

THE UNITED STATES SUPREME COURT ON ABORTION

The United States Supreme Court's main decisions on abortion were the Roe v. Wade decision and its companion, Doe v. Bolton, both promulgated on January 22, 1973. These decisions permit abortion for virtually any reason throughout the nine months of pregnancy. This is clear from the following quotes in the summary of the decisions themselves. All of the quotes come from the journal, *United States Supreme Court Reports*. The numbers and letters given after the name of the decision refer to the specific edition of the journal, which may be read in any major public or university library.

ROE v. WADE 35 L Ed 2d 147

(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.

(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.

(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 it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." (Pp. 183-184)

DOE v. BOLTON 35 L Ed 2d 201

"We agree with the District Court, 319 Supp, at 1058, that the medical judgment may be exercised in the light of all factors – physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient. All these factors may relate to health." (Pg. 212)

Comment: Note that in Roe v. Wade the Supreme Court said the state(s) may proscribe (forbid) abortion after viability. It did not say must proscribe. Hence, as far as the Court is concerned, no state need do so. Furthermore, even proscribing abortion after viability is not allowed if the abortion is necessary "for the preservation of the life or health of the mother." Health is defined so broadly in Doe v. Bolton that abortion is available for virtually any reason, even after viability, since it is the woman seeking the abortion and the abortionist who decide whether the pregnancy adversely affects her health. This is why pro-choice groups always seek a "health" exception to any legislation put forth by pro-life groups, and why pro-life groups oppose such exceptions. (In Roe v. Wade, the Court defined viability by saying, "Viability is usually placed at about seven months [28 weeks] but may occur earlier, even at 24 weeks.") (Page 181). A normal pregnancy lasts about 40 weeks.

In its 1992 Planned Parenthood v. Casey decision, the Court made it clear that no state or other governmental unit in the U.S. may prohibit abortion prior to viability. Moreover, it reaffirmed Roe v. Wade's third trimester ruling. The Court said:

PLANNED PARENTHOOD V. CASEY 120 L Ed 2d 674

"We reject the rigid trimester framework of Roe v. Wade." (Pp. 715-716)

" ... a state may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." (Page 716)

"We also reaffirm Roe's holding that 'subsequent to viability, the State may, if it chooses, regulate, and even proscribe abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'" (Page 716)

Comment: Again, given the broad definition of health, it is virtually impossible to outlaw abortion itself at any stage of pregnancy. A study of abortion polls over more than 30 years demonstrates that a majority of the American public has never approved of this policy. The only time that a majority of the public appears to agree with the Court's ruling is when the pollsters misleadingly describe the Court's decision as "permitting abortion in the first three months of pregnancy," and stop there, as though it did not permit abortion beyond the first trimester.*

GONZALES V. CARHART 550 U.S. (Syllabus) 2007

In a fourth major ruling (there are several other rulings) promulgated in April, 2007, the Supreme Court upheld the constitutionality of the federal "Partial Birth Abortion Ban Act of 2003." This act banned a particular abortion procedure known as partial birth abortion, which is usually performed after the first trimester, and even post-viability. However, late-term abortions can still be performed using other procedures, as long as the woman and the abortionist agree that the pregnancy adversely affects her health, as broadly defined in *Doe v. Bolton*.

*See Raymond J. Adamek, *Thirty-Plus Years of Abortion Polls: What Have We Learned?* New York: Ad Hoc Committee in Defense of Life, 2002, and Adamek, "American Public Opinion Regarding Late Term Abortion," (Unpublished manuscript), May, 2009.

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