PAUL CLEMENT ON ABORTION

Highlights:

- Paul Clement argued in favor of restrictions to abortion and contraception.
  - In Gonzales v. Carhart, Clement successfully defended a ban on a second-trimester abortion procedure.
  - In Hobby Lobby v. Burwell, Clement argued that companies should not have to provide insurance coverage for contraception.

Clement Argued In Favor Of Restrictions To Abortion And Contraception

IN GONZALES V. CARHART, CLEMENT SUCCESSFULLY DEFENDED A BAN ON A SECOND-TRIMESTER ABORTION PROCEDURE

Clement Defended A Second-Trimester Abortion Ban That Was Upheld By The Supreme Court. According to the Guardian, "Clement's reputation as a legal defender of conservative positions was enhanced further by his oral arguments in favour of an act banning a procedure used to terminate pregnancies in the second trimester, known to conservatives as 'partial-birth abortion.' The legislation was signed into law in 2003. Its constitutionality upheld in 2007 in the supreme court in a 5-4 position, following oral arguments by Clement." [Guardian, 3/30/12]

Clement In Gonzales v. Carhart Successfully Argued To Uphold States' Second-Trimester Abortion Bans. According to Justia, "Attorneys - Priscilla Smith (plaintiffs) Paul Clement (defendants) […] The majority opinion viewed the challenge narrowly as attacking the law on a facial rather than as-applied basis. While it found that it was not facially unconstitutional, it did not reject the possibility of an as-applied challenge. Kennedy stated that the undue burden standard in Planned Parenthood v. Casey required courts to place a stronger emphasis on the state's interest in the life of the fetus than the lower courts had shown in reviewing this case. Since the medical community did not agree on the health risks that the partial-birth abortion process might be needed to resolve, partial-birth abortions could be banned without a health exception until greater clarity was found. Acknowledging that the Court had invalidated a different statute banning partial-birth abortions in Stenberg v. Gonzales, the Court stated that this statute had clearer language and thus did not violate due process. The majority opinion did specifically state that it was valid under the Commerce Clause." [Justia, accessed 5/15/24]

In Oral Arguments, Clement Claimed That Intact Dilation And Evacuation Abortion Was Never Medically Necessary According to the New York Times, "One example was his response to the assertion by Solicitor General Paul D. Clement that it was never necessary for doctors to use the banned procedure because a more common procedure, one not covered by the statute, 'has been well tested and works every single time as a way to terminate the pregnancy.'"

- **Justice Kennedy Fact-Checked Clement, Stating That Other Abortion Methods Often Endanger The Health Of The Mother.** According to the New York Times, "Justice Kennedy responded: 'Well, but there is a risk if the uterine wall is compromised by cancer or some forms of pre-eclampsia and it's very thin. There's a risk of being punctured.' His comment reflected arguments that the doctors challenging the law have made. They say that 'partial-birth abortion' — known medically as both 'intact dilation and evacuation' and 'D and X,' for dilation and extraction — is often safer because the removal of an intact fetus avoids injury to the uterus. The more common method of second-trimester abortion, in which the fetus is dismembered, can leave behind bone fragments." [New York Times, 11/9/06]

IN HOBBY LOBBY V. BURWELL CLEMENT ARGUED THAT COMPANIES SHOULD NOT HAVE TO PROVIDE INSURANCE COVERAGE FOR CONTRACEPTIVES

Clement Was The Main Counsel In Hobby Lobby v. Burwell, Who Argued That Hobby Lobby Should Not Have To Provide Contraceptives Through Their Employer Insurance. According to the Washingtonian, "This morning's ruling

was also split 5-4, but this time in Clement's favor. In the case, Burwell v. Hobby Lobby, Clement represented the craft-store chain, as well as Conestoga Wood Specialties. Both companies asserted that for religious reasons, they should not have to comply with a requirement under the Affordable Care Act that they cover contraception for women employees." [Washingtonian, 6/30/14]