



On Roe 41

On January 22nd we mark the 41st anniversary of the Supreme Court's game-changing decision on abortion, and we do well to recall the difference *Roe v. Wade* made in our political and social life.

*Roe* caught everyone by surprise, because by 1973 the political momentum to make state laws on abortion more liberal had stalled. From 1967 to 1970 pro-abortion proponents prevailed in a number of state legislative debates, and by the time of *Roe* 19 states had liberalized their laws (though only four allowed abortion on demand). Then, beginning in 1971, the pro-life movement won a string of legislative victories, defeating abortion legalization bills in all 25 of the state legislatures that considered them. In 1972 the people of Michigan and North Dakota overwhelmingly rejected initiative proposals to loosen their abortion laws. By the end of 1972, only weeks before *Roe*, repeal of New York's unrestricted law seemed only a year away; and Planned Parenthood grew concerned that California's law would not survive 1973.

Then the Court came to the rescue of the abortion cause. Suddenly, throughout the nation, all meaningful limits on abortion throughout the nine months of pregnancy were overturned. Statistics hint at the magnitude of the change. In 1972, the year before *Roe*, the

number of legal abortions totaled 587,000; in 1973, as the decision began to take effect, the total jumped to 750,000; in 1980 it reached 1.5 million. As the number of clinics increased and made abortion more widely available, markedly higher abortion rates among poor and minority women became apparent. By 2008 55% of abortions were performed on black or Hispanic women, and 42% of women who had abortions were below the poverty line. But these statistics only begin to suggest the devastating social transformation which *Roe* set in motion.

Four decades later the spirit of *Roe v. Wade* lives on in "pro-choice" opposition to any limits on the abortion liberty. Planned Parenthood has tirelessly fought against legal regulation of abortion clinics, against informed consent in abortion decisions, against parental consent for minors, against waiting periods before an abortion, against the ban on partial-birth abortion, and against the mandatory protection of survivors of late-term abortions. The "pro-choice" movement has resolutely set itself against *informed* choice every time it is proposed.

And yet, 41 years after the Justices presumed to settle the abortion debate, *Roe* is increasingly on the defensive. More precise knowledge of human reproduction and gestation has confirmed the humanity of intra-uterine life—a truth the sonogram makes evident to anyone with eyes to see but which the Justices of *Roe* could not. Despite its four-decade dominance, however, there is no respectable legal justification to be found for the reasoning in *Roe*. Even the law clerk

to Justice Blackmun, the decision's author, admitted as much: "*Roe*, as constitutional interpretation, is virtually impossible to defend." Nor is its status any more respectable in medicine; even after 40 years of legality abortion has never been accepted as part of mainstream medical practice.

We need to recall *Roe* because we need to be reminded of its four-decade failure to crush opposition to the abortion agenda. We need to remember because we must continue to hope that *Roe* will one day be overturned. We must continue to hope because those whose right to life *Roe* took away depend on us to do so—and to put our hope into action in the defense of life in the womb.