SUPREME COURT OF THE UNITED STATES

No. 99–830

DON STENBERG, ATTORNEY GENERAL OF NEBRASKA, ET AL., PETITIONERS *v.* LEROY CARHART

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June 28, 2000]

JUSTICE STEVENS, with whom JUSTICE GINSBURG joins, concurring.

Although much ink is spilled today describing the gruesome nature of late-term abortion procedures, that rhetoric does not provide me a *reason* to believe that the procedure Nebraska here claims it seeks to ban is more brutal, more gruesome, or less respectful of "potential life" than the equally gruesome procedure Nebraska claims it still allows. JUSTICE GINSBURG and Judge Posner have, I believe, correctly diagnosed the underlying reason for the enactment of this legislation– a reason that also explains much of the Court's rhetoric directed at an objective that extends well beyond the narrow issue that this case presents. The rhetoric is almost, but not quite, loud enough to obscure the quiet fact that during the past 27 years, the central holding of *Roe* v. *Wade*, 410 U. S. 113 (1973), has been endorsed by all but 4 of the 17 Justices who have addressed the issue. That holding– that the word "liberty" in the Fourteenth Amendment includes a woman's right to make this difficult and extremely personal decision– makes it impossible for me to understand how a State has any legitimate interest in requiring a doctor to follow any procedure other than the one that he or she reasonably believes will best protect the woman in her exercise of this constitutional liberty. But one need not

even approach this view today to conclude that Nebraska's law must fall. For the notion that either of these two equally gruesome procedures performed at this late stage of gestation is more akin to infanticide than the other, or that the State furthers any legitimate interest by banning one but not the other, is simply irrational. See U. S. Const., Amdt. 14.