

Abortion:

Test *Your Grip* on Reality



At 21 weeks' gestation, Samuel Armas clasps a finger of the surgeon operating on him in the womb to correct spina bifida

Soon the U.S. Supreme Court will decide¹ whether Congress may ban a procedure – partial-birth abortion – described by one federal judge as “gruesome, brutal, barbaric, and uncivilized.”²

Partial-birth abortion kills a developed, living baby after he or she is mostly delivered *OUTSIDE* the mother's body.³ It is used in the middle and last months of pregnancy, when dismemberment in the womb becomes more difficult due to the baby's stronger bones and ligaments.

Over 70% of Americans supported the federal Partial-Birth Abortion Ban Act when it was enacted in 2003.⁴ Many mistakenly assume the ban is now in effect.

Tragically, in *Stenberg v. Carhart*⁵ (2000), the Court effectively struck down bans on partial-birth abortion in about 30 states.⁶

Today the Court is still debating whether this grotesque procedure is so protected by the U.S. Constitution that even Congress's widely supported law must also fall.

How did our Constitution become so mangled as to protect the direct killing of mostly born children? The answer lies in two Supreme Court decisions issued on January 22, 1973: *Roe v. Wade* and *Doe v. Bolton*.⁷ Sadly, many people still don't realize what those decisions really did.

Test your grip on the reality of abortion by taking this True/False quiz.

Give yourself one point for each correct answer.

1. *Roe* legalized abortion at every stage of pregnancy. True or False?
2. Polls show that most Americans support the policy of *Roe v. Wade*. True or False?
3. Regardless of how most Americans may feel, prominent legal scholars and judges agree that *Roe* is well grounded in the Constitution. True or False?
4. By treating abortion as a matter between a woman and her doctor, the Court is just acknowledging the fact that abortion is practiced by most physicians and widely accepted in medicine. True or False?

5. Late-term abortions must remain legal if women's lives and physical health are to be preserved. True or False?
6. Very few abortions are done because of maternal or fetal health problems, or in cases of rape or incest. True or False?
7. If *Roe v. Wade* is overturned, abortion will automatically be illegal in the United States. True or False?
8. If abortion were illegal, "back alley" abortions would endanger thousands of women's lives. True or False?

ANSWERS

1. **True.** While some news media and polls⁸ still say the Court legalized abortion only in the first three months, in fact it made abortion legal through all nine months of pregnancy, effectively striking down the abortion laws of all 50 states.

In *Roe v. Wade*, the Court ruled that abortion may not be prohibited or restricted in the first trimester (first three months). In the second trimester abortion must still be allowed, and may be regulated *only* to serve the mother's health. Even after "viability," when the child is developed enough to survive outside the womb, abortion must still be allowed if needed to preserve the mother's "health." *Roe's* companion case, *Doe v. Bolton*, defined maternal "health" to include "all factors – physical, emotional, psychological, familial, and the woman's age – relevant to the well-being of the patient."⁹

Thus abortion must be allowed, even in the ninth month, if a woman would be upset about continuing her pregnancy. James McMahon, M.D. has cited "youth" or "depression" among his reasons for performing late-term partial-birth abortions.¹⁰ Martin Haskell, M.D. has said most of the partial-birth abortions he performed up to about 25 weeks were "elective."¹¹ George Tiller, M.D. has done elective abortions through 25 weeks and "fetal indication" abortions (to kill handicapped children) through 38 weeks.¹²

2. **False.** Some polls, e.g., a 2005 Harris Interactive poll, show majority support for *Roe* (52% in favor, 47% opposed), but only when they misrepresent *Roe* as "making abortions up to three months of pregnancy legal." In the same poll, 72% of Americans said abortion should be *illegal* after the first trimester, and 86% said it should be *illegal* after the second trimester¹³ (responses incompatible with *Roe*).

Support for abortion even in the first trimester is questionable: In a 2004 Zogby poll, 61% of Americans said abortion should not be permitted after the fetal heartbeat has begun.¹⁴ This occurs less than four weeks after conception.¹⁵

3. **False.** Even scholars who support legal abortion have stated that *Roe* is not good constitutional law. Yale law professor John Hart Ely wrote in 1973 that *Roe v. Wade* is "a very bad decision ... because it is *not* constitutional law and gives almost no sense of an obligation to try to be."¹⁶ Edward Lazarus, former law clerk to *Roe's* author, Justice Harry Blackmun, writes: "As a matter of constitutional interpretation and judicial method, *Roe* borders on the indefensible."¹⁷ Seven Supreme Court justices have criticized *Roe*: Warren Burger, Byron White, William Rehnquist, Antonin Scalia, Clarence Thomas, Sandra Day O'Connor, and Ruth Bader Ginsburg.¹⁸

4. **False.** Abortion is practiced outside mainstream medicine. 76% of U.S. hospitals, whether religious or secular, public or private, do not provide abortions.¹⁹ In 2000 the overwhelming majority of abortions (93%) were performed in 837 free-standing clinics, with only 5% performed in hospitals and 2% in doctors' offices.²⁰ Even ob-gyns who support abortion in theory describe it as unpleasant, depressing and "the dirty work of our field."²¹

5. **False.** Specialists in high risk obstetrics and perinatology have testified in court that destroying the fetus at late stages is *never* necessary to protect a mother's health. Obstetrics professor Harlan Giles, M.D., who performs abortions up to viability, stated: "I do not think there are any maternal conditions that I'm aware of that mandate ending the pregnancy that, also, require that the fetus be dead. ... And I cannot think of a fetal condition or malformation, no matter how severe, that actually causes harm or risk to the mother of continuing the pregnancy."²²

6. True. Abortions are rarely done for these reasons. Fewer than half of 1% of women cite rape as the main reason for having an abortion; 4% cite a “physical problem” of their own and 3% cite any problem affecting fetal health. Over 90% of abortions in the U.S. are done for social or economic reasons – the mother says she is not ready for a child, can’t afford one right now, is unmarried, etc.²³

7. False. If *Roe* is overturned, policy decisions about abortion will again be made by citizens and legislatures. Some states would place substantial limits on abortion, while others may not.²⁴ But federal courts would no longer *forbid* lawmakers to protect unborn human lives.

8. False. Abortion advocates claimed that thousands of women died annually from “back alley” abortions before *Roe*, but some later admitted their statistics were fabrications.²⁵ In the 30 years before *Roe*, women's deaths from abortion dropped sharply in the U.S. (from over 1,200 to fewer than a hundred a year) due to antibiotics and other medical advances.²⁶ Today, over 30 years after *Roe*, women continue to die from *legal* abortions, both chemical (RU-486) and surgical abortions.²⁷ Generally the risks of abortion depend more on a country's overall health system than on the legal status of abortion; for example, much of Poland's 54% drop in maternal mortality between 1990 and 2002 occurred after the country banned abortion in 1993.²⁸

SCORING: 0-3 points: Welcome, beginner!

4-5 points: Advanced, and well on your way to a firm grip!

6-8 points: Congratulations, pro-life expert!

To continue improving your grip on abortion reality, visit www.usccb.org/prolife_early_and_often.

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¹ On November 8, 2006, the Court heard oral arguments in two challenges to the federal Partial-Birth Abortion Ban Act – *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood*. A decision is expected by July 2007.

² Opinion of U.S. District Court Judge Richard C. Casey in *National Abortion Fed'n v. Ashcroft*, 330 F.Supp.2d 436, 479 (S.D.N.Y. 2004).

³ The statute reads in part: “[I]n the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother” before the abortion provider performs an overt act that he knows will kill the fetus. 18 U.S.C. 1531.

⁴ L. Saad, “Gallup Poll Analyses: Abortion Views Hold Steady Over Past Year,” June 2, 2003.

⁵ 530 U.S. 914 (2000).

⁶ *Carhart v. Gonzales*, 413 F.3d 791, 793 (8th Cir. 2005).

⁷ 410 U.S. 113 (1973) and 410 U.S. 179 (1973), available at www.usccb.org/prolife/issues/abortion/roevwade/index.shtml.

⁸ *E.g.*, Harris Interactive Poll #18, March 3, 2005. For further documentation, see www.nrlc.org/abortion/Roedistort112904.html.

⁹ 410 U.S. 179, 192 (1973).

¹⁰ House Report 105-24 – Partial-Birth Abortion Ban Act of 1997, text accompanying notes 44 & 45, available at <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr024&dbname=105&>; and *American Medical News*, July 5, 1993, at 22.

¹¹ *American Medical News*, July 5, 1993, at 22.

¹² www.driller.com/fasum.html, www.driller.com/elect.html and www.driller.com/ic5.html.

¹³ The Harris Poll, *supra* note 8.

¹⁴ Zogby International Poll, April 15-17, 2004.

¹⁵ Keith L. Moore and T.V.N. Persaud, *The Developing Human: Clinically Oriented Embryology*, 7th edition. Philadelphia: W.B. Saunders Co., 2003, at 70.

¹⁶ “The Wages of Crying Wolf: A Comment on *Roe v. Wade*,” 82 *Yale Law Journal* 920, 947 (1973).

¹⁷ “The Lingering Problems with *Roe v. Wade*,” FindLaw's Writ, Oct. 3, 2002, <http://writ.news.findlaw.com/lazarus/20021003.html>.

¹⁸ Quotations and citations can be seen at www.usccb.org/prolife/issues/abortion/roevwade/SpCtJustices.pdf.

¹⁹ Jack Hitt, “Who Will Do Abortions Here?,” *New York Times Magazine*, January 18, 1998, 23.

²⁰ Lawrence B. Finer and Stanley K. Henshaw, “Abortion Incidence and Services in the United States in 2000,” *Perspectives on Sexual and Reproductive Health* 35, no. 1 (2003).

²¹ Hitt, *supra* note 19, at 26.

²² *Women's Med. Prof'l Corp. v. Voinovich*, 911 F.Supp 1051 (S.D. Ohio 1995), Trial Transcript, Nov. 13, 1995 at 331 & 332.

²³ Lawrence B. Finer *et al.*, “Reasons U.S. Women Have Abortion: Quantitative and Qualitative Perspectives,” *Perspectives on Sexual and Reproductive Health* 37, no. 3 (2005).

²⁴ Benjamin Wittes, “Letting Go of *Roe*,” *The Atlantic Monthly*, January/February 2005, 48.

²⁵ “In N.A.R.A.L. we generally emphasized the drama of the individual case, not the mass statistics, but when we spoke of the latter it was always ‘5,000 to 10,000 deaths a year.’ I confess that I knew the figures were totally false, and I suppose the others did to [sic] if they stopped to think about it. But in the ‘morality’ of our revolution, it was a *useful* figure, widely

accepted, so why go out of our way to correct it with honest statistics?" Bernard Nathanson, M.D., *Aborting America*. New York: Pinnacle Books, 1981, at 193.

²⁶ Testimony of the United States Catholic Conference on Constitutional Amendments Protecting Unborn Human Life before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, March 24, 1976, at 10 & 12-13; Table 2 (at 12-13) reproduces Maternal Mortality statistics published by the National Center for Health Statistics. In 1972, the center reported: 21 deaths from legal abortions, 40 from illegal abortions, and 22 from spontaneous abortions (miscarriages).

²⁷ Staff Report, Subcommittee on Criminal Justice, Drug Policy and Human Resources, *The FDA and RU-486: Lowering the Standard for Women's Health* (October 2006), available at <http://reform.house.gov/GovReform/Files/?CategoryID=152>; Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, Surveillance Summaries, No. 24, 2006, vol. 55, SS-11, *Abortion Surveillance – United States, 2003*, available at www.cdc.gov/mmwr/PDF/ss/ss5511.pdf (see pp. 7-8 for deaths in 2001 and 2002 attributable to legal induced abortion).

²⁸ World Health Organization Regional Office for Europe, "Highlights on health, Poland 2005," available at www.euro.who.int/eprise/main/WHO/Progs/CHHPOL/mortality/20050616_1.

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