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ABORTION FROM COUNTRIES A TO U: A COMPARATIVE ANALYSIS OF ABORTION LAWS AND ATTITUDES IN AMERICA AND UZBEKISTAN

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Abstract This paper compares and analyses abortion laws in the United States, one of the world's oldest democracies, to those in Uzbekistan, an ancient middle Asian country that gained its independence from the Soviet Union in 1991. The authors examine both the United States and Uzbekistan constitutions and other laws regulating abortion and other reproductive rights. Regarding the United States, it tracks key abortion decisions from the Supreme Court. The authors also explore general attitudes about abortion and reproductive rights in both countries.

Keywords
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1 Introduction

Abortion has a long history, dating back to Ancient Civilization. Indeed, perhaps the original evidence of induced abortion can be found in the Egyptian Ebers Papyrus in 1550 BCE (Potts & Campbell, 2009). Defined as the deliberate termination of a pregnancy, the practice of induced abortion, in contrast to a spontaneous abortion, which refers to a naturally occurring condition that ends a pregnancy[1], has always been a contentious issue, with attitudes concerning it shifting throughout time and across cultures (Potts & Campbell, 2009). Sentiments toward abortion are often correlated to religious beliefs, with some religions tolerant of the practice and others strongly opposed to it.

Much has been written on the topic of abortion. This article explores it in a limited way. Specifically, we have analyzed it in a comparative fashion, from the reasonably extensive experience of the United States, one of the world's oldest democracies,[2] to that in Uzbekistan, which gained its independence from the Soviet Union on September 1, 1991, a mere 33 years ago.

The article analyzes the federal constitutions of both countries, applicable legislation and case authorities (in the case of the United States), to determine how they regulate and shape abortion practices. With that background as a foundation, the article also analyzes how the public in both countries view abortion and the impact that the abortion laws have on the people in America and Uzbekistan. The article then concludes with observations.

2. The Abortion Experience in the United States of America

2.1 Brief Timeline of the History of Abortion

According to Winny (2022), "Until the mid-19th century, the U.S. attitude toward abortion was much the same as it had often been elsewhere throughout history: It was a quiet reality, legal until 'quickening' (when fetal motion could be felt by the

[1] A spontaneous abortion is also known as a miscarriage. The Cambridge Dictionary defines a miscarriage as "an early, unintentional end to a pregnancy." This article focuses solely on induced abortions.
[2] Historically, the first democracy dates to Ancient Athens. The oldest democracy, by number of continuous years, is the United States (223), followed by Switzerland (175) and New Zealand (166) (World Economic Forum, 2019).

mother)."[3] Citing Joanne Rosen, JD, MA, a senior lecturer in Health Policy and Management who studies the impact of law and policy on access to abortion, 'Abortion has existed for pretty much as long as human beings have existed' and in the eyes of the law the fetus wasn't a 'separate, distinct entity until then' but rather an extension of the mother" (Winny, 2022). Winny (2022) goes on to explain that, perhaps contrary to popular belief or intuition, the tide toward anti-abortion was fueled not by moral or religious concerns, as is largely the case today, but rather by the United States "physicians on a mission to regulate medicine" (Winny, 2022). As Winny (2022) explains, before then, abortion services routinely were mainly carried out by midwives who sold abortifacient plants and who used various "methods passed down through generations, from herbal abortifacients and pessaries – a tampon-like device soaked in a solution to induce abortion – to catheter abortions that irritate the womb and force a miscarriage, to a minor surgical procedure called dilation and curettage (D & C), which remains one of the most common methods of terminating an early pregnancy" (Winny, 2022).

In 1857, ten years after it had been established, the American Medical Association (AMA), which at that time excluded women from its ranks and which was trying to earn its spurs as leader of the medical profession, squarely targeted the midwives as being quacks that were unqualified to provide reproductive services such as abortion, contrasting them of course to the eminently qualified (male) physicians that belonged to the AMA. In short, the AMA was incentivized to put the midwives out of business to the economic advantage of its male members. The AMA's plan was straightforward. It lobbied state lawmakers to pass legislation to ban the practice of abortions. According to Winny, "To make their case, [the AMA] asserted that there was a medical consensus that life begins at conception, rather than at quickening" (Winny, 2022).

Between 1860 and 1880, as a result of the AMA's letter-writing campaign, many anti-abortion laws were passed at the state level (Winny, 2022). Abortion, therefore, was illegal in nearly all states. The tide changed once again, however, during the Great Depression era of the 1920s and 1930s. Dr. Fissell found that, although illegal, doctors performed abortions anyway to spare women the hardship of raising

[3] This is significant, as it undercuts the central tenet of the Supreme Court's 2022 *Dobbs* decision, overruling *Roe* and holding the United States Constitution does not protect the right to abortion at any stage of pregnancy. The majority claimed that abortion was not "deeply rooted" in American history. The majority was egregiously wrong.

unwanted children during such harsh economic times (Winny, 2022). But in the ebb and flow of the abortion debate, the tide again shifted against abortion after World War II, when Americans, on the whole, wanted to settle down and have families. Therefore, at least in the eyes of men, the woman's job was to stay home and raise children while the man worked. Abortion was antithetical to this vision. Physicians were prosecuted for performing abortions. This meant, predictably, that abortions were performed "underground" illegally. According to the Guttmacher Institute, "Estimates of the number of illegal abortions in the 1950s and 1960s ranged from 200,000 to 1.2 million per year" (Benson Gold, 2003). In 1965, 17% of reported deaths attributed to pregnancy and childbirth were associated with illegal abortion (Benson Gold, 2003). But a rubella outbreak in the mid-1960s turned the tide once again, and states responded with more liberal abortion laws (Winny, 2022). As Winny states, "Catching rubella during pregnancy could cause severe birth defects, leading medical authorities to endorse therapeutic abortions. But the safe, legal abortions remained largely the preserve of the privileged" (Winny, 2022). Fissel added, "Women who are well-to-do have always managed to get abortions, almost always without a penalty. But God help her if she was a single, Black, working-class woman" (Winny, 2022). According to Winny, in the late 1960s and early 1970s, women who had the financial means to do so brought lawsuits to gain the right to have abortions performed in hospitals. In other instances, physicians offered proof that their pregnant patients required abortions to protect their physical and/or mental health or even their life (Winny, 2022). In 1973, 17 states had laws making abortions legal, at least under some circumstances (Winny, 2022).

2.2 Supreme Court Jurisprudence Before the Abortion Cases

2.2.1 The Right to Privacy and Substantive Due Process

It is difficult to understand and analyze the Supreme Court cases on abortion without a basic understanding of its jurisprudence bearing on the abortion cases that preceded those cases. The discussion in this section is designed to help put the abortion cases in historical context. There is perhaps no more confusing area of constitutional law than substantive due process.[4] The Fifth Amendment includes a

[4] Constitutional law scholar Erwin Chemerinsky has written that, "There is no concept in American law that is more elusive or more controversial than substantive due process. Substantive due process has been used in this century

due process clause stating that no person shall "be deprived of life, liberty, or property, without due process of law."[5] The Fourteenth Amendment was enacted in 1868, 77 years after the Fifth Amendment. It has five sections, but section one is the most consequential and litigated and lies at the heart of many of the Supreme Court's landmark cases.[6] Section 1 of the Fourteenth Amendment provides in part that "No State shall make or enforce any law which shall abridge the privileges or immunities[7] of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process[8] of law; nor deny to any person within its jurisdiction the equal protection[9] of the laws."[10]

When we think of the phrase "due process", most of us probably associate it with procedural due process: the fundamental rights to be given notice of a crime or civil action brought against a person, the right and opportunity to be heard, the right to a fair and open trial, etc. These rights deal with the administration of justice itself. The due process clause is a check or safeguard against the government's arbitrary denial of life, liberty, or property. In *Ohio Bell Telephone*,[11] the Supreme Court described due process as "the protection of the individual against arbitrary action."[12]

While it is true that the due process clauses provide procedural protections, they also offer substantive protections. In this article, as it relates to the Supreme Court's abortion decisions, we are concerned with the latter. According to Professor Chemerinsky, although the Supreme Court has never provided any precise definition of substantive due process, it "asks whether the government's deprivation of a person's life, liberty or property is justified by a sufficient purpose. Procedural due process, by contrast, asks whether the government has followed the proper

to protect some of our most precious liberties. Still, there are now and have always been Justices of the Supreme Court who believe there is no such thing as substantive due process." (Chemerinsky, 1999, p. 1501).

[5] The Fifth Amendment to the United States Constitution creates several constitutional rights, limiting governmental powers focusing on criminal procedures. It was ratified, along with nine other amendments, in 1791, as part of the Bill of Rights. The Supreme Court has extended most, but not all, rights of the Fifth Amendment to the state and local levels. The Court furthered most protections of this amendment through the Due Process clause of the Fourteenth Amendment.

[6] *See, e.g.*, *Brown v. Board of Education*, 347 U.S. 483 (1954) (regarding racial segregation); *Bush v. Gore*, 531 U.S. 98 (2000) (regarding the 2000 presidential election); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (regarding same-sex marriage).

[7] The privileges and immunity clause.

[8] The due process clause.

[9] The equal protection clause.

[10] Fourteenth Amendment to the United States Constitution, Section 1.

[11] *Ohio Bell Tel. Co. v. Public Utilities Comm'n*, 301 U.S. 292 (1937).

[12] *Ohio Bell Tel. Co. v. Public Utilities Comm'n*, 301 U.S. 302 (1937).

procedures when it takes away life, liberty, or property. Substantive due process looks to whether there is a sufficient substantive justification, a good enough reason for such a deprivation" (Chemerinsky, 1999, p. 1501).

Space limitations preclude an extensive discussion of the history of substantive due process. Suffice it to say that in the early part of the twentieth century, substantive due process was used extensively to protect economic liberties from government interference. *Lochner v. New York*[13] was a seminal case concerning the so-called economic substantive due process. The Supreme Court routinely used the *Lochner* doctrine to invalidate legislation regulating business. However, it became discredited and effectively ended abruptly with the Supreme Court's holding in *West Coast Hotel Co. v. Parrish*, which upheld the constitutionality of state minimum wage legislation.

Although the Court abandoned economic substantive due process restrictions on legislation after the *West Coast Hotel* case, the Court has continued to recognize substantive due process rights concerning non-economic legislation that affects intimate issues such as bodily integrity, marriage, religion, childbirth, child-rearing, and sexuality. In *U.S. v. Carolene Products*,[14] the Supreme Court held that substantive due process would apply to "rights enumerated in and derived from the first Eight Amendments to the Constitution, the right to participate in the political process, such as the rights of voting, association, free speech, and the rights of 'discrete and insular minorities.'" After *Carolene Products*, the Court has determined that fundamental rights protected by substantive due process are those deeply rooted in American history and tradition, viewed in light of evolving social norms. Such rights, although not explicitly enumerated in the Bill of Rights, are instead 'penumbra' of certain amendments that refer to or assume the existence of such rights. Accordingly, the Court has found that various personal and relational rights, as opposed to merely economic rights, are fundamental and, therefore, protected.

[13] *Lochner v. New York*, 198 U.S. 45 (1905), *overruled in part*, *Ferguson v. Syrups*, 372 U.S. 726 (1963). In *Lochne*r, the Supreme Court struck down a New York law that limited the maximum number of hours that bakers could work, holding that freedom of contract was a fundamental right under the right of "liberty" contained in the due process clause and used a strict scrutiny standard of review. Strict scrutiny is the most stringent standard of review and gives little deference to legislatures passing laws. Consequently, according to Professor Chemerinsky, over the next 30 years hundreds of state laws of a similar nature were invalidated (see, Chemerinsky, 1999, p. 1503).
[14] *Products U.S. v. Carolene*, 304 U.S. 144, fn. 4 (1938).

2.3 Some of the Important Supreme Court Cases Invoking Substantive Due Process to Protect Various Fundamental Rights

In 1879, Connecticut passed legislation banning the use of any drug, medical device, or other instrument in furthering contraception. Estelle Griswold, the head of Planned Parenthood in Connecticut, and Lee Bruxton, a gynecologist at the Yale School of Medicine, opened a birth control clinic in New Haven, Connecticut. Planning to use the clinic to challenge the constitutionality of the statute under the Fourteenth Amendment, they were both arrested and convicted of violating the law. Their convictions were affirmed in the Connecticut state court system. As they planned, the case ended up before the Supreme Court in *Griswold v. Connecticut*.[15] The principal question in the case was whether the Constitution protects the right of marital privacy against state restrictions on a married couple's ability to be counseled in the use of contraceptives. The Court held that it does because a right to privacy, though not explicitly enumerated anywhere in the Constitution, nevertheless can be inferred from several amendments in the Bill of Rights, and this right, in turn, prevents states from making the use of contraception by married couples illegal.

Justice William Douglas, who authored the majority opinion, was faced with the practical problem of trying to overcome objections by the dissenting Justices[16] that since the Constitution does not explicitly mention a right to privacy, the Court should not usurp legislative authority and read one into the Constitution. Referring to quite a number of earlier Supreme Court decisions, dating as far back as 1925 in the case of *Pierce v. Society of Sisters*,[17] Douglas maintained that so-called penumbras[18] or zones surround many of the constitutional amendments, which, taken together, establish a right to privacy. Douglas argued that any other interpretation would render the enumerated rights fairly meaningless. In particular, he argued that the First, Third, Fourth, and Ninth Amendments create a right to privacy in marital

20. *Griswold v. Connecticut,* 381 U.S. 479 (1965).
21. Ruling was 7-2, with Justices Black and Stewart dissenting. In a concurring opinion, Justice Goldberg, joined by Justices Warren and Brennan, argued that the right to privacy can be found in the Ninth and Fourteenth Amendments. Justice Harlan II, who also wrote a separate concurring opinion, found that the Due Process Clause of the Fourteenth Amendment protects the right to privacy. The dissenting justices were left unpersuaded by any of the arguments.
[17] *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).
[18] A penumbra is defined by the Meriam-Webster Dictionary as a space of partial illumination (as in an eclipse) between the perfect shadow on all sides and the full light; a shaded region surrounding the dark central portion of a sunspot; a surrounding or adjoining region in which something exists in a lesser degree: fringe.

relations.[19] Citing earlier cases, Douglas reasoned that "specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.[20] Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen."[21]

Eisenstadt v. Baird[22] is the second case of note. William Baird gave a woman a contraceptive foam at the close of his lecture to students on contraception to deal with over-population.[23] Baird ultimately was convicted of a felony under a Massachusetts law prohibiting anyone from giving away a drug, medicine, instrument, or article for the prevention of conception to unmarried men or women. Under the law, only married couples could obtain contraceptives, and only registered doctors or pharmacists could provide them. Baird was neither. The First Circuit Court of Appeals held that the statute prohibited contraception per se, and conflicted "with fundamental human rights" under *Griswold.*[24] In a 6-to-1 decision,[25] the Supreme Court struck down the Massachusetts law, holding that the law's distinction between single and married individuals failed the "rational basis test" applied under the Fourteenth Amendment's Equal Protection Clause.[26] The Court reasoned that since married couples were entitled to contraception under the Court's ruling in *Griswold*, withholding the same right to single persons without any rational basis for drawing such a distinction was fatal to the constitutionality of the law.[27]

Justice Brennan wrote the majority opinion. He made the following observation. "If the right to privacy means anything, *it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. See Stanley v. Georgia*, 394 U.S. 557 (1969).

[19] *Griswold v. Connecticut*, 381 U.S. 482-486.
[20] *Poe v. Ullman*, 367 U.S. 497, 367 U.S. 516-522 (dissenting opinion).
[21] *Griswold v. Connecticut*, 381 U.S. 484.
[22] *Eisenstadt v. Baird*, 405 U.S. 438 (1972).
[23] *Eisenstadt v. Baird*, 405 U.S. 438 (1972)
[24] *Eisenstadt v. Baird*, 429 F.2d 1398 (1970).
[25] Justices Powell and Rehnquist took no part in the consideration or decision in the case.
[26] *Eisenstadt v. Baird*, 405 U.S. at 443, 446-454. To pass the rational basis test, the statute under review must have a legitimate state interest, and there must be a rational connection between the statute 's means and goals. Rational-basis review is the most deferential form of appellate court scrutiny and appellate courts rarely invalidate legislation under this standard. Strict-scrutiny review, on the other hand, is the least deferential standard of appellate review, and statutes are often invalidated by appellate courts under this test.
[27] *Eisenstadt v. Baird*, 405 U.S. at 443, 446-454.

[Footnote 10] See also Skinner v. Oklahoma." (Emphasis in the text added).[28] The Court's reference to *Stanley* and *Skinner* is noteworthy. In *Stanley v. Georgia*[29] the Court held that the First Amendment, as made applicable to the states by the Fourteenth Amendment, prohibits making the private possession of obscene material (pornography) a crime.[30] What is instructive about *Stanley*, as pertaining to the Supreme Court's abortion cases trilogy, is that the First Amendment says nothing about pornography. In other words, the right to have possession of pornography is not an enumerated right in the Constitution. Justice Marshall wrote the following in support of the Court's holding. "This right to receive information and ideas, regardless of their social worth, see *Winters v. New York,* 333 U.S. 507, 333 U.S. 510 (1948), is fundamental to our free society. Moreover, in the context of this case – a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home – that right takes on an added dimension. *For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.*" (Emphasis added)[31]

Expanding on the idea that the founders of the Constitution sought to protect American citizens' right to privacy vigilantly, and for Americans to be left free from unwarranted government intrusion, themes certainly relevant to the abortion debate, and which the majority in Dobbs ignored, Justice Marshall, quoting from *Olmstead v. United States*[32] elaborated. "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, thoughts, emotions, and sensations. *They conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized man."* (Emphasis added)[33]

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[28] *Eisenstadt v. Baird*, 405 U.S. at 453.
[29] *Stanley v. Georgia*, 394 U.S. 557 (1969).
[30] *Stanley v. Georgia*, 394 U.S. 560-568 (1969).
[31] *Stanley v. Georgia*, 394 U.S. 564 (1969). The U.S. Constitution contains very few enumerated rights, as compared to many European Constitutions. Instead, it contains many broad terms, such as "due process," "equal protection," "liberty" etc.
[32] *Olmstead v. United States*, 277 U.S. 438, 277 U.S. 478 (1928) (Brandeis, J., dissenting).
[33] *Stanley v. Georgia*, 394 U.S. at 564.

Skinner v. Oklahoma,[34] another case referenced by Justice Brennan in *Baird*, involved a constitutional challenge to an Oklahoma criminal statute[35] that provided for the sterilization, by vasectomy or salpingectomy, of habitual criminals, which the statute in question defined as "any person who, having been convicted two or more times, in Oklahoma or in any other State, of felonies involving moral turpitude". The Petitioner had been convicted three times, once for stealing chickens, and twice for robbery while using a firearm.[36] In 1936, the Oklahoma State Attorney General brought proceedings against the Petitioner under the statute. Petitioner answered the complaint by arguing the statute was unconstitutional under the Fourteenth Amendment. The trial judge instructed the jury that the three crimes Petitioner had committed were felonies involving moral turpitude and that the only question it was to answer was whether the operation of vasectomy could be performed on Petitioner without detriment to his general health.[37] The jury found it could be, and judgment was entered directing that a vasectomy be performed. The Oklahoma Supreme Court affirmed the judgment.[38]

The United States Supreme Court struck down the Oklahoma statute as violative of the Equal Protection Clause of the Fourteenth Amendment, holding that the right to procreation is a fundamental right, and as such a State cannot require the sterilization of criminals convicted of certain crimes.[39] In so holding, Justice Douglas stated, "We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race…. Any experiment that the State conducts is due to his irreparable injury. He is forever deprived of a basic liberty."[40] At the very outset of his opinion, Justice Douglas asserted that, "This case touches a sensitive and important area of human rights. Oklahoma deprives certain individuals of a right which is basic to the perpetuation of a race the right to have offspring."[41] Thus, at several different points of its opinion, the Court described procreation as a "fundamental right," and as "one of the basic civil rights of man," and as a "basic liberty." These basic rights are not enumerated in the Constitution [just as the word

[34] *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942).
[35] Oklahoma Habitual Criminal Sterilization Act, Okla.Stat.Ann. Tit. 57, §§ 171, *et seq*; L. 1935, pp. 94 *et. seq*.
[36] *Skinner v. Oklahoma*, 316 U.S. at 537.
[37] *Skinner v. Oklahoma*, 316 U.S. at 537.
[38] *Skinner v. State ex rel. Williamson*, 189 Okla. 235, 115 P.2d 123 (1941).
[39] *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. at 538-543.
[40] *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. at 541.
[41] *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. at 536.

abortion is not]; rather, they derive from broad terms that are set forth in the Constitution such as "liberty."

In *Loving v. Virginia*,[42] a unanimous Court invalidated state laws banning marriage between individuals of different races, holding that these so-called anti-miscegenation statutes violated both the Due Process and the Equal Protection Clauses of the Fourteenth Amendment. Chief Justice Earl Warren noted that, "These statutes also deprive the Lovings of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." [Emphasis added][43] Chief Justice Warren concluded the opinion by stating, "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. *Skinner v. Oklahoma*, 316 U.S. 536, 316 U.S. 541 (1942) (see also *Maynard v. Hill,* 125 U.S. 190 (1888)). To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive to the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State."[44]

2.4 The U.S. Supreme Court's Abortion Rulings Trilogy: Roe (1973), Casey (1992) and Dobbs (2022)

2.4.1 Roe v. Wade (1973)

Roe v. Wade[45] was the seminal abortion case that the Supreme Court considered. Roe involved a Texas woman named Norma McCorvey. In 1970, she sought to terminate her pregnancy but was prevented from doing so under Texas state criminal law, which provided that it was a crime to "procure an abortion" or to attempt one,

[42] *Loving v. Virginia*, 388 U.S. 1 (1967).
[43] *Loving v. Virginia*, 388 U.S. 12 (1967).
[44] *Loving v. Virginia*, 388 U.S. 12 (1967).
[45] *Roe v. Wade*, 410 U.S. 113 (1973).

except with respect to "an abortion procured or attempted by medical advice for the purpose of saving the life of the mother."[46] McCorvey, who already had two children she was unable to care for, alleged that she could not afford to travel to another state in order to have an abortion under safe conditions.[47] She claimed that the Texas statutes were unconstitutionally vague and that they violated her right to personal privacy protected under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.[48]

Justice Harry Blackmun delivered the opinion for the 7-2 majority of the Court. Fundamentally a substantive due process case, Justice Blackmun explained that the "right of privacy,[49] whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."[50] The opinion went on to state that a statute "that excepts from criminality only a lifesaving procedure on behalf of the mother, without regard to pregnancy stage and recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment."[51] Although the Court concluded this fundamental right to privacy protects a woman's choice whether to have an abortion, this right must be balanced against the government's interests in protecting women's health and protecting "the potentiality of human life." The Court reasoned that the relative weight of each of these interests varies over the course of pregnancy, and the law must account for this variability.

In an attempt to strike this balance, and referring extensively to the medical and scientific literature, the Court held that in the first trimester, the state may not

[46] *Roe v. Wade*, 410 U.S. 117-118 (1973). As the Court notes in its opinion, at the time of Roe, the majority of the States had criminal statutes similar to the Texas statute at issue. For the sake of clarity, we will refer to plaintiff "Roe" in this article as McCorvey.
[47] *Roe v. Wade*, 410 U.S. 121 (1973).
[48] *Roe v. Wade*, 410 U.S. 121 (1973).
[49] Justice Blackman acknowledged that the Constitution does not explicitly mention (enumerate) any right of privacy, but then discussed in some detail the cases (and others) discussed in Section 3.2 of this paper (*Roe v. Wade*, 410 U.S., 152-153).
[50] *Roe v. Wade*, 410 U.S., 153. The Ninth Amendment, ratified in 1791, states that, *"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people*." The purpose of the Ninth Amendment was to assert the principle that the enumerated rights set forth in the Constitution are not exhaustive and final and that the listing of certain rights does not deny or disparage the existence of other rights. The problem always has been that what rights were protected by the amendment was never made clear.
[51] *Roe v. Wade, 410 U.S.,* 164.

regulate the abortion decision; only the pregnant woman and her attending physician can make that decision. In the second trimester, the state may impose regulations on abortion that are reasonably related to maternal health. In the third trimester, once the fetus reaches the point of "viability" (traditionally known as quickening), a state may regulate abortions or even prohibit them entirely, so long as the laws contain exceptions for cases when abortion is necessary to save the life or health of the mother.[52] Furthermore, the majority found that strict scrutiny[53]was the appropriate standard of appellate review when reviewing state restrictions on abortion, since it is part of the fundamental right of privacy.[54]

Viewed as a sweeping victory for women's reproductive rights at the time, foreshadowing the bitter judicial fights that would take place in future years regarding the abortion controversy, it is noteworthy that the Justices in *Roe* could not themselves agree on any unified source of a woman's right to abortion. Concurring in the result, Justice Douglas, using a more forceful tone than Blackmun, contended the Fourteenth Amendment, not the Ninth Amendment, is the more appropriate source of the right to privacy. In his concurrence, Justice Stewart argued that the right to privacy was explicitly rooted in the Due Process Clause of the Fourteenth Amendment. Quoting from *Board of Regents v. Roth*[55] Stewart said, "In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." *Board of Regents v. Roth*, 408 U.S. 564. 572. The Constitution nowhere mentions a specific right of personal choice in matters of marriage and family life, but the 'liberty' protected by the Due Process Clause of the Fourteenth Amendment covers more than those freedoms explicitly named in the Bill of Rights."[56] Justice Burger, while concurring, believed that two physicians instead of one should be required to agree to a woman's right to an abortion. Justices White and Rehnquist dissented. Rehnquist, an originalist, traced Nineteenth-century laws

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[52] *Roe v. Wade, 410 U.S.,* 164-165.

[53] Strict scrutiny is the least deferential standard of appellate review when the appeals court evaluates the state legislation at issue (*Roe v. Wade, 410 U.S.,* 155).

[54] Right to privacy law began to develop in the United States in the late Nineteenth and early Twentieth Centuries. Justice Louis Brandeis, prior to becoming a Supreme Court Justice [he served as an Associate Justice from 1916 to 1939], co-authored a seminal law review article titled »The Right to Privacy« in the 1890 Harvard Law Review. This influential essay, written primarily by Brandeis, is widely regarded as the first publication in the United States to advocate a right to privacy. In it, Brandeis and Samuel D. Warren II articulated that right primarily as a »right to be let alone.« In the early 1900s, New York then passed one of the first state laws regarding the right to privacy.

[55] *Board of Regents v. Roth*, 408 U.S. 564, 572.

[56] *Roe v. Wade*, 410 U.S.,168 citing a litany of cases including *Schware v. Board of Bar Examiners*, 353 U.S. 232, 238-239; *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535; *Meyer v. Nebraska*, 262 U.S. 390, 399-400.

on abortion and the status of abortion both when the Constitution and the Fourteenth Amendment were ratified and concluded that state restrictions on abortion were considered valid so that the drafters could not have contemplated creating rights that conflicted with it.[57]

Praised by progressives, who believe the Constitution is a "living document" whose general terms such as "Due Process," "Equal Protection," "Liberty," etc., were specifically utilized by the framers of them to allow future judges and Justices to shape the law to meet changing times, the *Roe* decision was derided by others, who argued and still argue that the Constitution and its Amendments must be read literally. They contend that liberal, activist Justices make rulings that are not true to the original text and meaning of the Constitution and that such judges and Justices act as super legislators, usurping the general rights of the people, who act through their elected representatives.[58]

2.4.2 Important Abortion Rulings Between 1973 and 1991

In the memorable opening lines of the majority, plurality opinion authored by Justice Sandra Day O'Connor[59] in *Casey*,[60] O'Connor wrote, "Liberty finds no refuge in a jurisprudence of doubt. Yet 19 years after our holding that the Constitution protects a woman's right to terminate her pregnancy in its early stages, *Roe v. Wade*, 410 U.S. 113 (1973), that definition of liberty is still questioned."

Justice O'Connor was referencing the fact that among conservatives and the Pro-Life movement, *Roe* was not well received, to say the least. In many of the now so-called "Red States," those where conservative values are particularly high, mainly in

[57] *Roe v. Wade*, 410 U.S., 170-178 (Rehnquist, J., *dissenting*).
[58] Originalists argue that the meaning of the constititutional text is fixed and that it should bind constitutional actors. Living constitutionalists contend that constitutional law can and should evolve in response to changing circumstances and values. Lawrence B. Solum wrote an excellent article on this subject entitled, »Originalism Versus Living Constitutionalism: The Conceptual Structure of the Great Debate, 113 Northwestern University Law Review, 1243 (2019). Mr. Solum is an American legal theorist known for his work in the philosophy of law and constitutional theory. He is a Professor of Law at the University of Virginia School of Law and was previously a Professor of Law at Georgetown University Law Center.
[59] Sandra Day O'Connor was sworn in as an Associate Justice of the Supreme Court in September 1981. Nominated by President Ronald Reagan, a conservative Republican, O'Connor had previously served as the first female majority leader of a state senate as the Republican leader in the Arizona Senate. By the time of her appointment to the Court, the Court itself had turned decidedly conservative. O'Connor did frequently side with the Court's conservative bloc, but often demonstrated the ability to side with the Court's liberal members as well. The *Casey* case was a prime example of the latter.
[60] *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 844 (1992).

mid-America, the state legislatures continually passed legislation specifically designed to test *Roe's* boundaries. At the same time, they waited for the Supreme Court to turn far enough to the right where *Roe's* very existence could be attacked and overruled. That day came, as we shall see later in this paper. But before reaching that point, we will briefly summarize just some of the many major abortion rulings issued by the Supreme Court after *Roe* and before the *Casey* case in 1992.

In *Planned Parenthood of Central Missouri v. Danforth*,[61] the Court struck down a law requiring spousal consent for abortion. In *Maher v. Roe*,[62] a sharply divided Court held that states may exclude abortion services from Medicaid coverage.[63] In *Colautti v. Franklin*[64] the Court, in a 6-3 decision, struck down as unconstitutionally vague a Pennsylvania law that required physicians to try to save the life of a fetus that might have been viable. In *Harris v. McRae*[65] the Court, again along mainly conservative/liberal lines, upheld the constitutional validity of the Hyde Amendment. This federal law proscribed federal funding for abortions except when necessary to preserve life or as a result of rape or incest. In his dissenting opinion, Justice Marshall stated that, "The legislation before us is the product of an effort to deny to the poor the constitutional right recognized in *Roe v. Wade*, 410 U.S. 113 (1973), even though the cost may be serious and long-lasting health damage."[66]

In *H.L. Matheson*,[67] the Court, in a 6-3 ruling, upheld a Utah law requiring parental notification for an abortion when the patient is a minor living with her parents. Justices Marshall, Brennan and Blackmun dissented. Writing for the dissenters, Justice Marshall wrote, "Many minor women will encounter interference from their parents after the state-imposed notification. In addition to parental disappointment and disapproval, the minor may confront physical or emotional abuse, withdrawal of financial support, or actual obstruction of the abortion decision. Furthermore, the threat of parental notice may cause some minor women to delay past the first

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[61] *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976). There were several other issues involved in the case as well.
[62] *Maher v. Roe*, 432 U.S. 464 (1977).
[63] America does not provide universal health care to its citizens. Health is not considered a fundamental right. Medicaid is the nation's public health care program for people with low income. The Medicaid program covers more than 1 in 5 Americans, including many with complex and costly needs for care. The program is the principal source of long-term care coverage for people in the United States (see, Rudowitz et al., 2023).
[64] *Colautti v. Franklin*, 439 U.S. 379 (1979).
[65] *Harris v. McRae*, 448 U.S. 297 (1980).
[66] *Harris v. McRae*, 448 U.S. 297 (1980), Marshall, J., *dissenting.*
[67] *H.L. Matheson*, 450 U.S. 398 (1981).

trimester of pregnancy, after which the health risks increase significantly. Other pregnant minors may attempt to self-abort or obtain an illegal abortion rather than risk parental notification. Still, others may forsake an abortion and bear an unwanted child, which, given the minor's probable education, employment skills, financial resources and emotional maturity, . . . may be exceptionally burdensome."[68] Marshall decried the fact that this law was a "state-imposed obstacle to the exercise of the minor woman's free choice" under the Fourteenth Amendment.[69]

In *City of Akron v. Akron Center for Reproductive Health*,[70] in a 6-3 decision, the Court invalidated a host of limitations that Ohio law placed on abortions, such as a waiting period, parental consent without judicial bypass, and a ban on abortions outside of hospitals after the first trimester. In her dissenting opinion, Justice O'Connor, with whom Justices White and Rehnquist joined, stated that the *Roe* trimester framework was essentially untenable and should be abandoned.[71] She pointed to, among other things, changes in medical science since the *Roe* decision.[72]

In *Thornburgh v. American College of Obstetricians and Gynecologists*,[73] the Court, in a 5-4 ruling, invalidated a Pennsylvania law that required informed consent to include information about fetal development and alternatives to abortion. Writing for the majority, Justice Blackman wrote, "In the years since this Court's decision in *Roe,* States and municipalities have adopted a number of measures seemingly designed to prevent a woman, with the advice of her physician, from exercising her freedom of choice. *Akron* is but one example. But the constitutional principles that led this Court to its decisions in 1973 still provide the compelling reason for recognizing the constitutional dimensions of a woman's right to decide whether to end her pregnancy."[74]

In *Webster v. Reproductive Health Services*[75] a sharply divided Court, in a majority opinion written by Chief Justice Rehnquist, upheld rules requiring doctors to test for viability after 20 weeks and blocking state funding and state employee participation in

[68] *H.L. Matheson*, 450 U.S. 398 (1981), 439-440, Marshall, J., *dissenting.* [Citations omitted].
[69] *H.L. Matheson*, 450 U.S. 398 (1981), 421. [Citations omitted].
[70] *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983).
[71] *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983), 453-460, O'Connor, J., *dissenting.*
[72] *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983), 453-460.
[73] *Thornburgh v. Amer. Coll. of Obstetricians*, 476 U.S. 747 (1986).
[74] *Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416 (1983).
[75] *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

abortion services. Justice Antonin Scalia, participating in his first abortion case since becoming a Supreme Court Justice,[76] wrote in dissent that he would reconsider and explicitly overrule *Roe,* and that avoiding the "*Roe* question" by deciding the case before it in a narrow a manner as possible is not required by precedent and not justified by policy. Scalia expressed his view that abortion was a political, not a judicial issue.[77]

The next major abortion case was *Rust v. Sullivan.*[78] In a 5-4 ruling, the Court upheld a federal law banning certain federal funds being used for abortion referrals or counseling. Justice David Souter was now on the Supreme Court bench, having been placed there upon the nomination of President George H. W. Bush, a Republican, to fill a seat that Justice Brennan had vacated. By this time, Justice Anthony Kennedy, a President Reagan nominee, was also on the bench. Justice Kennedy joined in the majority in this case.

2.4.3 Planned Parenthood of Southeastern Pennsylvania v. Casey (1992)

In 1988 and 1989, when Robert Casey was the Governor, Pennsylvania amended its abortion laws to place substantial restrictions on a woman's right to obtain an abortion. Those restrictions required a woman seeking an abortion to obtain parental consent, for a married woman to notify her husband of her intended abortion, and that clinics provide certain information to a woman seeking an abortion and wait at least 24 hours before performing the abortion. Several abortion clinics and physicians challenged these provisions. The United States Court of Appeals for the Third Circuit upheld all of these provisions except for the husband notification requirement.[79]

As the Supreme Court was now considerably more conservative than was the case when *Roe* was decided in 1973, the Pro-Life activists (who had clamored politically for a conservative Court and the reversal of *Roe)* hoped the Court would finally overturn *Roe,* and return the matter of whether to allow abortions to the States. They

[76] Justice Antonin Scalia was nominated to the Court by President Ronald Reagan. He assumed role as Associate Justice in 1986. Scalia was described as the intellectual anchor for the originalist and textualist position of the Court's most conservative wing.
[77] *Webster v. Reproductive Health Services*, 492 U.S. 490, 532-537, Scalia, J., *dissenting.*
[78] *Rust v. Sullivan*, 500 U.S. 173 (1991).
[79] *Planned Parenthood of Southeastern Pa. v. Casey*, 947 F.2d 682 (1991).

were disappointed. In a plurality opinion written by Justice O'Connor, and joined in by Justices Kennedy and Souter, the Court affirmed the "essential holding" of *Roe*, that women have a right to obtain an abortion prior to fetal viability. However, citing advances in medical knowledge, the Court rejected *Roe's* trimester-based approach for allowing states to curb the availability of abortion in favor of a more flexible medical definition of viability. "After considering the fundamental constitutional questions resolved by *Roe,* principles of institutional integrity, and the rule of *stare decisis*, we are led to conclude this: the essential holding of *Roe v. Wade* should be retained and once again reaffirmed."[80]

A critical aspect of the plurality's decision is its discussion of *stare decisis*, which. the Court devoted an astounding 15 pages to.[81] There are established factors the Supreme Court analyzes to determine whether *stare decisis* mandates that previous precedent be followed or whether a precedent should be overruled. The Court exhaustively analyzed each element, and concluded none of them justified overruling *Roe*. The Court concluded its discussion of *stare decisis* by stating the following [which showed remarkable concern about the institutional integrity of the Court were it to reverse *Roe*]: "If the Court's legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals. The Court's concern with legitimacy is not for the sake of the Court but for the sake of the Nation to which it is responsible. *The Court's duty in the present case is clear*. In 1973, it confronted the already-divisive issue of governmental power to limit personal choice to undergo abortion, for which it provided a new resolution based on the due process guaranteed by the Fourteenth Amendment. *Whether or not a new social consensus is developing on that issue, its divisiveness is no less today than in 1973, and pressure to overrule Roe's essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy, and to the Nation's commitment to the rule of law. It is, therefore, imperative to adhere to the essence of Roe's original decision, and we do so today*." [Emphasis added][82]

Significantly, however, the Court revised the test that courts use to scrutinize laws relating to abortion, moving away from a strict scrutiny standard [application of which will often result in laws being held invalid] to an "undue burden" standard: a

[80] *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 845-846 (1992).
[81] *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 853-869 (1992).
[82] *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 868-869 (1992).

law is invalid under this standard if "it has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."[83] Justices Scalia and Rehnquist wrote dissents and both stated that they would have used this case as an opportunity to overrule *Roe*, and they would have upheld the constitutionality of all of the provisions at issue in the case.[84]

2.4.4 Important Abortion Rulings Between 1992 and 2022

At issue in *Hill v. Colorado*[85] was, as Justice Stevens framed it, the "constitutionality of a 1993 Colorado statute that regulates speech-related conduct within 100 feet of the entrance to any healthcare facility.[86] In a 6-3 decision[87] the majority of the Court upheld the law, thereby limiting protest and leafletting close to an abortion clinic. The Court held that valid time, place, and manner regulations under the First Amendment must be designed to serve a significant and legitimate purpose, contain content-neutral restrictions, and be narrowly tailored so that ample alternative avenues of communication remain available.[88]

In *Stenberg v. Carhart*[89] the Court, in a 5-4 decision, held that Nebraska's statute criminalizing the performance of a partial birth abortion violates the U.S. Constitution, as interpreted in both *Casey* and *Roe*.[90] More specifically, the Court held that under the Fourteenth Amendment, a state cannot pass an anti-abortion law that does not include an exception for the health of the mother. It also cannot pass a law that criminalizes partial-birth abortions unless it is thoroughly clear that it does not extend to other forms of abortion.[91] In his dissenting opinion, joined by Chief Justice Rehnquist and Justice Scalia, Clarence Thomas again expressed his view that the *Roe* "decision was grievously wrong."[92]

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[83] *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 877 (1992).
[84] *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 944-1002 (1992), Scalia, J., and Rehnquist, J., *dissenting.*
[85] *Hill v. Colorado*, 530 U.S. 703 (2000).
[86] *Hill v. Colorado*, 530 U.S. 707 (2000).
[87] The composition of the Court continued to change, with recent appointments turning it ever more conservative. At the time of this decision, Justices David Souter, a George H.W. Bush appointment in 1990, and Justice Clarence Thomas, also appointed by the first President Bush, were now both on the bench.
[88] *Hill v. Colorado*, 530 U.S. 703, 719-725.
[89] *Stenberg v. Carhart*, 530 U.S. 914 (2000).
[90] *Stenberg v. Carhart*, 530 U.S. 924-946 (2000).
[91] *Stenberg v. Carhart*, 530 U.S. 924-946 (2000).
[92] *Stenberg v. Carhart*, 530 U.S. 980 (2000), Thomas, J., *dissenting.*

2.4.5 Dobbs v. Jackson Women's Health Organization (2022)[93]

The case arose in 2018, when the Mississippi state legislature adopted the Gestational Age Act, which prohibited almost all abortions after 15 weeks of pregnancy, well before the point of fetal viability, which usually occurs at about 24 weeks. Jackson Women's Health Organization, the only licensed abortion clinic in Mississippi, filed suit in federal district court, challenging the constitutionality of the law and requesting a temporary restraining order, which was issued the following day. Based on *Roe* and *Casey*, the district court granted the TRO and also summary judgment, finding the law unconstitutional. The Fifth Circuit Court of Appeals affirmed the ruling. The Supreme Court agreed to hear the case, though it limited the issues to be decided to the single question of whether all bans on pre-viability abortions are unconstitutional.

The Court's decision, authored by Justice Samuel Alito, Jr., and issued on June 24, 2022, upheld (6-3) Mississippi's prohibition of pre-viability abortion and took the further step of overruling (5-4) both *Roe* and Casey. Alito wrote that *Roe* and *Casey* had to be overruled because they were "egregiously wrong" and "deeply damaging" because they limited the options of people opposed to abortion. In support of these conclusions, Alito wrote that the Constitutional text itself provides no right to abortion. Further, abortion was not protected as a fundamental "liberty" right because the right to abortion was not "deeply rooted" in English or U.S. common law; in 1868, when the 14th Amendment was adopted, the majority of states criminalized abortion, and it was not relevant that the motives for the bans may have been to enforce women's "natural maternal role" and increase white middle- and upper- class birthrate in response to increased immigration. *Roe* and *Casey* were also "egregiously wrong" because the viability line is a legislative judgment, and how to balance the interests of a fetus against the interest of a mother is also a legislative, not a judicial, judgment. Alito claimed that *Roe* and *Casey* "inflamed national politics and proved to be unworkable because lower courts and Supreme Court Justices have differed on applying the "substantial burden" standard in differing factual situations. He discussed the principle of *stare decisis* at length but, in the end, dismissed the extensive analysis the *Casey* Court had engaged in on this matter, concluding that

[93] *Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022).*

stare decisis is not an "inexorable command" and is at its weakest when the Court interprets the Constitution.

Justices Breyer, Sotomayor and Kagan wrote a joint dissent. "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." The dissent states, "After today, young women will come of age with fewer rights than their mothers and grandmothers had. The majority accomplishes that result without so much as considering how women have relied on the right to choose or what it means to take that right away." Further, "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 and incest." Striking an even more ominous note for the future of all American's future rights, the dissent stated, "And no one should be confident that this majority is done with its work. The right *Roe* and *Casey* recognized does not stand alone."

2.5 Discussion and Commentary Post- Dobbs Ruling[94]

A complete dissection of the *Dobbs* ruling is beyond the scope of this article.[95] However, your American author believes that the majority's decision, using Justice Alito's inflammatory rhetoric, was both "egregiously wrong" and "deeply damaging"[96] for numerous reasons, some of which I will discuss below.

What explains the *Dobb's* majority rejecting 50 years of abortion law jurisprudence and over 60 years of privacy law jurisprudence? Let me be clear. It is because in my view the religious far right, a very small sliver of the United States population,[97] with

[94] The views and comments expressed in this section are those of the American author, only.
[95] For an excellent legal analysis of why the majority ruling was wrong, see Center for Reproductive Rights, 2023.
[96] Used in this context, the words "egregiously" and "deeply" are called intensifiers. An intensifier is a "linguistic element used to give emphasis or additional strength to another word or statement." Merriam-Webster's Dictionary of English Usage, 1994, pp. 555-556. Other commonly used intensifiers include blatantly, certainly, clearly, obviously, undoubtedly etc. Paradoxically, a fairly recent law review article suggests that using intensifiers in legal briefs is a bad idea. In a study of United States Supreme Court briefs, the authors found that increased intensifier use was correlated with losing, especially for appellants (Long & Christen, 2008, p. 180; see also, Schiess, 2017, pp. 48-51). Johnson (2021) agrees. "[Intensifiers] may appear to add emphasis but often come across as a sign of weakness, a substitute for compelling argument." Alito's use of intensifiers, I contend, are indeed hyperbole used to mask the weakness in his legal arguments. He knows, however, that this language plays well to Pro-life crowd and others that do not understand legal theory.
[97] According to the Public Religion Research Institute's 2020 Census on American Religion, in 2006, almost a quarter of the American population identified as white evangelical while only 14.5% of the population does so today. Evangelical is an umbrella category within Protestant Christianity. They recognize the Bible as the ultimate authority.

an oversized influence in the increasingly hard right Republican party, fought tooth and nail over the last five decades to help elect presidents that vowed to nominate ever-increasingly conservative Supreme Court Justices that signaled before going on the Supreme Court bench they would overrule *Roe* and *Casey*. Although this trend dates back to the Ronald Reagan presidency, it speed-warped leading up to Donald Trump's election in 2016. Evangelicals and Donald Trump. Talk about odd bedfellows.

Hanna Rosin is an Israeli-born American writer and journalist. In a recent piece for Radio Atlantic (Rosin, no date), Rosin interviewed Tim Alberta, also a political reporter at the Atlantic and the son of a pastor at a prominent mega-church in Michigan. Alberta explains the chronology of the evangelical movement in America and, in particular, how leading Evangelical leaders, despite their disdain for Trump, "not exactly a paragon of Christian value," (Rosin, no date) eventually struck a Faustian bargain with him.[98] When Trump seized the Republican nomination, Trump soon understood he needed the evangelical voters to win, and they realized Trump could deliver what they wanted most: Pro-Life Supreme Court Justices.[99] Trump strategically chose Mike Pence as his Vice-Presidential running mate[100] to provide him with evangelical bona fides. Alberta explains that "[The evangelicals] understood exactly the relationship they were entering into with Donald Trump. They were under no illusions that God's hands were on him. They didn't believe any of that. They didn't even bother trying to sell that to their flocks. Really, what they said was: Look, this is a crummy situation. We've got a binary choice. There are multiple Supreme Court justices hanging in the balance here. And if you care about abortion –which is the number-one issue for a lot of these folks – then you have an obligation to vote for this person, no matter how gross and wretched we find his personal conduct to be." (Rosin, no date). And so it happened. The religious right

They are staunchly against abortion, same-sex marriage and support other so-called "family values." They overwhelmingly support the Republican party and authoritarian leaders, such as Donald Trump (Shoemaker, 2021).

[98] Many articles have emerged that secretly Trump holds the religious right in contempt and mocks them (and worse). (see e.g., Coppins, 2020).

[99] My discussion in this section is not mere hyperbole. It is factual. For those readers interested in how the anti-abortion supporters elected Republican politicians that would deliver on their promises to reshape the federal judiciary to overturn *Roe/Casey*, an excellent piece by Planned Parenthood (no date) entitled "Timeline of Attacks on Abortion: 2009-2021" is a must read. "When former President Trump reshaped the federal courts, the efforts of abortion opponents shifted into high gear. Their tactics became even more deceptive and extreme than before Trump came to office." According to the timeline, October 19, 2016, was the date "Trump promises to nominate judges who would 'automatically' overturn *Roe v. Wade*."

[100] Pence refers to himself as a born-again Evangelical Catholic (McFarlan Miller & Winston, 2016).

voted for Trump; Trump eventually became president; and, during his four-year tenure he appointed three Supreme Court Justices: Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett, the most by anyone-term president since Herbert Hoover, who was the president from 1929-1933.

What is egregiously wrong is that the religious right has been allowed to use the judiciary, which is supposed to be an apolitical institution, as its vessel to thrust its moral views, particularly its biblical (non-scientific) view that life begins at the moment of conception, on all American women.[101] What is egregiously wrong is that the *Dobbs* majority jettisoned fifty years of abortion law precedent and sixty years of constitutional privacy law precedent to reach its strained result. As succinctly and correctly stated [in this author's view] by the dissent in *Dobbs*, "The Court reverses course today for one reason and one reason only: because the composition of this Court has changed."[102] Rejecting the storied principle of *stare decisis*, "Today, the proclivities of individuals rule. The [majority] departs from its obligation to faithfully and impartially apply the law."[103] Justice Brennan was surely correct in *Eisenstadt,* when he stated, "If the right to privacy means anything, *it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."* It is ironic, to say the least, that under usual conservative dogma people should have the right to be left alone and that any governmental intrusion into people's lives is unacceptable, and yet when it comes to abortion these same people want to impose their religious and moral views on others. They believe the Bible, not the United States Constitution, should govern the abortion debate. This is certainly the crux of the situation. This, too, is egregiously wrong.

[101] The religious far-right likes to assert that "life begins at the moment of conception" as the basis for their anti-abortion stance. This is a belief people of some religions hold which stems from the Bible, not science (see, Paulson, 2022). I find this very troubling indeed because in reality government, through a group of evangelicals, is in essence endorsing their religious beliefs and foisting them on all Americans. I believe this violates at least the spirit of the First Amendment, which provides in part "Congress shall make no law respecting an establishment of religion. …" While Protestant evangelicals and others may believe whatever they want when it comes to religions and morals [under the free exercise clause of the First Amendment], the government has no business elevating judges to the bench that they know will foist those views on others [actually the vast majority of Americans] that do not hold such religious views, and that actually place greater reliance on science and reasoning than on biblical stories.

[102] *Dobbs v. Jackson Women's Health Organization*, Dissenting opinion, p. 6.

[103] *Dobbs v. Jackson Women's Health Organization*, Dissenting opinion, p. 6.

The *Dobbs* ruling is egregiously out of step with what the majority of Americans want. The Pew Research Center [PRC] has exhaustively examined public opinion on abortion in America. In a 2022 paper (Pew Research Center, 2022), PRC found that 61% of Americans believe that abortion should be legal in all or most cases.[104] This percentage stayed relatively constant between the years 1995 and 2022 (Pew Research Center, 2022).[105] The PRC also found that nearly three-quarters of White evangelical Protestants think abortion should be illegal in all or most cases. In contrast, a stunning 84% of religiously unaffiliated Americans say abortion should be legal in all or most cases, while 66% of Black Protestants, 60% of White Protestants who are not evangelical, and even 56% of Catholics hold the same views (Ranji, Diep & Salganicoff, 2023). 63% of women and 58% of men, significant majorities, believe that abortion should be legal (Ranji, Diep & Salganicoff, 2023). "Majorities of adults across racial and ethnic groups express support for legal abortion. About three-quarters of Asian (74%) and two-thirds of Black adults (68%) say abortion should be legal in all or most cases, as do 60% of Hispanic adults and 59% of White adults" (Ranji, Diep & Salganicoff, 2023). Younger Americans, those that are most likely to bear the consequences of abortion laws, overwhelmingly say abortion should be legal in all or most cases: 74% of adults under age 30; 62% of adults in their 30s and 40s. However, more than 50% of older Americans, those in their 50s, 60s and even older, express support for legal abortion (Ranji, Diep & Salganicoff, 2023). 61% of Americans believe that Dobbs was wrongly decided (Murray, 2023).

The *Dobbs* ruling is also deeply damaging for a plethora of reasons. Blatant judicial partisanship will ultimately destroy the public's confidence in the judicial system and undermine the rule of law. The *Dobbs* ruling has been, and will continue to be, deeply damaging to many American women. The ruling has relegated women to second-class citizens. As noted in What *Dobbs* Got Wrong (Center for Reproductive Rights, 2023), "Every pregnancy entails risk to a pregnant person's health or life, and pregnancy and childbirth involved significant and comparably greater risks than abortion." The Human Rights Watch [hereinafter HRW] organization issued an extensive paper in April 2023, documenting in detail the extreme harms that have

[104] Pew Research Center (2022) – 37% say it should be illegal in all or most cases.
[105] Interestingly, the number of abortions performed in America had generally steadily *decreased* in the decade before *Dobbs*, and paradoxically, the number of abortions nationwide actually *increased* in the year following *Dobbs* (Ranji, Diep & Salganicoff, 2023).

occurred as a consequence of *Dobbs.*[106] According to HRW, following *Dobbs*, approximately 22 million women live in states having abortion laws where abortion access is either totally inaccessible or heavily restricted (Human Rights Watch, 2023). In its Executive Summary, HRW states, "The consequences of the *Dobbs* decision are wide ranging. Restrictions on access to healthcare places women's lives and health at risk, leading to increased maternal mortality and morbidity, a climate of fear among healthcare providers, and reduced access to all forms of care. *Dobbs* also enables penalization and criminalization of healthcare, with providers, patients, and third parties at risk of prosecution or civil suit for their involvement in private healthcare decisions. … [T]he harms of *Dobbs* violate principles of equality and non-discrimination; they fall disproportionately on marginalized populations including Black, indigenous, and people of color; immigrants; and those living in poverty" (Human Rights Watch, 2023).[107] Black women, in particular, will suffer the most as a consequence of the absurd ruling in *Dobbs.*[108]

Indeed, this is perhaps the most deleterious impact of *Dobbs*. As the dissent [referring to *Dobbs*] aptly notes, "In States that bar abortion, women of means will still be able to travel to obtain the services they need. It is women who cannot afford to do so who will suffer most. These are the women most likely to seek abortion care in the first place. Women living below the federal poverty line experience unintended pregnancies at rates five time higher than higher income women do, and nearly half

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[106] Human Rights Watch is a large, international organization consisting of country experts, lawyers, journalists, and others that work to protect people, especially the most vulnerable, from various abuses. In April 2023, it wrote an extensive 44-page paper entitled: Human Rights Crisis: Abortion in the United States After *Dobbs*. This section of our paper will refer to that paper, but for those interested in a comprehensive analysis of the adverse consequences caused by Dobbs, we highly recommend that article to you (Human Rights Watch, 2023).

[107] According to an American Progress article in June 2023, "14 states [in the Midwest and deep south] have near-total abortion bans during any point in pregnancy in effect, and six states have implemented abortions bans with other limits from 6 to 20 weeks after a person's last menstrual period. These bans have some differences but, overall, contain only the narrowest exceptions, which have jeopardized patient safety in myriad ways. Most bans are enforced through criminal penalties and jail time for providers; however, some states, including Idaho and Oklahoma, have passed 'bounty hunter' abortion bans… [which] permits any individual to sue those who perform an abortion or simply help someone secure care" (see Damante & Jones, 2023).

[108] *See,* Cineas, 2022. This article contains jarring statistics on the disproportionate impact *Dobbs* is having on Black women. Black women are nearly four times more likely than White women to seek abortions. They are more likely to live in so-called contraception deserts and less likely to have access to health care. 60% of pregnancies involving Black women are unintended, as compared to 42% for White women. A majority of women seeking legal abortion services live in states with bans. Black women are three times more likely to die from pregnancy-related causes than White women. Black women are disproportionately victims of sexual violence. Perhaps most catastrophic of all, abortion restrictions will trap Black women in a cycle of poverty. "Nearly one in four Black women lives in poverty and, though they make up only 12.8% of all women in the US population, represent 22.3% of women in poverty. The gender wage gap, the gender wealth gap, and segregation into low-paying jobs all limit their employment opportunities."

of women who seek abortion care live in households below the poverty line." (Human Rights Watch, 2023). The harsh realities of *Dobbs* are that "[I]n States where legal abortions are not available, [women] will lose any ability to obtain safe, legal abortion care. They will not have the money to make the trip necessary; or to obtain childcare for that time; or to take time off work. Many will endure the costs and risks of pregnancy and giving birth against their wishes. Others will turn in desperation to illegal and unsafe abortions. They may lose not just their freedom, but their lives." (Cineas, 2022).

What is particularly cruel and pernicious about this is that, according to Whitehurst et al. (2022) many states with the toughest abortion laws have the weakest social programs to help the women that are forced to have children and to support those children once born.[109] According to an analysis of federal data by The Associated Press, some states such as Mississippi and Texas, that have extremely harsh abortion laws, also are among the hardest places to raise a healthy child, especially for the poor, which as we have seen, are the women and girls being forced to give birth to children they do not want and cannot afford.[110] Citing legal historian Mary Ziegler at Florida State University's law school, "The pro-life movement has made its political bones by relying on the GOP [i.e., the Republican party] [which] has not been in favor of expanding the social safety net for young children and pregnant people, and the pro-life movement, which may have otherwise wanted to do that, is not willing to expend political capital on that because its priority is abortion, basically, and nothing beyond it" (Whitehurst et al., 2022).

A recent Washington Post Article (Joyce & Tierney, 2022) provides revealing information on the shocking lack of support that states that ban abortion provide to mothers and their children, both during pregnancy and after birth. In general, America ranks poorly on a number of measures related to maternal support and outcomes. "While child care tends to be more affordable in states with bans, the rates of uninsured women and maternal deaths are among the highest in the country; no state with a ban has legislation in place to guarantee paid leave, which helps women recover from giving birth without losing income." (Joyce & Tierney, 2022).

[109] (Whitehurst et al., 2022); Social programs weak in many states with tough abortion laws, 2022.
[110] (Whitehurst et al., 2022); "Mississippi has the nation's largest share of children living in poverty and babies with low birth rates, according to 2019 data from the U.S. Census Bureau and the Centers for Disease Control" while "Texas has the highest rate of women receiving no prenatal care during their first trimester and ranks second worst for the proportion of children in poverty who are uninsured."

Women living in states where abortion rights have been rescinded earn lower salaries than women in other states (Joyce & Tierney, 2022). To make matters worse, most states with abortion bans contain a high percentage of women who do not have private or public health insurance (Joyce & Tierney, 2022).[111] "Maternal mortality has been on the rise in the United States, with Black women dying at nearly three times the rate as White women in 2020. The number of deaths or pregnant and new mothers in states with abortion bans are among the highest." (Joyce & Tierney, 2022).[112]

What kind of society, or more precisely, segment of society, forces the most vulnerable women in society to have children against their will, and then fail to provide them with the support required to raise them?[113] This is both deeply damaging and just plain cruel.[114]

Baron warns that in this era of extreme climate change, limiting access to abortion will be even more devastating, especially to those already living in the margins. "In a time when we are experiencing more intense, disruptive climate impacts, the consequences of [*Dobbs*] will be even more harmful and deadly, with Black people and low-income people bearing the worst" (Baron, 2022). Baron points out that even before *Dobbs,* the reproductive health system in America was "shaky at best" and

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[112] "The maternal death rate in states with abortion bans is 42% higher than in states with wider access." (Joyce & Tierney, 2022). The poor states in the deep south, including Louisiana, Alabama, Georgia, Arkansas and South Carolina have significantly higher rates of death related to pregnancy, birth and post-pregnancy.

[112] "The maternal death rate in states with abortion bans is 42% higher than in states with wider access." (Joyce & Tierney, 2022). The poor states in the deep south, including Louisiana, Alabama, Georgia, Arkansas and South Carolina have significantly higher rates of death related to pregnancy, birth and post-pregnancy.

[113] United Nations experts report that abortion bans approved by *Dobbs* "could lead to violations of women's rights to privacy, bodily integrity and autonomy, freedom of expression, freedom of thought, conscience, religion or belief, equality and non-discrimination, and freedom from torture and cruel, inhuman and degrading treatment and gender-based violence." Further they warn, "Women and girls in disadvantaged situations are disproportionately affected by these bans, referring to "women and girls from marginalized communities, racial and ethnic minorities, migrants, women and girls with disabilities, or living on low incomes, in abusive relationships or in rural areas." (see*,* United Nations, 2023).

[114] A recent article by The Commonwealth Fund describes how limiting abortion access for American women impacts health and economic security. The authors compared the U.S. to other western nations. The authors concluded abortion is both more accessible and affordable in other high-income countries. America does a much poorer job than other countries in reproductive care that is part of a continuum of comprehensive primary care and robust social services (Seervai et al., 2023). US News (2024) reports that the Republicans in the United States House of Representatives have proposed budget cuts to the 2024 budget that would eliminate the Department of Health and Human Services' "Healthy Start" program, which aims to attack high rates of mortality for pregnant women and their unborn children. According to US News (2024), "Around 60% of women participating in this program are Black, according to a 2020 analysis done for the department by Abt Associates. The Centers for Disease Control and Prevention said in a 2021 survey that the maternal mortality rate for Black women was 2.6 times the rate for white women."

structed upon "long-standing racial health disparities" with the States being "a dangerous place to be pregnant and give birth, especially for BIPOC [Black, Indigenous, and people of color] groups" (Baron, 2022). She explores in depth how environmental burdens such as increasing temperatures [and heat waves], air pollution, unsafe drinking water fall disproportionately on women and BIPOC groups and negatively impact their reproductive lives.

Returning again to the HRW paper, the authors concluded that because of *Dobbs,* in conjunction with restrictive state laws on abortion, America "is in violation of its obligations under international law, codified in a number of human rights treaties to which it is a party or a signatory. These human rights obligations include, but are not limited to, the rights to: life; health; privacy; liberty and security of person; to be free from torture and other cruel, inhuman, or degrading treatment or punishment; freedom of thoughts, conscience, and religion or belief equality and non-discrimination; and to seek, receive, and impart information" (Human Rights Watch, 2023). In my view, it is both shocking and disingenuous for America to lecture other countries about their social policies that are harmful to the human and civil rights of their citizens, when too many American politicians, at both the state and federal level, espouse views and promote legislation, and nominate judges, such as anti-abortion laws that deprive Americans, especially the most vulnerable Americans, of those very rights.[115] Shame on them.[116] Finally, if we are to accept the rationale that

[115] Anti-feminists want to control, alter and delete women's rights. They want to take America back to a patriarchal society. Eliminating the rights to abortion is one such method of doing so. A recent Blog by the National Women's Law Center recounted a rally in Dallas, Texas in June 2023, in which multiple speakers from a right-wing group Turning Point USA told college and high-school age women and girls that they should give up on their careers and become wives and mothers instead. "June 24 [2023] marks one year since the Supreme Court took away our constitutional right to abortion. The gender justice movement has always known that this decision wasn't only about abortion – but really about the role of women in our society. It's just that, before the Supreme Court decision, extremists made concerted efforts to disguise their real agenda." (*see*, Graves, 2023; Sanders and Jenkins, no date). According to these authors, "The Trump administration even refused to agree to a UN Security Council Resolution safeguarding the reproductive health of women raped during armed conflict."

[116] There has been some good news post-*Dobbs*. Shoenthal reports on the business impact *Dobbs* has had a year later. A positive development is that major companies including Apple, Starbucks, Microsoft and many others, have spoken out against *Dobbs,* and more importantly, have promised "protections for their workers including travel reimbursement for employees seeking reproductive care no longer accessible in the state where they reside" and increasing or expanding other workplace benefits to help demonstrate that abortion access is about the health, safety and well-being of their workers as well as gender equality in the workplace. Companies have developed creative methods of ensuring employees have access to contraceptives (Shoenthal, 2023). Further, when the issue of abortion rights is actually put to the people of the various states, many following *Dobbs* have passed initiatives enshrining the right to abortion and in some cases contraceptives, in their state constitutions. California, Michigan, Ohio and Colorado are among the states that have so voted in 2022-2023. In Kansas, in August 2022, voters rejected a ballot measure that would have stripped the right to abortion from that state's constitution. Therefore, as can be seen, when Americans are actually given the choice in ballot measures whether to provide abortion and other reproductive

the *Dobbs* majority used to overrule *Roe* and *Casey*, then all of the privacy rights that the Supreme Court historically protected over the years in cases including *Obergefell v. Hodges, Griswold v. Connecticut, Lawrence v. Texas* and others, discussed in section 2.2.1, are at risk. In other words, this radical right Supreme Court is not done rolling back civil rights that Americans have enjoyed as a matter of federal constitutional law for many decades (Cittadino, 2022).[117]

The *Dobb's* decision has not decreased the overall number of abortions in the United States. According to a report by #WeCount, a research project led by the Society of Family Planning, there were about 2,200 more abortions in the year following the decision. (McPhillips, 2023). *Dobbs* has had a big impact on where abortions are now being performed. "There were about 115,000 fewer abortions in the 17 states with total or six-week bans in effect, plummeting 98% in banned states and dropping 40% in those with 6-week gestational limits, according to the new report. About a third of the overall decline can be attributed to Texas." (McPhillips, 2023). There were nearly 117,000 more abortions, a 14 % year-over-year increase, in the remaining 33 states where abortion remains legal, along with the District of Columbia. (McPhillips, 2023). Data suggests that much of the increase in abortions in states where abortion remains legal were among patients who traveled from states with bans or restrictions. (McPhillips, 2023). Further, "An increasing share of abortions are provided by virtual-only telehealth providers, . . .up from an average of about 4,000 a month before Dobbs to nearly 7,000 a month afterward." (McPhillips, 2023).

While *Dobbs* has fundamentally changed when and where pregnant women get abortions, it also has altered the method used for their abortions. Mifepristone is a commonly used abortion pill. It was first approved by the FDA in 2000. Initially, the FDA required the drug to be prescribed in person, over three visits to a doctor. Since 2016, the FDA has eased that regimen, allowing patients to obtain prescriptions through telemedicine appointments and to get the drug by mail. In 2015, the FDA approved a change in the dosing regimen that allowed the drug to be used for up to

rights as a matter of state constitutional law, many are resoundingly voting yes. For a comprehensive breakdown of state laws on abortions as of 2023 (Sherman & Witherspoon, 2023).

[117] In its 2024 term, the Supreme Court will issue rulings concerning the constitutionality of more state laws that further restrict abortion access. The Court has granted *certiorari* to consider whether abortion bans in Idaho and Texas mean hospitals do not have to perform abortions in medical emergencies, such as when someone giving birth experiences severe bleeding or preeclampsia. It also will decide whether women should continue to have legal access to the pill mifepristone, a medication commonly used to help end a pregnancy through 10 weeks of gestation. (Thornton & Santucci, 2024).

10 weeks of pregnancy, instead of the earlier seven weeks (Calfas, 2024). A Wall Street Journal article, citing a new Guttmacher Institute report [a research group that supports abortion rights], states that medication abortions have dramatically increased, accounting for "nearly two-thirds of abortions in the U.S. in 2023" (Calfas, 2024). "In 2020, medication abortion, a two-drug regimen approved to terminate pregnancies up to 10 weeks of gestation, accounted for 53%" of all abortions in America (Calfas, 2024). Guttmacher found more than 642,000 medication abortions in 2023 were performed through formal healthcare providers. "Access to medication abortion has grown with policy changes including the expansion of telehealth abortion services" (Calfas, 2024).

The Alliance for Hippocratic Medicine (Alliance), a Pro-Life group, argues that the FDA exceeded its administrative authority when it made mifepristone more accessible, and it claims the drug is unsafe. In April 2023, a Texas U.S. Federal District Court Judge, at the urging of the Alliance, imposed a nationwide ban on the drug, ruling the FDA improperly approved the drug 23 years ago. Within minutes, a Washington State U.S. Federal District Judge issued a contrary ruling. The United States Supreme Court granted a *writ of certiorari* to hear the case.[118] The Alliance and other anti-abortion groups want the Supreme Court to ban the drug, claiming that it is "unsafe" despite its long safety record. These groups argue the FDA acted arbitrarily and capriciously. The FDA estimates that 5.6 million Americans have used mifepristone to terminate pregnancies since it was approved in 2000 (France24, 2023). The US government has argued that the decision on whether to allow the drug should be left to the FDA, not the judicial branch. The government, along with multiple Amicus parties, contend the drug has been deemed safe and effective since 2000 and that the FDA has updated the drug's approved conditions based on updated scientific evidence and experience including the over five million patients that have successfully used it. The government and the Amicus parties maintain the Alliance's only real disagreement with the FDA is that it (and others in the Pro-Life movement) oppose all forms of abortion. The conservative members of this Supreme Court have in general signaled a desire to limit administrative agency powers, especially to interpret their rules, believing instead that these are tasks more suitable to the judicial branch. The Court is faced with an initial question of whether

[118] No. 23-236. *Food and Drug Administration v. Alliance for Hippocratic Medicine; Danco Laboratories, L.L.C. v. Alliance for Hippocratic Medicine.* SCOTUS granted *writ of certiorari* December 13, 2023, and consolidated the cases for oral argument scheduled for March 26, 2024. A decision is expected by the end of June 2024.

plaintiffs have standing to have the case heard. The government maintains they lack standing. The Court might rule against the plaintiffs on that procedural ground. However, should the Court conclude the plaintiffs do have standing, and reach the merits of the question whether the FDA exceeded its legal authority respecting rules it issued concerning mifepristone, your author would not be at all surprised if the conservative majority of the court rules against the government in these consolidated cases.

The Pro-Life movement, although obviously happy with the *Dobbs*' ruling, is continuing to push harder to make abortion even more difficult across America. The Susan B. Anthony Pro-Life America is promoting a national ban on abortions at 15 weeks of pregnancy (Associated Press, 2024). Reports have surfaced recently that Republican presidential candidate and former President Donald Trump is considering whether to back the plan and will make a decision soon (The Hill, 2024). According to a report in Politico (Ollstein, 2024), although anti-abortion groups might not yet have completely persuaded Trump to commit to signing a national ban should he be reelected to the White House, "those groups are designing a far-reaching anti-abortion agenda for the former president to implement as soon as he is in office." The report goes on to state, "In emerging plans that involve everything from the EPA [Environmental Protection Agency] the Federal Trade Commission to the Postal Service, nearly 100 anti-abortion and conservative groups are mapping out ways the next president can use the sprawling federal bureaucracy to curb abortion access." (Ollstein, 2024). Since Republicans will not have enough votes in the United States Senate and House of Representatives to be able to enact Congressional anti-abortion legislation, the Pro-Life groups are mapping out plans and strategies that do not require congressional approval, and that instead can be enacted through either executive order or administration action. These groups are "drafting executive orders to roll back Biden-era policies that have expanded abortion access, such as making abortions available in some circumstances at VA [Veteran Administration] hospitals. They are also collecting resumes from conservative activists interested in becoming political appointees or career civil servants and training them to use overlooked levers of agency power to curb abortion access" (Ollstein, 2024).

The Heritage Foundation's 2025 Presidential Transition Project, according to President Biden's campaign manager Julie Chavez Rodrigues, has "laid out an 887-

page blueprint that includes, in painstaking detail, exactly how they plan to leverage virtually every arm, tool and agency of the federal government to attack abortion access. Trump's close advisers have actual plans to block access to abortion in every single state without any help from Congress or the courts" (Ollstein, 2024). For example, the plan would rescind all of the policies President Biden enacted that expanded access to both abortion pills and surgical abortions "including funding for military members who must travel across state lines for an abortion, the provision of abortions at VA clinics, the expansion of HIPPA privacy rules to cover abortions, and the availability of abortion pills by mail and at retail pharmacies" (Ollstein, 2024). SBA Pro-Life America wants the FDA to "reimpose the requirement – lifted by the Biden administration – that abortion pills only be dispensed in-person by a doctor, and investigate non-fatal complications reported by patients who take the drugs. Others want the [FDA] to go further and strip the two-decade-old approval of the pill, banning its sale nationwide" (Ollstein, 2024).

Much is at stake in the 2024 Presidential election. One thing is for certain: The debate about abortion rights in America will rage on for the indeterminate future.

3 The Abortion Experience in Uzbekistan

3.1 The Constitution of the Republic of Uzbekistan

The Uzbekistan Constitution consists of six parts and 155 Articles. As with the U.S. Constitution, it does not mention abortion. However, a common theme throughout the Uzbekistan Constitution is the State's staunch commitment to human rights and freedom, the ideals of democracy, equality for all citizens, and social justice.[119] Part Two is entitled "Basic Human and Civil Rights, Freedoms and Duties."[120] It consists of six sections and 45 Articles. Continuing the themes mentioned above, Article 19 provides, in part, that "Everyone shall enjoy human rights and freedoms from birth."[121] The following paragraph of Article 19 is an analogue to the U.S. Equal Protection Clause contained in the Fourteenth Amendment, "All citizens of the

[119] Republic of Uzbekistan Constitution. See, e.g., Articles 1, 13 and 14. Article 13, for example, provides: "Democracy in the Republic of Uzbekistan shall rest on the principles common to all mankind, according to which the ultimate value is the human being, his life, freedom, honor, dignity and other inalienable rights."
[120] Republic of Uzbekistan Constitution, Part Two.
[121] Republic of Uzbekistan Constitution, Part Two, Chapter 5 [General Provisions], Article 19. It is interesting the authors chose the phrase "from birth."

Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without discrimination by sex, race, nationality, language, religion, social origin, convictions and social status." Chapter 7 is entitled "Personal Rights and Freedoms." The first paragraph thereof provides that "The right to life is an inalienable right of every human being and shall be protected by law. Infringement against human life shall be regarded as the gravest crime." (Republic of Uzbekistan Constitution, Chapter 7, Article 25).

Article 31 provides that, "Everyone shall have the right to inviolability of private life, personal and family secrets, protection of honor and dignity." (Republic of Uzbekistan Constitution, Chapter 7, Article 31). The Fourth paragraph of Article 31 states, "Everyone shall have the right to inviolability of the house." (Republic of Uzbekistan Constitution, Chapter 7, Article 31). Therefore, unlike the U.S. Constitution, the Uzbekistan Constitution specifically enshrines a right to privacy.[122] It is also noteworthy that the Constitution protects family secrets.

Article 48 provides universal, State paid health care. "Everyone shall have the right to health and qualified medical care. Citizens of the Republic of Uzbekistan shall have the right to receive a guaranteed, extensive medical assistance in the manner prescribed by law at the expense of the state." (Republic of Uzbekistan Constitution, Chapter 7, Article 48). In contrast, the United States does not have universal healthcare. Health is not considered a basic right. Through a patchwork of legislation, many Americans are covered by various forms of governmental health insurance, but many people are not. Those people are left to secure health insurance on their own (Schultz, 2019, p. 17-38).

3.2 Law on Protection of the Reproductive Health of Uzbekistan Citizen's

The Republic of Uzbekistan has national legislation specifically dedicated to its citizen's reproductive health, including expressly abortion.[123] Adopted in 2019, the Law on Protection of the Reproductive Health of Uzbekistan Citizen's [PRHC]

[122] As discussed in Sections 1 and 2 of this article, the right to privacy in the United States has developed through the common law, statutory law and the Supreme Court's interpretation of the Fourteenth Amendment to the Constitution.

[123] Law of the Republic of Uzbekistan on Protection of the Reproductive Health of Citizens [PRHC]. Adopted by the Legislative Chamber on February 15, 2019, and approved by the Senate on February 28, 2019.

comprehensively regulates all spheres of its citizen's reproductive health (Article 1, PRHC). Many aspects of this Law serve to advance the rights as enumerated in the Constitution. Article 2, PRHC provides that to the extent Uzbekistan is signatory to an international treaty that contains provisions at odds with those contained in Uzbek legislation regarding protection of reproductive health, "then the rules of the international treaty shall be applied." Article 3, PRHC broadly defines the term "reproductive health" to include a person's "state of physical, mental and social welfare . . . related to their reproductive system, its functions, life processes that determine the ability of a person to give birth to a child."

As it pertains to the subject of our paper, Article 3, PRHC lists the general protections that it provides for Uzbek citizen's reproductive health including "safe induced termination of pregnancy, which helps to prevent possible complications and consequent malfunctions in the reproductive system" and "acquisition of information about methods of contraception and access to them."

Article 4, PRHC defines the basic principles of the legislation in the sphere of Uzbek citizen's reproductive health as being humaneness; the equality of men and women; the government's non-intervention in the private lives of its citizens, including the non-disclosure of personal and family secrets; ensuring accessibility and quality of medical services; and, ensuring the scope of services guaranteed by the State.

Article 10 enumerates the reproductive rights of all Uzbek citizens. All citizens have the right to make their own decisions on issues related to giving birth to their children with the use of safe and efficient reproductive technologies; to obtain full and accurate information; to use medical preventive services and be protected from substances and procedures that may be harmful to their health, including from scientific experiments; to receive medical and social, as well as psychological, assistance and information; and, to use assisted reproductive technologies. All such information is confidential and may not be disclosed by legal entities or individuals.

Article 11 lists protections specifically intended for the reproductive health of women. Along with rights previously enumerated in earlier articles, such as the right to full and accurate information and access to medical services and consultations, "[A] woman shall have the right to receive social support from the State and undergo fertility treatment, have her reproductive health protected before pregnancy, during

pregnancy, in labor and postpartum, with the use of modern methods of treatment." Article 11 goes on to stipulate that "During the period of pregnancy, medical interventions shall be allowed upon written consent of both spouses, in case of absence of a husband – upon consent of a woman, or upon consent of parents or other legal representatives in situations with minority status or disability."

Article 11 concludes with the following, "In case of refusal of medical interventions with indication of possible consequences, it shall be registered in medical documents and confirmed in writing by a pregnant woman, if it is impossible – by her husband or her relatives, and if it is impossible to obtain the written refusal or medical intervention – by the conclusion of the case conference. A woman shall not be compelled to pregnancy, induced termination or pregnancy or contraception."[124]

Crucially, Article 18 is entitled "Induced termination of pregnancy" and provides in full as follows: "Induced termination of pregnancy shall be done: upon the will of a woman during the first twelve weeks of pregnancy; under medical indications endangering the life of a pregnant woman – at any time regardless of the gestation age. Medical institutions shall inform the woman, who decided to terminate her pregnancy or refuses to do a therapeutic abortion, about possible negative consequences of her health."[125]

3.3 June 2020 Order on Approval of the Regulations on the Procedure for Carrying out Artificial Termination of Pregnancy

Abortion in Uzbekistan is legal, accessible and declining.[126] In contrast to the situation in America, all Uzbek women [including girls] have always had access to safe and free abortion. In America, issues surrounding abortion have been hotly debated in politics and religious circles, especially since the Court's seminal ruling in *Roe*. This has not been the case in Uzbekistan and other Central Asian countries. Article 18 of The Law on Protection of the Reproductive Health of [Uzbekistan]

[125] Article 19 concerns confidentiality matters. Article 20 is entitled "Dispute resolution" and provides that "Disputes arising in the sphere of protection of the reproductive health of citizens shall be resolved according to the procedure, stipulated by the legislation."

[125] Article 19 concerns confidentiality matters. Article 20 is entitled "Dispute resolution" and provides that "Disputes arising in the sphere of protection of the reproductive health of citizens shall be resolved according to the procedure, stipulated by the legislation."

[126] This indeed is the title of an article written by Niginakhon Saida for The Diplomat, 2022. Some of the content of this section of our article is taken from this article, and we thank the author for her research and work.

Citizens, dated February 15, 2019, provides a woman "upon her will" with the right to an induced abortion "during the first twelve weeks of pregnancy." Although it is true that is a relatively short period of time, the same Article stipulates that "under medical indications endangering the life of a pregnant woman [induced abortion is legal] at any time regardless of the gestation age."

An Order issued by the Minister of Health of the Republic of Uzbekistan in June 2020, entitled Order on Approval of the Regulations on the Procedure for Carrying out Artificial Termination of Pregnancy [2020 Order], establishes the specific procedures and conditions that implement the February 2019 Law. Chapter 1 [General rules] of the 2020 Order stipulates that induced abortion must be carried out by an obstetric and gynecological institution with the written consent of the husband and wife, the consent of the woman herself or the parents in the absence of the husband or on the basis of an application for the voluntary consent of other legal representatives to the use of artificial termination of pregnancy. A woman cannot be forced to undergo an induced abortion. The applicable medical institution is obligated to notify a woman who has either decided to have an induced abortion or who refuses to terminate a pregnancy of the possible negative health consequences of those decisions.

Chapter Two of the 2020 Order governs the procedures for how induced abortions are performed. The pregnant woman must contact a registered primary health care institution in the applicable district where she resides for consultation on the condition of the fetus and to undergo a medical examination. Depending on the duration of the pregnancy, an examination is performed by either a general practitioner or an OB-GYN who conducts the necessary examinations "in accordance with established standards." If necessary, specialists may be consulted in order to provide their assessments. These medical examinations and consultations are utilized to determine whether "medical indications [exist] that pose a threat to the life of [the]pregnant woman" in accordance with a list set forth in an Appendix to the 2020 Order.

Appendix 2 to the 2020 Order contains 86 such "life-threatening conditions" including: tuberculosis of internal organs; asthma; tumors requiring chemical or radiation therapy; blood diseases such as leukemia, lymphomas, aplastic and hemolytic anemia; diabetes mellitus; chronic and persistent hereditary and

degenerative mental disorders and mood disorders; sleep disorders including catalepsy and narcolepsy; diseases involving the eye and those of the circulatory system; inflammatory diseases of the central nervous system, epilepsy, multiple sclerosis; congenital heart defects and myocardial diseases; chronic hepatitis, cirrhosis of the liver; various respiratory diseases; various vascular diseases; etc. One of the risk factors is young age, and as such, girls under 14 are allowed access to abortion.[127]

Abortion in late pregnancy is performed exclusively in gynaecological departments at obstetric and gynaecological institutions.

If such a life-threatening condition is believed to exist, then on the basis of an order by the head of the multidisciplinary polyclinic of the central district (i.e. city) where the pregnant woman resides, a consultation is organized before a "Council" consisting of the head of the department working in the polyclinic, an OB-GYN, a GP, a neonatologist, an ultrasound doctor and other specialists as necessary (even to include a lawyer) (Order 2000), Chapter Two, Paragraph 20). This Council then determines, based on the condition of both the pregnant woman and her fetus, whether induced abortion is advisable (Order 2000, Chapter Two, Paragraph 20). Chapter 21 governs the procedures for providing notice to the "pregnant woman, her parents in the absence of her husband, her spouse, as well as other legal representatives if the pregnant woman is a minor or incapacitated" concerning the outcome of the examinations.

The examined woman is then sent to an obstetric and gynecological institution, at the location of permanent or temporary residence, for the induced abortion (Order 2000, Chapter 11) which is performed using either a medical or surgical method (Order 2000, Chapter 12). Although the medical team is under obligation to advise

[127] Saida, 2022. It is interesting that the Minister of Health decided to specifically enumerate the physical and mental health conditions that qualify as life threatening. It is unclear what discretion the reviewing Council has in deciding when a condition is life threatening, especially if the pregnant woman is found to have a mental or physical condition that does not fall squarely into one of the 86 conditions on the list. It also is not clear what legal recourse a pregnant woman has if she disagrees with the conclusion reached by the reviewing Council. At least in Anglo Saxon law, a court trying to interpret the meaning of legislation (i.e. legislative intent) is guided in its task by various rules of statutory construction, one being: *Expressio unius est exclusio alterius*, a Latin phrase meaning "to express or include one thing implies the exclusion of the other, or of the alternative." Therefore, an Anglo-Saxon court reviewing such a matter might well conclude that if a pregnant woman's mental or physical condition does not squarely fit into one of the 86 listed conditions, then the Minister meant that she does not qualify for a post 12-week abortion as she does not suffer from a "life threatening" condition.

the woman concerning the methods of induced abortion (Order 2000, Chapter 13), the woman has the discretion to choose this method based on a variety of factors, including the stage of her pregnancy, her general medical conditions and other medical indications (Order 2000, Chapter 14). The question of where the induced abortion takes place depends on a variety of factors. When the procedure is carried out up the twelve-week period, it is done in primary outpatient clinics, unless surgery is required, in which case it is performed in an outpatient clinic at obstetric and gynecological institutions. However, if the woman has high-risk concomitant diseases or life-threatening medical indications, and the period of gestation is still less than twelve weeks, the procedure, regardless of the method, must be performed in a hospital's gynecological department (Order 2000, Chapter 16). Induced abortion from twelve to twenty-two weeks of pregnancy, regardless of the method of termination used, is carried out in the gynecological or obstetric department of a medical institution (Order 2000, Chapter 17). Subsequent Chapters of the 2002 Order regulate such matters as how methods of anesthesia are used; how records concerning decision-making are maintained; steps medical providers are required to take in cases where the pregnant woman refuses the offer of artificial termination of pregnancy, and who receives notice of this decision etc. (Order 2000, Chapter 18). Once the pregnancy is terminated due to one of the life-threatening conditions set forth in Appendix 2, the "couple or woman" are directed to local screening centers for examinations until the next pregnancy (Order 2000, Chapter 24).[128] Finally, Chapter 3 states that "Persons guilty of violating this Order shall be liable in accordance with the law."[129]

3.4 Criminal Law Implications in Sphere of Induced Abortions

According to Saida, "The criminal code of Uzbekistan envisions administrative or criminal liability only for those who force a woman to abort a child or who carry out abortion illegally, but a woman herself is not liable for terminating a pregnancy under any circumstances" (Saida, 2022). Saida goes on to state: "[A]bortion and the delivering of babies have long been among nine types of medical practices that

[128] Chapter 25 provides that all materials such as the placenta and fetal egg, obtained during the inducement procedure, are sent to appropriate laboratories for testing while Chapter 26 stipulates that after the procedure, women with Rh-negative blood are immunized with human immunoglobulin antirhesus Rho(D) for 72 hours.

[129] According to Justia (no date), in addition to abortion being permitted during the first 12 weeks of pregnancy, *"It is [also] permitted afterward based on certain economic, social, or medical grounds, such as saving the life of a pregnant woman, preserving her physical or mental health, fetal impairment, inadequate financial resources, and cases of rape and incest*."

cannot be performed by private medical entities, along with organ transplants, blood donation, providing medical-forensic examinations and other similar medical services. Such services are restricted to the government in part as an effort to prevent the sale of children and the illegal documentation of births and deaths. Local private clinics can lose their licenses by illegally performing abortions or delivery services" (Saida 2022). And while "the government approved allowing private institutions to engage in childbirths in 2019, the presidential decree does not allow private clinics to perform abortions" (Saida, 2022).

Chapter III of the Criminal Code of the Republic of Uzbekistan [CCRU], regulates crimes dangerous to life and health. Article 114 of the CCRU concerns "Criminal abortion" and provides that induced abortion "by an obstetrician or gynecologist outside the medical institution or in the presence of medical contraindications is punishable by a fine of up to twenty-five minimum wage or deprivation of a certain right for up to three years of correctional labor for up to one year. Abortion by a person who does not have the right to do so is punishable by a fine of twenty-five to fifty minimum wages or correctional labor from one to two years or arrest for up to three months." This Chapter goes on to state that when the acts set forth above were performed negligently, leading to the death of the victim or other "grave consequences," the person perpetrating these actions is subject to "correctional labor from two to three years or imprisonment for up to five years" (CCRU, Chapter Three, Article 114, subparts a) and b)).

The CCRU defines medical contraindications for abortion as including acute and subacute gonorrhea; acute and subacute inflammatory processes of the genital organ; purulent foci regardless of their location as well as other [unspecified] acute infectious diseases, for a period of more than 12 weeks (CCRU, Chapter Three, Article 114, subparts a) and b)). Article 114(4) of the CCRU provides abortion is also illegal when performed outside a medical institution "when it is known to be criminal regardless of medical evidence." Article 114(5) of the CCRU provides that the criminal crime of abortion is completed "from the moment of the beginning of the commission of actions aimed at the artificial termination of pregnancy."

On November 8, 2019, Uzbekistan's President issued Decree No. PQ-4513 "On Improving the Quality and Further Expanding the Scope of Medical Care Provided to Women of Reproductive Age, Pregnants and Children." The Decree states, in

part, that "Some types of medical activities that are prohibited for private medical organizations and involve a high level of risk to the life, health and sanitary-epidemiological peace of the population." A List of such activities follows that general proclamation. The list of services that private medical entities cannot perform includes organ transplants, blood donations, abortion and the delivering of babies (Item No. 4).[130] According to Saida, the reason that some medical procedures are reserved for the "government is to help prevent the sale of children and the illegal documentation of births and deaths" (Saida, 2022).

3.5 Further Discussion Regarding Abortion in Uzbekistan

Saida postulates that the Uzbekistan abortion laws are premised on the government's concern about overpopulation, as Uzbekistan is the most populous country in Central Asia (Saida, 2022). In 2000, 24 million people resided in the country, but that figure ballooned to over 35 million by 2021 (Saida, 2022).[131] Indeed, as we have seen in section 3.2, Uzbekistan has made a strong commitment to family planning and induced abortion, and the availability of contraceptives without restrictions seems to be part of a grand strategy to prevent unwanted pregnancies and perhaps keep the overall population somewhat in check.

Still, despite the availability of abortion, Uzbekistan has seen the number of abortions decrease from 42,682 in 2007 to 35,449 in 2021.[132] Saida reports that a reasonable explanation for this decrease in abortions is the overall improvement in the quality of life in Uzbekistan. Traditionally, Uzbeks have had very large families, often with as many as five to seven children. Due to the global economic problems in the mid-2000s, many Uzbek families could not afford so many children and resorted to abortions to limit the size of their families.[133] According to Saida, in the early 2000s, good quality contraceptives were expensive and since abortions were and still are provided in public facilities either at no or very low costs, abortions were a reasonable alternative (Saida, 2022). She also postulates that religion, in particular

[130] According to the American College of Obstetricians and Gynecologists, induced abortion is safe and although there are risks with any medical treatment, major complications are rare (see The American College of Obstetricians and Gynecologists, 2022).
[131] Saida, 2022, citing the Republic of Uzbekistan Statistics Agency.
[132] Saida, 2022, further, the number of abortions per 100 births fell from 7.4 in 2007 to 4.1 in 2021.
[133] Saida, 2022, referencing VOA News Article, entitled, Abortion is a Fatal Condition Among, Young People in Uzbekistan, 2016.

"the increasing influence of Islam in the community," may play a role in the decrease in the rates of abortion.[134]

The use of contraceptives in Uzbekistan also has been decreasing. "In 2007, 51.1% of women aged 15 to 45 were using IUDs while another 5.3% were on hormonal pills, but as of 2021, only 46.9% of women use contraceptives (44.1% IUDs and 2.8% hormonal pills). But because hormonal birth control pills are available everywhere and women do not have to register with local health institutions to acquire them (unlike IUDs), it is safe to assume more women are on hormonal pills than is officially reported" (Saida, 2022).

In conclusion, Saida states, "Uzbekistan remains one of the safest countries for women to terminate unwanted pregnancies. Not only are women not punished for choosing an abortion, but the wider society also does not condemn or confront them for their choices. Still, women often share their experiences in their inner circles only, and abortion is not widely discussed in public" (Saida, 2022). Uzbek women who opt for abortions apparently still prefer to do so secretly.

In 1998, Westoff et al. performed a comprehensive study of the replacement of abortion by contraception in Kazakhstan, Uzbekistan, and the Kyrgyz Republic. The study, which consisted of surveys completed by large cohorts of women in each country, was conducted during the summer and fall of 1995, 1996, and 1997 (Westhoff et al., 1998, p. 3). The study concluded that the percentage of pregnancies that end in abortion is 38 in Kazakhstan, 14 in Uzbekistan, and 27 in the Kyrgyz Republic (Westhoff et al., 1998, p. 5, Table 2.1.). According to the report, the lower abortion rate in Uzbekistan "is at the same level as that for the United States, but there the majority of abortions are among young, unmarried women, while in Uzbekistan and the other countries in this region, abortions are almost entirely among married women." (Westhoff et al., 1998, p. 6). The principal conclusion derived from the study was that "There is ample evidence that abortion is declining and that contraceptive use is increasing" in all three Republics studied (Westhoff et al., 1998, p. 45). The authors explained this trend was likely the result of the fact that "abortion was the principal method of birth control in the former Soviet Union both because of the unavailability of modern contraceptive methods and because of

[134] Saida, 2022, states, "Islamic leaders exhort Muslims against [abortion], especially after the first 120 days of pregnancy."

negative attitudes on the part of the medical establishment, particularly regarding oral contraceptives" (Westhoff et al., 1998, p. 45). However, contraceptive use has increased rapidly in all three countries (Westhoff et al., 1998, p. 46). Our discussion in Section 3.2 bears this out.

3.6 State Support for Expectant Mothers, Babies and Children of Early Age

In October 2019, Uzbekistan enacted legislation Supporting Breastfeeding and Requirements for Food for Babies and Children of an Early Age.[135] Chapter Two, Article Four of this legislation provides that the main directives of state policy in this sphere are to protect the "rights, freedoms and legitimate interests of expectant mothers, nursing mothers, babies and children of early age[136] on breastfeeding; support and promotion of breastfeeding; providing babies and children of early age with high-quality and safe food; state control in the sphere of support of breastfeeding and providing food for babies and children of early age." This legislation directs the Ministry of Health to develop and realize state programs to further this sphere by, among other things, assisting state bodies and public authorities to carry out this mandate; to interact with non-state and non-profit organizations and other institutes of civil society to implement the legislation; to establish health regulations, regulations and hygienic standard rates on production, transportation, storage and sales of products of food for babies and children of early age; to establish requirements for the quality and quantity characteristics, production, transportation, storage and sales of food products for babies and children of early age, etc.

3.7 Labour Code Provisions Supporting Women Giving Birth

The Labour Code of the Republic of Uzbekistan (Labour Code) contains various provisions providing pre- and post-partum benefits to women who give birth to

[135] Law of the Republic of Uzbekistan of October 23, 2019 No. ZRU-574 About support of breastfeeding and requirements to food for babies and children of early age. As amended by the Law of the Republic of Uzbekistan of 26.04.2021 No. ZREU-685. Accepted by Legislative house on October 9, 2019; Approved by the Senate on October 11, 2019.

[136] Children of early age is defined in Chapter 1, Article 3 as "children aged from one year up to three years."

children.[137] Maternity protection provisions include maternity leave for women working in Uzbekistan 70 days before and 56 days after childbirth.[138] On completion of maternity leave, women are also granted childcare leave, which may be used entirely or partially by the child's father, grandmother and grandfather or by another relative who actually takes care of the child. This parental leave extends until the child reaches the age of two years, with an allowance for this period. At the mother's request, she shall also be granted a complementary leave without pay to care for the child until the child reaches the age of three years (Labour Code, §§ 345-235). The Labour Code also guarantees pregnant women the right to work part-time upon their request (Labour Code, §§ 228, 234, 238). The Labour Code also has provisions for maternity leave benefits (Labour Code, §§ 282, 284), parental leave benefits (Labour Code, §§ 232, 234 and 238), and the right to nursing breaks when their children are under the age of two, in addition to breaks for taking rest and meals at least every three hours, 30 minutes each. Breaks to feed a child shall be counted in working time and paid at the rate of the average monthly wage (Labour Code, §§ 236, 238). Uzbekistan women who are pregnant and who have children under the age of 14 (for handicapped children 16) cannot be compelled to work at night or overtime without their consent (Labour Code, §§ 228, 238). Upon written advice of their doctor, pregnant women are entitled to have their usual workplace output reduced, given lighter job tasks, provided with adaptive work conditions, and be transferred to more suitable posts consistent with their medical condition (Labour Code, §§ 226, 227). The Labour Code also protects pregnant women against having to perform arduous work, such as manual lifting, carrying, pushing or pulling loads, as determined by the Ministry of Labour and Council of the Trade Union Federation (Labour Code, §§ 225). Finally, the Labour Code protects pregnant women from discriminatory practices and wrongful termination (Labour Code, §§ 6, 224).

4 Concluding remarks

The juxtaposition between America and Uzbekistan on how abortion is viewed politically, socially and legislatively could not be more pronounced. Before the 1970s, abortion in America was not nearly the political and social firestorm that it is today.

[137] Labour Code of the Republic of Uzbekistan dated December 21, 1995; as amended December 6, 2008. See also, International Labour Organization TRAVAIL, Conditions of Work and Employment Programme web page.
[138] LCRU, §§ 3, 233 and 238. Entitlement to maternity leave also cover a father or tutor, grandmother, grandfather or other relative who actually takes care of the child, in cases when the mother's care for the child is absent (for example in case of death or long stay in a medical establishment).

However, the Supreme Court's *Roe* decision in 1973 seemed to serve only to galvanize a small but vocal portion of the population around abortion. Over the last fifty years, the Republican party has courted the far-right and, in states where it has legislative control, has enacted legislation that has either outlawed abortion entirely or has significantly restricted it. Further, the anti-abortionists have been able to infuse the judicial system, including most significantly the United States Supreme Court, with like-minded Justices willing to discard all notions of precedent and *stare decisis* to carry out their work by providing a judicial imprimatur on their religious anti-abortion sentiments.

Paradoxically, while the world's oldest democracy has thereby stripped women of their privacy rights and right to choose, one of the world's youngest democracies, Uzbekistan, has enshrined a right to abortion in its laws. While it is true that the twelve-week limitation on the right to abortion is indeed restrictive, and some women may not even know they are pregnant when that time expires, at least abortion is universally allowed in Uzbekistan, as opposed to America, where many women are completely deprived of the right. Furthermore, while abortion rules across the American states are often confusing, and in nearly constant flux, those in Uzbekistan are both uniform and clearly spelled out. The rules governing abortion in Uzbekistan apply equally to all women, while the patchwork of state laws now in existence in America are disparate, and the evidence clearly shows they have an egregiously negative impact on the most marginalized women in the country, namely the poor and usually women of color. The straightforward rules in Uzbekistan help ensure that women can experience safe abortions. Not so in America. This is a disgrace.

Furthermore, the rules in Uzbekistan clearly enumerate the circumstances where a pregnant woman can have an abortion after twelve weeks. The 86 exceptions would seem to provide a woman with ample opportunity for an abortion beyond twelve weeks. It is not entirely clear to our authors whether the Councils deciding on abortions have discretion to grant them after 12 weeks for reasons not set forth in Appendix 2 to the Uzbek 2020 Order. While in America, many states have tried to severely restrict the use of contraceptives as a means of birth control, Uzbekistan encourages them as a matter of state policy, both as an alternative to abortion and as a part of the grand family planning scheme. Consistent with many countries of the European Union, Uzbekistan also has legislation that helps pregnant mothers both pre- and post-partum both in the workplace and by helping to ensure that

infants and young children receive adequate nutrition. It is difficult to square the fact that so many in America's Pro-life movement want to force women to have unwanted babies, on the one hand, but then reject the idea of providing those women and their babies with any state support, instead deriding the idea of providing tax money for these purposes as "European socialism."

It is not hyperbole to state that the issue of abortion has become so polarizing that it has torn at the fabric of American society. Abortion, along with gun violence, has come to define America to the world. In Uzbekistan, on the other hand, the abortion landscape is quiet. Uzbekistan seems to have legislation regulating abortion that most members of the public are satisfied with, and which has struck an appropriate balance.

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Povzetek v slovenskem jeziku

Ta članek primerja in analizira zakonodajo o splavu v Združenih državah Amerike, eni izmed najstarejših demokracij na svetu, z zakonodajo v Uzbekistanu, starodavni srednjeazijski državi, ki je svojo neodvisnost od Sovjetske zveze pridobila leta 1991. Avtorji pregledujejo ustave tako Združenih držav Amerike kot Uzbekistana in druge zakone, ki urejajo splav in druge reproduktivne pravice. V tem oziru analizirajo nekatere ključne odločitve Vrhovnega sodišča Združenih držav Amerike o splavu. Avtorji prav tako raziskujejo splošna stališča o splavu in reproduktivnih pravicah v obeh državah.