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**Your Turn**

Alan Garfield
Guest columnist

Who should make choices on abortion?

Roe v. Wade is under siege.

Conservative states have enacted a flurry of laws that severely limit a woman's right to choose or eliminate the right altogether. A new Alabama law even bars abortions for women who became pregnant through rape or incest.

The legislators enacting these laws realize they're unconstitutional. But they have done their math.

They know that Justice Anthony Kennedy was the crucial fifth vote on the Supreme Court for upholding abortion rights. And they know that Kennedy's replacement by Brett Kavanaugh has created a new majority that is hostile to Roe.

The legislators are betting that this new majority will overturn Roe or, more likely, allow states to so severely restrict a woman's right to choose that Roe might as well be overturned.

At this pivotal juncture, it is worth recalling what Roe decided, and it is worth pondering the wisdom of that decision — or lack thereof.

Policy choices in a democracy are ordinarily made through the political process. Minimum wage and military funding are set by elected officials.

Citizens displeased with these officials can vote the bums out.

But when the Supreme Court finds a constitutional right, it removes the issue from political control. When the Court held that prayers are not permitted in public schools, legislators couldn't override this decision even if their constituents desperately wished they would.

Likewise, when the Court held that people have a right to possess a handgun at home, only a constitutional amendment could reverse this holding. (Keep in mind that constitutional amendments are easier said than done; it takes two-thirds of both houses of Congress and three-quarters of the states.)

When the Supreme Court decided Roe, it removed the decision to terminate early-stage pregnancies from political control. After Roe, it didn't matter if 90 percent of Oklahomans wanted to ban abortions. Oklahoma couldn't do so because women had a constitutional right to make the abortion decision without government interference.

Still, the right created by Roe was not absolute. The Court said that women could terminate a pregnancy before a fetus would be viable outside of a womb, typically around 24 weeks into a pregnancy. After that time, states could prohibit abortions.

Was Roe a good decision?

There's no "right" answer as to whether Roe was correctly decided. You'll have to decide for yourself.

To help you get started, let's eliminate some of the more spurious arguments against Roe. You've probably heard pundits say that Roe was wrongly decided because the Constitution nowhere mentions abortion rights.

They're right, but their argument is simplistic and best ignored. While the Constitution does not specifically refer to abortion rights, there are plenty of textual provisions that could be a source of this right.

The Fourteenth Amendment forbids the abridgment of citizens' "privileges or immunities" but doesn't define those terms. They could include a woman's right to choose.

The same is true for the undefined term "liberty" in the Due Process Clauses of the Fifth and Fourteenth amendments. And, perhaps most intriguingly, the Ninth Amendment seems to invite justices to find implied rights. It states that the enumeration of rights in the Constitution "shall not be construed to deny or disparage others retained by the people."

What does liberty mean to you? Should a decision as consequential as abortion be made by the individual most greatly impacted by this decision or by the government?

Alan Garfield is a distinguished professor at Delaware Law School.