RSC Republican Study Committee

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Legislative Bulletin……..……June 4, 2003

Contents:

H.Con.Res. 177 — Recognizing and commending the members of the United States Armed Forces and their leaders, and the allies of the United States and their armed forces, who participated in Operation Enduring Freedom in Afghanistan and Operation Iraqi Freedom in Iraq and recognizing the continuing dedication of military families and employers and defense civilians and contractors and the countless communities and patriotic organizations that lent their support to the Armed Forces during those operations (Hunter)

Order of Business: The resolution is scheduled for consideration on Wednesday, June 4th, under a motion to suspend the rules and pass the bill.

Summary: H.Con.Res. 177 resolves that Congress:

"(1) commends President Bush, Secretary of Defense Rumsfeld, and United States Central Command commander General Franks, United States Army, for their planning and execution of enormously successful military campaigns in Operation Enduring Freedom and Operation Iraqi Freedom;

"(2) expresses its highest commendation and most sincere appreciation to the members of the United States Armed Forces who participated in Operation

Enduring Freedom and Operation Iraqi Freedom, including the members of the organizational elements specified in section 2 of this resolution;

"(3) commends the Department of Defense civilian employees, the civilian contractors, and the defense contractor personnel whose skills made possible the equipping of the greatest Armed Force in the annals of modern military endeavor;

"(4) conveys its deepest sympathy and condolences to the families and friends of the members of United States and coalition forces who have been injured, wounded, or killed during those operations;

"(5) calls upon communities across the Nation--

(A) to prepare appropriate homecoming ceremonies to honor and welcome home the members of the Armed Forces participating in Operation Enduring Freedom and Operation Iraqi Freedom and to recognize their contributions to United States homeland security and to the Global War on Terrorism; and

(B) to prepare appropriate ceremonies to commemorate with tributes and days of remembrance the service and sacrifice of those servicemembers killed or wounded during either of those Operations;

"(6) expresses the deep gratitude of the Nation to the 21 steadfast allies in Operation Enduring Freedom and to the 49 coalition members in Operation Iraqi Freedom, especially the United Kingdom, Australia, and Poland, whose forces, support, and contributions were invaluable and unforgettable; and

"(7) recommits the United States to ensuring the safety of the United States homeland, to preventing weapons of mass destruction from reaching the hands of terrorists, and to helping the people of Iraq and Afghanistan build free and vibrant democratic societies."

The resolution lists each organizational element of the Army, Marine Corps, Navy, Air Force, Special Operations Command who participated in Operation Iraqi Freedom and Operation Enduring Freedom.

Additional Background: On October 7, 2001, the U.S. and its allies launched Operation Enduring Freedom against the Taliban and Al Qaeda in Afghanistan. On March 19, 2003, the U.S. and its allies launched Operation Iraqi Freedom against the regime of Saddam Hussein. In these two campaigns, nearly 330,000 members of the U.S. Armed Forces were deployed and 224,500 Reserve and National Guard members were called to active duty. In Afghanistan, 67 servicemembers and other personnel were killed and 140 were killed in Iraq.

Committee Action: The resolution was referred to the Committees on Armed Services and International Relations on May 13, but was not considered by either committee.

Cost to Taxpayers: The resolution authorizes no expenditure.

Does the Bill Create New Federal Programs or Rules?: No.

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H.Res. 201— Expressing the sense of the House of Representatives that our Nation's businesses and business owners should be commended for their support of our troops and their families as they serve our country in many ways, especially in these days of increased engagement of our military in strategic locations around our Nation and around the world (Rogers of Michigan))

Order of Business: The bill is scheduled to be considered on Wednesday, June 4, 2003 under a motion to suspend the rules and pass the bill.

Summary: H.Res. 201 has four findings regarding the contribution of our nation's businesses and business owners for the deployed troops, including 216,931 reserves, and resolves:

That it is the sense of the House of Representatives that—

- "the businesses that establish the backbone of our Nation in times of peace and rise to a greater standard of resolve in times of challenge do so by—(a) carrying on the good work of commerce, industry, and innovation; and (b) steadfastly supporting the members of our military and their families; and
- "the business owners of our Nation deserve our commendation and sincere expression of gratitude."

Committee Action: The bill was introduced on April 11, 2003, and reported by voice vote from the House Energy and Commerce Committee on April 30.

Cost to Taxpayers: The resolution has no cost.

Does the Bill Create New Federal Programs or Rules?: No.

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H.R. 361—Sports Agent Responsibility and Trust Act (*Gordon*)

Order of Business: The bill is scheduled to be considered on Wednesday, June 4th, under a motion to suspend the rules and pass the bill.

Summary: H.R. 361 would make it illegal under federal law for an athlete agent to:

- recruit or solicit (directly or indirectly) a student athlete to enter into an agency contract, by--
  --giving any false or misleading information; or
  --providing anything of value (including a loan) to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract;

- enter into an agency contract with a student athlete without giving the student athlete or his or her legal guardian the required disclosure document; or
- predate or postdate an agency contract.

The required disclosure document referenced above (which is in addition to any disclosure required under applicable state laws) would have to include the following exact language near the student's signature:

> *Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract.*

The Federal Trade Commission (FTC) would be charged with enforcing these provisions, and state attorneys general would be authorized (after notifying the FTC) to bring civil suits in federal court to enforce compliance with this legislation and/or to obtain damages, restitution, or other compensation on behalf of state residents. The FTC would be allowed to intervene in any such state-originated suit to provide information or to file an appeal. The reverse would not be allowed, however; states could not intervene in an FTC-originated suit under this legislation.

An educational institution would also have a right of action against an athlete agent for damages caused by a violation of this legislation. Specifically, damages would be limited to actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured, penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate actions likely to be imposed by such an association or conference. The prevailing party would be able to recoup attorneys' fees and other such legal costs.

H.R. 361 would not restrict the abilities of individuals to seek remedies available under existing federal or state law.

The bill would encourage (not require) states to enact the Uniform Athlete Agents Act of 2000 (UAAA) drafted by the National Conference of Commissioners on Uniform State Laws, which can be accessed at this website:
http://www.law.upenn.edu/bll/ulc/uaaa/aaa1130.htm

Specifically, this bill would encourage the enactment of the provisions in the Uniform Athlete Agents Act relating to the registration of sports agents; the required form of contract; the right of the student athlete to cancel an agency contract; the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security; and the provisions for reciprocity among the states.

Additional Background: According to the Energy and Commerce Committee, in House Report 108-24 Part I, the UAAA has been adopted by sixteen states and introduced in the legislatures of twelve others. Of the states that have not enacted the UAAA, eighteen have existing athlete agent laws, while sixteen have no law that directly addresses athlete agent conduct.

Committee Action: On January 27, 2003, the bill was referred to the House Energy and Commerce Committee. Two days later, the Committee marked up and favorably reported H.R. 361 by voice vote. On March 5, 2003, the bill was referred sequentially to the House Judiciary Committee for consideration of the provisions that fall within the jurisdiction of Judiciary. On May 15, 2003, the Subcommittee on Commercial and Administrative Law marked up and forwarded the bill by voice vote to the full committee. On May 21, 2003, the full Judiciary Committee marked up and favorably reported H.R. 361 by voice vote.

Some Possible Concerns: Conservatives might be concerned that this bill federalizes what has traditionally been a state issue. In fact, in House Report 108-24 Part I, the House Energy and Commerce Committee states that this legislation is being enacted because of "disparate and sometime ineffective state laws and the absence of any laws in many states." The Committee continues, "H.R. 361 will provide remedies to protect student athletes and the educational institutions, particularly in those states with no existing law addressing athlete agent conduct."

Cost to Taxpayers: CBO estimates that H.R. 361 would not have a significant impact on the federal budget. Based on information from the FTC, CBO expects that enforcement of the bill would still occur mostly at the state level. Therefore, CBO expects that any increase in civil penalties resulting from the enactment of H.R. 361 would be insignificant. Further, CBO estimates that H.R. 361 would increase the FTC's costs by less than $500,000 annually, subject to appropriation.

Does the Bill Create New Federal Programs or Rules?: YES. The bill would federalize the enforcement of "unscrupulous" enticements of student athletes by agents.

Constitutional Authority: The Energy and Commerce Committee, in House Report 108-24 Part I, cites constitutional authority in Article I, Section 8, Clause 3, which gives Congress the authority to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

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H.R. 1954 —Armed Forces Naturalization Act of 2003
with an Amendment (Sensenbrenner)

Order of Business: The bill is scheduled to be considered on Wednesday, June 4, 2003, under a motion to suspend the rules and pass the bill with an amendment

Note: The bill originally was scheduled to be considered on May 20, 2003.
The bill will be brought up with an amendment that includes:

1) **A new provision that the citizenship granted under this act may be revoked if a serviceman is dishonorably discharged before serving five years; and**
2) **A revised definition of parent, to ensure the parent was legally residing in the U.S. at the time of the serviceman's death.**

Summary: H.R. 1954 modifies, retroactive to September 11, 2001, certain provisions regarding the immigration process for military personnel, military survivor benefits, and the immigration process for surviving spouses, children, or parents. Under current law, lawful permanent residents who have served honorably on active duty or in reserve status in the U.S. armed forces for an aggregate of three years are eligible to apply for citizenship. The bill lowers this requirement from three years to one year. (Note: during periods of military hostilities, most recently declared effective September 11, 2001, active duty forces are immediately eligible to apply for citizenship.) No fee may be charged for the naturalization process of these servicemen, except if under state law a state fee is required (this amendment is not retroactive and no refunds are required under the bill). To the "maximum extent practicable," INS proceedings related to servicemen shall be available at U.S. embassies, consulates, and overseas military installations.

H.R. 1954 also clarifies survivor benefit procedures for the spouse, children, and parents of those servicemen granted citizenship posthumously, as long as the immediate relative petitions are submitted not later than 2 years after the posthumous citizenship status is granted (the spouse remains a spouse for purposes of this act until remarriage). The bill specifies that the act does not provide any benefit for someone who is not a spouse, a child (under 21), or a parent of the posthumous citizen. The bill also modifies current immigration laws to allow for immigration procedures to continue for the immediate alien relatives (spouse, children, or parents) of those citizens killed in the line of duty or in a death aggregated by such service.

Additional Information: According to CBO, the U.S. Armed Forces currently include about 37,000 individuals on active duty and another 12,000 in reserve status who are *not* citizens. Approximately 9,000 new legal permanent residents are expected to enter the Armed Forces on active duty by the end of FY04. Approximately 7,000 persons on active duty (20% of those eligible) have already applied for naturalization since military hostilities were declared and could not benefit from H.R. 1954.

Committee Action: H.R. 1954 was introduced on May 6, 2003, and referred to the House Judiciary Committee. The committee considered the bill on May 7, and reported it out by voice vote.

Cost to Taxpayers: CBO estimates that H.R. 1954 would cost about $1 million in FY2003 and $12 million in 2004, due to the reduction in immigration fees. CBO anticipates that the majority of eligible individuals would choose to naturalize under the bill's provisions over the next year or two, thus avoiding the $310 in fees currently

collected by the Bureau of Citizenship and Immigration Services (BCIS). CBO further estimates that two-thirds (over 30,000) of the eligible persons would apply for naturalization. By comparison, nationwide about 55 percent of eligible aliens apply for citizenship over the duration of their stay in the United States.

Does the Bill Create New Federal Programs or Rules?: The bill modifies current law regarding the granting of citizenship to military servicemen, granting posthumous citizenship to servicemen killed in the line of duty, and regarding the process and cost for surviving alien relatives to apply for citizenship. To provide for the overseas naturalization services authorized under the bill, BCIS expects to employ 25 federal employees, funded by fees, in overseas locations. BCIS is authorized to increase other fees because those eligible under the bill will have free services, CBO anticipates BCIS will raise its fees in FY05 to cover its costs. Total immigration costs to BCIS (not just those authorized under H.R.1954) are estimated at over $1 billion in the next few years.

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H.R. 760—Partial-Birth Abortion Ban Act of 2003 (Chabot)

Order of Business: The bill is scheduled to be considered the week of June 2, 2003, under a modified closed rule, with a substitute made in order, and one motion to recommit. There is an hour of debate on the Rule, then an hour of debate on the bill, then an hour of debate on the substitute (text temporarily viewable at http://www.house.gov/rules/greenwood1.pdf), then 10 minutes on the motion to recommit.

Summary: The Partial-Birth Abortion Ban Act (H.R. 760) makes it illegal in the United States for a physician to perform a partial-birth abortion. It is estimated that at least 2,200 to 5,000 partial-birth abortions are performed each year in the United States. Partial-birth abortion is a procedure where a pregnant woman's cervix is forcibly dilated over a three-day time 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. 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.

Three years ago in *Stenberg v. Carhart*, the United States Supreme Court struck down Nebraska's partial-birth abortion ban, which was similar, but not identical, to the previous bans passed by Congress. To addresses *Stenberg,* the Partial-Birth Abortion Ban Act of 2003 differs from the previous legislation in two ways:

REFUTING THE SUPREME COURT'S CLAIM THAT THE LAW WAS VAGUE:

The five-justice majority in *Stenberg* thought that Nebraska's definition of partial-birth abortion was vague and potentially outlawed a common abortion procedure where an unborn child is pulled apart limb by limb through dismemberment (dilation and evacuation (D&E)) and sometimes the limbs enter into the birth canal. In a D& E, the justices ruling in the majority explained:

> "During a pregnancy's second trimester (12 to 24 weeks), the most common abortion procedure is "dilation and evacuation" (D&E), which involves dilation of the cervix, removal of at least some fetal tissue using nonvacuum surgical instruments, and (after the 15th week) the potential need for instrumental dismemberment of the fetus or the collapse of fetal parts to facilitate evacuation from the uterus. **When such dismemberment is necessary, it typically occurs as the doctor pulls a portion of the fetus through the cervix into the birth canal"** (emphasis added).
>
> —http://supct.law.cornell.edu/supct/html/99-830.ZS.html

To address the Court's concerns that the definition of partial-birth abortion was vague, H.R. 760 contains a new, more precise, definition of the prohibited procedure:

Definition of Partial-Birth Abortion in H.R. 760:

"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."

Life of the Mother Exception (an exception contained in all previously-passed bans)**:**

"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."

REFUTING THE COURT'S CLAIM THAT LAW NEEDS A "HEALTH" EXCEPTION:

The Court ruled that the Nebraska ban placed an "undue burden" on women seeking abortions because it failed to include an exception to preserve the "health" of the mother. The Court based its conclusion on the trial court's factual findings regarding the relative health and safety benefits of partial-birth abortions—findings that were highly disputed.

The *Stenberg* Court, however, was required to accept these questionable trial court findings because of the highly deferential "clearly erroneous" standard that is applied to lower court factual findings.

According to the Judiciary Committee, those factual findings are inconsistent with the overwhelming weight of authority on the issue —including evidence received during extensive legislative hearings—which indicate that a partial-birth abortion is never medically necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care. This is supported by the American Medical Association which has said the procedure is "not good medicine" and is "not medically indicated" in any situation.

Although the Supreme Court in *Stenberg* was obligated to accept the district court's findings, Congress possesses an independent constitutional authority to reach findings of fact. Under well-settled Supreme Court jurisprudence, these congressional findings will be entitled to great deference by the federal judiciary in ruling on the constitutionality of a federal partial-birth abortion ban. Thus, the first section of H.R. 760 contains Congress's 14 factual findings that, based upon extensive medical evidence compiled during congressional hearings, a partial-birth abortion is never necessary to preserve the health of a woman.

In a "health" emergency, why wait three days?

Some proponents of partial-birth abortion claim the bill needs an exception for the "health" of the mother. In a paper he presented at a September 1992 meeting of the National Abortion Federation, Ohio abortionist Martin Haskell, M.D. described the partial-birth abortion procedure, which he is credited with inventing. The procedure, he said, takes up to three days. If a woman's health is in danger, why wait three days?

The procedure, he describes, takes three days:

> "Day 1—Dilation
> … Five, six, or seven large Dilapan hydroscopic dilators are placed in the cervix. The patient goes home or to a motel overnight."
>
> "Day 2—More Dilation
> The patient returns to the operating room where the previous day's Dilapan are removed. The cervix is scrubbed and anesthesized. Between 15 and 25 Dilapan are placed in the cervical canal. The patient returns home or to a motel overnight.
>
> "Day 3—The Operation
> The patient returns to the operating room where the previous day's Dilapan are removed." [The procedure is then described in vivid detail]
>
> —Source: Martin Haskell, M.D., "Dilation and Extraction for Late Second Trimester Abortion," in "Second Trimester Abortion: From Every Angle,"

Fall Risk Management Seminar, September 13-14, 1992,
Dallas, Texas, National Abortion Federation.
Entire paper: http://www.house.gov/burton/RSC/haskellinstructional.pdf

Greenwood/Hoyer/N. Johnson Substitute, A Phony Ban:

A substitute amendment has been made in order on the House floor (the text of which can temporarily be viewed on the House Rules website http://www.house.gov/rules/greenwood1.pdf). The substitute mirrors the text of H.R. 809, a bill introduced by Rep. Steny Hoyer (D-MD) and Rep. Jim Greenwood (R-PA.). This is the first time the House has voted on a substitute amendment to the Partial Birth Abortion Ban. This substitute makes it a federal crime to perform an abortion "after the fetus has become viable," but **"does not prohibit any abortion if, *in the medical judgment of the attending physician***, the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman" (emphasis added).

Abortionist determines when he's guilty of violating ban:

- Because of the way the bill's exception is written, the Hoyer/Greenwood proposal would allow every abortionist to claim every abortion procedure was done *in his judgment* for an undefined "health" of the mother.

- Health is not defined in the substitute and under current Supreme Court precedent, health may include "all factors—physical, emotional, psychological, familial, and the woman's age— relevant to the well-being of the patient." Practitioners of partial-birth abortion, for example, have testified in court and before Congress that they consider the mother being a teenager, having a fear of open spaces, and depression, among other things, as acceptable health reasons for performing this procedure. Since currently every abortion in the United States is done at the discretion of the abortionist's judgment, this Hoyer/Greenwood proposal would do nothing to change the status quo and would not outlaw, in practice, a single abortion.

Partial-Birth Abortions Permitted under Expected Substitute:

- Though the Hoyer/Greenwood proposal does not mention partial-birth abortion, if enacted it would apply no restrictions to partial-birth abortions until after an unborn baby is provably "viable" — which abortionists generally claim is in the *seventh month* or even later — even though the majority of partial-birth abortions are performed in the *fifth and sixth months* of pregnancy. The Hoyer/Greenwood substitute would also permit the aborting of provably "viable" unborn babies in the seventh, eighth, and ninth months to enhance the "mental health" of the mother, as the sponsors explicitly confirmed in a "Dear Colleague" dated March 16, 2000, posted at www.nrlc.org/abortion/pba/Phony%20ban%20on%20late-term.pdf

- To read direct quotes that demonstrate how broadly abortionists who perform partial-birth abortions interpret the health exception see the following document http://www.house.gov/burton/RSC/PBAex03.pdf

Possible Motion to Recommit, A Gutting Exception:

In the 107th Congress, Rep. Tammy Baldwin (D-WI) offered a motion to recommit that would have eliminated the defined life of the mother exception in the partial-birth abortion ban and replaced it with a "life or health" exception in "appropriate medical judgment" (left undefined).

Effect of Baldwin Motion to Recommit:

> Sec. 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.~~ **where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.**

Under this modification, the abortionist, himself could make the determination that the partial-birth abortion is to "preserve" the "health" of the mother for any reason. Health was not defined under this motion and under current Supreme Court precedent, health may include "all factors—physical, emotional, psychological, familial, and the woman's age— relevant to the well-being of the patient." Practitioners of partial-birth abortion have testified in court and before Congress that they consider the mother being a teenager, having a fear of open spaces, and depression, among other things, as acceptable reasons for performing this procedure. If the Baldwin motion had been adopted, every abortionist could claim the procedure was done in his judgment for the so-called "health" of the mother, thus gutting the intent of the ban.

Additional Information:

Legislative History:

104th Congress:

On November 1, 1995, the House first considered the Partial-Birth Abortion Ban Act (H.R. 1833), which passed 288-139 (Roll Call No. 756 http://clerkweb.house.gov/cgi-bin/vote.exe?year=1995&rollnumber=756)

On December 7, 1995, the ban passed the Senate 54-44, with a few minor modifications. (http://www.senate.gov/legislative/vote1041/vote_00596.html

On March 27, 1996, the House agreed to the Senate modifications, 286-129, 1 voting present (Roll Call No. 94 http://clerkweb.house.gov/cgi-bin/vote.exe?year=1996&rollnumber=94)

On April 10, 1996, the Partial-Birth Abortion Ban Act was vetoed by President Bill Clinton.

On September 19, 1996, the House overrode the veto, 285-137 (Roll No. 422) http://clerkweb.house.gov/cgi-bin/vote.exe?year=1996&rollnumber=422

On September 26, 1996, the Senate failed by to override the veto 58-40 http://www.senate.gov/legislative/vote1042/vote_00301.html

105th Congress:

On March 20,1997, the House considered the Partial-Birth Abortion Ban Act (H.R.1122). After defeating a motion to recommit the bill with instructions (that would have gutted the ban) 149 - 282 (Roll no. 64) http://clerkweb.house.gov/cgi-bin/vote.exe?year=1997&rollnumber=64 the House passed the ban 295-136 (Roll Call No.65 http://clerkweb.house.gov/cgi-bin/vote.exe?year=1997&rollnumber=65

On May 20, 1997, the ban passed the Senate with amendments 64-36 http://www.senate.gov/legislative/vote1051/vote_00071.html

On October 8, 1997 the House agreed to the Senate amendments and passed the ban 296-132 (Roll no. 500 http://clerkweb.house.gov/cgi-bin/vote.exe?year=1997&rollnumber=500)

On October 10, 1997, the Partial-Birth Abortion Ban Act was vetoed by President Bill Clinton for the second time.

On July 23, 1998 the House overrode the President's veto 296-132 (Roll No. 325) http://clerkweb.house.gov/cgi-bin/vote.exe?year=1998&rollnumber=325

On September 18, 1998, the Senate failed by to override the veto 64-36 http://www.senate.gov/legislative/vote1052/vote_00277.html

106th Congress:

On April 5, 2000, the House considered the Partial-Birth Abortion Ban Act (H.R.3660). After defeating a motion to recommit the bill with instructions (that would have gutted the ban) 140-289 (Roll no. 103) http://clerkweb.house.gov/cgi-bin/vote.exe?year=2000&rollnumber=103 the House passed the ban 287-141 (Roll Call No.104 http://clerkweb.house.gov/cgi-bin/vote.exe?year=2000&rollnumber=104)

On October 21, 1999, the Senate considered the Partial-Birth Abortion Ban Act (S. 1692) and approved it with amendments 63-34 http://www.senate.gov/legislative/vote1061/vote_00340.html

On May 25, 2000, the House took up S. 1692 as amended, struck the entire text, inserted the House-passed text of H.R. 3660, passed the bill and requested a conference with the Senate. This passed by voice vote.

The Senate refused to go to conference with the House on the Partial-Birth Abortion Ban act, and the bill died at the end of the 106th Congress.

107th Congress:

July 24, 2002, the House considered the Partial-Birth Abortion Ban Act (H.R. 4965). After defeating a motion to recommit the bill with instructions (that would have gutted the ban) 187-241 (Roll no. 342) http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=342 the House passed the ban 274 - 151, 1 Present (Roll no. 343) http://clerkweb.house.gov/cgi-bin/vote.exe?year=2002&rollnumber=343

108th Congress:

March 12, 2003, the Senate considered the Partial-Birth Abortion Ban Act (S.3). The following amendment affirming *Roe v. Wade* was adopted 52-46: http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00048

SEC. 4. SENSE OF THE SENATE CONCERNING ROE V. WADE.
(a) FINDINGS.--The Senate finds that--
(1) abortion has been a legal and constitutionally protected medical procedure throughout the United States since the Supreme Court decision in Roe v. Wade (410 U.S. 113 (1973)); and
(2) the 1973 Supreme Court decision in Roe v. Wade established constitutionally based limits on the power of States to restrict the right of a woman to choose to terminate a pregnancy.
(b) SENSE OF THE SENATE.--It is the sense of the Senate that--
(1) the decision of the Supreme Court in *Roe v. Wade* (410 U.S. 113 (1973)) was appropriate and secures an important constitutional right; and
(2) such decision should not be overturned.

and the Senate passed the ban 64-33 with this one amendment. http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00051

(Note: Because of this controversial Sense of the Senate language, which is unrelated to the partial-birth abortion issue, it is expected the House will demand a conference committee with the Senate to remove extraneous provisions and send a clean ban to the President's desk.)

Other Resources: drawings of partial-birth abortion procedure: http://www.nrlc.org/abortion/pba/diagram.html

Background and talking points on partial-birth abortion: http://www.nrlc.org/abortion/pba/index.html

Why delivering a child in a breech (feet-first) position and puncturing the skull is not recommended medical practice for the "health" of the mother: http://www.nrlc.org/abortion/pba/pbafact11.html & http://www.nrlc.org/abortion/pba/pbafact12.html

Resources from physicians against partial-birth abortion. PHysicians'Ad-hoc Coalition for Truth http://www.geocities.com/CapitolHill/9707/

Administration Position: During the March 2003 consideration of the ban in the Senate, the Administration released the following statement of policy:

> The Administration strongly supports enactment of S. 3, which would ban an abhorrent procedure commonly known as partial-birth abortion. The bill is narrowly tailored and exempts those procedures necessary to save the life of the mother.
>
> Partial-birth abortion is a late-term abortion procedure that is not accepted by the medical community. Approximately 30 States have attempted to ban it. The Administration strongly believes that enactment of S. 3 is both morally imperative and constitutionally permissible.
>
> **The Administration strongly opposes any amendment to the bill that would limit its application to a time after the child is determined to be viable,** which could allow this procedure to be used as late as the fifth or sixth months of **pregnancy, when most partial birth abortions are performed. The Administration** supports the exception for procedures necessary to save the life of the mother, but **strongly opposes any amendments to create additional exceptions because these exceptions may create open-ended loopholes and allow use of the procedure even in the third-trimester** (emphasis added).

[Note: the Senate amendments opposed by the Administration mirror the gutting substitute and what may be the motion to recommit offered in the House.]

Cost to Taxpayers: CBO estimates that implementing H.R. 760 would not result in any significant cost to the federal government. Because the bill would establish a new federal crime, there could be an increase in law enforcement, court proceedings, or prison operations costs, but CBO does not estimate a significant cost due to the low number of cases expected. Any fines collected from prosecutions would be deposited into the Crime Victims Fund.

Does the Bill Create New Federal Programs or Rules?: H.R. 760 would create a new federal crime under Title 18 of the U.S. Code for a physician to perform a partial-birth abortion (except to save the life of the mother), punishable by a fine and/or imprisonment for up to two years. A pregnant mother who undergoes a partial-birth abortion may not be prosecuted under H.R. 760.

Constitutional Authority: The Judiciary Committee (in Report No. 108-58) finds authority in Article I, Section 8, Clause 3 of the Constitution (commerce clause).

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