

REHNQUIST, J., Dissenting Opinion

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

MR. JUSTICE REHNQUIST, dissenting.

The holding in *Roe v. Wade*, ante p. 113, that state abortion laws can withstand constitutional scrutiny only if the State can demonstrate a compelling state interest, apparently compels the Court's close scrutiny of the various provisions in Georgia's abortion statute. Since, as indicated by my dissent in *Wade*, I view the compelling state interest standard as an inappropriate measure of the constitutionality of state abortion laws, I respectfully dissent from the majority's holding.

WHITE, J., Dissenting Opinion

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MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting. ^[1]

At the heart of the controversy in these cases are those recurring pregnancies that pose no danger whatsoever to the life or health of the mother but are, nevertheless, unwanted for any one or more of a variety of reasons -- convenience, family planning, economics, dislike of children, the embarrassment of illegitimacy, etc. The common claim before us is that, for any one of such reasons, or for no reason at all, and without asserting or claiming any threat to life or health, any woman is entitled to an abortion at her request if she is able to find a medical advisor willing to undertake the procedure.

The Court, for the most part, sustains this position: during the period prior to the time the fetus becomes viable, the Constitution of the United States values the convenience, whim, or caprice of the putative mother more than the life or potential life of the fetus; the Constitution, therefore, guarantees the right to an abortion as against any state law or policy seeking to protect the fetus from an abortion not prompted by more compelling reasons of the mother.

With all due respect, I dissent. I find nothing in the language or history of the Constitution to support the Court's judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers [p222] and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes. The upshot is that the people and the legislatures of the 50 States are constitutionally dissatisfied to weigh the relative importance of the continued existence and development of the fetus, on the one hand, against a spectrum of possible impacts on the mother, on the other hand. As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but, in my view, its judgment is an improvident and extravagant exercise of the power of judicial review that the Constitution extends to this Court.

The Court apparently values the convenience of the pregnant mother more than the continued existence and development of the life or potential life that she carries. Whether or not I might agree with that marshaling of values, I can in no event join the Court's judgment because I find no constitutional warrant for imposing such an order of priorities on the people and legislatures of the States. In a sensitive area such as this, involving as it does issues over which reasonable men may easily and heatedly differ, I cannot accept the Court's exercise of its clear power of choice by interposing a constitutional barrier to state efforts to protect human life and by investing mothers and doctors with the constitutionally protected right to exterminate it. This issue, for the most part, should be left with the people and to the political processes the people have devised to govern their affairs.

It is my view, therefore, that the Texas statute is not constitutionally infirm because it denies abortions to those who seek to serve only their convenience, rather than to protect their life or health. Nor is this plaintiff, who claims no threat to her mental or physical health, entitled to assert the possible rights of those women [p223] whose pregnancy assertedly implicates their health. This, together with *United States v. Vuitch*, 402 U.S. 62 (1971), dictates reversal of the judgment of the District Court.

Likewise, because Georgia may constitutionally forbid abortions to putative mothers who, like the plaintiff in this case, do not fall within the reach of § 26-1202(a) of its criminal code, I have no occasion, and the District Court had none, to consider the constitutionality of the procedural requirements of the Georgia statute as applied to those pregnancies posing substantial hazards to either life or health. I would reverse the judgment of the District Court in the Georgia case.

· [This opinion applies also to No. 718, *Roe v. Wade*, ante p. 113.]