



ROE V. WADE

Questions and Answers

1. WHAT IS ROE V. WADE?

It is the 1973 Supreme Court ruling that legalized abortion nationwide. A woman who said she was pregnant from rape and wanted an abortion (“Jane Roe” in court documents) sued a Texas district attorney (Henry Wade) to prevent him from enforcing a Texas law banning abortion except to save the mother’s life. On January 22, 1973, the Court decided this case, and a similar case (*Doe v. Bolton*) in which a woman denied an abortion by a hospital review committee (“Mary Doe” in court documents) had challenged Georgia’s law. The Court struck down both laws, with the effect of striking down similar laws in all the other states as well. Jane Roe (whose real name is Norma McCorvey) later admitted having lied about the rape. Horrified at these decisions’ impact, both she and Mary Doe (whose real name is Sandra Cano) are now among those urging their reversal.

2. WHAT DID ROE V. WADE DO?

It said the right of privacy (not mentioned in the text of the Constitution) “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” The Justices ruled that a state may not restrict abortion at all in the first three months of pregnancy (first trimester). It may establish guidelines only to protect the *mother’s* health during the next three months (second trimester). After “viability,” when the unborn child could survive if delivered (which the Court placed at 24 to 28 weeks of gestation), the state may prohibit abortion unless it is deemed necessary to preserve the mother’s “life or health.”

3. SO ROE ALLOWS STATES TO PROHIBIT ABORTION AFTER VIABILITY?

Well, no. In the companion case *Doe v. Bolton*, which the Court said must be read together with *Roe*, “health” was defined in the abortion context to include “all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well-being of the patient.” By this definition, abortion must be allowed in the ninth month if the abortionist says it is needed to serve a woman’s emotional well-being. Thus all meaningful limits on abortion throughout the nine months of pregnancy were discarded.

4. DID THE COURT FIND THAT LIFE DOESN’T BEGIN UNTIL BIRTH?

No. It argued that uses of the word “person” in the Constitution do not seem to include the unborn. Then, citing wide disagreement as to when human life begins, the Court said it “need not resolve” this difficult question. Instead of considering the scientific evidence that life begins at conception,

or even allowing legislatures to protect those who have never been proven to be anything but human beings, the Court decided to treat unborn children merely as “potential life”—and to prevent the people or their elected representatives from determining otherwise.

5. WASN’T THE COURT ONLY CONTINUING A TREND TOWARD “LIBERALIZING” ABORTION LAWS BEGUN BY THE PEOPLE AND THEIR ELECTED REPRESENTATIVES?

No. In the years leading up to *Roe*, proposals to weaken laws against abortion were introduced in most states but usually not enacted. Some states did add narrow exceptions to their laws, and a few legalized abortion for any reason, generally up to 20 weeks’ gestation. But then the trend reversed. New York’s legislature voted to restore legal protection to unborn children (a move blocked by the governor’s veto). And in 1972 the people of Michigan and North Dakota overwhelmingly voted to reject proposals to loosen their abortion laws. After studying public opinion against legalized abortion, demographer Judith Blake concluded that a Supreme Court decision striking down state laws would be “the only road to rapid change.” *Roe* created a national policy more extreme than the law of any state, and it disrupted the democratic process by which the American people had begun to deal with the conflicting claims of the abortion debate.

6. IN THE PAST THREE DECADES, HAVEN’T PEOPLE COME TO ACCEPT THE POLICY OF ROE V. WADE?

No. Public opposition to legalized abortion remains strong. The vast majority of Americans oppose the policy of unlimited abortion set down in *Roe*, and most believe abortion should not be legal for the reasons it is most often performed. In Zogby International’s April 2004 poll, 56 percent would ban all abortions or allow them only in cases of rape or incest or danger to the mother’s life; these cases make up a tiny percentage of legal abortions. In fact, only 13 percent in this same poll agreed abortion should be legal for any reason at any time during a woman’s pregnancy.

7. DO ALL LEGAL EXPERTS APPROVE OF ROE?

No. *Roe* has been criticized by several Supreme Court justices, and even by legal experts who favor legalized abortion. Justice Byron White called it “an exercise of raw judicial power.” Yale law professor John Hart Ely has said that *Roe* is “a very bad decision. . . . It is bad because it is bad constitutional law, or rather because it is *not* constitutional law and gives almost no sense of an obligation to try to be.” Edward Lazarus, former clerk to Justice Harry Blackmun who wrote the *Roe* opinion, says that “*Roe*, as constitutional interpretation, is virtually impossible to defend.”

8. HAS THE SUPREME COURT SPOKEN MORE RECENTLY ABOUT THE VALIDITY OF ITS DECISION IN ROE?

In 1992, in *Planned Parenthood v. Casey*, the Court abandoned *Roe*'s trimester framework, but reaffirmed *Roe*'s holding that no abortion could be banned before viability. Three Justices said they were doing this not so much because the original case was rightly decided, but because it had been the law for a long time and many people had come to rely on the availability of abortion. They said that "a decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided." But if one realizes the decision was wrong, it is doubly wrong to keep imposing it on the country. In his *Casey* dissent, Chief Justice William Rehnquist noted that in the previous two decades the Court had "overruled in whole or in part 34 of its previous constitutional decisions." Reversal of *Roe* is long overdue.

9. HAVEN'T MANY STATES BANNED PARTIAL-BIRTH ABORTION, THE KILLING OF CHILDREN IN THE PROCESS OF BEING BORN ALIVE?

Yes, but even those laws have been struck down by the Supreme Court on the basis of *Roe v. Wade*. By a 5-to-4 vote, the Court has ruled that even these laws must include *Roe*'s exception for the mother's "health" (without explaining why her health could require killing a mostly-born child instead of completing a live delivery). Given the Court's definition of "health," such an exception would make the laws largely meaningless.

10. WHAT IS ROE'S IMPACT ON SOCIETY?

Abortions in the U.S. have risen to well over a million a year, with one-fourth of all pregnancies ending in abortion. Problems that some claimed *Roe* would alleviate—"unwanted" children, child abuse and abandonment, etc.—have worsened. Many women have been maimed or killed by legal abortion, and abortionists have been protected from legal scrutiny by courts applying *Roe*. Many more women bear heavy emotional scars from abortion, and increasingly they are making their stories public to warn other women. Far from emancipating women, *Roe* has helped create the expectation that women will resort to abortion—to "fit" into college and the workforce, and to free men from unwanted parental responsibility. It has blocked progress toward a society that welcomes women *with* their children.

11. HAVE COURTS APPLIED ROE TO OTHER ISSUES?

Courts have used *Roe* to strike down safety regulations protecting women, as well as laws protecting children born alive during abortion attempts. Judges have invoked *Roe* to argue for a constitutional right to assisted suicide, to nullify federal regulations protecting handicapped newborns from lethal neglect, and to demand legal recognition of same-sex marriage.

12. WHAT WOULD HAPPEN IF ROE WERE REVERSED?

Abortion would not automatically become illegal. Rather, the people and their elected representatives would be allowed to begin enacting abortion policies that respect the lives of both women and their unborn children. The move away from the Court's policy of virtually unlimited abortion would likely be gradual, leading to improvements in cultural attitudes toward women and children and in concrete support for women facing unplanned pregnancies.

13. WOULD THIS MEAN A RETURN TO DANGEROUS "BACK ALLEY" ABORTIONS?

No. Claims that thousands of women were dying from illegal abortions at the time of *Roe* were fabricated for political purposes, as a chief strategist later admitted. Due to the development of antibiotics and other medical advances, maternal deaths from all abortions (legal and illegal) dropped from 1,231 in 1942 to 70 in 1972, the year before *Roe*. Medicine has made more advances in the last thirty years, and women can be offered options that are safer for them *and* their children than abortion.

14. WHY ARE ABORTION ADVOCATES SO STRONGLY COMMITTED TO RETAINING ROE?

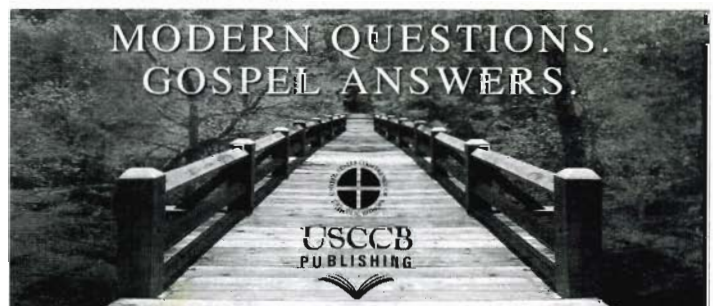
Roe v. Wade is increasingly recognized as bad law, bad medicine, and bad social policy. Most Americans object to an unlimited right to abortion. Therefore such a policy can be kept in place only by extraordinary life support — by insisting that *Roe* is untouchable, regardless of the evidence. Abortion advocates know that any return of this issue to the democratic process would produce a very different policy from what the Court created. But false judicial doctrines do not have a right to live. Human beings do.

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