



Major U.S. Supreme Court Rulings on Reproductive Rights

Cases Regarding the Right to Abortion

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

Nature of Case: Challenge to 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; created the trimester framework:

- During the first trimester of pregnancy, the state may not interfere.
- After the first trimester, the state may regulate to protect the woman's health.
- At the point of fetal viability, 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 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 requiring that abortions be performed only on Georgia residents.

Holding: Restrictions as to reason violate a woman's right to choose abortion as recognized in *Roe*; the residency requirement violates the Privileges and Immunities Clause.

***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.

***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 an exception must allow the banned procedure both because it is safer and because the woman's condition requires it.
- 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*, 550 U.S. 124 (2007)**

Nature of Cases: 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 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 statutory definition of the banned procedure is not vague and does not impose an undue burden because it does not reach "standard D&Es."
- Despite over 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 Ginsburg explained in her dissent, while no precedent was directly overruled, 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."



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- The Court left open that the ban could be challenged as applied “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 Abortion Access Restrictions

***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 perform certain recordkeeping and reporting.

Holding:

- Parental and spousal consent requirements are unconstitutional because they delegate to third parties an absolute veto power over the woman’s decision.
- Requiring a woman to certify that her consent is informed and freely given is constitutional, as are recordkeeping and reporting requirements.
- The ban on saline amniocentesis was struck down because it was the most commonly used abortion method after the first trimester 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 Equal Protection Clause is not violated when state Medicaid programs cover expenses associated with childbirth but refuse to fund non-therapeutic abortions.

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

Nature of Case: Regarding a court providing consent for a minor’s abortion in lieu of her parents (a “judicial bypass” or “judicial waiver”), a Massachusetts court found the law requires that: (a) a minor first attempt to obtain her parents’ consent before approaching the court; and (b) parents be notified when a minor files a petition with the court. The law also permits the judge to deny the minor’s petition if the procedure is found to be against the minor’s best interests.

Holding:

- The law is unconstitutional since it permits a third party to exercise an absolute veto over the minor’s right to an abortion.
- All minors must have an opportunity to approach a judge without first consulting their parents; 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 confidentially obtain an abortion if the abortion is in her best interests.

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 pregnant woman.

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

Nature of Case: Challenge to the Hyde Amendment, which bars the use of federal funds for abortions, except in cases of rape, incest, or to preserve the life of the pregnant woman.



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Holding: The restriction does not implicate a woman’s right to have an abortion as recognized in *Roe*. States participating in Medicaid are not required to use state funds to cover medically necessary abortions for which no federal funds are available.

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

Nature of Case: Challenge to an Ohio ordinance requiring: (a) a woman wait 24 hours between consenting to and receiving an abortion; (b) all abortions after the first trimester be performed in full-service hospitals; (c) minors under fifteen have parental or judicial consent; (d) specific information be given to a woman prior to an abortion, by the attending physician personally, 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 “the unborn child is a human life from the moment of conception”); and (e) fetal remains be disposed of “humanely.”

Holding: The ordinance is unconstitutional because it:

- a) fails to serve a state interest in protecting a woman’s health or ensuring informed consent;
 - b) interferes with a woman’s access to abortion services without protecting her health because the dilation 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 adequate judicial alternatives to parental involvement (see *Bellotti II*);
 - 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; intrudes on the physician’s judgment as to what is best for the individual woman; and forces giving information designed to dissuade the woman from having an abortion; and
 - e) is too vague regarding “humane” disposal 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: (a) all post-first-trimester abortions be performed in hospitals; (b) minors 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 hospital requirement is unconstitutional for the reasons stated in *Akron*. The remainder of the statute is constitutional because:

- a) the judicial bypass alternative conforms to the *Bellotti II* standard;
- b) requiring two doctors serves the state’s compelling interest in protecting a post-viable fetus; and
- c) pathology reports pose only a small financial burden on the woman and protect her health.

***Thornburgh v. Am. College of Obstetricians & Gynecologists*, 476 U.S. 747 (1986)**

Nature of Case: Challenge to Pennsylvania’s 1982 Abortion Control Act requiring: (a) a woman be given specific information before she has an abortion, including state-produced descriptions of the fetus; (b) physicians performing post-viability abortions use the method most likely to result in fetal survival unless it would cause a “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 abortion providers, with reports open for public inspection; and (e) one parent’s consent or a court order for a minor’s abortion.

Holding: The consent requirement is constitutional in accordance with *Bellotti II*. The remainder of the statute is unconstitutional because:

- a) requiring a woman be given such information is designed to dissuade her from having an abortion and interferes with the physician’s discretion;



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- b) method restrictions requires the woman to bear an increased risk to her health in order to maximize the chances of fetal survival;
- c) requiring two doctors does not make an exception for emergencies; and
- d) reporting requirements could lead to disclosure of the woman's identity.

In 1992, the Supreme Court overruled parts of this case (see *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 after 20 weeks gestational age.

Holding: The legislation was largely upheld, as follows:

- a) The declaration of when life begins is allowed. Five justices agreed there was insufficient evidence the declaration 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 public funds provision, accepting Missouri's assurance the provision would not restrict publicly employed healthcare professionals from providing full information about abortion to their clients.
- c) The provision barring the use of public facilities is allowed. The state may implement a policy favoring childbirth over abortion through such allocations of public resources.
- d) The provision requiring viability tests is allowed, as it does not require tests that would be "imprudent" or "careless" to perform.

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

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

Holding:

- The regulations are a reasonable interpretation of statutory prohibitions against the use of Title X funds in programs "where abortion is a method of family planning."
- The regulations do not violate the First Amendment or the right to an abortion because the government has "no obligation to subsidize the exercise of fundamental rights."
- 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 want 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 reaffirms a woman's right to choose abortion under *Roe*, but develops a new standard of review which allows restrictions on abortion prior to fetal viability as long as it does not constitute an "undue burden" on the right. A restriction is an "undue burden" when it has the purpose or effect of placing a substantial obstacle before a woman seeking an abortion.

- States can restrict post-viability abortion if laws include exceptions for the life and health of the pregnant woman.
- States can restrict pre-viability abortions in the following ways:
 - Provision of mandatory, state-sanctioned anti-abortion information;



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- Mandatory waiting periods;
- Reporting requirements for abortion clinics; and
- A one-parent consent requirement for minors that includes 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 requiring a parent be notified 48 hours before an abortion is provided to a minor. The district courts held the law unconstitutional because it did not provide an exception for medical emergencies.

Holding: The statute is unconstitutional because it lacks a medical emergency exception; however, the district courts may have gone too far striking down the entire law on that basis. The case was remanded to evaluate a more limited injunction.

Cases Regarding Anti-Choice Protestors

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

Nature of Case: Anti-abortion protesters sought—on First Amendment grounds—to overturn 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 ban on disruptive noise and the 36-foot buffer zone protecting clinic entrances and driveways are content-neutral measures that do not infringe on First Amendment rights.
- Florida has a valid interest in “protecting a woman's freedom to seek lawful medical or counseling services in connection with her pregnancy.” However, some portions of the injunction are broader than necessary to protect that interest, such as:
 - 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 on “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 an injunction aimed at protecting access to healthcare 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 and required them to withdraw outside the zones upon request.

Holding: The state interest in ensuring public safety and protecting a woman’s freedom to seek pregnancy-related services justifies properly tailored injunctions to secure unimpeded physical access to clinics. As such:

- a) the 15-foot “fixed” buffer zone outside of abortion clinic doorways, driveways, and parking lot entrances is necessary to ensure safe access to the clinics;
- b) the “floating buffer zone” is unconstitutional because it burdened more speech than was necessary to achieve the state interest; and
- c) the “cease and desist” provision is allowed as it permits demonstrators to espouse their message outside the zone and was necessary to stop harassing and intimidating behavior.



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***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 the entrance to a healthcare facility and prohibited approaching in order to leaflet, display a sign, or engage in protest, education, or counseling without that person’s consent.

Holding: The statute is content-neutral and, therefore, does not violate the First Amendment. Additionally:

- The restriction is reasonable as to time, place, and manner, and it leaves open ample alternative means of communication.
- The eight-foot distance of separation required by the statute would not adversely affect the regulated speech because this is a normal conversational distance.
- The statute bans only “approaches,” which means protesters are not liable if they stand still and others come within eight feet of them.
- The “knowingly” requirement protects against accidentally or unavoidably coming within eight feet of someone.
- The state’s interest in protecting the unwilling listener from persistent intrusions, particularly in situations the listener cannot choose to avoid, is legitimate.

***Scheidler v. NOW*, 547 U.S. 9 (2006)**

Nature of Case: A class action suit alleged anti-abortion protestors violated federal statutes prohibiting conspiracies to commit violence affecting commerce. The issue was whether violence done in furtherance of the plan or purpose must be related to robbery or extortion.

Holding: The anti-choice protestors’ activities were not violations because they did not relate to robbery or extortion. A limited reading of the federal statute at issue is appropriate, as a more expansive reading would go beyond legislative intent and federalize ordinary criminal behavior.