High court kills La. abortion law by refusing to hear it

By JOAN McRINNEY

WASHINGTON — The U.S. Supreme Court made quick work of Louisiana's abortion law Monday.

Without comment, the eight justices simply refused to hear the state's appeal in effect upholding lower federal courts that had ruled the Louisiana law violated a woman's constitutional rights.

Last year, the Supreme Court had struck down a Guam law — similar to Louisiana's — that also attempted to ban most types of abortions.

But Guam is not a state, and Louisiana argued that the Supreme Court should allow Louisiana stronger legal powers to deal with the abortion issue.

Simeon Heller, senior attorney for the New York-based Center for Reproductive Law, said that in terms of the national abortion debate, the court's Louisiana decision again indicates that the high court is not going to reconsider its decisions upholding the legality of abortion.

The court's landmark Roe vs. Wade decision of 20 years ago declared that a woman has a constitutional privacy right to choose abortion before a fetus is viable.

"We are going to have to wait for a change in the current court, or a change in the attitude of the current court," said Attorney James Bopp Jr., National Right to Life Committee.

In the more recent Casey case from Pennsylvania, the court said Roe vs. Wade is still the law of the land, but the court also approved some of Pennsylvania's restrictive regulations on how a woman may exercise her abortion decision. For instance, the court upheld Pennsylvania's waiting period.

Attorney James Bopp Jr., of the National Right to Life Committee, predicted that despite Louisiana's setback many state legislatures would continue to write abortion regulations and to test which abortion restrictions are allowed under the abortion law.

But Heller said it would be futile for Louisiana lawmakers to try to go beyond the Pennsylvania law or to try to enact an abortion ban in any form.

Mondays' court action "is a message that Louisiana cannot continue its own crusade to restrict women's constitutional rights," Heller said.

Bopp agreed that Guam and Louisiana-style laws banning most abortions would not pass muster with the current court "at this particular time in the court's history." He said: "We are going to have to wait for a change in the court, or a change in the attitude of the court," he said.

The Louisiana law was never enforced because the U.S. District Court for the Eastern District of Louisiana blocked enforcement in August of 1991 and the Fifth Circuit U.S. Court of Appeals affirmed that injunction in September 1991.

On appeal to the Supreme Court, Louisiana argued that the two lower federal courts had acted improperly when they invalidated the entire law on its face.

Courts should have allowed the law to go into effect and then determined if the law—or parts of it—could be applied in a constitutional manner, the state argued.

Filing for Louisiana, Gov. Edwin Edwards and Attorney General Richard Eyoub specifically asked the high court to reconsider, for example, "whether the Louisiana abortion statute might be applied after viability, to cases where abortions are sought for reasons of the unborn child's gender or race or are performed for the purposes of harvesting fetal body parts for transplantation experiments."

New Orleans Parish District Attorney Harry Connick also filed a petition seeking to defend the state law.

In its written rebuttal, the pro-choice legal team replied that the Louisiana abortion law said nothing about post-viability abortions, sex selection or fetal harvesting.

"The plain language of the act clearly prohibits all abortions with only a few limited exceptions," they wrote. "This court cannot, in an effort to find the law constitutional, rewrite it to apply only to certain abortions."

"The national implications of the Louisiana decision are that the Supreme Court does not believe you have to wait until a law goes into effect to attack it on its face as unconstitutional," Heller said. "They said it also in the Guam case. They're saying that again."