

Syllabus

SUPREME COURT OF THE UNITED STATES

410 U.S. 179

Doe v. Bolton

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF GEORGIA

No. 70-40 Argued: December 13, 1971 --- Decided: January 22, 1973

Georgia law proscribes an abortion except as performed by a duly licensed Georgia physician when necessary in "his best clinical judgment" because continued pregnancy would endanger a pregnant woman's life or injure her health; the fetus would likely be born with a serious defect; or the pregnancy resulted from rape. § 26-1202(a) of Ga. Criminal Code. In addition to a requirement that the patient be a Georgia resident and certain other requirements, the statutory scheme poses three procedural conditions in § 26-1202(b): (1) that the abortion be performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals (JCAH); (2) that the procedure be approved by the hospital staff abortion committee; and (3) that the performing physician's judgment be confirmed by independent examinations of the patient by two other licensed physicians. Appellant Doe, an indigent married Georgia citizen, who was denied an abortion after eight weeks of pregnancy for failure to meet any of the § 26-1202(a) conditions, sought declaratory and injunctive relief, contending that the Georgia laws were unconstitutional. Others joining in the complaint included Georgia-licensed physicians (who claimed that the Georgia statutes "chilled and deterred" their practices), registered nurses, clergymen, and social workers. Though holding that all the plaintiffs had standing, the District Court ruled that only Doe presented a justiciable controversy. In Doe's case the court gave declaratory, but not injunctive, relief, invalidating as an infringement of privacy and personal liberty the limitation to the three situations specified in § 26-1202(a) and certain other provisions, but holding that the State's interest in health protection and the existence of a "potential of independent human existence" justified regulation through § 26-1202(b) of the "manner of performance as well as the quality of the final decision to abort." The appellants, claiming entitlement to broader relief, directly appealed to this Court.

Held:

1. Doe's case presents a live, justiciable controversy and she has standing to sue, *Roe v. Wade*, ante p. 113, as do the physician [p180] appellants (who, unlike the physician in *Wade*, were not charged with abortion violations), and it is therefore unnecessary to resolve the issue of the other appellants' standing. Pp. 187-189.

2. A woman's constitutional right to an abortion is not absolute. *Roe v. Wade*, supra. P. 189.

3. The requirement that a physician's decision to perform an abortion must rest upon "his best clinical judgment" of its necessity is not unconstitutionally vague, since that judgment may be made in the light of all the attendant circumstances. *United States v. Vuitch*, 402 U.S. 62, 71-72. Pp. 191-192.

4. The three procedural conditions in § 26-1202(b) violate the Fourteenth Amendment. Pp. 192-200.

(a) The JCAH accreditation requirement is invalid, since the State has not shown that only hospitals (let alone those with JCAH accreditation) meet its interest in fully protecting the patient; and a hospital requirement failing to exclude the first trimester of pregnancy would be invalid on that ground alone, see *Roe v. Wade*, supra. Pp. 193-195.

(b) The interposition of a hospital committee on abortion, a procedure not applicable as a matter of state criminal law to other surgical situations, is unduly restrictive of the patient's rights, which are already safeguarded by her personal physician. Pp. 195-198.

(c) Required acquiescence by two copractitioners also has no rational connection with a patient's needs, and unduly infringes on her physician's right to practice. Pp. 198-200.

5. The Georgia residence requirement violates the Privileges and Immunities Clause by denying protection to persons who enter Georgia for medical services there. P. 200.

6. Appellants' equal protection argument centering on the three procedural conditions in § 26-1202(b), invalidated on other grounds, is without merit. Pp. 200-201.

7. No ruling is made on the question of injunctive relief. Cf. *Roe v. Wade*, supra. P. 201.

319 F.Supp. 1048, modified and affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C.J., and DOUGLAS, BRENNAN, STEWART, MARSHALL, and POWELL, JJ., joined. BURGER, C.J., post, p. 207, and DOUGLAS, J., post, p. 209, filed concurring opinions. WHITE, J., filed a dissenting opinion, in which REHNQUIST, J., joined, post, p. 221. REHNQUIST, J., filed a dissenting opinion, post, p. 223. [p181]