

Union Calendar No. 36

108TH CONGRESS
1ST SESSION

H. R. 760

[Report No. 108-58]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mr. CHABOT (for himself, Mr. SENSENBRENNER, Mr. KING of Iowa, Mr. KENNEDY of Minnesota, Mr. BACHUS, Mr. BRADY of Texas, Mr. CANNON, Mr. CANTOR, Mr. CUNNINGHAM, Mr. ENGLISH, Mr. GREEN of Wisconsin, Ms. HART, Mr. HAYES, Mr. HEFLEY, Mr. HOEKSTRA, Mr. HUNTER, Mr. JENKINS, Mr. KINGSTON, Mr. MILLER of Florida, Mrs. MYRICK, Mr. NEY, Mr. PENCE, Mr. PETERSON of Pennsylvania, Mr. PITTS, Mr. TOOMEY, Mr. WELDON of Pennsylvania, Mr. PICKERING, Mr. OXLEY, Mr. CRANE, Mr. DEMINT, Mr. SCHROCK, Mr. TANCREDO, Mr. ADERHOLT, Mr. TIAHRT, Mr. NORWOOD, Mr. SHADEGG, Mr. BURTON of Indiana, Mr. DOOLITTLE, Mr. EHLERS, Mr. ROGERS of Michigan, Mr. BAKER, Mr. MOLLOHAN, Mr. BALLENGER, Mr. MCCRERY, Mr. RENZI, Mr. FLETCHER, Mr. TIBERI, Mr. AKIN, Mr. COLLINS, Mr. JOHN, Mr. RYUN of Kansas, Mr. HOSTETTLER, Mr. VITTER, Mr. MCCOTTER, Mr. PORTMAN, Mr. SESSIONS, Mr. SOUDER, Mr. SHUSTER, Mr. WOLF, Mr. POMBO, Mr. DELAY, Mr. CAMP, Mr. BARTON of Texas, Mr. COSTELLO, Mr. BISHOP of Utah, Mr. TAYLOR of Mississippi, Mr. EVERETT, Mr. BLUNT, Mr. TERRY, Mrs. CUBIN, Mr. OBERSTAR, Mr. GRAVES, Mr. WHITFIELD, Mr. ISSA, Mr. FEENEY, Mr. STENHOLM, Mr. GOSS, Mr. SMITH of New Jersey, Mr. HYDE, Mr. WILSON of South Carolina, Mr. GUTKNECHT, Mr. PETRI, Mr. LINDER, Mr. COBLE, Mr. HAYWORTH, Mr. FRANKS of Arizona, Mr. BURGESS, Mr. STEARNS, Mr. BEAUPREZ, Mr. HULSHOF, Mr. ROGERS of Alabama, Mr. BURNS, Mr. PLATTS, Mr. BROWN of South Carolina, Mr. REHBERG, Mrs. EMERSON, Mr. KLINE, Mr. LAHOOD, Mr. MORAN of Kansas, Mr. TOM DAVIS of Virginia, Mr. BOOZMAN, Mr. OSBORNE, Mr. LEWIS of Kentucky, Mr. MURPHY, Mr. SIMPSON, Mr. RAHALL, Mr. TAYLOR of North Carolina, Mrs. JO ANN DAVIS of Virginia, Mr. WAMP, Mr. GOODE, Mr. CHOCOLA, Mrs. NORTHUP, Mr. FORBES, Mr. SULLIVAN, Mr. GOODLATTE, Mr. PUTNAM, Mrs. BLACKBURN, Mr. TURNER of Ohio, Mr. PEARCE, Mrs. MILLER of

Michigan, Ms. GRANGER, Mr. GINGREY, Mr. MANZULLO, Mr. COLE, Mr. FERGUSON, Mr. CALVERT, Mr. SMITH of Texas, Mr. GARRETT of New Jersey, Mr. STUPAK, Mr. BURR, Mr. RYAN of Wisconsin, Mr. JONES of North Carolina, Mrs. MUSGRAVE, Mr. CULBERSON, Mr. LATOURETTE, Mr. BOEHNER, Mr. BARRETT of South Carolina, and Mr. HENSARLING) introduced the following bill; which was referred to the Committee on the Judiciary

APRIL 3, 2003

Additional sponsors: Mr. SHIMKUS, Mr. TAUZIN, Mr. BARTLETT of Maryland, Mr. KING of New York, Mr. WELLER, Mr. ALEXANDER, Mr. SKELTON, Mr. BUYER, Mr. NUSSLE, Mr. FLAKE, Mr. PETERSON of Minnesota, Mr. JOHNSON of Illinois, Mr. MICA, Ms. ROS-LEHTINEN, Mr. LUCAS of Oklahoma, Mr. JANKLOW, Mr. LUCAS of Kentucky, Mr. DOYLE, Mr. ROGERS of Kentucky, Mr. FOLEY, Mr. OTTER, Mr. BONILLA, Mr. CARTER, and Mr. KELLER

APRIL 3, 2003

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Partial-Birth Abortion
5 Ban Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds and declares the following:

8 (1) A moral, medical, and ethical consensus ex-
9 ists that the practice of performing a partial-birth
10 abortion—an abortion in which a physician delivers

1 an unborn child’s body until only the head remains
2 inside the womb, punctures the back of the child’s
3 skull with a sharp instrument, and sucks the child’s
4 brains out before completing delivery of the dead in-
5 fant—is a gruesome and inhumane procedure that is
6 never medically necessary and should be prohibited.

7 (2) Rather than being an abortion procedure
8 that is embraced by the medical community, particu-
9 larly among physicians who routinely perform other
10 abortion procedures, partial-birth abortion remains a
11 disfavored procedure that is not only unnecessary to
12 preserve the health of the mother, but in fact poses
13 serious risks to the long-term health of women and
14 in some circumstances, their lives. As a result, at
15 least 27 States banned the procedure as did the
16 United States Congress which voted to ban the pro-
17 cedure during the 104th, 105th, and 106th Con-
18 gresses.

19 (3) In *Stenberg v. Carhart*, 530 U.S. 914, 932
20 (2000), the United States Supreme Court opined
21 “that significant medical authority supports the
22 proposition that in some circumstances, [partial
23 birth abortion] would be the safest procedure” for
24 pregnant women who wish to undergo an abortion.
25 Thus, the Court struck down the State of Nebras-

1 ka’s ban on partial-birth abortion procedures, con-
2 cluding that it placed an “undue burden” on women
3 seeking abortions because it failed to include an ex-
4 ception for partial-birth abortions deemed necessary
5 to preserve the “health” of the mother.

6 (4) In reaching this conclusion, the Court de-
7 ferred to the Federal district court’s factual findings
8 that the partial-birth abortion procedure was statis-
9 tically and medically as safe as, and in many cir-
10 cumstances safer than, alternative abortion proce-
11 dures.

12 (5) However, the great weight of evidence pre-
13 sented at the Stenberg trial and other trials chal-
14 lenging partial-birth abortion bans, as well as at ex-
15 tensive Congressional hearings, demonstrates that a
16 partial-birth abortion is never necessary to preserve
17 the health of a woman, poses significant health risks
18 to a woman upon whom the procedure is performed,
19 and is outside of the standard of medical care.

20 (6) Despite the dearth of evidence in the
21 Stenberg trial court record supporting the district
22 court’s findings, the United States Court of Appeals
23 for the Eighth Circuit and the Supreme Court re-
24 fused to set aside the district court’s factual findings
25 because, under the applicable standard of appellate

1 review, they were not “clearly erroneous”. A finding
2 of fact is clearly erroneous “when although there is
3 evidence to support it, the reviewing court on the en-
4 tire evidence is left with the definite and firm convic-
5 tion that a mistake has been committed”. *Anderson*
6 *v. City of Bessemer City, North Carolina*, 470 U.S.
7 564, 573 (1985). Under this standard, “if the dis-
8 trict court’s account of the evidence is plausible in
9 light of the record viewed in its entirety, the court
10 of appeals may not reverse it even though convinced
11 that had it been sitting as the trier of fact, it would
12 have weighed the evidence differently”. *Id.* at 574.

13 (7) Thus, in *Stenberg*, the United States Su-
14 preme Court was required to accept the very ques-
15 tionable findings issued by the district court judge—
16 the effect of which was to render null and void the
17 reasoned factual findings and policy determinations
18 of the United States Congress and at least 27 State
19 legislatures.

20 (8) However, under well-settled Supreme Court
21 jurisprudence, the United States Congress is not
22 bound to accept the same factual findings that the
23 Supreme Court was bound to accept in *Stenberg*
24 under the “clearly erroneous” standard. Rather, the
25 United States Congress is entitled to reach its own

1 factual findings—findings that the Supreme Court
2 accords great deference—and to enact legislation
3 based upon these findings so long as it seeks to pur-
4 sue a legitimate interest that is within the scope of
5 the Constitution, and draws reasonable inferences
6 based upon substantial evidence.

7 (9) In *Katzenbach v. Morgan*, 384 U.S. 641
8 (1966), the Supreme Court articulated its highly
9 deferential review of Congressional factual findings
10 when it addressed the constitutionality of section
11 4(e) of the Voting Rights Act of 1965. Regarding
12 Congress’ factual determination that section 4(e)
13 would assist the Puerto Rican community in “gain-
14 ing nondiscriminatory treatment in public services,”
15 the Court stated that “[i]t was for Congress, as the
16 branch that made this judgment, to assess and
17 weigh the various conflicting considerations. . . . It
18 is not for us to review the congressional resolution
19 of these factors. It is enough that we be able to per-
20 ceive a basis upon which the Congress might resolve
21 the conflict as it did. There plainly was such a basis
22 to support section 4(e) in the application in question
23 in this case.”. *Id.* at 653.

24 (10) *Katzenbach’s* highly deferential review of
25 Congress’ factual conclusions was relied upon by

1 the United States District Court for the District of
2 Columbia when it upheld the “bail-out” provisions of
3 the Voting Rights Act of 1965, (42 U.S.C. 1973e),
4 stating that “congressional fact finding, to which we
5 are inclined to pay great deference, strengthens the
6 inference that, in those jurisdictions covered by the
7 Act, state actions discriminatory in effect are dis-
8 criminatory in purpose”. *City of Rome, Georgia v.*
9 *U.S.*, 472 F. Supp. 221 (D. D. Col. 1979) *aff’d* *City*
10 *of Rome, Georgia v. U.S.*, 446 U.S. 156 (1980).

11 (11) The Court continued its practice of defer-
12 ring to congressional factual findings in reviewing
13 the constitutionality of the must-carry provisions of
14 the Cable Television Consumer Protection and Com-
15 petition Act of 1992. See *Turner Broadcasting Sys-*
16 *tem, Inc. v. Federal Communications Commission*,
17 512 U.S. 622 (1994) (Turner I) and *Turner Broad-*
18 *casting System, Inc. v. Federal Communications*
19 *Commission*, 520 U.S. 180 (1997) (Turner II). At
20 issue in the Turner cases was Congress’ legislative
21 finding that, absent mandatory carriage rules, the
22 continued viability of local broadcast television would
23 be “seriously jeopardized”. The Turner I Court rec-
24 ognized that as an institution, “Congress is far bet-
25 ter equipped than the judiciary to ‘amass and evalu-

1 ate the vast amounts of data’ bearing upon an issue
2 as complex and dynamic as that presented here’’.
3 512 U.S. at 665–66. Although the Court recognized
4 that “the deference afforded to legislative findings
5 does ‘not foreclose our independent judgment of the
6 facts bearing on an issue of constitutional law,’” its
7 “obligation to exercise independent judgment when
8 First Amendment rights are implicated is not a li-
9 cense to reweigh the evidence de novo, or to replace
10 Congress’ factual predictions with our own. Rather,
11 it is to assure that, in formulating its judgments,
12 Congress has drawn reasonable inferences based on
13 substantial evidence.” *Id.* at 666.

14 (12) Three years later in *Turner II*, the Court
15 upheld the “must-carry” provisions based upon Con-
16 gress’ findings, stating the Court’s “sole obligation
17 is ‘to assure that, in formulating its judgments, Con-
18 gress has drawn reasonable inferences based on sub-
19 stantial evidence.’” 520 U.S. at 195. Citing its rul-
20 ing in *Turner I*, the Court reiterated that “[w]e owe
21 Congress’ findings deference in part because the in-
22 stitution ‘is far better equipped than the judiciary to
23 “amass and evaluate the vast amounts of data”
24 bearing upon’ legislative questions,” *id.* at 195, and
25 added that it “owe[d] Congress’ findings an addi-

1 tional measure of deference out of respect for its au-
2 thority to exercise the legislative power.” Id. at 196.

3 (13) There exists substantial record evidence
4 upon which Congress has reached its conclusion that
5 a ban on partial-birth abortion is not required to
6 contain a “health” exception, because the facts indi-
7 cate that a partial-birth abortion is never necessary
8 to preserve the health of a woman, poses serious
9 risks to a woman’s health, and lies outside the
10 standard of medical care. Congress was informed by
11 extensive hearings held during the 104th, 105th,
12 and 107th Congresses and passed a ban on partial-
13 birth abortion in the 104th, 105th, and 106th Con-
14 gresses. These findings reflect the very informed
15 judgment of the Congress that a partial-birth abor-
16 tion is never necessary to preserve the health of a
17 woman, poses serious risks to a woman’s health, and
18 lies outside the standard of medical care, and
19 should, therefore, be banned.

20 (14) Pursuant to the testimony received during
21 extensive legislative hearings during the 104th,
22 105th, and 107th Congresses, Congress finds and
23 declares that:

24 (A) Partial-birth abortion poses serious
25 risks to the health of a woman undergoing the

1 procedure. Those risks include, among other
2 things: an increase in a woman's risk of suf-
3 fering from cervical incompetence, a result of
4 cervical dilation making it difficult or impos-
5 sible for a woman to successfully carry a subse-
6 quent pregnancy to term; an increased risk of
7 uterine rupture, abruption, amniotic fluid embolus,
8 and trauma to the uterus as a result of
9 converting the child to a footling breech posi-
10 tion, a procedure which, according to a leading
11 obstetrics textbook, "there are very few, if any,
12 indications for . . . other than for delivery of
13 a second twin"; and a risk of lacerations and
14 secondary hemorrhaging due to the doctor
15 blindly forcing a sharp instrument into the base
16 of the unborn child's skull while he or she is
17 lodged in the birth canal, an act which could re-
18 sult in severe bleeding, brings with it the threat
19 of shock, and could ultimately result in mater-
20 nal death.

21 (B) There is no credible medical evidence
22 that partial-birth abortions are safe or are safer
23 than other abortion procedures. No controlled
24 studies of partial-birth abortions have been con-
25 ducted nor have any comparative studies been

1 conducted to demonstrate its safety and efficacy
2 compared to other abortion methods. Further-
3 more, there have been no articles published in
4 peer-reviewed journals that establish that par-
5 tial-birth abortions are superior in any way to
6 established abortion procedures. Indeed, unlike
7 other more commonly used abortion procedures,
8 there are currently no medical schools that pro-
9 vide instruction on abortions that include the
10 instruction in partial-birth abortions in their
11 curriculum.

12 (C) A prominent medical association has
13 concluded that partial-birth abortion is “not an
14 accepted medical practice,” that it has “never
15 been subject to even a minimal amount of the
16 normal medical practice development,” that
17 “the relative advantages and disadvantages of
18 the procedure in specific circumstances remain
19 unknown,” and that “there is no consensus
20 among obstetricians about its use”. The asso-
21 ciation has further noted that partial-birth
22 abortion is broadly disfavored by both medical
23 experts and the public, is “ethically wrong,”
24 and “is never the only appropriate procedure”.

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

6 (E) The physician credited with developing
7 the partial-birth abortion procedure has testi-
8 fied that he has never encountered a situation
9 where a partial-birth abortion was medically
10 necessary to achieve the desired outcome and,
11 thus, is never medically necessary to preserve
12 the health of a woman.

13 (F) A ban on the partial-birth abortion
14 procedure will therefore advance the health in-
15 terests of pregnant women seeking to terminate
16 a pregnancy.

17 (G) In light of this overwhelming evidence,
18 Congress and the States have a compelling in-
19 terest in prohibiting partial-birth abortions. In
20 addition to promoting maternal health, such a
21 prohibition will draw a bright line that clearly
22 distinguishes abortion and infanticide, that pre-
23 serves the integrity of the medical profession,
24 and promotes respect for human life.

1 (H) Based upon *Roe v. Wade*, 410 U.S.
2 113 (1973) and *Planned Parenthood v. Casey*,
3 505 U.S. 833 (1992), a governmental interest
4 in protecting the life of a child during the deliv-
5 ery process arises by virtue of the fact that dur-
6 ing a partial-birth abortion, labor is induced
7 and the birth process has begun. This distinc-
8 tion was recognized in *Roe* when the Court
9 noted, without comment, that the Texas partu-
10 rition statute, which prohibited one from killing
11 a child “in a state of being born and before ac-
12 tual birth,” was not under attack. This interest
13 becomes compelling as the child emerges from
14 the maternal body. A child that is completely
15 born is a full, legal person entitled to constitu-
16 tional protections afforded a “person” under
17 the United States Constitution. Partial-birth
18 abortions involve the killing of a child that is in
19 the process, in fact mere inches away from, be-
20 coming a “person”. Thus, the government has
21 a heightened interest in protecting the life of
22 the partially-born child.

23 (I) This, too, has not gone unnoticed in
24 the medical community, where a prominent
25 medical association has recognized that partial-

1 birth abortions are “ethically different from
2 other destructive abortion techniques because
3 the fetus, normally twenty weeks or longer in
4 gestation, is killed outside of the womb”. Ac-
5 cording to this medical association, the “‘par-
6 tial birth’ gives the fetus an autonomy which
7 separates it from the right of the woman to
8 choose treatments for her own body”.

9 (J) Partial-birth abortion also confuses the
10 medical, legal, and ethical duties of physicians
11 to preserve and promote life, as the physician
12 acts directly against the physical life of a child,
13 whom he or she had just delivered, all but the
14 head, out of the womb, in order to end that life.
15 Partial-birth abortion thus appropriates the ter-
16 minology and techniques used by obstetricians
17 in the delivery of living children—obstetricians
18 who preserve and protect the life of the mother
19 and the child—and instead uses those tech-
20 niques to end the life of the partially-born child.

21 (K) Thus, by aborting a child in the man-
22 ner that purposefully seeks to kill the child
23 after he or she has begun the process of birth,
24 partial-birth abortion undermines the public’s
25 perception of the appropriate role of a physician

1 during the delivery process, and perverts a
2 process during which life is brought into the
3 world, in order to destroy a partially-born child.

4 (L) The gruesome and inhumane nature of
5 the partial-birth abortion procedure and its dis-
6 turbing similarity to the killing of a newborn in-
7 fant promotes a complete disregard for infant
8 human life that can only be countered by a pro-
9 hibition of the procedure.

10 (M) The vast majority of babies killed dur-
11 ing partial-birth abortions are alive until the
12 end of the procedure. It is a medical fact, how-
13 ever, that unborn infants at this stage can feel
14 pain when subjected to painful stimuli and that
15 their perception of this pain is even more in-
16 tense than that of newborn infants and older
17 children when subjected to the same stimuli.
18 Thus, during a partial-birth abortion procedure,
19 the child will fully experience the pain associ-
20 ated with piercing his or her skull and sucking
21 out his or her brain.

22 (N) Implicitly approving such a brutal and
23 inhumane procedure by choosing not to prohibit
24 it will further coarsen society to the humanity
25 of not only newborns, but all vulnerable and in-

1 nocent human life, making it increasingly dif-
 2 ficult to protect such life. Thus, Congress has
 3 a compelling interest in acting—indeed it must
 4 act—to prohibit this inhumane procedure.

5 (O) For these reasons, Congress finds that
 6 partial-birth abortion is never medically indi-
 7 cated to preserve the health of the mother; is in
 8 fact unrecognized as a valid abortion procedure
 9 by the mainstream medical community; poses
 10 additional health risks to the mother; blurs the
 11 line between abortion and infanticide in the kill-
 12 ing of a partially-born child just inches from
 13 birth; and confuses the role of the physician in
 14 childbirth and should, therefore, be banned.

15 **SEC. 3. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.**

16 (a) IN GENERAL.—Title 18, United States Code, is
 17 amended by inserting after chapter 73 the following:

18 **“CHAPTER 74—PARTIAL-BIRTH**
 19 **ABORTIONS**

“Sec.

“1531. Partial-birth abortions prohibited.

20 **“§ 1531. Partial-birth abortions prohibited**

21 “(a) Any physician who, in or affecting interstate or
 22 foreign commerce, knowingly performs a partial-birth
 23 abortion and thereby kills a human fetus shall be fined
 24 under this title or imprisoned not more than 2 years, or

1 both. This subsection does not apply to a partial-birth
2 abortion that is necessary to save the life of a mother
3 whose life is endangered by a physical disorder, physical
4 illness, or physical injury, including a life-endangering
5 physical condition caused by or arising from the pregnancy
6 itself. This subsection takes effect 1 day after the enact-
7 ment.

8 “(b) As used in this section—

9 “(1) the term ‘partial-birth abortion’ means an
10 abortion in which—

11 “(A) the person performing the abortion
12 deliberately and intentionally vaginally delivers
13 a living fetus until, in the case of a head-first
14 presentation, the entire fetal head is outside the
15 body of the mother, or, in the case of breech
16 presentation, any part of the fetal trunk past
17 the navel is outside the body of the mother for
18 the purpose of performing an overt act that the
19 person knows will kill the partially delivered liv-
20 ing fetus; and

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

24 “(2) the term ‘physician’ means a doctor of
25 medicine or osteopathy legally authorized to practice

1 medicine and surgery by the State in which the doc-
2 tor performs such activity, or any other individual
3 legally authorized by the State to perform abortions:
4 Provided, however, That any individual who is not a
5 physician or not otherwise legally authorized by the
6 State to perform abortions, but who nevertheless di-
7 rectly performs a partial-birth abortion, shall be sub-
8 ject to the provisions of this section.

9 “(c)(1) The father, if married to the mother at the
10 time she receives a partial-birth abortion procedure, and
11 if the mother has not attained the age of 18 years at the
12 time of the abortion, the maternal grandparents of the
13 fetus, may in a civil action obtain appropriate relief, unless
14 the pregnancy resulted from the plaintiff’s criminal con-
15 duct or the plaintiff consented to the abortion.

16 “(2) Such relief shall include—

17 “(A) money damages for all injuries, psycho-
18 logical and physical, occasioned by the violation of
19 this section; and

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

22 “(d)(1) A defendant accused of an offense under this
23 section may seek a hearing before the State Medical Board
24 on whether the physician’s conduct was necessary to save
25 the life of the mother whose life was endangered by a

1 physical disorder, physical illness, or physical injury, in-
2 cluding a life-endangering physical condition caused by or
3 arising from the pregnancy itself.

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

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

14 (b) CLERICAL AMENDMENT.—The table of chapters
15 for part I of title 18, United States Code, is amended by
16 inserting after the item relating to chapter 73 the fol-
17 lowing new item:

“74. **Partial-birth abortions** **1531**”.

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