

Roe v. Wade Decision, January 22, 1973

The celebrated and despised Supreme Court case on abortion

The issue of abortion raises significant tension in the United States. The issue separates certain religious groups, claiming a fetus' life has a value equal to that of a born person, from others who place a higher value on the right of a woman to control whether or not she is pregnant. In 1973, the Supreme Court weighed in, as it was presented with a case of a woman wishing to end her pregnancy and a state law preventing the woman from doing so. Our report explains the *Roe v. Wade* court decision in an infographic on bottom left of the next page.

The case

In 1971, Norma McCorvey (known in court documents as "Jane Roe") filed a lawsuit against the attorney general of Texas, Henry Wade. McCorvey argued a Texas law banning abortion, which had been enforced against her, was unconstitutional. The Texas law only allowed abortions if necessary to save the woman's life.

Regulation vs. Liberty

States are allowed to regulate a wide variety of actions in the interest of protecting people. But the Constitution limits the states' rights to regulate. One of those limits is based on an individual's right to liberty. In *Roe v. Wade*, McCorvey (Roe) argued the Constitution protected her *liberty* to choose to have an abortion, above the state's right to regulate abortion. To an extent, the Supreme Court agreed.

The Supreme Court ruling on *Roe v. Wade*

The Supreme Court declared the right to an abortion is a fundamental liberty that the state must have a *very* strong interest to limit. Our *Roe v. Wade* infographic describes how the court balanced the liberty/abortion interest of the woman with the state's interest in prenatal life.

The Court ruled that the woman's liberty right (right to control whether or not she is pregnant) is stronger than the state's interest in the fetus' life up until a certain point in the pregnancy. That point is the "point of viability" - when the fetus could survive on its own outside of the womb. After the point of viability, the state's interest in protecting the fetus outweighs the woman's choice to terminate her pregnancy. After the point of viability, the Court ruled, a state can prohibit women from getting abortions.

What else did the decision say?

The Supreme Court added that a state might regulate abortion based on reasons other than the concern for prenatal life. The Supreme Court said the state could justify abortion regulation based on the concern for a woman's health, just not before the end of the first trimester.

The controversy over the *due process* clause

McCorvey (Roe) based her argument on the word "liberty" contained in the *due process* clauses of the Constitution's 5th and the 14th Amendments. The due process clause says that no person can be deprived of "life, liberty, or property, without due process of law."

McCorvey's use of the due process clause to guarantee her the right to an abortion highlights a controversy in legal jurisprudence. Note the word "process" in the clause. Process and substance are different in law. Some argue the due *process* clause should not be used for *defining liberty*. In other words,

the *substance* of liberty cannot be determined through a provision that relates to *process*. For more information on this controversy (a confusing topic in law), see our infographic explainer on *Substantive Due Process* at the bottom right of this page.

Years later: Jane Roe's Change of Heart

Norma McCorvey - "Roe" herself - the woman who represents the decision - had a surprising change of heart on the issue of abortion later in life. McCorvey started a "pro-life" organization "Roe No More" in 1997 and even filed in court in 2003 to try to have *Roe v. Wade* overturned. The attempt was unsuccessful.

The future - changes in medical science

"Pro-choice" advocates may have a legitimate concern about the ruling as medical science advances. The Supreme Court ruled that the point of viability is the essential point at which the state's interest in prenatal life outweighs the liberty interest of the woman. But when medical science advances to bring that point of viability to progressively earlier times in the pregnancy, will the abortion bans creep up too?

Supreme Court	Roe v. Wade Historical Case Series	Decision January 22, 1973
A woman's choice to have an abortion outweighs the state's concern for prenatal life - up until the point of viability.		
In the early stages of pregnancy, a fetus cannot survive outside of the womb.		

The Court said:

During this time, the mother's liberty interest (choice to have an abortion if desired) outweighs the state's interest in prenatal life.



At some point, the fetus can survive outside of the womb ("point of viability").



Medical science in 1973: 24-28 weeks

From the point of viability, the Court grants the state a stronger interest.



The Court said:

From the point of viability, the state's interest in prenatal life outweighs the mother's liberty interest (choice in abortion).

Court Ruling

Before the point of viability, the state cannot ban abortions based on the concern for prenatal life. After the point of viability, it can.

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The Constitution's Placeholder for Social Progress

The Constitution:

Articles 1 - 7

Amendments 1 - 27

Substantive Due Process comes from the 5th and 14th Amendments.

5th Amendment
14th Amendment

The government cannot take a person's life, LIBERTY, or property without "due process."

Substantive Due Process is not about "Process" at all. It is actually about the "Substance" of liberty. *

Our concept of liberty changes over time according to social norms.

Supreme Court, Ultimate Constitutional Authority:

LIBERTY includes...

- Right to contract without labor regulation
Lochner v. New York (1905) OVERTURNED
- Right to control your child's education
Pierce v. Society of Sisters (1925)
- Right to marry someone of a different race
Loving v. Virginia (1967)
- Right to an abortion, before viability
Roe v. Wade (1973)
- Right to privacy
Griswold v. Connecticut (1965) (purchase of contraception)
Lawrence v. Texas (2003) (in sex practices/sodomy)
- Right to marry someone of the same-sex
Obergefell v. Hodges (2015)

* Substantive Due Process is controversial because the Court uses a "process" provision to secure a substantive right. Some believe substantive rights should only come from the Bill of Rights.

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