U.S. Supreme Court Decisions Concerning Reproductive Rights
1927-2018

Buck v. Bell, 274 U.S. 200 (1927)	By a vote of 8-1, the Supreme Court upheld a Virginia statute allowing sterilization of inmates at certain state mental institutions, holding that it was in the best interests of the state to prevent childbearing by those "unfit from continuing their kind."
Skinner v. State of Oklahoma, 316 U.S. 535 (1942)	The court ruled unanimously to invalidate an Oklahoma statute mandating sterilization as a punishment for certain crimes. The court held that the right to have children is fundamental, and that any mandatory sterilization laws must be subject to strict scrutiny.
Griswold v. Connecticut, 381 U.S. 479 (1965)	By a vote of 7-2, the court invalidated a Connecticut statute that prohibited the use of contraceptives, holding that the statute violated the constitutional right to marital privacy.
Eisenstadt v. Baird, 405 U.S. 438 (1972)	By a vote of 6-1, the court invalidated a law prohibiting the distribution of contraceptives to unmarried people, holding that the constitutional right to privacy extends to the reproductive decisions of both married and unmarried people.
Roe v. Wade, 410 U.S. 113 (1973)	By a vote of 7-2, the court invalidated a Texas law prohibiting abortion unless necessary to save a woman's life. The court held that the fundamental right to privacy extends to a woman's decision whether or not to have an abortion and that any governmental interference with that right is subject to strict judicial scrutiny. The court recognized two compelling state interests sufficient to justify restrictions on a woman's right to choose. States may regulate the abortion procedure after the first trimester of pregnancy in ways necessary to promote women's health. After the point of fetal viability—which occurs approximately at the beginning of the third trimester—a state may, to protect the potential life of the fetus, prohibit abortions not necessary to preserve the woman's life or health.

Doe v. Bolton, 410 U.S. 179 (1973)	Decided with *Roe v. Wade*. By a vote of 7-2, the court invalidated provisions of a Georgia law that required that: (1) any abortion be performed in a hospital; (2) a woman secure the approval of three physicians and a hospital committee before obtaining an abortion; and (3) a woman seeking to obtain an abortion be a resident of the state.
Bigelow v. Virginia, 421 U.S. 809 (1975)	By a vote of 7-2, the court invalidated the application of a Virginia statute that prohibited the advertisement of abortion services.
Carey v. Population Services, 431 U.S. 678 (1977)	By a vote of 7-2, the court invalidated a New York law prohibiting the sale or distribution of contraceptives to minors.
Colautti v. Franklin, 439 U.S. 379 (1979)	By a vote of 6-3, the court invalidated as unconstitutionally vague a Pennsylvania statute that required a physician, under threat of criminal penalties, to use the method and "degree of care" most likely to preserve the life and health of the fetus if the physician determined the fetus was viable or had "sufficient reason to believe that the fetus may be viable."
Bellotti v. Baird (II), 443 U.S. 622 (1979)	By a vote of 8-1, the court invalidated a Massachusetts law that required a minor to obtain the consent of both parents before obtaining an abortion. Four justices reasoned that the procedure for judicial waiver was unconstitutional because it required parental consultation in every case before the minor was permitted to go to court to demonstrate that she was mature enough to make her own decision or that an abortion was in her best interests. Four other justices considered the statute unconstitutional because it provided an absolute veto over a minor woman's abortion decision to a third party, whether a parent or a judge.
Harris v. McRae, 448 U.S. 297 (1980)	By a vote of 5-4, the court upheld the Hyde amendment, which prohibits the use of federal funds for abortion not necessary to preserve the woman's life. The court also held that states that participate in the Medicaid program are not required by Title XIX of the Social Security Act to fund medically necessary abortion for which federal funds are unavailable under the Hyde amendment.
Williams v. Zbaraz, 448 U.S. 358 (1980)	Decided with *Harris v. McRae*. By a vote of 5-4, the court upheld an Illinois statute prohibiting the use of state funds for abortion not necessary to save the woman's life.

H.L. v. Matheson, 450 U.S. 398 (1981)	By a vote of 6-3, the court upheld as not invalid on its face a Utah statute requiring a physician to notify a minor's parent before providing an abortion, but the court did not decide whether the statute would be unconstitutional as applied to a mature minor because the plaintiff had not alleged that she was mature.
City of Akron v. Akron Center for Reproductive Health [Akron I], 462 U.S. 416 (1983)	By a vote of 6-3, the court invalidated those provisions of a city ordinance that: (1) required physicians to give their patients anti-abortion information, including telling them that "the unborn child is a human life from the moment of conception;" (2) required a 24-hour waiting period following these lectures; (3) mandated that all abortions after the first trimester be provided in a hospital; (4) required parental consent for a minor to obtain an abortion, without providing a procedure for waiver of the consent requirement; and (5) required physicians to dispose of fetal remains in an unspecified "humane and sanitary manner."
Planned Parenthood Association of Kansas City, Mo. v. Ashcroft, 462 U.S. 476 (1983)	Decided with *Akron Center*. By a vote of 6-3, the court invalidated a provision of a Missouri statute that required any second-trimester abortion to be provided in a hospital. By a vote of 5-4, the court upheld requirements that: (1) a second physician be present during a post-viability abortion; (2) a minor obtain either parental consent or a judicial waiver; and (3) a pathology report be made for each abortion.
Simopoulos v. Virginia, 462 U.S. 506 (1983)	By a vote of 8-1, the court affirmed the criminal conviction of a physician for providing a second-trimester abortion outside a licensed hospital, noting that Virginia's definition of "hospital" differed from Missouri's and Akron's in that it included "outpatient hospitals," and was therefore broad enough to include any adequately equipped clinic. Thus, the court held that the Virginia restriction on where abortions can be provided after the first trimester was necessary to promote the health of women obtaining abortions.
Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986)	By a vote of 5-4, the court invalidated provisions of a Pennsylvania statute that required: (1) physicians to secure "informed consent" by providing anti-abortion information, including the availability of state-supplied printed materials describing the characteristics of the fetus and listing alternatives to abortion; (2) the reporting of detailed information available to the public for copying, including identification of the performing and referring physicians and personal information about the woman obtaining an abortion; (3) a physician providing a post-viability abortion to use that "degree of care" required to preserve the life and health of any unborn child intended to be born and to use the method most likely to preserve the life of the fetus, unless it would present a significantly greater medical risk to the woman's life or health; and (4) the presence of a second physician when viability is possible without providing an exception for a medical emergency.

Webster v. Reproductive Health Services, 492 U.S. 490 (1989)	By a vote of 5-4, the court upheld provisions of a Missouri statute prohibiting the use of public facilities or public personnel to provide abortion services and requiring a physician to make determinations and perform tests concerning gestational age, weight and lung maturity when he or she has reason to believe a woman to be 20 weeks or more pregnant. For the first time in the 16 years since *Roe v. Wade*, only a minority of the court—four justices—voted to reaffirm *Roe*.
Hodgson v. Minnesota, 497 U.S. 417 (1990)	By a vote of 5-4, the court invalidated as having no rational basis a Minnesota law requiring notification of both parents without a procedure for judicial waiver of the notice requirement. However, by a vote of 5-4, the court upheld another provision that required two-parent notification but included a procedure for judicial waiver, as well as a 48-hour waiting period for minors.
Ohio v. Akron Center for Reproductive Health [Akron II], 497 U.S. 502 (1990)	By a vote of 6-3, the court upheld an Ohio statute that required a minor to notify one parent or obtain a judicial waiver, rejecting a facial challenge alleging that the burdensome judicial procedure did not fulfill the constitutional requirement of a meaningful bypass procedure.
Rust v. Sullivan, 500 U.S. 173 (1991)	By a vote of 5-4, the court upheld federal regulations prohibiting health-care professionals at family-planning clinics that receive Title X funds from counseling or referring women regarding abortion, or even ultimately informing a pregnant patient that abortion is a legal option. President Clinton later rescinded the regulations.
Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)	By a vote of 5-4, the court "retained and once again reaffirmed" the "essential holding" of *Roe v. Wade*. The 5-4 majority also struck down a spousal notification provision of Pennsylvania's Abortion Control Act. However, by a vote of 7-2, the court upheld provisions of the Act that required: (1) physicians to provide patients with anti-abortion information, including pictures of fetuses at various stages of development, to discourage women from choosing abortion; (2) a mandatory 24-hour delay following these lectures; and (3) a one-parent consent requirement for minors with a judicial bypass. By a vote of 8-1 (Blackmun was the sole dissenter), the court upheld a provision that required the filing of reports, available for public inspection and copying, including the name and location of any facility providing abortion services that receives any state funds. Most significantly, the three-justice plurality opinion (authored by O'Connor, Kennedy, and Souter), abandoned *Roe*'s trimester framework and the strict scrutiny standard of review applied to fundamental rights, implementing the less protective "undue burden" standard of review for pre-viability abortion. The plurality explicitly overruled portions of *Akron* and *Thornburgh* that had limited states' ability to restrict the right to choose, deeming them "inconsistent

	with *Roe*'s statement that the State has a legitimate interest in promoting the life or potential life of the unborn." Four justices (Rehnquist, Scalia, Thomas, and White) voted to uphold all the challenged provisions and overturn *Roe* completely, stating that it was wrongly decided and the Constitution does not protect the right to choose. Only two justices (Blackmun and Stevens) voted to continue to protect the right to choose as a fundamental right under *Roe* by subjecting state restrictions to strict scrutiny.
Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993)	By a vote of 5-4, the court held that a federal civil-rights law, known as the "Ku Klux Klan" Act, 42 U.S.C. § 1985(3), does not protect women from anti-choice blockaders obstructing access to reproductive-health clinics. The court held that anti-choice blockades do not constitute sex-based discrimination for the purpose of the statute.
National Organization for Women v. Scheidler [Scheidler I], 510 U.S. 249 (1994)	By a vote of 9-0, the court held that claims under the Racketeer Influenced and Corrupt Organizations (RICO) Act do not require proof of an economic motive, and that NOW and a group of women's health centers could pursue their civil suit against Joseph Scheidler, the Pro-Life Action League (PLAL) and others.
Madsen v. Women's Health Center, 512 U.S. 753 (1994)	By a vote of 5-4 the court upheld provisions of a Florida injunction that: (1) created a 36-foot buffer zone outside the entrance to a reproductive-health clinic; and (2) prohibited anti-choice protesters from making noise that could be heard by patients inside the clinic during the hours in which surgical procedures were provided. The court noted that such injunctions burden "no more speech than necessary to serve a significant government interest." The court invalidated provisions creating a 300-foot "no approach" zone around the clinic, a ban on signs and images visible to people inside the clinic, and a 300-foot ban on picketing outside the residences of clinic employees.

Schenck v. Pro-Choice Network, 519 U.S. 357 (1997)

By a vote of 8-1, the court invalidated the provision in a New York injunction that created a 15-foot "floating" buffer zone around any person or vehicle seeking access to or leaving a clinic. The court held that the "floating" buffer zones "burden more speech than necessary to serve the relevant government interests." The court limited this holding to the facts of this case and noted that it did not address "whether the governmental interests involved would ever justify some sort of zone of separation between individuals entering the clinics and protestors, as measured by the distance between the two." By a vote of 6-3, the court upheld a provision creating a 15-foot "fixed" buffer zone outside of clinic doorways, driveways, and parking lot entrances. The court also upheld a "cease and desist" provision that permits two "sidewalk counselors" to approach a person inside the "fixed" buffer zones unless and until the person indicates a desire for the counselor to withdraw; the "sidewalk counselor" must then retreat 15 feet and remain outside the buffer zone.

Lambert v. Wicklund 520 U.S. 292 (1997)

In a *per curiam* opinion, the court upheld the judicial-bypass provision of a Montana statute requiring one-parent notification before a minor may have an abortion. The court held that a judicial-bypass procedure requiring a minor to show that parental notification is not in her best interest is equivalent to a judicial-bypass procedure requiring a minor to show that abortion without parental notification is in her best interest.

Mazurek v. Armstrong, 520 U.S. 968 (1997)

By a vote of 6-3, the court reversed a lower court ruling that would have permitted health-care providers to move forward with their challenge to a Montana law banning the provision of abortion services by licensed physician assistants working under the supervision of a doctor. Without full briefing or oral argument, the court found that, in general, physician-only requirements are constitutional. As the court's first application of the "undue burden" standard since *Planned Parenthood of Southeastern Pennsylvania v. Casey*, this decision indicated that the standard is less protective than it initially appeared and that regardless of a law's intended effect, the court will not invalidate state restrictions on abortion before viability unless the actual effect is to create a substantial obstacle on women obtaining an abortion.

Stenberg v. Carhart, 530 U.S. 914 (2000)

By a vote of 5-4, the court invalidated a Nebraska law that criminalized abortion procedures, vaguely defined, unless the procedure is necessary to save the life of the woman. First, the court held that the Nebraska law is unconstitutional because it lacked any exception to protect women's health, noting that "[s]ince the law requires a health exception in order to validate even a postviability abortion regulation, it at a minimum requires the same in respect to a previability regulation." The court also clarified that the health exception must protect women against health risks caused by the pregnancy as well as health risks caused by a regulation that forces

women to choose a less medically appropriate procedure. Second, the court found that the Nebraska law imposed an undue burden on women because it was written so broadly that it would affect not only dilation and extraction (D&X) procedures, but also dilation and evacuation (D&E) procedures, the most common form of previability second-trimester abortion. The court reasoned that physicians who used the D&E procedure would fear prosecution, conviction, and imprisonment, resulting in an undue burden upon a woman's right to choose.

Hill v. Colorado,
530 U.S. 703 (2000)

By a vote of 6-3, the court upheld the constitutionality of the zone-of-separation provision in Colorado's clinic-protection statute. The provision prohibits a person from knowingly approaching within eight feet of another person without consent, for the purpose of passing a leaflet or handbill, displaying a sign, or engaging in oral protest, education, or counseling. This restriction applies within a 100-foot radius from clinic entrances. The court reasoned that states have a legitimate interest in protecting the health and safety of their citizens, and that this interest "may justify a special focus on unimpeded access to health care facilities and the avoidance of potential trauma to patients associated with confrontational protests." The court held that the Colorado statute was content neutral because it only regulated where the speech can occur. In addition, the statute was not adopted because of any disagreement with the message or viewpoint of any speech. Further, Colorado's interests in protecting clinic access and privacy, and providing clear guidelines for law-enforcement officers, were not related to the content of the demonstrators' speech. The court also held that the zone-of-separation provision was a valid time, place, and manner regulation because it was narrowly tailored to serve the state's significant and legitimate governmental interests and left open ample alternative channels for communication. These channels included communicating at normal conversational distance, displaying signs, and distributing leaflets near the path of oncoming pedestrians.

Ferguson v. City of Charleston,
532 U.S. 67 (2001)

By a vote of 6-3, the court held that the Medical University of South Carolina's policy of testing pregnant women for cocaine is unconstitutional under the Fourth Amendment in the absence of consent. The court recognized that the purpose of the policy was to obtain evidence for criminal prosecution, not to help women or their pregnancies. The court also noted that punitive programs that punish pregnant women for drug use during pregnancy can actually harm the women and children they purport to protect.

Scheidler v. National Organization for Women [Scheidler II],
537 U.S. 393 (2003)

By a vote of 8-1, the court held that rights potentially violated by clinic protestors – women's right to seek medical services, clinic doctors' rights to perform their jobs, and clinics' rights to provide medical services and otherwise conduct their business – were not "property" that could be "obtained" within the meaning of the Hobbs Act (a

federal anti-extortion statute). On that basis, the court overturned a jury verdict against clinic protestors, in which jurors had found that the protestors had used improper means to obtain "property" belonging to the plaintiffs (clinics, and patients or prospective patients), and had therefore committed extortion. Because it voided the underlying offenses necessary to sustain a RICO violation in the case, the court declined to reach the issue of whether the clinics could be entitled to injunctive relief under RICO, lifted the injunction issued by the lower court, and remanded the case for further proceedings.

Planned Parenthood of Northern New England v. Ayotte, 546 U.S. 320 (2006)

By a vote of 9-0, the court remanded a case challenging New Hampshire's parental notification law, which lacked an exception to protect the health of a young woman facing a medical emergency. The court restated its precedent that abortion restrictions must contain an exception to protect a woman's health, but did not reach any of the constitutional questions at issue in the case. The court focused on remedy, returning the case to lower courts to determine whether a limited, rather than total, injunction could cure the law's constitutional defect.

Scheidler v. National Organization for Women [Scheidler III], 126 U.S. 1264 (2006)

By a vote of 8-0 (Justice Alito not participating), the court held that certain federal extortion and racketeering laws cannot be used by doctors, clinic employees, and women to stop anti-choice extremists from obstructing access to clinics, trespassing on or damaging clinic property, or using violence or threats of violence against clinics, their employees, or their patients.

Gonzales v. Carhart, 127 U.S. 1610 (2007)

By a vote of 5-4, the court upheld the first-ever federal ban on a safe abortion method. The Federal Abortion Ban outlaws certain second-trimester abortions and has no exception for cases when a woman's health is in danger. The court found the federal ban to be narrower than the ban at issue in *Stenberg*, and found that a health exception is not necessarily required when an abortion method is banned. While the majority claimed not to have disturbed precedent, in dissent Justice Ginsburg declared that "[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."

McCullen et al. v. Coakley, et al., 134 U.S. 2518 (2014)

By a vote of 9-0, the court invalidated a Massachusetts statute requiring clinic protesters to remain outside a 35-foot buffer zone. The court held the law was unconstitutional under the First Amendment's free-speech protections, concluding that while the commonwealth had legitimate interests in maintaining public safety and protecting women's access to reproductive-health care, because the law applies to public ways and sidewalks, it "deprives [petitioners] of their two primary methods of communicating with arriving patients: close personal conversations and distribution of literature." Despite the unanimous vote, there were three separate

written opinions. The Roberts opinion pointed to more tailored clinic-protection laws while the Supreme Court's more conservative justices opined that all buffer-zone laws should be found unconstitutional. In a concurrence written by Justice Scalia, joined by Justices Kennedy and Thomas, Scalia derides the court for essentially creating an "entirely separate, abridged edition of the First Amendment applicable to speech against abortion." Justice Samuel Alito wrote a concurrence expressing that buffer zones, in his opinion, constitute viewpoint discrimination, as they criminalize speech of anti-choice "counselors" but not clinic employees.

Burwell v. Hobby Lobby Stores, Inc.,
134 S. Ct. 2751 (2014)

By a vote of 5-4, the court ruled that closely held, for-profit corporations do not need to comply with the Affordable Care Act's contraceptive-coverage policy if they have religious objections to providing their workers with health insurance that covers birth control. The majority opinion held that the Religious Freedom Restoration Act (RFRA) – which was written to protect individuals' religious freedom – extends to closely held, for-profit corporations. The majority held that the policy imposed a substantial burden on these corporations' religious freedom. In making this ruling, the court considered such corporations capable of holding religious beliefs. Despite conceding that guaranteeing cost-free access to contraception is a compelling interest, the majority ultimately held that the government did not use the least-restrictive means of furthering that interest. Justice Ginsburg dissented, arguing that the majority opinion radically expands the rights of corporations. Moreover, she cautioned that the ruling could encourage groups to file more religious objections regarding a wide range of health-care services, and perhaps, increased objections from complying with other federal laws.

Zubik v. Burwell
136 S. Ct. 1557 (2016)

In a *per curiam* opinion, the court vacated the lower courts' judgments in the seven cases consolidated in *Zubik v. Burwell*, and remanded them to the respective United States Courts of Appeals. The issue before the court was whether the so-called "accommodation" to the Affordable Care Act's contraceptive-coverage policy – which requires most employers to provide insurance plans that cover all FDA-approved contraceptive methods without cost-sharing – violated religiously affiliated nonprofit organizations' rights under the Religious Freedom Restoration Act. Under the "accommodation," such organizations may opt out of providing this coverage, so long as they notify the government of their objection; the government then steps in to provide the coverage under women's policies, so that their coverage remains "seamless." Before vacating and remanding the case, the Supreme Court used an unusual procedural move, requesting that the parties file supplemental briefs to see if there are any alternative ways of resolving the cases. Ultimately, the court's opinion did not resolve the issue at hand, and it "expressed no view on the merits of the cases." 136 S. Ct. 1557, 1560. Justice Sotomayor wrote a concurring opinion, joined by Justice Ginsberg, emphasizing

that the *per curiam* opinion expressed no view on the merits of the cases and that "it allows the lower courts to consider only whether existing or modified regulations could provide *seamless* contraceptive coverage." *Id.* at 1561 (emphasis added).

Whole Woman's Health v. Hellerstedt
136 S.Ct. 2292 (2016)

By a vote of 5-3, the court ruled that two provisions of a Texas TRAP law (Targeted Regulation of Abortion Providers), H.B.2, were unconstitutional. The court held that these provisions – ambulatory-surgical center and admitting-privileges requirements – impose an undue burden on women's abortion rights: "The Court of Appeals' approach simply does not match the standard that this Court laid out in Casey . . . ." 136 S. Ct. 2292, 2310 (2016). Moreover, the Supreme Court held that when courts consider whether such laws violate the Constitution, they cannot assess only the purported "benefits" of the restrictions; they must weigh such so-called benefits against the burdens they impose on women. Justice Ginsberg filed a concurring opinion, stating "it is beyond rational belief that H.B.2 could genuinely protect the health of women, and certain that the law would simply make it more difficult for them to obtain abortions." 136 S. Ct. at 2321 (internal citation omitted). Justices Alito, Thomas, and Chief Justice Roberts dissented, with Justice Thomas offering a separate dissenting opinion.

National Institute of Family and Life Advocates v. Becerra
138 S.Ct. 2361 (2018)

By a vote of 5-4, the court struck down a California law that required fake women's health centers, also known as crisis pregnancy centers, to disclose their status as unlicensed clinics and to post a sign stating that California offers publicly-funded reproductive healthcare services, including contraception and abortion care. A group of fake women's health centers, groups that are fundamentally opposed to abortion and operate with the sole purpose of attempting to dissuade women from exercising their legal right to choose, challenged the law on the grounds that it unduly burdened their protected free speech. The majority agreed, holding that the law constituted a content-based regulation of speech prohibited by the First Amendment. Justice Breyer dissented, pointing out that under the majority's reasoning "many ordinary disclosure laws" including "numerous commonly found disclosure requirements relating to the medical profession" could be struck down 138 S. Ct. 2361, 2381 (2018). Breyer also highlighted that the "marketplace of ideas," as mentioned in the majority opinion, "is fostered, not hindered, by providing information to patients to enable them to make fully informed medical decisions in respect to their pregnancies" 138 S. Ct. 2361, 2388 (2018).