

United States v. Milan Vuitch (1971)

In the 1971 court case *United States v. Milan Vuitch*, hereafter *US v. Vuitch*, the US Supreme Court ruled that a Washington, DC law was constitutional by overturning a 1969 district court decision. Beginning in the early twentieth century, Washington, DC, prohibited abortions except for abortions performed to preserve the life or health of the pregnant woman. In 1969, Milan Vuitch, a physician in Washington, DC, was convicted of criminal abortion for providing an abortion when the woman's life was not endangered. In his defense, Vuitch argued that the Washington abortion law was unconstitutionally vague, meaning it failed to define health in terms clear enough so that doctors could be sure what actions violated the law. Though a lower district court agreed with Vuitch and struck down the law as unconstitutional, the Supreme Court later disagreed and overturned the decision. *US v. Vuitch* was one of the first US Supreme Court cases that challenged the constitutional validity of laws regulating abortion and set a precedent that helped determine future abortion cases, like *Roe v. Wade* in 1973, which made abortions more accessible and gave women more control over their bodies.

US v. Vuitch was one of several Supreme Court cases that dealt with abortion in the mid-twentieth century. Those cases set precedents for future cases on the same issues. In the US court system, judges issue rulings on particular legal matters that are brought to courts. When later judges refer to or build upon those earlier rulings, the earlier rulings are called precedents. By 1971, when the Supreme Court heard *US v. Vuitch*, some states had started to decriminalize abortion, and other states had started to reform their laws to make abortions legal in a larger number of circumstances. However, around the early 1970s, thirty-three states had laws that made abortions illegal in almost all circumstances. When the Supreme Court decided to hear the case *US v. Vuitch*, there were already several cases dealing with abortion waiting to be heard by the Supreme Court, including *Roe v. Wade*, which had been awaiting consideration since October 1970. After the Supreme Court gave its decision in *US v. Vuitch*, the court voted the next day to hear *Roe v. Wade* and *Doe v. Bolton*. Both cases cited the decision in *US v. Vuitch* as a precedent and the decisions in *Roe v. Wade* and *Doe v. Bolton* made abortions more accessible to women.

Prior to *US v. Vuitch*, abortions had been illegal in the US since 1901, except in some cases where the life or health of the woman was at stake. Under Washington, DC law doctors like Vuitch could provide a legal abortion to a woman if, in their professional opinion, the woman's health or life were at risk. Under some interpretations, the law allowed doctors to perform abortions on women who claimed their mental health would suffer without an abortion. Because of that provision, it was up to physicians to determine whether an abortion was necessary. Since the definition of health was generally left to the interpretation of physicians, those physicians could decide what constituted a threat to a woman's life or health. However, doing so left physicians vulnerable to the possibility of criminal prosecution in cases where the necessity of an abortion was not clear. Some doctors provided illegal abortions to women in secret. Some women who were unable to find a doctor willing to perform an abortion turned to other, less safe methods, and some women were hurt or even died as a result of botched abortions. Vuitch himself was arrested several times in connection with illegal abortions.

Vuitch provided abortions to women in the Washington, DC, area, beginning in 1960, when he opened his clinic. Vuitch was arrested sixteen times on abortion related charges because some hypothesized that he might be providing abortions to women whose lives were not at risk. Following Vuitch's sixteenth arrest in 1969, he was convicted for the first time of performing an illegal abortion and sentenced to a year in prison and a \$5,000 fine. Vuitch's response was to challenge the law he was convicted under, claiming it was unconstitutionally vague.

Vuitch appealed his conviction to the district court of Washington, DC, in November 1969. Vuitch's lawyers argued that the law prohibiting abortion in Washington, DC, was unconstitutionally vague. They claimed that while the law allowed physicians to provide abortions for women to preserve their endangered life or health, the law did not provide a clear definition of health for doctors to follow. They claimed that, as a result, doctors could unknowingly break the vague law. In the US, laws that are too vague violate the US Constitution and so are open to being struck down. The judge who heard Vuitch's case at the district court level, Gerhard Gesell, agreed with Vuitch's claim that the law was unconstitutionally vague.

Gesell determined that the law was unconstitutional in two respects. First, he claimed, the word health was too uncertain. He said that doctors may be convicted of criminal abortion, a felony, because a jury interprets the term health differently than the physician. Secondly, Gesell said that the law violated the Fifth Amendment right to be presumed innocent until proven guilty. Under the Washington law, the prosecutors in criminal abortion cases only needed to show that a doctor had performed an abortion. It was then up to the doctor to prove to the jury that the abortion had been performed legally. The law presumed that doctors who performed abortions did so illegally unless they could prove otherwise, which violated the Fifth Amendment. Without waiting for trial, Gesell dismissed the indictments against Vuitch. The reversal of the trial court's decision by Gesell and his declaration that the law was unconstitutional meant that Washington, DC, no longer had a law prohibiting abortion. After Gesell's decision, the United States government announced plans to appeal the decision to the Supreme Court.

The Supreme Court heard arguments for *US v. Vuitch* on 12 January 1971. At the time, the Supreme Court consisted of nine justices including the chief justice Warren Burger and justices Hugo Black, William Douglas, John Harlan II, William Brennan Jr., Potter Stewart, Byron White, Thurgood Marshall, and Harry Blackmun. Samuel Huntington was the attorney representing the United States, while attorneys Joseph Nellis and Norman Dorsen represented Vuitch. The main question of *US v. Vuitch* was whether the Washington, DC, law that prohibited abortion was unconstitutionally vague. There was also a secondary question of whether the Supreme Court had jurisdiction to make a ruling about laws in Washington, DC.

In the oral arguments, Huntington argued on behalf of the United States that the law was clear enough and could be applied in most situations without any question of vagueness. Huntington refuted the claim made by the district court judge in his decision on Vuitch's appeal that the law violated Fifth Amendment rights. Huntington argued that a doctor who performed an abortion to preserve the life or health of a woman could, based on legal precedent, defend themselves as having made the decision in good faith. That meant that a physician could justify their decision to perform an abortion on a woman by stating that they had made the decision in good faith based on their own medical knowledge. Huntington also argued that in cases where the woman was not directly at risk, the state had a duty to protect the life of the fetus. Huntington also mentioned that while the risks associated with giving birth were greater than those associated with getting an early abortion, the differences in risk did not qualify as enough of a danger to justify an abortion.

Nellis and Dorsen argued on behalf of Vuitch that every part of the phrasing of the law was unconstitutionally vague. The law permitted abortions that were necessary to preserve the life or health of the woman. However, the attorneys claimed, the meaning of necessary to preserve the life was vague because of its indefiniteness. They argued that could be interpreted to mean that a woman had a right to preserve her life as it was before she was pregnant. It could also be interpreted to mean that without an abortion, death was imminent for the woman, or that it was just a possibility. The attorneys also considered the term risk vague because there was no quantifier of how great the risk needed to be to justify an abortion. Finally, Vuitch's attorneys argued that the term health encompassed mental as well as physical health.

The Supreme Court gave its decision on 21 April 1971 in the form of written documents called opinions. The majority opinion was written by justice Black, and justices Burger, Blackmun, Black, Harlan, and White joined or agreed with that opinion. The Court ruled that the abortion law was not unconstitutionally vague and reversed the district court's decision. While the Supreme Court ruled that the term health was not unconstitutionally vague, they did assert, citing Webster's Dictionary, that health included mental and physical health. In their opinion, the Supreme Court also disagreed

with the district court's interpretation of the law as violating the Fifth Amendment rights of physicians to be presumed innocent until proven guilty. The Supreme Court held that that reasoning was an incorrect interpretation of the law. However, they did affirm that the burden of proving that a physician had performed an abortion in contradiction of the law belonged to the prosecution side. Prior to that decision, the burden of proof had been on the physicians accused of criminal abortion, who had to prove in court that the abortions they performed were done legally. The affirmation that the burden of proof was on the prosecution voided Gesell's argument that the law violated the Fifth Amendment. The Supreme Court also ruled that they did have the jurisdiction to hear the case, which the attorneys on both sides of the case had agreed with in their oral arguments.

White wrote a concurring opinion, meaning he agreed with the majority opinion while adding his own reasoning for the decision. He stated that even if the term health were unconstitutionally vague, which he agreed it was not, the law made it clear enough that the woman's health should be the standard by which physicians make decisions.

Douglas wrote an opinion dissenting in part and concurring in part. He agreed that the Supreme Court did have jurisdiction over the case, but he disagreed with the majority's assessment of the clearness of the law. In his opinion, Douglas stated that the term health was too broad and that the law should be turned over to Congress for revision. Harlan, Brennan, Marshall, and Blackmun wrote a dissenting opinion disagreeing with the majority assessment that the Supreme Court had jurisdiction over the case.

Stewart also wrote an opinion dissenting in part. He concurred with the majority on the issue of jurisdiction, but disagreed with the Court's assessment that the law was not unconstitutionally vague. Stewart instead offered another interpretation of the law. He held that the decision of whether any procedure was necessary was left to the physician's discretion. Stewart said that since the law specifically mentioned abortions performed by licensed physicians, any decision to perform an abortion by a licensed physician should not be second guessed by a lay person jury in court.

US v. Vuitch was one of the first cases heard by the Supreme Court that dealt with the constitutionality of an abortion-restricting law. The case itself was a technical loss. Vuitch's conviction was no longer overturned, and the Washington, DC, abortion law was back in place. However, according to legal historian Linda Greenhouse, the abortion rights movement regarded it as a victory in some respects. The case set a precedent of allowing the term health to encompass both physical and mental health. US v. Vuitch was cited as precedent in other Supreme Court cases dealing with abortion including Roe v. Wade, which gave women in the US the right to an abortion. In US v. Vuitch, the Court also affirmed that the burden of proof in criminal abortion cases rested with the prosecution, meaning physicians did not have to supply the proof that they were innocent, rather prosecutors needed to prove that the physician had performed an abortion illegally.

Sources

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