

## SCOPE AND MYTHS OF *ROE V. WADE*

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THURSDAY, MARCH 2, 2006

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON THE CONSTITUTION,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:06 p.m., in Room 2141, Rayburn House Office Building, the Honorable Steve Chabot (Chairman of the Subcommittee) presiding.

Mr. CHABOT. It is only the Chairman's mike that does not work, so we will check out the Democrats on the Committee later on here but—although we note they are not here. So it's a bit suspicious.

We do appreciate everyone coming out this afternoon. This is the Subcommittee on the Constitution. I am Steve Chabot, the Chairman. We expect Congressman Nadler, the Ranking Member, to come in shortly—and here he comes now.

Again, we'd like to thank everyone for being here as the House Constitution Subcommittee examines the scope and myths of *Roe v. Wade*.

In 1973, the *Roe v. Wade*—in *Roe v. Wade*, the United States Supreme Court constitutionalized abortion and effectively protected abortion on demand in America, subject only to limited regulations. This decision was unprecedented, and even prominent liberal constitutional scholars have said it was not grounded in the Constitution.

Prior to *Roe*, abortion was regulated by the States, and a majority of the States had statutes in place regulating abortion. *Roe* nullified all of these laws, removing from the people and their legislatures the ability to restrict abortion in reasonable ways.

Under *Roe* and its successor, *Planned Parenthood v. Casey*, restrictions on pre-viability abortions are unconstitutional if they impose an undue burden on a woman's ability to choose an abortion. After viability, the State can restrict abortion if the law contains exceptions for pregnancies that endanger the woman's life or health. However, "health" is defined so broadly that a woman can obtain an abortion for virtually any reason pursuant to a health exception.

The Court has upheld common-sense regulations on abortion, including parental notification and consent requirements for minors, waiting periods, and informed consent provisions. However, in striking down Nebraska's partial-birth abortion statute, the Court recognized a broad right to abortion that extends even to a procedure that involves killing a partially born child, usually by puncturing the child's skull with scissors and removing the child's

brain. Recently, one Federal appeals court judge who was duty-bound to enforce the Supreme Court's misguided precedents called the procedure "deeply disturbing and morally offensive." The Court recently granted cert. to consider the constitutionality of the Partial Birth Abortion Ban Act. The Court's decision in this case will likely determine just how far *Roe* and its progeny reach.

1.3 million abortions are performed each year in America, and researchers from the Guttmacher Institute have pointed out that, "[w]hile a small proportion of women who have abortions do so because of health concerns or fetal anomalies, the large majority choose termination in response to an unintended pregnancy." According to these researchers, the two most common reasons for abortion in 2004 were "having a baby would change my life" and "I can't afford a baby now." These reasons were cited by 74 and 73 percent of women, respectively.

As you will hear today, it is clear that abortion has dangerous and long-lasting effects on women and families. A recent article published in the *Journal of Child Psychology and Psychiatry* concluded that, of the young women studied, "[t]hose having an abortion had elevated rates of subsequent mental health problems including depression, anxiety, suicidal behaviors and substance use disorders."

Abortion affects not only the woman involved but also the family as a whole. Professor Alvaré will discuss the far-reaching implications of *Roe v. Wade* on family law and the family unit.

As evidenced by polling data, a majority of Americans support limiting abortion to specific circumstances including rape and incest and to save the life of the mother. Yet there remains a great misunderstanding by the public as to the real scope of *Roe v. Wade*, a misunderstanding that is exhibited in polling questions stating that *Roe* protects a right to an abortion in only the first 3 months of pregnancy.

In fact, *Roe* is much more sweeping. And today's hearings will examine both the legal and societal impact of *Roe* in addition to common misunderstandings of the decision.

I would like to thank all our witnesses this afternoon—we will be hearing from them shortly—for their hard work and for being here today. We very much look forward to their testimony here this afternoon.

One of the witnesses, Ms. Conway, it's been brought to our attention that there is rough weather up in New York. She was held up at the airport, and she is on her way. We expect her to be here, although we are not quite sure if she is going to make it or not. I would ask unanimous consent that her testimony be included in the evidence, without objection, if she doesn't make it. If she does make, she'll be able to testify here herself.

At this time I would yield to the gentleman from New York, Mr. Nadler, who is the Ranking Member of the Committee, for the purpose of making an opening statement.

Mr. NADLER. Thank you, Mr. Chairman.

I have to admit I was a bit perplexed by the title of this hearing, the "Myths of *Roe v. Wade*"? As the Ranking Member, I am often called upon to explain what's going on in this Subcommittee. It's often very difficult, but for the first time, I was really stumped.