

---

## *Federal Abortion Procedures Ban Heads to Court; Abortion Foes Pledge More Bills in 2004*

By Amy Deschner

President Bush's signing of the Partial-Birth Abortion Ban Act on November 5, 2003, was not just a moment of political triumph for abortion opponents, who had seen almost identical legislation vetoed twice by President Clinton. It was also, in the words of the Family Research Council's former president, Kenneth L. Connor, part of social conservatives' long-term strategy of dismantling, "brick by brick, the deadly edifice created by *Roe v. Wade*." The law represents the first federal ban on an abortion procedure since the Supreme Court legalized abortion nationwide more than 30 years ago, setting the stage for a court challenge that could redefine the scope of abortion rights in the United States.

### **Issues in Contention**

Three years ago, the Supreme Court struck down by the narrow majority of 5–4 a similar ban that had been enacted in Nebraska. In *Stenberg v. Carhart*, the Court cited two distinct constitutional problems with the state law: that the language used to define a "partial-birth" abortion was so broad as to potentially outlaw a range of abortion procedures and that the law lacked an exception that would allow a physician to employ such procedures when necessary to protect the health of the woman. Congressional supporters of the bill claim to have addressed these problems.

—Supporters argue that they have sufficiently narrowed the definition of a

"partial-birth" abortion by describing it as the performance of an "overt act" intended to kill the partially delivered living fetus. Opponents say that the language is still too imprecise and could cover a much broader category of procedures, including the dilatation and evacuation (D&E) procedure that is commonly performed during the second trimester of pregnancy—well before fetal viability, the point at which the Supreme Court has said states may act to restrict or prohibit abortion. The procedure that comes closest to what antiabortion groups say they want to criminalize is known as dilation and extraction (D&X). To avoid confusion, the bill's authors could have used that medical term and given the corresponding *medical* definition in the legislation. Instead, they chose to use the *political* term "partial-birth" abortion and create their own definition, purposely leaving the door open to broad interpretation.

(Continued on page 14)

---

## ***Federal Ban...***

*Continued from page 12*

Proponents also say they have addressed the health issue by including in the legislation itself congressional “findings” that “partial-birth” abortion is never necessary to preserve a woman’s health, that it poses serious risks to a woman’s health and that it lies outside the standard of medical care. Critics cite a substantial body of medical opinion to the contrary and argue that according to Supreme Court precedent, only a doctor evaluating an individual woman’s particular circumstances can determine the best way to protect that woman’s health.

### **‘You Can Weave Them Together’**

President Bush has stated that the country is not “ready” for a total ban on abortion. Republican leaders have already served notice that they hope to move the country closer to that

day by bringing up for congressional consideration a number of other abortion-related bills in 2004. The election-year legislative agenda prominently includes the Unborn Victims of Violence Act, which, while not affecting abortion legality per se, would create a separate crime for harm to an “unborn child” caused while committing a crime against a pregnant woman; alternative proposals that carry the same penalties as the Unborn Victims of Violence Act but would not, however, grant the fetus legal rights independent of the woman have already been rejected. Other likely candidates include the RU-486 Suspension and Review Act, which would remove mifepristone from the U.S. market, as well as a bill requiring parental notification for minors seeking an abortion on military bases. “Each of these issues can stand on their own,” Sen. Sam Brownback (R-KS) recently remarked. However, “you can weave them together.”

Meanwhile, it will be up to the Supreme Court to determine the final outcome of the “partial-birth” abortion ban. Challenges filed by Planned Parenthood Federation of America, the American Civil Liberties Union and the Center for Reproductive Rights have already resulted in temporary restraining orders blocking the law from enforcement throughout much of the country. The Justice Department has appealed these rulings, and hearings are slated in all three cases in March 2004, although the legal battle could take several years to play out.

Proponents of the measure are hopeful that by the time the case reaches the Court, President Bush will have had an opportunity to appoint at least one new justice, who could tip the balance in their favor. With this in mind, both sides agree: The 2004 presidential election will likely play a pivotal role in defining the scope of abortion rights in the future. ☉