

Table 10-2 Approaches to Laws That Restrict Abortion

Approach	Exemplary Cases/ Opinions	Definition
Strict scrutiny	<i>Roe v. Wade</i> (1973)	The right to abortion is fundamental. So laws restricting that right must be the least restrictive means available to achieve a compelling state interest. In the abortion context, a state's interest grows more compelling as the pregnancy moves from the first (no compelling interest) to second (interests related to maternal health) to third (post-viability) trimesters (interests in the potentiality of human life). States are free to prohibit post-viability abortions except where necessary for the preservation of the life or health of the mother
Undue burden	<i>Planned Parenthood v. Casey</i> (1992)	The right to abortion exists, but it is no longer fundamental. States may regulate abortion throughout the pregnancy (including pre-viability) as long as their restrictions did not place an undue burden—a substantial obstacle—on the right to terminate a pregnancy.
Rational basis	Rehnquist in dissent in <i>Roe</i> ; <i>Dobbs v. Jackson Health Organization</i> (2022)	The Constitution does not explicitly guarantee a right to abortion, nor is the right “deeply rooted” in the Nation's history. For these reasons, laws regulating abortion are no different from most other health and welfare laws and so when challenged, courts will uphold the restrictions as long as they are reasonable measures designed to achieve a legitimate state interests.