

Roe v. Wade / The Casey Case: Roe Revisited?

Directions:

1. Read the **summary** of the decision in *Planned Parenthood of Southern Pennsylvania v. Casey* (below).
 2. Answer the **Questions to Consider** (page 2).
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Summary

In 1992, the Supreme Court decided the case of *Planned Parenthood of Southern Pennsylvania v. Casey*.¹ At issue were five provisions of the Pennsylvania Abortion Control Act of 1982, which required that a woman seeking an abortion give her informed consent prior to the procedure; specified that she be provided with certain information at least 24 hours before the abortion is performed; mandated the informed consent of one parent for a minor to obtain an abortion; required that a married woman seeking an abortion notify her husband; and imposed certain reporting requirements on facilities providing abortion services. Because the make-up of the Court had changed and become more conservative in the almost 20 years since *Roe v. Wade* was decided in 1973, many people believed that the Court might use this case to overturn *Roe* altogether.

In a 5-4 decision the Court reaffirmed its commitment to *Roe* and to the basic right of a woman to have an abortion under certain circumstances. Justice O'Connor, who authored the majority opinion, argued that *stare decisis* required the Court to not overturn *Roe*. *Stare decisis* is the general principal that when a point has been settled by decision, it forms a precedent that is not afterwards to be departed from. However, the doctrine of *stare decisis* is not always relied upon. From time to time, the Court overrules earlier precedent that the justices believe had been wrongly decided. O'Connor argued that a generation of women had come to depend on the right to an abortion. Nonetheless, certain restrictions were upheld.

As a result of the case, a woman continues to have a right to an abortion before the fetus is viable (before the fetus could live independently outside of the mother's womb). The Court held that states cannot prohibit abortion prior to **viability**. However, the states can regulate abortions before viability as long as the regulation does not place an **"undue burden"** on the access to abortion. After fetal viability, however, states have increased power to restrict the availability of abortions. The state maintains the power to restrict some abortions because of its legitimate interest in protecting the health of the woman and the potential life of the fetus. The Court stated that a regulation places an "undue burden" on access to abortion when "a state

¹ Read the Supreme Court's full opinion in *Casey*: <https://caselaw.findlaw.com/us-supreme-court/510/1309.html>.

regulation has the purpose or effect of placing a **substantial obstacle** in the path of a woman seeking an abortion of a nonviable fetus.” However, the Court did not define what constitutes a “substantial obstacle.” In *Casey*, the Court upheld the 24-hour waiting period and parental consent for a minor, but it found the spousal notification requirement to be unconstitutional.

Questions to Consider

1. What is *stare decisis* and how was it used to uphold a woman’s right to an abortion that was first recognized in *Roe v. Wade*?
2. The original decision in *Roe v. Wade* used a **trimester test** (i.e., abortions were legal in the first six months of pregnancy) but in *Casey* the Court adopted a **viability test**. What are the differences between these two tests? What are the potential advantages and problems with each test?
3. Although *Casey* did not overturn the basic holding of *Roe*, it did modify it. Did *Casey* generally expand the right to an abortion recognized in *Roe* or allow for greater restrictions on that right? Explain your answer.

4. Under the **undue burden test** adopted by *Casey*, in your opinion which of the following would place an undue burden on the right to an abortion? Give your reasons for each answer.
- A state law requires a husband to provide written consent before his wife is able to obtain an abortion.
 - A poor woman is unable to obtain an abortion because her state does not provide public funds to cover such a medical procedure.
 - A state law requires 24-hour waiting period between the time of a woman's formal decision to have an abortion and the actual procedure.
 - A state law requires a pregnant minor to obtain written consent from both parents in order to obtain an abortion.
 - A state law requires a pregnant minor to obtain written consent from one parent or a judge in order to obtain an abortion.