ROE V. WADE, THEN AND NOW

LOGAN B. ASKEW

MARCH 4, 1993

UNITED STATES SUPREME COURT JUSTICES
AT TIME ROE V. WADE WAS DECIDED

Justice	President who Appointed	Date of Appntmnt.
Warren Burger, Chief Justice	Nixon	1969
William Douglas	Roosevelt	1939
William Brennan	Eisenhower	1957
Potter Stewart	Eisenhower	1959
Byron White	Kennedy	1962
Thurgood Marshall	Johnson	1967
Harry Blackmun	Nixon	1970
William Rehnquist	Nixon	1971
Lewis Powell	Nixon	1971

UNITED STATES SUPREME COURT JUSTICES
AT TIME PLANNED PARENTHOOD V. CASEY WAS DECIDED

Justice	President who Appointed	Date of Appntmnt.
William Rehnquist, Chief Justice	Nixon	1969
Byron White	Kennedy	1962
Harry Blackmun	Nixon	1970
John Paul Stevens	Ford	1975
Sandra Day O'Connor	Reagan	1981
Antonin Scalia	Reagan	1986
Anthony M. Kennedy	Reagan	1988
David H. Souter	Bush	1990
Clarence Thomas	Bush	1991

RECOGNIZING THE RICH TRADITION OF THIS LITERARY SOCIETY AND, FOR THE PAST YEAR, HAVING LISTENED TO THE MEMBERS' SCHOLARLY AND INTERESTING PAPERS, I MUST CONFESS THAT I DELIVER THIS, MY FIRST ATHAENEUM SOCIETY PAPER, FEELING SOME APPREHENSION. THIS FEELING HAS BEEN ENHANCED DUE TO TONIGHT'S STATED PROGRAM. AS EXPECTED, BILL ENGLER HAS DELIVERED A VERY GOOD PAPER WHICH HAS SET THE TONE FOR THE EVENING.

AS I CONSIDERED TOPICS FOR THIS PAPER, I THOUGHT OF A NUMBER OF SUBJECTS OF INTEREST TO ME. IT SEEMED THAT MANY OF THE TOPICS I CONSIDERED WERE RELATED TO CONSTITUTIONAL LAW. I SUSPECT THAT MOST OF THE LAWYERS IN THIS SOCIETY WILL TELL YOU THAT CONSTITUTIONAL LAW IS AN INTEREST OF THEIRS AS WELL, AND THAT THEY WISH MORE OPPORTUNITIES WERE AVAILABLE IN HOPKINSVILLE TO PRACTICE IN THIS AREA.

I AM WELL AWARE OF THE SOCIETY'S PROHIBITIONS AGAINST PAPERS ON THE SUBJECTS OF RELIGION AND POLITICS. KEEPING THIS IN MIND, MY PAPER IS ENTITLED <u>ROE V. WADE: THEN AND NOW</u>. IN ORDER NOT TO RUN AFOUL OF THIS PROHIBITION, MY INTENT IS NOT TO TAKE POSITIONS ON THE VARIOUS ABORTION ISSUES THAT WILL BE ADDRESSED, BUT RATHER TO SURVEY AND TO EXAMINE THE BASES OF THE UNITED STATES SUPREME COURT DECISIONS ADDRESSING THIS SUBJECT.

FOR THOSE OF YOU WHO HAVE BEEN MEMBERS OF THE ATHAENEUM SOCIETY SINCE THE MID-70'S, YOU WILL RECALL THAT PAUL TURNER HAS

PREVIOUSLY GIVEN AN EXCELLENT PAPER ON ABORTION. IN HIS PAPER, PAUL GAVE A HISTORICAL PERSPECTIVE ON THIS ISSUE WHICH CULMINATED IN THE ROE DECISION. TO THOSE OF YOU WHO HEARD THAT PAPER, I CAN ASSURE YOU THAT I HAVE NO INTENTION OF, IN EFFECT, DELIVERING PAUL'S PAPER AGAIN. AFTER HAVING OBSERVED THE TREATMENT OF BOB FAIRLEIGH LAST YEAR AFTER HE DELIVERED, FOR THE SECOND TIME, A PAPER ON DUCK HUNTING, I CERTAINLY WOULD NOT WANT TO SUFFER THE SAME FATE. RATHER, THE PURPOSE IS TO BEGIN WITH AN EXAMINATION OF ROE V. WADE, WHERE PAUL LEFT OFF, AND TO EXAMINE THE SUPREME COURT'S DECISIONS SINCE THEN. GIVEN THAT ROE WAS DECIDED IN JANUARY, 1973, PERHAPS IT IS SIGNIFICANT AND APPROPRIATE THAT IT BE RE-EXAMINED AT ITS TWENTIETH ANNIVERSARY IN AN ATHAENEUM PAPER.

FEW CONSTITUTIONAL ISSUES HAVE GENERATED AS MUCH CONTROVERSY AS ABORTION. WITH THE POSSIBLE EXCEPTION OF THE SUPREME COURT'S DECISION IN BROWN V. BOARD OF EDUCATION OF TOPEKA, KANSAS IN 1954, ROE HAS GENERATED MORE PUBLIC CONTROVERSY THAN ANY OTHER SUPREME COURT DECISION IN THE 20TH CENTURY. HOWEVER, UNLIKE THE BROWN DECISION, ROE V. WADE HAS BEEN AND CONTINUES TO BE CRITICIZED AND LEGALLY CHALLENGED. IT HAS BEEN RARE FOR THE SUPREME COURT NOT TO CONSIDER AN ABORTION RELATED CASE IN MOST TERMS OF THE COURT SINCE ROE WAS DECIDED TWENTY YEARS AGO. THIS INCLUDES, OF COURSE, CASES WHICH THE SUPREME COURT REFUSES TO HEAR ON APPEAL FROM A LOWER COURT, WHICH LOWER COURT OPINION THE COURT IMPLICITLY APPROVES.

MOREOVER, ABORTION HAS BEEN AND CONTINUES TO BE ONE OF THE MOST HOTLY DEBATED AND DIVISIVE SOCIAL, MORAL, RELIGIOUS AND POLITICAL ISSUE OF OUR TIME. IT IS COMMONPLACE FOR ABORTION ISSUES TO BE THE SUBJECT OF NEWS TELECASTS, WHETHER IT BE THE BLOCKADING OF ABORTION CLINICS OR THE REGULAR PUBLIC DEMONSTRATIONS IN FAVOR OF OR AGAINST A WOMAN'S RIGHT TO CHOOSE TO TERMINATE A PREGNANCY.

NOTWITHSTANDING CONSIDERABLE SPECULATION, THE EFFECT THAT THIS ISSUE HAS HAD ON OUR POLITICAL PROCESS IS DIFFICULT TO MEASURE. HOWEVER, TOP REPUBLICAN OFFICIALS LIKE FORMER REPUBLICAN PARTY CHAIRMAN RICH BOND OR, HIS SUCCESSOR, PRESENT PARTY CHAIRMAN HALEY BARBOUR HAVE STATED THEIR BELIEF THAT THE REPUBLICAN POSITION ON THIS ISSUE PLAYED A ROLE IN GEORGE BUSH'S DEFEAT TO BILL CLINTON LAST NOVEMBER. I DO NOT RECALL A WEEK THAT WENT BY IN LAST YEAR'S PRESIDENTIAL CAMPAIGN IN WHICH SPECIFIC REFERENCE WAS NOT MADE TO ROE V. WADE OR ITS ENUNCIATED PRINCIPLES.

TO UNDERSTAND ROE, IT IS NECESSARY TO BE MINDFUL OF THE CONTEXT IN WHICH IT WAS RENDERED. IN A LENGTHY HISTORICAL ANALYSIS OF ABORTION, THE SUPREME COURT NOTED IN ITS OPINION THAT, AT COMMON LAW, AN ABORTION PERFORMED BEFORE QUICKENING WAS NOT A CRIMINAL OFFENSE. QUICKENING WAS DEFINED AS THE FIRST RECOGNIZABLE MOVEMENT OF THE FETUS, APPEARING USUALLY FROM THE SIXTEENTH TO THE EIGHTEENTH WEEK OF PREGNANCY. THIS WAS BASED ON

THE THINKING THAT THE FETUS DID NOT BECOME A PERSON UNTIL SUCH PERIOD.

IN THE EARLY 1800'S, THE FIRST ENGLISH STATUTORY ABORTION LAW WAS ENACTED BASED ON THE QUICKENING THEORY. IT BECAME A SERIOUS CRIMINAL OFFENSE TO ABORT A QUICK FETUS, BUT LESSER PENALTIES WERE PROVIDED FOR PRE-QUICKENING ABORTIONS. BASED ON THIS STATUTE, CONNECTICUT WAS THE FIRST STATE TO PASS AN ABORTION LAW IN 1821 MAKING IT A CRIMINAL OFFENSE TO ABORT A QUICK FETUS. SOME OTHER STATES SUBSEQUENTLY ENACTED RESTRICTIVE ABORTION LEGISLATION, BUT IT WAS NOT UNTIL AFTER THE CIVIL WAR THAT LEGISLATION GENERALLY REPLACED THE COMMON LAW ON THIS SUBJECT.

BY THE END OF THE 1950'S, THE LARGE MAJORITY OF THE STATES BANNED ABORTION, HOWEVER AND WHENEVER PERFORMED, UNLESS DONE TO SAVE OR PRESERVE THE LIFE OF THE MOTHER. OF SIGNIFICANCE TO THE SUPREME COURT WAS THAT BEGINNING WITH THE COMMON LAW AND THROUGHOUT THE MAJOR PORTION OF THE NINETEENTH CENTURY, ABORTION WAS VIEWED WITH LESS DISFAVOR THAN UNDER MOST STATE STATUTES IN EFFECT IN 1973 AT THE TIME ROE WAS DECIDED. THE SUPREME COURT ALSO NOTED THAT THE LEGISLATIVE HISTORIES AND JUDICIAL DECISIONS INTERPRETING THESE STATUTES INDICATED THAT THE PRIMARY REASON FOR RESTRICTIVE ABORTION STATUTES WAS THE RISK THE PROCEDURE POSED TO THE MOTHER'S HEALTH, AS OPPOSED TO THE PROTECTION OF PRENATAL LIFE.

IN 1973, APPROXIMATELY TWO-THIRDS OF THE STATES HAD STATUTES GENERALLY PROHIBITING ABORTION EXCEPT IN CIRCUMSTANCES NECESSARY TO SAVE THE MOTHER'S LIFE. OF THESE STATES, 21 HAD LAWS ADOPTED PRIOR TO 1868, WHICH REMAINED IN EFFECT IN 1973. THE REMAINING ONE-THIRD OF THE STATES, IN WHICH APPROXIMATELY 40 PERCENT OF THE UNITED STATES POPULATION RESIDED, HAD RECENTLY LIBERALIZED THEIR LAWS CONCERNING ABORTION. AS THE SUPREME COURT NOTED IN ROE, A TREND HAD DEVELOPED TOWARD LESS RESTRICTIVE ABORTION LAWS.

IN THIS CONTEXT, THE SUPREME COURT CONSIDERED THE CONSTITUTIONALITY OF THE CHALLENGED TEXAS STATUTE IN ROE WHICH PROHIBITED ABORTIONS EXCEPT FOR THE PURPOSE OF SAVING THE LIFE OF THE MOTHER AND PROVIDED CRIMINAL PENALTIES THEREFOR. INTERESTINGLY, THE TEXAS STATUTE IN QUESTION WAS INITIALLY ADOPTED IN 1857, AND HAD REMAINED SUBSTANTIALLY UNCHANGED AT THE TIME OF THE ROE DECISION.

THE COURT INVALIDATED THE TEXAS STATUTE ON THE GROUNDS THAT IT VIOLATED A WOMAN'S RIGHT OF PRIVACY ROOTED IN THE 14TH AMENDMENT TO THE CONSTITUTION. THIS AMENDMENT PROVIDES IN PERTINENT PART: "NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW."

YOU WILL NOTE THE WORD ABORTION DOES NOT APPEAR IN THE 14TH AMENDMENT. NOR DOES IT APPEAR IN ANY OTHER SECTION OF THE CONSTITUTION. HOWEVER, BEGINNING WITH CASES FIRST DECIDED IN 1891, THE SUPREME COURT RECOGNIZED THAT A RIGHT OF PERSONAL PRIVACY EXISTS UNDER THE CONSTITUTION. IN MORE RECENT DECISIONS, THE SUPREME COURT HAD DETERMINED THAT THIS RIGHT OF PRIVACY EXTENDED TO FAMILY RELATED MATTERS, SUCH AS MARRIAGE, CONTRACEPTION, CHILD REARING AND EDUCATION. TO ENSURE CONSTITUTIONAL PROTECTION, THESE PERSONAL PRIVACY RIGHTS MUST BE DEEMED FUNDAMENTAL OR IMPLICIT IN THE CONCEPT OF ORDERED LIBERTY. THE SUPREME COURT CONCLUDED THAT A WOMAN'S DECISION WHETHER TO TERMINATE HER PREGNANCY WAS SUCH A FUNDAMENTAL PRIVACY RIGHT.

AS WITH OTHER LAWS REGULATING RIGHTS PROTECTED UNDER THE CONSTITUTION, THE SUPREME COURT HAS DEVELOPED TESTS TO ASSESS THEIR CONSTITUTIONALITY. REGARDLESS OF THE TEST EMPLOYED, THE COURT, IN ESSENCE, BALANCES THE RIGHTS OF THE INDIVIDUAL VERSUS THE INTERESTS OF THE STATE IN REGULATING THE RIGHTS SUBJECT TO CONSTITUTIONAL PROTECTION. DESPITE POPULAR PERCEPTIONS CONCERNING THESE CONSTITUTIONAL RIGHTS, FEW, IF ANY, ARE ABSOLUTE. FOR EXAMPLE, A PERSON'S FIRST AMENDMENT RIGHT OF FREE SPEECH IS OUTWEIGHED BY A STATE'S INTEREST IN PROTECTING THE PUBLIC AGAINST A PERSON SHOUTING FIRE IN A CROWDED THEATRE. DRAWING THESE LINES BETWEEN PERMISSIBLE AND IMPERMISSIBLE GOVERNMENT REGULATION IS NOT AN EXACT SCIENCE.

IN ROE, THE COURT ENGAGED IN A SIMILAR BALANCING ANALYSIS. BECAUSE THE WOMAN'S RIGHT TO TERMINATE A PREGNANCY WAS DEEMED FUNDAMENTAL, ANY GOVERNMENT REGULATION COULD ONLY BE JUSTIFIED BY A COMPELLING STATE INTEREST AND NARROWLY DRAWN LANGUAGE ADVANCING THAT DEFINED INTEREST. THIS IS THE SO CALLED STRICT SCRUTINY TEST.

THE STATE OF TEXAS ARGUED THAT ITS LEGISLATIVE DETERMINATION TO RECOGNIZE AND PROTECT PRENATAL LIFE FROM AND AFTER CONCEPTION WAS SO COMPELLING THAT ABORTIONS COULD BE PROHIBITED, EXCEPT AS NECESSARY TO SAVE THE LIFE OF THE MOTHER, REGARDLESS OF ANY MATERNAL RIGHTS PROTECTED UNDER THE CONSTITUTION. ON THE OTHER HAND, THE CHALLENGERS ARGUED THAT THE MOTHER'S RIGHT TO CHOOSE WAS AN ABSOLUTE RIGHT UNDER THE CONSTITUTION AND THAT THE IMPOSITION OF ANY CRIMINAL PENALTY IN THE ARENA WAS FORBIDDEN. THE COURT DID NOT AGREE FULLY WITH EITHER ANALYSIS AND ESSENTIALLY ADOPTED PORTIONS OF EACH. THE COURT RECOGNIZED THAT A STATE HAS A LEGITIMATE INTEREST IN PROTECTING BOTH THE MOTHER'S HEALTH AND THE POTENTIALITY OF HUMAN LIFE, BUT THAT EACH OF THESE INTERESTS GROWS AND REACHES A COMPELLING POINT AT VARIOUS STAGES OF PREGNANCY.

IN BALANCING THE WOMAN'S RIGHT TO CHOOSE VERSUS THE STATE'S RECOGNIZED INTEREST IN PROTECTING MATERNAL HEALTH AND PRENATAL LIFE, THE ROE COURT DEVELOPED THE NOW FAMOUS "TRIMESTER" ANALYSIS. UNDER THIS APPROACH, DURING THE FIRST TRIMESTER OF

PREGNANCY, OR APPROXIMATELY TWELVE TO THIRTEEN WEEKS, THE STATE HAS NO COMPELLING INTEREST IN PROTECTING THE HEALTH OF THE MOTHER OR PRENATAL LIFE BECAUSE THE ABORTION PROCEDURE POSES NO SUBSTANTIAL HEALTH RISK TO HER. THE COURT NOTED THAT, DURING THIS PERIOD, THE MORTALITY RATE IN ABORTION IS LESS THAN THE MORTALITY RATE IN NORMAL CHILDBIRTH. THEREFORE, DURING THIS INITIAL PERIOD, THE STATE MAY NOT REGULATE A WOMAN'S RIGHT TO TERMINATE HER PREGNANCY. THIS PRIVATE MEDICAL DECISION MUST BE LEFT TO THE WOMAN IN CONSULTATION WITH HER PHYSICIAN.

AFTER THE FIRST TRIMESTER, A COMPELLING STATE INTEREST ARISES IN THE HEALTH OF THE MOTHER BECAUSE OF THE INCREASED MEDICAL RISK TO HER. ACCORDINGLY, THE GOVERNMENT MAY REGULATE ABORTIONS BUT ONLY TO THE EXTENT THAT THE RESTRICTIONS ARE DESIGNED TO AND SERVE THE STATE INTEREST IN PROTECTING THE HEALTH OF THE MOTHER, AND THE RESTRICTIONS ARE NARROWLY DRAWN TO SERVE THAT COMPELLING STATE INTEREST.

THE COURT THEN CONCLUDED THAT THE STATE'S COMPELLING INTEREST IN PROTECTING UNBORN LIFE OCCURS AT VIABILITY, OR TWENTY-FOUR TO TWENTY-EIGHT WEEKS, BECAUSE THE FETUS IS THEN CAPABLE OF MEANINGFUL LIFE OUTSIDE THE MOTHER'S WOMB. UNDER THE 14TH AMENDMENT, AN UNBORN FETUS IS NOT RECOGNIZED AS A PERSON ENTITLED TO CONSTITUTIONAL PROTECTION UNTIL THAT POINT. IN REACHING THIS CONCLUSION, THE COURT NOTED THE GREAT MEDICAL, PHILOSOPHICAL AND THEOLOGICAL DISPUTES AS TO WHEN LIFE ACTUALLY BEGINS. IT ALSO NOTED THAT NO JUDICIAL PRECEDENT SUPPORTED THIS

CONTENTION EITHER. AFTER VIABILITY, THE STATE MAY EVEN PROHIBIT ABORTION BECAUSE OF ITS COMPELLING INTEREST TO PROTECT THE VIABLE FETUS, EXCEPT WHEN NECESSARY TO PRESERVE THE LIFE OF THE MOTHER. BECAUSE THE TEXAS STATUTE EXCEPTED FROM CRIMINALITY ONLY AN ABORTION PROCEDURE TO SAVE THE LIFE OF THE MOTHER, WITHOUT REGARD TO PREGNANCY STAGE, IT WAS UNCONSTITUTIONAL.

PROPHETICALLY, THE COURT RECOGNIZED THAT ITS DECISION WOULD GENERATE MORE STATE STATUTES WHICH ATTEMPTED TO REGULATE ABORTION AFTER THE FIRST TRIMESTER TO PROTECT THE HEALTH OF THE MOTHER AND, AFTER VIABILITY, TO PROTECT THE LIFE AND HEALTH OF THE FETUS AND MOTHER: "THE DECISION LEAVES THE STATE FREE TO PLACE INCREASING RESTRICTIONS ON ABORTION AS THE PERIOD OF PREGNANCY LENGTHENS, SO LONG AS THOSE RESTRICTIONS ARE TAILORED TO THE RECOGNIZED STATE INTERESTS."

ROE V. WADE WAS A SEVEN TO TWO DECISION, WITH JUSTICES REHNQUIST, NOW CHIEF JUSTICE, AND WHITE DISSENTING. IN THEIR DISSENT, THESE JUSTICES EXPRESSED THE VIEW THAT THE RIGHT TO AN ABORTION WAS NOT HISTORICALLY BASED IN THE CONSTITUTION, THE COURT HAD ESSENTIALLY ENGAGED IN JUDICIAL LEGISLATION, AND THESE ISSUES SHOULD BE LEFT UP TO THE STATE LEGISLATURES TO DECIDE.

OF THE MEMBERS OF THE ROE COURT, ONLY THREE REMAIN TODAY, REHNQUIST, WHITE AND BLACKMUN, THE AUTHOR OF THE DECISION. AS WE WILL SEE IN A MOMENT, THESE JUSTICES' POSITIONS HAVE NOT CHANGED IN TWENTY YEARS, AND THE DISSENTERS' POSITION HAS BEEN

ADOPTED BY OTHER MEMBERS. AS AN ASIDE, OF THE NINE MEMBERS OF THE SUPREME COURT AT THAT TIME, SIX WERE APPOINTED BY REPUBLICAN PRESIDENTS, AND THREE WERE APPOINTED BY DEMOCRATIC PRESIDENTS.

AS EXPECTED, NUMEROUS ABORTION ISSUES AROSE AND BECAME THE SUBJECT OF STATE LEGISLATIVE ENACTMENTS WHICH, IN TURN, BECAME THE TOPIC OF SUPREME COURT DECISIONS SUBSEQUENT TO THE ROE DECISION. AS IS OFTEN THE CASE IN CONSTITUTIONAL LAW, A SIGNIFICANT SUPREME COURT DECISION DEFINING FUNDAMENTAL RIGHTS GIVES RISE TO THE ENACTMENT OF STATUTES WHICH SEEK TO MORE PARTICULARLY DEFINE THESE RIGHTS IN OTHER RELATED CONTEXTS. THIS WAS PARTICULARLY TRUE WITH ROE SINCE A VARIETY OF ABORTION ISSUES WERE NEITHER RAISED BEFORE NOR ADDRESSED BY THE COURT.

AS WE CONSIDER THESE SUBSEQUENT OPINIONS DECIDED PRIOR TO 1992, IT IS IMPORTANT TO NOTE THAT THE SUPREME COURT WILL GENERALLY LIMIT ITS DECISIONS TO ISSUES ACTUALLY RAISED BY THE LITIGANTS, AND THAT IT DOES NOT ISSUE ADVISORY OPINIONS. IN MOST OF THESE DECISIONS, THE DISPUTE DID NOT INVOLVE WHETHER A WOMAN HAD THE FUNDAMENTAL RIGHT TO TERMINATE A PREGNANCY, RATHER THE COURT CONSIDERED ABORTION REGULATIONS AFTER THE FIRST TRIMESTER OF PREGNANCY.

PREDICTABLY, THE EARLY ABORTION CASES CONSIDERED STATUTES LIMITING BY WHOM AND WHERE AN ABORTION MAY BE PERFORMED. THE SUPREME COURT HAS HELD THAT THE STATE MAY NOT REQUIRE ABORTIONS TO BE PERFORMED IN A HOSPITAL, BUT MAY REQUIRE THEM TO

AND INFORMED CONSENT PROCEDURES WERE RE-EXAMINED AND ABANDONED BY THE SUPREME COURT LAST YEAR, AS I WILL DISCUSS IN A MOMENT. WITH RESPECT TO MINORS, A DIFFERENT SET OF RULES APPLIES.

AS YOU MIGHT EXPECT, THE RIGHTS OF THE SPOUSE OF A MOTHER OF AN UNBORN CHILD HAVE ALSO BEEN AN ISSUE LITIGATED AND DECIDED BY THE SUPREME COURT. WITHIN THREE YEARS OF THE ROE DECISION, THE SUPREME COURT HELD UNCONSTITUTIONAL A STATE STATUTE REQUIRING THE CONSENT OF THE SPOUSE OF A WOMAN SEEKING AN ABORTION DURING THE FIRST TRIMESTER OF PREGNANCY. SINCE AN ABORTION DECISION IS A FUNDAMENTAL RIGHT OF THE MOTHER TO BE EXERCISED UPON THE ADVICE OF A PHYSICIAN, NO THIRD PARTY MAY INFRINGE UPON THAT FUNDAMENTAL RIGHT. THE MOTHER'S LIBERTY INTEREST SIMPLY OUTWEIGHS HER HUSBAND'S INTEREST IN AND TO THE UNBORN CHILD.

ON TWO OCCASIONS, THE SUPREME COURT HAS CONSIDERED THE RESTRICTIONS ON THE ROLE AND USE OF PUBLIC FUNDS, FACILITIES AND EMPLOYEES IN THE ABORTION CONTEXT. IN 1989, THE COURT HELD THAT A MISSOURI STATUTE PROHIBITING THE USE OF PUBLIC FACILITIES OR EMPLOYEES FROM PERFORMING OR ASSISTING IN AN ABORTION WAS CONSTITUTIONAL, UNLESS THE MOTHER'S LIFE WAS AT STAKE.

IN 1991, THE SUPREME COURT ALSO UPHELD FEDERAL REGULATIONS PROMULGATED BY THE BUSH ADMINISTRATION WHICH

PROHIBITED THE USE OF TITLE X FEDERAL FUNDS FOR PROVIDING COUNSELING CONCERNING THE USE OF ABORTION, OR FOR REFERRING TO ABORTION AS A METHOD OF FAMILY PLANNING, AND PROVIDED THAT FACILITIES RECEIVING SUCH FUNDS MAY NOT ENGAGE IN ACTIVITIES TO ENCOURAGE, PROMOTE OR ADVOCATE ABORTION AS A METHOD OF FAMILY PLANNING. IN THAT CASE, BOTH FIRST AND FIFTH AMENDMENT CHALLENGES WERE RAISED TO THE REGULATIONS. THE FIFTH AMENDMENT CHALLENGE WAS BASED ON THE DENIAL OF DUE PROCESS RIGHTS TO A WOMAN SEEKING AN ABORTION, AND THE FIRST AMENDMENT CHALLENGE WAS BASED ON A PHYSICIAN'S RIGHT OF FREE SPEECH. THE SUPREME COURT REJECTED THESE ARGUMENTS HOLDING THAT A WOMAN'S FUNDAMENTAL RIGHT TO AN ABORTION WAS NOT INFRINGED UPON SINCE A PREGNANT WOMAN DESIRING AN ABORTION HAD THE SAME CHOICE AVAILABLE TO HER AS IF THE UNITED STATES GOVERNMENT HAD CHOSEN NOT TO FUND FAMILY PLANNING SERVICES AT ALL. A MAJOR ARGUMENT IN THIS CASE WAS THE IMPACT UPON INDIGENT WOMEN AND THEIR RECOGNIZED MORE LIMITED ACCESS TO AN ABORTION. THE SUPREME COURT LIKEWISE REJECTED THIS ARGUMENT CLAIMING THAT AN INDIGENT WOMAN'S INABILITY TO HAVE THE SAME FREEDOM OF CHOICE AS OTHER WOMEN WAS NOT THE PRODUCT OF GOVERNMENT RESTRICTIONS ON ABORTION, BUT RATHER OF FINANCIAL STATUS.

PERHAPS NO ABORTION RELATED ISSUES HAVE BEEN MORE HEAVILY LITIGATED THAN IN THE CONTEXT OF THE CONSTITUTIONAL RIGHTS OF UNDERAGE WOMEN. FOR INSTANCE, IN THAT CONTEXT, THE

COURT HAS APPROVED STATE IMPOSED REQUIREMENTS OF PARENTAL NOTIFICATION AND CONSENT, AND THE IMPOSITION OF A 48 HOUR WAITING PERIOD AFTER PARENTAL NOTIFICATION. IN ORDER FOR PARENTAL NOTIFICATION AND CONSENT STATUTES TO PASS CONSTITUTIONAL MUSTER, HOWEVER, THEY MUST CONTAIN A JUDICIAL BYPASS PROVISION WHICH PERMITS A MINOR TO OBTAIN APPROVAL OF A COURT OF COMPETENT JURISDICTION IN THE ABSENCE OF PARENTAL NOTIFICATION OR OVER THE OBJECTION OF HER PARENTS. UNDER THIS JUDICIAL BYPASS PROCEDURE, THE COURT MUST DETERMINE WHETHER THE MINOR IS MATURE AND CAPABLE OF GIVING CONSENT AND/OR WHETHER IT IS IN THE MINOR'S BEST INTEREST NOT TO GIVE PARENTAL NOTIFICATION. IN REQUIRING THIS JUDICIAL BYPASS PROCEDURE, THE COURT HAS RECOGNIZED THE DIFFICULTIES AND DANGERS OF OBTAINING PARENTAL CONSENT IN SINGLE PARENT FAMILIES OR ABUSIVE HOME SITUATIONS.

ALL OF THE ABOVE CASES WERE DECIDED PRIOR TO 1992, AND EACH WAS A SPLIT DECISION BY THE SUPREME COURT. IN THESE CASES, THE CONSTRUCTION OF THE SUBJECT STATUTES DID NOT HINGE UPON THE CONSTITUTIONALITY OF ROE V. WADE. THE ISSUE BEFORE THE COURT WAS THE REGULATION OF ABORTION, NOT ITS PROHIBITION. NEVERTHELESS, IN MANY OF THE CASES, DISSENTS WERE WRITTEN BY JUSTICES SEEKING THE REVERSAL OF ROE.

BEGINNING IN 1989, THE COURT'S DECISIONS BECAME MUCH MORE FRAGMENTED AND DIFFICULT TO UNDERSTAND. FOR INSTANCE, IN

THE 1989 MISSOURI DECISION, FIVE SEPARATE OPINIONS WERE WRITTEN BY FIVE DIFFERENT JUSTICES, WHICH EXPRESS SIX DIFFERENT VIEWPOINTS REGARDING THE HOLDING IN THE CASE OR THE LEGAL REASONS ADVANCED TO SUPPORT THE HOLDING. AS A RESULT OF THE NUMEROUS OPINIONS, THE APPROPRIATE JUDICIAL STANDARD BECAME CONFUSED AND UNCLEAR, AND ENGENDERED SOME DISAGREEMENT AMONG THE LOWER COURTS AS TO THE SUPREME COURT'S ACTUAL DIRECTIVE.

IN MY VIEW, A PRIMARY REASON FOR THIS FRAGMENTATION WAS THE NUMBER OF NEW MEMBERS ON THE COURT. PRESIDENT REAGAN APPOINTED SANDRA DAY O'CONNOR, ANTONIN SCALIA AND ANTHONY KENNEDY, WHO WERE RECOGNIZED AS MORE CONSERVATIVE JUSTICES. LIKEWISE, PRESIDENT BUSH APPOINTED DAVID SOUTER AND CLARENCE THOMAS TO THE COURT, ALSO RECOGNIZED AS CONSERVATIVE JUSTICES. THESE FIVE JUSTICES, REPRESENTING A MAJORITY OF THE COURT, WERE APPOINTED BY PRESIDENTS WHO PUBLICLY ENDORSED THE REVERSAL OF ROE V. WADE AND SUPPORTED CONSTITUTIONAL AMENDMENTS PROHIBITING ABORTION TO OVERRULE ROE. AS MANY OF YOU MAY REMEMBER, THE CONFIRMATION OF CLARENCE THOMAS WAS VIEWED BY SOME AS THE NECESSARY VOTE TO OVERTURN ROE V. WADE. BEFORE THE CONFIRMATION PROCESS BECAME MIRED IN ACCUSATIONS OF THE NOMINEE'S SEXUAL MISCONDUCT, HE WAS INTENSELY INTERROGATED CONCERNING HIS ABORTION POSITION.

ON JUNE 29, 1992, THE COURT ISSUED ITS OPINION IN PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA V. CASEY. THIS

WAS THE FIRST ABORTION CASE IN WHICH JUSTICE THOMAS PARTICIPATED, AND IT WAS DECIDED BY THE PRESENT COMPOSITION OF THE SUPREME COURT OF WHICH ONLY ONE MEMBER, JUSTICE BYRON WHITE, WAS APPOINTED BY A DEMOCRATIC PRESIDENT.

IN CASEY, THE COURT CONSIDERED THE CONSTITUTIONALITY OF A PENNSYLVANIA STATUTE REQUIRING, IN PERTINENT PART, A 24 HOUR WAITING PERIOD PRIOR TO AN ABORTION, THAT CERTAIN INFORMATION BE GIVEN TO A WOMAN PRIOR TO THE COMMENCEMENT OF THE 24 HOUR WAITING PERIOD SO SHE COULD GIVE HER INFORMED CONSENT TO THE PROCEDURE, SPOUSAL NOTIFICATION, AND, WITH RESPECT TO MINORS, A REQUIREMENT THAT A MINOR MUST OBTAIN THE INFORMED CONSENT OF BOTH OF HER PARENTS, WITH AN AVAILABLE JUDICIAL BYPASS OPTION IF THE MINOR DOES NOT WISH TO OR COULD NOT OBTAIN PARENTAL CONSENT.

IN CASEY, THE UNITED STATES DISTRICT COURT DETERMINED THAT ALL OF THESE PROVISIONS WERE UNCONSTITUTIONAL AND ENTERED A PERMANENT INJUNCTION AGAINST THE STATE'S ENFORCEMENT OF THE STATUTE. THE UNITED STATES COURT OF APPEALS, AFFIRMING IN PART

AND REVERSING IN PART, UPHELD ALL OF THE PROVISIONS EXCEPT FOR THE SPOUSAL NOTIFICATION REQUIREMENT. RELYING ON THE DECISION IN THE PREVIOUSLY REFERENCED 1989 DECISION ARISING OUT OF MISSOURI, THE COURT OF APPEALS APPLIED AN UNDUE BURDEN TEST, WHICH IS AN EASIER STANDARD, AS OPPOSED TO THE STRICT SCRUTINY OR COMPELLING INTEREST TEST. DUE TO THE CONFUSION CREATED BY ITS RECENT FRAGMENTED DECISIONS, THE SUPREME COURT DECIDED TO RE-EXAMINE THE HOLDING IN ROE V. WADE AND ITS FOUNDATIONS, AND TO DETERMINE WHETHER IT SHOULD REMAIN THE LAW.

BY A FIVE TO FOUR MAJORITY, THE COURT UPHELD THE WOMAN'S FUNDAMENTAL RIGHT TO AN ABORTION UNDER THE CONSTITUTION AS ENUNCIATED IN ROE. SPECIFICALLY, THE COURT REAFFIRMED THAT A WOMAN HAS A CONSTITUTIONALLY PROTECTED RIGHT TO TERMINATE A PREGNANCY BEFORE FETAL VIABILITY WITHOUT UNDUE INTERFERENCE FROM THE STATE; THAT A STATE HAS THE POWER TO RESTRICT OR PROHIBIT ABORTIONS AFTER VIABILITY PROVIDED IT CONTAINS AN EXCEPTION FOR PREGNANCIES ENDANGERING THE LIFE OR HEALTH OF THE MOTHER; AND THE STATE HAS A LEGITIMATE INTEREST IN PROTECTING UNBORN LIFE FROM THE OUTSET OF PREGNANCY.

IN TWO SEPARATE DISSENTING OPINIONS, FOUR JUSTICES, REHNQUIST, WHITE, SCALIA AND THOMAS, EXPRESSED THE MINORITY VIEW THAT ROE V. WADE SHOULD BE OVERRULED BECAUSE IT WAS WRONGLY DECIDED AND THAT A WOMAN DOES NOT HAVE A CONSTITUTIONAL RIGHT TO AN ABORTION. ALTERNATIVELY, THE DISSENTERS ARGUED THAT ANY STATE

STATUTE SHOULD BE JUDGED ON A RATIONAL-BASIS TEST AS OPPOSED TO A STRICT SCRUTINY TEST. NEEDLESS TO SAY, THE DISSENTERS STATED THAT ALL PROVISIONS OF THE PENNSYLVANIA STATUTE SHOULD BE UPHELD ON THESE GROUNDS.

WHILE THE MAJORITY OF THE COURT REAFFIRMED THE BASIC UNDERPINNINGS OF ROE, JUSTICES SOUTER, KENNEDY AND O'CONNOR DEPARTED FROM THE STRICT SCRUTINY TEST AND SUBSTITUTED AN UNDUE BURDEN OR SUBSTANTIAL OBSTACLE TEST, WHICH IS A LESS STRINGENT STANDARD. UNDER THIS ANALYSIS, A STATE DOES NOT HAVE TO DEMONSTRATE A COMPELLING INTEREST OUTWEIGHING THE WOMAN'S FUNDAMENTAL RIGHT TO CHOOSE. INSTEAD, ABORTION REGULATIONS WILL BE DEEMED CONSTITUTIONAL IF THE PROPOSED RESTRICTION DOES NOT CONSTITUTE AN UNDUE BURDEN TO THE WOMAN IN EXERCISING HER RIGHT BECAUSE ITS PURPOSE OR EFFECT IS TO PLACE SUBSTANTIAL OBSTACLES IN HER PATH WHILE SEEKING AN ABORTION PRIOR TO VIABILITY.

THE COURT NOTED THAT THE EFFECT OF ROE HAD BEEN TO PLACE AN ABSOLUTE PROHIBITION ON STATE REGULATION OF FIRST TRIMESTER ABORTIONS. THESE THREE AUTHORS REJECTED THE ROE TRIMESTER FRAMEWORK AS NO LONGER WORKABLE AND, INSTEAD, FOCUSED ON THE ISSUE OF VIABILITY. IN REJECTING THE TRIMESTER ANALYSIS, THESE JUSTICES HELD THAT ROE SPECIFICALLY CONCLUDED THAT THE STATE HAD A COMPELLING INTEREST IN PROTECTING UNBORN LIFE WHICH AROSE AT THE EARLIEST STAGES OF PREGNANCY. ACCORDINGLY, THE STATE COULD IMPOSE CERTAIN REGULATIONS ON ALL PRE-VIABILITY

ABORTIONS, WHETHER IN THE FIRST TRIMESTER OR NOT, SO LONG AS THE REGULATIONS MEET THE UNDUE BURDEN TEST.

THE ADOPTION OF THE LESS STRINGENT UNDUE BURDEN TEST AND REJECTION OF THE TRIMESTER ANALYSIS BY THESE JUSTICES COUPLED WITH THE FOUR DISSENTERS REJECTION OF THE HOLDING IN ROE ALTOGETHER, THESE SEVEN JUSTICES AGREED THAT, WITH THE EXCEPTION OF THE SPOUSAL NOTIFICATION REQUIREMENT IN THE PENNSYLVANIA STATUTE, ALL OF THE PROVISIONS OF THE CHALLENGED LAW WERE CONSTITUTIONAL. IN SO HOLDING, THEY OVERRULED PREVIOUSLY REFERENCED DECISIONS CONCERNING WAITING PERIODS AND INFORMED CONSENT. CONSISTENT WITH ITS PRIOR DECISIONS, THE SAME SEVEN JUSTICES UPHELD A MINOR'S RIGHT TO OBTAIN AN ABORTION ONLY WITH PARENTAL CONSENT PROVIDED THAT A JUDICIAL BYPASS OPTION WAS AVAILABLE.

THE THREE AUTHORS PLUS JUSTICES BLACKMUN AND STEVENS, WHO JOINED THE AUTHORS IN REAFFIRMING THE ESSENTIAL HOLDING OF ROE ESTABLISHING A CONSTITUTIONALLY PROTECTED RIGHT OF ABORTION, AGREED THAT THE SPOUSAL NOTIFICATION REQUIREMENT WAS UNCONSTITUTIONAL.

ACCORDINGLY, AS WITH PRIOR RECENT DECISIONS, VARIOUS JUSTICES AGREED AND DISAGREED WITH VARIOUS ASPECTS OF THE CASEY DECISION. THE FULL DECISION INCLUDING CONCURRING AND DISSENTING OPINIONS EXCEEDS 100 PAGES.

IF YOU ARE CONFUSED BY THIS DECISION, YOU ARE NOT ALONE. AS YOU CAN TELL, THE COURT REMAINS FRAGMENTED WITH RESPECT TO THE ABORTION ISSUE. ONE MIGHT LEGITIMATELY ASK: WHAT DID THE DECISION IN CASEY RESOLVE?

FIRST, A WOMAN'S FUNDAMENTAL RIGHT TO AN ABORTION REMAINS INTACT. THIS POSITION WAS ADOPTED BY A FIVE TO FOUR MARGIN OF THE PRESENT SUPREME COURT. AS PREVIOUSLY INDICATED, IT IS IMPORTANT TO REMEMBER THE COURT INCLUDES ONLY ONE DEMOCRATIC APPOINTMENT AND HAS FIVE NEW MEMBERS APPOINTED BY THE LAST TWO REPUBLICAN ADMINISTRATIONS.

SECOND, CASEY WEAKENS TWENTY YEARS OF PRECEDENTS WHICH HAD BEEN GENERALLY INTERPRETED TO PROHIBIT ANY ABORTION REGULATION DURING THE FIRST TRIMESTER OF PREGNANCY.

THIRD, FUTURE ABORTION REGULATIONS LIKELY WILL BE VIEWED UNDER A LESS STRINGENT STANDARD, MAKING IT EASIER FOR STATE ABORTION RESTRICTIONS TO BE DEEMED CONSTITUTIONAL. HOWEVER, THE SPECIFIC CONSTITUTIONAL TEST TO BE USED IS UNCLEAR.

IN HIS SEPARATE OPINION, JUSTICE HARRY BLACKMUN, THE AUTHOR OF ROE, CORRECTLY NOTED THAT THE STRICT SCRUTINY TEST IMPLEMENTED THROUGH A TRIMESTER FRAMEWORK WAS THE ONLY CONSTITUTIONAL ABORTION ANALYSIS WHICH HAD EVER GAINED MAJORITY SUPPORT ON THE COURT, AND HE URGED THAT IT NOT BE ABANDONED. HE CORRECTLY NOTED THAT, UNDER THIS ANALYSIS, THE PENNSYLVANIA REQUIREMENTS OF INFORMED CONSENT AND A 24 HOUR WAITING PERIOD

WOULD HAVE BEEN DEEMED UNCONSTITUTIONAL AS THEY HAD BEEN PREVIOUSLY. AFTER A SHARP ATTACK ON THE FOUR DISSENTERS IN WHICH HE ACCUSED CHIEF JUSTICE REHNQUIST OF HAVING A STUNTED CONCEPTION OF INDIVIDUAL LIBERTY, HE CONCLUDED:

> IN ONE SENSE, THE COURT'S APPROACH IS WORLDS APART FROM THAT OF THE CHIEF JUSTICE AND JUSTICE SCALIA. AND YET, IN ANOTHER SENSE, THE DISTANCE BETWEEN THE TWO APPROACHES IS SHORT -- THE DISTANCE IS BUT A SINGLE VOTE.
>
> I AM EIGHTY-THREE YEARS OLD. I CANNOT REMAIN ON THIS COURT FOREVER, AND WHEN I DO STEP DOWN, THE CONFIRMATION PROCESS FOR MY SUCCESSOR WELL MAY FOCUS ON THE ISSUE BEFORE US TODAY. THAT, I REGRET, MAY BE EXACTLY WHERE THE CHOICE BETWEEN THE TWO WORLDS WILL BE MADE.

THESE WORDS EMPHASIZE THAT THIS CONSTITUTIONAL ISSUE REMAINS DIVISIVE AND SUBJECT TO FURTHER CHANGE. IT MUST BE REMEMBERED THAT EVEN IF ROE WERE OVERRULED, THE STATES WOULD BE FREE TO REGULATE ABORTION AS THEY DID PRIOR TO 1973. IN THAT EVENT, IT IS LIKELY THAT SOME STATES WOULD PROHIBIT ABORTION, WHILE OTHERS WOULD HAVE LESSER RESTRICTIONS.

AFTER TWENTY YEARS OF NUMEROUS COURT CASES INTERPRETING ROE, WHAT DOES THE FUTURE HOLD IN THIS AREA OF THE LAW? ALTHOUGH IT IS IMPOSSIBLE TO PREDICT WITH ANY CERTAINTY, I SUSPECT THAT A VARIETY OF DIFFERENT EVENTS MAY OCCUR.

FIRST, IN VIEW OF THE FRAGMENTED DECISION IN CASEY WHICH PERMITS ADDITIONAL STATE ABORTION REGULATIONS HERETOFORE DEEMED PROHIBITED, I EXPECT FURTHER CASES IN WHICH THE STATE'S

ABILITY TO REGULATE ABORTION IS MORE PARTICULARLY DEFINED BY THE SUPREME COURT. AS WITH ROE, THE CASEY DECISION HAS OPENED THE DOOR FOR THE STATES TO IMPOSE MORE RESTRICTIONS ON ABORTION RIGHTS PRIOR TO VIABILITY SINCE THE UNDUE BURDEN TEST WILL LIKELY APPLY.

SECOND, IN VIEW OF THE ELECTION OF PRESIDENT BILL CLINTON, A PROFESSED PRO-CHOICE ADVOCATE, I THINK IT IS UNLIKELY THAT HE WILL FILL ANY VACANCY ON THE COURT WITH A CANDIDATE WHO DOES NOT RECOGNIZE ABORTION AS A CONSTITUTIONALLY PROTECTED RIGHT. AS WE HAVE SEEN FROM THE APPOINTMENTS OF DAVID SOUTER, ANTHONY KENNEDY AND SANDRA DAY O'CONNOR BY THE PAST TWO ADMINISTRATIONS, THERE IS NEVER ANY GUARANTEE, NOR SHOULD THERE BE, THAT A JUDICIAL NOMINEE WILL RULE IN A PARTICULAR MANNER REGARDLESS OF THE CONTEXT. GIVEN THE PRESENT COURT MAJORITY WHICH RECOGNIZES THE CONSTITUTIONAL RIGHT TO ABORTION, IT IS STILL UNLIKELY THAT THIS ANALYSIS WILL BE ABANDONED IN THE NEAR FUTURE EITHER BY THE PRESENT SUPREME COURT OR BY A CHANGE IN THE COMPOSITION OF THE COURT.

THIRD, SOME OF THE RESTRICTIVE ABORTION REGULATIONS HAVE BEEN LIFTED BY PRESIDENT CLINTON. FOR INSTANCE, ON HIS SECOND DAY IN OFFICE, THE PRESIDENT LIFTED THE BAN ON FETAL TISSUE RESEARCH AND SO CALLED "GAG RULE" PROHIBITING ABORTION COUNSELING IN FEDERALLY FUNDED FAMILY PLANNING CLINICS. I BELIEVE THE PRESIDENT WILL, WHERE POSSIBLE, EASE THESE KINDS OF

FEDERAL RESTRICTIONS ON ABORTION. HOWEVER, HIS EXECUTIVE POWER IN THIS AREA IS LIMITED.

FOURTH, I THINK IT IS POSSIBLE THAT THE CONGRESS, WITH THE PRESIDENT'S SUPPORT, WILL ENACT LEGISLATION THAT WILL CODIFY A WOMAN'S RIGHT TO AN ABORTION. OF COURSE, SUCH LEGISLATION WOULD PREEMPT ANY JUDICIAL DECISION, INCLUDING THOSE OF THE SUPREME COURT, OR ANY STATE LEGISLATION ON THIS SUBJECT.

FINALLY, I BELIEVE THIS WHOLE ISSUE MAY BECOME MOOT AS MEDICAL TECHNOLOGY CONTINUES TO ADVANCE. IN THE 1980'S, A GERMAN DRUG COMPANY MANUFACTURED A PILL CALLED RU-486. WHILE DESIGNED AS A TREATMENT FOR CANCER, ONE OF RU-486'S SIDE EFFECTS IS TO CAUSE ABORTION. BECAUSE OF THIS AND THE INTENSE POLITICAL PRESSURE ON EITHER SIDE OF THE ISSUE, RU-486 PRESENTLY IS AVAILABLE ONLY IN FRANCE, BRITAIN AND SWEDEN. CHINA, WITHOUT PERMISSION, HAS ALREADY COPIED THE DRUG. SINCE ABORTION IN SOME FORM IS LEGAL IN AREAS IN WHICH SEVENTY-FIVE PERCENT OF THE WORLD'S POPULATION RESIDES, IT IS REASONABLE TO ASSUME THAT THE DRUG WILL SOON BE AVAILABLE WORLDWIDE.

DUE TO THIS PRESSURE AND THE EXPRESSED DISLIKE OF THIS DRUG BY PRESIDENTS BUSH AND REAGAN, THE GERMAN COMPANY HAS NOT APPLIED FOR A LICENSE FROM THE UNITED STATES FOOD AND DRUG ADMINISTRATION. HOWEVER, THE CLINTON ADMINISTRATION IS REPORTEDLY GOING TO PROMOTE THE TESTING, LICENSING AND MANUFACTURING OF RU-486 IN THE U.S. ADDITIONALLY, STEPS HAVE

ALREADY BEEN TAKEN TO ELIMINATE THE BAN ON THE IMPORTATION OF RU-486 BY PEOPLE FOR THEIR PERSONAL USE.

IT WOULD SEEM A MATTER OF TIME BEFORE THE DRUG BECOMES AVAILABLE TO WOMEN IN THE UNITED STATES, WHETHER LEGALLY OR ILLEGALLY. A NATURAL CONSEQUENCE OF THIS AVAILABILITY WILL PRESUMABLY BE TO ELIMINATE THE NEED FOR CLINICAL ABORTIONS.

OF COURSE, ALL OF THE ABOVE IS SPECULATION ON MY PART. ON ITS TWENTIETH ANNIVERSARY, THE HOLDING OF ROE V. WADE ESTABLISHING A WOMAN'S CONSTITUTIONALLY PROTECTED RIGHT TO ABORTION REMAINS THE LAW OF THE LAND. GIVEN THE SERIOUS MORAL, THEOLOGICAL AND POLITICAL RAMIFICATIONS OF THIS ISSUE, IT IS UNLIKELY THAT IT WILL EVER BECOME ANY LESS DIVISIVE REGARDLESS OF WHAT GOVERNMENTAL RESTRICTIONS ARE ADOPTED, OR WHAT CASE IS PRESENTED TO THE SUPREME COURT, OR WHO SITS ON THE SUPREME COURT, OR WHO OCCUPIES THE WHITE HOUSE.