

June 19, 2002

Re: Partial-Birth Abortion Ban Act (H.R. 4965)

Dear Member of Congress:

The National Right to Life Committee (NRLC) urges you to cosponsor the Partial-Birth Abortion Ban Act (H.R. 4965), introduced today by Congressman Steve Chabot.

The bill would prohibit the performance of a “partial-birth abortion,” the only exception being if this abortion method is “necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.”

It is well documented that partial-birth abortions are performed thousands of times annually, and that the vast majority are performed on healthy babies of healthy mothers during the fifth and sixth months of pregnancy. (Some are performed at even later points in the pre-natal period, and not only in circumstances involving problems with maternal or fetal health.) In much-publicized interviews in 1997, Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, admitted that he and leaders of other pro-abortion groups were well aware that partial-birth abortions are performed routinely during the fifth and sixth months. “In the vast majority of cases, the procedure is performed on a healthy mother with a healthy fetus that is 20 weeks or more along, Mr. Fitzsimmons said.” (*The New York Times*, Feb. 26, 1997, page A11.) (20 weeks is the halfway point in pregnancy – 4½ months in layperson’s terms.)

The abortion method that H.R. 4965 seeks to ban was well described by U.S. Supreme Court Justice Clarence Thomas in his dissent in *Stenberg v. Carhart* (2000): “After dilating the cervix, the physician will grab the fetus by its feet and pull the fetal body out of the uterus into the vaginal cavity. . . . While the fetus is stuck in this position, dangling partly out of the woman's body, and just a few inches from a completed birth, the physician uses an instrument such as a pair of scissors to tear or perforate the skull. The physician will then either crush the skull or will use a vacuum to remove the brain and other intracranial contents from the fetal skull, collapse the fetus' head, and pull the fetus from the uterus.” [citations omitted]

The House approved bills to ban partial-birth abortion in the 104th, 105th, and 106th congresses. Those bills were similar (but not identical) to a Nebraska law that was struck down by a five-justice majority of the U.S. Supreme Court in *Carhart* on June 28, 2000, in which the Court extended *Roe v. Wade* to cover even the brutal practice of partial-birth abortion.

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Because of the *Stenberg v. Carhart* ruling, H.R. 4965 differs in two significant respects from the bans approved in past congresses. The first change is in the definition of “partial-birth abortion.” The five-justice majority in *Carhart* thought that Nebraska’s definition of “partial-birth abortion” was vague and could be construed to cover not only abortions in which the baby is mostly delivered alive before being killed, but also the more common “dilation and evacuation” (D&E) method, in which a well-developed unborn child is dismembered piece by piece while he or she is still inside the uterus, during which attached extremities are sometimes pulled into the birth canal. In order to avoid any possibility of such confusion, the new bill defines a prohibited partial-birth abortion as one in which “the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, *the entire fetal head is outside the body of the mother*, or, in the case of breech presentation, *any part of the fetal trunk past the navel is outside the body of the mother*,” and then kills the baby. [italics added for emphasis]

Justice O’Connor was part of the five-justice majority that struck down the Nebraska law, but we believe language in her concurrence strongly suggests that the revised definition contained in H.R. 4965 would satisfy her desire to exclude internal-dismemberment (D&E) abortions from the scope of any ban. The change might also satisfy the vagueness objection of some or all of the other justices who were in the majority in *Carhart*.

Secondly, the five-justice majority ruled that an abortionist must be allowed to use the partial-birth abortion method if he believes that it is the method which has the lowest risk of side effects for any particular woman seeking an abortion in the second trimester or third trimester. The news media often say that the Supreme Court ruled that a ban on partial-birth abortions must contain a “health exception,” but that is misleading, because the majority said that the abortionist must be allowed to use the method even when the pregnant woman has no health problem whatever -- that is, when abortion is being sought for purely non-medical reasons, which is the case with the vast majority of second-trimester abortions. Indeed, the majority explicitly rejected the suggestion that the “exception” could be limited “to situations where the pregnancy itself creates a threat to health.”

The majority reached this result by deferring to findings of fact by the trial court, which were based on acceptance of assertions by late-term abortionist Dr. LeRoy Carhart and others that the partial-birth abortion method was sometimes the method least likely to cause side effects. H.R. 4965 addresses this issue by incorporating congressional findings that partial-birth abortion is never necessary to protect the health of a woman and, indeed, exposes a woman to substantial and additional health risks. The findings summarize certain past rulings in which the Supreme Court has recognized and deferred to the broad fact-finding powers of Congress. The bill concludes that, based on the extensive congressional hearing record on partial-birth abortion, “Congress finds that partial-birth abortion is never medically indicated to preserve the health of the mother; is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line

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between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.”

In an effort to prevent enactment of a ban on partial-birth abortions, prominent pro-abortion leaders in the House have proposed counter-legislation that they claim would restrict “late-term” abortions, such as H.R. 2702, by Congressmen Hoyer and Greenwood. When the Partial-Birth Abortion Ban Act reaches the House floor, there may be an attempt to offer similar language as a substitute amendment or as a motion to recommit. We urge you to oppose these phony bans. The Hoyer-Greenwood proposal would apply ***absolutely no restrictions*** to partial-birth abortions until after a baby is provably “viable” -- which abortionists generally claim is in the seventh month or even later -- even though the great majority of partial-birth abortions are performed in the fifth and sixth months. Moreover, the Hoyer-Greenwood proposal would allow even the killing of provably “viable” babies *in the seventh, eighth, and ninth months* to enhance the “mental health” of the mother, as the sponsors explicitly confirmed in a “Dear Colleague” letter dated March 16, 2000.

In short, expressing support for a measure such as H.R. 2702 by cosponsoring it or voting for a motion or amendment based on it would put a Member on record as favoring (1) allowing *partial-birth* abortions without meaningful limitation, and (2) allowing even *third-trimester* abortions, by whatever method, for “mental health,” which Mr. Hoyer elsewhere has explained includes “psychological trauma.”

A factsheet, “Key Facts on Partial-Birth Abortion,” and extensive documentation on the subject (including NRLC’s thoroughly footnoted congressional testimony of March 11, 1997) is posted on the NRLC website at www.nrlc.org/abortion/pba/index.html. Please contact us if you require additional information on any facet of the debate over partial-birth abortions.

NRLC urges you to support H.R. 4965 and to oppose any amendments not accepted by the prime sponsor of the bill. NRLC will include the roll call vote on passage of H.R. 4965, and any preceding roll calls necessary to protect the bill, in its scorecard of key roll call votes for the 107th Congress.

Sincerely,



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