

Quick Sheet: **The Federal Abortion Ban and the Supreme Court Ruling**



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Background

On April 18, 2007, the United States Supreme Court voted in a 5-4 decision to uphold the Federal Abortion Ban.

Writing for the majority, Justice Kennedy, joined by Chief Justice Roberts and Justices Alito, Scalia, and Thomas, effectively overturned 30 years of precedent by upholding an abortion restriction that has no exception safeguarding a woman's health. This decision is a harbinger of the future challenges we face in protecting our fundamental right to choose and a stark reminder that we are only one Justice away from losing the right altogether.

What is the Federal Abortion Ban?

The Federal Abortion Ban, a law passed by Congress and signed by President George W. Bush in 2003, outlaws certain second-trimester abortions, and does not include any exception for when a woman's health is threatened. Specifically, the ban prohibits a procedure known as intact Dilation & Extraction (D&E). For some women, intact D&E is the safest medical procedure to preserve a woman's health and future fertility.

Why is this case so significant?

With this decision, the Court simultaneously deserted its longstanding commitment to protecting women's health and opened Pandora's Box on state and federal abortion restrictions.

Despite strong arguments presented by the lawyers representing abortion providers that the ban's language was unconstitutionally vague and violated Supreme Court precedent, the Court upheld the ban on the grounds that the procedure was narrowly defined and alternative procedures are available. The Court accepted the clearly ideological framing of the procedure as "gruesome" and ultimately deferred to an anti-choice Congress on the issue of whether the procedure would ever be medically necessary to protect their patients' health.

In making this determination, Justice Kennedy's opinion radically shifts the judicial standard of review on abortion restrictions. Under this court's analyses restrictions on abortion that further the government's "moral" interest in protecting fetal life even when that conflicts with a woman's decision to terminate her pregnancy and her health is at risk, would most likely be constitutional. Most alarming is the Court's paternalistic language justifying the ban to "protect" women who will regret their abortions and the procedure itself.

Didn't the Supreme Court rule on this case years ago?

In 2000, the Court struck down a similar state ban, with Justice O'Connor casting the decisive vote to protect a woman's health and the right to choose. President Bush's most recent appointments, Roberts and Alito, solidified the Court's anti-choice voting block.

Will the ban affect abortion rights in my state?

The ban, which imposes a criminal penalty of up to two years in prison for physicians who are convicted of violating the law, will be enforceable in every state because federal law trumps state law.

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How will the decision affect women seeking abortions later in their pregnancies?

Women seeking abortions later in pregnancy will no longer have the assurance that they will be receiving the safest possible procedure.

What impact will the decision have on abortion providers?

Facing the threat of federal prison time, some abortion providers will likely have to change their practice.

What does this mean for the future of abortion rights?

The decision opens the door to anti-choice state and federal lawmakers to enact more restrictions on abortions, including bans on abortions as early as 12 weeks.

What role did the National Institute for Reproductive Health play in this case?

The National Institute, under its previous name the Institute for Reproductive Health, collected over 200 stories of women who had later term abortions. These stories illustrated the multitude of reasons why women seek later term abortions, including threats to their own lives and health, severe fetal anomalies or financial hardship. These stories became the basis for a brief, written and submitted by Orrick, Herrington & Sutcliffe LLP, in support of the defendants in this case.

To view the brief and full opinion, visit our website at www.nirhealth.org.



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