



Written by [Bruce Walker](#) on August 10, 2010

Louisiana Abortion Laws Attacked

The argument made by those clinics and their lawyers is that Louisiana is trying to treat abortion differently than other medical procedures. That, of course, is undeniably true. The abortion clinics argue that discrimination in the types of medical care provided violates the Equal Protection Clause of the Constitution and the restrictions on limiting abortion in the *Roe v. Wade* decision.



All legislative bodies in our nation routinely discriminate in application. When Congress passes a law adding another weird quirk to the Internal Revenue Code, it is deliberately intending to discriminate against some taxpayers and in favor of other taxpayers. When state legislatures pass laws the typical result is that one group of citizens gains some rights or benefits at the expense of others.

What abortion rights proponents seem to be saying is that the right to an abortion which the Supreme Court created in 1973 is entitled to extraordinary protection. If so, then *Roe v. Wade* changed our Constitution even more than anyone feared. The consent to perform surgery on minors, for example, has traditionally been the right of the parents, subject to such conditions as state legislatures make. The duty of doctors to patients is also something that state legislatures have regulated, and if a procedure – like a lobotomy – may be deemed to require extraordinary scrutiny and safeguards, those may be mandated.

What abortion rights advocates seem to be saying is that not only is abortion legal, but that the ordinary regulation which state government would exercise over any other medical procedure cannot be exercised over this particular, protected medical procedure. In fact, state governments have exercised the right to regulate almost every aspect of our lives. Some states have banned smoking in public restaurants. States have required vaccines for childhood diseases. States require doctors, in cases of suspected abuse, to report that suspicion to welfare workers or police.

The state, in short, meddles all the time in how we receive medicine, what sorts of medicines we may use or may not use, who is qualified to practice different types of medicine, what sort of tests must be performed on newborn babies – and so on. The power which Louisiana is trying to exercise over abortion may be onerous (state governments create onerous burdens on all sorts of constitutionally protected behavior all the time, with no “constitutional” lawyers getting upset.)

Clearly, what is at issue is whether abortion is intended to be given super-constitutional status or, perhaps another way of putting it is this: Is abortion intended to be some sort of secular sacrament, which cannot be modified or regulated in any way? If so, one must read very deeply between the lines



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of the Constitution to find sanction for such an attitude.



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