

The Second Look Project

US Law and Abortion

***Roe v. Wade* (1973)**

The central court decision that created current abortion law in the U.S. is **Roe v. Wade**.¹ In this 1973 decision, the Supreme Court ruled that women had a constitutional right to abortion, and that this right was based on an implied right to personal privacy emanating from the Ninth and Fourteenth Amendments.²

In *Roe v. Wade* the Court said that a fetus is not a person but "potential life", and thus does not have constitutional rights of its own.³ The Court also set up a framework in which the woman's right to abortion and the state's right to protect potential life shift: during the first trimester of pregnancy, a woman's privacy right is strongest and the state may not regulate abortion for any reason; during the second trimester, the state may regulate abortion only to protect the health of the woman; during the third trimester, the state may regulate or prohibit abortion to promote its interest in the potential life of the fetus, except where abortion is necessary to preserve the woman's life or health.⁴

***Doe v. Bolton* (1973)**

Roe v. Wade was modified by another case decided the same day, **Doe v. Bolton**.⁵ In *Doe v. Bolton* the Court ruled that a woman's right to an abortion could not be limited by the state if abortion was sought for reasons of maternal health. The Court defined health as "all factors - physical, emotional, psychological, familial, and the woman's age - relevant to the well-being of the patient."⁶ This health exception expanded the right to abortion for any reason through all three trimesters of pregnancy.

***Planned Parenthood v. Casey* (1992)**

The law on abortion was further clarified in **Planned Parenthood v. Casey**.⁷ In this 1992 case the Court said states could regulate abortion to require parental involvement when minors were involved, require a waiting period between seeking and obtaining an abortion, and require doctors to provide detailed medical information before obtaining consent for the abortion. The *Doe v. Bolton* health exception to abortion restrictions throughout pregnancy was not altered.

***Stenberg v. Carhart* (2000)**

In 2000 the Supreme Court again ruled on abortion in **Stenberg v. Carhart**.⁸ Here the Court said that a state could not prohibit the late-term abortion procedure called partial birth abortion.

Notes

1. *Roe v. Wade*, 410 U.S. 113, 162 (1973).
2. "The Constitution does not explicitly mention any right of privacy," but the Court has found "at least the roots of that right" in the First, Fourth, Fifth, Ninth, and Fourteenth Amendments, and in the penumbras of the Bill of Rights. *Roe v. Wade*, 410 U.S. at 129.
3. *Roe v. Wade*, 410 U.S. 113, 151. "If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically." *Id.* at 157. "The Constitution does not define 'person' in so many words," but none of the instances of its use "indicates, with any assurance, that it has any possible pre-natal application." *Id.* at 158. Therefore, "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." *Id.* at 159.
4. *Roe v. Wade*, 410 U.S. at 165-66.
5. *Doe v. Bolton*, 410 U.S. 178, 192 (1973).
6. *Doe v Bolton*, 410 U.S. at 193.
7. *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).
8. *Stenberg v Carhart*, 530 U.S. 914 (2000).

ABORTION

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