

# Abortion: No, Dobbs Isn't "Decentralization"

On June 24, the US Supreme Court handed down its ruling in *Dobbs v. Jackson Women's Health Organization*. Not unexpectedly (due to a leak of associate justice Samuel Alito's draft opinion in early May), the ruling overturns decades of precedent established in *Roe v. Wade* (1973) and *Casey v. Planned Parenthood* (1992), largely leaving the question of if (and if so, how) abortion can be regulated to state legislatures.

My usual disclaimer: This column is not about abortion. I'm not going to try to tell you that it's right or wrong, or that it should be legal or illegal. You've probably got opinions on that. They're probably not going to change. I'm not going to try to change them.

I'm less interested in abortion itself than I am in the quality of arguments about it. And I see a truly silly argument being advanced by supporters of the *Dobbs* ruling. Let's call it "the argument from decentralization."

Constitutionally, that argument often takes the form of claims for "states' rights," which is itself a misnomer. Constitutionally, states don't have "rights," they have powers. See, for example, the Tenth Amendment:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Most "states' rights" advocates ignore those last four words, holding that anything goes for state legislatures where a federal power isn't enumerated elsewhere in the Constitution.

A specific sub-set of those who favor the "states' rights" position also attribute a general goodness to "decentralization" as such, rather than mere "federalism" (which really treats state legislatures as the "lowest" level of power).

Decentralization is the notion that decisions should be made at the "lowest" possible level of government. Don't let Congress decide if a state legislature can decide; don't let a state legislature decide if a county commission can decide; don't let a county commission decide if a city council can decide; don't let a city council decide if individuals can decide.

I'm pretty fond of decentralization myself. But the *Dobbs* ruling is exactly the opposite of decentralization.

Per *Roe*, decisions concerning abortion were largely decentralized to the lowest possible level, that of individual choice. Agree with the logic of the decision or not, that was its effect.

Per *Dobbs*, such decisions are now largely centralized into the hands of state legislatures.

It's reasonable to argue that abortion is right or wrong, choice or crime, etc., and that it should be addressed at this or that level of government.

It's unreasonable to pretend that a massive centralization of power is a decentralization of power.

Whatever else *Dobbs* may be, it's unquestionably a "bigger government," not "smaller government," ruling.