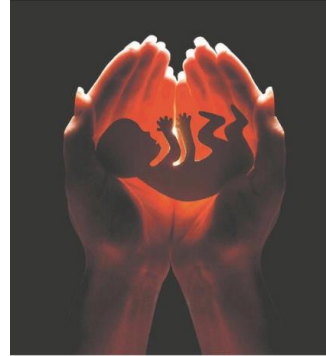


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Gun and abortion rulings: an important distinction

Steve Bakke  June 26, 2022



Letters in the June 25 StarTribune this expressed concern: “the Supreme Court says state and local leaders cannot require certain gun-safety measures, even if that’s what their constituents want.....[while] the Supreme Court establishes the very opposite principle, saying the decision on whether a woman can end a pregnancy must be left to the states to decide.”

The distinction between the two is subtle. The constitutional “right to bear arms” is expressly granted by the Second Amendment. The Court was ruling on the constitutionality of state legislation. In contrast, the “right to abortion” is not clearly set out in our Constitution, and the ruling in “Dobbs” dealt with the constitutionality of the original Roe v. Wade legislation.

Repeating, the “gun” ruling dealt with constitutionality of existing state law, while the “abortion” decision dealt with the constitutionality of the “Roe” legislation itself. Many strong Roe advocates were critical of the decision’s reasoning. The late Justice Ruth Bader Ginsburg stated in 2020, “Some women felt I should have been 100 percent in favor of Roe v. Wade, because I wasn’t.”

Ginsburg expressed her concern that the decision, which she applauded, was based on the “right to privacy.” She recognized how this reasoning would be susceptible to challenge because there is nothing in the Constitution that guarantees the “right to privacy.”

Ginsburg also believed it would have been better, in 1973 anyway, to promote abortion rights more slowly through state legislatures. Ironically, future abortion laws will be developed by state legislatures, as she favored.