Abortion ruling divides the United States

- Attempts to redefine beginning of life
- Opposing groups ready for battle

Washington

LAST week's US Supreme Court ruling on the constitutionality of a Missouri law that places new restrictions on the right to an abortion appears to have sundered the connection between the legal view of abortion and the medical view of the course of pregancy. In so doing, it opens the door to a host of further legal cases that may both restrict further the availability of abortion and challenge biomedical practices in many other areas, from the use of *in vitro* fertilization to the treatment of fetal abnormalities.

The ruling, delivered last Monday by a majority of five Supreme Court justices to four, has only a small direct effect, requiring Missouri doctors to test whether a fetus thought to be 20 weeks or older has reached a stage of development at which it could live outside the womb before considering an abortion. That ruling is wholly uncontentious. But within the opinions written by the Supreme Court justices are a host of indications that they do not accept the logic of the *Roe v Wade* decision that has determined US abortion rights for the past 16 years. Most significantly, the majority of justices let stand a preamble to the Missouri act that sets out that life begins at conception, and backed an opinion that could extend state interest to the whole period of a pregnancy.

Before last week's ruling, the connection between the state's right to regulate abortion and the course of pregnancy appeared solidly based in biological commonsense. In 1973, *Roe v Wade* accepted, as Chief Justice John Paul Stevens puts it, that "there is an obvious difference between the state interest in protecting the freshly fertilized egg and the state interest in protecting a nine-month gestated fully sentient fetus on the eve of birth. There can be no interest in protecting the newly fertilized egg from physical pain or mental anguish because the capacity for such suffering does not yet exist; respecting a developed fetus, however, that interest is valid".

In essence, *Roe v Wade* saw an increase in moral objections to abortion as a fetus developed, with a landmark at about 24 weeks when a fetus becomes capable of survival outside the womb. *Roe v Wade* divided pregnancy into three trimesters. In the first, women were given a right to abortion, protected by the constitutional right to privacy. In the second, the state was allowed some say in the control of abortion, but only in such regulations that protected the woman, not the fetus. In the final trimester, as the fetus became viable outside the womb, the state could regulate and even proscribe abortion.

On the surface, the new ruling does not change this state of affairs, the majority of justices claiming it simply "modifies and narrows" the Roe ruling. But in a single short paragraph, Chief Justice William Rehnquist opens the door to an onslaught on the logic of Roe by saying "we do not see why the state's interest in protecting human life should come into existence only at the point of viability and that there should therefore be a rigid line allowing state regulation after viability but prohibiting it before viability". Consistent with that view, the majority let stand the preamble to the Missouri act which declares that "the life of each human being begins at conception" and that "unborn children have . . . all the rights, privileges and immunitites available to other persons, citizens and residents of this state".

The Missouri act defines conception as "the fertilization of the ovum of a female by the sperm of a male", even though implantation does not occur until at least six days after fertilization. It therefore implies regulation not only of abortions in the first two trimesters, but also of forms of contraception such as the IUD and the morning-after pill. It would also appear to grant rights to all eggs fertilized in a petri dish for *in vitro* fertilization, and makes impossible the disposal of excess embryos.

The preamble passed the scrutiny of the majority of justices on the grounds that "it will be time enough for Federal courts to address the meaning of the preamble should it be applied . . . until then, this Court is not empowered to decide . . . abstract propositions". Only Justice John Paul Stevens, who dissented from the majority view, saw the preamble as essentially a theological argument that was invalid under the First Amendment and was "an unequivocal endorsement of a religious tenet of some but by no means all Christian faiths".

By striking at the foundations of *Roe v Wade*, but offering no clear guidelines in its place, the supreme court invites an avalanche of state legislation that will attempt to test further the right to control abortion. Behind that legislation will be vigorous pressure groups, many with roots in the evangelical Christian movement, that believe abortion is permissable only to save the life of the mother, and not even in cases of rape or incest.

Opposing them will be a host of women's groups. Justice Harry A. Blackmun, who dissented from the ruling, spoke for them when he wrote it would "clear the way once again for government to force upon women the physical labour and specific and direct medical and psychological harms that may accompany carrying a fetus to term . . . every year, many women, especially poor and minority women, would die or suffer debilitating physical trauma, all in the name of enforced morality or religious dictates or lack of compassion, as it may be".

The pro-abortion lobby believes that a majority of women will come forward to ensure that the freedoms they now enjoy will not be taken away from them. But the anti-abortion lobby believe they alone have the necessary staying power. As Lifeletter, the newsletter of one such organization bluntly put it, "pro-aborts have been notoriously unable to mobilize the kind of in-depth grass-roots, long-term tenacity that has sustained anti-aborts . . . . Jane Fonda and Co. have a limited attention span . . .". **Alun Anderson**

NUCLEAR POWER

Plant goes for a dollar

Boston

SHAREHOLDERS of the Long Island Light Company (LILCO) have voted to close the completed, but never operated, Shoreham nuclear power plant. It is the first time a utility has ever abandoned a licensed plant before it has gone on-line.

The shareholder vote gave almost unanimous support for a shutdown plan which allows the utility to divest itself completely of responsibility for the plant by selling it to the state of New York for $1. Under the agreement, the state would then be responsible for decommissioning the plant.

But Shoreham's fate may still not be sealed. After the announcement of the LILCO shareholder's decision, US Energy Department deputy secretary W. Henson Moore said that the vote will not affect his department's efforts to keep the plant alive. Energy Secretary James D. Watkins has on several occasions decried the closure of Shoreham and promised to make its operation a personal priority.

According to an Energy Department spokesperson, the agency will seek to block the transfer of Shoreham to New York state during Nuclear Regulatory Commission hearings later this year. But that move may come too late. LILCO officials have already announced that they will begin immediately to withdraw the plant's uranium fuel rods, a process that should be completed this summer.

LILCO vice president Joseph W. McDonnell expresses relief at the latest development: as far as the utility is concerned, he says, the "controversy has gone on much too long." Seth Shulman