

Roe v. Wade / Background •••—Answer Key

In the latter part of the 19th century and the first half of the 20th century, most states adopted laws strictly regulating the availability of abortions. Many states outlawed abortion except in cases where the mother's life was in jeopardy. Illegal abortions were widespread and often dangerous for women who undertook them because they were performed in unsanitary conditions.

The sexual revolution that began in the second half of the 20th century resulted in public pressure to ease abortion laws. As some states began to relax abortion restrictions, some women seeking an abortion found it relatively easy to travel to a state where the laws were less restrictive or where a doctor was willing to certify medical necessity.

However, poor women often could not travel outside their state to receive treatment, raising questions of equality. Laws were often vague, so that doctors did not really know whether they were committing a felony by providing an abortion. In addition, government interference in sexual matters was beginning to be called into question by a changing conception of privacy.

There is no “right to privacy” explicitly guaranteed in the Constitution. However, the Supreme Court has long acknowledged some right to privacy. In earlier rulings about privacy, the Supreme Court connected the right to privacy to location, particularly in a person's home. This association stemmed from notions of property rights and centered on people's personal property.

However, in the second half of the last century, the Court's position on privacy came to be seen as a right connected to a person, not to a location. The change in conception of privacy can be seen clearly in the landmark decision of *Griswold v. Connecticut* (1965). The Supreme Court ruled that a Connecticut law outlawing access to contraception (birth control) violated the U.S. Constitution because it invaded the privacy of married couples to make decisions about their families. In that ruling, the Court identified privacy as a transcendent value, fundamental to the American way of life, and to the other basic rights outlined in the Bill of Rights. Though the decision focused on the fundamental nature of privacy associated with marriage, the case set the stage for the Court to proceed further in its protection. Seven years later, the Court decided a case that extended access to contraception to unmarried persons, as well.

While the word “privacy” does not appear anywhere in the Constitution, the argument for protecting privacy is based on the Due Process Clause of the 14th Amendment, a clause that has been found to protect certain fundamental rights against government action.

Jane Roe, a pseudonym used to protect her identity, was a Texas resident in 1970. She wanted to have an abortion, but Texas abortion law made it a felony to abort a fetus unless “on medical

advice for the purpose of saving the life of the mother.” Roe filed suit against Wade, the district attorney of Dallas County, Texas, to challenge the statute outlawing abortion.

Roe contested the statute on the grounds that it violated the 14th Amendment’s mandate of equal protection of the laws and the guarantee of personal liberty and the right to privacy implicitly guaranteed in the First, Fourth, Fifth, Ninth, and 14th Amendments. The state argued that “the right to life of the unborn child is superior to the right to privacy of the mother.” The state also argued that in previous decisions where the Court protected individual or marital privacy, that right was not absolute. The state argued that this was a policy matter best left to the legislature to decide. The three-judge federal District Court ruled the Texas abortion law unconstitutional, and the case was then appealed directly to the U.S. Supreme Court.

Questions to Consider

1. What was the Texas law at issue in *Roe v. Wade*?

Texas abortion law made it a felony to abort or try to abort a fetus unless “on medical advice for the purpose of saving the life of the mother.”

2. How did the right to privacy evolve over the course of the last half-century?

There is not a reference to privacy in the Constitution and in early cases the Court seemed to connect privacy rights to property rights (such as protection within your own home). The decision in *Griswold* showed the change in how privacy rights are viewed. In that case, the Court ruled that outlawing access to contraception for married couples was unconstitutional because it violated the privacy of married couples to make decisions about their family. The Court stated that privacy was a fundamental right, necessary to ensure other basic rights.

3. Does the Supreme Court’s decision in the *Griswold v. Connecticut* case prohibit states from outlawing abortion? Explain.

The Court ruled in *Griswold* that a married couple had a right to privacy when making family decisions (specifically in the area of contraception). Therefore, it could be inferred that this right to privacy in making decisions about family (and whether or not to have children) could be extended and related to the right to privacy when deciding whether or not to have an abortion. However, it could also be inferred that those cases were specifically about the facts in front of the court, specifically contraception, not abortion.

4. Do you believe that privacy is a fundamental right necessary to securing the other rights in the Bill of Rights? Why or why not?

Student answers will vary as an argument could be made for either case. Students might point out that privacy is necessary to secure such rights as the right of free association, exercise of religion, the right of people to be secure in their persons, protection against self-incrimination. They might say that without personal autonomy, these rights are unattainable. On the other hand, students may argue that the right to privacy is not specifically mentioned in the Constitution and is therefore not fundamental or necessary.