

ROE V. WADE
410 U.S. 113 (1973)

Roe, an unmarried and pregnant young woman, sought declaratory and injunctive relief against Wade, a county district attorney, to prevent enforcement of a Texas criminal abortion statute. This statute criminalized all abortions throughout pregnancy except those which were "procured or attempted by medical advise for the purpose of saving the life of the mother." In defense of the statute, the state argued it furthered two state interests: (1) protection of the mother from a medically risky procedure; and (2) protection of the life of the fetus. Roe argued the statute interfered with the right of a pregnant woman to do as she wished with her own body. She said that this right, which was argued to be a part of a constitutional right of privacy, guaranteed her an entitlement to elect an abortion "at whatever time, in whatever way, and for whatever reason she alone chooses."

The Court rejected both positions. It found that the Constitution protects the right to an abortion throughout a significant portion, but not all, of a pregnancy. It said that the decision to abort a fetus was within a woman's "right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restriction upon the state, as we feel it is, or, as the district court determined, in the Ninth Amendment's reservation of rights to the people." It concluded, however, that the state could interfere in pursuit of a compelling state interest.

To determine when the state's interests came into existence, the court separated pregnancies into three time periods. During the first three months, or the first "trimester," decisions to abort are to be made by the "attending physician, in consultation with his patient," and without interference from the state. During the second trimester, the state can regulate abortions "to the extent that the regulation reasonably relates to the preservation and protection of maternal health."

The Court said that during the third trimester, the state's interest in protecting fetal life comes into existence. Relying on medical evidence then available, the Court found the point of viability, that is, when the fetus is "potentially able to live outside the mother's womb," occurs between 24 and 28 weeks. Before that time there is no state interest in fetal life sufficient to justify limitations on the pregnant woman's privacy rights. After viability, the state can regulate to protect the fetus, even to the extent of criminalizing elective abortions. However, it cannot bar abortions which are "necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."

The dissent said that an abortion is not "private" in the ordinary sense of the word. Even if abortions fell under some privacy right, the dissent said, this right should yield to a state law that has a rational relation to a valid state objective. Instead, the Court incorrectly adopted a compelling state interest test. Further, the fact that most states have had restrictions on abortion for over a century indicates that the asserted right to an abortion is not universally accepted.