

Abortion rights: Frontal or piecemeal attack? South Dakota's wide-ranging new ban

by [ABP news](#)

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A wide-ranging abortion ban recently passed by South Dakota is aimed ultimately at the U.S. Supreme Court. Members of the South Dakota House of Representatives gave final approval February 24 to the bill, sending it to the desk of Republican governor Mike Rounds, who signed it into law on March 6.

The law prohibits all abortions in South Dakota except for those to save a mother's life. The law contains no exceptions for pregnancies resulting from rape or incest, nor for pregnancies that could endanger the mother's health. Doctors who perform banned abortions could face a \$5,000 fine and a prison sentence.

The law's backers hope it will challenge *Roe v. Wade*, the landmark 1973 Supreme Court decision that recognized a woman's right to abortion in the Constitution.

But despite the addition of two new conservative justices, the high court may still lack the votes needed to hear a challenge to basic abortion rights, said some abortion opponents. "In essence, we don't think that there is much of a chance that the court will even review this law," said Daniel McConchie, vice president of the Chicago-based Americans United for Life.

McConchie cautioned that the law could prove to be counterproductive. He noted that there are five justices who remain on the court—associate justices Stephen Breyer, Ruth Bader Ginsburg, Anthony Kennedy, David Souter and John Paul Stevens—who have voted in the past to uphold the core of *Roe*.

Since the 1992 *Planned Parenthood v. Casey* decision, when a majority of justices affirmed a basic right to abortion, "there have been at least ten attempts to get the court to reconsider *Roe*, and the court has simply demurred each time," McConchie

said. "And it's very likely this time that the court would do so again."

McConchie also said if the South Dakota challenge goes the wrong way in the courts, it could contribute to a high court or appeals court decision that would add to the weight of precedent already supporting *Roe*.

With the addition to the high court of Chief Justice John Roberts and Justice Samuel Alito, abortion opponents have said the Court could move to the right on a number of issues, but that abortion rights may be easier to curtail than to dump in one sweeping decision.

For example, a February 28 decision by the Supreme Court removed uncertainty about the legality of protesting in front of clinics. The unanimous ruling ends a long battle in which the National Organization for Women tried to stop antiabortion protests by citing racketeering and extortion laws designed to fight organized crime.

"Decisions of this Court have assumed that Congress did not intend the Hobbs Act to have so broad a reach," wrote Justice Stephen Breyer, referring to an extortion law.

The American Center for Law and Justice, which represented Operation Rescue, a defendant in the case, hailed the decision. "This is a major victory for the pro-life community and removes a cloud that has been hanging over pro-life demonstrations for years," said Jay Sekulow, chief counsel of the Washington-based legal group.

But Carlton Veazey, the minister-president of the Washington-based Religious Coalition for Reproductive Choice, said the decision did not concern only the safety of women's clinics. "It is also about the safety of churches that have pro-choice positions and pro-choice clergy and the safety of homes of clergy who are pro-choice," he said.

The case was the second within a week that is encouraging to antiabortion activists. Justices decided February 21 to consider the constitutionality of a federal law banning a type of late-term abortion. The case, involving a procedure critics call "partial-birth abortion," will be heard this fall.

The dispute involves a law approved by Congress and signed by President Bush in 2003 making it a crime for doctors to perform the procedure known medically as intact dilation and extraction.

The procedure involves partial removal of the fetus from the womb and a puncturing of the skull, and is used to terminate pregnancies in the second and third trimesters. Doctors who perform the procedure contend that it is the safest method of abortion when a mother's health is threatened by heart disease, high blood pressure or cancer. -*Associated Baptist Press, Religion News Service*