

Classifying Arguments Activity

Roe v. Wade (1973)

After reading the **background, facts, issue, constitutional amendments, and Supreme Court precedents**, read each of the arguments below. These arguments come from the briefs submitted by the parties in this case. If the argument supports the appellant, Roe, write **R** on the line after the argument. If the argument supports the appellee, Wade, write **W** on the line after the argument. Work in your groups. When you have finished, determine which argument for each side is the most persuasive and be ready to give your reasons.

Arguments

1. A woman's right to privacy is implicitly guaranteed in the First, Fourth, Fifth, Ninth, and 14th Amendments. As the Court ruled in *Griswold*, there are certain matters—including the decision about whether to have a child—that are individual decisions protected by the Constitution. _____
2. A fetus, from the date of conception, is a person and has constitutional rights. The state has an important interest in protecting its future citizens. The right to life of the unborn child is superior to the right to privacy of the mother. The balancing of the two interests should favor the most vulnerable, the unborn child. _____
3. There is no right to abortion guaranteed in the Constitution. It is mentioned nowhere in the text, and there is no reason to believe that those who wrote the 14th Amendment intended to protect that right. _____
4. The law criminalizes a safe medical procedure, and it is too vague for doctors to know what they may or may not do. Doctors must determine that a woman's life is at risk in order to perform a legal abortion, and their decision and professional interpretation of "at risk" could land them in jail. _____
5. Unwanted pregnancies can have a major impact on women's lives. In the 1970s, women could be asked to leave their jobs if they became pregnant, and most employers did not provide maternity leave. Women could be endangering their careers or finances in addition to their psychological and physical health by being forced to carry a pregnancy to term. _____

- 6. Abortion is a policy matter best left to the state legislatures to decide. As elected officials, legislators make laws that reflect the popular will and morality of the people—as they have done here. The prohibition against abortion in Texas has existed since 1854.

- 7. Women in Texas who wish to have an abortion must either travel to another state where abortion is legal or undergo an illegal abortion where conditions could be unsafe. Travel is costly and inconvenient, thus making access to a safe, legal abortion more difficult for poor women. Illegal abortions put women’s life, health, and well-being at risk.

- 8. An unborn fetus is not legally recognized as a person and does not have rights equal to the mother. Abortions were more common in the 19th century, so it is clear that the framers of the 14th Amendment did not intend to include fetuses in the definition of “persons.” No Supreme Court case has established that a fetus is legally a person and, therefore, entitled to constitutional rights.

- 9. In previous decisions where the Court protected individual or marital privacy, that right was not absolute. All protected rights are subject to reasonable regulation, and Texas has a strong interest in protecting life and protecting women’s health, so the abortion restrictions are reasonable.

- 10. Abortion is different from contraception, so the Court’s decision in *Griswold v. Connecticut* does not apply here. Contraception prevents creation of life whereas abortion destroys existing life.

Roe v. Wade (1973)

Argued: December 13, 1971

Reargued: October 11, 1972

Decided: January 22, 1973

Background

The Constitution does not explicitly guarantee a right to privacy. The word “privacy” does not appear in the Constitution. However, the Bill of Rights includes protections for specific aspects of privacy, such as the Fourth Amendment’s “right of the people to be secure in their persons, houses, papers and effects” from unreasonable government searches and seizures and the Fifth Amendment’s right to be free of compelled self-incrimination in criminal cases. In early rulings about privacy, the Supreme Court connected the right to privacy to particular locations, with emphasis on a person’s home as a private space where the government could not intrude without a warrant. During the 21st century, the Court began interpreting the Constitution, including the Due Process Clause of the 14th Amendment, as providing a broader right to privacy protecting people as well as places. Over the decades the Court interpreted this right to privacy to include decisions about child rearing, marriage, and birth control. This is a case about whether that constitutionally protected right to privacy includes the right to obtain an abortion.

In the 19th and early 20th centuries, most states adopted laws banning or strictly regulating abortion. Many people felt that abortion was morally or religiously wrong, and so many states outlawed abortion except in cases where the mother’s life was in jeopardy. But illegal abortions were widespread and often dangerous for women who underwent them because they were performed in unsanitary conditions. Wealthier women could travel to states or other countries with looser laws to obtain abortions, while poorer women often did not have that option. In the 1960s, a movement to make abortion legal gained ground. The movement advocated for changes in state laws (and four states did repeal their bans) and brought cases in courts challenging the abortion bans as unconstitutional.

Facts

In 1969, a resident of Texas known as Jane Roe (a pseudonym used to protect her identity) wanted to terminate her pregnancy. Texas law made it a felony (serious crime) to abort a fetus unless “on medical advice for the purpose of saving the life of the mother.” Roe and her attorneys filed a lawsuit on behalf of her and all other women who were or might become pregnant and seek abortions. The lawsuit was filed against Henry Wade, the district attorney of Dallas County, Texas, and claimed that the state law violated the U.S. Constitution.

A three-judge federal District Court ruled the Texas abortion law unconstitutional under the Ninth Amendment, which states that “[t]he enumeration in the Constitution, of certain rights, shall not be

construed to deny or disparage others retained by the people.” In particular, the District Court concluded that “[t]he fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment,” which applies to the states through the 14th Amendment. The case was then appealed directly to the U.S. Supreme Court, which agreed to hear it.

Issue

Does the U.S. Constitution protect the right of a woman to obtain an abortion?

Constitutional Amendments and Supreme Court Precedents

- **Ninth Amendment to the U.S. Constitution**

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

- **14th Amendment to the U.S. Constitution**

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

- *Griswold v. Connecticut* (1965)

A married couple sought advice about contraception from a Planned Parenthood employee named Griswold. Connecticut law criminalized providing counseling to married people for the purpose of preventing conception. The Supreme Court ruled that the Connecticut law violated the Constitution because it invaded the privacy of married couples to make decisions about their families. The Court identified privacy as an important value, fundamental to the American way of life and to the other basic rights outlined in the Bill of Rights (including the First, Third, Fourth, and Ninth Amendments). Seven years later, the Court decided a case that extended access to contraception to unmarried persons, as well.

- *United States v. Vuitch* (1971)

Washington, DC, had a law that prohibited abortions unless a woman’s life or health was endangered by the pregnancy. Dr. Vuitch was arrested for violating that law, and he argued that only a doctor (not a prosecutor) could determine whether an abortion was necessary to protect a woman’s life or health. The Supreme Court did not overturn the DC law. Instead it ruled that “health” should include both psychological and physical well-being.