

## **The Partial-Birth Abortion Debate**

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### **Abstract**

The abortion debate did not end with *Roe v. Wade*. In fact it has only gotten more specific and more heated in recent years. Part of the on-going abortion debate, which has intensified in recent years, is the controversy over 'Late-term' or 'Partial-birth' abortions. Late-term/ partial-birth abortions are those which occur during the third trimester of pregnancy. During recent years the debate over late-term/ partial-birth abortions has shaped the relationship between Congress and the Presidency. In this paper I will discuss the interplay between Congress and the Presidency over this heated topic as they have occurred since the 1995 Partial-Birth Abortion Ban Act up to the present.

## **I. Introduction**

The abortion debate did not end in 1973 with the Court's decision in *Roe v. Wade*. In fact the debate has only gotten more specific and more heated in recent years. One of the most heated parts of this ongoing debate is the controversy over "late-term" or "partial-birth" abortion. This paper will discuss the Partial Birth Abortion Ban Act of 1995, the effect of the 1996 election on the debate and the 1997 Partial Birth Abortion Ban Act. I will also examine the overall interplay of Congress and the Presidency and give my input on what the future may hold in store for partial-birth abortion.

## **II. 1995 Partial-Birth Abortion Ban Act**

In 1995 abortion opponents in Congress, frustrated with past failure to outlaw abortion outright, became determined to limit abortion procedures in any and every way possible. Ann Lewis, Planned Parenthood's vice president of public policy, commented that congressional abortion opponents "adopted a legislative strategy of working to make it inaccessible" (Rubin 1184). Part of this legislative strategy was the Partial Birth Abortion Ban Act of 1995, introduced as identical bills: H.R. 1833 sponsored by Rep. Charles Canady, and S. 939, sponsored by Sen. Bob Smith. In this section I will discuss H.R. 1833, its content, its passage through the House and Senate, President Clinton's veto of H.R. 1833, and the Senate's inability to override the veto.

H.R. 1833, the Partial Birth Abortion Ban Act of 1995, bans the partial-birth abortion procedure. According to the act, a partial-birth abortion is "an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery" (104<sup>th</sup> 1). H.R. 1833 allows for one exception to the ban. The exception within the ban occurs when "the partial-birth abortion was performed by a physician who reasonably believed the partial-birth abortion was necessary to save the life of the mother and no other procedure would suffice for that purpose" (104<sup>th</sup> 2). In order to qualify for the exception within the law, the burden of proof is placed on the physician. This act also provides for the fining and imprisonment of physicians who perform the procedure.

Opponents of H.R. 1833 argued that this act provided for "undue involvement by the federal government in medical decision making" (Ponessa 1847) and that "the legislation seeks to frighten doctors from performing legal abortions in a large number of circumstances" (104<sup>th</sup> 22). Patricia Schroeder, D-CO, shared the concern with many opponents of H.R. 1833 that the act does not provide an exemption if the woman's health was in danger. In response to these concerns several opponents of the Act, including Schroeder, proposed amendments to H.R. 1833. However, the bill was considered under a "closed" rule so that no amendments could be added. The House of Representatives voted 288-139 to pass H.R. 1833 on November 1, 1995. On December 7, 1995, the Senate also passed H.R. 1833, with a few clarification changes to the bill, in a 54-44 vote. The House passed the Senate's changes 286-129 on March 7, 1996.

On April 10, 1996 President Clinton vetoed H.R. 1833, the 1995 Partial Birth Abortion Ban Act. In his return without approval to Congress, his letter to Cardinal Bernardin, and his remarks on the veto, President Clinton commented that he could not approve the bill, "because the bill does not allow women to protect themselves from serious threats to their health" (Weekly. Vol. 32 #15 646). President Clinton further

explained, “I cannot sign H.R. 1833, as passed, because it fails to protect women in such dire circumstances—because by treating doctors who perform the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women” (Weekly. Vol. 32 #15 646). Later in his veto the President conceded, “I understand the desire to eliminate the use of a procedure that appears inhumane” (Weekly. Vol. 32 #15 646). Finally, President Clinton proposed that he would have signed H.R. 1833 if it were amended to add an exception for serious health consequences. This type of amendment, according to Clinton, “would strike a proper balance” (Weekly. Vol. 32 #15 646). Did the Republicans in Congress make a mistake in completely rejecting the amendments suggested by Pat Schroeder and others? Yes, the language in many of the rejected amendments may have been acceptable to Clinton since they raised the woman’s health as an exception. Instead, Congress refused to take a more moderate stance on the issue. Now, the question to be asked is “Will Congress be able to rally enough votes to override the veto, or has the President won this abortion battle?”

On September 19, 1996, the House voted 285-137 to override the veto. At this point, H.R. 1833 went to the Senate for a tougher test. The Senate had only a ten-vote margin when they approved it the first time, and finding the votes to make up the two-thirds majority could be quite a challenge for Senate supporters of the Partial Birth Abortion Ban Act. In order to override the veto the Senate must find 13 Senators willing to switch their votes in favor of the override. Senator Moynihan, D-NY, pledged to switch his vote to support the override, leaving 12 votes left to swing.

Regardless of lobbying efforts made to swing Senate votes to override the President’s veto, the Senate came up nine votes short of the two-thirds majority needed. Senators, Leahy D-VT, Nunn D-GA, and Spector R-PA changed their votes, voting for the override but that still wasn’t enough. In a tactical maneuver, Senate Majority Leader Trent Lott, R-Miss, initially voted for the override but at the last minute switched his vote. This move enabled Sen. Lott to use a Senate rule, which allows a motion to reconsider a vote, as long as, the motion is requested by a Senator on the prevailing side (Langdon 2766).

### **III. 1996 Election and the Partial-Birth Abortion Debate**

Senator Lott’s action reserving the right to move for reconsideration of H.R. 1833 left the debate over partial-birth abortion looming in a time just prior to the 1996 federal elections. The uncertainty over the future of the Partial Birth Abortion Ban Act made it a hot topic for the 1996 campaigns. Partial-birth abortion became a particularly “tricky issue” for Republican candidates in 1996 (Rubin 1185). “It hurts our party in national elections to be seen as intolerant and insensitive on abortion,” said Rep. Boehlert, R-NY (Rubin 1185). In an effort to not seem “intolerant and insensitive” the Republican National Committee maintained a “big tent” image, allowing for multiple views on abortion within the party. The “big tent” concept provided an out for moderate and female Republicans who disagreed with all or part of the historical pro-life platform of the Republican Party. Although the “big tent” concept kept the Republican Party from splitting over the issue of abortion, it created confusion for voters about the party platform.

The aspect of the 1996 elections, which played the most important role in continuing the partial-birth abortion debate, was the influence of PACs (Political Action

Committees). During the 1996 campaigns PACs backing women congressional candidates gained even more popularity and power than they had in the 1992 elections (1992 was considered the Year of the Woman in Congress because so many women were elected.). EMILY's List, was a pioneer for PACs backing women congressional candidates. EMILY's List trained and financed women candidates who favored abortion rights. Similar groups like EMILY's List quickly formed during the 1996 campaigns on both sides of abortion debate. This created a situation where candidates in 1996 were financially supported by abortion issue PACs. When the election was over, candidates helped by these groups were almost obligated to take action supporting the side of the debate that supported them during the campaign and election.

#### **IV. 1997 Partial-Birth Abortion Ban Act**

Following the 1996 election members of Congress moved quickly to pay off the PACs that helped them to win their election, and proposed another partial-birth abortion bill. On March 12, 1997, the House Judiciary Committee approved H.R. 929 after once again defeating a series of Democratic amendments. However, two amendments offered by Rep. Nadler, D-NY, were approved by voice vote. These amendments “would prohibit men who abuse or abandon their spouses from suing them for having these types of abortions” and would permit the procedure to be performed to save a woman whose life was endangered by the pregnancy itself (Carney 643). In this round of the partial-birth abortion debate, Republicans focused on the graphic details of the procedure and on the number of procedures performed each year. Republicans argued that “there are thousands of elective partial-birth abortions performed every year” (Carney 643). Abortion rights supporters on the other hand, said that only a few hundred partial-birth abortions are performed each year, and the majority of those involve cases where the woman's health is in danger. Like the Republican Leadership, President Clinton hadn't changed his mind since 1995 either. President Clinton still opposed a partial-birth abortion ban at if it did not include an exception to protect the health of the mother. As written, H.R. 929 only granted an exception if the mother's life was jeopardized.

Following the House Judiciary Committee's approval of H.R. 929, the House brought H.R. 1122, a bill identical to both the Senate companion bill S.6 and the 1995 Partial Birth Abortion Ban Act H.R.1833, into consideration. The night before the vote in the full House, Republican Leadership opted to replace H.R. 929 with H.R. 1122. H.R. 929 made concessions aimed at gaining support for the bill, however since H.R. 1122 is identical to S.6 House Leadership opted for the quicker route to the White House. Once again, did the Republican Leadership foil their chances of passing a partial-birth abortion ban because of their own stubbornness? On March 20, 1997, the House passed H.R. 1122 by a vote of 295-136. The act was then considered in the Senate.

In the Senate, there were a few main amendments to the 1997 Partial Birth Abortion Ban Act H.R. 1122 under consideration. The first is the Daschle substitute, sponsored by Sen. Daschle, D-SD. Daschle's amendment allows an exception if “the physician certifies that continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health” (Senate RPC 9). Daschle's amendment was not passed. The second amendment was the Feinstein/Boxer/Moseley-Braun Amendment. This amendment would prohibit abortions post viability. This amendment

also failed. The Republican Leadership argued that this amendment was pointless, since *Roe v. Wade* already provided for that.

Finally Senator Rick Santorum, R-PA, made several changes aimed at broadening support. Sen. Santorum clarified the definition of partial-birth abortion by redefining it as “one of several methods used after the first trimester of pregnancy” (Carey 2490). Sen. Santorum’s changes also clarified that doctors would be shielded from criminal penalties if the physical life threatening emergency forced them to perform the procedure. This provision held that the doctor could first seek a hearing before the state medical board. Sen. Santorum’s changes to the bill were the lone amendments passed, much to the dismay of abortion rights supporters like Rep. Nita Lowey, D-NY, who described the senates changes to H.R. 1122 as, “window dressing that provides cover to doctors while leaving women out in the cold” (Carey 2490). Nevertheless, the Senate passed H.R. 1122 with amendments on May 20, 1997, with a 64-36 vote. The Senate vote was only three votes shy of being veto-proof. The bill was then sent back to the House to gain approval of the changes and passed Oct. 8, 1997, with a 296-132 vote.

On October 10, 1997, Bill Clinton vetoed a version of the Partial Birth Abortion Ban Act for the second time during his time as President of the United States. Once again Clinton would not approve the legislation because it failed to make an exception “where use of this procedure is necessary to avoid serious health consequences” (Weekly. Vol. 33 #41 1545). Clinton further went on to state, “When Governor of Arkansas, I signed a bill into law that barred third-trimester abortions, with an appropriate exception for life or health. I would do so again, but only if the bill contains an exception for the rare cases where a woman faces death or serious injury” (Weekly. Vol. 33 #41 1545). The fact is, once again Congress could have gotten a partial-birth abortion act passed had the effort been bipartisan and had the Republicans been more willing the to compromise in order to get something passed. Clinton surely would have passed Sen. Daschle’s legislation, which included exceptions for “grievous injury”. Instead Congress is left having to rally votes to override a presidential veto again.

Once returned to the House, they voted to override the President’s veto by more than two-thirds majority on July 23, 1998. In an effort to maximize the impact of the veto override on the upcoming elections the Senate held off voting until Sept. 28, 1998. However, the Senate had not been able to swing the three votes needed to override the presidential veto of H.R. 1122, the 1997 Partial Birth Abortion Ban Act failed to become law.

## **V. Conclusion**

The ultimate failure of both the 1995 and 1997 Partial-Birth Abortion Ban Acts lead to many questions. Why didn’t the Republican Leadership in Congress compromise and accept language, which would have been readily approved by President Clinton? Initially, I believed the Republican Leadership’s reluctance to pass amendments, which had exceptions for the woman’s health, was strictly a matter of stubbornness, and an unwillingness to compromise on this Party policy.

Following our class discussion on this topic, it became clear that the Republican Leadership pushing these Partial-Birth Abortion Ban Acts were more focussed on keeping the issue alive than on actually passing a law. This conclusion seems clear to me, when you look at the fact that President Clinton repeatedly offered to pass the Ban if

an exception for the woman's health were included. By passing a ban with the health exception the Republican Leadership would have still been able to maintain their original legislative strategy of limiting abortion in every way possible. Instead of making a compromise, and passing a law, which would achieve the goal of limiting abortions, the Ban proponents repeatedly turned down compromises and the chance to pass the prospective law.

The Republican Leadership pushing the Partial-Birth Abortion Ban Act then used the issue against their opponents, charging that opponents of the Act were for the murders of thousands of innocent children. The publicity over these changes was just what the Republican Leadership needed to maintain support from pro-life PACs. If a law is passed and the debate ends the financial support from these PACs would eventually end also. As a result the Republican Leadership in Congress keeps pushing the issue with little concern for passing a law.

Since the 1997 Partial-Birth Abortion Ban Act, partial-birth abortion opponents have not quit on the abortion issue. First of all, Congress used the encouragement of state regulation, as an alternative to regulating partial-birth abortion. By August of 1998 over 27 states have passed state partial-birth abortion acts. The new interest among the states in partial-birth abortion bans and the up-coming 2000 elections may have helped encourage Congress to try the Partial Birth Abortion Ban Act again in 1999. On April 29, 1999 Sen. Santorum sponsored S. 928, the 1999 Partial Birth Abortion Act. The bill is almost identical to the prior two and has been referred to the Committee on the Judiciary. This just goes to show that the fight isn't over yet. So long as the issue is more important than the law partial-birth abortion will be debated.

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