JUSTIA

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

Justia Opinion Summary and Annotations

Annotation

Primary Holding

A person may choose to have an abortion until a fetus becomes viable, based on the right to privacy contained in the Due Process Clause of the Fourteenth Amendment. Viability means the ability to live outside the womb, which usually happens between 24 and 28 weeks after conception.

Facts

The law in Texas permitted abortion only in cases involving rape or incest. When Dallas resident Norma McCorvey found out that she was pregnant with her third child, she tried to falsely claim that she had been raped and then to obtain an illegal abortion. Both of these efforts failed, and she sought the assistance of Linda Coffee and Sarah Weddington, who filed a claim using the alias Jane Roe for McCorvey. (The other named party, Henry Wade, was the District Attorney for Dallas County.)

McCorvey gave birth to her child before the case was decided, but the district court ruled in her favor based on a concurrence in the 1965 Supreme Court decision of Griswold v. Connecticut, written by Justice Arthur Goldberg. This concurrence had found that there was a right to privacy based on the Ninth Amendment of the Constitution. However, the district court refrained from issuing an injunction to prevent the state from enforcing the law, leaving the matter unresolved.

Attorneys

- Linda Coffee (plaintiff)
- Sarah Weddington (plaintiff)
- Jay Floyd (defendant)

Issues & Holdings

Issue: Whether a plaintiff still has standing to bring a case based on her pregnancy once she has given birth.
Holding: Yes. The mootness doctrine does not bar her case from being heard, even though this individual plaintiff's position would no longer be affected, and she did not have an actual case or controversy. This situation fits within the exception to the mootness rule that covers wrongs that are capable of repetition yet evading review. Most cases are not heard through to appeal in a period shorter than a pregnancy, so strictly applying the mootness doctrine would prevent these issues from ever being resolved.

Opinions

Majority

- Harry Andrew Blackmun (Author)
- Warren Earl Burger
- William Orville Douglas
- William Joseph Brennan, Jr.
- Potter Stewart
- Thurgood Marshall
- Lewis Franklin Powell, Jr.

The majority found that strict scrutiny was appropriate when reviewing restrictions on abortion, since it is part of the fundamental right of privacy. Blackmun was uninterested in identifying the exact part of the Constitution where the right of privacy can be found, although he noted that the Court had previously located it in the Fourteenth rather than the Ninth Amendment. The opinion applied a controversial trimester framework to guide judges and lawmakers in balancing the mother's health against the viability of the fetus in any given situation. In the first trimester, the woman has the exclusive right to pursue an abortion, not subject to any state intervention. In the second trimester, the state cannot intervene unless her health is at risk. If the fetus becomes viable, once the pregnancy has progressed into the third trimester, the state may restrict the right to an abortion but must always include an exception to any regulation that protects the health of the mother. The Court, which included no female Justices at the time, appears to have been confused about the differences between the trimester framework and viability, which are not necessarily interchangeable.

It is interesting to note that Blackmun was particularly invested in this case and the opinion, since he had worked at the Mayo Clinic in Minnesota during the 1950s and researched the history of abortions there. This may explain why he framed the opinion

largely in terms of protecting the right of physicians to practice medicine without state interference (e.g., by counseling women on whether to pursue abortions) rather than the right of women to bodily autonomy.

Dissent

- Byron Raymond White (Author)
- William Hubbs Rehnquist

White criticized the majority's arbitrary choice of a rigid framework without any constitutional or other legal foundation to support it. He believed that this aggressive use of judicial power exceeded the Court's appropriate role by taking away power that rested with state legislatures and essentially writing laws for them. White argued that the political process was the appropriate mechanism for seeking reform, rather than letting the Court decide whether and when the mother should be a higher priority than the fetus.

Dissent

- William Hubbs Rehnquist (Author)

Rehnquist expanded on the historical elements of White's argument. He researched 19th-century laws on abortion and the status of the issue at the time of both the Founding and the Fourteenth Amendment. His originalist approach led him to conclude that state restrictions on abortion were considered valid at the time of the Fourteenth Amendment, so its drafters could not have contemplated creating rights that conflicted with it.

Concurrence

- William Orville Douglas (Author)

More concerned with doctrinal sources than Blackmun, Douglas pointed out more forcefully that the Fourteenth Amendment rather than the Ninth Amendment is the appropriate source of the right of privacy.

Concurrence

- Potter Stewart (Author)

Stewart argued that the right of privacy was specifically rooted in the Due Process Clause of the Fourteenth Amendment.

Concurrence

- Warren Earl Burger (Author)

Burger felt that two physicians rather than one should be required to agree to a woman's request for an abortion.

Case Commentary

The Court was praised in many circles for its progressive attitude toward evolving social trends, even though the decision was framed in paternalistic language and seemed more focused on protecting physicians than women. However, many commentators have viewed its decision as a prime example of judicial "activism," a term that refers to when the Court is seen to infringe on the authority of other branches of government.. A magnet for controversy to the current day, Roe has been challenged consistently and lacks support from many current members of the Court. The trimester framework proved less workable than the majority had hoped, and decisions such as Planned Parenthood v. Casey have eroded what initially seemed like a sweeping statement in favor of women's rights. Many states that oppose Roe have enacted laws that will go into effect in the event that it is overturned.

Ironically, Norma McCorvey later repudiated her advocacy of the abortion cause and became a pro-life activist, arguing that abortion should be illegal.

Syllabus Case

U.S. Supreme Court

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

Roe v. Wade

No. 70-18

Argued December 13, 1971

Reargued October 11, 1972

Decided January 22, 1973

410 U.S. 113

Syllabus

A pregnant single woman (Roe) brought a class action challenging the constitutionality of the Texas criminal abortion laws, which proscribe procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life. A licensed physician (Hallford), who had two state abortion prosecutions pending against him, was permitted to intervene. A childless married couple (the Does), the wife not being pregnant, separately attacked the laws, basing alleged injury on the future possibilities of contraceptive failure, pregnancy, unpreparedness for parenthood, and impairment of the wife's health. A three-judge District Court, which consolidated the actions, held that Roe and Hallford, and members of their classes, had standing to sue and presented justiciable controversies. Ruling that declaratory, though not injunctive, relief was warranted, the court declared the abortion statutes void as vague and overbroadly infringing those plaintiffs' Ninth and Fourteenth Amendment rights. The court ruled the Does' complaint not justiciable. Appellants directly appealed to this Court on the injunctive rulings, and appellee cross-appealed from the District Court's grant of declaratory relief to Roe and Hallford.

Held:

1. While 28 U.S.C. § 1253 authorizes no direct appeal to this Court from the grant or denial of declaratory relief alone, review is not foreclosed when the case is properly before the Court on appeal from specific denial of injunctive relief and the arguments as to both injunctive and declaratory relief are necessarily identical. P. 123.

2. Roe has standing to sue; the Does and Hallford do not. Pp. 123-129.

(a) Contrary to appellee's contention, the natural termination of Roe's pregnancy did not moot her suit. Litigation involving pregnancy, which is "capable of repetition, yet evading review," is an exception to the usual federal rule that an actual controversy

[114]

must exist at review stages, and not simply when the action is initiated. Pp. 124-125.

(b) The District Court correctly refused injunctive, but erred in granting declaratory, relief to Hallford, who alleged no federally protected right not assertable as a defense against the good faith state prosecutions pending against him. *Samuels v. Mackell*, 401 U. S. 66. Pp. 125-127.

(c) The Does' complaint, based as it is on contingencies, any one or more of which may not

occur, is too speculative to present an actual case or controversy. Pp. 127-129.

3. State criminal abortion laws, like those involved here, that except from criminality only a life-saving procedure on the mother's behalf without regard to the stage of her pregnancy and other interests involved violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Though the State cannot override that right, it has legitimate interests in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of the woman's approach to term. Pp. 147-164.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. Pp. 163, 164.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health. Pp. 163, 164.

(c) For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. Pp. 163-164; 164-165.

4. The State may define the term "physician" to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined. P. 165.

5. It is unnecessary to decide the injunctive relief issue, since the Texas authorities will doubtless fully recognize the Court's ruling

[115]

that the Texas criminal abortion statutes are unconstitutional. P. 166.

314 F. Supp. 1217, affirmed in part and reversed in part.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C.J., and DOUGLAS, BRENNAN, STEWART, MARSHALL, and POWELL, JJ., joined. BURGER, C.J., *post,* p. 410 U. S. 207, DOUGLAS, J., *post,* p. 209, and STEWART, J., *post,* p. 167, filed concurring opinions. WHITE, J., filed a dissenting opinion, in which REHNQUIST, J.,

joined, *post,* p. 221. REHNQUIST, J., filed a dissenting opinion, *post,* p. 171.

Oral Argument - December 13, 1971

Oral Reargument - October 11, 1972