

Roe v. Wade - A Complicated History

By Steve Fernlund

Only a few issues rise to the level of controversy that abortion brings out. Civil rights, same-sex marriage, and access to birth control for married women have come close over the past 60 years, but they simmer in comparison to the boiling over of debate on abortion.

On June 24 this year the United States Supreme Court, in a case titled *Dobbs v. Jackson Women's Health Organization*, overturned its *Roe v. Wade* decision of January 22, 1973, bumping legal abortion providers off the precarious perch they sat on for almost 50 years. Instead of relying on the *Roe* decision, they now contend with the various state laws that regulate the procedures. The recent decision will have far-reaching ramifications beyond abortion, but that shall be a topic for another time.

The *Dobbs* case involved Jackson, the only abortion provider in the state of Mississippi suing Thomas E. Dobbs, a state health official, over a 2018 state law banning all abortions after the first 15 weeks of pregnancy. In *Roe*, the court determined that the state had no interest in fetal life until the end of the first trimester, about 21 weeks. And that six-week difference was the main issue of the *Dobbs* case. In deciding, the court ruled that the *Roe v. Wade* decision was wrong and that all regulation of abortion shall be done at the state level.

In Minnesota, a 1995 decision of the Minnesota Supreme Court in a case titled *Doe v. Gomez* created a standard considered to be broader than *Roe*. Minnesota abortion laws

will not change because of the decision in *Dobbs* unless a future legislature takes the action.

In a statement issued by the Catholic Bishops of Minnesota commenting on the *Dobbs* case the organization said, "Sadly, *Gomez* is unlikely to be overturned without a change in federal law or a state constitutional amendment."

The Bishops went on to state, "Despite Minnesota's legal landscape, we should continue to find ways to place reasonable limits on the availability of abortions, especially after viability (Minnesota is one of the few states without limitations on post-viability abortions). We should also put in place, and keep in place, measures to help protect women from further serious injury arising from the risks already involved with an abortion. Such protections include, among other things, licensing abortion clinics and requiring that chemical abortions be procured only through a physician."

America has always had a tumultuous relationship with abortion. When the Constitution was adopted, abortion was legal and virtually unregulated in all 13 states of the union, according to Geoffrey R. Stone, Professor of Law at the University of Chicago as quoted in *The Christian Science Monitor*. The only restrictions in place were that abortion became illegal after "quickening," or when the mother could feel the movement of the fetus. This "quickening" was considered to happen in the fourth or fifth month of pregnancy.

In the middle of the 19th century, the recently formed American Medical Association took the position that a fetus was a person from conception. It opposed all methods of contraception and abortion and virtually all states passed legislation banning the procedure, with limited exceptions if the mother's life was in danger.

By the middle of the 20th century, 17 states permitted abortions under a range of circumstances.

Estimates for the number of abortions performed, legal and otherwise, range from 200,000 to 1.2 million per year during the 1950s and 60s.

Controversial reproductive issues in the middle of the last century included the Supreme Court decision in 1965 titled *Griswold v. Connecticut* which threw out state laws that banned the use of contraception by married women. Oral birth control pills were first available in 1960. In 1972 the Court gave single women the right to access these contraceptives.

In the *Roe v. Wade* decision in 1973, the Court found that prior to the viability of an unborn child, somewhere between 24-28 weeks of pregnancy, the individual woman's interests were greater than the interests of the state. It ruled that after that so-called first trimester the state's interests outweigh the interest of the individual woman.

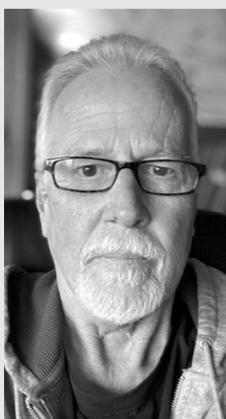
The *Roe* decision became a political organizing tool, and in 1976 the national Republican Party added an anti-abortion plank to its platform, and it has had that plank in every platform adopted since. In Minnesota, the Democratic-Farmer-Labor (DFL) Party had a vocal caucus of pro-life members dedicated to placing an anti-abortion plank in the DFL platform well into the 1990s, although they failed to do so.

The debates and tension over abortion rights and restrictions are not recent phenomena. They have been part of human civilizations for millennia and as the elections creep up on us you can expect them to get ever more hyperbolic.

As the Minnesota Catholic Bishops reasonably stated, "The prospect of *Roe* being overturned has already sharpened partisan division on the abortion question. As bishops, however, we have no interest in engaging as partisans, and we will continue to work to build common ground rooted in the principles articulated above. This is a matter of prenatal justice-giving to both mother and child that which is their due, namely, support and protection."

The Long Way Home

By Steve Fernlund



Now that the dust of rage has settled, stirred by the mass shootings on the Fourth of July, I thought I'd reflect on a simpler time. Maybe give you something to smile about.

It's the 60s, and I'm a grade school student in a first-ring suburb of Minneapolis. We were taught to start and manage a "passbook savings account" at Richfield State Bank. One morning a week we marched a couple of blocks for some churching, during school time. And we had regular fire drills, parading single file out the nearest exit. A nice break from learning.

Periodic civil defense drills found us lined up on the walls of the inside hallways, seated in neat rows on the floor with our knees raised and our heads bent between our legs. We weren't afraid of active shooters of course, but the Russians who had the "Bomb" were an evident threat to our existence. Only later did we find out that if "The Bomb" struck our fair city our corridor pose would not have saved us, but it would have left our charred remains neatly folded in one place to make cleaning up with the front-end loader a bit easier for any survivors.

On a happier note, my family spent a week during one of those summers at a small (rustic by today's standards) resort on a lake near Aitkin, MN. The family that owned the property had a teenage son for us city kids to look up to, let's call him Gust. He is one of two fond memories I have from that week.

Full of energy and blessed with the gift of gab, Gust told us of a favorite prank he had perfected. The cabins did not have indoor plumbing, so the two-hole outhouse was all

we city folks could use. Gust would see one of the guests, most often a suburban lady like my mom, heading to the privy and he would hide behind the two-holer.

Waiting long enough for the lady to be in position, he'd put on his best Swedish accent and shout, "Ma'am, would ya mind moving to the other hole? I'm painting down here." Then he'd run like hell.

On checkout day of that trip, a beautiful summer morning, the families who had become friends over the past week stood in a group on the shore exchanging addresses and promising to stay in touch. Parents, kids, and teenage girls.

To our left, we heard the putter of a small outboard motor and saw an aluminum boat cruising the shoreline. In the bow, facing rearward, sat a man who looked like he was the dad. The middle seat was weighed down by a heavysset man who may have been grandpa, also facing rearward. At the stern, proudly captaining the ship was a teenage boy.

When you're a teenage boy, it's a thrill to run the outboard. And when you were this kid, you watched the teenage girls on the shore with their families to make sure they were watching you. With his two passengers looking rearward, and the skipper watching the shore, no one saw the floating dive platform dead ahead. They hit it, square on.

The collision sent grandpa backward off his seat onto the bottom of the boat. All we could see were two chubby legs waving to little effect. All we could hear was both men shouting swear words I thought only we kids knew. Humiliated by the rowdy laughter coming from the group on shore, they turned tail and returned from whence they came.

The sixties were fright-filled years, not so much different from today. The memories I cherish from those times are the ones that made us laugh--out loud.

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He was publisher and editor of the Cook County News Herald in the 90's.

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