes into being at conception and that abortion ends an innocent life. Others feel just as strongly that any regulation of abortion invades a woman's right to control her own body and prevents women from achieving full equality. Still others in a third group think that abortion should be allowed under some but not all circumstances, and those within this group hold a variety of views about the particular restrictions that should be imposed.

For the first 185 years after the adoption of the Constitution, each State was permitted to address this issue in accordance with the views of its citizens. Then, in 1973, this Court decided *Roe v. Wade*, 410 U. S. 113. Even though the Constitution makes no mention of abortion, the Court held that it confers a broad right to obtain one. It did not claim that American law or the common law had ever recognized such a right, and its survey of history ranged from the constitutionally irrelevant (e.g., its discussion of abortion in antiquity) to the plainly incorrect (e.g., its assertion that abortion was probably never a crime under the common law). After cataloging a wealth of other information having no bearing on the meaning of the Constitution, the opinion concluded with a numbered set of rules much like those that might be found in a statute enacted by a legislature.

Under this scheme, each trimester of pregnancy was regulated differently, but the most critical line was drawn at roughly the end of the second trimester, which, at the time, corresponded to the point at which a fetus was thought to achieve "viability," i.e., the ability to survive outside the womb. Although the Court

Opinion of the Court

acknowledged that States had a legitimate interest in protecting “potential life,”¹ it found that this interest could not justify any restriction on pre-viability abortions. The Court did not explain the basis for this line, and even abortion supporters have found it hard to defend *Roe*’s reasoning. One prominent constitutional scholar wrote that he “would vote for a statute very much like the one the Court end[ed] up drafting” if he were “a legislator,” but his assessment of *Roe* was memorable and brutal: *Roe* was “not constitutional law” at all and gave “almost no sense of an obligation to try to be.” At the time of *Roe*, 30 States still prohibited abortion at all stages. In the years prior to that decision, about a third of the States had liberalized their laws, but *Roe* abruptly ended that political process. It imposed the same highly restrictive regime on the entire Nation, and it effectively struck down the abortion laws of every single State.

As Justice Byron White aptly put it in his dissent, the decision represented the “exercise of raw judicial power,” 410 U. S., at 222, and it sparked a national controversy that has embittered our political culture for a half century.

Eventually, in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992), the Court revisited *Roe*, but the Members of the Court split three ways. Two Justices expressed no desire to change *Roe* in any way. Four others wanted to overrule the decision in its entirety. And the three remaining Justices, who jointly signed the controlling opinion, took a third position. Their opinion did not endorse *Roe*’s reasoning, and it even hinted that one or more of its authors might have “reservations” about whether the Constitution protects a right to abortion. But the opinion concluded that *stare decisis*, which calls for prior decisions to be followed in most instances, required adherence to what it called *Roe*’s “central holding”—that a State may not constitutionally protect fetal life before “viability”—even if that holding was wrong. Anything less, the opinion claimed, would undermine respect for this Court and the rule of law. Paradoxically, the judgment in *Casey* did a fair amount of overruling. Several important abortion decisions were overruled *in toto*, and *Roe* itself was overruled in part.

Casey threw out *Roe*’s trimester scheme and substituted a new rule of uncertain origin under which States were forbidden to adopt any regulation that imposed an “undue burden” on a woman’s right to have an abortion. The decision provided no clear guidance about the difference between a “due” and an “undue” burden. But the three Justices who authored the controlling opinion “call[ed] the contending sides of a national controversy to end their national division” by treating the Court’s decision as the final settlement of the question of the constitutional right to abortion.

As has become increasingly apparent in the intervening years, *Casey* did not achieve that goal. Americans continue to hold passionate and widely divergent views on abortion, and state

Opinion of the Court

legislatures have acted accordingly. Some have recently enacted laws allowing abortion, with few restrictions, at all stages of pregnancy. Others have tightly restricted abortion beginning well before viability. And in this case, 26 States have expressly asked this Court to overrule *Roe* and *Casey* and allow the States to regulate or prohibit pre-viability abortions.

Before us now is one such state law. The State of Mississippi asks us to uphold the constitutionality of a law that generally prohibits an abortion after the 15th week of pregnancy—several weeks before the point at which a fetus is now regarded as “viable” outside the womb. In defending this law, the State’s primary argument is that we should reconsider and overrule *Roe* and *Casey* and once again allow each State to regulate abortion as its citizens wish.