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No Compromise

Roe v. Wade was a compromise. It was a compromise between people who believe that pregnant people have a right to decide whether or not to bring a pregnancy to term and those who think the state has an interest in protecting developing life. With the end of Roe v. Wade comes the end of the compromise. Anti-abortion forces have always been uncompromising, and I say now is the time for abortion rights forces to also be uncompromising. We are not giving up our liberty. Now is the time to establish the principle that the state does not have and ought not have the power to command a person's body.

As a supporter of abortion rights, I say: no individual born or not has a right to a person's body or to their pain. So, there is no right to be born. Birth is a gift that one human being gives to another. If a gift is forced by the state, if it is coerced by the power of the state to take away one's property, liberty, or life, birth is no longer a gift, it is involuntary servitude. Further, it is important to reframe how we think about the power to bring human life from potentiality to actuality. The power of life is not in the drop of human sperm fertilizing a human egg along with the coercive power of the state forcing pregnant people to stay pregnant, willingly or not, rather the power of life is in the womb and in the consent of the person within whose body the developing human exists. Without consent, forced pregnancy is involuntary servitude, and contrary to Justice Alito's majority opinion in *Dobbs*, there is a right to an abortion in the Constitution.

The right is found not only in the 14th amendment, but also in the 13th amendment. It says:

"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.”

This is straightforward, easy to understand. There is no need to think about substantive due process, ordered liberty, or penumbras and emanations. There is no need to study English common law or 17th century thought about abortion. State laws on abortion in 1787 or in 1865 are irrelevant. There is no need to rehearse the horrors of slavery. The plain meaning of the text is clear. According to the Merriam-Webster’s Collegiate Dictionary Eleventh Edition “involuntary” means: “done contrary to or without choice: COMPULSORY: not subject to control of the will: REFLEX” Pregnancy is not a reflex action. So, the pertinent meaning in this context is compulsory. According to the same dictionary, “servitude” means: “a condition in which one lacks liberty esp. to determine one’s course of action or way of life: a right by which something (as a piece of land) owned by one person is subject to a specified use or enjoyment by another.” Servitude is a lack of liberty.

During oral arguments in *Dobbs* and in his concurring opinion, Justice Kavanaugh said that the Constitution is neutral on abortion. This is a mistake because the Constitution is not neutral on liberty. In the preamble to the Constitution, the framers wrote that the purposes of a more perfect union include to: “secure the Blessings of Liberty to ourselves and our Posterity.”

According to the same dictionary, “liberty” means: “the quality or state of being free: the power to do as one pleases: freedom from physical restraint: freedom from arbitrary or despotic control: the positive enjoyment of various social, political, or economic rights and privileges: the power of choice.” Liberty means choice. If there is no choice, there is no liberty. Some people may argue that the state ought to have the power to curtail the liberty of pregnant people to protect the life of developing humans. I say: this makes pregnant people involuntary servants of the state. The 13th amendment does not make an exception for pregnancy. The exception is punishment for crime. The text says what it says.

The prohibition against involuntary servitude cannot be ignored by legislatures in the various states. Congress has the power to craft laws that protect the rights of people to be free from involuntary service. Freedom from the power of the state to force one to use one's body in a particular way is a human right. It is an inalienable right.

In a dissenting opinion in the case *Dr. A. v. Hochul*, a case where healthcare workers sued New York state because they wanted a religious exception from the state's vaccine mandate, Justice Gorsuch wrote and Justice Alito concurred:

"The Court finally acknowledged what had been true all along – that our Constitution is intended to prevail over the passions of the moment, and that the unalienable rights recorded in its text are not matters to 'be submitted to vote; they depend on the outcome of no election' . . . it is always the failure to defend the Constitution's promises that leads to this Court's greatest regrets."

This is an uncompromising truth. Yet, neither Gorsuch nor Alito would apply this legal principle to pregnancy. We the People of the United States ought to vote for people who will respect the inalienable human right to have power over our own bodies and codify abortion rights into federal law based on the 13th amendment.