

108TH CONGRESS
1ST SESSION

S. 3

AMENDMENT

In the House of Representatives, U. S.,

June 4, 2003.

Resolved, That the bill from the Senate (S. 3) entitled “An Act to prohibit the procedure commonly known as partial-birth abortion”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Partial-Birth Abortion*
3 *Ban Act of 2003”.*

4 ***SEC. 2. FINDINGS.***

5 *The Congress finds and declares the following:*

6 *(1) A moral, medical, and ethical consensus ex-*
7 *ists that the practice of performing a partial-birth*
8 *abortion—an abortion in which a physician delivers*
9 *an unborn child’s body until only the head remains*
10 *inside the womb, punctures the back of the child’s*
11 *skull with a sharp instrument, and sucks the child’s*
12 *brains out before completing delivery of the dead in-*
13 *fant—is a gruesome and inhumane procedure that is*
14 *never medically necessary and should be prohibited.*

1 (2) *Rather than being an abortion procedure*
2 *that is embraced by the medical community, particu-*
3 *larly among physicians who routinely perform other*
4 *abortion procedures, partial-birth abortion remains a*
5 *disfavored procedure that is not only unnecessary to*
6 *preserve the health of the mother, but in fact poses se-*
7 *rious risks to the long-term health of women and in*
8 *some circumstances, their lives. As a result, at least*
9 *27 States banned the procedure as did the United*
10 *States Congress which voted to ban the procedure dur-*
11 *ing the 104th, 105th, and 106th Congresses.*

12 (3) *In Stenberg v. Carhart, 530 U.S. 914, 932*
13 *(2000), the United States Supreme Court opined*
14 *“that significant medical authority supports the*
15 *proposition that in some circumstances, [partial birth*
16 *abortion] would be the safest procedure” for pregnant*
17 *women who wish to undergo an abortion. Thus, the*
18 *Court struck down the State of Nebraska’s ban on*
19 *partial-birth abortion procedures, concluding that it*
20 *placed an “undue burden” on women seeking abor-*
21 *tions because it failed to include an exception for par-*
22 *tial-birth abortions deemed necessary to preserve the*
23 *“health” of the mother.*

24 (4) *In reaching this conclusion, the Court de-*
25 *ferred to the Federal district court’s factual findings*

1 *that the partial-birth abortion procedure was statis-*
2 *tically and medically as safe as, and in many cir-*
3 *cumstances safer than, alternative abortion proce-*
4 *dures.*

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

13 (6) *Despite the dearth of evidence in the Stenberg*
14 *trial court record supporting the district court's find-*
15 *ings, the United States Court of Appeals for the*
16 *Eighth Circuit and the Supreme Court refused to set*
17 *aside the district court's factual findings because,*
18 *under the applicable standard of appellate review,*
19 *they were not "clearly erroneous". A finding of fact*
20 *is clearly erroneous "when although there is evidence*
21 *to support it, the reviewing court on the entire evi-*
22 *dence is left with the definite and firm conviction that*
23 *a mistake has been committed". Anderson v. City of*
24 *Bessemer City, North Carolina, 470 U.S. 564, 573*
25 *(1985). Under this standard, "if the district court's*

1 *account of the evidence is plausible in light of the*
 2 *record viewed in its entirety, the court of appeals*
 3 *may not reverse it even though convinced that had it*
 4 *been sitting as the trier of fact, it would have weighed*
 5 *the evidence differently”. Id. at 574.*

6 (7) *Thus, in Stenberg, the United States Su-*
 7 *preme Court was required to accept the very question-*
 8 *able findings issued by the district court judge—the*
 9 *effect of which was to render null and void the rea-*
 10 *soned factual findings and policy determinations of*
 11 *the United States Congress and at least 27 State leg-*
 12 *islatures.*

13 (8) *However, under well-settled Supreme Court*
 14 *jurisprudence, the United States Congress is not*
 15 *bound to accept the same factual findings that the Su-*
 16 *preme Court was bound to accept in Stenberg under*
 17 *the “clearly erroneous” standard. Rather, the United*
 18 *States Congress is entitled to reach its own factual*
 19 *findings—findings that the Supreme Court accords*
 20 *great deference—and to enact legislation based upon*
 21 *these findings so long as it seeks to pursue a legiti-*
 22 *mate interest that is within the scope of the Constitu-*
 23 *tion, and draws reasonable inferences based upon sub-*
 24 *stantial evidence.*

1 (9) *In Katzenbach v. Morgan*, 384 U.S. 641
 2 (1966), the Supreme Court articulated its highly def-
 3 erential review of Congressional factual findings when
 4 it addressed the constitutionality of section 4(e) of the
 5 Voting Rights Act of 1965. Regarding Congress’ fac-
 6 tual determination that section 4(e) would assist the
 7 Puerto Rican community in “gaining nondiscrim-
 8 inatory treatment in public services,” the Court stat-
 9 ed that “[i]t was for Congress, as the branch that
 10 made this judgment, to assess and weigh the various
 11 conflicting considerations * * *. It is not for us to
 12 review the congressional resolution of these factors. It
 13 is enough that we be able to perceive a basis upon
 14 which the Congress might resolve the conflict as it
 15 did. There plainly was such a basis to support section
 16 4(e) in the application in question in this case.”. *Id.*
 17 at 653.

18 (10) *Katzenbach’s* highly deferential review of
 19 Congress’s factual conclusions was relied upon by the
 20 United States District Court for the District of Co-
 21 lumbia when it upheld the “bail-out” provisions of
 22 the Voting Rights Act of 1965, (42 U.S.C. 1973c),
 23 stating that “congressional fact finding, to which we
 24 are inclined to pay great deference, strengthens the
 25 inference that, in those jurisdictions covered by the

1 *Act, state actions discriminatory in effect are dis-*
 2 *criminatory in purpose”. City of Rome, Georgia v.*
 3 *U.S., 472 F. Supp. 221 (D. D. Col. 1979) aff’d City*
 4 *of Rome, Georgia v. U.S., 446 U.S. 156 (1980).*

5 (11) *The Court continued its practice of defer-*
 6 *ring to congressional factual findings in reviewing the*
 7 *constitutionality of the must-carry provisions of the*
 8 *Cable Television Consumer Protection and Competi-*
 9 *tion Act of 1992. See Turner Broadcasting System,*
 10 *Inc. v. Federal Communications Commission, 512*
 11 *U.S. 622 (1994) (Turner I) and Turner Broadcasting*
 12 *System, Inc. v. Federal Communications Commission,*
 13 *520 U.S. 180 (1997) (Turner II). At issue in the*
 14 *Turner cases was Congress’ legislative finding that,*
 15 *absent mandatory carriage rules, the continued via-*
 16 *bility of local broadcast television would be “seriously*
 17 *jeopardized”. The Turner I Court recognized that as*
 18 *an institution, “Congress is far better equipped than*
 19 *the judiciary to ‘amass and evaluate the vast amounts*
 20 *of data’ bearing upon an issue as complex and dy-*
 21 *namic as that presented here”. 512 U.S. at 665–66.*
 22 *Although the Court recognized that “the deference af-*
 23 *forded to legislative findings does ‘not foreclose our*
 24 *independent judgment of the facts bearing on an issue*
 25 *of constitutional law,’” its “obligation to exercise*

1 *independent judgment when First Amendment rights*
 2 *are implicated is not a license to reweigh the evidence*
 3 *de novo, or to replace Congress’ factual predictions*
 4 *with our own. Rather, it is to assure that, in formu-*
 5 *lating its judgments, Congress has drawn reasonable*
 6 *inferences based on substantial evidence.” Id. at 666.*

7 (12) *Three years later in Turner II, the Court*
 8 *upheld the “must-carry” provisions based upon Con-*
 9 *gress’ findings, stating the Court’s “sole obligation is*
 10 *‘to assure that, in formulating its judgments, Con-*
 11 *gress has drawn reasonable inferences based on sub-*
 12 *stantial evidence.’” 520 U.S. at 195. Citing its ruling*
 13 *in Turner I, the Court reiterated that “[w]e owe Con-*
 14 *gress’ findings deference in part because the institu-*
 15 *tion ‘is far better equipped than the judiciary to*
 16 *“amass and evaluate the vast amounts of data” bear-*
 17 *ing upon’ legislative questions,” id. at 195, and added*
 18 *that it “owe[d] Congress’ findings an additional*
 19 *measure of deference out of respect for its authority*
 20 *to exercise the legislative power.” Id. at 196.*

21 (13) *There exists substantial record evidence*
 22 *upon which Congress has reached its conclusion that*
 23 *a ban on partial-birth abortion is not required to*
 24 *contain a “health” exception, because the facts indi-*
 25 *cate that a partial-birth abortion is never necessary*

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

12 *(14) Pursuant to the testimony received during*
 13 *extensive legislative hearings during the 104th, 105th,*
 14 *and 107th Congresses, Congress finds and declares*
 15 *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 embolus,*
 25 *and trauma to the uterus as a result of con-*

1 verting the child to a footling breech position, a
 2 procedure which, according to a leading obstet-
 3 rics textbook, “there are very few, if any, indica-
 4 tions for * * * other than for delivery of a sec-
 5 ond twin”; and a risk of lacerations and sec-
 6 ondary hemorrhaging due to the doctor blindly
 7 forcing a sharp instrument into the base of the
 8 unborn child’s skull while he or she is lodged in
 9 the birth canal, an act which could result in se-
 10 vere bleeding, brings with it the threat of shock,
 11 and could ultimately result in maternal death.

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

1 *struction in partial-birth abortions in their cur-*
2 *riculum.*

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

16 *(D) Neither the plaintiff in Stenberg v.*
17 *Carhart, nor the experts who testified on his be-*
18 *half, have identified a single circumstance dur-*
19 *ing which a partial-birth abortion was necessary*
20 *to preserve the health of a woman.*

21 *(E) The physician credited with developing*
22 *the partial-birth abortion procedure has testified*
23 *that he has never encountered a situation where*
24 *a partial-birth abortion was medically necessary*
25 *to achieve the desired outcome and, thus, is never*

1 *medically necessary to preserve the health of a*
2 *woman.*

3 *(F) A ban on the partial-birth abortion pro-*
4 *cedure will therefore advance the health interests*
5 *of pregnant women seeking to terminate a preg-*
6 *nancy.*

7 *(G) In light of this overwhelming evidence,*
8 *Congress and the States have a compelling inter-*
9 *est in prohibiting partial-birth abortions. In ad-*
10 *dition to promoting maternal health, such a pro-*
11 *hibition will draw a bright line that clearly dis-*
12 *tinguishes abortion and infanticide, that pre-*
13 *serves the integrity of the medical profession, and*
14 *promotes respect for human life.*

15 *(H) Based upon Roe v. Wade, 410 U.S. 113*
16 *(1973) and Planned Parenthood v. Casey, 505*
17 *U.S. 833 (1992), a governmental interest in pro-*
18 *tecting the life of a child during the delivery*
19 *process arises by virtue of the fact that during*
20 *a partial-birth abortion, labor is induced and*
21 *the birth process has begun. This distinction was*
22 *recognized in Roe when the Court noted, without*
23 *comment, that the Texas parturition statute,*
24 *which prohibited one from killing a child “in a*
25 *state of being born and before actual birth,” was*

1 *not under attack. This interest becomes compel-*
 2 *ling as the child emerges from the maternal*
 3 *body. A child that is completely born is a full,*
 4 *legal person entitled to constitutional protections*
 5 *afforded a “person” under the United States*
 6 *Constitution. Partial-birth abortions involve the*
 7 *killing of a child that is in the process, in fact*
 8 *mere inches away from, becoming a “person”.*
 9 *Thus, the government has a heightened interest*
 10 *in protecting the life of the partially-born child.*

11 *(I) This, too, has not gone unnoticed in the*
 12 *medical community, where a prominent medical*
 13 *association has recognized that partial-birth*
 14 *abortions are “ethically different from other de-*
 15 *structive abortion techniques because the fetus,*
 16 *normally twenty weeks or longer in gestation, is*
 17 *killed outside of the womb”. According to this*
 18 *medical association, the “‘partial birth’ gives the*
 19 *fetus an autonomy which separates it from the*
 20 *right of the woman to choose treatments for her*
 21 *own body”.*

22 *(J) Partial-birth abortion also confuses the*
 23 *medical, legal, and ethical duties of physicians to*
 24 *preserve and promote life, as the physician acts*
 25 *directly against the physical life of a child,*

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

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

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

23 (M) The vast majority of babies killed dur-
 24 ing partial-birth abortions are alive until the
 25 end of the procedure. It is a medical fact, how-

1 *ever, that unborn infants at this stage can feel*
2 *pain when subjected to painful stimuli and that*
3 *their perception of this pain is even more intense*
4 *than that of newborn infants and older children*
5 *when subjected to the same stimuli. Thus, during*
6 *a partial-birth abortion procedure, the child will*
7 *fully experience the pain associated with pierce-*
8 *ing his or her skull and sucking out his or her*
9 *brain.*

10 *(N) Implicitly approving such a brutal and*
11 *inhumane procedure by choosing not to prohibit*
12 *it will further coarsen society to the humanity of*
13 *not only newborns, but all vulnerable and inno-*
14 *cent human life, making it increasingly difficult*
15 *to protect such life. Thus, Congress has a compel-*
16 *ling interest in acting—indeed it must act—to*
17 *prohibit this inhumane procedure.*

18 *(O) For these reasons, Congress finds that*
19 *partial-birth abortion is never medically indi-*
20 *cated to preserve the health of the mother; is in*
21 *fact unrecognized as a valid abortion procedure*
22 *by the mainstream medical community; poses*
23 *additional health risks to the mother; blurs the*
24 *line between abortion and infanticide in the kill-*
25 *ing of a partially-born child just inches from*

1 *birth; and confuses the role of the physician in*
 2 *childbirth and should, therefore, be banned.*

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

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

6 **“CHAPTER 74—PARTIAL-BIRTH**
 7 **ABORTIONS**

“Sec.

“1531. *Partial-birth abortions prohibited.*

8 **“§ 1531. Partial-birth abortions prohibited**

9 *“(a) Any physician who, in or affecting interstate or*
 10 *foreign commerce, knowingly performs a partial-birth abor-*
 11 *tion and thereby kills a human fetus shall be fined under*
 12 *this title or imprisoned not more than 2 years, or both. This*
 13 *subsection does not apply to a partial-birth abortion that*
 14 *is necessary to save the life of a mother whose life is endan-*
 15 *gered by a physical disorder, physical illness, or physical*
 16 *injury, including a life-endangering physical condition*
 17 *caused by or arising from the pregnancy itself. This sub-*
 18 *section takes effect 1 day after the enactment.*

19 *“(b) As used in this section—*

20 *“(1) the term ‘partial-birth abortion’ means an*
 21 *abortion in which—*

22 *“(A) the person performing the abortion de-*
 23 *liberately and intentionally vaginally delivers a*
 24 *living fetus until, in the case of a head-first pres-*

1 *entation, the entire fetal head is outside the body*
 2 *of the mother, or, in the case of breech presen-*
 3 *tation, any part of the fetal trunk past the navel*
 4 *is outside the body of the mother for the purpose*
 5 *of performing an overt act that the person knows*
 6 *will kill the partially delivered living fetus; and*

7 *“(B) performs the overt act, other than com-*
 8 *pletion of delivery, that kills the partially deliv-*
 9 *ered living fetus; and*

10 *“(2) the term ‘physician’ means a doctor of med-*
 11 *icine or osteopathy legally authorized to practice med-*
 12 *icine and surgery by the State in which the doctor*
 13 *performs such activity, or any other individual le-*
 14 *gally authorized by the State to perform abortions:*
 15 *Provided, however, That any individual who is not a*
 16 *physician or not otherwise legally authorized by the*
 17 *State to perform abortions, but who nevertheless di-*
 18 *rectly performs a partial-birth abortion, shall be sub-*
 19 *ject to the provisions of this section.*

20 *“(c)(1) The father, if married to the mother at the time*
 21 *she receives a partial-birth abortion procedure, and if the*
 22 *mother has not attained the age of 18 years at the time*
 23 *of the abortion, the maternal grandparents of the fetus, may*
 24 *in a civil action obtain appropriate relief, unless the preg-*

1 nancy resulted from the plaintiff's criminal conduct or the
 2 plaintiff consented to the abortion.

3 “(2) Such relief shall include—

4 “(A) money damages for all injuries, psycho-
 5 logical and physical, occasioned by the violation of
 6 this section; and

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

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

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

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

1 (b) *CLERICAL AMENDMENT.*—*The table of chapters for*
 2 *part I of title 18, United States Code, is amended by insert-*
 3 *ing after the item relating to chapter 73 the following new*
 4 *item:*

“74. *Partial-birth abortions* 1531”.

Attest:

Clerk.