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Ban on Partial-Birth Abortion Clears Another Hurdle

Eileen D. Collins

In October, both the Senate and House of Representatives passed bills banning partial-birth abortion in the United States.¹ President George W. Bush, who has called partial-birth abortion "an abhorrent procedure that offends human dignity," signed the bill into law in early November.² Representative Steve Chabot (R-OH) and Senator Rick Santorum (R-PA) sponsored the legislation, which permits partial-birth abortions only when the life, not just the health, of the mother is in danger. Opponents, denouncing the ban as an unconstitutional restriction on a woman's right to abortion, went immediately to court to challenge the legislation.³ Several restraining orders were granted the same day Bush signed the bill and the Justice Department has vowed to fight those rulings.

The most common abortion technique in the second trimester of pregnancy is dilation and evacuation ("D&E"), which involves the dilation of the cervix, the removal of some fetal tissue, and the potential dismemberment of the fetus to facilitate evacuation.⁴ The term "partial-birth abortion" is a non-medical term referring to a variation of D&E called dilation and extraction ("D&X"). With D&X, the cervix is again dilated and the live fetus is delivered intact from the uterus into the birth canal. "At this point in the procedure," says Stephanie Tackett, a nurse at Christ Hospital and Medical Center in Oak

Lawn, "it is probable that part of the live fetus is outside the mother's body," hence the name partial-birth.⁵ The doctor then kills the fetus by collapsing the fetal skull and removing the contents of the fetal head. A dead, but intact, fetus is then delivered.

In July of 2000, the U.S. Supreme Court, in *Stenberg v. Carhart*, declared a Nebraska statute banning partial-birth abortions unconstitutional for failing to provide any health exception and for being too broadly written. The Court found the statute could be interpreted as prohibitive of both partial-birth abortion (D&X) and the common second trimester abortion (D&E). Justice Breyer, writing for the majority, quoted language from *Roe v. Wade* declaring that the State, after fetus viability, may "regulate and even proscribe abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." The Court in *Stenberg* reasoned that since a health exception is required for aborting a viable fetus, at least that much must be required for aborting a pre-viable fetus.

Despite the Supreme Court stating the necessity of a health exception, the new legislation provides no exception beyond danger to the mother's life. The American Civil Liberties Union ("ACLU"), denouncing the absence of a health exception and calling the ban reprehensible and dangerous for both women and their

doctors, has promised to challenge the law on behalf of women and doctors affected. Since 1995, over 30 states, including Illinois, have tried to ban partial-birth abortion and every challenge to these bans has been successful.

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Drafters of the proposed legislation, mindful of the *Stenberg* decision, made efforts to be clear about which procedures are affected.⁶ The legislation defines partial-birth abortion as a procedure in which the physician kills the fetus after "deliberately and intentionally vaginally deliver[ing] a living fetus until ... the entire fetal head is outside the body of the mother, or ... any part of the fetal trunk past the navel is outside the body of the mother." Drafters contend this wording prohibits D&X while still allowing D&E.

The legislation is accompanied by extensive congressional findings of fact, some directly conflicting with findings from *Stenberg*. Congress explains this disparity by

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pointing out that findings in Stenberg are based on the district court's findings. Because the higher courts did not believe the district court findings to be clearly erroneous, they refused to set aside the findings. Congress, entitled to make its own factual findings and enact legislation based upon them, did just that, specifically finding that partial birth abortion is never medically necessary to preserve a woman's health, that it poses significant health risks to the mother and that it is outside the standard of medical care.⁷

In addition to opposition from civil rights advocates, this law also faces opposition from medical professionals, including the American College of Obstetricians and Gynecologists ("ACOG") who have called this ban "inappropriate, ill-advised, and dangerous."⁸ However, even the ACOG concedes that it can name no situation in which a partial birth abortion would be the only procedure available to preserve a mother's life or health. Some doctors argue that legislators have no place making medical decisions best made by a woman and her physician. Supporters of the ban counter that sometimes, in order to protect state interests and the public, it is necessary for lawmakers to regulate medical decisions, as is the case with euthanasia, female circumcision, and the regulation of prescription drugs.

The ultimate fate of this law remains uncertain as legal challenges to the ban continue to grow in number and intensity.

1. Associated Press, *House OKs Partial-Birth Abortion Ban* (Oct. 2, 2003); Associated Press, *Bush to Sign Partial Birth Abortion Bill* (Oct. 21, 2003).

2. H.R. 760 §3; Press Release, White House, Statement by the President George W. Bush (Mar. 13, 2003); Associated Press, *Two More Judges Block Ruling* (Nov. 5, 2003).

3. Press Release, American Civil Liberties Union, *House Passes First-Ever Federal Ban on Safe Abortion Procedures; ACLU Promises Lawsuit to Protect Women and Doctors* (Oct. 2, 2003); Associated Press, *Two More Judges Block Ruling* (Nov. 5, 2003).

4. *Stenberg v. Carhart*, 530 U.S. 914, 924 (2000), citing American Medical Association, Report of Board of Trustees on Late-Term Abortion, App. 490-492 (hereinafter AMA Report).

5. Interview with Stephanie Tackett, Nurse, Christ Hospital and Medical Center, Oak Lawn, IL (Sept. 28, 2003).

6. Steve Chapman, *The Myths and Realities About Partial-Birth Abortion*, Chi. Trib., Oct. 5, 2003, §2, at 11.

7. H.R. 760 §2 (8), (13).

8. Press Release, American College of Obstetricians and Gynecologists, Statement on So-Called "Partial-Birth Abortion" Laws by the American College of Obstetricians and Gynecologists (Feb. 13, 2003).

Chicago Police Install Controversial Surveillance Cameras

Gavin Mbley

The City of Chicago recently began installing video cameras in public places to help fight crime, but some worry they will infringe upon privacy in the process.

The first cameras were installed in Chicago on July 31. In total, 30 cameras are now in operation, primarily on the west side of the city. The cameras are attached to light poles and can survey an area up to four blocks away. The images they capture can be monitored by officers using laptops in their squad cars.

Chicago Police Department Director of News Affairs Dave Bayless says the goal of the surveillance program named "Operation Disruption," is not to monitor criminal activity as much as it is to deter it. "It's not necessarily only about catching criminals," Bayless said. "These cameras are very visible. The goal is to reduce violent crime by disrupting narcotics and gang activity in higher-crime areas known to have narcotics, gang and violence problems. It [the goal] is to let them know they're being watched, in order to free up street corners."

The American Civil Liberties Union has not taken a direct position on the use of the cameras. Still, there is concern about the potential for abuse.

"We do not think the cameras, in and of themselves, are unconstitutional," ACLU of Illinois Director of Communications Ed Yohnka said.

"We worry about the cameras being used to disrupt legitimate first amendment expressive activity, or being manipulated to peer into individuals' homes, cars, etc."

Bayless says the police department has taken measures to ensure abuses are prevented. "The message is sent clear to our officers," Bayless said. "These cameras are meant to track activity on the public way where, as court cases have held, people do not have the expectation of privacy. This is meant for law enforcement purposes only, and not to invade anyone's privacy."

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Operation Disruption is part of a larger city-wide crime fighting initiative that began in July, when Chicago's murder rate was well above that of 2002, according to Bayless. Since the initiative began, Bayless says, homicide rates are down dramatically in the city, although he admits it is too early to tell what role the cameras have played in the decrease in crime.

Still, some wonder if the cameras are even effective at sup-