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## *Planned Parenthood of Southeastern Pennsylvania v. Casey: Casey v. Planned Parenthood of Southeastern Pennsylvania*

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**CASES PENDING**

**Planned Parenthood of Southeastern Pennsylvania v. Casey;  
Casey v. Planned Parenthood of Southeastern Pennsylvania**

Rulings below: 947 F.2d 682 (3d Cir. 1991).

**The Third Circuit upholds strict regulation of abortion, presenting a direct challenge to Roe v. Wade.**

A Pennsylvania statute restricting abortion was upheld by the Third Circuit. The statute: 1) narrowly defines "medical emergency exception" to various abortion restrictions, 2) imposes a 24-hour waiting period after informed consent, 3) requires physicians or their agents to provide informed consent information, 4) prescribes the content of informed consent information, 5) requires parental informed consent for pregnant minors, and 6) makes certain reports available for public disclosure. An additional provision which required a married woman to notify her husband of an intended abortion was held unconstitutional. Relying on Justice O'Connor's decision in Webster, the

Third Circuit held that this imposed an undue burden on a woman's right to abortion, and failed to serve a compelling state interest.

Certiorari was granted by the Supreme Court on the following questions:

1) Did the Court of Appeals err in upholding the constitutionality of the following provisions of the Pennsylvania Abortion Control Act: (a) definition of medical emergency, (b) informed consent, (c) parental consent, and (d) reporting requirements; 2) Did the Court of Appeals err in holding the Pennsylvania spousal notice provision (18 Pa. Cons. Stat. § 3209) unconstitutional? See 60 U.S.L.W. 3498 (Jan. 21, 1992).

Oral arguments were heard on April 22, 1992. See 60 U.S.L.W. 3727 (April 28, 1992) (summary of oral arguments presented). In their petitions for certiorari, both the plaintiffs and the State urged the Court to decide whether Roe v. Wade, 410 U.S. 113 (1973) has been or should be overruled.

Appellant's counsel argued that Roe v. Wade's strict scrutiny standard of review should be upheld. She asserted that the right to an abortion is part of a woman's liberty interest under the Due Process Clause of the Fifth and Fourteenth Amendments which protects a woman's bodily integrity and autonomy. She rejected the State's argument that a facial challenge to the husband notification provision must demonstrate that the statute is not valid as to any person. Appellant stressed that the government has an obligation to respect a woman's private decision not to involve her husband. She stated this is more destructive to family integrity than permitting individuals to make their own decisions.

The State argued that the appropriate inquiry is whether the statute imposes an undue burden. If it does not, the Court should apply the permissive rational basis test. Equating "undue burden" with a broad political impact or the number of people affected, counsel argued that the husband notification provision withstands this scrutiny. He asserted that only about one percent of all married women who obtain abortions do not notify their husbands. Thus, there is no undue burden. The state's interests in protecting the child satisfies the rational basis test. Therefore, the requirement should be sustained. The State concluded by asking the Court to overturn the strict scrutiny approach.

*\*Tahirih Sadrieh* recently received her J.D. degree from the State University of New York at Buffalo School of Law.

**EDITOR'S NOTE:** On June 29, 1992, just prior to publication, the Supreme Court's decision on this appeal was published. Justices O'Connor, Kennedy and Souter authored the plurality opinion, in which they recognized a woman's right "to choose to have an abortion before viability and to obtain it without undue interference from the state." In the name of stare decisis, these Justices, joined by Justices Blackmun and Stevens affirmed the holding of Roe v. Wade, and struck down Pennsylvania's requirement of spousal consent. Nonetheless, Justices O'Connor, Kennedy, Souter were joined by Chief Justice Rehnquist and Justices White, Scalia and Thomas in affirming the remaining restrictions imposed by the Pennsylvania law. Justices Rehnquist, White, Scalia and Thomas joined the plurality only in the result of affirming Pennsylvania's right to restrict access to abortion.

Relying on the logic set forth in the case which upheld a state's right to criminalize homosexuality, Bowers v. Hardwick, 478 U.S. 186 (1986), Justices Rehnquist, White, Scalia and Thomas urged the overturning of Roe, arguing that the Court should never have "discover[ed] new fundamental rights embedded in the Due Process Clause."

Justice Blackmun, the author of Roe, joined by Justice Stevens, dissented from the plurality's finding that the remaining restrictions were constitutional. While appreciating the "act of personal courage and constitutional principle" which underlay the plurality opinion, Justice Blackmun expressed his concern that "four members of this Court appeared poised to 'cast into darkness the hopes and visions of every woman in this country' who had come to believe that the Constitution guaranteed her the right to reproductive choice." Justice Blackmun prophesized: "all that remain[s] between the promise of Roe and the darkness of the plurality is a single, flickering flame. . . And I fear for the darkness as four Justices anxiously await the single vote necessary to extinguish the light."