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## SAVE THE DATE



**90TH ANNUAL HOLIDAY PARTY**  
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**WE CARE HOCKEY WITH A HEART**  
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**WE CARE CHILDREN'S FESTIVAL**  
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## NCBA Access to Justice Committee Honors National Pro Bono Week

Madeline Mullane

Marking the return to an in-person format for the first time since prior to the pandemic, the NCBA Access to Justice Committee hosted its Pro Bono Open House at Domus on October 24, 2022. The Committee—in conjunction with The Safe Center Long Island and Nassau Suffolk Law Services—held a successful and well-attended event, with over 110 people from the community able to receive one-on-one general legal consultations regarding a myriad of legal issues.

Over 50 attorneys, paralegals, and support staff joined together with representatives from Nassau County Supreme Court and the Appellate Division, Second Department to provide general guidance, consultations, and information on how to procedurally navigate the court system as a pro se litigant. Traditionally held during National Pro Bono Week, the Open House allows the public to have direct, free access to attorneys who can often provide transformative help after only a short meeting. For those who do not have the means or the understanding of the legal system, the consultation may be the catalyst to improve their situation or alleviate a source of stress and unease in their life.

While awaiting their consultation, representatives from the Nassau County Supreme Court spoke more in-depth with attendees about the courts' Access to Justice program, its origins and initiatives, and the ways it works with the public to achieve access to the court and potential relief available through its processes.



Many senior members of the community were in attendance, seeking guidance on issues ranging from elder abuse, taxes, and estate planning to real estate, contracts, and benefits. The most requested type of consultation for all attendees was wills, trusts, and estates. Real estate, landlord/tenant, and mortgage foreclosure were second most requested, with family law and related issues rounding out the top three. Some very niche consultations were requested and accommodated by the volunteer attorneys, doing their best to provide at least some perspective and guidance to all who they spoke with.

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## Hon. Norman St. George, Hon. Vito M. DeStefano, and Jeneen Wunder Discuss Judicial Initiatives and Offer Professional Insights to NCBA New Lawyers Committee

Byron C. Chou

On October 28, 2022, the New Lawyers Committee had the privilege of hosting a lunchtime panel of esteemed speakers consisting of the Hon. Norman St. George (Deputy Chief Administrative Judge for the Courts Outside of New York City), Hon. Vito M. DeStefano (Nassau County Administrative Judge), and Jeneen Wunder, Esq. (Principal Law Clerk to the Judge Norman St. George). The panelists discussed the New York State judiciary and its current initiatives, as well as offered insights on the successful practice of law as a new lawyer.

This in-person-only event, held in the North side Dining Room of Domus, was well-attended and provided an intimate and inviting setting, which allowed all attendees to engage with both Judges St. George and DeStefano and Ms. Wunder. It further provided the attendees with unique insight into the organizational structure of the New York State judiciary, its various districts, appellate departments, and their respective functions.

Moreover, as each speaker detailed their own personal and professional career milestones, they offered anecdotes and

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**FOCUS:  
CIVIL RIGHTS LAW**

**James G. Ryan, Seema Rambaran,  
and Ciara Villalona**

On June 24, 2022, the Court handed down its decision in *Dobbs v. Jackson Women's Health Organization*. The Court, in a 6-3 decision, held the Constitution does not confer a right to abortion.<sup>1</sup> In a clean sweep, the Court overruled *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* and held “the authority to regulate abortion” should be “returned to the people and their elected representatives.”<sup>2</sup>

The immediate consequences of *Dobbs* were felt nationwide.<sup>3</sup> Several states with “trigger laws,” laws designed to instantaneously go into effect under certain circumstances with no further state action required, resulted in complete statewide abortion bans, with no exceptions for rape or incest.<sup>4</sup> Other states found that their laws now banned abortions at six, fifteen, eighteen, or twenty weeks.<sup>5</sup> In forever blue states, like New York and California, there was no change in access to abortions.<sup>6</sup> In some states, abortion remains legal, for now, while courts determine if new or existing bans can take effect.<sup>7</sup>

What remains to be decided; however, is the effect of *Dobbs* on other rights not explicitly stated in the Constitution, including the rights to same-sex marriage and contraception. Cases in the October 2022 Term may reveal whether rights widely considered to be “fundamental” truly are so.

**Is *Dobbs* Just the Beginning?**

Justice Alito delivered the opinion of the Court, in which Justices Thomas, Gorsuch, Kavanaugh, and Barrett joined. Justices Thomas and Kavanaugh each filed concurring opinions, and Chief Justice Roberts filed an opinion concurring in the judgment. Justice Breyer, Justice Sotomayor, and Justice Kagan filed a dissenting opinion.

Perhaps one of the most striking statements in Justice Alito's majority opinion is, “The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one in which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment,”<sup>8</sup> thereby suggesting that if a right is not

# Civil Rights in a Post-*Dobbs* Era

explicitly stated in the Constitution, then it may be at risk.

Justice Alito, addressing the concerns of the dissent, wrote:

[T]he dissent suggests that our decision calls into question *Griswold*, *Eisenstadt*, *Lawrence*, and *Obergefell*. But we have stated unequivocally that “[n]othing in this opinion should be understood to cast doubt on precedents that do not concern abortion.” We have also explained why that is so: rights regarding contraception and same-sex relationships are inherently different from the right to abortion because the latter (as we have stressed) uniquely involves what *Roe* and *Casey* termed “potential life.” Therefore, a right to abortion cannot be justified by a purported analogy to the rights recognized in those other cases or by “appeals to a broader right to autonomy.” It is hard to see how we could be clearer.<sup>9</sup>

Throughout the majority opinion, it is repeated that the ruling addresses the right, or lack thereof, to abortions and no other rights. Justice Kavanaugh echoed Justice Alito's assertions about other precedents involving contraception and same-sex marriage.<sup>10</sup>

Justice Thomas' concurrence, however, struck a different tune. While Justice Thomas agreed that “nothing in the Court's [*Dobbs*] opinion” should be “understood to cast doubt on precedents that do not concern abortion,” he wrote “[I]n future cases, we should reconsider all of this Court's substantive due process precedents, including *Griswold*, *Lawrence*, and *Obergefell*.”<sup>11</sup> Justice Thomas omitted *Loving v. Virginia*, the unanimous 1967 decision which held anti-miscegenation statutes violated both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment.<sup>12</sup>

The dissent, jointly written by Justice Breyer, Justice Sotomayor and Justice Kagan, refused to take the majority at its word:<sup>13</sup>

And no one should be confident that this majority is done with its work. The right *Roe* and *Casey* recognized does not stand alone. To the contrary, the Court has linked it for decades to other settled freedoms involving bodily integrity, familial relationships, and procreation.... They are all part of the same constitutional fabric, protecting autonomous decision-making over the most personal of life decisions.... The lone rationale for what the majority does today is that the right to elect an abortion is

not “deeply rooted in history”... The same could be said, though, of most of the rights the majority claims it is not tampering with.

Depending on who is your favorite Justice, you may or may not believe the majority's promise that *Dobbs* is an isolated decision. Are *Griswold*, *Eisenstadt*, *Lawrence*, and *Obergefell* next on the chopping block? If any of them fall, wouldn't *Loving* also be at risk? In the October 2022 Term, the Court just might have the opportunity to set the record straight.

**Coming Up Next: *303 Creative LLC v. Elenis***

In February 2022, the Court agreed to hear an appeal from a Colorado web designer who is willing to serve LGBTQ+-identifying clients, but limits her wedding-related services to heterosexual couples.<sup>14</sup> Specifically, the Court will consider “whether applying a public accommodation law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment.”<sup>15</sup>

If this case gives you a feeling of déjà vu, you are not alone. Back in 2018, in *Masterpiece Cake Shop, LTD. v. Colorado Civil Rights Commission*, the Court evaluated whether Colorado's public accommodations law, which compelled a cake maker to design and make a cake that violated his sincerely held religious beliefs about same-sex marriage, violated the Free Speech and Free Exercise Clauses of the First Amendment.<sup>16</sup>

The Court, in a 7-2 decision, held the Colorado Civil Rights Commission's conduct in evaluating the cake shop owner's reasons for declining to make a wedding cake for same-sex couples violated the Free Exercise Clause. The Court's decision was narrow and left open the broader question of whether a business can discriminate against members of the LGBTQ+ community based on rights protected by the First Amendment.<sup>17</sup>

In the three years since *Masterpiece*, the Court's composition has changed dramatically. Justice Brett Kavanaugh joined the Court in September 2018, replacing Justice Anthony Kennedy.<sup>18</sup> In September 2020, Justice Ruth Bader Ginsburg, a feminist icon, died after 27 years on the nation's highest court.<sup>19</sup> Within weeks of her passing, Justice Amy Coney Barrett was nominated by President Donald Trump and confirmed by the U.S. Senate.<sup>20</sup> In June 2022, Justice Stephen Breyer retired after 28 years of service and was replaced by Justice Ketanji Brown Jackson.<sup>21</sup>

The controversial decision in *Dobbs* highlighted the ideological shift of the Court and led to serious debates about the role of the Court in the twenty-first century. Whether *Dobbs* makes you cheer or cringe, its effects on future civil rights cases may be profound. Decisions that will be rendered this Term will act as a seismograph to measure *Dobbs*'s consequences on various landmark precedents. ⚖️

1. 142 S. Ct. 2228 (2022).
2. *Id.* at 2242-43.
3. *Tracking the States Where Abortion is Now Banned*, The New York Times (Oct. 13, 2022), available at <https://nyti.ms/3NzCNC6>.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Dobbs* at 2242.
9. *Id.* at 2280.
10. *Id.* at 2309 (“I emphasize what the Court today states: Overruling *Roe* does not mean the overruling of those precedents, and does not threaten or cast doubt on those precedents.”) (Kavanaugh, J., concurring).
11. *Id.* at 2302.
12. Adam Edelman, *Thomas Wants the Supreme Court to Overturn Landmark Rulings that Legalized Contraception, Same-Sex Marriage*, NBC News (June 24, 2022), available at <https://nbcnews.to/3Uq3TOP>.
13. *Dobbs*, 142 S. Ct. at 2319.
14. Adam Liptak, *Supreme Court to Hear Case of Web Designer Who Objects to Same-Sex Marriage*, The New York Times (Feb. 22, 2022), available at <https://nyti.ms/3sXnKsn>.
15. *Id.*
16. *Masterpiece Cake Shop, LTD. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018).
17. Adam Liptak, *In Narrow Decision, Supreme Court Sides with Baker Who Turned Away Gay Couple*, The New York Times (June 4, 2018), available at <https://nyti.ms/2J5P8js>.
18. *Current Members*, The Supreme Court of the United States, available at <https://bit.ly/3U4DYfb>.
19. Linda Greenhouse, *Ruth Bader Ginsburg, Supreme Court's Feminist Icon, Is Dead at 87*, The New York Times (Sept. 18, 2020), available at <https://nyti.ms/3t1hq36>.
20. Jon Street, *Supreme Court Justice Photo Includes All Three Trump Picks for First Time*, Fox News (May 6, 2021), available at <https://fxn.ws/3TaVw5l>.
21. Ximena Bustillo, *Ketanji Brown Jackson Sworn in as First Black Woman on the Supreme Court*, NPR (June 30, 2022), available at <https://n.pr/3Dv2f76>.



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