

A Side-by-Side Analysis of the Nebraska Abortion Ban and the Federal Abortion Ban

In 2000 the Supreme Court ruled in *Stenberg v. Carhart* that a Nebraska statute banning so-called “partial-birth” abortion was unconstitutional for two independent reasons: the statute lacked the necessary exception for preserving the health of the woman, and the definition of the targeted procedure was so vague as to possibly proscribe other abortion procedures, thus placing an “undue burden on a woman’s right to make an abortion decision.”

The Federal Abortion Ban passed by Congress and signed by President Bush in 2003 is similarly unconstitutional.

	Unconstitutional Nebraska Statute § 28-328	Supreme Court Rulings	Federal Abortion Ban Enacted in 2003	Analysis
Health Exception	Contained no exception for preserving the health of the woman.	<p>“...Consequently, the governing standard requires an exception ‘where it is necessary, in appropriate medical judgment for the preservation of the health of the mother’ for this Court has made clear that a State may promote but not endanger a woman’s health when it regulates the methods of abortion.” <i>Stenberg v. Carhart</i>, 530 U.S. 914 at 931 (2000) (quoting <i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i>, 505 U.S. 833 at 879) (1992)</p> <p>“Since the law requires a health exception in order to validate even a postviability abortion regulation, it at a minimum requires the same in respect to previability regulation.” <i>Carhart</i> at 930</p>	Contains no exception for preserving the health of the woman.	While the Supreme Court has ruled a health exception necessary to make the legislation constitutional, the authors of the Federal Abortion Ban did not include an exception to preserve a woman’s health. Instead, they included 15 pages of deceptive “findings” declaring Congressional findings of fact superior to judicial findings of fact, asserting that Congress should simply ignore <i>Carhart</i>. In so doing, the law’s authors recognized that the omission of a health exception makes the bill unconstitutional under <i>Carhart</i>.
Definition of the targeted procedures	“...deliberately and intentionally delivering into the vagina a living unborn child, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child.”	“...using this law some present prosecutors and future Attorneys General may choose to pursue physicians who use D&E procedures, the most commonly used method for performing previability second trimester abortions. All those who perform abortion procedures using that method must fear prosecution, conviction, and imprisonment. The result is an undue burden upon a woman’s right to make an abortion decision.” <i>Carhart</i> at 945-946.	“...deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother...for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.” § 1531 (b)(1)(A)	The Supreme Court struck down the Nebraska statute as unconstitutionally vague, since the definition in the statute would have prohibited the D&E abortion procedure. Similarly, the Federal Abortion Ban is vague and fails to exclude the D&E procedure from its prohibitions. It thus places an undue burden on a woman’s right to choose to have an abortion and is unconstitutional.