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Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Phone No. (Partial) (1 page)	nd	P6/b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Elena Kagan
OA/Box Number: 14374

FOLDER TITLE:

Drafts [1]

2009-1006-F

kc135

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker

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[001]

P6/(b)(6)
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MILITARY
PERSONNEL

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

03-Jun-1996 05:54pm

TO: Jeremy D. Benami
FROM: Jennifer L. Klein
 Domestic Policy Council

SUBJECT: Op Ed

I realized I have only one comment on the op ed. In the 5th paragraph, first to second line, I would delete "such women" and go straight to "for the small . . ." That way we avoid any concern that these women have anything in their medical histories that a bill the President would sign would not cover.

DRAFT

150 word version of letter to the Editor

commonly referred to as partial birth abortion.

I write to set the record straight regarding President Clinton's position on H.R. 1833, legislation banning a certain abortion procedure. ~~President Clinton is against late-term abortions. He has long opposed them except where necessary to protect the life or health of the mother.~~

the procedure is necessary to protect a woman against grave harm

allow use of the procedure

The President vetoed HR 1833 because it did not ~~provide an exception~~ in those rare and compelling cases when a doctor is sure that the woman faces real, grave risks to her health. The President has consistently said that he would sign legislation banning this procedure if Congress would add a limited exemption ~~where the use of the procedure is necessary to avoid serious health consequences.~~

covering these cases.

~~The President does not support an exception that can be unreasonably stretched to cover, for instance, emotional stress, financial hardship or inconvenience. He is convinced that Congress, working with his administration can produce a bill that appropriately limits the exception to the small number of cases where the health risks facing a woman are grave and real. He would sign such a bill the moment it reaches his desk.~~

Sincerely,

I write to set the record straight regarding President Clinton's position on HR 1833, legislation banning a certain abortion procedure commonly referred to as partial-birth abortion.

The President vetoed HR 1833 for one reason - it did not allow use of the procedure in those rare and compelling cases when the procedure is necessary to protect a woman against grave harm to her health.

ET ~~The President could not accept a law that would force women to endure ^{grave} serious risks to their health, including the ability to have children in the future.~~

The President has said repeatedly that he would sign legislation banning this procedure if Congress, **DRAFT** in accord with both the Constitution and the American people, passed a law that would allow the use of the procedure in those rare and compelling cases where

The problem is that

selection of the procedure is necessary to avert serious ~~inconveniences~~ ^{harm} to a woman's health. Congress has refused to present the President with a bill containing such a tightly confined exception.

more interested in creating a political issue than solving a problem,

First, a word of background:

DRAFT

involves an issue as difficult -- indeed, painful -- as any ~~the~~ embroiling our citizens and public officials. commonly referred to as partial birth abortion,

500 word version of op-ed

~~Experts in conflict resolution tell you that the first step to reconciling differences is listening to and understanding the position of the other side.~~ The ongoing debate over H.R. 1833, legislation to ban a certain abortion procedure, goes to the heart of one of our nation's most sensitive and troubling social issues. If the goal of those engaged in the debate is to solve a truly human problem rather than create a political issue, ~~all sides of the discussion~~ need to understand what the other ~~is~~ saying. Unfortunately, President Clinton's clear, principled position on this legislation has been seriously misrepresented and misunderstood.

makes it sound like just part of the abortion war

President Clinton ~~has~~ long opposed late-term abortions, except where necessary to protect the life or health of the mother. As Governor of Arkansas, he signed ~~a bill into law~~ that barred third trimester abortions, with an appropriate exception for life or health. He would sign a bill to do the same thing at the federal level if ~~presented to him now~~

The particular procedure at issue in H.R. 1833 posed ~~a~~ difficult and disturbing issue for the President, ~~one~~ which he studied and prayed about for many months. The President ultimately came to believe that this rarely used procedure is justifiable as a last resort when doctors judge it necessary to save a woman's life or avert serious consequences to her health.

Last month, ~~and~~ the President was joined at the White House by five women who desperately wanted to have their babies and were devastated to learn that their babies had fatal conditions which would not let them live. These women wanted anything other than an abortion, but were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to bear children.

The President vetoed HR 1833 because it did not provide an exception for the small number of compelling cases, such as those women when a doctor is sure that the woman ~~faces real, grave risks to her health.~~ The President has consistently said that he would sign legislation banning this procedure if Congress would add a limited exemption where the use of the procedure is necessary to avoid serious health consequences, ~~giving such cons.~~ ~~where the procedure is necessary to protect life or protect against serious harm to health~~

~~Let me make clear that the~~ President does not contend that the procedure is always used in circumstances that meet his standard -- namely, that the procedure must be necessary to prevent death or serious adverse health consequences. The procedure may well be used in situations, where a woman's serious health interests are not at issue. ~~The President does not support such uses, does not defend them, and would sign appropriate legislation banning them.~~ But

Many who support this bill believe that any health exception is untenable. They contend that a "health" exception could be stretched to cover most anything -- for example, youth, emotional stress, financial hardship or inconvenience. The President does not support that kind of exception. ~~share this view.~~ It is not impossible -- it is not beyond the ingenuity of Congress working with this Administration -- to draft a bill making absolutely clear that the procedure may be used only in cases where a woman risks death or serious damage to her health, and in no other case.

For them, this was not about choice. It was about choosing against having a child.

DRAFT

President Clinton supports ~~an exception that takes effect only where a woman faces~~²
~~real, serious adverse health consequences.~~ He has implored Congress for months to work ^{send him}
~~with his administration to produce~~ a bill that ~~appropriately limits the exception to the small~~
~~number of cases where the health risks facing a woman are grave and real.~~ In the interests
of all who face this tragic situation, the President's offer to Congress remains on the table:
Work with him to produce a bill that provides ~~such a limited~~^(this) exception, and he will sign it
the moment it reaches his desk.

contains such a carefully limited exception for serious harm to health.

DRAFT

EDITORIALS AGAINST HR 1833

1) Arkansas Democrat-Gazette 2/28/96

Joseph Efferson, Editorial

"Actions Betray Rhetoric"

- says President committed to "abortion-on-demand proponents"
- writes that hypocritical to claim to oppose abortion but support choice

2) Arkansas Democrat-Gazette, 4/17/96

Paul Greenberg, editorial

"Open Season on the Fetus"

-States that "There is no method of abortion, none, so abhorrent that it will be banned in the tasteful, modern neo-pagan America of A.D. 1996"

-Criticizes clause No. 943 (protecting the mother's health) saying, "In mod America, what sickness cannot be justified under the rubric of health?"

-Questions whether the number of 'partial birth' abortions performed each year is 500 or more, because "nobody seems to keep strict count."

3) Boston Herald, 3/29/96

editorial

- Claims the President has tried to ensure that abortions will be "unhampered, ubiquitous and government-funded."

4) Boston Herald, 4/12/96

editorial

- Asserts HB was "humane legislation" the President vetoed to pander to political left

- Says the President's objection for health reasons is "absurd," having a health exception would gut the measure.

- Suggests President has switched from pro-life governor to extremist pro-choice president.

5) The Cincinnati Enquirer, 4/14/96

editorial

"Horrific Veto"

- Says the "inhumane torture of an unborn child can never be rare enough."

- Implies President is ignoring pledge to try to make abortions more rare.

6) The Indianapolis Star, 4/28/96

editorial

"When Life is Denied"

- Asserts the President's veto goes against earlier promises not to support funding for abortions of viable fetuses.

- Wrongfully claims the President wants to support guaranteed abortion without limitation for any reason.

- Argues veto is a "surrender to a culture of death"

7) Los Angeles Times (Wash. Edition) 5/12/96

Helen Alvare (Nat. Conf. of Catholic Bishops), opinion

"The Eternity Within' -- Signed Away by a Pro-Abortion Veto"

- claims president chose to ignore what those who perform 'partial-birth' abortions say: most are "purely elective." Even those they call "non-elective," would be considered elective by most people."
- says Clinton used five woman he invited to veto as political pawns
- argues "preponderance of medical evidence" says this procedure is not needed to protect mother's health, President ignored this information

8) The Richmond Times Dispatch, 4/26/96

editorial

"Partial Truths"

- Claims no medical emergency exists that is helped by this procedure.
- Suggests that many of these late-term abortions are "purely elective" -- exceptions are so rare they should be discounted.
- States the only goal of the procedure is to "protect the death of the baby."
- Criticizes the President for defending his position with "half-truths"

9) The Richmond Times Dispatch, 3/27

editorial

"At Issue"

- Finds there is no reason at all for the President to veto the bill, protecting a "painful" and unneeded procedure.

10) Sun-Sentinel (Ft. Lauderdale), 4/8/96

Cal Thomas (L.A. Times Syndicate)

"President's Mind Made Up Even On Late Term Abortions"

- Claims the President supports "abortion on demand for any reason."
- Quotes Dayton doctor, saying that "'80 percent' of these procedures are 'purely elective.'"
- Says President will stick with abortion lobby, claiming he only pretends to wrestle with moral issues.

11) The Tampa Tribune, 4/12/96

"Clinton's Latest Loathsome Act"

- Asserts "procedure is not all that rare."
- Quotes same Dayton doctor that procedures are elective.
- "Mr. Clinton's claim that he vetoed the measure to protect women's health is false."
- Falsely claims operation is for legalizing the killing of fetuses who could otherwise survive, not for protecting women's health.

EDITORIALS IN RELIGIOUS PUBLICATIONS AGAINST HR 1833

1) America, 5/4/96
editorial

- Criticizes the President for listening to a narrow perspective, for not listening to moral qualms of dissenting pro-choice feminists, and for not addressing the problem of the courts' typically broad definition of 'health.'
- Warns that, "Clinton's veto will haunt him - especially among Catholic voters."

2) The Catholic Advocate, 5/9/96
Bishop James T. McHugh, editorial

- Wrongfully calls the President "committed to abortion under any circumstances."
- Says the President used women who have undergone procedure as "political pawns."
- Asserts President's veto not justified by medical evidence (says Congress based decision on medical testimony.)

3) Catholic New York, 5/9/96
Hermine Merz, letter

- Claims that the past four years have been a "slippery slope" into a "culture of death."
Wrongfully assumes the President wants 'health' to be broadly defined.

4) Catholic Standard 4/18/96
Richard Szczepanowski, editorial
"The Abortion President"

- Claims that the President has done everything to make abortion "as easy as... getting a tooth pulled."
- Falsely states that the President has done nothing to make abortion rare.
- Says veto endorses infanticide, going far beyond devotion to a woman's right to choose.

5) Catholic Standard, 4/18/96
James Cardinal Hickey

- Claims the President vetoed the will of the people, saying most "pro-choice" physicians cannot tolerate this procedure and most "pro-choice" Americans oppose it.
- Asserts the President has cast his lot with extremists in the abortion debate.
- Claims HR 1833 *is* constitutional, as "no court addressed the legality of killing a live, mostly delivered child."
- Urges readers to write to Maryland Senators in support of 'life.'

6) Catholic Universe Bulletin, 5/3/96
Roger Kostiha, letter
"On Clinton"

- Calls the President the most pro-death president in history.
- Says abortionists perform procedure for monetary profit and the President vetoed the bill for political profit.

John and Patricia Jemson
"On Partial Birth Abortions"

- Calls the President extremist, committed to the "cause of abortionists."

7) The Florida Catholic 4/26/96

Archbishop John Favalora, editorial

"President's Veto: Tragic Moment for Human Life"

- Misrepresents the President's position by asserting that the health exception is "tantamount to nullifying the law." The Archbishop states that 'health' is used in this country to justify abortion on demand.
- The Archbishop urges readers to write to the President to express their opposition to the veto and to their congressmen to urge them to override the President's veto.

8) The Florida Catholic, 4/26/96

Tracy Early, Opinion/Article

"Obstetrician: Partial-birth Abortions Never Needed"

- Details the position of Dr. James R. Jones, who says that the "partial-birth" abortion procedure is never needed.
- Says the intent of the procedure is not to save the life or health of the mother, but is fetal death.
- "In cases of special difficulty, obstetricians can always resort to Caesarean delivery"

9) The Long Island Catholic, 5/1/96

Msgr. James Lisante, editorial

- Says the President is endorsing infanticide.

10) Our Sunday Visitor, 5/12/96

Russell Shaw, Opinion

"The President's Veto and the Bishop's Priorities"

- Misrepresents the President by stating that his first political priority is "retaining the loyalty of his core constituency, which includes extreme pro-abortion feminists and their allies."

11) Pittsburgh Catholic, 5/10/96

Patrick J. Gallagher, opinion

- Claims the President's decision based on his belief that he already has the Catholic vote "wrapped up."
- Hopes the President's veto will be a wakeup call for elected representatives to make a commitment to the right to life.

12) Pittsburgh Catholic, 5/10/96,

editorial

- Wrongfully asserts the President is catering to "elites who can deliver dollars and votes." To call partial birth abortion compassion is "the final degradation of compassion."

13) Baptist New Mexican, No Date

Tom Strode

"Pro-Lifers Protest Clinton Veto"

- Calls partial-birth abortions "a gruesome, late-term abortion procedure"
- Quotes Southern Baptist Christian Life Commission President Richard Land as saying "The president's often-repeated excuse of the need for an exception for the mother's health is a discredited catch-all loophole which has been demonstrated to include any reason the mother so desires."

14) Baptist New Mexican, No Date

Editorial

"Ending the Senseless Slaughter"

- Said the President wanted "exceptions that would allow the procedure for just about any reason the mother so desired."
- Says dilation and extraction, "along with all the other horrible methods of taking the lives of pre-born human beings created in the image of God, is still legal and available to anyone who wants it."

15) Baptist New Mexican, No Date

Rick Bentley, letter

"Give Up Tax-Exempt Status to Speak Truth"

- says President's action is "blatant disregard of the Scriptures" relating to helpless children.

16) Western Recorder (KY) 4/30/96

"National Notes"

- The Lutheran Church, usually quite on policy issues, has criticized the veto as a devaluation of human life, echoing the criticism of the Vatican.

17) Western Recorder 4/9/96

Augusta Weisenberger, letter

"God have mercy"

- says the procedure has nothing to do with the life of the mother because the woman is already in the process of giving birth; the procedure is blatantly cruel and painful.

18) The Alabama Baptist 4/18/96,

update

"Land: Clinton 'crossed the line'"

- Richard Land, pres. of the Southern Baptist Christian Life Commission said veto shows President to be "pro-abortion," not only "pro-choice."

200 word version of letter to the Editor (revised)

I write to set the record straight regarding President Clinton's veto of H.R. 1833, legislation banning a certain abortion procedure referred to in the bill as partial-birth abortion.

The President has said that he considers this to be a disturbing procedure, and he opposes its use on an elective basis. However, he believes strongly that it should be available in the small number of compelling cases where its use, in the medical judgment of a woman's physician, is necessary to preserve her life or avert serious damage to her health.

The problem with the bill Congress passed is that it provides an exception only when a doctor believes that a woman's *life* is at risk. The President could not accept a law that fails to protect women from serious threats to their health, including the loss of ability to have children in the future.

The President has said repeatedly that he would sign legislation banning this procedure if it included a limited exception to prevent death or serious adverse health consequences. That common sense position would sharply restrict use of the procedure while preserving a doctor's option to use it the rare cases where it is truly necessary. If Congress were more interested in finding a solution than in creating a political issue, a fair bill could be swiftly drafted, passed and signed into law.

May 6, 1996

Religious Coalition for Reproductive Choice
1025 Vermont Ave., N.W. Suite 1130
Washington, D.C. 20005

Dear ___:

Thank you for your letter of April 29 concerning H.R. 1833, legislation banning a certain abortion procedure, commonly referred to in the press as partial birth abortion. As you know, in late March, Congress passed that bill and on April 10, I vetoed it because of its failure, in certain rare and compelling cases, to prevent serious threats to women's health.

My position on this bill has been widely misrepresented and misunderstood. Some, including those more interested in creating a political issue than in putting real, meaningful limits on the use of this procedure, have deliberately distorted my views. But I know that a great many people of good faith -- and of all faiths -- are sincerely perplexed about the veto. That is why I want to set forth as clearly as I can the genuine basis for my position.

Let me begin with a word of background. I am against late-term abortions and have long opposed them, except, as the Supreme Court requires, where necessary to protect the life or health of the mother. As Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health, and I would sign a bill to do the same thing at the federal level if it were presented to me.

The particular procedure aimed at in H.R. 1833 -- generally referred to by doctors as dilation and evacuation -- poses a most difficult and disturbing issue, one which I studied and prayed about for many months. Indeed, when I first heard a description of this procedure, I anticipated that I would support the bill. But after I studied the matter and learned more about it, I came to believe that this rarely used procedure is justifiable as a last resort when doctors judge it necessary to save a woman's life or to avert serious consequences to her health.

Last month, I was joined in the White House by five women who desperately wanted to have their babies and were devastated to learn that their babies had fatal conditions and would not live. These women wanted anything other than an abortion, but were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to bear children. These

women gave moving, powerful testimony. For them, this was not about choice. This was not about choosing against having a child. Their babies were certain to perish before, during or shortly after birth. The only question was how much grave damage they were going to suffer. Here is what one of them had to say:

"Our little boy had...hydrocephaly. All the doctors told us there was no hope. We asked about in utero surgery, about shunts to remove the fluid, but there was absolutely nothing we could do. I cannot express the pain we still feel. This was our precious little baby, and he was being taken from us before we even had him. This was not our choice, for not only was our son going to die, but the complications of the pregnancy put my health in danger, as well. If I carried to term, he might die in utero, and the resulting toxins could cause a hemorrhage and possibly a hysterectomy. The hydrocephaly also meant that a natural labor risked rupturing my cervix and my uterus."

Some have raised the question whether this procedure is ever most appropriate as a matter of medical practice. The best answer to this question comes from the medical community, which broadly supports the continued availability of this procedure in cases where a woman's serious health interests are at stake. In those rare cases, I believe the woman's doctors should have the ability to determine, in the best exercise of their medical judgment, that the procedure is indeed necessary.

The problem with H.R. 1833 is that it provides an exception to the ban on this procedure only when a doctor can be certain that a woman's life is at risk, but not when the doctor is sure that she faces real, grave risks to her health.

Let me be clear. I do not contend that this procedure, today, is always used in circumstances that meet my standard -- namely, that the procedure must be necessary to prevent death or serious adverse health consequences. The procedure may well be used in situations where a woman's serious health interests are not at issue. But I do not support such uses, I do not defend them, and I would sign appropriate legislation banning them.

At the same time, I cannot and will not countenance a ban on this procedure in those cases where it represents the best hope for a woman to avoid serious risks to her health. I recognize that there are those who believe it appropriate to force a woman to endure real, serious risks to her health -- including, sometimes, the loss of her ability to bear children -- in order to deliver a baby who is already dead or about to die. But I am not among them.

I also understand that many who support this bill believe that any health exception is untenable. In a letter sent to me on April 16 by our leading Catholic Cardinals, they contend that a "health" exception for the use of this procedure could be used to

cover most anything -- for example, youth, emotional stress, financial hardship or inconvenience.

That is not the kind of exception I support. I support an exception that takes effect *only* where a woman faces real, serious adverse health consequences. Those who oppose this procedure may wish to cite cases where fraudulent health reasons are relied upon as an excuse -- excuses I could never condone. But people of good faith must recognize that there are also cases where the health risks facing a woman are deadly serious and real. *It is in those cases that I believe an exception to the general ban on the procedure must be allowed.*

Further, I flatly reject the view of those who suggest that it is impossible to draft a bill imposing real, stringent limits on the use of this procedure -- a bill making absolutely clear that the procedure may be used only in cases where a woman risks death or serious damage to her health, and in no other case. I know that it is not beyond the ingenuity of Congress, working together with this Administration, to fashion such a bill.

Indeed, that is why I implored Congress, by letter dated February 28, to add a limited exemption for the small number of compelling cases where use of the procedure is necessary to avoid serious health consequences. Congress ignored my proposal and did so, I am afraid, because there are too many there who prefer creating a political issue to solving a human problem. But I reiterate my offer now: if Congress will work with me to produce a bill that meets the concerns outlined in this letter, I will sign it the moment it reaches my desk.

~~As I said at the outset of this letter,~~ I know that many people will continue to disagree with me about this issue. But they should all know the truth about where I stand: I do not support the use of this procedure on demand. I do not support the use of this procedure on the strength of mild or fraudulent health complaints. But I do believe that we cannot abandon women, like the women I spoke with, whose doctors advise them that they need the procedure to avoid serious injury. That, in my judgment, would be the true inhumanity.

I continue to hope that a solution can be reached on this painful issue. I hope as well that the deep dialogue between my Administration and people of faith can continue with regard to the broad array of issues on which we have worked and are working together.

Sincerely,

DRAFT

Partial Birth Letter
(4/18[2]/96)

A great deal has been written in recent days and weeks about legislation banning a certain abortion procedure, commonly referred to in the press as partial birth abortion. In late March, Congress passed that legislation, H.R. 1833, and on April 10, I vetoed it because of its failure, in certain rare and compelling cases, to prevent serious threats to women's health.

My position on this bill has been widely misrepresented and misunderstood. Some, including those more interested in creating a political issue than in putting real, meaningful limits on the use of this procedure, have deliberately distorted my views. But I know that a great many people of good faith -- and of all faiths -- are sincerely perplexed about the veto. It is to these people that I address these comments -- not because I believe that you will necessarily come to share my view, but so that you will understand the genuine basis of my position.

Let me begin with a word of background. I am against late-term abortions and have long opposed them, except, as the Supreme Court requires, where necessary to protect the life or health of the mother. As Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health, and I would sign a bill to do the same thing at the federal level if it were presented to me.

The particular procedure aimed at in H.R. 1833 -- generally referred to by doctors as dilation and evacuation -- poses a most difficult and disturbing issue, one which I studied and prayed about for many months. Indeed, when I first heard a description of this procedure, I anticipated that I would support the bill. But after I studied the matter and learned more about it, I came to believe that this rarely used procedure is justifiable as a last resort when doctors judge it necessary to save a woman's life or to avert serious consequences to her health.

Last week, I was joined in the White House by five women who desperately wanted to have their babies and were devastated to learn that their babies had fatal conditions and would not live. These women wanted anything other than an abortion, but were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to bear children. These women gave moving, powerful testimony. For them, this was not about choice. This was not about choosing against having a child. Their babies were certain to perish before, during or shortly after birth. The only question was how much grave damage they were going to suffer. Here is what one of them had to say:

"Our little boy had...hydrocephaly. All the doctors told us there was no hope. We asked about in utero surgery, about shunts to remove the fluid, but there was absolutely nothing

we could do. I cannot express the pain we still feel. This was our precious little baby, and he was being taken from us before we even had him. This was not our choice, for not only was our son going to die, but the complications of the pregnancy put my health in danger, as well. If I carried to term, he might die in utero, and the resulting toxins could cause a hemorrhage and possibly a hysterectomy. The hydrocephaly also meant that a natural labor risked rupturing my cervix and my uterus."

Some have raised the question whether this procedure is ever most appropriate as a matter of medical practice. The best answer to this question comes from the medical community, which broadly supports the continued availability of this procedure in cases where a woman's serious health interests are at stake. In those rare cases, I believe the woman's doctors should have the ability to determine, in the best exercise of their medical judgment, that the procedure is indeed necessary.

The problem with H.R. 1833 is that it provides an exception to the ban on this procedure only when a doctor can be certain that a woman's life is at risk, but not when the doctor is sure that she faces real, grave risks to her health.

Let me be clear. I do not contend that this procedure, today, is always used in circumstances that meet my standard -- namely, that the procedure must be necessary to prevent death or serious adverse health consequences. The procedure may well be used in situations where a woman's serious health interests are not at issue. But I do not support such uses, I do not defend them, and I would sign appropriate legislation banning them.

At the same time, I cannot and will not countenance a ban on this procedure in those cases where it represents the best hope for a woman to avoid serious risks to her health. I recognize that there are those who believe it appropriate to force a woman to endure real, serious risks to her health -- including, sometimes, the loss of her ability to bear children -- in order to deliver a baby who is already dead or about to die. But I am not among them.

I also understand that many who support this bill believe that any health exception is untenable. In a letter sent to me on April 16 by our leading Catholic Cardinals, they contend that a "health" exception for the use of this procedure could be used to cover most anything -- for example, youth, emotional stress, financial hardship or inconvenience.

That is not the kind of exception I support. I support an exception that takes effect *only* where a woman faces real, serious adverse health consequences. Those who oppose this procedure may wish to cite cases where fraudulent health reasons are relied upon as an excuse -- excuses I could never condone. But people of good faith must recognize that there are also cases

where the health risks facing a woman are deadly serious and real. *It is in those cases that I believe an exception to the general ban on the procedure must be allowed.*

Further, I flatly reject the view of those who suggest that it is impossible to draft a bill imposing real, stringent limits on the use of this procedure -- a bill making absolutely clear that the procedure may be used only in cases where a woman risks death or serious damage to her health, and in no other case. I know that it is not beyond the ingenuity of Congress, working together with this Administration, to fashion such a bill.

Indeed, that is why I implored Congress, by letter dated February 28, to add a limited exemption for the small number of compelling cases where use of the procedure is necessary to avoid serious health consequences. Congress ignored my proposal and did so, I am afraid, because there are too many there who prefer creating a political issue to solving a human problem. But I reiterate my offer now: if Congress will work with me to produce a bill that meets the concerns outlined in this letter, I will sign it the moment it reaches my desk.

As I said at the outset of this letter, I know that many people will continue to disagree with me about this issue. But they should all know the truth about where I stand: I do not support the use of this procedure on demand. I do not support the use of this procedure on the strength of mild or fraudulent health complaints. But I do believe that we cannot abandon women, like the women I spoke with, whose doctors advise them that they need the procedure to avoid serious injury. That, in my judgment, would be the true inhumanity.

I continue to hope that a solution can be reached on this painful issue. I hope as well that the deep dialogue between my Administration and people of faith can continue with regard to the broad array of issues on which we have worked and are working together.

Sincerely,

Partial Birth Letter
(4/18/96)

DRAFT
FROM
TODD

A great deal has been written in recent days and weeks about legislation banning a certain abortion procedure, commonly referred to in the press as partial birth abortion. In late March, Congress passed that legislation, H.R. 1833, and on April 10, I vetoed it because of its failure, in certain rare and compelling cases, to prevent serious threats to women's health.

My position on this bill has been widely misrepresented and misunderstood. Some, including those more interested in creating a political issue than in putting real, meaningful limits on the use of this procedure, have deliberately distorted my views. But I know that a great many people of good faith -- and of all faiths -- are sincerely perplexed about the veto. It is to these people that I address these comments -- not because I believe that you will necessarily come to share my view, but so that you will understand the genuine basis of my position.

Let me begin with a word of background. I am against late-term abortions and have long opposed them, except, as the Supreme Court requires, where necessary to protect the life or health of the mother. As Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health, and I would sign a bill to do the same thing at the federal level if it were presented to me.

The particular procedure aimed at in H.R. 1833 -- generally referred to by doctors as dilation and evacuation -- poses a most difficult and disturbing issue, one which I studied and prayed about for many months. Indeed, when I first heard a description of this procedure, I anticipated that I would support the bill. But after I studied the matter and learned more about it, I came to believe that this rarely used procedure is justifiable as a last resort when doctors judge it necessary to save a woman's life or to avert serious consequences to her health.

Last week, I was joined in the White House by five women who desperately wanted to have their babies and were devastated to learn that their babies had fatal conditions and would not live. These women wanted anything other than an abortion, but were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to bear children. These women gave moving, powerful testimony. For them, this was not about choice. This was not about choosing against having a child. Their babies were certain to perish before, during or shortly after birth. The only question was how much grave damage they were going to suffer. Here is what one of them had to say:

"Our little boy had...hydrocephaly. All the doctors told us there was no hope. We asked about in utero surgery, about shunts to remove the fluid, but there was absolutely nothing

we could do. I cannot express the pain we still feel. This was our precious little baby, and he was being taken from us before we even had him. This was not our choice, for not only was our son going to die, but the complications of the pregnancy put my health in danger, as well. If I carried to term, he might die in utero, and the resulting toxins could cause a hemorrhage and possibly a hysterectomy. The hydrocephaly also meant that a natural labor risked rupturing my cervix and my uterus."

Some have raised the question whether, as a matter of medical practice, this procedure is ever the safest for a woman. But there is broad support in the medical community for the proposition that this procedure should be available for doctors to use, in the best exercise of their medical judgment, in those rare cases, when a woman's serious health interests are at stake.

The problem with H.R. 1833 is that it provides an exception to the ban on this procedure only when a doctor can be certain that a woman's life is at risk, but not when the doctor is sure that she faces real, grave risks to her health.

Let me be clear. I do not contend that this procedure, today, is always used in circumstances that meet my standard -- namely, that the procedure must be necessary to prevent death or serious adverse health consequences. The procedure may well be used in situations where a woman's serious health interests are not at issue. But I do not support such uses, I do not defend them, and I would sign appropriate legislation banning them.

At the same time, I cannot and will not countenance a ban on this procedure in those cases where it represents the best hope for a woman to avoid serious risks to her health. I recognize that there are those who believe it appropriate to force a woman to endure real, serious risks to her health -- including, sometimes, the loss of her ability to bear children -- in order to deliver a baby who is already dead or about to die. But I am not among them.

I also understand that many who support this bill believe that any health exception is untenable. In a letter sent to me on April 16 by our leading Catholic Cardinals, they contend that a "health" exception for the use of this procedure could be used to cover most anything -- for example, youth, emotional stress, financial hardship or inconvenience.

That is not the kind of exception I support. I support an exception that takes effect *only* where a woman faces real, serious adverse health consequences. Those who oppose this procedure may wish to cite cases where fraudulent health reasons are relied upon as an excuse -- excuses I could never condone. But people of good faith must recognize that there are also cases where the health risks facing a woman are deadly serious and real. *It is in those cases that I believe an exception to the*

general ban on the procedure must be allowed.

Further, I flatly reject the view of those who suggest that it is impossible to draft a bill imposing real, stringent limits on the use of this procedure -- a bill making absolutely clear that the procedure may be used only in cases where a woman risks death or serious damage to her health, and in no other case. I know that it is not beyond the ingenuity of Congress, working together with this Administration, to fashion such a bill.

Indeed, that is why I implored Congress, by letter dated February 28, to add a limited exemption for the small number of compelling cases where use of the procedure is necessary to avoid serious health consequences. Congress ignored my proposal and did so, I am afraid, because there are too many there who prefer creating a political issue to solving a human problem. But I reiterate my offer now: if Congress will work with me to produce a bill that meets the concerns outlined in this letter, I will sign it the moment it reaches my desk.

As I said at the outset of this letter, I know that many people will continue to disagree with me about this issue. But they should all know the truth about where I stand: I do not support the use of this procedure on demand. I do not support the use of this procedure on the strength of mild or fraudulent health complaints. But I do believe that we cannot abandon women, like the women I spoke with, whose doctors advise them that they need the procedure to avoid serious injury. That, in my judgment, would be the true inhumanity.

I continue to hope that a solution can be reached on this painful issue. I hope as well that the deep dialogue between my Administration and people of faith can continue with regard to the broad array of issues on which we have worked and are working together.

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(4/17/96)

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My position on this bill has been widely misrepresented and misunderstood. Some, including those more interested in creating a political issue than in putting real, meaningful limits on the use of this procedure, have deliberately distorted my views. But I know that a great many more people of good faith -- and of all faiths -- are sincerely confused and distressed about my veto. It is to these people that I address these comments -- not because I believe that you will necessarily come to share my view, but so that you will understand the genuine basis of my position.

Let me begin with a word of background. I am against late-term abortions and have long opposed them, except, as the Supreme Court requires, where necessary to protect the life or health of the mother. As Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health, and I would sign a bill to do the same thing at the federal level if it were presented to me.

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Last week, I was joined in the White House by five women who desperately wanted to have their babies, who were devastated to learn that their babies had fatal conditions and would not live, who wanted anything other than an abortion, but who were advised by their doctors that this procedure was their best chance to avert the risk of death or grave harm which, in some cases, would have included an inability to ever bear children. These women gave moving, powerful testimony. For them, this was not about choice. This was not about choosing against having a child. Their babies were certain to perish before, during or shortly after birth. The only question was how much grave damage they were going to suffer. Listen to one of them:

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Some have raised the question whether, as a matter of medical practice, this procedure is ever the safest for a woman. I can only say that there are many doctors -- some of whom testified before Congress -- who believe that this procedure is, in certain rare cases, the safest one to use. And in those rare cases, where a woman's serious health interests are at stake, I believe her doctors, in the best exercise of their medical judgment, should have the option to use it.

The problem with H.R. 1833 is that it provides an exception to the ban on this procedure only when a doctor can be certain that a woman's life is at risk, not when the doctor is sure that she faces real, grave risks to her health.

Let me be clear. I do not contend that this procedure is, today, always used in circumstances that meet my standard -- namely, that the procedure must be necessary to prevent death or serious adverse health consequences. The procedure may well be used in situations where a woman's serious health interests are not at issue. But I do not support such uses, I do not defend them, and I would sign legislation banning them.

At the same time, I cannot and will not countenance a ban on this procedure in those cases where it represents the best hope for a woman to avoid serious risks to her health. I recognize that there are those who believe it appropriate to force a woman to endure real, serious risks to her health -- including, sometimes, the loss of her ability to ever bear children -- in order to have a baby who is already dead or about to die. But I am not among them.

I also understand that many who support this bill believe that any health exception is bogus. In a letter sent to me on April 16 by our leading Cardinals, they contend that a "health" exception for the use of this procedure could be used to cover most anything -- for example, youth, emotional stress, financial hardship or inconvenience.

That is not the kind of exception I support. I support an exception that takes effect *only* where a woman faces real, serious adverse health consequences. Those who oppose this procedure may wish to cite cases where bogus health reasons are relied upon as an excuse -- an excuse I could never condone. But

people of good faith must recognize that there are also cases where the health risks facing a woman are deadly serious and real. *It is in those cases that I believe an exception to the general ban on the procedure must be allowed.*

Further, I flatly reject the view of those who suggest that it is impossible to draft a bill imposing real, stringent limits on the use of this procedure -- a bill making absolutely clear that the procedure may be used only in cases where a woman risks death or serious damage to her health, and in no other cases. I know that it is not beyond the ingenuity of Congress and this Administration, working together, to fashion such a bill.

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As I said at the outset of this letter, I know that many people will continue to disagree with me about this issue. But they should all know the truth about where I stand: I do not support the use of this procedure on demand. I do not support the use of this procedure on the strength of mild or bogus health complaints. But I do believe that we cannot abandon women in grave danger of serious injury whose afflicted babies are certain to die in the immediate aftermath of birth, if not before. That, in my judgment, would be the true inhumanity.

I continue to hope that a solution can be reached on this painful issue. And I hope as well that the rich dialogue between my Administration and people of faith can continue with regard to the broad array of issues on which we have worked together fruitfully.

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~~who~~ who need the procedure
to avoid serious injury.

Tack -

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R

Kathy and I
thought some-
thing like this
might be helpful
for tomorrow's
abortion meeting

Etene

THE WHITE HOUSE

DRAFT

WASHINGTON
April 25, 1996

MEMORANDUM FOR LEON PANETTA

FROM: JACK QUINN
SUBJECT: PARTIAL-BIRTH ABORTION

We may be asked, as we explain our position on the Partial Birth Act, whether our proposed exception for "serious adverse health consequences" could include psychological harm. One possible answer goes as follows:

No; that is a real red herring. Psychological reasons can never justify a doctor's decision to use the "partial birth" procedure as a way to perform an abortion. That's because it can't possibly matter to a woman's mental health whether a doctor chooses one procedure rather than another. And that's all this legislation is about: not whether a woman can have an abortion, but whether she can have this kind of abortion. When that's the question, the woman's mental health is and should be entirely irrelevant. No doctor can make the choice of procedure on that basis.

To explain this answer a bit further: what we are arguing about here is the justification for using a particular procedure -- not the justification for choosing to have an abortion at all. That's because the partial-birth legislation has to do only with the choice of procedure and not with the availability of abortion generally. It prohibits the use of a particular procedure in cases where an abortion is otherwise available.

Because the above is true, the whole issue of mental health is a ruse. Mental health (though it may be a reason for having an abortion at all) just isn't a justification for choosing one procedure from the range of alternatives: no one procedure is better for the psyche than any other. Thus, we can say with certainty that the President's exemption -- which sets forth the circumstances in which a doctor can choose this procedure rather than another -- does not include the risk of psychological harm.

The downsides of using an answer along these lines are: (1) Though the ultimate conclusion is easy to state, the rationale behind it is more difficult. If a person has to explain the conclusion, this complexity could cause trouble. (2) The answer suggests another question: Would the President allow a woman, in the post-viability stage, to get some kind of abortion for mental health reasons? Our answer says mental health is never a reason for choosing one procedure over another; but that leaves open whether it may be a reason for having an abortion at all. In suggesting that question, the answer may buy us trouble.

THE WHITE HOUSE
WASHINGTON
April 25, 1996

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THE WHITE HOUSE

WASHINGTON

February 2, 1996

DRAFT

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

SUBJECT: PARTIAL BIRTH ABORTION ACT

In discussing the Partial Birth Abortion Act, the Administration so far has focused on the inadequacy of the bill in protecting the health of women. This position necessarily has glided over several complex questions, which we will have to address if we wish to obtain a bill that you can sign.

Below are four ways of amending the Act's prohibition on partial birth abortions. They differ with respect to (1) the meaning and appropriate scope of a life and health exception, (2) the permissibility of imposing any restrictions on use of the procedure in the pre-viability setting. Of course, we need not propose any statutory language of our own, and if we do wish to propose language, we can phrase the amendments in different ways. These formulations are meant only to focus the question of when the regulation of partial birth abortions is impermissible.

and

The Office of Legal Counsel believes that the only one of these proposals to meet constitutional standards is Option 4 (the option, of the ones presented here, allowing greatest use of the partial birth procedure). *We disagree and believe that options*

2, 3 and 4 are all unconstitutional. Option 1, on the other hand, we agree is unconstitutional because it

- 1. The prohibition [of the Act] shall not apply to any abortion performed where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert a serious adverse health consequence to the woman.

This option allows use of the partial birth procedure, whether in the pre-viability or post-viability stage, in only one circumstance: where the abortion is performed because the pregnancy poses a threat to the life or the serious health interests of the woman.

- 2. The prohibition [of the Act] shall not apply to any abortion if, in the medical judgment of the attending physician, the abortion (or, in the case of pre-viability abortions, the abortion or election of particular method of abortion) is necessary to preserve the life of the woman or avert a serious adverse health consequence to the woman.

fails to

This option allows use of the partial birth procedure in the post-viability stage in the same circumstance described in Option 1: where the abortion is performed because the pregnancy poses a

threat to the life or the serious health interests of the woman. It allows use of the of the partial birth procedure in the pre-viability stage in that circumstance and another: where the abortion is performed for non-health related ("elective") reasons, but the election and use of the partial birth procedure (as opposed to other abortion procedures) is necessary to avert a threat to the life or the serious health interests of the woman.

3. The prohibition [of the Act] shall not apply to any abortion performed prior to the viability of the fetus, or after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert a serious adverse health consequence to the woman.

This is the Boxer Amendment. It allows use of the partial birth procedure in the post-viability stage in the same circumstance described in Option 1: where the abortion is performed because the pregnancy poses a threat to the life or the serious health interests of the woman. It allows use of the partial birth procedure in the pre-viability stage in any case at all, regardless whether the abortion is performed for health-related reasons and also regardless whether in "elective" cases, the use of the partial birth procedure (as opposed to other procedures) is medically necessary.

4. The prohibition [of the Act] shall not apply to any abortion performed prior to the viability of the fetus, or after viability where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert an adverse health consequence to the woman.

This option allows use of the partial birth procedure in the post-viability stage where the abortion is performed because the pregnancy poses a threat to the life or the health interests of the woman. Note that in this formulation, the adverse health consequences to the woman do not have to be "serious." The option allows use of the partial birth procedure in the pre-viability stage in any case at all, as does Option 3. This is

the option preferred by the DLC at the Justice Department.

THE WHITE HOUSE

WASHINGTON

February 2, 1996

DRAFT

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SUBJECT: PARTIAL BIRTH ABORTION ACT

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The Office of Legal Counsel believes that the only one of these proposals to meet constitutional standards is Option 4 (the option, of the ones presented here, allowing greatest use of the partial birth procedure).

1. The prohibition [of the Act] shall not apply to any abortion performed where, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert a serious adverse health consequence to the woman.

This option allows use of the partial birth procedure, whether in the pre-viability or post-viability stage, in only one circumstance: where the abortion is performed because the pregnancy poses a threat to the life or the serious health interests of the woman.

2. The prohibition [of the Act] shall not apply to any abortion if, in the medical judgment of the attending physician, the abortion (or, in the case of pre-viability abortions, the abortion or election of particular method of abortion) is necessary to preserve the life of the woman or avert a serious adverse health consequence to the woman.

This option allows use of the partial birth procedure in the post-viability stage in the same circumstance described in Option 1: where the abortion is performed because the pregnancy poses a

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THE WHITE HOUSE

WASHINGTON

February 2, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: LEON PANETTA, JACK QUINN,
GEORGE STEPHANOPOULOS, NANCY-ANN MIN

SUBJECT: PARTIAL BIRTH ABORTION ACT

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~~follows:~~
The Office of Legal Counsel of the Justice Department believes that the only one of the proposals ~~to~~ meets constitutional standards ~~is~~ Option 4 (the option, of the ones presented here, allowing greatest use of the partial birth procedure). The White House Counsel's Office disagrees, believing that Options 2, 3, and 4 are all at least arguably constitutional. On the other hand, the White House Counsel's Office agrees with OLC that Option 1 is unconstitutional because it prevents a doctor from using the partial birth procedure in any previability case in which the woman desires the abortion for non-health related reasons, even if the partial birth procedure (as compared to other procedures) is necessary to protect her from serious adverse health consequences.

will help to bring info sharper

Attached to this memo is a draft of a letter, which sets out your basic position on the Partial Birth Abortion Act. The penultimate paragraph of the letter, in which you say what kind of bill you could sign, is most consistent with Option 1 in the absence of the bracketed words and is most consistent with Option 2 when those words are included.

* * * * *

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the woman or avert a serious adverse health consequence to the woman.

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This option allows use of the partial birth procedure in the post-viability stage where the abortion is performed because the

pregnancy poses a threat to the life or the health interests of the woman. Note that in this formulation, the adverse health consequences to the woman do not have to be "serious." The option allows use of the partial birth procedure in the pre-viability stage in any case at all, as does Option 3. This is the option preferred by the Justice Department's OLC.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO: Martha
Elena

Re: New Draft
of Letter

Take Necessary Action _____

Approval or Signature _____

Comment _____

Prepare Reply _____

Discuss With Me _____

For Your Information

See Remarks Below _____

FROM: NANCY-ANN MIN

DATE: 1/31/96

REMARKS:

- Attached is a new draft in which I tried to capture our discussion today.
- I've sent Elena the DOJ memo separately (on Ohio decision).
- Note the last clause in 1st sentence in ¶ 3 - do we need "for", or should we just say "election basis" period.

DRAFT

Dear Senator Hatch:

I understand that the House is preparing to consider H.R. 1833, as amended by the Senate, which would prohibit doctors from performing certain types of abortions. I want to make the Congress aware of my position on this extremely complex issue.

I have always believed that the decision to have an abortion should be between a woman, her conscience, her doctor, and her God. I strongly believe that legal abortions--those abortions that the Supreme Court ruled in Roe v. Wade must be protected--should be safe and rare. I have long opposed late-term abortions except, as the law requires, where they are necessary to protect the life of the mother or where there is a threat to her health. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions except where they were necessary to protect the life or health of the woman, consistent with the Supreme Court's rulings.

The procedure described in H.R. 1833 is ~~very~~ disturbing, and I ~~personally~~ cannot support its use on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available. But as I understand it, there are rare and tragic situations that can occur late in a woman's pregnancy in which, in a doctor's medical judgment, this procedure may be necessary to save a woman's life or to preserve her health. In those situations, the law that we have been elected to uphold requires that a woman's ability to choose this procedure be protected.

Keep

I have concluded that H.R. 1833 as drafted does not meet the constitutional requirements that the Supreme Court has imposed upon us, in Roe and the cases that have followed it, to provide protections for both the life and the health of the mother in any laws regulating late-term abortions. ~~As the Supreme Court made clear in Casey v. Planned Parenthood, "Roe forbids a state from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health."~~

Maybe don't need?

I have studied and prayed about this issue, and the families who must face this awful choice, for many months. I believe that we have a duty to try to find common ground: a resolution to this issue that respects the views of those--including myself--who object to this particular procedure, but also upholds the Supreme Court's requirement that laws regulating abortion protect both the life and the health of American women.

Note

I am prepared to support H.R. 1833 if it is amended to make clear that the prohibition of this procedure does not apply to cases in abortions that are performed where, in the medical judgment of the attending physician, it is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

which the procedure,

DRAFT 2
(with Counsel's edits)

Dear Senator Hatch:

I understand that the House is preparing to consider H.R. 1833, as amended by the Senate, which would prohibit doctors from performing certain types of abortions. I want to make the Congress aware of my position on this extremely complex issue.

I have always believed that the decision to have an abortion should be between a woman, her conscience, her doctor, and her God. I strongly believe that legal abortions--those abortions that the Supreme Court ruled in Roe v. Wade must be protected--should be safe and rare. I have long opposed late-term abortions except, as the law requires, where they are necessary to protect the life of the mother or where there is a threat to her health. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions except where they were necessary to protect the life or health of the woman, consistent with the Supreme Court's rulings.

The procedure described in H.R. 1833 is very disturbing, and I personally cannot support its use on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available. As I understand it, however, there are rare and tragic situations that can occur late in a woman's pregnancy in which, in a doctor's medical judgment, this procedure may be necessary to save a woman's life or to preserve her health. In those situations, the law that we have been elected to uphold requires that a woman's ability to choose this procedure be protected.

I have studied and prayed ^{the use of} about this issue, and the families who must face this awful choice, for many months. I believe that we have a duty to try to find common ground: a resolution to this issue that respects the views of those--including myself--who object to this particular procedure, but also upholds the Supreme Court's requirement that laws regulating abortion protect both the life and the health of American women.

I have concluded that H.R. 1833 as drafted does not meet the constitutional requirements that the Supreme Court has imposed upon us, in Roe and the decisions that have followed it, to provide protections for both the life and the health of the mother in any laws regulating late-term abortions. I am prepared to support H.R. 1833 if it is amended to make clear that the prohibition of this procedure does not apply to cases in which the procedure, in the medical judgment of the attending physician, is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

selection of the

DRAFT 4/9/96 4:00pm.

**STATEMENT BY PRESIDENT WILLIAM JEFFERSON CLINTON
VETO OF H.R. 1833
THE WHITE HOUSE
APRIL 10, 1996**

Good afternoon. I have just met with several courageous women who told me that they want other women to have the same option they had when they made the potentially life-saving decision to have a certain kind of abortion that would be banned by H.R. 1833. Some of these women are liberals and some are conservatives. Some are Catholics and some are Jews. Some are pro-choice. And others are pro-life. But, there is one thing they all have in common: they all wanted their children; they didn't want to have abortions; and they made the agonizing choice only when it became clear that their babies would not survive and their own lives and health were in grave danger.

Tammy and Mitchell Watts were elated when they found out she was going to have a baby. But, that joy was shattered when they found out in her seventh month that the fetus was suffering from a chromosomal disorder and would not live. Furthermore, if the baby were to die inside her, the release of harmful toxins in her own bloodstream could have been fatal. She and her husband, in consultation with their doctor and pastor, tearfully made the decision to terminate the suffering of the fetus and protect her own health and life. It was the toughest decision they ever had to make -- but it was right for them and gave them hope that someday they would have a healthy baby.

Twenty six weeks into her pregnancy, Claudia and Richard Ades found out that their unborn son had a hole in his heart and excessive fluid in his head. He would not live. And Claudia's own health was at risk. They too decided to terminate the pregnancy. Claudia's only thought before undergoing the procedure was would her baby be in pain. The doctors assured her he would not. They hope and pray that no one has to go through what they experienced, but, if they do, they believe that every woman should have the option of seeking the best medical solution.

I was also moved by the story of a young Catholic woman who became pregnant last year with her first child. More than 20 weeks into her pregnancy she discovered her baby had severe hydrocephalus and probably would not live. Her doctor recommended the termination of the pregnancy in order to minimize the trauma to her body and to best preserve her ability to become pregnant again. Although the loss of the baby was devastating, she and her husband are now, thankfully, expecting a child in the fall.

This is a difficult and disturbing issue -- one that I have studied and prayed about for many months. After much reflection, I have concluded that I could not support use of this method of abortion on an elective basis, where there are other equally safe procedures available. However, I understand that, as in the cases I just described, there are rare and tragic situations where, in a doctor's judgement, this procedure may be necessary to save a woman's life or to avert serious adverse consequences to her health. Our concern is for the

health of the mother. We are surprised that Congress would explicitly rule out consideration of the mother's health in this legislation.

I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience and her God -- not the Congress. And I have always opposed late-term abortions except where necessary to protect the life or health of the mother.

I am opposed to H.R. 1833 because it does not allow women to protect themselves from serious threats to their health. In refusing to permit women to avail themselves of this procedure when their lives are threatened or when their health is put in serious jeopardy, the Congress has chosen to ignore or trivialize the legitimate concerns of women like Tammy Watts and Claudia Ades. I cannot be a party to this indifference. I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation. Therefore, I am compelled to veto it.

Thank you.

THE WHITE HOUSE
WASHINGTON

Dawn —

We've written a
new first paragraph.
I think it should be
OK. Let me know.

Elena



THE WHITE HOUSE
WASHINGTON

OFFICE OF THE STAFF SECRETARY

Fax Transmittal Sheet

TO: Elena Kagan

Fax Number: 61647

Phone Number: 67594

FROM: Todd Stern

SUBJECT: Cardinal Hickey

DATE: 4/9/96

NUMBER OF PAGES (including cover sheet): 3

MESSAGE:

If all pages are not received, please call 202/456-2702

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April 9, 1996

His Eminence James Cardinal Hickey
Archbishop of Washington
Post Office Box 29260
Washington, D.C. 20017

Dear Cardinal Hickey:

I want to thank you for your letters on H.R. 1833. I appreciate and considered the strong moral convictions you expressed.

This is a difficult and disturbing issue, one which I have studied and prayed about for many months. After much reflection, I concluded that I could not support use of this method of abortion on an elective basis, where there are other equally safe procedures available. However, I understand that there are rare and tragic situations where, in a physician's judgment, this procedure may be necessary to save a woman's life or to avert serious adverse consequences to her health.

I have been moved, for example, by the stories of a number of young women who, although very opposed to abortion, ended up relying on the intact dilation and evacuation procedure upon the advice of their doctors in order to avoid the grave health consequences they otherwise faced.

My hope is that a common ground can be found on this issue that respects the views of those, including myself, who find this procedure enormously troubling, while at the same time both upholding the Constitutional requirement that laws regulating abortion protect the life and health of American women and allowing doctors to exercise their best medical judgment in the rare cases where this procedure may be necessary to save a woman from serious adverse health consequences.

I cannot sign H.R. 1833 as drafted because in permitting an exception solely to preserve a woman's life, it does not meet the legal requirements of the Constitution or protect American women against the risk of serious harm.

Again, I thank you for your letters. These are painful and sobering issues. Although I know you disagree with me on this matter, I hope we can continue our dialogue and continue to work together on the broad array of issues on which we do agree. I need your help, your insight and, at times, even your criticism.

April 9, 1996

The Reverend Fred C. Kammer, S.J.
President
Catholic Charities USA
Suite 200
1731 King Street
Alexandria, Virginia 22314

Dear Fred:

Thank you for your note on the "~~partial birth~~" bill. I understand how strongly you feel about it.

I have found this to be a terribly difficult and disturbing issue, one which I have studied and prayed about for many months. It was only after a great deal of reflection, and after pondering the consequences, however unintended, that I believe this legislation could have on the lives of certain women, that I reached my decision.

I concluded that I could not support use of this method of abortion on an elective basis, where there are other equally safe procedures available; however, I understand that there are rare and tragic situations where, in a physician's judgment, this procedure may be necessary to save a woman's life or to avert serious adverse consequences to her health.

In reaching my decision, I have been moved by the stories of a number of young women -- some of them Catholic and staunchly pro-life -- who ended up relying on this procedure upon the advice of their doctors in order to avoid grave health consequences. I cannot, in good conscience, sign a bill that would make it impossible for doctors, in their best medical judgment, to use this procedure in such circumstances.

These are painful and sobering issues. Although I know you disagree with me on this matter, it is important to me that we continue to work together on the broad array of issues on which we do agree. Thank you for your insight, your support and your heartfelt criticism.

Sincerely,

THE WHITE HOUSE
WASHINGTON

April 2, 1996

MEMORANDUM FOR JACK QUINN
KATHY WALLMAN

FROM: ELENA KAGAN *ek*

SUBJECT: ABORTION VETO MESSAGE

While you were away, Jack, Todd circulated the attached veto message to the appropriate persons in the White House. As far as I know, no one requested any changes.

OLC has requested one change. In the second sentence of the first paragraph, Walter and Dawn want to delete the phrase "from serious health threats." Their problem, of course, is with the word "serious." (The word "serious" appears in numerous other places, but as I told Dawn when I sent the message over to her, I tried to use the word in ways that OLC would find unproblematic; for the most part, it seems, this effort succeeded.) They say that this sentence, as written, suggests that the Constitution requires only a "serious health" exception, rather than a broader "all health" exception.

I actually think that the sentence is technically accurate, even assuming that the OLC understanding of the Constitution is correct. The sentence says that the Constitution requires that women be protected from serious health threats. It does. Of course, under OLC's view, the Constitution also requires that women be protected from non-serious health threats. But we say nothing to the contrary. On OLC's view, the sentence may be underinclusive, but it is not inaccurate.

If this is cutting the baloney too fine, we can (1) tell OLC we just don't care, or (2) change the sentence to make OLC happy. If we do (2), I would edit the sentence differently from OLC, taking out the reference to the Constitution, rather than to serious health threats. Hence, "I do so because the bill fails to protect women from serious health threats." But I vote for option (1) because I think we should talk about both the Constitution and serious health threats in the first paragraph.

Let me know.

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Elena - what
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Does not allow women to protect themselves

Threats to their

DRAFT

Veto Message for H.R. 1833

I am returning without my approval H.R. 1833, which would prohibit doctors from performing a certain kind of abortion. I do so because the bill fails to protect women from serious health threats, as the Constitution and sound public policy require.

In refusing to permit women to avail themselves of this procedure when their life is

I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience, and her God. I support the decision in Roe v. Wade protecting a woman's right to choose, and I believe that the abortions protected by that decision should be safe and rare. Consistent with that decision, I have long opposed late-term abortions except where necessary to protect the life or health of the mother. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health.

The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health. Medical conditions can develop at a stage in the pregnancy such that the use of this procedure becomes the best or the only feasible way of preserving the life or the serious health interests of the woman, including her ability to have children in the future. In these situations, in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

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I cannot sign H.R. 1833, as drafted, because it fails to protect women in such dire circumstances -- because by treating doctors who use the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose the procedure for sound medical reasons, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

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I earlier proposed to Congress that it pass appropriate legislation regarding this procedure. I told Congress that I would support H.R. 1833 if it were amended to make clear that the prohibition did not apply to situations in which the selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse health consequences to the woman. A bill

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just as it is surely contrary to sound public policy.

amended in this way would have struck a proper balance, reserving this troubling procedure for those rare circumstances where it is necessary.

Congress chose not to take this sensible and constitutionally appropriate path, instead either ignoring or trivializing concerns about protecting women from serious health risks. As a result of this Congressional indifference to women's health and safety, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

THE WHITE HOUSE

WASHINGTON

April 2, 1996

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KATHY WALLMAN

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The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health. Medical conditions can develop at a stage in the pregnancy such that the use of this procedure becomes the best or the only feasible way of preserving the life or the serious health interests of the woman, including her ability to have children in the future. In these situations, in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

I cannot sign H.R. 1833, as drafted, because it fails to protect women in such dire circumstances -- because by treating doctors who use the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose the procedure for sound medical reasons, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

I earlier proposed to Congress that it pass appropriate legislation regarding this procedure. I told Congress that I would support H.R. 1833 if it were amended to make clear that the prohibition did not apply to situations in which the selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse health consequences to the woman. A bill

amended in this way would have struck a proper balance, reserving this troubling procedure for those rare circumstances where it is necessary.

Congress chose not to take this sensible and constitutionally appropriate path, instead either ignoring or trivializing concerns about protecting women from serious health risks. As a result of this Congressional indifference to women's health and safety, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

Veto Message for H.R. 1833

I am returning without my approval H.R. 1833, which would prohibit doctors from performing a certain kind of abortion. I do so because the bill does not allow women to protect themselves from serious threats to their health. In refusing to permit women to avail themselves of this procedure when their lives are threatened or when their health is put in serious jeopardy, the Congress has fashioned a bill that is surely unconstitutional, just as it is surely contrary to sound public policy.

I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience, and her God. I support the decision in Roe v. Wade protecting a woman's right to choose, and I believe that the abortions protected by that decision should be safe and rare. Consistent with that decision, I have long opposed late-term abortions except where necessary to protect the life or health of the mother. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health.

The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health. Medical conditions can develop at a stage in the pregnancy such that the use of this procedure becomes the best or the only feasible way of preserving the life or the serious health interests of the woman, including her ability to have children in the future. In these situations, in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

I cannot sign H.R. 1833, as drafted, because it fails to protect women in such dire circumstances -- because by treating doctors who use the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose the procedure for sound medical reasons, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

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prohibition did not apply to situations in which the selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse ~~health~~ consequences to ~~the woman~~. A bill amended in this way would have struck a proper balance, reserving this troubling procedure for those rare circumstances where it is necessary.

Congress chose not to take this sensible and constitutionally appropriate path, instead either ignoring or trivializing concerns about protecting women from serious health risks. As a result of this Congressional indifference to women's health and safety, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

Veto Message for H.R. 1833

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I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience, and her God. I support the decision in Roe v. Wade protecting a woman's right to choose, and I believe that the abortions protected by that decision should be safe and rare. Consistent with that decision, I have long opposed late-term abortions except where necessary to protect the life or health of the mother. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health.

The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health. Medical conditions can develop at a stage in the pregnancy such that the use of this procedure becomes the only feasible way of preserving the life or the serious health interests of the woman, including her ability to have children in the future. In these situations, in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

I cannot sign H.R. 1833, as drafted, because it fails to protect women in such dire circumstances -- because by treating doctors who use the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose a medically necessary procedure, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

I earlier proposed to Congress that it pass appropriate legislation regarding this procedure. I told Congress that I would support H.R. 1833 if it were amended to make clear that the prohibition did not apply to situations in which the selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse health consequences to the woman. A bill amended in this way would have struck a proper balance, reserving

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| this troubling procedure for those rare circumstances where it is medically necessary.

Congress chose not to take this sensible and constitutionally appropriate path, instead either ignoring or trivializing concerns about protecting women from serious health risks. As a result of this Congressional indifference to women's health and safety, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

DRAFT

Veto Message for H.R. 1833

Every place we use "health" we should modify it with the concept "serious", OK?

I am returning without my approval H.R. 1833, which would prohibit doctors from performing a certain kind of abortion. I do so because the bill fails to protect women from serious health threats, as the Constitution and sound public policy require.

I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience, and her God. I support the decision in Roe v. Wade protecting a woman's right to choose, and I believe that the abortions protected by that decision should be safe and rare. Consistent with that decision, I have long opposed late-term abortions except where necessary to protect the life or health of the mother. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health.

The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her health. Medical conditions can develop at a stage in the pregnancy such that the use of this procedure becomes the only feasible way of preserving the life or health of the woman, including her ~~future child-bearing capacity~~. In these situations, in which a woman and her family must face an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

I cannot sign H.R. 1833, as drafted, because it fails to protect women in such dire circumstances -- because it fails to preserve the ability of women and their doctors to choose this procedure for sound medical reasons. This bill does not satisfy the constitutional command that any law regulating abortion protect both the life and the health of the woman. It puts the health of the mother at risk by too widely criminalizing the use of this procedure.

I earlier proposed to Congress that it pass appropriate legislation regarding this procedure. I told Congress that I would support H.R. 1833 if it were amended to make clear that the prohibition did not apply to situations in which the selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse health consequences to the woman. A bill amended in this way would have struck a proper balance, ~~reflecting discomfort with this procedure, but also recognizing that in rare circumstances it is medically necessary.~~ *reserving their troubling*

Should we emphasize criminalization point? Med. necessary and criminal?

P.S. - Is it actually defined or described? Thought one of the criticisms was that it was vague

as to coverage. P.P.S. Is there a void for vagueness argument here?

against serious injury to her

too much of a give?

ability to have ~~any~~ children.

for those

when

Congress chose not to take this sensible and constitutionally appropriate path, instead either ignoring or trivializing ~~my~~ concerns about protecting women from serious health risks, including the loss of future reproductive capacity. As a result of this Congressional indifference to women's health and safety, I cannot, in ~~all~~ good conscience and consistent with my responsibility to uphold the law, sign this legislation.

Can we make it more personal - no more kids.

Veto Message for H.R. 1833
(4-9-96)

I am returning without my approval H.R. 1833, which would prohibit doctors from performing a certain kind of abortion. I do so because the bill does not allow women to protect themselves from serious threats to their health. By refusing to permit women, in reliance on their doctors' best medical judgment, to use this procedure when their lives are threatened or when their health is put in serious jeopardy, the Congress has fashioned a bill that is consistent neither with the Constitution nor with sound public policy.

I have always believed that the decision to have an abortion generally should be between a woman, her doctor, her conscience, and her God. I support the decision in Roe v. Wade protecting a woman's right to choose, and I believe that the abortions protected by that decision should be safe and rare. Consistent with that decision, I have long opposed late-term abortions except where necessary to protect the life or health of the mother. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions, with an appropriate exception for life or health.

The procedure described in H.R. 1833 has troubled me deeply, as it has many people. I cannot support use of that procedure on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available.

There are, however, rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, the use of this procedure may be necessary to save a woman's life or to protect her against serious injury to her health. Medical conditions can develop at a stage in the pregnancy such that the use of this procedure becomes the best or the only feasible way of preserving the life or the serious health interests of the woman, including her ability to have children in the future. In these situations, in which a woman and her family must make an awful choice, the Constitution requires, as it should, that the ability to choose this procedure be protected.

I cannot sign H.R. 1833, as drafted, because it fails to protect women in such dire circumstances -- because by treating doctors who use the procedure in these tragic cases as criminals, the bill poses a danger of serious harm to women. This bill, in curtailing the ability of women and their doctors to choose the procedure for sound medical reasons, violates the constitutional command that any law regulating abortion protect both the life and the health of the woman. The bill's overbroad criminal prohibition risks that women will suffer serious injury.

I earlier proposed to Congress that it pass appropriate

6

legislation regarding this procedure. I told Congress that I would support H.R. 1833 if it were amended to make clear that the prohibition did not apply to situations in which the selection of the procedure, in the medical judgment of the attending physician, was necessary to preserve the life of the woman or avert serious adverse consequences to her health. A bill amended in this way would have struck a proper balance, reserving this troubling procedure for those rare circumstances where it is necessary.

Congress chose not to take this sensible and constitutionally appropriate path, instead leaving women unprotected against serious health risks. As a result of this Congressional indifference to women's health and safety, I cannot, in good conscience and consistent with my responsibility to uphold the law, sign this legislation.

Memorandum

From: ELENA KAGAN

To: _____

I am prepared to support legislation prohibiting the use of this procedure if it is amended to make clear that the prohibition does not apply to cases in which [alternative medical procedures would, in the opinion of the attending physician, risk loss of life or dangerous health consequences for a woman.

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THE WHITE HOUSE

WASHINGTON

February 24, 1996

MEMORANDUM FOR WALTER DELLINGER

FROM: ELENA KAGAN
SUBJECT: LETTER ON H.R. 1833

Attached is the current -- and probably the final -- draft of the letter on H.R. 1833 to be sent to Senator Hatch and Congressman Hyde this coming week. I understand that you and Jack have discussed the internal dynamics here; much as Jack and I supported your suggested language, we just couldn't bring people around to it. I can tell you that it was plenty difficult to get even what we got.

Thanks very much -- and sorry it didn't turn out better.

Elena

THE WHITE HOUSE

WASHINGTON

The Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I understand that the House is preparing to consider H.R. 1833, as amended by the Senate, which would prohibit doctors from performing a certain type of abortion. I want to make the Congress aware of my position on this extremely complex issue.

I have always believed that the decision to have an abortion should be between a woman, her conscience, her doctor, and her God. I strongly believe that legal abortions -- those abortions that the Supreme Court ruled in Roe v. Wade must be protected -- should be safe and rare. I have long opposed late-term abortions except, as the law requires, where they are necessary to protect the life of the mother or where there is a threat to her health. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions except where they were necessary to protect the life or health of the woman, consistent with the Supreme Court's rulings.

The procedure described in H.R. 1833 is very disturbing, and I cannot support its use on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available. As I understand it, however, there are rare and tragic situations that can occur in a woman's pregnancy in which, in a doctor's medical judgment, this procedure may be necessary to save a woman's life or to preserve her health. In those situations, the Constitution requires that a woman's ability to choose this procedure be protected.

I have studied and prayed about this issue, and about the families who must face this awful choice, for many months. I believe that we have a duty to try to find common ground: a resolution to this issue that respects the views of those -- including myself -- who object to this particular procedure, but also upholds the Supreme Court's requirement that laws regulating abortion protect both the life and the health of American women.

I have concluded that H.R. 1833 as drafted does not meet the constitutional requirements that the Supreme Court has imposed upon us, in Roe and the decisions that have followed it, to provide protections for both the life and the health of the mother in any laws regulating abortions.

I am prepared to support H.R. 1833, however, if it is amended to make clear that the prohibition of this procedure does not apply to situations in which the ~~election~~ of the procedure, in the medical judgment of the attending physician, is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

I urge the Congress to amend H.R. 1833 to ensure that it protects the life and the health of the woman, as the law we have been elected to uphold requires.

Sincerely,

~~with~~
selection



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D. C. 20530

February 5, 1996
4:15 pm

MEMORANDUM TO JACK QUINN AND ELENA KAGAN

FROM: Walter Dellinger *WD*

Although it still leaves a pre-viability / second trimester issue, does the following language come closer to where you want to be?

I am prepared to support legislation prohibiting the use of this procedure that makes clear that the prohibition does not apply to cases in which the alternative medical procedures available would, in the opinion of the attending physician, (pose a danger) to a woman's life or health.

Handwritten notes:
Elena
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U. S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

DATE: February 1, 1996

FACSIMILE TRANSMISSION SHEET

FROM: Walter Dellinger OFFICE (202) 514-2051
PHONE: _____TO: Jack Quinn OFFICE (202) 456-2632
PHONE: _____NUMBER OF PAGES: 6 PLUS COVER SHEETFAX NUMBER: (202) 456-6279

REMARKS:

IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX, PLEASE CONTACT KATHLEEN MURPHY OF KEVIN SMITH ON 514-2057

OFFICE OF LEGAL COUNSEL FAX NUMBER: (202) 514-0563
FTS NUMBER: (202) 368-0563



U. S. Department of Justice

Office of Legal Counsel

Elena

Office of the
Assistant Attorney General

Washington, D.C. 20530

February 1, 1996

Jack --

I would like you to talk with you about the following alternative last paragraph of the letter to Hatch.

I am prepared to support legislation prohibiting the post-viability use of this procedure if it is amended to make clear that the prohibition of this procedure does not apply to cases in which the procedure, in the medical judgment of the attending physician, is necessary to preserve the life of a woman or to avert a ~~danger~~ to her health.

*condition or event
dangerous*

The problem with the present formulation is simply that the Supreme Court held invalid in Thornburgh a "choice-of-method" restriction requiring that doctors use the abortion procedure most protective of fetal health unless doing so would pose a "significantly greater medical risk" to the woman. Limiting the health exception to medical risks that qualify as "significant", the Court held, would constitute an impermissible "trade-off" of a woman's health. The Tenth Circuit recently applied this holding to find constitutionally insufficient an exception that required a "grave danger" to a woman's health.

I tried in the above language to reconcile the President's concern and the Court's holdings by bringing in the word "danger." To avoid clear conflict with the Court's decisions, it is also important to use the word post-viability at the point indicated.

Copies of relevant pages of the court decisions are attached.

Walter

THORNBURGH

danger of deterring the exercise of that right, and must be invalidated.

3. Section 3210(b) (degree of care for postviability abortions) and § 3210(c) (second-physician requirement when the fetus is possibly viable). Section 3210(b)¹³ sets forth two independent requirements for a postviability abortion. First, it demands the exercise of that degree of care "which such person would be required to exercise in order to preserve the life and health of any unborn child intended to be born and not aborted." Second, "the abortion technique employed shall be that which would provide the best opportunity for the unborn child to be aborted alive unless," in the physician's good-faith judgment, that technique "would present a significantly greater medical risk to the life or health of the pregnant woman." An intentional, knowing, or reckless violation of this standard is a felony of the third degree, and subjects the violator to the possibility of imprisonment for not more than seven years and to a fine of not more than \$15,000. See 18 Pa. Cons. Stat. §§1101(2) and 1103(3) (1982).

The Court of Appeals ruled that § 3210(b) was unconstitutional because it required a "trade-off" between the woman's health and fetal survival, and failed to require that maternal

¹³ Section 3210(b) reads:

"Every person who performs or induces an abortion after an unborn child has been determined to be viable shall exercise that degree of professional skill, care and diligence which such person would be required to exercise in order to preserve the life and health of any unborn child intended to be born and not aborted and the abortion technique employed shall be that which would provide the best opportunity for the unborn child to be aborted alive unless, in the good faith judgment of the physician, that method or technique would present a significantly greater medical risk to the life or health of the pregnant woman than would another available method or technique and the physician reports the basis for his judgment. The potential psychological or emotional impact on the mother of the unborn child's survival shall not be deemed a medical risk to the mother. Any person who intentionally, knowingly or recklessly violates the provisions of this subsection commits a felony of the third degree."

health be the physician's paramount consideration. 737 F. 2d, at 300, citing *Colautti v. Franklin*, 439 U. S. 379, 397-401 (1979) (where Pennsylvania's 1974 Abortion Control Act was reviewed). In *Colautti*, this Court recognized the undesirability of any "trade-off" between the woman's health and additional percentage points of fetal survival." *Id.*, at 400.

Appellants do not take any real issue with this proposition. See Brief for Appellants 84-86. They argue instead, as did the District Court, see 552 F. Supp., at 806-807, that the statute's words "significantly greater medical risk" for the life or health of the woman do not mean some additional risk (in which case unconstitutionality apparently is conceded) but only a "meaningfully increased" risk. That interpretation, said the District Court, renders the statute constitutional. *Id.*, at 807. The Court of Appeals disagreed, pointing out that such a reading is inconsistent with the statutory language and with the legislative intent reflected in that language; that the adverb "significantly" modifies the risk imposed on the woman; that the adverb is "patently not surplusage"; and that the language of the statute "is not susceptible to a construction that does not require the mother to bear an increased medical risk in order to save her viable fetus." 737 F. 2d, at 300. We agree with the Court of Appeals and therefore find the statute to be facially invalid.¹⁴

Section 3210(c)¹⁵ requires that a second physician be present during an abortion performed when viability is possi-

¹⁴ This makes it unnecessary for us to consider appellees' further argument that § 3210(b) is void for vagueness.

¹⁵ Section 3210(c) reads:

"Any person who intends to perform an abortion the method chosen for which, in his good faith judgment, does not preclude the possibility of the child surviving the abortion, shall arrange for the attendance, in the same room in which the abortion is to be completed, of a second physician. Immediately after the complete expulsion or extraction of the child, the second physician shall take control of the child and shall provide immediate medical care for the child, taking all reasonable steps necessary, in his

Jack --

Attached are two versions of the abortion memo.

The top one includes all your edits (which, as I said, were superb).

The bottom one includes all your edits except for one. In the last sentence of the first paragraph, rather than saying (as you said) that a veto "can be justified," this version says that a veto "is appropriate." I think this language fits better the very last sentence of the memo (which you added).

Sign whichever you want!

Elena

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THE WHITE HOUSE

WASHINGTON

January 29, 1996

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MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN

SUBJECT: PARTIAL BIRTH ABORTION ACT

You have asked for a response to a memo from Lee Strobel urging you to sign the partial birth abortion act. The memo you received argues: (1) that many partial birth abortions are performed in "routine" cases, where there is no life or safety issue; (2) that even in non-routine cases, there are always equally sound medical alternatives to the partial birth procedure; and (3) that some of the non-routine cases highlighted by pro-choice groups (notably, the Coreen Costello and Viki Wilson cases) would not be affected by the legislation. Each of these arguments is misleading. Although there is conflicting medical opinion on many issues surrounding the partial birth procedure, the best available information, viewed in light of Supreme Court law, indicates that you should veto the bill because it does not sufficiently protect the health of the woman.

not quite accurate, for the reasons described below.

At bottom, however, even acknowledging that medical opinion on this procedure is divided,

1. ^{with regard to} ~~A memo to you dated January 22 discussed the claim that many partial birth abortions are performed in routine cases. That memo noted the lack of firm medical data (on either side) respecting the circumstances in which these abortions are performed. The memo then noted that the Administration has opposed the Act only because it fails to meet constitutional standards designed to protect the life and health of the woman.~~

can be justified on grounds that

~~We have objected -- and we should continue to object -- to the use of this procedure in any "routine" cases, not involving a woman's life or safety. If the bill were amended as you have insisted it be, such that you could sign it, then the~~

procedure would be banned in routine cases -- i.e., where the

2. Doctors have offered a range of different views as to whether and when use of the partial birth procedure is medically necessary or appropriate. Some doctors, as the memo to you indicates, believe that alternative medical procedures are always as safe or safer than the partial birth procedure. Other doctors claim that the partial birth procedure is often the safest surgical alternative for women late in pregnancy. These doctors, among other things, say that the procedure poses least risk to a woman's future reproductive capacity.

The other

A federal district court in Ohio recently addressed this matter in ruling on the constitutionality of a state statute banning partial birth procedures. After six days of hearings, during which several medical experts testified on each side of the issue, the district court concluded that the partial birth procedure "appears to pose less of a risk to maternal health" than do other procedures available late in pregnancy.

life or health of the woman is not at risk.

In this regard,

Given the state of medical evidence on this subject, it seems appropriate to leave to doctors themselves the decision whether the procedure is medically necessary. ~~At a bare minimum, some doctors, in the exercise of their best medical judgment, find the procedure to be the safest available for certain of their patients.~~ The question the Act presents is whether to prevent such doctors from acting on ~~this~~ judgment. The Supreme Court has recognized that abortion regulations must "allow the attending physician the room he needs to make his best medical judgment." Such an approach, which allows the medical community to make clearly medical decisions, seems the surest way to protect the health of women.

that the procedure is the safest available in a particular circumstance.

3. The facts relating to the Costello and Wilson cases are somewhat uncertain, but this uncertainty tends to reinforce, rather than undermine, the Administration's current position on the Partial Birth Act. The Strobel memo claims that Coreen Costello did not have a partial birth procedure as defined by the Act. Some doctors would support this claim; others would dispute it. There is enormous uncertainty within the medical community as to exactly which procedures this Act covers. The Act does not use any medically recognized terms, and although the definition ~~in the Act~~ ~~it provides~~ of "partial birth abortion" may seem clear to a layman, many doctors say that they do not know how it would apply to particular medical procedures. The dispute over whether Costello's procedure was covered by the Act thus points to a real problem with the legislation: its vagueness and lack of clarity as applied to the real world of medicine.

Similarly, it is not clear whether the Costello and Wilson procedures would fall within the bill's current "life of the mother" exemption. Even if Costello and Wilson were in life-threatening (as opposed to health-threatening) pregnancies, which is itself unclear, a partial birth abortion may not have been "necessary" to save their lives, as the current exemption requires. Under this exemption, it is apparently not enough that a woman is in a life-threatening pregnancy and that her doctor has determined that the partial birth procedure is the most medically appropriate; a partial birth procedure falls within the exemption only if that procedure, and no other, is capable of saving the woman's life. No one knows -- indeed, given the state of medical evidence on these matters, it seems impossible to know -- whether Costello or Wilson (or any other woman in their situation) would get any relief from this very limited exemption.

it seems indisputable that this bill,

In any event, ~~if this bill passes, the health of some women (even if not women in exactly the position of Costello and Wilson) will suffer.~~ The bill will operate in certain cases to prevent women from receiving the medical procedures ~~(their doctors believe to be the safest for them.~~ As you know, this result is forbidden by current constitutional law, which insists that at every stage of a pregnancy, the state's interest in regulating abortion yield to preservation of a woman's health. It is this infirmity

that

alone that impels me to advise you that the proposed Act does not pass constitutional muster.

it

THE WHITE HOUSE
WASHINGTON

4-15-76

Dawn -

I'm sorry for the delay in getting this to you.

The letter to Bernadin, for your information, went to a number of religious leaders.

I hope all of this meets with your and Walter's approval.

Elena

THE WHITE HOUSE
WASHINGTON

DATE: _____

TO:

Doctors who believe fastest

Broad support in med

FROM:

White House Counsel
Room 125, OEOB, x6-7901

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REVISED DRAFT 4/10/96 10:00 a.m..

**STATEMENT BY PRESIDENT WILLIAM JEFFERSON CLINTON
VETO OF H.R. 1833
THE WHITE HOUSE
APRIL 10, 1996**

Good afternoon. I have just met with four courageous women who have had to make a potentially life-saving, although tragic decision to have the kind of abortion that would be banned by H.R. 1833. They represent a small, but extremely vulnerable group of women in this country. They may have different faiths...different political views...and come from different parts of the country. But, they have one thing in common: they all wanted their children; they didn't want to have abortions; and they made the agonizing choice only when it became clear that their babies would not survive and their own lives and health were in grave danger. No one can tell this story better than one of the women who has lived through it. At this time I would like to introduce Vicki Stella.

[VICKI STELLA TELLS HER STORY]

Thank you. Unfortunately, Vicki Stella is not alone. The families standing with me today all have similar stories to tell. They have all made the difficult choice, at the advice of their doctors, to terminate their pregnancies because their babies had been diagnosed with life-threatening disorders that also jeopardized the life and health of the mother. It was the most painful decision any of them have ever had to make. As one of them told me, this is not an issue of abortion or choice -- it is an issue of women's health. Medical experts and families are the ones best qualified to make these decisions -- not the government.

This is a difficult and disturbing issue -- one that I have studied and prayed about for many months. After much reflection, I have concluded that I could not support use of this method of abortion on an elective basis, where there are other equally safe procedures available. However, I understand that, as in the cases of these families here today, there are rare and tragic situations where, in a doctor's judgement, this procedure may be necessary to save a woman's life or to avert serious adverse consequences to her health. My concern is for the health of the mother. I am surprised that Congress would explicitly rule out consideration of the mother's health in this legislation.

I have always believed that abortion should be safe, legal and rare. And that the decision to have an abortion generally should be between a woman, her doctor, her conscience and her God -- not the Congress. I have always opposed late-term abortions except where necessary to protect the life or health of the woman.

I am opposed to H.R. 1833 because it contains a fatal flaw. It does not allow women to protect themselves from serious threats to their health, as required by the Constitution. I cannot, in good conscience, sanction this injustice. Few people are faced with the tragic choices that the families here today have had to make. And we should be careful to judge them if we have not walked in their shoes. Were it not for access to the safest procedure for these women, they might not be here today with us or their families. It is for them, their

children and their families that I am compelled to veto H.R. 1833. Thank you.

Good afternoon. I have just met with four courageous women who have had to make a potentially life-saving, although tragic decision to have the kind of abortion that would be banned by H.R. 1833. They represent a small, but extremely vulnerable group of women in this country. They may have different faiths...different political views...and come from different parts of the country. But, they have one thing in common: they all wanted their children; they didn't want to have abortions; and they made the agonizing choice only when it became clear that their babies would not survive and their own lives and health were in grave danger.

No one can tell this story better than one of the women who has lived through it. At this time I would like to introduce Mary-Dorothy Line.

[MARY-DOROTHY LINE TELLS HER STORY]

Thank you, Ms. Line. Unfortunately, Mary-Dorothy Line is not alone.

Tammy and Mitchell Watts were elated when they found out she was going to have a baby. But, that joy was shattered when they found out in her seventh month that the fetus would not live and her health was in serious danger.

She and her husband, in consultation with their doctor and pastor, tearfully made the decision to terminate the suffering of the fetus and protect her own health and life. It was the toughest decision they ever had to make -- but it was right for them and gave them hope that someday they would have a healthy baby.

Thirty-two weeks into her pregnancy, Vicki Stella learned that her son had nine major abnormalities that added up to certain death. As a diabetic, Vicki's doctors advised her that she faced grave health risks if she were to go through with a delivery that her baby could not survive.

Vicki has two other children and she told me that she made the painful decision to terminate the pregnancy because those children needed her alive.

Seven months into her third pregnancy, Coreen Costello's doctors broke the devastating news that her fetus had a severe and fatal disorder. They told her that going through with the pregnancy would be dangerous and even life-threatening for her. After much agonizing soul-searching, she and her husband finally decided that the safest option for Coreen's health was to terminate the pregnancy.

This is a difficult and disturbing issue -- one that I have studied and prayed about for many months. After much reflection, I have concluded that I could not support use of this method of abortion on an elective basis, where there are other equally safe procedures available. However, I understand that, as in the cases of these families here today, there are rare and tragic situations where, in a doctor's judgement, this procedure may be necessary to save a woman's life or to avert serious adverse consequences to her health. My concern is for the health of the mother. I am surprised that Congress would explicitly rule out consideration of the mother's health in this legislation.

I have always believed that abortion should be safe, legal and rare. And that the decision to have an abortion generally should be between a woman, her doctor, her conscience and her God -- not the Congress.

I have always opposed late-term abortions except where necessary to protect the life or health of the woman.

I am opposed to H.R. 1833 because it contains a fatal flaw. It does not allow women to protect themselves from serious threats to their health, as required by the Constitution. I cannot, in good conscience, sanction this injustice.

Few people are faced with the tragic choices that the families here today have had to make. And we should be careful to judge them if we have not walked in their shoes. Were it not for access to the safest procedure for these women, they might not be here today with us or their families. It is for them, their children and their families that I am compelled to veto H.R. 1833.

Thank you.

DRAFT

Dear Senator Dole:

Thank you for your letter concerning H.R. 1833, which would prohibit doctors from performing certain types of abortions. While I respect your views on this very complex issue, I cannot agree with you that this bill should become law. I have concluded that the bill as drafted does not meet the constitutional requirements that the Supreme Court has imposed upon us.

I have always believed that the decision to have an abortion should be between a woman, her conscience, her doctor, and her God. I strongly believe that legal abortions--those abortions that the Supreme Court ruled in Roe v. Wade must be protected--should be safe and rare. I have long opposed late-term abortions except where they are necessary to protect the life of the mother or where there is a threat to her health, as the law requires. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions except where they were necessary to protect the life or health of the woman, consistent with the Supreme Court's rulings.

H.R. 1833 does not meet the Supreme Court's test of protecting both the life and health of the woman. The amendment you offered during Senate consideration of H.R. 1833 permits a doctor to perform this type of abortion only in cases where it is "necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose."

I have some question about whether your amendment would protect a woman whose life is endangered by the pregnancy itself, because it appears to require her to show that she suffers from some independent physical disorder or illness. But even accepting that your intent was to protect situations where the life of the mother is threatened, your amendment does not go far enough. The Supreme Court has held that laws regulating abortion must preserve a woman's right to an abortion not only when her life is endangered, but also in situations where her health is endangered. In Casey v. Planned Parenthood, the Supreme Court made clear that "Roe forbids a state from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health." Your amendment does not protect women who are faced with this tragic situation where continuing their pregnancy would constitute a threat to their health.

I have studied--and prayed--about this issue, and the families who face this horrible choice, for many months. I believe that you and I have a duty to try to find common ground: a resolution to this issue that respects the views of those who object to this particular procedure, but also upholds the Supreme Court's requirement that laws regulating abortion protect both

DRAFT

the life and the health of American women. The amendment that Senator Boxer offered during the Senate's consideration of H.R. 1833 would achieve this common ground. It would make clear that the prohibition in H.R. 1833 does not apply to abortions that are performed where, "in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman."

I urge you to join with me in supporting the Boxer amendment.

DRAFT 2
(with Counsel's edits)

Dear Senator Hatch:

I understand that the House is preparing to consider H.R. 1833, as amended by the Senate, which would prohibit doctors from performing certain types of abortions. I want to make the Congress aware of my position on this extremely complex issue.

I have always believed that the decision to have an abortion should be between a woman, her conscience, her doctor, and her God. I strongly believe that legal abortions--those abortions that the Supreme Court ruled in Roe v. Wade must be protected--should be safe and rare. I have long opposed late-term abortions except, as the law requires, where they are necessary to protect the life of the mother or where there is a threat to her health. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions except where they were necessary to protect the life or health of the woman, consistent with the Supreme Court's rulings.

The procedure described in H.R. 1833 is very disturbing, and I personally cannot support its use on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available. As I understand it, however, there are rare and tragic situations that can occur late in a woman's pregnancy in which, in a doctor's medical judgment, this procedure may be necessary to save a woman's life or to preserve her health. In those situations, the law that we have been elected to uphold requires that a woman's ability to choose this procedure be protected.

I have studied and prayed about this issue, and the families who must face this awful choice, for many months. I believe that we have a duty to try to find common ground: a resolution to this issue that respects the views of those--including myself--who object to this particular procedure, but also upholds the Supreme Court's requirement that laws regulating abortion protect both the life and the health of American women.

I have concluded that H.R. 1833 as drafted does not meet the constitutional requirements that the Supreme Court has imposed upon us, in Roe and the decisions that have followed it, to provide protections for both the life and the health of the mother in any laws regulating late-term abortions. I am prepared to support H.R. 1833 if it is amended to make clear that the prohibition of this procedure does not apply to cases in which the procedure, in the medical judgment of the attending physician, is necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

DRAFT

Dear Senator Hatch:

I understand that the House is preparing to consider H.R. 1833, as amended by the Senate, which would prohibit doctors from performing certain types of abortions. I want to make the Congress aware of my position on this extremely complex issue.

I have always believed that the decision to have an abortion should be between a woman, her conscience, her doctor, and her God. I strongly believe that legal abortions--those abortions that the Supreme Court ruled in Roe v. Wade must be protected--should be safe and rare. I have long opposed late-term abortions except, as the law requires, where they are necessary to protect the life of the mother or where there is a threat to her health. In fact, as Governor of Arkansas, I signed into law a bill that barred third trimester abortions except where they were necessary to protect the life or health of the woman, consistent with the Supreme Court's rulings.

The procedure described in H.R. 1833 is ^{STG} very disturbing, and I personally cannot support its use on an elective basis, where the abortion is being performed for non-health related reasons and there are equally safe medical procedures available. But as I understand it, there are rare and tragic situations that can occur late in a woman's pregnancy in which, in a doctor's medical judgment, this procedure may be necessary to save a woman's life or to preserve her health. In those situations, the law that we have been elected to uphold requires that a woman's ability to choose this procedure be protected. Keep

I have concluded that H.R. 1833 as drafted does not meet the constitutional requirements that the Supreme Court has imposed upon us, in Roe and the cases that have followed it, to provide protections for both the life and the health of the mother in any laws regulating late-term abortions. ~~As the Supreme Court made clear in Casey v. Planned Parenthood, "Roe forbids a state from interfering with a woman's choice to undergo an abortion procedure if continuing her pregnancy would constitute a threat to her health."~~ Maybe don't need?

I have studied and prayed about this issue, and the families who must face this awful choice, for many months. I believe that we have a duty to try to find common ground: a resolution to this issue that respects the views of those--including myself--who object to this particular procedure, but also upholds the Supreme Court's requirement that laws regulating abortion protect both the life and the health of American women. Note

I am prepared to support H.R. 1833 if it is amended to make clear that the prohibition of this procedure does not apply to ~~cases in abortions that are performed where,~~ in the medical judgment of the attending physician, ~~it is~~ necessary to preserve the life of the woman or avert serious adverse health consequences to the woman.

which the procedure,