

Pro-choice forces not optimistic about outlook for *Roe vs. Wade*

THURSDAY APR 23 1992

By JOHN GRAVOIS

POST WASHINGTON BUREAU

WASHINGTON — The pro-choice movement pleaded emotionally Wednesday with the U.S. Supreme Court to uphold abortion rights for women, but its lead lawyer conceded there's little doubt *Roe vs. Wade* is doomed.

In remarks aimed at inciting public outrage as much as influencing the court, American Civil Liberties Union attorney Kathryn Kolbert warned that

■ 200 arrested at suburban
Buffalo clinic/A-15

in the rubble of

Roe vs. Wade "women might again be forced to the back alleys for their medical care with grave consequences for their lives and health."

After arguing her case against a Pennsylvania law that places numerous restrictions on abortion, Kolbert said, "I can count votes as well as anyone, and

Please see **ABORTION, A-24**

ABORTION: Pro-choice attorneys pessimistic

From A-1

anyone can see that there are not enough votes to reaffirm *Roe vs. Wade*."

A decision in the Pennsylvania case is expected by July.

In arguments presented by Solicitor General Kenneth Starr to the justices, the Bush administration reaffirmed it wants the court to reject the premise in *Roe* that abortion is a fundamental constitutional right.

The milestone 1973 *Roe* decision came from a Texas case in which the high court severely restricted states' rights to regulate abortion. The Pennsylvania case is the latest in a long line of state legislative efforts nationwide to reclaim broad regulatory power.

Despite the dire warnings of the pro-choice movement, it is not at all clear there would be a wholesale rush among legislatures to enact outright bans on abortion. In Texas, for example, Gov. Ann Richards and Lt. Gov. Bob Bullock are staunchly pro-choice and in prime position to stymie any extreme anti-abortion initiative.

Pennsylvania Gov. Robert Casey — one of few national Democratic figures who are openly anti-abortion — insisted that "we did not bring this case to overturn *Roe vs. Wade* ... The question here is the extent to which states can go on protecting innocent, defenseless, unborn human life."

Pennsylvania Attorney General Ernest Preate, who argued the state's case before the high court, agreed, saying, "We believe that the Pennsylvania statute could be upheld without overturning *Roe vs. Wade*."

Nonetheless, most experts on both sides of the explosive issue agree with Kolbert's assessment of the anti-*Roe* sentiment of the court, which has been stacked with conservative justices over the past decade by Presidents Reagan and Bush. But most expect the court to uphold the Pennsylvania law without explicitly overturning *Roe*.

Kolbert and other pro-choice leaders maintained that distinction is meaningless.

"If (the court) upholds the Pennsylvania law, the fundamental right to choose will no longer exist," said Kate Michelman,

president of the National Abortion Rights Action League.

Said Kolbert: "There is absolutely no way that this case is only about the Pennsylvania restrictions. This case is about making abortion illegal. This case is about sending women back to the back alleys for their medical care."

She accused Casey of being "extraordinarily disingenuous" in claiming the state's interest is solely in regulating abortion. "The governor supports a total ban on abortion ... That is his intent and that has been the intent of the Pennsylvania Legislature since first adopting the law."

Regardless, in considering the case, the court will focus on the provisions of the 1989 Pennsylvania law which requires:

- Doctors to tell women seeking abortions about fetal development and alternatives to abortion.

- Women to put off abortion for 24 hours after receiving such information.

- Doctors to keep detailed records, subject to public disclosure, of all abortions performed.

- Married women in most cases to notify their husbands of their plans for abortions.

The 3rd U.S. Circuit Court of Appeals upheld most provisions of the law, but struck down the section dealing with spousal notification.

Last week, the 9th U.S. Circuit Court of Appeals struck down a more restrictive Guam abortion law. The appeals court ruled in that case that *Roe* — until further word from the Supreme Court — is still the law of the land.

For such a dynamic issue, Wednesday's debate inside the courtroom was subdued. Most of the action was outside, where crowds of protesters on both sides of the issue assembled.

Probably the most biting comment registered during the hour-long hearing came when Pennsylvania's Preate contended that *Roe* fell short of allowing abortion on demand and thus left states with power to limit the procedure under certain conditions.

Justice Harry Blackmun, who wrote the 1973 decision, pointedly asked Preate: "Have you read *Roe*?" Preate replied that he had.

That was Blackmun's only question of the session. The only justice who was silent throughout

was the newest member of the court, Clarence Thomas, who told an incredulous Senate Judiciary Committee during confirmation hearings last year that he had never even discussed *Roe* with fellow lawyers.

Justice Sandra Day O'Connor, the only woman ever to serve on the court, pressed Preate on the spousal notification provision in the Pennsylvania law. She said it was "curious" that the state would require married women wanting an abortion to inform their husband, but not to notify the potential father if they are unmarried.

O'Connor also repeatedly prodded Kolbert to argue the specifics of the Pennsylvania law rather than dwell on far-reaching implications of potential court actions.

But Kolbert stuck to her strategy of portraying any deterioration of *Roe* as a devastating blow to privacy and women's rights in general.

"Never before has this court taken back a fundamental right that has been taken advantage of by millions of Americans for two decades," Kolbert said.

She and other pro-choice leaders said the court will have its say this summer, but women will have the last word at the voting booth in November's national elections.

"It is our view that the president of the United States has done his best to make sure that our arguments will fall on deaf ears. He has packed this court with justices who are hostile to the right to choose abortion in its fundamental status ... But women in this nation ... will fight back," Kolbert vowed.

The justices will take their first vote on the case in their regularly scheduled, closed-door conference Friday, and then begin their opinion writing. Votes could change during that process.

Court observers consider Blackmun and John Paul Stevens the only solid votes to maintain abortion rights. Chief Justice William Rehnquist, Byron White, Antonin Scalia and Anthony Kennedy are expected to side with Pennsylvania lawmakers.

The remaining justices — O'Connor, Thomas and David Souter — are considered question marks.