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Three federal appeals courts hear late-term abortion cases

Proceedings are under way in New York, San Francisco and Lincoln, Neb. in cases against the sweeping ban

By E.A. Torriero
Chicago Tribune (KRT)

LINCOLN, Neb. — Judges in three venues across the nation Monday began hearing the first legal challenges to a new federal law banning certain types of abortions.

The cases in federal courts in New York, San Francisco and Lincoln, Neb., brought by physicians who perform abortions and abortion-rights groups, center mostly on what some lawmakers define as "partial-birth abortion" and what doctors call "intact dilation and extraction" or D&X.

Congress passed a prohibition on such procedures that President Bush signed into law in November. It is the most sweeping legal action on the matter since the Roe vs. Wade ruling

by the U.S. Supreme Court legalized a woman's right to abortion in 1973.

Opponents claimed in courtrooms Monday that the law is not specific and does not take a woman's health into account when deciding the necessity of the procedure. Government lawyers argued that the procedure is not only unnecessary but also inhumane.

In the procedure, usually done in the second trimester and occasionally in the third, a fetus is partially brought out of the womb and its skull is deflated. An estimated 2,200 to 5,000 such terminations are performed annually in the United States, out of 1.3 million total abortions.

The U.S. Supreme Court struck down a similar Nebraska law in 2000. On Monday, Nebraska physician LeRoy Carhart, who fought his state law, was again in the same Lincoln courthouse, this time as a plaintiff against the federal government.

"The fight continues," he said after the government and abortion-rights attorneys presented their opening

arguments before U.S. District Court Judge Richard Kopf.

The ban, carrying a maximum 2-year prison term for doctors convicted of performing the procedure, is on hold pending legal actions.

Activists chose to challenge the law in three symbolic venues from coast-to-coast. Along with several doctors, the National Abortion Federation is spearheading the challenge in New York, the Planned Parenthood Federation of America and others brought the San Francisco case, and Carhart along with the Center for Reproductive Rights is in court in Lincoln.

Because of the long legal battle waged in Nebraska by Carhart — and Judge Kopf's familiarity with the evidence and legal nuances — the Lincoln hearing is expected to be a bellwether for future appeals, legal observers said.

Ban opponents are hoping that courts will follow precedent and rule in their favor.

"Five courts of appeal have said that (the laws) must include an exception for the health of the mother," Priscilla Smith, attorney for Carhart and the plaintiffs, told Kopf.

Procedures for terminating pregnancies are varied, Smith told Kopf, and usually rely on the discretion of the doctor. Therefore Congress cannot issue a sweeping ban, she said.

"Physicians have learned to expect the unexpected," said Smith, who intends to present more than a dozen doctors and experts in the next two weeks.

But lead U.S. Attorney Anthony Coppelino argued that because the procedures are varied, Congress could not be expected to be specific in its language.

"We can't seem to get a common term," he said about the disagreements over how to define the abortions in dispute.

Coppelino promised to present updated evidence and experts to convince Kopf that Congress acted based on new, detailed information. But Kopf, who read pretrial transcripts of Congress' debate, indicated that he would be hard to convince.

"I don't see (that) Congress spent anywhere near the effort that you folks did in trying to give me a clear picture," he told the attorneys.

Kopf seemed to view the bipartisan bill more as a political creation than a legislative one. Some lawmakers have termed the procedure "barbaric."

"The question really is, 'Does Congress really care about whether the procedure is unsafe or not?'" he asked.

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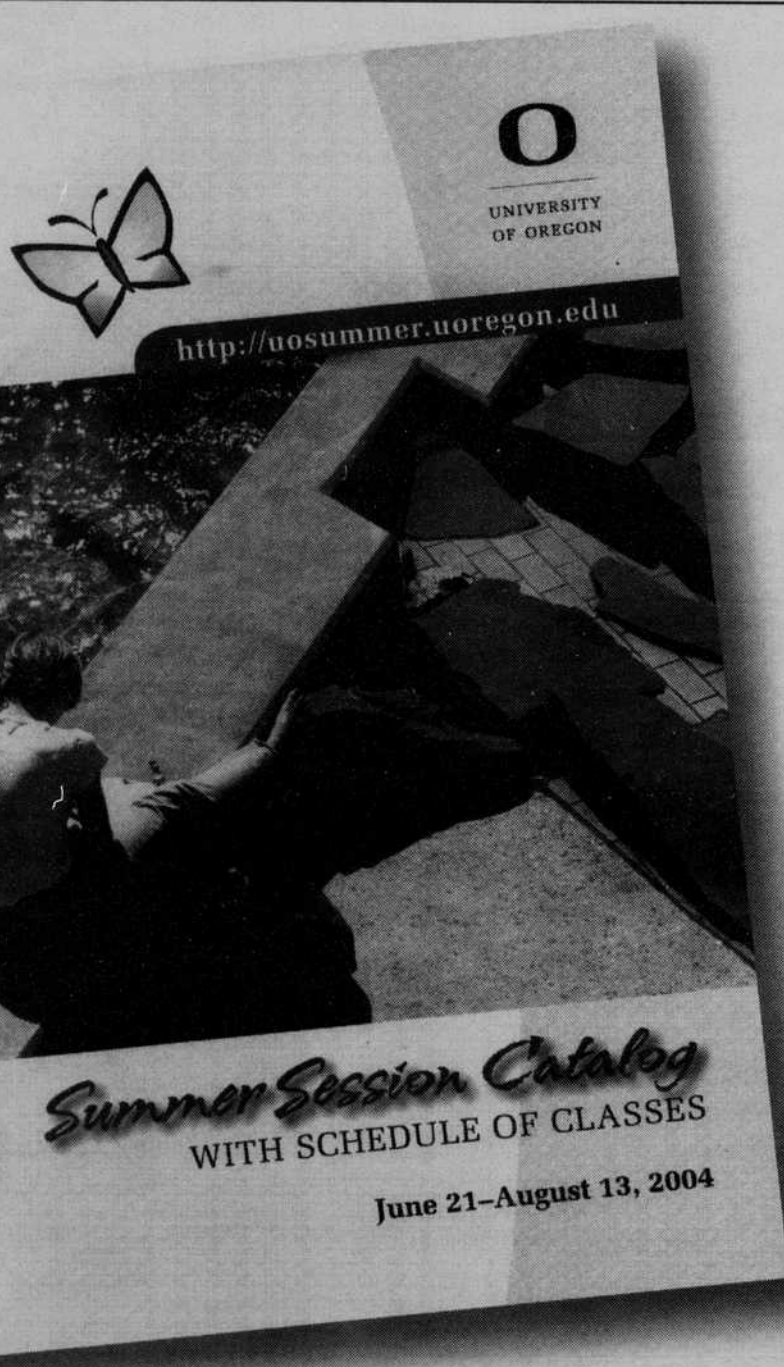
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