



Major U.S. Supreme Court Rulings on Reproductive Rights

Cases Regarding Right to Abortion

Roe v. Wade, 410 U.S. 113 (1973)

Nature of Case: Challenge to a Texas law prohibiting abortions except to save the woman's life.

Holding:

- The right to privacy extends to the decision of a woman, in consultation with her physician, to terminate her pregnancy.
- During the first trimester of pregnancy, this decision may be effectuated free of state interference.
- After the first trimester, the state has a compelling interest in protecting the woman's health and may reasonably regulate abortion to promote that interest.
- At the point of fetal viability (capacity for sustained survival outside the uterus), the state has a compelling interest in protecting potential life and may ban abortion, except when necessary to preserve the woman's life or health.

Doe v. Bolton, 410 U.S. 179 (Argued in 1971; Decided on January 22, 1973, the same day as Roe)

Nature of Case: Challenge to a Georgia law prohibiting abortions except in cases of medical necessity, rape, incest, and fetal abnormality; and that only Georgia residents may obtain abortions in that state.

Holding:

- It violates a woman's right to choose abortion as recognized in Roe v. Wade.
- The residency requirement violates the Privileges and Immunities Clause of the Constitution.

Connecticut v. Menillo, 423 U.S. 9 (1975)

Nature of Case: Appeal from conviction of non-physician for performing abortion.

Holding:

- States may require that only physicians provide abortions.
- Such a regulation provides the minimum standard of safety upon which the constitutional right recognized in Roe was predicated.

Stenberg v. Carhart, 530 U.S. 914 (2000)

Nature of Case: Challenge to Nebraska's so-called "partial-birth" abortion ban.

Holding:

- The statute is unconstitutional because it lacks an exception for situations when the procedure is necessary to protect the woman's health.
 - Such a health exception must allow the banned procedure both because the woman's medical condition requires it and because the banned procedure is less risky than others.
- The statute creates an undue burden on a woman's right to abortion because it has the effect of outlawing the dilation and evacuation (D&E) procedure, the most commonly used method for performing second-trimester abortions.

Gonzales v. Carhart and Gonzales v. Planned Parenthood Federation of America, Inc. 550 U.S. ____ (2007)

Nature of Case: Challenges to the federal abortion ban (the "Partial-Birth Abortion Ban Act of 2003"), which makes it a federal crime to "deliberately and intentionally vaginally deliver a living fetus" past certain anatomical landmarks "for the purpose of performing an overt act



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that the person knows will kill the partially delivered living fetus.” The ban does not contain an exception for the woman’s health.

Holding:

- The Court held that the statutory definition of the banned procedure is not vague and does not impose an undue burden because it does not reach what the Court called “standard D&Es.”
- Despite more than 30 years of precedent requiring abortion restrictions to contain exceptions for the woman’s health, the Court ruled that the ban does not need a health exception because there is “medical uncertainty over whether the Act’s prohibition creates significant health risks.”
- As Justice Ruth Bader Ginsburg explained in dissent, while the Court did not directly overrule any of its precedents, the decision is “alarming” because “for the first time since Roe, the Court bless[ed] a prohibition with no exception safeguarding a woman’s health.”
- The Court left open that the ban could be challenged “if it can be shown that in discrete and well-defined instances a particular condition has or is likely to occur in which the procedure prohibited by the Act must be used.”

Cases Regarding Restrictions on Access to Abortion

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976)

Nature of Case: Challenge to a Missouri law requiring (a) parental consent for a minor's abortion; (b) husband's consent to a married woman's abortion; (c) the woman's written informed consent; (d) that no second-trimester abortion be done by saline amniocentesis; and (e) that abortion providers do certain record keeping and reporting.

Holding:

- Parental and spousal consent requirements held unconstitutional because they delegate to third parties an absolute veto power over a woman's abortion decision
- The requirement that the woman certify that her consent is informed and freely given is constitutional, as are the record-keeping and reporting requirements.
- The ban on saline amniocentesis is struck down because saline amniocentesis is the most commonly used abortion method after the first 12 weeks of pregnancy and was shown to be less dangerous to the woman's health than other available methods; the choice of method must be left to the physician.

Maher v. Roe, 432 U.S. 464 (1977)

Nature of Case: Challenge to Connecticut's limitation of state Medicaid funding for medically necessary abortions and its refusal to fund "elective" abortions.

Holding:

- The state need not fund a woman's exercise of her right to choose abortion even though it funds the exercise of her right to choose childbirth.
- It was not a violation of the Equal Protection Clause for state Medicaid programs to cover expenses associated with childbirth but to refuse to fund non-therapeutic abortions.

Beal v. Doe, 432 U.S. 438 (1977)

Nature of Case: Challenge to Pennsylvania regulations that prohibited state financial assistance for nontherapeutic abortions, limiting assistance to abortions deemed medically necessary.

Holding:

- The Federal Medicaid program is not required to fund “non-medically necessary” abortions.



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Colautti v. Franklin, 439 U.S. 379 (1979)

Nature of Case: Challenge to provisions of Pennsylvania law requiring physician intending to perform an abortion to determine that fetus is not viable. If physician finds that fetus "is or may be viable," he or she is required to exercise the degree of care in performing abortion that would have been exercised if a live birth were intended."

Holding:

- Provisions are "void for vagueness" because meanings of "viable" and "may be viable" are unclear.
- Decision on viability must be left to the good-faith judgment of the physician.
- Provisions are also unconstitutional because they impose criminal liability on physicians regardless of their intent to violate the law.

Bellotti v. Baird (Bellotti II), 443 U.S. 622 (1979)

Nature of Case: The law would require, the Massachusetts court said, (a) that a minor first attempt to obtain her parents' consent before approaching a court for permission for her abortion; (b) that parents be notified when a minor files a petition for judicial waiver; and (c) the judge may deny the minor's petition if the judge finds that an abortion would be against the minor's best interests.

Holding:

- All minors must have an opportunity to approach a judge without first consulting their parents; and the proceedings must be confidential and expeditious.
- A mature minor must be given permission for an abortion, regardless of the judge's view as to her best interests. Even an immature minor must be permitted to have a confidential abortion, if the abortion is in her best interests.
- The law is unconstitutional since it permits a third party the ability to exercise an absolute veto over the minor's right to an abortion
- Also see *Planned Parenthood of Northern New England v. Heed*, 390 F.3d 53 (2004), in which the court held unconstitutional a New Hampshire parental notification law that did not include an exception for the health of the mother.

Harris v. McRae, 448 U.S. 297 (1980)

Nature of Case: Challenge to the Hyde Amendment.

Holding:

- States participating in the Medicaid program are not required to use their own funds to cover "medically necessary" abortions for which no federal monies are available.
- Restricting the use of federal funds to cover abortion does not implicate a woman's due process right to have an abortion, as defined by *Roe*.

Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (1983)

Nature of Case: Challenge to an Ohio, ordinance requiring that (a) a woman wait 24 hours between consenting to and receiving an abortion; (b) all abortions after the first trimester of pregnancy be performed in full-service hospitals; (c) minors under fifteen have parental or judicial consent for an abortion; (d) the attending physician personally give the woman information relevant to informed consent; (e) specific information be given to a woman prior to an abortion, including details of fetal anatomy, a list of risks and consequences of the procedure, some of which were false or hypothetical, including a statement that read, "the unborn child is a human life from the moment of conception;" and (f) fetal remains be "humanely" disposed of.

Holding:



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- The ordinance is unconstitutional because it: (a) serves neither the state's interest in protecting the woman's health nor in ensuring her informed consent; (b) interferes with a woman's access to abortion services without protecting her health because the dilatation and evacuation (D&E) method of mid-trimester abortion may be performed as safely in out-patient facilities as in full-service hospitals; (c) fails to guarantee an adequate judicial alternative to parental involvement (see *Bellotti II*, 1979); (d) makes abortions more expensive and is not necessary to ensure informed consent since the physician can delegate the counseling task to another qualified individual; (e) intrudes on the physician's judgment as to what is best for the individual woman and contains information designed to dissuade the woman from having an abortion; and (f) is too vague to give fair warning of what the law requires.
- In 1992, the Supreme Court overruled parts of this case (see *Planned Parenthood v. Casey*).

Planned Parenthood of Kansas City, Missouri, v. Ashcroft, 462 U.S. 476 (1983)

Nature of Case: Challenge to a Missouri law requiring that (a) all post-first-trimester abortions be performed in hospitals; (b) minors under 18 have parental consent or judicial authorization for their abortions; (c) two doctors be present at the abortion of a viable fetus; and (d) a pathologist's report be obtained for every abortion.

Holding:

- The statute: (a) is unconstitutional for the reasons stated in *City of Akron v. Akron Center for Reproductive Health* (1983); (b) is constitutional because the judicial bypass alternative contained in the statute conforms to the standards set out in *Bellotti II* (1979); (c) serves the state's compelling interest in protecting potential life after viability and is, therefore, constitutional; and (d) is constitutional because it poses only a small financial burden to the woman and protects her health.

Babbitt v. Planned Parenthood of Central and Northern Arizona, 789 F. 2nd 1348 (9th Cir. 1986), Affirmed 479 U.S. 925 (1986)

Nature of Case: The Ninth Circuit found unconstitutional an Arizona law prohibiting grants of state money for family planning to organizations that provide abortion or abortion counseling and referral. The law would be valid, the Ninth Circuit said, only if the state could prove it was the only way to stop its money from being used to pay for abortions and abortion-related activities. Since the state could not prove this, the law was struck down.

Holding:

- The U.S. Supreme Court summarily affirmed the Ninth Circuit without issuing an opinion.

Thornburgh v. American College of Obstetricians and Gynecologists, Pennsylvania Section, 476 U.S. 747 (1986)

Nature of Case: Challenge to Pennsylvania's 1982 Abortion Control Act requiring (a) that a woman be given specific information before she has an abortion, including state-produced printed materials describing the fetus; (b) that physicians performing post-viability abortions use the method most likely to result in fetal survival unless it would cause "significantly" greater risk to a woman's life or health; (c) the presence of a second physician at post-viability abortions; (d) detailed reporting to the state by providers on each abortion, with reports open for public inspection; and (e) one parent's consent or a court order for a minor's abortion.

Holding:

- The statute: (a) is invalid because it interferes with the physician's discretion and requires a woman to be given information designed to dissuade her from having an abortion; (b) is invalid because it requires the woman to bear an increased risk to her health in order to



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maximize the chances of fetal survival; (c) is invalid because it does not make an exception for emergencies; (d) is unconstitutional because it could lead to disclosure of the woman's identity; and (e) is remanded to the lower court for consideration in light of newly enacted state court rules.

- In 1992, the Supreme Court overruled portions of this case in *Planned Parenthood v. Casey*.

Webster v. Reproductive Health Services, 492 U.S. 490 (1989)

Nature of Case: Challenge to Missouri's 1986 Act: (a) declaring that life begins at conception; (b) forbidding the use of public funds for the purpose of counseling a woman to have an abortion not necessary to save her life; (c) forbidding the use of public facilities for abortions not necessary to save a woman's life; and (d) requiring physicians to perform tests to determine viability of fetuses after 20 weeks gestational age.

Holding:

- (a) The Court allowed the declaration of when life begins to go into effect because five justices agreed that there was insufficient evidence that it would be used to restrict protected activities such as choices of contraception or abortion. Should the declaration be used to justify such restrictions in the future, the affected parties could challenge the restrictions at that time; (b) the Court unanimously declined to address the constitutionality of the public funds provision. The Court accepted Missouri's representation that this provision was not directed at the conduct of any physician or health care provider, private or public, but solely at those persons responsible for expending public funds, and that the provision would not restrict publicly employed health care professionals from providing full information about abortion to their clients; (c) the Court upheld the provision that barred the use of public facilities. It ruled that the state may implement a policy favoring childbirth over abortion by allocations of public resources such as hospitals and medical staff; and (d) the Court upheld the provision requiring viability tests by interpreting it not to require tests that would be "imprudent" or "careless" to perform.

Hodgson v. Minnesota, 497 U.S. 417 (1990)

Nature of Case: Challenge to a 1981 Minnesota statute that required notification of both biological parents, followed by a wait of at least 48 hours, prior to a minor's abortion. A second section of the statute provided for a judicial bypass if the two-parent notification provision without a waiver procedure were enjoined. The plaintiffs challenged the second section based on evidence gathered during the five years that the parental consent requirement and judicial bypass were in effect.

Holding:

- The Court held that two-parent notification with no judicial bypass alternative poses an unconstitutional burden on a minor's right to abortion.
- A different majority of the Court allowed the second section of the Minnesota law to stand, however, because of the addition of a judicial alternative.
- The Court upheld the validity of the 48-hour waiting period following notification before the abortion can be performed.

Rust v. Sullivan/ New York v. Sullivan, 500 U.S. 173 (1991)

Nature of Case: Challenge to 1988 federal regulations that forbade counseling and referral for abortion or advocacy of abortion rights in programs that receive funds under Title X of the federal Public Health Service Act (1970).

Holding:



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- The Court held that the regulations do not violate the Title X statute because they are a reasonable interpretation of the statutory prohibitions against the use of Title X funds in programs "where abortion is a method of family planning."
- The Court further held that the regulations do not violate the First Amendment or the right to choose abortion, ruling that the government has no obligation to pay for the exercise of constitutional rights.
- The Court held that the government's decision not to fund the provision of information does not directly interfere with the rights of doctors, clinics, or patients, since providers are free to offer abortions and abortion-related information in separate programs, and women who wish unbiased medical information and services are free to seek them elsewhere.

Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)

Nature of Case: Challenge to Pennsylvania's 1989 Abortion Control Act.

Holding:

- The Court reaffirmed the validity of a woman's right to choose abortion under *Roe v. Wade*, but announced a new standard of review that allows restrictions on abortion prior to fetal viability so long as they do not constitute an "undue burden" on the woman's right to have an abortion.
 - A restriction is an "undue burden" when it has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion. Under this standard, only the husband notification provision was considered an undue burden and therefore unconstitutional. All the other provisions were upheld as not unduly burdensome.
- In upholding the Pennsylvania abortion restrictions, the Court overturned portions of two of its previous rulings, *City of Akron v. Akron Center for Reproductive Health* (1983) and *Thornburgh v. American College of Obstetricians and Gynecologists* (1986).
- States can restrict post-viability abortion if laws include exceptions for the health and the life of the pregnant woman.
- The Court upheld pre-viability restrictions on the right to choose that included:
 - Provision of mandatory, state sanctioned anti-abortion information
 - Mandatory waiting periods
 - Reporting requirements for abortion clinics
 - A one-parent consent requirement for minors, including a judicial bypass option

Ayotte v. Planned Parenthood of Northern New England, 546 U.S. 320 (2006)

Nature of case: Challenge to New Hampshire law that requires a parent be notified 48 hours before an abortion is provided to a minor. The lower federal courts held the law unconstitutional because it did not provide an exception for medical emergencies that threaten a minor's health.

Holding:

- The Court did not disturb the lower courts' ruling that the statute was unconstitutional because it lacked a medical emergency exception.
- The Court found that this proposition was not disputed by New Hampshire and was supported by prior precedents of the Court that had held that the states may not restrict access to abortions that are necessary to preserve the woman's health or life.
- The Court did hold that the lower courts may have gone too far in enjoining the entire parental notice law rather than just its application to medical emergency situations.
- The Court remanded the case to the lower courts to determine whether a more limited injunction would be keeping with the New Hampshire legislature's intent.



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Cases Regarding Anti-Choice Protestors

Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993)

Nature of Case: Anti-abortion demonstrators (including the leadership of Operation Rescue) challenged an injunction against their activities that included blocking access to health care facilities in the Washington, D.C. area. The injunction was based on an 1871 civil rights statute that forbade private conspiracy to violate constitutional rights. The demonstrators claimed their activities did not violate the statute.

Holding:

- The Court held that the demonstrators' activities did not violate the civil rights statute because their actions were not motivated by "class-based discriminatory animus against women," as the statute requires, but rather by opposition to abortion.
- The Court held further that the demonstrator's incidental impact on the right of women to travel interstate (for the purpose of securing an abortion) was not the kind of violation of a right for which the 1871 statute was enacted.

Madsen v. Women's Health Center, 512 U.S. 753 (1994)

Nature of Case: Anti-abortion protesters sought to overturn on First Amendment grounds an injunction against their activities at a Melbourne, Florida clinic. The injunction prohibited demonstrations within 36 feet of the clinic property line; noise and visual displays that could be heard and seen inside the clinic; approaching any person seeking services within 300 feet of the clinic, unless the person indicated a desire to communicate; and established a 300-foot buffer zone around the residences of clinic physicians and staff.

Holding:

- The Court held that the 36-foot buffer zone protecting clinic entrances and driveways is a content-neutral measure that does not infringe on the First Amendment rights of abortion opponents, and that the ban on disruptive noise was also constitutional.
- The majority indicated that Florida's interests include "protecting a woman's freedom to seek lawful medical or counseling services in connection with her pregnancy."
- But the Court limited the scope of its ruling by striking portions of the injunction as broader than necessary to protect the state's interests, including application of the buffer zone to certain private property adjoining the clinic, the 300-foot no approach zone and residential buffer zone, and the prohibition against "images observable to" patients inside the clinic.

Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357 (1997)

Nature of Case: Challenge on First Amendment grounds to injunction aimed at protecting access to reproductive health care clinics. Three elements of the injunction were challenged: (1) a "fixed" buffer zone prohibiting all demonstration activity within 15 feet of the clinics' doorways, driveways, and parking lot entrances; (2) a "floating" zone prohibiting all demonstration activity within 15 feet of any person or vehicle entering or leaving the clinics; (3) "cease and desist" provisions, which allowed no more than two "sidewalk counselors" to approach patients within the buffer zones, but required them to stop "counseling" and withdraw outside the zones upon request.

Holding:

- The government interests in ensuring public safety and protecting a woman's freedom to seek pregnancy-related services justify properly tailored injunctions to secure unimpeded physical access to clinics.
- The Court upheld the 15 foot "fixed" buffer zone outside of abortion clinic doorways, driveways, and parking lot entrances as necessary to ensure safe access to the clinics.



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- The Court, however, struck down as unconstitutional the "floating buffer zone," because it burdened more speech than was necessary to achieve the governmental interest.
- The Court upheld the "cease and desist" provision because it allowed demonstrators to espouse their message outside of the zone and was necessary to address their previous harassing and intimidating behavior.

Hill v. Colorado, 530 U.S. 703 (2000)

Nature of Case: Challenge on First Amendment grounds to a Colorado statute that established an eight-foot "bubble zone" around anyone within 100 feet of a healthcare facility. This statute forbade individuals from knowingly approaching closer than eight feet another person who is within 100 feet of the entrance of a healthcare facility, without that person's consent, in order to leaflet, display a sign, or engage in protest, education, or counseling.

Holding:

- The statute does not violate the First Amendment because it does not regulate speech on the basis of content or viewpoint.
- The Court concluded that it was a reasonable time, place, and manner restriction that left open, ample, alternative means of communication.
- The Court reasoned that; (1) the eight-foot distance of separation required by the statute would not adversely affect the regulated speech because this is a normal conversational distance; (2) because the statute only bans "approaches," protesters are not liable if they stand still and others come within eight feet of them; and (3) the protester must "knowingly" approach, and the "knowingly" requirement protects against accidentally or unavoidably coming within eight feet of someone who is in motion.
- The Court also addressed the question of the legitimacy of the state's interest in enacting this type of restriction and found the state's interest in protecting the unwilling listener from persistent and dogged intrusions, particularly in situations that the listener cannot choose to avoid, to be legitimate.

Scheidler v. National Organization for Women ("Scheidler II and III"), 537 U.S. 393 and 547 U.S. 9 (2003 and 2006)

Nature of Case: National Organization for Women (NOW) sought to use the federal Racketeer Influenced and Corrupt Organizations (RICO) Act to sue anti-abortion organizations that engage in unlawful blockades and other harassment against reproductive health clinics. NOW argued that RICO is applicable because the unlawful actions constituted a nationwide conspiracy to eliminate access to abortion by using extortion and intimidation to drive the clinics out of business. After the Supreme Court held the suit could proceed even if the anti-abortion groups were not economically motivated (see *Scheidler I* (1994)), the case was remanded to the lower courts for further proceedings. A jury found defendants had violated RICO. Defendants appealed on the basis that they did not commit extortion because they did not obtain anything of value for themselves by interfering with the provision of medical services.

Holding:

- In *Scheidler II* (2003), the Supreme Court reversed, because defendants did not acquire property, their actions were not extortion under RICO.
- In *Scheidler III* (2006), the Court ruled that acts and threats of violence apart from extortion were not actionable under RICO.