



Pro-Life Bulletin Board

A project of American Life League, Inc.

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Roe v. Wade: What did the Supreme Court really say?

The Supreme Court declared in *Roe v. Wade* that the United States Constitution grants a woman a “right” to have an abortion. Specifically, the Court held that the so-called right to privacy that had previously been attached to the Fourteenth Amendment’s due process clause “includes the abortion decision.”

The Court went on to declare abortion not just a right, but a “fundamental” right—that is, one that a state may not restrict unless it is protecting a “compelling” interest. The significance of this classification is crucial. The Court in *Roe* doomed in advance virtually any law that would attempt to prohibit any abortion.

The Court decreed that in the first three months of pregnancy (the first trimester), “the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman’s attending physician.”

In the second trimester of pregnancy, the state’s interest in protecting the health of the mother becomes “compelling” and, therefore, laws may “regulate the abortion procedure in ways that are reasonably related to maternal health.”

Finally, when the baby becomes viable (i.e., the baby is, in the Court’s words, capable of “meaningful life outside the mother’s womb”), the state’s “interest in the potentiality of human life” also becomes “compelling.” At that point, the state may “regulate, and even proscribe, abortion except where it is necessary . . . for the preservation of the life or health of the mother.”

The casual reader may have the impression, upon reading this last clause, that states may make it legally difficult for women to obtain third-trimester abortions. That impression is false, because the Court saved the “fine print” on abortion for its *Doe v. Bolton* decision.

Doe v. Bolton is the key that unlocked legal abortion on demand through all nine months of pregnancy. It was *Roe* that said states could prohibit post-viability abortions except those for “the life or health of the mother,” but it was *Doe* that defined “health.”

According to Justice Harry Blackmun’s *Doe* opinion, in determining whether an abortion is necessary for a woman’s health, a doctor’s 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.”

Thus, under *Doe*, if a woman’s pregnancy is causing her “emotional” problems, she may legally abort her child in the ninth month. This would be an abortion for reason of “health.”

Lost in most of the *Roe* and *Doe* decisions is the object of abortion—the preborn child. While the Court refers to a pregnant woman as a “mother,” it refers to the baby in the womb as “the developing young” or “potential life.” The Court simply glosses over the scientific evidence of the preborn baby’s humanity and writes him or her off as a Constitutionally non-person.

Perhaps the most infamous line from *Roe* reads: “We need not resolve the difficult question of when life begins.” Blackmun declared that since “medicine, philosophy, and theology are unable to arrive at any consensus” as to when a human comes into existence, the Court would not speculate.

Since the Court held that “when life begins” is an open question, the state could not outlaw abortion based upon its “interest” in preborn babies because its “interest” was held unprovable, much less “compelling.”

Pregnant and in need of help?

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