

The case of planned parenthood of southeastern pennsylvania v. robert p. casey es...

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Alphonso Campbell American Government TH 9: 30 Mr. Scott Covey March 11, 2010 [pic] The Case of Planned Parenthood of Southeastern Pennsylvania v. Robert P.

Casey [pic] [pic] Planned Parenthood v. Casey I. Introduction and Thesis Statement A. Statement of Case- Planned Parenthood v. Casey is a Supreme Court case in which the constitutionality of several Pennsylvania state regulations regarding abortion were challenged.

B. Thesis Statement- the Supreme Court's plurality opinion upheld the constitutional right to have an abortion but lowered the standard for analyzing restrictions of that right, invalidating one regulation but upholding the others. II. Background facts A. Who- Planned Parenthood of Southeastern Pennsylvania B. What- Petitioned that five provisions of the Pennsylvania Abortion Control Act of 1982.

C. When- Argued April 22, 1992 and decided June 29, 1992. D. Where- Southeastern Pennsylvania E.

Why- The petitioners believed the provisions were unconstitutional. F. How- The petitioners, five abortion clinics and a physician and a class of doctors brought this suit seeking a declaratory judgment.

III. Arguments A. Planned Parenthood B. Robert P.

Casey IV. Opinion A. Majority Opinion B. Dissenting Opinion C. Personal Opinion V.

Significance of the Case: To protect women's right to have an abortion at their own risk, and their choice. In *Planned Parenthood v Casey*, a slim majority of the Supreme Court, to the surprise of many, dramatically rejected the vigorous and caustic calls of four dissenting Justices to overrule *ROE V. WADE* (1973), decided nineteen years earlier. The majority instead reaffirmed Roe's "core" as it struck down a spousal notice provision in a Pennsylvania ABORTION statute. A different majority, however, OVERRULED portions of two of Roe's successor decisions, by upholding the statute's informed consent provisions for adult women, including a twenty-four-hour waiting period and a prescribed set of oral and written disclosures by the physician of "objective, non-judgmental ... accurate scientific information" about fetal development, social services, and adoption.

This latter majority also upheld a parental consent provision (with a judicial bypass) for minors seeking abortion and a clinic data collection and reporting requirement. Among the notable features of this case was the gravitas of the PLURALITY OPINION by the three Justices in the conservative middle of the Court. Justices ANTHONY M. KENNEDY, SANDRA DAY O'CONNOR, and DAVID H. SOUTER jointly authored and signed the opinion, an exceptional step reminiscent of the *COOPER V.*

AARON (1958) opinion signed by each of the nine WARREN COURT Justices to emphasize their commitment to *BROWN V. BOARD OF EDUCATION* (1955). Drawing back from their expressions of hostility to Roe in prior opinions, Kennedy and O'Connor joined with Souter to reaffirm Roe's "core" holdings that a woman has a FUNDAMENTAL RIGHT to terminate her pregnancy prior

to fetal viability; after viability a state can ban abortion except where the woman's life or health are endangered; and from the start of a pregnancy the state has a legitimate interest in protecting the health of the woman and a growing interest in protecting the life of the fetus.

In contrast to Justices JOHN PAUL STEVENS and HARRY A. BLACKMUN, who in separate opinions adhered more fully to the Court's opinion in Roe, the joint plurality opinion rejected Roe's " trimester structure" for evaluating state regulation of abortion in favor of an " undue burden" standard. By this, the plurality meant that a state cannot constitutionally impose a rule that leaves a woman with merely a formal right or that " has the purpose or effect of placing a substantial obstacle" to the effective exercise of the abortion right. Moreover, a burden that affects only a small fraction of women can nonetheless constitute an undue burden as to them. Thus, while the spousal notice provision may interfere with the choice of only some women, it was struck down as a substantial burden. By contrast, the plurality did not deem the impediments that a twenty-four-hour waiting period clearly impose to be a substantial obstacle, on the evidence offered in this facial challenge. It remains to be seen how courts will implement the " undue burden" standard in evaluating regulations that make abortion more difficult and more costly.

Although the dissenters disparaged this standard as a newly minted DOCTRINE without content, some scholars have suggested that the undue burden standard accurately describes the Court's traditional approach, across a broad range of constitutional issues, to determining whether a right has been infringed. In applying the undue burden standard, the Court

notably did not apply the dicta in UNITED STATES V. SALERNO (1987) that, outside of FIRST AMENDMENT cases, a facial challenge can succeed only if there is “no set of circumstances” under which the statute is valid. The joint opinion tied its application of the undue burden standard to the important question of the affirmative role of the state in creating a decisional framework for individuals to help secure to them conditions supporting the exercise of their autonomy; and this concern, in turn, implicitly implicates the related questions of GOVERNMENT SPEECH and the speech of professionals. The opinion indicated that the state may seek to further its interest in “potential life” prior to fetal viability only by means “calculated to inform the woman’s free choice, not hinder it,” and may require physicians to provide patients with certain information “to ensure that this choice is thoughtful and informed” and specifically informed of the philosophic and social arguments that favor a state’s “preference” for childbirth. In describing the woman’s interest in reproductive autonomy, the joint opinion spoke more of liberty than the RIGHT OF PRIVACY; linked aspects of this liberty to the right of bodily integrity the Court has identified in, among other cases, Cruzan v.

Director, Missouri Department of Health (1990); and sympathetically emphasized that reproduction and abortion are unique in that they touch upon the very core of personhood and conscience (as individuals seek to apprehend “the mystery of human life”) and involve for women a unique intimacy, burden, and pain. Moreover, the opinion recognized the essential role of reproductive autonomy in affording women opportunities “to participate equally in the economic and social life of the Nation. Despite the

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views of some commentators, it would appear that the opinion necessarily, although implicitly, treated the woman's interest as fundamental. In so doing, the joint opinion forthrightly reaffirmed that the "liberty" the DUE PROCESS clause protects includes fundamental rights that are identified by a judicial exercise of "reasoned judgment" and not only by a search for the Framers' ORIGINAL INTENT or for America's specific historical traditions. Among those identified liberties endorsed by the joint opinion is the fundamental right to use contraceptives, including post conception contraceptives. Despite its sympathetic elaboration of the woman's interests, the joint opinion intimated that some of its authors might not have joined Roe when originally decided, and that for them STARE DECISIS was determinative of their judgment. Because Roe was workable, had induced serious reliance by a generation of women, and was not an anachronism undermined by subsequent changes in doctrine or facts, the plurality found no warrant to overturn Roe under traditional principles of stare decision in constitutional matters.

The plurality nonetheless acknowledged that these factors would not preclude reexamination of even so repeatedly reaffirmed a case as Roe, given the depth of the constitutional and political controversy surrounding it. However, after reviewing more than a century of CONSTITUTIONAL HISTORY, the opinion concluded that Roe was one of those rare cases in which the Court "calls the contending sides of a national controversy to end their national division by accepting a common mandate rooted in" the Court's interpretation of the Constitution. Unless the circumstances facing the nation have fundamentally altered, the opinion asserts, later Justices must adhere

to the judgment in such a case in order to maintain the Court's constitutional legitimacy and avoid appearing to "surrender to political pressure. Perhaps the authors of the joint opinion understood that, had they joined in overruling Roe, they would have appeared to be doing exactly what the Republican Presidents RONALD REAGAN and GEORGE H. W.

BUSH who nominated them wanted. For these Presidents had engaged in an unprecedented attempt to reshape the federal judiciary by ideologically screening judicial nominations, especially with respect to abortion, and by occasionally disregarding other traditional criteria of nomination, including professional and senatorial judgments. In declining to vote the party line, however, these Justices may have aided the REPUBLICAN PARTY electorally by continuing to place the abortion right beyond Republican political reach—at least until additional retirements from the Court lead some to try once again to place the issue of Roe before the electorate and the Court.

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