

Letter to the Supreme Court of the United States

Concerning
Thomas Dobbs

v.

Jackson Women's Health Organization

Written by
Valerie Elverton Dixon, PhD

The question before the Court:

Whether all pre-viability prohibitions on elective abortions are unconstitutional.

I say: yes, all pre-viability prohibitions on elective abortions are unconstitutional.

I write as a citizen of the United States and as a human being concerned about the erosion of basic human rights regarding power over one's own body. I write in solidarity with Jackson Women's Health Organization.

Summary of the Argument

No individual, born or not, has a right to another person's body or to their pain. When States pass laws that curtail a pregnant person's liberty to decide what happens with their own body, when such laws force a pregnant person to carry a pregnancy to term against their will, the State has imposed involuntary servitude upon that individual in violation of the 13th amendment of the United States Constitution. While both slavery and involuntary servitude rob a person of their liberty, the two are not the same. A person is not bought and sold through involuntary servitude, but the individual is still compelled into forced labor against their will. Literally.

Further, States may have an interest in unborn life, but according to both the Declaration of Independence and the United States Constitution, States have an obligation to the already born

to secure their human rights. The unborn individual has no right to life that supersedes the rights of the born who also have responsibilities to themselves, their families, communities, nation and world.

Argument

The 13th amendment reads:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

The argument that the Constitution does not protect a person's right to have an abortion, makes no sense in the face of the 13th amendment. The 9th amendment to the Constitution says that We the People of the United State have rights that are not specifically stated, but the 13th amendment grants the right to an abortion, not necessarily as a kind of freedom to do a thing but rather as a freedom from being acted upon, a freedom from being forced to do what one does not want to do, from being forced to carry a pregnancy to term against one's will. Moreover, Constitutional amendments override State laws.

When we read any text, we read it within contexts, within an interpretive fusion of past, present, and future horizons. We read the text with intentionality. Since ALL of any entity cannot be perceived all at once, we choose which aspects of the thing is important from our understanding of the past, our position in the present, and our hope for the future. (See: "On Originalism and Textualism" at justpeacetheory.com. Click on essays,) In the national debate

regarding abortion, many people do not see the 13th amendment at all. However, I, as a Blackwoman in America and as a womanist scholar, see this amendment as not only relevant, but as probably the most pertinent aspect of the Constitution that says the Union exists to, among other things, “secure the blessings of liberty to ourselves and to our posterity.”

Let us think about the history of the 13th amendment. Ratified on December of 1865, the amendment was an extension of federal authority over the states. It was necessary because the Emancipation Proclamation did not free all enslaved people in the United States, and it was an executive order made as an exigency of war. There was no guarantee that after the Civil War ended that states formerly in rebellion would not reinstitute slavery. In the movie *Lincoln*, the screenwriter, Tony Kushner, gives Lincoln a speech that explains why the 13th amendment was necessary. He says on cancelling state laws:

I felt the war demanded it. My oath demanded it. I felt right with myself, and I hoped it was legal to do it. I am hoping still. Two years ago I proclaimed these people emancipated, then, thenceforward and forever free. Suppose the courts say I have no authority to do it. They might well decide that. Say there's no amendment abolishing slavery. Say its after the war, and I can no longer use my war powers to just ignore the Court's decisions, which I sometimes felt I had to do. Might these people I freed be ordered back into slavery?

So, the 13th amendment was intended to override state law for the purpose of securing the liberty of formerly enslaved people. However, to determine the original intent of its authors and to determine its relationship to the original intent of the founders, it is important to read the 13th amendment within the context of its historical genealogy to see both its progenitors and its progeny.

The lawmakers considering the wording of a constitutional amendment which would end slavery had two Declarations of the Rights of Man and Citizens written in France to consider.

The Declaration written in 1793 addresses the selling of oneself:

18) Every man can contract his services and his time, but he cannot sell himself or be sold: his person is not an alienable property. The law knows of no such thing as the status of servant; there can exist only a contract for services and compulsion between the man who works and the one who employs him. (columbia.edu/~iw6/docs/dec1793.html)

The Declaration of the Rights of Man and Citizen written in 1789 says in part:

- I. Men are born and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.
- II. The end of all political associations, is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

Thomas Jefferson was influential in the writing of both of these declarations. However, those who supported the 13th amendment decided to base it on the Northwest Ordinance of 1787, written by Jefferson. The Northwest Ordinance says:

Art. 6 There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided, always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed

and conveyed to the person claiming his or her labor or service as aforesaid.

The Northwest Ordinance predates the Constitution. The fugitive slave language was repeated in the Constitution, and the language prohibiting slavery and involuntary servitude would show up again in the 13th amendment. Before the French Declarations of Rights, before the Northwest Ordinance, the Declaration of Independence, the seminal document, stepped back from a condemnation of slavery and the slave trade, thus allowing the tragic flaw, the congenital deformity, the internal contradiction that has plagued the United States since its beginning, that a nation founded on the philosophy of liberty built its house on the shifting sands of a political economy financed by chattel slavery. Still the Declaration, to this day, is an aspirational document that inspires people who are dedicated to advancing human rights.

The Declaration says: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men deriving their just powers from the consent of the governed.” Anti-abortion forces have misappropriated this language to apply to the unborn. I say again: No individual born or not, has a right to person’s body or to a person’s pain. The moment the State imposes the claim of the unborn on a pregnant person’s body, it takes away the liberty of the pregnant person. It impedes their pursuit of happiness.

When Thomas Jefferson wrote the Declaration, he borrowed language from the English philosopher John Locke who wrote about the rights to life, liberty and property. Jefferson substituted the pursuit of happiness for property. Happiness is the goal. As in the philosophy of Aristotle, writing in the *Nicomachean Ethics*, happiness is not a means to an end, rather it is an end in itself. He writes:

Now such a thing happiness, above all else, is held to be; for this we choose always for self and never for the sake of something else, but honour, pleasure, reason, and every virtue we choose indeed for themselves (for if nothing resulted from them we should still choose each of them), but we choose them also for the sake of happiness, judging that by means of them we shall be happy. Happiness, on the other hand, no one chooses for the sake of these, nor, in general, for anything other than itself.

Further, Aristotle understands life, in this context, to mean the activity of the “rational element.” It is a born individual living and acting in the world, not an unborn individual. I say: People live together in social, cultural, and political agreement so that all may help each to flourish, to attain sustenance of life and the joy that makes life worth living.

All human beings have certain rights that global humanity has agreed upon. The Universal Declaration of Human Rights, agreed upon by the United Nations General Assembly, December, 1948, is “a common standard of achievement for all peoples and all nations.” It is the progeny of the 13th amendment and of the Declaration of Independence. The first three articles state:

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person

belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and the security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all its forms.

([un.org/en/about-us/universal-declaration-of-human-rights](https://www.un.org/en/about-us/universal-declaration-of-human-rights))

Again. Rights begin at birth, and no one ought to be forced into the involuntary servitude of carrying a pregnancy to term against their will.

One reason for this is that born human beings have the right to refuse to put their bodies at risk because of pregnancy. The unborn individual puts a stress on a pregnant person's body, and people still die in or shortly after childbirth. To refer to childbirth as "labor" is an apt term because it is painful, a travail, that sometimes requires major abdominal surgery. I say again: No individual, born or not, has a right to a person's body or to a person's pain.

Too many anti-abortion people fail to properly recognize this fact. In a September 30, 2021 hearing of the House Committee on Oversight and Reform – A State of Crisis: Examining the Urgent Need to Protect and Expand Abortion Rights and Access – I was astonished to hear Dr. Ingrid Skop, a Texas based ob-gyn, compare a baby in the womb to a car in the garage. This analogy is wrong in so many ways. Unless we are talking about an electric car that charges from the electricity of the house, a car does not get its nourishment from the garage. The car does not put a strain on nearly every vital part of the garage. The garage does not grow and does not have to move through the world with the car inside it. When it is time for the car to leave the garage, it is not a painful process that can go on for hours or may even require that

the garage to be sawed open to allow the car to leave. The garage does not risk its own existence with the car in it.

In the same hearing, Ms. Loretta Ross, Associate Professor of the Study of Women & Gender at Smith College and co-creator of the theory of reproductive justice, testified to the need for women to have access to safe legal abortions and to have access to quality care when they choose to bring a pregnancy to term. Reproductive justice also understands that people have a right to quality pre- and post-natal healthcare and all the various support necessary to rear children in a safe and healthy environment. I say this is an obligation of the state to its citizens.

I said earlier that we read texts in context. We have seen the textual context of the 13th amendment in its genealogy, but there is an actual real-world context for the 13th amendment and the proposed anti-abortion laws. Writing in a tribute to the late Justice Ruth Bader Ginsburg, I wrote: “The idea of blind justice is no justice at all because injustice happens with eyes wide open.” Justice Ginsburg saw the real world when she made her judgements.
(tikkun.org/i-dissent)

The State of Mississippi is asking this court to overrule *Roe v. Wade* and *Planned Parenthood v. Casey* so that it can enact a law that would prohibit abortions before viability. It wants to force more pregnant people to carry a pregnancy to term against their will. However, Mississippi is not meeting its obligations to secure life, liberty, and pursuit of happiness to pregnant people and their children.

Mississippi is the poorest state in the union. According to the World Population Review:

Mississippi is the poorest U. S. state. Mississippi’s median household income is \$45,792, the lowest in the country with a livable wage of \$46,000. Additionally, the state has a poverty rate of 19.6%, the highest of any state. Unfortunately,

Mississippi also has the highest obesity rate in the country of 40.8 % and the lowest life expectancy of 74.5.

(worldpopulationreview.com/state-rankings/poorest-states)

World Population Review says further: “Unfortunately, poor states are more like to have worse health outcomes and lower life expectancy than their wealthier counterparts. This is likely due to a little or no access to quality health care or to being able to afford regular preventive care.”

The *2021 March of Dimes Report Card* (MARCHOFDIMES.ORG/REPORTCARD) grades Mississippi an F. Its preterm birthrate is 14.2%; its infant mortality rate is 9.1 per 1,000 live births.

According to the report: “In Mississippi the preterm birthrate among Black women is 44% higher than the rate among all other women.” These outcomes are because of a lack of access to healthcare. Mississippi did not expand or extend Medicaid. It has no midwife policy It does not allow Medicaid to cover doula care.

To learn more about the state of ob-gyn care in Mississippi, I talked with Dr. Lakeisha White Richardson, an ob-gyn based in Greenville, Mississippi. (Full disclosure: Dr. Richardson is my cousin.) I asked her why the statistics for Mississippi were so bad. The short answer is access to healthcare. To get Medicaid to cover their prenatal care, people need a letter from a physician that confirms they are pregnant, but without the insurance coverage, many physicians will not see the patients to give them the letter. Thus, they are caught in a Catch-22. Because Mississippi did not expand Medicaid, people in rural areas do not have a medical facility near them. They have to drive 45 minutes to an hour one way to get to care. People who work low-wage jobs cannot take that kind of time from their day. If they are not at work, they do not get paid, and they cannot afford to miss a paycheck or to get a reduced pay check.

There are fewer physicians in the specialty because of the high cost of malpractice insurance. Mississippi needs tort reform. Fewer doctors, fewer medical facilities mean that pregnant people with underlying conditions such as lupus have very few places in the state where they can get care. Dr. Richardson suggests that Mississippi ought to provide a mobile service that

would bring healthcare to the people, rather than people having to spend time and money to travel to where the healthcare is. However, even people with insurance are not fully covered for some medications that would prevent pre-term delivery.

Then, there is the problem with crisis pregnancy centers run by anti-abortion groups. These centers provide ultrasounds for people to encourage them to bring their pregnancies to term, and that is all – no bloodwork, no fetal testing, no labs. Women who they persuade to keep their pregnancies often do not know that coming to these centers periodically to get an ultrasound is NOT prenatal care. Dr. Richardson says when people come to her, they may be far along in their pregnancies not knowing that they have not been getting adequate care. This is especially the case for Latinas for whom English is a second language.

Mississippi wants the Court to allow it to force more people to bring to birth children they do not want and/or for whom they are in no position to nurture. The foster care and adoption systems are woefully inadequate. When children are born to people who cannot care for them, there is often nowhere for the child to go. It is not unusual for children to suffer from abuse and even die of neglect. The tragic reality in the United States is that the foster care system is broken from sea to shining sea. A former student of mine who grew up in the foster care system put it succinctly: The foster care system sucks!

I say again. The State has an obligation to its citizens that the State of Mississippi specifically and the United States in general is failing to meet. One such obligation is to allow people more freedom to make choices for their lives. So, within the context of a past, present, and future horizon the meaning of the 13th amendment is to continue the project of rational life and liberty toward the goal of happiness that was conceived, however imperfectly, by the founders. Now, and in years to come, the meaning of involuntary servitude will take on a meaning beyond forced labor. It will have to do with the use of the body for medical purposes.

In his essay, "The Understanding of 'Neither Slavery Nor Involuntary Servitude Shall Exist' Before the Thirteenth Amendment", David Upham concludes: "if 'slavery' need not involve forced labor but is primarily a question of chattel ownership of human beings, the Amendment's first section might well provide a constitutional prohibition on kidnapping as well as markets in human beings" (*The Original Meaning and Continuing Relevance of the Thirteenth Amendment* 255) I say power over one's own body is an inalienable right that will be increasingly important as medicine advances and organ donations become a more routine standard of life-giving and life-preserving care. (See: "An Inalienable Right" at tikkun.org/an-inalienable-right) Anti-abortion laws do not put pregnant people on the market, but they do take away personal autonomy and power over one's own body that is the essence of liberty and rational life.

For this reason and because of the plain meaning and original intent of the 13th amendment, this Court ought to uphold *Roe v. Wade* and *Planned Parenthood v. Casey* and rule that all pre-viability prohibitions on elective abortions are unconstitutional.

Sources

Aristotle. *Nicomachean Ethics*. E-Bookarama Editions.

Declaration of the Rights of Man and Citizen written 1789.

<https://constitutionnet.org/sites/default/files/> . . .

Declaration of the Rights of Man and Citizens 1793.

columbia.edu/~iw6/docs/dec1793..html

Dixon, Valerie Elverton. "An Inalienable Right" tikkun.org/an-inalienable-right

"I Dissent" tikkun.org/i-dissent

"On Originalism and Textualism" at justpeacetheory.com

Lincoln. Directed by Steven Spielberg. Screenplay by Tony Kushner. Dreamworks Pictures et.al.
2012.

2021 March of Dimes Report Card. MARCHOFDIMES.ORG/REPORTCARD

Northwest Ordinance (1787).

ourdocuments.gov/doc.php?flesh=false&doc=8

Richardson, Dr. Lakeisha White. Telephone conversation, November 19, 2021.

Universal Declaration of Human Rights.

un.org/en/about-us/universal-declaration-of-human-rights

Upham, David. "The Understanding of 'Neither Slavery Nor Involuntary Servitude Shall Exist' Before the Thirteenth Amendment". *The Original Meaning and Continuing Relevance of the Thirteenth Amendment*. Constitutional Discourse Series. Series Editor Randy E. Barnett. Washington, DC: Georgetown Center for the Constitution, 2019.

World Population Review.

worldpopulationreview.com/state-rankings/poorest-states

*All websites accessed 11/22/2021