

Backgrounder: Partial-Birth Abortion (February 14, 2003)

Congress again takes up Partial-Birth Abortion Ban Act in response to call of President Bush to ban “abhorrent procedure”

For further information, contact the Federal Legislation Department at the National Right to Life Committee (NRLC) at Legfederal@aol.com or 202-626-8820, and visit the Partial-Birth Abortion section of the NRLC website at www.nrlc.org/abortion/pba/index.html.

WASHINGTON (Feb. 14, 2003) -- The Partial-Birth Abortion Ban Act, a major pro-life priority, was reintroduced in Congress this week. Congressional leaders immediately indicated that both houses may take initial action on the bill within the next month or two.

The bill was introduced in the House of Representatives as **H.R. 760** by Congressman Steve Chabot (R-Oh.), the chairman of the House Judiciary Subcommittee on the Constitution, and in the Senate as **S. 3** by Senator Rick Santorum (R-Pa.), chairman of the Senate Republican Conference. Senate Republican leaders listed the bill as one of their top priority measures.

In January 22 remarks to the March for Life, President Bush said, “My hope is that the United States Congress will pass a bill this year banning partial-birth abortion, which I will sign. Partial-birth abortion is an abhorrent procedure that offends human dignity.” The President also called for action on the bill in his January 28 State of the Union speech.

The bill is the same text as that which was passed by the House of Representatives on July 24, 2002, by a lopsided bipartisan vote of 274-151. The then-Democratic Senate leadership refused to allow that bill to come up for a vote in 2002. In earlier years, Congress approved national bans on partial-birth abortion twice, but they were vetoed by President Clinton. On each occasion, the House voted to override the vetoes, but supporters fell short of the necessary two-thirds majority in the Senate. The last time the Senate dealt with the partial-birth abortion issue, on October 21, 1999, 63 senators voted to pass the ban, and two additional senators who supported it were absent, for a total of 65. However, votes on gutting amendments have been and will be much closer than those totals would suggest.

The January 2003 Gallup poll found that **70% favored** and 25% opposed “a law that would make it illegal to perform a specific abortion procedure conducted in the last six months of pregnancy known as ‘partial birth abortion,’ except in cases necessary to save the life of the mother.” (margin of error +/- 3%)

What is a partial-birth abortion?

Supreme Court Justice Clarence Thomas accurately described the partial-birth abortion method 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. At this stage of development, the head is the largest part of the body. . . . the head will be held inside the

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uterus by the woman's cervix. 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."

An eight-page instruction paper on how to perform a partial-birth abortion, written by an abortionist in 1992, in a sense began the whole partial-birth abortion debate. It is posted on a congressional website: www.house.gov/burton/RSC/haskellinstructional.pdf.

Most partial-birth abortions are performed in the fifth and sixth months of pregnancy (20-26 weeks). At this stage, an infant who is expelled spontaneously is usually *born alive*. There is abundant medical evidence that the baby at this stage is extremely sensitive to pain.

Some partial-birth abortions are performed in the seventh month and later – and not only in cases of fetal disorders or maternal distress. **It is noteworthy that in Kansas, the only state in which the law requires separate reporting of partial-birth abortions, abortionists reported in 1999 they performed 182 partial-birth abortions on babies who were defined by the abortionists themselves as “viable,” and they also reported that all 182 of these were performed for “mental” (as opposed to “physical”) health reasons.** See page 11 of the following document: www.kdhe.state.ks.us/hci/99itop1.pdf.

Five justices said *Roe v. Wade* covers partial-birth abortions

In June 2000, the U.S. Supreme Court, in a 5-4 ruling in *Stenberg v. Carhart*, struck down a Nebraska law that was similar to the federal ban that was under consideration in Congress at that time, citing *Roe v. Wade*. In response to the *Stenberg v. Carhart* ruling, the new federal bill differs in two significant respects from the bans approved by the 104th Congress and 105th Congress (which were vetoed by President Clinton).

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 second-trimester “dilation and evacuation” (D&E) method. In a “D&E,” a well-developed unborn child is dismembered piece by piece. Death occurs while he or she is still inside the uterus, but an arm or leg is sometimes pulled into the birth canal before being twisted off, while the baby is still alive in the womb, so the justices thought this might be considered a “partial-birth abortion” under the Nebraska definition.

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] Pro-abortion groups continue to assert that this definition covers abortion methods other than that depicted, but they have not explained how. It appears they hope that

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journalists will not press them to discuss specifically how the definition in the bill could possibly be construed to apply to late-term dismemberment procedures.

The five-justice majority also 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 late second trimester (not only women with a “health” problem). 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.

The new federal bill 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 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 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.”

Pro-abortion disinformation persists, although discredited

When legislation dealing with partial-birth abortion was first introduced in Congress in 1995, major pro-abortion groups insisted that the method was used very rarely, only a few hundred times a year, and only in cases involving acute medical crises. Although there was always abundant documentation to the contrary, these assertions were accepted and repeated as fact by many major organs of the media incessantly until late 1996, when several newspapers published reports based on interviews with various abortionists who acknowledged that the method was employed frequently and mostly for purely elective abortions.

The pro-abortion disinformation campaign suffered another blow in February 1997, when Ron Fitzsimmons, then and now the executive director of the National Coalition of Abortion Providers, admitted that he and leaders of other pro-abortion groups knew better when they claimed that the partial-birth method was used rarely and only in extraordinary circumstances. Fitzsimmons said this was merely a “party line” adopted by the major pro-abortion advocacy groups. Regarding his own (albeit minor) role in disseminating this “party line,” he said, “[I] lied through my teeth.”

“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, Fitzsimmons said.” (*The New York Times*, Feb. 26, 1997, p. A11.) (20 weeks is the halfway point in pregnancy – 4½ months in layperson’s terms.) See clippings at www.nrlc.org/abortion/pba/index.html, in the late 1996 and early 1997 archive.

A great deal of other evidence – collected by congressional committees, journalists, and other entities both before and since 1997 – supports Fitzsimmons’ statements. In January 2003, even the Alan Guttmacher Institute – an affiliate of Planned Parenthood – published a survey of

abortion providers that estimated that 2,200 abortions by the method were performed in the year 2000. While that figure is surely low for reasons discussed by NRLC elsewhere (www.nrlc.org/press_releases_new/release011503.html), it is *more than triple* the number that AGI estimated in its most recent previous survey (for 1996).

Despite all of that and more, some journalists and some advocates continue to disseminate the old, discredited misinformation. To cite just one example: “A so-called partial-birth abortion is defined generally as a late-term procedure in which the fetus is aborted after it is partially outside the mother’s body. It is usually performed in cases when the mother’s life is threatened or the fetus is deformed.” (From “Anti-abortion lobby counting on victories in 108th Congress,” by Pam Brogan, Gannett News Service, December 17, 2002.) For recent examples of “media myths” about partial-birth abortion, see “Revival of Some Old Myths on *Roe v. Wade* and Partial-Birth Abortion” (February 6, 2003), at www.nrlc.org/abortion/pba/roevwademyths.html.

Phony Bans

Many lawmakers who oppose the Partial-Birth Abortion Ban Act tell their constituents that they instead favor a bill to ban “late-term” abortions with a “health” exception. The leading House advocates of this legislation, Reps. Steny Hoyer (D-Md.) and Jim Greenwood (R-Pa.), have admitted that this so-called “ban” actually would allow third-trimester abortions even for “mental health.” (www.nrlc.org/abortion/pba/Phony%20ban%20on%20late-term.pdf)

In the Senate, a similar “phony ban” substitute has been sponsored by Senator Tom Daschle (D-SD) and, more recently, by Senator Dick Durbin (D-IL). The Durbin “phony ban” has no application before provable “viability” of a given baby, and even after that (i.e., in the seventh month and later), would allow abortion to be performed on a mother to prevent any degree of “risk” of “grievous injury to her physical health.” **Dr. Warren Hern, a leading practitioner of very late abortions who wrote the textbook *Abortion Practice*, commented on the Daschle amendment, “I say every pregnancy carries a risk of death,” and therefore, “I will certify that any pregnancy is a threat to a woman’s life and could cause ‘grievous injury’ to her ‘physical health.’” (in *USA Today* and *Washington Times*, both May 15, 1997) In other words, under the Daschle-Durbin amendment, any pregnant woman would qualify for an abortion in the seventh month and later.**

Resources

Additional documents on medical, legal, and legislative aspects of partial-birth abortion are posted at www.nrlc.org/abortion/pba/index.html. A good primer is the testimony NRLC presented to a joint hearing of the U.S. Senate Judiciary Committee and the U.S. House Judiciary Constitution Subcommittee in March 1997, which contains footnoted citations to some of the more thorough journalistic examinations of the issue (including interviews with partial-birth abortionists) and to primary documents: www.nrlc.org/abortion/pba/test.html.