

US federal judge rules anti-abortion law unconstitutional

Jamie Chapman
9 June 2004

A federal judge in San Francisco ruled on June 1 that the Partial-Birth Abortion Ban Act of 2003 violates constitutional protections of a woman's right to abortion. In her 117-page ruling, US District Judge Phyllis J. Hamilton cited three fatal defects in the legislation, which was signed by President Bush last November after passing both the House and the Senate by nearly two to one margins, where it received critical support from congressional Democrats.

The first defect was that the law placed an undue burden on the woman's right to choose an abortion at any time up to the point (normally about 24 weeks) that the fetus could live outside the womb. The second defect was that the language of the act was unconstitutionally vague, and could make illegal much more commonly employed types of second trimester abortions. The third defect was the failure to incorporate an exception for the health of the mother.

Hamilton's brief cited Supreme Court precedent for each of the key issues, particularly the 5-4 ruling in 2000 overturning a Nebraska law that sought to ban the same procedure. Hamilton rejected government contentions that minor changes that federal lawmakers made from the earlier Nebraska legislation affected the evaluation of the constitutional issues.

In particular, she criticized the failure to use standard medical terminology or definitions for the procedure being banned, leaving great latitude for interpretation.

This lack of precision was no accident. In order to garner support for the anti-abortion bill long sought by the Christian fundamentalist "right-to-lifers," the medically defined term "dilation and extraction," or D&X, was replaced with "partial-birth abortion," a term that does not exist in medical literature but which has the advantage of sounding particularly gruesome. As the judge pointed out, the definition in the

legislation, lacking any medical precedent, could be used to ban the much more common dilation and evacuation (D&E) as well as another method called induction, potentially making procedures that constitute 95 percent of second trimester abortions illegal.

No doubt this was the goal of the legislation's drafters, although they claimed to be focusing only on the D&X operation. Anti-abortion forces have for years been seeking to overturn or at least substantially undermine the 1973 *Roe v. Wade* decision that recognized a woman's legal right to abortion, after many years when working class women, unable to afford to travel to clinics outside the country where abortion was legal, suffered the risks and the all-too-often deadly consequences of back-alley abortions.

What is striking about the Partial-Birth Abortion Ban Act of 2003 is how flagrantly it defies legal precedents, including those set by the same right-wing-dominated Supreme Court which installed Bush in the White House in the notorious *Bush v. Gore* decision, in the same year that the majority struck down the Nebraska ban on late-term dilation and extraction.

There was little effort to craft legislation which would have any hope of passing Supreme Court review. Even the justices who twisted the concept of "equal protection" to justify suppressing a legally authorized recount of the presidential ballots in Florida would have difficulty reversing their own precedent set only four years ago by the same nine justices.

In her opinion written to explain her decision to cast the decisive fifth vote against the Nebraska ban, Justice Sandra Day O'Connor said that no prohibition of an abortion procedure could hope to pass constitutional muster unless it contained a clearly written exception for the life and health of the mother. The drafters of PABA included an exception for the life of the mother,

but refused to include an exception for health, knowing that this made a successful court challenge all but certain.

The bill was a blatantly political maneuver, aimed at providing some raw meat for the religious right. It is likely that the Bush White House and the congressional Republican leadership expected it to be struck down by the courts during the summer of 2004, thus allowing them to issue demagogic attacks on “liberal judges” to rally their fundamentalist base in the election campaign.

The California court case is the first of three lawsuits challenging the Partial-Birth Abortion Ban Act of 2003 to reach a verdict. The other two lawsuits were filed in federal courts in Nebraska and in New York.

All three judges issued temporary injunctions preventing the Justice Department from enforcing the abortion ban pending the outcome at trial. In her ruling, the California judge made the injunction permanent with respect to doctors from Planned Parenthood, who brought the suit, and against City of San Francisco physicians, who joined the suit, and who provide reproductive counseling and abortion services to mostly indigent women at San Francisco General Hospital.

Judge Hamilton declined to extend the permanent injunction to actions against all doctors nationwide, pending the rulings of the Nebraska and New York district courts.

In response to the ruling, White House press secretary Scott McClellan stated, “The president is committed to building a culture of life in America, and the administration will take every necessary step to defend this law in the courts.” A spokeswoman for the Justice Department, while not committing to an appeal of the ruling, said, “The Department will continue to devote all resources necessary to defend this Act of Congress.” She also referred to Bush building a “culture of life in America.”

Bush’s credentials as an advocate of a “culture of life” include not only the instigation of two major wars, which have already killed tens of thousands in Afghanistan and Iraq, but his earlier role in Texas, where he presided over more state executions than any other governor in the United States, dooming more than 150 death row inmates, including those who were mentally incompetent and those convicted for crimes committed when they were children.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact