The Chief Justice's narrow conception of individual liberty and stare decisis leads him to propose the same standard of review proposed by the plurality in Webster. States may regulate abortion procedures in ways rationally related to a legitimate state interest. Williamson v. Lee Optical Co., 348 U. S. 483, 491 (1955); cf. Stanley v. Illinois, 405 U. S. 645, 651-653 (1972). Post, at 24. The Chief Justice then further weakens the test by providing an insurmountable requirement for facial challenges: petitioners must `show that no set of circumstances exists under which the [provision] would be valid.' Post, at 30, quoting Ohio v. Akron Center for Reproductive Health, 497 U. S., at 514. In short, in his view, petitioners must prove that the statute cannot constitutionally be applied to anyone. Finally, in applying his standard to the spousal-notification provision, The Chief Justice contends that the record lacks any hard evidence to support the joint opinion's contention that a large fraction of women who prefer not to notify their husbands involve situations of battered women and unreported spousal assault. Post, at 31, n. 2. Yet throughout the explication of his standard, The Chief Justice never explains what hard evidence is, how large a fraction is required, or how a battered women is supposed to pursue an as applied challenge.

Under his standard, States can ban abortion if that ban is rationally related to a legitimate state interest "a standard which the United States calls deferential, but not toothless." Yet when pressed at oral argument to describe the teeth, the best protection that the Solicitor General could offer to women was that a prohibition, enforced by criminal penalties, with no exception for the life of the mother, could raise very serious questions. Tr. of Oral Arg. 49. Perhaps, the Solicitor General offered, the failure to include an exemption for the life of the mother would be arbitrary and capricious. Id., at 49. If, as The Chief Justice contends, the undue burden test is made out of whole cloth, the so-called arbitrary and capricious limit is the Solicitor General's new clothes.

Even if it is somehow irrational for a State to require a woman to risk her life for her child, what protection is offered for women who become pregnant through rape or incest? Is there anything arbitrary or capricious about a State's prohibiting the sins of the father from being visited upon his offspring?

But, we are reassured, there is always the protection of the democratic process. While there is much to be praised about our democracy, our country since its founding has recognized that there are certain fundamental liberties that are not to be left to the whims of an election. A woman's right to reproductive choice is one of those fundamental liberties. Accordingly, that liberty need not seek refuge at the ballot box.

IV

In one sense, the Court's approach is worlds apart from that of The Chief Justice and Justice Scalia. And yet, in another sense, the distance between the two approaches is short "the distance is but a single vote."

I am 83 years old. I cannot remain on this Court forever, and when I do step down, the confirmation process for my successor well may focus on the issue before us today. That, I regret, may be exactly where the choice between the two worlds will be made.

Chief Justice Rehnquist, with whom Justice White, Justice Scalia, and Justice Thomas join, - concurring in the judgment in part and dissenting in part.

The joint opinion, following its newly-minted variation on stare decisis, retains the outer shell of Roe v. Wade, 410 U. S. 113 (1973), but beats a wholesale retreat from the substance of that case. We believe that Roe was wrongly decided, and that it can and should be overruled consistently with our traditional approach to stare decisis in constitutional cases. We would adopt the approach of the plurality in Webster v. Reproductive Health Services, 492 U. S. 490 (1989), and uphold the challenged provisions of the Pennsylvania statute in their entirety.

I

In ruling on this case below, the Court of Ap- peals for the Third Circuit first observed that this appeal does not directly implicate Roe; this case involves the regulation of abortions rather than their outright prohibition. 947 F. 2d 682, 687 (1991). Accordingly, the court directed its attention to the question of the standard of review for abortion regulations. In attempting to settle on the correct standard, however, the court confronted the confused state of this Court's abortion jurisprudence. After considering the several opinions in Webster v. Reproductive Health Services, supra, and Hodgson v. Minnesota, 497 U. S. 417 (1990), the Court of Appeals concluded that Justice O'Connor's undue burden test was controlling, as that was the narrowest ground on which we had upheld recent abortion regulations. 947 F. 2d, at 693-697 (`When a fragmented court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds' (quoting Marks v. United States, 430 U. S. 188, 193 (1977) (internal quotation marks omitted)). Applying this standard, the Court of Appeals upheld all of the challenged regulations except the one requiring a woman to notify her spouse of an intended abortion.

In arguing that this Court should invalidate each of the provisions at issue, petitioners insist that we reaffirm our decision in Roe v. Wade, supra, in which we held unconstitutional a Texas statute making it a crime to procure an abortion except to save the life of the mother. We agree with the Court of Appeals that our decision in Roe is not directly implicated by the Pennsylvania statute, which does not prohibit, but simply regulates, abortion. But, as the Court of Appeals found, the state of our post-Roe decisional law dealing with the regulation of abortion is confusing and uncertain, indicating that a reexamination of that line of cases is in order. Unfortunately for those who must apply this Court's decisions, the reexamination undertaken today leaves the Court no less divided than beforehand. Although they reject the trimester framework that formed the underpinning of Roe, Justices O'Connor, Kennedy, and Souter adopt a revised undue burden standard to analyze the challenged regulations. We conclude, however, that such an outcome is an unjustified constitutional compromise, one which leaves the Court in a position to closely scrutinize all types of abortion regulations despite the fact that it lacks the power to do so under the Constitution.

In Roe, the Court opined that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, . . . and that it has still another

important and legitimate interest in protecting the potentiality of human life. 410 U. S., at 162 (emphasis omitted). In the companion case of Doe v. Bolton, 410 U. S. 179 (1973), the Court referred to its conclusion in Roe that a pregnant woman does not have an absolute constitutional right to an abortion on her demand. 410 U. S., at 189. But while the language and holdings of these cases appeared to leave States free to regulate abortion procedures in a variety of ways, later decisions based on them have found considerably less latitude for such regulations than might have been expected.

For example, after Roe, many States have sought to protect their young citizens by requiring that a minor seeking an abortion involve her parents in the decision. Some States have simply required notification of the parents, while others have required a minor to obtain the consent of her parents. In a number of decisions, however, the Court has substantially limited the States in their ability to impose such requirements. With regard to parental notice requirements, we initially held that a State could require a minor to notify her parents before proceeding with an abortion. H. L. v. Matheson, 450 U. S. 398, 407-410 (1981). Recently, however, we indicated that a State's ability to impose a notice requirement actually depends on whether it requires notice of one or both parents. We concluded that although the Constitution might allow a State to demand that notice be given to one parent prior to an abortion, it may not require that similar notice be given to two parents, unless the State incorporates a judicial bypass procedure in that two- parent requirement. Hodgson v. Minnesota, supra.

We have treated parental consent provisions even more harshly. Three years after Roe, we invalidated a Missouri regulation requiring that an unmarried woman under the age of 18 obtain the consent of one her parents before proceeding with an abortion. We held that our abortion jurisprudence prohibited the State from imposing such a blanket provision . . . requiring the consent of a parent. Planned Parenthood of Central Mo. v. Danforth, 428 U. S. 52, 74 (1976). In Bellotti v. Baird, 443 U. S. 622 (1979), the Court struck down a similar Massachusetts parental consent statute. A majority of the Court indicated, however, that a State could constitutionally require parental consent, if it alternatively allowed a pregnant minor to obtain an abortion without parental consent by showing either that she was mature enough to make her own decision, or that the abortion would be in her best interests. See id., at 643-644 (plurality opinion); id., at 656-657 (White, J., dissenting). In light of Bellotti, we have upheld one parental consent regulation which incorporated a judicial bypass option we viewed as sufficient, see Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U. S. 476 (1983), but have invalidated another because of our belief that the judicial procedure did not satisfy the dictates of Bellotti. See Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 439-442 (1983). We have never had occasion, as we have in the parental notice context, to further parse our parental consent jurisprudence into one-parent and two-parent components.

In Roe, the Court observed that certain States recognized the right of the father to participate in the abortion decision in certain circumstances. Because neither Roe nor Doe involved the assertion of any paternal right, the Court expressly stated that the case did not disturb the validity of regulations that protected such a right. Roe v. Wade, 410 U. S., at 165, n. 67. But three years later, in Danforth, the Court extended its abortion jurisprudence and held that a State could not require that a woman obtain the consent of her spouse before proceeding with an abortion. Planned Parenthood of Central Mo. v. Danforth, 428 U.S., at 69-71.

States have also regularly tried to ensure that a woman's decision to have an abortion is an informed and well-considered one. In Danforth, we upheld a requirement that a woman sign a consent form prior to her abortion, and observed that it is desirable and imperative that [the decision] be made with full knowledge of its nature and conse- quences. Id., at 67. Since that case, however, we have twice invalidated state statutes designed to impart such knowledge to a woman seeking an abortion. In Akron, we held unconstitutional a regulation requiring a physician to inform a woman seeking an abortion of the status of her pregnancy, the development of her fetus, the date of possible viability, the complications that could result from an abortion, and the availability of agencies providing assistance and information with respect to adoption and childbirth. Akron v. Akron Center for Reproductive Health, supra, at 442-445. More recently, in Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986), we struck down a more limited Pennsylvania regulation requiring that a woman be informed of the risks associated with the abortion procedure and the assistance available to her if she decided to proceed with her pregnancy, because we saw the compelled information as the antithesis of informed consent. Id., at 764. Even when a State has sought only to provide information that, in our view, was consistent with the Roe framework, we concluded that the State could not require that a physician furnish the information, but instead had to alternatively allow nonphysician counselors to provide it. Akron v. Akron Center for Reproductive Health, 462
U.S., at 448-449. In Akron as well, we went further and held that a State may not require a physician to wait 24 hours to perform an abortion after receiving the consent of a woman. Although the State sought to ensure that the woman's decision was carefully considered, the Court concluded that the Constitution forbade the State from imposing any sort of delay. Id., at 449-451.

We have not allowed States much leeway to regulate even the actual abortion procedure. Although a State can require that second-trimester abortions be performed in outpatient clinics, see Simopoulos v. Virginia, 462 U. S. 506 (1983), we concluded in Akron and Ashcroft that a State could not require that such abortions be performed only in hospitals. See Akron v. Akron Center for Reproductive Health, supra, at 437-439; Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, supra, at 481-482. Despite the fact that Roe expressly allowed regulation after the first trimester in furtherance of maternal health, `present medical knowledge,' in our view, could not justify such a hospitalization requirement under the trimester framework. Akron v. Akron Center for Reproductive Health, supra, at 437 (quoting Roe v. Wade, supra, at 163). And in Danforth, the Court held that Missouri could not outlaw the saline amniocentesis method of abortion, concluding that the Missouri Legislature had failed to appreciate and to consider several significant facts in making its decision. 428 U.S., at 77.

Although Roe allowed state regulation after the point of viability to protect the potential life of the fetus, the Court subsequently rejected attempts to regulate in this manner. In Colautti v. Franklin, 439 U. S. 379 (1979), the Court struck down a statute that governed the determination of viability. Id., at 390-397. In the process, we made clear that the trimester framework incorporated only one definition of viability "ours" as we forbade States from deciding that a certain objective indicator"``be it weeks of gestation or fetal weight or any other single factor"should govern the definition of viability. Id., at 389. In that same case, we also invalidated a regulation requiring a physician to use the abortion technique offering the best

chance for fetal survival when performing postviability abortions. See id., at 397-401; see also Thornburgh v. American Col- lege of Obstetricians and Gynecologists, supra, at 768-769 (invalidating a similar regulation). In Thornburgh, the Court struck down Pennsylvania's requirement that a second physician be present at postviability abortions to help preserve the health of the unborn child, on the ground that it did not incorporate a sufficient medical emergency exception. Id., at 769-771. Regulations governing the treatment of aborted fetuses have met a similar fate. In Akron, we invalidated a provision requiring physicians performing abortions to insure that the remains of
the unborn child are disposed of in a humane and sanitary manner. 46
U.S., at 451 (internal quotation marks omitted). Dissents in these cases expressed the view that the Court was expanding upon Roe in imposing ever greater restrictions on the States. See Thornbu- rgh v. American College of Obstetricians and Gynecologists, 476 U. S., at 783 (Burger, C. J., dissenting) (The extent to which the Court has departed from the limitations expressed in Roe is readily apparent); id., at 814 (White, J., dissenting) ([T]he majority indiscriminately strikes down statutory provisions that in no way contravene the right recognized in Roe). And, when confronted with State regulations of this type in past years, the Court has become increasingly more divided: the three most recent abortion cases have not commanded a Court opinion. See Ohio v. Akron Center for Reproductive Health, 497 U. S. 502 (1990); Hodgson v. Minnesota, 497 U. S. 417 (1990); Webster v. Reproductive Health Services, 492 U. S. 490 (1989).

The task of the Court of Appeals in the present case was obviously complicated by this confusion and uncertainty. Following Marks v. United States, 430 U. S. 188 (1977), it concluded that in light of Webster and Hodgson, the strict scrutiny standard enunciated in Roe was no longer applicable, and that the undue burden standard adopted by Justice O'Connor was the governing principle. This state of confusion and disagreement warrants reexamination of the fundamental right accorded to a woman's decision to abort a fetus in Roe, with its concomitant requirement that any state regulation of abortion survive strict scrutiny. See Payne v. Tennessee, 501 U. S. ---, ------- (1991) (slip op., at 17-20) (observing that reexamination of constitutional decisions is appropriate when those decisions have generated uncertainty and failed to provide clear guidance, because correction through legislative action is practically impossible (internal quotation marks omitted)); Garcia v. San Antonio Metropolitan Transit Authority, 469 U. S. 528, 546-547, 557 (1985).

We have held that a liberty interest protected under the Due Process Clause of the Fourteenth Amendment will be deemed fundamental if it is implicit in the concept of ordered liberty. Palko v. Connecticut, 302 U. S. 319, 325 (1937). Three years earlier, in Snyder v. Massachusetts, 291 U. S. 97 (1934), we referred to a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental. Id., at 105; see also Michael H. v. Gerald D., 491 U.S. 110, 122 (1989) (plurality opinion) (citing the language from Snyder). These expressions are admittedly not precise, but our decisions implementing this notion of fundamental rights do not afford any more elaborate basis on which to base such a classification.

In construing the phrase liberty incorporated in the Due Process Clause of the Fourteenth Amendment, we have recognized that its meaning extends beyond freedom from physical restraint. In Pierce v. Society of Sisters, 268 U. S. 510 (1925), we held that it included a parent's right to send a child to private school; in Meyer v. Nebraska, 262 U.S. 390 (1923), we held that it included a right to teach a foreign language in a parochial school. Building on these cases, we have held that that the term liberty includes a right to marry, Loving v. Virginia, 388 U. S. 1 (1967); a right to procreate,

Skinner v. Oklahoma ex rel. Williamson, 316 U. S. 535 (1942); and a right to use contraceptives. Griswold v. Connecticut, 381 U. S. 479 (1965); Eisenstadt v. Baird, 405 U. S. 438 (1972). But a reading of these opinions makes clear that they do not endorse any all-encompassing right of privacy.

In Roe v. Wade, the Court recognized a guarantee of personal privacy which is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. 410 U. S., at 152-153. We are now of the view that, in terming this right fundamental, the Court in Roe read the earlier opinions upon which it based its decision much too broadly. Unlike marriage, procreation and contra- ception, abortion involves the purposeful termi- nation of potential life. Harris v. McRae, 448 U. S. 297, 325 (1980). The abortion decision must therefore be recognized as sui generis, different in kind from the others that the Court has protected under the rubric of personal or family privacy and autonomy. Thornburgh v. American College of Obstetricians and Gynecologists, supra, at 792 (White, J., dissenting). One cannot ignore the fact that a woman is not isolated in her pregnancy, and that the decision to abort necessarily involves the destruction of a fetus. See Michael H. v. Gerald D., supra, at 124, n. 4 (To look at the act which is assertedly the subject of a liberty interest in isolation from its effect upon other people [is] like inquiring whether there is a liberty interest in firing a gun where the case at hand happens to involve its discharge into another person's body).

Nor do the historical traditions of the American people support the view that the right to terminate one's pregnancy is fundamental. The common law which we inherited from England made abortion after quickening an offense. At the time of the adoption of the Fourteenth Amendment, statutory prohibitions or restrictions on abortion were commonplace; in 1868, at least 28 of the then-37 States and 8 Territories had statutes banning or limiting abortion. J. Mohr, Abortion in America 200 (1978). By the turn of the century virtually every State had a law prohibiting or restricting abortion on its books. By the middle of the present century, a liberalization trend had set in. But 21 of the restrictive abortion laws in effect in 1868 were still in effect in 1973 when Roe was decided,and an overwhelming majority of the States prohibited abortion unless necessary to preserve the life or healthof the mother. Roe v. Wade, 410 U. S., at 139-140; id.,at 176-177, n. 2 (Rehnquist, J., dissenting). On this record, it can scarcely be said that any deeply rooted tradition of relatively unrestricted abortion in our history supported the classification of the right to abortion as fundamental under the Due Process Clause of the Fourteenth Amendment.

We think, therefore, both in view of this history and of our decided cases dealing with substantive liberty under the Due Process Clause, that the Court was mistaken in Roe when it classified a woman's decision to terminate her pregnancy as a
fundamental right that could be abridged only in a manner which withstood strict scrutiny. In so concluding, we repeat the observation made in Bowers v. Hardwick, 478 U. S. 186 (1986):
Nor are we inclined to take a more expansive view of our authority to discover new fundamental rights imbedded in the Due Pro- cess Clause. The Court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution. Id., at 194. We believe that the sort of constitutionally imposed abortion code of the type illustrated by our decisions following Roe is inconsistent with the notion of a Constitution cast in general terms, as ours is, and usually speaking in general principles, as ours does. Webster v. Reproductive Health Services, 492 U. S., at 518 (plurality opinion). The Court in Roe reached too far when it analogized the right to abort a fetus to the rights involved in Pierce, Meyer, Loving, and Griswold, and thereby deemed the right to abortion fundamental.

II

The joint opinion of Justices O'Connor, Kennedy, and Souter cannot bring itself to say that Roe was correct as an original matter, but the authors are of the view that the immediate question is not the soundness of Roe's resolution of the issue, but the precedential force that must be accorded to its holding. Ante, at 29. Instead of claiming that Roe was correct as a matter of original constitutional interpretation, the opinion therefore contains an elaborate discus- sion of stare decisis. This discussion of the principle of stare decisis appears to be almost entirely dicta, because the joint opinion does not apply that principle in dealing with Roe. Roe decided that a woman had a fundamental right to an abortion. The joint opinion rejects that view. Roe decided that abortion regulations were to be subjected to strict scrutiny and could be justified only in the light of compelling state interests. The joint opinion rejects that view. Ante, at 29-30; see Roe v. Wade, supra, at 162-164. Roe analyzed abortion regulation under a rigid trimester framework, a framework which has guided this Court's decisionmaking for 19 years. The joint opinion rejects that framework. Ante, at 31.

Stare decisis is defined in Black's Law Dictionary as meaning to abide by, or adhere to, decided cases. Black's Law Dictionary 1406 (6th ed. 1990). Whatever the central holding of Roe that is left after the joint opinion finishes dissecting it is surely not the result of that principle. While purporting to adhere to precedent, the joint opinion instead revises it. Roe continues to exist, but only in the way a storefront on a western movie set exists: a mere facade to give the illusion of reality. Decisions following Roe, such as Akron v. Akron Center for Reproductive Health, Inc., 462 U. S. 416 (1983), and Thornburgh v. American College of Obstetricians and Gynecologists, 476 U. S. 747 (1986), are frankly overruled in part under the undue burden standard expounded in the joint opinion. Ante, at 39-42.

In our view, authentic principles of stare decisis do not require that any portion of the reasoning in Roe be kept intact. Stare decisis is not . . . a universal, inexorable command, especially in cases involving the interpretation of the Federal Constitution. Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 405 (1932) (Brandeis, J., dissenting). Erroneous decisions in such constitutional cases are uniquely durable, because correction through legislative action, save for constitutional amendment, is impossible. It is therefore our duty to reconsider constitutional interpretations that depar[t] from a proper understanding of the Constitution. Garcia v. San Antonio Metropolitan Transit Authority, 469 U. S., at 557; see United States v. Scott, 437 U. S. 82, 101 (1978) (`[I]n cases involving the Federal Constitution, . . . [t]he Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function.' (quoting Burnet v. Coronado Oil & Gas Co., supra, at 406-408 (Brandeis, J., dissenting))); Smith v. Allwright, 321 U. S. 649, 665 (1944). Our constitutional watch does not cease merely because we have spoken before on an issue; when it becomes clear that a prior constitutional interpretation is unsound we are obliged to reexamine the question. See, e.g., West Virginia State Bd. of Education v. Barnette, 319 U. S. 624, 642 (1943); Erie R. Co. v. Tompkins, 304 U. S. 64, 74-78 (1938).

The joint opinion discusses several stare decisis factors which, it asserts, point toward retaining a portion of Roe. Two of these factors are that the main factual underpinning of Roe has remained the same, and that its doctrinal foundation is no weaker now than it was in 1973. Ante, at 14-18. Of course, what might be called the basic facts which gave rise to Roe have remained the

same"women become pregnant, there is a point somewhere, depending on medical technology, where a fetus becomes viable, and women give birth to children. But this is only to say that the same facts which gave rise to Roe will continue to give rise to similar cases. It is not a reason, in and of itself, why those cases must be decided in the same incorrect manner as was the first case to deal with the question. And surely there is no requirement, in considering whether to depart from stare decisis in a constitutional case, that a decision be more wrong now than it was at the time it was rendered. If that were true, the most outlandish constitutional decision could survive forever, based simply on the fact that it was no more outlandish later than it was when originally rendered.

Nor does the joint opinion faithfully follow this alleged requirement. The opinion frankly concludes that Roe and its progeny were wrong in failing to recognize that the State's interests in maternal health and in the protection of unborn human life exist throughout pregnancy. Ante, 29-31. But there is no indication that these components of Roe are any more incorrect at this juncture than they were at its inception.

The joint opinion also points to the reliance interests involved in this context in its effort to explain why precedent must be followed for precedent's sake. Certainly it is true that where reliance is truly at issue, as in the case of judicial decisions that have formed the basis for private decisions, [c]onsiderations in favor of stare decisis are at their acme. Payne v. Tennes- see, 501 U. S., at "" (slip op., at 18). But, as the joint opinion apparently agrees, ante, at 13-14, any traditional notion of reliance is not applicable here. The Court today cuts back on the protection afforded by Roe, and no one claims that this action defeats any reliance interest in the disavowed trimester framework. Similarly, reliance interests would not be diminished were the Court to go further and acknowledge the full error of Roe, as reproductive planning could take virtually immediate account of this action. Ante, at 14.

The joint opinion thus turns to what can only be described as an unconventional "and unconvincing" notion of reliance, a view based on the surmise that the availability of abortion since Roe has led to two decades of economic and social developments that would be undercut if the error of Roe were recognized. Ibid. The joint opinion's assertion of this fact is undeveloped and totally conclusory. In fact, one can not be sure to what economic and social developments the opinion is referring. Surely it is dubious to suggest that women have reached their places in society in reliance upon Roe, rather than as a result of their determination to obtain higher education and compete with men in the job market, and of society's increasing recognition of their ability to fill positions that were previously thought to be reserved only for men. Ibid.

In the end, having failed to put forth any evidence to prove any true reliance, the joint opinion's argument is based solely on generalized assertions about the national psyche, on a belief that the people of this country have grown accustomed to the Roe decision over the last 19 years and have ordered their thinking and living around it. Ibid. As an initial matter, one might inquire how the joint opinion can view the central holding of Roe as so deeply rooted in our constitutional culture, when it so casually uproots and disposes of that same decision's trimester framework. Furthermore, at various points in the past, the same could have been said about this Court's erroneous decisions that the Constitution allowed separate but equal treatment of minorities, see Plessy v. Ferguson, 163 U.S. 537 (1896), or that liberty under the Due Process Clause protected freedom of contract. See Adkins v. Children's Hospital of D. C., 261 U. S. 525 (1923); Lochner v. New York, 198 U. S. 45 (1905). The separate but equal doctrine lasted 58 years after Plessy, and Lochner's protection of contractual

freedom lasted 32 years. However, the simple fact that a generation or more had grown used to these major decisions did not prevent the Court from correcting its errors in those cases, nor should it prevent us from cor- rectly interpreting the Constitution here. See Brown v. Board of Education, 347 U. S. 483 (1954) (rejecting the separate but equal doctrine); West Coast Hotel Co. v. Parrish, 300 U. S. 379 (1937) (overruling Adkins v. Children's Hospital, supra, in upholding Washington's minimum wage law).

Apparently realizing that conventional stare decisis principles do not support its position, the joint opinion advances a belief that retaining a portion of Roe is necessary to protect the legitimacy of this Court. Ante, at 19-27. Because the Court must take care to render decisions grounded truly in principle, and not simply as political and social compromises, ante, at 23, the joint opinion properly declares it to be this Court's duty to ignore the public criticism and protest that may arise as a result of a decision. Few would quarrel with this statement, although it may be doubted that Members of this Court, holding their tenure as they do during constitutional good behavior, are at all likely to be intimidated by such public protests.

But the joint opinion goes on to state that when the Court resolve[s] the sort of intensely divisive controversy reflected in Roe and those rare, comparable cases, its decision is exempt from reconsideration under established principles of stare decisis in constitutional cases. Ante, at 24. This is so, the joint opinion contends, because in those intensely divisive cases the Court has call[ed] the contending sides of a national controversy to end their national division by accepting a common mandate rooted in the Constitution, and must therefore take special care not to be perceived as surrender[ing] to political pressure and continued opposition. Ante, at 24-25. This is a truly novel principle, one which is contrary to both the Court's histori- cal practice and to the Court's traditional willingness to tolerate criticism of its opinions. Under this principle, when the Court has ruled on a divisive issue, it is apparently prevented from overruling that decision for the sole reason that it was incorrect, unless opposition to the original decision has died away.

The first difficulty with this principle lies in its assumption that cases which are intensely divisive can be readily distinguished from those that are not. The question of whether a particular issue is intensely divisive enough to qualify for special protection is entirely subjective and dependent on the individual assumptions of the members of this Court. In addition, because the Court's duty is to ignore public opinion and criticism on issues that come before it, its members are in perhaps the worst position to judge whether a decision divides the Nation deeply enough to justify such uncommon protection. Although many of the Court's decisions divide the populace to a large degree, we have not previous- ly on that account shied away from applying normal rules of stare decisis when urged to reconsider earlier decisions. Over the past 21 years, for example, the Court has overruled in whole or in part 34 of its previous constitutional decisions. See Payne v. Tennessee, supra, at "", and n. 1 (slip op., at 18-19, and n. 1) (listing cases).

The joint opinion picks out and discusses two prior Court rulings that it believes are of the intensely divisive variety, and concludes that they are of comparable dimension to Roe. Ante, at 19-22 (discussing Lochner v. New York, supra, and Plessy v. Ferguson, supra). It appears to us very odd indeed that the joint opinion chooses as benchmarks two cases in which the Court chose not to adhere to erroneous constitutional precedent, but instead enhanced its stature by acknowledging and correcting its error, apparently in violation of the joint opinion's legitimacy principle. See West Coast

Hotel Co. v. Parrish, supra; Brown v. Board of Education, supra. One might also wonder how it is that the joint opinion puts these, and not others, in the intensely divisive category, and how it assumes that these are the only two lines of cases of comparable dimension to Roe. There is no reason to think that either Plessy or Lochner produced the sort of public protest when they were decided that Roe did. There were undoubtedly large segments of the bench and bar who agreed with the dissenting views in those cases, but surely that cannot be what the Court means when it uses the term intensely divisive, or many other cases would have to be added to the list. In terms of public protest, however, Roe, so far as we know, was unique. But just as the Court should not respond to that sort of protest by retreating from the decision simply to allay the concerns of the protesters, it should likewise not respond by determining to adhere to the decision at all costs lest it seem to be retreating under fire. Public protests should not alter the normal application of stare decisis, lest perfectly lawful protest activity be penalized by the Court itself.

Taking the joint opinion on its own terms, we doubt that its distinction between Roe, on the one hand, and Plessy and Lochner, on the other, withstands analysis. The joint opinion acknowledges that the Court improved its stature by overruling Plessy in Brown on a deeply divisive issue. And our decision in West Coast Hotel, which overruled Adkins v. Children's Hospital, supra, and Lochner, was rendered at a time when Congress was considering President Franklin Roosevelt's proposal to reorganize this Court and enable him to name six additional Justices in the event that any member of the Court over the age of 70 did not elect to retire. It is difficult to imagine a situation in which the Court would face more intense opposition to a prior ruling than it did at that time, and, under the general principle proclaimed in the joint opinion, the Court seemingly should have responded to this opposition by stubbornly refusing to reexamine the Lochner rationale, lest it lose legitimacy by appearing to overrule under fire. Ante, at 25.

The joint opinion agrees that the Court's stature would have been seriously damaged if in Brown and West Coast Hotel it had dug in its heels and refused to apply normal principles of stare decisis to the earlier decisions. But the opinion contends that the Court was entitled to overrule Plessy and Lochner in those cases, despite the existence of opposition to the original decisions, only because both the Nation and the Court had learned new lessons in the interim. This is at best a feebly supported, post hoc rationalization for those decisions.

For example, the opinion asserts that the Court could justifiably overrule its decision in Lochner only because the Depression had convinced most people that constitutional protection of contractual freedom contributed to an economy that failed to protect the welfare of all. Ante, at 19. Surely the joint opinion does not mean to suggest that people saw this Court's failure to uphold minimum wage statutes as the cause of the Great Depression- In any event, the Lochner Court did not base its rule upon the policy judgment that an unregulated market was fundamental to a stable economy; it simply believed, erroneously, that liberty under the Due Process Clause protected the right to make a contract. Lochner v. New York, 198 U. S., at 53. Nor is it the case that the people of this Nation only discovered the dangers of extreme laissez faire economics because of the Depression. State laws regulating maximum hours and minimum wages were in existence well before that time. A Utah statute of that sort enacted in 1896 was involved in our decision in Holden v. Hardy, 169 U. S. 366 (1898), and other states followed suit shortly afterwards. See, e.g., Muller v. Oregon, 208 U.S. 412 (1908); Bunting v. Oregon, 243 U.S. 426 (1917). These statutes were indeed enacted because of a belief on the part of their sponsors that freedom of contract did not protect the welfare of workers, demonstrating that that belief manifested itself more than a generation before the

Great Depression. Whether most people had come to share it in the hard times of the 1930's is, insofar as anything the joint opinion advances, entirely speculative. The crucial failing at that time was not that workers were not paid a fair wage, but that there was no work available at any wage.

When the Court finally recognized its error in West Coast Hotel, it did not engage in the post hoc rationalization that the joint opinion attributes to it today; it did not state that Lochner had been based on an economic view that had fallen into disfavor, and that it therefore should be overruled. Chief Justice Hughes in his opinion for the Court simply recognized what Justice Holmes had previously recognized in his Lochner dissent, that [t]he Constitution does not speak of freedom of contract. West Coast Hotel Co. v. Parrish, 300 U.S., at 391; Lochner v. New York, supra, at 75 (Holmes, J., dissenting) ([A] Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of laissez faire). Although the Court did acknowledge in the last paragraph of its opinion the state of affairs during the then-current Depression, the theme of the opinion is that the Court had been mistaken as a matter of constitutional law when it embraced freedom of contract 32 years previously.

The joint opinion also agrees that the Court acted properly in rejecting the doctrine of separate but equal in Brown. In fact, the opinion lauds Brown in comparing it to Roe. Ante, at 25. This is strange, in that under the opinion's legitimacy principle the Court would seemingly have been forced to adhere to its erroneous decision in Plessy because of its intensely divisive character. To us, adherence to Roe today under the guise of legitimacy would seem to resemble more closely adherence to Plessy on the same ground. Fortunately, the Court did not choose that option in Brown, and instead frankly repudiated Plessy. The joint opinion concludes that such repudiation was justified only because of newly discovered evidence that segregation had the effect of treating one race as inferior to another. But it can hardly be argued that this was not urged upon those who decided Plessy, as Justice Harlan observed in his dissent that the law at issue puts the brand of servitude and degradation upon a large class of our fellow- citizens, our equals before the law. Plessy v. Ferguson, 163 U. S., at 562 (Harlan, J., dissenting). It is clear that the same arguments made before the Court in Brown were made in Plessy as well. The Court in Brown simply recognized, as Justice Harlan had recognized beforehand, that the Fourteenth Amendment does not permit racial segregation. The rule of Brown is not tied to popular opinion about the evils of segregation; it is a judgment that the Equal Protection Clause does not permit racial segregation, no matter whether the public might come to believe that it is beneficial. On that ground it stands, and on that ground alone the Court was justified in properly concluding that the Plessy Court had erred.

There is also a suggestion in the joint opinion that the propriety of overruling a divisive decision depends in part on whether most people would now agree that it should be overruled. Either the demise of opposition or its progression to substantial popular agreement apparently is required to allow the Court to reconsider a divisive decision. How such agreement would be ascertained, short of a public opinion poll, the joint opinion does not say. But surely even the suggestion is totally at war with the idea of legitimacy in whose name it is invoked. The Judicial Branch derives its legitimacy, not from following public opinion, but from deciding by its best lights whether legislative enactments of the popular branches of Government comport with the Constitution. The doctrine of stare decisis is an adjunct of this duty, and should be no more subject to the vagaries of public opinion than is the basic judicial task.

There are other reasons why the joint opinion's discussion of legitimacy is unconvincing as

well. In assuming that the Court is perceived as surrender[ing] to political pressure when it overrules a controversial decision, ante, at 25, the joint opinion forgets that there are two sides to any controversy. The joint opinion asserts that, in order to protect its legitimacy, the Court must refrain from overruling a controversial decision lest it be viewed as favoring those who oppose the decision. But a decision to adhere to prior precedent is subject to the same criticism, for in such a case one can easily argue that the Court is responding to those who have demonstrated in favor of the original decision. The decision in Roe has engendered large demonstrations, including repeated marches on this Court and on Congress, both in opposition to and in support of that opinion. A decision either way on Roe can therefore be perceived as favoring one group or the other. But this perceived dilemma arises only if one assumes, as the joint opinion does, that the Court should make its decisions with a view toward speculative public perceptions. If one assumes instead, as the Court surely did in both Brown and West Coast Hotel, that the Court's legitimacy is enhanced by faithful interpretion of the Constitution irrespective of public opposition, such self-engendered difficulties may be put to one side.

Roe is not this Court's only decision to generate conflict. Our decisions in some recent capital cases, and in Bowers v. Hardwick, 478 U. S. 186 (1986), have also engendered demonstrations in opposition. The joint opinion's message to such protesters appears to be that they must cease their activities in order to serve their cause, because their protests will only cement in place a decision which by normal standards of stare decisis should be reconsidered. Nearly a century ago, Justice David J. Brewer of this Court, in an article discussing criticism of its decisions, observed that many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all. Justice Brewer on The Nation's Anchor, 57 Albany L.J. 166, 169 (1898). This was good advice to the Court then, as it is today. Strong and often misguided criticism of a decision should not render the decision immune from reconsideration, lest a fetish for legitimacy penalize freedom of expression.

The end result of the joint opinion's paeans of praise for legitimacy is the enunciation of a brand new standard for evaluating state regulation of a woman's right to abortion "the undue burden standard. As indicated above, Roe v. Wade adopted a fundamental right standard under which state regulations could survive only if they met the requirement of strict scrutiny. While we disagree with that standard, it at least had a recognized basis in constitutional law at the time Roe was decided. The same cannot be said for the undue burden standard, which is created largely out of whole cloth by the authors of the joint opinion. It is a standard which even today does not command the support of a majority of this Court. And it will not, we believe, result in the sort of simple limitation, easily applied, which the joint opinion anticipates. Ante, at 13. In sum, it is a standard which is not built to last.

In evaluating abortion regulations under that standard, judges will have to decide whether they place a substantial obstacle in the path of a woman seeking an abortion. Ante, at 34. In that this standard is based even more on a judge's subjective determinations than was the trimester framework, the standard will do nothing to prevent judges from roaming at large in the constitutional field guided only by their personal views. Griswold v. Connecticut, 381 U. S., at 502 (Harlan, J., concurring in judgment). Because the undue burden standard is plucked from nowhere, the question of what is a substantial obstacle to abortion will undoubtedly engender a variety of conflicting views. For example, in the very matter before us now, the authors of the joint opinion would uphold Pennsylvania's 24-hour waiting period, concluding that a "particular burden" on some women is not a

substantial obstacle. Ante, at 44. But the authors would at the same time strike down Pennsylvania's spousal notice provision, after finding that in a large fraction of cases the provision will be a substantial obstacle. Ante, at 53. And, while the authors conclude that the informed consent provisions do not constitute an undue burden, Justice Stevens would hold that they do. Ante, at 9-11.

Furthermore, while striking down the spousal notice regulation, the joint opinion would uphold a parental consent restriction that certainly places very substantial obstacles in the path of a minor's abortion choice. The joint opinion is forthright in admitting that it draws this distinction based on a policy judgment that parents will have the best interests of their children at heart, while the same is not necessarily true of husbands as to their wives. Ante, at 53. This may or may not be a correct judgment, but it is quintessentially a legislative one. The undue burden inquiry does not in any way supply the distinction between parental consent and spousal consent which the joint opinion adopts. Despite the efforts of the joint opinion, the undue burden standard presents nothing more workable than the trimester framework which it discards today. Under the guise of the Constitution, this Court will still impart its own preferences on the States in the form of a complex abortion code.

The sum of the joint opinion's labors in the name of stare decisis and legitimacy is this: Roe v. Wade stands as a sort of judicial Potemkin Village, which may be pointed out to passers by as a monument to the importance of adhering to prece- dent. But behind the facade, an entirely new method of analysis, without any roots in constitutional law, is imported to decide the constitutionality of state laws regulating abortion. Neither stare decisis nor legitimacy are truly served by such an effort.

We have stated above our belief that the Constitution does not subject state abortion regulations to heightened scrutiny. Accordingly, we think that the correct analysis is that set forth by the plurality opinion in Webster. 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. Williamson v. Lee Optical of Okla., Inc., 348 U. S. 483, 491 (1955); cf. Stanley v. Illinois, 405 U. S. 645, 651-653 (1972). With this rule in mind, we examine each of the challenged provisions.

III

A

Section 3205 of the Act imposes certain requirements related to the informed consent of a woman seeking an abortion. 18 Pa. Cons. Stat. 3205 (1990). Section 3205(a)(1) requires that the referring or performing physician must inform a woman contemplating an abortion of (i) the nature of the procedure, and the risks and alternatives that a reasonable patient would find material; (ii) the fetus' probable gestational age; and (iii) the medical risks involved in carrying her pregnancy to term. Section 3205(a)(2) requires a physician or a nonphysician counselor to inform the woman that (i) the state health department publishes free materials describing the fetus at different stages and listing abortion alternatives; (ii) medical assistance benefits may be available for prenatal, childbirth, and neonatal care; and (iii) the child's father is liable for child support. The Act also imposes a 24-hour waiting period between the time that the woman receives the required information and the time that the physician is allowed to perform the abortion. See Appendix, ante, at 61-63.

This Court has held that it is certainly within the province of the States to require a woman's

voluntary and informed consent to an abortion. See Thornburgh v. American College of Obstetricians and Gynecologists, 476 U. S., at 760. Here, Pennsylvania seeks to further its legitimate interest in obtaining informed consent by ensuring that each woman is aware not only of the reasons for having an abortion, but also of the risks associated with an abortion and the availability of assistance that might make the alternative of normal childbirth more attractive than it might otherwise appear. Id., at 798-799 (White, J., dissenting).

We conclude that this provision of the statute is rationally related to the State's interest in assuring thata woman's consent to an abortion be a fully informed decision.

Section 3205(a)(1) requires a physician to disclose certain information about the abortion procedure and its risks and alternatives. This requirement is certainly no large burden, as the Court of Appeals found that the record shows that the clinics, without exception, insist on providing this information to women before an abortion is performed. 947 F. 2d, at 703. We are of the view that this information clearly is related to maternal health and to the State's legitimate purpose in requiring informed consent. Akron v. Akron Center for Reproductive Health, 462 U.S., at 446. An accurate description of the gestational age of the fetus and of the risks involved in carrying a child to term helps to further both those interests and the State's legitimate interest in unborn human life. See id., at 445-446, n. 37 (required disclosure of gestational age of the fetus certainly is not objectionable). Although petitioners contend that it is unreasonable for the State to require that a physician, as opposed to a nonphysician counsel- or, disclose this information, we agree with the Court of Appeals that a State may rationally decide that physicians are better qualified than counselors to impart this information and answer questions about the medical aspects of the available alternatives. 947 F. 2d, at 704.

Section 3205(a)(2) compels the disclosure, by a physician or a counselor, of information concerning the availability of paternal child support and state-funded alternatives if the woman decides to proceed with her pregnancy. Here again, the Court of Appeals observed that the record indicates that most clinics already require that a counselor consult in person with the woman about alternatives to abortion before the abortion is performed. Id., at 704-705. And petitioners do not claim that the information required to be disclosed by statute is in any way false or inaccurate; indeed, the Court of Appeals found it to be relevant, accurate, and non-inflammatory. Id., at 705. We conclude that this required presentation of balanced information is rationally related to the State's legitimate interest in ensuring that the woman's consent is truly informed, Thornburgh v. American College of Obstetricians and Gynecologists, 476 U. S., at 830 (O'Connor, J., dissenting), and in addition furthers the State's interest in preserving unborn life. That the information might create some uncertainty and persuade some women to forgo abortions does not lead to the conclusion that the Constitution forbids the provision of such information. Indeed, it only demonstrates that this information might very well make a difference, and that it is therefore relevant to a woman's informed choice. Cf. id., at 801 (White, J., dissenting) ([T]he ostensible objective of Roe v. Wade is not maximizing the number of abortions, but maximizing choice). We acknowledge that in Thornburgh this Court struck down informed consent requirements similar to the ones at issue here. See id., at 760-764. It is clear, however, that while the detailed framework of Roe led to the Court's invalidation of those informational requirements, they would have been sustained under any traditional standard of judicial review, . . . or for any other surgical procedure except abortion. Webster v. Reproductive Health Services, 492 U. S., at 517 (plurality opinion) (citing Thornburgh v. American College of Obstetricians and Gynecologists, 476 U. S., at 802 (White, J., dissenting); id., at

783 (Burger, C. J., dissenting)). In light of our rejection of Roe's fundamental right approach to this subject, we do not regard Thornburgh as controlling.

For the same reason, we do not feel bound to follow this Court's previous holding that a State's 24-hour mandatory waiting period is unconstitutional. See Akron v. Akron Center for Reproductive Health, 462 U. S., at 449-451. Petitioners are correct that such a provision will result in delays for some women that might not otherwise exist, therefore placing a burden on their liberty. But the provision in no way prohibits abortions, and the informed consent and waiting period requirements do not apply in the case of a medical emergency. See 18 Pa. Cons. Stat. 3205(a), (b) (1990). We are of the view that, in providing time for reflection and reconsideration, the waiting period helps ensure that a woman's decision to abort is a well-considered one, and reasonably furthers the State's legitimate interest in maternal health and in the unborn life of the fetus. It is surely a small cost to impose to ensure that the woman's decision is well considered in light of its certain and irreparable consequences on fetal life, and the possible effects on her own. Id., at 474 (O'Connor, J., dissenting).

B

In addition to providing her own informed consent, before an unemancipated woman under the age of 18 may obtain an abortion she must either furnish the consent of one of her parents, or must opt for the judicial procedure that allows her to bypass the consent requirement. Under the judicial bypass option, a minor can obtain an abortion if a state court finds that she is capable of giving her informed consent and has indeed given such consent, or determines that an abortion is in her best interests. Records of these court proceedings are kept confidential. The Act directs the state trial court to render a decision within three days of the woman's application, and the entire procedure, including appeal to Pennsylvania Superior Court, is to last no longer than eight business days. The parental consent requirement does not apply in the case of a medical emergency. 18 Pa. Cons. Stat. 3206 (1990). See Appendix, ante, at 64-65.

This provision is entirely consistent with this Court's previous decisions involving parental consent requirements. See Planned Parenthood Association of Kansas City, Mo., Inc. v. Ashcroft, 462 U. S. 476 (1983) (upholding parental consent requirement with a similar judicial bypass option); Akron v. Akron Center for Reproductive Health, supra, at 439-440 (approving of parental consent statutes that include a judicial bypass option allowing a pregnant minor to demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interests); Bellotti v. Baird, 443 U. S. 622 (1979).