
HOUSE BILL 1562

State of Washington

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By Representatives Dunn, Holmquist, Sump, Buri, Crouse, Ahern, Roach, Orcutt, Haler, Talcott, Hinkle, Schindler, Condotta, Serben, Ericksen, Kristiansen and McCune

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1 AN ACT Relating to prohibiting partial birth abortions; adding a
2 new section to chapter 9.02 RCW; creating a new section; prescribing
3 penalties; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds and declares the
6 following:

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

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

1 twenty-seven states banned the procedure as did the United States
2 Congress which voted to ban the procedure during the 104th, 105th, and
3 106th Congresses.

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

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

17 (5) However, the great weight of evidence presented at the Stenberg
18 trial and other trials challenging partial birth abortion bans, as well
19 as at extensive congressional hearings, demonstrates that a partial
20 birth abortion is never necessary to preserve the health of a woman,
21 poses significant health risks to a woman upon whom the procedure is
22 performed, and is outside of the standard of medical care.

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

37 (7) Thus, in *Stenberg*, the United States supreme court was required
38 to accept the very questionable findings issued by the district court

1 judge; the effect of which was to render null and void the reasoned
2 factual findings and policy determinations of the United States
3 congress and at least twenty-seven state legislatures.

4 (8) However, under well-settled supreme court jurisprudence, the
5 United States congress is not bound to accept the same factual findings
6 that the supreme court was bound to accept in *Stenberg* under the
7 "clearly erroneous" standard. Rather, the United States congress is
8 entitled to reach its own factual findings, findings that the supreme
9 court accords great deference, and to enact legislation based upon
10 these findings so long as it seeks to pursue a legitimate interest that
11 is within the scope of the Constitution, and draws reasonable
12 inferences based upon substantial evidence.

13 (9) In *Katzenbach v. Morgan*, 384 U.S. 641 (1966), the supreme court
14 articulated its highly deferential review of congressional factual
15 findings when it addressed the constitutionality of section 4(e) of the
16 voting rights act of 1965. Regarding congress's factual determination
17 that section 4(e) would assist the Puerto Rican community in "gaining
18 nondiscriminatory treatment in public services," the court stated that
19 "[i]t was for congress, as the branch that made this judgment, to
20 assess and weigh the various conflicting considerations.... It is not
21 for us to review the congressional resolution of these factors. It is
22 enough that we be able to perceive a basis upon which the congress
23 might resolve the conflict as it did. There plainly was such a basis
24 to support section 4(e) in the application in question in this case."
25 *Id.* at 653.

26 (10) *Katzenbach's* highly deferential review of congress's factual
27 conclusions was relied upon by the United States district court for the
28 District of Columbia when it upheld the bail-out provisions of the
29 voting rights act of 1965, (42 U.S.C. 1973c), stating that
30 "congressional fact finding, to which we are inclined to pay great
31 deference, strengthens the inference that, in those jurisdictions
32 covered by the act, state actions discriminatory in effect are
33 discriminatory in purpose." *City of Rome, Georgia v. U.S.*, 472 F.
34 Supp. 221 (D.D. Col. 1979) aff'd *City of Rome, Georgia v. U.S.*, 446
35 U.S. 156 (1980).

36 (11) The court continued its practice of deferring to congressional
37 factual findings in reviewing the constitutionality of the must-carry
38 provisions of the cable television consumer protection and competition

1 act of 1992. See *Turner Broadcasting System, Inc. v. Federal*
2 *Communications Commission*, 512 U.S. 622 (1994) (Turner I) and *Turner*
3 *Broadcasting System, Inc. v. Federal Communications Commission*, 520
4 U.S. 180 (1997) (Turner II). At issue in the Turner cases was
5 congress's legislative finding that, absent mandatory carriage rules,
6 the continued viability of local broadcast television would be
7 "seriously jeopardized." The Turner I court recognized that as an
8 institution, "congress is far better equipped than the judiciary to
9 'amass and evaluate the vast amounts of data' bearing upon an issue as
10 complex and dynamic as that presented here." 512 U.S. at 665-66.
11 Although the court recognized that "the deference afforded to
12 legislative findings does not foreclose our independent judgment of the
13 facts bearing on an issue of constitutional law," its "obligation to
14 exercise independent judgment when first amendment rights are
15 implicated is not a license to reweigh the evidence de novo, or to
16 replace congress's factual predictions with our own. Rather, it is to
17 assure that, in formulating its judgments, congress has drawn
18 reasonable inferences based on substantial evidence." *Id.* at 666.

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

30 (13) There exists substantial record evidence upon which congress
31 has reached its conclusion that a ban on partial birth abortion is not
32 required to contain a "health" exception, because the facts indicate
33 that a partial birth abortion is never necessary to preserve the health
34 of a woman, poses serious risks to a woman's health, and lies outside
35 the standard of medical care. Congress was informed by extensive
36 hearings held during the 104th and 105th congresses and passed a ban on
37 partial birth abortion in the 104th, 105th, and 106th congresses.
38 These findings reflect the very informed judgment of the congress that

1 a partial birth abortion is never necessary to preserve the health of
2 a woman, poses serious risks to a woman's health, and lies outside the
3 standard of medical care, and should, therefore, be banned.

4 (14) Pursuant to the testimony received during extensive
5 legislative hearings during the 104th and 105th congresses, the
6 congress found that:

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

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

33 (c) A prominent medical association has concluded that partial
34 birth abortion is "not an accepted medical practice," that it has
35 "never been subject to even a minimal amount of the normal medical
36 practice development," that "the relative advantages and disadvantages
37 of the procedure in specific circumstances remain unknown," and that
38 "there is no consensus among obstetricians about its use." The

1 association has further noted that partial birth abortion is broadly
2 disfavored by both medical experts and the public, is "ethically
3 wrong," and "is never the only appropriate procedure."

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

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

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

16 (g) In light of this overwhelming evidence, congress and the states
17 have a compelling interest in prohibiting partial birth abortions. In
18 addition to promoting maternal health, such a prohibition will draw a
19 bright line that clearly distinguishes abortion and infanticide, that
20 preserves the integrity of the medical profession, and promotes respect
21 for human life.

22 (h) Based upon *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned*
23 *Parenthood v. Casey*, 505 U.S. 833 (1992), a governmental interest in
24 protecting the life of a child during the delivery process arises by
25 virtue of the fact that during a partial birth abortion, labor is
26 induced and the birth process has begun. This distinction was
27 recognized in *Roe* when the court noted, without comment, that the Texas
28 parturition statute, which prohibited one from killing a child "in a
29 state of being born and before actual birth," was not under attack.
30 This interest becomes compelling as the child emerges from the maternal
31 body. A child that is completely born is a full, legal person entitled
32 to constitutional protections afforded a "person" under the United
33 States constitution. Partial birth abortions involve the killing of a
34 child that is in the process, in fact mere inches away from, becoming
35 a "person." Thus, the government has a heightened interest in
36 protecting the life of the partially born child.

37 (i) This, too, has not gone unnoticed in the medical community,
38 where a prominent medical association has recognized that partial birth

1 abortions are "ethically different from other destructive abortion
2 techniques because the fetus, normally twenty weeks or longer in
3 gestation, is killed outside of the womb." According to this medical
4 association, the "partial birth" gives the fetus an autonomy which
5 separates it from the right of the woman to choose treatments for her
6 own body.

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

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

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

26 (m) The vast majority of babies killed during partial birth
27 abortions are alive until the end of the procedure. It is a medical
28 fact, however, that unborn infants at this stage can feel pain when
29 subjected to painful stimuli and that their perception of this pain is
30 even more intense than that of newborn infants and older children when
31 subjected to the same stimuli. Thus, during a partial birth abortion
32 procedure, the child will fully experience the pain associated with
33 piercing his or her skull and sucking out his or her brain.

34 (n) Implicitly approving such a brutal and inhumane procedure by
35 choosing not to prohibit it will further coarsen society to the
36 humanity of not only newborns, but all vulnerable and innocent human
37 life, making it increasingly difficult to protect such life. Thus,

1 congress has a compelling interest in acting, indeed it must act, to
2 prohibit this inhumane procedure.

3 (o) For these reasons, the congress found that partial birth
4 abortion is never medically indicated to preserve the health of the
5 mother; is in fact unrecognized as a valid abortion procedure by the
6 mainstream medical community; poses additional health risks to the
7 mother; blurs the line between abortion and infanticide in the killing
8 of a partially born child just inches from birth; and confuses the role
9 of the physician in childbirth and should, therefore, be banned.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.02 RCW
11 to read as follows:

12 (1) Any physician who, in or affecting interstate or foreign
13 commerce, knowingly performs a partial birth abortion and thereby kills
14 a human fetus shall be fined under this section or imprisoned not more
15 than two years, or both. This subsection does not apply to a partial
16 birth abortion that is necessary to save the life of a mother whose
17 life is endangered by a physical disorder, physical illness, or
18 physical injury, including a life-endangering physical condition caused
19 by or arising from the pregnancy itself.

20 (2) The definitions in this subsection apply throughout this
21 section unless the context clearly requires otherwise.

22 (a) "Partial birth abortion" means an abortion in which:

23 (i) The person performing the abortion deliberately and
24 intentionally vaginally delivers a living fetus until, in the case of
25 a head-first presentation, the entire fetal head is outside the body of
26 the mother, or, in the case of breech presentation, any part of the
27 fetal trunk past the navel is outside the body of the mother for the
28 purpose of performing an overt act that the person knows will kill the
29 partially delivered living fetus; and

30 (ii) Performs the overt act, other than completion of delivery,
31 that kills the partially delivered living fetus.

32 (b) "Physician" means a doctor of medicine or osteopathy legally
33 authorized to practice medicine and surgery by the state in which the
34 doctor performs such activity, or any other individual legally
35 authorized by the state to perform abortions. However, any individual
36 who is not a physician or not otherwise legally authorized by the state

1 to perform abortions, but who nevertheless directly performs a partial
2 birth abortion, is subject to the provisions of this section.

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

9 (b) Such relief shall include:

10 (i) Money damages for all injuries, psychological and physical,
11 occasioned by the violation of this section; and

12 (ii) Statutory damages equal to three times the cost of the partial
13 birth abortion.

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

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

24 (5) A woman upon whom a partial birth abortion is performed may not
25 be prosecuted under this section, for a conspiracy to violate this
26 section.

27 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
28 preservation of the public peace, health, morals, or safety, or support
29 of the state government and its existing public institutions, and takes
30 effect immediately.

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