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2 abortion bills are vetoed by Napolitano

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PHOENIX — Gov. Janet Napolitano on Friday vetoed two measures designed to place new restrictions on abortions.

The governor rejected HB 2263, which would have revamped existing laws that require a minor to get parental consent before terminating a pregnancy. She also vetoed HB 2769, an effort to enact an enforceable state law against "partial-birth" abortion.

Cathi Herrod, president of the anti-abortion Center for Arizona Policy, blasted the governor's actions.

"Once again, Gov. Napolitano has shown how radical she is on the abortion issue," Herrod said. She was particularly incensed about Napolitano's rejection of a state law to ban partial-birth abortions, saying the procedure amounts to "infanticide."

"The pre-born child is killed in the process of being born," Herrod said.

Napolitano, however, said she saw no reason to subject doctors who are treating pregnant women to more criminal penalties.

With the two new vetoes, the governor maintains her record of never having signed any measure into law since taking office in 2003 that in any way restricts the right of abortion.

The governor's actions leave Herrod and other abortion foes without recourse: She admitted there is not enough support for either measure in the Legislature to override the vetoes. And Napolitano's term as governor is not up until the end of 2010.

But Herrod said her organization plans to "educate" voters in this fall's legislative elections about abortion issues in hopes of getting a more favorable state House and Senate.

Arizona has had a law against partial-birth abortions on the books since 1997. But that statute was blocked from taking effect by a federal judge who concluded its provisions made it unconstitutional.

Five years ago, however, the U.S. Supreme Court upheld a federal statute criminalizing the procedure. Ron Johnson, who lobbies on behalf of the state's three Catholic bishops, said HB 2769 was designed to mirror that language.

The practical effect would be to allow county attorneys to prosecute doctors. Now, a physician can be brought up on charges only if a federal prosecutor decides to take the case.

Under HB 2769, a partial-birth abortion would be allowed only to save the life of the mother. It also would permit the husband of a woman who undergoes an illegal partial-birth abortion to sue the doctor to recover money for any physical or psychological injuries.

Napolitano, however, said it varied from federal statutes in two ways.

First, the federal law allows a doctor charged with breaking the law to seek a professional opinion from another

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physician about the medical necessity of the procedure. The doctor facing charges then could use that opinion in defending himself or herself in court.

That provision was in the original version of the bill but was removed after complaints from the Arizona Medical Board.

Spokesman Roger Downey said the board's primary role is to investigate complaints filed by patients against doctors. He said having a doctor be able to seek an opinion from board members would put them in a position of having a conflict of interest if the doctor's patient later filed a complaint.

"We really did our best to bend over backwards to meet the demands of everyone, including her Board of Medical Examiners," Johnson said. All but one of the doctors and public members of the board are Napolitano appointees.

Napolitano also said the federal law caps the potential punishment of doctors at no more than two years in prison. This legislation provided for a presumptive term of 18 months in prison but permitted a 7 1/2-year prison term for those with prior convictions.

"Rather than introducing more criminal penalties into the relationship between a woman and her physician, let us focus our collective efforts to remedy the root issue of unwanted pregnancies by addressing such important topics as family planning and the prevention of sexual violence against women," Napolitano wrote in her veto message.

That same theme was echoed in her rejection of the parental-consent measure.

Federal courts have ruled states cannot absolutely ban minors from having an abortion absent parental consent.

The result is a law that allows a judge to waive that requirement. That law says only that a judge can authorize an abortion by a minor after determining she is mature enough to make the decision.

That lack of detail resulted in a 2003 ruling by the Arizona Court of Appeals that spelled out that a minor must prove her maturity by "clear and convincing evidence," a standard higher than most civil cases but less stringent than "beyond a reasonable doubt" — which applies to criminal cases.

The court also listed factors a judge may consider in making that determination.

For example, the court ruling states — and HB 2263 mirrors — that "experience" can be judged based on the girl's age, experiences outside the home, living away from home and handling personal finances.

"Perspective" can be measured by what steps the girl took to explore her options and the extent she considered those options. And the ruling and the bill say her "judgment" can be weighed on what she did since learning of her pregnancy.

HB 2263 lifted that language precisely. But Napolitano, citing that ruling, called the law "unnecessary."

Michelle Steinberg, spokeswoman for Planned Parenthood of Arizona, said her organization agrees with Napolitano that neither law is necessary.

She said doctors who perform partial-birth abortions can be prosecuted under federal law. And she said there is no reason to codify the 2003 court ruling in statute.

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