The Radical Reality of Roe v. Wade (and its companion, Doe v. Bolton)

by Schu Montgomery

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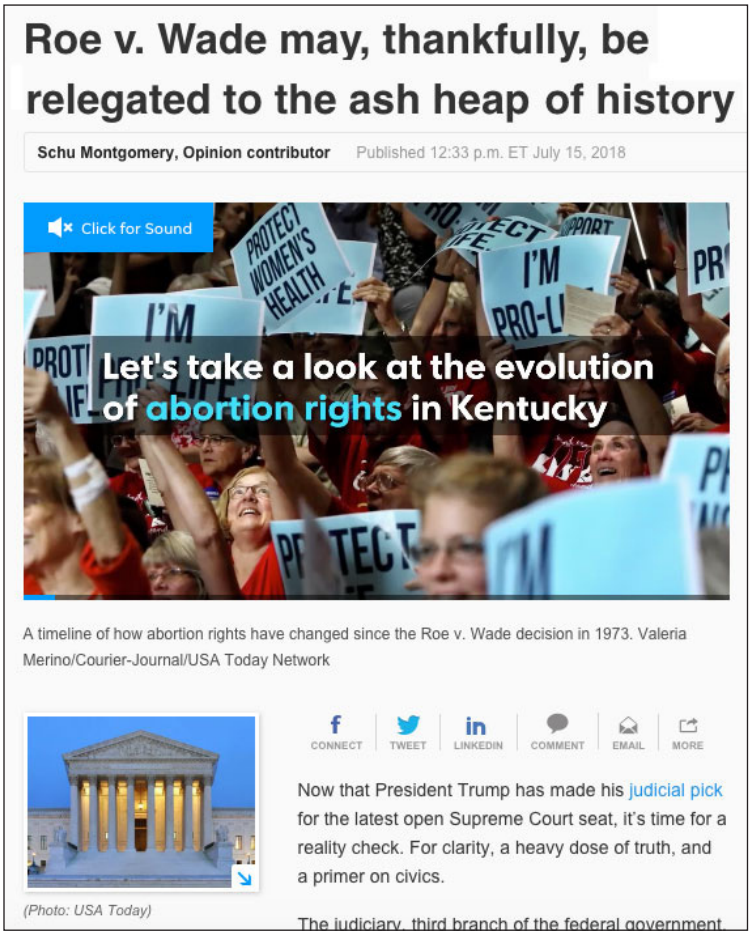
Now that President Trump has made his judicial pick for the latest open Supreme Court seat, it's time for a reality check. For clarity, a heavy dose of truth, and a primer on civics.

The judiciary, third branch of the federal government, is supposed to interpret, not make law. Making law is the job of lawmakers. Roe v. Wade (and its companion case, Doe v. Bolton) remains the lightning rod for opposition to abortion because it invented a "right" neither explicitly or implicitly mentioned in the Constitution.



What the 7-2 Supreme Court decision in 1973 did was literally usurp the peoples' voice in a vital matter of life and death, and struck down anti-abortion laws in most of our states.

Interestingly, impetus for the groundswell of grassroots crisis pregnancy centers throughout this nation, which assist the expectant mother not to abort through financial and a host of pre- and post-natal resources, emerged out of frustration that little could be done to stem the massive slaughter of unborn children imposed by the Court's Roe and Doe decisions.

Never will we hear, though, in the upcoming debate over Supreme Court nominee Brett Kavanaugh, and speculation whether he'll vote to overturn Roe v. Wade, that some of Roe's biggest critics were, lo and behold, liberals who supported legalized abortion.

John Hart Ely, an eminent legal scholar, writing in the Yale Law Journal, called Roe "bad constitutional law," and a "frightening" example how a "super-protected right is not inferable from the language of the Constitution, the framers' thinking …or the nation's governmental structure."

Similarly, liberal legal scholar, Laurence Tribe of Harvard, opined that "behind its own verbal smokescreen, the substantive judgment on which (Roe) rests is nowhere to be found."

Kermit Roosevelt, a University of Pennsylvania law professor, dubbed the Roe ruling, "barely coherent," wherein "the court pulled its fundamental right to choose more or less from the constitutional ether."

Roe was viscerally criticized as a "lousy opinion that disenfranchised millions of conservatives on an issue about which they care deeply," argued the Brookings Institution's Benjamin Wittes.

Even Edward Lazarus, the former clerk to Justice Harry Blackmun, who authored Roe, said it "borders on the indefensible" providing essentially "no reasoning in support of its holding," and through the years "no one has produced a convincing defense of Roe on its own terms."

Liberal Slate columnist William Saletan admits "Blackmun's (Supreme Court) papers vindicate every indictment of Roe: invention, overreach, arbitrariness, textual indifference."

Finally, one of Roe's two dissenting justices, Byron White, labeled the ruling an "act of raw judicial power."

Yet despite this left-leaning cascade of criticism over these 45 years, many Americans remain woefully ignorant of the radical and grossly subjective underpinnings of Roe v. Wade/Doe v. Bolton. In Doe, abortion was permitted through the full nine months of a woman's pregnancy, based on the broad interpretation of "health" which includes "all factors – physical, emotional, psychological, familial, and the woman's age." In short, Doe forced states to allow abortions for just about any reason up to birth. The sweeping "health" definition that became the standard for late-term abortions, is opposed overwhelmingly by a majority of Americans.

Obviously, with the advancement of ultrasound and 3-D technology, which offers a universally respected 'window to the womb' for countless couples, the trimester system set forth by the Roe justices appears sickeningly obtuse, outmoded, and frankly, inhuman, for a very human, very active preborn child.

Justice Sandra Day O'Connor admitted Roe's irreconcilability to scientific reality lamenting it was "on a collision course with itself."

At the very least it will take a reversal of Roe (the ideal route, though, would be passing a constitutional amendment affirming 'personhood' for the preborn) to rectify a wrong that should never have been imposed in the first place by seven unelected jurists over four decades ago.

But such a dramatic event can't happen overnight, unlike Roe's draconian result. It will take a specific anti-abortion statute passed by elected representatives in one of the states, but challenged by pro-abortionists, to bring it before the Court in its defense, so the justices have an opportunity to revisit the notoriously controversial ruling that has repulsed so many Americans for so long.

Much like another unpopular, yet reversible, 7-2 decision declaring African-Americans non-citizens (Dred Scott v. Sandford), Roe may one day, thankfully, be relegated to the ash heap of history.

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