108TH CONGRESS
1ST SESSION

H. R. 760

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

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
11 an unborn child's body until only the head remains
12 inside the womb, punctures the back of the child's
13 skull with a sharp instrument, and sucks the child's
14 brains out before completing delivery of the dead in-
15 fant—is a gruesome and inhumane procedure that is
16 never medically necessary and should be prohibited.

17 (2) Rather than being an abortion procedure
18 that is embraced by the medical community, particu-
19 larly among physicians who routinely perform other

1 abortion procedures, partial-birth abortion remains a
2 disfavored procedure that is not only unnecessary to
3 preserve the health of the mother, but in fact poses
4 serious risks to the long-term health of women and
5 in some circumstances, their lives. As a result, at
6 least 27 States banned the procedure as did the
7 United States Congress which voted to ban the pro-
8 cedure during the 104th, 105th, and 106th Con-
9 gresses.

10 (3) In Stenberg v. Carhart, 530 U.S. 914, 932
11 (2000), the United States Supreme Court opined
12 ''that significant medical authority supports the
13 proposition that in some circumstances, [partial
14 birth abortion] would be the safest procedure'' for
15 pregnant women who wish to undergo an abortion.
16 Thus, the Court struck down the State of Nebras-
17 ka's ban on partial-birth abortion procedures, con-
18 cluding that it placed an ''undue burden'' on women
19 seeking abortions because it failed to include an ex-
20 ception for partial-birth abortions deemed necessary
21 to preserve the ''health'' of the mother.

22 (4) In reaching this conclusion, the Court de-
23 ferred to the Federal district court's factual findings
24 that the partial-birth abortion procedure was statis-
25 tically and medically as safe as, and in many cir-

1 cumstances safer than, alternative abortion proce-
2 dures.

3 (5) However, the great weight of evidence pre-
4 sented at the Stenberg trial and other trials chal-
5 lenging partial-birth abortion bans, as well as at ex-
6 tensive Congressional hearings, demonstrates that a
7 partial-birth abortion is never necessary to preserve
8 the health of a woman, poses significant health risks
9 to a woman upon whom the procedure is performed,
10 and is outside of the standard of medical care.

11 (6) Despite the dearth of evidence in the
12 Stenberg trial court record supporting the district
13 court's findings, the United States Court of Appeals
14 for the Eighth Circuit and the Supreme Court re-
15 fused to set aside the district court's factual findings
16 because, under the applicable standard of appellate
17 review, they were not ''clearly erroneous''. A finding
18 of fact is clearly erroneous ''when although there is
19 evidence to support it, the reviewing court on the en-
20 tire evidence is left with the definite and firm convic-
21 tion that a mistake has been committed''. Anderson
22 v. City of Bessemer City, North Carolina, 470 U.S.
23 564, 573 (1985). Under this standard, ''if the dis-
24 trict court's account of the evidence is plausible in
25 light of the record viewed in its entirety, the court

1 of appeals may not reverse it even though convinced
2 that had it been sitting as the trier of fact, it would
3 have weighed the evidence differently''. Id. at 574.
4 (7) Thus, in Stenberg, the United States Su-
5 preme Court was required to accept the very ques-
6 tionable findings issued by the district court judge—
7 the effect of which was to render null and void the
8 reasoned factual findings and policy determinations
9 of the United States Congress and at least 27 State
10 legislatures.
11 (8) However, under well-settled Supreme Court
12 jurisprudence, the United States Congress is not
13 bound to accept the same factual findings that the
14 Supreme Court was bound to accept in Stenberg
15 under the ''clearly erroneous'' standard. Rather, the
16 United States Congress is entitled to reach its own
17 factual findings—findings that the Supreme Court
18 accords great deference—and to enact legislation
19 based upon these findings so long as it seeks to pur-
20 sue a legitimate interest that is within the scope of
21 the Constitution, and draws reasonable inferences
22 based upon substantial evidence.
23 (9) In Katzenbach v. Morgan, 384 U.S. 641
24 (1966), the Supreme Court articulated its highly
25 deferential review of Congressional factual findings

1 when it addressed the constitutionality of section
2 4(e) of the Voting Rights Act of 1965. Regarding
3 Congress' factual determination that section 4(e)
4 would assist the Puerto Rican community in ''gain-
5 ing nondiscriminatory treatment in public services,''
6 the Court stated that ''[i]t was for Congress, as the
7 branch that made this judgment, to assess and
8 weigh the various conflicting considerations . . . . It
9 is not for us to review the congressional resolution
10 of these factors. It is enough that we be able to per-
11 ceive a basis upon which the Congress might resolve
12 the conflict as it did. There plainly was such a basis
13 to support section 4(e) in the application in question
14 in this case.''. Id. at 653.

15 (10) Katzenbach's highly deferential review of
16 Congress's factual conclusions was relied upon by
17 the United States District Court for the District of
18 Columbia when it upheld the ''bail-out'' provisions of
19 the Voting Rights Act of 1965, (42 U.S.C. 1973c),
20 stating that ''congressional fact finding, to which we
21 are inclined to pay great deference, strengthens the
22 inference that, in those jurisdictions covered by the
23 Act, state actions discriminatory in effect are dis-
24 criminatory in purpose''. City of Rome, Georgia v.

1 U.S., 472 F. Supp. 221 (D. D. Col. 1979) aff'd City
2 of Rome, Georgia v. U.S., 446 U.S. 156 (1980).
3 (11) The Court continued its practice of defer-
4 ring to congressional factual findings in reviewing
5 the constitutionality of the must-carry provisions of
6 the Cable Television Consumer Protection and Com-
7 petition Act of 1992. See Turner Broadcasting Sys-
8 tem, Inc. v. Federal Communications Commission,
9 512 U.S. 622 (1994) (Turner I) and Turner Broad-
10 casting System, Inc. v. Federal Communications
11 Commission, 520 U.S. 180 (1997) (Turner II). At
12 issue in the Turner cases was Congress' legislative
13 finding that, absent mandatory carriage rules, the
14 continued viability of local broadcast television would
15 be ''seriously jeopardized''. The Turner I Court rec-
16 ognized that as an institution, ''Congress is far bet-
17 ter equipped than the judiciary to 'amass and evalu-
18 ate the vast amounts of data' bearing upon an issue
19 as complex and dynamic as that presented here''.
20 512 U.S. at 665–66. Although the Court recognized
21 that ''the deference afforded to legislative findings
22 does 'not foreclose our independent judgment of the
23 facts bearing on an issue of constitutional law,' '' its
24 ''obligation to exercise independent judgment when
25 First Amendment rights are implicated is not a li-

1 cense to reweigh the evidence de novo, or to replace
2 Congress' factual predictions with our own. Rather,
3 it is to assure that, in formulating its judgments,
4 Congress has drawn reasonable inferences based on
5 substantial evidence.'' Id. at 666.
6 (12) Three years later in Turner II, the Court
7 upheld the ''must-carry'' provisions based upon Con-
8 gress' findings, stating the Court's ''sole obligation
9 is 'to assure that, in formulating its judgments, Con-
10 gress has drawn reasonable inferences based on sub-
11 stantial evidence.' '' 520 U.S. at 195. Citing its rul-
12 ing in Turner I, the Court reiterated that ''[w]e owe
13 Congress' findings deference in part because the in-
14 stitution 'is far better equipped than the judiciary to
15 ''amass and evaluate the vast amounts of data''
16 bearing upon' legislative questions,'' id. at 195, and
17 added that it ''owe[d] Congress' findings an addi-
18 tional measure of deference out of respect for its au-
19 thority to exercise the legislative power.'' Id. at 196.
20 (13) There exists substantial record evidence
21 upon which Congress has reached its conclusion that
22 a ban on partial-birth abortion is not required to
23 contain a ''health'' exception, because the facts indi-
24 cate that a partial-birth abortion is never necessary
25 to preserve the health of a woman, poses serious

1 risks to a woman's health, and lies outside the
2 standard of medical care. Congress was informed by
3 extensive hearings held during the 104th, 105th,
4 and 107th Congresses and passed a ban on partial-
5 birth abortion in the 104th, 105th, and 106th Con-
6 gresses. These findings reflect the very informed
7 judgment of the Congress that a partial-birth abor-
8 tion is never necessary to preserve the health of a
9 woman, poses serious risks to a woman's health, and
10 lies outside the standard of medical care, and
11 should, therefore, be banned.

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

16 (A) Partial-birth abortion poses serious
17 risks to the health of a woman undergoing the
18 procedure. Those risks include, among other
19 things: an increase in a woman's risk of suf-
20 fering from cervical incompetence, a result of
21 cervical dilation making it difficult or impos-
22 sible for a woman to successfully carry a subse-
23 quent pregnancy to term; an increased risk of
24 uterine rupture, abruption, amniotic fluid embo-
25 lus, and trauma to the uterus as a result of

1 converting the child to a footling breech posi-
2 tion, a procedure which, according to a leading
3 obstetrics textbook, "there are very few, if any,
4 indications for . . . other than for delivery of
5 a second twin"; and a risk of lacerations and
6 secondary hemorrhaging due to the doctor
7 blindly forcing a sharp instrument into the base
8 of the unborn child's skull while he or she is
9 lodged in the birth canal, an act which could re-
10 sult in severe bleeding, brings with it the threat
11 of shock, and could ultimately result in mater-
12 nal death.

13 (B) There is no credible medical evidence
14 that partial-birth abortions are safe or are safer
15 than other abortion procedures. No controlled
16 studies of partial-birth abortions have been con-
17 ducted nor have any comparative studies been
18 conducted to demonstrate its safety and efficacy
19 compared to other abortion methods. Further-
20 more, there have been no articles published in
21 peer-reviewed journals that establish that par-
22 tial-birth abortions are superior in any way to
23 established abortion procedures. Indeed, unlike
24 other more commonly used abortion procedures,
25 there are currently no medical schools that pro-

1 vide instruction on abortions that include the
2 instruction in partial-birth abortions in their
3 curriculum.

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

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

22 (E) The physician credited with developing
23 the partial-birth abortion procedure has testi-
24 fied that he has never encountered a situation
25 where a partial-birth abortion was medically

1 necessary to achieve the desired outcome and,
2 thus, is never medically necessary to preserve
3 the health of a woman.
4 (F) A ban on the partial-birth abortion
5 procedure will therefore advance the health in-
6 terests of pregnant women seeking to terminate
7 a pregnancy.
8 (G) In light of this overwhelming evidence,
9 Congress and the States have a compelling in-
10 terest in prohibiting partial-birth abortions. In
11 addition to promoting maternal health, such a
12 prohibition will draw a bright line that clearly
13 distinguishes abortion and infanticide, that pre-
14 serves the integrity of the medical profession,
15 and promotes respect for human life.
16 (H) Based upon Roe v. Wade, 410 U.S.
17 113 (1973) and Planned Parenthood v. Casey,
18 505 U.S. 833 (1992), a governmental interest
19 in protecting the life of a child during the deliv-
20 ery process arises by virtue of the fact that dur-
21 ing a partial-birth abortion, labor is induced
22 and the birth process has begun. This distinc-
23 tion was recognized in Roe when the Court
24 noted, without comment, that the Texas partu-
25 rition statute, which prohibited one from killing

1 a child ''in a state of being born and before ac-
2 tual birth,'' was not under attack. This interest
3 becomes compelling as the child emerges from
4 the maternal body. A child that is completely
5 born is a full, legal person entitled to constitu-
6 tional protections afforded a ''person'' under
7 the United States Constitution. Partial-birth
8 abortions involve the killing of a child that is in
9 the process, in fact mere inches away from, be-
10 coming a ''person''. Thus, the government has
11 a heightened interest in protecting the life of
12 the partially-born child.

13 (I) This, too, has not gone unnoticed in
14 the medical community, where a prominent
15 medical association has recognized that partial-
16 birth abortions are ''ethically different from
17 other destructive abortion techniques because
18 the fetus, normally twenty weeks or longer in
19 gestation, is killed outside of the womb''. Ac-
20 cording to this medical association, the '' 'par-
21 tial birth' gives the fetus an autonomy which
22 separates it from the right of the woman to
23 choose treatments for her own body''.

24 (J) Partial-birth abortion also confuses the
25 medical, legal, and ethical duties of physicians

1 to preserve and promote life, as the physician
2 acts directly against the physical life of a child,
3 whom he or she had just delivered, all but the
4 head, out of the womb, in order to end that life.
5 Partial-birth abortion thus appropriates the ter-
6 minology and techniques used by obstetricians
7 in the delivery of living children—obstetricians
8 who preserve and protect the life of the mother
9 and the child—and instead uses those tech-
10 niques to end the life of the partially-born child.

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

19 (L) The gruesome and inhumane nature of
20 the partial-birth abortion procedure and its dis-
21 turbing similarity to the killing of a newborn in-
22 fant promotes a complete disregard for infant
23 human life that can only be countered by a pro-
24 hibition of the procedure.

1 (M) The vast majority of babies killed dur-
2 ing partial-birth abortions are alive until the
3 end of the procedure. It is a medical fact, how-
4 ever, that unborn infants at this stage can feel
5 pain when subjected to painful stimuli and that
6 their perception of this pain is even more in-
7 tense than that of newborn infants and older
8 children when subjected to the same stimuli.
9 Thus, during a partial-birth abortion procedure,
10 the child will fully experience the pain associ-
11 ated with piercing his or her skull and sucking
12 out his or her brain.
13 (N) Implicitly approving such a brutal and
14 inhumane procedure by choosing not to prohibit
15 it will further coarsen society to the humanity
16 of not only newborns, but all vulnerable and in-
17 nocent human life, making it increasingly dif-
18 ficult to protect such life. Thus, Congress has
19 a compelling interest in acting—indeed it must
20 act—to prohibit this inhumane procedure.
21 (O) For these reasons, Congress finds that
22 partial-birth abortion is never medically indi-
23 cated to preserve the health of the mother; is in
24 fact unrecognized as a valid abortion procedure
25 by the mainstream medical community; poses

additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.

SEC. 3. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

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

"CHAPTER 74—PARTIAL-BIRTH ABORTIONS

"Sec.
"1531. Partial-birth abortions prohibited.

"§ 1531. Partial-birth abortions prohibited

"(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. This subsection takes effect 1 day after the enactment.

"(b) As used in this section—

"(1) the term 'partial-birth abortion' means an abortion in which—

"(A) the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living 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.

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

8 ''(2) Such relief shall include—

9 ''(A) money damages for all injuries, psycho-
10 logical and physical, occasioned by the violation of
11 this section; and

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

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

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

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

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

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

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