

SUMMARY STATEMENT
Planned Parenthood v. State of Idaho
Docket. Nos. 49615, 49817, 49899

These cases primarily concern whether the Idaho Constitution protects abortion from the legislature's broad power to enact laws concerning the public's health, welfare, and safety. Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky, and Caitlin Gustafson, M.D., on behalf of herself and her patients (collectively "Petitioners"), brought three petitions, each seeking a writ of prohibition and declaratory relief blocking implementation and enforcement of recently enacted laws: Idaho Code sections 18-622(2) ("Total Abortion Ban"), 18-8804 and -8805 ("6-Week Ban"), and 18-8807(1) ("Civil Liability Law"). Today, a majority of the Court (J. Brody, C.J. Bevan, and J. Moeller) deny Petitioners' requests for extraordinary writs of prohibition and declaratory relief.

The Idaho Constitution does not contain an explicit right to abortion. Nevertheless, Petitioners argued that certain provisions *implicitly* enshrine abortion as a right entitled to heightened protection from the legislature's broad power to regulate conduct. In other words, they contended abortion is a "fundamental" right. For the reasons explained in the opinion, the majority concludes that a fundamental right to abortion cannot be read into the text of the Idaho Constitution. Since Idaho attained statehood in 1890, the Court has repeatedly and steadfastly interpreted the Idaho Constitution based on the plain and ordinary meaning of its text, as intended by those who framed and adopted the provision at issue. That is the Court's duty as the judicial branch: to sustain the rule of law—not to promote personal policy preferences of the five sitting justices.

The Inalienable Rights Clause in Article I, section 1 of the Idaho Constitution, which lists the rights to life, liberty, and property, provides the textual basis for the recognition of implicit fundamental rights. Article I, section 21, while not purporting to be a repository of implicit rights, provides that the listing of rights in the Idaho Constitution "shall not be construed to impair or deny other rights retained by the people." The Inalienable Rights Clause was framed at Idaho's constitutional convention in 1889 and ratified by the people of Idaho later that same year. Thus, for the Court to read a fundamental right into the Idaho Constitution, it must examine whether the alleged right is so "deeply rooted" in the traditions and history of Idaho at the time of statehood that it can fairly conclude that the framers and adopters of the Inalienable Rights Clause intended to implicitly protect that right.

Applying that test to this dispute, the majority concludes there is no support for a conclusion that a right to abortion was "deeply rooted" at the time the Inalienable Rights Clause was adopted. Nothing in the territorial laws of Idaho, the record of the 1889 constitutional convention, the surrounding common law and statutes, the surrounding publications of the times, or Idaho's medical regulations at that time show abortion was viewed as a right entitled to heightened protection from the legislature's regulatory power. To the contrary, the relevant history and traditions of Idaho show abortion was viewed as an immoral act and treated as a crime. Thus, the majority holds it cannot be concluded that the framers and adopters of the Inalienable Rights Clause intended to implicitly protect abortion as a fundamental right.

Importantly, nothing about the majority's decision prevents the voters of Idaho from answering the deeply moral and political question of abortion at the polls. If the people of Idaho are dissatisfied with these new laws, they can elect new legislators. Additionally, the Idaho Constitution is not immutable. Indeed, a review of the session laws of this State reveals that the

people of Idaho have amended the Idaho Constitution 135 times since 1889—and many of these amendments span the political spectrum. In fact, voters rejected a proposal in 1970 which would have added an explicit “right of privacy” in Article I, section 1 of the Idaho Constitution in a proposed re-write of the Constitution. 1970 Idaho Sess. Laws 739, 740.

Additionally, as explained in the opinion, the majority concludes that the laws at issue each pass “rational-basis” review. Under that form of review, each of these laws is constitutional because it is rationally related to the government’s legitimate interest in protecting prenatal fetal life at all stages of development, and in protecting the health and safety of the mother. The majority emphasizes that the questions of whether a law passes constitutional muster—and whether a law is good policy—are distinct. In the challenges Petitioners bring, the Court can only judge these laws—as demanded by the constitutional principle of separation of powers—based on their constitutionality, not on whether they are wise policy.

Justice Zahn (p. 106) dissents from the majority opinion and would hold that a pregnant woman has a fundamental right to obtain an abortion to preserve her life or health based on the plain language of Article I, section 1 of our Constitution, Idaho’s history and traditions, and the impacts that pregnancy can have on a woman’s inalienable rights to life or health. She would hold the laws at issue are unconstitutional because they are not narrowly tailored to achieve a compelling state interest.

Justice Stegner (p. 125) concurs in Justice Zahn’s conclusion, but would hold that a broader fundamental right to obtain an abortion exists and that it is not limited to circumstances involving the life or health of the mother. He would hold the laws at issue are unconstitutional because they are not narrowly tailored to achieve a compelling state interest.

******This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.******