

7. NARAL's report also describes a flurry of pro-life legislative activity at the state level. Fifty-eight pro-life measures passed in 2005 alone, of the 614 pro-life measures considered that year. Because of this, NARAL gave the nation a grade of D-minus in protecting "reproductive rights."
8. In the past two years, many pro-choice pundits and legal scholars have published scathing analyses of *Roe v. Wade's* legal and political deficiencies. They now recommend that abortion be regulated at the state level, as it was before the Supreme Court's wrenching it away in 1973.¹
9. A growing number of federal judges are openly criticizing the Supreme Court's abortion jurisprudence for, among other things, unclear and inconsistent standards which often contradict the standards applied in other legal contexts.²
10. Abortion supporters have long urged Senators to impose a "litmus test" on judicial nominees, requiring that they demonstrate whole-hearted allegiance to *Roe v. Wade*. But Americans now strongly disagree with such a litmus test and oppose using a filibuster to keep qualified nominees who are not pro-abortion off the bench.

The Prospects of Banning Partial-Birth Abortion Nationwide

The Supreme Court's 2000 decision in *Stenberg v. Carhart* found Nebraska's partial-birth abortion ban unconstitutional, with the result that state bans in 29 other states were voided. Three federal district courts later found the *federal* Partial-Birth Abortion Ban Act of 2003 unconstitutional on the basis of *Stenberg*. Three federal appellate courts have agreed. While no one can predict Supreme Court rulings, particularly in the abortion area, there is reason to hope that the Supreme Court will *uphold* the federal ban on partial-birth abortion when it hears the case of *Gonzalez v. Carhart* this fall. Here's why.

First, the abortion procedure is defined in a more precise and limited way in the federal ban. The federal ban prohibits killing the infant after he or she

is delivered "substantially *outside* the mother's body at specified anatomical points." There can be no confusion between this procedure and any other abortion method; it is as close to infanticide as it can be.

Second, neither *Roe v. Wade* nor the 1992 decision which affirmed and modified it, *Planned Parenthood v. Casey*, provides Constitutional protection for killing a child who is substantially outside his or her mother's body.

Third, when Congress enacted the federal partial-birth abortion ban, it made specific factual findings. Eight years of Congressional hearings and debate demonstrated that partial-birth abortion "is never medically necessary" to preserve the mother's health and, in fact, "poses significant health risks" to women.

The Toppling of *Roe*?

Partial-birth abortion has not only exposed the depravity of late-term abortion and its similarity to infanticide. It has also exposed flaws in our legal system which have prevented the American people from stopping this appalling practice. These flaws have prevented the country from protecting unborn children consistent with the Constitution and with the moral aspirations of the American people, guided by the self-evident truths in our Declaration of Independence. We can hope that the Supreme Court will review *Gonzales v. Carhart* with minds attuned to the Constitution, and hearts open to the truth about human life.

¹ See www.usccb.org/prolife/issues/abortion/roevwade/index.shtml.

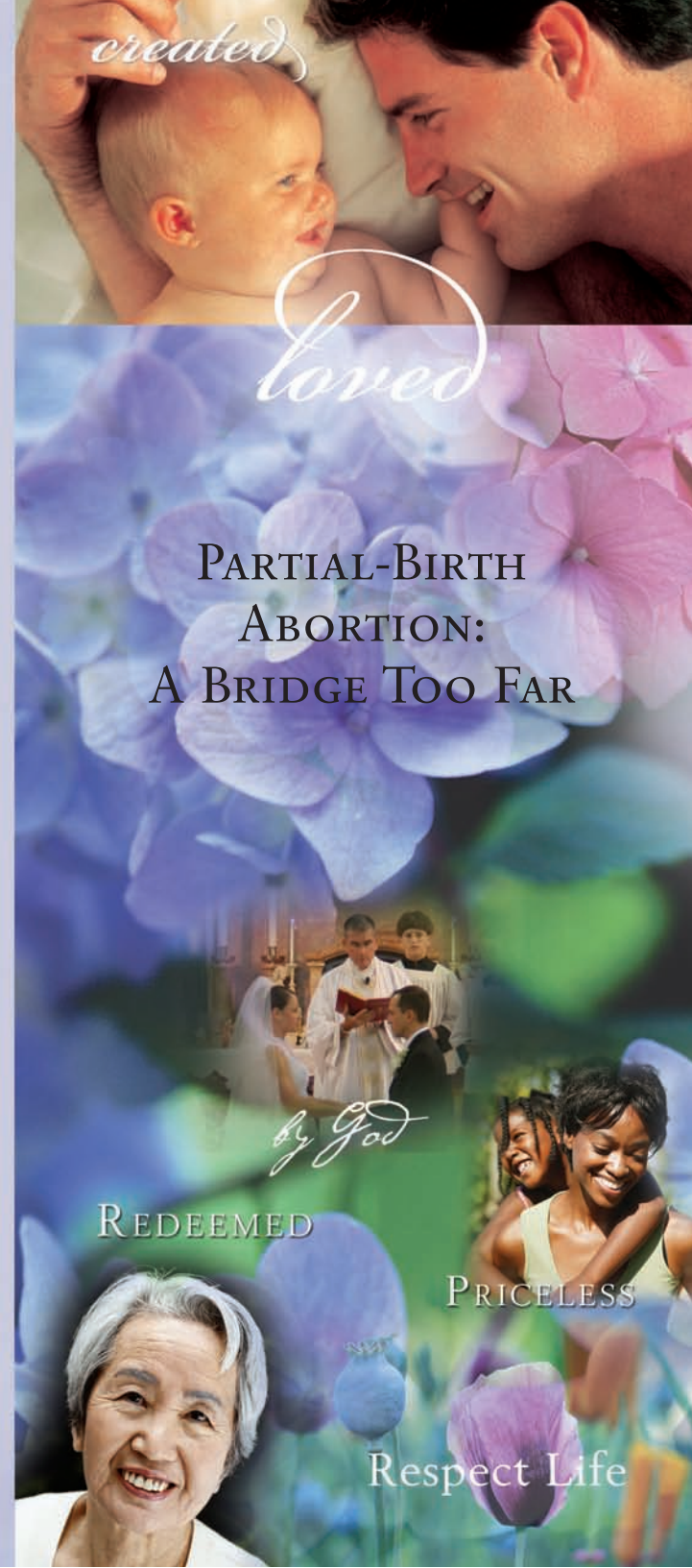
² *Ibid.*

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In 1992, Martin Haskell, MD presented a paper called “Dilation and Extraction for Late Second Trimester Abortion” at a National Abortion Federation (NAF) seminar. There he explained the “D&X” abortion method he “routinely” used to kill unborn children at 20- to 24-weeks’ gestational age (and sometimes through 26 weeks). In March 1996, in riveting eyewitness testimony to Congress, a nurse gave “partial-birth abortion” (as it came to be known) a face – specifically the “most perfect angelic face” of a baby boy at 26 1/2 weeks’ gestational age. Dr. Haskell had delivered the boy alive, feet-first, up to his neck, then stuck scissors into the base of his skull, inserted a suction tube and vacuumed out his brain.

The abortion industry’s defense of this grotesque procedure brings to mind the disastrous Allied attempt to break through German lines at Arnhem. It was the Nazis’ last victory on the Western front, resulting in 18,000 Allied casualties. Shortly before the operation, an Army deputy commander had told Field Marshall Montgomery: “I think we may be going a bridge too far.”

Partial-birth abortion is undoubtedly the “bridge too far” for the abortion industry. And while Montgomery’s miscalculation of Nazi strength did not change the outcome of World War II, the defense of partial-birth abortion is already undermining the regime established by the U.S. Supreme Court in *Roe v. Wade*. Ultimately, partial-birth abortion may be *Roe*’s undoing.

Murder Most Foul, or Only as Foul as Other Abortion Methods?

Some consider partial-birth abortion akin to infanticide. In philosophical terms, it is the *reductio ad absurdum* of the premise that a woman has a Constitutional right to have a doctor kill her offspring for economic or social reasons at the earliest stage of pregnancy. But some judges (including two on the Supreme Court) have *defended* partial-birth abortion on the ground that there is no moral or logical difference

between it and the alternative, equally gruesome second-trimester abortion method of dismembering a child in the womb and removing his body parts piecemeal.

Doctors who perform late-term abortions have also made their view clear. For them, the difference between killing a partially-born child and one who is fully delivered is a legal technicality.

Thanks to eight years of hearings and debates in Congress, pro-life educational efforts, and the proliferation of alternative news sources, particularly the Internet, Americans did learn about partial-birth abortions, and over 70% want to ban them. Dr. Haskell’s 1992 presentation has had far-reaching consequences, including the following.

Ten Consequences of Partial-Birth Abortion

1. At least one wire service, one major polling company and a number of major newspapers still misrepresent *Roe* as legalizing abortion only “in the first three months of pregnancy.” So for many Americans, the fact that abortions are being done in the second and third trimesters of pregnancy, and are legal for any reason throughout pregnancy, came as shocking news.
2. The gruesome particulars of partial-birth abortion shifted the focus of the public debate away from the sometimes difficult social and economic circumstances women may face due to an unplanned pregnancy, toward the act itself. With the growing use of ultrasound, many Americans began to *see* the child. The child’s obvious humanity changed the debate from a woman’s “right to choose” to the question: How can any circumstances a pregnant woman may face justify killing her child?
3. Nationwide polls have recorded a seismic shift toward pro-life positions. From 1991 to 1995, polls showed that 32% of Americans, on average, favored unrestricted abortion. In mid-

1996, as public knowledge of partial-birth abortion spread, such support dropped to 25%. In an April 2005 poll by the polling company, inc.TM which offered six possible views on abortion’s legality, only 10% said abortion should be “legal any time, for any reason.” That compared to 17% who responded “never legal,” 14% who said “only legal when the mother’s life is in danger,” and 31% who would permit abortion only when the mother’s life is at risk and in cases of rape and incest.

4. Initially, some journalists obligingly reported that the partial-birth abortion procedure was extremely rare and performed only in cases of severe fetal anomalies or for serious maternal health reasons. However, publications like *American Medical News* and *The [Bergen County] Record* did their own research, and discovered that thousands of partial-birth abortions were being done annually, primarily on healthy mothers and healthy babies. Americans began to realize that biased or lazy journalists had not given them the full truth about abortion in general.
5. The strong public reaction against partial-birth abortion resulted in the enactment of laws banning the procedure in 30 states between 1996 and 2000. Congressional efforts to ban partial-birth abortion nationwide were stymied by two vetoes by President Clinton and, in June 2000, by the Supreme Court when it declared Nebraska’s law unconstitutional. Americans saw how some in government can disregard and thwart the will of the people on this issue.
6. Partial-birth abortion has also had a probable influence on elections. NARAL Pro-Choice America (NARAL), in its 2006 report on reproductive rights, identifies twenty-four states as having pro-life legislatures, nineteen of which also have a pro-life governor; the report states that nine states have a majority pro-choice legislature, and only four of them also have a pro-choice governor.