

Roe v. Wade, 1973

Does a woman have a legal right to an abortion? Many religious groups oppose this right, civil libertarians, unaffiliated individuals, and women's rights organizations are in favor of this right.

Background of the Case:

An unmarried pregnant woman, Jane Roe (pseudonym) took legal action against the District Attorney of Dallas County, Texas (Henry Wade). At the time, Texas law made it a crime for a woman to have an abortion except when, in a doctor's judgement, abortion would be necessary to save the mother's life.

Roe's life was not in danger so according to the law, she could not have an abortion in Texas.

Constitutional Issue:

Roe argued that not being able to have an abortion invaded her right to privacy. She claimed that according to the Bill of Rights and the "due process" clause of the Fourteenth Amendment, her basic rights had been violated.

The state of Texas argued that the protection of the life, as stated in the Fourteenth Amendment, could not be applied to a fetus as it was not a person in the eyes of the law.

The Court's Decision:

The Court decided in Roe's favor. [A 7-2 Majority].

The verdict of the Court was written by Justice Harry A. Blackman.

His statement asserted that the Court had to "*resolve the issue by constitutional measurement free of emotions and of predilection*" (free of bias), a difficult task for the Court.

Blackman stated that a person does have an inferred right to privacy under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the Constitution. He said that "*the right has some extension to activities related to marriage, procreation, and contraception.*" He further added that "*the right to privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.*"

His decision did discuss the fact that this choice may result in a specific or direct medical injury but other injuries could also result from an unwanted pregnancy. These could include "*a distressful life and future, psychological harm, distress resulting from an unwanted child and the problem of bringing a child into a family already unable, psychologically or otherwise, to care for it.*"

In his conclusion, he also stated that the privacy right was not absolute. The right could not support the absolute right to choose abortion and must be balanced against important state interests to the regulation.

The Court also raised the issue about a fetus being a “person” according to the Fourteenth Amendment.

The Court decided that a fetus was NOT a person under the Fourteenth Amendment.

His statement included the following excerpt:

“We need not resolve the difficult question of when life begins . . . the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to an answer.”

He stated that the state does have specific rights, namely to protect the health of a pregnant woman and the potential human life of a fetus.

The Court then made a further decision:

To satisfy both interests of the issue, the Court divided the term of pregnancy into two parts based on medical knowledge.

The first part is the first trimester (the three-month period) of the pregnancy. The Court said that this was the point up to which fewer women died from abortions than in normal childbirth. In order to protect women during this time, a state may regulate abortion procedures. It must be done using the doctors’ qualifications and the licensing of the facilities used in abortions. In the first trimester, the decision to have an abortion is the sole decision of both the woman and her doctor. The state cannot impose further restrictions to those just stated.

The Court stated that the point where the state is responsible is when the child’s life begins, when it is capable of living outside of the womb. During the period of the third trimester, the state may constitutionally regulate and even forbid abortion, except when necessary to preserve a woman’s life or health.

Between the end of the first trimester, and around the third trimester, the state may *“if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.”*

Justice William Rehnquist’s dissenting opinion question if any constitutional right to privacy or liberty could be so broad as to include the complete restriction of state controls on abortion during the first trimester. His point of view was stated when he said ***“the Court’s opinion will accomplish the seemingly impossible feat of leaving this area If the law more confused that it found it.”***

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Name: _____

1. What new rulings about abortions were made in this case?

2. According to the Court's ruling, what was the role of the state in abortions?

3. How does medical science play a major role in the right to an abortion?

4. Justice Rehnquist said that the decision left the law more confused than it found it. What do you think he meant by this comment?
