A Closer Look

THE U.S. SUPREME COURT

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Al Garcia, right, and a person dressed as the Grim Reaper stood outside a Planned Parenthood clinic in Denver yesterday, seeking to dissuade people from having abortions.

CLINIC DEMONSTRATIONS

States judged able to restrict actions by abortion protesters

By LAURIE ASSEO
Associated Press

WASHINGTON — The Supreme Court gave states greater leeway to restrict anti-abortion demonstrations outside health clinics, ruling yesterday that Colorado's limits on "sidewalk counseling" legitimately protect abortion patients' right to avoid unwanted speech.

The justices, by a 6-3 vote, upheld a 1993 Colorado "bubble" law that bars people from counseling, distributing leaflets or displaying signs within 8 feet of others without their consent whenever they are within 100 feet of a clinic's entrance.

"This statute simply empowers private citizens entering a health-care facility with the ability to prevent a speaker, who is within 8 feet and advancing, from communicating a message they do not wish to hear," Justice John Paul Stevens wrote for the court.

Violators can be sentenced to six months in jail and a $750 fine.

The law was challenged as a violation of protesters' free-speech rights.

"The right to free speech, of course, includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker's message may be offensive to his audience," Stevens wrote. "But the protection afforded to offensive messages does not always embrace offensive speech that is so intrusive that the unwilling audience cannot avoid it."

His opinion was joined by Chief Justice William Rehnquist and Justices Sandra Day O'Connor, David Souter, Ruth Bader Ginsburg and Stephen Breyer.

Dissenting were Justices Antonin Scalia, Anthony Kennedy and Clarence Thomas. Scalia and Kennedy both read from their dissents on the bench.

Scalia called the ruling "one of many aggressively pro-abortion novelties announced by the court in recent years."

"Today's decision is an unprecedented departure from this court's teachings respecting unpopular speech in public" areas, Kennedy's dissenting opinion said.

The decision marked the first time the nation's highest court reviewed a state legislature's attempt to regulate anti-abortion demonstrators outside health clinics. The justices twice previously had ruled in abortion-protest disputes, but those had stemmed from court injunctions aimed at specific clinics, not laws with statewide effect.

"The 8-foot restriction on an unwanted physical approach leaves ample room to communicate a message through speech," Stevens said in his ruling. Demonstrators can stand on the sidewalk at clinic entrances and hand leaflets to those entering the clinic as they pass by.

The Colorado law was enacted, state officials had told the court, after abortion patients complained of being spat on, kicked and harassed outside clinics.

But the three anti-abortion demonstrators who challenged the state law called their tactics gentle and said they raised their voices only because they were required to keep their distance from those they sought to advise.

Nebraska law banning abortion procedure ruled unconstitutional

Continued from Page One

tal, inhumane procedure," said Michael Janocik, assistant director of the group's educational foundation.

The Kentucky attorney general's office yesterday was trying to determine what impact the ruling would have on the state's 2-year-old law. It has never been enforced because of court challenges.

In 1997 the Indiana General Assembly approved a similar law that makes an exception only to save the mother's life.

Gov. Frank O'Bannon, a Democrat, signed the legislation but said he had reservations about its constitutionality.

THE LAW has never been tested in court, said Chris Gibson, legislative director for the Indiana Civil Liberties Union.

Gibson said the court's decision "definitely makes Indiana's statute constitutionally dubious at best." He said most similar state laws were drafted using "model legislation" that could be affected by the high court's decision.

U.S. District Judge John G. Heyburn struck down Kentucky's law as overbroad. Attorney General Ben Chandler appealed his decision. The 6th Circuit Court of Appeals in Cincinnati heard arguments in December but has delayed ruling.

Breyer said in his opinion that the ban, as written, could apply to a common, safe procedure known as "dilation and evacuation," or "D & E," in which portions of a fetus are pulled into the vagina and either pulled or cut off and delivered.

"In sum, using this law some present prosecutors and future attorneys general may choose to pursue physicians who use D&E procedures, the most commonly used method for performing previability second trimester abortions," he wrote.

"All those who perform abortion procedures using that method must fear prosecution, conviction and imprisonment. The result is an undue burden upon a woman's right to make an abortion decision. We must consequently find the statute unconstitutional," Breyer wrote.

The justices' ruling seems to leave an opening for legislation that would ban certain abortion procedures — so long as it allows exceptions for the life and health of the mother. That portion of the opinion sparked disagreement from other justices in the majority.

Justice John Paul Stevens, in his concurrence, said it is difficult for him to see that any abortion procedure is more "gruesome" than another and questioned whether such limits would be acceptable under Roe vs. Wade, the 1973 decision that made abortion legal.

Justice Ruth Bader Ginsburg noted in her concurrence that banning one procedure doesn't advance the state's interest in protecting human life — a requirement under another abortion case out of Pennsylvania — since the sole purpose of abortion is to kill a fetus.

But Justice Sandra Day O'Connor, who cast the key vote in yesterday's majority, said she can envision a constitutional statute that would ban the procedure; however, she said Nebraska's law did not meet the requirements.

IN HER concurring opinion, O'Connor said a "ban on partial-birth abortion that only proscribed the D & X method of abortion and that included an exception to preserve the life and health of the mother would be constitutional in my view."

What critics call "partial-birth" abortion — the dilation and extraction procedure O'Connor mentioned — is often referred to as a type of "late-term" procedure, but Kentucky, as do most states, already prohibits third-trimester abortions if the fetus is viable, unless the life or health of the woman is at risk.

Breyer noted that the American College of Obstetricians and Gynecologists has said that the procedure the Nebraska law attempted to ban might sometimes be the best procedure to save the life or health of a woman.

That seems to go to the heart of some arguments for the ban — that the procedure is never necessary to save the life and health of the child.

Congress has twice voted to ban the procedure — using language similar to the Nebraska statute — and both times President Clinton has vetoed it. Some abortion foes have called for a constitutional amendment banning it.

The issue is almost sure to play a role in this year's presidential election. Republican George W. Bush favors a ban on the procedure but Vice President Al Gore, a Democrat, opposes any such law.

Stephen Hut, a lawyer representing the doctors who perform abortions in the Kentucky case, said yesterday that he sees little difference in the Kentucky and Nebraska statutes. He stopped short of declaring victory in the Kentucky case but noted that Heyburn's ruling was "cited positively" in the Supreme Court decision.

The Supreme Court split 5-4, with Justices Breyer, O'Connor, Stevens, Ginsburg and David Souter forming the majority. Chief Justice William Rehnquist and Justices Antonin Scalia, Clarence Thomas and Anthony Kennedy were in the minority.

Kennedy, in his dissent, said the majority decision "nullifies a law expressing the will of the people of Nebraska that medical procedures must be governed by moral principles having their foundation in the intrinsic value of human life, including life of the unborn."

Scalia wrote, "Today's decision, that the Constitution of the United States prevents the prohibition of a horrible mode of abortion, will be greeted by a firestorm of criticism as well it should." He likened the ruling to the court's 19th-century Dred Scott decision that upheld the institution of slavery.

The Nebraska law made it a felony for a doctor to perform an abortion in which the physician "partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery."

The Kentucky statute is virtually identical, prohibiting procedures in which "the physician performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery."

Beth Wilson, director of the American Civil Liberties Union of Kentucky's Reproductive Freedom Project, said the ruling "is a clear victory for women."

"THE SUPREME Court has recognized that these laws are a clear attack on a woman's right to choose . . . It's a good decision," she said. "It shows these bans are not limited to a certain type of procedure; they are a sweeping prohibition on safe and common abortion methods."

Janocik, with Kentucky Right to Life, said yesterday that the ruling could force abortion foes to look for "different wording" to outlaw the procedure, but he said he didn't know if the decision would render Kentucky's law unconstitutional.

Wilson, however, said Chandler should drop Kentucky's appeal of Heyburn's decision to strike down the law.

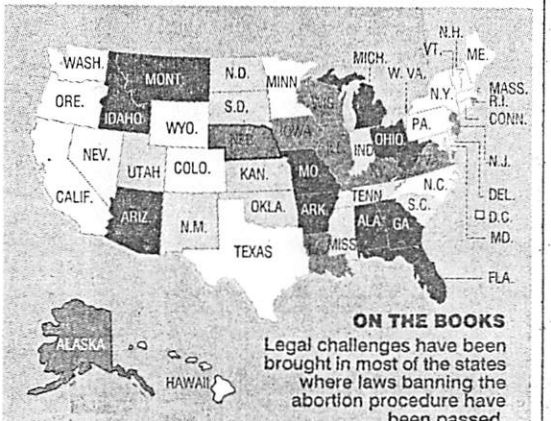
The state has paid over $300,000 to the ACLU during the past 16 years to compensate it for legal fees the civil-rights organization incurred fighting abortion laws it viewed as unconstitutional.

"Given the clear guidance of the Supreme Court, the logical thing for the commonwealth to do would be to withdraw its appeal and stop this silly waste of taxpayer money," Wilson said.

Staff writer Lesley Stedman contributed to this story.

WHERE STATES STAND

The Supreme Court's decision on the abortion procedure known as dilation and extraction will almost certainly affect states with similar laws. Here is a look at the status of similar state laws.



ON THE BOOKS

Legal challenges have been brought in most of the states where laws banning the abortion procedure have been passed.

- ■ Law blocked*
- ■ Law blocked but under appeal
- □ Law has not been challenged**
- □ No such existing law

*Law in Georgia and Montana limited to specifically defined procedures. A new Ohio law is not yet in effect.
**Law in Kansas, New Mexico and Utah limited to specific circumstances.

Source: Center for Reproductive Law and Policy

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LOCAL REACTION ABOUT SCHOOL CASE

Ruling may not affect Kentucky, Indiana

By HOLLY CORYELL
and GRACE LEE UY
The Courier-Journal

Local parochial schools welcomed the Supreme Court ruling that allows religious schools to use computers and other materials bought with government money.

But most observers said the decision wouldn't cause big changes in Kentucky.

In Indiana, meanwhile, the ruling probably won't help a legal challenge to dual enrollment, said an attorney for the Indiana Civil Liberties Union. Under dual enrollment, public schools hire teachers who work with students in private schools. In exchange, the public school district includes the private school students in its enrollment count and receives more state money.

THE RULING is "very good news" for the Archdiocese of Louisville, said Leisa Speer, superintendent of schools for the archdiocese, which oversees 68 Catholic schools in 24 Kentucky counties.

"Our schools have benefited throughout the years" from money from Title VI of the Elementary and Secondary Education Act of 1965. Among other things, that law provides classroom materials to teachers and students at both public and private non-profit schools.

The money allows "us to supplement the existing programs," Speer said.

Archdiocesan schools in Jefferson County receive $80,000 to $85,000 per year from the public school system for Title VI programs, and Speer doesn't expect that to change.

In the 1999-2000 school year, 18 private schools and 52 Catholic schools in Jefferson County received a total of $135,211 in Title VI funding, said Bernard Minnis, assistant superintendent for equity and poverty issues for the county's public school district.

Both amounts will be lower for the coming school year, he predicted.

Jeff Vessels, executive director of the American Civil Liberties Union of Kentucky, said he is concerned about the court's ruling.

"We believe that this ruling does erode the wall of separation between church and state because it does give permission for citizens' tax dollars to support religious schools," he said. "We believe that is contrary to the First Amendment."

IN INDIANA, an attorney for the Indiana Civil Liberties Union said yesterday's decision probably won't support the ICLU's objection to dual enrollment.

Many of the school systems that had been using the practice to get extra state money have already stopped, said ICLU attorney Paige Freitag.

The Indiana legislature changed the way students are counted, making the dual enrollment practice less lucrative. All schools who used the practice have also been ordered to repay the state the additional money they got from counting non-public students in their enrollment figures.

NOR IS THE Supreme Court decision likely to affect a lawsuit brought by the ICLU against Harrison County over plans to share riverboat casino tax revenue with a Catholic school in Corydon, Freitag said. After the suit was filed, the school asked the county to halt its plan.

What is unclear is what will happen to programs not mentioned in the ruling — programs that provide federal money for other uses, such as special education and transportation for private school students.

Jeff Vessels, executive director of the American Civil Liberties Union of Kentucky.

Public school districts in Kentucky take about 7,800 students to private and parochial schools, which usually reimburse the public schools for the cost, said Lisa Gross, a spokeswoman for the Kentucky Department of Education.

Lauren Roberts, a spokeswoman for Jefferson County Schools Superintendent Stephen Daeschner, said he hadn't seen the ruling and wanted to review it.

CHURCH AND STATE

Tax money can buy computers for religious schools, court says

By ANJETTA McQUEEN
Associated Press

WASHINGTON — The government can provide computers for religious schools, the Supreme Court ruled yesterday in a decision that significantly narrowed the constitutionally required separation of religion and government.

The 6-3 ruling was praised by supporters of private school tuition vouchers — government initiatives to help parents of children who do not attend public schools.

The justices said a Louisiana parish can distribute money for instructional equipment — including computers, books, maps, and film strip projectors — to private schools as long as it's done in a "secular, neutral and nonideological" way.

"We believe the majority of the court has signaled that school vouchers are constitutional," said Matthew Berry, a lawyer with the Institute for Justice. He defended, among other programs being challenged in lower courts, Florida Gov. Jeb Bush's statewide plan to give parents of poor children money for private schooling.

But critics warned against giving religious schools and their missions new access to the public treasury.

"The Supreme Court certainly took a sledgehammer to the wall of separation between church and state today," said the Rev. Barry W. Lynn, executive director of Americans United for Separation of Church and State. "The silver lining is that this decision gives no aid or comfort to voucher supporters."

Public school officials lamented they could be sued over Bible lessons that show up on computers they've bought.

"A computer contains instructional content that no one can monitor," said Anne Bryant, executive director of the National School Boards Association. "Once you are connected to the Internet, this technology could be used for religious instruction."

However, Justice Clarence Thomas wrote in the court's main opinion: "We see no basis for concluding that Jefferson Parish's Chapter 2 program 'has the effect of advancing religion.' ... Chapter 2 does not result in governmental indoctrination, because it determines eligibility for aid neutrally, allocates that aid based on the private choices of the parents of schoolchildren; ... Nor does Chapter 2 define its recipients by reference to religion."

Thomas was joined by Chief Justice William Rehnquist and Justices Antonin Scalia and Anthony Kennedy in a sweeping opinion that would allow almost any government aid to religious schools.

Yet, Justices Sandra Day O'Connor and Stephen Breyer — who supplied the critical votes to reach a majority on the nine-member court — refused to go that far. In an opinion by O'Connor, they called the Thomas opinion's "expansive scope ... troubling."

Justices David Souter, John Paul Stevens and Ruth Bader Ginsburg dissented.