



The Restrictive Reach of Roe

Each year we observe the anniversary of *Roe v. Wade*, the Supreme Court decision of January 22, 1973, that made abortion in America legal overnight. The Justices thought they had settled the issue once and for all that day, but the voice of protest has not ceased to ring out from shore to shore ever since.

Under *Roe's* dark shadow a striking disconnect has worked its way into Americans' views about abortion. Though an overwhelming majority (over 70% by Gallup's reckoning) think second- and third-trimester abortions should be *restricted* by law, at the same time most of those polled *oppose* reversing *Roe*, the very decision that protects a woman's "right to choose" to abort well into the second trimester. These incompatibly contradictory opinions give lower courts throughout the country lee-way to issue rulings that significantly reinforce *Roe's* lock-grip on our law and further desensitize us to its ever-widening reach into our national life.

Consider a case from the South. The 11th Circuit Court of Appeals struck down an Alabama law for regulating dismemberment abortion in the second trimester (after 15 weeks). The law required doctors to stop the heartbeat of the unborn fetus before the

bloody extraction of its body—a procedure that Supreme Court Justice Ruth Bader Ginsburg had described as "gruesome" and "brutal." But the appellate court felt itself bound by the reasoning flowing from *Roe* and found the law unconstitutional because of the "undue burden" it placed on the 500 Alabama mothers who obtained such abortions each year.

Consider a case from the Midwest. The 7th Circuit Court of Appeals was presented with an Indiana law prohibiting second-trimester abortions (after 20 weeks) for discriminatory or eugenic purposes, and once again *Roe*-derived reasoning rejected it as unconstitutional. The ruling was "absurd" and "regrettable," one judge conceded, but he felt constrained to concur because *Roe* makes abortion "the most favored right in American law, . . . more ironclad . . . than the rights enumerated in the Bill of Rights."

Most Americans disapprove of late-term abortions, but the extremism of *Roe* has made our country among the easiest in which to obtain them. Keen to maintain this permissive regime, proponents of abortion have launched an ominous new attack on the faith of judicial nominees who might help to dismantle *Roe*.

In 2017 a member of the Senate Judiciary Committee gave Amy Comey Barrett a taste of the kind of religious test which Catholic nominees like her can expect to face in the future. At a public hearing on her nomination, the senator inquired into Professor Barrett's involvement with the People of Praise, a Catholic/Protestant covenant community in which she and her

family have long been active. It was clear to the senator that “the dogma lives loudly in you.” By unstated implication, the nominee’s fidelity to Catholic teaching on the sanctity of life in the womb would disqualify her from ruling on cases involving *Roe v. Wade*.

Brian Buescher received similar treatment from two other Judiciary Committee members recently. They directed their ire at his membership in the Knights of Columbus, whose “extreme positions” against *Roe* and same-sex “marriage” made them suspicious of the nominee’s ability to rule rightly in abortion cases. If Buescher were nominated, they asked, would he quit the Knights? The question threw down an intimidating threat in the path of future nominees: if you want a seat on the court, be prepared to sacrifice your religious faith on the altar of *Roe v. Wade*.

For the secular religion that seeks to banish Christianity from our midst *Roe v. Wade* is an article of faith that draws a line in the sand against defenders of life. *Roe*’s legacy privileges the right to choose over the right to life and, increasingly, over the right to religious liberty as well. If America is truly to be the land of the free, it must become ever anew the home of the brave. That is why it is essential to confront the nation each January with what *Roe* has wrought—in hopeful anticipation of the day when it will finally be undone.