

AAPLOG – AMERICAN ASSN OF PRO-LIFE OB/GYNS

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THE PARTIAL BIRTH ABORTION BAN ACT OF 2003

THIS PAPER WILL HELP YOU MAKE SENSE OF THE LEGAL STATUS OF THE BAN

You will remember that in 1996 and 1997, Congress enacted prohibitions on partial-birth abortions. President Clinton vetoed both laws. In 2003, Congress enacted, and President George W. Bush signed, the Partial-Birth Abortion Ban Act of 2003. However, the Partial-Birth Abortion Ban Act of 2003 has never gone into effect. It was challenged in the United States District Court of Appeals for the Districts of Nebraska, San Francisco and New York. All three Federal Circuit Courts struck down the Partial-Birth Abortion Ban Act of 2003 as unconstitutional. The language is very complex, but in essence the grounds for the courts' decision concerned the lack of a "health of the mother" exception. To be sure, the Act allows Partial Birth Abortion to save the "life of the mother." It is common knowledge that the "health of the mother" exception provides a huge and unenforceable loophole that basically negates the legislation. Additionally, the 8th Circuit Court found the Ban Act "imposed an undue burden on the right to an abortion", since (they opined) it would outlaw the most common late term abortion procedure.

The United States Government has asked the U.S. Supreme Court to overturn the lower Federal District Courts decisions in Nebraska and San Francisco. If these decisions are overturned, the Partial-Birth Abortion Ban Act of 2003 would be enforced as the law of the land in the United States. The United States Supreme Court has agreed to hear the case against the Partial Birth Abortion Ban Act of 2003, with a judgment expected in early 2007.

AAPLOG disagrees with the reasoning and conclusions of the Circuit Courts which struck the law down. In preparation for this Supreme Court hearing, AAPLOG, with the legal help of Americans United for Life, has prepared 2 separate "Friend of the Court" Amicus Briefs, one for each of the two cases. Our arguments are simple to understand, medical in nature, and not obscured in legalese. As a doctor, you will be able to easily understand and appreciate our line of reasoning as we ask the U.S. Supreme Court to reverse the Circuit Court judgments, and allow the Ban to go into effect. You will find the Summary of Argument for each brief to be very enlightening as you seek to understand the basic issues. (stream of thought in **bold print**)

Gonzales vs Carhart (8th Circuit, Nebraska)

SUMMARY OF ARGUMENT

This brief summarizes the record testimony in the Nebraska, New York, and San Francisco cases challenging the Partial Birth Abortion Ban Act of 2003 and demonstrates that "partial-birth abortion" as defined by the Act (hereinafter D&X) is not necessary for any maternal or fetal condition. There is no reliable evidence that any maternal or fetal medical condition requires the use of D&X or that D&X is safer than existing procedures. In contrast, there is substantial and reliable evidence that there are well-established alternatives to D&X (namely, dilation & evacuation (D&E) and medical induction). Hence, there is no reliable evidence that a prohibition on D&X will increase medical risk to any woman. Accordingly, the Act's prohibition of D&X creates no "substantial obstacle" and thus no undue burden under *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

Gonzales vs Planned Parenthood Federation of America (9th Circuit, California)

Summary of Argument

This brief critically examines the medical testimony presented to the Northern District of California in *Planned Parenthood v. Ashcroft*, 320 F.Supp.2d 957 (N.D. Cal. 2004), and referenced by the Ninth Circuit in *Planned Parenthood v. Gonzales*, 435 F.3d 1163 (9th Cir. 2006). As demonstrated below, the **evidence presented to the district court revealed that D&X is not the “safest medical option” and that D&X is never “medically necessary” for maternal medical conditions or fetal anomalies.** Hence, there is no reliable evidence that a prohibition on D&X will increase medical risk to any woman. Accordingly, the Partial-Birth Abortion Ban **Act’s prohibition of D&X creates no “substantial obstacle” and thus no undue burden** under *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).⁵

The AAPLOG conclusion, as stated in our Gonzalez vs Carhart Brief: The ACOG Policy Statement has no basis in empirical evidence and is not reliable.