



JUSTICE RUTH BADER GINSBURG

“The decision whether or not to bear a child is central to a woman’s life, to her well-being and dignity. It is a decision she must make for herself. When Government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices.”¹

Biography

- Born on March 15, 1933, in Brooklyn, New York
- Associate Supreme Court Justice, 1993–present (appointed by President Clinton)

Current Role on the Supreme Court

- Justice Ginsburg is one of the strongest supporters of the right to choose on the Supreme Court. Her opinions while on the Court, as well as her professional activities prior to becoming a federal court judge in 1980, demonstrate her commitment to the protection of the constitutional right to choose.
- The last three cases addressing the fundamental right to choose were decided by a one-vote margin.² If Ginsburg retires and is replaced by an anti-choice justice, the balance on the Court would shift dramatically.

A History of Support for Reproductive Freedom

- Justice Ginsburg demonstrated her support for the right to choose prior to her appointment to the D.C. Circuit in 1980.
 - In 1972, she became the first director of the pro-choice American Civil Liberties Union’s Women’s Rights Project.³ During that time, she successfully argued five women’s rights cases before the Supreme Court.⁴
 - Although Ginsburg authored a law review article in 1985 arguing that *Roe* would have been better received if based on equal protection grounds,⁵ during her confirmation hearing, she agreed with the holding of *Casey* that access to abortion is “part of the liberty guaranteed by the 14th Amendment.”⁶
- Justice Ginsburg has consistently voted to strike down measures burdening the right to choose.

- She voted to strike down a Montana “physician only” law preventing licensed physician assistants working under the supervision of a doctor to perform abortions.⁷
- She voted with a narrow five-Justice majority to strike down a Nebraska statute that outlawed abortion as early as 12 weeks of pregnancy, because the statute was overly broad and lacked an exception to protect women’s health.⁸ She wrote a concurring opinion stating that the law was passed specifically to express the legislators’ hostility to the right to choose. She stated that the Nebraska legislature passed the law to “chip away at the private choice shielded by *Roe v. Wade*.”⁹
- She voted with the majority to strike down a hospital’s policy of testing pregnant women for cocaine without consent.¹⁰ The Court recognized that the policy was not intended to help women or their pregnancies but to obtain criminal evidence.¹¹
- She voted to reaffirm the right to privacy established in *Griswold v. Connecticut* and *Roe*.¹²
- Justice Ginsburg has consistently voted to protect clinics against anti-choice violence.
 - She has consistently voted in support of buffer zones around clinics to protect against anti-choice clinic violence.¹³
 - She voted with a unanimous Court holding that claims under the Racketeer Influenced and Corrupt Organizations (“RICO”) Act do not require proof of an economic motive and that the National Organization for Women and a group of women’s health centers could pursue a civil suit against clinic blockaders.¹⁴
- Justice Ginsburg voted with the majority to strike down a law prohibiting consensual sex between adults. The Court held that the law was a violation of the constitutionally protected individual right to privacy; its opinion was based largely on the rights and liberties outlined in *Griswold*, *Roe*, and *Casey*.¹⁵
- Most recently, Justice Ginsburg authored the dissenting opinion in a case in which the majority upheld the Federal Abortion Ban, federal legislation that outlaws certain second-trimester abortions and does not include any exception for when a woman’s health is threatened. She wrote an incisive and compelling dissent, arguing that the Court should have struck down the Federal Abortion Ban just as it did Nebraska’s ban in *Stenberg*, and pointing out the alarming fact that “for the first time since *Roe*, the Court blesses a prohibition with no exception safeguarding a woman’s health.”¹⁶

Notable Quotations

*"[T]he law prohibits the procedure because the state legislators seek to chip away at the private choice shielded by Roe v. Wade, even as modified by Planned Parenthood of Southeastern Pa. v. Casey."*¹⁷

*"Again as stated by Chief Judge Posner, 'if a statute burdens constitutional rights and all that can be said on its behalf is that it is the vehicle that legislators have chosen for expressing their hostility to those rights, the burden is undue.'"*¹⁸

*"I earlier observed that, in my judgment, Roe ventured too far in the change it ordered. The sweep and detail of the opinion stimulated the mobilization of a right-to-life movement and an attendant reaction in Congress and state legislatures. In place of the trend 'toward liberalization of abortion statutes' noted in Roe, legislatures adopted measures aimed at minimizing the impact of the 1973 rulings, including notification and consent requirements, prescriptions for the protection of fetal life, and bans on public expenditures for poor women's abortions."*¹⁹

*"Overall, the Court's Roe position is weakened, I believe, by the opinion's concentration on a medically approved autonomy idea, to the exclusion of a constitutionally based sex-equality perspective. I understand the view that for political reasons the reproductive autonomy controversy should be isolated from the general debate on equal rights, responsibilities, and opportunities for women and men. I expect, however, that organized and determined opposing efforts to inform and persuade the public on the abortion issue will continue through the 1980s. In that process there will be opportunities for elaborating in public forums the equal-regard conception of women's claims to reproductive choice uncoerced and unsteered by government."*²⁰

*"Today's decision is alarming. It refuses to take Casey and Stenberg seriously. It tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists (ACOG). It blurs the line, firmly drawn in Casey, between previability and postviability abortions. And, for the first time since Roe, the Court blesses a prohibition with no exception safeguarding a woman's health."*²¹

*"[T]he Act, and the Court's defense of it, cannot be understood as anything other than an effort to chip away at a right declared again and again by this Court—and with increasing comprehension of its centrality to women's lives."*²²

*"Congress imposed a ban despite our clear prior holdings that the State cannot proscribe an abortion procedure when its use is necessary to protect a woman's health. Although Congress' findings could not withstand the crucible of trial, the Court defers to the legislative override of our Constitution-based rulings. A decision so at odds with our jurisprudence should not have staying power."*²³

Notes:

- ¹ *Nomination of Ruth Bader Ginsburg, To Be Associate Justice of the Supreme Court of the United States Before the Senate Comm. on the Judiciary*, 103rd Cong. 207 (1993).
- ² *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 843–44, 911, 922 (1992); *Stenberg v. Carhart*, 530 U.S. 914, 918–19 (2000); *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. 1610, 1618 (2007).
- ³ David Von Drehle & Joan Biskupic, *A Lifetime of Experience*, ST. PETERSBURG TIMES, Aug. 15, 1993, at 1D.
- ⁴ *New Justice Is a Proponent of Restraint*, THE NATIONAL L. J., Dec. 27, 1993, at S8.
- ⁵ See Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375 (1985).
- ⁶ *Nomination of Ruth Bader Ginsburg, To Be Associate Justice of the Supreme Court of the United States Before the Senate Comm. on the Judiciary*, 103rd Cong. 150 (1993).
- ⁷ *Mazurek v. Armstrong*, 520 U.S. 968, 977 (1997) (Stevens, J., dissenting).
- ⁸ *Stenberg*, 530 U.S. at 930–31, 939–40.
- ⁹ *Stenberg*, 530 U.S. at 951–52 (Ginsburg, J., concurring).
- ¹⁰ *Ferguson v. City of Charleston*, 532 U.S. 67, 69, 86 (2001).
- ¹¹ *Ferguson*, 532 U.S. at 79–84.
- ¹² See *Lawrence v. Texas*, 539 U.S. 558, 564–66 (2003) (citing *Roe v. Wade*, 410 U.S. 113 (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965)).
- ¹³ See *Hill v. Colorado*, 530 U.S. 703, 705 (2000); *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 360 (1997); *Madsen v. Women’s Health Center*, 512 U.S. 753, 756 (1994).
- ¹⁴ *National Organization for Women v. Scheidler*, 510 U.S. 249, 250 (1994).
- ¹⁵ *Lawrence*, 539 U.S. at 564–74.
- ¹⁶ *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. at 1641 (Ginsburg, J., dissenting).
- ¹⁷ *Stenberg*, 530 U.S. at 952 (Ginsburg, J., concurring) (citations omitted).
- ¹⁸ *Stenberg*, 530 U.S. at 952 (Ginsburg, J., concurring) (quoting *Hope Clinic v. Ryan*, 195 F.3d 857, 881 (7th Cir. 1999)).
- ¹⁹ Ginsburg, 63 N.C. L. REV. at 381–82 (footnotes omitted).
- ²⁰ Ginsburg, 63 N.C. L. REV. at 386.

Notes, cont'd:

- ²¹ *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. at 1641 (Ginsburg, J., dissenting).
- ²² *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. at 1653 (Ginsburg, J., dissenting).
- ²³ *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. at 1652–53 (Ginsburg, J., dissenting) (citations omitted).