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 GINSBURG, with whom JUSTICE STEVENS joins, concurring.

I write separately only to stress that amidst all the emotional uproar caused by an abortion case, we should not lose sight of the character of Nebraska's "partial birth abortion" law. As the Court observes, this law does not save any fetus from destruction, for it targets only "a *method* of performing abortion." *Ante*, at 11–12. Nor does the statute seek to protect the lives or health of pregnant women. Moreover, as JUSTICE STEVENS points out, *ante*, at 1 (concurring opinion), the most common method of performing previability second trimester abortions is no less distressing or susceptible to gruesome description. Seventh Circuit Chief Judge Posner correspondingly observed, regarding similar bans in Wisconsin and Illinois, that the law prohibits the D&X procedure "not because the procedure kills the fetus, not because it risks worse complications for the woman than alternative procedures would do, not because it is a crueler or more painful or more disgusting method of terminating a pregnancy." *Hope Clinic* v. *Ryan*, 195 F. 3d 857, 881 (CA7 1999) (dissenting opinion). Rather, Chief Judge Posner commented, the law prohibits the procedure because the State legisla-

tors seek to chip away at the private choice shielded by *Roe* v. *Wade*, even as modified by *Casey*. *Id.*, at 880–882.

A state regulation that "has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus" violates the Constitution. *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 877 (1992) (joint opinion of O'CONNOR, KENNEDY, and SOUTER, JJ.). Such an obstacle exists if the State stops a woman from choosing the procedure her doctor "reasonably believes will best protect the woman in [the] exercise of [her] constitutional liberty." *Ante*, at 1 (STEVENS, J., concurring); see *Casey*, 505 U. S., at 877 ("means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it"). Again as stated by Chief Judge Posner, "if a statute burdens constitutional rights and all that can be said on its behalf is that it is the vehicle that legislators have chosen for expressing their hostility to those rights, the burden is undue." *Hope Clinic*, 195 F. 3d, at 881.