

ROE v. WADE (1973)

The landmark decision that established pregnant women have a right to abortion without excessive government restriction as an expression of their right to privacy.

KEY TERMS

Abortion

The decision in *Roe v. Wade* focused on the right of Jane Roe to access an abortion, which is the medical termination of a pregnancy through either medication or surgery. The *Roe v. Wade* ruling framed abortion as a private medical decision between a woman and her physician.

Viability

While the ruling for *Roe v. Wade* used the trimester system to determine when abortion could be performed, subsequent rulings on the topic have focused on viability. Viability is the point at which a fetus can live outside a mother's womb. The point of viability is generally considered to be 28 weeks, but advances in medical technology have moved that up to 24 weeks.

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FACTS OF THE CASE

In June 1969, a 21-year-old woman named Norma McCorvey learned that she was pregnant with her third child. After determining that she did not want to continue her pregnancy, she attempted to obtain an abortion in Texas, but was rejected because Texas law restricted abortion “for the purpose of saving the life of the mother.” She did not attempt to obtain an illegal abortion. Two attorneys filed suit on behalf of Norma McCorvey using the pseudonym “Jane Roe” against Henry Wade, the Dallas County District Attorney who represented Texas. Jane Roe’s legal team argued that the Texas law should be overturned both because it was overly vague and because it violated her right to privacy protected under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. A lower court ruled that the Texas law was unconstitutional on the grounds that it violated the Ninth Amendment and its implicit right to privacy. The case was appealed to the Supreme Court in 1970 and was scheduled to be heard in December 1971.

THE DECISION

In a 7-2 decision, the Court ruled that the “right to privacy” of the Fourteenth Amendment constitutionally protects a woman’s right to have an abortion. The Texas Law that was at the heart of the case was considered unconstitutional because it was too broad in that it did not balance the different stages of pregnancy or any other mitigating factors. The decision established a constitutional right to abortion under a woman’s right to privacy. It balanced the state’s interests in protecting its citizens



A rally on the steps of the Supreme Court in 2005 on the anniversary of the decision in Roe v. Wade

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PRECEDENT

Miller v. Johnson (1995)—*Roe v. Wade* was the first Supreme Court case to specifically legislate issues around abortion. While it does not have a direct judicial precedent, the court ruling relied extensively on the due process clause of the Fourteenth Amendment, which argues that “...nor shall any state deprive any person of life, liberty, or property, without due process of the law” and rights to privacy extended by the Constitution.

SUBSEQUENT CASE

Planned Parenthood v. Casey (1992)—ruled that while the essential holding of *Roe v. Wade* (1973) was valid, it needed to be modified. The Court rejected the trimester standard in favor of a viability standard. The Court determined that states could impose some restrictions on abortions prior to the point of a fetus’s viability as long as those restrictions did not represent an “undue burden.”

against the individual liberties of citizens by regulating each trimester of the pregnancy differently. The Court argued that the State may not regulate abortion in the first trimester, although it could regulate abortion for maternal health concerns in the second trimester and could prohibit abortion entirely in the third trimester.

IMPACT

The ruling in *Roe v. Wade* was controversial when it was first formed and continues to be divisive today. The two dissenting Supreme Court judges wrote scathing dissents that criticized the Court’s use of the Fourteenth Amendment to regulate abortion. Justice Bryon White asserted that the decision showed that “The Court simply fashions and announces a new constitutional right for pregnant women” without sufficient constitutional backing. Justice William Rehnquist, who also dissented, argued that “to reach its result, the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment.” These objections have become major points of criticism in the ongoing debate over *Roe v. Wade*. As it stands, *Roe v. Wade* continues to provide precedent for abortion law in the United States, although subsequent cases have modified the trimester structure in the ruling and allowed states to place more regulations on first trimester abortions as long as they do not represent an “undue burden” on women.

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Public Support for Roe v. Wade

