

FINAL REVIEW, Stenberg

STENBERG V. CARHART

JUSTICE BREYER OPINION:

-Voided the Nebraska ban on partial birth abortion for two main reasons.

-1) The Prohibition on partial birth abortions in the 2nd trimester lack exception for the health of the mother required by the ruling in Casey.

-He says "A state cannot subject women's health to significant risks...where state regulations force woman to use riskier methods of abortion (D&E vs D&X)...A risk to a woman's health is the same whether it happens to arise from regulating a particular method of abortion, or from barring abortion entirely".

-In regards to the phrase "Necessary, in appropriate medical judgment for the preservation of life and health of the mother", necessary does not require absolute proof or consensus because those things are hardly present in any major medical decision.

-2) Nebraska statute also violated the right to abortion as it pushed D&E over D&X even when the latter can be a safer option. "By restricting the safest and most common form of second trimester abortion, the statute imposed an undue burden under Casey".

JUSTICE STEVENS CONCURRENCE

-"The notion that either of these two equally gruesome procedures performed at this late stage of gestation is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational".

JUSTICE GINSBURG CONCURRENCE

-She accused the Nebraska law of chipping away at the right to abortion.

KENNEDY DISSENT

-He argues through a graphic description of the D&X procedure that because of the similarity in appearance to infanticide, "Nebraska's ban on partial birth abortion furthers purposes states are entitled to pursue".

-Kennedy asserts that the point of Casey was to give greater freedom to the states to draw their own opinions of abortion.

-In response to Stevens, he says "The issue is not whether members of the judiciary can see a difference between the two procedures. It is whether Nebraska can."

-Because D&E can be used in the second trimester, even at slightly higher risk, Nebraska is justified in maintaining its ban of D&X out of interests in "the sanctity of life" because there are safe alternatives.

-"The difference in physical safety is, at best, marginal".

-The statute only really covers the D&X procedure.

THOMAS DISSENT

-Thomas accuses the majority opinion of drawing more from Roe and Casey than was there. While the former two cases articulated a situation where a woman must get an abortion, the decision in this case addressed issues of method.

-Further, "Although Roe and Casey mandate a health exception for cases in which abortion is necessary for a woman's health, the majority concludes that a procedure is "necessary" if it has any comparative benefits".

-Thomas asserts that this health exception eviscerates the undue burden standard of Casey and allows for abortion on demand any time a doctor says something might be safer.

-"The Majority's insistence on a health exception is a fig leaf barely covering its hostility to any abortion regulation by the states---a hostility that Casey purported to reject..."