

## CASE ANALYSIS OF OVERTURNED U.S. LANDMARK JUDGEMENT: ROE VS WADE

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### ABSTRACT

"Worse than aborting is birthing in instability" -Abhijit Naskar. The United States of America kept this instability at bay for the past 50 years, but by overturning the Roe v. Wade decision, the Supreme Court of the United States has brought it back. The right to abort a child gave women the freedom to live their lives as they chose, which was inferred in the right to privacy guaranteed by the Fourteenth Amendment to the Constitution. This article provides a thorough analysis of the past and present judgments made against America on the right to an abortion. Because this article demonstrates the reasoning behind such judgments, which have brought uncertainty to the lives of women.

**Keywords:** Abortion, Privacy, Amendment, Constitutional, Unconstitutional, pregnancy.

### INTRODUCTION

Abortion is a highly controversial and divisive issue in American culture, politics, and society. In America, abortion has existed since European colonization. The 16<sup>th</sup> and 17<sup>th</sup>-century jurist Sir Edward Coke called abortion "the great delusion". The courts of State, therefore, viewed abortion after "quickeening (the point at which a woman feels life used to determine fetal viability)" as a common law crime. Almost 37 states had passed anti-abortion laws by the end of 1868. The Supreme Court said that "19th-century laws were created to protect the mother's health from the dangers of unsafe work". Fifteen months before Roe, five state courts had declared abortion laws constitutional stating that it was "designed to protect the lives of unborn children". Thus, the court's conviction that they were focused on the national interest in protecting 'maternal health' is unexplainable.<sup>1</sup>

Prior to 1973, abortion was illegal in 33 states of the US except in certain circumstances (i.e., rape, incest, endangered maternal health). Then the case Jane Roe vs Henry Wade came into

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<sup>1</sup> P B Linton, Roe v. Wade and the history of abortion regulation, 15 Am J Law Med. (2-3), 227-33 (1989)

<https://pubmed.ncbi.nlm.nih.gov>

existence which “involved a Texas statute that prohibited abortion except when necessary to save the life of the pregnant woman”. In a decision written by Justice Blackmun, the Supreme Court held that “The Due Process Clause of the Fourteenth Amendment to the American Constitution provides a fundamental right to privacy that protects a pregnant woman’s freedom to have an abortion”. Still, this right is not arbitrary and must be balanced against the state's interest in protecting the health of women and the life of the unborn child.<sup>2</sup>

The Court framed a three-trimester pregnancy system. In the course of the first trimester, the decision to terminate a pregnancy is entirely up to the woman. After the first trimester, the state can “manage the procedure”. In the course of the second trimester of pregnancy, countries can regulate abortion for the health of the mother, but cannot ban it. After the second trimester of pregnancy, the fetus is viable, and states may regulate or prohibit abortion for the sake of potential life, except when necessary to protect the life or health of the mother.<sup>3</sup> Nearly fifty years later, on June 24, 2022, the Supreme Court overruled Roe in Dobbs v. Jackson women's health organization on the grounds that “the substantive right to abortion was not deeply rooted in this Nation's history or tradition, nor considered a right when the due process clause was ratified in 1868 and was unknown in American law until Roe”.

## WHAT HAPPENED IN ROE V. WADE?

In 1969, Norma McCovey (alias Jane Roe) 22-year-old single woman who was residing in Dallas Country sought to terminate her unwanted pregnancy. Norma previously had given birth twice and gave up both the children for adoption. Her first child was adopted and raised by her mother, and the second child was adopted by another family. During the time of her third pregnancy, she was denied an abortion because at that time abortion was illegal in Texas except when necessary to save the mother's life. While traveling to other countries American women with financial means could obtain abortion where the procedure was safe and legal or pay a large number of fees to U.S. doctors willing to perform a secret abortion. Since those options were out of reach for her and other Texas laws allowed abortion in case of rape or incest so on her friend's suggestion, she claimed that her pregnancy was a result of rape. Due to a lack of evidence and documents the case was rejected. Norma then sought to have an illegal abortion but was unsuccessful. She was then introduced to Texas attorneys Linda Coffee and Sarah

<sup>2</sup> United States, Supreme Court Jane Roe v. Wade(1973), Legal information institute, Cornell U Law School <https://www.law.cornell.edu>

<sup>3</sup> Ibid at 1

Wedding ton, who were interested in challenging anti-abortion law. In 1970, her attorneys filed a case on behalf of Henry Wade the district attorney of Dallas under the legal pseudonym "Jane Roe". The suit was filed in the District Court for the Northern District ("District Court") of Texas. Roe carried out her pregnancy and her child were born in a Dallas hospital in 1970 and then placed for adoption before the first argument was presented before the highest court of law. Besides Roe "a licensed physician (Hallford) was permitted to intervene by the court who had two state abortion cases pending against him and a childless married couple (the Does), the wife not being pregnant, separately attacked the laws, basing alleged injury on the future possibilities of contraceptive failure, pregnancy, unpreparedness for parenting, and deterioration of the wife's health".

Thus, the case represented the plight of the pregnant unmarried woman, the childless couple, as well as the licensed physician, all together attacking the criminal abortion statutes of Texas. Upon much deliberation, the court held that Roe and her representatives and Dr. Hallford, had to stand to sue to present legitimate contention but the Does did not have standing because they had failed to allege facts sufficient to state a present contention. The claims were consolidated and duly heard in the District Court, composed of three judges. A three-judge District Court, declared the abortion statutes "void as vague and over broadly infringing those plaintiffs Ninth and Fourteenth Amendment rights" but denied injunctive relief. The parties appealed this ruling to the Supreme court.

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## **LEGAL ARGUMENTS MADE BY PARTIES <sup>4</sup>**

Several arguments were made before the Supreme Court regarding the case as follows:

### **ARGUMENTS OF STATE**

Three main arguments put forth by the state in its case to defend the abortion laws:

- A fetus is a "Human" protected under the Fourteenth Amendment, so laws allowing abortions would "deprive a person of life", a prohibited practice.
- Texas law applies in the interests of the state, even if the right to privacy is violated. The national interest must protect human life (life is a process that begins at conception and ends at death)

<sup>4</sup> Doug Linder, The right to an abortion- UKMC School of Law, Exploring Constitutional Conflicts  
<http://law2.umkc.edu>

- Texas law is not unconstitutional and unambiguous. There are inaccuracies in every law, but this is more obvious than most others. Laws allowing abortion when necessary for the “health” of the mother carry more weight.

## ARGUMENTS OF ROE

Others associated with Jane Roe have put forward their arguments based on the following claims:

- Roe argued that the Texas statutes were unconstitutionally vague and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments recognized in the case of Griswold.
- The right to an abortion must be recognized as “a basic right that causes strict scrutiny” because childbearing and childbirth greatly affect a woman’s life.
- Texas law violates a physician’s basic right to give medical care. Countries cannot opt-out of STD treatment to prevent promiscuity. The state cannot prohibit all forms of labor.
- Texas law is not supported by the “compelling state interest” in protecting the unborn child because the unborn child has no rights under Texas law, and abortion itself is legal.
- The law is not “moot” simply because Jane Roe is no longer pregnant. This case is included in the “capable of repetition, yet evading review” exception because the Supreme Court cannot decide the case in less than nine months.

## WHAT SUPREME COURT DECIDED?

The Supreme Court completely denied Roe’s contention, which had always insisted on an absolute right to abortion in order to balance women’s right to privacy with the state’s interest in regulating abortion. On January 22, 1973, the Supreme Court overturned Texas’s criminal ban on abortion by 7 to 2, ruling that the right to have an abortion is a "fundamental right". The Court held that "in addition to decisions relating to marriage, contraception, education and family relations, decisions to continue or terminate a pregnancy are fundamental to the freedom of the individual."<sup>5</sup> In doing so, the court found that *Griswold v. Connecticut* (1965) refers to the fundamental right of a woman to choose whether or not to have an abortion. The core values

<sup>5</sup> Unknown, *Roe v. Wade*, Center for Reproductive Rights, <https://reproductiverights.org>

of this right include freedom of choice and concern for physical consequences (i.e., concern for physical integrity).<sup>6</sup> The court acknowledged “the great prejudice that the State would impose upon the pregnant woman by denying this choice including the health and economic risks of being forced to continue a pregnancy”.

To balance a woman’s right to privacy with the state’s interest in protecting the health of the mother and the life of the unborn child, the courts created the trimester framework -

- During a woman’s 1<sup>st</sup> trimester of pregnancy, the state cannot regulate abortions other than by requiring them to be performed under a licensed doctor in a medically safe environment.
- During a woman’s 2<sup>nd</sup> trimester, the court ruled that abortion could be regulated by the state if the rules sufficiently addressed the health of the pregnant woman.
- During a woman’s 3<sup>rd</sup> trimester of pregnancy, the government’s concern for the protection of life goes beyond her right to privacy. As a result, states can ban abortions unless it is necessary to save the life or health of the pregnant woman.<sup>7</sup>

## SIGNIFICANCE OF ROE V. WADE<sup>8</sup>

Roe was considered by many people as the case that “legalized abortion.” However, that wasn’t exactly true. Roe -

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- Described abortion as an implied constitutional right to privacy and,
- Framed a trimester pregnancy system so that states can regulate abortion.

Surprisingly, Roe did not significantly affect the number of annual abortions in the United States. “According to the Guttmacher Institute, in the years before Roe, there were more than a million illegal abortions per year in the United States. After Roe, even though abortion number remained around one million but were performed legally”, In addition, the abortion-related death rate dropped dramatically in the years after Roe.

In Roe the judicial interpretation of the Constitution is that abortion is legal. However, following Roe many supporters lobbied for stricter abortion laws. Opponents failed to ban abortion completely, but they did it. Many nations have introduced restrictions on abortion

<sup>6</sup> Supra note 2 ,at 1

<sup>7</sup> Laura Temme , Roe v. Wade case summary , Find Law(June30,2022), <https://supreme.findlaw.com>

<sup>8</sup> Ibid

under certain conditions, including parental reporting, mandatory disclosure of abortion risks, and long-term limitations on abortion. This issue continues to be a hot topic of administrative debate at the national level as well. The state abides to enforce abortion laws, which are often challenged in federal courts. But few have made it to the highest court of law. Wade can be lifted.

## WHY ROE V. WADE OVERTURNED?

Roe was under attack since the moment it was decided in 1973. Since 1973, repeated challenges narrowed the scope of Roe but did not revoke it. In May 2021 the Supreme Court agreed to review a lower court's decision to strike down Mississippi state law, adopted in 2018, in its October 2021 term. The case concerns the constitutionality of a Mississippi's Gestational Age Act which provides that "except in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks". Despite the fact that the statute was plainly unconstitutional under Roe vs Wade and Planned parenthood vs Casey, Mississippi legislators passed the bill in the hope that the inevitable legal case would ultimately reach the Highest court in authority where a majority of conventional judges would overturn or severely limit the scope. An abortion clinic Jackson women's health organization, and one of its doctors challenged the act in Federal District Court, accusing that it violated this court's ruling establishing a constitutional right to abortion, in particular Roe and Casey case.<sup>9</sup>

The only contention that the court would like to consider in the case, Dobbs v. Jackson women's health organization, was whether bans on all pre-mature abortions are unconstitutional. The states only abortion clinic argued that the Constitution supports the fundamental right to "body integrity and personal freedom in matters of family, medical care, and religious beliefs". The clinic argued that the judge should not have considered Roe's annulment because the state did not include this argument in its original appeal to the Supreme Court. But Mississippi state argued that stare decisis should not stop the Supreme Court from overturning Roe. According to state, the Roe v. Wade decision has been controversial from the start and, is therefore unreliable as established law. The state also claimed that stare decisis is at its weakest in this case because it deals with Constitutional interpretation. In May 2022, an

<sup>9</sup> United States, Supreme court Dobbs v. Jackson woman's health organization ,legal information institute, Cornell U Law School, <https://www.law.cornell.edu>

apparent draft of majority opinion was published in the case. The draft opinion was full-throated unusual denial of the 1973 decision that guarantees the protection of the federal constitution and the subsequent decision of the 1992 in Planned parenthood v. Casey that mainly retained the law.<sup>10</sup> In the document labeled as the “Opinion of the court” Justice Alito writes “Roe was egregiously wrong from the start its reasoning was exceptionally weak, and the decision has had damaging consequences and instead of offering a nationwide solution to the abortion problem, Roe and Casey provoked debate and deepened divisions. We hold that Roe and Casey must be overruled. It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”

The decision most of which was leaked in early May, implied that the Court had voted to overturn both Roe and Casey. As anticipated, On June 24, 2022, the American, Supreme Court accepted state’s appeal and released its official opinion where the justices voted 6-3 to overturn Roe v. Wade eliminating the federal constitutional right to abortion. The official opinion appeared to be largely the same as Justice Alito’s draft.

## CONCLUSION

Abortion had always been the most controversial topic in America history. During 1600s-1800s abortion remained legal but by the early 1900s every state had made Abortion illegal except for the cases when women ‘s life was in danger .But in 1973 landmark judgement Roe V. Wade “ The Supreme court established legal right to access abortion up to the point of fetal viability (i.e. around 28 week )” .The Judgement remained in practice for almost nearly half a century then has been struck down by the Supreme court on June 24 ,2022 holding that “The constitution of United States does not confer a right to abortion and returning the authority to regulate abortion to the people and their elected representatives”. The court’s decision to struck down Roe was based on the contention that abortion rights were not firmly rooted in American history and tradition and were not part of universally recognized right to automatic abortion.

Women's pregnancy is perhaps one of the most decisive aspect of her life it disrupts her employment, physique, education and her entire family life. Every woman bears biggest responsibility to bring a whole new life to the world so she should be mentally and physically strong. Compelling her to continue with pregnancy will only endanger her life and the life of

<sup>10</sup> Josh Gerstein and Alexander Wad, Supreme Court has voted to overturn abortion rights, draft opinion shows, Politico (May,03,2022, 02:14 PM)

the fetus she is carrying. Since woman carries a baby in her womb for nine months, she should be able to choose either to carry on with the pregnancy or abort it.

The abolition of Roe's Judgement that made balance between federal and pregnant person's interest will lead to serious implications for reproductive health rights. Roe may be imperfect in ability to protect reproductive rights but empowered millions of people across US to decide their own future and protect their own lives. Forbidding abortion will only put women through undue pressure and they will resort to risky underground abortion procedures as it was earlier before the Roe's judgement. Shortly after Roe was abolished Fifteen states already banned abortion and the number is expected to increase. Surge for contraceptive pills is going to increase in the coming days. The state needs to reconsider the matter as the women's right to life and privacy is under serious threat in US.

