

20 Sep 2022

Erik Williams



The Honourable Thom Tillis
113 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Tillis,

Please accept my gratitude for your considered and polite response dated 07 Jul 2022 to a quasi-legal brief I had sent to Justice Alito (and a fair heap of official Washington DC!) vis-à-vis the leaked draft opinion he authored in *Dobbs v. Jackson Women's Health Org*¹ which was largely intact with the eventual decision in the case handed down on 24 Jun 2022.

I would kindly point out a slight lack of attention to detail in your office's reading of the original brief where I clearly had identified myself as a 52 year-old white male with a panoramic/fat physique and a face better suited to radio in two different locations.

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July 7, 2022

Ms. Erik Williams

Dear Ms. Williams:

Thank you for taking the time to contact me about the Supreme Court ruling on the *Dobbs v. Jackson* case. I appreciate hearing from you.

The Supreme Court's decision to repeal *Roe v. Wade* is a historic ruling. Each state

My immediate reaction was of wry amusement followed by immense pride in being associated as being on the side of defending the rights of women in this controversy. It might amuse you to learn that I've been a life member of the Girl Scouts of America for at least 34 years (and was hanging round various Girl Scout troops many years prior to that!). Also, my sister was fond of joking at the time that my bra size was definitely larger than hers for many years. As expected, she's since caught up and then decidedly surpassed my mammary efforts as well she ought. ☺

¹ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. ____ (2022)

I'll admit this seems a trivial matter on the face of it but when you consider that you and your office have a considerable impact on the appropriation of trillions of dollars of taxpayer money, one would rather imagine the taxpayers might demand their representatives practice extreme attention to detail when it comes to reading and subsequently writing complex legislation.

That minor nitpick aside, the greater disappointment was that whilst the reply did a masterful job of stating your position on the abortion issue now that we are in the post-*Dobbs*² reality many of us feared, it did not address any of the flaws I had advanced in depending on the states to decide this issue properly by themselves.

As someone who served in the North Carolina General Assembly relatively recently since your election to the United States Senate, I would expect that you have an expert understanding of the hyper-partisan gerrymandering of the General Assembly districts as well as the districts that elect our delegation to the United States House of Representatives that has been the subject of intense litigation starting with the *Citizens United* decision in 2010³.

That gerrymandering combined with essentially unfettered and unregulated political spending has led to our "representatives" being far less representative of the actual political views of the voters of our great state.

I won't rehash the full argument I made in the original letter⁴ but it is crystal clear to anyone paying attention to the political machinations in this state that the current majority feels much more comfortable picking the voters they wish to face rather than contesting independently drawn districts where they would then have to actually convince a working majority of the voters in those districts that their policies are good and beneficial for them.

Our two trips to the Supreme Court in *Cooper v. Harris*⁵ and *Rucho v. Common Cause*⁶ certainly make the argument that whilst there is gerrymandering going on in other states in our country (Wisconsin and Maryland, in particular), it is clear that when it comes to gerrymandering for partisan benefit, no one comes close to the evils of that practice than the Old North State.

Unfortunately, with no relief coming from the courts on this issue in the foreseeable future (particularly *Rucho's*⁷ opinion that found that North Carolina was an unlawful partisan

² *Ibid.*

³ *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)

⁴ "From the "Our 'Society' Treats Women Disgracefully" Dept:" - https://www.sunfox.com/doing_the_news/2022/06/24/12187/

⁵ *Cooper v. Harris*, 581 U.S. ____ (2017)

⁶ *Rucho v. Common Cause*, No. 18-422, 588 U.S. ____ (2019)

⁷ *Ibid.*

gerrymander but that the federal courts could do nothing about it), merely hoping that hyper-partisans will not act as hyper-partisans is not sufficient.

Compounding matters further is Judge William Osteen lifting his injunction in *Bryant v. Woodall*⁸ which had enjoined North Carolina from enforcing a 1973 ban on abortion after 20 weeks gestation with only limited medically necessary abortions being permitted.

More than a few elected representatives in the General Assembly as well as those running for office have made it patently clear they view the 20 week ban that is now the current law of our land as only a starting point toward legislation that would effectively ban abortion entirely.

Only time will tell if these candidates, should they be elected, will adopt even more extremist positions including elimination of the usual exceptions for cases of rape or incest as well as medical necessity in protecting the life of the mother.

They're already out of touch with where a significant majority of North Carolinians are on this issue according to noted Republican pollster Paul Shumaker⁹, someone I'd imagine you'd be rather familiar with and inclined to find credible given his efforts on behalf of your successful Senate campaign in 2014¹⁰.

In his poll memorandum dated 14 Sep 2022, his polling indicated that when looking at North Carolinians overall, only 10% of them favoured a total ban on abortion with no exceptions and 16.1% would allow abortion only to save the life of the mother. That leaves **25.1% in the overall pool** who would allow abortion in the first trimester (where 92% of all abortions occur according to the latest Kaiser Family Foundation study¹¹ with only 7% occurring afterward and according to their earlier study in 2019¹² really falls off a cliff to 1% or less after 20 weeks) with the usual exceptions for rape, incest, and the life of the mother) and **44.4% who favour abortion being the right of the woman in all circumstances.**

69.5% surveyed being in favour of abortion (even when his question limited it to the first 12 weeks which is a departure from the *Casey*¹³ standard of viability which is anywhere from 24-28 weeks depending on the individual circumstances of the pregnancy) is a staggering number in today's political environment where the divisions are so sharp and on the razor's edge.

⁸ *Bryant v. Woodall*, 1 F.4th 280 (4th Cir. 2021)

⁹ <https://www.politico.com/news/2022/09/14/gop-pollster-warns-party-on-total-abortion-bans-00056615>

¹⁰ <https://www.paulshumaker.com/about> ("Paul Shumaker's ability to form a competitive team and utilize insights from data and historical trends, combined with his sheer political instincts, led me to a decisive win against my opponent -- an incumbent U.S. Senator -- in 2014." --- United States Senator Thom Tillis)

¹¹ <https://www.kff.org/womens-health-policy/report/key-facts-on-abortion-in-the-united-states/>

¹² <https://www.kff.org/womens-health-policy/fact-sheet/abortions-later-in-pregnancy/>

¹³ *Planned Parenthood v. Casey*, 505 U. S. 833 (1992) – Reaffirmed the right to abortion found by *Roe v. Wade* and changed the framework of regulation to foetal viability as opposed to the strict trimester standard from *Roe*.

If anything, I think Mr. Shumaker understates the danger for the Republican Party and its candidates who are moving heaven and earth after *Dobbs* to severely restrict if not outright ban abortion when you look at the numbers for the Republican respondents and especially **independents like me.**

Amongst the GOP respondents, **35.5%** were in favour of the 12 week limit proposed by Mr. Shumaker and **20.8%** supported no restrictions at all. **56.1% amongst Republicans!**

The news for Republican anti-abortion hard liners gets even worse when you look at the numbers amongst the unaffiliated voters...**26.3% and 47.8%, respectively for a total of 74.1% in favour** which is only slightly less than those identifying as Democrats weighing in at **14.2% and 61.9% respectively for a total of 76.1% in favour.**

These results have been relatively consistent prior to the *Dobbs* decision and after it was handed down from the Court showing a strong majority favouring not overturning *Roe v. Wade*¹⁴ and subsequent polling after the decision still showed an even larger majority in favour of safe abortion access.

The results in the referendum in Kansas where the question of repealing a state constitutional protection of abortion went down in flames 59% to 41% (in *KANSAS* of all states which was very fundamentalist when my father was stationed at Ft Leavenworth in 1978 and has only gotten far more strident and partisan since) is quite telling of the majority opinion in this country on this issue even in supposed Republican strongholds.

The voters across North Carolina and the United States could not be clearer on this issue...the Court's current ideological split (which is problematic as it is and shouldn't exist had precedent been followed properly) should not have been used in this fashion to advance a political policy the clear majority of voters in this country do not agree is sound policy.

This is where I would respectfully disagree with the assertion you made in the reply that "North Carolina's eventual decision regarding abortion is not my decision".

You're a citizen of North Carolina just as I am and I'd presume you'd cast your ballot here come November.

The difference is that "ordinary" citizens like me do not enjoy vast financial resources and insider connections with the people who decide which candidates will be put on offer on the

¹⁴ *Roe v. Wade*, 410 U. S. 113 (1973)

ballot and have the resources to affect the success of the candidate's election with donations to their campaigns.

That gives you far more influence over the policy positions that these candidates adopt than I would have. A strong suggestion from a sitting Senator that adopting hardline positions on abortion that are completely out of touch with where the North Carolina electorate is politically is tantamount to suicide in a state that's far more of a swing state than the current gerrymandering seems to indicate and such advice would only be ignored by a complete fool.

There are a few extremist candidates this election cycle that fit that description but I rather hope that most of them can have a collegial and pleasant debate and work toward a reasonable and workable compromise once away from the cameras and sound bites.

So what would be a reasonable position to take on this issue, in my opinion?

When you say "my long-held belief is that all life is sacred", I'm inclined to take you at your word. It may or may not shock you to discover that I feel the exact same way...all life is sacred and precious. In an ideal world, abortion would be a completely unnecessary procedure.

The reality is that we don't live in that world and probably never will no matter how advanced medical science may get!

Conception and carrying a child to term is a frightfully complex if not miraculous biological process that requires so many things to go right for the foetus to achieve viability and ultimately be born, much of which is completely out of our control even in the cases where the best medical care is available and money is no object.

And that doesn't even begin to consider the psychological and social needs of the mother / family and the child once born to give the baby a good and safe home and the best chance at a good quality of life until they're ready to stand on their own years down the road.

This universe abhors extremes and yet our current political environment not only tolerates the extremists, it often amplifies them to the point of drowning out any chance at common sense or compromise to find a solution that whilst it'll never be perfect is at least workable for the majority in our country.

You know, the way it was supposed to be back when the Founding Fathers invented our representative democracy! ☺

The bill I would write were I in the Senate would include the following guiding principles:

1. Codify a woman's unrestricted right to an abortion at least to the standard of viability laid down in *Planned Parenthood v. Casey*¹⁵. This right would include prohibitions against restricting her right to an abortion in cases of rape, incest, or necessity to save the life of the mother.

This more flexible arrangement than *Roe's*¹⁶ strict trimester standard can be a moving target based on the individual circumstances of the mother but is generally agreed to be somewhere between 24-28 weeks based on current medical technology. As discussed earlier, only 1% of abortions happen after the 20th week and even those rare abortions are invariably cases where there is no possibility for both the foetus and the mother to survive the pregnancy.

2. Late-term abortions after viability in her particular circumstances would only be permissible if the providing doctor documents a good-faith certification (with appropriate safe-harbour provisions to prevent malicious and frivolous prosecutions) that the foetus has no possibility of survival or assurance of a reasonable quality of life.

Forcing a mother to carry a foetus to term (potentially for weeks or months) that has already died in utero or clearly cannot survive outside the womb is horribly cruel to the mother and those who love and support her. It can also be potentially deadly in the case of ectopic pregnancies and other complications.

Likewise, consider the foetus that has developed such severe defects in utero that even if they're born, they'll never have a chance at a good quality of life or even survive to develop into childhood and beyond. There was no way that my mother could have known that my older sister that I never met had *Tetralogy of Fallot*¹⁷ and as a result Julianne only survived about fifteen minutes after being born¹⁸. Had she survived longer, her quality of life would have been about nil and the likelihood she'd have seen her first birthday was about the same. Medical science has advanced such that Fallot babies now have the abnormalities corrected surgically after birth and live decent lives afterward but that was not the state of medical knowledge in the 1960s.

Most foetal abnormalities tend to occur in the first trimester¹⁹ and some 50-plus years after Julianne's brief time with us, medical science has advanced to the point where many of them are detected in that time. My younger son Alexander would be one of those

¹⁵ *Planned Parenthood v. Casey*, 505 U. S. 833 (1992)

¹⁶ *Roe v. Wade*, 410 U. S. 113 (1973)

¹⁷ <https://www.cdc.gov/ncbddd/heartdefects/tetralogyoffallot.html>

¹⁸ From the "This One's For Julianne" Dept: - https://www.sunfox.com/doing_the_news/2021/09/26/11580/

¹⁹ <https://mothertobaby.org/fact-sheets/critical-periods-development/>

cases where the *massive focal cortical dysplasia*²⁰ in his right frontal lobe of his brain developed in utero likely in the second trimester and later (indeed, his 2"x3" focal dysplasia that has been the focus of many neurosurgical studies is still likely the largest one ever found in a human being as the vast majority of focal dysplasias are microscopic). When he was born, he manifested seizures within hours and his EEG to this day almost 18 years later shows upwards of 100,000 or more seizure events in the average day in addition to developmental delays and left-sided hemiparesis.

We had no way of knowing his condition prior to birth and certainly had no inkling of the immense emotional and financial stresses that came from two brain surgeries (the first at seven weeks of age and as far as we know Alex is still the youngest patient to ever have that surgery) and all of the speech, occupational, and physical rehabilitation that is still ongoing. It ultimately tore our family apart but even with that, we have been thankful we've been able to provide for his needs so far. He is truly a special young man that has forgotten more about the concept of courage than I would ever have the ability to know and his grace in enduring what most of us would find completely intolerable is remarkable to say the least.

But what if we could have detected that dysplasia relatively early in the pregnancy and the doctors told us there was a very strong possibility it could have been bad enough that Alex would have been bed-ridden and barely conscious due to the seizure medications and that he'd never walk, talk, dance, or be a general source of mischief and amusement?

At one point in his treatment, that possibility seemed more plausible by the day. Ultimately, we never had to face that hellish choice and for that I'm thankful beyond words. But had we to take that decision with the knowledge of what would come that we didn't have at the time, we would have likely continued the pregnancy and dealt with the consequences.

We had that privilege and ability. Not everyone does and sadly there are times that poor-to-nonexistent quality of life is much more cruel than accepting that the best decision for the foetus is to go to that better place we all hope for when it is our time and the bells toll for us.

The very nature of not being able to predict how a pregnancy will go is why we must allow the mother this choice and to support her to the best of our ability should she have to avail herself of it. To do any less would compound an already tragic situation and elevate it to a cruelty that is almost unimaginable. That is not who we are as a society that is supposed to be compassionate to those less fortunate than us!

²⁰ <https://www.epilepsy.com/causes/structural/focal-cortical-dysplasia>

And whilst I do share the general sense of revulsion toward the techniques of late-term abortions that you indicated in your letter, our healthcare system places quite a lot of trust in medical providers providing their services ethically and competently. Unlike medical devices and drugs, no Federal or state agency regulates and approves surgical procedures and arguments²¹ can be made that FDA-like regulation of these procedures might well be subject to the lobbying and politicization that plagues the FDA's work today and have a chilling effect upon innovation. Whether we *like* the techniques is *irrelevant* to them being standard and appropriate medical practice developed over many years if not decades by doctors/surgeons for these very rare instances of abortion.

3. It shall be unlawful to enact any provisions that make the providing or receiving of abortion services provided by this law a criminal act except in the case of #2 if it can be proven beyond a shadow of a doubt in court that the documented certification provided was not based on medically sound principles or in some other illegal or unethical way.
4. A person guilty of causing a pregnancy via rape or incest is not entitled to parental rights should the child be carried to term and be born without significant oversight by the courts and social services agencies and then only by the mother's consent.
5. The choice to have an abortion is ultimately between the woman and her medical provider with the woman's choice being given ultimate preference.

Whilst I personally believe she should canvass the opinion of the father (if appropriate given #4) and others in her support structure, the ultimate decision must be hers and hers alone. She is bearing the vast majority of the consequences (physical and emotional) of the pregnancy and should be granted the deference of choosing what is best for her.

Should a woman be not mentally or physically capable making her own decision of or chooses to nominate someone to act as her healthcare advocate/surrogate, she may do so and allow them to take decisions and act upon her behalf according to her expressed wishes much in the same way a living will currently works for end-of-life decisions.

Should such a person not be available to her or willing to serve, a process should be put in play to allow an ever expanding pool of potential advocates to be found starting with her immediate family and should they choose not to serve, appointing a guardian ad litem to advocate for her interests according to her expressed will as it is known.

²¹ <https://pubmed.ncbi.nlm.nih.gov/29239595/>

6. It shall be unlawful to enact any provision that imposes a waiting period or other unreasonable requirements such as mandatory pre-abortion counselling for a woman to lawfully obtain an abortion as provided in this bill.

The states would be allowed to insist that providers have a mechanism to offer information on alternatives to abortion such as adoption or resources to help support the mother after birth should she decide to carry to term provided the information is offered on a voluntary basis and the mother may decline without reprisal or coercion.

This exception granted to the states can be satisfied either during the appointment or by providing the information electronically or by telephone and must not impose the requirement of additional appointments.

Research has shown that waiting periods are medically unnecessary²² and very rarely achieve the intended effect of getting the woman to change her mind. Overly intrusive and onerous waiting periods and counselling usually have a chilling effect upon a woman obtaining legal medical services and imposes undue burdens particularly for working mothers.

7. The states may enact legislation that expand upon the rights granted in this legislation but may never introduce legislation to reduce a woman's right to abortion to less than the rights granted herein.

I'm not a lawyer nor am I an expert in writing legislation but I believe that these guiding principles would address the vast majority of the concerns you noted and give a just and reasonable balance between the life and rights of the mother as well as the life of the foetus and the interests of our society at large.

I'm sure improvements can be made to those principles and I'd welcome any ideas my Senator learned in the law may wish to share but **I will not back down from the ultimate guiding principle that what one chooses to do when it concerns their body is a decision best left to the person and their healthcare provider.**

We already have too many entities who have injected their interests between the patient and their provider. Insurance companies and their armies of claims adjusters and medical policies resulting in denials of coverage, government in the form of restrictions of access in Medicare/Medicaid, overzealous lawyers litigating everything in sight, and often a person's employer whose decision often based solely on economic terms and their profits can have a

²² Waiting Periods for Abortion - <https://www.guttmacher.org/evidence-you-can-use/waiting-periods-abortion>

seriously detrimental effect (if not prevent) medically necessary health care decisions from being taken.

The situation was already bad enough and now the Supreme Court has seen fit to essentially add the electorate voting on what a woman may or may not do with her body. That decision was certainly historic and for all the wrong reasons for it took away a right established in law for almost fifty years now and replaced it with utter chaos and no clear standard that we can all live by and live with.

But worst of all, it sent the clearest possible message that as far as the Supreme Court is concerned and the zealous state legislatures moving abortion bans of various sorts through the process at ludicrous speed is that women are now a second-class citizen in their own country.

I never thought I would live to see the day that my daughter would wake up the morning after the decision was handed down with less rights and total strangers voting on what happens to her body.

And should Justice Thomas' prediction that he made in his concurring opinion come to pass, the slippery slope we're already standing upon is only the beginning. Having succeeded at denying a woman's right to bodily autonomy, the right to contraception and the LGBTQ+ community's hard-won right to marry the one they love is clearly next in the crosshairs. Curiously he avoided mention of the case which struck down Virginia's miscegenation law that he's personally benefitted from but make no mistake that the current Supreme Court majority's idea that the right to abortion is negotiable and able to be put up to a vote, *Loving v. Virginia*²³ being a child case of *Griswold v. Connecticut*²⁴ upon which *Roe*²⁵ was argued means his marriage won't be far behind if for no other reason than the sake of consistency.

The extremists won the battle when the Supreme Court decided this case poorly and chose the most expedient solution of washing their hands of this issue in the worst possible way. But they are starting to find that often in this complex world we live where so little is black and white, having isn't such a wonderful thing as wanting and that they will reap what they've sown in ways they cannot yet imagine.

I hope that I live long enough to see my daughter's rights to decide what happens to her own body restored to her as I wish for you to do so as well for the women that you cherish.

May that day come swiftly!

²³ *Loving v. Virginia*, 388 US 1 (1967)

²⁴ *Griswold v. Connecticut*, 381 U.S. 479 (1965)

²⁵ *Roe v. Wade*, 410 U. S. 113 (1973)

I was gratified to see in your response that you are on board with the customary exceptions to the proposed and enacted abortion bans concerning rape, incest, and the life of the mother. That is clearly in line with where a majority of North Carolinians are on this issue politically.

Likewise, I firmly agree with your exhortation at the end of your letter that:

“Regardless of personal views or feelings on the Supreme Court’s decision, I urge call and respect in this time. I hope individuals on both sides will be able to voice their opinions and concerns in a peaceful manner.”

That is the spirit in which this rather long and detailed response was intended.

I may not have succeeded in getting you to come over completely to the guiding principles I’ve expressed above and that’s OK by me...reasonable people may disagree reasonably with one another and I respect how you may have come to your current stated position on the issue.

But hopefully I’ve managed to communicate that these guiding principles are sincerely held and the product of research and reason as opposed to mere emotion and that were I to put them to every voter in North Carolina and see if they found them a reasonable basis for legislation at the Federal or state level, I suspect those polling numbers I mentioned earlier may well actually move even further in favour of accessibility to abortion. Even amongst the most die-hard of Republicans!

I guess we will find out soon enough how successful that will be!

And even though I’m now forced to pivot my efforts to persuading various officials and candidates here in North Carolina, you may rest assured that I’ll be in touch from time to time on issues of importance to the people of North Carolina.

I hope that those of us who wish for the General Assembly to act with similar reason and care may well have your support in that effort.

Whatever you may decide, I hope you choose well in the best traditions and according to the will of the people of North Carolina whom we both cherish.

Yours ever,

Erik Williams