

Vote Tuesday, November 7

Lifespan *news*

Special Edition

Serving Southeastern Michigan Since 1970

October 2000

Right to Life

In these troubled times when all our
Morals and values are under attack,
There is one struggle we all must share
For those who cannot fight back.

I speak of the unborn child—
No more oppressed minority can there be.
Why is he denied his one basic right
In America, "the land of the free"?

Some say it's a matter of free will,
Others say it's an individual's choice,
I say that all who care must speak out
For those who have no voice.

The taking of a human life
Brings shame upon us all.
The murder of our children
Is a crime we must outlaw.

So if we raise our voices
For the cause in which we strive,
We can prevent this slaughter,
And protect our right to life.

—Author Unknown

**WHAT IS PARTIAL-BIRTH ABORTION?
HOW CAN WE STOP IT?**

Please, turn the page—

Democrats court pro-abortion voters

The Democratic Party took the unprecedented move of inviting the head of the nation's largest pro-abortion group, the National Abortion and Reproductive Rights Action League (NARAL), to speak from the platform at their national convention during prime time.

Michelman told the Democratic Convention that, "A woman's right to choose...could be lost in only one day—Election Day. That's way we must elect Al Gore and Joe Lieberman."

Michelman continued:

"With the appointment of just two justices hostile to *Roe v. Wade*, the freedom to choose will be lost.

One election is all it takes. It is that simple. This election is that serious. If he has the opportunity, George W. Bush will appoint enough Supreme Court justices to overturn *Roe v. Wade* and end legal abortion.

At every opportunity, Governor Bush has made clear his intent to restrict a woman's right to choose. He is one of the nation's most anti-choice governors. He won his party's nomination on an anti-choice platform.

Amazingly, Governor Bush found a running mate even more anti-choice than he is.

Al Gore and Joe Lieberman...are pro-choice...

Al Gore and Joe Lieberman will protect a woman's right to choose..."

Vice President Al Gore has a recent history of close association with NARAL. In 1997, Vice President Gore gave the keynote address at NARAL's annual *Roe v. Wade* Luncheon. In it he stated, "America's women have the right to choose, and no one will ever steal that right away. The right to choose is fundamental, lodged in our Constitution, affirmed by our Supreme Court. And, on behalf of President Clinton, I vow to you here, and to all listening, that we will never ever let anyone take that right away."

At that same luncheon, NARAL President Kate Michelman praised the Clinton-Gore White House for their support of *Roe v. Wade*, stating, "We stand here on the very edge of a new

presidential term. The first pro-choice President and Vice-President since *Roe v. Wade* was decided...We thank Bill Clinton and Al Gore for saving *Roe*...Thank you. Thank you for this day. For this celebration of *Roe*."

The Democratic convention also featured Kristina Kiehl, co-founder of the pro-abortion Voters for Choice, and identified as a member of the Democratic party Platform Committee. Kiehl told the audience, "Choice, our platform's fundamental constitutional liberty, is just one Supreme Court justice away from being overturned. The two or three Supreme Court justices appointed by our next president will have as profound an impact on our children's generation as *Roe v. Wade*...did on ours." She concluded, "We need Al Gore and Joe Lieberman."

"NARAL President Kate Michelman's speech has made it clear that Al Gore and the national Democratic Party think it is smart politics to be aggressively pro-abortion," said Wanda Franz, Ph.D., president of the National Right to Life Committee, "We believe pro-life voters will prove them wrong in November."

—National Right to Life Committee, Inc.
Press Release, August 16, 2000

Consider this...

Robert H. Bork, Senior Fellow at the American Enterprise Institute and a professor at the Ave Maria School of Law, has stated, in a recent article, appearing in *First Things*:

"If Al Gore becomes President, we will certainly see nominees whose confirmation will put the Court on an extreme activist course for years to come and, if the past is any guide, the results will not be undone if and when more restrained Justices replace them. The "constitutional" right to an abortion will be entrenched and expanded. The prospect for banning even partial-birth abortions, or, more accurately, infanticides, will dwindle to zero."

Remember these admonitions when you go to the polls on **November 7.**

**YOU CAN
DO SOMETHING ON NOV. 7
TO STOP THE SLAUGHTER
OF BABIES. WILL YOU?**

VOTE ON NOVEMBER 7

In the hopes that you have all the necessary information to vote as a pro-life member, we have accepted a paid ad from Right to Life of Michigan PAC.

With our Sept./Oct. newsletter and this special edition, you should have all the pertinent facts to make an informed decision when entering the polling booth on November 7.

Share the knowledge with your friends and family—Remind them to vote on Tuesday, November 7.

Right to Life - Lifespan is a 501.c4 organization and does not endorse candidates. The paid advertising in this newsletter does not imply any endorsement by Right to Life - Lifespan.

Correction to Candidate Survey

Lifespan has received an amended candidate survey from Grant Garrett, a candidate for the 9th District, U. S. House of Representatives.

His corrected response to question #7 in our September, October 2000 issue, "Do you OPPOSE laws allowing assisted suicide?" is Yes.

Lifespan News

Special Edition 2000

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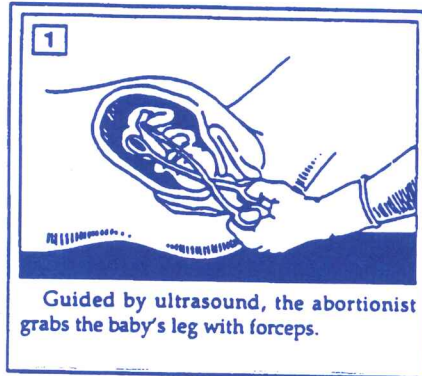
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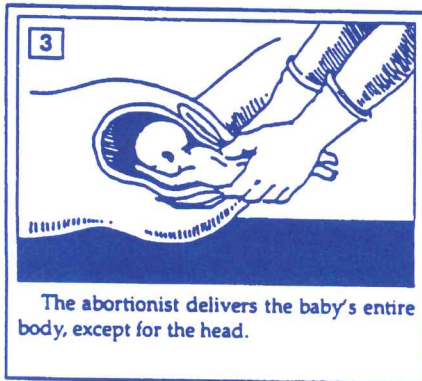
PARTIAL-BIRTH ABORTION



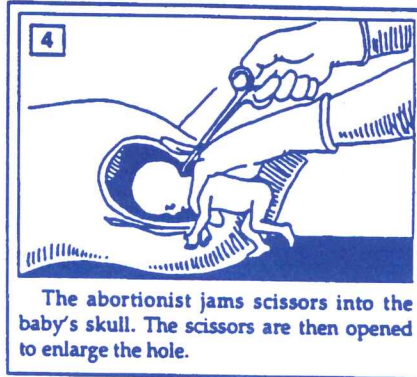
Guided by ultrasound, the abortionist grabs the baby's leg with forceps.



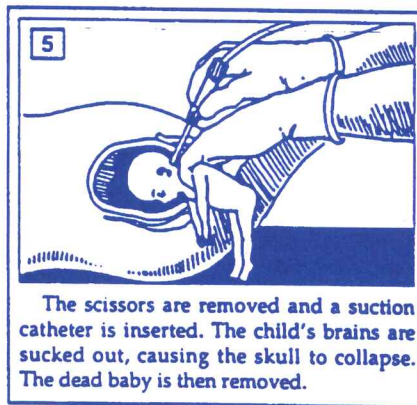
The baby's leg is pulled out into the birth canal.



The abortionist delivers the baby's entire body, except for the head.



The abortionist jams scissors into the baby's skull. The scissors are then opened to enlarge the hole.



The scissors are removed and a suction catheter is inserted. The child's brains are sucked out, causing the skull to collapse. The dead baby is then removed.

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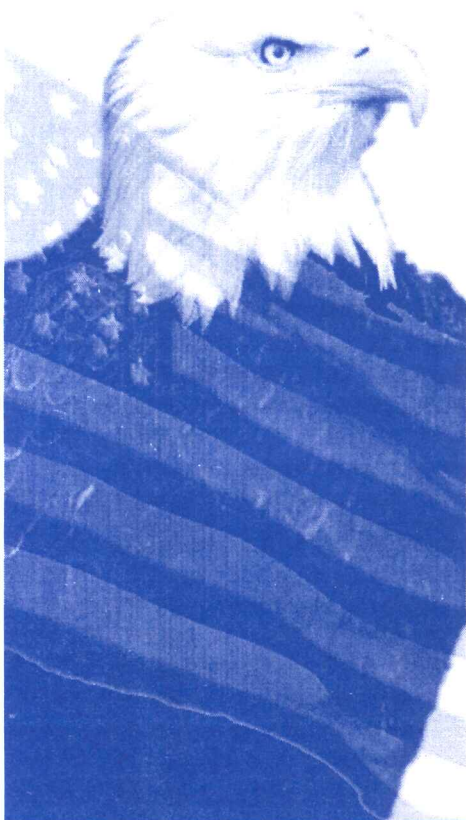
On June 28, 2000, the Supreme Court struck down a Nebraska law that banned the procedure known as partial-birth abortion, extending the precedent established by the 1973 *Roe v. Wade* decision to include this most inhumane and gruesome procedure.

In addition, the 3rd Circuit Court of Appeals also struck down New Jersey's partial-birth abortion ban. The court said that in contrast to an infant whose mother intends to give birth, an infant who is killed during a partial-birth abortion is not entitled to protections of the law because the woman was clearly not seeking to give birth.

What this implies is that once a child is marked for an abortion, it does not matter at all if the child emerges from the womb as a live baby—the woman did not intend to deliver a live baby and there is no legal reason to protect that life.

Partial-birth abortion, RU-486—it doesn't matter. A woman has been given not only the right to an abortion, but also the right to a dead baby. The Born-Alive Infant Protection Act, which passed the U.S. House of Representatives on a 380-15 vote on Sept. 26 provides that once a child is born, he or she cannot be killed or allowed to die because he or she is unwanted. The measure now moves to the Senate.

The only sure way of returning protection to babies who survive an abortion and of stopping partial-birth abortions is to provide **PRO-LIFE LEADERSHIP** at the highest levels of our government. It seems that the Clinton/Gore administration will leave a legacy that is deadly to unborn children and removes the dignity deserved by all women. We need to be sure that the next administration will restore respect and dignity to all members of our human family.



GENERAL ELECTION VOTING GUIDE

ON THE
FOLLOWING PAGES

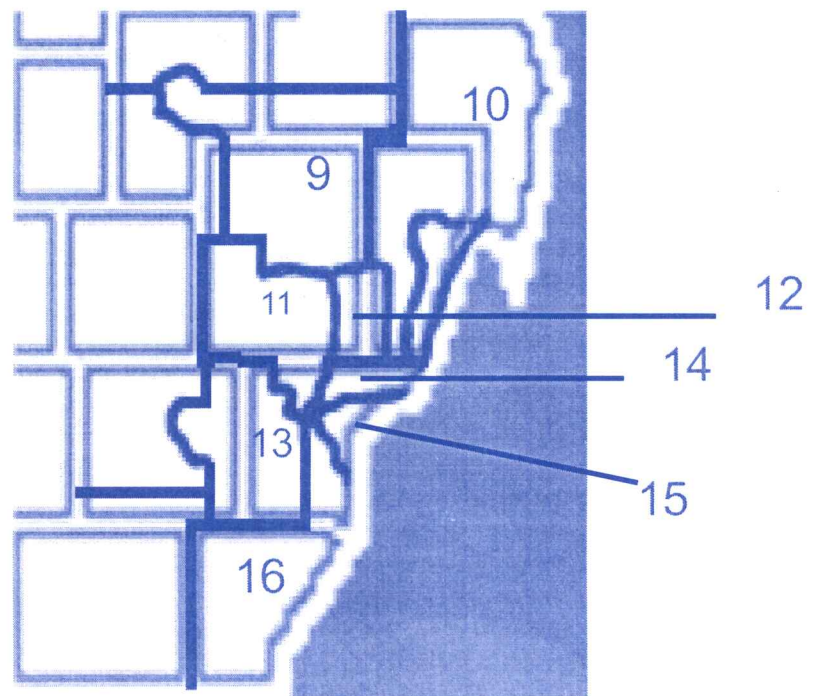
**PROTECT LIFE
ON NOV. 7**

To learn more about
Right to Life of Michigan
Political Action Committee
endorsements for the
General Election,
visit the RLM web site at
www.rtl.org

TAKE THE FOLLOWING PROLIFE VOTER'S GUIDE TO THE POLLS ON NOVEMBER 7

& VOTE FOR PROLIFE CANDIDATES

CONGRESSIONAL DISTRICTS



9TH CONGRESSIONAL DISTRICT**RLM-PAC Endorsements****PRESIDENT & VICE PRESIDENT***George W. Bush & Dick Cheney (R)***U.S. SENATE***Spencer Abraham (R)****U.S. CONGRESS***Dale Kildee (D)****STATE HOUSE DISTRICTS**

42	Robert Gosselin (R)*	48	No Endorsement
43	No Endorsement	49	No Endorsement
44	Michael Kowall (R)*	50	George Cunningham (R)
45	Mike Bishop (R)*	82	Jud Gilbert (R)*
46	No Endorsement	83	Stephen Ehardt (R)*
47	No Endorsement		

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[ELECT 3]

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Clifford Taylor*
Robert Young***2ND APPEALS COURT** [Elect 1]*Genesee & Oakland Counties***J. Martin Brennan****6TH CIRCUIT** [Elect 1]*Oakland County***Richard Kuhn, Jr.****52ND DISTRICT COURT****3rd DIVISION** [Elect 1]*Oakland County***BOTH MEET CRITERIA****68TH DISTRICT COURT** [Elect 1]*Genesee County***Raymond Branch*****LAPEER COUNTY PROBATE** [Elect 1]**Justus Scott****10TH CONGRESSIONAL DISTRICT****RLM-PAC Endorsements****PRESIDENT & VICE PRESIDENT***George W. Bush & Dick Cheney (R)***U.S. SENATE***Spencer Abraham (R)****U.S. CONGRESS***Tom Turner (R)***STATE HOUSE DISTRICTS**

26	Wm. Callahan (D)*	33	Janet Kukuk (R)*
27	No Endorsement	81	Lauren Hager (R)*
31	Diane Zontini (R)	82	Jud Gilbert (R)*
32	Alan Sanborn (R)*		

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Clifford Taylor*
Robert Young***2ND APPEALS COURT** [Elect 1]*Macomb County***J. Martin Brennan****39th DISTRICT COURT** (Incumbent) [Elect 1]*Fraser & Roseville Cities***Marco Santia*****40th DISTRICT COURT** [Elect 1]*St. Clair Shores City***Mark Fratarcangeli****41(a) DISTRICT COURT**

[Elect 1]

*Shelby & Macomb Townships***Doug Shepherd****41(b) DISTRICT COURT**

(Partial Term)

*Mt. Clemens City; Clinton
& Harrison Townships***Joseph Kosmala**

11TH CONGRESSIONAL DISTRICT

RLM-PAC Endorsements

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U.S. SENATE

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U.S. CONGRESS

*Joe Knollenberg (R)**

STATEHOUSE DISTRICTS

16	Bob Brown (D)*	38	Nancy Cassis (R)*
19	No Endorsement	39	Marc Shulman (R)*
20	No Endorsement	40	No Endorsement
36	No Endorsement	44	Michael Kowall (R)*
37	Andrew Raczowski (R)*	46	No Endorsement

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WSU BOARD OF GOVERNORS

Michael Kelly (R)

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NONPARTISAN BALLOT

STATE SUPREME COURT JUSTICES [ELECT 3]

*Stephen Markman**

*Clifford Taylor**

*Robert Young**

1ST COURT OF APPEALS

(Incumbent, Partial Term) [ELECT 1]

*Kurtis Wilder**

1ST COURT OF APPEALS

(Non-Incumbent) [ELECT 1]

Both Meet Criteria

2ND APPEALS COURT [Elect 1]

J. Martin Brennan

3RD CIRCUIT COURT

(Incumbent) [Elect 18]

*Karen Fort Hood**

*Chris Murray**

*Daniel Ryan**

3RD CIRCUIT COURT [Elect 2]

Annette Berry

Kathleen McCarthy

6TH CIRCUIT COURT [Elect 1]

Richard Kuhn, Jr.

48TH DISTRICT COURT [Elect 1]

Diane D'Agostini

WAYNE COUNTY COMMUNITY COLLEGE TRUSTEE

*Mary Ellen Stempfle**

12TH CONGRESSIONAL DISTRICT

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U.S. CONGRESS

Bart Baron (R)

STATEHOUSE DISTRICTS

27	No Endorsement	34	Douglas MacLean (R)
28	Paul Wojno (D)*	35	No Endorsement
29	Jennifer Faunce (R)*	36	No Endorsement
30	Sal Rocca (R)	41	John Pappageorge (R)*
32	Alan Sanborn (R)*	42	Robert Gosselin (R)*

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Michael Kelly (R)

Mary Kay Shields (R)

NONPARTISAN BALLOT

STATE SUPREME COURT JUSTICES [ELECT 3]

*Stephen Markman**

*Clifford Taylor**

*Robert Young**

2ND APPEALS COURT [Elect 1]

Macomb & Oakland Counties

J. Martin Brennan

6TH CIRCUIT COURT [Elect 1]

Oakland County

Richard Kuhn, Jr.

41(a) DISTRICT COURT [Elect 1]

Macomb County

Doug Shepherd

13TH CONGRESSIONAL DISTRICT**RLM-PAC Endorsements****PRESIDENT & VICE PRESIDENT***George W. Bush & Dick Cheney (R)***U.S. SENATE***Spencer Abraham (R)****U.S. CONGRESS***No Endorsement***STATE HOUSE DISTRICTS**

16	Bob Brown (D)*	22	Ray Basham (D)*
17	BOTH MEET CRITERIA	23	George Mans (D)*
18	Patricia Gibbons (R)	52	No Endorsement
19	No Endorsement	53	No Endorsement
20	No Endorsement	54	Thomas Banks (R)
21	Bruce Patterson (R)*	55	Gene DeRossett (R)*

WAYNE COUNTY COMMISSION

9	Kathleen Husk (R)*	14	Joseph Palamara (D)*
11	Robert Bovitz (R)		

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Mary Kay Shields (R)***NONPARTISAN BALLOT****STATE SUPREME COURT JUSTICES [ELECT 3]***Stephen Markman*
Clifford Taylor*
Robert Young****1ST COURT OF APPEALS (Incumbent, Partial Term) [ELECT 1]***Wayne County**Kurtis Wilder****1ST COURT OF APPEALS (Non-Incumbent) [ELECT 1]***Wayne County**Both Meet Criteria***3RD CIRCUIT COURT (Incumbent) [Elect 18]***Wayne County**Karen Fort Hood*
Chris Murray*
Daniel Ryan****3RD CIRCUIT COURT [Elect 2]***Wayne County**Annette Berry
Kathleen McCarthy***WAYNE COUNTY COMMUNITY COLLEGE TRUSTEE***Mary Ellen Stempfle****14TH CONGRESSIONAL DISTRICT****RLM-PAC Endorsements****PRESIDENT & VICE PRESIDENT***George W. Bush & Dick Cheney (R)***U.S. SENATE***Spencer Abraham (R)****U.S. CONGRESS***No Endorsement***STATE HOUSE DISTRICTS**

1	Andrew Richner (R)*	11	No Endorsement
2	No Endorsement	12	No Endorsement
4	No Endorsement	13	No Endorsement
5	No Endorsement	14	No Endorsement
6	No Endorsement	16	Bob Brown (D)*
10	No Endorsement		

WAYNE COUNTY COMMISSION

9	Kathleen Husk (R)*	14	Joseph Palamara (D)*
11	Robert Bovitz (R)		

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Mary Kay Shields (R)***NONPARTISAN BALLOT****STATE SUPREME COURT JUSTICES [ELECT 3]***Stephen Markman*
Clifford Taylor*
Robert Young****1ST COURT OF APPEALS***(Incumbent, Partial Term) [ELECT 1]**Kurtis Wilder****1ST COURT OF APPEALS (Non-Incumbent) [ELECT 1]***Both Meet Criteria***3RD CIRCUIT COURT (Incumbent) [Elect 18]***Karen Fort Hood*
Chris Murray*
Daniel Ryan****3RD CIRCUIT COURT [Elect 2]***Annette Berry
Kathleen McCarthy***36TH DISTRICT COURT (Incumbent) [Elect 10]***Maria Luisa Oxholm****WAYNE COUNTY COMMUNITY COLLEGE TRUSTEE***Mary Ellen Stempfle**

15TH CONGRESSIONAL DISTRICT

RLM-PAC Endorsements

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U.S. SENATE

*Spencer Abraham (R)**

U.S. CONGRESS

No Endorsement

STATEHOUSE DISTRICTS

- | | | | |
|---|---------------------|----|----------------|
| 1 | Andrew Richner (R)* | 8 | No Endorsement |
| 2 | No Endorsement | 9 | No Endorsement |
| 3 | No Endorsement | 11 | No Endorsement |
| 4 | No Endorsement | 13 | No Endorsement |
| 6 | No Endorsement | 25 | No Endorsement |
| 7 | No Endorsement | | |

WAYNE COUNTY COMMISSION

- | | | | |
|----|--------------------|----|----------------------|
| 9 | Kathleen Husk (R)* | 14 | Joseph Palamara (D)* |
| 11 | Robert Bovitz (R) | | |

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Scott Romney (R)

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WSU BOARD OF GOVERNORS

Michael Kelly (R)
Mary Kay Shields (R)

NONPARTISAN BALLOT

STATESUPREME COURT JUSTICES [ELECT 3]

Stephen Markman*
Clifford Taylor*
Robert Young*

1ST COURT OF APPEALS (Incumbent, Partial Term) [ELECT 1]

Wayne County
Kurtis Wilder*

1ST COURT OF APPEALS (Non-Incumbent) [ELECT 1]

Wayne County
Both Meet Criteria

3RD CIRCUIT COURT (Incumbent) [Elect 18]

Wayne County
Karen Fort Hood*
Chris Murray*
Daniel Ryan*

3RD CIRCUIT COURT [Elect 2]

Annette Berry
Kathleen McCarthy

WAYNE COUNTY COMMUNITY COLLEGE TRUSTEE

Mary Ellen Stempfle*

16TH CONGRESSIONAL DISTRICT

RLM-PAC Endorsements

PRESIDENT & VICE PRESIDENT

George W. Bush & Dick Cheney (R)

U.S. SENATE

*Spencer Abraham (R)**

U.S. CONGRESS

No Endorsement

STATEHOUSE DISTRICTS

- | | | | |
|----|---------------------|----|-------------------------|
| 15 | Gary Woronchak (R)* | 24 | William O'Neil (D)* |
| 16 | Bob Brown (D)* | 25 | No Endorsement |
| 22 | Ray Basham (D)* | 55 | Gene DeRossett (R)* |
| 23 | George Mans (D)* | 56 | Randy Richardville (R)* |

MONROE CO. PROSECUTOR

Michael Weipert (D)

MONROE CO. CLERK

Diana Ohanesian (R)

WAYNE COUNTY COMMISSION

- | | | | |
|----|--------------------|----|----------------------|
| 9 | Kathleen Husk (R)* | 14 | Joseph Palamara (D)* |
| 11 | Robert Bovitz (R) | | |

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NONPARTISAN BALLOT

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Clifford Taylor*
Robert Young*

1ST COURT OF APPEALS

(Incumbent, Partial Term) [ELECT 1] *Wayne County*
Kurtis Wilder*

1ST COURT OF APPEALS

(Non-Incumbent) [ELECT 1] *Wayne County*
Both Meet Criteria

3RD CIRCUIT COURT (Incumbent) [Elect 18]

Wayne County
Karen Fort Hood*
Chris Murray*
Daniel Ryan*

3RD CIRCUIT COURT [Elect 2]

Annette Berry
Kathleen McCarthy

WAYNE COUNTY COMMUNITY COLLEGE TRUSTEE

Mary Ellen Stempfle*

“Woe to those who call evil, good...”

The Supreme Court and Its Partial-Birth Abortion Decision

The following is taken from a collection of essays entitled The Supreme Court 2000: A Symposium, in First Things, October 2000 and reprinted with permission. This selected essay is by David M. Smolin.

In considering the blind spots of other generations or cultures from a safe distance, it becomes clear that there is no atrocity, no horror, no injustice which human beings, under some circumstances, will not defend, or even posit as a positive good. Present an injustice or atrocity in a way that appeals to a combination of perceived self-interest, ideological fit, and group superiority, and all classes of human beings, regardless of intelligence, educational level, or social position, will likely embrace it.

The atrocities we can critique from afar frequently fail to illumine our minds sufficiently to steer us away from those closer at hand, for self-interest, ideology, and pride are far more powerful blinders than we realize. Certainly it is difficult for a society as divided as contemporary America to come to a shared understanding on fundamental ethical issues.

Justice Antonin Scalia declares in *Stenberg v. Carhart* that he is “optimistic enough to believe” that the decision constitutionally protecting partial-birth abortion will “one day...be assigned its rightful place in the history of this Court’s jurisprudence beside *Korematsu* [validating internment of Japanese-Americans during World War II] and *Dred Scott* [holding white supremacy and racial slavery as fundamental tenets of American constitutionalism].” Justice Scalia is hoping that one day we will be as removed from the abortion controversy as we are today removed from past controversies over slavery and the internment of Japanese-Americans, and that this distance will be the consequence of having clearly and definitively rejected the injustice in question.

The alternatives to Justice Scalia’s “optimism” are either 1) to accept the viewpoint that partial-birth abortion is legally and ethically acceptable, or 2) to fear that America will never reach the place where it clearly rejects such horrific forms of killing. There have been, after all, empires, nations, regimes, and peoples that went through their entire history without ever turning from their particular injustices and atrocities. There is no guarantee of justice being realized in history—including American history—and we cannot be confident that Justice Scalia’s optimism will be vindicated.

Stenberg is historic because it constitutionally validates and protects an extreme and horrific form of abortion bordering on infanticide, while placing this validation in the context of explicitly gruesome descriptions of the various forms of late-term abortion. The legal issues and factual background of *Stenberg* forced each Justice to confront the raw facts of precisely how abortion brings about the destruction of the human fetus.

Stenberg centered on various methods of post-fifteen week abortion. The most common method of abortion at this stage, dilation and evacuation (D&E), generally involves the use of surgical instruments to dismember the fetus. Because of a technical point regarding interpretation of the Nebraska statute, the majority in *Stenberg* felt obligated to emphasize, in clinical language, that D&E involves pulling “a portion of the fetus through the cervix into the birth canal,” where the “traction” of the surgical instrument and the cervical opening produces dismemberment. Just in case anyone could miss the meaning of the majority’s clinical description, Justice Anthony Kennedy’s dissent translated this into lay language:

The fetus, in many cases, dies just as a human adult or child would: it bleeds to death as it is torn from limb to limb...The fetus can be alive at the beginning of the dismemberment process and can survive for a time while its limbs are being torn off...Dr. [Leroy] Carhart [the abortionist who challenged Nebraska’s partial-birth abortion ban] has observed fetal heartbeat...with “extensive parts of the fetus removed,”...and testified that mere dismemberment of a limb does not always cause death because he knows of a physician who removed the arm of a fetus only to have the fetus go on to be born “as a living child with one arm.” ...At the conclusion of a D&E abortion...the abortionist is left with “a tray full of pieces.”

Under *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), the states are powerless to prohibit D&E, since it is the most common method of abortion after fifteen weeks, and those cases mandate elective abortion until viability, and “health-indicated” abortion until birth. However, when abortion doctors in the early 1990s developed a new method of abortion—denominated variously as dilation and extraction (D&X), intact D&X, or intact D&E—the states and Congress reacted with extensive legislation activity prohibiting “partial-birth abortion.” The essence of this new method was to use obstetrical-type methods to deliver the fetus into the birth canal, with the exception of the head. The physician would then employ what is clinically known as a “head reduction procedure” on the often still-living fetus, and then deliver a relatively intact, but dead, fetus. Once again, Justice Kennedy’s dissent translates the procedure into ordinary language:

The fetus’ arms and legs are delivered outside the uterus while the fetus is alive; witnesses to the procedure report seeing the body of the fetus moving outside the woman’s body...At this point, the abortion procedure has the appearance of a live birth. As stated by one group of physicians, “as the physician manually performs breech extraction of the body of a live fetus, excepting the head, she continues in the apparent role of an obstetrician delivering a child.” ...With only the head of the fetus remaining in utero, the abortionist tears open the skull. According to Dr.

continued on page 10

Supreme Court

continued from back page

Martin Haskell, a leading proponent of the procedure, the appropriate instrument to be used at this stage of the abortion is a pair of scissors... Witnesses report observing the portion of the fetus outside the woman react to the skull penetration... The abortionist then inserts a suction tube and vacuums out the developing brain and other matter found within the skull.

Justice Clarence Thomas' dissent contains the testimony of a nurse who had observed such an abortion:

The baby's little fingers were claspings and unclaspings, and his little feet were kicking. Then the doctor stuck the scissors in the back of his head, and the baby's arms jerked out, like a startle reaction, like a flinch, like a baby does when he thinks he is going to fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby's brains out. Now the baby went completely limp.

The reactions of the Court majority to the abortion methods in question exemplified the fact that human beings can justify anything. Justice Stephen Breyer, writing for the majority, admitted that his descriptions of abortion procedures "may seem clinically cold or callous to some, perhaps horrifying to others." Justice John Paul Stevens (joined by Justice Ruth Bader Ginsburg) stated: "Although much ink is spilled today describing the gruesome nature of late-term abortion procedures, that rhetoric does not provide me a *reason* to believe that the procedure Nebraska here claims it seeks to ban is more brutal, more gruesome, or less respectful of 'potential life' than the equally gruesome procedure [D&E] Nebraska claims it still allows." Justice Stevens labeled it "irrational" to ban partial-birth abortion but not D&E, despite the fact that it is the Court's own precedents that made it impossible to ban D&E. Justice Ginsburg (joined by Justice Stevens) noted that "amidst all the emotional uproar caused by an abortion case," it should be remembered that the prohibition of partial-birth abortion would "not save any fetus from destruction," and anyway that D&E abortion "is no less distressing or susceptible to gruesome description." Justices Stevens and Ginsburg thus used the fact that D&E abortion is horrific, yet clearly protected by *Roe* and *Casey*, not as a reason to question *Roe* and *Casey*, but instead to belittle as "irrational" or anti-*Roe* any attempt to prohibit the killing of a child partially delivered outside of the mother's body. Having forced the nation to swallow elective dismemberment of late-term unborn children, these Justices declared it "irrational" and unconstitutional to resist partial-birth abortion.

The hardening of the abortion right, like the hardening of the hearts of the Justices, was visibly on display in *Stenberg*. The most significant legal issue was whether Nebraska's prohibition of partial-birth abortion was unconstitutional because it failed to provide a health exception. Nebraska argued that a health exception was unnecessary because partial-birth abortion was never necessary for the health of the mother. Nebraska's position was buttressed by various statements of the American Medical Association, which had previously supported a federal

version of the ban on partial-birth abortion, and which after expert study had been unable to identify any circumstance where partial-birth abortion was the only appropriate procedure. Similarly, a prior statement of the American College of Obstetricians and Gynecologists had concluded that it "could identify no circumstances under which [D&X] would be the only option to save the life or preserve the health of the woman."

Further, even the abortion doctors who had testified in favor of D&X abortion in fact had never used the technique, leading Justice Kennedy to label their testimony a "courtroom conversion." The most the majority could say, after reviewing opposing medical briefs, was that although there were no controlled medical studies, and although medically safe alternatives were always available, the disagreement by respectable medical opinion as to whether D&X was ever or generally *safer* to some degree made it constitutionally mandatory that the individual abortion doctor be allowed to select D&X abortion. Thus, although Justice Sandra Day O'Connor noted that an appropriately worded statute with a health exception might be constitutional, Justice Kennedy explained that such a statute would not prohibit a single partial-birth abortion, for given the Court's approach every individual physician would have to be permitted to determine whether there were "health" reasons for a partial-birth abortion.

*...pity humanity, ever finding
fresh ways to express
its depths of depravity...*

The Court further interpreted Nebraska's statute as potentially applicable to D&E abortion, and unconstitutional for that reason. This holding was far less significant in itself, since such a defect could be effectively cured by subsequent legislative amendment. More significant was the Court's return to its pre-*Casey* jurisprudence under which it typically interpreted abortion-related statutes to assure their unconstitutionality. Thus, the Court in *Stenberg* deliberately chose to interpret Nebraska's statute as applicable to D&E abortion despite a contrary interpretation by the State Attorney General and a plausible contrary statutory construction presented in the dissent of Justice Thomas. The Court, as it had prior to *Casey*, refused to apply the usual principle that laws should be interpreted to avoid constitutional difficulties, thereby illustrating a unique hostility to laws regulating abortion.

Stenberg represented a significant hardening of the abortion rights position of Justice O'Connor. The *Stenberg* dissenters repeatedly cited and quoted Justice O'Connor's abortion opinions from the 1980s, in which she had criticized the Court for operating as "the nation's ex officio medical board with powers to approve or disapprove medical and operative practices and standards throughout the United States." She had

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Supreme Court

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then emphasized the superior position of legislatures over courts to make such factual medical judgments, argued for the right of states to regulate abortion despite the views of medical organizations on "the physical safety of a particular procedure," and complained of "an unprecedented canon of construction under which in cases involving abortion a permissible [constitutional] reading of a statute is to be avoided at all costs." But Justice O'Connor's prior abortion opinions did not prevent her from adhering in *Stenberg* to all that she had previously criticized, and now in a context far more explicit as to the underlying horror of late-term abortion.

In 1992, Justices Kennedy, O'Connor, and David Souter had banded together to issue a joint opinion reaffirming the essentials of *Roe* on the grounds of adhering to precedent, while claiming to create a more moderate standard of judicial review for abortion regulations that would allow room for significant legislative activity on behalf of the unborn. Any one of the three could have provided the fifth vote at that time to overrule *Roe*, but they chose instead to band together and reaffirm it. Justice Kennedy strove mightily to show that *Stenberg* was a betrayal, rather than a logical consequence, of their infamous *Casey* joint opinion, and he has good cause to believe that Nebraska's prohibition of partial-birth abortion should have been constitutional under *Casey*'s approach to interpreting and reviewing abortion regulations.

Justice Kennedy argued that partial-birth abortion could rationally be viewed as worse than D&E abortion because it was closer to infanticide and subverted obstetrical childbirth techniques to kill the fetus delivered partially outside of the

mother, thereby particularly endangering the reputation and ethical integrity of the medical profession. Yet, despite his prior vote to protect D&E abortion, Justice Kennedy conceded that "those who oppose abortion" would subject both partial-birth abortion and D&E abortion "to the most severe moral condemnation, condemnation reserved for the most repulsive human conduct." It is difficult to know whether Justice Kennedy is having pangs of conscience for his role in preserving elective abortion. It is clear enough, however, that now that Justice Kennedy is no longer needed as the fifth vote to uphold *Roe*, Justices O'Connor and Souter no longer feel bound to accord even minimalistic abortion regulations the more moderate level of review promised in their *Casey* opinion.

Pity the *Stenberg* five, for like Pharaoh of old their hardened hearts place them in more danger, spiritually speaking, than those whom they oppress. Pity Justice Kennedy, who cast the decisive vote eight years ago to permit "the most repulsive human conduct," and now gazes upon the gruesome consequences. Pity America, where a woman is not considered equal to a man unless her physician may freely elect between dismembering her baby, piece by piece, onto a tray or partially delivering her baby and then suctioning out the brains. And pity humanity, ever finding fresh ways to express its depths of depravity, and desperately in need of redemption by the God whose image we repeatedly deface in our inhumanity to one another.

David M. Smolin is Professor of Law at Cumberland Law School of Samford University in Birmingham, Alabama, and Fellow of the Southern Center for Law and Ethics. He was primary author of a medical facts brief in Stenberg that was cited in both majority and dissenting opinions.

Power of the Polls

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In short, the quality of our government and its policies rests completely in the hands of the people. As President James A. Garfield, a gospel minister, once reminded citizens:

Now, more than ever before, the people are responsible for the character of their Congress. If that body be ignorant, reckless, and corrupt, it is because the people tolerate ignorance, recklessness and corruption. If it be intelligent, brave and pure, it is because the people demand these high qualities to represent them in the national legislature...[I]f the next centennial does not find us a great nation...it will be because those who represent the enterprise, the culture and the morality of the nation do not aid in controlling the political forces.

The current condition of our government and our country is simply a reflection of the action—or lack thereof—by the God-fearing community. [We] must awaken and again become active in the civic arena, moving beyond [our] self-imposed boundaries of church and home...

The responsibilities facing God-fearing citizens this coming election are somber, and the potential repercussions from our action—or lack thereof—are both far-reaching and longlasting. Remember that where citizen complacency rules, wrong principles and policies will abound; and when it comes to sound government, the enemy is seldom "them"; it is generally citizen apathy. Consequently, voting, one of the simplest of citizen responsibilities, is also one of the most important.

—David Barton is founder and president of WallBuilders; www.wallbuilders.com
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The power of the polls

By David Barton

Government always has had, and always will have, a direct influence on matters of religion; for its public policies will either encourage, accommodate, tolerate, hinder, or prohibit religious expressions. The key to which of these policies is adopted by a government rests on nothing more than the personal beliefs of the officials who formulate those policies. As William Penn (a Quaker minister and the founder of Pennsylvania) explained:

Governments, like clocks, go from the motion men give them...Wherefore governments rather depend upon men than men upon governments. Let men be good and the government cannot be bad...But if men be bad, they will endeavor to warp and spoil it to their turn.

Quite simply, government policies always reflect the personal values of those involved in establishing those policies. That is, a God-fearing leader will not enact God-hostile policies any more than a leader who is an enemy of religious expression will encourage the public acknowledgment of God.

This truth was so well understood that, even a century after Penn's declaration, John Francis Mercer reminded the other delegates at the Constitutional Convention:

It is a great mistake to suppose that the paper we are to propose [the Constitution] will govern the United States. It is the men whom it will bring into the government and the interest in maintaining it that is to govern them. The paper will only mark out the mode and the form. Men are the substance and must do the business.

Understanding that public policies were a direct reflection of the beliefs of those in office, William Paterson, a signer of the

Constitution and a Justice on the U.S. Supreme Court, reminded citizens of the Scriptural truth that:

When the righteous rule, the people rejoice; when the wicked rule, the people groan. (Proverbs 29:2)

Yet, the only way that the righteous can rule in America is to be elected to office, and they can only be elected to office when God-fearing, moral citizens vote for them. Quite simply, then, into the hands of citizens has been placed the stewardship of the nation and its policies.

...For example, Founding Father and educator Noah Webster (a soldier in the American Revolution and the man responsible for Article 1, Section 8, ¶8 of the Constitution) reminded citizens:

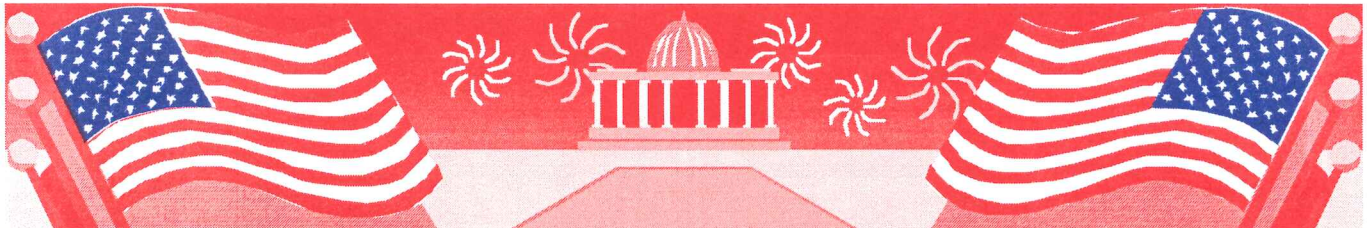
In selecting men for office, let principle be your guide...It is alleged by men of loose principles or defective views of the subject that religion and morality are not necessary or important qualifications for political stations. But the Scriptures teach a different doctrine. They direct that rulers should be men "who rule in the fear of God, able men, such as fear God, men of truth, hating covetousness" (Exodus 18:21).

In fact, so clear was this Scriptural directive that Webster concluded:

When a citizen gives his suffrage [vote] to a man of known immorality, he abuses his trust [civic responsibility]; he sacrifices not only his own interest, but that of his neighbor; he betrays the interest of his country.

The warning was clear: if citizens became negligent in electing moral, God-fearing leaders to office, their government would become corrupt and their civil liberties would be endangered...

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