JUSTIA

# Gonzales v. Carhart, 550 U.S. 124 (2007)

Overview | Opinions | Materials

05-380 February 21, 2006 November 8, 2006

**Decided:**
April 18, 2007

## Annotation

**PRIMARY HOLDING**

The Fourteenth Amendment does not prevent states from passing a law against partial-birth abortion if the state bases the reasoning for the law on special ethical and moral concerns that do not apply to most other forms of abortion.

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## Syllabus

**SYLLABUS**
**OCTOBER TERM, 2006**
**GONZALES V. CARHART**

**SUPREME COURT OF THE UNITED STATES**

GONZALES, ATTORNEY GENERAL *v.* CARHART et al.

certiorari to the united states court of appeals for the eighth circuit

No. 05–380. Argued November 8, 2006—Decided April 18, 2007

Following this Court's *Stenberg* v. *Carhart*, 530 U. S. 914, decision that Nebraska's "partial birth abortion" statute violated the Federal Constitution, as interpreted in *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, and *Roe* v. *Wade*, 410 U. S. 113, Congress passed the Partial-Birth Abortion Ban Act of 2003 (Act) to proscribe a particular method of ending fetal life in the later stages of pregnancy. The Act does not regulate the most common abortion procedures used in the first trimester of pregnancy, when the vast majority of abortions take place. In the usual second-trimester procedure, "dilation and evacuation" (D&E), the doctor dilates the cervix and then inserts surgical instruments into the uterus and maneuvers them to grab the fetus and pull it back through the cervix and vagina. The fetus is usually ripped apart as it is removed, and the doctor may take 10 to 15 passes to remove it in its entirety. The procedure that prompted the federal Act and various state statutes, including Nebraska's, is a variation of the standard D&E, and is herein referred to as "intact D&E." The main difference between the two procedures is that in intact D&E a doctor extracts the fetus intact or largely intact with only a few passes, pulling out its entire body instead of ripping it apart. In order to allow the head to pass through the cervix, the doctor typically pierces or crushes the skull.

The Act responded to *Stenberg* in two ways. First, Congress found that unlike this Court in *Stenberg,* it was not required to accept the District Court's factual findings, and that that there was a moral, medical, and ethical consensus that partial-birth abortion is a gruesome and inhumane procedure that is never medically necessary and should be prohibited. Second, the Act's language differs from that of the Nebraska statute struck down in *Stenberg*. Among other things, the Act prohibits "knowingly perform[ing] a partial-birth abortion … that is [not] necessary to save the life of a mother," 18 U. S. C. §1531(a). It defines "partial-birth abortion," §1531(b)(1), as a procedure in which the doctor: "(A) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the [mother's] body … , or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the [mother's] body … , for the purpose of performing an overt act that the person knows will kill the

partially delivered living fetus"; and "(B) performs the overt act, other than completion of delivery, that kills the fetus."

In No. 05–380, respondent abortion doctors challenged the Act's constitutionality on its face, and the Federal District Court granted a permanent injunction prohibiting petitioner Attorney General from enforcing the Act in all cases but those in which there was no dispute the fetus was viable. The court found the Act unconstitutional because it (1) lacked an exception allowing the prohibited procedure where necessary for the mother's health and (2) covered not merely intact D&E but also other D&Es. Affirming, the Eighth Circuit found that a lack of consensus existed in the medical community as to the banned procedure's necessity, and thus *Stenberg* required legislatures to err on the side of protecting women's health by including a health exception. In No. 05–1382, respondent abortion advocacy groups brought suit challenging the Act. The District Court enjoined the Attorney General from enforcing the Act, concluding it was unconstitutional on its face because it (1) unduly burdened a woman's ability to choose a second-trimester abortion, (2) was too vague, and (3) lacked a health exception as required by *Stenberg*. The Ninth Circuit agreed and affirmed.

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## Opinions

**Opinion (Kennedy)** | Concurrence (Thomas) | Dissent (Ginsburg)

Hear Opinion Announcement - April 18, 2007

**OPINION OF THE COURT**
**GONZALES V. CARHART**
**550 U. S. _____ (2007)**

**SUPREME COURT OF THE UNITED STATES**
**NOS. 05-380 AND 05-1382**

ALBERTO R. GONZALES, ATTORNEY GENERAL, PETITIONER

05–380 *v.*

*LEROY CARHART et al.*

*on writ of certiorari to the united states court of appeals for the eighth circuit*

*ALBERTO R. GONZALES, ATTORNEY GENERAL, PETITIONER*

*05–1382 v.*

*PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., et al.*

*on writ of certiorari to the united states court of appeals for the ninth circuit*

*[April 18, 2007]*

*Justice Kennedy* delivered the opinion of the Court.

These cases require us to consider the validity of the Partial-Birth Abortion Ban Act of 2003 (Act), 18 U. S. C. §1531 (2000 ed., Supp. IV), a federal statute regulating abortion procedures. In recitations preceding its operative provisions the Act refers to the Court's opinion in *Stenberg* v. *Carhart*, 530 U. S. 914 (2000), which also addressed the subject of abortion procedures used in the later stages of pregnancy. Compared to the state statute at issue in *Stenberg*, the Act is more specific concerning the instances to which it applies and in this respect more precise in its coverage. We conclude the Act should be sustained against the objections lodged by the broad, facial attack brought against it.

In No. 05–380 *(Carhart)* respondents are LeRoy Carhart, William G. Fitzhugh, William H. Knorr, and Jill L. Vibhakar, doctors who perform second-trimester abortions. These doctors filed their complaint against the Attorney General of the United States in the United States District Court for the District of Nebraska. They challenged the

## Materials

**Oral Arguments**

Oral Argument - November 08, 2006

## Procedural History

### Prior History

- Carhart v. Gonzales, 413 F.3d 791 (8th Cir. 2005)

## Attorneys

Priscilla Smith (plaintiffs)

Paul Clement (defendants)

## Search This Case

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