Supreme Court Upholds Ban on Abortion Procedure

By THE ASSOCIATED PRESS

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WASHINGTON (AP) -- The Supreme Court upheld the nationwide ban on a controversial abortion procedure Wednesday, handing abortion opponents the long-awaited victory they expected from a more conservative bench.

The 5-4 ruling said the Partial Birth Abortion Ban Act that Congress passed and President Bush signed into law in 2003 does not violate a woman's constitutional right to an abortion.

The opponents of the act "have not demonstrated that the Act would be unconstitutional in a large fraction of relevant cases," Justice Anthony Kennedy wrote in the majority opinion.

The decision pitted the court's conservatives against its liberals, with President Bush's two appointees, Chief Justice John Roberts and Justice Samuel Alito, siding with the majority.

It was the first time the court banned a specific procedure in a case over how -- not whether -- to perform an abortion.

Abortion rights groups as well as the leading association of obstetricians and gynecologists have said the procedure sometimes is the safest for a woman. They also said that such a ruling could threaten most abortions after 12 weeks of pregnancy, although government lawyers and others who favor the ban said there are alternate, more widely used procedures that remain legal.

The outcome is likely to spur efforts at the state level to place more restrictions on abortions.

"I applaud the Court for its ruling today, and my hope is that it sets the stage for further progress in the fight to ensure our nation's laws respect the sanctity of unborn human life," said Rep. John Boehner of Ohio, Republican leader in the House of
Representatives.

Said Eve Gartner of the Planned Parenthood Federation of America: "This ruling flies in the face of 30 years of Supreme Court precedent and the best interest of women's health and safety. ... This ruling tells women that politicians, not doctors, will make their health care decisions for them." She had argued that point before the justices.

More than 1 million abortions are performed in the United States each year, according to recent statistics. Nearly 90 percent of those occur in the first 12 weeks of pregnancy, and are not affected by Wednesday's ruling.

Six federal courts have said the law that was in focus Wednesday is an impermissible restriction on a woman's constitutional right to an abortion.

The law bans a method of ending a pregnancy, rather than limiting when an abortion can be performed.

"Today's decision is alarming," Justice Ruth Bader Ginsburg wrote in dissent. She said the ruling "refuses to take ... seriously" previous Supreme Court decisions on abortion.

Ginsburg said the latest decision "tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper in certain cases by the American College of Obstetricians and Gynecologists."

She was joined by Justices Stephen Breyer, David Souter and John Paul Stevens.

The procedure at issue involves partially removing the fetus intact from a woman’s uterus, then crushing or cutting its skull to complete the abortion.

Abortion opponents say the law will not reduce the number of abortions performed because an alternate method -- dismembering the fetus in the uterus -- is available and, indeed, much more common.

In 2000, the court with key differences in its membership struck down a state ban on partial-birth abortions. Writing for a 5-4 majority at that time, Justice Breyer said the law imposed an undue burden on a woman's right to make an abortion decision.

The Republican-controlled Congress responded in 2003 by passing a federal law that asserted the procedure is gruesome, inhumane and never medically necessary to preserve a woman's health. That statement was designed to overcome the health exception to restrictions that the court has demanded in abortion cases.

But federal judges in California, Nebraska and New York said the law was unconstitutional, and three appellate courts agreed. The Supreme Court accepted appeals from California and Nebraska, setting up Wednesday's ruling.

Kennedy's dissent in 2000 was so strong that few court watchers expected him to take a different view of the current case.

Kennedy acknowledged continuing disagreement about the procedure within the medical community. In the past, courts have cited that uncertainty as a reason to allow the disputed procedure.

But Kennedy said, "The law need not give abortion doctors unfettered choice in the course of their medical practice."

He said the more common abortion method, involving dismemberment, is beyond the reach of the federal ban.
While the court upheld the law against a broad attack on its constitutionality, Kennedy said the court could entertain a challenge in which a doctor found it necessary to perform the banned procedure on a patient suffering certain medical complications.

Doctors most often refer to the procedure as a dilation and extraction or an intact dilation and evacuation abortion.

The law allows the procedure to be performed when a woman's life is in jeopardy.

The cases are Gonzales v. Carhart, 05-380, and Gonzales v. Planned Parenthood, 05-1382.

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