

## **Roe v. Wade and the Texas Heartbeat Bill**

In May 2021, Texas passed a bill that would ban abortion in nearly all cases after the unborn child's heartbeat is detected, typically six weeks into a pregnancy. On September 1, the Supreme Court upheld the bill in a 5-4 decision.

Many states have tried heartbeat bills in the past but have been blocked, or "stayed," by the Supreme Court. Typically, the court refers back to the historic *Roe v. Wade* case of 1973, which ruled that abortion is a constitutional right protected by the 14th amendment.

As it stands, the bill requires doctors to seek out the heartbeat, and if detected, bans the abortion. The bill allows for exceptions when the mother is proven at risk.

As expected, once the Texas bill was enacted, a group of abortion providers petitioned the Supreme Court to overturn the bill. But this bill stands apart from other attempts at heartbeat bills as it authorizes "private civil right of action" against abortion providers, as [the bill states](#), not official state intervention.

The bill enables private citizens to bring civil action upon individuals or institutions that assist a woman with an abortion that violates the ban. Anyone who assists with an abortion outside of the limits may face litigation, excluding the mother herself.

By shifting away from criminal charges and toward civil litigation, this legal strategy circumvents the ruling of *Roe v. Wade*, which was one of the greatest mistakes of the Supreme Court.

### **The Mistake of Roe v. Wade**


*Roe v. Wade* was a mistake not just because it undermines a fundamental right to life but because it relied upon anti-scientific claims, its final ruling is unconstitutional, and it included multiple errors that have since been disproven.

#### **1. Anti-science**

The court opinion, delivered by Justice Blackmun, held that abortion rights should not "stand or fall on acceptance of the belief that life begins at conception or at some other point prior to live birth." Furthermore, Blackmun referred to the belief that human life begins at conception as nothing more than a "theory." Therefore, as the court decided, the state cannot weigh an unborn child's life as equal to the mother's.

But even today, biologists agree life begins at fertilization. A [five-year study](#) released in 2019 concluded that of the 5,502 biologists surveyed across 1,056 academic institutions, 95% affirmed the assertion that life begins at fertilization, despite many biologists identifying as pro-choice. With this assertion, we can conclude that [an estimated 62 million](#) innocent American lives have been taken since the infamous *Roe v. Wade* case in 1973.

Many people continue to believe life begins at birth---a belief dispelled by the scientific community. Humans do not gain personhood when they move from their mother's womb into the outside world. In fact, birth is just another stage of life, like moving from adolescence to adulthood.

American laws, lawmakers, and abortion providers have turned public opinion against science. Strategic language has convinced many that unborn children are nothing more than a lump of cells. We're to use terms such as *fetus*, not *child*. One gynecologist and author encourages the use of "[fetal pole](#)" rather than *human heart*. But the terminology is irrelevant---scientifically, a heart is a heart no matter what we call it, and it beats as early as six weeks into a pregnancy. 

## 2. Unconstitutional

The purpose of the Supreme Court is to determine the constitutionality of a disputed law. The Supreme Court does not have the right to create laws---that responsibility belongs to Congress, which is duly elected by the people.

But in the case of *Roe v. Wade*, the Supreme Court essentially created a new law, one which prevents individual states from restricting abortion. The ruling superseded the rights of the states to choose their own abortion laws, many of which would enact stricter abortion laws, particularly Southern states.

The justices claimed, however, that the right to an abortion can be found in the 14th amendment of the Constitution. The 14th amendment, which was added to protect the newly freed slaves during the Reconstruction era, was drafted to legally protect freedmen from discrimination and to grant them due process under the law.

The original motivation behind the 14th amendment was to *protect* life. The purpose was not to grant the so-called right to privacy but to prevent the inhumane and subhuman treatment of individuals. Abortion is the definition of inhumane treatment of "subhuman" individuals.

Even if the amendment did discuss the right of the individual to privacy, procuring an abortion is no more a privacy right than is prostitution or taking illicit drugs, both of which occur in private. Instead, there are laws in place to protect individuals from the harm of these activities, despite hindering the "right to choose" what they do with their bodies.

The opinion of the court is certainly not grounded in any part of the constitution, and as a result, six Supreme Court justices have publicly criticized *Roe v. Wade* for being unconstitutionally grounded: Byron White, William Rehnquist, Antonin Scalia, Clarence Thomas, Anthony Kennedy, and Sandra Day O'Connor.

### 3. Erroneous

The justices made irrefutably erroneous claims through the court process, including in the final opinion of the court.

First, the court erroneously claimed that abortion was not previously considered a crime until recent American legislation began to demonize it. Blackmun wrote that "it now appears doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus." His statement has been debunked by many law historians.

In fact, one can easily determine his statement is false. William Blackstone, England's foremost legal scholar and law historian, chronicled English common law in his *Commentaries on the Laws of England*. [His book](#) shows that abortion had always been firmly established as a crime throughout English history:

If a woman is quick with child, and by a potion, or otherwise, killeth it in her womb; or if any one beat her, whereby the child dieth in her body, and she is delivered of a dead child; this, though not murder, was by the ancient law homicide or manslaughter. But at present it is not looked upon in quite so atrocious a light, though it remains a very heinous misdemeanor.

At the very least, abortion after "quickening" (the time the mother feels the fetal movement) was considered a misdemeanor crime, but a crime nonetheless, and was even more strictly punished before Blackstone's time.

Second, Blackmun's opinion of the court misrepresented anti-abortion legislation that was enacted at the time of the 14th amendment.

Because the decision of the court relied so heavily on the 14th amendment, the opposition was quick to point out that when the 14th amendment was written, many states were simultaneously enacting anti-abortion legislation. Implying that the 14th amendment would encompass abortion disregards the popular attitude against abortion at the time.

But Blackmun claimed those laws were not put in place to protect the unborn but to protect women from unsafe abortion practices.

That claim stems from now-debunked articles by a man named Cyril Means, who Blackmun cited in the opinion of the court. In [a letter to the editor](#) published in the *New York Times*, Means claimed that "eugenic abortion" should be used to "prevent the birth of monsters."

Despite those false claims, it was the unjust murder of infant life that truly motivated the anti-abortion legislation at the time of the 14th amendment. The general misrepresentation of the amendment ultimately became a deciding factor in the *Roe v. Wade* case.

## Final Thoughts

There are many reasons *Roe v. Wade* is a mistaken, unconstitutional case. But unfortunately, it has yet to be overturned.

In the meantime, states have been successfully circumventing the ruling, such as the Texas bill. As a result, Texas has successfully passed one of the strictest abortion laws in the nation. It is well within constitutional grounds for Texas to do so.

The nation's founders drafted the constitution to protect the autonomy of the states to make laws as they see fit, without interference from the federal government. The founders did not foresee, however, a Supreme Court that would become as powerful as the federal government itself, dictating laws with which the states must comply.

For a state to overcome this disastrous case is a triumph, and many other states may mirror Texas's legal strategy. If others follow suit, there may be an opportunity for the eventual and necessary overturning of *Roe v. Wade* once and for all.