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**From:** Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP [ WHO ] )  
**To:** Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )  
**Subject:** : Article: Aborton case might test Gonzales' court chances  
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RECORD TYPE: PRESIDENTIAL (NOTES MAIL)  
CREATOR:Stuart W. Bowen ( CN=Stuart W. Bowen/OU=WHO/O=EOP [ WHO ] )  
CREATION DATE/TIME:19-JUN-2001 22:55:47.00  
SUBJECT:: Article: Aborton case might test Gonzales' court chances  
TO:Brett M. Kavanaugh ( CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [ WHO ] )  
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----- Forwarded by Stuart W. Bowen/WHO/EOP on 06/19/2001  
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Rebecca Turner Gonzales  
06/19/2001 12:27:53 PM  
Please respond to Rebecca Turner Gonzales  
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To: Alberto R. Gonzales/WHO/EOP, Stuart W. Bowen/WHO/EOP  
cc:  
Subject: Article: Aborton case might test Gonzales' court chances

Saturday, June 16  
Abortion case might test Gonzales' court chances

By Jena Heath  
American-Statesman Washington Staff  
Saturday, June 16, 2001

WASHINGTON -- An abortion case decided last year by the Texas Supreme Court could come back to haunt former Justice Al Gonzales, whose frequent mention as a possible first Hispanic pick for the U.S. Supreme Court has irked both sides in the abortion debate.

It is far from certain that President Bush would choose Gonzales, who, in his current job as White House counsel, vets nominees to the federal bench and to the nation's highest court. But even the persistent rumor of that possibility has started rumblings that the Texas Supreme Court's March 2000 opinion -- granting a 17-year-old girl the right to seek an abortion without notifying her parents -- could serve as a litmus test of sorts.

The court's decision angered anti-abortion activists, but it also raises questions for groups such as the National Abortion and Reproductive Rights Action League, which favors abortion rights.

On the Texas bench, Gonzales joined with the majority in a case that sparked harsh language among the court's all-Republican judges. In his concurrence, Gonzales wrote: "While the ramifications of such a law and the results of the Court's decision here may be personally troubling to me as a parent, it is my obligation as a judge to impartially apply the laws of this state without imposing my moral view on the decisions of the Legislature."

The case was the first big test of the state's Parental Notification Act, which then-Gov. Bush signed into law in June 1999 and which prohibits doctors from performing abortions on minors unless their parents are notified. A minor may receive a "judicial bypass" to obtain an abortion without parental notification if she meets certain criteria, including convincing a judge that she is mature and well-informed about abortion and its alternatives.

Gonzales' decision to vote for the bypass in the so-called Baby Jane Doe case has prompted criticism from conservative commentator Terence P. Jeffrey, a former campaign manager for Pat Buchanan.

"I think he wrote the concurrence to try and create some ambiguity about his personal position on abortion," said Jeffrey, who argues against a Gonzales nomination to the U.S. Supreme Court in the June 4 issue of Human Events, the magazine he edits. "He wanted to (imply) that he might have a personal conviction on abortion that was different than was his judicial decision."

Abortion-rights advocates read the same words but come up with a different interpretation.

"He said in three different ways that, 'I basically, legally, have a gun to my head, I have to rule this way,'" said Elizabeth Cavendish, legal director at the action league. "But he signaled that he didn't want to rule that way. . . . If he's Bush's right-hand legal man, he probably shares the president's legal philosophy."

Gonzales declined to comment for this story. "There's nothing to comment on," he said. "There's no vacancy, and as I've said I'm not a candidate and don't intend to be a candidate for the court."

The Mexican American son of one-time migrant workers, Gonzales' life story moved Bush, who said when he appointed him to the state Supreme Court in 1998: "In many ways, Al embodies the American dream." Gonzales served as chief lawyer during Bush's first term as governor. Bush appointed him secretary of state in 1997.

Deal Hudson, editor and publisher of Crisis, a conservative Catholic magazine, cautions abortion opponents about judging too quickly.

"Generally, I tend to trust the president's appointees in this area," said Hudson, who has advised Bush on Catholic issues. "I would always tend to give the president's appointees, including Gonzales, the benefit of the doubt. Rather than jumping to conclusions about any isolated case, the only way anyone could comment is by looking at the particularities."

Although anti-abortion activists are concerned, they are nervous about



appearing at odds with a Republican president who opposes abortion rights and who has singled out U.S. Supreme Court Justice Antonin Scalia, arguably the court's most conservative member, as the justice he most admires.

"We're not pleased with the lack of courage on the pro-life issue by Mr. Gonzales," said Cathie Adams, president of Texas Eagle Forum, based in Dallas.

"This is one of the few things where you can say, 'Here was one of those crucial times, and how did he perform?' He was on the wrong side, in my opinion," said Kelly Shackelford, chief counsel for the Plano-based Liberty Legal Institute. "I would also like to say that he's doing a fine job as White House counsel. I'd like to see him stay where he is."

Shackelford said there are other judges, among them Emilio Garza of the 5th U.S. Circuit Court of Appeals, whose appointment could help Bush win favor with key Latino and Catholic voter constituencies while not alienating anti-abortion conservatives.

Activists on both sides describe Gonzales as "a stealth candidate" whose overall judicial philosophy and views on abortion they are still trying to discern.

"The reason I called him a stealth candidate is that he's not crystal clear on choice," Cavendish, of the action league, said. "For both sides, the stakes are very high. We recognize that the Supreme Court is in play, and we both want a certain vote. We're pretty positive that he's anti-choice and that we can't take the risk. . . . They probably think he should have tortured the law as a (state) Supreme Court justice. Maybe we're in somewhat similar positions here."

Jena Heath can be reached at [jenah@coxnews.com](mailto:jenah@coxnews.com) or (202) 887-8324.

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Saturday, June 16

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*By Jena Heath*

American-Statesman Washington Staff

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