

WHAT EVERY ADVOCATE NEEDS TO KNOW ABOUT THE Federal Abortion Ban

Can you imagine a politician making medical decisions for you?

No? Well, that's exactly what the Federal Abortion Ban does. By upholding the Federal Abortion Ban — the first-ever federal ban on abortion without a provision to protect a woman's health — the U.S. Supreme Court told women that politicians, not doctors, will make their medical decisions for them. Under this law, doctors could face *criminal penalties* for doing what their experience and professional training tells them is best for their patients. Health care providers should not have to choose between exercising their best medical judgment and going to jail. Politicians who are not trained in medicine and who cannot possibly know or understand the intricacies of each individual situation have no place interfering with the doctor-patient relationship. Only a doctor is qualified to determine what is the most medically appropriate care for his or her patients.

What's in a name?

The official name of this law, the "Partial-Birth Abortion Ban Act of 2003," was chosen by its anti-choice proponents to suggest that it applies to abortions that occur very late in pregnancy. However, the law is not really about banning "late-term" abortion procedures and is not limited to abortions performed in the third trimester of pregnancy. In fact, forty states and the District of Columbia already ban third-trimester abortions except when the life or health of the woman is endangered. Rather, this law is part of a larger agenda to ban all abortions. There is nothing in the law that references the point in pregnancy when this law applies. Rather, the law's supporters have used misleading rhetoric to try to convince the public that it deals with abortions in the late third trimester and to mask that it in fact bans a safe and medically appropriate procedure used in the second trimester of pregnancy.

"Partial-birth abortion" is not a medical term, and doctors do not agree on what procedures it covers. For this reason, pro-choice advocates should refer to the law as the Federal Abortion Ban because that's exactly what this law is: the first-ever federal ban on an abortion procedure without a health exception.

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What does the Supreme Court decision really mean?

1. For thirty years, the Supreme Court has consistently held that, when politicians have placed restrictions on abortion, a woman's health must always be paramount. That is no longer the case. For the first time in history, politicians have been allowed to craft a law saying that a woman can be denied medical care even when her health is in danger. This is very scary because it opens the door for politicians to pass more abortion restrictions without protections for a woman's health.

2. In this decision, the Supreme Court has ruled that politicians know more about medical care than doctors. Ignoring the expert medical testimony of OB/GYNs, the Supreme Court deferred to the opinion of politicians and ruled that a safe, effective abortion procedure is never medically necessary. Rather than trusting doctors to use their best medical judgment when it comes to an individual patient's care, they allowed politicians to intrude in the private doctor-patient relationship. The Supreme Court told women that from now on, politicians — not doctors — will be making their health care decisions for them.

3. The Supreme Court showed a stunning disrespect for women in this case with Justice Anthony M. Kennedy writing in the Court's opinion that he wanted to shield women from making a decision that they may not understand and might later come to regret. This offensive and paternalistic attitude — now enshrined in Supreme Court jurisprudence — prompted Justice Ruth Bader Ginsburg to respond in her dissent that "the Court deprives women of the right to make an autonomous choice, even at the expense of their safety."

Even though the Supreme Court had previously made clear that restrictions on abortion procedures must include an exception to preserve a woman's health and cannot be so broadly written as to encompass safe second-trimester abortions, the authors of the Federal Abortion Ban chose not to include a health exception and chose to write it nearly as broadly as the Nebraska ban. Under clear and recent Supreme Court precedents, this law should therefore have been ruled unconstitutional.

Although courts in three federal circuits had already struck down the Federal Abortion Ban as unconstitutional, the Supreme Court upheld this dangerous law in April 2007.

Immediately after President Bush signed the Federal Abortion Ban into law in 2003, lawsuits were filed by the Center for Reproductive Rights (*Carhart v. Gonzales*), the American Civil Liberties Union (*National Abortion Federation v. Gonzales*) and Planned Parenthood Federation of America (*Planned Parenthood v. Gonzales*) in federal trial courts in Nebraska, New York, and California, respectively. All three trial courts declared the law unconstitutional because it lacked the necessary health exception. The Nebraska and California courts also found the law unconstitutionally broad because it would outlaw some of the most common abortion procedures performed as early as 12 weeks in pregnancy. The government appealed the rulings in each case to the Second (New York), Eighth (Nebraska), and Ninth (California) Circuit Courts of Appeal, and each appeals court affirmed the lower court's rulings. The government appealed the rulings in the Eighth (*Gonzales v. Carhart*) and Ninth (*Gonzales v. Planned Parenthood Federation of America*) Circuit cases, and the U. S. Supreme Court has agreed to hear these appeals. Oral arguments for both cases were heard on November 8, 2006.

On April 18, 2007, in a 5-4 decision, the Supreme Court upheld the Federal Abortion Ban in the cases *Gonzales v. Planned Parenthood Federation of America* and *Gonzales v. Carhart*. The ban criminalizes an abortion procedure employed in the second trimester of pregnancy even when the woman's health is in jeopardy. By upholding this law, the Supreme Court has effectively eliminated the core protections of the landmark *Roe v. Wade* decision that held that any restriction on abortion MUST include a provision to safeguard a pregnant woman's health. That is no longer the case. As a result of this federal law, even solidly pro-choice states such as New York are subject to this ban's restrictions. Further, the doors have been opened to allow states to pass laws further restricting a woman's ability to access abortion services. Justice Ruth Bader Ginsburg wrote the dissenting opinion, joined by Justices Stephen G. Breyer, David H. Souter, and John Paul Stevens: "Today's decision is alarming. It tolerates, indeed applauds, Federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists (ACOG)." Physicians who are convicted of violating the ban will face up to two years in federal prison for providing medically appropriate care that they believe to be in the best interest of their patient.



How can I talk about this issue?

- The American public should be absolutely outraged by this unprecedented and dangerous intrusion into the private relationship between a woman and her doctor.
- This stunning decision, which defies both common sense and established law, inserts politicians and the Supreme Court in the middle of private health care decisions.
- It is abundantly clear that the anti-choice majority of the Court has joined the Bush administration and is willing to support laws that interfere with medical decisions even when they jeopardize a woman's health.
- This ruling represents a seismic shift for the Supreme Court and the nation. With new Bush appointees, this Court has unraveled more than 30 years of precedent protecting women's health. The future of legal access to abortion in this country is grim.
- The Bush court told women that politicians, not doctors, will make their medical decisions for them. This ruling is an insult to women. As Justice Ginsburg says in her dissent, it "reflects ancient notions about women's place in the family and under the Constitution."
- This ban is part of a larger agenda to criminalize abortion. This ruling risks opening the floodgates to state and federal attempts to limit access to

The Supreme Court ignored thirty years of precedent protecting women’s health. In fact, this Federal Abortion Ban is similar to a Nebraska law that was previously struck down by the Supreme Court as unconstitutional.

In 2000, just three years before President Bush signed the Federal Abortion Ban into law, the Supreme Court struck down a Nebraska abortion ban — a law to which the Federal Abortion Ban is nearly identical — as unconstitutional. In that case, *Stenberg v. Carhart*, the Supreme Court ruled that the Nebraska abortion ban was unconstitutional for two reasons:

No health exception: The Nebraska ban did not include a health exception to protect women, just as the Federal Abortion Ban does not. The majority opinion in *Stenberg* confirmed that when a state regulates abortion procedures, its paramount consideration must be a woman’s health. Stating that Supreme Court precedent has “made clear that a State may promote but not endanger a woman’s health when it regulates the methods of abortion,” the Court concluded “the governing standard requires an exception ‘where it is necessary, in appropriate medical judgment for the preservation of the life or health of the mother.’” *Stenberg v. Carhart*, 530 U.S. 914, 931 (2000).

Undue burden: The Nebraska ban was so broadly worded that it would have prevented doctors from performing procedures used in more than 90% of abortions provided in the second trimester. Because the Nebraska ban reached safe and appropriate abortion procedures used during the second trimester of pregnancy, the Court ruled that the Nebraska ban imposed an undue burden on a woman’s constitutionally protected right to choose abortion.

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Major medical associations are opposed to the Federal Abortion Ban

Many major medical professional organizations oppose government bans on safe, medically appropriate abortions. The American College of Obstetricians and Gynecologists (ACOG), which represents more than 90% of all OB/GYN specialists in the U.S., has stated: “The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.” Organizations of health professionals that have stated their opposition to the Federal Abortion Ban include:

- American College of Nurse Practitioners
- American College of Obstetricians and Gynecologists
- American Medical Student Association
- American Medical Women’s Association
- American Nurses Association
- American Public Health Association
- Association of Reproductive Health Professionals
- Association of Schools of Public Health
- Association of Women Psychiatrists
- National Asian Women’s Health Organization
- National Association of Nurse Practitioners in Reproductive Health
- National Black Women’s Health Project
- National Latina Institute for Reproductive Health
- National Women’s Health Network
- Physicians for Reproductive Choice and Health

President Bush signs the Federal Abortion Ban into law November 5, 2003

American Civil Liberties Union files challenge

National Abortion Federation v. Gonzales
District Court for the Southern District of New York

On August 26, 2004, the district court ruled that the ban “cannot be sustained because it does not provide for an exception to protect the health of the mother.”

The government appealed the case to the U.S. Court of Appeals for the Second Circuit.

Planned Parenthood files challenge

Planned Parenthood Federation of America v. Gonzales
District Court for the Northern District of California

On June 1, 2004, the district court struck down the ban because the omission of a health exception and its overbreadth render the law unconstitutional.

The government appealed the case to the U.S. Court of Appeals for the Ninth Circuit.

Center for Reproductive Rights files challenge

Carhart v. Gonzales

District Court for the District of Nebraska

On September 8, 2004, the district court struck down the law as unconstitutional because it fails to include an exception to protect a woman’s health and is an undue burden on a woman’s right to an abortion.

The government appealed the case to the U.S. Court of Appeals for the Eighth Circuit.

Government appeals District Court’s ruling

Gonzales v. National Abortion Federation
Second Circuit Court of Appeals

On January 31, 2006, the Second Circuit affirmed the district court’s ruling that the ban requires a health exception. The Second Circuit asked the parties for further legal briefing to determine how to fix the law’s constitutional problem.

Government appeals District Court’s ruling

Gonzales v. Planned Parenthood Federation of America
Ninth Circuit Court of Appeals

On January 31, 2006, the Ninth Circuit affirmed the district court’s decision striking down the ban.

Government appeals District Court’s ruling

Gonzales v. Carhart
Eighth Circuit Court of Appeals

On July 8, 2005, a unanimous panel of three judges affirmed the district court’s ruling on the health exception grounds.

Government appeals Circuit Court’s ruling

Gonzales v. Planned Parenthood Federation of America, Gonzales v. Carhart
U.S. Supreme Court

On April 18, 2007, the Supreme Court issued a 5-4 decision upholding the Federal Abortion Ban. This ban outlaws a type of second-trimester abortion procedure, even if a woman’s health is in jeopardy.