



Legal Precedent to Undermine Roe

Fetal Rights Legislation

- Fetal rights legislation undermines one of the central tenets of Roe – that a fetus is not a legal “person” for the purposes of protection under the Constitution – by giving legal rights to a fetus that conflict with and even undermine the rights of pregnant women. Fetal protection legislation lacking an adequate exemption for abortion could make all abortions in a state illegal if Roe v. Wade were later overturned or further undermined.¹
- Unborn Victims of Violence Act (UVVA)²
 - Signed into law on April 1, 2004
 - Creates additional criminal penalties for harm to a fetus that occurs during the commission of a federal crime
 - Gives legal status to a fertilized egg, embryo, or fetus, even if the woman is not aware that she is pregnant

State Children’s Health Insurance Program (SCHIP)

- In 2002, with the support of the Bush administration, the Department of Health and Human Services classified a fertilized egg as an “unborn child.”³
 - Fetuses became eligible for coverage under State Children’s Health Insurance Program (SCHIP), instead of simply allowing for coverage of the pregnant woman.

Child Interstate Abortion Notification Act (H.R. 748)

- Passed by the House in 2005, but never voted on in the Senate.⁴
- This bill, also called the Teen Endangerment Act,⁵ would make it a crime for non-parents to knowingly transport minors across state lines, in order to evade parental involvement laws in pursuit of abortion care.⁶ Both the physician performing the abortion and the adult who transported the minor could face criminal charges.⁷
- CIANA would cause devastating effects on many minors, including:
 - Young women who feel uncomfortable or unsafe about involving their parents in their decision to have an abortion; and
 - Young women who live in states with very few abortion providers.
- It interferes with the constitutionally protected right to travel which should allow the minor all privileges and immunities of the state to which she travels to receive an abortion.

¹ American Civil Liberties Union, What’s Wrong with Fetal Rights, <http://www.aclu.org/reproductiverights/fetalrights/16530res19960731.html> (last visited July 14, 2008).

² National Right to Life, Unborn Victims of Violence, http://www.nrlc.org/unborn_victims/index.html (last visited July 29, 2008).

³ Centers for Medicare & Medicaid Services, State Children’s Health Insurance Program, <http://www.cms.hhs.gov/home/schip.asp> (last visited July 29, 2008).

⁴ GovTrack.us, H.R. 748 [109th]: Child Interstate Abortion Notification Act, <http://www.govtrack.us/congress/bill.xpd?bill=h109-748> (last visited July 14, 2008).

⁵ American Civil Liberties Union, House Subcommittee Approves Teen Endangerment Act, ACLU Denounces Measure as Dangerous and Extreme, <http://www.aclu.org/reproductiverights/youth/12588prs20050413.html> (last visited July 14, 2008).

⁶ GovTrack.us, H.R. 748 [109th]: Child Interstate Abortion Notification Act, <http://www.govtrack.us/congress/bill.xpd?tab=summary&bill=h109-748> (last visited July 14, 2008).

⁷ Id.



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Partial Birth Abortion Ban Act of 2003⁸

- Signed into law by President Bush on November 5, 2003.
- The term “partial birth abortion” does not describe an actual medical procedure; it is simply a non-medical term created by abortion opponents to refer to various procedures used in second trimester abortions.
- Targets the D&X (dilation & extraction) procedure, which is used in some second-trimester abortions, and the D&E (dilation & evacuation) procedure, which is the most common and the safest method of surgical abortion after 14 weeks.
 - The ban makes it a federal crime to “deliberately and intentionally vaginally deliver a living fetus” past certain anatomical landmarks “for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.”
- The ban does not contain an exception for the woman’s health.
- After being struck down as unconstitutional by every District Court and Circuit Court in which it was challenged, the ban was upheld in April 2007 by the U.S. Supreme Court in *Gonzales v. Carhart*.

⁸ Center for Reproductive Rights, *The Federal Abortion Ban, In a Stunning Reversal, Supreme Court Rules Against Women’s Health, In Favor of Abortion Restrictions*, http://www.reproductiverights.org/crt_pba.html (last visited July 14, 2008).