

The Supreme Court – June 24, 2022

by Ian Blodger

Today, the Supreme Court of the United States issued two decisions:

Dobbs v. Jackson Women’s Health Organization, No. 19-1392: The Supreme Court held that the U.S. “Constitution does not confer a right to abortion,” overruled its prior decisions in *Roe v. Wade* and *Casey*, and returned “the authority to regulate abortion . . . to the people and their elected representatives.” Justice Alito wrote the Court’s opinion, joined by four other justices: Thomas, Gorsuch, Kavanaugh, and Barrett. Justices Thomas and Kavanaugh wrote separate concurrences but joined Justice Alito’s opinion for the Court in full. Chief Justice Roberts concurred only in the judgment, “agree[ing] with the Court that the viability line established by *Roe* and *Casey* should be discarded” but disagreeing that the case required the Court to “take the dramatic step of altogether eliminating the abortion right.” Three justices—Breyer, Sotomayor, and Kagan—dissented in a jointly written opinion. The dissenting justices wrote in defense of the “right to terminate a pregnancy” and the “constitutional regime we have lived in for the last 50 years” that “recognized competing interests, and sought a balance between them.” The dissenting justices criticized the “majority’s cavalier approach to overturning this Court’s precedents” and warned that “no one should be confident that this majority is done with its work.”

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Becerra v. Empire Health Foundation, No. 20-1312: This case addresses how Medicare calculates reimbursements for hospitals that treat a higher-than-usual percentage of low-income patients that are entitled to Medicare Part A benefits. Hospitals that do so receive a higher daily rate for their services. In assessing whether a hospital treats a higher-than-usual percentage of low-income patients, the Department of Health and Human Services (DHHS) calculates what is called the “Medicare fraction,” by dividing the number of patient days attributable to patients “entitled to benefits under part A of [Medicare]” who are also poor by the number of patient days attributable to all patients who “were entitled to benefits under [Medicare] part A.” There are, however,

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some patients whom Medicare insures, but does not actually pay for—for example if they have private health insurance coverage. DHHS includes these patients in their calculation for determining the Medicare fraction, despite not paying for their treatment. Empire Health Foundation challenged DHHS’s approach, arguing the statutory language required DHHS to exclude these patients from their calculation. The Ninth Circuit agreed with Empire. In a 5-4 decision authored by Justice Kagan, the Supreme Court held that in calculating the Medicare fraction, individuals “entitled to [Medicare Part A] benefits” are all those qualifying for the program, regardless of whether they receive Medicare payments for part or all of a hospital stay. Justice Kavanaugh dissented, joined by Chief Justice Roberts and Justices Alito and Gorsuch, arguing that patients that do not receive payment from Medicare were not “entitled to [Medicare Part A] benefits” for that particular treatment, and should not be included in the calculation of the Medicare fraction.

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