



A DCI Deliberation Guide

Abortion (Part II):

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

Format for Deliberation

Before the Deliberation

- I. Watch the "[National Abortion Act Proposal](#)" Video on YouTube (REQUIRED)
- II. Read this Deliberation Guide (REQUIRED)
- III. Review the sources listed in the footnotes of this document (Optional)

During the Deliberation

- I. Setting Expectations - 10 min.
- II. Getting to Know Each Other – 15 min.
- III. National Abortion Act Proposal Part I - 50 min.
- IV. National Abortion Act Proposal Part II – 30 min.
- V. Reflections - 15 min.

Background

In our last session, we discussed the strongest and weakest arguments for increasing and restricting access to abortions. We also examined the *Dobbs v. Jackson Women’s Health Organization* case that is before the Supreme Court and discussed the type of abortion policy that we believe the United States should have.

In this session, we will discuss a hypothetical proposal for a “National Abortion Act” designed to serve as a “grand compromise” on this issue that aims to treat abortions ethically, responsibly, and consistently across the country. This proposal is presented in a short video that you should watch before our session together and before reading the rest of this guide (the text of the video is provided below for your reference once you have had the opportunity to watch it). The video was created as part of an earlier research project exploring how partisanship and polarization affect people’s attitudes towards new policy proposals on contentious issues. It does not represent the views of the DCI but is presented to spark conversation about what a possible resolution of the abortion debate might look like – and how it might be improved.

Because any future trajectories of abortion policy will either support or depart from the precedents set by previous Supreme Court decisions, this Guide first provides more background on both *Roe v. Wade* and *Planned Parenthood v. Casey*, as well as the current *Dobbs v. Jackson Women’s Health Organization* case before the Court. The National Abortion Act proposal both builds on and diverges from those precedents in different ways, and so understanding those cases is also helpful to analyzing this proposal.

Roe v. Wade

The U.S. Supreme Court ruled in *Roe v. Wade* (1973) that a woman’s right to an abortion is constitutionally protected prior to fetal viability. Women have the right to an abortion through the end of the first trimester (twelve weeks into the pregnancy), and during the second trimester, states may regulate abortion, but cannot restrict access entirely. The ruling concluded that states may restrict all abortions during the third trimester, after viability (generally around 24 weeks), unless the health or life of the mother is in danger.¹ In *Roe*, the Court also established that the unborn do not have federal constitutional protections.²

The Court ruled 7-2 that a woman’s right to an abortion is a privacy right protected under the Due Process Clause of the Fourteenth Amendment. A woman’s right to abortion varies as pregnancy progresses; the state’s interest in protecting the life of the mother and unborn child is weighed against this variability. States are prohibited from passing laws that broadly ban abortion without consideration for the stages of pregnancy.

The *Roe* ruling means that **during the first trimester (0-13 weeks)**, the decision to have an abortion lies between a woman and her doctor, and the state may not regulate the decision.³ The justices reasoned that abortion prior to the end of the first trimester “is relatively safe, the mortality rate being lower than the rates for normal childbirth, and because the fetus has no capability of meaningful life outside of the mother’s womb,” therefore, the state has no “compelling interest” to limit access to abortion. Rather, “the attending physician, in consultations with this patient, is free to determine, without regulation from the State, that, in his medical judgment, the patient’s pregnancy should be terminated.”⁴

Laws related to regulating abortion **in the second trimester (14-26 weeks)** must be reasonably related to the mother’s health. However, the law must “contain exceptions for cases when abortion is necessary to save the life or health of the mother.”⁵ The Court found that in the

¹ “Abortion” Gale Opposing Viewpoints Online Collection

² [“Right to an Abortion”](#) Cornell Law School

³ [“Roe v. Wade”](#) Oyez

⁴ [“Right to an Abortion”](#) Cornell Law School

⁵ [“Roe v. Wade”](#) Oyez

second trimester, states may regulate abortions as the risk to a woman increases. Abortions may be regulated “to the extent that the regulation reasonably related to the preservation and protection of maternal health,” but because the fetus is not yet viable, states cannot impede a woman’s decision to have an abortion.⁶

In the third trimester (27-40 weeks), states may regulate or entirely prohibit abortions once the fetus reaches the point of viability.⁷ “With respect to the State’s important and legitimate interest in potential life, the ‘compelling’ point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother’s womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother.”⁸

Justice Blackmun concluded that only a “compelling state interest” can justify regulations that limit “fundamental rights” such as the right to privacy and that legislators therefore must create laws narrowly “to express only the legitimate state interests at stake.”⁹ The Court held that “the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman ... [and] it has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes ‘compelling.’”¹⁰

Planned Parenthood v. Casey

In *Planned Parenthood v. Casey* (1992), the U.S. Supreme Court ruled 5-4 that abortion laws cannot impose an “**undue burden**” on a pregnant woman. The Court defines “undue burden” as a “substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” The Court upheld Pennsylvania provisions requiring informed consent, a 24 hour waiting period, and parental consent for minors, but struck down the provision requiring a married woman to notify her husband of the abortion,¹¹ stating that “a State may not give to a man the kind of dominion over his wife that parents exercise over their children.”¹²

⁶ [“Roe v. Wade”](#) Britannica

⁷ [“Roe v. Wade”](#) Oyez

⁸ [“Right to an Abortion”](#) Cornell Law School

⁹ [“Roe v. Wade”](#) Britannica

¹⁰ [“Right to an Abortion”](#) Cornell Law School

¹¹ [“Planned Parenthood of Southeastern Pennsylvania v. Casey”](#) Oyez

¹² [“Right to an Abortion”](#) Cornell Law School

In *Casey*, the court determined that **the right to abortion has three parts**: “First is a recognition of the right of a woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State’s interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman’s effective right to elect the procedure. Second is a confirmation of the State’s power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger a woman’s life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.”¹³

Although the *Casey* ruling eliminated the rigid trimester rules established in *Roe*, viability remained “the earliest point at which the State’s interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions.”¹⁴ However, the justices allowed for less burdensome regulations prior to viability, reasoning that “what is at stake is the woman’s right to make the ultimate decision, not a right to be insulated from all others in doing so. Regulations which do no more than create a structural mechanism by which the State ... may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman’s exercise of the right to choose.” Therefore, states may adopt measures “designed to persuade [a woman] to choose childbirth over abortion” unless an undue burden is imposed.¹⁵

Dobbs v. Jackson Women’s Health Organization

In *Dobbs v. Jackson Women’s Health Organization*, the court will determine “whether all pre-viability prohibitions on elective abortions are unconstitutional.”¹⁶ Currently, Mississippi law bans abortions after 15 weeks of pregnancy.¹⁷ If upheld, the law will overturn *Roe*’s fetal viability component. Julie Rikelman, litigation director at the Center for Reproductive Rights, argued that the viability standard allows women to control their own bodies rather than the state, as it establishes an objective standard rather than depending on vague questions regarding when life begins.¹⁸ Mississippi Solicitor General Scott Steward argued that *Roe* “is an egregiously wrong decision that has inflicted tremendous damage on our country and will continue to do so and take innumerable human lives unless and until this court overrules it.”¹⁹

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ “[Dobbs v. Jackson Women’s Health Organization](#)” SCOTUS Blog

¹⁷ “[Roe at Risk as Supreme Court Weighs Mississippi Abortion Case](#)” *U.S. News and World Report*

¹⁸ Ibid.

¹⁹ Ibid.

In 2021, conservative legislatures enacted a record number of 108 abortion restrictions in 19 states.²⁰ If the Court rules in favor of Mississippi, “21 states have laws or constitutional amendments already in place that would make them certain to attempt to ban abortion as quickly as possible. An additional five states have political composition, history and other indicators—such as recent actions to limit access to abortion—that show they are likely to ban abortion as soon as possible without federal protections.”²¹

A Hypothetical “National Abortion Act” Proposal

As noted above, a group of researchers developed a hypothetical proposal for a “National Abortion Act” that they used to test how partisanship and polarization affect people’s attitudes towards new policy proposals on contentious issues. The text of this proposal is provided below for your reference, but we recommend you watch the accompanying video before reading the text. The proposal is presented here to stimulate a discussion about a holistic set of policies that Americans with diverse perspectives on abortion might be able to support. It centers around the benefits of a nationally-legislated abortion policy that would likely place more restrictions on abortion in states that lean Democratic and fewer restrictions in states that lean Republican.

Abortion has drawn fierce debate for decades and the nation’s policy is ad hoc and fragmented. While the rate of abortions has declined by more than half since 1980 and the total number of abortions reached its lowest level since the 1970s, approximately 20% of pregnancies – nearly one million in total – still end in abortion. Within this context, pro-life activists emphasize the rights of unborn children while pro-choice advocates defend the rights of women to make decisions about their own bodies. Such an important and divisive issue should not be left for the courts or individual states to decide.

*We propose that Congress pass the “**National Abortion Act**” as a grand compromise that is fashioned by the people’s representatives, not the courts, and treats abortions ethically, responsibly, and consistently across the country. This compromise will clarify and protect the rights of both women and fetuses, which some refer to as unborn children, by codifying the status quo and making important amendments to it. Contrary to what most believe, *Roe v. Wade* does not allow for all abortions. The decision prohibits governments from restricting any abortions during the first trimester, allows regulations during the second trimester, and compels the government to protect prenatal life during the third trimester except when the mother’s life is in danger.*

*This new law will **codify these restrictions on abortions in the third trimester**, which 8 states have not enacted. It will also **eliminate abortion restrictions through the second trimester of pregnancy**, which are currently in place in 41 states. This will allow time*

²⁰ [“Roe v. Wade in Peril: Our Latest Resources”](#) Guttmacher Institute

²¹ Ibid.

*for women to discover they are pregnant and deliberate by themselves and with the important people in their lives. To aid in this process, it will also **mandate counseling**, so women can discuss their situation with a professional, and a **waiting period**, to ensure such a significant decision is not made hastily.*

*To reduce the financial burden of this counseling and waiting period, which are currently not required in 16 states, women will be able to make use of **virtual doctor visits**, so they only need to see a clinician once. And following current law, given that many taxpayers are morally opposed to abortions, **abortion services shall be paid for by private health insurance, personal savings or philanthropic contributions**, not by government funding.*

This legislation will help us move beyond the intractable battlefield over rights and work together towards reducing the need and demand for abortions, a goal that we can all agree on.

Setting Expectations (10 min)

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 and analyze various proposals regarding abortion policy. 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 versus states’ rights to regulate and restrict them.

During today’s deliberation, we will discuss the possibility of a “National Abortion Act” that attempts to forge a “grand compromise” on this issue. We will weigh its strengths and weaknesses and discuss how we might improve it. By the end of the deliberation, we will have noted areas of both agreement and disagreement related to this proposal and the criteria such proposals ought to have. In our next deliberation, we will explore the specific areas that we all agree on with regard to abortion policy as well as articulate the areas where we do not agree.

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 (15 min)

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?

Discussing the National Abortion Act Proposal Part 1 (50 min)

Today we will weigh the strongest arguments for and against a National Abortion Act as outlined in the proposal. We will also discuss the criteria that ought to be considered as we evaluate abortion policies. First, let's look at the individual elements of the proposal. Each of us will have an opportunity to offer an answer to each of these questions before we turn to the next one.

1. What are the strongest arguments for and against Congress passing a “National Abortion Act” as a “grand compromise that is fashioned by the people’s representatives, not the courts?”
2. What are the strongest arguments for and against codifying nationally *Roe v. Wade’s* requirement for the government to protect prenatal life during the third trimester except when the mother’s life is in danger?
3. What are the strongest arguments for and against eliminating abortion restrictions through the first and second trimesters of pregnancy?
4. What are the strongest arguments for and against requiring mandatory counseling before having an abortion?
5. What are the strongest arguments for and against requiring a waiting period before having an abortion?
6. What are the strongest arguments for and against restricting the use of government funds for 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.

Discussing the National Abortion Act Proposal Part II (30 min)

Now, let’s discuss the overall proposal:

1. What are the strongest arguments for and against this compromise proposal?
2. What are important criteria for such a proposal?
3. How might we improve this proposal for it to better achieve these criteria?

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 the specific elements of this policy – are there particular contexts, for example, where your agreement breaks down? Or perhaps your reasons for supporting or opposing particular components of the policy are different? Exploring this complexity can be helpful as well.

Reflections (15 min)

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 and the type of policy we ought to have 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.

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 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.