

The Reshaping of Constitutional Balance in *Dobbs v. Jackson Women's Health Organization*

Anika Butala

Few decisions in modern history have dramatically readjusted the constitutional landscape at the Supreme Court the way *Dobbs v. Jackson Women's Health Organization* has. By overturning *Roe v. Wade* and *Planned Parenthood v. Casey*, the Court drastically changed the balance between state sovereignty and individual rights, redefining the coverage area of federal constitutional protection under the Fourteenth Amendment. The consequences of this decision were not only to dismantle a nearly fifty-year precedent but also to reinvigorate the role of the states in shaping reproductive rights and, with it, overwhelming questions about the extent of individual liberty in the face of state regulatory power.

Supporting this, *Dobbs* represents a commitment to federalism, returning authority to regulate abortions back to the state legislatures. By this act, the Court made clear that moral, ethical, and public health concerns regarding abortion are best addressed on the state level. This decision recenters states as chief arbiters of deeply contested social issues, thus allowing states to tailor laws according to localized values rather than through a broad federal mandate.

The ruling is in line with the historical arguments that have been advanced for decentralized governance and reflects a judicial philosophy that constitutional interpretation should be tethered to state sovereignty. But this shift also pushes in a profound practical consequence: the creation of dramatically divergent legal schemes across the United States, in which abortion rights are now a function of geographic residence rather than a national standard. Writing for the majority, Justice Alito argued that abortion rights did not have any grounding in the nation's historical traditions and, as such, should not be protected under the Due Process Clause. This reasoning departs from decades of precedent in which the Court recognized certain

personal liberties—such as marriage, privacy, and bodily autonomy—as fundamental rights insulated from state interference.

The renunciation of substantive due process in *Dobbs* presages disturbing consequences for other settled rights based upon similar constitutional reasoning. If what the Court considers historical analysis is what dictates what is a fundamental right, then the future of contraception rights under *Griswold v. Connecticut*, same-sex marriage under *Obergefell v. Hodges*, and intimate relationships under *Lawrence v. Texas* are in jeopardy. To the extent *Dobbs* cabins the scope of substantive due process, it reflects a judicial readiness to revisit liberties that many thought were constitutionally settled.

A critical underpinning of the *Dobbs* decision is its reliance on historical traditions to determine whether abortion qualifies as a constitutionally protected right. The majority opinion asserts that since abortion was not deeply rooted in American legal history, it should not enjoy federal constitutional protection. This methodology gives undue weight to historical legal frameworks at the expense of contemporary understandings of rights and risks, stagnating constitutional interpretation.

While historical analysis is often useful and sometimes necessary in constitutional decisionmaking, a rigid historical approach to the "deeply rooted" standard risks shutting the door to evolving norms and scientific progress. Critics argue that this position ignores how people live their lives today and the dynamic nature of constitutional precepts designed to protect individual liberty in a rapidly changing world.

One of the more immediate consequences of *Dobbs* creates fragmentation in how states approach and limit abortion. Individuals seeking care in states where their lawmakers embraced such restrictive measures on abortion on demand face drastic travel burdens, economic

hardships, and even threats of criminal liability. States continuing to legally perform abortions have taken on the hue of sanctuaries, fueling interstate legality battles and adding a layer of confusion to assert jurisdictional authority over reproductive concerns.

This patchwork approach to a fundamental question raises profound questions regarding the extent to which constitutional rights should be dependent on one's geography. The very idea of fundamental rights implies uniform application, but Dobbs effectively creates reproductive rights contingent upon legislative whims rather than constitutional guarantees. The consequence is greater inequities in healthcare access and legal protection, disproportionately affecting vulnerable communities who have limited ability or resources to circumvent the laws.

Although the majority opinion in Dobbs purports to have cabined its holding to abortion, the opinion's more general attack on substantive due process raises concern that other rights stemming from the Fourteenth Amendment are not safe. Justice Thomas's concurrence, in which he urged the reconsideration of precedents such as *Griswold*, *Lawrence*, and *Obergefell*, presaged a judicial path that could erode further personal freedoms.

If the Court extends its reasoning in Dobbs into other areas, constitutional doctrine relative to the rights of privacy, marriage equality, and access to contraception will be undermined. The specter of revisiting these precedents casts a pall on constitutional law, which portends a retreat toward rigidity in interpreting the scope of individual rights against state authority.

The decision of the Supreme Court in *Dobbs v. Jackson Women's Health Organization* presents a seminal moment in constitutional jurisprudence in terms of rebalancing state sovereignty with individual rights. In returning the regulation of abortion to the state legislatures, the Court has reinvigorated federalism at the expense of substantive due process protection for

individual liberty that has been protected for decades. As the legal landscape continues to shift in the wake of Dobbs, its larger implications for constitutional rights remain far from settled.

Whether this decision is a momentary readjustment or a sea change in the Court's approach to individual liberties will depend on future judicial interpretations and legislative responses at both the state and federal levels.

Works Cited

Alito, Samuel. "Opinion of the Court: Dobbs v. Jackson Women's Health Organization."

Supreme Court of the United States, June 24, 2022.

https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

Center for Reproductive Rights. "The Case in Depth: Dobbs v. Jackson Women's Health Organization." Accessed January 30, 2025.

<https://reproductiverights.org/case/scotus-mississippi-abortion-ban/dobbs-jackson-womens-health/>.

Legal Information Institute. "Dobbs v. Jackson Women's Health Organization (2022)." Cornell Law School. Accessed January 30, 2025.

https://www.law.cornell.edu/wex/dobbs_v._jackson_women%27s_health_organization_%282022%29.

Congressional Research Service. "Regulating Reproductive Health Services After Dobbs v.

Jackson." November 1, 2023. <https://crsreports.congress.gov/product/pdf/IF/IF12269>.

American Bar Association. "One Year Later: Dobbs v. Jackson Women's Health Organization in Global Context." Accessed January 30, 2025.

<https://www.americanbar.org/groups/crsj/resources/human-rights/archive/one-year-later-dobbs-v-jackson-womens-health-org-global-context/>.

League of Women Voters. "Explaining SCOTUS's Abortion Decision in Dobbs v. Jackson

Women's Health Organization." Accessed January 30, 2025.

<https://www.lwv.org/blog/explaining-scotuss-abortion-decision-dobbs-v-jackson-womens-health-organization>.

Kaufman, Risa, Rebecca Brown, Catalina Martínez Coral, Jihan Jacob, Martin Onyango, and Katrine Thomasen. “Global Impacts of Dobbs v. Jackson Women’s Health Organization and Abortion Regression in the United States.” *Sexual and reproductive health matters*, December 2022. <https://pmc.ncbi.nlm.nih.gov/articles/PMC9673802/>.

“Dobbs v. Jackson Women’s Health Organization (2022).” National Constitution Center – constitutioncenter.org. Accessed January 30, 2025.
<https://constitutioncenter.org/the-constitution/supreme-court-case-library/dobbs-v-jackson-womens-health-organization>.

Arika Herron, *Indiana Adopts Near-Total Abortion Ban as Governor Signs SB 1 into Law*, *Indianapolis Star* (Aug. 6, 2022, 6:07 PM),
<https://www.indystar.com/story/news/politics/2022/08/05/indiana-abortion-law-passed-final-vote-to-come/65391000007> [<https://perma.cc/ZG2J-9SBE>].