

The Supreme Court Decision in *Dobbs* OVERRULES The Montana Abortion Decision in *Armstrong*

The State of Montana is commonly thought to allow abortion. This premise is based upon the Montana *Armstrong* case from 1999. However, at the moment the Supreme Court of the United States of America published its decision in *Dobbs*, which **OVERRULED** *Roe v. Wade* and *Planned Parenthood v. Casey*, the Montana abortion decision in *Armstrong* (1999) was also **OVERRULED**.

The Supreme Court's new decision in *Dobbs*, is directly applicable to the Montana case *Armstrong*. The *Armstrong* case depended upon *Roe v. Wade* and *Planned Parenthood v. Casey* in order to establish an abortion right in Montana. However, since *Dobbs* **OVERRULED** both *Roe* and *Casey*, Montana's *Armstrong* case is now also **OVERRULED** for the following three (3) reasons:

REASON #1: Neither the United States Constitution or the Montana State Constitution Confer a Right to Abortion.

The Supreme Court in *Dobbs* found it significant that the United States Constitution does not mention abortion. A Constitution right must be specifically mentioned in order for a court to rule on the right. Without a specific reference to abortion in the Constitution, the court cannot make a ruling validating abortion.

“[T]he Constitution makes no mention of abortion.” *Dobbs*, p. 1.

“The Constitution makes no express reference to a right to obtain an abortion.” *Dobbs*, p. 9.

Likewise, the Montana court in *Armstrong* admitted that the Montana Constitution does not mention abortion. A Montana court cannot make up a Constitutional right --- in this case, abortion -- which does not exist in the Montana Constitution!

REASON #2: *Roe, Casey, and Armstrong* (Montana) are Different from All Other Privacy Cases because *Roe, Casey* and *Armstrong* Deal with the Destruction of Human Babies and Not with Privacy.

The word ‘privacy’ occurs 84 TIMES in *Armstrong*. The *Armstrong* case asserted that abortion is a private matter, and since privacy is mentioned in the Montana Constitution, that abortion is a constitutional right under the Montana Constitution.

However, the Supreme Court of the United States of America in *Dobbs* now tells us that abortion is **NOT** a privacy right.

“Abortion is “fundamentally different” from other privacy rights because abortion “destroys...an “unborn human being.” *Dobbs*, p. 5.

“What sharply distinguishes...abortion...is...that...Abortion destroys...the life of an “unborn human being.” *Dobbs*, p. 32.

Montana's *Armstrong* case does NOT establish an independent right of abortion in Montana, because abortion is NOT a privacy right under the Supreme Court's new decision in *Dobbs*.

The *Armstrong* case is thus rendered unconstitutional, because the Supreme Court has determined in *Dobbs* that abortion is not a privacy right. Since the entire Montana *Armstrong* case rested upon the right of privacy, *Armstrong* cannot stand. *Armstrong* is unconstitutional under the United States Constitution and the Montana Constitution. *Armstrong* is now Null & Void and of no legal effect.

REASON #3: The Montana *Armstrong* case relied directly on *Roe & Casey* to Establish a Supposed Privacy Right to Abortion which was Not Specifically Stated in the Montana Constitution.

The Montana *Armstrong* decision mentioned *Roe* and *Casey* **16 TIMES** in order to justify an abortion right which does not exist in the Montana Constitution.

For example, the *Armstrong* court stated that, “There is no doubt that a woman's right to choose to have an abortion before fetal viability and to obtain it without "undue interference" or "undue burden" from the state is protected under the federal constitution. *Planned Parenthood v. Casey*, 505 U.S. at 846, 112 S.Ct. at 2804. This federal constitutional right is grounded in privacy and is protected under the Due Process Clause of the Fourteenth Amendment. *Roe*, 410 U.S. at 153, 93 S.Ct. at 727; *Planned Parenthood v. Casey*, 505 U.S. at 846, 112 S.Ct. at 2804.” *Armstrong*, ¶ 40

Montana’s *Armstrong* case found a supposed right to abortion from within *Roe* AND *Casey*, and specifically mentioned *Roe & Casey* **16 TIMES** in one decision.

However, Montana’s *Armstrong* case cannot rely on *Roe* AND *Casey* as established precedent in order to assert a right to abortion, because ***Roe* AND *Casey* are now unconstitutional!**

CONCLUSION

Courts---like the court in the Montana case *Armstrong*---do **NOT** have the POWER to make or create a right which is not written in the United States or the Montana Constitutions!

The U.S. Supreme Court said that, “*Casey*...claimed the authority to impose a permanent settlement of the issue of a constitutional abortion right simply by saying that the matter was closed. That unprecedented claim exceeded the power vested in the U.S. Constitution. As Alexander Hamilton famously put it, the Constitution gives the judiciary “neither Force nor Will.” *Dobbs*, pp. 68-69.

In other words, courts cannot legislate. “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.**” *Dobbs*, p. 69.

THE ACTION STEP!

The Montana Legislature and the Montana Governor, **MUST** act quickly and decisively. As of Friday, June 24, 2022, when the United States Supreme Court **OVERRULED** *Roe* and *Casey*, the Montana *Armstrong* case was also **OVERRULED** because *Armstrong* depended heavily on the United States Supreme Court’s original rationale in *Roe* and *Casey*.

Young mothers are poised to come from out-of-state to Montana now in order to seek abortions, because they think that abortion is Constitutional in Montana. However, as of June 24th, **ABORTION IS UNCONSTITUTIONAL IN MONTANA!**

The Montana Legislature and the Montana Governor must act now to protect unborn human beings from destruction. They must take action to **LEGALLY VALIDATE** that the *Armstrong* case is now **NULL & VOID** due to to *Dobbs*. They must **LEGALLY VALIDATE** that there is **NO** right to abortion in the great State of Montana!

Written By---

Patrick Gould, Esquire, J.D., M.A.

Professor of Law, Handong International Law School, South Korea.