/* In this case, the court was squarely asked to overrule Roe vs. Wade, but did not. This case did however, change the standards of review for such cases. */

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA et al. v. CASEY, GOVERNOR OF
PENNSYLVANIA, et al.
certiorari to the united states court of appeals for the third circuit

No. 91-744. Argued April 22, 1992 Decided June 29, 1992

At issue are five provisions of the Pennsylvania Abortion Control Act of 1982: 3205, which requires that a woman seeking an abortion give her informed consent prior to the procedure, and specifies that she be provided with certain information at least 24 hours before the abortion is performed; 3206, which mandates the informed consent of one parent for a minor to obtain an abortion, but provides a judicial bypass procedure; 3209, which commands that, unless certain exceptions apply, a married wom- an seeking an abortion must sign a statement indicating that she has notified her husband; 3203, which defines a "medical emergency" that will excuse compliance with the foregoing requirements; and 3207(b), 3214(a), and 3214(f), which impose certain reporting requirements on facilities providing abortion services. Before any of the provisions took effect, the petitioners, five abortion clinics and a physician representing himself and a class of doctors who provide abortion services, brought this suit seeking a declaratory judgment that each of the provisions was unconstitutional on its face, as well as injunctive relief. The District Court held all the provisions unconstitutional and permanently enjoined their enforcement. The Court of Appeals affirmed in part and reversed in part, striking down the husband notification provision but upholding the others.

Held: The judgment in No. 91-902 is affirmed; the judgment in No. 91-744 is affirmed in part and reversed in part, and the case is remanded.

947 F.2d 682: No. 91-902, affirmed; No. 91-744, affirmed in part, reversed in part, and remanded.

Justice O'Connor, Justice Kennedy, and Justice Souter delivered the opinion of the Court with respect to Parts I, II, and III, concluding that:

1. Consideration of the fundamental constitutional question resolved by Roe v. Wade, 410 U.S. 113, principles of institutional integrity, and the rule of stare decisis require that Roe's essential holding be retained and reaffirmed as to each of its three parts: (1) a recognition of a woman's

right to choose to have an abortion before fetal viability and to obtain it without undue interference from the State, whose previability interests are not strong enough to support an abortion prohibition or the imposition of substantial obstacles to the woman's effective right to elect the procedure; (2) a confirmation of the State's power to restrict abortions after viability, if the law contains exceptions for pregnancies endangering a woman's life or health; and (3) the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. Pp.1-27.

(a) A reexamination of the principles that define the woman's rights and the State's authority regarding abortions is required by the doubt this Court's subsequent decisions have cast upon the meaning and reach of Roe's central holding, by the fact that The Chief Justice would overrule Roe, and by the necessity that state and federal courts and legislatures have adequate guidance on the subject. Pp.1-3. (b) Roe determined that a woman's decision to terminate her pregnancy is a "liberty" protected against state interference by the substantive component of the Due Process Clause of the Fourteenth Amendment. Neither the Bill of Rights nor the specific practices of States at the time of the Fourteenth Amendment's adoption marks the outer limits of the substantive sphere of such "liberty." Rather, the adjudica- tion of substantive due process claims may require this Court to exercise its reasoned judgment in determining the boundaries between the individual's liberty and the demands of organized society. The Court's decisions have afforded constitutional protection to personal decisions relating to marriage, see, e. g., Loving v. Virginia, 388 U.S. 1, procreation, Skinner v. Oklahoma, 316 U.S. 535, family relationships, Prince v. Massachusetts, 321 U.S. 158, child rearing and education, Pierce v. Society of Sisters, 268 U.S. 510, and contraception, see, e. g., Griswold v. Connecticut, 381 U.S. 479, and have recognized the right of the individual to be free from unwarranted governmental intrusion into matters so fundamentally affecting a per- son as the decision whether to bear or beget a child, Eisenstadt v. Baird, 405 U.S. 438, 453. Roe's central holding properly invoked the reasoning and tradition of these precedents. Pp.- 4-11.

(c) Application of the doctrine of stare decisis confirms that Roe's essential holding should be reaffirmed. In reexamining that holding, the Court's judgment is informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling the holding with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling. Pp.11-13.

(d) Although Roe has engendered opposition, it has in no sense proven unworkable, representing as it does a simple limitation beyond which a state law is unenforceable. P.13. (e) The Roe rule's limitation on state power could not be repudiated without serious inequity to people who, for two decades of economic and social developments, have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. The Constitution serves human values, and while the effect of reliance on Roe cannot be exactly measured, neither can the certain costs of overruling Roe for people who have ordered their thinking and living around that case be dismissed. Pp.13-14. (f)No evolution of legal principle has left Roe's central rule a doctrinal anachronism discounted by society. If Roe is placed among the cases exemplified by Griswold, supra, it is clearly in no jeopardy, since subsequent constitutional developments have neither disturbed, nor

do they threaten to diminish, the liberty recognized in such cases. Similarly, if Roe is seen as stating a rule of personal autonomy and bodily integrity, akin to cases recognizing limits on governmental power to mandate medical treatment or to bar its rejection, this Court's post- Roe decisions accord with Roe's view that a State's interest in the protection of life falls short of justifying any plenary override of individual liberty claims. See, e. g., Cruzan v. Director, Missouri Dept. of Health, 497 U.S. ___, ___. Finally, if Roe is classified as sui generis, there clearly has been no erosion of its central determination. It was expressly reaffirmed in Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (Akron I), and Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747; and, in Webster v. Reproductive Health Services, 492 U.S. 490, a majority either voted to reaffirm or declined to address the constitutional validity of Roe's central holding. Pp.14-17.

(g) No change in Roe's factual underpinning has left its central holding obsolete, and none supports an argument for its overruling. Although subsequent maternal health care advances allow for later abortions safe to the pregnant woman, and post-Roe neonatal care developments have advanced viability to a point somewhat earlier, these facts go only to the scheme of time limits on the realization of competing interests. Thus, any later divergences from the factual premises of Roe have no bearing on the validity of its central holding, that viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions. The soundness or unsoundness of that constitutional judgment in no sense turns on when viability occurs. Whenever it may occur, its attainment will continue to serve as the critical fact. Pp.17-18.

(h) A comparison between Roe and two decisional lines of comparable significance "the line identified with Lochner v. New York, 198 U.S. 45, and the line that began with Plessy v. Ferguson, 163 U.S. 537" confirms the result reached here. Those lines were overruled "by, respectively, West Coast Hotel Co. v. Parrish, 330 U.S. 379, and Brown v. Board of Education, 347 U.S. 483- "on the basis of facts, or an understanding of facts, changed from those which furnished the claimed justifications for the earlier constitutional resolutions. The overruling decisions were comprehensible to the Nation, and defensible, as the Court's responses to changed circumstances. In contrast, because neither the factual underpinnings of Roe's central holding nor this Court's understanding of it has changed (and because no other indication of weakened precedent has been shown), the Court could not pretend to be reexamining Roe with any justification beyond a present doctrinal disposition to come out differently from the Roe Court. That is an inadequate basis for overruling a prior case. Pp.19-22.

(i) Overruling Roe's central holding would not only reach an unjustifiable result under stare decisis principles, but would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law. Where the Court acts to resolve the sort of unique, intensely divisive controversy reflected in Roe, its decision has a dimension not present in normal cases and is entitled to rare precedential force to counter the inevitable efforts to overturn it and to thwart its implementation. Only the most convincing justification under accepted standards of precedent could suffice to demonstrate that a later decision overruling the first was anything but a surrender to political pressure and an unjustified repudiation of the principle on which the Court staked its authority in the first instance. Moreover, the country's loss of confidence in the Judiciary would be underscored by condemnation for the Court's failure to keep faith with those who support the decision at a cost to

themselves. A decision to overrule Roe's essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy and to the Nation's commitment to the rule of law. Pp.22-27.

Justice O'Connor, Justice Kennedy, and Justice Souter concluded in Part IV that an examination of Roe v. Wade, 410 U.S. 113, and subsequent cases, reveals a number of guiding principles that should control the assessment of the Pennsylvania statute:

(a) To protect the central right recognized by Roe while at the same time accommodating the State's profound interest in potential life, see, id., at 162, the undue burden standard should be employed. An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability.
(b) Roe's rigid trimester framework is rejected. To promote the State's interest in potential life throughout pregnancy, the State may take measures to ensure that the woman's choice is informed. Measures designed to advance this interest should not be invalidated if their purpose is to persuade the woman to choose childbirth over abortion. These measures must not be an undue burden on the right.

(c) As with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion, but may not impose unnecessary health regulations that present a substantial obstacle to a woman seeking an abortion.

(d) Adoption of the undue burden standard does not disturb Roe's holding that regardless of whether exceptions are made for particular circumstances, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.

(e) Roe's holding that "subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother" is also reaffirmed. Id., at 164-165. Pp.27-37.

Justice O'Connor, Justice Kennedy, and Justice Souter delivered the opinion of the Court with respect to Parts V-A and V-C, concluding that:

1. As construed by the Court of Appeals, 320- 3's medical emergency definition is intended to assure that compliance with the State's abortion regulations would not in any way pose a significant threat to a woman's life or health, and thus does not violate the essential holding of Roe, supra, at 164. Although the definition could be interpreted in an unconstitutional manner, this Court defers to lower federal court interpretations of state law unless they amount to "plain" error. Pp.38-39.

2. Section 3209's husband notification provision constitutes an undue burden and is therefore invalid. A significant number of women will likely be prevented from obtaining an abortion just as surely as if Pennsylvania had outlawed the procedure entirely. The fact that 3209 may affect fewer than one percent of women seeking abortions does not save it from facial invalidity, since the proper focus of constitutional inquiry is the group for whom the law is a restriction, not the

group for whom it is irrelevant. Furthermore, it cannot be claimed that the father's interest in the fetus' welfare is equal to the mother's protected liberty, since it is an inescapable biological fact that state regulation with respect to the fetus will have a far greater impact on the pregnant woman's bodily integrity than it will on the husband. Section 3209 embodies a view of marriage consonant with the common-law status of married women but repugnant to this Court's present understanding of marriage and of the nature of the rights secured by the Constitution. See Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 69. Pp.46-58.

Justice O'Connor, Justice Kennedy, and Justice Souter, joined by Justice Stevens, concluded in Part V-E that all of the statute's recordkeeping and reporting requirements, except that relating to spousal notice, are constitutional. The reporting provision relating to the reasons a married woman has not notified her husband that she intends to have an abortion must be invalidated because it places an undue burden on a woman's choice. Pp.59-60. Justice O'Connor, Justice Kennedy, and Justice Souter concluded in Parts V-B and V-D that:

1. Section 3205's informed consent provision is not an undue burden on a woman's constitutional right to decide to terminate a pregnancy. To the extent Akron I, 462 U.S., at 444, and Thornburgh, 476 U.S., at 762, find a constitutional violation when the government requires, as it does here, the giving of truthful, nonmisleading information about the nature of the abortion procedure, the attendant health risks and those of childbirth, and the "probable gestational age" of the fetus, those cases are inconsistent with Roe's acknowledgement of an important interest in potential life, and are overruled. Requiring that the woman be informed of the availability of information relating to the consequences to the fetus does not interfere with a constitutional right of privacy between a pregnant woman and her physician, since the doctor-patient relation is derivative of the woman's position, and does not underlie or override the abortion right. Moreover, the physician's First Amendment rights not to speak are implicated only as part of the practice of medicine, which is licensed and regulated by the State. There is no evidence here that requiring a doctor to give the required information would amount to a substantial obstacle to a woman seeking abortion.

The premise behind Akron I's invalidation of a waiting period between the provision of the information deemed necessary to informed consent and the performance of an abortion, id., at 450, is also wrong. Although 3205's 24-hour waiting period may make some abortions more expensive and less convenient, it cannot be said that it is invalid on the present record and in the context of this facial challenge. Pp.39-46. 2.Section 3206's one-parent consent require- ment and judicial bypass procedure are constitutional. See, e. g., Ohio v. Akron Center for Reproductive Health, 497 U.S. ___, ___. Pp.58- -59.

Justice Blackmun concluded that application of the strict scrutiny standard of review required by this Court's abortion precedents results in the invalidation of all the challenged provisions in the Pennsylvania statute, includ- ing the reporting requirements, and therefore concurred in the judgment that the requirement that a pregnant woman report her reasons for failing to provide spousal notice is unconstitutional. Pp.10, 14-15.

The Chief Justice, joined by Justice White, Justice Scalia, and Justice Thomas, concluded that:

1. Although Roe v. Wade, 410 U.S. 113, is not directly implicated by the Pennsylvania statute,

which simply regulates and does not prohibit abortion, a reexamination of the "fundamental right" Roe accorded to a woman's decision to abort a fetus, with the concomitant requirement that any state regulation of abortion survive "strict scrutiny," id., at 154-156, is warranted by the confusing and uncertain state of this Court's post-Roe decisional law. A review of post-Roe cases demonstrates both that they have expanded upon Roe in imposing increa- singly greater restrictions on the States, see Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 783 (Burger, C. J., dissenting), and that the Court has become increasingly more divided, none of the last three such decisions having commanded a majority opinion, see Ohio v. Akron Center for Reproductive Health, 497 U.S. 502; Hodgson v. Minnesota, 497 U.S. 417; Webster v. Reproductive Health Services, 492 U.S. 490. This confusion and uncertainty complicated the task of the Court of Appeals, which concluded that the "undue burden" standard adopted by Justice O'Connor in Webster and Hodgson governs the present cases. Pp.1-8.

2. The Roe Court reached too far when it analogized the right to abort a fetus to the rights involved in Pierce v. Society of Sisters, 268 U.S. 510; Meyer v. Nebraska, 262 U.S. 390; Loving v. Virginia, 388 U.S. 1; and Griswold v. Connecticut, 381 U.S. 479, and thereby deemed the right to abortion to be "fundamental." None of these decisions endorsed an all-encompassing "right of privacy," as Roe, supra, at 152-153, claimed. Because abortion involves the purposeful termination of potential life, the abortion decision must be recognized as sui generis, different in kind from the rights protected in the earlier cases under the rubric of personal or family privacy and autonomy. And the historical traditions of the American people "as evidenced by the English common law and by the American abortion statutes in existence both at the time of the Fourteenth Amendment's adoption and Roe's issuance" do not support the view that the right to terminate one's pregnancy is "fundamental." Thus, enactments abridging that right need not be subjected to strict scrutiny. Pp.8-11.

3. The undue burden standard adopted by the joint opinion of Justices O'Connor, Kennedy, and Souter has no basis in constitutional law and will not result in the sort of simple limitation, easily applied, which the opinion anticipates. To evaluate abortion regulations under that standard, judges will have to make the subjective, unguided determination whether the regulations place "substantial obstacles" in the path of a woman seeking an abortion, undoubtedly engendering a variety of conflicting views. The standard presents nothing more workable than the trimester framework the joint opinion discards, and will allow the Court, under the guise of the Constitution, to continue to impart its own preferences on the States in the form of a complex abortion code. Pp.22-23. 4.The correct analysis is that set forth by the plurality opinion in Webster, supra: A woman's interest in having an abortion is a form of liberty protected by the Due Process Clause, but States may regulate abortion procedures in ways rationally related to a legitimate state interest. P.24.

5. Section 3205's requirements are rationally related to the State's legitimate interest in assuring that a woman's consent to an abortion be fully informed. The requirement that a physician disclose certain information about the abortion procedure and its risks and alternatives is not a large burden and is clearly related to maternal health and the State's interest in informed consent. In addition, a State may rationally decide that physicians are better qualified than counselors to impart this information and answer questions about the abortion alternatives' medical aspects. The requirement that information be provided about the availability of paternal child support and

state-funded alternatives is also related to the State's informed consent interest and furthers the State's interest in preserving unborn life. That such information might create some uncertainty and persuade some women to forgo abortions only demonstrates that it might make a difference and is therefore relevant to a woman's informed choice. In light of this plurality's rejection of Roe's "fundamental right" approach to this subject, the Court's contrary holding in Thornburgh is not controlling here. For the same reason, this Court's previous holding invalidating a State's 24-hour mandato- ry waiting period should not be followed. The waiting period helps ensure that a woman's decision to abort is a well-considered one, and rationally furthers the State's legitimate interest in maternal health and in unborn life. It may delay, but does not prohibit, abortions; and both it and the informed consent provisions do not apply in medical emergencies. Pp.24-27.

6. The statute's parental consent provision is entirely consistent with this Court's previous decisions involving such requirements. See, e.g., Planned Parenthood Association of Kansas City, Missouri, Inc. v. Ashcroft, 462 U.S. 476. It is reasonably designed to further the State's important and legitimate interest "in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely," Hodgson, supra, at 444. Pp.27-- 29.

7. Section 3214(a)'s requirement that abortion facilities file a report on each abortion is constitutional because it rationally furthers the State's legitimate interests in advancing the state of medical knowledge concerning maternal health and prenatal life, in gathering statistical information with respect to patients, and in ensuring compliance with other provisions of the Act, while keeping the reports completely confidential. Public disclosure of other reports made by facilities receiving public funds"those identifying the facilities and any parent, subsidiary, or affiliated organizations, 3207(b), and those revealing the total number of abortions performed, broken down by trimester, 3214(f) "are rationally related to the State's legitimate interest in informing taxpayers as to who is benefiting from public funds and what services the funds are supporting; and records relating to the expenditure of public funds are generally available to the public under Pennsylvania law. Pp.34-35.

Justice Scalia, joined by The Chief Justice, Justice White, and Justice Thomas, concluded that a woman's decision to abort her unborn child is not a constitutionally protected "liberty" because (1) the Constitution says absolutely nothing about it, and (2) the longstanding traditions of American society have permitted it to be legally proscribed. See, e. g., Ohio v. Akron Center for Reproductive Health, 497 U.S. ___, ___ (Scalia, J., concurring). The Pennsylvania statute should be upheld in its entirety under the rational basis test. Pp.1-3.

O'Connor, Kennedy, and Souter, JJ., announced the judgment of the Court and delivered the opin- ion of the Court with respect to Parts I, II, III, V-A, V-C, and VI, in which Blackmun and Stevens, JJ., joined, an opinion with respect to Part V-E, in which Stevens, J., joined, and an opinion with respect to Parts IV, V-B, and V-D. Stevens, J., filed an opinion concurring in part and dissenting in part. Blackmun, J., filed an opinion concurring in part, concurring in the judgment in part, and dissenting in part. Rehnquist, C. J., filed an opinion concurring in the judgment in part and dissenting in part, in which White, Scalia, and Thomas, JJ., joined. Scalia, J., filed an opinion concurring in the judgment in part and dissenting in part, in which Rehnquist, C. J., and White and Thomas, JJ., joined.

Opinion

Justice O'Connor, Justice Kennedy, and Justice Souter announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III, V-A, V-C, and VI, an opinion with respect to Part V-E, in which Justice Stevens joins, and an opinion with respect to Parts IV, V- B, and V-D.

I

Liberty finds no refuge in a jurisprudence of doubt. Yet 19 years after our holding that the Constitution protects a woman's right to terminate her pregnancy in its early stages, Roe v. Wade, 410 U. S. 113 (1973), that definition of liberty is still questioned. Joining the respondents as amicus curiae, the United States, as it has done in five other cases in the last decade, again asks us to overrule Roe. See Brief for Respondents 104-117; Brief for United States as Amicus Curiae 8.

At issue in these cases are five provisions of the Pennsylvania Abortion Control Act of 1982 as amended in 1988 and 1989. 18 Pa. Cons. Stat. 3203-3220 (1990). Relevant portions of the Act are set forth in the appendix. Infra, at 60. The Act requires that a woman seeking an abortion give her informed consent prior to the abortion procedure, and specifies that she be provided with certain information at least 24 hours before the abortion is performed. 3205. For a minor to obtain an abortion, the Act requires the informed consent of one of her parents, but provides for a judicial bypass option if the minor does not wish to or cannot obtain a parent's consent. 3206. Another provision of the Act requires that, unless certain exceptions apply, a married woman seeking an abortion must sign a statement indicating that she has notified her husband of her intended abortion. 3209. The Act exempts compliance with these three requirements in the event of a medical emergency, which is defined in 3203 of the Act. See 3203, 3205(a), 3206(a), 3209(c). In addition to the above provisions regulating the performance of abortions, the Act imposes certain reporting requirements on facilities that provide abortion services. 3207(b), 3214(a), 3214(f).

Before any of these provisions took effect, the petitioners, who are five abortion clinics and one physician representing himself as well as a class of physicians who provide abortion services, brought this suit seeking declaratory and injunctive relief. Each provision was challenged as unconstitutional on its face. The District Court entered a preliminary injunction against the enforcement of the regulations, and, after a 3- day bench trial, held all the provisions at issue here unconstitutional, entering a permanent injunction against Pennsylvania's enforcement of them. 744 F. Supp. 1323 (ED Pa. 1990). The Court of Appeals for the Third Circuit affirmed in part and reversed in part, upholding all of the regulations except for the husband notification requirement. 947 F. 2d 682 (1991). We granted certiorari. 502 U.S. ____ (1992).

/* Fairly unusual in that the District Court would naturally have a great deal of reticence to go against US Supreme Court authority and thus, the District Court opinion is probably closer to the earlier Supreme Court decisions than that of the Circuit Court. */

The Court of Appeals found it necessary to follow an elaborate course of reasoning even to identify the first premise to use to determine whether the statute enacted by Pennsylvania meets constitutional standards. See 947 F. 2d, at 687-698. And at oral argument in this Court, the attorney for the parties challenging the statute took the position that none of the enactments can be upheld without overruling Roe v. Wade. Tr. of Oral Arg. 5-6. We disagree with that analysis; but we acknowledge that our decisions after Roe cast doubt upon the meaning and reach of its holding. Further, the Chief Justice admits that he would overrule the central holding of Roe and adopt the rational relationship test as the sole criterion of constitutionality. See post, at ___. State and federal courts as well as legislatures throughout the Union must have guidance as they seek to address this subject in conformance with the Constitution. Given these premises, we find it imperative to review once more the principles that define the rights of the woman and the legitimate authority of the State respecting the
legitimate authority of the State respecting the termination of pregnancies by abortion procedures.

After considering the fundamental constitutional questions resolved by Roe, principles of institutional integrity, and the rule of stare decisis, we are led to conclude this: the essential holding of Roe v. Wade should be retained and once again reaffirmed.

/* The thin plurality here is attempting to pres this as the ruling, and then may go to great distances from there away from Roe, although retaining it in name. */

It must be stated at the outset and with clarity that Roe's essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger a woman's life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. These principles do not contradict one another; and we adhere to each.

II

Constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment. It declares that no State shall deprive any person of life, liberty, or property, without due process of law. The controlling word in the case before us is liberty. Although a literal reading of the Clause might suggest that it governs only the procedures by which a State may deprive persons of liberty, for at least 105 years, at least since Mugler v. Kansas, 123 U. S. 623, 660-661 (1887), the Clause has been understood to contain a substantive component as well, one barring certain government actions regardless of the fairness of the procedures used to implement them. Daniels v. Williams, 474 U. S. 327, 331 (1986). As Justice Brandeis (joined by Justice Holmes) observed, [d]espite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth Amendment applies to matters of substantive law as well as to matters of procedure.

Thus all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States. Whitney v. California, 274 U. S. 357, 373 (1927) (Brandeis, J., concurring). [T]he guaranties of due process, though having their roots in Magna Carta's `per legem terrae' and considered as procedural safeguards `against executive usurpation and tyranny,' have in this country `become bulwarks also against arbitrary legislation.' Poe v. Ullman, 367 U. S. 497, 541 (1961) (Harlan, J., dissenting from dismissal on jurisdictional grounds) (quoting Hurtado v. California, 110 U. S. 516, 532 (1884)).

The most familiar of the substantive liberties protected by the Fourteenth Amendment are those recognized by the Bill of Rights. We have held that the Due Process Clause of the Fourteenth Amendment incorporates most of the Bill of Rights against the States. See, e.g., Duncan v. Louisiana, 391 U. S. 145, 147-148 (1968). It is tempting, as a means of curbing the discretion of federal judges, to suppose that liberty encompasses no more than those rights already guaranteed to the individual against federal interference by the express provisions of the first eight amendments to the Constitution. See Adamson v. California, 332 U. S. 46, 68-92 (1947) (Black, J., dissenting). But of course this Court has never accepted that view.

It is also tempting, for the same reason, to suppose that the Due Process Clause protects only those practices, defined at the most specific level, that were protected against government interference by other rules of law when the Fourteenth Amendment was ratified. See Michael H. v. Gerald D., 491 U. S. 110, 127-128, n. 6 (1989) (opinion of Scalia, J.). But such a view would be inconsistent with our law. It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. We have vindicated this principle before. Marriage is mentioned nowhere in the Bill of Rights and interracial marriage was illegal in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause in Loving v. Virginia, 388 U. S. 1, 12 (1967) (relying, in an opinion for eight Justices, on the Due Process Clause). Similar examples may be found in Turner v. Safley, 482 U. S. 78, 94-99 (1987); in Carey v. Population Services International, 431 U. S. 678, 684-686 (1977); in Griswold v. Connecticut, 381 U. S. 479, 481-482 (1965), as well as in the separate opinions of a majority of the Members of the Court in that case, id., at 486-488 (Goldberg J., joined by Warren, C. J., and Brennan, J., concurring) (expressly relying on due process), id., at 500-502 (Harlan, J., concurring in judgment) (same), id., at 502-507 (White, J., concurring in judgment) (same); in Pierce v. Society of Sisters, 268 U. S. 510, 534-535 (1925); and in Meyer v. Nebraska, 262 U. S. 390, 399-403 (1923).

Neither the Bill of Rights nor the specific practices of States at the time of the adoption of the Fourteenth Amendment marks the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects. See U. S. Const., Amend. 9. As the second Justice Harlan recognized:

> [T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This `liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking,

> includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment. Poe v. Ullman, supra, at 543 (Harlan, J., dissenting from dismissal on jurisdictional grounds).

Justice Harlan wrote these words in addressing an issue the full Court did not reach in Poe v. Ullman, but the Court adopted his position four Terms later in Griswold v. Connecticut, supra. In Griswo- ld, we held that the Constitution does not permit a State to forbid a married couple to use contraceptives. That same freedom was later guaranteed, under the Equal Protection Clause, for unmarried couples. See Eisenstadt v. Baird, 405 U.S. 438 (1972). Constitutional protection was extended to the sale and distribution of contraceptives in Carey v. Population Services International, supra. It is settled now, as it was when the Court heard arguments in Roe v. Wade, that the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood, see Carey v. Population Services International, supra; Moore v. East Cleveland, 431 U. S. 494 (1977); Eisenstadt v. Baird, supra; Loving v. Virginia, supra; Griswold v. Connecticut, supra; Skinner v. Oklahoma ex rel. Williamson, 316 U. S. 535 (1942); Pierce v. Society of Sisters, supra; Meyer v. Nebraska, supra, as well as bodily integrity. See, e.g., Washington v. Harper, 494 U. S. 210, 221-222 (1990); Winston v. Lee, 470 U.S. 753 (1985); Rochin v. California, 342 U. S. 165 (1952).

The inescapable fact is that adjudication of substantive due process claims may call upon the Court in interpreting the Constitution to exercise that same capacity which by tradition courts always have exercised: reasoned judgment. Its boundaries are not susceptible of expression as a simple rule. That does not mean we are free to invalidate state policy choices with which we disagree; yet neither does it permit us to shrink from the duties of our office. As Justice Harlan observed:

> Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to this Constitutional concept has of necessity been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint. Poe v. Ullman, 367 U.S., at 542 (Harlan, J., dissenting from dismissal on jurisdictional grounds).

See also Rochin v. California, supra, at 171-172 (Frankfurter, J., writing for the Court) (To believe that this judicial exercise of judgment could be avoided by freezing `due process of law' at some fixed stage of time or thought is to suggest that the most important aspect of

constitutional adjudication is a function for inanimate machines and not for judges).

Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage. Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code. The underlying constitutional issue is whether the State can resolve these philosophic questions in such a definitive way that a woman lacks all choice in the matter, except perhaps in those rare circumstances in which the pregnancy is itself a danger to her own life or health, or is the result of rape or incest.

It is conventional constitutional doctrine that where reasonable people disagree the government can adopt one position or the other. See, e.g., Ferguson v. Skrupa, 372 U. S. 726 (1963); Williamson v. Lee Optical of Oklahoma, Inc., 348 U. S. 483 (1955). That theorem, however, assumes a state of affairs in which the choice does not intrude upon a protected liberty. Thus, while some people might disagree about whether or not the flag should be saluted, or disagree about the proposition that it may not be defiled, we have ruled that a State may not compel or enforce one view or the other. See West Virginia State Bd. of Education v. Barnette, 319 U. S. 624 (1943); Texas v. Johnson, 491 U. S. 397 (1989).

Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. Carey v. Population Services International, 431 U. S., at 685. Our cases recognize the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. Eisenstadt v. Baird, supra, at 453 (emphasis in original). Our precedents have respected the private realm of family life which the state cannot enter. Prince v. Massachusetts, 321 U.S. 158, 166 (1944). These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

/* In reading Griswold and other related cases on personal reproductive freedom, one is tempted to ask if abortion is "sui generis" and the authorities do not otherwise apply. */

These considerations begin our analysis of the woman's interest in terminating her pregnancy but cannot end it, for this reason: though the abortion decision may originate within the zone of conscience and belief, it is more than a philosophic exercise. Abortion is a unique act. It is an act fraught with consequences for others: for the woman who must live with the implications of her decision; for the persons who perform and assist in the procedure; for the spouse, family, and society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life; and, depending on one's beliefs, for the life or potential life that is aborted. Though abortion is conduct, it does not follow that the State is entitled to proscribe it in all instances. That is because the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law. The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear.

That these sacrifices have from the beginning of the human race been endured by woman with a pride that ennobles her in the eyes of others and gives to the infant a bond of love cannot alone be grounds for the State to insist she make the sacrifice. Her suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and our culture. The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.

It should be recognized, moreover, that in some critical respects the abortion decision is of the same character as the decision to use contraception, to which Griswold v. Connecticut, Eisenstadt v. Baird, and Carey v. Population Services International, afford constitutional protection. We have no doubt as to the correctness of those decisions. They support the reasoning in Roe relating to the woman's liberty because they involve personal decisions concerning not only the meaning of procreation but also human responsibility and respect for it. As with abortion, reasonable people will have differences of opinion about these matters. One view is based on such reverence for the wonder of creation that any pregnancy ought to be welcomed and carried to full term no matter how difficult it will be to provide for the child and ensure its well-being. Another is that the inability to provide for the nurture and care of the infant is a cruelty to the child and an anguish to the parent. These are intimate views with infinite variations, and their deep, personal character underlay our decisions in Griswold, Eisenstadt, and Carey. The same concerns are present when the woman confronts the reality that, perhaps despite her attempts to avoid it, she has become pregnant.

It was this dimension of personal liberty that Roe sought to protect, and its holding invoked the reasoning and the tradition of the precedents we have discussed, granting protection to substantive liberties of the person. Roe was, of course, an extension of those cases and, as the decision itself indicated, the separate States could act in some degree to further their own legitimate interests in protecting prenatal life. The extent to which the legislatures of the States might act to outweigh the interests of the woman in choosing to terminate her pregnancy was a subject of debate both in Roe itself and in decisions following it.

While we appreciate the weight of the arguments made on behalf of the State in the case before us, arguments which in their ultimate formulation conclude that Roe should be overruled, the reservations any of us may have in reaffirming the central holding of Roe are outweighed by the explication of individual liberty we have given combined with the force of stare decisis. We turn now to that doctrine.

III
A

The obligation to follow precedent begins with necessity, and a contrary necessity marks its outer limit. With Cardozo, we recognize that no judicial system could do society's work if it eyed each issue afresh in every case that raised it. See B. Cardozo, The Nature of the Judicial Process 149 (1921). Indeed, the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable. See Powell, Stare Decisis and Judicial Restraint, 1991 Journal of Supreme Court History 13, 16. At

the other extreme, a different necessity would make itself felt if a prior judicial ruling should come to be seen so clearly as error that its enforcement was for that very reason doomed.

Even when the decision to overrule a prior case is not, as in the rare, latter instance, virtually foreordained, it is common wisdom that the rule of stare decisis is not an inexorable command, and certainly it is not such in every constitutional case, see Burnet v. Coronado Oil Gas Co., 285 U. S. 393, 405-411 (1932) (Brandeis, J., dissenting). See also Payne v. Tennessee, 501 U. S. ____, ____ (1991) (slip op., at ___) (Souter, J., joined by Kennedy, J., concurring); Arizona v. Rumsey, 467 U. S. 203, 212 (1984). Rather, when this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case. Thus, for example, we may ask whether the rule has proved to be intolerable simply in defying practical workability, Swift & Co. v. Wickham, 382 U. S. 111, 116 (1965); whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation, e. g., United States v. Title Ins. & Trust Co., 265 U. S. 472, 486 (1924); whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine, see Patterson v. McLean Credit Union, 491 U. S. 164, 173-174 (1989); or whether facts have so changed or come to be seen so differently, as to have robbed the old rule of significant application or justification, e.g., Burnet, supra, at 412 (Brandeis, J., dissenting).