



# Akron Abortion Ordinance Struck Down

Five and one-half years after the Akron City Council ignored the best advice and analysis of legal experts and medical practitioners by passing the infamous Akron Abortion Ordinance, the U.S. Supreme court's ruling in ACLU's legal challenge to that thorny law has given a clear-cut victory to reproductive rights advocates, affirming that a woman's right to choose abortion is strongly protected against governmental meddling by the constitutionally based right of privacy.

Adopting arguments advanced by ACLU Cooperating Attorney Stephan Landsman, a Cleveland State University Law Professor who was chief counsel in the case from its inception, the Court's majority said the right to guarantee is "grounded in the concept of personal liberty guaranteed by the Constitution, [and] encompasses a woman's right to decide whether to terminate her pregnancy."

Scolding the dissent, Justice Powell, writing for the majority, pointed out that it "stops short of arguing flatly that *Roe* should be overruled. Rather, it adopts reasoning that, for all practical purposes, would accomplish precisely that result."

The decision, issued two weeks before the end of the Court's term, not only reaffirmed its landmark holding of a decade ago, but significantly expanded it by finding that Akron's "hospital-only" requirement for all second-trimester abortions (a grey area of the *Roe* decision) improperly and unnecessarily burdened the abortion decision, and by stating clearly that state regulations may not even attempt to influence "the woman's choice between abortion and childbirth."

In the words of the majority opinion, this is how the Court ruled on the most disputed provisions of the Akron ordinance:

- **The "Hospital-Only" Requirement**

"It is true that a state abortion regulation is not unconstitutional simply because it does not correspond perfectly in all cases to the asserted state interest. But the lines drawn in a state regulation must be reasonable, and this cannot be said of [the language at issue]. By preventing the performance of D & E [dilatation and evacuation] abortions in an appropriate nonhospital setting, Akron has imposed a heavy, and unnecessary, burden on women's access to a relatively inexpensive, otherwise accessible, and safe abortion procedure. [This] section has the effect of inhibiting the vast majority of abortions after the first 12 weeks, and therefore unreasonably infringes upon a woman's constitutional right to obtain an abortion. (emphasis added)."

- **Parental or Judicial Consent**

"The relevant legal standards are not in dispute. The Court has held that 'the State may not impose a blanket provision . . . requiring the consent of a parent or person *in loco parentis* as a condition for abortion of an unmarried minor.' In [a 1979 case], a majority of the Court indicated that the State's interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial. [That] plurality cautioned, however,

that the State must provide an alternative procedure whereby a pregnant minor may demonstrate that she is sufficiently mature to make the abortion decision herself or that, despite her immaturity, an abortion would be in her best interests. Under these decisions, it is clear that Akron may not make a blanket determination that all minors under the age of 15 are too immature to make this decision or that an abortion never may be in the minor's best interests without parental approval. (emphasis added)."

"We respect [the doctrine of adherence to decided cases] today, and reaffirm *Roe v. Wade*."

—Justice Lewis Powell, writing for the six-person Supreme Court majority in striking down as unconstitutional the Akron Abortion Ordinance in *Akron v. Akron Center for Reproductive Health*, June 15, 1983.

- **"Mis-Informed" Consent**

"The validity of an informed consent requirement rests on the State's interest in protecting the health of the pregnant woman. The decision to have an abortion has implications far broader than those associated with most other kinds of medical treatment. . . This does not mean, however, that a State has unreviewable authority to decide what information a woman must be given. . . It remains primarily the responsibility of the physician to ensure that appropriate information is conveyed to his patient, depending on her particular circumstances. [Our prior] recognition of the State's interest. . . will not justify abortion regulations designed to influence the woman's informed choice between abortion or childbirth (emphasis added).

"[Akron's regulation] attempts to extend the State's interest in ensuring 'informed consent' beyond permissible limits. First, it is fair to say that much of the information required is designed not to inform the woman's consent but rather to persuade her to withhold it altogether.

"An additional and equally decisive objection to [this section] is its intrusion upon the discretion of the pregnant woman's physician. . . By insisting upon recitation of a lengthy and inflexible list of information, Akron unreasonably has placed obstacles in the path of the doctor upon whom the woman is entitled to rely for advice in connection with her decision."

- **24-Hour Waiting Period**

"The Court of Appeals [found] that the inflexible period had 'no medical basis,' and that careful consideration of the abortion decision by the woman 'is beyond the state's power to require.' We affirm the Court of Appeals' judgment.

"We find that Akron has failed to demonstrate that any legitimate state interest is furthered by an arbitrary and inflexible waiting period. There is no evidence suggesting that the abortion procedure will be performed more safely. . . [I]f a woman, after appropriate counseling, is prepared to give her written informed consent and proceed with the abortion, a State may not demand that she delay the effectuation of the decision (emphasis added).

As chief counsel on the case during its half-decade pendency in the courts, Stephen Landsman spent over 2,000 hours seeing it to its most successful end. However, he was not alone in his toils. Of invaluable assistance at

various times were attorneys Gordon Beggs and Wayne Hawley (of Cleveland), Patricia Vance (of Akron), Dennis Haines and Patricia Roberts (of Youngstown), and Bruce Campbell and Louis Jacobs (of Columbus); Lois Lipton, of Illinois ACLU's reproductive rights project; and Janet Benshoof, Suzanne Lynn, and Nan Hunter, staff attorneys of national ACLU's Reproductive Freedom Project in New York.