

Session 1 Student Handout 2

## ABORTION AND THE SUPREME COURT

### 1973 - What the Court Actually Said

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 have to meet the following guidelines:

**FIRST TRIMESTER** During the first three months of pregnancy, the state must leave the abortion decision entirely to a woman and her physician.

**SECOND TRIMESTER** During the second three months, the state may only enact laws which regulate abortions in ways "reasonably related to maternal health." This simply means that a state may determine who is qualified to perform the abortion and where such an operation may take place. The state may not, however, enact laws which safeguard the lives of the unborn.

**THIRD TRIMESTER** After a woman's sixth or seventh month of pregnancy, the law may forbid her to have an abortion that is not determined to be necessary to preserve her "life or health" (emphasis supplied). The Court went on to define the word "health" in such broad terms--i.e., social well-being--as to make it virtually impossible for a state to protect the unborn child even after the sixth or seventh month of pregnancy.

The justices of the Supreme Court, disregarding prior legal tradition, overwhelming biological evidence and the ethical traditions of a majority of the American people, struck down the abortion laws of all 50 states (even the most permissive at the time) and made abortion on demand, at virtually every state of pregnancy, the law of the land. On January 22, 1973, the Court gave the United States the dubious distinction of having the most permissive abortion law of any nation in the western world.

### NOTES:

1. The Supreme Court, in *Roe v. Wade*, 410 U.S. 113 (1973) stated:

(A) 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.

(B) 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.

2. The Supreme Court, in *Doe v. Bolton*, 410 U.S. 179 (1973) stated: ... 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. This allows the attending physician the room he needs ... 410 U.S. 192

## TIME LINE OF SUPREME COURT DECISIONS:

1/22/73 - Jane Roe vs. Dallas Dist Atty. Henry Wade & Mary Doe vs. Georgia Atty. Gen. Arthur K. Bolton

7/1/76 - Planned Parenthood vs. Missouri Atty. Gen. John C. Danforth: Allowed the state to require record keeping of abortions performed and signed consent by the woman. Declared it unconstitutional to require doctors to exercise care to preserve fetal life and overturned a ban on saline abortions after first 12 weeks of pregnancy and a requirement that a husband consent to abortion.

6/20/77 - Connecticut Social Services Commissioner Edward W. Maher vs. Susan Roe: Medicaid need not pay expenses for nontherapeutic elective abortions simply because it pays expenses for childbirth, because the state has a legitimate interest in preserving life.

6/30/80 - U.S. Health and Human Services Secretary Patricia R. Harris vs. Cora McRae: States are not obliged to fund "medically necessary" abortions for the poor. (eg. Hyde amendment cut off federal funding for medicaid abortions.)

7/3/89 - Missouri Atty. Gen. William L. Webster vs. Reproductive Health Services: Upheld Missouri's ban on using state facilities or employees to perform elective nontherapeutic abortions and a requirement for medical tests to determine a fetus' chance for life (viability).

6/29/92 - Planned Parenthood of Southeast Pennsylvania vs. Casey: (From "Why Can't We Love Them Both?", Dr. & Mrs. Willke) The U.S. Supreme Court reversed some of its earlier decisions. It ruled that certain reasonable regulations of abortion be enacted. These included parental notification of a minor daughter's scheduled abortion, informed consent, a 24-hour waiting period and confidential reporting. It struck down a spousal notification clause. It clearly reaffirmed "Roe vs. Wade" however. In doing so, it rejected Roe's trimester scheme and spoke to a dividing line at viability. It essentially rejected the right of privacy as its justification and adopted a new "liberty" standard.

The above restrictions would not apply if they "unduly burdened" her right to abortion. The original definition of "health" remained, and so abortion remained legal until birth.

6/28/2000 - Stenberg vs. Carhart: The court by a 5-4 vote struck down a state law that banned a surgical abortion procedure known as "partial-birth abortion." Current: Half the state legislatures have passed bans on partial birth abortions but have been stopped by courts. "While suffering setbacks in court, they (pro-lifers) are waging an increasingly successful public relations battle." (Los Angeles Times, February 11, 1999)