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Roe reversal: not a descent into theocracy

Steve Bakke  July 17, 2022



Roe was reversed because it was a poorly constructed ruling. Many abortion supporters agreed. Edward Lazarus, former clerk to Justice Harry Blackmun, author of Roe, stated “Roe borders on the indefensible.” A Washington Post article, on July 10, 2003, observed, “...even most “jurisprudes’ – if you administer truth serum – will tell you it is basically indefensible.”

Kermit Roosevelt, a University of Pennsylvania law professor stated in 2003 that “As constitutional argument, Roe is barely coherent...” Justice Ginsburg was concerned with Roe’s constitutional vulnerability of Roe. She believed it would have been better in 1973 to first patiently promote abortion rights at the state level.

Roe relied on the “right to privacy” as constitutional justification. However, neither “abortion” nor “right to privacy” are mentioned in the constitution. That fact weakened arguments for “a constitutional right to choose.”

Personally, I believe a compromise federal legislative solution was possible. Polls indicate 70% of Americans believe there should be restrictions on abortion, but that type of compromise was blocked by ideologues on both sides i.e., those who want all abortions to be forbidden vs. support for “on-demand” access to full-term abortion.

Finally, the abortion debate is not merely a theological argument for most anti-abortion activists. It’s an argument about the unsettled question of, “What is the definition of human life?” It’s a nuanced question, but one which must be debated if the abortion issue is to find some sort of peace.

The abortion debate will now be managed by individual states – our laboratories of democracy.