



# A DCI Deliberation Guide

## Abortion:

*Should Roe v. Wade be overturned?  
What kind of public policy should we have?*

### Format for Deliberation

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#### Before the Deliberation

- I. Read this document
- II. Read the Guttmacher Institute's webpage, "[An Overview of Abortion Laws](#)"
- III. Read Britannica's Procon.org article, "[Should Abortion Be Legal?](#)"
- IV. Read The New York Times article, "[Who Gets Abortions in America](#)"
- V. Read Cornell University's Legal Information Institute's Supreme Court Bulletin, "[Dobbs v. Jackson Women's Health Organization](#)"
- VI. (Optional) Review the sources listed in the footnotes of this document

#### During the Deliberation

- I. Setting Expectations - 10 min.
- II. Getting to Know Each Other – 10 min.
- III. Understanding Tensions around Abortion - 30 min.
- IV. Examining Dobbs v. Jackson Women's Health Organization – 25 min.
- V. Identifying, Evaluating, and Prioritizing Policies - 30 min.
- VI. Reflections - 15 min.

### Background

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For decades, Americans have held differing views on the topic of abortion. Recently these differences have become more salient, as new state laws and court cases have called into question whether *Roe v. Wade* will be overturned by the U.S. Supreme Court, and whether states should be allowed to restrict access to abortions.

The U.S. Supreme Court ruled 7-2 in the **1973 *Roe v. Wade* case** that women have the right to abortions, but that states may impose regulations and restrictions.<sup>1</sup> Justice Blackmun, as the author of the majority opinion, developed a trimester approach to weigh the competing

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<sup>1</sup> "Roe v. Wade, 1973." Issues & Controversies, Infobase, 1 Jan. 1973, icof-infobase-com.proxy048.nclive.org/articles/QXJ0aWNsZVRleHQ6Mj1MjU=.

interests of the woman's right to privacy and the state's interest in preserving life. The opinion states that women's rights to privacy (and therefore abortion) decrease as women move into their second and third trimesters, when the state's interest in regulating safety and preserving life increases.<sup>2</sup> It further states that "with respect to the State's important and legitimate interest in potential life, the compelling point is at viability," or the point at which a fetus can survive outside of the womb.<sup>3</sup> In the **1992 Planned Parenthood v. Casey case**, the court upheld most of Pennsylvania's abortion restrictions but established an "undue burden" test for state abortion laws. This test asserted that state laws may not create a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability."<sup>4</sup>

Recent laws in various states have limited access to abortions, despite the majority of Americans who support abortion. According to Pew Research, 59% agree that "abortion should be legal in all or most cases" while 39% believe that abortion should "be illegal in all or most cases."<sup>5</sup> While a small percentage of Americans assert that abortion should never or always be legal, most support or oppose abortion with qualifications.<sup>6</sup> The Guttmacher Institute reports that 1,320 abortion restrictions have been enacted by state legislatures since *Roe*, with numerous restrictions, including bans on abortion after a certain number of weeks that were enacted in 2021. Many of these restrictions have been struck down, while others remain in place or are under court review.<sup>7</sup>

**State laws regulating and restricting abortions** range from mandatory waiting periods to mandatory counseling to parental consent for minors.<sup>8</sup> As of July 2021, 15 states require a woman to have an ultrasound prior to having an abortion.<sup>9</sup> Other laws focus on imposing stringent regulations on providers of abortions, while several states have recently passed bills that ban abortions after a fetal heartbeat can be detected, which often occurs before a woman knows she is pregnant.<sup>10</sup> Increased restrictions has resulted in a smaller number of abortion providers.<sup>11</sup> The U.S. Supreme Court will soon rule on *Dobbs v. Jackson Women's Health Organization*, which will determine the constitutionality of a Mississippi law that prohibits abortion later than 15 weeks into pregnancy.<sup>12</sup> Some states ban second trimester abortions, even if the pregnancy is a result of rape or incest.<sup>13</sup>

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> "Planned Parenthood of Southeastern Pennsylvania v. Casey." Oyez, <http://www.oyez.org/cases/1991/91-744>.

<sup>5</sup> <https://www.pewforum.org/fact-sheet/public-opinion-on-abortion/>

<sup>6</sup> Ibid.

<sup>7</sup> "State Abortion Laws." Issues & Controversies, Infobase, 7 Oct. 2021, icof-infobase-com.proxy048.nclive.org/articles/QXJ0aWNsZVRleHQ6MTY1NDQ=.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

Following a wave of restrictive abortion laws (many of which were overturned by the courts), Texas passed a law banning abortion after 6 weeks of pregnancy, which would affect the 85 percent of women in Texas who have abortions after this point in their pregnancies.<sup>14</sup> The law, which allows private citizens to sue medical providers who perform abortions, has gone into effect, though challenges to its constitutionality remain.<sup>15</sup>

**Supporters of these laws** argue that restricting abortion protects the lives of the unborn, prevents unsafe conditions in clinics, and provides women with the necessary information to make difficult decisions.<sup>16</sup> Additionally, “the state has an interest in protecting the fetus, which can feel pain and deserves constitutional protections.”<sup>17</sup> Supporters of restrictive laws contend that these policies save lives and grant constitutional protection to the unborn, arguing that abortion is murder. They further argue that fetal heartbeats can be detected around six weeks into a pregnancy, which demonstrates to them that life is at stake.<sup>18</sup> In their view, laws that require women to view an ultrasound or undergo counseling are not punitive, but rather help women to make informed decisions about their options.<sup>19</sup>

**Opponents of abortion restrictions** argue that such “restrictions violate women’s right to privacy and control over their own bodies” and that making abortions more difficult to access leads to women seeking other, “dangerous means of terminating pregnancies.”<sup>20</sup> These opponents assert that theories of “fetal pain” and unsafe clinics are unproven, so restrictions based on these claims are unfounded.<sup>21</sup> The American Congress of Obstetricians and Gynecologists (ACOG), in a statement opposing a law in Washington, D.C. that imposed abortion restrictions based on notions of fetal pain, wrote that they oppose “legislative proposals that are not based on sound science or that attempt to prescribe how physicians should care for their patients.”<sup>22</sup> They went on to state that the age of viability is generally considered to be 24 weeks, and that fetuses are unlikely to perceive pain prior to the third trimester.<sup>23</sup>

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> “American Congress of Obstetricians and Gynecologists Statement on Fetal Pain.” Issues & Controversies, Infobase, 18 June 2012, [cof-infobase-com.proxy048.nclive.org/articles/QXJ0aWNsZVRleHQ6MTgxMTM=](http://cof-infobase-com.proxy048.nclive.org/articles/QXJ0aWNsZVRleHQ6MTgxMTM=).

<sup>23</sup> Ibid.

## Setting Expectations (10 min)

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In this section, we will review the “Expected Outcomes,” Deliberative Dispositions,” and “Conversation Agreements” below.

### Expected Outcomes of the Conversation

The purpose of this deliberation is to deepen our understanding of the abortion policies in the United States. Over the course of the deliberation, we will have the opportunity to listen to the perspectives of our fellow deliberators as well as share our own experiences and beliefs about a woman’s right to choose to have an abortion and states’ rights to regulate and restrict them. By the end of the conversation, we will have deliberated about the strongest and weakest arguments for restricting or expanding abortion access and discussed our highest and lowest priorities for reforming abortion policies in the United States. We will also have talked about whether the Supreme Court should uphold or strike down Mississippi’s recent abortion law or its earlier *Roe* and *Casey* decisions. Finally, we will have reflected on our conversation, our areas of agreement and disagreement, and what we have learned from our time together.

### Deliberative Dispositions

The DCI has identified several “deliberative dispositions” as critical to the success of deliberative enterprises. When participants adopt these dispositions, they are much more likely to feel their deliberations are meaningful, respectful, and productive. Several of the Conversation Agreements recommended below directly reflect and reinforce these dispositions, which include a commitment to egalitarianism, open mindedness, empathy, charity, attentiveness, and anticipation, among others. A full list and description of these dispositions is available at <https://deliberativecitizenship.org/deliberative-dispositions/>.

### Conversation Agreements

In entering into this discussion, to the best of our ability, we each agree to:

1. Be authentic and respectful
2. Be an attentive and active listener
3. Be a purposeful and concise speaker
4. Approach fellow deliberators’ stories, experiences, and arguments with curiosity, not hostility
5. Assume the best - and not the worst - about the intentions and values of others, and avoid snap judgements
6. Demonstrate intellectual humility, recognizing that no one has all the answers, by asking questions and making space for others to do the same
7. Critique the idea we disagree with, not the person expressing it, and remember to practice empathy
8. Note areas of both agreement and disagreement
9. Respect the confidentiality of the discussion
10. Avoid speaking in absolutes (e.g., “All people think this,” or “No educated people hold that view”)

## Getting to Know Each Other (10 min)

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In this section, we will take less than a minute to share our names, where we are currently located, and answer one of the questions below.

1. What are your hopes and concerns for your family, community and/or country?
2. What would your best friend say about who you are?
3. What sense of purpose / mission / duty guides you in your life?

## Understanding Tensions around Abortion (30 min)

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The abortion debate is obviously a fraught and sensitive topic. One issue revolves around language and how we refer to fetuses or unborn children. Abortion opponents often prefer to use unborn children while opponents of abortion restrictions often prefer to use fetuses. For this reason, in this guide we have used both terms, but participants may choose to use one or the other. Please respect their choice with grace and attentiveness to the complexity of these terms and people's different perspectives on them.

In this section, we will examine the arguments for and against abortion regulations (Britannica's [list of pro and con arguments](#) is a good resource for this discussion). We will each take 1-2 minutes to answer each of the questions below, without interruption or crosstalk.

- What are the ***strongest arguments for restricting*** access to abortions?
- What are the ***weakest arguments for restricting*** access to abortions?

Once everyone has answered these questions, we will each take 1-2 minutes to answer the next two questions:

- What are the ***strongest arguments for maintaining or increasing*** access to abortions?
- What are the ***weakest arguments for maintaining or increasing*** access to abortions?

After everyone has answered these questions, the group is welcome to take a few minutes for clarifying or follow up questions and responses. Continue exploring the topic as time allows.

## **Examining *Dobbs v. Jackson Women's Health Organization* (25 min)**

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In December 2021, the Supreme Court heard arguments in *Dobbs v. Jackson Women's Health Organization*, and it will be ruling on the case this summer. We will each address the central questions of the case below, and then discuss them further as time allows.

- **Should the Supreme Court uphold or overturn Mississippi's law that bans abortions after 15 weeks?**
- **In its ruling, should it uphold or overturn *Roe's* viability standard and *Casey's* "undue burden" standard?**

In addressing these questions, we might consider the following more specific questions:

1. At what point in a pregnancy, if any, should states be allowed to limit access to an abortion?
2. At what point, if any, should women not be allowed to terminate their pregnancy?
3. How should we respond to concerns regarding the rights of women to privacy and access to safe abortions?
4. How should we respond to concerns about the rights of the fetus/unborn child?
5. How should we respond to concerns about the rights of states to regulate abortions and the constitutionality of such regulations?

It may also be helpful to refer to this [summary](#) of the case from Cornell University's Legal Information Institute.

Once we have all had a chance to address this question, discuss our answers together, and note where agree and disagree, please move on to the next section.

## **Identifying, Evaluating, and Prioritizing Policies (30 min)**

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We will now identify, evaluate, and prioritize specific measures to take related to abortion. We will each address the question below, and then together we'll explore our areas of agreement and disagreement. We can also generate additional ideas that may transcend and elicit more support than existing proposals.

- **What type of abortion policy should the United States have?**

In considering this question, we can refer to the list below of specific abortion policy proposals. Which one of these policies is your highest priority? Which is the lowest? Why? Are there other ideas that you believe are also important to consider?

*Policies restricting access to abortions:*

- a. Women should be required to wait 24 hours between meeting with a health care provider and getting an abortion
- b. Doctors should be required to show and describe ultrasound images to women seeking an abortion
- c. In-person abortion counseling should be followed by a waiting period before the procedure (thereby requiring at least two trips to the facility)
- d. Access to abortion for those younger than 18 without parental involvement should be limited
- e. Abortions should only be performed by doctors who have hospital admitting privileges
- f. Abortions should be prohibited once cardiac activity, known as fetal heartbeat, is detected
- g. Doctors performing abortions and/or women getting an abortion should be subject to either fines or prison time

*Policies expanding access to abortions:*

- a. People enrolled in Medicaid, federal employees, members of the military, and others should be able to use federal funds to cover abortions.
- b. Restrictions on medication abortion (i.e., abortion with pills) should be lifted
- c. The workforce of well-trained abortion providers should be expanded
- d. The right to abortion should be affirmed in state constitutions
- e. A legal standard that protects access to abortion should be established
- f. Private health insurance plans should be required to cover abortion
- g. Access to abortion clinics should be protected<sup>24,25</sup>

As time allows, we should engage with one another on our answers to these questions.

If there is strong disagreement in the group, try to explore the underlying reasons for the disagreement – are they based on different factual interpretations, different value emphases, or different life experiences? Perhaps you can agree on where precisely you disagree, which can be helpful. Alternatively, if there is widespread agreement in the group, try to dig deeper and examine the nuances of these policies – are there particular contexts, for example, where your agreement breaks down? Or perhaps your reasons for supporting particular policies are different? Exploring this complexity can be helpful as well.

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<sup>24</sup> Kirzinger, Ashley et al. 2020. "[Abortion Knowledge and Attitudes: KFF Polling and Policy Insights.](#)" KFF.

<sup>25</sup> Nash, Elizabeth. 2019. "[State Abortion Policy Landscape: From Hostile to Supportive.](#)" Guttmacher Institute.

## Reflections (15 min)

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While today's conversation is an important step in the journey, effectively managing the relationship between a woman's right to choose and state restrictions on abortions will take time and commitment. Please reflect on the insights from your discussion with your fellow participants today, and then answer one of the questions below without interruption or crosstalk. After everyone has answered, the group is welcome to continue exploring additional questions as time allows.

1. What was most meaningful or valuable to you during this deliberation?
2. Where are the areas of both agreement and disagreement in your group?
3. Have any new ways to think about this issue occurred to you as we have talked today? Any new ideas that might transcend our current way of conceiving of the problem and its potential solutions?
4. Was there anything that was said or not said that you think should be addressed with the group? Are there any perspectives missing from this conversation that you feel would be important to hear?
5. What did you hear that gives you hope for the future of conversations on issues related to abortion?
6. Is there a next step you would like to take based upon the deliberation you just had?



## About This Guide

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### The Deliberative Citizenship Initiative

The Deliberative Citizenship Initiative (DCI) is dedicated to the creation of opportunities for Davidson students, faculty, staff, alumni, and members of the wider community to productively engage with one another on difficult and contentious issues facing our community and society. The DCI regularly hosts facilitated deliberations on a wide range of topics and organizes training workshops for deliberation facilitators. To learn more about these opportunities, visit [www.deliberativecitizenship.org](http://www.deliberativecitizenship.org).

### DCI Deliberation Guides

The DCI has launched this series of Deliberation Guides as a foundation for such conversations. They provide both important background information on the topics in question and a specific framework for engaging with these topics. The Guides are designed to be informative without being overwhelming and structured without being inflexible. They cover a range of topics and come in a variety of formats but share several common elements, including opportunities to commit to a shared set of Conversation Agreements, learn about diverse perspectives, and reflect together on the conversation and its yield. The DCI encourages conversations based on these guides to be moderated by a trained facilitator. After each conversation, the DCI also suggests that its associated Pathways Guide be distributed to the conversation's participants.

### DCI Pathways Guides

For every Deliberation Guide, the DCI has also developed an associated Pathways Guide, which outlines opportunities for action that participants can consider that are related to the covered topic. These Pathways Guides reinforce the DCI's commitment to an action orientation, a key deliberative disposition. While dialogue and deliberation are themselves important contributors to a healthy democracy, they become even more valuable when they lead to individual or collective action on the key issues facing society. Such action can come in a range of forms and should be broadly understood. It might involve developing a better understanding of a topic, connecting with relevant local or national organizations, generating new approaches to an issue, or deciding to support a particular policy.

If you make use of this guide in a deliberation, please provide attribution to the Deliberative Citizenship Initiative and email [dcideliberativecitizenship.org](mailto:dcideliberativecitizenship.org) to tell us about your event. To access more of our growing library of Deliberation Guides, Pathways Guides and other resources, visit [www.deliberativecitizenship.org/readings-and-resources](http://www.deliberativecitizenship.org/readings-and-resources).