

Roe v. Wade / Background ••

In the second half of the 20th century, women faced great difficulty getting abortions. Many states outlawed abortion except in cases where the mother's life was in danger. Illegal abortions were often dangerous because they were performed in unsanitary conditions. As people's ideas about sexual freedom changed, women gained greater access to birth control measures, and public pressure to change abortion laws also increased. Several states relaxed their abortion laws which meant that women living in states that outlawed abortion could travel to another state for an abortion.

However, poor women often could not afford to travel outside their state to receive treatment, raising questions of equality. Laws were often vague, so that doctors did not know whether they were breaking the law by providing an abortion. In addition, some people began to question whether the government should be able to interfere with people's decisions in sexual matters. They believed that laws banning birth control and abortion were an invasion of privacy.

There is no "right to privacy" specifically guaranteed in the Constitution. However, the Supreme Court has long acknowledged some right to privacy, but usually associated that right with a location, like a person's home. However, during the 1960s, the Court's position on privacy changed so that it related to a person, not a location.

In the case of *Griswold v. Connecticut* (1965), the Supreme Court ruled that a Connecticut law outlawing access to contraception (birth control) violated the U.S. Constitution because it invaded the privacy of married couples to make decisions about their families. In that ruling, the Court identified privacy as a fundamental value for the American way of life, and for the other basic rights outlined in the Bill of Rights.

Jane Roe (not her real name) was a Texas resident in 1970. She wanted to have an abortion, but Texas abortion 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 filed suit against Wade, the district attorney of Dallas County, Texas, to challenge the law outlawing abortion.

Roe said that the law violated the equal protection of the laws and a guarantee of personal liberty guaranteed by the 14th Amendment and a woman's right to privacy implicitly guaranteed in the First, Fourth, Fifth, Ninth, and 14th Amendments. The state argued that "the right to life of the unborn child is superior to the right to privacy of the mother." The state also argued that in previous decisions where the Court protected individual or marital privacy, that right was not absolute. The state argued that this is a policy matter best left to the legislature to decide. The three-judge federal District Court ruled the Texas abortion law unconstitutional, and the case was then appealed directly to the U.S. Supreme Court.

Questions to Consider

1. What was the Texas law at issue in *Roe v. Wade*?
2. Which parts of the Constitution imply a “right to privacy”?
3. What did the Court say about the right to privacy in *Grisvold*?
4. Do you believe that privacy is a fundamental right necessary to securing the other rights in the Bill of Rights? Why or why not?