

## U.S. Supreme Court Decisions on Abortion 1973-2003

- Roe v. Wade***, 410 U.S. 113 (1973)  
*Roe* invalidated a 19<sup>th</sup> century Texas statute prohibiting abortion except in cases where necessary to preserve maternal life on the basis that the right of privacy secured by the Due Process clause of the Fourteenth Amendment includes a fundamental right of a woman to decide "whether or not to terminate her pregnancy."
- Doe v. Bolton***, 410 U.S. 179 (1973)  
Companion to *Roe v. Wade*. By a vote of 7-2, the Court invalidated Georgia "reform" abortion statute that permitted abortion where continued pregnancy would endanger woman's life or health, including mental health, where the fetus would likely be born with a serious defect or where pregnancy resulted from rape. Statute also required that abortion be performed in accredited hospital, and that two physicians confirm the performing physician's judgment of necessity for abortion.
- Doe* is frequently cited for its definition of maternal "health." Because *Roe* allowed abortion in the second and third trimesters for the "life or health" of the mother, the following definition of "health" has been used to make abortion on demand available through all nine months of pregnancy:
- "[T]he medical judgment may be exercised in the light of all factors -- physical, emotional, psychological, familial, and the woman's age -- relevant to the well being of the patient. All these factors may relate to health." *Doe v. Bolton*, 410 U.S. 179, 192 (1973).**
- Bigelow v. Virginia***, 421 U.S. 809 (1975)  
Invalidated the application of a Virginia statute that prohibited the advertisement for abortion.
- Connecticut v. Menillo***, 423 U.S. 9 (1975)  
Upholding Connecticut anti-abortion statute as it applies to non-physicians.
- Singleton v. Wulff***, 428 U.S. 106  
Held that physicians may challenge abortion-funding restrictions on behalf of their female patients seeking abortions. Has thus had strong impact upon abortion litigation, allowing physicians to act as plaintiffs instead of individual women, as is the case of *Roe v. Wade*.
- Bellotti v. Baird (I)***, 428 U.S. 132 (1976)  
Unanimous decision holding that the district court should have abstained from deciding the constitutionality of a Massachusetts parental consent statute until the state court had interpreted the statute.
- Planned Parenthood of Central Missouri v. Danforth***, 428 U.S. 52 (1976)  
Upheld definition of "viability" under state statute, and requirement that woman sign consent form prior to abortion. Invalidated provisions requiring consent of spouse to abortion, requiring consent of parents for abortion performed on minor daughter, prohibiting use of saline amniocentesis abortion procedure, and requiring those performing abortions to exercise professional skill and care to preserve the life of the fetus.
- Maher v. Roe***, 432 U.S. 464 (1977)  
Upheld a Connecticut prohibition of the use of public funds for abortions, except those that are "medically necessary." The statute was challenged on grounds of due process and equal protection based on claim that a state which provides Medicaid funds for childbirth must also fund abortion. The Court reasoned that the state is free to use its power of funding to encourage childbirth over abortion. Court noted "a woman has at least an equal right to choose to carry her fetus to term as to choose to abort it."
- Beal v. Doe***, 432 U.S. 438 (1977)  
Companion to *Maher v. Roe*. Upheld a Pennsylvania statute that restricted the use of Medicaid funds for abortion to those that are "medically necessary," rejecting challenge that this policy violates Title XIX of the Social Security Act.
- Poelker v. Doe***, 432 U.S. 519 (1977)  
Third in the series of 1977 abortion funding cases. Upheld St. Louis policy against performance of abortion in public hospitals.
- Colautti v. Franklin***, 439 U.S. 379 (1979)  
Struck down as vague a Pennsylvania statute that required physician to use abortion technique providing the best opportunity for the fetus to be born alive in abortions after viability.
- Bellotti v. Baird (II)***, 443 U.S. 622 (1979)  
This case sets the standard for parental consent for minors seeking abortion. The Court invalidated a Massachusetts law that required a minor to obtain the consent of both parents before obtaining an abortion. Held that states requiring the consent of parents to abortions upon minors must afford minors an alternative opportunity for authorization of the abortion ("judicial bypass") where the minor may demonstrate that either she is mature and well enough informed to make her own abortion decision, or if not mature, that the abortion would nonetheless be in her best interests.

<b><i>Harris v. McRae</i></b> , 448 U.S. 297 (1980)	Perhaps the most significant Supreme Court holding on abortion between <i>Roe</i> and <i>Casey</i> . By a vote of 5-4, the Court upheld the Hyde Amendment, which restricts federal funding of Medicaid abortions only to cases of life endangerment (and, since 1994, rape or incest at behest of Clinton administration). The Court also held that states participating in the Medicaid program are not required by Title XIX of the Social Security Act to fund medically necessary abortions for which there is no federal reimbursement under the Hyde Amendment. The Supreme Court reasoned that government could distinguish between abortion and "other medical procedures," because "no other procedure involves the purposeful termination of a potential life."
<b><i>Williams v. Zbaraz</i></b> , 448 U.S. 358 (1980)	Companion to <i>Harris v. McRae</i> . Upheld an Illinois statute prohibiting the use of state funds for abortions except where necessary to save the woman's life.
<b><i>H.L. v. Matheson</i></b> , 450 U.S. 398 (1981)	Following a facial challenge, the Court upheld a Utah statute requiring a physician to notify a minor's parent before performing an abortion.
<b><i>City of Akron v. Akron Center for Reproductive Health</i></b> , 462 U.S. 416 (1983)	Invalidated informed consent provisions of a city ordinance that required physicians to give their patients information on medical risks of abortion, fetal development, and abortion alternatives; required a 24-hour waiting period; required that all abortions after the first trimester be performed in a hospital; required parental consent for a minor with no judicial bypass; and required physicians to dispose of fetal remains in a "humane and sanitary manner."
<b><i>Planned Parenthood Association of Kansas City, Mo. v. Ashcroft</i></b> , 462 U.S. 476 (1983)	Companion case to <i>Akron Center</i> . Court invalidated a Missouri statute that required all second-trimester abortions to be performed in a hospital.  However, the Court upheld requirements that (1) a second physician be in attendance during a post-viability abortion; (2) a minor obtain either parental consent or a judicial waiver; and (3) a pathology report be made for each abortion.
<b><i>Simopoulos v. Virginia</i></b> , 462 U.S. 506 (1983)	The Court affirmed a Virginia Supreme Court opinion upholding the conviction of a doctor for unlawfully performing an abortion during the second trimester of pregnancy outside of a licensed hospital. Noting that Virginia's definition of "hospital" included outpatient clinics (unlike Missouri's in <i>Akron</i> ), the Court held that Virginia's requirement that second trimester abortions be performed in licensed clinics was constitutional as a reasonable means of furthering the state's compelling interest in protecting the woman's own health and safety.
<b><i>Diamond v. Charles</i></b> , 106 S.Ct. 1697 (1986)	Dismissed appeal brought by two physicians from ruling striking down an Illinois abortion statute, holding that failure of state to join in the appeal left the Court with no standing to resolve the matter.
<b><i>Thornburgh v. American College of Obstetricians and Gynecologists</i></b> 476 U.S. 747 (1986)	In this 5-4 decision, the Court invalidated provisions of a Pennsylvania statute that required (1) that physicians must give their patients informed consent information on fetal development and medical risks of abortion; (2) informational reporting requirements; (3) a physician to use the method of abortion most likely to preserve the life of a viable unborn child (without provision for increased risk to a woman's health); and (4) the attendance of a second physician at a post-viability abortion (without medical emergency exception).
<b><i>Webster v. Reproductive Health Services</i></b> , 492 U.S. 490 (1989)	In this 5-4 decision, the Court upheld provisions of a Missouri statute that (1) prohibited the use of public facilities or public personnel to perform abortions; and (2) in pregnancies of 20 weeks or more, requiring ultrasound tests to determine viability of the unborn child by measuring gestational age, weight, and lung maturity.
<b><i>Hodgson v. Minnesota</i></b> , 497 U.S. 417 (1990)	Invalidated a Minnesota law requiring a two-parent notification without a procedure for judicial bypass of the notice requirement. However, the Court upheld another provision that required two-parent notification but did include a procedure for judicial waiver, as well as a 48-hour waiting period for minors.
<b><i>Ohio v. Akron Center for Reproductive Health</i></b> , 497 U.S. 502 (1990)	Rejecting a facial challenge, the Court upheld an Ohio statute that required a minor to notify one parent or obtain a judicial waiver. The Court rejected the abortion clinic's claim that the judicial procedure was burdensome.
<b><i>Rust v. Sullivan</i></b> , 500 U.S. 173 (1991)	The Court upheld federal regulations prohibiting personnel at family planning clinics that receive Title X funds from counseling or referring women regarding abortion.

- Planned Parenthood of Southeastern Pennsylvania v. Casey***, 505 U.S. 833 (1992)
- By a sharply divided vote of 5-4, the Court reaffirmed the essential holding of *Roe*. The Court upheld provisions of a Pennsylvania statute that required (1) physicians to provide patients with informed consent booklets, including medical risks of abortion and childbirth as well as pictures of the unborn child at various stages of development; (2) a mandatory 24-hour reflection period following receipt of information; (3) the filing of abortion reports for statistical compilation, including information such as age of woman, gestational age of aborted child, and reason for abortion; and (4) a one-parent consent requirement for minors with a judicial bypass. The Court explicitly overruled parts of *Akron* (1983) and *Thornburgh* (1986).
- The plurality opinion of three Justices reaffirmed the essential holding of *Roe* that prior to viability, a woman's right to abortion cannot be restricted. The plurality, however, abandoned the "strict scrutiny" standard of review applied to fundamental rights for a new "undue burden" standard of review, which these restrictions passed. Two Justices voted to continue subjecting state restrictions to strict scrutiny. These five Justices voted to strike down a provision that barred a married woman from obtaining an abortion unless she notified her husband. Four Justices voted to uphold all challenged provisions and overturn *Roe* completely.
- Bray v. Alexandria Women's Health Clinic***, 506 U.S. 263 (1993)
- A sharply divided (5-4) Court held that a federal civil rights law, 42 U.S.C. Sec. 1985(3), cannot be applied to pro-life protesters because 1) "women seeking an abortion" are not a protected class under the statute, and 2) voluntary opposition to abortion does not constitute class-based discriminatory animus against women.
- National Organization for Women v. Scheidler***, 510 U.S. 249 (1994)
- By a vote of 9-0, the Court held that claims under the Racketeer Influenced and Corrupt Organizations (RICO) Act do not require a proof of an economic motive. Therefore, abortion advocates and clinics could pursue lawsuit against pro-life protesters. However, the Court did not reach the issue of whether application of RICO to pro-life protesters would violate the First Amendment.
- Madsen v. Women's Health Center***, 512 U.S. 753 (1994)
- By a vote of 5-4, the Court upheld a Florida injunction creating a 36-foot buffer zone outside the entrance of an abortion clinic, and prohibited excessive noise that could be heard inside the clinic. However, the Court struck down injunctive relief that banned "images observable," which prohibited the display of pro-life signs. The court also struck down provisions creating a 300-foot buffer zone around the clinic, holding that such zones burden more speech than necessary to accomplish goal.
- Schenck v. Pro-Choice Network***, 519 U.S. 357 (1997)
- The Court invalidated, as violation of First Amendment, state court injunction that created a 15-foot "floating" buffer zone around any person or vehicle seeking access to or leaving an abortion clinic. However, the Court upheld a provision creating a 15-foot "fixed" buffer zone outside of abortion clinics.
- Mazurek v. Armstrong***, 117 S. Ct. 1865 (1997)
- The Court upheld Montana's statute requiring that only licensed physicians perform abortions ("physician-only" requirement).
- Hill v. Colorado***, 530 U.S. 703 (2000)
- By a vote of 6-3, the Court upheld a Colorado statute that makes it unlawful for any person within 100 feet of the entrance to *any* "health care facility" (including abortion clinics) to "knowingly approach" within eight feet of another person, without that person's consent, in order to pass "a leaflet, or handbill to, display a sign to, or engage in oral protest, education, or counseling with" such person. The Court held that the statute did not violate the First Amendment because it protects listeners from unwanted communication, is content-neutral, and a valid time, place, and manner restriction. The Court also found that the statute was not overbroad, unconstitutionally vague, or a prior restraint.
- Stenberg v. Carhart***, 530 U.S. 914 (2000)
- By a vote of 5-4, the Court struck down Nebraska's ban on partial-birth abortion. The Court concluded that key statutory terms were unconstitutionally vague such that it would affect not only partial birth abortion, but also other constitutionally protected second-trimester abortion methods. The Court also found the statute invalid for lack of a "health" exception. Strongly worded dissenting opinions were filed by Justices Rehnquist, Kennedy, Scalia, and Thomas.
- Scheidler v. NOW; Operation Rescue v. NOW***, No. 01-1118 and 01-1119 (2003)
- By a vote of 8-1, the Court determined that federal racketeering laws, such as RICO, could not be used as the basis for criminal charges against pro-life protestors who demonstrate outside abortion clinics. The Court also dissolved a ten-year permanent injunction, prohibiting protestors from demonstrating outside abortion clinics. The Court further found that the federal Hobbs Act was not violated by protestors who had not "obtained" property, attempted to "obtain" property or conspired to "obtain" property from the abortion clinics. The clinics had argued that "interference" with the clinic's right to do business was enough to violate the Hobbs Act. The Court disagreed.