WORLD & NATION

High court rulings concern abortion, school aid

Partial-birth ban, access to clinics divide justices

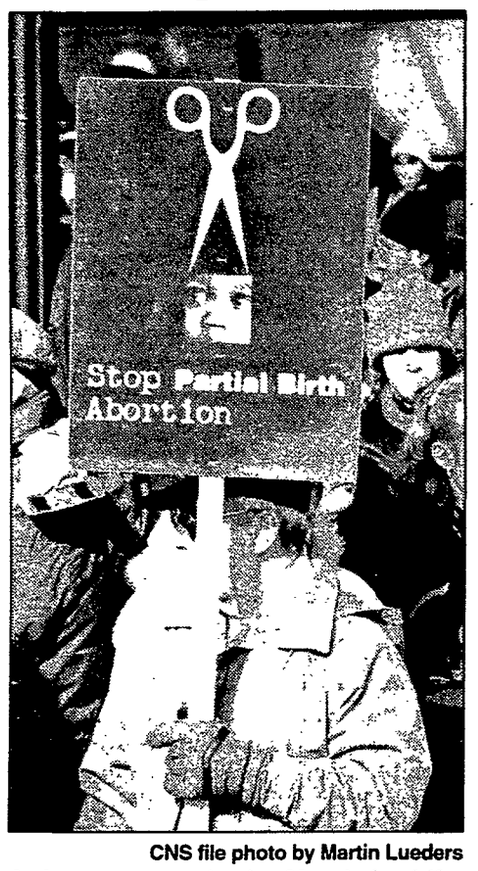
WASHINGTON (CNS) — In two abortion-related cases, a sharply divided Supreme Court June 28 said Nebraska's law banning partial-birth abortion was unconstitutional and upheld a Colorado ban on demonstrations in close proximity to where abortions are performed.

Ruling 5-4, the court held that Nebraska's law prohibiting partial-birth abortion unconstitutionally limits access to abortion in general. But one of the justices in the majority noted in a separate opinion that other state laws that more narrowly define their bans may not necessarily be unconstitutional.

Writing for the majority, Justice Stephen Breyer said the law failed the constitutionality test by not providing an exception from the ban when the prescribed procedure may be medically safest for the mother.

He also said the statute failed to adequately distinguish the difference between two similar types of abortion — dilation and evacuation, known as D&E, and the partial-birth abortion procedure, which is known medically as D&X, for dilation and extraction.

"Using this law some present prosecutors and future attorneys general may choose to pursue physicians who use D&E procedures, the most commonly used method for performing pre-viability second trimester abortions," Breyer said. "All those who perform abortion procedures using that method must fear prosecution, conviction and imprisonment."



CNS file photo by Martin Lueders

A demonstrator in the March for Life, held earlier this year, calls for ending the use of the partial-birth abortion procedure. The Supreme Court June 28 ruled as unconstitutional a Nebraska law banning the procedure.

In the "D&X" or partial-birth method, the live fetus is partially delivered, feet first, before surgical scissors are stabbed into the base of the infant's head. The child's brain is then removed by suction, allowing for easier delivery of the collapsed head.

In the "D&E" procedure, dilation and evacuation, an arm or leg of a live fetus may be pulled into the birth canal during the abortion procedure.

Justice Sandra Day O'Connor, in a concurring opinion, noted that the laws of Kansas, Utah and Montana specifically prohibit only the D&X procedure, and pointedly exclude other types of abortion from those states' bans.

"If Nebraska's statute limited its application to the D&X procedure and included an exception for the life and health of the mother, the question presented today would be quite different than the one we face today," O'Connor wrote.

In addition to Breyer and O'Connor, the majority included Justices John Paul Stevens, David Souter and Ruth Bader Ginsburg. Dissenting were Chief Justice William Rehnquist and Justices Antonin Scalia, Anthony Kennedy and Clarence Thomas.

In the Colorado case, the court ruled 6-3 to uphold a state law prohibiting abortion protests or "sidewalk counseling" within 8 feet of people approaching any health care facility.

Writing for the court in that case, Stevens upheld a 1993 statute that limits speech within eight feet of people who are within 100 feet of a medical facility.

Stevens said the statute is not "regulation of speech," but "a regulation of the places where some speech may occur." He said the law is viewpoint neutral and "simply establishes a minor place restriction on an extremely broad category of communications with unwilling listeners."

Joining Stevens in the majority were Rehnquist and O'Connor, Souter, Ginsburg and Breyer. Dissenting were Scalia, Kennedy and Thomas.

The two rulings prompted impassioned dissent from the bench from Thomas, Kennedy and Scalia.

Scalia accused the majority of stacking the deck against people who sincerely oppose abortion by limiting their power to enact state laws prohibiting abortion and also by restricting their First Amendment rights to attempt to quietly persuade women not to have abortions by speaking to them as they approach medical centers.

In his written dissent, Scalia said he believes the Nebraska case, *Stenberg vs. Carhart*, will someday be considered one of the court's greatest mistakes, along with the 1857 Dred Scott decision, which upheld the right to own slaves. It was overturned in 1858 when the 14th Amendment to the Constitution abolished slavery.

Speaking from the bench and in his written dissent, Kennedy took issue with the majority's "failure to accord any weight to Nebraska's interest in prohibiting partial birth abortion," saying it undermines the ruling.

In his 44-page dissent, Thomas said in order to reach its conclusion the majority "must first take a series of indefensible steps," including disregarding "the very constitutional standard it purports to employ," including displacing "the considered judgment of the people of Nebraska and 29 other states."

Thomas said the majority opinion also expands the use of a health exception to laws limiting abortion beyond what the court previously allowed in its 1992 decision in *Planned Parenthood vs. Casey*.

"According to the majority, so long as a doctor can point to support in the (medical) profession for his (or the woman's) preferred procedure, it is `necessary' and the physician is entitled to perform it."

Supreme Court upholds library, computer aid to parochial schools

WASHINGTON (CNS) — In what was quickly hailed as a landmark ruling for school choice, the U.S. Supreme Court has upheld use of federal funds to help supply computer hardware and software and library and media materials to religiously affiliated schools.

By a 6-3 decision June 28 the court reversed the judgment of the 5th U.S. Circuit Court of Appeals, which had said it was unconstitutional to include religious schools among the private schools receiving such aid in Jefferson Parish, La. The case is titled Mitchell vs. Helms.

Four of the six-justice majority proposed what in effect would be a new, simpler neutrality test for the constitutionality of public aid to private schools.

Two justices agreed that the Louisiana aid was constitutional but sharply opposed the other four's view of how the court should test such cases. The three dissenters also opposed revising the neutrality test.

"This decision brightens our educational future," Archbishop Francis B. Schulte of New Orleans said. "I am thankful because the decision should support the extension of new educational technologies to all children, regardless of the schools they attend," he said.

Mark Chopko, general counsel of the U.S. Catholic Conference, said the decision "has nationwide ramifications because children attending religious schools throughout the country are eligible to receive (Elementary and Secondary Education Act) Title VI services."

He added that the ruling "continues a recent trend in the court's Establishment Clause jurisprudence that exhibits a more realistic and benign interpretation of that clause."

Mercy Sister Lourdes Sheehan, USCC secretary for education, said, "This may be one of the most significant decisions that impact the rights of students in religious schools to enjoy equal access to technology and other resources necessary for a quality education in the 21st century."

Leonard DeFiore, president of the National Catholic Educational Association, called it a "visionary and landmark decision" that recognizes "that computers and software are as vital as yesterday's textbooks in instructing our young people."

Kevin J. Hasson, president and general counsel of the Becket Fund for Religious Liberty, said the ruling ends "a legacy of bigotry" in high court religious liberty cases.

He said the ruling "unmistakably opens the door to school-choice plans across the country."

At issue in the case was use of Title VI's Chapter 2 federal funds, which go through state and local school authorities, to provide computer, library and media resources to public and private schools alike in Jefferson Parish. In Louisiana a parish is a civil jurisdiction like counties in other states.

Most of the private schools that received the materials under the program were Catholic, but several nonreligious private schools and several affiliated with other religions were also recipients.

The four-judge plurality opinion, written by Justice Clarence Thomas and joined by Chief Justice William Rehnquist and Justices Antonin Scalia and Anthony Kennedy, held that public aid in the form of learning resources is permissible so long as the resources themselves are not unsuitable for public schools because of religious content and so long as eligibility for aid is determined in a constitutional, religiously neutral manner.