Supreme Court Decisions
ABORTION

Roe v. Wade 1973 Relying on an unstated "right of privacy" found in a "penumbra" of the Fourteenth Amendment, the Court effectively legalized abortion on demand throughout the full nine months of pregnancy. Although the Court mentioned the state's possible interest in the "potentiality of human life" in the third trimester, legislation to protect that interest would be gutted by mandated exceptions for the "health" of the mother (see *Doe* below).

Doe v. Bolton 1973 Companion case to *Roe*, *Doe* broadly defined the "heath" exception so that any level of distress or discomfort would qualify and gave the abortionist final say over what qualified: "The medical judgment may be exercised in the light of all factors–physical, emotional, psychological, familial, and the woman's age–relevant to the well being of the patient. All these factors may relate to "health." Because the application of the health exception was left to the abortionist, legislation directly prohibiting any abortion became practically unenforceable.

Bigelow v. Virginia, Connecticut v. Menillo 1975 *Bigelow* allowed abortion clinics to advertise. *Menillo* said that despite *Roe*, state prohibitions against abortion stood as applied to non-physicians; states could also authorize non-physicians to perform abortions.

Singleton v. Wulff 1976 Allowed abortionists to challenge abortion-funding restrictions on behalf of their female patients. Previously, only a patient had standing in abortion cases, so this ruling had a significant impact on abortion litigation.

Planned Parenthood of Central Missouri v. Danforth 1976 The court rejected a parental consent requirement and decided that (married) fathers had no rights in the abortion decision. Furthermore, the Court struck down Missouri's effort to ban the saline amniocentesis abortion procedure, in which salt injected into the womb slowly and painfully poisons the child.

Maher v. Roe, Beal v. Doe 1977 States are not required to fund abortions, though they can if they choose. A state can use funds to encourage childbirth over abortion.

Poelker v. Doe 1977 A state can prohibit the performance of abortions in public hospitals.

Colautti v. Franklin 1979 Although *Roe* said states could pursue an interest in the "potential life" of the unborn child after viability (*Roe* placed this at the third trimester), the Court struck down a Pennsylvania statute that required abortionists to use the abortion technique most likely to result in live birth if the fetus is viable.

Bellotti v. Baird* (II) 1979 Set the standard for parental consent legislation. The Court struck down a Massachusetts law requiring a minor to obtain the consent of both parents before obtaining an abortion, insisting that states wanting to offer a "judicial bypass" exception by which the child could demonstrate her maturity to a judge or show that the abortion would somehow be in her best interest.
*In *Bellotti v. Baird* (I) 1976, the Court returned case to the state court on a procedural issue.

Harris v. McRae 1980 The Court upheld Hyde Amendment, which restricted federal funding of abortion to cases here the mother's life was endangered (rape and incest exceptions were later added). The Court said states could distinguish between abortion and "other medical procedures" because "no other procedure involves the purposeful termination of a potential life." While the Court insisted that a woman had a right to an abortion, the state was not required to fund the exercise of that right

Williams v. Zbaraz 1980 States are not required to fund abortions that are not funded by the federal government, but can opt to do so.

HL v. Matheson 1981 Upholding a Utah statute, the Court ruled that a state could require an abortionist to notify one of the minor girl's parents before performing an abortion without a judicial bypass.

If Roe is overturned...

Myth 1: *Abortion will be illegal throughout the U.S.*
Truth: If *Roe* were overturned, abortion would not necessarily be illegal throughout the country, but the people of each state would likely be free to decide through their legislatures whether and under what conditions to permit abortion. *Roe* simply made abortion on-demand the law of the land, allowing people and their legislative representatives no input.

Myth 2: *Thousands will die from illegal, "back-alley abortions."*
Truth: Despite the claims of pro-abortion advocates, legalized abortion was not responsible for the decline in abortion-related maternal deaths. Instead, medical advances in the 1940s (antibiotics) and 1960s (ICUs)–before abortion was legalized–produced a decline in the number of abortion-related deaths. In 1972, year before *Roe*, there were only 39 deaths from illegal abortions, and in 1973, there were still 25 deaths from legal abortions. Furthermore, restrictions on abortion would presumably reduce the number of overall abortions. We can therefore expect that there would be remarkably few maternal deaths if *Roe* were overturned and state legislatures significantly restricted abortion.

History Repeats	*Dred Scott* (1857), 7-2 decision	*Roe v. Wade* (1973), 7-2 decision	History Repeats
	Denied citizenship to an entire class of people based on race.	Denied personhood to an entire class of people based on development.	
	Property rights of slaveholder trump the interests of the slave, who has no rights.	Privacy rights of mother trump the interests of the unborn child, who has no rights.	
	Sought to decide the slavery issue once and for all, but led to the Civil War.	Sought to decide the abortion issue once and for all, but over thirty years later the country is still divided.	
	Overturned by Congress in the 13th, 14th, and 15th Amendments.	Ironically, *Roe* relied on the 14th Amendment, which restored the human dignity that the Court had stripped from persons of African descent, to deny that dignity to the unborn over 100 years later.	

City of Akron v. Akron Center for Reproductive Health 1983 The Court struck down an ordinance passed by the City of Akron requiring: (1) that abortionists inform their clients of the medical risks of abortion, of fetal development and of abortion alternatives; (2) a 24-hour waiting period after the first visit before obtaining an abortion; (3) that second- and third-trimester abortions be performed in hospitals; (4) one-parent parental consent with no judicial bypass; (5) and the "humane and sanitary" disposal of fetal remains. Later, the Court reversed some of this ruling in *Casey*.

Planned Parenthood Association of Kansas City v. Ashcroft 1983 Upheld a Missouri law requiring that post-viability abortions be attended by a second physician and that a pathology report be filed for each abortion.

Simopoulos v. Virginia 1983 Affirmed conviction of an abortionist for performing a second-trimester abortion in an improperly licensed facility.

Thornburgh v. American College of Obstetricians and Gynecologists 1986 Struck down a Pennsylvania law requiring: (1) that abortionists inform their clients regarding fetal development and the medical risks of abortion; (2) reporting of information about the mother and the unborn child for second- and third-trimester abortions; (3) that the physician use the method of abortion most likely to preserve the life of a viable unborn child; and (4) the attendance of a second physician in post-viability abortions. Later, the Court reversed some of this ruling (see *Casey* below).

Webster v. Reproductive Health Services 1989 Upheld Missouri statute prohibiting the use of public facilities or personnel for abortions and requiring abortionists to determine the viability of the unborn child after 20 weeks.

Hodgson v. Minnesota, Ohio v. Akron Center for Reproductive Health 1990 In *Hodgson*, struck down Minnesota statute requiring two-parent notification without a judicial bypass, but upheld the same provision with a judicial bypass. In the same decision, the Court allowed a 48-hour waiting period for minors following parental notification. In *Ohio v. Akron*, the Court upheld one-parent notification with judicial bypass.

Rust v. Sullivan 1991 Upheld federal regulation prohibiting Title X family planning clinic personnel from counseling or referring women regarding abortion. If a clinic physically and financially separated abortion services from family planning services, the family planning component could still receive Title X money. Relying on *Maher and Harris*, the Court emphasized that the government is not obliged to fund abortion-related services, even if it funds parental care or childbirth.

Planned Parenthood of Southeastern Pennsylvania v. Casey 1992 By a sharply divided vote of 5-4, the Court reaffirmed the "central holding" of *Roe*, but in a 7-2 vote, suggested that states could pursue their interest in "potential" life, explicitly overruling parts of *Akron* and *Thomburg* by allowing informed consent requirements (that the woman be given information on the risks of abortion and on fetal development), a mandatory 24-hour waiting period following receipt of the information, the collection of abortion statistics, and a required one-parent consent with judicial bypass. Spousal notification provisions, however, were held unconstitutional.

Mazurek v. Armstrong 1997 Upheld Montana law requiring that only licensed physicians perform abortions.

Stenberg v. Carhart 2000 Nebraska (as did more than half the other states) passed a law to ban partial-birth abortion, a method in which the premature infant (usually in the fifth or sixth month) is delivered alive, feet first, until only the head remains in the womb. The abortionist then punctures the baby's skull and removes her brain. On a 5-4 vote, the Court shuck down the Nebraska law (and thereby rendered the other state laws unenforceable, as well). The five justices said that the Nebraska legislature had defined the method too vaguely. In addition, the five justices held that *Roe v. Wade* requires that an abortionist be allowed to use even this method, even on a healthy woman, if he believes it is the safest method.

Gonzales v. Carhart 2007 Stating that, in light of *Casey*, the state did have an interest in protecting fetal life, and that the law did not impose an "undue burden," the court upheld the federal version of the Partial-birth Abortion Act, passed by Congress and signed by President George W. Bush in 2003. The court was satisfied that the language of the statute was clear.