



Written by [Selwyn Duke](#) on July 2, 2022

Roe Woe: Manchin and Collins Violate Their Oaths by Stressing Un-American *Stare Decisis*

In the wake of *Roe* being aborted, some liberal politicians, such as senators Joe Manchin (D-W.Va.) and Susan Collins (R-Maine), are crying foul because they claim that SCOTUS justices Brett Kavanaugh and Neil Gorsuch deceived them over *stare decisis* (respect for precedent) during confirmation hearings. What's unsaid is that *stare decisis* is itself a deception. In fact, our Founders would be aghast at the standard. Why? It's simple:



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If a precedent clearly conforms to the Constitution, then regard for *stare decisis* is unnecessary for a precedent-aligned ruling; all a justice need do is reference the Constitution and he'll vote incidentally in accordance with the precedent.

If the precedent doesn't conform to the Constitution, it is then *illegal* and should be overturned, which a justice will vote to do if he, again, references the Constitution.

In other words, exalting *stare decisis* serves no legitimate purpose. The people doing so are generally individuals who dislike the Constitution's dictates, but know they could never amend the document (get the people's consent) in accordance with their wishes. So they instead uphold this notion that convenient "precedent" — i.e., the will of a handful of judges — should supersede the supreme law of the land, the Constitution. It's no wonder Justice Clarence Thomas [stated](#) last month, "I always say that when someone uses *stare decisis*, that means they're out of arguments."

But here's what hasn't been said: In complaining they were deceived by Gorsuch and Kavanaugh, Manchin and Collins are in glass houses with millimeter-thick walls.

For they are violating *their* oaths.

Upon assuming office, the senators took an oath to uphold the Constitution.

They did *not* take an oath to uphold precedent.

Yet when they make adherence to *stare decisis* a prerequisite for SCOTUS confirmation, they're seeking to ensure that their chosen justices will place precedent before the Constitution. They are thus *violating their oath of office by proxy*.

(And, of course, our politicians routinely violate their oaths directly by supporting unconstitutional legislation.)

In reality, consulting precedent is only necessary for a judge if he's sincerely unsure of what a constitutional provision dictates in a given case and wishes to benefit from past wisdom; in such an event, however, precedent is merely part of historical analysis and study, not a constraining stricture.

As for the near deification of precedent called *stare decisis*, it actually is a con (and some of its proponents are no doubt conning themselves; i.e., rationalizing). We'll hear that *Roe* was unassailable



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“precedent” because it had been in place for 49 years, even though not having *Roe* and leaving abortion to the states was precedent for the *better part of 200 years before then*. What’s more, *Plessy v. Ferguson* (separate but equal opinion) was “precedent” for 58 years until *Brown v. Board of Education*. Should it have been respected and kept in place, senators Manchin and Collins?

It’s all the more laughable when considered thus: We can have a precedent such as marriage being a state matter for more than 200 years. Then, five long-in-the-tooth, black-robed lawyer zealots get caught up in sexual fashions, get into their heads that they should impose some perceived good, and completely violate this standard (i.e., [Obergefell v. Hodges](#), 2015). And we’re supposed to respect their newly minted precedent over what preceded it...why?

The truth is that the Court has reversed its own precedents 145 times. So whence comes this regard for *stare decisis*?

Well, the Left wouldn’t have valued precedent ages ago because, with court rulings having been more “traditionalist,” it wouldn’t have served their ends. Now, after years of judicial activism having delivered an arsenal of decisions facilitating their agenda, we hear, “Oh, no! You can’t touch these judicial opinions. *Stare decisis* today, *stare decisis* tomorrow, *stare decisis* forever!” Yeah? Tell it to the judge.

In the final analysis, liberal senators will sanctimoniously give SCOTUS nominees the third degree about whether they as justices would uphold *stare decisis*, as if it’s some sacred legal principle. But the onus belongs on them. They’re demanding that judges become proxies for their constitutional trespass. This is shameful, and it alone should disqualify them from office.

Of course, politicians also like judicial activism on hot-button issues because they can then wash their hands of the matter and say “That’s it — the courts have ruled!” These politicians consequently won’t have to take a stand on the controversial issues and risk increased election-time voter ire.

But with *Roe* no mo’, Manchin now may end up with a bill banning abortion on his desk. He’ll then have to sign it and incur the wrath of the Party of Death (formerly the Democrats), or veto it and explain to West Virginians why he’s governing like a Californian. But, hey, maybe he can just point to precedent — there have been, after all, plenty of phony politicians before him.

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