

State v. New Times, INC (1973)

In the 1973 case *State v. New Times, INC*, the Arizona Court of Appeals in Phoenix, Arizona, ruled that Arizona Revised Statutes 13-211, 13-212, and 13-213, collectively called the Arizona abortion statutes, were unconstitutional. The statutes made it illegal for anyone to receive, provide, or advertise abortion services. The Arizona Court of Appeals reviewed a case in which a city court in Tempe, Arizona, convicted the *New Times*, a newspaper headquartered in Phoenix, Arizona, of advertising abortion. In hearing the case, the Arizona Court of Appeals deferred to the recently decided US Supreme Court case *Roe v. Wade* (1973). In *Roe v. Wade*, the US Supreme Court ruled that women have constitutional rights to abortion services within the first trimester of pregnancy. Accordingly, the Arizona Court of Appeals claimed that all of Arizona's abortion statutes, including the one the *New Times* was convicted of, prohibited no criminal acts, and set aside *New Times*'s conviction.

In 1901, the Arizona Territorial Legislature codified laws that were later renamed as Arizona Revised Statutes 13-211, 13-212, and 13-213. Statute 13-211 made it illegal for any person to provide, supply, or administer any drug, substance, or instrument to a pregnant woman with the intent to produce an abortion. Similarly, statute 13-212 prohibited any pregnant woman from soliciting any drug, substance, or surgical procedure with the intent to obtain an abortion. Statute 13-213 banned the advertisement of contraception and abortion. Together, the statutes were called the Arizona abortion laws. While collectively the statutes all regulated abortion access in Arizona, statute 13-213 was the individual statute that was constitutionally challenged throughout the late twentieth century.

In 1962, the Planned Parenthood Committee of Phoenix, an organization headquartered in Phoenix that provided Arizona women with contraception and family planning education, appealed a lawsuit to the Arizona Supreme Court in Phoenix to challenge the constitutionality of Arizona Statute 13-213. Prior to the 1962 case, none of the Arizona abortion statutes had been challenged. In the case *Planned Parenthood Committee of Phoenix v. Maricopa County* (1962), the Arizona Supreme Court ruled that the Arizona statute was constitutional. However, the court also ruled that the law did not apply to organizations like Planned Parenthood, which provided a medical services to those seeking information about contraception. Rather, the court ruled that the statute banned the paid advertising of brand name contraceptive devices through media intended for public audiences.

In the 1970s, the city of Tempe charged the *New Times* with violating the Arizona Revised Statute 13-213, which banned the advertising of devices or methods for contraception or abortion. The *New Times* had to appear in in the Tempe City Court in Tempe, Arizona, for the violation. The Tempe City Court found the *New Times* guilty of violating the statute. Following the decision, *New Times* appealed the decision to the Arizona Superior Court for Maricopa County in Phoenix.

In the Maricopa County Superior Court, the *New Times* sought to have the charges dismissed by challenging the constitutionality of the Arizona statute 13-213. However, the court denied *New Times*'s motion to dismiss the charges and refused to hear the challenge of constitutionality. The Maricopa County Superior Court upheld the decision of the Tempe City Court and found *New Times* in violation of Arizona statute 13-213.

After that, *New Times* appealed the decision to Division One of the Arizona Court of Appeals in Phoenix. Three judges reviewed the case: Jack Ogg, Henry Stevens, and Francis Donofrio, who served as presiding judge. Attorneys Herbert Finn and Elizabeth Finn from Phoenix represented *New Times*. Gary Nelson, the Arizona Attorney General, and William Schafer, the Assistant Attorney General of Arizona, represented the state of Arizona in the case.

On 3 July 1973, the Arizona Court of Appeals issued its decision. They referred to previous abortion cases to examine the constitutionality of Arizona statute 13-213. They also noted that the Arizona Supreme Court had found the statute constitutional in *Planned Parenthood Committee of Phoenix v. Maricopa County* (1962). However, the Arizona Court of Appeals acknowledged that since the 1962 Arizona Supreme Court case, another federal case had set a new precedent.

The Arizona Court of Appeals cited the case *Roe v. Wade* decided by the US Supreme Court in Washington, D.C., on 22 January 1973. In *Roe v. Wade*, Norma McCorvey, a pregnant woman under the alias Jane Roe, brought the case against the Dallas, Texas, county district attorney Henry Wade, and challenged the constitutionality of several Texas abortion laws that made abortion illegal.

In *Roe v. Wade*, the US Supreme Court stated that women have inherent rights to privacy in their reproductive lives under the due process clause of the Fourteenth Amendment to the US Constitution. The due process clause of the Fourteenth Amendment protects citizens' life, liberty, or property from unwarranted governmental regulation. The US Supreme Court ruled that the due process clause also protects rights to privacy in matters inherent to individuals' lives. They further claimed that those rights protect women's abilities to make decisions about whether or not they should have abortions. The US Supreme Court ruled that the Texas abortion laws were unconstitutional, giving women the right to terminate a pregnancy within the first trimester.

After reviewing previous case decisions, the Arizona Appeals Court decided the case *State v. New Times, INC.* Judge Donofrio delivered the opinion of the Court. Judges Ogg and Stevens concurred. The Court stated that the issue on the constitutionality of Arizona statute 13-213 was settled by *Roe v. Wade* and that the Court was bound by the decision of the US Supreme Court. The Arizona Court of Appeals found that the US Supreme Court opinion in *Roe v. Wade* invalidated all of the Arizona abortion statutes. Therefore, the Arizona Court of Appeals ruled that Arizona Revised Statutes 13-211, 13-212, and specifically 13-213, were unconstitutional, and it reversed the decisions of the two lower courts.

Sources

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