



Roe v. Wade: An Explainer

What Did *Roe v. Wade* Do?

The *Roe v. Wade* Supreme Court decision of 1973 ruled that abortion is protected under the U.S. Constitution, striking down many state abortion restrictions and severely limiting the extent to which states could write their own abortion laws.

The Court pegged the permissibility of abortions to the three trimesters of pregnancy:

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

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

The *Planned Parenthood v. Casey* Supreme Court decision of 1992 did away with *Roe*'s trimester framework and created a new rule: a state cannot impose an "undue burden" on a woman's attempt to obtain an abortion pre-viability.

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

If the Supreme Court ever overturned *Roe* and *Casey*, the question of abortion legality would most likely return to where it was before *Roe*—the individual states. Some states would likely allow abortion procedures in most or all circumstances, while others would likely restrict abortion or even completely outlaw it, except in cases when it is necessary to save the life of the mother.

One unlikely scenario is the Supreme Court ruling that unborn persons possess constitutional rights under the 14th Amendment.

What Would Codifying *Roe* into Law Do?

If *Roe* were codified into law, it would be a federal statute that has governing power over all the states. All existing state abortion restrictions would most likely be repealed. States would still be able to pass legislation that restricts abortion 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.

“But overturning *Roe v. Wade* would be undemocratic. The majority of Americans support *Roe*.”

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

A mere eight percent of Americans think that abortions should be permitted during the third trimester of pregnancy ([Harvard CAPS and Harris](#)). Multiple polls suggest that most Americans oppose abortion after only five months of pregnancy. Polls by [Marist and the Knights of Columbus](#), [Reuters and Ipsos](#), and [Quinnipiac University](#) showed opposition to abortion past five months at 55 percent, 58 percent, and 49 percent, respectively. Clearly, Americans do not understand the extent to which *Roe v. Wade* liberalized abortion laws, resulting in much more apparent support for the 1973 Supreme Court decision than otherwise would be expected.

Overturing *Roe* would be the best way to achieve abortion legislation aligned with the will of the American people. The right to decide on abortion restrictions belongs with the states, where citizens can use their votes to elect people who best represent them and their views. As long as the issue of abortion remains in the hands of nine unelected Supreme Court justices, any hope for pluralism in American society regarding the subject is lost. Considering the diversity of opinion among Americans, there should be room for diversity in the laws that govern them.

“Why should moderately pro-choice voters reject the Democratic Party’s platform on abortion?”

The Democratic Party has a very extreme stance on abortion that does not align with the views of most Americans or even most Democrats. Democratic politicians have stated that, if given the opportunity, they would codify *Roe* into law. The codification of *Roe* would be anti-democratic, as it would not allow moderate or pro-life states to enact abortion laws as they see fit.