



Roe v. Wade: An Explainer

by Connor Semelsberger, M.P.P.

What Did *Roe v. Wade* Do?

The U.S. Supreme Court's *Roe v. Wade* decision of 1973 ruled that a right to abortion was protected under the Due Process Clause of the U.S. Constitution's Fourteenth Amendment.¹ This decision struck down many state abortion restrictions and severely limited the extent to which states could write their own laws concerning abortion.

Initially, the Court pegged the permissibility of abortions to the three trimesters of pregnancy:

- **First trimester:** States could not restrict abortion.
- **Second trimester:** Regulations designed to protect a pregnant woman's health, but not to further a state's interest in potential life, were permitted.
- **Third trimester:** States could completely outlaw abortion, except when "necessary to preserve the life or health of the mother."² (This health exception was later liberally interpreted to certify any mental health claim as medically necessary for an abortion in states that had restricted abortion in the third trimester.)

Under *Roe*, no restrictions on abortion were mandated in the second or third trimesters, and restrictions were forbidden in the first trimester. Abortion through all nine months of pregnancy was the default unless Congress or the individual states passed laws restricting it.

The *Planned Parenthood v. Casey* decision of 1992 did away with *Roe*'s trimester framework and created a new rule: a state could not impose an "undue burden" on a woman's attempt to obtain an abortion pre-viability (*i.e.*, the gestational age when a baby is generally considered capable of surviving outside the mother's womb).³

What Did Overturning *Roe* and *Casey* Do?

On June 24, 2022, the U.S. Supreme Court overturned *Roe* and *Casey* in *Dobbs v. Jackson Women's Health Organization*, holding that the Court's 1973 ruling was incorrect and that "[t]he Constitution does not confer a right to abortion."⁴ *Dobbs* returned the ability to write laws concerning abortion to where it was before *Roe*—the people's elected representatives. Currently, some states allow abortion procedures in most or all circumstances, while others protect unborn life at certain points during pregnancy (*e.g.*, conception, fetal heartbeat, point of viability).⁵

What Would Codifying *Roe* Do?

Congress could "codify *Roe*" by voting to make legal abortion through all nine months of pregnancy a federal statute. This statute would have governing power over all the states, and all existing state protections for the unborn would most likely be repealed. Congress has considered the Women's Health Protection Act,⁶ a bill that would not only codify *Roe* but force states that pass laws protecting life after the point of viability to get them precleared with the U.S. Department of Justice. States would still be able to pass legislation protecting life after the point of viability (generally set at 24 weeks gestation), but these laws would have to pass an even higher threshold in the courts than before.

"But Overturning *Roe v. Wade* Was Undemocratic. The Majority of Americans Supported *Roe*."

It is true that polls indicated some level of support for *Roe*. Results vary, but it is safe to say that between 65 and 75 percent of Americans did not want to see *Roe* overturned. However, polls show a greater variation in Americans' opinions when it comes to abortion itself, indicating that many are

unaware of what *Roe* actually entailed. A mere eight percent of Americans think that abortions should be permitted during the third trimester of pregnancy (Harvard CAPS and Harris).⁷ Seventy-one percent believe abortion should only be permitted during the first three months of pregnancy, in limited cases, or not at all (Marist and the Knights of Columbus).⁸ Clearly, many Americans do not understand that one of the core tenets of *Roe* is legal abortion until birth. This lack of understanding results in much higher support for *Roe* than would otherwise be expected based on how Americans feel about abortion in general.

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¹ *Roe v. Wade*, 410 U.S. 113 (1973).

² *Ibid.*

³ *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

⁴ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ____ (2022).

⁵ “Pro-Life Laws in the States: Post-*Roe*,” Family Research Council, accessed October 14, 2022, <https://www.frc.org/prolifemaps>.

⁶ Women’s Health Protection Act, H.R.3755, 117th Cong. (2021-2022).

⁷ Max Greenwood, “Poll: Nearly half of Americans say Supreme Court should uphold *Roe v. Wade*,” *The Hill*, May 31, 2019, <https://thehill.com/policy/healthcare/446367-poll-nearly-half-of-americans-say-supreme-court-should-uphold-roe-v-wade/>.

⁸ “Americans’ Opinions on Abortion, January 2022,” Knights of Columbus, accessed October 14, 2022, <https://www.kofc.org/en/resources/communications/marist-polling-slide-deck2022.pdf?bcs-agent-scanner=bb0315a0-2161-a34c-9bfa-4fa4cf219a9a>.