**Roe v. Wade**

[Roe v. Wade](http://womenshistory.about.com/library/etext/gov/bl_roe_a.htm) is the historic Supreme Court decision overturning a Texas interpretation of abortion law and making abortion legal in the United States. The Roe v. Wade decision held that a woman, with her doctor, could choose abortion in earlier months of pregnancy without legal restriction, and with restrictions in later months, based on the right to privacy.

**Date of the Roe v. Wade decision**

[January 22](http://womenshistory.about.com/library/cal/bl0122.htm), 1973.

**Effect of the Roe v. Wade decision:**

All state laws limiting women's access to abortions during the first trimester of pregnancy were invalidated by Roe v. Wade. State laws limiting such access during the second trimester were upheld only when the restrictions were for the purpose of protecting the health of the pregnant woman. Roe v. Wade legalized abortion in the United States, which was not legal at all in many states and was limited by law in others.

**Basis of the Roe v. Wade decision:**

The lower court's decision in this case was that the Ninth Amendment, a part of the Bill of Rights, in stating that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people," protected a person's right to privacy. The Supreme Court chose to base its decision on the [Fourteenth Amendment](http://womenshistory.about.com/od/laws/a/equal_protect.htm). [Roe v. Wade was decided](http://womenshistory.about.com/library/etext/gov/bl_roe_g.htm) primarily on the Due Process Clause of the Fourteenth Amendment to the United States Constitution. A criminal statute that did not take into account the stage of pregnancy or other interests than the life of the mother was deemed a violation of Due Process.

**Acceptable government regulation according to Roe v. Wade:**

Different rules at different stages of pregnancy were considered appropriate:

* In the first trimester, the state (that is, any government) could treat abortion only as a medical decision, leaving medical judgment to the woman's physician.
* In the second trimester (before viability), the state's interest was seen as legitimate when it was protecting the health of the mother.
* After viability of the fetus (the likely ability of the fetus to be able to survive outside and separated from the uterus), the *potential* of human life could be considered as a legitimate state interest, and the state could choose to "regulate, or even proscribe abortion" as long as the life and health of the mother was protected.

**Who Roe and Wade were:**

The alias "Jane Roe" was used for [Norma McCorvey](http://womenshistory.about.com/od/abortionus/a/norma_mccorvey.htm), on whose behalf the suit was originally filed, alleging that the abortion law in Texas violated her constitutional rights and the rights of other women.. The defendant was the district attorney of Dallas County, Texas, Henry B. Wade.

**Who argued the case:**

Sarah Weddington and Linda Coffee were the plaintiff's lawyers. John Tolle, Jay Floyd and Robert Flowers were the defendant's lawyers.

**Who voted for and against the Roe v. Wade decision:**

The majority: Harry Blackmun, William J. Brennan, Chief Justice Warren Burger, William O. Douglas, Thurgood Marshall, Lewis Powell and Potter Stewart. The dissent: William Rehnquist and Byron White. The majority opinion was written by [Harry Blackmun](http://womenshistory.about.com/library/etext/gov/bl_roe_b.htm). Concurring opinions were written by [Potter Stewart](http://womenshistory.about.com/library/etext/gov/bl_roe_i.htm), [Warren Burger](http://womenshistory.about.com/library/etext/gov/bl_roe_k.htm), and [William O. Douglas](http://womenshistory.about.com/library/etext/gov/bl_roe_l.htm). Dissenting opinions were written by [William Rehnquist](http://womenshistory.about.com/library/etext/gov/bl_roe_j.htm) and [Byron White](http://womenshistory.about.com/library/etext/gov/bl_roe_m.htm).

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**Brief Fact Summary.** Appellant Jane Roe, a pregnant mother who wished to obtain an abortion, sued on behalf of all woman similarly situated in an effort to prevent the enforcement of Texas statutes criminalizing all abortions except those performed to save the life of the mother.  **Synopsis of Rule of Law.** Statutes that make criminal all abortions except when medically advised for the purpose of saving the life of the mother are an unconstitutional invasion of privacy.

**Facts.** Texas statutes made it a crime to procure or attempt an abortion except when medically advised for the purpose of saving the life of the mother. Appellant Jane Roe sought a declaratory judgment that the statutes were unconstitutional on their face and an injunction to prevent defendant Dallas County District Attorney from enforcing the statutes. Appellant alleged that she was unmarried and pregnant, and that she was unable to receive a legal abortion by a licensed physician because her life was not threatened by the continuation of her pregnancy and that she was unable to afford to travel to another jurisdiction to obtain a legal abortion. Appellant sued on behalf of herself and all other women similarly situated, claiming that the statutes were unconstitutionally vague and abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.  **Issue.** Do the Texas statutes improperly invade a right possessed by the appellant to terminate her pregnancy embodied in the concept of personal liberty contained in the Fourteenth Amendment’s Due Process Clause, in the personal marital, familial, and sexual privacy protected by the Bill of Rights or its penumbras, or among the rights reserved to the people by the Ninth Amendment?

**Held.** The right to personal privacy includes the abortion decision, but the right is not unqualified and must be considered against important state interests in regulation. The abortion laws in effect in the majority of the States are of relatively recent vintage, deriving from statutory changes generally enacted in the latter half of the 19th century. At common law abortion performed before quickening (the first recognizable movement of the fetus in utero) was not an indictable offense, and it is doubtful that abortion was ever a firmly established common law crime even when it destroyed a quick fetus.

Three reasons have been advanced for the historical enactment of criminal abortion laws. The first is that the laws are the product of a Victorian social concern to discourage illicit sexual conduct, but this argument has been taken seriously by neither courts nor commentators. The second reason is that the abortion procedure is hazardous, therefore the State’s concern is to protect pregnant women. However, modern medical techniques have altered the situation, with abortions being relatively safe particularly in the first trimester. The third reason is the State’s interest is in protecting the prenatal life. However, this is somewhat negated by the fact that the pregnant woman cannot be prosecuted for the act of abortion.

For the stage prior to the approximate end of the first trimester, the abortion decision must be left to the medical judgment of the pregnant woman’s attending physician, and may not be criminalized by statute.

For the stage subsequent to the approximate end of the first trimester, the State may regulate abortion in ways reasonably related to maternal health based upon the State’s interest in promoting the health of the mother.

For the stage subsequent to viability, the State may regulate and even proscribe abortion, except where necessary for the preservation of the mother’s life, based upon the State’s interest in the potential of the potential life of the unborn child.

**Dissent.** Justice Rehnquist. The right to an abortion is not universally accepted, and the right to privacy is thus not inherently involved in this case.

 **Discussion.** The Court finds that an abortion statute that forbids all abortions except in the case of a life saving procedure on behalf of the mother is unconstitutional based upon the right to privacy. However, it does allow for regulation and proscription of abortion when the statute is narrowly tailored to uphold a compelling state interest, such as the health of the mother or the viable fetus. The court declined to address the question of when life begins.