

Overlap Between Supreme Court Justices and Anti-Choice Talking Points During *Dobbs v. Jackson Women’s Health Organization* Arguments

Throughout oral arguments in *Dobbs v. Jackson Women’s Health Organization*, several U.S. Supreme Court justices parroted inaccurate and intentionally inflammatory talking points about abortion spread by anti-choice groups. The case directly challenges *Roe v. Wade*, and there is no path for the Court to uphold Mississippi’s 15-week abortion ban without overturning *Roe*.

Below are key areas of overlap that expose the close ties between the anti-choice movement’s rhetoric and statements by the Court’s anti-choice supermajority.

Quote from Justices	Anti-Choice Rhetoric
False and Misleading Claims About Viability and Fetal “Personhood”	
<p>Context & Debunk: Courts have consistently applied the core holding of <i>Roe v. Wade</i>—that states cannot ban abortion prior to viability—for nearly fifty years. Anti-choice claims about “modern science,” fetal development, and viability are false and misleading and distract from the anti-choice movement’s agenda to outlaw <i>all</i> abortion care. Arguments supporting efforts to lock into law ideological language defining when life begins (fetal “personhood”) expose the movement’s extremism, as accepting such arguments would lead to bans on virtually all abortion care and other broad-ranging implications, including potentially limiting access to birth control and IVF.</p>	
<ul style="list-style-type: none"> → Justice Samuel Alito: “Viability is dependent on medical technology and medical practice. It has changed. It may continue to change.” → Justice Alito: “Are there secular philosophers and bioethicists who take the position that the rights of personhood begin at conception or at some point other than viability?” → Justice Alito: “There are those who say that the rights of personhood should be considered to have taken hold at a point when the fetus acquires certain independent characteristics.” 	<ul style="list-style-type: none"> ✗ Anti-choice extremist group Susan B. Anthony List (SBA List) claimed that viability was a “completely arbitrary standard” that “changed over time.” ✗ Anti-choice extremist and #StopTheSteal promoter Abby Johnson baselessly claimed that “95% of biologists believe life begins at conception.” ✗ Anti-choice extremist group Live Action amplified anti-choice legal scholars who attacked the viability rule as “inconsistent” and advocated for so-called fetal “personhood.”
Bad Faith Comparisons to Other Countries’ Laws	
<p>Context & Debunk: Bad faith comparisons between U.S. abortion laws and those of other countries ignore the reality that overturning <i>Roe</i> would push the United States. out of alignment with international norms among democratic countries. When discussing European laws to make extreme anti-choice policies appear palatable, activists intentionally exclude critical context about countries’ larger healthcare systems, which ensure greater access to quality reproductive healthcare, including abortion care.</p>	

<p>→ Chief Justice John Roberts: “When you get to the viability standard, we share that standard with the People’s Republic of China and North Korea.”</p>	<ul style="list-style-type: none"> ✗ SBA List misleadingly compared U.S. abortion laws to that of China and North Korea. ✗ March for Life misleadingly claimed that 47 out of 50 European countries ban abortion after 15 weeks and that the United States is one of the seven countries that allow abortion after 20 weeks, alongside China and North Korea.
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False Comparisons to Vaccine Mandates

Context & Debunk: False comparisons by anti-choice activists between vaccine mandates and efforts to ban abortion care are an attempt to distract from how dangerous and unpopular their agenda is. They’re co-opting rhetoric that they know works about personal decisions and inaccurately applying it to their agenda in hopes of appealing to people they believe to be persuadable.

<p>→ Justice Amy Coney Barrett: “There is, without question, an infringement on bodily autonomy, you know, which we have in other contexts, like vaccines. However, it doesn’t seem to me to follow that pregnancy and parenthood are all part of the same burden.”</p>	<ul style="list-style-type: none"> ✗ Abby Johnson argued that vaccine mandates are an example of the government making decisions about peoples’ bodies. ✗ Anti-choice Students for Life President Kristan Hawkins co-opted the phrase “my body, my choice” to argue against mask mandates.
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Disingenuous Claims about States’ Rights

Context & Debunk: Anti-choice arguments about states’ rights ignore the reality that abortion is a constitutionally-protected and fundamental right that every person should have the freedom to exercise regardless of where they are located. Anti-choice groups actively support attacks on democracy, [including voter suppression efforts](#), demonstrating their commitment to enacting their unpopular agenda to ban abortion by any means necessary.

<p>→ Justice Brett Kavanaugh: “You’re arguing that the Constitution is... neutral on the question of abortion? In other words, that the Constitution is neither pro-life nor pro-choice on the question of abortion but leaves the issue for the people of the states or perhaps Congress to resolve in the democratic process?”</p>	<ul style="list-style-type: none"> ✗ Students for Life argued that Texas should be able to “pass” its vigilante-enforced ban on abortion (SB 8) because states’ rights are explicitly included in the constitution, while abortion is not. ✗ SBA List claimed overturning Roe would allow states to use the “democratic process” to achieve consensus on abortion laws.
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False Comparisons to Justify Overturning Precedent

Context & Debunk: False comparisons between *Roe v. Wade* and *Plessy v. Ferguson* and *Dred Scott v. Sandford*, cases that [upheld state-sanctioned racism and segregation](#), exemplify the anti-choice movement's willingness to co-opt racial justice in its effort to ban abortion, which disproportionately harms Black, Indigenous, and other people of color. Unlike these cases which denied basic civil rights and freedoms to Black people in the United States, *Roe* protects individuals' fundamental freedom to make personal decisions about if, when, and how to start or grow a family.

- Justice Kavanaugh: "If you think about some of the most important cases, the most consequential cases in this Court's history, **there's a string of them where the cases overruled precedent.** *Brown v. Board* outlawed separate but equal."
- Justice Alito: "So suppose *Plessy v. Ferguson* was re-argued in 1897... Would it not be sufficient to say that was **an egregiously wrong decision** on the day it was handed down and now it should be overruled?"
- Justice Barrett: "[Stare Decisis is] not an inexorable command... **there are some circumstances in which overruling is possible... We have *Plessy, Brown.***"

- ✗ SBA List President Marjorie Dannenfelser egregiously [argued](#) that **"the quality of precedent" at stake** with *Jackson Women's Health Organization* was **"rivaled only" by *Dred Scott v. Sandford* and *Plessy v. Ferguson*.**
- ✗ Abby Johnson falsely [compared](#) **overturning *Roe* to *Brown v. Board of Education* overturning the case *Plessy v. Ferguson*,** stating, "If you ever think *Roe v. Wade* has been too long a precedent to overturn, remember that segregation was upheld for 58 years."
- ✗ Kristan Hawkins erroneously [compared](#) ***Roe* to *Plessy v. Ferguson* and *Dred Scott v. Sandford* saying they "were at one time considered precedent and that deserved to be reversed."**