

Life Insight

A Publication of the USCCB Secretariat for Pro-Life Activities ¶ Vol. 18, No. 1 March – April 2007

Gonzales v. Carhart: Cause for Renewed Hope

In upholding the federal ban on partial-birth abortion in *Gonzales v. Carhart*, the U.S. Supreme Court has made a significant course correction in the very erratic path of abortion law.

For the first time since *Roe v. Wade*, the Court has upheld a law banning a specific (and particularly heinous) abortion method. That result alone, however, does not amount to much.

Abortion remains legal throughout pregnancy. A doctor performing late-term abortions still has two commonly-used methods to choose from – killing the child by tearing off her limbs piecemeal or injecting digoxin to cause a fetal heart attack while the child is still in the womb. Doctors now are simply foreclosed from intentionally delivering a living child partly outside the mother's body before committing an act which kills the child.

The Supreme Court's decision *does* establish a line between abortion and infanticide by allowing lawmakers to ban the killing of a mostly born child. Thankfully it does much more.

In the 1992 *Planned Parenthood v. Casey* decision, the Court said that states have a "legitimate and substantial interest in preserving and promoting fetal life," and even admitted the Court had gone too far in denying states' leeway in regulating abortion. But the Court seemed to forget this in its next major abortion decision, *Stenberg v. Carhart*, the 2000 ruling striking down Nebraska's partial-birth abortion ban, ignoring the promise of *Casey* and further expanding the abortion license to defend the killing of the partly-born child.

Now, by upholding the federal ban on partial-birth abortion, the Court demonstrates that its promise in *Casey* might actually mean something.

Gonzalez v. Carhart ("Carhart II") breaks away from the expansive majority and concurring opinions in *Stenberg v. Carhart* ("Carhart I") in at least five ways that bode well for the future of abortion law.

1. Prior Supreme Court opinions have not been candid about abortion. For example, they refuse to concede that abortion kills a living human being. Unwilling to state when life begins, some Justices referred to children before birth only as "potential life" and called abortion "termination of pregnancy." *Carhart I* used obscure Latin words to sanitize the deed – *calvarium* for skull and *disarticulation* for tearing off limbs.

In *Carhart II* the Court lifts the veil, repeatedly acknowledging the humanity of the unborn child. The ruling refers to the prenatal human as a "child" and an "infant," and calls abortion "killing."

2. Some Justices in *Carhart I* refused to give much or any weight to Nebraska's stated interest in preserving unborn life. In their view, banning partial-birth abortion ("PBA") would not prevent other equally gruesome abortion methods (of which they approve). They claimed Nebraska's real motive was therefore an improper one: moral revulsion.

While it does not overrule *Roe*, *Carhart II* emphatically reaffirms the state's interests in showing "its profound respect for the life within the woman," and in protecting the life of the unborn child "from the inception of the pregnancy." *Carhart II* also reaffirms the state's interest in "protecting the integrity and ethics of the medical profession," implying correctly that PBA erodes both.

3. *Roe v. Wade* forbade prohibiting abortion before viability and mandated that every attempt to prohibit abortion after viability include a "health exception." This, in effect, nullifies the law, because every abortion-minded woman arguably presents some "health" factor, broadly described by the Court as including "all factors" – emotional, "familial," age, and so on – related to "well-being." Later decisions expanded the use of the health exception by demanding its inclusion in statutes that merely regulate some aspect of abortion, such as laws requiring parental notice. *Carhart I* even claimed that an abortion method some doctors think *might* have a *marginal* health benefit over other methods cannot be prohibited.

Carhart I concluded that when medical authority is divided on the alleged health benefits of PBA, the Court is right to favor the "substantial medical

authority” advocating a “women’s health” reason for the abortion.

Carhart II up-ends this presumption in favor of abortion providers, allowing lawmakers greater leeway to enact laws according to what they reasonably conclude is the best evidence.

4. The Supreme Court has always permitted individual abortion providers and industry groups to challenge entire abortion regulations “on their face” on behalf of their patients. Suits to enjoin enforcement of abortion laws are typically filed the day the law would have taken effect. Pro-abortion plaintiffs argue that if the law were in force, a hypothetical future patient could be irreparably harmed while waiting for a court to find the law unconstitutional as applied to her own situation.

Outside the abortion context, preliminary injunctions against laws are usually granted only when challengers establish that “no set of circumstances exists under which the [law] would be valid” – a very high hurdle. When it comes to abortion cases, however, such rules were thrown out in favor of those benefiting abortion doctors. Challengers have successfully blocked laws for years, merely by presenting a court with the hypothetical and sometimes far-fetched circumstances of a fictional plaintiff.

Carhart II states that where medical uncertainty exists, facial challenges should not be entertained. Instead, a doctor should sue only to prevent the law’s application to actual women whose health he can prove would be compromised by the law.

5. Courts reviewing abortion laws have also favored abortion industry plaintiffs in the way they interpret the language of statutes. In other legal contexts, language in a statute is understood according to its common meaning. If the law would be constitutional under a plausible interpretation of the statutory language, the Court gives lawmakers the benefit of the doubt and assumes they intended to convey the constitutional meaning. With abortion laws, however, plain phrases have often been twisted to create vagueness and confusion where none exists. *Carhart I*, for example, strained to twist Nebraska’s definition of PBA to claim it was vague and overbroad.

Thankfully, *Carhart II* examined the federal ban in a common-sense way, interpreting it as banning only what it clearly describes.

What does all this mean for the future? In the negative column, *Roe* and *Casey* are left standing. But if the Court means what it says in *Carhart II*, we can expect it to uphold more state and federal laws regulating abortion. For example, the Court may now

uphold laws on parental involvement *without phony health exceptions*, or on informed consent – giving truthful information about fetal pain, the abortion-breast cancer link, the risk of subsequent preterm births, or the child’s characteristics as shown by an ultrasound image before the abortion.

The Court’s new candor about unborn life and abortion and its apparent increased willingness to uphold reasonable regulations may open up many opportunities to foster greater respect for life and discourage abortion, even while *Roe* and *Casey* stand.

Abortion Aftermath: “An Antiabortion Shibboleth”?

In her dissenting opinion in *Gonzales v. Carhart*, Justice Ruth Bader Ginsburg takes issue with the majority’s tender depiction of the mother-child bond. She also seems vexed that the majority described the regret, depression, and loss of esteem some women experience after an abortion. Justice Ginsburg calls post-abortion regret “an antiabortion shibboleth,” that is, a slogan or saying that characterizes a particular group of people (but no others).

To prove her point, Justice Ginsburg cites a *New York Times Magazine* cover story entitled “Is There a Post-Abortion Syndrome?” and some of the sources mentioned in that article. Given the fact that the *New York Times*’ worldview has been shaping some Court opinions for years, it’s only fair to see the “Gray Lady” finally getting some credit. Unfortunately, the article on which Justice Ginsburg relies concludes that “scientific evidence” shows no risk of depression, drug abuse or any other psychological problem after abortion greater than women experience after birth or from having an unwanted pregnancy. Amazing!

To arrive at such a sanguine view of abortion, one would have to be oblivious to reams of scientific evidence, including large-scale, peer-reviewed, records-based studies in prestigious journals of psychology and medicine by researchers in the United States, Canada, Sweden, Finland, New Zealand and Russia. But, hey, what do they know? They don’t write for *The New York Times*.

One would also have to ignore hundreds of thousands of heart-breaking personal stories and messages on the Internet, such as those posted on AfterAbortion.com (a politically neutral website). And one would have to ignore the scores of sites offering resources, testimonies and referral lines for post-abortion healing, such as NOPARH.org (The National

Office for Post-Abortion Reconciliation and Healing) and HopeAfterAbortion.org (a site maintained by the U.S. Conference of Catholic Bishops' Secretariat for Pro-Life Activities). Both support the work of Project Rachel, the Church's post-abortion healing ministry, and its 165 offices around the country.

In light of all that, one wonders how a journalist could build a plausible case for a happy-go-lucky view of abortion.

Emily Bazelon, author of the *NY Times* article, relies on a false spin perpetuated by abortion groups. The claim: In a letter from Surgeon General C. Everett Koop to President Ronald Reagan, Koop denied any psychological harm from abortion. The author also relies on a Congressional Report prepared by staff of Rep. Henry Waxman (D-Calif.), in which pregnancy help centers are lambasted for spreading false information about abortion, such as an increased suicide risk in its aftermath. Additionally, Bazelon puts faith in two professors, both abortion supporters, whose articles are rife with error.

Permit me, once again, to correct the record on the Koop letter. We keep a copy of it on file, ready at hand when this claim is repeated. Koop's Jan. 9, 1989 letter to President Reagan explained why a report could not be issued on psychological harm following abortion, because the "available scientific evidence" did not support any conclusion. The earliest studies were "flawed methodologically," Koop explained.

Studies finding psychological harm were often based on small samples of women (100 or fewer) who sought counseling after abortion. This sample was not necessarily representative of all women who aborted a child. Larger studies attempting to show "relief" typically measured reactions within hours or days of the abortion, when a predominant feeling is relief that the crisis has passed. However, the authors of these studies did not clarify that, even then, relief was accompanied by many reactions, including very negative feelings of loss, despair, anger, sadness and depression.

Many large studies were also flawed, in that 50% or more of study participants dropped out before the study's conclusion. Koop called for a large, government-funded, five-year, prospective study to accurately assess psychological and physical harm from abortion according to the best scientific standards.

The "Waxman Report" accuses pregnancy help centers of lying about the abortion aftermath, singling out a person at one center who cautioned: "The suicide rate in the year after an abortion 'goes up by seven times.'" Waxman and Bazelon count this "proof" that

pro-lifers are inventing the problem of post-abortion trauma.

Actually, in a well-known Finnish study, Mika Gissler *et al.* analyzed medical records of 1,347 women of reproductive age who committed suicide between 1987 and 1994. They discovered the suicide rate in the 12 months following birth was a low 5.9 per 100,000 women, while the suicide rate in the 12 months following an abortion was 34.7 per 100,000 women — a rate nearly six times higher. If crisis pregnancy centers can be faulted for exaggerating post-abortion suicide by one percentage point, what should we make of those who deny *any increased suicide risk at all?*

In 2006, a team of researchers from New Zealand led by David Fergusson, Ph.D. (a self-described pro-choice atheist) published extensive findings on the mental health effects of abortion among a group of about 600 girls, born the same year, which the New Zealand government had tracked for 25 years following their births.

The team analyzed periodic mental health assessments, expecting to find no correlation between abortion and depression, anxiety, suicidal ideation, and drug and alcohol abuse. Instead, they found that abortion increased the risk of every harmful effect studied. For example, 78% of girls who had abortions between the ages of 15-18 had major depression, compared to 35% who had been pregnant but did not abort, and 31% of those who had not been pregnant.

Several U.S. researchers, including David Reardon, Ph.D., and Priscilla Coleman, Ph.D., analyzed the Medi-Cal database maintained by the California Department of Health Services. Two studies looked at mental health claims of women receiving medical assistance from California in the first 90 days after an abortion (14,000 women) or the first 90 days after giving birth (40,000 women).

None of the women had psychiatric claims in the year prior to the pregnancy resolution. Women in the "abortion" group had significantly higher in-patient and out-patient mental health claims than women in the "birth" group, both in the first 90 days and throughout the four-year study period.

A third study using this database analyzed the deaths of 1,713 women who delivered or aborted a child in 1989 and who then died between 1989 and 1997. The abortion group was 154% more likely to have died by suicide, by accidents (82%), and by violent crimes (81%), than the birth group.

Instead of all these studies, the author relies on research articles by Brenda Major and Nancy Russo,

that attempt to demonstrate no significant mental health problems after abortion – articles so flawed as to be useless.

Major claims the incidence of depression in the two years following an abortion (20%) is equal to the incidence of depression in all women ages 15-35. Leaving aside the fact that about 40% of women in that age group have had one or more abortions, Major does not explain whether she measured women's depression on any given day or over a two-year or 20-year period, so it is difficult to draw any reasonable conclusion from those figures.

The comparison that has predictive value is one that looks at the incidence of depression after abortion compared to its incidence after childbirth, a comparison that has been drawn in many of the record-based studies cited earlier. In addition, she has published sanguine "findings" despite study drop-out rates of 50% and higher, although research shows that those most negatively affected by their abortion experience are likely to be "concealers" and study "drop-outs."

Russo's research using the National Longitudinal Survey of Youth (NLSY) database is virtually worthless because only 13.6% of women surveyed reported having had an abortion. The Guttmacher Institute, the research arm of Planned Parenthood, has estimated that (based on abortion incidence in the relevant age groups) 60% of women in the NLSY

database who had abortions were concealing one or more abortions from interviewers.

What's more, Russo derives her rosy outcome for women who've aborted a child by looking at answers to a "self-esteem" survey, as if low self-esteem were synonymous with anxiety or depression.

There's really no excuse for *The New York Times* to perpetuate a myth that abortion is a happy, empowering event, and deny the reality that millions of women (and men) have experienced and dozens of research studies now document.

If you or a loved one is grieving the loss of a child to abortion, you're not alone. And you need not suffer alone. Click the link "Where to Find Help" on hopeafterabortion.org and discover the depth of Christ's merciful love.

*Life Insight** is a publication of the
USCCB Secretariat for Pro-Life Activities
3211 Fourth St., N.E.
Washington, DC 20017-1194
Phone (202)541-3070; Facsimile (202)541-3054
www.usccb.org/prolife
Made possible through the generosity of
the Knights of Columbus

*The materials contained within are intended for use by Catholic dioceses and organizations, and permission is not required for reproduction or use by them. All other uses must be authorized. For re-prints, questions or comments contact Susan E. Wills, at the above address.