

118TH CONGRESS
1ST SESSION

H. RES. 28

Condemning the Supreme Court’s decision to overturn *Roe v. Wade* and *Planned Parenthood v. Casey* and committing to advancing reproductive justice and judicial reform.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 11, 2023

Mr. ESPAILLAT (for himself, Mr. PAYNE, Ms. CLARKE of New York, Ms. VELÁZQUEZ, Ms. NORTON, Mr. MOULTON, Mr. EVANS, Mr. GARCÍA of Illinois, Ms. WILLIAMS of Georgia, Mr. MULLIN, Mr. CONNOLLY, Ms. DELBENE, Mr. CLEAVER, Ms. BARRAGÁN, Mr. THANEDAR, Ms. SCHA-KOWSKY, Ms. BONAMICI, Ms. MENG, Ms. TLAIB, Mr. DAVIS of Illinois, Mr. HIGGINS of New York, Mr. GOTTHEIMER, Ms. JAYAPAL, Ms. STE-VENS, Ms. TOKUDA, Mr. CARSON, Ms. CHU, Mr. KRISHNAMOORTHY, Mr. TRONE, Ms. TITUS, Mr. DESAULNIER, Mr. BOWMAN, Mr. BLUMENAUER, Ms. LOFGREN, Mrs. HAYES, and Mrs. CHERFILUS-McCORMICK) submitted the following resolution; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

RESOLUTION

Condemning the Supreme Court’s decision to overturn *Roe v. Wade* and *Planned Parenthood v. Casey* and committing to advancing reproductive justice and judicial reform.

Whereas, in *Planned Parenthood v. Casey*, the Supreme Court held that—

(1) “Overruling Roe’s central holding would not only reach an unjustifiable result under stare decisis principles, but would seriously weaken the Court’s capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law”;

(2) “Roe determined that a woman’s decision to terminate her pregnancy is a ‘liberty’ protected against State interference by the substantive component of the Due Process Clause of the Fourteenth Amendment. Neither the Bill of Rights nor the specific practices of States at the time of the Fourteenth Amendment’s adoption marks the outer limits of the substantive sphere of such ‘liberty’. Rather, the adjudication of substantive due process claims may require this Court to exercise its reasoned judgment in determining the boundaries between the individual’s liberty and the demands of organized society”; and

(3) “The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. The Constitution serves human values, and while the effect of reliance on Roe cannot be exactly measured, neither can the certain costs of overruling Roe for people who have ordered their thinking and living around that case be dismissed”;

Whereas it is tempting “to suppose that the Due Process Clause protects only those practices, defined at the most specific level, that were protected against government interference by other rules of law when the Fourteenth Amendment was ratified . . . But such a view would be inconsistent with our law. It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. We have vindicated this prin-

ciple before. Marriage is mentioned nowhere in the Bill of Rights and interracial marriage was illegal in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against State interference by the substantive component of the Due Process Clause in *Loving v. Virginia*”;

Whereas, in *Dobbs v. Jackson Women’s Health Organization*, the Supreme Court presided over a challenge to a 2018 Mississippi law that bans virtually all abortions after the 15th week of pregnancy;

Whereas, during oral arguments in *Dobbs v. Jackson Women’s Health Organization*, Justice Sonia Sotomayor, poignantly and correctly stated, “Will this institution [the Supreme Court] survive the stench that this creates in the public perception that the constitution and its reading are just political acts?” “I don’t see how it is possible”;

Whereas, on June 24, 2022, the Supreme Court issued its holding in *Dobbs v. Jackson Women’s Health Organization* by holding that—

(1) “the Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives”;

(2) a restrictive standard applies for substantive due process rights under the United States Constitution by only recognizing rights “deeply rooted in [our] history and tradition” and “implicit in the concept of ordered liberty”; and

(3) a State’s regulation of abortion is not a sex-based classification and is thus not subject to the “heightened scrutiny” that applies to such classifications;

Whereas Justice Clarence Thomas’s concurring opinion in *Dobbs v. Jackson Women’s Health Organization* urges the Supreme Court to “reconsider all . . . substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*. Because any substantive due process decision is demonstrably erroneous”;

Whereas Justice Breyer, Justice Sotomayor, and Justice Kagan issued a dissenting opinion in *Dobbs v. Jackson Women’s Health Organization*, stating—

(1) for half a century, *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey*, have protected the liberty and equality of women;

(2) “*Roe* held, and *Casey* reaffirmed, that the Constitution safeguards a woman’s right to decide for herself whether to bear a child”;

(3) “The government could not control a woman’s body or the course of a woman’s life: It could not determine what the woman’s future would be”;

(4) “Respecting a woman as an autonomous being, and granting her full equality, meant giving her substantial choice over this most personal and most consequential of all life decisions”;

(5) the Supreme Court’s majority today, “says that from the very moment of fertilization, a woman has no rights to speak of. A State can force her to bring a pregnancy to term, even at the steepest personal and familial costs. An abortion restriction, the majority holds, is permissible whenever rational, the lowest level of scrutiny known to the law. And because, as the Court has often stated, protecting fetal life is rational, States will feel free to enact all manner of restrictions”;

(6) “The Mississippi law at issue here bars abortions after the 15th week of pregnancy. Under the majority’s

ruling, though, another State’s law could do so after ten weeks, or five or three or one—or, again, from the moment of fertilization”;

(7) “Some States have enacted laws extending to all forms of abortion procedure, including taking medication in one’s own home. They have passed laws without any exceptions for when the woman is the victim of rape or incest. Under those laws, a woman will have to bear her rapist’s child or a young girl her father’s—no matter if doing so will destroy her life. So too, after today’s ruling, some States may compel women to carry to term a fetus with severe physical anomalies . . . States may even argue that a prohibition on abortion need make no provision for protecting a woman from risk of death or physical harm. Across a vast array of circumstances, a State will be able to impose its moral choice on a woman and coerce her to give birth to a child”;

(8) “A State can of course impose criminal penalties on abortion providers, including lengthy prison sentences. But some States will not stop there. Perhaps, in the wake of today’s decision, a State law will criminalize the woman’s conduct too, incarcerating or fining her for daring to seek or obtain an abortion. And as Texas has recently shown, a State can turn neighbor against neighbor, enlisting fellow citizens in the effort to root out anyone who tries to get an abortion, or to assist another in doing so”;

(9) “After this decision, some States may block women from traveling out of State to obtain abortions, or even from receiving abortion medications from out of State. Some may criminalize efforts, including the provision of information or funding, to help women gain access to other States’ abortion services”;

(10) “Most threatening of all, no language in today’s decision stops the Federal Government from prohibiting abortions nationwide, once again from the moment of conception and without exceptions for rape or incest”;

(11) “Whatever the exact scope of the coming laws, one result of today’s decision is certain: the curtailment of women’s rights, and of their status as free and equal citizens”;

(12) “According to the majority, no liberty interest is present—because (and only because) the law offered no protection to the woman’s choice in the 19th century. But here is the rub. The law also did not then (and would not for ages) protect a wealth of other things. It did not protect the rights recognized in Lawrence and Obergefell to same-sex intimacy and marriage. It did not protect the right recognized in Loving to marry across racial lines. It did not protect the right recognized in Griswold to contraceptive use. For that matter, it did not protect the right recognized in Skinner v. Oklahoma ex rel. Williamson . . . not to be sterilized without consent. So if the majority is right in its legal analysis, all those decisions were wrong, and all those matters properly belong to the States too—whatever the particular State interests involved. And if that is true, it is impossible to understand (as a matter of logic and principle) how the majority can say that its opinion today does not threaten—does not even ‘undermine’—any number of other constitutional rights”;

(13) “Today’s decision, taken on its own, is catastrophic enough. As a matter of constitutional method, the majority’s commitment to replicate in 2022 every view about the meaning of liberty held in 1868 has pre-

cious little to recommend it. Our law in this constitutional sphere, as in most, has for decades upon decades proceeded differently. It has considered fundamental constitutional principles, the whole course of the Nation's history and traditions, and the step-by-step evolution of the Court's precedents. It is disciplined but not static. It relies on accumulated judgments, not just the sentiments of one long-ago generation of men (who themselves believed, and drafted the Constitution to reflect, that the world progresses). And by doing so, it includes those excluded from that olden conversation, rather than perpetuating its bounds”;

(14) “The legitimacy of the Court is earned over time . . . it can be destroyed much more quickly”;

(15) “The American public . . . should never conclude that its constitutional protections hung by a thread—that a new majority, adhering to a new ‘doctrinal school’, could ‘by dint of numbers’ alone expunge their rights . . . It is hard—no, it is impossible—to conclude that anything else has happened here”;

(16) “With sorrow—for this Court, but more, for the many millions of American women who have today lost a fundamental constitutional protection—we dissent”;

Whereas the Supreme Court's holding in *Dobbs v. Jackson Women's Health Organization* places other fundamental human rights, such as the right to contraception, interracial marriage, and same-sex marriage at risk;

Whereas the Supreme Court's holding in *Dobbs v. Jackson Women's Health Organization* strips millions of women of their status as free and equal members of society, and has a corrosive impact on society, for example—

(1) according to the World Health Organization, lack of access to safe, affordable, timely and respectful abortion care, and the stigma associated with abortion, pose risks to women's physical and mental well-being throughout their life;

(2) approximately 64,000,000 women and girls of reproductive age live in the United States, and more than half of them live in States that could seek to ban or further restrict access to abortion now that the Supreme Court overturned Roe and Casey;

(3) everyone risks losing access to abortion in 28 States, but those who are more likely to get the procedure include women of color, in part because of unequal access to opportunities like health care, jobs, education, and housing;

(4) undocumented women will be disproportionately impacted by restrictions on abortions as they will not be able to travel to seek abortion services;

(5) women living in poverty or on lower incomes will be disproportionately impacted by restrictions on abortions, as most women getting abortions are living in poverty;

(6) transgender and gender non-binary (TGNB) individuals will be impacted, as the Guttmacher Institute found that approximately 500 TGNB individuals obtained abortions in 2017;

(7) medication abortion accounted for 54 percent of all United States abortions in 2020, an increase from 39 percent in 2017, according to the Guttmacher Institute;

(8) 19 States prohibit pills from being prescribed by telemedicine or delivered through the mail, and 9 additional States are proposing to do the same;

(9) the American College of Obstetricians and Gynecologists estimates that miscarriage is the most common form of pregnancy loss, as many as 26 percent of all pregnancies end in miscarriage and according to reports, miscarriages and abortions are often clinically indistinguishable; and

(10) reports find that medical providers who treat pregnancy-related issues, including miscarriages, fear performing any procedure that can be classified as an abortion—even while the procedures remain legal, risking being prosecuted, having their licenses revoked, or being thrown in jail; and

Whereas, on June 23, 2022, Gallup found that public confidence in the Supreme Court has sunk to a historic low of 25 percent: Now, therefore, be it

1 *Resolved*, That the House of Representatives—

2 (1) condemns the restless and newly constituted
3 Supreme Court’s holding in *Dobbs v. Jackson Women’s Health Organization*;

4 (2) commits to utilizing constitutional authorities provided to Congress under Article III of the
5 Constitution to enact judicial reform, helping reassure public confidence in the Supreme Court so that
6 it is not viewed as a partisan institution;

7 (3) commits to ensuring that Federal law advances reproductive justice, recognizing that access
8 to abortion constitutes access to health care as a
9 fundamental liberty of all human beings;

1 (4) commits to protecting communities that will
2 be disproportionately impacted by the holding in
3 Dobbs v. Jackson Women’s Health Organization, in-
4 cluding women of color, undocumented women,
5 women living in poverty, LGBTQIA+ individuals,
6 gender nonconforming individuals, and individuals
7 with disabilities; and
8 (5) urges the executive branch to utilize con-
9 stitutional authorities and a whole-of-government ap-
10 proach to advance reproductive justice.

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