

CONCERNED WOMEN *for* AMERICA

***Dobbs v. Jackson Women’s Health Organization* Talking Points**

- The case¹ presents a challenge to a Mississippi state law that places strict limits on abortions after 15 weeks.
- The case is *not* a direct challenge to *Roe*. The limited question before the Court is whether all pre-viability prohibitions on elective abortions are unconstitutional.²
- The Mississippi law is known as the “Gestational Age Act,”³ and it seeks to protect women and unborn children by limiting abortions after 15 weeks only to the cases of medical emergencies and/or several fetal abnormalities.
- Though it is true that the Supreme Court manufactured a constitutional right to abortion in *Roe v. Wade*,⁴ the Court has always recognized “the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus” (see *Planned Parenthood v. Casey*⁵).
- The Court’s jurisprudence has been a complete failure in balancing those two interests, namely, the Court-created right to an abortion and the state’s interest in protecting the health of the mother and the life of a baby in the womb.
- The Court has used many legal tricks to try to establish some guidelines, including a baby’s viability and the burden on the woman’s rights, but their efforts in this area have been decidedly legislative in nature and beyond the role the Constitution envisioned for the Court.
- Scientific progress has given us a window into the womb, thereby destroying the foundation upon which *Roe* and *Casey* and the Supreme Court’s entire abortion jurisprudence rests.
 - With advancements in ultrasounds, not only do we know the life inside the womb is a baby, but doctors are able to perform life-saving treatment, even perform surgery, as with the famous cases of babies with spina bifida.⁶

¹ Supreme Court Docket No. 19-1392, available at <https://www.supremecourt.gov/docket/docketfiles/html/public/19-1392.html>.

² *Dobbs v. Jackson Women’s Health Question Presented*, available at <https://www.supremecourt.gov/docket/docketfiles/html/qp/19-01392qp.pdf>.

³ Mississippi House Bill 1510, available at <https://legiscan.com/MS/text/HB1510/id/1692666>.

⁴ *Roe v. Wade*, 410 U.S. 113 (1973), available at <https://www.law.cornell.edu/supremecourt/text/410/113>.

⁵ *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), available at <https://www.law.cornell.edu/supct/html/91-744.ZS.html>.

⁶ *The Perinatal Revolution*, Colleen Malloy, M.D., Monique Chireau Wubbenhorst, M.D., MPH, and Tara Sander Lee, Ph.D, *Issues in Law & Medicine*, Volume 34, Issue 1, Article 2, (Spring 2019).

CONCERNED WOMEN *for* AMERICA

- Babies feel pain at a very early stage. The scientific evidence shows that from 15 weeks onward, “the fetus is extremely sensitive to painful stimuli, and that this fact should be taken into account when performing invasive medical procedures on the fetus. It is necessary to apply adequate analgesia to prevent the suffering of the fetus.”⁷
- According to the U.S. National Library of Medicine,⁸ a 15-week-old baby:
 - Has eyes and eyelids with a well-formed face,
 - Limbs have developed,
 - The baby has hands and feet with little toes and fingers that have gone so far as to develop nails on them (he or she can make a fist!),
 - The genitals have appeared,
 - Organs are fast developing with the baby’s liver already making red blood cells of its own,
 - And muscle tissue and bones continue to grow and become harder, making it possible to begin to move.
- It is time for the Supreme Court to catch up to the 21st Century.
- Americans overwhelmingly support banning late-term abortion and restricting it during the first trimester. A recent Marist poll found 75% of Americans, including 61% of those who identify as pro-choice, say abortion should be banned at the very least to after the first trimester.⁹
- It is time for *Roe’s* House of Cards to come tumbling down. Women and children deserve better than the legislative games the Supreme Court has employed up to this point!
- It is the states’ highest duty to protect the health of mothers and the life of babies. They should be free to enact laws to do that in the best way they see possible, as Mississippi has done here.

⁷ Fact Sheet: Science of Fetal Pain, Charlotte Lozier Institute, available at <https://lozierinstitute.org/fact-sheet-science-of-fetal-pain/>, citing Sekulic S *et al.*, Appearance of fetal pain could be associated with maturation of the mesodiencephalic structures. *J Pain Res.* 9, 1031, 2016.

⁸ Fetal development, MedlinePlus, U.S. National Library of Medicine, available at <https://medlineplus.gov/ency/article/002398.htm>, accessed May 21, 2021.

⁹ America’s Opinions on Abortion, January 2019, available at <https://www.kofc.org/un/en/resources/communications/american-attitudes-abortion-knights-of-columbus-marist-poll-slides.pdf>.