ally "deliver[ed] . . . [so that] in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother." [615] The Court distinguished this federal statute from the Nebraska statute that it had struck down in *Stenberg*, holding that the federal statute applied only to the intentional performance of the less-common "intact dilation and excavation." The Court found that the federal statute was not unconstitutionally vague because it provided "anatomical landmarks" that provided doctors with a reasonable opportunity to know what conduct it prohibited.[616] Further, the scienter requirement (that delivery of the fetus to these landmarks before fetal demise be intentional) was found to alleviate vagueness concerns.[617]

In a departure from the reasoning of *Stenberg*, the Court held that the failure of the federal statute to provide a health exception [618] was justified by congressional findings that such a procedure was not necessary to protect the health of a mother. Noting that the Court has given "state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty," the Court held that, at least in the context of a facial challenge, such an exception was not needed where "[t]here is documented medical disagreement whether the Act's prohibition would ever impose significant health risks on women." [619] The Court did, however, leave open the possibility that as-applied challenges could still be made in individual cases.[620]

As in *Stenberg*, the prohibition considered in *Gonzales* extended to the performance of an abortion before the fetus was viable, thus directly raising the question of whether the statute imposed an "undue burden" on the right to obtain an abortion. Unlike the statute in *Stenberg*, however, the ban in *Gonzales* was limited to the far less common "intact dilation and excavation" procedure, and consequently did not impose the same burden as the Nebraska

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[615] 18 U.S.C. § 1531(b)(1)(A). The penalty imposed on a physician for a violation of the statute was fines and/or imprisonment for not more than 2 years. In addition, the physician could be subject to a civil suit by the father (or maternal grandparents, where the mother is a minor) for money damages for all injuries, psychological and physical, occasioned by the violation of this section, and statutory damages equal to three times the cost of the partial-birth abortion.

[616] 550 U.S. at 150.

[617] 550 U.S. at 148–150.

[618] As in *Stenberg*, the statute provided an exception for threats to the life of a woman.

[619] 550 U.S. at 162. Arguably, this holding overruled *Stenberg* insofar as *Stenberg* had allowed a facial challenge to the failure of Nebraska to provide a health exception to its prohibition on intact dilation and excavation abortions. 530 U.S. at 929–38.

[620] 550 U.S. at 168.