

Roe v. Wade (1973)

Argued: December 13, 1971

Reargued: October 11, 1972

Decided: January 22, 1973

Background and Facts

The U.S. Constitution does not use the word “privacy” anywhere in the text. But some of the amendments in the **Bill of Rights** include protections for some types of privacy, like the **Fourth Amendment’s** right to be free from unreasonable government searches and **seizures**. During the 21st century, the Supreme Court said that the Constitution, including the **Due Process Clause** of the 14th Amendment, provided a right to privacy that protected people as well as places. The Court said that the right to privacy included decisions about raising children, marriage, and birth control. This is a case about whether the right to privacy includes the right to have an **abortion** to terminate a pregnancy.

In the 19th and early 20th centuries, most states passed laws banning or controlling abortion. Many people felt that abortion was morally wrong, so some states outlawed abortion unless the pregnant person’s life was in danger. But illegal abortions were common and often dangerous.

In Texas, it was illegal to have an abortion unless a doctor said it was needed to save the pregnant person’s life. In 1969, a pregnant resident of Texas known as Jane Roe (a made-up name used to protect her) wanted to have an abortion. Roe sued, arguing that the Texas law violated the U.S. Constitution.

The District Court ruled that the Texas law was **unconstitutional** because a person’s choice to have an abortion is a **fundamental right** that is protected by the Ninth Amendment. The state of Texas asked the U.S. Supreme Court to hear the case, and it agreed.

Constitutional Question

Does the U.S. Constitution protect the right of a person to have an abortion?

Arguments for Roe

- Some choices, including whether or not to have a child, are protected by the Constitution because they are private. While it is not mentioned in the Constitution, the right to privacy is indirectly guaranteed by the First, Fourth, Fifth, Ninth, and 14th Amendments.
- A **fetus** is not a person under the law and does not have the same legal rights as the parent.

- Many people have unwanted pregnancies, which has a major effect on their lives. In the 1970s, a person could legally be fired if they became pregnant. A person could be risking their career, their finances, and their mental and physical health by having a child.
- If a person in Texas wants to have an abortion, they must either travel to another state where abortion is legal or have an illegal, unsafe abortion. Travel is expensive, so it is harder for poor people to have safe abortions.

Arguments for Wade

- The Constitution does not protect the right to an abortion. It isn't mentioned in the text, and there is no reason to think that the framers who wrote the amendment wanted to protect that right in the 14th Amendment.
- A fetus is a person and has constitutional rights. The state has an important interest in protecting fetuses because they will grow up to be citizens. A fetus's right to life is more important than the parent's right to privacy.
- The Court's earlier decisions said that the right to privacy can be limited by reasonable rules. Texas' law is reasonable because the state has a strong interest in protecting the fetus and the pregnant person's health.
- Decisions about whether to allow or ban abortions should be left to the state legislatures, not the courts. The legislature is elected, so it mirrors the beliefs of the citizens.

Decision

The Supreme Court ruled for Jane Roe in a 7-2 decision. Justice Blackmun wrote the Court's opinion, holding that a woman's right to have an abortion was protected by the Constitution. Chief Justice Burger and Justices Stewart and Douglas wrote concurring opinions. Justices White and Rehnquist wrote dissents.

The majority ruled that a woman's right to an abortion was found in the 14th Amendment's Due Process Clause, which says that states cannot "deprive any person of ... liberty ... without due process of law." This "liberty" includes the right to privacy. The Court said that the right to privacy includes the right to decide whether or not to have an abortion. Additionally, the Court decided that the word "person" in the 14th Amendment does not include a fetus, as the law throughout history did not recognize a fetus as having rights.

Despite finding that people have the right to have an abortion, the Court also said that it was limited by the state's interests. The Court ruled that where fundamental rights, like privacy, are involved, the state can only limit these rights by showing a compelling (or persuasive) state interest. The Court recognized that the state has interests in protecting pregnant people's health and potential human life.

To balance the state's interests with pregnant people's interests, the Court set up a test to decide when states could regulate or ban abortions. During the first **trimester**, or first three months of a pregnancy, a person's right to privacy is more important than the state's interests. Abortion is not dangerous during this part of the pregnancy and the fetus is still undeveloped. During the second trimester, abortion poses a bigger risk and the fetus is more developed. The state can regulate, but not outlaw, abortions during the second trimester. However, these laws must be intended to protect the pregnant person's health. During the third trimester, abortion is even riskier and the fetus is almost completely developed and might be able to survive on its own. The state's interests become more important than the pregnant person's right to privacy during these last three months. A state can regulate and even ban abortions during the last trimester as long as there are exceptions for abortions needed to protect the pregnant person's health.

In his dissent, Justice White said that nothing in the text or history of the Constitution supported the right to have an abortion. Justice Rehnquist agreed, arguing that this was a question for the legislature, not the courts.

Impact of the Case

The immediate impact of the decision in *Roe v. Wade* was the striking down of laws that banned or severely restricted abortions in 30 states, including Texas.

In the years after *Roe v. Wade*, several states passed laws regulating abortion; these were often challenged in court. The decisions in these cases upheld *Roe v. Wade* but allowed for some restrictions like waiting periods and parental notification for minors.

In 2022, the Court heard arguments in *Dobbs v. Jackson Women's Health*, which questioned whether the Supreme Court decided *Roe v. Wade* incorrectly. The Supreme Court ruled in *Dobbs* that abortion was not a right protected in the Constitution and overruled the precedent it set nearly 50 years earlier in *Roe*. This decision returned the authority to regulate abortion to the states.

Glossary

- **Abortion**: a medical procedure to end a pregnancy.
- **Bill of Rights**: the first 10 amendments to the U.S. Constitution.
- **Compelling**: very important and persuasive.
- **Concurring opinion**: written explanation of a decision when a justice agrees with the result of a case, but for a different reason than the majority.
- **Dissent**: an opinion written by the justices who disagree with the majority's decision.
- **Due Process Clause**: the part of the 14th Amendment that says the states cannot take away someone's life, liberty, or property without due process of law. "Due process of law" means

that the government must follow certain procedures, like a trial. These procedures are different depending on what the government is trying to take away.

- **Fetus:** the medical term used for an unborn baby.
- **Fourth Amendment:** the Fourth Amendment protects individuals from “unreasonable searches and seizures.” That means that the government cannot simply enter someone’s home and search through their belongings without a good reason.
- **Fundamental right:** a right that is considered so important that the government must protect it.
- **Liberty:** freedom.
- **Majority:** the opinion signed by more than half of the Supreme Court.
- **Seizures:** when the government takes someone’s property, often to use it as evidence in a criminal trial.
- **Trimester:** three months of a pregnancy. There are three trimesters in a human pregnancy.
- **Unconstitutional:** not allowed by or contained in the Constitution. If a law is unconstitutional, it will be struck down, meaning it is no longer a law.

Additional information about *Roe v. Wade*, including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at <https://www.landmarkcases.org/>.