

## Top court takes abortion case

Justices to hear appeal of halt  
to Nebraska law that bans  
'partial birth procedures'

**By Linda Greenhouse**  
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WASHINGTON - Adding an abortion case to its docket for the first time in eight years, the Supreme Court agreed Friday to decide whether a Nebraska law banning a procedure the state calls "partial birth abortion" is constitutional.

The justices plan to hear the case in April and decide it by early summer.

The election-year ruling could have a substantial impact on the fractious politics of abortion, although it may not resolve questions about all the similar, but differently worded, prohibitions that 30 states have adopted in recent years.

The Nebraska law - which is broadly written and lacks an exception to protect the health of pregnant women - was declared un-constitutional last year by a federal appeals court, which also struck down similar laws in Iowa and Arkansas.

Nearly, simultaneously, a different appeals court upheld laws in Wisconsin and Illinois, creating the judicial conflict that the Supreme Court is acting quickly to resolve.

In their order late Friday granting Nebraska's appeal, the justices indicated that they are not interested in revisiting the basic question of the constitutional status of abortion. Nebraska had asked the court to reconsider its decisions establishing a right to abortion, but the justices granted review only on questions of whether the law is consistent with those precedents.

Like the other states' laws, the Nebraska law applies to procedures used to terminate pregnancies in which the fetuses cannot yet live outside the womb. At this state of pregnancy, the Supreme Court ruled eight years ago in *Planned Parenthood vs. Casey*, states may not place an "undue burden" on a woman's access to abortion.

In striking down the Nebraska law in its ruling last September, the 8<sup>th</sup> U.S. Circuit Court of Appeals in St. Louis said that because the Nebraska law would have the effect of prohibiting "the most common method of second-trimester abortion," it constituted an "undue burden."

In his opinion for the court, Judge Richard S. Arnold said that the phrase "partial birth abortion," though widely used by lawmakers and in the popular press, has no fixed medical or legal content."

The Nebraska law, which was passed in 1997 but has been blocked from taking effect, contains this description of the abortion technique it prohibits: "an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery." The term "partially delivers" is in turn defined as "deliberately and intentionally delivering into the vagina a living unborn child or substantial portion thereof."

The appeals court said the phrase "substantial portion" was the law's "crucial problem" because it meant that the prohibition applied to a range of abortion procedures used quite early in pregnancy, in which a doctor pulls fetal parts from the uterus through the birth canal.

Although Nebraska argued that its legislature had in fact intended to ban this common procedure, known as dilation and evacuation, the appeals court said that, "we cannot, however, twist the words of the law and give them a meaning they cannot reasonably bear."