down as intruding upon the discretion of the physician, and as being aimed at discouraging abortions rather than at informing the pregnant woman's decision.[585] The Court also invalidated a 24-hour waiting period following a woman's written, informed consent.[586]

On the other hand, the Court upheld a requirement that tissue removed in clinic abortions be submitted to a pathologist for examination, because the same requirements were imposed for in-hospital abortions and for almost all other in-hospital surgery.[587] The Court also upheld a requirement that a second physician be present at abortions performed after viability in order to assist in saving the life of the fetus.[588] Further, the Court refused to extend *Roe* to require states to pay for abortions for the indigent, holding that neither due process nor equal protection requires government to use public funds for this purpose.[589]

The equal protection discussion in the public funding case bears closer examination because of its significance for later cases. The equal protection question arose because public funds were being made available for medical care to indigents, including costs attendant to childbirth, but not for expenses associated with abortions. Admittedly, discrimination based on a non-suspect class such as indigents does not generally compel strict scrutiny. However, the question arose as to whether such a distinction impinged upon the right to abortion, and thus should be subjected to heightened scrutiny. The Court rejected this argument and used a rational basis test, noting that the condition that was a barrier to getting an abortion—indigency—was not created or exacerbated by the government.

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[585] City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 444–45 (1983); Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986). In *City of Akron*, the Court explained that while the state has a legitimate interest in ensuring that the woman's consent is informed, it may not demand of the physician "a recitation of an inflexible list of information" unrelated to the particular patient's health, and, for that matter, may not demand that the physician rather than some other qualified person render the counseling. *City of Akron*, 462 U.S. 416, 448–49 (1983).

[586] City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 450–51 (1983). *But see* Hodgson v. Minnesota, 497 U.S. 417 (1990) (upholding a 48-hour waiting period following notification of parents by a minor).

[587] Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476, 486–90 (1983).

[588] 462 U.S. at 482–86, 505.

[589] Maher v. Roe, 432 U.S. 464 (1977); Harris v. McRae, 448 U.S. 297 (1980). *See also* Beal v. Doe, 432 U.S. 438 (1977) (states are not required by federal law to fund abortions); Harris v. McRae, 448 U.S. at 306–11 (same). The state restriction in *Maher*, 432 U.S. at 466, applied to nontherapeutic abortions, whereas the federal law barred funding for most medically necessary abortions as well, a distinction the Court deemed irrelevant, *Harris*, 448 U.S. at 323, although it provided Justice Stevens with the basis for reaching different results. Id. at 349 (dissenting).