

The abortion court case: What's at stake?

(CPS)—While many college students across the country celebrated Earth Day Wednesday, thousands of others looked toward the nation's Capitol with concern about an entirely different matter.

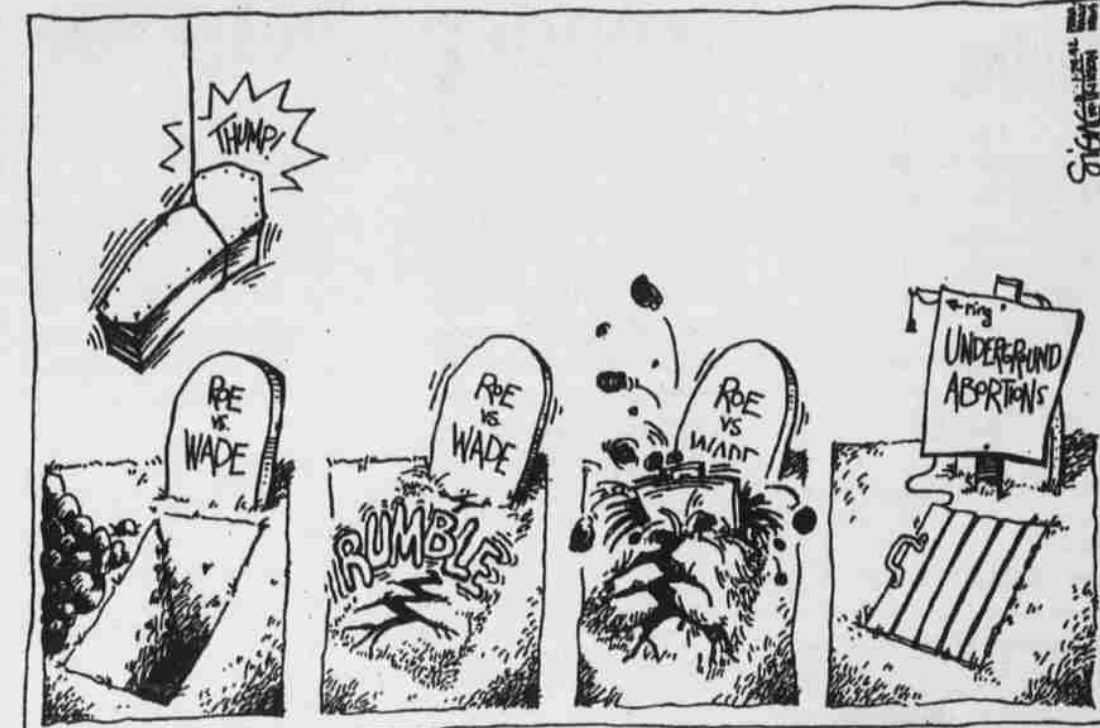
On Wednesday, the U.S. Supreme Court began to hear arguments in a Pennsylvania abortion case that could overturn, or more strictly limit, existing abortion rights spelled out in *Roe v. Wade*.

Recent rallies for and against abortion have once again brought the issue to the national spotlight. At the center of the debate this time is the case titled *Planned Parenthood of Southeastern Pennsylvania v. Casey*, on which the Supreme Court will most likely rule in July.

The Pennsylvania law in question requires women to notify their husbands of their decision to have an abortion. Other requirements include a 24-hour waiting period, detailed record-keeping by doctors of each abortion performed, which would be subject to public disclosure, and that doctors tell women about alternatives to abortion and about fetal development.

The appeals court upheld the constitutionality of the Pennsylvania law in all areas except spousal notification, which it said placed an "undue burden" on the woman by taking away her power to decide.

But, on all of the other requirements, the appeals court said the Pennsylvania law was constitutionally sound, based again on the legal concept of "undue burden." "Undue bur-



den" is the phrase used most frequently in abortion cases by Justice Sandra Day O'Connor. The term refers to a person's power to decide privacy issues for himself or herself.

For example, the court says that spousal notification violates the standard of undue burden because a woman could not obtain an abortion if her husband refused to agree to the procedure.

But, parental notification in the cases of minors does not violate the undue burden standard because every law dealing with parental notification upheld by the court has a clause that gives the minor a way around notification. In nearly all cases, that loophole is petitioning the court either for permission to get an abortion or for permission to not seek parental approval for an abortion.

According to Ann Massie, law professor at Washington and Lee University, the undue burden standard is the one on which most of the abortion cases hinge.

"What she says and what (the appeals court) means when they cite O'Connor is that if the (abortion) requirement doesn't impose an undue burden on the right of the woman, then the requirement must appear reasonable to the state," Massie said. "If it appears reasonable, then (the requirement) can be upheld. That allows the state wide latitude. But, if it does impose an undue burden, then you have to go back to *Roe v. Wade*."

That's why many fear *Roe v. Wade* will eventually be reversed.

Most activists don't expect the Pennsylvania case to over-

turn *Roe v. Wade* because of the upcoming election. But Massie and others note that the requirements the court is considering in the case are a major departure from the abortion cases heard in the past few years, the most noted (*Rust v. Sullivan*) dealing with federally funded family planning centers and the type of information they can give women about abortion.

The major departures in the Pennsylvania case deal with the information a doctor must give patients and the 24-hour waiting period.

"There are two parts to the information requirement," Massie explains. "First, either a doctor or referring physician must tell the woman of the nature of the procedure, the risk of having an abortion, the medical risk of carrying the child to term and the gestation period of the fetus.

"Also, someone must tell the woman that the Pennsylvania Department of

Health has pamphlets about the unborn child and its development. They must also tell the woman her other options, including the fact that the father could be held liable for financial assistance or that the woman could be eligible for prenatal care through the state.

"Finally, she must certify in writing that all this information has been given to the woman," Massie said.

According to *Roe v. Wade*, a state cannot regulate those things that the Pennsylvania law has spelled out.

"It's another assault on *Roe v. Wade*, like *Webster v. Reproductive Health Services*, where the states are trying to pass more restrictive legislation," Massie said. "The (court's) decisions of the past few years haven't been major departures from the past rulings, but they've tended in the direction of showing greater tolerance for regulations."

In the 1989 *Webster* case out of Missouri, the court granted states wider latitude to regulate abortions.

"If the Pennsylvania case is upheld, we will see these inroads develop," Massie said. "The court could uphold all of the (Pennsylvania requirements) and still uphold *Roe v. Wade*."

But, after the Pennsylvania case, the battle against *Roe v. Wade* could become increasingly stronger. Louisiana and Utah both have major anti-abortion laws headed toward the Supreme Court that basically provide a direct challenge to the rights guaranteed in *Roe v. Wade*.

Pro-life activists are pushing to have the 1973 case overturned and then will focus on convincing individual state legislators to limit abortion.

Pro-choice activists say they don't want a state-by-state fight if *Roe v. Wade* is overturned. Rather, they are lobbying Congress for passage of the Freedom of Choice Act, federal legislation that would set a national standard for abortion protection based on the principles established by *Roe v. Wade*.

If re-elected, President Bush has said he will veto the bill if it makes it to his desk; activists on both sides say they aren't sure whether or not enough congressional members support the measure to override Bush's veto.

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