

Roe v Wade

A Constitutional right of What and to Whom?

In 1973 SCOTUS found a “constructed right” in the Constitution. The court held that a woman’s right to an abortion was implicit in her” right to privacy protected by the 14th Amendment and laid out the following rules:

After the first trimester, the state could “regulate procedure.” During the second trimester, the state could regulate (but not outlaw) abortions in the interests of the mother’s health. After the second trimester, the fetus became viable, and the state could regulate or outlaw abortions in the interest of the potential life except when necessary to preserve the life or health of the mother.

An interesting note was the Court left standing a provision of that same Texas law that prohibited killing a child in the process of being delivered (Partial Birth Abortion). In 2007 SCOTUS upheld PBA in *Gonzales v. Carhart*. Nor did that Court explain why they excluded the other sex from that same decision making process protection.

So here we are somewhere in the between of Roe and Carhart and the Court being asked again to clarify those rules, which is the error. Instead of asking the Court for clarification of an almost 50-year-old rule, it would be better served to review the basis of the rule.

In Roe, the Court construed a privacy right to a woman's decision making and prohibited the State from interfering in that decision process. I agree with that protection but argue as follows.

Nowhere did the Court protect the subsequent act of the decision. Yes, you may dream or even decide to do something illegal but until you act, you have committed no crime now. Your thoughts and subsequent decision are protected privacy. Again, I agree.

But that is not the gravamen now before the court and where the 1973 Court erred. The focus must be on the subsequent act.

Nowhere in the Constitution does it give anyone the right to take a life. That is the question SCOTUS should be asked. Address the void between Roe and Gonzales.

First, let's review what has evolved since 1973 including the three accepted terms definitions; embryo, fetus and baby. The embryonic period starts at the third week and becomes and at the ninth week it becomes a fetus. For starters, heartbeat is detected at the 22nd day and first brain wave at 52nd day, all within the first trimester. By the 19th week the embryo has become a fetus that can hear, swallow and move. The first bowel movement occurs by the 21st week, heartbeat at the 22nd. From that point the fetus changes name upon birth, whenever that occurs.

From the end of the embryonic period, the fetus may have a different blood type than the mother and does have a different DNA. At this point it is no longer an extension of the mothers' body but evolved into a foreign hitchhiker.

Its undisputed the fetus is an unborn baby and viable at the 22nd week and a developed fetus by the second trimester. Has a heart-beat and brain waves. It has developed legs, eyes, fingernails and internal organs. This is a live organism that has its own DNA – derived from both parents.

So says SCOTUS and so says Science. SCOTUS needs to use that litmus to define a “human being”, not a person or citizen. That also brings the “elephant in the room” front and center. What about the father? Should not he have a say in the future of his child?

Second, the Constitution defines citizenship as “natural born”. Therefore, Citizenship cannot be bestowed. Thirdly, , the law 1 U.S. Code § 8 says an “infant” becomes a person when born ***but*** (section C) also includes “*any member of the species homo sapiens at any point prior to being “born alive” as defined in this section*”.

There is SCOTUS’ door #3. Declare the viable unborn baby as a human being, not a citizen, not a person but a human being. That will provide the same Constitutional protection of due process and equal protection given non-citizens, so says SCOTUS.

It also fits the legal requirement of murder. Every murder statue in the United States involves the “taking the life of a human being”. None require the human to be a person or citizen.

I rest my case. What rights and whose rights?

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