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Roe vs. Wade Still Safe at 30  
Pro-choicers fail to acknowledge their victories

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There's one thing about abortion that neither side in the debate wants you to know: On its 30th anniversary, Roe vs. Wade is about as safe from being overturned by the U.S. Supreme Court as any case could ever be.

Now it makes obvious sense that right-to-lifers don't want you to think of Roe as safe for all time. Opposition to abortion has taken a roller-coaster ride since 1973. In 1981, when Ronald Reagan became president, anti-abortionists anticipated passage of a constitutional amendment that would overturn Roe, but in the end came away completely empty-handed.

Right-to-life extremism then moved to the streets, with Randall Terry and other Operation Rescue activists using a variety of physically destructive and obstructive tactics to block women's access to abortion clinics. When the U.S. Supreme Court in 1989 in Webster vs. Reproductive Health Services appeared to signal that Roe's demise was close at hand, anti-abortionists were ecstatic and pro-choicers announced that the sky was falling.

But three years later, in 1992, the Supreme Court astounded everyone by reaffirming Roe, rather than overturning it. Justices Sandra Day O'Connor and Anthony M. Kennedy, along with newly appointed Justice David H. Souter, changed their tunes and co-authored a remarkably strong joint opinion in Planned Parenthood vs. Casey attesting to Roe's crucial historical stature.

Casey was a landmark pro-choice victory, as was Congress' 1994 enactment of the Freedom of Access to Clinic Entrances law, which mandated substantial criminal penalties for repeat offenders who attacked or obstructed clinics.

But Casey and FACE have had highly ironic consequences. Most surprising of all, pro-choice interest groups have failed to applaud or champion Casey, preferring instead to focus on how Casey allows states to impose 24-hour waiting periods on women seeking abortions plus other hindrances that do not "unduly burden" getting an abortion.

And most pro-choicers have also failed to celebrate what a hugely successful statute FACE has been, since the tremendous decline in truly obstructive protests outside clinics over the past nine years likewise undercuts any "sky is falling" political message aimed at mobilizing complacent supporters.

But pro-choicers' failure to acknowledge their victories and Roe's sturdiness has helped right-to-lifers regain the political initiative.

Oddly enough, both Casey and FACE have helped anti-abortion forces too.

Casey's proclamation that Roe's core question was no longer up for grabs forced right-to-lifers to shift their focus to subsidiary issues, and the advent of FACE removed angry Operation Rescue-style protesters from news reports. Many more Americans have always supported limitations on secondary questions such as the late term so-called "partial birth" procedure and teenagers' access to abortions, than are willing to entertain any frontal assault on Roe. The Casey-imposed shift to a more modest agenda thus significantly aided right-to-lifers. Similarly, the all-but-complete disappearance of unpleasant Randall Terry types has allowed legislative strategists to regain the anti-abortion helm and present a far less offensive face to the American public.

But the limitations on any possible right-to-life advances are stark. Anti-abortion Republican politicians, unlike right-to-life interest groups, realize that making abortion a front-burner political issue hurts rather than helps them. Three years before George W. Bush's successful 2000 campaign strategy of saying as little as possible about abortion highlighted this dynamic, anti-abortion Republican James Gilmore captured Virginia's governorship while running ads that emphasized "the Supreme Court has spoken, no one's going to ban abortions."

So long as anti-abortion political initiatives focus on subsidiary issues like 24-hour waiting periods, parental involvement in minors' decision-making and partial-birth bans, they will not run up against the stable majority consensus that firmly supports Roe's protection of a legal right to abortion.

But any appearance of pro-life momentum should not be oversold, for our recent history--especially the strong pro-choice groundswell that occurred between Webster and Casey--shows that the fundamental limits on pro-life success are clear.

Likewise, any worries about a decisive change in the composition of the Supreme Court must consider how politically irrational it would be for the Bush administration to put forward a predictably anti-Roe nominee who would precipitate nationally televised Senate confirmation warfare and fail to win approval.

Most important of all, the Supreme Court itself, having invested so much of its own institutional stature and historical credibility on Roe's behalf in Casey, will not go back to the pre-1973 past short of an ideological transformation of American society that right-to-lifers hope for but that is almost impossible to imagine.

So don't spend too much time looking upward no matter how often you hear that for abortion, the sky again is about to fall. Roe vs. Wade is safe and sturdy today, and 30 more years from now, Roe will still remain standing just as it does today.

PHOTO: Members of "Rock For Life" a youth activist group opposed to abortion, pray across the street from the Washington Planned Parenthood offices on Monday. Reuters photo by Brendan McDermid