

ROE v. WADE 2.0

by

Margaret Vandenburg

Inspired by oral arguments at the Supreme Court on December 1, 2021,
a date which will live in infamy.

An alarming amount of the play adheres to the transcript of the proceedings,
exposing the Roberts Court's transparently partisan agenda.

Direct quotations from *Dobbs v. Jackson Women's Health Organization*
are transcribed in regular font.

*Italics designate satiric additions,
which really just say the quiet parts out loud.*

CHARACTERS:

JUSTICE SOTOMAYOR, dressed like a Supreme Court Justice, front and back

JUSTICE KAVANAUGH, half-dressed like a priest (*see costume note*)

JUSTICE BARRETT, half-dressed like a weirdly flirtatious Mrs. Grundy

JUSTICE THOMAS, half-dressed like a Founding Father

JUSTICE BREYER, half-dressed like a hospice patient

CHIEF JUSTICE ROBERTS, half-dressed like an umpire

MR. STEWART, representing the people of Mississippi, dressed like a clown

MS. RIKELMAN, defending Roe versus Wade, dressed like Lady Liberty

JUSTICE GINSBURG, dressed like a Supreme Court Justice,
with a Notorious RBG T-shirt underneath

Costume considerations: Each Justice's costume is like a split screen, so to speak. From the back, they all look the same, wearing judicial robes in the manner of capes. In the front, their individual characteristics are on full display in the manner indicated above. The capes are voluminous enough to wrap around the front of their costumes as they don and doff the gravitas befitting the Court.

Set considerations: The bench is equipped with nine seats for the requisite number of Supreme Court Justices. Three of the seats are occupied by dummies dressed as a Pope (Justice Alito), a Ku Klux Klan Night Rider (Justice Gorsuch), and a gagged woman (Justice Kagan). Each Justice has a nameplate and a set of signature props, as follows:

Justice Sotomayor's seat at the bench is equipped with a miniature scale of justice, which keeps oscillating wildly in spite of her efforts to maintain its balance.

Justice Kavanaugh, who is surrounded by a well-stocked hard liquor bar and a beer keg, becomes progressively drunk and more flirtatious as the hearing proceeds.

Justice Barrett is equipped with knitting needles, a yarn basket, and a pair of half-finished baby slippers, a work in progress.

Justice Thomas is surrounded by a miniature library of dusty old books and documents, which all but fall apart as he relentlessly consults them. He also has a powder wig bellows at the ready.

Justice Breyer, who is hooked up to various life support monitors, becomes progressively infirm during the course of oral arguments.

Chief Justice Robert's seat is equipped with a hydraulic function designed to facilitate lording himself over fellow Justices. Nevertheless, his authority is increasingly imperiled as the ultra-conservative faction of the Court flexes its muscles.

Additional considerations: In pared-down productions and presentations of the play—in-person and even online readings, for example—set and costume considerations can easily be scaled back as necessary, especially in light of the play's activist intent. In more elaborate productions, directors may choose to add props as the play proceeds, hiding things like Justice Kavanaugh's liquor and Justice Barrett's knitting needles under the bench until the satiric dimensions of the play gather steam.

* * * * *

The Supreme Court Chamber, where Justices initially maintain a modicum of decorum in spite of the absurdity of Mr. Stewart's oral arguments. Little by little, they show their true colors, both literally and figuratively, exposing thinly veiled judicial agendas and carnivalesque costumes as the satiric dimensions of the play unfold.

MARSHAL (voice-over)

The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!

CHIEF JUSTICE ROBERTS

We will hear argument this morning in case 19-1392, Dobbs versus Jackson Women's Health Organization.

(Mr. Stewart, seated at a desk adjacent to Ms. Rikelman, rises and advances to the lectern.)

MR. STEWART

Mr. Chief Justice, and may it please the Court:

Roe versus Wade and Planned Parenthood versus Casey hurt our country. They have no basis in the Constitution. They have no home in our history or traditions. They damage the democratic process. They choke compromise. They poison the Court. For 50 years, they've kept this Court at the center of a political battle it can never resolve.

Roe and Casey have failed, but the people of Mississippi, if given the chance, will succeed. The Constitution places its trust in the people. On hard issue after hard issue, the people have made this country work. This Court should overrule Roe and Casey and let Mississippians determine whether or not to protect unborn children's lives.

I welcome the Court's questions.

(Justice Sotomayor tries to speak but is cut off by Justice Kavanaugh, a pattern of mansplaining that will be repeated throughout the play.)

JUSTICE SOTOMAYOR

Counsel, I'd like to —

JUSTICE KAVANAUGH

I want to be clear about what you're arguing and not arguing. As I understand it, you're arguing that the Constitution is silent and, therefore, neutral on the question of abortion. In other words,

that the Constitution is not pro-life or pro-choice but leaves the issue for the people of the states to resolve in the democratic process. Is that accurate?

MR. STEWART

Yes, Your Honor.

JUSTICE KAVANAUGH (*equivocating*)

And so, even if you were to prevail, the states—many states—some states could continue to allow abortion. Is that correct?

MR. STEWART

That's consistent with our view, Justice Kavanaugh. It's one that allows all interests to have full voice. *A little something for everyone.*

JUSTICE SOTOMAYOR

A little something for everyone except pregnant women—

JUSTICE KAVANAUGH (*interrupting*)

Thank you, Mr. Stewart.

JUSTICE SOTOMAYOR

Counsel, I'd like to —

JUSTICE THOMAS (*interrupting*)

Mr. Stewart. If I were to ask you which Constitutional right protects access to abortion, is it privacy? Is it autonomy? What would it be?

MR. STEWART

Whichever one you're focusing on, Justice Thomas, each of them is a step removed from the Constitution. Yes, the Constitution does protect certain aspects of privacy, of autonomy and the like. But going directly from abstract concepts to specific rights isn't how this Court traditionally does due process analysis . . .

JUSTICE SOTOMAYOR

Do you mean to say that privacy and autonomy are abstract?

MR. STEWART (*flummoxed*)

No, Justice Sotomayor— I mean— *In any case, abortion isn't mentioned in the Constitution.*

JUSTICE SOTOMAYOR

The word woman isn't mentioned in the Constitution, either. Does that mean—

(Justice Sotomayor is interrupted by Chief Justice Roberts.)

CHIEF JUSTICE ROBERTS

Be that as it may, the crux of your case is whether or not Roe and Casey were wrongly decided. Is it not? It's part of our stare decisis doctrine that precedence isn't an inexorable command and that there are circumstances in which overruling is possible. Even desirable. Plessy versus Ferguson, for example. And Brown versus Board of Education. Both of which righted egregious wrongs, did they not? But in thinking about stare decisis—whether or not precedence should stand—how should we evaluate precedence in such volatile cases? Casey explicitly takes into account public reaction to Roe versus Wade. Is that a factor you accept, or are you arguing that we should minimize that factor?

MR. STEWART

What I'd emphasize, Chief Justice Roberts, is that the people—you know, many, many people—really just want to have the matter returned to them so they can decide it locally—deal with it the way they think best, *depending on the dictates of their conscience*. This is a hot, difficult issue for everyone. And the last fifty years have made things worse, not better. Roe is dividing the country—

JUSTICE SOTOMAYOR

All the more reason—

JUSTICE BREYER *(condescendingly)*

I assume you've read Roe pretty thoroughly.

MR. STEWART

Yes, Justice Breyer.

JUSTICE BREYER

You claim that Roe versus Wade has politicized the Court. *It's a danger, I grant you that. But wouldn't overruling Roe also politicize the Court? It's particularly important to show we're not caving into social pressure. Or political pressure, for that matter. Not to mention the fact that new members of the Court have tipped the balance of power in your direction.*

CHIEF JUSTICE ROBERTS

Surely you don't mean that, Justice Breyer. There's no such thing as conservative and liberal Justices. Not on my watch, anyway. We don't have Obama judges or Trump judges, Bush judges or Clinton judges.

(Justice Sotomayor waves after the Chief mentions Obama; Justices Kavanaugh and Barrett wave after the mention of Trump; and Justice Thomas waves after Bush is mentioned. The Chief strategically ignores them.)

Our job is to call balls and strikes, not to pitch or bat *or legislate from the bench*.

[For the record, the umpire analogy and the reference to "Obama judges" are quotations from Roberts' Senate confirmation hearing and a public statement respectively. Every other regular font line in the play comes from the transcript of Dobbs v. Jackson Women's Health Organization.]

JUSTICE THOMAS (*almost ironically*)

God forbid.

CHIEF JUSTICE ROBERTS

What we have is an extraordinary group of dedicated judges doing their level best to be impartial.

JUSTICE SOTOMAYOR

Is that why Mitch McConnell blocked Merrick Garland?

CHIEF JUSTICE ROBERTS

Just because the legislative branch has gone the way of banana republics doesn't mean we have.

JUSTICE BREYER

Prove it.

CHIEF JUSTICE ROBERTS

Are you threatening me?

JUSTICE BREYER

Of course not. I'm challenging you to put your vote where your mouth is. To uphold Roe.

JUSTICE BARRETT

I'm not so sure this is such a good idea. Airing our dirty laundry like this.

JUSTICE SOTOMAYOR

You'd prefer to shred the rule of law behind closed doors?

JUSTICE BARRETT

Standard practice. You know that as well as I do.

JUSTICE BREYER

Not so fast. I'd like to read a couple of sentences from Casey, if I may. To clarify what's at stake: "To overrule under fire in the absence of the most compelling reason, to reexamine a watershed decision, would subvert the Court's legitimacy beyond any serious question."

All right. What do you say to that?

JUSTICE BARRETT

Are you talking to me?

JUSTICE BREYER

I'm talking to Mr. Stewart. Unless you'd like to openly argue on behalf of the plaintiff.

JUSTICE BARRETT

No comment.

JUSTICE BREYER

What about you, Mr. Stewart? You're not worried that overturning Roe versus Wade would undermine the Court's legitimacy?

MR. STEWART (*nonchalantly*)

Not really.

(as though remembering where he is and who he's talking to)

What I mean to say— *In light of*— We now have 50 years of evidence to see what Roe has done and what it hasn't done.

JUSTICE BREYER

Well, it's caused some good things in the eyes of some people. And some bad things in the eyes of others.

JUSTICE SOTOMAYOR (*raising her voice*)

Let's call a spade a spade, shall we? What hasn't been at issue for the last 50 years is a woman's right to choose, the right to control her own body. 30 Justices over 50 years have reaffirmed this right. Four have said no, two of them members of this Court.

(Justice Sotomayor glares at Justice Thomas and the Justice Alito dummy.)

But 30 Justices have said yes, of varying political backgrounds. Now the sponsors of this bill, the House bill in Mississippi, admit they're challenging Roe because we have new Justices on the Supreme Court.

(with mounting righteous indignation)

Will this institution survive the stench this creates in the public perception that the Constitution and its reading are just political acts?

MR. STEWART

Needless to say, the Mississippi House bill never should have said that out loud—

JUSTICE SOTOMAYOR

The truth will out, Mr. Stewart. And I don't see how the legitimacy of the Court can survive if people believe that everything, including Roe vs. Wade, is politically motivated. (*slyly*) I could name any other set of rights, including the Second Amendment, by the way. There are many political people who believe the Court erred in saying that bearing arms is a personal right as opposed to a militia right.

JUSTICE THOMAS

Don't be ridiculous.

JUSTICE SOTOMAYOR

You haven't answered my question, Counsel.

MR. STEWART

Justice Sotomayor, I think the concern about appearing political makes it absolutely imperative that the Court reach a decision well-grounded in the Constitution—in text, structure, history, and tradition—and that we carefully consider the stare decisis factors we’ve laid out.

JUSTICE SOTOMAYOR

Casey already went through every one of them. Point by point.

MR. STEWART

No, it didn’t, Your Honor, respectfully.

JUSTICE SOTOMAYOR

You think Casey’s reasoning was wrong. That’s your belief. But the Supreme Court has already rendered its decision.

MR. STEWART (*keeps interrupting*)

Well, Your Honor—

JUSTICE SOTOMAYOR

And you haven’t added—

MR. STEWART

Sorry, Your Honor—

JUSTICE SOTOMAYOR

—haven’t added anything other than “I disagree with Casey.” *Not a very compelling argument, Mr. Stewart.*

MR. STEWART (*riffling through papers*)

Maybe I can highlight a problem or two. Casey doesn’t account for the last 30 years of advancements in medicine, science, all those things—

JUSTICE SOTOMAYOR

What are the—

(*Justice Kavanaugh tries to interrupt.*)

JUSTICE KAVANAUGH

What is —

JUSTICE SOTOMAYOR

(*hand-signaling to Justice Kavanaugh to back off*)

—what are the advancements in medicine you refer to, Counsel?

MR. STEWART

I think it’s an advancement in— in knowledge about fetal pain. *Things like that.* We know that an unborn girl is fully human from a very early—

JUSTICE SOTOMAYOR

A gross minority of doctors believe fetal pain exists before viability. Before a brain cortex is formed, in other words.

MR. STEWART

That's not what—

JUSTICE SOTOMAYOR

Pre-viability fetal pain is a belief, not a scientific fact.

MR. STEWART

But—

JUSTICE SOTOMAYOR

How is your interest anything but a religious view? The issue of when life begins has been hotly debated by philosophers since the beginning of time. I gather it's still debated in religious circles. When do you believe a human life actually begins?

MR. STEWART

(floundering, if not drowning in incompetence)

Your Honor, I— aside from—

CHIEF JUSTICE ROBERTS *(coming to the rescue)*

Mr. Stewart, I know what Roe versus Wade said about viability. But was viability at issue in Casey?

MR. STEWART

(recovering his equilibrium, as though the Chief Justice has thrown him a life preserver)

I don't think it was squarely at issue in Casey, Your Honor.

CHIEF JUSTICE ROBERTS

Which means viability hasn't been litigated since Roe.

MR. STEWART

Exactly.

JUSTICE SOTOMAYOR

(hauling out a blow horn)

May I finish my inquiry?

CHIEF JUSTICE ROBERTS *(sulking)*

Of course, Justice Sotomayor.

JUSTICE SOTOMAYOR

Virtually every state defines brain death as death. Yet, the literature is filled with episodes of people who are completely and utterly brain dead responding to stimuli. Clearly, a response by a fetus doesn't prove there's a sensation of pain, let alone consciousness. You haven't provided a shred of evidence that there's viability before 23 to 24 weeks.

MR. STEWART

What about fetal personhood, Your Honor? Roe versus Wade's core holding is that we can only protect an unborn girl's life after viability—when she can survive outside the womb—but not when she needs us most—pre-viability. This is not the world the Constitution promises.

JUSTICE SOTOMAYOR

Why do you keep referring to the fetus as a girl?

MR. STEWART

It's inclusive.

JUSTICE SOTOMAYOR

It's offensive.

JUSTICE BARRETT

Think of it as a kind of fetal feminism. Protecting the rights of unborn Gloria Steinems.

JUSTICE SOTOMAYOR

That's rich. Coming from you.

JUSTICE KAVANAUGH (to Justice Sotomayor)

You're never satisfied, are you? First you complain we exclude you. Now you're offended because we bend over backwards to include you.

JUSTICE THOMAS

Give them an inch, they'll take an ell.

CHIEF JUSTICE ROBERTS

Now, now. Let's not fight amongst ourselves. It's unseemly. One way or the other, the crux of the case is viability, isn't it?

JUSTICE THOMAS

Exactly. I've searched high and low for reference to anything remotely related to viability in the Constitution. In the Bill of Rights. In every single amendment to every single Constitutional clause. Am I missing something?

MR. STEWART

That's the cornerstone of our case against Roe, Justice Thomas. Viability isn't tethered to anything in the Constitution, in history, or tradition. It's a quintessentially legislative line.

JUSTICE SOTOMAYOR

Counsel, there's so much that's not in the Constitution, including the idea that the Supreme Court has the last word on *things like guns and abortion*. And yet, what the Court does—on a day-to-day basis—is render decisions based on the structure of the Constitution.

Accordingly, we've recognized parents' rights to educate their children at home. To teach them the religion of their choice. We've recognized people's right to choose who they're going to marry. I fear none of these things are written in the Constitution. Why do you now say that somehow Roe and Casey are so unusual they must be overturned?

MR. STEWART (*floundering again*)

Well, Your— Justice— I mean— I would emphasize—

JUSTICE BARRETT

Would a decision in your favor call into question any of the cases Justice Sotomayor just mentioned?

MR. STEWART

No, Justice Barrett.

(a lot of wink-winking and various other transparently duplicitous responses from conservative Justices)

JUSTICE SOTOMAYOR (*under her breath*)

Yeah, right.

JUSTICE BARRETT

What about Griswold, Lawrence, and Obergefell?

MR. STEWART

First of all, the vast majority of these cases have more clearly defined parameters—you can't ban contraception, can't ban intimate romantic relationships between consenting adults, can't ban same-sex marriage—*none of which impinge on the rights of others the way Roe does*.

JUSTICE BREYER

What about Masterpiece Cake Shop versus Colorado? The Evangelical cake-baker case?

MR. STEWART

With all due respect, Justice Breyer. Surely queer wedding cakes are a bridge too far.

JUSTICE SOTOMAYOR

In other words, you're dissimulating when you say that overturning Roe wouldn't have an effect on those cases.

MR. STEWART

Heaven forbid.

JUSTICE SOTOMAYOR

That pretty much says it all.

JUSTICE BREYER

Forgive me. I'm sorry to interrupt again. *But I'm having trouble following your logic here. Where do you draw the line? Last time I checked, neither queer cakes nor gay marriage is explicitly mentioned in the Constitution. I'm not trying to argue we should overturn Obergefell, mind you. But do you really think states like Mississippi and Texas and Florida aren't going to challenge these cases in court? We would be opening the floodgates, wouldn't we?*

MR. STEWART

I mean, Your Honor, we'll always have a diversity of views. And people will vigorously debate and make decisions for themselves —

JUSTICE SOTOMAYOR

That's the point, isn't it? Making decisions for ourselves. When does the life of a woman enter into the calculus? Forcing women who are poor to give birth—and that's 75 per cent of the population in Mississippi—puts them at four times greater risk of serious medical complications, if not death, than having an abortion before viability.

(Justice Sotomayor hauls out a bullwhip, which was concealed under the bench. The other Justices display varying degrees of trepidation, glancing over their shoulders as she navigates her way around the bench. Mr. Stewart cringes as Justice Sotomayor dramatizes a succession of points on the gallery floor, brandishing her whip like a lion tamer.)

And now the state is saying to these women: *Your bodies are not your own.*

(Justice Sotomayor cracks the whip.)

The state has jurisdiction over you.

(Justice Sotomayor cracks the whip again.)

The state intends to force you to bear a child. *(another crack)* *To compromise your ability to earn a living, temporarily if not permanently. (another crack)* *To put your life on the line, whether you like it or not.*

(Having backed Mr. Stewart into the courtroom equivalent of a corner, Justice Sotomayor holds the coiled-up whip close to his face, menacingly.)

Because we know better than you do—

CHIEF JUSTICE ROBERTS
(grabbing an AK47, which is concealed under the bench)

Justice Sotomayor . . .

JUSTICE SOTOMAYOR
(turning around to face of Chief Justice Roberts)

Chief Justice Roberts.

CHIEF JUSTICE ROBERTS
(brandishing his weapon)
If I've told you once, I've told you a thousand times. Whips aren't allowed in the courtroom.

JUSTICE SOTOMAYOR
And guns are?

CHIEF JUSTICE ROBERTS
Of course. They're in the Constitution, remember?

(Chief Justice Roberts motions with his gun barrel, forcing Justice Sotomayor to return to her seat on the bench.)

JUSTICE SOTOMAYOR
By which you mean we're a well-ordered militia?

(The rest of the conservative Justices haul out AK47s)

CHIEF JUSTICE ROBERTS
Something like that.

JUSTICE SOTOMAYOR
(still making her way back to her seat)
Silly me. I thought we were here to safeguard against martial law. Not enforce it.

CHIEF JUSTICE ROBERTS *(gleefully)*
You're quite right. Who needs guns when you've got a supermajority?

JUSTICE BARRETT
(flirtatiously to Justice Kavanaugh)
Is that a gun in your pocket, or are you just happy to see me?

JUSTICE KAVANAUGH
A little bit of both.

(Justice Kavanaugh primes his pump with a shot of tequila. At this relatively early stage of his inebriation, he is still

adhering to the ritualistic niceties of the salt/shot/lime progression.)

CHIEF JUSTICE ROBERTS

Order in the court!

(The conservative Justices snap back into pseudo-professionalism, stashing their AK47s under the bench again.)

Well, we're almost out of time. I have just a few little—well, not little, I hope—questions. And the first gets back to the issue of viability.

You know, in your petition for cert, your first question—and the only one on which we granted review—was whether all pre-viability prohibitions on elective abortions are unconstitutional. And then I think it's fair to say that when you got to the brief on the merits, you kind of shifted gears and talked about whether or not Roe and Casey should be overruled, not just modified. And I wanted to give you a chance to explain *this shell game*.

(catching himself)

Pardon me. This shift.

MR. STEWART

A couple points, Your Honor. So, at the petition stage, we emphasized that the Court was going to need to reconsider, revisit, or reevaluate *something or other*. *The merits, if I'm remembering correctly*, if not the viability clause. *Take your pick*. As to whether the Court should overrule—take that momentous step—

(long awkward pause)

—we've presented our best arguments for that, that's—that's what we've done, Mr. Chief Justice. I rest my case.

CHIEF JUSTICE ROBERTS

(utterly ignoring the fact that Mr. Stewart has just tied himself into illogical knots)

Thank you, Counsel. Justice Thomas?

JUSTICE THOMAS

No further questions.

CHIEF JUSTICE ROBERTS

Justice Kavanaugh? Justice Breyer?

(They shake their heads.)

Justice Sotomayor?

JUSTICE SOTOMAYOR

Why bother?

CHIEF JUSTICE ROBERTS

Thank you, Counsel.

MR. STEWART

Thank you, Chief Justice.

(Mr. Stewart retreats to his desk, where he mops his brow as Ms. Rikelman prepares to address the Court. Her self-possession and judicial fluency are palpable, a stark contrast to Mr. Stewart's clownish incompetence.)

CHIEF JUSTICE ROBERTS

Ms. Rikelman.

(Ms. Rikelman, seated at a desk adjacent to Mr. Stewart, rises and advances to the lectern.)

MS. RIKELMAN

Mr. Chief Justice, and may it please the court:

Mississippi's ban on abortion two months before viability is flatly unconstitutional under decades of precedent. Mississippi asks the Court to dismantle this precedent and allow states to force women to remain pregnant and give birth against their will.

The Court should refuse to do so for at least three reasons.

First, stare decisis presents an especially high bar here. In *Casey*, this Court carefully examined and rejected every possible reason for overruling *Roe*, holding that a woman's right to end a pregnancy before viability was a rule of law and a component of liberty it could not renounce.

Second, *Casey* and *Roe* were correct. For a state to take control of a woman's body and demand that she go through all the physical risks and life-altering consequences of pregnancy and childbirth is a fundamental deprivation of her liberty. Preserving a woman's right to make this decision until viability protects her liberty while logically balancing the other interests at stake.

Third, eliminating or reducing the right to abortion will propel women backwards. Two generations have now relied on this right, and one out of every four women makes the decision to end a pregnancy. To avoid profound damage to women's liberty, equality, and the rule of law, the Court should affirm *Roe* versus *Wade*.

JUSTICE THOMAS

I'm going to ask you the same question I asked Mr. Stewart. *I've searched high and low, Ms. Rikelman—spent sleepless nights poring over the sacred words of our divinely-inspired, slave-holding Founding Fathers—looking for textual evidence in support of your theory of the case.*

(A devout Catholic, Justice Thomas crosses himself every time he invokes the name of the Founding Fathers.)

If we were interpreting the Second Amendment, I'd know exactly what we're talking about. If we were interpreting the Fourth Amendment, I'd know what we're talking about because it's written. It's there. What specifically are we talking about in Roe versus Wade? Is it liberty? Is it autonomy? Is it privacy? What is it?

MS. RIKELMAN

It's liberty, Your Honor. It's the textual protection in the Fourteenth Amendment that a state can't deprive a person of liberty without due process of law. Allowing a state to take control of a woman's body and forcing her to undergo the physical demands, risks, and life-altering consequences of pregnancy is a fundamental deprivation of her liberty.

JUSTICE THOMAS

Did any state constitutional provision recognize that abortion was a right, liberty, or immunity in 1868, when the Fourteenth Amendment was adopted?

MS. RIKELMAN

No, Your Honor. But there was a tradition under the common law for centuries of women being able to end their pregnancies. At the time of the founding and well into the 1800s, women freely exercised this right.

JUSTICE THOMAS

The brief for the American Historical Association says that abortion wasn't legal before quickening in 26 out of 37 states at the time when the Fourteenth Amendment was adopted. Is that correct?

MS. RIKELMAN

That is correct, Your Honor. But those 26 states discarded the common law because of a discriminatory view that a woman's proper place was as a wife and mother, a view that the Constitution now rejects. *Until 1860, even the Catholic church allowed abortion before what they called ensouling—their term for viability or quickening.* That's why it's appropriate to historicize reproductive rights. Otherwise, the Constitution might reinforce historical discrimination against women.

JUSTICE THOMAS

And?

(long pause)

MS. RIKELMAN

Is that a question, Justice Thomas?

JUSTICE THOMAS

It's the question, Ms. Rikelman.

MS. RIKELMAN

I'm afraid I don't understand.

JUSTICE THOMAS

All men are created equal, are they not?

MS. RIKELMAN

It's the cornerstone of our founding documents.

JUSTICE THOMAS

Precisely. Now we're getting somewhere. Let's parse that phrase, shall we?

(as though tasting the words)

All men are created equal. From an originalist perspective—the way the Founding Fathers themselves understood it—

(Justice Thomas crosses himself again.)

—what do you suppose they meant by all men?

CHIEF JUSTICE ROBERTS

Let's not go there, Justice Thomas.

JUSTICE THOMAS

Why not? Ms. Rikelman claims that the Constitution no longer reinforces historical discrimination against women, of all things. I'd like to give her an opportunity to defend her position.

CHIEF JUSTICE ROBERTS

(clearly unnerved by Justice Thomas's tendency to say the quiet part out loud)

I must confess I don't see how this line of questioning relates to Dobbs versus Jackson Women's Health Organization.

JUSTICE BARRETT

(raising her hand like a preschooler eager to answer the question)

I know! I know!

CHIEF JUSTICE ROBERTS

(reluctantly calling on her, so to speak)

You have a question, Justice Barrett?

JUSTICE BARRETT

That's why I'm here—to make sexist questions seem less offensive. Let alone sexist rulings. I'm the Uncle Tom of jurisprudence pertaining to women. No offense, Justice Thomas.

JUSTICE THOMAS

None taken. It's a compliment, coming from you.

JUSTICE BARRETT

(turning to Ms. Rikelman)

Mrs. Rikelman, I take it you think women are entitled to the inalienable rights enjoyed by the all men referred to in “All men are created equal”?

MS. RIKELMAN

Needless to say—

JUSTICE BARRETT

That being the case, why draw the line there? In the spirit of the never-ending quest to expand the purview of human rights, don't fetuses deserve the same consideration?

MS. RIKELMAN

With all due respect, Your Honor, so-called fetal personhood isn't at issue in this case.

JUSTICE BARRETT

I'll be the judge of that.

(adopting a confidential, saccharine-sweet tone)

Do you have children, Mrs. Rikelman?

MS. RIKELMAN

I hardly think that's relevant.

JUSTICE BARRETT

Says who? Justice Sotomayor doesn't have children, you know. Neither does Justice Kagan. Much to the detriment of their judgment, if you ask me. Have you been blessed with children?

MS. RIKELMAN

Two girls.

JUSTICE BARRETT

Only two? I've got seven children, you know. Two of whom are adopted. Which leads me to my next question. Both Roe and Casey emphasize the consequences of forced parenting and the obligations of motherhood that flow from pregnancy. Why don't the safe haven laws take care of the problem? There is, without question, an infringement on bodily autonomy. Not unlike vaccines. But that doesn't mean pregnancy and parenthood are all part of the same burden.

Mr. Stewart's brief points out that in all 50 states, you can terminate parental rights by relinquishing a newborn—leave the baby at a fire house, for example. Or a police station. Not to mention adoption agencies. Why didn't you address the safe haven laws and why don't they matter?

MS. RIKELMAN

They don't matter for a number of reasons, Your Honor. The idea that a woman can place a child up for adoption has, of course, been true since Roe and Casey. So it's a consideration the Court already addressed when it decided those cases and adhered to the viability line.

Pregnancy imposes unique physical demands and risks on women and, in fact, has impact on their ability to care for other children, other family members, on their ability to work. And those risks are alarmingly high. It's 75 times more dangerous to give birth in Mississippi than it is to have a pre-viability abortion, and those risks are disproportionately threatening the lives of women of color.

Finally, there's the emotional burden of forcing a woman to choose whether or not to give a child up for adoption—

JUSTICE BARRETT

That proves my point, not yours. How could any woman in her right mind resist the idea of wrapping these booties around the precious little toes of a newborn?

(holding up the booties she's been knitting)

You're a mother. Don't they tug at your heart strings, Mrs. Rikelman?

JUSTICE SOTOMAYOR

Have you ever considered how rape and incest might affect a woman's heart strings?

JUSTICE BARRETT

The Mississippi House bill doesn't take rape and incest into account, and neither should you. A soul is a soul, no matter how it was conceived.

JUSTICE BREYER

So much for the separation of church and state.

JUSTICE BARRETT

Mrs. Rikelman was the one who brought up ensoulment, not me.

JUSTICE BREYER

Ensolment after viability. Not before.

CHIEF JUSTICE ROBERTS

Aye, there's the rub. Let's return to the question at hand—whether Mississippi has the right to prohibit abortions at 15 weeks rather than 23 or 24. A minor adjustment in the larger scheme of things, if you ask me. Not a total ban. Surely viability and choice aren't as closely linked as you say they are, Ms. Rikelman.

JUSTICE BREYER

Before we shift gears, I'd like to follow up on something Justice Barrett said about vaccines and bodily integrity.

CHIEF JUSTICE ROBERTS *(reluctantly)*

Very well. I'll allow it. Against my better judgment.

JUSTICE BREYER

Thanks, Chief.

(turning to Ms. Rikelman)

I hardly think vaccines and abortion are comparable, do you? With reference to bodily integrity, that is. Not to mention public health.

MS. RIKELMAN

They're not comparable by any measurable standard, Your Honor. Pregnancy impacts a woman's bodily integrity for at least nine months, even without serious medical complications. Vaccines, on the other hand, only take a minute and are minimally invasive—

JUSTICE THOMAS *(interrupting)*

Assuming they don't contain microchip tracking devices—

JUSTICE KAVANAUGH

Or make your balls blow up like balloons. Like Nicki Minaj's cousin's best friend—

CHIEF JUSTICE ROBERTS

Let's save questions about vaccines for next week, when we consider whether or not to block the President's vaccine mandates.

JUSTICE THOMAS

Talk about a no-brainer.

JUSTICE SOTOMAYOR

Here again, you're not worried about the Court's legitimacy? Telling women what to do with their bodies is fair game, apparently. But asking everyone else to take a life-saving vaccine is unlawful. Why? Because it infringes on their right to infect other people? You're not just telegraphing double standards. You're broadcasting them.

JUSTICE KAVANAUGH

Don't be ridiculous. Fox News would never dream of broadcasting our double standards—

CHIEF JUSTICE ROBERTS

Foul ball! We're here to interpret the Constitution, not pander to the press. Let alone public opinion.

JUSTICE SOTOMAYOR

Even though the vast majority of Americans favor reproductive rights?

CHIEF JUSTICE ROBERTS

Especially because the majority of Americans favor reproductive rights. Who are they to decide what is or isn't ethical? Or legal.

JUSTICE SOTOMAYOR

That was the crux of Mr. Stewart's argument, wasn't it? Letting the people of Mississippi decide whether or not to uphold Roe versus Wade. Somehow they're allowed to make ethical decisions, even though the majority of Americans aren't qualified to do so? Yet another double standard.

JUSTICE BREYER

Hoisted with his own petard—

CHIEF JUSTICE ROBERTS

Need I remind you I'm the Chief Justice? This is my court, and I'll be the judge of what is or isn't a double standard.

JUSTICE BARRETT

(to Justice Kavanaugh)

I love it when he gets all hot and bothered like that, don't you?

JUSTICE KAVANAUGH

Preferably behind closed doors—

(Chief Justice Roberts's chair shoots way up; everyone snaps to attention like chastised children, with the notable exception of Justice Sotomayor, who smacks her scales into a frenzy of oscillation.)

CHIEF JUSTICE ROBERTS

(with the full force of his authority)

Ms. Rikelman. I read your brief, which states—*somewhat inexplicably*—that the only real option we have is to reaffirm Roe and Casey as they stand or to overrule them in their entirety. You say that (quote) “there are no half-measures here” (unquote). Is that a correct understanding of your brief?

MS. RIKELMAN

Your Honor, we're responding to Mississippi's request to replace viability with a 15-week ban. As you well know, the viability line is the central holding in both Roe and Casey. Without it, there's no real way to uphold a woman's constitutional right to abortion.

If the Mississippi House bill prevails, then states with six-week bans, eight-week bans, ten-week bans, and so on, would seek to enforce them without recourse to the scope of the liberty interest going forward. States will rush to ban abortion at virtually any point in pregnancy. *It's a textbook definition of a slippery slope, Your Honor.*

CHIEF JUSTICE ROBERTS

So much the better—

(giving himself away, and then doing damage control)

—by which I mean, this particular case is only asking for a 15-week ban. As far as viability goes, I don't see what that has to do with the question of choice at all.

MS. RIKELMAN

With all due respect, Your Honor, people who need abortions after 15 weeks are often in the most challenging circumstances. They are often people with a major health or life change, a family illness, a job loss, separation, young people or people who are on contraception or

pregnant for the first time and were delayed and recognizing the signs of pregnancy, or poor women, who often have much more trouble navigating access to care. And if they are denied the ability to make this decision because there's a ban after the ten weeks, they'll suffer all the consequences the court has talked about in the past.

In fact, the data over the last 50 years has clearly shown that abortion has been critical to women's equal participation in society. It's been critical to their health, to their lives, to their ability to pursue—

CHIEF JUSTICE ROBERTS

I'm sorry, what kind of data is that?

MS. RIKELMAN

I would refer the Court to the brief of the economists in this case, which compiles data showing how the legalization of abortion has enhanced women's access to education and professional opportunities—

CHIEF JUSTICE ROBERTS (*dismissively*)

Well, putting data aside, if you think the issue is one of choice—that women should have a choice to terminate their pregnancies—doesn't 15 weeks provide ample time to make that decision?

Because viability doesn't have anything to do with choice, does it?

MS. RIKELMAN

As the Court has repeatedly emphasized—in *Roe* and *Casey* and *June Medical*, for example—the viability line has both a biological and a logical justification, marking the point when the fetus is capable of meaningful life—

CHIEF JUSTICE ROBERTS

Not so fast. That's a syllogism, *not a justification*.

JUSTICE KAVANAUGH

A syllogism? Or a tautology?

CHIEF JUSTICE ROBERTS

A syllogism, without a doubt, as follows:

(even more pompously than usual)

Premise: Viability marks the point at which a fetus can survive on its own.

Premise: Abortion is legal until a fetus can survive on its own.

Conclusion: Therefore, viability justifies the right to abortion.

A logical fallacy if ever there was one.

JUSTICE KAVANAUGH

A logical fallacy, to be sure. But a tautology, not a syllogism, as follows:

The viability line is justified because the fetus is capable of meaningful life.

JUSTICE THOMAS

Strictly speaking, that's circular reasoning. Not a true tautology at all. If we're going to expose Ms. Rikelman's logical fallacies, we need to be precise—

JUSTICE SOTOMAYOR

The clock is ticking, gentlemen. While you're engaging in rhetorical pissing contests, women in Mississippi are faced with the grim prospect of terminating pregnancies without access to medical care. You can't really ban abortions, you know. You can only ban safe abortions. And only if you flout the equal protection clause of the Fourteenth Amendment.

CHIEF JUSTICE ROBERTS

Are you arguing this case, Justice Sotomayor? Or should we let Ms. Rikelman represent the baby killers—I mean the pro-choice side of the argument?

MS. RIKELMAN

If I may, I'd like to address the question of viability, once and for all. It's a clear and workable line that preserves the essential components of liberty and autonomy. And it has the advantage of being a rule of law for 50 years.

JUSTICE KAVANAUGH

Yes and no. The problem with your argument is that you're only accounting for one side of the equation. There are two interests at stake—the life of the mother and the life of the fetus—and one interest has to prevail over the other at any given point in time. In your brief, you say that the existing framework accommodates—that's your word—both the pregnant woman and the fetus. But according to Mr. Stewart's brief, you can't accommodate both interests, Ms. Rikelman. You have to pick.

The core problem here is that you're forcing the Court to pick sides on the most contentious social debate in American life. The Mississippi House bill argues that the Constitution is neutral on the question of abortion. And because the Constitution is neutral, this Court should be scrupulously neutral—neither pro-choice nor pro-life—because we don't have the authority to rule one way or the other. So we should return to a position of neutrality and leave the question of abortion to the states. To the people of Mississippi. *That's Mr. Stewart's argument in a nutshell, if I'm not mistaken, and I want to give you a chance to respond to it.*

MS. RIKELMAN

Yes. A few points, Your Honor.

First, those very same arguments were made in Casey, and the Court rejected them, saying that this philosophical disagreement can't be resolved in a way that women have no choice in the matter.

And, second, I don't think it would be a neutral position. The Constitution provides a guarantee of liberty, including the ability to make decisions related to childbearing, marriage, and family.

Women have an equal right to liberty under the Constitution, Your Honor, and if they're not able to make this decision—if states take control of women's bodies and force them to endure months of pregnancy and childbirth—they will never have equal status under the Constitution.

JUSTICE KAVANAUGH

I hardly think liberty and equality are interchangeable, Ms. Rikelman, as your argument seems to suggest. Be that as it may, I'd like to ask a follow-up question about stare decisis, picking up on Justice Breyer's comments. When you really dig into it, as I have, the history of stare decisis tells a somewhat different story than is sometimes assumed.

We all know that some of the most consequential cases in the Court's history involved overruling precedent. *Brown v. Board* outlawed separate but equal. *Baker versus Carr* set the stage for one person/one vote. More recently, *Lawrence v. Texas*, which said that the state can't prohibit same-sex conduct. *Gideon versus Wainwright*, which guaranteed the right to counsel in criminal cases. *Obergefell*, which recognized a constitutional right to same-sex marriage.

I assume you agree with most, if not all, of these decisions, each of which overruled a precedent. So the question on stare decisis is why, if—and I know you disagree with what I'm about to say in the “if”—if we think that precedents are seriously wrong, then why doesn't the history of this Court's practice require us to overrule them?

MS. RIKELMAN

Because the view that a previous precedent was wrong has never been enough for this Court to overrule, especially when there's 50 years of precedent. Instead, the Court has required something else, a special justification. And Mississippi hasn't come forward with any special justification. They make the same exact arguments the Court already considered and rejected in its stare decisis analysis in *Casey*.

If this Court renounces the liberty interests recognized in *Roe* and reaffirmed in *Casey*, it would be an unprecedented contraction of individual rights and a stark departure from principles of stare decisis.

In fact, the Court has never revoked a right that is so fundamental to so many Americans and so central to their ability to participate fully and equally in society.

Furthermore, the real-world effects of overruling *Roe* and *Casey* would be severe and swift. Nearly half of the states are poised and ready to enact bans on abortion in all stages of pregnancy, many without exceptions for rape or incest. *To borrow a line from Mr. Stewart's brief, this is not the world the Constitution promises.*

JUSTICE KAVANAUGH

You make a very forceful argument and identify critically important interests that are at stake in this issue, no doubt about that. *Too bad we've already made up our minds.*

(Convinced that he and his cronies will win the day, Justice Kavanaugh pours himself a celebratory shot of tequila.

Needless to say, a beer chaser is always at the ready.)

JUSTICE THOMAS

I must say I'm mystified by your position, Ms. Rikelman. Do you mean to say that a case can never be overruled on the grounds that it was egregiously wrong?

MS. RIKELMAN

At the very least, the state would have to come forward with some kind of materially changed circumstance or some kind of materially new argument. And Mississippi hasn't done so in this case.

JUSTICE THOMAS

(progressively incensed)

Really? Suppose Plessy versus Ferguson was re-argued in 1897, *smack in the middle of Jim Crow*. Would it not have been sufficient to say that it was an egregiously wrong decision from day one—the minute it was handed down—and should therefore be overruled?

MS. RIKELMAN

Without a doubt, Plessy versus Ferguson was egregiously wrong on the day it was handed down. But the Court was still required to provide a special justification. Had Brown versus Board of Education not exposed the hypocrisy of the separate but equal doctrine, Plessy wouldn't have been overturned, at least not yet.

JUSTICE THOMAS

Do you really—

MS. RIKELMAN

And here, Mississippi hasn't—

JUSTICE THOMAS

(fixated on the question, like a dog with a bone)

You actually think there are no circumstances in which a decision may be overruled, properly overruled, when it must be overruled simply because it was egregiously wrong at the moment it was decided?

MS. RIKELMAN

I think—

JUSTICE THOMAS

(relentlessly interrupting)

Is that correct?

MS. RIKELMAN

—every other—

JUSTICE THOMAS

Is that your position?

MS. RIKELMAN

—stare decisis factor likewise—

JUSTICE THOMAS (*menacingly*)

Yes or no, Ms. Rikelman! *Stop equivocating.*

MS. RIKELMAN

(*with remarkable sangfroid in the face of the dog with a bone; picking her words very carefully*)

No. This Court has never overruled solely based on a conclusion that a decision was wrong. If stare decisis is to mean anything, it has to mean that overruling precedent requires strict scrutiny of the original argument—a *point-by-point analysis of precedent*—quite literally the only way to ensure the rule of law going forward. Casey did that. It applied the stare decisis factors to Roe. Which means what we’re dealing with here is precedent on precedent. *Doubly settled law.*

JUSTICE BARRETT

(*like butter doesn’t melt in her mouth*)

Counsel, you keep emphasizing that the Court drew the line at viability in Roe and reaffirmed it in Casey, and that’s certainly something that we have to take into consideration.

But suppose we were considering this question for the first time. I’m sure you know the arguments about the viability line as well as I do, probably better than I do. What would you say to the idea that the line really doesn’t make any sense—that it is, as Chief Justice Roberts himself described it, arbitrary?

MS. RIKELMAN (*incredulously*)

You’re asking me to ignore stare decisis?

JUSTICE BARRETT

Sure. Why not?

MS. RIKELMAN

Because, *as I have already indicated*, the stare decisis doctrine is the cornerstone of the rule of law.

JUSTICE BARRETT

Not if you’re effectively hiding behind the doctrine, Mrs. Rikelman. Does this mean you can’t defend the viability line in and of itself?

MS. RIKELMAN

The Court itself has consistently ruled that viability is a principled line, the most—

JUSTICE BARRETT

Yes, but we’re fighting the hypothetical here, Counsel. Accept the hypothetical. Surely if a woman wants to be free from the burdens of pregnancy, that interest doesn’t disappear the moment the viability line is crossed. What is the secular philosophical argument for saying this is the appropriate line?

JUSTICE BREYER

I hate to interrupt—I really do—but I can't help but think the word secular is a telltale sign that we've wandered into dangerous territory, where the religious view has somehow wormed its way into our deliberations. Could this possibly be true?

JUSTICE THOMAS

Heaven forbid.

JUSTICE BREYER

That's the second time you've said that. Yet another tell.

JUSTICE THOMAS

And that's the second time you've said you hate to interrupt, a ridiculous assertion, given your tendency to pontificate—

JUSTICE BREYER

My tendency to pontificate—

CHIEF JUSTICE ROBERTS

Pontificating goes with the territory, gentlemen. What doesn't go with the territory is this public display of discord. This in-fighting. I won't allow it. As Justice Breyer is wont to say, the Court's legitimacy relies on the appearance of collegiality, if not unanimity.

JUSTICE BREYER

I never said that.

CHIEF JUSTICE ROBERTS

We're all one big happy family, remember? Doctrinal differences notwithstanding, Justice Ginsburg and Justice Scalia frequently accompanied one another to the opera. Justice Scalia taught Justice Kagan how to shoot a gun, if you can believe it. They even went hunting together. Isn't that right, Justice Kagan?

(A muffled sound emanates from Justice Kagan's gagged dummy.)

JUSTICE SOTOMAYOR

You may have noticed that two of those Justices are no longer with us.

CHIEF JUSTICE ROBERTS

And?

JUSTICE SOTOMAYOR

The collegiality of the Court may not have survived Justice Ginsburg's passing. For obvious reasons.

CHIEF JUSTICE ROBERTS

I do wish you'd make more of an effort to get along.

JUSTICE SOTOMAYOR

To play nicely with the other children?

CHIEF JUSTICE ROBERTS

Something like that. Decorum is essential to the reputation of the Roberts Court—

JUSTICE THOMAS

The Roberts court or the Thomas Court?

JUSTICE BARRETT

Six of one, half a dozen of the other.

CHIEF JUSTICE ROBERTS

I beg your pardon—

JUSTICE BARRETT

(in the manner of a junior high school gossipmonger)

Nothing.

*(resuming a pseudo-professional demeanor, addressing
Ms. Rikelman)*

*Getting back to the task at hand. Does the viability line really hold up under strict scrutiny,
given the philosophical questions posed by fetal personhood?*

MS. RIKELMAN

*With all due respect, no one will ever be able to answer these questions. No one in this court,
anyway. Philosophy—secular or otherwise—is the purview of philosophers, not Justices, who
are charged with interpreting the Constitution, not speculating on the meaning and origin of life.
Viability is the most principled, workable line because it balances all the interests at stake—
including the fetus's ability to survive separately—without requiring the Court to resolve
unresolvable philosophical debates.*

JUSTICE BREYER

Which leads us back to the question of stare decisis.

JUSTICE THOMAS

Talk about beating a dead horse.

JUSTICE BREYER

*I'd like to read from Casey again, if I may. As you well know, the majority opinion is written in
two parts. Part one reaffirms Roe versus Wade. The second part enumerates the stare decisis
principles that clinched the case. In light of this due diligence—and I quote—"only the most
convincing justification can show that a later decision overruling Roe is anything but a surrender*

to political pressures or new members of the Court”—unquote. “*New members,*” *mind you. Their words, not mine.*

(Justice Breyer looks pointedly at Justices Kavanaugh and Barrett.)

The last sentence of Casey also warns that overruling Roe versus Wade would undermine our ability to function as the Supreme Court of a nation dedicated to the rule of law. *They didn’t refer to this outcome as a stench—Justice Sotomayor’s characterization of the case—if only because the Burger Court was more collegial than the Roberts Court.*

Mr. Stewart has assured us that we need not worry about damaging the Supreme Court’s legitimacy. What do you think, Ms. Rikelman? Have you’ve reflected on the larger implications of this case—above and beyond the question of whether a 15-week ban really effectively guts Roe.

MS. RIKELMAN

It’s not my place to tell the Court how to conduct itself. I’m here to uphold the rule of law. And the rule of law demands that the Court reaffirm the rights of women, which have been justified beyond a shadow of a doubt in Roe and Casey.

JUSTICE SOTOMAYOR

No one should have to tell the court how to conduct itself. Yet here we are, on the brink of what amounts to a constitutional crisis. It’s not enough that the executive and legislative branches of our government are imploding? Are we really going to follow suit?

Rereading Casey, I’m struck by its assessment of the historical significance of Roe versus Wade. It says Roe is special. What’s special about it? It calls it a watershed case. Why? Because the country is divided? Because feelings run high? And yet the country, for better or for worse, decided to resolve their differences by this Court laying down a constitutional principle, in this case a woman’s right to control her own body.

In watershed cases such as this, it’s particularly important to show that we’re not a political institution whose rulings swing back and forth depending on what part of the public yells loudest. It’s what Hamilton meant when he said that we wield neither the sword nor the purse—that our legitimacy relies on the people’s belief *that we aren’t just politicians in robes, dressing up partisan politics in the guise of legal proceedings.*

Judging from the tenor of oral arguments thus far, I fear we’re in danger of jeopardizing our authority, if not our legitimacy—

CHIEF JUSTICE ROBERTS

(progressively histrionic, if not hysterical, as he contemplates losing control of “his” court)

Enough already! How do you think I feel? It’s my court! And if you think I want to go down in history as the Chief Justice who allowed blatant partisan politics to run rampant, you’ve got another thing coming. When it comes to the high court, the art of the deal requires an invisible hand, steering our rulings in an ultra-conservative direction without sinking the ship of state.

This isn't the first court to try to make the contraction of rights look like fidelity to the Constitution. But the times they are a-changin'. Try as we might, we can't ignore the woeful fact that the majority of the people are moving in one direction—toward an expansion of equality—while my court desperately tries to turn back the clock—to make America great again, to borrow a phrase—otherwise known as owning the libs.

(pleading with fellow conservatives)

We need to proceed incrementally, privileging religious liberties without appearing to violate the separation of church and state. Advancing the interests of heteronormative rich white men without appearing to marginalize black, brown, indigenous, queer, and other appropriately disenfranchised groups, who aren't up to the task of governing themselves. The operative word is appearance, a simulacrum of justice, not unlike the Statue of Liberty, which seems to welcome the huddled masses even as the United States slams its borders shut to safeguard the white supremacy that made America great in the first place.

JUSTICE BARRETT

Stop! I'm getting all hot and bothered just thinking about heteronormative white supremacists.

CHIEF JUSTICE ROBERTS

(strategically ignoring her)

Fellow conservatives, lend me your ear. Dobbs versus Jackson Women's Health is an ingenious bill, tailor-made to gut Roe while maintaining the illusion of choice. But only if we allow the 15-week ban to stand, at least for now, to cover our tracks. A wolf in sheep's clothing comes to mind, an apt metaphor for the Roberts Court, if I may say so myself.

Don't get me wrong. I want to throw Roe on the ash heap of history as much as you do, though I would never say it out loud.

JUSTICE BARRETT

You just did.

CHIEF JUSTICE ROBERTS

I just did what?

JUSTICE BARRETT

You said it out loud.

CHIEF JUSTICE ROBERTS

Oops.

(directly addressing the audience, smiling cherubically)

What I meant to say, of course, is that we would never dream of overruling Roe without making sure every last stare decisis consideration is subjected to strict scrutiny—a double, triple, quadruple level of judicial review designed, in part, to safeguard the reputation of this august institution—

JUSTICE KAVANAUGH

Why bother? Nobody's really paying attention anyway. Except maybe a handful of Feminazis. The majority of Americans are too busy fighting over Covid vaccines. And whether or not the January 6 assault on the Capitol was heroic or not. Besides, who needs judicial review when we've got Fox News on our side?

JUSTICE THOMAS

Not to mention the fact that Justice Ginsburg is gone—finally—and we can do as we please.

(With the exception of Chief Justice Roberts, the conservative justices start descending from their thrones)

JUSTICE BARRETT

(as they're descending)

The changing of the guard, so to speak, ushering in a whole new era of not-so-compassionate conservatism. Justice Ginsburg must be rolling in her grave—

JUSTICE THOMAS

One can only hope—

(With the exception of Chief Justice Roberts, the conservative Justices start dancing in a circle around the gallery, singing gleefully)

JUSTICES BARRETT, THOMAS, AND KAVANAUGH

*Ding-dong, the witch is dead! Which old witch? The wicked witch
Ding-dong, the wicked witch is dead!*

*She's gone where the goblins go below, below, below, yo ho
Ding-dong! the merry-o sing it high, sing it low
Let them know the wicked witch is dead—*

CHIEF JUSTICE ROBERTS

Order in the court!

(Chastened, the three conservative Justices slink back to their seats on the bench.)

Let's see now. Where were we?

MS. RIKELMAN

I'd like to underscore the number of times members of this Court have declared that Roe versus Wade is settled law. And that viability is—

JUSTICE THOMAS

You've made that point abundantly clear, Ms. Rikelman. For what it's worth.

CHIEF JUSTICE ROBERTS

Any further questions?

JUSTICE THOMAS

Enough already.

CHIEF JUSTICE ROBERTS

Justice Kavanaugh?

(He shakes his head.)

Justice Breyer?

(Justice Breyer, who is apparently too far gone to vocalize his response, waves off the opportunity to pose another question.)

Justice Sotomayor?

JUSTICE SOTOMAYOR

No further questions.

CHIEF JUSTICE ROBERTS

Thank you, Counsel.

MS. RIKELMAN

Thank you, Chief Justice.

(Ms. Rikelman returns to her desk.)

CHIEF JUSTICE ROBERTS *(ceremoniously)*

The case is hereby submitted for review at 11:54 a.m., December 1, 2021.

JUSTICE BREYER

(with considerable difficulty getting the words out)

A date which will live in infamy.

JUSTICE SOTOMAYOR

The beginning of the end of democracy—

(Thunder and lightning, as Justice Ginsburg descends from the clouds in the manner of deus ex machina.)

JUSTICE GINSBURG

Over my dead body.

(addressing the bench with sunny irony)

Did you miss me? When the cat's away, the mice will play, that's for sure. Who knew you could make so much mischief in the brief span of time since my untimely demise?

Mind you, I'm well aware that people say I should have retired earlier, by which they mean I'm responsible for the conservative super-majority on the Court. You mustn't think we can't hear you on Mount Olympus—the acoustics are amazing up there.

(with her usual no-nonsense clarity and rapier-like wit)

I'd like to set the record straight, once and for all. Don't blame me for the fact that Donald Trump defeated Hillary Clinton. That Mitch McConnell cares more about demagoguery than democracy. Let alone the fact that Justice Barrett isn't so much a RINO—a Republican in name only—as a WINO—a woman in name only.

JUSTICE KAVANAUGH

Did someone say wino? Cheers!

JUSTICE GINSBURG

As for you, the frat boy occupying the Honorable Justice Kennedy's seat, do you have any idea how much damage you've already done to this institution? I fault myself, in a way, for letting it happen. Now that I've got a little distance from it all—death has a way of cutting through all the bullshit—I can acknowledge the mistakes we made, welcoming you with open arms when we should have called a stench a stench, to quote Justice Sotomayor. And that's not all.

(gesturing at the opulence of the courtroom)

We let this pomp and circumstance go to our heads—all the power we wield due, in part, to the dereliction of the other two branches of government, who dump all their dysfunction at our doorstep. That's no excuse, mind you. I'm well aware of my own narcissistic tendencies—leaning into my rock star status instead of discouraging it. Making a video of my workout in the courthouse gym, of all things, basking in my fifteen minutes of fame like an elderly Kardashian. Notorious RBG, my ass.

(opening her robe, exposing a Notorious RBG T-shirt)

Not to mention holding onto my seat well past my expiration date. It's a cautionary tale, Justice Breyer. Make way for the next generation, already—

(Justice Breyer's medical monitors beep in response.)

It all boils down to one of the seven deadly sins—pride—flattering myself that I was somehow irreplaceable. That only I could save the day, even now, descending from the heavens to beat back the rising tide of testosterone on the Court.

I hate to tell you in particular, Justice Kavanaugh, given your dangerously fragile ego. But you're just another judge, no more, no less, pretending to be supreme. Pretending to have some kind of divine right, a relic of the monarchy we rebelled against.

(Justice Kavanaugh throws back a shot or two, entering into the final stages of his alcoholic demise.)

And this is what kills us as an institution—this pretense that we're above partisan politics, which obscures the fact that we're just as prone to corruption as the other two branches of government. All the more dangerous because there are no checks and balances on the Supreme Court, whose unelected members serve for life. Whose confirmation hearings are performative at best, sideshows at worst. Just ask Justices Thomas and Kavanaugh. Which reminds me. Now that I'm no longer bound by the Court's insidious civility—yet another vector of hypocrisy—I'd like to pose a question I've been dying to ask you two. Did you do it?

JUSTICE THOMAS

I beg your pardon.

JUSTICE GINSBURG

You'd be better off begging the pardon of Anita Hill and Christine Blasey Ford. Fess up. Did you do it?

JUSTICE KAVANAUGH (*slurring his words*)

I did not have sex with that woman.

JUSTICE GINSBURG

The Clinton defense. Tried and true and guaranteed to telegraph the unimpeachable integrity of men in power, lack of integrity notwithstanding. After all, boys will be boys.

JUSTICE KAVANAUGH

I'll drink to that.

JUSTICE THOMAS

Cheers.

JUSTICE GINSBURG

And that's what this is all about, isn't it? Boys being boys? You have your way with us, in every conceivable way, and then you leave us holding the bag—or the fetus, as the case may be—which you dare to call a person while denying us our right to personhood.

An embryo endowed with the inalienable rights of life, liberty, and the pursuit of happiness. What next? Fetal 401(k)s?

I thought I could leave it in your hands, Justice Sotomayor, to carry the torch of justice in the face of the tyranny of testosterone. But relying on heroic measures won't address the fact that this court is rotten to the core. Any institution that pretends to be infallible is bound to abuse its power. Have we learned nothing from two millennia of papal malfeasance? Speaking of which, what's with all the Catholics on the bench?

(Justices Thomas, Barrett, Kavanaugh, and Chief Justice Roberts all cross themselves.)

Republicans are yelling and screaming about democrats threatening to pack the court. But it's already been packed with papists whose raison d'être is overruling Roe.

Congratulations. The moment you've been waiting for has finally arrived. The pièce de résistance of judicial activism! The swan song of democracy—overturning Roe versus Wade—the ultimate expression of what all men are created equal has meant all along.

You know me. I'd like to believe that the arc of the moral universe is long, but it bends towards justice. If this turns out to be true, it will be in spite of, not because of, the Supreme Court,

whose name alone disqualifies it as an agent of equality. We'd be better off calling it the People's Court.

JUSTICE BARRETT

That's a television show.

JUSTICE GINSBURG

And this is a circus. Take your pick. Now, if you'll excuse me, I'll do what I came here to do.

JUSTICE SOTOMAYOR

Fasten your seatbelts, gentlemen.

JUSTICE GINSBURG

Like I said, I'm not here to save the day. I just left my purse behind my former seat on the bench, the one currently occupied by a gagged dummy of the female persuasion. A little on the nose, don't you think?

(Justice Ginsburg retrieves her handbag and makes her way back to the gallery; the conservative Justices watch their backs, nervously, as she scoots around them.)

I'm tempted to impart one last pearl of wisdom. Having pontificated for so many years, perched up there on my high horse, it's difficult to break the habit. We all remember the apocryphal story of Benjamin Franklin's description of the Constitutional Convention in 1787. When asked what kind of government the delegates had devised, he replied: "A republic, if you can keep it."

Listening to the proceedings of your Court, Chief Justice Roberts, I'm afraid Franklin's admonition is too high-minded to meet the moment. A gangsta version is much more appropriate, given your indifference to the rule of law.

(Approaching the bench, Justice Ginsburg delivers the line in the manner of Michael Corleone in The Godfather.)

Nice little democracy you got here. Be a shame if somethin' happens to it.

(Clearly intimidated, Chief Justice Roberts glances in the direction of the Sergeant-at-arms.)

No need to call the Sergeant-at-Arms, Chief. I'll see myself out.

(Justice Ginsburg walks off the stage and leaves the theatre via one of the aisles flanked by audience members.)

JUSTICE BARRETT

Talk about a showstopper.

CHIEF JUSTICE ROBERTS

*Nonsense. The demise of democracy doesn't mean the end of the conservative agenda.
(giddily)*

*If anything, it enhances our authority. Nothing can stop us now!
(Stirring patriotic music prompts the conservative Justices
to jump to their feet, stretching out their arms toward an
imaginary horizon, as though witnessing a religious
revelation.)*

At long last, the City on the Hill is nigh . . .

JUSTICE THOMAS

America as God intended it!

JUSTICE KAVANAUGH

A theocracy of the chosen few!

JUSTICE BREYER

*(Having become progressively infirm during the course of
the play, Justice Breyer finally gives up the ghost. The
escalating beeps of his medical monitors serenade the
conservative Justices as they wax poetic about the
autocratic fruits of their labors. In lieu of verbally
responding, his pulse stops and the monitors' sounds
flatline.)*

JUSTICE SOTOMAYOR

*The beginning of the end of democracy as we know it. Talk about an inside job. Was it Abraham
Lincoln who said that the real threat to our freedoms will come not from the outside but from
within? I suppose I could always resign in protest. A lot of good it would do. Mitch McConnell
would just block President Biden's nomination, and another Federalist Society judge would be
elevated to the court. I'll be damned if I'm going to go down without a fight.
(addressing the audience, delivering a rally cry of civic
responsibility)*

If the arc of the moral universe doesn't bend toward justice, it's on us, people. We the people—

MARSHAL (voice-over)

Oyez! Oyez! Oyez!

*(The conservative Justices sit back down, donning their
professional facades.)*

All persons having business before the Honorable, *the Infallible*, the Supreme Court of the
United States, are admonished to draw near and give their attention, for the Court is now sitting.
God save the United States and this Honorable Court!

CHIEF JUSTICE ROBERTS

We will hear argument this afternoon in case 19-1393, *Christian Soldiers Incorporated versus What's Left of the Rule of Law*.

Lights.

End of play.

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