

Arguments focus on right to limit abortion

By Patricia Zapor
Catholic News Service

WASHINGTON — In Supreme Court arguments on Pennsylvania's abortion law, Planned Parenthood urged the court to affirm the right to abortion granted by *Roe vs. Wade*, while the Justice Department and the state of Pennsylvania argued that the basic *Roe* ruling is not at stake.

In the most closely watched session at the court since the 1989 Webster abortion case, Kathryn Kolbert of Planned Parenthood said April 22 that the central question in reviewing Pennsylvania's law is whether the Constitution gives a government the right to interfere with a woman's right to end a pregnancy.

Although three times the justices urged Kolbert to address the specifics of the Pennsylvania law, she insisted that the 1973 *Roe* decision, which established abortion as a part of the fundamental right to privacy, should be the framework through which the law is reviewed.

"The standard that the court applies will establish the outcome," she said.

Arguing for the state, Pennsylvania Attorney General Ernest D. Preate Jr. insisted the law is well within the state's rights to make laws governing access to abortion that were laid out in the 1989 Webster ruling, which upheld some state abortion restrictions.

"*Roe* need not be revised except to affirm that it did not establish unlimited rights," Preate said.

The Pennsylvania law, which is not being enforced, establishes a waiting period before an abortion may be performed; requires doctors to discuss fetal development and alternatives to abortion before the abortion is performed; and requires parental notification when minors seek abortions and notification of husbands.

In his argument supporting the law, U.S. Solicitor General Kenneth W. Starr said the central issue is that the state has a compelling interest in protecting fetal life. In response to questions from Justice John Paul Stevens, Starr acknowledged that the Justice Department has no specific standard for establishing fetal viability, that is, when the developing baby can survive outside its mother's womb.

He said the criteria for how much states can regulate abortion should be based on how "rational" the laws are, and he emphasized that a state has a compelling interest in the life of its "potential citizens."

Pennsylvania's law does not prohibit



Emotions run high as activists demonstrate outside the Supreme Court in Washington, D.C. April 22, when justices heard arguments on the constitutionality of the Pennsylvania abortion law. AP/Wide World Photos

abortions, Starr noted, it only regulates them and therefore is not in conflict with *Roe*.

In urging Kolbert to discuss the specifics of the Pennsylvania law, Justice Anthony M. Kennedy said that if the court upheld the statute it would not "necessarily undercut *Roe*."

"Our stance is that it would undercut and overturn *Roe*," Kolbert said.

She insisted the state's interest in protecting fetal life that was outlined in *Roe* does not come into play with Pennsylvania's law and that any provision for a state to regulate abortion would diminish *Roe*.

Arguing for the state, Preate focused his discussion on the requirement that married women notify their husbands before they have an abortion. The 3rd U.S. Circuit Court of Appeals upheld all sections of the Pennsylvania law except the husband-notification requirement. Preate said he felt he didn't need to defend the other sections.

Kolbert said that section in particu-

lar constituted a danger for women who might be harmed by their husbands upon learning they intended to have an abortion. But Preate said the statute would apply to less than 1 percent of all women who seek abortions in Pennsylvania and any who faced dangers would be exempted.

Outside the court, hundreds of people — most carrying signs or wearing buttons proclaiming support for abortion rights — waited in a light rain for the throng of reporters covering the arguments. Some waited on the marble plaza through a night of sporadically heavy showers for a chance at a limited number of seats inside for the hourlong session.

Leaders of some of the primary organizations supporting legal abortion believe the court will use the Pennsylvania case to overturn the 1973 *Roe* ruling. Others, including several prominent opponents of abortion, expect *Planned Parenthood vs. Casey* to fur-

ther expand states' rights to regulate abortion, without completely overruling *Roe*.

A decision from the court is likely before the end of the current session in late June or early July.

In 1988 and 1989 the Pennsylvania Legislature amended the state's abortion law and was immediately challenged by Planned Parenthood of Southeastern Pennsylvania in U.S. District Court.

The lower court invalidated many of the requirements and issued a permanent injunction against enforcing it. The attorney general appealed to the 3rd U.S. Circuit Court of Appeals, which upheld most of the law, striking down only the spousal notification requirement. The state and Planned Parenthood then asked the Supreme Court to review separate sections of the law. In agreeing to do so, the Supreme Court decided to hear the two cases together.

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