**A** From the *Dobbs* Oral Argument:

To Mississippi’s lawyer Justice Kavanaugh said: “[A]s I understand it, you're arguing that the Constitution is silent and, therefore**, neutral** on the question of abortion? In other words, that the Constitution is neither pro-life nor pro-choice on the question of abortion but leaves the issue for the people of the states or perhaps Congress to resolve in the democratic process? Is that accurate? MR.

Kavanaugh said the same thing to the abortionists’ lawyer: “And I think [that] because the Constitution is **neutral,** that this Court should be scrupulously **neutral** on the question of abortion, neither pro-choice nor pro-life, but, because, they say, the Constitution doesn't give us the authority, we should leave it to the states and we should be **scrupulously neutral** on the question and that they are saying here, I think, that we should return to a position of n**eutrality** on that contentious social issue rather than continuing to pick sides on that issue.” [Emphasis added]

**B** From Chief Justice Roberts’ concurrence in *June Medical:*

In this context, courts applying a balancing test would be asked in essence to weigh the State’s interests in “protecting the potentiality of human life” and the health of the woman, on the one hand, against the woman’s **liberty interest in defining her “own concept of existence, of meaning, of the**

**universe, and of the mystery of human life” on the other*.” Casey***. There is no plausible sense in which anyone, let alone this Court, could objectively assign weight to such imponderable values and no meaningful way to compare them if there were. Attempting to do so would be like “judging whether a particular line is longer than a particular rock is heavy,” [citation to Justice Scalia opinion omitted]. Pretending that we could pull that off would require us to act as legislators, not judges, and would result in nothing other than an “unanalyzed exercise of judicial will” in the guise of a “neutral utilitarian calculus.” [Emphasis added; internal citations omitted]

**C** Justice John Harlan in 1961, *Poe v. Ullman:*

[T]he very inclusion of the category of morality among state concerns indicates that society is not limited in its objects only to the physical well-being of the community, but has traditionally concerned itself with the moral soundness of its people as well. . . . The laws regarding marriage which provide both when the sexual powers may be used and the legal and societal context in which children are born and brought up, as well as laws forbidding adultery, fornication and homosexual practices which express the negative of the proposition, confining sexuality to lawful marriage, form a pattern so deeply pressed into the substance of our social life that any constitutional doctrine in this area must build upon that basis.

**D** Justice Alito, dissenting in *Obergefell* (2015)

Adherents to different schools of philosophy use different terms to explain why society should formalize marriage and attach special benefits and obligations to persons who marry...“Here, the States defending their adherence to the traditional understanding of marriage have explained their position using the **pragmatic vocabulary** that characterizes most American political discourse...Their basic argument is that States formalize and promote marriage, unlike other fulfilling human relationships, in order to encourage potentially procreative conduct to take place within a lasting unit that has long been thought to provide the **best atmosphere for raising children.”**

**E** Justice Scalia, dissenting in *Lawrence (2003):*

1.[P]reserving the traditional institution of marriage" is just a kinder way of describing the State's moral disapproval of same-sex couples…. The people may feel that their disapprobation of homosexual conduct is strong enough to disallow homosexual marriage, but not strong enough to criminalize private homosexual acts-and may legislate accordingly.

**2.**The Texas statute undeniably seeks to further the belief of its citizens that certain forms of sexual behavior are "immoral and unacceptable," Bowers, supra, at 196-the same interest furthered by criminal laws against fornication, bigamy, adultery, adult incest, bestiality, and obscenity. The Court today [says] that "'the fact that the governing majority in a State has traditionally viewed a particular practice as immoral is not a sufficient reason for upholding a law prohibiting the practice,"' [citation here omitted]. This effectively decrees the end of all morals legislation. If, as the Court asserts, the promotion of majoritarian sexual morality is not even a legitimate state interest, none of the above-mentioned laws can survive rational-basis review.

**F:** Chief Justice Burger, in *Paris Adult Theater* (1973):

The States have the power to make a morally neutral judgment that public exhibition of obscene material, or commerce in such material, has a tendency to injure the community as a whole, to endanger the public safety, or to jeopardize, in Mr. Chief Justice Warren’s words, the States’ “right . . . to maintain a decent society.”