



## Roe Reality Check #4

*Roe v. Wade* said the Constitution includes a right to abortion.

Yet even legal commentators who support legal abortion have said *Roe* is not good constitutional law.

*Roe v. Wade* is "a very bad decision... because it is *not* constitutional law and gives almost no sense of an obligation to try to be."<sup>1</sup>

- John Hart Ely, Yale law professor

"As a matter of constitutional interpretation and judicial method, *Roe* borders on the indefensible.... [It is] one of the most intellectually suspect constitutional decisions of the modern era."<sup>2</sup>

- Edward Lazarus, former clerk to Justice Blackmun (who authored *Roe*)

"Since its inception *Roe* has had a deep legitimacy problem, stemming from its weakness as a legal opinion."<sup>3</sup>

- Benjamin Wittes, Washington Post legal affairs editorial writer

"One of the most curious things about *Roe* is that, behind its own verbal smokescreen, the substantive judgment on which it rests is nowhere to be found."<sup>4</sup>

- Laurence Tribe, Harvard law professor

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1 "The Wages of Crying Wolf: A Comment on *Roe v. Wade*," 82 *Yale L.J.* 920-49 (1973) at 947.

2 "The Lingering Problems with *Roe v. Wade*," *FindLaw's Writ*, Oct. 3, 2002, <http://writ.news.findlaw.com/azarus/20021003.html>

3 "Letting Go of *Roe*," *The Atlantic Monthly*, January/February 2005, p. 48.

4 "Toward a Model of Roles in the Due Process of Life and Law," 87 *Harv.L.Rev.* 1 (1973) at 7.

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