

NRLC's Ultrasound Viewing Legislation

The ultrasound viewing legislation NRLC endorses requires the abortion provider, prior to the abortion, to **perform** an ultrasound, **provide an explanation** of the results, **display** the ultrasound images, and **provide a medical description** of the ultrasound images such as pointing out the presence of external members and internal organs if present and viewable.

What sets the NRLC legislation apart from other ultrasound viewing legislation?

- NRLC model legislation varies from other ultrasound viewing model legislation because the NRLC legislation seeks to change the **status quo**.
- Several states have laws requiring abortion providers to offer mothers an opportunity to view the ultrasound prior to the abortion. NRLC supported this legislation, but NRLC has now discovered these laws do not achieve the results intended. **Why** do they not achieve the original intent? NRLC discovered that many abortion providers are **claiming** that they **already offer** the mother the opportunity to view the ultrasound. In practice, the abortion providers offer the option to view the ultrasound in such a way that places the burden on the mother in crisis. For instance, some abortion providers note the opportunity within a lengthy consent form, and then require the mother in crisis to ask for the opportunity once with the doctor. The burden should not be on the mother in crisis to ask for the ability to view the ultrasound, it should be on the abortion provider.

Is ultrasound display legislation constitutional?

- **The legislation is constitutional.** The controlling case law is from *Planned Parenthood vs. Casey*, 505 U.S. 833 (1992). In this case the court held:

Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the state furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later with devastating

psychological consequences, that her decision was not fully informed. If the information the state requires to be made available to the woman is truthful and not misleading the requirement may be permissible.

What could be more truthful than the ultrasound image? The ultrasound provides a window into the womb. It allows the mother to see her unborn child and to experience the humanity of the unborn child before it is too late. The mother needs the opportunity to understand the consequences of her decision so she might be able to spare herself from regret and save the child's life. The court in *Gonzales v. Carhart* again acknowledged that the mother might regret the abortion if she learns more information after it is too late. In particular, that she might regret the partial birth abortion:

The State has an interest in ensuring so grave a choice is well informed. It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form. *Gonzalez v. Carhart*, 127 S. Ct. 1610, 1634 (2007).

The court recognized informed consent is within the state's interest in order to protect the mother from making a decision she regrets. Similar to the partial birth abortion case, the mother should have all of the facts before making the decision to abort. She should know what her unborn child looks like before the abortion, instead of after the abortion when she sees an image of an 10-week-old unborn child with a beating heart, lips, arms, fingers, fingernails, legs, and toes. She should know about the development of her unborn child, and the ultrasound image provides her with first-hand knowledge of that development.

In *Gonzales v. Carhart*, the Supreme Court also revisited the Casey standard.

Under the principles accepted as controlling here, the Act, as we have interpreted it, would be unconstitutional "if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Planned Parenthood v. Casey*, 505 U.S., at 878, 112 S.Ct. 2781 (plurality opinion). *Gonzalez v. Carhart*, 127 S. Ct. 1610, 1635 (2007).

The viewing of the ultrasound does not create a substantial obstacle to obtaining an abortion. The ultrasound is used by most abortion providers to date the pregnancy, and is already a part of the process of having an abortion. Thus, providing the mother an opportunity to see her ultrasound images cannot be

construed as a substantial obstacle. Further, she is not forced to view the ultrasound image, and has the ability to turn away and choose not to view the image.

The ultrasound viewing legislation is Constitutional based on the current holdings of the Supreme Court.

The Second reason NRLC welcomes this challenge is that when we debate pro-life legislation we bring attention to the unborn child and revitalize the fight for human life by gaining public support. This held true when we debated over partial-birth abortion. The public learned about the notorious procedures being performed on the partially born child. As more people saw that at the heart of the debate was the unborn child, the pro-life movement made advances and gained momentum. The current legislative environment is one of a culture of death, one that is not supporting pro-life initiatives. The ultrasound debate will help recharge the fight for the unborn child against abortion.

