

Partial birth abortion is a gruesome act of infanticide. Sixty to seventy-five percent of Americans believe it should be illegal and banned. So Congress passed a law that banned the procedure and the United States Supreme Court upheld the law. This is great news.

But some of our state legislators would have us believe that this law is enough to ensure that no partial-birth abortion could be performed in Tennessee. The reason, they say, is that the federal law applies in Tennessee. That is true – to an extent. But now here's what they fail to tell you.

We all recall from our high school civics class that the federal government has limited powers. It only has the powers specifically stated in the US Constitution. One power Congress has is to regulate interstate and foreign commerce. That is why the federal ban specifically says it only applies when the partial-birth abortion was "in or affecting interstate or foreign commerce." So, while the federal law is good and does apply in every state, not all partial-birth abortions that could be performed in Tennessee will necessarily involve interstate or foreign commerce. In fact, no court has yet to hold that any partial-birth abortion actually involves interstate commerce.

So, a federal court could determine that the circumstances involving a particular partial-birth abortion in Tennessee does not involve interstate commerce. If so, the federal law would not apply. (Consider the very real possibility of a Tennessee doctor performing a partial-birth abortion on a Tennessee resident and the difficulty of proving "interstate commerce.") So, for partial-birth abortion to be illegal in all instances, Tennessee would have to have its own law banning partial-birth abortion. That is why at least three other states are now trying to pass or have recently passed their own laws against partial-birth abortion. But it is also important for Tennessee to have its own law so that our local District Attorneys can prosecute a violation of the law and Tennesseans would not have to depend on whether a federal prosecutor, a political appointee, would prosecute a violation of the federal ban. Federal prosecutors often follow the political leanings of the President who appoints him or her.

But Tennessee does not have its own law banning partial-birth abortion. Worse yet, our state Attorney General recently issued an official opinion saying that if our legislature tried to ban the procedure the law would be "constitutionally suspect" under Tennessee's Constitution. That's right. Tennessee's state Constitution provides a greater right to abortion than is provided under the U.S. Constitution. Our state Supreme Court "found" this right to abortion in our state constitution back in 2000 when it also struck down our informed consent and waiting period laws.

The *only* way to make sure our legislature can constitutionally ban partial-birth abortion and pass other common sense laws about abortion is for Tennesseans to be able to vote on a Constitutional amendment that would once again make our Constitution neutral on the issue of abortion, as was the case for 130 years until the 2000 state Supreme Court ruling.

Senate Joint Resolution (SJR) 127 would do just that. But for a fourth time in the last seven years, the Resolution has been killed by six Representatives in a House Subcommittee. But, under House rules, a vote of two-thirds of our Representatives can bring the Resolution to the floor for a full debate and vote. But the House must act in the next week or two or we cannot vote on the amendment until 2014 at the earliest.

But, beware, pro-abortion legislators are now telling citizens that Tennessee already has a law banning partial-birth abortion. It is true that in 1997, Tennessee passed a law banning partial-birth abortion, but that law is Constitutionally unenforceable because of a decision by the United States Supreme Court in 2000. An unenforceable law is no law.

The bottom line is Tennessee has no enforceable law banning partial-birth abortion and unless the House passes SJR 127 very soon so that we can vote to amend our state constitution, we can be nearly certain that a ban would not be valid under Tennessee's constitution. It is imperative that state Representatives support every effort to bring it before the full House for a fair up and down vote. The majority of the members of the House support SJR 127 and they deserve to be heard on a matter as important as life.