



Supreme Court Set To Overturn Roe v Wade, Leaked Draft Opinion Shows

Description

A [leaked draft](#) of a US Supreme Court decision reveals that **the majority of the court has decided to overturn *Roe v. Wade* by a vote of 5-4**, according to [Politico](#), which calls it a “full-throated, unflinching repudiation of the 1973 decision which guaranteed federal constitutional protections of abortion rights and a subsequent 1992 decision – *Planned Parenthood v. Casey* – that largely maintained the right.”



“Roe was egregiously wrong from the start,” wrote Justice Samuel Alito in the draft which was circulated inside the court before someone leaked it to the news outlet. **“We hold that *Roe* and *Casey* must be overruled.”**

“No draft decision in the modern history of the court has been disclosed publicly while a

case was still pending. The unprecedented revelation is bound to intensify the debate over what was already the most controversial case on the docket this term.”

<https://t.co/2os0uJWyUr>

— Eamon Javers (@EamonJavers) [May 3, 2022](#)

Politico highlighted these 10 passages from the draft opinion:

- “We hold that *Roe* and *Casey* must be overruled. The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision....”
- “*Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have enflamed debate and deepened division. It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”
- “In the years prior to [*Roe v. Wade*], about a third of the States had liberalized their laws, but *Roe* abruptly ended that political process. It imposed the same highly restrictive regime on the entire Nation, and it effectively struck down the abortion laws of every single State. ... [I]t represented the ‘exercise of raw judicial power’... and it sparked a national controversy that has embittered our political culture for a half-century.”
- “The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation’s history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973.”
- “In some States, voters may believe that the abortion right should be more even more [sic] extensive than the right *Casey* and *Roe* recognized. Voters in other States may wish to impose tight restrictions based on their belief that abortion destroys an ‘unborn human being.’ ... Our nation’s historical understanding of ordered liberty does not prevent the people’s elected representatives from deciding how abortion should be regulated.”
- “We have long recognized, however, that *stare decisis* is ‘not an inexorable command,’ and it ‘is at its weakest when we interpret the Constitution.’ It has been said that it is sometimes more important that an issue ‘be settled than that it be settled right.’ But when it comes to the interpretation of the Constitution — the ‘great charter of our liberties,’ which was meant ‘to endure through a long lapse of ages,’ we place a high value on having the matter ‘settled right.’”
- “On many other occasions, this Court has overruled important constitutional decisions. ... Without these decisions, American constitutional law as we know it would be unrecognizable, and this would be a different country.”
- “*Casey* described itself as calling both sides of the national controversy to resolve their debate, but in doing so, *Casey* necessarily declared a winning side. ... The Court short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect

from *Roe*. ... Together, *Roe* and *Casey* represent an error that cannot be allowed to stand.”

- “*Roe* certainly did not succeed in ending division on the issue of abortion. On the contrary, *Roe* ‘inflamed’ a national issue that has remained bitterly divisive for the past half-century....This Court’s inability to end debate on the issue should not have been surprising. This Court cannot bring about the permanent resolution of a rancorous national controversy simply by dictating a settlement and telling the people to move on. Whatever influence the Court may have on public attitudes must stem from the strength of our opinions, not an attempt to exercise ‘raw judicial power.’”
- “We do not pretend to know how our political system or society will respond to today’s decision overruling *Roe* and *Casey*. And even if we could foresee what will happen, we would have no authority to let that knowledge influence our decision. We can only do our job, which is to interpret the law, apply longstanding principles of *stare decisis*, and decide this case accordingly. We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.”

Sorry one last thing for those wondering about Court procedure: After oral argument the Justices take a tentative vote. This would have happened in December. The senior most justice in the majority gets to assign the opinion. That might have been Roberts, but doubtful since...

— Neal Katyal (@neal_katyal) [May 3, 2022](#)

So there is the possibility an opinion can flip after oral argument and the tentative vote, so it’s theoretically powerful the Alito opinion won’t be the vote of the Court. But it would require a Justice BESIDES Chief Justice Roberts to flip.

— Neal Katyal (@neal_katyal) [May 3, 2022](#)

The magnitude of this report is so serious that *Politico* included this editor’s note vouching for the authenticity of the draft decision.

Editors' note: About our just published story

Team,

Just now on our site, we've published a story, along with an accompanying side bar and document, on a draft Supreme Court opinion that would overturn *Roe v Wade*.

After an extensive review process, we are confident of the authenticity of the draft. This unprecedented view into the justices' deliberations is plainly news of great public interest.

We take our responsibilities to our readers and our publication with the greatest seriousness. Our obligation, as protected by the First Amendment, is to report the news and inform our audience.

Our journalism speaks for itself, and that's no different here.

Matt
Dafna

Via [Ben Mullin](#)

The leak has completely wiped the headlines and Twitter is exploding with hot takes.

Leaking a draft SCOTUS ruling is worse than January 6th. The Court was the one institution where conservatives and liberals lived in peace and trust. You disagreed but the trust was sacred. This completely destroys the Court's inner workings. Totally in shock right now.

— Cernovich (@Cernovich) [May 3, 2022](#)

The fact that some are praising this leak shows how utterly craven we have become in our politics. There appears no ethical rule or institutional interest that can withstand this age of rage.

— Jonathan Turley (@JonathanTurley) [May 3, 2022](#)

FWIW, there's not much the GOP wants less than Roe to actually be overturned.

If the Politico scoop is correct, the GOP is now the dog who caught the car.

Roe was always a shiny thing to campaign on (much like repealing Obamacare) but never something they actually wanted to do.

— Angry Staffer ? (@Angry_Staffer) [May 3, 2022](#)

This is why they leaked:

"Justices can and sometimes do change their votes as draft opinions circulate and major decisions can be subject to multiple drafts and vote-trading...The court's holding will not be final until it is published, likely in the next two months." (Politico) <https://t.co/9k0JfLfYZd>

— Andrew Kolvet (@AndrewKsay) [May 3, 2022](#)

Probably the greatest violation of unwritten "norms" in the history of the Supreme Court.

And I absolutely guarantee you the leaker spent years railing against President Trump's undermining of norms. <https://t.co/XSa9LaGb66>

— Josh Hammer (@josh_hammer) [May 3, 2022](#)

Interference in a Supreme Court decision is a blow to democracy – like, say, stopping an electoral vote

The conspirators must be rounded up and arrested and placed next to the J6 detainees

— Jack Posobiec ?? (@JackPosobiec) [May 3, 2022](#)

and. here. we. go. pic.twitter.com/5l9Ngxiz3U

— Siraj Hashmi (@SirajAHashmi) [May 3, 2022](#)

by Tyler Durden

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