Battle shifts to state legislatures

By Cindy Wooden
Catholic News Service

WASHINGTON — By upholding Missouri abortion restrictions, the U.S. Supreme Court has set the scene for a new wave of pro-life activity — not on the sidewalks in front of clinics, but in the chambers of state legislatures.

Anti-abortion activists and abortion rights proponents seem to agree on one thing: new abortion restrictions have a good chance of passing in Alabama, Florida, Georgia, Louisiana, Minnesota, Missouri, Nebraska, Oklahoma, Pennsylvania and Utah.

The states most resistant to restrictions seem to be Alaska, Colorado, Connecticut, Hawaii, Maine, New Mexico, New York, North Carolina and Washington. Of those states, only Colorado, Maine and New Mexico do not fund abortions for poor women.

The National Right to Life Committee, the National Abortion Rights Action League and other groups on both sides have assessed the outcome in each state legislature — but they promise to lobby in force no matter what the likely outcome.

The aftermath of the July 3 Supreme Court decision could include a "reactivation" of pro-life supporters who withdrew after 16 years of legislative defeats following the court's 1973 ruling legalizing abortion, said Douglas Johnson, legislative director of the National Right to Life Committee.

With the Missouri ruling, "it's actually possible to do something that will stick," he said.

The Missouri law declared that life begins at conception; requires viability tests on fetuses after the 20th week of development; prohibits public hospitals and personnel from performing any abortion not required to save a woman's life; and bans funds used to encourage or counsel a woman to have an abortion not required to save her life.

The scenarios predicting how states will react to the proposed restrictions "are somewhat pat," Johnson said. "There are going to be battles in every state."

Florida Gov. Bob Martinez has called for a special session of the legislature this fall to enact abortion restrictions. And Florida state Rep. Tom Banjanin has already filed a bill incorporating many of the Missouri restrictions.

The governor met July 5 with pro-life legislators, representatives of anti-abortion groups and with Thomas A. Horkan Jr., executive director of the Florida Catholic Conference.

While the group is pleased with the governor's action, "there is some concern ... that the state not act too quickly and make mistakes" in drafting the legislation, which could lead a court to overturn it, Horkan said.

Passage of restrictions isn't guaranteed, he said. "There is a strong pro-abortion faction in the legislature, especially in some leadership positions. But with a strong governor and grass-roots support, we will be able to pass some legislation to protect the unborn."

"I hope Gov. Martinez succeeds in implementing all the restrictions allowed by the Supreme Court and that eventually people will realize that life begins at conception," said Trinitarian Sister Lucy Smoker, director of pro-life activities for the Diocese of Pensacola-Tallahassee.

"We can't be complacent," Sister Smoker said, "but above all, I feel that whatever we do has to be done with love as the priority."

Continued on page 15

AP/Wide World Photos

FACE OFF — With the Supreme Court in the background, Stacey Bridges, a pro-choice advocate, yells at Ronald Ross, a pro-life demonstrator.

Court moved toward overruling of Roe v. Wade, Blackmun says

By Jerry Filteau
Catholic News Service

WASHINGTON — With its 5-4 decision July 3 upholding a Missouri anti-abortion law, the U.S. Supreme Court implicitly moved toward overruling Roe vs. Wade, its landmark 1973 abortion decision, said Justice Harry A. Blackmun.

Blackmun, joined by Justices William J. Brennan and Thurgood Marshall in an impassioned dissent against the majority ruling, said eventually the court "would overrule Roe ... and would return to the states virtually unfettered authority to control" abortion.

"A plurality of this court implicitly invites every state legislature to enact more and more restrictive abortion regulations in order to provoke more and more test cases," Blackmun said.

The minority dissent argued that the Missouri law was unconstitutional in all areas at issue before the court.

Justice Antonin Scalia, who sided with the judgment of the court majority but disagreed sharply with the approach it took, agreed with Blackmun that the decision "effectively would overrule *Roe vs. Wade.*"

Scalia argued that the high court should have confronted the Roe case directly in order to avoid the "chaos" he predicted would follow the new decision.

Now, Scalia said, it "appears that the mansion of constitutionalized abortion law, constructed overnight in *Roe vs. Wade*, must be disassembled door-jamb by door-jamb, and never entirely brought down, no matter how wrong it may be."

Scalia argued that the court ought to have reconsidered its Roe decision in part because reconsideration was the only way to deal with "the harm that many states believed, pre-Roe, and many may continue to believe, is caused by largely unrestricted abortion.

"That will continue to occur if the states

Continued on page 15

Court was deeply divided over decision to uphold Missouri law

By Jerry Filteau
Catholic News Service

WASHINGTON — In their July 3 decision upholding limited restrictions on abortion in a Missouri law, the nine justices of the U.S. Supreme Court were unanimous in only one portion of their ruling and divided different ways on the other three portions.

Chief Justice William H. Rehnquist wrote the main opinion representing the judgment of the majority.

Here are the main sections of the ruling and how the justices voted:

• Rehnquist, joined by Justices Byron R. White, Sandra Day O'Connor, Antonin Scalia and Anthony M. Kennedy: The preamble to the Missouri law, stating that "the life of each human being begins at conception," is an abstract statement, and the court "is not empowered to decide ... abstract propositions." Courts may rule on the preamble only if it is applied so as to restrict someone's rights in a concrete way. Scalia and O'Connor wrote separate opinions of concurrence on this point.

Justice Harry A. Blackmun, joined by Justices William J. Brennan and Thurgood Marshall, dissented. Justice John Paul Stevens filed a separate dissent in which he said the preamble not only restricts abortion rights unconstitutionally but unconstitutionally "interferes with contraceptive choices."

• Rehnquist with White, Kennedy, O'Connor and Scalia: The law's provisions forbidding public employees to perform or assist in abortion and prohibiting the use of public facilities for abortion, except when necessary to save the life of the mother, are only restrictions on public funding of abortion, not on abortion itself, and are therefore constitutional.

Blackmun, joined by Brennan, Marshall and Stevens, dissented, arguing that the "public facilities" language was so "sweeping" that it encompasses "a substantial percentage of private health-care providers."

• Rehnquist with all members of the court in agreement: Provisions banning use of public funds to encourage or counsel a woman to have an abortion, or any such counseling by public employees or in public facilities, are "moot" for the court since the state says those provisions are aimed only at "those persons responsible for expending funds" and because those challenging the law said they are not adversely affected if that is the state's interpretation.

• Rehnquist with White and Kennedy: Missouri's provisions requiring a physician, when dealing with a pregnancy that may be 20 or more weeks in duration, to take such steps as may be needed to determine whether the fetus is viable, are a legitimate exercise of "the state's interest in protecting petential human life." The three justices ruled that this restriction was legitimate even though the Missouri law does not correspond with "the rigid trimester analysis" used by the Supreme Court in its famous 1973 *Roe vs. Wade* decision.

Scalia agreed that the testing provision is constitutional, but he disagreed strongly with the way the other justices approached the decision. The court should have tackled *Roe vs. Wade* directly, he said, and its effort to avoid doing that in the Missouri case was "the least responsible" course the Supreme Court could have taken.

Rulings

Continued from page 1

• June 30, 1980: The court, voting 5-4 in *Harris vs. McRae*, upholds as constitutional the Hyde amendment, which prohibits federal funding of abortions.

• March 23, 1981: In *H.L. vs. Matheson*, the court upholds by a 6-3 margin a Utah law requiring parental notification if an "immature, dependent minor" wants an abortion.

• June 15, 1983: Ruling in abortion cases from Akron, Ohio, and from the states of Missouri and Virginia, the Supreme Court strikes down several abortion restrictions. These include requirements that all second-trimester abortions be performed in hospitals and that a 24-hour waiting period occur before an abortion.

• April 30, 1986: Citing technical and procedural grounds, the court votes 9-0 in *Diamond vs. Charles* to scrap an Illinois abortion-control law but does not discuss the legality or morality of abortion itself.

• June 11, 1986: The court, voting 5-4, strikes down Pennsylvania abortion restrictions, including requirements that doctors provide women with detailed information on abortion and its adverse effects, that a second doctor be present when a viable fetus is being aborted, and that doctors use the abortion method most likely to save the child. In the case, *Thornburgh vs. American College of Obstetricians and Gynecologists*, the court also re-affirms the "general principles" of *Roe vs. Wade.*