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“Laden With the Power to Devalue Human Life” — The Supreme Court Rules Again on Abortion

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In an historic 5-4 decision, the U.S. Supreme Court has affirmed the government's right to ban the partial birth abortion procedure. The Court reversed the rulings of six lower courts that had struck down the ban. The measure had been passed by Congress and signed into law by President Bush in 2003.

Associate Justice Anthony Kennedy wrote the majority opinion. Kennedy has succeeded retired Justice Sandra Day O'Connor as the most frequent “swing” vote among the nine justices. Kennedy also wrote the majority opinion in the 1992 *Planned Parenthood v. Casey* decision — a decision that basically affirmed the Court's infamous 1973 decision legalizing abortion, *Roe v. Wade*.

The decision handed down Wednesday, *Gonzales v. Carhart* [see full text of decision and opinions [here](#)] was a stunning blow to pro-abortion forces because it represented the first time a specific abortion procedure had been successfully banned.

A closer look at the majority opinion reveals even more. Justice Kennedy acknowledged that, for many, even the most common abortion procedure is “a procedure itself laden with the power to devalue human life.” This is rather amazing language in itself, but Justice Kennedy then argued that the partial birth procedure “implicates additional ethical and moral concerns that justify a special prohibition.”

The explicit inclusion of this moral language marks a great achievement in this decision. So is the decision's acknowledgement that “it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained.”

Then, follow the progression of this argument:

In a decision so fraught with emotional consequence some doctors may prefer not to disclose precise details of the means that will be used, confining themselves to the required statement of risks the procedure entails. From one standpoint this ought not to be surprising. Any number of patients facing imminent surgical procedures would prefer not to hear all details, lest the usual anxiety preceding invasive medical procedures become the more intense. This is likely the case with the abortion procedures here in issue. . . .

It is, however, precisely this lack of information concerning the way in which the fetus will be killed that is of legitimate concern to the State. . . . The State has an interest in ensuring so grave a choice is well informed. It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form.

Justice Samuel Alito and Chief Justice John Roberts joined in Kennedy's opinion. Justices Antonin Scalia and Clarence Thomas joined the decision, but issued a separate concurring opinion that included this bold assertion: "[T]he Court's abortion jurisprudence, including *Casey* and *Roe v. Wade* . . . has no basis in the Constitution."

In an angry dissent, Justice Ruth Bader Ginsburg declared the majority decision to be "alarming." Most remarkably, she attacked the majority's concern for the emotional health of mothers (due to the unique bond between mother and child), proclaiming that concern to be "discredited."

Here is her statement:

This way of thinking reflects ancient notions about women's place in the family and under the Constitution—ideas that have long since been discredited.

The acknowledgement of a unique bond between mother and child, born or unborn, is an "ancient" notion long since "discredited?"

Justices John Paul Stevens, David Souter, and Stephen Breyer joined Ginsburg in her dissenting opinion.

April 18, 2007 will go down in history as a landmark day in the struggle to recover human dignity and the sanctity of human life. This ruling is an important step toward that recovery — and we still have a very long way to go. There is reason to believe that this decision may be even more important than might first appear. After all, the majority opinion does recognize that for many citizens, any abortion is "a procedure laden with the power to devalue human life."

