



DEFENDING LIFE

An Overview of Key
Abortion Cases and
Their Impact



Defending Life:

An Overview of Key Abortion Cases and Their Impact

PART I



On June 24, 2022, the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women’s Health Organization*, upholding Mississippi’s 15-week restriction on abortion and overturning *Roe v. Wade*. This was a defining moment in the decades of legal and advocacy work by the pro-life movement, which has been dedicated to protecting the unborn, supporting mothers, and building a culture that values life—from conception to natural death.

To understand and appreciate the joy felt by pro-life Americans upon learning of the decision in *Dobbs*, it helps to have a firm understanding of the major Supreme Court cases that wrongly invented and sustained abortion as a “right.”

In just a few minutes, you’ll have a clear understanding of the impact of the major abortion-related cases, specifically *Roe v. Wade*, *Doe v. Bolton*, and *Planned Parenthood v. Casey*. You’ll be better equipped to be able to discuss with family and friends the need to protect life and the harm caused by the abortion industry.

Several cases inserted and entrenched abortion into the laws of the United States, causing a nationwide regime of abortion on demand that led to us being in the company of North Korea and China. These erroneous decisions created a “right” to abortion that does not exist in the Constitution, along with various legal standards that proved to be unworkable and confusing. This bad precedent paved the way for the *Dobbs* case.

For you formed my inward parts; you knitted me together in my mother’s womb. I praise you, for I am fearfully and wonderfully made. Wonderful are your works; my soul knows it very well.

PSALM 139:13-14 (ESV)



Pre-Roe Landscape

As early as the 16th century, Western law recognized the humanity of the unborn and valued their lives. According to one examination of the legal history of abortion:

In both England and America and under both the common law and statutes, the law treated abortion as the homicide of an unborn child, with its classification, prosecution, and punishment reflecting current knowledge about prenatal life and [development](#).

Going back even further, Hebrew law recognized the nature of pregnancy and treated the unborn child as a person. Exodus 21:22-23 notes that if two men fighting “hit a pregnant woman” and no serious harm is done to the woman or baby, no special punishment shall be applied. But if “serious injury” happens to the mother or baby, the punishment increases commensurately: “life for life.” (NIV)

Though 1970s-era pro-abortion revisionists argued that American and/or Western law and historical tradition on abortion had been more ambiguous, by the late 19th century:

- ▶ Abortion was illegal throughout most of the nation
- ▶ Popular leaders in the women’s rights movement, including Susan B. Anthony, had spoken out strongly against abortion
- ▶ The American Medical Association (AMA) [had condemned the “slaughter of countless children” through abortion](#)

Although movements in the early-to-mid 20th century—including the creation and spread of Planned Parenthood clinics—started to challenge these norms, the laws and cultural attitudes respecting life largely stayed in place into the 1970s.

Roe v. Wade (1973) (7-2)

Case summary: Because abortion remained unlawful in almost every state, in the early 1970s, pro-abortion activists sought to circumvent the ability of states to protect the unborn, by securing a judicial ruling that would nullify state laws limiting abortion.

In 1970, attorneys for “Jane Roe” (later revealed to be Norma McCorvey) filed suit challenging a Texas law that prohibited abortion, except in cases that threatened the life of the mother.

McCorvey’s attorneys prevailed in the district court, where a three-judge panel declared the law unconstitutional, arguing that it violated a right to privacy found in the unenumerated rights guaranteed by the 9th Amendment.

The court’s ruling was affirmed by the U.S. Court of Appeals for the 5th Circuit, and Texas appealed to the U.S. Supreme Court. The Supreme Court issued its decision on January 22, 1973, a 7-2 ruling in favor of Roe.

- ▶ **Plaintiff:** “Jane Roe”
- ▶ **Defendant:** State of Texas, through the Dallas County District Attorney Henry Wade
- ▶ **Outcome:** U.S. Supreme Court rules 7-2 in favor of Roe



What impact did the decision have?

The Court's ruling overturned the existing Texas law—and all other state laws protecting life from abortion in the first trimester, as well as most laws protecting life in the second trimester. The majority opinion creating a “trimester framework,” radically liberalizing abortion law, deeming abortion a newly discovered “fundamental right.”

The trimester test was complicated and looked like legislative policy-making: During the first trimester, the government's interest in protecting the unborn and mothers was outweighed by the woman's right to “privacy,” which the Court's majority said it derived from the Due Process Clause of the 14th Amendment. This was the first time the right of “privacy” was interpreted to include the intentional taking of a human life.

The Court's majority (7 male justices) also claimed that motherhood “may force upon the woman a distressful life and future.”

The *Roe* decision avoided the question of when human life begins:

“We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, in this point in the development of man's knowledge, is not in a position to speculate as to the answer.”

Since 1973, more than 60 million unborn children have been killed through abortion.

Key Takeaways From *Roe*

- ▶ Cited the 14th Amendment's Due Process Clause as a basis for a constitutional “right to privacy” that included the ability to end human life through abortion
- ▶ Overturned state laws protecting the unborn from abortion
- ▶ Created a “trimester framework” stating that government could not protect unborn children from abortion until the third trimester

Doe v. Bolton (1973) (7-2)

Case summary: *Doe v. Bolton* is a companion case to *Roe*, decided the same day. In *Doe*, Georgia's law limited abortion, except in the case of documented rape, the health of the mother, or a likely serious and untreatable birth defect. The law also ensured that any abortions performed were done in a hospital setting. The legal arguments were similar to *Roe*, with the plaintiff arguing that the state law violated a right to privacy that includes abortion. The Court agreed.



What impact did the decision have?

The catch: while both *Roe* and *Doe* seemed to provide opportunity for states to protect the lives of the unborn from abortion at later stages of pregnancy, the Court's definition of "health of the mother" in *Doe* allowed doctors and policymakers to justify abortion for nearly any reason, defining the factors contributing to the mother's health as follows:

"We agree...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 wellbeing of the patient. All these factors may relate to health."

This broad definition meant that doctors could justify abortions when they could cite reasons like a pregnant mother feeling sad or already having another child.

- ▶ **Plaintiff:** "Mary Doe"
- ▶ **Defendant:** State of Georgia, through the state's Attorney General, Arthur K. Bolton
- ▶ **Outcome:** U.S. Supreme Court rules 7-2 in favor of Doe

Key Takeaways From *Doe*

- ▶ Affirmed *Roe* ruling
- ▶ Broadly defined "health of the mother" to justify abortion, up to the moment of birth, for almost any reason

Planned Parenthood of Southeastern Pennsylvania v. Casey (1992) (5-4)

Case summary: The most significant abortion case after *Roe* and *Doe* was *Planned Parenthood of Southeastern Pennsylvania v. Casey*, in 1992. Since *Roe/Doe*, many states had taken the opportunity to legislate in the areas not explicitly covered by the rulings. Pennsylvania was one such state. The law permitted abortion, but included a waiting period, spousal notice, and parental consent (in the case of minors).

The Court had an opportunity in *Casey* to overturn *Roe*, which legal experts had widely regarded as poorly decided—even those who agreed with its outcome. Unfortunately, while the Court's opinion was split, the plurality opinion stated that it was affirming the "essential holding" of *Roe*:

"The woman's right to terminate her pregnancy before viability is the most central principle of *Roe vs. Wade*. It is a rule of law and a component of liberty we cannot renounce."

One major development in the *Casey* decision was the rejection of the trimester scheme introduced in *Roe* in favor of a viability (the point at which a baby can survive outside the womb) and an "undue burden" standard.



On viability, the Court recognized the arbitrary nature of the trimester standard, and that the advancement of medical technology made the unborn “viable” at earlier stages—23 or 24 weeks, instead of the 28-week standard in *Roe*. Once the child was considered viable, the state would have a legitimate interest in protecting him or her, and could restrict abortion—except in the case of the health of the mother (going back to *Doe*, this could be interpreted broadly).

The Court also placed emphasis on *stare decisis* (literally, “let the decision stand”), a judicial concept that holds that courts should respect the precedents of previously decided cases. This concept would continue to be utilized by defenders of *Roe* in the following years.

Despite the disappointing ruling in *Casey*, pro-life Americans and organizations remained committed to building a culture that would see abortion as unthinkable and make it illegal. That included devoting significant resources and effort into organizations like pregnancy resource centers, that help pregnant mothers see pro-life options for their children and provide practical assistance for mothers free of charge.

Pro-life advocates also worked to pass laws in states that would help pregnant mothers have an opportunity to see their baby (via ultrasound), before deciding whether to choose abortion or life. Some states ensured that adolescents don’t undergo abortions without their parents’ knowledge.

The holdings in *Roe*, *Doe*, and *Casey* remained the effective law of the land until the Court’s decision in *Dobbs v. Jackson Women’s Health Organization*. Part II of this guide will address the case in full.

Despite a frustrating loss in the case of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, pro-life advocates continued to work tirelessly to find ways to challenge the infamous and wrong *Roe v. Wade* decision. Thirty years after the *Casey* decision was handed down, the pro-life movement received an opportunity in a case challenging a newly-enacted state law limiting abortions at 15 weeks, before viability. The outcome of the case would dramatically alter the landscape and work of pro-life advocates.

- ▶ **Plaintiff:** Planned Parenthood of Southeastern Pennsylvania
- ▶ **Defendant:** State of Pennsylvania, through the state’s Governor, Robert Casey
- ▶ **Outcome:** Divided judgment (plurality opinion of three justices joined in part by two other justices) in favor of Planned Parenthood

Key Takeaways From Casey

- ▶ Upheld central holding in *Roe*, that there is some kind of fundamental right to abortion
- ▶ Replaced trimester scheme with viability and “undue burden” standard
- ▶ Pointed to 14th Amendment’s Due Process Clause in affirming the right to an abortion based on “liberty” and “bodily autonomy”
- ▶ Relied, in part, on *stare decisis*



Defending Life:

An Overview of Key Abortion Cases and Their Impact

PART II

Dobbs v. Jackson Women's Health Organization **(2022) (6-3)**

Case summary: Since the Supreme Court issued its decision in *Roe v. Wade* in 1973, more than 60 million unborn children lost their lives to abortion.

The past 50 years have also seen huge advances in prenatal medicine and technology. While viability was widely considered to be between 24 and 28 weeks gestation in 1973, it is now considered to be between 21 and 22 weeks gestation.

Ultrasounds have helped reveal developmental characteristics such as fetal heartbeat, movement, and pain perception, characteristics that weren't widely known back in 1973 when *Roe* was decided. It makes sense that states would want their laws to reflect our modern scientific knowledge.

That's why, with the assistance of Alliance Defending Freedom, Mississippi passed a law in 2018 limiting abortions after 15 weeks in gestational age, permitting them only in medical emergencies or for severe fetal abnormality.

- ▶ **Plaintiff:** "Dobbs" (Dr. Thomas Dobbs, State Health Officer, State of Mississippi)
- ▶ **Defendant:** Jackson Women's Health Organization
- ▶ **Outcome:** U.S. Supreme Court rules 6-3 in favor of Dobbs



After losing in the trial court and in the U.S. Court of Appeals for the 5th Circuit, Mississippi asked the U.S. Supreme Court to weigh in to answer the question whether the Constitution prohibits states from passing laws like Mississippi’s limiting abortion before the point of viability. The U.S. Supreme Court heard oral arguments on December 1, 2021, and issued its decision June 24, 2022.

The Supreme Court upheld Mississippi’s law, overturned the *Roe* and *Casey* precedents, and affirmed, in the words of the majority opinion, that “the Constitution does not confer a right to abortion.”

[ADF was privileged to serve on Mississippi’s legal team](#) throughout the process – from drafting to defending its pro-life law.

What impact did the decision have?

By overturning *Roe v. Wade*, the Supreme Court returned policymaking on abortion to the people and their elected representatives. State policy makers no longer have their hands tied, and they can now affirm that life is a human right and ensure that women have real support—not the kind that pits them against their children. In anticipation of the ruling in *Dobbs*, over a dozen states had passed laws designed to protect life that could go into effect when a ruling was issued that overturned *Roe*. Many other leaders had also expressed interest in passing similar protections in their states following the *Dobbs* decision.

ADF is now engaged in assisting several states in defending their pro-life laws in court.

Following the decision in *Dobbs*, America entered a new period: one in which the people and their elected lawmakers can make laws that not only recognize that life is a human right, but also adhere to science and better support and empower mothers. This is a significant step toward a culture that values and cherishes human life from conception to natural death. The battle for life has not ended but has shifted ground. And pro-life advocates will continue to support and defend mothers and the unborn from efforts by the abortion industry.

While the victory in *Dobbs* is indeed a blessing from the Lord, and an answer to nearly 50 years of fervent prayer, much work remains to be done to protect life and support mothers. And just like many have done in the last 50 years, ADF will continue to pray and advocate for laws, precedents, and the building of a culture that protects the unborn, the integrity of the medical profession, and the health and well-being of women.

Key Takeaways From *Dobbs*

- ▶ Overturned *Roe* and *Casey* decisions
- ▶ Decision stated that “[t]he Constitution does not confer a right to abortion.”
- ▶ Returned issue of abortion to states, allowing the people and their elected representatives the opportunity to protect unborn life

Defending Life:

An Overview of Key Abortion Cases and Their Impact

PART III

Pro-life Americans are right to rejoice at the recent victory at the Supreme Court in the case of *Dobbs v. Jackson Women's Health Organization*.

The ruling has once and for all put disastrous cases like *Roe v. Wade* and *Planned Parenthood v. Casey* where they belong: on the ash heap of history.

These cases should be remembered by future Americans alongside infamous rulings, such as *Dred Scott v. Sanford* (upholding slavery), as grotesque and shameful decisions that subjugated the rights of millions of innocent lives.



In 2022, the U.S. Supreme Court decided in *Dobbs v. Jackson Women's Health Organization* to overturn *Roe* and return the opportunity to protect life to the states.

The majority opinion makes clear that the Constitution absolutely does not support a "right" to abortion.

The opinion upheld Mississippi's law that protects a baby's life after 15-weeks.



So, is abortion against the law now?

The overturning of *Roe* does not make abortion illegal in the United States. It returns the regulation of abortion to pre-*Roe* status. This is in accordance with the Tenth Amendment to the Constitution, which defined the concept of federalism:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

The majority opinion, written by Justice Samuel Alito, states that “[i]t is time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”

Each state can now affirm that life is a human right and ensure that women have real support--not the kind that pits them against their children.

On a practical level, the abortion conversation and consequent actions return to state legislatures where they were before *Roe* and *Doe* were decided.

BY THE NUMBERS

Since *Roe v. Wade*, more than **60 MILLION BABIES** have lost their lives to abortion

There are only **6 NATIONS** (including China and North Korea) that allow abortion on-demand throughout all 9 months of pregnancy

There are only **12 NATIONS** that permit elective abortions at viability; the vast majority (75%) of nations limit abortion after 12 weeks

So where is the next battleground for the pro-life movement?

State by state: Since *Roe* seized and transferred much of the legislative control over abortion to the courts, the focus of the pro-life movement has been—rightly so—on achieving success in defending life in the courtroom.

Now, the majority of the focus will turn to statehouses across the country. With the demise of *Roe*, each state now has the opportunity to protect life.

For example, Texas passed a law in 2021 that protects life beginning at six weeks. In states like California, however, elected officials have pledged to “build a firewall” to defend the abortion industry. Some have perversely declared their intent to make their state or city a so-called “sanctuary” for abortion.

Many states had been anticipating the overturning of *Roe* and had passed “trigger” laws, designed to protect the unborn. These laws were designed to go into effect automatically, upon the overturn of *Roe*.

Another handful of states already have pro-life laws that are being implemented. Pro-abortion activists have already challenged nearly all of these laws, and pro-life Americans must be ready to help defend them, both in the court of law and the court of public opinion. One of ADF’s core principles—our [Generational Wins](#)—is to safeguard the sanctity of life, and we are at the forefront helping to defend many of those laws in the courts.



State leaders are stepping up to propose or enact policies that protect the unborn, in our post *Roe* world. It is now critical for citizens in every state to both support pro-life elected officials at the ballot box and hold them accountable for promises that they make to protect all human life.

Abortion by mail

Pro-life Americans will also continue working to reverse a horrendous decision by the Food and Drug Administration in 2021 that loosened regulations for chemical abortion drugs.

The change allowed women seeking an abortion to be able to receive the dangerous drugs via mail, rather than in-person. The government's sanctioning of abortion through self-administered drugs has already had [devastating consequences](#), both for unborn children and the mothers who are often left horrified and shattered by the results.

Americans in good conscience must stand firm to oppose the liberalization of at-home abortions, in support of pregnant women who have been told by the abortion industry that the use of chemical abortion drugs without doctor supervision, is a "safe" option despite the documented risks associated with the drug itself.

How Can I Stay Engaged?

For half a century, pro-life Americans have prayed fervently for the overturning of *Roe*, marched in the streets, written to elected officials, and voted for pro-life candidates. The overturning of *Roe* will save millions of lives and is a cause for great celebration. However, the battle for life is now on a new battleground and will require every pro-life American to take action. Here are a few simple ways to get and stay involved in saving lives:

Individuals

- **Support pregnancy centers.** Your local pregnancy centers are key to saving unborn lives and supporting mothers. Now more than ever, they need your investment of volunteer time, financial and material support, and encouragement as they will have an increase of women seeking their support.
- **Speak honestly with family/friends.** Despite the extensive media coverage surrounding *Roe*, *Dobbs*, and the topic of abortion, many myths persist. Although it may be uncomfortable and difficult to speak plainly about life issues, if we are to build a sustainable life-affirming culture, we must be willing to speak truth to our family and friends. To help you do this, ADF has created a short, accessible, and free resource: [Life: 3 Myths and 3 Facts](#). Make sure to download it and share with a friend!
- **Engage with legislators/policymakers.** Much of the fight to defend life will now take place in the statehouses throughout the nation. More than ever, it is vital that you engage with your elected representatives. First, you need to find out who your representatives are. This information is easily found at [OpenStates.org](#) via a simple address search. When interacting with legislators and policy makers, it is important to use the 4 C's of communication: be clear, concise, civil, and courteous when asking them to take specific action on a bill or policy.



Church leaders

- **Engage your church in serving the community.** Encourage your church family to find ways to find and support your community's [pregnancy centers](#). As a church family, you can make a difference by adopting your local pregnancy center and adding them into your annual outreach or missions budget. You can also invite the executive director to share about their life-saving work with your church and invite your members to stay engaged year-round.
- Your church can also show Christ's love for the vulnerable by supporting foster/adoption agencies. Post-*Roe*, the need for foster homes and families willing to permanently adopt will greatly increase, and the church has a unique opportunity to care for the bodies—and souls—of these children, all made in the image of God. The need at maternity homes will also increase, as women who find themselves with unplanned pregnancies look for assistance in providing stable housing, education, prenatal care, and more. Your church family has a ripe opportunity to speak the Gospel directly into the lives of these women, while attending to their very real and immediate material needs.
- [Join ADF's Church Alliance](#). Consider joining the ADF Church Alliance, which helps prepare churches to protect their right to operate, teach, and minister according to biblical principles.



Home Educators and Families

- **Include pro-life material in your curriculum or at-home instruction.** As a home educator or engaged parent, you are in a unique position to provide your children with accurate information about the truth about the beauty and wonder of *imago dei*—that all children are created in His image and are loved by God, and the destructive nature of abortion. You have the opportunity to return again and again to these pro-life themes in discussions about science, literature, current events, Scripture, and much more.
- **Tour and volunteer at your local pregnancy center.** A visit to your local pregnancy center is a wonderful opportunity for you and your children to see and participate in saving lives and support expectant mothers.

With *Roe* in the rear-view mirror, millions of unborn children will now enjoy the fundamental right to life. Expectant mothers should be honored, rejoiced with, and find the care and support they need. They should not face pressure to take part in the willful destruction of the life of their child.



We must commit ourselves to prayer, as we are powerless to change hearts and minds without the transforming power of the Gospel of Jesus Christ. We invite you to join brothers and sisters in Christ throughout the nation in prayer for the continued battle to defend life. ADF has launched the [Generational Wins Prayer Initiative](#) to mobilize and equip 5 to 10 million Christians to pray for freedom's future.

Please pray for:

- **Pregnant mothers** – we pray that they will know the truth and be free to make life-saving choices, and find encouragement and support from friends, family, and church community.
- **Abortionists** – we pray that their hearts will respond to the truth and kindness of God, repent of their participation in shedding innocent blood, and become emboldened to speak up and affirm the plain truth that unborn children are precious lives in need of their tender care.
- **Elected officials** – we pray that they would support life through laws that protect all human life from conception to natural death and that they would take courage from the ruling in *Dobbs* to vigorously defend the right to life.



ALLIANCE DEFENDING
FREEDOM
ADFLEGAL.ORG



15100 N. 90th Street
Scottsdale, AZ 85260
(800) 835-5233