

Life Insight

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Urge Amnesty International to Rescind its New Abortion Policy

BACKGROUND: In April 2007, the Executive Council of Amnesty International (AI), preempting action by the International Council that is to meet in August, abandoned Amnesty International's neutral stance on abortion to take a pro-abortion position. Amnesty International's new policy advocates the global decriminalization of abortion. AI's policy also appears to apply to every stage of pregnancy and has already led AI-USA to oppose laws against the killing of partially-delivered children. Similarly, the new policy of advancing access to abortion to preserve women's "health," a word left undefined by AI, does not confine the practice to narrow circumstances. At the International Council meeting, Amnesty International may reconsider its policy on abortion.

USCCB POSITION: The U.S. Conference of Catholic Bishops has been among those urging Amnesty International to reject this new policy when its International Council meets in August. The July 2, 2007 statement of USCCB president, Bishop William S. Skylstad (and its press release) can be read at: www.usccb.org/comm/archives/2007/07-120.shtml.

For many years, the Catholic community in the United States and elsewhere has admired and worked with Amnesty International in its efforts to advance the cause of universal human rights. Much more urgent work remains, work that will be harmed by this unprecedented and unnecessary involvement in the abortion debate.

While the proposed action by Amnesty International may appear to some to support women's freedom or provide a compassionate response to women in difficult situations of pregnancy, abortion injures the health and dignity of women at the same time that it ends the life of the unborn child. A far more compassionate response is to provide support and services for pregnant women, advance their educational and economic standing in society, and resist all forms of violence and stigmatization against them.

Many of the great figures of our time who advanced human rights and compassion for the destitute - Susan B. Anthony, Mohandas Gandhi, Mother Teresa, Dietrich Bonhoeffer, Archbishop Oscar Romero, Dorothy Day, Elizabeth Cady Stanton, Fannie Lou Hamer - also opposed abortion. Many will find it incomprehensible that these giants of human progress must now be seen as enemies of human rights. The action of the Executive Council undermines AI's longstanding moral credibility, diverts its mission, divides its own members (many of whom are Catholic or defend the rights of unborn children), and jeopardizes AI's support by people in many nations, cultures and religions.

ACTION REQUESTED: Ask Amnesty International to rescind its new policy on abortion at the International Council meeting in August. To contact AI, call or write:

Amnesty International USA
5 Penn Plaza
New York, NY 10001
phone: (212) 807-8400
fax: (212) 627-1451

Emphasize these points:

- Point out that abortion injures the health and dignity of women at the same time that it ends the life of the unborn child.
- Indicate that the action of the Executive Council undermines Amnesty's longstanding moral credibility, diverts its mission, and divides its own members.
- Urge the members of the International Council of Amnesty International, when they meet in Mexico in August, to reconsider and rescind this new policy.

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Death Silences a Strong and Unwavering Voice for the Unborn and Disabled

Thomas J. Marzen, Esq., a longtime advocate for life, passed away on July 8 in Indiana. Tom had undergone treatment for lung cancer some time ago. We learned recently that the cancer had recurred and spread, and that Tom was entering hospice care. Though initially expected to live for as long as three months, Tom died unexpectedly on July 8. His two grown sons were able to be with him.

Tom served as general counsel to Americans United for Life in the late 1970s and early 1980s. In 1984 he took on the enormous challenge of directing the newly formed National Legal Center for the Medically Dependent and Disabled, a national resource center funded by the Legal Services Corporation to advocate for the right to life-saving medical treatment on behalf of children and adults with disabilities.

As general counsel of the Center and as editor of its journal *Issues in Law & Medicine*, Tom became a linchpin figure in promoting mutual understanding and collaboration between the pro-life and disability rights movements in defending vulnerable human life. The entire movement against legalized euthanasia and assisted suicide would today be an incomparably weaker and poorer influence in our society if not for the work he did and the coalitions he helped build.

His legal research, writing and advocacy were also highly influential, and the definitive law review article of which he was primary author, "Suicide: A Constitutional Right?", was cited often by the U.S. Supreme Court justices in 1997 when they unanimously denied a constitutional right to assisted suicide.

Later, when the Center shifted to private funding and was able to take on the abortion issue, Tom worked closely with National Right to Life Committee general counsel Jim Bopp and was deeply involved in the litigation that ultimately led the Court to uphold the federal partial-birth abortion ban this year.

Tom was a trusted advisor to the USCCB's Pro-Life and General Counsel offices on pro-life legal issues, and a board member of the National Catholic Partnership on Disability (NCPD).

His dedication and his research and writing extended as well to issues affecting the internal life of the Catholic Church, its history and the defense of its teaching on the sanctity of human life.

In his total dedication to the lives of the most vulnerable, his intelligence and wit, and his completely self-effacing manner, Tom was a model that many of us in the pro-life movement strove with limited success to emulate. Tom will be very sorely missed

here, but he will have many grateful advocates to speak for him at the next step on his journey. May perpetual light shine upon him!



Big Abortion – Spinning Straw into Gold

Critics of the Supreme Court's April 2007 decision *Gonzales v. Carhart* ("Carhart II") – the abortion industry, its lobbyists and friends on Capitol Hill – are already exploiting the decision for fund-raising, legislative, electoral and general scare-mongering purposes. Their efforts involve playing fast and loose with the facts and with the reasoning of the ruling.

They accuse the Court of overturning recent precedent (*Stenberg v. Carhart* in 2000; "Carhart I"), being hypocritical (because "the ban won't stop a single abortion"), selling out women's health and striking a near-fatal blow to *Roe v. Wade*. None of this is true. Let's look at some of their distortions.

Did Carhart II overturn Carhart I?

In *Carhart I*, Nebraska abortion doctor Leroy Carhart successfully challenged Nebraska's ban on partial-birth abortion. In 2007, he lost his challenge to the federal ban. Why the different result? Although the federal law, Nebraska's and those of about 29 other states all sought to ban partial-birth abortions, lawmakers used different statutory language to do so.

Nebraska's law defined partial-birth abortion as a procedure in which the doctor delivers a "substantial portion of the fetus" into the vagina before committing an act which kills the fetus. In *Carhart I*, five Justices found this description so "vague" that it could also apply to dismemberment abortions, the commonly-used mid-trimester abortion method. In dismemberment abortions, it often happens that the child's heart continues to beat after his leg or arm is drawn into the birth canal and ripped from his trunk (by traction against the cervix).

If both the PBA and dismemberment procedures were banned, the Court reasoned, it would place "a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus," creating an "undue burden" on a woman's "right" to choose.

In response to the Court's vagueness concerns in *Carhart I*, Congress revised the Partial Birth Abortion Ban Act, defining PBA as a procedure in which the doctor partially delivers a living child *outside* his mother's body – *the entire head* in a head-first

delivery or the *trunk past the navel* in a feet-first delivery – then kills the child.

So it was not necessary for the Court to overrule *Carhart I* when it upheld the more precisely worded federal ban in *Carhart II*. Banning the less commonly used procedure, PBA, would not create an undue burden for abortion-minded women, unless, for example, the dismemberment alternative to PBA were far more dangerous than PBA. But abortion doctors have all along (wrongly) insisted that both methods are safe (for the mother, anyway). So the precedent of *Carhart I* stands, insofar as state laws banning PBA would still be found unconstitutional if they were to track Nebraska's definition.

Where's the hypocrisy?

Justice Ginsburg and other critics of the recent decision find it hypocritical and irrational to ban only one gruesome method of abortion (PBA) while another equally gruesome method (dismemberment) remains legal. "Banning PBA won't stop a single abortion!" the critics have lectured us. But we're not the ones who created the irrational scheme of *Roe* under which the law protects the life of a preemie born at 24 weeks gestation, but permits killing a child at full term (40 weeks) because he's still inside his mother. Sure we'd like to dispense with the hypocrisy that pretends one's physical location is a valid criterion for granting and withholding the right to not be killed, but the Court continues to foreclose that possibility. And since most critics of the PBA ban seem generally to find all abortions hunky-dory, it's odd they should criticize *Carhart II* on the ground that it will not stop any abortions.

They are also taking too narrow a view when claiming that PBA ban will not stop a single abortion. Justice Kennedy, writing for the Court, explains: "It is a reasonable inference that a necessary effect of the regulation and the knowledge it conveys will be to encourage some women to carry the infant to full term, thus reducing the absolute number of late-term abortions" (Slip Opinion at 29-30).

Has the Court sold out women's health by banning PBA?

PBA has never been about the "health of the mother" – even as broadly defined in *Doe v. Bolton* ("all factors," emotional, familial, age, whatever, related to "well-being"). It's always been about the abortion doctor's convenience and avoiding a live birth. Doing a dismemberment abortion in mid to late pregnancy takes a lot longer, due to the child's stronger bones and ligaments. But after the mother has

undergone 2-3 days of cervical dilation (risking infection and cervical incompetence), it takes only a matter of minutes for the doctor to partially deliver the child intact, kill him in a way that collapses his skull and complete the delivery.

Early on, abortion supporters defended the procedure by claiming it was necessary to preserve the mother's future fertility in the case of babies with hydrocephalus or other conditions where the mother would be "ripped apart" by a normal vaginal delivery. One by one, each "health" reason was exposed as a sham by experts in maternal-fetal medicine. Even a select panel convened by the pro-abortion American College of Obstetricians & Gynecologists (ACOG) "could identify no circumstances under which this [partial-birth abortion] procedure ... would be the only option to save the life or preserve the health of the woman." (ACOG Statement of Policy, Jan. 12, 1997).

Despite this, the Court in *Carhart I* ruled that conflicting medical opinion on the alleged marginal health benefit of PBA had to be resolved in favor of the abortion doctor's professional judgment. In *Carhart II*, the Court gives lawmakers some leeway in deciding what medical evidence is entitled to greater weight.

Has *Roe* been struck a mortal blow?

Sadly, no. But it has not been reaffirmed either. To reach a five-Justice majority in *Carhart II*, Justices Scalia and Thomas – who believe *Roe* and *Planned Parenthood v. Casey* (the 1992 decision that "reaffirmed" *Roe*) were wrongly decided – had to join forces with Justice Kennedy who joined in writing the *Casey* decision, and with Chief Justice Roberts and Justice Alito whose views on *Casey* are not known. The majority arrived at a consensus: applying the *Casey* principles without endorsing them. This means that the Court determined the constitutionality of the federal ban by applying an intermediate standard of review (the "substantial obstacle" or "undue burden" tests) rather than the strict or heightened scrutiny standards used from *Roe* until *Casey*.

Justice Kennedy also signaled the Court's willingness to apply the same rules in deciding the constitutionality of abortion laws as are followed in other areas of law, putting an end to "abortion distortion." Language in abortion statutes will now be interpreted by giving words their common meaning and reading them in any plausible way that saves the statute from "unconstitutionality." In *Carhart II*, the Court admitted that this maxim had "fallen by the wayside" in construing abortion laws; in fact, courts sometimes went to great lengths to find an

unconstitutional meaning, to invalidate abortion regulations.

Another example of abortion distortion before *Carhart II* is that the Court consistently allowed abortion doctors to challenge an entire abortion law as unconstitutional on its face. When successful, the entire law was declared void. In *Carhart II*, the Court announced that future court challenge to the federal PBA statute (and perhaps other abortion laws for which a plaintiff claims a need for a health exception) should be brought through an “as applied” challenge. If plaintiffs successfully show they are harmed by the application of the law to their circumstances, the judge will not void the entire law, but carve out an exception, narrowly tailored to protect plaintiffs and others who are similarly situated.

In the area of evidence, too, courts have sometimes treated abortion doctors as the ultimate authorities on health or safety issues and what constitutes informed consent. By contrast, opposing testimony by board-certified medical specialists in obstetrics and maternal-fetal medicine has been given less weight. Justice Kennedy objected to this bias in his dissent in *Carhart I*:

“The standard of medical practice cannot depend on the individual views of Dr. Carhart and his supporters... A ban which depends on the ‘appropriate medical judgment’ of Dr. Carhart is no ban at all.”

Despite continued disagreement among experts on the supposed “health benefits” of PBA, the Court in *Carhart II* stated: “Medical uncertainty does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts.”

The spin cycle on *Carhart II* began the day after the ruling when pro-choice members of Congress introduced the “Freedom of Choice Act.” It calls for taxpayer funding of abortions and nullifying every state and federal law or policy that “interferes” with abortion. Expect more of the same in the foreseeable future.

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