

“The Right to Abortion”

Introduction

Over the past several decades the right to abortion has raised considerable interest in both the realm of politics and bioethics. Since *Roe v. Wade*, the issue of abortion has since been dividing the country and has caused widespread public controversy. In this paper, I shall support the decision of a woman’s right to abortion made possible by *Roe v. Wade*.

First, I will answer the important question of what exactly is an abortion? According to Harvard Health Publishing, “Abortion is the removal of pregnancy tissue, products of conception of the fetus and placenta (afterbirth) from the uterus.” This is done in two ways where doctors can use medications, surgery or a combination of both to terminate the unwanted pregnancy.

However, before the era of *Roe v. Wade*, women were subjected to harmful means of terminating their pregnancy. Patients were subjected to what were called “back-alley abortions” provided by both medical and lay providers, which caused severe injury to the woman. When abortion was illegal, many women were left vulnerable and desperate in their attempts to expel the unwanted fetus.

In today’s age, there has been a shift over the past several years to a predominately conservative Supreme Court that looks to overturn *Roe v. Wade*. During former president Trump’s term, he appointed three conservative Supreme Court Justices who seek to revoke abortion rights or restrict abortion access. A number of states across the U.S, specifically conservative states, are legalizing the ban of abortion after six weeks of pregnancy and seeking to implement more restrictive abortion laws all together. These anti-abortion measures carry several burdens to women, one being that most pregnant women do not discover or even know

that they are pregnant at six to eight weeks. In other words, the laws are effectively abortion bans. Furthermore, the Court's conservative appointees "are showing signs of more deference to state judgement when evaluating abortion restrictions." Doing so would be overturning the lasting precedent on abortion made possible by *Roe*, making it so that it is no longer a constitutional right to make abortions illegal.

As a result, abortion advocates fear that the current Supreme Court, including the recently appointed Amy Coney Barret, might overturn *Roe v. Wade*. In this paper, I will first discuss the state of the law as it applies to abortion. Namely, the Supreme Court's *Planned Parenthood v. Casey* (1992) case that reaffirms the groundwork of *Roe v. Wade*, and the undue burden test which lowers the standard of scrutiny that is given to laws that regulate abortion. Second, I will discuss why not having access to abortion creates ethical problems and the bioethical principles that surround this issue. Third, I will discuss how the current law is adequate in the right to abortion and why the current conservative Supreme Court Justices today should uphold *Roe v. Wade*. In all, I shall analyze the Supreme Court cases of *Griswold v Connecticut*, *Roe v Wade*, *Planned Parenthood v Casey* to argue that the law appropriately addresses the bioethical issues at stake.

Summary of Relevant Law

The first Supreme Court case I would like to briefly discuss is *Griswold v. Connecticut*, which established the "right to privacy" within the confines of a marriage. The Supreme Court ruled that married individuals have the right to use contraceptives and that the ban on contraceptives would be violating marital privacy. However, over the next several years, the Court expanded this "right to privacy" beyond the boundaries of marriage, laying the foundation for *Roe v. Wade*.

In the historical case of *Roe v. Wade*, the right to abortion was established based on this right to privacy. More than a decade later, the landmark case of *Planned Parenthood v. Casey* reaffirmed the ruling of *Roe* that the State is prohibited from banning most abortions. *Casey's* holding modified some restrictions on the right to abortion by forming the undue burden standard. Before analyzing the undue burden standard, I shall explain how the frameworks used in *Roe v. Wade* and *Planned Parenthood v. Casey* differ.

1. Trimester framework – The trimester framework established in *Roe v. Wade* was created by the Court to balance the state's interest with women's privacy rights. According to the Legal Information Institute (LII), "The Court divided the pregnancy into three trimesters. During the first trimester, the decision to terminate the pregnancy was solely at the discretion of the woman. After the first trimester, the state could "regulate procedure." During the second trimester, the state could regulate (but not outlaw) abortions in the interests of the mother's health. After the second trimester, the fetus became viable, and the state could regulate or outlaw abortions in the interest of the potential life except when necessary to preserve the life or health of the mother."
2. The viability analysis/undue burden standard established in *Planned Parenthood v. Casey* was created by the Supreme Court to ensure the health of both the mother and the life of the fetus by implementing a law banning abortions before the viability of the fetus. The Court found it too restrictive to not allow the state to protect fetal life until viability and ruled that a state could legislate to express its interest in fetal life from the beginning of the pregnancy so as long as those regulations do not place an undue burden on abortion access.

In all, *Casey* gives the state much more ability to protect fetal life. Whereas *Roe* was almost exclusively concerned with protecting the pregnant woman's privacy/autonomy, *Casey* is much more concerned about protecting fetal life.

This change in framework had a substantial impact on the right to abortion and the ability to exercise this right due to the stricter and more precise laws each state can implement. If a woman chooses to elect for this procedure, she must do so closer to the time she finds out she is pregnant. This leaves a smaller window for contemplating her decision and makes it harder for women to obtain an abortion closer to fetal viability in some states.

Finally, in this section I would like to point out the following states that already passed anti-abortion bills: Alabama, Louisiana, Mississippi, Ohio, Georgia, Missouri, Kentucky, Arkansas, Utah, and Iowa. Missouri, for example, is already looking to pass a law that would ban abortions after eight weeks of pregnancy and is already before the 8th Circuit Court of Appeals. These conservative states are pushing these laws that clearly violate the *Casey's* undue burden test because they want to overturn or challenge *Roe v. Wade* in order to make abortion illegal.

Exploration of Bioethical Issues

In this section, I would like to explore the bioethical principles that are at issue. The first principle I would like to discuss is respect for autonomy, which is the right of competent adults to make informed decisions regarding their medical care. By respecting a woman's autonomy and bodily integrity to elect for a safe, legal abortion, she is given the right to make the informed choices that impact her health and life. "A mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear." It would be unethical for the State to determine if the woman should make these sacrifices because they are too personal and

intimate. If the right to abortion or access to abortion were to be taken away, she would not have the ability to shape her own future and personal life because she is forced to carry an unwanted potential child.

Next, I would like to discuss the principles of beneficence and non-maleficence which are obligations to do good or do no harm to others. If a woman is forced to have a child against her will, the woman might experience unwanted hardships rearing the potential child. For example, a woman who is not financially stable might not have the resources to feed, spend time, or provide holistically (mentally and socially) to the child. Additionally, the mother might not want to bring a child into this world because of her current relationship with the father of the child and might be involved in an abusive relationship. In this way, the potential child might grow up being neglected from his/her mother and father, stray away from school due to the lack of attention, and could potentially experiment with drugs or crime. The potential harms to society might include having an unwanted child who is exposed to these negative outcomes grow up to be an adult with emotional impairments such as aggression and violence towards others.

Lastly, I would like to discuss the principle of justice, which is defined as the obligation to act in fairness when allocating resources. Women in conservative states who must travel to states such as California, for example, to obtain an abortion might not have the means to do so. If *Roe v. Wade* is overturned, this would certainly be the outcome. Women who do not have the financial means to travel, pay for hotel accommodations, and take off several days from work, will be disproportionately impacted by anti-abortion laws.

Analysis of How the Law Appropriately Accounts for Ethical Issues

In this section, I am maintaining that the law is indeed adequate in this area and *Roe v. Wade* should be upheld. In order to support my argument, I shall look to substantive and procedural due process. By looking at substantive due process, there is a good enough reason for why the right to abortion is the right the decision because it is good for the woman, the family, and society at large. As discussed earlier from a bioethical perspective, there is sufficient substantive justification for how depriving a woman of the right to abortion could cause harm to the unwanted child as well. Additionally, the right to privacy also includes the right to abortion because it is within the “zone of privacy.” Although “the Constitution does not explicitly mention any right of privacy... the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution.” The right of privacy found in the Fourteenth Amendment and reservation of right to the people in the Ninth Amendment “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” Imposing, or forcing, an unwanted child upon a woman may impose some significant psychological and physical harms. Such being that the mother is subjected to an emotionally distressful life rearing the unwanted child in an environment where the mother is already having trouble maintaining her own life. An example of this might be a teenage girl or a young woman who has minimal or no outside support from a mature adult. In this way, she is unable to provide for herself and does not have the means to provide financially and emotionally for this unwanted child.

Additionally, procedural due process shows that *Roe v Wade* is Supreme Court precedent and generally, precedent should be upheld. However, in *Bowers v Hardwick* and *Lawrence v Texas* precedent was overturned. Nonetheless, overturning *Roe* would be different from *Lawrence* because in *Bowers*, the case that *Lawrence* overturned, expanded rights for

individuals, while in *Roe*, the Court would be taking away the rights of women to obtain an abortion, and people have come to rely on these rights. Therefore, overturning *Roe* would constitute an impermissible disregard for *stare decisis* (the principle of respecting precedent that forms the foundation of the US judicial system).

Conclusion

Although the abortion controversy will continue to be a heated issue across the United States, it is important to recognize the ways in which women have benefited from the right to abortion and why the precedent set by *Roe v. Wade* should be upheld. The right to secure a legal abortion under safe conditions has been a right that women have become reliant on for reasons that fit their personal needs. As discussed above, the landmark cases of *Griswold v. Connecticut*, *Roe v. Wade*, and *Planned Parenthood v. Casey* sufficiently account for the bioethical issues that are stake.