

Roe v. Wade / Summary of Decision

The Supreme Court decided in favor of Roe in a 7-2 decision. Justice Blackmun wrote the opinion for the majority, which recognized that a woman's choice whether to have an abortion is protected by her right to privacy. Justices Stewart, Burger, and Douglas wrote concurring opinions. Justices White and Rehnquist dissented.

The majority determined that a woman's right to decide whether to have an abortion involved the question of whether the Constitution protected a right to privacy. The justices answered this question by asserting that the 14th Amendment, which prohibits states from "depriv[ing] any person of ... liberty ... without due process of law," protected a fundamental right to privacy. Further, after considerable discussion of the law's historical lack of recognition of rights of a fetus, the justices concluded "the word 'person,' as used in the 14th Amendment, does not include the unborn." The right of a woman to choose to have an abortion fell within this fundamental right to privacy and was protected by the Constitution.

A woman's right to choose to have an abortion was not considered an absolute right. The Court stated that government restrictions on a woman's right to choose were subject to the highest standard of review, that of strict scrutiny. This level of review requires that in order to be enforceable, a government regulation of this right must be shown to be narrowly tailored to a meet a compelling state interest. The justices noted that states did have some legitimate interests in regulating or prohibiting abortions. The first interest was the protection of the health of the mother from the dangers of abortion procedures; the second was the protection of the life of the fetus. While these interests were not very strong in the early stages of pregnancy, they became stronger (more compelling) in the later stages of the pregnancy. Striking a balance between a woman's right to privacy and a state's interests, the Court set up a framework laying out when states could regulate and even prohibit abortions.

According to the framework, in the first trimester (the first three months of the pregnancy), a woman's right to privacy surrounding the choice to have an abortion outweighed a state's interests in regulating this decision. In the first trimester, having an abortion does not pose a grave danger to the life and health of the mother, and the fetus is still undeveloped. The state's interests are not yet compelling, so it cannot interfere with a woman's right to privacy by regulating or prohibiting her from having an abortion during the first trimester. During the second trimester, the state's interests become more compelling as the danger of complications increases and the fetus becomes more developed. During this stage, it may regulate, but not prohibit abortions, as long as the regulations are aimed at protecting the health of the mother. During the third trimester, the danger to the woman's health becomes the greatest and fetal development nears completion. In the third trimester the state's interests in protecting the health of the mother and in protecting the life of the fetus become their most compelling. The state

may regulate or even prohibit abortions during this stage, as long as there is an exception for abortions necessary to preserve the life and health of the mother.

In his dissenting opinion, Justice Rehnquist argued that the framers of the 14th Amendment did not intend for it to protect a right of privacy, a right that they did not recognize, and that they definitely did not intend for it to protect a woman's decision to have an abortion. Justice Rehnquist further argued that the only right to privacy is that which is protected by the Fourth Amendment's prohibition of unreasonable searches and seizures. Finally, he concluded that because this issue required a careful balance of the interests of the woman against the interests of the state, it was not an appropriate decision for the Court to make, but instead was a question that should have been left up to state legislatures to resolve.