

Gonzales v. Carhart (2007) ^[1]

By: Zhang, Mark Keywords: Abortion ^[2] Fetus ^[3]

In *Gonzales v. Carhart* (2007), the US Supreme Court held in a five-to-four decision that the 2003 [Partial-Birth Abortion Ban Act](#) ^[5] passed by the US Congress was constitutional. Although the Court previously ruled in *Stenberg v. Carhart* (2000) that a Nebraska law that prohibited [partial-birth abortions](#) ^[6] was unconstitutional, *Gonzales* reversed this decision. *Gonzales* created the precedent that anyone who delivers and kills a living [fetus](#) ^[7] could be subject to legal consequences, unless he or she performed the procedure to save the life of the mother.

Before the *Gonzales* decision, both the US Court of Appeals for the Eighth Circuit and the US Court of Appeals for the Ninth Circuit had ruled that the federal [Partial-Birth Abortion Ban Act](#) ^[5] of 2003 was unconstitutional. The ban outlawed all partial-birth abortions?any procedure in which the physician partially delivers and then kills a living fetus?that were not necessary to preserve the life of the mother. In the US, between eighty-five and ninety percent of the 1.3 million abortions that were performed annually at the time took place during the first [trimester](#) ^[8], or first three months of [pregnancy](#) ^[9]. The most common procedures performed during the first [trimester](#) ^[8] do not include partial-birth [abortion](#) ^[10] and, therefore, the law does not regulate them. Of the remaining abortions that occurred, most were done during the second [trimester](#) ^[8]. The most common method for performing a second [trimester](#) ^[8] [abortion](#) ^[10] is the [dilation and evacuation](#) ^[11] procedure, or D&E. Congress passed the [Partial-Birth Abortion Ban Act](#) ^[5] to regulate the practice of a form of D&E known as intact D&E, [dilation and extraction](#) ^[12] (D&X), or intact D&X, in which the fetus?s legs and torso are extracted and its brain is suctioned out so that its skull collapses and can more easily pass through the [cervix](#) ^[13].

The [Partial-Birth Abortion Ban Act](#) ^[5] was tested in two separate cases. A group of physicians who performed second-[trimester](#) ^[8] abortions, led by [LeRoy Carhart](#) ^[14], challenged the law in the US District Court in Nebraska in 2003's *Carhart v. Ashcroft*, while the [organization](#) ^[15] [Planned Parenthood Federation of America](#) ^[16] did so in the US District Court in the Northern District of California in 2004's *Planned Parenthood Federation of America* ^[16] *v. Ashcroft*. Both district courts prohibited the US Attorney General from upholding the Partial-Birth Abortion Act, and the Courts of Appeal for the Eighth and Ninth Circuits upheld those decisions. [Alberto Gonzales](#) ^[17], the US Attorney General, appealed to the US Supreme Court, which consolidated both cases into *Gonzales v. Carhart*.

Justice Anthony Kennedy?s majority opinion outlined the reasons that the Supreme Court chose to overrule the decisions of the lower courts. Chief Justice John Roberts and Justices Samuel Alito, Clarence Thomas, and Antonin Scalia joined Kennedy in the majority opinion. Relying on the precedent set in *Planned Parenthood of Southeastern Pa. v. Casey* (1992), the majority held that the [Partial-Birth Abortion Ban Act](#) ^[5] was valid as the government has a "legitimate and substantial interest in preserving and promoting fetal life." Kennedy notes that the two circuit courts had ruled the law unconstitutional primarily because it lacked an exception allowing the procedure when necessary to maintain the health of the mother.

However, Kennedy argues, the federally established [Partial-Birth Abortion Ban Act](#) ^[5] accounted for such an exception because it did not prohibit ordinary D&E, but rather it prevented physicians only from performing the more controversial intact D&E. In an intact D&E, the doctor first delivers a living [fetus](#) ^[7] past its navel, and then performs an overt act that kills the partially delivered [fetus](#) ^[7]. As the law allowed intact D&Es to be performed when necessary to save the mother's life, it therefore did not endanger the health of the mother.

In response to concerns regarding the Partial-Birth Abortion Act's vagueness, Kennedy held that unlike other unconstitutional partial-birth [abortion](#) ^[10] laws, the new ban specifically defined the prohibited procedure. In fact, the law prevented only overt acts causing the living fetus's death after it had been delivered past the anatomical landmark of its navel or, in the case of a head-first delivery, after the entire fetal head was outside the mother's body. The ban did not extend to D&Es in which the [fetus](#) ^[7] is removed in pieces or D&Es in which the [fetus](#) ^[7] is killed via lethal injection *in utero*. According to Kennedy's decision, the [Partial-Birth Abortion Ban Act](#) ^[5] also did not impose an undue burden on the mother to find alternatives, as several other options existed for a legal [abortion](#) ^[10] after the first [trimester](#) ^[8].

A dissenting opinion was written by Justice Ruth Bader Ginsburg and supported by Justices David Souter, John Paul Stevens, and Stephen Breyer. Ginsburg argued that the outcome of *Gonzales* did not follow the precedents established by the US Supreme Court in its 1992 *Casey* and in its 2000 *Stenberg* decisions, which together prevented limitations from being imposed on abortions. Furthermore, Ginsburg argued that federal intervention should not be tolerated regarding intact D&Es, as the [American College of Obstetricians](#) ^[18] had found the procedure necessary and proper in certain instances. Ginsburg concluded that the ruling was a reversal of prior [abortion](#) ^[10] rulings.

Gonzales influenced the modern [abortion](#) ^[10] debate. While previous rulings had legalized abortions in general, the extent to which they could be performed was still a largely contested topic. In validating the [Partial-Birth Abortion Ban Act](#) ^[5] of 2003, *Gonzales* established a new legal precedent allowing such prohibitory laws to be created. Since *Gonzales*, several medical organizations and scientific publications, including the *New England Journal of Medicine*, have disparaged the precedent as posing a threat to physicians who perform legal D&Es. Similarly, others condemn the ruling as shifting the focus of [abortion](#) ^[10] from women's health to preserving societal morality.

Sources

1. Annas, George J. "The Supreme Court and Abortion Rights." *The New England Journal of Medicine* 356 (2007): 2201-7.
2. Bostom, Barry A. "Gonzales v. Carhart." *Issues in Law and Medicine* 23 (2007): 89-93.
3. Carhart v. Ashcroft, 287 F. Supp. 2d 1015 (2003).
[http://scholar.google.com/scholar_case?q=Carhart+v.+Ashcroft,+287+F.+Supp.+2d+1015+\(2003\)](http://scholar.google.com/scholar_case?q=Carhart+v.+Ashcroft,+287+F.+Supp.+2d+1015+(2003))
^[19] (Accessed January 9, 2014).
4. Charo, R. Alta. "The Partial Death of Abortion Rights." *New England Journal of Medicine* 356 (2007): 2125-8.
5. Gee, Graham. "Regulating Abortion in the United States after *Gonzales v. Carhart*." *The Modern Law Review* 70 (2007): 979-92.
6. *Gonzales v. Carhart*, 550 U.S. 124 (2007).

http://scholar.google.com/scholar_case?q=Gonzales+v.+Carhart&hl=en&as_sdt=806&case=7079

[20] (Accessed January 3, 2014).

7. [Partial-Birth Abortion Ban Act](#) [5] of 2003, 18 U.S.C. § 1531 (2003).
<http://www.law.cornell.edu/uscode/text/18/1531> [21] (Accessed January 9, 2014).
8. [Planned Parenthood Federation of America](#) [16] v. Ashcroft, 320 F. Supp. 2d 957 (2004).
http://scholar.google.com/scholar_case?q=Planned+Parenthood+Federation+of+America+v.+Ash
[22] (Accessed January 9, 2014).
9. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).
http://scholar.google.com/scholar_case?q=Planned+Parenthood+of+Southeastern+Pennsylvania
[23] (Accessed January 3, 2014).
10. Stenberg v. Carhart, 530 U.S. 914 (2000).
http://scholar.google.com/scholar_case?q=Stenberg+v.+Carhart&hl=en&as_sdt=806&case=19021
[24] (Accessed January 3, 2014).

In *Gonzales v. Carhart* (2007), the US Supreme Court held in a five-to-four decision that the 2003 Partial-Birth Abortion Ban Act passed by the US Congress was constitutional. Although the Court previously ruled in *Stenberg v. Carhart* (2000) that a Nebraska law that prohibited partial-birth abortions was unconstitutional, *Gonzales* reversed this decision. *Gonzales* created the precedent that anyone who delivers and kills a living fetus could be subject to legal consequences, unless he or she performed the procedure to save the life of the mother.

Subject

Abortion [25] Dilatation and extraction abortion [26] United States. Partial-Birth Abortion Ban Act of 2003 [27] Fetus [28] Pregnancy [29] Late-term abortion [30] Women's health services [31] Constitutional courts [32] Abortion, Criminal [33] Abortion, Induced [34]

Topic

Legal [35] Reproduction [36]

Publisher

Arizona State University. School of Life Sciences. Center for Biology and Society. Embryo Project Encyclopedia.

Rights

© Arizona Board of Regents Licensed as Creative Commons Attribution-Share Alike 3.0 Unported <http://creativecommons.org/licenses/by-sa/3.0/> Licensed as Creative Commons Attribution-NonCommercial-Share Alike 3.0 Unported (CC BY-NC-SA 3.0) <http://creativecommons.org/licenses/by-nc-sa/3.0/>

Format

Articles [37]

Last Modified

Wednesday, July 4, 2018 - 04:40

DC Date Accessioned

Thursday, August 16, 2012 - 21:14

DC Date Available

Thursday, August 16, 2012 - 21:14

DC Date Created

2012-02-28

DC Date Created Standard

Tuesday, February 28, 2012 - 07:00

- [Contact Us](#)

© 2018 Arizona Board of Regents

- The Embryo Project at Arizona State University, 1711 South Rural Road, Tempe
Arizona 85287, United States

Source URL: <https://embryo.asu.edu/pages/gonzales-v-carhart-2007>

Links:

[1] <https://embryo.asu.edu/pages/gonzales-v-carhart-2007>

[2] <https://embryo.asu.edu/keywords/abortion>

[3] <https://embryo.asu.edu/keywords/fetus>

[4] <https://embryo.asu.edu/search?text=Gonzales%20v.%20Carhart%20%282007%29>

[5] <https://embryo.asu.edu/search?text=Partial-Birth%20Abortion%20Ban%20Act>

[6] <https://embryo.asu.edu/search?text=partial-birth%20abortions>

[7] <https://embryo.asu.edu/search?text=fetus>

[8] <https://embryo.asu.edu/search?text=trimester>

[9] <https://embryo.asu.edu/search?text=pregnancy>

[10] <https://embryo.asu.edu/search?text=abortion>

[11] <https://embryo.asu.edu/search?text=dilation%20and%20evacuation>

[12] <https://embryo.asu.edu/search?text=dilation%20and%20extraction>

[13] <https://embryo.asu.edu/search?text=cervix>

[14] <https://embryo.asu.edu/search?text=LeRoy%20Carhart>

[15] <https://embryo.asu.edu/search?text=organization>

[16] <https://embryo.asu.edu/search?text=Planned%20Parenthood%20Federation%20of%20America>

[17] <https://embryo.asu.edu/search?text=Alberto%20Gonzales>

[18] <https://embryo.asu.edu/search?text=American%20College%20of%20Obstetricians>

[19]

[http://scholar.google.com/scholar_case?q=Carhart+v.+Ashcroft,+287+F.+Supp.+2d+1015+\(2003\).&hl=en&as_sdt=806&case=7079370](http://scholar.google.com/scholar_case?q=Carhart+v.+Ashcroft,+287+F.+Supp.+2d+1015+(2003).&hl=en&as_sdt=806&case=7079370)

[20]

http://scholar.google.com/scholar_case?q=Gonzales+v.+Carhart&hl=en&as_sdt=806&case=7079370

[21] <http://www.law.cornell.edu/uscode/text/18/1531>

[22]

http://scholar.google.com/scholar_case?q=Planned+Parenthood+Federation+of+America+v.+Ashcroft&hl=en&as_sdt=806&case=7079370

[23]

http://scholar.google.com/scholar_case?q=Planned+Parenthood+of+Southeastern+Pennsylvania+v.+Casey&hl=en

[24]

http://scholar.google.com/scholar_case?q=Stenberg+v.+Carhart&hl=en&as_sdt=806&case=1902129

[25] <https://embryo.asu.edu/library-congress-subject-headings/abortion>

[26] <https://embryo.asu.edu/library-congress-subject-headings/dilatation-and-extraction-abortion>

[27] <https://embryo.asu.edu/library-congress-subject-headings/united-states-partial-birth-abortion-ban-act-2003>

[28] <https://embryo.asu.edu/library-congress-subject-headings/fetus>

[29] <https://embryo.asu.edu/library-congress-subject-headings/pregnancy>

[30] <https://embryo.asu.edu/library-congress-subject-headings/late-term-abortion>

[31] <https://embryo.asu.edu/library-congress-subject-headings/womens-health-services>

[32] <https://embryo.asu.edu/library-congress-subject-headings/constitutional-courts>

[33] <https://embryo.asu.edu/medical-subject-headings/abortion-criminal>

[34] <https://embryo.asu.edu/medical-subject-headings/abortion-induced>

[35] <https://embryo.asu.edu/topics/legal>

[36] <https://embryo.asu.edu/topics/reproduction>

[37] <https://embryo.asu.edu/formats/articles>