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Body

LINDA WERTHEIMER: Supreme Court nominee Ruth Bader Ginsburg began making the rounds on Capitol Hill today, meeting with individual senators. Her nomination is generally viewed with approval by both Republicans and Democrats, but her writing on the subject of abortion and the Supreme Court's Roe versus Wade decision that legalized abortion is being carefully scrutinized. NPR's Nina Totenberg reports.

NINA TOTENBERG: For nearly the last decade, Ruth Ginsburg has written and spoken about Roe versus Wade and her reservations about the way the Supreme Court dealt with the case. There is little doubt Judge Ginsburg is pro-choice, but she's also a judge who believes in judicial restraint where possible, and she has said in a number of forums that she believes that the court's 1973 Roe decision went too far too fast, that it robbed the political process of the possibility of resolving the issue, and that the decision was based on the wrong legal reasoning. The Roe case involved a Texas statute that made it a crime to have or perform abortions. In a number of articles and speeches, Judge Ginsburg has suggested that the court did the right thing in striking down the statute, but, that in its first major abortion case the court should not have done much more. She has said that in creating a kind of abortion code in Roe, the court prevented the states from regulating most abortions except to protect the health of the mother. In a lecture just three months ago, Judge Ginsburg suggested that the Roe decision had halted a movement in many states to liberalize abortion laws. She argued that if the ruling had been less encompassing, the question of abortion might have been settled more amicably in the state legislatures. Instead, she said, a well organized and vocal right to life movement rallied against Roe and almost succeeded in eliminating the right to abortion. Ginsburg went on to argue that the legal underpinning for Roe, the right to privacy, was the wrong way to approach the case. Rather, she argued, the court should have based its ruling on the constitution's guarantee to equal protection of the law and the notion that it is gender discrimination to treat women differently in making medical decisions because of pregnancy. Today President Clinton said he had not discussed the subject of abortion with Judge Ginsburg but he said he'd read her articles and speeches and took them to be in favor of abortion rights.

PRES: I think if you read the lecture, she is clearly pro-choice in the sense that she believes the government should not make that decision for the women of America. She disagrees with the rationale of the decision. I'm not sure I agree with her, as a matter of fact, on that issue, but I thought it was a very provocative and impressive argument.

NINA TOTENBERG: Nonetheless, Ginsburg's views have caused considerable consternation among some women's rights advocates. Kate Michelman is director of the National Abortion Rights Action League.

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KATE MICHELMAN: What I'm concerned about, in terms of Judge Ginsburg's criticisms of Roe, is that she raises concerns that she would, in fact, give states control over this right or agree that states might have some ability to interfere in this decision.

NINA TOTENBERG: Janet Benchuv [sp], an abortion rights advocate who argues cases in the Supreme Court regularly, says she disagrees with Ginsburg about the court moving too fast in Roe. The states, she says, would have continued to bar women from having abortions or at least to make abortions very difficult to obtain; but, with hindsight, she agrees that the court's legal reasoning was mistaken.

JANET BENCHUV: The present court is sort of stuck in looking at women's rights in a certain way. They can only look at women's rights where women want to be just like men. You know, if I want to work on an assembly line and get \$5 an hour, they understand that a woman should also- that a man and woman should both get \$5 an hour; but if I'm working on an assembly line making the same as a man but I don't get maternity leave, they say that's not sex discrimination because if he could get pregnant he wouldn't get it either, and I think that begs a point in that her article, which says she would have come at abortion differently, points out the whole conundrum in the court on women, pregnancy, and sex discrimination.

NINA TOTENBERG: Abortion opponents say that, in their view, Ginsburg's legal reasoning would have led to still more abortions. Here's Paige Cunningham [sp], president of Americans United for Life.

PAIGE CUNNINGHAM: Under a gender-discrimination theory, I think her outcome would be that abortion would be unrestricted, and I think it would go as far as to include taxpayer-funded abortions.

NINA TOTENBERG: And, Operation Rescue's Randall Terry is unequivocal about Ginsburg.

RANDALL TERRY: Them packaging her as a moderate and selling her to us as a moderate is- is, frankly, pathetic. If this woman is a moderate, I'm the Flying Nun.

NINA TOTENBERG: Terry is furious at Republicans for not opposing Ginsburg.

RANDALL TERRY: The lack of spine in the Republican Party is pathetic. It seems like the only first principles that the Republican Party has is to keep in power. When the Democrats are facing a candidate that's pro-life, they fight tooth and nail. Why, then, are the Republicans selling us out already, saying that this woman's a moderate and promising to vote for her? This is pathetic.

NINA TOTENBERG: I'm Nina Totenberg, in Washington.

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