

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12591

LATER-TERM ABORTION POLICIES

| STATE | THRESHOLD FOR LATER-TERM ABORTIONS | LATER-TERM ABORTION PERMITTED WHEN THREAT TO WOMAN'S: | | | WHEN A LATER-TERM ABORTION IS PERFORMED A SECOND PHYSICIAN'S MUST: | |
|----------------|------------------------------------|---|--------------------------|----------|--|-----------|
| | | Life and Health | Life and Physical Health | Life | Attend | Approve |
| Alabama | Viability | | X | | | X |
| Arizona | Viability | X | | | X | |
| Arkansas | Viability | X* | | | X | |
| California | Viability | X | | | | |
| Connecticut | Viability | X | | | | |
| Delaware | ▼ | | | ▼ | | |
| Florida | 24 weeks | X | | | | X |
| Georgia | 3rd trimester | X | | | | X |
| Idaho | Viability | | | X | | X |
| Illinois | Viability | X | | | X | |
| Indiana | Viability | | X | | X | |
| Iowa | 3rd trimester | X | | | | |
| Kansas | Viability | X | | | | X |
| Kentucky | Viability | X | | | | |
| Louisiana | Viability | X | | | X | |
| Maine | Viability | X | | | | |
| Maryland | Viability | X** | | | | |
| Massachusetts | 24 weeks | X | | | | |
| Michigan | Viability | | | X | | |
| Minnesota | ▼ | ▼ | | | ▼ | |
| Missouri | Viability | X | | | X | |
| Montana | Viability | | X | | | X |
| Nebraska | Viability | X | | | | |
| Nevada | 24 weeks | X | | | | |
| New York | 24 weeks | | | X | X | |
| North Carolina | 20 weeks | X | | | | |
| North Dakota | Viability | X | | | | X |
| Ohio | ▼ | | ▼ | | ▼ | ▼ |
| Oklahoma | Viability | X | | | X | |
| Pennsylvania | 24 weeks | | X | | X | X |
| Rhode Island | 24 weeks | | | X | | |
| South Carolina | 3rd trimester | X† | | | | X |
| South Dakota | 24 weeks | X | | | | |
| Tennessee | Viability | X | | | | |
| Texas | 3rd trimester | X | | | | |
| Utah | ▼ | | ▼ | | | |
| Virginia | 3rd trimester | X | | | | X |
| Washington | Viability | X | | | | |
| Wisconsin | Viability | X | | | | |
| Wyoming | Viability | X | | | | |
| TOTAL | 36 | 28 | 4 | 4 | 9 | 10 |

▼ Enforcement permanently enjoined by a court order; policy not in effect

* Also permitted in case of rape or incest.

** Also permitted in case of fetal abnormality.

† If done for mental health reasons, must have the certification of an independent psychiatrist.

FOR MORE INFORMATION:

For information on state legislative and policy activity click on Guttmacher's [Monthly State Update](#) and for state level information and data on reproductive health issues, click on [Guttmacher's State Center](#).

Cohen SA and Saul R, [The campaign against 'partial-birth' abortion: status and fallout](#). *The Guttmacher Report on Public Policy*, 1998, 1(6):6-10.

The Alan Guttmacher Institute (AGI), [Late-term abortions: legal considerations](#), Issues in Brief, New York: AGI, 1997.

Dailard C, [Abortion restrictions and the drive for mental health parity: a conflict in values?](#) *The Guttmacher Report on Public Policy*, 1999, 2(3):4-5 & 14.

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THE PARTIAL-BIRTH ABORTION BAN ACT -- MISCONCEPTIONS AND REALITIES

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For the latest updates on the partial-birth abortion issue,
keep an eye on <http://www.nrlc.org/abortion/pba/index.html>

WASHINGTON, D.C. -- When President Bush signed the Partial-Birth Abortion Ban Act (S. 3) into law on November 5, 2003, pro-lifers saw the culmination of an eight-year struggle led by the National Right to Life Committee (NRLC) and congressional pro-life leaders

The bill represents the first direct national restriction on any method of abortion since the Supreme Court legalized abortion on demand in 1973.

A Gallup-CNN-USA Today poll conducted in late October found that among "young adults" (age 18-29), the ban is favored 77-19%, while among the older groups, support was 68-25%. A Gallup poll conducted last January, which specified that the method is "conducted in the last six months of pregnancy," and has a life-of-mother exception, found 70% for a ban.

Past polls of obstetrician-gynecologists and registered nurses found strong majorities of both groups in favor of making partial-birth abortion illegal (documentation below).

WHAT THE BILL DOES

The bill bans "partial-birth abortion," and it legally defines a partial-birth abortion as any abortion in which the baby is delivered "past the [baby's] navel . . . outside the body of the mother," OR "in the case of head-first presentation, the entire fetal head is outside the body of the mother," BEFORE being killed. The complete official text of the bill being signed by President Bush, in a searchable format, is here:

<http://www.nrlc.org/abortion/pba/partial-birth%20abortion%20Ban%20act%20final%20language.htm>

The bill would allow the method if it was ever necessary to save a mother's life. Such an exception has been part of the legislation since it was first introduced in 1995. Nevertheless, it is still not uncommon to see news reports that the bill would "never" allow the procedure, or to say flat out that it does not contain an exception to save a mother's life. CBS Evening News, for example, has made this error repeatedly over the years. An October 21, 2003, CBS Evening News report suggested twice that the bill would "never" allow a "late-term abortion," a compound fallacy.

THE TERM "PARTIAL-BIRTH ABORTION"

"Partial-birth abortion" is a legal term of art, defined by Congress as a matter of federal

law, as quoted above.

Although supporters and opponents of the new law differ dramatically in their perceptions of what methods the law covers (as discussed below), neither side believes that the legal definition of "partial-birth abortion" is synonymous with the shifting and conflicting descriptions attached in various literature to such pseudo-medical jargon terms as "dilation and extraction," "intact dilation and evacuation," or "intact dilation and extraction."

In short, it is simply inaccurate for journalists to equate the legal term "partial-birth abortion" with these nebulous jargon terms.

Sometimes reporters say that "doctors call the procedure . . .," followed by one of the three conflicting jargon terms listed above. But many doctors -- probably, most doctors -- actually call it "partial-birth abortion." The term "partial-birth abortion" has been recognized and used by many eminent medical authorities for years, including former Surgeon General C. Everett Koop, and hundreds of prominent obstetricians and gynecologists who have expressed support for the bill.

The Merriam-Webster Medical Dictionary, utilized by major medical websites such as those sponsored by the National Institutes of Health, the National Library of Medicine, and Harvard Medical School, lists a definition for "partial-birth abortion," but not the pseudo-medical jargon terms coined by abortion providers and used by many opponents of the bill. Check it out:

<http://www.nlm.nih.gov/medlineplus/mpldictionary.html>

In short, besides being a legal term of art, "partial-birth abortion" is as much a "medical term" as "heart attack" (which both journalists and others usually use in preference to "myocardial infarction").

Another thing that both sides agree on is that it is inaccurate to report, as CBS Evening News has done repeatedly, that the bill is a "late-term abortion ban." It is a ban not of "late-term abortion" but of a defined method -- and the legal definition of that method has never referred to a point in "term," but rather, to the location of the living baby when he or she is killed. (See "Is It Misleading to Call it Partial 'Birth?," below.)

In reality, partial-birth abortion cannot be performed in the first three months, and most are performed in the fifth and sixth months. So, then, are partial-birth abortions "late-term" abortions? The question is impossible to answer, because the label "late-term" has no standard legal or medical meaning, and is used in wildly different ways. Pro-abortion groups exploit this ambiguity -- they use the label "late-term" as code for "third-trimester," meaning the seventh month and later -- a period that begins roughly three weeks AFTER babies typically attain the lung development sufficient to survive indefinitely outside the womb (so-called "viability").

When journalists describe the bill as a "ban on late-term abortions" or "certain late-term abortions," they introduce an element of ambiguity or outright distortion into everything else they say about the matter, because many readers may understand the label as referring to third-trimester abortions, while many others will regard abortions in the fifth and sixth months as "late-term abortions" too.

Consider the medical illustrations used this year during the House and Senate floor debates, which accurately depict a typical partial-birth abortion of a baby at 24 weeks

(five and one-half months). Here is a proposed experiment for journalists: Show one of these illustrations to the first 10 people you meet on the street, explain that it shows "an abortion," and ask if they think it looks like a "late-term" abortion. We predict that most will reply in the affirmative. Yet, what the illustration shows is not, in the usage of NARAL and Planned Parenthood, a "late-term" (third-trimester) abortion. The term "third trimester" is used to refer to points as early as the start of the 25th week and as late as the start of the 27th week.

IS IT MISLEADING TO CALL IT A PARTIAL "BIRTH"?

Since 1995, NRLC has stressed that most partial-birth abortions are performed in the fifth and sixth months (although some have been performed later, and not always in cases of serious physical disorder of mother or baby). See NRLC's first media factsheet on the issue, dated June 21, 1995:

http://www.nrlc.org/abortion/pba/NRLC_factsheet_PBA_June_1995.pdf

Some critics of the bill argue that the term "partial-birth" is misleading because, they insist, it connotes that the typical partial-birth abortion is performed near or at full term (40 weeks, or nine months). For example, Will Saletan asserts in an essay in *Slate* ("The 'Partial-Birth' Myth," Oct. 22, 2003) that the name is misleading because "this procedure doesn't take place anywhere near the appointed hour of birth."

"The appointed hour of birth" is neither a "medical term" NOR a legal term of art. The objection is based on the premise that "birth" occurs only at or near full term -- or, in some variants, that "birth" occurs only after "viability." (Viability begins soon after the start of the sixth month.) But this premise is profoundly erroneous, in either form.

In federal (and most state) law, a "live BIRTH" occurs when the baby is (1) all the way outside the mother, even if the cord is still attached, and (2) displays any respiration, heartbeat, or movement of voluntary muscles. See the federal Born-Alive Infants Protection law enacted in 2002:

http://www.nrlc.org/Federal/Born_Alive_Infants/index.html

Most partial-birth abortions are performed in the fifth and sixth months of pregnancy. Even early in the fifth month, babies who are expelled by premature labor will often be born alive. At that stage the baby's lungs are too undeveloped to permit sustained survival, but if the baby draws breath it is a LIVE BIRTH.

Medically and certainly legally, "live BIRTH" is an entirely different concept from "viability" (which relates mainly to lung development and the capacity for sustained respiration). The "live birth period" begins long before "viability." Even under the doctrine of *Roe v. Wade*, once outside the mother, a human who shows any signs of life is a "person" protected by law and the Constitution, whether he or she lives for five minutes or 100 years.

By 20 weeks (halfway through the fifth month), the LIVE BORN baby may breathe for an hour or so before dying. By 23 weeks (just into the sixth month), ONE-THIRD survive long term -- but you will never find out whether a given baby would have been part of the one-third, after her skull is punctured and brain removed in a partial-birth abortion.

By 24 weeks (about halfway through the sixth month), more than HALF are long-term

survivors.

Thus, at the stages that most partial-birth abortions are performed, the great majority of babies would be "live births" if they were expelled by spontaneous premature labor, and many would be long-term survivors.

In other words, in a partial-birth abortion, a premature human is deliberately pulled to within just a few inches of being, medically and legally, a LIVE BIRTH -- so this method is indeed a PARTIAL LIVE BIRTH -- or 'partial-birth,' for short.

President Bush spoke the painful, literal, legal truth on November 5, 2003, when he said, "For years, a terrible form of violence has been directed against children who are inches from birth..."

[NOTE: Legally, there is NO SUCH THING as a "fetus" who is all the way outside the mother and alive. Under federal law (and most state law), even if pre-viable, this is a pre-mature "infant," and also a "person," a "human being," and a "child."

<http://www.nrlc.org/Federal/Born Alive Infants/APmemo031302.html>

<http://www.nrlc.org/Federal/Born Alive Infants/index.html>

<http://www.nrlc.org/Federal/Born Alive Infants/jquiz.html>

HOW MANY PARTIAL-BIRTH ABORTIONS ARE THERE?

Figures from abortion-industry groups have ranged from 2,200 for the year 2000 (from The Alan Guttmacher Institute [AGI], which is affiliated with the Planned Parenthood Federation of America [PPFA], a major abortion provider) to 3,000-5,000 (in 1997, by Ron Fitzsimmons, the executive director of the National Coalition of Abortion Providers, although each of these figures was based on definitions somewhat different from that contained in the Partial-Birth Abortion Ban Act.

The AGI figure is clearly a bare minimum. Responses to AGI's periodic surveys are purely voluntary. It is hard to understand why any abortionist would report that he was performing such abortions if he was not, but easy to imagine that many would throw the survey in the wastebasket. (An earlier AGI survey, using the same methodology, claimed that only 650 such abortions were performed in 1996 -- an absurd claim, but nevertheless was accepted as authoritative by The New York Times and other news media for years. It appears that AGI is now trying to "forget" that it ever made this claim -- see the exchange of letters in the Washington Times here:

<http://www.nrlc.org/abortion/pba/PBAletterwashtimes110403.html>

THE NEW LAW AND THE SUPREME COURT

In the case of *Stenberg v. Carhart* in 2000, by a 5-4 vote, the Supreme Court struck down a Nebraska law banning partial-birth abortions, holding that *Roe v. Wade* guarantees the right of an abortionist to use the method whenever he thinks it is preferable to other methods. The five-justice majority opinion, written by Justice Stephen Breyer, took pains to clarify that it did NOT intend to limit this doctrine to cases in which there was a pre-existing maternal or fetal health problem, but to ANY case in which a woman sought an abortion from Dr. Carhart in the second trimester.

Congress has now invited the five-justice majority to re-examine that extreme and inhumane decision. The new bill contains extensive congressional findings, based on

years of congressional staff investigations and hearings, that partial-birth abortion is unnecessary to preserve "health," and indeed poses intrinsic risks even over and above other abortion methods. In addition, the definition of "partial-birth abortion" is more detailed and explicit than the definition found in the Nebraska law that the five justices struck down in 2000.

As noted, the "health" issue is addressed in the bill itself, in lengthy congressional findings. Beyond that, many of the claims of medical "necessity" for partial-birth abortion, on closer examination, turn out to involve not any bona fide risk to a mother's physical health, but rather, a diagnosis that the baby has Down syndrome or some other disorder that cannot be cured. The word "health," in most of these cases, is really a euphemism for pre-natal euthanasia. For further discussion, see <http://www.nrlc.org/abortion/pba/JohnsonAdesinterview041096.html>
<http://www.nrlc.org/abortion/pba/pbafact13.html>

Some of the women who have figured most prominently in attacks on the bill, such as Viki Wilson of California, clearly did not have abortions that would be covered by the bill -- even under the interpretation, which is erroneous, that the bill covers dismemberment procedures (D&E).

HISTORY OF THE LEGISLATION

The Partial-Birth Abortion Ban Act was introduced by Congressman Charles Canady (R-Fl.) on June 14, 1995. The bill was developed in collaboration with NRLC. The current chief sponsors are Senator Rick Santorum (R-Pa.) and Congressman Steve Chabot (R-Ohio).

The House first passed the bill on November 1, 1995, 288-139. The Senate first passed the bill on December 7, 1995, 54-44. In the 104th and 105th congresses, Congress approved the ban but President Clinton vetoed the bills; in both of those congresses, the House overrode but the Senate sustained. In the 106th Congress, both the House and Senate passed similar bills, but no final bill was approved. In the 107th Congress (2002), the House passed the ban, but the Senate Democratic leadership blocked it from coming to the Senate floor. This year, the bill won final approval in the House approval in the House on October 2, 281-142, and in the Senate on October 21, 64-34.

TURNING POINTS IN THE DEBATE

The debate over partial-birth abortion began in 1992 with the circulation of an instruction paper written by Ohio abortionist Martin Haskell, explaining how to perform the procedure. The paper is posted here.

In the ensuing years, there have been several key turning points in the debate, which are documented in the NRLC chronological archive on partial-birth abortion, here: <http://www.nrlc.org/abortion/pba/index.html>

The turning points include:

-- the eyewitness account of Brenda Pratt Shafer, a nurse who was "very strongly pro-choice" until she witnessed a partial-birth abortion close up.

<http://www.nrlc.org/abortion/pba/pbacampaign.html>

<http://www.nrlc.org/abortion/pba/Shaffer%20smear.pdf>

-- emphatic repudiation by the two major societies of anesthesiologists of the claim -- disseminated by major pro-abortion groups and accepted as fact by major journalists -- that anesthesia given to the mother causes painless death of the unborn child before a partial-birth abortion is performed. In congressional testimony, medical experts testified that by the late second trimester, the unborn child is very responsive to painful stimuli, and that this is not much affected by anesthesia given only to the mother.
http://www.nrlc.org/abortion/Fetal_Pain/index.html

-- the unraveling of the manufactured claim that partial-birth abortions are performed only hundreds of times a year and only, or nearly only, in medically acute circumstances. This claim had been energetically promulgated by NARAL, the Planned Parenthood Federation of America, the National Abortion Federation, and other major pro-abortion groups -- often in the same press releases and factsheets that complained that the bill applied to abortions performed before "viability." But the disinformation campaign collapsed between September 1996 and February 1997, due to investigations by various journalists -- including writers for American Medical News, the Washington Post, Bergen Record, and PBS.

-- the decision, in February 1997, by Ron Fitzsimmons -- then and now the executive director of the National Coalition of Abortion Providers -- to repudiate what he called "the party line." Fitzsimmons estimated that the method was used 3,000-5,000 times annually, and "in the vast majority of cases" on "a healthy mother with a healthy fetus that is 20 weeks or more along" (New York Times, Feb. 26, 1997). Subsequently, other spokespersons for major abortion providers publicly defended Fitzsimmons and affirmed the accuracy of his statements.

<http://www.nrlc.org/abortion/pba/PBA%20NYT%20lied.pdf>

<http://www.nrlc.org/abortion/pba/PBA%20activists%20lied.pdf>

<http://www.nrlc.org/abortion/pba/AMAFitzsimmons1997.pdf>

-- The June 2000 U.S. Supreme Court ruling in Stenberg v. Carhart (discussed above).

REVIVAL OF DISCREDITED MYTHS

In the wake of the revelations described above, the Senate Judiciary Committee and the House Judiciary Constitution Subcommittee held an unusual joint hearing on March 11, 1997, at which NRLC presented testimony that documented in detail the disinformation campaign that had been waged against the bill.

<http://www.nrlc.org/abortion/pba/test.html>

What new evidence has come to light since 1997 only reinforces the conclusion that some practitioners use the method routinely during the fifth and sixth months of pregnancy, and even later, and that the vast majority of partial-birth abortions do not involve any acute medical circumstances. For example, Kansas became the only state to enact a law that requires reporting of partial-birth abortions separately from other abortion methods. The first full year the law was in effect (1999), Kansas abortionists reported that 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 the compilation [here](#).

Nevertheless, in recent months, NRLC has witnessed attempts to revive erroneous claims about partial-birth abortion that were thoroughly discredited in 1996 and 1997. Articles and broadcasts in major media outlets, including the Boston Globe and the Wall Street Journal, have adopted the premise the partial-birth abortions are nearly always

performed to deal with serious physical disorders of mother and/or baby.

In January 1997, the PBS documentary program MEDIA MATTERS devoted a major segment to an examination of how much of the news media had uncritically adopted as fact assertions that were highly disputed from the beginning, and that were disproved when belatedly subjected to journalistic scrutiny. The transcript is here: <http://www.pbs.org/wnet/mediamatters99/transcript2.html>

One of the journalists interviewed in the MEDIA MATTERS program was Washington Post medical writer David Brown, M.D. After interviewing numerous abortionists, Dr. Brown wrote, "[I]n most cases where the procedure is used, the physical health of the woman whose pregnancy is being terminated is not in jeopardy." He also said, "Most people who got this procedure were really not very different from most people who got abortions."

After all that, can the pro-abortion advocacy groups revive the myth? It looks like they're trying. The Planned Parenthood Federation of America (PPFA), in a September 17, 2003 press release, asserted that the bill would "outlaw a medical procedure used primarily in emergency abortions." <http://www.nrlc.org/abortion/pba/PPrelease091703.html>

If they fool you twice, shame on you.
<http://www.nrlc.org/abortion/pba/PBAmythsmemo01303.html>

SUPREME COURT -- DIVIDED 6-3 ON ROE V. WADE (LEGAL ABORTION FOR ANY REASON), BUT 5-4 ON PARTIAL-BIRTH ABORTION

It has been erroneously reported in recent months by Gannett News Service that the current Supreme Court is divided 5-to-4 on legal abortion. In reality, six current Supreme Court justices have clearly expressed support for legal abortion for any reason to "viability," and for "health" even after that. For an explanation of what the term "health" means in the context of abortion law, by Washington Post medical writer Dr. David Brown, here: <http://www.nrlc.org/abortion/pba/roevwademyths.html>

However, the 2000 ruling that struck down Nebraska's ban on the partial-birth abortion method was a 5-4 ruling, since Justice Kennedy -- a supporter of Roe -- voted to uphold the Nebraska ban on the partial-birth abortion method.

Another misconception: Gannett News Service and some others also continue to misreport that the Supreme Court allows greater restrictions on abortion after the first three months. The Supreme Court majority explicitly repudiated any such "trimester" distinction in the 1992 Casey ruling. For further discussion of these two misconceptions about the Supreme Court, see: http://www.nrlc.org/abortion/pba/gannett_news_service_again_disse.htm

ILLUSTRATIONS, CERTIFIED MEDICALLY ACCURATE, OF PARTIAL-BIRTH ABORTION AND "D&E" ABORTION METHODS

In legal documents filed in federal court in Nebraska on October 31, several abortionist argue (through the attorneys of the Center for Reproductive Rights) that the Partial-Birth Abortion Ban Act does not distinguish between dismemberment procedures ("dilation and evacuation") that involve dismemberment of the baby inside the woman's body, and the "extraction" (partial-birth) procedures in which the baby is killed after being partly delivered outside the woman's body. They insist that the definition in the bill could apply

to the dismemberment procedures, because they say are not sure what the words "living fetus" mean, and because fetuses take some time to die in the womb even after their arms or legs have been torn off.

The lawmakers who crafted the bill dispute that it covers such inside-the-body killing procedures. In order for readers or viewers to evaluate these conflicting claims, it certainly is important for them to be provided with the actual DEFINITION of "partial-birth abortion" from the bill. But since radically different interpretations are being placed on that definition, in order to really understand what the argument is about, readers or viewers need to SEE illustrations -- certified by medical authorities as entirely accurate -- of the two different abortion methods that are under discussion.

With respect to partial-birth abortion, the color illustrations displayed repeatedly on the floor of the U.S. Senate and the U.S. House are posted and downloaded here:
[http://www.nrlc.org/abortion/pba/PBA Images/PBA Images Heathers Place.htm](http://www.nrlc.org/abortion/pba/PBA%20Images/PBA%20Images%20Heathers%20Place.htm)

We have the rights to use these illustrations and we have placed them in the public domain for non-commercial use. No further permissions are required to legitimate news media to reproduce any or all of them for non-commercial purposes, as long as none of the images are altered (other than enlargement or reduction in overall size).

At the bottom of the same website page, you will find letters from medical authorities (including the eminent Professor Watson Bowes, co-editor of the *Obstetrical and Gynecological Survey*, a leading journal), certifying that these drawings accurately depict a partial-birth abortion (as defined in the bill) at 24 weeks, which is about 5-1/2 months. Most partial-birth abortions are performed in the 18 to 26 week range, so this depicts such an abortion in the typical time period when they are performed.

With respect to the second method, the "dilation and evacuation" or "D&E" method, which some pro-abortion groups insist is also covered by the bill, the medical illustration firm Nucleus Medical Art offers a standard textbook illustration, which we have purchased a license to display on our website. It depicts an unborn child being dismembered at 23 weeks.

<http://www.nrlc.org/abortion/pba/DEabortiongraphic.html>

WHAT DO MOST DOCTORS AND NURSES SAY?

In a very unbalanced article in that appeared in the *Boston Globe* on October 28, reporter Carol Cruzan Morton noted that the bill contains congressional findings that the banned method is "risky and medically unjustified," but she immediately asserted, in the *Globe's* own voice, that these are "claims that most doctors dispute." No poll of doctors or other authority was cited to support this assertion, nor has any been provided by the *Globe* in response to subsequent requests.

The only poll of physicians on the subject we have seen was conducted by *Medical Economics* and published in October, 2002, asking the question, "Should the procedure that's often called 'partial-birth abortion' remain legal?" Among all physicians, only 27% were for keeping the method legal, while 44% said it should not be legal (a plurality), and 28% weren't sure. Among the obstetrician-gynecologists, however, there was a clear majority of 57% for the ban, and only 33% for keeping the method legal. *Medical Economics* Senior Editor Dorothy L. Pennachio wrote that among various medical specialties, "Ob/gyns are least likely to be on the fence -- only 10 percent say they're not sure; they're also most likely (57 percent) to believe the procedure should be outlawed."

See:

http://www.memag.com/be_core/search/show_article_search.isp?searchurl=/be_core/content/journals/m/data/2002/1011/ethabort.html&title=Abortion%3A+A+right+or+an+outrage%3F&navtype=m&query=abortion

A 1999 random sample of 2,000 hospital-based registered nurses by RN magazine found that 63% favored a ban on partial-birth abortion.

<http://www.conservativenews.org/InDepth/archive/199903/IND19990315c.html>

MORE COMPLAINTS ABOUT TERMINOLOGY BY CRITICS OF THE BILL

Some opponents of the bill have recently objected to some terms used by supporters, including "premature infant," "child," "kill," and "abortionist." However, each of these terms has been acknowledged and used as well by practitioners of partial-birth abortion and their defenders.

"Premature infant" is accurate. As explained above, the method is usually used in the fifth and sixth months (sometimes later). Even at the start of the fifth month, if a woman goes into spontaneous labor, her baby often will be a live birth. Babies born starting just after the start of the sixth month now very often survive indefinitely. The usage occasionally seen in the news media, "a fetus who survived an abortion," is a medical and legal oxymoron. A member of the species *Homo sapiens* who has been entirely expelled from the mother and who is alive is a premature "infant" -- and, under federal law, an "child" and a "person."

<http://www.nrlc.org/Federal/Born Alive Infants/index.html>

<http://www.nrlc.org/Federal/Born Alive Infants/APmemo031302.html>

As to "child," even the inventor of the partial-birth abortion method, the late physician James McMahon, told *American Medical News*, "After 20 weeks [4-½ months] where it frankly is a child to me, I really agonize over it. ... On the other hand, I have another position, which I think is superior in the hierarchy of questions, and that is: 'Who owns the child?' It's got to be the mother." The article is here:

<http://www.nrlc.org/abortion/pba/AmericanMedicalNews1993.pdf>

There are numerous examples of pro-abortion advocates acknowledging what should be obvious: Abortion "kills" a developing human. For example, Faye Wattleton, former president of Planned Parenthood, said in 1997, "I think we have deluded ourselves into believing that people don't know that abortion is killing." Regarding partial-birth abortion specifically, the executive director of the National Coalition of Abortion Providers, Ron Fitzsimmons, told *The New York Times*, "It is a form of killing. You're ending a life."

As to the term "abortionist": At the very first congressional hearing on the Partial-Birth Abortion Ban Act on June 15, 1995, Dr. J. Courtland Robinson, professor of ob-gyn at Johns Hopkins, testifying on behalf of the National Abortion Federation against the Partial-Birth Abortion Ban Act, repeatedly identified himself as an "abortionist," and even as a "Christian abortionist." [Hearing Record, 104th Congress, First Session, June 15, 1995, Serial No. 31, at pages 86-87.] If the term was good enough for the lead witness for the National Abortion Federation, it is good enough for us.

WHAT IS NEXT?

At an October 28 press conference, President Bush was asked, "Do you believe that the climate has changed since the last campaign and all abortions should be banned?" The President's accurate answer, and NRLC's comment on his answer, are here:

<http://www.nrlc.org/abortion/pba/bushcommentpba102803.html>

The U.S. House of Representatives passed, in the last Congress, four major pro-life bills other than the Partial-Birth Abortion Ban Act, all of which died without action in the U.S. Senate, which was then under Democratic control. NRLC hopes that the U.S. Senate will take up each of these measures during the current Congress. They are:

-- The next major pro-life bill likely to come up in the Senate is the Unborn Victims of Violence Act (S. 1019, H.R. 1997), also known as "Laci and Conner's Law." This is a bill to recognize an unborn child as a victim when he or she is injured or killed during the commission of a federal crime of violence. NRLC believes that such crimes have two victims. http://www.nrlc.org/Unborn_victims/index.html

-- The Child Custody Protection Act (S. 851, H.R. 1755) would make it a federal offense to take a minor across state lines to obtain an abortion, if this abridges the right of a parent, under the home-state law, to be involved in her abortion decision. <http://www.nrlc.org/federal/ccpa/index.html>

-- The Abortion Non-Discrimination Act (S. 1397) would prohibit state or local government officials from using government power to compel health care providers to participate in abortion. <http://www.usccb.org/prolife/issues/abortion/andaindex.htm>

-- The Human Cloning Prohibition Act (S. 245, H.R. 534) would prohibit the creation of cloned human embryos. The House passed this legislation in the current Congress on February 27, 241-155. http://www.nrlc.org/killing_embryos/cloningmisconceptions031803.html

BROADCAST DEBATES

NRLC Legislative Director Douglas Johnson debated Center for Reproductive Rights President Nancy Northup regarding the Partial-Birth Abortion Ban Act on National Public Radio's "Diane Rehm Show," October 29, 2003 (requires RealPlayer): http://www.wamu.org/dr/2003/drarc_031027.html#wednesday

Johnson debated Planned Parenthood Federation of America (PPFA) President Gloria Feldt on June 10, 2003, on the Public Radio International program "To The Point," <http://www.nrlc.org/abortion/pba/index.html> (requires RealPlayer)

FOR FURTHER INFORMATION

For further information on partial-birth abortion, or to arrange interviews or broadcast debates, call (202) 626-8820 or send e-mail to Legfederal@aol.com

Click [HERE](#) to return to the main Partial-Birth Abortion page.



Is a partial-birth abortion ever the only way to preserve a mother's physical health?

President Clinton and pro-abortion advocacy groups have made strenuous efforts to persuade the public that partial-birth abortions are necessary to protect the lives or health of pregnant women, and many journalists have uncritically accepted this claim at face value. However, these claims are coming under increasingly sharp challenge from prestigious medical experts, and from women who have given birth to babies in circumstances such as those cited by President Clinton.

The sort of cases highlighted by President Clinton-- third-trimester abortions of babies with disorders incompatible with sustained life outside the womb-- account for a small fraction of all the partial-birth abortions. Confronted with identical cases, most specialists would never consider executing a breech extraction and puncturing the skull. Instead, most would deliver the baby alive, sometimes early, without jeopardy to the mother-- usually vaginally-- and make the baby as comfortable as possible for whatever time the child has allotted to her.

In an interview published in the August 19 edition of *American Medical News*, former Surgeon General C. Everett Koop said, "I believe that Mr. Clinton was misled by his medical advisors on what is fact and what is fiction in reference to late-term abortions. Because in no way can I twist my mind to see that the late-term abortions as described-- you know, partial birth, and then destruction of the unborn child before the head is born-- is a medical necessity for the mother. It certainly can't be a necessity for the baby."

Dr. Koop, a world-renown pediatric surgeon, was asked by the *American Medical News* reporters whether he had ever "treated children with any of the disabilities cited in this debate? For example, have you operated on children born with organs outside of their bodies?" Dr. Koop replied, "Oh, yes indeed. I've done that many times. The prognosis usually is good. There are two common ways that children are born with organs outside of their body. One is an omphalocele, where the organs are out but still contained in the sac... the first child I ever did, with a huge omphalocele much bigger than her head, went on to develop well and become the head nurse in my intensive care unit many years later."

In addition, in the summer of 1996, an organization called Physicians' Ad Hoc Coalition for Truth (PHACT) began circulating material directly challenging President Clinton's claims. As of early September, PHACT reportedly consisted of over 230 physicians, mostly professors and other specialists in obstetrics, gynecology, and fetal medicine. In an advertisement published in August, the PHACT physicians said:

Congress, the public-- but most importantly women-- need to know that partial-birth abortion is never medically indicated to protect a mother's health or her future fertility.

The PHACT doctors also referred directly to the specific medical conditions that affected some of the women who appeared with President Clinton at his April 10 veto ceremony, such as hydrocephalus (excessive fluid in the head), and commented:

At a July 24 briefing on Capitol Hill, PHACT member Dr. Curtis Cook, an ob/gyn perinatologist with the West Michigan Perinatal and Genetic Diagnostic Center, said that partial-birth abortion:

is never necessary to preserve the life or the fertility of the mother, and may in fact threaten her health or well-being or future fertility. In my practice, I see these rare, unusual cases that come to most generalists' offices once in a lifetime-- they all come into our office. We see these every day....The presence of fetal disabilities or fetal anomalies are not a reason to have a termination of pregnancy to preserve the life of the mother-- they do not threaten the life of the mother in any way....[and] where these rare instances do occur, they do not require the death of the baby or the fetus prior to the completion of the delivery.

Also present at the July 24 briefing were several women who, while pregnant, had learned that their unborn babies were afflicted with conditions similar or identical to those cited by President Clinton, but who gave birth to their babies alive. One of the women, Jeannie French of Oak Park, Illinois, distributed a July 17 letter that she and several other women sent to President Clinton, asking for a meeting so that he could learn about the medical alternatives to partial-birth abortion. Ms. French wrote:

In recent months, I have had the opportunity to get to know many women who've carried and given birth to children with fatal conditions from anencephaly, encephaloceles, Trisomy 18, hydrocephaly, and even a rare disease called body stalk anomaly, in which internal organs develop outside a baby's body. We gave birth to our children knowing that their serious physical disabilities might not allow them to live long.... You say that partial-birth abortion has to be legal for cases like ours, because women's bodies would be 'ripped to shreds' by carrying their very sick children to term. By your repeated statements, you imply that partial-birth abortion is the only or the most desirable response to children suffering severe disabilities like our children... This message is so wrong!... Will you meet with us personally, and hear our stories?

U.S. House Gives Final Approval to Partial-Birth Abortion Ban, But Some Democratic Senators Delay Final Senate Vote

WASHINGTON (Oct. 4, 2003) -- Only a single legislative step -- a final vote in the U.S. Senate B remains before Congress sends the Partial-Birth Abortion Ban Act (S. 3) to President Bush for his signature.

The bill represents the first direct national restriction on any method of abortion since the Supreme Court legalized abortion on demand in 1973.

The House of Representatives gave final approval to the bill on October 2 by an overwhelming vote of 281-142.

It has been almost a decade since the gruesome practice of partial-birth abortion escaped the shadowy corners of abortion clinics and was disclosed to the public, said Congressman Steve Chabot (R-Oh.), the prime sponsor of the bill in the House. With the House's final approval, we move one step closer to finally banning this horrific procedure, he noted.

House Majority Leader Tom DeLay (R-Tx.) proclaimed the vote as a victory for humanity and a pivotal point in the long battle to protect the unborn. Rep. James Oberstar (D-Mn.) said House passage was a landmark day for those who, for more than 30 years, have worked to reduce the number of abortions performed in America.

Approval by the Senate is also assured. Based on past Senate roll calls on the measure and its antecedents, 64 or 65 of the 100 U.S. senators are likely to vote to send the bill to President Bush.

Nevertheless, some Democratic senators who oppose the bill, including Sen. Barbara Boxer (D-Ca.) and Sen. Tom Harkin (D-Iowa), prevented the vote from occurring before the Senate began a 10-day recess on October 3. This means that the necessary Senate vote cannot occur earlier than mid-October.

President Clinton and a minority of senators, mostly Democrats, have blocked enactment of the partial-birth abortion ban for eight years, and now a group made up entirely of Democratic senators is obstructing the bill for additional weeks, commented NRLC Legislative Director Douglas Johnson, who worked with federal lawmakers to originate the legislation in 1995.

The Partial-Birth Abortion Ban Act was originally introduced in 1995 by Congressman Charles Canady (R-Fl.), who retired from Congress in 2000.

Senator Rick Santorum (R-Pa.) is the lead sponsor of the legislation in the Senate.

Senate Majority Leader Bill Frist (R-Tn.), a strong supporter of the ban, expressed regret that Democratic senators did not allow the Senate to give final approval to the bill on October 2, immediately after the House acted.

As soon as we get back, we will be scheduling it for consideration, Frist said on October 3, as the Senate began its recess. It is imperative that the Senate consider this measure in short order so the President can sign this legislation into law.

President Bush urged Congress to pass the ban in his January 28 State of the Union speech. On June 4, he said, I urge Congress to quickly resolve any differences and send me the final bill as soon as possible so that I can sign it into law.

On October 2, as the House completed action on the bill, White House Press Secretary Scott McClellan told reporters, The House right now is voting on the conference committee report on the legislation that would ban the brutal practice of partial-birth abortion. This will be an important step toward building a culture of life in America. And we look forward to the House passage and urge the Senate to move quickly on this important piece of legislation as well.

On the 281-142 October 2 House roll call, the ban was supported by 218 Republicans and 63 Democrats. It was opposed by four Republicans, 137 Democrats, and one independent.

A January Gallup poll found that 70 percent of the public favors the ban.

(The Oct. 2 House roll call will be published in the November issue of *NRL News*. The roll calls by which the Senate and House gave preliminary approval to the bill were published in *NRL News* earlier this year. All of these roll calls, including the Oct. 2 House vote, are posted in the congressional scorecards found at the *Legislative Action Center* on the NRLC website at www.nrlc.org.)

Legal Challenge Expected

The bill legally defines a partial-birth abortion as any abortion in which the baby is delivered either A past the navel . . . outside the body of the mother, @ or A in the case of head-first presentation, the entire fetal head is outside the body of the mother, @ before being killed.

The method is usually used in the fifth and sixth months of pregnancy, and usually on healthy mothers of healthy unborn babies. It is sometimes used somewhat earlier, but never during the first three months. It is also sometimes used in the seventh month and later.

The bill would allow the method only if it was ever necessary to save a mother's life.

Pro-abortion groups have vowed to challenge the ban in federal courts as soon as it is signed into law. Reportedly these will include challenges by the American Civil Liberties Union on behalf of the National Abortion Federation, and by the Center for Reproductive Rights on behalf of Nebraska abortionist LeRoy Carhart.

In the case of *Stenberg v. Carhart* in 2000, by a 5 to 4 vote, the Supreme Court struck down a Nebraska law banning partial-birth abortions, holding that under *Roe v. Wade* an abortionist must be permitted to use the method when he sees fit.

Johnson noted that NRLC has never predicted whether or not the Supreme Court will uphold the federal ban.

A In *Stenberg v. Carhart* in 2000, five Supreme Court justices struck down Nebraska's ban on partial-birth abortion, holding that *Roe v. Wade* guarantees an abortionist's right to perform a partial-birth abortion whenever he chooses, @ Johnson noted. A But that was a 5-to-4 decision, and we hope that by the time this federal ban reaches the Supreme Court, there will be at least a one vote shift away from the extreme position taken by the five justices in 2000 B either by a justice seeing this bill in a different light, or by a change in personnel. @ In the meantime, A This bill puts a spotlight on the brutal violence that premature infants suffer every day because of *Roe v. Wade*, as interpreted by five justices on the U.S. Supreme Court, @ Johnson said.

Congressional opponents of the bill said that it failed to show proper deference to past rulings of the Supreme Court.

The bill is A nothing but a veiled attempt to undermine the Supreme Court's landmark ruling, @ complained House Democratic Whip Steny Hoyer (D-Md.).

Another leading congressional opponent of the ban, Rep. Jerrold Nadler (D-NY), said, A This bill reads as if the authors carefully studied the Supreme Court decisions, then went out of their way to thumb their noses at 30 years of constitutional law. @

Kate Michelman, president of NARAL, said, "This overly broad bill will strike at the very heart of *Roe*, and creates a legal pathway to the overturn of *Roe* ultimately, so we have to challenge it."

Conference Committee

Both houses approved the legislation earlier this year by about two-to-one margins. The only substantive difference between the House and Senate versions was the Harkin Amendment, an amendment expressing support for *Roe v. Wade* that was narrowly adopted in the Senate.

In order to get rid of the Harkin Amendment, sponsors of the bill decided to send it to a House-Senate conference committee. Opponents were able to delay that step for some weeks, but on September 17 the Senate voted to go to conference. The conference met on September 30.

Because Republicans hold majority control of both the House and Senate, Republican supporters of the bill outnumbered Democratic opponents 3-to-2 among the conferees from both the House and the Senate, and the conference was chaired by the chairmen of the Judiciary committees, Senator Orrin Hatch (R-Utah) and Rep. F. James Sensenbrenner (R-Wi.), both strong supporters of the bill.

On party-line votes, the committee deleted the Harkin Amendment, and also rejected a series of other gutting amendments offered by Sen. Boxer, Sen. Dianne Feinstein (D-Ca.), Rep. Zoe Lofgren (D-Ca.), and Rep. Nadler.

Health@ Claims Debated

During the October 2 House debate, opponents insisted that the partial-birth abortion method is sometimes necessary to protect women's health.

In reply, House Judiciary Committee Chairman Sensenbrenner said that the bill includes extensive congressional findings, based upon medical evidence received in a series of legislative hearings, that . . . partial-birth abortion is never medically necessary to preserve a woman's health, poses serious risks to women's health, and in fact is below the requisite standard of medical care.

Some opponents of the ban also resurrected long-discredited claims that the method is used mostly or only in cases of babies who cannot survive after birth because of profound disorders.

These are not children who are going to be born and run around the room, said Rep. Louise Slaughter (D-NY).

In response, Rep. Chris Smith (R-NJ), the co-chairman of the House Pro-Life Caucus, noted that even the head of the National Coalition of Abortion Providers had admitted that such claims were untrue. Most of those who are killed with partial-birth abortion methods are perfectly healthy, perfectly normal -- and those kids, like their disabled brothers and sisters, should not be executed in this terrible way or in any other way, Smith said.

Resources on Partial-Birth Abortion

The NRLC website contains the most extensive archive of documentation on partial-birth abortion available anywhere on the internet, including documentation on all disputed issues surrounding partial-birth abortion, White House statements on the issue, groundbreaking reports by investigative journalists for major newspapers and periodicals, and expert-certified color illustrations of the method.

The color illustrations of the partial-birth abortion method that were displayed on the Senate and House floors during the debates this year, along with documentation of their accuracy by eminent medical authorities, are here.

Medical drawings of a "dilation and evacuation" (D&E) abortion, a different method not covered by the bill, appear [here](#).

A basic resource, "Key Facts on Partial-Birth Abortion," is posted [here](#).

The NRLC archive also contains NRLC's in-depth testimony presented to Congress, with citations to primary sources, [here](#).

U.S. House Members Speak Out For Ban on Partial-Birth Abortion

Congresswoman Sue Myrick (R-NC): Al must say, as a mother and a grandmother, it is astonishing to me that this horrible practice is even remotely legal in America today. . . . Partial-birth abortion is the procedure where a pregnant woman's cervix is forcibly dilated over a 3-day period. On the third day, her child is pulled, feet first, through the birth canal until his or her entire body, except for the head, is outside the womb. The head is held inside the womb by the woman's cervix, and 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 abortionist inserts scissors into the base of the baby's skull, and the scissors are opened, creating a hole in the baby's head. The skull is either then crushed with instruments or a suction catheter is inserted into the hole and the baby's brain is suctioned out. Since the head is now small enough to slip through the mother's cervix, the now lifeless body is pulled the rest of the way out of its mother and the baby's corpse is discarded, usually as medical waste.@

Rep. Mark Kennedy (R-Mn.), who organized a special series of speeches on the House floor the night before the House took up the bill: Al had a young nephew who was born at less than two pounds. Sadly, 3,000 to 5,000 young children a year -- many of them bigger than my nephew when he was born -- die through partial-birth abortion, and it is time that we end this. It is deplorable that a country like ours which was founded on the respect for life has continued to allow this terrible practice.@

Rep. Mike Pence (R-In.): Al am mindful of that Bible verse that whatsoever you do for the least of these, you do for me, the Lord tells us. And I submit what we will do in this Congress tomorrow, banning this barbaric procedure known as partial-birth abortion, is the least we can do for the least of these.@

Congresswoman Ileana Ros-Lehtinen (R-Fl.): ASome of my colleagues who support partial-birth abortion are the first ones to rightly advocate the prohibition of cruelty against others or even against helpless animals. But how can some cringe in horror when an animal is tortured, yet they do not think twice about the unspeakable suffering of an innocent baby being killed through this so-called medical procedure?

Congressman F. James Sensenbrenner (R-Wi.), chairman of the House Judiciary Committee: Almplicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns but all vulnerable and innocent human life.@

Congressman Joe Pitts (R-Pa.), chairman of the House Values Action Team: AThis type of abortion, partial-birth abortion, is more like a legal technicality. The baby must be delivered

feet-first so that the doctor actually forces the head to stay in the birth canal. Otherwise, he would be born and actually breathe. Most people would call this murder. But right now, it is just a technicality. There is no excuse for this procedure in a civilized nation.@

Partial-Birth Abortion Ban Act of 2003 (Enrolled as Agreed to or Passed by Both House and Senate)

--S.3--

One Hundred Eighth Congress

of the

United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday,

the seventh day of January, two thousand and three

An Act

To prohibit the procedure commonly known as partial-birth abortion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Partial-Birth Abortion Ban Act of 2003'.

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion--an abortion in which a physician deliberately and intentionally vaginally delivers a living, unborn child's body until either the entire baby's head is outside the body of the mother, or any part of the baby's trunk past the navel is outside the body of the mother, and only the head remains inside the womb, for the purpose of performing an overt act (usually the puncturing of the back of the child's skull and removing the baby's brains) that the person knows will kill the partially delivered infant, performs this act, and then completes delivery of the dead infant--is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.

(2) Rather than being an abortion procedure that is embraced by the medical community, particularly among physicians who routinely perform other abortion procedures, partial-birth abortion remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives. As a result, at least 27 States banned the procedure as did the United

States Congress which voted to ban the procedure during the 104th, 105th, and 106th Congresses.

(3) In *Stenberg v. Carhart*, 530 U.S. 914, 932 (2000), the United States Supreme Court opined 'that significant medical authority supports the proposition that in some circumstances, [partial birth abortion] would be the safest procedure' for pregnant women who wish to undergo an abortion. Thus, the Court struck down the State of Nebraska's ban on partial-birth abortion procedures, concluding that it placed an 'undue burden' on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the 'health' of the mother.

(4) In reaching this conclusion, the Court deferred to the Federal district court's factual findings that the partial-birth abortion procedure was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures.

(5) However, substantial evidence presented at the Stenberg trial and overwhelming evidence presented and compiled at extensive congressional hearings, much of which was compiled after the district court hearing in Stenberg, and thus not included in the Stenberg trial record, demonstrates that a partial-birth abortion is never necessary to preserve the health of a woman, poses significant health risks to a woman upon whom the procedure is performed and is outside the standard of medical care.

(6) Despite the dearth of evidence in the Stenberg trial court record supporting the district court's findings, the United States Court of Appeals for the Eighth Circuit and the Supreme Court refused to set aside the district court's factual findings because, under the applicable standard of appellate review, they were not 'clearly erroneous'. A finding of fact is clearly erroneous 'when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed'. *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573 (1985). Under this standard, 'if the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently'. *Id.* at 574.

(7) Thus, in Stenberg, the United States Supreme Court was required to accept the very questionable findings issued by the district court judge--the effect of which was to render null and void the reasoned factual findings and policy determinations of the United States Congress and at least 27 State legislatures.

(8) However, under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the 'clearly erroneous' standard. Rather, the United States Congress is entitled to reach its own factual findings--findings that the Supreme Court accords great deference--and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence.

(9) In *Katzenbach v. Morgan*, 384 U.S. 641 (1966), the Supreme Court articulated its highly deferential review of congressional factual findings when it addressed the constitutionality of section 4(e) of the Voting Rights Act of 1965. Regarding Congress' factual determination that section 4(e) would assist the Puerto Rican community in 'gaining nondiscriminatory treatment in public services,' the Court stated that '[i]t was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations * * *. It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support section 4(e) in the application in question in this case.' *Id.* at 653.

(10) Katzenbach's highly deferential review of Congress' factual conclusions was relied upon by the United States District Court for the District of Columbia when it upheld the 'bail-out' provisions of the Voting Rights Act of 1965 (42 U.S.C. 1973c), stating that 'congressional fact finding, to which we are inclined to pay great deference, strengthens the inference that, in those jurisdictions covered by the Act, state actions discriminatory in effect are discriminatory in purpose'. *City of Rome, Georgia v. U.S.*, 472 F. Supp. 221 (D.D.C. 1979) *aff'd* *City of Rome, Georgia v. U.S.*, 446 U.S. 156 (1980).

(11) The Court continued its practice of deferring to congressional factual findings in reviewing the constitutionality of the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992. See *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 512 U.S. 622 (1994) (Turner I) and *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 520 U.S. 180 (1997) (Turner II). At issue in the Turner cases was Congress' legislative finding that, absent mandatory carriage rules, the continued viability of local broadcast television would be 'seriously jeopardized'. The Turner I Court recognized that as an institution, 'Congress is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon an issue as complex and dynamic as that presented here', 512 U.S. at 665-66. Although the Court recognized that 'the deference afforded to legislative findings does 'not foreclose our independent judgment of the facts bearing on an issue of constitutional law,' its 'obligation to exercise independent judgment when First Amendment rights are implicated is not a license to reweigh the evidence de novo, or to replace Congress' factual predictions with our own. Rather, it is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.' *Id.* at 666.

(12) Three years later in Turner II, the Court upheld the 'must-carry' provisions based upon Congress' findings, stating the Court's 'sole obligation is 'to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.' 520 U.S. at 195. Citing its ruling in Turner I, the Court reiterated that '[w]e owe Congress' findings deference in part because the institution 'is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon' legislative questions,' *id.* at 195, and added that it 'owe[d] Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power.' *Id.* at 196.

(13) There exists substantial record evidence upon which Congress has reached its conclusion that a ban on partial-birth abortion is not required to contain a 'health' exception, because the facts indicate that a partial-birth abortion is never necessary to preserve the health of a woman,

poses serious risks to a woman's health, and lies outside the standard of medical care. Congress was informed by extensive hearings held during the 104th, 105th, 107th, and 108th Congresses and passed a ban on partial-birth abortion in the 104th, 105th, and 106th Congresses. These findings reflect the very informed judgment of the Congress that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care, and should, therefore, be banned.

(14) Pursuant to the testimony received during extensive legislative hearings during the 104th, 105th, 107th, and 108th Congresses, Congress finds and declares that:

(A) Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: An increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, 'there are very few, if any, indications for * * * other than for delivery of a second twin'; and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

(B) There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures. No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures. Indeed, unlike other more commonly used abortion procedures, there are currently no medical schools that provide instruction on abortions that include the instruction in partial-birth abortions in their curriculum.

(C) A prominent medical association has concluded that partial-birth abortion is 'not an accepted medical practice', that it has 'never been subject to even a minimal amount of the normal medical practice development,' that 'the relative advantages and disadvantages of the procedure in specific circumstances remain unknown,' and that 'there is no consensus among obstetricians about its use'. The association has further noted that partial-birth abortion is broadly disfavored by both medical experts and the public, is 'ethically wrong,' and 'is never the only appropriate procedure'.

(D) Neither the plaintiff in *Stenberg v. Carhart*, nor the experts who testified on his behalf, have identified a single circumstance during which a partial-birth abortion was necessary to preserve the health of a woman.

(E) The physician credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome and, thus, is never medically necessary to preserve the health of a

woman.

(F) A ban on the partial-birth abortion procedure will therefore advance the health interests of pregnant women seeking to terminate a pregnancy.

(G) In light of this overwhelming evidence, Congress and the States have a compelling interest in prohibiting partial-birth abortions. In addition to promoting maternal health, such a prohibition will draw a bright line that clearly distinguishes abortion and infanticide, that preserves the integrity of the medical profession, and promotes respect for human life.

(H) Based upon Roe v. Wade, 410 U.S. 113 (1973) and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a governmental interest in protecting the life of a child during the delivery process arises by virtue of the fact that during a partial-birth abortion, labor is induced and the birth process has begun. This distinction was recognized in Roe when the Court noted, without comment, that the Texas parturition statute, which prohibited one from killing a child 'in a state of being born and before actual birth,' was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a 'person' under the United States Constitution. Partial-birth abortions involve the killing of a child that is in the process, in fact mere inches away from, becoming a 'person'. Thus, the government has a heightened interest in protecting the life of the partially-born child.

(I) This, too, has not gone unnoticed in the medical community, where a prominent medical association has recognized that partial-birth abortions are 'ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside of the womb'. According to this medical association, the 'partial birth' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body'.

(J) Partial-birth abortion also confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life. Partial-birth abortion thus appropriates the terminology and techniques used by obstetricians in the delivery of living children--obstetricians who preserve and protect the life of the mother and the child--and instead uses those techniques to end the life of the partially-born child.

(K) Thus, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, partial-birth abortion undermines the public's perception of the appropriate role of a physician during the delivery process, and perverts a process during which life is brought into the world, in order to destroy a partially-born child.

(L) The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the procedure.

(M) The vast majority of babies killed during partial-birth abortions are alive until the end of the

fetus; and

'(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and

'(2) the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: Provided, however, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

'(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

'(2) Such relief shall include--

'(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

'(B) statutory damages equal to three times the cost of the partial-birth abortion.

'(d)(1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

'(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

'(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.'

(b) CLERICAL AMENDMENT- The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:
--1531'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

***Gonzales v. Carhart*, 550 U.S. ____ (2007),**

Decision

Justice Anthony Kennedy wrote for the Court that the respondents had failed to show that Congress lacked power to ban this abortion procedure. Chief Justice John Roberts along with Justices Samuel Alito, Clarence Thomas, and Antonin Scalia agreed with the Court's judgment, and they also joined Kennedy's opinion.

The Court left the door open for as-applied challenges, citing its recent precedent in *Ayotte v. Planned Parenthood of New England*. According to *Washington Post* reporter Benjamin Wittes, "The Court majority, following the path it sketched out last year in the New Hampshire case, decided to let the law stand as a facial matter and let the parties fight later about what, if any, applications need to be blocked."^[1]

The Court decided to "assume ... for the purposes of this opinion" the principles of *Roe v. Wade* and *Planned Parenthood v. Casey*. The Court then proceeded to apply those "principles accepted as controlling here."

The Court said that the lower courts had repudiated a central premise of *Casey* — that the state has an interest in preserving fetal life — and the Court held that the ban was narrowly tailored to address this interest. Relying deferentially on Congress's findings that this intact dilation and extraction procedure is never needed to protect the health of a pregnant woman, Kennedy wrote that a health exception was therefore unnecessary. And, where medical testimony disputed Congress's findings, Congress is still entitled to regulate in an area where the medical community has not reached a "consensus."^[2]

The majority opinion held that "ethical and moral" considerations, including an interest in fetal life, represented "substantial" state interests which (assuming they do not impose an "undue" burden) could be a basis for legislation at all times during pregnancy, not just after viability. Thus, the Court believed that the pre-viability/post-viability distinction was not implicated in *Carhart*.^[2]

In addition, the Court distinguished the *Stenberg* case, which previously struck down Nebraska's partial-birth abortion law. The Court held that the state statute at issue in *Stenberg* was more ambiguous than the later federal statute at issue in *Carhart*.^[2]

The majority opinion in *Gonzales v. Carhart* did not discuss the constitutional rationale of the Court's prior abortion cases (i.e. "due process"). However, the majority opinion disagreed with the Eighth Circuit that the federal statute conflicted with "the Due Process Clause of the Fifth Amendment [which] is textually identical to the Due Process Clause of the Fourteenth Amendment."^[6]

[edit] Concurrence

Justice Thomas filed a concurring opinion, joined by Justice Scalia, saving for another day the issue of whether Congress had sufficient power under the Commerce Clause to enact this ban.^[2] The Commerce Clause was also mentioned in the opinion of the Court, and was the only clause of the Constitution mentioned explicitly by the opinions in this case.

The concurrence also stated that Justices Thomas and Scalia joined the Court's opinion "because it accurately applies current jurisprudence." And, the concurrence reiterated their view that that current abortion jurisprudence "has no basis in the Constitution." Nadine Strossen, President of the ACLU, pointed out that "no less an anti-abortion proponent than Justice Scalia joined by Justice Thomas, in his separate opinion, chided the majority for not coming out and explicitly saying that they had overturned not *Roe vs. Wade*, but the prior partial-birth abortion ban case."^[18]

[edit] Dissent

Justice Ruth Bader Ginsburg dissented, joined by justices David Souter, John Paul Stevens, and Stephen Breyer, contending that the ruling was an "alarming" one that ignored Supreme Court abortion precedent. Justice Ginsburg's dissent was the only opinion in this case that mentioned the word "privacy". Justice Ginsburg, referring in particular to *Planned Parenthood v. Casey*, sought to ground the Court's abortion jurisprudence based on concepts of personal autonomy and equal citizenship rather than the Court's previous privacy approach: "Thus, legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature."^[2]

Justice Kennedy's opinion in *Carhart* did not touch upon the question of whether the Court's prior decisions in *Roe v. Wade* and *Planned Parenthood v. Casey* were valid. Dissenting Justice Ginsburg characterized this aspect of the Court's opinion as follows: "Casey's principles, confirming the continuing vitality of 'the essential holding of *Roe*,' are merely 'assume[d]' for the moment ... rather than 'retained' or 'reaffirmed.'"

Rep. Wes Keller

From: Ruth Ewig [@hotmail.com]
Sent: Sunday, February 10, 2008 2:41 PM
To: Rep. Wes Keller
Subject: HB 301

Dear Representative Keller,
THANK YOU for sponsoring this bill. We want it to pass.

Sincerely, Jonathan & Ruth Ewig
(907) 452-

2/11/2008

Rep. Wes Keller

From: H Scott Meyer (@aol.com]
Sent: Saturday, February 09, 2008 10:12 PM
To: Rep. Wes Keller
Subject: HB301

To: Representative Wes Keller
Subject: HB301-Partial Birth Abortion Ban

I am in favor of your helping push this bill forward. I agree with the bill and am showing you my support by sending you this e-mail

Sincerely

H Scott Meyer
Eagle River, AK

2/11/2008

Rep. Wes Keller

From: Arliss Marshall [mailto:ar@ci.net]
Sent: Saturday, February 09, 2008 9:18 AM
To: Rep. Wes Keller
Subject: HB 301

I am in support of HB 301, the Partial Birth Abortion Ban. I can't understand why anyone would want to oppose this bill.

Thanks,

Arliss Marshall

Wasilla, AK 99654

2/11/2008

Rep. Wes Keller

From: John & Sue Delain [[@acsalaska.net](mailto:jd@acsalaska.net)]

Sent: Sunday, February 08, 2009 5:52 PM

To: Rep. Wes Keller

Subject: HB301

Rep. Keller

Would you please see that this important bill continues on, than you for all your help.

John F Delain

2/11/2008

Rep. Wes Keller

From: Leslie Greenfield [mailto:leslie@csalaska.net]
Sent: Friday, February 08, 2008 11:18 AM
To: Rep. Wes Keller
Subject: abortion ban

Rep. Keller,

I strongly support the ban on partial-birth abortion. It's the same as murder. Those children have as much a right to life as anyone else. I pray HB 301 passes into law. Thank you for your stand.

Leslie Greenfield
Fairbanks

For God so loved the world, that He gave His only begotten Son, that whosoever believeth in Him should not perish, but have everlasting life. John 3:16

No virus found in this outgoing message.

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Version: 7.5.516 / Virus Database: 269.19.21/1266 - Release Date: 2/8/2008 10:06 AM

Rep. Wes Keller

From: Nick Serino [:alaska.net]
Sent: Friday, February 08, 2008 10:10 AM
To: Rep. Wes Keller
Subject: HB301

Hello Mr. Keller,
Just wanted to let you know I support HB 301 .
Please work to get it passed !
Thanks
Rev. Nick Serino

Rep. Wes Keller

From: Eileen Ward [mailto:ward@alaskaonline.net]

Sent: Friday, February 08, 2008 9:58 AM

To: Rep. Wes Keller

Subject: HB301

Dear Rep. Keller,

Re: HB301 - Partial Birth Abortion Ban

Thank you for sponsoring this very important bill to protect the unborn child.

**Respectfully,
Eileen Ward
Eagle River, Alaska**

2/11/2008

Rep. Wes Keller

From: Spiers, James K
Sent: Friday, February 08, 2008 9:54 AM
To: Rep. Wes Keller
Subject: HB301

Sir:

Please do all to ensure passage of HB301. Thank you.

Ken Spiers

2/11/2008

Rep. Wes Keller

From: Kristina Johannes
Sent: Friday, February 08, 2008 9:53 AM
To: Rep. Wes Keller
Subject: HB301

Dear Rep Keller,

I support HB 301 and urge you to do what you can to accomplish it's passage.

Thanks for your work on this serious issue of the defense of innocent human life.

PX

Kristina Johannes

Anchorage, AK 99517

1 of 1

Rep. Wes Keller

From: edwin case [mailto:edwin.case@casey.com]
Sent: Friday, February 08, 2008 9:50 AM
To: Rep. Wes Keller
Subject: ***** HB301

Dear Sir,

I would like to let you know that we are very interested in HB301 being passed. Murder of an innocent life by any other name is still murder. Thank you for your support.

In Christ's Service,

 Dan and Marilyn Case 

Psalm 73:28

"But it is good for me to draw near to God: I have put my trust in the Lord God, that I may declare all thy works."

Never miss a thing. Make Yahoo your homepage.

Rep. Wes Keller

From: Bob Wilson [mailto:]

Sent: Friday, February 08, 2008 9:02 AM

To: Rep. Wes Keller

Subject: HB301

Rep. Keller,

Thank you for standing for the unborn, and for those who cannot help or speak for themselves. They have your voice and those of us that stand with you in this fight to bring awareness to our State and nation that government passed laws do not always make things morally right. We have a long ways to go and sometimes it looks impossible, but through your diligence and others such as Rep Coghill we have the opportunity for at least a partial victory in this war that is killing our children. But in all things, w/o much prayer, we can do nothing.

To God be all the glory in the Lord Jesus Christ's name

Bob Wilson

2/11/2008

Rep. Wes Keller

From: Pastor Clark [aska.net]
Sent: Friday, February 08, 2008 8:49 AM
To: Rep. Wes Keller
Subject: *****SPAM***** Partial Birth Abortion

I hope you will take the stand that is right and pass HB103. God will not continue to bless this great nation of ours if continue down such wicked paths. I love America but also truth and righteousness. Please do what is right. You should not follow majority opinion, you should follow righteousness.....but even if you did follow the majority you would pass this bill; most people are against partial birth abortion, and abortion of any type.

Thank you for your service.

Northern Lights Baptist Church
Gregg Clark, Pastor

Cell (907) 760-5511 (6511)
Email: gclark@alaska.net

Old Time Religion from the Old Time Book



Rep. Wes Keller

From: Karen Karlen [mailto:karen.karlen@alaska.gov]

Sent: Friday, February 08, 2008 8:43 AM

To: Rep. Wes Keller

Subject: HB301

Representative Keller,

Please make sure that HB301 passes the House. Thank you.

Karen Karlen
Fairbanks, Alaska

2/11/2008

Rep. Wes Keller

From: Edna DeVries idovrie thr 1]
Sent: Friday, February 08, 2008 7:04 AM
To: Rep. Wes Keller
Subject: good job

Good job on the partial birth abortion bill. Have a blessed day. love edna and noel

THERE IS A GOD AND HE CARES FOR YOU!!!!

Rep. Wes Keller

From: Annie Dougherty
Sent: Thursday, February 07, 2008 6:44 PM
To: Rep. Wes Keller
Subject: Thank You

Representative Keller,

Thank you for your unwavering support for what is right, and your sponsorship of HB301.

You and your work will remain in our prayers.

God Bless.

Annie Dougherty and family

Rep. Wes Keller

From: Marie & Sean Mayton (mailto:mayton37@comcast.net)

Sent: Monday, February 11, 2008 9:00 PM

To: Rep. Wes Keller

I would like to express strong support of House Bill 301.

Marie Mayton

Never miss a thing. Make Yahoo your homepage.

2/12/2008

Rep. Wes Keller

From: [redacted]
Sent: Monday, February 11, 2008 8:42 PM
To: Rep. Wes Keller
Subject: HB 301

I am e-mailing to express my strong support for House Bill 301.
Thank You,
Sarah Wingerter

[Click to become a designer and quit your boring job.](#)

Rep. Wes Keller

From: Tim & Sena Nunley
Sent: Monday, February 11, 2008 8:22 PM
To: Rep. Wes Keller
Subject: HB 301

Representative Keller,
We understand that House Bill 301 is going before the House soon. We feel strongly that partial birth abortion is wrong and are hoping and praying that this bill moves forward.
Thanks for the job you are doing! We appreciate you!

Sincerely,
Tim and Sena Nunley
Palmer, AK

Rep. Wes Keller


From: Jack and Teresa Nordby ;
Sent: Monday, February 11, 2008 7:42 PM
To: Rep. Wes Keller
Subject: HB301

Dear Mr. Keller:

I am writing to urge you to support HB301 to ban partial birth abortion.

Teresa Nordby

Anchorage, AK 99516

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Rep. Wes Keller


From: Monty and Nelda Hotchkiss [r
..]
Sent: Monday, February 11, 2008 7:41 PM
To: Rep. Wes Keller
Subject: HB301

I would like to voice my support for HB301 to be passed into law.

Sincerely

Fremont L. Hotchkiss

Palmer, Ak 99645

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Rep. Wes Keller

From: randy nevens :om]
Sent: Monday, February 11, 2008 6:52 PM
To: Rep. Wes Keller
Subject: abortion

I strongly support the banning of partial birth abortions. I believe that life begins at conception and any voluntary termination is terribly wrong.

Randy Nevins

registered Fairbanks voter

Be a better friend, newshound, and
know-it-all with Yahoo! Mobile. Try it now. [http://mobile.yahoo.com/;](http://mobile.yahoo.com/)
[_ylt=Ahu06i62sR8HDtDypao8Wcj9tAcJ](#)

Rep. Wes Keller

From: Joann White

Sent: Tuesday, February 12, 2008 11:37 AM

To: Rep. Wes Keller

Subject: HB301

I am in favor of HB301. Please do your utmost to get it passed.

Joann White

2/12/2008

From: n
Sent: Tuesday, February 12, 2008 11:14 AM
To: Rep. Wes Keller
Subject: *** * unborn babies

Thank you for your sponsorship of HB301 !!! Let's get this on the books asap!

Therese Syren, his Power
Kim Syren " " "
(hardcopy response not necessary)

Have you checked out www.KOL.com? It's a great site just for kids. It's got games, music, cartoons, sports scores, homework help and more. So what are you waiting for? Start clicking!

Rep. Wes Keller

From: Doug Prins

Sent: Monday, February 11, 2008 6:08 PM

To: Rep. Wes Keller

Subject: HB301

Dear Representative Keller,

I am in total agreement with House Bill 301 (HB301) which bans Partial Birth Abortion.

Please do all you can to make this bill become law in the great State of Alaska.

Sincerely,
Doug and Marlin Prins

[FREE Animations for your email - By IncrediMail! Click Here!](#)

Rep. Wes Keller

From: Barbara Gazaway
Sent: Monday, February 11, 2008 5:59 PM
To: Rep. Wes Keller
Subject: Partial Birth Abortion. House Bill 301 (HB301)

Representative Keller,

I am writing in support of the bill banning partial birth abortions.

Barbara Gazaway

Rep. Wes Keller

From: Mrs. Smith
Sent: Monday, February 11, 2008 5:42 PM
To: Rep. Wes Keller
Subject: House Bill 301

Hello,

**I strongly encourage you to support House Bill 301
Anything less is just wrong.**

**Thankyou,
Nicole Smith
Palmer, Alaska**

Rep. Wes Keller

From:

Sent: Monday, February 11, 2008 4:43 PM

To: Rep. Wes Keller

Subject: ***** Partial Birth Abortion Ban

Dear Rep. Keller,

I am a member (and former Vice-Chair for the Republican Party) of District 31, and former District Chair of the "old" District 19. I am writing to voice my support for a partial birth abortion ban. Below is a description of that "procedure" contained in a U.S. Supreme Court opinion, *Gonzalez vs. Carhart*:

Intact D&E gained public notoriety when, in 1992, Dr. Martin Haskell gave a presentation describing his method of performing the operation. Dilation and Extraction 110-111. In the usual intact D&E the fetus' head lodges in the cervix, and dilation is insufficient to allow it to pass. See, e.g., *ibid.*; App. in No. 05-380, at 577; App. in No. 05-1382, at 74, 282. Haskell explained the next step as follows:

" 'At this point, the right-handed surgeon slides the fingers of the left [hand] along the back of the fetus and "hooks" the shoulders of the fetus with the index and ring fingers (palm down).

" 'While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down, along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

" '[T]he surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.

" 'The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.' " H. R. Rep. No. 108-58, p. 3 (2003).

This is an abortion doctor's clinical description. Here is another description from a nurse who witnessed the same method performed on a 26-week fetus and who testified before the Senate Judiciary Committee:

" 'Dr. Haskell went in with forceps and grabbed the baby's legs and pulled them down into the birth canal. Then he delivered the baby's body and the arms—everything but the head. The doctor kept the head right inside the uterus... .

" 'The baby's little fingers were clasping and unclasping, and his little feet were kicking. Then the doctor stuck the scissors in the back of his head, and the baby's arms jerked out, like a startle reaction, like a flinch, like a baby does when he thinks he is going to fall.