

# Opinion: [Roe v. Wade] Still a hot button after all these years

Constitution is to keep government from interfering with individual liberty. And while the original Constitution only restricted the federal government, the Constitution was amended after the Civil War to extend the protections of individual liberty against state governments as well.

## Personal liberty

The right to privacy discussed in Roe is nothing more than a recognition that governments under our Constitution are formed for the purpose of providing for the general welfare and are denied the power to infringe on personal liberty and autonomy except when there is a compelling public purpose to do so.

Indeed, while there is no specific right of privacy mentioned in the Constitution, the Ninth Amendment clearly recognizes that rights not specifically recognized therein are still “retained by the people” where government has no legitimate reason to restrict them.

And seven members of that all-male court that decided Roe could not think of a compelling reason why a woman should be forced to continue an unwanted pregnancy.

While the state defendants in the case argued that anti-abortion statutes were intended to protect the health of women, the opinion by Justice Harry Blackmun, a Republican-appointee and onetime counsel to the Mayo Clinic, noted that advances in medical knowledge and technology had made early abortion far safer than childbirth and continued pregnancy in many cases.

As to the notion that the unborn fetus had rights of personhood (an argument far more prevalent among right-to-lifers today than it was in 1970), the court noted that in the major part of the 19th century, “legal abortion practices were far freer than they are today,” suggesting that the Founders did not consider fetuses as “persons” under the Constitution.

Nor, said the Court, was it within its power to decide “the difficult question as to when life begins. When those trained in medicine, philosophy and theology are unable to arrive at any consensus, the judiciary at this point in the development of man’s knowledge is not in a position to speculate as to the answer.”

## A fundamental right

So the solid majority of the court could not find any compelling reason to deprive women of this fundamental right any more than the majority could think of a compelling reason to prohibit couples from using birth-control devices in the pre-Roe decision in *Griswald v. Connecticut*.

