



## Legislative Bulletin.....June 18, 2013

### Contents:

H.R. 1797 — Pain-Capable Unborn Child Protection Act

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### **H.R. 1797 Pain-Capable Unborn Child Protection Act — Franks (R-AZ)**

**Order of Business:** The bill is [scheduled](#) to be considered on June 18, 2013, subject to a closed rule. There will be one hour of general debate divided equally and controlled by the ranking minority member and the chair of the Committee on the Judiciary. The Rule provides for one motion to recommit with or without instructions. The bill will be managed on the floor by Representatives Foxx (R-NC) and Slaughter (D-NY). More detailed information regarding the rule can be viewed [here](#).

**Major Changes Since the Last Time This Legislation Was Before the House:** [H.R. 3803](#), the District of Columbia Pain-Capable Unborn Child Protection Act, was introduced in the 112<sup>th</sup> Congress by Rep. Franks (R-AZ). It had 222 cosponsors. In the 112<sup>th</sup> Congress it was referred to the House Judiciary; House Oversight and Government Reform. The House Committee on Oversight and Government Reform discharged the bill and the House Committee on the Judiciary favorably reported the bill. On June 31, 2012, H.R. 3803 was considered under a motion to suspend the rules and pass the bill, which requires two-thirds of the Members to support the bill. The vote was 220-154 ([Roll No. 539](#)), which failed to reach the two-thirds required to pass the bill. *Unlike H.R. 3803, the current version, H.R. 1797, is applicable to the entire United States and also contains an exemption that would allow abortions if the pregnancy is the result of incest against a minor or rape and the rape or incest has been previously reported to law enforcement.*

**Summary:** [H.R. 1797](#) prohibits abortions 20 weeks after fertilization and applies nationwide. In addition, the bill contains exemptions for pregnancies that are the result of rape or incest against a minor if the rape or incest were also previously reported to law enforcement or to an appropriate government agency authorized to act on reports of child neglect or abuse. The bill also contains an exemption if the abortion is “necessary to save the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, but not including psychological or emotional conditions.”

**Additional Background:** H.R. 1797 has 184 cosponsors. The Partial Birth Abortion Ban of 2003 only prohibited a specific type of abortion. This bill prohibits *all* types of abortions, with certain exceptions, 20 weeks after fertilization. In addition, this bill does not prohibit access to abortions up to 20 weeks after fertilization. When H.R. 1797 was introduced on April 26, 2013, it was only applicable to the District of Columbia and did not contain an exemption for pregnancies that were the result of rape or incest against a minor. The bill is in response to scientific evidence that shows that unborn children beyond 20 weeks of gestation are capable of feeling pain. Section 11 of the [bill](#) states that “there is substantial medical evidence that an unborn child is capable of experiencing pain at least by 20 weeks after fertilization if not earlier.” This bill was expanded nationwide in the wake of criminal trial of Kermit Gosnell. House Committee on the Judiciary Chairman Goodlatte’s issued a [statement](#) regarding H.R. 1797 that included information about recent scientific developments as well as the decision to expand the bill nationwide in wake of the trial of Kermit Gosnell.

**Committee Action:** The House Committee on the Judiciary Subcommittee on the Constitution and Civil Justice held a [markup](#) on H.R. 1797 on June 4, 2013. A transcript of the markup can be viewed [here](#). During the markup, an [amendment](#) was offered by Rep. Franks, the bill’s sponsor. The amendment changed the bill so that it would apply nationwide, instead of just to the District of Columbia. The bill was reported favorably by the Subcommittee by a [vote](#) of 6-4. On June 12, 2013, the Full Committee on the Judiciary favorably held a markup on the bill. During the markup Rep. Conyers (D-MI) offered an [amendment](#) to provide an exemption for pregnancies that were the result of rape or incest. Rep. Conyer’s amendment was defeated by a [vote](#) of 13-17. On June 12, 2013, the full House Committee on the Judiciary held a [markup](#) on the bill, as reported by the Subcommittee on the Constitution and Civil Justice. Rep. Conyers (D-MI) offered an [amendment](#) that failed by a [vote](#) of 13-17. Rep. Nadler (D-NY), Rep. DelBene (D-WA), and Rep. Watt (D-NC) also offered an [amendment](#) that was defeated by a [vote](#) of 16-20. The full Committee on the Judiciary favorably reported H.R. 1797 by a [vote](#) of 20-12. A transcript of the full Committee markup can be viewed [here](#).

**Administration Position:** On Monday, June 17, 2013, the Executive Office of the President issued a [Statement of Administration Policy \(SAP\)](#) in opposition to H.R. 1797.

**Cost to Taxpayers:** At time of press no Congressional Budget Office (CBO) cost estimate was available.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Contain Any Federal Encroachment into State or Local Authority in Potential Violation of the 10<sup>th</sup> Amendment?:** No.

**Does the Bill Delegate Any Legislative Authority to the Executive Branch?:** No.

**Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** No.

**Constitutional Authority:** According to the sponsor, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, clause 17: `The Congress shall have Power . . . to exercise exclusive legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of the particular states, and the Acceptance of Congress, become the seat of government of the United States.” Congressman Franks’ statement in the Congressional Record can be viewed [here](#). Section 14 of the [bill](#), as amended, contains additional statements of congressional authority: “(14) Congress has authority to extend protection to pain-capable unborn children under the Supreme Court’s Commerce Clause precedents and under the Constitution’s grants of powers to Congress under the Equal Protection, Due Process, and Enforcement Clauses of the Fourteenth Amendment.”

**Outside Organizations In Support:**

**Pro-Life Groups Scoring in Favor:**

- American’s United for Life
- Concerned Women for America
- Family Research Council
- National Right to Life Committee (NRLC)

**Pro-Life Groups Supporting:**

- Susan B. Anthony List
- The Ethics and Religious Liberty Commission of the Southern Baptists Convention

**Note:** RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.

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