

# Partial-birth abortion ban again ruled wrong: Judge calls law unconstitutional

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A second federal judge has ruled against the government's ban on so-called partial birth abortions, saying the federal law passed by Congress last year is unconstitutional.

The ruling by U.S. District Judge Richard Casey of New York City on August 26 followed a similar decision by a San Francisco judge in June.

That earlier ruling by U.S. District Judge Phyllis Hamilton barred the government from enforcing the ban, which Hamilton determined is unconstitutionally vague in defining the acts and procedures it prohibits. The Justice Department said in early August it would appeal the San Francisco ruling.

Conservatives, including many Christians, have applauded the Partial-Birth Abortion Ban Act, signed in 2003 by President Bush, as a significant first step in the battle to reverse legal abortion. Proponents of the ban said it applies only to one kind of late-term procedure involving the destruction of a "living fetus" that is at least partially outside the mother's body.

Supporters of abortion rights say the partial-birth ban is an attempt to erode reproduction rights established by the U.S. Supreme Court. They contend the ban is unconstitutional because it lacks an exception allowing the procedure to protect a woman's health.

In the latest decision, Judge Casey said the procedure is protected by previous Supreme Court rulings and could be outlawed only if there were a "medical consensus" that no circumstance exists in which a woman could benefit from it. "While Congress and lower courts may disagree with the Supreme Court's constitutional decision, that does not free them from their constitutional duty to

obey the Supreme Court's rulings," Casey wrote. Still, Casey called partial-birth abortion a "barbaric" procedure that probably subjects fetuses to "severe pain."

The American Center for Law and Justice, a frequent critic of partial-birth abortion, denounced Casey's ruling. "While the decision is disappointing, it's important to realize that this ruling represents only the beginning of a lengthy legal process that will end at the Supreme Court of the United States," said ACLJ Chief Counsel Jay Sekulow. "We remain committed to working for the protection of human life and outlawing the barbaric procedure known as partial-birth abortion."

Meanwhile, Richard Land, president of the Southern Baptist Ethics and Religious Liberty Commission, said the best way to eliminate partial-birth abortion is by replacing the Supreme Court justices whose rulings protect it. "As Justice [Antonin] Scalia has noted succinctly, this court has taken sides in the culture war, and it's not the side of life." -*Associated Baptist Press*