

posed, states may adopt measures “designed to persuade [a woman] to choose childbirth over abortion.”<sup>603</sup>

*Casey* did, however, overturn earlier decisions striking down informed consent and 24-hour waiting periods.<sup>604</sup> Given the state’s legitimate interests in protecting the life of the unborn and the health of the potential mother, and applying “undue burden” analysis, the three-Justice plurality found these requirements permissible.<sup>605</sup> After The Court also upheld application of an additional requirement that women under age 18 obtain the consent of one parent or avail themselves of a judicial bypass alternative.

On the other hand, the Court<sup>606</sup> distinguished Pennsylvania’s spousal notification provision as constituting an undue burden on a woman’s right to choose an abortion. “A State may not give to a man the kind of dominion over his wife that parents exercise over their children” (and that men exercised over their wives at common law).<sup>607</sup> Although there was an exception for a woman who believed that notifying her husband would subject her to bodily injury, this exception was not broad enough to cover other forms of abusive retaliation, *e.g.*, psychological intimidation, bodily harm to children, or financial deprivation. To require a wife to notify her husband in spite of her fear of such abuse would unduly burden the wife’s liberty to decide whether to bear a child.

The passage of various state laws restricting so-called “partial birth abortions” gave observers an opportunity to see if the “undue

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<sup>603</sup> 505 U.S. at 877–78. Application of these principles in *Casey* led the Court to uphold overrule some precedent, but to invalidate arguably the most restrictive provision. The four provisions challenged which were upheld included a narrowed definition of “medical emergency” (which controlled exemptions from the Act’s limitations), record keeping and reporting requirements, an informed consent and 24-hour waiting period requirement; and a parental consent requirement, with possibility for judicial bypass, applicable to minors. The provisions which was invalidated as an undue burden on a woman’s right to an abortion was a spousal notification requirement.

<sup>604</sup> *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983) (invalidating “informed consent” and 24-hour waiting period); *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986) (invalidating informed consent requirement).

<sup>605</sup> Requiring informed consent for medical procedures was found to be both commonplace and reasonable, and, in the absence of any evidence of burden, the state could require that information relevant to informed consent be provided by a physician rather than an assistant. The 24-hour waiting period was approved both in theory (it being reasonable to assume “that important decisions will be more informed and deliberate if they follow some period of reflection”) and in practice (in spite of “troubling” findings of increased burdens on poorer women who must travel significant distances to obtain abortions, and on all women who must twice rather than once brave harassment by anti-abortion protesters). 505 U.S. at 885–87.

<sup>606</sup> The plurality Justices were joined in this part of their opinion by Justices Blackmun and Stevens.

<sup>607</sup> 505 U.S. at 898.