



Written by [Laurence M. Vance](#) on June 2, 2022

7 Better Reasons *Roe v. Wade* Should Be Overturned

The leaked [initial draft](#) majority opinion written by Supreme Court Justice Samuel Alito that would overturn [Roe v. Wade](#) (1973) has beltway conservatives salivating. And rightly so.

Writes Alito:

We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely — the Due Process Clause of the Fourteenth Amendment.

Roe was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division. It is time to heed the Constitution and return the issue of abortion to the people's elected representatives.



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(*Casey* reaffirmed the *Roe* decision and further prohibited states from imposing an “undue burden” on a woman seeking an abortion.)

But do these conservatives really understand why *Roe v. Wade* should be overturned?

In a [commentary](#) written for the Daily Signal (“7 Reasons *Roe v. Wade* Should Be Overturned”), published by the Heritage Foundation, the well-known conservative think tank, Bruce Ashford actually gives us one reason why *Roe v. Wade* should be overturned — it harms society — and seven ways that abortion has harmed society:

1. Abortion kills the baby.
2. Abortion abuses women.
3. Abortion hurts men.
4. Abortion harms marriages and families.
5. Abortion undermines justice and equality.
6. Abortion undermines our nation's system of checks and balances.



7. Abortion minimizes society's mediating institutions.

Roe v. Wade and abortion have certainly harmed society, but these are not reasons to address abortion at the federal level.

If beltway conservatives really want to make the case for the overturning of *Roe v. Wade*, then there are better reasons why, and they are reasons that should appeal to not only conservatives, but to liberals and libertarians as well. Here, then, are seven interrelated things conservatives should be focusing on.

1. *The Constitution*. Not only does the Constitution nowhere mention abortion, there is nothing in the Constitution that could possibly be used to even suggest that it provides a federal right to abortion. Even the right to privacy, which the majority of Supreme Court justices in the *Roe v. Wade* case appealed to in order to manufacture out of whole cloth a federal right to abortion, is not mentioned in the Constitution.

2. *The Tenth Amendment*. The Tenth Amendment reserves to the states those powers not delegated to the national government: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Although the issue of abortion is reserved to the states even without the Tenth Amendment (because it is not mentioned in the Constitution), the Tenth Amendment makes it doubly clear that all powers not delegated to the federal government (and this includes the power to regulate abortion) are reserved to the states.

3. *The Federalist*. The essays by Hamilton, Madison, and Jay that make up *The Federalist* have always been recognized as an authoritative commentary on and explanation of the Constitution. One of the most important essays is No. 45, written by James Madison:

The powers delegated by the proposed Constitution to the Federal Government, are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.

It is inconceivable that the Founders of the Republic and the Framers of the Constitution would have intended or implied a federal right to abortion in the Constitution.

4. *Federalism*. Our system of government is a federal system in which a limited number of powers have been delegated to a central government. The power to have anything to do with abortion is not one of them. Therefore, there is no federal solution to the abortion question. And as former member of Congress Ron Paul has well said: "The federalization of abortion law is based not on constitutional principles, but rather on a social and political construct created out of thin air by the *Roe* court." But this works both ways. It would be just as wrong for the federal government to prohibit abortion. Conservatives who think otherwise are absolutely clueless about the nature and structure of the government of the United States.

5. *Abortion is a crime*. It is not birth control, it is not choice, it is not reproductive freedom, it is not a constitutional right, it is not family planning, and it is not health care. The Constitution mentions only



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three crimes: treason, piracy, and counterfeiting. Therefore, abortion should never be considered a federal crime or subject to federal rules and regulations. And because abortion is a crime, it is subject to the police power of the states just like the crimes of murder, rape, manslaughter, armed robbery, and running a red light. So, because the states have different criteria as to what constitutes a crime and what criminal penalties should be, abortion laws will vary from state to state.

6. *States' Rights*. Before the *Roe v. Wade* decision, abortion was strictly a matter of state law. Thirty states prohibited abortion without exception; 16 states banned abortion except in the case of rape, incest, a threat to the life or health of the mother, and/or fetal impairment; and four states allowed abortions in nearly all cases before the fetus was viable. The overturning of *Roe v. Wade* would merely return the abortion issue to the states, where it should have never left. It won't end abortion in America or in and of itself change a single abortion law in any state.

7. *Roe v. Wade itself*. The case should have never been heard by the Supreme Court in the first place. In 1970, Jane Roe (Norma McCorvey), a resident of Texas, wanted an abortion, but state law forbade the practice unless it was necessary to save the life of the mother. A [lawsuit](#) was filed on her behalf in federal district court against Henry Wade (the Dallas County district attorney). The court unanimously ruled in Roe's favor, and declared the Texas abortion law to be unconstitutional because — by the most torturous logic — it violated the Due Process Clause of the Fourteenth Amendment and deprived women of their rights secured by the Ninth Amendment to choose whether to have children. The case was then appealed to the Supreme Court. Not only should the case have never been heard by the Supreme Court, it should never have been heard by the federal district court.

Beltway conservatives will need to make better arguments for the overturning of *Roe v. Wade* than how it and abortion have harmed society.



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