

Roe v. Wade

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Introduction

Roe v. Wade was one of the most controversial court cases in our country's history that led to the U.S. decision to legalize abortion in all states. The case was first argued in December of 1971 and a decision was not reached by the Supreme Court until January 22nd, 1973.

Background

The main issue in this case was whether or not a state can make it a crime to abort a baby. This was a very controversial issue at the time and it still is today. There are those who are "pro-life" and those who are "pro-choice". If someone is pro-life, then they believe that abortion should be illegal and that the life of an unborn baby is equal to that of any other human. If somebody is pro-choice, then they believe that since the baby is inside the woman's body, that the woman has the right to decide whether or not the baby lives. Each side had good points to support their opinions which is why this was and still is such a controversial issue.

This issue starts with abortion laws themselves and how they have changed throughout our history. Abortion has always been a touchy subject for Americans throughout our history. Before we became our own country in 1776, women were allowed abortions in the first weeks of pregnancy if they wished for it.¹ However, state legislatures started to outlaw abortions in the mid-19th century. By the time the 20th century rolled around, abortions were illegal in every state, however some states would

¹ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=152677&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

allow it if the mother's life was in danger.² Even though these laws were in place, women continued to perform abortions in secret, which put them at risk considering the abortion could only be done under dangerous circumstances. Because of this, some women would try to lie about being raped in order to obtain a legal and safe abortion.³

Main Conflict

In the September of 1969, Norma McCorvey was working as a carnival show barker. It was during this time that she learned that she was pregnant for the third time. Because of this she decided to go back to Dallas. At this point in her life she had no job and was starting to become severely depressed. She was out of money and decided it would be best for her to seek an abortion.⁴ The only problem for her was that abortions were illegal. At the time, abortions were only legal in the state of Texas if the mother's life was in danger.⁵ However, what she did not know was that in the case of rape or incest, there was an exception regarding the laws surrounding abortion. She was told by her friends that in the case of rape or incest, an abortion could be legally and safely performed. After gaining knowledge of this information, her friends told her to lie and say that she had been raped. This plan didn't work due to the fact that there were no existing police reports of the "rape". She began to become desperate and decided to seek out an illegal abortion clinic. When she found it she discovered that it had been shut down by the police and was now abandoned. All that remained besides the

²"Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=152677&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

³"Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=152677&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

⁴ "Roe v. Wade." *West's Encyclopedia of American Law*. *Encyclopedia.com*. 14 Feb. 2018 <<http://www.encyclopedia.com>>.

⁵ "Roe v. Wade." *West's Encyclopedia of American Law*. *Encyclopedia.com*. 14 Feb. 2018 <<http://www.encyclopedia.com>>.

abandoned building were dirty instruments scattered around the room and dried blood on the floor.⁶

It was at this point that she decided to take the issue to court. The suit was brought in 1969 by Norma McCorvey. She was under the alias Jane Roe to keep her identity a secret.⁷ There were several reasons why she decided to stay anonymous. She was afraid that the unwanted attention would be bad for her five year old daughter. Her parents were also against abortion, and she had lied about being raped and didn't want publicity for that. Because of wanting to stay anonymous, she didn't participate in any court hearings. She was eventually referred to two attorneys by the names of Sarah Weddington and Linda Coffee. Both women were young attorneys that were looking for a plaintiff to challenge the Texas abortion law.⁸ Weddington understood McCorvey's plight, because she had to go to Mexico to get an abortion back in the 1960's. McCorvey settled to take part in a lawsuit against the Dallas district attorney, Henry Wade, stating that she had the right to abort her baby according to the rights guaranteed in the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.⁹

Despite the fact that McCorvey wanted the suit to be done with in time for her to get an abortion, she said to her attorneys "Let's do it for other women." She wanted to do this not only for herself, but on behalf of all pregnant women against Texas district

⁶ "Roe v. Wade." *West's Encyclopedia of American Law*. . *Encyclopedia.com*. 14 Feb. 2018 <<http://www.encyclopedia.com>>.

⁷ "Roe v. Wade." *West's Encyclopedia of American Law*. . *Encyclopedia.com*. 14 Feb. 2018 <<http://www.encyclopedia.com>>.

⁸ "Roe v. Wade." *West's Encyclopedia of American Law*. . *Encyclopedia.com*. 14 Feb. 2018 <<http://www.encyclopedia.com>>.

⁹ "Roe v. Wade." *West's Encyclopedia of American Law*. . *Encyclopedia.com*. 14 Feb. 2018 <<http://www.encyclopedia.com>>.

attorney Henry Wade. Finally, on March 3rd, 1970, Roe was filed in court. At this point Roe was 6 months (roughly 24 weeks) into her pregnancy.¹⁰

McCorvey's two attorneys, Coffee and Weddington, charged that the 1859 Texas anti-abortion law (which stated that an abortion could only be legally performed if the mother's life was in danger) was unconstitutional. Coffee's and Weddington's argument was partially based on the Fourteenth Amendment's due process clause. The Fourteenth Amendment due process clause states and reassures that every single citizen receive equal protection under the law, and it also states that laws all are required to be written clearly.¹¹ This may not seem like it has a lot to do with abortion laws, but it does. A lot of times, when physicians were being charged with performing illegal abortions, they would often claim that any laws stating abortion was illegal with the exception of the mother's life being in danger were not precise enough, or too vague, to be interpreted, thus violating the Fourteenth Amendment. During the second argument of the case Sarah Weddington stated "if the state could show that the fetus was a person under the Fourteenth Amendment or under some other amendment or part of the constitution, then you would have the situation of trying-- you would have a state compelling interest, which, in some instances, can outweigh a fundamental right."

¹²However, this is not what Coffee and Weddington based the bulk of their argument off

¹⁰ "Roe v. Wade." *West's Encyclopedia of American Law*. . *Encyclopedia.com*. 14 Feb. 2018 <<http://www.encyclopedia.com>>.

¹¹ Cullen-DuPont, Kathryn. "Roe v. Wade." *Encyclopedia of Women's History in America, Second Edition*, Facts On File, 2000. *American History*, online.infobase.com/Auth/Index?aid=152677&itemid=WE52&articleId=163854. Accessed 14 Feb. 2018.

¹² https://apps.oyez.org/player/#/burger3/oral_argument_audio/16650 Roe v. Wade Oral Reargument - October 11, 1972

of. They were much more intrigued in affirming a woman's sacred right to make her decisions about pregnancy on her own, they decided it would be best to base their argument primarily off of the Ninth Amendment, which stated "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people".¹³

For the majority of our country's history, courts have interpreted this as giving to the states any rights that the Constitution did not grant specifically to the federal government. However, a controversy regarding this surfaced in 1965. In 1965 Justice William O. Douglas' decision regarding the *Griswold v. Connecticut* birth control case states quite clearly that the people, instead of the states, possess all rights not specifically taken account of in the constitution and one of those rights was the right to privacy.¹⁴ Coffee and Weddington argued that the right to privacy decided in this case also applied when it came to pregnancies. They firmly believed that a woman's right to privacy included her right to whether or not she had the right to legally terminate an unborn fetus. As for the state's position on the matter, the state stated that the right that an unborn child has to it's life is greater than a woman's right to privacy. Eventually, on

¹³Cullen-DuPont, Kathryn. "Roe v. Wade." *Encyclopedia of Women's History in America, Second Edition*, Facts On File, 2000. *American History*, online.infobase.com/Auth/Index?aid=152677&itemid=WE52&articleId=163854. Accessed 14 Feb. 2018.

¹⁴ Cullen-DuPont, Kathryn. "Roe v. Wade." *Encyclopedia of Women's History in America, Second Edition*, Facts On File, 2000. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=163854. Accessed 14 Feb. 2018.

June 17, 1970, the Fifth Circuit Court issued a decision in favor of Jane Roe, stating that the Texas laws outlawing abortion were unconstitutional.¹⁵

Despite the fact that the Fifth Circuit Court said that the Texas laws stating abortion was illegal were unconstitutional, the state of Texas was not ordered or forced to stop enforcing the law.¹⁶ This did not please Coffee, Weddington, or Roe. It caused them to appeal immediately to the United States Supreme Court, which accepted their case and agreed to hear it.

Compromise

In 1971, the case was filed by Norma McCorvey, known in court documents as Jane ROE against Henry WADE, the district attorney of Dallas County from 1951 to 1987, who enforced a Texas law that prohibited abortion, except to save a woman's life.¹⁷ The Supreme Court heard the case, but the Court had two empty spots because of Republican John M. Harlan's death and the retirement of Democrat Hugo L. Black.¹⁸ The Chief Justice at the time, Chief Justice Burger, did not think this was a good time to hear the case due to these circumstances. He felt uncomfortable deciding a case that

¹⁵ Cullen-DuPont, Kathryn. "Roe v. Wade." *Encyclopedia of Women's History in America, Second Edition*, Facts On File, 2000. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=163854. Accessed 14 Feb. 2018.

¹⁶ Cullen-DuPont, Kathryn. "Roe v. Wade." *Encyclopedia of Women's History in America, Second Edition*, Facts On File, 2000. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=163854. Accessed 14 Feb. 2018.

¹⁷ *Roe v. Wade Fast Facts*. www.cnn.com/2013/11/04/us/roe-v-wade-fast-facts/index.html.

¹⁸ Purdy, Elizabeth. "Roe v. Wade." *Encyclopedia of the Supreme Court*, Facts On File, 2005. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=164486. Accessed 14 Feb. 2018.

could have a massive impact on our society with a court that wasn't complete and decided it would be best to wait until nominees Democrat Lewis Powell and Republican William Rehnquist were added to the Court.

On October 11, 1972, with both vacant spots on the Supreme Court no longer empty, the case was argued a second time.¹⁹ Approximately three months later, on January 22, 1973, the case had been decided by the Burger Court. The Court ruled 7-2 in favor of Roe and in doing so extended the right to personal privacy in sexual matters which had been established originally in the *Griswold v. Connecticut* case.²⁰

Aftermath

The decision that the Supreme Court made in the *Roe v. Wade* case had a huge impact on our society, and it was considered a bombshell. Even those who supported abortion admitted that they were surprised by the outcome of the situation, which completely scrapped all state laws that regulated abortion, even including some of the more liberal states like New York.²¹ American citizens and politicians were divided into two groups, those who were "pro-life" and those who were "pro-choice".

¹⁹ Purdy, Elizabeth. "Roe v. Wade." *Encyclopedia of the Supreme Court*, Facts On File, 2005. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=164486. Accessed 14 Feb. 2018.

²⁰ Purdy, Elizabeth. "Roe v. Wade." *Encyclopedia of the Supreme Court*, Facts On File, 2005. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=164486. Accessed 14 Feb. 2018.

²¹ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

The most immediate effect of *Roe v. Wade* was a noticeably sharp increase in abortions. One year prior to *Roe v. Wade*, about 500,000 abortions were performed in states that liberalized abortion laws.²² According to an ABC News report on January 22nd, 1973, more than 450,000 abortions were performed in the two years prior to the *Roe v. Wade* decision.²³ Six years after, the yearly rate had doubled, with approximately one million abortions being performed each year.²⁴ By the time the late 1980's rolled around, almost one and a half million abortions were taking place in America annually.²⁵ About a third of pregnancies were ending with abortions, which had also become the most common surgical procedure for young women, and 87% of those abortions took place during the first trimester of pregnancy.²⁶

While most people who were pro-life limited their efforts against abortion to judicial or legislative channels, a considerable amount of them started to become more and more hostile to clinic workers. They would often engage in verbal harassment or

²² "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

²³ ARCHIVAL VIDEO: U.S. Supreme Court Rules on *Roe v. Wade* in 1973.

abcnews.go.com/Politics/video/archival-video-us-supreme-court-rules-roe-wade-43523300.

²⁴ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

²⁵ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

²⁶ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

engagement, and on some occasions would resort to violence. In the years between 1977 and 1987, there were 208 clinics that reported bomb threats, there were 78 clinics that ended up getting bombed or set on fire, and 60 clinic workers had received death threats.²⁷ In 1993, that violence turned lethal. David Gunn, an abortion doctor, was murdered outside of an abortion clinic by Michael Griffin in Pensacola, Florida.²⁸ In August, another abortion doctor by the name of George Tiller was wounded in Wichita, Kansas.²⁹ Aside from these acts of violence, there were also some Supreme Court cases that restricted abortion such as *Harris v. McRae*, *Webster v. Reproductive Health Services*, *Rust v. Sullivan*, and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.³⁰

For many people, abortion is basically just a moral issue.³¹ Someone might think it's wrong due to their personal beliefs, religion, or vice versa. Because of this, many

²⁷ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

²⁸ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

²⁹ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

³⁰ "Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 14 Feb. 2018.

³¹"Abortion Debate." Wikipedia, Wikimedia Foundation, 3 Mar. 2018, en.wikipedia.org/wiki/Abortion_debate.

believe that the controversy surrounding abortion in our country may never be solved,
and only time will tell with an issue like this.

Appendix

The following picture shows a group of pro-life activists protesting abortion.



Bibliography

Primary Sources-

ARCHIVAL VIDEO: U.S. Supreme Court Rules on Roe v. Wade in 1973.

abcnews.go.com/Politics/video/archival-video-us-supreme-court-rules-roe-wade-43523300.

This source was helpful in my research because it provided important statistics and other information that I could not find anywhere else.

Associated Press, 31 Aug. 2015, 11:12,

www.businessinsider.com/ap-judge-sides-with-anti-abortion-group-in-birth-control-suit-2015-8.

This picture showed how certain people protest, which helped me understand more about my topic.

https://apps.oyez.org/player/#/burger3/oral_argument_audio/16650 Roe v. Wade Oral Reargument - October 11, 1972

This helped because I was able to hear the actual words that were heard in court. I doubt there are many other places where I could've found this and it was extremely helpful because I could put in the exact words that they said, making it as historically accurate as possible.

Secondary Sources-

"Abortion Debate." Wikipedia, Wikimedia Foundation, 3 Mar. 2018,
en.wikipedia.org/wiki/Abortion_debate.

It listed reasons on why abortion was and still is controversial, which was helpful in my conclusion.

Cullen-DuPont, Kathryn. "Roe v. Wade." *Encyclopedia of Women's History in America, Second Edition*, Facts On File, 2000. *American History*, online.infobase.com/Auth/Index?aid=152677&itemid=WE52&articleId=163854. Accessed 26 Feb. 2018.

This source provided a lot of background on the case and I was able to learn much more about how the case got to court.

Roe v. Wade Fast Facts. www.cnn.com/2013/11/04/us/roe-v-wade-fast-facts/index.html.

This source provided a few little facts about McCorvey and her lawyers.

"Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=152677&itemid=WE52&articleId=1009508. Accessed 13 Feb. 2018.

This source provided a lot of background information on abortion laws in our country, and how they have changed throughout history. It also talked about how women obtained illegal abortions.

"Roe v. Wade ." *Issues & Controversies in American History*, Infobase, 2015. *American History*, online.infobase.com/Auth/Index?aid=103398&itemid=WE52&articleId=1009508. Accessed 5 Mar. 2018.

This source provided a lot of information on the aftermath of Roe v. Wade and how it affected our society.

"[Roe v. Wade](#)." *West's Encyclopedia of American Law*. . *Encyclopedia.com*. 26 Feb. 2018

This source provided a lot of information on McCorvey's background and why she wanted an abortion and why she took the case to court

Purdy, Elizabeth. "Roe v. Wade." *Encyclopedia of the Supreme Court*, Facts On File, 2005. *American History*,
online.infobase.com/Auth/Index?aid=152677&itemid=WE52&articleId=164486. Accessed 27 Feb. 2018.

This source provided a lot of information about the Supreme Court hearings, and why it was argued a second time.