



## Stenberg v. Carhart, 530 U.S. 914, 920, 924, 934, 963 (2000)

Plaintiff physician filed suit challenging the constitutionality of a Nebraska statute, which criminalized performance of "partial birth abortions." The district court found the statute unconstitutional, and the court of appeals affirmed. The Supreme Court held that the statute was unconstitutional because it lacked any exception for the preservation of the health of the mother. Where substantial medical authority supported the proposition that banning a particular abortion procedure could endanger women's health, a prohibitory statute must include a health exception when the procedure is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. The statute was also unconstitutional because it imposed an undue burden on a woman's ability to choose a more common abortion procedure, thereby unduly burdening the right to choose abortion itself.

### **The Court Used AMA Guidance and Reports in Formulating Its Reasoning and Definitions**

Nebraska's argument (6) is right -- there are no general medical studies documenting the comparative safety of the various abortion procedures. Nor does the Court deny the import of the American Medical Association's (AMA) recommendation (argument (7)) that intact D&X not be used unless alternative procedures pose materially greater risk to the woman.

D&E "refers generically to transcervical procedures performed at 13 weeks gestation or later." American Medical Association, Report of Board of Trustees on Late-Term Abortion, App. 490 (hereinafter AMA Report). The AMA Report, adopted by the District Court, describes the process as follows.

an American Medical Association policy statement that "there does not appear to be any identified situation in which intact D&X is the only appropriate procedure to induce abortion," Late Term Pregnancy Termination Techniques, AMA Policy H-5.982 (1997).

American Medical Association (AMA) publications describe the D&X abortion method as "ethically wrong." AMA Board of Trustees Factsheet on HR 1122 (June 1997), in App. to Brief for Association of American Physicians and Surgeons et al. as *Amici Curiae* 1 (AMA Factsheet).