

We don't need to go there again

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If news of the anti-abortion machinations in South Dakota brought on that sinking, "here we go again" feeling, you're not alone. Like you, I believe there's little to be gained from another round in America's abortion wars.

True, in theory, the arrival of two new conservative justices on the United States Supreme Court creates an opportunity for abortion opponents to change constitutional law. But a change in court personnel says nothing about whether it's a good time for this country to reconsider the rightness or wrongness of abortion.

Fact is, there's nothing new to say. So what's the point?

The South Dakota legislature has raised the specter of another culture clash by passing a bill, signed into law by the governor, that criminalizes abortions not justified to save a pregnant woman's life. (Rape victims' doctors would be permitted, apparently, to prescribe emergency contraception -- the "morning after pill" -- so long as they did so before a pregnancy could be medically confirmed.)

As national law now stands, the statute is flatly unconstitutional.

Lawmakers in South Dakota know this. But they believe they have good grounds to challenge precedent. They want, in the language of the state House of Representatives Bill 1215, "to fully protect the rights, interests, and health of the pregnant mother, the rights, interest, and life of her unborn child, and the mother's fundamental natural intrinsic right to a relationship with her child."

Republican state Rep. Roger Hunt introduced the bill and he says that from the moment of conception, "states' rights" protected by the 10th Amendment constitutionally trump "women's rights" protected by the 14th Amendment. States must be permitted to enact laws that ban abortions, he argues.

This assertion of "states' rights" can stand only if the high court turns its back on 33 years of abortion jurisprudence, including *Roe vs. Wade* (1973) and *Planned Parenthood vs. Casey* (the 1992 decision in which Justice Sandra Day O'Connor pronounced that states may not enact statutes that "unduly burden" a woman's right to choose.)

Beyond *Roe* and *Casey*, more than a dozen other Supreme Court cases, including the 2000 *Stenberg vs. Carhart* decision invalidating Nebraska's "partial birth" abortion ban, stand in the way of the South Dakota statute.

I don't see the case for putting the country through a bound-to-be-bitter rehash of the law and ethics of abortion. Anyone who has followed the issue at all knows the perspectives and supporting considerations on every side -- women's rights vs. states' rights, life vs. choice, abortion vs. adoption, gender equality vs. gender subordination, poor women's safe access vs. poor women's dangerous back-alley alternatives, and so on. Even the high school and college groups I address seem to know most of the competing arguments before my lectures begin.

South Dakota lawmakers argue that medical and scientific discoveries since *Roe vs. Wade* warrant the high court's reconsideration of the case. According to Hunt's bill, life "begins at the time of conception, a conclusion confirmed by scientific advances since the 1973 decision of *Roe vs. Wade*, including the fact that each human being is totally unique immediately at fertilization."

Factual discoveries are relevant to law and can have bottom-line moral and ethical relevance, too. So South Dakota's claim of novel discoveries seemingly demands the attention of moralists as well as jurists.

But in this case the novelty claim is only a strategy. Objective scientific discoveries are not prompting a reconsideration of *Roe* -- the politics and personal values of South Dakotans who disagree with *Roe* are the real driving force.

Contrary to the assertions of Hunt and a committee with a pro-life majority appointed by his state to study the issue, there are no major, new, proven medical discoveries for the court to consider.

The "science" that links abortion to an increased risk of cancer, for instance, is utterly unproven. And as for psychological and social harm, states seeking abortion restrictions have continuously educated the federal courts about the credible health and welfare effects of abortion -- much as health care providers have continuously educated the courts about the credible health and welfare consequences of unwanted pregnancy and childbirth.

The Supreme Court has always factored updated considerations of harms associated with abortion into its determination of abortion rights. Abortion law is not stuck in the 1970s.

Oddly, South Dakota lawmakers base the case for legal reconsideration of Roe in part on the supposedly new discovery that from the moment of conception a unique human entity with its own DNA exists. Great leaps in genetic understanding have indeed occurred in the last dozen years, thanks to the successes of the Human Genome Project.

But the genetic distinctiveness of each human being is hardly new information, unknown to the Supreme Court at the time of Roe. Justice Harry Blackmun, who wrote the majority opinion in Roe, acknowledged that a woman is not "isolated" in her pregnancy.

His wording may have been a bit opaque, but he knew that a pregnant woman carries a developing, distinct human entity -- a fact of life that, as a curious young schoolgirl way back in the 1960s, I learned from books readily available in the public library and on my family's shelf of encyclopedias.

So what's the better set of laws, the one we've got or the one we could have if the court reverses more than three decades of legal precedent? I vote for the one we've got, for the same reasons I supported it 10, 20 and 30 years ago.

Roe vs. Wade represents a necessary compromise in our society, because people reach different conclusions when they conscientiously balance the interest in women's health and welfare against the interest in protecting earliest beginnings of human life. It's telling that many who morally oppose abortion agree with the "pro-choice" perspective that justice and the Constitution require allowing individual women and their doctors the freedom to decide whether a particular pregnancy ought to be brought to term.

In a world of gender inequality, rape, incest, uncertain adoption options for minority infants, inadequate sex education, contraceptive failure and expense, along with unmet poverty and mental health needs, I see it that way, too.

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