

## ***PLANNED PARENTHOOD v. CASEY* (1992)**

In *Casey* the Supreme Court, by a 5-4 vote, issued a decision that brought good and bad news to each side of the abortion debate. The case involved the constitutionality of a Pennsylvania abortion statute, and many observers on both sides felt that this decision might signal the end of the *Roe*-era.

The majority, led by an emerging moderate bloc of Justices O'Connor, Souter, and Kennedy, began their opinion by reaffirming *Roe*'s basic principles giving women the right to seek an abortion. The majority then used an "undue burden" test to analyze whether or not each provision of the Pennsylvania law provided a "substantial obstacle" to a woman seeking an abortion.

The Court ultimately upheld the statute's sections requiring an informed consent (a doctor must provide full medical information to the patient including adoption alternatives, health risks to the mother, etc.), parental consent for minors (with a judicial bypass provision), a 24-hour waiting period, and a requirement that abortion providers give detailed patient records to the State. A spousal notification requirement was struck down as giving husbands an effective veto over a woman's choice and, therefore, constituting an "undue burden."

Chief Justice Rehnquist was joined in partial dissent by Justices White, Thomas and Scalia. The dissent stated that "*Roe* was wrongly decided" and should be overturned. Rehnquist would also use a "rational basis" test to uphold the statute rather than O'Connor's "undue burden" test.

The majority also dealt at length with the benefits and costs of overturning the basic protection provided to women in the *Roe* decision. They distinguished *Roe* from other important constitutional law cases, such as *Plessy v. Ferguson*, in noting that the Court's understanding of the facts underlying *Roe*'s rationale had not changed the way they had when the Court was deciding to overturn *Plessy* in *Brown v. Board of Education*.