

Document Project: Roe v. Wade

Elaine Jerrell, Margaret Lane, Matthew Turner

Essential Question

What social factors are at work in the Roe v. Wade decision?

Content Objectives

Students will be able to...

1. understand the legal definition of privacy and how it applies to legislative control relating specifically to human reproduction and sexuality.
2. assess the motives of the court in their ruling on Roe v. Wade.
3. evaluate the status of the right to abortion in the states at the time of the Roe v. Wade decision.
4. to identify editorial bias in an editorial favorable to the Roe v. Wade decision.
5. to explain how advocacy groups responded to the court's decision in Roe v. Wade.
6. analyze how the Roe v. Wade decision is viewed through the spectrum of the family.

Historical Background

Roe v. Wade was decided by the U.S. Supreme Court in January of 1973. Attorneys argued that a woman, Jane Roe, had the right to terminate her pregnancy as she chooses and that law that prohibited such were inconsistent with her protections under the U.S. Constitution. The court ruled that, though it disagreed that a woman had a right to terminate her pregnancy, the right to privacy, established in the Griswold v. Connecticut ruling, extended to human reproduction and sexuality therefore making a woman's decision to terminate her pregnancy a private matter in which states could not infringe before the moment of fetal viability.

Primary Documents

Document 1

Griswold v. Connecticut, Opinion of the Court, William O. Douglas (excerpt)

“The present case, then, concerns a relationship lying within the zone of privacy created by several fundamental constitutional guarantees. And it concerns a law which, in forbidding the use of contraceptives rather than regulating their manufacture or sale, seeks to achieve its goals by means having a maximum destructive impact upon that relationship. Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." Would we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.

“We deal with a right of privacy older than the Bill of Rights - older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.”¹

Questions:

1. Should Americans have a fundamental right to privacy? Explain.
2. Evaluate Justice Douglas' assertion that a ban on contraceptives would force a violation of privacy to enforce.
3. Does the right to privacy have any limits? What might they be?
4. How might an attorney use this case to argue in opposition of wire-tapping and other covert surveillance of U.S. citizens?

¹ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Document 2

Roe v. Wade, Opinion of the Court, Harry A. Blackmun (excerpt)

“On the basis of elements such as these, appellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute.

“We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified, and must be considered against important state interests in regulation.”²

“In view of all of this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake. We repeat, however, that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the State of a non-resident who seeks medical consultation and treatment there, and that it has still another important and legitimate interest in protecting to potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling.”³

Questions:

1. Compare the moral belief of the court with the legal belief of the court as stated in Justice Blackmun's opinion.
2. Evaluate the courts assertion that abortion falls under the right to privacy and can therefore, not be legislated against.
3. Explain why you do or do not agree that human reproduction, sexuality, and pregnancy are private issues.
4. Describe the role of medicine in the decision.

² *Roe v. Wade*, 410 U.S. 113 (1973).

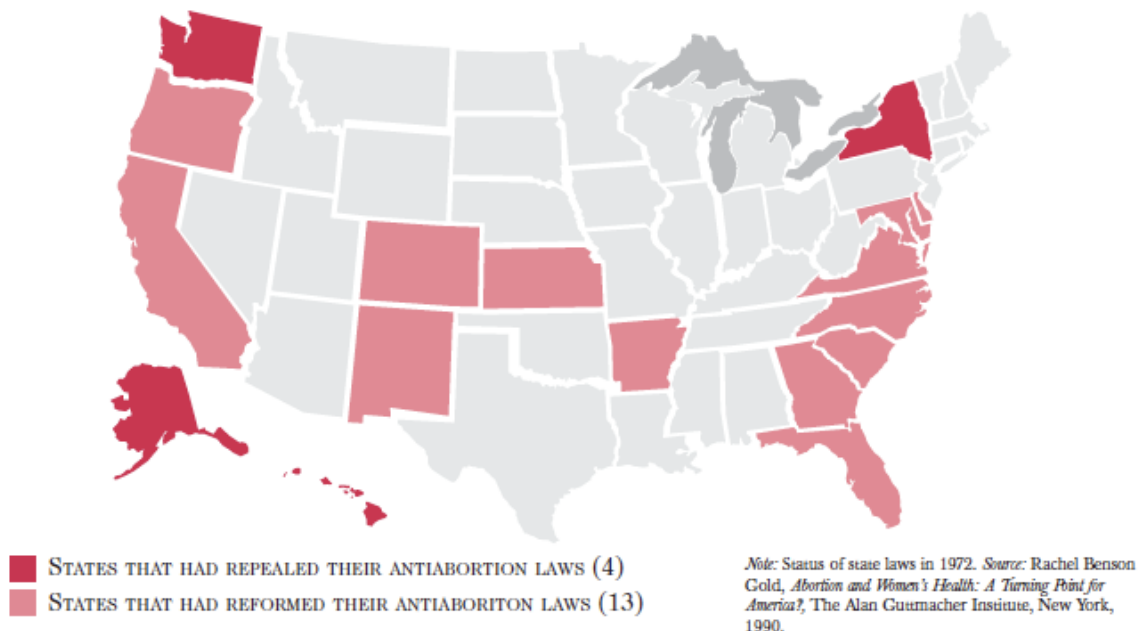
³ *Roe v. Wade*.

Document 3

Pre-Roe v. Wade Legal Abortion Map⁴

In 1962, the American Law Institute (ALI) published a “Model Penal Code on Abortion”. In an attempt to standardize the patchwork of state abortion laws, it proposed to decriminalize abortion in any of three circumstances : 1. to protect the life or health of the mother, 2. if the woman had become pregnant as a result of rape or incest, or 3. when the fetus had a severe defect. As the map below shows, by 1972, 17 states had either reformed their laws to fit the ALI guidelines or repealed their abortion laws altogether. Those that repealed passed statutes allowing the abortion if the woman and her doctor agreed is was necessary.

STATE ABORTION LAWS BEFORE *ROE*



Questions:

1. What generalizations can you make about the states that reformed their laws based on the American Law Institute recommendations?
2. What generalizations can you make about the states that repealed their laws?
3. How do the ALI guidelines, adopted by 13 of the states compare to the majority's guidelines in *Roe*?
4. How do the laws in the 4 states compare to the majority's guidelines?

⁴ Gold, Rachel Benson. “Lessons from Before *Roe*: Will Past be Prologue?” Guttmacher Institute. <http://www.guttmacher.org/pubs/tgr/06/1/gr060108.html> (July 20, 2009).

Document 4

Article: *Respect for Privacy*⁵

Respect for Privacy

New York Times (1857-2009) (NY); Jan 24, 1973.
ProQuest Historical Newspapers: The New York Times (1851 - 2009)
Pg. 93

Respect for Privacy

The Supreme Court has made a major contribution to the preservation of individual liberties and of free decision-making by its invalidation of state laws inhibiting a woman's right to obtain an abortion in the first three months of pregnancy.

The Court's seven-to-two ruling could bring to an end the emotional and divisive public argument over what always should have been an intensely private and personal matter. It will end that argument if those who are now inveighing against the decision as a threat to civilization's survival will pause long enough to recognize the limits of what the Court has done.

It has not ordered any mother to have an abortion. It has left the decision where it belongs—to the woman and her physician—with the power of the state to interfere, at later stages of pregnancy, governed essentially by considerations of maternal health. The Court has performed a useful historical function by recalling that the spur for the initial adoption of state laws banning abortion nearly a century ago was the great risk of maternal death involved in the surgical procedures then used. Now the risk arises out of perpetuating such archaic statutory prohibitions. The effect of these laws has been to force women, especially the young and the poor, to resort to abortion mills instead of expert hospital care when they are determined not to have an unwanted child.

The majority opinion by Justice Blackmun stops short of the absolutist view that a woman is entitled to terminate her pregnancy whenever, however and why ever she alone chooses. Instead, it affirms the legitimate interest of the state in putting such limits on that right of privacy as are needed in advanced phases of gestation to safeguard health, maintain medical standards or protect potential life. In the process, the Court wisely avoids the quicksand of attempting a judicial pronouncement on precisely when life begins, an endeavor that has long baffled scientists, theologians and philosophers.

Nothing in the Court's approach ought give affront to persons who oppose all abortion for reasons of religion or individual conviction. They can stand as firmly as ever for those principles, provided they do not seek to impede the freedom of those with an opposite view.

President Nixon, who intervened so gratuitously last year in an effort to upset New York State's liberal abortion law, can exercise a healing role now by acting to uphold the Court's ruling. In so doing he would be following the admirable precedent set by President Eisenhower nearly two decades ago in backing the Supreme Court's school desegregation decision, despite his own private reservations.

The Court's verdict on abortions provides a sound foundation for final and reasonable resolution of a debate that has divided America too long. As with the division over Vietnam, the country will be healthier with that division ended.

Questions:

1. How does the editorial characterize the decision? Given an example to support your characterization.
2. What is the editorial referring to when it mentions the "admirable precedent set by President Eisenhower"? Is this an accurate comparison?
3. What does the editor predict will be the outcome of the decision? Evaluate the accuracy of this prediction.
4. Why does the editorial not mention the dissent's point of view?

⁵ "Respect for Privacy." New York Times. 24 Jan., 1973. Proquest Historical Newspapers. Online. 20 July 2009. <<http://www.proquest.com>>.

Document 5

Planned Parenthood Ad⁶



**If you agree that every child should be loved,
shouldn't you support a woman's right to abortion?**

Questions:

1. What is the significance about the family chosen as the subject for this ad? Does this ad address any other issues besides abortion.
2. Does this ad address any aspect of the Ninth Amendment right to privacy? Is so, where?
3. What moral values is this ad supporting?
4. Which of the three people in this ad is the focus? Is this the same person who was the focus of the Roe decision? Explain.
5. Without the caption, the picture might be used in a pro-life ad. How might a pro-life supporter re-write the second half of the caption above to support his/her views?

⁶ Planned Parenthood.

http://galenet.galegroup.com/servlet/HistRC/hits?docNum=CD2210015598&tab=16&locID-imcpl_indy&origSear Accessed July 22, 2009.

Document 6

Norma McCorvey, "Jane Roe," affidavit

The case was first heard before the Federal District Court in Dallas, TX, in May 1970. Dallas County Assistant District Attorney John Tolle represented the defendant, Dallas County District Attorney Henry Wade. Mr. Tolle filed a request to speak with "Jane Roe" before the hearing. Roe (Norma McCorvey) did not come forward on the day before the scheduled hearing, but had her attorneys file an anonymous affidavit for her. The following is an excerpt from her affidavit.

"In it, she stated that she wished to remain anonymous since 'the notoriety occasioned by the lawsuit would make it impossible for me to secure any employment in the near future and would severely limit my advancement in any employment which I secure at a later date.' She continued, 'I consider the decision of whether to bear a child a highly personal one and feel that the notoriety occasioned by the lawsuit would result in a gross invasion of my personal privacy.' McCorvey wrote that she has 'wanted to terminate my pregnancy because of the economic hardship which my pregnancy entailed and because of the social stigma attached to the bearing of illegitimate children in our society.' Since she could not travel to another state for a legal abortion, she said, 'I fear that my very life would be endangered if I submitted to an abortion which I could afford.'"⁷

Questions:

1. What reason does McCorvey offer for not wanted to speak with Mr. Tolle before the hearing.
2. Why did McCorvey want to terminate her pregnancy? From her statement, can you tell which of the two reasons offered might have more weight?
3. Why does she believe that if she goes to another state to get an abortion her life might be in danger?
4. The right to privacy is one of the main issues in this case. How does McCorvey's statement address that issue?
5. In what ways does her statement agree with the arguments her attorneys are presenting her right to an abortion?
6. Is there any evidence in her statement that she will later become pro-life? If so, where?

⁷ Women's History. Roe v. Wade 1973. http://www.gale.cengage.com/free_resources/whm/trials/roe.htm July 21, 2009.

ROE v. WADE Final Assessment

Given the graphic below, please respond to the following questions.

1. What is the objective of this advertisement?
2. What issues from *Roe v. Wade* and accompanying readings are addressed in this ad? Explain each issue.
3. What social issues does this advertisement bring up?
4. Identify any strongly-worded vocabulary. How is this vocabulary used to accomplish the objective?
5. How does this ad portray the *Roe v. Wade* Case? Do you feel this portrayal (not the ruling) is correct?

WHAT'S IN A NAME?

<p>"Pro-Life" <i>...is really</i> Pro-Force and Pro-Control</p>  <p>...It enslaves women and their bodies! It is an invasion of privacy that criminalizes reproductive freedom. It criminalizes doctors and incites fanatics.</p>	<p>"Pro-Choice" <i>...is really</i> Pro-Freedom and Pro-Liberty</p>  <p>...It frees women from dictatorship over their bodies! Follow the lead of Abraham Lincoln who defied the Supreme Court's "Dred Scott Decision" which upheld slavery.</p>
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THIS IS YOUR CHOICE...
Stand up for Freedom and Intelligence *or*
allow superstition and ignorance to devastate our Democracy.

PROTECT ROE v. WADE!



Goals for Americans Foundation

11100 Linpage Place ■ St. Louis ■ MO ■ 63132 ■ 800-719-9244

Paul Flum, President www.goalsforamericans.org