Abortion and the Supreme Court

On January 22, 1973, the U.S. Supreme Court in two separate decisions (Roe v. Wade and Doe v. Bolton), ruled that any state abortion law in the future would not be allowed to prohibit previable abortions and would allow abortions throughout all nine months of pregnancy for "health" reasons. These two decisions led to the legalization of abortion on demand throughout the entire United States and prevented prolife states from restricting abortion with the exception of some modest regulations on the practice. Over the next 50 years, over 62 million unborn children died from abortion. The following court cases outline the abortion jurisprudence that followed the Roe and Doe opinions. However, with the Dobbs decision handed down on June 24, 2022, Roe, Doe, and Casey were overruled sending the abortion decision to elected members of the legislature to decide.

Planned Parenthood Association of Central Missouri v. Danforth, July 1976
As a result of the Danforth ruling, a wife may obtain an abortion without her husband's consent and, in most instances, even without his knowledge. Another result of the Court's ruling in the Danforth case is that all state laws requiring the parents' consent before an abortion is performed on their minor daughter are now invalid.

In addition, states may not prohibit the use of a particular type of abortion method nor require doctors to take as much care to save the life of an aborted baby as if the baby were born prematurely. This decision was decided by votes of 6-3 and 5-4 with Blackmun writing the opinion and dissention by Chief Justice Burger, Justices White and Rehnquist and Justice Stevens in part.

Maher v. Doe, Beal v. Doe, June 1977
It is constitutional for a state not to fund non-therapeutic abortions under the Medicaid program; decided by a 6-3 vote with Powell writing the opinion and Brennan, Marshall and Blackmun dissenting.

Poelker v. Doe, 1977
A city may choose to provide publicly financed hospital services for childbirth but may choose to bar abortions in its public hospitals. Decided by a 6-3 vote with Brennan, Marshall and Blackmun dissenting.

Colautti v. Franklin, 1979
A state may not require doctors doing abortions to protect the life of the fetus whenever they have reason to believe it might survive the abortion. Decided by 6-3 vote with Blackmun writing the opinion and Burger, White and Rehnquist dissenting.

Bellotti v. Baird, Hunerwald v. Baird, 1979
A state may not require parental consent or judicial approval for an abortion for an unmarried minor. However, five justices stated they would accept some form of parental notification. Decided by 8-1 vote with White dissenting.

McRae v. Secretary of HEW, Zbaraz v. Quern (Williams), 1980
There is nothing unconstitutional about the Hyde Amendment; the federal government may refuse to pay for most abortions for welfare women. In addition, states are under no obligation to pay for such abortions if federal funds for reimbursements are withdrawn. Decided by a 5-4 vote with Stewart writing the decision and Brennan, Blackmun, Marshall and Stevens dissenting.

H.L. v. Matheson, 1981
The court upheld a Utah statute requiring that the parents of a minor be informed by a physician, "if possible," before he performs an abortion upon her. Decided by a 6-3 vote with Chief Justice Burger writing the decision and Marshall, Brennan and Blackmun dissenting.

Planned Parenthood Association of Kansas City, Missouri v. Ashcroft and City of Akron v. Akron Center for Reproductive Health, June 15, 1983
The Supreme Court ruled as unconstitutional the requirement that abortions after 12 weeks (or the first trimester) of pregnancy be performed in a hospital. Majority opinion written by Powell with dissent by O'Connor, White and Rehnquist.

Planned Parenthood Association of Kansas City, Missouri v. Ashcroft, June 15, 1983
The Supreme Court upheld the requirements of: a pathology report for each abortion, the presence of a second physician when abortions are performed after viability and parental or juvenile court consent for minors securing abortion.

City of Akron v. Akron Center for Reproductive Health, June 15, 1983

The Supreme Court ruled unconstitutional the informed consent provisions that a doctor inform a woman of the development of her baby, the complications that may result from an abortion and the availability of alternatives. Also ruled unconstitutional a 24-hour waiting period and that the remains of the aborted baby be disposed of in a humane and sanitary manner. Majority opinion delivered by Powell with dissent by O'Connor, White and Rehnquist.

Bowen v. American Association Thornburgh v. ACOG Bowen v. American Association of Hospitals et al., June 9, 1986

In a 5-3 decision, the U.S. Supreme Court struck down Reagan Administration regulations (based upon the 1973 Rehabilitation Act and known as the Baby Doe Regulations) which were intended to prevent discriminatory non-treatment of handicapped newborn infants. The Court relied heavily upon the right of parents to refuse treatment for their children. (Stevens, Powell, Marshall, Blackmun, Burger for plurality with White, O'Connor, Brennan dissenting.)

Thornburgh v. ACOG (American College of Obstetricians and Gynecologists), June 11, 1986

In a 5-4 decision written by Justice Blackmun with Powell, Stevens, Brennan and Marshall concurring (White, Rehnquist, O'Connor, Burger dissenting), the Supreme Court struck down a Pennsylvania statute that provided informed consent prior to an abortion, reporting requirements on the performance of abortion and protection of viable unborn children.

Hartigan v. Zbaraz, 1987

The court upheld, by a 4-4 vote, an appellate court ruling striking down a state law requiring some minor women to wait 24 hours after telling their parents or a judge of the decision to have an abortion. Since this ruling established no precedent, the case may be reheard later.

Bowen v. Kendrick, June 29, 1988

In a 5-4 decision, the court upheld the constitutionality of the Adolescent Family Life Act (AFLA). The court recognized that AFLA prohibits funding to programs that perform, counsel (with narrow exceptions), refer for abortion and require promotion of adoption as an alternative to abortion. But, the court ruled, [That] approach is not inherently religious, although it may coincide with the approach taken by certain religions.

Webster v. Reproductive Health Services, July 3, 1989

In a 5-4 decision, the court upheld a Missouri statute regulating abortion. In a series of votes, the court provided the state with new authority to limit abortions in the areas of public funding and post-viability abortions.

Ohio v. Akron Center for Reproductive Health, June 25, 1990

By a 6-3 vote, the Ohio parental notification law was upheld with Kennedy writing the majority opinion.

Hodgson v. Minnesota, June 25, 1990

In separate concurring decisions, the Minnesota parental notification law was upheld, including a 48-hour waiting period and two-parent notification with a judicial bypass.

Rust v. Sullivan, May 23, 1991

In a 5-4 decision written by Justice Rehnquist, the court upheld the Reagan regulations regarding Title 10. The court stated that federal guidelines prohibiting the use of federal monies for counseling and referring for abortions were constitutional.

Casey v. Planned Parenthood, June 29, 1992

The court in split decisions upheld Pennsylvania statute abortion regulations on parental consent, informed consent, 24-hour waiting period and abortion reporting. In a 5-4 split, the court struck the spousal notification and reaffirmed Roe v. Wade. The court adopted an "undue burden test."

Bray v. Alexander, January 13, 1993

The court in a 6-3 vote authored by Justice Antonin Scalia, ruled that the 1871 civil rights law (Ku Klux Klan Act) does not apply to efforts by groups such as Operation Rescue to blockade abortion facilities into closing with mass protests.

Schenk v. Pro-Choice Network, February 1997

The Supreme Court ruled that "floating buffer zones" around abortion clinics limit free speech and are therefore unconstitutional. However, the Court did rule that a "fixed" buffer zone is constitutional, meaning that an area of 15 feet from the clinic entrance is to remain "off grounds" to demonstrators.

Mazurek v. Armstrong, June 16, 1997
The Supreme Court upheld a Montana statute that specifically disqualified physician assistants from performing abortions.

Hill v. Colorado, June 28, 2000
In a 6-3 decision, the Court upheld a Colorado law that places restrictions on abortion clinic demonstrations. The "bubble" law creates an 8 foot buffer around persons entering abortion facilities. It is a restriction upon the free speech rights of abortion protestors.

Stenberg v. Carhart, June 28, 2000
In a 5-4 ruling the Court overturned the Nebraska law which prohibited partial birth abortions. The decision altered the Casey decision and expanded the health exception. Those dissenting included Rehnquist, Scalia, Kennedy and Thomas.

Greenville Women's Clinic, February 26, 2001
In refusing to hear a challenge to South Carolina's abortion clinic regulations, the U.S. Supreme Court let stand a lower court ruling that the regulations are constitutional.

Scheidler v. Now, February 26, 2003
The Supreme Court ruled that RICO (Racketeer Influenced and Corrupt Organizations) law does not apply to prolife protesters in the case of Scheidler v. NOW (National Organization for Women). The 8-to-1 ruling prohibits federal anti-racketeering law from being used in the prosecution of prolife or any protesters. The high court ruled that prolifers' political activity could not be considered the type of extortion that RICO prohibits.

Ayotte v. Planned Parenthood, January 18, 2006
The Supreme Court ruled that the lower court had erred in striking down a New Hampshire parental notification law by failing to narrow its consideration of the law. The Court said that if there are parts of the law that are constitutional, the entire law should not be struck down, and the courts are obligated to uphold as much of a law as possible. The 9-0 opinion of the court was written by Justice Sandra Day O'Connor and was one of her last before leaving the bench.

Schiedler v. NOW II, February 26, 2006
The Supreme Court ruled that the lower courts had misapplied the federal Hobbs Act dealing with extortion to prolife protestors. In an 8-0 ruling written by Justice Breyer, the court ruled that the prolife activists could not be charged under this law.

Gonzales v. Carhart, April 18, 2007
The Supreme Court upheld the federal Partial Birth Abortion Ban Act of 2003 signed by President Bush. The majority opinion by Justice Kennedy repudiated portions of the 2000 Stenberg ruling which had overturned a similar law enacted in Nebraska. (Kennedy had issued a scathing dissent in the Stenberg case.) The opinion used very graphic language to describe the abortion procedure. It further reinforced the 2006 Ayotte ruling stating courts have a duty to uphold statutes as constitutional to the greatest extent possible, not strike them down for the smallest reason. The Gonzales decision noted that the Congress had a legitimate interest in drawing a bright line between abortion and infanticide. The ruling represents the first safeguards against a specific abortion procedure to be upheld by the high court.

Northland Family Planning v. Cox, January 7, 2008
In a standard order containing no comment, the U.S. Supreme Court declined to hear an appeal brought by Michigan Attorney General Mike Cox seeking to declare Michigan's Legal Birth Definition Act constitutional and enforceable. This law to prohibit partial birth abortions was enacted by a citizens' initiative petition drive, overriding Gov. Jennifer Granholm's veto of the bill when it was passed by the Legislature. With the Court's refusal to hear the case, the lower court rulings striking the law down became permanent.

NFIB v. Sebelius, June 28, 2012
By a 5-4 vote the U.S. Supreme Court upheld the sweeping federal health care law - the Affordable Care Act (ACA). The ACA contains numerous anti-life provisions, including the most dramatic increase in government funding for abortion in U.S. history. In addition to tax-subsidized insurance plans that will fund abortions, the law coerces religious and other organizations (including RLM) to purchase health plans that cover abortion-causing drugs and devices. Other provisions set the stage for future health care rationing, opening the door to cost-driven passive euthanasia. Overall, the ACA is the single most anti-life law ever enacted.

McCullen vs. Coakley, June 26, 2014

The Supreme Court unanimously overturned a 2007 Massachusetts law that created a 35-foot buffer zone around abortion clinic entrances, blocking protestors or prolife sidewalk counselors from public sidewalks. Chief Justice Robert's opinion said the law was too expansive and thus infringed on the First Amendment. The ruling did not specifically revisit or overturn the 2000 ruling in the Hill v. Colorado which upheld an 8-foot "floating bubble zone" around persons entering an abortion clinic. Though all nine justices agreed on a narrow, technical basis for striking down the buffer zone, the more conservative justices argued further that core First Amendment protections would warrant voiding this law and the Colorado bubble zone.

Burwell v. Hobby Lobby Stores, June 30, 2014

In a narrow 5-4 decision, the Supreme Court ruled that Hobby Lobby and Conestoga Wood Specialties, as closely-held corporations, would not be required under the Affordable Care Act to provide free insurance coverage to employees of contraceptives that may act as abortifacients against their conscience. The decision was based on the Religious Freedom Restoration Act (RFRA), which protects religious liberty from governmental interference. The majority opinion outlined clearly that citizens do not lose their religious freedom when they form a corporation and the RFRA was enacted to chasten the Supreme Court back to protecting the fundamental principle of religious freedom. While the ruling settled the question of religious protection for certain corporations, numerous other legal questions about the contraceptive mandate's impact on other organizations were not resolved.

Whole Women's Health v. Hellerstedt, June 27, 2016

In a 5-3 decision (due to Scalia vacancy), the Supreme Court struck down two provisions of a Texas law regulating abortion practices. The 5th Circuit Court of Appeals had previously upheld the law. One provision required abortionists to have admitting privileges with a nearby hospital so they can provide follow-up treatment should complications arise. The second provision required abortion clinics to meet surgical center licensing requirements. The Court found these provisions an unconstitutional "undue burden" because they did not substantially increase safety. The Court ruled that since reported complications were already so low, the burden imposed by these requirements was not matched by a safety benefit. (The vast underreporting of abortion complications was not factored into the ruling.) It remains to be seen if this newly articulated "benefit-burden test" will be part of future abortion rulings.

NIFLA v. Becerra June 26, 2018

In a 5-4 decision, the Supreme Court reversed a 2015 California law that required licensed pregnancy care centers to advertise for free abortions in complete opposition to their goal as a prolife center. The requirement to prominently post signs advertising abortions was not required of other medical clinics, so the court found there was an unequal application of the law. The unlicensed pregnancy care centers were required to include a 29-word statement about not being a licensed medical clinic in all of their publications including on billboards that simply say, "Choose Life." In addition, the statement needed to be printed in as many as 13 languages which the court found would so drown out the center's message as to render it meaningless. The majority opinion pointed out that state-controlled speech that targets specific speakers without a compelling state interest was likely an unconstitutional burden on the 1st Amendment. The case was remanded back to the 9th Circuit Court of Appeals for a decision consistent with the Supreme Court's opinion.

Box v. Planned Parenthood of Indiana and Kentucky, Inc. May 28, 2019

In a 7-2 decision, the Supreme Court upheld an Indiana law that requires abortion providers to dispose of fetal remains in the same way as other human remains. The clinics must either bury or cremate the fetal remains. Another provision of this case was to prevent a woman from having an abortion based on gender, race, or disability. This provision was rejected by the justices; however, Supreme Court Justice Clarence Thomas wrote a 20-page concurring opinion that detailed the eugenic history of the abortion movement and indicated that the court may one day need to address this concern. In 2016, former Vice President, Mike Pence signed the laws into place but they were blocked by the 7th Circuit Court of Appeals.

June Medical Services v. Russo, June 29, 2020

In a 5-4 decision, the Supreme Court struck down a Louisiana law that would have required abortionists to have admitting privileges at local hospitals. The court deemed the law an unconstitutional burden on a woman's right to abortion. They reasoned that reported abortion

complications are so low, the admitting privileges law served no genuine health benefit to women. In 2016, the Supreme Court struck down a similar law in Texas in Whole Women's Health v. Hellerstadt. Unlike the Texas law, the Louisiana law had withstood a challenge at the 5th circuit court of appeals which gave hope to prolife people that the court would reverse the Hellerstadt decision. Unfortunately, the court reaffirmed their previous position.

Little Sisters of the Poor v. Pennsylvania, July 8, 2020

In a 7-2 decision—following 7 years of litigation and two previous trips up the Supreme Court—the Court upheld the Trump's Administration's exception to the HHS Mandate, allowing the Little Sisters of the Poor and others with religious or moral objections to opt out of providing their employees with contraceptive insurance coverage—including those that may act as abortifacients. Ginsburg and Sotomayor dissented.

Dobbs v. Jackson Women's Health Organization, 2022

On June 24, 2022, the U.S. Supreme Court voted to overturn the 1973 Roe v. Wade and 1992 Planned Parenthood of Southeastern Pennsylvania v. Casey decision. Justice Samuel Alito authored the opinion and was joined by Justices Clarence Thomas, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. Chief Justice John Roberts concurred but submitted his own opinion in favor of striking the viability standard, but not agreeing to the overturn of Roe at this time. Justices Stephen Breyer, Sonia Sotomayor, and Elena Kagan authored the dissent. Since then, 19 states moved to restrict abortion while others, including Michigan, expanded abortion. Due to the Dobbs decision, any law affecting abortion will be left to the voters and their elected leaders but may face additional judicial scrutiny for constitutional clarity.