



**THE HUMAN FAMILY
RESEARCH CENTER**

*Every Human Being
Leaves a Fingerprint on the Universe*

***FACTORS THE SUPREME COURT WILL CONSIDER IN
DECIDING WHETHER TO OVERRULE A PRECEDENT***

Workability

The question is whether *Roe & Doe* should be kept because the Court established a standard that could be applied in other cases, such as the undue burden standard. It has also been used to evaluate whether a ruling has been accepted by the American people or whether it has been “subject to substantial and continuing criticism.”

Reliance

The question is whether individual women as well as society in general have come to rely on the availability of abortion.

Erosion of the Foundation of a Case

The question is whether cases decided after *Roe & Doe* have weakened the foundation or the basis for these decisions.

Stability of the Legal System

The question is whether a particular overruling decision would be so contrary to the will of the people that there would be a possibility that it would not be obeyed or would be significantly destabilizing to the foundation of our legal system. In the hearings on his nomination, Chief Justice Roberts referred to this as a “jolt” to the system.

Whether the Original Opinion Was Correctly Decided

The question is whether *Roe & Doe* were correct interpretations of the Constitution. Judge Alito said, in a 1985 job application, that he was proud of his contribution to cases in which the government argued that the Constitution doesn't protect a right to abortion. However, he never said specifically that he thought *Roe & Doe* were wrongly decided or whether they should be overruled. This will be a major area of questioning.

Change in Facts & Circumstances

The Supreme Court struck down the "separate but equal" doctrine in *Brown v. Board of Education* because it was proven that separate was not equal when it came to educational opportunities. This is the type of fact/circumstances this factor refers to.

Political Pressure

The Supreme Court has, in the past, been concerned that overruling *Roe & Doe* would be seen as submitting to political/public pressure. The point was raised at the Roberts hearings.

Time

Theoretically, the longer a decision has been around, the more "settled" it becomes. However, there are several examples of overruled cases that had been around much longer than *Roe & Doe*.

Closeness of the Vote on the Original Opinion

While not very significant, this has been mentioned as a possible factor. The closer the vote, the easier it would be to overrule the decision later, if other factors favored overruling.