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Federal Judge Blocks Late-Term Abortion Ban

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The Associated Press

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LINCOLN, Neb. - A federal judge blocked implementation of a federal ban on certain late-term abortions Wednesday, less than an hour after President Bush signed the measure into law.

"Congress and the president ignored the Supreme Court and women's health in enacting this law," said Nancy Northup, president of the Center for Reproductive Rights, which filed the lawsuit to block the law.

"The Nebraska court's order will protect doctors from facing prison for providing their patients with the best medical care."

U.S. District Judge Richard Kopf issued a temporary restraining order, citing concerns that the law did not contain an exception to the ban for preserving the health of a woman seeking the abortion.

"While ... Congress found that a health exception is not needed, it is, at the very least, problematic whether I should defer to such a conclusion when the Supreme Court has found otherwise," Kopf said.

The judge stopped short of prohibiting the new law from being enforced nationwide.

He said his order would apply only to the four doctors who filed the lawsuit in Nebraska and their "colleagues, employees and entities ... with whom plaintiffs work, teach, supervise or refer" patients.

The four are: Dr. LeRoy Carhart, who practices in Bellevue, Neb. and is also licensed in Iowa, Indiana, Kansas, Ohio, Pennsylvania, New Jersey, and Wisconsin; Dr. William Fitzhugh, who is licensed to practice in Virginia; Dr. William Knorr, medical director and co-owner of the Savannah Women's Medical Clinic in Savannah, Ga., and also licensed in Alabama, South Carolina and New York; and Dr. Jill Vibhakar, who practices medicine at Emma Goldman Clinic for Women and at the University of Iowa College of Medicine Hospital in Iowa City, Iowa.

"This will prevent the (U.S.) Attorney General and his staff from using this act against me, my patients, all physicians that I refer to and all physicians that refer to me," Carhart said.

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Kopf did not immediately schedule the next hearing in the case, at which time he could decide whether to issue a preliminary injunction against implementation of the law.

The judge's ruling followed a three-hour hearing in a lawsuit brought by abortion supporters trying to block the ban. The four doctors sought to block the ban of the procedure opponents call partial-birth abortion.

In making his ruling, Kopf referred to a legal challenge from Carhart that led to the U.S. Supreme Court overturning Nebraska's partial-birth abortion ban in 2000. The high court said the Nebraska law and others like it were an "undue burden" on women's rights.

"The Supreme Court, citing factual findings of eight different trial judges, appointed by four different presidents, and the considered opinion of the American College of Obstetricians and Gynecologists, has found a very similar law unconstitutional because it banned 'partial-birth abortions' with the requisite exception from the preservation of the health of the woman," Kopf said.

Meanwhile, federal judges in New York and San Francisco are scheduled to soon hear arguments in similar challenges to the ban by Planned Parenthood and the American Civil Liberties Union.

At the White House, Bush spokesman Scott McClellan said the president believes the new law will be upheld.

"We believe it is constitutional and you could expect that we would vigorously defend this law in the courts," McClellan said.

Judge Kopf voiced his concerns at the start of the hearing. "It seems to me the law is highly suspect, if not a per se violation of the Constitution," he said.

U.S. Justice Department attorney Anthony Coppelino told Kopf that he should show deference to Congress' findings that the abortion procedure has not been studied enough to prove it's necessary.

"We ask that you give consideration to the deep concerns that were expressed by Congress," Coppelino said. "It is an abhorrent and useless procedure."

Kopf said he could find no record of a doctor who performs abortions in the second and third trimesters testifying before Congress on late-term abortions. "Isn't that important if Congress was really interested in knowing about this procedure?" Kopf said.

The law also appears to have a "serious vagueness problem," Kopf said.

Priscilla Smith, an attorney for the Center for Reproductive Rights, said that if the law is allowed to take effect "physicians across the country will risk imprisonment for providing abortion care in accordance with their best medical judgment."

The ban defines so-called partial-birth abortion as delivery of a fetus "until, in the case of a headfirst presentation, the entire fetal head is outside the body of the mother, or, in the case of the breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus."

Carhart said the method is one of the safest abortion procedures because it reduces the risk of leaving parts of the fetus inside the woman.

The procedure is used most often in cases where the woman has developed heart disease, diabetes or other life-threatening ailments.

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