In reaching this finding the Court held that, while a state-created obstacle need not be absolute to be impermissible, it must at a minimum "unduly burden" the right to terminate a pregnancy. And, the Court held, to allocate public funds so as to further a state interest in normal childbirth does not create an absolute obstacle to obtaining and does not unduly burden the right.[590] What is interesting about this holding is that the "undue burden" standard was to take on new significance when the Court began raising questions about the scope and even the legitimacy of *Roe*.

Although the Court expressly reaffirmed *Roe v. Wade* in 1983,[591] its 1989 decision in *Webster v. Reproductive Health Services*[592] signaled the beginning of a retrenchment. *Webster* upheld two aspects of a Missouri statute regulating abortions: a prohibition on the use of public facilities and employees to perform abortions not necessary to save the life of the mother; and a requirement that a physician, before performing an abortion on a fetus she has reason to believe has reached a gestational age of 20 weeks, make an actual viability determination.[593] This retrenchment was also apparent in two 1990 cases in which the Court upheld both one-parent and two-parent notification requirements.[594]

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[590] "An indigent woman who desires an abortion suffers no disadvantage as a consequence of Connecticut's decision to fund childbirth; she continues as before to be dependent on private sources for the services she desires. The State may have made childbirth a more attractive alternative, thereby influencing the woman's decision, but it has imposed no restriction on access to abortions that was not already there." *Maher*, 432 U.S. at 469–74 (the quoted sentence is at 474); *Harris*, 448 U.S. at 321–26. Justices Brennan, Marshall, and Blackmun dissented in both cases and Justice Stevens joined them in *Harris*. Applying the same principles, the Court held that a municipal hospital could constitutionally provide hospital services for indigent women for childbirth but deny services for abortion. Poelker v. Doe, 432 U.S. 519 (1977).

[591] City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 419–20 (1983). In refusing to overrule Roe v. Wade, the Court merely cited the principle of *stare decisis*. Justice Powell's opinion of the Court was joined by Chief Justice Burger, and by Justices Brennan, Marshall, Blackmun, and Stevens. Justice O'Connor, joined by Justices White and Rehnquist, dissented, voicing disagreement with the trimester approach and suggesting instead that throughout pregnancy the test should be the same: whether state regulation constitutes "unduly burdensome interference with [a woman's] freedom to decide whether to terminate her pregnancy." 462 U.S. at 452, 461. In the 1986 case of Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986), Justice White, joined by Justice Rehnquist, advocated overruling of Roe v. Wade, Chief Justice Burger thought Roe v. Wade had been extended to the point where it should be reexamined, and Justice O'Connor repeated misgivings expressed in her *Akron* dissent.

[592] 492 U.S. 490 (1989).

[593] The Court declined to rule on several other aspects of Missouri's law, including a preamble stating that life begins at conception, and a prohibition on the use of public funds to encourage or counsel a woman to have a nontherapeutic abortion.

[594] Ohio's requirement that one parent be notified of a minor's intent to obtain an abortion, or that the minor use a judicial bypass procedure to obtain the approval of a juvenile court, was approved. Ohio v. Akron Center for Reproductive Health,