Roe v. Wade and the Right to Privacy

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I. INTRODUCTION: The Right to Privacy

On January 22, 1973, the United States Supreme Court struck down the State of Texas's criminal abortion laws, finding that the right to decide whether to have a child is a fundamental right guaranteed by the U.S. Constitution. The 7-2 decision in *Roe v. Wade* would have an immediate and profound effect on the lives of American women.

Before *Roe*, it is estimated that "between 200,000 and 1.2 million illegally induced abortions occur[red] annually in the United States."[1] As many as 5,000 to 10,000 women died per year following illegal abortions and many others suffered severe physical and psychological injury.[2]

Roe not only moved abortions out of the back-alleys, but it also helped define the contours of the right to privacy, which protects individuals from unwarranted governmental interference in private affairs. In addition, this decision, and those that followed, recog-

nized that the right to make childbearing choices is central to women's lives and their ability to participate fully and equally in society.

Despite the significance of this decision, most people know little about *Roe* beyond the fact that it "legalized abortions." This booklet is an attempt to put *Roe* into its historical and legal context: to demonstrate that this decision not only grew out of this country's tradition of individual liberty — that is, of placing key personal and moral decisions in the hands of individuals, rather than the government — but is also part of a larger global trend of recognizing women's human rights. In addition, by excerpting key portions of the majority opinion in this case, this booklet attempts to clear up some common misconceptions about what the case did or did not do.

In the years since *Roe v. Wade* was decided, there have been cutbacks in the scope of its protection for women's right to choose abortion. Most significantly, the Supreme Court's 1992 decision in *Planned Parenthood v. Casey* made two profound changes: it reduced the level of judicial scrutiny given to laws that restrict abortion and eliminated *Roe*'s "trimester system," which outlined the changing balance

between a woman's right to choose abortion and the State's interest in regulating the procedure as a pregnancy progresses. Nonetheless, *Roe*'s continuing importance should not be dismissed. The High Court's decision in this case remains a touchstone for those working to secure women's reproductive rights, and should be understood by all those whose lives it has affected.

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1 Willard Cates, Jr., and Robert W. Rochat, *Illegal Abortions in the United States: 1972-74*, 8 Fam. Plan. Persp. 86, 92 (1976) (footnote omitted).

2 *See* Lawrence Lader, *Abortion 3* (1966); Cates & Rochat, *supra*, at 86-92; *see also* Nancy Binkin, Julian Gold and Willard Cates, Jr., *Illegal Abortion Deaths in the United States: Why Are They Still Occurring?*, 14 Fam. Plan. Persp. 163, 166 (1982) (*Roe* resulted in a dramatic decline in deaths due to illegal abortion).

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II. *ROE V. WADE*: Then and Now

The Decision

In its 1973 decision in *Roe v. Wade*, the United States Supreme Court recognized that a woman's right to decide whether to continue her pregnancy was protected under the constitutional provisions of individual autonomy and privacy. For the first time, *Roe* placed women's reproductive choice alongside other fundamental rights, such as freedom of speech and freedom of religion, by conferring the highest degree of constitutional protection — strict scrutiny — to choice. Finding a need to balance a woman's right to privacy with the state's interest in protecting potential life, the Supreme Court established a trimester framework for evaluating restrictions on abortion. The Court required the state to justify any interference with the abortion decision by showing that it had a "compelling interest" in doing so and that restrictions on abortions performed before fetal viability were limited to those that narrowly and precisely promoted real maternal health concerns. After the point of viability, the state was free to ban abortion or take other

steps to promote its interest in protecting fetal life. Even after that point, however, the state's interest in the viable fetus must yield to the woman's right to have an abortion to protect her life and health.

Although a landmark ruling, the *Roe* decision was consistent with earlier Supreme Court rulings recognizing a right of privacy that protects intimate and personal decisions — including those affecting child-rearing, marriage, procreation, and the use of contraception — from governmental interference. In the decade preceding *Roe,* women's advocates spearheaded campaigns to reverse century-old criminal abortion laws that had resulted in the death or injury of scores of women who had undergone unsafe illegal or self-induced abortions. During the 1960s and 1970s, a movement of medical, public health, legal, religious, and women's organizations successfully urged one-third of state legislatures to liberalize their abortion statutes. By guaranteeing women's right to make childbearing decisions, *Roe* became a foundation for fulfilling the promise of women's equality in educational, economic, and political spheres.

The Political Backlash

At the same time, *Roe* galvanized those who did not want to see women participate equally in society. The far right immediately orchestrated a political onslaught that has resulted in numerous state and federal abortion restrictions and contributed to a changed Supreme Court, ideologically bent on eviscerating *Roe.* The right to choose became the target of not only the Religious Right, but also right-wing politicians and judges who used the *Roe* decision to attack the "judicial activism" of the Supreme Court and its purported failure to adhere to the text of the Constitution and the "original intent" of its Framers. This backlash reached its peak during the three terms of Presidents Reagan and Bush. Beginning in 1983, the U.S. Solicitor General routinely urged the Supreme Court, on behalf of the federal government, to overturn *Roe.* In addition, when appointing Supreme Court Justices, Reagan and Bush used opposition to *Roe* as a litmus test. During this twelve year period, five Justices — O'Connor, Scalia, Kennedy, Souter, and Thomas — were appointed. Not one of these five, who still constitute a majority on the Court today, supports the "strict scrutiny" standard of review established by *Roe.*

The Weakening of **Roe**

The erosion of *Roe*'s protections began immediately. Well-funded abortion opponents pressed state and federal lawmakers to enact a wide range of restrictive abortion laws, which would directly or indirectly reverse *Roe*'s protection of women's reproductive choices. Many states adopted requirements that married women involve their husbands in their abortion choice, mandates that young women consult their parents in their abortion decisions, restrictions on abortion coverage in state Medicaid programs and state employee health plans, bans on the performance of abortions in public hospitals, mandatory delay and/or biased counseling requirements, and bans on particular abortion methods. By 1976, Congress had passed the first Hyde Amendment, which banned the use of federal Medicaid dollars and other federal funds for almost all abortions. Similar limitations on other federal spending measures — covering federal workers, military personnel, women on reservations, and inmates, among others — were enacted in following years.

Lawsuits challenging the constitutionality of these restrictions provided the Supreme Court with

numerous opportunities to dilute the fundamental right to choose abortion, and it wasn't long before the more reluctant members of the seven-Justice majority in *Roe* abandoned full protection for the right. Just three years later, the firm majority of *Roe* was already reduced to six by the defection of Chief Justice Burger, who voted against the majority to uphold parental consent, spousal consent, and a ban on saline abortions in *Planned Parenthood v. Danforth* (1976). Four years later, the Chief Justice, as well as Justices Stewart and Powell, abandoned *Roe*, joining Justices White and Rehnquist to form a new five-Justice majority in *Harris v. McRae* (1980). In this decision, the Court found that the denial of Medicaid funding did not "interfere" with women's rights to make reproductive decisions, and that the state could promote fetal life throughout pregnancy by discriminatory funding. This effectively deprived poor women of their right to choose.

In addition to weakening *Roe*'s protection for low-income women, the Court acted to compromise young women's reproductive rights. In *Bellotti v. Baird* (1979), a plurality of the Court, led by Justice Powell, outlined a general scheme that would meet constitutional muster for states imposing parental consent

requirements. As a consequence of this invitation, over 30 states today require either parental notice or consent for a minor seeking an abortion.

While the Court endorsed lesser constitutional protections for the right to abortion for the politically disenfranchised — low-income women and minors — a tenuous majority of the Court continued to invalidate restrictions on the rights of adult, non-indigent women, such as the 24-hour waiting period, biased informed consent, and second-trimester hospitalization requirements in the *City of Akron v. Akron Center for Reproductive Health* (1983) case. In her dissent, Justice O'Conner, joined by Justices White and Rehnquist, expressed her view that regulations imposed on abortion throughout the entire pregnancy are not unconstitutional unless they unduly burden the right to an abortion. This was the first articulation of an "undue burden" standard, which would eventually jettison the trimester framework for evaluating restrictions on abortion outlined in *Roe*. The majority Court also continued to adhere to the trimester framework of *Roe*, under which a woman's life and health must predominate even after fetal viability, in *Colautti v. Franklin* (1979) and *Thornburgh v. American College of Obstetricians and Gynecologists* (1986).

In 1988, President Reagan appointed Justice Kennedy to replace Justice Powell, a supporter of *Roe*. It was widely anticipated that Justice Kennedy's arrival heralded the beginning of a five-Justice majority on the Court that would overrule *Roe* at the earliest opportunity: Chief Justice Rehnquist and Justices White, O'Connor, Scalia, and Kennedy. Yet, when *Webster v. Reproductive Health Services* was decided in 1989, only four Justices voted to overrule *Roe*. Justice O'Connor staked out a "middle" position, upholding a Missouri viability testing requirement as consistent with *Roe* and its progeny, but deferring reconsideration of *Roe* for a future case that presented what she viewed as a more direct conflict. The *Webster* decision invited states to pass laws banning abortion to test *Roe*. Soon thereafter, a territory (Guam) and two states (Louisiana and Utah) enacted statutes criminalizing virtually all abortions. These ban statutes were blocked, albeit with great reluctance by some federal judges.

Justice O'Connor also did not find it necessary to overrule *Roe* in two parental involvement cases the Court decided in June of 1990. In one, *Ohio v. Akron Center for Reproductive Health*, a six-Justice majority upheld a one-parent notification statute that also contained a burdensome and potentially lengthy judi-

cial bypass procedure. In that decision, the Court went so far as to hold that a one-parent notice statute did not require a judicial bypass procedure to be constitutional and, even if a bypass were required, the Ohio bypass would be valid. In the second case, *Hodgson v. Minnesota* (1990), Justice O'Connor cast the deciding vote to invalidate as "unreasonable" a statute that required minors to notify both parents, with no judicial bypass option; but she also voted to uphold the same statute with a bypass. In the course of her opinion, she made reference to the "undue burden" test.

In the early 90's, with the retirement of Justices Brennan (1990) and Marshall (1991), the announced hostility to *Roe* of Chief Justice Rehnquist, Justices White, O'Connor, and Kennedy, and the presumed hostility to *Roe* of Justices Souter and Thomas, the overturn of *Roe* was a serious threat. As the Court's majority support for *Roe* disintegrated, anti-choice state legislatures continued to pass restrictions on abortion. Mississippi, North Dakota, and Pennsylvania re-enacted mandatory delay and biased consent requirements previously invalidated by the Court in *Akron* and *Thornburgh*. Pennsylvania went beyond these other states by imposing a spousal

notice requirement (without a judicial bypass) for married women. While the abortion ban cases — the most direct attacks on *Roe* — wound their way through the lower federal courts, the United States Court of Appeals for the Third Circuit in 1991 did what every observer of the Supreme Court was doing, but which other courts had refused to do: it counted the votes on the Supreme Court and found that the undue burden test, as applied by Justice O'Conner, in *Hodgson*, was the controlling standard of review in abortion cases. Under this standard, it upheld Pennsylvania's mandatory delay and biased informed consent statute (which the Supreme Court had found unconstitutional five years earlier in *Thornburgh)*, but struck down the spousal notice requirement.

When the Supreme Court granted review of the Pennsylvania case, *Planned Parenthood v. Casey* (1992), it was asked once again to overrule *Roe* or re-affirm it. The plaintiffs in the case strongly urged the Court to reject the "undue burden" test as unworkable and to retain "strict scrutiny" as the test for abortion regulations. The Court issued an unusual "Joint Opinion," authored by Justices O'Connor, Kennedy, and Souter, re-affirming *Roe*'s "core holding" that states may not

ban abortions or interfere with a woman's ultimate decision to terminate a pregnancy. Yet, at the same time, the Court eliminated *Roe's* trimester framework, permitting states to regulate abortion prior to viability based on the state's interest in protecting potential life and maternal health, so long as those regulations did not impose an "undue burden."

But *Casey's* definition of "undue burden" was not the same as Justice O'Connor's in her *Akron* dissent. First, it did not require a "severe limitation" or "absolute prohibition" on a woman's right to choose, as did Justice O'Connor's test, but a "substantial obstacle." Second, *Casey* established that a law was invalid if it had either the "purpose or effect" of imposing such a "substantial obstacle" in the path of a woman seeking a pre-viability abortion. Third, unlike Justice O'Connor's version, the *Casey* test invalidated a law imposing an undue burden, even if it advanced the state's interests in potential life or maternal health. Under this new standard, the Court upheld Pennsylvania's mandatory delay/informed consent law, but struck down the spousal notice requirement because it imposed a substantial obstacle for a "large fraction" of married women who would not otherwise notify their husband.

Since the *Casey* decision was issued in 1992, the Court seemed disinclined to grant full briefing and oral argument in abortion cases, either deciding cases involving restrictions on abortion summarily or rejecting them outright. However, the Court or its Members have spoken about the right to abortion on several occasions since then. In late 1992, Chief Justice Rehnquist and Justices Scalia and White dissented from the Court's refusal to hear an appeal in the case invalidating Guam's abortion ban, writing that the statute was not unconstitutional in all its applications and should therefore not be invalidated on its face (that is, as written, as opposed to how it is applied). In 1993, Justices O'Connor and Souter signed a concurring opinion in a case arising from a 24-hour delay statute in North Dakota, emphasizing that, even though a similar statute was upheld in *Casey,* the constitutionality of the North Dakota statute should have been determined based on an independent factual examination of the burdens of the law in that state. Also in 1993, the Court denied review in the Louisiana abortion ban case. In 1994, Justice Souter, hearing an emergency appeal as the Circuit Justice, issued an opinion indicating his view that litigants were free to challenge on their face statutes like Pennsylvania's in other states. In 1997, the

Court in *Mazurek v. Armstrong* restricted the seemingly independent "purpose" prong of the *Casey* test, holding that it was doubtful that invalid purpose could be found without an invalid effect, and that the scope of a court's inquiry into purpose was very limited.

A New Century

The first two decades of the 21st Century may further define the treatment of *Roe v. Wade* for the future.

The first test came soon after the beginning of the 21st Century. In January, 2000, the Court announced it would consider the constitutionality of Nebraska's "partial-birth abortion" ban in the case *Stenberg v. Carhart*. Nebraska's ban, which was challenged by the Center for Reproductive Law and Policy, was found unconstitutional by the U.S. Court of Appeals for the Eighth Circuit. One month later, however, the Seventh Circuit upheld two similarly worded laws from Illinois and Wisconsin, creating a sharp split in the Circuits. The language of these abortion bans was sweeping and broad, and could have included virtually all abortion procedures, even those used in the early weeks of pregnancy. Publicly, however, supporters of these bans camouflaged this

fact by using a term made up by the National Right-to-Life Committee ("partial-birth abortion") and pretending that the bans were designed to prevent doctors from using one particular procedure (also an interference with the doctor-patient relationship). On June 28, 2000 the U.S. Supreme Court struck down the Nebraska ban finding it an unconstitutional violation of *Roe v. Wade* (see p.41).

Many other questions remain to be answered:

Will the undue burden test, so far applied by the Court only to infringements on women's decisional autonomy, also be applied in the same way to infringements on the bodily integrity strand of privacy?

Will the Court ultimately abandon the undue burden test for restrictions on pre-viability abortions, which is unique in constitutional law, and, if so, will Roe's *strict scrutiny standard be restored?*

As more and more states require neutrality in Medicaid funding of abortion and childbirth, will Congress or the Court require neutrality on a national level?

What role will equal protection jurisprudence play in the protection of the right to abortion?

In short, will the promise of Roe v. Wade *be fulfilled?*

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III. PRIVACY LAW AND THE U.S. SUPREME COURT: Before and After *Roe v. Wade*

The 1973 Supreme Court decision in *Roe v. Wade* was far from radical — it was the logical extension of High Court decisions on the right to privacy dating back to the turn of the century and used the same reasoning that guarantees our right to refuse medical treatment and the freedom to resist government search and seizure. In finding that the constitutional right to privacy encompasses a woman's right to choose whether or not to continue a pregnancy, the High Court continued a long line of decisions that rejected government interference in life's most personal decisions. What follows is an outline of selected Supreme Court decisions showing how the Court's views on abortion and the right to privacy have evolved.

May 25, 1891, *Union Pacific Railway Co. v. Botsford*: The High Court rejected the right of a defendant in a civil action to compel the plaintiff to submit to physical examination, writing that "[n]o right is held

more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others. . . ."

June 4, 1928, *Olmstead v. United States*: In a wiretapping case, Justice Brandeis, dissenting, wrote broadly of the right to be "let alone:"

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. . . . They conferred, as against the government, the right to be let alone — the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.

June 1, 1942, *Skinner v. Oklahoma*: In a unanimous opinion, the Court held (per Justice Douglas) that, by forcing a prisoner to undergo sterilization, the State of Oklahoma violated the equal protection clause of the Fourteenth Amendment. The Court wrote that such an action treads on "one of the basic civil rights of man," and that "marriage and procreation are fundamental to the very existence and survival of the race."

June 7, 1965, *Griswold v. Connecticut*: The Supreme Court held that the constitutional right to privacy, derived from the "penumbras and emanations" of the Bill of Rights, encompasses the right of married persons to use contraceptives. Justice Goldberg, in concurrence, relied extensively on the Ninth Amendment, which states that the specific rights enumerated in the Bill of Rights are not exhaustive.

April 21, 1971, *United States v. Vuitch*: By a 5-4 vote, the Court held that a District of Columbia statute criminalizing abortion unless "necessary for the preservation of the mother's life or health" was not unconstitutionally vague. However, the Court interpreted the term "health" to include "psychological as well as physical well-being."

December 13, 1971: *Roe v. Wade* and *Doe v. Bolton* were argued for the first time before the Supreme Court.

March 22, 1972, *Eisenstadt v. Baird*: The Court held that a statute that allowed the provision of contraceptives to married adults, while prohibiting it for unmarried adults, violated the equal protection clause of the Fourteenth Amendment. In the course of its

decision, the Court recognized that the right to privacy protects access to contraceptives for the married and unmarried alike. The opinion states, "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." Chief Justice Burger dissented. Neither Justice Powell nor Justice Rehnquist participated in this decision, presumably because they had only been recently appointed and were not present for oral argument.

October 11, 1972: *Roe v. Wade* and *Doe v. Bolton* were re-argued before the Court.

January 22, 1973: *Roe v. Wade* and *Doe v. Bolton* were both decided by the Court with a 7-2 vote. *Roe* established that:

- Abortion is encompassed within the right to privacy.
- Restrictions on abortion must be narrowly tailored to serve compelling state interest.
- Before viability, the state's interest in fetal life is not compelling.
- Even after viability, when the state's interest in fetal life becomes compelling, the state must allow abortions necessary to protect a woman's life or health.
- The state's interest in maternal health becomes compelling at the end of the first trimester of pregnancy.
- A fetus is not a "person" under the Fourteenth Amendment, nor may the state justify restrictions on abortion based on one theory of when life begins.
- In *Doe*, the Court defined "health" to include "all factors — physical, emotional, psychological, familial, and the woman's age — relevant to the well-being of the patient."

Justices White and Rehnquist dissented in both cases.

1975: Justice Douglas (author of the *Griswold* opinion) retired and was replaced by Justice Stevens.

September, 1976: In an attempt to undermine *Roe* through regulation, Congress enacted the first Hyde Amendment as a rider to the appropriations bill for the Department of Health, Education and Welfare (later renamed the Department of Health and Human Services (HHS)), which is renewed annually. The Hyde Amendment limited federal funding for

abortions through Medicaid and all other HHS programs to those necessary to save a woman's life and, in some years, in cases of rape and incest, or where the pregnancy would cause "severe and long-lasting physical health damage" to the woman.

July 1, 1976, *Planned Parenthood v. Danforth*: By a 6-3 vote, the Court invalidated a requirement that a married woman obtain her husband's consent for an abortion, reasoning that such a requirement granted unconstitutional veto power to a third party. In the same decision, the Court struck down a ban on the performance of abortions by saline amniocentesis. By a 5-4 vote (with Justice Stevens dissenting), the Court struck down a statute requiring minors seeking abortions to obtain the written consent of one parent, again reasoning that it provided unconstitutional veto power to a third party. Chief Justice Burger, in a retreat from his concurrence in *Roe*, joined Justice White's dissenting opinion.

July 1, 1976, Singleton v. Wulff: A plurality of the Court (Justices Blackmun, Brennan, White, and Marshall) recognized that physicians may assert the rights of their patients seeking abortions, reasoning in part that women may be "chilled" from bringing

abortion cases for themselves "by a desire to protect the very privacy of her decision from the publicity of a court suit." Four Justices dissented from this portion of the opinion; Justice Stevens found it unnecessary to decide the question.

July 1, 1976: In *Bellotti v. Baird (Bellotti I)*, the Court, in a unanimous opinion delivered by Justice Blackmun, declined to rule on the merits of a Massachusetts statute requiring minors seeking abortions to obtain parental consent or a court order waiving parental consent. Instead, the Court held that the federal district court should have sought an interpretation of the statute from the Massachusetts Supreme Judicial Court. The U.S. Supreme Court held the statute unconstitutional three years later.

June 9, 1977, *Carey v. Population Services International*: The Court invalidated a New York statute making it a crime to sell or distribute contraceptives to minors under 16; for anyone other than a pharmacist to distribute contraceptives to anyone over 16; and for anyone to display or advertise contraceptives. The Court thus expanded the right to obtain and use contraceptives established in *Griswold* and *Eisenstadt* to minors.

June 20, 1977: In three cases decided on the same day, *Maher v. Roe*, *Beal v. Doe*, and *Poelker v. Doe*, the Court for the first time addressed restrictions on public funding for abortions, upholding all of them. In *Beal*, the Court held that the federal Medicaid statute does not require funding of abortions that are not "medically necessary." In *Maher*, the same majority held that the equal protection clause of the Fourteenth Amendment does not require state Medicaid programs to cover non-therapeutic abortions for indigent women just because it covers the expenses associated with childbirth. In other words, the Court found that states may constitutionally promote childbirth over abortion through Medicaid. Similarly, in *Poelker*, the Court held that a public hospital's failure to provide non-therapeutic abortions did not violate the equal protection clause. In each case, the same three Justices — Brennan, Marshall, and Blackmun — dissented. Prefiguring its devastating decision three years later to uphold the Hyde Amendment, the Court in *Maher* wrote that the restriction on funding non-therapeutic abortions "does not impinge upon the fundamental right recognized in *Roe*" because it imposes "no restriction on access to abortions that was not already there."

January 9, 1979, *Colautti v. Franklin*: By a 6-3 vote, the Court struck down a Pennsylvania statute requiring a physician performing an abortion to "preserve the life and health of the fetus [as though it were] intended to be born and not aborted" when the fetus is viable or if there is "sufficient reason to believe [it] may be viable." The Court found the law to be unconstitutionally vague because it did not distinguish between "may be viable" and the definition of viability established in *Roe*. Moreover, the Court noted that the statute did not "clearly specify . . . that the woman's life and health must always prevail over the fetus['s] life and health when they conflict."

July 2, 1979, *Bellotti v. Baird (Belotti II)*: Before the Court for the second time, this case involved a Massachusetts parental consent statute. The Massachusetts Supreme Judicial Court interpreted the statute to: (1) require the consent of both parents for any non-emergency abortion for a woman under 18; (2) require that a parent, if available, be notified of a court procedure to authorize the abortion; and (3) allow the court to withhold consent for the abortion even if the minor is capable of making an informed and reasonable decision. Eight Justices found the

statute unconstitutional: four because it granted absolute veto power of the minor's decision to either the parents or the court, and four because the court procedure required parental consultation and allowed the court to override the decision of a mature minor. In addition, four Justices, in a plurality opinion written by Justice Powell, announced a framework for testing the constitutionality of parental involvement statutes in the future. Under this framework, a parental involvement requirement must contain an alternative bypass procedure in which the minor is entitled to a waiver of parental involvement if she is mature enough to make the abortion decision or if an abortion would be in her best interest. The procedure must allow her to proceed anonymously to protect her privacy, and must be sufficiently expeditious so that her abortion is not delayed.

June 30, 1980, *Harris v. McRae*: The Court upheld the validity of the Hyde Amendment under the right to privacy of the Fifth Amendment and under the Establishment Clause of the First Amendment. The Court ruled that the Hyde restrictions do not interfere with the due process liberty recognized in *Roe*, writing, "a woman's freedom of choice [does not carry] with it a constitutional entitlement to the

financial resources to avail herself of the full range of protected choices." The Court further stated that the Hyde Amendment "leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have if Congress had chosen to subsidize no health care costs at all." Finally, the Court held that states participating in the Medicaid program are not required by Title XIX of the Social Security Act to fund "medically necessary" abortions for which federal funds are not available. Justice Brennan wrote a dissenting opinion, joined by Justices Marshall and Blackmun, decrying the Court's "failure to acknowledge that the discriminatory distribution of the benefits of governmental largess can discourage the exercise of fundamental liberties just as effectively as can an outright denial of those rights through criminal and regulatory sanctions." Similarly, Justice Stevens dissented, arguing that "the government must use neutral criteria in distributing benefits." Justice Brennan's dissent became the model for several state court rulings over the succeeding years requiring neutrality in funding between abortion and childbirth under state constitutions.

March 23, 1981, *H.L. v. Matheson*: The Court upheld a Utah parental notice statute that provided no procedure by which a minor could bypass parental involvement. The only plaintiff in the case was an unmarried, immature minor who was living with and dependent upon her parents; thus, the Court found she could not challenge the application of the statute to mature or emancipated minors. Three Justices dissented.

1981: Justice Stewart retired and was replaced by Justice O'Connor.

1982: The Solicitor General of the United States, who appears in court on behalf of the Administration, filed an *amicus* brief in *City of Akron v. Akron Center for Reproductive Health* proposing an "undue burden" standard that would require courts to give "heavy deference" to state legislative judgment on abortion. The Solicitor proposed that the undue burden standard be developed on a case-by-case basis.

June 15, 1983: The Court decides two abortion cases on the same day. In *City of Akron v. Akron Center for Reproductive Health*, the Court struck down a city

ordinance requiring that all second-trimester abortions be performed in a hospital; a woman seeking an abortion wait at least twenty-four hours after giving written consent and receiving biased information from the attending physician; women under age fifteen obtain the "informed" written consent of one parent twenty-fours hour prior to an abortion; and fetal remains be disposed of in a "humane and sanitary" manner. The Court's 6-3 opinion found that the hospital requirement did not serve the state's interest in protecting maternal health; the biased informed consent provision followed by a mandatory 24-hour delay period did not serve the state's interest in insuring informed consent; the parental consent requirement was invalid because it did not provide a confidential alternative bypass procedure; and the fetal remains provision was unconstitutionally vague. In her dissent, Justice O'Connor (joined by Justices White and Rehnquist) rejected the trimester framework established in *Roe* in favor of applying the "undue burden" test, under which a statute is invalid if it involves "absolute obstacles or severe limitations on the abortion decision." This was the first time that three Justices voted to discard *Roe* in a case involving restrictions on adult women.

In *Planned Parenthood v. Ashcroft*, the Court likewise invalidated a second-trimester hospitalization requirement, but upheld a number of other restrictions. For the first time, the Court approved a parental consent statute that contained a judicial bypass mechanism. The Court also upheld a provision requiring a pathology report for each abortion and the presence of a second physician during all post-viability abortions.

1986: The Solicitor General of the United States filed an *amicus* brief in *Thornburgh v. American College of Obstetricians and Gynecologists* urging the Court to abandon *Roe v. Wade* entirely. The brief also attacked the doctrine of incorporation, under which various substantive rights were made applicable to the states via the Due Process Clause of the Fourteenth Amendment.

June 11, 1986, *Thornburgh v. American College of Obstetricians & Gynecologists*: The Court struck down, in its entirety, a Pennsylvania statute requiring that a woman seeking an abortion receive a state-scripted lecture from her attending physician and be told of the availability of additional state-printed materials, including information about fetal development,

before giving her "informed" consent to the procedure; abortion providers file reports with the state that name the performing and referring physicians, provide details about women obtaining abortions, and the method of payment; a physician performing a post-viability abortion exercise the degree of care that is most likely to result in fetal survival, unless doing so "would present a significantly greater medical risk to the life or health of the pregnant woman;" and a second physician be present during abortions where it is possible for the fetus to survive the procedure, regardless of whether an emergency exists. In invalidating the reporting requirements, the Court wrote that "the Court consistently has refused to allow government to chill the exercise of constitutional rights by requiring disclosure of protected, but sometimes unpopular, activities." In invalidating the first restriction on post-viability abortion, the Court found that this provision required an unconstitutional "trade-off" between the woman's health and fetal survival. The Court found the second post-viability provision to be invalid because it contained no exception for emergency abortions.

In his dissent, Chief Justice Burger, who had concurred in *Roe*, stated his desire to "re-examine *Roe*,"

leaving a bare 5-4 majority in favor of maintaining *Roe*. Justice O'Connor, also dissenting, urged once again the application of the "undue burden" standard she had defined in the *City of Akron* case three years earlier.

June 30, 1986, *Bowers v. Hardwick*: By a 5-4 vote, the Court upheld a Georgia sodomy statute challenged by a gay man who claimed it violated his rights under the Ninth and Fourteenth Amendments. The Court declined to extend the right to privacy enumerated in *Roe* and *Griswold* to protect consensual sex between same-sex partners. Justice Blackmun dissented, joined by Justices Brennan, Marshall, and Stevens. Justice Powell, who had supported the continuing validity of *Roe* a few weeks earlier in *Thornburgh*, concurred, but noted that the punishment for "a single private, consensual act of sodomy" under Georgia law may violate the Eighth Amendment's prohibition on cruel and unusual punishment.

1986: Chief Justice Burger retired and was replaced as Chief Justice by Associate Justice Rehnquist; Rehnquist's Associate position was filled by Justice Scalia.

1987-88: Justice Powell retired and was replaced by Justice Kennedy. With this shift in the composition of the Court, there is no clear majority supporting *Roe*.

1989: The Solicitor General of the United States submitted an *amicus* brief in *Webster v. Reproductive Health Services*, asking the Court to overrule *Roe*. The brief relied extensively on purported historical evidence of a strong state interest in protecting fetal life.

July 3, 1989, *Webster v. Reproductive Health Services*: In a 5-4 opinion, the Court upheld a Missouri ban on the use of public employees and facilities for performing abortions, except where necessary to save a woman's life. The Court found that the restriction was valid under *McRae* and preceding cases that held that the "[s]tate need not commit any resources to facilitating abortions." The Court also upheld a requirement that physicians test for viability at twenty weeks gestational age or more. Three Justices (Rehnquist, White, and Kennedy) urged reconsideration of *Roe*, Justice Scalia went so far as to suggest that the Court overrule *Roe*, and Justice O'Connor voted to uphold the statute but found no conflict with prior precedents. In his dissent, Justice Blackmun wrote: "For today, the women

of this Nation still retain the liberty to control their destinies. But the signs are evident and very ominous, and a chill wind blows." This case marked the first time that only four Justices voted to uphold *Roe* in its entirety.

On the same day the Court decided *Webster*, it granted *certiorari* in three abortion cases: two involving parental notice statutes and one involving a statute regulating clinics that provide abortions. In one case, *Hodgson v. Minnesota*, the Solicitor General of the United States filed an *amicus* brief arguing that the scope of constitutional privacy rights should be determined by whether the right was specifically recognized in 1868, when the Fourteenth Amendment was ratified. As a fallback position, the Solicitor argued that the state's interest in fetal life is compelling enough to overcome a woman's right to choose abortion in all cases.

June 25, 1990: In *Hodgson v. Minnesota*, a closely divided Court held that Minnesota's blanket requirement that minors notify both parents before obtaining an abortion is "unreasonable" and hence unconstitutional, but that an alternative Minnesota statute, which includes a judicial bypass mechanism, is valid.

Four Justices (Kennedy, Rehnquist, White, and Scalia) voted to uphold the statute without the bypass. The same day, in *Ohio v. Akron Center for Reproductive Health*, the Court upheld Ohio's one-parent notice requirement by a 6-3 vote despite numerous problems with the judicial bypass procedure provided in the statute. The Court left open the possibility that a one-parent notice statute does not require a bypass mechanism at all.

1990: Justice Brennan retired and was replaced by Justice Souter.

May 23, 1991, *Rust v. Sullivan*: In an extension of prior abortion funding cases, the Court, by a 5-4 vote, held that a regulation prohibiting recipients of family planning funds under Title X of the Public Health Service Act from providing counseling about or referrals for abortions (the gag rule) does not violate either freedom of speech or the right to privacy. The Court also upheld provisions barring Title X projects from engaging in activities that "encourage, promote, or advocate abortion as a method of family planning," and requiring grantees that provided abortions with non-federal funds to keep these activities "physically and financially separate" from their Title X projects.

Newly-appointed Justice Souter provided the crucial fifth vote to uphold the gag rule. Had Justice Brennan still been on the Court, the result would have undoubtedly been different.

1991: Justice Marshall retired and was replaced by Justice Thomas.

1992: The Solicitor General of the United States filed an *amicus* brief in *Planned Parenthood v. Casey* arguing that there is no fundamental right to abortion and, even if there is, the state's compelling interest in protecting fetal life throughout pregnancy subsumes it, and, therefore, the Court should uphold all the restrictions at issue in the case.

June 29, 1992, *Planned Parenthood v. Casey*: In a joint opinion upholding all but one provision of Pennsylvania's Abortion Control Act, Justices O'Connor, Kennedy, and Souter replaced the strict scrutiny standard established in *Roe* with an "undue burden" test for analysis of pre-viability restrictions on abortion. The joint opinion specifically re-affirmed *Roe*'s standard for evaluating restrictions on abortion after viability but eliminated *Roe*'s trimester framework by explicitly extending the state's interest in

protecting potential life and maternal health to apply throughout pregnancy. Therefore, regulations that affect a woman's abortion decision that further these interests are valid unless they have the "purpose or effect" of "imposing a substantial obstacle" in the woman's path. Justice Scalia decries the "undue burden" test as unworkable, while Justice Blackmun announces hope that all the restrictions upheld by the Court will ultimately, upon new evidence, be invalidated as undue burdens. In applying this new standard to the Pennsylvania statute, the Court upheld the requirement that a physician — and only a physician — must provide a woman with state-scripted information 24-hours in advance of a non-emergency abortion. The Court also upheld Pennsylvania's narrow definition of medical emergency. The Court did not uphold the statute's husband notification requirement, finding that, for a woman who doesn't choose to notify her husband, the requirement could enable her husband to prevent her from obtaining an abortion or harm her physically or otherwise — thus imposing an undue burden on her right.

1993: Justice White, one of two dissenting Justices in *Roe*, retired and was replaced by Justice Ginsburg.

1994: Justice Blackmun, author of *Roe*, retired and was replaced by Justice Breyer.

March 31, 1997, *Lambert v. Wicklund*: The Court held that, absent state court interpretation to the contrary, a requirement that an immature minor show that parental notification is not in her best interest is equivalent to a requirement that she show that abortion is in her best interest.

June 16, 1997, *Mazurek v. Armstrong*: The Court eliminated the crucial "purpose" prong in the undue burden test established in *Casey*, ruling that it was doubtful as to whether a statute could be ruled invalid based solely on its impermissible purpose without showing an impermissible effect. The Court also weakened the discretion of the lower federal courts to consider evidence of the process by which a statute was enacted, including information showing that a statute was drafted by anti-choice groups and unsupported by any evidence that it furthered maternal health. The ruling ignored past cases establishing that courts must take such facts into consideration when reviewing cases involving race discrimination.

June 28, 2000, *Stenberg v. Carhart:* In a 5-4 vote, the U.S. Supreme Court struck down a Nebraska ban on so-called "partial-birth abortion," finding it an unconstitutional violation of *Roe v. Wade*. Writing for the majority, Justice Breyer found that the Nebraska ban violates the Supreme Court precedents *Roe v. Wade* and *Planned Parenthood v. Casey* by failing to include an exception to preserve the health of the woman and by imposing an undue burden on a woman's ability to choose an abortion.

In addition, the Court determined that the effect of the ban went well beyond prohibitions against so-called "late term" abortion, finding the ban to be so broad and vague that constitutionally protected abortion procedures performed before viability could be prohibited. The majority decision was joined by four justices. Four separate dissenting opinions were filed by Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas, demonstrating that *Roe* and the right to choose is imperiled.

The Court's decision will have the domino effect of rendering similar bans passed in over 30 states and Congress unconstitutional or unenforceable.

Roe v. Wade and the Right to Privacy

IV. *ROE V. WADE* IN THE GLOBAL CONTEXT

International Recognition of Abortion Rights

With *Roe v. Wade*, the United States bolstered an emerging global trend toward recognizing women's right to reproductive autonomy. Prior to 1973, several of the world's nations — including China, India, the former Soviet Union, and the United Kingdom — had already liberalized their restrictive abortion laws. The 28 years since *Roe* have seen greater worldwide liberalization of abortion laws than any other period of history. However, during this same period, the United States has acted, through court decisions and legislation, to make abortion laws increasingly more restrictive.

Approximately 62% of the world's population now lives in the 64 countries that permit abortion at the woman's request or with the approval of medical practitioners on broad social and economic grounds. For the other 38% of the world's population, abortion is still illegal under most circumstances. Not only are these 127 countries lagging behind an international

trend toward liberalization, their laws and policies violate standards articulated in international human rights instruments. Globally recognized rights, including the right to privacy, the right to be free from gender discrimination, the right to health, and the right to life, liberty and security, are compromised by laws that criminalize abortion.[1]

At recent United Nations conferences, governments and nongovernmental agencies alike recognized the need to address unsafe abortion. The International Conference on Population and Development held in Cairo in 1994 and the Fourth World Conference on Women held in Beijing in 1995 specifically addressed reproductive rights and reproductive health, including unsafe abortion. While the documents adopted at these conferences are not binding under international law, they embody globally accepted policy norms and recommendations.

The Cairo Programme of Action recognizes unsafe abortion as a public health issue and calls for greater safety and compassion for women seeking abortions.[2] The Cairo positions on abortion were reaffirmed at a five-year review by the UN in 1999, despite efforts of reactionary governments to block them.

The Beijing Platform for Action goes further by urging governments to consider removing criminal penalties for women who have undergone illegal abortions and to take affirmative steps toward understanding and addressing the causes and consequences of illegal abortion.[3]

The growing international consensus in favor of abortion rights is evident at both the international and national levels. The following summary of the abortion laws of 12 nations places *Roe* in its historical context, highlighting reforms that preceded, coincided, and followed *Roe* and identifying countries in which reform has not yet occurred.

*Pre-***Roe** *Reform*

CHINA

Since 1953, China's abortion policy has reflected the national objective of curbing population growth. Abortion is generally available at the woman's request during the first six months of pregnancy. Provincial regulations further the national population policy, often referred to as the "one-child policy," by penalizing those who do not comply with family planning regulations and providing incentives for the termina-

tion of pregnancies. In addition, pursuant to a 1994 national law, physicians are legally obligated to "give a medical opinion on terminating pregnancy" in cases where the fetus is diagnosed with a serious hereditary disease or impairment or where the pregnancy endangers the woman's life.[4]

THE UNITED KINGDOM

The United Kingdom was one of the first countries in Europe to liberalize its abortion law. The Abortion Act of 1967, (Ch. 87, Oct. 27, 1967) as amended in 1990, (Human Fertilization and Embryology Act, 1990, Ch. 37, Nov. 1, 1990) allows two medical practitioners to authorize an abortion during the first 24 weeks of pregnancy [gestational limits are calculated from last menstrual period] if the continuation of the pregnancy would involve greater risk to the woman's physical or mental health than if the pregnancy were terminated. The Abortion Act recognizes social and economic grounds for abortion by providing for consideration of the woman's actual or reasonably foreseeable environment when evaluating the potential threat to her mental health. The Abortion Act further provides that physicians should consider the risks to the mental or physical health of the woman's existing children. An abortion may be performed at any time

when necessary to prevent a grave, permanent injury to the woman's health, to avoid a risk to the woman's life, or in the case of severe fetal impairment. A medical practitioner who determines in good faith that the abortion is immediately necessary to save a woman's life need not seek the approval of a second practitioner before performing the procedure. While the Abortion Act gives medical practitioners — not the woman — the power to determine her eligibility for an abortion, liberal interpretation of the law reportedly renders abortion available virtually on request. The Abortion Act is not in force in Northern Ireland, where abortions are available only to save a woman's life and protect her physical and mental health.

INDIA

India's Medical Termination of Pregnancy Act (No. 34 of 1971, Secs. 3 and 4) was enacted in 1971. The Termination of Pregnancy Act sets forth liberal grounds for obtaining an abortion. As in the United Kingdom, however, women in India may at no point obtain an abortion at their request. Abortion is legal within the first 12 weeks of pregnancy when one registered medical practitioner determines in good faith that the pregnancy poses a threat to a woman's physical or mental health or that the fetus is likely to

suffer a serious physical or mental disability. The law recognizes, among other things, contraceptive failure, rape, and the woman's actual or reasonably foreseeable environment as considerations affecting a woman's mental health. After 12 weeks, a woman may obtain an abortion if two registered medical practitioners agree that one of the above conditions has been met. When an immediate abortion is necessary to save a woman's life, the approval of a single registered practitioner is sufficient.

Roe-*era Reforms*

SWEDEN

Sweden enacted a liberal abortion law in 1974 (Swedish Abortion Act of June 14, 1974). Abortion is legal at the woman's request through the eighteenth week of pregnancy. Abortions after the eighteenth week of pregnancy are permitted for medical, socioeconomic, and legal reasons when approved by the National Board of Health and Welfare. Approval for abortions after viability of the fetus will be granted only when the pregnancy gravely threatens the woman's life or health or in the case of severe fetal impairment.

DENMARK

Denmark's Pregnancy Act of 1973 (Law No. 350 of June 13, 1973) made abortion legal at the woman's request during the first 12 weeks of pregnancy. With approval by a hospital committee, a woman may have an abortion after 12 weeks on limited grounds, including socioeconomic reasons, rape, and likelihood of fetal impairment. Abortion is available at any time without authorization when the pregnancy poses a risk of "serious deterioration" to the woman's physical or mental health.

FRANCE

France enacted provisional legislation liberalizing abortion in 1975 (Law No. 75-17 of Jan. 17, 1975), giving the law, with minor modifications, permanent status in 1979 (Law No. 79-1204 of Dec. 31, 1979). Under the current law, during the first 14 weeks of pregnancy, a woman who declares herself to be in "distress" may legally obtain an abortion, provided she undergoes counseling and observes the mandatory waiting period of one week. Because the woman herself is the final judge of whether or not she is in "distress," abortion is effectively available on request. After 14 weeks, abortion is permitted only when two physicians determine that the procedure is necessary

to prevent a grave risk to woman's health or when there is a strong likelihood of fetal impairment.

Recent Reforms

TURKEY
Turkey's Population Planning Law (15 Law No. 2827 of 1983), enacted in 1983, permits abortion during the first 10 weeks of pregnancy. If the woman is married, her husband must consent to the termination of the pregnancy. After 10 weeks, an abortion may be performed with the approval of a medical specialist and a gynecologist when the woman's life is in danger or if there is a risk of severe fetal impairment. When an abortion is immediately necessary to save a woman's life, the attending physician may authorize the procedure.

ROMANIA
In 1989, one of the first acts of the new Romanian government was to reverse the restrictive abortion laws of the Ceaucescu regime (Decree-Law No. 1, Dec. 26, 1989). Abortion is now permitted at the woman's request during the first 14 weeks of pregnancy. After 14 weeks, an abortion may be performed only on therapeutic grounds.

SOUTH AFRICA
South Africa's Choice on Termination of Pregnancy Act (17 Act No. 92 of 1996), enacted in 1996, is the most liberal abortion law in Africa. Abortion is available at the woman's request during the first 12 weeks of pregnancy. Beyond 12 weeks, but before the twentieth week, an abortion may be obtained if a medical practitioner is of the opinion that the pregnancy poses a risk of injury to the woman's physical or mental health, there is a substantial risk that the fetus would suffer from a severe physical or mental impairment, the pregnancy results from rape or incest, or the continued pregnancy would significantly affect the social or economic circumstances of the woman. Abortion is available at any time if the continued pregnancy poses a threat to the woman's life or there is a risk of fetal impairment or injury.

Looking to the Future: the Struggle Continues

Despite the historical trend toward liberalization of abortion laws, numerous countries continue to maintain and enforce laws that criminalize abortion. Such laws pose an extreme threat to women's lives, health, and freedom. The following are geographically diverse examples of nations in which women's lives

are particularly at risk from unsafe abortion.

CHILE

During its final weeks in office in 1989, the Pinochet regime eliminated a health law provision that had permitted abortion on therapeutic grounds. Chile's abortion law (18 Act. No. 18.826, Aug. 24, 1989) is now among the world's most restrictive. Abortion is prohibited under all circumstances. No exception is made for procedures performed to save a woman's life. Women who have undergone abortions, particularly low-income women, are often prosecuted.

NEPAL

Abortion is illegal in Nepal and is punishable by imprisonment of both the patient and the provider. The law does provide an exception for abortions caused while performing an act of "benevolence" ("*upkaar*"). However, since the term "benevolence" has not been defined clearly by the law, the exception to the prohibition is vague and has received narrow interpretation (Country Code, 1963, Ch. 10: Homicide, Nos. 28 & 31). As in Chile, a large number of low-income women have been prosecuted for having an abortion. In 1997, an estimated 75% of all the women incarcerated in Nepal were imprisoned

for having had an abortion.

NIGERIA

Abortion in Nigeria is a criminal offense in both the southern and northern states, unless performed to save a woman's life (20 Crim. Code ' 228 (applies to southern states); Penal Code ' 232 (applies to northern states)).

Conclusion

During the past 28 years, the international community has shown increasing respect for women's reproductive rights. The *Roe* decision undoubtedly added momentum to this global trend. However, while pro-choice reformers worldwide continue to prevail in their national legislatures, advocates of reproductive rights in the United States are struggling to curtail further erosion of the critical freedoms established in *Roe*. Women worldwide must continue the urgent fight to ensure that their right to reproductive autonomy is recognized as a human right.

Endnotes

1 *See generally*, The International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, art. 17.1, S. Treaty Doc. No. 95-2, 999 U.N.T.S. 171, 6 I.L.M. 368

(entry into force Mar. 23, 1967) [hereinafter ICCPR]; Universal Declaration of Human Rights, adopted Dec. 10, 1948, art. 2, G.A. res. 217 A(III), U.N. Doc. A/810 at 71 [hereinafter UDHR]; The International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, art. 2.2, 993 U.N.T.S. 3 (entry into force Jan. 3, 1976) [hereinafter ICESCR]; The Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Dec. 18, 1979, arts. 1,3, 1249 U.N.T.S. 13, 19 I.L.M. 33 (entry into force Sept. 3, 1981) [hereinafter CEDAW]; ICCPR art. 2.1; ICESCR arts. 12.1, 12.2; CEDAW arts. 10, 12.1, 14.2; UDHR art. 3; ICCPR arts. 6.1, 9.1.

2 Programme of Action of the International Conference on Population and Development, Cairo, Egypt, 5-13 Sep. 1994, in REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, 8.25, U.N.Doc. A/CONF. 171/13/Rev.1, U.N. Sales No. 95.XIII.18 (1995).

3 The Beijing Declaration and Platform for Action, Fourth World Conference on Women, Beijing, China, 5-15 September 1995, 106(k), 109(i), U.N. Doc. DPI/1766/Wom (1996).

4 Maternal and Infant Health Care Law, 1994, translated in Law on Maternal and Infant Health Care Reported, FBIS-CHI-94-211, Nov. 1, 1994, at 29-32.

V. *ROE V. WADE*: Excerpts from the Decision of the United States Supreme Court

Before the United States Supreme Court issued its decision in *Roe v. Wade*, the case was argued not once, but twice before the Justices. Understanding how significant the case would be, Justice Harry A. Blackmun devoted countless hours to researching and drafting the majority opinion. The decision that was handed down on January 22, 1973, included both a considered argument on the constitutionality of the specific Texas laws in question, and a historical overview of laws concerning abortion and medical and religious thought on the issue.

The full text of this decision can be found at 410 U.S. 113 (1973); in addition, the decision can be found on numerous websites, including *http://carver.law.cuny.edu/roe.htm* and by searching *http://www.findlaw.com*. Below are excerpts from the decision. Footnotes and citations have been omitted, for the most part, from these excerpts. The cites in brackets note where the

excerpts can be found within the decision's text.

The majority opinion began its analysis with an overview of the history of abortion in the West and legal tradition pertaining to it:

> *It perhaps is not generally appreciated that the restrictive criminal laws in effect in a majority of States today are of relatively recent vintage. Those laws, generally proscribing abortion or its attempt at any time during pregnancy except when necessary to preserve the pregnant woman's life, are not of ancient or even of common-law origin. Instead, they derive from statutory changes effected for the most part, in the latter half of the 19th century. [410 U.S. 113, 130]*

After discussing the laws of Ancient Greece and Rome (as well as the teachings of these civilizations' religions and those of the founders of medicine), the Justices then turned to the English common law, which served as the basis of American jurisprudence.

> *It is understood that at common law, abortion performed before "quickening" – the first recognizable movement of the fetus* in utero, *appearing usually from the 16th to the 18th week of pregnancy – was not an indictable offense. The absence of a common-law crime for pre-quickening abortion appears to have developed from a confluence of earlier philosophical, theological, and civil and canon law concepts of when life begins. These disciplines variously approached the question in terms of the point at which the embryo or fetus became "formed" or recognizably human, or in terms of when a "person" came into being, that is, infused with a "soul" or "animated." A loose consensus evolved in early English law that these events occurred at some point between conception and live birth. . . . . Bracton [an early legal scholar] focused upon quickening as the critical point. The significance of quickening was echoed by later common-law scholars and found its way into the received common law in this century. [410 U.S. 113, 132-133]*

> *Whether abortion of a* quick *fetus was a felony at common law, or even a lesser crime, is still disputed. [410 U.S. 113, 134] . . . [I]t now appear[s] doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus. [410 U.S. 113, 137].*

The majority opinion noted that, in 1803, England enacted its first criminal abortion statute, which replaced the common law discussed above. The Court went on to discuss the various laws that were later passed in that country, including the Abortion Act of 1967, which was one of the first European laws liberalizing abortion (see p.46).

Turning to American law, the Justices wrote:

> *In this country, the law in effect in all but a few States until the mid-19th century was the pre-existing English common law. . . . By 1840, when Texas had received the common law, only eight American States had statutes dealing with abortion. It was not until after the War Between the States that legislation began generally to replace the common law. Most of these initial statutes dealt severely with abortion after quickening but were lenient with it before quickening. Most punished attempts equally with completed abortions. While many statutes included the exception for an abortion thought by one or more physicians to be necessary to save the mother's life, that provision soon disappeared and the typical law required that the procedure actually be necessary for that purpose.*

> *Gradually, in the middle and late 19th century the quickening distinction disappeared from the statutory law of most States and the degree of the offense and the penalties were increased. By the end of the 1950's, a large majority of jurisdictions banned abortion, however and whenever performed, unless done to save or preserve the life of the mother. . . . In the past several years, however, a trend toward liberalization of abortion statutes has resulted in adoption, by about one-third of the States, of less stringent laws. . . .*
>
> *It is thus apparent that at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than under most American statutes currently in effect. Phrasing it another way, a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today. At least with respect to the early state of pregnancy, and very possibly without such a limitation, the opportunity to make this choice was present in this country well into the 19th century. Even later, the law continued for some time to treat less punitively an abortion procured in early pregnancy. [410 U.S. 113, 138 - 141]*

Understanding that laws concerning abortion cannot be understood in a vacuum, the Court also discussed the positions taken by three prominent organizations, the American Medical Association, the American Public Health Association, and the American Bar Association. It began by noting:

> *The anti-abortion mood prevalent in this country in the late 19th century was shared by the medical profession. Indeed, the attitude of the profession may have played a significant role in the enactment of stringent criminal abortion legislation during that period. [410 U.S. 113, 142]*

They also noted, however, that the medical community was not monolithic in its views of abortion and that its official stance changed with time. As outlined in the majority opinion, at the time of the decision in *Roe*, all three of these major, mainstream organizations had positions supporting the liberalization of criminal laws pertaining to abortion.

Later in the decision, the Court also turned to the question of when life begins, and the wide range of thought on this point.

It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until live birth. This was the belief of the Stoics. . . . It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. . . . It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained; organized groups that have taken a formal position on the abortion issue have generally regarded abortion as a matter for the conscience of the individual and her family. . . . As we have noted, the common law found greater significance in quickening. Physicians and their scientific colleagues have regarded that event with less interest and have tended to focus either upon conception, upon live birth, or upon the interim point at which the fetus becomes "viable," that is, potentially able to live outside the mother's womb, albeit with artificial aid. . . . The Aristotelian theory of "mediate animation," that held sway through the Middle Ages and the Renaissance in Europe, continued to be the official Roman Catholic dogma until the 19th century, despite opposition to this "ensoulment" theory from those

in the Church who would recognize the existence of life from the moment of conception. . . . The latter is now, of course, the official belief of the Catholic Church. As one brief amicus *discloses, this is a view strongly held by many non-Catholics as well, and by many physicians. Substantial problems for precise definition of this view are posed, however, by new embryological data that purport to indicate that conception is a "process" over time, rather than an event, and by new medical techniques such as menstrual extraction, the "morning-after" pill, implantation of embryos, artificial insemination, and even artificial wombs. . . .*

In areas other than criminal abortion, the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth or to accord legal rights to the unborn except in narrowly defined situations and except when the rights are contingent upon live birth. . . . [T]he unborn have never been recognized in the law as persons in the whole sense. [410 U.S. 113, 160-162]

After setting the stage, the Court laid out its reasoning, beginning with the question of whether a constitutional right to choose abortion exists.

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, *141 U.S. 250, 251 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. . . . These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty" . . . are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage,* Loving v. Virginia, *388 U.S. 1, 12 (1967); procreation,* Skinner v. Oklahoma, *316 U.S. 535, 541-542 (1942); contraception,* Eisenstadt v. Baird, *405 U.S., at 4530454; id., at 460, 463-365 (WHITE, J., concurring in result); family relationships,* Prince v. Massachusetts, *321 U.S. 158, 166 (1944); and child rearing and education,* Pierce v. Society of Sisters, *268 U.S. 510, 535 (1925),* Meyer v. Nebraska, supra.

This view of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm maybe imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation. [410 U.S. 113, 152-153]

After finding that the right to choose abortion can be found in the right to privacy, the Court went on to discuss whether and in what situations the State could restrict the procedure. In doing so, it prescribed the standard by which courts were to measure the constitutionality of such restrictions.

On the basis of elements such as these, appellant and some amici *argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. . . . [A] State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. . . . [410 U.S. 113, 153-154]*

Where certain "fundamental rights are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest," . . . and that legislative enactments must

be narrowly drawn to express only the legitimate state interests at stake. [410 U.S. 113, 155]

Finally, the Court analyzed how the competing interests of the woman seeking an abortion and the State's interest in "safeguarding health, in maintaining medical standards, and in protecting potential life" should be balanced.

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now-established medical fact . . . that until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth. It follows that, from and after this point, a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. . . .

This means, on the other hand, that for the period prior to this "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that,

in his medical judgement, the patient's pregnancy should be terminated. If that decision is reached, the judgement may be effectuated by an abortion free of interference by the State.

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother.

Measured again these standards, Art. 1196 of the Texas Penal Code, in restricting legal abortions to those "procured or attempted by medical advice for the purpose of saving the life of the mother," sweeps too broadly. The statute makes no distinction between abortions performed early in pregnancy and those performed later, and it limits to a single reason, "saving" the mother's life, the legal justification for the procedure. The statute, therefore,

cannot survive the constitutional attack made upon it here. [410 U.S. 113, 163-164]

This holding, we feel, is consistent with the relative weights of the respective interests involved, with the lessons and example of medical and legal history, with the lenity of common law, and with the demands of the profound problems of the present day. The decision leaves the State free to place increasing restrictions on abortion as the period of pregnancy lengthens, so long as those restrictions are tailored to the recognized state interests. The decision vindicates the right of the physician to administer medical treatment according to his professional judgment up to the point where the important state interests provide compelling justifications for intervention. [410 U.S.1 113, 165-166]

In 1992, nineteen years after the decision in *Roe*, the Supreme Court issued its decision in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). The opinion in that case profoundly changed the legal landscape. The plurality opinion, authored jointly by Justices O'Connor, Kennedy, and Souter, eliminated *Roe*'s trimester framework. Under that framework, which is outlined above, decisions regarding abortion during

the first trimester could be made without state interference; those performed after the first trimester could be regulated by the state in order to protect the woman's health; and, after fetal viability, the State could go so far as to ban abortions, so long as exceptions were made to protect the woman's life or health.

Perhaps more importantly, the Court established a new test for pre-viability abortion restrictions, replacing *Roe*'s "strict scrutiny" with the "undue burden" standard. Under this test, laws that have the "purpose or effect" of placing a substantial obstacle in the way of women seeking abortions are unconstitutional. While the parameters of the "undue burden" standard are still being tested, it is clear that women no longer enjoy the highest level of constitutional protection for their childbearing choices.

In Stenberg v. Carhart, 120 S. Ct. 2597 *(*2000), by a 5-4 vote, the U.S. Supreme Court struck down a Nebraska ban on so-called "partial-birth abortion," finding it an unconstitutional violation of *Roe v. Wade*. Writing for the majority, Justice Breyer found that the Nebraska ban violates the Supreme Court precedents *Roe v. Wade* and *Planned Parenthood v. Casey*

by failing to include an exception to preserve the health of the woman and by imposing an undue burden on a woman's ability to choose an abortion.

In addition, the Court determined that the effect of the ban went well beyond prohibitions against so-called "late term" abortion, finding the ban to be so broad and vague that constitutionally protected abortion procedures performed before viability could be prohibited. The majority decision was joined by five justices. Four separate dissenting opinions were filed by Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas, demonstrating that *Roe* and the right to choose is imperiled.

The Court's decision will have the domino effect of rendering similar bans passed in over 30 states and Congress unconstitutional or unenforceable.

VI. *Roe v. Wade* and the Timeline of the 20th Century

1900 Five million female wage earners in the U.S. make up one-fifth of the workforce.

1902 Women in Australia win the vote.

1902 Elizabeth Cady Stanton, suffragist thinker and leader, dies.

1903 Emmeline Pankhurst and daughters Christabel and Sylvia form the avidly pro-suffrage Women's Social and Political Union in England and proceed to chain themselves to buildings, burn letter boxes, and storm Parliament.

1906 Susan B. Anthony dies after a half-century of fighting for women's right to vote.

1910 German feminist Clara Zetkin proposes March 8 as International Women's Day, dedicated to equal rights for women worldwide.

1914 Deeply affected by the death of Sadie Sacks from an illegal abortion, Margaret Sanger publishes descriptions of contraception in *The Woman Rebel* and is promptly arrested for obscenity; two years later, Sanger opens the first birth control clinic and is again arrested.

1916 Jeannette Rankin of Montana becomes the first woman elected to the United States Congress.

1917 *How Long Must Women Wait for Liberty?* ask Alice Paul and other women displaying banners in front of the White House; a public outcry arises when hundreds are arrested and many imprisoned.

1918 Great Britian grants the vote to a limited group of women.

1919 Seventy-eight years after Americans organize, the Senate votes 49-47 for the 19th Amendment as drafted by Susan B. Anthony:

> *The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.*

1924 British women tire of Beecham's Pills and other sometimes lethal products used to induce miscarriage and form the Workers' Birth Control Group, arguing: "It's four times as dangerous to bear a child as to work in a mine; and mining is a man's most dangerous trade."

1927 Female sex hormones are discovered.

1929 Women in Nigeria arise in a massive protest against taxation by colonialists on products that provide income to women in the Women's War.

1930 Pope Pius XI virulently attacks both contraception and abortion.

1933 "Rabbit" tests (Ascheim-Z) provide women with an early method to finding out if they are pregnant.

1936 German gynecologist Friedrich Wilde develops the first cervical cap.

1939 Recognizing the significance of African-American midwives, the Tuskegee Institute creates a school of nurse-midwifery.

1940 Margaret Chase Smith of Maine begins a long public career as the first woman to serve in both houses of Congress.

1945 Blackburn Labour women in England threaten to stop making tea for men unless they nominate a woman for Parliament; Barbara Castle is chosen and wins.

1946 Estrogen replacement theory is prescribed to relieve the symptoms of menopause.

1948 A commission headed by Eleanor Roosevelt announces the Universal Declaration of Human Rights, which forbids sex discrimination and calls for the individual right to privacy, to marry and found a family, and to equality within marriage.

1953 China establishes a "one child policy."

1953 *"Sex is here to stay"* says one headline after a report by Alfred Kinsey suggests unmarried college women are not virgins, people often engage in oral sex, and same sex practices are not so uncommon.

1954 Despite the image of the '50s housewife, 60 percent of women work outside the home, and in real life, even Harriet of *Ozzie and Harriet* is a hard-working career woman.

1955 Rosa Parks, an African American seamstress, is arrested after refusing to move to another seat for a white rider on a Montgomery bus, sparking the civil rights movement.

1956 20,000 women in Pretoria, South Africa march against the distribution of apartheid passes that African women would be required to carry under the rigid government control system.

1958 The Church of England gives its blessing to the use of contraception.

1960 "The Pill" is commercially produced in the U.S. for the first time.

1961 With dire statistics showing that one million women get illegal abortions in the 1950s and over 1,000 die, the Jane Collective in Chicago arises to provide safe abortions away from back-alley butchers.

1964 The most important civil rights act of the century, the Civil Rights Act of 1964, guarantees equal access to services, and, in Title VII, outlaws discrimination in employment.

1965 Rejecting a state law that makes it illegal to disseminate information about contraception to married couples, the U.S. Supreme Court rules in *Griswold v. Connecticut* that people enjoy a fundamental zone of privacy.

1966 The National Organization for Women is founded and becomes the first group to demand repeal of all anti-abortion laws.

1967 England is one of the first European countries to liberalize abortion laws, and in the same year, Colorado, North Carolina, and California ease the strictness of their laws.

1967 The United Nations adopts a Declaration on the Elimination of Discrimination against Women.

1968 The United Nations Conference on Human Rights embraces reproductive rights, stating that parents have the right to decide freely and responsibly on the number and spacing of their children and to have reproductive health information.

1969 Anna Koedt of Great Britain publishes a controversial paper, *The Myth of the Vaginal Orgasm*, arguing that the clitoris and not the penis is the key to women's sexual enjoyment.

1969 The Boston Women's Health Book Collective releases *Our Bodies, Ourselves*, which quickly becomes a must-have resource for women.

1970 Hawaii, New York, and Alaska make abortion legal at the request of the woman and her doctor.

1971 An ad hoc committee of the U.S. Catholic Conference calls itself the National Right to Life Committee and takes a vehement stand against abortion.

1971 Within the space of four years, India, Denmark, Sweden, and France all pass liberal abortion laws.

1972 The U.S. Supreme Court rules that a right of personal privacy protects the right of unmarried couples to contraception in *Eisenstadt v. Baird*.

1973 On January 22, in *Roe v. Wade*, the U.S. Supreme Court legalizes abortion in a 7-2 vote. Justice Harry Blackmun writes that a constitutional right to privacy applies to decisions about abortion. Decisions about abortion are left to a woman and her doctor in the first trimester, after which the state may regulate abortions when necessary to promote women's health. After fetal viability, the state may prohibit abortions except those necessary to preserve a woman's life or health. In a companion case, *Doe v. Bolton*, the Court defines "health" to include physical, emotional, psychological, and familial factors.

1973 Immediately after women's victory in *Roe*, Senator Jesse Helms of North Carolina launches the backlash, introducing a so-called Human Life Amendment to the Constitution that never passes. He successfully inserts restrictions in foreign assistance, preventing the usage of federal funds for "abortion as a method of family planning."

1973 The Institutes of Biblical Law by R.J. Rushdoony gets fundamental Christians politically activated by painting a theocracy in which Biblical law rules the land instead of a government by the people.

1976 Targeting poor women, anti-abortion zealot Congressman Henry Hyde slashes at Roe, passing the first of abortion restrictions that ultimately eliminate Medicaid funding except in cases of rape, incest, or when necessary to save a woman's life or severe damage to her health

1977 Rosie Jiminez of Texas dies from an illegal abortion in Mexico, which she seeks upon learning that Medicaid will not cover the procedure.

1977 Right-winger John Whitehead of the anti-abortion Rutherford Institute argues there is no separation of church and state.

1977 Teenager Becky Bell dies after an illegal abortion, which she sought rather than go through the agony of getting parental consent under a restrictive state law.

1978 Italian women occupy an abortion clinic in Rome's largest hospital after the director of the clinic announces that he will decline to provide abortions, an option permitted under Italian law.

1979 Jerry Falwell founds the Moral Majority with the goals of opposing abortion, feminism, pornography, communism, and gay rights.

1980 Ronald Reagan is elected President and finds new ways to implement an anti-abortion agenda.

1980 The U.S. Supreme Court upholds the Hyde Amendment in *Harris v. McRae*, ruling that the government can discriminate against abortion in health programs for poor women.

1981 Sandra Day O'Connor of Arizona becomes the first woman on the U.S. Supreme Court.

1982 10 years after it was approved by Congress, the Equal Rights Amendment to the Constitution dies three states short of necessary state ratification.

1984 A woman in Australia delivers the first baby born from a frozen embryo.

1984 At the United Nations Population Conference in Mexico City, the Reagan administration announces a global gag rule that will eliminate foreign assistance to family planning groups that offer information about abortion.

1984 The Republican party adopts an unyielding anti-abortion platform, demanding recognition of the rights of the unborn and an anti-abortion litmus tests for judicial appointments.

1986 Ultra-conservative Justice Antonin Scalia is appointed and Justice William Rehnquist is elevated to Chief Justice of the U.S. Supreme Court.

1987 Olayinka Koso-Thomas, a doctor in West Africa, criticizes the harmful traditional practice of female circumcision — by which the clitoris or labia of girls are cut away — a practice that affects 2 million girls around the world each year.

1988 World AIDS Day is recognized for the first time.

1988 The Christian Coalition, a quasi-religious political action organization, is formed by Pat Robertson.

1988 Justice Anthony Kennedy joins the U.S. Supreme Court.

1988 Used car salesman Randall Terry forms Operation Rescue, a violent anti-abortion group that proceeds to terrorize clinics.

1988 RU-486, a pill that induces abortion, becomes available in France but its manufacturer refuses distribution in the U.S. and the Bush Administration imposes an import ban to prevent American women from accessing the drug.

1989 "A chill wind blows" writes U.S. Supreme Court Justice Blackmun when, for the first time in the 16 years since *Roe v. Wade*, only a minority of Justices vote to affirm *Roe* as a 5-4 opinion in *Webster v. Reproductive Health Services* lets stand a Missouri law that prohibits public facilities or personnel from performing abortions except where necessary to save a woman's life.

1989 The Pinochet regime in Chile passes a "right-to-life" law, still in effect as the century closes, that subjects women who get abortions and those who provide them to arrest, while the new Romanian government reverses the restrictive abortion law of the Ceaucescu regime and legalizes abortion

1991 Judge Clarence Thomas, a conservative African-American, becomes a member of the U.S. Supreme Court, replacing the recently retired liberal Justice Thurgood Marshall.

1992 NOW's March for Women's Lives brings over 750,000 to Washington in support of abortion rights.

1992 While upholding the right to abortion, the U.S. Supreme Court weakens *Roe v. Wade* in the decision of *Planned Parenthood v. Casey*, which allows significant state restrictions, including a requirements that physicians deliver anti-abortion information to patients, a mandatory 24-hour delay, and requirement that teens to get consent from a parent or a court.

1993 President Bill Clinton appoints feminist Ruth Bader Ginsberg to the U.S. Supreme Court

1993 In a decade of ugly anti-abortion acts, thousands of violent incidents are recorded, including murders that begin with the assassination of Dr. David Gunn in Florida in 1993, followed in the next six years by the killings of two other doctors, one escort, one security guard, and two receptionists.

1994 U.S. Supreme Court Justice Harry Blackmun, author of *Roe*, retires.

1994 Democratic elections in South Africa are held under a constitution that includes equal rights for

women, and women win 106 of 400 national Assembly seats.

1995 36,000 women from around the world meet in Beijing for the Fourth World Conference on Women and marshal new efforts toward equality including demands to end punitive abortion laws.

1996 A law banning Female Genital Mutilation passes Congress, but immigration officials resist recognizing it as a valid reason for seeking amnesty in the U.S.

1996 Eighty-six percent of counties in the U.S. have no abortion services and the number of abortion providers continues a downward decline in 44 states.

1996 The Taliban, a fundamentalist Islamic militia, seizes control in Afghanistan and institutes a regime of murderous repression against women, barring them from schools, employment, and the public.

1997 Extreme anti-choice Republicans in Congress introduce devious proposals to covertly rip apart *Roe v. Wade* including the deceptively-named "Child Custody Protection Act," which would subject adults to arrest for helping minors travel to another state for

an abortion, and the so-called "partial-birth abortion" law written by National Right to Life, which pretends to outlaw one abortion procedure but is a ruse to ban all abortions.

1997 In the last three abortion decisions of the century, the U.S. Supreme Court agrees to new restrictions against minors and physician assistants, and narrows zones of protection from protesters at abortion clinics.

1998 Thirty million people worldwide are living with HIV/AIDS, including forty percent of women in developing countries.

1998 The U.S. has the highest teen rates of pregnancy of any industrialized nation.

1998 Sixty percent of voters support the right to choose, but anti-abortion groups push through numerous obstacles to abortion in state legislatures, including convoluted schemes of waiting periods, biased information, complicated red tape, anti-teen restrictions, denials funding for poor women, and bans on all abortions masquerading as limits on a single procedure.

1999 The Pill finally becomes available in Japan after men get ready access to Viagra, the just-discovered drug to treat male impotence.

1999 Women worldwide at a 5-year United Nations review of the International Conference on Population and Development secure the affirmation of reproductive rights as human rights, despite strident Vatican efforts to block women's rights.

1999 Women in Kuwait are once again denied the right to vote.

1999 An American company prepares to release drugs similar to RU-486 in France for use in non-surgical abortion.

2000 In a 5-4 vote, the U.S. Supreme Court strikes down a Nebraska ban on so-called "partial-birth abortion," finding it an unconstitutional violation of *Roe v. Wade*.

2000 President George W. Bush re-imposed the Global Gag Rule on the U.S. Agency for International Development (USAID) population program. This policy restricts all foreign non-governmental organizations (NGOs) that receive USAID family planning funds from using their own, non-U.S. funds to provide legal abortion services, lobby their own governments for abortion law reform, or even provide accurate medical counseling or referrals regarding abortion.

VII. CONTACT INFORMATION

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