

U.S. Supreme Court outlaws medical procedure

Abortion ruling sets new precedent putting the fetus before the woman

May 22, 2007

Sandwiched between news of the Virginia Tech massacre and the issuing of subpoenas over Alberto Gonzalez's firing of eight U.S. Attorneys, the U.S. Supreme Court appeared on the bench and announced a major decision that reverses part of the historic Roe v. Wade precedent set in 1973.

The April 18th ruling upholds the ban placed on some abortions passed by Congress in 2003 and signed into law by President Bush.

"Today's decision affirms that the Constitution does not stand in the way of the people's representatives enacting laws reflecting the compassion and humanity of America," the President said in a press release.

Even the title of the Partial-Birth Abortion Ban Act is controversial. Written and adopted during the "culture of corruption" era when Tom Delay served as Speaker of the House, many representatives argued that since the fetus is not viable when the medical procedure in question is performed, the reference to "partial birth" is misleading.

"As a result of today's ruling, the health of women who have dangerous pregnancies is now



Photo: Megan Porter/NARAL

Speaking at a City Hall rally following the bad news is Dr. Pratima Gupta, Physician, Physicians for Reproductive Choice and Health. On the far left is Whitney Hoyt, political director for NARAL Pro-Choice California.

in deep jeopardy," Senator Boxer thundered on the Senate floor shortly after the Supreme Court upheld the act. What obstetricians call "intact dilation and extraction" is a procedure in which a doctor uses forceps to pull the entire fetus out of the womb. It's typically employed when health complications have arisen in the prospective mother. If it's late in the second trimester, the traditional method of vacuuming a fetus out in many pieces can harm the uterus and other internal organs. According to Boxer, "Women who are in need of this banned procedure will be denied it, even if they risk losing their fertility, becoming paralyzed, or sustaining organ damage."

Other types of abortions are

still legal. While federal aid no longer covers the costs for the uninsured, California and a few other states continue to pick up the tab for poor women.

Justice Ruth Bader Ginsburg wrote the dissenting opinion in the 5-to-4 ruling. In a departure from normal court decorum, she read her dissent aloud from the bench.

Describing the majority's opinion as "alarming", Bader said it "cannot be understood as anything other than an effort to chip away at a right declared again and again by this court, and with increasing comprehension of its centrality to women's lives." The conservative majority, Ginsburg claimed, "tolerates, indeed

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applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases” by doctors’ groups, including gynecologists.”

At issue is the court’s apparent rejection of a legal concept known as *starry decisio*, which means in Latin, “to stand by the thing decided.” Since *Roe v. Wade*, the constitutional rights of the woman had always prevailed, except in cases where the fetus had become viable (i.e. able to survive on its own). With the new ruling, neither the potential risks to a woman’s health nor the inability of the fetus to survive figure into the equation. Doctors who adhere to accepted medical practice and continue to perform the procedure could now end up in prison.

Oddly, while the majority opinion cited moral issues concerning unborn life, it left open the door for a woman to use other, more invasive abortion methods in the same situation. Ginsburg noted that inconsistency in her dissent, implying that deeper issues concerning women’s rights were involved in the ruling.

President Bush’s Supreme Court appointments of Samuel Alito and Chief Justice John Roberts are already generating a sea change in civil rights law on a number of fronts.



Amy Everitt

According to the *New York Times*, the justices recently heard arguments in a case involving the McCain-Feingold campaign finance law passed by Congress in 2002. Back in 2003, Justice Sandra Day O’Connor tipped the scales in *McConnell v. Federal Election Commission*, which upheld major provisions of that law, including restrictions on campaign-season television advertising paid for by corporations and labor unions.



Photo: Gregory Raphael

Attorney for *Roe* in *Roe v. Wade* Sarah Weddington, shown here at a NARAL seminar on a recent anniversary of the historic decision.

According to the *Times*, the new case considers that same ban in a slightly different context.

“If Alito takes the position of the dissenters” in the 2003 case, said Richard H. Pildes, a law professor at New York University interviewed by the *Times*, “that would represent a profound transformation in the power of Congress to reach campaign finance practices. The betting line is that he’s likely to go that way.”

Before Alito’s appointment to the court in 2006, O’Connor had defied conservative ideology, providing the crucial swing vote in cases involving affirmative action, campaign finance and separation of church and state. Appointed by Ronald Reagan in 1981, her tenure infuriated many conservatives and the Christian right, which subsequently refused to endorse any woman to serve on the bench.

Ironically, it was O’Connor’s

pivotal vote in another 5-to-4 ruling that put George W. Bush in office, which set up the unraveling of her legacy on the bench. Many analysts maintain that the exit polling that gave Al Gore the victory in the Florida presidential election on 2000 wasn’t erroneous and that improper ballot procedures skewed the vote tally in that state. The Supreme Court ruling suspended the recount, however, giving Bush the needed electoral votes to become President.

Responding to the latest abortion decision, Senator Boxer and New York Representative Jerrold Nadler have introduced the Freedom of Choice Act, a bill which would codify *Roe v. Wade* into law and guarantee a woman’s right to choose in all 50 states. However, even if the legislation were to pass both houses, President Bush would likely veto it.

The Supreme Court ruling went into effect 25 days after its

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announcement. Estimates of the number of women receiving the intact dilation and extraction procedure annually range from 2,500 to 5,000.

California NARAL Gears Up for Fight

Amy Everitt, who directs the state affiliate of the National Abortion Rights Action League (NARAL), said her organization will focus its energies next year on defeating the 18 members of the California congressional delegation who supported the Partial-Birth Abortion Act. The group also endorses the Freedom of Choice Act introduced by Senator Boxer.

"The part that we can't undo is where the Supreme Court gave the green light to anti-choice forces to pass laws at the state level that also repeal the court tenet of Roe that a women's health had to be paramount," said Everitt. "Justice Kennedy, who wrote the decision, took a hard right into Scalia-land. It was just so shocking in its departure from 30 years of set law."

This is the first time in the history of the country that a safe medical procedure has been outlawed, she noted. "Congress and the Supreme Court are now practicing medicine without a license."

Since 70 percent of all Congress members have worked their way up from positions in local government, NARAL monitors all municipal elections from school board on up, backing candidates who support choice. In California, the group sends regular email alerts to about 150,000 members and activists. NARAL also conducts speaker trainings and the program House Calls, which sends delegations to visit elected representatives an lobby for pro-choice legislation.

The California chapter of

NARAL itself is not easy to reach, according to Everitt. That's because the telephone company has not listed the organization in the phone book since it first ordered service years ago. Funded by private donations and grants from public foundations, NARAL's Pine Street office employs a staff of six.

Since Bay Area congressional representatives already vote the pro-choice ticket, Everitt said NARAL pays more attention to non-urban areas around the state.

"We go to where the conversation needs to take place, which isn't necessarily San Francisco," she said, "but it's a much a harder conversation and so you have to train people."

Last year, a NARAL member in Placerville reported that her daughter was receiving an abstinence-only curriculum for sex education in a Placerville public high school. Everitt said she and her staff contacted representatives of NARAL partner organizations and together confronted school authorities about the problem. Public schools are required by law to present honest, accurate and comprehensive information to students, said Everitt.

For more info about NARAL, visit prochoiceca.org or call 415.890.1020.

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