

Roe v. Wade / Supreme Court Decisions from Roe to Dobbs

Instructions:

1. Read the summaries below of notable U.S. Supreme Court decisions regarding a constitutional right to abortion.
 2. Answer the **Questions to Consider** (page 3).
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– *Roe v. Wade* (1973)

In a 7-2 decision, the Supreme Court ruled that people had a right to have an abortion as part of their fundamental right to privacy, which was protected by the Due Process Clause of the 14th Amendment. The right to privacy meant that people were protected from unreasonable state interference in their marriage, procreation, contraception, family relationships, and child rearing. The government could only restrict this right if there was a compelling government interest. Because these interests became stronger later in pregnancy, the Court said the government could not limit abortion during the first trimester (first 12 weeks) of pregnancy, could impose reasonable restrictions during the second trimester (weeks 13–26), and could completely ban abortion during the third trimester.

– *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992)

This case changed the Supreme Court's analysis for abortion cases. The Court reaffirmed the central holding of *Roe*, that a person has the right to have an abortion without the undue influence of the state and that states may not ban abortions before fetal viability. For state laws that regulated (rather than banned) abortions, the Court applied the undue burden test. A law posed an undue burden on a person's right to an abortion if it **1)** placed a substantial obstacle in their path, and **2)** failed to advance a legitimate state interest. The Court struck down the part of the Pennsylvania law that required a woman to notify her husband before she could get an abortion. The Court stated that this could cause abuse and domestic violence, which constituted a substantial obstacle. The Court also said that other parts of the law, like the informed consent requirement, a 24-hour waiting period, and a one-parent consent requirement for minors, did not present an undue burden.

– *Whole Woman's Health v. Hellerstedt* (2016)

In this case the U.S. Supreme Court struck down Texas HB2, a law that required abortion providers to have active admitting privileges at a hospital within 30 miles of their clinics. The Court found that HB2 posed an undue burden on people seeking abortions. The law placed

numerous obstacles on people seeking abortion, such as a dramatic decrease in the number of abortion clinics, an increase in waiting times at existing clinics, an increase in crowding, and an increase in the distance people must travel to reach clinics. Additionally, HB2 did not advance a state interest because abortion was already very safe in Texas, so requiring admitting privileges for doctors provided no additional health benefits.

– *June Medical Services LLC v. Russo* (2020)

In a 5-4 decision, the U.S. Supreme Court struck down Louisiana Act 620, which was almost identical to HB2, the Texas law that the Supreme Court struck down in *Whole Woman's Health*. It required all doctors who provide abortions to have active admitting privileges at a hospital located within 30 miles of the abortion clinic. This case resulted in a plurality opinion, which is written when a majority of the justices cannot agree on the reasoning behind a decision. The opinion that the most justices sign becomes the plurality opinion. The plurality applied the undue burden test that was established in *Planned Parenthood v. Casey* and applied in *Whole Woman's Health*. According to this standard, Louisiana Act 620 was unconstitutional if it had “the purpose or effect of presenting an undue burden to a woman seeking an abortion.” To determine whether there was an undue burden, courts must “weigh the law’s ‘asserted benefits against the burdens’ it imposes on abortion access.”

The plurality determined that Act 620 presented substantial obstacles to people seeking abortions. Furthermore, Act 620 failed to advance a legitimate state interest even though Louisiana claimed it would improve the health of pregnant people. Even though Louisiana is a much smaller state than Texas, Act 620 posed a burden as severe as the Texas law struck down in *Whole Woman's Health*. Because these conclusions were supported by strong evidence, the plurality determined Act 620 posed an unconstitutional burden on abortion access in Louisiana.

– *Dobbs v. Jackson Women's Health Organization* (2022)

This case involved a Mississippi law that banned abortion after 15 weeks except in a medical emergency or in the case of a severe fetal abnormality. When passing the law, the Mississippi Legislature identified three state interests: **1)** protecting the life of the unborn; **2)** protecting the medical profession; and **3)** protecting the health of people who are pregnant. The day Mississippi enacted the 15-week ban, Jackson Women's Health Organization filed a case in federal court challenging the constitutionality of the law because it conflicted with the precedents set in *Roe* and *Casey*.

In a 6-3 decision, the U.S. Supreme Court found that the Mississippi ban was not unconstitutional because the Constitution does not protect the right to an abortion. This decision overturned the precedents set in *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*. Therefore, states have the authority to regulate abortion. Justice Alito, writing for the majority, emphasized that the Constitution does not refer to abortion at all. The majority explained that some rights not listed in the Constitution are protected by the Due

Process Clause, but that abortion is not among them because it is not “deeply rooted in our Nation’s history.”

Justice Alito stated that although the decisions in *Roe* and *Casey* established a right to an abortion, they should be overruled despite the doctrine of *stare decisis*, which generally requires the Supreme Court to follow precedents when deciding current cases. He explained that *stare decisis* should not be followed when a previous ruling is grievously (seriously) incorrect as he argues these were. He noted landmark decisions like *Brown v. Board of Education*, which rejected the “separate but equal” doctrine, had overruled the precedent set in *Plessy v. Ferguson*. He also stated that the issue of abortion should be determined by the people’s representatives at the state level.

Questions to Consider

1. What was the precedent set in *Roe v. Wade* (1973)?
2. Although *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) did not overturn the basic holding of *Roe*, it did modify it. How did *Casey* change the limits on state restrictions set out in *Roe*?
3. How was the precedent set in *Roe v. Wade* applied to a person’s right to an abortion presented in *Whole Woman’s Health v. Hellerstedt* (2016) and *June Medical Services LLC v. Russo* (2020)?

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