



The Weekly Dish

Drag Queen Conservatism

A toxic, stupid sideshow is defining the post-liberal right as scolds.

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Is *Obergefell* Next?

The Supreme Court's nixing of *Roe vs Wade* — turning the abortion issue back to state legislatures — is not exactly surprising after the earlier leak. What was new was Clarence Thomas' solo dissent, where he opined that “in future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*.”

Cue the panic. Has my previous confidence that the end *Roe* was unrelated to these precedents waned? Not really. Here's why. This was a solo dissent — and told us nothing new about Thomas, who has held this position for a long time. No one joined him in this. In the actual majority opinion, you can read the following, with respect to *Griswold*, *Lawrence* and *Obergefell*:

[E]ach precedent is subject to its own *stare decisis* analysis, and the factors that our doctrine instructs us to consider like reliance and workability are different for these cases than for our abortion jurisprudence.

Kavanaugh wrote a separate opinion affirming this specific view — that *Roe* was indeed unique in this respect. There are also four assurances in the majority opinion that *Roe* is *sui generis*. Thomas also concedes that there could be other constitutional defenses for these previous decisions beyond “substantive due process.”

For a more expansive argument on these points, check out Wally Olson's piece in the wake of the wedding cake case. Worth remembering a passage from that case signed by Roberts, Alito and Gorsuch:

Our society has come to the recognition that gay persons and gay couples cannot be treated as social outcasts or as inferior in dignity and worth. For that reason the laws and the Constitution can, and in some instances must, protect them in the exercise of their civil rights.

The exercise of their freedom on terms equal to others must be given great weight and respect by the courts.

The other massive difference, of course, is public opinion. Abortion has long been controversial — and is still furiously contested. Marriage equality reached a record consensus just this month: 71 percent approval, with 55 percent approval among Republicans last year. Thomas was trolling.