

Three years later, however, the Court invoked principles of *stare decisis* to reaffirm *Roe's* “essential holding,” although it had by now abandoned the trimester approach and adopted Justice O'Connor's “undue burden” test and *Roe's* “essential holding.”<sup>600</sup> According to the Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*,<sup>601</sup> the right to abortion has three parts. “First is a recognition of the right of a woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies which endanger a woman's life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.”

This restatement of *Roe's* essentials, recognizing a legitimate state interest in protecting fetal life throughout pregnancy, necessarily eliminated the rigid trimester analysis permitting almost no regulation in the first trimester. Viability, however, still marked “the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions,”<sup>602</sup> but less burdensome regulations could be applied before viability. “What is at stake,” the three-Justice plurality asserted, “is the woman's right to make the ultimate decision, not a right to be insulated from all others in doing so. Regulations which do no more than create a structural mechanism by which the State . . . may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose.” Thus, unless an undue burden is im-

---

<sup>600</sup> It was a new alignment of Justices that restated and preserved *Roe*. Joining Justice O'Connor in a jointly authored opinion adopting and applying Justice O'Connor's “undue burden” analysis were Justices Kennedy and Souter. Justices Blackmun and Stevens joined parts of the plurality opinion, but dissented from other parts. Justice Stevens would not have abandoned trimester analysis, and would have invalidated the 24-hour waiting period and aspects of the informed consent requirement. Justice Blackmun, author of the Court's opinion in *Roe*, asserted that “the right to reproductive choice is entitled to the full protection afforded by this Court before *Webster*,” *id.* at 923, and would have invalidated all of the challenged provisions. Chief Justice Rehnquist, joined by Justices White, Scalia, and Thomas, would have overruled *Roe* and upheld all challenged aspects of the Pennsylvania law.

<sup>601</sup> 505 U.S. 833, 846 (1992).

<sup>602</sup> 505 U.S. 833, 860 (1992).