

High court ruling may point to more abortion limitations: A 5-4 decision on "partial-birth" abortion

News in the [May 15, 2007](#) issue

In upholding a federal ban on a rare kind of late-term abortion procedure, the Supreme Court may have begun undermining its key abortion precedent. Activists on both sides of the abortion issue said the court's 5-4 decision on "partial-birth" abortion was a possible turning point in the court's abortion jurisprudence.

"With today's Supreme Court decision, it is just a matter of time before the infamous *Roe v. Wade* decision in 1973 will also be struck down by the court," said a press statement from Roberta Combs, president of the Christian Coalition of America.

James Tonkowich, president of the Institute on Religion and Democracy, agreed that the April 18 ruling chips away at the landmark decision that legalized abortion nationwide by declaring the procedure constitutionally protected under a woman's right to privacy. "*Roe* is no longer the dictator over the Supreme Court," he said.

Meanwhile, abortion-rights advocates worried that Combs and Tonkowich might be right.

Carlton Veazey, president of the Religious Coalition for Reproductive Choice, issued a statement saying his group was "alarmed that the court has taken a step toward valuing a potential person over the woman whose life may be at risk." Lower federal courts had ruled against the abortion ban because it did not include an exception to protect the mother's health. The high court's previous abortion decisions dictated that such an exception must be part of any restriction on abortion rights.

Nancy Keenan, president of NARAL Pro-Choice America, said the ruling "shows Bush's appointees have moved the court in a direction that could further undermine *Roe v. Wade* and protections for women's health. The door is now open for politicians like George W. Bush to interfere even more in our personal, private

medical decisions.”

Keenan referred to Bush’s two recent appointees to the court—Chief Justice John Roberts and Justice Samuel Alito—who both voted with the 5-4 majority in the decision. Alito’s vote was pivotal because he replaced retired Justice Sandra Day O’Connor, who generally voted against restrictions on abortion.

Indeed, in the first fallout from the ruling, the Supreme Court on April 23 returned two cases—dealing with Virginia and Missouri state laws on so-called partial-birth abortion—to lower federal courts for reconsideration. In both cases, the appeals courts had cited previous Supreme Court abortion decisions in overturning state bans on the abortion procedure. But justices vacated those decisions, instructing the lower courts to reconsider in light of its recent decision that a federal ban on the procedure did not need to include a broad exception for risks to the health of the mother.

Abortion-rights opponents said Bush’s election had finally paid a real dividend for their movement—after years of court appointments by ostensibly antiabortion Republican presidents.

“This decision is a powerful and timely reminder of the enormous significance of presidential elections and their pivotal impact on the makeup of the Supreme Court,” said Richard Land, head of the Southern Baptist Convention’s Ethics and Religious Liberty Commission. “If Al Gore or John Kerry . . . had made the nominations to replace [O’Connor or the late chief justice William Rehnquist], then this monstrous partial-birth abortion procedure would have likely been upheld by the highest court as constitutional in the land in a 6-3 vote.”

Veazey said the ruling will open the doors to governmental imposition of religious viewpoints. “This decision moves us closer to the time when sectarian religious viewpoints will govern medical decisions for all Americans, whether they share those viewpoints or not,” he said. *-Associated Baptist Press*