

NLWJC - Kagan

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Abortion Partial Birth - Legislative

Abortion - partial birth -
legislative

Cynthia Dillard 09/18/98 11:06:21
AM

Record Type: Record

To: Nicole R. Rabner/WHO/EOP, Laura Emmett/WHO/EOP, Elena Kagan/OPD/EOP

cc:

Subject: partial birth abortion

The Senate sustained the President's veto, 64-36. Didn't lose any more votes this time around.

Abortion-partial bi-Th-
Legislative

Cynthia Dallard 09/17/98 10:52:06 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

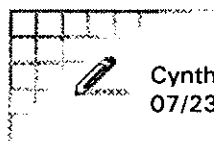
Subject: abortion

In case you don't already know, the Senate has 4 hours of debate on Partial Birth bill, and then they will vote tomorrow. Durbin is introducing a substitute amendment which will include the Daschle language from last year in addition to a provision requiring a women to get a second opinion (ie. a second doctor must certify that the procedure is necessary to protect a woman's life or from greivous harm). I don't think Durbin has decided yet whether or not to bring it up for a vote. I'll keep you posted.

Message Sent To:

Elena Kagan/OPD/EOP
Jennifer L. Klein/OPD/EOP
Neera Tanden/WHO/EOP
Laura Emmett/WHO/EOP
Peter G. Jacoby/WHO/EOP

Abortion - partial birth -
legislative



Cynthia Dailard
07/23/98 04:41:34 PM

Record Type: Record

To: Laura Emmett/WHO/EOP, Jennifer L. Klein/OPD/EOP, Neera Tanden/WHO/EOP

cc:

Subject: House override quickie analysis

----- Forwarded by Cynthia Dailard/OPD/EOP on 07/23/98 04:45 PM -----



clare_coleman @ ppfa.org
07/23/98 04:52:45 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: House override quickie analysis

Veto override vote analysis

October 8, 1997 final 295-133 6 absences
July 23, 1998 final 296-132 7 absences

New members since October 8, 1997, vote and how they voted:

Mary Bono	-	replaced Sonny Bono	-
Robert Brady	missed the vote	Tom Foglietta	-
Lois Capps	+	Walter Capps	+
Vito Fossella	-	Susan Molinari	-
Barbara Lee	+	Ron Dellums	+
Gregory Meeks	+ spoke on floor	Floyd Flake	-
Heather Wilson	-	Steve Schiff	-

Missed the vote, but were with us in the past:

Ford
Lewis (GA)
Markey
Serrano

Missed the last vote, but were with us today:

Hilliard
Payne

*** DRAFT *** DO NOT DISTRIBUTE *** DRAFT ***

*Abortion - partial birth -
legislative*

Members Voting Against the Rule, Against the Tabling of the Hoyer Motion to Recommit, In Support of the Frank Motion to Recommit and In Support of Final Passage of HR1122, the "Partial-Birth Abortion Ban Act."

T. Barrett (D-WI)
Bonior (D-MI)
Boyd (D-FL)
Davis (D-FL)
Etheridge (D-NC)
Flake (D-NY)
Gephardt (D-MO)
Hinojosa (D-TX)
J. Johnson (D-WI)
P. Kennedy (D-RI)
Kind (D-WI)

Lampson (D-TX)
Maloney (D-CT)
Minge (D-MN)
J. Moran (D-VA)
Pomeroy (D-ND)
Reyes (D-TX)
Sandlin (D-TX)
Shays (R-CT)
Spratt (D-SC)
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Shays (R-CT)
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Castle (R-DE)
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Frelinghuysen (R-NJ)
Gephardt (D-MO)
Gilchrest (R-MD)
Hinojosa (D-TX)
Houghton (R-NY)
Jefferson (D-LA)
J. Johnson (D-WI)
Kelly (R-NY)
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Kleczka (D-WI)
Klug (R-WI)
Lampson (D-TX)
Maloney (D-CT)
Minge (D-MN)
Moakley (D-MA)
J. Moran (D-VA)
Neal (D-MA)
Obey (D-WI)
Pomeroy (D-ND)
Ramstad (R-MN)
Reyes (D-TX)
Sandlin (D-TX)
Shays (R-CT)
Spratt (D-SC)
Strickland (D-OH)

Abortion - partial birth -
legislative

05/08/97 18:49

003

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Findings

(1) As the Supreme Court recognized in Roe v. Wade, the government has an "important and legitimate interest in preserving and protecting the health of the pregnant woman . . . and has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling";

(2) In delineating at what point the government's interest in fetal life becomes "compelling," Roe v. Wade held that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability," a conclusion reaffirmed in Planned Parenthood of Southeastern Pennsylvania v. Casey;

(3) Planned Parenthood v. Casey also reiterated Roe's holding that the government's interest in potential life becomes compelling with fetal viability, stating that "subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother";

(4) According to the Supreme Court, viability "is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of state protection that now overrides the rights of the woman";

(5) The Supreme Court has thus indicated that it is constitutional for Congress to ban abortions occurring after viability so long as the ban does not apply when a woman's life or health faces a serious threat;

(6) Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to protect a viable fetus so long as the mother's health is not put at greater risk;

(7) It is well established that women may suffer serious health conditions during pregnancy, such as breast cancer, preeclampsia, uterine rupture or non-Hodgkin's lymphoma, among others, that may require the pregnancy to be terminated;

(8) While such situations are rare, not only would it be unconstitutional but it would be unconscionable for Congress to ban abortions in such cases, forcing women to endure severe damage to their health and, in some cases, risk early death;

(9) In cases where the mother's health is not at such high risk, however, it is appropriate for Congress to assert its "compelling interest" in fetal life by prohibiting abortions after fetal viability;

(10) While many States have banned abortions of viable fetuses, in some States it continues to be legal for a healthy woman to abort a viable fetus;

(11) As a result, women seeking abortions may travel between the States to take advantage of differing State laws;

(12) To prevent abortions of viable fetuses not necessitated by severe medical complications, Congress must act to make such abortions illegal in all States;

(more)

00/08/87 10:48 7

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(13) Congress finds that abortion of a viable fetus should be prohibited throughout the United States, unless a woman's life or health is threatened and that, even when it is necessary to terminate the pregnancy, every measure should be taken, consistent with the goals of protecting the mother's life and health, to preserve the life and health of the fetus.

Prohibition of Post-Viability Abortions

(a) In General. It shall be unlawful to abort a viable fetus unless the physician certifies that continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

"Grievous injury" shall be defined as:

- (a) a severely debilitating disease or impairment specifically caused by the pregnancy; or
- (b) an inability to provide necessary treatment for a life-threatening condition.

(b) "Grievous injury" does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.

Penalties

(a) Action by Attorney General: the Attorney General may commence a civil action under this Act in any appropriate United States District Court.

(b) Relief.

(1) First offense: In any action under subparagraph (.), the court shall order the suspension or revocation of respondent's medical license, certificate, or permit, or shall assess a civil penalty against the respondent in an amount not exceeding \$100,000, or both.

(2) Second offense: If the respondent has been convicted on a prior occasion for a violation of this Act, the court shall order the revocation of respondent's medical license, certificate, or permit, or shall assess a civil penalty against the respondent in an amount not exceeding \$250,000, or both.

(c) Certification Requirements. At the time of the commencement of an action under this section, the Attorney General shall certify to the court that at least 30 calendar days previously --

(1) he or she has notified in writing to the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision of the alleged violation of this section; and

(2) he or she believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

No woman who has had an abortion after fetal viability may be prosecuted under this section for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of this title.

(more)

Penalties

(a) **Action by Attorney General.** The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this Act in any appropriate United States District Court.

(b) **Relief.**

(1) **First offense:** In any action under subparagraph (), the court shall notify the State medical licensing authority in order to effect the suspension or revocation of respondent's medical license, or shall assess a civil penalty against the respondent in an amount not exceeding \$100,000, or both.

(2) **Second offense:** If the respondent has been convicted on a prior occasion for a violation of this Act, the court shall notify the State medical licensing authority in order to effect the revocation of respondent's medical license, or shall assess a civil penalty against the respondent in an amount not exceeding \$250,000, or both.

(3) **Hearing on penalties:** The State medical licensing authority shall be given notification of and an opportunity to be heard at a hearing to determine penalties under this Title.

(c) **Certification Requirements.** At the time of the commencement of an action under this section, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General shall certify to the court that at least 30 calendar days previously --

(1) he or she has notified in writing to the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision of the alleged violation of this section, as well as the State medical licensing board or other appropriate State agency, and

(2) he or she believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

No woman who has had an abortion after fetal viability may be prosecuted under this section for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of this title.

Regulations

In the certification to be submitted under subsection (), the physician shall certify that, in his or her best medical judgment, an abortion was medically necessary pursuant to subsection (), and describe the medical indications supporting his or her judgment.

The Department of Health and Human Services shall establish regulations for certification by the physician under subsection (), unless the State has its own certification procedure for abortions after fetal viability.

In addition, Department of Health and Human Services shall establish regulations to ensure the confidentiality of all information submitted pursuant to certification by the physician, as required by subsection ().

Each State shall ensure that the State medical licensing authority develops regulations to effect the revocation or suspension of respondent's medical license under subsection (), or the State shall be subject to loss of funding under title XVIII.

Rule of Construction

Nothing in this chapter shall be construed to prohibit State or local governments from regulating, restricting, or prohibiting post-viability abortions to the extent permitted by the Constitution of the United States.

Abortion - partial
birth - legislative

Bipartisan Alternative to S. 6/H.R. 1122

S. 6, the Partial Birth Abortion Ban, would outlaw the procedure physicians call dilatation and extraction (D&X) at any stage of pregnancy -- with no exception for the health of the mother -- but allow other, sometimes more dangerous abortion procedures to be used in its place.

The bipartisan alternative to S. 6 would ban all abortions after fetal viability (when the fetus can sustain survivability outside the womb with or without life support) unless the mother's life or health is truly endangered. The health exception to the comprehensive ban is being written to cover only very rare situations (1) that arise from complications of the pregnancy itself, such as serious heart damage (cardiomyopathy), severe hypertension (preeclampsia); dangerous aggravation of pre-existing conditions, such as complications from diabetes (blindness, amputation); and, as in the cases of some women carrying severely deformed fetuses, uterine rupture and other injuries; or (2) where termination of the pregnancy is necessary to allow medically necessary treatment of life-threatening conditions, including aggressive cancers (acute leukemia or breast cancer).

Constitutional Parameters Limiting Government Restriction of Abortion

Right To Terminate Pregnancy Prior To Viability: Roe v. Wade held that the Constitution protects "a woman's decision whether or not to terminate her pregnancy." This holding was reaffirmed in Planned Parenthood of Southeastern Pennsylvania v. Casey, in which the Supreme Court held that "it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy."

Viability Defined: According to the Court, "viability is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of state protection that now overrides the rights of the woman." Although the actual point of viability varies with each case, it is generally reached between the 23rd and the 28th week.

Government May Ban Abortion After Viability: In Casey, the Supreme Court reiterated Roe's determination that after viability, the State may ban abortion. Many states have done so, and post-viability abortions comprise less than 0.5% of all abortions (99% occur in the first 20 weeks).

Ban Must Have An Exception When A Woman's Life Or Health Is At Risk: According to Roe and Casey, although the State has a legitimate interest in preserving potential life, and may promote this interest by prohibiting abortion once the fetus attains viability, it may not do so when preventing an abortion would endanger the life or health of the mother. The Court has consistently held that "maternal health [must] be the physician's paramount consideration."

Would S. 6 prevent abortions? No. S. 6 would not stop a single abortion; it would merely result in abortion by a different method, such as induction, hysterotomy (pre-term c-section), or dilatation and evacuation (D&E) -- all of which pose a greater risk to the mother's health in certain cases.

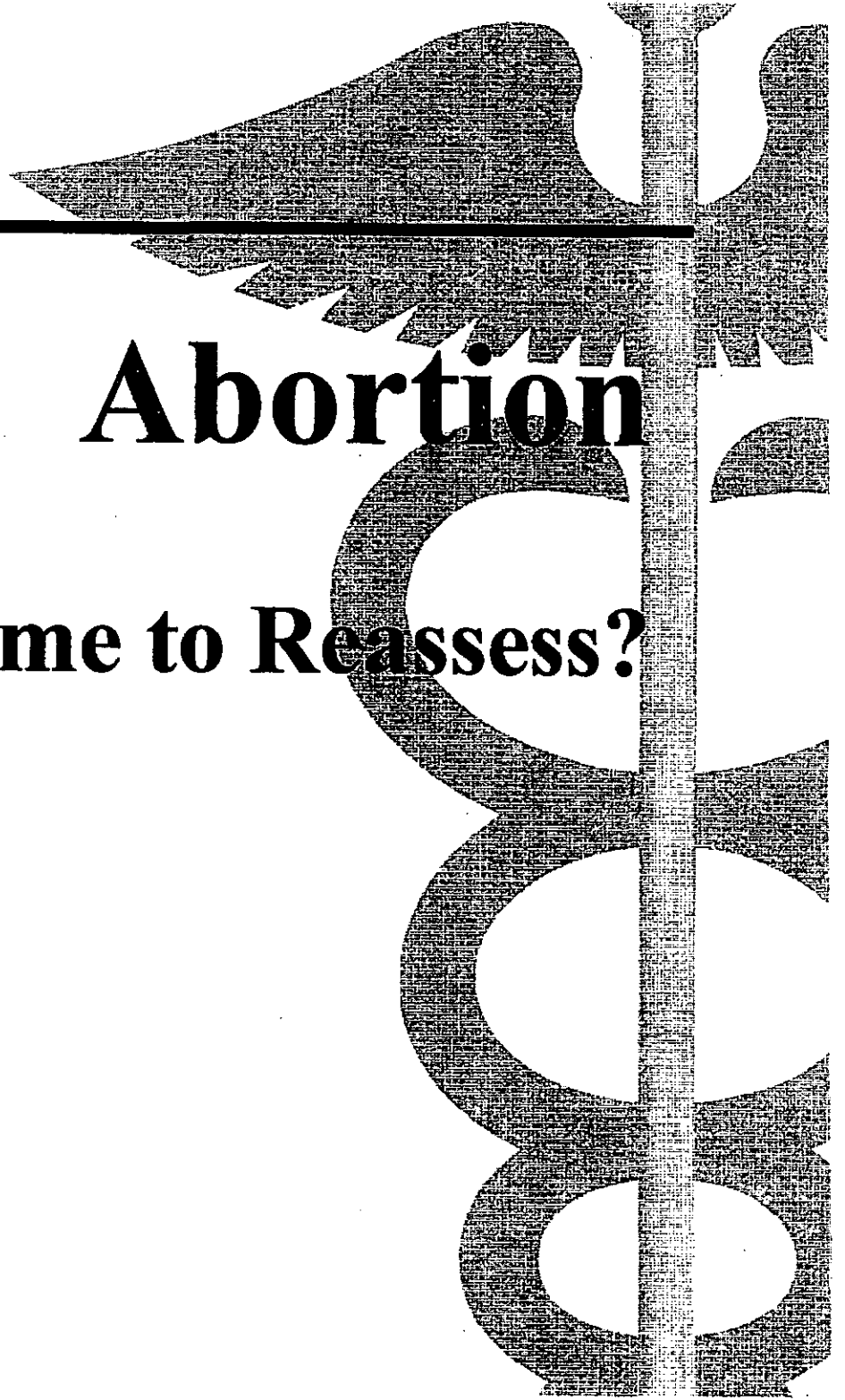
Can S. 6 become permanent law? No. Even if Congress overrides a Presidential veto, S. 6 is clearly unconstitutional, so it will be struck down by the courts and have no ultimate effect.

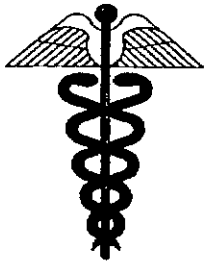
Can something be done to stop unnecessary abortions of viable fetuses? Yes. Congress can pass the bipartisan, comprehensive post-viability abortion ban with a narrow life and health exception that will outlaw these very late-term abortions. This will actually reduce the number of abortions in this country without putting women at unacceptable risk. This ban would be constitutional, and the President would sign it.



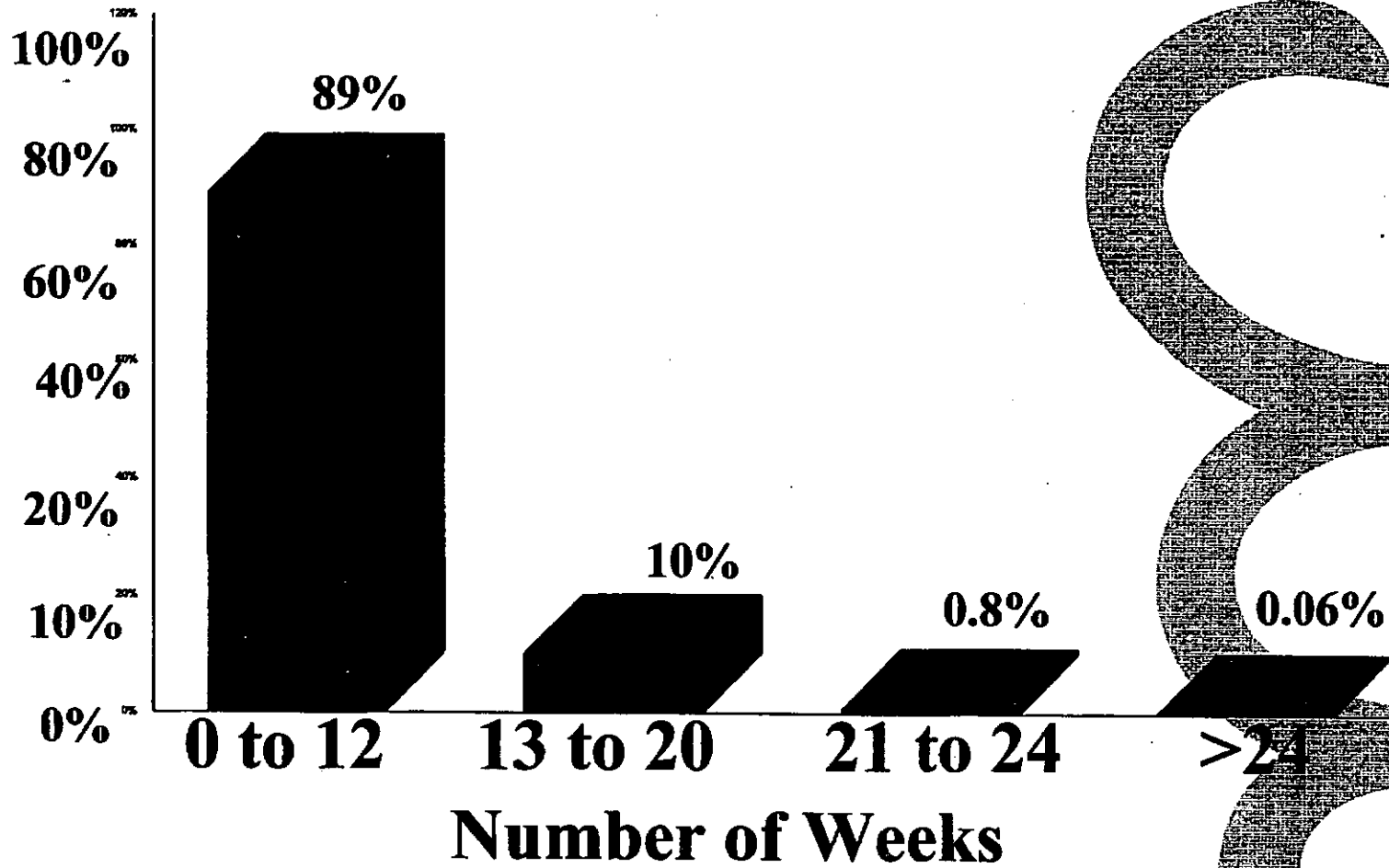
Abortion

Time to Reassess?

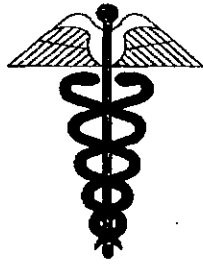




Truth: When Abortions Occur



Source: The Alan Guttmacher Institute



The Real Issue

**When, and under what
circumstances, should the
government restrict abortion?**



Truth: the Constitution

Roe v. Wade (1973): protects *"a woman's decision whether or not to terminate her pregnancy."*

Colautti v. Franklin (1979): *"a fetus is considered viable if it is potentially able to live outside the womb, albeit with artificial aid."*

Planned Parenthood v. Casey (1992): prohibits restrictions that place *"a substantial obstacle in the path of a woman seeking an abortion of a non-viable fetus."*



Truth: the Science

Viability:

- ▶ Ability to sustain survivability outside the womb, with or without life support.
- ▶ Usually 23-28 weeks.
- ▶ Determined by physician on a case-by-case basis.



Key Questions Posed by S. 6/H.R. 1122

- ▶ Should just one, or all, post-viability abortion procedures be banned?
- ▶ Should a mother's health be protected throughout pregnancy?
- ▶ Should a woman's Constitutional right to choose before viability be preserved?



Two Approaches

S. 6/H.R. 1122

- ▶ Bans only one procedure; allows others in its place.
- ▶ Violates a woman's Constitutional right to have her health protected.
- ▶ Violates a woman's Constitutional right to choose before viability.

The Alternative

- ▶ Bans all post-viability abortions.
- ▶ Preserves exceptions for life & health of the mother. (narrowly defined)
- ▶ Protects a woman's Constitutional right to choose before viability.



Viability

99% of abortions are performed within the first 20 weeks.



0

Right to Choose
Constitutionally protected.

Viability

(23-28 weeks)

40

S. 6/H.R. 1122: bans D&X
and all other
procedures



Post-Viability

S. 6/H.R. 1122

- ▶ Bans only:
Dilatation & Extraction
(D&X or "Intact D&E")
- ▶ No exception to protect
health of the mother.

The Alternative

- ▶ Bans all:
Dilatation & Evacuation (D&E)
Dilatation & Extraction (D&X)
Induction
Hysterotomy
Hysterectomy
- ▶ Preserves exception
for health of the mother.
(narrowly defined)

National Right to Life on Alternatives to D&X:

S. 6

(source: NRL Web Page as of 5/1/97)

no ban

D&E "...may cause cervical laceration. Bleeding...may be profuse."

no ban

Induction [with prostaglandins] "...risks...cervical trauma, infection, hemorrhage...cardiac arrest and rupture of the uterus...Death is not unheard of."

no ban

Hysterotomy (C-section) "...highest risk to the health of the mother...potential for rupture during subsequent pregnancies..."

banned

D&X No maternal health risks cited.



Who Should Decide...

- ▶ ... Which Procedure is Medically Appropriate in an Individual Case?

**A Woman
and her Doctor.**

or

The Government.

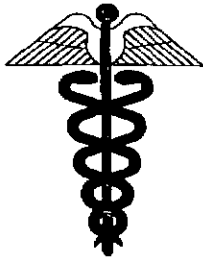


Health Consequences: the Constitution

Roe v. Wade (1973): protects a mother's health throughout pregnancy.

Planned Parenthood v. Danforth (1975): Cannot force "a woman and her physician to terminate her pregnancy by methods more dangerous to her health than the method outlawed."

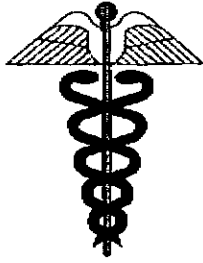
Thornburgh v. American College of Ob/Gyns (1986): Cannot force a mother "to bear an increased medical risk...to save her viable fetus."



Health Consequences: Physicians say...

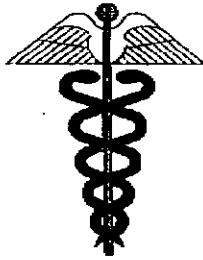
American College of Obstetricians & Gynecologists

"An intact D&X may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. **The intervention of legislative bodies into medical decision making is inappropriate, ill-advised, and dangerous.**"



Complications Caused by the Pregnancy

- ▶ **Primary pulmonary hypertension:** *Sudden death or intractable congestive heart failure. Maternal mortality approaches 50%. (this or other complications occur in 10 to 40% of patients with chronic hypertension)*
- ▶ **Preeclampsia:** *Severe hypertension & accompanying renal/kidney or liver failure. (5 to 10% of pregnancies)*
- ▶ **Cardiomyopathy:** *Occurs late in pregnancy in women with no history of heart disease as "a distinct, well-described syndrome of cardiac failure."*



When Pregnancy Complicates Treatment

- ▶ **Cancers:** (1 in 1000 pregnancies)
Pregnancy depresses mother's immune system; radiation and chemotherapy are harmful to fetus.
- ▶ **Lymphoma:** 50% cure rate with immediate treatment; likely death in 6 months if delayed, radiation & chemotherapy risk fetal mutation.
- ▶ **Breast Cancer:** (1 in 3000 pregnancies)
Increased estrogen and lactose production during pregnancy accelerates cancer; immune system depressed.

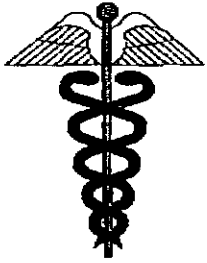


Health Exception

It shall be unlawful to abort a viable fetus unless the physician certifies that continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health. "Grievous injury" shall be defined as:

- (a) a severely debilitating disease or impairment specifically caused by the pregnancy; or
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"Grievous injury" does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.



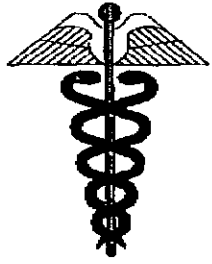
Who Should Decide...

► ...When Medical Risks are Serious Enough?

**A Woman
and her Doctor.**

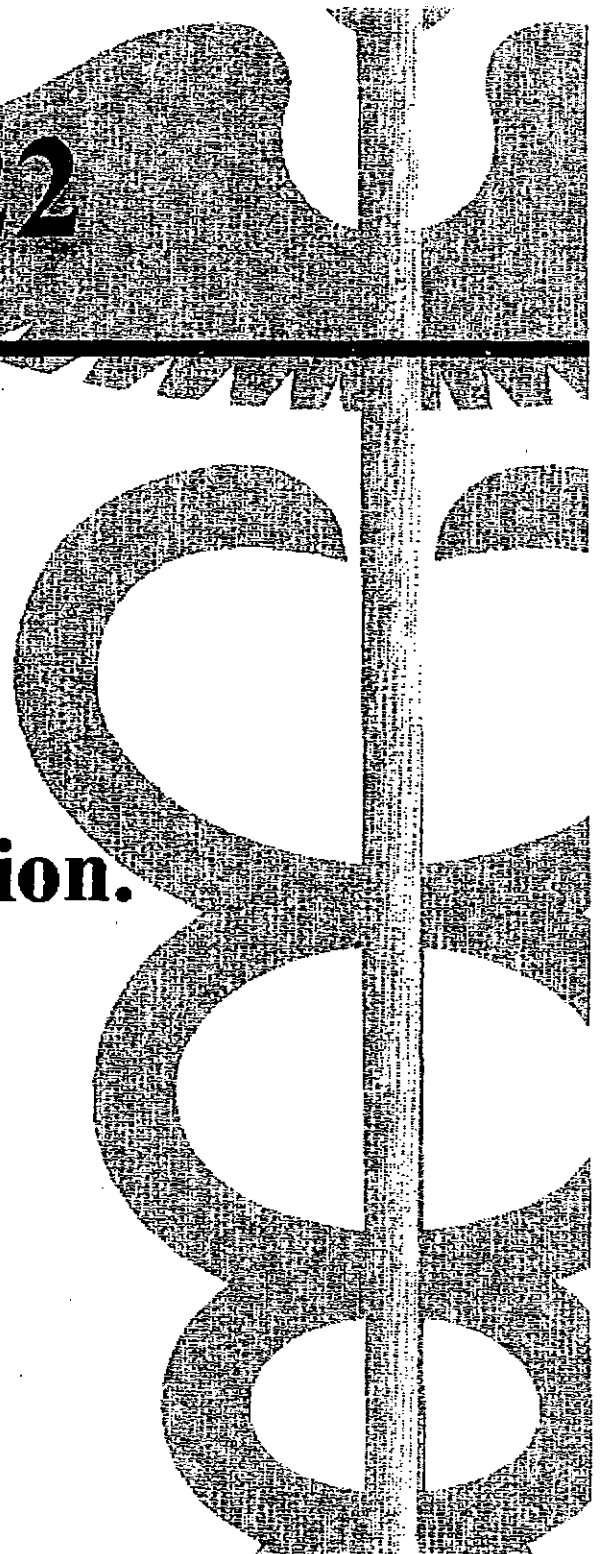
or

The Government.



S. 6/H.R. 1122

- ▶ **Clearly Unconstitutional.**
- ▶ **Doesn't Stop a Single Abortion.**





The Alternative

- ▶ **Before Viability:** A woman's Constitutional right to choose is protected.
- ▶ **After Viability:** All procedures banned with exceptions only when the life or health of a mother are seriously threatened.

Partial birth - legislative

08/09/97 18:49

NOT RECEIVED

002

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Findings

- (1) As the Supreme Court recognized in Roe v. Wade, the government has an "important and legitimate interest in preserving and protecting the health of the pregnant woman . . . and has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling";
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- (7) It is well established that women may suffer serious health conditions during pregnancy, such as breast cancer, preeclampsia, uterine rupture or non-Hodgkin's lymphoma, among others, that may require the pregnancy to be terminated;
- (8) While such situations are rare, not only would it be unconstitutional but it would be unreasonable for Congress to ban abortions in such cases, forcing women to endure severe damage to their health and, in some cases, risk early death;
- (9) In cases where the mother's health is not at such high risk, however, it is appropriate for Congress to assert its "compelling interest" in fetal life by prohibiting abortions after fetal viability;
- (10) While many States have banned abortions of viable fetuses, in some States it continues to be legal for a healthy woman to abort a viable fetus;
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(more)

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003

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(b) "Grievous injury" does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.

Penalties

(a) Action by Attorney General: the Attorney General may commence a civil action under this Act in any appropriate United States District Court.

(b) Relief.

(1) First offense: In any action under subparagraph (a), the court shall order the suspension or revocation of respondent's medical license, certificate, or permit, or shall assess a civil penalty against the respondent in an amount not exceeding \$100,000, or both.

(2) Second offense: If the respondent has been convicted on a prior occasion for a violation of this Act, the court shall order the revocation of respondent's medical license, certificate, or permit, or shall assess a civil penalty against the respondent in an amount not exceeding \$250,000, or both.

(c) Certification Requirements. At the time of the commencement of an action under this section, the Attorney General shall certify to the court that at least 30 calendar days previously --

- (1) he or she has notified in writing to the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision of the alleged violation of this section, and
- (2) he or she believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

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(more)

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Penalties

(a) **Action by Attorney General.** The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this Act in any appropriate United States District Court.

(b) **Relief.**

(1) **First offense:** In any action under subparagraph (), the court shall notify the State medical licensing authority in order to effect the suspension or revocation of respondent's medical license, or shall assess a civil penalty against the respondent in an amount not exceeding \$100,000, or both.

(2) **Second offense:** If the respondent has been convicted on a prior occasion for a violation of this Act, the court shall shall notify the State medical licensing authority in order to effect the revocation of respondent's medical license, or shall assess a civil penalty against the respondent in an amount not exceeding \$250,000, or both.

(3) **Hearing on penalties:** The State medical licensing authority shall be given notification of and an opportunity to be heard at a hearing to determine penalties under this Title.

(c) **Certification Requirements.** At the time of the commencement of an action under this section, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General shall certify to the court that at least 30 calendar days previously --

(1) he or she has notified in writing to the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision of the alleged violation of this section, as well as the State medical licensing board or other appropriate State agency, and

(2) he or she believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

No woman who has had an abortion after fetal viability may be prosecuted under this section for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of this title.

Regulations

In the certification to be submitted under subsection (), the physician shall certify that, in his or her best medical judgment, an abortion was medically necessary pursuant to subsection (), and describe the medical indications supporting his or her judgment.

The Department of Health and Human Services shall establish regulations for certification by the physician under subsection (), unless the State has its own certification procedure for abortions after fetal viability.

In addition, Department of Health and Human Services shall establish regulations to ensure the confidentiality of all information submitted pursuant to certification by the physician, as required by subsection ().

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003

Each State shall ensure that the State medical licensing authority develops regulations to effect the revocation or suspension of respondent's medical license under subsection O, or the State shall be subject to loss of funding under title XVIII.

Rule of Construction

Nothing in this chapter shall be construed to prohibit State or local governments from regulating, restricting, or prohibiting post-viability abortions to the extent permitted by the Constitution of the United States.

Abortion - partial birth -
legislative

05/08/97 18:48

DRAFT - NOT FOR DISTRIBUTION

Findings

- (1) As the Supreme Court recognized in Roe v. Wade, the government has an "important and legitimate interest in preserving and protecting the health of the pregnant woman . . . and has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes compelling";
 - (2) In delineating at what point the government's interest in fetal life becomes "compelling," Roe v. Wade held that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability," a conclusion reaffirmed in Planned Parenthood of Southeastern Pennsylvania v. Casey;
 - (3) Planned Parenthood v. Casey also reiterated Roe's holding that the government's interest in potential life becomes compelling with fetal viability, stating that "subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother";
 - (4) According to the Supreme Court, viability "is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of state protection that now overrides the rights of the woman";
 - (5) The Supreme Court has thus indicated that it is constitutional for Congress to ban abortions occurring after viability so long as the ban does not apply when a woman's life or health faces a serious threat;
 - (6) Even when it is necessary to terminate a pregnancy to save the life or health of the mother, every medically appropriate measure should be taken to protect a viable fetus so long as the mother's health is not put at greater risk;
 - (7) It is well established that women may suffer serious health conditions during pregnancy, such as breast cancer, preeclampsia, uterine rupture or non-Hodgkin's lymphoma, among others, that may require the pregnancy to be terminated;
 - (8) While such situations are rare, not only would it be unconstitutional but it would be unconscionable for Congress to ban abortions in such cases, forcing women to endure severe damage to their health and, in some cases, risk early death;
 - (9) In cases where the mother's health is not at such high risk, however, it is appropriate for Congress to assert its "compelling interest" in fetal life by prohibiting abortions after fetal viability;
 - (10) While many States have banned abortions of viable fetuses, in some States it continues to be legal for a healthy woman to abort a viable fetus;
 - (11) As a result, women seeking abortions may travel between the States to take advantage of differing State laws;
 - (12) To prevent abortions of viable fetuses not necessitated by severe medical complications, Congress must act to make such abortions illegal in all States;
- (more)

05/09/97 11:57

05/08/97 10:48

DRAFT -- NOT FOR DISTRIBUTION

(13) Congress finds that abortion of a viable fetus should be prohibited throughout the United States, unless a woman's life or health is threatened and that, even when it is necessary to terminate the pregnancy, every measure should be taken, consistent with the goals of protecting the mother's life and health, to preserve the life and health of the fetus.

Prohibition of Post-Viability Abortions

(a) In General. It shall be unlawful to abort a viable fetus unless the physician certifies that continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health.

"Grievous injury" shall be defined as:

- (a) a severely debilitating disease or impairment specifically caused by the pregnancy, or
 (b) an inability to provide necessary treatment for a life-threatening condition.

(b) "Grievous injury" does not include any condition that is not medically diagnosable or any condition for which termination of pregnancy is not medically indicated.

Penalties

(a) Action by Attorney General: the Attorney General may commence a civil action under this Act in any appropriate United States District Court.

(b) Relief.

(1) First offense: In any action under subparagraph (a), the court shall order the suspension or revocation of respondent's medical license, certificate, or permit, or shall assess a civil penalty against the respondent in an amount not exceeding \$100,000, or both.

(2) Second offense: If the respondent has been convicted on a prior occasion for a violation of this Act, the court shall order the revocation of respondent's medical license, certificate, or permit, or shall assess a civil penalty against the respondent in an amount not exceeding \$250,000, or both.

(c) Certification Requirements. At the time of the commencement of an action under this section, the Attorney General shall certify to the court that at least 30 calendar days previously --

(1) he or she has notified in writing to the Governor or chief executive officer and attorney general or chief legal officer of the appropriate State or political subdivision of the alleged violation of this section, and

(2) he or she believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

No woman who has had an abortion after fetal viability may be prosecuted under this section for a conspiracy to violate this section or for an offense under section 2, 3, 4, or 1512 of this title.

(more)

Penalties

(a) **Action by Attorney General.** The Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General or United States Attorney specifically designated by the Attorney General may commence a civil action under this Act in any appropriate United States District Court.

(b) **Relief.**

(1) **First offense:** In any action under subparagraph (), the court shall notify the State medical licensing authority in order to effect the suspension or revocation of respondent's medical license, or shall assess a civil penalty against the respondent in an amount not exceeding \$100,000, or both.

(2) **Second offense:** If the respondent has been convicted on a prior occasion for a violation of this Act, the court shall notify the State medical licensing authority in order to effect the revocation of respondent's medical license, or shall assess a civil penalty against the respondent in an amount not exceeding \$250,000, or both.

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(2) he or she believes that such an action by the United States is in the public interest and necessary to secure substantial justice.

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The Department of Health and Human Services shall establish regulations for certification by the physician under subsection (), unless the State has its own certification procedure for abortions after fetal viability.

In addition, Department of Health and Human Services shall establish regulations to ensure the confidentiality of all information submitted pursuant to certification by the physician, as required by subsection ().

Each State shall ensure that the State medical licensing authority develops regulations to effect the revocation or suspension of respondent's medical license under subsection (), or the State shall be subject to loss of funding under title XVIII.

Rule of Construction

Nothing in this chapter shall be construed to prohibit State or local governments from regulating, restricting, or prohibiting post-viability abortions to the extent permitted by the Constitution of the United States.

II

105TH CONGRESS
1ST SESSION**S. 481**

To prohibit certain abortions.

IN THE SENATE OF THE UNITED STATES

MARCH 19, 1997

Mrs. FEINSTEIN (for herself, Mrs. BOXER, and Ms. MOSELEY-BRAUN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit certain abortions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Post-Viability Abortion
5 Restriction Act".

6 **SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.**

7 (a) **IN GENERAL.**—It shall be unlawful, in or affect-
8 ing interstate or foreign commerce, knowingly to perform
9 an abortion after the fetus has become viable.

10 (b) **EXCEPTION.**—This section does not apply if, in
11 the medical judgment of the attending physician, the abor-

2

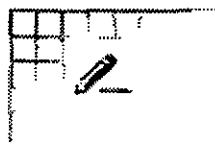
1 tion is necessary to preserve the life of the woman or to
2 avert serious adverse health consequences to the woman.

3 (c) CIVIL PENALTY.—A physician who violates this
4 section shall be subject to a civil penalty not to exceed
5 \$10,000. The civil penalty provided by this subsection is
6 the exclusive remedy for a violation of this section.

○

Martin - partial birth -
legislative

To: Elena
JK: Tracey 5/1/97



Record Type: Record

To:

cc:

Subject: Late-term

Daschle met with about 24 Senators in his office last night to talk through his alternative. Attached is updated materials including more info on mental health (Daschle let Members see the language but did not let them take copies). I understand they spent quite a bit of time talking about how they could possibly draw a narrow mental health exception and the talks were quite inconclusive. The sense was that there was general uneasiness -- even among some of the pro-choicers -- with the mental health language. Members are concerned that they are going to vulnerable to chargers that the standard to not tight enough and conditions like mild depression could be covered. They're gonna keep talking next week.

POTUS may get asked about this at the Senate retreat.

Message Sent To: _____

AGENDA
Late-Term Abortion Meeting
April 30, 1997

I. Problems with S. 6/H.R. 1122

- Unconstitutional
- No health exception
- Ineffective

II. Goals of Alternative

- Constitutionality
- Protection of women's health
- Effectiveness

III. Health Definition

IV. Penalties

V. Schedule and Floor Strategy

- After Supplemental Appropriations bill
- Message/Participation
- Amendments

Bipartisan Alternative to S. 6/H.R. 1122

S. 6, the Partial Birth Abortion Ban, would outlaw the procedure physicians call dilatation and extraction (D&X) at any stage of pregnancy -- with no exception for the health of the mother -- but allow other, sometimes more dangerous abortion procedures to be used in its place.

The bipartisan alternative to S. 6 would ban all abortions after fetal viability (when the fetus can sustain survivability outside the womb with or without life support) unless the mother's life or health is truly endangered. The health exception to the comprehensive ban is being written to cover only very rare situations (1) that arise from complications of the pregnancy itself, such as serious heart damage (cardiomyopathy), severe hypertension (preeclampsia); dangerous aggravation of pre-existing conditions, such as complications from diabetes (blindness, amputation); and, as in the cases of some women carrying severely deformed fetuses, uterine rupture and other injuries; or (2) where termination of the pregnancy is necessary to allow medically necessary treatment of life-threatening conditions, including aggressive cancers (acute leukemia or breast cancer).

Constitutional Parameters Limiting Government Restriction of Abortion

Right To Terminate Pregnancy Prior To Viability: Roe v. Wade held that the Constitution protects "a woman's decision whether or not to terminate her pregnancy." This holding was reaffirmed in Planned Parenthood of Southeastern Pennsylvania v. Casey, in which the Supreme Court held that "it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy."

Viability Defined: According to the Court, "viability is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can in reason and all fairness be the object of state protection that now overrides the rights of the woman." Although the actual point of viability varies with each case, it is generally reached between the 23rd and the 28th week.

Government May Ban Abortion After Viability: In Casey, the Supreme Court reiterated Roe's determination that after viability, the State may ban abortion. Many states have done so, and post-viability abortions comprise less than 0.5% of all abortions (99% occur in the first 20 weeks).

Ban Must Have An Exception When A Woman's Life Or Health Is At Risk: According to Roe and Casey, although the State has a legitimate interest in preserving potential life, and may promote this interest by prohibiting abortion once the fetus attains viability, it may not do so when preventing an abortion would endanger the life or health of the mother. The Court has consistently held that "maternal health [must] be the physician's paramount consideration."

Would S. 6 prevent abortions? No. S. 6 would not stop a single abortion; it would merely result in abortion by a different method, such as induction, hysterotomy (pre-term c-section), or dilatation and evacuation (D&E) -- all of which pose a greater risk to the mother's health in certain cases.

Can S. 6 become permanent law? No. Even if Congress overrides a Presidential veto, S. 6 is clearly unconstitutional, so it will be struck down by the courts and have no ultimate effect.

Can something be done to stop unnecessary abortions of viable fetuses? Yes. Congress can pass the bipartisan, comprehensive post-viability abortion ban with a narrow life and health exception that will outlaw these very late-term abortions. This will actually reduce the number of abortions in this country without putting women at unacceptable risk. This ban would be constitutional, and the President would sign it.

Memorandum

Re: Constitutional Issues Involved in Drafting Health Exception to Late Term Abortion Ban

To follow up on your meeting yesterday, we wanted to address more precisely the constitutional problems associated with a pre-viability restriction on abortion and on limiting the health exception to physical health alone.

Is it constitutional to ban one procedure before viability?

No. There are two reasons why a ban on a procedure before viability would be unconstitutional. First, before viability, the States may restrict abortions only when the purpose of the restrictions is to protect the health of the mother (or to "inform the choice") and may not impose restrictions that are intended simply as an obstacle to getting an abortion. Second, limiting a woman's access to one type of procedure could force the woman to risk her health, since in some cases that procedure may be the safest.

Restrictions Before Viability -- Only for Informed Choice & Women's Health: The Supreme Court made it extremely clear in Planned Parenthood of Southeastern Pennsylvania v. Casey, that "it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy." In Casey, the court held that prior to viability, restrictions on abortion must not constitute an "undue burden" on a woman's right to terminate her pregnancy. An undue burden is one that has "the purpose or the effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."

Regulations that have been upheld under the Casey formulation include informed consent provisions and parental notification and have been characterized by the Court as not intended to burden the right but intended to inform the choice. A ban on a procedure could not be characterized as intended to do anything but limit the right to seek abortions. In addition, criminalizing a procedure used prior to viability, particularly since there are strong similarities between various procedures, would likely have a chilling effect on doctors who perform abortions. Such a chilling effect also could be seen by the Court as burdening a woman's constitutional right to choose to abort a nonviable fetus.

Under the Supreme Court's jurisprudence, blocking a woman's access to what a doctor might believe to be the safest abortion procedure would pose an undue burden to the right to choose to terminate a pregnancy.

Restricting Access to One Procedure Could Harm Women's Health: The Supreme Court has stated repeatedly that maternal health cannot be compromised in favor of the fetus. In Colautti v. Franklin, the Supreme Court criticized a Pennsylvania statute, which provided that a physician must employ an "abortion technique . . . that . . . would provide the best opportunity for the fetus to be aborted alive so long as a different technique would not be necessary . . . to preserve the life or health of the mother." The Court found the provision very "problematic." The Court noted that the provision "does not clearly specify . . . that the woman's life and health must always prevail over the fetus's life and health when they conflict," and also found that the term "necessary" meant "that a particular technique must be indispensable to the woman's life or health -- not merely desirable -- before it may be adopted." The Court stated that the statute's ambiguity concerning "whether it requires the physician to make a 'trade-off' between the woman's health and additional percentage points of fetal survival" posed "[s]erious . . . constitutional difficulties."

More recently, in Thornburgh v. American College of Obstetricians and Gynecologists, the Court struck down a statute that "failed to require that maternal health be the physician's paramount consideration" and forced her to "bear an increased medical risk in order to save her viable fetus."

While people differ over whether the so-called "partial birth" procedure is sometimes necessary to protect a woman's life or health, mainstream gynecologists and obstetricians would agree that it may often be the most appropriate or safest procedure among those available. The American College of Obstetricians and Gynecologists (ACOG) recently issued a position statement, stating that it could not establish that the procedure "would be the only option to save the life or preserve the health of a woman." According to ACOG, "[a]n intact D&X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision."

The fact that mainstream gynecologists and obstetricians believe there are times when the procedure would best protect a woman's life or health, would make a ban on a specific procedure unconstitutional, as it could have a detrimental impact on women's health.

Would it be unconstitutional to ban post-viability abortions for mental health reasons?

Yes. First, it is clear that, even after viability, women must be allowed access to abortion to protect their health. The Court has consistently held that "maternal health [must] be the physician's paramount consideration."

While the Supreme Court has never been faced directly with the breadth of the health exception after viability, the Court has indicated that it considers mental health to be an integral part of health. For example, in Casey, the Court stated that "[i]t cannot be questioned that psychological well-being is a facet of health." Similarly, in United States v. Vuitch, the Court noted that "the general usage and modern understanding of the word 'health' . . . includes psychological as well as physical well-being."

Following the Supreme Court's lead, the Third Circuit in American College of Obstetricians & Gynecologists v. Thornburgh stated that Pennsylvania's abortion law would have been unconstitutional if it had declared that "potential psychological or emotional impact on the mother" could not be considered a medical risk to the mother.

Even more recently, the District Court for the Southern District of Ohio became the first court in the nation to face post-viability health definitions head on. In the context of a facial challenge (that is, challenging the statute as unconstitutional not just in a particular case but for all or most applications), the court struck down the ban because the court believed that the statute did not make an exception for abortions necessary for mental or emotional health reasons. Women's Medical Professional Corp. v. Voinovich, 911 F. Supp. 1051 (S.D. Ohio 1995).

Based on these precedents, it is very likely that the Court would rule that an exception drafted to cover only physical health problems is unconstitutional.

MEMORANDUM

Re: Mental health conditions and pregnancy

Upon a review of psychiatric journals and after discussions with the American Psychiatric Association, as well as independent psychiatrists, it appears that we were correct in our initial determination that the health definition would only cover extremely rare cases. Pregnancy may prohibit successful treatment of, or seriously worsen, some psychiatric diseases, such as schizophrenia and manic depression psychoses. For these reasons, it appears a mental health inclusion is necessary in order to comprehensively protect women's health.

Difficulty of treating Psychiatric Disease during Pregnancy

According to the American Academy of Family Physicians, approximately 16 percent of pregnancies are accompanied by some type of psychiatric dysfunction. Most of these women do not experience severe depression or psychosis, but some may require anti-depressant medication. Often, such medication is not prescribed for pregnant women because of the risk of teratogenic (developmental malformations) effects on the fetus. In some cases, depriving the woman of medication may lead to suicide or total functional breakdown.

It should be noted that for many women with serious psychiatric conditions (such as suicidal tendencies), abortion would not provide successful treatment. However, in extreme situations where a woman does not respond to aggressive treatment, pregnancy termination may be necessary to avoid a severe psychotic break. Obstetrics manuals list such cases as indications for pregnancy termination.

Suggested Mental Health Response

When discussing the health exception, we should continue to refer to the severity standard, and we can correctly point out that this excludes almost all psychiatric conditions. In addition, it is important to note that the debate over mental health parity highlighted the connection between many mental illnesses and their physical manifestations or causes. Even though we may not be able to anticipate the types of serious psychiatric conditions that may require pregnancy termination for treatment, we should not exclude mental health as a category simply because it is perceived as "less serious" than physical health. The following is a reprint of the suggested response to questions about the inclusion of mental health:

Mental illness, when diagnosed as a psychiatric disease, is not ruled out in this definition. However, mild depression or other less-than-severe conditions are not covered by this definition, just as a minor illness or other mild "physical" conditions are not covered. And remember that the Senate voted just last year to insist on equitable health coverage for mental illness, based largely on the fact that mental illnesses are diseases of the brain and can be just as serious as "physical" conditions.

Our exception turns on the severity, not the type, of condition dealt with by a woman late in pregnancy. These severe conditions fall under the two categories in our definition (either a disease or impairment caused by the pregnancy, or inability to treat a life-threatening condition). We are providing legal guidelines for physicians to supplement their existing understanding of medical indications for pregnancy termination. It is the physicians themselves who must make the ultimate determination about which conditions and circumstances meet that severity standard.

It may well be that the exception for mental illness or psychiatric disease will never be used. If at all, it would be an extremely rare case, and it should be noted that in the case of most psychiatric diseases, treatment could be administered without the need for pregnancy termination.

In the end, no matter how tight we make this definition, some will always argue that it's too loose – that there's a loophole that women and doctors could use to allow unnecessary abortions. But don't forget to counterbalance that concern with consideration for protecting the women for whom termination of pregnancy is truly a medical necessity. And don't forget there are certain constitutional parameters within which we must operate. Excluding mental health categorically would almost certainly make the law unconstitutional, and I am not willing to arbitrarily rule out coverage of diseases that could, in fact, put women at unacceptable risk.

This should not be considered an exhaustive list of serious maternal health conditions. These are merely examples of conditions listed in obstetrical textbooks as possible medical indications for pregnancy termination.

Disease or Impairment Caused by Pregnancy

Preeclampsia (with accompanying renal, kidney, or liver failure)

onset of severe hypertension during pregnancy

"Preeclampsia often occurs early and with increased severity. Deterioration of maternal renal function or uncontrolled hypertension is an indication for pregnancy termination."° Preeclampsia occurs in 5-10% of pregnancies and is severe in less than 1%. Eclampsia (complication characterized by seizures) occurs in approximately 0.1% of pregnancies.

Peripartal cardiomyopathy

heart failure in late pregnancy

"Characterized by its occurrence...in women with no previous history of heart disease and in whom no specific [origin] of heart failure can be found, peripartal cardiomyopathy is a distinct, well-described syndrome of cardiac failure in late pregnancy."°

Pregnancy-aggravated hypertension

acceleration of existing hypertension

"Maternal indications include organ failure such as renal failure, seizures associated with the development of eclampsia [progression from hypertension/preeclampsia characterized by seizures and can result in cerebral hemorrhage], and uncontrollable hypertension."* Complications develop in 10-40% of patients with chronic hypertension.

Primary pulmonary hypertension

complication of existing hypertension (abnormally high blood pressure)

"The natural course of the disease terminates either by sudden death or by the development of intractable congestive heart failure resistant to therapy. Maternal mortality with primary pulmonary hypertension approaches 50%."°

Amniotic fluid embolism

results from a mass of amniotic fluid in the maternal circulation

Typically caused by invasive third-trimester obstetric procedures or by blunt abdominal trauma. Amniotic fluid lodges in the circulation system and leads to respiratory failure and cardiovascular collapse, shock, or coma.*

Sources:

* Clinical Manual of Obstetrics, ed. David Shaver and Frank Ling (University of Tennessee College of Medicine), Sharon Phelan (University of Alabama Department of Obstetrics and Gynecology), and Charles Beckmann (University of Wisconsin Department of Obstetrics and Gynecology)

° Manual of Obstetrics: Diagnosis and Therapy, ed. Kenneth Niswander and Arthur Evans, University of California, Davis, School of Medicine

Life-Threatening Conditions Requiring Immediate Treatment

Bone Marrow Failure

severe form of anemia

"The role of pregnancy termination [in bone marrow failure treatment] is unclear. Therapeutic abortion is inconsistently associated with remission. It may be necessary, however, in order to treat the patient with anabolic steroids."° Additionally, "bone marrow transplant has become the treatment of choice. Termination of the pregnancy would be necessary if a suitable donor could not be found."° It should be noted that bone marrow transplant is also a treatment for other conditions such as leukemia.

Cardiac Arrest

heart failure

Most incidents of cardiac arrest are secondary to other acute events, such as anesthetic complications, trauma, or shock. According to several obstetrics manuals, pregnancy termination -- whether by delivery or abortion -- is often recommended.*° CPR can generally be expected to generate only 30 percent of normal cardiac output, and during pregnancy the uterus obstructs this cardiac output even further.

Cancer

Cancer complicates approximately 1 out of every 1000 pregnancies. Issues that must be addressed in pregnancies affected by cancer include the effect of pregnancy on the malignancy, the need for pregnancy termination, and the timing of therapy. Radiation and chemotherapy may be contraindicated during pregnancy due to documented risks of fetal mutation. Additionally, pregnancy inhibits a woman's ability to fight off cancer because the immune system is often depressed, and her nutritional intake is divided between herself and the fetus.

Lymphoma

cancer of the lymphatic system

"High-grade Non-Hodgkin's lymphoma is a rapidly progressive disease with a median survival of six months. Since cure rates approach 50%, it is imperative therapy not be delayed."* In this situation, delay of therapy could mean the loss of an opportunity to cure the mother. Because both radiation and chemotherapy present mutation risks for the fetus, termination of the pregnancy is suggested in order to begin treatment for lymphoma.

Breast Cancer

especially breast cancer diagnosed during pregnancy

"Factors in pregnancy that could adversely affect this malignancy include...increased estrogen and prolactin stimulation [both factors that exacerbate breast cancer], and depression of the immune system."° The frequency of breast cancer in pregnancy is second only to cancer of the cervix, occurring in 1 out of every 3,000 pregnancies. In addition, adequate nutrition is a serious problem.

Sources:

* Clinical Manual of Obstetrics, ed. David Shaver and Frank Ling (University of Tennessee College of Medicine), Sharon Phelan (University of Alabama Department of Obstetrics and Gynecology), and Charles Beckmann (University of Wisconsin Department of Obstetrics and Gynecology)

° Manual of Obstetrics: Diagnosis and Therapy, ed. Kenneth Niswander and Arthur Evans, University of California, Davis, School of Medicine

Elena -

I did not imagine it - Barney made fairly clear references to difference between banning all procedures vs one procedure during debate on the rules + general debate (attached). He also opined that the Pres might sign the Bill with his amendment included (also attached).

See also Rep Barnett's note re change in the Bill on the floor re life endangerment as a result of the pregnancy itself - MCF

to the process. However, my determination to ban this gruesome, immoral process is stronger. Vote "yes" on the bill.

Ms. SLAUGHTER. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin [Mr. BARRETT].

Mr. BARRETT of Wisconsin. Mr. Speaker, I rise in opposition to this rule. This is a bill that I supported last year and I will probably support it again this year, but I am deeply troubled by what the Committee on Rules did.

The Committee on Rules said that a woman whose life is threatened by the pregnancy itself should die. The original bill said we are not going to do that; if my wife is going to die because of the pregnancy, we are not going to let that happen. This bill says, let the woman die, and that is wrong.

The Committee on Rules abused this process. We should go back to the original language in this bill that was put in as it was introduced. There is no woman in this country that should die because of the pregnancy itself. This bill should be changed.

Every person in this room knows that there is not a woman in this country that should die because her life is threatened by her pregnancy. That is an outrage, and this bill originally recognized that there was a problem with that. It originally realized that this is a spot where this bill was vulnerable last year, so it corrected it. Now they are back to playing politics.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes and 15 seconds to the gentleman from New York [Mr. NADLER].

(Mr. NADLER asked and was given permission to revise and extend his remarks.)

Mr. NADLER. Mr. Speaker, I am outraged that the leadership of this House has once again decided to play politics with women's lives. This bill values abusive fathers more than women's lives. This bill, as reported here, eliminated amendments made by the committee that would have helped save some women.

Let me explain how this bill works. A woman becomes pregnant. While she is pregnant, the father of the fetus rapes her. He then beats her to a pulp. He throws her down the stairs, he batters her. He then disappears from the scene and abandons her.

This woman, who is now severely traumatized, who is physically injured by the battering, whose doctor tells her that because of her injuries, carrying the pregnancy to term will probably result in permanent, severe physical injury, perhaps permanent paralysis, for life, decides to have an abortion. The doctor tells her the safest method of abortion is the so-called, what some people call the partial-birth abortion. It is the safest method. Other methods might kill her, might increase the chance of paralysis, but this, he says, is the safest method.

This bill says, First, she cannot have that abortion that way. If she does, the

doctor is criminally liable. The bill also says that the father of the child, of the fetus, who raped her, who abused her, who abandoned her, now can sue her and her doctor for damages. The abusive father is entitled to damages. In fact, he is even entitled to money for physical and emotional damages that he has suffered.

This is ludicrous. It is an outrage. It is disgusting. Not only does this bill intrude, infringe, and violate the constitutional right to choose, but it rewards abusive fathers. It rewards rapists.

The committee's amendment that would have said that a father who beats the woman, who abuses her, who abandons her, cannot sue her for damages, was eliminated in proceedings by the Committee on Rules. This is shameful. I urge the House to reject this bill.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, it seems very clear to me that we have people who would prefer an issue to a bill that could become law. I offered an amendment in committee that would have provided an exception to the ban in cases where it was necessary to use this procedure to avoid serious adverse physical health consequences to the mother.

Now, people on the other side have argued that health is too broad. I do not agree with that. I find the health concept important. But I also understand the health concept, including mental health, is most directly relevant when we are talking about whether or not to have an abortion.

This bill does not say you cannot have an abortion; it says you may not use this particular procedure. Where we are talking about a ban on a specific procedure, then physical issues become more prominent, because the mental question generally is as to whether or not an abortion is permitted.

Here is what the majority is insisting upon. A doctor believes he can show that it is necessary under the wording of this bill to use this procedure for a woman who has established her right to an abortion, because otherwise there would be severe physical adverse health consequences, and the majority says no. The majority says even if avoiding this procedure will subject the woman to severe adverse physical health consequences, as long as she is not going to die, but if she is severely physically damaged, then they cannot use this procedure. And the chairman of the full committee, with the intellectual honesty he brings to the issue, said if it is a choice between the woman incurring serious physical health damage and the life of the fetus, then the woman's health must give way.

The chairman of the committee made that explicit when he opposed the amendment, and that is the choice that

the Members are not being allowed to make. I am not being allowed to offer an amendment that would have provided an exception to severe physical adverse health consequences. I think that bespeaks an interest on the part of some in an issue and not a law.

Ms. SLAUGHTER. Mr. Speaker, I yield 1½ minutes to the gentlewoman from New York [Mrs. LOWEY].

(Mrs. LOWEY asked and was given permission to revise and extend her remarks.)

Mrs. LOWEY. Mr. Speaker, I rise in strong opposition to this closed rule.

Mr. Speaker, this is a difficult issue. That is why I had hoped that we could work with the GOP leadership to reach consensus on this legislation. We have repeatedly tried to compromise with the Republican leadership to write a bill that the President could support. As my colleagues know, the President has said very clearly that he will sign this legislation if it contains a narrow exception to protect those few women who need this procedure to preserve their health. I personally asked the leadership to work with us, to craft a narrow health exception to the bill. They were unwilling.

The GOP leadership was also unwilling to allow a vote on the bipartisan Hoyer-Greenwood substitute. That legislation would have banned all late-term abortions, all late-term abortions, except those performed to save the life or preserve the health of the pregnant woman.

The President will veto the bill in its current form. He has made that very clear. So rather than work with us to send the President a bill that he will sign, the Republican leadership would rather pass legislation that he will veto.

Let us be clear. This vote today is about the value of women's health. The President said that he will not sign a bill unless it protects women's health, and the GOP leadership will not go along. I am sorry that the leadership chose to turn this sensitive matter into a political issue. Unfortunately, it has become very clear that this leadership does not want to ban this procedure, they want a political issue.

I urge my colleagues to defeat this closed rule so that we can include a health exception to the bill.

Ms. SLAUGHTER. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. EDWARDS].

Mr. EDWARDS. Mr. Speaker, I strongly oppose late-term abortions, but I believe that when the mother's life or health are at risk, that choice should be made by a woman and her physician and not by the Federal Government.

Mr. Speaker, what the American people do not know about this bill is this: If we want to save babies, why does this bill just outlaw one abortion procedure? The fact is, this bill still makes it legal to have abortions at the end of the eighth or ninth month of pregnancy. What the American people

criminalized. We remember the days before Roe versus Wade. We know that thousands of women died undergoing unsafe, illegal abortions, and we will not allow this Congress to force American women into the back alley ever again. This is just the beginning. The Republicans will not stop with one procedure. They want to ban all abortions at any time by any method.

Mr. Speaker, as a mother of three beautiful grown children, as a recent grandmother, as one who respects life with every ounce of my soul, I urge my colleagues to vote against this ban.

□ 1315.

Mr. CANADY of Florida: Mr. Speaker, I yield 1 minute to the gentlewoman from Washington [Mrs. SMITH].

Mrs. SMITH of Washington: Mr. Speaker, I rise today in support of the Partial-Birth Abortion Ban Act. America is too good for infanticide. Babies have to stay protected by our Constitution. If babies go first, who is next?

I want to take this opportunity to share with you a memo from a pro-abortion group that I just got, assuming that all women will support this gruesome procedure. They gave us instructions on how to debate the procedure and they said, and I will quote, Do not talk about the fetus. No matter what we call it, this kills an infant. Do not argue about the procedure, the partial-birth procedure is gruesome. There is no way to make it pleasant to voters or even only distasteful.

Mr. Speaker, I urge my colleagues to see past the smoke screen that has been created by the abortion lobby. Again, America is too good to support infanticide.

NATIONAL RIGHT TO LIFE COMMITTEE, INC.,
Washington, DC, March 20, 1997.

CONGRESSMAN HOYER SAYS THE GREENWOOD-HOYER MOTION TO RECOMMIT WITH INSTRUCTIONS ALLOWS EVEN THIRD-TRIMESTER ABORTIONS FOR "MENTAL HEALTH" AND "PSYCHOLOGICAL TRAUMA"

When the House takes up the Partial-Birth Abortion Ban Act (HR 1122) Thursday, March 20, Rep. Steny Hoyer (D-Md.) and Rep. Jim Greenwood (R-Pa.) are expected to offer a "motion to recommit with instructions" that will include the substance of the measure that they introduced on March 12 as HR 1032, which they call the "Late-Term Abortion Restriction Act."

The Hoyer-Greenwood measure would: Allow all methods of abortion, including partial-birth abortion, on demand until "viability"; and

Empower the abortionist himself ("the attending physician") to define what "viability" means; and

Even after this self-defined "viability," and even in the third trimester, allow partial-birth abortions to be performed whenever "in the medical judgment of the attending physician, the abortion is necessary to avert serious adverse health consequences to the woman." [emphasis added] [see Hoyer's explanation below]

At a March 12 press conference in the House Radio-TV Gallery, which was tape-recorded, Congressman Hoyer was asked what the word "health" means in his statement. Mr. Hoyer responded as follows: [emphasis added] [We] included the language "serious adverse health consequences." We're not talk-

ing about a hangnail, we're not talking about a headache. Does it include—and this is one of the things that the opponents of this particular legislation, the proponents of the pro-life position, would contend—does it include mental health? Yes, it does. [emphasis added]

I point out that the overwhelming majority of Americans, and Members who vote on this floor, are for an exception for rape and incest. The exception of rape and incest, of course, is not because a pregnancy resulting from rape or incest causes a physical danger to the woman. It is because it poses a psychological trauma to the woman to carry to term, either because she is very young, impregnated by her father or brother or some other family member, or because she is raped. In the debate some years ago, for example, I used Willy Horton as an example. [End of Hoyer quote. Italics indicates Mr. Hoyer's verbal emphasis]

Thus, by the explicit statement of its author, the Hoyer-Greenwood motion would allow partial-birth abortions (and other abortions) even in the final three months of pregnancy, whenever an abortionist simply affirms that this would prevent "serious" "mental health" "consequences." Further, Mr. Hoyer's own interpretation of "mental health" is not limited to women who are, say, severely psychotic. Rather, Mr. Hoyer explicitly acknowledged that "serious health" covers "psychological trauma." Legally, the language is all-encompassing.

Moreover, under the Hoyer-Greenwood measure, the abortionist himself decides what "viability" means. This is like Congress passing a bill to "ban" so-called "assault weapons," with a provision to allow each gundealer to define "assault weapon." The Hoyer-Greenwood bill does not "regulate" the abortionist; rather, it empowers the abortionist to regulate himself.

In real medical practice, "viability" begins at 23 weeks, when the baby's lung development is sufficient to allow survival in about one case in four. But late-term abortionists often have their own idiosyncratic notions of when "viability" occurs, which may have no relationship to neonatal medicine or to the babies' actual survival prospects.

In short, the Hoyer-Greenwood bill does not "restrict" abortions after viability, nor does it "restrict" third-trimester abortions. Indeed, the Hoyer measure would be an empowerment by Congress for abortionists to perform third-trimester abortions with complete impunity.

Under the Hoyer-Greenwood measure, Congress would confer on the abortionist himself explicit authority to judge, by his own standards and immune from review by any other authority: (1) what "viability" means, and (2) whether an abortion would prevent "serious" harm to "health," including "mental health" or "psychological trauma," in Mr. Hoyer's words.

Thus, under the Hoyer-Greenwood bill, it is impossible for an abortionist to perform an "illegal" third-trimester abortion, because he alone decides what is legal. Such a law would be a mere facade—it would not prevent a single partial-birth abortion, nor would it prevent a single third-trimester abortion.

For further documentation on partial-birth abortions, the Partial-Birth Abortion Ban Act, and the Clinton-Hoyer-Daschle phony ban, contact the National Right to Life Committee's Federal Legislative Office at (202) 626-8820, fax (202) 347-3668, or see the NRLC Homepage at www.nrlc.org.

[From the Washington Post Health Section, Sept. 17, 1996]

VIABILITY AND THE LAW
(By David Brown, M.D.)

The normal length of human gestation is 266 days, or 38 weeks. This is roughly 40 weeks from a woman's last menstrual period.

Pregnancy is often divided into three parts, or "trimesters." Both legally and medically, however, this division has little meaning. For one thing, there is little precise agreement about when one trimester ends and another begins. Some authorities describe the first trimester as going through the end of the 12th week of gestation. Others say the 13th week. Often the third trimester is defined as beginning after 24 weeks of fetal development.

Nevertheless, the trimester concept—and particularly the division between the second and third ones—commonly arises in discussion of late-stage abortion.

Contrary to a widely held public impression, third-trimester abortion is not outlawed in the United States. The landmark Supreme Court decisions Roe v. Wade and Doe v. Bolton, decided together in 1973, permit abortion on demand up until the time of fetal "viability." After that point, states can limit a woman's access to abortion. The court did not specify when viability begins.

In Doe v. Bolton the court ruled that abortion could be performed after fetal viability if the operating physician judged the procedure necessary to protect the life or health of the woman. "Health" was broadly defined.

"Medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial and the woman's age—relevant to the well-being of the patient," the court wrote. "All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment."

Because of this definition, life-threatening conditions need not exist in order for a woman to get a third-trimester abortion.

For most of the century, however, viability was confined to the third trimester because neonatal intensive-care medicine was unable to keep fetuses younger than that alive. This is no longer the case.

In an article published in the journal Pediatrics in 1991, physicians reported the experience of 1,765 infants born with a very low birth weight at seven hospitals. About 20 percent of those babies were considered to be at 25 weeks' gestation or less. Of those that had completed 23 weeks' development, 23 percent survived. At 24 weeks, 34 percent survived. None of those infants was yet in the third trimester.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. FRANK], the ranking member of the Committee on the Judiciary.

Mr. FRANK of Massachusetts: Mr. Speaker, I thank our senior member for yielding me the time. I appreciate the skill with which he is managing our side of this very difficult issue.

I want to call attention to an amendment which the majority refused to allow. When Members have come forward, as the gentlewoman from New York just did, with an eloquence and passion that is a model of how issues ought to be discussed, and talk about threats to the health of women and talk about how this bill does not allow a doctor to take into account serious adverse health consequences, some of my friends on the other side said, well,

health is too vague. Health could mean severe mental health problems. We want to rule that out.

But what they do not say is that they do not only want to rule out mental health, which seems to be a valid consideration, they would deny the use of this procedure to a woman even if the doctor could show that it was necessary to avoid serious physical damage to her health. And I have offered an amendment that says only that, that we will not preclude this if a doctor finds it necessary to avoid long-term serious adverse physical health damage. They will not allow that amendment. They will not allow even a vote on that.

The chairman of the full committee, a man of great intellectual integrity who was against abortion in any form or shape, says the reason he voted against that amendment was that if it is a choice between the life of the fetus and severe physical health damage to the mother, then the mother must incur that damage and not only that, we in Congress will decide that the mother must incur that damage.

I think the failure to allow a vote on serious physical health adverse consequences in the first place deprives them the right to argue about mental health because they will not allow any health requirement.

We are not talking about whether or not you have an abortion at all but about the procedure. And what they are trying to do is to force a vote which would, and let us be very clear, the vote would make it impossible for a doctor to even try to show that it was necessary to use this procedure to avoid serious long-term physical damage.

Mr. COBURN. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Oklahoma.

Mr. COBURN. Mr. Speaker, I think the point is there is not ever a case, never a case where this procedure is needed to protect the life of a woman.

Mr. FRANK of Massachusetts. Mr. Speaker, the gentleman has made his point.

Let me say this, if in fact Members were confident of that, then the amendment would be harmless because this bill does not say, I do not like this bill, but I am dealing with the framework you put forward, the bill does not say, in the opinion of the physician, it says you can have such an exception for life if it is necessary. My amendment tracks that language. My amendment says, the doctor would have to show that it was necessary to prevent long-term physical health.

The gentleman at the microphone, a doctor, is convinced that never, ever, ever in the whole history of the world would it be physically possible. That is a judgment he is qualified to make.

But I do not believe we as a Congress ought to legislate that it is never possible. The fact is that if it is never possible, the exception will not be a very

large one because it is not a subjective amendment.

I will go back to what the chairman of the full committee said, as I said, a man of great integrity, he said, if there is a choice between physical damage to the mother, serious adverse physical damage, and the life of the fetus, even if we are talking about a fetus with the brain on the outside, as the gentlewoman from New York pointed out, that tragic situation, this would not be allowed.

I want to make it clear, I do not believe you should restrict into physical health in general, but here we have an unusual bill. This bill concededly by its sponsors does not try to stop abortions. It would allow all manner of abortion except this procedure.

Now, your mental health would be relevant, and it still would be as to whether or not you could have an abortion. A severely depressive situation would be a justification for an abortion, as the exception. When we are talking only about this procedure versus that procedure, then it seems to me it is relevant to talk only about physical. But again the assertion that it is never, ever going to be physical, and we have had women and doctors who disagree, the doctors do disagree, the question is, Should the Congress adopt the view that it is never valid to try to avoid serious physical health damage to the mother if that means this particular abortion procedure?

That, I wanted to point out, is the amendment that they would not even let us vote on. That is the choice. I think it is unfortunately indicative of some Members who might rather have an issue to take to the country than a piece of legislation.

I believe the adoption of this legislation, of this amendment, even though I might not like it, could lead to a signed bill. The failure even to allow a vote on this and the insistence on defeating it, it seems to me, shows a preference for an issue over a piece of legislation.

I thank my ranking member for yielding me the time.

Mr. CANADY of Florida. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. Mr. Speaker, I think it is important, first of all, having delivered greater than 3,100 babies and cared for over 10,000 women in my medical experience, I want to again reemphasize, there is no medical indication ever for this procedure.

To answer the gentleman from Massachusetts' question, why would you, if in fact there is a reason to do this procedure, why would you do it to a live baby? Why would not the doctor kill the baby first, which in fact is what they do.

The very false arguments, false arguments that are put forward is that the baby, with the encephalocele or the externalized brain, the people that do this procedure actually kill the children first. There is no reason to use

that as an argument. That sets up my second point.

This argument is about whether or not we are going to talk about the truth of the procedure. You will not find in any medical textbook, you will not find in any residency training program where they teach doctors to care for women's health, you will never find where this procedure is taught or is shown as an indicated procedure. Why not? Very simple reason: It is not ever indicated. It is not indicated in the medical literature. It has been abhorred.

There was a statement earlier that said that the ACOG was worried about this because it had the potential of inhibiting. They said, they do not like this procedure either. What they said is the Congress dealing with these issues have the potential of inhibiting care. Potential is very much different than changing or affecting care.

We were told that this was done on a small number of infants and that it was always done or most always done on infants with severe deformities. That was an out-and-out lie. I stood on this floor last year and said that was untrue. I will tell Members today, it is untrue, absolutely, without question that this is ever needed to take care of a woman's health.

Second point, it was said that a woman's fertility can only be protected sometimes by using this. That is exactly the opposite of the truth. I can give you cases where women's fertility because of this procedure has been ruined forever. It goes against everything we are taught in the medical community to preserve fertility and to preserve a woman's health.

Mr. CONYERS. Mr. Speaker, I yield 1½ minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Mr. Speaker, I thank the gentleman for yielding time to me.

First, I would say, I think the gentleman from Oklahoma's comments help focus this. He said that as far as this legislation is concerned, if the fetus was killed earlier in the procedure, then this bill would not have any affect. I think that shows we are not here talking about not having the abortion or not bringing an end to the potential life. I think that ought to be clear.

I think we have heard arguments on the other side that suggested that this is opposition to abortion. That underlines the point, that has been made here. This is not a bill about stopping abortions in any circumstances, mental health, whatever the reason. It is saying, well, you did not perform the fatal act early enough.

I think that is a great distinction with very little difference. I think that it undercuts the arguments they have been making. I think people have been led to believe that this was going to prevent late term abortion. We have the acknowledgment that it does no such thing and does not even try to.

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Northup
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Oberstar
Ortiz
Packard
Pappas
Parker
Pascrell
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitta

Pombo
Porter
Portman
Poshard
Pryce (OH)
Quinn
Radanovich
Rahall
Regula
Riggs
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Schiff
Sensenbrenner
Sessions
Shadegg
Shaw
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)

Smith (OR)
Smith (TX)
Snowbarger
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Stupak
Sununu
Talent
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traffant
Turner
Upton
Walsh
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Watts (OK)
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Weiler
White
Whitfield
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Wolf
Young (AK)
Young (FL)

NOES—175

Abercrombie
Ackerman
Allen
Andrews
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Barrett (WI)
Becerra
Bentzen
Berman
Berry
Bishop
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Blumenauer
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Brown (CA)
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DeFazio
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Dicks
Dixon
Doggett
Dooley
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Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Fazio
Filner
Flake
Foglietta
Ford
Frank (MA)
Frelinghuysen

Frost
Furse
Gejdenson
Gephardt
Gilman
Gonzales
Green
Greenwood
Gutierrez
Harman
Hastings (FL)
Hilliard
Hinches
Hinojosa
Hooley
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Hoyer
Jackson (IL)
Jackson-Lee
(TX)
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Kennedy (MA)
Kennedy (RI)
Kennelly
Kilpatrick
Kind (WI)
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Kolbe
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McDermott
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McKinney
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Millender
McDonald
Miller (CA)
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Molinari
Moran (VA)
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Pastor
Payne
Pelosi
Pickett
Pomeroy
Price (NC)
Ramstad
Rangel
Reyes
Rivers
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schumer
Scott
Serrano
Shays
Sherman
Skaggs
Slaughter
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stokes
Strickland
Tanner
Tauscher
Thompson
Thurman
Tierney
Towns
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxler
Weygand
Wise
Woolsey
Wynn
Yates

NOT VOTING—10
Bono
Burton
Callahan
Hilleary
Kaptur
McIntosh
Oxley
Smith, Linda
Torres
Waxman

□ 1223

So the resolution was agreed to.
The result of the vote was announced
as above recorded.
a motion to reconsider was laid on
the table.

PERSONAL EXPLANATION

Mr. MCINTOSH. Mr. Speaker, on rollcall No. 62, I was unavoidably detained. Had I been present, I would have voted "aye."

GENERAL LEAVE

Mrs. MYRICK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on House Resolution 100.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?
There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. MCINNIS). The Chair notes that there has been a disturbance in the visitor's gallery in contravention of the law and the rules of the House of Representatives. The doormen and the police will remove from the gallery those persons participating in the disturbance.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate has passed a concurrent resolution of the following title in which the concurrence of the House is requested:

S. Con. Res. 14. Concurrent resolution providing for a conditional adjournment or recess of the Senate and the House of Representatives.

The message also announced that pursuant to Public Law 104-264, the Chair, on behalf of the Democratic leader, appoints the following individuals to the National Civil Aviation Review Commission:

Linda Barker, of South Dakota; and
William Bacon, of South Dakota.

PARTIAL-BIRTH ABORTION BAN ACT OF 1997

Mr. CANADY of Florida. Mr. Speaker, pursuant to House Resolution 100, I call up the bill (H.R. 1122) to amend title 18, United States Code, to ban partial-birth abortions, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.
The text of H.R. 1122 is as follows:

H.R. 1122

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Partial-Birth Abortion Ban Act of 1997".

SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 73 the following:

"CHAPTER 74—PARTIAL-BIRTH ABORTIONS

"Sec.
"1531. Partial-birth abortions prohibited.

"§ 1531. Partial-birth abortions prohibited

"(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than two years, or both. This paragraph shall not apply to a partial-birth abortion that 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. This paragraph shall become effective one day after enactment.

"(b)(1) As used in this section, the term 'partial-birth abortion' means an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

"(2) As used in this section, the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: Provided, however, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

"(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

"(2) Such relief shall include—

"(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

"(B) statutory damages equal to three times the cost of the partial-birth abortion.

"(d) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section."

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

"74. Partial-birth abortions 1531".

The SPEAKER pro tempore. Pursuant to House Resolution 100, the gentleman from Florida [Mr. CANADY] and the gentleman from Michigan [Mr. CONYERS] each will control 1 hour.

The Chair recognizes the gentleman from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Speaker, I yield myself such time as I may consume.

□ 1230

Mr. Speaker, today for the fourth time the House considers an issue

H1202

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McCollum
McCreary
McDade
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McInnis
McIntyre
McKeon
McNulty
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Moran (KS)
Murtha
Myrick
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Neumann
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Norwood
Nussle
Oberstar
Ortiz
Packard
Pappas
Parker
Pascrell
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts

Pombo
Porter
Portman
Poshard
Pryce (OH)
Quinn
Radinovich
Rahall
Regula
Riggs
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Schiff
Sensenbrenner
Sessions
Shadegg
Shaw
Shirakus
Shuster
Siskiy
Skeon
Skelton
Smith (NJ)

Smith (OR)
Smith (TX)
Snowberger
Solomon
Sonder
Spence
Stearns
Stenholm
Stump
Stupak
Tamm
Taheri
Tammis
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Traffant
Turner
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wickar
Wolf
Young (AK)
Young (FL)

NOT VOTING—10
Bono
Burton
Callahan
Hilleary
Kaptur
McIntosh
Oxley
Smith, Linda
Torres
Waxman

So the resolution was agreed to.
The result of the vote was announced
as above recorded.
a motion to reconsider was laid on
the table.

PERSONAL EXPLANATION
Mr. MCINTOSH. Mr. Speaker, on rollcall No.
62, I was unavoidably detained. Had I been
present, I would have voted "aye."

GENERAL LEAVE
Mrs. MYRICK. Mr. Speaker, I ask
unanimous consent that all Members
may have 5 legislative days within
which to revise and extend their re-
marks on House Resolution 100.

The SPEAKER pro tempore. Is there
objection to the request of the gentle-
woman from North Carolina?
There was no objection.

ANNOUNCEMENT BY THE SPEAKER
PRO TEMPORE

The SPEAKER pro tempore (Mr.
McINNIS). The Chair notes that there
has been a disturbance in the visitor's
gallery in contravention of the law and
the rules of the House of Representa-
tives. The doormen and the police will
remove from the gallery those persons
participating in the disturbance.

MESSAGE FROM THE SENATE

A message from the Senate by Mr.
Lundregan, one of its clerks, an-
nounced that the Senate has passed a
concurrent resolution of the following
title in which the concurrence of the
House is requested:

S. Con. Res. 14. Concurrent resolution pro-
viding for a conditional adjournment or re-
cess of the Senate and the House of Rep-
resentatives.

The message also announced that
pursuant to Public Law 104-394, the
Chair, on behalf of the Democratic
leader, appoints the following individ-
uals to the National Civil Aviation Re-
view Commission:

Linda Barker, of South Dakota; and
William Bacon, of South Dakota.

PARTIAL-BIRTH ABORTION BAN
ACT OF 1997

Mr. CANADY of Florida. Mr. Speak-
er, pursuant to House Resolution 100, I
call up the bill (H.R. 1123) to amend
title 18, United States Code, to ban par-
tial-birth abortions, and ask for its im-
mediate consideration in the House.

The Clerk read the title of the bill.
The text of H.R. 1123 is as follows:

Be it enacted by the Senate and House of Rep-
resentatives of the United States of America in
Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the "Partial-
Birth Abortion Ban Act of 1997".
SEC. 2. PROHIBITION ON PARTIAL-BIRTH ABOR-
TIONS.
(a) IN GENERAL.—Title 18, United States
Code, is amended by inserting after chapter
73 the following:
"CHAPTER 74—PARTIAL-BIRTH
ABORTIONS

"Sec.
"1531. Partial-birth abortions prohibited.
"1531. Partial-birth abortions prohibited.

"(a) Any physician who, in or affecting
interstate or foreign commerce, knowingly
performs a partial-birth abortion and there-
by kills a human fetus shall be fined under
this title or imprisoned not more than two
years, or both. This paragraph shall not
apply to a partial-birth abortion that is nec-
essary to save the life of a mother whose life
is endangered by a physical disorder, illness,
on injury: Provided, That no other medical
procedure would suffice for that purpose.
This paragraph shall become effective one
day after enactment.

"(b)(1) As used in this section, the term
'partial-birth abortion' means an abortion in
which the person performing the abortion
partially vaginally delivers a living fetus be-
fore killing the fetus and completing the de-
livery.

"(2) As used in this section, the term 'phy-
sician' means a doctor of medicine or osteop-
athy legally authorized to practice medicine
and surgery by the State in which the doctor
performs such activity, or any other individ-
ual legally authorized by the State to per-
form abortions: Provided, however, That any
individual who is not a physician or not oth-
erwise legally authorized by the State to
perform abortions, but who nevertheless di-
rectly performs a partial-birth abortion,
shall be subject to the provisions of this sec-
tion.

"(c)(1) The father, if married to the mother
at the time she receives a partial-birth abor-
tion procedure, and if the mother has not at-
tained the age of 18 years at the time of the
abortion, the maternal grandparents of the
fetus, may in a civil action obtain appro-
priate relief, unless the pregnancy resulted
from the plaintiff's criminal conduct or the
plaintiff consented to the abortion.

"(2) Such relief shall include—
"(A) money damages for all injuries, psy-
chological and physical, occasioned by the
violation of this section; and
"(B) statutory damages equal to three
times the cost of the partial-birth abortion.
"(d) A woman upon whom a partial-birth
abortion is performed may not be prosecuted
under this section, for a conspiracy to vio-
late this section, or for an offense under sec-
tion 2, 3, or 4 of this title based on a viola-
tion of this section."

(b) CLERICAL AMENDMENT.—The table of
chapters for part I of title 18, United States
Code, is amended by inserting after the item
relating to chapter 73 the following new
item:
"74. Partial-birth abortions 1531".

The SPEAKER pro tempore. Pursuant
to House Resolution 100, the gen-
tleman from Florida [Mr. CANADY] and
the gentleman from Michigan [Mr.
CONYERS] each will control 1 hour.

The Chair recognizes the gentleman
from Florida [Mr. CANADY].

Mr. CANADY of Florida. Mr. Speak-
er, I yield myself such time as I may
consume.

Mr. Speaker, today for the fourth
time the House considers an insis-

procedure is determined by a woman's physician to be medically warranted under the circumstances, then the Congress should respect that judgment not criminalize it. We should not substitute our political judgment for professional medical judgment grounded in the particular circumstances of real cases.

This bill should be defeated.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 100, the bill is considered as having been read for amendment and the previous question is ordered.

The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. HOYER

Mr. HOYER. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. HOYER. Yes, Mr. Speaker, I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. HOYER moves to recommit the bill H.R. 1122 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendments:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Late Term Abortion Restriction Act".

SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

(a) IN GENERAL.—It shall be unlawful, in or affecting interstate or foreign commerce, knowingly to perform an abortion after the fetus has become viable.

(b) EXCEPTION.—This section does not prohibit any abortion if, in the medical judgment of the attending physician, the abortion is necessary to preserve the life of the woman or to avert serious adverse health consequences to the woman.

(c) CIVIL PENALTY.—A physician who violates this section shall be subject to a civil penalty not to exceed \$10,000. The civil penalty provided by this subsection is the exclusive remedy for a violation of this section.

POINT OF ORDER

Mr. CANADY of Florida. Mr. Speaker, I rise to a point of order that the motion to recommit is not germane to the bill.

The SPEAKER pro tempore. The gentleman will state his point of order.

Mr. CANADY of Florida. Mr. Speaker, the fundamental purpose of the underlying bill, H.R. 1122, deals with a very limited class of abortions, specifically partial-birth abortions. This is one specific type of procedure as defined in the bill.

The fundamental purpose of the motion to recommit amendment deals with any abortion procedure done post-viability. It purports to cover a much broader class of procedures than the one procedure specifically prohibited in this bill.

Therefore, since the fundamental purpose of the motion to recommit purports to deal with a class of procedures that is broader than the one pro-

cedure in the underlying bill, a proposition on a subject different from that under consideration, it is not germane to the bill and I insist on the point of order.

The SPEAKER pro tempore. Does the gentleman from Maryland [Mr. HOYER] wish to be heard on the point of order?

Mr. HOYER. I do, Mr. Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I thank the Chair for recognizing me on the point of order.

Mr. Speaker, this amendment is offered for the purpose, as it says, of limiting all late-term abortions, of prohibiting all late-term abortions, including abortions to which the gentleman spoke. We believe it does in fact expand upon but is inclusive of the procedures to which the gentleman's bill speaks. We believe it is an effort and an opportunity for the Congress to say that not only the late-term partial birth to which the bill speaks but that all procedures to effect late-term abortions ought to be prohibited. They ought to be prohibited as the policy of the United States of America.

It does provide, as does the underlying bill, with certain exceptions: The life of the mother, as is consistent with the bill on the floor. It also expands upon that to say serious adverse health consequences as well.

We believe in that context and, frankly, got an initial judgment as it was offered in the Committee on the Judiciary that this amendment was believed initially to be in order.

We believed that initial judgment was in fact correct. We believed this gives an opportunity for Members not only to speak to the instant issue raised by the particular 1122 bill, but also importantly gives to Members the opportunity to express their view that all late-term abortions, not just one procedure, but that procedure and all procedures to effect post-viability abortions be outlawed, be illegal, be against the policy of the United States of America, except in very limited circumstances.

Because of that, Mr. Speaker, Members will have the opportunity to express themselves as being against late-term abortions, which is the context, I suggest to the Speaker, in which this debate has occurred and proceeded.

Because of that, this gives Members the opportunity to particularly but more broadly, as Mr. CANADY did in fact correctly observe, express themselves on limiting all procedures for late-term abortions.

For that reason, we think it expands upon, he is correct, expands upon and makes more broad the prohibition on late-term abortions. It is for that reason that we think it critically important that the Chair rule that this is in fact in order so that Members can appropriately—because we believe it to be in order—express themselves in opposition to late-term abortions.

□ 1500

The SPEAKER pro tempore (Mr. MCINNIS). The gentleman from Florida has made a point of order that the amendment proposed—

Mr. EDWARDS. Mr. Speaker, the gentleman from Florida stated his point of order very rapidly and I want to be clear on this.

Is the parliamentary point of order on the point that the bill before the House only prohibits one type of abortion procedure, but the motion of the gentleman from Maryland [Mr. HOYER] would actually prohibit more types, in fact all types of late-term abortion procedures?

Is that the point of order that the gentleman from Florida is trying to make and objecting to letting the measure of the gentleman from Maryland up on the floor?

Mr. CANADY of Florida. Mr. Speaker, will the gentleman yield?

Mr. EDWARDS. I yield to the gentleman from Florida.

The SPEAKER pro tempore. The gentlemen will suspend. The Chair will recognize Members to argue the point of order. Does the gentleman from Florida seek that recognition?

Mr. CANADY of Florida. Mr. Speaker, I seek the opportunity to respond to the question posed by the gentleman from Texas.

The SPEAKER pro tempore. The Chair will hear argument confined to the point of order. The gentleman may proceed, confined to the point of order.

Mr. CANADY of Florida. Mr. Speaker, the point of order is the fundamental purpose of the underlying bill, H.R. 1122, deals with a very limited class of abortion, specifically partial-birth abortions.

One specific type of procedure in the bill is what is dealt with in H.R. 1122. The fundamental purpose of the motion to recommit, in contrast to that, deals with any abortion procedure done post viability. It, therefore, purports to cover a much broader class of procedures.

I believe that the impact of the motion to recommit would essentially be nil, because although it purports to affect a broader class of procedures, due to the exceptions contained in the motion to recommit, it is essentially meaningless.

Mr. EDWARDS. Mr. Speaker, I guess going back to my original question to the Speaker, the point of order is being made on the basis that the bill before the House simply outlaws one type of abortion procedure, the motion made by the gentleman from Maryland would actually ban many other types of late-term-abortion procedures, and the gentleman from Florida objects to that being vetoed upon in the House; is that correct, Mr. Speaker?

The SPEAKER pro tempore. The Chair hopes to clarify this point in the Chair's ruling. The Chair is now prepared to rule.

The SPEAKER pro tempore (Mr. McINNIS). Is the gentleman opposed to the bill?

Mr. FRANK of Massachusetts. I am in its form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. FRANK of Massachusetts moves to recommit the bill H.R. 1122 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendments:

Page 2, line 10, insert after the words "or injury" the following:

"including a life endangering physical condition caused by or arising from the pregnancy itself, or to avert serious adverse long-term physical health consequences to the mother"

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. FRANK) is recognized for 5 minutes in support of his motion to recommit.

Mr. FRANK of Massachusetts. Mr. Speaker, after the Committee on Rules tried to keep this from being heard, I appreciate your helping make sure that it is.

This is an amendment that would in its most important form add one more exception. Remember we had the bill that does not prevent the abortions, as the gentleman from Florida acknowledged, but bans a particular procedure.

Mr. Speaker, the bill bans a specific procedure. The sponsors said in opposition to the amendment that we just voted on that was ruled nongermane when it came up before, well, we do not like health as an exception. I do. I wanted health as an exception. That was voted down, and I regret it. But now I am offering a narrower one that meets some of the arguments we heard.

Health broadly defined by the Supreme Court when there is no other reference, and it is just health when there is no modifier, the Supreme Court has said that includes mental health, et cetera, as I think it should. But in this case where we are talking about one procedure where we have already voted down health, I have a further amendment. This says, "You can have an exception if it is necessary to avert serious adverse long-term physical health consequences." This, Mr. Speaker, is what the House is about to vote on.

I ask my colleagues, "Are you prepared to say to a doctor if you believe in your best medical judgment that it is necessary to avert serious physical long-term adverse health consequences, and the only way to avert them is to use this procedure, this amendment says to a doctor, because it follows the language of the bill, if it is necessary, not if it's in your subjective opinion, but if it's necessary, and you can show in a judicial proceeding that it was necessary to avert serious long-term adverse physical health consequences you can perform the procedure." And the majority is going to say no apparently.

Well, some say it is never possible. If my colleagues really believe that, then

the amendment would do no harm. But is the House ready to tell every doctor in America that never under any circumstances can he or she use a medical judgment to say this procedure? Because again we are not talking about whether or not there can be an abortion. There can be an abortion. It may be on mental health grounds, it may be on physical health grounds. Then the question is what is the procedure. And we are asking for a vote that says if it is necessary so that a woman does not lose her fertility so that there is not permanent damage to her organs, if she is not in horrible pain for a prolonged period.

Is that not likely to happen? I do not know; along with almost everybody in the House, I do not know. And therefore I am not prepared to legislate it. I am prepared to say that the physicians can decide that.

How much time do I have remaining, Mr. Speaker?

The SPEAKER pro tempore. The gentleman from Massachusetts has 2 minutes remaining.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield to the gentleman from Connecticut (Mrs. KENNELLY).

Mrs. KENNELLY. Mr. Speaker, in all my years in the House I have never been more disturbed by a vote, but yet what happened in the Committee on Rules last night and on the floor here today, my concerns have not been allayed. Mr. Speaker, let me talk about those concerns.

I do not think the State should interject itself before viability and that women should have the right to protect their life and their health as under Roe versus Wade. I am concerned about viability of pregnancies, and I know health has been broadly interpreted, but under Frank it will be interpreted as the serious, serious physical health of the mother.

I am concerned about this, and it is before us, this method. It is brutal, it is inhuman, and it should never be used. However, may I say that is not my decision. Under Roe versus Wade the law of the land aids the decision of the mother and the doctor.

Mr. Speaker, I am so concerned about this body today. We have let political considerations and efforts do away with Roe versus Wade take over this and not let us resolve this situation.

Forty States, Mr. Speaker, have resolved this situation. We can resolve it by putting the serious health of the mother into this mix.

Mr. Speaker, we can do better.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me anticipate. Members on the other side have said, "Well, when you say health, the Supreme Court reads a broader version." Yes, I have that opinion right here. When it only said health, the Supreme Court interpreted a statute referring to health more broadly. The Supreme Court has never said that health al-

ways—that physical health does not just mean physical health. There is no argument for that, and the Supreme Court has never interpreted a statute on physical health. That is the key issue here.

I also add a language point that others have brought up making it clear that, if life is endangered by a condition arising from the pregnancy itself, that is also an exception. And that is not in the bill explicitly, and it ought to be, but this key point is before us now: "Do you believe as the chairman of the committee said, and the chairman of the committee in his intellectual integrity said if the choice is serious long-term physical health damage to the mother or the life of the fetus, apparently even a severely damaged fetus that could not live long, the woman's health must suffer."

I hope the House will not vote that way.

The SPEAKER pro tempore. Is the gentleman from Florida opposed to the motion to recommit?

Mr. CANADY of Florida. I am, Mr. Speaker.

The SPEAKER pro tempore. The chair recognizes the gentleman from Florida (Mr. CANADY) for 5 minutes in opposition to the motion to recommit.

Mr. CANADY of Florida. Mr. Speaker, regarding the life exception language contained in the gentleman's proposal, it is already covered in H.R. 1122. The language in the amendment simply restates what is obvious in the language in the bill. The life exception in H.R. 1122 states, and I will read it; it is on page 2 beginning on line 7:

This paragraph shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by physical disorder, illness, or injury.

That very statement is made on the floor today that this bill does not provide an exception for the life of the mother. It is clearly right here in the bill. I have asked the Members to read it, look at it with their own eyes.

Regarding the health exception, partial-birth abortion is never necessary for a mother's health or future fertility. Hundreds of obstetricians, gynecologists, and maternal fetal specialists, along with former Surgeon General C. Everett Koop, have come forward to unequivocally state that, quote, "Partial-birth abortion is never medically necessary to protect the mother's health or her future fertility. On the contrary, this procedure can pose a significant threat to both," close quote.

Furthermore, in an American Medical News article Dr. Warren Hern, a late-term abortionist, disputed the safety of the partial-birth abortion procedure. I want to quote directly from this article. Now, this is Dr. Hern, M.D., one of the leading experts on abortion procedures in this country. This is what he said:

I have very serious reservations about this procedure, said Dr. Hern, the

The gentleman from Florida makes a point of order that the amendment proposed in the instructions with the motion to recommit offered by the gentleman from Maryland is not germane.

The pending bill prohibits a certain class of abortion procedures.

The amendment proposed in the motion to recommit prohibits any or all abortion procedures in certain stages of pregnancy. It differentiates between the stages of pregnancy on the basis of fetal viability. In so doing, the amendment arguably addresses a subset of the category of pregnancies addressed by the bill. Still, by addressing any or all abortion procedures, the prohibition in the amendment exceeds the scope of the prohibition in the bill.

The bill confines its sweep to a single, defined class of abortion procedures. Thus, even though the amendment differentiates between pregnancies on narrower bases than does the bill, the amendment also, by addressing any or all abortion procedures, broadens the prohibition in the bill.

One of the basic lines of precedent under clause 7 of rule 16, the germaneness rule, holds that a proposition addressing a specific subject may not be amended by a proposition more general in nature. As noted in section 798f of the House Rules and Manual, this principle applies even when both propositions address a common topic.

Thus, on March 23, 1960, the Chair held that an amendment to criminalize the obstruction of any court order was not germane to a bill to criminalize only the obstruction of court orders relating to the desegregation of public schools.

On the reasoning reflected in this line of precedent, the Chair holds that the amendment proposed in the motion to recommit is not germane to the bill. Accordingly, the point of order is sustained and the motion to recommit is not in order.

Mr. HOYER. Mr. Speaker, it is with great reluctance, because I believe very strongly that the Chair's rulings ought to be upheld, but in this instance, Mr. Speaker, I am compelled, because of the importance of the issue and the closed rule that prevented any amendments, and because I believe, Mr. Speaker, in your ruling you correctly indicated that the Hoyer and Greenwood bill broadens the scope of this bill and broadens the application to procedures beyond what the bill refers to, and for that reason held it not to be germane, I am compelled to appeal the ruling of the Chair.

Mr. CANADY of Florida. Mr. Speaker, I move to lay the appeal on the table.

The SPEAKER pro tempore. First of all, the question is, Shall the decision of the Chair stand as the judgment of the House?

Now, the Chair will recognize the gentleman from Florida [Mr. CANADY].

MOTION TO TABLE OFFERED BY MR. CANADY OF FLORIDA

Mr. CANADY of Florida. Mr. Speaker, I move to lay the appeal on the table.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. CANADY] to lay on the table the appeal of the ruling of the Chair.

The question was taken; and the Chair announced that the yeas appeared to have it.

Mr. HOYER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 265, nays 165, not voting 2, as follows:

[Roll No. 63]

YEAS—265

- Aderholt, Archer, Arney, Bachus, Baesler, Baker, Ballenger, Barcia, Barr, Barrett (NE), Bartlett, Barton, Bass, Bateman, Bereuter, Bilbray, Bilirakis, Bliley, Blunt, Boehner, Bonilla, Bono, Bowki, Brady, Bryant, Bunning, Burr, Burton, Buyer, Callahan, Calvert, Camp, Campbell, Canady, Cannon, Cantle, Chabot, Chambliss, Chenoweth, Chiswell, Clayton, Coble, Coburn, Collins, Conaway, Cook, Cooksey, Costello, Cox, Cramer, Crane, Crapo, Cuban, Cunningham, Danner, Davis (VA), DeLo, DeLay, Deutch, Diaz-Balart, Dickey, Doehittle, Doyle, Dwyer, Duncan, Dunn, Eklers, Ehrlich, Emerson, English, Ensign, Everett, Ewing, Fawell, Foley, Forbes, Fowler, Fox, Franks (NJ), Frelinghuysen, Gallegly, Ganske, Gekas, Gibbons, Glick, Gillmor, Gilman, Gohmert, Gooden, Goodlatte, Goodling, Gordon, Goss, Graham, Granger, Guintoli, Hall (OH), Hall (TX), Hamilton, Hansen, Hastings (WA), Hayworth, Hefley, Harger, Hill, Hillery, Hironaka, Holden, Horn, Hoopes, Houchens, Hult, Hunter, Hutchinson, Hyde, Inglis, Ixtab, Jenkins, Jepsen, Johnson, Egan, Jones, Kanjorski, Kaptur, Kline, Kelly, Kildee, King, King (NY), Kingston, Klink, Klug, Knollenberg, Kolbe, Kucinich, LaFalce, LaHood, Largent, Latham, LaTourrette, Leno, Leach, Lewis (CA), Lewis (KY), Lister, Lipinski, Livingston, LoBundo, Lucas, Manton, Manzullo, Mascara, McCollum, McGreey, McDade, McHugh, McInnis, McIntosh, McIntyre, McKeon, McNulty, Marzullo, Mays, Miller (FL), Minkley, Molinari, Moran (KS), Murtha, Myrick, Neal, Neuharth, Neumann, Ney, Northup, Nowack, Nunes, Oberstar, Obey, Ortiz, Packard, Pappas, Parker, Paul, Paxton, Pease, Peterson (MN), Peterson (PA), Petri, Pickering, Pitzer, Pombo, Porter, Postman, Poshard, Pryor (AR), Quinn, Radziewicz, Rahall, Rangel, Regula, Riggs, Riley, Roemer, Rogers, Rogers, Rohrabacher, Ros-Lehtinen, Roukema, Royce, Ryan, Salmon, Sanford, Sargent, Schaefer, Dan, Schaffer, Bob

- Schlif, Sensenbrenner, Sessions, Shadegg, Shaw, Shimkus, Shuster, Sisk, Sisk, Sisk, Skelton, Smith (MI), Smith (NJ), Smith (OR), Smith (TX), Smith, Linda, Snowberger, Solomon, Souder, Spence, Stearns, Stenholm, Stump, Stupak, Sununu, Talent, Tamin, Taylor (MS), Taylor (NC), Thomas, Thornberry, Tlupe, Tiahrt, Traflet, Turner, Upton, Walsh, Wamp, Watkins, Watts (OK), Weldon (FL), Weldon (PA), Weller, Weyand, White, Whitfield, Wicker, Wolf, Young (AK), Young (FL)

NAYS—165

- Abercrombie, Ackerman, Allen, Andrews, Baldacci, Barrett (WI), Becerra, Bentsen, Berman, Berry, Bishop, Blagojevich, Blumenauer, Boehlert, Bonior, Bowwell, Boucher, Boyd, Brown (CA), Brown (FL), Brown (OH), Capps, Cardin, Carson, Clay, Clayton, Clyburn, Condit, Conyers, Coyne, Cummings, Davis (FL), Davis (IL), DeFazio, DeGette, Delahunt, DeLaware, Delmas, Dicks, Dingell, Dixon, Doggett, Dooley, Edwards, Engel, Eshen, Eshelridge, Evans, Farr, Fattah, Fazio, Fitzhugh, Flaherty, Foglietta, Ford, Frank (MA), Frost, Furse, Gejdenson, Gephardt, Gonzalez, Green, Greenwood, Gutierrez, Harman, Hastings (FL), Hefner, Hilliard, Hinchey, Hinojosa, Hooley, Hoyer, Jackson (IL), Jackson-Lee, Johnson (TX), Jefferson, Johnson (CT), Johnson (WI), Johnson, E. B., Kennedy (MA), Kennedy (RI), Kennelly, Kilpatrick, Kind (WI), Klecka, Lamson, Latta, Levin, Lewis (GA), Lofgren, Lowey, Luther, Maloney (CT), Maloney (NY), Markey, Martinez, Matsui, McCarthy (MO), McCarthy (NY), McDermott, McGovern, Meehan, McKinney, Meek, Menendez, Mendenhall, McDonald, Miller (CA), Minge, Mink, Moran (VA), Morella, Nadler, Oliver, Owens, Pallone, Pascrell, Pastor, Payne, Pelosi, Pickett, Pomeroy, Price (NC), Rangel, Reyes, Rivers, Rothman, Roybal-Allard, Rush, Sabo, Sanchez, Sanders, Sandlin, Sawyer, Schumer, Scott, Serrano, Shays, Sherman, Skaggs, Slaughter, Smith, Adam, Snyder, Spratt, Stabenow, Stark, Stokes, Strickland, Tanner, Tauscher, Thompson, Thurman, Tierney, Torres, Towns, Velazquez, Vento, Visclosky, Waters, Watt (NC), Waxman, Waxler, Wise, Woolsey, Wyua, Yates

NOT VOTING—3

Capitol, Orley

□ 1525

Messrs. BASS, KINGSTON, and RAMSTAD, and Mrs. KELLY changed their vote from "nay" to "yea."

So the motion to table was agreed to. The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1530

MOTION TO RECOMMIT OFFERED BY MR. FRANK OF MASSACHUSETTS. Mr. FRANK of Massachusetts. Mr. Speaker, I offer a motion to recommit.

author of Abortion Practice, the Nation's most widely used textbook on abortion standards and procedures. He specializes in late-term procedures. He opposes the bill, he said, because he thinks Congress has no business dabbling in the practice of medicine. But of the procedure in question he says this: "You really can't defend it. I'm not going to tell someone else that they should not do this procedure, but I'm not going to do it."

Now, Dr. Hern's concern centers around claims that the procedure in late-term pregnancy can be safest for the pregnant woman and that without this procedure women would have died, and this is what Dr. Hern says: "I would dispute any statement that this is the safest procedure to use," close quote. "Turning the fetus to a breech position is potentially dangerous." He added, "You have to be concerned about causing amniotic fluid embolism or placental abruption if you do that."

Pamela Smith, M.D., director of medical education in the department of obstetrics and gynecology at Mt. Sinai Hospital of Chicago added two more concerns. Cervical incompetence and subsequent pregnancy caused by 3 days of forceful dilation of the cervix and uterine rupture caused by rotating the fetus within the womb. Partial-birth abortion is used by some abortionists for their own convenience. It is never necessary to partially deliver a live child and jam scissors into the back of his or her head to preserve the mother's health. Just consider what is involved in this procedure.

I would ask my colleagues to consider what is involved in this procedure. A living human child is partially delivered. With the child three-fourths out of the mother, with only the head remaining in the mother, the child is stabbed in the back of the head.

I hate describing this, but this is what goes on.

Explain to me how stabbing the child in the back of the head in this gruesome procedure protects the mother's health. It is nonsense; it does not. It is not necessary. What we are seeing here is an effort by people who believe that abortion should be permitted under any circumstance at any time during pregnancy for any reason, an attempt to derail this bill, put in amendments that will create loopholes and will render the bill meaningless.

I urge my colleagues who are serious about addressing this procedure to oppose this motion to recommit and support the bill.

Mr. Speaker, I yield the balance of my time to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. Mr. Speaker, we once again deal with deception. There is no serious adverse long-term physical health consequence to the mother that can be best treated by this procedure. It does not exist, it has never existed, it will never exist. It is a falsehood, it is an untruth. Partial-birth abortion, D&E on the live baby is done for the

convenience of an abortionist. It is never done for any other reason. It is done for the convenience of an abortionist.

This is a deceptive way to confuse the issue. There is no truth that this allowance needs to be there, because it never exists. It is a falsehood. It is something that was set up so that we can create a false climate.

I will repeat. It never happens. It never is indicated.

□ 1545

The SPEAKER pro tempore (Mr. MCINNIS). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the yeas appeared to have it.

RECORDED VOTE

Mr. FRANK of Massachusetts. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—yeas 149, noes 282, not voting 2, as follows:

[Roll No. 64]

AYES—149

- | | | |
|---------------|-----------------|---------------|
| Ankerman | Furse | Mingo |
| Andrews | Geddeson | Moakley |
| Baldacci | Gephardt | Moran (VA) |
| Barrett (WI) | Glickrest | Morella |
| Beahm | Gilman | Neal |
| Bentzen | Gonzales | Obey |
| Berman | Green | Over |
| Bishop | Greenwood | Owens |
| Blagojevich | Hastings (FL) | Pallone |
| Bومنانان | Hillard | Parter |
| Boschert | Blacbey | Payne |
| Boulton | Blanco | Pomeroy |
| Boucher | Booley | Price (NC) |
| Byrd | Horn | Ramstad |
| Brown (CA) | Houghton | Rangel |
| Brown (FL) | Hoyer | Rayes |
| Brown (OH) | Jackson (IL) | Rivers |
| Campbell | Jackson-Lee | Rothman |
| Capps | (TX) | Roybal-Allard |
| Cardin | Jefferson | Rush |
| Carson | Johnson (CT) | Sabo |
| Castle | Johnson (WI) | Sanchez |
| Clayton | Jehinson, E. B. | Sanders |
| Clyburn | Kelly | Sandin |
| Chuyers | Kennedy (MA) | Sawyer |
| Cobys | Kennedy (RI) | Scott |
| Cummings | Kennelly | Serrano |
| Davis (FL) | Kilpatrick | Shays |
| Davis (IL) | Klad (WI) | Sherman |
| DeFazio | Klopacka | Skaggs |
| Delahunt | Klug | Smith, Adam |
| DeLauro | Kolbe | Snyder |
| Dellums | Lampson | Spratt |
| Deutch | Lastos | Stabenow |
| Dicks | Levin | Stark |
| Dixon | Lewis (GA) | Stokes |
| Doggett | Lutler | Strickland |
| Dooley | Maloney (CT) | Thompson |
| Edwards | Markey | Thurman |
| Engel | Matsui | Tierney |
| Eshoo | McCarthy (MO) | Torres |
| Ethridge | McCarthy (NY) | Towns |
| Evans | McDermott | Vento |
| Fastah | McGovern | Waters |
| Filner | McKinney | Watt (NC) |
| Flake | Meek | Wise |
| Ford | Menendez | Woolsey |
| Frank (MA) | Miller | Wynn |
| Frelinghuysen | McDonald | Yates |
| Frost | Miller (CA) | |

NOES—282

- | | | |
|-------------|--------|----------|
| Abercrombie | Archer | Baseler |
| Aderholt | Armey | Baker |
| Allen | Bachus | Balleger |

- | | | |
|--------------|---------------|---------------|
| Barcia | Gutknecht | Paxon |
| Barr | Hall (OH) | Pease |
| Barrett (NE) | Hall (TX) | Pelosi |
| Bartlett | Hamilton | Peterson (MN) |
| Barton | Hansen | Peterson (PA) |
| Bas | Harman | Petri |
| Bateman | Hastert | Pickering |
| Bereuter | Hastings (WA) | Pickett |
| Berry | Hayworth | Pitta |
| Bilbray | Hefley | Pombo |
| Bilirakis | Hefner | Porter |
| Billiey | Heger | Portman |
| Blunt | Hill | Poshard |
| Boehner | Hillery | Pryce (OH) |
| Bonilla | Hobson | Quinn |
| Bono | Hoekstra | Radanovich |
| Borski | Holden | Rahall |
| Boswell | Hostettler | Regula |
| Brady | Hulshof | Riggs |
| Bryant | Hunter | Riley |
| Bunning | Hutchinson | Roemer |
| Burr | Hyde | Rogan |
| Burton | Inglis | Rogers |
| Buyer | Istook | Rohrabacher |
| Callahan | Jenkins | Roe-Lehtinen |
| Calvert | John | Roukema |
| Camp | Johnson, Sam | Royce |
| Cannady | Jones | Ryun |
| Cannon | Kanjorski | Salmon |
| Chabot | Kasich | Sanford |
| Chambliss | Kildee | Saxton |
| Chenoweth | Kim | Scarborough |
| Christensen | King (NY) | Schaefer, Dan |
| Clement | Kingston | Schaefer, Bob |
| Coble | Klink | Schiff |
| Coburn | Knollenberg | Schumer |
| Collins | Kucinich | Sensenbrenner |
| Combest | LaFalce | Sessions |
| Condit | LaHood | Shadegg |
| Cook | Largent | Shaw |
| Cooksey | Latham | Shimkus |
| Costello | LaTourrette | Shuster |
| Cox | Lasio | Siskiy |
| Cramer | Leach | Skeen |
| Crane | Lewis (CA) | Skelton |
| Crape | Lewis (KY) | Slaughter |
| Cubin | Linder | Smith (MI) |
| Cunningham | Lipinski | Smith (NJ) |
| Danaher | Livingston | Smith (OR) |
| Davis (VA) | LoBlundo | Smith (TX) |
| Deaf | Loftgren | Smith, Linda |
| DeGette | Lowey | Snowberger |
| DeLay | Lucas | Solomon |
| Dias-Balart | Maloney (NY) | Souder |
| Dickey | Manton | Spence |
| Dingell | Mansullo | Stearns |
| Doan | Martinez | Stenholm |
| Doyle | Mascara | Stump |
| Dreier | McCollum | Stupak |
| Duncan | McCrery | Sununu |
| Dunn | McDade | Talent |
| Ehlers | McHale | Tanner |
| Ehrlich | McHugh | Tauscher |
| Emerson | McInnis | Tanias |
| English | McIntosh | Taylor (MS) |
| Englert | McIntyre | Taylor (NC) |
| Everett | McKeon | Thomas |
| Ewing | McNulty | Thornberry |
| Farr | Metcalfe | Thune |
| Fawell | Mica | Tiahrt |
| Fazio | Miller (FL) | Traffant |
| Foglietta | Mink | Turner |
| Foley | Molinar | Upton |
| Forbes | Mollohan | Velasquez |
| Fowler | Moran (KB) | Visclosky |
| Fox | Murtha | Walsh |
| Franks (NJ) | Myrick | Wamp |
| Gallely | Nadler | Watkins |
| Gancke | Nethercutt | Watts (OK) |
| Gekas | Neumann | Waxman |
| Gibbons | Ney | Weldon (FL) |
| Gilmer | Northup | Weldon (PA) |
| Gingrich | Norwood | Weller |
| Goode | Numie | Wexler |
| Goodlatte | Oberstar | Weygand |
| Goodling | Ortiz | White |
| Gordon | Packard | Whitfield |
| Goss | Pappas | Wicker |
| Graham | Parker | Wolf |
| Granger | Pascarell | Young (AK) |
| Gutierrez | Paul | Young (FL) |

NOT VOTING—2

Kaptur
Oxley
Mr. FOGLETTA changed his vote from "aye" to "no."
So the motion to recommit was rejected.

MAR-12 97 11:10 FROM:
SENT BY:

TO: 2024565557

PAGE: 02/02

3- 6-97 :10:21AM :

Abortion - partial birth -
legislative materials -
2/4
H.L.C.

F:\M5\HOYER\HOYER.001

105TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. HOYER introduced the following bill; which was referred to the Committee
on _____

A BILL

To prohibit certain abortions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Late Term Abortion
5 Restriction Act".

6 SEC. 2. PROHIBITION ON CERTAIN ABORTIONS.

7 (a) IN GENERAL.—It shall be unlawful, in or affect-
8 ing interstate or foreign commerce, knowingly to perform
9 an abortion after the fetus has become viable.

1 (b) EXCEPTION.—This section does not prohibit any
 2 abortion if, in the medical judgment of the attending phy-
 3 sician, the abortion is necessary to preserve the life of the
 4 woman or to avert serious adverse health consequences to
 5 the woman.

6 (c) CIVIL PENALTY.—A physician who violates this
 7 section shall be subject to a civil penalty not to exceed
 8 \$10,000. The civil penalty provided by this subsection is
 9 the exclusive remedy for a violation of this section.

SENT BY:

3- 6-97 :10:22AM ;

4 / 4

Hoyer Overview of Late-Term Abortion Bill Issues

This memo attempts to clarify the three key issues raised during the members' meeting last Thursday. There are essentially three issues to be addressed: 1) post-viability vs. third trimester; 2) serious health vs. health; and 3) penalty options.

I. "Post-Viability" Language:

The post-viability language in the Hoyer bill is entirely consistent with Roe as modified by the Supreme Court's decision in Casey. Casey, taking notice of medical advancements which could render the trimester framework obsolete as an index of fetal viability, dropped the trimester framework in favor of a viability standard. Whereas Roe's trimester framework was fixed, Casey's viability standard is subject to movement as medicine's ability to save prematurely born babies improves. Casey (the current "law of the land") upholds a woman's constitutional right to have an abortion up to the point of fetal viability (subject to restraints which do not place an "undue burden" on that right), and after viability "where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother." Senator Boxer's amendment to H.R. 1833 (the partial birth bill vetoed by the President last year) also uses Casey's "viability" rubric.

II. "Serious Adverse Health Consequences" Language:

The health exception in the Hoyer bill is practically identical to the life and health exception language contained in the Boxer amendment to H.R. 1833. This language narrows, theoretically, the health exception of Casey by providing that the threat to the health of the woman must be "serious" in nature ("in the medical judgment of the attending physician"). We believe that this will not have a substantial impact on the class of women who seek late-term abortions, because most women who seek post-viability abortions do so for health reasons a physician would consider "serious". We believe and intend that our "serious health" exception will encompass severe fetal anomalies, which pose a serious health risk to the health of the woman, but not minor birth defects such as cleft palate which do not pose such a risk. "Adverse" should have no narrowing effect because it is beyond question that the Court in Casey and Roe sought to avoid health endangerment (vs. improvement).

III. Penalty Options:

The Hoyer bill provides for a \$10,000 civil penalty for physicians who perform post-viability abortions which do not fall within the prescribed life or serious health exception. A civil penalty is preferable to no penalty because it provides the necessary "teeth" to counteract pro-life charges that the bill is illusory. The \$10,000 figure is sufficiently substantial to provide a plausible defense to the unavoidable pro-life criticism. If set much higher, the civil penalty could have a "chilling" deterrent effect on physicians, diminishing access to women who seek late-term abortions for permissible (i.e., "serious health") reasons under the bill. A criminal penalty would clearly have a "chilling effect" and would raise the disturbing specter of physicians being carted away in handcuffs -- an image most Americans would find offensive.

To: Ben Frelund
Honorable Griffin

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide a procedure for determining whether a physician's conduct was necessary to save the life of the mother.

IN THE SENATE OF THE UNITED STATES—105th Cong., 1st Sess.

H.R. 1122

To amend title 18, United States Code, to ban partial birth abortions.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. SANTORUM

Viz:

1 On page 2, line 16, strike the semicolon and all that
2 follows through "purpose" on line 17.

3 On page 3, between lines 8 and 9, insert the follow-
4 ing:

5 "(3) As used in this section, the term 'vaginally deliv-
6 ers a living fetus before killing the fetus' means delib-
7 erately and intentionally delivers into the vagina a living
8 fetus, or a substantial portion thereof, for the purpose of :

1 performing a procedure the physician knows will kill the
2 fetus, and kills the fetus.

3 On page 3, between lines 21 and 22, insert the follow-
4 ing:

5 "(d)(1) A defendant accused of an offense under this
6 section may seek a hearing before the State Medical Board
7 on whether the physician's conduct was necessary to save
8 the life of the mother whose life was endangered by a
9 physical disorder, illness or injury.

10 "(2) The findings on that issue are admissible on that
11 issue at the trial of the defendant. Upon a motion of the
12 defendant, the court shall delay the beginning of the trial
13 for not more than 30 days to permit such a hearing to
14 take place.

15 On page 3, line 22, strike "(d)" and insert "(e)".