

August 15, 2016: The Aftermath of *Roe v. Wade*

The battle over abortion isn't going away any time soon. As subsequent Supreme Court decisions have shown, the 1973 case of *Roe v. Wade* was not the final word on the topic.

For example, in 1992 the Court handed down a decision in *Planned Parenthood v. Casey*. In *Casey*, five controversial provisions within Pennsylvania's abortion law were challenged as being unconstitutional. These provisions were:

- A requirement that doctors warn women considering abortions about possible health risks.
- Married women had to give their husbands notice before obtaining an abortion.
- Minors wanting an abortion were required to get permission from either a parent or a legal guardian.
- A 24-hour waiting period was required between the time a woman decides to have an abortion and when she undergoes the abortion.
- Abortion facilities must report certain information about the person and procedure to the government.

Because of the tremendous backlash that followed the *Roe v. Wade* decision, many people believed that the Supreme Court would use the *Casey* decision to overrule *Wade v. Roe* once and for all. However, the Court upheld the primary ruling in *Roe*. That is, "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability," the point in the pregnancy where the fetus could possibly survive on its own outside the womb. After viability is reached, States are free to restrict and even prohibit abortions unless the woman's health is at risk.

However, in a very conflicted decision, the Court widened the door for State regulation of abortions. The Court rejected the "rigid" trimester framework of *Roe v. Wade*. Instead, the Court said that "[r]egulations designed to foster the health of a woman seeking an abortion are valid if they do not constitute an undue burden." The Court went on to say that " [a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability."

Therefore, States can pass laws that promote and protect the health or safety of woman seeking abortion. States may also pass laws "designed to persuade [the pregnant woman] to choose childbirth over abortion," as long as the laws don't "constitute an undue burden."

Using this new standard of review, the Court actually upheld 4 of Pennsylvania's 5 abortion provisions. Only the provision requiring a wife to give

her husband notice of her desire to seek an abortion was deemed an undue burden and therefore ruled unconstitutional.

As predicted, rather than reducing the tension existing between the opposing sides of the abortion issue, the *Casey* decision actually increased it. This is because, following the decision, States passed a barrage of new abortion regulations. These included, among others: laws restricting certain abortion techniques; requirements that doctors at abortion clinics have local hospital admitting privileges; and insistence that abortion clinics meet similar standards required of surgical centers.

Numerous lawsuits were filed across the country challenging the constitutionality of these new regulations. This year, the Supreme Court, succumbing to tremendous pressure, finally agreed to accept a Texas case for review. In late June, the Court issued a decision that we'll discuss next week.