

## UNITED STATES SUPREME COURT DECISIONS ON ABORTION

July 16, 2024

Following is a brief summary of United States Supreme Court abortion decisions commencing with **Roe v. Wade**, giving the citations, date, and holding.

**Roe v. Wade**, 410 U.S. 113 (1973). Roe invalidated a 19th century Texas statute prohibiting abortion except in cases where necessary to preserve maternal life, on the basis that the right of privacy secured by the Due Process clause of the Fourteenth Amendment includes a fundamental right to decide whether or not to bring a pregnancy to term. 7-2 with Rehnquist and White dissenting.

**Doe v. Bolton**, 410 U.S. 179 (1973). Invalidated Georgia "reform" abortion statute that permitted abortion where continued pregnancy would endanger woman's life or health, including mental health, where the fetus would likely be born with a serious defect, or where pregnancy resulted from rape. Statute also required that abortion be performed in accredited hospital, and that two physicians confirm the performing physician's judgment of necessity for abortion. Doe is frequently cited for its definition of maternal "health" to include a broad range of factors, such as physical, emotional, psychological, familial, and the woman's age, including general maternal "well-being," as a justification for legalized abortion during the last trimester of pregnancy. 7-2 with Rehnquist and White dissenting.

**Bigelow v. Virginia**, 421 U.S. 809 (1975). Invalidating state ban on advertising for abortion. 7-2 with Rehnquist and White dissenting.

**Connecticut v. Menillo**, 423 U.S. 9 (1975). Upheld Connecticut anti-abortion statute as it applies to non-physicians. 9-0.

**Singleton v. Wulff**, 428 U.S. 106 (1975). Held that physicians may challenge abortion funding restrictions on behalf of their female patients seeking abortions. Has thus had strong impact upon abortion litigation, allowing physicians to act as plaintiffs instead of individual women, as in the case of Roe v. Wade. 9-0 with Powell, Burger, Stewart, and Rehnquist dissenting in part.

**Planned Parenthood of Missouri v. Danforth**, 428 U.S. 52 (1976). Upheld definition of "viability" under state statute, and requirement that women sign consent form prior to abortion. Invalidated provisions requiring consent of spouse (if any) to abortion, requiring consent of parents for abortion performed on minor daughter, prohibiting use of saline amniocentesis abortion procedure, and requiring those performing abortions to exercise professional skill and care to preserve the life of the fetus. 5-4 with Stevens, White, Burger, and Rehnquist dissenting.

**Bellotti v. Baird (I)**, 428 U.S. 132 (1976). Abstained from ruling on constitutionality of Massachusetts parental consent statute pertaining to abortion until resolution by state courts of how statute is to be constructed. 9-0.

**Beal v. Doe**, 432 U.S. 438 (1977). First in series of 1977 abortion funding cases. Upheld, by 6-3 vote, Pennsylvania restriction on use of federal funds for abortions to those that are "medically

necessary" against challenge that this policy violates Title XIX of the Social Security Act. 6-3 with Brennan, Marshall, and Blackmun dissenting.

**Maier v. Roe**, 432 U.S. 464 (1977). Second in series of 1977 abortion funding cases. Upheld 6-3 vote, a Connecticut regulation restricting use of federal funds to those abortions that are "medically necessary." Regulation was challenged on constitutional grounds of due process and equal protection. Reasoned that state is free to use its power of funding to encourage childbirth over abortion. Also noted that "a woman has at least an equal right to choose to carry her fetus to term as to choose to abort it." 6-3 with Brennan, Marshall, and Blackmun dissenting

**Poelker v. Doe**, 432 U.S. 519 (1977). Third in series of 1977 abortion funding cases. Upheld St. Louis, Mo. policy against performance of abortion in public hospitals. 6-3 with Brennan, Marshall, and Blackmun dissenting.

**Colautti v. Franklin**, 439 U.S. 379 (1979). Invalidated by a 6-3 vote. Pennsylvania statute created standard for determination of viability of unborn child, and requiring use of abortion technique providing the best opportunity for the fetus to be aborted alive in abortions after viability. 6-3 with White, Rehnquist, and Burger dissenting.

**Bellotti v. Baird (II)**, 443 U.S. 622 (1979). Invalidated Massachusetts statute requiring parental consent, and held that states requiring the consent of parents to abortions upon minors must afford minors an alternative opportunity for authorization of the abortion where the minor may demonstrate that either she is mature enough to make her own decision, or that the abortion would be in her best interests. 8-1 with White dissenting.

**Harris v. McRae**, 448 U.S. 297 (1980). Upheld, by 5-4 vote, the Hyde Amendment, restricting use of federal funds for abortion to those necessary to preserve the life of the mother. In bitterly-contested litigation in New York federal court, the Hyde Amendment was challenged as a denial of due process, equal protection, freedom of religion, and as an establishment of Roman Catholic dogma in violation of the First Amendment. Perhaps the most significant Supreme Court holding on abortion outside of Roe. 5-4 with Brennan, Marshall, Blackmun, and Stevens dissenting.

**Williams v. Zbaraz**, 448 U.S. 358 (1980). Companion to Harris v. McRae, upheld Illinois statute prohibiting use of state funds for abortion except where necessary to preserve the life of the mother undergoing abortion. 5-4 with Brennan, Marshall, Blackmun, and Stevens dissenting.

**H.L. v. Matheson**, 450 U.S. 398 (1981). Upheld Utah statute requiring notification of parents prior to abortion performed on unemancipated minors. 6-3 with Brennan, Marshall, and Blackmun dissenting.

**Akron v. Akron Center for Reproductive Health**, 462 U.S. 416 (1983), Invalidated, by 6-3 vote, Akron Ordinance requiring all second-trimester abortions to be performed in hospitals, requiring consent of parents for all abortions performed on minors under the age of 15, requiring detailed information on medical risks of abortion, fetal development, and abortion alternatives to be given to women prior to abortions, and requiring 24-hour waiting period between giving of required information and performance of abortion. Significant dissenting opinion written by Justice O'Connor in her first abortion case. 6-3 with O'Connor, Rehnquist, and White dissenting. This case was rejected by the plurality in Planned Parenthood of Southeastern Pennsylvania v. Casey (1992).

**Planned Parenthood Assn. of Kansas City v. Ashcroft**, 462 U.S. 476 (1983). Invalidated second-trimester hospitalization requirement, but upheld regulations pertaining to parental consent, the presence of a second physician at post-viability abortions, and pathology reports.

6-3 overturning hospital requirement, with O'Connor, White, and Rehnquist dissenting; 5-4 in all other issues, with Brennan, Marshall, Blackmun, and Stevens dissenting.

**Simonopoulos v. Virginia**, 462 U.S. 506 (1983). Upheld law requiring second-trimester abortion be performed in licensed hospitals or clinics; 8-1 with Stevens dissenting.

**Diamond v. Charles**, 476 U.S. 54 (1986). Dismissed appeal brought by two physicians from ruling striking down an Illinois abortion statute, holding that failure of state to join in the appeal left the Court with no standing to resolve the matter. 9-0.

**Thornburgh v. American College of Obstetricians and Gynecologists (ACOG)**, 476 U.S. 747 (1986). Invalidated provisions of Pennsylvania Abortion Control Act concerning informed consent, informational reporting requirements, and performance of abortion after viability. Notable for hostility of majority of five Justices to apparently mild forms of abortion regulation, and strong dissents from four Justices calling for re-examination or reversal of Roe v. Wade. 5-4 with Burger, White, Rehnquist, and O'Connor dissenting. This case was rejected by the plurality in Planned Parenthood of Southeastern Pennsylvania v. Casey (1992).

**Zbaraz v. Hartigan**, 484 U.S. 171 (1987). Upheld a lower court ruling overturning a mandated waiting period; 4-4 with Burger, White, Rehnquist, and O'Connor "dissenting."

**Webster v. Reproductive Health Services**, 492 U.S. 490 (1989). Upheld requirements for viability tests after twenty weeks and barred both the use of public facilities or public employees from participating in abortion, except to save the life of the mother. 5-4 with Blackmun, Brennan, Marshall, and Stevens dissenting in part.

**Hodgson v. Minnesota**, 497 U.S. 417 (1990). Upheld constitutionality of two parent notification law passed in Minnesota, requiring judicial bypass mechanism for minor seeking abortion. Court upheld 48-hour waiting period before abortion and direct physician notification to parents of minor seeking abortion. On the first issue (judicial bypass requirement), Rehnquist, White, Scalia, and Kennedy dissented. On the second issue (upholding waiting period and direct physician notification), , Blackmun, Brennan, Marshall, and Stevens were in dissent.

**Ohio v. Akron Center for Reproductive Health**, 497 U.S. 502 (1990). Provision that doctors provide timely notice to a parent of a minor seeking an abortion ruled constitutional if a judicial bypass option is open to a minor who can demonstrate mature judgement, parental abuse, or that the notice requirement is not in her best interest. 6-3 with Blackmun, Brennan, and Marshall dissenting.

**Rust v. Sullivan**, 500 U.S. 173 (1991). Upheld Department of Health and Human Services regulations prohibiting abortion counseling and referral with Title X family planning funds. 5-4 with Blackmun, Stevens, O'Connor, and Marshall dissenting.

**Planned Parenthood of Southeastern Pennsylvania v. Casey**, 505 U.S. 833 (1992). Held that the informed consent requirements, 24-hour waiting period, the parental consent provision and reporting and recordkeeping requirement of a Pennsylvania statute were constitutional. The Court also reaffirmed what it called the "central holding" of Roe, that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability," and that any "pre-viability regulations" must not be an "undue burden" on the "right" to an abortion. 5-4 with Rehnquist, Scalia, White, and Thomas dissenting and encouraging the reversal of Roe v. Wade.

**Bray v. Alexandria Women's Clinic**, 506 U.S. 263 (1993). Held that an 1871 federal law known as the Anti-Ku Klux Klan Act could not be applied to pro-life protestors because opposition to abortion is not sex discrimination. 6-3 with Stevens, O'Connor, and Blackmun dissenting.

**National Organization for Women (NOW) v. Scheidler**, 510 U.S. 249 (1994). Court ruled unanimously that RICO could be used by clinic operators to sue pro-life groups who stage protest and blockade at abortion clinics. 9-0.

**Madsen v. Women's Health Center**, 512 U.S. 753 (1994). Upheld a 36-foot buffer zone at entrance of abortion clinic and restriction limiting amount of noise protesters could generate at clinic. Overturned a restriction on use of observable signs. Overturned a 300-foot no approach zone. 6-3 with Scalia, Kennedy, and Thomas dissenting.

**Dalton v. Little Rock Family Planning Services**, 516 U.S. 474 (1996). At issue was a district court injunction invalidating Arkansas' Constitutional Amendment 68 (a prohibition on the use of State funds to pay for abortion except to save the life of the mother) as violating the federal Hyde Amendment as interpreted by the Clinton Administration (mandating payment for abortions when pregnancy is result of rape or incest). The Court held that the injunction was overly broad and ordered that the injunction only enjoin the enforcement of the Amendment to the extent that the Amendment imposes obligations inconsistent with federal law. 9-0.

**Janklow v. Planned Parenthood**, 517 U.S. 1174 (1996). The Court denied review of an Appeals Court ruling that held a parental notice statute unconstitutional because it had no judicial bypass provision. 6-3 with Rehnquist, Thomas, and Scalia writing a dissent.

**Leavitt v. Jane L.**, 518 U.S. 137 (1996). A procedural ruling by the Court upholding state legislature's use of severability causes. The Supreme Court scolds the 8th Circuit Court of Appeals for abuse of power in the abortion context. 5-4 with Stevens, Souter, Ginsburg, and Breyer dissenting.

**Mazurek v. Armstrong**, 520 U.S. 968 (1997). The Court upheld a Montana statute that restricted the performance of abortions to licensed physicians. 6-3 with Stevens, Ginsburg, and Breyer dissenting.

**Lambert v. Wicklund**, 520 U.S. 292 (1997). The Court upheld a Montana parental notification statute. 9-0.

**Schenck v. Pro-Choice Network of New York**, 519 U.S. 357(1997). The Court reviewed the use of "fixed buffer zones" and "floating buffer zones" by courts to restrict protesting at abortion clinics. The court found the "fixed buffer zones" to be constitutional, whereas the "floating buffer zones" were found to violate the First Amendment. 9-0 with Scalia, Kennedy, Thomas, and Breyer dissenting in part.

**Voinovich v. Women's Medical Professional Corp.**, No. 97-934 (1998). The Court denied certiorari in a case dealing with Ohio's ban on brain suction abortions. 6-3 with Thomas, Rehnquist, and Scalia dissenting.

**Stenberg v. Carhart**, 530 U.S. 914 (2000). The Court struck Nebraska's law banning partial birth abortions. 5-4 with Kennedy, Rehnquist, Thomas, and Scalia dissenting.

**Hill v. Colorado**, 530 U.S. 703 (2000). The Court upheld as constitutional, a requirement that you have prior consent of a person within an 8-foot zone --within a 100-foot radius of an abortion facility-- before you approach her. The Court held that the provision was a valid time, place and manner restriction. 6-3 with Scalia, Thomas, and Kennedy dissenting.

**Ayotte v. Planned Parenthood of New England**, 546 U.S. 320 (2006). The Court unanimously remanded New Hampshire's parental notification law to the 1<sup>st</sup> Circuit Court of Appeals.

**Gonzales v. Carhart**, 550 U.S. 124 (2007). The Court upheld as constitutional the Federal Partial Birth Abortion Ban Act. 5-4 with Ginsburg, Stevens, Souter, and Breyer dissenting.

**Whole Woman's Health v. Hellerstedt**, 579 U.S. 582 (2016). The Court invalidated two Texas provisions in a statute requiring that abortionists have admitting privileges and that abortion facilities be held to the same standards as ambulatory surgical centers. 5-3 with Thomas, Alito, and Roberts dissenting.

**June Medical Services LLC v. Russo**, 591 U.S. 299 (2020). The Court struck Louisiana's 2014 "Unsafe Abortion Protection Act," or Act 620, that required abortionists to have admitting privileges to a hospital within 30 miles of an abortion clinic — similar to the requirement already in place for doctors who perform surgery at outpatient surgical centers. The majority declared it "an undue burden" and likened it to their decision in *Hellerstedt*. However, the Court seemingly restored the "undue burden" precedent established in *Planned Parenthood of Southeastern Pennsylvania v. Casey*. 5-4 with Thomas, Alito, Gorsuch, and Kavanaugh dissenting.

**Dobbs v. Jackson Women's Health Organization**, No. 19-1392 (2022). The Court upheld Mississippi's Gestational Age Act which protects unborn children at 15 weeks gestation. The Court also held that the United States Constitution does not grant a right to abortion overruling the tenets of *Roe* and *Casey*, thereby returning the authority to regulate abortions to the people and their elected representatives. 6-3 with Breyer, Sotomayor, and Kagan dissenting.

**FDA v. Alliance for Hippocratic Medicine**, No. 23-235 (2024). This case was consolidated with *Danco Laboratories, L.L.C. v. Alliance for Hippocratic Medicine*. The Court unanimously ruled that the challenger in the case, the Alliance for Hippocratic Medicine, did not have standing. The justices did not rule on whether the FDA acted properly in removing safeguards on the abortion drug mifepristone.

**Moyle v. United States (2024)**, Nos. 23-726 and 23-727 (2024). This case was consolidated with *Idaho v. United States* and addressed whether the Emergency Medical Treatment and Active Labor Act (EMTALA) preempts state abortion regulations and requires hospitals to perform abortions disallowed by state law. In a 6-3 decision, the Court dismissed this case as "improvidently granted." The decision reinstates the lower court's pause on the Idaho law in question (the Defense of Life Act), while litigation continues in the lower courts.