**Court to weigh in on Mississippi abortion ban intended to challenge *Roe v. Wade***

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The Supreme Court on Monday set the stage for a major ruling next year on abortion – one that could upend the Supreme Court’s landmark decisions in [***Roe v. Wade***](https://casetext.com/case/roe-v-wade) and [***Planned Parenthood v. Casey***](https://casetext.com/case/planned-parenthood-of-southeastern-pennsylvania-v-casey-casey-v-planned-parenthood-of-southeastern-pennsylvania), in which the court ruled that the Constitution protects the right to have an abortion before a fetus becomes viable. The court granted review in [***Dobbs v. Jackson Women’s Health Organization***](https://www.scotusblog.com/case-files/cases/dobbs-v-jackson-womens-health-organization/), a challenge to the constitutionality of a Mississippi law that (with limited exceptions) bars abortions after the 15th week of pregnancy.

The decision to review the Mississippi law comes nearly  a year after the court [**struck down a Louisiana law**](https://www.scotusblog.com/case-files/cases/june-medical-services-llc-v-russo/) that required doctors who perform abortions to have the right to admit patients at a nearby hospital. In that case, five justices, including Chief Justice John Roberts, relied on *Casey* in ruling that the Louisiana law imposed an undue burden on the right to obtain a pre-viability abortion. But the make-up of the Supreme Court has changed since the ruling in the Louisiana case last June: One of the justices in the majority, Justice Ruth Bader Ginsburg, a staunch supporter of abortion rights, died in September and was replaced by Justice Amy Coney Barrett, whose personal opposition to abortion drew criticism from Democrats at her confirmation hearing.

When the Mississippi legislature passed the law at the heart of the case in 2018, Jackson Women’s Health Organization – the only licensed abortion provider in the state – went to court to challenge the law’s constitutionality and block the state from enforcing it. A federal district court agreed with the clinic, reasoning that the Supreme Court’s cases do not allow states to ban abortions before a fetus becomes viable, which occurs at around 24 weeks of pregnancy.

The U.S. Court of Appeals for the 5th Circuit upheld that decision, rejecting Mississippi’s argument that the Supreme Court’s cases required the district court to determine instead whether the law creates a “substantial obstacle” for a person seeking an abortion before the fetus becomes viable.

There is no substantial obstacle, the state suggested, because a patient could decide to have an abortion before reaching the 15th week.

But the Mississippi law is not merely a restriction on the availability of pre-viability abortions, the court of appeals stressed; it is a ban on pre-viability abortions. The law prohibits all abortions after 15 weeks except in cases of health emergencies or fetal abnormalities.

The state went to the Supreme Court last summer, asking the justices to rule on whether all bans on pre-viability abortions are unconstitutional.

The clinic urged the Supreme Court to stay out of the dispute, stressing that the Supreme Court has long held that the Constitution protects the right to terminate a pregnancy before the fetus becomes viable. However, the Supreme Court in the end.

**Relevant Constitutional Amendments to abortion rights:**

* 4th Amendment
  + The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
* 9th Amendment
  + The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
* 10th Amendment
  + The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.
* 14th Amendment (Section 1)
  + Section 1.  
    All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Relevant Cases on abortion rights:**

**Roe vs. Wade: 1973**

The central court decision that created current abortion law in the U.S. is Roe v. Wade. In this 1973 decision, the Supreme Court ruled that women had a constitutional right to abortion, and that this right was based on an implied right to personal privacy emanating from the Ninth and Fourteenth Amendments.

In Roe v. Wade the Court said that a fetus is not a person but "potential life," and thus does not have constitutional rights of its own. The Court also set up a framework in which the woman's right to abortion and the state's right to protect potential life shift: during the first trimester of pregnancy, a woman's privacy right is strongest and the state may not regulate abortion for any reason; during the second trimester, the state may regulate abortion only to protect the health of the woman; during the third trimester, the state may regulate or prohibit abortion to promote its interest in the potential life of the fetus, except where abortion is necessary to preserve the woman's life or health.

**Planned Parenthood of Southeastern Pa. v. Casey” 1992**

The Court held states could require parental consent for a minor’s abortion (as long as judicial bypass is available), require a waiting period between seeking and obtaining an abortion, and require detailed “informed consent” including medical information about the abortion.

The State could not require a signed statement from the woman that she had given notice to her husband, if any, prior to the procedure.

Casey abandoned the trimester framework, replacing it with pre- and post-viability tests for constitutionality. Viability was defined as: “The ability for the unborn child to live outside the womb.”

Roe was reaffirmed – although “liberty” replaced “privacy” as the alleged constitutional interest.

More available here: <https://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/upload/Summary-of-Roe-v-Wade-and-Other-Key-Abortion-Cases.pdf>