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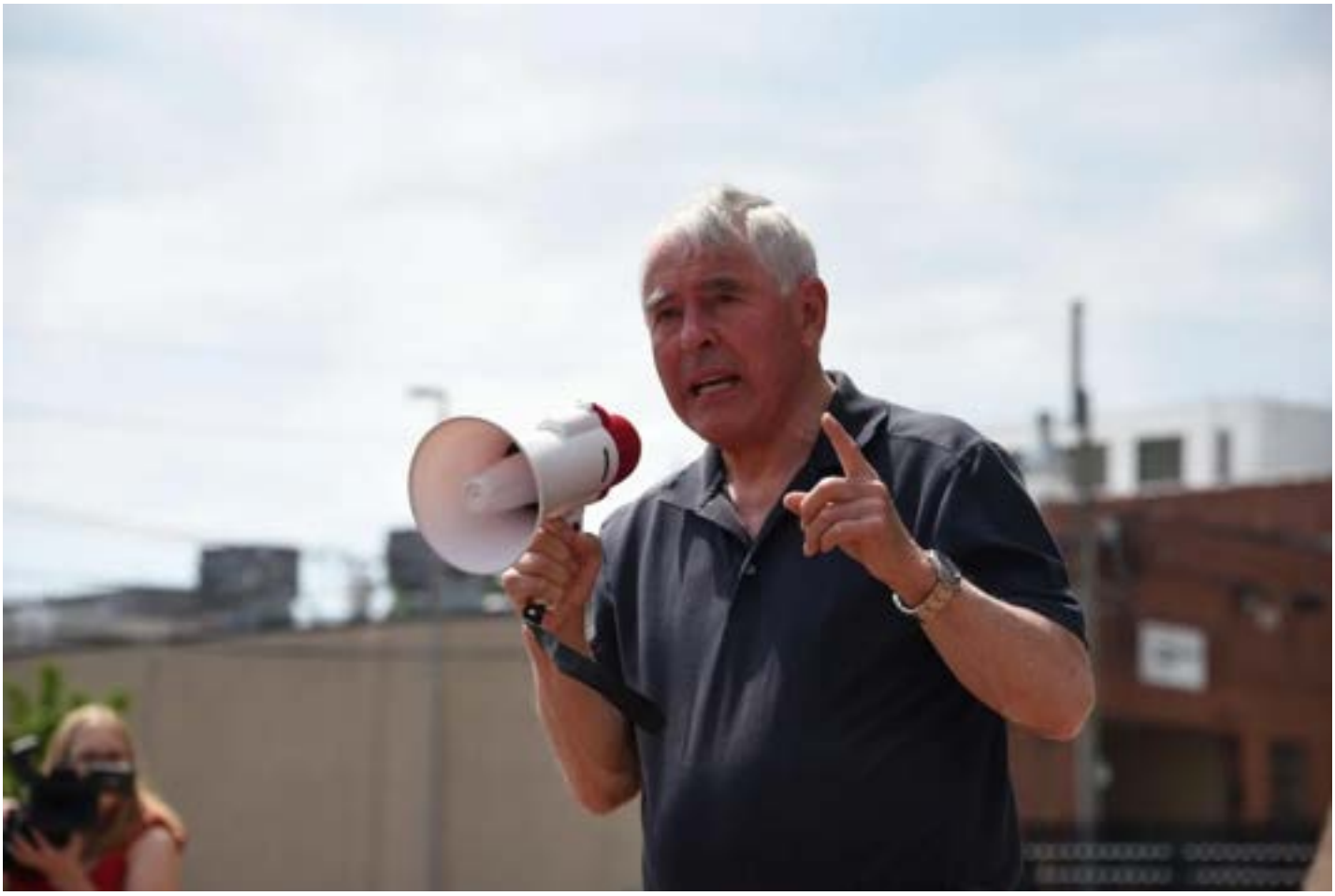
COMMENTARY

Edwards: The Dobbs decision overruling Roe v. Wade is wrong

Sen. John S. Edwards

Jul 17, 2022



State senator John Edwards, D-Roanoke, addresses the crowd at the July 4 abortion rights protest in front of the Poff Federal Building in Roanoke. He encouraged attendees to vote for change.

Emma Coleman

Sen. John S. Edwards

The U.S. Supreme Court decision in Dobbs v. Jackson Women's Health Organization overrules almost 50 years of constitutional liberty rights of women to decide important personal decisions under Roe v. Wade (1973). The Dobbs

decision devalues the dignity of women and eviscerates the judicial principle of stare decisis.

The Roe decision, written by Justice Harry Blackmun, was informed by modern health science, including from the American Medical Association and the highly respected Mayo Clinic in his home state Minnesota. In contrast, Dobbs is based on personal ideology. Its author, Justice Samuel Alito, relies heavily on pre-Roe abortion laws, including laws from the 19th century and even from the medieval 13th century!

The Dobbs court also ignores stare decisis, despite the Justices having sworn fidelity to it in their Senate confirmation hearings. This doctrine states that court precedent should not be overturned without good cause.

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Women have relied for years on Roe in structuring their lives and relationships. Even Chief Justice John Roberts warned that overruling Roe “is a serious jolt to the legal system.”

Returning abortion decisions to the states, as the opinion does, is not workable, another tenant of stare decisis. It will cause confusion and inconsistency as to whether and when abortion may be available.

Some states have “trigger laws” effective upon abortion no longer being constitutionally protected. Other states have “zombie laws” passed before Roe, resurrected by Dobbs, even if enacted in the 19th century.

Some prohibit abortion after conception or after so many weeks, even in the case of rape or incest. Some make no exception for the health or life of the mother, for severe fetal abnormality, or for other serious health complications.

A woman's right to an abortion should not depend on where she lives, much less on differing state agendas. Healthcare should not depend on political ideology or one's zip code.

The Dobbs opinion seeks to justify overturning Roe by citing Brown v. Board of Education (1954), which overruled Plessy v. Ferguson (1896)'s "separate but equal" doctrine. But Brown relied on new psychological studies showing "separate" schools made black children feel not equal and that separate schools in fact did not offer equal education. Dobbs offers no new scientific or medical understandings of abortion in overturning Roe.

To return a constitutional right to the states is also an affront to our federal system. Since 1788, we have not been a loose confederation of independent states, each with differing views on what freedoms Americans should enjoy. We are the United States of America where each person has the same freedoms under our Constitution.

The Roe decision was rooted in the "liberty right" embedded in the Fourteenth Amendment. This includes the liberty of an individual to decide personal matters; this defines what it means to be an American.

The Dobbs opinion notes that "abortion" and "privacy" are not mentioned in the Constitution. Neither are other personal matters such as marriage, procreation, contraception, and family relationships. In America, choices regarding personal matters are for individuals to make, not the state.

Abortion involves a moral issue, affecting the interests of both the mother and the fetus. Roe provided a compromise in its trimester approach based on viability of a fetus living outside the womb.

Moral issues often involve religious beliefs. Our First Amendment protects the right of “free expression” of one’s religion; but it also guards against government “establishing” a religion. Many conservative Christians and Catholics are outspoken in opposing abortion, but many other religious groups strongly support a woman’s right to choose.

Many Christian and Jewish groups strongly oppose Dobbs. They believe overruling Roe is “an assault on Biblical values” and an attack on women’s freedom. They express the legitimate fear that poor women in particular will have their choices limited and freedoms taken away.

It is not a stretch to say the Court may adopt Justice Clarence Thomas’ concurring opinion in Dobbs calling on the Court to revisit all “substantive due process” precedents, including those protecting same-sex marriage (Obergefell v. Hodges 2015), consensual intimacy (Lawrence v. Texas 2003) and contraception (Griswold v. Connecticut 1965). He ignores interracial marriage (Loving v. Virginia 1968), which in some states as late as 1960s would not have allowed him to marry his wife.

The history of America is the expansion of individual rights. Unfortunately, the Dobbs decision is the first time a constitutional right has been taken away in our nation’s history.

State Sen. John Edwards

BY MARK BOWES Richmond Times-Dispatch

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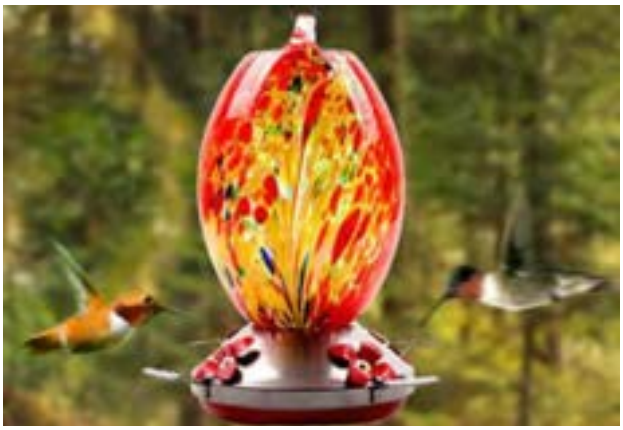

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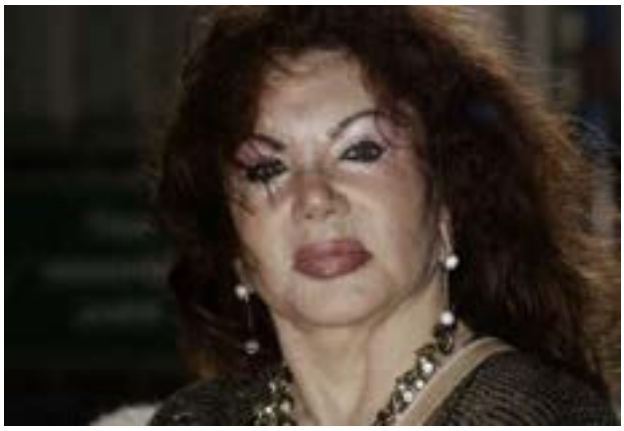

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